

# Royal Commission into the Casino Operator and Licence

THE REPORT — VOLUME 1

#### ROYAL COMMISSION INTO THE CASINO OPERATOR AND LICENCE

#### The Report – Volume 1

The Hon. Ray Finkelstein, AO, QC Commissioner

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The Royal Commission into the Casino Operator and Licence acknowledges the traditional Aboriginal owners of country throughout Victoria and recognises their continuing connection to land, sea, culture and community. The Commission pays its respects to elders past, present and emerging.



15 October 2021

Her Excellency the Honourable Linda Dessau, AC Governor of Victoria Government House Drive Melbourne VIC 3004

Your Excellency

In accordance with the Letters Patent dated 22 February 2021 and the amendments to the Letters Patent dated 25 February 2021 and 10 June 2021, I have the honour of presenting to you the report and recommendations of the Royal Commission into the Casino Operator and Licence.

Yours sincerely

The Honourable Ray Finkelstein, AO, QC Commissioner

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#### Acronyms

Term	Definition
AFP	Australian Federal Police
AML	anti-money laundering
AML/CTF	anti-money laundering/counter-terrorism financing
ASIC	Australian Securities and Investments Commission
ASX	Australian Securities Exchange
AUSTRAC	Australian Transaction Reports and Analysis Centre
CALD	culturally and linguistically diverse
CBPGR	Commission Based Players' Gaming Revenue
СРН	Consolidated Press Holdings Pty Limited
CRA	Casino Regulatory Authority (Singapore)
CTF	counter-terrorism financing
CUB	Carlton & United Breweries Ltd
CUP	China Union Pay
DAB	deposit account balance
EGM	electronic gaming machine
FATF	Financial Action Task Force
FATG	fully-automated table game
FCCCP	Financial Crime and Compliance Change Program
GGR	Gross Gaming Revenue
HCL	Hudson Conway Limited
ICS	internal control statement
IFTI	International Funds Transfer Instruction
ILGA	Independent Liquor and Gaming Authority (NSW)
IMA	International Marketing Agent (Singapore)
JTO	junket tour operator
JTR	junket tour representative
KYC	know your customer

Term	Definition
n.d.	no date
PBL	Publishing and Broadcasting Limited
RGA	Responsible Gaming Advisor
RGC	Responsible Gaming Centre
RMC	Risk Management Committee (Crown)
RSG	Responsible Service of Gaming
SMR	Suspicious Matter Report
TTR	Threshold Transaction Report
VCCA	Victorian Casino Control Authority
VCGA	Victorian Casino and Gaming Authority
VCGLR	Victorian Commission for Gambling and Liquor Regulation
VCGR	Victorian Commission for Gambling Regulation
VGCCC	Victorian Gambling and Casino Control Commission
VRGF	Victorian Responsible Gambling Foundation

#### Glossary

Term	Definition
Bergin Inquiry	The inquiry under section 143 of the <i>Casino Control Act 1992</i> (NSW) undertaken by the Hon. Patricia Bergin, AO, SC to look into whether Crown Sydney was suitable to hold a casino licence in New South Wales.
Bonus Jackpots	A <b>Crown Melbourne</b> promotional scheme offering dining, hotel accommodation and parking benefits to members.
buy-in	The amount of money or funds a player credits to an <b>electronic gaming machine</b> , <b>fully-automated table game</b> or semi-automated table game, or exchanges for chips or chip purchase vouchers for play on a <b>table game</b> at the <b>Melbourne Casino</b> .
buy-out	The amount of money or funds a player has returned to them on a gambling product at the <b>Melbourne Casino</b> .
Cage	A secure area of the <b>Melbourne Casino</b> in which financial transactions, including exchanging cash or chips for play, are conducted in relation to the casino's gaming operations.
carded and uncarded customers	Customers gambling at the <b>Melbourne Casino</b> using a Crown loyalty card or without a card. Commonly referred to as 'carded play' and 'uncarded play', and 'carded' and 'uncarded' customers.
Casino Agreement	An agreement between <b>Crown Melbourne</b> (then Crown Casino Ltd) and the <b>regulator</b> (then the Victorian Casino Control Authority) dated 21 September 1993, incorporating all variations as at the date of this Report (unless the context requires otherwise).
casino licence	A licence granted under part 2 of the <i>Casino Control Act 1991</i> (Vic) that allows the licence holder to operate a casino.
casino licensee	The holder of a licence granted under part 2 of the <i>Casino Control Act</i> 1991 (Vic). See also <b>casino operator</b> .
casino operator	The casino licensee who operates the casino.
Commission Based Player	A person who participates in an approved <b>premium player</b> arrangement or an approved <b>junket</b> . The person must meet the casino regulator's requirements.
Crown Australian Resorts	<b>Crown Melbourne</b> , Crown Perth and Crown Sydney integrated casino resorts.

Term	Definition
Crown Melbourne	Crown Melbourne Limited. The holder of the Melbourne casino licence and the casino operator.
	Previously known as Crown Casino Ltd, Crown Limited, Haliboba Pty Ltd and Crown Melbourne Limited.
	Crown Melbourne is a wholly owned subsidiary of Crown Resorts.
	See Appendix E for the corporate history of the Crown group.
Crown Melbourne Contracts	In the context of this Commission, the documents referred to in section 25(1)(c) of the <i>Casino Control Act 1991</i> (Vic). They are:
	<ul> <li>a suite of commercial agreements concerning the operation of the Melbourne Casino Complex</li> </ul>
	<ul> <li>any other agreements between Crown Melbourne and the State, or a body representing the State, that impose obligations on the casino operator in relation to gaming.</li> </ul>
Crown Resorts	Crown Resorts Limited. An ASX-listed, Australian public company and Crown Melbourne's ultimate holding company.
	See Appendix E for the corporate history of the Crown group.
cuckoo smurfing	A method of <b>money laundering</b> criminals use to move funds across borders and make money generated by their illegal activities appear to have come from a legitimate source. It usually occurs when one or more third parties intercepts legitimate payments and replaces them with deposits of illicit funds. See Chapter 6 for a detailed explanation.
electronic gaming machine	A device for playing a game of chance or a game that involves chance and skill that can be wholly or partly electronic. Players make bets on the machine with winnings returned as credits.
front money	The amount of money or funds a <b>junket</b> organiser or promoter lodges with the <b>casino operator</b> before the junket player starts playing at the casino as part of the junket.
fully-automated table game	Table games that do not require a dealer for play.
gambling	Gambling requires a player to risk losing something of value (usually money) for the chance of winning more. Gambling outcomes may depend on correctly predicting an uncertain outcome (such as a particular horse coming first in a race) or luck (such as a winning combination of symbols on an electronic gaming machine).

Term	Definition
Gambling Code	Also called a Responsible Gambling Code of Conduct. Each gambling industry participant needs to have a Gambling Code under the <i>Gambling Regulation Act 2003</i> (Vic), and <b>Crown Melbourne</b> must have one under the <i>Casino Control Act 1991</i> (Vic). Gambling Codes must meet certain standards and requirements.
gaming	A formalised expression of play. Games can come in many different types and genres, such as board games or electronic/digital games played via a computer or smartphone.
Gross Gaming Revenue	The total amount a <b>casino operator</b> receives through gaming, less the amount paid out as winnings. See Chapters 11 and 12 for a detailed explanation.
high roller	A person who gambles very large amounts of money in a casino through a <b>Commission Based Player</b> arrangement.
holding company	A company that holds majority voting rights or shares in other companies. See also <b>subsidiary</b> and <b>wholly owned subsidiary</b> .
internal control statement	The approved and documented system of internal controls and administrative and accounting procedures for <b>Crown Melbourne</b> .
junket	An arrangement whereby a person, or a group of people, is introduced to a <b>casino operator</b> by a junket organiser or promoter, who receives a commission based on the <b>turnover</b> of the junket players play in a casino. See Chapter 7 for a detailed explanation.
Management Agreement	An agreement between <b>Crown Melbourne</b> (then Crown Casino Ltd) and the State of Victoria dated 20 September 1993, a copy of which is set out in schedule 1 of the <i>Casino (Management Agreement)</i> Act 1993, as varied by ten Deeds of Variation, copies of which are set out in schedules 2 to 11 of that Act (unless the context requires otherwise).
Melbourne Casino	The casino operated in Melbourne by <b>Crown Melbourne</b> , including the areas in which money counting, surveillance, storage and other activities related to the conduct and playing of games are carried on.
Melbourne Casino Complex	The Melbourne Casino and connected facilities at the Crown Melbourne site on Southbank. It includes hotels, restaurants, bars and other non-gaming amenities.
money laundering	The act of disguising or legitimising the origins of money that is used in or derived from crime. See Chapter 6 for a detailed explanation.

Term	Definition
net loss	When the total amount outlaid by a player exceeds winnings or returns from gambling.
Observable Signs	Seen or reported behaviours or patterns of behaviours which are potential indicators that a person may be experiencing problems with their gambling behaviours.
offsetting	A practice that enables the international transfer of value without actually transferring money. This is possible because the practice involves a financial credit and debit (offsetting) relationship between two or more entities operating in different countries.
patron account	A bank account maintained by Crown into which patrons can deposit money.
Play Safe Limits	Crown Melbourne's voluntary money and time limit setting program. It allows Crown Resorts' loyalty program members to set money and time limits for their fully-automated table game play.
pre-commitment system	A system that involves a gambler setting a loss limit and a time limit before they commence gambling. This can be mandatory or voluntary.
premium player arrangement	An arrangement whereby a <b>casino operator</b> agrees to pay a patron of the casino a commission based on the patron's play. The commission could be based on the patron's <b>turnover</b> or some other aspect of their play.
problem gambler	A person whose gambling has negative consequences. They may often spend more than their limit, gamble to win money back and feel stressed about their gambling.
problem gambling	Gambling characterised by difficulties in limiting money and/or time spent gambling, which leads to adverse consequences for the person gambling and often for others in the community.
regulator	The regulator of the <b>casino operator</b> has had a number of different names since it was first established. In this Report, the term 'regulator' is used instead of the regulator's name, unless the name is needed for clarity.
Responsible Gaming Register	The electronic database maintained by <b>Crown Melbourne</b> into which gaming staff log activities or incidents relating to the Responsible Service of Gaming.
risk appetite	The boundaries for risk an organisation sets and is willing to accept in pursuit of strategic objectives.

T	Definition
Term	Definition
risk management plan/ framework	The totality of policies, processes and risk management tools used by an organisation to manage the variety of risks it faces.
root cause analysis	Any systematic process that identifies the cause of an undesired event.
Self-Exclusion Program	A program <b>Crown Melbourne</b> offers to customers wanting to voluntarily ban themselves from gaming areas for a period of at least 12 months.
spin rate	The interval between spins on an electronic gaming machine.
structuring	The practice of deliberately splitting what could be a single cash transaction into several smaller transactions, each of which is less than \$10,000 individually but which collectively equal or exceed \$10,000. The purpose of structuring to is avoid authorities detecting large cash deposits.
subsidiary	A company that is more than 50 per cent owned and controlled by another company or firm.
SYCO	An electronic customer relationship management system used by <b>Crown Melbourne</b> and Crown Perth.
table game	A game played on a table or similar surface, typically with counters, balls or other playing pieces. In the context of a casino, a game played at a table, as opposed to an <b>electronic gaming machine</b> , <b>fully-automated table game</b> or semi-automated table game.
turnover	The amount wagered. It is all the money bet before any winnings are paid out or losses incurred. It does not include any additional charges that may also be paid at the point of purchase.
unincorporate	An unincorporated association or entity consisting of a group of individuals with a common interest without a legally recognised structure.
VIP International	The business unit of <b>Crown Resorts</b> focused on marketing Crown's casinos to overseas gamblers.
wholly owned subsidiary	A subsidiary company all of whose shares are owned by a holding company.
YourPlay	The voluntary pre-commitment system that is mandatory under the Gambling Regulation Act 2003 (Vic) for all electronic gaming machines at all gaming venues in Victoria, including the Melbourne Casino. The system allows patrons to pre-set money and/or time limits for gambling on electronic gaming machines.



#### Reports

Short form	Donort
3110111101111	Report
1983 Report	Xavier Connor, Report of Board of Inquiry into Casinos in the State of Victoria (April 1983)
1991 Report	Xavier Connor, Report on Casinos (February 1991)
Banking Royal Commission Final Report	Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (February 2019)
Bergin Report	Parliament of New South Wales, Report of the Inquiry under Section 143 of the <i>Casino Control Act 1992</i> (NSW) (February 2021)
First Review	Victorian Casino and Gaming Authority, First Triennial Report of Investigation into the Casino Operator and Licence under Section 25 of the <i>Casino Control Act 1991</i> (June 1997)
Second Review	Victorian Casino and Gaming Authority, Second Triennial Review of the Casino Operator and Licence (June 2000)
Third Review	Victorian Casino and Gaming Authority, Third Triennial Review of the Casino Operator and Licence (June 2003)
Fourth Review	Victorian Commission for Gambling Regulation, Fourth Review of the Casino Operator and Licence (June 2008)
Fifth Review	Victorian Commission for Gambling and Liquor Regulation, Fifth Review of the Casino Operator and Licence (June 2013)
Sixth Review	Victorian Commission for Gambling and Liquor Regulation, Sixth Review of the Casino Operator and Licence (June 2018)





CHAPTER 01

## Overview

#### CHAPTER 1

#### Overview

- The Commission was established to inquire into, and report on, the suitability of Crown Melbourne to hold its casino licence. The precursor was two findings in the Bergin Report:
  - · Crown Melbourne facilitated millions of dollars to be laundered through a bank account of its subsidiary.
  - · Crown Melbourne allowed operators with links to organised crime to arrange for junket players to gamble at the casino.
- The main focus of the Commission's inquiries was to discover whether the misconduct identified in the Bergin Report was more widespread and, if it was, who was involved and what should be done.
- Within a very short time, the Commission discovered that for many years Crown Melbourne had engaged in conduct that is, in a word, disgraceful. This is a convenient shorthand for describing conduct that was variously illegal, dishonest, unethical and exploitative.
- The catalogue of wrongdoing is alarming, all the more so because it was engaged in by a regulated entity whose privilege to hold a casino licence is dependent upon it being, at all times, a person of good character, honesty and integrity.
- It is difficult to grade the seriousness of the misconduct. Some was so callous that it is hard to imagine it could be engaged in by such a well-known corporation whose Melbourne Casino Complex is visited by millions annually.
- A trigger for the Bergin Inquiry was the arrest in October 2016 of 19 China-based Crown staff, and the subsequent imprisonment of 16 of those staff. The staff had been illegally promoting gambling in Australia to Chinese residents who would gamble large sums. Crown executives were warned that Chinese officials intended to crack down on this activity. Yet they did nothing to protect their staff.
- Despite knowing that staff who worked in Indonesia, Malaysia, Taiwan and Singapore were also likely contravening their local laws, Crown let them carry out promotional activities as the chance of them being charged was not significant. To have done so after the China arrests is nothing short of appalling.
- Crown's underpayment of casino tax shows a similar disregard of the law. In 2011, Crown Melbourne embarked upon a plan to minimise its casino tax by claiming as a deduction amounts that its internal and external lawyers said were not, or were probably not, deductible items. The plan involved concealing from the regulator the true nature of the deductions for fear of getting caught. In the end the plan failed when its existence was exposed by the Commission. Already, over \$61.5 million in back taxes and interest has been repaid. More is likely due.
- Not only was Crown Melbourne content to breach local laws, it also happily assisted its wealthy Chinese patrons to breach the currency laws of their country. Between 2012 and 2016, those patrons transferred up to \$160 million from accounts in China to the Crown Towers Hotel. Purportedly this was to pay for hotel services, but in reality it was to spend at the gambling tables. In addition to Crown Melbourne assisting to breach Chinese currency laws, what occurred also contravened local laws and likely allowed money laundering to take place.

- 10 Crown Melbourne's relationship with the regulator provides more evidence of its indifference to acceptable conduct. Over the years the regulator conducted several investigations into Crown Melbourne's affairs. Instead of cooperating with those investigations in the manner that is expected of a regulated entity, Crown Melbourne took the opposite tack. It bullied the regulator. It provided it with false or misleading information. It delayed the investigatory process. All in all, it took what steps it could to frustrate the regulator's investigations.
- Perhaps the most damning discovery by the Commission is the manner in which Crown Melbourne deals with the many vulnerable people who have a gambling problem. The cost to the community of problem gambling is enormous. It is not only the gambler who suffers. It also affects many other people, and institutions.
- 12 Crown Melbourne had for years held itself out as having a world's best approach to problem gambling. Nothing can be further from the truth. The Commission heard many distressing stories from people whose lives were ruined by gambling but whose situation might have been improved if casino staff had carried out their obligations under Crown Melbourne's Gambling Code.
- 13 The Commission looked for reasons to explain why Crown Melbourne acted as it did. Not all the reasons are known. But some stand out.
- 14 First, Crown Melbourne's board failed to carry out one of its prime responsibilities; namely, to ensure that the organisation satisfied its legal and regulatory obligations. Perhaps the board was not told what was going on. The alternative, to adopt an old expression from the railroad industry, is that the board 'fell asleep at the wheel'.
- 15 Second, many senior executives involved in the misconduct were indifferent to their ethical, moral and sometimes legal obligations. Some were motivated by a drive for profit. Some simply did what they did because they could.
- Third and regrettably, both internal and external lawyers who knew that Crown Melbourne was wanting to engage in conduct that contravened some laws failed to counsel Crown Melbourne not to go ahead. They would say this is not the function of a lawyer, whose only role is to advise on what the law is. While that might sometimes be a defensible position, it cannot be right when the client/employer is a regulated entity that must remain of good repute, having regard to its 'character, honesty and integrity'.
- 17 Last, there is the Packer/CPH influence. This was dealt with in great detail by the Hon. Patricia Bergin, AO, SC who found that their influence encouraged Crown to put profit ahead of other motives for action. The Packer/CPH influence was only touched upon during this Commission's inquiries and then largely through the evidence given by Crown's directors. That evidence confirmed Ms Bergin, SC's views.
- 18 When these facts came to light, it was inevitable that Crown Melbourne would be found unsuitable to hold its casino licence. No other finding was open. The only difficult question was what should be done in that circumstance.
- 19 Deciding what to recommend was a demanding task. It required the weighing up of two almost irreconcilable positions. On one side, there was the overriding need to maintain the integrity of the licensing system. That requires the cancellation of a casino licence held

- by an unsuitable person. On the other side, there were two factors: the risk that cancellation of Crown Melbourne's licence would cause considerable harm to the Victorian economy and innocent third parties; and whether, in a short time, Crown Melbourne could so 'remake' itself that it would once again become suitable to hold a casino licence.
- 20 In reality there is no correct view. It was simply necessary to make a recommendation knowing that whatever the decision, there will be legitimate criticism from those who would go the other way.
- 21 Although Crown Melbourne rightly deserves criticism for its past misconduct, and no one connected with the organisation is entitled to much sympathy, what tipped the balance against the cancellation of its licence was that Crown Melbourne has, at great financial cost, embarked on a significant reform program led by people of good will and skill. The program is likely to succeed. If it does, that will be to the benefit of Victoria.
- 22 Important steps towards reform have been taken. Most significant among them is the appointment of a new board and new and highly motivated senior executives.
- 23 Still, the road forward will not be easy. If the recommendations are accepted, Crown Melbourne will not be in control of its own destiny. For the next two years, the ultimate decision maker at Crown Melbourne will be a Special Manager. This manager, most likely a firm, will oversee all aspects of the casino's operations. It will keep a watchful eye on the progress of reform. It will make sure that all rules and regulations are complied with. It will investigate particular aspects of the casino's operations.
- 24 At the end of the two-year period, the Special Manager will report what has occurred to the regulator. The regulator will then decide whether it is 'clearly satisfied' that Crown Melbourne has returned to suitability. This will be a tough test to satisfy.
- 25 The regulator will be tasked to make its decision 'on the papers'. That is, there will be no further inquiries. The regulator will undertake its task by reference only to the results of the three inquiries into the Crown companies that have been carried out or are presently underway and the reports of the Special Manager.
- 26 If, after taking that material into account, the regulator is not 'clearly satisfied' that Crown Melbourne is suitable to hold its casino licence, the licence will be cancelled forthwith.

#### Terms of Reference

- 27 My Terms of Reference raise a number of questions. Those questions and my answers are:
  - Whether Crown Melbourne is a suitable person to continue to hold the casino licence under the Casino Control Act.
  - A: No.
  - Q: Whether Crown Melbourne is complying with the Casino Control Act, the Casino (Management Agreement) Act, the Gambling Regulation Act (together with any regulations or other instruments made under any of those Acts), and any other applicable laws.

- A: No. Crown Melbourne has contravened the Casino Control Act in various respects and has contravened the Casino (Management Agreement) Act in various respects. The details are found in Part 2 of this Report.
- Q: Whether Crown Melbourne is complying with the Crown Melbourne Contracts.
- A: No. Crown Melbourne has contravened provisions of the Management Agreement and the Casino Agreement. The details are found in Part 2 of this Report.
- **Q:** Whether it is in the public interest for Crown Melbourne to continue to hold the casino licence in Victoria.
- **A:** Not necessary to answer.
- Q: If you consider that Crown Melbourne is not a suitable person, or that it is not in the public interest for Crown Melbourne to hold the casino licence in Victoria, what action (if any) would be required for Crown Melbourne to become a suitable person, or for it to be in the public interest for Crown Melbourne to continue to hold the casino licence in Victoria.
- A: I recommend that the Casino Control Act be amended to create the position of a Special Manager with power to oversee and exercise control over the affairs of a casino operator who has been found to be unsuitable. In relation to Crown Melbourne, the Special Manager should be appointed to oversee and control its affairs for a period of two years. At the end of that period, the regulator should determine whether it is clearly satisfied that Crown Melbourne has become a suitable person to hold its casino licence and that it is in the public interest for it to do so. Details are explained in Chapter 16.
- Q: Whether Crown Resorts is a Suitable Associate of Crown Melbourne.
- A: No.
- Q: If you consider that Crown Resorts is not a Suitable Associate of Crown Melbourne, what action (if any) would be required for Crown Resorts to become a Suitable Associate of Crown Melbourne.
- A: No action is required. If, in two years, the regulator decides that Crown Melbourne is a suitable person to continue to hold its casino licence, it is likely that Crown Resorts will be a suitable associate of Crown Melbourne.
- **Q:** Whether any other existing associates of Crown Melbourne are not Suitable Associates of Crown Melbourne.
- A: It is unlikely that James Packer and the CPH group are presently associates of Crown Melbourne. However, they will become associates on the expiry of the undertakings they have given to the Independent Liquor and Gaming Authority (NSW). Details are explained in Chapter 20.
- Q: If you consider that any other existing associates of Crown Melbourne are not Suitable Associates of Crown Melbourne, what action (if any) would be required for those persons to become Suitable Associates of Crown Melbourne.

- Although the CPH group is not currently an associate of Crown Melbourne, A: I recommend that the Casino Control Act be amended to require the group to reduce its shareholding in Crown Resorts from its current 37 per cent holding to less than a 5 per cent holding. In that event, neither Mr Packer nor the CPH group will become an associate of Crown Melbourne after their undertakings to ILGA have expired.
- Q: Whether you consider changes to relevant Victorian legislation, including the Casino Control Act and the Victorian Commission for Gambling and Liquor Regulation Act, as well as the Crown Melbourne Contracts, are necessary for the State to address your findings and implement your recommendations.
- Yes. The details of all proposed legislative and other changes are found A: in my recommendations.
- Q: Whether there are any other matters necessary to satisfactorily resolve the matters set out above.
- A: Yes. The details are found in my recommendations.

#### Recommendations

28 My Report contains a number of recommendations. For convenience they are set out here. They are grouped according to subject matter and numbered in the order in which they appear in the Report. Immediately preceding each group there is a brief explanation for the recommendations.

#### The regulator

29 The following recommendations have two main objectives. One is to add to the regulator's power to obtain information. The other is to create the office of a Special Manager, who may be appointed by the Minister or the regulator to take control of a casino in certain limited circumstances.

#### RECOMMENDATION 20: NEW POWERS FOR THE REGULATOR<sup>1</sup>

It is recommended that the Casino Control Act be amended to permit the regulator:

- to require any person attending for an examination under section 26(1)(c) to answer questions on oath or affirmation
- in addition to the powers conferred by section 26, to require a casino operator or an associate to provide it with a written statement (verified on oath or affirmation) containing such information as the regulator reasonably requires to carry out its duties or perform its functions
- to make a costs order in respect of any action under section 20

- to require the casino operator to retain at its own cost and pay for a suitably qualified expert:
  - approved by the regulator
  - engaged on terms approved by the regulator

to inquire into and report to the regulator on any matter the regulator reasonably requires to carry out its duties or perform its functions

- · to direct the casino operator to provide the expert with all information the expert reasonably requires
- to require the casino operator to comply with any recommendation made by the regulator as a result of an investigation under section 25.

#### RECOMMENDATION 21: SPECIAL MANAGER<sup>2</sup>

It is recommended that the Casino Control Act be amended to the following effect:

- The regulator has power by an instrument in writing to appoint a Special Manager to oversee the affairs of the casino operator:
  - if the regulator is directed to do so by the Minister; or
  - where it appears to the regulator that at least one of the following situations exist:
    - there are reasonable grounds to suspect that the casino operator has contravened, in a material respect, a provision of its casino licence, the Casino Control Act, or any agreement entered into under sections 15 or 142 of the Casino Control Act
    - the casino operator is or may no longer be a suitable person to hold a casino licence
    - it is in the public interest because fraud, misfeasance or other misconduct by a person concerned with the affairs of the casino operator is alleged
    - in any case it is in the public interest.
- The Special Manager:
  - may be a body corporate or unincorporate
  - if a body corporate or unincorporate, the Special Manager must nominate one or more individuals to carry out any of its functions that can only be undertaken by a natural person.

- The Special Manager must be qualified for appointment by virtue of their knowledge of, or experience in, industry, commerce, law or public administration.
- The instrument appointing the Special Manager must specify:
  - the period of the appointment
  - the terms and conditions (if any) to which the appointment is subject
  - any particular functions the Special Manager is to perform
  - any other matter the regulator considers appropriate
  - if appointed at the direction of the Minister, any function specified in the Minister's direction.
- The functions of the Special Manager shall be to:
  - oversee the affairs of the casino operator including the casino operations
  - carry out investigations that are specified in the instrument of appointment
  - report to the regulator on any matter it has investigated
  - otherwise comply with any direction in the instrument of appointment.
- The Special Manager or, if a body corporate or unincorporate, the nominated person(s), should have the following rights, privileges and powers:
  - the rights and privileges of a director of the casino operator, but not the right to vote
  - despite not having the right to vote, the power to:
    - · direct the board of directors of the casino operator to take particular action
    - direct the board of directors of the casino operator to refrain from taking particular action

if the Special Manager believes that the direction:

- is in the best interests of the casino operator or of the casino operations; or
- is necessary to secure compliance with any law or regulation governing the casino operator or the casino operations.
- · A failure to comply with a direction should be a strict liability offence carrying a significant penalty.
- Without limiting its rights, privileges and powers, the Special Manager may:
  - investigate the affairs of the casino operator and the casino operations
  - attend meetings of the board of directors and any subcommittee of the board

- attend meetings of the casino operator's management, including meetings of any audit committee and compliance committee
- inspect all the books and records of the casino operator
- obtain the advice of, or services from, any third party including experts
- require any director, officer, employee or agent of the casino operator to provide such information, including confidential or privileged information, as the Special Manager requires to carry out its duties.
- A person who fails to comply with a requirement to provide information will be guilty of a strict liability offence with a significant penalty. The court may direct the person to comply with the requirement.
- The Special Manager may carry out its functions, and any director or officer of the casino operator acting under the direction of the Special Manager must observe that direction, despite:
  - the Corporations Act, except to the extent of any inconsistency
  - the casino operator's constitution.
- The Special Manager may if special circumstances arise, and if so directed by the regulator must, make interim reports to the regulator and on the termination of its appointment shall report its opinion on, or in relation to:
  - the conduct of the casino operator and casino operations
  - the particular affairs of the casino operator or casino operations that the instrument of appointment requires the Special Manager to investigate.
- A report may contain confidential or privileged information.
- A copy of any interim report and the final report must be forwarded to the Minister.
- Neither the Minister nor the regulator is to provide a copy of a report to any person unless it is in the public interest to do so. If the report contains information the subject of legal professional privilege, the privilege does not cease.
- The regulator must consider any interim report or the final report and decide what action, including disciplinary action, it should take.
- The costs and expenses of the Special Manager and any costs incurred by the regulator in connection with the Special Manager process must be paid by the casino operator.
- The Special Manager is to be given an indemnity by the State for properly incurred debts.

- If a Special Manager is appointed to Crown Melbourne:
  - The regulator must within 90 days of receiving the Special Manager's final report decide whether it is clearly satisfied that:
    - · Crown Melbourne has become a suitable person to continue to hold its casino licence; and
    - it is in the public interest that Crown Melbourne's casino licence should continue in force.
  - The regulator must engage a senior counsel to assist in its deliberations.
  - For the purposes of its decision, the regulator must only have regard to:
    - the Bergin Report (and documents/evidence tendered)
    - the Report of this Royal Commission (and documents/ evidence tendered)
    - the Reports of the Perth Royal Commission (and documents/evidence tendered)
    - the report(s) of the Special Manager.
  - If the regulator is not clearly satisfied that:
    - · Crown Melbourne has become a suitable person to continue to hold its casino licence; and
    - it is in the public interest that Crown Melbourne's casino licence should continue in force,

the casino licence granted to Crown Melbourne on 19 November 1993 under Part 2 of the Casino Control Act should forthwith be cancelled.

- If the regulator has not made a decision within 90 days of receiving the Special Manager's final report, the casino licence should be cancelled forthwith.

#### RECOMMENDATION 22: APPOINTMENT OF THE SPECIAL MANAGER<sup>3</sup>

It is recommended that the Minister direct the regulator to appoint the Special Manager to Crown Melbourne for a period of two years.

The direction should specify the matters the Special Manager is required to investigate and report on. Those matters could include the following:

- details of each direction the Special Manager has given to members of the board
- · whether the direction was complied with

- whether the casino operator has put in place appropriate policies, processes and structures to meet its obligations under the Anti-Money Laundering and Counter-Terrorism Financing Act
- whether those Anti-Money Laundering/Counter-Terrorism Financing policies, processes and structures are being implemented
- · whether the casino operator has put in place appropriate risk management policies, processes and structures
- whether those risk management policies, processes and structures are being implemented
- whether the casino operator has revised its Responsible Service of Gambling practices to take account of the concerns highlighted in this Commission's Report
- · whether the casino operator has adopted policies, processes and structures that will enable it to comply with its Responsible Gambling Code of Conduct in force
- whether the casino operator is complying with its Responsible Gambling Code of Conduct
- whether the casino operator is conducting its casino operations in a manner that has regard to the best operating practices in casinos of a similar size and nature to the Melbourne Casino
- whether the casino operator has conducted a 'root cause' analysis into the failures outlined in the Bergin Report and in the Report of this Commission, and what the findings were
- whether there is any evidence of maladministration
- · whether there is any evidence of illegal or improper conduct
- whether the casino operator has engaged in any conduct that may give rise to a material contravention of any law
- · the conduct of the casino operations generally.

Further details of the matters the Special Manager could investigate are set out in Appendix I.

#### RECOMMENDATION 23: PERIODIC REVIEW<sup>4</sup>

It is recommended that, if, following the receipt of the Special Manager's report, the regulator does not cancel Crown Melbourne's casino licence, the Casino Control Act be amended so that the next investigation due to be undertaken pursuant to section 25 of the Casino Control Act is deferred for at least three years.

#### The manager

30 The following recommendations are designed to assist a manager who is appointed to operate a casino on the cancellation or suspension of a casino licence. Currently, under the Casino Control Act, a manager must manage the casino on their own account. The recommendations will enable the manager to step into the shoes of the casino operator. They also prevent owners of personal property used in the casino operations from taking possession of their property while used by the manager.

#### RECOMMENDATION 24: ADDITIONAL FUNCTIONS AND POWERS OF THE MANAGER<sup>5</sup>

It is recommended that the Casino Control Act be amended to include the following provisions relating to the manager:

- Upon appointment the manager:
  - has control of the casino operator's casino operations and all the property used in those operations
  - may carry on those operations and manage that property
  - may dispose of any of the property used in the casino operations and pay the net proceeds of sale to the persons entitled to the proceeds
  - may perform any function and exercise any power that the casino operator or any of its officers could have exercised in relation to the casino operations
  - when performing a function or exercising a power as manager of the casino operator, is taken to be acting as the casino operator's agent.
- The regulator is to determine the rate of compensation payable to the manager by the former casino operator and to approve the costs and expenses incurred by the manager.
- During the period of management, the former casino operator must:
  - use its best endeavours to facilitate the operation of the casino within the casino complex
  - afford the manager all appropriate rights, including rights of access and egress over the casino complex, as are necessary to enable the manager to operate a casino in the casino complex.
- The manager is to be given an indemnity by the State for properly incurred debts.

#### RECOMMENDATION 25: PROPERTY RIGHTS OF THIRD PARTIES<sup>6</sup>

It is recommended that the Casino Control Act be amended so that a third party cannot, without the regulator's permission:

- · enforce any security interest (as defined in the Corporations Act) over property that the manager retains for use in the casino's operations
- · take possession of any property retained by the manager for use in the casino's operations
- levy execution on any judgment obtained against the former casino operator.

#### Inspectors

31 Inspectors are in attendance at the casino. These recommendations broaden the inspectors' functions and give them additional powers. Their purpose is to ensure there is appropriate supervision of conduct on the casino floor and to assist in the detection of criminal activity.

#### RECOMMENDATION 17: FUNCTIONS OF INSPECTORS7

It is recommended that the Casino Control Act be amended to add to inspectors' functions the following:

- · to ascertain whether money laundering is taking place
- · to ascertain whether loansharking is taking place
- · to ascertain whether illicit drugs are being sold
- · to make an exclusion order when appropriate
- · on behalf of the casino operator, to withdraw a person's licence to remain on the casino premises
- any other functions as are prescribed by regulation.

#### RECOMMENDATION 18: POWERS OF INSPECTORS<sup>8</sup>

It is recommended that the Casino Control Act be further amended so that:

- · inspectors have free and unfettered access to all parts of the casino, all the surveillance equipment used by the casino operator, and all the books and records of the casino wherever they be located
- any interference with inspectors' performance of their functions is to be a strict liability offence the contravention of which should carry a significant penalty.

#### The casino operator

32 These recommendations impose obligations on a casino operator to cooperate with the regulator and prohibit the casino operator from giving false or misleading information to the regulator.

#### RECOMMENDATION 19: COOPERATION WITH THE REGULATOR9

It is recommended that the Casino Control Act be amended:

- to oblige a casino operator to cooperate with the regulator in relation to the performance by the regulator of its functions. Cooperation requires the licensee to make full and frank disclosure of all information that relates to the performance by the regulator of a particular function
- to oblige the casino operator to notify the regulator of a material breach, or a likely material breach, of the Casino Control Act, the Casino (Management Agreement) Act, the Gambling Regulation Act, its Responsible Gambling Code of Conduct and any agreements made pursuant to sections 15 and 142 of the Casino Control Act. A breach or likely breach will be material having regard to, among other things, the number and frequency of similar previous breaches or likely breaches, the impact of the breach or likely breach and any other matter prescribed by regulation
- to prohibit the casino operator from making false or misleading statements or providing false or misleading material to the regulator
- · to make a contravention of those obligations a strict liability offence that carries a significant penalty.

#### Structure of the casino operator

33 There are two reasons for these recommendations. One is to put a limit on the ownership of shares in a casino operator to prevent outside influence. The other is to secure the independence of the board and the senior management of the casino operator.

#### RECOMMENDATION 28: LIMIT ON SHAREHOLDING<sup>10</sup>

It is recommended that the Casino Control Act be amended as follows:

- No person shall have or acquire a relevant interest in 5 per cent or more of the issued capital in a casino operator or 5 per cent or more of the issued capital in the holding company or intermediate holding company of which the casino operator is a subsidiary, without the regulator's approval.
- If a person does hold or acquire a relevant interest in 5 per cent or more of the issued capital of a casino operator, or 5 per cent or more of the issued capital in the holding company or intermediate holding company of a casino operator without the regulator's approval, that holding or acquisition should be deemed to be a breach by the casino operator of its casino licence.
- 'Relevant interest' should have the same meaning as in sections 608 and 609 of the Corporations Act.
- If the regulator requests the casino operator, its holding company or any intermediate holding company of a casino operator to take steps to discover who holds a relevant interest in the casino operator, or its holding company or any intermediate holding company and they fail to do so, that failure should be deemed to be a breach of the casino licence.
- The restriction on shareholding should not apply to any existing shareholding in Crown Resorts (at the current holding) and Crown Melbourne, other than CPH's shareholding in Crown Resorts. It should apply to CPH with effect from September 2024.
- If a person contravenes the 5 per cent rule, the regulator may serve that person with a notice requiring the person to dispose of the relevant interest within a specified time.
- · A failure to comply with the notice should be an offence with a significant penalty. In addition, the Supreme Court should have power to make any order it considers appropriate to secure compliance with the regulator's notice, including an order directing the person to dispose of any relevant interest.

#### RECOMMENDATION 29: AN INDEPENDENT BOARD<sup>11</sup>

It is recommended that the Casino Control Act be amended to impose an obligation that a casino operator must have a majority of its board as independent directors, including independent of any ultimate or intermediate holding company.

#### RECOMMENDATION 30: INDEPENDENCE OF SENIOR MANAGEMENT<sup>12</sup>

For the avoidance of any doubt about the construction of the Casino Agreement, it is recommended that the Casino Control Act be amended so that:

- the board of a casino operator is not permitted to delegate any of its functions to any person or body of persons other than a subcommittee of the board or an individual director
- the casino operator must appoint a full-time:
  - chief executive officer (however described)
  - chief financial officer (however described)
  - chief operating officer (however described)
  - heads of Gaming, Surveillance, International and Domestic VIP Business and Compliance (however described)

and ensure that those persons do not report to, or take instructions from, any person or group of persons other than the board of the casino operator or an officer of the casino operator

• the Minister has power to vary these requirements.

The amending legislation should make clear that it does not diminish any of the other obligations imposed by clauses 22 and 28 of the Casino Agreement.

## Money laundering

34 The following recommendations are designed to reduce the incidence of money laundering in a casino. They cover junkets, carded and cashless play, the proper identification of customers, and enhanced cooperation with law enforcement agencies.

#### RECOMMENDATION 2: CARDED PLAY<sup>13</sup>

It is recommended that a direction be given to Crown Melbourne pursuant to section 23(1) of the Casino Control Act to the effect that carded play be compulsory at the Melbourne Casino for all gaming.

#### RECOMMENDATION 3: CASHLESS PLAY14

It is recommended that a direction be given to Crown Melbourne pursuant to section 23(1) of the Casino Control Act to the effect that Crown Melbourne phase out the use of cash at the Melbourne Casino, save for gaming transactions of \$1,000 or less.

#### RECOMMENDATION 1: IMPROVED IDENTIFICATION<sup>15</sup>

It is recommended that section 122 of the Casino Control Act be amended to include a new sub-paragraph for procedures for the verification of the identity of all persons seeking to enter the Melbourne Casino. The system should include requirements for the retention of customer data.

#### RECOMMENDATION 6: SINGLE PATRON BANK ACCOUNT<sup>16</sup>

It is recommended that a direction be given to Crown Melbourne pursuant to section 23(1) of the Casino Control Act to the effect that on and from 30 June 2022, it must keep and maintain a single account as approved by the regulator at an authorised deposit-taking institution in the state for use for all banking transactions by patrons.

#### RECOMMENDATION 8: REGULATION OF JUNKETS<sup>17</sup>

It is recommended that the Casino Control Act be amended to prohibit a casino operator from dealing with junket tour operators.

#### RECOMMENDATION 7: SURVEILLANCE FOOTAGE<sup>18</sup>

It is recommended a direction be given to Crown Melbourne pursuant to section 23(1) of the Casino Control Act to the effect that it retain all security and surveillance CCTV footage for a period of 12 months.

#### RECOMMENDATION 4: INFORMATION SHARING WITH STATE LAW ENFORCEMENT<sup>19</sup>

It is recommended that a direction be given to Crown Melbourne pursuant to section 23(1) of the Casino Control Act to the effect that it enter into an information-sharing protocol with Victoria Police. The protocol must set out, to the satisfaction of Victoria Police, the information-sharing arrangements between Crown Melbourne and Victoria Police, which against the background of what Victoria Police needs, prescribes what information Crown Melbourne must provide, and the format and timeframes for the provision of that information.

#### RECOMMENDATION 5: INFORMATION SHARING WITH FEDERAL LAW ENFORCEMENT<sup>20</sup>

It is recommended that the regulator, if it deems appropriate, give a direction to Crown Melbourne pursuant to section 23(1) of the Casino Control Act to the effect that Crown Melbourne enter into a similar arrangement with the Australian Criminal Intelligence Commission and the Australian Federal Police.

## Responsible service of gambling

35 The purpose of the following recommendations is to deal with problem gambling. One recommendation is to make compulsory a pre-commitment system that imposes limits on time and money spent on gambling. The other recommendation is to impose obligations on the casino operator to properly supervise the gaming floor. There are also recommendations dealing with the collection of data that may be used for research into problem gambling.

#### RECOMMENDATION 9: PLAYER CARD DATA<sup>21</sup>

It is recommended that a direction be given to Crown Melbourne pursuant to section 23(1) of the Casino Control Act that the player card collect, to the extent practicable, data relating to:

- · player buy-in (time, amount)
- player buy-out (time, amount)
- play periods (date, start time, end time)
- player turnover
- player losses and wins
- gambling product
- such further information as the regulator reasonably requires for anti-money laundering and Responsible Service of Gaming purposes.

#### RECOMMENDATION 10: PRE-COMMITMENT AND TIME LIMITS<sup>22</sup>

It is recommended that as soon as possible, the YourPlay system be a full, mandatory, binding, pre-commitment system for Australian residents gambling on EGMs at the Melbourne Casino.

The pre-commitment system should operate in the following manner:

- Each player must set a daily, weekly or monthly time limit and a daily, weekly or monthly loss limit.
- · If the pre-set time limit or the pre-set loss limit is reached, the player cannot continue to gamble on an EGM and the limit(s) cannot be altered, for 36 hours.
- No player can gamble on an EGM for more than 12 hours in any 24-hour period.
- If a player has gambled for 12 hours in any 24-hour period, the player must take a break for 24 hours.
- A player cannot gamble continuously on an EGM for more than three hours.

- A player must take a break of at least 15 minutes after three hours of continuous gambling.
- A player cannot gamble on EGMs for more than 36 hours per week.
- There should be a default pre-set loss limit that the player can modify.
- The default pre-set loss limit should be set by regulation. It could be calculated by reference to the median income of a wage earner less the standard cost of living. Or it could be calculated by estimating the median losses of a recreational gambler. The pre-set loss limit should be reviewed at least annually.

For the effective operation of a full, mandatory, binding YourPlay system, internal control systems are needed to ensure that a customer is unable to acquire more than one card. The systems need to be approved under section 122 of the Casino Control Act.

#### RECOMMENDATION 11: GAMBLING CODE<sup>23</sup>

It is recommended that a new Ministerial Direction be made under section 10.6.6 of the Gambling Regulation Act, in respect of a casino operator, which includes the following requirements:

- a duty to take all reasonable steps to prevent and minimise harm from gambling, including by monitoring the welfare of players, discouraging intensive and prolonged play and intervening when a person is displaying behaviour that is consistent with gambling harm
- · a duty to take all reasonable steps to ensure that players on the gambling floor are regularly observed to monitor behaviour that is consistent with gambling harm
- a duty to ensure that there is a sufficient number of responsible gambling officers (however called) at the casino.

It is recommended that the Ministerial Direction:

- set maximum play period limits
- prescribe how long a break in play should be
- · identify the period at which players should be interacted with, and the form of interaction, while gambling.

Different rules will be needed for different gambling products. For EGMs, the periods of play should mirror those recommended for YourPlay. For other gambling products, the limits should not be less onerous than those approved by Crown Resorts in May 2021 for domestic customers.

#### RECOMMENDATION 12: DATA COLLECTION<sup>24</sup>

It is recommended that to facilitate data collection for research purposes there should be established a Gambling Data Committee made up of three persons, one appointed by the regulator, one appointed by Crown Melbourne and one appointed by the Victorian Responsible Gambling Foundation.

The committee should have the following functions:

- to identify the data to be included in a repository
- to ensure the data is up-to-date and comprehensive.

The committee should be required to carry out the following tasks:

- · oversee the design and structure of the repository and its user interface
- identify the data that is to be publicly available and data that will have restricted access
- · ensure processes and procedures are put in place for the efficient maintenance and updating of the repository
- establish protocols to anonymise data to respect the privacy of gamblers
- establish a register of recognised researchers
- establish a simple process by which a request for data is to be made.

#### RECOMMENDATION 13: CROWN MELBOURNE DATA<sup>25</sup>

It is recommended that the committee have power to direct Crown Melbourne and the monitoring licensee for the YourPlay system to provide data that is reasonably required and in a particular format.

#### RECOMMENDATION 14: COSTS OF DATA COLLECTION<sup>26</sup>

It is recommended that the cost of establishment and operation of the committee is paid for by the government, with staff and Secretariat support provided by the Victorian Responsible Gambling Foundation.

#### Miscellaneous

36 The following recommendations deal with a variety of subjects such as the consequence of the non-payment of casino tax, removing the circumstances in which the State may be liable to pay damages for action taken in consequence of a casino operator's conduct and the review of penalties under the Casino Control Act that were fixed 20 years ago. There is also a recommendation to clarify the definition of an 'associate'.

#### RECOMMENDATION 16: UNPAID CASINO TAX<sup>27</sup>

It is recommended that the Taxation Administration Act be amended to cover casino tax payable under the Management Agreement as well as any other taxes payable under the Casino Control Act.

#### RECOMMENDATION 31: ACTIONS AGAINST THE STATE<sup>28</sup>

It is recommended that legislation be enacted to the effect that:

- no action claim or demand whatsoever may be made or allowed against the State of Victoria or any responsible Minister of the State in respect of any damage, loss or injury alleged to have been sustained as a result of the implementation of any recommendation made in this Report
- · no decision made to implement any recommendation in this Report may be subject to any appeal or any order in the nature of certiorari, prohibition or mandamus or the grant of any declaration or injunction.

#### RECOMMENDATION 15: DAMAGES PAYABLE BY THE STATE<sup>29</sup>

It is recommended that the following obligations under the Management Agreement be repealed:

- · the obligation on the State or the regulator to obtain the written consent of Crown Melbourne before action is taken to cancel or vary Crown Melbourne's casino licence pursuant to section 20(1)(e) of the Casino Control Act
- the obligation on the State to pay compensation pursuant to clauses 24A.3 or 24A.4 for action taken by the State or the regulator that is a Trigger Event,

if a reason for the cancellation or variation or action (as the case may be) is the conduct of Crown Melbourne.

#### RECOMMENDATION 27: PENALTIES<sup>30</sup>

It is recommended that there be a thorough review of all the penalties imposed by the Casino Control Act. Most should be substantially increased.

Special attention should be given to the penalty to be imposed for disciplinary action. Currently the penalty is a fine not exceeding \$1 million. It is recommended that the penalty be increased to at least \$10 million.

#### RECOMMENDATION 32: DEFINITION OF ASSOCIATE31

It is recommended that the Casino Control Act be amended so that 'associate' means:

- the holding company and each intermediate holding company of the casino operator (holding company to be defined as in the Corporations Act);
- any person who has a relevant interest (as defined in the Corporations Act) in at least 5 per cent of the issued capital of the casino operator, or any of its intermediate holding companies or its ultimate holding company;
- · any director or officer (as defined in the Corporations Act) of the casino operator, any of its intermediate holding companies or its ultimate holding company; and
- any individual or company certified by the regulator to be an associate.

#### RECOMMENDATION 33: INCREASE IN SHAREHOLDING32

It is recommended that an associate cannot increase its relevant interest in the issued capital of the casino operator, or any of its intermediate holding companies or its ultimate holding company, without the written approval of the regulator.

#### RECOMMENDATION 26: THE AREA OF THE SUB-LEASE<sup>33</sup>

It is recommended that steps be taken to ensure that the area in which the Melbourne Casino's casino operations are being conducted and the area that is to be the subject of a sub-lease under the Management Agreement are the same. If the matter cannot be agreed then legislation will be necessary.

# Endnotes

1	Chapter 16.
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CHAPTER 02

# History of gambling regulation in Victoria

#### CHAPTER 2

# History of gambling regulation in Victoria

## Introduction

The first casino to open in Australia was Wrest Point Hotel Casino in 1973, located in Hobart, Tasmania. By 1986, eight casinos had opened across Australia.¹ Victoria resisted the introduction of both electronic gaming machines (**EGMs**) and casinos in the 1970s and early 1980s. But by the late 1980s, changes in the economic fortunes of the State, and public opinion, paved the way for their introduction.² By the time the proposed legislation to legalise casinos and EGMs reached the Victorian Parliament in 1991, both sides of politics generally supported the policy decision to legalise these forms of gambling. The Coalition opposition at the time declared that the Casino Control Bill 1991 (Vic) 'should be regarded as a coalition initiative'.³

## Terms used in this chapter

- 2 The regulator of the Melbourne Casino has had a number of different names since it was first established. In this Report, the term 'regulator' is used to refer to these bodies, unless otherwise required by context. See Acronyms for the names of the regulatory bodies.
- 3 The Melbourne Casino licence holder has also had a number of different names. In this Report, the casino licence holder will be referred to as the 'casino operator' unless otherwise required by context. Appendix E details the different names of the licence holder.

# Legalisation and establishment of a casino in Victoria

- 4 In Victoria, it has been—and continues to be—public policy to prohibit gambling and the conduct of gambling unless they are specifically legalised. Where permitted, legislation has carefully constrained how legal forms of gambling are conducted. Victorian gambling legislation has responded to the need to control gambling markets that were previously illegal and to mitigate or control the negative side effects of gambling activity.
- 5 During the 1970s and early 1980s, successive Victorian Governments resisted legalising casinos and EGMs, and did not progress various private sector proposals to develop a casino.<sup>4</sup>
- 6 In October 1982, former Federal Court judge, the Hon. Xavier Connor, QC, was appointed by the Victorian Government to inquire into and recommend whether casinos should be established in Victoria. At this time, a number of casinos had opened across Australia, providing states and territories with a source of tax revenue and helping them create employment and attract tourism. Mr Connor, QC also inquired into, among other matters:

iii. the legal and administrative measures, if any, which should be adopted to control and supervise the operations of any casino or casinos that may be established in Victoria;

- iv. the measures, if any, which should be taken to prevent undesirable persons from having a financial or other connection with or being in a position to influence any aspect of the operations of any casino or casinos which may be established in Victoria; and
- v. whether such a casino or casinos should be established or operated by the Minister, an agency of Government, or private enterprise.<sup>5</sup>
- 7 In April 1983, Mr Connor, QC, issued his *Report of Board of Inquiry into Casinos in the State of Victoria* (1983 Report). The 1983 Report recommended against the establishing of casinos in Victoria because of the social and regulatory problems that could result.<sup>6</sup>
- 8 Mr Connor, QC formed the view that if casinos were to be legalised, they would need to be subject to a very high level of regulatory control. He noted:

No one disputed the proposition that, if there were to be casinos, their establishment and operation should be strictly controlled by Government. The broad object of such control is to ensure that casinos are properly run. One indispensable requirement for a properly run casino is a proprietor of integrity and ability. Any legislation must provide for adequate machinery for selection of such a proprietor. Another indispensable requirement is a sound system of Government control staffed by honest and capable people. To those unfamiliar with casinos, the degree of control which has been found necessary may seem at first to be somewhat far fetched. Once the dangerous and volatile nature of casino gambling is understood, however, the absolute necessity for competent ongoing strict, even draconian, control becomes clear. The degree and form of control will vary in some respects according to the type of casino which is ultimately introduced; but there are many measures of control and supervision which apply to any casino. Control may be ineffective because it is corrupt; it may also be ineffective because it is incompetent, albeit honest.<sup>7</sup>

- 9 The government accepted Mr Connor, QC's 1983 Report findings and announced that Victoria would not proceed with any casino proposal. The Premier at that time, the Hon. John Cain, had argued consistently that EGMs would encourage people to gamble beyond their financial capacity and that they exploited the working class.<sup>8</sup>
- 10 Mr Cain resigned in August 1990. The State was facing economic challenges and increasing political pressure to increase state revenue. The new government, led by the Hon. Joan Kirner, AC, announced the legalisation of casinos and EGMs.<sup>9</sup>
- 11 There were a number of factors motivating that decision. These included that:
  - casinos would stimulate a struggling economy by bringing both employment opportunities and tax revenue
  - legalising EGMs and casinos would redirect to Victoria money being spent by Victorians crossing the border into New South Wales to use EGMs
  - community attitudes towards establishing casinos in Victoria were changing.<sup>10</sup>

- 12 While political and community views on developing casinos in Victoria had changed, concern remained that casinos would attract criminal influence and exploitation. Under the gambling reforms announced in December 1990, the Kirner Government reappointed Mr Connor, QC to report on the preferred method for the establishment and control of an 'open casino' and '[t]he feasibility of establishing an unobtrusive casino prior to and in addition to the open casino'.<sup>11</sup>
- 13 In his second report, *Report on Casinos*, delivered on 14 February 1991 (1991 Report), Mr Connor, QC inquired into, and reported on:

•••

- v. the content of legislation to be introduced which would be designed to provide strict controls over all aspects of the operation of such casinos, including whether or not an independent authority needs to be established to oversee the operations of the casinos and if so the membership, functions and powers of the independent authority;
- vi. the measures to be taken to exclude criminal activity and influence from the casinos and criteria/restrictions if any for person/bodies having a financial, ownership or other connections with the establishment or management of the casino.<sup>12</sup>
- 14 The 1991 Report observed:

It has now become commonplace to editorialise that since [1983] it has been demonstrated that Australian casinos can be conducted in a way which keeps them free of organised crime. It remains a fact, however, that crime is constantly knocking on the door and the most stringent and sustained measures are required to keep it out.<sup>13</sup>

- 15 Mr Connor, QC made recommendations regarding the system of regulation and control for casinos. He concluded that he still considered Victoria would be better off without casinos and that he had no real confidence crime would be kept out over the long term.<sup>14</sup>
- When the Victorian Government made the policy decision to authorise the operation of a casino in Victoria, it largely accepted Mr Connor, QC's recommendations.

## Establishing a legislative framework

- 17 In the 1991 Report, Mr Connor, QC recommended that the *Casino Control Act 1983* (Qld) (Queensland Act) be used as the model for casino control legislation in Victoria, subject to the modifications, adaptations and additions he specified in that report.<sup>15</sup>
- 18 Mr Connor, QC noted that the Queensland Act was based substantially on New Jersey legislation. The Queensland Act did, however, differ from the New Jersey legislation in an important respect: the Queensland Act was administered by a Minister. Virtually all decisions of any importance were at the Minister's discretion. The Queensland Act did not provide for any independent control body. With this important exception, Mr Connor, QC considered the Queensland Act generally to be a good model for Victoria to follow.<sup>16</sup>

- 19 After considering the 1991 Report, the Victorian Government introduced two Bills to facilitate the establishment of a legal gambling industry in Victoria: the Gaming Machine Control Bill 1991 (Vic), to regulate EGMs, and the Casino Control Bill 1991 (Vic), to regulate casinos.
- 20 During the second reading of the Casino Control Bill, the then Minister for Major Projects said:

This Bill will enable the establishment of the casinos and is the result of the recommendations of the [1991] Connor report. The government has worked closely with the New South Wales government, which also is preparing casinos legislation based on the Connor report. The Bill mirrors the current New South Wales draft Bill, and indeed the two Bills are almost identical in format and wording. This consistency of approach will be of benefit to prospective tenderers for casino licences and will offer to both States the same high level of stringent control and regulation of casino operations.

In order to exclude criminal activity and influence from the casinos, legislation designed to provide strict control over all aspects of the operation of casinos is required. The government believes the Bill will achieve the objective, based on the Connor report and the experience of interstate and overseas legislation.<sup>17</sup>

21 The Casino Control Bill was passed on 4 June 1991 and received Royal Assent on 25 June 1991. Not all of Mr Connor, QC's recommendations were adopted. The Casino Control Act 1991 (Vic) was less prescriptive than the Queensland Act in several respects. Further, a number of Mr Connor, QC's recommended modifications, adaptions and additions to the Queensland Act were not adopted, including modifications relating to the regulation of junkets.

#### Grant of the Crown Casino licence

- 22 In late 1991, the Victorian Government called for parties to express interest in developing and operating a large casino in Melbourne. Expressions of interest were received from Australian and international consortiums. The Hudson Conway consortium involved large Melbournebased companies and well-known business identities. It was formed by Hudson Conway Limited (HCL) (a listed property construction company, then controlled by Mr Lloyd Williams and the late Mr Ron Walker, AC, CBE),18 Federal Hotels Ltd and Carlton & United Breweries Ltd (CUB) (collectively the founding shareholders). It was promoted as the only genuinely Melbournebased bid. The consortium proposed raising capital from the public to establish the casino.<sup>19</sup>
- 23 Following probity investigations by the Victorian Casino Control Authority (VCCA), a casino licence was granted to the Hudson Conway consortium's Crown Casino Ltd on 19 November 1993 for a term of 40 years.<sup>20</sup> The corporate history of the Crown group of companies is detailed in Appendix E.
- 24 The temporary Melbourne Casino, called the Galleria Casino, opened on 30 June 1994. It was located at the World Trade Centre on the north bank of the Yarra River while the preferred Southbank site was being developed. Operations transferred to the Southbank site on 8 May 1997.<sup>21</sup>
- 25 In October 2014, the term of the casino licence was extended by 17 years to 2050.<sup>22</sup>

# Ownership and corporate structure of the casino operator

- At the time the casino licence was granted, Crown Casino Ltd entered into an agreement with the VCCA under section 142 of the Casino Control Act (Casino Agreement). It also entered into the Management Agreement with the State under section 15 of the Casino Control Act (Management Agreement). The Management Agreement was ratified by the Casino (Management Agreement) Act 1993 (Vic) (Management Agreement Act).
- 27 The Casino Agreement included a number of obligations regarding the corporate structure of the casino operator, including the need for prior approval by the regulator before a person's shareholding in the casino operator (other than the founding shareholders) exceeded 5 per cent of the total number of shares on issue.<sup>23</sup>
- 28 Since Crown Casino Ltd was granted the casino licence, there have been a number of changes in the ownership of the casino operator, including the Publishing and Broadcasting Limited (PBL)—Crown merger and a subsequent restructure. Given the importance of these changes, they are dealt with separately in Chapter 17.

# Regulation of the casino operator

29 The casino operator is currently regulated by the Victorian Commission for Gambling and Liquor Regulation (VCGLR). Both the regulator and the regulatory framework under which the casino is regulated have changed significantly since the Casino Control Act was first enacted.

#### Overview of the current framework

- 30 The casino operator is currently subject to a range of legislative, regulatory and contractual requirements set out in:
  - · the Casino Control Act
  - the Management Agreement Act
  - the Gambling Regulation Act 2003 (Vic)
  - the Liquor Control Reform Act 1998 (Vic)
  - relevant regulations and ministerial directions made under those Acts<sup>24</sup>
  - a suite of commercial agreements concerning the operation of the Melbourne Casino Complex (Transaction Documents).
- 31 The Transaction Documents set out the details of the relationship between the various participants in the Melbourne Casino, including the State, the VCGLR and financiers. In its Sixth Review of the Casino Operator and Licence (June 2018) (Sixth Review), the VCGLR defined the Transaction Documents to include the Management Agreement, the casino licence, the Casino Agreement and other listed documents setting out financial and quasi-regulatory obligations and privileges of the casino operator and its holding company.<sup>25</sup>
- 32 The framework in which the casino operator is regulated today is significantly different from that envisaged when the legislation authorising casinos in Victoria was passed in 1991.

#### The Casino Control Act

- 33 The Casino Control Act provides for the licensing and operation of casinos in Victoria. Key features of the Casino Control Act in its original form included:
  - The establishment of a specialist, standalone, independent regulator (the VCCA).
     This body was responsible for, among other things, licensing the casino operator and approving the casino's systems of internal controls and procedures, accounting procedures and bank accounts.<sup>26</sup>
  - The creation of a separate office of the Director of Casino Surveillance, responsible for supervising the day-to-day operations in the casino, investigating complaints and helping to detect offences. The Director of Casino Surveillance was separate from the VCCA, but was required to report to and generally assist the VCCA.<sup>27</sup>
  - The appointment of inspectors by the Director of Casino Surveillance to supervise the operations of the casino, including handling and counting money in the casino, and helping to detect offences.<sup>28</sup>
  - The process for licensing casino operators. The Act also outlined the criteria the VCCA had to consider when determining the suitability of an applicant for a casino licence and the suitability of each of that applicant's associates. More than one casino licence could be issued under the Casino Control Act (with the Minister's approval), subject to any exclusivity arrangements entered into by the VCCA.<sup>29</sup>
  - The process for licensing special employees of the casino, including those working in a
    managerial capacity, those involved in the conduct of gaming, those involved in the counting
    or movement of money or chips, and those involved in the repair of gaming equipment.
     The Director of Casino Surveillance was required to investigate and assess each applicant
    against the specific suitability criteria before granting a special employee licence.<sup>30</sup>
  - A general power for the VCCA to investigate a casino at any time and a requirement for the VCCA to undertake an investigation at the Minister's direction. Additionally, the VCCA was required to reassess, at least every three years, the suitability of the casino operator to continue holding the casino licence and to determine whether keeping the casino licence in force remained in the public interest.<sup>31</sup>
  - A requirement for the VCCA to approve certain supply contracts entered into by the
    casino operator. This required the VCCA to inquire into the operation of each contract
    and the suitability of each person who was a party to the contract. The VCCA had power
    to require the termination of a contract if it considered the contract was no longer in the
    public interest.<sup>32</sup>
  - Subject to a limited exception, a prohibition on the casino operator providing credit to patrons.<sup>33</sup>
  - The power to make subordinate legislation regulating or prohibiting the promotion and conduct of junkets.<sup>34</sup>
  - The power for the Director of Casino Surveillance or the casino operator (including on the direction of the Chief Commissioner of Police) to issue exclusion orders to a person, prohibiting them from entering or remaining in the casino.<sup>35</sup>

- A requirement for the VCCA to approve a detailed system of internal controls and administrative and accounting procedures governing the day-to-day operations of the casino. The required content of the system of internal controls and administrative and accounting procedures was specified in the Casino Control Act.<sup>36</sup>
- The power for the VCCA to issue directions to the casino operator that related to the conduct, supervision or control of casino operations. The casino operator was required to comply with the directions.<sup>37</sup>
- The power for the VCCA to require a casino operator, or a person directly or indirectly associated with the operator, to provide information, to produce documents or to attend before the VCCA to be examined. Failure to comply without a reasonable excuse was punishable as if the person was in contempt of court.<sup>38</sup>
- The power for the VCCA to take disciplinary action against the casino operator, which
  could include cancellation, suspension, letter of censure, variation to the terms of the
  licence or the imposition of a fine not exceeding \$1 million.<sup>39</sup>
- A provision that no right of compensation was enforceable against the State in relation to the cancellation, suspension or variation of the terms of the licence, or an amendment of the conditions of a licence, under the Casino Control Act.<sup>40</sup>
- 34 Before a tender process for the award of a casino licence could commence, the Casino Control Act required that regulations be made setting out, among other things:

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- d. the maximum permissible number of casinos;
- e. the permissible locations for casinos;
- f. the required style and size of casinos generally or of any particular casino; and
- g. such other matters (if any) as the Minister considers relevant to the expressions of interest, invitations or applications.<sup>41</sup>
- 35 The Casino Control Act has been amended many times over the past 30 years. There have been several substantial changes to elements of the regulatory framework in which the Melbourne Casino operates.

#### THE CASINO AGREEMENT

- 36 Under the Casino Control Act as originally enacted, the VCCA was permitted, subject to the Minister's approval, to enter into agreements for or in connection with the establishment and operation of casinos. The agreement could provide that the obligations it imposed were to be considered as conditions of the casino licence.<sup>42</sup>
- 37 In addition, the Casino Control Act also permitted the VCCA to enter into an agreement with the proposed casino operator as to the exclusivity of the casino licence.<sup>43</sup>
- 38 On 21 September 1993, the VCCA entered into the original Casino Agreement with the proposed casino operator in relation to the establishment and operation of the Melbourne Casino and the exclusivity of the casino licence.<sup>44</sup>

- 39 The Casino Agreement addressed various matters, including the development and completion of the Melbourne Casino, conditions relating to the casino operator's company structure and disclosure requirements, the grant of the casino licence, the casino games and operating practices, and licence conditions.<sup>45</sup>
- 40 Under the Casino Agreement, the casino operator was required to:
  - Obtain the VCCA's approval for the appointment of any director or alternate director.<sup>46</sup>
  - Remove any director or alternate director from office in accordance with the VCCA's direction.<sup>47</sup>
  - Not knowingly permit any person (other than the founding shareholders) to be entitled to more than 5 per cent of the total number of shares of the casino operator at any time without the VCCA's approval.<sup>48</sup>
  - Obtain the VCCA's approval before carrying on or conducting any business other than
    the businesses authorised under the Casino Agreement and the casino licence or any
    business incidental to or complementary with those businesses.<sup>49</sup>
  - Obtain the VCCA's approval before establishing or acquiring a subsidiary unless that subsidiary related to a business incidental to or complementary with those businesses contemplated by or authorised under the Casino Agreement and the casino licence.<sup>50</sup>
- 41 Other key provisions of the Casino Agreement included that:
  - While the casino licence remained in force, the VCCA undertook not to grant a casino
    licence to any other person for the operation of a casino anywhere in Victoria for six years
    from the licensing date under the Casino Agreement and, in those parts of Victoria within
    a radius of 150 km from the casino site, for 12 years from that licensing date.<sup>51</sup>
  - The casino operator was required to strive to obtain the maximum Gross Gaming Revenue (GGR) by conducting its operations in the temporary casino and later at the Melbourne Casino as a discrete business operated in Melbourne in a proper and efficient manner, having regard to the best operating practices in international casinos of a similar size and nature to the Melbourne Casino.<sup>52</sup>
  - Subject to a specified Transaction Document, it would be a contravention of the casino licence, enabling the VCCA to take disciplinary action against the casino operator under the Casino Control Act, if certain events occurred (including if the casino operator breached the Casino Agreement).<sup>53</sup>
  - Subject to the Minister's approval, the parties to the Casino Agreement could vary any provision of the Casino Agreement.<sup>54</sup>
- 42 Since the Casino Agreement as originally enacted was entered into, it has been the subject of 12 Deeds of Variation.<sup>55</sup>
- 43 While the amendments in the earlier Deeds of Variation related primarily to the development of the Melbourne Casino and the casino operator's financial arrangements,<sup>56</sup> there have been significant changes to, among other things, the conditions relating to the casino operator's structure.<sup>57</sup> Some of these changes affect the ongoing regulation of the casino, and are discussed in more detail in other chapters.<sup>58</sup>

## The Management Agreement Act

- 44 Under the Casino Control Act as originally enacted, the VCCA was prohibited from granting a casino licence unless a management agreement had been entered into between the State and the proposed casino operator that: (a) identified the casino to be the subject of the licence; and (b) contained any other terms and conditions the Minister thought fit.<sup>59</sup>
- This management agreement was initially intended to cover matters such as 'taxation arrangements, design of the development of the casino, and infrastructure provision arrangements with the developer'. Since then, the scope of matters incorporated into the agreement has expanded.
- 46 On 16 November 1993, the Management Agreement entered into between the State and the casino operator dated 20 September 1993 was ratified by Parliament and set out in schedule 1 of the Management Agreement Act as originally enacted.
- 47 The Management Agreement Act, as originally enacted, principally addressed the approvals for, and development of, the casino. Key provisions included:
  - That to the extent that the Management Agreement was inconsistent with a provision of the Casino Control Act, the provisions of the Management Agreement would prevail.
     This provision allowed any terms in the Casino Control Act to be overridden by any ratified commercial arrangements incorporated into the Management Agreement between the State and the casino operator.<sup>61</sup>
  - That the sale, transfer, assignment or other disposal of the licence by the casino operator
    to another person would be permitted only if the Minister approved the sale, transfer,
    assignment or other disposal to that person of the casino operator's rights, liabilities
    and obligations under the Management Agreement and the person had been approved
    by the VCCA.<sup>62</sup>
  - That the casino operator would be obliged to pay the premium payments, fees and taxes to the State.<sup>63</sup>
  - That the casino operator would have the exclusive right to conduct games approved under the Casino Control Act by the VCCA for a period of six years, extended to 12 years for those parts of the State within a radius of 150 km of the casino, subject to a carve-out for specified EGMs, lottery and club keno games. The Management Agreement also restricted the maximum number of EGMs permitted in venues within 100 km of the casino to 105, and the total number of EGMs in the state to 45,000, for a 12-year period.<sup>64</sup>
- 48 The Management Agreement Act, as originally enacted, also included:
  - A requirement to obtain the State's consent before dealing with the casino assets, making changes to the building, or any improvement or fixture forming part of the casino assets, or leasing or acquiring any asset other than in the ordinary course of the casino operator's business, except as permitted by the Casino Agreement.<sup>65</sup>
  - The processes and procedures for the further development and approval of the design documentation, for the approval of the casino location and for the development of the casino.<sup>66</sup>
  - The process for, and consequences of, the termination of the Management Agreement.<sup>67</sup>

- 49 The Management Agreement can only be amended by agreement of the State and the casino operator, and any amendment only comes into effect when ratified by Parliament.68 Since the enactment of the Management Agreement Act, the Management Agreement has been the subject of 10 Deeds of Variation, each of which Parliament has ratified.<sup>69</sup>
- 50 While many of the early amendments related to changes to the development phase of the project, there have been some significant changes to the Management Agreement that affect the ongoing regulation of the casino. These are discussed in more detail in other chapters.<sup>70</sup>

## The Gaming Machine Control Act

- 51 The Gaming Machine Control Act 1991 (Vic) was enacted after the Casino Control Act had passed.
- 52 The Gaming Machine Control Act created the regulatory framework for the introduction of EGMs in Victoria including:
  - their use in hotels, clubs and casinos
  - the activities of persons in the industry, including EGM manufacturers and suppliers.<sup>71</sup>

#### 53 The Act provided for:

- The manufacture, sale, supply, obtaining and possession of EGMs to be regulated.<sup>72</sup>
- · The Minister to issue directions about the requirements for EGMs. These covered a range of matters, including the maximum number of EGMs permitted in Victoria, how many of these could be located outside the metropolitan area, the maximum number of EGMs allowed in restricted and unrestricted areas, and the bet limits for each class or area.<sup>73</sup>
- · The casino operator to be authorised, as a licensed venue operator, to obtain and possess EGMs.74
- · Technicians to be licensed to service, repair or maintain gaming equipment and to carry out prescribed duties. It further provided for persons listed on the roll of recognised manufacturers and suppliers of EGMs and components (Roll) to manufacture, sell or supply EGMs.<sup>75</sup> The casino operator was not able to obtain EGMs or components from a person not listed on the Roll.
- The regulator to approve EGM types, games and linked jackpot arrangements; restrict access to EGM components; and create offences for unlawful interference with gaming equipment.76
- The establishment of the Victorian Gaming Commission. The Victorian Gaming Commission's objectives included to ensure that gaming on EGMs was conducted honestly and that the management of gaming was free from criminal influence and exploitation; and to regulate the use of EGMs in casinos and approved venues. Its objectives also included to regulate the activities of key operatives in the gaming machine industry, including those who manufactured, supplied, repaired or owned machines, or provided venues for and operated machines.<sup>77</sup>

- The establishment of the position of the Director of Gaming. The Director of Gaming's functions included ensuring that the conduct of gaming at approved venues was supervised; detecting offences committed in or in relation to approved venues; and reporting to and assisting the Victorian Gaming Commission with the operation of the Gaming Machine Control Act. The Director of Gaming was authorised to appoint inspectors to enforce the provisions in the Gaming Machine Control Act.<sup>78</sup>
- 54 Inspectors appointed under the Casino Control Act had all the rights, duties and functions conferred on inspectors by the Gaming Machine Control Act in relation to EGMs on casino premises.<sup>79</sup>
- Amendments were made by the Casino Control (Amendment) Act 1993 (Vic) and the Casino Control (Further Amendment) Act 1993 (Vic) to the Casino Control Act and the Gaming Machine Control Act to clarify the intended interactions between these Acts. The amendments ensured that the responsibility for the supervision and control of all gaming within the casino rested with the VCCA and the Director of Casino Surveillance, as was originally intended. Further, the amendments gave responsibility for the approval of EGM manufacturers to the Victorian Gaming Commission.

# Key changes to the casino regulator

- 56 In the 1991 Report, Mr Connor, QC identified two basic functions of government in the management of casino gambling: a control function and a regulatory function. He recommended that each function be discharged by separately appointed persons or bodies.<sup>80</sup>
- 57 The control function related primarily to the licensing of casinos and covered the administrative functions, some of which were described as 'quasi-judicial'.<sup>81</sup> The regulatory function related primarily to the direct supervision of the operation of casinos and the conduct of gambling in casinos. Mr Connor, QC stated that if this function was to be discharged satisfactorily, there would need to be a Division of Casino Regulation staffed by people with highly developed skills in administration, finance, auditing, policy and surveillance.<sup>82</sup>
- 58 The regulatory framework initially established in Victoria to regulate EGMs and casinos comprised two bodies:
  - the Victorian Gaming Commission established under the Gaming Machine Control Act
  - the VCCA established under the Casino Control Act.
- 59 Consistent with the advice of Mr Connor, QC, the VCCA was established as an independent, standalone specialist regulator, responsible for the control functions in the casino.<sup>83</sup> The Director of Casino Surveillance was also established as the entity responsible for the conduct of gambling within, and for the direct supervision of, the casino.<sup>84</sup>
- 60 After the VCCA had completed the probity assessments of the casino licensee applicants, but before the casino opened, the standalone specialist casino regulator was merged with the Victorian Gaming Commission to create a regulator responsible for both casinos and EGMs: the Victorian Casino and Gaming Authority (VCGA).

## Victorian Casino and Gaming Authority

- 61 In September 1993, the Victorian Government commissioned a review of EGMs in Victoria. The review included a consideration of the effectiveness and efficiency of the regulatory and managerial framework governing the introduction and operation of EGMs. The recommendations of the review stressed the importance of having one Minister responsible for all aspects of gambling.<sup>85</sup>
- 62 On 3 June 1994, by part 8 of the *Gaming and Betting Act 1994* (Vic), the VCCA was merged with the Victorian Gaming Commission to form the VCGA.<sup>86</sup> The VCGA was an independent statutory body for monitoring and controlling all forms of gambling in Victoria, and had powers under a number of Acts.<sup>87</sup>
- 63 The merger of the VCCA and the Victorian Gaming Commission was said to be a logical step because they had similar regulatory roles. It was intended to ensure a consistent approach to the regulation of all aspects of gaming. It was also intended to help pool existing regulatory expertise and carry out similar functions more efficiently. In addition, the new authority assumed responsibility for the regulation of wagering and approved betting competitions.<sup>88</sup>
- 64 At this time, the office of the Director of Gaming and Betting was also established. It was given the power to investigate compliance under the Gaming and Betting Act, including with betting rules and licences, and to generally assist the VCGA in relation to the operation of the Gaming and Betting Act.<sup>89</sup>

## Victorian Commission for Gambling Regulation

- 65 Some eight years later, in 2002, the Victorian Government commissioned a high-level review of the governance arrangements for gambling regulation. The review found that gambling regulation in Victoria was confusing, with responsibilities spread across a number of Acts and regulators. It recommended simplifying and streamlining the regulatory regime through the creation of the VCGR. It also recommended a consolidation of existing legislation.<sup>90</sup>
- 66 On 1 July 2004, the VCGR was established under chapter 10 of the Gambling Regulation Act. The Gambling Regulation Act repealed the Gaming and Betting Act, and replaced the VCGA and the two statutory positions (Director of Gaming and Betting and Director of Casino Surveillance) with the VCGR.<sup>91</sup>
- 67 The Gambling Regulation Act consolidated eight of Victoria's 10 principal gaming statutes into a single Act. 92 The Casino Control Act and the Management Agreement Act were excluded from the consolidation as they related solely to a standalone casino, to which 'more onerous inspection and control requirements appl[ied]'. 93 However, the responsible gambling provisions in the consolidated Gambling Regulation Act applied to the casino.

## Victorian Commission for Gambling and Liquor Regulation

68 On 6 February 2012, the VCGLR was established by the *Victorian Commission for Gambling* and Liquor Regulation Act 2011 (Vic).<sup>94</sup> The VCGLR assumed all regulatory functions, duties and powers of the VCGR, the Director of Liquor Licensing and the Liquor Licensing Panel.

The establishment of the VCGLR was said to be a reform; not a merger, rebranding or restructure. The reform sought to create a 'new, modern, world-class regulator for liquor and gambling in Victoria'. The government expected that the natural synergies between liquor and gambling regulation would enable better use of regulatory resources, which would lead to 'improved education and compliance outcomes for the Victorian community, as well as industry'. 96

#### SCOPE OF FUNCTIONS

70 The VCGLR is a very different regulator to the one created by the Casino Control Act. The VCCA was set up to regulate casinos, with three objectives:

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- a. ensuring that the management and operation of casinos remains free from criminal influence or exploitation; and
- b. ensuring that gaming in casinos is conducted honestly; and
- c. promoting tourism, employment and economic development generally in the State.<sup>97</sup>
- 71 The objectives of the VCGLR today are significantly broader. Its responsibilities include regulating the compliance of all Victorian gambling and liquor licences, and educating the public and the relevant industries on issues of compliance, as well as advising the Minister on liquor and gambling-related matters.<sup>98</sup>

#### INDEPENDENCE OF THE REGULATOR

The VCCA, VCGA and VCGR had each been established as an independent regulator and were not subject to the general direction of the Minister. When the VCGLR was established however, it was required, when performing functions or duties or exercising its powers, to have regard to any decision making guidelines issued by the Minister. This provision was intended to enable the Minister to provide general policy guidance to the VCGLR. It does not, however, give the Minister the power to direct the VCGLR on how it should determine any individual matter. In addition, one of the VCGLR's functions is to ensure that government policy in relation to gambling and liquor is implemented. These obligations indicate that the VCGLR may not be as independent as its predecessors.

#### FUNDING ARRANGEMENTS

When the VCCA was established, the Casino Control Act provided that the VCCA and the Director of Casino Surveillance were to be funded out of the Consolidated Fund for expenses incurred in carrying out their respective functions.<sup>101</sup> When established, the VCGA was funded in a similar way.<sup>102</sup> The VCGR was funded differently: the Gambling Regulation Act made it budget-funded.<sup>103</sup> The VCGLR is also budget-funded. Its *Corporate Plan* 2020–23 states that the annual budget is provided by the Department of Justice and Community Safety and its recurrent funding is subject to annual government budget decisions. The VCGLR has indicated that it is 'responsible for the management of all resources [it has] at [its] disposal within the constraints of its operating budget'.<sup>104</sup> The VCGLR's Corporate Plan identifies as a key strategic risk that the current funding model is incompatible with operational requirements.<sup>105</sup>

#### PERSONS APPOINTED TO THE REGULATOR

- 74 The 1991 Report recommended that the president of the regulator be someone who had at least 10 years' experience as a barrister or solicitor. This was so that the president would have experience with the quasi-judicial and administrative functions of the regulator—for example, conducting hearings—and be able to manage proceedings so as to ensure that they adhered to principles of natural justice.<sup>106</sup>
- 75 When the VCCA was first established, its Chair was required to be a legal practitioner or a magistrate with at least 10 years' experience. The Chair of the VCGLR is, however, no longer required to be a legal practitioner or magistrate. A person is qualified if the Minister is satisfied that they have the appropriate knowledge, experience and expertise to be a member of the VCGLR. The VCGLR.

#### STAFF

76 The VCCA was entitled to employ staff and engage consultants on terms it determined itself.<sup>109</sup> When the VCGA was established, its staff became employees under the *Public Sector Management Act 1992* (Vic).<sup>110</sup> VCGLR staff are now engaged under the *Public Administration Act 2004* (Vic).<sup>111</sup>

# Victorian Gambling and Casino Control Commission

- 77 On 3 August 2021, the Victorian Government announced the establishment of a new regulator, the Victorian Gambling and Casino Control Commission (VGCCC). Unlike the VCGLR, the VGCCC will focus solely on regulating the casino and gambling operators, with a dedicated casino regulation division.
- Prior to the establishment of the VCGLR, liquor and gambling were regulated by two standalone agencies. The Victorian Government has described the combined regulation of liquor and gaming as a 'failed experiment'. The introduction of the VGCCC will see 'governance return to a model that has a specific and separate focus on liquor and gambling regulation'. The introduction of the VGCCC will see 'governance return to a model that has a specific and separate focus on liquor and gambling regulation'.

# Changes to key aspects of casino regulation

79 Since 1991, substantive changes have been made to key aspects of casino regulation. The most relevant of these changes are summarised below.

## Periodic suitability reviews

- 80 In 2005, the maximum number of years between periodic reviews of the casino operator was changed from at least every three years to at least every five years.<sup>114</sup> The scope of the reviews was also expanded. In addition to considering the casino licensee's suitability and the public interest in the licence continuing, the regulator has to consider:
  - whether or not the casino operator was complying with the Casino Control Act, the Management Agreement Act, the Gambling Regulation Act and the regulations made under any of those Acts

- · whether or not the casino operator was complying with the Transaction Documents and any other agreements between the casino operator and the State, or a body representing the State, that impose obligations on the casino operator in relation to gaming. 115
- 81 The extended period of time between reviews was intended to enable a 'more rigorous and detailed review of the casino operator', noting that a review could still be conducted more frequently if the regulator considered it necessary. 116
- 82 While the matters required to be addressed in the periodic review of the casino operator and its licence were expanded to include these additional considerations, the VCGLR observed in the Sixth Review that these matters had previously been considered under the general heading of 'suitability'.117
- 83 The Report of the Inquiry under Section 143 of the Casino Control Act 1992 (NSW) (Bergin Report) noted that in New South Wales, there had been proposals that the periodic reviews be abandoned altogether. The Bergin Report also noted that the Casino Control Act 1992 (NSW) was amended (in March 2018) so that the timing of these reviews in New South Wales can be altered by the making of regulations.<sup>118</sup> In the Sixth Review, the VCGLR stated:

One other Australian jurisdiction, New South Wales, mandates periodic licence reviews by the regulator in very similar terms. Other jurisdictions provide for ad hoc reviews. While the regulatory regime of Singapore (expressly benchmarked for the purposes of this review) does not specifically mandate a periodic review, its two casinos operate under three-year renewable licences, meaning that a very similar outcome is achieved.

The New South Wales Government recently considered its policy position on periodic reviews, as part of a process of alignment of the regulatory regimes for the present Sydney Casino and a new restricted gaming facility licensed to commence operations from 2019 (Crown Sydney).

Those considerations canvassed the role of a review and a particular paradox associated with the activity: that, if such a review could conclude that the casino operator was no longer suitable, that same state of affairs would already have been apparent to the regulator and a licence removal process would have been initiated. Noting this paradox, and the fact that the most recent review of the present Sydney Casino licence had been completed in 2016, the NSW Government determined that the periodic review requirement should remain in place at least until the first review following the opening of Crown Sydney.

To the VCGLR, this review has presented the opportunity to assess and reflect, overall, on the casino operator's past and ongoing conduct of the licensed business, with the benefit of input from stakeholders and comparison with other jurisdictions, and with the transparency arising from the obligation to report to the responsible Minister.<sup>119</sup>

## 'Single purpose' restriction

- 84 In 2005, following a review of the commercial agreements between the State, the regulator and the casino operator, the Victorian Government agreed to the removal of the restriction on the casino operator owning and operating other casino businesses ('single purpose' restriction).<sup>120</sup> Consequently, the Casino Control (Amendment) Act 2005 (Vic) was passed and a suite of new and amended agreements were entered into between the regulator, the casino operator and PBL (the new and amended arrangements and agreements are discussed in more detail in another chapter).<sup>121</sup>
- 85 The following amendments were made to the Casino Agreement to facilitate the removal of the 'single purpose' restriction:
  - The removal of the restriction that the casino operator must not:
    - conduct any business other than the business authorised under the Casino Agreement and the casino licence or any business incidental or complementary with those businesses without the prior written approval of the regulator
    - establish or acquire a subsidiary unless it relates to an incidental or complementary business without the prior written approval of the regulator
    - take on or under a lease, or acquire for consideration, any asset other than in the ordinary course of the casino operator's business, without the prior consent of the State.122
  - · A requirement that the casino operator must 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. 123
- 86 The Management Agreement was also amended to remove the obligation on the casino operator to obtain the prior written consent of the State to take on or under a lease, or acquire for consideration, any asset other than in the ordinary course of the casino operator's business.124
- 87 These amendments allowed the casino operator to own or operate businesses in addition to the Melbourne Casino. The change was intended to benefit Victoria by providing for 'increased tourism and export income'.125 In the second reading of the Casino Control (Amendment) Bill 2005 (Vic), which gave effect to the suite of agreements, the then Attorney-General stated:

This review of the casino agreement has resulted in a package of agreements between the [VCGR], the government, Crown and Crown's parent company, [PBL].

These agreements will provide significant benefits for Victoria, including:

- increased transparency and accountability through the improved provision of information by Crown to the [VCGR];
- the expenditure by Crown of at least \$170 million over the next five years on the Melbourne Casino complex. This will maintain the value of the complex which is leased by the state to Crown;

- increased tourism and export income as a result of the removal of the single-purpose restriction. Crown will be able to compete for interstate and international casino business and for other non-gaming business;
- · the promotion of tourism to Victoria by Crown; and
- employment and other economic benefits that will result from Melbourne being the headquarters for the gaming business of [PBL] and the Melbourne casino remaining the flagship gaming business for [PBL] in Australia. 126

## Prohibition on providing credit

- 88 The Casino Control Act as originally enacted prohibited a casino operator from providing credit to patrons, subject to a limited exception. The casino operator was, in certain circumstances, permitted to issue chips in exchange for a cheque, without waiting for the funds to clear.<sup>127</sup> Amendments to the Casino Control Act were passed in 1996 to introduce a further exception to permit the casino operator to provide credit to players not ordinarily residing in Australia when participating in a 'premium player arrangement' or a junket. To be able to use this exception, the casino operator and the player needed to satisfy the requirements of any relevant controls and procedures approved by the regulator.<sup>128</sup>
- 89 The ability to offer credit directly (to premium and junket players) or indirectly (to players by cashing cheques before they had cleared) resulted in the casino operator having to manage unpaid debts. The casino operator is required to seek the regulator's approval before discharging any debts accrued by players. 129

## Oversight of controlled contracts

- 90 The Casino Control Act defines certain categories of contracts that the casino operator enters into as 'controlled contracts'. From its commencement, the Casino Control Act established a process for the regulator to regulate controlled contracts, subject to limited exceptions.<sup>130</sup> This measure was intended to prevent criminal elements from obtaining a financial interest in the casino 'by the back door'.131
- 91 The regulatory oversight of controlled contracts has shifted over time and moved towards a model where the casino operator, rather than the regulator, undertakes due diligence in relation to its contractors.
- 92 The Casino Control Act was amended in 1993, before the Melbourne Casino opened, to provide the regulator with greater flexibility as to the types of contracts it needed to approve and to adopt an approach to controlled contracts that was considered 'commercially practical'. 132 The amendments:
  - · Authorised the regulator to exempt any specified classes of contract or particular matters from the definition of 'controlled contracts'. 133
  - Required the regulator to publish an annual report on the classes of exempt contracts.<sup>134</sup>

- Removed the requirement that the regulator investigate the operation of, and suitability
  of parties to, all controlled contracts before the casino operator could enter such
  contracts. In its place, the casino operator was required to provide notice of the controlled
  contract to the regulator, which could object to the contract or notify the casino operator
  that it required more time to conduct investigations.<sup>135</sup>
- 93 Further changes to the regulation of controlled contracts were made:
  - To allow the casino operator to develop a system of self-regulation for controlled contracts. The regulator needed to be satisfied that the casino operator's system of internal controls and administrative and accounting procedures—approved by the regulator—enabled an adequate assessment of the suitability of the supplier and ensured that the requirements of the controlled contract were met.<sup>136</sup> The intent of this amendment was to reduce the administrative burden on the regulator. Instead of investigating every controlled contract, it could focus its investigations as required. The regulator retained the power to require the termination of a controlled contract on public interest grounds.<sup>137</sup>
  - To exempt from the controlled contract provisions any contracts between the casino operator and a person listed on the Roll.<sup>138</sup>
- 94 The regulator advised in its *Fifth Review of the Casino Operator and Licence* (June 2013) (*Fifth Review*) that it had categorised the level of risk associated with the types of contracts entered into by the casino operator. Category A was considered to be the highest risk, Category B to be medium risk and Category C to be low risk. At the time of the Fifth Review, Category A and B contracts were considered to be 'controlled contracts' for the purposes of the Casino Control Act.<sup>139</sup>

## Oversight of junkets

- 95 In the 1991 Report, Mr Connor, QC noted that the Queensland Act did not deal with junkets but left them to be dealt with by regulation. He considered junkets to be 'of such importance that they should be dealt with in the Act' and that a modified version of the junket provisions included in the Queensland regulations should appear in the Victorian Act. This recommendation was not adopted in the Casino Control Act as originally enacted where, consistent with the Queensland Act, the details for the oversight of junkets were left to regulations. 141
- 96 The Casino Control Act as originally enacted authorised regulations to be made that regulated or prohibited the promotion and conduct of junkets. 42 Regulations could be made that:
  - imposed restrictions on those who may organise or promote a junket
  - required the organiser or promoter of a junket, or the casino operator concerned, to give
    the regulator advance notice of the junket and to provide to the regulator detailed
    information about the conduct of, and the arrangements for, any junkets
  - required any contract or other agreement that related to the conduct of a junket to be in a form the regulator approved
  - required the organiser or promoter of a junket, or the casino operator concerned, to give specified information about the conduct of the junket to participants in that junket.<sup>143</sup>

- 97 The regulation-making power was amended in 1994 to allow regulations also to be made relating to premium player arrangements, and to require the casino operator to give the regulator advance notice of a 'premium player arrangement'.144
- 98 In 1996, the Casino Control Act was amended to include new provisions that prohibited a person from organising or promoting a junket without the approval of the Director of Casino Surveillance. The amendment also prohibited the Director of Casino Surveillance from granting an approval to a junket organiser or promoter unless satisfied that the criteria specified in the regulations had been met.<sup>145</sup> This amendment meant that the Director of Casino Surveillance became responsible for approving junket organisers and promoters.
- 99 On 20 October 1998, the Casino Control (Junkets and Premium Players) (Interim) Regulations 1998 (Vic) came into effect. On 31 March 1999, those regulations were superseded by the Casino Control (Junkets and Premium Players) Regulations 1999 (Vic).
- 100 The 1999 regulations had as their objective to provide for: '(a) the approval of junket organisers and promotors; (b) [the form and minimum content of] junket agreements; [and] (c) information to be given to the [regulator] about junkets and premium player arrangements'.146
- 101 Specific relevant regulations included:
  - · Regulation 6, which permitted a person to apply to the Director of Casino Surveillance for approval to organise or promote one or more junkets and the Director of Casino Surveillance to require an applicant to provide any information relevant to their investigation of the application.
  - Regulation 7, which required the Director of Casino Surveillance to refer a copy of each application to the Chief Commissioner of Police and the Chief Commissioner to inquire into and report to the Director of Casino Surveillance on any matters concerning the application that the Director of Casino Surveillance requested.
  - Regulation 9, which specified the criteria for approval of applications for the purposes of section 69(1AB) of the Casino Control Act as it then stood. The test was whether the applicant was of good repute. In the case of natural person applicants, regulation 9 required the applicant and each agent of the applicant who would accompany the junket to Australia to be of good repute, having regard to character, honesty and integrity. In the case of body corporate applicants, each agent who would accompany the junket, as well as each person who, in the opinion of the Director of Casino Surveillance, was able to exercise 'a significant influence over or with respect to the management or operation of the applicant's junket business', similarly had to be of good repute, having regard to those same matters.
  - Regulation 10(3), which provided that if the Director of Casino Surveillance gave approval, it remained in force for the period specified in the approval, which could not exceed three years.
  - Regulation 16, which required junket arrangements to be in writing in a form approved by the regulator and to contain prescribed content, including the names and countries of origin of junket players.

- 102 The Casino Control Act was further amended in 2002 to permit casino operators to accept gaming wagers, and pay wagers won, in foreign currencies for commission-based players. This arrangement was required to be in accordance with any relevant controls and procedures approved by the regulator in respect of foreign currency.<sup>147</sup>
- 103 In 2003, by amendments to the Casino Control Act, the regulation of junkets in Victoria changed significantly. Regulatory oversight of junkets and premium player arrangements was replaced with a system of self-regulation. Under the new system, the casino operator's system of internal controls and administrative and accounting procedures (approved by the regulator) included procedures for the promotion and conduct of junkets or premium player arrangements.<sup>148</sup>
- 104 In the second reading speech for the Gambling Regulation Bill 2003 (Vic), which would introduce this change, the then Minister for Sport and Recreation stated:

[P]robity requirements for junket operators will now be the responsibility of the casino operator, but overseen by the [regulator] through its supervision of the casino's internal controls and procedures ...<sup>149</sup>

## Oversight of associates

- 105 The Casino Control Act as originally enacted did not include any process for assessing the suitability of new associates or for the casino operator to separate from an associate considered to be unsuitable.
- 106 In 1996, a new provision was inserted into the Casino Control Act, permitting the regulator to investigate an associate of a casino operator, or a person likely to become an associate of a casino operator. The casino operator was obliged to notify the regulator in writing, and as soon as practicable, that a person was likely to become an associate, and to take all reasonable steps to ensure that a person did not become an associate except with the regulator's prior approval. The regulator was required to consider whether the associate:

  - a. [was] of good repute, having regard to character, honesty and integrity;
  - b. [was] of sound and stable financial background;
  - c. [had] any business association with any person, body or association who or which, in the opinion of the regulator, [was] not of good repute having regard to character, honesty and integrity, or [had] undesirable or unsatisfactory financial resources.<sup>150</sup>
- 107 If the regulator determined that an associate was unsuitable, the regulator could require the associate to terminate the association with the casino operator. If the association was not terminated within a certain timeframe, the regulator could direct the casino operator to take all reasonable steps to do so. The casino operator was required to comply with the direction, and the regulator could take disciplinary action if the casino operator failed to comply.<sup>151</sup>

- 108 In 2000, the Casino Control Act was further amended to empower the regulator to:
  - issue a warning to an associate or require an associate to give a written undertaking to the regulator regarding the associate's future conduct. The regulator could do this if it determined that the associate had engaged, or was engaging in, conduct that it considered to be unacceptable
  - · give notice to the associate to require it to terminate the association with the casino operator. The regulator could do this if the associate failed to give an undertaking the regulator required or if the associate breached an undertaking.<sup>152</sup>
- 109 The obligation on the casino operator to separate from unsuitable associates was also amended in 2000 to require the casino operator 'take all reasonable steps' to terminate an association.153

# Recognising gambling harm

- 110 Along with the key aspects of casino regulation discussed above, the legislated objectives of casino regulation have changed over time. The main changes to the legislated objectives, discussed below, relate to responsible gambling.
- In 2000, the objectives of the regulator under the Casino Control Act were amended. The objective of 'promoting tourism, employment and economic development generally in the State' was replaced with:

fostering responsible gambling in casinos in order to:

- ii. minimise harm caused by problem gambling; and
- iii. accommodate those who gamble without harming themselves or others.154
- 112 The purpose of the Gaming Machine Control Act was also amended, adding the same objective.155
- 113 During the second reading of the Gambling Legislation (Responsible Gambling) Bill 2000 (Vic), which would also make a number of amendments to the Gaming Machine Control Act in relation to EGMs in pubs and clubs outside the casino, the then Minister for Sport and Recreation said:

The government is very much focused on its election commitment to policies that swing the pendulum back to better gaming regulation that will ameliorate the adverse impacts of gambling on all communities.

For its part, the government is not opposed to the gaming or casino industries in Victoria. But we want an industry that is acutely aware of its special place in the community and committed to fulfilling its obligations to the people of Victoria.

The bill introduces key areas of our election commitments relating to the better regulation of gambling in order to secure a better balanced approach to gambling and better protect the community from the adverse effects of gambling.<sup>156</sup>

- 114 Although the purpose of 'promoting tourism, employment and economic development generally in the State' is no longer a purpose of the regulator, it remains one of the purposes of the Casino Control Act. 157
- 115 In June 2000, in the Second Triennial Review of the Casino Operator and Licence (Second Review), the regulator observed that '[w]hile the Casino Control Act still has an economic purpose, the amendments make it clear that the [regulator] no longer has a responsibility to manage its licensing systems for an economic purpose'.<sup>158</sup> Nevertheless, the regulator considered the Second Review should still address the impact of the casino on tourism, employment and economic development generally in Melbourne and Victoria. The regulator noted that the casino operator had several obligations, under the Transaction Documents, with respect to tourism, employment and economic development. It further noted that performance of those obligations was relevant to the general suitability of the casino operator, and that therefore a general examination of economic impact would have relevance to the review.<sup>159</sup>
- 116 When the regulator came to conduct the Third Triennial Review of the Casino Operator and Licence (June 2003) (Third Review), it sought legal advice about how the amendment to its statutory objectives affected its obligation to conduct periodic reviews of the casino operator.<sup>160</sup>
- 117 Mr Peter Hanks, QC advised that while the amendment to the regulator's statutory objectives had the effect of reorienting the regulator away from economic development issues and towards social issues, the requirement to conduct regular reviews of the casino operator remained focused on issues of reputation, integrity, stability, honesty and efficacy of the casino operator and its operations. Mr Hanks, QC noted that, in this context, it was significant that the definition of 'public interest' in the Casino Control Act had not been changed in any substantial way in 2000, and the definition continued to define that term as 'public interest or interest of the public ... having regard to the creation and maintenance of public confidence and trust in the credibility, integrity and stability of casino operations.'161
- 118 The regulator considered that advice in the context of the terms of reference that it had prepared for the Third Review. It decided to remove an item from the terms of reference relating to the impact of the Melbourne Casino on tourism, employment and economic development generally in Melbourne and in Victoria on the basis that:
  - the statutory powers of the regulator did not extend to this area
  - these issues did not impact on the activities of the regulator
  - the then Minister for Gaming received advice on these issues from the then Gaming Policy Unit within the Department of Justice. 162

## The introduction of the Gambling Regulation Act

119 As has been mentioned, the Gaming Machine Control Act was repealed on 1 July 2004 by the Gambling Regulation Act, which consolidated eight of the 10 principal gaming Acts into a single Act. 163

- 120 While the Casino Control Act and the Management Agreement Act were not consolidated into the Gambling Regulation Act, the matters relating to casino regulation that were previously addressed under the Gaming Machine Control Act were, subject to some exceptions, re-enacted in the Gambling Regulation Act. These included responsible gambling measures.<sup>164</sup>
- 121 Two purposes of the amended Gambling Regulation Act are to:
  - · foster responsible gambling in order to minimise harm caused by problem gambling and to accommodate those who gamble without harming themselves or others
  - ensure that minors are neither encouraged to gamble nor allowed to do so.<sup>165</sup>
- 122 While there are no corresponding purposes in the Casino Control Act, 166 parts of the Gambling Regulation Act that incorporate responsible gambling measures are imposed on a casino operator. 167

## Changing responsible gambling obligations

123 The purpose of the Casino Control Act as originally enacted was to establish a system for the licensing, supervision and control of casinos, with the aims of:

- a. ensuring that the management and operation of casinos remains free from criminal influence or exploitation; and
- b. ensuring that gaming in casinos is conducted honestly; and
- c. promoting tourism, employment and economic development generally in the State.168
- 124 The Casino Control Act as originally enacted included no express reference to harm minimisation or responsible gambling, and neither did the second reading speech that introduced the Casino Control Bill to Parliament.<sup>169</sup> At the time the Casino Control Bill was debated, the main harm envisaged was criminal activity and influence in casinos.<sup>170</sup> While this concern remains a focus of the Casino Control Act in its current form,<sup>171</sup> later amendments to the Act and its supporting legislation, including the Gaming Machine Control Act and later the Gambling Regulation Act, included a focus on the harms associated with gambling.
- 125 The Casino Control Act as originally enacted did, however, include a number of harm minimisation and responsible gambling measures, although they were not described as such in the Act. These included:
  - Casino operator agents or employees being prohibited from inducing patrons to enter the casino or to take part in gaming in the casino. 172
  - The casino operator being required to provide copies of the rules of games; display advice and information in relation to gaming rules, including odds; and display minimum and maximum odds.<sup>173</sup>

- Subject to certain exceptions, the casino operator being prohibited from providing credit to patrons.174
- Minors being prohibited from entering the casino.<sup>175</sup>
- The Director of Casino Surveillance or casino operator having the power to exclude persons from entering or remaining in the casino.<sup>176</sup>
- 126 These harm minimisation and responsible gambling measures have been added to and amended, responding to changing community expectations and the government's approach to regulating responsible gambling.
- 127 Further changes relating to harm minimisation and responsible gambling in the Casino Control Act have included:
  - · Prohibiting the casino operator from knowingly sending or directing advertisements to a person subject to an exclusion order.<sup>177</sup>
  - Permitting the Minister to make directions about bet limits on EGMs in casinos.<sup>178</sup>
  - Subject to certain exceptions, prohibiting the casino operator from accepting largedenomination banknotes, and prohibiting games from being played on an EGM unless each spin could be initiated only by a distinct and separate activation of the machine by the player.<sup>179</sup>
  - · Requiring the casino operator to limit withdrawals, and prohibit cash advances from credit accounts, from cash facilities within 50 m of the casino entrance. 180
  - Subject to certain exceptions, requiring the casino operator to pay out EGM winnings over \$2,000 by cheque, and to prohibit cheques drawn by the casino operator from being cashed at the casino or exchanged for gaming tokens.<sup>181</sup>
  - Requiring a person subject to an exclusion order to forfeit winnings to the State.<sup>182</sup>
  - Prohibiting the casino operator from allowing a person to gamble or bet while intoxicated.183
  - · Requiring the casino operator, as a condition of its licence, to implement a Responsible Gambling Code of Conduct (Gambling Code). 184
- 128 The Gaming Machine Control Act, and later the Gambling Regulation Act, have also imposed additional harm minimisation and responsible gambling obligations on the casino operator, including:
  - Regulating the use of loyalty programs.<sup>185</sup>
  - · Requiring the regulator to approve types of EGMs, or specific EGM games, having regard to a range of matters, including the game fairness and security, and responsible gambling. 186
  - Regulating the content of, and compliance with, Gambling Codes.<sup>187</sup>
  - Requiring pre-commitment systems to be installed on all EGMs in Victoria.<sup>188</sup>

#### Responsible Gambling Codes of Conduct

- 129 The Casino Control Act and the Gambling Regulation Act were amended in 2007 to require the casino operator to implement a Gambling Code approved by the regulator. 189
- 130 Prior to the introduction of mandatory Gambling Codes, the casino operator was part of the Victorian Gaming Machine Industry Accord and was a signatory to the Victorian Gaming Machine Industry Code of Practice. This was a voluntary responsible gambling code.<sup>190</sup>
- 131 It was intended that gambling industry participants would be required to develop codes that were appropriate for the nature of their business and the type of gaming that they provided. This approach acknowledged that 'there can be more than one means of achieving the objective of responsible gambling and that a degree of flexibility is appropriate'. 191
- 132 When mandatory Gambling Codes were first introduced, the Minister could issue directions under the Gambling Regulation Act to the regulator. This included directions in relation to:

- a. the standards and requirements that a Responsible Gambling Code of Conduct, approved by the [regulator], and implemented by [the casino operator], must meet;
- b. guidelines in respect of Responsible Gambling Codes of Conduct;
- c. the content, monitoring and enforcement of Responsible Gambling Codes of Conduct.<sup>192</sup>
- 133 In addition to any directions given by the Minister, a Gambling Code was required to:
  - demonstrate a commitment to foster responsible gambling
  - · be appropriate for, and relevant to, the nature and type of gambling provided
  - · set out a review process by which the casino operator would assess the operation and effectiveness of the Gambling Code. 193
- 134 The regulator was required to approve all Gambling Codes<sup>194</sup> and the casino operator was required to implement an approved Gambling Code. 195 The Casino Control Act was amended to empower the regulator to take disciplinary action against the casino operator for 'repeated breaches by the casino operator of the casino operator's [Gambling Code]'. 196
- 135 In addition, the regulator was required to report at least annually to the Minister on:
  - · the effectiveness of the Gambling Codes
  - the casino operator's level of compliance
  - · whether any disciplinary action had been taken against the casino operator because of repeated breaches of the Gambling Codes
  - · whether the regulator had conducted any programs, such as educational programs, for the benefit of the casino operator in order to increase compliance with, and the effectiveness of, the Gambling Codes.<sup>197</sup>

- 136 The regulator approved the casino operator's first Gambling Code in May 2009, which was implemented by the casino operator on 1 June 2009. 198
- 137 The requirement in the Casino Control Act that a Gambling Code be approved by the regulator was removed in 2018. It was replaced with a requirement that the casino operator implement a Gambling Code that complies with:
  - relevant regulations made under the Gambling Regulation Act
  - ministerial directions under the Gambling Regulation Act that applied to the casino operator.199
- 138 The Gambling Regulation Act was amended to:
  - · Authorise the Minister to issue directions about the standards and requirements that a Gambling Code must meet.200
  - · Replace the requirement for annual reviews of Gambling Codes by the regulator with the requirement that the Minister undertake a review every five years.<sup>201</sup> This amendment was intended to allow a more meaningful evaluation to take place at regular intervals and to reduce the burden on the regulator.<sup>202</sup>
- 139 The requirement for a Minister's review every five years is still in force. The reviews must consider how effectively Gambling Codes:
  - · ensure that gambling products are supplied responsibly
  - · promote practices that support and encourage responsible gambling
  - help minimise harm caused by gambling.<sup>203</sup>
- 140 The 2018 changes were intended to improve the enforceability of the Gambling Codes and enable the ministerial directions to be more prescriptive about a range of matters, including how venue operators can better identify and respond to problematic gambling behaviour.<sup>204</sup>
- 141 With these changes, the casino operator became responsible for ensuring that its Gambling Codes complied with the applicable ministerial directions. The regulator continued to have a compliance and enforcement role. All the 2018 changes are still in force.

## Pre-commitment and loyalty schemes

142 In 2003, a new regulatory framework for player loyalty schemes came into effect under the Gaming Machine Control Act.<sup>205</sup> The framework was designed to address the 'increasing use of card technology and the emergence of databases that collect and manage consumer information on the spending and playing patterns of players'. 206

- 143 Among other things, the new framework required loyalty scheme providers, including the casino operator, to:
  - Provide loyalty scheme participants with written 'player activity statements' containing prescribed information.
  - Allow loyalty scheme participants to set limits on the time they could play games under the scheme and on their net loss in a 24-hour period and over a year. The participants could change the limits but, under the framework, the change could not take effect for at least 24 hours. When a participant's limits were reached, the loyalty scheme provider was prohibited from allowing the participant to continue playing under the loyalty scheme.<sup>207</sup>
- 144 Excluded persons were not permitted to participate in loyalty schemes.<sup>208</sup>
- 145 Under this regime, in June 2003, the casino operator introduced the 'Play Safe Limits' program to allow members of its loyalty program to voluntarily pre-set limits on time or spending for each session before playing EGMs and fully-automated table games (FATGs). 209
- 146 When the Gaming Machine Control Act was repealed by the Gambling Regulation Act in 2004, the regulatory framework for loyalty schemes was incorporated into the Gambling Regulation Act.<sup>210</sup>
- 147 The loyalty scheme requirements in the Gambling Regulation Act were subsequently amended in 2015, when it became mandatory for the new statewide pre-commitment system to be used by venue operators, including the casino operator, as the limit-setting mechanism on EGMs.<sup>211</sup> The system allows a person to set a time limit or net loss limit before that person gambles on an EGM in any venue in Victoria with EGMs.<sup>212</sup> From 1 December 2015, it became mandatory for all EGMs at all gaming venues in Victoria, including the casino, to be linked to the statewide pre-commitment system.<sup>213</sup>
- 148 In the second reading of the Gambling Regulation Amendment (Pre-commitment) Bill 2013 (Vic) that implemented the statewide pre-commitment system, the then Treasurer stated:

The coalition government has led the way by committing to introducing a voluntary precommitment scheme. Precommitment is a vital harm minimisation and consumer protection measure that will help players control their gambling and avoid it escalating to harmful levels. Precommitment is not just for problem gamblers; it is for everyone who makes the decision to play a gaming machine. Players can decide what they want to spend or how long they want to spend playing a gaming machine, and precommitment provides the tools to enable the player to keep track of the time and costs of their gaming machine play and the tools to enable the player to stick to the limits they have set.<sup>214</sup>

- 149 Intralot Gaming Services Pty Ltd (Intralot) was authorised under the Gambling Regulation Act to provide, operate and maintain a pre-commitment system and associated services.<sup>215</sup>
- 150 While it is mandatory for all EGMs to be linked to Intralot's pre-commitment system, players may use the scheme on a voluntary basis and the limits imposed by the player are not binding.

- 151 The Intralot pre-commitment system for players in Victoria is called 'YourPlay'.<sup>216</sup> When a player reaches their pre-determined time or spending limit, the EGM is disabled and informs the player that the limit has been reached. The player can then elect to continue gambling by clicking through the screen or can exit the system by removing their card. As such, the system acts as an information cue, reminding the player of the pre-determined limit, rather than as a protective measure preventing continued play beyond the set limits.<sup>217</sup>
- 152 At the time YourPlay was implemented on EGMs at the Melbourne Casino, the Play Safe Limits program operated through the casino operator's loyalty scheme was required to be disabled on EGMs, as only the statewide pre-commitment system could be used to offer limit-setting mechanisms.<sup>218</sup> The Play Safe Limits program continues to be used by the casino operator to provide a pre-commitment system to players of FATGs.
- 153 To encourage participation in the YourPlay scheme, when it was introduced, the loyalty scheme requirements under the Gambling Regulation Act were amended to provide that players had to use one card for both pre-commitment and loyalty schemes. This meant that if a venue operator, including the casino operator, wished to have a loyalty scheme, the same player card, card reader, display screen and kiosk would be used for both the loyalty scheme and the pre-commitment system.<sup>219</sup> These new requirements created one means of obtaining access to information at a gaming venue about both schemes.<sup>220</sup> This approach was intended to remove the stigma of using a card designed solely for pre-commitment.<sup>221</sup>

# Provision of regulatory certainty to Crown

- 154 In 2014, amendments were made to the Management Agreement, which were ratified by Parliament, to provide 'regulatory certainty' to the casino operator. The then Minister for Liquor and Gaming Regulation stated that the amendments were intended to support continued investment and jobs for Victoria 'in an increasingly competitive environment', where the Melbourne Casino faced a sharp increase in competition from casinos in Australia and the region, 'while delivering substantial financial benefits to the State'. 222
- 155 The agreement negotiated between the State and the casino operator provided for:
  - an extension of the casino licence term by 17 years to 18 November 2050
  - an increase in the number of gaming tables in the casino from 400 to 440 and an increase in the number of FATG terminals from 200 to 250
  - an increase in the number of EGMs from 2,500 to 2,628
  - the receipt by the State of payments up to \$910 million from Crown
  - the provision to the casino operator of 'enhanced' regulatory certainty.<sup>223</sup>
- 156 The 'regulatory certainty' acquired by Crown Melbourne is of such importance, it is the subject of a separate chapter (Chapter 9).

# Current approach to casino regulation: risk based regulation

- 157 Since its establishment in 2012, the VCGLR has aimed to transform itself into a 'modern, risk-based regulator'.224
- 158 The VCGLR describes its regulatory approach as being risk based, and has indicated that an understanding of risk guides its decision-making priorities and use of resources in discharging its statutory functions in licensing, information and education, monitoring and enforcement. The VCGLR also indicates that under this risk based approach, it considers the risks associated with activities, such as particular types of gambling, as well as the risk presented by individuals and businesses in the gambling and liquor industries. By adopting a risk based approach, the VCGLR acknowledges that a tolerance of risk is necessary to properly meet its regulatory objectives.<sup>225</sup>
- 159 Mr Peter Cohen, a former executive commissioner of the VCGR, 226 conducted the Casino Modernisation Review for the New South Wales Office of Liquor, Gaming and Racing in 2016. Mr Cohen advised the New South Wales Government that risk based regulation allowed risk to be transferred from the government sector to the operators. He stated:

Regulators unnecessarily involved in day-to-day operations of casinos, which prescriptive models engender, assume a level of liability which should not be the State's responsibility. These risks come in many forms but are generally in place where the regulator is asked to approve something in advance rather than allow the operator to decide the correct course of action.<sup>227</sup>

- 160 The risk based approach adopted by the VCGLR today is a significant change from the prescriptive regulatory oversight approach under the Casino Control Act as first enacted.<sup>228</sup> Some of the changes to the regulatory framework in Victoria over time reflecting this shift include:
  - · Significant changes to junket oversight. Probity assessments for junket operators have shifted from being the responsibility of the regulator to that of the casino operator, with the regulator now only overseeing junket operations through its supervision of the casino's internal controls and procedures. Mr Cohen noted that the Victorian approach to junket regulation is an example of permissive, risk based regulation. While junkets are no longer required to be approved by the regulator, that does not mean that the casino operator has no responsibility to ensure, among other things, that junket operations comply with its approved systems of administrative and internal controls. Mr Cohen also noted that the regulator retains a general power to issue binding directions to the casino operator in relation to the conduct, supervision or control of operations in the casino.<sup>229</sup>
  - · Changes to oversight of contracts for the supply of goods and services (controlled contracts). These changes allow the casino operator to develop a system of self-regulation, provided that the regulator is satisfied that the casino operator's systems of internal controls and accounting procedures adequately enable the assessment of suppliers' suitability, and that the casino operator has complied with the requirements for controlled contracts imposed under the Casino Control Act.<sup>230</sup>

- Replacing the requirement that the regulator approve Responsible Gambling Codes of Conduct with a requirement that the casino operator is responsible for ensuring that its Responsible Gambling Code of Conduct complies with the Casino Control Act.<sup>231</sup>
- 161 When comparing the Victorian and Singaporean regulatory practices, Mr Cohen stated that even though the legislation in these jurisdictions is similar, the methodology for regulating is vastly different. Victoria has shifted its focus from the highly prescriptive approach implemented in the early days of casino regulation in the 1990s to the essentially risk based approach of today. Conversely, Singapore started with a heavily prescriptive approach and has continued in that form.<sup>232</sup>

#### Auditor-General's reports on the regulation of gambling

- 162 The Victorian Auditor-General's Report entitled *Regulating Gambling and Liquor*, released in February 2017, identified a number of issues with the VCGLR's implementation of a risk based approach.
- 163 The Auditor-General recognised that a risk based approach helps the VCGLR to allocate its finite resources to areas that have the greatest impact on limiting the negative effects of gambling and alcohol. It also provides the VCGLR with a transparent, defensible approach to its regulatory work.<sup>233</sup>
- 164 The Auditor-General observed, however, that 'some audits of key areas of risk for the casino operator had not been performed consistently, or at all, since 2012'.<sup>234</sup> The Auditor-General further noted that the Casino Control Act prohibits the casino operator from running the casino unless the VCGLR has approved its system of internal controls and administrative and accounting procedures. While the Casino Control Act requires the casino operator to implement the approved controls and procedures, the Auditor-General indicated that the VCGLR should regularly assess whether this is happening.<sup>235</sup>
- The Auditor-General also noted that regular reviews of the internal audit activities of the casino could provide assurance about the adequacy of the internal controls and oversight of the casino. However, the Auditor-General observed that while the VCGLR planned to undertake a quarterly audit on the internal audit function of the operator, this would have been the first occasion since August 2012 that it had undertaken any such review. The Auditor-General stated:

[The] VCGLR obtains information on the casino operator's annual internal audit program and copies of the agenda and minutes of the operator's audit and compliance committee meetings. However, [the] VCGLR could not demonstrate that it systematically reviews this material. In addition, the information the operator provides is not sufficient to give assurance that its internal controls and oversight are robust or adequate, because it does not adequately demonstrate the risk assessments, resources, processes or quality assurance used in these activities.

[The] VCGLR can request complete documentation of the operator's audit and compliance committee meetings but has not done so since 2013. This is a gap in its approach because this information could be used to improve its understanding of the effectiveness of the operator's internal controls and to inform the targeting of [the] VCGLR's compliance activities.<sup>236</sup>

- 166 The Auditor-General recommended that the VCGLR continue to revise the risk based approach to compliance to ensure better targeting of compliance activities.<sup>237</sup>
- 167 When the Auditor-General followed up on the recommendations in 2019, it noted that the VCGLR was still finalising implementation of its risk based model for gambling licensing.<sup>238</sup>

# Suitability and public interest

168 The notions of suitability and public interest are central to the Casino Control Act and the Terms of Reference of this Commission. Given their importance, they are dealt with separately in Chapter 18 and Appendix H.

## **Endnotes**

- The Allen Consulting Group, Casinos and the Australian Economy, Report to the Australasian Casino Association (Report, April 2009) 4.
- Australian Institute for Gambling Research, University of Western Sydney, *Australian Gambling Comparative History and Analysis—Project Report for the Victorian Casino and Gaming Authority* (Report, October 1999) 151–2.
- 3 Victoria, Parliamentary Debates, Legislative Assembly, 28 May 1991, 2535 (Jan Wade).
- 4 Australian Institute for Gambling Research, University of Western Sydney, *Australian Gambling Comparative History and Analysis—Project Report for the Victorian Casino and Gaming Authority* (Report, October 1999) 152.
- 5 Xavier Connor, Report of Board of Inquiry into Casinos in the State of Victoria (Report, April 1983) [1.02].
- Xavier Connor, Report of Board of Inquiry into Casinos in the State of Victoria (Report, April 1983) [18.02]–[18.08].
- 7 Xavier Connor, Report of Board of Inquiry into Casinos in the State of Victoria (Report, April 1983) [16.02].
- Australian Institute for Gambling Research, University of Western Sydney, *Australian Gambling Comparative History and Analysis—Project Report for the Victorian Casino and Gaming Authority* (Report, October 1999) 152, 175.
- 9 Australian Institute for Gambling Research, University of Western Sydney, Australian Gambling Comparative History and Analysis—Project Report for the Victorian Casino and Gaming Authority (Report, October 1999) 175
- Australian Institute for Gambling Research, University of Western Sydney, *Australian Gambling Comparative History and Analysis—Project Report for the Victorian Casino and Gaming Authority* (Report, October 1999) 155. 175–6.
- 11 Exhibit RC1566 Xavier Connor, Report on Casinos, 14 February 1991, [1.1].
- 12 Exhibit RC1566 Xavier Connor, Report on Casinos, 14 February 1991, [1.1].
- 13 Exhibit RC1566 Xavier Connor, Report on Casinos, 14 February 1991, [7.4].
- 14 Exhibit RC1566 Xavier Connor, Report on Casinos, 14 February 1991, [9.3].
- 15 Exhibit RC1566 Xavier Connor, Report on Casinos, 14 February 1991, [6.8], [6.23], [9.1].
- 16 Exhibit RC1566 Xavier Connor, Report on Casinos, 14 February 1991, [6.8]. The report does not identify the relevant New Jersey legislation.
- 17 Victoria, Parliamentary Debates, Legislative Assembly, 24 April 1991, 1692 (James Kennan).
- 18 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, 41.
- Australian Institute for Gambling Research, University of Western Sydney, *Australian Gambling Comparative History and Analysis—Project Report for the Victorian Casino and Gaming Authority* (Report, October 1999) 153–4.
- Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, 41; Exhibit RC0488 VCCA Melbourne Casino Project Casino Agreement, 21 September 1993, cl 26.2.
- 21 VCGA, Third Triennial Review of the Casino Operator and Licence (Report, June 2003) 31.
- 22 Casino and Gambling Legislation Amendment Act 2014 (Vic) s 3, amending Casino Control Act 1991 (Vic) s 18; Casino and Gambling Legislation Amendment Act 2014 (Vic) s 8, inserting Casino (Management Agreement) Act 1993 (Vic) sch 11 cl 2.1(c).
- 23 Exhibit RC0488 VCCA Melbourne Casino Project Casino Agreement, 21 September 1993, cl 22.1(f).
- 24 Relevant regulations include the *Gambling Regulation (Pre-commitment and Loyalty Scheme) Regulations* 2014 (Vic), *Gambling Regulations* 2015 (Vic), *Gaming Regulation (Premium Customer) Regulations* 2011 (Vic) and *Casino Control (Fees) Regulations* 2015 (Vic).
- 25 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, 4.
- 26 Casino Control Act 1991 (Vic) pts 2, 9, 10, as enacted.
- 27 Casino Control Act 1991 (Vic) pt 7 div 2, as enacted.
- 28 Casino Control Act 1991 (Vic) pt 7 div 3, as enacted.
- 29 Casino Control Act 1991 (Vic) pt 2, as enacted.
- 30 Casino Control Act 1991 (Vic) pt 4, as enacted.

- 31 Casino Control Act 1991 (Vic) ss 24-5, as enacted.
- 32 Casino Control Act 1991 (Vic) pt 3 div 2, as enacted.
- 33 Casino Control Act 1991 (Vic) s 68(7), as enacted.
- 34 Casino Control Act 1991 (Vic) s 69, as enacted.
- 35 Casino Control Act 1991 (Vic) ss 72, 74, as enacted.
- 36 Casino Control Act 1991 (Vic) ss 121–2, as enacted.
- 37 Casino Control Act 1991 (Vic) s 23, as enacted.
- 38 Casino Control Act 1991 (Vic) ss 26(1), 27, as enacted.
- 39 Casino Control Act 1991 (Vic) s 20, as enacted.
- 40 Casino Control Act 1991 (Vic) s 156, as enacted.
- 41 Casino Control Act 1991 (Vic) s 7(1), as enacted.
- 42 Casino Control Act 1991 (Vic) s 142, as enacted.
- 43 Casino Control Act 1991 (Vic) s 14, as enacted.
- 44 Exhibit RC0488 VCCA Melbourne Casino Project Casino Agreement, 21 September 1993, recital E.
- 45 Exhibit RC0488 VCCA Melbourne Casino Project Casino Agreement, 21 September 1993, pts 2–5, sch 1.
- 46 Exhibit RC0488 VCCA Melbourne Casino Project Casino Agreement, 21 September 1993, cl 22.1(c).
- 47 Exhibit RC0488 VCCA Melbourne Casino Project Casino Agreement, 21 September 1993, cl 22.1(d).
- 48 Exhibit RC0488 VCCA Melbourne Casino Project Casino Agreement, 21 September 1993, cls 22.1(f)–(g).
- 49 Exhibit RC0488 VCCA Melbourne Casino Project Casino Agreement, 21 September 1993, cl 22.1(p).
- 50 Exhibit RC0488 VCCA Melbourne Casino Project Casino Agreement, 21 September 1993, cl 22.1(q).
- Exhibit RC0488 VCCA Melbourne Casino Project Casino Agreement, 21 September 1993, cl 26.2.
   Exhibit RC0488 VCCA Melbourne Casino Project Casino Agreement, 21 September 1993, cl 28.
- Exhibit RC0488 VCCA Melbourne Casino Project Casino Agreement, 21 September 1993, cl 28.
   Exhibit RC0488 VCCA Melbourne Casino Project Casino Agreement, 21 September 1993, cl 31.2.
- 54 Exhibit RC0488 VCCA Melbourne Casino Project Casino Agreement, 21 September 1993, cl 4.
- 55 Exhibit RC0435 Consolidated Casino Agreement, 21 September 1993.
- See, eg, Exhibit RC0491 VCCA Melbourne Casino Project Third Variation Agreement to the Casino Agreement, 25 May 1994, cl 2; Exhibit RC0493 VCGA Melbourne Casino Project Fifth Variation Agreement to the Casino Agreement, 7 March 1995, cl 2.
- See, eg, Exhibit RC0496 VCGA Melbourne Casino Project Eighth Variation Agreement to the Casino Agreement, 27 May 1999, cl 3.5; Exhibit RC0497 VCGR Melbourne Casino Project Ninth Variation Agreement to the Casino Agreement, 8 July 2005, cls 2.3–2.8.
- 58 See discussion in Chapters 16 and 17.
- 59 Casino Control Act 1991 (Vic) s 15, as enacted.
- 60 Victoria, Parliamentary Debates, Legislative Assembly, 24 April 1991, 1693 (James Kennan).
- 61 Casino (Management Agreement) Act 1993 (Vic) s 7, as enacted.
- 62 Casino (Management Agreement) Act 1993 (Vic) s 9, as enacted.
- 63 Casino (Management Agreement) Act 1993 (Vic) s 11, sch 1 pt 4, as enacted.
- 64 Casino (Management Agreement) Act 1993 (Vic) sch 1 pt 5, as enacted.
- 65 Casino (Management Agreement) Act 1993 (Vic) sch 1 cl 41.2, as enacted.
- 66 Casino (Management Agreement) Act 1993 (Vic) sch 1 pts 2–3, as enacted.
- 67 Casino (Management Agreement) Act 1993 (Vic) sch 1 pt 6, as enacted.
- 68 Casino (Management Agreement) Act 1993 (Vic) sch 1 cl 4, as enacted.
- 69 Casino (Management Agreement) Act 1993 (Vic) schs 2–11.
- See, eg, Chapter 16.
- 71 Gaming Machine Control Act 1991 (Vic) s 1, as enacted.
- 72 Gaming Machine Control Act 1991 (Vic) pts 2–3, as enacted.
- 73 Gaming Machine Control Act 1991 (Vic) s 12, as enacted.
- 74 Gaming Machine Control Act 1991 (Vic) ss 13, 32, as enacted.
- 75 Gaming Machine Control Act 1991 (Vic) ss 16–17, as enacted.
- 76 Gaming Machine Control Act 1991 (Vic) pt 4, as enacted.
- 77 Gaming Machine Control Act 1991 (Vic) pt 6, as enacted.
- 78 Gaming Machine Control Act 1991 (Vic) pts 7–8, as enacted.

- 79 Gaming Machine Control Act 1991 (Vic) s 163(2), as enacted.
- 80 Exhibit RC1566 Xavier Connor, Report on Casinos, 14 February 1991, [3.1]–[3.4].
- 81 Exhibit RC1566 Xavier Connor, Report on Casinos, 14 February 1991, [3.2].
- 82 Exhibit RC1566 Xavier Connor, Report on Casinos, 14 February 1991, [3.3].
- Casino Control Act 1991 (Vic) pt 10, as enacted; Exhibit RC1566 Xavier Connor, Report on Casinos, 14 February 1991, [3.10].
- 84 Casino Control Act 1991 (Vic) pt 7 div 2, as enacted.
- Victorian Auditor-General, *Victoria's Gaming Industry: An Insight into the Role of the Regulator* (Special Report No 54, March 1998) [2.3]–[2.4].
- Victorian Auditor-General, *Victoria's Gaming Industry: An Insight into the Role of the Regulator* (Special Report No 54, March 1998) [2.3]–[2.4]; *Gaming and Betting Act 1994* (Vic) pt 8, as enacted.
- 87 Casino Control Act 1991 (Vic); Casino (Management Agreement) Act 1993 (Vic); Club Keno Act 1993 (Vic); Gaming and Betting Act 1994 (Vic); Gaming Machine Control Act 1991 (Vic); Lotteries, Gaming and Betting Act 1996 (Vic); Racing Act 1958 (Vic); Tattersalls Consultations Act 1958 (Vic); TT-Line Gaming Act 1993 (Vic).
- 88 Victoria, Parliamentary Debates, Legislative Assembly, 28 April 1994, 1314–15 (Alan Stockdale).
- 89 Victoria, Parliamentary Debates, Legislative Assembly, 28 April 1994, 1315–16 (Alan Stockdale).
- 90 Victoria, Parliamentary Debates, Legislative Council, 2 December 2003, 1987 (Justin Madden).
- 91 Gambling Regulation Act 2003 (Vic) s 12.1.1.
- 92 The Acts consolidated in the Gambling Regulation Act 2003 (Vic) were the Gaming Machine Control Act 1991 (Vic), Gaming and Betting Act 1994 (Vic), Public Lotteries Act 2000 (Vic), Gaming No. 2 Act 1997 (Vic), Interactive Gaming (Player Protection) Act 1999 (Vic), Club Keno Act 1993 (Vic), TT-Line Gaming Act 1993 (Vic) and Lotteries, Gaming and Betting Act 1996 (Vic). Each of these Acts was repealed by Gambling Regulation Act 2003 (Vic) s 12.1.1, as enacted.
- 93 Victoria, Parliamentary Debates, Legislative Council, 2 December 2003, 1987 (Justin Madden).
- 94 Victorian Commission for Gambling and Liquor Regulation Act 2011 (Vic) pt 2.
- 95 Victoria, Parliamentary Debates, Legislative Assembly, 15 September 2011, 3298 (Michael O'Brien).
- 96 Victoria, Parliamentary Debates, Legislative Assembly, 15 September 2011, 3299 (Michael O'Brien).
- 97 Casino Control Act 1991 (Vic) s 140, as enacted.
- 98 Victorian Commission for Gambling and Liquor Regulation Act 2011 (Vic) s 9.
- 99 Victorian Commission for Gambling and Liquor Regulation Act 2011 (Vic) s 5.
- 100 Victorian Commission for Gambling and Liquor Regulation Act 2011 (Vic) s 9(g).
- 101 Casino Control (Further Amendment Act) 1993 (Vic) s 23, inserting Casino Control Act 1991 (Vic) s 112B.
- Gaming and Betting Act 1994 (Vic) ss 94, 95, as enacted; Gaming and Betting Act 1994 (Vic) s 229(k), repealing s 112B(1).
- 103 Gambling Regulation Act 2003 (Vic) s 12.1.2, sch 5 item 108, as enacted, repealing Casino Control Act 1991 (Vic) s 112B(2); Gambling Regulation Act 2003 (Vic) s 12.1.1, as enacted, repealing Gaming and Betting Act 1994 (Vic).
- 104 VCGLR, Victorian Commission for Gambling and Liquor Regulation Corporate Plan 2020–23 (September 2020) 22.
- 105 VCGLR, Victorian Commission for Gambling and Liquor Regulation Corporate Plan 2020–23 (September 2020) 25.
- 106 Exhibit RC1566 Xavier Connor, Report on Casinos, 14 February 1991, [6.3].
- 107 Casino Control Act 1991 (Vic) s 131(2), as enacted.
- 108 Victorian Commission for Gambling and Liquor Regulation Act 2011 (Vic) s 12(1).
- 109 Casino Control Act 1991 (Vic) s 145, as enacted.
- 110 Gaming and Betting Act 1994 (Vic) s 96, as enacted.
- 111 Victorian Commission for Gambling and Liquor Regulation Act 2011 (Vic) s 29.
- 112 Yara Murray-Atfield and Oliver Gordon, 'Crown Admits Failings at Royal Commission as Melbourne CEO "Ceases" Role, Regulator Split', *ABC News* (online, 3 August 2021) <www.abc.net.au/news/2021-08-03/ crown-royal-commission-ceo-leaves-regulator-gone/100344726>.
- 113 Victoria State Government, 'New Regulator to Strengthen Casino Oversight' (Media Release, 3 August 2021) 1.
- 114 Casino Control (Amendment) Act 2005 (Vic) s 3(1), amending Casino Control Act 1991 (Vic) s 25.

- 115 Casino Control (Amendment) Act 2005 (Vic) s 3(1), amending Casino Control Act 1991 (Vic) s 25.
- 116 Victoria, Parliamentary Debates, Legislative Council, 16 August 2005, 233 (Justin Madden).
- 117 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, 16.
- Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 38; Casino Control Amendment Act 2018 (NSW) sch 1 cl 2, substituting Casino Control Act 1992 (NSW) s 31(3).
- 119 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, 17.
- 120 Exhibit RC0013 VCGLR Fifth Review of the Casino Operator and Licence, June 2013, 40.
- 121 See Chapter 17.
- Exhibit RC0497 VCGR Melbourne Casino Project Ninth Variation Agreement to the Casino Agreement, 8 July 2005, cl 2.6. The Ninth Deed of Variation deleted cls 22.1(p), 22.1(q), 22.4 and 48.2(e) of the Casino Agreement.
- Exhibit RC0497 VCGR Melbourne Casino Project Ninth Variation Agreement to the Casino Agreement, 8 July 2005, cl 2.6. The Ninth Deed of Variation substituted cl 28 of the Casino Agreement.
- 124 Casino (Management Agreement) Act 1993 (Vic) sch 9 cl 3(a). The Eighth Deed of Variation to the Management Agreement, in sch 9 of the Casino (Management Agreement) Act 1993 (Vic), deleted cl 48.2(e) of the Management Agreement.
- 125 Victoria, Parliamentary Debates, Legislative Assembly, 21 July 2005, 2004 (Rob Hulls).
- 126 Victoria, Parliamentary Debates, Legislative Assembly, 21 July 2005, 2004 (Rob Hulls).
- 127 Casino Control Act 1991 (Vic) s 68(7), as enacted.
- 128 Miscellaneous Acts (Further Omnibus Amendments) Act 1996 (Vic) s 10, inserting Casino Control Act 1991 (Vic) s 68(8).
- 129 Casino Control Act 1991 (Vic) s 68(2)(e).
- 130 Casino Control Act 1991 (Vic) ss 29–35, as enacted.
- 131 Victoria, Parliamentary Debates, Legislative Assembly, 24 April 1991, 1693 (James Kennan).
- 132 Casino Control (Further Amendment) Act 1993 (Vic) s 9; Victoria, Parliamentary Debates, Legislative Council, 10 November 1993, 917 (Haddon Storey).
- 133 Casino Control (Further Amendment) Act 1993 (Vic) s 8, amending Casino Control Act 1991 (Vic) ss 29, 31.
- Casino Control (Further Amendment) Act 1993 (Vic) s 8(2), amending Casino Control Act 1991 (Vic) s 29(1).
- 135 Casino Control (Further Amendment) Act 1993 (Vic) s 9, substituting Casino Control Act 1991 (Vic) s 30.
- 136 Gambling Legislation (Miscellaneous Amendments) Act 2000 (Vic) s 48, amending Casino Control Act 1991 (Vic) ss 122(1)(u)–(v).
- 137 Victoria, Parliamentary Debates, Legislative Council, 21 November 2000, 1434 (Justin Madden).
- 138 Gaming Legislation (Amendment) Act 2002 (Vic) s 5, inserting Casino Control Act 1991 (Vic) s 29(1)(ba).
- 139 Exhibit RC0013 VCGLR Fifth Review of the Casino Operator and Licence, June 2013, 50.
- 140 Exhibit RC1566 Xavier Connor, Report on Casinos, 14 February 1991, [6.21].
- 141 Casino Control Act 1991 (Vic) s 69, as enacted.
- The Casino Control Act 1991 (Vic) s 69(3), as enacted, defined a 'junket', without limiting the commonly understood meaning of the term, to include any arrangement for the promotion for gaming in a casino by a group of people (usually involving arrangements for the provision of transportation, accommodation, food, drink and entertainment for participants, some or all of which are paid for by the casino operator or are otherwise provided on a complimentary basis). The Casino Control (Miscellaneous Amendments) Act 1994 (Vic) ss 4, 9(3) amended Casino Control Act 1991 (Vic) ss 3(1), 69(3), replacing the definition of 'junkets' to mean an arrangement whereby a person or a group of people is introduced to a casino operator by a junket organiser or promoter who receives a commission based on the turnover of play in the casino attributable to the persons introduced by the organiser or promoter or otherwise calculated by reference to such play.
- 143 Casino Control Act 1991 (Vic) s 69(2), as enacted.
- 144 Casino Control (Miscellaneous Amendments) Act 1994 (Vic) s 9, amending Casino Control Act 1991 (Vic) s 69.

  A 'premium player arrangement' was defined to mean an arrangement whereby a casino operator agrees to pay a patron of the casino a commission based on the patron's turnover of play in the casino: Casino Control (Miscellaneous Amendments) Act 1994 (Vic) s 4, amending Casino Control Act 1991 (Vic) s 3(1).
- 145 Gaming Acts (Amendment) Act 1996 (Vic) s 29, inserting Casino Control Act 1991 (Vic) ss 69(1AA)–(1AB).
- 146 Casino Control (Junkets and Premium Players) Regulations 1999 (Vic) reg 1.

- 147 Gaming Legislation (Amendment) Act 2002 (Vic) s 9, inserting Casino Control Act 1991 (Vic) ss 64(2)–(3).
- 148 Gambling Regulation Act 2003 (Vic) s 12.1.2, sch 5 cl 84, as enacted, repealing Casino Control Act 1991 (Vic) s 69; Gambling Regulation Act 2003 (Vic) s 12.1.2, sch 5 cl 115(b), as enacted, inserting Casino Control Act 1991 (Vic) s 122(1)(w).
- 149 Victoria, Parliamentary Debates, Legislative Council, 2 December 2003, 1989 (Justin Madden).
- 150 Gaming Acts (Amendment) Act 1996 (Vic) s 27, inserting Casino Control Act 1991 (Vic) s 28A.
- 151 Gaming Acts (Amendment) Act 1996 (Vic) s 26, inserting Casino Control Act 1991 (Vic) ss 28A(3), 28(5); Casino Control Act 1991 (Vic) s 20(1) (definition of 'grounds for disciplinary action', para (da)), as at 1 July 1997.
- 152 Gambling Legislation (Miscellaneous Amendments) Act 2000 (Vic) s 42, substituting Casino Control Act 1991 (Vic) s 28A(5) (with ss 28A(4A), 28A(4B), 28A(5)).
- 153 Gambling Legislation (Miscellaneous Amendments) Act 2000 (Vic) s 42, substituting Casino Control Act 1991 (Vic) s 28A(5) (with ss 28A(4A), 28A(4B), 28A(5)).
- 154 Gambling Legislation (Responsible Gambling) Act 2000 (Vic) s 4, substituting Casino Control Act 1991 (Vic) s 140(c).
- 155 Gambling Legislation (Responsible Gambling) Act 2000 (Vic) s 6, inserting Gaming Machine Control Act 1991 (Vic) s 1(f).
- 156 Victoria, Parliamentary Debates, Legislative Council, 5 April 2000, 561 (Justin Madden).
- 157 Casino Control Act 1991 (Vic) s 1.
- 158 VCGA, Second Triennial Review of the Casino Operator and Licence (Report, June 2000) 7.
- 159 VCGA, Second Triennial Review of the Casino Operator and Licence (Report, June 2000) 7.
- 160 VCGA, Third Triennial Review of the Casino Operator and Licence (Report, June 2003) 4.
- VCGA, Third Triennial Review of the Casino Operator and Licence (Report, June 2003) 34; Casino Control Act 1991 (Vic) ss 3(1), 25(1).
- 162 VCGA, Third Triennial Review of the Casino Operator and Licence (Report, June 2003) 4-5.
- 163 Gambling Regulation Act 2003 (Vic) ss 1.2(2), 12.1.1, as enacted; Victoria, Victoria Government Gazette,
  No G 27, 1 July 2004, 1843. The Acts consolidated in the Gambling Regulation Act 2003 (Vic) were the
  Gaming Machine Control Act 1991 (Vic), Gaming and Betting Act 1994 (Vic), Public Lotteries Act 2000 (Vic),
  Gaming No. 2 Act 1997 (Vic), Interactive Gaming (Player Protection) Act 1999 (Vic), Club Keno Act 1993 (Vic),
  TT-Line Gaming Act 1993 (Vic) and Lotteries, Gaming and Betting Act 1966 (Vic).
- Gaming Machine Control Act 1991 (Vic) pt 3, pt 4 ss 77B–77C, 81–81B, as at 1 July 2003; Gambling Regulation Act 2003 (Vic) ch 3 pt 4, ch 3 pt 5 div 3, as enacted.
- 165 Gambling Regulation Act 2003 (Vic) ss 1.1(2)(a)–(ab).
- 166 Casino Control Act 1991 (Vic) s 1.
- 167 Gambling Regulation Act 2003 (Vic) ch 3 pt 5 div 3, ch 10 pt 6 div 2.
- 168 Casino Control Act 1991 (Vic) s 1, as enacted.
- 169 Casino Control Act 1991 (Vic) s 1, as enacted; Victoria, Parliamentary Debates, Legislative Assembly, 24 April 1991, 1692–5 (James Kennan).
- Victoria, *Parliamentary Debates*, Legislative Assembly, 24 April 1991, 1692 (James Kennan); Victoria, *Parliamentary Debates*, Legislative Council, 4 June 1991, 2075 (David White).
- 171 Casino Control Act 1991 (Vic) s 1.
- 172 Casino Control Act 1991 (Vic) s 64(i), as enacted.
- 173 Casino Control Act 1991 (Vic) ss 66(1)(a)–(b), (d), as enacted.
- 174 Casino Control Act 1991 (Vic) s 68, as enacted.
- 175 Casino Control Act 1991 (Vic) s 84, as enacted.
- 176 Casino Control Act 1991 (Vic) s 72, as enacted.
- 177 Casino Control Act 1991 (Vic) s 78A.
- 178 Casino Control Act 1991 (Vic) ss 62A(4)–(6).
- 179 Casino Control Act 1991 (Vic) s 62AB.
- 180 Casino Control Act 1991 (Vic) s 81AA.
- 181 Casino Control Act 1991 (Vic) s 81AAB.
- 182 Casino Control Act 1991 (Vic) s 78B.
- 183 Casino Control Act 1991 (Vic) s 81AAC.

- 184 Casino Control Act 1991 (Vic) s 69.
- 185 Gaming Machine Control Act 1991 (Vic) ss 82A–82F, as at 1 July 2003; Gambling Regulation Act 2003 (Vic) ch 3 pt 5 div 5.
- 186 Gaming Machine Control Act 1991 (Vic) s 69; Gambling Regulation Act 2003 (Vic) s 3.5.4.
- 187 Gambling Regulation Act 2003 (Vic) ch 10 pt 6 div 2.
- 188 Gambling Regulation Act 2003 (Vic) ch 3 pt 8A.
- 189 Gambling Legislation Amendment (Problem Gambling and Other Measures) Act 2007 (Vic) s 57, inserting Casino Control Act 1991 (Vic) s 69; Gambling Legislation Amendment (Problem Gambling and Other Measures) Act 2007 (Vic) s 49, inserting Gambling Regulation Act 2003 (Vic) s 10.6.8.
- 190 Exhibit RC0013 VCGLR Fifth Review of the Casino Operator and Licence, June 2013, 82–3.
- 191 Victoria, Parliamentary Debates, Legislative Council, 22 November 2007, 3662 (Gavin Jennings).
- 192 Gambling Legislation Amendment (Problem Gambling and Other Measures) Act 2007 (Vic) s 49, inserting Gambling Regulation Act 2003 (Vic) s 10.6.6.
- 193 Gambling Legislation Amendment (Problem Gambling and Other Measures) Act 2007 (Vic) s 49, inserting Gambling Regulation Act 2003 (Vic) s 10.6.7.
- 194 Gambling Legislation Amendment (Problem Gambling and Other Measures) Act 2007 (Vic) s 49, inserting Gambling Regulation Act 2003 (Vic) s 10.6.8.
- 195 Gambling Legislation Amendment (Problem Gambling and Other Measures) Act 2007 (Vic) s 57, inserting Casino Control Act 1991 (Vic) s 69.
- 196 Gambling Legislation Amendment (Problem Gambling and Other Measures) Act 2007 (Vic) s 55, inserting Casino Control Act 1991 (Vic) s 20(1)(db).
- 197 Gambling Legislation Amendment (Problem Gambling and Other Measures) Act 2007 (Vic) s 49, inserting Gambling Regulation Act 2003 (Vic) s 10.6.10.
- 198 Exhibit RC0013 VCGLR Fifth Review of the Casino Operator and Licence, June 2013, 82.
- 199 Gambling Regulation Amendment (Gaming Machine Arrangements) Act 2017 (Vic) s 58, amending Casino Control Act 1991 (Vic) s 69; Gambling Regulation Amendment (Gaming Machine Arrangements) Act 2017 (Vic) s 53, substituting Gambling Regulation Act 2003 (Vic) ss 10.6.6–10.6.9.
- 200 Gambling Regulation Amendment (Gaming Machine Arrangements) Act 2017 (Vic) s 53, substituting Gambling Regulation Act 2003 (Vic) s 10.6.6.
- 201 Liquor and Gambling Legislation Amendment Act 2018 (Vic) s 68, repealing Gambling Regulation Act 2003 (Vic) ch 10 pt 6 div 3; Gambling Regulation Amendment (Gaming Machine Arrangements) Act 2017 (Vic) s 53, substituting Gambling Regulation Act 2003 (Vic) s 10.6.8.
- Victoria, *Parliamentary Debates*, Legislative Assembly, 20 September 2017, 2868 (Marlene Kairouz).
- Gambling Regulation Amendment (Gaming Machine Arrangements) Act 2017 (Vic) s 53, substituting Gambling Regulation Act 2003 (Vic) s 10.6.8.
- 204 Victoria, Parliamentary Debates, Legislative Assembly, 20 September 2017, 2868 (Marlene Kairouz).
- Gaming Legislation (Amendment) Act 2002 (Vic) s 41, inserting Gaming Machine Control Act 1991 (Vic) ss 82A–82F; Gaming Legislation (Amendment) Act 2002 (Vic) s 2(4).
- 206 Victoria, Parliamentary Debates, Legislative Council, 6 June 2002, 1649 (Justin Madden).
- 207 Gaming Legislation (Amendment) Act 2002 (Vic) s 41, inserting Gaming Machine Control Act 1991 (Vic) ss 82A–82F.
- Gaming Legislation (Amendment) Act 2002 (Vic) s 41, inserting Gaming Machine Control Act 1991 (Vic) ss 82A(5)–(7).
- 209 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, 97.
- 210 Gambling Regulation Act 2003 (Vic) ss 3.5.36–3.5.41, as enacted.
- 211 Gambling Regulation Amendment (Pre-commitment) Act 2014 (Vic) s 37, inserting Gambling Regulation Act 2003 (Vic) pt 8A.
- 212 *Gambling Regulation Act 2003* (Vic) ss 1.3, 3.8A.1 (definitions of 'pre-commitment mechanism' and 'pre-commitment system').
- 213 Gambling Regulation Act 2003 (Vic) s 3.8A.7(4).
- 214 Victoria, Parliamentary Debates, Legislative Assembly, 31 October 2013, 3800 (Michael O'Brien).

- 215 Victoria, Victoria Government Gazette, No G 15, 10 April 2014, 677; Gambling Regulation Act 2003 (Vic) ss 3.4.4(1B)-(1C), 3.8A.2.
- 216 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, 97.
- Angela Rintoul and Anna Thomas, 'Pre-Commitment Systems for Electronic Gaming Machines' 217 (Discussion Paper No 9, Australian Gambling Research Centre, August 2017) 6.
- 218 Gambling Regulation Amendment (Pre-commitment) Act 2014 (Vic) s 37, inserting Gambling Regulation Act 2003 (Vic) s 3.8A.13.
- 219 Gambling Regulation Amendment (Pre-commitment) Act 2014 (Vic) s 33, inserting Gambling Regulation Act 2003 (Vic) s 3.5.36D; Victoria, Parliamentary Debates, Legislative Assembly, 31 October 2013, 3801 (Michael O'Brien).
- 220 Victoria, Parliamentary Debates, Legislative Assembly, 31 October 2013, 3801 (Michael O'Brien).
- 221 Victoria, Parliamentary Debates, Legislative Assembly, 31 October 2013, 3801 (Michael O'Brien).
- 222 Casino (Management Agreement) Act 1993 (Vic) sch 11; Victoria, Parliamentary Debates, Legislative Council, 18 September 2014, 3141-2 (Edward O'Donohue).
- 223 Casino (Management Agreement) Act 1993 (Vic) sch 11; Victoria, Parliamentary Debates, Legislative Council, 18 September 2014, 3141-2 (Edward O'Donohue).
- 224 VCGLR, Victorian Commission for Gambling and Liquor Regulation Corporate Plan 2017–20 (July 2017) 8.
- 225 VCGLR, VCGLR's Regulatory Approach (Report, August 2015) 5, 8.
- 226 'Peter Cohen', The Agenda Group (Web Page) <a href="https://theagendagroup.com.au/blog/2018/01/06/peter">https://theagendagroup.com.au/blog/2018/01/06/peter</a>.
- 227 Peter Cohen, Casino Modernisation Review (Report, February 2016) 20.
- Peter Cohen, Casino Modernisation Review (Report, February 2016) 18. 228
- 229 Peter Cohen, Casino Modernisation Review (Report, February 2016) 16.
- 230 Peter Cohen, Casino Modernisation Review (Report, February 2016) 58; Casino Control Act 1991 (Vic) ss 29, 121, 122(1)(u).
- 231 Gambling Regulation Amendment (Gaming Machine Arrangements) Act 2017 (Vic) s 58, amending Casino Control Act 1991 (Vic) s 69.
- 232 Peter Cohen, Casino Modernisation Review (Report, February 2016) 18.
- 233 Victorian Auditor-General, Follow Up of Regulating Gambling and Liquor (Report, November 2019) 25.
- 234 Victorian Auditor-General, Regulating Gambling and Liquor (Report, February 2017) 43.
- 235 Victorian Auditor-General, Regulating Gambling and Liquor (Report, February 2017) 43.
- 236 Victorian Auditor-General, Regulating Gambling and Liquor (Report, February 2017) 43-4.
- 237 Victorian Auditor-General, Regulating Gambling and Liquor (Report, February 2017) xiii.
- 238 Victorian Auditor-General, Follow Up of Regulating Gambling and Liquor (Report, November 2019) 25.



CHAPTER 03

# The Bergin Inquiry: corporate failures and the Packer influence

#### CHAPTER 3

# The Bergin Inquiry: corporate failures and the Packer influence

#### Introduction

- 1 This chapter examines the inquiry under section 143 of the Casino Control Act 1992 (NSW) that was undertaken by the Hon. Patricia Bergin, AO, SC (Bergin Inquiry). The Report of the Bergin Inquiry was provided to the Independent Liquor and Gaming Authority (NSW) (ILGA) on 1 February 2021. The findings of the Bergin Inquiry constitute a critical context for the work of this Commission.
- 2 By way of background, Crown Resorts has three operating subsidiaries: Crown Melbourne, which operates the Melbourne Casino, Burswood Nominees Ltd as trustee for the Burswood Property Trust (Crown Perth), which operates the Crown casino in Perth, and Crown Sydney Gaming Pty Ltd (Crown Sydney), which holds a restricted gaming licence to operate the Crown casino at Barangaroo.<sup>2</sup>
- 3 The Bergin Inquiry was established to determine whether:
  - · Crown Sydney was a suitable person to continue to hold a restricted gaming licence; and
  - Crown Resorts was a suitable person to be a close associate of Crown Sydney.<sup>3</sup>
- 4 A key focus of the Bergin Inquiry was whether Crown Resorts or its subsidiaries had engaged in money laundering, breached gambling laws in China and made arrangements with junket operators who had links to organised crime.<sup>4</sup>
- 5 The Bergin Inquiry also examined the sale by CPH to Melco Resorts & Entertainment Limited (Melco) of a 19.99 per cent stake of its shareholding (then 46.1 per cent) in Crown Resorts.<sup>5</sup>
- 6 The Bergin Inquiry concluded that:
  - Crown Sydney is not a suitable person to continue to give effect to its restricted gaming licence
  - Crown Resorts is not a suitable person to be a close associate of Crown Sydney.<sup>6</sup>
- 7 The principal findings upon which these conclusions were based were that:
  - between 2014 and 2019, Crown enabled or facilitated money laundering through the bank accounts of its subsidiaries Southbank Investments Pty Limited (Southbank) and Riverbank Investments Pty Limited (Riverbank), and that this situation went unchecked and unchanged despite warnings from its bankers<sup>7</sup>
  - between 2014 and 2016, Crown disregarded the welfare of its China-based staff—putting them at risk of detention by pursuing an aggressive sales policy and failing to escalate risks through the appropriate corporate risk management structure<sup>8</sup>

- between 2012 and 2020, Crown entered into and/or continued commercial relationships with junket operators who had links to triads and other organised crime groups, and maintained those relationships after becoming aware of persistent public allegations of such links in national and international media reports and in its own due diligence reports.9
- Shortly after this Commission was established, Crown Melbourne was requested to inform the Commission whether it accepted that, based on the evidence and material that was before the Bergin Inquiry, it was open for the Commission to: (a) make the principal findings set out above; and (b) conclude that Crown Resorts is not a suitable person to be a close associate of Crown Sydney.10
- This Commission received a response by letter on behalf of both Crown Resorts and Crown Melbourne. 11 The letter defined those companies together as 'Crown' and recorded Crown's acknowledgement that:
  - Between 2013 and 2017 in the case of the Riverbank accounts, and between 2013 and 2019 in the case of the Southbank accounts, third parties engaged in apparent money laundering through those accounts. Crown inadvertently facilitated or enabled this activity despite concerns being raised by its bankers.
  - Between 2015 and 2016, the pursuit of an aggressive VIP sales policy and a failure to escalate risks through the appropriate corporate risk management structure put Crown's China-based staff at risk of detention.
  - Between 2012 and 2020, having relied on its due diligence, Crown entered into and/or continued commercial relationships with some junket operators after becoming aware of a number of allegations in national and international media reports of links between those operators and triads or other organised crime groups.
- 10 Neither Crown Resorts nor Crown Melbourne has sought to resile from those concessions, although they were given the opportunity to do so.<sup>12</sup> Further, Crown Resorts and Crown Melbourne accept that, based on the evidence and material before the Bergin Inquiry, it was open to conclude that Crown Resorts was not a suitable person to be a close associate of Crown Sydney.<sup>13</sup>
- 11 Following the commencement of the Bergin Inquiry, Crown began to implement 'a substantial reform program'.14 The program is continuing and intends to deal, among other things, with the deficiencies in governance that came to light during the Bergin Inquiry.
- 12 A key issue for this Commission is to consider the effectiveness of this reform program. To undertake that task requires a proper understanding of the facts and circumstances that led the Bergin Inquiry to make its findings and reach its conclusions.
- 13 This chapter will summarise the Bergin Report. In the Bergin Report Crown Resorts Limited is referred to as 'Crown' but in some instances, the term 'Crown' is used in a generic sense to refer to the broader Crown business or group. 15 For fidelity to the Bergin Report, this chapter reflects the language used in that Report.

# The genesis of the Bergin Inquiry

- On 30 May 2019, CPH Crown Holdings Pty Ltd, a wholly owned CPH subsidiary, agreed to sell 19.99 per cent of its approximately 46.1 per cent shareholding in Crown to Melco (Share Sale Agreement). Melco owns casinos in Asia that operate in Macau and the Philippines. 17
- 15 The Share Sale Agreement between CPH Crown Holdings and Melco provided for the shares to be transferred in two equal tranches—the first on 6 June 2019 and the second by 30 September 2019.<sup>18</sup>
- On 6 June 2019, Melco advised ILGA that it intended to seek 'approvals' for representation on the Crown board and relevant subsidiary boards, and for six named individuals to become close associates of Crown Sydney. Melco also advised ILGA that it intended to apply to become a close associate of Crown Sydney.<sup>19</sup>
- 17 As a result, ILGA began to inquire into the suitability of Melco and the six named persons becoming close associates of Crown Sydney.<sup>20</sup>
- In July and August 2019, various media outlets, including The Sydney Morning Herald and The Age, published allegations of illegal and/or improper conduct by Crown and its alleged associates and business partners.<sup>21</sup> The allegations included that Crown or its agents, affiliates or subsidiaries:
  - engaged in money laundering
  - · breached gambling laws in China
  - partnered with junket operators who had links to drug traffickers, money launderers, human traffickers and organised crime groups.<sup>22</sup>
- 19 The partial consummation of the sale to Melco and the media allegations caused ILGA to establish the Bergin Inquiry on 14 August 2019.<sup>23</sup> Its purpose was to conduct a suitability review and undertake a regulatory framework and review.
- 20 On 6 February 2020, CPH Crown Holdings and Melco agreed to release Melco of its obligations to purchase the second tranche of shares in Crown.<sup>24</sup>
- 21 Three key issues considered by the Bergin Inquiry were:
  - 'China arrests': In October 2016, Chinese police detained 19 Crown employees, for promoting Crown's Australian casinos.<sup>25</sup> Sixteen were sentenced to imprisonment and fined.
  - Money laundering at Crown: This involved suspect transactions through the Riverbank and Southbank bank accounts, and the deposit of large sums of cash carried into the Melbourne Casino in shopping bags.
  - Junkets and organised crime: This involved Crown's relationships with junket tour
    operators (JTOs) (who arranged for high rollers from mainland China to come to Crown
    casinos in Australia) with links to organised crime, including triad gangs notorious for
    laundering drug money, suspect debt collection techniques and links to sex trafficking.

#### China arrests

- 22 Crown Melbourne had a business unit known as 'VIP International'. That business unit reported to the Crown Melbourne board and was responsible for managing all overseas operations. <sup>26</sup> It identified and developed relationships with international VIP gamblers with a view to having those gamblers visit Crown casinos in Australia. From as early as March 2007, Crown's VIP marketing efforts were focused on offshore expansion. <sup>27</sup>
- 23 The following people were involved in the management of VIP International:
  - From August 2013, Mr Barry Felstead was the CEO of Crown's Australian Resorts and the most senior executive responsible for VIP International. Mr Felstead reported to Mr Rowen Craigie. Mr Craigie was then Managing Director and CEO of Crown.<sup>28</sup>
  - From 2011 until his arrest in October 2016, Mr Jason O'Connor was the ultimate decision maker in VIP International. His job title was Group Executive General Manger of VIP International Gaming.<sup>29</sup>
  - From February 2012, Mr Michael Chen, based in Hong Kong, was the most senior internationally based member of VIP International. He reported directly to Mr O'Connor and they spoke at least once a day.<sup>30</sup>
  - A number of senior vice presidents were responsible for different geographic regions or business lines within VIP International, including, until mid-2013, Mr Stefan Albouy.<sup>31</sup>
  - The VIP International leadership team comprising:32
    - Ms Jacinta Maguire, General Manager of Commercial
    - Mr Roland Theiler, Senior Vice President of International Business
    - Mr Ishan Kunaratnam (known as Mr Ratnam), a Crown executive with a longstanding relationship with the Packer family.<sup>33</sup>
- 24 To facilitate its activities, VIP International established and maintained overseas sales teams and operations in various jurisdictions, including China.<sup>34</sup> Those operations were intended to take advantage of the wealth of the middle class and the increasing propensity of Chinese citizens to travel.<sup>35</sup>
- 25 By 2011, China had become Crown's largest market for high-value international VIP players.<sup>36</sup>
- 26 Initially, VIP International operated in mainland China by having sales staff travel to meet existing or prospective Chinese VIP customers from neighbouring regions such as Macau and Hong Kong.<sup>37</sup>
- 27 Subsequently, although the Bergin Report does not record precisely when, Crown consolidated its presence in China. It did so by having staff who lived and worked in various regions of China conduct its sales and marketing activities.<sup>38</sup> Members of senior management also regularly travelled to China to undertake roadshows on behalf of Crown.<sup>39</sup>
- 28 From 2012 onwards, China-based staff were employed by Crown Singapore. The directors of that entity were Mr Craigie and Mr Felstead.<sup>40</sup>

- The role of the sales team in China was to maintain relationships with existing VIP gaming customers, to establish and consolidate relationships with high-value gamblers who had yet to visit Crown's casinos, and to market those casinos to existing and potential customers. The team's role also involved collecting gambling debts. 42
- 30 The presence of Crown in China led to the continued growth of VIP International turnover in Australia. VIP International achieved turnover of \$26.9 billion and \$31 billion in 2010 and 2011 respectively, with turnover increasing year on year between 2012 and 2014.<sup>43</sup> As at September 2014, approximately 20 Crown staff lived and worked in mainland China.<sup>44</sup>
- 31 On 13 and 14 October 2016, Chinese police conducted a series of coordinated raids on the homes of staff in mainland China. Nineteen Crown employees were arrested and questioned by the authorities. All were charged with assembling a crowd to engage in gambling in breach of Article 303 of the Criminal Law of the People's Republic of China 1997 (China).<sup>45</sup>
- 32 Article 303 provides:

Whoever, for the purpose of profit, gathers a crowd to gamble, or undertakes gambling as a business shall be sentenced to fixed-term imprisonment of three years or less, detention or surveillance and shall be subject to a fine.<sup>46</sup>

33 On 26 June 2017, 16 of the 19 employees were fined and sentenced to terms of imprisonment of between nine and ten months. The remaining three employees were exempted from criminal penalty.<sup>47</sup>

#### Media allegations and Crown's response

- 34 In July and August 2019, various media outlets published allegations concerning the operations of Crown in China and the arrests of its China-based staff. It was alleged that:
  - · Crown knew that its China-based staff were breaching Chinese gambling laws
  - · Crown exposed its staff to the risk of detention in China
  - Crown disregarded the welfare of its employees who were offered 'huge bonuses' to lure Chinese high rollers to its Australian casinos
  - even as it became likely that Chinese police were closing in, Crown directed its China-based staff to continue to promote gambling, but to do so 'under the radar'
  - Crown's operations in China cast doubt over its corporate governance practices.<sup>48</sup>
- 35 On 31 July 2019, in response to the media allegations, the Crown board made an Australian Securities Exchange (ASX) announcement titled 'A Message from the Crown Resorts board of Directors'. The announcement sought to defend Crown against the allegation that it knew that its staff breached Chinese gambling laws. In the announcement, the board stated that Crown:
  - · did not know that the conduct of its staff in China constituted an offence in China
  - · had itself not been charged with or convicted of any offence in China

- understood that its staff were operating in a manner that did not breach Article 303
- had obtained legal and government relations advice from reputable independent specialists.<sup>50</sup>

#### The findings of the Bergin Inquiry

#### NO BUSINESS LICENCE TO OPERATE AN OFFICE IN CHINA

- 36 Neither Crown nor any Crown subsidiary held any form of licence, authorisation or approval to operate or conduct business activities of any kind in mainland China.<sup>51</sup>
- 37 At various times between 2011 and October 2015, Crown obtained legal advice relating to the legality of its business activities in China. Based on an interpretation of the legal advice, those involved in VIP International appeared to form the view that it was legal for Crown to employ staff in China to promote gambling without a business licence so long as Crown was not operating an office in China. That is, Crown considered that a business licence was only required if it sought to establish an office in China.<sup>52</sup>
- 38 While the China-based staff were typically required to work from their residential homes when conducting their marketing activities, from at least 2012 an 'unofficial' office had been opened in Guangzhou, China.<sup>53</sup> The following facts are relevant:
  - The office was a residential apartment, rented by Crown to support VIP International business activities and to process visa applications for its Chinese customers. The office carried no Crown signage.<sup>54</sup>
  - The office was used by staff to perform administrative functions related to processing visa applications for VIP players from Macau, Hong Kong and mainland China.<sup>55</sup>
  - By May 2012 at the latest, the existence of the office was known to the Crown Melbourne legal team and several executives. This followed an email from Crown executive Mr Albouy to Mr Chen, Mr O'Connor and others describing the office arrangements as 'unsuitable', 'subject to random checks by authorities' and 'posing many risks'. The email also proposed that the Guangzhou team move into a new premises, with business registration, so as to 'give the team a more safe and professional environment' in which to work.<sup>56</sup>
  - Mr Albouy's concerns and suggestion were ignored, with Crown continuing to lease the same premises until at least 2015.<sup>57</sup>
  - In 2015, the Guangzhou office moved to new premises and continued to operate until the China arrests in October 2016.<sup>58</sup>
  - Following the China arrests, the premises continued to be leased on a rolling basis under the names of the employees, as negotiated between Mr Chen and the property owner.
     The lease continued until August 2017.<sup>59</sup>
  - Prior to the China arrests, additional people who were aware of the existence of the Guangzhou office included Ms Jan Williamson, Senior Legal Counsel at Crown Melbourne, Ms Debra Tegoni, Executive General Manager, Legal and Regulatory Services, Mr Theiler and Mr Chris MacKay, a non-executive director of Crown.<sup>60</sup>

- Mr O'Connor told the Bergin Inquiry that the existence of the office 'wasn't a secret' in Crown Melbourne.<sup>61</sup>
- Mr Craigie accepted that the unofficial office in Guangzhou was an attempt to disguise from the Chinese authorities the fact that Crown was conducting an office in Guangzhou.<sup>62</sup>

# ADVICE REGARDING THE LEGALITY OF CROWN'S ACTIVITIES AND ESCALATING RISKS IN CHINA

- 39 Article 303 prohibits a person, for the purpose of profit, from 'gather[ing] a crowd to gamble' or from 'undertak[ing] gambling as a business'. Article 1 of Interpretation No. 3 [2005] of the Supreme People's Court Criminal Division, effective from 13 May 2015, sets out four scenarios that constitute 'gather[ing] a crowd to gamble'. One of those scenarios is 'organising 10 or more persons who are citizens of the People's Republic of China to go abroad to gamble, from which kickbacks or referral fees are collected'.<sup>63</sup>
- 40 Further guidance from the Supreme People's Court Criminal Division provides:

The number of persons organised is not calculated on an aggregate basis. It is necessary that 10 or more [Chinese] citizens are organised at one time to go abroad to gamble ... The phrase 'at one time' can be translated as on a single occasion.<sup>64</sup>

- 41 Mr Craigie, Mr Felstead and Mr O'Connor understood that whether or not the China-based staff were breaching Article 303 turned on two questions of interpretation:
  - First, whether staff in China were organising more than 10 Chinese citizens to travel to venues to gamble on one single occasion, or whether the number of 10 citizens could be accumulated over a number of occasions.
  - Second, whether staff were receiving a commission from Crown based on the amount
    of the Chinese citizens' gambling turnover (which they understood to be legal)
    or whether staff were receiving a commission from the gamblers directly (which they
    understood to be illegal).<sup>65</sup>
- 42 Mr Craigie accepted that it was 'particularly unsafe to rely on some technical construction of Chinese law'. 66 Mr O'Connor gave evidence that he referred to legal and other advice at the time, but that he assessed that advice 'through the eyes of a Westerner and ... didn't fully appreciate that China's legal system doesn't operate the same way as the Western legal system does'. 67
- 43 Crown directors and management generally accepted the following propositions:
  - The Chinese legal system was different to the Australian legal system.
  - China was a country where the law may be enforced inconsistently.
  - There was a risk of arbitrary action by Chinese authorities.
  - In the period up to October 2016, China was a riskier place for Crown staff to be working than Australia.<sup>68</sup>

- 44 Crown sought legal advice about its activities in China from international law firm WilmerHale on at least seven occasions between 2012 and 2015.
- 45 In June 2012, following a change in the political landscape in China when the Chinese Government announced a crackdown on corruption, WilmerHale advised:
  - It was not illegal to sell offshore gaming within China.
  - There were laws prohibiting the marketing of gaming onshore for more than 10 people.
  - Because gaming was a 'sensitive topic', Crown should be 'cautious and avoid openly marketing'.<sup>69</sup>
- 46 On 19 February 2013, WilmerHale advised that a normal casino employee is unlikely to be deemed a 'principal' or found guilty under Chinese criminal law by merely marketing or participating in casino operations, provided that the employee is not directly making a profit from doing so.<sup>70</sup>
- 47 Mr Albouy cautioned that reliance could not be placed on the advice when it came to protecting staff, stating that 'the issue is not conviction ... but the fact that authorities "may" apprehend our team for questioning.<sup>71</sup>
- 48 On 25 March 2013, Mr Chen wrote to Mr O'Connor and Mr Felstead noting that two China-based staff of Crown had been seen regularly with a customer who had been recently detained.

  Mr Chen stated they were at risk of being called in for questioning by Chinese authorities.<sup>72</sup>

  Mr Chen followed up with an email the next day that included the following:

Folks in the VIP industry have long been very sensitive to the actions of the Chinese government. There has been much misinformation in the field about the legalities of what we do and the rights people have if they were identified to be marketing casinos in China.

... We received definitive advice that the activities that we undertake in China do NOT violate any criminal laws ...

We have provided all China staff with the attached protocol to follow in the event such a knock on the door arrives ...

This is one thing that it is important to understand when it comes to the China team. They are living in constant fear of getting tapped on the shoulder. In a country where due process is inconsistently applied, it is a risky place to be for all of our team ...

Most folks in the industry just think it is in [a] gray area and that they are at risk of arrest  $\dots^{73}$ 

49 On 19 May 2013, following Mr Chen receiving notice that a Crown junket operator had been detained by authorities for questioning in Guangzhou, WilmerHale advised that the law remained 'unchanged'.<sup>74</sup>

50 Crown engaged Mintz Group, a global investigations and risk advisory firm, to provide advice in relation to its operations in China.<sup>75</sup> On 12 July 2013, Mintz Group sent Mr Chen a copy of an article it had published regarding foreign companies doing business in China. That article stated:

While the draw of China's large and growing market might be worth the risk, foreign companies must enter with full anticipation of a lack of transparency, fairness, and accountability under the country's laws.<sup>76</sup>

- On 1 October 2013, Mintz Group sent a further email attaching a new article it had published. This article suggested that a newly established investigatory agency in China was adopting an aggressive stance towards foreign companies that was not 'business as usual'.<sup>77</sup>
- 52 On 15 October 2013, Mr O'Connor suggested adding 'foreign political policy risk' to the Crown Melbourne Risk Register as a risk affecting Crown Melbourne's international business. The Risk Register was amended to record Chinese political action as a significant risk to the performance of Crown Melbourne.<sup>78</sup> No other action was taken by Crown Melbourne.
- 53 In March 2014, Mr Veng Anh, then a Vice President of International Business Operations at Crown Melbourne, exchanged a series of texts with Mr O'Connor. In his texts, he reported 'inside information' from China. The inside information suggested that from April to May 2014, the Chinese Government would begin arresting people, including those having 'anything to do with gambling or moving money out of the country'. Mr Anh advised Mr O'Connor that Crown should remove all of its staff from China for one month.<sup>79</sup> It appears that no staff were relocated. Instead, the warning appeared to prompt Crown to suggest that staff collect outstanding debts as soon as possible because of the crackdown.<sup>80</sup>
- 54 In mid-August 2014, a bank in China made an inquiry with a China-based member of Crown staff, 'CY'. CY then expressed concerns to Mr Chen about doing business in China without any formal registration. That prompted Mr Chen to seek advice from WilmerHale, which advised Crown not to use particular descriptors in banking fields when paying salaries, allowances, bonuses or consulting fees to its employees in China. Following this advice, Mr Chen suggested to Mr O'Connor that all wire transfers to overseas staff should have generic references and no reference to 'VIP' or 'gaming'. Mr O'Connor in turn instructed Crown accounts payable staff to ensure that no China 'funding templates' displayed the words 'VIP funding' and to instead use 'services/consulting fees' as a generic reference.<sup>81</sup>
- Also in August 2014, Mr Chen wrote to Mr Felstead about the VIP International business in China. He proposed two alternative approaches to the future conduct of that business. The first was 'doubling-down' and maintaining aggressive targets and promotional activities. The second approach was reducing projections, expectations and promotional intensity in China. Mr Chen stated that the first approach would expose Crown to 'a lot more risk'. Mr Felstead suggested that Mr Michael Johnston, a member of the Crown board, be included in a discussion on the topic. Thereafter, VIP International adopted the first approach and continued with a strategy to increase sales and pursue targets aggressively throughout 2014, 2015 and 2016.

  Pressure to improve performance, driven by Mr Felstead, continued into early 2015.82

- On 19 September 2014, a China-based employee informed Mr Chen by email that he had been questioned by Chinese police the previous day about his regular contact with an individual identified as a casino patron in 2012, and about what his job involved. The employee recounted that he told the police that he was doing 'Crown Hotel marketing in China' and only assisted with hotel accommodation in China. The questioning of the employee was reported to various individuals the same day, including Mr O'Connor, Ms Williamson and Ms Tegoni.<sup>83</sup>
- 57 In October 2014, a VIP International marketing workshop for the 2015 financial year noted that the sales teams in many countries, especially in China, were 'operating under constant threat of being detained, questioned, and harassed with regards to their customers and their activities'.<sup>84</sup>
- On 6 February 2015, the Chinese Ministry of Public Security announced that China was cracking down on foreign casinos seeking to attract and recruit Chinese citizens to travel abroad for gambling (Crackdown Announcement).<sup>85</sup> The Crackdown Announcement was widely reported in international media. The next day, media reports included the claim that President Xi Jinping had 'officially declared war on the global gaming industry'.<sup>86</sup>
- 59 The Crackdown Announcement quickly came to the attention of senior executives within VIP International, including Mr O'Connor and Mr Felstead, and a number of Crown executives and directors, including Mr James Packer, Mr John Alexander, Mr Craigie and Mr Johnston.<sup>87</sup>
- 60 On 9 February 2015, a market intelligence service, Asia Gaming Brief, published a report quoting Mr Hua Jingfeng, a deputy bureau chief at the Ministry of Public Security, as saying:

A fair number of neighbouring countries have casinos, and they have set up offices in China to attract and drum up interest from Chinese citizens to go abroad and gamble. This will ... be an area that we will crack down on.<sup>88</sup>

That same day, WilmerHale provided advice in relation to whether the Crackdown Announcement affected the China-based staff and, if so, how.<sup>89</sup> It advised that:

Given the highlighted government efforts to crack down on rep offices with core business to facilitate Chinese individuals gambling abroad, the company's rep offices/employees in China should focus its business on introducing the hotel/resort and facilities, rather than [engaging] in any activities which may be viewed as directly facilitating Chinese individuals gambling offshore.<sup>90</sup>

- Also on 9 February 2015, Mr Chen emailed staff at the 'VIP International Offices' email address reassuring them that they were not in violation of 'any known laws'. The email indicated that application would be made for Hong Kong or Singapore work permits for all China-based staff who did not currently hold a foreign passport. Mr Chen told staff: '[t]his is purely a precautionary measure that will allow you to say that you work out of an overseas location and are on business travel in China' (although the application for work permits did not ultimately occur).<sup>91</sup>
- 63 The following day, on 10 February 2015, WilmerHale provided advice in relation to whether there had been any change to the law regarding Article 303. It advised that there had been no recent changes but that, given the current enforcement environment, 'it would be prudent for staff not to be involved in the money-moving activities because it can be easily interpreted as an effort to facilitate overseas gambling'.<sup>92</sup>

- 64 Following the Crackdown Announcement, VIP International executives not based in China decided to avoid travelling to mainland China for a while.93
- 65 The Crackdown Announcement did not cause Crown to stop or alter its business operations in China.94 Crown did, however, attempt to make them less overt by not proceeding with or deferring an 'official' office in China.95 Crown also removed the Crown logo from private jets used to transport high rollers from China to Crown venues in Australia (with a view to making Crown's targeting of Chinese citizens to visit its casinos more 'under the radar', as noted by Mr Ratnam).96
- 66 In contrast, competitors of Crown 'pulled their entire teams out of China'. 97 Mr Chen asked WilmerHale if Crown should do the same. On 25 February 2015, WilmerHale advised that the picture was not entirely clear. WilmerHale was 'not sure' whether the removal of staff from China was necessary at that point, but suggested that perhaps Crown could have some key China-based employees 'tentatively' work outside China; for example, in Hong Kong.98
- 67 On 13 March 2015, VIP International engaged Mintz Group to do a risk assessment of the prevailing situation.<sup>99</sup>
- 68 On 16 March 2015, a 'VIP Update' document, which was circulated to Mr Alexander, Mr Johnston, Mr Robert Rankin, Mr Guy Jalland, Mr Craigie and Mr Kenneth Barton (the then CFO of Crown),100 reported the Crackdown Announcement as a financial threat and a possible reason for the lower-than-expected turnover across the Chinese New Year period. The VIP Update did not, however, report the increased risk to the safety of staff, or the decision of VIP International executives to defer their own travel as a consequence of the announcement.<sup>101</sup>
- 69 On 23 March 2015, Mr Chen emailed Mr O'Connor providing directions as to what should happen to his pay cheque if he were detained in China. 102
- 70 On 25 March 2015, Mintz Group provided its risk assessment. It relevantly read:

There is clearly enhanced attention underway from relevant [Chinese] authorities concerning foreign casino marketing activities in mainland China ... The coming months likely will feature an increasing level of scrutiny by [the Ministry of Public Security], and possibly other authorities directed at foreign casino marketing and other personnel in the mainland ...

- ... Given this current state of affairs, it would still seem prudent to proceed with planned marketing efforts, but keep them low-key, ideally with small groups at a time, and little to no publicity ...
- ... it is likely that relevant Chinese authorities will pursue this crackdown with greater than average vigour.<sup>103</sup>
- 71 In mid-June 2015, Chinese authorities arrested and detained employees of certain South Korean casino operators. In late June 2015, Crown received advice from Mintz Group that the South Korean employees were detained because they were assisting with the transfer of funds out of China, in contravention of Chinese currency laws.<sup>104</sup> That advice was circulated to Mr O'Connor, Mr Felstead and Mr Ratnam, and forwarded by Mr Felstead to Ms Tegoni, Mr Michael Neilson, Mr Craigie, Mr Johnston and Mr Barton. 105

- On 22 June 2015, WilmerHale provided advice following the arrest of the South Korean casino employees. It advised that the potential charges included luring Chinese citizens to gamble in Korean casinos and violating Chinese foreign currency policies. WilmerHale also advised that those employees were not based in China but had travelled there to conduct marketing activities, and that their arrests should be read in the context of the government's continued crackdown on corruption in recent years.<sup>106</sup>
- On 9 July 2015, Chinese police questioned two members of the VIP International team in relation to their involvement in gambling activities.<sup>107</sup> Both were referred to the police by tipsters.<sup>108</sup> One of the staff members, 'Mr BX', did not give a truthful response to police about what his employment involved, saying that he worked for Crown Resorts and helped to organise leisure trips for customers.<sup>109</sup> The response of the second staff member was not recorded. Mr O'Connor and Ms Williamson appreciated that Mr BX had not been truthful in the answers he gave. Mr O'Connor acknowledged his awareness that Mr BX was in fact involved in organising gambling tours to Crown's casinos in Melbourne and Perth.<sup>110</sup>
- 74 Chinese police asked Mr BX to provide a letter confirming the nature of his employment by Crown.<sup>111</sup> This triggered a flurry of internal activity within Crown. There was discussion regarding which Crown entity should send the letter and what should be said, if anything, about the activities of Crown.<sup>112</sup> Parties to the discussion included Mr Chen, Ms Williamson, Ms Tegoni, Mr Neilson and Mr Felstead.<sup>113</sup> Mr Johnston was made aware that Mr BX had been questioned by Chinese police in July 2015.<sup>114</sup>
- 75 Ultimately, Crown Singapore sent a letter confirming Mr BX's employment by that entity. It noted that Crown Singapore was a subsidiary of Crown Melbourne, which was, in turn, part of the Crown Resorts group. Finally, the letter noted that Crown Resorts was listed on the ASX and was one of the 'leading hotel, resort and entertaining companies in Australia'. It did not mention that Crown through its subsidiaries operated two casinos in Australia.
- On 13 October 2015, Chinese national television broadcast a program called *Topics in Focus* (CCTV Program). The CCTV Program addressed the subject of foreign casinos and their networks inside China, with a particular focus on foreign casinos marketing to Chinese citizens. The CCTV Program included a discussion of the legal prohibitions on promoting gambling, and summarised the hard-line approach taken by the Chinese Government in relation to foreign casinos. Many of the China-based staff were shaken by the CCTV Program and sought advice on the current state of affairs regarding their activities in China.
- 77 On 15 October 2015, Mr Chen advised China-based staff to limit meetings with guests to small numbers and to avoid 'any overt sales and marketing activity'. No other changes were made to the day-to-day activities of China-based staff.
- 78 On 20 October 2015, Mr Chen reported to Mr O'Connor that the team in China had 'definitely heightened concerns'.<sup>118</sup>
- 79 WilmerHale provided advice in October 2015, following the broadcast of the CCTV Program.<sup>119</sup> WilmerHale advised that in the current environment, Crown marketing should not expressly promote the casino business and should not refer patrons to money changers.<sup>120</sup>
- 80 Throughout 2016, Mr Chen continued to encourage his China-based staff to increase sales and performance, including on the first day of the arrests (13 October 2016).<sup>121</sup>

- 81 On 26 June 2016, Mr Chen wrote to Mr Felstead advocating for a favourable performance review and noting that he had 'taken on the risks of being prosecuted in China'.<sup>122</sup>
- 82 On 13 and 14 October 2016, the raids and arrests of the 19 employees occurred. Sixteen were sentenced to terms of imprisonment.<sup>123</sup>

#### CONCLUSIONS OF THE BERGIN INQUIRY

- 83 The Bergin Inquiry reached the following conclusions.
- 84 The allegation that Crown knew its staff were breaching Chinese gambling laws was not established in view of the legal advice that Crown had obtained.<sup>124</sup> The Bergin Inquiry did not consider whether Crown had breached other laws by operating in an office in China without a business licence.
- 85 The allegation that Crown exposed its staff to the risk of detention in China was established. The Bergin Report noted that Crown kept pushing its China-based staff to make greater sales in the face of the questioning of its employees by Chinese authorities, the arrests of South Korean casino employees and the targeted crackdown on foreign casinos targeting and luring Chinese citizens to gamble overseas.<sup>125</sup>
- 86 The allegation that Crown disregarded the welfare of its employees and pushed them to make greater sales was established. 126
- 87 The allegation that, as the Chinese police were closing in, Crown directed its China-based staff to keep promoting gambling but 'under the radar' was established.<sup>127</sup>
- 88 The allegation that Crown instructed its China-based staff to falsely claim they were not working in China but in other locations was not established. This was because Mr Chen did not go ahead with the WilmerHale suggestion to that effect.<sup>128</sup>
- 89 The allegation that Crown's operations in China cast doubt over its corporate governance practices was established. 129

# Money laundering

# Background

- 90 Money laundering is the process of legitimising proceeds of crime. Casinos are particularly vulnerable to being used for money laundering. 130 In part this is because of the large volumes of cash with which they deal.<sup>131</sup> There are various mechanisms by which money may be laundered through a casino.<sup>132</sup> One difficulty for casinos is that there is often little observable basis for distinguishing between those patrons laundering funds and other patrons.<sup>133</sup>
- 91 Between 27 July 2019 and mid-August 2019, numerous newspaper articles alleged that money laundering had occurred through the Southbank and Riverbank bank accounts.<sup>134</sup>
- 92 Separate allegations about money laundering at the Melbourne Casino were made in the media around that same time, including in a 60 Minutes program titled 'Crown Unmasked' that aired on 28 July 2019.135

- 93 In an ASX announcement on 31 July 2019, the Crown board sought to defend Crown against the allegations that it facilitated money laundering in its casinos and that it turned a blind eye to this activity.<sup>136</sup> Among other things, the board stated that Crown took its regulatory obligations very seriously, proactively complied with those obligations, and had in place a comprehensive anti-money laundering (AML) and counter-terrorism financing (CTF) program.<sup>137</sup>
- 94 Most relevantly, on 5 and 6 August 2019, The Sydney Morning Herald and The Age published an article titled 'Crown's Firms Used to Launder Drug Funds'. The article alleged:

Drug traffickers have used two private companies that were set up by Crown Resorts with Crown executives as directors to bank suspected proceeds of crime, federal investigations have alleged.

Investigators traced money from a number of suspected or convicted drug traffickers and money launderers flowing into the bank accounts of the two companies, Southbank Investments Pty Ltd and Riverbank Investments Pty Ltd, between 2012 and 2016, according to former officials.

One source said that federal police believed the two Crown companies were used by criminal entities because they believed that the money they deposited into them would not be closely scrutinised. 139

95 The Bergin Report directed its consideration of money laundering to the veracity of the media allegations that Crown: (a) facilitated money laundering or turned a blind eye to such activity in the Southbank and Riverbank accounts; and (b) facilitated money laundering or turned a blind eye to such activity in the Melbourne Casino. 140

#### The Southbank and Riverbank accounts

#### SOUTHBANK: INCORPORATION AND ACTIVITY

- 96 Southbank was incorporated on 1 August 1996.<sup>141</sup> It is a wholly owned subsidiary of Crown Melbourne.142
- 97 As at 1 January 2021, the directors of Southbank were Mr Felstead, who was appointed on 8 November 2013, and Mr Barton, who was appointed on 30 June 2017. 143 Its secretaries were Mr Joshua Preston, who was appointed on 12 August 2014, and Ms Mary Manos, who was appointed on 30 June 2017.144
- 98 Previous directors of Southbank included Mr Alexander, between 22 March 2017 and 24 January 2020, and Mr Craigie, between 9 January 2002 and 22 March 2017.<sup>145</sup>
- 99 The Bergin Report does not record why Southbank was incorporated, why it was named 'Southbank Investments Pty Ltd' or what activities, besides operating a bank account, it undertook. The Bergin Report does, however, refer to internal legal advice provided some time after December 2016 that suggested that Southbank did not carry on business and simply operated a bank account to receive casino patrons' funds. 146

- 100 In late 2001, the regulator advised Crown Melbourne that it had no objection in principle to its proposal that international patrons be permitted to make deposits to Crown Melbourne through the Southbank account in order to afford those patrons 'privacy', subject to certain conditions. One condition was that the regulator be provided with quarterly reports of the details of deposits into the account. This, however, occurred only for a relatively short period. Thereafter, the regulator received quarterly reports only of the total assets and liabilities of Southbank. The regulator therefore lacked visibility of the actual deposits made into the account.147
- 101 The Bergin Report does not identify from whom, or why, patrons were said to require privacy; but presumably the patrons did not wish for their own banking records to reveal deposits into a Crown casino bank account.
- 102 In December 2016, Australian Transaction Reports and Analysis Centre (AUSTRAC) queried whether Southbank should be enrolled as a 'reporting entity', within the meaning of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) (AML/CTF Act), in its own right. Internal legal advice obtained by Crown suggested that because the Southbank account had 'no other function than the mere conduit for the receipt' of casino patrons' funds, Southbank was not providing a 'designed service' under the AML/CTF Act (and was therefore not itself a reporting entity).<sup>148</sup>
- 103 Subsequently, Crown sought external legal advice as to whether Southbank and Riverbank were reporting entities because they were providing a designated remittance service.<sup>149</sup> The Bergin Report does not record what advice was received or whether any action was taken in response.

#### RIVERBANK: INCORPORATION AND ACTIVITY

- 104 Riverbank was incorporated on 15 May 2003 and is a subsidiary of Burswood Limited, which operates Crown Perth. 150
- 105 As at the time of the Bergin Report, the directors of Riverbank were Mr Felstead, who was appointed on 26 March 2007, and Mr Barton, who was appointed on 12 August 2014.<sup>151</sup> Its secretaries were Mr Preston and Ms Manos, who were both appointed on 30 June 2017.<sup>152</sup>
- 106 Previous directors of Riverbank included Mr Alexander, between 22 March 2017 and 24 January 2020, and Mr Craigie, between 29 October 2008 and 22 March 2017.<sup>153</sup>
- 107 As with Southbank, the Bergin Report does not explain why Riverbank was incorporated, why it was named 'Riverbank Investments Pty Ltd' or what activities, besides operating a bank account, it undertook. The Bergin Report does, however, indicate that the purpose of Riverbank was 'also to afford its international patrons privacy', and records that patrons of Crown Perth made deposits through the Riverbank account.<sup>154</sup>

#### OPERATION OF THE SOUTHBANK AND RIVERBANK ACCOUNTS

108 Initially, both Southbank and Riverbank held bank accounts with HSBC. In 2013, following a strategic review of the gaming sector, HSBC decided to discontinue its relationship with Southbank and Riverbank. 155

- 109 Southbank then opened an account with CBA and Riverbank opened an account with ANZ. 156
- 110 Crown circulated the details of the Southbank and Riverbank accounts to its patrons. It advised its patrons that when making a deposit, the depositor should reference the Crown identification number of the patron to whom the deposit should be credited. This was so that the patron's deposit account could be credited accordingly.<sup>157</sup> If no patron identification number was referenced at the time of deposit, the patron had to provide it to the casino, via the Cage or VIP International, with evidence of the deposit to enable Crown to credit their patron deposit account.<sup>158</sup> The evidence could take the form of a receipt from the bank or from internet banking, or a phone screenshot showing the nature of transfer that had occurred.<sup>159</sup>
- 111 When funds accumulated in the Southbank and Riverbank accounts, they would be 'swept' into Crown bank accounts at regular intervals. Hundreds of millions of dollars flowed through the Southbank and Riverbank accounts annually. 161
- 112 Despite Crown directing patrons that the Southbank and Riverbank accounts would not accept transfers from companies, when such transfers were made, they were in fact accepted. Southbank and Riverbank also accepted anonymous deposits made using the 'QuickCash' method.<sup>162</sup>

#### THE AGGREGATION PROBLEM

- 113 Cage staff at Crown Melbourne and Crown Perth entered details of deposits made by patrons into the Southbank and Riverbank accounts into a database known as 'SYCO'.
- 114 SYCO is an electronic customer relationship management system used by Crown Melbourne and Crown Perth. It records information about patrons and details of deposits credited to their patron deposit accounts.<sup>163</sup>
- 115 Certain Cage staff at both casinos aggregated numerous deposits (made to the credit of a single patron deposit account) into a single SYCO entry recording only the sum total of the deposits, rather than recording each individual deposit separately. Other staff recorded both the aggregate value of deposits to a single account and the individual deposits that constituted the aggregate amount. In the main, Cage staff favoured the former practice. In By aggregating individual deposits, important information that could be seen in the Southbank and Riverbank bank statements was lost in the process of data entry into the SYCO system. In There was no indication on the face of relevant SYCO entries that the amount being credited to the relevant patron deposit account was comprised of two or more smaller amounts. This is what is termed the 'aggregation' problem.
- 116 SYCO played an important role in the AML transaction monitoring program in place at Crown Melbourne and Crown Perth. Members of the AML Teams at Crown Melbourne and Crown Perth accessed and reviewed SYCO for the purpose of identifying suspicious transactionsor patterns of transactions at their respective casinos. In particular, the AML Teams extracted reports from SYCO to review deposits for AML purposes.<sup>167</sup>
- 117 The aggregation of multiple deposits to the credit of a single patron deposit account into a single SYCO entry by Cage staff meant that AML staff were unable to identify the fact of aggregation, or the number and nature of deposits that constituted the aggregated amount. AML staff were denied a complete picture of what was occurring in the underlying bank accounts.<sup>168</sup>

- 118 Further, there were indications that money laundering was, or was likely to be, occurring through the Southbank and Riverbank accounts from at least January 2014. 169
- 119 These are summarised below.

#### RED FLAG: ANZ AND THE RIVERBANK ACCOUNT

- 120 On 31 January 2014, approximately six months after the Riverbank account was opened, ANZ raised concerns with Crown by email to Mr Travis Costin, Group Treasury and Finance Manager, about multiple cash deposits that were indicative of 'structuring' in the account. By internal email to Mr Barton that same day, Mr Costin expressed the incorrect belief that the accounts could not receive cash deposits.<sup>170</sup>
- 121 On the same day, Mr Costin responded to ANZ requesting further details of the transactions in question. ANZ provided those details and posed a series of questions to Mr Costin about the Riverbank account. The questions related to the purpose of the account, why the account was being used as a conduit account, the reason for establishing a separate legal entity to conduct 'this activity', why the entity included 'Investments' in its company name, whether 'other "investment" accounts under the Crown group' were being utilised in a similar fashion, and what, if any, monitoring of the Riverbank account was taking place. The questions indicated that ANZ had serious concerns about the operation of the Riverbank account.
- 122 In an internal email from Mr Costin to Mr Barton on 31 January 2014, Mr Costin stated that he was 'not 100% sure what we should/shouldn't mention around the use of company names'. 

  Mr Barton recommended that Mr Costin speak with Mr Birch of ANZ. 

  173
- On 3 February 2014, a meeting took place at the office of Crown Melbourne between Mr Costin and Mr Birch about the suspect transactions in the Riverbank account. At the meeting, Mr Costin sought to 'get ANZ comfortable' with the accounts, and noted in a subsequent email to Mr Theiler that one outstanding question from the meeting 'was why the money changer deposits multiple amounts under \$10k at different branches'. The 'obvious answer' was that the deposits were indicative of money laundering, explaining why they had been queried by ANZ in the first instance.
- 124 There was no evidence that Crown provided any written response to the questions from ANZ.<sup>176</sup> Nor was there any evidence of the following:
  - That Mr Costin, Mr Barton or anyone else at Crown or its subsidiaries elevated ANZ's concerns or queries to any Crown Risk Management Committee (RMC)<sup>177</sup> or the boards of Crown, Crown Perth or Riverbank.<sup>178</sup>
  - That any person at Crown took steps to review the balance of the transactions in the bank statements for the Riverbank account in light of ANZ's concerns. A review would have revealed that those statements up to January 2014 were 'riddled with examples' of structuring. From 31 January 2014 until the accounts were shut for good in late 2019,<sup>179</sup> an additional 61 cash deposits indicative of structuring appeared in the accounts.<sup>180</sup>
- On 27 March 2014, a further meeting took place between representatives of ANZ and Crown relating to issues of money laundering. Those present included Mr Neilson (then General Counsel of Crown), Ms Tegoni (then Legal Officer and AML Compliance Officer for Crown Melbourne), Mr Preston (then Legal Officer and AML Compliance Officer for Crown Perth),

- Mr Barton and Mr Costin. That meeting and the fact that it related to issues of money laundering was not brought to the attention of the Crown RMC, the Crown board, the Crown Perth board or the Riverbank board.<sup>181</sup>
- 126 On 31 March 2014, ANZ sent an email to Mr Costin raising the practice of aggregation in the context of reporting to AUSTRAC.<sup>182</sup> The practice of aggregation was neither reviewed nor stopped after this email.
- 127 On 31 March 2014, Mr Barton retained consultancy firm Promontory to undertake a review of the Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) programs at Crown Melbourne and Crown Perth. Crown commissioned this review to give ANZ comfort in circumstances where transactions indicative of money laundering had been identified in the Riverbank account. Promontory was not, however, alerted to the existence of the Southbank and Riverbank accounts; nor about the issues that ANZ had identified in those accounts.<sup>183</sup>
- 128 On 29 April 2014, Mr Barton and Mr Costin again met with ANZ. At that meeting ANZ informed Crown that the Riverbank account would be closed in July 2014.<sup>184</sup> In response, Mr Barton directed Mr Costin to tell patrons of Crown Melbourne and Crown Perth 'to stop making multiple in branch cash deposits below the [reporting] threshold'. 185 That same day, Mr Costin emailed numerous Crown staff noting that the closure of the Riverbank account had been expected. He requested that customers be advised that multiple in-branch cash deposits under the \$10,000 reporting threshold (set under the AML/CTF Act) would not be accepted in the new CBA accounts, as 'we don't want this process to occur again with CBA in six months time ... due to the suspect transactions'. 186
- 129 On 29 September 2014, Promontory delivered its report to Mr Barton. The report noted that Promontory had reviewed the manual (as opposed to automated) transaction monitoring undertaken by Crown and, without conducting any testing, was able to infer that Crown Melbourne and Crown Perth had implemented the manual control in a manner consistent with their AML/CTF programs.<sup>187</sup> The Promontory report did not address the Southbank or Riverbank accounts, nor the issues ANZ had identified with those accounts. The report did, however, observe that the procedures and documentation for the cash transactions report monitor's (CTRM) review of bank statements was deficient and depended largely on the monitor's experience with AML/CTF issues and familiarity with the business of Crown Melbourne.<sup>188</sup>
- 130 Mr Barton subsequently provided the Promontory report to Mr Birch at ANZ. On 5 March 2015, Mr Birch responded to Mr Barton with commentary on the Promontory analysis, suggesting improvements that Crown might make to its AML/CTF Program in the areas of know-your-customer (KYC), junkets due diligence, enhanced due diligence, and transaction monitoring. It is not clear from the Bergin Report whether that commentary was passed on to Crown AML Teams. On 6 March 2015, Mr Barton replied to Mr Birch stating that his commentary 'seems to largely be a comparison with ANZ's processes' and enquiring '[a]re there any specific area that should be addressed from this comparison?'189
- 131 Despite ANZ closing the Riverbank account in July 2014, the delivery of the Promontory report on 29 September 2014 recording deficiencies in Crown processes for reviewing bank statements, and Mr Birch's commentary of 5 March 2015, no changes were made to the operation or monitoring of the Southbank or Riverbank accounts at this time. 190

#### RED FLAG: ASB BANK AND THE SOUTHBANK (NEW ZEALAND) ACCOUNT

- 132 In addition to its CBA Australian dollar account, Southbank held an account in New Zealand with ASB Bank, a subsidiary of CBA.<sup>191</sup>
- 133 On 10 July 2018, Ms Tama Tauira, a Transaction Relationship Manager from ASB, requested to speak with Mr Costin to ask him 'urgent' due diligence questions regarding the operation of the ASB Southbank account. On 11 July 2018, at Mr Costin's request, Ms Tauira put those questions in writing, enquiring whether the ASB account:
  - · was subject to governance and oversight by the Crown board or senior management
  - · was covered by the Crown AML Program or a Crown internal AML audit
  - · was covered by periodic audits undertaken by the casino's regulator
  - was regulated by any regulator in New Zealand.<sup>192</sup>
- 134 Ms Tauira also asked Mr Costin to confirm whether: (a) there was transaction monitoring in place to detect unusual activity in the Southbank ASB account; and (b) there were processes and procedures in place to identify cash deposits and confirm the source of cash deposits in the account. Ms Tauira requested Mr Costin to provide documentation to support the answers to each of the questions she had posed.<sup>193</sup>
- Later that day, Mr Costin forwarded Ms Tauira's queries to Ms Louise Lane, then Group General Manager of AML. Despite Ms Tauira noting the queries to be urgent, no response was provided to ASB until three months later, on 2 October 2018. Mr Costin's response was drafted by Ms Lane.<sup>194</sup>
- 136 The response to ASB was misleading:
  - There was no evidence to support the suggestion made by Mr Costin that Crown made 'source of funds' enquiries in respect of cash deposits into the Southbank account.<sup>195</sup>
  - Contrary to Mr Costin's indication that the Southbank ASB bank account was subject
    to oversight by Crown's board or senior management, the majority of the Crown board
    knew nothing about the Southbank and Riverbank accounts, let alone provided oversight
    of the Southbank ASB bank account.<sup>196</sup>
  - As Southbank was not enrolled as a reporting entity with AUSTRAC, the ASB account was not 'covered by' the Crown Melbourne AML/CTF Program or any AML audit, contrary to Mr Costin's assertion.<sup>197</sup>
  - Mr Costin's response implied that the ASB account was audited by the VCGLR, which was untrue.<sup>198</sup>
  - Mr Costin's response that transaction monitoring was in place was true to an extent.
     At that time, however, Crown had been made aware by ANZ and Promontory that its transaction monitoring processes had deficiencies, and that its processes and procedures for identifying cash deposits into the Southbank and Riverbank accounts suffered from the aggregation problem described above.<sup>199</sup>

- 137 On 2 November 2018, Ms Tauira raised urgent queries with Mr Costin regarding \$15 million in payments made over the preceding two years by a particular patron. She considered that the patron's activities required investigation and sought particular information from Mr Costin. After internal discussion, Crown did not provide the information requested.<sup>200</sup>
- 138 On 23 November 2018, Ms Tauira queried whether Southbank was an AML/CTF reporting entity. Mr Costin replied that it was not, and indicated that the reporting entity was Crown Melbourne, the holding company of Southbank and the operator of the gaming facility.<sup>201</sup>
- 139 On 22 January 2019, ASB notified Crown that it was closing the Southbank account for reasons that included the information that Crown had provided to ASB.<sup>202</sup>
- 140 Mr Xavier Walsh (then COO of Crown Melbourne), Mr Preston and Ms Lane were all informed of the ASB decision. The same day that ASB notified Crown of its decision to close the Southbank account, Mr Walsh emailed Mr Costin asking '[a]re we able to set up an account with a different bank?' Mr Costin replied, copying Mr Preston and Ms Lane, that that would be unlikely, that ANZ had already shut down the Southbank accounts in Australia due to AML concerns, and that Chinese, European and American banks 'won't go anywhere [near] patron accounts', leaving only Westpac or Bank of New Zealand as banking options. 203
- 141 Neither the closure of the ASB Southbank account, nor the perceived difficulty in finding an alternative bank, were escalated to Crown's RMC, the Crown board or the Crown Melbourne board.<sup>204</sup>
- 142 The closure of the ASB Southbank account (against the backdrop of the earlier closure by ANZ of the ANZ Riverbank account in light of AML concerns) did not lead to:
  - · any review of the wisdom of permitting Southbank and Riverbank to continue to operate conduit accounts
  - · any detailed review of either the account statements for those entities or of Crown's AML processes more generally
  - the implementation of any additional controls to prevent the Southbank and Riverbank accounts from being (or continuing to be) exploited for money-laundering purposes.<sup>205</sup>

#### RED FLAG: CBA AND THE SOUTHBANK ACCOUNT

- 143 Overlapping with the period during which the ASB developments occurred, there were also developments with CBA regarding the Southbank and Riverbank accounts.
- 144 On 10 December 2018, CBA raised written queries about money laundering with Crown regarding the operation of the Southbank accounts. In particular, CBA queried whether Southbank was covered by the existing Crown-wide AML Program as a 'Designated Business Group' and what measures Southbank undertook to identify and verify the identity of individuals from whom it was accepting funds. CBA also queried what measures Southbank had in place to identify and prevent the receipt of illegitimate funds, and what remedial actions Crown had taken in respect of the VCGLR finding regarding junket arrangements.<sup>206</sup>

- 145 On 11 December 2018, Mr Costin emailed Ms Lane to note that the 'ASB queries have finally reached CBA'. On 20 December 2018, Crown responded to the CBA queries.<sup>207</sup>
- 146 In February 2019, Ms Lane met with the CBA account management team to discuss Crown's AML controls. The fact of this meeting and CBA's concerns were not notified to the Crown RMC or the boards of Crown, Crown Melbourne or Crown Perth.<sup>208</sup>
- 147 In July and August 2019, there was media reporting about money laundering at the Melbourne Casino, which the Crown Resorts board denied through an ASX announcement on 31 July 2019.
- 148 On 5 and 6 August 2019, the article exposing allegations of money laundering through the Southbank and Riverbank accounts was published in The Sydney Morning Herald and The Age respectively.209
- 149 On 14 August 2019, ILGA issued the Terms of Reference for the Bergin Inquiry.<sup>210</sup>
- 150 On 27 August 2019, there was a meeting between Crown and CBA. The meeting was attended by Ms Lane, Mr Costin, Mr Alan McGregor and Mr Barton, on behalf of Crown. At the meeting, CBA indicated that the issues identified in the newspaper article raised red flags, and that an investigation of the Southbank and Riverbank accounts had identified information that CBA could not share with Crown, thereby telegraphing to Crown CBA's concerns that the accounts had been used for money laundering.<sup>211</sup>
- 151 On 4 October 2019, there was a further meeting between Crown and CBA, attended by Mr Costin and Mr Barton. At that meeting, CBA notified Mr Costin and Mr Barton of the impending closure by CBA of the Southbank and Riverbank accounts.<sup>212</sup>
- 152 In December 2019, the decision by CBA to close those accounts was brought to the attention of the Crown RMCs and the boards of Crown, Crown Melbourne and Crown Perth.<sup>213</sup>

#### RED FLAG: MS LANE'S REVIEW

- 153 Immediately after the publication of the article in The Sydney Morning Herald and The Age on 5 August 2019, Ms Lane began conducting a review of the Southbank and Riverbank accounts.214
- 154 On 6 August 2019, Ms Lane requested the bank statements for the Southbank account. Between 6 and 20 August 2019, Ms Lane conducted a manual review of the statements, cross-checking suspicious activity with SYCO entries and establishing whether Crown entities had submitted 'suspicious matter reports' (SMRs) appropriately. 215
- 155 By 20 August 2019, Ms Lane had formed the view that the review process was highly labour intensive and that she would need either additional internal support to complete the task, or that it would need to be done externally. On 20 August 2019, she spoke to Mr Neil Jeans, the Principal of Initialism (a specialist AML consultancy), about obtaining external forensic assistance to review the Southbank and Riverbank accounts. Mr Jeans advised that they might obtain that assistance from Grant Thornton (a business advisory consultancy). That same day, Mr Jeans introduced Ms Lane to Ms Katherine Shamai of Grant Thornton. 216

- 156 By email on 21 August 2019, Ms Lane informed Mr Preston that she wished to engage Grant Thornton to assist in her bank account review. She also indicated that if Crown preferred that the 'incredibly time consuming' task be completed internally, additional hands would be required. At that time, Mr Preston was a designated AML Compliance Officer for Crown.<sup>217</sup>
- 157 Ultimately, Crown did not engage Grant Thornton to provide forensic support. Crown obtained advice from law firm MinterEllison that there was a real risk that any such review would not be the subject of legal professional privilege (and thus a risk it would not be immune from production in a legal proceeding). Mr Preston then formed the view that it was not necessary to conduct a comprehensive review of the Southbank and Riverbank accounts. He understood that the Crown transaction monitoring program covered those accounts. Ar Preston provided incorrect advice to the Crown board that the Southbank and Riverbank accounts were dealt with in the same manner as all other Crown accounts, and that they were covered by the Crown AML policy.
- 158 Crown's response to the media allegations demonstrated not only a failure to understand the AML landscape and legislative requirements, but also a total lack of commitment to rectifying obvious problems identified in the 5 and 6 August newspaper article.<sup>220</sup>
- 159 Ms Lane took no further steps in relation to the matter and left her employment at Crown in early October 2019 (following a period of leave between 31 August and 22 September 2019).<sup>221</sup>
- 160 Crown did not promptly inform the Bergin Inquiry that Ms Lane had (to Mr Preston's knowledge) commenced a review of the Southbank and Riverbank accounts following publication of the article in *The Sydney Morning Herald* and *The Age* on 5 August 2019. That only came to light on and from 17 November 2020, due in part to the fact that relevant documents relating to these matters, previously not produced by Crown, were newly available.<sup>222</sup>
- In September 2020, the AML, Compliance and Credit Teams within Crown Melbourne and Crown Perth commenced an internal investigation into the aggregation problem.<sup>223</sup>
- In November 2020, reports by Grant Thornton comprising forensic data analysis of the Southbank and Riverbank accounts, and a report by Initialism reviewing those accounts for indications of money laundering, were provided to the Bergin Inquiry.<sup>224</sup> The Grant Thornton and Initialism reports identified seven types of transactions indicative of money laundering on those accounts.<sup>225</sup> These included numerous instances of structuring in the manner identified by ANZ in January 2014.<sup>226</sup> The activity continued in the Southbank and Riverbank CBA accounts following closure of the ANZ account in 2014. The activity appeared in the Southbank CBA account from November 2013 to April 2019, and in a new Riverbank CBA account from May 2014 to July 2017.<sup>227</sup>
- Although Crown's banking instructions required patrons who wished to make deposits into the Southbank or Riverbank accounts to do so from a personal account (that is, not from a company, business or trust bank account), these instructions were regularly ignored by patrons and not enforced by Crown. The bank statements of Southbank and Riverbank included hundreds of transfers from companies and money remitters.<sup>228</sup> The collective value of those transfers was at least in the tens of millions of dollars.<sup>229</sup>

#### FINDINGS IN RESPECT OF THE SOUTHBANK AND RIVERBANK ACCOUNTS

- 164 The Bergin Inquiry found there was 'no doubt' that the processes adopted by Crown enabled or facilitated money laundering through the Southbank and Riverbank accounts.<sup>230</sup> By contrast, the Bergin Inquiry found that the veracity of the media allegations that Crown turned a blind eye to money laundering through those accounts, was not established.<sup>231</sup> Instead, the Bergin Inquiry's findings were equally damning. They were that:
  - Crown knew that money laundering was probably occurring, starting from when ANZ notified Crown in 2014 of its concerns about the indications of money laundering in the Riverbank account.<sup>232</sup>
  - Crown's facilitation of money laundering continued for years, from at least 2014 until
    the accounts were closed in October 2019, notwithstanding that Crown was alerted
    by a number of banks to the real prospect of money laundering in the accounts.<sup>233</sup>
  - Crown displayed a cavalier attitude in relation to queries about money laundering later raised by ASB and CBA.<sup>234</sup>
  - Crown failed to ensure that the operation of its casinos was protected from criminal exploitation.<sup>235</sup>
  - Decisions made by Crown were infected by extraordinarily poor judgement.<sup>236</sup>
  - The aggregation problem compromised the ability of the AML Team to do its work properly.<sup>237</sup>
  - Crown's failure to react urgently and comprehensively to public allegations of money laundering through its subsidiaries exposed a present, very deep corporate cultural problem.<sup>238</sup>
  - The lack of understanding of the AML landscape and legislation displayed by the Crown directors constituted a very significant deficiency in the corporate character of Crown.<sup>239</sup>

#### CROWN CONCESSIONS

- 165 Crown ultimately accepted that there was aggregation of certain transactions in entries in its SYCO system.<sup>240</sup> It also accepted that this aggregation compromised the ability of its AML Team to identify examples of structuring in the Southbank and Riverbank accounts.<sup>241</sup>
- 166 From 18 November 2020, Crown conceded, on the basis of the Initialism report, that it was more probable than not that money laundering occurred in the Southbank and Riverbank accounts as a result of 'cuckoo smurfing'. 242
- 167 Crown Chairman at the time, Ms Helen Coonan, conceded that the conduct of Crown had enabled money laundering to occur.<sup>243</sup>

## Money laundering at the Melbourne Casino

- 168 The media allegations against Crown were not limited to facilitating and turning a blind eye to money laundering in its Southbank and Riverbank accounts. The media also alleged that Crown facilitated money laundering or turned a blind eye to such activity at the Melbourne Casino.<sup>244</sup>
- 169 CCTV footage provided to the Bergin Inquiry depicted three separate incidents at the Suncity junket cash desk (within the Melbourne Casino):
  - In May 2017, a man placed a blue cooler bag on the Suncity desk, unzipped the bag, unpacked many bundles of \$50 notes wrapped in elastic bands and placed them in stacks on the cash desk.<sup>245</sup>
  - In December 2017, a man removed multiple bundles of cash, amounting to many hundreds of thousands of dollars, from a black cardboard shopping bag. The cashier then put the money through a cash-counting machine and provided the man with plaques, a form of chips.<sup>246</sup>
  - In December 2017, a man placed chips on the Suncity desk. The Suncity cashier then exchanged the chips for cash.<sup>247</sup>
- 170 In respect of the three incidents, there was no evidence of Suncity personnel checking the source of the cash, or confirming the identity of the person providing the cash.<sup>248</sup>
- 171 CCTV still photographs from January and February 2018 depicted further similar scenarios at the Suncity desk, including bundles of cash wrapped in elastic bands being removed from a suitcase in front of the desk.249
- 172 In March 2018, the Crown Melbourne International VIP Team received an internal report that large amounts of cash were being stored at the Suncity desk. Following that report, Crown reviewed and changed the Suncity room cash arrangements to limit the amount of cash that could be held in that room to \$100,000.250 At the time that limit came into force, on 20 April 2018, \$5.6 million in cash was removed from the Suncity room under supervision of Crown staff and deposited into a Suncity patron deposit account.<sup>251</sup>
- 173 On 19 December 2018, a backpack containing \$250,000 was taken from behind a curtain in the Suncity room to two men waiting in a car outside the casino. The two men were subsequently arrested.252

#### **FINDINGS**

- 174 The Bergin Inquiry found that money taken from the suitcase and shopping bags was, more probably than not, money that was to be laundered. It found that money was laundered through the Suncity VIP room at the Melbourne Casino and conditions were not imposed until 2018 to prevent very large cash transactions from occurring.<sup>253</sup> It concluded that the media allegations that Crown facilitated money laundering through Crown Melbourne were established.<sup>254</sup>
- 175 It also concluded that, by reason of the belated actions Crown took with respect to cash in the Suncity room, it did not turn a blind eye to money laundering through the Melbourne Casino.<sup>255</sup>

# Junkets and organised crime

## Background

Junkets are a well-recognised part of the international casino landscape. An important development in many casinos around the world in the early 2000s was the emergence of the VIP segment of the casino market.<sup>256</sup> This is now a global market, with casinos around the world competing for VIP patrons, and the 'vast majority' of VIP patrons come from mainland China.<sup>257</sup> The Bergin Report explained:

There is a strong relationship between VIP patrons from Mainland China and Junkets. In Australia ... casino operators are heavily dependent on Junkets for the continued success of the VIP market segment of their revenues.<sup>258</sup>

...

Junkets identify VIP patrons and make arrangements for them to travel to gamble in particular casinos, often by offering enticements such as free travel and accommodation. In return, casino operators pay Junket operators commissions which in some jurisdictions such as Macau and Australia are based upon the Junket participant's turnover during any particular Junket program ... Junkets may also advance credit to Junket participants and enforce debts incurred by those participants.<sup>259</sup>

•••

In Australia, the casino operator enters into contractual arrangements with the Junket operators, sometimes referred to as 'junket promoters', rather than with the individual Junket participants. If the casino operator extends credit to the Junket operator, it looks to the Junket operator to pay the debt. It is a matter for the Junket operator how the debt is received from the Junket participant.<sup>260</sup>

- 177 The involvement of organised crime groups in the junket industry has been widely reported for many years.<sup>261</sup> By reason of their credit-providing and debt-enforcing functions, junkets are particularly vulnerable to infiltration by those involved in organised crime. Criminal behaviour associated with junkets includes unlawful debt collection practices and money laundering.<sup>262</sup>
- 178 It is illegal to enforce gambling debts in China.<sup>263</sup> This has led to the use of extra-judicial means of debt collection, such as threats of violence, to encourage debtors to repay money.<sup>264</sup>
- 179 There are also strict limits on the amount of money that individuals can carry or otherwise transfer out of China. 265 Junkets have been implicated in the laundering of money out of China. 266 The potential link between junkets and money laundering, and the vulnerability of junkets to money laundering, is well recognised. In Australia, this vulnerability has been acknowledged by AUSTRAC and the VCGLR. 267
- 180 The ability of casino operators to ensure that they do not deal with junkets or junket operators engaging in, or facilitating, such behaviour is limited by the opaque nature of many junket operators. At the Bergin Inquiry, the then directors of Crown gave evidence about the difficulties they perceived in dealing with junket operators.<sup>268</sup>

- 181 The practice of Crown was to deal only with individuals as junket operators, rather than corporations. Crown had two types of arrangements with junket operators: one was to pay the operator a negotiated rate with a slight discount to theoretical takings; and the other was a revenue-sharing arrangement, with the total revenue generated from the junket split as agreed between the junket operator and the casino.<sup>269</sup>
- 182 Crown entered into contracts with individual junket operators to formalise these arrangements.<sup>270</sup>

## Media allegations and Crown's response

- 183 Among the various media allegations made in July and August 2019 were allegations that Crown had partnered with junket operators with links to drug traffickers, money launderers, human traffickers and organised crime groups.<sup>271</sup> In particular, it was alleged that:
  - · Crown partnered with seven named junket operators with links to organised crime groups
  - · Crown failed to conduct appropriate due diligence into the junket operators with whom it entered into agreements, such that it was either wilfully blind or recklessly indifferent to the links these junket operators had to organised crime groups.<sup>272</sup>
- 184 In an ASX announcement on 31 July 2019, the Crown board sought to rebut the suggestion that Crown partnered with junket operators with links to organised crime.<sup>273</sup> The directors of Crown claimed that:
  - · junkets were an established and accepted part of the operations of international casinos
  - · Crown dealt with junkets in essentially the same way as other international casinos
  - Australian regulators reviewed junket operators and their dealings with licensed casinos
  - · Crown itself had a robust process for vetting junket operators and undertook regular reviews of those operators in light of new or additional information.<sup>274</sup>

## Evidence before the Bergin Inquiry

- 185 The following topics were common ground at the Bergin Inquiry:
  - In numerous instances, Crown had information that included claims and allegations that some of the seven junket operators named in the media allegations had links to organised crime groups. After receiving that information, Crown continued its relationships with those operators.<sup>275</sup>
  - · Those at Crown in a position to determine whether it should commence or continue a relationship with a particular junket operator did not have any clear guidance as to the proper approach they should take to publicly available reputational information and allegations about junket operators. There was no set 'bar of tolerance' against which decision makers could test information and allegations.<sup>276</sup>

- The senior people at Crown who had responsibilities for Crown's junket operators included:
  - Mr Felstead, then the CEO of Australian Resorts and the Head of the VIP business unit
  - Mr Preston, then the Chief Legal Officer responsible for reviewing relationships between Crown and its junket operators
  - Mr Johnston, then a non-executive director of Crown, who was involved in the Crown review of junket operations after the China arrests in October 2016.<sup>277</sup>
- Following its review of its operations following the China arrests in October 2016, Crown ceased its relationship with all China-based junket operators, with perhaps one exception.<sup>278</sup>
- In about 2017, Mr Felstead, Mr Preston and Mr Johnston formed a 'review panel' to review any particular junket operator 'escalated' to the panel for consideration. On escalation, the panel was to consider whether Crown should continue its relationship with that operator, or whether the risk rating of the operator should be adjusted.<sup>279</sup>
- From July 2017, Mr Felstead, Mr Preston and Mr Johnston made the final decision whether
  to approve a new junket operator. No prospective operator would be approved unless
  each of them granted approval. The rationale for determining whether or not an operator
  would be approved was undocumented.<sup>280</sup>
- Also from July 2017, Crown commenced reviewing its relationships with existing junket operators on an annual basis. Most often, those reviews were conducted solely by the Credit Control Team and escalated to the review panel if it determined that material new information or a material change in an operator's profile warranted such an escalation.<sup>281</sup>
- In April 2020, Crown commissioned Deloitte to undertake a review of its junket program.<sup>282</sup>
- On 26 August 2020, Deloitte submitted its report. The report advised that a number
  of improvements were required in respect of Crown's junket operations, including better
  definition of risk and probity, gathering more robust information and data, and ensuring
  a clearer pathway for decision making.<sup>283</sup>
- One shortcoming the Deloitte report identified was the lack of a defined 'escalation point'
  to the review panel, and ambiguity as to triggers for further investigations. Only on five
  occasions did an annual review result in escalation to the review panel.<sup>284</sup>
- In August 2020, the Crown board determined to suspend its junket operations.
   The suspension was put in place pending a review of problems identified in the course of the Bergin Inquiry, and of Crown's future relationships with junket operators in general.<sup>285</sup>
- Also in August 2020, Crown retained the consultancy Berkeley Research Group to assist
  in assessing its relationships with junket operators and to undertake a due diligence
  investigation into various junket operators and representatives.<sup>286</sup>
- In September 2020, when its casinos were shut due to COVID-19 restrictions, the Crown board decided to extend the suspension of junket operations until 30 June 2021 so it could conduct a proper assessment of the situation.<sup>287</sup>

 On 17 November 2020, Crown announced that it would permanently cease dealing with international junket operators unless those operators are licensed or otherwise authorised by regulators in the jurisdictions in which they operate.<sup>288</sup>

#### THE EVOLUTION OF THE CROWN JUNKET DUE DILIGENCE PROCESSES

- 186 The Crown due diligence processes changed over time.<sup>289</sup> The first change occurred in October 2014, following the broadcast of a *Four Corners* program 'High Rollers High Risk' in September 2014. The second change occurred in November 2016, following the China arrests. The third change occurred in mid-2017, following a broad review of VIP International conducted in the aftermath of the China arrests.<sup>290</sup>
- 187 Prior to September 2014, the Crown due diligence processes were very limited.<sup>291</sup> Decisions regarding approval of prospective junket operators were not subject to any sign-off at the senior executive level. Instead, Mr O'Connor had ultimate decision-making responsibility.<sup>292</sup>
- 188 Prospective junket operators submitted applications to in-market sales team members at Crown. Those team members were responsible for collecting identification documents and sending applications to VIP International, which would then assess the applicant's bona fides. VIP International verified whether the applicant was a junket operator established in other jurisdictions and whether the applicant had a legitimate request to operate a junket with Crown. VIP International also sought evidence of the applicant's ability to perform the expected function of a junket operator. Once VIP International was satisfied of these matters, it provided the application to the Crown Compliance Team. This team did no more than prepare a form licence document and undertake a further background check against the 'World-Check' database. This check focused more on the creditworthiness of the prospective junket operator than the probity of the applicant.<sup>293</sup>
- 189 To Mr O'Connor, a 'critical' part of the probity assessment was that the prospective junket operator was able to secure a visa to come to Australia. He reasoned that border control authorities in Australia had access to a lot more robust information and intelligence than Crown. Accordingly, if a junket operator could pass the border authorities' test (the test involved character suitability) and obtain a visa, that gave him confidence that probity was as it ought to be.<sup>294</sup>
- After the Four Corners program, Crown reviewed the allegations made in that broadcast. A compliance probity review was commissioned by Mr O'Connor and undertaken by Ms Michelle Fielding, Group General Manager, Compliance at Crown Melbourne, and her team. Ms Fielding's team reported to Ms Tegoni, then Legal Officer and AML Compliance Officer at Crown Melbourne.<sup>295</sup> Mr O'Connor claimed that Crown thereafter made improvements to the due diligence procedure, including extra due diligence checking against some other databases. Mr O'Connor was unable to identify any other improvements to the due diligence procedure. In fact, due diligence checks often remained limited to World-Check searches.<sup>296</sup>
- 191 In the immediate aftermath of the China arrests, Crown reviewed certain aspects of its VIP International business and made changes to its due diligence process for junket operators. The review was undertaken by the Crown 'VIP Committee'. The VIP Committee comprised Mr Felstead, Mr Johnston, Mr Neilson, Ms Tegoni, Mr Theiler and, on occasion, Mr Craigie and Mr Preston. As part of the review, Crown decided to cease dealing with junket operators based in China.<sup>297</sup> Minutes from VIP Committee meetings indicate that:

- · obtaining third party due diligence reports remained the exception, rather than the rule
- Crown did not keep records of junket due diligence reports
- · only a small portion of junket operators with whom Crown dealt had been confirmed as holding DICJ junket licences (issued by the gambling regulator in Macau). 298
- 192 From mid-2017, the position changed. A prospective junket operator was required to complete a 'New Junket Operator Application' and provide a range of information and documentation to Crown. The Credit Control Team then undertook a due diligence procedure on the junket operator. This procedure included obtaining credit and due diligence reports from third party providers, and focused on junket operator creditworthiness and probity. If the credit control team decided to recommend that an applicant be approved, it prepared a due diligence profile for the applicant for review by the review panel comprising Mr Felstead, Mr Preston and Mr Johnston. They made the final decision as to whether a prospective junket operator would be approved. The basis for their approval was not documented.<sup>299</sup>

#### CROWN CONCESSIONS

- 193 Crown initially adopted the same defensive approach to the junket allegations as was apparent in its ASX announcement. Ultimately, however, it made the following concessions to the Bergin Inquiry:
  - · Ms Coonan conceded that, while it might be apt to describe the Crown junket due diligence processes as 'extensive', they were not 'robust'. She indicated that one of the deficiencies in the assessment process was that it did not cast the net widely enough to capture people associated with junkets.<sup>300</sup>
  - Other directors accepted that the junket due diligence and review processes had deficiencies, were not sufficiently robust or could be improved.<sup>301</sup>
  - · Crown required more clearly defined escalation points and triggers for further investigation as part of its annual junket operator reviews. 302
  - · There were shortcomings in the junket due diligence processes. Even in their most recent formulation, those processes did not eliminate all risks associated with junkets, including because a casino operator can never have full information about probity.<sup>303</sup>
  - · The scope of junket due diligence processes had been too narrowly focused on the junket operator.304
  - · Due diligence carried out on some junket operators either did not identify all necessary information, or was not analysed sufficiently to accurately assess risk. 305
  - · There was a need for greater input from the Crown Compliance and AML Teams in the due diligence assessments for junkets. Tension could exist in letting people on the operational side of the business have the final say on vetting junket operators.<sup>306</sup>

#### **FINDINGS**

- 194 The Bergin Inquiry concluded that there was information in the public domain to support the media allegations that at least some of the junket operators with whom Crown had dealings had links to organised crime groups, and that those allegations were established.<sup>307</sup> It did not find that Crown was wilfully blind or recklessly indifferent to those links. 308 Rather, it found that:
  - Crown had numerous structures in place to deal with junket operators. Those structures were adjusted from time to time and, from mid-July 2017, there were annual reviews into existing operators.309
  - · Crown gave consideration to publicly available information in respect of the seven named junket operators, although it reached what the Bergin Inquiry considered to be unjustified conclusions.<sup>310</sup>
  - Crown had flawed structures for reviewing particular junket operators.<sup>311</sup>
  - In some instances, decisions to continue dealing with particular junket operators were 'infected with error or failed to take into account appropriate matters'.312

#### Conclusions

- 195 Putting to one side the findings ultimately made by the Bergin Inquiry, some conclusions may be drawn from the foregoing narrative.
- 196 In respect of the China arrests, those involved in managing the VIP International business favoured the aggressive pursuit of profit over the safety and welfare of China-based staff. In particular:
  - They conducted business in China from the Guangzhou office without any business licence or authorisation, in known disregard of the law, from May 2012 (at the latest) until October 2016.
  - · They ignored concerns raised by Mr Albouy that the clandestine Guangzhou office was unsuitable and posed many risks.313
  - They declined to apply for a business licence, authorisation or registration despite the Crackdown Announcement on 6 February 2015, with a view to keeping Crown's China-based activities 'under the radar' and out of sight of Chinese authorities.
  - They relied on a positive interpretation of Article 303 (albeit with the benefit of legal advice) in circumstances where:
    - The Chinese Government had announced a crackdown on foreign casinos soliciting Chinese citizens to gamble abroad.
    - China-based staff were fearful about the legitimacy of their activities (and at least in one instance lied, to the knowledge of Crown senior management, to Chinese authorities about the nature of those activities).
    - After the Crackdown Announcement, VIP International executives decided to defer travel to China for a period.

- Two China-based employees had been questioned by authorities, after tip-offs, about their activities in China and gambling.
- They supplied a letter to Chinese authorities confirming the employment of a questioned China-based employee, in which they did not disclose that Crown operated casinos in Australia or the nature of the employee's work in organising gambling tours in Melbourne and Perth.
- South Korean casino employees organising for Chinese citizens to visit South Korean casinos had been arrested in China.
- They ignored the possibility that the risk was not necessarily that Crown employees were committing offences under Article 303 (as the Chinese authorities ultimately alleged), but that the employees were subject, at the very least, to the risk of arrest and detention.
- They otherwise failed to adequately heed various red flags and warnings about the risk of arrest and limit their activities in China accordingly.
- They did not sufficiently appreciate the risks of operating in China, or they ignored those risks.

#### 197 The following conclusions may be drawn in respect of money laundering:

- Crown was aware that money was likely being laundered through its Southbank and
  Riverbank accounts from as early as 2014. Despite this, it did not investigate the position
  or otherwise take steps to prevent money laundering (except by directing patrons to stop
  structuring) until some time after the media allegations about Southbank and Riverbank
  and the establishment of the Bergin Inquiry. This was despite:
  - ANZ closing the Riverbank account in July 2014 in light of AML concerns
  - ASB closing the Southbank New Zealand dollar account in January 2019 in light of AML concerns
  - CBA closing the Southbank Australian dollar account in around October 2019 in light of AML concerns.
- Crown was not motivated to identify and report, nor meaningfully mitigate against, the risk of money laundering through its Southbank and Riverbank accounts.
- Red flags indicating serious money laundering concerns were ignored, and not appropriately escalated to board or RMC levels. Crown's corporate governance failed in respect of its AML activities.

#### 198 The following conclusions may be drawn in respect of junkets:

- · Crown's processes for vetting its junket partners were ill-defined and inadequate.
- Crown did not take sufficient, or sufficiently quick, steps to terminate its relationships with junket operators alleged to have links to organised crime.
- Crown favoured profits generated by junkets over conducting robust due diligence on its junket partners.

- 199 The following conclusions may be drawn in respect of governance and culture:
  - Crown had a culture that prioritised profit above compliance with its legal obligations.
  - · Crown had inadequate corporate governance processes and failed to appropriately respond to known risks or, otherwise, properly investigate those risks.
  - · Crown officers are likely to have breached duties imposed by the Corporations Act 2001 (Cth) by exposing Crown and/or its subsidiaries to the risk of prosecution and civil litigation.

## The Packer influence

## Background

- 200 What follows is a summary of evidence presented to the Bergin Inquiry in connection with Mr Packer and CPH.
- 201 Mr Packer was responsible for much of the success of the Crown enterprise.314
- 202 Mr Packer served as the Executive Chairman of Crown from late 2007 until 13 August 2015.315 He remained on the board as a director at that time, until 21 December 2015.316 He was again appointed as a director on 3 August 2017.317
- 203 On 21 March 2018, Mr Packer resigned from the board, citing personal reasons. He also resigned as a director of various other entities within the CPH group of companies.318
- 204 Mr Packer still retains ultimate control of CPH, the largest shareholder in Crown Resorts. 319

#### The nature of the Packer influence

- 205 The size of the CPH holding of Crown, coupled with the ubiquitous and powerful influence of Mr Packer, led to the creation of a team of loyal directors and senior managers. Those directors and managers were committed and steadfast in their devotion to assisting Mr Packer achieve his business pursuits.<sup>320</sup> Mr Packer retained significant control over Crown affairs, even after his resignation as Chairman of the board and as a director.
- 206 The Bergin Report states:

The extent and nature of Mr Packer's power whilst at the helm of the Crown Board and in continuing to manoeuvre it remotely after his departure from the Board assisted not only by his loyal team of corporate operatives but also by the information sharing arrangements that had been fastened onto the corporate structure has been the subject of investigation as a matter incidental to the question of the suitability of Crown and the Licensee.<sup>321</sup>

207 To understand the extent of Mr Packer's influence over Crown requires some analysis of evidence before the Bergin Inquiry—in particular, in relation to the following directors and senior managers: Mr Johnston, Mr Jalland, Mr Alexander, Mr Andrew Demetriou, Mr Harold Mitchell, Mr Barton, Mr Felstead, Mr Ratnam and Mr Benjamin Brazil.

#### MICHAEL JOHNSTON

- 208 Mr Johnston was one of the three CPH nominees on the Crown board from 6 July 2007 and was a non-executive director of Crown until resigning from his positions at CPH and Crown on 10 February 2021.322 He was the Finance Director of the CPH group of companies from 2004. In 2013, Mr Packer invited Mr Johnston to participate in the Crown VIP working group. Mr Johnston then provided Mr Packer with updates on issues in relation to the VIP business. 323
- 209 At different times, Mr Johnston owed obligations to Crown as a director of Crown; to CPH as a director of CPH; to CPH Crown Holdings as its sole director, and/or to Crown as a CPH executive providing services. These obligations resulted in the potential for serious conflicts of interest, which were discussed during the Bergin Inquiry.<sup>324</sup>
- 210 Following Mr Packer's resignation as a director of Crown and CPH, Mr Johnston wrote to the Crown CEO, Mr Barton, on 23 August 2018 in relation to the Services Agreement between Crown and CPH. This agreement was a formal arrangement for the provision of certain services by CPH to Crown. Mr Johnston suggested an amendment to the Services Agreement to allow Crown to continue to provide confidential information to Mr Packer.<sup>325</sup> The Crown Remuneration Committee resolved that a 'Controlling Shareholder Protocol' (Protocol) would be the preferred mechanism to enable the sharing of confidential information with Mr Packer. Mr Johnston executed the Protocol on behalf of CPH on 31 October 2018.<sup>326</sup>
- 211 The Protocol required careful consideration of certain requirements before confidential information was shared by Crown with CPH or Mr Packer. It was Mr Johnston's practice to give information to Mr Packer in relation to the VIP working group and to brief Mr Packer in relation to the VIP business.327
- 212 The Bergin Inquiry concluded that many of the risk management problems and corporate governance issues encountered by Crown were worsened by Mr Johnston's conflicting roles.<sup>328</sup>
- 213 Mr Packer expected Mr Johnston to inform him of any important issues regarding Crown, particularly in relation to the VIP International business. Mr Johnston showed complete loyalty to Mr Packer. 329

#### **GUY JALLAND**

- 214 Mr Jalland was a director of CPH and was appointed to the Crown board in June 2018. He was also the Managing Director of CPH in June 2018.<sup>330</sup> Mr Jalland resigned from his positions at Crown and CPH on 10 February 2021.331
- 215 Mr Jalland executed the Protocol for the purposes of sharing confidential information with Mr Packer.332
- 216 Mr Jalland was one of Mr Packer's three key advisors within CPH. 333

#### JOHN ALEXANDER

217 Mr Alexander was appointed as a director of Crown Resorts Ltd on 6 July 2007 and remained as a director until 22 October 2020. He was the Executive Deputy Chairman at the commencement of 2015. Mr Alexander was the Executive Chairman as well as the CEO of Crown from 1 February 2017 to 24 January 2020. He was a director of Crown Sydney from 22 March 2017 to 24 January 2020.334

- 218 Mr Alexander's first loyalty has been to Mr Packer for many years. When Mr Packer made suggestions about the business, Mr Alexander had 'cause to listen'. 335
- 219 Mr Alexander executed the Protocol on behalf of Crown. 336
- 220 Mr Alexander used the Protocol to provide Mr Packer with high-level information on a regular basis, including information in relation to proposed initiatives and details of discussions at board meetings.337
- 221 Email evidence before the Bergin Inquiry indicated that Mr Alexander had received instructions from Mr Packer regarding cost-cutting measures that Crown should take. 338
- 222 Mr Packer was asked about the cost-cutting measures that were the subject of the emails:
  - Q: So Mr Alexander was raising with you a significant question of whether he should proceed with cost-cutting measures including staff and salaries, and he also referred to short-term incentives; do you see that?
  - A: Yes.
  - Q: And this was a significant management decision which Mr Alexander was raising?
  - A: I would say Mr Alexander was proposing.
  - Q: Yes. And, in your email, you were telling him that he had your blessing to do that, to implement those cost-cutting measures; correct?
  - A: I agreed with his proposal. Yes.
  - Q: Yes. And you expected Mr Alexander to act on what you said and implement those cost-cutting measures, didn't you?
  - A: I expected Mr Alexander to act on what he said and what I agreed with—
  - Q: You expected—
  - **A:** —and implement those cost-cutting measures.
  - Q: Yes. You were giving him your blessing to implement cost-cutting measures, he having sought it; correct?
  - A: Correct.339
- 223 This exchange, and the broader email correspondence between Mr Alexander and Mr Packer, shows that Mr Packer was heavily involved in decision making on important issues at Crown, despite holding no position at Crown after March 2018.
- 224 Not only did Mr Packer influence Mr Alexander, but Mr Alexander also provided confidential information to Mr Packer about board meetings and 'in camera' sessions of the board.<sup>340</sup>

#### ANDREW DEMETRIOU

- 225 Mr Demetriou was appointed as an independent non-executive director of the Crown board in January 2015.<sup>341</sup>
- 226 Mr Demetriou was appointed Chairman of Crown Melbourne on 30 January 2020. He resigned on 12 February 2021.<sup>342</sup>
- 227 Mr Demetriou's relationship with the Packer family resulted from a meeting between Mr Demetriou and Mr Kerry Packer (Mr James Packer's father) before Mr Kerry Packer's death. Mr Demetriou was then introduced to Mr James Packer, who approached him directly with a request to join the Crown board in 2012 (which Mr Demetriou refused) and again in January 2015.<sup>343</sup>
- 228 Mr Demetriou regularly shared confidential Crown information with Mr Packer, including providing summaries of Crown board meetings.<sup>344</sup>
- 229 The extent of Mr Demetriou's dedication to Mr Packer is illustrated in an email sent from Mr Demetriou to Mr Packer in April 2019, in which Mr Demetriou said: 'As previously said, I remain committed to serving the best interests of Crown and, most importantly, you.'345
- 230 When questioned how his relationship with Mr Packer—and the above statement—were consistent with his obligations as an independent director, Mr Demetriou distanced himself from the statement, and indicated that the best interests of Crown were first and foremost. When pressed, however, Mr Demetriou conceded that a reasonable bystander would question whether he was truly independent based on his statement to Mr Packer.<sup>346</sup>
- Other evidence before the Bergin Inquiry confirmed that Mr Packer sought to influence Mr Demetriou in Mr Demetriou's role as a director of Crown.<sup>347</sup>

#### HAROLD MITCHELL

- 232 Mr Mitchell is a long-term friend of the Packer family. He was appointed as an independent non-executive director of Crown on 10 February 2011.<sup>348</sup> He resigned on 22 February 2021.
- 233 There was no direct evidence before the Bergin Inquiry in relation to Mr James Packer's influence over Mr Mitchell. There was, however, evidence of a large loan provided by Mr Kerry Packer to Mr Mitchell. Mr Mitchell denied that he had been influenced in his decision making.<sup>349</sup>

#### KENNETH BARTON

- 234 Mr Barton was the CFO of Crown from March 2010 until his appointment as CEO on 24 January 2020. He was a director of Crown Melbourne from 17 October 2013, a director of Riverbank from 12 August 2014, and a director of Southbank from 30 June 2017. Mr Barton was also a director of Crown. He resigned from all of these positions on 15 February 2021.<sup>350</sup>
- 235 Mr Barton provided financial reports to Mr Packer on an almost daily basis under the Protocol.<sup>351</sup> Mr Barton acknowledged that, after Mr Packer's resignation from Crown and CPH, Mr Packer gave him instructions regarding the information he required.<sup>352</sup>
- 236 Mr Packer conceded that, in November 2018, he instructed Mr Barton to prepare specific information and reports for him.<sup>353</sup>

- 237 Mr Packer also conceded that there were numerous other occasions on which he instructed Mr Barton to do as he expected.354
- 238 Mr Barton acknowledged that he provided confidential information to Mr Packer in order to 'maintain a strong and open relationship with CPH and to get the benefits that we get from CPH and James' involvement in the business'. 355

#### BARRY FELSTEAD

- 239 Mr Felstead was CEO of Crown Perth from March 2007 until August 2013, when he was appointed CEO of Australian Resorts at Crown. At the same time he had responsibility for VIP International. He was appointed director of Crown Melbourne in November 2013. He had a standing invitation to attend Crown board meetings, in addition to receiving all board papers. Mr Felstead resigned from all Crown positions at the end of 2020.356
- 240 Mr Packer told the Bergin Inquiry that he expected Mr Felstead would inform him of any important issues in relation to VIP International, and that Mr Felstead had shown complete loyalty to him for many years.357
- 241 Mr Felstead engaged in regular correspondence with Mr Packer following Mr Packer's resignation from Crown and CPH director positions.358

#### ISHAN KUNARATNAM (KNOWN AS MR RATNAM)

- 242 Mr Ratnam was a long-term friend of the Packer family and was appointed as Special Advisor to the Chairman by Mr Packer in October 2014 in order to conduct dealings with VIP customers on Mr Packer's behalf and to provide important information to Mr Packer. Mr Ratnam also held various executive roles in VIP International.<sup>359</sup>
- 243 Mr Ratnam's primary role was to interact with VIP International clients and to provide information to Mr Packer.<sup>360</sup> The evidence before the Bergin Inquiry confirmed that Mr Packer had significant influence over Mr Ratnam when he was performing his duties as an officer of Crown.361

#### BENJAMIN BRAZIL

- 244 Mr Brazil was a Crown director from 2009 to 2017. Mr Brazil was a personal friend of Mr Packer and this friendship led to Mr Brazil joining the Crown board. 362
- 245 Mr Brazil was questioned about his relationship with Mr Packer, and about a series of emails in which he appeared to be assisting Mr Packer. Mr Brazil denied that he acted other than in the interests of Crown.363

#### Mr Packer's use of his influence

- 246 Mr Packer exercised varying levels of influence over the operations of Crown both while holding positions at Crown and CPH, and after he relinquished those positions.
- 247 For the most part, Mr Packer used his influence over these directors and executives to elicit from them important information confidential to Crown. Mr Packer also used his influence to exercise control over Crown business operations to suit his own interests, even after his resignation from Crown and CPH.

- 248 Mr Packer was asked by Ms Bergin, SC about his desire to influence directors and senior management:
  - Q: It would appear from what I have read thus far that there is an element, or there was an element at the time that you were Chairman, of a desire to please you. You understand that, don't you?
  - A: Possibly, Madam Commissioner. Possibly.
  - **Q:** Is it a mere possibility, Mr Packer?
  - A: If you look at our financial budgets and forecasts, they never please me because we always missed them, and that was probably right towards the top of my list of important things, so I don't think it would be fair to say that I was always being pleased by people.
  - Q: It's the other way around though; it was their desire to please you, do you not think?
  - A: I don't know, Madam Commissioner. I mean, I always asked for conservative budgets ... Whether that was people trying to please me or whether that was people trying to justify the capex [capital expenditure] that we had committed to the business ...
  - **Q:** So they weren't giving you the bad news in relation to the budgets?
  - A: Well, the budgets—the actuals never hit the budgets.<sup>364</sup>
- 249 The extent of Mr Packer's influence is demonstrated in a line of questions from counsel assisting the Bergin Inquiry relating to email correspondence between Mr Packer and Mr Barton in 2018:
  - Q: You expected Mr Barton to do what you had asked and prepare for you a conservative financial year forecast, didn't you?
  - **A:** Well, that was Mr Barton's job.
  - Q: Yes. But you were asking him to prepare something for you that you could bank; correct?
  - A: Those are the words in the email, Mr Bell, so yes.
  - Q: Yes. And you expected Mr Barton to do that, didn't you?
  - **A:** Yes.<sup>365</sup>

The topic was taken up by Ms Bergin, SC:

- Q: But his [Mr Barton's] job wasn't to tell you things. His job was to work for Crown.
- A: No, his job Madam Commissioner, there was a budgeting process that was done at this time every year and so I was curious—I was curious about that. I—
- Q: I understand you were curious, but his job was as CFO of Crown, was it not?
- A: Yes, Madam Commissioner. 366

- 250 An email of 1 March 2019 from Mr Packer to Mr Barton further evidences Mr Packer's influence. Mr Packer wrote: 'Ken I think all of you have had your heads in the sand this year. We never meet our plans and I'm sick of it. Make sure for your own sake that we achieve the FY 20 [the 2020 financial year] plan.'367
- 251 The following day, Mr Packer wrote to Mr Barton, copying Mr Alexander and Mr Felstead, and stated: 'Sorry Ken I meant everyone.' 368
- 252 Mr Packer was questioned about his use of the words 'for your own sake'. Mr Packer agreed that he was frustrated and that he was making his expectations abundantly clear.<sup>369</sup>
- 253 The Bergin Inquiry considered other correspondence between Mr Packer and Crown directors. The correspondence showed not only that Mr Packer had influenced the Crown directors in the execution of their duties, but that he knew he had this influence.<sup>370</sup>
- 254 The Bergin Report recorded that Mr Alexander was reporting to Mr Packer. Mr Barton was reporting to Mr Packer. Mr Felstead was reporting to Mr Packer. Mr Johnston was reporting to Mr Packer. Mr Packer did not report to anyone.<sup>371</sup>
- 255 The Bergin Report's ultimate conclusion was that the influence of Mr Packer, and his ability to remotely manoeuvre Crown's operations notwithstanding his absence from the Crown board, had 'disastrous consequences' for Crown.<sup>372</sup>

## CPH undertakings post Bergin Inquiry

- 256 In April 2021, CPH reached agreement with ILGA that CPH could retain its 37 per cent shareholding in Crown on certain terms. The purpose of the agreement was to reduce Mr Packer's influence over Crown.<sup>373</sup>
- 257 Under the agreement, CPH undertook that it would not:
  - enter into any information-sharing arrangements with Crown
  - initiate any discussions with Crown, other than through public forums, about Crown businesses or operations
  - seek to have its executive or nominee appointed to the Crown board, or requisition
    a meeting of Crown shareholders to seek the appointment of any person as a director
    of Crown, before October 2024
  - seek any amendment to the Crown constitution that would affect the management or operation of Crown businesses.<sup>374</sup>
- 258 Similar undertakings have been offered to the VCGLR. 375

## **Endnotes**

- Exhibit RC0445 Bergin Report Volume 1, 1 February 2021; Exhibit RC0970 Bergin Report Volume 2, 1 February 2021.
- 2 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 101 [3], [7], 105 [25]. See also Western Australia, Western Australian Government Gazette, No 45, 12 March 2021, 1079, 1081. The Bergin Report records that 'Burswood Ltd' is the Crown entity that holds a licence to operate, and operates, the Crown casino in Perth (cf 106 [31] where the Bergin Report records that 'Burswood Nominees Pty Ltd' is the licensee). It appears, however, from the Terms of Reference appointing a Royal Commission to inquire into and report on the affairs of 'Crown Casino Perth' in Western Australia, that the Crown entity licensed to operate the Crown casino in Perth is 'Burswood Nominees Ltd in its capacity as trustee of the Burswood Property Trust' and not Burswood Ltd, which is the holding company of Burswood Nominees Ltd.
- 3 Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 680 [10], 692 [16]. 'Close associate' is defined in s 3 of the Casino Control Act 1992 (NSW) by reference to s 5 of the Gaming and Liquor Administration Act 2007 (NSW).
- 4 Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 692 [14]-[15].
- 5 The Bergin Inquiry's Terms of Reference were subsequently amended to reflect the fact that, on 29 April 2020, Melco sold its shares in Crown Resorts and ceased to have a relevant interest or voting power in Crown Resorts: Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 8 [24]-[25]; Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 691 [11]-[12], 692 [16(d)].
- 6 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, ii.
- 7 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 204–38.
- Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 239-97. 8
- 9 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 298-321.
- 10 Exhibit RC0148 Letter from Ray Finkelstein to Crown Melbourne Directors, 10 March 2021.
- 11 Exhibit RC1268 Letter from Crown Resorts and Crown Melbourne to Ray Finkelstein, 17 March 2021.
- 12 Exhibit RC0148 Letter from Ray Finkelstein to the Crown Melbourne Directors, 10 March 2021; Exhibit RC1268 Letter from Crown Resorts and Crown Melbourne to Ray Finkelstein, 17 March 2021.
- 13 Exhibit RC1268 Letter from Crown Resorts and Crown Melbourne to Ray Finkelstein, 17 March 2021, 3 [6].
- 14 Exhibit RC1268 Letter from Crown Resorts and Crown Melbourne to Ray Finkelstein, 17 March 2021, 3 [7].
- 15 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 2 [1].
- 16 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 2 [4].
- 17 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 2 [5].
- Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 3 [6]. 18
- 19 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 3 [7]-[8].
- 20 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 4: see Casino Control Act 1992 (NSW) s 35(3).
- 21 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 4-5 [8]-[9].
- 22 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 5 [9].
- 23 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 2 [3].
- 24 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 7 [14].
- 25 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 252 [79], 285 [238].
- 26 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 241 [13], [14].
- 27 Exhibit RC0445 Inquiry Report Volume 1, 1 February 2021, 241-2 [14]-[18].
- 28 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 243 [22].
- 29 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 243 [23].
- 30 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 243 [24].
- 31 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 243 [26].
- 32 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 243 [27].
- 33 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 148 [22], 244 [28].
- 34 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 242 [15].
- 35 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 251 [73].
- 36 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 251 [74].

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37
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 252 [77].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 252 [78].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 252 [82].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 252 [79], 285 [238].
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 252 [80].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 269 [162].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 252 [76].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 253 [86].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 291 [271]-[272].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 255 [102(a)].
47
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 291 [273].
48
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 239-40 [5].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 240 [6].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 240 [6]-[7].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 253 [87].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 253 [88].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 253 [89].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 253-4 [89], [92].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 254 [92].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 254 [90]-[91].
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 254 [92].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 254 [93].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 254 [94].
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 254 [95], 277 [202], 284 [233].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 254 [95].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 255 [98].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 255-6 [102].
64
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 256 [103]–[104].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 256-7 [106].
66
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 257 [107].
67
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 257 [109].
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 257 [110].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 258 [112]-[116].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 258-9 [117]-[119].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 259 [119].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 263 [138].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 264 [140].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 259 [120]-[121].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 265 [143].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 265 [143].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 265 [146].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 265 [146].
79
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 265-6 [147].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 266 [149].
81
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 266-7 [151]-[153].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 267-8 [156]-[159], 270 [170].
83
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 268 [160].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 268 [161].
85
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 271 [172].
86
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 271 [173].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 271 [175]-[176].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 271 [174].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 260 [122]-[124].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 260-1 [124].
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 273 [184], 296 [310].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 261 [125]-[126].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 274 [186], 275 [190], 277 [199].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 274 [186], 276 [193].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 275 [188], [190].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 275-6 [190]-[193].
97
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 276 [195].
98
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 276 [195]-[196] (cf 287 [246]).
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 277 [201].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 130 [22].
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 278 [207].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 279 [210].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 279-80 [211]-[212].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 282-3 [223], [224].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 283 [225]-[226].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 261 [127]-[128].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 283 [227]-[228], 286 [242].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 284 [232], 286 [242].
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 283 [230], 286 [240].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 286 [241].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 285 [238].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 262 [130].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 288 [252], [254].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 289 [258].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 262 [129].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 293-4 [285]-[287], 294 [290].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 297 [312]-[314].
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134
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 101[6]-[7], 197 [12].
135
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 197 [11], 205 [5]-[6].
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137
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141
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 101 [6], 207 [14].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 207 [17].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 101 [7], 207 [18].
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164
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 234 [168].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 209 [33].
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 209 [30], [32].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 209 [33].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 212 [45].
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       As to which, see Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 133 [2]-[3], 134 [9].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 212 [45].
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       As to which, see Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 221 [91], [92].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 212 [48].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 216 [66], [67].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 216 [66], [67].
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212
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219
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 202-3 [32].
220
       Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 547 [31].
221
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 225 [109].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 225 [110]-[113].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 229 [132].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 229 [133].
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       Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 544 [12].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 232 [159].
       Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 549 [43].
235
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 234 [166].
236
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 234 [166], [168].
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       Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 552 [52].
239
       Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 552 [54].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 226 [116].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 226 [116].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 227-8 [126].
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 232 [152].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 206 [11], 234 [171]-[173].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 235 [177].
      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 234 [175].
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247
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 235 [178].
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      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 235-6 [179]-[181].
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250 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 236 [183]–[184].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 236-7 [185]-[186].
      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 237 [191].
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253
      Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 544 [12].
      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 234 [172], 237 [194]-[195].
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       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 238 [191].
256 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 14 [5].
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      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 14 [5], [9]–[10].
258
      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 19 [40]; see also 24 [63].
      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 16 [22].
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      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 16–17 [23].
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 66 [18].
261
262 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 63 [1], [3].
263 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 63 [4], 66 [17].
264
      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 63 [4].
265 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 63 [3].
266
      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 63 [3].
267
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 64-5 [7]-[10].
268
      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 301 [18]; Bergin Inquiry Transcript (Packer),
       8 October 2020, 3696-7; Bergin Inquiry Transcript (Johnston), 29 September 2020, 3157;
       Bergin Inquiry Transcript (Mitchell), 9 October 2020, 3853-4.
      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 304 [32], [33].
269
270
      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 304 [34].
271
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 198 [14], 298 [1].
      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 298 [2]-[3].
272
273
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 240 [6], 300 [8].
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 298 [4], 300 [6]-[9].
274
275
      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 302 [23], 304 [35], 305 [38].
      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 302-3 [25].
276
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 303 [27]-[28].
277
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 302 [23]. In November 2016, Crown terminated
       its relationship with over 100 junket operators in mainland China: 320 [135].
279
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 303 [28].
280
      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 318 [125].
281
      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 318 [126].
282
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 319 [130].
283
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 319 [130].
      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 318 [126].
284
      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 301 [17].
285
      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 301 [17], 309 [64].
286
287
      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 301 [17].
288
      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 302 [19]; Exhibit RC0970 Bergin Report Volume 2,
       1 February 2021, 539 [28].
289
      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 315 [110].
290 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 315 [110].
291 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 316 [115].
292 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 316 [113].
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293
      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 315–16 [111]–[112].
294
      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 316 [114].
295 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 289 [262], 316 [116]. As to Ms Tegoni's position,
       see 212 [49].
296 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 316 [117].
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 317 [118]-[119].
297
298
      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 17 [25], 317 [120]-[122]. The Macau regulator,
       the Gaming Inspection and Coordination Bureau, is commonly referred to as the DICJ (Direcção de
       Inspecção e Coordinenanação de Jogos).
      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 317–18 [123]–[125].
299
300
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 302 [24], 319 [129(c)].
301
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 319 [129(c)].
302 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 318 [126].
303
      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 318 [129(a)].
304 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 318 [129(b)].
305 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 319 [129(d)].
306
      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 318 [127]-[128].
307
      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 313 [100], 314 [107].
308 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 321 [142].
309
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 318 [126], 319 [133].
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 320 [136].
310
311
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 320 [139].
312
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 319 [133].
313
      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 254 [90]-[91].
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 145 [1], [4].
314
315
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 146 [10], 149 [28].
316
      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 152 [46].
317
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 160 [79].
318
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 146 [7], 160 [77]-[79], [81]-[82].
319
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 102 [12].
320
      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 145 [5], 146 [8], 148 [17]-[22]; Exhibit RC0970
       Bergin Report Volume 2, 1 February 2021, 558 [90].
321
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 146 [8].
322
      Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 403 [1]-[2]; Crown Resorts, 'Resignation
       of Directors' (ASX Media Release, 10 February 2021).
323
       Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 404 [8].
324
       Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 433 [121].
325
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 161 [85].
326
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 161 [88], 162 [93].
      Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 404 [11].
327
328
       Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 446 [164].
329
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 148 [17].
      Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 476 [62]-[64].
330
       Crown Resorts, 'Resignation of Directors' (ASX Media Release, 10 February 2021).
331
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 162 [93].
332
333
      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 244 [35].
334
       Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 494 [3].
335
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 148 [18].
336
      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 162 [93].
337
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 166 [105].
338 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 167 [113].
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339 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 170 [124].

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Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 179 [168].
340
341
       Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 447 [1].
       Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 447 [2]; Crown Resorts, 'Resignation
342
       of Director—Andrew Demetriou' (ASX Media Release, 12 February 2021).
       Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 447-8 [7].
343
344
       Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 461 [63].
345
      Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 461 [64].
346
       Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 461-2 [65].
347
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 175 [149]-[151].
       Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 482 [94].
348
349
       Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 485-6 [111].
350
       Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 366 [3]-[8]; Crown Resorts,
       'Senior Executive Changes' (ASX Media Release, 15 February 2021).
351
       Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 371 [33].
352
       Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 502 [45].
353
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 167 [116].
354
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 167 [116], 168 [119].
355
       Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 370 [29].
356
      Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 519 [3]-[5].
357
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 247 [47].
      Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 529 [24].
358
359
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 148 [22].
360
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 148 [22].
361
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 148 [22].
       Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 505 [57]-[59].
362
       Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 508 [75].
363
      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 146-7 [11].
364
365
      Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 167 [116].
366
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 168 [119].
367
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 173 [137].
368
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 174 [142].
369
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 174 [143].
370
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 150-1 [34]-[45].
       Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 182 [187]-[188].
371
       Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 570 [19].
372
       Exhibit RC0437 Statement of Helen Coonan, 28 April 2021, Annexure i.
373
374
       Exhibit RC0437 Statement of Helen Coonan, 28 April 2021, Annexure i.
375
       Exhibit RC1409 Letter from Ashurst to DLA Piper, 26 July 2021.
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CHAPTER 04

# Corporate governance: general

#### CHAPTER 4

# Corporate governance: general

## Introduction

This chapter outlines corporate governance best practice. First, it will discuss the underlying principles of good corporate governance. Then it will deal with two important aspects of corporate governance: risk management and culture.

# What is corporate governance?

At its simplest, corporate governance is the system by which corporations are directed and controlled. The system:

> specifies the distribution of rights and responsibilities among different participants in the corporation, such as, the board, managers, shareholders and other stakeholders, and spells out the rules and procedures for making decisions on corporate affairs.1

- Corporate governance is different from managing a corporation. Managing a corporation is concerned with running the corporation's business affairs. Governance is concerned with running the enterprise: making sure that it is 'running in the right direction and being run well'.2
- Although corporate governance is about the power exercised over the activities of a corporation, corporate governance principles do not explain how, or in whose interests, that power should be exercised. That will depend upon the view taken about the role of a corporation.
- There is an ongoing debate about whether a corporation should be run solely in the interests of shareholders or whether it should take into account other interests. Those interests might be those of different stakeholders (those affected by the activities of the corporation) or an even broader class.

#### The traditional view

- The classic or traditional view is that the management of a corporation (directors and senior executives) is the agent of the shareholders. Under this approach, the shareholders' interests are paramount.
- Professor Milton Friedman is the principal proponent of this view. In a famous article published in the New York Times Magazine on 13 September 1970, Professor Friedman criticised those in the business community who proposed that a corporation should promote desirable sociable ends. He wrote:

[T]he manager [of a corporation] is the agent of the individuals who own the corporation or establish the eleemosynary institution, and his primary responsibility is to them.3

According to this view, the job of a corporation's management is to maximise shareholder value.

#### The financier's view

- Another approach, developed by economists Mr Andrei Shleifer and Mr Robert Vishny, regards corporate governance as 'the ways in which suppliers of finance to corporations assure themselves of getting a return on their investment'.4 This approach is concerned with the economic efficiency of the corporation.
- 10 The traditional and financier's views both hold that good corporate governance is concerned with securing the economic wellbeing of those who have a direct stake in the corporation. Good governance does not require other considerations to be taken into account.

#### The stakeholder view

Since the 1980s, the objective of corporate governance has moved away from the narrow interests of shareholders and financiers to those of the stakeholder. From this perspective, corporate governance is concerned not only with the relationship between the corporation and its shareholders and financiers, but also its relationship with other stakeholders. The stakeholders are those groups without whose support the corporation would cease to exist. They include employees, customers, suppliers, banks and, where appropriate, government and governmental agencies.

## The socially responsible corporation

- 12 Many organisations contend that a corporation (and, therefore, corporate governance) should also have regard to the role the corporation plays in society at large.
- 13 Sir Adrian Cadbury, writing in the foreword to the World Bank Group report on corporate governance in 2000, said:

Corporate governance is concerned with holding the balance between economic and social goals and between individual and communal goals. The governance framework is there to encourage the efficient use of resources and equally to require accountability for the stewardship of those resources. The aim is to align as nearly as possible the interests of individuals, corporations, and society.5

- 14 In 2019, the Business Roundtable, a trade association of chief executives of leading United States of America corporations, issued its 'Statement on the Purpose of a Corporation'. The Business Roundtable has issued statements since 1997 that have endorsed principles of shareholder primacy. The 2019 statement, however, superseded the previous statements and instead outlined a broader, modern standard for corporate responsibility. The standard requires commitment to:
  - · delivering value to customers
  - investing in employees through training, education, diversity and inclusion, dignity and respect
  - · dealing fairly and ethically with suppliers
  - · supporting the community in which the corporation works
  - generating long-term value for shareholders.<sup>6</sup>

- 15 To summarise, corporate governance requires a commitment to all stakeholders (including local communities and country).
- 16 Many nations have adopted this broad approach to corporate governance. For example, the Organisation for Economic Co-Operation and Development has published principles, directed to policymakers, that aim to provide a benchmark for good corporate governance.7
- 17 These principles state that a corporate governance framework should:
  - · recognise the rights of stakeholders established by law or through mutual agreements and encourage active cooperation between corporations and stakeholders in creating wealth, jobs and sustainable, financially sound enterprises
  - · ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership and governance of the company
  - · ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.8
- 18 This broad approach has been adopted by many institutional investors when setting the benchmarks against which investment decisions should be made. For example, the Australian Council of Superannuation Investors (ACSI) is a group of 36 Australian and international asset owners and institutional investors who collectively manage around \$1 trillion in assets. ACSI has published guidelines concerning the governance practices of the corporations in which ACSI members may invest their funds. These guidelines place emphasis on the engagement of the corporation with its stakeholders.
- 19 The ACSI guidelines are underpinned by the following core principles:
  - · Good governance requires boards to consider and manage all material risks facing their company, including environmental, social and governance (ESG) risks.
  - Board governance should contribute to shareholder value and create the conditions in which sustainable long-term investment can prosper.
  - · Company owners should influence the governance, policies, practices and management of the investee entity in order to improve investment outcomes. Material ESG factors should be analysed by company owners when deciding how to exercise their ownership rights, and also when deciding whether to invest.
  - Companies should properly disclose their performance in relation to material ESG factors that could affect the value of shareholders' investment in the company.
  - · Companies rely on a range of stakeholders to operate and succeed, including governments, employees, communities, investors, consumers and suppliers. Effectively engaging with stakeholders is key to maintaining this social licence to operate.9
- 20 The broad perspective of corporate governance is now widely accepted. For example, the Companies Act 2006 (UK) now provides that a company director must act in a way that promotes the success of the company, taking into account various matters including: (a) the interests of the company's employees; (b) the company's business relationships; and (c) the company's impact on the community and environment.10

21 Under this broad approach, a corporation must take into account the consequences of its actions not only on its shareholders and stakeholders, but on all people outside the corporation whose interests could be affected. According to Professor Ian Ramsay, Director of the Melbourne Law School's Centre for Corporate Law, this requires corporations to be "socially responsible" and often subordinat[e] profit maximisation to other goals'.

# The legal framework: general

22 The framework for corporate governance is found in legislation, in self-regulating arrangements, in voluntary commitments and in business practices that have developed over time. These practices can be specific to industry sectors as well as to regions and countries.

## Corporations Act

- 23 The Corporations Act sets minimum standards for corporate governance and does not purport to recommend or enforce a model of best practice. It does, however, impose standards of transparency, accountability, fairness and responsibility.
- 24 The responsibility for managing a corporation is given to its directors. The directors must act diligently and in good faith. They must not act for an improper purpose. They are under a duty to disclose any material personal interest in a matter that is before the board. Subject to certain exceptions, they must not vote on matters in which they may have a material personal interest. For benefits that fall outside the exceptions, there is a rigorous disclosure regime.<sup>12</sup>
- 25 Shareholders are given protections. There are extensive provisions that regulate takeovers and grant remedies for oppressive conduct. Shareholders must approve related party transactions and may bring proceedings on behalf of a corporation or seek compensation from a corporation.<sup>13</sup>

#### Guidelines

- A number of government and private organisations have developed corporate governance guidelines. These do not lay down binding rules; rather, their purpose is to assist the management of the corporation by identifying the key issues to which attention should be given. It is convenient, briefly, to refer to the most significant examples of these.
- 27 A listed corporation must comply with the ASX Listing Rules (Listing Rules). The Listing Rules recommend use of the good governance standards found in the ASX Principles and Recommendations. The ASX Principles and Recommendations were first introduced in 2003. There were eight key principles (from 10), and separate recommendations for each principle. The original eight key principles were:
  - The corporation should clearly delineate the respective roles and responsibilities of the board and management.
  - The board should be of an appropriate size and have the skills, commitment and knowledge to enable it to discharge its duties effectively.
  - The corporation should instil and continually reinforce a culture across the organisation of acting lawfully, ethically and responsibly.

- The corporation should have appropriate processes to verify the integrity of its corporate reports.
- The corporation should make timely and balanced disclosure of all matters having a material effect on the price or value of its securities.
- The corporation should provide its security holders with appropriate information to allow them to exercise their rights.
- · The corporation should establish a sound risk management framework and periodically review that framework.
- · The corporation should pay directors and executives remuneration sufficient to attract and retain high-quality directors and executives.<sup>14</sup>
- 28 In 2003, the third principle (which at the time was to act 'ethically and responsibly') had only one key recommendation (from two), which was that the corporation should have and disclose a code of conduct for its directors, senior executives and employees.<sup>15</sup>
- 29 In 2019, the third principle was changed to state that the corporation should 'instil ... a culture ... of acting lawfully, ethically and responsibly'. This change brought with it new recommendations, which were that the corporation should:
  - articulate and disclose its values
  - · ensure that the board or a committee thereof is informed of any material breaches of the code of conduct for directors, senior executives or employees
  - · have and disclose whistleblower and anti-bribery and corruption policies, and ensure that the board or a committee of the board is informed of any material breaches of these policies.16
- 30 In addition, the Listing Rules require the corporation to prepare a corporate governance statement that discloses the extent to which the corporation has followed the corporate governance guidelines. This statement must be included in the corporation's annual report. If the corporation has not followed a recommendation, the statement must identify that recommendation and provide reasons why it was not followed.<sup>17</sup>
- 31 The Australian Securities and Investments Commission (ASIC) has published a number of regulatory guides and reports on corporate governance. They deal with:
  - · managing conflicts
  - shareholder engagement
  - · director oversight of financials and audit
  - · emerging risk management
  - handling corporate information
  - · executive remuneration
  - · corporate actions involving share capital
  - directors as gatekeepers.<sup>18</sup>

- 32 The Australian Prudential Regulatory Authority (APRA) has developed a number of prudential standards with which regulated firms (authorised deposit-taking institutions, general insurers, life insurers and private health insurers) must comply.
- 33 The APRA standards are not significantly different from the ASX and ASIC guidelines. They do, however, impose mandatory obligations on the regulated firms.
- 34 Examination of guidelines discussed above reveals that the dominant focus is on boards and board-related issues. They deal with topics such as board membership criteria, board size, the proportion of inside and outside (independent) directors and the structure of board committees.
- 35 The guidelines have resulted in a mass of guidance statements from corporations, and the creation of many new jobs (such as 'Head of Corporate Governance'). Their effectiveness is another matter.

# The legal framework: gaming sector

- 36 In addition to the requirements set out above, corporations operating in the gaming sector have additional obligations, including those set out in the Gambling Regulation Act and their Gambling Code.
- 37 The Gambling Regulation Act imposes standards of responsible gambling on gaming venue operators, including to minimise harm caused by problem gambling; to accommodate those who gamble without harming themselves or others; to ensure that minors are not allowed to gamble; and to ensure that gaming is conducted honestly and free of criminal influence and that the management of gaming machines is free of criminal influence.<sup>19</sup>
- 38 It is a condition of a casino licence that the casino operator implements a Gambling Code.<sup>20</sup>
- 39 A Gambling Code must include, among other matters:
  - a responsible gambling message identifying the commitment of the casino operator to responsible gambling
  - responsible gambling information including information on how to gamble responsibly and on self-exclusion programs
  - the process for interacting with customers who have requested information regarding problem gambling and who are displaying indicators of distress that may be related to problem gambling
  - what the casino operator will do to discourage extended and intensive gambling.<sup>21</sup>
- 40 Since February 2020, a Gambling Code for gaming venues other than a casino must:
  - provide that the venue operator has a duty to take reasonable steps to prevent and minimise harm arising from the operation of gaming machines
  - identify how the venue operator will monitor behaviour consistent with gambling harm and take steps to discourage intensive and prolonged gambling
  - include certain provisions that discourage playing multiple machines or reserving
    a gaming machine in order to play another gaming machine in the gaming machine area.<sup>22</sup>

# Risk management

41 Risk management is the process of identifying, assessing and controlling risks to a corporation in order to minimise the harm the corporation may suffer or to maximise its opportunities.<sup>23</sup> It is a key component of corporate governance and a crucial responsibility of the board and management.<sup>24</sup> Risk is properly managed when the corporation is clear about its strategic objectives, understands the ways in which there may be positive or negative deviations from those objectives, and takes action to control those deviations.

## Risk appetite

- 42 Risk is inherent in commercial activity. The risk appetite of an organisation sets the boundaries for risk it is willing to accept in pursuit of strategic objectives.<sup>25</sup>
- 43 The board of the corporation is responsible for setting the risk appetite.<sup>26</sup> This establishes the parameters within which management is to operate.<sup>27</sup> The factors to be taken into account when setting risk appetite include:
  - the mission and vision of the corporation
  - the strategic direction of the corporation and what risks are required to achieve the desired level of performance
  - · the principal risks faced by the corporation and its capacity to deal with them
  - the views and expectations of stakeholders.<sup>28</sup>
- 44 An effective risk appetite must be:
  - clear and appropriately balanced between risk taking and risk aversion
  - supported and understood by management
  - well communicated throughout all levels of the corporation
  - · consistently applied in key decisions
  - monitored to detect when the corporation is acting outside the risk appetite.<sup>29</sup>
- 45 Ensuring that the risks taken by management are consistent with the corporation's risk appetite is critical to effective risk management. When management operates outside the risk appetite, action should be taken to stop the activity.<sup>30</sup>

## Risk management process

- 46 In broad terms, the process of risk management involves the following steps:
  - First, identify all the categories or types of risk that the corporation might face.
  - Second, analyse and evaluate the risks to understand their causes and potential consequences. The risks can then be prioritised and subject to risk treatment (that is, putting in place actions and controls to mitigate a risk).

Third, take the required action to address the risk. The action should be consistent with
the risk appetite of the corporation. The object of the action might be to avoid the risk,
to remove the source of the risk, or to accept the risk after making an informed decision.<sup>31</sup>

### Risk governance

- 47 Risk governance, in its broadest sense, is the manner in which risk management is undertaken in a corporation, including how it manages risk, makes decisions taking into account the risks, and allocates the necessary resources so that appropriate action may be taken.
- 48 The ASX Corporate Governance Council has recommended that a listed entity should have a board subcommittee dedicated to overseeing risk. A risk subcommittee can:
  - monitor management's performance against the corporation's risk management framework, including its risk appetite
  - review breakdowns of material risks and ascertain what needs to be changed or improved in the risk management framework
  - review management reports about new and emerging sources of risk and the measures management are taking to deal with those risks.<sup>32</sup>
- 49 The Hon. Kenneth M Hayne, AC, QC observed that a board cannot properly oversee risk without having the right information and without challenging management.<sup>33</sup> In 2019, the ASIC Corporate Governance Taskforce published its review into the governance of Australia's largest financial institutions. It found that material information about the risk faced by those institutions was often contained in dense board packs or reports to the board where the key risks were difficult to identify.<sup>34</sup> It recommended that a large corporation should ensure that:
  - the risk committee has sufficient resources to discharge its mandate
  - the risk committee provides informed oversight and ensures that information received from management is adequate
  - the board engages in active oversight of management by probing and analysing information provided by management
  - clear and effective processes exist to escalate and deal with urgent material risks.<sup>35</sup>
- 50 A recognised (though not universally accepted) framework for risk governance is the 'three lines model'. The board must oversee this model. The board must oversee this model.
- 51 A brief explanation of the model follows.
- 52 The first line is the part of the organisation that provides the products or services to clients: the frontline team.<sup>38</sup> They are responsible for identifying, analysing, evaluating and treating risks to achieve the corporation's objectives, and for escalating information about risk.
- The second line comprises those responsible for overseeing the risk management compliance function. Their function is to ensure all appropriate risk factors are being implemented in accordance with policies. They should also analyse and report on the adequacy and effectiveness of risk management procedures.<sup>39</sup>

54 The third line is an internal audit team that is independent of management. They provide independent and objective advice to management and the board on the adequacy and effectiveness of the corporation's governance and risk management. 40

## Root cause analysis

- 55 Root cause analysis is any systematic process that identifies the cause of an undesired event.<sup>41</sup> The objective of the analysis is to determine whether the likelihood of the undesired event occurring, or the impact of the event if it does occur, can be tolerated.
- 56 The ASIC Corporate Governance Taskforce considers that root cause analysis is important for effective risk management. It recommends that management should undertake root cause analysis to identify underlying causes of recurring breaches of risk appetite.<sup>42</sup>
- 57 The steps required to undertake root cause analysis are:
  - First, determine the need, purpose and scope of the analysis.
  - · Second, collect information to establish the facts that led to the undesired event.
  - Third, analyse the potential causes.
  - Fourth, once the analysis is complete, validate the findings.

## Risk culture

- 58 Risk culture is a term describing the norms and traditions of individual and group behaviour within an organisation that determine the way the organisation identifies, understands, discusses and acts on the risks the organisation confronts, and the risks it takes.<sup>43</sup>
- 59 Risk culture influences the actions and decisions taken by individuals within an organisation and shapes the attitude of the organisation towards its stakeholders.
- 60 A sound risk culture supports appropriate risk awareness, behaviours and judgements about risk-taking in an organisation. It bolsters effective risk management, promotes sound risk-taking decisions and ensures emerging risks or risk-taking activities beyond a corporation's risk appetite are recognised, assessed, escalated and addressed in a timely manner.<sup>44</sup> It is part of the broader culture of a corporation.

# Culture

- 61 Culture is comprised of the shared values and norms that shape behaviours and mindsets within a corporation.<sup>45</sup> It influences how people operate within the corporation.
- 62 Culture is often considered at three intersecting levels:
  - the visible organisational structures and processes of the corporation
  - · the espoused values: the strategies, goals and philosophies of the corporation
  - the tacit underlying assumptions (sometimes called 'unwritten ground rules') of the corporation.46

- 63 These three levels are the essence of culture. They are comprised of the jointly learned values and beliefs that are taken for granted within a corporation.
- 64 Mr Hayne, QC, in his Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Banking Royal Commission Final Report), made the following general points about culture:
  - The culture of each corporation is unique and varies widely within different parts of the organisation.
  - · There is no single 'best practice' for creating or maintaining a desirable culture.
  - Culture cannot be prescribed or legislated.<sup>47</sup>

# What is the right culture?

- 65 A good culture aims to create an environment that:
  - · ensures adherence to basic norms of behaviour, including a requirement to obey the law, not to mislead or deceive, and to act fairly
  - · reinforces judicious decision making that takes into account the interests of multiple stakeholders.48
- 66 Second, a good culture will tend to be characterised by a shared sense of purpose across the organisation. There should be a strong alignment between this purpose and the values, incentives, structures and other policies and procedures of the organisation. This purpose must take into account changing societal expectations. Corporations are now expected to make a broader positive contribution to society and must do more than deliver a financial outcome. 49
- 67 Satisfying this expectation will require the corporation to minimise the harm caused by its activities. On the other hand, a toxic culture leading to corporate misconduct can affect consumer confidence in an industry. This can impede the overall performance of participants in that industry and the broader economy.<sup>50</sup>
- 68 Third, a good culture is one where the directors and senior management clearly set out the expectations of the organisation and lead by example.
- 69 Fourth, a good culture stems from the capacity of management to appropriately manage, reward, incentivise, equip and communicate with those who work in the organisation.

## Good culture in a casino

- 70 Unacceptable or unethical behaviour that violates social norms may well benefit a casino in the short term. Research indicates, however, that an ethical climate and a good organisational culture that reduces instances of inappropriate behaviour will produce long-term benefits.<sup>51</sup>
- 71 Evidence also indicates that cultural norms supporting an ethical climate contribute positively to the implementation of responsible gambling practices by employees. This also has positive flow-on effects for a casino. In an ethical climate, employees are more likely to be motivated and engaged in their work, and customers are more likely to gamble there.52

72 If a casino takes seriously the pursuit of responsible gambling, first it develops a safetyoriented culture that has a forward-looking focus on the potential harms or risks resulting from its decision making. Second, it integrates responsible gambling into its business decisions so that those decisions are made having regard to the potential harm arising from gambling.53

## What makes a culture toxic?

- 73 A corporation has a toxic culture where it engages in long-term and systemic rule-breaking and damaging behaviour. Toxic behaviour is not limited to illegal conduct. It includes conduct that is plainly damaging or that promotes misbehaviour.54
- 74 There are various reasons why a toxic culture might come about. First, a corporation may develop practices that normalise deviance from accepted standards. For instance, a corporation may be aware of the potential deviation from acceptable norms of conduct, but regard the action as 'an acceptable risk'.55 Deviations are particularly prevalent where the observable practices of the corporation diverge from what is formally expected of people within the organisation, whether under relevant laws or under the organisation's formal policies or procedures.<sup>56</sup>
- 75 Second, a corporation may enable toxic behaviour by neutralising unacceptable conduct. This occurs when the corporation denies that harm is caused by its actions or denies responsibility for that harm. It will also occur if the corporation asserts that the victim deserves the harm.<sup>57</sup>
- 76 Third, a corporation may make it easier to engage in toxic behaviour. This occurs when the impugned conduct is concealed within the structure of the corporation or where there is inadequate internal oversight. It may also occur where employees are left with substantial discretionary power and rule-breaking is condoned or rewarded.<sup>58</sup>
- 77 Fourth, a corporation may obstruct rule-following when the culture is toxic and the corporation:
  - is unwilling to act when misconduct or harm-causing action occurs (allowing rule-breaking to occur without critique); or
  - · fails to assess the causes of misconduct or harm-causing actions and fails to implement the changes necessary to prevent the misconduct or action occurring in the future.<sup>59</sup>
- 78 Fifth, a corporation may impose undue stress on its employees, which can lead to employees engaging in toxic behaviour. Stress may arise from pressure to meet the objectives of the corporation or an inability for employees to meet those objectives without resorting to toxic behaviour.60

## How can culture be changed?

79 Cultural norms provide predictability about how a corporation operates. The innate human desire for stability suggests that culture can be difficult to change. 61

- 80 To bring about change, a corporation must form a view of its culture, identify problems, develop and implement a plan to deal with them, and determine whether the planned changes can be effective.<sup>62</sup> These are the steps that should be followed:
  - Undertake a deep analysis of the structures, values and practices that contributed to the toxic behaviour, in order to understand their causes.
  - Develop an ethical and compliant tone at the top of the organisational hierarchy (the board)
    with a clear and specific cultural direction that the corporation must pursue. This may
    require the recruitment and promotion of managers who will pursue this direction,
    and clear communication throughout the corporation that reinforces the new norms.
  - Change the tangible structures (for example, artefacts) in the corporation to reinforce the new norms.
  - Change the values and practices of existing employees.<sup>63</sup>
- 81 This last step is one of the most critical. A toxic culture cannot be repaired merely by punishing or replacing the executives and the actual wrongdoers. There must be a true change in the values and practices of the corporation. This will require the corporation to demonstrate to employees that it is ready to learn new values and practices. It may be appropriate for employees to participate in decision making regarding issues that concern corporate culture.<sup>64</sup>
- 82 Cultural change is unlikely to occur if employees doubt whether their leaders are capable of effecting change.<sup>65</sup> Initiatives to change culture need to take place at all levels within the organisation and may, accordingly, take years to bring into effect.
- 83 This highlights how important it is for the leadership to speak honestly and responsibly about the need for cultural change. This will be a difficult task if the leadership (including senior management) was responsible for creating the toxic culture. 66 Nonetheless, if those leaders cannot be open and honest about their conduct, it may only be possible to bring about cultural change by changing the leadership.

## What culture should a casino operator adopt?

- This is not a difficult question. It simply requires a statement of the appropriate norms of conduct to which a casino operator should conform. It will include norms of conduct or standards imposed by the law and norms of conduct that are expected by the community. They are to:
  - obey the law
  - · act honestly
  - deter illegal and immoral behaviour that might take place in a casino
  - · not exploit people who come to the casino to gamble
  - · take active measures to minimise the harm caused by gambling
  - · cooperate fully and candidly with the regulator and with government.

# **Endnotes**

- Exhibit RC1599 Andrew Lumsden and Kylie McPherson, Australian Corporation Practice: Chapter 31 Corporate Governance, September 2017, [31.005].
- Bob Tricker, Corporate Governance: Principles, Policies and Practices (Oxford University Press, 3rd ed, 2015) 4.
- 3 Exhibit RC1602 Article: A Friedman Doctrine—The Social Responsibility of Business is to Increase its Profits, 13 September 1970, 2.
- 4 Andrei Shleifer and Robert Vishny, 'A Survey of Corporate Governance' (Working Paper No 5554, National Bureau of Economic Research, 1996) 2.
- Adrian Cadbury, 'Foreword' in Magdi Iskander and Nadereh Chamlou, *Corporate Governance: A Framework for Implementation* (The World Bank Group, 2000) vi.
- 6 'Statement on the Purpose of a Corporation', *Business Roundtable* (Web Page, 2021) <a href="https://opportunity.businessroundtable.org/ourcommitment">https://opportunity.businessroundtable.org/ourcommitment</a>.
- Organisation for Economic Co-Operation and Development, *G20/OECD Principles of Corporate Governance* (Report, 2015) 7.
- Organisation for Economic Co-Operation and Development, *G20/OECD Principles of Corporate Governance* (Report, 2015) 34, 37, 45.
- 9 'ACSI Governance Guidelines', *ACSI* (Web Page, 2020) <a href="https://acsi.org.au/publications/governance-guidelines">https://acsi.org.au/publications/governance-guidelines</a>>.
- 10 Companies Act 2006 (UK) s 172(1).
- lan M Ramsay (ed), 'Corporate Governance and the Duties of Company Directors' (Centre for Corporate Law and Securities Regulation, 1997) 3.
- 12 Corporations Act 2001 (Cth) ss 198A, 180–1, 191–2, 195.
- 13 Corporations Act 2001 (Cth) ch 6, ss 232–7, ch 2E.
- 14 ASX Corporate Governance Council, *Principles of Good Corporate Governance and Best Practice Recommendations* (1st ed, March 2003) 11.
- ASX Corporate Governance Council, *Principles of Good Corporate Governance and Best Practice Recommendations* (1st ed, March 2003) 25.
- ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations* (4th ed, February 2019) 16–17.
- 17 ASX, Listing Rules (at 1 December 2019) r 4.10.
- 18 'Corporate governance', *ASIC* (Web Page, 2014) <a href="https://asic.gov.au/regulatory-resources/corporate-governance">https://asic.gov.au/regulatory-resources/corporate-governance</a>.
- 19 Gambling Regulation Act 2003 (Vic) s 1.1(2).
- 20 Casino Control Act 1991 (Vic) s 69.
- 21 Exhibit RC0508 Ministerial Direction No S 430, 17 September 2018, 4–6.
- 22 Exhibit RC0163 Ministerial Direction No S 85, 21 February 2020, 2-4.
- The Commission acknowledges the assistance provided by ERM International in the preparation of this section.
- ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations* (4th ed, February 2019) 26.
- ASIC, Corporate Governance Taskforce: Director and Officer Oversight of Non-Financial Risk (Report, October 2019) 11.
- ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations* (4th ed, February 2019) 26.
- ASIC, Corporate Governance Taskforce: Director and Officer Oversight of Non-Financial Risk (Report, October 2019) 11.
- Committee of Sponsoring Organizations of the Treadway Commission, *Risk Appetite—Critical to Success* (Report, May 2020) 9–13.
- 29 Committee of Sponsoring Organizations of the Treadway Commission, *Risk Appetite—Critical to Success* (Report, May 2020) 19–23.

- 30 ASIC Corporate Governance Taskforce, *Director and Officer Oversight of Non-Financial Risk* (Report, October 2019) 16.
- 31 Exhibit RC1606 Australian Standard: Risk Management—Guidelines, 2018, 8–15 [6].
- ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations* (4th ed, February 2019) 26.
- Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Final Report, February 2019) vol 1, 396.
- ASIC, Corporate Governance Taskforce: Director and Officer Oversight of Non-Financial Risk (Report, October 2019) 3.
- ASIC, Corporate Governance Taskforce: Director and Officer Oversight of Non-Financial Risk (Report, October 2019) 43–50.
- 36 The Institute of Internal Auditors, The IIA's Three Lines Model (Report, July 2020).
- 37 The Institute of Internal Auditors, *The IIA's Three Lines Model* (Report, July 2020) 5.
- 38 The Institute of Internal Auditors, *The IIA's Three Lines Model* (Report, July 2020) 4–5.
- 39 The Institute of Internal Auditors, The IIA's Three Lines Model (Report, July 2020) 6.
- 40 The Institute of Internal Auditors, The IIA's Three Lines Model (Report, July 2020) 6.
- 41 International Electrotechnical Commission Electropedia (online at 7 September 2021) 'root cause analysis' (def 192-12-05).
- 42 ASIC, Corporate Governance Taskforce: Director and Officer Oversight of Non-Financial Risk (Report, October 2019) 16.
- 43 APRA, Risk Culture (Information Paper, October 2016) 8.
- 44 Financial Stability Board, *Guidance on Supervisory Interaction with Financial Institutions on Risk Culture:*A Framework for Assessing Risk Culture (Report, 7 April 2014) 1.
- Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Final Report, February 2019) vol 1, 375.
- Edgar Schein and Peter Schein, *The Corporate Culture Survival Guide* (Wiley, 3rd ed, 2019) 21–7; Exhibit RC1613 Article: Toxic Corporate Culture: Assessing Organizational Processes of Deviancy, 22 June 2018, 5.
- 47 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Final Report, February 2019) vol 1, 375–6.
- Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Final Report, February 2019) vol 1, 376.
- Financial Conduct Authority, 'Transforming Culture in Financial Services' (Discussion Paper No 18/2, March 2018) 22, 31.
- Kevin Stiroh, 'The Economics of Why Companies Don't Fix Their Toxic Cultures', *Harvard Business Review* (online, 22 March 2018) <a href="https://hbr.org/2018/03/the-economics-of-why-companies-dont-fix-their-toxic-cultures">https://hbr.org/2018/03/the-economics-of-why-companies-dont-fix-their-toxic-cultures</a>.
- 51 Exhibit RC1605 Article: The Role of Risk Climate and Ethical Self-Interest Climate in Predicting Unethical Pro-Organisational Behaviour, 2020, 16–17.
- Kahlil S Philander, 'Future-Proofing the Industry: Organizational Culture and Responsible Gambling' (Conference Paper, New Horizons in Responsible Gambling Conference, 10–12 March 2020) 9–10.
- Kahlil S Philander, 'Future-Proofing the Industry: Organizational Culture and Responsible Gambling' (Conference Paper, New Horizons in Responsible Gambling Conference, 10–12 March 2020) 6.
- Exhibit RC1613 Article: Toxic Corporate Culture: Assessing Organizational Processes of Deviancy, 22 June 2018. 4.
- Exhibit RC1613 Article: Toxic Corporate Culture: Assessing Organizational Processes of Deviancy, 22 June 2018, 6.
- Exhibit RC1613 Article: Toxic Corporate Culture: Assessing Organizational Processes of Deviancy, 22 June 2018, 7, 25–6; Kevin Stiroh, 'The Economics of Why Companies Don't Fix Their Toxic Cultures', Harvard Business Review (online, 22 March 2018) <a href="https://hbr.org/2018/03/the-economics-of-why-companies-dont-fix-their-toxic-cultures">https://hbr.org/2018/03/the-economics-of-why-companies-dont-fix-their-toxic-cultures</a>.

- 57 Exhibit RC1613 Article: Toxic Corporate Culture: Assessing Organizational Processes of Deviancy, 22 June 2018, 8, 22-3.
- 58 Exhibit RC1613 Article: Toxic Corporate Culture: Assessing Organizational Processes of Deviancy, 22 June 2018, 8-9, 17-18.
- 59 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Final Report, February 2019) vol 1, 377; Exhibit RC1613 Article: Toxic Corporate Culture: Assessing Organizational Processes of Deviancy, 22 June 2018, 15, 17.
- 60 Exhibit RC1613 Article: Toxic Corporate Culture: Assessing Organizational Processes of Deviancy, 22 June 2018, 8, 13, 15, 26.
- 61 Edgar Schein and Peter Schein, The Corporate Culture Survival Guide (Wiley, 3rd ed, 2019) 34-5.
- Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Final Report, February 2019) vol 1, 388.
- 63 Exhibit RC1613 Article: Toxic Corporate Culture: Assessing Organizational Processes of Deviancy, 22 June 2018, 28-31; Kahlil S Philander, 'Future-Proofing the Industry: Organizational Culture and Responsible Gambling' (Conference Paper, New Horizons in Responsible Gambling Conference, 10-12 March 2020) 10-11.
- Exhibit RC1613 Article: Toxic Corporate Culture: Assessing Organizational Processes of Deviancy, 22 June 2018, 30-1.
- 65 Exhibit RC1613 Article: Toxic Corporate Culture: Assessing Organizational Processes of Deviancy, 22 June 2018, 25, 31 (in what the authors termed 'corporate cognitive dissonance').
- Exhibit RC1613 Article: Toxic Corporate Culture: Assessing Organizational Processes of Deviancy, 66 22 June 2018, 25, 31.



CHAPTER 05

# Failures of corporate governance

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# Failures of corporate governance

## Introduction

- 1 The principles of good corporate governance, including a discussion about two aspects, risk management and culture, can be found in Chapter 4.
- 2 This chapter will identify inadequacies in Crown's risk management framework and culture. It will assess the sufficiency of Crown's remediation plan, which is designed to improve its culture.
- 3 For the most part, the discussion will concentrate on the Crown group, because the risk management framework and culture programs are group wide. Where relevant, Crown Melbourne will be singled out.

# Crown's risk management framework

- 4 Effective risk management is particularly important for casino operators. Significant risk and compliance requirements are inherently associated with licensed gambling operations. It has long been recognised that casinos are vulnerable to money laundering, criminal influence and exploitation and have the potential to inflict much harm. For those and other reasons, casinos are heavily regulated and rely on a social licence to operate.<sup>1</sup>
- 5 The Bergin Inquiry identified significant failures of risk management at Crown.<sup>2</sup>
- 6 The failures included:
  - the failure of the board in its fundamental responsibility to set, monitor and communicate Crown's risk appetite<sup>3</sup>
  - risk decisions by senior executives being dominated by a pursuit of profit over the welfare
    of Crown employees and compliance with the object of the Casino Control Act 1992 (NSW)
    of protecting the casino from criminal exploitation<sup>4</sup>
  - demands by the board of the VIP International business unit and the incentivisation and encouragement of management to take inappropriate risks in the pursuit of the success of that business<sup>5</sup>
  - the ineffectiveness and underutilisation of Crown's risk management and compliance structures<sup>6</sup>
  - deficiencies in the various documents designed to capture risks.<sup>7</sup>
- 7 Crown has conceded that the deficiencies in its corporate governance and risk management framework contributed to the failures identified by the Bergin Inquiry.8

#### For example:

- · Ms Antonia Korsanos, a non-executive director of Crown Resorts, Chair of Crown Melbourne and member of the Crown RMC, identified failures to escalate risk to the board, blurred reporting lines, a commercially driven culture over risk management and compliance, and the risk appetite for Crown's operations in China not being appropriately set or monitored.9
- · Ms Jane Halton, a non-executive director of Crown Resorts and chair of the RMC, acknowledged that '[a] number of specific failures including in reporting, escalation, skill, knowledge, culture, appropriate diligence and care and lack of questioning' were identified in the Bergin Report and that in some instances these went to the operation of the risk management framework.10
- The Bergin Inquiry made or endorsed various recommendations, the purpose of which were to improve Crown's risk management framework.
- 10 Key recommendations included that Crown:
  - articulate an appropriate risk appetite<sup>11</sup>
  - address deficiencies in the drafting of various policy documents designed to capture risk<sup>12</sup>
  - minimise 'management speak'13
  - · conduct a proper analysis of the failings that led to the arrests of 19 Crown employees in China in October 2016, known as the 'China arrests'.14
- This Commission has uncovered further and more recent examples of inappropriate and illegal conduct, especially by Crown Melbourne, in part caused by failures in risk management. There is the tax treatment of Bonus Jackpots, 15 the China Union Pay (CUP) issue, 16 the foreign marketing practices,<sup>17</sup> and the approach to responsible gambling.<sup>18</sup>
- 12 Critical to effective risk management is ensuring that the risks taken by management are consistent with the corporation's risk appetite.<sup>19</sup> The recently identified failures are inconsistent with Crown's current risk appetite that it has 'zero appetite for breaking the law';<sup>20</sup> and its risk appetite statement that it has no appetite to accept material risk related to regulatory, legal or statutory requirements or any activity that would be inconsistent with its social licence to operate.21
- 13 The identified misconduct suggests, despite the reforms to Crown's risk management framework, risks are still not being identified and escalated when Crown is operating outside its risk appetite.

## Reforms to Crown's risk management framework

- 14 Following the China arrests, Crown introduced a series of reforms to its risk management program.
- 15 At the time of the China arrests, Crown's businesses were operating under a Risk Management Policy adopted in February 2008 (2008 Policy).<sup>22</sup> Most risk issues were managed at the level of the individual properties,23 which had their own RMCs.24

- 16 The 2008 Policy had a number of deficiencies. First, it made no mention of the 'risk appetite' of the Crown Resorts board. Second, it did not specify how the risk management framework worked to ensure that Crown was operating within its risk appetite.<sup>25</sup> Third, there was no risk management plan specifically in respect of VIP International.26
- 17 Ms Halton acknowledged problems with Crown's system of risk management as it existed before the China arrests. She described the problems in the following way:

Documentation, escalation and reporting of risks prior to 2018 was not systematic ... Some risk areas were more mature than others ... The actual risk appetite of the business was understood by some but not all staff. There was a misalignment between the documented elements of the risk appetite and the actual risk appetite of the company ... The balance between financial, risk and compliance issues was heavily weighted towards the former ... This was not documented in a formal risk appetite statement and there was a lack of formalisation of the risk expectations of the Board ... Risk reporting and the escalation of reporting in respect of some risks that had materialised appears to have been ad hoc and limited to some individuals rather than always through a structured process.<sup>27</sup>

- 18 In December 2017, following the China arrests, Crown Resorts appointed Ms Anne Siegers as Group General Manager for Risk and Audit to overhaul Crown's risk management system.<sup>28</sup>
- 19 Ms Siegers introduced a series of reforms. They included:
  - introducing a group function to manage risk across Crown's properties<sup>29</sup>
  - setting Crown's risk appetite<sup>30</sup>
  - developing a risk management strategy<sup>31</sup>
  - · formalising the second and third line roles of the Risk and Audit Teams (see discussion of the three lines model in Chapter 4).32
- 20 Looking at these changes in more detail, in August 2018, Crown Resorts adopted an updated Risk Management Policy.<sup>33</sup> Under this policy, the Crown Resorts board delegated oversight responsibility for risk management to the RMC.34 Each of Crown's businesses had its own risk management framework; however, the policy removed the business's RMCs. Each business then became responsible for reviewing its own risk profile and reporting to the RMC at least four times a year.35
- 21 In June 2019, Crown Resorts approved a Risk Management Strategy. 36 The Risk Management Strategy set the risk appetite for Crown Resorts and Crown Melbourne (which was the same for both entities).<sup>37</sup> The risk appetite comprised an overarching risk appetite statement, seven 'impact categories', and metrics such as risk tolerances and reporting triggers. The Risk Management Strategy, together with the Risk Management Policy, constitutes the current risk management framework for Crown.38

- 22 This framework adopted the 'three lines model' for risk governance. The three lines model is a recognised, although not universally accepted, model for risk governance.<sup>39</sup> The front line team consisting of customer-facing staff (unusually including senior executives) form the first line of defence and assume ownership of, and accountability for, managing material risks. Crown's Chief Risk Officer (a new role created in December 2020) along with Compliance, Financial Crime and legal functions, form the second line of defence and have no operational business reporting line or revenue-generating responsibilities. The independent internal audit function forms the third line of defence.40
- 23 In February 2020, the Risk Management Policy was revised. The revised policy required the risk management framework of each business to align with Crown's Risk Management Strategy and its risk appetite. The policy also retained the responsibility of each business to review its own risk profile and report to the RMC at least four times a year.41 In June 2020, the June 2019 Risk Management Strategy was amended. A new Part 4 was introduced. It recorded that management was required to monitor 'Risk Culture'. This was defined as:

[T]he system of values and behaviours present in an organisation that shapes the decisions and actions of staff in relation to risk taking. It determines the collective ability of all staff to:

- · Identify, understand, openly discuss and act on both current and future risks to the organisation; and
- Operate consistently within the Risk Appetite.<sup>42</sup>
- 24 In December 2020, the audit and risk functions were separated, prompting the creation of the Chief Risk Officer role (Ms Siegers' current role) and the role of Group General Manager, Internal Audit.<sup>43</sup> The separation is consistent with the operation of the three lines of defence model, and entrenches the independence of the second and third lines (risk and audit).
- 25 In April 2021, an updated Risk Management Strategy was adopted, with a plain English risk appetite statement.<sup>44</sup> That statement reads:

In general, Crown's risk appetite is a balanced one that allows taking measured commercial risk as it pursues strategic objectives whilst aiming to manage and minimise risk in its operations. Crown's Risk Management Framework is designed to manage, rather than eliminate the risk of failure to achieve business objectives and can only provide reasonable and not absolute assurance against breaches of risk appetite. In this balanced stance, Crown is willing to accept, in some circumstances, material commercial risks that may result in impacts to our finances, services to our customers or infrastructure, but only within pre-defined limits and parameters.

There are a number of areas of the business where Crown does not have appetite to accept material risks. Specifically:

- 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.
- Crown does not have appetite to accept material risk related to any association with or influence from criminal elements.
- 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.
- 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 (emphasis added).45
- 26 Ms Halton acknowledged that there may be 'residual risks' from previous 'more liberal' risk appetites, which would need to be identified and, where inconsistent with the current risk appetite, remediated.46 That observation is hardly surprising given the recent wrongdoing uncovered by this Commission.
- 27 Other recent reforms to Crown's risk management framework include:
  - the introduction of an Enterprise Risk Management system in Melbourne to collate risk information and facilitate reporting<sup>47</sup>
  - improved reporting lines. Since December 2020, the Chief Risk Officer has reported directly to the CEO of Crown Resorts and the boards of Crown's other subsidiaries. The Chief Risk Officer also reports to the Chairs of the RMC and the Crown Melbourne Audit Committee<sup>48</sup>
  - an increase in the frequency and duration of RMC meetings<sup>49</sup>
  - · the introduction of the Executive Risk and Compliance Committee across Perth and Melbourne<sup>50</sup>
  - · the introduction of monthly meetings of compliance officers, including the Chief Risk Officer<sup>51</sup>
  - the allocation of more resources to risk management.<sup>52</sup>
- 28 Crown intends to continue to improve its risk management systems.<sup>53</sup> Ms Siegers' evidence was that Crown's risk management framework is under continuous enhancement and review.<sup>54</sup>

## VCGLR Recommendation 3

- 29 Before leaving the description of Crown's risk management framework, it is necessary to refer to the interaction between Crown Melbourne and the VCGLR in relation to the external review of Crown Melbourne's risk management framework. This topic is dealt with in Chapter 10. Some aspects need to be repeated.
- 30 Shortly after the appointment of Ms Siegers, Crown Melbourne's risk management framework was subject to two external reviews:
  - In May 2018, the VCGLR engaged PwC Australia to provide it with advice on Crown Melbourne's risk management framework. PwC concluded that Crown Melbourne's risk management framework and approach was documented, and that processes were in place to support its implementation, but a potential area for improvement was for Crown Melbourne to establish 'risk appetite' for material risks. 55
  - In June 2018, the VCGLR published the Report of its Sixth Review. That Report noted that Crown Melbourne had experienced risk failings relevant to its primary licence and recommended that Crown Melbourne obtain external advice in relation to its risk framework.<sup>56</sup> Recommendation 3 provided '[t]he VCGLR recommends that, by 1 July 2019, Crown assess the robustness and effectiveness of its risk frameworks and systems, including reporting lines in the chain of command, and upgrade them where required. This assessment should be assisted by external advice' (emphasis added).<sup>57</sup>
- 31 In February 2019, Crown Melbourne engaged Deloitte to conduct an assessment of its risk management framework.58
- 32 Ms Siegers was involved in instructing Deloitte. Deloitte's review had a very limited scope. Ms Cara Hartnett, the partner at Deloitte charged with the review, described the instructions:

In December 2018, Stephen Roche, Partner, Deloitte received a request from Alan McGregor, CFO, Crown Resorts Australia, to assist CML [Crown Melbourne Limited] with a risk management review ... [Alan McGregor] also noted that the brief from Crown's Group GM of Risk & Audit, Anne Siegers, had outlined that the review was to be 'high level, desktop advice and challenge on the design of the risk management framework' and that they did not want 'an exhaustive or highly sophisticated review identifying what best practice is and all the gaps that they could have against that' (emphasis added).59

- 33 Both Ms Siegers and Ms Hartnett accepted that the Deloitte review was not an assessment of the 'robustness and effectiveness of [Crown Melbourne's] risk frameworks and systems' as required by Recommendation 3.60 Further, each agreed that the review did not assess whether the frameworks and systems were 'embedded' within the organisation.<sup>61</sup>
- 34 There was one difference of opinion between Ms Hartnett and Ms Siegers. Ms Hartnett said Deloitte did not assess whether the risk management framework was appropriate for a casino.<sup>62</sup> Ms Siegers maintained that Deloitte had assessed Crown Melbourne's risk management framework and indicated that the design was specifically appropriate for Crown Melbourne's business. 63 Ms Hartnett's evidence must be preferred given her involvement in the Deloitte review.

- 35 Deloitte's Final Report was completed in June 2019.64 The Report made various recommendations and Crown, which at the time was developing a revised group wide approach to risk management, implemented most of them.<sup>65</sup>
- 36 Notwithstanding the limited scope of the Deloitte review, on 1 July 2019 Mr Barry Felstead, then CEO of Crown Australian Resorts, wrote to the VCGLR about Crown Melbourne's compliance with Recommendation 3.66 The letter stated that an assessment of the robustness and effectiveness of Crown Melbourne's risk management framework and systems 'has been completed in satisfaction of Recommendation 3'.67 Ms Siegers assisted with drafting the letter.68
- 37 Contrary to Crown Melbourne's letter to the VCGLR, Crown Melbourne had not satisfied Recommendation 3. Deloitte's review was merely a desktop review and was limited in scope and utility. Ms Siegers agreed that it was not an assessment of the robustness and effectiveness of Crown Melbourne's risk management systems.<sup>69</sup>
- 38 Ms Siegers explained that Deloitte could not conduct an assessment of the robustness and effectiveness of Crown Melbourne's risk management framework because 'a lot of the elements [of the revised and group wide risk management system] were not in place yet, so doing an assessment of how well it was implemented would not have been done-able [sic] at that stage'.70 Ms Siegers said that she completed the remainder of the review herself,<sup>71</sup> and considered that the requirements of Recommendation 3 had been met, because (according to Ms Siegers), it required that 'Crown conduct that review with the assistance of external advice' (emphasis added).<sup>72</sup>
- 39 Ms Siegers did not explain what work she had undertaken to complete the review. Nor did she keep a written record of any work she may have done. 73 Nor did she explain how she conducted a robust review when it was not possible for Deloitte to do so.74
- 40 When this is taken into account, it is unlikely that Ms Siegers conducted the review required by the terms of Recommendation 3. Even if she had conducted that review, the foregoing discussion highlights that, prior to the VCGLR inquiry, there had not been an external assessment of the robustness and effectiveness of Crown Melbourne's risk management framework and systems. Nor had there been an external assessment of whether those risk management frameworks and systems were appropriate for a casino business.

# Evaluation of Crown's risk management framework

- 41 Mr Peter Deans is a risk and strategy consultant retained by the Commission. Mr Deans was the Chief Risk Officer at a major bank. He prepared a report outlining his opinion on the effectiveness and robustness of Crown's risk management framework and systems. His report considered risk management practices at Crown between January 2019 and March 2021.<sup>75</sup>
- 42 Mr Deans assessed that the core fundamentals of a risk management framework were in place. He considered there were documented frameworks and practices that could enable Crown to identify, assess, manage, report and (if possible) mitigate risk.<sup>76</sup>

#### 43 Mr Deans noted:

- The RMC Charter had the 'key foundational elements' to enable Crown to establish and maintain risk management frameworks, governance and processes.<sup>77</sup>
- · The length and content of the Risk Management Strategy was consistent with what would be expected of an Australian publicly listed group of the same size and nature as the Crown group.<sup>78</sup>
- The frameworks and the group's approach to risk management were supported by an established risk management function.<sup>79</sup>
- There was evidence of Crown identifying key business risks and elevating those risks for discussion within its governance structures.80
- · Processes were in place for the RMC to reasonably identify areas of significant business risk or exposure, and new and emerging risks.81
- 44 Mr Deans also identified several areas that needed improvement. He said:
  - The role of the RMC in overseeing the resourcing, operation and effectiveness of the risk management function and with respect to risk culture should be outlined in its Charter.82
  - · There should be a rolling agenda for the RMC to ensure in-depth discussion at regular intervals of specific risk categories such as AML and CTF and the external regulatory environment.83
  - A larger set of risks should be reported to the RMC.<sup>84</sup>
  - · The RMC and management should develop and agree on a suite of qualitative measures to better monitor and report on whether Crown was operating within or outside its risk appetite.85
  - · Where Crown was operating outside its risk appetite, the RMC should monitor management's progress in bringing the relevant risk issue within appetite.86
  - The Risk Management Strategy should be improved, including through the inclusion of a standalone risk appetite statement that documented business risks in greater detail,87 and through confirming the roles and responsibilities of subsidiary boards.88
- 45 Ms Halton accepted that Mr Deans' report was a considered report and indicated that it would be treated 'very seriously'.89 She said the report would be considered carefully by the RMC at its August 2021 meeting.90
- 46 Ms Siegers, on the other hand, was sceptical about the value of the report. She recorded in a memorandum to the RMC that it was 'based on the premise that the practices employed in the financial sector are relevant to Crown Resorts'. She wrote that Crown Resorts had certain risks different to financial risks that required a 'different risk management response'.91 She rejected certain recommendations.
- 47 This is a matter of concern. Ms Siegers' attitude suggests there may be some impediments to real reform.

- 48 There are other concerns about the proper functioning of Crown's risk management framework and systems:
  - There has not been a root cause analysis in relation to the China arrests. The importance of such an analysis has been explained. The Bergin Inquiry and Ms Helen Coonan, former Chairman of Crown Resorts, expressed support for such a review. 92 Ms Siegers gave evidence that 'to get an effective root cause assessment, you need to do it very quickly after the events' and that it was essentially too late. 93 No further explanation was given.
  - · Documents comprising Crown's risk management framework remain replete with management speak.

## Conclusions

- 49 Crown Melbourne's existing risk management framework, systems and processes would benefit from:
  - a root cause analysis into the failures outlined in the Bergin Report and this Commission's Report
  - implementing the recommendations made by Mr Deans
  - · external reviews of the robustness and effectiveness of the risk management framework, systems and processes and their appropriateness to Crown Melbourne as a casino operator. This should happen every three years, noting the first external review is currently scheduled for 2022
  - the Chair of the RMC, currently Ms Halton, being personally responsible for overseeing Crown's implementation of the recommendations made by Mr Deans and the external review.94
- 50 The Commission understands that Crown Melbourne will carry out these steps. Given Ms Siegers' resistance to external review and feedback into Crown Melbourne's risk management frameworks and systems, it is appropriate that Ms Halton (or the Chair of the RMC) has a supervisory role.
- 51 The Commission also suggests that Crown Melbourne rewrite its documents in plain English.

# Crown's corporate culture

- 52 Crown accepts, as it must, that its past misconduct exposed by the Bergin Inquiry and by this Commission reflects a deficient corporate culture. It understands that its corporate culture needs to change.95
- 53 To assess the extent of cultural reform required and the challenges Crown faces in achieving that change, it is instructive to reflect on the evidence before this Commission regarding Crown's culture, both past and present.
- 54 First, Crown has acknowledged that the failures identified in the Bergin Report reflected a culture motivated by profit at any cost.

- 55 Ms Korsanos, for example, identified 'poor culture underpinned by a drive for profits' as contributing to the failures identified in the Bergin Report. Ms Korsanos also referred to the China arrests and decision making in relation to junkets as having been influenced by a culture focused on returns over risk and compliance. She said that the failures associated with the Riverbank and Southbank accounts may also have been influenced by similar cultural failings. Ms
- 56 Mr Nick Weeks, the newly appointed Executive General Manager, Transformation and Regulatory Response, identified the following cultural issues as driving the unacceptable behaviour identified in the Bergin Report:

Well, I think that overriding cultural issue was the company prioritised profit over all those other considerations that a company with a good culture would balance more evenly. So I think that was a fundamental failing. It seemed to me that there were people in the organisation in positions of influence and power that were exercising very poor judgment in terms of some of the decision-making that occurred, and my sense was from reading that report that the level of reporting, the quality of reporting and the escalation of issues in the organisation wasn't occurring in a way that it ought to be (emphasis added).<sup>98</sup>

57 Second, an interrelated issue that emerged before the Bergin Inquiry and this Commission was Crown's methodical exploitation of 'grey areas' in service of profit. Ms Halton described this way of operating in her evidence:

So how I would characterise this is ... if you think about things that are black and things that are white, and things that are grey, it strikes me that very often people operated in the grey until someone told them they couldn't. And I think that is a fair characterisation. I've talked to staff about this issue. The truth of the matter is if it's white, fine, if it's black, fine, and, frankly, if it's grey, unless you get it ticked that it's white, you don't do it.<sup>99</sup>

- Third, Ms Halton gave evidence of a lack of psychological safety of staff. For example, regarding the China arrests, she agreed that staff were not comfortable and did not feel as though they could speak up.<sup>100</sup>
- 59 This has been and remains an ongoing issue. In 2018, Crown commissioned an employee experience survey. The responses suggested psychological safety of employees was a significant issue.<sup>101</sup> Notwithstanding the survey results, there is no evidence the issue was ever discussed at board level.<sup>102</sup>

# Poor culture causing poor conduct

- 60 This Commission has uncovered other recent failings by Crown that strongly suggest that the same cultural problems remain.
- 61 First, there is the issue of Crown Melbourne's improper deductions in the calculation of casino tax, particularly the Bonus Jackpot deductions. Crown Melbourne's treatment of the Bonus Jackpot deductions speaks to the same culture of profit over compliance.

- 62 Ms Halton conceded that Crown Melbourne's practice with respect to the Bonus Jackpot deductions has 'all the hallmarks' of the same 'grey area' way of operating.<sup>103</sup> Mr Xavier Walsh, former CEO of Crown Melbourne, made the same point about the failure by anyone at Crown Melbourne to raise the issue with the regulator and 'come clean'. 104 The problem is that Mr Walsh's inability to 'come clean' suggests that he, too, did not feel safe to speak up.
- 63 Second, there is the CUP issue. This practice reflects the same tendency of Crown Melbourne to operate 'in the grey'. The CUP process involved practices that allowed wealthy patrons to defeat Chinese currency regulations as well as open the door to money laundering.<sup>105</sup>
- 64 A Crown Melbourne employee raised this practice at a March 2021 training session. He told those present that the practice involved money laundering. He said that 'hosting staff were given instructions from "higher ups" to identify, implement or create new methods of circumventing government laws'. 106 Despite the serious nature of the allegations raised at this meeting, only one of the 14 employees present reported the discussion.<sup>107</sup>
- 65 Their silence also suggests that issues of psychological safety around reporting of wrongdoing remain. Mr Steven Blackburn, Chief Compliance and Financial Crime Officer, agreed that the individuals attending the meeting may have been scared to report the matters raised.<sup>108</sup> Another possibility accepted by Mr Blackburn was that the employees were concerned their career progression would be negatively affected if they did escalate the matter.<sup>109</sup>
- 66 It is noted that the Crown directors relatively promptly notified the Commission of the allegations made in the training session, and disclosed the results of the legal investigation subsequently undertaken.
- 67 Third, Crown Melbourne's relationship and dealings with the regulator suggest its cultural problems persist.
- 68 Many witnesses frankly acknowledged the problematic state of the relationship between Crown Melbourne and the regulator. Mr Blackburn described Crown Melbourne as taking a 'fairly aggressive' approach to the relationship.<sup>110</sup> Ms Korsanos described Crown Melbourne's culture in relation to the regulator as 'defensive'. 111 Mr Nigel Morrison, director of Crown Resorts, said Crown Melbourne did not have an open and honest relationship with the regulator and described Crown Melbourne's attitude as one where 'if they didn't think it was overly important and they could get away with it, they did'.112
- 69 Crown Melbourne's aggressive attitude to the regulator is encapsulated in a most concerning exchange, in 2019, between the regulator and Ms Michelle Fielding, then Group Executive General Manager, Regulatory and Compliance. The exchange concerned Recommendation 17 in the Report of the VCGLR's Sixth Review and a dispute with the VCGLR as to whether Crown Melbourne should seek input from AUSTRAC in reviewing its internal control statements.<sup>113</sup> Ms Fielding, in rejecting the suggestion Crown Melbourne should seek AUSTRAC's input, called Mr Jason Cremona, an employee of the VCGLR, and spoke to him in an aggressive manner, saying that Mr Joshua Preston, Crown's then Chief Legal Officer, was 'furious' at the suggestion and would most probably 'call the Minister'.114

- 70 Another example is Crown Melbourne's lack of cooperation with the VCGLR investigation concerning the China arrests. Ms Coonan gave the following evidence on that issue:
  - It's the old Crown taking every point, arguing every issue, not accepting basic propositions of fact that are clearly open; correct?
  - I think that's right. I mean, I hadn't had a chance to refresh my memory of it, A: but I think that would be a fair way to characterise it.
  - Q: And that's only January this year, isn't it?
  - Yes, it is. It's the old Crown, January this year. 115 A:
- 71 While the current directors and executives all agree that Crown Melbourne's relationship with the regulator should be open, honest and cooperative, until recently nothing has been done to address this issue.

## Deloitte review

72 Now that Crown has been forced to act, it has engaged Deloitte, led by organisational culture expert Ms Victoria Whitaker, to undertake a review of Crown's culture. 116 Ms Whitaker described the purpose of the Deloitte review (named Project Darwin) as being:

to provide an assessment of the maturity of the existing approach to organisational culture, conduct a current state of Crown Resorts' organisational culture (including risk culture), establish the target state culture, assess the gaps between the target state and current state organisational culture, and prepare a roadmap on how to close the gaps. 117

- 73 The Deloitte review is being undertaken in four phases. Phase 1 is a desktop review and consultations to assess the company's culture framework. Phase 2 involves the development and rollout of an organisation wide culture survey. Phase 3 involves detailed analysis and assessment of the data to support Phase 4. Phase 4 will focus on the development of a road map for change.<sup>118</sup>
- 74 At the time Ms Whitaker gave evidence to the Commission, Deloitte had substantially completed Phase 1. On 30 July 2021, Deloitte provided a report on the outcomes of Phases 2 and 3 of the program, which is Deloitte's assessment of the current state of Crown's organisational culture.<sup>119</sup> Through Deloitte's work, the Commission has a recent snapshot of Crown's corporate culture.
- 75 Relevantly, in late 2020 and early 2021, Ms Whitaker conducted preliminary interviews with Mr Ken Barton (at the time CEO of Crown Resorts) and Ms Alicia Gleeson (Executive General Manager of Human Resources at Crown Melbourne) to gain insight into Crown's culture. 120 The Commission has the records of the interviews.

- 76 There were similarities between the observations of Ms Gleeson and Mr Barton. According to Ms Whitaker, the comments of Ms Gleeson and Mr Barton painted a 'pretty grim' picture of the culture at Crown:
  - **Q:** So to summarise, Ms Whitaker, in combination of the interview that you had with Mr Barton and Ms Gleeson, what was conveyed to you were perceptions from those individuals about Crown's culture and the sorts of things that were conveyed as the perceptions were, just using some headings 'psychological safety'; correct?
  - A: Correct.
  - Q: The Board not necessarily listening and providing feedback?
  - A: I think it is more the feedback piece was what was conveyed, yes.
  - Q: The Board not providing feedback. Permafrost in middle management?
  - **A:** Potentially, yes, that was a perception.
  - Q: People not being held to account?
  - A: Yes.
  - Q: Lack of clarity in escalating issues?
  - A: Yes.
  - **Q:** And problems not being investigated or being solved by people instead of being escalated?
  - **A:** I think it was that people were trying to deal with the problems themselves without escalating, yes.
  - Q: But there was also the issue about 'If nothing happens I won't report it'?
  - A: A sense of complacency, yes.
  - Q: ... But all of those comments, I suggest to you, paint a pretty grim picture of how Crown's culture is perceived by senior individuals within the organisation; would you agree with that?
  - A: What you've just listed does paint a pretty grim picture, yes. 122
- 77 Some of the problems identified by Ms Gleeson and Mr Barton are not new.
- Deloitte's Phases 2 and 3 report contains an even more recent assessment of the current state of Crown's culture.<sup>123</sup> Data collection was undertaken between March and July 2021, including an 'all staff survey'; interviews with the board, executive leadership and external stakeholders; and focus groups with a cross-section of employees across Melbourne, Perth and Sydney.<sup>124</sup>

#### 79 The following is Deloitte's summary of its findings:

Whilst there is an awareness of the importance of compliance, it is not yet driving consistent behaviour. Staff perceive ongoing conflicts between appeasing customers, driving profit and adhering to policies and processes. Policies and processes were seen to be poor in places, due to being overly complex, poorly written or lacking applicability. Despite high levels of completion of mandatory training, staff did not always know where to access policies to do their job.

...

Less than half of Crown's people perceived the Board to be living Crown's values, with particularly low sentiment from mid-level managers. Just over half perceive their senior leaders living the values. The main stated reasons were related to the royal commissions and adverse media reporting. These views have influenced employees' perceptions of Crown's trustworthiness and whether it has the customer's best interests at heart.

...

Crown has a hierarchical structure and managers are the first point of contact for staff raising concerns. Nearly half of the respondents did not hold a positive perception of the relationship they have with their manager. This is driven by perceptions of inconsistent reward and performance management and a perceived lack of coaching and feedback, which results in low confidence in to [sic] speak up and challenge others.

...

The majority of staff perceive the people they work with to be supportive, friendly and honest. These relationships influence inclusion and sharing lessons learnt. At times, there were perceptions that peers do not respond well to constructive challenge.<sup>125</sup>

80 In relation to Crown Melbourne's current values and behaviours, Deloitte's findings were:

## We do the right thing

The Crown Culture Review found weak support for the value of 'we do the right thing' being lived in the organisation. Despite strong awareness of compliance, barriers that enable compliance behaviours [sic] still exist.

A majority of staff believe it is necessary to bend the rules and work around policies and procedures to get their job done, driven by a perception of customer centricity and a profit mandate.

Some believed policy frameworks were weak and difficult to implement. While around half were not confident to provide constructive challenge, driven by fear of consequences and being punished, or complacency that no action would be taken.

Personal relationships with managers were key to this sentiment, with some managers perceived to misuse their authority, being dismissive or demanding.

#### We work together

The Crown Culture Review found mixed support for the value of 'we work together' being lived in the organisation. While there is high collaboration and team work within business units, silos exist across business units and properties, driven by poor communication, combined with a lack of shared objectives, as well as underlying structural and systems based deficiencies. Perceptions of inconsistent performance management and reward also contributed to this sentiment.

#### We act respectfully

The Crown Culture Review found some support for the value of 'we act respectfully' being lived in the organisation.

Just over half trusted Crown, largely driven by low perceptions that the Board and Executive were living Crown's values. One in three did not agree that Crown had the customer's best interests at heart.

The majority of people had a positive experience at Crown, felt respected at work and are committed to the purpose and values of Crown. Diversity was celebrated, but feelings of inclusion were lower, typically driven by manager/ employee relationships.

#### We are passionate

The Crown Culture Review found some support for the value 'we are passionate' being lived in the organisation.

Crown's people are committed to Crown's success, but low motivation stems from regulatory scrutiny, lack of empowerment, poor career path management and a low appetite for innovation.

A mindset of 'this is the way we've always done things' is perceived to be stifling innovation, and many do not feel empowered to make decisions.<sup>126</sup>

81 Given the interest of this Commission in Crown Melbourne's culture of compliance, the following finding by Deloitte is most concerning:

### Barriers exist preventing an effective risk culture

Whilst awareness of the importance of compliance appears to be strong, it is not yet driving consistent behaviour or an effective risk culture. There is a need to remove the barriers to constructive challenge across the business. Staff don't always feel empowered or involved in the decisions that affect them. There are also low levels of agreement that unacceptable

risk taking is consistently penalised. There is a need for improvements in communication and role modelling, including sharing mistakes and lessons learned. Furthermore, some leaders recognised the lack of 'outside in' thinking. While risk literacy is emerging, it needs to be further strengthened especially across Line One in the organisation.<sup>127</sup>

82 It is clear that many cultural problems still exist. It is equally clear that many of them may be difficult to overcome.

## Cultural reform plan

- 83 Crown accepts the need to improve its culture. Many Crown witnesses frankly conceded that reform is necessary and emphasised Crown's commitment to its culture reform program.<sup>128</sup>
- 84 Crown's concessions on the need for cultural change may be contrasted with Crown's submissions before the Bergin Inquiry. There, Crown rejected as 'incorrect at several levels' the accusation that it had a 'dysfunctional' culture that included an 'arrogant indifference to regulatory and compliance risk', a 'culture of denial and unwillingness to examine and address past failings' and 'a culture which prioritised the pursuit of profit above all else'. 129 The change of attitude is overdue, but welcome.
- 85 In her statement, Ms Coonan describes the 'cultural uplift program' as a 'key component' of Crown's wider reform program.<sup>130</sup> Crown's cultural reform plan is under the direction of Mr Stephen McCann, the CEO of Crown Melbourne and Crown Resorts, and Mr Tony Weston, Chief People and Culture Officer (who commenced on 7 June 2021). It is to be assisted by the review currently being conducted by Deloitte.<sup>131</sup>
- 86 The remediation plan Crown has provided to regulators post the Bergin Inquiry provides a useful summary of steps Crown is taking to alter its culture. 132 It has already taken the following steps, among others:
  - In July 2020, it rolled out its new values, which include: (a) we do the right thing; (b) we act respectfully; (c) we are passionate; and (d) we work together. 133 These values have been incorporated into relevant policies and documents, including the Code of Conduct, and Risk and Compliance Culture Framework. 134
  - In December 2020, it implemented an overarching culture reform program (also referred to as the 'cultural uplift program'). 135
  - It commissioned the culture review by Deloitte.<sup>136</sup>
  - It made changes to short-term incentives for key management personnel such as partial deferral and forfeiture in the event of adverse regulatory or compliance events; and introduced compliance and risk key performance objectives for salaried staff. Crown has also engaged an external expert to review and provide recommendations in relation to its remuneration framework.137
  - It appointed a Chief People and Culture Officer (Mr Weston) as well as Mr Weeks, to facilitate cultural change. Mr Weeks is on a 12-month contract; however, Mr Weston's engagement does not appear to be similarly limited.<sup>138</sup>
  - It changed the 'tone from the top' approach by refreshing its board and management team.<sup>139</sup>

- 87 In relation to the focus at Crown on changing the 'tone from the top':
  - · Ms Halton said that 'informal soundings' taken by herself and other members of the current board showed that 'people detect very clearly the change in tone from the top'. 140
  - · Ms Korsanos said that there was a need to break down Crown's 'defensive' culture but she believed 'we've had more traction post the leadership changes ... both at board level and executive level' and that had been driven by changes at the board and management levels.<sup>141</sup> Ms Korsanos emphasised the engagement by the Crown Resorts board and Crown Melbourne board in the reform agenda. Her evidence was that '[a]ny change in culture must be driven by leadership. The new board and executive leadership team will be critical to this change'.143
  - Mr McCann said he told staff to speak up if they see behaviour that is inappropriate and to not do anything that they feel uncomfortable doing or that is 'inconsistent with their values'.144
  - · Mr Weston underscored that Crown's leadership is 'very invested' in the culture change program and that the Crown Resorts board has prioritised the culture change program as part of Crown's broader reform program.<sup>145</sup> He said that although the Deloitte assessment is ongoing, the Crown Resorts board and senior management throughout Crown are already looking for ways to improve culture. Mr Weston noted as an example that the Chairman has been encouraging staff through weekly communications to speak up 'when something does not feel right'.146

## Can Crown change its culture?

- 88 It is positive that Crown has acknowledged problems with its culture, including 'the magnitude of its governance and cultural failings',147 and is making attempts to change.
- 89 The importance of reforming its culture is acknowledged by Crown's own Risk and Compliance Culture Framework. 148 The Framework records that risk and compliance culture—the system of values, beliefs and behaviours in an organisation—'shapes the decisions and actions of employees in relation to compliance and risk taking' (emphasis added).<sup>149</sup> Without meaningful cultural reform, there can be no remediation of the failures identified by this Commission and the Bergin Inquiry. Without cultural reform, changes to risk management frameworks will achieve little, because the choices and behaviour of employees and management at Crown, including at Crown Melbourne, will not change. This is in the context of the 'extraordinary level of inherent risk' in the casino sector.<sup>150</sup>
- 90 Crown faces substantial challenges in effecting cultural reform and will need to overcome a number of barriers that currently exist. While the timeframe to embed self-sustained cultural change is difficult to estimate, the experts agree it might take years.
- 91 Ms Elizabeth Arzadon, an expert on corporate culture and its influence on conduct and risk outcomes, was retained by the Commission to prepare a report outlining her opinion about Crown Melbourne's relationship with the regulator, how Crown's culture could be changed, and how long it would take to effect that change. 151

- 92 First, in considering Crown Melbourne's relationship with the regulator, Ms Arzadon observed that the VCGLR employs a 'risk based' model. That model places substantial reliance on the integrity of internal control processes within supervised entities, preserving limited regulatory resources to examine issues of highest risk. See Risk based regulators 'rely heavily on a culture of transparency, responsiveness and collaboration with supervised institutions'. Crown Melbourne has indicated its intention to improve its relationship with the regulator. Ms Arzadon notes, however, that improvement will be 'very difficult to achieve, requiring considerable energy, time and resources on both sides'. To improve its relationship with the regulator, Crown Melbourne must find a joint purpose with the regulator and incentives to change.
- 93 Second, and more broadly, Ms Arzadon explained that it is not simple to change organisational culture. Crown's culture is the product of a system of influences both within and outside its organisational 'walls'. If Crown's culture is to change, all these systemic influences must be considered. Crown, like most organisations undertaking cultural transformation, will be attempting to 'juggle the necessary activities alongside other critical business objectives required to sustain its survival. The most earnest attempts to enact culture change can trigger unexpected and problematic side effects.
- 94 Moreover, achieving behavioural change is not easy. As Ms Arzadon points out:

Anyone who has tried to change their own eating or exercise habits knows that behavioural change is difficult. Leading an entire organisation through the behaviour change required for cultural transformation is exponentially more difficult. Success is far more likely when there is investment in appropriate guidance, objective analysis, empirically-based techniques and leadership coaching, at a level commensurate to the task.<sup>160</sup>

- 95 In that regard, Ms Arzadon expressed concern that neither Mr Weeks nor Mr Weston are experts in cultural reform. 161 She did accept that Ms Whitaker is an appropriate expert. 162
- 96 Third, assuming it is possible, cultural change takes time. While some changes can be achieved quickly, Ms Arzadon suggests that embedding sustained cultural change can take between three to five years. Even if Crown achieves a swift turnaround in its culture, it may sometimes revert to its former position. Ms Arzadon put it this way:
  - ... [s]ay [in] 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.<sup>164</sup>
- 97 Ms Arzadon also commented that Deloitte's Phase 4 work is the kind of work that is really the beginning of a culture change program. Deloitte's Phase 4 work involves defining the aspirational state and developing the road map for change, and establishing the frameworks that will support that change. The activities that will constitute the road map for change will not be worked out until Deloitte's Phase 4 work is complete.

- 98 Other witnesses, including Crown witnesses, agreed with Ms Arzadon that achieving cultural change will take some time. Mr McCann, speaking from his experience in leading a large cultural change project at Lendlease (a property development, construction and investment business), said that the change took two years. 166 Mr Weeks said that an organisation can achieve cultural change quickly, but acknowledged change takes time to embed.<sup>167</sup>
- 99 Ms Whitaker also said that it can take years to effect sustained cultural change, and that it can be complex to measure:
  - All right. I just wanted to get an understanding of the time frame for the work that Deloitte is doing, but ... That ... the work that Deloitte is doing is effectively providing a roadmap. Once that roadmap is in place, and you have satisfied that you've got all the tools to effect the change that you want, is it not the case that it can take years for cultural change to occur, and years to know whether or not it's worked?
  - It can take years for sustained culture change to occur. I think we will start to see early indications of change. It also requires multiple measurements in order to know that that change has been affected long-term. So that is part of the reason that is given to why culture change takes a long time. 168
- 100 Fourth, while Crown points to changes 'at the top' (at board and executive level), those changes will not necessarily solve the serious cultural problems that exist.
- 101 Ms Arzadon explained that although she had seen a lot of evidence of Crown telling staff: '[Y]ou should speak up', that was not the same as 'trying to understand why they might not speak up'.169 This is because:
  - even if leaders display a genuine desire for change and begin to shift their personal mindsets and behaviour, there are many reasons why broader organisational change may be resisted, especially at middle and lower levels where tangible change is often critical.<sup>170</sup>
- 102 Ms Whitaker agreed that changing the tone from the top was insufficient:
  - [I want you to assume a series of propositions.] Just assume them to be true, they may or may not be true, but assume you have a firm who is engaged in the following types of conduct. Systematic, long-term breaches of the law, both statute law and other legal obligations—second. Systematically and over a period of time facilitated illegal conduct by third parties. Four, in dealings with government, lax [sic] candour, doesn't make full disclosure. Five, deals with lots of vulnerable people and takes advantage of them. And each of those types of conduct is explicable by a profit motive; that is, if I engage in all of those things, I will make more money than I otherwise would. My question to you is: what would that tell you about the culture of the firm?

What would it tell me about the culture of the firm. I think it would give rise to a number of questions in relation to the culture that I would ask, such as, what is the tone being set by the leaders, what processes do they have in place to manage risk and conduct. What attitudes do they have to those that they impact upon, what processes are in place to draw out mistakes or poor conduct, like speak-up processes.

- Q: [Go back to my question, and assume this is a long-term behaviour] ... 5 years, 10 years, 15 years, pick whatever meaning you like to the word 'long-term', what does it tell you about the culture of the firm?
- I think it would tell me that, given those hypothetical situations you gave me, A: that it is an organisation that is driven towards a self-orientation of ... looking after oneself.

- Q: [And if I had a scale for measuring culture] ... and it was from one to ten, ten being the best and one being the worst, good, now you know my question, don't you?
- A: Yes, where ...
- Q: If you make the assumptions I've asked you to make, where on the scale would you put the firm?
- A: Commissioner, can I clarify, what I think you are getting at, which is to what extent is it [an] ethical culture, a responsible culture, those sorts of aspects, is that what you are asking, because I need a goal in mind?
- Q: Yes, that's exactly what I'm after.
- A: I would say that it is sitting on the end of looking after oneself and being oriented towards 1, that is the lower end of that scale.

- Q: Assume the behaviours I've described are endemic throughout the organisation: top, middle management, lower management, floor staff. In other words, it is cemented into the operation of the firm itself, that's how most people who relevantly can engage in this conduct ... that's a bad way of putting it. It is across the board in the firm. Make that assumption. Would you accept this proposition that simply changing the top will get you nowhere?
- I agree that simply changing the top will only get you part of the way. There A: are other activities that would drive that change that you are looking for.<sup>171</sup>

- 103 Fifth and finally, Ms Arzadon critically identified that Crown requires a purpose-driven culture rather than a compliance culture.<sup>172</sup> That is, Crown needs to engage in 'new thinking about [its] purpose, strategy, operations and financial model, and solutions that can somehow deliver financial results *within* a frame of good conduct—not simply without breaking the law'.<sup>173</sup> In Ms Arzadon's view, Crown must 'bring together the purpose of compliance and conduct with revenue generation'.<sup>174</sup> Ms Arzadon made a similar observation in the context of discussing the need for Crown Melbourne to have an aligned purpose with the regulator if it is to achieve genuine change in the relationship.<sup>175</sup>
- The problems that can arise when the purpose of compliance conflicts with revenue generation were explored at length through the Bergin Inquiry and also during the Commission hearings. The Bonus Jackpots tax issue is one example (see Chapter 12). The CUP issue is another (see Chapter 13).
- 105 Ms Arzadon was unable to identify any evidence to suggest that Crown is taking or contemplating taking the step of aligning the purpose of compliance and conduct with revenue generation; she had only seen reinforcement of the need to be compliant.<sup>176</sup>
- 106 This is something that Crown must urgently and closely consider, along with the question why staff have a fear of speaking up.

## Conclusions

- 107 Crown appreciates that Deloitte's Phases 2 and 3 report confirms that significant work is required for it to 'embed the sustainable cultural change to which it aspires'.<sup>177</sup>
- 108 Deloitte's Phase 4 work will involve defining Crown's aspirational culture and developing the road map for change, along with the governance, measurement and reporting frameworks that will support that change.<sup>178</sup> Deloitte's Phase 4 work has not been completed. Accordingly, the road map and specific activities to achieve Crown's desired culture state have not yet been identified.
- 109 Other activities Crown expects to undertake to achieve cultural reform include:
  - · reviewing and refining its strategic intent
  - · engaging with key stakeholders, including the regulator
  - developing and implementing a measurement process
  - audit and information sharing.<sup>179</sup>
- 110 There is no evidence concerning the timeframe for achieving these steps.
- 111 The Commission has two concerns. The first is that in order to change, Crown must review its strategic intent to align the purpose of compliance and conduct with revenue generation. There is no evidence this has occurred.
- 112 The second is that Crown might revert to its 'old ways' once the glare of the public inquiries becomes part of history. That indicates that Crown's cultural reform program will need to be closely monitored, potentially for years to come.
- Nonetheless, it is acknowledged that the culture of an organisation can change for the better. How long that will take, and how successful it will be, are unknowns.

# **Endnotes**

- See Adrian Finanzio, Penny Neskovcin, Meg O'Sullivan and Geoffrey Kozminsky, Counsel Assisting Submissions, Royal Commission into the Casino Operator and Licence (14 July 2021) 221 [2.3].
- See, eg, Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 380 [65]–[66], 532 [44]–[45], 554–5 [70]–[72], 555–6 [76]–[79], 559 [96], 562 [111]–[112].
- 3 Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 556 [77], 562 [111].
- 4 Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 554–5 [71], 556 [79], 562 [112].
- 5 Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 556 [77].
- 6 Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 555 [72], [76].
- 7 Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 556 [78], 559 [96].
- 8 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 28 [C.2], 61–2 [C.82].
- 9 Exhibit RC0434 Statement of Antonia Korsanos, 27 April 2021, 22 [110].
- Exhibit RC0427 Statement of Jane Halton, 28 April 2021, 24–5 [186]. Ms Halton confirmed in evidence that the matters set out in the paragraph extracted above are her explanation of the factors that led to Crown's failings, rather than simply summarising the Bergin Report's findings: Transcript of Jane Halton, 7 July 2021, 3602.
- 11 Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 540 [32].
- 12 Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 556 [78].
- 13 Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 540 [33], 559 [96].
- 14 Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 557 [84].
- 15 See Chapter 12.
- 16 See Chapter 13.
- 17 See Chapter 14.
- 18 See Chapter 8.
- 19 See Chapter 4.
- 20 Transcript of Jane Halton, 7 July 2021, 3556.
- 21 Exhibit RC0427 Statement of Jane Halton, 28 April 2021, Annexure I, 11–12.
- Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 133 [2]; Exhibit RC1546 Crown Resorts Risk Management Policy, February 2008.
- 23 Exhibit RC0427 Statement of Jane Halton, 28 April 2021, 6 [52].
- 24 Exhibit RC1546 Crown Resorts Risk Management Policy, February 2008, cl 2.
- 25 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 134 [7].
- Exhibit RC0003 VCGLR Report regarding an investigation conducted pursuant to sub-ss 24(1)–(2) of the *Casino Control Act 1991* (Vic) into the conviction and sentencing of Crown employees for gambling related offences in the People's Republic of China in June 2017 (redacted), n.d., 30–2 [148]–[163].
- 27 Exhibit RC0427 Statement of Jane Halton, 28 April 2021, 6 [56]–[61].
- Transcript of Anne Siegers, 9 June 2021, 1971; Exhibit RC0445 Bergin Report Volume 1, February 2021, 138 [32].
- 29 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 138–9 [32]–[33].
- 30 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 139 [34].
- 31 Exhibit RC1366 Crown Resorts Risk Management Strategy, June 2019.
- 32 Transcript of Anne Siegers, 9 June 2021, 1974–5.
- 33 Exhibit RC1547 Crown Resorts Risk Management Policy, August 2018.
- 34 Exhibit RC1547 Crown Resorts Risk Management Policy, August 2018, cls 1–2.
- 35 Exhibit RC1547 Crown Resorts Risk Management Policy, August 2018, cl 2.
- 36 Exhibit RC1366 Crown Resorts Risk Management Strategy, June 2019.
- 37 Exhibit RC0427 Statement of Jane Halton, 28 April 2021, [7]–[8].
- 38 Exhibit RC0427 Statement of Jane Halton, 28 April 2021, 2 [21].
- 39 See Chapter 4.
- 40 Exhibit RC0427 Statement of Jane Halton, 28 April 2021, Annexure I, cls 6.4–6.6.

- 41 Exhibit RC0309 Statement of Steven Blackburn, 21 April 2021, Annexure d, 1 [2]. Cf Exhibit RC1547 Crown Resorts Risk Management Policy, August 2018, cl 2.
- 42 Exhibit RC1367 Crown Resorts Risk Management Strategy, June 2020, pt 4.
- The Group General Manager, Internal Audit reports directly to the boards of Crown Melbourne, Crown Sydney and Crown Perth: Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 41–2 [C.37(d)–(e)], 63 [C.84(h)].
- Exhibit RC0187 Crown Resorts Risk Management Framework Progress report, n.d., cells C87–C88; Exhibit RC0427 Statement of Jane Halton, 28 April 2021, 24 [182].
- 45 Exhibit RC0427 Statement of Jane Halton, 28 April 2021, Annexure I, cl 7.
- 46 Exhibit RC0427 Statement of Jane Halton, 28 April 2021, 2 [18].
- 47 Exhibit RC0417 Crown Resorts Remediation Plan, 30 June 2021, 38.
- Transcript of Anne Siegers, 9 June 2021, 1968–71; Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 41–2 [C.37(d)].
- These increased to four in 2017, then to six in mid-2020. See Exhibit RC0417 Crown Resorts Remediation Plan, 30 June 2021, 37.
- Transcript of Anne Siegers, 9 June 2021, 1970–1; Exhibit RC0427 Statement of Jane Halton, 28 April 2021, 4 [42], 5 [44]; Exhibit RC0417 Crown Resorts Remediation Plan, 30 June 2021, 38.
- 51 Exhibit RC0417 Crown Resorts Remediation Plan, 30 June 2021, 38.
- 52 See, eg, Exhibit RC0417 Crown Resorts Remediation Plan, 30 June 2021, 35–9.
- 53 Exhibit RC0427 Statement of Jane Halton, 28 April 2021, 23 [172].
- Transcript of Anne Siegers, 9 June 2021, 1996.
- Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, 65. See also Exhibit RC0427 Statement of Jane Halton, 28 April 2021, Annexure a, 4.
- 56 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, 66-7.
- 57 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, 67.
- 58 Exhibit RC0972 Letter from Deloitte to Alan McGregor, 12 February 2019.
- 59 Exhibit RC0183 Statement of Cara Hartnett, 16 April 2021, 1[5].
- Transcript of Anne Siegers, 9 June 2021, 1980–1; Transcript of Cara Hartnett, 9 June 2021, 1883.
- Transcript of Cara Hartnett, 9 June 2021, 1881; Transcript of Anne Siegers, 9 June 2021, 1975.
- Transcript of Cara Hartnett, 9 June 2021, 1882.
- Transcript of Anne Siegers, 9 June 2021, 1976–8.
- 64 Exhibit RC0183 Statement of Cara Hartnett, 16 April 2021, Annexure f.
- Exhibit RC0197 Implementation of Deloitte Recommendations table, n.d.; Transcript of Anne Siegers, 10 June 2021, 2044–6.
- 66 Exhibit RC0189 Letter from Barry Felstead to Catherine Myers, 1 July 2019.
- 67 Exhibit RC0189 Letter from Barry Felstead to Catherine Myers, 1 July 2019, 3.
- Transcript of Anne Siegers, 9 June 2021, 1983.
- Transcript of Anne Siegers, 9 June 2021, 1979.
- 70 Transcript of Anne Siegers, 9 June 2021, 1979–80.
- 71 Transcript of Anne Siegers, 9 June 2021, 1981–2.
- 72 Transcript of Anne Siegers, 9 June 2021, 1981.
- 73 Transcript of Anne Siegers, 9 June 2021, 1988.
- Ms Siegers suggested she could assess the robustness of the design: Transcript of Anne Siegers, 9 June 2021, 1988.
- 75 Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, 4 [1.10].
- Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, 35 [3.95], 36 [3.99].
- 277 Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, 14 [3.9].
- 78 Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, 21 [3.39].

- 79 Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, 36 [3.103].
- 80 Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, 25–6 [3.58]–[3.60].
- Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, 27 [3.65], 28 [3.68].
- 82 Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, 39 [4.6], 40 [4.11].
- 83 Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, 39 [4.5].
- Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, 45 [4.29].
- Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, 45 [4.30].
- Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, 45 [4.30].
- 87 Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, 43 [4.22].
- 88 Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, 44 [4.26].
- Transcript of Jane Halton, 7 July 2021, 3614.
- 90 Transcript of Jane Halton, 7 July 2021, 3614–15.
- 91 Exhibit RC0433 Memorandum regarding the Royal Commission's Expert Report on the Risk Management Frameworks and Systems of Crown Resorts, 6 July 2021, 1.
- 92 Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 351–2 [14]–[18], 557 [84]–[85].
- 93 Transcript of Anne Siegers, 10 June 2021, 2037–8.
- Adrian Finanzio, Penny Neskovcin, Meg O'Sullivan and Geoffrey Kozminsky, Counsel Assisting Submissions, Royal Commission into the Casino Operator and Licence (14 July 2021) 238 [8.6]; Exhibit RC0427 Statement of Jane Halton, 28 April 2021, 11 [92].
- 95 See generally Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 28–9 [C.2]–[C.4]. Given Crown's cultural reform program is group wide, references to Crown in this part of the chapter include Crown Melbourne.
- 96 Exhibit RC0434 Statement of Antonia Korsanos, 27 April 2021, 21 [108(b)].
- 97 Exhibit RC0434 Statement of Antonia Korsanos, 27 April 2021, 22 [110]–[112].
- 98 Transcript of Nick Weeks, 6 July 2021, 3387.
- 99 Transcript of Jane Halton, 7 July 2021, 3572.
- 100 Transcript of Jane Halton, 7 July 2021, 3589–90.
- 101 Exhibit RC0431 Swinburne University Crown Employee Experience Research Report, August 2018, 60.
- 102 Transcript of Jane Halton, 7 July 2021, 3595, 3597.
- 103 Transcript of Jane Halton, 7 July 2021, 3572–3.
- 104 Transcript of Xavier Walsh, 5 July 2021, 3260.
- 105 Transcript of Steven Blackburn, 1 July 2021, 2966–7. See also Chapter 13.
- See generally Transcript of Steven Blackburn, 1 July 2021, 2923, 2926–7; see also Exhibit RC0376 Surveillance Log Entry Report, 17 March 2021.
- 107 Transcript of Steven Blackburn, 1 July 2021, 2927. Crown disputes the accuracy of the record of the meeting: Transcript of Steven Blackburn, 1 July 2021, 2928.
- 108 Transcript of Steven Blackburn, 1 July 2021, 2930.
- 109 Transcript of Steven Blackburn, 1 July 2021, 2931.
- 110 Transcript of Steven Blackburn, 1 July 2021, 3068.
- 111 Transcript of Antonia Korsanos, 7 July 2021, 3660.
- 112 Transcript of Nigel Morrison, 22 June 2021, 2278.
- 113 The details of this episode are set out in Chapter 10.

- Exhibit RC0008 Statement of Jason Cremona, 15 April 2021, 36 [106]; Transcript of Michelle Fielding, 28 June 2021, 2664–5.
- 115 Transcript of Helen Coonan, 8 July 2021, 3765.
- 116 Exhibit RC0184 Statement of Victoria Whitaker, 16 April 2021, 1 [5].
- 117 Exhibit RC0184 Statement of Victoria Whitaker, 16 April 2021, 1[3].
- 118 Statement of Antonia Korsanos, 27 April 2021, 18 [95].
- 119 Exhibit RC1419 Deloitte Current Culture Review Final Report, July 2021.
- 120 Exhibit RC0184 Statement of Victoria Whitaker, 16 April 2021, 7 [56], 8 [69].
- 121 Transcript of Victoria Whitaker, 9 June 2021, 1932.
- 122 Transcript of Victoria Whitaker, 9 June 2021, 1939–40.
- 123 Exhibit RC1419 Deloitte Current Culture Review Final Report, July 2021.
- 124 Exhibit RC1419 Deloitte Current Culture Review Final Report, July 2021, 7.
- 125 Exhibit RC1419 Deloitte Current Culture Review Final Report, July 2021, 7.
- 126 Exhibit RC1419 Deloitte Current Culture Review Final Report, July 2021, 8–9.
- 127 Exhibit RC1419 Deloitte Current Culture Review Final Report, July 2021, 9.
- See, eg, Transcript of Jane Halton, 7 July 2021, 3572, 3589, 3572; Transcript of Xavier Walsh, 5 July 2021, 3260; Transcript of Helen Coonan, 8 July 2021, 3860; Transcript of Nick Weeks, 6 July 2021, 3387. In his statement to the Commission, Mr Weston underscored that Crown's leadership is 'very invested' in cultural change: Exhibit RC0478 Statement of Tony Weston, 6 July 2021, 2 [10]. See generally Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 28 [C.3].
- 129 Exhibit RC1560 Crown Resorts Submission to the Bergin Inquiry, 25 November 2020, 246–7 [917]–[918].
- 130 Exhibit RC0437 Statement of Helen Coonan, 28 April 2021, 21 [82(a)].
- 131 Exhibit RC0417 Crown Resorts Remediation Plan, 30 June 2021, 39–40.
- Exhibit RC0416 Statement of Nick Weeks, 7 June 2021, Annexure d, 37–9; Exhibit RC0417 Crown Resorts Remediation Plan, 30 June 2021, 39–42.
- 133 Exhibit RC0417 Crown Resorts Remediation Plan, 30 June 2021, 39.
- Exhibit RC0427 Statement of Jane Halton, 28 April 2021, Annexure j; Exhibit RC0427 Statement of Jane Halton, 28 April 2021, Annexure h.
- 135 Exhibit RC0416 Statement of Nick Weeks, 7 June 2021, Annexure i.
- 136 Exhibit RC0184 Statement of Victoria Whitaker, 16 April 2021.
- 137 Exhibit RC0417 Crown Resorts Remediation Plan, 30 June 2021, 42.
- 138 Transcript of Nick Weeks, 6 July 2021, 3381; Exhibit RC0478 Statement of Tony Weston, 6 July 2021, 1[6].
- 139 Exhibit RC0417 Crown Resorts Remediation Plan, 30 June 2021, 40.
- 140 Transcript of Jane Halton, 7 July 2021, 3600.
- 141 Transcript of Antonia Korsanos, 7 July 2021, 3661.
- 142 Transcript of Antonia Korsanos, 7 July 2021, 3709.
- 143 Exhibit RC0434 Statement of Antonia Korsanos, 27 April 2021, 22 [116].
- 144 Transcript of Stephen McCann, 6 July 2021, 3486.
- 145 Exhibit RC0478 Statement of Tony Weston, 6 July 2021, 2 [10].
- 146 Exhibit RC0478 Statement of Tony Weston, 6 July 2021, 3 [13].
- 147 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 55 [C.69].
- 148 Exhibit RC0427 Statement of Jane Halton, 28 April 2021, Annexure h.
- 149 Exhibit RC0427 Statement of Jane Halton, 28 April 2021, Annexure h, cl 2.1.
- Exhibit RC0477 Elizabeth Arzadon Expert Opinion regarding Cultural Change at Crown Melbourne, June 2021, 6.
- Exhibit RCO477 Elizabeth Arzadon Expert Opinion regarding Cultural Change at Crown Melbourne, June 2021, 4. Notably, Ms Arzadon was asked to complete a limited scope of work within a specific time period; for example, Ms Arzadon did not carry out a cultural review of Crown.
- 152 Exhibit RC0477 Elizabeth Arzadon Expert Opinion regarding Cultural Change at Crown Melbourne, June 2021. 6.
- Exhibit RC0477 Elizabeth Arzadon Expert Opinion regarding Cultural Change at Crown Melbourne, June 2021, 7.

- 154 Transcript of Michelle Fielding, 28 June 2021, 2667–8.
- 155 Exhibit RC0477 Elizabeth Arzadon Expert Opinion regarding Cultural Change at Crown Melbourne,
- 156 Exhibit RC0477 Elizabeth Arzadon Expert Opinion regarding Cultural Change at Crown Melbourne, June 2021, 11.
- 157 Exhibit RC0477 Elizabeth Arzadon Expert Opinion regarding Cultural Change at Crown Melbourne, June 2021, 11.
- 158 Exhibit RC0477 Elizabeth Arzadon Expert Opinion regarding Cultural Change at Crown Melbourne,
- Exhibit RC0477 Elizabeth Arzadon Expert Opinion regarding Cultural Change at Crown Melbourne, 159 June 2021, 15.
- Exhibit RC0477 Elizabeth Arzadon Expert Opinion regarding Cultural Change at Crown Melbourne, 160 June 2021, 16.
- 161 Exhibit RC0477 Elizabeth Arzadon Expert Opinion regarding Cultural Change at Crown Melbourne, June 2021, 16.
- 162 Transcript of Elizabeth Arzadon, 9 July 2021, 3968.
- Exhibit RC0447 Elizabeth Arzadon Expert Opinion regarding Cultural Change at Crown Melbourne, June 2021, 20.
- 164 Transcript of Elizabeth Arzadon, 9 July 2021, 3950.
- 165 Transcript of Elizabeth Arzadon, 9 July 2021, 3996-7.
- Transcript of Stephen McCann, 6 July 2021, 3490. 166
- Transcript of Nick Weeks, 6 July 2021, 3402. 167
- 168 Transcript of Victoria Whitaker, 9 June 2021, 1947.
- 169 Transcript of Elizabeth Arzadon, 9 July 2021, 3977.
- 170 Exhibit RC0477 Elizabeth Arzadon Expert Opinion regarding Cultural Change at Crown Melbourne, June 2021, 16.
- 171 Transcript of Victoria Whitaker, 9 June 2021, 1951–3.
- 172 Exhibit RC0477 Elizabeth Arzadon Expert Opinion regarding Cultural Change at Crown Melbourne,
- 173 Exhibit RC0477 Elizabeth Arzadon Expert Opinion regarding Cultural Change at Crown Melbourne, June 2021, 25.
- 174 Transcript of Elizabeth Arzadon, 9 July 2021, 3951.
- 175 Exhibit RC0477 Elizabeth Arzadon Expert Opinion regarding Cultural Change at Crown Melbourne, June 2021, 7.
- 176 Transcript of Elizabeth Arzadon, 9 July 2021, 3951.
- Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 52 [C.61]. 177
- 178 Transcript of Elizabeth Arzadon, 9 July 2021, 3996–7.
- 179 Exhibit RC0416 Statement of Nick Weeks, 7 June 2021, Annexure i.



CHAPTER 06

# Money laundering

#### CHAPTER 6

# Money laundering

#### Introduction

- 1 Money laundering is the act of disguising or legitimising the origins of money used in or derived from crime.<sup>1</sup>
- 2 By disguising the instruments and proceeds of crime, criminals are better able to avoid detection, prosecution and the confiscation of their illicit funds under proceeds of crime legislation.<sup>2</sup>
- 3 Money laundering has devastating effects. It enables almost all serious and organised crime, facilitates tax evasion and undermines the integrity of the legitimate economy.<sup>3</sup> Money laundering allows criminals to hide and accumulate wealth, avoid prosecution, evade taxes, increase profits through reinvestment and fund further criminal activity.<sup>4</sup> Money laundering is itself a crime, attracting penalties of up to life imprisonment.<sup>5</sup>
- In 2015, the then Australian Crime Commission (ACC) estimated that in the two years prior, serious and organised crime cost the country \$36 billion.<sup>6</sup> Money laundering both supports and conceals those crimes and was recognised by the ACC as one of three critical organised crime risks.<sup>7</sup>
- In 2011, Australia's financial crime regulator, AUSTRAC, published a report on money laundering in Australia. AUSTRAC explained money laundering and its consequences in the following way:

Criminals generate profits from illegal activities such as fraud, drug trafficking, tax evasion, people smuggling, theft, arms trafficking and corrupt practices. They rely on laundering or cleaning this 'dirty' money to legitimise or hide its illegal origins.

Money laundering involves processing illicit profits in ways which mask ownership and make funds appear to have come from legitimate sources. This enables criminals to hide and accumulate wealth, avoid prosecution, evade taxes, increase profits through reinvestment, and fund further criminal activity, including terrorism.<sup>8</sup>

6 At least \$10 billion is estimated to be laundered through the Australian economy annually.9

## The vulnerability of casinos to money laundering

- 7 Gaming venues are an ideal location in which to launder money.<sup>10</sup> They are one of the few remaining institutions where cash is commonplace. Casinos in particular present an attractive environment for money laundering.<sup>11</sup> They are notorious for attracting money launderers.<sup>12</sup>
- 8 It is not only Australian criminals and crime syndicates who seek to launder the proceeds of their crimes. Many foreign nationals come to Australia and its casinos with the same objective: to transform and clean illegal funds into usable currency.

- Casino operators are not unlike banks in that they offer patrons a wide range of financial services: they maintain customer accounts, exchange foreign currency, facilitate electronic funds transfers, act as money transmitters and cheque cashiers and themselves write cheques.<sup>13</sup> Often these services are available 24 hours a day.<sup>14</sup>
- 10 It is the variety, frequency and volume of financial transactions that casinos undertake, together with their cash-intensive nature and round-the-clock accessibility, that makes casinos particularly vulnerable to money laundering.<sup>15</sup>
- 11 Because cash is an anonymous store of value and leaves no audit trail, it is a medium favoured by criminals.
- 12 There are several ways to launder money through a casino. Initialism, a specialist AML consultancy engaged by Crown Resorts, identified 51.16
- 13 Obvious examples include:
  - · Cash derived from a criminal enterprise being used to purchase casino chips for the ostensible purpose of gambling and those chips then being redeemed (as purported 'winnings') in cash, cheque or money transfer. Following redemption, the funds appear to have been derived from a legitimate source, namely, from gambling activity.
  - · A criminal organisation deposits funds into a casino operator's bank account for use by a casino patron. The patron then purchases chips with the credit in their account before later redeeming those chips, again creating the appearance that the funds have been derived from a legitimate source.<sup>17</sup>
- 14 Other methods of money laundering employed at a casino may involve the exploitation of the following features and activities at casinos.
- 15 Casino VIP rooms and high-stakes gambling:
  - · Casino VIP rooms offer exclusive access to high-stakes gaming tables, where high-value bets are routinely placed, if not required as a condition of entry. High-stakes gaming is vulnerable to abuse because it is common for players to gamble with large volumes of cash, the source and ultimate ownership of which may not be readily discernible.18

#### 16 Junkets:

- For reasons discussed at length in Chapter 7, junkets are widely recognised as being susceptible to exploitation by money launderers. Features of junkets that make them vulnerable include: (a) people associated with junkets carrying large sums of cash into or out of the country; (b) junket operators moving large sums of money electronically between casinos and jurisdictions; and (c) layers of obscurity around the source and beneficial ownership of money used on junket tours.<sup>19</sup>
- In his evidence, A Police Officer in the Organised Crime Intelligence Unit of Victoria Police observed that, in their experience, money laundering through junkets at the Melbourne Casino was 'rife', with 'money that we highly suspected was illicit ... flooding into junket accounts on a daily basis'.20

#### 17 Electronic gaming machines:

• EGMs, known colloquially as 'pokies', offer criminals an accessible way to launder smaller sums of criminal proceeds. Criminals may launder illicit cash through EGMs by claiming gaming machine payouts from legitimate players (that is, paying cash to a player who has accumulated credits and then requesting a cheque from the gaming venue in a sum equivalent to those credits) or by putting large amounts of cash or credits through an EGM and then converting the credits to cash in the payout voucher as 'winnings'.<sup>21</sup>

#### 18 Multiple jurisdictions:

• Where a casino operator operates casinos across multiple jurisdictions, criminals may seek to convert chips purchased with dirty money at one casino into credit to be transferred to a second casino in another jurisdiction. Once transferred, the credit can be converted back to chips at the second casino and those chips later redeemed, with the funds appearing to have been derived from a legitimate source. Because the transaction takes place in stages, across casinos and jurisdictions, it is difficult for staff at a single casino to identify the transaction as suspicious and for any single regulator to detect it.<sup>22</sup>

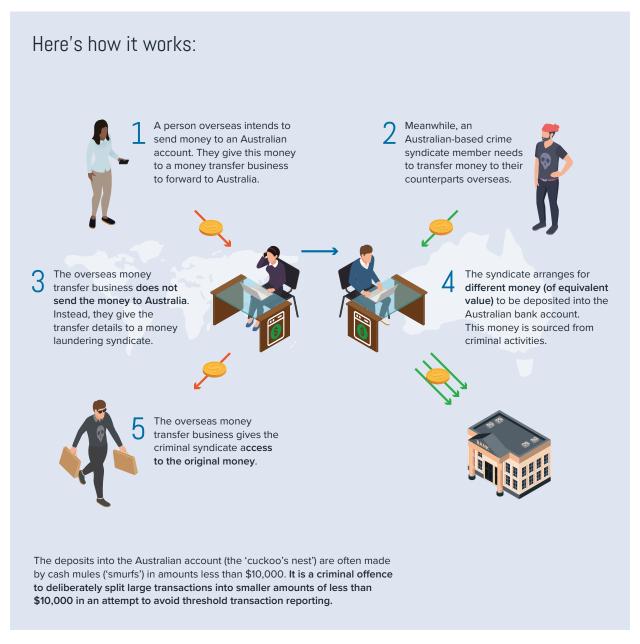
#### 19 Structuring:

- Structuring refers to the practice of deliberately splitting what could be a single cash transaction into several smaller transactions, each of which is less than \$10,000 individually but which collectively equal or exceed \$10,000.<sup>23</sup> Cash transfers of \$10,000 or more constitute 'threshold transactions' under the AML/CTF Act, which must be reported to AUSTRAC. Structuring is done to avoid the transfer of cash coming to the attention of AUSTRAC.
- It is possible that a person might deposit two or more sums of less than \$10,000, but which together exceed \$10,000, in short succession for legitimate gaming or other reasons. While such transactional behaviour is an indicator that money laundering may be occurring, it is not in and of itself proof of money laundering.<sup>24</sup>
- If carried out for the sole or dominant purpose of not giving rise to a 'threshold transaction' (and a corresponding 'Threshold Transaction Report (TTR)' to AUSTRAC) under the AML/CTF Act, structuring is a criminal offence attracting a penalty of up to five years' imprisonment.<sup>25</sup>

#### 20 Cuckoo smurfing:

- Cuckoo smurfing refers to a process where the flow of a legitimate payment is intercepted and replaced with a deposit of illicit funds by one or more third parties.<sup>26</sup>
- Cuckoo smurfing is facilitated by professional money laundering syndicates that work with a corrupt remitter based overseas. The corrupt remitter:
  - accepts an instruction from a customer to make a payment to an Australia-based beneficiary customer; and
  - hijacks the money transfer coming into Australia in order to place funds that are sourced from criminal activity into the Australia-based beneficiary account.<sup>27</sup>

- Generally, the beneficiary customer receiving the funds is expecting legitimate funds to be deposited into their account and is not aware that the funds transferred are the proceeds of crime.28
- The term 'cuckoo smurfing' is used because of similarities between this money laundering method and the activities of the cuckoo bird. Cuckoos lay their eggs in the nests of other bird species, which then unknowingly take care of the eggs, believing them to be their own.<sup>29</sup> Similarly, the Australian beneficiary customer may be unaware that the funds transferred into their account are the proceeds of crime and that these funds have been deposited into their account through a criminal process.30
- The following picture from a joint Australian Federal Police (AFP) and AUSTRAC fact sheet on cuckoo smurfing explains how the process works:



Source: AFP and AUSTRAC, Cuckoo Smurfing (Fact Sheet) < www.austrac.gov.au/sites/default/files/2021-06/21-1074%20Cuckoo%20 Smurfing%20Factsheet\_d04.pdf>.

- 21 Criminals who launder money at a casino by exchanging dirty money for chips to then be redeemed as purported winnings may be motivated to engage in game play before redemption. This is because actual gambling will help avoid their conduct appearing suspicious to casino staff (it otherwise involves converting money into chips and those chips back to money for no readily apparent legitimate purpose). Any money lost in the process of gambling is regarded as an acceptable 'cost of doing business'.
- 22 Insofar as certain money laundering methods increase levels of game play within a casino, casino operators stand to benefit. The more robust and effective their AML measures, the less revenue they will generate.
- A casino operator who is not of good repute, having regard to their character, honesty and integrity, may be tempted to turn a blind eye to money laundering in their casino in pursuit of profit. This is one reason why the Casino Control Act is concerned with the character (and financial soundness) of a casino licensee and their ongoing suitability.<sup>31</sup>
- 24 A key aim of the Casino Control Act is to ensure that the management and operation of casinos remains free from criminal influence and exploitation.<sup>32</sup>
- A casino operator who knowingly permits its operations to be exploited by money launderers, and potentially also one who unknowingly does so, cannot be suitable to hold or continue to hold a casino licence under the Casino Control Act. Neither can a casino operator who is reckless as to the possibility of such exploitation.
- A difficulty for casino operators in this respect is that there is 'often little observable basis for distinguishing between those patrons laundering funds in the casino and all other casino patrons'. This difficulty is compounded by the fact that there is no single method of money laundering and, over time, existing methods of money laundering may evolve and new methods be developed in an attempt to sidestep existing counter-measures and exploit new technologies. 4
- 27 In order for a casino operator to effectively mitigate the risk that its services will be used to launder money and, in turn, enable serious and organised crime, it must: (a) be acutely aware of the indicators of money laundering in a gaming environment; (b) have in place robust systems to detect and deter such conduct; and (c) ensure that those systems are regularly reviewed and functioning as intended. This much can be expected of a suitable licensee and is, by and large, mandated by legislation.

# The history of AML/CTF regulation in Australia

- 28 The Commonwealth Government first enacted legislation to combat money laundering by the *Cash Transaction Reports Act 1988* (Cth) (CTR Act). The CTR Act was the result of several royal commissions that uncovered links between tax evasion, fraud, organised crime and money laundering.
- 29 The CTR Act established the Cash Transaction Reports Agency and had as an aim the tracking of cash transactions.<sup>35</sup> The Act required cash dealers to report cash transactions of \$10,000 or more to the Director of the Cash Transaction Reports Agency. A 'cash dealer' included 'a person who carries on a business of operating a gambling house or casino'.<sup>36</sup>

- 30 In 1989, the Financial Action Task Force (**FATF**) was established to lead international efforts to fight money laundering. The FATF is a 39-member intergovernmental body that sets global AML and CTF standards. Australia is a founding member of the FATF.<sup>37</sup>
- 31 In 1990, the FATF issued a series of 40 recommendations designed to be enacted in national legal systems to help better combat money laundering.<sup>38</sup>
- 32 Some of the recommended measures were already embodied in the CTR Act. To meet others, the CTR Act was significantly amended.<sup>39</sup> It was renamed the *Financial Transaction Reports Act 1988* (Cth) (**FTR Act**) and, to reflect its broader remit, the Cash Transaction Reports Agency was renamed AUSTRAC.<sup>40</sup>
- From time to time since 1990, the FATF has revised its recommendations to account for evolving and increasingly sophisticated money laundering techniques and to strengthen existing AML/CTF measures.<sup>41</sup> New iterations of the FATF's recommendations were published in 1996, 2003 and 2012, with the 2012 recommendations updated in October 2020.<sup>42</sup>
- In 2005, the FATF evaluated Australia's compliance with its 2003 recommendations on money laundering, and nine special recommendations on terrorism financing. At that time, the Commonwealth was already reviewing Australia's AML/CTF regime.<sup>43</sup> These events culminated in the enactment of the AML/CTF Act on 12 December 2006, together with the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*(AML/CTF Rules) made under section 229 of that Act. In performing his or her functions under the Act, the AUSTRAC CEO must have regard to any relevant 'FATF Recommendations'.<sup>44</sup>
- 35 The AML/CTF Act largely replaced the FTR Act. AUSTRAC continued in existence under its auspices. 45 The AML/CTF Act contains a host of measures designed to detect, deter and disrupt money laundering and other serious financial crimes. It applies to providers of designated services, including gambling services. Accordingly, Crown Melbourne is subject to a number of obligations imposed by the Act.

#### The current AML/CTF regime

- 36 The AML/CTF Act and the AML/CTF Rules establish a framework under which 'reporting entities' are required to:
  - enrol with AUSTRAC
  - · report certain currency transactions to AUSTRAC
  - provide their designated services only in accordance with an AML/CTF program having certain characteristics
  - · lodge transaction and compliance reports with AUSTRAC
  - comply with record-keeping requirements related to the provision of the designated services.<sup>46</sup>
- 37 Any entity that provides a 'designated service' is a reporting entity.<sup>47</sup> Examples of designated service providers include banks, credit unions, remittance dealers, casinos and other providers of 'gambling services'.<sup>48</sup>

- 38 Along with a host of other services provided by casinos, gambling services include accepting bets, paying out winnings, allowing a person to play a gaming machine and exchanging money for chips.49
- 39 Crown Melbourne is a reporting entity for the purposes of the AML/CTF Act.
- 40 The AML/CTF Act imposes two primary obligations on reporting entities:
  - · the obligation to comply with the reporting obligations in the Act within specified timeframes
  - the obligation to implement an AML/CTF program that has certain mandatory features.<sup>50</sup>
- 41 It is an offence for a reporting entity to provide designated services without an AML/CTF program and otherwise than in accordance with that program.<sup>51</sup>
- 42 The primary purpose of the program is to ensure that a reporting entity identifies, manages and mitigates the risk that the designated services it provides will be exploited to launder money or finance terrorism.52
- 43 An AML/CTF program is ordinarily required to have two parts: Part A (general), which sets out procedures to identify, manage and reduce the risk that the reporting entity 'reasonably faces' to its provision of services that might involve or facilitate money laundering or terrorism financing; and Part B (customer information), which sets out procedures for identifying, collecting and verifying certain customer information (known as KYC).53
- 44 A reporting entity is obliged to carry out customer due diligence in the manner prescribed by Part B of its AML/CTF program.54
- 45 The AML/CTF Act requires the content of an AML/CTF program to be risk based.55
- 46 When determining appropriate systems and controls to adopt in its program, a reporting entity must have regard to the nature, size and complexity of its business and the type of money laundering/terrorism financing risk that it might reasonably face.56 In identifying the risk, it must consider:
  - its customer types, including any politically exposed persons
  - · the types of services it provides
  - · the methods by which it delivers those services
  - the foreign jurisdictions with which it deals.<sup>57</sup>
- 47 The requirement that a reporting entity has and implements an AML/CTF program tailored to its particular circumstances means that the burden of detecting, deterring and disrupting money laundering falls not only on AUSTRAC as the relevant regulator, but also on reporting entities directly. It is those entities, at the coal face, who are best placed to stop money laundering before it occurs, or to detect and report the activity.

#### The reporting requirements under the AML/CTF Act

- 48 In addition to implementing a risk based AML/CTF program, the AML/CTF Act obliges reporting entities to notify AUSTRAC of suspicious transactions, threshold transactions and international funds transfer instructions.<sup>58</sup>
- 49 In the circumstances specified in the AML/CTF Act, reporting entities are required to submit:
  - SMRs<sup>59</sup>
  - TTRs<sup>60</sup>
  - International Funds Transfer Instruction (IFTI) reports<sup>61</sup>
  - AML/CTF compliance reports.<sup>62</sup>
- 50 Each report must take a particular form and be submitted within a particular timeframe. AUSTRAC may then request additional information.<sup>63</sup>
- 51 Generally speaking, an SMR must be submitted where a reporting entity has reasonable grounds to suspect that a designated service it has provided or proposes to provide may involve the proceeds of crime or otherwise be related to money laundering, the financing of terrorism, tax evasion or some other serious offence. An SMR must also be submitted if the reporting entity has reasonable grounds to suspect that the person with whom they are dealing is not who they say they are.<sup>64</sup>
- 52 Among other things, the SMR must contain details of:
  - the reasonable grounds for suspicion relating to the suspicious matter
  - the person or entity to which the report relates (including in the case of the individual,
    if known, their full name, telephone number, address, date of birth, occupation, country
    of citizenship and any aliases used and, in cases where their identity is unknown,
    a description of the person and an indication as to whether the reporting entity holds
    any video footage or photographs of the person)
  - the relevant designated service involved and whether it was or is proposed to be provided.<sup>65</sup>
- Depending on the grounds for suspicion, a reporting entity is obliged to submit an SMR to the AUSTRAC CEO within 24 hours to three business days of forming the relevant suspicion. Failure to comply is an offence under the AML/CTF Act. 67
- A reporting entity must not disclose to any person other than AUSTRAC that it has submitted or is required to submit an SMR, or any information from which those facts could reasonably be inferred.<sup>68</sup> An unwarranted disclosure is referred to as 'tipping off' and it is an offence under the AML/CTF Act, punishable by up to two years' imprisonment.<sup>69</sup>
- 55 A TTR must be submitted when a reporting entity starts to provide or provides a designated service to a customer that involves a 'threshold transaction'. As noted earlier, a threshold transaction is one that involves the transfer of physical currency of \$10,000 or more or its foreign currency equivalent. Physical currency means cash. The transfer may involve either paying or receiving cash.

- 56 Among other things, the TTR must contain details of:
  - · the customer's full name, date of birth, address and, if known, any aliases used by the customer, any business name(s) and ABN(s) under which they operate and their telephone number (or similar details if the person conducting the threshold transaction is not the customer)
  - · the transaction itself
  - the recipient of the money.<sup>74</sup>
- 57 A reporting entity is obliged to submit a TTR to the AUSTRAC CEO within 10 business days after the day on which the transaction took place.75 Failure to comply is an offence under the AML/CTF Act.76
- 58 An IFTI report must be submitted when a person receives instructions in connection with the electronic transfer of funds into or out of Australia.77
- 59 Depending on the type of IFTI, an IFTI report must contain details of:
  - · the names of the payer and payee
  - · complete payer information or tracing information depending on the type of transfer
  - · the name and identity of the ordering institution or beneficiary institution and any relevant branch information
  - the amount and currency transferred
  - the date of transfer.<sup>78</sup>
- 60 A person must submit an IFTI report to the AUSTRAC CEO within 10 business days after the day on which the person sent or received instructions about the relevant transfer.<sup>79</sup> Failure to comply is an offence under the AML/CTF Act.80
- 61 The quality, accuracy and timely provision of these reports is important. Together with information and reports AUSTRAC receives from other sources, these reports equip AUSTRAC with the data it requires to identify and analyse transactions of concern and patterns of suspicious activity. The intelligence can then be shared with appropriate law enforcement bodies and actioned as required.81 The failure to provide these reports, or to provide them in a timely fashion, risks money laundering going undetected and unchecked. At best, its identification is made more difficult or delayed.

# Crown's AML/CTF program

62 As required by the AML/CTF Act, Crown has an AML/CTF program.<sup>82</sup> It is a joint program that applies to Crown Melbourne, Crown Perth, Crown Sydney and any other Crown company that might provide designated services from time to time (and that does not already have an AML/CTF program of its own).83

63 The current iteration of the joint Crown AML/CTF Program was approved by the Crown entities to which it applies, including Crown Melbourne, at a joint board meeting on 2 November 2020.84 At that meeting, Crown Melbourne resolved to appoint Mr Nicholas Stokes as its AML/CTF Compliance Officer.85

#### Money laundering at Crown Melbourne

- 64 The ability of a casino operator to identify, manage and mitigate money laundering risk is an important factor in ensuring that its casino operations remain free from criminal influence and exploitation.
- 65 A particular area of interest for this Commission was whether and how Crown Melbourne has managed and mitigated its money laundering risks, and how it proposes to do so in future. Crown Melbourne recognises that its ability in this area is central to an assessment of its suitability to continue to hold a casino licence.86
- 66 The Commission heard evidence from a number of AML/CTF experts, Crown employees and two witnesses from law enforcement with AML experience.
- 67 The evidence was given by:
  - five AML/CTF experts:
    - Ms Katherine Shamai: a partner at Grant Thornton and the author of Grant Thornton reports into the Southbank and Riverbank accounts
    - Mr Neil Jeans: the principal of Initialism and previous AML advisor to Crown<sup>87</sup>
    - Ms Lisa Dobbin: a partner at Deloitte and the person leading Deloitte's forensic investigations into a range of AML matters at Crown
    - Mr Alexander Carmichael: the Managing Director of Promontory Financial Group and the author of Promontory's reports into Crown's vulnerabilities to financial crime and assessing Crown's strategic AML capability
    - Ms Robyn McKern: a partner at McGrathNicol and the person who led McGrathNicol's forensic review for the Commission into certain aspects of Crown's response to the money laundering risks it confronts at its casinos
  - three witnesses from Crown:
    - Mr Steven Blackburn: Crown's recently appointed Group Chief Compliance and Financial Crime Officer
    - Mr Nicholas Stokes: Crown's then Group General Manager of AML and AML/CTF Compliance Officer
    - Mr Alan McGregor: CFO of Crown Melbourne and Crown Resorts
  - two law enforcement officials.

- 68 After the close of evidence, Crown notified the Commission that it had created a number of new executive-level roles related to its Financial Crime and Compliance Change Program (FCCCP). As a result of those changes, Mr Stokes' role became redundant and he left Crown effective on 30 September 2021.88
- 69 The Commission also reviewed substantial volumes of documentary evidence obtained under compulsory processes.
- 70 The evidence paints a profoundly unsatisfactory picture. It reveals:
  - a litany of failings on the part of Crown Melbourne and Crown Resorts to appropriately identify, mitigate and manage the risk that Crown Melbourne's provision of gambling services might involve or facilitate money laundering; including failures to report as required to AUSTRAC89
  - · that Crown Melbourne has not acted with rigour, candour or haste in addressing allegations and revelations of money laundering made in 2019 and 202090
  - · that despite Crown Melbourne having operated the Melbourne Casino since 1994 and it having been subject to AML obligations for the entirety of that time, its ability to manage money laundering risks is presently at only an 'early stage of maturity'91
  - that Crown Melbourne does not have in place robust and sustainable systems to detect and deter money laundering; rather it has significant, current vulnerabilities to financial crime and only a basic or preliminary state of preparedness to counter money laundering and financial crime more generally.92
- 71 It bears briefly mentioning some evidence from Victoria Police about likely money laundering on the gambling floors of the Melbourne Casino.
- 72 A Victoria Police officer in the Organised Crime Intelligence Unit gave evidence that every day, Victoria Police sees young Asian males taking cash in shoeboxes and plastic bags into the casino.93 The officer said there would be money laundering at the casino on a daily basis and that, in junkets, it is 'rife'. As previously mentioned, the officer told the Commission that Victoria Police officers were seeing money that they highly suspected was illicit flooding into junket accounts on a daily basis.95
- 73 The Police Officer also said that outside the junket programs, Victoria Police observed, or had intelligence as to, a lot of lower-level suspected money laundering.96 They explained:

The casino is the biggest cash business in this state, and the criminals that want to launder money love cash businesses. So to walk into the casino as an individual that wants to turn illicit cash into legal cash, the simplest way of doing that is putting it into your account, or running dirty money in there, getting chips, playing for a very small period of time and then cashing that in for a Crown cheque. You go to the bank and you tell the bank 'I won it at the casino.' That is the most basic kind of money laundering and I would suggest that would nearly happen on a daily basis, yes. 97

74 When asked whether the problem was as true today as it was 10 years ago, the officer's answer was that it was 'happening constantly'.98

- In contrast with that disturbing evidence, the Commission also heard evidence that, largely as a result of findings made in the Bergin Report and revelations made during the course of the Bergin Inquiry hearings, Crown has embarked on a program of significant reform in the way in which it tackles financial crime, including money laundering. Many Crown witnesses gave evidence about this program of AML reform. Its existence is relied upon as an indicator of Crown Melbourne's present suitability, notwithstanding Crown's acknowledged failings and deficiencies in this area.<sup>99</sup>
- 76 The reform program is both ambitious and a work in progress. It is also long overdue. At best, it will take considerable time to implement and embed. At worst, its implementation is subject to various contingencies and may fail.
- 77 Crown stands condemned that such a program of AML reform was not commenced much earlier. There is no acceptable reason for why that is so.
- 78 The remainder of this chapter considers:
  - the findings of the Bergin Inquiry with respect to money laundering
  - an alternative lens through which the facts underpinning the Bergin Inquiry's findings about Crown's knowledge of money laundering might be viewed, known as 'systems intentionality'
  - actions taken by Crown Melbourne in response to external scrutiny and allegations of money laundering
  - the present state of Crown Melbourne's preparedness to combat money laundering,
     together with the status of proposed reforms and risks to their successful implementation
  - consequent conclusions open to be drawn about Crown Melbourne's present suitability to continue to hold a casino licence
  - · recommendations.

# The findings of the Bergin Inquiry

- One of the key issues examined by the Bergin Inquiry was whether, as the media had alleged, Crown Resorts facilitated or turned a blind eye to money laundering through the bank accounts of its subsidiaries, Southbank and Riverbank, at the Melbourne and Perth casinos, respectively.<sup>100</sup>
- 80 The allegations and evidence before the Bergin Inquiry about these matters is set out at length in Chapter 3, and in the Bergin Report itself.<sup>101</sup>
- The Bergin Inquiry's findings were damning. It concluded that Crown had facilitated money laundering, likely worth hundreds of millions of dollars, over many years. 102
- 82 More particularly, it concluded:
  - The processes adopted by Crown Resorts enabled or facilitated money laundering through its Southbank and Riverbank accounts, despite warnings from its bankers over many years.<sup>103</sup>

- Crown Resorts failed to ensure that the operation of its casinos was protected from criminal exploitation.<sup>104</sup>
- Crown Resorts did not turn a blind eye to such money laundering, but rather:
  - made decisions and took steps in connection with potential money laundering that were 'infected by extraordinarily poor judgment'; and
  - was impeded in its ability to identify potential money laundering through the accounts because of an 'aggregation problem'. 105
- 83 Both Crown Resorts and Crown Melbourne accept the accuracy of the Bergin Inquiry's conclusions. 106 In Crown's own words, it:

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.<sup>107</sup>

- 84 Crown also recognises and accepts that the Bergin Inquiry exposed 'significant deficiencies in its response to the risk of money laundering in the casino'.<sup>108</sup>
- 85 Before turning to other matters, it is instructive first to consider why the Bergin Inquiry concluded that Crown Resorts did not turn a blind eye to money laundering and how a different conclusion might be reached by analysing Crown's conduct through the lens of what is known as 'systems intentionality'.<sup>109</sup>
- 86 Viewing Crown's conduct through this different lens provides a basis to challenge the proposition that Crown's facilitation of money laundering was 'inadvertent'.

## Systems intentionality

- 87 In determining whether Crown turned a blind eye to the money laundering activity occurring through its Southbank and Riverbank accounts, having ignored repeated warnings, the Bergin Report posited the relevant question to be 'whether the evidence establishes that Crown knew of money laundering and did nothing about it. That is, that Crown saw it and then intentionally looked away making itself "blind" to such activity'.<sup>110</sup>
- 88 The Bergin Inquiry's focus was directed primarily to the state of knowledge of Crown's directors and officers, whose knowledge could be attributed to Crown.<sup>111</sup> This is consistent with the traditional legal position that a corporation's directing mind and will is found in its board of directors.<sup>112</sup>
- 89 In reaching the conclusion that Crown was not knowingly or intentionally involved in money laundering through its Southbank and Riverbank accounts, 113 the Bergin Inquiry concluded:
  - No Crown officers were aware that money laundering was occurring through the relevant accounts—indeed, the majority of the Crown board was unaware of even the existence of those accounts.<sup>114</sup>
  - Key Crown employees and officers repeatedly failed to ask relevant questions and read
    relevant documents relating to the accounts that would have revealed the problem, and
    did not identify or report available warning signs further up the chain.<sup>115</sup>

- By reason of the 'aggregation problem' and the manner in which Crown's AML system operated, while Crown's AML Team were looking for indicators of money laundering, those indicia were not capable of being identified: '[t]he Crown team were looking. They were not looking away. It was just that they could not see'.'116
- 90 The aggregation problem was a practice where, in the main, when entering details of deposits made into the Southbank and Riverbank accounts to be credited to a single patron account in a Crown database known as SYCO, Cage staff aggregated multiple individual deposits into a single SYCO entry, rather than creating a separate entry for each individual deposit.<sup>117</sup>
- 91 As the Bergin Report remarked, 'the process of aggregation at the cage obscured the number and nature of the deposits which constituted the aggregated amount'. Therefore, the SYCO system 'did not give a complete picture of what was occurring in the underlying bank accounts. Important information which could be seen in the bank statements was lost in the process of data entry into the SYCO system'.<sup>118</sup>
- 92 In performing their AML functions, the AML Teams at Crown Melbourne and Crown Perth only reviewed extracts of the SYCO system, rather than the underlying Southbank and Riverbank bank statements. In consequence, transaction patterns, suspicious transactions and instances of structuring in those accounts were rendered undetectable to Crown's AML Teams. This can be described as a systems error. One consequence was that, by reason of an inability to identify potential instances or patterns of structuring, Crown's AML Teams were denied the ability to identify suspicious behaviour and form the suspicion required to trigger SMR reporting obligations.
- 93 The consequences of this were twofold. First, AUSTRAC did not receive timely reports of objectively suspicious financial conduct, which it therefore could not investigate as appropriate. Second, criminals could continue to launder money through the Southbank and Riverbank accounts unidentified and undeterred by any Crown scrutiny.
- 94 In a public submission to the Commission, Dr Elise Bant, a Professor at the University of Western Australia Law School, details a model by which to assess corporate culpability, referred to as 'systems intentionality'. This model represents a departure from the traditional approach to corporate responsibility, which is assessed by reference to the knowledge and conduct of those who lead the company. The systems intentionality model considers that corporate character and state of mind is manifested in a company's systems, policies and patterns of behaviour (as opposed to through the individual directors and officers who lead it). It is premised on the notion that 'a corporation's internal structures, methods and processes articulate systems that are inherently purposeful in their nature' (emphasis in original).
- 95 Applied in this instance, a systems intentionality model recognises that while Cage staff—whose data entry practices contributed to the aggregation problem—may have been individually honest, they were 'nonetheless cogs in a corporate process that was inherently apt to break the law'.<sup>124</sup>

96 Dr Bant's submission made the following observations, which bear setting out in full:

[T]he Bergin Report does not suggest that Crown's SYCO data entry (in particular, the aggregation) practices or [AML] compliance processes evolved by accident. Although there were some inconsistencies, it concluded that cage staff adopted an aggregated process 'in the main'. Any claim of accident by Crown would have to explain how these accidents were replicated over long periods, as individual employees were replaced by new employees trained in carrying out the requisite processes. It is open to conclude that this data entry pattern and practice evidenced a system of conduct adopted and maintained by Crown. The AML Team, by contrast, clearly adopted and carried out Crown's system of compliance checks, one predicated upon the (fatally flawed) SYCO database entries.

The next step [in the systems intentionality process] is to consider how, and why, the data entry and AML systems were set up, maintained and operated independently of one another notwithstanding that the data entry task was critical to the effective functioning of the AML system. The Bergin Report does not identify why the systems were separated in this way. What is clear is that, over many years, there appear to have been no audits or checks carried out of the data entry (including aggregation) process in light of its (again) inherently and obviously, critical role to the effective functioning of the compliance system. This failure continued notwithstanding repeated warnings and 'red flags' raised by third parties banks (ANZ, ASB and CB[A]) about the aggregation process. Crown was an entity with very significant gaming experience and, indeed, expertise. The systems were of central importance in countering the endemic and notorious risk of criminal money laundering activity. Here, it is open to consider that their ongoing separation need not be understood as a matter of accident or remarkable incompetence on the part of Crown. These were longstanding systems that were, arguably, inherently purposive and necessarily related. In this light, it may and should be asked whether, seen as functionally dependent and critically important compliance systems, their continued separation was intentional (emphasis in original).<sup>125</sup>

- 97 Relevant to Dr Bant's observations, it should be noted that Crown has not undertaken any meaningful root cause analysis of the aggregation problem and why instances of structuring on the Southbank and Riverbank bank accounts were not identified and escalated, in the face of repeated warnings. This is notwithstanding that Initialism was originally tasked with conducting a root cause analysis, 126 and that Crown informed AUSTRAC that such an analysis would be undertaken with Initialism's assistance.<sup>127</sup>
- 98 Instead, in October 2020, Crown Resorts undertook an internal audit assessment of transaction monitoring on the Southbank and Riverbank accounts and produced a cursory three-page draft report.<sup>128</sup> Two paragraphs were dedicated to 'root cause'. They reflect an obvious self-interest and a lack of critical analysis and reflection. They read:

The work conducted by Internal Audit revealed that Crown's historical practice of aggregating deposits in the Southbank and Riverbank bank accounts upon

entering them into SYCO, was done so [sic] with the purpose of optimising process efficiencies and customer service, and done so [sic] with no intended malice or desire to avoid AML requirements.

The control breakdowns that led to these transactions not being identified from an AML perspective were due to a lack of designated responsibility/ accountability and sufficient knowledge and understanding amongst relevant staff to recognise structuring as suspicious activity and the potential AML implications. This includes a design deficiency/oversight in the AML Program to identify and monitor all bank account transactions and subsequent aggregation in SYCO.<sup>129</sup>

- 99 From the features described in the Bergin Report, Dr Bant submitted that the following conclusions could be drawn:
  - · Crown's adoption and implementation of data entry and AML systems were purposive, in the sense that Crown intended generally to act through those systems of conduct. 130
  - · Crown must be taken to know what is inherent in those systems: namely, that they were critical to guarding against the notorious and ongoing risk of money laundering and were necessarily interdependent.<sup>131</sup>
  - · Crown's level of corporate culpability can be judged by reference to its systems. In this case, its systems were maintained over a very long period of time, without audit, in circumstances where there were no inherent adjustment mechanisms in either system to address their faults. These deficiencies had the consequence that the very conduct that the systems (seen together) were supposed to avoid was actively facilitated.<sup>132</sup>
  - By repeatedly ignoring and failing to act upon warnings and red flags raised by expert third parties, Crown manifested a highly reckless attitude towards money laundering, if not a level of culpability beyond recklessness. Viewed through the lens of systems intentionality, 'Crown must be taken to understand the inherent incidents of the systems it adopts and carries out. In this case, the unchecked, intentional and longstanding aggregation process, on which the AML system depended, actively and necessarily facilitated money laundering'. 133
  - · From an integrated systems perspective, the compliance checks carried out by the AML Team were guaranteed to fail. Where systems that are inherently liable to cause harm (for example, by facilitating criminal behaviour) are adopted and operative over a prolonged period of time, with no mechanism for review or adjustment, it becomes possible to see Crown as knowingly facilitating that risk through its intended (not accidental) conduct. This is open to being construed as dishonest conduct. 134
  - · While individual (or even all) directors and senior managers may have been oblivious of the systems in play, that is not the key question for this Commission. The key question for this Commission is whether the corporation is a 'suitable person'. That inquiry 'cannot, and must not, stop with its human figureheads'. 135

- 100 There is considerable force in Dr Bant's submission. It provides a compelling challenge to the proposition that Crown's facilitation of money laundering through its Southbank and Riverbank accounts was inadvertent. It also makes plain that mere 'board renewal' at various Crown entities, including Crown Melbourne, is not enough to render a company that is otherwise unsuitable to hold a casino licence, suitable. So, too, the mere adoption of new policies and processes apt to produce lawful conduct, is insufficient unless enacted on the ground.<sup>136</sup>
- 101 Systemic and sustained change is needed for a culpable corporation to reform its character, as revealed through its systems, policies and processes.<sup>137</sup>
- 102 While Crown Melbourne has embarked on a reformation process, that process remains ongoing and its outcomes are yet to be seen.

## Actions taken in response to money laundering allegations

- 103 On 5 and 6 August 2019, the media published an explosive article alleging that drug traffickers had used the Southbank and Riverbank accounts to bank suspected proceeds of crime, <sup>138</sup> and suggesting that Crown had facilitated and turned a blind eye to significant money laundering through those accounts. <sup>139</sup>
- 104 The articles followed years of warnings and red flags from various of Crown's bankers about potential money laundering in those accounts, which were repeatedly ignored.<sup>140</sup>
- 105 On 14 August 2019, the Bergin Inquiry was established. It was tasked, under Part B (Suitability Review) of its Terms of Reference, with inquiring into and reporting upon whether Crown Sydney remained a suitable person to hold a restricted gaming licence for the purposes of the *Casino Control Act 1992* (NSW) (and whether Crown Resorts is a suitable person to be a close associate of Crown Sydney) in light of the media allegations.<sup>141</sup>
- 106 A significant part of the Bergin Inquiry's work was directed to ascertaining the veracity of the media allegations surrounding the Southbank and Riverbank accounts.
- 107 For reasons that are explored in the Bergin Report, Crown itself did not see fit to engage external assistance to investigate whether there were indications of money laundering in those accounts until October 2020. This was:<sup>142</sup>
  - some 14 months after the media allegations were first made
  - despite Mr Jeans of Initialism, who at the time was providing discrete AML services to Crown, suggesting on 20 August 2019 that Crown ought investigate whether money laundering was occurring through its bank accounts generally, and introducing Ms Shamai of Grant Thornton to Crown with a view to Grant Thornton undertaking the requisite forensic account analysis<sup>143</sup>
  - despite Ms Shamai standing ready and able to assist<sup>144</sup>
  - despite Mr Jeans repeating his recommendation to Crown (via Mr Joshua Preston, then Chief Legal Officer of Crown) a second time, approximately one year later<sup>145</sup>
  - despite Mr Jeans repeating his recommendation to Crown (via Mr Ken Barton, then CEO and Managing Director of Crown Resorts) a third time, in early to mid-September 2020.

108 This failure to act is unacceptable. It displays a disturbing lack of haste and a disregard for, or indifference to, Crown's AML obligations.

#### Internal investigation of bank accounts

- 109 Whether due to Mr Jeans' repeated recommendations or otherwise as a result of probing by the Bergin Inquiry, in around September 2020 Crown commenced an internal investigation into cash deposits made between 2013 and 2019 into the bank accounts of Southbank and Riverbank.<sup>147</sup>
- 110 The internal investigation revealed 102 instances (comprising 609 individual deposits with a total value of \$5,223,401) of potentially structured cash deposits in the Southbank and Riverbank accounts, based on a 72-hour deposit window. The investigation also revealed that in each of these instances, the multiple deposits were aggregated when details of them were entered into SYCO. The sychological structured cash deposits in the Southbank and Riverbank accounts, based on a 72-hour deposit window.
- Mr Claude Marais, Crown's General Manager, Legal and Compliance, prepared a memorandum dated 29 September 2020 for Mr Barton setting out the results of the internal investigation.<sup>150</sup>
  The memorandum recorded that the investigation was continuing and would include a 'corresponding review of the other casino bank accounts for Crown Melbourne and Crown Perth into which patron funds are deposited'.<sup>151</sup>
- 112 The internal investigation did indeed proceed to examine transactions on the Crown Melbourne and Crown Perth bank accounts.<sup>152</sup> On 15 October 2020, Mr McGregor prepared a memorandum providing an update on Crown's internal investigation into cash deposits, potential structuring activity and suspicious deposit descriptors used through 'our various bank accounts' from 2013 to December 2019, including the Crown Melbourne and Crown Perth bank accounts.<sup>153</sup>
- 113 The 15 October 2020 memorandum recorded that Crown's investigation further revealed that the total value of cash deposits under the \$10,000 threshold made into the following accounts over the 2013–19 period was:

• Southbank CBA account: \$2,463,696

Riverbank ANZ account: \$2,452,009

· Riverbank CBA account: \$762,899

Crown Melbourne ANZ account: \$2,463,380

Crown Perth ANZ account: \$300,791.<sup>154</sup>

- 114 It will be observed that the value of cash deposits under the \$10,000 threshold was roughly the same in the Crown Melbourne account, the Southbank (CBA) account and Riverbank (ANZ) account over that period.
- This was a very significant revelation, because, while the media allegations were focused on the Southbank and Riverbank accounts, Crown now had data analysis that revealed equivalent activity of cash deposits under the \$10,000 threshold on the Crown Melbourne account.<sup>155</sup>

- 116 This data analysis should have, and may well have, rung alarm bells. It gave Crown grounds to suspect that money laundering through its bank accounts extended beyond the Southbank and Riverbank accounts, and into:
  - the Crown Melbourne bank account, at potentially equivalent levels
  - · the Crown Perth bank account, at lower levels.

#### Engagement of Grant Thornton and Initialism

- 117 Against this backdrop, in October 2020 Crown engaged Grant Thornton and Initialism to look for evidence of money laundering in the Southbank and Riverbank accounts alone. The engagement was for the express purpose of providing their reports to the Bergin Inquiry.
- The limitation on the scope of the Grant Thornton and Initialism investigations (to the Southbank and Riverbank accounts alone), the results of which were to be presented to the Bergin Inquiry, suggests a lack of candour on the part of Crown regarding the Bergin Inquiry and, through it, ILGA. An open conclusion is that Crown sought to limit the damage that might be inflicted on it by revelations of money laundering through bank accounts beyond the Southbank and Riverbank accounts.
- 119 Crown contends that the Crown Melbourne and Crown Perth bank accounts were not excluded from review at the time. 158 Rather, according to Crown, and indeed this was the evidence given by both Ms Shamai and Mr Jeans, the review of the Southbank and Riverbank accounts was 'prioritised' (emphasis in original), with the broader review to be undertaken subsequently. 159 Crown said that the prioritisation of the review of the Southbank and Riverbank accounts 'makes sense' as they were the accounts the subject of extensive examination at the Bergin Inquiry. 160
- 120 While it is true enough that the review of the Southbank and Riverbank accounts was prioritised, that observation does not address the issue of candour. Crown did not inform the Bergin Inquiry that a preliminary internal analysis had revealed equivalent volumes of transactions under the \$10,000 threshold on the Crown Melbourne account;<sup>161</sup> or that a subsequent investigation into those additional accounts was proposed.
- 121 Instead, the Bergin Inquiry was informed that Crown 'brought forward' the Grant Thornton Report because Crown considered that it was the right thing to do, and that Crown wanted to ensure that the Bergin Inquiry had 'complete and up-to-date information'. 162
- 122 Crown's submission also overlooks the relevance to the Bergin Inquiry of what was known about the other accounts. Although the Southbank and Riverbank accounts had been a focus of the hearings, Part B of the Bergin Inquiry Terms of Reference concerned a suitability review into Crown Sydney and Crown Resorts by reference to allegations of engaging in money laundering. The result of any investigation into suspected money laundering on the Crown Melbourne and Crown Perth accounts was directly relevant to the Bergin Inquiry's Terms of Reference.
- 123 Finally on this point, Crown also says the prioritisation of the Southbank and Riverbank investigation enabled a report to be produced in relation to the Riverbank and Southbank accounts before the close of the Bergin hearings.<sup>164</sup> It points to the length of time required

- by Deloitte to complete its current patron account review as evidence that it would not have been possible to produce a report for the Bergin Inquiry if all the accounts were investigated at once.165
- 124 The problem with this submission is that it ignores the fact that the media allegations about money laundering were made in early August 2019 and the Bergin Inquiry was announced on 14 August 2019. Crown had plenty of time to conduct a comprehensive investigation to put to the Bergin Inquiry.
- 125 Crown's desire to limit the damage it suffered, and its associated lack of candour, was also evident in other limitations imposed on the investigation by Grant Thornton that was to be presented to the Bergin Inquiry.
- 126 Those limitations, a function of the instructions provided by Crown, were:
  - · First, Grant Thornton and Initialism looked only at Southbank and Riverbank's Australian dollar bank accounts and not foreign currency accounts held by those entities.<sup>166</sup>
  - Second, the Grant Thornton work examined the Southbank and Riverbank accounts in isolation from each other, notwithstanding the plausible scenario that a money launderer might structure deposits across the two accounts. 167
  - · Third, the Grant Thornton analysis looked for only three of nine structuring scenarios identified by Initialism.<sup>168</sup>
- 127 In consequence, it is likely that the volume of structuring activity identified by Grant Thornton in the Southbank and Riverbank accounts is understated.<sup>169</sup>
- 128 As to the exclusion of the foreign currency accounts from the investigation, Crown:
  - · relies on the evidence given by Mr McGregor to the effect that the foreign currency accounts were set up for telegraphic transfers only (not cash) and a submission that they were therefore not suitable for review for structuring 170
  - · submits that, in any event, Deloitte will consider the foreign currency accounts in the course of its current review.<sup>171</sup>
- 129 Those arguments overlook the fact that structuring is but one money laundering technique. Similarly, that Deloitte will consider the foreign currency accounts does not address Crown's conduct in presenting only part of the picture to the Bergin Inquiry. The same can be said about Crown's submission that Deloitte also will consider money laundering across accounts.<sup>172</sup>
- 130 As to the structuring scenarios to be searched for, Ms Shamai said that if Crown was genuinely interested in uncovering the full extent of structuring on the Southbank and Riverbank accounts, she could not think of any defensible reason to exclude the additional six structuring scenarios from analysis.<sup>173</sup> She also said that it would have been quite straightforward to add the other six structuring scenarios to the forensic tool used to analyse the bank transaction data; and that it would not have materially increased the cost.<sup>174</sup>

- 131 Mr Jeans said that Crown's decision to limit the structuring scenarios to be identified from nine to three<sup>175</sup> was:
  - contrary to his recommendation
  - · the bare minimum level of scenarios that should be undertaken
  - · not what was proper or appropriate or sensible; but doing less would not have been acceptable.176
- 132 Mr Jeans also gave the somewhat contradictory evidence that the three scenarios used would best and most directly identify structuring in the Southbank and Riverbank accounts.<sup>177</sup>
- 133 In response to the proposition that Crown curbed the scope of the Southbank and Riverbank investigation by limiting the structuring scenarios to be searched for to three, Crown relies again on the issue of timing. Crown submits that Initialism's existing analysis was already a time-consuming and detailed exercise and that '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-collection and analysis exercise would be. 178 It also points to the prospect of the wider net generating false positives.<sup>179</sup>
- 134 This fails to take into account that the timing problem was of Crown's own making. If it had commenced the investigation in August 2019 in response to either the media allegations or the commencement of the Bergin Inquiry, there would have been ample time to conduct a full analysis. If the nine scenarios had produced false positives, they could have been eliminated by the Initialism analysis.
- 135 Further, Crown did not inform the Bergin Inquiry of the constraints on the scope of the review undertaken by Grant Thornton and Initialism.
- 136 Initialism's Southbank and Riverbank investigation also suffered from the first two constraints faced by Grant Thornton (foreign currency accounts were not reviewed nor were deposits across accounts).180 In addition:
  - Initialism relied on Grant Thornton's limited data analysis, save to the extent that Initialism carried out any broader investigation<sup>181</sup> (which it did only on a sample basis).<sup>182</sup>
  - · Initialism did not assess Crown's handling of the suspect transactions from an AML perspective (that is, whether Crown itself identified, reported and acted to mitigate the matters), although it could well have. 183
  - · It was outside Initialism's scope of work to make any recommendations in light of its findings.184
- 137 The imposition of the limitations on Grant Thornton and Initialism's engagement can be read as an attempt to limit the extent of any adverse findings.
- 138 The Initialism analysis concluded:
  - · Crown's operation of the Southbank and Riverbank accounts rendered them vulnerable to being used to launder money.<sup>185</sup>
  - · There were transactions indicative of the money laundering techniques of structuring, smurfing and cuckoo smurfing in the accounts.<sup>186</sup>

- There was activity indicative of cuckoo smurfing via the quick cash deposit channel.<sup>187</sup>
- · There were international transfers in the hundreds of thousands and millions of dollars that were indicative of cuckoo smurfing. 188
- · There were payments in the hundreds of thousands of dollars, and one in the millions of dollars, that had payment descriptors that were inconsistent with the underlying purpose of the payment to Crown, which was indicative of money laundering.<sup>189</sup>
- There were 117 instances indicative of structuring through the Riverbank account to avoid the TTR threshold.190
- There were 53 instances indicative of such structuring through the Southbank account.<sup>191</sup>
- 139 Mr Jeans estimated that Initialism identified indicators of money laundering in the multiples of millions of dollars. 192
- 140 By way of summary, the following points can be made at this stage:
  - · Money laundering via established and well-known money laundering techniques was facilitated and allowed to go undetected on the Southbank and Riverbank accounts for years.
  - · Once the media allegations were published, Crown did nothing to investigate the allegations for over a year. It acted only when it became untenable to continue to do nothing. Then, it did the bare minimum.
  - Despite the suggestion by the AML expert to review all its bank accounts, Crown did not do that and, as a result, did not present the full picture to the Bergin Inquiry. This failing is particularly problematic because once the Southbank and Riverbank accounts closed, it was probable that money laundering continued in other Crown bank accounts.<sup>193</sup>

### Analysis of Crown Melbourne and Crown Perth patron accounts

- 141 On 20 November 2020, Crown provided the Grant Thornton and Initialism reports to the VCGLR and indicated that it had instructed those firms to undertake equivalent analyses of the bank accounts operated by Crown Melbourne and Crown Perth. 194
- 142 For the analysis to be undertaken, Crown provided Grant Thornton with most of the bank statements it required. By the end of February 2021, the work was nearly complete.<sup>195</sup> Nonetheless, Grant Thornton was instructed to down tools by Crown's solicitors because another firm (which transpired to be Deloitte) was to be engaged to perform the analysis.<sup>196</sup>
- 143 The effect was to delay unduly the disclosure of any money laundering through Crown Melbourne's other bank accounts.

#### Investigation of money laundering through other Crown accounts at large

144 In February 2021, in response to suggestions made in the Bergin Report as to a 'pathway to suitability' for Crown Sydney, Crown engaged Deloitte to conduct a forensic review of its bank accounts to ensure that the criminal elements the Bergin Inquiry found had infiltrated the Southbank and Riverbank accounts had not infiltrated other accounts.<sup>197</sup>

- 145 This work is known as the Deloitte Phase 2 Forensic Review. Once complete, it will comprise the results of Deloitte's forensic investigation into activity on Crown's patron accounts over a seven-year period and will reveal whether there are indicia of money laundering in those accounts.<sup>198</sup> A 'patron account' is a bank account maintained by Crown and into which patrons can deposit money. There are at least 44 patron accounts. 199
- 146 The evidence is that the Phase 2 Forensic Review is unlikely to be complete until late September 2021.<sup>200</sup> In this respect, the Commission finds itself in the same position as did the Bergin Inquiry in relation to the Grant Thornton and Initialism reports. That is, the Commission may be in receipt of a critical report that it cannot test or meaningfully consider. This is quite unsatisfactory.

#### 147 Ms Dobbin said:

- If Deloitte had started its work in November 2020 (when Crown informed the VCGLR that Grant Thornton and Initialism had been instructed to undertake analysis of the Crown Melbourne and Crown Perth bank accounts), the results of its work would likely have been available to the Commission.<sup>201</sup>
- There was no impediment to Crown engaging Deloitte to perform the task earlier, including when allegations of money laundering through the Southbank and Riverbank accounts were first made in early August 2019.202
- Crown could have done a similar review at any point in time since the Melbourne Casino opened in 1994.<sup>203</sup>
- 148 Anticipating the difficulty in timing, the Commission examined some provisional or preliminary findings of Deloitte's Phase 2 work.<sup>204</sup> The provisional findings were that there exists 'initial indicators' of money laundering on 14 of Crown's patron accounts, but given the incomplete state of Deloitte's analysis it is too early to draw conclusions.<sup>205</sup>
- 149 A forensic review of Crown's patron accounts for the period 1 July 2019 to 22 February 2021 undertaken by McGrathNicol at the request of the Commission did not identify any indications of structuring (using a 72-hour deposit window) in that period.<sup>206</sup> It should be borne in mind, however, that:
  - a large part of the period the subject of McGrathNicol's review was affected by the COVID-19 pandemic, during which there were periods of lockdown and restrictions on international travel
  - the McGrathNicol Report had certain limitations that the Deloitte Phase 2 Report will not have.207
- 150 The following observations should be made about Deloitte's Phase 2 Forensic Review:
  - · First, the review is being undertaken as a step on the pathway to suitability for Crown Sydney. It is not a proactive initiative on the part of Crown. The formulation of Deloitte's scope of work was developed in the context of a draft letter to ILGA.<sup>208</sup>
  - Second, Crown unsuccessfully attempted to limit Deloitte's review to three years of bank transactions rather than seven, as is appropriate and usual, with a longer period providing a better opportunity to identify money laundering.<sup>209</sup>

- Third, Crown's deposit account balance (DAB) accounts (ledger accounts used by Crown to account for money deposited by patrons) are excluded from Deloitte's review,<sup>210</sup> except where there are related transactions in the patron accounts, notwithstanding that transaction activity on those accounts is, according to Ms Dobbin, a significant area of potential money laundering activity.<sup>211</sup>
- 151 Crown submits that it was the apparent money laundering in the Southbank and Riverbank accounts that caused Crown to commission a comprehensive audit of its bank accounts.<sup>212</sup> The evidence does not support that submission. The evidence establishes that it was only subsequent to the Bergin Inquiry setting out a minimum requirement for suitability that Crown acted to engage Deloitte to conduct a comprehensive audit.<sup>213</sup>
- 152 Moreover, the Bergin Report states:

The [ILGA] could have no confidence that either [Crown Sydney or Crown Resorts] 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 ... 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.<sup>214</sup>

- 153 Crown submits that the exclusion of the DAB accounts from the Deloitte Phase 2 work (save for where there are related transactions in the patron accounts) was justified because:
  - Crown fairly and correctly interpreted the recommendation of the Bergin Inquiry relating to bank accounts<sup>215</sup>
  - there is '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.<sup>216</sup>
- 154 These are not helpful submissions. First, there is nothing in the text of the Bergin Report's suggestion that limits it to bank accounts. Second, if Crown were seeking to show bona fides or exhibit full transparency in light of past, admitted instances of money laundering on the Southbank and Riverbank accounts, it would surely include all its accounts, including the DAB accounts, in the Deloitte Phase 2 Forensic Review. Third, McGrathNicol's work, albeit preliminary and requiring further investigation, reveals potential structuring and parking on the DAB accounts.<sup>217</sup>
- 155 The evidence given by Ms Dobbin is significant:
  - Q: Am I right to assume that when you get to the end of this project you are not going to be able to say to anyone, whether that be Crown or the ILGA, that there is no money laundering on the DAB accounts?
  - A: No, we won't be able to say that.
  - Q: You won't be able to say one way or the other, that there is or isn't money laundering on the DAB accounts; is that right?
  - A: Correct.

- **Q:** And do you see transactions on the DAB accounts to be a significant area of potential money laundering activity which could be the subject of a review?
- **A:** I would see them as accounts that will have relevant transactions or relevant behavioural patterns that will help us to understand what we are seeing in the bank accounts.
- **Q:** Yes, I do accept that they are going to be relevant but my question was slightly different. I will ask it again. Do you see that the transaction activity on the DAB accounts, in and of itself, is a significant area of potential money laundering activity that could be the subject of a review?
- A: Yes, I would agree with that.<sup>218</sup>
- 156 McGrathNicol's forensic analysis revealed 1,914 individual transactions associated with 272 unique patrons that appeared to be structuring, although more analysis is required to determine whether the transactions relate to genuine gaming behaviour or are indicative of money laundering. The most recent of those transactions identified in the McGrathNichol analysis is 25 May 2021 for Crown Melbourne and 16 June 2021 for Crown Perth.<sup>219</sup>
- 157 McGrathNicol recommends further investigation to determine whether these transactions are in fact indicative of money laundering.<sup>220</sup> The Commission is not aware of any proposal by Crown to undertake that investigation, except for a proposed sample-based review by Crown, the results of which it will assess to determine whether it considers a 'full review of all transactions identified by McGrathNicol is required'.<sup>221</sup>

# Response to the Grant Thornton and Initialism Southbank and Riverbank reports

- 158 Grant Thornton's reports on the Southbank and Riverbank accounts identified a total of 52 individual patrons involved in potential structured transactions in the Riverbank account and 30 patrons in the Southbank account.<sup>222</sup>
- 159 On 18 March 2021, the VCGLR wrote to Crown Melbourne, referring to the patrons identified in the Grant Thornton and Initialism reports, and queried whether Crown Melbourne's 'Significant Player Review' had regard to the reports, in particular, when considering the 'suitability of the patrons identified in those reports to continue to be customers of Crown'.<sup>223</sup>
- 160 On 24 March 2021, Crown Melbourne replied. Its reply revealed that the process being undertaken to address the observations in the Grant Thornton and Initialism Southbank and Riverbank reports involved undertaking a 'historical "look-back" of transactions' to determine whether any 'retroactive reporting' to AUSTRAC was required.<sup>224</sup> The letter also indicated that to the extent suspicious matters were identified, Crown would undertake enhanced customer due diligence (which includes a requirement to consider whether to continue to have a business relationship with the patron).<sup>225</sup> Crown Melbourne explained that it did not deem it necessary to expand or amend the Significant Player Review to consider the suitability of patrons referred to in the reports.<sup>226</sup>

- 161 It is evident that Crown Melbourne did not move quickly to investigate whether it should cease dealing with patrons on whose accounts there were indications of money laundering. Indeed, the 'look-back' was still ongoing as at late March 2021.<sup>227</sup>
- 162 Ms Shamai of Grant Thornton was asked whether this was an appropriate response. She said that the next step (following revelation of the structuring activity) is to investigate whether the structuring is being done with the knowledge of the patron in order to determine the root cause of it and whether the patron is an appropriate person with whom Crown Melbourne should be dealing. Ms Shamai said she would expect that investigation to commence immediately after the evidence of the structuring came to light.<sup>228</sup>
- 163 Critically, Ms Shamai said the danger in delaying the commencement of that type of investigation is that it allows the behaviour to continue.<sup>229</sup> She agreed that a reporting entity whose facilities were knowingly being used for money laundering would be expected to act with reasonable haste.230
- 164 In May 2021, Crown had a change of heart and decided to subject the patrons to its Significant Player Review process. That process remains ongoing.<sup>231</sup>

#### Introduction of new patron account controls

- 165 A second, more encouraging aspect of Crown's response to the Grant Thornton and Initialism revelations was the introduction of new policies and controls over its patron accounts. The new controls have largely been operational since 1 December 2020.<sup>232</sup> They are designed to ensure that the conduct that occurred on the Southbank and Riverbank accounts cannot be repeated. They comprise:
  - a third party transfers and money remitters policy statement<sup>233</sup>
  - a return of funds policy statement<sup>234</sup>
  - a bank transfer notification.<sup>235</sup>
- 166 To assess the efficacy of the new policies and controls, Crown:
  - · engaged Initialism to review transactions on its Crown Melbourne and Crown Perth bank accounts to assess whether prohibitions relating to cash payments and third party transfers were being observed by customers and enforced by Crown<sup>236</sup>
  - engaged Deloitte to conduct a controls assessment, looking at the design and operational effectiveness of the new controls. This work is known as the Deloitte Phase 1 work.<sup>237</sup>
- 167 A draft Initialism report identified a series of cash deposits that may have been in breach of the prohibition on cash deposits.<sup>238</sup> It also identified several potential telegraphic transfer deposits from third parties, including money remitters, that did not appear to have been returned as required by the new controls.<sup>239</sup>

- 168 Initialism required further data before it could reach definitive conclusions.<sup>240</sup> That data has not yet been provided and Initialism has been unable to finalise its work.<sup>241</sup>
- 169 Deloitte's Phase 1 Report assessing the effectiveness of the new patron account controls reached the following conclusions:
  - As to design effectiveness, the controls were aligned with industry practice and effective
    in addressing cash structuring and cuckoo smurfing.<sup>242</sup> However, the controls are not yet
    sufficiently mature to be effective on a sustainable basis and significant enhancement
    is required from a design perspective.<sup>243</sup>
  - As to operational effectiveness, Crown staff's process in accepting deposits was largely in line with policy.<sup>244</sup>
- 170 Ms Dobbin conceded that Deloitte had 'serious concerns' about the design of the new controls and had identified deficiencies in both the design and the sustainability of those controls.<sup>245</sup>
- 171 The issue of sustainability identified by Deloitte was that the review period considered by Deloitte (1 December 2020–22 February 2021) was not reflective of either normal transactional volumes or AML/CTF risk exposures due to COVID-19 restrictions. Because the controls were entirely manual, Deloitte expressed the view that the patron account controls are 'unlikely to be sustainably effective in a normal volume environment'.<sup>246</sup>
- 172 Deloitte also made a number of incidental observations, including that training was largely 'on the job', that there were instances of a lack of formal or consistent documentation, and there were instances of inconsistency in the application of certain controls.<sup>247</sup>
- 173 This is broadly consistent with the opinion of McGrathNicol. It found that, if effectively implemented, Crown's new patron account controls will prevent and deter certain types of money laundering, but that they have the hallmarks of being implemented at speed and in an ad hoc manner, and are immature, manual and at risk of being unsustainable.<sup>248</sup>
- 174 Deloitte made a series of recommendations in its Phase 1 Report, to which Crown responded.<sup>249</sup> Deloitte then assessed Crown's response.<sup>250</sup>
- 175 Deloitte's assessment of the response indicates the large scope of work that must be undertaken to implement its recommendations.
- 176 Ms Dobbin agreed that 'there is a lot to do' and that it would take many months, perhaps six, to bed down the relevant processes despite only being a small part of Crown's overall AML Program.<sup>251</sup>
- 177 Importantly, Deloitte's assessment of Crown's response:
  - · was limited to the 'words on paper'
  - · assumes the implementation will be delivered effectively and to a high standard
  - did not evaluate the capability of the staff who will implement the reforms.<sup>252</sup>

# Crown's present state of preparedness and the status of the proposed reforms

- 178 The Commission heard a good deal of evidence about Crown's present state of preparedness to combat money laundering; from Crown's own internal financial crime staff and from several third party experts, including those engaged by Crown (Promontory, Deloitte, Initialism) and one engaged by the Commission (McGrathNicol).<sup>253</sup>
- 179 The preponderance of the evidence is that Crown has significant, current vulnerabilities to financial crime and only a basic or preliminary state of preparedness to counter money laundering and financial crime generally.
- 180 Mr Blackburn assesses Crown as being at a 'foundational' level or 'early stage of maturity' in its management of financial crime risk.<sup>254</sup>
- In describing Crown's management of financial crime risk as foundational, Mr Blackburn had regard to the fact that it has a compliant joint AML/CTF Program, that most processes are documented, that foundational resources and capabilities are in place and that largely manual processes are deployed and basic controls and systems operating. He considered that of the elements within an overall financial crime program, the majority were foundational and the others were either in an initial stage or transitioning to foundational.<sup>255</sup>
- 182 Mr Stokes said that Crown has 'the foundations of a robust framework from an AML/CTF control perspective', but that operational staff thought that some AML framework matters and tools that should exist were absent.<sup>256</sup>
- 183 Promontory completed two reports for Crown. The first assessed Crown's present vulnerability to AML (Phase 1).<sup>257</sup> The second concerned what capabilities Crown would need to have to maintain an effective AML/CTF compliance program (Phase 2).<sup>258</sup>
- 184 The Promontory Phase 1 Report provides a detailed and sobering assessment of Crown's present vulnerabilities to financial crime. It catalogues each of those vulnerabilities and contains a host of recommendations about how Crown can best address them and improve its policies, procedures and systems.
- 185 The Phase 1 Report assessed that some controls were only partially effective and required attention.<sup>259</sup> When asked whether there were any aspects of Crown's overall AML control framework that could be described as 'mature' or 'optimal', the most that Mr Carmichael (from Promontory) could say was that some individual elements were 'consistent with the industry practices'.<sup>260</sup>
- 186 The Phase 1 Report observed that Crown's AML/CTF control environment was undergoing a period of significant change and enhancement. It noted that, based on its experience working with organisations implementing major change, some foundational elements are required for effective and sustained transformation, including a transformation strategy and plan and a change management process. In Promontory's view, both of those elements were underdeveloped. The risks of proceeding with change without those two elements included inefficiencies, ineffectiveness, the introduction of new problems, data loss and the loss of process integrity.<sup>261</sup>

- 187 McGrathNicol's assessment was similarly concerning. It found that Crown's approach to the management of money laundering and terrorism financing risk is a work in progress and far less advanced than could reasonably be expected of an entity that has been providing gambling services for approximately 30 years, and has been subject to obligations to operate a risk based AML/CTF program for the last 15 of those years.<sup>262</sup>
- 188 McGrathNicol's assessment as at July 2021 was that, if Crown's overall financial crime maturity is foundational, it is only 'barely and recently so'.<sup>263</sup>

#### Future plans

- 189 In recognition of some of its past and present failings and informed by various reports, Crown has plans to uplift its AML capability in future. Crown's proposals in this respect are set out in a number of documents, including:
  - a 'Financial Crime & Compliance Board Pack' dated 24 May 2021, which:
    - details Mr Blackburn's assessment of the current state of maturity of Crown's financial crime and compliance programs
    - sets out his proposals for enhancement and uplift through the FCCCP<sup>264</sup>
  - a memorandum dated 7 June 2021 setting out a road map and proposed timeframe to implement recommendations in the Deloitte Phase 1 Report and Promontory Phase 1 Vulnerability Assessment.<sup>265</sup>
- 190 McGrathNicol has reviewed the FCCCP plan and concluded that it is comprehensive and appropriately prioritised.<sup>266</sup> The Commission accepts this. It is, however, only at the early stages of design and implementation.
- 191 Significant aspects of the proposed FCCCP are either yet to be completed or only just underway.<sup>267</sup> For example, the critically important enterprise-wide risk assessment is not yet complete.<sup>268</sup> The replacement of the AML/CTF Committee with the Financial Crime Oversight Committee and the Financial Crime Working Group is only just underway.<sup>269</sup> Mr Blackburn is 'in the process of' engaging a firm to perform an independent review of Crown's formal AML Program,<sup>270</sup> which is expected to commence in late 2021.<sup>271</sup>

#### Consideration as to present and future state

- 192 Notwithstanding the past failings and the present early stage of the implementation of its reforms, Crown contends that its AML Program or framework is 'presently appropriate, adequately resourced and compliant',<sup>272</sup> and that 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'.<sup>273</sup>
- 193 It also submits that while its AML Program is necessarily ongoing, it expects to have reached an advanced state of AML maturity by December 2022.<sup>274</sup>
- 194 The Commission does not accept these submissions.

- 195 The evidence establishes that Crown's AML Program is not presently adequately resourced. Mr Blackburn acknowledged that Crown's Group Financial Crime Team and program is only appropriately resourced '[g]iven its current maturity level' to meet 'minimum' standards, 275 and that the financial crime program 'must evolve through considerable enhancements, thus requiring further material investment in both FTE [full-time equivalent positions] and systems'.<sup>276</sup>
- 196 Crown proposes to recruit a further 55 permanent full-time equivalent positions and 10 further temporary full-time equivalent positions in financial crime and compliance.<sup>277</sup> Based on the role descriptions, the work to be performed by the 65 additional full-time equivalent positions is neither superfluous nor unnecessary.<sup>278</sup>
- 197 Further, Mr Blackburn has assessed elements of Crown's 'financial crime ecosystem' as being at either an 'initial' or transitioning from 'initial' to 'foundational' stage of maturity,<sup>279</sup> where:
  - · 'initial' maturity refers to an entity with inadequate resources, inadequate governance, minimal processes and limited awareness of risk
  - · 'foundational' maturity refers to an entity with a compliant AML/CTF program, most of its processes documented, foundational resources and capability, largely manual processes and basic systems and controls, which has initiated 'assurance'.280
- 198 The elements that Mr Blackburn assessed as 'initial' include:
  - Procedures
  - Enterprise-wide risk assessment
  - · Product risk assessment
  - · Board oversight—roles and responsibilities
  - Board oversight—assurance.<sup>281</sup>
- 199 The elements that Mr Blackburn assessed as transitioning from 'initial' to 'foundational' include:
  - · Customer risk rating
  - Third party due diligence
  - · Supporting infrastructure and data readiness
  - Compliance and breach reporting.<sup>282</sup>
- 200 By way of further example, Mr Blackburn made the following comments about the limitations of Crown's current key financial crime and compliance systems:
  - Manual records: prone to data entry error; no direct feedback into Crown systems or risk registers
  - SYCO: not intuitive and there is no scope to upload documents
  - · Sentinel (Crown's new automated transaction monitoring system): no case management; relies on input from other systems
  - · CURA (the AML Customer Risk Register): no integration with other Crown systems

- Unifii (the unusual activity reporting and AML Investigation Portal): currently no integration with Crown systems; not suitable for end-to-end case management
- · Dow Jones/Factiva (the customer screening and news search tool): limited ability to customise and calibrate screening preferences
- Surveillance: significant deficiencies in the way the security and surveillance operations are conducted in each of the properties.<sup>283</sup>
- 201 As to the claim of 'compliance' with the AML/CTF Act and Rules, 284 Crown overstates what the evidence discloses. There is no evidence that Crown presently complies with each of the requirements of the AML/CTF Act and Rules. The only evidence of compliance is in respect of one aspect of Crown's overall AML framework; namely, the joint AML/CTF Program. Mr Blackburn said that the joint AML/CTF Program was compliant.<sup>285</sup> Mr Jeans' opinion was that Part A of the Program complies with the AML/CTF Rules and is appropriately designed.<sup>286</sup>
- 202 Just because the joint AML/CTF Program on paper is compliant does not mean that the program is being carried out. One example will suffice.
- 203 Crown made the following observation about the joint AML/CTF Program:

The [Crown joint AML/CTF Program] provides for a 'Three Lines of Defence' Model in respect of money laundering and terrorism financing (ML/TF) risk. 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 commercial business risk, this ensures that the commercial motivations are appropriately balanced with ML/TF risks. 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 riskbased 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 (emphasis added).<sup>287</sup>

204 However, in his FCCCP board pack presentation, Mr Blackburn noted that 'Crown doesn't currently have a second line of defence assurance function'. <sup>288</sup> He said:

> The second line of defence must apply risk-based assurance to assess and test compliance with policy and program obligations across Crown in respect of compliance, financial crime and responsible gaming. Where issues are identified, the second line must then apply deficiency management to ensure that those issues are addressed in a timely and effective manner. As Crown does not currently have a second line assurance function, one is proposed under the [FCCCP] (emphasis added).289

#### 205 Further, as to compliance:

- The results of AUSTRAC's formal enforcement investigation into the compliance of Crown Melbourne with the AML/CTF Act over the period 31 October 2014 to 16 October 2020 are not yet known; but Crown concedes that it may have breached:
  - the obligation in section 36 of the AML/CTF Act relating to the conduct of ongoing customer due diligence, by not complying with all the requirements in Chapter 15 of the AML/CTF Rules
  - section 81 of the AML/CTF Act, by not adopting and maintaining an AML/CTF program that complied with all of the requirements set out in Chapters 8 and 15 of the AML/CTF Rules
  - section 82, by not complying with the requirements set out in its AML/CTF Program.<sup>290</sup>
- · Crown may have provided a registrable designated remittance service in contravention of section 74(1A) by way of the paid-out process.<sup>291</sup>

#### Timeliness of implementation of Crown's changes

- 206 Change takes time.
- 207 It is apparent that Crown's present state of preparedness to fight financial crime is wanting. It has only recently begun to action a reform agenda to remedy deficiencies in its AML policies, practices and systems. Crown itself acknowledges that the program of reform required to address its deficiencies is 'necessarily ongoing', 292 and that it is under no illusion as to the dimension of the challenge it faces on AML reform.<sup>293</sup>
- 208 Precisely how long the reform program will take to fully implement, and whether it will be successful, remain to be seen.
- 209 Ms Dobbin, in assessing the time required to implement Deloitte's recommendations about patron accounts (being a 'very small' part of the overall AML Program),<sup>294</sup> thought that task alone would take many months, and that a further six to 12 months would then be required from the date the recommendations 'went live' to test and determine whether they were working as intended.<sup>295</sup>
- 210 Mr Carmichael, when asked to estimate how long it would take to implement all of the recommendations in Promontory's Phase 1 Vulnerability Assessment, said that some recommendations could be actioned reasonably quickly, whereas others would 'take years'.<sup>296</sup>
- 211 Mr Blackburn has not forecast how long he thinks the reform agenda will take to complete, but has set an aspiration date of 31 December 2022 to deliver Crown to its target maturity state.<sup>297</sup> Other documents reveal some target dates stretching into 2023 where the reforms require technology or systems changes.<sup>298</sup>

#### 212 McGrathNicol observed that:

- the financial crime projects involved in the FCCCP are at a very preliminary stage and some are not yet scoped or costed
- · there is a significant amount of work for Crown to do
- there is a considerable risk associated with achieving an advanced stage of maturity within Crown's proposed timeframe, the key risks being funding, technology and people.<sup>299</sup>
- 213 In order to achieve its reform agenda, Crown will need to attract skilled employees in significant numbers, absorbing them and having them quickly scale the learning curve, noting that they are unlikely to bring casino experience.<sup>300</sup>
- 214 Whether this is achievable, and sustainable over the long term, remains to be seen. There is cause for hope, and for doubt.
- 215 Crown Melbourne appears to accept that there is at least some risk that, left to its own devices, it might not stay the course on AML and other reform. This concession is implicit in Crown Melbourne's submission that it is appropriate to appoint an independent monitor or supervisor with extensive powers and functions to oversee and scrutinise the implementation of its reform program.<sup>301</sup>

#### Conclusion

- 216 This Commission must assess the suitability of Crown Melbourne to continue to hold the casino licence now. As matters stand, Crown Melbourne is not suitable. This is because Crown:
  - · facilitated money laundering through the Southbank bank account
  - failed to investigate warnings about potential money laundering through that account over many years
  - failed to investigate media allegations of money laundering through that account until 14 months after they were levelled, the Bergin Inquiry was established and it had become entirely untenable for Crown to continue to do nothing
  - was slow to take reasonably available steps having regard to the conclusions of the Grant Thornton and Initialism reports with respect to Southbank and Riverbank including to review, promptly, whether to continue to provide services to those patrons whose accounts contained transactions indicative of money laundering
  - provided many of its experts with limited sets of instructions with a view to them producing reports that looked better for Crown, but that did not analyse the full picture
  - did not display candour to the Bergin Inquiry in respect of the review performed by Grant Thornton and Initialism of transactions on the Southbank and Riverbank bank accounts
  - does not presently have sufficiently robust systems to detect and deter money laundering and other forms of financial crime and is uncertain whether and when it will have such systems.

- 217 The Commission has examined Crown's program of financial crime reform. That program, although nascent, is appropriate and Crown should continue to develop, pursue and implement it, with regular progress reporting to the regulator and the proposed Special Manager (see Chapter 16).
- 218 The Commission also heard evidence from a number of third party experts who had examined parts of Crown's overall AML framework and made recommendations as to reform and improvement. Crown Melbourne should implement each of the recommendations set out in:
  - Promontory Phase 1 Report dated 24 May 2021 and titled 'Phase 1: AML Vulnerability Assessment'<sup>302</sup>
  - Promontory Phase 2 Report dated 20 June 2021 and titled 'Strategic Capability Assessment'<sup>303</sup>
  - Deloitte Phase 1 Report dated 26 March 2021 and titled 'Assessment of Patron Account Controls'<sup>304</sup>
  - Initialism Transaction Monitoring Review dated June 2021<sup>305</sup>
  - McGrathNicol Report dated 5 July 2021 and titled 'Forensic Review—AML/CTF'. 306

# Other evidence of reform measures to reduce money laundering and financial crime

- 219 The Commission heard evidence from two law enforcement witnesses about measures that could be introduced at the casino to increase verification and identification protocols and assist in law enforcement.
- 220 Commander Michael Frewen of Victoria Police Crime Command said that the Commission may wish to consider the following options to increase verification and identification protocols at the Melbourne Casino and assist in law enforcement:
  - All patrons attending Crown Casino Melbourne be required to produce identification, of minimum threshold, which is to be recorded on an internal Crown Casino Melbourne database. Patron gambling be monitored and recorded to ensure it is commensurate with legitimate gambling activity.
  - Information-sharing arrangements be established between Crown Melbourne, Victoria Police and the VCGLR, which prescribes the information Victoria Police needs to meet its law enforcement obligations, and the format and timeframes for the provision of that information to Victoria Police.<sup>307</sup>
- 221 A Police Officer in the Organised Crime Intelligence Unit gave evidence concerning reforms aimed to stop money laundering at the casino. When asked what they would do, short of closing the casino, to stop money laundering, the officer said:
  - ... I would say you need to be tighter around your betting accounts. I'm not sure whether the casino is a bank, but ... they certainly operate like one. So I would first off make sure anybody who had an account, a betting account,

or an offset account or a safety deposit box had to provide 100 points of ID to open that. If you want to have people that could access that account, being deposit or withdrawal, they also have to show 100 points of ID ...

The other thing I would stop is the casino should have an account which is in the name of the patron of that account, so any withdrawal, apart from a cheque, any withdrawal could only go into that patron's bank account that they own. It cannot go into yours, can't be directed to mine, has to be that. If that person wants to direct the money to you, then he does it out of his own account.308

- 222 The issue of increased or better identification procedures and requirements was echoed in the evidence given by Mr Jeans. Mr Jeans noted that one of the major enablers of money laundering was anonymity and therefore one of the first things to be considered to prevent money laundering is to reduce the level of anonymity by identifying or being in a position to identify people who are gaming or bringing money into the casino.<sup>309</sup>
- 223 By way of example, Mr Jeans referred to registered clubs legislation, where there is a requirement to be identified before entering a club. He said this usually requires the provision of a driver licence or other authoritative photo identification.310
- 224 In Victoria, an example of a regime requiring the production of identification before entering a club is to be found in the Liquor Control Reform Act 1998 (Vic), which regulates the sale of liquor to club members, guests of members and non-members.
- 225 The identification requirement is found in schedule 1. By section 10(4) a club licence is granted subject to a condition that the rules of the club comply with schedule 1. Schedule 1 provides that the rules of a club must provide for the keeping of records of guests.<sup>311</sup> In the case of a club that holds a venue operator's licence, the rules of a club must provide that an 'authorised gaming visitor' must:
  - · produce evidence of their residential address before being admitted to the licensed premises
  - carry identification at all times while on the licensed premises.<sup>312</sup>

## Improved identification procedures

- 226 In considering any improvement to patron identification procedures, it is important to understand one particular aspect of the context in which the Melbourne Casino operates. That aspect is the AML/CTF regime that does deal with customer identification.
- 227 The default position under part 2 of the AML/CTF Act is that a reporting entity must verify a customer's identity before providing a designated service to the customer. However, under part 10.1 of the AML/CTF Rules, casinos (as opposed to providers of gaming services) are exempted in respect of designated services of a certain kind.313
- 228 In effect, those rules exempt casinos, where the gaming service in question involves an amount less than \$10,000 (or an amount of \$10,000 or more that involves the customer giving or receiving only gaming chips or tokens), from the requirement to verify the identity of a customer before providing a service to that customer.

- 229 Mr Jeans was aware of mandatory identification obligations under the AML/CTF Rules. Referring to the current identification level of \$10,000, Mr Jeans said that it would be sensible to reduce that limit. He explained that there is a balance between casual low-value gambling and a person undertaking 'nefarious activities'. His evidence was that identification at a lower level was worth considering.314
- 230 There is both a practical and conceptual distinction between identifying customers at the point of, or prior to, the provision of services, and identifying customers as they enter or seek to enter the gaming floor.
- 231 There are also practical and conceptual distinctions between:
  - · requiring customers to produce identification; and
  - requiring the casino to verify customer identification.
- 232 Commander Frewen's evidence was directed to the point of entry onto the casino floor; and also referred to identification of a minimal threshold. The Promontory Phase 1 Report also made a number of observations and recommendations regarding the authentication of identification documents by Crown Melbourne. There is, nevertheless, merit in the obligation being on the casino to verify the customer's identity.

#### RECOMMENDATION 1. IMPROVED IDENTIFICATION

It is recommended that section 122 of the Casino Control Act be amended to include a new sub-paragraph for procedures for the verification of the identity of all persons seeking to enter the Melbourne Casino. The system should include requirements for the retention of customer data.

## Compulsory carded play

- 233 Carded play (as distinct from uncarded play) involves a patron using or swiping their Crown membership card prior to playing any game at the casino. Carded play has a number of benefits when it comes to the responsible service of gambling, including permitting the measurement of the time spent gambling (see further discussion in Chapter 8).
- 234 Mr Jeans gave evidence about mandatory carded play (which he prioritised over the issue of prohibiting cash) in terms of its AML/CTF benefits.<sup>315</sup> Those include: (a) providing the opportunity to monitor and audit the complete behaviour and activity of the patrons; (b) enabling better identification of unusual activity; and (c) providing more transparency.316
- 235 Crown is presently considering system changes that enforce carded play (and therefore customer identification) via reduced cash thresholds across a range of services, which Crown observes will enable implementation of enhanced transaction monitoring rules across customer gaming activity.317

236 Additionally, in June 2021, Crown introduced a table games and Cage uncarded play limit, where a card is required for transactions above \$4,999. Trown is also planning a feasibility study on implementing limits on uncarded play for EGMs and electronic table games for transactions above \$1,999. Transactions above \$1,999.

#### RECOMMENDATION 2: CARDED PLAY

It is recommended that a direction be given to Crown Melbourne pursuant to section 23(1) of the Casino Control Act to the effect that carded play be compulsory at the Melbourne Casino for all gaming.

#### Cashless play

- 237 The question of cashless play (or a prohibition on the use of cash at the casino) raises different considerations, a number of which may pull in different directions.
- 238 To begin with, it is noted that:
  - because cash is an anonymous store of value and leaves no audit trail, it is a medium favoured by criminals
  - the cash-intensive nature of casinos is one reason why they are particularly vulnerable to money laundering<sup>320</sup>
  - as per the Victoria Police evidence, the Melbourne Casino is the biggest cash business in this state, and criminals who want to launder money love cash businesses.<sup>321</sup>
- 239 The Victorian Responsible Gambling Foundation (VRGF) made submissions in respect of cashless gambling. It submitted that while a move to solely cashless gambling presents opportunities to assist monitoring gambling behaviour, with the dual benefit of providing data to track gambling behaviours (to support appropriate intervention) and assisting research into behaviour associated with gambling harm, it also carries a risk of increasing gambling harm due to the frictionless nature of the transaction. As a result, there is less likelihood of time for reflection, and the potential to make it difficult for people to track their spending during gambling.<sup>322</sup>
- 240 In its submission, the VRGF points out other risks identified by the research, including that:
  (a) cashless gambling encourages higher spending; (b) cash transactions are felt as more painful (and less associated with reward); and (c) 'cashless methods can reduce the efficacy of existing harm reduction measures that make people take a physical break or have interpersonal contact, for example, to access cash'.<sup>323</sup>
- 241 The VRGF contends that unless structured properly, cashless gambling could put people at increased risk of gambling harm. It submits that any move towards cashless forms of gambling needs to be developed and viewed through a gambling harm reduction lens and implemented only in association with well-planned harm reduction measures that reduce the risk of continuous gambling.<sup>324</sup> The VRGF suggests that such measures include:

- a universal system that requires people who gamble to set limits and prevents use when those pre-set limits are reached
- information and education about the time and money limits that are appropriate
- enforced break periods of at least 15 minutes every three hours.<sup>325</sup>
- 242 The VRGF also recommends that 'if cashless gambling or digital wallets are to be introduced or trialled in Victoria, a system with a harm prevention focus should first be developed and piloted in order to assess its effectiveness'. 326
- 243 Many of the concerns identified by the VRGF will be addressed or mitigated if other recommendations in this Report are accepted. For example, in Chapter 8 there is a recommendation that the YourPlay pre-commitment system be made compulsory for EGMs with set time limits for gambling and limits for expenditure.
- 244 Another recommendation is for improvements to be made to Crown Melbourne's Gambling Code to address harm minimisation measures at the Melbourne Casino.
- 245 Crown Melbourne's submission on cashless gaming similarly refers to what it calls the 'prominent harm minimisation strategy' of limiting a patron's access to cash, referring to legislation that restricts the location or availability of ATMs in the casino venue and also manages withdrawal limits.<sup>327</sup>
- 246 Crown Melbourne's submissions state that it is considering cashless gaming initiatives to reduce the use of cash in its casinos, including the introduction of a digital wallet program that would allow patrons to transact digitally.<sup>328</sup> Crown Melbourne also refers to section 68 of the Casino Control Act, which prohibits Crown Melbourne from providing money or chips as part of a transaction involving a credit card or a debit card.<sup>329</sup> Crown Melbourne says:
  - [S]ubject to the approval of the respective State governments, Crown intends to move to cashless gaming over time. The main way patrons will be able to fund gaming activity will be through a digital wallet for all games. A digital payment committee at Crown is currently considering this. 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.<sup>330</sup>
- 247 Mr Jeans' view is that prohibiting cash would not work particularly well because, in his words, 'there are people who would want to come to the casino and use diminished levels' of cash.<sup>331</sup>
- 248 A transition to cashless gaming (or to cashless gaming above a nominal threshold of, say, \$1,000) will be a matter where the devil is in the detail. For reasons that are explored elsewhere in this Report, Crown Melbourne should not be trusted to pursue such a course unsupervised.

249 In light of this, and in the circumstances, and conditional on:

- · the acceptance and implementation of all the recommendations in Chapter 8; and
- due regard being paid to the VRGF's concerns about cashless gambling,

the following recommendation is made regarding cashless play.

#### RECOMMENDATION 3: CASHLESS PLAY

It is recommended that a direction be given to Crown Melbourne pursuant to section 23(1) of the Casino Control Act to the effect that Crown Melbourne phase out the use of cash at the Melbourne Casino, save for gaming transactions of \$1,000 or less.

250 The issues dealt with in this chapter concern the prevention of criminal conduct. The prevention of criminal conduct will be aided if Crown Melbourne shares information with law enforcement agencies.

# RECOMMENDATION 4: INFORMATION SHARING WITH STATE LAW ENFORCEMENT

It is recommended that a direction be given to Crown Melbourne pursuant to section 23(1) of the Casino Control Act to the effect that it enter into an information-sharing protocol with Victoria Police. The protocol must set out, to the satisfaction of Victoria Police, the information-sharing arrangements between Crown Melbourne and Victoria Police, which against the background of what Victoria Police needs, prescribes what information Crown Melbourne must provide, and the format and timeframes for the provision of that information.

# RECOMMENDATION 5: INFORMATION SHARING WITH FEDERAL LAW ENFORCEMENT

It is recommended that the regulator, if it deems appropriate, give a direction to Crown Melbourne pursuant to section 23(1) of the Casino Control Act to the effect that Crown Melbourne enter into a similar arrangement with the Australian Criminal Intelligence Commission and the Australian Federal Police.

#### Single patron bank account

- 251 In respect of Crown Melbourne's patron bank accounts, which are the bank accounts held by and in the name of various Crown entities into which patrons can make deposits, Ms Dobbin agreed in evidence that:
  - the ease of monitoring for money laundering is greatly enhanced by having a single patron account
  - there is a greater risk of failure in monitoring for money laundering where there are multiple patron accounts to monitor.<sup>332</sup>
- 252 Mr Blackburn indicated that he is looking to rationalise the number of patron accounts at Crown and would agree with a recommendation from this Commission that there be no more than a single patron account for each of the Melbourne, Perth and Sydney casinos.<sup>333</sup>

#### RECOMMENDATION 6: SINGLE PATRON BANK ACCOUNT

It is recommended that a direction be given to Crown Melbourne pursuant to section 23(1) of the Casino Control Act to the effect that on and from 30 June 2022, it must keep and maintain a single account as approved by the regulator at an authorised deposit-taking institution in the state for use for all banking transactions by patrons.

### Retention of surveillance footage

- 253 Commander Frewen said that Victoria Police would be assisted in conducting its law enforcement duties if Crown Melbourne were to retain its security footage 'for as long as possible' given that Crown's current practice is to 'erase footage after a short period of time'.<sup>334</sup>
- 254 Mr Craig Walsh, Crown Melbourne's Executive Director of Security and Surveillance, gave evidence that footage is only held for 14 days.<sup>335</sup>

#### RECOMMENDATION 7: SURVEILLANCE FOOTAGE

It is recommended a direction be given to Crown Melbourne pursuant to section 23(1) of the Casino Control Act to the effect that it retain all security and surveillance CCTV footage for a period of 12 months.

## **Endnotes**

- 1 'Crimes We Prosecute: Money Laundering', *Commonwealth Director of Public Prosecutions* (Web Page) <a href="https://www.cdpp.gov.au/crimes-we-prosecute/money-laundering">www.cdpp.gov.au/crimes-we-prosecute/money-laundering</a>>.
- ACC, Organised Crime in Australia 2011 (Report, 2011) 46. Proceeds of crime are subject to confiscation and forfeiture under the *Proceeds of Crime Act 2002* (Cth) and, among other state acts, the *Confiscation Act 1997* (Vic).
- ACC, The Costs of Serious and Organised Crime in Australia 2013–14 (Report, 2015) 9; AUSTRAC, Money Laundering in Australia 2011 (Report, 2011) 8. The phrase 'serious and organised crime' has a particular statutory meaning pursuant to s 4 of the Australian Crime Commission Act 2002 (Cth).
- 4 Australian Criminal Intelligence Commission, Organised Crime in Australia 2017 (Report, 2017) 9.
- 5 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 60 [78]-[82]. Money laundering offences exist in the Criminal Code (Cth) (sch 1 to the Criminal Code Act 1995 (Cth)), the Crimes Act 1958 (Vic) and the legislation of certain other states. Part 10.2 of the Criminal Code (Cth) makes it a crime to intentionally, recklessly or negligently deal with money or other property that are the proceeds of crime, reasonably suspected of being the proceeds of crime or intended to become instruments of crime. The severity of the penalty liable to be imposed, which may include life imprisonment, is based on the value of the money or other property in question and the state of knowledge of the party dealing with that property. Comparable offences exist in ss 193-195A of the Crimes Act 1958 (Vic) and attract penalties of up to 20 years' imprisonment. The Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) also contains a series of money-laundering related offences, in ss 53, 55, 123 and 136-43, which attract penalties of up to 10 years' imprisonment. Examples of offences under that Act include knowingly providing false or misleading information or documents required to be provided under the Act (ss 136-7); producing or possessing a false identification document intended for use in a customer identification procedure required by the Act (s 138); engaging in 'structuring' so as to avoid triggering the threshold reporting requirements of the Act (s 142); and failing to submit particular reports about the movement of physical currency in the form, and at the time, required by the Act (ss 53-5).
- ACC, The Costs of Serious and Organised Crime in Australia 2013–14 (Report, 2015) 3–4, 6, 11.

  The \$36 billion estimate comprised \$21 billion in direct losses (excluding confiscated proceeds of crime) and \$15 billion in prevention and response costs, including spending on related law enforcement and criminal justice activities.
- ACC, Organised Crime in Australia 2011 (Report, 2011) 7; AUSTRAC, Money Laundering in Australia 2011 (Report, 2011) 5.
- 8 AUSTRAC, Money Laundering in Australia 2011 (Report, 2011) 8.
- 9 ACC, Organised Crime in Australia 2011 (Report, 2011) 46.
- 10 See generally FATF, *Vulnerabilities of Casinos and Gaming Sector* (Report, March 2009); AUSTRAC, *Money Laundering in Australia 2011* (Report, 2011) 21–3; American Gaming Association, *Best Practices for Anti-Money Laundering Compliance 2019–2020* (Report, 2020).
- 11 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 45 [2].
- 12 See generally FATF, *Vulnerabilities of Casinos and Gaming Sector* (Report, March 2009); AUSTRAC, *Money Laundering in Australia 2011* (Report, 2011) 21–3; American Gaming Association, *Best Practices for Anti-Money Laundering Compliance 2019–2020* (Report, 2020).
- 13 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 46–7 [9]–[10].
- 14 FATF, Vulnerabilities of Casinos and Gaming Sector (Report, March 2009) 25 [86].
- 15 FATF, Vulnerabilities of Casinos and Gaming Sector (Report, March 2009) 25 [87].
- Exhibit RC1351 Initialism Transaction Monitoring Review Crown Resorts, June 2021, 45–55. See also FATF, Vulnerabilities of Casinos and Gaming Sector (Report, March 2009) 27–46 [99]–[142].
- 17 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 46 [8].
- 18 AUSTRAC, Money Laundering in Australia 2011 (Report, 2011) 22.
- 19 AUSTRAC, Money Laundering in Australia 2011 (Report, 2011) 22.
- Transcript of A Police Officer, 18 June 2021, 2079–80.
- 21 AUSTRAC, Money Laundering in Australia 2011 (Report, 2011) 22.

- 22 FATF, Vulnerabilities of Casinos and Gaming Sector (Report, March 2009) 28-9 [103]-[104].
- 23 Exhibit RC0084 Statement of Lisa Dobbin, 16 April 2021, Annexure e, 6, 19.
- Exhibit RC0465 McGrathNicol Forensic Review AML/CTF Report Part 1, 5 July 2021, 14. 24
- 25 Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) ss 142-3.
- Exhibit RC0084 Statement of Lisa Dobbin, 16 April 2021, Annexure e, 6. 26
- 27 AUSTRAC, Cuckoo Smurfing: Financial Crime Guide (June 2021) 4.
- 28 AUSTRAC, Cuckoo Smurfing: Financial Crime Guide (June 2021) 4. There are also instances where the Australian beneficiary customer is aware of the suspicious activity occurring on their account but wilfully ignores the activity. Further, there are instances where a person overseas has intentionally engaged a corrupt remittance service provider to send funds to their own accounts in Australia to avoid capital controls or tax laws in a foreign jurisdiction: AUSTRAC, Cuckoo Smurfing: Financial Crime Guide (June 2021) 4.
- 29 AUSTRAC, Cuckoo Smurfing: Financial Crime Guide (June 2021) 5.
- 30 AUSTRAC, Cuckoo Smurfing: Financial Crime Guide (June 2021) 5.
- 31 Casino Control Act 1991 (Vic) ss 9(1)-(2)(b), 9(2)(d), 25.
- 32 Casino Control Act 1991 (Vic) s 1(a)(i).
- 33 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 47 [10].
- 34 AUSTRAC, Money Laundering in Australia 2011 (Report, 2011) 9.
- 35 Cash Transaction Reports Act 1988 (Cth) s 35(1).
- 36 Cash Transaction Reports Act 1988 (Cth) ss 3(1), 7.
- 'Who We Are', FATF (Web Page) <www.fatf-gafi.org/about>. 37
- FATF, The Forty Recommendations of the Financial Action Task Force on Money Laundering (Report, 1990). 38
- 39 Those amendments were effected by the Cash Transaction Reports Amendment Act 1991 (Cth).
- 40 Cash Transaction Reports Amendment Act 1991 (Cth) ss 5,11.
- 41 FATF, The Forty Recommendations of the Financial Action Task Force on Money Laundering (Report, 1990).
- 42 'Review of the FATF Standards and Historical Versions', FATF (Web Page, 2021) < www.fatf-gafi.org/ publications/fatfrecommendations/documents/review-and-history-of-fatf-standards.html#historical>.
- 43 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 48-9 [18]-[20]; Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) s 209.
- 44 Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) s 212(4).
- 45 Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) s 209.
- 46 Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) pts 3, 7, 10.
- 47 Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) ss 5-6.
- 48 AUSTRAC, Money Laundering in Australia 2011 (Report, 2011) 7; Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) s 6(1).
- 49 Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) s 6(1) (table 3).
- 50 AUSTRAC, Money Laundering in Australia 2011 (Report, 2011) 7; Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) pts 3, 7; Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) (Cth) r 8.1.2.
- 51 Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) ss 81–2.
- 52 Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) ss 80, 84(2); Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) (Cth) r 8.1.2.
- 53 Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) pt 7.
- 54 Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) ss 32, 81.
- 55 See, eg, Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) ss 84(2)(c), 84(3)(b); Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) (Cth) rr 4.2.2, 4.2.5, 4.2.8, 4.2.9, 4.3.2, 8.1.3, 8.3.2.
- 56 Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) (Cth) r 8.1.3.
- 57 Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) (Cth) r 8.1.4.
- 58 Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) pt 3.
- 59 Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) ss 41–2.
- 60 Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) ss 43-4.

- 61 Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) ss 45-6.
- 62 Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) s 47.
- Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) s 49. 63
- Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) ss 41(1)-(2). 64
- Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) s 41(3); Anti-Money Laundering 65 and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) (Cth) r 18.2.
- 66 Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) s 41(2).
- 67 Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) s 41(4).
- 68 Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) s 123(1).
- 69 Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) s 123(11).
- 70 Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) ss 43(1)-(2).
- 71 Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) ss 5, 18–19.
- 72 Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) s 5. The term 'physical currency' is defined to mean 'the coin and printed money (whether of Australia or of a foreign country) that is designed as legal tender and circulates and is customarily used and accepted as a medium of exchange in its country of issue'.
- 73 Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) s 5.
- 74 Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) s 43(3); Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) (Cth) r 19.3.
- 75 Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) s 43(2).
- 76 Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) s 43(4).
- 77 Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) ss 45(1)-(2).
- 78 Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) s 45(3); Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) (Cth) chs 16-17.
- 79 Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) s 45(3). See also 'Examples of IFTI Reporting for Casinos', AUSTRAC (Web Page, 2021) < www.austrac.gov.au/business/how-complyguidance-and-resources/guidance-resources/examples-ifti-reporting-casinos>.
- 80 Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) s 45(4).
- 81 AUSTRAC, Money Laundering in Australia 2011 (Report, 2011) 4.
- 82 Exhibit RC0023 Statement of Nicholas Stokes, 25 April 2021, Annexure d; Exhibit RC0309 Statement of Steven Blackburn, 21 April 2021, Annexure b.
- 83 Exhibit RC0023 Statement of Nicholas Stokes, 25 April 2021, Annexure d, 1 [1.1], 28 (definition of 'Crown Entity').
- 84 Exhibit RC1306 Minutes of Crown Melbourne board meeting, 2 November 2020, 2, 4.
- 85 Exhibit RC1306 Minutes of Crown Melbourne board meeting, 2 November 2020, 5.
- Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 86 [D.1]. 86
- 87 Transcript of Nicholas Stokes, 21 May 2021, 439.
- 88 Exhibit RC1617 Letter from Allens Linklaters to Solicitors Assisting, 27 August 2021.
- 89 Exhibit RC0149 Letter from Allens Linklaters to Solicitors Assisting, 24 March 2021, Annexure b; Exhibit RC0244 Letter from Allens to Solicitors Assisting, 21 April 2021, Annexure b; Exhibit RC0037 Grant Thornton Report titled Forensic Data Analysis for Crown Resorts—Riverbank Investment Pty Ltd, 17 November 2020; Exhibit RC0038 Grant Thornton Report titled Forensic Data Analysis for Crown Resorts— Southbank Investment Pty Ltd, 26 November 2020; Exhibit RC0062 Statement of Neil Jeans, 16 April 2021, Annexure c.
- 90 Adrian Finanzio, Penny Neskovcin, Meg O'Sullivan and Geoffrey Kozminsky, Counsel Assisting Submissions, Royal Commission into the Casino Operator and Licence (14 July 2021) 154 [1.5].
- 91 Exhibit RC0310 Supplementary Statement of Steven Blackburn, 28 April 2021, 6 [26]; Exhibit RC0100 Phase 1: AML Vulnerability Assessment, 24 May 2021.
- 92 Adrian Finanzio, Penny Neskovcin, Meg O'Sullivan and Geoffrey Kozminsky, Counsel Assisting Submissions, Royal Commission into the Casino Operator and Licence (14 July 2021) 179 [4.4].
- 93 Transcript of A Police Officer, 18 June 2021, 2084-5.
- 94 Transcript of A Police Officer, 18 June 2021, 2079.

- 95 Transcript of A Police Officer, 18 June 2021, 2080.
- 96 Transcript of A Police Officer, 18 June 2021, 2080.
- 97 Transcript of A Police Officer, 18 June 2021, 2080.
- 98 Transcript of A Police Officer, 18 June 2021, 2079-80.
- 99 See, eg, Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 10 [A.21].
- 100 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 206 [11]-[12].
- 101 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 204-5 [2]-[6].
- 102 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 232 [153]; Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 543 [9], 544 [12].
- 103 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 232 [153].
- 104 Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 549 [43].
- 105 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 234 [166], [168].
- 106 Exhibit RC1268 Letter from Antonia Korsanos and Helen Coonan to Ray Finkelstein, 17 March 2021.
- 107 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 92 [D.26]. See also Exhibit RC1268 Letter from Antonia Korsanos and Helen Coonan to Ray Finkelstein, 17 March 2021, 2.
- 108 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 10 [A.21].
- 109 Submission 49 University of Western Australia Law School, 6.
- 110 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 233 [160].
- 111 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 233 [162].
- 112 Submission 49 University of Western Australia Law School, 3; Lennard's Carrying Co v Asiatic Petroleum Co Ltd [1915] AC 705, 713.
- 113 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 234 [169]—[170].
- 114 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 217 [71].
- 115 See, eq, Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 212 [48], 212-13 [50], 216 [64], 225 [112]-[113], 233 [165]; Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 549-53 [44]-[57]; Submission 49 University of Western Australia Law School, 5.
- 116 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 234 [168]–[169].
- 117 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 209 [31], 234 [168].
- 118 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 209 [33].
- 119 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 209 [30].
- 120 Submission 49 University of Western Australia Law School, 6.
- 121 Submission 49 University of Western Australia Law School, 2.
- 122 Submission 49 University of Western Australia Law School, 3, 6.
- 123 Submission 49 University of Western Australia Law School, 8.
- Submission 49 University of Western Australia Law School, 9. 124
- 125 Submission 49 University of Western Australia Law School, 9.
- 126 Exhibit RC0066 Email chain between Matthew Young and Ken Barton et al, 2 October 2020; Exhibit RC0065 Email from Neil Jeans to Claude Marais et al, 20 November 2020; Adrian Finanzio, Penny Neskovcin, Meg O'Sullivan and Geoffrey Kozminsky, Counsel Assisting Submissions, Royal Commission into the Casino Operator and Licence (14 July 2021) 186 [5.2]-[5.6].
- 127 Exhibit RC0067 Letter from Joshua Preston and Nick Stokes to Nathan Newman et al, 20 August 2020, 2; Exhibit RC0401 Letter from Nick Stokes to AUSTRAC, 5 October 2020, 4.
- Exhibit RC0744 Crown Resorts Internal Audit Assessment—Southbank and Riverbank Account Transaction 128 Monitoring, October 2020.
- 129 Exhibit RC0744 Crown Resorts Internal Audit Assessment—Southbank and Riverbank Account Transaction Monitoring, October 2020, 2.
- 130 Submission 49 University of Western Australia Law School, 10.
- 131 Submission 49 University of Western Australia Law School, 10.
- 132 Submission 49 University of Western Australia Law School, 10.
- 133 Submission 49 University of Western Australia Law School, 10–11.
- 134 Submission 49 University of Western Australia Law School, 11.

- 135 Submission 49 University of Western Australia Law School, 11.
- 136 Submission 49 University of Western Australia Law School, 3, 11.
- 137 Submission 49 University of Western Australia Law School, 11.
- Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 204 [2]. 138
- Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 206 [9], [11]. 139
- 140 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 210-15 [38]-[60].
- 141 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 5 [9].
- 142 Adrian Finanzio, Penny Neskovcin, Meg O'Sullivan and Geoffrey Kozminsky, Counsel Assisting Submissions, Royal Commission into the Casino Operator and Licence (14 July 2021) 158-9 [2.8]-[2.11].
- 143 Transcript of Neil Jeans, 25 May 2021, 725-8; Exhibit RC0064 Email from Neil Jeans to Louise Lane and Katherine Shamai, 20 August 2019.
- 144 Transcript of Katherine Shamai, 24 May 2021, 656–7.
- 145 Transcript of Neil Jeans, 25 May 2021, 731-2.
- 146 Transcript of Neil Jeans, 25 May 2021, 732-5.
- 147 Exhibit RC0042 Memorandum from Claude Marais to Ken Barton, 29 September 2020; Exhibit RC0043 Memorandum from Claude Marais to Ken Barton, 13 October 2020; Adrian Finanzio, Penny Neskovcin, Meg O'Sullivan and Geoffrey Kozminsky, Counsel Assisting Submissions, Royal Commission into the Casino Operator and Licence (14 July 2021) 159-61 [2.17]-[2.25].
- 148 Exhibit RC0042 Memorandum from Claude Marais to Ken Barton, 29 September 2020, 1[3].
- 149 Exhibit RC0042 Memorandum from Claude Marais to Ken Barton, 29 September 2020, 1 [4].
- Exhibit RC0042 Memorandum from Claude Marais to Ken Barton, 29 September 2020. 150
- 151 Exhibit RC0042 Memorandum from Claude Marais to Ken Barton, 29 September 2020, 3 [9]-[10].
- 152 Exhibit RC0045 Memorandum from Alan McGregor regarding Bank Statement Analysis, 15 October 2020.
- 153 Exhibit RC0044 Email from Richard Murphy to Katherine Shamai et al, 16 October 2020; Exhibit RC0045 Memorandum from Alan McGregor regarding Bank Statement Analysis, 15 October 2020.
- 154 Exhibit RC0045 Memorandum from Alan McGregor regarding Bank Statement Analysis, 15 October 2020, 3.
- 155 Exhibit RC0045 Memorandum from Alan McGregor regarding Bank Statement Analysis, 15 October 2020.
- 156 Exhibit RC0035 Letter of Engagement—Crown Resorts, 14 October 2020; Exhibit RC0036 Letter of Engagement Signed Page—Crown Resorts, 16 October 2020; Exhibit RC0041 Email from Richard Murphy to Neil Jeans et al. 13 October 2020.
- 157 Transcript of Neil Jeans, 25 May 2021, 740, 765.
- 158 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 141 [D.186].
- 159 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 141–2 [D.186]-[D.187].
- 160 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 141 [D.186].
- This point was made in the Closing Submissions of Counsel Assisting the Commission and is not addressed 161 in the responsive submissions by Crown Melbourne Limited and Crown Resorts Limited: Adrian Finanzio, Penny Neskovcin, Meg O'Sullivan and Geoffrey Kozminsky, Counsel Assisting Submissions, Royal Commission into the Casino Operator and Licence (14 July 2021) 164 [2.51].
- 162 Adrian Finanzio, Penny Neskovcin, Meg O'Sullivan and Geoffrey Kozminsky, Counsel Assisting Submissions, Royal Commission into the Casino Operator and Licence (14 July 2021) 164 [2.51].
- 163 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 5 [9].
- Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 141 [D.186]. 164
- Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 141 [D.186] 165 (n 710).
- 166 Transcript of Katherine Shamai, 24 May 2021, 634.
- 167 Transcript of Katherine Shamai, 24 May 2021, 620.
- 168 Transcript of Katherine Shamai, 24 May 2021, 622-3, 673; Exhibit RC0039 Email chain between Neil Jeans and Nick Stokes et al, 21 October 2020; Transcript of Neil Jeans, 25 May 2021, 757.
- 169 Transcript of Katherine Shamai, 24 May 2021, 620, 623, 634.

- Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 142 [D.188]; Transcript of Alan McGregor, 6 July 2021, 3546–7.
- 171 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 142 [D.188].
- 172 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 144 [D.197].
- 173 Transcript of Katherine Shamai, 24 May 2021, 673.
- 174 Transcript of Katherine Shamai, 24 May 2021, 624, 667.
- Exhibit RC0068 Email chain between Nick Stokes and Alice Waterson et al, 21 October 2020; Transcript of Neil Jeans, 25 May 2021, 761.
- 176 Transcript of Neil Jeans, 25 May 2021, 762–3.
- 177 Transcript of Neil Jeans, 26 May 2021, 866.
- Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 143 [D.191]–[D.192].
- 179 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 143 [D.192].
- 180 Transcript of Neil Jeans, 25 May 2021, 707–8.
- 181 Transcript of Neil Jeans, 25 May 2021, 708.
- 182 Transcript of Neil Jeans, 26 May 2021, 869.
- 183 Transcript of Neil Jeans, 25 May 2021, 709–10, 764.
- 184 Transcript of Neil Jeans, 25 May 2021, 765.
- Exhibit RC0062 Statement of Neil Jeans, 16 April 2021, Annexure c, 4; Transcript of Neil Jeans, 25 May 2021, 711.
- 186 Exhibit RC0062 Statement of Neil Jeans, 16 April 2021, Annexure c, 17–70.
- Exhibit RC0062 Statement of Neil Jeans, 16 April 2021, Annexure c, 70–83; Transcript of Neil Jeans, 25 May 2021, 747.
- 188 Transcript of Neil Jeans, 25 May 2021, 747–8.
- 189 Transcript of Neil Jeans, 25 May 2021, 749.
- 190 Exhibit RC0062 Statement of Neil Jeans, 16 April 2021, Annexure c, 14.
- 191 Exhibit RC0062 Statement of Neil Jeans, 16 April 2021, Annexure c, 14.
- 192 Transcript of Neil Jeans, 25 May 2021, 746.
- 193 Transcript of Katherine Shamai, 24 May 2021, 656; Transcript of Neil Jeans, 25 May 2021, 765–6.
- 194 Exhibit RC0047 Letter from Ken Barton to Alex Fitzpatrick, 20 November 2020.
- Transcript of Katherine Shamai, 24 May 2021, 643, 646–7, 649, 651–2; Exhibit RC0048 Email chain between Claude Marais and Katherine Shamai, 18 December 2020.
- 196 Transcript of Katherine Shamai, 24 May 2021, 651.
- 197 Exhibit RC0084 Statement of Lisa Dobbin, 16 April 2021, Annexure a.
- Exhibit RC0084 Statement of Lisa Dobbin, 16 April 2021, Annexure a, 3; Exhibit RC0084 Statement of Lisa Dobbin, 16 April 2021, Annexure b.
- 199 Transcript of Lisa Dobbin, 26 May 2021, 912.
- 200 Exhibit RC0476 Deloitte Crown Resorts Updated Timings for Phase 2 and 3 of Forensic Review, 30 June 2021, 4.
- 201 Transcript of Lisa Dobbin, 26 May 2021, 935.
- 202 Transcript of Lisa Dobbin, 26 May 2021, 935.
- 203 Transcript of Lisa Dobbin, 26 May 2021, 936.
- 204 Exhibit RC0092 Deloitte bank account review spreadsheet, n.d.
- Adrian Finanzio, Penny Neskovcin, Meg O'Sullivan and Geoffrey Kozminsky, Counsel Assisting Submissions, Royal Commission into the Casino Operator and Licence (14 July 2021) 169–70 [2.86]–[2.88]; Exhibit RC0092 Deloitte bank account review spreadsheet, n.d.; Transcript of Lisa Dobbin, 26 May 2021, 927–30, 933.
- 206 Exhibit RC0465 McGrathNicol Forensic Review AML/CTF Report Part 1, 5 July 2021, 15, 45-6.
- Adrian Finanzio, Penny Neskovcin, Meg O'Sullivan and Geoffrey Kozminsky, Counsel Assisting Submissions, Royal Commission into the Casino Operator and Licence (14 July 2021) 171 [2.96].
- Exhibit RC0085 Draft letter from Crown to Philip Crawford, 13 February 2021; Transcript of Lisa Dobbin,
   May 2021, 889; Adrian Finanzio, Penny Neskovcin, Meg O'Sullivan and Geoffrey Kozminsky, Counsel
   Assisting Submissions, Royal Commission into the Casino Operator and Licence (14 July 2021) 172–3 [2.110].

- Exhibit RC0084 Statement of Lisa Dobbin, 16 April 2021, Annexure a, 3; Exhibit RC0084 Statement of Lisa Dobbin, 16 April 2021, Annexure d, 4; Exhibit RC0085 Draft letter from Crown to Philip Crawford, 13 February 2021, 2; Transcript of Lisa Dobbin, 26 May 2021, 890–5; Adrian Finanzio, Penny Neskovcin, Meg O'Sullivan and Geoffrey Kozminsky, Counsel Assisting Submissions, Royal Commission into the Casino Operator and Licence (14 July 2021) 173 [2.111].
- Transcript of Lisa Dobbin, 26 May 2021, 899–902; Transcript of Steven Blackburn, 1 July 2021, 3003; Transcript of Robyn McKern, 9 July 2021, 3938.
- Transcript of Lisa Dobbin, 26 May 2021, 899–902; Adrian Finanzio, Penny Neskovcin, Meg O'Sullivan and Geoffrey Kozminsky, Counsel Assisting Submissions, Royal Commission into the Casino Operator and Licence (14 July 2021) 173 [2.112].
- 212 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 99 [D.43].
- See, eg, Exhibit RC0084 Statement of Lisa Dobbin, 16 April 2021, Annexure a; Exhibit RC0085 Draft letter from Crown to Philip Crawford, 13 February 2021. See also Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 102 [D.56].
- 214 Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 569 [16].
- 215 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 108–9 [D.73], [D.75].
- 216 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 114 [D.91].
- 217 Exhibit RC0465 McGrathNicol Forensic Review AML/CTF Report Part 1, 5 July 2021, 13–14.
- 218 Transcript of Lisa Dobbin, 26 May 2021, 901–2.
- 219 Exhibit RC0465 McGrathNicol Forensic Review AML/CTF Report Part 1, 5 July 2021, 14.
- 220 Exhibit RC0465 McGrathNicol Forensic Review AML/CTF Report Part 1, 5 July 2021, 14.
- Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 116 [D.96]; Exhibit RC1417 Memorandum regarding Southbank and Riverbank transactions, 30 July 2021, 2.
- 222 Exhibit RC0037 Grant Thornton Report titled Forensic Data Analysis for Crown Resorts—Riverbank Investment Pty Ltd, 17 November 2020, 2; Exhibit RC0038 Grant Thornton Report titled Forensic Data Analysis for Crown Resorts—Southbank Investment Pty Ltd, 26 November 2020, 2.
- 223 Exhibit RC0053 Letter from Ross Kennedy to Xavier Walsh, 18 March 2021.
- 224 Exhibit RC0054 Letter from Xavier Walsh to Ross Kennedy, 24 March 2021, 2.
- 225 Exhibit RC0054 Letter from Xavier Walsh to Ross Kennedy, 24 March 2021, 2.
- 226 Exhibit RC0054 Letter from Xavier Walsh to Ross Kennedy, 24 March 2021, 2.
- 227 Exhibit RC0054 Letter from Xavier Walsh to Ross Kennedy, 24 March 2021.
- 228 Transcript of Katherine Shamai, 24 May 2021, 658–9.
- Transcript of Katherine Shamai, 24 May 2021, 659. Relevantly, Ms Shamai's evidence was that it was 'probable' that the transaction activity evident on the Southbank and Riverbank accounts continued on other Crown bank accounts after the closure in December 2019 of the Southbank and Riverbank accounts: Transcript of Katherine Shamai, 24 May 2021, 656.
- 230 Transcript of Katherine Shamai, 24 May 2021, 662.
- 231 Exhibit RC0399 Letter from Xavier Walsh to Catherine Myers, 12 May 2021.
- Exhibit RC0084 Statement of Lisa Dobbin, 16 April 2021, Annexure a, 7; Transcript of Lisa Dobbin, 26 May 2021, 947.
- 233 Exhibit RC0094 Memorandum regarding AML/CTF Policy Statement—Third Party Transfers and Money Remitters, 16 November 2020.
- 234 Exhibit RC0095 Crown Corporate Policy Statement—Return of Funds, 4 January 2021.
- See, eg, Exhibit RC0096 Email from Crown Melbourne to patrons, 24 December 2020.
- Exhibit RC0062 Statement of Neil Jeans, 16 April 2021, 13; Transcript of Neil Jeans, 25 May 2021, 780–2; Exhibit RC0069 Email from Caroline Marshall to Neil Jeans et al, 17 February 2021; Exhibit RC0070 Email chain between Caroline Marshall and Neil Jeans et al, 22 February 2021.
- 237 Exhibit RC0084 Statement of Lisa Dobbin, 16 April 2021, Annexure a; Transcript of Lisa Dobbin, 26 May 2021, 947.
- 238 Exhibit RC0062 Statement of Neil Jeans, 16 April 2021, Annexure n, 3–13.
- 239 Exhibit RC0062 Statement of Neil Jeans, 16 April 2021, Annexure n, 13–27.

- Exhibit RC0062 Statement of Neil Jeans, 16 April 2021, Annexure n, 3–13; Transcript of Neil Jeans, 25 May 2021, 784–5.
- See, eg, Transcript of Neil Jeans, 25 May 2021, 787–8.
- Exhibit RC0084 Statement of Lisa Dobbin, 16 April 2021, Annexure e, 7; Transcript of Lisa Dobbin, 26 May 2021, 956.
- Transcript of Lisa Dobbin, 26 May 2021, 957; Exhibit RC0084 Statement of Lisa Dobbin, 16 April 2021, Annexure e, 8.
- 244 Exhibit RC0084 Statement of Lisa Dobbin, 16 April 2021, Annexure e, 8, 40.
- 245 Transcript of Lisa Dobbin, 26 May 2021, 957-60.
- 246 Exhibit RC0084 Statement of Lisa Dobbin, 16 April 2021, Annexure e, 8.
- 247 Transcript of Lisa Dobbin, 26 May 2021, 972.
- 248 Transcript of Robyn McKern, 9 July 2021, 3875.
- 249 Exhibit RC0098 Crown's response to recommendations identified in Deloitte's Phase 1 Report, 26 March 2021.
- 250 Exhibit RC0084 Statement of Lisa Dobbin, 16 April 2021, Annexure f.
- 251 Transcript of Lisa Dobbin, 26 May 2021, 974.
- 252 Transcript of Lisa Dobbin, 26 May 2021, 976.
- 253 Because dealing with the evidence as to Crown's present vulnerabilities to financial crime may give rise to a risk that evidence will be exploited by those seeking to launder money through its casinos, only a high-level summary of evidence is provided.
- Exhibit RC0310 Supplementary Statement of Steven Blackburn, 28 April 2021, 6; Exhibit RC0311 Further Supplementary Statement of Steven Blackburn, 7 June 2021, 2–3; Exhibit RC0311 Further Supplementary Statement of Steven Blackburn, 7 June 2021, Annexure a, 2–4.
- 255 Exhibit RC0311 Further Supplementary Statement of Steven Blackburn, 7 June 2021, 2–3.
- 256 Transcript of Nicholas Stokes, 21 May 2021, 444.
- 257 Exhibit RC0100 Phase 1: AML Vulnerability Assessment, 24 May 2021.
- 258 Exhibit RC0397 Promontory Phase 2: Strategic Capability Assessment Report, 20 June 2021.
- 259 Exhibit RC0100 Phase 1: AML Vulnerability Assessment, 24 May 2021; Confidential transcript of Alexander Carmichael, 27 May 2021, 1034.
- 260 Confidential transcript of Alexander Carmichael, 27 May 2021, 1034.
- 261 Exhibit RC0100 Phase 1: AML Vulnerability Assessment, 24 May 2021, 34-5.
- 262 Exhibit RC0465 McGrathNicol Forensic Review AML/CTF Report Part 1, 5 July 2021, 9.
- 263 Exhibit RC0465 McGrathNicol Forensic Review AML/CTF Report Part 1, 5 July 2021, 10.
- 264 Exhibit RC0311 Further Supplementary Statement of Steven Blackburn, 7 June 2021, Annexure a.
- 265 Exhibit RC0311 Further Supplementary Statement of Steven Blackburn, 7 June 2021, Annexure g.
- 266 Exhibit RC0465 McGrathNicol Forensic Review AML/CTF Report Part 1, 5 July 2021, 11, 79.
- See, eg, Exhibit RC0309 Statement of Steven Blackburn, 21 April 2021, 7; Exhibit RC0311 Further Supplementary Statement of Steven Blackburn, 7 June 2021, Annexure a.
- 268 Exhibit RC0309 Statement of Steven Blackburn, 21 April 2021, 5.
- Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 90 [D.19], 93 [D.30].
- 270 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 91 [D.22].
- 271 Exhibit RC0311 Further Supplementary Statement of Steven Blackburn, 7 June 2021, 8–9 [28].
- 272 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 10 [A.21]; Transcript of Crown Responsive Closing Submissions, 3 August 2021, 4058.
- 273 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 10 [A.22], 86 [D.3], 151–2 [D.221].
- 274 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 10 [A.22].
- 275 Exhibit RC0310 Supplementary Statement of Steven Blackburn, 28 April 2021, 6 [27].
- 276 Exhibit RC0310 Supplementary Statement of Steven Blackburn, 28 April 2021, 6 [28].
- 277 Exhibit RC0311 Further Supplementary Statement of Steven Blackburn, 7 June 2021, Annexure a, 14.
- 278 Exhibit RC0311 Further Supplementary Statement of Steven Blackburn, 7 June 2021, Annexure a, 32–6.
- 279 Exhibit RC0311 Further Supplementary Statement of Steven Blackburn, 7 June 2021, Annexure a, 5.

- 280 Exhibit RC0311 Further Supplementary Statement of Steven Blackburn, 7 June 2021, Annexure a, 4.
- Exhibit RC0311 Further Supplementary Statement of Steven Blackburn, 7 June 2021, Annexure a, 5. See the high-quality, colour version of this document, which shows shading.
- Exhibit RC0311 Further Supplementary Statement of Steven Blackburn, 7 June 2021, Annexure a, 5. See the high-quality, colour version of this document, which shows shading.
- 283 Exhibit RC0311 Further Supplementary Statement of Steven Blackburn, 7 June 2021, Annexure a, 24–5, 27.
- See, eg, Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 10 [A.21], 12–13 [A.25(a)], 151–2 [D.221].
- 285 See, eg, Exhibit RC0311 Further Supplementary Statement of Steven Blackburn, 7 June 2021, Annexure a, 6.
- 286 Exhibit RC0062 Statement of Neil Jeans, 16 April 2021, Annexure j.
- 287 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 89–90 [D.16]. See also Exhibit RC0023 Statement of Nicholas Stokes, 25 April 2021, Annexure d.
- 288 Exhibit RC0311 Further Supplementary Statement of Steven Blackburn, 7 June 2021, Annexure a, 8.
- 289 Exhibit RC0311 Further Supplementary Statement of Steven Blackburn, 7 June 2021, Annexure a, 20.
- 290 Exhibit RC0149 Letter from Allens Linklaters to Solicitors Assisting, 24 March 2021, Annexure b, 2.
- 291 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 359.
- 292 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 10 [A.21].
- 293 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 86 [D.1].
- 294 Transcript of Lisa Dobbin, 26 May 2021, 975.
- 295 Transcript of Lisa Dobbin, 26 May 2021, 977-8.
- 296 Confidential transcript of Alexander Carmichael, 27 May 2021, 1036–7.
- Transcript of Steven Blackburn, 1 July 2021, 3010–11; Exhibit RC0311 Further Supplementary Statement of Steven Blackburn, 7 June 2021, Annexure a, 2.
- See, eg, Exhibit RC0311 Further Supplementary Statement of Steven Blackburn, 7 June 2021, 5 [15]; Exhibit RC0311 Further Supplementary Statement of Steven Blackburn, 7 June 2021, Annexure g, 2, 36–7; Transcript of Steven Blackburn, 1 July 2021, 3013.
- 299 Exhibit RC0465 McGrathNicol Forensic Review AML/CTF Report Part 1, 5 July 2021, 11, 79–80; Transcript of Robyn McKern, 9 July 2021, 3876.
- 300 Exhibit RC0465 McGrathNicol Forensic Review AML/CTF Report Part 1, 5 July 2021, 11.
- Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 5 [A.2]–[A.3], 316 [1].
- Exhibit RC0100 Phase 1: AML Vulnerability Assessment, 24 May 2021. This report contains 21 numbered recommendations in section 4 and other (unnumbered) recommendations in section 5.
- 303 Exhibit RC0397 Promontory Phase 2: Strategic Capability Assessment Report, 20 June 2021.
- 304 Exhibit RC0084 Statement of Lisa Dobbin, 16 April 2021, Annexure e. There is also an addendum report regarding Crown Perth dated 5 May 2021 and titled 'Addendum to Final Phase 1 Report (Crown Perth)': Exhibit RC0097 Deloitte Report of the Phase 1: Assessment of Patron Account Controls—Addendum to Final Phase 1 Report (Crown Perth), 5 May 2021. The recommendations of the Deloitte Phase 1 Report are summarised in a report dated 13 April 2021 titled 'Phase 1: Assessment of Patron Account Controls—Assessment of Crown's Response': Exhibit RC0084 Statement of Lisa Dobbin, 16 April 2021, Annexure f.
- 305 Exhibit RC1351 Initialism Transaction Monitoring Review Crown Resorts, June 2021.
- 306 Exhibit RC0465 McGrathNicol Forensic Review AML/CTF Report Part 1, 5 July 2021.
- 307 Exhibit RC1574 Supplementary Statement of Michael Frewen, 17 July 2021, 5–6 [3.2].
- 308 Transcript of A Police Officer, 18 June 2021, 2080–1.
- 309 Transcript of Neil Jeans, 26 May 2021, 872.
- 310 Transcript of Neil Jeans, 26 May 2021, 872.
- 311 Liquor Control Reform Act 1998 (Vic) sch 1(h).
- 312 Liquor Control Reform Act 1998 (Vic) sch 1(i).
- 313 Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) (Cth) rr 10.1.3–6.
- 314 Transcript of Neil Jeans, 26 May 2021, 876.
- 315 Transcript of Neil Jeans, 26 May 2021, 874.
- 316 Transcript of Neil Jeans, 26 May 2021, 874.

- 317 Exhibit RC0311 Further Supplementary Statement of Steven Blackburn, 7 June 2021, Annexure a, 22.
- 318 Exhibit RC0311 Further Supplementary Statement of Steven Blackburn, 7 June 2021, Annexure a, 29, 39. See also Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 120-1 [D.112].
- 319 Exhibit RC0311 Further Supplementary Statement of Steven Blackburn, 7 June 2021, Annexure a, 39. See also Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 121 [D.114].
- 320 FATF, Vulnerabilities of Casinos and Gaming Sector (Report, March 2009) 25 [87].
- 321 Transcript of A Police Officer, 18 June 2021, 2080.
- 322 Responsive submission VRGF, 2 August 2021, 23 [10.3].
- 323 Responsive submission VRGF, 2 August 2021, 23 [10.4].
- 324 Responsive submission VRGF, 2 August 2021, 23–4 [10.5].
- Responsive submission VRGF, 2 August 2021, 23–4 [10.5]. 325
- Responsive submission VRGF, 2 August 2021, 24 [10.6]. 326
- Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 121 [D.115] 327 (n 580).
- 328 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 121 [D.115].
- 329 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 121 [D.115].
- Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 202 [F.96]. 330
- 331 Transcript of Neil Jeans, 26 May 2021, 874.
- 332 Transcript of Lisa Dobbin, 26 May 2021, 919–20.
- Transcript of Steven Blackburn, 1 July 2021, 2999. 333
- 334 Exhibit RC1574 Supplementary Statement of Michael Frewen, 17 July 2021, 7 [4.7].
- Transcript of Craig Walsh, 25 June 2021, 2590. 335



CHAPTER 07

# Junkets

#### CHAPTER 7

## Junkets

#### Introduction

- 1 In the casino world, the term 'junket' refers to a short-term gambling program arranged by a junket operator for one or more high-wealth players at a chosen casino, in conjunction with the relevant casino operator, on terms agreed between them.<sup>1</sup>
- 2 The person or persons who arrange junkets are known variously as junket operators, junket promotors or JTOs. Many JTOs have an international presence and operate in particular jurisdictions through agents known as junket tour representatives (JTRs).<sup>2</sup>
- 3 As Ms Bergin, SC noted:

Junkets are a well-recognised part of the international casino landscape ...3

There is a strong relationship between VIP patrons from Mainland China and Junkets. In Australia ... casino operators are heavily dependent on Junkets for the continued success of the VIP market segment of their revenues ...<sup>4</sup>

[JTOs] identify VIP patrons and make arrangements for them to travel to gamble in particular casinos, often by offering enticements such as free travel and accommodation. In return, casino operators pay Junket operators commissions ...<sup>5</sup>

- The relationship between a casino operator and a JTO is contractual. While a casino operator might contract with a JTO on any terms, in Australia, casino operators ordinarily agree to pay JTOs commission, based on the collective turnover of junket players during a particular junket.<sup>6</sup> Turnover refers to the sum of money actually wagered by players in the casino.<sup>7</sup>
- The contractual arrangements between a casino operator and a JTO typically require the JTO to deposit a minimum level of 'front money' in order to operate a junket program at a casino.<sup>8</sup> That front money is then exchanged for junket-specific chips, known as 'dead' or 'rolling' chips, which are provided to the JTO for distribution to players for use during the junket.<sup>9</sup>
- Junket players cannot acquire dead or rolling chips directly from the casino operator and the chips cannot be redeemed for money. Winnings are paid in 'live chips', which can be redeemed for cash at the casino or given to the JTO in exchange for more dead chips for further junket gaming. This allows the JTO to track junket players' turnover.<sup>10</sup>
- A casino operator has no contractual relationship with individual junket players. It has no particular visibility as to: (a) their identities; (b) what money, if any, they have each contributed to the collective pool of front money used to acquire dead chips; or (c) the source or the ultimate ownership of that money. A casino operator is not privy to the arrangements between a JTO and junket players in any given junket. It is possible that:
  - junket players may have been sourced by 'sub-junkets' who identify and recruit suitable players for a junket program, typically in exchange for a commission from a JTO
  - a JTO is funded by financiers

- a JTO might itself advance credit to junket players
- a JTO might source deposits from investors to advance as credit to junket players, with investors then receiving a dividend in return.<sup>12</sup>
- 8 Casino operators do not ordinarily know who stands behind or is associated with any given JTO, particularly where that JTO operates through a JTR.<sup>13</sup> This lack of transparency around junket operations, players' identities, and the source, ultimate ownership and distribution of junket funds provides opportunities for criminal exploitation and, in particular, money laundering.<sup>14</sup>
- 9 In December 2020, AUSTRAC released a report, *Money Laundering and Terrorism Financing Risk Assessment*, dealing with the junkets sector (AUSTRAC Junkets Report).<sup>15</sup> AUSTRAC observed that players may prefer to participate in junkets, rather than play as individuals, for any number of reasons. These include that:
  - 'junkets are often organised as holiday entertainment for tourists, and can involve complimentary transport, accommodation, food and beverages provided by the casino' (known as complimentaries)
  - JTOs can organise tours to casinos across the world, and the players need only deal with one entity
  - junket players are generally accompanied by a JTO or JTR who 'may be able to see to their needs in a manner beyond that which could be facilitated by the casino'
  - 'JTOs often offer financial incentives to players, such as a portion of the commission the casino pays the JTO'
  - · 'JTOs often offer credit to players'
  - the JTO or JTR is 'responsible for conducting all financial transactions with the casino, enabling players to focus on their gambling activity'. 16
- 10 In addition, in the case of premium or junket players who do not ordinarily reside in Australia, the Casino Control Act provides an exemption to the general prohibition of casinos offering credit to patrons.<sup>17</sup>
- 11 Australian casino operators may similarly be attracted to junkets for several reasons:
  - The casino operator's primary customer is the JTO and it is logistically easier to administer financial arrangements with one party rather than with several.<sup>18</sup>
  - JTOs are often foreign nationals who have greater capacity to identify and attract players from foreign jurisdictions to Australia (noting that the vast majority of VIP patrons come from mainland China).<sup>19</sup>
  - The JTO business model relies on repeat access to the same casinos, meaning that JTOs
    are more likely to repay any credit advanced to them personally (for the benefit of junket
    players) by a casino operator.<sup>20</sup>
- 12 From the State's perspective, junkets attract international tourists to Australia, generating both direct gaming revenue and associated taxes and indirect tourism revenue and employment. To remain competitive in a global junket market and thereby attract players from interstate and foreign jurisdictions, casinos have negotiated with state and territory governments to levy a lower rate of gaming tax than that which would otherwise apply.<sup>21</sup>

## How does a junket work?

- 13 The following describes how a junket ordinarily comes into existence and its typical features.
- 14 First, a casino operator conducts due diligence and credit checks on a potential JTO, and assuming it is satisfied with the results, enters into a written contract with the JTO.<sup>22</sup>
- The JTO identifies prospective players, who are generally residents of a foreign country. Individual junket players enter into separate agreements with the JTO to either provide money up front, or alternatively enter into a private funding arrangement, which may include borrowing from the JTO. The casino is not privy to this financial arrangement.<sup>23</sup>
- Once the JTO has identified a sufficient number of players, the JTO and the casino enter into an agreement for that specific junket program. The agreement outlines whether the JTO will provide front money from its casino account, or whether the casino will provide a line of credit to the JTO. The agreement also ordinarily sets out:
  - · the sum of front money, and therefore the expected turnover
  - the commission payable to the JTO (which is usually based on that expected turnover)
  - · the terms of any credit provided
  - whether the casino will provide any 'complimentaries'.24
- 17 Players arrive at the casino and their identity is verified by casino staff. The casino provides the JTO or their representative with specialised chips, which are distributed by the JTO to players and only used for junkets. These chips cannot be used on the main gaming floor and must be returned to the casino for settlement of the junket account. The JTO is responsible for settling the account and all other financial transactions with the casino.<sup>25</sup>
- Players gamble with the junket-specific chips for the duration of the junket. Players may leave the program before it ends, settling privately with the JTO. New junket players can be added to the junket while it is progressing. Players can acquire more junket-specific chips by agreement with the JTO.<sup>26</sup>
- 19 At the end of the program, players return the chips that have been won or not played to the JTO. The casino calculates turnover to determine whether the junket has won or lost, the casino tax payable, the commission payable to the JTO and any liability the JTO may have to the casino (for example, if a line of credit was advanced to the JTO by the casino operator).<sup>27</sup>
- 20 The casino operator pays out winnings and commission in accordance with instructions from the JTO. The JTO may instruct that all winnings be paid to it, so that it can distribute those winnings among junket players in the relevant proportions. Payment will often occur offshore. In some circumstances, the JTO may instruct the casino operator to distribute the funds directly to the players, or to third parties. If the junket loses, the JTO is liable to pay the amount of the loss to the casino operator.<sup>28</sup>

#### Junkets at Crown Melbourne

- In the recent past, junkets were an important—and highly profitable—part of Crown Melbourne's business.
- 22 Between July 2015 and June 2020, Crown Melbourne made well over \$1 billion in junket revenue. In the 2016, 2017, 2018 and 2019 financial years, junkets generated revenue of approximately \$445 million, \$200 million, \$430 million and \$310 million respectively.<sup>29</sup> In the 2020 financial year, in which revenue was reduced due to COVID-19-related travel restrictions into Australia and the mandated closing of the Melbourne Casino during periods of lockdown,<sup>30</sup> Crown Melbourne's junket revenue stood at just over \$170 million.<sup>31</sup>
- The sum of money wagered during junkets over the period 2015 to 2020 was significant. For example, an internal risk assessment of a JTO with whom Crown Melbourne partnered revealed that, between July 2014 and November 2018, the turnover of junkets associated with that JTO alone was more than \$20 billion.<sup>32</sup>
- 24 Following the media revelations in mid-2019 concerning Crown Resorts' relationships with JTOs that had links to organised crime, and the subsequent Bergin Inquiry,<sup>33</sup> Crown's position on junkets changed drastically. The evolution of Crown's position is set out below, together with a timeline of related regulatory action taken by the VCGLR.<sup>34</sup>
- 25 In August 2020, the Crown Resorts board resolved to suspend its relationship with JTOs so that it could review those relationships in light of matters raised by evidence before the Bergin Inquiry and more generally.<sup>35</sup>
- On 25 September 2020, at a time when international travel into Australia was severely limited due to COVID-19 restrictions, the Crown Resorts board decided to extend that suspension to 30 June 2021 so that it could properly assess the situation. It engaged Berkeley Research Group (BRG) to help it assess its relationships with JTOs.<sup>36</sup>
- 27 On 2 October 2020, the VCGLR served a 'show cause' notice on Crown Melbourne under section 20(2) of the Casino Control Act.<sup>37</sup> The notice alleged that Crown Melbourne had breached section 121(4) of the Casino Control Act by not dealing with particular JTOs and JTRs in accordance with its approved junket internal control statement (ICS). The notice foreshadowed disciplinary action in respect of that alleged breach and gave Crown Melbourne an opportunity to be heard before any action was taken.
- The VCGLR alleged that Crown Melbourne had breached clause 2.5.1 of its ICS by continuing to deal with particular JTOs, agents and junket players. Clause 2.5.1 required Crown Melbourne to ensure that it had robust processes in place to consider the ongoing probity of its registered junket operators, junket players and premium players. The question for the VCGLR was not only whether Crown Melbourne had in place robust probity processes, but whether those processes were followed in the relevant instances.<sup>38</sup>
- 29 On 30 October 2020, Crown Melbourne made written submissions in response to the show cause notice.<sup>39</sup> Crown Melbourne's written (and later oral) submissions were to the effect that its probity processes for assessing junkets were robust, based on applicable standards and Crown Melbourne's risk appetite at the time.<sup>40</sup>

#### 30 On 17 November 2020:

- The VCGLR amended the show cause notice to add a further alleged breach.<sup>41</sup>
- Crown Resorts announced a decision to permanently cease dealing with international junket operators, until any such operator had been licensed or authorised by all regulators in the jurisdictions in which it operated.<sup>42</sup>
- 31 On 12 December 2020, Crown Melbourne made further written submissions in respect of the show cause notice.<sup>43</sup>
- 32 On 21 January 2021, there was a hearing about the matters the subject of the VCGLR's show cause notice at which Crown Melbourne made oral submissions.<sup>44</sup>
- 33 On 1 February 2021, the Bergin Report was delivered. Chapter 3.4 considered the veracity of media allegations that Crown Resorts or its subsidiaries had partnered with seven junket operators with links to organised crime. The Bergin Report recommended that the Casino Control Act 1992 (NSW) be amended to prohibit casino operators in New South Wales from dealing with junket operators. From dealing with junket operators.
- On 27 April 2021, the VCGLR handed down its decision in respect of its show cause notice, finding that Crown Melbourne had breached the Casino Control Act in the manner alleged. The VCGLR determined to impose the maximum possible fine of \$1 million in respect of that breach. It also issued a letter of censure to Crown Melbourne, directing it, among other things, not to recommence junket operations at the Melbourne Casino until it applies to and receives permission from the VCGLR to do so.<sup>47</sup>
- 35 On 13 May 2021, ILGA issued a media release in which it noted it had reached an agreement with Crown Resorts not to run any international junket operations.<sup>48</sup> That media release was in different terms to a media release issued the same day by Crown Resorts, and referred to an earlier Crown Resorts announcement about Crown ceasing to deal with all junket operators.<sup>49</sup>
- 36 Between 16 and 19 May 2021, Solicitors Assisting this Commission exchanged correspondence with the solicitors acting for Crown Resorts and Crown Melbourne about those companies' intentions with respect to junkets at the Melbourne Casino. This exchange culminated in a letter dated 19 May 2021, in which Crown Resorts and Crown Melbourne confirmed that both had ceased dealings with international junket operators and JTOs and did not intend to deal with either in the future. The companies noted that the only remaining engagement Crown had with junket operators concerned the termination of junket agreements, the collection of outstanding debts and the return of funds and other property belonging to select operators.<sup>50</sup>
- 37 In its closing submissions, Crown Resorts and Crown Melbourne reiterated that neither had any intention of recommencing junket operations.<sup>51</sup>
- 38 Of course, intentions can change.

## The risks involved in junkets

39 There are a number of characteristics of the junket sector that make it particularly susceptible to criminal exploitation. According to the FATF, a global money laundering and terrorist financing watchdog:

A vulnerability of junket programmes is that they involve the movement of large amounts of money across borders and through multiple casinos by third parties. Junket participants generally rely on the junket operators to move their funds to and from the casino. This creates layers of obscurity around the source and ownership of the money and the identities of the players.<sup>52</sup>

- 40 The vulnerabilities of junkets to organised crime are set out in detail in Chapter 1.5 of the Bergin Report and need not be repeated at length here. 53 The risks largely arise because:
  - arrangements between JTOs, junket players and any third parties with whom JTOs might be affiliated are opaque. Funds are often transferred from abroad to a casino operator who deals only with a JTO or, one further step removed, their JTR. Such opacity around the source of junket funds and who ultimately owns those funds helps junket players and third parties avoid scrutiny and potentially facilitates money laundering54
  - · JTOs may extend credit to junket players and therefore may need to enforce debts owed by those players. In circumstances where many junket players come from mainland China, where it is illegal to collect gambling debts, violence and other extra-judicial means of debt recovery may be utilised. This increases the chances of JTOs becoming associated with, if not infiltrated or run by, organised criminals. 55
- 41 There is a long history of links between junkets and organised crime. During the 1990s, triad turf wars in Macau were fuelled by conflict over who controlled VIP gaming rooms.<sup>56</sup> The affiliation between Macau junket operations and organised crime is notorious.<sup>57</sup> So too are the money laundering risks associated with junkets.58
- 42 AUSTRAC has recognised that casino-based tourism generally is potentially susceptible to money laundering. Common risks it has identified include:
  - · people carrying large amounts of cash into or out of countries
  - · junket operators moving large sums electronically between casinos or to other jurisdictions
  - layers of obscurity around the source and ownership of money on junket tours.
- 43 In its AUSTRAC Junkets Report, AUSTRAC assessed the junket sector as being at a 'high' level of risk of money laundering and/or terrorism financing, on a 'low-medium-high' risk scale.<sup>60</sup> AUSTRAC identified that the vulnerabilities of junkets to organised crime fall into five broad categories: (a) customers;<sup>61</sup> (b) products and services;<sup>62</sup> (c) delivery channels;<sup>63</sup> (d) exposure to foreign jurisdictions;<sup>64</sup> and (e) level of implementation of risk mitigation strategies.<sup>65</sup>
- 44 Crown Melbourne's former Group Manager for AML, Mr Nick Stokes, expressed broad agreement with AUSTRAC's assessment of the risks and vulnerabilities associated with junkets.66

- 45 The risk that junkets might be exploited for money laundering purposes has materialised at Crown Melbourne. An experienced Victoria Police officer in the Organised Crime Intelligence Unit of Victoria Police gave evidence that money laundering through junkets at the Melbourne Casino was 'rife'. The officer stated that 'money that we [Victoria Police] highly suspected was illicit ... [was] flooding into junket accounts on a daily basis'. The officer said that the problem was not new but had been 'happening constantly' since at least 2007.67
- 46 The first two of the AUSTRAC risk categories—customers, and products and services—should be explained in more detail.

#### Customers

- 47 Junket players are inherently higher-risk customers for casino operators. The manner in which junkets operate, and the use of cash within junket programs, increases anonymity for junket players. The primary customer of the casino operator is the JTO, or its JTR. The relationship between the casino and junket players is indirect.
- 48 The fact that the funds in junket accounts are pooled makes it more difficult for a casino operator, law enforcement and casino regulators to link transactions made by the JTO to specific junket players. In addition, transaction reports submitted by a casino operator to AUSTRAC and other regulatory bodies about transactions that trigger reporting requirements have limited use because the transactions are likely to be reported under the name of the JTO or JTR rather than the name of any individual player whose actions have triggered the reporting requirement.
- 49 The vast majority of junket players in Australia are foreign nationals. AUSTRAC found that 95 per cent of junket players in Australia between 1 April 2018 and 31 March 2019 were foreign residents.68 Having a customer base composed of predominantly foreign residents can increase the junket sector's attractiveness and exposure to transnational serious and organised crime, simply due to its geographical reach. In addition, such a customer base can mean that the source and destination of funds, and information about customers' criminal and financial activity, are difficult to identify as they are located in foreign jurisdictions.
- 50 As the level of gaming transactions during junkets is relatively high, there is also a higher risk that junkets will be exploited for money laundering.<sup>69</sup>
- 51 Further, AUSTRAC has found that some junkets have been infiltrated by criminals, including members of crime groups operating in Asia, and people involved in transnational money laundering schemes.<sup>70</sup>
- 52 Finally, AUSTRAC has reported that junket accounts are also used by persons who do not have any direct association with a JTO or junket. It identified 193 SMRs recording that a third party was depositing money into a junket account. Some of these were 'indirect' cash deposits that third parties may have made into their own casino account, then transferred to a junket account, even though they were not participating in the junket. Casino staff also reported observing third parties giving cash to a JTO or their representative, who made the deposit into the junket account.71
- 53 The level of transacting on junket accounts by persons not identified as players on the junket indicates that junket accounts are vulnerable to use for purposes other than junket activity.

#### Products and services

- 54 The activities and services provided by JTOs, and gambling activities generally, provide several opportunities for money laundering. According to AUSTRAC:
  - · Money deposited with a casino and then withdrawn with minimal gaming activity 'will appear to have a legitimate origin, even though very little money was actually risked'. Additionally, any losses sustained can give the incorrect appearance that the customer is engaging in genuine gaming activity.
  - · As it is possible to win large amounts following a relatively small outlay, it is difficult for banks at which gamblers' accounts are held to identify suspicious deposits, or to determine whether income derives from its claimed income source (for example, gambling winnings).
  - · Money involved in gambling activities is highly moveable and can be transferred between fiat currency and gaming chips, or transferred to another player, another casino or a domestic or foreign bank.72
- 55 In Australia, gambling winnings are not taxable, so funds 'run through' a casino can be readily justified as winnings and go untaxed.<sup>73</sup>

#### Use of cash

- 56 Cash is particularly vulnerable to being laundered because it is anonymous, untraceable and easy to exchange. AUSTRAC has assessed that the high incidence of large cash transactions in the junket sector increases its vulnerability to money laundering and in particular, to the comingling of illicit and legitimate funds.74
- 57 Cash for use during junkets can often be deposited directly into bank accounts of casino operators. These transactions are reported to AUSTRAC by the bank rather than the casino. Casinos accepting cash deposits for customer accounts through banks are susceptible to the money laundering method known as cuckoo smurfing and is another way of facilitating the domestic transactions required for offsetting.<sup>75</sup>

## Use of gaming accounts

- 58 Casinos can provide 'gaming accounts' to JTOs or patrons, operating similarly to an account with a financial institution. Gaming accounts allow account holders to deposit and withdraw funds using chips, cash, personal and bank cheques, intra-casino transfers and domestic electronic transfers.76
- 59 AUSTRAC considers junket accounts at casinos to be highly vulnerable to the storage and movement of potentially illicit funds.<sup>77</sup> The 'parking' of illicit money puts distance between the act or acts that generated the illicit funds and the ultimate recipient(s) of those funds, making it harder to trace the flow of money.

## The regulation of junkets

## The previous position

- 60 The history of gambling regulation in Victoria is set out at length in Chapter 2. There it is explained that Mr Connor, QC's original view that junkets be dealt with under the Casino Control Act was not adopted. Rather it was left to regulation, and the regulator.
- 61 By 2003, with the introduction of the Gambling Regulation Act, the regulator's oversight of junkets and premium players was replaced with a requirement that the casino operator's ICSs include 'procedures for the promotion and conduct of junkets or premium player arrangements'. 78
- The rationale behind this change is unclear. As noted in Chapter 2, the second reading speech for the Gambling Regulation Bill recorded only:

In other reforms, probity requirements for junket operators will now be the responsibility of the casino operator, but overseen by the [regulator] through its supervision of the casino's internal controls and procedures.<sup>79</sup>

- 63 Section 121(1) of the Casino Control Act prohibits a casino operator from conducting casino operations otherwise than in accordance with a written system of internal controls and procedures approved by the VCGLR. Section 122(1) provides that such a system must include details of the matters prescribed in that section. The Gambling Regulation Act introduced a new sub-section 122(1)(w) in the Casino Control Act, which requires the internal controls to include details of 'procedures for the promotion and conduct of junkets or premium player arrangements'.
- 64 Accordingly, at present, the establishment and conduct of junkets at Crown Melbourne is regulated only by its ICS on junket and premium player programs.<sup>80</sup> The previous iteration of that ICS required Crown Melbourne to ensure that it has in place robust processes to consider the ongoing probity of junket operators, junket players and premium players.<sup>81</sup> The current iteration of the ICS, introduced in December 2020, is in different terms, but also requires Crown Melbourne to consider probity matters.<sup>82</sup>
- Under this regime, the obligation to ensure the probity of JTOs and others involved in junkets with whom Crown Melbourne deals lies squarely with Crown Melbourne.
- 66 The VCGLR has only indirect control over junkets at Crown Melbourne. Its role is limited to approving or not approving a proposed ICS regarding Crown Melbourne's junket operations.
- Insofar as the ICS calls for the exercise of discretion or judgement, it is for Crown Melbourne alone to exercise that discretion or judgement. Whether and how Crown Melbourne follows its controls in practice is, to a large degree, a matter for it. The Casino Control Act does not presently grapple with the prospect that Crown Melbourne—as a private enterprise without the investigatory and other powers of a law enforcement body—might not be in a position to adequately 'vet' proposed JTOs or JTRs and their close associates. Nor may it be able to investigate the accuracy or appreciate the broader significance of rumours and reports of JTO or JTR links to organised crime or criminal activity.

#### Is the current regulation effective?

- 68 In considering whether the current regulation is effective, it is necessary, first, to understand the circumstances that led to Crown Resorts' and Crown Melbourne's decision to cease partnering with JTOs. Those circumstances are, in large part, detailed in the Bergin Report and summarised in Chapter 3.83
- 69 There had been media allegations that Crown had partnered with several JTOs that had links to organised crime.<sup>84</sup> The Bergin Inquiry found that information in the public domain supported the media allegations in that at least some of the junket operators with whom Crown had dealings had links to organised crime.<sup>85</sup> It did not find that Crown was wilfully blind or recklessly indifferent to those links. Rather, it found:
  - Crown had numerous structures in place to deal with junket operators. Those structures
    were adjusted from time to time and, from mid-July 2017, there were annual reviews into
    existing operators. Those reviews were, however, most often conducted solely by Crown's
    Credit Control Team and rarely escalated to a review panel<sup>86</sup>
  - Crown gave consideration to publicly available information in respect of the named junket operators, although it reached what the Bergin Inquiry considered to be unjustified conclusions<sup>87</sup>
  - Crown had flawed structures for reviewing particular junket operators<sup>88</sup>
  - in some instances, decisions to continue dealing with particular operators 'may have been infected with error or failed to take into account appropriate matters'.89
- 70 During the Bergin Inquiry, Crown Resorts commissioned three independent consultants to review various aspects of its junket arrangements:
  - In August 2019, it commissioned FTI Consulting (FTI) to review its policies and procedures for conducting due diligence research into existing and new JTOs and premium players. The scope of engagement included FTI reviewing sources of information, research methodologies and third party research platforms utilised by Crown in its internal due diligence process to assess the effectiveness and defensibility of its process. FTI delivered a draft report on 10 September 2019.90 It was the first review of Crown Resorts' junket due diligence process.91
  - In April 2020, it commissioned Deloitte to review Crown Resorts' decision-making processes related to JTOs and persons of interest. Deloitte's scope of work included identifying opportunities for Crown to enhance its due diligence and decision-making frameworks. Deloitte delivered its report on 26 August 2020.<sup>92</sup>
  - In July 2020, it commissioned BRG to undertake a discrete due diligence investigation into specified JTOs and JTRs. BRG delivered its report on 12 September 2020.<sup>93</sup>
- 71 Having received those reports, Crown Resorts made a series of concessions to the Bergin Inquiry about its junket due diligence processes. 94 It accepted that due diligence carried out on some junket operators did not identify all necessary information, or otherwise result in information that was identified being analysed in a way that accurately assessed risk. 95

- It also accepted that there was a need for greater input from its Compliance and AML Teams in the due diligence process, noting that letting people on the operational side of the business have the final say on vetting junket operators could cause tension.<sup>96</sup>
- 72 Notwithstanding those concessions, which were plainly open to be made, the evidence examined by this Commission demonstrates that Crown's problems with junkets went beyond a lack of information and lack of input from relevant compliance units. For example, Crown Resorts' conduct after receiving the draft FTI report is troubling and demonstrates both a reluctance to improve its internal processes and a failing in its risk management procedures and processes.
- 73 The draft FTI report did not conclude that Crown's junket probity processes were defensible or robust. Rather, it made 29 recommendations, relating to 16 aspects of its probity processes, about how Crown could improve its due diligence into existing and new JTOs and premium players. In particular, it recommended that: (a) due diligence be conducted not only on JTOs but also on junket tour agents; (b) the outcome of all due diligence decisions by management be documented; and (c) Crown '[build] the capability' of its staff undertaking due diligence research, Implying that Crown's capacity at that time was insufficient.
- As Ms Anne Siegers, the Chief Risk Officer of Crown Resorts, accepted in the course of her evidence, the draft FTI report revealed significant gaps in Crown's due diligence processes as they existed in September 2019. 99 Insofar as the report identified that Crown Melbourne's probity processes regarding junkets were not 'robust', as required by its then current junkets ICS, Ms Siegers conceded that some kind of response from Crown Melbourne was required. 100
- 75 Despite this, it appears that:
  - the draft FTI report was not circulated to relevant stakeholders and never tabled at a Crown Melbourne RMC meeting<sup>101</sup>
  - no request was ever made to FTI to finalise its draft report
  - no changes were made to Crown Melbourne's ICS on junkets and premium players in response to the 29 recommendations contained in the draft FTI report<sup>102</sup>
  - junket operations continued unchanged.
- One possible explanation for the inaction of Crown Resorts and Crown Melbourne is that the FTI report was commissioned solely with a view to assisting Crown Resorts defend the robustness of its junket probity processes before the Bergin Inquiry, rather than to genuinely assist it identify deficiencies in and improve those processes (or otherwise with that dual purpose). When it became apparent that, if finalised, the draft FTI report could not be deployed in the manner intended, it appears to have been shelved.
- 77 Whatever the reason Crown Resorts failed to act on the draft FTI report, it was not the conduct expected of a suitable associate of a licensee. Due to the operational dependence of Crown Melbourne on Crown Resorts, and the intimate interconnection of the affairs of Crown Melbourne and Crown Resorts, the failure to act on the draft FTI report reflects also on the suitability of Crown Melbourne. That failure to act is not the conduct expected of a suitable licensee.

- As had been observed, in April 2020, Crown Resorts engaged Deloitte to review its decision making processes related to JTOs and persons of interest. The scope of Deloitte's engagement was different to and narrower than the scope of FTI's engagement, although there was a degree of overlap. Deloitte's scope of work included identifying opportunities for Crown to enhance its due diligence and decision making frameworks. Both the FTI draft report and the Deloitte report were completed by Dr Murray Lawson, who had moved from FTI to Deloitte after FTI delivered its draft report and before Deloitte received instructions to prepare a separate report. This only came to light after Dr Lawson gave evidence to the Commission and was not explained.<sup>103</sup>
- 79 In August 2020 Deloitte delivered its report. It contained 27 recommendations. 104
- 80 The report noted that probity assessments were primarily managed by the Crown Credit Team and made several recommendations about involving Crown's AML, Compliance, and Security and Surveillance Teams in the due diligence process. <sup>105</sup> In his evidence to the Commission, Dr Lawson agreed that a lack of documentation of 'reasoning and rationales' was a theme of the Deloitte report. <sup>106</sup> He also said that Crown Melbourne had avoided costly due diligence searches into JTOs even though junket operations contributed millions of dollars of revenue each year. <sup>107</sup>
- 81 The Deloitte report repeated many of the same observations, and made similar recommendations, as the draft FTI report of the previous year. For instance, one recommendation made by Deloitte was that '[t]hose staff members in the Credit team who are responsible for conducting due diligence [be] provided with formal training in open-source research and information collection', and that 'internal training documents [be] supplemented to include guidance on carrying out searches and due diligence checks ...'. The draft FTI report had similarly recommended that '[s]taff members conducting DD [due diligence] ... be provided with formal training and support in Information Collection, Due Diligence ...' and that '[s]taff members conducting DD ... develop a comprehensive research manual that contains guidance on search strategies, information sources, and how best [to] utilise the available resources'.
- Another example is the recommendation by Deloitte that Crown obtain details of authorised junket agents as part of the initial information provided to it by new JTOs. The draft FTI report had similarly recommended that Crown's Marketing Team 'obtain details of all authorised agents from [JTOs] as part of the initial onboarding procedure'. There are many other examples.
- 83 In its closing submissions, Crown itself acknowledged the 'similar[ities]' between the observations and recommendations in both reports. That recommendations needed to be repeated across the two reports makes plain that Crown Resorts did not take the deficiencies in its junket due diligence processes sufficiently seriously.
- 84 In September 2020, shortly after the completion of the Deloitte report, BRG delivered its report. BRG's work involved it making a series of inquiries to verify the probity or otherwise of particular individuals and entities that had entered into junket arrangements with Crown Melbourne. BRG had discussions with industry sources, and with regulatory and other contacts in regions relevant to the persons being investigated. The BRG report confirmed that several JTOs were suspected to be involved in illegal activity. Despite this, Crown Resorts entered into arrangements with those JTOs, presumably because the illegal activity was unproven.<sup>113</sup>
  That is, substantive rumours of criminal conduct or criminal association were not a deterrent.

- 85 Of particular relevance to the question of regulation, it should be noted that there was nothing groundbreaking in BRG's methods of investigation. BRG did not discover a new way of conducting due diligence. Crown could have engaged BRG or a similar organisation to investigate probity concerns surrounding persons with dubious reputations when those concerns first arose, and otherwise well prior to mid-2020. Crown could also have carried out more thorough investigations itself. It did neither.<sup>114</sup>
- 86 Whatever the reason for Crown's inaction, it is not the conduct expected of a suitable licensee, or a suitable associate of a licensee.
- 87 It is apparent from the foregoing that Crown continued to deal with persons with links to organised crime before it suspended junket operations at least partly because of inadequacies in its junket due diligence processes and the implementation of those processes.
- 88 However, even with best practice processes, difficulties would have remained.
- 89 Crown Resorts directors and former directors themselves gave evidence to the Bergin Inquiry about the complexities of dealing with JTOs.<sup>115</sup> Crown Resorts' then Chief Executive Officer of Australian Resorts, Mr Barry Felstead, gave evidence to the effect that Crown did not always have access to all information it would require to make an informed decision about whether to deal with particular JTOs or JTRs.<sup>116</sup> He advocated for a nationwide junket licensing regime in which licensing would be done by 'an independent party'.<sup>117</sup>
- 90 In its closing submissions to the Bergin Inquiry, Crown Resorts reflected on this difficulty. It said:
  - ... Crown accepts that there have been shortcomings in its junket due diligence processes. Crown also accepts that, in their most recent form, those processes do not eliminate all risks associated with junkets. One reason that is so is because a casino operator can never have full information, and usually will have significantly less information than that which is available to regulators and law enforcement agencies. Consequently, there is a question whether Crown or other casino operators should continue to deal with junkets in future absent licensing, approval or sanction of junkets by regulators.<sup>118</sup>
- 91 There is no doubt that the ability of casino operators to ensure they do not deal with junkets or junket operators engaging in or facilitating criminal behaviour is limited by the opaque nature of many junket operators. As a private enterprise, Crown Melbourne has limited powers to see through that opacity itself. One might read Crown Resorts' and Crown Melbourne's stated intention not to deal with international junket operators and JTOs in future as an implied admission of that fact and the untenable nature of the associated risks.
- 92 In circumstances where: (a) as the Bergin Inquiry concluded, Crown partnered with numerous junket operators with links to organised crime; (b) there were system and process failures in the way Crown carried out probity checks and periodic assessments of junket operators—unidentified by the regulator prior to the media revelations and events of the Bergin Inquiry; and (c) there are limitations inherent in any private enterprise's ability to assess probity, particularly of persons outside the jurisdiction, it cannot be suggested that the current regulatory framework is effective. It is not.

## An effective regulatory approach

- 93 There are four possible approaches to regulating junkets:
  - Maintain the current regulatory regime in the hopes that Crown Melbourne will implement better procedures for assessing the probity of JTOs and others in the junket sector, with a commitment to probity over profit.
  - Revert to the regulatory model in place prior to 2003: this model would shift the burden of establishing the probity of JTOs and JTRs to the VCGLR, assisted by the Chief Commissioner of Police.
  - Implement a similar but stricter regulatory model, such as that in place in Singapore.
  - In recognition of the significant risks inherent in junket operations, as acknowledged in the AUSTRAC Junkets Report and by Crown's Group Manager for AML, ban junkets altogether.
- 94 The regulatory regime in Singapore bears brief description.
- 95 Casino operators in Singapore are governed by the *Casino Control Act 2006* (Singapore).<sup>119</sup> The Casino Regulatory Authority (**CRA**) is the regulator responsible for administering that Act. Section 110A of the Act requires JTOs, referred to in the Act as 'International Marketing Agents' (**IMAs**), and persons employed by IMAs as their representatives or agents, to be licensed by the CRA. Severe penalties, including imprisonment, apply to contraventions of section 110A.
- 96 Part II of the *Casino Control (Casino Marketing Arrangements) Regulations 2013* (Singapore) governs IMA licence applications. Among other things, regulation 7 requires all applications for a licence to be accompanied by: (a) documentary evidence from a casino operator of its intention to enter into an 'international market arrangement' with the IMA applicant; and (b) an endorsement from that casino operator stating that, having regard to the suitability of the applicant, the casino operator is satisfied that entering into such an agreement with the applicant will not affect the credibility, integrity or stability of its casino operations. The application must be accompanied by a due diligence report on the applicant.
- 97 Regulation 13 sets out the matters to which the CRA shall have regard in considering any application for an IMA licence. These include:
  - · the financial soundness and stability of the applicant
  - any information that the applicant is not of good repute, having regard to character, honesty and integrity
  - · the nature of the ownership, trust or corporate structure of the applicant, where applicable
  - whether the applicant or its associates have business associations with persons not of good repute or with undesirable or unsatisfactory financial resources
  - the applicant and its associates' track record of compliance with legal and regulatory regimes in Singapore and elsewhere.
- 98 The CRA may require the applicant to consent to having their photograph, fingerprints and palm prints taken and sent to the Commissioner of Police, who may inquire into and report on such matters as the CRA requests.<sup>121</sup>

- As with the previous regime in place in Victoria, licences are valid only for the period specified by the regulator, and cannot exceed three years. 122
- 100 Once licensed, an IMA is subject to a variety of duties and must still comply with requests for information from the CRA.<sup>123</sup> The IMA must keep extensive records of every casino marketing arrangement that it organises, promotes or conducts, including player details and other prescribed matters.
- 101 At present, there are no IMAs licensed under the Singaporean regime.<sup>124</sup>
- 102 Of the four potential options outlined above, the first option—maintenance of the current regime—can quickly be discounted. It does nothing to address the inherent limitations on a casino operator's ability to accurately and thoroughly assess the probity or otherwise of third parties, particularly where those parties are based in foreign jurisdictions.
- 103 The first option also pays insufficient regard to the fact that:
  - · as recently as late last year, Crown's own experts examined Crown's junket probity processes and found them substandard
  - · Crown's conduct regarding junkets to date has shown that it cannot, at least yet, be left to its own devices in managing the risks associated with junkets
  - · a casino operator will always have a financial self-interest in partnering with profitable JTOs and JTRs, even in the face of doubts about their probity.
- 104 The second and third options—reverting to the regulatory model in place before 2013 or implementing a model similar to that in place in Singapore respectively—are not dissimilar, though both have disadvantages. The second option would likely result in a not insignificant cost to the State, for the primary benefit of a private enterprise. If that course were to be adopted, a mechanism might be introduced where the casino operator bears those costs or some portion of those costs, given that the relevant regulatory work would effectively be undertaken on its behalf.
- 105 The Singaporean regime is more developed than the model previously contained in the Casino Control Act and related regulations. It appears to represent a superior model for junket licensing. One difficulty for a Victorian—as opposed to a Federal—regulator may be gaining access to relevant information from foreign jurisdictions about foreign nationals and associated entities. This much was acknowledged by the VCGLR, which, in its closing submissions observed:

- c. Any regulatory licensing regime will face difficulties in assessing, verifying and ensuring the probity of junket entities given they are commonly foreign entities, require the provision of intelligence and evidence from Commonwealth and overseas agencies, and require adequate resourcing to thoroughly investigate.
- d. Doing so may be seen to transfer the obligation of a casino operator, who should, as a suitable person, ensure that the entities they do business with, including junkets, are themselves suitable, to the regulator ...<sup>125</sup>

106 In circumstances where players who might otherwise participate in junkets can instead enter into premium player arrangements with casino operators directly, the fourth option can be justified by the findings of the AUSTRAC Junkets Report and the inherent and demonstrated risks associated with junkets.

#### RECOMMENDATION 8: REGULATION OF JUNKETS

It is recommended that the Casino Control Act be amended to prohibit a casino operator from dealing with junket tour operators.

## **Endnotes**

- The Casino Control Act 1991 (Vic) s 3 defines 'junket' to mean 'an arrangement whereby a person or group of people is introduced to a casino operator by a junket organiser or promoter who receives a commission based on the turnover of play in the casino attributable to persons introduced by the organiser or promoter or otherwise calculated by reference to such play'.
- 2 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 68 [27].
- 3 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 16 [22].
- 4 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 19 [40]; see also 24 [63].
- Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 16 [22].
- 6 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 16 [22].
- 7 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 15 [16].
- 8 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 17 [24].
- Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 15–16 [16]–[17]. 9
- Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 15 [16]. 10
- Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 67-8 [21]-[24]. 11
- 12 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 67-8 [23]-[25].
- 13 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 67 [22]-[23].
- 14 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 67 [21].
- 15 AUSTRAC, Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment (Report, 11 December 2020).
- 16 AUSTRAC, Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment (Report, 11 December 2020) 8.
- 17 Casino Control Act 1991 (Vic) s 68(8).
- 18 AUSTRAC, Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment (Report, 11 December 2020) 8.
- 19 AUSTRAC, Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment (Report, 11 December 2020) 8; Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 14 [9].
- 20 AUSTRAC, Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment (Report, 11 December 2020) 8.
- 21 AUSTRAC, Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment (Report, 11 December 2020) 7.
- 22 AUSTRAC, Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment (Report, 11 December 2020) 8.
- 23 AUSTRAC, Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment (Report, 11 December 2020) 8.
- 24 AUSTRAC, Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment (Report, 11 December 2020) 9.
- 25 AUSTRAC, Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment (Report, 11 December 2020) 9.
- 26 AUSTRAC, Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment (Report, 11 December 2020) 9.
- 27 AUSTRAC, Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment (Report, 11 December 2020) 9.
- 28 AUSTRAC, Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment (Report, 11 December 2020) 9.
- 29 Exhibit RC0455 Junket Operators and Premium Players revenue spreadsheet, n.d.; Adrian Finanzio, Penny Neskovcin, Meg O'Sullivan and Geoffrey Kozminsky, Counsel Assisting Submissions, Royal Commission into the Casino Operator and Licence (14 July 2021) 196 [2.4].

- Indeed, in its closing submissions to the Bergin Inquiry, Crown Resorts and Crown Sydney Gaming Pty
  Ltd observed that 'it has in practice been impossible since March 2020 for junkets to operate at Crown
  Melbourne or Crown Perth': Exhibit RC1560 Crown Resorts, Closing submission to Bergin Inquiry, n.d.,
  64 [216].
- 31 Exhibit RC0455 Junket Operators and Premium Players revenue spreadsheet, n.d.
- Exhibit RC0463 Letter from DLA Piper to Solicitors Assisting, 31 May 2021, Annexure i, 152 [454]; Exhibit RC1561 Crown Melbourne ML/TF Risk Assessment Review, n.d.
- 33 See, eg, Exhibit RC1554 Article: How 'Mr Chinatown' Delivered the Whales, 29 July 2019; Exhibit RC1555 Article: How Australia's Casino Got Tied Up With Criminals, 29 July 2019; Exhibit RC1556 Article: Casinos Face Probe into Organised Crime Links, 1 August 2019.
- For a detailed timeline of the regulatory action, see Chapter 10.
- Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 301 [17].
- Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 301 [17]; Crown Resorts, 'ILGA Inquiry—Evidence' (ASX Media Release, 25 September 2020).
- 37 Exhibit RC1523 Letter from Ross Kennedy to Barry Felstead, 2 October 2020.
- 38 Exhibit RC0292 VCGLR Confidential Reasons for Decision, 27 April 2021, 10 [33]–[36].
- 39 Exhibit RC0366 VCGLR Transcript of proceedings in the matter of Crown Melbourne, 21 January 2021, 2.
- 40 Exhibit RC0292 VCGLR Confidential Reasons for Decision, 27 April 2021, 11 [41].
- 41 Exhibit RC0366 VCGLR Transcript of proceedings in the matter of Crown Melbourne, 21 January 2021, 2.
- 42 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 302 [19]; Crown Resorts, 'Future Junket Relationships—Update' (ASX Media Release, 17 November 2020).
- 43 Exhibit RC0366 VCGLR Transcript of proceedings in the matter of Crown Melbourne, 21 January 2021, 2.
- 44 Exhibit RC0366 VCGLR Transcript of proceedings in the matter of Crown Melbourne, 21 January 2021.
- Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 298 [2]; Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 692 [15(c)]. A summary of the Bergin Report's findings regarding junkets is set out in Chapter 3 of this Report.
- 46 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, v [11].
- 47 Exhibit RC0292 VCGLR Confidential Reasons for Decision, 27 April 2021, 2.
- 48 ILGA, 'Bergin Report Update Regarding Crown's Barangaroo Casino' (Media Release, 13 May 2021) 1.
- 49 Crown Resorts, 'NSW ILGA Announcement in Relation to Crown Sydney' (ASX Media Release, 13 May 2021).
- 50 Exhibit RC0461 Letter from Allens Linklaters to Solicitors Assisting, 19 May 2021.
- 51 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 154 [E.4].
- 52 FATF, Vulnerabilities of Casinos and Gaming Sector (Report, March 2009) 48 [153].
- 53 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 63–8.
- AUSTRAC, Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment (Report, 11 December 2020) 4.
- Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 63 [3]–[4].
- 56 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 63 [1].
- 57 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 64 [5]–[6].
- 58 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 64 [7].
- 59 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 64–5 [9].
- AUSTRAC, Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment (Report, 11 December 2020) 3.
- AUSTRAC, Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment (Report, 11 December 2020) 25.
- 62 AUSTRAC, Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment (Report, 11 December 2020) 31.
- 63 AUSTRAC, Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment (Report, 11 December 2020) 35.
- AUSTRAC, Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment (Report, 11 December 2020) 37.

- 65 AUSTRAC, Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment (Report, 11 December 2020) 41.
- 66 Transcript of Nicholas Stokes, 20 May 2021, 364.
- Transcript of A Police Officer, 18 June 2021, 2079-80. 67
- AUSTRAC, Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment 68 (Report, 11 December 2020) 4, 10, 28.
- 69 AUSTRAC, Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment (Report, 11 December 2020) 28.
- 70 AUSTRAC, Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment (Report, 11 December 2020) 29.
- 71 AUSTRAC, Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment (Report, 11 December 2020) 31.
- 72 AUSTRAC, Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment (Report, 11 December 2020) 31. Fiat currency is currency that is designated and accepted as legal tender within a country; ie coin or paper money.
- 73 AUSTRAC, Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment (Report, 11 December 2020) 31.
- 74 AUSTRAC, Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment (Report, 11 December 2020) 32.
- 75 AUSTRAC, Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment (Report, 11 December 2020) 34.
- 76 AUSTRAC, Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment (Report, 11 December 2020) 34.
- AUSTRAC, Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment 77 (Report, 11 December 2020) 34.
- 78 Gambling Regulation Act 2003 (Vic) s 12.1.2, sch 5 item 115(b); Casino Control Act 1991 (Vic) ss 121(1), 122(1)(w).
- 79 Victoria, Parliamentary Debates, Legislative Council, 2 December 2003, 1989 (Justin Madden).
- 80 See, eg, Exhibit RC0969 Crown Melbourne Junket and Premium Player Programs ICS version 10, 24 December 2015; Exhibit RC1276 Crown Melbourne Junket and Premium Player Programs ICS version 11, December 2020.
- 81 Exhibit RC0969 Crown Melbourne Junket and Premium Player Programs ICS version 10, 24 December 2015,
- 82 Exhibit RC1276 Crown Melbourne Junket and Premium Player Programs ICS version 11, December 2020.
- 83 See generally Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, Chapter 3.4.
- 84 See Chapter 3.
- Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 313 [100], 314 [107]. 85
- 86 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 318 [126], 319 [133].
- 87 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 320 [136].
- 88 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 320 [139].
- 89 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 319 [133].
- 90 Exhibit RC0192 FTI Consulting Review of Due Diligence Procedures for Operators and Premium Players Crown Resorts draft report, 10 September 2019.
- 91 Exhibit RC0192 FTI Consulting Review of Due Diligence Procedures for Operators and Premium Players Crown Resorts draft report, 10 September 2019, 6-8.
- 92 Exhibit RC0354 Third Statement of Xavier Walsh, 3 May 2021, Annexure i.
- 93 Exhibit RC0453 BRG Investigative Report regarding Chau Cheok Wa et al, 12 September 2020.
- 94 See Chapter 3.
- 95 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 319 [129(d)].
- 96 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 318 [127]-[128].
- 97 Exhibit RC0192 FTI Consulting Review of Due Diligence Procedures for Operators and Premium Players Crown Resorts draft report, 10 September 2019, Annexure 5.

- 98 Exhibit RC0192 FTI Consulting Review of Due Diligence Procedures for Operators and Premium Players Crown Resorts draft report, 10 September 2019, 7.
- 99 Transcript of Anne Siegers, 10 June 2021, 2021.
- Transcript of Anne Siegers, 10 June 2021, 2030. 100
- See, eg, Transcript of Anne Siegers, 10 June 2021, 2013, 2015, 2021–2; Transcript of Jane Halton, 101 7 July 2021, 3576.
- Adrian Finanzio, Penny Neskovcin, Meg O'Sullivan and Geoffrey Kozminsky, Counsel Assisting Submissions, 102 Royal Commission into the Casino Operator and Licence (14 July 2021) 232-3 [6.8]-[6.10].
- 103 Adrian Finanzio, Penny Neskovcin, Meg O'Sullivan and Geoffrey Kozminsky, Counsel Assisting Submissions, Royal Commission into the Casino Operator and Licence (14 July 2021) 203 [6.12].
- 104 Exhibit RC0354 Third Statement of Xavier Walsh, 3 May 2021, Annexure i, Appendix G.
- See, eg, recommendation 18 in Exhibit RC0354 Third Statement of Xavier Walsh, 3 May 2021, Annexure i, 105 Appendix G.
- 106 Transcript of Murray Lawson, 20 May 2021, 302.
- 107 Transcript of Murray Lawson, 20 May 2021, 307.
- 108 Cf Exhibit RC0192 FTI Consulting Review of Due Diligence Procedures for Operators and Premium Players Crown Resorts draft report, 10 September 2019, Annexure 5 and Exhibit RC0354 Third Statement of Xavier Walsh, 3 May 2021, Annexure i, Appendix G.
- 109 Exhibit RC0354 Third Statement of Xavier Walsh, 3 May 2021, Annexure i, Appendix G, recommendation 4.
- 110 Exhibit RC0192 FTI Consulting Review of Due Diligence Procedures for Operators and Premium Players Crown Resorts draft report, 10 September 2019, Annexure 5.
- 111 Exhibit RC0192 FTI Consulting Review of Due Diligence Procedures for Operators and Premium Players Crown Resorts draft report, 10 September 2019, Annexure 5 (Agents) and Exhibit RC0354 Third Statement of Xavier Walsh, 3 May 2021, Annexure i, Appendix G, recommendation 7.
- 112 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 165 [E.38].
- 113 Transcript of Xavier Walsh, 5 July 2021, 3305-6.
- 114 Transcript of Xavier Walsh, 5 July 2021, 3305-6.
- 115 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 301 [18].
- 116 Bergin Inquiry Transcript (Felstead), 19 August 2020, 1328-34.
- 117 Bergin Inquiry Transcript (Felstead), 19 August 2020, 1334.
- 118 Exhibit RC1560 Crown Resorts closing submission to the Bergin Inquiry, n.d., 64 [215].
- 119 Casino Control Act (Singapore, cap 33A, 2007 rev ed).
- 120 See also Casino Control Act (Singapore, cap 33A, 2007 rev ed) s 110B.
- 121 Casino Control (Casino Marketing Arrangements) Regulations 2013 (Singapore) rr 10(2)(c), 10(2)(d), 10(3).
- 122 Casino Control (Casino Marketing Arrangements) Regulations 2013 (Singapore) r 17.
- Casino Control (Casino Marketing Arrangements) Regulations 2013 (Singapore) pt III, particularly r 24. 123
- 124 'Licenses & Approvals', CRA (Web Page, 1 March 2021) <www.cra.gov.sg/licenses-approvals/licenses/ international-market-agents>.
- 125 Responsive submission VCGLR, 2 August 2021, 56-7 [165(c)]-[165(d)].







# Royal Commission into the Casino Operator and Licence

THE REPORT — VOLUME 2

#### ROYAL COMMISSION INTO THE CASINO OPERATOR AND LICENCE

# The Report – Volume 2

The Hon. Ray Finkelstein, AO, QC Commissioner

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The Royal Commission into the Casino Operator and Licence acknowledges the traditional Aboriginal owners of country throughout Victoria and recognises their continuing connection to land, sea, culture and community. The Commission pays its respects to elders past, present and emerging.

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CHAPTER 08

# Responsible service of gambling

#### CHAPTER 8

# Responsible service of gambling

#### Introduction

- The financial position of Victoria in 1991 was grim. The State's public sector debt had risen to \$28 billion, from about \$23 billion in 1988. Unemployment was around 10 per cent. The budget deficit for the year was expected to exceed \$1 billion.1
- For some time, the government had been subject to pressure to legalise casinos in the state. Given the circumstances, it is not surprising that the government finally agreed. The reasons were compelling. Significant economic benefits were expected. There would be a growth in employment. Tourism to the state would increase. Associated businesses would benefit. And, importantly, government revenue would rise.
- 3 In the second reading of the Casino Control Bill, the responsible Minister explained that '[Melbourne] is a world-class city and the time has come when it should have a world-class casino'.2
- The Minister acknowledged that there were significant risks associated with establishing a casino. The risks the Minister identified were the potential for criminal activity and the influence of organised crime. In his 1983 Report, Mr Connor, QC warned that criminal organisations would find casinos ideal for the purposes of money laundering.<sup>3</sup>
- The Minister said that the Casino Control Bill was 'designed to provide strict control over all aspects of the operation of casinos' so as to exclude criminal activity and influence.4
- Nothing was said by the Minister introducing the Casino Control Bill about the potential harmful effects of gambling at a casino.5
- The opposition supported the establishment of a casino. The Member for Monash, a former barrister, said that the opposition:
  - decided that, after very careful investigation of the economic, social and regulatory factors involved, there should be a casino in this State and that it should be what is described as a world-class casino.6
- The Member for Monash went on to say:
  - On balance the economic benefits of casinos outweigh the risk on the regulatory side, the risk that is undoubtedly the greatest being that of organised crime taking an interest in casinos and intruding into them. The opposition came to the view that the level of surveillance and regulation is such that it will reduce the risk to a very low level.<sup>7</sup>
- The only mention of the harmful effects of gambling during the parliamentary debate of the Casino Control Bill was in the context of loansharking and extortion. It was pointed out that there was a real potential for extortion where people have a gambling problem. They would be concentrated in one area and would potentially fall prey to those who lend money.8

10 The stated purposes of the Casino Control Bill, which remain in the Casino Control Act to this day, 9 reflected the government's priorities and concerns. They were to:

> [e]stablish a system for the licensing, supervision and control of casinos with the aims of:

- a. ensuring that the management and operation of casinos remains free from criminal influence or exploitation; and
- b. ensuring that gaming in casinos is conducted honestly; and
- c. promoting tourism, employment, and economic development generally in the State.<sup>10</sup>
- 11 Following the passage of the Bill in June 1991, the government took immediate steps to establish a casino, commencing the process to issue the casino licence in late 1991.11 The casino was anticipated to be a \$1 billion development that could earn \$100 million per year in gambling revenue for the State.12

## The benefits of gambling

- 12 Gambling in Australia has become a large and expanding industry. It incorporates a diverse range of activities, from charitable gambling to internet gaming. New products are being developed. The trend to increased spending on recreation and leisure and the expansion of commercial forms of gambling allows gambling to be promoted as a legitimate form of entertainment.<sup>13</sup>
- 13 The gambling industry makes a significant contribution to the Victorian economy in terms of employment, investment tourism and tax revenue.14 Over 15,000 people are employed at clubs and hotels that have EGMs, at the Melbourne Casino and at standalone TAB agencies.15
- 14 In dollar terms, between 2001 and 2019 more than \$4 billion was spent on all forms of gambling in Victoria each year.<sup>16</sup>
- 15 Gambling taxes have become a stable source of State revenue, with between \$1.63 billion and \$2 billion received annually by the State in the 2009 to 2020 financial years.<sup>17</sup> In the 2020 financial year, gambling taxes were the State's fifth-highest source of revenue. 18 This revenue helps fund some of the essential services that the government provides, including health services, community projects and community education initiatives.
- 16 Crown's contribution to the economy must be acknowledged. Crown is a major employer (over 20,000 people are employed across the Crown Resorts businesses, including over 11,500 who work in Melbourne)<sup>19</sup> and makes a substantial contribution to Victorian, Western Australian and Commonwealth revenues. It provides training and educational opportunities and, through its philanthropic arm, the Crown Foundation, contributes to cultural and charitable causes.<sup>20</sup>
- 17 More specifically, Crown paid over \$650 million in taxes in Australia in 2019. Since 2014 it has paid at least \$812.4 million in corporate income tax to the Commonwealth as well as contributing over \$3 billion to Victoria's revenue. Through its procurement activities, Crown also supports many other Australian businesses.21

- 18 In a submission to a 2015 Productivity Commission research paper into tourism, Crown Resorts contended that, with the exception of airlines, it was Australia's largest generator of tourism revenue and that a third of its revenue came from international visitors. Crown Resorts also asserted that, in circumstances where Australia's market share of tourism from China in particular was declining, it stood to 'capture growing international demand for luxury travel, as [Crown's integrated resorts] cater to the desire of the Asian middle class'. 22
- 19 Crown Melbourne was the fifth most visited attraction in Melbourne in 2019, with 2.2 million overnight visitors. Of this number, 1.6 million were domestic overnight visitors and 610,800 were international overnight visitors.<sup>23</sup>
- 20 In the 2020 financial year, the Melbourne Casino and other gambling services contributed \$149 million in 'direct tourism gross value added' to the State. While this industry sector does not make the highest direct tourism gross value added contribution, the amount is still significant.24
- 21 More broadly, many people who gamble (including at the Melbourne Casino) do so because they enjoy it. Some studies have tentatively linked certain forms of gambling with an improved sense of wellbeing.25 The recreational and functional benefits of the Melbourne Casino extend beyond gambling to other forms of entertainment, and to accommodation and function spaces.

# The harm caused by gambling

#### A brief overview

- 22 The Productivity Commission conducted the first independent national review of the social and economic impacts of the gambling industries across Australia.<sup>26</sup>
- 23 Its report was published in 1999.<sup>27</sup> It was a novel and influential effort to evaluate the costs and benefits of gambling. The Productivity Commission's work has been augmented by reports from the VRGF,<sup>28</sup> the work of other organisations in Victoria<sup>29</sup> and interstate,<sup>30</sup> and a growing body of international reports and scholarship.31
- 24 The Productivity Commission identified problem gambling as a significant social cost resulting from the rapid growth and commercialisation of the gambling industry. It noted the industry's ability:
  - simultaneously to provide entertainment that is harmless to many people, while being a source of great distress—and even of financial and personal ruin—to a significant minority. The imbalances between the consequences for each group can be very marked, a feature not found in other entertainment industries.32
- 25 A common research tool to assess the risk and prevalence of problem gambling is the Problem Gambling Severity Index (PGSI). The PGSI is a tool based on research on the common signs and consequences of problematic gambling,33 and is a standardised measure of at-risk behaviour used by the VRGF.

- 26 The PGSI is used by respondents to self-assess their gambling behaviour over the past 12 months. They answer nine questions by selecting a score for each: never (0), rarely (1), sometimes (1), often (2) or always (3). The scores are added up and respondents are placed in one of the following categories:
  - non-problem gambler (the person's gambling has no negative consequences)
  - low-risk gambler (the person experiences a low level of problems with their gambling with few or no identified negative consequences—for example, they may very occasionally spend over their limit or feel guilty about gambling)
  - a moderate-risk gambler (the person experiences a moderate level of problems leading to some negative consequences—for example, they may sometimes spend more than they can afford, lose track of time or feel guilty about gambling)
  - · a problem gambler (the person gambles with negative consequences and a possible loss of control—for example, they may often spend more than their limit, gamble to win money back and feel stressed about their gambling).34
- 27 This and similar indices, such as the Short Gambling Harm Screen, have been used to measure the level of problem gambling in the population.

#### THE NUMBER OF PROBLEM GAMBLERS

- 28 In 2009, the Productivity Commission conducted a further inquiry into Australia's gambling industries. The report, published in 2010, estimated that there were between 80,000 and 160,000 adults suffering severe problems from their gambling and between 250,000 and 350,000 adults at moderate risk, experiencing low levels of harm, and who could progress to problem gambling.35 In its 2017 report, 'The Social Cost of Gambling to Victoria' (2017 VRGF Report), the VRGF estimated that out of a total Victorian population of around 4 million people, there were approximately 35,000 problem gamblers, 122,600 moderate-risk gamblers and 391,000 low-risk gamblers.<sup>36</sup> In a later report, published in March 2020 (2020 VRGF Report), the VRGF estimated that there were approximately 36,000 problem gamblers, 118,000 moderate-risk gamblers and 329,000 low-risk gamblers in Victoria.<sup>37</sup>
- 29 In 2018, the VRGF conducted an online questionnaire, rather than using the usual telephonebased survey method, and found markedly higher rates of problem gambling. It estimated that averaged over all age groups, the prevalence of problem gambling was 11 per cent and that the prevalence in the 25-34 year age group was 23 per cent.38 The authors observed that individuals may be more willing to acknowledge their gambling problems in an anonymous online questionnaire than in a telephone interview. They also noted that participants were chosen to be more representative of the general Victorian population than in other studies.<sup>39</sup>
- 30 Evidence given to the Commission was that the prevalence of problem gambling in the Victorian adult population in the 2019 financial year was 0.7 per cent.<sup>40</sup>

#### THE MONEY LOST TO GAMBLING

- 31 Research showed that in the 2019 financial year, approximately 70 per cent of Victorian adults had participated in some form of gambling in the previous 12 months.<sup>41</sup> The principal forms of legal gambling in Victoria are EGMs, casino table games, betting, lotteries, raffles and bingo. 42
- 32 Annual gambling losses are substantial. The amount lost per adult in Victoria in the 2018 financial year was estimated to be \$1,163.43 Broken down by gambling product, the losses on EGMs are the greatest. Some \$2.7 billion was lost on EGMs in Victoria in the 2018 financial year. This may be compared with sports betting losses in Victoria, which were around \$371.7 million in the same period.44
- 33 It is instructive to consider gambling losses by reference to problem gamblers and moderate-risk gamblers.
- 34 The 2010 Productivity Commission Report estimated that problem gamblers likely accounted for around 40 per cent (possibly as much as 60 per cent or, in the most conservative case, as low as a (still significant) 22 per cent) of EGM losses, and moderate-risk gamblers accounted for a further 19 per cent (possibly as much as 27 per cent or, in the most conservative case, 7 per cent). Problem gamblers accounted for \$2.6 billion of EGM losses. 45
- 35 More recently, the 2017 VRGF Report estimated that problem and moderate-risk gamblers in Victoria accounted for 59.4 per cent of EGM spending in the 2015 financial year (moderate-risk gamblers accounting for 23 per cent and problem gamblers accounting for 35.8 per cent), and that only 18.7 per cent of EGM spending came from non-problem gamblers. 46 It also found that problem gamblers accounted for 58.7 per cent of table games spending at the Melbourne Casino, moderate-risk gamblers accounted for 19.1 per cent and low-risk gamblers accounted for 15.3 per cent. A mere 6.9 per cent of the casino's table games spending came from non-problem gamblers.47
- 36 The total amount spent on gambling at the Melbourne Casino is significant. Between the 2008 and 2018 financial years, this amount rose from approximately \$1.1 billion to approximately \$1.8 billion.48

#### THE RESPONSE OF GOVERNMENT AND INDUSTRY

- 37 In 2006, the State Government acknowledged that over 55,000 adult Victorians had become addicted to gambling. The vast majority were addicted to gambling on EGMs.<sup>49</sup>
- 38 As more evidence of the harmful effects of problem gambling emerged and the cost of those effects mounted, both the government and the industry took action to minimise the harm. Initiatives included:
  - · prohibiting minors from accessing gambling
  - conducting community awareness campaigns
  - · requiring the provision of information about gaming rules, odds and rates of returns
  - · establishing self-exclusion programs

- putting warning messages on gambling terminals
- placing restrictions on advertising
- establishing gambling assistance hotlines.<sup>50</sup>

#### Non-gamblers affected by gambling

- 39 The number of people with gambling problems is much smaller than the number of people who may be affected by those problems.<sup>51</sup>
- 40 Work carried out by the VRGF in 2016 confirmed that the harm done by gambling extends well beyond the gambler. The types of harm experienced by 'affected others'—people in the familial and social networks of gamblers who are experiencing harms—include:
  - · relationship disruption, conflict or breakdown
  - · poorer health
  - · emotional and psychological distress
  - financial harm
  - reduced performance at work or in study
  - · cultural problems (for example, personal conflicts about gambling when it is against cultural beliefs, reduced ability to participate in cultural practices or meet community expectations, and reduced connection to the cultural community)
  - criminal activity
  - life course and intergenerational harms.<sup>52</sup>
- 41 The 2017 VRGF Report stated that in the 2015 financial year:
  - Gambling-related harm imposed both direct and indirect costs on the gambler.
  - The costs imposed by gambling-related harm extended to affected others in the form of divorce or separation; experiences of violence; emotional distress; and, in extreme cases, the impact of suicide attempts or fatality by suicide.
  - · Costs extended to third parties and the community in the form of productivity loss and work impacts; the cost of crime to businesses and the Victorian justice system; and costs to the health and human service sector, the mental health sector and homelessness services.
  - Every problem gambler affected approximately six others through their gambling, while gamblers at moderate risk affected three others, and low-risk gamblers affected one other.53
- 42 The 2017 VRGF Report estimated that affected others could constitute over 22 per cent of the Victorian population; however, it noted that a substantial percentage of this population would be experiencing minor harms, not enough to give rise to a high degree of emotional stress and the costs associated with that.54

#### Costing the harms

- 43 The cost to Victorians of the harms caused by gambling far exceeds the amounts lost by those gambling. The Victorian Auditor-General has assessed this cost to be around \$7 billion a year, through damage to relationships, health and wellbeing, monetary losses and other social costs.<sup>55</sup>
- 44 A brief survey of some of the types of harms that contribute to those costs follows.

#### FINANCIAL COSTS

45 The financial costs of gambling harms are substantial, and can stem from bankruptcy, unpaid debts and excessive spending on gambling (which may result in financial strain, debt or less money available for essential items). The VRGF 2017 Report estimated that in the 2015 financial year alone, 2,693 bankruptcies may have been the result of gambling in Victoria. It estimated the annual cost of gambling-related bankruptcy in Victoria to be \$70.1 million.<sup>56</sup> That figure did not take into account the indirect costs that may arise from bankruptcy, such as costs to relationships (for example, emotional distress and divorce), and the use of government services such as housing assistance or financial support.<sup>57</sup>

#### COSTS TO HEALTH AND WELLBEING

- 46 The physical and psychological impacts of gambling can be very grave. Problem gambling is associated with substantially lower levels of life satisfaction. The 2020 VRGF Report used the Australian Unity Wellbeing Index to measure Victorian adult respondents' overall life satisfaction, as well as their satisfaction with how safe they felt; their standard of living; their personal relationships; their health; their future security; what they were currently achieving in life; and their feeling of being part of a community. Problem gamblers had notably lower scores than other respondents in every domain.58
- 47 The 2017 VRGF Report indicated that in the 2015 financial year, over 40 per cent of problem gamblers reported increased depression due to gambling within the previous 12 months. Some 7.5 per cent of problem gamblers reported that their gambling had contributed to or caused a suicide attempt or ideation. Even adjusting this rate to accommodate the possibility that gambling was not the sole contributing factor, this amounted to 2,112 suicide attempts or ideation among problem gamblers alone within the previous 12 months. The total number of suicide attempts or ideation for low-risk, moderate-risk and problem gamblers was estimated to be 8,802.59
- 48 The 2017 VRGF Report estimated (again, applying a reduction to account for those who may have committed suicide in any event) that there were 587 suicides in Victoria caused by gambling problems in the 2015 financial year. 60

#### COSTS TO RELATIONSHIPS AND FAMILY

- 49 Problem gambling has been shown to have disruptive and destructive consequences for relationships and families.
- 50 The 2017 VRGF Report records that almost 20 per cent of problem gamblers in Victoria reported that their gambling contributed to or caused their divorce or separation. Applying a 20 per cent reduction to account for instances of divorce or separation that may have occurred in any event, it was estimated that gambling problems contributed to or caused 14,693 divorces or separations among low-risk, moderate-risk and problem gamblers.<sup>61</sup>

51 Gambling has also been empirically associated with family violence. The relationship between gambling and family violence is complex. 62 Gambling can result in stress, anger or financial crisis, which in some cases may increase the likelihood of family violence. In other cases, problematic gambling may be an effect of family violence. Some research indicates that there is a nearly threefold increase in the probability of violence in families where there is problem or moderate-risk gambling.<sup>63</sup>

#### PRODUCTIVITY AND WORK COSTS

52 Problem gambling can interfere with a person's ability to function as a productive, gainfully occupied member of the community. The 2017 VRGF Report considered, for example, the cost of gambling-related job losses, absenteeism and lost productivity in the 2015 financial year. Datasets indicated that reduced productivity at work due to gambling problems cost businesses over \$323 million that year.<sup>64</sup> More than 16,000 people were estimated to be absent from work because of gambling problems, costing over \$46 million.<sup>65</sup> Further, over 11 per cent of problem gamblers, and almost 5,000 people with varying levels of gambling problems were estimated to have lost their job as a result of gambling problems (again adjusted to account for those who may have lost their job in any event).66

#### COSTS TO GOVERNMENT

- 53 Gambling imposes substantial costs on various branches of government. There are costs to the justice system as a result of gamblers who commit offences connected with gambling problems. In the 2015 financial year, some 18,513 people with varying levels of gambling problems were estimated to have committed a crime due to gambling.67
- 54 Wider costs to government include the cost of establishing and maintaining the public structures that regulate, research and treat gambling-related problems; and the cost of people with gambling problems accessing health and human services, mental health services and homelessness services.68

### Concluding remarks

55 Concentrating attention on the financial costs of harms caused by gambling problems ignores the larger picture. Many of the most profound impacts of gambling problems defy quantification. The true impact of a life lost to suicide on the person's family and friends is incalculable. The same is true of the personal cost to a life of irrecoverable years spent overwhelmed by addiction, uncertainty and hopelessness, or of a childhood marred by violence or homelessness.

# The number of problem gamblers at the Melbourne Casino

56 The Melbourne Casino is a huge, attractive and busy venue. In the five financial years from 2016 to 2020, Crown spent some \$2.46 billion on marketing, rewards and other benefits and enticements to attract customers.<sup>69</sup> These measures have been very successful. In each of the years 2016 to 2019, the Melbourne Casino had between 22.4 and 23.4 million visits. Numbers declined in 2020 because of the closures resulting from the COVID-19 pandemic.<sup>70</sup>

- 57 The number of visits includes players who visit the Melbourne Casino on more than one occasion in a day. This means that estimating the number of individuals who attend each day is difficult. The likely number is somewhere between 12,000 and 14,000 players per day.71
- 58 The Melbourne Casino attracts many gamblers who have problems with their gambling. Data from the 2020 VRGF Report shows that in 2018–19:
  - Twenty-five per cent of people who had gambled at the Melbourne Casino in the previous 12 months experienced some harm from gambling.
  - · Just over a third of Victorians experiencing problem gambling, and nearly a third of all Victorians at moderate risk of experiencing problem gambling, had gambled at the Melbourne Casino in the previous 12 months.
  - Compared to the broader population of Victorians who gamble on table games, EGMs, bingo and Keno, those gambling at the Melbourne Casino are more likely to report having experienced at least one form of gambling harm.
  - Sixty-one per cent of people gambling on EGMs at the Melbourne Casino experiencing 'problem gambling' had used unrestricted EGMs in the previous 12 months.72
- 59 Using data from the 2020 VRGF Report, Ms Rosa Billi, Branch Head for Research and Evaluation at the VRGF, concluded that the prevalence of problem gamblers at the Melbourne Casino may be three times higher than among all Victorian adults who gamble.<sup>73</sup>
- 60 Crown says there are three issues of concern with Ms Billi's analysis: (a) it is not statistically significant; (b) the sample size is too small to draw an accurate conclusion; and (c) since her conclusions were drawn from the 2020 VRGF Report's findings but not published within it, they have not been peer-reviewed.74
- 61 Those concerns can be put aside. First, the issues were not raised with Ms Billi, so she could not rebut or answer any criticism. To rely on them now is unfair.
- 62 Second, Ms Billi's analysis has some support in the research. A 2015 paper titled 'Responsible Gambling and Casinos', commissioned by Gambling Research Australia, reached the following conclusion:

In general, regular casino gamblers were found (i.e. by prevalence studies) to be more likely compared to other gamblers to be problem gamblers with 10 per cent of casino gamblers in the general population likely to be moderate risk to problem gamblers (New South Wales); casino gamblers were over three times more likely to be problem gamblers and moderate risk gamblers than other gamblers (South Australia).<sup>75</sup>

63 Finally, even if the issues raised by Crown were valid, it is open to conclude that, as a matter of common sense, problem gamblers are more likely to be found in the casino when compared to all Victorian adults who gamble.

64 So much appeared obvious to Parliament when considering the establishment of a casino in Victoria. During the debate on the Casino Control Bill, the Member for Monash said:

> Finally, it was pointed out to those who consulted on the issue that the potential for extortion is enormous where those who have a gambling problem ... can be seen as concentrated in one area, and will perhaps be prey to those who lend money (emphasis added).<sup>76</sup>

65 The evidence and submissions received by this Commission indicate that problem gamblers are drawn to the casino for many reasons, including because it is open 24 hours a day and has more EGMs than any other venue.<sup>77</sup>

#### The features of EGMs

- 66 It is important to understand why such a large proportion of problem gamblers are attracted to EGMs, and why most money gambled by problem gamblers is spent on EGMs.
- 67 Ms Billi said research that had examined the structural characteristics of EGMs has identified a range of factors associated with gambling harm. These factors include:
  - · the rapid speed of play relative to other forms of gambling
  - · the lack of natural breaks from gambling
  - the highly variable and unpredictable outcomes, together with product characteristics such as 'near misses' (where losses are presented as 'almost wins') and 'losses disguised as wins' (where a person loses more than they stake, yet the outcome is accompanied by the celebratory machine sounds and graphics that occur when a person wins),78

which may lead to persistent gambling in the face of losses, particularly among those experiencing problem gambling.<sup>79</sup>

- 68 Ms Billi said research shows that:
  - people who experience problems with gambling are more likely to gamble out of a desire to escape or alter mood, and products that offer rapid, continuous gambling appear to be a more effective means of achieving these goals
  - · faster, more continuous gambling activities are more conducive to potentially harmful patterns of gambling behaviour, such as increasing stake size in an attempt to recoup losses
  - the absence of a natural break from gambling prevents a person from reflecting on the gambling outcome
  - · increased EGM play speed may be associated with higher spending, greater underestimates of the amount spent, placing of higher bets and impaired recall of outcomes.80
- 69 Other research confirms Ms Billi's evidence. For example, there is evidence that EGMs can induce a dissociative 'flow state' where a gambler's awareness of self, the passage of time and surroundings is diminished.81 For problem gamblers in particular, that 'flow state' may itself be addictive, 82 especially for those suffering from depression, who find superficial relief in a dissociative state.83

- 70 Research suggests that losses disguised as wins produce a response in the brain similar to that produced by wins, encouraging gamblers to continue gambling, and that they can enhance the 'flow state'.84 Similarly, losses presented as 'near misses' may stimulate an even greater urge to continue playing than an actual win, and can result in players gambling for longer than intended.85
- 71 In addition to having these general characteristics, the EGMs at the Melbourne Casino have particular characteristics that others in Victoria do not. The restrictions imposed on the EGMs at the Melbourne Casino are less stringent in many instances than those imposed on EGMs at other gaming venues in Victoria. The following table sets out the operational differences.

EGM features	Clubs and hotels	Crown (restricted mode)	Crown (unrestricted mode)
Spin rate	Cannot be shorter than 2.14 seconds	Cannot be shorter than 2.14 seconds	No restriction
Bank note acceptor	Cannot accept bank notes greater than \$50	Cannot accept bank notes greater than \$50	No restriction
Load-up limit	Limit of \$1,000	Limit of \$9,949	No restriction
Pay-out limit	Winnings higher than \$2,000 must be paid by cheque	Winnings higher than \$2,000 must be paid by cheque	No restriction
AutoPlay	Prohibited	Prohibited	Allowed
Maximum bet per spin	\$5	\$10	No restriction

Source: Submission 60 VRGF, 31 May 2021, 20.

- 72 As can be seen from this table, EGMs at the Melbourne Casino can operate in both restricted and unrestricted mode. Of the 2,628 EGMs permitted to be operated at Crown Melbourne,86 1,000 are permitted to operate in 'unrestricted' mode when certain requirements are satisfied (including that a player has a pre-set time and loss limit on their YourPlay account, and has not exceeded either limit).87 Crown Melbourne is the only venue in the state that has EGMs permitted to operate in unrestricted mode.88
- 73 Mr Mark Mackay, Executive General Manager of Gaming Machines, acknowledged that because there are no maximum bet limits on unrestricted EGMs and there are higher bet limits on restricted EGMs at the casino than at other EGM venues, the risk of harm from gambling at the Melbourne Casino is greater than the risk of harm from gambling on any other EGMs in Victoria.89

# The Gambling Code

- 74 It is a condition of Crown Melbourne's casino licence that it must implement a Gambling Code.90 Repeated breaches of its Gambling Code is a ground upon which the regulator may take disciplinary action against Crown Melbourne.91
- 75 The requirement to implement a Gambling Code came about in the following way.
- 76 In October 2006, the Victorian Government issued its report 'Taking Action on Problem Gambling'.92 The Report set out the steps the government intended to take in response to problem gambling. The steps included establishing a code of conduct for the Victorian gambling industry to be implemented in 2007.93
- 77 The requirement that there be a Gambling Code was implemented by the Gambling Legislation Amendment (Problem Gambling and Other Measures) Act 2007 (Vic). This legislation introduced a number of measures designed to deal with the prevention, early intervention and treatment of gambling-related harm.94 In relation to casinos, the measures included limiting the availability of ATMs in the casino, making it an offence to provide gaming machines outdoors and making it an offence to allow an intoxicated person to gamble.95
- 78 It also required a range of gambling licence holders, including Crown Melbourne, to implement a Gambling Code. For Crown Melbourne, this new obligation was imposed under section 69 of the Casino Control Act.96
- 79 Section 69 now provides:

It is a condition of a casino licence that the casino operator implement a Responsible Gambling Code of Conduct that complies with—

#### [the relevant Ministerial direction]97

- 80 The latest Ministerial direction that applies to Crown Melbourne was made on 17 September 2018.98 The required contents of a Gambling Code are set out in part 2 of the direction. Most are concerned with the provision of information to customers. Others require positive action by the casino operator.99
- 81 Under the heading 'Interaction with customers', the Ministerial direction provides:

A code must require the relevant person to interact with customers to foster responsible gambling, and must identify how this will occur.

In particular, a code must specify a process for interacting with those customers who:

- a. have requested information about, or assistance with, a gambling problem or self-exclusion; and
- b. are displaying indicators of distress that may be related to problem gambling.<sup>100</sup>

- 82 An important question that arises is whether Crown Melbourne is implementing its Gambling Code. The answer to that question requires an investigation into:
  - Crown Melbourne's obligations under its Gambling Code
  - · what action it takes to comply with those obligations
  - · whether that action is adequate to secure compliance.
- 83 Before answering those questions, it is necessary to consider the terms of its Gambling Code.

#### A brief history of the Gambling Code

- 84 Crown Melbourne has adopted different versions of its Gambling Code.
- 85 The first version, adopted in 2009, required the following interaction with customers:

A customer displaying signs of distress or unacceptable behaviour will be approached by a staff member who will offer assistance and referrals to specialist support as required. These signs are known by our staff and may include, but are not limited to, a person:

- either gambling every day or finding it difficult to stop gambling;
- gambling for extended periods without a break;
- · avoiding contact while gambling;
- · communicating very little with anyone else;
- · barely reacting to events going on around them;
- · displaying aggressive, antisocial or emotional behaviour while gambling; and
- making requests to borrow money from staff or other customers or continuing to gamble with the proceeds of large wins.

The assistance offered by staff may take the form of:

- interaction with the customer and encouraging them to take a break from gambling;
- offering the customer non-alcoholic refreshments such as a cup of tea or coffee in a quieter and more private area such as our break-out lounge areas or the [Responsible Gaming Support Centre].<sup>101</sup>
- 86 The Gambling Code also required that all contacts with a customer by the Responsible Gaming Liaison Officers (RGLOs) and senior management would be recorded in an incident register, along with the action taken. 102

87 The circumstances in which there would be interaction with a customer were altered in the third version of the Gambling Code, which was adopted in 2012. The relevant part then read:

A customer displaying signs of distress or unacceptable behaviour will be approached by a staff member who will offer assistance and referrals to specialist support as required.

Observable Signs are seen or reported behaviours or patterns of behaviours which are potential indicators that a person may be experiencing problems with their gambling behaviours. These are seen or reported in context and usually more than one is displayed to indicate potential problems with gambling. Observable signs are included in Crown's Responsible Service of Gaming training ...<sup>103</sup>

#### 88 The 'Observable Signs' changed, to the following:

- Self disclosure of a problem with gambling or problems related to gambling
- · Request to self-exclude
- · Distorted and irrational attitudes about gambling
- Barely reacting to surrounding events
- Intolerance to losing, displayed as bad temper or distress
- · Significant variation in mood during a gambling session
- Children left unattended whilst parent/guardian gambles
- · Regular complaints to staff about losing or blaming the venue/staff for their losses
- Requests to borrow money for gambling
- Showing a pattern of gambling for long periods without a break
- Progressive reduction of self-care e.g. appearing unkempt or fatigued
- · Requests for assistance from family and/or friends concerned about an individual's gambling behaviour 104

#### 89 The Gambling Code noted:

These [Observable Signs] are adapted from 'Identifying Problem Gamblers in Gambling Venues', Delfabbro et al, 2007 and 'Current Issues related to identifying the problem gambler in the gambling venue' various authors, Australian Gambling Council, 2002.<sup>105</sup>

90 The fourth version of the Gambling Code, adopted in July 2016, made further changes to the section on intervention with customers. Three are material:

The following change was made (marked up against third version added):

As part of delivering exceptional customer service, our staff are encouraged to engage with our customers. A customer displaying observable signs of distress or unacceptable behaviours that may be related to potential problem gaming behaviours or unacceptable behaviour will be approached by a staff member who will offer assistance and referrals to specialist support as required.<sup>106</sup>

The list of Observable Signs of problem gambling became:

- Self-disclosure of a problem with gaming or request to self-exclude
- Requests for assistance from family and/or friends concerned about an individual's gaming behaviour
- Children left unattended whilst parent/guardian gambles
- · Gets angry while gaming or shows signs of distress during or after gaming
- Often gambles for long periods without a break
- Witnessed or heard that a customer was trying to borrow money for gaming
- Significant decline in personal grooming or appearance
- Observed conflict over gaming between family members or friends
- · Unrealistic remarks about gaming
- · Complains to staff about losing or blames the casino or gaming product for losing
- · Secretive or embarrassed about being at the casino or stays on to gamble when friends leave the venue
- Gambles without reacting to what is going on around him/her and avoids contact or conversation with others
- Frequent visits to the ATM<sup>107</sup>

In similar terms to earlier versions of the Code, the fourth version provided:

Persons displaying [Observable Signs] will be referred to RGLOs or senior management who have undergone advanced responsible gaming training.<sup>108</sup>

91 The fourth version stated that, in addition to the sources mentioned in the third version, the Observable Signs in this version were also adapted from the 2014 'Validation Study of In-Venue Problem Gambler Indicators' (2014 Study), by Anna Thomas, Paul Delfabbro and Andrew R Armstrong. 109

- 92 The fifth version, adopted in October 2016, made no relevant changes. 110 The sixth version, adopted in 2019, made only one relevant change. Instead of persons displaying Observable Signs being referred to 'RGLOs or senior management'1111 they were now to be referred to '[Responsible Gaming Advisors] or management for referral to the [Responsible Gaming Advisors]'.112 During the Commission hearings, in May 2021, a seventh version of the Gambling Code was adopted. It contained no relevant changes. 113
- 93 In summary, the most recent Gambling Code requires Crown Melbourne staff to act if a customer displays an Observable Sign that may be related to potential problem gambling behaviours or unacceptable behaviour. One action is for the staff member to approach the customer and offer assistance. The other is for the customer to be referred to a Responsible Gaming Advisor (RGA) or to management for referral to an RGA.

#### A key Observable Sign under the Gambling Code

- 94 As has been explained, there were originally separate Observable Signs, being 'either gambling every day or finding it difficult to stop gambling' and 'gambling for extended periods without a break'.<sup>114</sup> The two were subsequently combined into: 'showing a pattern of gambling for long periods without a break'.<sup>115</sup> That Observable Sign then became 'often gambles for long periods without a break'.116 This Observable Sign was the subject of considerable attention during the Commission hearings.
- 95 The proper understanding of Observable Signs can be gathered from the research cited in the Gambling Code, namely the 2014 Study, 117 the 2007 study, 11dentifying Problem Gamblers in Gambling Venues' (2007 Study)<sup>118</sup> and the 2002 study, 'Current Issues Related to Identifying the Problem Gambler in the Gambling Venue' (2002 Study).<sup>119</sup> While the focus of the research was on EGMs, the 2007 Study involved participants who gambled on other games and the 2002 Study referred to casinos generally. 120

#### LONG PERIODS WITHOUT A BREAK

96 The 2002 Study is not a research project, but 'a compilation of submissions from a [panel] of Australian and international experts working in research or clinical practice'. As to length of playing sessions, the 2002 Study states:

The panel had a wide range of session times indicative of problems. While most may not agree that the lower end of the range (1 hour) is indicative of anything serious, certainly five to six hours and beyond would raise concerns especially if linked to a number of sessions per week—although this latter feature was not a frequent response from the panel ... This is also harder to quantify in absolutes, and people may lose very quickly if playing maximum stakes, many lines and experiencing a bad run. But clearly, a long session can be an indicator of trouble. 122

97 The 2007 Study involved a literature review and empirical research. The authors found that 'there are certain behaviours that most, if not all, problem gamblers produce on at least some occasions'.123 One was that '[a] problem gambler typically gambles for long periods

- (often 3 hours or more) and often lose[s] track of what is going on around them'.124 The authors developed a list of indicators that would assist gaming venue staff to identify problem gambling. The list included 'gambles for three hours or more without a break of 15 minutes or longer' and 'gambles for five or more hours without a break of 15 minutes or longer'.<sup>125</sup>
- 98 The 2014 Study revised the indicators of a gambling problem identified in the 2007 Study. The authors noted the importance of long periods of continuous play; that is, play without a meaningful break:

The results of the present study showed that the most common visible indicators of problem gambling which can be observed in venues relate to the duration and intensity of gambling or to ways of raising funds or chasing wins. Problem gamblers were likely to be intensely focused on their play, want to play for long periods of time without a proper break and play very rapidly or frenetically (emphasis added).<sup>126</sup>

- 99 The revised list of indicators of a gambling problem in the 2014 Study included as a 'probable' indicator of a gambling problem, 'often gambles for long periods (3+ hours) without a proper break'.127
- 100 These studies make clear that the reference to 'gambl[inq] for long periods' in Crown Melbourne's Gambling Code should be understood to mean gambling for at least three hours, with an outer limit of five to six hours, without a proper break.
- 101 For its part, Crown Melbourne contends for a different approach. It says that the reference to a 'long period without a break' is a reference to the periods of permitted play set out in its internal Play Periods Policy.<sup>128</sup>
- 102 There is no merit in this contention. The proper meaning of any aspect of a Gambling Code cannot be affected by a document not incorporated by reference into the Code.

#### 'OFTEN'

- 103 Since the fourth version of Crown's Gambling Code, the relevant Observable Sign has required the customer to exhibit the behaviour of 'often gambles for long periods without a break' (emphasis added). The meaning of 'often' is unclear.
- 104 The research contained in the 2002 Study suggests 'often' could mean a number of gambling sessions per week,129 gambling at least once a week,130 or gambling more than five hours a week.131
- 105 The preferable view is that 'often' means two or more gambling sessions in a week. Gambling for a long period without a break for more than one session a week may not be an indicator of problem gambling. Gambling for five hours in a week is also unlikely, without more, to be a sign of problem gambling. It is reasonable to proceed on the basis that gambling for two or more sessions in a week could be a sign that there are problems.
- 106 In the end, the correct construction, whatever it is, will not affect the outcome of the Commission's analysis. This is because it is also reasonable to proceed on the basis that a significant number of players who gamble for extended periods are likely to do so more than once a week.

# Play Periods

- 107 Crown Melbourne has an established policy that sets out the steps for Crown Melbourne staff to 'administer and supervise those parts of the [Gambling] Code' related to the Observable Sign 'Often gambles for long periods without a break' and to 'breaks in play'. 132
- 108 This policy is the Play Periods Policy mentioned earlier.

#### A brief summary of the Play Periods Policy

- 109 Following a proposal in 2010,133 a 'Play Periods Trial' was implemented in May 2012.134 The trial provided that:
  - · after 12 hours of play, the customer would be observed by a manager and/or RGLO and action or no action would be taken as required
  - after 16 hours of play, the customer would be spoken to by a manager or RGLO and action or no action would be taken as required
  - · after 20 hours of play, the customer would be spoken to by an RGLO and action or no action would be taken as required
  - · after 22 hours of play, the customer would be spoken to by an RGLO and action or no action would be taken as required
  - · after 24 hours of play, the customer may be asked to leave depending on prior engagement/observation.135
- 110 Version 1.1 of the Play Periods Policy was adopted in February 2018 and provided that:
  - · after significant continuous gambling for less than 24 hours, the customer would be reminded to take substantial regular breaks
  - after 24 hours of continuous gambling, the customer would be asked to leave and be directed by an RGLO to take a 24-hour break
  - SYCO (being the loyalty program data collection system in place)<sup>136</sup> reports would be generated every four hours, and RGLOs would check all ratings where there was gambling for 16 hours or greater. 137
- 111 Version 1.2, also adopted in February 2018, was in relevantly the same terms as Version 1.1.138
- 112 Version 1.3, adopted in December 2018, made the following relevant changes:
  - After significant continuous gambling 'without appropriate breaks' for less than 24 hours, the customer would be reminded to take substantial regular breaks.
  - After 24 hours of continuous gambling 'without appropriate breaks', the customer would be asked to leave and would be directed by an RGLO to take a 24-hour break.

- Gaming staff or an RGLO would interact with the customer at 12, 16 and 20 hours of gambling to encourage the customer to take a break from play.
- If the customer also displayed 'any observable signs', the customer would be asked by staff to take a break.
- RGLOs would check all ratings where there was gambling for 12 hours or greater.<sup>139</sup>
- 113 Version 1.4, adopted in May 2019, was in relevantly the same terms as Version 1.3 (save that the title of 'RGLO' was changed to 'RGA').140
- 114 No Version 1.5 was produced to the Commission.
- 115 Version 1.6, adopted in December 2019, was in relevantly the same terms as Version 1.4 save for two key changes:
  - It expressly applied only to Crown loyalty program members as distinct from all customers.
  - · It provided that gaming staff or an RGA would interact with or observe, as appropriate, the member (as distinct from interact with only) at 12, 16 and 20 hours of gambling to encourage the member to take a break from play.<sup>141</sup>
- 116 Version 1.7, adopted in December 2020, also expressly applied only to Crown loyalty program members. It included the following relevant changes:
  - Members who continuously gambled 'without appropriate breaks' for significant periods of less than 18 hours would be reminded to take regular breaks.
  - · Members who continuously gambled for 18 hours 'without appropriate breaks' would be asked to leave and be directed by an RGA or Gaming Manager to take a 24-hour break.
  - Gaming staff or an RGA would interact with or observe, as appropriate, the member at 12, 15 and 17 hours of gambling to encourage the member to take a break from play. 142
- 117 Accordingly, since Version 1.3 of the policy, the first time a staff member is required to check on a player, on the basis of their length of continuous play without appropriate breaks, has been at the 12-hour mark. No interaction has ever been required before this time under the various versions of the Play Periods Policy. This is also reflected in practice.<sup>143</sup>
- 118 Moreover, Versions 1.6 and 1.7 of the Play Periods Policy do not mandate interaction, and permit observation of the customer at the 12-hour mark.<sup>144</sup> Indeed, in practice, an RGA would only observe from afar and would not interact with the customer unless there was some other Observable Sign displayed at that time.<sup>145</sup> The same process may occur at the 15 and 17-hour mark (under Version 1.7 of the Play Periods Policy). 146

#### WHAT CONSTITUTES A BREAK?

119 There is little evidence of what length of time constitutes a 'break'. This makes it difficult to determine when a patron has gambled for a particular time 'without appropriate breaks' (as specified in the Play Periods Policy since Version 1.3). According to an internal paper prepared by the VCGLR in June 2020, the position is as follows:

RGAs are provided with ... mobile phone alerts of members who have been on the gaming floor for more than 12 hours without a substantial break, based on their loyalty club use. This new technology seeks intervention at:

- 12 hours of continuous play without breaks of more than 2 hours
- 14 hours of continuous play without breaks of more than 3 hours
- 20 hours of continuous play (irrespective of breaks), and
- 24 hours of continuous play (irrespective of breaks).147
- 120 The break times are not unreasonable. On the other hand, the length of the break time is largely irrelevant as a harm mitigation measure by Crown Melbourne for reasons that will be explained.

#### A recent 'enhancement' to the Play Periods Policy

121 In May 2021, and in direct response to this Commission's exploration of the issue, 148 the Crown Resorts board endorsed a plan to introduce Responsible Service of Gaming (**RSG**) 'enhancements'. 149 These enhancements will be discussed later. At present, it is only necessary to mention that one enhancement was an alteration to the Play Periods Policy. The alteration was that:

Crown will introduce the following time limits on playing at Gaming machines, Table Games and Electronic Table Games:

- 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.
- International Premium Program Players—staying less than seven days— 18 hours in a 24 hour period with interventions at hours 12, 14 and 16.
   Players staying for longer than 7 days would align with Domestic Player limits.<sup>150</sup>
- 122 Crown has indicated that a new Play Periods Policy, reflecting the above changes in respect of domestic players, was approved on 24 May 2021.<sup>151</sup>
- 123 While the change is a positive development, precisely how the new Play Periods Policy will operate is not clear.
- 124 Further, the change was developed and approved in just six days, and in circumstances where the person responsible for the change, Mr Steven Blackburn (Group Chief Compliance and Financial Crime Officer of Crown Resorts),<sup>152</sup> did not appear to have a full understanding of the issues involved. This is not intended to be a criticism of him.<sup>153</sup>
- One final matter should be noted. There is evidence that Crown Melbourne was 'also looking at implementing a 3-hour check, between three and four-hour and implementing an additional check at that stage'. Crown has not indicated when a change along those lines would be implemented. 55
- 126 What follows focuses on Play Periods Policy Version 1.7 (unless the context indicates otherwise).

# Breaches of the Play Periods Policy

#### 127 The evidence reveals the following:

- · Crown Melbourne has consistently failed to comply with both the Gambling Code and the Play Periods Policy. Players have been allowed to gamble continuously for 12 hours or more without any observation or interaction. 156 Some customers have been allowed to gamble continuously for well over 24 hours. 157
- · Faithful compliance with the Play Periods Policy is inconsistent with the requirements of the Gambling Code (this observation applies equally to the May 2021 enhancement). The Gambling Code requires that a customer be approached and offered, or referred to, assistance when they display an Observable Sign. It provides that 'often gambl[ing] for long periods without a break' is an Observable Sign. 158 The literature on which this Observable Sign is based shows that a 'long period' is between three hours and five to six hours. 159 Yet, the various versions of the Play Periods Policy discussed above do not require an observation or interaction by Crown Melbourne staff until at least 12 hours of gambling (without a break of two or more hours).<sup>160</sup> In practice, the position is worse. At the 12-hour mark, staff will only observe a customer, not interact with them, unless they are displaying some other Observable Sign. 161
- The alerts sent to RGAs in relation to play periods do not include information about how frequently customers gamble, making it very difficult for the RGAs to know whether a customer has been gambling 'often'. 162
- The alerts are concerned with 'carded' customers only (that is, Crown loyalty program members).<sup>163</sup> RGAs must rely on observation alone to determine whether an 'uncarded' customer has 'often gambled for long periods of time without a break'. That is an almost impossible task. As one RGA agreed, her job would be 'much, much easier ... if people were playing carded'.164

128 The evidence that establishes these propositions will now be addressed.

#### Identifying patrons with gambling problems

#### THE MEASURES IMPLEMENTED BY CROWN MELBOURNE

- 129 Ms Sonja Bauer, then Group General Manager of Responsible Gaming at Crown Resorts, gave detailed evidence about how Crown Melbourne deals with customers with gambling problems. She explained that:
  - · All Crown Melbourne employees are trained in RSG when they commence employment. Operational staff such as food and beverage and gaming staff undertake refresher training every two years thereafter.<sup>165</sup> The training includes Observable Signs.<sup>166</sup> Staff are trained to inform an RGA,167 or their manager (who will in turn inform an RGA), when they notice a customer displaying Observable Signs. 168 Some staff also attend VIP/Operational management meetings where gaming managers are updated on RSG matters.<sup>169</sup>

- Crown Melbourne established a Responsible Gaming Centre (RGC) in 2002. It comprises
  'a reception area, private counselling rooms and an office area, and is located close to, but
  away from the casino gaming floor'.<sup>170</sup> It is staffed by RGAs, responsible gaming psychologists
  and a chaplaincy service.<sup>171</sup> There are three responsible gaming psychologists and one
  part-time chaplain.<sup>172</sup>
- RGAs are trained to implement and deliver Crown Melbourne's responsible gaming
  programs and services 'with the aim of minimising harm for customers and their families'.<sup>173</sup>
  RGAs are required to spend a proportion of their time walking the gaming floor 'to
  approach and respond to customers exhibiting problem gaming indicators, and [to attend]
  to referrals and enquiries from staff'.<sup>174</sup>
- Crown Melbourne maintains an electronic database known as the Responsible Gaming Register (Register), used by responsible gaming staff 'to log activities pertaining to the service of responsible gaming'. It generates daily reports and can produce reports on particular customers when required.<sup>175</sup>
- The Play Periods Policy is applied to regulate the time customers spend engaged in gambling.<sup>176</sup> The evidence indicates that customers may gamble at the Melbourne Casino using a Crown loyalty card (enabling them to gain points and associated benefits), or without a card. Crown Melbourne staff commonly refer to this as 'carded play' and 'uncarded play'. Where a player is engaged in carded play on EGMs, it is possible to measure the time they have spent gambling within a given day. If a carded player spends 12 hours gambling without a break of two or more hours, an RGA will receive an alert on their mobile phone via a system called 'Splunk', which enables the RGA to identify the player's location. The RGA can then check on the player. Further alerts are received at 15, 17, 18, 20 and 24 hours of play (without appropriate breaks).<sup>177</sup>
- There is a 'Crown Model', which is a predictive data modelling tool that Crown Melbourne has devised. Using characteristics of carded players who have subsequently self-excluded, it attempts to predict problematic play. The model does not operate in real time. Rather, RGAs are provided with reports listing a tranche of 100 members whom the model identified as appropriate for interaction with the RSG Team. Efforts are then made to interact with that person.<sup>178</sup> The evidence indicates that the reports are created approximately every six weeks, and the RSG Team has about four to five weeks to action each report, and to evaluate and report on the data obtained.<sup>179</sup>
- Crown Melbourne maintains a Self-Exclusion Program where individuals who wish
  to self-exclude can visit the RGC and undertake in writing to do so, or can self-exclude
  via the online portal on Crown Melbourne's website. Customers will self-exclude for
  a minimum of 12 months, during which Crown Melbourne's policy requires certain steps
  to be taken to ensure those customers cannot gamble at the Melbourne Casino. A third
  party exclusion program also operates, permitting family members or others to apply
  to Crown Melbourne to review a person's gambling behaviour. Third parties may also
  contact RGAs to report concern for others.<sup>180</sup>
- There is a Time Out Program, which is an adjunct to the Self-Exclusion Program. Through
  this, customers can elect to ban themselves from the gaming floor for three or six months.<sup>181</sup>
- 130 These tools are not effective. Crown Melbourne now understands that there are 'serious deficiencies in some aspects of its Responsible Gambling services'. 182

#### STAFFING LEVELS AND STAFF TRAINING

- 131 The challenges of administering RSG at the Melbourne Casino are immense. The venue is enormous. In the years 2016 to 2019 there were between 22.4 and 23.4 million visits to the gaming floor each year, 183 with an estimated 12,000 to 14,000 unique visitors each day. 184
- 132 The key RSG staff on the casino floor are the RGAs. 185
- 133 Until 2018, Crown Melbourne employed only seven RGAs. In 2018, the number was increased to 12 following concerns raised in the VCGLR's Sixth Review. 186
- 134 Increasing the number of RGAs to 12 was intended to provide even coverage across the 24 hours of the day that the Melbourne Casino is open.<sup>187</sup> But with only 12 RGAs, no more than three are at work at any one time. 188 The Commission assumes that as has been announced, when a further four RGAs are hired, 189 there will be no more than four RGAs at work at any one time.
- 135 Whether the number of RGAs present at one time is three or four, it is inadequate. 190 RGAs have numerous responsibilities. These include providing information or advice to staff, entering information into the Register, speaking with customers who are contemplating self-exclusion and managing customers who have attempted to enter the gaming floor despite having self-excluded.191
- 136 The RGA position description specifies that only 30 per cent of an RGA's role will be dedicated to 'Customer Service and Operations', which includes walking the gaming floor.<sup>192</sup>
- 137 This means that most of the time, there are fewer than three RGAs present on the gaming floor. Sometimes no RGA is present on the gaming floor because they are attending to other duties. 193
- 138 Even when all three RGAs are on the gaming floor, each has to supervise approximately 870 EGMs and approximately 180 gaming tables (including poker and other table games).<sup>194</sup>
- 139 Save for the RGAs, operational staff have little training in responsible gambling. All operational staff (including gaming, food and beverage and security personnel) receive a 45-minute training session as part of their induction, 195 and online refresher training for an hour every two years. 196 Staff working in EGM areas of the casino receive a further hour of advanced training,<sup>197</sup> and some staff are required to undertake additional hospitality or management training.<sup>198</sup> However, only 10 minutes of the induction training, 199 and five minutes of the advanced training, are dedicated to Observable Signs.<sup>200</sup>
- 140 Crown Melbourne expects the task of the RGAs to be supported by all staff working on the gaming floor. That expectation is not the reality. In the end, Ms Bauer accepted that, more often than not, food and beverage staff and dealers were there to do their primary jobs and were not, for example, keeping track of play periods.<sup>201</sup>
- 141 In any event, there are practical difficulties with the approach that all Crown Melbourne staff are involved in RSG.<sup>202</sup> The roles of operational staff—whether they are serving food and drinks at a busy bar or dealing hands at a blackjack table—do not permit them to provide meaningful support to the RGAs in relation to the dozens, if not hundreds, of customers in their immediate vicinity.
- 142 Research has found that staff are not keen to intervene with customers displaying problem gambling behaviours.

- 143 Research indicates that staff in gaming machine venues are generally reluctant to make an uninvited approach unless the customer is being aggressive, trying to borrow money or appears to be extremely upset. Approaches to offer assistance were very rare.<sup>203</sup> This research suggests that staff will only intervene to prevent disruption to other patrons on the gaming floor rather than to assist the problem gambler.
- 144 Crown submits that an operating model under which all staff are charged with at least some responsibility for looking out for Observable Signs is possible.<sup>204</sup> That might be so in theory. But it would require extraordinary changes to workplace practices for such a model to operate effectively. Certainly, it will not be achieved in the short term.
- 145 A number of Crown Melbourne staff who work on or near the gaming floor were randomly selected to give evidence about the assistance they give to RGAs. The staff included food and beverage staff, dealers and hosts. Each gave their evidence anonymously.
- 146 There were compelling similarities in their evidence. For example, several of them:
  - · were not even familiar with the term 'Observable Signs', let alone able to name specific Observable Signs<sup>205</sup>
  - could not accurately explain Crown's Play Periods Policy<sup>206</sup>
  - did not know what RSG meant,<sup>207</sup> or did not often encounter or deal with RSG issues in their work<sup>208</sup>
  - did not know where the RGC was located or had never been there<sup>209</sup>
  - could not name any of the 12 RGAs at Crown and/or could not recall speaking to them<sup>210</sup>
  - · had never, or not more than once over their years of employment, referred anyone to the RGC or suggested to their manager that someone be referred.<sup>211</sup>

### THE EVIDENCE FROM CUSTOMERS

- 147 That Crown Melbourne staff face an impossible task attempting to identify and deal with customers who gamble continuously for extended periods is borne out by the evidence of what actually happens on the Melbourne Casino gaming floors.
- 148 The Commission heard from several people who had gambled at the Melbourne Casino. Most gave evidence about their past or ongoing struggles with problem gambling. Their evidence provided a vivid and powerful picture of the sometimes devastating consequences of gambling.

## Case studies

#### ELIZABETH'S STORY

Elizabeth is a trained secondary school teacher. She has tertiary qualifications. She also worked in real estate for a number of years.<sup>212</sup>

Elizabeth owned a house in a beachside suburb. The house was sold and Elizabeth planned to use the proceeds (\$120,000) to buy another house in Melbourne. But she was a problem gambler. She lost approximately \$80,000 gambling.<sup>213</sup> In the end, Elizabeth only had \$5,000 left.<sup>214</sup>

One evening, Elizabeth went to the Melbourne Casino in the 'misguided hope that [she] might win all of what [she] had lost back'. She gambled for approximately 52 hours straight. Staff members would start their various shifts. She would recognise them. At one point, a staff member asked, '[A]re you still here?' Elizabeth just nodded, smiled and said, 'Yes I am. This is my time off.'215

Elizabeth lost her \$5,000. She said, 'Never ever did one other person come and approach me ... to say "Are you okay?" 216

When she had lost all of her money, Elizabeth left the casino.

Elizabeth's gambling continued after this incident. Following one session of gambling during which she lost all of her money, she drove to the Westgate Bridge. She was absolutely desperate. She stopped her car and thought about ending her life.<sup>217</sup>

What stopped her was the railing that she needed to scale, which was waist high. As she was attempting to clamber over, the bow of a ship appeared. The lights and noise of the ship frightened her, but they also brought her back to her senses. 218

Elizabeth returned to her car and drove to the Royal Melbourne Hospital, where she was admitted for a short time. She then underwent counselling.<sup>219</sup>

#### BINBIN'S STORY

Binbin was raised in China. He came to Australia when he was 16 to study. He obtained a Bachelor's degree in law and business and a Master's degree in accounting.<sup>220</sup>

He married, and bought several properties.<sup>221</sup>

After losing his job, Binbin began to gamble, starting with online gambling. He also started gambling at the Melbourne Casino. Binbin's gambling habit became so bad, he excluded himself from online gambling.<sup>222</sup>

While gambling at the Melbourne Casino, Binbin was invited to gamble in the Mahogany Room (the casino's high roller room) by a host.<sup>223</sup>

Over a two-month period between late 2019 and early 2020, Binbin went to the Melbourne Casino and gambled every day, often for over eight hours a day, and on two occasions for 'maybe 15 hours a day'. On only one occasion was Binbin approached by a staff member about responsible gambling. By then, Binbin had already gambled every day for between one and one and a half months, and had lost around \$50,000 to \$60,000.224

Binbin sold all of his properties to fund his gambling addiction, but was able to transfer some of the proceeds to his parents so that he could not spend the money. His marriage ended.<sup>225</sup>

### STUART'S STORY

Stuart is a relief primary school teacher. 226

He began gambling at the Melbourne Casino about 15 years ago. At the time, he was a heavy drinker and drug user.<sup>227</sup>

Initially, Stuart went to the Melbourne Casino complex with friends, because he could get a drink any time of the day there.<sup>228</sup>

Then Stuart began playing on the EGMs. Over time, he came to regularly gamble at the Melbourne Casino and other venues. 229

Over a 10-year period, Stuart would gamble at the Melbourne Casino about once a month.<sup>230</sup> He was often under the influence of drugs or alcohol.<sup>231</sup> He was never approached by Crown Melbourne staff for gambling for too long.<sup>232</sup>

Stuart did not witness Crown Melbourne staff approach any person for gambling for too long.<sup>233</sup> He did see staff approach persons if they misbehaved in some way; for example, if they started striking an EGM.<sup>234</sup>

#### CAROLYN'S STORY

Carolyn worked as an administration officer in an electrical company.

From time to time, Carolyn gambled at the Melbourne Casino with her employer.<sup>235</sup> Initially, she was able to gamble within her means.<sup>236</sup> But over a number of years, she developed a harmful addiction.<sup>237</sup> Gambling eased her loneliness and she was drawn to the benefits offered to Crown loyalty program members.<sup>238</sup>

Carolyn began to steal money from her employer to fund her gambling habit. She stole over \$400,000 in a seven-year period.<sup>239</sup>

Ultimately, Carolyn's crime was discovered and she was convicted and sent to prison for stealing money from her employer.<sup>240</sup> At the time she was 64 years old.<sup>241</sup>

Carolyn gave up her inheritance and all her savings to repay the debt to her employer.<sup>242</sup> She now lives a modest life with 'nothing to show for all [her] years of hard work', and is heartbroken and anguished.<sup>243</sup>

During all her time gambling at the Melbourne Casino, even when she spent all day gambling, no one ever approached Carolyn to ask if she was okay or suggest she take a break.<sup>244</sup> She said, 'I would have thought that if they could see you're sitting there for six, 12, even five hours or whatever, playing, and not taking a break ... they would come up and say, "Look, you know, you haven't taken a break. How about you come and have a coffee?" It doesn't happen. It doesn't happen. So long as you're spending money, it won't happen.<sup>245</sup>

Carolyn believes that if she had been approached while gambling, and spoken to, she 'might not have spent that time in prison'.<sup>246</sup>

- 149 The Commission also received submissions attesting to lengthy gambling sessions at the Melbourne Casino with no or insufficient staff intervention.<sup>247</sup>
- 150 Then there are places at the Melbourne Casino where gamblers may be left unnoticed by staff.<sup>248</sup>
- Ultimately, Ms Bauer agreed that during the casino's busiest times, problem gamblers could 'get lost in a big crowd', because staff are 'busy doing other things'.<sup>249</sup> Even during quiet periods, problem gamblers go unnoticed because staff levels are lower and the gaming floor is huge.<sup>250</sup>
- 152 This is aggravated by the fact that RGAs only receive alerts in relation to customers who use carded play.<sup>251</sup> For uncarded players, RGAs must rely on face-to-face observation of individual customers.<sup>252</sup> On a busy and expansive gaming floor, recognising long periods of continuous play by uncarded players is a difficult, if not impossible, task.
- 153 Ms Bauer accepted that uncarded players are 'the least likely to be picked up for reminders' about excessive play periods. Ms Bauer also accepted that if a customer prefers anonymity, they are unlikely to engage in carded play and may well be 'the ones most likely to be trying to avoid' being reminded to, for example, take a break.<sup>253</sup>

#### EVIDENCE FROM SUPPORT WORKERS

- 154 The Commission heard evidence from several people who work with those experiencing gambling harms.
- 155 In the last five years, 'Gloria', a gambling counsellor and social worker, has counselled around 200 clients.<sup>254</sup> About 85 per cent of her current clients (or their family members) are gambling at the Melbourne Casino. Gloria also visits the casino from time to time as part of her work.<sup>255</sup>
- 156 Gloria gave evidence that a client had gambled continuously at the casino for more than two days, sleeping on sofas, at the food court and in cars in the car park.<sup>256</sup> Gloria said it was common for problem gamblers who visited gambling counsellors to spend more than 24 hours at a time at the Melbourne Casino.<sup>257</sup> Gloria also said that staff would only intervene and encourage people to take a break or ask them to leave if they misbehaved (such as by arguing with other customers) or appeared dishevelled.<sup>258</sup>
- 157 Gloria also gave evidence about the consequences of excessive gambling at the Melbourne Casino. One horrific incident must be mentioned:
  - A: ... One example is the most horrible one. It happened five years ago. And then the wife is like came to my office and reported family violence related to her husband who has the gambling behaviours. And when this man is lose money at Crown Casino he will come back home and whack his wife, then blaming her that she brings bad luck after they getting marriage because before getting marriage the man can win some money, after they get marry he keep losing the money. So he thinks that is all his wife's fault.
  - Q: And just so the Commissioner understands, how did the husband propose the money be repaid?
  - A: He force his wife to provide sex work in their massage shop. He ask his wife to provide either hand job or blow job to the client to collect more money.<sup>259</sup>
- 158 'Ronaldo' has worked with 70 to 80 clients over the course of a career as a social worker, and currently has 15 active clients.<sup>260</sup> Ronaldo estimated that around 75 per cent of clients gamble at the Melbourne Casino for up to 12 hours a day.<sup>261</sup> Ronaldo mentioned that one client had gambled for four days, occasionally sleeping in front of EGMs, but that 'none of the staff there have approached her ever'. 262
- 159 Ronaldo had also never heard of casino staff regularly approaching customers who had been gambling for long periods and asking them to take a break.<sup>263</sup> During regular work-related visits to the Melbourne Casino, Ronaldo had seen people 'crying on their phone and ... staff walking by without approaching them', and 'a lot of people sleeping right in front of the pokie machines'.264
- 160 'Prita', a gambling counsellor, <sup>265</sup> also gave evidence. The following exchange took place:
  - A: So, my clients told me that they can spend hours, like 24 ... more than 20 hours per day, or they can stay at Crown for several days without being check in, whether to see if they is okay. And they even report to me that if they keep playing, no one come in and check in with them regardless the longest

- hour that they've stayed at Crown. They always been approached if they were too tired and they fall asleep. That is why one of the staff will check in with them and ask them to leave the venue and take a nap or something like that.
- Q: So the only times that your clients reported to you that they had been asked to leave is when they have fallen asleep?
- A: Yes.
- Q: No other client has been told they were asked to leave because they were gambling too long or exhibiting signs of distress?
- A: No, never.<sup>266</sup>
- 161 One of Prita's clients, a black tier member (of the Crown loyalty program), told Prita that she had gambled for more than 10 days without stopping, and staff did not check on her or ask whether she was okay.<sup>267</sup>
- 162 Regrettably, the evidence revealed that the consequences of excessive gambling included loansharking, <sup>268</sup> criminal activity, <sup>269</sup> forced prostitution <sup>270</sup> and even suicide. <sup>271</sup> These are precisely the kinds of harms that were identified as potential consequences of gambling at the outset of this chapter.

#### EVIDENCE FROM A RESPONSIBLE GAMING ADVISOR

- 163 The Commission also heard evidence from an RGA.<sup>272</sup> The RGA gave evidence anonymously. This is what was said:
  - Customers sometimes engaged in uncarded play to avoid detection.<sup>273</sup>
  - · At times customers were permitted to gamble continuously for periods in excess of 12, 14, 16, 18, 20 and even 24 hours. 274 Some were permitted to gamble for 24 hours or more without a significant break and without being spoken to or approached.<sup>275</sup>
  - · RGAs do not receive alerts in relation to play periods for uncarded players; instead, RGAs must rely on their visual observations as they circulate around gaming areas. This is more difficult than monitoring carded players.<sup>276</sup>
  - · Customers sometimes fell asleep at EGMs. In some instances they were woken up and asked to move along, but were not offered any assistance or referred to RSG services.<sup>277</sup>
  - RGAs would receive an alert when a carded player had gambled for 12 hours. Provided the player was not displaying other Observable Signs, they would not approach and speak to them.<sup>278</sup>
- 164 It is worth expanding on the last point. The RGA gave the following evidence:
  - Q: ... if you get a [phone] alert at 12 hours, and you get to the customer in time and you observe the customer, let's take that hypothetical example, and I know every case is different, but if you then observe the customer and they are not displaying any other observable signs, in the ordinary course, your approach is to just make that observation at 12 hours; is that right?
  - A: Yes.

- **Q:** And not, at 12 hours, to go and approach and speak to the customer, in the ordinary course?
- **A:** In the ordinary course, yes.<sup>279</sup>

#### THE MAHOGANY ROOM

- 165 The Mahogany Room is the high roller room at the Melbourne Casino.<sup>280</sup> Access is restricted to platinum and black tier members of the Crown loyalty program. There are about 7,000 platinum members and about 750 to 800 black tier members.<sup>281</sup> Together, they contribute 62 per cent of turnover from Crown loyalty program members.<sup>282</sup> The goings-on at the Mahogany Room are of some importance.
- 166 Mr Peter Lawrence, the General Manager, VIP Customer Service, accepted that customers in the Mahogany Room often gamble for more than 12, 14 or 16 hours.  $^{283}$
- 167 The evidence given by Mahogany Room customers was consistent with Mr Lawrence's observation, and indicated that there was no intervention by staff during these periods of gambling. One current black tier member gave the following evidence:
  - Q: ... Is the casino staff and the hosts, are they encouraged to get people in no matter what if they know someone has a problem or are they astute and they try to help people with that?
  - A: They don't try to help anybody in there ...
  - Q: Have you ever seen, for example, someone gambling who looks tired or might have been there for a while and someone come along and tap them on the shoulder and say, 'You've been here for a long time, why don't we get a drink and have a break'?
  - **A:** No.<sup>284</sup>
- 168 A former black tier member said this:
  - Q: And if you were to gamble—if you were to gamble for 10 hours in a row, or 11, 12, 13, have you gambled those periods?
  - A: I have on many occasions ...
  - Q: Has anyone tapped you on the shoulder to have a break?
  - A: Never. Never.

A: I've never seen anyone tapped on the shoulder and asked the question, you've exceeded ... I've seen people fall asleep.<sup>285</sup>

### THE RESPONSIBLE GAMING REGISTER

- 169 Another source of evidence is the data in the Register. The Register records interactions between RSG staff members and customers and other parties in relation to responsible gaming.<sup>286</sup> Ms Bauer extracted information from the Register that she said provided 'an overview of the behaviours that are recorded that may be indicative of problem gambling behaviours'.<sup>287</sup> What the extract shows, for example, is that:
  - in 2016, there were a total of 1,470 interactions. Of these, 846 arose from customers voluntarily requesting assistance or seeking self-exclusion, a further 42 were identified by a third party (such as a concerned family member reporting a person's problem gambling) and 582 were identified by Crown Melbourne staff.
  - in 2017, there were a total of 1,603 interactions: 957 voluntarily identified, 34 identified by third parties and 612 identified by Crown Melbourne staff
  - in 2018, there were a total of 2,125 interactions: 1,012 voluntarily identified, 67 identified by a third party and 1,046 identified by Crown Melbourne staff
  - in 2019, there were 3,366 interactions: 1,724 voluntarily identified, 198 identified by a third party and 1,444 identified by Crown Melbourne staff.<sup>288</sup>
- 170 We return to these figures later in this chapter. As will be made clear, the figures demonstrate that there is little interaction by Crown Melbourne staff with customers who gamble for extended periods.
- 171 The Register shows many instances where no interaction occurred in response to a phone alert to an RGA (in relation to play periods) for several hours after the alert was received.<sup>289</sup> The Register also disclosed many instances where the action taken was not the interaction required by the applicable Play Periods Policy and the Gambling Code.<sup>290</sup> Examples include failures to take any action at the 12-hour mark, 16-hour mark, 20-hour mark and even after 24 hours (as required by the relevant Play Periods Policy).<sup>291</sup>
- 172 These are not isolated instances. They are part of a pattern of systemic failures that is evident from a close examination of the Register.
- 173 An examination of an arbitrarily chosen day from the Register, 10 June 2019, highlights the point.

Time	Comments
8.05 am	PP16 [ie Play Period alert]  VIP  Tables  Local Host manager [A] advised [patron] playing for 19hrs with no significant break.

Time	Comments	
8.31 am	PP20	
	VIP	
	Tables	
	Local Host manager [A] advised [patron] playing for 20hrs with no significant break.	
9.27 am	P24	
	PRE	
	Tables	
	TG ACM [B] advised [patron] playing for over 24hrs with no significant break.	
10.50 am	PP16	
	VIP	
	Machines	
	GM VOSM [C] advised [patron] playing for 19hrs	
	with no significant break.	
10.55 am	PP16	
	PRE	
	Machines	
	GM VOSM [C] advised [patron] playing for 18hrs with no significant breaks (staying in-house).	
12.33 pm	PP20	
	VIP	
	Tables	
	Local Host manager [A] advised [patron] playing for nearly 24hrs with no break longer than 4.5hrs.	
12.33 pm	PP16	
	VIP	
	Tables	
	Local Host manager [A] advised [patron] playing for 19hrs with no break longer than 3.5hrs.	

Continues to the next page

Time	Comments	
12.34 pm	PP16	
	VIP	
	Tables	
	Local Host manager [A] advised [patron] playing for 19hrs with no significant break.	
2.58 pm	PP24	
	VIP	
	Tables	
	Local Host manager [D] advised [patron] playing for over 24hrs with no significant breaks.	
3.15 pm	PP20	
	PRE	
	Machines	
	GM VOSM [E] advised [patron] playing for 21hrs with no break longer than 4.5hrs.	
4.58 pm	PP24	
	PRE	
	Machines	
	GM VOSM [F] advised [patron] playing for over 24hrs with no significant breaks.	
5.21 pm	PP16	
	VIP	
	Tables	
	Local Host manager [D] advised [patron] playing for 19hrs with no significant break.	
5.22 pm	PP16	
	VIP	
	Tables	
	Local Host manager [D] advised [patron] playing for 19hrs with no significant break.	

Time	Comments
5.22 pm	PP16 VIP Tables Local Host manager [D] advised [patron] playing for 19hrs with no significant break.
5.23 pm	PP20 VIP Tables Local Host manager [D] advised [patron] playing for 20hrs with no break longer than 4hrs.
7.43 pm	PP20 VIP Tables ACM informed patron has played for 20hrs.
7.47 pm	PP20 Tables DSM [G] informed patron is at 23hrs.
9.19 pm	PP24 VIP Tables DSM [H] informed patron has played for 24hrs.

Source: Exhibit RC0103 Crown Melbourne Responsible Gaming Daily Operations Report, 10 June 2019.

- 174 Two facts stand out from the Register for 10 June 2019. First, the RGAs and staff who were involved failed to comply with the applicable Play Periods Policy (which required gaming staff or an RGA to interact with customers at the 12, 16 and 20-hour mark, and required an RGA to attend if a customer has been gambling for 24 hours or more without a substantial break) and potentially the Gambling Code (which required that patrons displaying Observable Signs be referred to RGAs or certain senior management). <sup>292</sup> That is not a criticism—the task asked of them was impossible. Second, in some cases, the patron was only observed several hours after the RGA received notification that the patron had been gambling for an extended period. Both facts are consistent with the evidence that the Commission has heard from patrons and Crown staff alike (discussed above).
- 175 The Commission also examined extracts of the Register for other days. In particular, it examined the Register for 5 March 2021 (another randomly chosen day, but after the Commission had been announced).<sup>293</sup> It revealed a similar story.

- 176 The information from the Register is compelling. It casts considerable doubt on the evidence given by Ms Bauer about the successful operation of Crown Melbourne's responsible gambling policies.
- 177 Ms Bauer understood the damning impact of the information from the Register. To deflect that impact and in response to questions from Crown Melbourne's counsel, 294 Ms Bauer said that the alerts received by the RGAs at the 12, 15 and 17-hour marks did not indicate continuous play at the Melbourne Casino but only the time a customer spent 'on site'. She explained that the times represented nothing more than an initial 'card-in' (that is, a member's first use of their card at the casino) and the latest card-in. Ms Bauer said that a 17-hour alert would be issued if a member had 'play[ed] for five minutes, [went] to the football and c[a]me back 17 hours later and play[ed] again'.295
- 178 That this evidence was inaccurate was apparent from information provided by Mr Nicolas Emery, Crown Melbourne's Chief Marketing Officer.<sup>296</sup> He explained that it was possible to determine how long a Crown loyalty program member was at the Melbourne Casino and how long the member was gambling. He said a member's card 'tracked ... the amount of time someone is spending on a device or a table ... We can see the patron hours for our rewards members and we can also see the total patron['s] hours on the property'.297
- 179 When Ms Bauer was recalled, she confirmed that carded players are 'measured' for their gaming activity.<sup>298</sup> She gave the following evidence:
  - Q: If a person comes in, I think [Crown Melbourne's counsel] mentioned on the last occasion they might enter the car park and enter the premises in some way and swipe their card, the systems that Crown has can record wherever the card is used; correct?
  - A: Yes.
  - Q: And so in that way it can record when someone is physically on the site?
  - A: Yes.
  - Q: But it can also record, as we've already discussed, how long a player has played a particular machine within a certain period?
  - **A:** Yes.<sup>299</sup>

# Concluding remarks

- 180 Four points should be noted.
- 181 First, for carded players, the picture that emerges is that, generally speaking, there is no interaction with a customer who gambles for any continuous period up to 12 hours unless that customer displays some other Observable Sign. At the 12-hour mark, a customer might be observed, but no interaction will occur unless the customer displays some other Observable Sign.
- 182 Second, uncarded players are in an even worse position. The monitoring of uncarded players, which only involves observation, is minimal. While steps are being taken by Crown Melbourne to address this issue,<sup>300</sup> the only effective solution is to require carded play on all EGMs.

- 183 Third, even if the various versions of the Play Periods Policy provided an appropriate guideline for compliance with the Gambling Code (which they do not), the Policy has not been followed.
- 184 Finally, Crown Melbourne has for many years consistently breached its Gambling Code and, therefore, a condition of its casino licence.

# Permitting and encouraging gambling harms

- 185 To this point, consideration has only been given to the issue of gamblers who engage in 'continuous play'. It is also necessary to consider how Crown Melbourne approaches its RSG obligations in other areas.
- 186 In particular, it is necessary to examine:
  - pre-commitment on EGMs
  - the role of hosts
  - Crown Melbourne's response to behaviours that elevate the risk of gambling harms, including multiple machine use and the use of 'picks'
  - Crown Melbourne's capacity to supervise its customers
  - Crown Melbourne's approach to self-exclusion
  - Crown Melbourne's marketing functions, including promotional events and activities, Crown's loyalty program, and select benefits and enticements offered to its customers
  - the use of data and information for research and evaluation.

### Pre-commitment on EGMs

- 187 Research to which reference has been made in this chapter shows that a large proportion of problem gamblers are attracted to EGMs.
- 188 Research that complements the evidence heard by the Commission also shows that individuals frequently gamble more than intended during sessions of play. Even if such an individual has decided how much time and money they might spend gambling, they make impulsive choices that ignore those earlier decisions.301
- 189 The Productivity Commission made a number of recommendations to deal with these problems, noting that its main concern in relation to the costs of gambling for Australians was the reduction in the social costs of gambling (in particular, problem gambling).<sup>302</sup>
- 190 One recommendation was that there should be a pre-commitment system for EGMs. 303 A pre-commitment system involves a gambler setting limits on their gambling, such as a loss limit and a time limit before they commence gambling.<sup>304</sup> According to the Productivity Commission:

Under 'partial' pre-commitment, people are not obliged to be in the system. When they are, they can choose to set or not to set limits, and if they breach such limits, they can continue to play. In contrast, under 'full' pre-commitment, people must be in the system, but voluntarily set limits. If they set limits,

they are bound by them. Often the former is referred to as 'voluntary' pre-commitment and the latter as 'mandatory'. However, these labels are confusing. Both systems are essentially 'voluntary' since the gambler can choose whether to set a limit in either. 305

- 191 To avoid any confusion, pre-commitment will be considered in this chapter by reference to the following categories:
  - partial (where participation is voluntary) or full (where all players must use the system, but are not required to set limits)
  - · voluntary (which allows participants to choose whether to set limits) or mandatory (where participants must set limits)
  - binding (where a participant cannot continue gambling once a pre-set limit is reached) or non-binding (where a player can elect to continue gambling once reaching a pre-set limit).
- 192 The issue of whether a player should be forced to set limits before they gamble is one of the most contentious issues in discussions about EGM reform. There are those who contend that forcing players to set limits is paternalistic and that individual choice would be violated if players are forced to set limits. Others say that personal responsibility should not be paramount. They argue that the addictive nature of EGMs erodes a person's free choice about their gambling. That is, the problem gambler needs protection from the harms their gambling causes.
- 193 These arguments will never be fully resolved. In large measure, they depend upon the different personal values and ethics of those who hold the respective viewpoints.
- 194 Putting to one side debates about values and ethics, the fact is that, as the Productivity Commission pointed out, pre-commitment is an effective strategy to control expenditure in respect of time and money spent on gambling.<sup>306</sup> Professor Alex Blaszczynski (who, as detailed below, has acted as a consultant for Crown) and colleagues have pointed out in their report on Operator-Based Approaches to Harm Minimisation in Gambling (Harm Minimisation Summary Review) that:

support for the strategy [of pre-commitment] is steeped in the findings of a number of studies that have explored typical methods which individuals meeting the criteria for a gambling disorder have applied in self-regulating their gambling behaviour.307

Moreover, pre-commitment as a harm minimisation strategy has been adopted, or is to be adopted, in a number of jurisdictions (including as a trial).308

195 The Productivity Commission concluded that while partial pre-commitment provided some benefits, such as assisting gamblers to set goals and become more aware of their gambling, a partial pre-commitment system would 'give Ulysses a knife to cut his bonds when the Sirens call'.309

196 Accordingly, the Productivity Commission suggested that a full pre-commitment system was necessary. It said:

> The Commission's view is that precommitment is a strong, practicable and ultimately cost-effective option for harm minimisation. It overcomes some of the existing severe deficits in achieving self-control for problem gamblers and for genuine informed consent by many other consumers.

> While recognising that even a full precommitment system cannot be a 'silver bullet', it may ultimately take pressure off other regulations aimed at harm minimisation.310

197 Professor Blaszczynski and colleagues are of the same view. In their Harm Minimisation Summary Review they wrote:

> Offering pre-commitment where the problem gambler is responsible for making the choice of setting limits may not be realistic; its use may need to be mandated to maximise the positive outcomes [pre-commitment provides].311

- 198 The authors go on to make two important points:
  - To be optimally successful, the structure of any ideal EGM-based pre-commitment system needs to apply to all players and to eliminate the option for a player to (a) exchange cards with other players, or be provided with temporary cards by venue operators once pre-set thresholds are reached; and (b) switch play to a cash-based machine.312
  - · Any pre-commitment strategy ought to consider setting a reasonable minimum daily amount (losses) as the default level for all individuals. This daily amount can be estimated by taking into account the median losses or the average amount lost by recreational gamblers. This is an arbitrary figure that could be adjusted over time subject to it representing an acceptable daily limit for the majority of problem gamblers.313
- 199 The Victorian Parliament introduced a pre-commitment system for EGMs in 2014 (effective from 1 December 2015) by amendment to the Gambling Regulation Act. The system is a partial, voluntary, non-binding system. On the second reading of the Gambling Regulation Amendment (Pre-Commitment) Bill 2013 (Vic), the then Treasurer said that the pre-commitment system is voluntary, provides players with choice and is effective for harm minimisation.314
- 200 The pre-commitment scheme, which is accessible on all EGMs in Victoria, is called 'YourPlay'. Under the YourPlay scheme, individuals can activate a YourPlay player card and then pre-set time and loss limits.<sup>315</sup> As the VCGLR explained in its Sixth Review:

Under the YourPlay scheme, when a player has set a time or spending limit and the person reaches the YourPlay set limit, the gaming machine is disabled and a message is displayed on the machine notifying the player that the player has reached the limit. A message then asks the player to choose whether to stop game play on the gaming machine or to continue play. If a person chooses to keep playing, the game play will be re-enabled on the gaming machine and YourPlay will continue to track the play. 316

201 The scheme has not been successful. Relevantly, in 2019, Crown Resorts established a Responsible Gaming Advisory Panel (RGAP), comprised of Professor Blaszczynski, Professor Paul Delfabbro and Professor Lia Nower.<sup>317</sup> In August 2020, the panel prepared a paper titled 'Review of Crown Resort's Responsible Gaming Programs and Services' (RG Review).318 The RGAP pointed out:

> The uptake of voluntary pre-commitment is extremely low. Most trials show that only 1–5% of people voluntarily sign up for pre-commitment systems and very few use time-based limits. Even when people are actively encouraged to sign up, the rate of utilisation drops off significantly over time and can be close to 0% after around 6 months (citation omitted).319

### YOURPLAY AT THE MELBOURNE CASINO

- 202 At the Melbourne Casino, when a person reaches a limit under the YourPlay system and elects to continue playing, they are permitted to do so. There is no regulatory obligation on staff to take any action. 320
- 203 In the RG Review, the RGAP noted that a limitation of the YourPlay system was that players can continue gambling after reaching their self-imposed limit.<sup>321</sup>
- 204 Though nothing is being done by Crown Melbourne in this regard, that position need not continue. The following evidence given by Mr Blackburn is important:
  - Q: Do you agree that Crown should not permit a person to continue gambling if they reach a pre-determined YourPlay time or money limit?
  - A: I do.

- Q: So Crown obviously can't, at the moment the way things are, set limits for patrons. Do you agree customers should be encouraged by Crown to set realistic and affordable YourPlay limits consistent with what the Foundation's recommendation is?
- A: I do.
- Q: Do you agree with me that if Crown wanted to have limits and make sure players, when they reached pre-determined limits, stop playing, it is big enough and it has the resources, if it has the will it could make these things happen?
- **A:** I do.<sup>322</sup>

### Hosts

- 205 There are many different types of hosts at the Melbourne Casino. 323 The Commission focused on the role of hosts in the Mahogany Room, given the large amounts gambled there. 324
- 206 A table game host in the Mahogany Room, called a Mahogany Executive Host (referred to in this chapter as a 'host'), looks after a number of Crown loyalty program members.<sup>325</sup> The host acts as a regular point of contact for those members. The host attends to members' personal needs, such as making hotel and dining arrangements on their behalf. The host also provides members with incentives and enticements, such as tickets to sporting and musical events.<sup>326</sup>
- 207 The principal function of the host is to encourage members to gamble at the Melbourne Casino.<sup>327</sup> As one former host put it:
  - ... [A] gambler is a gambler, a punter is a punter. When they are onsite, a lot of the time they're not just going to come in and park their car, jump on the bus and go to the football, they're going to come back and play.<sup>328</sup>
- 208 That host said even if a member was taking a break from gambling, they would often contact them and invite them to come to the casino for a catch up. The expectation was that the member might continue their gambling. The host said:
  - I was always asked to contact them and make sure that they were okay and continue to offer them, hey, look, you may not want to gamble, but he might want to go to the football, so give him football tickets, or they might want to come in for a bit of dinner, sometime. 329
- 209 The host said that even if a member had been playing for 15 or 20 hours, they would not suggest they take a break from gambling unless advised to do so by an RGLO (as RGAs were then known).330 Nor did the host feel obliged to suggest self-exclusion if a member was or seemed to be in relatively serious financial trouble. They said: 'It wasn't—it wasn't the nature in the office to do that sort of thing. I mean, if—yeah—no, not really. No'.331
- 210 Indeed, the host indicated that they were instructed to subtly discourage clients from self-excluding:
  - Q: And if someone said to you, 'Oh, I'm going to self-exclude, not just have a break', what would you say in response, in the usual course of conduct? How would you normally respond to that?
  - A: We would sort of ask if they ... I would ask if ... if it was one of my clients, I would ask if they are okay, sort of advise that if they do go down the road of self-exclusion just because they've had one bad day on the table, it is going to take more than 12 months to get back in, and when you do get back in you have to go through the Government. It is a big process. So we sort of were asked to steer them away from that option and maybe say, 'Hey, look, instead of self-excluding, maybe just take time off and go to the football next weekend and take time to cool down, go home. Cool your heels and let's speak in a few days time.' That's the road we went down.<sup>332</sup>

- 211 The host also said that, in effect, they would 'sort of talk [their clients] out of' self-excluding in this way.<sup>333</sup> They indicated that the Management Team instructed them and other hosts to operate this way.334
- 212 The Commission has examples of the kinds of communications that members received from hosts. Some of these were plainly directed towards emotionally manipulating customers into spending more money for the benefit of their hosts. 335
- 213 In summary, the job of the host is 'to get people to come in and gamble no matter what'. 336
- 214 An example of the lengths to which hosts would go to encourage gambling is the case of Ahmed Hasna. Mr Hasna was a black tier card holder.<sup>337</sup> He was also addicted to gambling.<sup>338</sup> On one occasion, Mr Hasna went to the Melbourne Casino. He had a cheque for \$100,000 with him as the payee.<sup>339</sup> Mr Hasna asked to exchange the cheque for \$100,000 worth of chips. Crown Melbourne agreed to provide the chips. 340 Mr Hasna then went to the gaming floor and lost the \$100,000.341
- 215 Two days later, the cheque was dishonoured.<sup>342</sup> Mr Hasna was called by his host.<sup>343</sup> According to the host, he was directed to make the call by Mr Lawrence.<sup>344</sup> Mr Hasna told the host that he was experiencing financial hardship and could not repay his debt. 345 He said he was considering self-exclusion.<sup>346</sup>
- 216 On Mr Lawrence's instruction, the host informed Mr Hasna that he could continue gambling at the casino—and maintain all his black card privileges—on the condition that he repay his \$100,000 debt out of any future winnings.<sup>347</sup> Mr Hasna agreed.<sup>348</sup> In due course the debt was repaid.<sup>349</sup> He then continued gambling and lost a considerable sum of money.<sup>350</sup>
- 217 Mr Lawrence was asked about these events:
  - Q: You agree with me, don't you, that the decision to let Mr Hasna come back to gamble was predatory and irresponsible?
  - A: Irresponsible, yes.
  - **Q:** You don't accept that it is predatory?
  - **A:** Yes, it ... it is a strong word, but possibly yes.<sup>351</sup>
- 218 Mr Lawrence said he did not know that Mr Hasna had informed the host that he was in financial difficulty and was contemplating self-exclusion.<sup>352</sup> He accepted, however, that he likely knew that Mr Hasna had previously self-excluded and that self-exclusion suggested that the person had problems with gambling.353
- 219 Asked more generally about the culture and practices at Crown Melbourne, particularly in relation to higher tier members, Mr Lawrence said that:
  - · patrons are not asked about the amount of money they gamble and whether they can afford it<sup>354</sup>
  - hosts do not suggest self-exclusion, even where a person is in financial difficulty<sup>355</sup>
  - hosts and Mahogany Room staff rarely check in on the wellbeing of customers before 12 hours of continuous play<sup>356</sup>
  - patrons regularly gamble for more than 12, 14, 16, 18 and even 24 hours at a time.<sup>357</sup>

- 220 Mr Lawrence acknowledged that Mr Hasna's situation was not exceptional. He said that prior to March 2021, Crown Melbourne often permitted patrons who owed debts they could not repay to gamble to pay back their debts. He agreed that this practice was irresponsible.<sup>358</sup> The following exchange then took place:
  - Q: And you must agree with me, mustn't you, that that is because what is driving you, your colleagues in the Mahogany Room, is money. When you are looking at things, you are motivated by money, above all else. That's the reality of the situation, isn't it, Mr Lawrence?
  - A: I would accept that.

- Q: And the point of all this, the thrust of it, is that when left to balance the competing interests, profits or the welfare of customers in the Mahogany Room, you and your colleagues prioritise money. That is just the reality, isn't it?
- A: Certainly revenue is an important part of what we need to achieve, but

...

- **Q:** Answer my question.
- **A:** ... (overspeaking) ... yes, I agree.<sup>359</sup>
- 221 It goes without saying, but it must be said, that it is inconsistent with the practice of responsible gambling for a casino to encourage a patron to gamble in the hope that the patron can win enough to discharge their debt to the casino. Yet this is what happened with Mr Hasna. And, according to Mr Lawrence, it has happened in many other instances.<sup>360</sup>
- 222 In summary, the evidence before the Commission has made it clear that, at least to a significant extent, hosts engage in the following conduct. They:
  - proactively contact clients and entice them to come to the casino to gamble<sup>361</sup>
  - arrange for customers to collect gifts like tickets from the casino, and invite patrons to dinners at the casino, in the hope that when the customer enters the complex they will gamble<sup>362</sup>
  - · do not speak to clients about the amount of money they are gambling or whether they can afford it<sup>363</sup>
  - rarely ask customers to take a break from gambling<sup>364</sup>
  - · continue to contact clients if they have not visited the casino for a period of time, or had decided to take a break from gambling (though according to Mr Lawrence, contact would be made after an appropriate break had been taken, to entice the customer back into the complex in the hope that they started gambling again)<sup>365</sup>
  - · before March 2021, irresponsibly permitted customers to gamble even if they owed the casino money, 366 with the practice only changing in response to this Commission 367
  - do not suggest that customers should self-exclude, and perhaps even discourage self-exclusion.368

## The misuse of gambling products

- 223 Mr Mackay was asked about the use of picks and similar devices to depress the 'play' buttons on EGMs, and about customers gambling on more than one EGM at a time.
- 224 On the first issue, it is important to understand that restricted EGMs are designed to require a player to press 'play' for each game. To be clear, the use of picks allows players to depress the play button without having to manually interact with the machine.<sup>369</sup>
- 225 Mr Mackay acknowledged that customers sometimes used picks and similar devices for this purpose.<sup>370</sup> He agreed this was an issue that Crown Melbourne had known about for some time.<sup>371</sup> He agreed that 'if one were to prioritise the welfare of Victorians, [Crown Melbourne] wouldn't have a practice that allowed people to have picks and other devices that depressed the play button'.<sup>372</sup>
- 226 As it turned out, prior to February 2018, Crown Melbourne issued Crown-branded picks to allow patrons to simulate 'autoplay'. When the use became public knowledge, staff were instructed to confiscate Crown-branded picks if they observed them being used. However, according to Mr Mackay, where players used picks or similar devices that did not carry a Crown brand, the players were discouraged from using them but were not stopped from playing in that way, and the use of these devices continues.<sup>373</sup>
- 227 While Mr Mackay did not accept the proposition, it appears that preventing the use of only Crown-branded picks indicates that Crown Melbourne is concerned with the reputational damage rather than preventing the harms caused by the use of those devices.<sup>374</sup>
- 228 Under the current gaming rules, in certain circumstances a customer can play on up to three EGMs at a time.<sup>375</sup> That is something that must change.
- 229 Mr Mackay agreed that if Crown Melbourne were to prioritise the welfare of Victorians, it would not allow play on multiple EGMs to occur.<sup>376</sup> He also acknowledged that the use of multiple EGMs was a practice that Crown Melbourne had known about for at least a few years.<sup>377</sup>
- 230 Mr Mackay said that in January or February 2021, 'with the pending update of the casino rules', a direction was issued requiring staff on the main gaming floor to request customers to stop playing multiple machines.<sup>378</sup> The practice is still allowed in the premium Teak and Mahogany Rooms.<sup>379</sup>
- 231 At the conclusion of his evidence, Mr Mackay accepted that Crown Melbourne could have done more over the years to foster RSG and minimise gambling harms.<sup>380</sup> He could hardly have done otherwise.

# Supervision of at-risk customers

232 Ms Bauer estimated that in 2016 there were 1,470 interactions recorded in the Register that may indicate problem gambling behaviours, in 2017 there were 1,603, in 2018 there were 2,125, and in 2019 there were 3,366. Many of those interactions likely relate to multiple attendances on the same person.<sup>381</sup>

- 233 As was noted earlier, in the 2019 financial year problem gamblers were found to constitute approximately 0.7 per cent of the Victorian adult population.<sup>382</sup> They were found to constitute approximately 1.1 per cent of the Victorian adult population who gambled.<sup>383</sup> There is a wider cohort who are at risk of becoming problem gamblers ('moderate' and 'low-risk' gamblers), and a still wider cohort who may suffer gambling harms despite not being problem, moderate or even low-risk gamblers.<sup>384</sup>
- 234 It was also noted earlier that people gambling at the Melbourne Casino may be more likely to suffer gambling harms than they would at any other venue.385 In 2018–19, 25 per cent of people who gambled at the Melbourne Casino experienced some type of gambling-related harm. The prevalence of people who experience problem gambling at the Melbourne Casino may be three times higher when compared to all Victorian adults who gamble.<sup>386</sup>
- 235 Assume that there are 12,000 to 14,000 unique visitors each day at the Melbourne Casino.<sup>387</sup>
  - If 1.1 per cent of this group are problem gamblers, 388 then on an average day there may be 132 to 154 problem gamblers at the Melbourne Casino and a larger number who are moderate or low-risk gamblers.
  - If 3.3 per cent of this group are problem gamblers (that is, three times the prevalence compared to all Victorian adults who gamble), then on an average day there may be 396 to 462 problem gamblers at the Melbourne Casino and a larger number who are moderate or low-risk gamblers.
  - If 25 per cent of this group experience gambling harm,<sup>389</sup> that would be an average of 3,000 to 3,500 people per day who experience such harm.
- 236 Yet the Register shows that on an average day in 2016 there were only about four interactions relating to behaviours that may be indicative of problem gambling (some of which may have related to the same person).<sup>390</sup> That increased to about nine interactions per day by 2019.<sup>391</sup>
- 237 On any view, a large number of customers engaging in problem or risky gambling are escaping attention.<sup>392</sup>
- 238 Ms Bauer's written statement to the Commission also included the complete set of interactions relating to referrals to the RGC that were recorded in the Register (not just those Ms Bauer identified as possibly indicative of problem gambling behaviours) for the last five calendar years.<sup>393</sup> The tables show, for example, that there were 4,372 such referrals in 2016, 4,816 in 2017, 12,206 in 2018 and 18,259 in 2019.394
- 239 Included in these numbers are categories of interaction only tangentially related to problem gamblers or the minimisation of gambling harm. For example, an interaction may be the report of a missing person.<sup>395</sup> Further, as is noted above, many of the interactions relate to multiple attendances on the same person.<sup>396</sup>

### Self-exclusion

- 240 Crown Melbourne's Self-Exclusion Program is available to customers wanting to voluntarily ban themselves from gaming areas.<sup>397</sup> A request to self-exclude is viewed as a 'very strong' Observable Sign and staff who are approached by customers wishing to self-exclude are required by the Gambling Code to refer the customer 'as soon as practicable' to the RGC. 398
- 241 An RGA then conducts an interview with the customer to provide information about self-exclusion, its implications and the process for revoking a self-exclusion order.<sup>399</sup> Customers can choose a self-exclusion period of one, two or three years.<sup>400</sup> The exclusion remains in place until an application for revocation is made. 401 A customer cannot apply for revocation prior to the end of their chosen period. 402
- 242 Upon self-exclusion, the customer loses all their Crown Rewards loyalty points. 403 If they breach, or attempt to breach, a self-exclusion order, an RGA is called and manages the incident. 404
- 243 In July 2016, Crown Melbourne introduced an online self-exclusion process. This has received only a very minimal response.405
- 244 Several submissions received by the Commission state that customers who have self-excluded continue to enter the casino with no staff intervention. 406
- 245 One reason is likely to be that there is an insufficient number of RGAs. 407
- 246 Another is the slow deployment of facial recognition technology, which is a valuable tool to detect the presence of self-excluded customers. 408 Mr Craig Walsh, Executive Director, Security and Surveillance, gave this evidence:
  - **Q:** Do you now regret not prioritising or at least making facial recognition technology occur sooner in the roll-out program than it did?
  - A: My wishes would have been to roll out facial recognition in 2012/13.
  - Q: You wanted to do it in 2012 and 2013?
  - A: I did.
  - **Q:** The business wouldn't spend the money on it?
  - A: That's correct.409
- 247 Despite that evidence, Crown Melbourne says that it is unfair to suggest there was a 'delay' in the rollout of the technology. 410 It says that the only delay was in the creation of the technology. 411
- 248 Whatever the true position, two points are clear. First, only now is Crown Melbourne completing its transition to a full digital facial recognition system. 412 Second, the time it has taken to roll out the technology is regrettable. Had the technology been in place earlier, fewer excluded persons would have gained access to the casino floor,413 and that may have resulted in less harm being caused.

# Crown's marketing activities

- 249 Crown Melbourne's marketing activities are a key part of its operations. Mr Emery explained that the marketing activities can be classified into groups:
  - · Promotional events, activities and associated customer communications led by Crown Melbourne's Marketing Team. Crown Melbourne orchestrates more than 200 promotions in a given year, ranging from direct-to-member offers to promotions offered to higher tier or general Crown Melbourne members, to red carpet and bingo campaigns.<sup>414</sup> There are also events such as sporting competitions, galas and prize draws.<sup>415</sup>
  - The operation of the Crown Rewards loyalty program. In addition to its basic membership, Crown Melbourne has silver, gold, platinum and black tiers. 416 Membership in these tiers is determined by 'status credits' that are based on the amount of money and time a given player spends gambling.417
  - Benefits and enticements offered directly to customers by Crown Melbourne's gaming business units. These take many forms, including prizes, rebates, credits, tournaments and complimentary items or benefits such as food, beverages, accommodation, transport, tickets and free parking.418
- 250 Mr Emery said that some promotions and benefits are aimed at enticing members to increase their level of spending.<sup>419</sup> For example, to be eligible for a cash prize, a person may need to spend a certain amount in a given period, and the promotion may be open to members for whom that amount would represent a significant increase in their spending.<sup>420</sup> Equally, members may be incentivised to increase their spending by the promise of attaining a higher membership tier.421
- 251 The following preliminary matters are of note with regard to marketing at Crown Melbourne.
- 252 First, promotions are designed to draw people into the casino so they will gamble.<sup>422</sup> If marketing entices customers to gamble more frequently, and to gamble larger amounts, that is a successful outcome.<sup>423</sup> Crown evaluates the success of a promotion predominantly on whether it drives visitation and whether or not participants in the promotion spent money while at the casino.<sup>424</sup> All of that is unsurprising—the higher the gambling turnover, the higher Crown's profits would be.425
- 253 Second, the consequences of marketing promotions can be devastating for Victorians. For example, a black tier member came to the casino to collect 'free' Phil Collins tickets, and lost \$30,000 gambling. 426 Nonetheless, Mr Emery accepted that was a 'good outcome' from a marketing perspective.427
- 254 Third, before Crown Melbourne invites members to participate in promotions, it does not consider whether they can afford to participate in the promotion, 428 nor does it consider any player data analytics relevant to RSG (other than 'stop codes'—codes applied to individuals subject to self-exclusion, Time Out or Withdrawal of Licence). 429 Crown Melbourne only considers loyalty status data to ensure that its high-value customers receive the high-value offers.430

- 255 Fourth, Crown Melbourne has structured its loyalty program so it rewards higher-turnover customers, meaning problem gamblers are more likely to benefit from the program as compared to people who gamble in a safe manner. 431
- 256 On the other hand, Crown Melbourne allows customers to opt out of receiving marketing material.<sup>432</sup> Further, Crown Melbourne does not send marketing material to those loyalty program members with stop codes on their accounts. $^{433}$  Mr Emery accepted that the number of persons with RSG-related stop codes is small, meaning this measure is inadequate.<sup>434</sup>

#### THE RED CARPET PROGRAM

- 257 Some promotions targeted potentially vulnerable or financially constrained people. Several witnesses gave evidence about Crown Melbourne's recently discontinued Red Carpet Program (previously known as the Bus Program). 435 This program, which had been in operation since the 1990s,<sup>436</sup> was directed towards older people who were members of community organisations, including members of CALD communities.437
- 258 Participants were bussed to the Melbourne Casino. 438 The cost was subsidised by Crown Melbourne. Prior to April 2018, in order for their community organisation to qualify for the subsidy, participants were required to stay for between four and six hours. 439 They were offered a free musical performance and a buffet lunch. 440 They were given other benefits, such as a parking voucher for a future visit, meal vouchers and vouchers for discounts at select outlets within the Melbourne Casino Complex.<sup>441</sup> In their time at the casino many participants gambled, particularly playing EGMs.
- 259 Professor Linda Hancock, an experienced gambling researcher and former Chair of the Victorian Gambling Research Panel, filed a submission with the Commission dealing with the vulnerability of older adults to gambling disorders. Professor Hancock identified various factors that may contribute to that vulnerability, ranging from age-related cognitive conditions, fixed incomes and social isolation. Women over 60 years of age were identified as a particular at-risk group, as were CALD groups.442
- 260 Professor Hancock referred to a 2010 survey of Red Carpet Program participants by North East Primary Care Partnership, a metropolitan health service. The survey found that over 42 per cent of participants spent more than they had planned gambling at the casino and almost a quarter planned to return to win back their losses.443
- 261 The VCGLR discussed the Red Carpet Program with the Ethnic Community Council of Victoria in 2017. A note of the meeting records the attendees' concerns that participants in the Red Carpet Program were overspending, many to the extent that they did not have enough money to purchase their medication.444
- 262 In May 2021, Crown Melbourne decided that the Red Carpet Program would be discontinued because it was inconsistent with its RSG obligations. 445 This is a welcome decision. It should have been made years earlier.

#### BINGO AT CROWN MELBOURNE

- 263 The Red Carpet Program is just one example of how Crown Melbourne's marketing activities have the potential to cause harm to vulnerable people.
- 264 Crown Melbourne conducted a Bingo Program until May 2021.446 Dr Sarah MacLean (an Associate Professor at La Trobe University) and colleagues conducted research into the program. 447 According to their work, playing bingo was free, but players were required to become Crown loyalty program members. 448 They were given vouchers for table games and EGMs and thereafter received Crown Melbourne promotional material by email. 449 Three bingo sessions were held at two to three-hour intervals during the day. People spoken to by Dr MacLean and her colleagues attended more than one session. Each session lasted for around 30 minutes, allowing participants to remain at the casino between sessions.<sup>450</sup>
- 265 Dr MacLean and her colleagues observed that after the bingo game, most of the participants went directly to the gaming floor.<sup>451</sup> They formed the view that: '[t]he provision of Bingo at Crown Melbourne is designed to draw people into the venue with the expectation that a significant proportion of visitors will then use other forms of gambling including EGMs'.452
- 266 Dr MacLean and her colleagues spoke to a number of participants. For some it was a 'pleasant and affordable experience'. 453 Others were exposed to significant gambling harms. 454 One participant described a friend who was unable to resist gambling on EGMs after attending bingo sessions and suffered significant financial and psychological harms. 455
- 267 In May 2021, Crown Melbourne decided that the Bingo Program would be discontinued. 456

#### OTHER CONCERNS RAISED BY COMMUNITY ORGANISATIONS

- 268 Ms Manorani Guy is the President of the Victorian Working Group on International Student Employability (VicWISE), which provides pastoral care and employment pathways to international students. Ms Guy gave evidence that international students may be unfamiliar with casinos, and so may be especially vulnerable to enticements such as 'attractive giveaways, free parking, free meals, access to high roller rooms and being treated like a celebrity'. 457
- 269 Gambling counsellors working with certain CALD communities gave evidence indicating that members of such communities are susceptible to a range of gambling harms, including mental illness, relationship breakdowns and family violence, and face difficulties effectively selfexcluding from Crown Melbourne.458

# Supporting research into gambling harm

270 There is evidence indicating that Crown Melbourne has been reluctant to support research and evaluation of gambling harms or to supply data to those investigating those harms.<sup>459</sup> The Commission heard from researchers who considered that Crown Melbourne was resistant to providing data for research purposes.460

- 271 Mr Shane Lucas, the CEO of the VRGF, voiced those concerns, though he conceded that the VRGF had not, in recent times, sought any data from Crown Melbourne. Mr Lucas suggested that it not having done so reflected 'an understanding in the research community' that the response 'might simply be negative', or that Crown Melbourne would 'seek to exercise a degree of control over the ultimate outcomes of the research that you did based on the data'.461
- 272 Whatever may have been the position in the past, Crown Melbourne has indicated that it is now amenable to providing information and assistance to enable independent research to be undertaken into problem gambling and gambling harms.<sup>462</sup>

# Recent initiatives by Crown

273 There are two recent RSG initiatives that should be noted.

# Crown's Responsible Service of Gaming Advisory Panel

- 274 As has been observed, in 2019 Crown Resorts established a RGAP, and in August 2020 the RGAP prepared a 'Review of Crown Resort's Responsible Gaming Programs and Services'. 463 The review made 17 recommendations. In brief, they included:
  - changes to staff training programs and staff roles
  - the expansion of the RGC to facilitate confidential and sensitive interaction with customers requesting assistance
  - · sharing and promoting information about self-exclusion and third party exclusion programs and the provision of additional support services to self-excluded persons
  - · procedures for self-exclusion, revocation and reinstatement
  - evaluation of the facial recognition technology to enhance detection of possible breaches by self-excluded individuals
  - changes to the Crown Model.<sup>464</sup>
- 275 Some of the recommendations have been implemented; others are in progress. Crown must be commended for the creation of the RGAP and its work. 465

## RSG enhancements

- 276 As has been briefly mentioned, in May 2021 Crown Resorts approved a series of RSG enhancements. These involved:
  - the employment of a new 'Manager RG', 'RG Administration Officer', four new 'RGAs' and a part time 'RG Psychologist (Research)' at Crown Melbourne
  - the recruitment of additional RGAs with priority given to those from CALD backgrounds, including language skills that are underrepresented in the staff profile but overrepresented in persons experiencing harm from gambling

- · increased remuneration for RSG staff
- new play period time limits for domestic players (12 hours in a 24-hour period, with 'observation/intervention' at eight and 10 hours) and for international premium program players
- support for a statewide exclusion register
- the permanent cessation of the Red Carpet Program and of Bingo for Crown's loyalty program members
- subject to the direction of the Victorian Government, an intention to move to cashless gaming
- · controls to ensure that direct-to-member offers do not require customers to exceed historical behaviours (spend or visit frequency) in order to get their first benefit
- replacing gaming vouchers received on sign up to Crown Rewards with a non-gaming/promotional voucher
- · undertaking research into whether any aspects of the Crown Rewards loyalty program are causing harm and what measures can be put in place to control that risk
- considering RSG implications of all future employee incentives.
- 277 It is appropriate to make some comments regarding how these enhancements came about.
- 278 First, and as already observed in this chapter, most of the enhancements were developed urgently,<sup>467</sup> between 18 and 24 May 2021. The urgency was driven by the directors, who wanted to ensure that Crown Melbourne had something positive in its statement to the Commission.468
- 279 Mr Blackburn explained the matter:
  - So I met with three members of the Board [on] ... the morning of 18 May, to present to them in advance to brief them on the papers I was bringing to the board ... And the RG enhancement paper at that stage included only reference to capacity and remuneration ...

- ... one of the board members said ... are there other things we can change to help uplift our program, and I said I would take that away and discuss it with Sonja [Bauer].
- Q: Understand. But you agree with me that somewhere along the line, part of these enhancements were about positioning Crown for the purposes of this Commission?
- A: That wasn't my goal but I agree it may have been part of the broader goal.
- Q: Part of the broader goal of the directors and the way Ms Bauer has interpreted things?
- A: Yes. Absolutely. 469

- 280 Second, and again as earlier observed, the person who proposed the 'enhancements', Mr Blackburn, had no experience, training or expertise in RSG.<sup>470</sup> To reiterate, that is not a criticism of Mr Blackburn. He only took up his position at Crown Resorts on 24 February 2021, two days after this Commission was announced.<sup>471</sup> He was retained for his expertise in financial crime, not to assist in developing and monitoring RSG at the casino.<sup>472</sup> He was given the role of head of RSG following the departure of the former Chief Legal Officer.<sup>473</sup>
- 281 Third, the enhancements are actions that, at a minimum, Crown Melbourne should already have been undertaking. As Mr Blackburn put it, they are common sense changes. They are not a comprehensive set of reforms.<sup>474</sup>
- 282 Finally, the VCGLR noted in the Sixth Review that changes in Crown Melbourne's responsible gambling practice have largely been driven by regulatory and other external pressures.<sup>475</sup> The development of the enhancements on the fly, in response to the Commission, demonstrates that the position identified by the VCGLR remains true.
- 283 Notwithstanding those observations, the evidence of Mr Blackburn and others indicates the proposals are a well-intentioned effort to address deficiencies obvious in Crown Melbourne's approach to RSG.476
- 284 Turning to the enhancements, it is appropriate to make some observations about each of them.

#### THE MARKETING CONTROLS AND SIGN-UP BENEFITS

- 285 The 'controls' with respect to direct-to-member offers are informal assurances from Crown Melbourne's Marketing Team that direct-to-member offers will henceforth be designed in a particular way.477
- 286 Direct-to-member offers constitute only one of many forms that promotions may take. In addition to direct-to-member offers there are 'cross-complex campaigns', which are promotions open to members and sometimes non-members across the main floor and gaming rooms; promotions open to all members, specific tiers of members and specific cohorts of members, including promotions run from the main gaming floor and in members-only rooms; member jackpots; poker tournaments and so on.<sup>478</sup> The proposed reform applies only to one form of offer.
- 287 Further, within direct-to-member offers the proposed reform will apply only to 'first benefits'. A direct-to-member offer may, however, be structured so that a customer is eligible for additional benefits beyond the 'first benefit'. For example, it may be that if a customer comes to the casino in accordance with an offer made to them they receive a benefit (their 'first benefit'), such as a voucher; and if they come again, they receive a further benefit.<sup>479</sup>
- 288 Equally, the replacement of gaming vouchers on signing up with non-gaming or promotional vouchers may make very little difference if, in either case, a person is incentivised by the non-gaming or promotional vouchers to spend more time and money gambling at the casino.

#### RESEARCHING THE LINK BETWEEN PROBLEM GAMBLING AND LOYALTY PROGRAMS

- 289 Crown Melbourne appears to envisage conducting or commissioning research to determine whether there is a causal relationship between Crown Melbourne's loyalty program and problem gambling. Crown Melbourne has not, to date, taken any such steps. 480
- 290 The following matters are important.
- 291 First, in a supplementary statement to the Commission, Ms Billi referred to research that demonstrated that loyalty programs can be effective in attracting gamblers and facilitating gambling.<sup>481</sup> The research suggests that loyalty programs may harm vulnerable individuals by providing rewards to frequent gamblers, so as to link positive reinforcement to the amount of money gambled rather than the outcome of gambling sessions (for example, wins or losses). Broader research also indicated that the desire to engage in an activity, including gambling, increases with proximity to a reward.482
- 292 Ms Billi noted research that had concluded that loyalty programs in the gambling industry 'may be antithetical to harm minimization strategies'.483 Ms Billi acknowledged, however, that further research was required to determine whether there is a definitive causal link between loyalty programs and problem gambling.<sup>484</sup> Nevertheless, she said that people with gambling problems are overrepresented among loyalty program members.<sup>485</sup> There is evidence, for example, that loyalty program points and rewards are linked to an increased urge to gamble beyond preplanned limits; 486 and that incentives provided by gambling venues may increase the amount wagered by gamblers and particularly problem gamblers.<sup>487</sup> The research also indicated that people with gambling problems perceived that promotions and rewards offered by venues increased their gambling and distorted their perception of their gambling. 488
- 293 Second, there are reasons why immediate action on this issue is warranted:
  - There is evidence that people who are vulnerable to, or experience, gambling harms are overrepresented in loyalty programs.<sup>489</sup>
  - It is inherently likely that a membership program that requires people to maintain or increase the amount of time and money they spend at a casino, and offers them enticements and incentives to do so, has the potential to cause harm.
- 294 Third, while the research enhancement proposed by Crown is in principle a good initiative, one matter of concern should be mentioned. Crown was asked to respond to the following question: 'What research (if any) has been undertaken by Crown Melbourne or Crown Resorts to ascertain the effect the loyalty program has on problem gambling?'. Mr Emery provided the response. He said:

To the best of my knowledge the business has not undertaken any research into the effect the Crown Rewards program has on problem gambling. The responsible gaming team do however keep abreast of academic research into problem gambling and this also includes academic research on the above topic.490

- 295 When asked about that answer, Mr Emery gave the following evidence:
  - Q: If the casino was serious about undertaking research about the link between loyalty programs and problem gambling, it would have been mentioned in paragraph 85 of your statement?
  - A: Yes, correct.491
- 296 There is a risk that the need for further research could be used to justify continued inaction.

#### REMUNERATION

- 297 The proposal that employee incentives consider RSG implications is far from concrete. Merely considering the matter does not tether Crown Melbourne to a particular approach.
- 298 There is a further concern. Presently, Crown Melbourne hosts receive a bonus that is based, at least in part, on customer visitation. 492 It is safe to infer a relationship between turnover and visitation.
- 299 It appears this will not change. In a paper dated 19 May 2021, prepared by the General Managers, Responsible Gaming of Crown Perth, Crown Sydney and Crown Melbourne, the following recommendation was made:
  - 5. Elimination of Gaming Host Turnover-based Commission/Bonus Rewards. In whatever form there may still exist bonus payment incentives among Crown management/staff to encourage from our customers, higher stakes and/or longer play periods, these must cease. 493
- 300 A proposal in that form was not put to the Crown Resorts board or approved as part of the responsible service of gaming enhancements. 494

#### PLAY PERIODS

- 301 The development of the play periods enhancements raises concerns about the RSG Team. The RSG Team told Mr Blackburn that a 12-hour play period was reasonable. 495 There is, of course, no research or academic learning suggesting that a 12-hour play period is reasonable. The following exchange between Mr Blackburn and the Commission took place:
  - Q: If the 12 hours is absurdly wrong, what does that tell you about your team who were pushing it? They say 12 hours is fine. Let's say they are wrong ... but what would it tell you about the team you have if 12 hours is absurd?
  - **A:** That I need to revisit my team.
  - Q: Yes. And what does that mean. When you use the word 'revisit', what do you mean by the word 'revisit'?
  - A: I need to understand the expertise they apply in reaching conclusions of that nature. I need to apply judgment to it. 496

#### CASHLESS GAMBLING

302 While the move to cashless gambling is to be encouraged—both as an AML measure (see Chapter 6) and because play periods can be more effectively monitored through carded play it must be developed and seen through a gambling harm reduction lens. Concerns include the frictionless nature of transactions, where there is less likelihood of time for reflection; and it being potentially difficult for people to track their spending during gambling.<sup>497</sup>

### Observations on the recent initiatives

- 303 Many of the concerns voiced in this chapter were previously raised with Crown Melbourne by the VCGLR. In its Sixth Review, the VCGLR noted that Crown Melbourne's approach to responsible gaming was 'essentially unchanged' since its Fifth Review five years earlier. 498 Its Report noted:
  - Crown Melbourne's RGC had no 'quantified key performance measures', and outcomes for patrons who interact with the RGC were not systematically measured. 499
  - · Poor use was made of Crown Melbourne's internally available data, in contrast to its use of data to measure the effectiveness of its responsible service of alcohol practices. 500
  - · RSG staffing levels were inadequate and there was inadequate engagement with people who may be experiencing gambling harms.<sup>501</sup>
  - · Crown Melbourne's RSG strategy relies almost exclusively on Observable Signs and people self-identifying as having gambling problems. 502
  - · Crown Melbourne's reliance on the wider body of staff to discern Observable Signs was limited by the fact that those staff are busy with their core duties. 503
  - · The amount of time patrons were left unattended before staff intervention as mandated by the Play Periods Policy was not conducive to responsible lengths of play for local players. 504
  - Crown Melbourne's use of player data analytics to support interventions was still in a trial phase five years after being recommended as part of the Fifth Review and 10 years after first being raised with Crown Melbourne. 505
  - 'Where there has been change in responsible gambling practice, this has largely been driven by regulatory and other external pressure ....<sup>506</sup>
- 304 Notwithstanding the above, and in fairness to Crown Melbourne, the Sixth Review made several RSG recommendations, all of which the regulator concluded were satisfactorily implemented (save for those recommendations that have not yet fallen due).507
- 305 It must also be acknowledged that Mr Blackburn genuinely intends to further reform Crown's RSG program. 508

# Conclusion

- 306 The problems raised in this chapter are not easily repaired. They reflect a flawed organisational structure, a dysfunctional culture, failures of leadership and an unfavourable regulatory regime.
- 307 There are four areas where, based on current learning, steps can be taken to reduce gambling harms.

# Carded play

- 308 As has been shown, it is nearly impossible to monitor uncarded players at the Melbourne Casino. For that reason, it is appropriate that all customers should use a player card for all forms of gambling at the Melbourne Casino. A recommendation to that effect has been made in Chapter 6.
- 309 To enable proper research into problem gambling, it is important that the player card also be used to collect data.

#### RECOMMENDATION 9: PLAYER CARD DATA

It is recommended that a direction be given to Crown Melbourne pursuant to section 23(1) of the Casino Control Act that the player card collect, to the extent practicable, data relating to:

- player buy-in (time, amount)
- · player buy-out (time, amount)
- play periods (date, start time, end time)
- player turnover
- · player losses and wins
- gambling product
- such further information as the regulator reasonably requires for anti-money laundering and Responsible Service of Gaming purposes.

## Pre-commitment and time limits

- 310 An important step is to control gambling on EGMs, which is a form of gambling that causes more harm than others.
- 311 Pre-commitment is an obvious area of reform. If a full, mandatory, binding, pre-commitment system is implemented, that will significantly reduce the incidence of problem gambling.
- 312 The State has explained that there are practical difficulties that stand in the way of an immediate implementation of this system. Nonetheless, when these practical difficulties can be overcome such a system should be introduced. 509

#### RECOMMENDATION 10: PRE-COMMITMENT AND TIME LIMITS

It is recommended that as soon as possible, the YourPlay system be a full, mandatory, binding, pre-commitment system for Australian residents gambling on EGMs at the Melbourne Casino.

The pre-commitment system should operate in the following manner:

- Each player must set a daily, weekly or monthly time limit and a daily, weekly or monthly loss limit.
- If the pre-set time limit or the pre-set loss limit is reached, the player cannot continue to gamble on an EGM and the limit(s) cannot be altered, for 36 hours.
- No player can gamble on an EGM for more than 12 hours in any 24-hour period.
- If a player has gambled for 12 hours in any 24-hour period, the player must take a break for 24 hours.
- A player cannot gamble continuously on an EGM for more than three hours.
- · A player must take a break of at least 15 minutes after three hours of continuous gambling.
- A player cannot gamble on EGMs for more than 36 hours per week.
- There should be a default pre-set loss limit that the player can modify.
- The default pre-set loss limit should be set by regulation. It could be calculated by reference to the median income of a wage earner less the standard cost of living. Or it could be calculated by estimating the median losses of a recreational gambler. The pre-set loss limit should be reviewed at least annually.

For the effective operation of a full, mandatory, binding YourPlay system, internal control systems are needed to ensure that a customer is unable to acquire more than one card. The systems need to be approved under section 122 of the Casino Control Act.

# Gambling Code

- 313 Another area where reform is desirable is the content of the Gambling Code for casinos.
- 314 The contents of a Gambling Code are set by a Ministerial Direction made under section 10.6.6 of the Gambling Regulation Act.
- 315 Currently there are two Ministerial Directions in force, one for casinos and other gambling licensees (made on 17 September 2018) and the other for EGM venue operators (pubs and clubs) (made on 21 February 2020).510
- 316 There are material differences between the two Ministerial Directions. The differences are set out in the following table.

Subject	Crown Melbourne	Other venues
Responsible gambling message	Requires a code to include a responsible gambling message that identifies the casino operator's commitment to responsible gambling (part 2, page 4).  Does not specify the level of commitment to responsible gambling a casino operator should have.	Requires a code to include the following responsible gambling message: 'A venue operator has a duty to take all reasonable steps to prevent and minimise harm from the operation of gaming machines in the approved venue, including by monitoring the welfare of gaming machine players, discouraging intensive and prolonged gaming machine play and intervening when a person is displaying behaviour that is consistent with gambling harm' (part 2, clause 1).

#### Subject Crown Melbourne Other venues Interaction with Provides a code must: Requires a code to include customers provisions regarding: require the casino operator to interact with customers · interaction with customers to foster responsible communication with gamblers gambling, and identify (part 2, clause 2); and how this will occur · interaction with customers— • in particular, specify a process signs of distress (part 2, for interacting with those clause 3). customers who: These provisions set out detailed - have requested responsibilities of a venue information about, operator; for example, providing or assistance with, that a venue operator: a gambling problem must ensure that or self-exclusion; and communications with customers do not induce - are displaying indicators a person to enter or remain of distress that may in the gaming machine area be related to problem (part 2, clause 2.1(a)) gambling · must not encourage or · require that interaction with induce a person to engage customers occurs in in intensive or prolonged a manner that respects the gaming machine play customer's right (part 2, clause 3.3) to privacy (part 2, page 5). is expected to ask a person Does not prescribe how the to take a break away from the relevant person must interact gaming machine area where with customers to foster an interaction has occurred responsible gambling, or the and that interaction has process for interacting with determined that the person customers showing signs is angry while gaming or has of distress. requested assistance as a Arguably, does not require a consequence of their gaming relevant person to specify a (part 2, clause 3.4). process for interacting with customers displaying indicators of problem gambling if they did not request assistance or information about problem

gambling or self-exclusion.

317 It is accepted that there are differences in the operating environment of a casino on the one hand and a local pub or club on the other. This may account for some of the differences in the treatment of casino operators and EGM venue operators. But it does not account for all. Some requirements, appropriately amended, should apply to the casino operator. There are distinct risks that arise from the nature and scale of the Melbourne Casino that should be reflected and addressed in its Gambling Code.

#### RECOMMENDATION 11: GAMBLING CODE

It is recommended that a new Ministerial Direction be made under section 10.6.6 of the Gambling Regulation Act, in respect of a casino operator, which includes the following requirements:

- a duty to take all reasonable steps to prevent and minimise harm from gambling, including by monitoring the welfare of players, discouraging intensive and prolonged play and intervening when a person is displaying behaviour that is consistent with gambling harm
- · a duty to take all reasonable steps to ensure that players on the gambling floor are regularly observed to monitor behaviour that is consistent with gambling harm
- a duty to ensure that there is a sufficient number of responsible gambling officers (however called) at the casino.

It is recommended that the Ministerial Direction:

- set maximum play period limits
- · prescribe how long a break in play should be
- · identify the period at which players should be interacted with, and the form of interaction, while gambling.

Different rules will be needed for different gambling products. For EGMs, the periods of play should mirror those recommended for YourPlay. For other gambling products, the limits should not be less onerous than those approved by Crown Resorts in May 2021 for domestic customers.

318 It is appropriate to remind Crown Melbourne that its Gambling Code should be written in plain and unambiguous language. Its current Gambling Code does not satisfy that description as is evident from the discussion about the meaning of some of the Observable Signs.

#### Access to data

319 The final point is access to data. It is generally accepted that data collected by Crown Melbourne and other gaming venues should be made available to researchers.<sup>511</sup> This will enable serious research into the causes of problem gambling and gambling harms.

#### RECOMMENDATION 12: DATA COLLECTION

It is recommended that to facilitate data collection for research purposes there should be established a Gambling Data Committee made up of three persons, one appointed by the regulator, one appointed by Crown Melbourne and one appointed by the Victorian Responsible Gambling Foundation.

The committee should have the following functions:

- to identify the data to be included in a repository
- to ensure the data is up-to-date and comprehensive.

The committee should be required to carry out the following tasks:

- · oversee the design and structure of the repository and its user interface
- · identify the data that is to be publicly available and data that will have restricted access
- · ensure processes and procedures are put in place for the efficient maintenance and updating of the repository
- · establish protocols to anonymise data to respect the privacy of gamblers
- establish a register of recognised researchers
- establish a simple process by which a request for data is to be made.

#### RECOMMENDATION 13: CROWN MELBOURNE DATA

It is recommended that the committee have power to direct Crown Melbourne and the monitoring licensee for the YourPlay system to provide data that is reasonably required and in a particular format.

#### RECOMMENDATION 14: COSTS OF DATA COLLECTION

It is recommended that the cost of establishment and operation of the committee is paid for by the government, with staff and Secretariat support provided by the Victorian Responsible Gambling Foundation.

# **Endnotes**

- See Exhibit RC1627 Victoria, Budget Speech, 28 August 1990 (Tom Roper); Exhibit RC1626 Victoria, Budget Strategy and Review 1990–91, Chapter 1: Budget Overview, 5 [Table 1.1]; Exhibit RC1628 Victoria, Budget Strategy and Review 1991–92, Chapter 1: Budget Overview, 3 [Table 1.3]; 'Victoria: Unemployment Rate: Persons (A84595606K)' in the spreadsheet titled 'Table 02. Labour force by state, territory, greater capital city and rest of state and sex', 'Labour Force, Australia, Detailed,' Australian Bureau of Statistics (Web Page, 26 August 2021) < www.abs.gov.au/statistics/labour/employment-and-unemployment/labour-force-australiadetailed/latest-release>.
- 2 Victoria, Parliamentary Debates, Legislative Assembly, 24 April 1991, 1692 (James Kennan).
- 3 Xavier Connor, Report of Board of Inquiry into Casinos in the State of Victoria (Report, April 1983) [14.17]-[14.18].
- 4 Victoria, Parliamentary Debates, Legislative Assembly, 24 April 1991, 1692 (James Kennan).
- 5 Victoria, Parliamentary Debates, Legislative Assembly, 24 April 1991, 1692-5 (James Kennan).
- Victoria, Parliamentary Debates, Legislative Council, 6 June 1991, 2311 (JVC Guest). 6
- 7 Victoria, Parliamentary Debates, Legislative Council, 6 June 1991, 2311 (JVC Guest).
- 8 Victoria, Parliamentary Debates, Legislative Council, 6 June 1991, 2312 (JVC Guest).
- 9 Casino Control Act 1991 (Vic) s 1(a).
- 10 Casino Control Act 1991 (Vic) s 1(a)-(c), as enacted.
- 11 VCGA, Third Triennial Review of the Casino Operator and Licence (Report, June 2003) 40.
- 12 Exhibit RC1621 Article: Kennan Expects \$100m Windfall from State Casino, 1 November 1991, 1.
- 13 Australian Institute for Gambling Research, University of Western Sydney, Australian Gambling Comparative History and Analysis—Project Report for the Victorian Casino and Gaming Authority (Report, October 1999) 205.
- 14 See Victorian Government, 'Victorian Government Submission to the Productivity Commission Inquiry into Gambling in Australia' (March 2009) 22; Australasian Gaming Council, 'A Guide to Australasia's Gambling Industries, Facts Figures and Statistics, Chapter Seven: The Contribution of Australia's Gambling Industries 2017/18' (February 2020) 12.
- 15 Victorian Government, 'Victorian Government Submission to the Productivity Commission Inquiry into Gambling in Australia' (March 2009) 27.
- 16 Queensland Government Statistician's Office, Queensland Treasury, Australian Gambling Statistics, 1993-94 to 2018-19, 36th edition (Report, April 2021) 89, Table Vic 20.
- 17 See the spreadsheet titled 'Taxation Revenue—Annual' in 'State Taxation Revenue', Victorian Department of Treasury and Finance (Web Page, 2021) < www.dtf.vic.gov.au/state-financial-data-sets/state-taxationrevenue>. This spreadsheet details the historical and forecast data published in budget papers (Budget and Budget Update) and the Annual Financial Report. It includes the taxation data series for gambling taxes.
- 18 Exhibit RC0722 VAGO Reducing the Harm Caused by Gambling Report, March 2021, 11.
- 19 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 15 [A.33].
- 20 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 107-10 [6]-[29]; see also 'Crown Resorts Foundation', Crown Resorts (Web Page, 2021) < www.crownresorts.com.au/Our-Contribution/Crown-Resorts-Foundation>.
- Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 107-8 [1]-[7]; Responsive submission Crown 21 Melbourne Limited and Crown Resorts Limited, 2 August 2021, 15 [A.33(d)], 320 [17].
- 22 Crown Resorts, Submission to Productivity Commission, Australia International Tourism Industry Research Report (15 December 2014) 2, 4-6.
- 23 State of Victoria, 'Melbourne's Top Attractions, Business Victoria' (Fact Sheet, 2019) 1 <a href="https://business.vic.">https://business.vic.</a> qov.au/\_\_data/assets/pdf\_file/0009/1865160/Melbournes-Top-Attractions-year-ending-December-2019.pdf>. This fact sheet provides an overview of overnight visitors to Victoria who attended places or attractions in Melbourne. This includes both domestic and international overnight visitors and may include those who visit the place/attraction as part of a day trip (this does not include local visitors).

- See Table 6 in the spreadsheet titled 'State Tourism Satellite Account 2019–20 data tables' in 'State Tourism Satellite Accounts, 2019–20', *Tourism Research Australia* (Web Page, 2021) <www.tra.gov.au/data-and-research/reports/state-tourism-satellite-account-2019-20/data-tables>. 'Direct tourism gross value added' means the value of direct tourism output before taxes, less the value of the goods and services used to produce these tourism products: 'Australian National Accounts: Tourism Satellite Account methodology', *Australian Bureau of Statistics* (Web Page, 10 December 2020) <www.abs.gov.au/methodologies/australian-national-accounts-tourism-satellite-account-methodology/2019-20>.
- 25 See, eg, Exhibit RC1586 Article: An Economic and Social Review of Gambling in Great Britain, 2013, 13–14.
- 26 Productivity Commission, Australia's Gambling Industries (Inquiry Report No. 10, 26 November 1999), 5.
- 27 Productivity Commission, Australia's Gambling Industries (Inquiry Report No. 10, 26 November 1999).
- See, eg, Browne et al, *The Social Cost of Gambling to Victoria* (Research Report, VRGF, November 2017); Exhibit RC0127 VRGF Identifying Effective Policy Intervention to Prevent Gambling-Related Harm Report, June 2019.
- See, eg, Victorian Competition and Efficiency Commission, *Counting the Cost: Inquiry into the Costs of Problem Gambling* (Final Report, 2012).
- 30 See, eg, South Australian Centre for Economic Studies, *Social Impacts of Gambling: A Comparative Study* (Final Report, April 2009); Lenny Roth, 'Gambling: An Update' (Research Paper, Parliament of New South Wales, March 2020).
- See, eg, Exhibit RC1586 Article: An Economic and Social Review of Gambling in Great Britain, 2013, 1; Patrick Basham and Karen White, *Gambling with our Future? The Costs and Benefits of Legalized Gambling* (Report, The Fraser institute, 2002); Gerda Reith, *Research on the Social Impacts of Gambling* (Final Report, Scottish Executive Social Research, 2006); Exhibit RC1593 Article: The Social Costs of Gambling: An Economic Perspective, February 1999; Douglas Walker, 'Quantification of the Social Costs and Benefits of Gambling' (Conference Paper, Annual Alberta Conference on Gambling Research, 2006); Douglas Walker, et al, *State of the Evidence Review: Societal and Economic Impact of Gambling* (Research Report, Gambling Research Exchange Ontario, 2015); Earl Grinols, *The Hidden Social Costs of Gambling* (Research Report, Centre for Christian Ethics at Baylor University, 2011); Brian Easton, 'The Benefits and Costs of Gambling: Some Policy Implications' (Web Page, April 2010) <www.eastonbh.ac.nz/2010/04/the-benefits-and-costs-of-gambling-some-policy-implications>.
- 32 Productivity Commission, Australia's Gambling Industries (Final Report No. 10, 26 November 1999) 13–14.
- 'Problem Gambling Severity Index (PGSI)', *VRGF* (Web Page, 2021) <a href="https://responsiblegambling.vic.gov.au/for-professionals/health-and-community-professionals/problem-gambling-severity-index-pgsi">https://responsiblegambling.vic.gov.au/for-professionals/health-and-community-professionals/problem-gambling-severity-index-pgsi</a>.
- 'Problem Gambling Severity Index (PGSI)', *VRGF* (Web Page, 2021) <a href="https://responsiblegambling.vic.gov.au/for-professionals/health-and-community-professionals/problem-gambling-severity-index-pgsi">https://responsiblegambling.vic.gov.au/for-professionals/health-and-community-professionals/problem-gambling-severity-index-pgsi</a>.
- 35 Exhibit RC0322 Table of Documents emailed to Steven Blackburn, n.d., Annexure w, 47, 5.19.
- 36 Browne et al, The Social Cost of Gambling to Victoria (Research Report, VRGF, November 2017) 45.
- 37 Exhibit RC0322 Table of documents emailed to Steven Blackburn, n.d., Annexure y, 23.
- 38 Howe et al, Gambling and Problem Gambling in Victoria (Report, VRGF, July 2018) 48.
- 39 Howe et al, Gambling and Problem Gambling in Victoria (Report, VRGF, July 2018) 48–9.
- 40 Exhibit RC0181 Statement of Rosa Billi, 10 May 2021, 4 [34]. The figure in [34] was corrected in evidence by Ms Billi: see Transcript of Rosa Billi, 8 June 2021, 1795.
- 41 Exhibit RC0322 Table of documents emailed to Steven Blackburn, n.d., Annexure y, 1.
- 42 Gambling Regulation Act 2003 (Vic); Casino Control Act 1991 (Vic).
- 43 'Expenditure on Gambling in Victoria and Australia', VRGF (Web Page, 13 December 2019) <a href="https://responsiblegambling.vic.gov.au/resources/gambling-victoria/expenditure-on-gambling-victoria-and-australia">https://responsiblegambling.vic.gov.au/resources/gambling-victoria/expenditure-on-gambling-victoria-and-australia</a>.
- 44 'Expenditure on Gambling in Victoria and Australia', *VRGF* (Web Page, 13 December 2019) <a href="https://responsiblegambling.vic.gov.au/resources/gambling-victoria/expenditure-on-gambling-victoria-and-australia">https://responsiblegambling.vic.gov.au/resources/gambling-victoria/expenditure-on-gambling-victoria-and-australia</a>.
- 45 Exhibit RC0322 Table of Documents emailed to Steven Blackburn, n.d., Annexure w, 16–17, 5.33.
- 46 Browne et al, The Social Cost of Gambling to Victoria (Research Report, VRGF, November 2017) 51.
- 47 Browne et al, The Social Cost of Gambling to Victoria (Research Report, VRGF, November 2017) 51.

- 48 Browne et al, The Social Cost of Gambling to Victoria (Research Report, VRGF, November 2017) 51; Queensland Government Statistician's Office, Queensland Treasury, Australian Gambling Statistics 1992–93 to 2017-18, 35th edition (Report, December 2019) 89, Table Vic 20.
- 49 Exhibit RC1584 Article: A Pokie-Holic State, 17 June 2008, 1.
- 50 Submission 59 Australasian Gaming Council, 28.
- 51 Browne et al, The Social Cost of Gambling to Victoria (Research Report, VRGF, November 2017) 26.
- 52 Browne et al, Assessing Gambling-Related Harm in Victoria: A Public Health Perspective (Research Report, VRGF, April 2016) 75-9.
- 53 Browne et al, The Social Cost of Gambling to Victoria (Research Report, VRGF, November 2017) 26. See also Exhibit RC0322 Table of documents emailed to Steven Blackburn, n.d., Annexure y, 107–10.
- 54 Browne et al, The Social Cost of Gambling to Victoria (Research Report, VRGF, November 2017) 65.
- 55 Exhibit RC0722 VAGO, Reducing the Harm Caused by Gambling Report, March 2021, 3, 11.
- 56 Browne et al, The Social Cost of Gambling to Victoria (Research Report, VRGF, November 2017) 53-4.
- 57 Browne et al, The Social Cost of Gambling to Victoria (Research Report, VRGF, November 2017) 54.
- 58 Exhibit RC0322 Table of documents emailed to Steven Blackburn, n.d., Annexure y, 74-6. The Australian Unity Wellbeing Index has been designed as a barometer of Australians' satisfaction with their lives
- 59 Browne et al, The Social Cost of Gambling to Victoria (Research Report, VRGF, November 2017) 57-8.
- 60 Browne et al, The Social Cost of Gambling to Victoria (Research Report, VRGF, November 2017) 73.
- 61 Browne et al, The Social Cost of Gambling to Victoria (Research Report, VRGF, November 2017) 59-61.
- 62 Women's Health in the North, Understanding the Link between Family Violence and Gambling: Information for Local Government (Fact Sheet, 2021) 2 (citations omitted).
- 63 Nicki A Dowling et al, 'Problem Gambling and Family Violence: Findings from a Population-Representative Study' (2018) 7(3) Journal of Behavioural Addictions 806, 806-9.
- 64 Browne et al, The Social Cost of Gambling to Victoria (Research Report, VRGF, November 2017) 67-8.
- 65 Browne et al, The Social Cost of Gambling to Victoria (Research Report, VRGF, November 2017) 70-1.
- Browne et al, The Social Cost of Gambling to Victoria (Research Report, VRGF, November 2017) 68–70. 66
- 67 Browne et al, The Social Cost of Gambling to Victoria (Research Report, VRGF, November 2017) 74-6.
- 68 Browne et al, The Social Cost of Gambling to Victoria (Research Report, VRGF, November 2017) 76–83.
- 69 Exhibit RC0133 Statement of Nicolas Emery, 5 May 2021, [11]-[12].
- 70 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, [32].
- 71 Transcript of Nicolas Emery, 4 June 2021, 1529; Exhibit RC0143 Crown Melbourne Average Daily Unique Visitations report, 1 June 2021.
- 72 Exhibit RC0181 Statement of Rosa Billi, 10 May 2021, [52]-[53]; Exhibit RC0322 Table of documents emailed to Steven Blackburn, n.d., Annexure y.
- 73 Exhibit RC0181 Statement of Rosa Billi, 10 May 2021, [52.5].
- 74 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 224-5 [F.185]-[F.203].
- 75 Submission 08 South Australian Centre for Economic Studies, 202.
- 76 Victoria, Parliamentary Debates, Legislative Council, 6 June 1991, 2312 (JVC Guest).
- 77 Submission 32 Australian Vietnamese Women's Association Inc, 1; Submission 28 Elizabeth Mitchell, 1; Submission 75 School of Public Health & Preventative Medicine, Monash University, 11. See also 'Evidence given by support workers' in this chapter.
- Exhibit RC0181 Statement of Rosa Billi, 10 May 2021, 7 [39] (citing Parke et al, Key Issues in Product Based 78 Harm Minimisation: Examining Theory, Evidence and Policy Issues in Great Britain (Report, December 2016)).
- 79 Exhibit RC0181 Statement of Rosa Billi, 10 May 2021, 7 [39] (citing Parke et al, Key Issues in Product Based Harm Minimisation: Examining Theory, Evidence and Policy Issues in Great Britain (Report, December 2016)).
- 80 Exhibit RC0181 Statement of Rosa Billi, 10 May 2021, 7 [40] (citing Parke et al, Key Issues in Product Based Harm Minimisation: Examining Theory, Evidence and Policy Issues in Great Britain (Report, December 2016)); Schottler Consulting, Literature Review of the Impact of EGM Characteristics on Gambling Harm (Report, 2019).
- 81 Exhibit RC1587 Article: Dark Flow, Depression and Multiline Slot Machine Play, 73, 76, 81, 83.
- Exhibit RC1587 Article: Dark Flow, Depression and Multiline Slot Machine Play, 76. 82

- 83 Exhibit RC1587 Article: Dark Flow, Depression and Multiline Slot Machine Play, 73, 83.
- 84 Exhibit RC1587 Article: Dark Flow, Depression and Multiline Slot Machine Play, 73–4.
- Exhibit RC1585 Article: Amplified Striatal Responses to Near-Miss Outcomes in Pathological Gamblers,
   27 April 2016, 2614, 2620–1. See also Exhibit RC1589 Article: Gambling Near-Misses Enhance Motivation to Gamble and Recruit Win-Related Brain Circuitry, 2009.
- Casino Licence granted to Crown Melbourne (then Crown Casino Ltd) under Part 2 of the *Casino Control Act* 1991 (Vic) dated 19 November 1993, cl 8(c).
- Victoria, Victoria Government Gazette, No S 510, 9 December 2019. A player must have a pre-set time and loss limit on their YourPlay account, and not have exceeded either limit, to use an EGM in unrestricted mode. Other conditions apply to the operation of EGMs in unrestricted mode; for example, they can only operate in specified areas.
- Victoria, Victoria Government Gazette, No S 510, 9 December 2019.
- 89 Transcript of Mark Mackay, 7 June 2021, 1685 [16]–[22].
- 90 Casino Control Act 1991 (Vic) s 69.
- 91 Casino Control Act 1991 (Vic) s 20(1).
- 92 Department of Justice (Vic), Taking Action on Problem Gambling (Report, October 2006).
- 93 Department of Justice (Vic), Taking Action on Problem Gambling (Report, October 2006) 4.
- 94 Victoria, *Parliamentary Debates*, Legislative Assembly, 1 November 2007, 3827 (Tony Robinson).
- 95 Gambling Legislation Amendment (Problem Gambling and Other Measures) Act 2007 (Vic) ss 56–9.
- Casino Control Act 1991 (Vic) s 69 inserted by Gambling Legislation Amendment (Problem Gambling and Other Measures) 2007 (Vic) s 57. When originally introduced, the section provided as follows:
   '[I]t is a condition of a casino licence that the casino operator implement a Responsible Gambling Code of Conduct that has been approved by the Commission'.
- 97 Casino Control Act 1991 (Vic) s 69, inserted by Gambling Legislation Amendment (Problem Gambling and Other Measures Act 2007 (Vic) s 57 and subsequently amended by Gambling Regulation Amendment (Gaming Machine Arrangements) Act 2017 (Vic) s 58.
- 98 Exhibit RC0508 Ministerial Direction No S 430, 17 September 2018, 4–6, as amended by Exhibit RC0163 Ministerial Direction No S 85, 21 February 2020.
- 99 Exhibit RC0508 Ministerial Direction No S 430, 17 September 2018, 4–6.
- 100 Exhibit RC0508 Ministerial Direction No S 430, 17 September 2018, 5.
- 101 Exhibit RC0712 Crown Melbourne Responsible Gambling Code of Conduct, 26 May 2009, 11–12.
- 102 Exhibit RC0712 Crown Melbourne Responsible Gambling Code of Conduct, 26 May 2009, 12.
- 103 Exhibit RC0714 Crown Melbourne Responsible Gambling Code of Conduct, Version 3, November 2012, 11–12.
- 104 Exhibit RC0714 Crown Melbourne Responsible Gambling Code of Conduct, Version 3, November 2012, 12.
- 105 Exhibit RC0714 Crown Melbourne Responsible Gambling Code of Conduct, Version 3, November 2012, 12.
- Exhibit RC0713 Crown Melbourne Responsible Gambling Code of Conduct, Version 4, July 2016, 11, amending Exhibit RC0714 Crown Melbourne Responsible Gambling Code of Conduct, Version 3, November 2012, 11.
- 107 Exhibit RC0713 Crown Melbourne Responsible Gambling Code of Conduct, Version 4, July 2016, 12.
- 108 Exhibit RC0713 Crown Melbourne Responsible Gambling Code of Conduct, Version 4, July 2016, 12.
- 109 Exhibit RC0713 Crown Melbourne Responsible Gambling Code of Conduct, Version 4, July 2016, 12.
- 110 Exhibit RC0715 Crown Melbourne Responsible Gambling Code of Conduct, Version 5, October 2016.
- 111 Exhibit RC0715 Crown Melbourne Responsible Gambling Code of Conduct, Version 5, October 2016, 3, 12.
- 112 Exhibit RC0110 Crown Melbourne Responsible Gambling Code of Conduct, Version 6, July 2019, 16.
- 113 Exhibit RC0694 Crown Melbourne Responsible Gambling Code of Conduct, Version 7, May 2021.
- 114 Exhibit RC0712 Crown Melbourne Responsible Gambling Code of Conduct, n.d., 11–12.
- 115 Exhibit RC0714 Crown Melbourne Responsible Gambling Code of Conduct, Version 3, November 2012, 12.
- 116 Exhibit RC0713 Crown Melbourne Responsible Gambling Code of Conduct, Version 4, July 2016, 12.
- Exhibit RC0121 Gambling Research Australia Validation Study of In-Venue Problem Gambler Indicators Report, February 2014.
- Exhibit RC0968 The University of Adelaide Identifying Problem Gamblers in Gambling Venues Report, 24 August 2007.

- Exhibit RC0550 Report regarding Current Issues Related to Identifying the Problem Gambler in the Gambling Venue, August 2002.
- 120 Exhibit RC0121 Gambling Research Australia Validation Study of In-Venue Problem Gambler Indicators Report, February 2014, 28–9; Exhibit RC0968 The University of Adelaide Identifying Problem Gamblers in Gambling Venues Report, 24 August 2007; Exhibit RC0550 Report regarding Current Issues Related to Identifying the Problem Gambler in the Gambling Venue, August 2002, [2.5].
- 121 Exhibit RC0121 Gambling Research Australia Validation Study of In-Venue Problem Gambler Indicators Report, February 2014, 20; Exhibit RC0550 Report regarding Current Issues Related to Identifying the Problem Gambler in the Gambling Venue, August 2002, 2.
- Exhibit RC0550 Report regarding Current Issues Related to Identifying the Problem Gambler in the Gambling Venue, August 2002, 8 (section 1.2, 'Length of playing sessions').
- Exhibit RC0968 The University of Adelaide Identifying Problem Gamblers in Gambling Venues Report, 24 August 2007, 201 [5.14.2].
- Exhibit RC0968 The University of Adelaide Identifying Problem Gamblers in Gambling Venues Report, 24 August 2007, 201 [5.14.2].
- Exhibit RC0968 The University of Adelaide Identifying Problem Gamblers in Gambling Venues Report, 24 August 2007, 285.
- Exhibit RC0121 Gambling Research Australia Validation Study of In-Venue Problem Gambler Indicators Report, February 2014, 88–9.
- Exhibit RC0121 Gambling Research Australia Validation Study of In-Venue Problem Gambler Indicators Report, February 2014, 69, 202–3.
- 128 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 198 [F.77].
- Exhibit RC0550 Report regarding Current Issues Related to Identifying the Problem Gambler in the Gambling Venue, August 2002, 8 (section 1.2, under the heading 'Length of playing sessions').
- Exhibit RC0550 Report regarding Current Issues Related to Identifying the Problem Gambler in the Gambling Venue, August 2002, 9 (section 1.3, under the heading 'Number of sessions per week').
- Exhibit RC0550 Report regarding Current Issues Related to Identifying the Problem Gambler in the Gambling Venue, August 2002, 34.
- 132 Transcript of Sonja Bauer, 2 June 2021, 1225.
- Exhibit RC1622 Gaming Departments and Responsible Gaming Department, Proposal regarding Play Periods Trial, 26 May 2010.
- 134 Exhibit RC1623 Table regarding Responsible Gambling Initiatives, n.d., 14.
- Exhibit RC1622 Gaming Departments and Responsible Gaming Department, Proposal regarding Play Periods Trial, 26 May 2010.
- 136 Exhibit RC0208 Letter from Barry Felstead to Catherine Myers, 30 December 2019, 6.
- 137 Exhibit RC1624 Play Periods Policy, Version 1.1, February 2018, 1.
- 138 Exhibit RC0207 Play Periods Policy, Version 1.2, February 2018, 1.
- 139 Exhibit RC0117 Play Periods Policy, Version 1.3, December 2018, 1–2.
- 140 Exhibit RC0699 Play Periods Policy, Version 1.4, May 2019.
- 141 Exhibit RC0698 Play Periods Policy, Version 1.6, December 2019.
- 142 Exhibit RC0116 Play Periods Policy, Version 1.7, December 2020, 1–2.
- 143 Transcript of Sonja Bauer, 2 June 2021, 1228, 1269.
- Exhibit RC0698 Play Periods Policy, Version 1.6, December 2019, 1; Exhibit RC0116 Play Periods Policy, Version 1.7, December 2020, 1.
- 145 Transcript of Employee 7, 27 May 2021, 1062–3; Transcript of Sonja Bauer, 2 June 2021, 1269.
- 146 Transcript of Sonja Bauer, 2 June 2021, 1235.
- 147 Exhibit RC0209 VCGLR Sixth Casino Review recommendations 7, 8 and 9, 16 July 2020, 4–5 [31].
- 148 Transcript of Steven Blackburn, 1 July 2021, 3041.
- 149 Exhibit RC0122 Letter from Allens Linklaters to Solicitors Assisting, 26 May 2021.
- 150 Exhibit RC0122 Letter from Allens Linklaters to Solicitors Assisting, 26 May 2021, 2.
- 151 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 199 [F.85].
- 152 Exhibit RC0309 Statement of Steven Blackburn, 21 April 2021, 1.

- 153 Transcript of Steven Blackburn, 1 July 2021, 3033–54.
- 154 Transcript of Steven Blackburn, 1 July 2021, 3038.
- 155 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 199–200 [F.86].
- 156 See, eg, Transcript of Employee 7, 27 May 2021, 1068–70; Transcript of Sonja Bauer, 2 June 2021, 1252–4.
- 157 See, eg, Transcript of BZ, 4 May 2021, 28; Transcript of Employee 7, 27 May 2021, 1067–8. See also the evidence from Crown records, employees and customers, and from community workers and the public, in the section, 'Identifying patrons with gambling problems'.
- See, eg, Exhibit RC0110 Crown Melbourne Responsible Gambling Code of Conduct, Version 6, July 2019, 15–16; Exhibit RC0694 Crown Melbourne Responsible Gambling Code of Conduct, Version 7, May 2021, 15–16.
- 159 Exhibit RC0121 Gambling Research Australia Validation Study of In-Venue Problem Gambler Indicators Report, February 2014, 203; Exhibit RC0968 The University of Adelaide Identifying Problem Gamblers in Gambling Venues Report, 24 August 2007, 285; Exhibit RC0550 Report regarding Current Issues Related to Identifying the Problem Gambler in the Gambling Venue, August 2002, 8.
- 160 Exhibit RC0207 Play Periods Policy, Version 1.2, February 2018; Exhibit RC0117 Play Periods Policy, Version 1.3, December 2018, 1; Exhibit RC0699 Play Periods Policy, Version 1.4, May 2019; Exhibit RC0698 Play Periods Policy, Version 1.6, December 2019; Exhibit RC0116 Play Periods Policy, Version 1.7, December 2020, 1–2.
- 161 Transcript of Employee 7, 27 May 2021, 1062–3.
- 162 Transcript of Employee 7, 27 May 2021, 1059–61.
- 163 Transcript of Employee 7, 27 May 2021, 1059.
- 164 Transcript of Employee 7, 27 May 2021, 1070.
- 165 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, 15 [58].
- 166 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, 15 [59].
- 167 RGAs were formerly called 'Responsible Gaming Liaison Officers'.
- 168 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, 15 [59].
- 169 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, 15 [60].
- 170 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, 15 [62].
- 171 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, 15 [62].
- 172 Transcript of Sonja Bauer, 1 June 2021, 1153, 1167 [29]–[41].
- 173 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, 15 [63].
- 174 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, 16 [63].
- 175 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, 16 [67].
- 176 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, 16–17 [68]–[70].
- 177 Transcript of Employee 7, 27 May 2021, 1059–61; Transcript of Sonja Bauer, 21 June 2021, 2188–9, 2191–2, 2201, 2204; Exhibit RC0208 Letter from Barry Felstead to Catherine Myers, 30 December 2019, 7–8. Alerts may be sent at different times under Crown's new Play Periods Policy, which was approved on 24 May 2021 (Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 199 [F.85]).
- 178 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, 17 [71]–[76].
- Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, 26–7 [117(g)]; Exhibit RC0567 Email chain between Michelle Fielding and Rowan Harris, 26 June 2020, 2.
- 180 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, 17–18 [77]–[78], 28 [123]–[124], 49–50 [174]–[175], 50–1 [180]; Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, Annexure ee, 5 [4], 6–7 [6].
- 181 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, 18 [79].
- Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 11 [A.23], 181 [F.14].
- 183 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, 7 [32].
- 184 Transcript of Nicolas Emery, 4 June 2021, 1529; Exhibit RC0143 Crown Melbourne Average Daily Unique Visitations Report, 1 June 2021.
- 185 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, 23–5 [101]–[106].
- 186 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, 57 [198(b)].
- 187 Transcript of Sonja Bauer, 1 June 2021, 1169.
- 188 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, 24 [108]–[109].

- 189 Exhibit RC0642 Email from Steven Blackburn to Bronwyn Weir, 20 May 2021, Annexure a.
- 190 Transcript of Sonja Bauer, 1 June 2021, 1175–6, 1181–4.
- Exhibit RC0111 Responsible Gaming Advisor Position Description, 3 June 2019; Transcript of Sonja Bauer, 1 June 2021, 1174–5, 1158–9.
- 192 Exhibit RC0111 Responsible Gaming Advisor Position Description, 3 June 2019, 1; Transcript of Sonja Bauer, 1 June 2021, 1174. The RGA who gave evidence said that they spent approximately 70 per cent of their time walking the gaming floor during their 12-hour shift: see Transcript of Employee 7, 27 May 2021, 1052. They also gave evidence that it took 30 minutes to walk the floor (provided that was limited to walking and observing), which they did more than five, and less than 10 times in a shift: see Transcript of Employee 7, 27 May 2021, 1058. This equates to approximately 20 per cent to 40 per cent of their time spent only walking and observing.
- 193 Transcript of Sonja Bauer, 1 June 2021, 1174–5.
- Casino Licence granted to Crown Melbourne (then Crown Casino Ltd) under Part 2 of the *Casino Control Act* 1991 (Vic) dated 19 November 1993, cl 8(c); Transcript of Sonja Bauer, 1 June 2021, 1204–6. If there were four RGAs on the floor, the ratio would be approximately one RGA to 650 EGMs and 135 gaming tables (including poker and other table games).
- 195 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, Annexure s.
- 196 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, Annexure p.
- 197 Exhibit RC0113 Responsible Service of Gaming for Senior Managers (advanced) session plan, January 2020.
- 198 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, 33 [151], [154].
- 199 Transcript of Sonja Bauer, 1 June 2021, 1186.
- 200 Transcript of Sonja Bauer, 1 June 2021, 1187.
- 201 Transcript of Sonja Bauer, 1 June 2021, 1179–80.
- 202 Transcript of Sonja Bauer, 1 June 2021, 1178–9.
- 203 Hing et al, Responsible Conduct of Gambling Study (Research Report, 2020) 16–19.
- Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 208 [F.121], 209 [F.123].
- See, eg, Transcript of Employee 1, 21 May 2021, 479; Transcript of Employee 2, 21 May 2021, 489; Transcript of Employee 3, 21 May 2021, 498.
- See, eg, Transcript of Employee 1, 21 May 2021, 479; Transcript of Employee 2, 21 May 2021, 490; Transcript of Employee 3, 21 May 2021, 499; Transcript of Employee 4, 21 May 2021, 509.
- See, eg, Transcript of Employee 4, 21 May 2021, 503.
- 208 See, eg, Transcript of Employee 1, 21 May 2021, 476; Transcript of Employee 2, 21 May 2021, 486.
- See, eg, Transcript of Employee 1, 21 May 2021, 479–80; Transcript of Employee 2, 21 May 2021, 490; Transcript of Employee 3, 21 May 2021, 499; Transcript of Employee 4, 21 May 2021, 510.
- See, eg, Transcript of Employee 1, 21 May 2021, 480; Transcript of Employee 2, 21 May 2021, 490–1; Transcript of Employee 4, 21 May 2021, 510–11.
- See, eg, Transcript of Employee 1, 21 May 2021, 480; Transcript of Employee 3, 21 May 2021, 499–500; Transcript of Employee 4, 21 May 2021, 511.
- 212 Transcript of Elizabeth Mitchell, 4 May 2021, 3.
- In oral evidence, Ms Mitchell gave an estimate of \$55,000, but subsequently contacted the Commission to correct the estimate.
- Submission 28 Elizabeth Mitchell, 1; Transcript of Elizabeth Mitchell, 4 May 2021, 5.
- 215 Submission 28 Elizabeth Mitchell, 1; Transcript of Elizabeth Mitchell, 4 May 2021, 5, 7.
- 216 Transcript of Elizabeth Mitchell, 4 May 2021, 7.
- 217 Submission 28 Elizabeth Mitchell, 2–3; Transcript of Elizabeth Mitchell, 4 May 2021, 11.
- 218 Submission 28 Elizabeth Mitchell, 3; Transcript of Elizabeth Mitchell, 4 May 2021, 11.
- 219 Submission 28 Elizabeth Mitchell, 3; Transcript of Elizabeth Mitchell, 4 May 2021, 11–12.
- 220 Transcript of Binbin Du, 5 May 2021, 3–5.
- 221 Transcript of Binbin Du, 5 May 2021, 3–5.
- 222 Submission 23 Binbin Du, 1; Transcript of Binbin Du, 5 May 2021, 7, 11–12.
- 223 Submission 23 Binbin Du, 1; Transcript of Binbin Du, 5 May 2021, 8–10.

- Transcript of Binbin Du, 5 May 2021, 15–16.
- 225 Transcript of Binbin Du, 5 May 2021, 20.
- 226 Transcript of Stuart McDonald, 4 May 2021, 17–18.
- 227 Submission 22 Stuart McDonald.
- 228 Submission 22 Stuart McDonald.
- 229 Transcript of Stuart McDonald, 4 May 2021, 19, 22.
- 230 Submission 22 Stuart McDonald.
- 231 Submission 22 Stuart McDonald.
- 232 Transcript of Stuart McDonald, 4 May 2021, 22.
- 233 Transcript of Stuart McDonald, 4 May 2021, 22.
- 234 Transcript of Stuart McDonald, 4 May 2021, 22.
- 235 Submission 16 Carolyn Crawford, 2; Transcript of Carolyn Crawford, 6 May 2021, 21.
- 236 Transcript of Carolyn Crawford, 6 May 2021, 21.
- 237 Submission 16 Carolyn Crawford, 1; Transcript of Carolyn Crawford, 6 May 2021, 22–3.
- 238 Submission 16 Carolyn Crawford, 2; Transcript of Carolyn Crawford, 6 May 2021, 24–5.
- 239 Transcript of Carolyn Crawford, 6 May 2021, 22, 36–8.
- 240 Submission 16 Carolyn Crawford, 1; Transcript of Carolyn Crawford, 6 May 2021, 23.
- 241 Submission 16 Carolyn Crawford, 1.
- 242 Transcript of Carolyn Crawford, 6 May 2021, 29; Submission 16 Carolyn Crawford, 1.
- 243 Submission 16 Carolyn Crawford, 1.
- 244 Submission 16 Carolyn Crawford, 2; Transcript of Carolyn Crawford, 6 May 2021, 25.
- Transcript of Carolyn Crawford, 6 May 2021, 26.
- 246 Transcript of Carolyn Crawford, 6 May 2021, 28.
- See, eg, Submission 38 Anonymous; Submission 39 Anna Bardsley, 2; Submission 43 Anonymous, 1; Submission 45 Anonymous, 3; Submission 84 Anonymous.
- 248 Transcript of Sonja Bauer, 1 June 2021, 1143.
- 249 Transcript of Sonja Bauer, 1 June 2021, 1144.
- 250 Transcript of Sonja Bauer, 1 June 2021, 1145.
- 251 Transcript of Employee 7, 27 May 2021, 1059.
- 252 Transcript of Employee 7, 27 May 2021, 1070.
- 253 See, eg, Transcript of Sonja Bauer, 2 June 2021, 1264.
- 254 'Gloria' is the pseudonym given to the witness known as EZ: Transcript of EZ, 20 May 2021, 390–1.
- 255 Transcript of EZ, 20 May 2021, 391.
- 256 Transcript of EZ, 20 May 2021, 392–3.
- 257 Transcript of EZ, 20 May 2021, 393.
- 258 Transcript of EZ, 20 May 2021, 393.
- 259 Transcript of EZ, 20 May 2021, 396–7.
- 260 'Ronaldo' is the pseudonym given to the witness known as EX: Transcript of EX, 20 May 2021, 412–13.
- 261 Transcript of EX, 20 May 2021, 413–14.
- 262 Transcript of EX, 20 May 2021, 414–15.
- 263 Transcript of EX, 20 May 2021, 414.
- 264 Transcript of EX, 20 May 2021, 414.
- 265 'Prita' is the pseudonym given to the witness known as FZ: Transcript of FZ, 27 May 2021, 1086.
- 266 Transcript of FZ, 27 May 2021, 1091.
- 267 Transcript of FZ, 27 May 2021, 1093.
- Transcript of EZ, 20 May 2021, 394–6; Transcript of Sonja Bauer, 2 June 2021, 1299–1304; Transcript of Manorani Guy, 8 June 2021, 1851–3.
- Transcript of FZ, 27 May 2021, 1092; Submission 16 Carolyn Crawford.
- 270 Transcript of EZ, 20 May 2021, 396-7.
- 271 Exhibit RC0525 Coroners Prevention Unit Response to Data Request re: Deaths relating directly or indirectly to the Crown Casino Complex, 6 May 2021, 41; Exhibit RC0520 Table of Crown Melbourne related deaths, 29 October 2019, 1–3.

- 272 Transcript of Employee 7, 27 May 2021, 1048.
- 273 Transcript of Employee 7, 27 May 2021, 1067.
- 274 Transcript of Employee 7, 27 May 2021, 1067–8.
- 275 Transcript of Employee 7, 27 May 2021, 1068–70.
- 276 Transcript of Employee 7, 27 May 2021, 1066–7.
- 277 Transcript of Employee 7, 27 May 2021, 1072–3.
- 278 Transcript of Employee 7, 27 May 2021, 1062–3.
- 279 Transcript of Employee 7, 27 May 2021, 1062–3.
- 280 Transcript of Nicolas Emery, 4 June 2021, 1476.
- 281 Transcript of Mark Mackay, 7 June 2021, 1718.
- 282 Exhibit RC0133 Statement of Nicolas Emery, 5 May 2021, 13 [83].
- 283 Transcript of Peter Lawrence, 8 June 2021, 1768.
- 284 Transcript of AZ, 3 May 2021, 59, 76.
- 285 Transcript of Ahmed Hasna, 3 May 2021, 6, 33.
- 286 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, 9 [40].
- 287 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, 11 [48].
- 288 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, 11–14 [50]–[54].
- 289 See, eg, Transcript of Sonja Bauer, 2 June 2021, 1252–6.
- See, eg, Transcript of Sonja Bauer, 2 June 2021, 1260–2; Exhibit RC0118 Observable Signs Report, n.d., 4–5; Exhibit RC0117 Play Periods Policy, Version 1.3, December 2018, 1; Exhibit RC0715 Crown Melbourne Responsible Gambling Code of Conduct, Version 5, October 2016, 11–12.
- See, eg, Transcript of Sonja Bauer, 2 June 2021, 1254–61; Exhibit RC0118 Observable Signs Report, n.d., 4–5; Exhibit RC0117 Play Periods Policy, Version 1.3, December 2018, 1.
- Exhibit RC0699 Play Periods Policy, Version 1.4, May 2019, 1; Exhibit RC0715 Crown Melbourne Responsible Gambling Code of Conduct, Version 5, October 2016, 11.
- 293 Exhibit RC0599 NOS Report spreadsheet, 2021.
- 294 Transcript of Sonja Bauer, 21 June 2021, 2204.
- 295 Transcript of Sonja Bauer, 3 June 2021, 1399, 1436–7, 1439–40.
- 296 Transcript of Nicolas Emery, 4 June 2021, 1455.
- 297 Transcript of Nicolas Emery, 4 June 2021, 1527.
- 298 Transcript of Sonja Bauer, 21 June 2021, 2165.
- 299 Transcript of Sonja Bauer, 21 June 2021, 2174–5.
- 300 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 202 [F.95].
- 301 Blaszczynski et al, *Operator-Based Approaches to Harm Minimisation in Gambling: Summary, Review and Future Directions* (Report, 2014) 32 [5.1].
- 302 Exhibit RC0322 Table of Documents emailed to Steven Blackburn, n.d., Annexure w, 1.3.
- See Recommendation 10.4: Exhibit RC0322 Table of Documents emailed to Steven Blackburn, n.d., Annexure w, 54, 10.44.
- 304 Exhibit RC0322 Table of Documents emailed to Steven Blackburn, n.d., Annexure w, 10.20–1.
- 305 Exhibit RC0322 Table of Documents emailed to Steven Blackburn, n.d., Annexure w, 10.19–20.
- 306 Blaszczynski et al, *Operator-Based Approaches to Harm Minimisation in Gambling: Summary, Review and Future Directions* (Report, 2014) 33 [5.1].
- 307 Blaszczynski et al, *Operator-Based Approaches to Harm Minimisation in Gambling: Summary, Review and Future Directions* (Report, 2014) 33 [5.1].
- See, eg, discussion in Exhibit RC0322 Table of Documents emailed to Steven Blackburn, n.d., Annexure w, 10.18; Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, Annexure d, 32 [1.7].
- 309 Exhibit RC0322 Table of Documents emailed to Steven Blackburn, n.d., Annexure w, 10.21–2.
- 310 Exhibit RC0322 Table of Documents emailed to Steven Blackburn, n.d., Annexure w, 10.44.
- 311 Blaszczynski et al, *Operator-Based Approaches to Harm Minimisation in Gambling: Summary, Review and Future Directions* (Report, 2014) 41 [5.1.5].
- 312 Blaszczynski et al, Operator-Based Approaches to Harm Minimisation in Gambling: Summary, Review and Future Directions (Report, 2014) 36 [5.1.2.2].

- 313 Blaszczynski et al, *Operator-Based Approaches to Harm Minimisation in Gambling: Summary, Review and Future Directions* (Report, 2014) 41 [5.1.5].
- 314 Victoria, *Parliamentary Debates*, Legislative Assembly, 31 October 2013, 3800 (Michael O'Brien).
- 315 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, 97.
- 316 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, 98.
- 317 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, Annexure d, 1, 11 [1.1].
- 318 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, Annexure d.
- 319 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, Annexure d, 33 [1.7].
- 320 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, 98-9.
- 321 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, Annexure d, 59.
- 322 Transcript of Steven Blackburn, 1 July 2021, 3062, 3064.
- 323 Transcript of Mark Mackay, 7 June 2021, 1715–17.
- 324 Transcript of Peter Lawrence, 8 June 2021, 1759–60.
- 325 Transcript of Mark Mackay, 7 June 2021, 1717; Transcript of Employee 6, 21 May 2021, 550.
- 326 Transcript of Employee 6, 21 May 2021, 551, 563–4; Transcript of BZ, 4 May 2021, 29–30.
- 327 Transcript of BZ, 4 May 2021, 45.
- 328 Transcript of BZ, 4 May 2021, 30.
- 329 Transcript of BZ, 4 May 2021, 43.
- 330 Transcript of BZ, 4 May 2021, 42.
- 331 Transcript of BZ, 4 May 2021, 45.
- 332 Transcript of BZ, 4 May 2021, 43–4.
- 333 Transcript of BZ, 4 May 2021, 45.
- 334 Transcript of BZ, 4 May 2021, 44.
- 335 Confidential submission.
- 336 Transcript of BZ, 4 May 2021, 45.
- 337 Transcript of Ahmed Hasna, 3 May 2021, 6.
- 338 See, eg, Transcript of Ahmed Hasna, 3 May 2021, 3.
- 339 Transcript of Ahmed Hasna, 3 May 2021, 35–6.
- 340 Transcript of Ahmed Hasna, 3 May 2021, 35–6.
- Transcript of Ahmed Hasna, 3 May 2021, 36.
- 342 Transcript of Ahmed Hasna, 3 May 2021, 37.
- 343 Transcript of Ahmed Hasna, 3 May 2021, 37.
- 344 Exhibit RC0179 Statutory Declaration, 10 April 2021, 1 [6].
- 345 Transcript of Ahmed Hasna, 3 May 2021, 38.
- 346 Transcript of Ahmed Hasna, 3 May 2021, 38.
- Exhibit RC0179 Statutory Declaration, 10 April 2021, 1 [8]; see also Transcript of Peter Lawrence, 8 June 2021, 1781.
- 348 Transcript of Ahmed Hasna, 3 May 2021, 38.
- 349 Transcript of Ahmed Hasna, 3 May 2021, 38–9.
- 350 Transcript of Peter Lawrence, 8 June 2021, 1781; Transcript of Ahmed Hasna, 3 May 2021, 38–9.
- 351 Transcript of Peter Lawrence, 8 June 2021, 1786.
- 352 Transcript of Peter Lawrence, 8 June 2021, 1784.
- 353 Transcript of Peter Lawrence, 8 June 2021, 1784–5.
- 354 Transcript of Peter Lawrence, 8 June 2021, 1765–6, 1772.
- 355 Transcript of Peter Lawrence, 8 June 2021, 1769–70.
- 356 Transcript of Peter Lawrence, 8 June 2021, 1766–7.
- 357 Transcript of Peter Lawrence, 8 June 2021, 1768.
- 358 Transcript of Peter Lawrence, 8 June 2021, 1773.
- 359 Transcript of Peter Lawrence, 8 June 2021, 1789–90.
- 360 Transcript of Peter Lawrence, 8 June 2021, 1774.
- 361 Transcript of Peter Lawrence, 8 June 2021, 1760.
- 362 Transcript of Peter Lawrence, 8 June 2021, 1760–1.

- 363 Transcript of Peter Lawrence, 8 June 2021, 1765–6.
- 364 Transcript of BZ, 4 May 2021, 42–3; Transcript of Employee 6, 21 May 2021, 560–1.
- Transcript of BZ, 4 May 2021, 43; Transcript of Employee 6, 21 May 2021, 568; Transcript of Peter Lawrence, 8 June 2021, 1769. Mr Lawrence gave no evidence as to what an appropriate break was, nor how an appropriate length was determined.
- 366 Transcript of Peter Lawrence, 8 June 2021, 1773.
- 367 Transcript of Peter Lawrence, 8 June 2021, 1774–5.
- 368 Transcript of BZ, 4 May 2021, 43–5; Transcript of Peter Lawrence, 8 June 2021, 1769–70.
- 369 Exhibit RC0146 Statement of Mark Mackay, 5 May 2021, 8 [24(b)], 9 [26]; Transcript of Sonja Bauer, 1 June 2021, 1135-6; Transcript of Mark Mackay, 7 June 2021, 1686.
- 370 Transcript of Mark Mackay, 7 June 2021, 1686.
- 371 Transcript of Mark Mackay, 7 June 2021, 1687.
- 372 Transcript of Mark Mackay, 7 June 2021, 1692.
- 373 Exhibit RC1625 Letter from Alex Fitzpatrick to Barry Felstead, 7 March 2019; Exhibit RC1492 Reclaiming Button Picks Policy, 7 March 2019; Transcript of Mark Mackay, 7 June 2021, 1687–8.
- 374 Transcript of Mark Mackay, 7 June 2021, 1688.
- 375 Victoria, Victoria Government Gazette, No S 44, 24 April 1997, 381–2, Rule 21. Subsequent amendments to the Rules do not amend Rule 21.
- 376 Transcript of Mark Mackay, 7 June 2021, 1692.
- 377 Transcript of Mark Mackay, 7 June 2021, 1690-1.
- 378 Transcript of Mark Mackay, 7 June 2021, 1690.
- 379 Transcript of Mark Mackay, 7 June 2021, 1690.
- 380 Transcript of Mark Mackay, 7 June 2021, 1720.
- 381 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, 9 [40], 10 [46], 11-13 [48]-[54]; Transcript of Sonja Bauer, 3 June 2021, 1389-91.
- 382 Exhibit RC0181 Statement of Rosa Billi, 10 May 2021, 4 [34]. Note the figure in [34] was corrected to 0.7 per cent in evidence by Ms Billi: see Transcript of Rosa Billi, 8 June 2021, 1795.
- 383 Exhibit RC0322 Table of documents emailed to Steven Blackburn, n.d., Annexure y, 23.
- 384 Transcript of Rosa Billi, 8 June 2021, 1802–3.
- Exhibit RC0181 Statement of Rosa Billi, 10 May 2021 9-10 [52]-[53]; Exhibit RC0322 Table of documents emailed to Steven Blackburn, n.d., Annexure y.
- 386 Exhibit RC0181 Statement of Rosa Billi, 10 May 2021, 9 [52.5], [52.7].
- 387 Transcript of Nicolas Emery, 4 June 2021, 1529; Exhibit RC0143 Crown Melbourne Average Daily Unique Visitations report, 1 June 2021.
- 388 Exhibit RC0322 Table of documents emailed to Steven Blackburn, n.d., Annexure y, 23.
- Exhibit RC0181 Statement of Rosa Billi, 10 May 2021, 9 [52.7].
- 390 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, 11 [50]; Transcript of Sonja Bauer, 3 June 2021, 1389-91.
- 391 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, 13 [54].
- Notably, this accords with the reports of a number of people who made public submissions to the Commission. See, eg, Submission 7 Robert Ingmire; Submission 14 Catherine Sommerville; Submission 18 Anonymous; Submission 19 Anonymous.
- 393 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, 36–40 [168]; Transcript of Sonja Bauer, 3 June 2021,
- 394 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, 36-40 [168].
- 395 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, Annexure 4, 77.
- 396 Transcript of Sonja Bauer, 3 June 2021, 1394-5.
- 397 Exhibit RC0694 Crown Melbourne Responsible Gambling Code of Conduct, Version 7, May 2021, 9.
- Transcript of Sonja Bauer, 3 June 2021, 1333; Exhibit RC0110 Crown Melbourne Responsible Gambling Code of Conduct, Version 6, July 2019, 14.
- 399 Transcript of Sonja Bauer, 3 June 2021, 1341; Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, Annexure ee, 2.

- Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, Annexure ee, 3; Transcript of Sonja Bauer, 3 June 2021, 1341.
- Transcript of Sonja Bauer, 3 June 2021, 1341; Exhibit RC0109 Statement of Sonja Bauer, Annexure ee, 3 [1.5].
- Transcript of Sonja Bauer, 3 June 2021, 1342–3; Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, Annexure ee, 3 [1.5].
- Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, Annexure ee, 3 [1.4], 4; Transcript of Sonja Bauer, 3 June 2021, 1343.
- 404 Transcript of Sonja Bauer, 1 June 2021, 1166, 1174.
- 405 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, 28 [121]; Transcript of Sonja Bauer, 3 June 2021, 1343–4.
- Submission 22 Stuart McDonald; Submission 25 Peter Jankowski, 2; Submission 46 Anonymous, 1. See also Submission 69 Financial Counselling Victoria, 2.
- 407 Transcript of Sonja Bauer, 1 June 2021, 1172.
- Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, 115; Transcript of Craig Walsh, 25 June 2021, 2582, 2593–8.
- 409 Transcript of Craig Walsh, 25 June 2021, 2604.
- 410 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 168 [E.49].
- Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 169 [E.50]–[E.52].
- 412 Transcript of Craig Walsh, 25 June 2021, 2579.
- 413 See, eg, Transcript of Employee 7, 27 May 2021, 1052.
- 414 Exhibit RC0133 Statement of Nicolas Emery, 5 May 2021, 3 [17], 6 [19].
- 415 See, eg, Exhibit RC0133 Statement of Nicolas Emery, 5 May 2021, 3–7 [16]–[31].
- 416 Exhibit RC0133 Statement of Nicolas Emery, 5 May 2021, 11 [66].
- 417 Exhibit RC1250 Crown Rewards Rules, 1 August 2019, 6 [6], 9 [9].
- 418 See, eg, Exhibit RC0133 Statement of Nicolas Emery, 5 May 2021, 2 [11], 3-5 [18]-[19].
- 419 Transcript of Nicolas Emery, 4 June 2021, 1457, 1461, 1473–5, 1482.
- 420 Transcript of Nicolas Emery, 4 June 2021, 1482.
- 421 Exhibit RC0133 Statement of Nicolas Emery, 5 May 2021, 11–12 [66]–[71].
- 422 Transcript of Nicolas Emery, 4 June 2021, 1460.
- 423 Transcript of Nicolas Emery, 4 June 2021, 1461.
- 424 Transcript of Nicolas Emery, 4 June 2021, 1468.
- 425 Transcript of Nicolas Emery, 4 June 2021, 1458.
- Transcript of Ahmed Hasna, 3 May 2021, 8–9. '[O]n that occasion I got called in to pick up Phil Collins tickets, because you go in and pick them up, I went in to pick them up and I dropped 30,000. So going in to pick up Phil Collins tickets cost me \$30,000 for my friends that went to watch him ... Nothing is for free, it's all calculated, it's pretty smart. They know how to play you and they play you quite well.'
- 427 Transcript of Nicolas Emery, 4 June 2021, 1474–5.
- 428 Transcript of Nicolas Emery, 4 June 2021, 1468.
- Transcript of Nicolas Emery, 4 June 2021, 1468–9; Exhibit RC0133 Statement of Nicolas Emery, 5 May 2021, 8 [42], [44].
- 430 Transcript of Nicolas Emery, 4 June 2021, 1468.
- 431 Transcript of Nicolas Emery, 4 June 2021, 1505.
- 432 Exhibit RC0146 Statement of Mark Mackay, 5 May 2021, 7 [21].
- 433 Transcript of Nicolas Emery, 4 June 2021, 1468–9.
- 434 Transcript of Nicolas Emery, 4 June 2021, 1470–3.
- Transcript of Sonja Bauer, 3 June 2021, 1377–80; Transcript of Shane Lucas, 4 June 2021, 1577; Transcript of Mark Mackay, 7 June 2021, 1693–708; Transcript of Rosa Billi, 8 June 2021, 1827–8.
- 436 Transcript of Sonja Bauer, 3 June 2021, 1378.
- 437 Transcript of Mark Mackay, 7 June 2021, 1695, 1703–5.
- 438 Transcript of Mark Mackay, 7 June 2021, 1696.
- 439 Transcript of Mark Mackay, 7 June 2021, 1695–7. From April 2018, no minimum stay on property was imposed.

- 440 Transcript of Mark Mackay, 7 June 2021, 1704.
- 441 Submission 79 Deakin University, 7-8.
- 442 Submission 79 Deakin University, 2, 11–12.
- 443 Submission 79 Deakin University, 9.
- Exhibit RC0168 File Note regarding VCGLR meeting with Ethnic Community Council of Victoria, 28 November 2017, 3, [10]. See also Transcript of Mark Mackay, 7 June 2021, 1704–5.
- Transcript of Mark Mackay, 7 June 2021, 1708–9; Exhibit RC0122 Letter from Allens Linklaters to Solicitors Assisting, 26 May 2021.
- 446 Exhibit RC0122 Letter from Allens Linklaters to Solicitors Assisting, 26 May 2021, 2.
- 447 Submission 09 La Trobe University.
- 448 Submission 09 La Trobe University, 2–3.
- 449 Submission 09 La Trobe University, 2–3.
- 450 Submission 09 La Trobe University, 2.
- 451 Submission 09 La Trobe University, 3.
- 452 Submission 09 La Trobe University, 7.
- 453 Submission 09 La Trobe University, 3.
- 454 Submission 09 La Trobe University, 7.
- 455 Submission 09 La Trobe University, 3.
- 456 Exhibit RC0122 Letter from Allens Linklaters to Solicitors Assisting, 26 May 2021, 2.
- 457 Transcript of Manorani Guy, 8 June 2021, 1849–50.
- 458 Transcript of EZ, 20 May 2021, 390, 394, 396–7; Transcript of FZ, 27 May 2021, 1087, 1092, 1096.
- 459 See, eg, Submission 65 Federation University, 5; Submission 79 Deakin University, 14–15.
- 460 See, eg, Submission 65 Federation University, 5; Submission 79 Deakin University, 14–15.
- 461 Transcript of Shane Lucas, 4 June 2021, 1565–6.
- Supplementary responsive submission Crown—Casino gambling data, 13 August 2021, 2–4 [4]–[19]; Transcript of Shane Lucas, 4 June 2021, 1582; Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 191 [F.50].
- 463 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, Annexure d.
- 464 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, Annexure d, 8–10.
- See Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 339–41, Annexure F1.
- Exhibit RC0122 Letter from Allens Linklaters to Solicitors Assisting, 26 May 2021, 2; Exhibit RC0652 Email chain between Steven Blackburn and Helen Coonan et al, 20 May 2021, Annexure a; Exhibit RC0652 Email chain between Steven Blackburn and Helen Coonan et al, 20 May 2021, Annexure b.
- Exhibit RC0217 Email from Rowan Cameron to Sonja Bauer, 19 May 2021; Transcript of Steven Blackburn, 1 July 2021, 3048–9.
- Transcript of Steven Blackburn, 1 July 2021, 3049–50. Before 18 May 2021, the RSG paper detailing the proposed RSG improvements being prepared by Mr Blackburn had only included references to capacity and remuneration: Transcript of Steven Blackburn, 1 July 2021, 3041. See also Transcript of Nicolas Emery, 4 June 2021, 1499, 1516; Transcript of Mark Mackay, 7 June 2021, 1708–9.
- 469 Transcript of Steven Blackburn, 1 July 2021, 3041.
- 470 Transcript of Steven Blackburn, 1 July 2021, 3019–20.
- 471 Transcript of Steven Blackburn, 1 July 2021, 2916.
- 472 Transcript of Steven Blackburn, 1 July 2021, 3019–20.
- 473 Transcript of Steven Blackburn, 1 July 2021, 3020, 3037.
- 474 Transcript of Steven Blackburn, 1 July 2021, 3033.
- 475 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, 6.
- 476 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 11 [A.23].
- 477 Transcript of Nicolas Emery, 4 June 2021, 1497.
- 478 Exhibit RC0133 Statement of Nicolas Emery, 5 May 2021, 5 [19].
- 479 Transcript of Nicolas Emery, 4 June 2021, 1498.
- Transcript of Nicolas Emery, 4 June 2021, 1515–16. At the time of writing Crown Melbourne had not taken such steps.

- 481 Exhibit RC0182 Supplementary statement of Rosa Billi, 2 June 2021, 2 [5.1].
- 482 Exhibit RC0182 Supplementary statement of Rosa Billi, 2 June 2021, 2 [5.2]; Exhibit RC1592 Article: Loyalty Programmes in the Gambling Industry: Potentials for Harm and Possibilities for Harm-Minimization, 13 June 2018, 496.
- 483 Exhibit RC0182 Supplementary statement of Rosa Billi, 2 June 2021, 2-3 [5.2]; Exhibit RC1592 Article: Loyalty Programmes in the Gambling Industry: Potentials for Harm and Possibilities for Harm-Minimization, 13 June 2018, 496.
- 484 See, eg, Transcript of Rosa Billi, 8 June 2021, 1823. But see Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 213 [F.136], in which it is asserted that one study has concluded that '[l]oyalty programs ... have very little to do with problem gambling' and that 'loyalty programs have no significant impact on problem gambling'.
- See, eg, Exhibit RC0182 Supplementary statement of Rosa Billi, 2 June 2021, 3-4 [5.6]. 485
- 486 Exhibit RC1592 Article: Loyalty Programmes in the Gambling Industry: Potentials for Harm and Possibilities for Harm-Minimization, 13 June 2018, 502; Exhibit RC0732 Article: Factors that Influence Gambler Adherence to Pre-Commitment Decisions, 23 August 2010, 5-6, 12.
- 487 Exhibit RC1592 Article: Loyalty Programmes in the Gambling Industry: Potentials for Harm and Possibilities for Harm-Minimization, 13 June 2018, 501-2.
- Exhibit RC1592 Article: Loyalty Programmes in the Gambling Industry: Potentials for Harm and Possibilities 488 for Harm-Minimization, 13 June 2018, 502. See also Exhibit RC0728 Gambling Research Australia Report Regarding the Role of Loyalty Programs in Gambling, January 2016, 202.
- 489 Exhibit RC0182 Supplementary statement of Rosa Billi, 2 June 2021, 3-4 [5.6].
- 490 Exhibit RC0133 Statement of Nicolas Emery, 5 May 2021, 13 [85].
- 491 Transcript of Nicolas Emery, 4 June 2021, 1516.
- 492 Transcript of Employee 5, 21 May 2021, 531.
- 493 Exhibit RC0219 Crown Responsible Gaming Best Practice Recommendations, May 2021, 2 [5].
- 494 Exhibit RC0122 Letter from Allens Linklaters to Solicitors Assisting, 26 May 2021, 2; Exhibit RC0652 Email chain between Steven Blackburn and Helen Coonan et al, 20 May 2021, Annexure a; Exhibit RC0652 Email chain between Steven Blackburn and Helen Coonan et al, 20 May 2021, Annexure b.
- 495 Transcript of Steven Blackburn, 1 July 2021, 3407.
- 496 Transcript of Steven Blackburn, 1 July 2021, 3048.
- 497 Transcript of Shane Lucas, 4 June 2021, 1554; Responsive submission VRGF, 2 August 2021, 23-24 [10.3]-[10.6].
- 498 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, 6.
- 499 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, 6.
- Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, 88. 500
- Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, 90-2, 95.
- 502 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, 93-5.
- 503 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, 95.
- 504 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, 97. 505
- Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, 6.
- 506 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, 6.
- 507 See Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, Annexure F2.
- Transcript of Steven Blackburn, 1 July 2021, 3050; Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 11 [A.23].
- 509 Supplementary responsive submission State of Victoria on Mandatory Pre-Commitment, 12 August 2021.
- 510 Exhibit RC0508 Ministerial Direction No S 430, 17 September 2018; Exhibit RC0163 Ministerial Direction No S 85, 21 February 2020.
- 511 Supplementary responsive submission Crown—Casino gambling data, 13 August 2021, 2-4 [4]-[19]; See also Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 191 [F.50]; Responsive submission VRGF, 2 August 2021, 30–1 [12.4]; Supplementary responsive submission VRGF, 10 August 2021; Transcript of Rosa Billi, 8 June 2021, 1821.



# Limitations on government action

# Limitations on government action

# Introduction

- 1 The implementation of reforms dealing with problem gambling faces a difficulty.
- 2 The Management Agreement imposes obligations upon the State to pay compensation to Crown Melbourne if certain action is taken. The action includes steps that may reduce gambling harms. These steps include introducing any form of mandatory pre-commitment or amending the manner in which Crown Melbourne's loyalty program operates.
- 3 The cap on the amount of compensation is \$200 million (as adjusted) for each Parliamentary term.
- 4 The relevant part of the Management Agreement is part 5A, which is headed 'Regulatory Certainty' and was introduced by the Tenth Variation Deed that was made on 3 September 2014.<sup>1</sup> It is necessary to describe this part in some detail.

# Regulatory certainty

- One principal provision that was introduced by the Tenth Variation Deed is clause 24A.2. Pursuant to that clause, the State and the VCGLR agreed, among other things, that they will not, without the consent of Crown Melbourne:
  - cancel or vary the casino licence on the public interest ground in section 20(1)(e) of the Casino Control Act<sup>2</sup>
  - increase the then current rates of casino tax<sup>3</sup>
  - impose any new tax except where such new tax applies generally throughout Victoria, applies to businesses in the Melbourne CBD or applies to businesses in the hospitality industry.<sup>4</sup>
- The State acknowledged that if clause 24A.2 was breached Crown Melbourne would suffer compensable loss, the amount of which would be determined according to ordinary principles of law applicable to a breach of contract.<sup>5</sup>
- In addition, it was provided that if the State or the regulator (or any other State body or State authority) takes any of the actions set out in Annexure 1 to the Management Agreement without the consent of Crown Melbourne, Crown Melbourne will be entitled to compensation.<sup>6</sup>
  The actions, called 'Trigger Events', include:
  - reducing any maximum bets on table games, semi-automated table games or FATGs or gaming machines
  - removing, reducing in number or amending or restricting the then current manner in which gaming machines in unrestricted mode are permitted to operate
  - introducing any form of mandatory pre-commitment other than the requirement for players of gaming machines operating in unrestricted mode to set time and net loss limits

- restricting or amending the then current manner in which Crown Melbourne's loyalty scheme is permitted to operate.<sup>7</sup>
- 8 There is a carve-out.8 No compensation is payable in respect of any action that:
  - has an adverse impact on earnings before interest, taxes, depreciation and amortisation of less than \$1 million per annum
  - · arises directly from disciplinary action taken against Crown Melbourne
  - advertises or promotes the government's responsible gambling, responsible service of alcohol or 'Quit Smoking' programs, provided such actions are not targeted solely at Crown Melbourne.<sup>9</sup>
- There is another carve-out. No compensation is payable as a result of any variation to the casino licence that would otherwise constitute a Trigger Event.<sup>10</sup>
- 10 It is of significant concern that the State or the regulator might be inhibited from suspending or cancelling a casino licence on public interest grounds, or from taking action that would reduce the harm caused by gambling, if that action would oblige the State to pay damages to Crown Melbourne.
- 11 First, if the public interest demands that Crown Melbourne's casino licence should no longer remain in force because of misconduct on the part of Crown Melbourne, it would be wholly inappropriate for the State or the regulator to be inhibited from taking that action. There is no countervailing public interest that supports the restriction.
- Second, the position is equally problematic if the State or the regulator considers it necessary to implement a Trigger Event to limit gambling harm caused by the failure of Crown Melbourne to carry out its responsible gambling obligations (howsoever imposed). In that circumstance, an obligation to pay damages is both anomalous and contrary to good government.
- Third, it is also contrary to settled principle. It has long been established that a person should not be entitled to recover damages caused by their own wrongful conduct. The principle is so well settled that it has its own Latin maxim: ex turpi causa non oritur actio. A rough English translation is 'from a dishonourable cause an action does not arise'.
- 14 An example of the application of this principle is the *Highwayman's* case.<sup>11</sup> The plaintiff sued his partner for his share of the proceeds of the sale of a gold watch that they had stolen from 'a gentleman' walking on Hounslow Heath. The action was dismissed. The lawyers were held in contempt. The parties themselves were arrested and later hanged.
- There are two aspects of the Management Agreement that might offend this principle. First, clause 24A.2(a)(i) provides, in effect, that the State and the regulator must not, without Crown Melbourne's consent, cancel or vary its casino licence relying on section 20(1)(e) of the Casino Control Act (the public interest ground for taking disciplinary action).
- The circumstances in which a casino licence might be cancelled or varied on the public interest ground might arise in two ways. One is when, quite apart from any misconduct by Crown Melbourne, the casino operations cause such harm that it is in the public interest for those operations to be brought to an end. The other is when action is required because of unacceptable conduct on the part of Crown Melbourne.

- 17 In the latter circumstance the State or the regulator should be freed from the obligation to seek Crown Melbourne's consent. The present requirement that they must do so cannot be justified.
- 18 The same issue arises in relation to the State's obligation to pay compensation under clauses 24A.3 and 24A.4 if a Trigger Event is implemented. Where a Trigger Event is required to deal with the consequences of Crown Melbourne's misconduct, it is unreasonable for the State to pay any compensation.

#### RECOMMENDATION 15: DAMAGES PAYABLE BY THE STATE

It is recommended that the following obligations under the Management Agreement be repealed:

- the obligation on the State or the regulator to obtain the written consent of Crown Melbourne before action is taken to cancel or vary Crown Melbourne's casino licence pursuant to section 20(1)(e) of the Casino Control Act
- the obligation on the State to pay compensation pursuant to clauses 24A.3 or 24A.4 for action taken by the State or the regulator that is a Trigger Event,

if a reason for the cancellation or variation or action (as the case may be) is the conduct of Crown Melbourne.

# **Endnotes**

- For further discussion see Chapter 2.
- 2 Exhibit RC0502 Consolidated Management Agreement, 20 September 1993, cl 24A.2(a)(i).
- 3 Exhibit RC0502 Consolidated Management Agreement, 20 September 1993, cl 24A.2(a)(ii).
- 4 Exhibit RC0502 Consolidated Management Agreement, 20 September 1993, cl 24A.2(a)(iii).
- 5 Exhibit RC0502 Consolidated Management Agreement, 20 September 1993, cl 24A.2(b).
- Exhibit RC0502 Consolidated Management Agreement, 20 September 1993, cls 24A.3, 24A.4, Annexure 1. 6
- Exhibit RC0502 Consolidated Management Agreement, 20 September 1993, cl 24A.4, Annexure 1 cl 1.1(b). 7
- 8 A carve-out is a contract provision by which the parties exclude (or carve out) certain claims or remedies.
- Exhibit RC0502 Consolidated Management Agreement, 20 September 1993, Annexure 1 cl 2.3. 9
- 10 Exhibit RC0502 Consolidated Management Agreement, 20 September 1993, cl 24A.5.
- Everet v Williams (1725) 104 ER 725. See 'The Highwayman's Case (Everet v. Williams)' (1893) 9(3) 11 Law Quarterly Review 197.



# Crown Melbourne and the regulator

# Crown Melbourne and the regulator

# Introduction

- The Casino Control Act requires the regulator, the VCGLR, to monitor, investigate, audit and enforce compliance with the laws and regulations that govern the Melbourne Casino's operations.
- 2 This involves the VCGLR taking action including:
  - having a dedicated team that works from the Crown Casino Complex
  - · having an audit and investigation team that regularly reviews and assesses the casino operator's licence obligations
  - approving junket and premium player programs and ensuring the relevant approved systems of internal controls are in place and are being implemented
  - conducting joint operations with the AFP and Victoria Police in a variety of matters including at the Crown Casino Complex.
- The VCGLR is also required to carry out a comprehensive review of the casino's operations at least every five years to determine whether Crown Melbourne is still a suitable person to hold its casino licence.1
- In performing its functions, the VCGLR expects Crown Melbourne to work with it in an open and cooperative manner and to disclose to it everything that it could reasonably need to be aware of in order to exercise its functions effectively and efficiently.<sup>2</sup>
- The community has the same expectations because that is appropriate behaviour for a casino operator.
- A failure by Crown Melbourne to meet those expectations is a critical factor in considering whether Crown Melbourne continues to be a suitable person to hold its casino licence. At the very least, a failure to be open and cooperative in its dealings with the regulator will provide insight into Crown Melbourne's attitude to its obligations as a regulated entity.
- It may also provide some guidance into how Crown Melbourne will behave in the future. This will be relevant, in particular, in assessing whether Crown Melbourne's reform program will bring about any real change in its behaviour.
- Crown Melbourne's interactions with the VCGLR will be analysed through three case studies:
  - the investigation into the arrest of Crown workers in China
  - · the Sixth Review
  - the examination of Crown Melbourne's ICSs in dealing with the assessment of junket operators.

#### VCGLR supervisory role

- The VCGLR has a statutory obligation to maintain and administer the licensing, supervision and control of casinos.
- 10 This will often require the VCGLR to conduct investigations:
  - into the suitability of the casino operator and its associates<sup>3</sup>
  - that can be self-initiated or commenced at the direction of the Minister for Gaming<sup>4</sup>
  - to determine whether disciplinary action should be taken against any person.<sup>5</sup>
- To conduct an investigation, the VCGLR can exercise its coercive powers to require a casino operator or a person associated with the casino operator to:
  - provide relevant information
  - · produce specified records
  - attend before the regulator to answer questions.<sup>6</sup>
- 12 A failure to comply can be punished as a contempt of the Supreme Court of Victoria.<sup>7</sup>
- 13 The VCGLR also has power to direct a casino licensee to 'adopt, vary, cease or refrain from any practice in respect of the conduct of casino operations'. Failure to comply with a direction is a criminal offence.8

# Case study: China arrests

14 The circumstances surrounding the arrests of 19 Crown employees have been recorded in detail in the Bergin Report and in the VCGLR's China Report. There is a summary in Chapter 3. Though it will involve some repetition, it is convenient here to provide a brief recitation of the background leading to the arrests.9

# Crown's VIP Program and China

- 15 Since its establishment, Crown Melbourne has actively sought to solicit VIP gamblers from overseas to play at its casinos.<sup>10</sup> To support this effort, Crown has a VIP International department, which services Crown Melbourne and other Crown casinos.11
- 16 The VIP International department has been essential to Crown Melbourne's financial success. In the 2013 financial year turnover from overseas gamblers was around \$38.9 billion, peaking at \$52.3 billion in the 2015 financial year. Between 2014 and October 2016, when 19 members of Crown's staff were arrested, Crown's China operations had the strongest year-on-year growth of any market the department was involved in.12
- 17 From 2000, Crown's activities in China were conducted by staff stationed in Hong Kong and Macau.<sup>13</sup> However, by 2012 Crown had a number of China-based staff who were employed by Crown Singapore.14

- 18 This team was made up of administrative assistants and sales staff located in seven regions of China.<sup>15</sup> Most worked out of their own homes due to concerns regarding the open promotion of gambling services in mainland China.
- 19 In 2012 Crown established an 'unofficial' office in Guangzhou. The office dealt with visa applications for gamblers from Macau, Hong Kong and mainland China.<sup>16</sup>
- 20 Crown's China-based staff were overseen by two executives: Mr Michael Chen, President of International Marketing, who was based in Hong Kong, and Mr Jason O'Connor, then Group General Manager VIP International Crown Resorts. Mr Chen was the conduit between staff based in China and his direct report, Mr O'Connor. Mr O'Connor was responsible for the financial performance of domestic and international VIP business, and considered himself the 'ultimate decision-maker' in the VIP International department.<sup>17</sup>
- 21 Two directors had oversight of Crown's China operations: Mr Barry Felstead, the CEO of Crown Australian Resorts and director of Crown Melbourne and Crown Singapore, and Mr Rowan Craigie, the CEO and Managing Director of Crown Resorts and a director of Crown Melbourne.18

#### Crackdown in China

22 On 6 February 2015, the Chinese Ministry of Public Security (MPS) announced that China was cracking down on the promotion of foreign casinos in mainland China. The statement from the Deputy Bureau Chief of the MPS stated:

A fair number of neighbouring countries have casinos, and they have set up offices in China to attract and drum up interest from Chinese citizens to go abroad and gamble. This will also be an area that we will crack down on.<sup>19</sup>

23 The crackdown was reported in the media. A news article in Reuters published on 6 February 2015 and entitled 'China's President Just Declared War on Global Gambling' (Reuters Article) observed:

> Chinese President Xi Jinping has officially declared war on the global gambling industry, warning foreign casinos that Chinese citizens will be gambling much less in China, neighbouring countries, and the US.<sup>20</sup>

- 24 In June 2015, a number of employees from South Korean casino operators were arrested and detained by Chinese authorities.<sup>21</sup> Following the arrests, two China-based Crown staff members were also detained and questioned by Chinese authorities.
- 25 On 9 July 2015, a VIP International staff member based in Wuhan was questioned by Chinese authorities regarding his activities in China. The employee informed the Chinese authorities that he worked for Crown, that his role was to assist customers in their visa applications and that he did not know whether those customers gambled in Australia.<sup>22</sup> At the Bergin Inquiry Mr O'Connor and Ms Jan Williamson (Senior Lawyer at Crown Melbourne) acknowledged that these were not truthful answers.23

- 26 The employee was required to provide a 'certificate of employment' to the Chinese police by the next day. A letter recording his employment was authorised to be written by Mr Felstead and provided on Crown Singapore letterhead.<sup>24</sup> The letter stated that the staff member was employed by Crown Singapore and that Crown Resorts was 'one of the leading hotel, resort and entertainment companies in Australia ...'.25
- 27 A second Crown employee was also questioned by Chinese authorities in July 2015. According to the VCGLR's China Report, the employee informed the regulator that he was questioned by police. No further action was taken against this employee, though the employee informed Mr Chen of the questioning.<sup>26</sup>

#### Arrests and convictions

- 28 On 13 and 14 October 2016, Chinese police conducted a series of raids at the homes of Crown's China-based staff, arresting 19 employees. Among them was Mr O'Connor, who was visiting China at the time as part of a VIP International roadshow. All 19 employees were charged with breaching Article 303 of the Chinese Criminal Law.<sup>27</sup>
- 29 Article 303 provides that it is illegal that a person 'for the purposes of profit [to gather] a crowd to gamble, or [undertake] gambling as a business .... The Supreme People's Court of China has ruled that this article applies to a person who organises 10 or more Chinese citizens to go abroad to gamble when kickbacks or referral fees are collected.<sup>28</sup>
- 30 Ultimately the arrested employees pled guilty to the charges. Sixteen of the 19 employees were sentenced to terms of imprisonment and were fined the equivalent of \$1.67 million, which Crown paid.<sup>29</sup>
- 31 Upon their release, the employees and Crown entered into deeds of settlement pursuant to which they received some form of compensation.<sup>30</sup> The Commission has not sought to obtain, nor is it aware of, the terms of those deeds. Most of the employees who were detained no longer work for Crown. Mr O'Connor, however, is currently the Director of Innovation and Strategy at Crown Melbourne.31

# VCGLR investigation

- 32 In July 2017, the VCGLR Compliance Division Probity Team opened an investigation into the arrests of the China-based staff.<sup>32</sup> The purpose of the investigation was to examine the circumstances surrounding the detention and conviction of the employees, to determine whether there was any corporate governance failure arising out of those circumstances, and to collect information that may have been relevant to the assessment of the suitability of the employees (as some were subject to suitability requirements as Casino Special Employees under the Casino Control Act) in the event that they continued to be employed.<sup>33</sup>
- 33 The investigation moved through four phases between its commencement in 2017 and the delivery of the Final Report to the Minister in February 2021.

#### PHASE 1

- 34 On 13 July 2017, Mr Jason Cremona (Manager of Licence Management and Audit (LMA) in the Licensing Division) notified Ms Michelle Fielding (Crown's Group General Manager, Regulatory and Compliance) that the VCGLR would not take immediate action regarding the detention and conviction of the Crown employees but would review the matter and determine whether any action should be taken once the statement of reasons from the Chinese Court had been released.34
- 35 On 31 August 2017, Mr Joshua Preston (Chief Legal Officer, Australian Resorts) attended the VCGLR's offices and gave a presentation regarding the background to the China arrests (Crown China Presentation).
- 36 Following the Crown China Presentation, on 25 September 2017, Mr Ben Considine, an investigator with the VCGLR's Investigations Team, emailed Ms Fielding requesting various documents. The documents included minutes from Crown Resorts' board and board subcommittees regarding Crown Resorts' operations in China; Crown's Risk Management Committee materials, such as charters, plans and policies; and communications between Crown and its international employees regarding the steps they should take in conducting their operations.35
- 37 Mr Considine did not receive a response to his email. He sent a follow-up email to Ms Fielding on 5 October 2017, repeating his request and seeking further information, including copies of advices received from Crown's legal advisors WilmerHale and its external risk advisors, the Mintz Group, and any other information that addressed Crown's China operations, in particular any advice regarding the prohibitions on gambling in the Chinese Criminal Law.<sup>36</sup>
- 38 Mr Considine's requests did not specify a deadline for the production of the documents. Ms Fielding left a telephone message for Mr Considine saying that Crown Melbourne would provide the material 'by the end of November or first week of December'. On 8 November 2017, Mr Considine emailed Ms Fielding and asked that the documents be provided by 4 December 2017.37

#### PHASE 2

- 39 The second phase began in November 2017, when Mr Timothy Bryant, a Team Leader (Investigations) in the Compliance Division assumed oversight of the investigation.<sup>38</sup>
- 40 On 27 November 2017, Mr Preston sent Mr Considine material relating to Crown's risk management systems and some communications between Crown and its China-based employees. In his covering letter, Mr Preston referred to the existence of, but claimed privilege over, legal advices received from WilmerHale. He did provide some advice received from the Mintz Group.39
- 41 Upon reviewing the investigation file and a memorandum prepared by Mr Considine, Mr Bryant decided that he needed more information from Crown Melbourne. Mr Bryant was also concerned about the time Crown Melbourne had taken to provide documents that had been informally requested. Accordingly, he decided to issue formal notices under section 26 of the Casino Control Act to produce the documents he was after. 40

- 42 On 4 January 2018, the following section 26 notices were issued:
  - a notice requesting records of verdicts, decisions, pleas, findings and details of fines
    paid regarding the trial of the China-based staff; specific internal audit, financial and risk
    compliance documents; the letter provided by Crown Singapore regarding the Crown
    employee questioned by Chinese authorities; and correspondence between Crown
    Resorts or Crown Melbourne and the Mintz Group.<sup>41</sup>
  - a notice requesting unredacted versions of all documents provided to the VCGLR in November 2017.<sup>42</sup>
- 43 Between 19 January and 1 February 2018, Mr Preston provided a number of documents to the VCGLR. They included communications between Crown entities and the Mintz Group.<sup>43</sup>
- 44 On 2 February 2018 the VCGLR issued a further section 26 notice requesting the production of:

Any other records which contain information regarding any identification, assessment or treatment of risks conducted by Crown Melbourne Limited and/or Crown Resorts Limited and/or Crown Resort Pte Ltd (Hong Kong) [Crown Singapore] regarding operations within mainland China from 1 January 2015 to the present, excepting any records or documents which have already been provided to the Commission.<sup>44</sup>

- In response, on 16 February 2018 Mr Preston wrote to the VCGLR stating that Crown had been unable to locate any documents that contained information about various Crown entities' identification of risk regarding the conduct of their employees in China other than those already provided or that were subject to claims of privilege.<sup>45</sup>
- 46 Critically, the letter written by Mr Preston identified, for the first time, the existence of backup tapes that Crown was restoring for the purpose of discovery in a class action that had been commenced against it relating to the China arrests and their effect on the price of Crown shares (Crown Class Action).<sup>46</sup> Mr Preston indicated that in the course of reviewing those tapes, further documents might come to light.
- 47 Mr Bryant did not want to wait months to receive further documents. So, between 21 February and 14 March 2018, notices to attend for examination were served on several Crown employees, including Mr Craigie, Mr O'Connor, Mr Felstead and Mr Chen.<sup>47</sup>
- 48 Mr Bryant conducted the examinations between March and May 2018. During the examinations each witness was accompanied by Mr Preston and Mr Richard Murphy, a senior partner of Crown's external lawyers MinterEllison.
- 49 The examinations will be discussed in more detail later in this chapter. At this point it is only necessary to mention that during Mr Craigie's and Mr O'Connor's examinations, it became apparent that there existed VIP department plans (VIP Presentations) that contained an analysis of the risks of Crown's operations in China. During Mr O'Connor's examination, the VCGLR requested that Crown Melbourne produce the plans.<sup>48</sup>
- 50 Following the examinations, the VCGLR issued a further section 26 notice seeking information about the letter provided by Crown Singapore to the Chinese police. It also sought documents that identified who prepared the letter and any documents relating to the letter or similar letters provided in relation to Crown employees.<sup>49</sup>

- 51 On 27 March 2018, Mr Murphy provided the VIP Presentations. Mr Murphy advised that the documents had been redacted to 'mask information of Crown that is not relevant to the matters the subject of the VCGLR's China investigation', though he offered the VCGLR the opportunity to review the unredacted documents at Crown's premises.<sup>50</sup>
- 52 The VIP Presentations included the 'F16–F20 Strategic Business Plan Executive Review VIP International'. That plan contained the following statement:

The most recent development was an announcement that authorities are taking a stand against foreign casinos seeking to attract business out of China. This announcement was made about 1 month ago (and likely contributed to the softer than expected CNY period).<sup>51</sup>

- 53 Mr Bryant told this Commission that, in his view, Crown Melbourne should have provided the VIP Presentations either in response to Mr Considine's request for information on 5 October 2017 or in response to the section 26 notice issued on 2 February 2018.<sup>52</sup>
- 54 On 14 May 2018, the VCGLR wrote to Crown Melbourne referring to its failure to produce the VIP Presentations in response to the February notice. It sought reasons why it should not conclude that Crown failed to comply with the notice without reasonable excuse.<sup>53</sup>
- 55 Mr Preston responded by letter dated 23 May 2018. He submitted that the documents did not fall under the February notice. In particular, Mr Preston wrote:

Crown Melbourne did not produce the Presentations because they are relevantly concerned with market outlook, and do not record risks that were identified as attaching to or arising in connection with activity on the ground in China, or the conduct of any risk assessment in relation to those operations.<sup>54</sup>

- 56 Mr Preston also provided an update on the restoration of tapes as part of the discovery process in the Crown Class Action.
- 57 A short time later, MinterEllison wrote to the VCGLR advising that a small number of additional documents had been identified as falling within the section 26 notices. On 7 and 8 June 2018 those documents were provided to the VCGLR (June 2018 Materials).
- 58 Prior to receiving the June 2018 Materials, the VCGLR had finalised a summary report of its investigation. The Summary Report was provided to Crown Melbourne for comment on 8 June 2018.<sup>55</sup>
- 59 The Summary Report recorded that Crown Melbourne's corporate governance and risk assessments failed to identify and assess the risks associated with the crackdown in China. It noted a number of failings on Crown Melbourne's part, including an overreliance on Mr Chen and a failure to escalate key incidents and risks to the Crown board.<sup>56</sup>
- On 26 June 2018, Mr John Alexander (Chairman of Crown Melbourne) wrote to the VCGLR's CEO, Ms Catherine Myers, with Crown Melbourne's response to the Summary Report. In his letter, Mr Alexander rejected any suggestion of wrongdoing, writing: 'To the extent that the Summary Report contains purported findings and conclusions of VCGLR Compliance Division staff which are adverse to Crown Melbourne, they are strongly disputed'.<sup>57</sup>

#### PHASE 3

- 61 This phase involved consolidating the work previously done and ensuring that Crown Melbourne had produced all documents that fell within the section 26 notices.
- 62 On 23 August 2018, a further section 26 notice was served. Among the documents requested were those that had been the subject of previous notices but had not been produced and those that had previously been redacted for confidentiality purposes.<sup>58</sup>
- 63 On 21 September 2018, MinterEllison produced four lever arch folders of documents.<sup>59</sup> On the same day, Mr Murphy wrote to the VCGLR stating that 'the whole episode of the detention and conviction of Crown Group staff does not warrant any regulatory action' and urged the VCGLR to close its investigation. Mr Murphy also advised that additional documents may be made available as the discovery process in the Crown Class Action was ongoing.60
- 64 Mr Bryant was frustrated with Crown Melbourne's approach to document production. He was particularly offended that Crown Melbourne took its discovery obligations more seriously than its obligation to produce documents under the Casino Control Act.61
- 65 On 14 November 2018, the VCGLR wrote to Crown Melbourne advising that the obligation to provide documents pursuant to the section 26 notices was wholly separate from the discovery process in the Crown Class Action. The letter stated that the VCGLR expected Crown Melbourne to fully comply with all notices and requests for information by 5 December 2018.<sup>62</sup> Crown Melbourne did provide additional materials on 5 December 2018 and again on 18 March 2019.<sup>63</sup>
- 66 After reviewing the additional material, the VCGLR finalised a draft report of its investigation and sent it to Crown Melbourne on 19 May 2019. The Draft Report concluded:
  - [T]he risk management systems and processes that form the [risk management] framework were never engaged to assess the warning signs and address the risk of Crown staff being detained in China.<sup>64</sup>
- 67 The Draft Report stated that despite the risk management failures and, in particular, the failure of senior management to appreciate and address the changing regulatory environment in China, Crown Melbourne was still a suitable person to hold a casino licence. The Draft Report also contained a number of recommendations for Crown to adopt.
- 68 On 26 June 2019, MinterEllison informed the VCGLR that Crown Melbourne accepted in principle the conclusion as to its suitability. Critically, and in a departure from the tone of its previous communications, MinterEllison wrote that Crown Melbourne 'accepted in principle that their risk management framework could deal more directly with the risk of adverse legal action in a foreign jurisdiction, and appropriate mitigation strategies'.65

#### PHASE 4

- 69 On 28 July 2019, Channel 9 aired a segment on 60 Minutes that brought to light new information relevant to the China investigation. The segment included an interview with Ms Jenny Jiang, one of the China-based staff who had been convicted and imprisoned.<sup>66</sup> Ms Jiang made a number of allegations, including that:
  - Crown had assisted Chinese nationals to obtain visas
  - consulate officers in China had helped rubber stamp the visa applications
  - · despite the crackdown, Crown directed its employees to promote the business
  - Crown directed its employees not to cooperate with authorities in the event they were detained.67
- 70 Following the airing of the program, on 23 September 2019, the VCGLR wrote to MinterEllison informing it that due to the new allegations it was not in a position to finalise its report. It sought the contact details of the China-based staff members to determine whether they would be willing to provide information to the VCGLR.68
- 71 MinterEllison ignored the letter.
- 72 On 9 October 2019, the VCGLR issued a section 26 notice seeking production of documents relating to China-based staff.<sup>69</sup>
- 73 On 16 October 2019, MinterEllison provided the requested documents, though it noted the duty of confidentiality that each employee owed to Crown and stated that Crown was prepared to waive compliance with that duty on condition that it be involved in any interviews with the employees.70
- 74 On 15 January 2020, after filing witness statements in the Crown Class Action, MinterEllison wrote to the VCGLR informing it that by filing the statements, it had waived legal privilege regarding the advices Crown received from WilmerHale.71 The VCGLR then issued a section 26 notice requesting the production of the witness statements.<sup>72</sup>
- 75 Between August and September 2020, several Crown executives gave evidence at the Bergin Inquiry. The VCGLR reviewed that evidence and the material tendered and issued the following further section 26 notices:
  - on 1 October 2020, a notice seeking certain exhibits and documents referred to during the hearing
  - on 24 November 2020, a notice seeking the Statement of Issues and Contentions and the closing submissions of Crown Resorts and CPH
  - on 26 November 2020, a notice seeking the closing submission of Counsel Assisting the Bergin Inquiry.<sup>73</sup>

- 76 Crown's closing submissions made several concessions regarding the arrests of staff in China, including that:
  - · Crown's risk management structures and processes were not utilised
  - · key developments in the operating environment in China were not escalated to either board-level committees or the wider board
  - a small group of executives, rather than the board, set the risk appetite of Crown in relation to China.74
- 77 On 22 December 2020, the VCGLR wrote to Crown Melbourne asking for acknowledgement of certain propositions, including that:
  - · the totality of the events that occurred in China constituted a failure of Crown's risk management, corporate governance, ethics and culture
  - · most executives and directors employed or involved in the events that culminated in the arrests, convictions and sentencing in China remained at Crown
  - not all directors in the period between 2010 and 2016 were aware, prior to the arrests, that Crown employed staff who lived and worked in China
  - · the risk appetite of the board would have been zero had the board been informed of certain escalation events, including the crackdown, arrest of South Korean casino staff and questioning of China-based Crown staff by police
  - · copies of legal advice obtained by Mr Chen or by internal lawyers at Crown Melbourne were not made available to the board prior to the arrests, were not considered as part of Crown's risk management structures and had never been provided to the VCGLR.75
- 78 Further, the VCGLR noted that having reviewed material from the Bergin Inquiry and the material provided by Crown Melbourne, it was 'concerned about the degree of candour that Crown had displayed in its dealings with the VCGLR'.76
- 79 Following Crown Melbourne's response to the propositions put to it, the VCGLR finalised its report and on 19 February 2021 delivered it to the Minister.<sup>77</sup>

# Crown Melbourne's behaviour during the China investigation

- 80 The investigation was hampered by a deliberate lack of cooperation and candour on the part of Crown Melbourne and its senior executives. The failures were:
  - providing incorrect or inaccurate information to the VCGLR
  - failing to produce documents when required
  - · the unnecessary redaction of information
  - belatedly conceding matters that should not have been in dispute.

#### Inaccurate or incorrect information

81 On several occasions during the investigation, Mr Preston, Mr O'Connor and Mr Felstead provided incorrect or inaccurate information to the VCGLR and its investigators.

#### CROWN CHINA PRESENTATION

- 82 Prior to the commencement of the formal investigation, Crown sought to downplay its knowledge of the risks associated with the crackdown against gambling in China. This was done in two ways. First, in the Crown China Presentation given by Mr Preston to the VCGLR on 31 August 2017 it was asserted that Crown had sought advice from the Mintz Group regarding the risks associated with operating in China and that the advice given did not indicate there were any substantial risks regarding the activities of Crown's employees.
- 83 The Crown China Presentation omitted key information from the Mintz Group advice. For example, the Mintz Group had warned Crown that the Public Security Bureau (PSB) was monitoring people working in the gaming business. Crown's presentation suggested that the monitoring was focused only on those engaged in gambling. The presentation and the advice are set out below side by side:

Crown China Presentation <sup>78</sup>	Mintz Group advice <sup>79</sup>
According to sources working in the Public Security Bureau (PSB) in China, most provincial levels of the PSB had intelligence units that routinely monitored people engaged in gambling (emphasis added).	According to sources working in the Public Security Bureau (PSB) system most provincial levels of the PSB had intelligence units that routinely monitor people who work in the gambling business (emphasis added).

84 The Crown China Presentation omitted other information from the Mintz Group advice. One omitted portion read:

> In essence, we learned that the Guangdong PSB had recently received instructions from central PSB to step up monitoring of foreign gambling companies marketing activities throughout China ...80

- 85 The selective use of the Mintz Group advice has not been explained. Perhaps there was no intention to mislead the regulator, as Crown Melbourne submits.81 Whether intended or not, does not matter. Mr Bryant believed that the PSB was monitoring people who gambled, not people who worked in the gambling business. He would not have been under that mistaken belief if the Mintz Group advice had been accurately presented.
- 86 Second, the Crown China Presentation suggested that Crown had taken active steps to ensure that it was not in breach of Article 303 of the Chinese Criminal Law. One slide in the Crown China Presentation stated:

Crown instructed its staff to conduct themselves in China in a manner which it understood would not involve breaching Article 303.

#### Crown staff were instructed to:

Not hand out promotional materials that referred to gaming facilities or terms of play (Crown did not produce such materials for distribution in China) ...82

- 87 The statement that Crown did not produce promotional materials for distribution in China and that staff in China were instructed not to hand out promotional materials was false. In March 2019, the VCGLR received material that included an email from the Group Marketing Executive at VIP International to members of the VIP International Team, including those based in Hong Kong and China. The email described the gambling promotional material that Crown had shipped to its international offices, and included instructions for the distribution of that material in mainland China.83 The promotional material included material inviting patrons to attend Crown Casino and participate in competitions, including one with \$1 million prize money.84
- 88 It is possible that Mr Preston was not aware that promotional material was being provided for use in China.85 Certainly that is how Crown Melbourne puts the position. Nonetheless, if Mr Preston was unaware of the true facts he should have made proper enquiries to ensure that misleading information was not given to the regulator.
- 89 Plainly, the Crown China Presentation gave the false impression that Crown had done all it could to not contravene Article 303 of the Chinese Criminal Law.

#### VCGLR INTERVIEWS

- 90 Between 7 March and 10 May 2018, Mr Bryant conducted the examinations of Crown executives including Mr Felstead and Mr O'Connor.86 During each interview Mr Preston and Mr Murphy were present.
- 91 Mr O'Connor's examination took place on 8 March 2018. He was asked about the arrests of Crown's employees in China. During the questioning, Mr Bryant showed Mr O'Connor the Reuters Article. The following exchange then took place:
  - Okay. And what was your business strategy at the time that article came out? Q:
  - A: I wasn't aware of that, that's what I'm saying.
  - Q: Okay, but you're aware that a crackdown occurred about that time in China, a general anti-corruption crackdown?
  - A: Yes. A specific crackdown on the casino industry, no.

...

- Q: Okay, and who would—as your direct report would have you discussed with your direct report?
- A: Yes. Yes, at the time discussed it with my direct reports and probably other senior people in the organisation as well. Can I stress, though, at the time it was understood to be a crackdown on corruption generally. I don't recall any discussions about crackdowns specifically on casinos or gambling operators.87

- 92 Mr O'Connor's answers are inconsistent with the contemporaneous communications between himself and other Crown executives about what was occurring in China in 2015. The answers are also different from the evidence Mr O'Connor gave at the Bergin Inquiry.
- 93 On 7 February 2015, the day after the Reuters Article was published, Mr O'Connor had received several emails about the crackdown. The emails make it clear that Mr O'Connor knew about the crackdown and that it was concerned with the activities of foreign casinos.
- 94 For example, on 7 February 2015, Mr Howard Aldridge (Managing Director at Crown Aspinalls) sent the Reuters Article to Mr O'Connor and asked:

Are you guys in Melbourne making any adjustments to the FY16 business plan based upon what is happening across China. Also, is there any concerns for the Crown staff working in China. Maybe we can add this to the topics for discussion when I am in Melbourne.<sup>88</sup>

95 Mr O'Connor responded:

These issues will, undoubtedly bring considerable discussion during the planning process (which is yet to commence).

•••

As for the staff, we are always very concerned for their wellbeing and Michael is consulting our lawyers to get a clearer view of what this really means. In the meantime, we all need to take extra care.<sup>89</sup>

96 The effect of the crackdown had also been discussed by Mr O'Connor and other Crown executives. On 7 February 2015, Mr Chen sent an email to Mr Felstead, copying in Mr O'Connor, that referred to a different Reuters article about the crackdown. Mr Felstead responded that it was 'another good challenge for you both'. Mr Chen wrote:

For us.

This suggests we may need to delay our plans on establishing physical office presence in China.

Also, this raises the alert level on the safety of our staff.90

- 97 Concerns about the events in China were also raised at a meeting between several Crown executives, including Mr O'Connor, Mr Felstead and Mr Chen, on 11 February 2015. An agenda for the meeting was distributed by Mr O'Connor. The following was an agenda item:
  - 2. Industry chatter re marketing crackdown

Avoid travel to Mainland [China] for a while ...91

- 98 Mr O'Connor gave the following evidence at the Bergin Inquiry about the crackdown:
  - **Q:** Now, in early February 2015 did you become aware of an announcement by the Chinese authorities that they were cracking down on foreign casinos recruiting Chinese citizens to gamble in other countries?
  - A: Yes, I was aware of that announcement.

...

- Q: So you appreciated, I assume, that this announcement by the Chinese authorities had the potential to create a risk to Crown's existing business operations in China?
- A: Yes, I ... I interpreted this to represent a risk to our business, that's right.
- Q: Yes. And it was a matter that you needed to treat seriously as a senior executive responsible for the VIP international business, I'm sure.
- A: Yes. 92
- 99 It is clear that what Mr O'Connor said during his examination by Mr Bryant was not correct.
- 100 Mr O'Connor now says that at the time of his examination he was suffering from emotional trauma following his arrest and detention in China. He was also suffering from an unspecified 'serious infectious disease'. This, he says, caused a memory lapse and he did not intentionally provide false information to Mr Bryant.93
- 101 It is worth pointing out that Mr O'Connor had been asked by Mr Bryant whether he had a medical clearance for his examination and replied that he had. Nonetheless, it may be accepted that the factors that Mr O'Connor identified may have affected his memory.94
- 102 That, however, does not absolve Mr O'Connor of blame. He did not, when he recovered his memory, attempt to correct the false statements he made during his examination. Nor, for that matter, did the lawyers, Mr Preston or Mr Murphy, who were present at both examinations.
- 103 Mr Felstead also provided answers to questions put by Mr Bryant about his knowledge of the crackdown that were inconsistent with the evidence he gave at the Bergin Inquiry. During his examination. Mr Felstead said:

My recollection from the time, and this is in relation to what information's come from talking to the customers and the like, was that there was certainly a ... certainly a move from the Chinese government to restrict some of the activities of its citizens in terms of ... and a lot of that ... well certainly my understanding was based about Macau, which was evidenced in the drop off in the business in Macau. And a lot of it was and this is once again information from customers and what you hear in the industry, a lot of it was a crackdown on government officials engaging in gambling, which was ... always seemed a bit of a sore point for the Chinese government. That was certainly made loud and clear to us from customers who we would converse with and talk to, and there was certainly a large degree of trepidation about business in Macau for some of our customers, because a lot of the crackdowns were occurring around that. So that was probably the ... that was probably the key thrust that I took from that period.95

104 Mr Felstead gave this evidence notwithstanding that he had received emails regarding the crackdown and how that might affect the VIP business.

- 105 Mr Felstead was more forthcoming in his evidence to the Bergin Inquiry:
  - Q: Now, would you agree that the Chinese government crackdown on foreign casinos seeking Chinese gamblers seems to have been widely published in the media and in industry publications in February 2015?
  - A: I would agree with that, Mr Bell.

- Q: And you would agree, would you not, that this announcement, appearing to come from the Chinese government, had the potential to create a serious risk to Crown's existing operations in China; correct?
- A: I think it had the ability to do that if it wasn't managed correctly. 96
- 106 During his examination by Mr Bryant, Mr Felstead was also asked about the questioning by the Chinese authorities of one China-based employee and the letter by Crown Singapore regarding the terms of that person's employment. Mr Felstead said he could not recall the letter but observed that it 'rings a bell'.97
- 107 Mr Felstead said that he knew that staff had been questioned, but was under the impression that the questions concerned a customer rather the recruitment of gamblers in China:
  - Q: Can you recall how that was relayed to you?
  - A: Look, I think it was ... yeah, I think it was in relation to we've had a staff member who's been ... who's been questioned and my understanding, it was in relation to a particular ... it could have been in relation to a particular patron but I don't recall a lot of details about it but I definitely remember there was an incident where a staff member was questioned by a government agency, whether it was the police, I can't remember.
  - Q: Can you recall it being in the context of a patron?
  - A: That was my understanding.98
- 108 Those answers are inconsistent with contemporaneous correspondence to which Mr Felstead was a party. On the day after the employee was questioned, Mr O'Connor emailed Mr Felstead explaining the reason for the questioning and the need for a letter from Crown. The email read:

Hi Baz,

FYI

We had another employee questioned by the Chinese police yesterday.

He seems to have been accused of organising gambling operations or something. He explained that he works for a hotel resort company and helps with visas and travel arrangements etc. They asked for a letter from his employer verifying this.99

109 On the same day, Mr Felstead received from Ms Williamson a draft of the proposed letter. Mr Felstead responded 'Fine by me thanks Jan.'100

- 110 Mr Felstead's answers to Mr Bryant are also inconsistent with the evidence he gave at the Bergin Inquiry.<sup>101</sup> The following exchange highlights the difference:
  - **Q:** Were you aware, in July 2015, that the Chinese police had said to this person that they could not tell him who had informed them, but that the issue was that he had organised people to gamble in Australia?
  - A: I was aware of that. 102
- Mr Felstead has proffered an explanation for the apparent inconsistency in his statements. He said he answered Mr Bryant's questions to the best of his ability. However, by the time he gave evidence during the Bergin Inquiry, Mr Felstead had prepared himself properly and had a better grasp of the facts.<sup>103</sup>
- 112 Assuming that to be so, Mr Felstead cannot be excused for failing to correct the inaccurate statements made to Mr Bryant. Mr Felstead knew that the investigation being undertaken by the VCGLR was important. It is reasonable to infer that he appreciated the importance of correcting the record.
- 113 It is fair to say that in his evidence before the Commission Mr Bryant was reluctant to criticise Mr O'Connor or Mr Felstead. When asked to explain his reaction to Mr O'Connor's evidence regarding the crackdown at the Bergin Inquiry, Mr Bryant said:
  - A: Mr O'Connor was being very forthright in his answers at the ILGA inquiry and at my interview with Mr O'Connor he hadn't been as forthcoming. I was quite ... having said that, the interview I conducted with Mr O'Connor unfortunately I hadn't been provided with a lot of material from Crown at that time which would have clearly showed his level of understanding I think of the crackdown.
  - Q: Mr Bryant, you are being charitable. I want to suggest to you that this was an email that you had shown Mr O'Connor at the interview in 2018, wasn't it?
  - **A:** Yes, it was.
  - **Q:** And Mr O'Connor, through Crown, could have had access to all of the documents that you later came to see during the investigation; don't you agree?
  - A: Yes, I do.
  - Q: And you were annoyed, weren't you?
  - **A:** I was very frustrated with how the course of the investigation had played out based on Crown's level of cooperation through the interviews and the provision of the material.<sup>104</sup>
- 114 By contrast, in a memorandum to Mr Scott May, General Counsel of the VCGLR, Mr Bryant was less circumspect and described his concerns about 'possible misleading statements at VCGLR interviews' by Mr O'Connor and Mr Felstead.<sup>105</sup>
- While it is understandable that Mr Bryant did not wish to openly accuse Mr O'Connor or Mr Felstead of misleading the VCGLR, where there is a difference between Mr Bryant's evidence to the Commission and the manner in which he expressed his concerns in his memorandum to Mr May, the latter is preferred.

## The production of material

- 116 The manner in which Crown provided documents to the VCGLR in response to informal requests and to section 26 notices deserves criticism. Mr Bryant told the Commission that Crown was 'not forthcoming' with disclosure and that when it did provide documents it did so in a piecemeal way.<sup>106</sup> Not wishing to be unfair to Mr Bryant, this downplays the true position.
- 117 It is clear from the sequence of events and the correspondence that Crown Melbourne took divergent approaches to the production of documents sought under section 26 notices and the production of documents in the Crown Class Action. As the MinterEllison correspondence shows, many documents were produced to the VCGLR simply because a search for their existence only took place to meet the discovery obligations in the litigation.
- 118 Crown Melbourne did inform the VCGLR and this Commission that it took its obligations under section 26 seriously, and that it had 'provided considerable focus and resources to respond to the VCGLR's requests for documents and information'. Plainly the 'focus and resources' provided were insufficient.
- 119 Not only was the search for documents deficient, but Crown Melbourne's production of documents to the VCGLR was haphazard. On many occasions, it took Crown Melbourne months to respond to a section 26 notice. For example, documents produced in March 2019 were in response to section 26 notices served in February and August 2018.<sup>108</sup> The explanation proffered was that the documents only came to light when meeting the Crown Class Action discovery obligations. Presumably if there had not been a class action the documents would never have been provided to the VCGLR.<sup>109</sup>
- 120 To state the obvious, Crown Melbourne's approach to meeting its statutory obligation to produce documents was unsatisfactory. It was particularly unsatisfactory given the important inquiry that was being undertaken by the VCGLR.
- 121 Crown Melbourne puts the blame on Mr Preston, who was in charge of document production. 110 No doubt particular individuals bear responsibility for the inadequate response to the section 26 notices. Mr Preston may be one of the individuals at fault. None of that really matters. The point is that it was Crown Melbourne to whom the notices were addressed and it was its responsibility to ensure there was proper compliance with those notices.
- 122 Crown Melbourne also excuses its non-compliance by referring to delays caused by problems with the backup tapes where most of the documents were stored. The reality is that the backup tape searches were undertaken to meet Crown Melbourne's discovery obligations in the Crown Class Action. Those searches were not carried out to satisfy the section 26 notices. Crown Melbourne had sufficient time to comply with those notices but did not do so.
- 123 Further, representatives of Crown Melbourne and MinterEllison interviewed several staff members in Australia and overseas to find out what had happened in China. The VCGLR was not informed of those interviews. Nor was it provided with details of the information that had been obtained.<sup>111</sup>
- 124 Crown Melbourne's unsatisfactory approach gives some insight into the attitude of Crown to its regulatory responsibilities. It shows that those responsibilities were not taken particularly seriously.

125 It is also appropriate to refer to the effect Crown Melbourne's approach had on the VCGLR investigation. The delay in the production of documents had an adverse impact on the VCGLR's resources. Its investigation took far longer than it should have and that, in turn, delayed the implementation of important remedial action.

#### Redactions

- 126 Prior to August 2018, Crown Melbourne produced many documents to the VCGLR with redactions based on alleged lack of relevance or claims for legal privilege.
- 127 This also frustrated the investigation. In due course the VCGLR insisted that the documents be provided without redaction. And, ultimately, they were.
- 128 If Crown Melbourne had the mindset to cooperate with the VCGLR it would have taken a different approach. Perhaps some information might have been withheld on the basis of legal privilege. But, in most instances, Crown Melbourne would have provided the documents in unredacted form.
- 129 It speaks ill of Crown Melbourne's culture that it did not adopt that approach.

# Crown Melbourne's attitude to the investigation

- 130 From the outset, Crown Melbourne positioned itself to advance the proposition that it had acted in accordance with its risk management protocols and done everything it could to ensure its staff observed Chinese law. The Crown China Presentation was only the first step. Crown continued to resist any suggestion that its systems failed to adequately assess the risk the crackdown posed to its staff in China.
- 131 Crown Melbourne was explicit about this in its response to the VCGLR's Summary Report.

  The main conclusion in the Summary Report was:
  - Crown's corporate governance and risk assessment failed to identify and assess risks stemming from a change in the Chinese government's approach, in 2015 relating to Chinese citizens being enticed to gamble overseas.<sup>112</sup>
- 132 The Summary Report also detailed Crown Melbourne's delays in the provision of documents to the VCGLR and its preference to favour discovery in the Crown Class Action:
  - The above matters suggest that Crown did not undertake a thorough and diligent search for documents matching the terms of the VCGLR's notices until the discovery process required by the Federal Court. Crown ought have conducted a thorough and diligent search for documents earlier. This aspect is ongoing and will require a further detailed report however it is considered prudent to bring to the attention of the Commission at this stage.<sup>113</sup>
- 133 Crown Melbourne's response was swift and dismissive. In June 2018, Mr Preston instructed Mr Murphy to 'push back hard on a range of comments, findings and conclusions in the extract and no doubt the report itself'.<sup>114</sup> Mr Murphy obliged.

- 134 Mr Murphy informed the VCGLR that Crown Melbourne 'strongly disputed' any adverse findings or conclusions. He submitted that there were 'several fundamental errors which pervade the Report', making the remarkable statement that the Summary Report failed to 'identify any specific conduct of any of the detainees (prior to their detentions) which they knew or ought to have known was in breach of China law'.115
- 135 This was simply an attempt to divert attention away from the facts. Those facts were that Crown Melbourne had significant concerns regarding the crackdown and the possibility that Crown's China-based activities would attract the attention of the Chinese authorities. And it did nothing to protect its staff.
- 136 Crown Melbourne rejected the VCGLR's criticisms regarding its document production. It contended that Crown had sought to expedite the process where possible and had engaged in a 'painstaking and expensive document retrieval process involving the restoration of backup tapes'. 116 That process, however, was undertaken to meet Crown Melbourne's discovery obligations in the Crown Class Action, not its statutory obligation to comply with the section 26 notices.
- 137 Crown Melbourne also made efforts to resist further investigatory steps being taken. On 21 September 2018, Mr Murphy wrote to the VCGLR asserting that 'the whole episode of the detention and conviction of Crown Group staff does not warrant any regulatory action'. He went on:

Crown respectfully submits that it is appropriate in all the circumstances for the VCGLR to close its investigation on the basis that no disciplinary or other action is warranted.<sup>117</sup>

138 The Crown Resorts board also considered a number of ways to prevent the Summary Report being provided to the Minister or being made public. The minutes of its June 2018 meeting record:

> The Board discussed the draft China investigation report in detail and, having regard to the content of the draft report, endorsed the recommendation to seek to request that the VCGLR not provide the full report to the Minister, and instead provide a much shorter executive summary, together with a response from Crown Melbourne.

> The Board recommended that, if the VCGLR refused the Company's request to provide a summary to the Minister, the matter be brought back to the Board for further consideration, including whether an injunction be sought.<sup>118</sup>

139 Although there was no basis for any court intervention, either Mr Preston or Mr Murphy contemplated bringing proceedings against the VCGLR. There may have been a meeting where this was discussed. That is not clear. What is clear is that notes were prepared for a possible meeting. Those notes indicate that either Mr Preston or Mr Murphy should implore the VCGLR not to finalise its report or provide a draft to the Minister in order to avoid a public fight between Crown Melbourne and the regulator and avoid:

the risk of court action to restrain finalisation or publication of the report, including the possibility of Michael Chen taking such action, either in Victoria or the US, to protect his reputation

any challenge to the power of the VCGLR to promulgate a gratuitously damaging report outside the statutory framework of its 5 yearly review reports ...<sup>119</sup>

140 Crown Melbourne's position softened after the VCGLR got its hands on incriminating documents. In response to the Draft Report, Crown Melbourne accepted that its risk management framework could have more directly dealt with the risk of adverse action against the China-based staff.<sup>120</sup> By that time, however, Crown Melbourne had no alternative but to face the reality of the situation.

#### Conclusion

- 141 In stark contrast to its approach to the VCGLR, Crown Melbourne did acknowledge its failings during the Bergin Inquiry. It accepted that:
  - ... failings occurred in relation to China. Risk management structures and processes were not utilised. Important developments in the operating environment in China were not escalated to board-level committees and to the wider board. They should have been. The failure to escalate those developments meant that a small group of individuals made the decision about how to respond to them. The board should have made those decisions. That small group, and not the board, set the risk appetite of Crown in relation to China. This should not have happened.
  - ... the management of the external advice obtained in connection with the China operations was inadequate. All of that advice should have been provided to and assessed by Crown's internal lawyers. That Crown's internal lawyers obtained copies of much of the advice only after the China arrests was a failing.<sup>121</sup>
- 142 Crown Melbourne's repeated insistence to the VCGLR that it had done nothing wrong was wholly unjustified. It was only when all the incriminating information was unearthed and Crown Melbourne became the subject of even more intense scrutiny that it had no other option than to concede that its processes were insufficient to meet the risks on the ground in China.
- 143 If Crown Melbourne had properly appreciated its obligation to be cooperative and forthcoming, and acted in accordance with that obligation, the VCGLR's investigation would have been over much sooner. Crown Melbourne's failings would have been more quickly identified and repaired.
- 144 Regrettably, Crown Melbourne's culture did not allow it to take that course.

# Case study: VCGLR Sixth Review implementation

- Pursuant to section 25 of the Casino Control Act, the VCGLR is obliged to conduct regular reviews to assess whether a casino operator remains a suitable person to hold its casino licence.
- 146 The VCGLR conducted its Sixth Review of Crown Melbourne and released its report in June 2018. As a result of that review, the VCGLR found that Crown Melbourne continued to be a suitable person to hold its casino licence. Nonetheless, its Sixth Review made several recommendations for Crown Melbourne to adopt.
- 147 There were 20 recommendations in all.<sup>122</sup> One recommendation (Recommendation 17) concerned the risk of money laundering through the Melbourne Casino by junket operations.

  Another was in relation to a review of Crown Melbourne's risk management (Recommendation 3).

  Crown Melbourne's response to both recommendations will be discussed below.

#### Recommendation 17

- 148 Recommendation 17 was made because the VCGLR was concerned that Crown Melbourne did not have sufficiently robust controls in place to reduce the risk of money laundering by junket players.
- 149 Crown Melbourne was required to have, and did have in place, ICSs for junkets.
- 150 The ICSs for junkets did not adequately deal with junket players. In particular, the ICSs did not require that Crown Melbourne determine what proportion of front money put up by the junket operator had been contributed by each junket player.<sup>123</sup>
- 151 The Sixth Review picked up this point. It recorded:
  - [T]he VCGLR observes that to assist in mitigating the risks associated with junkets, the current internal control statements for junkets could be strengthened with the inclusion of more robust controls in relation to the identification of individual junket players and their associated gaming transactions when participating in junkets.<sup>124</sup>
- 152 Recommendation 17 was made to overcome this gap. The recommendation was:
  - 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.<sup>125</sup>
- 153 Before finalising the Sixth Review, the VCGLR provided a draft (containing Recommendation 17) to Crown. Crown Melbourne responded to the draft. As regards Recommendation 17 the response simply noted: Recommendation supported. Recommendation 5.
- 154 Following the publication of the Sixth Review, Mr Alex Fitzpatrick, the VCGLR's Director of Licensing, asked Mr Cremona to oversee the implementation of the recommendations.<sup>128</sup>

#### CROWN MELBOURNE'S RESPONSE TO RECOMMENDATION 17

155 Representatives of Crown Melbourne and the VCGLR met on a quarterly basis.<sup>129</sup> The quarterly meeting held on 25 September 2018 was attended by Mr Cremona, Mr Rowan Harris (from the VCGLR), Mr Xavier Walsh of Crown Melbourne and Mr Preston. One of the agenda items was the report of the Sixth Review. The minutes record:

Recommendation 17. Crown noted that it had spoken to senior managers from AUSTRAC regarding this recommendation. The VCGLR will provide greater clarity of the recommendation and consult with AUSTRAC. 130

- 156 Mr Cremona told the Commission that at the meeting the discussion centred around the reasons for the recommendation and how the VCGLR expected Crown Melbourne to satisfy the recommendation. The Crown Melbourne representatives said they were unclear what was required. Mr Cremona said that he informed those present he was surprised that Crown sought any 'clarity' as the matter had been clearly explained in the Sixth Review.<sup>131</sup>
- 157 On 31 October 2018, there was another meeting between representatives of the VCGLR and Crown Melbourne to discuss the recommendation. Those present included Mr Harris, Mr Cremona, Ms Fielding and Ms Sonja Bauer (then Group General Manager Responsible Gaming, Crown Resorts). Ms Fielding wanted to know what the VCGLR expected by Recommendation 17. The minutes record the VCGLR's unequivocal response:

The VCGLR advised that in their view part of this recommendation is about ensuring greater visibility of individual junket players and their gaming activity to ensure that Anti Money Laundering risks are appropriately addressed. Therefore, it is expected that the review of the appropriate ICS, which will include the Junkets and Premium Player Programs ICS, will vary the applicable ICS to enable the same level of transparency for individual junket player activity as there is for premium players ... In reviewing the ICS, Crown would need to seek input from the VCGLR in conjunction with AUSTRAC regarding record keeping in relation to individual junket players (which Crown noted is not required by the Recommendations) and this should inform reporting of any suspicious matters by Crown (which Crown notes is not required by the Recommendations).<sup>132</sup>

- 158 On 9 November 2018, Mr Cremona wrote to Ms Fielding. He referred to the discussion at the meeting and asked that if Crown needed any further clarification, it inform the VCGLR as soon as possible.133
- 159 Mr Cremona told the Commission that his purpose in writing was to ensure there was 'clarity' regarding the recommendations.<sup>134</sup> No response was received.<sup>135</sup>

160 On 18 January 2019, Crown Melbourne provided a table to the VCGLR outlining its progress on all the recommendations made in the Sixth Review. In relation to Recommendation 17, the table recorded:

> Crown has met with AUSTRAC to discuss this recommendation. A new joint AML Program across Crown's Australian Resorts is being developed and will be reviewed by an external party. AUSTRAC is being kept informed of progress.

Internal controls are being reviewed. 136

- 161 It would have been obvious to Crown Melbourne that a new AML program was not what was required by Recommendation 17.
- 162 To check on Crown Melbourne's progress on the implementation of Recommendation 17, representatives of the VCGLR, including Mr Cremona and Mr Harris, met with the Director of Regulator Operations and Acting Manager of Regulator Operations at AUSTRAC on 20 February 2019.
- 163 The AUSTRAC representatives explained that there had been discussions with Crown Melbourne but they were not about AUSTRAC reviewing Crown Melbourne's ICSs. Rather, Crown had 'raised [with AUSTRAC an alleged] "uncertainty" in relation to the recommendation'.137
- 164 On 12 March 2019, representatives of Crown Melbourne and the VCGLR again met to discuss the progress of implementing the recommendations in the Sixth Review. In relation to Recommendation 17, the minutes record:

- c. JP [Joshua Preston] advised that the joint (Crown Perth/Crown Melbourne) AML program will be reviewed by an external party and is a 'significant piece of work' which may not be completed by 1 July 2019. The VCGLR believes that the joint AML program is not linked to recommendation 17.
- d. JP advised that Crown consults with AUSTRAC on its ICSs and that the strongest control is the joint AML program. In addition, the strengthening of internal controls would be somewhat limited to the AML internal program/ processes and 'framework documents'. JP believes the fundamental issue re AML/CTF is the internal AML/CTF program, not the ICSs. 138
- 165 Mr Cremona told the Commission that he viewed Mr Preston's statements as an attempt to persuade the VCGLR that Recommendation 17 would be satisfied if Crown's joint AML/CTF Program appropriately ensured AML risks were addressed. 139
- 166 The minutes show that Mr Cremona and/or Mr Harris made it clear that this was not acceptable:

e. ... JC advised that although the AML/CTF program was important, it was not the key consideration in line with the recommendation.

- f. JC advised that the ICSs should support the AML program, and the ICS review as required by the recommendation, in particular the Junkets and Premium Players ICS, needed to be subject to Crown's review and AUSTRAC's input re its suitability.
- g. RH [Rowan Harris] referred to the central issue of lack of transparency of individual junket players and referred to page 138 of the Sixth Casino Review report which states 'mitigating the risks associated with junkets could be strengthened with the inclusion of more robust controls in relation to the identification of individual junket players and their associated gaming transactions when participating in junkets'. JP noted that this was an observation and would not 'drive' the recommendation review outcomes.
- h. The VCGLR made clear its expectations re consultation with AUSTRAC and the review of the ICS for junkets.
- i. JC advised of his concern that Crown's response and the discussion in the meeting does not appear to specifically address the recommendation.<sup>140</sup>
- 167 As the VCGLR had repeatedly pointed out, the AML/CTF Program was not the object of their concern. The ICSs needed reform so that the VCGLR (as opposed to AUSTRAC) had 'visibility' regarding junket front money and who contributed to it. That would then satisfy the VCGLR that the casino was taking necessary steps to be operating free from criminal influence.<sup>141</sup>
- 168 On 23 May 2019, Mr Fitzpatrick wrote to Mr Preston advising that the VCGLR was of the view that Crown may not meet Recommendation 17. In the letter he wrote:

Recommendation 17 requires Crown, by 1 July 2019, to undertake a robust review (with external assistance) of relevant internal control statements (ICSs), including input from AUSTRAC, to ensure that anti-money laundering risks are appropriately addressed. Based on discussions with Commission staff and Crown's written updates, Crown appears reluctant to undertake a review of any relevant internal control statements (ICSs) with input from AUSTRAC.

At a minimum, to implement this recommendation, the Commission expects that Crown provides AUSTRAC with the relevant ICSs, including the Junkets and Premium Player Programs ICS, to inform the review and assist Crown in ensuring that AML risks are appropriately addressed through its AML program as well as the ICSs.142

- 169 Later the same day Ms Fielding called Mr Cremona. She told him she thought the letter misrepresented Crown Melbourne's position. She said Crown Melbourne had not indicated it would not seek input from AUSTRAC. She said Mr Preston was furious and would most likely call the Minister.<sup>143</sup> Ms Fielding told the Commission she passed on this threat at the direction of Mr Chris Reilly (Director of Corporate Affairs, Crown Resorts). She did say she was uncomfortable doing so.144
- 170 There is no evidence that the threat to call the Minister was carried out. However, Mr Fitzpatrick's letter did have the effect of forcing Crown Melbourne to engage with Recommendation 17.

- 171 On 14 June 2019, Mr Preston wrote to Mr Fitzpatrick. He refuted several observations made in the letter of 23 May 2019. He then set out the steps Crown Melbourne had taken to comply with the recommendation. They were that Crown Melbourne had:
  - reviewed all the ICSs
  - · identified the ICSs with potential relevance to AML risks
  - considered those ICSs against the backdrop of Crown Melbourne's existing AML/CTF Compliance Framework
  - prepared proposed amendments to those ICSs, where appropriate
  - recently submitted those ICSs, and the proposed changes, to AUSTRAC, and requested that AUSTRAC provide:
    - its view on the changes proposed by Crown
    - any other input or commentary from AUSTRAC regarding the relevant ICS
  - also recently submitted these ICSs, and the proposed changes, to an independent AML/CTF expert, and asked the expert to provide:
    - his view on the changes proposed by Crown Melbourne
    - any other input or commentary he had regarding the relevant ICSs. 145
- 172 It later transpired that Crown Melbourne had only provided the draft ICSs to AUSTRAC on 30 May 2019—that is, the week after the VCGLR's letter of complaint to Crown. 146
- 173 The independent expert was Mr Neil Jeans of Initialism. The letter requesting Initialism to act was sent on 4 June 2019. This was approximately three weeks before the deadline for implementation of the recommendation and some 11 months after the recommendation was made.
- 174 On 1 July 2019, Mr Felstead wrote to the VCGLR asserting that Crown Melbourne had implemented Recommendation 17. The letter stated that:
  - · Crown Melbourne had completed a robust review of the ICSs
  - Crown Melbourne had made changes to its ICS and engaged Initialism and AUSTRAC to review the changes
  - AUSTRAC had declined to comment on the changes.<sup>148</sup>
- 175 Crown Melbourne also advised that it had amended the relevant ICSs by:
  - including Crown's AML/CTF Program as a control in the 'Minimum Standards and Controls' section of each relevant ICS
  - including a specific risk of 'Criminal influence and exploitation' (which captures potential money laundering or terrorism financing activities) in each relevant ICS Risk Assessment where that risk is not already directly or indirectly included.<sup>149</sup>

#### THE TRUE POSITION

- 176 Recommendation 17 required Crown Melbourne to:
  - conduct a robust review of existing ICSs
  - to do so with external assistance
  - to do so with input from AUSTRAC to ensure that AML risks were appropriately addressed.
- 177 Not one requirement was met by Crown Melbourne.
- 178 As to the first requirement, although Crown Melbourne asserted that it conducted a 'robust review', if it conducted any review at all (which it may have) it was not the review required by the recommendation.<sup>150</sup>
- 179 As to the second requirement, Initialism was engaged by Crown Melbourne to perform a limited task that was premised on Crown Melbourne itself having undertaken a thorough review of all ICSs. The relevant portion of Initialism's engagement letter reads:

#### Crown has thoroughly reviewed all ICSs to assess:

- a. which ICSs are potentially relevant to the assessment and management of money laundering risks (specifically, those ICSs of Business Units directly or indirectly involved in the provision of designated services to patrons); and
- b. with reference to these relevant ICSs, whether any amendments are appropriate to reflect how Crown identifies, mitigates and manages its money laundering risks under its AML/CTF Program. In so doing, Crown had reference to relevant Internal Control Manuals considered and approved by the NSW Regulator (Liquor and Gaming NSW).151
- 180 It is clear that this is not the work that was required by Recommendation 17.
- 181 The second requirement was that the review be conducted with external assistance. Crown Melbourne said that this assistance was provided by Mr Jeans. However, Crown Melbourne had only sought a limited review by Mr Jeans. The following exchange during Mr Jeans' evidence is illustrative:
  - Q: The approach you took to Recommendation 17 was the subject to criticism last week in the Commission by Mr Cremona of the VCGLR. In particular, he said that your opinion letter was not a proper response to Recommendation 17 and did not address the substance of Recommendation 17. Is there any response you would like to make to that?
  - A: Mr Cremona is correct. That was not the scope of the work I was asked to do. I was asked to simply do a limited review of documents provided to me, to then provide an opinion to Crown. That review was limited in the fact that I actually did not provide a statement of work, I did not issue a proposal in relation to this piece of work and actually did not charge Crown for this piece of work. That is because the work was very limited. This was literally less than half a day's work that I undertook for them to produce this letter. 152

- 182 Crown Melbourne went on to say that this is all that was required of it. 153 This is not so. Recommendation 17 required more, as is plain from the wording of the recommendation itself. Contrary to Crown Melbourne's assertion, the second requirement had not been met.<sup>154</sup>
- 183 The third requirement was for AUSTRAC to be involved. Crown Melbourne did not provide the ICSs to AUSTRAC until 30 May 2019. Previously Crown Melbourne had informed the VCGLR that it had sought AUSTRAC's assistance much earlier. For example, Crown Melbourne's update of 18 January 2019 recorded:

Crown has met with AUSTRAC to discuss this recommendation. A new joint AML Program across Crown's Australian Resorts is being developed and will be reviewed by an external party. AUSTRAC is being kept informed of progress.<sup>155</sup>

- 184 The update of 2 May 2019 repeated this and added that the ICSs had been reviewed and that 'preliminary discussions with AUSTRAC have taken place'. 156
- 185 That was misleading. Contrary to the submission by Crown Melbourne that the statement simply meant that a meeting had taken place between it and AUSTRAC, when read in context, the statement clearly implied that AUSTRAC was playing a role in reviewing the junket ICSs. That was not correct. The best that can be said is that there had been a brief discussion with AUSTRAC about the ICSs. But nothing AUSTRAC said to Crown Melbourne indicated it would review the ICSs.
- 186 In any event, AUSTRAC decided that it was not appropriate for it to comment on the ICSs. 157

#### FINALISATION OF RECOMMENDATION 17

- 187 On 1 July 2019 the VCGLR considered whether Crown Melbourne had complied with Recommendation 17.
- 188 Mr Cremona told the Commission that the VCGLR had three options:
  - · accept that Crown Melbourne had satisfied the recommendation without qualification
  - accept that Crown Melbourne had satisfied the recommendation, but with the qualification that the VCGLR was not happy with the outcome and would conduct its own review
  - find that Crown Melbourne had not met the recommendation and require it to further review the ICSs under guidance.<sup>158</sup>
- 189 Mr Cremona was of the view that Crown Melbourne had not satisfied the substance of Recommendation 17. Nevertheless, he said that the second option was the best way to proceed. He explained:

[T]he issue we had was if we determined 'had not met the recommendation' that would have required Crown to conduct a further review. And that's where we had a little bit of a sticking point, because in discussions with my team we agreed that that wasn't an acceptable outcome. We had made Crown fully aware as to what we expected to be the outcome of that review, which comes across through my whole statement, and I didn't think it was an acceptable outcome, and I don't believe I could put faith in Crown to deliver the outcomes if we were to require a second review.<sup>159</sup>

190 Mr Harris sent a memorandum to Mr Fitzpatrick outlining Crown Melbourne's implementation of Recommendation 17. It concluded:

In summary, LMA staff are of the view that Crown has met the specific requirements of recommendation 17. However, the shortcomings in Crown's proposed amendments to ICSs do not go far enough to provide the sort of transparency to the Commission of individual junket participants and their gaming transactions as intended by the Sixth Casino Review report. 160

- 191 In his memorandum Mr Harris recommended that the VCGLR accept Mr Cremona's second option. The VCGLR adopted the recommendation.
- 192 Crown Melbourne contends that it did comply with Recommendation 17, notwithstanding Mr Cremona's doubts. It contends that it complied with the recommendation, first, by focusing on its AML/CTF Program, which was the primary mechanism by which money laundering risks were addressed. The second basis for compliance was that, in the end, it stopped dealing with junket operators.
- 193 The problem with each contention is that it fails to grapple with what was required by the recommendation. A particular ICS needed investigation. Crown Melbourne resisted that task.
- 194 The VCGLR was perhaps wrong to find that Crown Melbourne had satisfied Recommendation 17. On the other hand, the approach that it adopted led to a satisfactory outcome.
- 195 Following its decision, the VCGLR obtained a report from Senet Legal.
- 196 The report stated that Crown Melbourne's suggested changes were high level and raised concerns that they did not adequately address all of the key risks and other areas of concern.161
- 197 The report went on to recommend several changes to the ICSs, which satisfied the regulator's concern. The changes included a requirement that Crown Melbourne introduce enhanced due diligence measures on an initial and an ongoing basis in respect of junket players.<sup>162</sup>
- 198 The suggested changes were put in place by Crown Melbourne. Shortly thereafter, Crown announced its intention to suspend junket operations.

#### Recommendation 3

199 The VCGLR's third recommendation was:

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.

200 As discussed in Chapter 5, in order to satisfy this recommendation, Crown Melbourne engaged Deloitte to 'review Crown's risk management program and provide observations and where appropriate, recommendations for improvement'.163

- 201 The engagement did not require Deloitte to assess whether Crown Melbourne's risk framework was embedded into the organisation, whether it was operating correctly or even whether it was appropriate for Crown Melbourne's operations.<sup>164</sup> Deloitte was only requested to conduct a 'desktop review'. Deloitte did not interview any relevant members of staff such as the Chair of the RMC or persons responsible for the external audit.<sup>165</sup>
- 202 Deloitte prepared a report and provided it to Crown Melbourne. The report noted that Crown Melbourne's risk management framework was consistent with accepted risk management standards and set out certain recommendations regarding future areas of development.<sup>166</sup>
- 203 Ms Cara Hartnett, who led the review team from Deloitte, acknowledged that the review did not determine or assess the robustness or effectiveness of Crown Melbourne's risk management framework.<sup>167</sup>
- 204 On 1 July 2019, Mr Felstead wrote to Ms Myers at the VCGLR stating that Crown Melbourne had complied with Recommendation 3. In his letter, Mr Felstead noted that a number of internal steps had been taken by Crown Melbourne in relation to its risk management systems, including action taken in response to an assessment conducted by PwC Australia that the VCGLR had initiated. The letter also noted that Crown Melbourne was satisfied that its systems were effective and properly embedded into the business following a review of its framework.<sup>168</sup>
- 205 In relation to the external assistance required by the recommendation, Mr Felstead's letter stated:

To further ensure the robustness of the enhancements being introduced within the risk management framework, Crown Melbourne sought advice from an external advisory firm on the major elements of the program. The third party review considered that 'Crown's risk management framework and its design is consistent with the risk management standard ISO 31000:2018 Risk Management' and that 'Crown has a risk management program with the key elements for effective risk management either in place or under development.' A number of their recommendations were incorporated into the Risk Management Strategy document that was presented to the Crown Resorts Board and approved in June 2019.<sup>169</sup>

- 206 Ms Anne Siegers is the Chief Risk Officer at Crown Resorts. She was responsible for dealing with Recommendation 3. It was Ms Siegers who determined the nature and scope of Deloitte's engagement. Ms Siegers was also involved in settling the letter Mr Felstead sent to the regulator.
- 207 Ms Siegers explained why she had not engaged Deloitte to carry out a full and comprehensive assessment of the robustness and effectiveness of Crown Melbourne's risk management framework. The reason she gave was that 'a lot of the elements were not in place yet, so doing an assessment of how well it was implemented would not have been done ... able [sic] at that stage'. Ms Siegers added that, in any event, 'the risk management strategy document itself had not yet been approved by the board'.<sup>170</sup>

- 208 Ms Siegers was asked why the VCGLR was told that the review undertaken by Crown Melbourne had involved 'an extensive assessment of the depth of understanding and management of risk across the operation' and that steps were being taken to ensure 'the robustness of the enhancements being introduced within the risk management framework'.<sup>171</sup>
- 209 Ms Siegers responded that she was able to assess the robustness of the risk management design.<sup>172</sup> She could not explain how that could be done when not all the relevant 'elements' were in place to enable Deloitte to assess the robustness of the design. Nor did Ms Siegers keep any record of her work. In these circumstances, it is unlikely that she carried out the robust assessment that was called for.
- 210 It follows that the information Mr Felstead provided in his letter to the VCGLR was incorrect. Perhaps he was given the incorrect information by Ms Siegers. Perhaps he failed to make appropriate enquiries to find out the true position. Whatever be the reason, it does not justify giving inaccurate information to the regulator.

#### Conclusion

- 211 Crown Melbourne's approach to the implementation of Recommendation 17 reflects a dismissive and uncooperative attitude towards the VCGLR. A review conducted under section 25 of the Casino Control Act is a serious process. Recommendations made following a review are matters the VCGLR considers important in order to ensure that the casino operations are conducted appropriately.
- 212 Recommendation 17 was driven by a concern about criminal influences and possible money laundering by junket players. The VCGLR was of the view that junket players should be treated in the same way as junket operators and premium players. Crown Melbourne knew this but adopted an approach that was designed to avoid imposing transparency over junket players.
- 213 It is not difficult to discern its reasons. Requiring junket players to provide their personal details and details about the source of their funds would likely see some take their business elsewhere. This was a risk that Crown Melbourne was not prepared to run. Instead, it accepted the risk of money laundering taking place at the casino rather than lose business.
- 214 Recommendation 3 resulted from the VCGLR's view that Crown Melbourne had failed in relation to risk management. Those failings included non-compliance with its junket internal control requirements and varying the operation of several EGMs without consent.
- 215 That Crown Melbourne falsely claimed compliance with such an important recommendation is extremely troubling.

# Case study: Junket ICS investigation

## Background

- 216 An approved ICS with which Crown Melbourne was required to comply concerned how it should deal with junket operators, junket players and premium players. The Junket ICS obliged Crown to conduct appropriate probity checks of those persons.
- 217 On 2 October 2020, the VCGLR served a notice on Crown Melbourne under section 20(2) of the Casino Control Act requiring it to show cause why disciplinary action should not be taken against it. The notice alleged that Crown Melbourne had breached the Casino Control Act by not dealing with three junket agents or operators in accordance with the Junket ICS.<sup>173</sup> This was later amended to four agents or operators.

#### 218 In summary, it was alleged that:

- · Crown Melbourne had failed to identify issues relating to Mr Pan (a junket agent). It was alleged that Mr Pan was associated with a legal brothel that had been prosecuted for breach of Victoria's sex worker laws and that Mr Pan was involved in serious criminal activity with suspected links to organised crime. Crown Melbourne had been advised by the AFP and Victoria Police about Mr Pan's possible links to human trafficking, illegal brothels and money laundering.
- Crown Melbourne failed to verify open-source media reports that Mr Song (a junket operator) had been convicted of being part of a large illegal gambling syndicate and that it failed to have proper regard to Mr Song's involvement in a proceeds of crime case that was before the Supreme Court of Victoria.
- · Mr Wong (a junket player who was also known as Mr Prawira) had been subject to United Nations imposed travel bans and had his assets frozen because of his links to the former President of Liberia. He was allowed to gamble at Crown Melbourne under the name Yoseph Prawira until 2 March 2015 when his licence to enter the casino was withdrawn. It was alleged that by allowing Mr Wong to gamble, Crown Melbourne failed to conduct sufficient probity checks of Mr Wong, including into his conviction for his failure to disclose asset information in Singapore, which led to his imprisonment for six months in 2005.
- · Crown Melbourne failed to have proper regard to certain matters relating to Mr Chau (a junket operator) and his Suncity junket. Those matters included Mr Chau's connections to the 14K Triad, AUSTRAC inquiries regarding large cash transactions involving Mr Chau and Suncity, and Suncity's non-compliance with cash controls imposed by Crown Melbourne, which led to the discovery of \$5.3 million in cash in Mr Chau's junket operation desk and a further \$300,000 in cupboards in the junket operation room.<sup>174</sup>
- 219 When the show cause notice was served, Crown Melbourne was aware of several deficiencies in its process of checking the background of junket operators. In August 2019, Crown Melbourne (through MinterEllison) had engaged FTI to conduct a review into its junket program.<sup>175</sup> The draft FTI report identified deficiencies in the program. They included that the quality of the staff who conducted the due diligence should be improved, that the staff should be appropriately trained and that the due diligence process should be enhanced.<sup>176</sup>

- 220 On 11 September 2019, Mr Preston received the draft FTI report from MinterEllison.<sup>177</sup>
- 221 On 17 December 2020, Ms Helen Coonan (former Executive Chairman of Crown Melbourne and Crown Resorts), Mr Walsh and other Crown executives met with VCGLR representatives. During that meeting, Ms Coonan expressed a desire to work collaboratively with the regulator, saying:

I think it's absolutely critical that we have lines of communication open and that as we negotiate what I would call perhaps some of our shortcomings we're able to work through them together so that we do get a good outcome.<sup>178</sup>

- 222 Mr Walsh spoke about Crown Melbourne's dealings with 'top' local and domestic patrons, stating that Crown Melbourne intended to have direct communications with those patrons to ensure they provided details of matters such as their source of wealth. He said that the onus was now on patrons who had been excluded from the casino to demonstrate why Crown Melbourne should reconsider their exclusion.<sup>179</sup>
- 223 The impression sought to be given was that Crown Melbourne was now willing to adopt a more cooperative approach with the regulator. Mr Walsh's comments also suggested that Crown Melbourne appreciated that its previous practices (at least in relation to premium players) were deficient.
- 224 However, this is not how Crown dealt with the show cause notice. Crown Melbourne's approach was to differentiate between its decision to allow the four individuals to operate or play at the casino, which it conceded should not have been allowed, and the probity processes it had in place, which it asserted were 'robust'.
- 225 There was a hearing on the show cause proceeding on 21 January 2021. Mr Walsh, Mr Murphy and counsel all addressed the VCGLR on behalf of Crown Melbourne. 180
- 226 During the course of the hearing Mr Walsh had accepted 'that we [Crown] should not be dealing with the four persons noted in the particulars', having noted 'Crown does not concede that we have breached our ICSs as articulated in the show cause notice'.181
- 227 Mr Walsh argued that the allegation concerning Mr Pan did not constitute a breach of section 121(4) of the Casino Control Act because Mr Pan was a junket agent and the Junket ICS only applied to junket operators. 182
- 228 Mr Walsh said that Crown Melbourne's probity processes conformed to industry standards and community expectations at the time of the alleged breaches and that Crown Melbourne had adhered to those standards. He provided no evidence to support this claim.<sup>183</sup>
- 229 Mr Walsh submitted that Crown Melbourne's probity processes were robust, and that Crown Melbourne reviewed probity information that it obtained from third parties.<sup>184</sup> His submission ignored Crown Melbourne's critical failure, which was that it had not sought any probity information directly from the persons concerned.
- 230 Importantly, the submission was inconsistent with the draft FTI report. It was also inconsistent with the review undertaken by Deloitte into Crown Melbourne's Due Diligence and Persons of Interest processes. While it is unclear whether Mr Walsh had reviewed the draft FTI report, both reviews identified significant flaws in the probity assessment process for junkets and were provided to executives at Crown Melbourne. 185

- 231 Not only was the submission inconsistent with the draft FTI report and the Deloitte review, but Mr Walsh and Crown Melbourne's legal representatives made no mention of either document.<sup>186</sup>
- 232 Crown Melbourne argued that its approval process was sound because it was based on decisions made by senior managers such as Mr Preston and Mr Felstead. For example, it was put that Mr Preston had been provided with detailed material about Mr Chau (a politically exposed person) and assessed him to be a suitable person to operate junkets.<sup>187</sup>
- 233 On 27 April 2021, the VCGLR handed down its decision. It found that Crown Melbourne had breached section 121(4) of the Casino Control Act and imposed a fine of \$1 million. It directed that Crown Melbourne refrain from conducting junket operations until it received permission from the VCGLR to do so.<sup>188</sup>
- 234 The VCGLR said there was real uncertainty about who was responsible for assessing probity information. The VCGLR formed the view that the decision-making process was ad-hoc. It also found that Crown Melbourne's arguments were inconsistent with the evidence given to the Bergin Inquiry that Crown Melbourne had a Persons of Interest Committee that determined whether a politically exposed person should be allowed into the casino.<sup>189</sup>
- 235 Finally, despite Crown Melbourne's assertion that an applicable probity assessment had been made, the VCGLR found that there was no record of the basis upon which probity decisions were made. As noted in its decision:

The evidence and submissions Crown made to the [VCGLR] are bereft of any suggestion that Crown's relevant probity processes included contemporaneously recording the reasons why probity decisions were made, or the basis upon which they were made.<sup>190</sup>

#### Conclusion

- 236 Crown Melbourne's approach to the disciplinary proceeding can be described as obstructionist, aggressive and involving submissions that had little or no evidentiary support or were inconsistent with positions taken elsewhere.
- 237 Mr Walsh agreed that Crown Melbourne's approach to the disciplinary hearing was inappropriate. He said:

If we had our time again, I'm not sure we would have adopted that position ... 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.<sup>191</sup>

- 238 The directors of Crown Melbourne also accept that the company's approach was inappropriate.

  Ms Halton described the approach as 'deeply regrettable'. Ms Coonan said that the
  correspondence sent in relation to the disciplinary proceeding was 'very regrettable'. 193
- 239 Crown Melbourne and Ms Coonan both said that Crown Melbourne's approach was that mandated by the then board, which was still dominated by CPH appointees. Ms Coonan went so far as to say that at board meetings she disagreed with that approach.<sup>194</sup> She said that it was also the approach recommended by MinterEllison.

240 It may well be—indeed, it is likely—that the Crown Melbourne board and Crown Melbourne's lawyers were responsible for the manner in which the show cause notice was handled. That is not an excuse. It merely identifies the persons for whose conduct Crown Melbourne is responsible. At least in the case of the lawyers, the company was not obliged to go along with their approach. It does seem that it willingly did so.

## What should be done

- 241 While Crown Melbourne submitted to this Commission that its relationship with the regulator is now in the hands of new personnel who are committed to a new and transparent relationship,<sup>195</sup> the conduct described in this chapter is unacceptable. It is unacceptable for several reasons. If it is allowed to continue:
  - the regulator will be unable to properly and efficiently carry out its duties, particularly when confronted with an uncooperative casino operator
  - the regulator's task of overseeing casino operations will be impeded when the casino operator does not make a full and frank disclosure of the information the regulator requires to carry out its functions.
- 242 Chapter 16 recommends a number of reforms to the Casino Control Act. Some of those recommendations are designed to deal with the problems identified in this chapter.

# **Endnotes**

- Casino Control Act 1991 (Vic) s 25.
- 2 Responsive submission VCGLR, 2 August 2021, [64].
- 3 Casino Control Act 1991 (Vic) s 25.
- 4 Casino Control Act 1991 (Vic) s 24.
- 5 Casino Control Act 1991 (Vic) s 20.
- 6 Casino Control Act 1991 (Vic) s 26.
- 7 Casino Control Act 1991 (Vic) s 27.
- 8 Casino Control Act 1991 (Vic) s 23.
- 9 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 239-97; Exhibit RC0003 VCGLR Report regarding an investigation conducted pursuant to sub-sections 24(1)-(2) of the Casino Control Act 1991 (Vic) into the  $conviction \ and \ sentencing \ of \ Crown \ employees \ for \ gambling-related \ of fences \ in \ the \ People's \ Republic \ of \ China,$ in June 2017 (redacted), n.d.
- 10 Exhibit RC0003 VCGLR Report regarding an investigation conducted pursuant to sub-sections 24(1)–(2) of the Casino Control Act 1991 (Vic) into the conviction and sentencing of Crown employees for gamblingrelated offences in the People's Republic of China, in June 2017 (redacted), n.d., 21 [73].
- 11 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 241.
- 12 Exhibit RC0003 VCGLR Report regarding an investigation conducted pursuant to sub-sections 24(1)–(2) of the Casino Control Act 1991 (Vic) into the conviction and sentencing of Crown employees for gamblingrelated offences in the People's Republic of China, in June 2017 (redacted), n.d., 22 [77].
- 13 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 252.
- Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 252. 14
- 15 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 253. According to the Bergin Report, at September 2014, approximately 20 staff lived and worked in mainland China.
- 16 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 253-4.
- 17 Exhibit RC0003 VCGLR Report regarding an investigation conducted pursuant to sub-sections 24(1)–(2) of the Casino Control Act 1991 (Vic) into the conviction and sentencing of Crown employees for gamblingrelated offences in the People's Republic of China, in June 2017 (redacted), n.d., 25 [101]–[102].
- 18 Exhibit RC0003 VCGLR Report regarding an investigation conducted pursuant to sub-sections 24(1)-(2) of the Casino Control Act 1991 (Vic) into the conviction and sentencing of Crown employees for gamblingrelated offences in the People's Republic of China, in June 2017 (redacted), n.d., 26 [107]–[109], 27 [114]–[115].
- 19 Exhibit RC0003 VCGLR Report regarding an investigation conducted pursuant to sub-sections 24(1)–(2) of the Casino Control Act 1991 (Vic) into the conviction and sentencing of Crown employees for gamblingrelated offences in the People's Republic of China, in June 2017 (redacted), n.d., 55 [306].
- 20 Exhibit RC1578, Article: China's President Just Declared War on Global Gambling, 6 February 2015.
- 21 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 261 [127].
- 22 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 283–4, 286.
- 23 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 286; Bergin Inquiry Transcript (O'Connor), 3 September 2020, 2031 [42]-[46]; Bergin Inquiry Transcript (Williamson), 9 September 2020, 2222 [1]-[4].
- 24 Exhibit RC0007 Email chain between Barry Felstead and Jan Williamson, 10 July 2015.
- 25 Exhibit RC1549 Letter from Crown Resorts to whom it may concern, re employee in Hong Kong, 9 July 2015.
- 26 Exhibit RC0003 VCGLR Report regarding an investigation conducted pursuant to sub-sections 24(1)–(2) of the Casino Control Act 1991 (Vic) into the conviction and sentencing of Crown employees for gamblingrelated offences in the People's Republic of China, in June 2017 (redacted), n.d., 73 [424]-[425].
- 27 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 291.
- 28 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 255-6.
- 29 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 291-2; Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure j, [7].
- 30 Exhibit RC0003 VCGLR Report regarding an investigation conducted pursuant to sub-sections 24(1)–(2) of the Casino Control Act 1991 (Vic) into the conviction and sentencing of Crown employees for gamblingrelated offences in the People's Republic of China, in June 2017 (redacted), n.d., 19 [55]-[56].

- 31 Exhibit RC1512 Statement of Jason O'Connor, 15 June 2021, 1[1].
- 32 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, 5 [18]; Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure b.
- 33 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, 5 [19].
- 34 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure b.
- 35 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure e.
- 36 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure f.
- 37 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure h.
- 38 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, 1 [1], 2 [8], 10 [34].
- 39 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure i.
- 40 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, 10-11 [37]-[38]; Transcript of Timothy Bryant, 17 May 2021, 52-3.
- 41 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure k.
- 42 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure I.
- 43 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure m; Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure n.
- 44 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure o, 2.
- 45 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure p.
- 46 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure p.
- 47 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, 13-14 [44].
- 48 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure cc [18]-[19].
- 49 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure aa.
- 50 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure bb.
- Exhibit RC1579 Crown F16-F20 Strategic Business Plan Executive Review, VIP International, n.d., 4. 51
- 52 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure cc.
- 53 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure dd.
- 54 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure ff, 2.
- 55 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure kk.
- 56 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure II.
- 57 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure rr, 2 [5].
- 58 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure ss.
- 59 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure tt.
- 60 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure uu.
- Transcript of Timothy Bryant, 17 May 2021, 92, 95. 61
- 62 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure ww.
- Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure xx; Exhibit RC0001 Statement 63 of Timothy Bryant, 15 April 2021, Annexure aaa; Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure bbb.
- 64 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure eee, 9 [26].
- 65 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure hhh, 4 [26].
- 66 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, 34 [96]-[97].
- Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, 34-5 [97]. 67
- Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure kkk. 68
- 69 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure III.
- 70 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure mmm.
- 71 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure sss.
- 72 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure uuu.
- 73 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure www; Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure bbbb; Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure cccc.
- 74 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure dddd, 17 [59], 19 [69].
- 75 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure eeee.

- 76 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure eeee.
- 27 Exhibit RC0003 VCGLR Report regarding an investigation conducted pursuant to sub-sections 24(1)–(2) of the *Casino Control Act 1991* (Vic) into the conviction and sentencing of Crown employees for gambling-related offences in the People's Republic of China, in June 2017 (redacted), n.d., 2.
- 78 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure d, 6.
- 79 Exhibit RC0004 Email from Michael Chen to Jason O'Connor, 26 March 2015, 2.
- 80 Exhibit RC0004 Email from Michael Chen to Jason O'Connor, 26 March 2015, 2.
- 81 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 293 [I.17].
- 82 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure d, 12.
- 83 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, 31–2 [88(d)]; Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure bbb, [23(B)].
- 84 Exhibit RC1559 Crown Resorts Explore VIP Magazine Issue 14, Melbourne, Perth & London, July–September 2016, 8.
- Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 293–4 [I.18]. Joshua Preston filed a submission to the Commission, but did not address this issue. See Responsive submission Joshua Preston, 2 August 2021.
- 86 Mr Bryant was assisted by other members of the VCGLR, including Mr Jarrod Wolf and Mr Stephen Brown.
- 87 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure w, 55.
- 88 Exhibit RC1550 Email chain between Jason O'Connor, Michael Chen and Howard Aldridge, 10 February 2015.
- 89 Exhibit RC1550 Email chain between Jason O'Connor, Michael Chen and Howard Aldridge, 10 February 2015.
- 90 Exhibit RC1551 Email chain between Michael Chen, Barry Felstead and Jason O'Connor, 7 February 2015.
- 91 Exhibit RC1580 Email chain between Jason O'Connor, Barry Felstead et al, 11 February 2015.
- 92 Exhibit RC0005 Bergin Inquiry Transcript (O'Connor), 3 September 2020, 2011–13.
- 93 Exhibit RC1512 Statement of Jason O'Connor, 15 June 2021, 3 [22]; Responsive submission Jason O'Connor, 2 August 2021, 2–3 [9]–[11].
- 94 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure w, 3–4.
- 95 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure y, 15–16.
- 96 Bergin Inquiry Transcript (Felstead), 17 August 2020, 1166–8.
- 97 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure y, 33.
- 98 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure y, 32.
- 99 Exhibit RC0006 Email chain between Jason O'Connor and Barry Felstead, 10 July 2015.
- 100 Exhibit RC0007 Email chain between Barry Felstead and Jane Williamson, 10 July 2015.
- 101 Bergin Inquiry Transcript (Felstead), 18 August 2020, 1215.
- 102 Bergin Inquiry Transcript (Felstead), 18 August 2020, 1217.
- 103 Exhibit RC1581 Supplementary Statement of Barry Felstead, 26 July 2021, [4]–[6], [8], [12]–[16], [35]–[37], [39]–[41], [43]–[44].
- 104 Transcript of Timothy Bryant, 17 May 2021, 73.
- 105 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure aaaa, 1.
- Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, 47 [138(b)]; Transcript of Timothy Bryant, 17 May 2021, 83.
- Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure xx, 8; see also Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 294–5 [I.24].
- Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, 31 [87]; see also Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure bbb, 1.
- 109 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure aaa.
- 110 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 295 [I.25].
- 111 Transcript of Richard Murphy, 29 June 2021, 2767, 2795.
- 112 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure II, 4.
- 113 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure II, 21 [9.2].
- 114 Exhibit RC0273 Email from Joshua Preston to Barry Felstead et al, 8 June 2018.
- 115 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure rr, 3.
- 116 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure rr, 7.

- 117 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure uu.
- 118 Exhibit RC0278 Crown Resorts Limited board meeting minutes, 12 June 2019, 7.
- 119 Exhibit RC0279 File Note regarding meeting with the VCGLR, 19 June 2019, 4.
- 120 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure hhh.
- 121 Exhibit RC0001 Statement of Timothy Bryant, 15 April 2021, Annexure dddd, 17 [59]–[60].
- 122 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018.
- 123 Transcript of Jason Cremona, 18 May 2021, 132.
- 124 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, 138.
- 125 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, 138.
- Exhibit RC1582 Confidential Draft of VCGLR Sixth Review of the Casino Operator and Licence, Version to Crown for Comment, 21 May 2018.
- 127 Exhibit RC0009 Statement of Jason Cremona, 15 April 2021, Annexure b, 10.
- Exhibit RC0008 Statement of Jason Cremona, 15 April 2021, 9 [28]; Transcript of Jason Cremona, 18 May 2021, 139.
- 129 Transcript of Jason Cremona, 18 May 2021, 139.
- 130 Exhibit RC0009 Statement of Jason Cremona, 15 April 2021, Annexure d, 3.
- 131 Transcript of Jason Cremona, 18 May 2021, 141.
- 132 Exhibit RC0009 Statement of Jason Cremona, 15 April 2021, Annexure f, 3.
- 133 Exhibit RC0009 Statement of Jason Cremona, 15 April 2021, Annexure i.
- 134 Exhibit RC0008 Statement of Jason Cremona, 15 April 2021, 17 [57].
- 135 Exhibit RC0008 Statement of Jason Cremona, 15 April 2021, 17 [59].
- 136 Exhibit RC0009 Statement of Jason Cremona, 15 April 2021, Annexure n, 8.
- 137 Exhibit RC0008 Statement of Jason Cremona, 15 April 2021, 21–2 [65]–[67].
- 138 Exhibit RC0009 Statement of Jason Cremona, 15 April 2021, Annexure y, 4.
- 139 Exhibit RC0008 Statement of Jason Cremona, 15 April 2021, 25 [81].
- 140 Exhibit RC0009 Statement of Jason Cremona, 15 April 2021, Annexure y, 5.
- Exhibit RC0008 Statement of Jason Cremona, 15 April 2021, 25 [81]; Transcript of Jason Cremona, 18 May 2021, 164.
- Exhibit RC0009 Statement of Jason Cremona, 15 April 2021, Annexure mm, 1.
- Exhibit RC0008 Statement of Jason Cremona, 15 April 2021, 36 [106]; Exhibit RC0009 Statement of Jason Cremona, 15 April 2021, Annexure nn, 1.
- 144 Transcript of Michelle Fielding, 28 June 2021, 2665.
- Exhibit RC0009 Statement of Jason Cremona, 15 April 2021, Annexure pp, 2.
- Exhibit RC0008 Statement of Jason Cremona, 15 April 2021, 37–8 [107]; Exhibit RC0009 Statement of Jason Cremona, 15 April 2021, Annexure qq.
- Exhibit RC0071 Letter from Louise Lane to Neil Jeans, n.d.; the letter is undated but Neil Jeans' evidence noted the date he received it as 4 June 2019: Transcript of Neil Jeans, 25 May 2021, 804.
- 148 Exhibit RC0009 Statement of Jason Cremona, 15 April 2021, Annexure tt, 1–2.
- 149 Exhibit RC0009 Statement of Jason Cremona, 15 April 2021, Annexure tt, 3–4.
- Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 308 [I.75(a)] (n 1796); RC0009 Statement of Jason Cremona, 15 April 2021, Annexure tt, 1.
- Exhibit RC0071 Letter from Louise Lane to Neil Jeans, n.d., 3; the letter is undated but Neil Jeans' evidence noted the date he received it as 4 June: Transcript of Neil Jeans, 25 May 2021, 804.
- 152 Transcript of Neil Jeans, 25 May 2021, 807–8.
- Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 307–9 [I.74]–[I.75].
- 154 Transcript of Neil Jeans, 25 May 2021, 809.
- 155 Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, Annexure zzz, 8.
- 156 Exhibit RC0009 Statement of Jason Cremona, 15 April 2021, Annexure gg, 9.
- 157 Exhibit RC0009 Statement of Jason Cremona, 15 April 2021, Annexure rr.
- 158 Exhibit RC0011 Email from Jason Cremona to Steve Thurston, 2 August 2019.
- 159 Transcript of Jason Cremona, 18 May 2021, 195.

- 160 Exhibit RC0009 Statement of Jason Cremona, 15 April 2021, Annexure vv, 4.
- 161 Exhibit RC0463 Letter from DLA Piper to Solicitors Assisting, 31 May 2021, Annexure j, 9.
- Exhibit RC0463 Letter from DLA Piper to Solicitors Assisting, 31 May 2021, Annexure j. 162
- Exhibit RC0183 Statement of Cara Hartnett, 16 April 2021, Annexure h, 1. 163
- Exhibit RC0183 Statement of Cara Hartnett, 16 April 2021, 1 [4]; Transcript of Cara Hartnett, 9 June 2021, 164 1881-2.
- Exhibit RC0183 Statement of Cara Hartnett, 16 April 2021, 1 [5]; Transcript of Cara Hartnett, 9 June 2021, 1879. 165
- 166 Exhibit RC0183 Statement of Cara Hartnett, 16 April 2021, 3 [16]-[18].
- 167 Transcript of Cara Hartnett, 9 June 2021, 1883.
- Exhibit RC0189 Letter from Barry Felstead to Catherine Myers, 1 July 2019, 3. 168
- 169 Exhibit RC0189 Letter from Barry Felstead to Catherine Myers, 1 July 2019, 3.
- 170 Transcript of Anne Siegers, 9 June 2021, 1979.
- 171 Transcript of Anne Siegers, 9 June 2021, 1984, 1986.
- 172 Transcript of Anne Siegers, 9 June 2021, 1988.
- 173 Exhibit RC1523 Letter from VCGLR to Barry Felstead, 2 October 2020.
- 174 Exhibit RC1552 Letter from Ross Kennedy to Ken Barton, 17 November 2020.
- 175 Exhibit RC0430 Crown Resorts Brand Committee meeting minutes, 22 August 2019, 2; Transcript of Anne Siegers, 10 June 2020, 2009-10.
- 176 Exhibit RC0192 FTI Consulting Review of Due Diligence Procedures for Operators and Premium Players Crown Resorts Ltd Report, 10 September 2019.
- Exhibit RC1619 Letter from Richard Murphy to Joshua Preston, 11 September 2019. 177
- Exhibit RC0438 Transcript of Proceedings—VCGLR Record of Meeting, 17 December 2020, 2. 178
- 179 Exhibit RC0438 Transcript of Proceedings—VCGLR Record of Meeting, 17 December 2020, 11–12.
- 180 Exhibit RC0366 VCGLR Transcript of Proceedings in the matter of Crown Melbourne, 21 January 2021.
- 181 Exhibit RC0366 VCGLR Transcript of Proceedings in the matter of Crown Melbourne, 21 January 2021, 5, 6.
- 182 Exhibit RC1525 Letter from Ken Barton to Cameron Warfe, 30 October 2020, 8.
- 183 Exhibit RC0366 VCGLR Transcript of Proceedings in the matter of Crown Melbourne, 21 January 2021, 5, 12.
- 184 See, eg, in relation to Mr Song, Exhibit RC1526 Letter from Ken Barton and Xavier Walsh to Scott May and Cameron Warfe, 5 February 2021, 5.
- 185 Exhibit RC0192 FTI Consulting Review of Due Diligence Procedures for Operators and Premium Players Crown Resorts Ltd Report, 10 September 2019.
- 186 Exhibit RC0366 VCGLR Transcript of Proceedings in the matter of Crown Melbourne, 21 January 2021.
- Exhibit RC1553 Letter from Ken Barton to Cameron Warfe, 4 December 2020, 7-8; Exhibit RC0366 VCGLR Transcript of Proceedings in the matter of Crown Melbourne, 21 January 2021, 38.
- 188 Exhibit RC0292 VCGLR Decision and Confidential Reasons for Decision, 27 April 2021, 2.
- Exhibit RC0292 VCGLR Decision and Confidential Reasons for Decision, 27 April 2021, 15-16. 189
- 190 Exhibit RC0292 VCGLR Decision and Confidential Reasons for Decision, 27 April 2021, 17.
- 191 Transcript of Xavier Walsh, 5 July 2021, 3333.
- 192 Transcript of Jane Halton, 7 July 2021, 3586.
- 193 Transcript of Helen Coonan, 8 July 2021, 3766.
- 194 Responsive submission Helen Coonan, 2 August 2021, 19 [93].
- Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 290, 195 314-15 [1.102]-[1.106].



CHAPTER 11

# Casino tax

#### CHAPTER 11

# Casino tax

## Introduction

- 1 Crown Melbourne, as the casino operator, is obliged to pay a casino tax and other moneys to the State. The obligations are not imposed by the Casino Control Act.¹ Rather, they are found in the Management Agreement made between Crown Melbourne (then known as Crown Casino) and the State on 20 September 1993.²
- 2 The Management Agreement was ratified by the Parliament by passage of the Management Agreement Act. That Act provides that the Management Agreement 'takes effect as if it had been enacted in [the] Act'. That is to say, the agreement has the force of a statutory enactment.
- 3 The Management Agreement has been amended by 10 Deeds of Variation. Each deed has also been ratified by an Act of Parliament.<sup>4</sup>
- 4 This chapter describes the amounts Crown Melbourne is required to pay to the State under the Management Agreement, with particular emphasis on the casino tax.

## Casino tax

- The Management Agreement in its original form provided that Crown Melbourne was to make the following payments to the State:
  - a Premium Payment (\$10 million) and a further payment of \$190 million, in consideration for the grant of the casino licence<sup>5</sup>
  - a Casino Supervision and Control Charge (\$5 million) to be paid each financial year from 30 June 1994 until 30 June 1997, in respect of the regulator's expenses of supervising the establishment of the temporary casino and the Melbourne Casino<sup>6</sup>
  - an additional casino tax of \$2,400,000 each month from 1 July 1994 until 30 June 1996 (in aggregate \$57,600,000)<sup>7</sup>
  - for each month until 30 June 1997, 20 per cent of the GGR for that month and from 1 July 1997, 21.25 per cent of the GGR for each month<sup>8</sup>
  - a community benefit levy of 1 per cent of the GGR each month<sup>9</sup>
  - an additional casino tax calculated by reference to the amount by which the GGR exceeds
    what is called the Base Amount.<sup>10</sup>
- 6 'Gross Gaming Revenue' was defined as:

the total of all sums, including cheques and other negotiable instruments whether collected or not, received in any period by the Company from the conduct or playing of games within the Temporary Casino or the Melbourne Casino (as the case may be) less the total of all sums paid out as winnings during that period in respect of such conduct or playing of games.<sup>11</sup>

7 The payment obligations have changed over time. It is not necessary to describe each change. Reference will only be made to those changes that relate to Crown Melbourne's obligation to pay casino tax.

#### Second Variation

- 8 The Management Agreement was varied by the Second Variation Deed made on 12 October 1995. This variation amended Crown Melbourne's obligations in relation to the construction of the southern tower of the hotel that was originally required to be completed as part of the original Melbourne Casino Complex. The variation imposed an obligation on Crown Melbourne in respect of revenue from Commission Based Players.
- 9 A 'Commission Based Player' is a player who participates in a premium player arrangement or a junket.<sup>12</sup>
- 10 The variation also imposed obligations on Crown Melbourne:
  - to pay a casino tax of 9 per cent of the Commission Based Players' Gaming Revenue (CBPGR) each month<sup>13</sup>
  - to pay a community benefit levy of 1 per cent of the CBPGR each month<sup>14</sup>
  - if the casino tax on the CBPGR and the community benefit levy for the year commencing on 1 January 1996, or the six-month period commencing on 1 January 1997, was less than \$5 million, to pay an additional casino tax to bring the amount paid up to \$5 million<sup>15</sup>
  - if the casino tax on the CBPGR and the community benefit levy for any financial year commencing on or after 1 July 1997 was less than \$10 million, to pay an additional casino tax to bring the amount paid up to \$10 million<sup>16</sup>
  - to pay an additional casino tax if the CBPGR exceeded the Commission Based Players'
     Base Amount<sup>17</sup>
  - to pay as an additional tax a monthly guaranteed minimum base tax of \$2.8 million from 1 January 1996 and ending 31 December 1998<sup>18</sup>
  - to pay \$5 million to Tourism Victoria in five equal annual payments of \$1,000,000.
- 11 There was also an obligation to pay interest for any unpaid amounts under clause 22 (tax on GGR and other payments), clause 22A (tax on CBPGR) or clause 22B (guaranteed minimum base tax).<sup>20</sup> Interest is at the rate set under the *Penalty Interest Rates Act 1983* (Vic).<sup>21</sup>
- 12 'Commission Based Players' Gaming Revenue' was defined as:
  - the total of all sums, including cheques and other negotiable instruments whether collected or not, received in any period after 31 December 1995 by the Company from the conduct or playing of games within the Temporary Casino or the Melbourne Casino (as the case may be) by Commission Based Players less the total of all sums paid out as winnings during that period to Commission Based Players in respect of such conduct or playing games.<sup>22</sup>
- 13 In addition, the definition of 'Gross Gaming Revenue' was varied by including the words 'but excluding any Commission Based Players' Gaming Revenue' at the end of the definition.<sup>23</sup>

#### Sixth Variation

- In June 1999, the Commonwealth, States and Territories entered into the Intergovernmental Agreement on the Reform of Commonwealth–State Financial Relations. That agreement requires each State or Territory to adjust their gambling tax arrangements to take account of the GST on gambling operations.<sup>24</sup>
- The Intergovernmental Agreement was given effect by the Sixth Variation Deed to the Management Agreement made on 3 April 2000. By that variation, the total amount of casino tax payable under clauses 22 and 22A was reduced by the State Tax Credit, being an amount equivalent to the amount determined under division 126 of the GST legislation.<sup>25</sup>

#### Ninth Variation

- 16 The Ninth Variation Deed was made on 4 June 2009. It made a number of changes to the rate of casino tax payable to the State:
  - The rate of casino tax payable from 1 July 1997 until the day before the commencement
    of the Ninth Variation Deed was set at 21.25 per cent of the GGR for the relevant month.<sup>26</sup>
  - From the commencement of the Ninth Variation Deed the casino tax became:
    - 21.25 per cent of the GGR attributable to the operation of Table Games; plus
    - 22.97 per cent of the GGR attributable to the operation of gaming machines.<sup>27</sup>
  - The casino tax on the GGR attributable to the operation of gaming machines was to increase by 1.72 per cent on 1 July 2010 and each year thereafter with the final increase to be in the year commencing 1 July 2014.<sup>28</sup>

#### Tenth Variation

- 17 The Tenth Variation Deed was made on 3 September 2014. By that time Crown Casino had changed its name to Crown Melbourne Ltd and the VCGLR had become the casino regulator.
- The Tenth Variation Deed led to several important changes. First, the deed recorded that the Casino Control Act would be amended to permit an increase in the maximum number of gaming machines (from 2,500 to 2,628) that could be located at the Melbourne Casino.<sup>29</sup> Second, it was agreed that the term of the casino licence would be extended by 17 years until 18 November 2050.<sup>30</sup> Third, it was noted that the casino licence would be amended to increase the maximum number of gaming tables for playing Table Games (from 400 to 440) and to increase the number of stations connected to FATGs (from 200 to 250) at the Melbourne Casino.<sup>31</sup>
- 19 In return, Crown Melbourne agreed to make the following further payments to the State:
  - \$250 million within seven days<sup>32</sup>
  - \$250 million on 1 July 2033<sup>33</sup>
  - if the annual growth of the Normalised Gaming Revenue for the financial year ending 30 June 2014 to the financial year ending 30 June 2022 exceeds 4 per cent, a payment of \$100 million, on 1 September 2022<sup>34</sup>

- if the annual growth of the Normalised Gaming Revenue for the financial year ending 30 June 2014 to the financial year ending 30 June 2022 exceeds 4.7 per cent, an additional \$100 million, on 1 September 2022<sup>35</sup>
- · if the casino tax paid to the State in respect of GGR and CBPGR from New Gaming Product in any year from 1 July 2015 to 30 June 2021 is less than \$35 million, an additional casino tax to bring the amount paid up to \$35 million.36
- 20 Three new definitions were introduced:

Normalised Gaming Revenue means Gross Gaming Revenue, plus Normalised Revenue from Commission Based Play.37

Normalised Revenue from Commission Based Play means the total turnover from Commission Based Players, multiplied by 1.35%.38

New Gaming Product means the new gaming products permitted to be installed as a consequence of the amendments to the Casino Licence referred to in clause 2.2(b) of the Tenth Deed of Variation and does not include any gaming product installed at the Melbourne Casino as at the Tenth Variation Commencement Date.39

21 There was also an obligation to pay interest for any unpaid amounts under clause 21A (the two payments of \$250 million) and the casino tax payable under clause 21B (the uplifts if the rate of growth of the Normalised Gaming Revenue exceeded 4 per cent and 4.7 per cent, respectively, in the relevant years).<sup>40</sup> Interest is at the rate set under the Penalty Interest Rates Act.<sup>41</sup>

# Conclusion

- 22 Crown Melbourne has acknowledged that since at least 2012 it has been underpaying casino tax owed to the State.
- 23 In July 2021, Crown Melbourne paid approximately \$61.5 million to the State on account of unpaid casino tax (including penalty interest).42
- 24 There is an unresolved question as to whether the underpayment of casino tax was far greater. The details of that issue are dealt with in the next chapter.

# **Endnotes**

- 1 Casino Control Act 1991 (Vic) s 81J.
- The State and the proposed casino operator were required to enter into the Management Agreement before the casino licence could be granted. See *Casino Control Act 1991* (Vic) s 15(1).
- 3 Casino (Management Agreement) Act 1993 (Vic) s 6(1).
- 4 Casino (Management Agreement) Act 1993 (Vic) ss 6A-6J, schs 2-11.
- 5 Casino (Management Agreement) Act 1993 (Vic) sch 1 cl 21.1; Casino Control Act 1991 (Vic) s 112A(1)(a).
- 6 Casino (Management Agreement) Act 1993 (Vic) sch 1 cl 22.1(a); Casino Control Act 1991 (Vic) s 112A(1)(b).
- 7 Casino (Management Agreement) Act 1993 (Vic) sch 1 cl 22.1(c).
- 8 Casino (Management Agreement) Act 1993 (Vic) sch 1 cl 22.1(b).
- 9 Casino (Management Agreement) Act 1993 (Vic) sch 1 cl 22.1(d).
- 10 Casino (Management Agreement) Act 1993 (Vic) sch 1 cl 22.2.
- 11 Casino (Management Agreement) Act 1993 (Vic) sch 1 cl 2.
- 12 Casino (Management Agreement) Act 1993 (Vic) sch 3 cl 3.1(a), amending Management Agreement cl 2 (inserting the definition of 'Commission Based Player').
- 13 Casino (Management Agreement) Act 1993 (Vic) sch 3 cl 3.1(x), inserting Management Agreement cl 22A.1(a).
- 14 Casino (Management Agreement) Act 1993 (Vic) sch 3 cl 3.1(x), inserting Management Agreement cl 22A.1(b).
- 15 Casino (Management Agreement) Act 1993 (Vic) sch 3 cl 3.1(x), inserting Management Agreement cl 22A.2.
- 16 Casino (Management Agreement) Act 1993 (Vic) sch 3 cl 3.1(x), inserting Management Agreement cl 22A.3.
- 17 Casino (Management Agreement) Act 1993 (Vic) sch 3 cl 3.1(x), inserting Management Agreement cl 22A.4.
- 18 Casino (Management Agreement) Act 1993 (Vic) sch 3 cl 3.1(y), inserting Management Agreement cl 22B.
- 19 Casino (Management Agreement) Act 1993 (Vic) sch 3 cl 3.1(w), substituting Management Agreement cl 20.3.
- 20 Casino (Management Agreement) Act 1993 (Vic) sch 3 cl 3.1(z), inserting Management Agreement cl 22C.
- 21 Casino (Management Agreement) Act 1993 (Vic) sch 1 cl 2 (definition of 'Default Rate').
- 22 Casino (Management Agreement) Act 1993 (Vic) sch 3 cl 3.1(a), amending Management Agreement cl 2 (inserting the definition of 'Commission Based Players' Gaming Revenue').
- 23 Casino (Management Agreement) Act 1993 (Vic) sch 3 cl 3.1(e), amending Management Agreement cl 2 (amending the definition of 'Gross Gaming Revenue').
- 24 Intergovernmental Agreement on the Reform of Commonwealth–State Financial Relations, signed June 1999 (entered into force 1 July 1999) cl 5(viii).
- Casino (Management Agreement) Act 1993 (Vic) sch 7 cl 3(b), inserting Management Agreement cl 22C.2; Casino (Management Agreement) Act 1993 (Vic) sch 7 cl 3(a), amending Management Agreement cl 2 (inserting definition of 'State Tax Credit'); A New Tax System (Goods and Services Tax) Act 1999 (Cth) ch 4 pt 4-4 div 126.
- 26 Casino (Management Agreement) Act 1993 (Vic) sch 10 cl 3.2(b), amending Management Agreement cl 22.1(b)(ii).
- 27 Casino (Management Agreement) Act 1993 (Vic) sch 10 cl 3.2(c), inserting Management Agreement cl 22.1(b)(iii).
- 28 Casino (Management Agreement) Act 1993 (Vic) sch 10 cl 3.2(f), inserting Management Agreement cl 22.1(f).
- 29 Casino (Management Agreement) Act 1993 (Vic) sch 11 cl 2.1(b).
- 30 Casino (Management Agreement) Act 1993 (Vic) sch 11 cl 2.1(c).
- 31 Casino (Management Agreement) Act 1993 (Vic) sch 11 cl 2.2(b).
- 32 Casino (Management Agreement) Act 1993 (Vic) sch 10 cl 3.1(d), inserting Management Agreement cl 21A(a).
- 33 Casino (Management Agreement) Act 1993 (Vic) sch 10 cl 3.1(d), inserting Management Agreement cl 21A(b).
- 34 Casino (Management Agreement) Act 1993 (Vic) sch 10 cl 3.1(d), inserting Management Agreement cl 21B(a)(i).
- 35 Casino (Management Agreement) Act 1993 (Vic) sch 10 cl 3.1(d), inserting Management Agreement cl 21B(a)(ii).
- 36 Casino (Management Agreement) Act 1993 (Vic) sch 10 cl 3.1(e), inserting Management Agreement cl 22.10(b).
- 37 Casino (Management Agreement) Act 1993 (Vic) sch 10 cl 3.1(d), inserting Management Agreement cl 21B(b)(ii).
- 38 Casino (Management Agreement) Act 1993 (Vic) sch 10 cl 3.1(d), inserting Management Agreement cl 21B(b)(iii).
- 39 Casino (Management Agreement) Act 1993 (Vic) sch 10 cl 3.1(e), inserting Management Agreement cl 22.10.

- 40 Casino (Management Agreement) Act 1993 (Vic) sch 10 cl 3.1(d), inserting Management Agreement cl 21C.
- 41 Casino (Management Agreement) Act 1993 (Vic) sch 1 cl 2 (definition of 'Default Rate').
- 42 Crown Resorts, 'Victorian Casino Tax—Update' (ASX Media Release, 27 July 2021).



CHAPTER 12

# Unpaid casino tax

#### CHAPTER 12

# Unpaid casino tax

## Introduction

- 1 Crown Melbourne is required to pay casino tax to the State. The amount of tax is a percentage of GGR and a percentage of CBPGR, each then adjusted for GST. There is also an uplift (called super tax) if the GGR or CBPGR exceeds a certain amount.
- 2 GGR is defined to mean:

the total of all sums, including cheques and other negotiable instruments whether collected or not, received in any period by the Company from the conduct or playing of games within the Temporary Casino or the Melbourne Casino (as the case may be) less 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.<sup>1</sup>

- 3 CBPGR has an equivalent meaning but is confined to revenue received from Commission Based Players. These are players who participate in premium player arrangements or junkets.<sup>2</sup>
- 4 Stripped down to their essential elements, both GGR and CBPGR are the difference between 'sums ... received ... from playing games' and 'sums paid out as winnings'. The underpayment of casino tax has engaged each element.
- To understand the issues raised, it is necessary to explain some background matters regarding Crown Melbourne's operations, including its loyalty program.

# The loyalty program

- 6 Members of Crown's loyalty program, Crown Rewards, receive various benefits and privileges.
- Members accrue Crown Rewards points based on the amount they gamble at Crown Melbourne and how much they spend at Crown Melbourne participating hotels, and retail and food and beverage outlets, such as restaurants and clubs.<sup>3</sup>
- 8 Crown Rewards points can be exchanged for goods or services from many outlets at the Melbourne Casino Complex. The outlets include those operated by Crown Melbourne as well as those operated by third party retailers.<sup>4</sup> The retailers include high-end stores such as Bvlgari, Hugo Boss, Omega and Rolex, as well as restaurants such as Nobu and Rockpool Bar & Grill.<sup>5</sup> If a member elects to use their points at one of the outlets, Crown Melbourne pays the supplier the cost of the goods or services.<sup>6</sup> Points can also be exchanged for car parking, meals and hotel accommodation.<sup>7</sup>
- 9 Separately, benefits are also awarded to members simply based on their type of membership. For example, platinum tier members will, by virtue of that membership, be entitled to free car parking, hotel accommodation or discounted meals. On occasion, Crown staff will provide those benefits to selected members as a sign of goodwill.

## Crown's promotional activities

- 10 Crown Melbourne also offers benefits to its members as part of its promotional activities. The benefits include:
  - category 1: Pokie Credit Rewards (Welcome Back/Free Credits Program)
  - category 2: Mail Outs (Bonus pokie offers)
  - category 3: Pokie credits (Matchplay)
  - category 4: Random Riches (Carded Lucky Rewards)
  - category 5: Jackpot Payments
  - · category 6: Consolation
  - · category 7: Pokie Credit Tickets
  - category 8: Bonus Jackpots (dining, hotel accommodation and parking).<sup>10</sup>
- 11 Most benefits (apart from some in category 5 and all of categories 3, 6 and 8) are provided in the form of pokie credits that can be used to gamble on an EGM.<sup>11</sup>
- 12 There is an important distinction between the types of member benefits that are provided. The benefits in categories 1, 2, 4 and 7 are provided in the form of pokie credits to be used to gamble on an EGM.<sup>12</sup> They cannot be converted to cash and are non-transferable.<sup>13</sup>
- 13 Category 3 is different. Matchplay are Crown Rewards points that a patron has converted to pokie credits to gamble on an EGM.<sup>14</sup>
- Category 5 benefits (Jackpot Payments) are also different. A jackpot is defined in the Casino Control Act, in substance, as the 'winnings ... payable' from money that accumulates as contributions are made to a special prize pool. The benefits in category 5 are time-based jackpots. That is, members can win prizes distributed at random by playing on participating EGMs during scheduled promotional times. The prizes include pokie credits, cash, food and beverage vouchers (redeemable at participating Crown Melbourne restaurants) and third party gift cards (for example, for use at David Jones, Coles or BP service stations). 16
- 15 Category 6 benefits (Consolation) allow a member to double the amount they would otherwise win on an EGM.<sup>17</sup>
- An important feature of each of the benefits in categories 1 to 7 is that (except for fixed prize category 5 promotions such as cash or gift cards), in its calculation of GGR and CBPGR, Crown Melbourne has accounted for the benefits when redeemed as a sum received and has deducted the value of the benefits as a sum paid out as winnings. By this method, the benefits had no effect on the calculation of the casino tax.<sup>18</sup>
- 17 It is worth emphasising that although categories 1 to 7 were often referred to by Crown Melbourne as 'Bonus Jackpots', none (apart from possibly categories 5 and 6) were jackpots in accordance with the statutory definition or with ordinary parlance.

# The category 8 promotion

- 18 Turning to category 8 Bonus Jackpots (dining, hotel accommodation and parking), the manner in which Crown Melbourne treated this category for the purpose of calculating GGR and CBPGR was different to how it treated the other categories.
- 19 From at least 2000, one of Crown Melbourne's promotions was its gaming loyalty food program.<sup>19</sup> The program allowed a member to earn points based on gambling turnover. The member could purchase a meal or obtain a discount on a meal at participating Crown restaurants based on points accrued on EGMs and table games.<sup>20</sup>
- 20 In late 2011, Crown Melbourne investigated whether it could treat the cost of its loyalty food program as a sum paid out as winnings for the purposes of GGR.
- 21 The concept was set out in a presentation titled 'Gaming Machines Food Program Initiative', prepared in October 2011. The following are extracts from the presentation:

Change Gaming Machines Food Program to be controlled by the Linked Jackpot Equipment to reduce costs and increase profit/margin.

'If anyone in this country doesn't try to minimise their tax they want their heads read' (Kerry Packer 1991—House of Representatives Select Committee).

#### Proposal

- Transfer the Issuance control of the Gaming Machine Food Program from Syco to Dacom
- Classify the Gaming Machines Food Program to be a Bonus/Jackpot as per Welcome Back (earn X receive Y)
- Allow the Gaming Machine Food Program Costs to be a Gaming Machine Tax Deduction

#### Reduce

- · Gaming Machines Total Revenue
- Reduce Marketing Costs
- Reduce Tax

#### Increase:

- · Gaming Machines Profit
- Gaming Machines Margin

#### Legal/Compliance Approval

VCGR/Treasury Questions on Tax Deductible Items

Focus on Bonusing and Jackpots.<sup>21</sup>

- 22 Two points should be noted about the proposal. First, it intended to treat the category 8 benefits differently to the category 1 to 7 benefits. The category 8 benefits, when used, were not to be treated as sums received for the purposes of calculating GGR. If they were, then there would be no tax advantage. Second, although it was to be styled as a 'jackpot', the program did not have any of the characteristics of a jackpot.<sup>22</sup> Treating the Gaming Machines Food Program as a jackpot would mask its true character.
- 23 On 6 March 2012, Crown Melbourne decided to go ahead with the proposal.<sup>23</sup> There was, however, concern that the regulator might query the addition of the benefits to the sums paid out as winnings. This was for good reason. No aspect of the food program initiative was a sum paid out for a win by the member. So, Crown Melbourne decided to conceal what was about to take place.
- 24 On 22 March 2012, Mr Edwin Aquino, Revenue Audit Manager, sent a memorandum to Mr Peter Herring, now the Group General Manager, Product, Strategy and Innovation. The memorandum stated:

I refer to your proposed reclassification of Gaming Machines Food program to be part of the Bonus Jackpot and allow the promotional cost to be a Gaming Machine Tax deduction.

Factoring in the refurbishment, economic environment, impacts from negative publicity and the increase in Gaming Machines Gaming Tax by 1.72% in 1 July 2012, we are of the opinion that the proposed change will not be noticed by the VCGLR.

We would recommend the Gaming department prepares a roll forward style explanation in the event that the VCGLR questions the budgeted gaming tax once our budgets are eventually submitted. We are happy to assist in this process.<sup>24</sup>

- 25 Ms Debra Tegoni, Crown's then in-house counsel, considered the permissibility of treating the food program as a sum paid out as winnings. She recorded her views in a memorandum dated 28 March 2012.25
- 26 Ms Tegoni's memorandum did not definitively say the cost of the food program could be treated as winnings. All Ms Tegoni did was to set out potential arguments for and against that view. She said:

As there is no definition of 'bonus jackpots' one can argue that these types of rewards are a 'bonus'—an unexpected reward in the ordinary meaning of that word and in any event is correctly described as a 'winning' to justify a deduction from Gross Gaming Revenue ...

An alternative argument on this point may be that the reward or bonus is not a 'sum paid out as winnings' ... to be properly calculated as a deduction. The bonus/reward or prize ... does not arise in respect of the playing of games ...

[W]e would also rely on a course [of] conduct that such deductions have been allowed in the past ... [t]his is not a strong argument for us ... 26

- 27 Ms Tegoni said that proceeding with the deductions 'is aligned with what we have done in the past and so puts us in no worse a situation, other than if any dispute were to arise, the potential for claw back quantum obviously increases'.27
- 28 In a section of her memorandum headed 'Opinion and Risks', Ms Tegoni wrote that the doubts she raised about the permissibility of the deduction would be:

... of course only relevant if the change [were] 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.

Provided extending the reclassification of the gaming machine's [sic] food program does not alert anyone's interest and so a review in tax payable, the risk appears fairly low and if required a reasonable argument can be put to justify our position. The risk may increase as and when more deductions are included over time ...<sup>28</sup>

- 29 The idea was to conceal the new deduction from the regulator. Crown Melbourne initially proposed to implement the deductions gradually, over a period of time. This was a risk management strategy to conceal the deductions from the regulator.<sup>29</sup>
- 30 Crown submits that the 'unchallenged evidence is that the staged rollout occurred for "technical" reasons'. That is not correct according to Mr Herring's evidence:
  - Q: The March 2012 Gaming Food Program Initiative proposed that the roll out of dining awards ... be staged ... Was that proposal designed to ensure, or expected to have the effect that, the regulator did not become, or would not become, aware of the deductions? ...
  - A: ... the initial staged roll-out discussion was technical, staged to ensure the systems operated as designed but I do recall a request via Mr [Richard] Longhurst wanting to see a staged roll-out in the presentation as a risk management strategy which I presume was relating to the regulator becoming aware but I cannot be sure (emphasis added).31
- 31 The cost to Crown Melbourne of implementing the deductions in stages was estimated to be \$950,000 in additional casino tax.<sup>32</sup> The implementation timetable was subsequently accelerated.33
- 32 In April 2013, Crown Melbourne decided to add the benefits that members received for hotels and parking to the food program deductions.<sup>34</sup> This included benefits to which a member was already entitled because of their membership status (for example, a black tier member was entitled to free parking, regardless of the outcome of any gambling event). The effect of this further change would be that a proportion of the deductions were in respect of benefits not based on gambling turnover.<sup>35</sup> The same is likely to be true of the dining rewards deducted as part of the food program.<sup>36</sup>

33 The extension of the deductions and the risk of detection were recorded in another note by Ms Tegoni. She wrote:

> Basically they are saying that parts of the Crown Signature Club Program, which have been a cost of doing business for the program will be allocated as a deduction where it can be linked with play.

Essentially it is an internal adjustment whereby where [sic] the reward, wining [sic] in terms of deduction under the Casino Management Agreement (can be linked to play) than [sic] a transfer price deduction will be deducted. If there is no link to play eg silver members who are entitled to general free car parking, Crown will in its discretion continue to offer, as a benefit of membership, car parking. We may be forced to defend this at some point with the Regulator but it is agreed that it is the issue of 'winnings' like the other deductions that will potentially be an issue and also this with an additional element of us providing a member benefit and deducting it when it is linked to play, which on one view is appropriate.

This also applies to the hotel benefits.<sup>37</sup>

- 34 The evidence indicates that car parking was treated as a sum paid out as a winning in late 2013 and that hotel deductions were treated that way from 2014.38
- 35 The most likely inference is no one at Crown Melbourne who knew of the deductions believed that the category 8 deductions were legitimate. They nonetheless proceeded with the changes because they believed the chance of the deductions being discovered was limited, and sufficiently limited to warrant Crown Melbourne running the risk of detection.
- 36 The evidence given by both Mr Mark Mackay, Executive General Manager of EGMs, and Ms Michelle Fielding, Group Executive General Manager and a qualified lawyer,<sup>39</sup> supports this inference.<sup>40</sup> The labelling of category 8 benefits as jackpots was confined to discussions regarding GGR. In no other context were the benefits of meals, accommodation and parking referred to as jackpots. The benefits were described as jackpots in a GGR context to mask their true character.

## External legal advice in 2014

37 In December 2014, Crown Melbourne sought advice from senior and junior counsel on whether its premium player commissions were winnings for the purposes of calculating GGR.41 The premium player commission was an amount paid to a player calculated as a percentage of the player's turnover in the casino or as a percentage of the player's losses at the casino. In addition, a complimentary allowance covering accommodation, food, drinks and airfares, also calculated on the player's turnover, was provided. 42

38 Counsel said that the complimentary allowances were not 'winnings'. Their reasons are worth setting out:

Such allowances do not bear the character of a 'sum paid out as winnings' but are in the nature of gifts or gratuities, albeit Crown calculates the value of the gift or gratuity based on a player's turnover. Allowances may only be applied to accommodation, food and beverage and airfare costs, and may not be redeemed for cash. We accept that a 'winning' may be a non-monetary prize, but we do not see that a gift whose size is calculated by reference to turnover or losses is capable of being a 'prize'. Complimentary Allowances are not awarded to the winner of a game.43

- 39 The conclusion about the complimentary allowances is plainly correct. The reasons for that conclusion also make clear, and it would have been clear to Crown Melbourne, that the category 8 benefits (dining, hotel accommodation and parking) were not winnings to be taken into account for the purposes of calculating GGR.
- 40 Notwithstanding the advice received from senior counsel, Crown Melbourne continued to treat the value of category 8 bonuses as sums paid out as winnings.

## VCGLR's inquiries in 2017 and 2018

- 41 In mid-2017, the VCGLR looked at the Bonus Jackpot issue.
- 42 On 29 June 2017, there was a meeting between representatives of Crown Melbourne and the VCGLR. At that meeting, Ms Tracy Shen of the VCGLR raised the impact of the different jackpot types on the EGM revenue calculation. She requested 'a breakdown of Bonus Jackpot[s] for one day'. Mr Matthew Asher, Strategy and Innovation Manager, Gaming Machines, said he would provide that information.44
- 43 The VCGLR subsequently met with Mr Asher to discuss the issue. 45
- 44 On 31 May 2018, Mr Jason Cremona of the VCGLR emailed Ms Fielding and asked a number of questions about the Bonus Jackpots. These included a request for confirmation that the Bonus Jackpots treated as winnings were specific to amounts earned or awarded on an EGM. He also sought details of each type of Bonus Jackpot.<sup>46</sup>
- 45 Mr Cremona's enquiry provoked a flurry of activity at Crown Melbourne. It involved directors of Crown Melbourne, Mr Ken Barton and Mr Barry Felstead; and senior executives Mr Xavier Walsh, Crown Melbourne's COO, and Mr Alan McGregor, Crown Resorts' CFO. Mr Herring, in-house counsel Mr Joshua Preston, and Ms Fielding, then Crown Resorts' Group General Manager, Regulatory and Compliance, were also involved.<sup>47</sup>

- 46 The result of this activity was agreement as to the form of response to be given to the VCGLR.<sup>48</sup> The response was sent by Ms Fielding on 5 June 2018. It provided the following information:
  - 1. Pokie Credit Rewards (Welcome Back/Free Credits Program)
    - · Based on Pokie Points earned on a Gaming Machine during a patron's last visit, will determine the patron's reward value
    - Senior Pokie Credit Reward receive a bonus \$3 at specific levels
  - 2. Mail Outs
    - These are Bonus Pokie Credit Offers sent via mail to Crown Reward Members for varying amounts
  - 3. Pokie Credits (Matchplay)
    - These are Pokie Credits received by exchanging Crown Rewards points for Pokie Credits at any gaming machine
  - 4. Random Riches (Carded Lucky Rewards)
    - · Rewards based on earning Pokie Points on a gaming machine for specific groups of Crown Rewards Members

#### Miscellaneous

- 5. Jackpot Payments
  - Pokie Credit payments as Pokie Credits from Lucky Time Jackpots
- 6. Consolation
  - Consolation payments e.g. issued from Lucky Time Jackpots or Lucky Numbers
- 7. Pokie Credit Tickets
  - Promotional Pokie Credit Game Tickets issued to players for redemption at Gaming Machines

#### 8. Bonus Jackpots

- Based on Pokie Points earned on Gaming Machines
  - Carpark 25 Pokie Points in a day
  - Valet Parking for Black and Platinum Crown Rewards—1,000 Pokie **Points**
  - Hotel Night Benefits Crown Rewards Rewards [sic] Black—1,000 **Pokie Points**
  - Hotel Night Benefits Crown Rewards Rewards [sic] Platinum—1000 **Pokie Points**
  - Dining Rewards, the amount issued is based on Pokie Points earned on Gaming Machines during a visit example:
    - Receive \$7.50 Dining Reward by earning 150 points on gaming machines in a day.49
- 47 Ms Fielding also addressed the specific questions raised by Mr Cremona. The answers are in italics:

Just to clarify my understanding of the discussion, I noted the following dot points. 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: That is correct, but for exceptions noted at points 2, 3 & 7 above:

- Bonus jackpots are only accumulated and deducted from gaming tax AFTER being redeemed/used and NOT when earned. All bonusing is only deducted at the time of redemption.
- A patron cannot redeem 'loyalty points earned' for credits on a gaming machine. This is incorrect—note point 3 above. Bonuses must be earned or provided with a specific condition to earn the bonus, ie; returning to Crown to earn X bonus credits. That is correct;

#### A couple of action points too:

- Peter said that bonus prize/points are not 'linked to signature club'. Can you get him to expand on this? Neither Pete or I recall this—however, to clarify, they generally are related.
- · 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. See listing above ...<sup>50</sup>

- 48 There was one important matter that Ms Fielding did not disclose to Mr Cremona. She did not explain that many members were entitled to category 8 benefits because of their loyalty program membership status (black, platinum, gold and silver) and not because of an EGM gambling event. It is unclear who was aware of this at the time,<sup>51</sup> though Mr Herring appears to have known about it.<sup>52</sup>
- 49 It is not clear whether the failure to disclose the true nature of the category 8 benefits was inadvertent. This was not investigated during the Commission's hearings so no findings can be made. Nonetheless, what is clear is that Mr Cremona was not told all the relevant facts.
- 50 In any event, Crown accepts that it should have been more open in the disclosure it made to the VCGLR in 2018.<sup>53</sup>

### External advice in 2018 and 2019

- Despite the exchange of correspondence, Crown Melbourne was concerned that the VCGLR was 'digging around' about the category 8 benefits.<sup>54</sup> Mr Preston and others were concerned because Crown Melbourne 'weren't on solid ground'.<sup>55</sup> This could be described as a mild understatement.
- 52 So, on 17 October 2018, Mr Preston sought advice from Mr Glen Ward, a partner of MinterEllison, regarding the permissibility of Crown Melbourne's practice in relation to the deductions.<sup>56</sup>
- 53 Mr Preston informed Mr Ward that the deductions had been made for several years.<sup>57</sup> Mr Ward was not informed that some members were already entitled to certain of the benefits based on their membership status.
- 54 A solicitor assisting Mr Ward recorded the instructions obtained from Mr Preston, Mr Herring and Ms Fielding. Her note reads:
  - Health check re food + hotel + carpark program

bonus jackpots not broken down into types of jackpots

- belief that VCGLR would know that credit rewards are being deducted
- Item 8 does not meet def of bonus jackpot b/c not using ICT
- evidence over time where we can show [the VCGLR had] clear visibility.<sup>58</sup>

55 Mr Ward provided a draft advice to Mr Preston on 25 October 2018.<sup>59</sup> The following paragraphs are important:

•••

#### 21. The VCGLR:

- a. was not advised of this change in the treatment of Gaming Machine Food program costs;
- b. has not approved the Gaming Machine Food Program as a 'Bonus Jackpot'.
- 22. Documents issued at the time of the introduction of these changes to the Gaming Machine Food Program speak of, among other things, the benefit to the bottom line of including these Bonus Jackpots, and the likelihood of the VCGLR detecting this change in treatment.

•••

- 26. On a strict interpretation of Gross Gaming Revenue, to constitute a deductible, the amounts must be 'won' by the punter 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 Food Program involves.
- 27. The concept of loyalty credits accruing based on level of play does not logically fit within the concept of a jackpot, either as that term is commonly understood, or as it is defined in the [Casino Control Act] (which is a very narrow, technical definition).
- 28. On the other hand, paragraph 1.03 of the [internal control statement] (sanctioned by the VCGLR) provides a helpful statement of intention ... 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 Food Program may be able to be treated as 'winnings' for the purposes of Gross Gaming Revenue.
- 29. According to the Technical Criteria, all Bonus Jackpots need to be approved. The changes to the Gaming Machine Program were not so approved.<sup>60</sup>
- 56 Crown Melbourne says Mr Ward's draft advice did not make clear that the deductions were improper. 61 If that is a fair reading of the draft advice, the reader would have at least understood there was a serious risk that the deductions were not permitted.
- 57 Following receipt of the draft advice, Ms Fielding and Mr Herring made some amendments to it (by providing extra information) and returned it to Mr Ward to see whether he would change his mind.<sup>62</sup> The amendments were largely rejected.<sup>63</sup>

- 58 Mr Preston forwarded the draft advice to Mr Walsh.<sup>64</sup> It was also provided to Mr Mackay and other senior executives. Mr Mackay, who reviewed the advice,<sup>65</sup> said he thought that the directors also knew of the advice.<sup>66</sup>
- 59 On 9 July 2019, Ms Fielding sought further advice from Mr Ward. She asked whether a new draft Technical Requirements Document proposed by the VCGLR changed Mr Ward's advice on Crown's tax treatment of its Bonus Jackpots.<sup>67</sup>
- 60 Mr Ward provided a second advice. That advice accurately identified that 'the question of whether deductions made in respect of the Gaming Machine Bonus Jackpot Program meet the statutory definition of sums "paid out as winnings" is a question of statutory construction, and not to be resolved by reference to other documents'.<sup>68</sup>
- Despite this, the second advice can be read as suggesting that if the Technical Requirements Document was altered to reflect the way the Bonus Jackpot promotion program operated, that change may provide some basis for a contention that the Bonus Jackpot could be treated as a winning.
- The document Technical Requirements for Gaming Machines in the Melbourne Casino, dated 10 July 1996, sets out the technical requirements and the criteria against which approval will be given for EGMs to be used for gambling in the Melbourne Casino. <sup>69</sup> The technical requirements cover matters such as machine access, monitoring and software integrity. The technical requirements have nothing at all to do with the calculation of GGR under the Management Agreement.
- 63 Mr Ward must have appreciated that even if the new draft Technical Requirements Document endorsed or reflected the operation of the Bonus Jackpot program, this would have no impact on the GGR definition. In fact, Mr Ward had already made that point explicit. His suggestion to the contrary makes no sense.
- 64 Mr Ward's final advice also contained the following paragraph:

We understand in this respect that the VCGLR has made certain enquiries during the course of 2018 in relation to Crown Melbourne's treatment of Bonus Jackpots, but to date the VCGLR has not raised any specific issue about the composition of Bonus Jackpots or the treatment of Gaming Machine Bonus Jackpot Program costs as a deductible. Helpfully, under the New [Technical Requirements Document], there is less scope for the VCGLR to raise issues with Crown's treatment of the Gaming Machine Bonus Jackpot Program.<sup>70</sup>

- of GGR could not be affected by some other document, such as a new draft Technical Requirements Document. It is likely that Mr Ward was attempting to convey the possibility that once the VCGLR dealt with the technical requirements issue, it may not return to the manner in which GGR was calculated.
- 66 Mr Ward sent his final advice to Ms Fielding on 18 November 2019.<sup>71</sup> She passed it on to Mr Walsh and Mr Herring.<sup>72</sup> According to Mr Mackay, the directors and Mr McGregor were informed of the advice, and may have been given a copy.<sup>73</sup>
- 67 Despite Mr Ward's advice, the costs of the category 8 promotions continued to be treated as sums paid out as winnings.

# The GST dispute

- 68 In 2020, there was a dispute between Crown Melbourne and the Commissioner of Taxation regarding how GST should be calculated in relation to the commissions and rebates Crown paid to junket operators.74
- 69 The dispute was litigated in the Federal Court and was resolved at first instance in Crown Melbourne's favour on 10 September 2020.75
- 70 A week later Mr Chris Reilly, General Manager of Tourism at Crown Resorts, emailed a number of people at Crown Melbourne, including Mr Walsh, Mr Herring, Ms Fielding, Mr Barton and Mr Felstead, asking for 'a chat ... to go through some outstanding and historical tax and regulatory matters ...'.76
- 71 This caused Mr Herring, on 21 September 2020, to raise the Bonus Jackpot deductions with Ms Fielding. He emailed her that, in his view, Crown Melbourne had been 'very specific and clear on all deductions' with the VCGLR. 77
- 72 The next day, Mr Walsh invited a number of senior executives, including Mr Barton, Mr McGregor, Mr Preston, Mr Felstead, Ms Fielding and Mr Herring, to attend a meeting regarding 'GST judgment—DFT—Next Steps'.78 A file note of the meeting records:

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Bonus Jackpots 2012—$4 million
$40 million
Is it deductable—what are the components
Has it been approved ...
1994—no one looked at it
90% ok going forward.<sup>79</sup>
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- 73 Mr Walsh gave evidence about the meeting. He said that 'everybody at the meeting understood that there was a residual risk' as to the deductions by the end of that meeting.<sup>80</sup> Mr Walsh also said Mr Barton 'had a view that perhaps [Crown had] taken too narrow a view to what was winnings',81 and that Mr Barton was looking to 'wrap up all the historical tax matters ... in a single agreement' with the State.82
- 74 Ms Fielding gave evidence that, prior to February 2021, Mr Walsh told her he intended to escalate the tax treatment of Bonus Jackpots to the Crown Melbourne board and ensure the regulator was clear about the issue.83 It does not appear he raised the issue with the board, and he certainly did not raise it with the regulator.
- 75 The category 8 benefits continued to be treated as sums paid out as winnings.

76 Crown Melbourne contends that this was the fault of Mr Barton and Mr Felstead, both of whom are no longer employed by a Crown company.<sup>84</sup> Mr Walsh makes the same point.<sup>85</sup> The contention, however, ignores the fact that other senior executives were involved, to a far greater degree than Mr Barton and Mr Felstead. Some still hold important positions within the organisation.

# Meeting between Mr Walsh and Ms Coonan

- 77 On 22 February 2021, the Victorian Government announced that there would be a royal commission to inquire into the suitability of Crown Melbourne to continue to hold its casino licence.
- 78 A meeting between Mr Walsh and Ms Helen Coonan, then Chairman of Crown Resorts, was scheduled for the next day. Mr Walsh prepared an agenda for the meeting. Relevantly, it read:

#### 6. Compliance

Legacy issue86

- 79 Mr Walsh gave the following evidence about the meeting. He said he raised with Ms Coonan what he described as a 'legacy issue', being the 'tax issue'.87 Apparently, he did not go into any detail with Ms Coonan regarding the nature of the 'legacy issue'. He said Ms Coonan told him to 'pull the information together' because she was 'concerned regarding the matter to, you know, establish a position'.88 Mr Walsh was to 'pull the information together' and give it to the lawyers for advice and disclosure. 89 Mr Walsh said that Ms Coonan was 'definitely going to consider the matter'.90
- 80 Confirmation of this last statement appears in a note taken by Mr Walsh. He wrote in hand on the agenda, adjacent to the words 'legacy issue':

Helen [Coonan] to consider

XW [Mr Walsh] to think about how best to communicate.91

- 81 Mr Walsh explained that the words 'how best to communicate' were a reference to how best to disclose the matter to the regulator.92
- 82 Ms Coonan also gave evidence about the meeting. Her evidence is, in a minor respect, different to that of Mr Walsh.
- 83 Ms Coonan said that Mr Walsh told her that, in the 'interests of transparency, there was a legacy matter he wanted to bring to [her] attention'; '[i]t related [to] the deductions or calculations of the jackpot tax'; and that 'there was a memorandum ... which ... suggested ... the VCGLR had not been informed and probably wouldn't notice'. She said that Mr Walsh was worried about it as a 'transparency issue', but that the VCGLR had taken a 'thorough look at it' and it had now been approved.93

- 84 Ms Coonan agreed that she had directed Mr Walsh to 'pull the information together' and give it to Crown's lawyers. 94 However, Ms Coonan disagreed that she was to consider the issue. Her evidence was:
  - Q: When he [Mr Walsh] met with Mr Mackay, Mr Mackay took a note of his instructions from Mr Walsh ... 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, [sic] I don't know what Mr Walsh meant by that note. 95
- Nothing turns on the differing recollections. The conversation between the two on this topic was not long. It is not surprising that their recollections of what was said differs in some respects. In the end, Mr Walsh's recollection is likely to be more accurate, it being supported by his notation. This is not to suggest that Ms Coonan's account is inaccurate. It is simply an instance of a short conversation about which recollections differ.
- 86 Perhaps it could be said that Ms Coonan should have followed up the issue to discover what it was about, as it related to a potential underpayment of casino tax, an obviously important matter. On the other hand, Mr Walsh described it, incorrectly as it turned out, as a 'legacy issue', implying that it only related to the past. Taking into account all the problems which, at that moment, Crown Resorts and Crown Melbourne were facing, it is not surprising Ms Coonan thought (even if incorrectly) she had left the matter for others to deal with.
- 87 The other possibility is that Mr Walsh should have squarely raised the potential underpayment of tax with Ms Coonan.<sup>96</sup>

# The spreadsheet

- On the morning of 24 February 2021, a day after his meeting with Ms Coonan, Mr Walsh spoke to Mr Mackay about the Bonus Jackpots deductions. He instructed Mr Mackay to 'prepare or pull together the impact of those deductions made under the loyalty program'. Mr Mackay's file note of the discussion, which described the matter as a 'latent' tax issue, noted that Ms Coonan was 'reviewing [it] to revert to [Mr Walsh]'. Ms Coonan was 'reviewing [it] to revert to [Mr Walsh]'.
- 89 Following the meeting, Mr Mackay asked Mr Herring to send him 'any detail he had on the Bonus Jackpots in regards to the breakout of each of them'. 99
- 90 Mr Mackay subsequently instructed Mr Jose Machado, Finance and Commercial Manager—Gaming, to prepare a spreadsheet setting out the 'tax impact' of the Bonus Jackpot deductions. The 'tax impact' meant the amount of casino tax Crown Melbourne saved by making the deductions. 101
- 91 The spreadsheet that was prepared only covered the years 2014 to 2019. It indicated that:
  - if all Bonus Jackpots (that is, categories 1 to 8) were not deductible, Crown Melbourne had underpaid casino tax by \$167,829,413
  - if category 8 Bonus Jackpots were not deductible, Crown Melbourne had underpaid casino tax by \$22,872,944.<sup>102</sup>

- 92 The calculations were broken down into various categories (namely, category 8 Bonus Jackpots, the Welcome Back deductions and the remainder of the Bonus Jackpots). According to Mr Mackay, this categorisation reflected the different risks as to whether the amounts were deductible. 103
- 93 The calculations in the spreadsheet did not make any adjustment for GST. Nor did the calculations take into account super tax or penalty interest payable on any unpaid casino tax.
- 94 At about 11.30 am on 26 February 2021, Mr Mackay met with Mr Walsh and Mr Herring to discuss the spreadsheet.<sup>104</sup> Mr Mackay knew the spreadsheet was sensitive<sup>105</sup> and he did not email the document to Mr Walsh.<sup>106</sup>
- 95 According to Mr Mackay, he and Mr Walsh understood the potential exposure was about \$170 million, excluding super tax and penalty interest. Mr Walsh's evidence was that he was only concerned with the category 8 deductions. deductions.

## Mr Walsh raises the casino tax issue

- 96 On 1 March 2021, there was a meeting attended by Mr Walsh, Ms Fielding, Ms Jan Williamson (General Manager Legal, Crown Melbourne), Mr McGregor and Ms Anne Siegers.<sup>109</sup> The unpaid casino tax issue was discussed. Mr Walsh said that most of the attendees were familiar with the issue that was raised in 2018.<sup>110</sup>
- 97 The attendees discussed whether unpaid casino tax could be offset against other taxes where there might have been overpayment; whether Crown could rely on the draft Technical Requirements Document to bolster its position; and what would be the public perception of the disclosure of the underpayment of gaming tax.<sup>111</sup>
- 98 On 3 or 4 March 2021, Mr Walsh discussed the Bonus Jackpot issue with Ms Jane Halton, a director of Crown Resorts and Crown Melbourne.<sup>112</sup> According to Mr Walsh, he told Ms Halton about the legal advice that had been received in 2012 and 2018. He described those advices as 'equivocal'.<sup>113</sup> He also told Ms Halton that the VCGLR had a 'very close look at it in 2018' and that the draft Technical Requirements Document would 'cure' any issues going forward, but it would not resolve the issue historically.<sup>114</sup>
- 99 Ms Halton's account of the discussion differs somewhat. Her evidence was:
  - Q: [C]an you tell the Commission what [Mr Walsh] said to you on that topic on 4 March?
  - A: Yes, I can. My memory is that he told me, and it is in the context of a 'bring out your dead' broader admonition. This wasn't a discussion about all of the things ... it was a discussion about operation of the business, et cetera, et cetera, but he said to me, 'One thing that I've become aware of, it reflects badly on culture, it is an issue from two thousand' ... and I believe he said '12' ... 'in respect of something that wasn't fulsomely disclosed and there is a note, a document, that talks about not telling the VCGLR something.'

I believe he said 'jackpot', he didn't say 'tax', and he said that, however this matter was disclosed to the VCGLR in ... subsequently in 2018. And that was about the extent of it.

- Q: I see. So did he describe it as a tax, an unpaid tax issue?
- A: No.
- Q: He just described it as something that reflects badly on culture that happened in 2012 that was not disclosed fulsomely ...
- A: Correct.
- Q: ... but it was fixed up in 2018?
- A: That was what I took from that conversation. Correct.
- Q: His evidence was he talked about advice that had been received in 2012 and 2018 which he described as equivocal. You don't recall that?
- **A:** No, I don't, I'm sorry.
- Q: He said that there was a presentation; you don't recall him referring to a presentation although you recall him saying something?
- A: A document. He did say a document.

- Q: And he certainly didn't tell you that was something he'd been aware of since at least 2018, did he?
- A: No, I don't believe so. 115
- 100 Ms Halton agreed she was 'concerned' that Mr Walsh downplayed the tax issue, knowing Mr Walsh was 'in the midst of it' in 2018. 116
- 101 Mr Walsh said that he met Mr Nigel Morrison and Ms Antonia Korsanos, both directors of Crown Resorts, on 9 March 2021. He said he provided to them the same information he had given to Ms Halton.<sup>117</sup>
- 102 Ms Korsanos' evidence about the meeting is different:
  - Q: Just focusing on the underpayment of gaming revenue tax, what do you remember Mr Walsh telling you in that meeting on 9 March?
  - A: The discussion was focused on more a cultural issue. Mr Walsh mentioned that he'd come across a presentation from 2012 that made some references that represented the poor culture and lack of transparency in a change that was made to the tax calculation at the time. The focus was about the comment in the presentation and what ... and how that would be looked upon. He did mention that there was a reference ... an internal advice.
  - Q: Yes.

- A: And also that the situation had been ... sorry, the calculation had been audited a few years ago, about three years ago, and full transparency had been made and then also subsequently cured through a technical requirements document update. So the conversation was about the lack of transparency, the lack of engagement and openness with the VCGLR, and again representative of poor culture. Focused on the comment more than anything ...
- **Q:** You said that he mentioned internal advice. Did he also mention external advice?
- A: No, he didn't.
- Q: Did he tell you what that advice said or the effect of the advice?
- **A:** Along the lines of 'It can be done but the VCGLR could argue against it.' Something along those lines.
- Q: What did you take away as the concern that he was raising with you at that point? Was it the issue about non-disclosure to the VCGLR or transparency to the VCGLR?
- **A:** It wasn't an issue ... it was definitely a culture and lack of transparency and poor engagement with the VCGLR. It wasn't an issue on whether there was a concern on that calculation.
- Q: So he didn't mention it was an issue about underpayment of tax?
- **A:** Correct. I did not walk away from that meeting believing that there was a concern that tax had been underpaid.
- **Q:** You had no idea about the quantum in mind either?
- **A**: No [...]<sup>118</sup>
- 103 Ms Korsanos said it was 'a concern' that Mr Walsh did not disclose to her all he knew about the unpaid casino tax issue. 119
- 104 Mr Morrison did not give evidence about the meeting with Mr Walsh on 9 March 2021. Mr Morrison said he had a very brief conversation with Mr Walsh in a corridor on 19 or 22 March 2021. 120 Although he could not recall much of the detail, Mr Morrison said he was left with the impression that Mr Walsh had recently come across an issue through a document review, 121 within the past few weeks. 122 Mr Morrison did not understand that the issue concerned the underpayment of casino tax. 123
- 105 Mr Morrison expressed concern that he had not been informed of the potential underpayment of casino tax even though it was known to Ms Coonan and Mr Walsh.<sup>124</sup> He said that would particularly be the case if Mr Walsh had known about the issue for years.<sup>125</sup>

## The Commission's request for information

- 106 On 10 March 2021, Solicitors Assisting the Commission wrote to Crown Resorts and Crown Melbourne requesting them to disclose, relevantly, conduct that would or might breach any provision of the Management Agreement Act or the Management Agreement. 126
- 107 On 18 March 2021,<sup>127</sup> Mr Walsh, Mr McGregor, Ms Williamson and Mr Robert Meade (Crown Melbourne's in-house counsel) and Mr Herring met Crown Melbourne's solicitors, Allens Linklaters, to discuss whether the tax treatment of Bonus Jackpots should be disclosed to the Commission. Mr Andrew Maher, a senior partner of the firm, attended the meeting.<sup>128</sup> He was the solicitor principally responsible for acting on behalf of the Crown companies in relation to the Commission's inquiries.
- 108 The unpaid tax issue was outlined by Mr Walsh. The issue was described to Mr Maher as potentially involving \$40 million and that it related to Bonus Jackpots comprising hotel accommodation, dining and car parking. 129 According to Mr Maher, his 'primary impression' was that the issue concerned a lack of approval from the VCGLR in the period 2012 to 2018.<sup>130</sup>
- 109 A file note taken at the meeting by one of the solicitors present relevantly says:

XW [Mr Walsh]: things I'm worried about being explored. When we calculate gaming tax-deduct amounts as winnings. Difference between collection and paying out. Over the journey add ons to that in terms of what we deduct.

Normally relate to things like—free play in gaming machines.

However in 2012, the company realised we could deliver through our systems the ability to award customers things like hotel rooms, carparks or meals.

Idea is—you play so much—you get free meal. We have the ability to do that through the system approved.

Internal legal advice as to whether we needed approval or not, and also whether constitutes winnings paid out. No definition on winnings paid out in the act. Universally in the world—get winnings gets paid out. Food, hotels and carparks potentially different though.

In a business preso and the legal advice with senior execs in 2012, eg ken barton, rowan Craigie, greg Hawkins, word to the effect—given economic movements, vcglr won't notice. Gives impression we won't inform vcglr. That we wouldn't tell them—in the slide deck and also internal legal advice [initially].

2012—took the deduction, went into the reports.

Late 2017—[Andrew] wilkie announcements. Post that reported [to] the board, [Barry] Felstead asked what is there. Someone said bonus jackpots—a little unsure—what's this about? Then asked for [MinterEllison's] advice. Glen ward said should have got it approved—but overriding question is whether winings [sic] anyway.

And no clear definition on that.

But he said think you're on unstable ground since didn't get it approved.

•••

[XW:] The issue that made it difficult—needed approval and didn't seek it. Approved by system change but questionable. And technical requirements doc—it allows for what we're doing now, that wa samnedd [sic] and approved by the [VCGLR] in 2020, and covers what we are doing now. We advised them in 2018. But as to 2012—crown's gone out of its way to cheat tax—what do you think? Awkward conversation.

• • •

XW: \$40 mil issue. Around \$4 mil per year. Gives the impression didn't raise as we didn't want a response. In email and slide deck.

...

XW: an email—talks about increase in gaming machine tax says proposed change not noticed by [VCGLR]. Then preso in business plan says something similar. Legal advice says doesn't alert anyone's interest, hence risk is low.

...

XW: started with the team at crown—around local and domestic customers, started in earnest last year, why didn't you do it 5 years ago.

Environment was, unless really aware something wrong, thinking was play on.<sup>131</sup>

- 110 It is important to mention what Mr Maher was not told, as it helps to explain what subsequently transpired. He was not told:
  - that Crown Melbourne had received advice suggesting there was a serious risk that the deductions were not allowable<sup>132</sup>
  - that some deductions had been made in respect of benefits to which members were entitled because of their membership status (a matter that appears to have been known to at least Mr Herring, who was at the meeting)<sup>133</sup>
  - that the potential liability for unpaid casino tax was far in excess of \$40 million, which is the case however the evidence is viewed.
- 111 Crown submits Mr Walsh was only ever concerned about the category 8 deductions.<sup>134</sup> Even if that is correct, the amount of \$40 million was a material understatement, because it excluded super tax and penalty interest.<sup>135</sup>
- By contrast, Mr Mackay said the spreadsheet he prepared for Mr Walsh separated category 8, category 1 and the other categories based on legal risks. This suggests that, internally, Crown Melbourne may have viewed the risk associated with the deductibility of the categories differently. This conclusion is supported by the fact that Mr Mackay included those categories in the spreadsheet he provided to, and discussed with, Mr Walsh. In the circumstances, the \$40 million Mr Walsh spoke of was a patently inadequate estimate. It must, however, be acknowledged that according to the evidence, Crown Melbourne's primary concern was the category 8 deductions.

- One possible explanation is that Mr Walsh was only concerned about the category 8 deductions and was not alert to any other issue. Whether this is a satisfactory explanation is not clear. From the spreadsheet Mr Mackay gave him, Mr Walsh must have appreciated there were potentially other casino tax problems. Perhaps he did not appreciate the extent of those problems.
- 114 In any event, Mr Maher gave evidence that, had he been told Crown Melbourne had advice that 'there was a possibility' the category 8 deductions were not allowable, he would have advised Crown Melbourne to make disclosure to the Commission.<sup>137</sup>
- 115 The details of the discussion suggest that the Crown Melbourne representatives downplayed the significance of the underpayment of casino tax. If they had taken it as seriously as the circumstances required, they would have provided more information to Mr Maher and the other solicitors.
- That said, towards the conclusion of the meeting Mr Maher asked to be given the relevant documents so he could consider whether the matter need be disclosed.<sup>138</sup> The documents were provided the following day. They included a draft of Mr Ward's 2018 advice and Mr Ward's advice of 18 November 2019, and some relevant presentations.<sup>139</sup> Had those documents been reviewed, Allens Linklaters would have advised Crown to disclose the matter to the Commission. According to Allens Linklaters and Crown, however, 'Allens inadvertently overlooked the need to review the documents in [the] folder closely'.<sup>140</sup>
- 117 This is in part explicable on the basis that Mr Maher did not appreciate the importance of the issue. That Mr Maher did not appreciate the importance of the issue is confirmed by subsequent events.
- To comply with the Commission's request for details of actual or potential breaches of relevant legislation and agreements, Allens Linklaters prepared a number of schedules containing the requested information. Schedules were provided to the Commission on 24 March 2021,<sup>141</sup> and a further schedule was provided on 21 April 2021.<sup>142</sup> In none of these schedules was the Bonus Jackpot issue mentioned.<sup>143</sup>
- The issue was not mentioned even though the schedules expressly referred to other casino tax transgressions. For example, the 24 March 2021 breach schedule contained the following entry:

On 20 November 2015, the VCGLR issued Crown with a letter requesting the payment of penalty interest in accordance with s 116(1) of the *Casino Control Act*.

Crown's August 2015 Gross Gaming Revenue (*GGR*) Report had incorrectly overstated jackpot winnings, resulting in \$41,842.79 underpayment of gaming tax for the period. The \$41,842.79 was added to the following month's GGR calculation (September 2015).

The penalty interest calculated for the period the tax was unpaid (one month) was \$326.72. Crown chose not to dispute the letter and submitted a cheque to the VCGLR for the amount of \$326.72.144

120 This entry did not prompt Allens Linklaters or Crown Melbourne staff (who examined the schedule carefully) to disclose the Bonus Jackpot issue.<sup>145</sup>

- 121 The issue only came to light when Mr Mackay's spreadsheet setting out the quantum of unpaid casino tax was noticed by one of counsel assisting this Commission. The spreadsheet had been produced to the Commission along with tens of thousands of other documents and was not produced in response to any notices to produce that related to requests for information on breaches or potential breaches.
- 122 Crown Melbourne's failure to flag the Bonus Jackpot issue before it was raised at Commission hearings was closely investigated.
- 123 The Commission accepts that the failure to inform it of the Bonus Jackpot issue was inadvertent. It was overlooked by Allens Linklaters when the schedules were being prepared. It was overlooked by Crown Melbourne staff when they reviewed the schedules before they were produced to the Commission.
- 124 Whether or not Mr Walsh downplayed the matter, he did raise it with Allens Linklaters. He provided Allens Linklaters with the relevant documents. He followed up the matter internally to ensure that disclosure was made.<sup>146</sup>

## The cat is out of the bag

- 125 Mr Mackay was called to give evidence on 7 June 2021. He had previously caused the spreadsheet to be prepared and, as well, had made some changes to it.<sup>147</sup> Mr Mackay had been asked to prepare a statement on a number of issues unconnected with unpaid casino tax. However, it was during his oral evidence that the unpaid casino tax issue became public.
- 126 On the same day, there was a meeting of the directors of Crown Resorts. During the meeting, or shortly thereafter, a media article about the unpaid casino tax was drawn to the directors' attention.<sup>148</sup>
- 127 The directors were asked to explain what happened when they heard the news. Ms Halton said that she was shocked by what was reported in the article. Ms Korsanos and Mr Morrison said much the same thing. Mr Morrison said that everyone at the meeting was shocked by the magnitude of the potential underpayment.
- On the evidence, it could be suggested that Ms Coonan's position was somewhat troubling. She had been told of the potential underpayment by Mr Walsh on 23 February 2021. Yet she made no mention of this at the meeting. On the contrary, according to Mr Morrison, Ms Coonan seemed as shocked about the news as were the others.
- 129 However, the other directors were in the same position. Each had been told about the 'legacy issue', although Mr Morrison may have been given fewer details than the others. None thought the matter of sufficient significance that action had to be taken.
- Once again, the explanation may be that the manner in which Mr Walsh disclosed the 'legacy issue' did not cause any alarm. That is, for whatever reason, the issue was downplayed.
- 131 There was another meeting on 7 June 2021 that raises a most troubling matter. The meeting was between Mr Meade, Ms Williamson and Mr Reilly. They discussed the disclosure that had occurred that day during the Commission hearings.

- According to Ms Williamson, who gave evidence before the Commission, Mr Reilly recounted a meeting he had with Mr Felstead and Mr Preston. During that meeting, Mr Felstead referred to the failure to disclose to the VCGLR the Bonus Jackpot issue. According to Mr Reilly, Mr Felstead suggested that given the lapse of seven years, the documents relating to the issue should be destroyed. Mr Preston said that this should not occur.<sup>154</sup>
- 133 Mr Meade made a file note of the meeting with Mr Reilly and Ms Williamson. The relevant portion of his file note reads:

Chris called to discuss the matters covered in hearings today.

Recounted a meeting w/ Barry Felstead & Josh Preston in 2018.

Josh had identified that there was a presentation which raised concerns about disclosure of the tax matter to VCGLR, from 7 years prior.

Barry had suggested that, @ 7 years, the docs be destroyed.

Josh refused.

Chris advised, if asked, pay the tax.

Jan advised we had the presentation. Chris grateful for confirmation[.]155

134 The possibility that documents might be destroyed to cover up an underpayment of tax is most disturbing. That said, it is not possible to determine whether Mr Felstead did suggest that incriminating documents be destroyed. First, Mr Felstead has filed a statement in which he denies the allegation. Second, Mr Reilly was not called to give evidence. So, the truth may never be known.

# The quantum of the underpayment

- 135 Once the underpayment of casino tax became public, Crown Resorts and the Crown Resorts' directors sought independent tax advice from senior counsel in Sydney and senior and junior counsel in Melbourne.
- 136 Having received that advice, Crown now accepts that it has underpaid casino taxes.<sup>157</sup>

## Categories 5 and 8

- 137 Crown Melbourne acknowledged that the category 8 Bonus Jackpot deductions, and some of the category 5 deductions, should not have been made.<sup>158</sup> It agreed that Crown Melbourne's casino tax obligations for the years 2013 to 2021 had to be reassessed, with an adjustment to be made for GST, and the proper amount paid. In due course, an amount in excess of \$60 million (inclusive of interest) was paid.<sup>159</sup>
- 138 Crown Melbourne has ceased treating the costs of the category 8 promotion as deductions and has determined that it will no longer run aspects of the category 5 promotion. 160

## Category 6

139 Regarding category 6, the Consolation category, no issue is raised. The prize to which the category refers is a sum paid out as winnings. But because Crown Melbourne treated category 6 amounts as sums received (which they may not have been) and as sums paid out as winnings (which they appear to be), Crown Melbourne may have overpaid tax in relation to this category (although the amount would be less than \$1.14 million, 161 and any refund may be subject to limitations issues).

## Category 3

- 140 The Commission is of the opinion that there has been a significant underpayment of casino tax in relation to category 3 (Matchplay). There are two lines of reasoning that support this view.
- 141 The first line is based on the proposition that the pokie points should be treated as a 'sum received' for the purposes of GGR. To understand the reasoning, it is helpful first to consider the decision in *London Clubs Management Ltd v Revenue and Customs Commissioners* (a decision of the United Kingdom Supreme Court, the final court of appeal).<sup>162</sup>
- The case concerned the proper calculation of gaming duty. Under the relevant legislation, gaming duty was payable as a percentage of the 'gross gaming yield' of a casino. The 'gross gaming yield' was the aggregate of 'gaming receipts' and 'banker's profits' (the casino being the banker). 'Banker's profits' from gaming were the difference between 'the value, in money or moneys worth, of the stakes staked with the banker' and 'the value of prizes provided by the banker'. 163
- The casino provided non-negotiable chips to selected gamblers as a promotional tool.

  The chips were provided free of charge. They could not be used to buy goods or services.

  They could not be exchanged for cash. They could only be used to place bets. The casino also provided free bet vouchers to selected gamblers as a promotional tool. They could be used in the same way as non-negotiable chips.<sup>164</sup>
- 144 The question the Supreme Court had to resolve was whether, in calculating 'banker's profits', the non-negotiable chips and free bet vouchers were to be brought to account. The Supreme Court said 'No' to this question.<sup>165</sup>
- 145 The reason was that a non-negotiable chip or free bet voucher does not represent money to which the gambler is entitled. This is because, unlike cash chips, a non-negotiable chip or free bet voucher cannot be cashed in or exchanged for goods or services. The Supreme Court explained that a non-negotiable chip or free bet voucher has no real-world value to the casino.<sup>166</sup>
- The non-negotiable chips and free bet vouchers considered in *London Clubs* are different to the Matchplay benefits. Matchplay benefits have real value—the Crown Rewards points can be exchanged for goods or services. In addition, the benefits (points), once earned, are a liability of Crown Melbourne. Properly characterised, they are a contingent liability. As with any liability, a contingent liability can be valued. In the case of Matchplay, the value will be either (a) the face value of the pokie credits; or (b) a discount from the face value based on the likelihood of the contingency occurring.

- 147 If a member applies the points to acquire goods or services, the contingency is satisfied.

  Then Crown Melbourne will incur a cost, namely the amount that must be paid to the supplier of the goods or services. Conversely, if the member elects to exchange the points for pokie credits, the contingent liability is immediately discharged. In that event, Crown Melbourne receives an immediate benefit. The value of the benefit is equal to the face value of the pokie credits or their discounted value.
- 148 Two questions then arise. First, can the discharge of a contingent liability be a 'sum received'? Assuming the answer to this question is 'Yes', the second question is whether the 'sum received' is received 'from the conduct or playing of games'.
- On the first question, the reference to a sum received in the definition of GGR includes the receipt of money or moneys worth. There are many instances where a reference to a 'sum' of money is taken to include money or moneys worth. It would be an odd result if the same approach is not adopted for the purposes of GGR. Take the following example. Assume a patron acquires \$1,000 worth of chips in exchange for a \$1,000 watch. Is the acceptance of the watch a 'sum received' in exchange for the chips? Obviously, the answer is 'Yes'. Otherwise, the operation of the definition of GGR could easily be frustrated.
- 150 The same position holds if the member elects to convert Crown Rewards points to pokie credits. Crown Melbourne receives value, the discharge of its contingent liability (equivalent to the watch). In exchange, the member receives pokie credits (equivalent to the chips).
- 151 Crown Melbourne raises three issues to avoid this result. 170
- 152 First, it says that a 'sum received' must be a sum of money. It is enough to say that this is a contention unlikely to be upheld.
- 153 Second, it says that Crown Melbourne did not receive any 'real sum' from the exchange.<sup>171</sup> The argument seems to be that the exchange of points for pokie credits involves the satisfaction of contractual obligations, but not the receipt of anything of value.<sup>172</sup> This contention ignores the value to Crown Melbourne of being discharged from its contingent liability. In the real world, the release of an extant liability has real value. For the Melbourne Casino, the release has an easily ascertained value.
- 154 Third, Crown Melbourne contends that if the exchange did produce a 'sum received', that sum was not received from the conduct of playing of games.<sup>173</sup> It is difficult to understand this submission. The only way pokie credits can be used is for play on an EGM. Acquiring pokie credits is the same as acquiring chips with which to gamble. The money received by Crown Melbourne for the chips is 'from the conduct ... of games'. The same must be true of the value of the release received by Crown Melbourne for the pokie credits.
- Last, there is a faint suggestion that there may be double counting because the GGR definition refers to money received from the 'conduct or playing' of games.<sup>174</sup> There is nothing in the point. A sum may be received from the conduct or, alternatively, the playing of games, but not both.
- 156 On this analysis, Crown Melbourne is liable to pay tax on all sums received from Matchplay.
- 157 The second line of reasoning differs from the first. It is premised on the correctness of Crown Melbourne's contention that there is no 'sum received' from Matchplay. In that event, winnings paid out from bets where no sum is received cannot be deducted from GGR.

- 158 To understand why this is so, it is helpful to begin with an issue that arose in 2017.
- 159 Crown Melbourne conducted poker tournaments at the Melbourne Casino. It charged entry fees to players to participate in the tournaments. The State was of the view that the entry fees were a 'sum received' within the definition of GGR. Crown Melbourne disagreed.<sup>175</sup>
- 160 In support of its contention, Crown Melbourne relied upon a submission by MinterEllison. In that submission, MinterEllison referred to what it described as '[t]he proper construction of "Gross Gaming Revenue": 176
- 161 According to that construction, MinterEllison said:
  - · It is evident that the definition of 'Gross Gaming Revenue' sets up a relationship of interdependency between (a) 'sums ... received ... from the conduct of playing games'; and (b) 'sums paid out as winnings ... in respect of such conduct or playing of games'.
  - The function of the word 'such', in the expression 'sums paid out [as winnings] in respect of such conduct or playing of games', is to direct attention back to the conduct or playing of games from which the sums are received.
  - The relationship is between 'sums ... received' and 'sums paid out'.
  - · Thus, 'sums received' from the playing of games must refer to the sums that enter the pools of funds from which winnings are paid out.<sup>177</sup>
- 162 On this construction, in respect of sums paid out from 'free' Matchplay bets, there is an obvious lack of interdependency because (a) there is no sum received; yet there are (b) sums paid out.
- 163 Applying the MinterEllison analysis (which may be correct), winnings from a bet where there is no sum received are not deductable from the GGR calculation. The result is that winnings paid out from 'free' Matchplay bets are not deductable. The consequence is that Crown has underpaid casino tax, but in a different amount than if the first line of reasoning is applied.<sup>178</sup>

## Categories 1, 2, 4 and 7

- 164 The benefits in categories 1, 2, 4 and 7 are provided in the form of pokie credits, with each credit having a specific value when used in an EGM. Apart from their use to play a game in an EGM, the credits have no value to the member.
- 165 The VCGLR has obtained an opinion from Melbourne senior counsel on a similar issue. Counsel said that 'free play vouchers are issued by Crown to recipients at no cost to the recipients; the face value of the voucher, however, plainly represents an expense to Crown'. According to senior counsel, the vouchers, 'when converted into a chip and thereafter gambled at the casino plainly represent a "sum received by the casino". For this purpose it does not matter that the chip was sourced from a [voucher], that is an irrelevant fact'. There may be significance in the fact that the opinion refers to a situation where a free play voucher may be 'exchanged by the patrons for chips for playing at a gaming table ... or may be exchanged for cash' (as opposed to a pokie credit, which is not cashable and non-transferrable). 180
- 166 It is not proposed to address the correctness of this view. It is sufficient to say that, if there is no sum received, the second line of reasoning (developed by Crown Melbourne's lawyers) would mean that Crown Melbourne has underpaid its casino tax by a considerable amount.

# The consequences of non-payment

- 167 Although some of the underpaid casino tax has been paid, there is a significant question as to whether more tax is due.
- 168 That dispute can be resolved in one of two ways. First, the failure to pay casino tax following the service of a notice demanding payment will constitute a breach of a condition of Crown Melbourne's casino licence. In that event, the regulator can serve a notice under section 20(2) of the Casino Control Act affording Crown Melbourne the opportunity to show cause why disciplinary action (the cancellation, suspension or variation of the casino licence, the imposition of a fine or a letter of censure) should not be taken.
- 169 Second, the State could also sue for any unpaid casino tax together with penalty interest. There is no other financial consequence if casino tax is not paid, even if it is intentionally not paid.
- 170 This is an unusual situation. Most taxing statutes impose penalties for the non-payment of tax, in addition to charging interest on any amount not paid.
- 171 The Casino Control Act, for example, imposes penalties for the wilful evasion of the payment of any tax or levy payable under the Act. 182 It is an offence to furnish a false or misleading return or report to the regulator in respect of any tax or levy payable under the Act. 183 In each case, the penalty is 100 penalty units.
- The penalty provisions do not apply to the evasion of tax, furnishing a false return or making a false or misleading statement to the regulator in respect of casino tax payable under the Management Agreement. This is because casino tax payable under the Management Agreement cannot be described 'as a tax payable under the [Casino Control] Act', which it must be for the offence and penalty provisions to apply.
- 173 This is a significant omission and one that may not have been intended. The omission can be rectified.
- 174 The *Taxation Administration Act 1997* (Vic) was enacted to make general provision for the administration and enforcement of taxation laws in Victoria.<sup>184</sup>
- 175 The Taxation Administration Act has extensive provisions dealing with the collection of tax, and provisions for record keeping to enable a person's tax liability to be properly assessed.<sup>185</sup> The Taxation Administration Act also creates a number of offences, including for giving false or misleading information to tax officers, deliberately omitting information to a tax officer and tax evasion. The penalties are significant.<sup>186</sup>
- An important feature of the Taxation Administration Act is that it imposes penalty tax in the event of a tax default.<sup>187</sup> The failure to pay tax in whole or in part is a tax default.<sup>188</sup> Penalty tax is payable in addition to interest and any unpaid tax. The amount of penalty tax may be up to 75 per cent of the amount of tax unpaid.<sup>189</sup>

- 177 If a taxpayer takes steps to prevent or hinder the Commissioner of State Revenue becoming aware of the nature and extent of the taxpayer's default, penalty tax can be increased by a further 20 per cent. 190
- 178 The Taxation Administration Act does not apply to casino tax. It does, however, apply to gaming tax payable under part 6A of chapter 4 of the Gambling Regulation Act.

#### RECOMMENDATION 16: UNPAID CASINO TAX

It is recommended that the Taxation Administration Act be amended to cover casino tax payable under the Management Agreement as well as any other taxes payable under the Casino Control Act.

## **Endnotes**

- Exhibit RC0502 Consolidated Management Agreement, 20 September 1993, cl 2 (definition of 'Gross Gaming Revenue').
- Exhibit RC0502 Consolidated Management Agreement, 20 September 1993, cl 2 (definition of 'Commission 2 Based Players Gaming Revenue').
- 3 Exhibit RC0133 Statement of Nicolas Emery, 5 May 2021, Annexure h; Exhibit RC1250 Crown Rewards Rules, 1 August 2019, rule 6.1.
- 4 Exhibit RC0542 Letter from Mark Mackay to Solicitors Assisting, 25 June 2021; Exhibit RC0543 Crown Rewards Participating Outlets Melbourne, n.d.
- 5 Exhibit RC0425 Statement of Peter Herring, 30 June 2021, Annexure f; Exhibit RC0425 Statement of Peter Herring, 30 June 2021, Annexure g; Exhibit RC0542 Letter from Mark Mackay to Solicitors Assisting, 25 June 2021; Exhibit RC0543 Crown Rewards Participating Outlets Melbourne, n.d.
- 6 Exhibit RC0425 Statement of Peter Herring, 30 June 2021, Annexure f; Exhibit RC0425 Statement of Peter Herring, 30 June 2021, Annexure g; Transcript of Alan McGregor, 6 July 2021, 3520; Transcript of Xavier Walsh, 5 July 2021, 3363.
- 7 Exhibit RC1250 Crown Rewards Rules, 1 August 2019; Exhibit RC0542 Letter from Mark Mackay to Solicitors Assisting, 25 June 2021; Exhibit RC0543 Crown Rewards Participating Outlets Melbourne, n.d.
- 8 Exhibit RC0133 Statement of Nicolas Emery, 5 May 2021, Annexure h.
- 9 Transcript of Ahmed Hasna, 3 May 2021, 7-8.
- 10 Exhibit RC0425 Statement of Peter Herring, 30 June 2021, Annexure c.
- 11 Exhibit RC0425 Statement of Peter Herring, 30 June 2021, Annexure c.
- Exhibit RC0425 Statement of Peter Herring, 30 June 2021, Annexure c. 12
- 13 Exhibit RC0542 Letter from Mark Mackay to Solicitors Assisting, 25 June 2021; Exhibit RC0543 Crown Rewards Participating Outlets Melbourne, n.d.
- 14 Exhibit RC0425 Statement of Peter Herring, 30 June 2021, Annexure c.
- 15 Casino Control Act 1991 (Vic) s 3(1).
- 16 Exhibit RC0919 Supplementary Opinion regarding the Crown Melbourne Victorian state gaming tax issue, 4 July 2021, 2; Exhibit RC0425 Statement of Peter Herring, 30 June 2021, Annexure c.
- 17 Exhibit RC0425 Statement of Peter Herring, 30 June 2021, Annexure c.
- 18 Exhibit RC0158 Email chain between Glen Ward and Joshua Preston, 14 November 2018, Annexure a, 2 [13]-[17].
- 19 Exhibit RC0156 Email from Glen Ward to Joshua Preston 25 October 2018, Annexure a, 2 [18]; Exhibit RC0267 File Note regarding 'winnings', October 2011, 23.
- 20 Exhibit RC0267 File Note regarding 'winnings', 24 October 2011, 24.
- 21 Exhibit RC0267 File Note regarding 'winnings', 24 October 2011, 18-29.
- 22 Casino Control Act 1991 (Vic) s 3(1) (definition of 'jackpot'). Under the applicable standard operating procedure, the calculation of GGR included the deduction of 'Bonus Jackpots' awarded via the DACOM system: see Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 228 [G.8]-[G.9]; Exhibit RC1500 Crown Melbourne Standard Operating Procedures-Revenue Audit and Reporting, 6 July 2012, 2.
- 23 Exhibit RC0800 Email chain between Peter Herring, Debra Tegoni and Greg Hawkins, 6 March 2012, 1.
- 24 Exhibit RC0773 Memorandum regarding Proposal Classifying Gaming Machines F&B Promotional Program to be part of Bonus Jackpot, 22 March 2012.
- 25 Exhibit RC0775 Memorandum regarding Proposal Classifying Gaming Machines F&B Promotional Program to be part of Bonus Jackpot, 28 March 2012.
- 26 Exhibit RC0775 Memorandum regarding Proposal Classifying Gaming Machines F&B Promotional Program to be part of Bonus Jackpot, 28 March 2012, 3.
- 27 Exhibit RC0775 Memorandum regarding Proposal Classifying Gaming Machines F&B Promotional Program to be part of Bonus Jackpot, 28 March 2012, 3.
- 28 Exhibit RC0775 Memorandum regarding Proposal Classifying Gaming Machines F&B Promotional Program to be part of Bonus Jackpot, 28 March 2012, 4.

- 29 Exhibit RC0224 Crown Melbourne, Gaming Machines Food Program Initiative Presentation, March 2012; Exhibit RC1231 Second Statement of Peter Herring, 14 July 2021, 2–3. Cf Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 231 [G.20].
- 30 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 231 [G.20].
- Exhibit RC1231 Second Statement of Peter Herring, 14 July 2021, 2-3. 31
- 32 Exhibit RC0224 Crown Melbourne, Gaming Machines Food Program Initiative Presentation, March 2012, 10; Exhibit RC0823 Email from Greg Hawkins to Peter Herring et al, 4 April 2012.
- 33 Exhibit RC0830 Email chain between Richard Longhurst, Neil Spencer and Peter Herring, 30 March 2012.
- 34 Exhibit RC0329 File Note regarding Gaming Machines Tax Initiatives—Round 2, April 2013.
- 35 Exhibit RC0329 File Note regarding Gaming Machines Tax Initiatives—Round 2, April 2013, 9; Exhibit RC0424 Supplementary Statement of Alan McGregor, 1 July 2021, Annexure a.
- 36 Exhibit RC1231 Second Statement of Peter Herring, 14 July 2021, 2 [9].
- 37 Exhibit RC0329 File Note regarding Gaming Machines Tax Initiatives—Round 2, April 2013.
- 38 Exhibit RC0424 Supplementary Statement of Alan McGregor, 1 July 2021, Annexure a.
- 39 Transcript of Michelle Fielding, 28 June 2021, 2636.
- 40 Transcript of Mark Mackay, 7 June 2021, 1650-1; Transcript of Michelle Fielding, 28 June 2021, 2716-17.
- 41 Exhibit RC0206 Memorandum regarding Casino Tax, 19 December 2014.
- 42 Exhibit RC0206 Memorandum regarding Casino Tax, 19 December 2014, [11].
- 43 Exhibit RC0206 Memorandum regarding Casino Tax, 19 December 2014, [24].
- 44 Exhibit RC0760 Minutes of VCGLR Crown Business as Usual Operational meeting, 29 June 2017.
- 45 Exhibit RC0375 Email chain between Michelle Fielding and Matt Asher et al, 2 June 2018.
- 46 Exhibit RC0816 Email chain between Michelle Fielding and Peter Herring et al, 31 May 2018.
- 47 Exhibit RC0816 Email chain between Michelle Fielding and Peter Herring et al, 31 May 2018; Exhibit RC0331 Email chain between Michelle Fielding and Peter Herring, 2 June 2018; Exhibit RC0332 Email chain between Michelle Fielding and Nicole Wendt et al, 4 June 2018; Exhibit RC0824 Email chain between Peter Herring and Michelle Fielding et al, 5 June 2018; Exhibit RC0817 Email chain between Alan McGregor and Peter Herring et al, 5 June 2018.
- 48 Exhibit RC0817 Email chain between Alan McGregor and Peter Herring et al, 5 June 2018.
- 49 Exhibit RC0780 Email chain between Michelle Fielding and Barry Felstead et al, 5 June 2018.
- 50 Exhibit RC0780 Email chain between Michelle Fielding and Barry Felstead et al, 5 June 2018.
- 51 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 231–2 [G.21].
- 52 Exhibit RC1231 Second Statement of Peter Herring, 14 July 2021, 2; see also Exhibit RC0329 File Note regarding Gaming Machines Tax Initiatives—Round 2, April 2013.
- 53 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 251 [G.105].
- 54 Transcript of Mark Mackay, 7 June 2021, 1655. Cf Transcript of Michelle Fielding, 28 June 2021, 2729.
- 55 Transcript of Xavier Walsh, 5 July 2021, 3250, 3262.
- 56 Exhibit RC0150 Email from Joshua Preston to Glen Ward, 17 October 2018.
- 57 Exhibit RC0150 Email from Joshua Preston to Glen Ward, 17 October 2018.
- 58 Exhibit RC0856 File Note regarding Crown General 'Winnings', 19 October 2018.
- 59 Exhibit RC0156 Email from Glen Ward to Joshua Preston, 25 October 2018; Exhibit RC0156 Email from Glen Ward to Joshua Preston, 25 October 2018, Annexure a.
- 60 Exhibit RC0156 Email from Glen Ward to Joshua Preston, 25 October 2018, Annexure a.
- 61 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 234 [G.32].
- Transcript of Michelle Fielding, 28 June 2021, 2711-12; Exhibit RC0157 Email from Joshua Preston to Glen 62 Ward, 2 November 2018; Exhibit RC0157 Email from Joshua Preston to Glen Ward, 2 November 2018, Annexure a.
- 63 Exhibit RC0158 Email chain between Glen Ward and Joshua Preston, 14 November 2018; Exhibit RC0158 Email chain between Glen Ward and Joshua Preston, 14 November 2018, Annexure a; Exhibit RC0158 Email chain between Glen Ward and Joshua Preston, 14 November 2018, Annexure b; Transcript of Michelle Fielding, 28 June 2021, 2712-13.

- 64 Exhibit RC0840 Email from Joshua Preston to Xavier Walsh, 13 December 2018; Exhibit RC0840 Email from Joshua Preston to Xavier Walsh, 13 December 2018, Annexure a.
- 65 Transcript of Mark Mackay, 7 June 2021, 1665.
- 66 Transcript of Mark Mackay, 7 June 2021, 1664.
- 67 Exhibit RC0159 Letter from Michelle Fielding to Glen Ward, 9 July 2019.
- 68 Exhibit RC0160 Memorandum regarding Gaming Machines Bonus Jackpot Program Initiative—GGR treatment, 18 November 2019, 2.
- 69 Exhibit RC0796 Email chain between Mark Tafft and Angelina Bowden-Jones, 12 June 2021, Annexure dd.
- 70 Exhibit RC0160 Memorandum regarding Gaming Machines Bonus Jackpot Program Initiative—GGR treatment, 18 November 2019, 3.
- 71 Exhibit RC0204 Email chain between Peter Herring and Mark Mackay et al, 24 February 2021, Annexure b.
- 72 Exhibit RC0204 Email chain between Peter Herring and Mark Mackay et al, 24 February 2021, Annexure b.
- 73 Transcript of Mark Mackay, 7 June 2021, 1672.
- 74 Crown Melbourne Ltd v Federal Commission of Taxation (2020) 20 ATR 117.
- 75 Crown Melbourne Ltd v Federal Commission of Taxation (2020) 20 ATR 117. The Commissioner of Taxation successfully appealed the judgment: see Commissioner of Taxation v Burswood Nominees Limited as trustee for the Burswood Property Trust [2021] FCAFC 151.
- 76 Exhibit RC0333 Email from Chris Reilly to Xavier Walsh et al, 17 September 2020.
- 77 Exhibit RC0335 Email chain between Peter Herring and Michelle Fielding et al, 21 September 2020.
- 78 Exhibit RC0337 Meeting invitation from Xavier Walsh to Chris Reilly et al, 22 September 2020.
- 79 Exhibit RC0802 File Note regarding GST—Case, 22 September 2020.
- 80 Transcript of Xavier Walsh, 5 July 2021, 3255.
- 81 Transcript of Xavier Walsh, 5 July 2021, 3255.
- 82 Transcript of Xavier Walsh, 5 July 2021, 3256-7.
- 83 Transcript of Michelle Fielding, 28 June 2021, 2733–4.
- 84 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 236-7 [G.37]-[G.41], 251-2 [G.107]-[G.108].
- 85 Responsive submission Xavier Walsh, 2 August 2021, 11 [42].
- 86 Exhibit RC0358 Memorandum regarding Crown Melbourne Weekly Catch Up Agenda, 23 February 2021, 2.
- 87 Transcript of Xavier Walsh, 5 July 2021, 3220.
- 88 Transcript of Xavier Walsh, 5 July 2021, 3221.
- 89 Transcript of Xavier Walsh, 5 July 2021, 3221–2.
- 90 Transcript of Xavier Walsh, 5 July 2021, 3221.
- 91 Exhibit RC0358 Memorandum regarding Crown Melbourne Weekly Catch Up Agenda, 23 February 2021, 2.
- 92 Transcript of Xavier Walsh, 5 July 2021, 3222.
- 93 Transcript of Helen Coonan, 8 July 2021, 3802–3.
- 94 Transcript of Helen Coonan, 8 July 2021, 3805.
- 95 Transcript of Helen Coonan, 8 July 2021, 3809.
- 96 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 253 [G.114].
- 97 Transcript of Mark Mackay, 7 June 2021, 1610.
- 98 Exhibit RC0202 File Note regarding tax deductible expenses, 24 February 2021.
- 99 Transcript of Mark Mackay, 21 June 2021, 2135.
- Exhibit RC0792 Email from Jose Machado to Mark Mackay, 24 February 2021; Exhibit RC0790 Email chain between Jose Machado and Mark Mackay, 24 February 2021; Exhibit RC0794 Email chain between Jose Machado and Mark Mackay, 24 February 2021; Exhibit RC0793 Email chain between Jose Machado and Mark Mackay, 25 February 2021.
- 101 Transcript of Mark Mackay, 7 June 2021, 1609.
- 102 Exhibit RC0147 Crown Melbourne Bonus Points and Bonus Jackpots Earnings Report, 26 February 2021; Transcript of Mark Mackay, 7 June 2021, 1610.
- 103 Transcript of Mark Mackay, 21 June 2021, 2137.
- 104 Exhibit RC0203 Mark Mackay calendar, 24-26 February 2021.
- 105 Transcript of Mark Mackay, 21 June 2021, 2141.

- 106 Transcript of Mark Mackay, 21 June 2021, 2141.
- 107 Transcript of Mark Mackay, 7 June 2021, 1610–12, 1615.
- Transcript of Xavier Walsh, 5 July 2021, 3353; Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 237 [G.44].
- Exhibit RC0205 Email chain between Michelle Fielding and Jan Williamson et al, 14 June 2021; Exhibit RC0338 File Note regarding Tax Bonus Jackpot, 1 March 2021; Transcript of Xavier Walsh, 5 July 2021, 3230.
- 110 Transcript of Xavier Walsh, 5 July 2021, 3234.
- 111 Transcript of Xavier Walsh, 5 July 2021, 3234–5; Exhibit RC0338 File Note regarding Tax Bonus Jackpot, 1 March 2021.
- 112 Transcript of Xavier Walsh, 5 July 2021, 3237–8.
- 113 Transcript of Xavier Walsh, 5 July 2021, 3238.
- 114 Transcript of Xavier Walsh, 5 July 2021, 3238–9.
- 115 Transcript of Jane Halton, 7 July 2021, 3608–9.
- 116 Transcript of Jane Halton, 7 July 2021, 3610–11.
- 117 Transcript of Xavier Walsh, 5 July 2021, 3239.
- 118 Transcript of Antonia Korsanos, 7 July 2021, 3695–6.
- 119 Transcript of Antonia Korsanos, 7 July 2021, 3697.
- 120 Transcript of Nigel Morrison, 22 June 2021, 2244, 2249.
- 121 Transcript of Nigel Morrison, 22 June 2021, 2248–9.
- 122 Transcript of Nigel Morrison, 22 June 2021, 2249–50.
- 123 Transcript of Nigel Morrison, 22 June 2021, 2245.
- 124 Transcript of Nigel Morrison, 22 June 2021, 2247.
- 125 Transcript of Nigel Morrison, 22 June 2021, 2250.
- 126 Exhibit RC0148 Letter from Solicitors Assisting to Crown Melbourne Directors, 10 March 2021.
- 127 Transcript of Andrew Maher, 22 June 2021, 2296.
- Exhibit RC0230 File Note regarding meeting between representatives of Crown and Allens Linklaters, 19 March 2021.
- 129 Transcript of Andrew Maher, 22 June 2021, 2325.
- 130 Transcript of Andrew Maher, 22 June 2021, 2305.
- Exhibit RC0230 File Note regarding meeting between representatives of Crown and Allens Linklaters, 19 March 2021, 3–4.
- Transcript of Andrew Maher, 22 June 2021, 2311–12; Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 251 [G.106].
- Exhibit RC1231 Second Statement of Peter Herring, 14 July 2021, 2. See also Exhibit RC0329 File Note regarding Gaming Machines Tax Initiatives—Round 2, April 2013.
- Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 256–7 [G3.3.3].
- 135 Transcript of Andrew Maher, 22 June 2021, 2327.
- 136 Transcript of Mark Mackay, 21 June 2021, 2137.
- 137 Transcript of Andrew Maher, 22 June 2021, 2312.
- 138 Transcript of Andrew Maher, 22 June 2021, 2297.
- Transcript of Andrew Maher, 22 June 2021, 2336–7. The documents provided to Allens Linklaters were: Exhibit RC0225 Timeline Review Briefing Note, n.d.; Exhibit RC0232 Summary of Gross Gaming Revenue, 28 February 2018; Exhibit RC0233 VCGA Technical Requirements for Gaming Machines, 10 July 1996; Exhibit RC0234 Letter from the VCGR to Lonnie Bossi, 6 November 2006; Exhibit RC0328 Memorandum regarding Proposal Classifying Gaming Machines F&B Promotional Program to be part of Bonus Jackpot, 28 March 2012; Exhibit RC0763 Memorandum regarding Gaming Machines Food Program Initiative—GGR Treatment, 25 October 2018; Exhibit RC0235 Email from Edwin Aquino to Peter Herring, 30 March 2012; Exhibit RC0236 Meeting invitation regarding Gaming Machines Tax Initiative, 12 October 2011; Exhibit RC0224 Crown Melbourne Gaming Machines Food Program Initiative Presentation, March 2012; Exhibit RC0238 Crown Melbourne Gaming Machines Business Plan, 2013; Exhibit RC0239 Crown Melbourne Gaming Machines Business Plan, 2014; Exhibit RC0240 Approval Requirement for new Bonus Jackpots, n.d.;

- Exhibit RC0240 Approval Requirement for new Bonus Jackpots, n.d.; Exhibit RC0242 VCGLR Technical Requirements Document for Melbourne Casino, n.d.
- 140 Exhibit RC0228 Letter from Allens Linklaters to Solicitors Assisting, 7 June 2021.
- Exhibit RC0149 Letter from Allens Linklaters to Solicitors Assisting, 24 March 2021; Exhibit RC0149 Letter from Allens Linklaters to Solicitors Assisting, 24 March 2021, Annexure a; Exhibit RC0149 Letter from Allens Linklaters to Solicitors Assisting, 24 March 2021, Annexure b.
- Exhibit RC0244 Letter from Allens Linklaters to Solicitors Assisting, 21 April 2021; Exhibit RC0244 Letter from Allens Linklaters to Solicitors Assisting, 21 April 2021, Annexure a; Exhibit RC0244 Letter from Allens Linklaters to Solicitors Assisting, 21 April 2021, Annexure b; Exhibit RC0244 Letter from Allens Linklaters to Solicitors Assisting, 21 April 2021, Annexure c.
- 143 See Appendix G.
- 144 Exhibit RC0149 Letter from Allens Linklaters to Solicitors Assisting, 24 March 2021, Annexure a, 6-7.
- 145 Transcript of Andrew Maher, 22 June 2021, 2345–9.
- 146 Transcript of Xavier Walsh, 5 July 2021, 3269.
- 147 Transcript of Mark Mackay, 7 June 2021, 1610, 1673; Transcript of Mark Mackay, 21 June 2021, 2136.
- 148 Transcript of Nigel Morrison, 22 June 2021, 2258.
- 149 Transcript of Jane Halton, 7 July 2021, 3606.
- 150 Transcript of Antonia Korsanos, 7 July 2021, 3693–4; Transcript of Nigel Morrison, 22 June 2021, 2258–60.
- 151 Transcript of Nigel Morrison, 22 June 2021, 2259–60.
- 152 Transcript of Nigel Morrison, 22 June 2021, 2260.
- 153 Transcript of Nigel Morrison, 22 June 2021, 2259–60.
- 154 Transcript of Jan Williamson, 2 July 2021, 3128–9.
- 155 Exhibit RC0339 File Note regarding call with Jan Williamson and Chris Reilly, 7 June 2021.
- 156 Exhibit RC1259 Statement of Barry Felstead, 15 July 2021, 2 [4]-[7].
- 157 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 244 [G.71].
- 158 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 244 [G.71].
- Exhibit RC1461 Letter from Helen Coonan to Catherine Myers, 27 July 2021; Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 246 [G.78].
- 160 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 229 [G.11].
- 161 Exhibit RC0424 Supplementary Statement of Alan McGregor, 1 July 2021, Annexure a.
- 162 London Clubs Management Ltd v Revenue and Customs Commissioners [2021] 2 All ER 333.
- London Clubs Management Ltd v Revenue and Customs Commissioners [2021] 2 All ER 333, 336 [3], [5] (Lord Kitchin, Lady Black and Lord Carnwath agreeing at 336).
- London Clubs Management Ltd v Revenue and Customs Commissioners [2021] 2 All ER 333, 337–8 [9]–[11] (Lord Kitchin, Lady Black and Lord Carnwath agreeing at 336).
- London Clubs Management Ltd v Revenue and Customs Commissioners [2021] 2 All ER 333, 340 [23], 346 [48], 347 [54] (Lord Kitchin, Lady Black and Lord Carnwath agreeing at 336).
- London Clubs Management Ltd v Revenue and Customs Commissioners [2021] 2 All ER 333, 345 [43]–[44] (Lord Kitchin, Lady Black and Lord Carnwath agreeing at 336, Lord Sales agreeing at 354 [88]).
- 167 See Adrian Finanzio, Penny Neskovcin, Meg O'Sullivan and Geoffrey Kozminsky, Closing submissions of Counsel Assisting the Commission, Royal Commission into the Casino Operator and Licence (14 July 2021) 107 [1.167].
- 168 See Adrian Finanzio, Penny Neskovcin, Meg O'Sullivan and Geoffrey Kozminsky, Closing submissions of Counsel Assisting the Commission, Royal Commission into the Casino Operator and Licence (14 July 2021) 107 [1.166].
- 169 Cf Exhibit RC1437 Memorandum of Advice from Christopher Archibald and Anna Dixon to ABL, 30 July 2021.

  In reaching that conclusion, the Commission means no disrespect to the opinion of Melbourne Counsel whose advices on the topic were of great assistance.
- 170 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 247 [G.85]–[G.86]; Exhibit RC1436 Memorandum of advice from Mark Robertson, 28 July 2021; Exhibit RC1437 Memorandum of advice from Christopher Archibald and Anna Dixon to ABL, 30 July 2021.
- 171 Exhibit RC1436 Memorandum of Advice from Mark Robertson, 28 July 2021, 13–15.

- 172 Exhibit RC1436 Memorandum of Advice from Mark Robertson, 28 July 2021, 17–18.
- 173 Exhibit RC1437 Memorandum of Advice from Christopher Archibald and Anna Dixon to ABL, 30 July 2021,
- 174 Exhibit RC1436 Memorandum of Advice from Mark Robertson, 28 July 2021, 13.
- 175 Exhibit RC0885 Letter from Barry Felstead to Cate Carr, 1 December 2017.
- 176 Exhibit RC0885 Letter from Barry Felstead to Cate Carr, 1 December 2017.
- 177 Exhibit RC0885 Letter from Barry Felstead to Cate Carr, 1 December 2017.
- 178 This reasoning is consistent with the approach in London Clubs Management Ltd v Revenue and Customs Commissioners [2021] 2 All ER 333, 347-8 [56] (Lord Kitchin, Lady Black and Lord Carnwath agreeing at 336). See also London Clubs Management Ltd v Revenue and Customs Commissioners [2021] 2 All ER 333, 353-4 [80] (Lady Arden).
- Exhibit RC0799 Email chain between Shaun Cartoon and Christopher Archibald et al, 19 June 2021, 179 Annexure tt, [13].
- 180 See views expressed on this point in: Exhibit RC1436 Memorandum of advice from Mark Robertson, 28 July 2021; Exhibit RC1437 Memorandum of advice from Christopher Archibald and Anna Dixon to ABL, 30 July 2021.
- 181 Exhibit RC0502 Consolidated Management Agreement, 20 September 1993, cl 25.2(a); Casino Licence granted to Crown Melbourne (then Crown Casino Ltd) under Part 2 of the Casino Control Act 1991 (Vic) dated 19 November 1993, cl 11.
- 182 Casino Control Act 1991 (Vic) s 120(a).
- Casino Control Act 1991 (Vic) s 120(b). 183
- 184 Taxation Administration Act 1997 (Vic) s 1.
- 185 Taxation Administration Act 1997 (Vic) pts 7-8.
- 186 Taxation Administration Act 1997 (Vic) pts 5, 8.
- 187 Taxation Administration Act 1997 (Vic) pt 5 div 2.
- 188 Taxation Administration Act 1997 (Vic) s 3(1) (definition of 'tax default').
- 189 Taxation Administration Act 1997 (Vic) s 30.
- 190 Taxation Administration Act 1997 (Vic) s 32.



# The China Union Pay issue

## The China Union Pay issue

#### Introduction

1 In 1983, Mr Connor, QC warned of the dangers of casinos providing credit to patrons:

Credit has almost routinely been the principal source of trouble with casinos. Casino management is generally anxious to be in a position to extend credit at its discretion to favoured gamblers. It increases casino turnover as well as encouraging gamblers to gamble beyond their means. The granting of credit leads to all kinds of problems particularly relating to skimming and collecting the unpaid debts of gamblers who live out of State. The way to eliminate problems relating to credit is simply to prohibit it.<sup>1</sup>

- 2 Mr Connor, QC also said that it was in the public interest that persons coming to and going from casinos should not carry large amounts of cash. He said: '[a] properly controlled cheque cashing facility would go a fair distance toward [encouraging gamblers not to carry cash]'.<sup>2</sup>
- 3 The Casino Control Act adopted these suggestions.
- 4 Relevantly, subject to certain exceptions, by section 68(2) a casino operator is prohibited from providing money or chips as part of a transaction involving a credit card or debit card.
- One exception is section 68(8), which provides that a casino operator may provide credit to a non-Australian resident participating in a premium player arrangement or a junket.
- This chapter will outline how Crown Melbourne contravened section 68 by implementing what has become known as the 'CUP process'; the 'CUP process' being the use of the Chinese-based bank card, China Union Pay, to allow international patrons to access funds in order to gamble at Crown Melbourne.

#### The process

- On 10 March 2021, Solicitors Assisting the Commission wrote to Crown Resorts and Crown Melbourne requesting them to disclose, relevantly, conduct that would or might breach any provision of the Casino Control Act.<sup>3</sup>
- 8 On 16 March 2021, a leadership training workshop was attended by a number of Crown Melbourne employees. There, one of the employees said he was aware that money laundering was taking place at the Melbourne Casino.
- 9 A surveillance log entry report summarised what the employee had said:

[The form of money laundering] involved having a high action international patron staying at a hotel (ie. Crown Towers). They (the hosting or hotel staff) would charge an 'incidental charge' ([the employee] failed to specify an amount) to the hotel invoice of the patron. The patron would then settle their hotel bill, including the incidental charge, using 'tap and go'. This would

transfer money from an international account to Crown to settle the amount on the hotel room. The money for the incidental charge would then be made available to the patron, potentially at the cage, for the purposes of gaming.<sup>4</sup>

- 10 On 25 March 2021, the employee was interviewed by three Crown Melbourne officers, including Mr Robert Meade (Crown Melbourne's in-house counsel), Ms Jan Williamson (another in-house lawyer) and Ms Miriam Burado (the manager of the employee's direct manager).<sup>5</sup>
- 11 On 21 April 2021, in response to the disclosure request, the Commission was informed that Crown Melbourne may have breached the AML/CTF Act. The Commission was provided with a copy of the surveillance log entry report recording what the employee said at the leadership training workshop. It was advised that Crown Resorts had begun an investigation into the matter.<sup>6</sup>
- In due course, the Commission was provided with a Memorandum of Advice, dated 1 June 2021, by senior and junior counsel who had been retained by the directors of Crown Resorts to investigate the matters raised by the employee. That advice sets out a detailed history of the practice.<sup>7</sup> It will be necessary to return to aspects of that advice.
- 13 It is important to understand the reason for the CUP process. China had imposed restrictions on Chinese nationals transferring money out of the country. Between the years 2012 and 2016, a Chinese national could not transfer more than USD50,000 per year to another jurisdiction. The Chinese currency restrictions were well known to Crown Melbourne executives.<sup>8</sup> The CUP process was devised to enable the illegal transfer of funds from China.
- In brief outline, the CUP process involved the following steps. International VIP patrons, mostly from China, were permitted to transfer funds to the Crown Towers Hotel through their CUP credit card or debit card. NAB was the merchant facility provider whose terminal facility was used. The hotel issued a room charge bill to the patron, falsely asserting that the hotel had provided services to the person. The patron would pay the bill and be given a voucher acknowledging the receipt of funds. Then the patron, accompanied by a Crown VIP host, took the voucher to the Cage and exchanged it for cash or chips.<sup>9</sup>
- 15 Crown Melbourne adopted the CUP process in the following circumstances. In August 2012, Crown Melbourne's Vice President South China contacted Mr William Mackay, the Executive Vice President of VIP Operations. He enquired whether two Chinese VIP patrons who were planning to visit Crown Melbourne could transfer to the casino \$200,000 via a credit card so that they could purchase chips to gamble.<sup>10</sup>
- 16 Crown Melbourne's Vice President South China discussed the matter with several Crown executives, including Mr Matt Sanders, a strategy manager at Crown Melbourne. Mr Sanders came up with the idea that the patrons could pretend to acquire services from the Crown Towers Hotel and use money transferred from their credit card account to pay for those services. Mr Sanders sought advice from Ms Debra Tegoni and Ms Michelle Fielding, Crown Melbourne's legal and compliance officers, on whether it could be done.<sup>11</sup>

#### Internal advice on the process

- 17 On 9 August 2012, Ms Fielding sent an email to Mr Sanders and Ms Tegoni containing her advice. The advice noted that:
  - the Casino Control Act prevented a cash advance from a credit card on the gaming floor and within 50m of any casino entrance
  - the Casino Control Act also forbade the provision of cash or chips as part of a transaction involving a credit card or debit card
  - · there was an exception where the chips were provided on credit to a person not ordinarily resident in Australia and the person was participating in a junket or a premium player arrangement.12
- 18 Ms Fielding's advice did not deal with the lawfulness of the proposed arrangement. She merely paraphrased the applicable provisions in the Casino Control Act.
- 19 However, Ms Fielding was alive to the risk such transactions represented, for she stated:

There is therefore a risk that the Regulator may take the view that to take advantage of exemption it must be the casino operator providing the credit and not the bank. We would argue in reply (if the matter arises), that the chips are being sold on credit as facilitated by and for the benefit of the casino operator and accordingly, in our view, the exemption should apply.<sup>13</sup>

- 20 Nonetheless, Ms Fielding advised that Crown Melbourne could sell and provide chips from a credit card to international patrons, provided those patrons were participating in a junket or a premium player arrangement.
- 21 Unfortunately, Ms Fielding did not consider whether, by acting in accordance with her advice, Crown Melbourne would be providing credit to the VIP patrons—for it is only in that circumstance that the exemption in section 68(8) would apply.

#### Adoption of the process and further reviews

- 22 Also on 9 August 2012, Mr Jason O'Connor (Group Executive General Manager, VIP International) approved the process and limited the transfer of funds to \$200,000.14
- 23 The process was then partially formalised. Mr Sanders emailed the duty managers at the hotel and the manager of the Cage on 6 September 2012 and explained the procedure to be followed. The instructions were quite detailed. 15
- 24 By mid-2013, 14 patrons had used the CUP process. The amounts transferred ranged from \$5,000 to \$450,000.16
- 25 An internal review of the process was then undertaken. The report of the review, dated 6 June 2013, identified potential money laundering as a problem. The report noted that the staff at the Cage were responsible for compliance with the AML requirements.<sup>17</sup>

- 26 There was no evidence before the Commission that, at any time during which the CUP process was in operation, the Cage staff considered that it might be necessary to make reports to AUSTRAC regarding the funds transferred from China. To the contrary, the evidence suggests they did nothing.
- 27 In mid-2013, an issue arose that should have alerted Ms Tegoni to the unlawfulness of the CUP process. In July 2013, Crown Melbourne reviewed whether its banking arrangements with NAB permitted the CUP process. It also considered whether it might engage CBA to be its merchant facility provider instead of NAB. Ms Tegoni was one of the review team.
- 28 During the review, correspondence passed between Ms Tegoni and an officer at CBA. In particular, on 26 July 2013, the CBA officer emailed an executive at Crown Melbourne, who forwarded the email to Ms Tegoni, noting there were a number of constraints on using the CUP process. Of the problems identified, three should be noted. According to the CBA officer, CUP cards:
  - · cannot be used to process cash out
  - · cannot be used to place bets or purchase gaming chips
  - cannot be used to purchase foreign currency.<sup>18</sup>
- 29 On 16 September 2013, Ms Tegoni reviewed an article from China Briefing News. The article discussed the problems faced by Chinese nationals seeking to transfer funds from China.<sup>19</sup>
- 30 In the unlikely event that Ms Tegoni had not been aware that the CUP process enabled Crown Melbourne's Chinese VIP patrons to illegally transfer funds from China, she now knew it. Upon reading the article, Ms Tegoni made a file note: '[t]ransaction NOT valid if it's illegal. Where?? Discretion if breaches laws or sanctions of another country.'20
- 31 Ms Tegoni was also concerned about Crown Melbourne's AML obligations. She sent an email to Mr Roland Theiler, Senior Vice President of International Business at Crown Melbourne, asking: 'Do you know if the Cage report on any pre-approval or intention to visit and use CUP here from an AML perspective—i.e. an IFTI on the instruction?'21
- 32 On 17 September 2013, Ms Tegoni prepared a 'note to file'. In summary, she recorded:
  - CBA emailed to say CUP cannot be used to purchase chips.
  - The NAB offer allows a CUP card to process a 'quasi-cash transaction' (something, such as chips, that may be readily converted to cash) as a 'purchase' rather than a 'cash out'. This suggests CUP can process such a transaction.
  - There would be proceeds of crime issues if such transactions were not legal.
  - NAB's terms and conditions suggest that such transactions are not valid if they are illegal.
  - Such transactions cannot be processed to provide players with cash.
  - If it is illegal for Chinese residents to gamble overseas (and she did not think it was), then that would be a matter for the individual patron, subject to proceeds of crime issues and NAB terms and conditions.

- There is a technical risk that such transactions are only completed on the gaming floor, but 'we have been doing this for a long time and this has been acceptable'.
- It is hard to see how the transactions could be illegal unless NAB has changed its terms and conditions or specified that using a CUP card for a quasi-cash transaction such as this is now illegal and invalid. This should be clarified and a new letter of offer obtained.<sup>22</sup>
- 33 Once again, Ms Tegoni was on notice that the CUP process was potentially unlawful.
- 34 In the same month, Ms Tegoni was asked to consider whether the CUP process required the patron to be a guest of the Crown Towers Hotel. In her advice, provided on 30 September 2013, Ms Tegoni stated:
  - ... S68 (2) of the Act prohibits Crown from providing money or chips as part of transaction involving a credit or a debit card unless exempted under S68(8) when the chips are provided on credit (there is no mention of debit card in this section) is provided to an International resident when participating in a Premium program agreement or a junket at the casino.
  - Accordingly, this is a further reason why we may have required them to be hotel guests. Either way it is preferable that we check that they are International residents and on such a program before we allow them to transact in this manner—I understand that this is the case.
  - It may well be argued that S68(2) does not apply for funds accessed at the hotel at all, as the section only deals with a transaction 'in connection with gaming or betting in the casino' and providing access to funds at the hotel is not this type of transaction. Irrespective, we have taken the view that, it is preferable to ensure the customer is international and playing on a program just in case.23
- 35 In October 2013, the CUP process was formalised in the VIP International 'Credit and Debit Card cash out policy'.24
- 36 In December 2013, the previous transfer limit of \$200,000 per transaction was increased to \$500,000 per transaction and patrons were informed of the increase.<sup>25</sup>
- 37 In fact, on several occasions, the \$500,000 limit was exceeded.<sup>26</sup>
- 38 In February 2014, Mr O'Connor met with representatives of Regal Crown (a Hong Kong-based remittance payment company) in Hong Kong to discuss whether it would become a merchant acquirer for CUP. At the time of the meeting, Mr O'Connor had been informed of concerns held by Ms Tegoni. Those concerns were:

- Do CUP know that the transactions are gaming related?
- Can we review the agreement between RC [Regal Crown] and CUP? ...
- How can we be assured that RC have a proper AML reporting process in place?<sup>27</sup>

- 39 Around the same time, there were internal discussions about whether the CUP process should be adopted by Crown Perth. Mr O'Connor was concerned about this. In an email to Ms Tegoni, he wrote, '[o]ne issue is what the VCGLR might do if contacted by the Perth regulator, which Josh [Preston] feels is likely to happen'.28
- 40 Whatever may have been the position in 2012 and 2013, by early 2014, Mr O'Connor, Mr Preston (then Chief Legal Officer, Australian Resorts) and Ms Tegoni were obviously worried about the lawfulness of the CUP process.
- 41 Indeed, in March 2014, Mr O'Connor read a Reuters article that referred to the CUP process; specifically, it noted that the process violated China's AML regulations and restrictions on currency exports. It also noted that the Chinese authorities feared the CUP process was being used by 'corrupt officials and business people to send money out of the country'.29
- 42 On 17 October 2014, Ms Tegoni sent the following email to Mr O'Connor:

Further to our conversation today, I thought that I should point out and clarify the relevant provisions of the Casino Control Act (Vic) 1991 that we have previously discussed in the context of this issue.

See attached section 68(2)(c). This provision states that, other than is provided/permitted under the remaining parts of section 68, Crown is not permitted 'in connection with any gaming or betting in the casino ... to provide money or chips as part of a transaction involving a debit or credit card'.

This was the provision I was talking about that we would have to defend in circumstances where the transactions were questioned.

We would argue that subsection 68(8) allows us to provide credit to a person who is not ordinarily resident in Australia on a premium player arrangement or as a Junket and so is effectively an exception to the above prohibition. Technically, however and as discussed, a credit card transaction is where credit is provided by the bank.

If we are providing chips as part of a credit or debit card transaction for those that are not international customers there may be additional risks involved.

In either situation (international or local customers), we would need to rely on the fact that the transaction is not 'in connection with gaming or betting in the casino' given that such transactions occur at the hotel (albeit may be argued to be completed at the Cage).

Obviously we may fail in any defence in this manner but the way in which we agreed to undertake these transactions are designed to mitigate the risks. This is predominantly why we agreed to limit CUP card transactions to international patrons staying at the hotel etc.

To the extent that we are accepting cards for other patrons—debit and credit we need to be aware of the restriction of section 68(2)(c).30

- Throughout 2015 and into 2016, further events occurred that threw more doubt on the lawfulness of the CUP process. Star Casino, which operated a casino in New South Wales, was also using the CUP process with NAB as its merchant service provider. NAB had begun querying their arrangement.<sup>31</sup>
- 44 On learning this, Ms Tegoni wrote another file note, which included the statement: '[m]y suggestion close down before if going to happen anyway'.<sup>32</sup>
- 45 In late 2015, Ms Tegoni spoke with Mr Alex Carmichael, the Managing Director of Promontory Group Australasia. Ms Tegoni's notes of the conversation included:

CUP Chinese Govt—crusade against corruption effectively shut down a lot of junkets operating out of Macau. Ceased.

CUP goes through at lower levels and prob exceed levels with multiple cards being used—within per day limit.

Large amounts over \$50k—single card.

Processed up \$200k.

Single card would be flagged—Chinese Govt—tracking \$50k and above.

Could be spread amongst multiple cards.<sup>33</sup>

- 46 Ms Tegoni's concern about compliance with the AML rules remained. She discussed the issue with senior officers during February 2016, but no action was taken to overcome any failings.<sup>34</sup>
- 47 If Ms Tegoni was still in any doubt about the propriety of the currency controls, that doubt was removed by a research note prepared by her legal assistant in February 2016. The research note stated that Chinese banks do not allow customers to send more than USD50,000 out of China each year.<sup>35</sup>
- 48 Notwithstanding the concerns about the CUP process, in March 2016 there were detailed discussions about extending the CUP process to Crown Perth even though the VCGLR might learn about the process.<sup>36</sup>
- 49 The CUP process came to an end in October 2016 following the arrests of Crown staff in China.<sup>37</sup>
- 50 However, between 2018 and 2019, the VIP business sought to reintroduce the practice. This was resisted by Mr Preston.<sup>38</sup>
- It should be noted that the process of using credit cards or debit cards at Crown Towers in return for cash continues. Invoices from Crown Towers from 2017 to 2021 show that customers used the card facilities to access cash of up to \$5,000. The invoices also include false room numbers for those not staying at Crown Towers Hotel.<sup>39</sup>
- 52 Mr Meade has succinctly summed up the purpose and consequences of the CUP process. In a file note prepared following his review of the CUP material, Mr Meade wrote that the CUP process:
  - was clearly designed to circumvent Chinese capital control laws
  - may have been contrary to Crown Melbourne's AML obligations
  - compromised Crown Melbourne's financial books and records.

53 There was no need for Mr Meade to add that the CUP process contravened section 68 of the Casino Control Act as it plainly did—a point Crown Melbourne concedes. 41 First, section 68(2)(c) prohibited the provision of money or chips as part of a transaction involving a credit card or debit card. The CUP process fell within the prohibition. Second, the exception in section 68(8) only applied if the casino operator provided credit to a person. The CUP process did not involve Crown Melbourne providing credit.

#### Repercussions of the CUP process

- 54 Counsel retained by the directors of Crown Resorts considered whether officers of Crown Resorts or Crown Melbourne had contravened the AML obligations under the AML/CTF Act, certain sections of the Crimes Act 1958 (Vic) and certain parts of the Criminal Code 1995 (Cth).42
- 55 It is not appropriate to discuss those aspects of their advice. For one thing, the CUP process has been referred to AUSTRAC and it will no doubt undertake its own inquiries to decide whether the AML/CTF Act has been contravened.
- 56 Second, the ability of counsel to advise adequately on the criminality of the conduct was hampered by the fact that they could not speak with all important participants and may not have had all relevant documents. As counsel themselves explain, this only allowed them to express tentative opinions on the illegality of the conduct.<sup>43</sup>
- 57 That said, and putting aside any potential criminal offences, there is a strong case to be made that parties involved in the CUP process have contravened section 184 of the Corporations Act. That section relevantly provides that an officer of a corporation commits an offence if they are reckless or dishonest and fail to exercise their powers in good faith and in the best interests of the corporation.
- 58 The decision to authorise and oversee the CUP process was clearly not in the best interests of Crown Melbourne. On the contrary, it was plainly against its interests for, having breached section 68, Crown Melbourne was at risk of being caught and subjected to disciplinary action of some kind.44 Indeed, it is still possible that action will be taken as regulatory investigations are currently underway.

#### **Endnotes**

- 1 Xavier Connor, Report of Board of Inquiry into Casinos in the State of Victoria (Report, 1983) [16.43].
- 2 Xavier Connor, Report of Board of Inquiry into Casinos in the State of Victoria (Report, 1983) [16.44].
- 3 Exhibit RC0148 Letter from Solicitors Assisting to Crown Melbourne Directors, 10 March 2021.
- 4 Exhibit RC0376 Surveillance Log Entry Report, 19 March 2021.
- 5 Exhibit RC0936 File Note regarding meeting with whistleblower, 25 March 2021; see also Transcript of Employee 15, 23 June 2021, 2472–3.
- Exhibit RC0244 Letter from Allens Linklaters to Solicitors Assisting, 21 April 2021, Annexure b, 14–15. See also Exhibit RC1452 Minutes of Crown Resorts board meeting, 9 April 2021.
- 7 Exhibit RC0268 Final Memorandum of Advice—Crown Resorts, CUP process and transfers by associates of customers, 1 June 2021.
- See Exhibit RC0952 File Note regarding China Union Pay meeting with Roland Theiler, 22 April 2021; Exhibit RC0959 File Note regarding China Union Pay meeting with Jacinta Maguire, 18 May 2021; Exhibit RC0955 File Note regarding China Union Pay meeting with Barry Felstead, 28 April 2021.
- 9 Exhibit RC0268 Final Memorandum of Advice—Crown Resorts, CUP process and transfers by associates of customers, 1 June 2021, 50 [200].
- 10 Exhibit RC0268 Final Memorandum of Advice—Crown Resorts, CUP process and transfers by associates of customers, 1 June 2021, Annexure xx, 6.
- 11 Exhibit RC0268 Final Memorandum of Advice—Crown Resorts, CUP process and transfers by associates of customers, 1 June 2021, Annexure xx, 5.
- 12 Exhibit RC0263 Email chain between Matt Sanders and Jason O'Connor et al, 9 August 2012.
- 13 Exhibit RC0263 Email chain between Matt Sanders and Jason O'Connor et al, 9 August 2012.
- Exhibit RC0268 Final Memorandum of Advice—Crown Resorts, CUP process and transfers by associates of customers, 1 June 2021, Annexure eee.
- Exhibit RC0268 Final Memorandum of Advice—Crown Resorts, CUP process and transfers by associates of customers, 1 June 2021, Annexure yy, 2–3.
- 16 Exhibit RC0268 Final Memorandum of Advice—Crown Resorts, CUP process and transfers by associates of customers, 1 June 2021, Annexure uu, 1.
- 17 Exhibit RC0268 Final Memorandum of Advice—Crown Resorts, CUP process and transfers by associates of customers, 1 June 2021, Annexure uu, 3.
- 18 Exhibit RC0268 Final Memorandum of Advice—Crown Resorts, CUP process and transfers by associates of customers, 1 June 2021, Annexure r, 2.
- 19 Exhibit RC0268 Final Memorandum of Advice—Crown Resorts, CUP process and transfers by associates of customers, 1 June 2021, Annexure v.
- 20 Exhibit RC0268 Final Memorandum of Advice—Crown Resorts, CUP process and transfers by associates of customers, 1 June 2021, Annexure w, 4.
- 21 Exhibit RC0268 Final Memorandum of Advice—Crown Resorts, CUP process and transfers by associates of customers, 1 June 2021, Annexure t.
- 22 Exhibit RC0268 Final Memorandum of Advice—Crown Resorts, CUP process and transfers by associates of customers, 1 June 2021, Annexure q.
- 23 Exhibit RC0268 Final Memorandum of Advice—Crown Resorts, CUP process and transfers by associates of customers, 1 June 2021, Annexure n, 1.
- Exhibit RC0268 Final Memorandum of Advice—Crown Resorts, CUP process and transfers by associates of customers, 1 June 2021, Annexure j.
- 25 Exhibit RC0268 Final Memorandum of Advice—Crown Resorts, CUP process and transfers by associates of customers, 1 June 2021, Annexure k.
- 26 Exhibit RC0313 Main Cage Purchase transaction spreadsheet, 23 October 2016.
- 27 Exhibit RC0268 Final Memorandum of Advice—Crown Resorts, CUP process and transfers by associates of customers, 1 June 2021, Annexure m, 2.
- 28 Exhibit RC0268 Final Memorandum of Advice—Crown Resorts, CUP process and transfers by associates of customers, 1 June 2021, Annexure m, 1.

- 29 Exhibit RC0268 Final Memorandum of Advice—Crown Resorts, CUP process and transfers by associates of customers, 1 June 2021, Annexure ggg; Exhibit RC0268 Final Memorandum of Advice—Crown Resorts, CUP process and transfers by associates of customers, 1 June 2021, Annexure II.
- 30 Exhibit RC0265 Email chain between Debra Tegoni and Jason O'Connor et al, 11 September 2015.
- Exhibit RC0268 Final Memorandum of Advice—Crown Resorts, CUP process and transfers by associates of 31 customers, 1 June 2021, Annexure hh.
- 32 Exhibit RC0268 Final Memorandum of Advice—Crown Resorts, CUP process and transfers by associates of customers, 1 June 2021, Annexure hh.
- 33 Exhibit RC0268 Final Memorandum of Advice—Crown Resorts, CUP process and transfers by associates of customers, 1 June 2021, Annexure c.
- 34 Exhibit RC0268 Final Memorandum of Advice—Crown Resorts, CUP process and transfers by associates of customers, 1 June 2021, Annexure z.
- 35 Exhibit RC0268 Final Memorandum of Advice—Crown Resorts, CUP process and transfers by associates of customers, 1 June 2021, Annexure cc.
- 36 Exhibit RC0268 Final Memorandum of Advice—Crown Resorts, CUP process and transfers by associates of customers, 1 June 2021, Annexure gg; Exhibit RC0268 Final Memorandum of Advice—Crown Resorts, CUP process and transfers by associates of customers, 1 June 2021, Annexure jij.
- Exhibit RC0268 Final Memorandum of Advice—Crown Resorts, CUP process and transfers by associates of 37 customers, 1 June 2021, Annexure d.
- 38 Transcript of Jan Williamson, 2 July 2021, 3179-82.
- 39 Exhibit RC0964 Crown Resorts Invoice, 26 February 2017; Exhibit RC0965 Crown Resorts Invoice, 13 August 2020; Exhibit RC0963 Crown Resorts Invoice, 6 August 2019; Exhibit RC0962 Crown Resorts Invoice, 31 May 2019; Transcript of Employee 10, 23 June 2021, 2437-8.
- 40 Exhibit RC0315 File Note regarding China Union Pay potential AML breach, 22 March 2021, 1.
- 41 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 269-70 [H.28].
- 42 Exhibit RC0268 Final Memorandum of Advice—Crown Resorts, CUP process and transfers by associates of customers, 1 June 2021.
- 43 Exhibit RC0268 Final Memorandum of Advice—Crown Resorts, CUP process and transfers by associates of customers, 1 June 2021, 4 [8].
- 44 See Australian Securities and Investments Commission v Maxwell (2006) 59 ACSR 373, 399-402 [104]-[110]; see also Cassimatis v Australian Securities and Investments Commission [2020] FCAFC 52, [460].



# Overseas operations

## Overseas operations

#### Introduction

- A significant number of patrons who gamble at the Melbourne Casino are citizens of countries in Asia. Their custom makes a large contribution to Crown Melbourne's profits. In the period 2015 to 2020, Crown Melbourne's reported turnover from VIP program play was \$220.8 billion.<sup>1</sup> A substantial proportion of that amount comprised turnover from Asian patrons.<sup>2</sup>
- 2 To attract custom from Asia, Crown Melbourne established a VIP International business unit. The function of this unit was to market Crown's casinos to overseas gamblers.
- 3 VIP International had offices in mainland China, Macau, Malaysia, Singapore, Indonesia, Thailand, Vietnam, Taiwan and New Zealand.<sup>3</sup> Its marketing activities were conducted from these offices. The staff were local residents.
- There was, however, a serious problem with these activities. Since the 1990s, Crown Melbourne knew that gambling or the promotion of gambling was illegal in China, Indonesia, Malaysia, Taiwan and Singapore. It had received advice to that effect from several law firms, including Baker & McKenzie and Jones Day, as well as from lawyers who practised in the various countries.<sup>4</sup>

#### Legal advice

- Ms Jan Williamson is an in-house lawyer at Crown Melbourne. One of her areas of responsibility was VIP International.<sup>5</sup> Ms Williamson said that she was only concerned with the 'HR side' of VIP International.<sup>6</sup> In fact, her role involved much more than that. On several occasions since 2002, Ms Williamson obtained advice from overseas law firms regarding the lawfulness of gambling in the Asian countries from which Crown Melbourne drew its custom.<sup>7</sup>
- 6 Crown Melbourne also knew that, in at least some of those jurisdictions, it was illegal to promote gambling in overseas casinos. Once again, it was Ms Williamson who had obtained advice to that effect.8
- 7 The fact that gambling and its promotion were unlawful in a number of Asian countries did not deter VIP International from luring Asian gamblers to the Melbourne Casino.
- That practice was interrupted in October 2016 with the arrest of the 19 China-based Crown employees, who were charged under Article 303 of the *Criminal Law of the People's Republic of China* (Criminal Law) with procuring of Chinese citizens to gamble at Crown's casinos in Australia.<sup>9</sup>
- 9 Crown Resorts, following the arrests, requested its Melbourne solicitors, MinterEllison (Mr Richard Murphy), to provide advice regarding the lawfulness of its overseas operations.<sup>10</sup>
  For the purposes of that advice, Crown Melbourne provided MinterEllison with a summary of the advice it had previously received about gambling laws in Asian countries, as at February 2017.

  Ms Williamson prepared the summary.<sup>11</sup>

- 10 The Hong Kong summary is a useful example of the previous advice. It summarised advice from MinterEllison's Hong Kong office, noting that while there was no specific legal restriction explicitly prohibiting the marketing or promotion of overseas casinos, casinos were illegal in Hong Kong and by implication the promotion of foreign casinos may be illegal.<sup>12</sup>
- The advice distinguished between different types of promotion. There was 'above the line' advertising, being advertising that goes to the general population, and 'below the line' advertising, which involves marketing towards a smaller specific group. In relation to 'above the line' advertising, the advice noted that there was no prohibition on the marketing or promotion of overseas casinos, but advised against high-profile campaigns.<sup>13</sup>
- 12 As to 'below the line' advertising, the advice was more circumspect:

There is no specific legal restriction which explicitly provides that the promotion of overseas casinos in Hong Kong is illegal but by implication it is argued that such promotion is illegal.

Further, in light of the geo-political factors caution is to be exercised when promoting Crown Resorts and the main focus should be on non-gaming elements.14

- 13 Mr Murphy informed Crown Melbourne that MinterEllison had reviewed 'the legal opinions obtained by Crown [Melbourne] as to what is permissible under local law in Macau, Hong Kong, Taiwan, Thailand, Indonesia, Singapore, Malaysia and Vietnam (and for completeness the UK and New Zealand)'. Mr Murphy added that this advice would be the foundation for determining what future activities, if any, Crown staff may engage in in those jurisdictions.<sup>15</sup>
- 14 Mr Murphy recorded his understanding that Crown staff were not engaged 'for the time being' in any marketing activities outside Australia. No doubt the marketing activities had stopped because of the China arrests.16

#### Proposed operating model

- 15 On 3 March 2017, MinterEllison provided to Crown Resorts a 'Draft—proposed operating model for VIP business'.<sup>17</sup> The draft proposal described the legal position in the Asian countries where Crown conducted its marketing. It included the 'do's' and 'don'ts' for staff visiting Asian countries and the ""do's" and "don'ts" for "road shows", functions, events and the like in Asian countries'. 18
- 16 The draft proposal advised that Crown should establish a regional hub in Hong Kong 'because the legal environment is relatively amenable'. 19 The proposal recommended, on the basis of the risks in other countries, that the Crown offices in each of those countries should be closed and the staff relocated to Hong Kong. The staff could then travel from Hong Kong to the various Asian countries where Crown previously had offices, to continue their work.
- 17 The draft proposal described the law relating to gambling in each country. 20 It is helpful to set that out here, as it will make plain precisely what Crown Melbourne understood the position to be.
- 18 Regarding Macau, the legal position was that 'the promotion and operation of local casinos by licensed operators is permitted. All other gaming activities and promotion are implicitly prohibited'.21

- 19 For Singapore, the position was that '[o]rganising, promoting or advertising ... of gaming in foreign casinos is likely to constitute a criminal offence'.22
- 20 For the remaining countries, Thailand, Malaysia, Indonesia, Vietnam and Taiwan, the advice was that '[o]rganising, promoting or advertising in [that country] of gaming in foreign casinos is an offence'.23
- 21 The draft proposal then described the "do's" and "don'ts" for "low key" visits by staff to Asian countries'. The 'do's' included:
  - · keep meetings as small and low-key as is practicable, with no more than five invitees per meeting
  - · discuss Crown's non-gaming facilities and non-gaming events
  - · if a customer wants to discuss any aspect of gaming, inform the customer that is not the purpose of the visit and say 'someone will follow up by telephone (calling from Australia or HK)'
  - · take only a 'sanitised' mobile device
  - · take only approved collateral that 'promotes Crown's resorts, non-gaming facilities and non-gaming events, but does not mention ... gambling activities'.24

#### 22 The 'don'ts' included:

- meet with more than five customers at a time without prior approval of Crown's compliance officer
- discuss any aspect of gaming (terms, credit, debt collection, and so on)
- · take any electronic device other than a Crown-approved 'sanitised' mobile device
- use public wi-fi for email or other electronic communications
- dock any external storage device to the Crown mobile device.<sup>25</sup>
- 23 Mr Murphy provided advice along these lines to the Crown Resorts board on 27 April 2017.<sup>26</sup>
- 24 As a result, the Crown Resorts board decided to restructure its VIP operating model. It closed its offices throughout Asia and established a regional hub in Hong Kong. Crown staff then travelled from Hong Kong to the Asian countries, where offices had previously existed, to carry out their work.27
- 25 There is also advice provided by MinterEllison to Crown, which is contained in a document entitled 'DRAFT—Proposed operating model'.<sup>28</sup> This is a most troubling document. It provides advice about the activities that Crown staff based in Australia or London might undertake and comments on the appropriateness of those activities. It provides similar advice to that given to staff based in Hong Kong who were to carry out their work in the Asian countries.
- 26 The troubling aspect of this draft proposed operating model is that it is not confined to advising on the lawfulness of particular activities. It also describes the '[r]isk mitigation' for each activity and rates the risk out of 10.29

27 To appreciate the true nature of this advice, two examples concerning Hong Kong-based staff activity in Macau are reproduced here:

Activity	Risk mitigation	Risk (/10)	Comments
Promotion of resorts and events (not gaming) eg circulation of gaming-free version of Crystal magazine and advertising golf tournaments at Capital	Govt. / regulator relations strategy	2	Residual risk is that such promotion comes to be regarded as, in truth, promotion of gaming. Risk seems relatively low because foreign casinos have been doing it for a long time with no issues, and Crown staff in Macau were not targeted when mainland PRC [China] staff were detained.
Gaming related activities including promotion, negotiating terms of play (including front money or credit terms) and collecting debts	Without any	8	Whilst promotion of gaming in foreign casinos is not expressly prohibited—local legal advice is that it is implicitly prohibited. Moreover there are instances of persons (generally mainland PRC [Chinese] nationals) disappearing from Macau and turning up in detention in mainland PRC [China].

 $Source: Exhibit \ RC0295 \ Draft-Proposed \ operating \ model, \ n.d., \ 4.$ 

- Precisely the same information is provided for the other Asian countries. The only difference is in the risk rating. For example, the risk rating for the '[p]romotion of resorts and events (not-gaming)' in Hong Kong is 1/10, for Singapore it is 3-4/10, for Thailand it is 3-4/10 and for Malaysia it is 3-4/10.
- 29 This is a very useful guide if Crown was interested in having its staff engage in illegal conduct in those countries. It enabled Crown to assess the chance of its staff being charged with a serious offence. It could then decide whether it was prepared to run the risk of its staff being caught.
- 30 The guide might also be construed as an encouragement to carry out prohibited conduct—that is, it may go beyond the lawyer's role of giving advice. On the other hand, some might (likely incorrectly) take the view that, because the role of a lawyer is not restricted to giving advice, risk rating is not out of order.<sup>31</sup>

#### Further advice

31 On 6 July 2018, Mr Murphy emailed Mr Joshua Preston (then Chief Legal Officer of Crown) to pass on additional information he had received from Hakluyt, an international strategic advisory firm.<sup>32</sup> The Hakluyt information also dealt with how Crown's marketing activities might safely be conducted in Asian countries, despite the promotion of gambling being unlawful.

32 With regard to Macau, Hakluyt said 'careful marketing is possible'. In his email, Mr Murphy said that 'by careful marketing' Hakluyt means 'marketing of Integrated Resorts and visitor services, not mentioning gambling."33 The text of what Hakluyt actually reported was a little different. This is what Hakluyt wrote:

Private VIP marketing restricted to Macau remains relatively low risk ... In Macau, provided it is done judiciously, VIP marketing can be relatively low risk ... and a marketing office would not invite undue attention ... Any public marketing in Macau should avoid mentioning casinos or gaming and focus instead on IR [integrated resorts] and visitor services.34

33 In relation to Singapore, Mr Murphy wrote that 'Hakluyt considers the operational risks in Singapore to be generally lower than Macau'. The text from Hakluyt read:

> Open marketing of casino operations is strictly forbidden and, in the words of a former Resorts World Sentosa executive, 'just isn't worth it' ... However, it is clear that overseas operators are able to market their services without undue attention from the authorities provided a number of conditions are met. In particular, as with other jurisdictions, it is important to be seen to promote IRs [integrated resorts] in any public marketing with no mention of gambling.35

34 In relation to Malaysia, Mr Murphy summarised Hakluyt's assessment as 'relatively low risk for low key marketing'. Hakluyt's Report read:

Integrated Resorts a well-established back door for casino marketing

There are ways around this though. According to a former executive at Genting: 'Marketing in Malaysia can be done—but it must be done discreetly, due to the sensitivities of its primarily Muslim population. Conservative politicians must never be in a position to complain of obvious promotions from foreign casinos'.36

#### Action taken by Crown

- 35 It is important to mention two steps that were taken by Crown in relation to its South-East Asian operations. The first step was its treatment of commissions or bonuses. Until late 2017, the marketing staff received a bonus or commission. The bonus was calculated by reference to the turnover at Australian casinos by patrons who staff procured to attend.<sup>37</sup> The payment of commission was subsequently discontinued.38
- 36 The second step was to prepare written VIP Operating Procedures to regulate the conduct of the marketing staff. The procedures contained 'main points to remember'. The 'main points' included that staff members should 'only discuss Crown's resorts and facilities (non-Gaming) whilst travelling'.39
- 37 The VIP Operating Procedures also set out in broad terms what was permissible in Asia. Staff were told they could meet patrons for coffee, lunch or dinner (with the proviso that meetings be kept small and low-key) and discuss Crown's non-gaming facilities and patrons' travel preferences.40

- 38 The VIP Operating Procedures stated that discussions about any aspect of gaming (including terms, credit and debt collection), or making travel, visa or accommodation arrangements for a customer, were prohibited.<sup>41</sup>
- 39 While the VIP Operating Procedures did not deal with New Zealand, Ms Williamson said there were similar procedures in place in that country as it also prohibited the promotion of foreign casinos.<sup>42</sup>

#### Reopening of Malaysian and Singaporean offices

- 40 The Malaysian and Singaporean markets were lucrative. Crown thought it likely that if offices in those jurisdictions could be reopened, substantial additional revenue would accrue.
- 41 Accordingly, in October 2018, the Crown Resorts board met to consider whether to re-engage local staff in Malaysia and Singapore 'to hold' non-gaming-related meetings with local customers.<sup>43</sup>
- 42 Mr Murphy attended the meeting. He relayed advice received from Hakluyt that local staff operating in Malaysia and Singapore would be at 'low risk' of enforcement action, provided they were careful not to approach customers who had a faith-based objection to gaming.<sup>44</sup>
- 43 In February 2019, Mr Barry Felstead (then CEO of Crown Resorts) made a presentation to the Crown Resorts RMC about reopening offices in Singapore and Malaysia. The minutes of the meeting record that Mr Felstead advised the Committee that, based on legal advice, returning to operate in Singapore and Malaysia was 'low risk' and that Crown would be at a 'competitive disadvantage' if it did not establish a physical presence in those countries.<sup>45</sup>
- 44 Mr Felstead, with the assistance of Mr Murphy, prepared a memorandum for the RMC concerning the reopening of the Malaysian office. The memorandum recorded:

The current control framework in place has been effective since the change in the VIP Operational Model and is focused on ensuring compliance and minimising the risk of Crown's processes being viewed by local law enforcement or even the general public as inadequate, and risking the safety and freedom of staff, as well as Crown's reputation.<sup>46</sup>

- The memorandum also referred to the financial contribution of the Malaysian market to Crown Resorts, being \$5.4 billion in the 2018 financial year. It included the number of gaming programs Malaysian nationals had been involved in over the previous 18 months.<sup>47</sup>
- 46 The memorandum concluded:

Management advises that the Malaysia Proposal contains a range of existing and enhanced protocols designed to address and reasonably mitigate the risks, with the residual risk rating being LOW, as support[ed] by MinterEllison, Hakluyt and local Malaysian lawyers.<sup>48</sup>

47 A letter of advice from Mr Murphy was also provided to the RMC. The letter summarised the updated legal advice received from Shearn Delamore, a local Malaysian law firm, and strategic advice from Hakluyt.

48 The summary of the legal advice was:

•••

- c. the law [in Malaysia] is focused on domestic gaming, not foreign casinos;
- d. nevertheless, it is broadly drafted, such that a court could interpret it to apply to offers of hospitality and marketing of integrated resorts where, in reality, the focus is on attracting patrons to gamble;
- e. offering hospitality, entertainment and the like to existing customers is low risk;
- f. approaching prospective customers (unless those prospective customers are known to be significant customers of other foreign casinos) is higher risk;
- g. providing that marketing activities by foreign casinos remain low key and not directed generally at the Muslim community, they are unlikely to be an enforcement priority for local authorities; and
- h. the authorities have 'bigger fish to fry' for enforcement resources, including local and online gaming activities.<sup>49</sup>
- 49 Beneath the heading 'Risk/reward balance', Mr Murphy wrote:

The risk of enforcement of the law (through detention of local staff or prosecution of Crown or its directors) appears low, if:

- a. activities in Malaysia are generally 'low key' and do not involve media advertising of Crown;
- b. interactions 'on the ground' in Malaysia are non-gaming related and are limited to persons who are existing gaming customers of Crown or who are reliably known to be significant customers of other foreign casinos; and
- c. regular up-dates are sought from local lawyers and Hakluyt (or another suitable government risk advisor) to pick up and evaluate any early warning signs of any change in enforcement policy or any 'crackdown' on foreign casinos.<sup>50</sup>
- 50 Having considered the matter, on 8 May 2019 the Crown Resorts RMC recommended to the board that it reopen its Malaysian office.<sup>51</sup> It had made a similar recommendation regarding the Singapore office in February 2019.<sup>52</sup> It also resolved that FTI Consulting be retained to provide regular updates about the political and regulatory environment in Malaysia.<sup>53</sup>
- 51 Crown staff continued to operate in these Asian countries until all VIP International operations came to an end in early 2021.<sup>54</sup>
- 52 There is no evidence that describes precisely the activities engaged in by the overseas staff to obtain business for Crown. It is, of course, possible that the staff did observe the 'do's' and 'don'ts' that were repeated in substance in the VIP Operating Procedures.

- There is, however, an air of unreality about the maintenance of a relatively significant workforce (there were approximately 11 staff in Hong Kong and three in New Zealand) simply to wine and dine clients. <sup>55</sup> It is much more likely, indeed probable, that the staff carried on in the way they had in the past, namely, to entice patrons to gamble at Crown's Australian casinos.
- Plainly, Crown was aware of the risk that this might happen. It is precisely the risk that was described in MinterEllison's 'DRAFT—Proposed operating model'. No doubt because the risk rating (between 1/10 and 3–4/10, depending on the country) was relatively low, Crown thought it was considered a risk worth taking. In any event, the people facing the real risk were the overseas staff.
- Discontinuing bonuses and giving written directions to Crown staff regarding what was and was not permitted conduct did not eliminate the risk. The only safe thing to do (that is, safe for the staff) would be to discontinue overseas marketing altogether.
- 56 In the end, this is what occurred.
- 57 In December 2020, China's National People's Congress Standing Committee passed an amendment to the Criminal Law to make clear that it was illegal for any Chinese citizen to participate in gambling outside China. The change to the Criminal Law also made clear that anyone who organised a Chinese citizen to gamble outside China committed an offence. That is, as Crown observed in January 2021, the overseas staff were now at greater risk than before if they solicited Chinese citizens to gamble outside China. The change to the Criminal Law also made clear that anyone who organised a Chinese citizen to gamble outside China committed an offence.
- Not surprisingly, the Crown Resorts board resolved to close the office in Hong Kong. The board also decided to close the Auckland office.<sup>58</sup>

#### Conclusion

- 59 The following points emerge from the nature of Crown's marketing activities in Asia and New Zealand:
  - · Crown knew that promoting its casinos was illegal or was likely to be illegal.
  - Crown knew that its staff were only permitted to market its resorts with no mention that a casino was part of the resort.
  - Crown knew there was a risk (albeit a low-rated risk) that the activities of its overseas staff would be regarded, in truth, as the promotion of gaming.
  - Despite knowing of all these things, Crown was prepared to run the risk (more accurately, Crown was prepared to allow its overseas staff to run the risk) of prosecution.
- 60 It is difficult to imagine more reprehensible conduct on the part of an employer in this day and age.
- This behaviour also demonstrates that Crown learnt little from the incarceration of its China-based staff in 2016 and 2017. It continued to exhibit disregard for the safety of its employees.

## **Endnotes**

- Crown Resorts, *Annual Report 2015* (Report, 2015) 51; Crown Resorts, *Annual Report 2016* (Report, 2016) 13; Crown Resorts, *Annual Report 2017* (Report, 2017) 13; Crown Resorts, *Annual Report 2018* (Report, 2018) 14; Crown Resorts, *Annual Report 2019* (Report, 2019) 17; Crown Resorts, *Annual Report 2020* (Report, 2020) 16.
- The centrality of patrons from Asia to Crown's VIP International business model was discussed further in the Bergin Report: see Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 14 [9], 19 [20], 21 [54], 24 [65]–[66], 93 [10], 148 [24], 149 [25].
- 3 Transcript of Richard Murphy, 29 June 2021, 2838.
- 4 Exhibit RC1567 File Note regarding legal advices obtained by Crown Melbourne regarding overseas gambling and promotion, n.d.
- 5 Transcript of Jan Williamson, 2 July 2021, 3088.
- 6 Transcript of Jan Williamson, 2 July 2021, 3133.
- 7 Exhibit RC1567 File Note regarding legal advices obtained by Crown Melbourne regarding overseas gambling and promotion, n.d.; Transcript of Jan Williamson, 2 July 2021, 3149–50.
- 8 Transcript of Jan Williamson, 2 July 2021, 3149–50.
- 9 See Chapter 10.
- Transcript of Richard Murphy, 29 June 2021, 2835; Exhibit RC0269 File Note regarding presentation by Richard Murphy to Crown board meeting, 20 February 2017.
- 11 Exhibit RC0300 Email chain between Jan Williamson and Kyle Wombolt et al, 27 January 2021; Transcript of Jan Williamson, 2 July 2021, 3148–9.
- 12 Exhibit RC0345 Advice on marketing and rendition risks—Hong Kong as at February 2017, 4–5.
- 13 Exhibit RC0345 Advice on marketing and rendition risks—Hong Kong as at February 2017, 4–5.
- 14 Exhibit RC0345 Advice on marketing and rendition risks—Hong Kong as at February 2017, 5.
- 15 Exhibit RC1575 Email from Richard Murphy to Michael Neilson, 18 January 2017, [5].
- 16 Exhibit RC1575 Email from Richard Murphy to Michael Neilson, 18 January 2017, [5].
- 17 Exhibit RC0346 Email chain between Richard Murphy, Barry Felstead and Geoff Dixon, 3 March 2017.
- 18 Exhibit RC0296 Draft—proposed operating model for VIP business, n.d., 8–9.
- 19 Exhibit RC0296 Draft—proposed operating model for VIP business, n.d., 1.
- 20 Exhibit RC0296 Draft—Proposed operating model for VIP business, n.d., 6–7.
- 21 Exhibit RC0296 Draft—Proposed operating model for VIP business, n.d., 6.
- 22 Exhibit RC0296 Draft—Proposed operating model for VIP business, n.d., 6.
- 23 Exhibit RC0296 Draft—Proposed operating model for VIP business, n.d., 6–7.
- 24 Exhibit RC0296 Draft—Proposed operating model for VIP business, n.d., 8.
- 25 Exhibit RC0296 Draft—Proposed operating model for VIP business, n.d., 8.
- Exhibit RC1262 File Note regarding presentation to Crown Resorts board meeting, 27 April 2017; Transcript of Richard Murphy, 29 June 2021, 2851–2.
- 27 Transcript of Richard Murphy, 29 June 2021, 2851–2.
- 28 Exhibit RC0295 Draft—Proposed operating model, n.d.
- 29 Exhibit RC0295 Draft—Proposed operating model, n.d., 4–8.
- 30 Exhibit RC0295 Draft—Proposed operating model, n.d., 5–8.
- 31 See the interesting debate in Exhibit RC1604 Article: Criminal Liability of Professional Advisers, 1998.
- 32 Exhibit RC1573 Letter from Richard Murphy to Joshua Preston, 6 July 2018.
- 33 Exhibit RC1573 Letter from Richard Murphy to Joshua Preston, 6 July 2018, 1.
- Exhibit RC1573 Letter from Richard Murphy to Joshua Preston, 6 July 2018, 4–5.
- Exhibit RC1573 Letter from Richard Murphy to Joshua Preston, 6 July 2018, 9.
- 36 Exhibit RC1573 Letter from Richard Murphy to Joshua Preston, 6 July 2018, 14.
- 37 Transcript of Jan Williamson, 2 July 2021, 3139–40.
- 38 Transcript of Jan Williamson, 2 July 2021, 3138.
- 39 Exhibit RC0299 VIP International Operation Procedures presentation, 12 April 2017, 5.
- 40 Exhibit RC0299 VIP International Operation Procedures presentation, 12 April 2017, 12.
- 41 Exhibit RC0299 VIP International Operation Procedures presentation, 12 April 2017, 13.

- 42 Transcript of Jan Williamson, 2 July 2021, 3152.
- 43 Exhibit RC0298 Crown Resorts Limited board meeting minutes, 11 December 2018, 9.
- 44 Exhibit RC0298 Crown Resorts Limited board meeting minutes, 11 December 2018, 10.
- 45 Exhibit RC0428 Minutes of Crown Resorts RMC meeting, 11 February 2019, 2.
- Exhibit RC0429 Crown Resorts RMC meeting diligent pack, 8 May 2019, 4. 46
- 47 Exhibit RC0429 Crown Resorts RMC meeting diligent pack, 8 May 2019, 6.
- Exhibit RC0429 Crown Resorts RMC meeting diligent pack, 8 May 2019, 6. 48
- 49 Exhibit RC0429 Crown Resorts RMC meeting diligent pack, 8 May 2019, 20.
- 50 Exhibit RC0429 Crown Resorts RMC meeting diligent pack, 8 May 2019, 21.
- 51 Exhibit RC0429 Crown Resorts RMC meeting diligent pack, 8 May 2019, 6-7; Transcript of Jane Halton, 7 July 2021, 3560.
- 52 Exhibit RC1263 Minutes of RMC meeting, 25 February 2019.
- 53 Exhibit RC0429 Crown Resorts RMC meeting diligent pack, 8 May 2019, 5.
- 54 Exhibit RC0437 Statement of Helen Coonan, 28 April 2021, Annexure c.
- 55 Exhibit RC0342 Crown Resorts RMC meeting minutes, 19 November 2020, 98-104.
- 56 Ben Blaschke, 'Cross-Border Casinos, Junkets in Firing Line as China Passes Amendment to Criminal Law', Inside Asian Gaming (online, 30 December 2020) < www.asgam.com/index.php/2020/12/30/cross-bordercasinos-junkets-in-firing-line-as-china-passes-amendment-to-criminal-law>.
- 57 Exhibit RC0343 Email chain between Kyle Wombolt and Mary Manos, 27 January 2021.
- 58 Exhibit RC1299 Minutes of Crown Resorts board meeting, 15 January 2021, 4.



## Miscellaneous breaches

#### Miscellaneous breaches

#### Introduction

- On 10 March 2021, the Commission wrote to Crown Melbourne enquiring whether it had engaged in any conduct that was, or might be, in breach of a number of statutes, including the Casino Control Act.1
- In its response, Crown Melbourne provided the Commission with details of some breaches of the Casino Control Act.2 Those details did not disclose the breaches that are the subject of this chapter.

### Bank cheques

- By section 68(2) of the Casino Control Act, a casino operator is prohibited from, among other things:
  - accepting a wager made otherwise than by money or chips
  - · lending money
  - · providing money or chips as part of a transaction involving a credit card or debit card
  - · extending any other form of credit.
- There are exceptions to the prohibition. By section 68(3) a casino operator 'may establish for a person a deposit account into 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'.
- By section 68(4) the operator 'may issue to the person who has established the deposit account and debit to the account chip purchase vouchers or money, not exceeding in total value the amount standing to the credit of the account'.
- Crown Melbourne has adopted the following practice in relation to bank cheques (strictly speaking, banker's drafts); that is, cheques drawn by a bank on itself (or another bank) in favour of a payee.
- If a patron is the named payee on a bank cheque, Crown Melbourne will exchange that cheque for chips for a value equal to the face value of the bank cheque. To effect the transaction, patrons must sign the reverse side of the cheque and write their membership number. The exchange then takes place before Crown Melbourne presents the bank cheque for payment through the clearing system.
- The question that arises is whether this practice falls within sections 68(3) and (4). The answer to this question requires the resolution of two issues:
  - Is a bank cheque bearing only the signature of the payee 'a cheque payable to [Crown Melbourne]' within the meaning of section 68(3)?
  - If it is, does section 68(4) permit the account to be debited before the bank cheque is presented for payment and payment is made?

- 9 The answer to the first issue depends on the application of rules relating to cheques. The relevant rules taken from the *Cheques Act 1986* (Cth) and, where applicable, from common law principles are:
  - · a cheque must be payable to a specified person or to the order of a specified person
  - alternatively, a cheque may be payable to the bearer
  - a cheque payable to a specified person or to the order of a specified person may be negotiated by indorsement
  - there are several types of indorsement: in blank, special, restrictive and conditional
  - if the indorsement is in blank (that is, it is not endorsed to a specified person) the cheque is payable to the bearer
  - there will be an indorsement in blank if the payee merely signs the back of the cheque without anything more.<sup>3</sup>
- To every banker the expression that a cheque that must be 'payable to the operator' will be regarded as a term of art that will take its meaning from the Cheques Act and so require the operator to be named or otherwise indicated with reasonable certainty on the cheque.
- 11 The contention made by Crown Melbourne that the obligation that the cheque be 'payable to the operator' is satisfied if the operator (Crown Melbourne) is entitled (as the bearer) to present the cheque for payment is not correct.<sup>4</sup> It does not apply the well-understood meaning of the expression 'payable to [a named person]'.
- 12 The answer to the second issue is more contentious.
- There are only two ways in which Crown Melbourne can debit a deposit account for chip purchase vouchers or money. One is for Crown Melbourne to credit the deposit account with the relevant amount of its own funds. The other is for Crown Melbourne to wait for the patron's cheque to be cleared and the patron's funds to be credited to the deposit account.
- 14 The construction question is whether Crown Melbourne's own funds or the patron's funds can be credited to the deposit account, or whether it is only the patron's funds that can be credited to the account.
- 15 The answer depends upon what is contemplated by sections 68(3) and (4).
- 16 There is no clear answer. The better view, however, is that section 68(3) assumes that the deposit that will be credited to the deposit account will come from the patron and not the casino operator.
- 17 Whatever be the answer to the second issue, Crown Melbourne's practice of dealing with bank cheques is in breach of section 68, at least because it is crediting to a patron's account a bearer cheque rather than a cheque payable to Crown Melbourne.

#### Blank cheques

- 18 Crown Melbourne has a practice involving blank cheques; that is, cheques that do not specify a certain sum in money that is to be paid to the payee.
- 19 The practice is that certain patrons who have a black card can attend at the Cage, and sign a counter cheque drawn on the patron's bank that is payable to Crown Melbourne but has no amount written in. The patron is from time to time given chips with which to gamble. At the end of a gambling session, the patron's debts are 'consolidated' and the amount due to Crown Melbourne is written on the cheque.
- 20 Unless an exception applies, this practice is in contravention of section 68(2) because it involves extending credit to the patron.
- 21 Crown Melbourne contends that the practice is confined to patrons who are not ordinarily in Australia and are participants in a premium player arrangement or a junket.
- 22 If this were correct, then the prohibition against giving credit imposed by section 68(2) would not apply by reason of section 68(8), which provides that a casino operator might provide chips on credit to a non-resident who is participating in a premium player arrangement or junket.
- 23 However, Crown Melbourne's contention seems not to be supported by the evidence. One of the hosts who was called said the practice was permitted for 'important customers'. This host was a host to local patrons, not patrons from overseas.<sup>6</sup> Another host said the practice applied to local Australian customers. Mr Peter Lawrence, General Manager VIP Customer Service, Mahogany Room, also gave evidence about the practice. He did not say that it only applied to foreign patrons.8
- 24 On the evidence, it seems likely that the blank cheque practice is in breach of section 68(2).

#### Bank accounts

- 25 Section 123(1) of the Casino Control Act provides that a casino operator must:
  - a. keep and maintain separate accounts at an authorised deposit-taking institution ... for all banking transactions arising under this Act in relation to the operator; and
  - b. ... provide the Commission ... with a written authority addressed to the authorised deposit-taking institution ... to comply with any requirements of an inspector ...
- 26 Between 2014 and 2019, a subsidiary of Crown Melbourne, Southbank, maintained a bank account that was used by patrons to deposit funds they needed for gambling at the Melbourne Casino. As a result, over the years, patrons deposited hundreds of millions of dollars into the Southbank account.
- 27 The question is whether Crown Melbourne was in breach of section 123(1) by causing Southbank to establish an account into which patrons paid their funds rather than establishing an account in its own name into which patrons' funds would be deposited.

- 28 The short point of construction is whether the account to which section 123(1) applies must be the account of the casino operator. That depends on what is meant by the requirement that the casino operator must 'keep and maintain' an account.
- 29 The relationship between a banker and its customer is one of contract. The relationship is that of debtor and creditor.
- 30 Accordingly, the construction question comes down to this: can a casino operator be said to 'keep and maintain' an account with a banker if it is not a party to the contract with the banker?
- 31 Crown Melbourne contends that it need not be the customer. This contention cannot be correct. Whatever be the content of the obligation to 'keep and maintain' an account, the account can neither be kept nor maintained by the casino operator if it is not a contracting party with the bank.
- 32 A person cannot be said to 'keep' a thing that is under the control of, or is maintained by, another person.

#### Accounting records

- 33 Section 124(1) of the Casino Control Act provides that a casino operator must keep such accounting records as correctly record and explain the transactions and financial position of the operations of the casino.
- 34 Crown Melbourne accepts that the record keeping for the CUP process, which is dealt with in Chapter 13, did not properly explain the true nature of the transactions involved in that process. Accordingly, section 124(1) was breached on hundreds of occasions.
- 35 There may well be another contravention. Crown Melbourne has an electronic customer management system that recorded details of the funds deposited into the Southbank account that were then dealt with by the Cage staff.
- 36 When entered into the management system, deposits made by an individual patron were aggregated into one entry instead of being recorded as separate deposits. According to Ms Bergin, SC, the result was that the management system 'did not give a complete picture of what was occurring in the underlying bank accounts. Important information which could be seen in the bank statements was lost in the process of data entry into the [management system]'.<sup>10</sup>
- 37 It seems from the observations made by Ms Bergin, SC that, apart from the management system, Crown Melbourne maintained no accounting records of the money deposited into the Southbank account so as to be able to see the amount of any individual deposit.
- 38 Certain of the information stored in the management system (but not all stored information) is properly characterised as an accounting record. An 'accounting record' is a business record that explains the transactions entered into by a person carrying on a business.<sup>11</sup>
- 39 If the management system is the only accounting record maintained by Crown Melbourne of money deposited in the Southbank account, it is difficult to see why there were not contraventions of section 124.

#### Contracts

- 40 Clause 48(1)(b) of the Casino Agreement and clause 41.41(b) of the Management Agreement provide, in substance, that Crown Melbourne must comply with all the laws applicable to the subject matters of those agreements.
- 41 During its inquiries, the Commission has identified many contraventions by Crown Melbourne of its legal obligations. The relevant findings are scattered throughout this Report.
- 42 Crown Melbourne acknowledges that, as a result of those contraventions, there have been breaches of the Casino Agreement and the Management Agreement.

#### **Endnotes**

- Exhibit RC0148 Letter from Solicitors Assisting to Crown Melbourne Directors, 10 March 2021.
- 2 Appendix G deals with the response of Crown Melbourne.
- 3 Cheques Act 1986 (Cth) ss 3, 19–22, 24; MJL Rajanayagam, The Law Relating to Negotiable Instruments in Australia (Butterworths, 1980) [7.15]; Bernard Riley, Bills of Exchange in Australia (The Law Book Company, 3rd ed, 1976) 100; Peacock v Rhodes (1781) Doug 633, 636.
- 4 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 280-5 [H.68]-[H.75].
- 5 Transcript of Employee 6, 21 May 2021, 579-80.
- 6 Transcript of Employee 6, 21 May 2021, 551.
- 7 Transcript of BZ, 4 May 2021, 51.
- Transcript of Peter Lawrence, 8 June 2021, 1750-4. 8
- 9 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 151 [D.219].
- 10 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 209 [33].
- 11 LexisNexis Australian Legal Dictionary (2nd ed, 2016), 'accounting record'.





# Royal Commission into the Casino Operator and Licence

THE REPORT — VOLUME 3

#### ROYAL COMMISSION INTO THE CASINO OPERATOR AND LICENCE

## The Report – Volume 3

The Hon. Ray Finkelstein, AO, QC Commissioner

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The Royal Commission into the Casino Operator and Licence acknowledges the traditional Aboriginal owners of country throughout Victoria and recognises their continuing connection to land, sea, culture and community. The Commission pays its respects to elders past, present and emerging.

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CHAPTER 16

# The powers of the regulator

#### CHAPTER 16

# The powers of the regulator

# Introduction

- The investigation undertaken by this Commission has exposed areas in the scheme of regulatory oversight of casino operators and casino operations that require reform.
- Some reforms are needed to prevent the type of conduct engaged in by Crown Melbourne from happening again. Other reforms are required to deal with circumstances that were not anticipated when the regulatory scheme was first enacted.
- This chapter will deal with aspects of the Casino Control Act relating to the powers of the casino regulator that warrant amendment.
- Key aspects of the Casino Control Act have been explained in Chapter 2. It is necessary to consider, in a little more detail, the provisions concerning the power to investigate, supervise and oversee a casino operator and its operations. It is also necessary to consider the cancellation and suspension power.

# Investigation power

- The Casino Control Act authorises the regulator to investigate the casino and its operations.<sup>1</sup> It also authorises the regulator to investigate associates of the casino operator.<sup>2</sup>
- The principal reasons the regulator is authorised to carry out an investigation include:
  - To determine whether the casino operator continues to be a suitable person to hold its casino licence. If not, it can decide what steps, including disciplinary action, should be taken.3
  - · To determine whether an associate has become unsuitable to be concerned in or associated with the casino operator's business and, if so, what steps should be taken.4
  - · In the event that a major change has occurred in relation to a casino operator (that is, a person has become an associate of the operator) without the regulator's approval, it can decide what action should be taken.<sup>5</sup>
- In order to carry out an investigation, the regulator has power to require the casino operator, or a person associated with the operator, to provide it with information, to produce documents and other records or to attend before the regulator to be examined.6
- To trigger the obligation to provide information or documents and records or attend for an examination, the regulator must give a notice in writing to the casino operator or other person. The notice should specify the action the operator or other person is required to take.<sup>7</sup>
- A failure to comply with the notice is punishable as if it were a contempt of the Supreme Court of Victoria.8

# Supervision power

- 10 The regulator has the power to give directions that relate to the conduct, supervision or control of a casino's operations.9
- 11 In order to carry out that function, the casino operator must provide to the regulator certain information about the casino's affairs. Principally, the obligation will arise when the regulator's approval is required for some reason; for example, if a person is to become an associate of the casino operator or if the casino operator wishes to enter into a controlled contract (a contract for the supply of goods or services to the casino).10
- 12 In the case of Crown Melbourne, the obligation to provide information is also found in the Casino Agreement.<sup>11</sup>
- 13 The Casino Agreement specifies that Crown Melbourne must allow the regulator:
  - · to inspect all records, accounts and information of Crown Melbourne
  - to have a representative attend meetings of Crown Melbourne, but not the right to vote at those meetings.<sup>12</sup>
- 14 In addition, Crown Melbourne is required to provide to the regulator:
  - all notices sent to shareholders<sup>13</sup>
  - · all notices or other information provided to the ASX and all notices or other information relating to Crown Melbourne received from the ASX, if Crown Melbourne is a listed company<sup>14</sup>
  - all notices or other information provided to ASIC, and all notices and other information relating to Crown Melbourne received from ASIC15
  - information regarding the activities of the Audit Committee and the Compliance Committee<sup>16</sup>
  - · financial information about Crown Melbourne's capital expenditure, budgets, investments and the like.17
- 15 Crown Melbourne's failings revealed by the Bergin Inquiry and this Commission occurred at all levels of the organisation.
- 16 The directors did not properly monitor Crown Melbourne's performance or oversee its processes to ensure that the organisation met its legal and regulatory obligations. Senior executives were personally involved in all aspects of Crown Melbourne's misconduct. Even employees played a role.
- 17 Had the regulator's existing powers been more extensive, it is possible that it would have detected, or dealt with, at least some of the problems that arose.

## Oversight of the casino floor

- 18 It is also necessary to consider whether there is sufficient oversight of conduct that takes place on the casino floor itself.
- 19 Principally, that task falls on the inspectors. Inspectors are appointed under the Victorian Commission for Gambling and Liquor Regulation Act.<sup>18</sup> They have functions under gaming and liquor legislation.<sup>19</sup> Under the Casino Control Act, inspectors have a number of functions, which include responsibilities at a casino.<sup>20</sup>
- 20 An inspector may enter and remain at the casino premises to:
  - · observe its operations
  - · ascertain whether its operations are properly conducted
  - · ascertain whether the provisions of relevant legislation are being complied with
  - supervise the handling of money
  - help detect Casino Control Act offences
  - investigate complaints.<sup>21</sup>
- 21 Mr Connor, QC had recommended the appointment of inspectors in his 1983 Report. He said:
  - · There must be an investigative, surveillance and auditing team of high integrity and skill. The skills needed include legal, accounting, auditing and investigative skills.<sup>22</sup>
  - The casino operator must be required to provide an office in the casino for the team.
  - · Members of the team should have power to examine the books and records of the casino operations, wherever the books and records are located.
  - · Members of the team should have power to take direct control of surveillance facilities in the casino.
  - Members of the team should have power to exclude persons from the casino.<sup>23</sup>
- 22 It is not clear whether the inspectors are carrying out all the functions Mr Connor, QC envisaged.
- 23 In addition to inspectors, when the Melbourne Casino commenced operation, the Casino Crime Unit of the Victoria Police was permanently stationed at the casino. The purpose of the Casino Crime Unit, as explained by Commander Michael Frewen, was:

to maintain the integrity of the Casino Industry by effective strategies, investigation techniques and prosecution of criminal acts thereby preventing the infiltration of significant criminal and corruptive influences.<sup>24</sup> 24 In his evidence to the Commission, Commander Frewen (then an Acting Assistant Commissioner) explained this in a little more detail.<sup>25</sup> He said the Casino Crime Unit:

> was responsible for a 24/7 presence at the casino, the collection of intelligence on behalf of Victoria Police and/or other agencies as the need necessitated, [and] providing an investigative response to a variety of different themes, including suspected international cheats, money laundering activities, counterfeiting and other suspicious activity ...<sup>26</sup>

- 25 Commander Frewen said the Casino Crime Unit also provided a 'primary response' to criminal conduct in and around the casino complex 'that presented on a day-to-day basis'.<sup>27</sup>
- 26 The Casino Crime Unit was disbanded in 2006 following an independent review of Crime Command. Having a physical base at the Melbourne Casino had little value in helping Victoria Police investigate serious money laundering and organised and serious crime, which are far-reaching and borderless. Money laundering, in particular, took place at many physical and virtual locations, including banking institutions, cash-based business venues and online platforms.<sup>28</sup>
- 27 Commander Frewen acknowledged that a police presence in large public places, such as a casino, is a form of effective policing. But he said this could be achieved by having uniformed members present, and that this was so in the case of Melbourne Casino.<sup>29</sup>
- 28 The functions of the permanently stationed team that Mr Connor, QC envisaged are different from the functions that the Casino Crime Unit performed, although there was a degree of overlap. Police were present at a casino to prevent criminal conduct and, if it did occur, to investigate the crime and prosecute the offender. Mr Connor, QC's proposed task force of skilled investigators was intended to provide broader oversight of the casino's operations as well as the activities of the casino operator.
- 29 The evidence before the Commission is that much illegal activity takes place in the casino itself. Money laundering, for example, remains a significant problem.<sup>30</sup> It is not only money that has been transferred from overseas that is of concern. Cash is regularly brought into the casino by, or on behalf of, local criminal elements to be laundered.
- 30 A Police Officer currently stationed in the Organised Crime Intelligence Unit at Victoria Police gave evidence about money laundering.<sup>31</sup> They said that:
  - 'there [was] money laundering at the casino on a daily basis'32
  - '[outside] junket programs ... we observed a lot of lower level money laundering or suspected money laundering'33
  - · 'individuals had a certain amount of cash with them ... [for example] in plastic bags ... going to the casino'34
  - · a particular type of container in which the cash was placed was 'a very big indicator [of money laundering] for us'35
  - 'there is a high probability [that certain people carrying money into the casino] are just money runners ... working for a money laundering syndicate'.36

- 31 The Police Officer was also asked about illegal prostitution at the Melbourne Casino. They said, 'I can answer that in relation to the illegal prostitution or prostitution, [it occurs] regularly, from what we've seen.' 37
- 32 The Police Officer did not say whether loansharking took place.<sup>38</sup> Other evidence is to the effect that loansharking does occur.39
- 33 This evidence, together with other evidence before the Commission, indicates that Melbourne Casino staff do not take sufficient action to deter or prevent illegal conduct, even when it is happening in plain sight.
- 34 In light of the evidence given by Victoria Police, and the fact that the Casino Crime Unit has been disbanded, it is appropriate that inspectors have more functions and are able to carry out these and any additional functions effectively.

#### RECOMMENDATION 17: FUNCTIONS OF INSPECTORS

It is recommended that the Casino Control Act be amended to add to inspectors' functions the following:

- to ascertain whether money laundering is taking place
- · to ascertain whether loansharking is taking place
- · to ascertain whether illicit drugs are being sold
- to make an exclusion order when appropriate
- on behalf of the casino operator, to withdraw a person's licence to remain on the casino premises
- any other functions as are prescribed by regulation.

#### RECOMMENDATION 18: POWERS OF INSPECTORS

It is recommended that the Casino Control Act be further amended so that:

- · inspectors have free and unfettered access to all parts of the casino, all the surveillance equipment used by the casino operator, and all the books and records of the casino wherever they be located
- any interference with inspectors' performance of their functions is to be a strict liability offence the contravention of which should carry a significant penalty.

## A problematic casino operator

- 35 As will by now be apparent from other parts of this Report, the regulator faces real difficulty in carrying out its functions if the casino operator adopts a non-cooperative, adversarial or even hostile attitude in its dealings with the regulator.
- 36 The adoption of this attitude places a significant constraint on the regulator's ability to carry out its statutory functions.
- 37 The position is made much worse if, as well as having a non-cooperative attitude, the casino operator withholds information from the regulator or actively misleads the regulator in an effort to hide the true facts.
- 38 This is the type of conduct Crown Melbourne engaged in. There is a description of that conduct in Chapter 10. It is not necessary to repeat what was said. It is sufficient to note that during several inquiries undertaken by the VCGLR, Crown Melbourne made a concerted effort to frustrate the regulator and conceal from it what had actually occurred.
- 39 Conduct like this cannot be allowed to continue. Crown Melbourne's assurances that the conduct will not be repeated cannot be relied upon. In the past, assurances of that kind were given but immediately broken.<sup>40</sup>
- 40 Other jurisdictions have recognised the problems caused by a recalcitrant casino operator. They have dealt with these licensees by imposing on them an obligation to cooperate as the price of the privilege of conducting a casino operation.
- 41 For example, the Gambling Commission of the United Kingdom, in its Licence Conditions and Codes of Practice (31 October 2020), records that it expects licensees 'to work with the Commission in an open and cooperative way'. To give effect to this legitimate expectation, a licensee can have its licence suspended or cancelled if it has not cooperated with the Commission during a statutory review.

#### RECOMMENDATION 19: COOPERATION WITH THE REGULATOR

It is recommended that the Casino Control Act be amended:

- to oblige a casino operator to cooperate with the regulator in relation to the performance by the regulator of its functions. Cooperation requires the licensee to make full and frank disclosure of all information that relates to the performance by the regulator of a particular function
- to oblige the casino operator to notify the regulator of a material breach, or a likely material breach, of the Casino Control Act, the Casino (Management Agreement) Act, the Gambling Regulation Act, its Responsible Gambling Code of Conduct and any agreements made pursuant to sections 15 and 142 of the Casino Control Act. A breach or likely breach will be material having regard to, among other things, the number and frequency of similar previous breaches or likely breaches, the impact of the breach or likely breach and any other matter prescribed by regulation

- · to prohibit the casino operator from making false or misleading statements or providing false or misleading material to the regulator
- to make a contravention of those obligations a strict liability offence that carries a significant penalty.
- 42 The Commission has also closely analysed several investigations that the regulator carried out into the affairs of Crown Melbourne. The details are in Chapter 10. What is apparent from that analysis is that, to more effectively carry out its inquiries, the regulator needs additional powers.

#### RECOMMENDATION 20: NEW POWERS FOR THE REGULATOR

It is recommended that the Casino Control Act be amended to permit the regulator:

- to require any person attending for an examination under section 26(1)(c) to answer questions on oath or affirmation
- in addition to the powers conferred by section 26, to require a casino operator or an associate to provide it with a written statement (verified on oath or affirmation) containing such information as the regulator reasonably requires to carry out its duties or perform its functions
- to make a costs order in respect of any action under section 20
- · to require the casino operator to retain at its own cost and pay for a suitably qualified expert:
  - approved by the regulator
  - engaged on terms approved by the regulator

to inquire into and report to the regulator on any matter the regulator reasonably requires to carry out its duties or perform its functions

- · to direct the casino operator to provide the expert with all information the expert reasonably requires
- · to require the casino operator to comply with any recommendation made by the regulator as a result of an investigation under section 25.

# Special Manager

- 43 In light of what is now known about the extent of Crown Melbourne's misconduct, it is also desirable for the regulator to have greater powers to oversee and control the casino operator's management.
- 44 The particular problem that needs to be dealt with is when it appears that the casino operator is not, or may no longer be, a suitable person to hold a casino licence, but it is not appropriate to cancel or vary the casino licence.

- 45 There will only be limited circumstances in which this situation could arise. The most obvious is when the casino operator's unsuitability is likely to be temporary. Under the current statutory regime, the regulator has few options. It could suspend the casino licence for a period and appoint a manager to conduct the casino operations during the period of suspension.<sup>43</sup> The only other alternative is for the regulator to permit the casino operator to continue operating the casino and keep a watchful eye on its operations.
- 46 Neither of these alternatives may be appropriate in particular circumstances. Missing from the legislation is the ability to permit the casino operator to continue to run the casino but to have in place some means by which the casino operations can be supervised, short of taking away all the casino operator's powers.
- 47 The gap in the legislation could be filled by creating the position of a Special Manager (however called), that can be appointed to oversee and control the casino operator and the casino operations. The Special Manager may also be required to investigate aspects of the casino's operations and report the results of that investigation.

#### RECOMMENDATION 21: SPECIAL MANAGER

It is recommended that the Casino Control Act be amended to the following effect:

- The regulator has power by an instrument in writing to appoint a Special Manager to oversee the affairs of the casino operator:
  - if the regulator is directed to do so by the Minister; or
  - where it appears to the regulator that at least one of the following situations exist:
    - there are reasonable grounds to suspect that the casino operator has contravened, in a material respect, a provision of its casino licence, the Casino Control Act, or any agreement entered into under sections 15 or 142 of the Casino Control Act
    - the casino operator is or may no longer be a suitable person to hold a casino licence
    - it is in the public interest because fraud, misfeasance or other misconduct by a person concerned with the affairs of the casino operator is alleged
    - in any case it is in the public interest.
- The Special Manager:
  - may be a body corporate or unincorporate
  - if a body corporate or unincorporate, the Special Manager must nominate one or more individuals to carry out any of its functions that can only be undertaken by a natural person.

- The Special Manager must be qualified for appointment by virtue of their knowledge of, or experience in, industry, commerce, law or public administration.
- The instrument appointing the Special Manager must specify:
  - the period of the appointment
  - the terms and conditions (if any) to which the appointment is subject
  - any particular functions the Special Manager is to perform
  - any other matter the regulator considers appropriate
  - if appointed at the direction of the Minister, any function specified in the Minister's direction.
- The functions of the Special Manager shall be to:
  - oversee the affairs of the casino operator including the casino operations
  - carry out investigations that are specified in the instrument of appointment
  - report to the regulator on any matter it has investigated
  - otherwise comply with any direction in the instrument of appointment.
- The Special Manager or, if a body corporate or unincorporate, the nominated person(s), should have the following rights, privileges and powers:
  - the rights and privileges of a director of the casino operator, but not the right to vote
  - despite not having the right to vote, the power to:
    - · direct the board of directors of the casino operator to take particular action
    - · direct the board of directors of the casino operator to refrain from taking particular action

if the Special Manager believes that the direction:

- is in the best interests of the casino operator or of the casino operations; or
- is necessary to secure compliance with any law or regulation governing the casino operator or the casino operations.
- · A failure to comply with a direction should be a strict liability offence carrying a significant penalty.

- Without limiting its rights, privileges and powers, the Special Manager may:
  - investigate the affairs of the casino operator and the casino operations
  - attend meetings of the board of directors and any subcommittee of the board
  - attend meetings of the casino operator's management, including meetings of any audit committee and compliance committee
  - inspect all the books and records of the casino operator
  - obtain the advice of, or services from, any third party including experts
  - require any director, officer, employee or agent of the casino operator to provide such information, including confidential or privileged information, as the Special Manager requires to carry out its duties.
- A person who fails to comply with a requirement to provide information will be guilty of a strict liability offence with a significant penalty. The court may direct the person to comply with the requirement.
- · The Special Manager may carry out its functions, and any director or officer of the casino operator acting under the direction of the Special Manager must observe that direction, despite:
  - the Corporations Act, except to the extent of any inconsistency
  - the casino operator's constitution.
- The Special Manager may if special circumstances arise, and if so directed by the regulator must, make interim reports to the regulator and on the termination of its appointment shall report its opinion on, or in relation to:
  - the conduct of the casino operator and casino operations
  - the particular affairs of the casino operator or casino operations that the instrument of appointment requires the Special Manager to investigate.
- A report may contain confidential or privileged information.
- A copy of any interim report and the final report must be forwarded to the Minister.
- Neither the Minister nor the regulator is to provide a copy of a report to any person unless it is in the public interest to do so. If the report contains information the subject of legal professional privilege, the privilege does not cease.

- The regulator must consider any interim report or the final report and decide what action, including disciplinary action, it should take.
- The costs and expenses of the Special Manager and any costs incurred by the regulator in connection with the Special Manager process must be paid by the casino operator.
- The Special Manager is to be given an indemnity by the State for properly incurred debts.
- If a Special Manager is appointed to Crown Melbourne:
  - The regulator must within 90 days of receiving the Special Manager's final report decide whether it is clearly satisfied that:
    - · Crown Melbourne has become a suitable person to continue to hold its casino licence; and
    - it is in the public interest that Crown Melbourne's casino licence should continue in force.
  - The regulator must engage a senior counsel to assist in its deliberations.
  - For the purposes of its decision, the regulator must only have regard to:
    - the Bergin Report (and documents/evidence tendered)
      - the Report of this Royal Commission (and documents/evidence tendered)
      - the Reports of the Perth Royal Commission (and documents/evidence tendered)
      - the report(s) of the Special Manager.
  - If the regulator is not clearly satisfied that:
    - · Crown Melbourne has become a suitable person to continue to hold its casino licence; and
    - it is in the public interest that Crown Melbourne's casino licence should continue in force,

the casino licence granted to Crown Melbourne on 19 November 1993 under Part 2 of the Casino Control Act should forthwith be cancelled.

- If the regulator has not made a decision within 90 days of receiving the Special Manager's final report, the casino licence should be cancelled forthwith.
- 48 If the previous recommendations are accepted, then the following should apply in respect of the appointment of the Special Manager.

#### RECOMMENDATION 22: APPOINTMENT OF THE SPECIAL MANAGER

It is recommended that the Minister direct the regulator to appoint the Special Manager to Crown Melbourne for a period of two years.

The direction should specify the matters the Special Manager is required to investigate and report on. Those matters could include the following:

- · details of each direction the Special Manager has given to members of the board
- whether the direction was complied with
- · whether the casino operator has put in place appropriate policies, processes and structures to meet its obligations under the Anti-Money Laundering and Counter-Terrorism Financing Act
- whether those Anti-Money Laundering/Counter-Terrorism Financing policies, processes and structures are being implemented
- whether the casino operator has put in place appropriate risk management policies, processes and structures
- · whether those risk management policies, processes and structures are being implemented
- · whether the casino operator has revised its Responsible Service of Gambling practices to take account of the concerns highlighted in this Commission's Report
- · whether the casino operator has adopted policies, processes and structures that will enable it to comply with its Responsible Gambling Code of Conduct in force
- whether the casino operator is complying with its Responsible Gambling Code of Conduct
- · whether the casino operator is conducting its casino operations in a manner that has regard to the best operating practices in casinos of a similar size and nature to the Melbourne Casino
- · whether the casino operator has conducted a 'root cause' analysis into the failures outlined in the Bergin Report and in the Report of this Commission, and what the findings were
- whether there is any evidence of maladministration
- · whether there is any evidence of illegal or improper conduct
- · whether the casino operator has engaged in any conduct that may give rise to a material contravention of any law
- · the conduct of the casino operations generally.

Further details of the matters the Special Manager could investigate are set out in Appendix I.

#### RECOMMENDATION 23: PERIODIC REVIEW

It is recommended that, if, following the receipt of the Special Manager's report, the regulator does not cancel Crown Melbourne's casino licence, the Casino Control Act be amended so that the next investigation due to be undertaken pursuant to section 25 of the Casino Control Act is deferred for at least three years.

# Powers on cancellation and suspension

- 49 There is another aspect of the Casino Control Act that should be examined. As has been explained, the regulator has power to cancel, suspend or vary the terms of a casino licence if one or more of the grounds for taking disciplinary action is made out.44
- 50 The suspension or cancellation of a casino licence may not automatically bring to an end the casino's operations.
- 51 If a casino licence is suspended or cancelled, the regulator may appoint a manager of the casino.<sup>45</sup> If appointed, the manager is deemed to hold the casino licence on the same terms on which the casino operator held the licence.<sup>46</sup> The manager then assumes full control of, and responsibility for, the business of the casino operator and may retain for use in the casino any property of the casino operator.<sup>47</sup> The manager may also employ staff as required.<sup>48</sup>
- 52 Provision is made for the distribution of the net income of the casino business conducted by the manager. In brief, no payments are to be made to the former casino operator without approval; the former casino operator is entitled to a fair rate of return for the property retained by the manager; and the balance must be paid into the Consolidated Fund or to the former casino operator as the regulator determines.<sup>49</sup>
- 53 This scheme is unsatisfactory and most likely unworkable. One principal deficiency is that the casino operations must be conducted by, and in the name of, the manager.
- 54 Practically speaking, for this to occur the manager would need to take over many, if not all, contracts between the casino operator and third parties (employees, suppliers and the like). This would be a complex and time-consuming task. It would be a major impediment to a smooth transfer of power from the licensee to the manager.
- 55 Another impediment is the likelihood that third parties would have a security interest over some gaming equipment and other property needed for use in the casino. There is nothing in the Casino Control Act that prevents those third parties exercising their property rights.
- 56 Finally, if a suitable person is found to take over the casino operations, including the gaming equipment and other property used in its operations, the manager has no power to sell the property to the new licensee.
- 57 These deficiencies can be overcome if the manager is appointed as the agent of the casino operator to take control of the casino operations and to take possession of the property used in those operations. It would also be necessary to prevent third parties from exercising their property rights.

#### RECOMMENDATION 24: ADDITIONAL FUNCTIONS AND POWERS OF THE MANAGER

It is recommended that the Casino Control Act be amended to include the following provisions relating to the manager:

- Upon appointment the manager:
  - has control of the casino operator's casino operations and all the property used in those operations
  - may carry on those operations and manage that property
  - may dispose of any of the property used in the casino operations and pay the net proceeds of sale to the persons entitled to the proceeds
  - may perform any function and exercise any power that the casino operator or any of its officers could have exercised in relation to the casino operations
  - when performing a function or exercising a power as manager of the casino operator, is taken to be acting as the casino operator's agent.
- The regulator is to determine the rate of compensation payable to the manager by the former casino operator and to approve the costs and expenses incurred by the manager.
- During the period of management, the former casino operator must:
  - use its best endeavours to facilitate the operation of the casino within the casino complex
  - afford the manager all appropriate rights, including rights of access and egress over the casino complex, as are necessary to enable the manager to operate a casino in the casino complex.
- The manager is to be given an indemnity by the State for properly incurred debts.

#### RECOMMENDATION 25: PROPERTY RIGHTS OF THIRD PARTIES

It is recommended that the Casino Control Act be amended so that a third party cannot, without the regulator's permission:

- · enforce any security interest (as defined in the Corporations Act) over property that the manager retains for use in the casino's operations
- · take possession of any property retained by the manager for use in the casino's operations
- levy execution on any judgment obtained against the former casino operator.

- 58 Finally, on this aspect it is noted that if the casino licence is cancelled and the State wishes to grant a casino licence to another person, the State can require Crown Melbourne to grant to the new casino operator a sub-lease of the Melbourne Casino.50
- 59 Through a complicated set of definitions, the area over which the sub-lease is to be granted is identified by a set of drawings that were initialled by, or on behalf of, the State and Crown Melbourne when the Management Agreement was entered into in 1993.
- 60 The area in which the casino operations are presently conducted no longer conforms with the 1993 drawings, although, of course, appropriate permissions were obtained from the regulator to extend the casino area from time to time.

#### RECOMMENDATION 26: THE AREA OF THE SUB-LEASE

It is recommended that steps be taken to ensure that the area in which the Melbourne Casino's casino operations are being conducted and the area that is to be the subject of a sub-lease under the Management Agreement are the same. If the matter cannot be agreed then legislation will be necessary.

#### **Penalties**

- 61 The Casino Control Act has a number of provisions the contravention of which is an offence leading to the imposition of a penalty. Most, if not all, of the penalties were set many years ago.
- 62 For that reason, many of the penalties are now inadequate, especially if it is hoped that their existence is to have a deterrent effect.
- 63 Take, for example, the penalty for refusing to comply with a direction given by the regulator. The penalty is 50 penalty units.<sup>51</sup> Another example is where a casino operator fails to keep accounting records. Once again, the penalty is 50 penalty units.<sup>52</sup> These penalties are absurdly low. There are many other examples.

#### **RECOMMENDATION 27: PENALTIES**

It is recommended that there be a thorough review of all the penalties imposed by the Casino Control Act. Most should be substantially increased.

Special attention should be given to the penalty to be imposed for disciplinary action. Currently the penalty is a fine not exceeding \$1 million. It is recommended that the penalty be increased to at least \$10 million.

# **Endnotes**

- Casino Control Act 1991 (Vic) s 24.
- 2 Casino Control Act 1991 (Vic) s 28A.
- Casino Control Act 1991 (Vic) ss 20(1) (definition of 'grounds for disciplinary action', para (d)), 25(1)(a), 25(2). 3
- 4 Casino Control Act 1991 (Vic) ss 28A(3)-(5).
- 5 Casino Control Act 1991 (Vic) ss 28(5).
- 6 Casino Control Act 1991 (Vic) s 26(1).
- 7 Casino Control Act 1991 (Vic) s 26(1).
- 8 Casino Control Act 1991 (Vic) s 27.
- 9 Casino Control Act 1991 (Vic) s 23(1).
- 10 Casino Control Act 1991 (Vic) ss 28(2)(a), 30.
- 11 Exhibit RC0435 Consolidated Casino Agreement, 21 September 2013.
- Exhibit RC0435 Consolidated Casino Agreement, 21 September 2013, cls 23, 24.1. 12
- Exhibit RC0435 Consolidated Casino Agreement, 21 September 2013, cl 24.2. 13
- Exhibit RC0435 Consolidated Casino Agreement, 21 September 2013, cl 25.1. 14
- 15 Exhibit RC0435 Consolidated Casino Agreement, 21 September 2013, cl 25.5.
- 16 Exhibit RC0435 Consolidated Casino Agreement, 21 September 2013, cl 25.6, sch 5 items 1-4.
- 17 Exhibit RC0435 Consolidated Casino Agreement, 21 September 2013, cl 25.6, sch 5 items 6-10.
- 18 Casino Control Act 1991 (Vic) s 3(1) (definition of 'inspector'); Gambling Regulation Act 2003 (Vic) s 1.3(1) (definition of 'inspector'); Victorian Commission for Gambling and Liquor Regulation Act 2011 (Vic) s 40.
- 19 Victorian Commission for Gambling and Liquor Regulation Act 2011 (Vic) s 42(1)(a).
- Casino Control Act 1991 (Vic) s 106. 20
- 21 Casino Control Act 1991 (Vic) ss 105(1), 106(b)-(d).
- Xavier Connor, Report of Board of Inquiry into Casinos in the State of Victoria (Report, April 1983) [16.27]. 22
- 23 Xavier Connor, Report of Board of Inquiry into Casinos in the State of Victoria (Report, April 1983) [16.28].
- 24 Exhibit RC1574 Supplementary Statement of Michael Frewen, 17 July 2021, 2 [2.1]-[2.2].
- 25 Transcript of Michael Frewen, 7 May 2021, 2.
- 26 Transcript of Michael Frewen, 7 May 2021, 9.
- 27 Transcript of Michael Frewen, 7 May 2021, 9.
- 28 Exhibit RC1574 Supplementary Statement of Michael Frewen, 17 July 2021, 2 [2.4]-[2.5].
- 29 Transcript of Michael Frewen, 7 May 2021, 10.
- 30 See Chapter 6.
- Transcript of A Police Officer, 18 June 2021, 2057. 31
- 32 Transcript of A Police Officer, 18 June 2021, 2079.
- 33 Transcript of A Police Officer, 18 June 2021, 2080.
- 34 Transcript of A Police Officer, 18 June 2021, 2085.
- 35 Transcript of A Police Officer, 18 June 2021, 2085.
- 36 Transcript of A Police Officer, 18 June 2021, 2087.
- 37 Transcript of A Police Officer, 18 June 2021, 2079.
- 38 Transcript of A Police Officer, 18 June 2021, 2057–113.
- Transcript of EZ, 20 May 2021, 394–6; Transcript of EX, 20 May 2021, 416–17. 39
- 40 See, eg, Chapter 10.
- 41 Gambling Commission (United Kingdom), Licence Conditions and Codes of Practice (at 31 October 2020) code 1.1.1.
- 42 Gambling Act 2005 (UK) s 120(1)(c).
- 43 Casino Control Act 1991 (Vic) ss 20, 22.
- 44 Casino Control Act 1991 (Vic) s 20.
- 45 Casino Control Act 1991 (Vic) s 22(1).
- 46 Casino Control Act 1991 (Vic) s 22(6)(a).
- 47 Casino Control Act 1991 (Vic) s 22(6)(b).
- 48 Casino Control Act 1991 (Vic) s 22(6)(e).

- Casino Control Act 1991 (Vic) s 22(8). 49
- 50 Exhibit RC0502 Consolidated Management Agreement, 20 September 1993, cl 26.5.
- 51 Casino Control Act 1991 (Vic) s 23(1).
- 52 Casino Control Act 1991 (Vic) s 124(2).



CHAPTER 17

# The structure of Crown Melbourne

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# The structure of Crown Melbourne

# Introduction

- In 1993, the then casino regulator, the VCCA, agreed to grant Crown Melbourne (then known as Crown Casino) a casino licence to operate the Melbourne Casino.
- On 21 September 1993, pursuant to section 142 of the Casino Control Act, the VCCA and Crown Melbourne entered into an agreement for the establishment and operation of the casino—the Casino Agreement.
- The Casino Agreement deals with the development of the Melbourne Casino Complex; the grant of the casino licence (including the payments to be made for the grant); the security to be provided by Crown Melbourne for the performance of its obligations; and the manner in which the casino operations are to be conducted.
- The Casino Agreement also deals with the structure of Crown Melbourne. There are three aspects of the structure that will be considered in this chapter:
  - · ownership of the casino operator
  - · management of the casino operator
  - the single purpose restriction.
- Finally, the Casino Agreement deals with the extent to which Crown Melbourne's holding company, Crown Resorts, is entitled to compete with Crown Melbourne's casino operations. While incidental to the structure of Crown Melbourne, this aspect will also be explored.

# Ownership structure

# Original shareholding

- The Casino Agreement has been varied on 12 occasions. It is convenient to consider the ownership structure first by reference to the Casino Agreement in its original form.
- 7 The Casino Agreement originally provided that:
  - until the completion of the Melbourne Casino Complex, the total number of shares to be held by the original developers, HCL and Federal Hotels (together known as the Sponsors) and by CUB was to be not less than 40 per cent of the issued capital in Crown Melbourne<sup>1</sup>
  - · during the 12 months following the completion of the complex, each Sponsor was not to reduce its shareholding to less than 10 per cent of the issued capital<sup>2</sup>
  - · apart from the initial shareholders, Crown Melbourne would not permit a person to become entitled to, or continue to hold, shares exceeding 5 per cent of the issued capital without the approval of the regulator.3

- 8 Consistent with the contractual 5 per cent limit on shareholding, the Articles of Association of Crown Melbourne contained the following clauses:
  - The number of shares to which a person (other than a Sponsor) was entitled could not exceed 5 per cent of the total number of shares in the company without the prior consent of the VCCA.<sup>4</sup>
  - The VCCA could require the company to dispose of any shares held by a member.<sup>5</sup>
- 9 These provisions were entrenched because the Articles of Association could not be amended without the VCCA's approval.<sup>6</sup>
- The reference to a person becoming 'entitled to shares' in both the Casino Agreement and the Articles of Association adopted the meaning of that expression in the *Corporations Act 1989* (Cth) (Corporations Act 1989), which was then in force.<sup>7</sup> It also adopted any change to that meaning that would result from an amendment to the Corporations Act 1989 or any replacement legislation.<sup>8</sup>
- 11 The shares to which a person was 'entitled' under the Corporations Act 1989 included shares in which that person had a 'relevant interest'. A person had a 'relevant interest' in shares principally if they had the power to vote or dispose of the shares. In addition, if a person had the prescribed shareholding in a body corporate (20 per cent of the shares), that person was deemed to have the same power to vote or dispose of the shares as had the body corporate. The person was, therefore, deemed to have a 'relevant interest' in the shares held by the body corporate.
- 12 The Corporations Act 1989 was repealed and, ultimately, replaced by the Corporations Act 2001. The concept of an 'entitlement' to shares is not found in the Corporations Act. Instead, it has been replaced by a 'relevant interest' in shares.<sup>12</sup> The principles are, however, substantially the same.<sup>13</sup>
- 13 The reference in the Casino Agreement to an 'entitlement' to shares must now be taken to refer to a 'relevant interest' in shares as defined by the Corporations Act. Applying the applicable principles of the construction of instruments would lead to the same conclusion regarding the meaning of an 'entitlement' to shares in the Articles of Association.
- 14 HCL was not a party to the Casino Agreement. But it had entered into the Supplemental Sponsors' Agreement by which it undertook to comply, and to use its best endeavours to ensure that the other Sponsors comply, with clause 22 of the Casino Agreement (the clause where the shareholding restriction is found).<sup>14</sup>
- 15 The requirement that the Sponsors and CUB should hold not less than 40 per cent of the shares had two objectives. One was to secure the capital base of Crown Melbourne. The other was to ensure that the Sponsors remained committed to the development of the casino project.<sup>15</sup>
- 16 This purpose was reinforced by clause 22.1(b), which permitted the Sponsors to only sell their shareholding down to less than 10 per cent of the issued capital during the 12 months following the completion of the Casino Complex.<sup>16</sup>

## Change to original shareholding

- 17 In January 1996, Crown Melbourne (then named Crown Limited) advised the then regulator, the VCGA, that the Sponsors' shareholding had fallen below 40 per cent. This occurred because Crown Resorts had made several private placements of shares to finance property acquisitions and building works.<sup>17</sup>
- 18 HCL and Crown Melbourne requested the VCGA to agree to reduce the minimum shareholding requirement from 40 per cent to 37 per cent.<sup>18</sup>
- 19 Later, HCL sought a variation of the Casino Agreement to permit it to sell down its shareholding to 33.5 per cent of the shares on issue.
- 20 Ultimately, the VCGA agreed to alter the shareholding requirements. One reason was that because Crown Melbourne had become a listed company, it now had a secure capital base. Another reason was that a sell-down by HCL or a dilution of HCL's interest was seen as a positive factor, because it would reduce its influence over Crown Melbourne and create a greater diversity of ownership.19
- 21 On 8 May 1997, the agreement to allow the reduction in the shareholding requirement was put into effect by the Sixth Variation to the Casino Agreement.<sup>20</sup> By that variation, the changes to the shareholding requirements included the following:
  - The original shareholding requirements were revoked by the deletion of paragraphs (a) and (b) of clauses 22.1.
  - · A new paragraph 22(a) was inserted that provided, among other things, that HCL must not dispose of any of its shares. That restriction did not, however, prevent HCL from disposing of its shares, provided it still held 33.5 per cent of the total number of shares on issue.
  - · A new paragraph 22(b) was inserted that provided that 12 months after the date of completion of the Melbourne Casino Complex (with a specified exclusion), HCL could reduce its shareholding to less than 10 per cent of the shares on issue or the number of shares held on that date (whichever was lower).21

# Merger with PBL

- 22 In December 1998, PBL proposed a 'merger' with Crown Melbourne.<sup>22</sup> The proposed merger involved PBL acquiring Crown Melbourne for around \$2 billion.<sup>23</sup> Shareholders in Crown Melbourne (then a listed company) were to be offered 'one PBL share for each 11 Crown Limited shares'.24
- 23 To understand what happened next, it is necessary to mention other provisions in the Casino Agreement in its original form: those that establish the so-called single purpose restriction.<sup>25</sup> They are:
  - · Crown Melbourne must not carry on or conduct any business other than the casino business, or any business incidental to or complementary with the casino business, without the regulator's approval.26

- · Crown Melbourne must not establish or acquire a subsidiary, unless it relates to an incidental or complementary business, without the regulator's approval.<sup>27</sup> (A business was incidental or complementary to the casino business if a dominant purpose of the business was to operate in support of and in conjunction with the casino business to increase or preserve the revenue of that business.)<sup>28</sup>
- Crown Melbourne must strive to obtain the maximum GGR by conducting its operations as a discrete business operated in Melbourne in a proper and efficient manner having regard to the best operating practices in international casinos of a similar size and nature.<sup>29</sup>
- 24 The VCGA thought that, should the proposed merger go ahead, these restrictions might no longer be effective. For example, its view was that:
  - · PBL could 'cannibalise' Crown Melbourne and establish a competing casino elsewhere in Australia
  - · PBL could acquire another casino, market it and move the high roller business to the new casino or between the two casinos
  - PBL could set up a casino tax bidding war between Victoria and other states.<sup>30</sup>
- 25 A mechanism had to be found to prevent PBL, or any related company, from carrying out casino operations elsewhere in Australia.
- 26 In addition, to evaluate the merger proposal, the VCGA obtained a report from the National Institute of Economic and Industry Research. The report made the following observations:
  - The merger was expected to result in a net loss of \$150 million for the Victorian economy.
  - Loss of control over Crown Melbourne would largely contribute to that loss.
  - The refinancing arrangements that would occur as a result of the merger would remove the difficulties Crown Melbourne then had with its financial covenants.31
- 27 The National Institute of Economic and Industry Research also noted that, as Crown Melbourne was a single purpose company without subsidiaries, Victoria's economic interest and the shareholders' interests were being given equal value. This would be lost, according to the National Institute, if the ownership of Crown Melbourne changed as a result of the merger.
- 28 Ultimately, the merger proposal was agreed. That agreement led to the Eighth Variation to the Casino Agreement, made on 27 May 1999.32

- 29 The Eighth Variation Agreement brought about the following relevant amendments. First, definitions were added, including:
  - 'Holding Company', which was defined to mean, in effect, Crown Melbourne's holding company that was not itself a subsidiary of a company incorporated in Australia. The Holding Company was PBL.33
  - 'Holding Company Group', which was defined to mean:
    - a. the Holding Company;
    - b. the Holding Company's Subsidiaries (including without limitation, [Crown Melbourne] and its Subsidiaries); and
    - c. any other entity which the directors of the Holding Company are required to consolidate in the consolidated profit and loss accounts and balance sheets of the Holding Company under the Corporations Act. 34
- 30 Second, the provisions relating to the founding shareholders (including clauses 22.1(a) and (b)) would become redundant if PBL was the sole shareholder in Crown Melbourne. Hence, they were removed.
- 31 Third, clause 22.1(f), which dealt with the 5 per cent shareholding limit, was deleted and replaced by the following clause:
  - [Crown Melbourne] will not knowingly permit a person or, upon becoming aware of a person being entitled, allow a person to continue to be entitled to a number of Shares which exceeds 5% of the total number of Shares on issue at any time, without the prior written approval of the [VCGA].35
- 32 This was designed to prevent PBL from listing Crown Melbourne on the ASX or from selling Crown Melbourne to another party without the VCGA's consent.<sup>36</sup>
- 33 Fourth, a new clause 22.1(r) was added. This provides:

The Holding Company Group, if it pursues anywhere in Australia a business similar to that of [Crown Melbourne], 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 [Crown Melbourne] and which promotes tourism, employment and economic development generally in the State of Victoria; and
- ii. which is not detrimental to [Crown Melbourne's] interests.<sup>37</sup>
- 34 The obvious purpose of this clause was to ensure that PBL conducted all its businesses to promote, rather than undermine, the Casino Control Act's objective of promoting tourism, employment and economic development generally in Victoria.<sup>38</sup>

- 35 That being said, under the new arrangements PBL was not prevented from acquiring an interstate casino operation. If it did, however, it would not be able to operate the interstate casino 'to the detriment of the Melbourne Casino'.<sup>39</sup>
- 36 Contemporaneously with the making of the Eighth Variation Agreement, the VCGA,
  Crown Melbourne and PBL entered into a Supplemental Casino Agreement. This agreement
  was made so that PBL could acquire the shares in Crown Melbourne with the VCGA's approval.<sup>40</sup>
- 37 By the Supplemental Casino Agreement, PBL undertook, among other things:
  - to comply with and ensure that each member of the Holding Company Group complied with clause 22 of the Casino Agreement
  - to ensure that Crown Melbourne would require the transfer, or the compulsory transfer, of shares in accordance with the company's constitution if the transfer would remedy a breach of the Casino Agreement or if the VCGA requested the transfer
  - to procure the affairs of Crown Melbourne to be conducted in accordance with the conditions set out in clause 22 of the Casino Agreement.<sup>41</sup>
- 38 It was also agreed that, for the purposes of the Casino Agreement, PBL would be regarded as the Holding Company of Crown Melbourne.<sup>42</sup>
- 39 For its part, the VCGA agreed that it would not treat Crown Melbourne as being in breach of clause 22(1)(f) of the Casino Agreement or article 2.7 of its constitution (the 5 per cent shareholding restriction), or regard PBL as being in breach of clause 4 of the Supplemental Casino Agreement (the obligation to enforce the 5 per cent share limit), if a person became entitled to more than 5 per cent of the issued capital of Crown Melbourne solely through their shareholding in PBL.<sup>43</sup>
- 40 It is not clear whether the effect of this last provision (clause 7 of the Supplemental Casino Agreement) was properly understood. PBL had obtained approval to acquire all the shares in Crown Melbourne despite the 5 per cent share limit. After that, however, a person who acquired more than 20 per cent of the shares in PBL would become 'entitled' to, or have a 'relevant interest' in, the shares in Crown Melbourne held by PBL.
- 41 The consequence was that any person could acquire between 20 per cent and 100 per cent of the capital of PBL, and thereby acquire an 'entitlement' or 'relevant interest' in all the issued shares of Crown Melbourne without being in breach of the 5 per cent share limit.
- 42 For some reason, the VCGA took a limited (and potentially incorrect) view of the effect of clause 7. It regarded the clause as:

a technical provision intended to remove a possible, unintended consequence of clause 22.1(f) of the Casino Agreement which, operating in conjunction with the share entitlement provisions of the Corporations Law in the circumstance where a person acquired 6% of PBL, would require PBL to dispose of shares in Crown.<sup>44</sup>

#### Restructure

- 43 The position was to become even more complicated as a result of the following events.
- 44 First, on 12 December 2007, the shares in Crown Melbourne were acquired by Crown Resorts (then known as Crown Limited) as part of a corporate restructure. The restructure involved PBL separating its gaming operations from its other ventures. It also involved Crown Resorts undertaking to assume the obligations of PBL under the Supplemental Casino Agreement, including the obligation to ensure that each member of the Holding Company Group complies with clause 22 of the Casino Agreement.<sup>45</sup>
- 45 Then, in 2019, there were discussions between Crown Resorts and the VCGLR (which had by then become the regulator) concerning a possible alteration of the securities provided by the Crown group to the State to secure the performance of Crown Melbourne's obligations under the Management Agreement.
- 46 Agreement in-principle was reached. That agreement was to be recorded in a further variation (the Twelfth Variation) to the Casino Agreement. In the course of discussions about the terms of the Twelfth Variation, Ms Mary Manos, the solicitor at Crown Resorts who had carriage of the negotiations, emailed Mr Scott May, General Counsel at the VCGLR, on 13 September 2019. She had the following proposal:

Clause 7.1 of the Supplemental Casino Agreement provides that the [regulator] agrees that it will not regard Crown Melbourne as breaching clause 22.1(f) of the Consolidated Casino Agreement or article 2.7 of the Crown Melbourne's constitution if a person becomes entitled to more than 5% of the total number of Shares in Crown Melbourne solely through that person's shareholding in PBL.

When Crown Resorts acquired Crown Melbourne at the end of 2007, an exercise was undertaken to update references to PBL in the Consolidated Casino Agreement to Crown Resorts. It appears that when that exercise was done, the separate Supplemental Casino Agreement was not incorporated into the one document so continues to exist alongside the Consolidated Casino Agreement. The currently proposed amendments to the Casino Agreement reflect an agreed position in relation to the security package. As part of that [process] we have also undertaken the administrative exercise of consolidating the provisions of the Supplemental Casino Agreement so that going forward, the parties need only refer to the one document.

Clause 7.1 of the Supplemental Casino Agreement now appears as clause 22B.1 of the Consolidated Casino Agreement. But for updating the reference to PBL to Crown Resorts, the clause is in the exact same terms. The effect of the clause is to acknowledge that Crown Melbourne as a subsidiary company of Crown Resorts has no power to direct or control the register of Crown Resorts. Similarly, as a listed public company whose shares are [freely] traded, Crown Resorts also has limited power to control its register.

In the above circumstances, it is appropriate that [it] be clarified that Crown Melbourne should not be taken to have contravened clause 22.1(f) of the Consolidated Casino Agreement if a person becomes entitled to more than 5% of the total number of Shares in Crown Melbourne solely through that person's shareholding in Crown Resorts. Even if Crown Melbourne became aware of a deemed interest in its shares there would be little it could do to 'not allow' that interest.46

- 47 The proposed change (the addition of clause 22B to the Casino Agreement) was referred to a solicitor at the VCGLR for comment.<sup>47</sup> The solicitor recognised that the change would mean that an acquisition of 20 per cent or more of the shares in Crown Resorts would not breach the 5 per cent share restriction. That would confine the VCGLR's oversight to the question of whether an acquisition of a significant shareholding in Crown Resorts would trigger the 'major change' provision in the Casino Control Act. 48
- 48 The solicitor emailed Mr May advising that '[i]f the Commission wishes to retain its power to consider the suitability of a person with significant interests in the holding company of the casino operator, then the [Casino Control Act] may need to be revised to allow this'.49
- 49 The issue identified by the solicitor was then the subject of correspondence between Mr May and Ms Manos. During that exchange, Mr May wrote that 'the proposed [clause] 22B.1 simply imports from the Supplemental Agreement into the Casino Agreement what is currently the case, and there is no "update" (the update having already occurred in 2007).50
- 50 The Twelfth Variation Agreement was made on 26 September 2019.51 It was intended to give effect to the restructure of the securities and to consolidate the provisions of the Supplemental Casino Agreement and the Casino Agreement. The consolidation involved adding the following clause 22B.1:

The [VCGLR] agrees that it will not regard [Crown Melbourne] as breaching clause 22.1(f) of this document or article 2.7 of [Crown Melbourne's] constitution if a person becomes entitled to more than 5% of the total number of Shares in [Crown Melbourne] solely through that person's shareholding in Crown Resorts.52

51 Plainly, the new clause was more than a consolidation of the two existing agreements. It substituted permitted acquisitions of shares in PBL for permitted acquisitions of shares in Crown Resorts, a public listed company. In a practical sense, it made the 5 per cent share limit almost irrelevant. The only time it would come into operation was if Crown Resorts wished to dispose of its subsidiary, Crown Melbourne.

### The 5 per cent limit

52 The reason for the 5 per cent limit on shareholding in Crown Melbourne can be traced back to Mr Connor, QC's 1983 Report. He said that it was:

essential that the licensing body be given ample power to investigate proposed changes in the corporate structure of the company which holds a licence or in a group of companies of which it is part. The essential object of all such investigations is to expose the seat of effective control, which may often be hidden; and then to regulate it.<sup>53</sup>

- 53 Mr Connor, QC explained that a person who wished to acquire a 5 per cent shareholding in a licensee should be subject to investigation. He expressed the view that a shareholding of that size may be sufficient, in combination with other shareholders, to effect vital changes in the personnel and policies of a casino licensee.<sup>54</sup>
- 54 These observations are as true today as they were when made in 1983. There is now a substantial body of academic literature that considers the position of a dominant shareholder—a shareholder who has the power to remove a corporation's board or management or who can significantly influence a corporation's affairs—and the dangers such a shareholder poses for a corporation.
- To be sure, a dominant shareholder can be beneficial. A dominant shareholder has the capacity, and sometimes the incentive, to monitor management and enhance a corporation's value. This minimises the risk of management acting opportunistically or in their own interests. Research indicates that a dominant shareholder can prevent:
  - · suboptimal investment and wastage of resources
  - · excessive executive compensation
  - practices that confer management with non-pecuniary benefits that reduce share value.<sup>57</sup>
- 56 On the other hand, a dominant shareholder can use its power to harm a corporation.<sup>58</sup> It is not uncommon, for example, for a dominant shareholder to take action to expropriate minority shareholders' rights. One method is by a non prorata distribution of dividends.
- 57 Another problem is where the dominant shareholder has arrangements with persons who contract with the corporation so that they can receive favourable contractual treatment in return for kickbacks.
- 58 Yet another problem is where the dominant shareholder diverts the corporation's assets or value to itself.
- 59 More relevantly, a dominant shareholder has the capacity, and often the incentive, to exercise active control over, and monitor the actions of, senior management of the corporation, if not its board.
- 60 Experience shows that a dominant shareholder usually has no difficulty making the board take into account its views on any important issue. At the very least, it is unlikely that the board would disregard the dominant shareholder's preferences.<sup>59</sup>

- 61 Directors who are linked to the dominant shareholder will often make decisions on transactions that benefit the dominant shareholder, even when those decisions may be detrimental to the corporation as a whole. This occurs even when the dominant shareholder does not have power, or does not exercise power, to nominate its appointees to the board.
- 62 CPH is an instructive example of the power of a dominant shareholder. Currently, CPH holds 37 per cent of the shares in Crown Resorts. For some time, Mr James Packer (the effective owner of CPH) was on the Crown Resorts board. He then resigned for personal reasons.
- 63 Both before and after his resignation, Mr Packer exercised a powerful influence over Crown Resorts—an influence much more powerful than any single director could exercise. According to the Bergin Report:
  - It was second nature for Mr Packer to require information from Crown Resorts so that he, Mr Packer, could make judgements about Crown Melbourne's financial position on a daily basis and to make demands on those who were managing that financial position.60
  - · Mr Packer was involved in many very important decisions affecting the operations of Crown Resorts and its employees and officers, even when he was no longer a director of Crown Resorts.<sup>61</sup> This was more than a major shareholder proffering advice or views about Crown Resorts' operations. It involved him 'managing and manoeuvring' all significant decisions of Crown Resorts.62
  - · Mr Packer took a prominent and active role in shaping the course of major business decisions, including alterations to the entire capital structure and strategic direction of the Crown group.63
- 64 In other words, CPH, through Mr Packer, acted in a manner that a dominant shareholder often can—to further its own commercial interest.
- 65 To ensure this situation does not arise again is itself a compelling reason why there should be an effective limit on the number of shares that can be held in a casino operator, or in the casino operator's holding company, that ought only be exceeded with the regulator's approval. There is, however, a significant obstacle to imposing an effective limit on the shareholding in Crown Melbourne, even on a 'look through' basis.
- 66 The 5 per cent limit is not found in the Casino Control Act. It was implemented in a private contract, the Casino Agreement. At the time the agreement was made, the shareholders in Crown Melbourne were known. Although the 5 per cent limit was exceeded, and indeed the initial shareholders were required to hold more than 5 per cent of the capital, that was acceptable to the regulator.64
- 67 The Casino Agreement was subsequently amended so that PBL could acquire all the shares in Crown Melbourne and so that CPH (as a substantial shareholder of PBL) could thereby indirectly acquire an entitlement to more than 5 per cent of the shares in Crown Melbourne. This was also acceptable to the regulator.<sup>65</sup>
- 68 Then the Casino Agreement was again amended, substituting Crown Resorts for PBL.66 This now allows shareholders in Crown Resorts to indirectly acquire an entitlement to more than 5 per cent of the shares in Crown Melbourne without the regulator's approval.

- 69 With Crown Resorts' shares listed on the ASX and the contractual 5 per cent limit of little effect, an acquisition of a substantial interest in Crown Melbourne can only be policed by the 'major change' provision in the Casino Control Act.<sup>67</sup>
- 70 It is, however, often difficult to identify who are the 'real' shareholders in a public company. It is common for shares to be held on trust by a nominee company, such as a subsidiary of a trading bank. It is true that there is an obligation on a person who acquires 5 per cent or more of the shares in a listed corporation to notify the corporation of that fact. Moreover, there is statutory power to enable the beneficial owner of shares in a listed corporation to be discovered. But these provisions are often ignored and, in any event, difficult for the regulator to supervise.
- 71 Greater problems would arise if Crown Resorts ceased to be a listed company, as then none of these provisions would apply. In that circumstance, the true owner of shares in Crown Resorts may never be known.
- 72 While Crown Resorts remains a listed entity, it would be impossible to have existing shareholders agree not sell their shares to a person if the share sale would result in the purchaser having more than 5 per cent of the issued capital.
- 73 It is equally impossible to suppose that the shareholders in Crown Resorts would agree to amend that company's constitution to incorporate a limit on shareholding in the company.
- 74 In these circumstances, the only effective means of imposing a limit on shares directly or indirectly held in a casino operator is by an amendment to the Casino Control Act.
- 75 There is good reason for there to be a limit. Without one, it is possible that an undesirable person could take control of the casino operations or, at a minimum, be in a position to influence the operations of a casino.
- 76 It is not to the point, as the CPH parties would have it, that CPH does not now, and is no longer in a position to, control Crown Resorts or its subsidiaries because of undertakings it has given to ILGA in New South Wales and which it is also prepared to give to the VCGLR.<sup>70</sup>
- 77 The undertakings are, in substance, that CPH will not obtain from Crown Resorts any information about its affairs that is not otherwise available to all shareholders, and it will not exercise its ability to appoint directors to the Crown Resorts board.<sup>71</sup>
- 78 First, the issue is one of principle. A person should not, without the approval of the regulator, have the capacity to exercise control over, or be able to influence the affairs of, a casino operator. For, at some point, that potential may become the reality.
- 79 Second, CPH is in a special position. For the reasons exposed in the Bergin Report, CPH should never be in the position to exert control over Crown Resorts and Crown Melbourne. While it maintains its shareholding, it could resume control once its undertakings to ILGA not to do so have expired.
- 80 Nor is it appropriate, if there is to be a cap on shareholding, that the cap be 20 per cent as contended for by CPH,<sup>72</sup> or even 10 per cent as suggested by Crown Resorts.<sup>73</sup> A person who holds more than 5 per cent of the shares in a listed company will often have power to influence its affairs. The more widely the other shares are held, the greater the potential for influence.

- 81 For these reasons, it is appropriate that the 5 per cent limit on the shareholding in the casino operator be retained or, at least, reinstated. The same limit should apply to any corporation that is the ultimate or intermediate holding company of the casino operator.
- 82 The Bergin Report suggested that there should be a 10 per cent limit on the ownership of shares in the holding company of a casino operator.<sup>74</sup> It would be good policy if there could be uniform legislation governing this issue. Nevertheless, not only is the 10 per cent limit inconsistent with the position that has been in place in Victoria since the casino licence was first granted, but the risk of undue influence by a person holding such a large stake in the holding company is unacceptable.

#### RECOMMENDATION 28: LIMIT ON SHAREHOLDING

It is recommended that the Casino Control Act be amended as follows:

- No person shall have or acquire a relevant interest in 5 per cent or more of the issued capital in a casino operator or 5 per cent or more of the issued capital in the holding company or intermediate holding company of which the casino operator is a subsidiary, without the regulator's approval.
- If a person does hold or acquire a relevant interest in 5 per cent or more of the issued capital of a casino operator, or 5 per cent or more of the issued capital in the holding company or intermediate holding company of a casino operator without the regulator's approval, that holding or acquisition should be deemed to be a breach by the casino operator of its casino licence.
- 'Relevant interest' should have the same meaning as in sections 608 and 609 of the Corporations Act.
- If the regulator requests the casino operator, its holding company or any intermediate holding company of a casino operator to take steps to discover who holds a relevant interest in the casino operator, or its holding company or any intermediate holding company and they fail to do so, that failure should be deemed to be a breach of the casino licence.
- The restriction on shareholding should not apply to any existing shareholding in Crown Resorts (at the current holding) and Crown Melbourne, other than CPH's shareholding in Crown Resorts. It should apply to CPH with effect from September 2024.
- If a person contravenes the 5 per cent rule, the regulator may serve that person with a notice requiring the person to dispose of the relevant interest within a specified time.
- A failure to comply with the notice should be an offence with a significant penalty. In addition, the Supreme Court should have power to make any order it considers appropriate to secure compliance with the regulator's notice, including an order directing the person to dispose of any relevant interest.

- 83 The reason for the carve-out—not restricting any existing shareholding in Crown Resorts other than for CPH—should be explained. Currently, Crown Resorts owns all the shares in Crown Melbourne and three shareholders hold more than 5 per cent of the issued capital of Crown Resorts: CPH, the Blackstone Group (9.99 per cent) and Perpetual Investments (8.19 per cent). Apart from the CPH interest, the other substantial shareholders were entitled to acquire their shares without approval. It would not be appropriate for the Parliament to now impose restrictions on their holdings without good cause being shown.
- The CPH stake is different. CPH abused its position as a dominant shareholder. It has temporarily given up its power to control, or exercise control over, the Crown Resorts board. On the other hand, once its undertakings to ILGA lapse, its position of control would be restored. That could be detrimental to Crown Melbourne.
- 85 At the same time, it would not be reasonable to force CPH to immediately sell its interest in Crown Resorts. Among other things, that would have a negative effect on the share price. There is no reason for that to occur. Hence, the recommendation is limited in two respects. First, it allows CPH to retain a 5 per cent holding. Second, it gives CPH until September 2024 to dispose of the remainder of its holding. That will enable it to realise a fair price.

# Control of management

- 86 The regulator has some control over the structure of the Crown Melbourne board and management team. Conversely, it has little oversight of decision making, whether at board or management level.
- 87 The regulator has power:
  - · to approve the appointment of directors or alternative directors
  - to direct the removal of any director or alternative director.
- 88 There is also an obligation that Crown Melbourne must, at all times, have a minimum of five directors.<sup>76</sup>
- 89 The failings of Crown Melbourne that have been exposed by the Bergin Inquiry, as well as those that have been discovered by this Commission, make plain that greater control of a casino operator is required.
- 90 A casino operator is not simply an organisation whose success or failure is a matter in which the Victorian Government has no real interest and no role to play.
- 91 The rationale for regulatory oversight of casinos in Australia and elsewhere include:
  - · concerns about the potential for links with organised crime
  - · concerns about the adverse social impacts of gambling
  - reducing the scope for money laundering
  - reducing the scope for other illegal conduct
  - ensuring that the casino operator complies with the conditions of its licence, the Casino Control Act and any agreements with the State or the regulator
  - ensuring that the casino operator remains financially stable.<sup>77</sup>

- 92 The focus of regulating a casino begins with ensuring the suitability of the casino operator. This invites extensive scrutiny during the application process. The focus must continue throughout the period of the casino's operations.
- 93 Close regulation of a casino is clearly justified. In their report on Responsible Gambling and Casinos, researchers from the South Australian Centre for Economic Studies explain:

The justification for regulation with respect to casinos is indisputable for the simple fact that it is government legislation which established casinos in each jurisdiction, government controls the rate of entry of competing business (e.g. conveys a monopoly licence for a specified time period), and government confers special privileges on casinos and then may apply different tax rates with respect to the privileges thus granted. Regulations are imposed on the industry to assist government with respect to a broad range of obligations such as disclosure regulation (e.g. monitor money laundering, large financial transactions) and ensure venues are free from criminal elements (e.g. review of probity, integrity and performance standards). Tax arrangements are designed (they are often negotiated) to facilitate international competitiveness (e.g. to attract VIP gamblers) as well as to address the negative externalities arising from the industry, such as the development of problem gambling, the cost of government provided gambling help services and traditional services such as policing, correctional services, health services and impact on third parties (families, businesses, etc).78

- 94 The investigation carried out by this Commission shows that the existing oversight framework has been ineffective in preventing corporate misconduct (including significant breaches of the law) or in preventing the harms caused to Melbourne Casino's patrons and others.
- 95 One obvious area for regulatory improvement is the board of the casino operator. If change is made here, as well as in other aspects of the casino's operations, the misconduct that has occurred and the harms that are still occurring may not be repeated.
- 96 There are several steps that could be taken to improve board functions. One is to specify the type of director that should be appointed to the board of a casino operator. At present, Crown Melbourne's Articles of Association provide that at least one-third of the board must be 'independent of the Sponsors and their respective [a]ssociates'.79 This restriction no longer has any effect as the Sponsors (HCL and Federal Hotels) no longer hold shares in Crown Melbourne.
- 97 It is appropriate here to say something about independent directors. An independent director is one who, broadly speaking, is not a member of the management team and has no commercial relationship with the company that would interfere with the independent exercise of the director's judgement.80

98 The ASX Corporate Governance Principles and Recommendations recommend that a majority of a listed company's board be independent directors.<sup>81</sup> The commentary to the recommendation states:

Having a majority of independent directors ... maximises the likelihood that the decisions of the board will reflect the best interests of the entity as a whole and will not be biased toward the interests of management or any other person or group with whom a non-independent director might be associated.<sup>82</sup>

- 99 Bodies around the world publish corporate governance guidelines. Most recommend that the board of a public corporation should have independent directors. The guidelines usually recommend that the independent directors make up a certain proportion of the board, ranging from one independent director to a majority of independent directors. Some guidelines suggest that there simply be a sufficient number of independent directors to influence the conduct of the board as a whole.<sup>83</sup>
- 100 Interestingly, academics Jeffrey Lawrence and Geof Stapledon have conducted an analysis of the effectiveness of independent directors. The analysis suggested that, on average, the performance of listed Australian companies did not improve even though they had independent directors. In other words, their existence did not add shareholder value.<sup>84</sup> The authors suggest that possible reasons for this include:
  - Independent directors may not have been performing their monitoring roles effectively at the time the study was undertaken.
  - Different types of boards may be appropriate for different companies.
  - Board behaviour rather than board composition is the critical factor.
  - · Only some independent directors add value.
  - Non-executive independent directors may simply be ineffective.<sup>85</sup>
- 101 Crown Melbourne is a striking example of the ineffectiveness of independent directors, at least when the directors are not independent of the holding company. Independent directors have always been on the board. They were on the boards of both Crown Resorts and Crown Melbourne when CPH was the controlling shareholder. Some are still on the boards.
- 102 It is nothing short of an understatement to say that the independent directors failed to benefit the management of Crown Melbourne as it is thought independent directors will do.
- 103 This is not to say, however, that the concept of independent directors should be put aside. To the contrary, it is likely that independent directors can have an important role to play on the Crown Melbourne board.
- 104 Mr Nigel Morrison is one of the recently appointed directors to the boards of both Crown Resorts and Crown Melbourne. Mr Morrison has an impressive background. He is a chartered accountant. He has worked extensively in the commercial world. He has had professional associations with casinos in Australia and overseas. For eight years, he was the Managing Director of SkyCity, a company that operates five casinos in New Zealand and Australia.<sup>86</sup>

- 105 Mr Morrison was asked for his views on having independent directors on the board of a company. He said, 'I think it is absolutely appropriate and fundamental to proper governance of any company.'87
- 106 Mr Morrison went on to explain:

[B]ecause—I think the independent directors need to make sure they are free to exercise their judgment, and their best judgment, and not be constrained with any loyalties or any other matters that might influence their judgment which aren't appropriate to thinking about the matter as a whole, objectively, and in the interests of all stakeholders and all shareholders.88

107 Mr Morrison was then asked whether it would be appropriate for a majority or some other number of the board members to be independent. He replied:

> I will speak about SkyCity a little bit. When I was a managing director for eight years, there was no dominant shareholder, no major shareholder, all institutional shareholders, and the board was made up of non-executive directors. 100 per cent non-executive directors. And I thought that gave a really good demarcation between management and the board such that management was in charge of strategy, it was great for the management team to exercise its view about things, it could come up with its own strategy, formulate its own strategy, present it to the board, have the board critique it, get some good independent advice in relation to that strategy, and we'd come out with a stronger plan at the end of the day. I thought that worked really, really well, without having any executive directors on the board other than I guess myself being the managing director.89

- 108 Mr Morrison's views are compelling. They conform to the views of many knowledgeable commentators who contend that good corporate governance requires there to be independent decision makers on the board.
- 109 However, where the casino operator is a subsidiary company, it is important that the directors of the subsidiary are also independent of the holding company.
- 110 For some time, this has been the view of the regulator. In the Second Review that was undertaken in 2000, the regulator (then the VCGA) looked into the corporate governance of Crown Melbourne after the merger with PBL. The report noted:
  - After Crown Melbourne ceased to be a listed company, there was a reduction in the disclosure of information relevant to the regulator's functions.90
  - · The regulator did not consider a Victorian-based director nominated by the holding company to be the same thing as an independent director.91
  - The regulator expressed concern that:

the proper level of decision making for the Crown [Melbourne] board requires a degree of independence from the parent company. Crown [Melbourne] is the licensed entity responsible for detailed technical compliance with the regulatory regime and it is the board of Crown [Melbourne] which is primarily responsible for Crown [Melbourne]'s actions.92

- 111 At the time, the VCGA was advised that Crown Melbourne's constitution was being reviewed and changes might be made to the director provisions.93
- 112 In its Third Review, undertaken in 2003, the VCGA revisited the issue of independent directors for the casino operator. Its report noted:
  - · The VCGA had been informed that Crown Melbourne's review of its constitution had been completed and that Crown Melbourne had decided not to amend it.
  - The VCGA was of the view that Crown Melbourne should appoint two additional independent directors so that at least one-third of the board were independent; that is, independent of the holding company.94
- 113 The regulator's observations were wholly justified.

#### RECOMMENDATION 29: AN INDEPENDENT BOARD

It is recommended that the Casino Control Act be amended to impose an obligation that a casino operator must have a majority of its board as independent directors, including independent of any ultimate or intermediate holding company.

- 114 This recommendation is made despite the fact that the regulator has power to approve the appointment of a director as well as power to require the removal of a director. The imposition of a statutory obligation that a majority of the directors of a casino operator be independent of any holding company emphasises the importance of the casino operator making decisions that are solely in its interests, and not those of other companies.
- 115 Each of Crown Resorts and Crown Melbourne accept that a casino operator should have an independent board and, if there is a holding company, that the board should be independent of the holding company.95

# The single purpose restriction

- 116 One of the principal objectives of the Casino Control Act is for a casino in Victoria to maximise the financial benefits to the State.
- 117 With this objective in mind, the Casino Agreement required the Melbourne Casino to be a single purpose company. The three clauses of the Casino Agreement that imposed this requirement have been outlined earlier in this chapter.96
- 118 There were several reasons for the imposition of the single purpose restriction:
  - To ensure that the employment benefits of operating a large casino remain in Victoria. The restriction prevents Crown Melbourne from shifting its operations interstate where it might own and operate another casino.
  - To prevent the casino operator from shifting, or threatening to shift, significant sources of casino revenue, such as the high roller business, to an interstate or overseas casino.

- To ensure the casino operator avoids any conflict of interest in operating a competing casino and is not distracted from focusing on ensuring the Melbourne Casino Complex remains a world-class tourist attraction, generating maximum revenue for the State.
- · So that disciplinary action requiring the suspension or cancellation of the casino licence and the appointment of a manager would not be hampered by the possibility of such action having an adverse impact on some other 'entwined casino business' owned by Crown Melbourne.97
- 119 Coupled with the single purpose restriction was the best operating practices obligation (clause 28). By this obligation, the Melbourne Casino and the Casino Complex were to be conducted in accordance with the best international operating practices.

#### Removal of the restriction

- 120 On 25 August 2003, Crown Resorts wrote to the Minister and to the regulator requesting a variation of the Casino Agreement by removing the single purpose restriction.98 The letters made the following points:
  - Crown Resorts was unaware of the original reason for the restriction.
  - No other casino or gambling operator in Australia has such a restriction imposed on it.
  - Given the Victorian Government's stated commitment to promote the export-oriented development of Victorian companies and industries, it was 'incongruous' that a successful Victorian company should be restrained from competing nationally and internationally.
  - The gambling industry is competitive and there are significant advantages to be gained by broadening the activities of a casino operator beyond a single property.
  - · There is an appreciable risk that the size and scale of merged operations, both in Australia and worldwide, would make it difficult for Crown to continue to compete effectively in key areas.99
- 121 Ultimately, the State and the regulator agreed to remove the single purpose restriction and permit Crown Melbourne to operate businesses in addition to the Melbourne Casino.
- 122 The price for the removal of the single purpose restriction was Crown's agreement that:
  - any business owned or operated by Crown Resorts outside Victoria was to be managed from Melbourne
  - · PBL was to locate the headquarters of its gaming business at the Melbourne Casino
  - the Melbourne Casino would remain the flagship of PBL's gaming business in Australia
  - · Crown Melbourne would endeavour to maintain the Melbourne Casino as the dominant Commission Based Player casino in Australia. 100
- 123 The removal of the single purpose restriction and the implementation of the terms agreed to give effect to this removal were achieved by the Ninth Variation Agreement to the Casino Agreement.<sup>101</sup>

#### 124 By that variation:

- Crown Melbourne must ensure that at least 75 per cent of the meetings of the company's board of directors are held in Melbourne. 102
- · Crown Melbourne must ensure that at least 75 per cent of the meetings of the company's senior executive managers are held in Melbourne.<sup>103</sup>
- Crown Melbourne must ensure that its senior executive managers reside in Victoria. The senior executives are the CEO, CFO, COO, a director who is an executive officer, and the heads of Gaming, Surveillance, International and Domestic VIP Business and Compliance.<sup>105</sup>
- One company secretary must reside in Victoria.<sup>106</sup>
- Crown Melbourne must ensure that the Holding Company Group locates the headquarters of its gaming business in Melbourne.<sup>107</sup>
- Crown Melbourne must endeavour to maintain the Melbourne Casino as the dominant Commission Based Player casino in Australia. 108
- · Crown Melbourne must ensure that the Holding Company Group maintains the Melbourne Casino as the flagship casino of the Holding Company Group's gaming business in Australia. 109
- · Crown Melbourne must conduct its operations at the Melbourne Casino in a manner that has regard to the best operating practices in international casinos of a similar size and nature.110

## The centralisation controversy

- 125 It is clear what these provisions were designed to achieve. Their objective was to make sure that the Melbourne Casino remained the dominant Commission Based Player casino in Australia and that the actual decision makers; the board and senior executives of Crown Melbourne, had personal knowledge of, and exercised control over, all critical aspects of the Melbourne Casino's operations.
- 126 Has this objective been achieved? There are two aspects of the obligations that the new provisions imposed. One is geographic; the other is substantive.
- 127 The geographic aspect is simple enough. It requires certain meetings and certain officers to reside in Melbourne or Victoria. There is no dispute about this aspect. Crown has conceded, however, that while Mr Barry Felstead was the CEO of Crown Melbourne, it was possible that there was a breach of clause 22.1(bb), for he was a resident of, and spent much time in, Western Australia.<sup>111</sup> That breach was rectified when Mr Xavier Walsh was appointed CEO.<sup>112</sup>
- 128 The second aspect, the one of substance, does give rise to a controversy. The controversy arises in this way. By centralising all the administrative functions, Crown Resorts is in effective control of Crown Melbourne's management team. At the same time, Crown Melbourne has its own executives.

- 129 The CPH group contends that, so long as Crown Melbourne employs officers who have the designation CEO, CFO and so on, the substantive aspects of the provisions are satisfied.<sup>113</sup> That cannot be correct. This approach is inconsistent with the objective that lies behind the new provisions.
- 130 On the proper construction of the new provisions, a designated office holder must carry out the duties that pertain to that office. A CEO, for example, is the head of the executive team of an organisation. The CEO takes instructions from, and is answerable to, the directors. The provisions do not permit a CEO to take instructions from, and be answerable to, the CEO of the holding company. Put more simply, Crown Melbourne must employ 'the CEO' for its organisation (the actual head of the management team) not 'a CEO' (who takes instructions from the actual head). The same is true for the other designated positions.
- 131 The same construction applies for the directors of Crown Melbourne. The directors must be the actual decision makers. They cannot act as mere surrogates of the Crown Resorts board.
- 132 The substantive obligations imposed by the new provisions seems to have been overlooked. For some time, the power to make important decisions affecting Crown Melbourne's operations, including the operation of the Melbourne Casino, has been delegated to the executives of the holding company, Crown Resorts. This was noted by the VCGLR in its Sixth Review:

[M]ost of the resolutions [of Crown Melbourne] were related to capital initiatives already determined by the Crown Resorts board or were formal resolutions complying with Corporations Law requirements (such as the approval of financial statements and the declaration of dividends) ...<sup>114</sup>

#### The VCGLR noted also:

Not only does Crown Resorts control Crown Melbourne, but many critical functions are performed on behalf of the casino operator at the group level or by people whose accountability is to the board of Crown Resorts rather than Crown Melbourne.<sup>115</sup>

- 133 The Sixth Review identifies the functions that have been delegated to Crown Resorts:
  - strategic direction and financial strategy
  - · information technology
  - · regulation and compliance
  - · responsible gaming
  - international business operations
  - learning and development
  - public relations
  - product, strategy and innovation
  - procurement and supply
  - · risk and audit

- finance
- AML
- enterprise reporting
- legal
- VIP International
- customer analytics
- strategy and finance
- hotels
- retail
- food and beverage.<sup>116</sup>
- 134 As a result, the Crown Melbourne board has little to do. According to the Sixth Review, board meetings took only 35 minutes and the chair of the Crown Melbourne board participated in only two of the 16 meetings held between January 2013 and May 2016.<sup>117</sup> The Crown Melbourne board's functions were, and remain, mainly formal. That is less true of the executive level. But it is the case that most, if not all, major decisions are made by those responsible to the Crown Resorts board, not the Crown Melbourne board.
- 135 Crown Melbourne justifies a centralisation of board and management decision making on the basis that it produces greater consistency in approach across the Crown group and helps executives develop greater expertise because they have a broader experience. It explained to the VCGLR that there are local staff at each Crown operating subsidiary who report to group managers at Crown Resorts. It asserted that this arrangement was needed for good management.118
- 136 Here there is some uncertainty about some of the information Crown Melbourne provided to the VCGLR regarding its current management structure. Those details are different from the evidence presented to the Commission. Mr Nick Weeks is the newly appointed Executive General Manager, Transformation and Regulatory Response at Crown Resorts. Mr Weeks said that, at present, the Crown group has 'a decentralised corporate governance model ... that results in duplication of decision-making regarding core compliance, risk and governance issues'.119 He said that the Crown group's plan for the future is to transition to a centralised model, so that corporate governance and risk functions for the group are centralised. Mr Weeks said that the Crown Resorts board has given in-principle support to this plan.<sup>120</sup>
- 137 Crown Resorts has taken advice from Herbert Smith Freehills (HSF) about the appropriateness of centralising all management functions. In that advice, given on 8 September 2020, it is recorded (no doubt based on instructions) that Crown Resorts is operating a 'decentralised governance framework' and wishes to centralise its governance structure to facilitate best-practice governance for a corporate group.<sup>121</sup>

- 138 Putting to one side the divergence on the facts, HSF noted the potential problems that might arise from a centralised corporate governance model:
  - · Directors of the holding company must be able to demonstrate that they exercise due care and diligence in relation to the entire corporate group.
  - Oversight and monitoring of the entire group is a more complex task and increases the workload of the directors of the holding company, which may increase the risk that they fail to oversee and monitor the entire corporate group. 122
- 139 HSF advised that the majority of large ASX-listed companies use a centralised management structure and consolidate the core governance, risk and compliance functions at the level of the holding company. This approach, according to HSF, is 'best practice for large ASX-listed companies but subject to any regulatory requirements ... and conflicting fiduciary duties'. 123
- 140 HSF also explained that if the principal governance functions are performed on a group basis by central management (including functions such as setting strategy and business plans, monitoring risk and audit functions, monitoring compliance with group policies, procedures and the like), 'subsidiary boards are not expected to, and generally should not, duplicate functions performed for the [g]roup'.124 HSF advised:

Under the centralised governance structure, the directors of each subsidiary will place reliance on the [g]roup management processes and, in general, will only separately consider such issues at the subsidiary level where exceptional circumstances exist. 125

## Centralisation inappropriate

141 In the case of a Victorian casino operator, centralising management functions is not an acceptable position. There are several reasons. They should be understood against the background of Mr Connor, QC's observations in his 1983 Report:

> To those unfamiliar with casinos, the degree of control [over a casino operator] which has been found necessary may seem at first to be somewhat far fetched. Once the dangerous and volatile nature of casino gambling is understood, however, the absolute necessity for competent ongoing strict, even draconian, control becomes clear. 126

142 Recognising this, the Casino Agreement requires management decisions to be taken at the Crown Melbourne level. What Mr Weeks put forward as a proposal, and what Crown Melbourne has informed the regulator it wishes to do, is inconsistent with that requirement. Put more simply, as explained earlier, on the proper construction of the Casino Agreement, decisions typically made by a board and by senior managers must be made by the Crown Melbourne board and its senior managers, and not by the Crown Resorts board and senior management.

- 143 There are good reasons for important decisions to be made by the casino operator and not delegated to a third party.
- 144 First, there must be strict oversight of the casino operator by the regulator to ensure that it is properly run. That will not be possible if major decisions are not made by the casino operator.
- 145 Second, as an aspect of the first reason, there is a need for the regulator to be able to deal directly with the senior executives of the casino operator. Sometimes the regulator will need to deal with senior executives urgently and sometimes it will be exercising its statutory power to obtain information. If major decision making takes place at the holding company level, that will unnecessarily and unduly restrict the regulator in performing its functions.
- 146 Third, decision making at senior management level should be done by the casino operator's senior management to ensure those making the decisions have a thorough understanding of the casino operations.
- 147 Fourth, policies or decisions that may be in the interest of a corporate group may not be in the interests of the casino operator. A simple example will make the point.
- 148 Part 2M.3 of the Corporations Act requires every company to lodge an annual financial report and an audit report. ASIC has issued an instrument that sets out the conditions upon which wholly owned corporations may be relieved of their reporting obligations under part 2M.3.

  Compliance with the instrument will allow the group to publish consolidated accounts.<sup>127</sup>
- 149 One condition that must be satisfied to obtain the benefit of the instrument is that each subsidiary must enter into a deed of guarantee by which it guarantees the debts of the holding company and all other companies in the group.<sup>128</sup>
- 150 Crown Resorts and its subsidiaries have taken advantage of the instrument. The result is that Crown Melbourne is relieved of its obligation to lodge annual returns. The price it pays is that it has now guaranteed the obligations of Crown Resorts and all other Crown Resorts subsidiary companies. This occurred in circumstances where Crown Melbourne is the most valuable company in the group.
- 151 Providing the guarantee might not involve any financial risk for Crown Melbourne. It will not involve any risk if Crown Resorts and all the other subsidiaries are solvent and there is no chance of them becoming insolvent. Indeed, in some circumstances, Crown Melbourne may be advantaged by cross-guarantees because its debts will be secured by the assets of Crown Resorts and its other subsidiaries.
- However, the opposite may be the case. For example, Crown Melbourne is under an obligation to ensure its total liabilities do not exceed 60 per cent of its total assets without the regulator's approval.<sup>129</sup> This obligation could be put in jeopardy if there is a deterioration in the financial position of Crown Resorts or one of its subsidiaries.
- 153 It is not only the potential of a future breach of the financial covenant (the 60 per cent requirement) that is problematic. The mere existence of the cross-guarantees makes it difficult for the regulator to determine whether the casino operator continues to be commercially viable when so much might depend on the financial position of all the companies in the Crown group. As a consequence, the regulator must become familiar with the assets and liabilities of every company in the corporate group. That puts the regulator in an unenviable position.

154 Perhaps there could be a suitable arrangement between Crown Melbourne and the regulator that allows some decision making to be centralised. It would not, however, be appropriate for board decisions, and decisions by the senior managers holding the positions identified in the Casino Agreement, to be made by the board and senior managers of the holding company.

#### RECOMMENDATION 30: INDEPENDENCE OF SENIOR MANAGEMENT

For the avoidance of any doubt about the construction of the Casino Agreement, it is recommended that the Casino Control Act be amended so that:

- the board of a casino operator is not permitted to delegate any of its functions to any person or body of persons other than a subcommittee of the board or an individual director
- the casino operator must appoint a full-time:
  - chief executive officer (however described)
  - chief financial officer (however described)
  - chief operating officer (however described)
  - heads of Gaming, Surveillance, International and Domestic VIP Business and Compliance (however described)

and ensure that those persons do not report to, or take instructions from, any person or group of persons other than the board of the casino operator or an officer of the casino operator

• the Minister has power to vary these requirements.

The amending legislation should make clear that it does not diminish any of the other obligations imposed by clauses 22 and 28 of the Casino Agreement.

# Competing with the Melbourne Casino

- 155 Crown Resorts is permitted to operate casinos outside Victoria. If it does so, the Casino Agreement imposes obligations on Crown Resorts to protect the position of the Melbourne Casino.
- 156 In the event that Crown Resorts does operate another casino, then, as has been explained, the Holding Company Group (which includes Crown Resorts) must 'use its best endeavours' to ensure that the other casino is conducted in a manner:
  - which is beneficial ... to [Crown Melbourne] and which promotes tourism, employment and economic development generally in Victoria; and
  - which is not detrimental to [Crown Melbourne's] interests.<sup>130</sup>

- 157 In addition, Crown Melbourne is under an obligation:
  - to endeavour to maintain the Melbourne Casino as the dominant 'Commission Based Player' casino in Australia;
  - to ensure the Crown group maintains the Melbourne Casino as the flagship casino of Crown Resorts gaming business in Australia. 131
- 158 Crown Melbourne may terminate some of its obligations on giving the regulator notice.<sup>132</sup> Presumably, it was assumed that Crown Resorts could require Crown Melbourne to give the notice, regardless of whether it was in the best interests of Crown Melbourne to do so. If Crown Melbourne is under independent control, it would not act against its own best interests.
- 159 On 4 July 2013, the then Premier of New South Wales announced that Crown Resorts had been invited to move ahead with a proposal to establish a six-star resort, including VIP gaming facilities, at Barangaroo in Sydney. This casino would have no EGMs, no low bet tables and only VIP members. 133
- 160 In an ASX media release, Crown Resorts said the proposal would 'give Sydney a landmark hotel it can be proud of ... [it would] attract international tourists, create jobs and put Sydney on the map'.134
- 161 Crown Resorts proposed that:
  - it pay an upfront licence fee of \$100 million
  - it pay a casino tax of 29 per cent of gaming revenue
  - it make total payments of \$1 billion to the New South Wales Government over the first 15 years of full operation
  - the licence fee and tax be reviewed only after 20 years.<sup>135</sup>
- 162 According to the then New South Wales Premier, the new resort's contribution to Gross State Product and State taxes would be greater than that contributed by Star Casino, another casino operating in Sydney. The Premier also estimated that the proposed development would create 1,250 additional jobs after the casino was constructed and increase international tourism. 136
- 163 In its annual reports, Crown Resorts said that the proposed Barangaroo development would:
  - · be 'a world-class' development that would attract 'a larger share of the booming Asian outbound tourism market. Incorporating world-class VIP gaming [that would] provide a further attraction to high net worth tourists from China and other Asian countries" 137
  - · 'deliver significant and unique benefits for the people of [New South Wales], boosting employment, business investment, export income and state revenue'. It would 'also assist Sydney attract a larger share of the booming outbound Asian tourism market'138
  - · 'become an international tourism icon and [would] help Sydney attract high net worth travellers from all parts of the world'139
  - represent a '\$2.2 billion investment' that [would] bring 'long term benefits' to 'Crown and the New South Wales economy more broadly'. 140

#### Material breach

- 164 There is a possibility that by proceeding with the Barangaroo development, including the new casino, Crown Melbourne will breach its obligations under the Casino Agreement. There are several reasons for this view.
- 165 The Commission requested Crown Resorts to produce its business plan for the development. It is unlikely that development of this magnitude would get underway without the preparation of a business plan that analysed the viability of the project.
- 166 No business plan was produced. Instead, the Commission was provided with a submission by Crown Resorts that had been provided to the New South Wales Government in June 2013. The submission sought government approval for the Barangaroo development.<sup>141</sup>
- 167 The submission contains a financial analysis of the project. Part of that analysis assumes a significant growth in the VIP International business for Australia. It also records that growth would accrue to both Melbourne and Sydney. It is suggested that the Melbourne Casino would experience a 6 per cent growth in this market, which would be driven by the opening of Crown Sydney.142
- 168 The submission also indicates that Crown Sydney would not be taking business away
- 169 There is a not insignificant risk, however, that the Melbourne Casino would suffer a loss of custom.
- 170 First, it is apparent from the published material that the patrons of the proposed Barangaroo casino (Chinese and Asian VIP players) are to be drawn from the same pool that Melbourne Casino targets.
- 171 Second, no detailed financial analysis appears to have been undertaken by Crown Resorts on the effect of the proposed Barangaroo casino on Melbourne Casino's operations or on the effect on tourism, employment and economic development in Victoria.
- 172 Third, the submission to the New South Wales Government does not address whether the projected 6 per cent growth of the Melbourne Casino business was less than the likely growth if the Barangaroo casino did not commence operations.
- 173 Fourth, more recent information that is contained in a Crown Resorts Business Plan and Budget for Crown Melbourne's VIP International business indicates a downturn in revenue at the Melbourne Casino. The budget was prepared for the financial years 2019 to 2023. The budget anticipates a decline in profits in each of the years 2022 and 2023. The budget does not attribute this potential decline to the opening of the new casino at Barangaroo, but the new casino may be a contributing factor.<sup>143</sup>
- 174 On the other side, the Commission did hear evidence suggesting that the Barangaroo development would benefit at least Crown Melbourne and its operations. Ms Jane Halton, a director of Crown Resorts, said that as a result of the Sydney development, 'everyone gets a better financial outcome ... nothing I've seen, or ever been told, ... suggests otherwise'. 144

- 175 Mr Stephen McCann, recently appointed CEO Crown Resorts and CEO Crown Melbourne, went further. He said, '... one of the big drivers for Victoria is tourism revenue, and part of the vision around having Crown Sydney is to become more appealing to international tourism spend, which would go to both Sydney and Melbourne'.145
- 176 In the end, it is not possible to determine whether there is likely to be a breach of the Casino Agreement. That will depend on what happens if and when the Barangaroo casino gets underway. Even then, it will take some time to determine whether the operation of the Barangaroo casino will be detrimental to the Melbourne operation or will benefit Victoria in any way.
- 177 That is a matter that will no doubt be properly investigated at some future time. If a problem develops, the parties can resort to their existing statutory/contractual rights.
- 178 On the other hand, it seems tolerably clear that Crown Resorts did not undertake a detailed analysis to determine whether Crown Sydney would be beneficial to Crown Melbourne or would promote tourism, employment and economic development in Victoria. This is a matter of real concern. The potential breach of a promise by Crown Melbourne to the State should be taken seriously.
- 179 It may turn out that the failure to undertake a detailed analysis is of no consequence. If so, that may be little more than good luck. It does, however, provide another example of the risks Crown is prepared to run.

## **Endnotes**

- 1 Exhibit RC0488 VCCA Melbourne Casino Project Casino Agreement, 21 September 1993, cl 22.1(a).
- 2 Exhibit RC0488 VCCA Melbourne Casino Project Casino Agreement, 21 September 1993, cl 22.1(b).
- 3 Exhibit RC0488 VCCA Melbourne Casino Project Casino Agreement, 21 September 1993, cl 22.1(f).
- 4 Exhibit RC1467 Crown Melbourne Memorandum and Articles of Association, 25 May 1998, art 2.7.
- 5 Exhibit RC1467 Crown Melbourne Memorandum and Articles of Association, 25 May 1998, art 9.11.
- 6 Exhibit RC0488 VCCA Melbourne Casino Project Casino Agreement, 21 September 1993, cl 22.1(k).
- 7 Exhibit RC0488 VCCA Melbourne Casino Project Casino Agreement, 21 September 1993, cl 22.3; Exhibit RC1467 Crown Melbourne Memorandum and Articles of Association, 25 May 1998, art 1.2(i).
- 8 Exhibit RC0488 VCCA Melbourne Casino Project Casino Agreement, 21 September 1993, cl 47.1(c); Exhibit RC1467 Crown Melbourne Memorandum and Articles of Association, 25 May 1998, art 1.2(a).
- 9 Corporations Act 1989 (Cth) ss 603 (definition of 'entitled'), 609(1)(a).
- 10 Corporations Act 1989 (Cth) ss 9 (definition of 'relevant interest'), 31.
- 11 *Corporations Act 1989* (Cth) ss 33, 30(7)(b).
- 12 Corporations Act 2001 (Cth) s 9 (definition of 'relevant interest').
- 13 Corporations Act 2001 (Cth) ss 608(1), 608(3)(a).
- Exhibit RC0481 Bundle of contracts and correspondence between the VCGA and Crown, various dates, 210 (Facsimile from MinterEllison to VCGA, 12 July 1996).
- Exhibit RC0481 Bundle of contracts and correspondence between the VCGA and Crown, various dates, 17 (File Note regarding comments on submissions made in response to the draft amendment proposed to clause 22.1(a), 20 November 1996).
- 16 Exhibit RC0488 VCCA Melbourne Casino Project Casino Agreement, 21 September 1993, cl 22.1(b).
- Exhibit RC0481 Bundle of contracts and correspondence between the VCGA and Crown, various dates, 227 (Letter from Peter Ronec to Alan Rowe, 23 January 1996).
- 18 Exhibit RC0481 Bundle of contracts and correspondence between the VCGA and Crown, various dates, 157 [7] (VCGA General Report on All 'In-Progress' Amendments to the Agreements for the Casino, n.d.).
- 19 Exhibit RC0481 Bundle of contracts and correspondence between the VCGA and Crown, various dates, 17 (File Note regarding comments on submissions made in response to the draft amendment proposed to clause 22.1(a), 20 November 1996).
- Exhibit RC0494 VCGA Melbourne Casino Project Sixth Variation Agreement to the Casino Agreement, 8 May 1997.
- 21 Exhibit RC0494 VCGA Melbourne Casino Project Sixth Variation Agreement to the Casino Agreement, 8 May 1997, cl 2.1(e).
- 22 For further discussion of the merger, see Appendix E.
- 23 Exhibit RC1620 Article: Packer Deals Again for Crown, 15 December 1998.
- 24 VCGA, Third Triennial Review of the Casino Operator and Licence (Report, June 2003) 32.
- 25 See the discussion of single purpose later in this chapter and in Chapter 2.
- 26 Exhibit RC0488 VCCA Melbourne Casino Project Casino Agreement, 21 September 1993, cl 22.1(p).
- 27 Exhibit RC0488 VCCA Melbourne Casino Project Casino Agreement, 21 September 1993, cl 22.1(q).
- 28 Exhibit RC0488 VCCA Melbourne Casino Project Casino Agreement, 21 September 1993, cl 22.4.
- 29 Exhibit RC0488 VCCA Melbourne Casino Project Casino Agreement, 21 September 1993, cl 28.
- 30 Exhibit RC0486 VCGA meeting minutes, 21 May 1999, 126–7 (Proposed Crown/PBL Merger Supporting Paper No. 1).
- Exhibit RC0486 VCGA meeting minutes, 21 May 1999, 26 (National Institute of Economic and Industry Research, 'The economic impact of the proposed Crown/PBL merger' report).
- 32 Exhibit RC0496 VCGA Melbourne Casino Project Eighth Variation Agreement to the Casino Agreement, 27 May 1999.
- 33 Exhibit RC0435 Consolidated Casino Agreement, 21 September 1993, cl 2 (definition of 'Holding Company').
- Exhibit RC0435 Consolidated Casino Agreement, 21 September 1993, cl 2 (definition of 'Holding Company Group').
- 35 Exhibit RC0435 Consolidated Casino Agreement, 21 September 1993, cl 22.1(f).

- Exhibit RC0486 VCGA meeting minutes, 21 May 1999, 109–10 (Detailed explanation of the proposed transaction documents: Eighth Variation).
- 37 Exhibit RC0435 Consolidated Casino Agreement, 21 September 1993, cl 22.1(r).
- Exhibit RC0486 VCGA meeting minutes, 21 May 1999, 110 (Detailed explanation of the proposed transaction documents: Eighth Variation); *Casino Control Act 1991* (Vic) s 1(a)(iii).
- Exhibit RC0485 Bundle of contracts and file notes, various dates, 266 (Office of Gambling Regulation, Review of the Casino Agreement, 23 September 2003).
- 40 Exhibit RC1568 Melbourne Casino Project Supplemental Casino Agreement, 27 May 1999.
- 41 Exhibit RC1568 Melbourne Casino Project Supplemental Casino Agreement, 27 May 1999, cl 4.
- 42 Exhibit RC1568 Melbourne Casino Project Supplemental Casino Agreement, 27 May 1999, cl 6.
- 43 Exhibit RC1568 Melbourne Casino Project Supplemental Casino Agreement, 27 May 1999, cl 7.
- Exhibit RC0486 VCGA meeting minutes, 21 May 1999, 111 (Detailed explanation of the Proposed Transaction Documents: Eighth Variation).
- Exhibit RC1569 Deed of Amendment, Accession and Release, 22 October 2007, cl 5; Exhibit RC1568 Melbourne Casino Project Supplemental Casino Agreement, 27 May 1999, cl 4(a).
- 46 Exhibit RC1570 Email from Mary Manos to Scott May, 13 September 2019.
- 47 Exhibit RC1571 Email chain between VCGLR Solicitor and Scott May, 10 September 2019, 5.
- 48 Exhibit RC1571 Email chain between VCGLR Solicitor and Scott May, 10 September 2019, 3–4; *Casino Control Act 1991* (Vic) s 28.
- 49 Exhibit RC1571 Email chain between VCGLR Solicitor and Scott May, 10 September 2019, 4.
- 50 Exhibit RC1572 Email from Scott May to Mary Manos, 16 September 2019.
- 51 Exhibit RC0500 VCGLR Melbourne Casino Agreement Project Twelfth Variation Agreement to the Casino Agreement, 26 September 2019.
- Exhibit RC0435 Consolidated Casino Agreement, 21 September 1993, cl 22B.1. As discussed further in Appendix E, at different times, both Crown Resorts and Crown Melbourne were named 'Crown Ltd'; consequently we have substituted the current name for the entity in square brackets.
- 53 Xavier Connor, Report of Board of Inquiry into Casinos in the State of Victoria (Report, April 1983) [16.24].
- 54 Xavier Connor, Report of Board of Inquiry into Casinos in the State of Victoria (Report, April 1983) [16.24].
- Exhibit RC1603 Article: The Role and Effect of Controlling Shareholders in Corporate Governance, 2 November 2016, 563.
- Exhibit RC1598 Article: The Elusive Quest for Global Governance Standards, 2009, 1281; Exhibit RC1603

  Article: The Role and Effect of Controlling Shareholders in Corporate Governance, 2017, 562; Exhibit RC1601

  Article: Deconstructing Independent Directors, 2013, 71.
- See, eg, Exhibit RC1601 Article: Deconstructing Independent Directors, 2013, 70–1; Exhibit RC1598 Article: The Elusive Quest for Global Governance Standards, 2009, 1284–6, 1305.
- Exhibit RC1603 Article: The Role and Effect of Controlling Shareholders in Corporate Governance, 2017, 563; Exhibit RC1598 Article: The Elusive Quest for Global Governance Standards, 2009, 1295; Exhibit RC1611 Article: Tunnelling, 2000, 23; Exhibit RC1612 Article: Unbundling and Measuring Tunnelling, 2014, 1700–1; Exhibit RC1607 Related Party Transactions: Policy Options and Real-World Challenges, October 2014, 3.
- 59 Exhibit RC1598 Article: The Elusive Quest for Global Governance Standards, 2009, 1295.
- 60 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 168 [120].
- 61 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 169–70 [121]–[123].
- 62 Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 171 [127].
- Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 175 [148].
- 64 Exhibit RC0488 VCCA Melbourne Casino Project Casino Agreement, 21 September 1993, cl 22.1(f).
- VCGA, *Third Triennial Review of the Casino Operator and Licence* (Report, June 2003) 27, 32; Exhibit RC0496 VCGA Melbourne Casino Project Eighth Variation Agreement to the Casino Agreement, 27 May 1999.
- Exhibit RC0500 VCGLR Melbourne Casino Project Twelfth Variation Agreement to the Casino Agreement, 26 September 2019.
- 67 Casino Control Act 1991 (Vic) s 28.
- 68 Corporations Act 2001 (Cth) ss 9 (definition of 'substantial holding'), 671B(1)(a).

- 69 Corporations Act 2001 (Cth) ss 672A, 672B.
- 70 Responsive submission CPH Parties, 2 August 2021, 10–13 [19]–[31].
- 71 Exhibit RC0437 Statement of Helen Coonan, 28 April 2021 (marked up corrections applied 5 July 2021), Annexure i.
- 72 Responsive submission CPH Parties, 2 August 2021, 26–8 [80]–[86].
- Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 83–4 [C.152(a)].
- 74 Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 636 [110].
- 75 Exhibit RC0435 Consolidated Casino Agreement, 21 September 1993, cls 22.1(c)-(d).
- 76 Exhibit RC0435 Consolidated Casino Agreement, 21 September 1993, cl 22.1(e).
- 77 Submission 08 South Australian Centre for Economic Studies, 30–5.
- 78 Submission 08 South Australian Centre for Economic Studies, 35.
- 79 Exhibit RC1467 Crown Melbourne Memorandum and Articles of Association, 15 June 2007, art 14.2.
- See commentary at ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations* (4th ed, February 2019) 13–14.
- ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations* (4th ed, February 2019) 15.
- ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations* (4th ed, February 2019) 15.
- 83 Jeffrey Lawrence and Geof Stapledon, Do Independent Directors Add Value? (Report, 1999) 2.
- 84 Jeffrey Lawrence and Geof Stapledon, Do Independent Directors Add Value? (Report, 1999) 53.
- 85 Jeffrey Lawrence and Geof Stapledon, Do Independent Directors Add Value? (Report, 1999) 53–5.
- Exhibit RC0223 Statement of Nigel Morrison, 15 June 2021, 1–2, 4; Exhibit RC0223 Statement of Nigel Morrison, 15 June 2021, Annexure b.
- 87 Transcript of Nigel Morrison, 22 June 2021, 2268.
- Transcript of Nigel Morrison, 22 June 2021, 2268.
- 89 Transcript of Nigel Morrison, 22 June 2021, 2270.
- 90 VCGA, Second Triennial Review of the Casino Operator and Licence (Report, June 2000) 24.
- 91 VCGA, Second Triennial Review of the Casino Operator and Licence (Report, June 2000) 26.
- 92 VCGA, Second Triennial Review of the Casino Operator and Licence (Report, June 2000) 26.
- 93 VCGA, Second Triennial Review of the Casino Operator and Licence (Report, June 2000) 25-6.
- 94 VCGA, Third Triennial Review of the Casino Operator and Licence (Report, June 2003) 12.
- 95 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 85 [C.152(d)].
- 96 For further information on the single purpose restriction, see the discussion in Chapter 2.
- 97 Exhibit RC0485 Bundle of contracts and file notes, various dates, 266 [16] (Office of Gambling Regulation, Review of the Casino Agreement, n.d.).
- 98 Exhibit RC0483 Brian Forrest Casino Agreement Review, n.d., 31–5 (see Letter from Rowen Craigie to Brian Forrest, 25 August 2003 and letter from Rowen Craigie to the Minister for Gaming, 25 August 2003); Exhibit RC0488 VCCA Melbourne Casino Project Casino Agreement, 21 September 1993, cls 22.1(p), 22.1(q), 22.4, 48.2(e).
- 99 Exhibit RC0483 Brian Forrest Casino Agreement Review, n.d., 31–2 (Letter from Rowen Craigie to Brian Forrest, 25 August 2003).
- 100 Exhibit RC0483 Brian Forrest Casino Agreement Review, n.d., 249–50 (Ministerial Brief regarding outcome of negotiations with Crown on removal of single purpose company provision and changes required by government in exchange, n.d., Attachment 4).
- Exhibit RC0497 VCGR Melbourne Casino Project Ninth Variation Agreement to the Casino Agreement, 8 July 2005, cl 2.6 (deleting cls 22.1(p)–(r), 22.4 of the Casino Agreement).
- Exhibit RC0497 VCGR Melbourne Casino Project Ninth Variation Agreement to the Casino Agreement, 8 July 2005, cl 2.3 (inserting cl 22.1(b) of the Casino Agreement); Exhibit RC0435 Consolidated Casino Agreement, 21 September 1993, cl 22.1(b).

- Exhibit RC0497 VCGR Melbourne Casino Project Ninth Variation Agreement to the Casino Agreement, 8 July 2005, cl 2.3 (inserting cl 22.1(c) of the Casino Agreement); Exhibit RC0435 Consolidated Casino Agreement, 21 September 1993, cl 22.1(ba).
- Exhibit RC0497 VCGR Melbourne Casino Project Ninth Variation Agreement to the Casino Agreement, 8 July 2005, cl 2.4 (inserting cl 22.1(bb) of the Casino Agreement); Exhibit RC0435 Consolidated Casino Agreement, 21 September 1993, cl 22.1(bb).
- Exhibit RC0497 VCGR Melbourne Casino Project Ninth Variation Agreement to the Casino Agreement, 8 July 2005, cl 2.2 (amending cl 2 of the Casino Agreement, inserting definition of 'Senior Executive Manager'); Exhibit RC0435 Consolidated Casino Agreement, 21 September 1993, cl 2 (definition of 'Senior Executive Manager').
- Exhibit RC0497 VCGR Melbourne Casino Project Ninth Variation Agreement to the Casino Agreement,
   July 2005, cl 2.4 (inserting cl 22.1(bc) of the Casino Agreement); Exhibit RC0435 Consolidated Casino Agreement, 21 September 1993, cl 22.1(bc).
- Exhibit RC0497 VCGR Melbourne Casino Project Ninth Variation Agreement to the Casino Agreement, 8 July 2005, cl 2.7 (inserting cl 22.1(ra) of the Casino Agreement); Exhibit RC0435 Consolidated Casino Agreement, 21 September 1993, cl 22.1(ra)(i).
- Exhibit RC0497 VCGR Melbourne Casino Project Ninth Variation Agreement to the Casino Agreement, 8 July 2005, cl 2.7 (inserting cl 22.1(ra) of the Casino Agreement); Exhibit RC0435 Consolidated Casino Agreement, 21 September 1993, cl 22.1(ra)(ii).
- Exhibit RC0497 VCGR Melbourne Casino Project Ninth Variation Agreement to the Casino Agreement, 8 July 2005, cl 2.7 (inserting cl 22.1(ra) of the Casino Agreement); Exhibit RC0435 Consolidated Casino Agreement, 21 September 1993, cl 22.1(ra)(iii).
- Exhibit RC0497 VCGR Melbourne Casino Project Ninth Variation Agreement to the Casino Agreement, 8 July 2005, cl 2.11 (substituting cl 28 of the Casino Agreement); Exhibit RC0435 Consolidated Casino Agreement, 21 September 1993, cl 28.
- 111 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 71–2 [C.109].
- 112 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 71–2 [C.111].
- 113 Responsive submission CPH Parties, 2 August 2021, 45 [150].
- 114 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, 56.
- 115 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, 39.
- 116 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, 51.
- 117 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, 56.
- 118 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, 52.
- 119 Exhibit RC0416 Statement of Nick Weeks, 7 June 2021, 10.
- 120 Exhibit RC0416 Statement of Nick Weeks, 7 June 2021, 10.
- Exhibit RC1557 Memorandum of advice regarding Crown Resorts Governance Structure, 8 September 2020, 1.
- Exhibit RC1557 Memorandum of advice regarding Crown Resorts Governance Structure, 8 September 2020, 3.
- Exhibit RC1557 Memorandum of advice regarding Crown Resorts Governance Structure, 8 September 2020, 4.
- Exhibit RC1557 Memorandum of advice regarding Crown Resorts Governance Structure, 8 September 2020, 5.
- Exhibit RC1557 Memorandum of advice regarding Crown Resorts Governance Structure, 8 September 2020, 5.
- 126 Xavier Connor, Report of Board of Inquiry into Casinos in the State of Victoria (Report, 1983) [16.02].
- 127 ASIC Corporations (Wholly-owned Companies) Instrument 2016/785.
- 128 ASIC Corporations (Wholly-owned Companies) Instrument 2016/785, s 5.
- 129 Exhibit RC0435 Consolidated Casino Agreement, 21 September 1993, cl 22.1(m).
- 130 Exhibit RC0435 Consolidated Casino Agreement, 21 September 1993, cls 22.1(r)(i)-(ii).
- 131 Exhibit RC0435 Consolidated Casino Agreement, 21 September 1993, cls 22.1(ra)(ii)–(iii).
- 132 Exhibit RC0435 Consolidated Casino Agreement, 21 September 1993, cl 22.1(ra).

- 133 Crown Resorts, 'Crown Sydney Hotel Resort Unsolicited Proposal Update' (ASX Media Release, 4 July 2013); New South Wales Government, 'Crown Proposal Moves to Stage 3' (Media Release, 4 July 2013).
- 134 Crown Resorts, 'Crown Sydney Hotel Resort Unsolicited Proposal Update' (ASX Media Release, 4 July 2013).
- 135 New South Wales Government, 'Crown Proposal Moves to Stage 3' (Media Release, 4 July 2013).
- 136 New South Wales Government, 'Crown Proposal Moves to Stage 3' (Media Release, 4 July 2013).
- 137 Crown Resorts, Annual Report 2014 (Report, 2014) 20.
- Crown Resorts, Annual Report 2015 (Report, 2015) 26. 138
- 139 Crown Resorts, Annual Report 2018 (Report, 2018) 3.
- 140 Crown Resorts, Annual Report 2020 (Report, 2020) 5.
- 141 Exhibit RC1466 Crown Sydney Hotel Resort Financial Submission, June 2013.
- Exhibit RC1466 Crown Sydney Hotel Resort Financial Submission, June 2013, 8, 12. 142
- 143 Exhibit RC0353 Second Statement of Xavier Walsh, 23 April 2021, Annexure x, 17.
- 144 Transcript of Jane Halton, 7 July 2021, 3621.
- 145 Transcript of Stephen McCann, 6 July 2021, 3495.



CHAPTER 18

# Suitability and the public interest

#### CHAPTER 18

# Suitability and the public interest

## Introduction

- This chapter will deal with two central issues raised by the Terms of Reference. First, whether Crown Melbourne is a suitable person to continue to hold its casino licence. Second, in any event, whether it is in the public interest for Crown Melbourne to continue to hold its casino licence.
- A related issue, whether any associate of Crown Melbourne is a suitable associate, is considered in Chapter 20.
- An application for a casino licence cannot be granted unless the regulator is satisfied that the applicant and each associate of the applicant is 'a suitable person to be concerned in or associated with the management and operation of a casino'.1
- Once granted, a casino licence may be cancelled or suspended if the casino operator is no longer suitable to hold its licence or it is no longer in the public interest for its licence to remain in force.2
- In 1997, the regulator obtained the advice of senior counsel on the meaning of 'suitable person' and 'public interest'.3 Extracts from those opinions are set out in Appendix H. That Appendix also extracts the discussion of the meaning of 'suitability' from the Bergin Report.
- It is appropriate to say a little more about each of these concepts.

# Suitability

- 'Suitable person' is not expressly defined in the Casino Control Act. There are, however, statutory criteria that describe the attributes of a 'suitable person'. They include that:
  - the person is of good repute, having regard to character, honesty and integrity
  - · the applicant has sufficient business ability to establish and maintain a successful casino
  - the person has adequate financial resources to operate a casino
  - · the person's associates are of good repute
  - each person connected with the casino business is also suitable.4
- The suitability requirement came from the concern that criminal elements may infiltrate a casino.<sup>5</sup> It is clear, though, that 'suitability' involves much broader considerations. This is plain from the requirement in the Casino Control Act that, in considering suitability, other factors must be taken into account. The most important of those factors are the casino operator's character, honesty and integrity, and its financial standing.<sup>6</sup> Another important factor is the suitability of the directors and officers involved in the administration of the casino's operations.<sup>7</sup>

- Critical to any inquiry into an applicant's suitability for a casino licence is whether they are of 'good character'. Character is an elusive concept. It can be seen indirectly through a person's acts and deeds, and is understood as being indicative of future conduct.
- 10 The New Jersey Casino Control Commission, in determining the suitability of an applicant for a casino licence, said:

[W]e conceive character to be the sum total of an individual's attributes, the thread of intention, good or bad, that weaves its way through the experience of a lifetime ... We must focus particularly on those attributes of trustworthiness, honesty, integrity and candor which are relevant to our inquiry.8

- 11 Ms Bergin, SC said that a suitable person is a person who 'possess[es] "high standards of conduct" and act[s] in accordance with those standards under pressure'.9
- 12 The typical assessment of suitability entails looking for evidence of misconduct and, if it exists, asking what conclusion may be drawn. It is also possible from these cases of misconduct to draw up a list of factors that, either individually or collectively, may indicate that a casino operator is unsuitable to hold a casino licence. Such a list would include:
  - misleading a licensing authority<sup>10</sup>
  - failing to cooperate with a regulator during an investigation<sup>11</sup>
  - previous criminal conduct, especially conduct that arose while carrying out functions permitted by the licence<sup>12</sup>
  - failing to comply with relevant statutory requirements that regulate the licensed activities.<sup>13</sup>
- 13 This approach is satisfactory when considering a new applicant for a casino licence. The information that is available will be about the past life or past corporate conduct of the applicant. That information will enable an assessment to be made of what may happen in the future.
- 14 A different approach is preferable when considering whether an existing casino licensee continues to be suitable to hold its licence. This approach will look more broadly at the licensee's conduct as a casino operator.
- 15 Elsewhere in this Report there is a statement of what are the appropriate norms of conduct to which a casino operator should conform.<sup>14</sup> They are worth repeating. A casino operator must:
  - · obey the law
  - · act honestly
  - · deter illegal and immoral behaviour that might take place in a casino
  - · not exploit people who come to the casino to gamble
  - take active measures to minimise the harm caused by gambling
  - · cooperate fully and candidly with the regulator and with government.

- 16 Whether or not there has been adherence to these norms is a better guide to suitability than considering isolated examples of misconduct to see whether, when considered in aggregate, they tell something about the future. So, if a casino operator infringes any one of the norms, it is on the road to unsuitability. If a casino operator infringes several of the norms, the end of the road is near. If a casino operator has infringed most of the norms, the journey is at an end.
- 17 In the process of assessing suitability, it is necessary to recognise that a casino operator, such as Crown Melbourne, is a corporation. So, in effect, it is the conduct of its directors, officers and employees that is under consideration.
- 18 The traditional approach is to recognise that a corporation can only act through its directors, officers and employees. Its moral responsibility (that is, its integrity, good character and the like), and its corporate culpability, are usually measured by the conduct of those who lead the organisation.15
- 19 This approach has been justifiably criticised in examinations of corporate responsibility. The submission by Dr Elise Bant, Professor of Private Law and Commercial Regulation at the University of Western Australia Law School, contends that the traditional approach 'is unduly restrictive and, arguably, runs counter to the more recent trend of corporate theory and regulation of corporations in Australia'. She goes on to say that 'corporate culpability is not merely to be equated with the character and morals of its leading officers although, of course, they may be important factors'.16
- 20 Dr Bant's thesis is that, for the purpose of determining corporate culpability, the mind of a corporation is shown in its systems, policies and patterns of behaviour. She said that it is the corporate culture of a firm that may direct, encourage, tolerate or lead to non-compliance with relevant laws. By corporate culture, Dr Bant means 'an attitude, policy, rule, course of conduct or practice existing within the body corporate generally or in the part of the body corporate in which the relevant activities take place'.17
- 21 In other words, the traditional approach to assessing suitability is too narrow. It does not acknowledge that many organisational decisions are more than the combination of individual choices and actions.<sup>18</sup> It is the systems, strategy, structure and culture of the corporation that can either cause or inhibit corporate misconduct.
- 22 Other researchers have identified that defective organisational "structures" and "information" and "decision-making" procedures may result in irrationalities, group think, flawed risk perceptions or secrecy with regard to misconduct'.19
- 23 This line of thinking seems to have influenced Mr Hayne, QC in his Banking Royal Commission Final Report. He said:

Failings of organisational culture, governance arrangements and remuneration systems lie at the heart of the misconduct examined in this Commission.<sup>20</sup>

- 24 Ms Bergin, SC has a more narrowly focused view. She proceeded on the basis 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'. 21 The assumption here is that by simply changing those who control the corporation, it is possible to change the company's suitability.
- 25 As posited by Dr Bant, the true position is more complicated. If the corporate systems or corporate culture tolerate wrongdoing, merely changing the personnel will not suffice. In that event, it will be more important to assess whether there has been a sufficient change in the organisation's hierarchy, corporate goals, systems and policies to be satisfied that there will be full compliance with all applicable rules and regulations.
- 26 Turning to the operational capacity of the casino operator, both the past and present must be considered. That will require an historical analysis of the casino operator's business dealings and management coupled with an assessment of the casino operator's current financial position.
- 27 The key question usually is not whether the casino operator is struggling and might seek capital from organised crime.<sup>22</sup> That will be a significant issue. In reality, though, the main question will be whether the casino operator has the operational resources and capacity to run a casino. If the casino operator is under financial stress, it might be tempted to cut corners in the honest and fair delivery of gambling services or seek financial aid from the wrong places.

## Public interest

- 28 The term 'public interest' is of 'broad import'.<sup>23</sup> When used in a statute, it usually requires a discretionary value judgement to be made by reference to undefined matters confined only by the particular purpose for the inquiry.<sup>24</sup> Whether or not something is in the public interest requires the decision maker to examine the matter from the perspective of the public at large, or of a significant portion of the public. Here, the purpose of public interest is the maintenance of public 'confidence and trust in the credibility, integrity and stability of casino operations'.<sup>25</sup>
- 29 It involves consideration of the broad interest of the community, regardless of whether acting in the community's interest disadvantages the casino operator's private interest.<sup>26</sup>
- 30 While the definition of public interest in relation to a casino operator refers to the credibility, integrity and stability of casino operations, the task of assessing whether it is in the public interest for a particular casino operator to continue to hold a casino licence is different. It requires an assessment of whether the casino operator's conduct (and the conduct of those who control it) has adversely affected the public confidence and trust in the casino operations.<sup>27</sup>
- 31 The reference to public confidence is to local confidence, which will be grounded in local community standards. Those standards will change over time and will be affected by matters that have received both adverse or positive publicity.<sup>28</sup>

## The suitability of Crown Melbourne

- 32 It is no exaggeration to say that news reports of what has been discovered by the Bergin Inquiry and what has come to light during the hearings of this Commission will have shocked the public as they gained a picture of the extent and gravity of Crown Melbourne's misconduct:
  - · criminals were allowed to gamble at the casino
  - money laundering flourished
  - · millions of dollars in taxes were not paid
  - wealthy Chinese patrons were assisted in illegally transferring up to \$160 million in funds from their country
  - the regulator was bullied and its investigations frustrated because it was fed misleading information
  - · employees' liberty and safety were put at risk, and some employees were jailed
  - other employees, at the Crown Towers Hotel, were instructed to falsify documents
  - vulnerable gamblers were encouraged and enticed to continue gambling beyond their means
  - tragically, the lives of many gamblers have been ruined.
- 33 These were not isolated instances of misconduct. They were part of a pattern of disgraceful behaviour that has been going on for over a decade.
- 34 Why did it happen? How was it allowed to happen?
- 35 It is likely that the complete truth will never be known. What can be said is that senior executives within Crown Resorts and Crown Melbourne allowed the misconduct to occur and, on many occasions, instigated the wrongdoing. And, worst of all, the misconduct involved all levels of the organisation.
- 36 The board must take considerable responsibility. One of the board's main functions is to make sure the organisation meets its legal and regulatory obligations. That basic duty seems to have been overlooked.
- 37 In their evidence before the Bergin Inquiry, as well as before this Commission, some directors claimed that the misconduct occurred without their knowledge. They pointed to a failure by senior executives to inform the board of what was going on. Others said that the board was not given accurate information.
- 38 There may be some truth to these claims. At the same time, it paints a picture of an ineffectual and incompetent board: a board that was not carrying out its duties. It is unacceptable for a board not to know anything about the litany of the company's wrongdoings over a sustained period.
- 39 Senior executives also were plainly at fault. They were responsible for the day-to-day affairs of the organisation. It was their job to make sure that all legal and regulatory obligations were, in fact, satisfied.

- 40 What is now known is that many senior executives were personally involved in the wrongdoing. Some knew that improper action was proposed and authorised it to go ahead. Others suspected wrongdoing but did nothing to prevent it from happening.
- It is open to conclude that the actions of certain senior executives were so unsatisfactory that they should no longer have any role in the affairs of a public company.
- 42 Finally, it is not possible to ignore the ordinary employees. Most Crown Melbourne employees are honest people. Some are not. Many gambling hosts took advantage of their vulnerable clients. They knew some clients could not afford to gamble, yet they encouraged and enticed them to keep going.
- 43 Identifying who was responsible for the wrongdoing does not fully explain why things went wrong. That is a difficult task, but some explanations are possible. There are two standout reasons that help explain why wrongdoing occurred and also the extent of the wrongdoing.
- 44 The first is the prioritisation of profit over all other considerations, including the wellbeing of Crown Melbourne's customers and staff. It is Crown Melbourne's pursuit of profit that led to patrons connected with organised crime being permitted to come to the casino to gamble. It is Crown Melbourne's pursuit of profit that led to the underpayment of casino tax. It is Crown Melbourne's pursuit of profit that resulted in overseas staff being told to engage in potentially illegal action. It is Crown Melbourne's pursuit of profit that led to the arrest of the 19 China-based staff and that put at risk those working in other countries. Finally, it is Crown Melbourne's pursuit of profit that led to its dereliction of the duty owed to customers experiencing distress because of problem gambling.
- 45 It is too simple, and probably unfair, to state that CPH (Mr James Packer's company) was the driving force behind Crown's pursuit of profit at all costs. CPH and Mr Packer obviously played a key part, as the Bergin Inquiry found. So also did the CPH appointees to the boards of Crown Resorts and Crown Melbourne. During their tenure, they 'captured' the independent directors and were a harmful influence, as the Bergin Inquiry also found. But many other Crown executives were of the same mindset.
- It is also too simple to explain what happened by reference only to profit maximisation. There is a second, and more insidious, cause at play. It is that Crown Melbourne took a risk based approach to legal and moral obligations. That approach focused more on the chance of getting caught (and preparing defensively for that event) than on the need for compliance with the law and adherence to ethical standards and community expectations.
- 47 This approach is what Mr Oliver Wendell Holmes, the great American jurist, referred to as the 'bad man's' view of legal rules: the rules are the price discounted by sanctions—or to reduce it even further, by the probability of the enforcement of sanctions.<sup>29</sup> That is, laws are not norms of conduct but tariffs on conduct.<sup>30</sup>
- 48 Many senior executives adopted this mindset. Their decision whether or not to engage in improper, or probably improper, conduct was made by considering the chance of discovery and sanction. If these executives thought Crown Melbourne would get away with improper conduct that was otherwise beneficial, they did not hesitate in going ahead. It was only when conduct was plainly unlawful that it was rejected.

- 49 However, it is not only the executives who were at fault. The lawyers (both in-house and external) played their part. It is only necessary to refer to a few examples to make the point.
- 50 There were occasions when Crown Melbourne was investigated by the regulator. Some investigations concerned alleged wrongdoing. Strategies were adopted to thwart and frustrate the regulatory process. All too often, these strategies were devised by lawyers or, at least, they were willing accomplices.
- Other examples are the CUP money transfer affair and the underpayment of casino tax. Each had lawyers closely involved. Crown Melbourne's in-house legal team knew that each activity was improper, if not worse. Yet their approach was to devise arguments that, if Crown Melbourne were caught, could be put forward to reduce its culpability. Language such as 'We could argue in reply (if the matter arises) that ...' (Ms Michelle Fielding on the CUP affair)<sup>31</sup> or 'One can argue that these types of rewards are a "bonus" (Ms Debra Tegoni on the Bonus Jackpots deductions)<sup>32</sup> finds its way into many of their opinions.
- 52 At no point did any lawyer say, 'This is improper' or 'A regulated entity must always remain suitable, and consistent with the privilege it has been given, should not engage in this type of conduct'.
- Not only did the in-house lawyers fail to take this position, but Mr Richard Murphy, an external lawyer, justified the approach. He was asked whether Crown Melbourne should have been told not to engage in conduct that was potentially illegal. Mr Murphy's answer was: 'I didn't see that to be my role as the external lawyer. My role was to help them appreciate what the laws were'. 33
- 54 When asked whether it made any difference that the client had special responsibilities and that the legislation under which it operates requires it to be 'super perfect', Mr Murphy responded: 'Again ... I didn't see it to be my role to be telling them what they should or shouldn't be doing'.<sup>34</sup>
- 55 This is a rule of conduct that lawyers have devised for themselves. But the rule is merely an assertion. It is not an explanation. It begs the question what the lawyer's role should be when it is plain that their client intends to engage in improper or illegal conduct.
- A lawyer need not simply be an agent of their client. The lawyer is by their training and vocation committed to the law. The lawyer is part of the system charged with upholding the law. That is the reason why the lawyer should have some obligation, perhaps best characterised as a moral obligation, to see that their client obeys the law.
- Put more directly, rather than a lawyer simply advising a client whether a given course of action is completely legal, in an appropriate case (and whether the case is appropriate will usually be self-evident) the lawyer could ask their client of the proposed conduct: 'Is it right?', 'Is it honest?' and 'Does it thwart the purpose of the law?'<sup>35</sup>
- To give moral advice is not to impose it. It may be nothing more than a trigger for a useful or necessary reconsideration of a course of action.
- 59 If the lawyers who were involved in Crown Melbourne's misconduct had adopted this attitude, much of what has happened, and most of the dishonourable conduct, would not have occurred.

- 60 Coming back to the question of whether Crown Melbourne is suitable to continue to hold its casino licence, when taking into account the dishonourable conduct that has been identified, it is simply not possible to describe Crown Melbourne as an entity of good repute having regard to character, honesty and integrity—the central requirement of suitability for a casino licensee.
- The failings—or, more accurately, the serious acts of misconduct—are breaches of almost every one of the norms of conduct that Crown Melbourne is required to observe. It has not obeyed the law. It has not acted honestly. It has exploited vulnerable individuals. It has not cooperated with the regulator or with government.
- 62 The only contention in favour of suitability that is put forward by Crown Melbourne is, in effect, that it is a new organisation that has cast aside its troubled past.
- 63 It is true that there have been significant changes to the boards of Crown Resorts and Crown Melbourne. Most of the old directors have gone. The new directors are honest, reputable and appropriately skilled people.
- There have also been significant changes at the senior management level. The new managers are also honest, reputable and appropriately skilled people.
- A significant remediation and reform program was introduced, probably beginning in the latter part of 2020, and its progress (at least in some respects) is well underway. The remediation and reform program deals with governance and organisational restructure, the VIP International business, new risk management controls for AML and cultural reform.
- All these steps are important. If Crown Melbourne is to have any chance of retaining its casino licence, they are plainly necessary.
- 67 It may be accepted that past misconduct does not always determine the present suitability of a licensee. The gravity of the past misconduct, the extent of the past misconduct, how recently that misconduct occurred and its consequences are obviously factors (and very important factors) to be taken into account.
- 68 Also relevant is the licensee's recognition of its past wrongs and its promise to redress the causes of its past failings through appropriate reforms.
- 69 Where the past failings are acknowledged and promises of reform are made, it is also necessary to take into account the amount of work required to redress the underlying causes, the time it will take to remedy or remove those causes, and the level of uncertainty about the success of any reform program.
- 70 The Commission acknowledges that a careful balance must be struck in weighing past conduct against present expressions of contrition and promises to improve.
- 71 With Crown Melbourne, however, it is simply impossible to sustain a finding of present suitability.
- 72 At its most basic, Crown Melbourne's submission is that, despite the obvious seriousness of its past misconduct, it can be trusted to implement the changes required to achieve a satisfactory level of operation.

- 73 This submission places too little weight upon the gravity, extent and recency of its misconduct than the facts would reasonably permit. Crown Melbourne's conduct is of the most egregious kind and it involved systemic and repeated failings in relation to a wide range of activities.
- 74 Without unduly going over ground covered elsewhere, it is only necessary to mention the facilitation of money laundering and the association with people connected with organised crime to show the gravity of the misconduct. It is also impossible to forget the indifference Crown Melbourne displayed to the wellbeing of its customers vulnerable to gambling harm; and that it underpaid millions of dollars of casino tax because it was thought the underpayment could be hidden from the regulator.
- 75 The submission also fails to acknowledge sufficiently that Crown Melbourne is in a position where it has no choice other than to undertake the most thorough review and implementation of appropriate reforms. It has not embarked upon that course voluntarily.
- Last, the submission pays insufficient regard to the fact that, according to the evidence given by its own experts, Crown Melbourne's reform program is far from straightforward, far from simple and far from complete. This is, at least in part, the result of the magnitude of wrongdoing, the problems Crown Melbourne must address and the size of the task involved to remedy them.
- 77 Achieving real and sustainable change in organisational behaviour from the kind of culture that has existed at Crown Melbourne for a decade or more presents significant challenges in and of itself.
- 78 Properly understood, the evidence makes plain that the reform program is in its very early stages. It may or may not be successful. And, if successful, it may take considerable time to achieve.
- 79 It would be wrong to say, and the Commission does not say, that it is impossible for Crown Melbourne to achieve the reforms it proposes. On the contrary, it is quite possible that, with the required dedication, reform will be achieved.
- 80 But that is not the test. The Casino Control Act requires that a licensee be suitable to conduct the business of a casino. The test is not that the licensee might become suitable at some future point.
- When regarding the extent of the misconduct that has occurred over the past 10 years, the seriousness of that misconduct and the harm that misconduct caused, to now hold Crown Melbourne to be suitable on the basis that it has begun a serious and earnest reform program would be to undermine a central element of the licensing framework.
- 82 The evidence, when considered and weighed, only admits of one conclusion: Crown Melbourne is not a suitable person to continue to hold its casino licence.
- 83 In light of this finding, there is no need also to consider whether it is in the public interest for Crown Melbourne to hold its casino licence.

## **Endnotes**

- Casino Control Act 1991 (Vic) s 9(1).
- 2 Casino Control Act 1991 (Vic) s 20(1).
- See VCGA, First Triennial Review of the Casino Operator and Licence (Report, June 1997) 4-6; 3 VCGA, Second Triennial Review of the Casino Operator and Licence (Report, June 2000) 49; VCGA, Third Triennial Review of the Casino Operator and Licence (Report, June 2003) 33.
- 4 Casino Control Act 1991 (Vic) s 9(2).
- 5 See the discussion in Chapter 2.
- 6 Casino Control Act 1991 (Vic) ss 9(2)(a)-(b).
- 7 Casino Control Act 1991 (Vic) s 9(2)(g).
- 8 In Re Bally's Casino Application (1981) 10 NJAR 356, 393.
- 9 Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 337 [12], citing Prothonotary of the Supreme Court of New South Wales v Da Rocha [2013] NSWCA 151, [21].
- 10 In Re Mayers and Casino Surveillance Authority (1993) 29 ALD 585.
- NSW Bar Association v Thomas (No 2) [1989] 18 NSWLR 193, 206. 11
- 12 See, eg, Legal Services Board v Bourozikas [2009] VSC 382; Law Institute of Victoria v Gough (Unreported, Supreme Court of Victoria, Hansen J, 10 February 1995) 14; Petracaro v Commissioner of Consumer Affairs (1994) 62 SASR 387.
- 13 See, eg, Tsaganas v Building Practitioners Board (No 2) (Review and Regulation) [2016] VCAT 2151; Victorian Building Authority v Tsaganas [2017] VSCA 248; Stasos v Tax Agents' Board (1990) 21 ALD 437.
- 14 See Chapter 4.
- In the Matter of Wynn MA, LLC, Massachusetts Gaming Commission, 30 April 2019. 15
- 16 Submission 49 University of Western Australia Law School, 17 May 2021, 5.
- 17 Submission 49 University of Western Australia Law School, 17 May 2021, 7.
- 18 Exhibit RC1545 Article: The Organization of Corporate Crime: Introduction to Special Issues of Administrative Sciences, 2018.
- 19 Exhibit RC1545 Article: The Organization of Corporate Crime: Introduction to Special Issues of Administrative Sciences, 2018, 38.
- 20 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Final Report, February 2019) vol 1, 412.
- 21 Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 338 [16].
- 22 Bergin Inquiry Transcript (Rose), 25 February 2020, 170-1.
- 23 ICM Agriculture Pty Ltd v The Commonwealth (2009) 240 CLR 140, 162 [20].
- 24 ICM Agriculture Pty Ltd v The Commonwealth (2009) 240 CLR 140, 162 [20].
- 25 Casino Control Act 1991 (Vic) s 3 (definition of 'public interest' or 'interest of the public').
- 26 Cf Comalco Aluminium (Bell Bay) Ltd v O'Connor (No 2) (1995) 131 ALR 657, 681.
- 27 VCGA, First Triennial Review of the Casino Operator and Licence (Report, June 1997) 4-6. An extract of David Habersberger's advice is set out in VCGA, Second Triennial Review of the Casino Operator and Licence (Report, June 2000) 54-5 (at Appendix 3) and in Appendix H of this Report.
- 28 VCGA, First Triennial Review of the Casino Operator and Licence (Report, June 1997) 4. An extract of Ms Crennan's advice is set out in VCGA, Second Triennial Review of the Casino Operator and Licence (Report, June 2000), 49-54 (at Appendix 3) and in Appendix H of this Report.
- Exhibit RC1600 Article: The Path of the Law, 1897. 29
- 30 Exhibit RC1609 Article: The Internal Point of View in Law and Ethics: Introduction, 2006, 1145.
- 31 Exhibit RC0263 Email chain between Matt Sanders and Jason O'Connor et al, 11 September 2012, 2.
- 32 Exhibit RC0818 Email from Peter Herring to Joshua Preston, 5 June 2018, Annexure d, 3 [12].
- 33 Transcript of Richard Murphy, 29 June 2021, 2888.
- 34 Transcript of Richard Murphy, 29 June 2021, 2889.
- 35 Exhibit RC1616 Article: Moral Counseling, 2006, 1317, 1333.



CHAPTER 19

# The path to suitability

#### CHAPTER 19

# The path to suitability

# Introduction

- The finding that Crown Melbourne is no longer suitable to hold its casino licence was inevitable. The conduct it engaged in for over a decade was so disgraceful that no other conclusion is possible.
- To decide what should be done, on the other hand, is more complex and requires a consideration of a range of actions, governmental and private.
- If, in a proceeding instituted by the regulator under the Casino Control Act, a casino operator is found to be an unsuitable person, the regulator may take one, or a combination of, the following steps:
  - · cancel or suspend the licence
  - · vary the licence
  - impose a fine of up to \$1 million
  - issue a letter of censure, which can direct the casino operator to rectify a particular matter.1
- In recommending what action should be taken against Crown Melbourne, the remedies of a fine or a letter of censure can be put aside. Those remedies are simply inadequate in the circumstances.
- Under the current statutory regime, the remedies of licence cancellation or suspension are the appropriate remedies to be employed in the case of an unsuitable casino operator.
- In his 1983 Report, Mr Connor, QC recommended that a power of cancellation be included in the legislation. He was troubled that the power would not be 'as effective a sanction as it seems on the surface'. He referred to evidence given by witnesses, both local and overseas, who expressed concern about the consequence a cancellation would have on tourism, the workforce, the State's economy and the like.2
- Nonetheless, Mr Connor, QC said it is absolutely necessary that the power of cancellation should be in the statute and that, in appropriate cases, it be exercised for the long term integrity of the casino industry.3 He described cancellation as the 'ultimate sanction'.4
- So, when there is serious and sustained misconduct by a casino operator leading to an unsuitability finding, unless the casino licence is cancelled or suspended, the unsuitable operator will be left in charge of its casino. That would be inconsistent with the objects of the Casino Control Act. And it would be contrary to the public interest.
- As a matter of principle, however, it is possible for circumstances to exist where a person who is an unsuitable casino operator need not lose its licence.
- 10 Seeking guidance on this issue from what has happened in other countries is not often very productive. The applicable rules and regulations, as well as the norms of conduct, may be different. On the other hand, there are occasions where overseas precedent may be instructive.

- 11 This is so with the decision of the United Kingdom Court of Appeal in the *Knightsbridge* case.<sup>5</sup>
  There, three gaming club licensees (each a private company) had committed numerous and serious breaches of the *Gaming Act 1968* (UK). The Gaming Licensee Committee cancelled their licences on the basis that each licensee was not a 'fit and proper person' to hold a gaming licence. The 'fit and proper person' test was the applicable test under the United Kingdom legislation.
- 12 The licensees appealed the decision to the Crown Court. Before the appeal was heard, the owners of the licensees sold their shares to new owners.
- On the hearing of the appeal, the new owners argued that, whatever be the past sins of the companies, 'they were completely reformed characters and were now fit and proper persons to hold gaming licences' and it was not appropriate for the licences to be cancelled.<sup>6</sup>
- 14 The Crown Court upheld the cancellation orders. It did so on the basis of the licensees' previous misconduct. It decided that the change in ownership was irrelevant.
- In judicial review proceedings in the Court of Appeal to challenge the decision of the Crown Court, one of the points raised was that the Crown Court had made a mistake in refusing to consider whether the licensees had reformed their character. The Court of Appeal upheld the complaint. Whether or not a person was 'fit and proper' to hold a gaming licence had to be determined at the time of the hearing before the Crown Court. Accordingly, the Court of Appeal said that when the licence holder is a limited company it is necessary to take into account:

whether the shareholding or management of the company remains the same ... as they were when the past misconduct occurred; [and] the general character and reputation of the shareholders and directors of the company at the date of the hearing ... So should any evidence that the 're-structured' licence holder has the capacity and intention to run the casino on different lines, or indeed that it may have already started to do so.<sup>7</sup>

- The following propositions can be drawn from this statement. First, a licensee that has engaged in serious breaches of the United Kingdom Gaming Act may, nevertheless, be a 'fit and proper person' to hold a gaming licence if it has fundamentally changed its ways. Second, the licensee may be able to satisfy the 'fit and proper' test if it intends to and will fundamentally change its ways.
- 17 This is, however, only one side of the issue that needed to be considered. The Court of Appeal pointed out that a fundamental change of character by the licensee might not be sufficient to save its gaming licence. The Court of Appeal explained:

There may well be cases in which the wrongdoing of the company license holder has been so flagrant and so well publicised that no amount of restructuring can restore confidence in it as a fit and proper person to hold a license; it will stand condemned in the public mind as a person unfit to hold a license and public confidence in the licensing justices [who had cancelled the license] would be gravely shaken by allowing it to continue to run the casino.<sup>8</sup>

18 The Court of Appeal went on to say:

If persons carrying on gaming through a limited company can run their establishment disgracefully, make a great deal of money and then when the licence is cancelled sell the company to someone who because he is a fit and proper person must be entitled to continue to hold the licence through the company, it will seriously devalue the sanction of cancellation ... A licensing authority is fully entitled to use the sanction of cancellation in the public interest to encourage other operators or would-be operators of gaming establishments to observe the law ...9

19 Translating these propositions into the mechanisms for action under the Casino Control Act, a casino operator may be a suitable person to hold a casino licence but it may no longer be in the public interest for its licence to remain in force.<sup>10</sup>

# The nature of a corporation

- 20 It might be helpful to explain in the more formal language used by company lawyers what the Court of Appeal had in mind when it referred to the 'restructure' of a corporate licensee so that it could become a 'fit and proper person'.
- 21 A corporation is an abstraction, a creation of parliament. It can carry out action—for example, engage in misconduct—only because the law attributes to the corporation the conduct of its directors and officers.
- 22 A corporation has a personality and a reputation. The action of the individuals, directors and officers, for whose conduct the corporation is responsible, sets its personality and reputation. That reputation, though it is derived from the actions of individuals, is not attached to those individuals. It is attached to the corporation.
- 23 A corporation is deemed to have knowledge. Its knowledge, like its reputation, is derived from the individuals who act on the corporation's behalf.
- 24 A corporation has a culture. The culture is made up of the corporation's policies, programs and practices that prescribe the rules in accordance with which its directors and officers act.
- 25 A corporation has an owner; its shareholders own the corporation. The shareholders have power to remove the individuals for whose actions the corporation is responsible and from whom the corporation derives its persona, reputation and culture. They can be replaced by individuals whose actions will produce a different persona, reputation and culture.

# An alternative to cancellation

- 26 Applying the approach suggested by the Knightsbridge case, a corporate casino operator that is unsuitable to hold a casino licence because of past misconduct may become a suitable casino operator and avoid the cancellation of its licence if the corporation has so thoroughly 're-made' itself that it has, in substance, become a 'different' corporation. This transformation could happen if:
  - · the corporation recognises and understands the reasons that led it to be an unsuitable licensee and has implemented appropriate change
  - · the directors and officers whose conduct caused the unsuitability finding have been replaced with suitable directors and officers
  - · steps have been taken internally to eliminate any lasting influence of the directors and officers whose conduct led to the unsuitability finding
  - · any deficient systems, processes and programs that permitted or encouraged improper conduct have been repaired or replaced
  - · an appropriate culture exists
  - the ownership of the corporation has changed.
- 27 It might also be necessary to amend the regulatory framework that governs the casino operator to impose more rigorous obligations on the operator in order to prevent the recurrence of the conduct that led to its unsuitability.
- 28 If these changes (internal and external) occur there can, in both a real and a commercial sense, be a 're-made' corporation with a different persona, reputation, culture, management and ownership. Of course, in the eyes of the law, the corporation would remain as the same legal abstraction.
- 29 If there is a fundamentally restructured licensee, there will be circumstances in which it is neither necessary nor appropriate to cancel or suspend the casino operator's licence on the basis that it has transformed itself from an unsuitable person to a suitable person and there is no public interest why its licence should be cancelled.
- 30 Here, however, there is a different situation. Crown Melbourne is an unsuitable person to hold its casino licence despite the reform program it has embarked upon. It nevertheless contends that it is not appropriate for its licence to be cancelled or suspended.

# The case against cancellation

- 31 Crown Melbourne says there is no need for any intervention for several reasons:
  - Its current reform program will in the short term result in a company that returns to a state of suitability.
  - The cancellation or suspension of the licence will give rise to potentially significant consequences for its financing arrangements. This could affect the viability of the company and group of which it is part, putting at risk the security of investors and employees alike.
  - Over many years Crown has made a significant contribution to the State, tourism and the
    fabric of the Victorian economy and, in the end, there is no guarantee that if the licence
    were cancelled the State would find a new licensee as good at running a casino as
    Crown Melbourne has been and will make itself in the near future.
- 32 In order to appreciate the import of these contentions and the effect they should have on the consequences of the unsuitability finding, it is necessary to look at them in a little more detail.
- 33 The backdrop against which this examination takes place should be the observations made in the *Knightsbridge* case about, on one hand, the significance of the restructure of a corporate licensee, and the need to maintain the integrity of the licensing system on the other.
- 34 The other matter to be borne in mind is that Crown Melbourne not only holds a casino licence, it is the owner of the Melbourne Casino Complex. The casino is but a part of that integrated resort and entertainment complex, which houses restaurants, bars, cinemas and nightclubs as well as hotel and conference facilities. Gambling only occurs within parts of the complex and those parts have varied slightly from time to time.
- 35 When Crown Melbourne was granted its casino licence it was on the basis that all the activities that take place within the complex, not just the casino operations, would provide employment and tourism benefits to Victoria.
- 36 Turning now to Crown Melbourne's submissions, it is best to start with the alleged financial calamity that will result from a cancellation or suspension of its casino licence.
- 37 The basis of this claim, which is spelt out in some detail in Crown Melbourne's closing submissions, is conveniently summarised in a letter from the Crown directors' lawyers to the Minister, written during the Commission's hearings.<sup>11</sup>
- 38 The purpose of the letter was to persuade the Minister not to accept any recommendation by the Commission that Crown Melbourne's casino licence be cancelled or suspended. Not surprisingly, Crown directors' lawyers did not provide a copy of the letter to the Commission. Quite properly, the State's solicitors did.

- 39 Be that as it may, Crown directors' lawyers claim that the cancellation of Crown Melbourne's casino licence or its suspension:
  - gives rise to an event of default under its financing agreements
  - the event of default may also trigger a cross-default under Crown's Euro Medium
     Term Note (standing at approximately \$180 million)
  - may cause credit rating agencies to downgrade the Notes to non-investment grade and trigger a put option that if exercised would require Crown to redeem the Notes
  - could ultimately lead to financiers calling up all its loan facilities (the bank debt standing at approximately \$420 million and letters of credit of which approximately \$99 million have been issued).
- 40 The letter goes on to say that any event of default:
  - may have severe consequences for Crown and its stakeholders including shareholders, employees, unions, trade creditors, patrons, the hotel precinct and the Melbourne tourism industry
  - may cause the loss of employment or severe threat of loss of employment of more than 11,000 employees
  - · could give potential overseas suitors an opportunity to take advantage of the situation.

For these reasons, according to the directors' lawyers: 'It is not in the public interest for Crown to fail.'

- 41 It is impossible to avoid observing that it was the height of 'chutzpah' for the letter to have been sent. This Yiddish word appears in modern dictionaries as meaning 'colossal effrontery' or 'brazen gall'. It also means 'presumption plus arrogance' according to Rosten's *The Joys of Yiddish*.<sup>12</sup>
- 42 What the letter slides over is that whatever financial consequences stem from a cancellation or suspension of Crown Melbourne's casino licence, they are consequences that have been brought about by Crown Resorts and Crown Melbourne. It is their dishonourable conduct that has led to the unsuitability finding.
- In any event, the claims of doom are overstated. First, it is likely that there have been extensive discussions between Crown and its financiers regarding the consequences of a loss of the licence. Second, it should also be assumed that contingency plans exist and alternative arrangements made (perhaps conditionally) to meet that eventuality.
- 44 Yet the lawyers' letter is bereft of any information about discussions along those lines. Even if, unlikely though it may be, there have been no discussions with the financiers, the letter should have said so.
- 45 All in all, it would not be appropriate for the Commission to accept, in the absence of direct evidence, Crown Melbourne's claims of financial ruin. This is not, however, to deny that the immediate cancellation of Crown Melbourne's casino licence may well cause significant harm to a variety of other interests.

- The contention that Crown has made a significant contribution to Victoria, the Victorian tourism industry and the Victorian economy must be recognised. Crown Melbourne's contribution has been significant and a good deal of it has been voluntary; for example, the work of the Crown Resorts Foundation. The loss of that continuing contribution would be a blow to Victoria and to the Victorian economy generally.
- 47 Then there is the potential loss that might be suffered by those businesses—the hotels, restaurants, theatres, retail outlets and the like that operate in the complex—that depend for their custom on the millions who visit the Melbourne Casino.
- 48 If the casino licence is cancelled it is likely the casino itself will stay, albeit under different management. Ignoring closures caused by the COVID-19 pandemic, the casino operations are lucrative—as even a cursory examination of Crown's annual reports shows. In a free market economy, it is always possible to find a buyer who will take over a successful operation. The only contentious issue will be the price.
- 49 It may, nevertheless, be assumed that on the cancellation of Crown Melbourne's casino licence, the casino will be shut for some time, at least until a manager is put in place to run the business and then another operator steps in. At each point there will be disruption to the casino's operations that will cause businesses in and around the complex to suffer.
- 50 By now it should be clear that it is not appropriate to proceed on the basis that thousands of employees, from senior executives to kitchen hands, will lose their jobs if the casino licence is cancelled. No doubt there would be job losses. A new operator is likely to reduce existing staff numbers. That may happen at the senior levels as well. For many employees, however, the prospect is that the casino is likely to continue in operation as it has in the past.
- 51 It should also be acknowledged that an immediate cancellation of Crown Melbourne's licence would harm Crown Resorts' minority shareholders, none of whom have had any involvement in the company's misconduct. Little has been said of those shareholders. Perhaps this is because, for the most part, the minority shareholders acquired or retained their shares in the knowledge of at least some of Crown's wrongdoing. For that reason, whether they suffer loss ought not influence what should occur.
- 52 Finally, there is the contention that, given time, Crown Melbourne will return to a position of suitability. As the *Knightsbridge* case shows, this is a matter that requires serious consideration. At the same time, it is a contention that must be reconciled with the other statement in the *Knightsbridge* case regarding the importance of not undermining the purpose that lies behind the cancellation power—upholding the integrity of the licensing system.
- 53 The return to suitability claim must also be reconciled with the proposition that it is inappropriate—and contrary to the public interest—to leave an unsuitable casino operator in charge of a casino on the basis that its efforts at reform might be successful.
- 54 Nevertheless, quite apart from what was said in the *Knightsbridge* case, there are other reasons why a potential transformation to suitability by Crown Melbourne must be considered.
- One is that the Commission's Terms of Reference provide that if Crown Melbourne is found to be unsuitable, the Commission must consider what action, if any, could be taken for Crown Melbourne to become a suitable person to continue to hold its licence.

- 56 Another reason is that there may be more efficient means of dealing with a presently unsuitable casino licensee that may become suitable, other than by cancelling or suspending its casino licence.
- 57 There is also the need to recommend, if possible, action that will avoid the potentially significant losses that may result from an immediate cancellation of Crown Melbourne's casino licence.
- In that context, the interests of the State, and of the Victorian economy are very important considerations. Although the Commission does not accept Crown Melbourne's end-of-the-world submission, it does acknowledge the real risk of harm to the Victorian economy if Crown Melbourne's licence is immediately cancelled and a substitute licensee is not put in place quickly or at all.
- 59 The extent of the harm cannot easily be measured in dollar terms. Most likely it would include loss of revenue for the tourism industry, loss of revenue for businesses operating at the Melbourne Casino Complex and loss of employment elsewhere. It could also have indirect consequences in other areas.
- To impose these potential harms on the State's economy, weakened as it is by the COVID-19 pandemic, is a step that should not be taken lightly.
- It may be possible to avoid these potential harms if there exists an appropriate alternative to the cancellation of Crown Melbourne's licence. That alternative is only worthwhile contemplating if there is a real possibility that Crown Melbourne can transform itself into a suitable person in the short term.

# Transformation to suitability

- 62 The prospect of a transformation to suitability—of Crown Resorts—was one of the issues addressed by Ms Bergin, SC in the New South Wales inquiry. She laid out a path for Crown Resorts to follow that would bring about the needed changes, the consequence of which would be that Crown Resorts would become a suitable associate of Crown Sydney, which could then regain its licence.
- The prospect of transformation was also given detailed attention during the Commission's inquiries. This involved many witnesses and took up a large proportion of the Commission's time.
- 64 The issues investigated were whether Crown Melbourne could be transformed into a suitable person and how long that might take. Particular attention was given to aspects of the structure of Crown Melbourne (ownership, management and staff), its culture and its reform program.
- The problems that exist at Crown Melbourne have many causes. They include poor corporate governance, indifference to the wellbeing of its customers and employees, a deficient risk management system, a drive for profits that overrode other obligations and a penchant for improper behaviour.
- 66 Following its investigations, the Commission reached the following conclusions, each of which is based on a detailed examination of material set out in other parts of this Report.

- 67 The first is that it is possible for an organisation to change fundamentally the manner in which it operates. To adopt the words of Ms Bergin, SC, an organisation may 'achieve a fresh start and emerge as a much stronger and better organisation'.<sup>13</sup>
- 68 Crown Melbourne has commenced the task, although it has only done so because of media revelations of money laundering and links with organised crime, the findings of the Bergin Inquiry, and the existence of this Commission. Nevertheless, Crown Melbourne recognises that it can only become a person of good repute by doing whatever is necessary to implement its reform program.
- 69 To that end, the following has occurred:
  - · an overhaul of the directors
  - replacement of senior management
  - · payment of some unpaid casino tax, with interest
  - implementation of a reform program with the assistance of appropriately qualified outside consultants
  - · a commitment to a constructive relationship with the regulator
  - a ban on junkets.
- 70 Second, while no material transformation has yet occurred, if it does it will take time.
- 71 Third, there is no guarantee that the necessary transformation will occur. For example, Crown Melbourne has introduced some new controls to deter money laundering but as yet their sustainability is uncertain. Policies have been adopted to repair culture, but because of the seriousness of the misconduct, 'the road ahead [is] long'.14
- 72 It is clear that more fundamental action must be taken if Crown Melbourne is to return to suitability.
- Perhaps the most important requirement is the full implementation of Crown Melbourne's reform program. This will involve many steps including, but not limited to:
  - · a 'root cause analysis' of why things went wrong
  - implementation of reforms to its risk management framework
  - repairing its broken culture
  - · investigating whether there have been AML/CTF contraventions in patron accounts
  - substantially improving its AML/CTF processes
  - putting in place appropriate responsible gaming policies with adequate staffing to implement them.
- Another necessary step is to change the ownership of Crown Melbourne. The harmful influence that CPH and its nominee directors brought to bear on Crown Resorts and Crown Melbourne is described at length in the Bergin Report. The damage caused to Crown Melbourne's reputation will not be repaired until CPH is removed from its position of dominance.

- 75 This is not answered by the undertaking CPH has given to ILGA that it will not exert any influence over Crown Resorts for some years. While CPH retains its shareholding its shadow remains.
- 76 Yet another step is to secure the independence of the Crown Melbourne board. It must be free of influence from any outside source, including its holding company, Crown Resorts.
- 77 Crown Resorts has commercial interests that are likely to be different from the commercial interests of Crown Melbourne. For that reason alone, it is not appropriate for Crown Resorts to have any influence over decision making at Crown Melbourne. There is another reason. Crown Melbourne is a regulated entity and, as a matter of principle, it should be beyond any outside influence.
- 18 It is also necessary for Crown Melbourne to consider whether further changes are required at the executive level. This is not a matter the Commission spent much time considering. But it is clear that if there is to be a fundamental transformation of Crown Melbourne, it will be necessary to consider the role played by some of the existing executives in Crown Melbourne's past misconduct. Whether they should remain in their present positions requires close attention. If there is even the slightest risk they will not change their ways, the executives should be moved on.
- 79 Currently, Crown Melbourne's reform program is a work in progress. Much remains to be done. But, when the steps are implemented, Crown Melbourne is likely to return to suitability. How long that will take is not clear. Crown Melbourne's experts say that the reform program can be successfully completed within a year or so. Although this seems to be on the optimistic side, the Commission is prepared to proceed on the basis that it is a fair view.
- 80 Somewhat reluctantly because of Crown Melbourne's past conduct, but with sufficient confidence for the future, the Commission has formed the view that the immediate cancellation of Crown Melbourne's casino licence is not in the interests of the Victorian community.
- 81 There are two main reasons. First, there is the real risk of significant harm to the Victorian economy and to innocent third parties if Crown Melbourne's licence were immediately cancelled. Although the extent of the harm cannot be measured, it may well be significant.
- 82 The second reason is more important than the first. It is the Commission's belief that Crown Melbourne has the will and the capacity to reform itself so that it again becomes a suitable person to hold a casino licence and can remove the stain on its reputation.
- 83 This leaves open the question of what should happen during the time it takes for Crown Melbourne to complete its reform program. One thing that should happen is for legislative intervention to assist the reform program.
- To remove CPH as the dominant shareholder, it will be necessary to amend the Casino Control Act to ensure its shareholding is reduced to less than 5 per cent. A recommendation to that effect has been made.
- 85 In order to remove Crown Resorts' control of Crown Melbourne it has been recommended that a majority of the Crown Melbourne directors must be independent, including being independent of Crown Resorts. This would enable Crown Melbourne to have its own 'directing mind and will'.'5

- 86 These reforms will assist the restructure process. But they do not deal with what should happen during the time it takes to complete the reform process.
- 87 Plainly, it is not appropriate for the casino business to remain under the sole control of Crown Melbourne while it works towards suitability. Crown Melbourne has been found to be an unsuitable person to hold a casino licence and it would be wrong for it to be left in charge of the casino operations while that status persists.
- 88 It is equally inappropriate for Crown Melbourne's reform process to be unsupervised. Supervision is required so that, in due course, the regulator will know whether or not the transformation to suitability has been successful.
- 89 At present, the only means of dealing with these twin issues under the Casino Control Act is to suspend Crown Melbourne's licence and appoint a manager to run the casino operations until the reform process is completed.
- 90 The appointment of a manager is a cumbersome solution, fraught with many practical difficulties, foreseen and unforeseen. One difficulty is how the casino operations would be integrated within the Melbourne Casino Complex.
- 91 Effective integration would require a complicated set of arrangements between the manager and Crown Melbourne, in its capacity as the owner of the complex. The arrangements would need to deal with staff who work both at the casino and in other parts of the complex, customer access to the non-casino parts of the complex (hotels, restaurants and the like), customer access to car parking, and so on. It is reasonable to assume that it would take months to put appropriate arrangements in place.
- 92 Suspension of the casino licence and the appointment of a manager would give rise to other problems. For instance, it would effectively shut down Crown Melbourne's reform process as many executives and staff would likely become employees of the manager. Even if the reform program were not shut down, Crown Melbourne's incentive for reform would likely be diminished.
- 93 Another problem is the effect that even a temporary suspension of the casino licence would have on the ability of CPH to dispose of its shareholding in Crown Resorts at a reasonable price. It should be assumed the share price would suffer a significant decline in the event of a suspension.
- 94 Many, if not all, of these difficulties could be overcome by the creation of the position of a Special Manager (by whatever name) with power to both oversee and monitor the affairs of an unsuitable casino operator until the casino operator reaches a state of suitability. In the meantime the licence can remain in place.
- 95 It is important that the Special Manager has powers greater than a mere monitor. A monitor has only a watching role. In the case of an unsuitable casino operator, more than a watching role is required. Because the unsuitable casino operator should not be left in control of its casino, the Special Manager should have something akin to a binding directions power and a veto power over management decisions. Though the casino operator will still manage the casino's operations, the Special Manager must have the final say over important issues.

- The objective is not to transfer control of the casino from the directors and senior management to the Special Manager. They should continue to perform their usual functions. What is required is for the Special Manager to have the ability to instruct the directors (and through them, management) to take or refrain from taking certain action to make sure nothing improper happens.
- 97 The Special Manager should also have a reporting role. Upon appointment the Special Manager can be tasked to investigate specific aspects of the casino operations and report the results of that investigation to the regulator and the Minister.
- 98 If the reason for the Special Manager's appointment is the unsuitability of the casino operator, any reform program will obviously be among the matters addressed in the reports.
- 99 The Commission has recommended that the Casino Control Act be amended to create the position of a Special Manager who will be able to carry out these functions.

# Conclusion

- 100 The decision about what should happen has not been easy to reach. There are powerful voices that say Crown Melbourne's conduct has been so grievous that it has forfeited the right to operate a casino. They say that to allow it to continue to run the casino would undermine the integrity of the licensing system. It would also undermine the public's faith in that system.
- 101 This is a view that cannot be criticised. It is fairly based and reasonable. But it represents only one view.
- 102 Equally important is the view that if there is a path to suitability Crown Melbourne should be permitted to take that path. The reasons for that have been explained.
- 103 In weighing the competing views, the Commission was mindful that its Terms of Reference require it to have regard to the most practical, effective and efficient way to address the matters arising out of this inquiry. The Terms of Reference also require the Commission to have regard to the financial impact its recommendations would have on the State.
- 104 Each of these considerations pointed to Crown Melbourne being given one, and only one, opportunity to reform itself.
- 105 It is reasonable to assume that if Crown Melbourne stays the course of its reform program, and implements in full the reform recommendations made in this Report, all the while monitored and controlled by a Special Manager, it will become a suitable licensee; and potentially a model one.
- 106 The scrutiny applied by the various inquiries, the 'blazing platform', the appointment of a number of reform-oriented senior managers, each point to Crown Melbourne substantially reforming, if not re-making, itself.
- 107 As that process has already begun in earnest, the most practical, effective and efficient way to address Crown Melbourne's current unsuitability is to set a deadline of two years by which time reform must be achieved. If Crown Melbourne has not reformed itself by the deadline, it will lose its licence. If it has, it will be permitted to continue to operate its casino business.

- 108 Further, the process of deciding whether the reform process has succeeded should be truncated. There have already been three major inquiries into the affairs of the Crown group. No further time should be spent in going over the past.
- 109 All that is needed at the end of the two-year period is for the regulator to make a speedy decision based on limited material. The regulator should make its decision within 90 days. The only material that the regulator should have are the reports of the several inquiries that have recently taken place and the reports of the Special Manager.
- 110 It is also necessary for the task of the regulator to be made quite clear. It is not appropriate that the regulator apply the standard test of suitability in the Casino Control Act.
- 111 For Crown Melbourne, greater certainty is required to diminish the possibility of error. Accordingly, it has been recommended that the regulator must be 'clearly satisfied' that Crown Melbourne has returned to suitability for Crown Melbourne to retain its licence. If a state of clear satisfaction is not reached, its licence must go.
- 112 Finally, if the recommendations made in this Report are adopted, it may be appropriate (though not necessary) to prevent action being taken against the State by any dissatisfied person or any person who may have suffered any loss.

#### RECOMMENDATION 31: ACTIONS AGAINST THE STATE

It is recommended that legislation be enacted to the effect that:

- no action claim or demand whatsoever may be made or allowed against the State of Victoria or any responsible Minister of the State in respect of any damage, loss or injury alleged to have been sustained as a result of the implementation of any recommendation made in this Report
- no decision made to implement any recommendation in this Report may be subject to any appeal or any order in the nature of certiorari, prohibition or mandamus or the grant of any declaration or injunction.

# **Endnotes**

- Casino Control Act 1991 (Vic) s 20.
- Xavier Connor, Report of Board of Inquiry into Casinos in the State of Victoria (Report, April 1983) [16.18]. 2
- Xavier Connor, Report of Board of Inquiry into Casinos in the State of Victoria (Report, April 1983) [16.19]. 3
- 4 Xavier Connor, Report of Board of Inquiry into Casinos in the State of Victoria (Report, April 1983) [16.18].
- 5 R v Knightsbridge Crown Court; Ex parte International Sporting Club (London) Ltd [1982] 1 QB 304.
- R v Knightsbridge Crown Court; Ex parte International Sporting Club (London) Ltd [1982] 1 QB 304, 310-11. 6
- 7 R v Knightsbridge Crown Court; Ex parte International Sporting Club (London) Ltd [1982] 1 QB 304, 317.
- 8 R v Knightsbridge Crown Court; Ex parte International Sporting Club (London) Ltd [1982] 1 QB 304, 318.
- 9 R v Knightsbridge Crown Court; Ex parte International Sporting Club (London) Ltd [1982] 1 QB 304, 318-19.
- 10 Casino Control Act 1991 (Vic) s 20(1) (definition of 'grounds for disciplinary action').
- Exhibit RC0415 Letter from ABL to the Minister for Consumer Affairs Gaming and Liquor, 2 July 2021. 11
- 12 Leo Rosten, The Joys of Yiddish (McGraw-Hill, 1968) 92-3.
- 13 Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 573.
- 14 Exhibit RC0477 Elizabeth Arzadon, Expert Opinion regarding Culture Change at Crown Melbourne, June 2021, 25.
- 15 Tesco Supermarkets Ltd v Nattrass [1971] 2 All ER 127.



CHAPTER 20

# The associates

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# The associates

# Introduction

- The Terms of Reference direct the Commission to inquire into whether each associate of Crown Melbourne is unsuitable to be associated with its casino business. If an associate is found to be unsuitable, the Terms of Reference require the Commission to identify what action would be required for the associate to become suitable.
- The Casino Control Act contains a definition of 'associate'.' It is a clumsy definition and, in some respects, difficult to apply. In substance, an associate:
  - · is a person who:
    - holds a share in the capital of the casino business or has an entitlement to receive any income derived by the casino business; or
    - has the power, whether exercisable alone or in association with others, (i) to participate in any directorial, managerial or executive decision; or (ii) to elect or appoint any person to be a director, manager or to some other executive position,

and by virtue of that fact is able to exercise a significant influence over the casino operations

- is a director, manager, other executive or company secretary.
- Two obvious issues arise from the definition. One is how it should apply where the relevant power is exercised indirectly—for example, through a holding company of the casino licensee. The second is that it is difficult to determine what is meant by a 'managerial' decision. Various officers within a corporation make decisions. Some are significant, some are only marginal and some sit somewhere in between. It is not clear whether participation in a 'managerial' decision is intended to cover every company decision by persons other than ordinary employees. If it is, a vast number of personnel have the relevant power.
- Ms Bergin, SC was critical of the equivalent definition—of close associate—in section 5 of the Casino Control Act 1992 (NSW). She described the definition as 'overly technical and not fit for purpose'. She said that several of the terms embedded in the definition were undefined and nebulous.2
- Moving on, the test for the suitability of an associate is the same test as applies to determine the suitability of a casino operator. The test is described in Chapter 18. In brief, to satisfy the test the person must be of good character and financially stable.
- There are two groups of associates of Crown Melbourne: 6
  - · Crown Resorts, which is an associate because of its power to control the Crown Melbourne board
  - · the current directors and senior executives of Crown Melbourne, who are associates because of the position they hold and power they exercise.

- This chapter will consider the suitability of the current directors and a number of the senior executives. For the most part, they have recently become associates and it is appropriate that their suitability be considered.
- There are, however, other executives whose suitability has not been examined. The reason is that nothing in the voluminous material that the Commission has examined suggests these executives may not be suitable associates. Therefore, they were not called to give evidence.
- There is a third group that may qualify as an associate. This is the CPH group (controlled by Mr James Packer), which may be an associate because one company in the group, CPH Crown Holdings Pty Limited, in which other members of the group hold an interest, is a substantial shareholder in Crown Resorts (approximately 37 per cent). Its shareholding would give it power to control Crown Melbourne.3
- 10 The reason there is uncertainty as to whether the CPH group qualifies as an associate of Crown Melbourne is because of undertakings recently given by the CPH group to ILGA. The undertakings are not to enter into any information-sharing arrangement with Crown Resorts, not to initiate discussions with Crown Resorts about its business or operations, not to appoint nominees to the Crown Resorts board and not to seek amendments to Crown Resorts' constitution.4
- 11 One undertaking—not to appoint nominees—runs for a fixed period. The other undertakings can be withdrawn at any time. The CPH group is unlikely to be an associate while the undertakings are in place.
- 12 This chapter will proceed on the assumption that the CPH group is, or is likely to be, an associate, although it is acknowledged that this may not be the true position.5

# Crown Resorts

- 13 The Bergin Inquiry found that Crown Resorts was not a suitable person to be a close associate of Crown Sydney.<sup>6</sup> In brief, Ms Bergin, SC found:
  - Between 2014 and 2019, Crown Resorts enabled and facilitated money laundering through the bank accounts of Southbank and Riverbank, and that this situation went unchecked and unchanged despite warnings from its bankers.<sup>7</sup>
  - Between 2014 and 2016, Crown Resorts disregarded the welfare of its China-based staff, putting them at risk of detention by pursuing an aggressive sales policy and failing to escalate risks through the appropriate corporate risk management structures.8
  - Between 2012 and 2020, Crown Resorts entered into and/or continued commercial relationships with junket operators who had links to triads and other organised crime groups. Further, it maintained those relationships after becoming aware of persistent allegations of such connections in national and international media reports and its own due diligence reports.9
- 14 In addition to those findings, this Commission has uncovered more misconduct on the part of Crown Melbourne when it was under the control of Crown Resorts. For the most part, Crown Resorts' executives were closely involved in that wrongdoing, and they often instigated it.<sup>10</sup>
- 15 It is clear that Crown Resorts is not a suitable person to be an associate of Crown Melbourne.

# The CPH group

- 16 Assuming the CPH group is an associate of Crown Melbourne, which CPH contends it is not, the group's close involvement in Crown Resorts' misconduct that was identified by the Bergin Inquiry makes it (strictly speaking, every member of the corporate group, together with Mr Packer) unsuitable to be an associate of Crown Melbourne.
- 17 One recommendation made by this Commission will, if implemented, bring any potential future association to an end. The recommendation is that (subject to certain exceptions) no person, including the CPH group, can hold a relevant interest in 5 per cent or more of the capital of Crown Resorts and Crown Melbourne. The effect of this recommendation would apply to the CPH group from September 2024.11
- 18 Once the CPH group shareholding in Crown Resorts falls below 5 per cent, the group will not be an associate of Crown Melbourne even upon the expiry of its undertakings to ILGA.

# Office holders

- 19 When this Commission commenced its inquiries, the associates of Crown Melbourne included Ms Helen Coonan, the Executive Chairman of Crown Resorts and Mr Xavier Walsh, a director and CEO of Crown Melbourne.
- 20 The Commission has been informed that neither Ms Coonan nor Mr Walsh will hold office by the time the Commission hands down its Report.<sup>12</sup> Accordingly, it is not appropriate for the Commission to consider the position of these officers.
- 21 On 27 August 2021, the Commission was informed that Dr Zygmunt (Ziggy) Switkowski, AO will succeed Ms Coonan as Chairman effective immediately. Dr Switkowski's appointment is subject to probity and regulatory approvals.<sup>13</sup>
- 22 Given the recency of his appointment and the fact that it remains subject to approvals, the Commission has not considered the suitability of Dr Switkowski as an associate.
- 23 The balance of this section examines the suitability of:
  - Ms Antonia Korsanos, a director of both Crown Resorts and Crown Melbourne since 2018
  - Ms Jane Halton, a director of Crown Resorts since 2018
  - Mr Nigel Morrison, a director of both Crown Resorts and Crown Melbourne appointed this year
  - · Mr Bruce Carter, a director of Crown Resorts also appointed this year
  - Mr Alan McGregor, the CFO of Crown Resorts
  - · Mr Stephen McCann, the CEO of Crown Melbourne and Crown Resorts
  - Mr Steven Blackburn, the Group Chief Compliance and Financial Crime Officer at Crown Resorts.

#### Antonia Korsanos

- 24 Ms Korsanos was appointed a non-executive director of Crown Resorts on 23 May 2018. She was appointed a non-executive director of Crown Melbourne on 5 September 2018 and the Chair of the Crown Melbourne board on 17 February 2021. She is also a member of five Crown Resorts committees, including its Responsible Gaming Committee and RMC.14
- 25 Ms Korsanos has recently been appointed Chair of Crown Sydney Gaming Pty Ltd. 15
- 26 Before joining Crown, Ms Korsanos was an executive at Aristocrat Leisure Limited, first as its CFO and then as its company secretary. Prior to that, Ms Korsanos held various senior finance roles at major public companies.16
- 27 Because of her background, Ms Korsanos has considerable experience in the gaming sector.
- 28 Ms Korsanos is clearly a person of good character. This was recognised by the Bergin Inquiry. The Bergin Report records:

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 [ILGA] would be justified in relying for honest, open and fair dealing in the future.<sup>17</sup>

- 29 During her tenure on the Crown Resorts board, Ms Korsanos became aware of the many cultural deficiencies at Crown. She appreciates that Crown's culture must change and that to effect change will take time and require commitment.18
- 30 Ms Korsanos said:

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.

But I truly believe that we are on the right path and in my experience you start with your strategies and you start to act as quickly as you can with changes like those that we are engaging in through the reform agenda. And then you follow through with your cultural program, right. And the cultural program really is about establishing the baseline. I think with the team we have today it is about reinforcing, well, revisiting our values ...

We've done that across a number of our functions but there is still more to be done. But I think we have definitely ... the change I've seen here versus how I saw cultural change in my prior experience, this change has been a lot faster. I don't think we can dismiss the signalling of change from the top down, what the signalling of that change, and also the experience of the NSW Inquiry and the Royal Commission, I don't think we can dismiss the effect that that has had in terms of speeding up the effort and the outcomes.

There is still a lot to do, there is still a lot to do and what is to be done is more about the longevity of maintaining and sustaining that change and making sure we have the right accountabilities in the business and people understand and have a line of sight of what their job means in the context of doing the right thing in the context of respect, working together and passion, or whatever the values are when we define what is relevant going forward.

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.<sup>19</sup>

- 31 It is clear that Ms Korsanos has a strong commitment to Crown's reformation. She understands that changes must be made from the top down and that Crown's reformation is a work in progress.
- 32 Ms Korsanos is a suitable person to be an associate of Crown Melbourne. She has however, indicated her intention to resign as a director.<sup>20</sup>

#### Jane Halton

- 33 Ms Halton was appointed a non-executive director of Crown Resorts on 23 May 2018. She is a member of several Crown Resorts committees, including its RMC and Audit and Corporate Governance Committee. She joined the Crown Resorts board at the same time as Ms Korsanos.21
- 34 Following the departure of Mr Walsh, Ms Halton was appointed as a director of Crown Melbourne and will act as interim Chairman of Crown Resorts until Dr Switkowski receives the necessary regulatory and probity approvals.<sup>22</sup>
- 35 Ms Halton is a highly experienced and qualified director. Before joining the business community, Ms Halton held senior roles in the Australian Public Service, including Secretary of the Department of Finance and Secretary of the Department of Health.<sup>23</sup>
- 36 Currently Ms Halton is also a director of ANZ Banking Group Limited, law firm Clayton Utz, the Institute of Health Metrics and Evaluation at the University of Washington, among others. Further, she is an Adjunct Professor at both the University of Sydney and the University of Canberra and a council member of the Australian Strategic Policy Institute.<sup>24</sup>

37 Ms Halton's good character was recognised in the Bergin Report. It records:

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 [ILGA] would be justified in relying for honest, open and fair dealing in the future.<sup>25</sup>

- 38 Ms Halton is alive to the need for reform at Crown. She appreciates that cultural reform is a very important part of Crown's ongoing remediation plan and has taken steps to ensure the reform program is proceeding.
- 39 Recently Ms Halton met the partner at Deloitte leading Deloitte's review of Crown's culture.<sup>26</sup> Ms Halton gave this account of their meeting:

So we went through a series of observations. She talked about the fact that there had been focus groups and what she was detecting. I asked a series of questions because of my particular interest about whether, for example, the changed tone and the tone from the top and the messaging to staff in her experience or focus group work had been heard, what the reaction if they are being heard is. We talked about the breadth and the variety of different components of the business.

...

She said she had been having it reflected back to her, and in fact I took from that meeting a level of comfort that notwithstanding the relatively short period since we exited the vast number of directors and a series of senior management, that those messages, and I was very ... I mean, I had been very keen for the Executive Chairman to send regular messaging to staff, all staff, and I was trying ... she was telling me that those messages were being looked at and were being heard. So they are not just read but the message was being absorbed.<sup>27</sup>

40 Ms Halton is a suitable person to be an associate of Crown Melbourne.

# Nigel Morrison

- 41 Mr Morrison is a new appointee to the boards of Crown Resorts and Crown Melbourne, having taken the position on 28 January 2021.<sup>28</sup> On 27 August 2021, the Commission was advised that Mr Morrison was appointed as Chairman of Crown Melbourne.<sup>29</sup>
- 42 Although a recent appointment, Mr Morrison has a long history with Crown. He played a key role coordinating the consortium that bid for the casino licence and he worked in various executive finance roles until 2000.<sup>30</sup>
- 43 Mr Morrison has other experience in the casino industry. For example, he was the Managing Director and CEO of SkyCity Entertainment Group Limited (SkyCity) between 2008 and 2016 and the CFO of the Galaxy Entertainment Group between 2007 and 2008 (both SkyCity and Galaxy own and operate casinos).<sup>31</sup>
- 44 More broadly, Mr Morrison spent 13 years at Ernst & Young, ultimately as a partner in its corporate advisory practice.<sup>32</sup>

- 45 Mr Morrison informed the Commission that when he joined SkyCity in 2008, 'there were in many ways, some similar challenges to those that face Crown'. He said that there had been no permanent CEO for over a year, the culture was not good, there were accusations of loansharking, and relations with regulators and governments were strained. Mr Morrison said he was able to successfully transform SkyCity in these circumstances.<sup>33</sup>
- 46 Mr Morrison recognises that the challenges facing Crown are 'seriously substantial'.<sup>34</sup>
  He identified a number of key challenges: rebuilding relationships and trust with regulators and governments; rebuilding the community's view of Crown and regaining public confidence; managing Crown's banking and rating agency relationships and funding, including as the Commission's findings and those of other investigations emerge; repositioning Crown's RSG to best practice; developing and implementing a new business plan to reflect changes to Crown's business model following the Bergin Inquiry and the Commission; and retaining quality staff and management, attracting high-quality new employees and maintaining staff morale and engagement.<sup>35</sup>
- 47 Mr Morrison stressed that he considered it 'absolutely appropriate and fundamental to proper governance of any company' that its directors be independent and not constrained by loyalties that might unduly prejudice their judgement.<sup>36</sup> He further emphasised the importance of an honest, open, frank and constructive relationship with the regulator.<sup>37</sup>
- 48 Mr Morrison did say that in the past he had dealings with Mr Kerry Packer, Mr James Packer and CPH.<sup>38</sup>
- 49 This is unsurprising given Mr Morrison's involvement in the casino sector. None of his dealings with Mr Kerry Packer, Mr James Packer or CPH affect Mr Morrison's suitability to be an associate of Crown Melbourne.
- 50 Mr Morrison is a suitable person to be an associate of Crown Melbourne.

#### Bruce Carter

- Mr Carter was invited to join the Crown Resorts board on 12 April 2021.<sup>39</sup> The regulator approved the appointment on 16 June 2021 and the appointment was confirmed.<sup>40</sup>
- 52 Following the departure of Mr Walsh, Mr Carter was appointed as an additional director of Crown Melbourne.<sup>41</sup>
- 53 Mr Carter was a partner at Ernst & Young and the Managing Partner at Ferrier Hodgson. In those positions he acquired extensive knowledge of corporate insolvency, restructuring and the 'turnaround' of companies.<sup>42</sup>
- 54 Since 2012, Mr Carter's primary role has been as a non-executive company director. He was a non-executive director of SkyCity for 11 years until his appointment to the Crown Resorts board.<sup>43</sup>
- 55 It is clear from Mr Carter's experience that he has a sound understanding of the risks currently facing Crown and the community expectations of that organisation. He also understands what needs to be done to repair the situation.<sup>44</sup>
- 56 Mr Carter is a suitable person to be an associate of Crown Melbourne.

# Alan McGregor

- 57 Mr McGregor has been at Crown for 16 years. He was the CFO of several Crown companies, including Crown Melbourne. He has been the CFO of Crown Resorts for 12 months. 45
- 58 Prior to joining Crown, Mr McGregor worked at SkyCity for seven years in various finance roles.46
- 59 Mr McGregor had knowledge of, and some involvement in, the Bonus Jackpots tax issue.<sup>47</sup>
- 60 Notwithstanding this knowledge, Mr McGregor did not suggest to the Crown Melbourne board or to its Risk Management or Compliance Committees that the tax issue be properly investigated or that it be raised with the regulator. This was a failing on his part.
- 61 Perhaps the failing can be explained by Mr McGregor's belief that the then CEO and Managing Director of Crown Resorts, Mr Ken Barton, would appropriately deal with the issue.<sup>48</sup>
- 62 Mr McGregor is an experienced senior executive at Crown. His conduct plays a part in setting the culture of the organisation. His failure to bring the Bonus Jackpot tax issue to the attention of others (for example, the board or the regulator) does raise questions about his judgement.
- 63 However, bad judgement does not mean that Mr McGregor is an unsuitable associate.
- 64 Mr McGregor is a suitable person to be an associate of Crown Melbourne.

### Stephen McCann

- 65 Mr McCann was appointed CEO of Crown Resorts effective 1 June 2021. On 20 August 2021 he was appointed CEO of Crown Melbourne.<sup>49</sup>
- 66 Mr McCann has recently been appointed a director of Burswood Limited.50
- 67 Mr McCann was appointed as CEO of Crown Resorts because of his general experience in the business world. He has worked in the banking and financial sectors and for Lendlease, a large multinational construction company. At Lendlease he was the Group Chief Executive and later, for a period of 12 years, he was the Managing Director.<sup>51</sup>
- 68 Mr McCann is a competent leader well able to run a large and complex organisation. While at Lendlease he presided over significant changes, including improvements to safety, regulatory compliance and culture.52
- 69 Mr McCann described cultural change as requiring a combination of 'leadership from the top', 'setting a direction and a purpose and a vision that people can subscribe to, buy into, be motivated and energised by', and 'systems and processes that enable them to follow the leadership'.53
- 70 Mr McCann recognises the need for cultural change at Crown Melbourne. He said:

Crown's culture needs to reflect an organisation which understands that it is not sustainable to generate revenue from vulnerable people and that it is the responsibility of all employees, not just responsible gaming staff, to be aware of the risks of gambling addiction and to be able to identify observable signs or concerning data and bring it to the appropriate person's attention. In addition, Crown's culture needs to encourage all staff to be willing to report

any misgivings they may have about any behaviours or practices they observe without any fear of retribution and to be confident instead that their concerns will be addressed and people will be held directly accountable for their actions and rewarded for appropriate behaviour and quality outcomes.<sup>54</sup>

- 71 Mr McCann also appreciates the importance of restoring public confidence in Crown. He acknowledged '[t]he long-term viability and sustainability of Crown requires both a social licence and a regulatory licence', and that Crown must keep pace with an increased focus on responsible gambling and environmental and social responsibility.55
- 72 It is clear that Mr McCann has carefully reflected on the challenges Crown faces, and the challenges he will face in his role. He recognises that Crown Melbourne's employees are 'looking for direction ... [and] leadership' and considers this his responsibility.<sup>56</sup>
- 73 Mr McCann has no experience dealing with a regulator but has been educating himself about the regulator's role. Recently he has been involved in discussions with the regulator, particularly about Crown Melbourne's need to be open and transparent.<sup>57</sup>
- 74 Mr McCann is a suitable person to be an associate of Crown Melbourne.

#### Steven Blackburn

- 75 Mr Blackburn was appointed as Crown's Chief Compliance and Financial Crime Officer on 24 February 2021.58
- 76 Mr Blackburn has extensive experience in anti-financial crime programs in the banking sector. From 2018 to 2021 he was the Chief Financial Crime Risk Officer and Group Money Laundering Reporting Officer at NAB. From 2011 to 2018, he was the Chief Anti-Money Laundering Officer at the Canadian Imperial Bank of Commerce. 59
- 77 Through these roles he developed expertise in AML, CTF, sanctions and anti-bribery and corruption. He was responsible for designing, implementing, overseeing and monitoring antifinancial crime regimes, and for building and maintaining relationships with regulators and stakeholders—in NAB's case with entities such as the AFP, AUSTRAC and Five Eyes Law Enforcement Group.60
- 78 Prior to 2011 Mr Blackburn practised as a lawyer. He held various senior legal positions, including as Managing Counsel at the Canadian Imperial Bank of Commerce.<sup>61</sup>
- 79 Following his appointment at Crown, Mr Blackburn's role was extended to overseeing RSG. Although he has no prior experience with RSG, he has sought to educate himself in this area.<sup>62</sup>
- 80 Mr Blackburn is a person of considerable skill, diligence and integrity. He describes himself as being a 'passionate advocate for integrity functions'.63 Based on what he now knows, Mr Blackburn has accepted that Crown's past culture was 'as bad as [he'd] ever seen anywhere' in his professional experience.64
- 81 Nevertheless, he is optimistic that there has been a genuine and significant cultural shift at Crown.65

- 82 Based on his assessment of Crown's current level of 'maturity' with respect to financial crime and compliance, Mr Blackburn has developed an ambitious financial crime and compliance change program.<sup>66</sup>
- 83 He has also devised a proposed series of enhancements to Crown's RSG Program, though he emphasised that these were not comprehensive and would be further developed in due course.67
- 84 The change program and the proposed enhancements were endorsed by the Crown Resorts board on 24 May 2021.68 They demonstrate Mr Blackburn's genuine intention to bring about change at Crown.
- 85 Mr Blackburn is a suitable person to be an associate of Crown Melbourne.

# Conclusion

- 86 The New South Wales Government has announced that its Casino Control Act 1992 (NSW) will be amended to change the definition of close associate to address some of the ambiguities mentioned earlier.
- 87 The deficiencies in the Casino Control Act should also be remedied, although not precisely along the lines proposed in New South Wales. 69

#### RECOMMENDATION 32: DEFINITION OF ASSOCIATE

It is recommended that the Casino Control Act be amended so that 'associate' means:

- · the holding company and each intermediate holding company of the casino operator (holding company to be defined as in the Corporations Act);
- any person who has a relevant interest (as defined in the Corporations Act) in at least 5 per cent of the issued capital of the casino operator, or any of its intermediate holding companies or its ultimate holding company;
- · any director or officer (as defined in the Corporations Act) of the casino operator, any of its intermediate holding companies or its ultimate holding company; and
- any individual or company certified by the regulator to be an associate.

#### RECOMMENDATION 33: INCREASE IN SHAREHOLDING

It is recommended that an associate cannot increase its relevant interest in the issued capital of the casino operator, or any of its intermediate holding companies or its ultimate holding company, without the written approval of the regulator.

# **Endnotes**

- 1 Casino Control Act 1991 (Vic) s 4.
- 2 Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 633 [93], 634 [97].
- In addition to CPH Crown Holdings Pty Limited, as of March 2021, other members of the CPH group included CPH Gaming IVA Pty Limited, CPH Gaming IVB Pty Limited, CPH Gaming III Pty Limited, CPH Gaming I Pty Ltd, Consolidated Press Holdings Pty Ltd, Conpress Holdings Pty Ltd, Bareage Pty Ltd and Consolidated Press Financial Services Pty Ltd.
- 4 Exhibit RC1411 Email chain between Guy Jalland, Murray Smith and Phillip Crawford, 15 March 2021.
- 5 Responsive submission CPH Parties, 2 August 2021, 5 [5].
- 6 Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 566 [140].
- 7 Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 543 [9].
- 8 Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 543 [9].
- 9 Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 543–4 [9], 545 [18].
- 10 See, eq, Chapters 10 and 12.
- 11 The CPH Parties submit that no shareholding cap is necessary or desirable: Responsive submission CPH Parties, 2 August 2021, Part C.
- 12 Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 324 [1], 328 [2].
- 13 Exhibit RC1617 Letter from Allens Linklaters to Solicitors Assisting, 27 August 2021.
- Exhibit RC0434 Statement of Antonia Korsanos, 27 April 2021, 1; Transcript of Antonia Korsanos, 7 July 2021, 3649.
- 15 Exhibit RC1617 Letter from Allens Linklaters to Solicitors Assisting, 27 August 2021.
- 16 Exhibit RC0434 Statement of Antonia Korsanos, 27 April 2021, 1.
- 17 Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 467 [10].
- 18 Transcript of Antonia Korsanos, 7 July 2021, 3710.
- 19 Transcript of Antonia Korsanos, 7 July 2021, 3708–9.
- 20 Crown Resorts, 'Retirement of Director' (ASX Media Release, 16 September 2021).
- 21 Exhibit RC0427 Statement of Jane Halton, 28 April 2021, 1[2]–[3].
- 22 Exhibit RC1617 Letter from Allens Linklaters to Solicitors Assisting, 27 August 2021.
- 23 Exhibit RC0427 Statement of Jane Halton, 28 April 2021, 1[4].
- 24 Exhibit RC0427 Statement of Jane Halton, 28 April 2021, 1[5].
- 25 Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 467 [10].
- 26 See Chapter 5.
- 27 Transcript of Jane Halton, 7 July 2021, 3587–8.
- 28 Crown Resorts, 'Appointment of Nigel Morrison as a Director' (ASX Media Release, 28 January 2021).
- 29 Exhibit RC1617 Letter from Allens Linklaters to Solicitors Assisting, 27 August 2021.
- 30 Exhibit RC0223 Statement of Nigel Morrison, 15 June 2021, 1.
- 31 Exhibit RC0223 Statement of Nigel Morrison, 15 June 2021, 1–2.
- 32 Exhibit RC0223 Statement of Nigel Morrison, 15 June 2021, 3–4.
- 33 Exhibit RC0223 Statement of Nigel Morrison, 15 June 2021, 4.
- 34 Exhibit RC0223 Statement of Nigel Morrison, 15 June 2021, 8.
- 35 Exhibit RC0223 Statement of Nigel Morrison, 15 June 2021, 8.
- Transcript of Nigel Morrison, 22 June 2021, 2268.
- 37 Transcript of Nigel Morrison, 22 June 2021, 2280–1.
- 38 Exhibit RC0223 Statement of Nigel Morrison, 15 June 2021, 2–3.
- 39 Exhibit RC0931 Statement of Bruce Carter, 12 June 2021, 1.
- 40 Exhibit RC1269 Letter from John Curran to Michelle Fielding, 16 June 2021.
- 41 Exhibit RC1617 Letter from Allens Linklaters to Solicitors Assisting, 27 August 2021.
- 42 Exhibit RC0931 Statement of Bruce Carter, 12 June 2021, 1, 4.
- 43 Exhibit RC0931 Statement of Bruce Carter, 12 June 2021, 2.
- 44 Exhibit RC0931 Statement of Bruce Carter, 12 June 2021, 3-4.
- 45 Exhibit RC0423 Statement of Alan McGregor, 16 April 2021, 1.

- 46 Exhibit RC0423 Statement of Alan McGregor, 16 April 2021, 1.
- 47 Exhibit RC0332 Email chain between Michelle Fielding and Nicole Wendt et al, 4 June 2018; Exhibit RC0824 Email chain between Peter Herring and Michelle Fielding et al, 5 June 2018. For further discussion of the Bonus Jackpots tax issue, see Chapter 12.
- 48 See the following minutes: Exhibit RC1294 Minutes of Crown Resorts board meeting, 18 February 2020; Exhibit RC1295 Minutes of Crown Resorts board meeting, 25 March 2020; Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, Annexure hhhhhhh; Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, Annexure kkkkkkk; Exhibit RC1296 Crown Resorts board diligent pack, 15 April 2020; Exhibit RC0437 Statement of Helen Coonan, 28 April 2021, Annexure a; Exhibit RC1297 Minutes of Crown Resorts board meeting, 9 September 2020; Exhibit RC0437 Statement of Helen Coonan, 28 April 2021, Annexure n; Exhibit RC1298 Minutes of Crown Resorts board meeting, 2 November 2020; Exhibit RC0437 Statement of Helen Coonan, 28 April 2021, Annexure f; Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, Annexure vvvvvv; Exhibit RC1299 Minutes of Crown Resorts board meeting, 15 January 2021; Exhibit RC1300 Minutes of Crown Resorts board meeting, 28 January 2021; Exhibit RC1301 Minutes of Crown Resorts board meeting, 9 February 2021; Exhibit RC1245 Minutes of Crown Resorts board meeting, 17 February 2021; Exhibit RC1302 Minutes of Crown Melbourne board meeting, 11 February 2020; Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, Annexure yyyy; Exhibit RC1304 Minutes of Crown Melbourne board meeting, 11 August 2020; Exhibit R1306 Minutes of Crown Melbourne board meeting, 2 November 2020; Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, Annexure ccccc; Exhibit RC1327 Crown Resorts Responsible Gaming Committee diligent pack, 23 June 2020; Exhibit RC1328 Minutes of Crown Resorts Responsible Gaming Committee meeting, 11 August 2020; Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, Annexure fffff; Exhibit RC1329 Minutes of Crown Resorts Responsible Gaming Committee meeting, 2 December 2020; Exhibit RC1344 Minutes of Crown Melbourne Compliance Committee meeting, 23 November 2020; Exhibit RC1345 Papers, Crown Melbourne Compliance meeting, 2 February 2021; Exhibit RC1346 Minutes of Crown Melbourne Compliance Committee meeting, 25 May 2021.
- 49 Crown Resorts, 'Crown Melbourne Management Changes' (ASX Media Release, 20 August 2021).
- 50 Exhibit RC1617 Letter from Allens Linklaters to Solicitors Assisting, 27 August 2021.
- 51 Exhibit RC0419 Statement of Stephen McCann, 15 June 2021, 2.
- 52 Exhibit RC0419 Statement of Stephen McCann, 15 June 2021, 4; Responsive submission Crown Melbourne Limited and Crown Resorts Limited, 2 August 2021, 39-40 [C.37].
- 53 Transcript of Stephen McCann, 6 July 2021, 3488.
- 54 Exhibit RC0419 Statement of Stephen McCann, 15 June 2021, 9.
- 55 Transcript of Stephen McCann, 6 July 2021, 3510.
- Transcript of Stephen McCann, 6 July 2021, 3489-90. 56
- 57 Transcript of Stephen McCann, 6 July 2021, 3451-6.
- Exhibit RC0310 Supplementary Statement of Steven Blackburn, 28 April 2021, 2. 58
- 59 Exhibit RC0310 Supplementary Statement of Steven Blackburn, 28 April 2021, 1–2.
- 60 Exhibit RC0310 Supplementary Statement of Steven Blackburn, 28 April 2021, 2.
- 61 Exhibit RC0310 Supplementary Statement of Steven Blackburn, 28 April 2021, 2.
- 62 See, eg, Transcript of Steven Blackburn, 1 July 2021, 3033.
- 63 Transcript of Steven Blackburn, 1 July 2021, 3036.
- 64 Transcript of Steven Blackburn, 1 July 2021, 2962-3.
- 65 Transcript of Steven Blackburn, 1 July 2021, 2933, 2963.
- Exhibit RC0311 Further Supplementary Statement of Steven Blackburn, 7 June 2021, Annexure a. 66
- 67 Transcript of Steven Blackburn, 1 July 2021, 3033, 3050.
- 68 Exhibit RC0696 Minutes of Crown Resorts board meeting, 24 May 2021.
- 69 Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 635 [100].



# APPENDICES

#### APPENDIX A

# Letters patent

# ELIZABETH THE SECOND, BY THE GRACE OF GOD QUEEN OF AUSTRALIA AND HER OTHER REALMS AND TERRITORIES, HEAD OF THE COMMONWEALTH:

I, the Honourable Linda Dessau AC, the Governor of Victoria, with the advice of the Premier, under section 5 of the Inquiries Act 2014 and all other enabling powers, appoint you

Roman (Ray) Finkelstein AO QC as Commissioner and Chairperson

to constitute a Royal Commission to inquire into and report on the matters specified in the terms of reference below.

#### BACKGROUND

- Crown Melbourne Limited (Crown Melbourne) operates the Melbourne Casino under a licence granted under and subject to the provisions of the Casino Control Act 1991 (Casino Control Act) on 19 November 1993. Crown Melbourne is the casino operator under the Casino Control Act and is a wholly-owned subsidiary of Crown Resorts Ltd (Crown Resorts).
- The aims of the system for the licensing, supervision and control of casinos established under the Casino Control Act include:
  - ensuring that the management and operation of casinos remains free from criminal influence or exploitation;
  - ensuring that gaming in casinos is conducted honestly; and
  - promoting tourism, employment, and economic development generally in the
- Crown Resorts' separate wholly-owned subsidiary, Crown Sydney Gaming Pty Ltd 3. (Crown Sydney), holds a restricted gaming licence in New South Wales.
- On 1 February 2021, an inquiry conducted by the Hon. Patricia Bergin SC for the New South Wales Independent Liquor and Gaming Authority (Bergin Inquiry), concluded that Crown Sydney was not a suitable person to continue to give effect to the Barangaroo restricted gaming licence and that Crown Resorts was not a suitable person to be a close associate of the person holding that restricted gaming licence.
- 5 The Bergin Inquiry also found, among other things, that Crown Resorts:
  - facilitated money laundering through the Southbank and Riverbank accounts unchecked and unchanged in the face of warnings from its bankers;

- disregarded the welfare of its China-based staff putting them at risk of detention by pursuing an aggressive sales policy and failing to escalate risks through the appropriate corporate risk management structures; and
- entered into or continued commercial relationships with junket operators who had links to Triads and other organised crime groups.
- Some of the conduct canvassed by the Bergin Inquiry related to the Melbourne 6. Casino operated by Crown Melbourne and other conduct related to the casino in Perth operated by Burswood Ltd (which is also a subsidiary of Crown Resorts).
- Other law enforcement agencies, including the AUSTRAC, have considered or are considering the conduct of Crown Resorts and/or Crown Melbourne, including allegations of money laundering.
- 8. The Minister for Consumer Affairs, Gaming and Liquor intends to establish a review into Victoria's casino regulatory framework (Regulatory Review). It is intended that the Regulatory Review will run concurrently with the Royal Commission.

#### DEFINITIONS 11.

- 9. Defined terms in the Casino Control Act have the same meaning in these letters patent unless the contrary intention appears. In addition:
  - a. Crown Melbourne Contracts means the documents referred to in s 25(1)(c) of the Casino Control Act.
  - b. Suitable Associate means a suitable person to be associated with the management of a casino under the Casino Control Act.

#### TERMS OF REFERENCE III.

- 10. You are appointed to inquire into and report on the matters set out below.
  - Whether Crown Melbourne is a suitable person to continue to hold the casino licence under the Casino Control Act.
  - 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.
  - C. Whether Crown Melbourne is complying with the Crown Melbourne Contracts.
  - Whether it is in the public interest for Crown Melbourne to continue to hold the casino licence in Victoria.
  - If you consider that Crown Melbourne is not a suitable person, or that it is not in the public interest for Crown Melbourne to hold the casino licence in Victoria, what action (if any) would be required for Crown Melbourne to

become a suitable person, or for it to be in the public interest for Crown Melbourne to continue to hold the casino licence in Victoria.

- F. Whether Crown Resorts is a Suitable Associate of Crown Melbourne.
- If you consider that Crown Resorts is not a Suitable Associate of Crown Melbourne, what action (if any) would be required for Crown Resorts to become a Suitable Associate of Crown Melbourne.
- Whether any other existing associates of Crown Melbourne are not Suitable Associates of Crown Melbourne.
- If you consider that any other existing associates of Crown Melbourne are not Suitable Associates of Crown Melbourne, what action (if any) would be required for those persons to become Suitable Associates of Crown Melbourne.
- Whether you consider changes to relevant Victorian legislation, including the Casino Control Act and the Victorian Commission for Gambling and Liquor Regulation Act 2011, as well as the Crown Melbourne Contracts, are necessary for the State to address your findings and implement your recommendations.
- Whether there are any other matters necessary to satisfactorily resolve the matters set out in paragraphs A to J, above.

#### RECOMMENDATIONS IV.

- You may make any recommendations that you consider appropriate arising out of 11. your inquiry.
- 12. In formulating your recommendations you should have regard to the most practical, effective and efficient way to address the matters arising out of your inquiry and the financial impact of your recommendations on the State.

#### REPORT ٧.

You are required to report your findings and any recommendations to the Governor 13. as soon as possible, and in any event, no later than 1 August 2021 or a later date agreed between the Commission and the Premier.

#### VI. CONDUCT OF YOUR INQUIRY

- 14. Without limiting the scope of your inquiry, or the scope of any recommendations that you may wish to make, you are directed to conduct your inquiry:
  - as you consider appropriate;
  - without incurring unnecessary cost or delay;

- without unnecessarily duplicating the Regulatory Review, or any other investigations or recommendations of inquiries or investigations into these or related matters that are described in the background above, or that otherwise come to your attention during your inquiry;
- without prejudicing the Regulatory Review, or any other inquiries and d. investigations into any matters relevant to your inquiry;
- by working cooperatively, as appropriate, with the Regulatory Review, or any other relevant inquiries or investigations;
- in a way that does not prejudice any current or future criminal or civil proceedings;
- so as to promptly bring to the attention of the Regulatory Review, relevant law enforcement agencies, or regulators, any information or documents that you consider to be relevant to their functions; and
- in accordance with these letters patent, the Inquiries Act 2014 and all other relevant laws.
- You may also consult with experts and engage persons to provide relevant advice and assistance.

These letters patent are issued under the Public Seal of the State.

WITNESS



20000

Her Excellency the Honourable Linda Dessau, Companion of the Order of Australia, Governor of the State of Victoria in the Commonwealth of Australia at Melbourne this 221 day of February 2021.

By Her Excellency's Command  The Honourable Daniel Andrews MP  Premier of Victoria  Entered on the record by me in the Register of Patents Book No <sup>47</sup> Page No <sup>16</sup> on the <sup>22</sup> day of February 2021  Secretary, Department of Premier and Cabinet
The Honourable Daniel Andrews MP  Premier of Victoria  Entered on the record by me in the Register of Patents Book No <sup>47</sup> Page No <sup>169</sup> on the <sup>227</sup> day of February 2021
The Honourable Daniel Andrews MP  Premier of Victoria  Entered on the record by me in the Register of Patents Book No <sup>47</sup> Page No <sup>169</sup> on the <sup>227</sup> day of February 2021
Entered on the record by me in the Register of Patents Book No <sup>47</sup> Page No <sup>169</sup> on the <sup>22<sup>4</sup></sup> day of February 2021
Entered on the record by me in the Register of Patents Book No <sup>47</sup> Page No <sup>169</sup> on the <sup>22<sup>4</sup></sup> day of February 2021
Entered on the record by me in the Register of Patents Book No <sup>4</sup> 7 Page No <sup>16</sup> 9 on the 22 <sup>nd</sup> day of February 2021
of February 2021
of February 2021
Secretary, Department of Premier and Cabinet
Secretary, Department of Premier and Cabinet
Secretary, Department of Premier and Cabinet



### APPENDIX B

# Amended letters patent

## ELIZABETH THE SECOND, BY THE GRACE OF GOD QUEEN OF AUSTRALIA AND HER OTHER REALMS AND TERRITORIES, HEAD OF THE COMMONWEALTH:

I, the Honourable Linda Dessau AC, the Governor of Victoria, with the advice of the Premier, under section 5 of the Inquiries Act 2014, section 41A of the Interpretation of Legislation Act 1984 and all other enabling powers, amend the Letters Patent entered into the Register of Patents Book No. 47 Page No. 169 on 22 February 2021 establishing the Royal Commission into the Casino Operator and Licence by:

After paragraph 15 inserting -

- VII. **EXPENSES AND FINANCIAL OBLIGATIONS**
- You are authorised to incur expenses and financial obligations to be 16. met from the Consolidated Fund up to \$10,000,000 in conducting this inquiry.

These amended letters patent are issued under the Public Seal of the State.



Her Excellency the Honourable Linda Dessau, Companion of the Order of Australia, Governor of the State of Victoria in the Commonwealth of Australia at Melbourne this day of February 2021.

Ву	Her Excellency's Command	
7	a the	
Th	e Honourable Daniel Andrews MP	
Pro	emier of Victoria	
En of	tered on the record by me in the Register of Patents Book No 47 Page Nol 70on the & day February 2021	
	a le	
~	<del></del>	
Se	cretary, Department of Premier and Cabinet	

### APPENDIX C

# Further amended letters patent

## ELIZABETH THE SECOND, BY THE GRACE OF GOD QUEEN OF AUSTRALIA AND HER OTHER REALMS AND TERRITORIES, **HEAD OF THE COMMONWEALTH:**

I, the Honourable Linda Dessau AC, the Governor of Victoria, with the advice of the Acting Premier, under section 5 of the Inquiries Act 2014, section 41A of the Interpretation of Legislation Act 1984 and all other enabling powers, amend the Letters Patent entered into the Register of Patents Book No. 47 Page No. 169 on 22 February 2021, as amended by the Letters Patent entered into the Register of Patents Book No. 47 Page No. 170 on

- 1. In paragraph 13, for the date 1 August 2021, substituting '15 October 2021'.
- 2. In paragraph 16, for the numeral \$10,000,000, substituting '\$19,750,000'.

These amended letters patent are issued under the Public Seal of the State.



Her Excellency the Honourable Linda Dessau, Companion of the Order of Australia, Governor of the State of Victoria in the Commonwealth of Australia at Melbourne this 10 1 day of June 2021.

By Her Excellen	y's Command			
Jam	feli			
The Honourable	James Merlino MP			
Acting Premier of	f Victoria			
Entered on the r of June 2021	ecord by me in the Register	of Patents Book No 47F	Page No 1 <b>16</b> on the 10	day
9	2			
Secretary, Depa	rtment of Premier and Cabir	net		

### APPENDIX D

# Acknowledgements

Many people provided invaluable support to the work of the Commission. Their effort should be acknowledged.

Mr Adrian Finanzio, SC, Ms Penny Neskovcin, QC, Ms Meg O'Sullivan and Mr Geoffrey Kozminsky worked tirelessly throughout the course of the inquiry in their role as assisting counsel.

They were ably instructed by a dedicated team of lawyers from Corrs Chambers Westgarth led by Ms Abigail Gill and Mr Craig Phillips.

Particular mention should be made of the assistance given to the Commission by Ms Elizabeth Langdon in her role as Chief Executive Officer. Without her assistance the Commission could not have run as smoothly as it did.

My personal assistant, Ms Victoria Wilson, was as usual dedicated in her work. My associate, Ms Lillian Vadasz, always provided me with frank and helpful advice.

I also wish to acknowledge collectively the assistance of the following people:

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## Barristers

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The Information Access Group

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Fair Work Commission Woo Agency

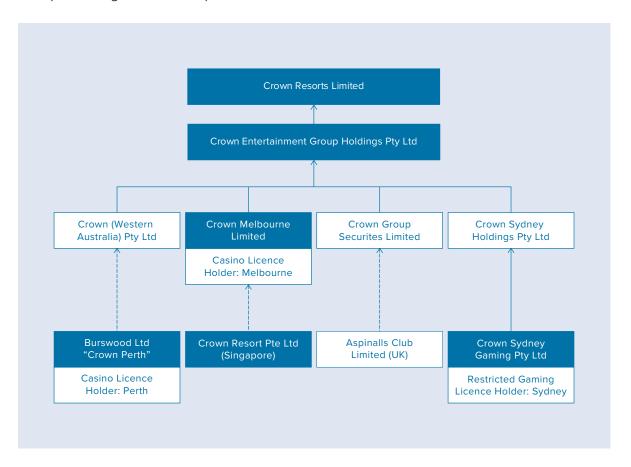
Graham Bradley, AM Notwithoutrisk Consulting

### APPENDIX E

# Crown group corporate history

- 1 The corporate history of the Crown group is complex.
- This history is complicated by the names under which the corporation today known as Crown Melbourne Limited has been registered. The names include Haliboba Pty Ltd, Crown Casino Ltd and Crown Limited. Crown Melbourne's current holding company, Crown Resorts Ltd, has also had different names, including Arterial Pty Ltd and Crown Limited.
- 3 Today, the licence holder is registered under the name Crown Melbourne Limited, and its holding company is Crown Resorts Ltd.
- 4 In this appendix, for the sake of simplicity, the licence holder will be referred to as Crown Melbourne and the holding company as Crown Resorts.
- 5 Crown Melbourne was the joint venture vehicle of HCL, Federal Hotels and CUB to acquire the casino licence for the Melbourne Casino.
- 6 The casino licence was granted on 19 November 1993.
- 7 Crown Melbourne was listed on the ASX on 9 March 1994.1
- 8 In June 1999, Crown Melbourne merged with PBL, a company then controlled by Mr Kerry Packer and later his son, Mr James Packer.
- 9 The merger involved several steps. Initially, PBL acquired all the shares in Crown Melbourne. It offered 'one PBL share for each 11 Crown [Limited] shares'. The Crown/PBL merger received the necessary regulatory and shareholder approvals and took effect on 30 June 1999.
- 10 Then, pursuant to two schemes of arrangement approved by the Supreme Court of Victoria on 21 January 2000, shareholders in HCL acquired shares in PBL at a ratio of two PBL shares for three HCL shares.<sup>4</sup>
- 11 On the completion of the merger, Crown Melbourne:
  - ceased to be a listed company
  - · became a wholly owned subsidiary of PBL.
- 12 In September 2004, PBL acquired all the shares in Burswood Limited, the holding company of Burswood Nominees Pty Ltd, which held the Perth Casino licence.
- 13 On 8 May 2007, PBL announced that it proposed to separate its gaming and media businesses into two separate listed companies, Crown Resorts and Consolidated Media Holdings.<sup>5</sup>
- 14 The separation occurred pursuant to two schemes of arrangement, each approved by the Federal Court of Australia on 28 November 2007.6
- 15 On the implementation of the schemes:
  - · Consolidated Media Holdings acquired PBL's media assets
  - Crown Resorts acquired all of PBL's gaming businesses, including its shares in Crown Melbourne.

- 16 On 3 December 2007, the shares in Crown Resorts were listed on the ASX.7
- 17 On 17 October 2013, a subsidiary of Crown Resorts, Crown Sydney Gaming Pty Ltd, was incorporated to construct and operate the casino at Barangaroo in Sydney.8
- 18 A simplified diagram of the corporate structure is set out below.



- 19 The following were the directors of Crown Resorts who have recently resigned. Most were appointed by or connected with CPH or the Packer family:
  - Ms Helen Coonan
  - · Mr Michael Johnston
  - · Mr Guy Jalland
  - · Mr Andrew Demetriou
  - Mr Ken Barton
  - Mr Harold Mitchell
  - Mr John Poynton
  - Mr John Horvath.9

- 20 The current directors of Crown Resorts and those nominated, awaiting regulatory approvals, are:
  - Dr Zygmunt (Ziggy) Switkowski
  - Ms Antonia Korsanos
  - Mr Nigel Morrison
  - Ms Jane Halton.
- 21 The following were the directors of Crown Melbourne who have recently resigned. Most were appointed by or connected with CPH or the Packer family:
  - Mr Demetriou
  - Mr Barton
  - Mr Horvath.<sup>10</sup>
- 22 The current directors of Crown Melbourne and those nominated, awaiting regulatory approvals, are:
  - Ms Korsanos
  - Mr Morrison
  - Mr Bruce Carter
  - Mr Stephen McCann
  - Ms Halton.

## **Endnotes**

- Exhibit RC1610 Article: Crown at a 34pc Premium on Debut, 10 March 1994.
- 2 VCGA, Third Triennial Review of the Casino Operator and Licence (Report, June 2003) 32.
- 3 VCGA, Third Triennial Review of the Casino Operator and Licence (Report, June 2003) 32.
- 4 Re Hudson Conway Ltd (Nos 6484 and 6485 of 1999) (2000) 33 ACSR 657.
- 5 Exhibit RC1597 Article: Packer Punts on PBL Split, 9 May 2007.
- Re Publishing & Broadcasting Ltd [2007] FCA 1610. 6
- 7 Crown Resorts, 'Crown Announces Full Year Results' (ASX Media Release, 20 August 2008) 2.
- Exhibit RC0445 Bergin Report Volume 1, 1 February 2021, 101 [4]. 8
- 9 Mr Horvath was an independent director.
- 10 Mr Horvath was an independent director.

### APPENDIX F

# Bergin Inquiry recommendations

### It is recommended that:

- 1 Section 4A of the Casino Control Act be amended to include an additional object of: Ensuring that all licenced casinos prevent any money laundering activities within their casino operations.
- 2 The Independent Casino Commission (ICC) be established by separate legislation as an independent, dedicated, stand-alone, specialist casino regulator with the necessary framework to meet the extant and emerging risks for gaming and casinos.
- 3 The ICC have the powers of a standing Royal Commission comprised of Members who are suitably qualified to meet the complexities of casino regulation in the modern environment.
- 4 The Casino Control Act be amended to make clear that any decision about a casino licence and any disciplinary action that may be taken against a licensee is solely that of the ICC, and that any term of a regulatory agreement that has been entered into by the Government or the Authority is of no effect to the extent that it purports to fetter any power of the ICC arising under the Casino Control Act.
- The Casino Control Act be amended to ensure that the casino supervisory levy is paid to the ICC or recognised in the budget of the ICC.
- The Casino Control Act be amended to make provision for each casino operator to be required to engage an independent and appropriately qualified Compliance Auditor approved by the ICC, to report annually to the ICC on the casino operator's compliance with its obligations under all regulatory statutes both Commonwealth and State in particular the Casino Control Act, the Casino Control Regulation and the terms of its licence.
- 7 The Casino Control Act be amended to make provision in respect of the Compliance Auditor's obligations in line with the following:
  - If the Compliance Auditor, in the course of the performance of the Compliance Auditor's duties, forms the belief that:
    - a activity within the casino operations may put the achievement of any of the objects of the Casino Control Act at risk; or
    - a contravention of the Casino Control Act or the regulations or of any other
       Commonwealth or New South Wales Act regulating the casino operations has occurred or may occur;

the Compliance Auditor must immediately provide written notice of that belief concurrently to the casino operator and to the ICC.

8 Consideration be given to an amendment to the Casino Control Act to include a provision similar to Singapore legislation for the concurrent reporting by the casino operator of suspicious transactions to AUSTRAC and the ICC.

- The Authority consider amendment to casino operators' licences to impose an obligation to monitor patron accounts and perform heightened customer due diligence, the breach of which provisions will be regarded as a breach of the Licence and give rise to possible disciplinary action.
- 10 The Casino Control Act be amended to impose on casino licensees an obligation that they require a Declaration of Source of Funds for any cash over the amount as determined by the ICC modelled on the reform introduced in British Columbia discussed in Chapter 5.1.
- 11 The Casino Control Act be amended to prohibit casino operators in New South Wales from dealing with Junket operators.
- 12 The Casino Control Act be amended to impose on any applicant for a casino licence an express requirement to prove that it is a suitable person by providing to the ICC 'clear and convincing evidence' of that suitability. This should apply to all suitability assessments under the Casino Control Act, including in the context of retaining a casino licence or in any five yearly review or for approval as a close associate.
- 13 The definition of 'close associate' under the Casino Control Act be repealed and replaced to mean:
  - a any company within the corporate group of which the licensee or proposed licensee (Licensee) is a member;
  - b any person that holds an interest of 10 per cent or more in the Licensee or in any holding company of the Licensee ('holding company' as defined in the *Corporations Act 2001* (Cth) so as to capture all intermediate holding companies);
  - c any director or officer (within the meaning of those terms as defined in the Corporations Act) of the Licensee, of any holding company, or of any person that holds an interest of 10 per cent or more in the Licensee or any holding company; and
  - d any individual or company certified by the Authority as being a 'close associate'.
- 14 The Casino Control Act be amended to include a provision that the cost of the investigation and determination of the suitability of any close associate of any applicant for a casino licence or any existing casino licensee be paid to the ICC in advance of the investigation and determination in the amount assessed by the ICC. Such amendment should include a provision for repayment of any over-estimate or payment of any shortfall against the estimate made by the ICC before the publication of the ICC's determination.
- 15 Item 4 of Schedule 1 of the Casino Control Act be amended to ensure that any transaction involving the sale or purchase of an interest in an existing licensee or any holding company of a licensee which results in a person holding an interest of 10 per cent or more in a licensee or holding company of the licensee is treated as a 'major change' event.
- 16 The Casino Control Act be amended to provide that a person may not acquire, hold or transfer an interest of 10 per cent or more in a Licensee of a casino in New South Wales or any holding company of a Licensee without the prior approval of the ICC.

- An amendment be made to section 34 of the Casino Control Act to permit the regulator to apply to the Court for an injunction to restrain 'any person' in respect of a breach of the above recommended provision or to obtain appropriate orders in connection with an interest acquired, held or transferred in breach of the provision.
- 18 The 'gaming and liquor legislation', as defined in section 4 of the Gaming and Liquor Administration Act 2007 (NSW) be reviewed for the purpose of considering amendments to ensure clarity and certainty in relation to the powers to be given to the new independent specialist casino regulator and consequential enactment of amendments to relevant legislation.
- 19 In any legislative review and/or consideration of legislative powers for the ICC, it would be appropriate to consider an express provision to include ASIC as one of the relevant agencies to which the ICC may refer information. It would also be appropriate to consider the inclusion of any other relevant agency not already expressly included in the legislation.



### APPENDIX G

## Crown breaches

- On 10 March 2021, the Commission wrote to Crown Melbourne asking it to disclose whether, since 1 January 2010, it had engaged in conduct that would, or might, breach any provision of the:
  - · Casino Control Act
  - Management Agreement Act
  - Gambling Regulation Act
  - Gambling Regulations
  - AML/CTF Act
  - AML/CTF Rules
  - FTR Act
  - Casino Agreement
  - · Management Agreement
  - Casino Licence granted on 19 November 1993.<sup>1</sup>
- Crown Melbourne provided the information in four tranches.<sup>2</sup> The information identified many thousands of actual or potential breaches. Most of them were not significant breaches.
- The actual or potential breaches can be divided into four broad categories:
  - RSG
  - · conduct of gaming
  - AML and CTF
  - minor regulatory and other miscellaneous breaches.
- They are summarised in the following tables.

# Responsible service of gambling

5 This table sets out actual or potential breaches of the Gambling Regulation Act, Casino Control Act or Crown Melbourne's Gambling Code.

Category or type	Number disclosed	Examples
Entry by an excluded person	'Thousands' <sup>3</sup>	Instances where people subject to self-exclusion orders entered the casino. Crown Melbourne stated that given the large number of incidents since 1 January 2010, it did not include details of each incident in its responses.
Entry by a minor	At least 98	<ul> <li>Instances where:</li> <li>babies and young children entered or were found in a gaming area with their families</li> <li>teenagers entered the casino and either attempted to gamble or did gamble.</li> <li>Some disclosures specified a time period during which minors entered the gaming area on 'various dates'. The reports did not specify how many times each actual or potential breach occurred during that period.</li> </ul>
Gambling by an intoxicated person	At least seven	Instances where intoxicated people were gambling or were in the gaming area.
Failure to display RSG information	At least six	Instances of consolidated multiple actual or potential breaches that included:  • failure to display responsible gambling messaging (for example, through brochures and stickers on machines) in required areas  • failure to display signage notifying patrons as to where game rules are located  • non-compliance with requirements relating to the visibility of clocks.
Non-compliance with RSG training requirements	At least four	Instances of consolidated multiple actual or potential breaches relating to multiple employees in relation to:  • failure to complete training by the due date  • inadequate training records.

Category or type	Number disclosed	Examples
Other RSG breaches	At least five	<ul> <li>Issues including:</li> <li>irrational conduct relating to the Self-Exclusion Program (for example, initially requiring a person to travel from Canberra to Melbourne to self-exclude in person)</li> <li>missing Observable Signs in relation to one at-risk gambler (following media reports about that individual).</li> <li>Crown Melbourne noted that its responsible gambling records include voluminous patron complaints that may identify actual or potential breaches of the Gambling Code.</li> </ul>

# Conduct of gaming

This table sets out the actual or potential breaches of an ICS, the Casino Control Act, Management Agreement Act, Gambling Regulation Act or the Gambling Regulations.

Category or type	Number disclosed	Examples
General	At least 70	Instances where:
breaches related to gameplay and gaming operations		<ul> <li>Crown Melbourne used 'blanking buttons' (which includes removing gambling options, disabling lower bet provisions and allowing prohibited autoplay) on 17 gaming machines in March and April 2017</li> </ul>
operations		<ul> <li>Crown Melbourne issued 'picks' that were being used to hold down EGM buttons for continuous play</li> </ul>
		poker tournaments were held off the gaming floor
		there were numerous EGM issues including:
		- errors identified in EGM Game IDs
		- EGM touchscreen errors
		- other general errors on EGMs
		<ul> <li>EGMs operating with the incorrect time displayed for 9 hours</li> </ul>
		- EGMs operating in continuous/unrestricted mode
		<ul> <li>five EGMs being below the required illuminance level</li> </ul>
		- incorrect payouts from EGMs.
		a Jackpot-linked machine was run as a standalone machine
		a Log of Chip Rotations was not completed
		<ul> <li>patrons were allowed to talk to each other during</li> <li>Pai Gow (in breach of the Pai Gow Rules)</li> </ul>
		<ul> <li>there was a failure to comply with Caribbean Stud Poker Rules by not incrementally increasing the jackpot</li> </ul>
		<ul> <li>general poker, blackjack, Baccarat and roulette rules were not followed</li> </ul>
		<ul> <li>there were bias/balance issues on a Big Wheel (BW3109) and failure to follow procedures</li> </ul>

Category or type	Number disclosed	Examples
		<ul> <li>playing cards were found around the Melbourne Casino outside of the gaming areas</li> <li>there was a failure to pay winnings to a patron</li> <li>patrons experienced incorrect dealing in card games</li> <li>dealers failed to establish their own hand or correctly compare hands in Bonus Texas Hold'em.</li> </ul>
Games played without the required number of cards or the wrong colour cards	At least 50	<ul> <li>Instances where:</li> <li>Pontoon games were dealt one card short</li> <li>Texas Hold'em Poker games were played with a reduced number of cards</li> <li>Poker games were played with fewer cards than required for eight hands due to dealer error</li> <li>Pontoon games were played with the wrong colour cards</li> <li>Blackjack games were dealt with insufficient cards.</li> </ul>
Semi-automated table with no dealer terminal connected	At least 50	This example included a failure to have a dealer terminal connected to semi-automated table games.
Fully-automated tables with no ability to set daily loss and time limits and operating despite closure	At least three	<ul> <li>Instances where:</li> <li>the VCGLR issued a Notice to Show Cause due to operational changes to the fully-automated tables that meant players could not set daily loss or time limits</li> <li>half the fully-automated tables continued operating on the gaming floor six hours after they were closed in SYCO (the Crown Melbourne electronic customer relationship management system).</li> </ul>

# AML/CTF

7 This table sets out the actual or potential breaches of the AML/CTF Act, AML/CTF Rules, FTR Act, Casino Control Act or the Management Agreement Act.

Category or type	Number disclosed	Examples
General AML and CTF-related compliance breaches (actual or potential) leading to increased risk of money laundering and terrorism financing	At least 300	Instances where:  AUSTRAC identified numerous compliance issues relating to AML/CTF Rules during an investigation  there were failures in the transaction aggregation process, leading to transactions not being monitored correctly  SMRs contained incomplete data and information  threshold reports contained expired identification numbers  in relation to IFTIs, there were:  failures to report IFTIs on time  incorrect IFTIs submitted to AUSTRAC  failures to report IFTIs to AUSTRAC at all  in relation to customer identification, there were:  failures to obtain residential addresses  the use of GPO boxes instead of residential addresses  the acceptance of expired identification from customers related to threshold transactions  failures to sight any identification at all  failures to verify identification  there was inappropriate disclosure of information to legal advisors and other external persons (including to Mr James Packer)  there were failures to report suspicious matters and transactions  there were failures to implement adequate controls relating to AML/CTF risks in the Sun City Room, including in relation to cash buy-ins and dealings with junket operators

Category or type	Number disclosed	Examples
		<ul> <li>employees made remarks relating to money laundering and Crown staff being aware that it occurs</li> <li>there was a failure to input all required information into SYCO</li> <li>there were deficiencies in Crown risk assessments relating to AML, CTF and junket operations.</li> </ul>
Junket due diligence process failures	At least 30	<ul> <li>Instances where:         <ul> <li>there were shortcomings in the junket due diligence process and person of interest processes that led to breaches relating to transaction monitoring and AML/CTF breaches</li> <li>there was a failure to notify the VCGLR of 15 non-resident junket operators over a seven-year period.</li> </ul> </li> </ul>
Failure to ensure all employees are fully trained in AML/CTF	At least 30	An internal audit that identified that nine Crown Melbourne employees failed to complete AML/CTF Program training on time.
Failure to monitor bank deposits into the Southbank account	Multiple from August 2013 to December 2019	Instances where money was deposited into the Southbank account without appropriate monitoring.

# Minor regulatory and miscellaneous breaches

This table sets out actual or potential breaches of the Gambling Regulation Act, Gambling Regulations, Casino Control Act or the Management Agreement Act. It also includes actual or potential breaches of Crown Melbourne's ICSs, Standard Operating Procedures, Casino Licence and the Casino Agreement.

Category or type	Number disclosed	Examples
Non-compliance with controls relating to the junket program or premium player program	At least 44	<ul> <li>Crown Melbourne often consolidated multiple instances of procedural non-compliance, for example:</li> <li>failure to sign and/or date Junket Program Agreements or Premium Player Program Agreements</li> <li>incomplete player details in relevant agreements</li> <li>discrepancies between players recorded in SYCO and those recorded in the relevant agreements</li> <li>insufficient player documentation in SYCO (for example, failure to record a player's residential address or scan a driver's licence).</li> </ul>
Failure to provide information to the regulator	At least 14	<ul> <li>Instances where Crown Melbourne failed to notify the regulator of certain matters as required, for example:</li> <li>where a person had become an associate of Crown Melbourne</li> <li>where a licensed employee had ceased working at the casino</li> <li>where Crown Melbourne had commenced dealings with a junket operator</li> <li>where Crown Melbourne failed to produce documents to the regulator within the required timeframe and produced the documents late.</li> </ul>
Non-compliance with Crown Melbourne internal controls	At least 11	<ul> <li>Instances of non-compliance with Crown Melbourne internal controls and administrative and accounting procedures, for example:</li> <li>writing off bad debts without permission from the regulator</li> <li>employees failing to sign various forms relating to inventory or deposits</li> <li>inadvertently leaving Automated Transaction Station drop boxes (locked containers that hold cash or chips) on the floor for two days.</li> </ul>

Category or type	Number disclosed	Examples
Advertising or promotion non-compliance	At least eight	<ul> <li>Instances relating to provisions regulating gaming advertising or the conduct of promotions, for example:</li> <li>airing an advertisement that included a reference to gaming</li> <li>displaying gaming machine advertisements outside of the casino boundary</li> <li>sending gaming machine material to members who did not consent to receiving gaming machine advertising</li> <li>conducting a competition otherwise than in accordance with how Crown Melbourne advertised the conduct of the promotion.</li> </ul>
Other	At least 20	<ul> <li>Instances involving:</li> <li>player information posters being obscured or not visible in the gaming area</li> <li>late payment of penalty interest on gambling taxes</li> <li>giving the incorrect amount of front money to a patron</li> <li>informing the regulator that a bank account in Thailand had been closed when it had in fact remained open</li> <li>failure to file the 2018 Annual Financial Report by the due date.</li> <li>Crown Melbourne also noted that it had already self-reported various other matters to relevant agencies, including:</li> <li>underpayment of wages to certain employees</li> <li>failure to make superannuation guarantee contribution payments for a number of sole proprietor contractors</li> <li>failure to notify Australian Border Force of matters concerning employees holding Temporary Work (Skilled) visas.</li> </ul>

## **Endnotes**

- Exhibit RC0148 Letter from Solicitors Assisting to the Directors, Crown Melbourne, 10 March 2021.
- 2 Exhibit RC0149 Letter from Allens Linklaters to Solicitors Assisting, 24 March 2021; Exhibit RC0149 Letter from Allens Linklaters to Solicitors Assisting, 24 March 2021, Annexure a; Exhibit RC0149 Letter from Allens Linklaters to Solicitors Assisting, 24 March 2021, Annexure b; Exhibit RC0244 Letter from Allens Linklaters to Solicitors Assisting, 21 April 2021; Exhibit RC0244 Letter from Allens Linklaters to Solicitors Assisting, 21 April 2021, Annexure a; Exhibit RC0244 Letter from Allens Linklaters to Solicitors Assisting, 21 April 2021, Annexure b; Exhibit RC0244 Letter from Allens Linklaters to Solicitors Assisting, 21 April 2021, Annexure c; Exhibit RC1562 Email from Allens Linklaters to Solicitors Assisting, 19 May 2021; Exhibit RC1562 Email from Allens Linklaters to Solicitors Assisting, 19 May 2021, Annexure a; Exhibit RC1563 Letter from Allens Linklaters to Solicitors Assisting, 18 June 2021; Exhibit RC1564 Letter from Allens Linklaters to Solicitors Assisting, 23 June 2021.
- 3 Exhibit RC0244 Letter from Allens Linklaters to Solicitors Assisting, 21 April 2021, 2.

### APPENDIX H

# Suitability and public interest

# Previous legal advice or consideration of the term 'suitability'

- When the regulator conducted its First triennial review of the Casino Operator and Licence in 1997 (First Review), it sought advice from Ms Susan Crennan, QC (as her Honour then was) on the proper construction of terms used in section 9 of the Casino Control Act. As these terms and their definitions have not been amended since, the advice may be considered relevant.
- 2 Ms Crennan, QC provided the following advice:

### [Suitable person]

There are no mandatory considerations set out in section 25 but a 'suitable person to be concerned in or associated with the management and operation of a casino' (s. 9) and 'a suitable person to continue to hold the casino licence' (s. 25) must give rise to very similar if not identical considerations.

#### Suitability

... 'Suitable person to continue to hold the casino licence' in section 25, in my opinion, should similarly be construed to mean a person who is both 'fit and proper' and 'operationally capable' ...

Accordingly any matter relevant to a person being:

- a. fit and proper; and
- b. operationally capable;

may be taken into account in determining whether a person is a 'suitable person to continue to hold the casino licence' under the provisions of section 25. ... There is no other test as such, as to whether persons meet the standards however guidance from the cases would suggest that on a proper analysis the basic test is whether the [regulator] achieves the requisite satisfaction that there is nothing which reflects adversely on the operator's fitness to operate a casino (citations omitted).

•••

### **Good repute**

Advice has already been provided by me on 26 May 1993 as to construction to be given to 'good repute' in section 9(2) of the [Casino Control] Act. On that occasion I opined that 'good repute' in section 9(2) should be construed widely, not narrowly, and would include 'reputation in fact and reputation in merit' the distinction between those being further explained in that advice.

...

#### Character

The word has as one of it[s] ordinary meanings 'the mental or moral constitution of a person' (Oxford English Dictionary [citation omitted]). To say a person has 'character' or 'good character' implies 'good repute' so there is some degree of overlap. Equally 'bad character' can imply 'bad repute'.

#### Honesty

Because 'honest' and 'dishonest' are descriptions of conduct frequently used in the law and in the case of 'dishonest' particularly in the criminal law, 'honesty' is a word possibly narrower and clearer that the words 'character' and 'integrity'. 'Honesty', in the prevailing modern sense of the word, means 'uprightness of disposition and conduct; integrity; truthfulness; straightforwardness; the quality opposed to lying, cheating or stealing' (Oxford English Dictionary [citation omitted]).

### Integrity

Integrity means 'freedom from moral corruption'. It is a synonym for honesty. It carries with it the connotation of truthfulness and fair dealing (Oxford English Dictionary [citation omitted]).

### [Reputation]

Innuendo and rumour are matters which go to 'reputation in fact' as described in my earlier advice. To ensure that real (or actual) issues are not clouded by innuendo and rumour it is appropriate to investigate innuendo and rumour to see whether such have a basis in fact. In the absence of a proper factual basis, innuendo and rumour cannot in fairness be given any significant weight

Mr David Habersberger, QC (as his Honour then was) separately advised the regulator on the extent of the investigation required by section 25 of the Casino Control Act. With respect to the suitability review, he advised:

> It is clear that the first limb of s. 25(1) requires an investigation of the suitability of the casino operator, which includes its associates. This is a similar test to that laid down in s. 9(1) of the [Casino Control] Act, as amplified by the particular matters listed in s. 9(2), and would have been applied by the [regulator] before it granted Crown Casino Ltd ('Crown') its casino licence in November 1993. The first limb of [s. 25(1)] is also virtually the same test as that specified in s. 20(1)(d) as a ground for disciplinary action. In essence, one could say that s. 25(1)(a) is a further attempt at 'ensuring that the management ... of casinos remains free from criminal influence or exploitation' (see 1(a) of the [Casino Control] Act).

Therefore, in my opinion, the [regulator] need to go no further than s. 9(2)(a) to (g) for guidance as to what matters it would have to consider in forming

the opinion required under s. 25(1)(a)—whether the casino operator and its associates were still persons of good repute, having regard to character, honesty and integrity, whether they were still persons of sound and stable financial background, whether the casino operator still had a satisfactory ownership, trust or corporate structure, whether it still had adequate financial resources and sufficiently experienced staff, whether its business ability was such that it was maintaining a successful casino, whether there were any business associations with any persons or bodies who were not of good repute or who had undesirable or unsatisfactory financial resources and whether all relevant officers were still suitable persons to act in their particular capacities.<sup>2</sup>

In the Fifth Review of the Casino Operator and Licence, the VCGLR referred to advice that had been previously received as to the meaning of 'suitable person', which stated:

The expression 'suitable person' is not defined in the Casino Control Act.

The VCGLR and its predecessors have obtained advice from Senior Counsel that, in light of the objectives of the Casino Control Act, the task of determining suitability for a section 25 casino review is akin to determining suitability for approval of an application for a casino licence.<sup>3</sup>

5 The Bergin Report also considered the term 'suitability', noting:

Previous reports to the [ILGA] have explored the expression 'good repute having regard to character, honesty and integrity'. Comparisons have been made with tests of fitness and propriety to hold certain licences, and requirements to be of 'good fame and character'.

Reference has also been made to judicial observations in relation to the concepts of 'character' as it 'provides an indication of likely future conduct' and of 'reputation' as it 'provides an indication of public perception as to the likely future conduct' of a person. It has also been observed that findings as to character and reputation 'may be sufficient' to ground a conclusion that a person is not 'fit and proper to undertake activities'. The analysis of the concept of character can become somewhat circular with reference to a person's 'nature and good character'. However, it is clear that a person of good character would possess 'high standards of conduct' and act in accordance with those standards under pressure.

Some observations by Regulators in other jurisdictions when considering a casino operator's 'integrity, honesty, good character and reputation' are of assistance.

In 1981 the New Jersey Casino Control Commission made the following observation in relation to the assessment of 'character' in the context of individuals:

We find this a most difficult task for several reasons. First, 'character' is an elusive concept which defies precise definition. Next, we can know the character of another only indirectly, but most clearly through his words and deeds. Finally, the character of a person is neither uniform nor immutable.

Nevertheless, we conceive character to be the sum total of an individual's attributes, the thread of intention, good or bad, that weaves its way through the experience of a lifetime.

In 2018 the Massachusetts Gaming Commission observed that when assessing the suitability of a corporate casino operator, it must be remembered that 'the corporate entity itself is made up of individuals and has no independent character or morality standing alone'. The Commission referred to the remarks in Merrimack College v KPMG LLP ... that:

Where the plaintiff is an organization that can only act through its employees, its moral responsibility is measured by the conduct of those who lead the organisation. Thus, where the plaintiff is a corporation ... we 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.

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.' However, this would only be possible if the company could 'isolate the wrong done and the wrongdoers from the remaining corporate personnel'. 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.'

A person is of 'good repute' if they have a reputation or are known to be a good person. A person may have flaws and may make mistakes but still have a reputation or be known as a good person. They may be of 'good repute' because they are honest; because they have integrity; and because their character is not adversely affected by the particular mistakes they have made.

In the context of this Inquiry good repute or reputation is to be judged by reference to matters including character, honesty and integrity. Although there was some debate about whether the assessment of good repute includes consideration of matters other than character, honesty and integrity, it is necessary in assessing character to take an 'holistic view' of both the Licensee and Crown including the assessment of the integrity of corporate governance and risk management structures and the adherence to adopted policies and procedures.4

### Public interest

In conducting its First Review, the VCGA also sought advice from Mr Habersberger, QC on the extent of the investigation required by section 25 of the Casino Control Act. Mr Habersberger, QC advised:

Understanding what is required by the second limb of s.25(1) is rather more difficult [than understanding the first limb of s.25(1)]. A number of points can be made concerning its construction. First, the phrases 'public interest' or 'interest of the public' are defined for the purposes of the [Casino Control] Act in s.3(1) thereof as meaning:

[the] public interest or interest of the public having regard to the creation and maintenance of public confidence and trust in the credibility, integrity and stability of casino operations.

In my opinion, this definition of the phrase 'public interest' is quite restricted compared to what it might have been thought to encompass without the enforced statutory guidance. It is limited to certain aspects of 'casino operations' rather than a broader approach to the question of the 'public interest'.

Secondly, there can be no doubt that the subject matter of s.25(1)(b), whatever that may be, is not the same as that in s.25(1)(a) of the [Casino Control] Act.

Thirdly, the distinction between casino operator and casino operations is to be found in the [Casino Control] Act itself. Part 3 of the [Casino Control] Act is concerned with the 'Supervision and Control of Casino Operators', whereas Part 5 deals with 'Casino Operations'.

Next, the question for the [regulator] under the second limb of s.25(1) is whether 'the casino licence' should continue in force, that is the licence of a particular casino operator, in this case, Crown. It is not a direction to the [regulator] to embark on the task of deciding whether or not there should be any, or any particular number of, casinos in Victoria. Moreover, the question is whether the licence 'should continue in force', that is, whether or not there should be a licence.5

Ms Crennan, QC also commented on the public interest requirement in section 25(1) of the Casino Control Act in her advice to the VCGA in the First Review. She advised:

> Community standards whether consensual or legal are relevant as guidelines or specific standards of good repute, character, honesty or integrity. It is Australian standards i.e. [those] recognised by the Australian community which are relevant. 'Public interest' which is relevant to section 25(2) is defined in section 3 and includes as a legitimate object of public interest 'public confidence and trust in the credibility, integrity and stability of casino operations' must refer to the confidence of the public in Victoria. Arguably the standards imposed under the Victorian and New South Wales legislation may be higher in some respects than standards imposed under other Australian legislation bearing in mind the derivation from the New Jersey model

of legislation. See for example Darling Casino v. New South Wales Casino Control Authority and Ors., an unreported decision of the High Court dated 4 April 1997 at pp.26–32. Be that as it may and I have not made any detailed comparisons for the purposes of this advice, it seems to me the public confidence referred to in section 3 must be a reference to local confidence which in turn will be grounded in local community standards. Standards may well be different in different countries and cultures but I do not deal with that further having regard to what I have said about the relevant community standards.6

- In the Fifth Review, the VCGLR noted that senior counsel's advice on the definition of the phrase 'public interest' is:
  - ... quite restricted compared to what it might have been thought to encompass without the enforced statutory guidance. It is limited to certain aspects of 'casino operations' rather than a broader approach to the question of the 'public interest'.7

# **Endnotes**

- VCGA, Second Triennial Review of the Casino Operator and Licence (Report, June 2000) 49-53.
- 2 VCGA, Second Triennial Review of the Casino Operator and Licence (Report, June 2000) 54-5.
- 3 Exhibit RC0013 VCGLR Fifth Review of the Casino Operator and Licence, June 2013, 43.
- 4 Exhibit RC0970 Bergin Report Volume 2, 1 February 2021, 337–8 [11]–[18] (citations omitted).
- 5 VCGA, First Triennial Review of the Casino Operator and Licence (Report, June 1997) 5.
- VCGA, Second Triennial Review of the Casino Operator and Licence (Report, June 2000) 52–3. 6
- 7 Exhibit RC0013 VCGLR Fifth Review of the Casino Operator and Licence, June 2013, 141.



### APPENDIX I

# Special Manager requirements

### General

- The Special Manager must consider:
  - a whether there is any evidence of maladministration
  - b whether there is any evidence of illegal or improper conduct
  - c whether Crown Melbourne has engaged in conduct that may give rise to a material contravention of any law
  - d the conduct of the casino operations generally since the conclusion of the Commission.
- The Special Manager's report must:
  - a contain details of each direction given by the Special Manager
  - b state whether the direction was complied with
  - c state whether Crown Melbourne's directors and executives cooperated with the Special Manager in the performance of its functions.

## Risk management

- The Special Manager is to evaluate whether:
  - a Crown Melbourne has conducted a suitable 'root cause' analysis into the failures outlined in the Report and in the Report of this Commission
  - b Crown Melbourne has implemented, completely and effectively, the recommendations made by Mr Peter Deans in his Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited1
  - c an external review has been undertaken of the robustness and effectiveness of Crown Melbourne's risk management framework, systems and processes, and their appropriateness to Crown Melbourne as a casino operator, and whether any recommendations made as a result of that review have been implemented completely and effectively.

## Culture

The Special Manager is to determine whether Deloitte has completed Phase 4 of its Project Darwin and is to evaluate the implementation and effectiveness of Crown's cultural reform program.

# Anti-money laundering/counter-terrorism financing

### External report recommendations

- The Special Manager is to evaluate whether there has been effective implementation of the recommendations set out in the following reports:
  - a **Promontory Phase 1 Report** dated 24 May 2021 and titled 'Phase 1: AML Vulnerability Assessment'. The recommendations are set out in section 4.
  - b **Promontory Phase 2 Draft Report** dated 20 June 2021 and titled 'Strategic Capability Assessment'. This report sets out a forward-looking strategic assessment and articulation of a 'target state model' for Crown Resorts to achieve in order to manage financial crime risk.
    - The Special Manager is to assess whether Crown's financial crime workforce numbers, structures, roles and functions correspond with the 'target state' articulated in this report.
  - c Deloitte Phase 1 Report dated 26 March 2021 and titled 'Assessment of Patron Account Controls'. The recommendations are summarised in a report dated 13 April 2021 titled 'Phase 1: Assessment of Patron Account Controls—Assessment of Crown's Response'.
  - d Deloitte Phase 2 Report concerning a Forensic Review of Crown's Patron Accounts. The details of the Phase 2 Forensic Review are set out in Deloitte's engagement letter dated 22 February 2021.<sup>6</sup>
  - e **Deloitte Phase 3 Report** concerning a Further Controls Assessment. The details of the Further Controls Assessment are set out in Deloitte's engagement letter dated 22 February 2021.<sup>7</sup>
  - f Deloitte Report on Hotel Card Transactions Review. The details of the Hotel Card Transaction Review are set out in a document dated 8 July 2021 and titled 'Forensic Review: Updated Timings for Phase 2 and 3 of Forensic Review (including HCT matter)'.8
  - g Initialism Transaction Monitoring Review dated June 2021.9 The recommendations are on pages 6, 14, 28–9, 37–8 and 44.

## McGrathNicol report

- 6 McGrathNicol's Forensic Review dated July 2021 identified preliminary indications of 'structuring' and 'parking' (being money laundering techniques) on Crown Melbourne's DAB accounts.<sup>10</sup>
- 7 McGrathNicol recommended further investigation of those transactions and the suspected structuring and parking.
- The Special Manager is to determine whether the further investigation has occurred and, if so, whether any changes to Crown's AML/CTF Program are necessary and have been implemented.

#### Crown's Financial Crime and Compliance Change Program

- Crown's Financial Crime and Compliance Change Program (FCCCP) is set out in a document prepared by Mr Steven Blackburn, Crown's Group Chief Compliance and Financial Crime Officer, dated 24 May 2021.11 The FCCCP focuses on 10 key areas for uplifting Crown's financial crime and compliance performance; namely people, risk appetite, frameworks, risk assessments, reporting and oversight, assurance, training, roles and responsibilities, customers and controls, and data and systems.
- 10 The Special Manager is to evaluate whether all the recommended reforms set out in the FCCCP (and any additions to that program) have been effectively implemented.

#### Other external expert work

- The Special Manager is to evaluate whether there has been effective implementation of any recommendation, whether or not set out in a report, in respect of the following work:
  - a PwC Australia's work for Crown concerning an uplift in Crown's SMR reporting, TTR reporting and/or IFTI reporting;
  - b Allens Linklaters' work for Crown concerning an uplift in Crown's SMR reporting, TTR reporting and/or IFTI reporting; and
  - c an enterprise-wide risk assessment.

## Resourcing

- 12 The Special Manager is to assess the adequacy of Crown Melbourne's financial crime budget.
- The Special Manager is to assess the adequacy of the staff numbers in the financial crime group.

## AML/CTF Program

- 14 The Special Manager is to evaluate whether the Crown Melbourne board is providing effective and meaningful oversight of its AML/CTF Program.
- 15 The Special Manager is to assess whether Crown Melbourne is complying with its AML/CTF Program.
- 16 The Special Manager is to review any internal or external audits conducted on any part of Crown Melbourne's AML/CTF Program and evaluate whether any non-compliance identified has been remedied.

## Responsible service of gambling

- 17 The Special Manager is to assess Crown Melbourne's responsible service of gambling program. This assessment should include examining:
  - a the effectiveness of Crown Melbourne's staff training in the responsible service of gambling;
  - b the adequacy of the responsible service of gambling staff numbers;
  - c the adequacy of funding of Crown Melbourne's responsible service of gambling program;
  - d the effectiveness of the services provided by the responsible service of gambling staff;
  - e the effectiveness of Crown Melbourne's Self-Exclusion Program and related programs (for example Time Out);
  - f the effectiveness of the responsible service of gambling 'enhancements' approved in May 2021;<sup>12</sup> and
  - g whether Crown Melbourne complies with its Gambling Code and Play Periods Policy.

# Compliance with statutory and contractual obligations

18 The Special Manager is to review whether Crown Melbourne complies with its obligations under the Casino Control Act, the Gambling Regulation Act, the Casino Agreement and the Management Agreement.

## **Definitions**

- 19 The following definitions apply to the terms in this document:
  - a AML/CTF means Anti-money laundering and counter-terrorism financing.
  - b Casino Agreement means the agreement between the regulator (then known as the Victorian Casino Control Authority) and Crown Melbourne (then known as Crown Casino) on 21 September 1993 as amended from time to time.
  - c Crown Melbourne means Crown Melbourne Limited.
  - d DAB means deposit account balance.
  - e IFTI means international funds transfer instruction.
  - f Management Agreement means the agreement between the State and Crown Melbourne (then known as Crown Casino) on 20 April 1993 as amended from time to time.
  - g SMR means suspicious matter report.
  - h TTR means transaction threshold report.

Whenever the Special Manager is required to report on the implementation of recommendations or reforms, the Special Manager should also report on the implementation of any variation to those recommendations or reforms.

## **Endnotes**

- Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021.
- Exhibit RC0100 Promontory Phase 1: AML Vulnerability Assessment, 24 May 2021. 2
- 3 Exhibit RC0397 Promontory Phase 2: Strategic Capability Assessment Report, 20 June 2021.
- Exhibit RC0084 Statement of Lisa Dobbin, 16 April 2021, Annexure e.
- 5 Exhibit RC0084 Statement of Lisa Dobbin, 16 April 2021, Annexure f.
- 6 Exhibit RC0084 Statement of Lisa Dobbin, 16 April 2021, Annexure a; see in particular Appendix 1. The terms of the engagement were varied by letter dated 19 March 2021: Exhibit RC0084 Statement of Lisa Dobbin, 16 April 2021, Annexure b. See also the detail in Exhibit RC0476 Deloitte Crown Resorts Updated Timing for Phase 2 and 3 of Forensic Review, 30 June 2021.
- 7 Exhibit RC0084 Statement of Lisa Dobbin, 16 April 2021, Annexure a; see in particular Appendix 1. The terms of the engagement were varied by letter dated 19 March 2021: Exhibit RC0084 Statement of Lisa Dobbin, 16 April 2021, Annexure b.
- 8 See Exhibit RC0476 Deloitte Crown Resorts Updated Timing for Phase 2 and 3 of Forensic Review, 30 June 2021 for details on the scope of this work and report.
- 9 Exhibit RC1351 Initialism Transaction Monitoring Review Crown Resorts, June 2021.
- Exhibit RC1460 McGrathNichol Forensic Review AML/CTF Report, 19 July 2021. 10
- 11 Exhibit RC0311 Further Supplementary Statement of Steven Blackburn, 7 June 2021, Annexure a.
- Exhibit RC0696 Minutes of Crown Resorts board meeting, 24 May 2021; Exhibit RC0122 Letter from Allens 12 Linklaters to Solicitors Assisting, 26 May 2021.



#### APPENDIX J

# Best practice in gambling regulation: international comparison

## Introduction

- 1 This appendix will review the regulation of casinos in a number of jurisdictions. Particular attention will be given to the different approaches taken to:
  - the type and role of the regulator
  - · the enforcement powers conferred on the regulator
  - AML
  - junkets
  - · assessing the suitability of the casino operator.

## Type and role of regulator

- 2 Governments regulate casino gaming through statutory authorities that have powers to enforce gaming legislation and oversee the operations of the casino.
- 3 There are three categories of statutory authorities:
  - · a standalone authority
  - · a general gaming authority
  - · a mixed licensing authority.
- 4 New Jersey and Singapore have standalone casino regulators: the New Jersey Casino Control Commission (NJCCC) and the Singaporean CRA. These bodies oversee aggressive regulatory regimes.<sup>1</sup>
- The NJCCC has broad-ranging powers. It can hear and determine applications for a casino licence, make regulations with which a casino operator must comply and work with the Division of Gaming Enforcement (Division).<sup>2</sup> The Division is best described as the investigatory and disciplinary arm of the casino regulatory system in New Jersey.<sup>3</sup> It is responsible for enforcing the *Casino Control Act 2021* (New Jersey) and the regulations made under it.<sup>4</sup> The Division also conducts continuing reviews of casino operations through on-site observation and other reviews.<sup>5</sup>
- The rationale for New Jersey's standalone regulator and its strict regulatory approach can be traced back to the legalisation of casinos in that state in the 1970s. In 1974, New Jersey voters rejected a ballot initiative to legalise casino gambling statewide. In 1976, voters approved a more restrictive referendum to legalise casino gaming in Atlantic City. The objective was to revitalise Atlantic City and provide economic support for older people and people with disability through taxation.<sup>6</sup>

New Jersey policymakers were keen to restrict the influence of gaming and ensure tight regulations around the operation of casinos.<sup>7</sup> This approach was described by Professor Anthony Cabot in evidence given at the Bergin Inquiry. He said:

> New Jersey—I think there was a bit of hostility towards the gaming industry at the state level when it first started and they took a position that they were going to be the most rigid regulatory agency in the world at the time. And so they came out and started regulating the industry in a fairly draconian fashion where they tried to regulate virtually everything down to, you know, the colour of the carpet.8

- In contrast, Nevada's approach to casino regulation has been described as 'hands off'.9 Nonetheless its focus, the suitability of the operator, has been credited as successfully eliminating the influence of organised crime.<sup>10</sup>
- Nevada has two separate regulatory agencies: the Nevada Gaming Control Board and the Nevada Gaming Commission. The Nevada Gaming Control Board is a full-time regulatory agency that oversees the gaming industry in the state.11 It has several divisions, including an investigations unit that conducts investigations related to casino licence applications and assesses suitability.<sup>12</sup> The Nevada Gaming Commission is a part-time body that hears appeals from decisions of the Nevada Gaming Control Board and has original jurisdiction in some licensing matters.13
- 10 Most other jurisdictions have a single gaming regulator with responsibility for regulating casinos, electronic and sports gaming, and lotteries. For example, in New Zealand the Gambling Commission oversees larger-scale lotteries, gaming machines and casinos.<sup>14</sup> It determines casino licence applications as well as appeals relating to licences to operate gaming machine venues and gaming activities such as larger-scale lotteries and raffles. 15 Single gaming regulators also exist in Massachusetts (the Massachusetts Gaming Commission (MGC)) and the United Kingdom (Gambling Commission).
- 11 Alberta has a single mixed licensing regulator, the Alberta Gaming, Liquor and Cannabis Commission (AGLC). The AGLC administers the Gaming, Liquor and Cannabis Act 2000 (Alberta), including the licensing of the sale and distribution of liquor and cannabis.<sup>16</sup>

## Enforcement powers

- 12 All regulators have investigative and disciplinary powers that are necessary to enforce the local gaming statutes and regulations. The powers vary in scope.
- 13 Several regulators have the power to enter a casino to observe whether the operator is conducting its operations in accordance with the regulations. In Alberta, a licensed inspector from the AGLC may enter any gaming premises to ensure compliance with the Alberta Gaming, Liquor and Cannabis Act.<sup>17</sup> The inspector is not required to give notice of an inspection. The only limitations are that the inspection must occur at a 'reasonable time', and the inspector must carry the required identification and present it on request to the owner or occupant of the premises being inspected.18

- 14 As an adjunct to an entry power, some regulators have powers to inspect and impound the books and records of a casino as well as gaming equipment. In New Jersey, the Division can, with the approval of the Division's director:
  - · inspect, examine and impound any gaming devices and equipment
  - inspect, examine and audit any books, records and documents relating to a casino operator's operations
  - seize, impound or take physical control of any book, record, ledger, game, device, cash box and its contents, counting room or its equipment, or casino operations.<sup>19</sup>
- Some jurisdictions permit the regulator to demand the production of documents or the provision of information. For example, in New Zealand, under the *Gambling Act 2003* (NZ), an inspector from the Gambling Commission may serve a notice on any person requiring them to provide or produce to the inspector any information, class of information or documents requested.<sup>20</sup>
- Other jurisdictions impose an obligation on the casino operator to cooperate with or be candid in their dealings with the regulator. For example, the New Jersey Casino Control Act requires 'each licensee or registrant, or applicant for a [licence] or registration ... [to] cooperate with the division in the performance of its duties'. The *Massachusetts General Laws 2020* (Massachusetts) criminalise both a lack of cooperation with, and making false statements to, the MGC. The penalty is a maximum of five years' imprisonment or a fine of USD25,000.
- 17 Cooperation and candour with the regulator are sometimes imposed through disciplinary powers. In Singapore, the CRA can take disciplinary action (which includes cancelling or suspending a licence) where the casino operator has failed to provide information that the Casino Control Act 2006 (Singapore) requires, or where the casino operator has knowingly or recklessly provided false or misleading information.<sup>22</sup> Similarly, in the United Kingdom, the Gambling Act 2005 (UK) authorises the Gambling Commission to revoke or suspend an operating licence, if the Commission believes that the operator has failed to cooperate with a statutory review process.<sup>23</sup>
- 18 Many jurisdictions in the United States of America classify their gaming or casino regulators as law enforcement agencies, and give them corresponding powers.
- In Massachusetts, the MGC has an Investigations and Enforcement Bureau. Its function is to maintain the integrity of the Massachusetts gaming industry.<sup>24</sup> The Massachusetts General Laws provide that members of the gaming enforcement unit of the State Police are to be assigned to the Bureau to investigate gaming violations by a licensee or any activity at a gaming establishment.<sup>25</sup> In order to formalise and strengthen the partnership contemplated in the Massachusetts General Laws, the MGC and the State Police have entered into a memorandum of understanding.<sup>26</sup> This memorandum deals with various matters such as the manner in which State Police are deployed to work with the Bureau,<sup>27</sup> and the obligation of the MGC to pay the salaries of State Police personnel who are deployed to the Bureau in certain circumstances.<sup>28</sup>
- 20 The Massachusetts General Laws also enable the MGC to have a permanent presence at casinos in order to exercise 'its oversight responsibilities with respect to gaming'.<sup>29</sup>

- 21 In New Jersey, there is significant cooperation between the Division and the Casino Gaming Bureau of the New Jersey State Police.<sup>30</sup> The Casino Investigations Unit, a division of the Casino Gaming Bureau, has authority to prosecute offences under the New Jersey Casino Control Act and has a permanent presence at all 12 casinos in Atlantic City.<sup>31</sup>
- 22 Regulators may rely on notification provisions to assist in enforcement. In Alberta, the Casino Terms and Conditions and Operating Guidelines (Handbook) set out the conditions of a casino licence. One condition is that the casino operator must notify the AGLC immediately if any of its officers, shareholders, directors, owners or employees are charged with or convicted of an offence under certain nominated statutes, including the *Criminal Code 1985* (Canada) and the Alberta Gaming, Liquor and Cannabis Act.<sup>32</sup>

#### **AML**

- There are two principal approaches to managing the risks of money laundering through casinos.

  One method is by enacting separate legislation that imposes reporting obligations on casinos.
- 24 In the United States of America, Title 31 of the *Code of Federal Regulations 2021* (USA) requires casinos to:
  - develop and implement an AML program reasonably designed to assure and monitor compliance with the requirements set out in the relevant Federal laws
  - comply with specific record-keeping requirements with respect to each deposit of funds, account opened or line of credit extended
  - comply with the special information-sharing procedures to deter money laundering and terrorist activity
  - report any suspicious transactions relevant to possible violations of law or regulation to the Financial Crimes Enforcement Network.<sup>33</sup>
- 25 The other approach, which is adopted in Alberta and the United Kingdom, is to require casinos to take certain AML action as a condition of the casino licence. In Alberta, the AGLC is a reporting entity under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act 2000* (Canada).<sup>34</sup> In order for casinos to fulfil their obligations, the Handbook sets out requirements that each casino must meet in order to combat money laundering. These include:
  - a requirement that all registered gaming workers complete an AML training course
  - an obligation to identify patrons for certain cash transactions
  - the appointment of AML administrators responsible for entering information into the AGLC AML database
  - the development and maintenance of internal facility policy and procedures relating to AML, where the AGLC's prior approval must be obtained for certain programs and procedures
  - a prohibition on conducting denomination exchanges in excess of CAD1,000 per patron on the same gaming day
  - tracking transactions that exceed CAD3,000.<sup>35</sup>

#### Junkets

- 26 There are two approaches to regulating junkets:
  - · a regulator-centric approach
  - · a casino-based approach.
- 27 A regulator-centric approach places the responsibility for regulating junkets with the regulator. Here, the regulator determines whether a junket can operate by assessing the suitability of the junket operator. Singapore and New Jersey have adopted this approach.<sup>36</sup>
- The New Jersey approach is less aggressive. The NJCCC licenses junkets as an 'ancillary casino service industry enterprise' and the junket operator is required to establish its good character, honesty and integrity.<sup>37</sup> The junket operator must also provide any financial information requested.<sup>38</sup> The NJCCC ensures that the casino operator properly supervises the junket operator by holding the casino operator responsible for any breaches of the Casino Control Act the junket operator or representative commits.<sup>39</sup>
- 29 In Singapore, the Casino Control Act strictly regulates the licensing of junket operators, which are referred to as IMAs.<sup>40</sup> The strict approach reflects the Singaporean government's concern about criminal influences on junkets and the opportunity to launder money through junket operations. On the introduction of the Casino Control Bill 2006 (Singapore), the Deputy Prime Minister said:

Because of the large sums of money transacted between the junket promoters, their clients and the casinos, it is important that junket promoters are well-regulated to ensure that the junkets do not provide a cover for crime syndicates to engage in criminal activities, such as money laundering. For this reason, clause 110 of the Bill shall require junket operators to be licensed before they can work with our casinos.<sup>41</sup>

- 30 The CRA must determine the suitability of an IMA.<sup>42</sup> In its assessment, the CRA takes into account whether the applicant is of good character, is financially sound and stable, has a satisfactory ownership structure, has business associations with persons not of good repute or has a record of non-compliance with legal or regulatory requirements.<sup>43</sup> The regulations require an IMA to keep extensive records of all players' names and identity information and to provide this information to the CRA on request.<sup>44</sup> The regime also requires the casino to certify that entering into an agreement with an IMA will not undermine the credibility, integrity and stability of casino operations.<sup>45</sup>
- 31 The casino-based approach is applied in some jurisdictions, including Nevada. Junket operators, known as 'independent agents', must register with the Nevada Gaming Control Board. And No probity assessment is required and a casino is not required to apply internal controls in engaging with the independent agent.
- 32 Nevada's approach may be explained by the unique nature of independent agents:
  - In relation to the internal control procedures at casinos, the contractual relationship is between the player and the casino.

- Independent agents cannot extend credit to junket players.
- Independent agents cannot take a share or commission of junket players' actual winnings and are paid based on a theoretical earning potential.<sup>48</sup>

## Suitability

- 33 All casino regulators assess the suitability of an applicant to operate a casino, along with the suitability of the applicant's associates. Public faith and confidence in casinos will only exist if those who are licensed to operate them, as well as their associates, are of good moral character.49
- 34 The requirement that a casino operator be a suitable person can be traced back to the decision of the Nevada Gaming Commission to adopt a suitability requirement in response to the rising influence of organised crime in the state. 50 The requirement was introduced in 1975 to ensure that a person could not operate a casino unless they:
  - · are of good character and reputation
  - have adequate business competence and experience.<sup>51</sup>
- 35 Most jurisdictions have suitability requirements that address three characteristics:
  - character and integrity
  - · financial ability
  - · management ability.
- 36 The character and integrity requirement takes a number of forms, but generally demands that an applicant (or an associate) be of good character. This is often regarded as someone who acts honestly and with integrity. Some jurisdictions, such as Alberta and Nevada, require the assessment to take into account previous criminal activity.52
- 37 The financial ability assessment examines the operator's soundness and the stability of its financial position. If a casino does not have sufficient financial support, it may turn to organised crime to help it operate.53
- 38 The rationale for the management ability requirement is the same as for financial stability. A casino operator and its associates should be capable of managing and operating a casino to avoid nefarious organisations infiltrating it due to financial or managerial incompetence.
- 39 The standard of proof required to meet the suitability requirement differs between jurisdictions. In Massachusetts, an applicant has the burden of proving suitability by clear and convincing evidence.54

#### Corporate structure

- 40 While suitability is a key requirement in granting a licence, some jurisdictions either require the applicant to have a specific corporate structure or impose limits on the ownership structure.
- 41 In Alberta, the *Gaming, Liquor and Cannabis Regulation 1996* (Alberta) provides that only a charitable or religious organisation can apply for certain gaming licences, and then only if the proceeds from gaming will be used for an approved charitable or religious purpose.<sup>55</sup> This reflects the history of gambling in Canada, where churches and other community organisations raised funds through raffles or lotteries.<sup>56</sup>
- 42 In Singapore, the Casino Control Act places various restrictions on share ownership. For example, it prevents substantial changes in shareholding within the first 10 years from the date on which a second site for a casino is designated under the Act.<sup>57</sup> Thus, the principal shareholder in a casino operator cannot, without approval of the CRA, reduce its shareholding to below 20 per cent of the issued capital during that period.<sup>58</sup> In addition, a person cannot, on or after the date a casino licence commences, acquire or enter into an arrangement to control more than 5 per cent of the issued shares in the casino operator without the Minister for Home Affairs' approval.<sup>59</sup> Additional approvals are required if a person seeks to control between 12 per cent and 20 per cent, or 20 per cent or more, of the issued shares.<sup>60</sup>
- 43 The reason for these restrictions was explained by the then Deputy Prime Minister of Singapore upon the introduction of the Singapore Casino Control Bill. He said that these restrictions were required so that the regulator and the Minister would be aware of significant shareholdings and could ensure that criminals could not infiltrate the operation of a casino by controlling an interest in a casino operator.<sup>61</sup>

## Associates and key personnel

- 44 Most jurisdictions assess the suitability of those who are associated with a casino operator. This sometimes includes certain employees.
- 45 An associate is usually defined as a person who is able to influence or control the casino operator. For example, the *Gaming Control Act 2021* (Nevada) describes an affiliate as someone who is 'directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, [the licensee]'.<sup>62</sup>
- 46 Under the New Zealand Gambling Act, a person is deemed to have 'significant influence in a casino' in circumstances that include if they:
  - are a director of the company that holds the casino licence; or
  - own shares (with certain voting rights), directly or indirectly, in the licence holder.<sup>63</sup>

- 47 Another way in which the suitability criterion is applied to those associated with a casino operator is by reference to the position they hold. In Alberta, the Handbook describes the 'key employees' who are subject to the suitability requirement.<sup>64</sup> They include senior management (such as the CEO or CFO), security management personnel and any person holding a position specified by the AGLC.65
- 48 The United Kingdom has a more generalist approach. In its Licensing and Policy Statement, the Gambling Commission simply notes that it will, through the process of determining licence applications, assess the suitability of those persons 'considered relevant to the application'.66 That will include persons exercising a function in connection with, or having an interest in, the licensed activities.67

## **Endnotes**

- The Singapore Government announced in 2020 that the Casino Regulatory Authority of Singapore will be regulated by a new generalist gaming agency, the Gambling Regulatory Authority. See 'Establishment of Gambling Regulatory Authority and Review of Gambling Laws', *Ministry of Home Affairs* (Web Page, 3 April 2020) <www.mha.gov.sg/mediaroom/press-releases/establishment-of-gambling-regulatory-authority-and-review-of-gambling-laws>.
- 2 Casino Control Act, NJ Stat Ann §§ 5:12-63(1), 5:12-69 (2021).
- 3 'Division of Gaming Enforcement', *State of New Jersey Department of Law & Public Safety* (Web Page) <a href="https://www.njoag.gov/about/divisions-and-offices/division-of-gaming-enforcement-home">www.njoag.gov/about/divisions-and-offices/division-of-gaming-enforcement-home</a>>.
- 4 Casino Control Act, NJ Stat Ann § 5:12-76a (2021).
- 5 Casino Control Act, NJ Stat Ann § 5:12-76k (2021).
- 6 Exhibit RC1618 Article: The Legalization and Control of Casino Gambling, 1980, 247 (n 14), 278 (n 174), 285.
- Melissa Rorie, 'Regulation of the Gaming Industry across Time and Place' (Research Paper, Center for Crime and Justice Policy, University of Nevada, Las Vegas, September 2017) 2.
- 8 Bergin Inquiry Transcript (Cabot), 25 February 2020, 115.
- 9 Melissa Rorie, 'Regulation of the Gaming Industry Across Time and Place' (Research Paper, Center for Crime and Justice Policy, University of Nevada, Las Vegas, September 2017) 3.
- Jennifer Roberts, Brett Abarbanel and Bo Bernhard, 'Practical Perspectives on Gambling Regulatory Processes for Study by Japan: Eliminating Organized Crime in Nevada Casinos' (Research Report, International Gaming Institute, University of Nevada, Las Vegas, 25 August 2017) 14–15.
- 'About Us', Nevada Gaming Control Board (Web Page) <a href="https://gaming.nv.gov/index.aspx?page=2">https://gaming.nv.gov/index.aspx?page=2</a>.

  This includes gaming machines, casinos and other types of wagering: see, eg, Gaming Control Act, Nev Rev Stat § 462.130 (2021).
- 12 'About Us', Nevada Gaming Control Board (Web Page) <a href="https://gaming.nv.gov/index.aspx?page=2">https://gaming.nv.gov/index.aspx?page=2</a>.
- 'Gaming Commission', *Nevada Gaming Control Board* (Web Page) <a href="https://gaming.nv.gov/index.aspx?page=3">https://gaming.nv.gov/index.aspx?page=3</a>.
- 14 Gambling Act 2003 (NZ) s 224.
- 15 Gambling Act 2003 (NZ) s 224. Section 10 of the Gambling Act 2003 (NZ) prohibits the licensing of any new casino venues.
- 16 Gaming, Liquor and Cannabis Act, RSA 2000, c G-1, s 3.
- 17 Gaming, Liquor and Cannabis Act, RSA 2000, c G-1, s 103(1).
- 18 Gaming, Liquor and Cannabis Act, RSA 2000, c G-1, ss 103(1), (3).
- 19 Casino Control Act, NJ Stat Ann § 5:12-79 (2021).
- 20 Gambling Act 2003 (NZ) s 333(1). This power is similar to the power conferred by s 10.4.10(1) of the Gambling Regulation Act 2003 (Vic).
- 21 Casino Control Act, NJ Stat Ann § 5:12-78 (2021).
- 22 Casino Control Act (Singapore, cap 33A, 2007 rev ed) s 54(1).
- 23 Gambling Act 2005 (UK) ss 119(1), 120(1)(c).
- 'Investigations and Enforcement Bureau', *MGC* (Web Page) <a href="https://massgaming.com/the-commission/inside-mgc/investigations-and-enforcement-bureau">https://massgaming.com/the-commission/inside-mgc/investigations-and-enforcement-bureau</a>.
- 25 Mass Gen Laws ch 22C §70, ch 23K § 6(c) (2020).
- 26 '2018 Community Mitigation Fund Specific Impact Grant Application', MGC (29 January 2018) <a href="https://massgaming.com/wp-content/uploads/Massachusetts-State-Police-2018-Specific-Impact-Grant-Application.pdf">https://massgaming.com/wp-content/uploads/Massachusetts-State-Police-2018-Specific-Impact-Grant-Application.pdf</a>.
- 27 Memorandum of Understanding by and between the MGC and the Massachusetts Department of State Police, dated 5 March 2014, cls 1–5 <a href="https://massgaming.com/wp-content/uploads/Massachusetts-State-Police-2018-Specific-Impact-Grant-Application.pdf">https://massgaming.com/wp-content/uploads/Massachusetts-State-Police-2018-Specific-Impact-Grant-Application.pdf</a>>.
- 28 Memorandum of Understanding by and between the MGC and the Massachusetts Department of State Police, dated 5 March 2014, cls 8c, 12 <a href="https://massgaming.com/wp-content/uploads/Massachusetts-State-Police-2018-Specific-Impact-Grant-Application.pdf">https://massgaming.com/wp-content/uploads/Massachusetts-State-Police-2018-Specific-Impact-Grant-Application.pdf</a>>.
- 29 Mass Gen Laws ch 23K § 4(20) (2020).

- 30 The website of the New Jersey State Police states that members of the Casino Investigations Unit (a division of the Casino Gaming Bureau) work in conjunction with the investigators from the Division. See 'Casino Investigations Unit', New Jersey State Police (Web Page) < www.njsp.org/division/investigations/casinoinvestigations.shtml>.
- 31 'Casino Investigations Unit', New Jersey State Police (Web Page) <www.njsp.org/division/investigations/ casino-investigations.shtml>.
- 32 AGLC, Casino Terms & Conditions and Operating Guidelines (22 June 2021) ss 4.11.2-4.11.3.
- 33 31 CFR §§ 1021.200-1021.210, 1021.320, 1021.400-1021.410, 1021.500-1021.540 (2021).
- 34 Proceeds of Crime (Money Laundering) and Terrorist Financing Act, RSC 2000, c 17; AGLC, Casino Terms & Conditions and Operating Guidelines (22 June 2021) s 18.2.1.
- 35 AGLC, Casino Terms & Conditions and Operating Guidelines (22 June 2021) ss 18.4.3–18.4.4, 18.4.8–18.4.9, 18.4.12, 18.5, 18.7–18.8.
- 36 Bergin Inquiry Transcript (Bromberg), 24 February 2020, 97.
- 37 Casino Control Act, NJ Stat Ann §§ 5:12-92a(3), c(4) (2021).
- 38 Casino Control Act, NJ Stat Ann § 5:12-92c(4) (2021).
- 39 Casino Control Act, NJ Stat Ann § 5:12-102g (2021).
- 40 Casino Control Act (Singapore, cap 33A, 2007 rev ed) s 110A.
- 41 Singapore, Parliamentary Debates, Legislature, 13 February 2006, 2323 (Mr Wong Kan Seng).
- 42 Casino Control Act (Singapore, cap 33A, 2007 rev ed) s 110B(2); Casino Control (Casino Marketing Arrangements) Regulations 2013 (Singapore) pt II.
- 43 Casino Control (Casino Marketing Arrangements) Regulations 2013 (Singapore) reg 13(1).
- 44 Casino Control (Casino Marketing Arrangements) Regulations 2013 (Singapore) reg 29.
- 45 Casino Control (Casino Marketing Arrangements) Regulations 2013 (Singapore) reg 7(1)(d)(i).
- 46 Regulations of the Nevada Gaming Commission and Nevada Gaming Control Board, current as of 21 August 2021, reg 25.020 <a href="https://gaming.nv.gov/modules/showdocument.aspx?documentid=15042">https://gaming.nv.gov/modules/showdocument.aspx?documentid=15042</a>>.
- 47 Regulations of the Nevada Gaming Commission and Nevada Gaming Control Board, current as of 21 August 2021, reg 25.020 <a href="https://gaming.nv.gov/modules/showdocument.aspx?documentid=15042">https://gaming.nv.gov/modules/showdocument.aspx?documentid=15042</a>>.
- 48 Bergin Inquiry Transcript (Cabot), 25 February 2020, 125-7.
- 49 See, eg, In the Matter of Wynn MA, LLC (MGC, 30 April 2019) 14; Bergin Inquiry Transcript (Rose), 25 February 2020. 170-1.
- Jennifer Roberts, Brett Abarbanel and Bo Bernhard, 'Practical Perspectives on Gambling Regulatory 50 Processes for Study by Japan: Eliminating Organized Crime in Nevada Casinos' (Research Report, International Gaming Institute, University of Nevada, Las Vegas, 25 August 2017) 7–10.
- 51 Jennifer Roberts, Brett Abarbanel and Bo Bernhard, 'Practical Perspectives on Gambling Regulatory Processes for Study by Japan: Eliminating Organized Crime in Nevada Casinos' (Research Report, International Gaming Institute, University of Nevada, Las Vegas, 25 August 2017) 10-11.
- 52 AGLC, Casino Terms & Conditions and Operating Guidelines (22 June 2021) s 4.9.10; Gaming Control Act, Nev Rev Stat § 463.170 (2021).
- 53 Bergin Inquiry Transcript (Rose), 25 February 2020, 175-6.
- 54 See discussion in In the Matter of Wynn MA, LLC (MGC, 30 April 2019) 14–16.
- 55 Gaming, Liquor and Cannabis Regulation (Alta Reg 143/1996) s 20(1).
- Jason Azmier and Robert Roach, 'The Ethics of Charitable Gambling: A Survey' (Research Report No 10, 56 Canada West Foundation, December 2000) 3.
- 57 Casino Control Act (Singapore, cap 33A, 2007 rev ed) s 42(1).
- 58 Casino Control Act (Singapore, cap 33A, 2007 rev ed) s 42(1)(a)(i).
- 59 Casino Control Act (Singapore, cap 33A, 2007 rev ed) s 65(1)(b).
- 60 Casino Control Act (Singapore, cap 33A, 2007 rev ed) ss 66(1)(a)-(b), 66(3).
- 61 Singapore, Parliamentary Debates, Legislature, 13 February 2006, 2323 (Mr Wong Kan Seng).
- 62 Gaming Control Act, Nev Rev Stat § 463.0133 (2021).
- 63 Gambling Act 2003 (NZ) s 7.

- 64 AGLC, Casino Terms & Conditions and Operating Guidelines (22 June 2021) s 4.9.10.
- AGLC, Casino Terms & Conditions and Operating Guidelines (22 June 2021) s 4.9.3. 65
- Gambling Commission, Licensing, Compliance and Enforcement under the Gambling Act 2005: Policy 66 Statement (June 2017) 8 [3.10].
- 67 Gambling Commission, Licensing, Compliance and Enforcement under the Gambling Act 2005: Policy Statement (June 2017) 8 [3.10].



#### APPENDIX K

# Best practice in gambling regulation: international comparison tables

Table 1: Alberta, Canada

Regulator	Alberta Gaming, Liquor and Cannabis Commission	
Overview of functions of the regulator	The functions of the AGLC under the Gaming, Liquor and Cannabis Act include to:  • issue gaming licences (including casino licences)	
	carry out gaming functions delegated to it under the Criminal Code     or conferred on it by the Alberta Gaming, Liquor and Cannabis Act     generate revenue for the Covernment of Alberta.	
	generate revenue for the Government of Alberta.	
Obligations to cooperate with the regulator	Licensees and gaming employees must cooperate fully with AGLC inspectors and police officers attending at a casino. Licensees must, on the request of an inspector or the AGLC:	
	provide materials (for example, records and documents) and provide a place where they may be inspected, audited, examined or copied  assist in carrying out an inspection.	
	assist in carrying out an inspection.	
Statutory obligations relating to AML	Licensees must implement certain procedures if money laundering occurs or is suspected to have occurred. Specific AML requirements apply, including employee training and certification, verification of patron identity and reporting of certain transactions.	
Key persons	Key persons subject to oversight include:	
subject to regulatory oversight	<ul> <li>employees of an applicant for a casino licence who exercise influence or control over day-to-day operations or decision making, or who have authority to hire or terminate the employment of registered gaming workers</li> </ul>	
	<ul> <li>associates of an applicant or licensee (including spouses, partners, persons with financial interests in the applicant or licensee, and corporations affiliated with the applicant or licensee).</li> </ul>	
Applicable tests or	The AGLC may terminate or refuse to issue a casino licence if satisfied that any of the applicant's key employees, associates or connected entities:	
standards relating to key persons	<ul> <li>have not acted or may not act in accordance with the law, with honesty and integrity or in the public interest</li> </ul>	
	<ul> <li>have a background, reputation or associations that may result in adverse publicity for the Alberta gaming industry</li> </ul>	
	<ul> <li>have, within the five years prior to being eligible for a casino licence, contravened relevant gaming legislation, regulations or licence conditions.</li> </ul>	

Table 2: Massachusetts, United States of America

Regulator	Massachusetts Gaming Commission
Overview of functions of the regulator	<ul> <li>The functions of the MGC under the Massachusetts General Laws include to:</li> <li>determine applications for gaming licences and gaming employee licences</li> <li>monitor licensees and other persons having a material involvement with a licensee</li> <li>gather facts and information applicable to its obligation to issue, suspend or revoke licences</li> <li>inspect casino equipment, supplies and records.</li> <li>The Division of Gaming Enforcement supports MGC regulatory responsibilities by investigating and prosecuting allegations of criminal activity related to gaming establishments. The Division provides assistance to the MGC when considering gaming rules and regulations.</li> <li>The Investigations and Enforcement Bureau is the primary law enforcement agency for casino regulation. It investigates casino licensees and any activity taking place at a casino.</li> </ul>
Obligations to cooperate with the regulator	Licensees must cooperate with the MGC in all gaming-related or criminal investigations and must make readily available all documents, equipment and personnel requested during a gaming-related investigation. The Bureau may impose a civil administrative penalty for a failure to comply.
Statutory obligations relating to AML	Casinos in Massachusetts have no express obligations in relation to money laundering under the Massachusetts General Laws. Casinos must comply with federal AML rules in the Code of Federal Regulations.
Key persons subject to regulatory oversight	<ul> <li>Key persons subject to oversight include:</li> <li>'affiliates', being those who directly or indirectly control, or are controlled by an applicant or licensee</li> <li>'close associates', being those holding a relevant financial interest in, or who are entitled to exercise power in, the business of an applicant or licensee and who are able to exercise a significant influence over casino management or operations.</li> </ul>
Applicable tests or standards relating to key persons	When considering a licence application, the MGC must instruct the Bureau to investigate the suitability of all parties interested in the licence, including affiliates and close associates. Suitability involves consideration of overall reputation, integrity and character.

Table 3: Nevada, United States of America

Regulators	Nevada Gaming Control Board and Nevada Gaming Commission	
Overview of functions of	The functions of the Gaming Control Board under the Gaming Control Act include to:	
the regulators	<ul> <li>protect the stability of the gaming industry through investigations, licensing, findings of suitability and enforcement of laws and regulations</li> </ul>	
	ensure the collection of gaming taxes and fees, an essential source of state revenue, and to maintain public confidence in gaming	
	implement policy enforcing State laws and regulations governing gaming.	
	The Nevada Gaming Commission acts on Board recommendations and is the final authority on licensing matters. It may approve, revoke, suspend or apply conditions to licences.	
Obligations to cooperate with the regulators	There is no express requirement for licensees to cooperate with the regulators. The extent of cooperation appears relevant in determining penalties. Independent agents (junket operators) must agree to cooperate with all requests, inquiries and investigations of the Board or the Commission.	
Statutory obligations relating to AML	Casinos in Nevada have no express obligations in relation to AML under the Nevada Gaming Control Act. Casinos must comply with federal AML rules in the Code of Federal Regulations.	
Key persons	Key persons subject to oversight include:	
subject to regulatory oversight	<ul> <li>'affiliates', being those who directly or indirectly control or are controlled by a casino operator ('control' means having direct or indirect power to direct the management and policies of the casino operator)</li> </ul>	
	<ul> <li>any person who provides services or property to a licensee under an arrangement permitting payment based on gaming earnings or profits.</li> </ul>	
Applicable tests or standards relating to key persons	The Commission may require an employee, agent, representative or lender of a licensee to apply for a licence where that person has power to exercise a significant influence over gaming operations. The Commission may also determine the suitability or require licensing of any person who provides services or property to a licensee. Suitability involves consideration of character, integrity, associations and criminal history.	

Table 4: New Jersey, United States of America

Regulator	New Jersey Casino Control Commission	
Overview of functions of the regulator	<ul> <li>The functions of the NJCCC under the Casino Control Act include to:</li> <li>determine all applications relating to casino licensing including issuing statements of compliance and granting casino key employee licences</li> <li>review and decide appeals relating to casino applications or licences</li> <li>refer matters to the Division of Gaming Enforcement for investigation including violations of the New Jersey Casino Control Act and matters concerning the conduct of gaming and gaming operations.</li> <li>The Division of Gaming Enforcement has general responsibility to implement the New Jersey Casino Control Act. It issues approvals, conducts audits and inspections of casinos, reports matters to the Commission and investigates violations of the New Jersey Casino Control Act.</li> </ul>	
Obligations to cooperate with the regulator	Applicants and licensees must cooperate with the Division in the performance of its duties. There is a continuing duty to provide any assistance or information required, and to cooperate in any investigation or inspection, by the Division. Licensees also have a duty to inform the Division of potential violations of the New Jersey Casino Control Act.	
Statutory obligations relating to AML	Casinos in New Jersey have no express obligations in relation to AML under the New Jersey Casino Control Act. Casinos must comply with federal AML rules in the Code of Federal Regulations.	
Key persons subject to regulatory oversight	<ul> <li>Key persons subject to oversight include:</li> <li>'affiliates', being persons who directly or indirectly, through one or more intermediaries, control or are controlled by an applicant or licensee</li> <li>persons designated as those who must 'qualify' in conjunction with the licence, including directors, those who hold beneficial interest or securities in the licensee, and any holding, intermediary or subsidiary companies of an applicant or licensee.</li> </ul>	
Applicable tests or standards relating to key persons	The NJCCC cannot issue a casino licence unless it determines that all key persons meet the applicable qualification criteria. This involves consideration of the person's character, honesty and criminal history, following which the NJCCC may issue a statement of compliance.	

Table 5: New Zealand

Regulator	Gambling Commission		
Overview of functions of the regulator	<ul> <li>The functions of the Gambling Commission under the Gambling Act include to:</li> <li>determine applications for a casino licence and impose, vary or revoke casino licence conditions</li> <li>determine applications by the Secretary for orders to suspend or cancel a casino licence</li> <li>advise Ministers on the proposed problem gambling levy</li> <li>consider complaints and decide various appeals.</li> </ul>		
Obligations to cooperate with the regulator	There is no express requirement in the New Zealand Gambling Act that a casino operator must cooperate with the Gambling Commission.		
Statutory obligations relating to AML	There are no provisions in the Gambling Act that impose express obligations on a casino in relation to AML. Anti-money laundering is governed by the <i>Anti-Money Laundering and Counter Financing of Terrorism Act 2009</i> (NZ).		
Key persons subject to regulatory oversight	<ul> <li>Key persons subject to oversight are those who have a 'significant influence' in the casino.</li> <li>A person has a significant influence in a casino if the person: <ul> <li>is or will be a director of the applicant or the holder or proposed transferee of a casino licence</li> <li>is or will be employed or engaged by the casino as the chief executive or a senior manager of a casino</li> <li>owns or will own shares (with certain voting rights), directly or indirectly, in the holder of a casino licence</li> <li>is considered by the Secretary or the Gambling Commission to have a significant interest in the management, ownership or operation of a casino.</li> </ul> </li> </ul>		
Applicable tests or standards relating to key persons	To grant a casino operator licence, the Gambling Commission must be satisfied that persons with a significant influence are suitable, taking into account honesty, criminal history, financial position, business skills, any professional disciplinary action, and any other matter the Gambling Commission considers relevant.		

Table 6: Singapore

Regulator	Casino Regulatory Authority
Overview of functions of the regulator	<ul> <li>The functions of the CRA under the Casino Control Act include to:</li> <li>license, regulate and supervise the operation of casinos</li> <li>approve any system of controls and administrative and accounting procedures of a casino</li> <li>detect offences committed on casino premises</li> <li>advise the Minister about policy in relation to supervision and inspection of casinos.</li> </ul>
Obligations to cooperate with the regulator	There is no express requirement in the Singapore Casino Control Act that a casino operator must cooperate with the CRA.
Statutory obligations relating to AML	The casino operator must perform due diligence to detect or prevent money laundering and financing of terrorism in certain circumstances, including when opening patron accounts, for cash transactions over SGD10,000 and where there is a reasonable suspicion that a patron is engaged in money laundering or terrorism financing activity. The <i>Casino Control (Prevention of Money Laundering and Terrorism Financing) Regulations 2009</i> (Singapore) also impose obligations relating to cash transactions, customer due diligence and record keeping. Casino operators must develop frameworks to prevent money laundering and terrorism financing, and to report suspicious transactions.
Key persons subject to regulatory oversight	Key persons subject to oversight include 'associates' of a casino operator, being those who are or will be able to exercise a significant influence with respect to the management or operation of the casino. Assessing 'significant influence' involves consideration of the person's position, financial interests, influence and powers in relation to the casino.
Applicable tests or standards relating to key persons	To grant a casino operator licence, the CRA must be satisfied that each associate is a suitable person to be associated with the management and operation of a casino. This involves consideration of the associate's reputation, integrity and financial resources.

Table 7: United Kingdom

Regulator	Gambling Commission	
Overview of functions of the regulator	<ul> <li>The functions of the Gambling Commission under the Gambling Act include to:</li> <li>issue, review and regulate casino licences</li> <li>investigate and institute criminal proceedings in respect of allegations of offences</li> <li>advise the Secretary of State on the incidence of gambling, how it is carried on, its effects and its regulation</li> <li>issue codes of practice about the provision of gambling and publish a statement setting out the principles it will apply when exercising its functions.</li> </ul>	
Obligations to cooperate with the regulator	The Licensing Conditions and Codes of Practice provide that the Gambling Commission expects licensees to work with it in an open and cooperative way and to disclose anything of which the Gambling Commission would reasonably need to be aware. The Gambling Commission may suspend and revoke an operating licence if the licensee has failed to cooperate with a review.	
Statutory obligations relating to AML	Under the Licensing Conditions and Codes of Practice, casinos must conduct a risk assessment considering the risk of the business being used for money laundering or terrorist financing. Casinos must also have in place and review policies, procedures and controls to prevent money laundering and terrorism financing and must ensure the effectiveness of the policies. Licensees must also comply with the <i>Money Laundering Regulations 2007</i> (UK).	
Key persons subject to regulatory oversight	Key persons subject to oversight include those considered relevant to an application for a licence. The persons considered relevant may vary depending on information provided in the licence application and the applicant's company structure but are likely to include those exercising a function in connection with, or having an interest in, the licensed activities.	
Applicable tests or standards relating to key persons	When considering the suitability of an applicant, the Gambling Commission will seek evidence to enable an assessment of the integrity, competence (including qualifications and experience), criminal history and past and present financial circumstances of a person relevant to the application.	



#### APPENDIX L

## Work of the Commission

- 1 On 22 February 2021, I was appointed Commissioner and Chairperson of the Royal Commission into the Casino Operator and Licence pursuant to letters patent issued by the Governor of Victoria under section 5 of the *Inquiries Act 2014* (Vic).<sup>1</sup>
- 2 On 16 March 2021, I issued a Practice Direction advising interested parties of the process for making applications for leave to appear.<sup>2</sup> This Practice Direction, along with all others issued by the Commission, was made available on the Commission's website.
- 3 The first hearing was held on 24 March 2021. At that hearing I outlined how the Commission would operate and how it proposed to gather relevant information.<sup>3</sup>
- 4 Mr Adrian Finanzio, SC, senior Counsel Assisting the Commission, provided further details of the processes to be followed. He said:
  - · subject matter experts would be retained
  - interviews would be conducted with relevant people
  - · documents would be obtained from a number of organisations
  - · witnesses would be called to give evidence
  - interested members of the public would be invited to make submissions.
- Information about public submissions, witnesses and hearings can be found in Appendices M and N.
- 6 Commission staff:
  - interviewed potential witnesses
  - held targeted discussions with CALD community representatives
  - translated and distributed relevant material in eight languages explaining what the Commission was about, how to make a submission, and the Terms of Reference
  - met with representatives from the Ethnic Communities Council of Victoria, the Victorian Multicultural Commission, and the Alliance for Gambling Reform
  - sent letters to a targeted range of organisations and community groups inviting them to make a written submission.
- 7 The Commission issued 220 notices under the Inquiries Act requiring the production of documents or information. In response, approximately 110,750 documents were produced. 2997 documents were tendered as exhibits. As at 30 September 2021, 262 exhibits had not been published on the website due to orders requiring their confidentiality.
- As required by the Inquiries Act, all documents and material have been transferred to the Victorian Department of Premier and Cabinet and the Public Record Office Victoria. The Department is responsible for responding to requests to access the records, including those made under the *Public Records Act 1973* (Vic) and the *Freedom of Information Act 1982* (Vic).

- 9 On 5 March 2021, the Perth Casino Royal Commission (PCRC) commenced in Western Australia. The PCRC was established to undertake inquiries into the operation of the casino operated by Crown Resorts in Perth, Western Australia.
- 10 The Commission monitored the work of the PCRC and entered into an information-sharing arrangement. Information that was requested by, and shared with, the PCRC included:
  - expert witness reports related to Crown's approach to junket operators, AML, CUP and the responsible service of gaming
  - notices to produce and requests for statements.
- 11 The Commission also engaged with the PCRC at an operational level about the systems and processes it had established.
- 12 The Commission was also required to work with the review into Victoria's casino regulatory framework (**Regulatory Review**) established by the Victorian Government. The Regulatory Review ran concurrently with the Commission.<sup>4</sup>
- 13 A number of topics and issues were within the scope of both the Regulatory Review and the Commission, including:
  - the current structural and governance arrangements of the regulator
  - emerging risks in casino regulation
  - the appropriateness of the regulatory framework in Victoria relating to junket operations, money laundering, and inquiry and audit powers
  - commercial agreements and contracts entered into by Crown Melbourne
  - any legislative changes that may be required to give effect to any recommended changes.
- 14 Commission staff engaged with the Regulatory Review Team as necessary to work cooperatively and avoid duplication.

# Endnotes

- See Appendices A, B and C.
- 2 Practice Direction 1, Applications for Leave to Appear, 16 March 2021.
- Transcript of opening statements, 24 March 2021. 3
- 4 Royal Commission into the Casino Operator and Licence, Letters Patent, cl 8, 14(c)–(e). (See Appendix A).



#### APPENDIX M

## Public submissions

- In March 2021, the Commission invited members of the public and interested organisations to make written submissions addressing the Terms of Reference. The invitation indicated that submissions could be made on a public, anonymous or confidential basis. Submissions had to be received by 9 July 2021.
- 2 The Commission has published the submissions on its website, save for those that were submitted on a confidential basis. Where necessary, information has been redacted to protect the privacy or identity of individuals, or where the content was considered to be defamatory.
- 3 Over 90 submissions were received. The list following identifies the persons who made the submissions.

Submission number Author  Submission 01 Stephen Brown  Submission 03 Anonymous  Submission 04 Emily Bieber  Submission 05 Anonymous  Submission 06 Grant Leeworthy  Submission 07 Robert Ingmire  Submission 08 South Australian Centre for Economic Studies  Submission 09 La Trobe University  Submission 10 Anonymous  Submission 11 Tim Falkiner  Submission 13 Anonymous  Submission 14 Catherine Sommerville  Submission 15 Anonymous  Submission 16 Carolyn Crawford  Submission 18 Anonymous  Submission 19 Anonymous  Submission 20 Stephen Mayne  Submission 21 Anonymous  Submission 22 Stuart McDonald		
Submission 03 Anonymous Submission 04 Emily Bieber Submission 05 Anonymous Submission 06 Grant Leeworthy Submission 07 Robert Ingmire Submission 08 South Australian Centre for Economic Studies Submission 09 La Trobe University Submission 10 Anonymous Submission 11 Tim Falkiner Submission 13 Anonymous Submission 14 Catherine Sommerville Submission 15 Anonymous Submission 16 Carolyn Crawford Submission 18 Anonymous Submission 19 Anonymous Submission 20 Stephen Mayne Submission 21 Anonymous	Submission number	Author
Submission 04 Emily Bieber  Submission 05 Anonymous  Submission 06 Grant Leeworthy  Submission 07 Robert Ingmire  Submission 08 South Australian Centre for Economic Studies  Submission 09 La Trobe University  Submission 10 Anonymous  Submission 11 Tim Falkiner  Submission 13 Anonymous  Submission 14 Catherine Sommerville  Submission 15 Anonymous  Submission 16 Carolyn Crawford  Submission 18 Anonymous  Submission 19 Anonymous  Submission 20 Stephen Mayne  Submission 21 Anonymous	Submission 01	Stephen Brown
Submission 05 Anonymous  Submission 06 Grant Leeworthy  Submission 07 Robert Ingmire  Submission 08 South Australian Centre for Economic Studies  Submission 09 La Trobe University  Submission 10 Anonymous  Submission 11 Tim Falkiner  Submission 13 Anonymous  Submission 14 Catherine Sommerville  Submission 15 Anonymous  Submission 16 Carolyn Crawford  Submission 18 Anonymous  Submission 19 Anonymous  Submission 20 Stephen Mayne  Submission 21 Anonymous	Submission 03	Anonymous
Submission 06 Grant Leeworthy  Submission 07 Robert Ingmire  Submission 08 South Australian Centre for Economic Studies  Submission 09 La Trobe University  Submission 10 Anonymous  Submission 11 Tim Falkiner  Submission 13 Anonymous  Submission 14 Catherine Sommerville  Submission 15 Anonymous  Submission 16 Carolyn Crawford  Submission 18 Anonymous  Submission 19 Anonymous  Submission 20 Stephen Mayne  Submission 21 Anonymous	Submission 04	Emily Bieber
Submission 07 Robert Ingmire  Submission 08 South Australian Centre for Economic Studies  Submission 09 La Trobe University  Submission 10 Anonymous  Submission 11 Tim Falkiner  Submission 13 Anonymous  Submission 14 Catherine Sommerville  Submission 15 Anonymous  Submission 16 Carolyn Crawford  Submission 18 Anonymous  Submission 19 Anonymous  Submission 20 Stephen Mayne  Submission 21 Anonymous	Submission 05	Anonymous
Submission 08  South Australian Centre for Economic Studies  Submission 09  La Trobe University  Submission 10  Anonymous  Submission 11  Tim Falkiner  Submission 13  Anonymous  Submission 14  Catherine Sommerville  Submission 15  Anonymous  Submission 16  Carolyn Crawford  Submission 18  Anonymous  Submission 19  Anonymous  Submission 20  Stephen Mayne  Submission 21  Anonymous	Submission 06	Grant Leeworthy
Submission 09  La Trobe University  Submission 10  Anonymous  Submission 11  Tim Falkiner  Submission 13  Anonymous  Submission 14  Catherine Sommerville  Submission 15  Anonymous  Submission 16  Carolyn Crawford  Submission 18  Anonymous  Submission 19  Anonymous  Submission 20  Stephen Mayne  Submission 21  Anonymous	Submission 07	Robert Ingmire
Submission 10 Anonymous  Submission 11 Tim Falkiner  Submission 13 Anonymous  Submission 14 Catherine Sommerville  Submission 15 Anonymous  Submission 16 Carolyn Crawford  Submission 18 Anonymous  Submission 19 Anonymous  Submission 20 Stephen Mayne  Submission 21 Anonymous	Submission 08	South Australian Centre for Economic Studies
Submission 11 Tim Falkiner  Submission 13 Anonymous  Submission 14 Catherine Sommerville  Submission 15 Anonymous  Submission 16 Carolyn Crawford  Submission 18 Anonymous  Submission 19 Anonymous  Submission 20 Stephen Mayne  Submission 21 Anonymous	Submission 09	La Trobe University
Submission 13 Anonymous  Submission 14 Catherine Sommerville  Submission 15 Anonymous  Submission 16 Carolyn Crawford  Submission 18 Anonymous  Submission 19 Anonymous  Submission 20 Stephen Mayne  Submission 21 Anonymous	Submission 10	Anonymous
Submission 14 Catherine Sommerville  Submission 15 Anonymous  Submission 16 Carolyn Crawford  Submission 18 Anonymous  Submission 19 Anonymous  Submission 20 Stephen Mayne  Submission 21 Anonymous	Submission 11	Tim Falkiner
Submission 15 Anonymous  Submission 16 Carolyn Crawford  Submission 18 Anonymous  Submission 19 Anonymous  Submission 20 Stephen Mayne  Submission 21 Anonymous	Submission 13	Anonymous
Submission 16 Carolyn Crawford  Submission 18 Anonymous  Submission 19 Anonymous  Submission 20 Stephen Mayne  Submission 21 Anonymous	Submission 14	Catherine Sommerville
Submission 18 Anonymous  Submission 19 Anonymous  Submission 20 Stephen Mayne  Submission 21 Anonymous	Submission 15	Anonymous
Submission 19 Anonymous Submission 20 Stephen Mayne Submission 21 Anonymous	Submission 16	Carolyn Crawford
Submission 20 Stephen Mayne Submission 21 Anonymous	Submission 18	Anonymous
Submission 21 Anonymous	Submission 19	Anonymous
, , , , , , , , , , , , , , , , , , ,	Submission 20	Stephen Mayne
Submission 22 Stuart McDonald	Submission 21	Anonymous
	Submission 22	Stuart McDonald

Submission number	Author
Submission 23	Binbin Du
Submission 25	Peter Jankowski
Submission 26	Steven Tran
Submission 27	Anonymous
Submission 28	Elizabeth Mitchell
Submission 29	Springvale Monash Legal Service
Submission 30	Anonymous
Submission 31	Connect Health & Community
Submission 32	Australian Vietnamese Women's Association Inc.
Submission 33	Anonymous
Submission 34	Anonymous
Submission 35	Anonymous
Submission 36	Anonymous
Submission 37	Victorian Arabic Social Services
Submission 38	Anonymous
Submission 39	Anna Bardsley
Submission 40	Anonymous
Submission 42	Anonymous
Submission 43	Anonymous
Submission 44	Turning Point/Monash Addiction Research Centre
Submission 45	Anonymous
Submission 46	Anonymous
Submission 48	Anonymous
Submission 49	University of Western Australia Law School
Submission 50	United Workers Union
Submission 55	University of Technology Sydney Law School
Submission 57	Anonymous
Submission 58	The Salvation Army

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Submission number	Author
Submission 59	The Australasian Gaming Council
Submission 60	Victorian Responsible Gambling Foundation
Submission 61	Alliance for Gambling Reform
Submission 63	Office of the Victorian Information Commissioner
Submission 64	Anonymous
Submission 65	Federation University
Submission 66	Steven Tran
Submission 69	Financial Counselling Victoria
Submission 70	Anonymous
Submission 71	Financial Counselling Australia
Submission 72	Anonymous
Submission 73	Anonymous
Submission 74	Anonymous
Submission 75	School of Public Health & Preventive Medicine, Monash University
Submission 76	T Callaway and Associates Pty Ltd
Submission 78	Investors Mutual Ltd
Submission 79	Deakin University
Submission 80	Anonymous
Submission 81	Anonymous
Submission 82	Tim Costello
Submission 84	Anonymous
Submission 87	Anonymous
Submission 88	Anonymous
Submission 89	Stephen Mayne



#### APPENDIX N

# Commission hearings

- The Commission hearings were held at the Fair Work Commission, 11 Exhibition Street, Melbourne. Most witnesses who resided in Victoria attended in person. The remainder, along with those residing interstate or overseas, gave evidence via video link. On some days, the COVID-19 lockdown restrictions required hearings to be held remotely.
- 2 Hearings commenced on 24 March 2021 and concluded on 3 August 2021. In all, 66 witnesses were called to give evidence. Most witnesses gave evidence at public hearings. On some occasions, however, the hearings were held in either closed or private session.
- There were several reasons for closed hearings and private hearings. Some witnesses were frightened of the possible consequences of giving evidence against Crown, or were ashamed of their circumstances. Others gave evidence about matters that were the subject of legal professional privilege, evidence that might have been the subject of public interest immunity, evidence concerning ongoing regulatory inquiries or evidence that might adversely affect the interests of other parties. It was decided none of this evidence should be disclosed publicly. Finally, the Commission heard certain evidence about the casino's operating systems that might be the subject of exploitation by criminal elements. It was decided that this evidence plainly ought not be disclosed either.
- 4 The following table lists hearing dates, topics and witnesses. All hearings were public, unless otherwise indicated.

Date	Witness name and employer	Торіс
3 May 2021	Ahmed Hasna (private hearing)	Responsible gambling and gambling addition
	AZ (private hearing)	Crown Rewards loyalty program
4 May 2021	Elizabeth Mitchell (private hearing)	Responsible gambling and gambling addiction
	lan (Stuart) McDonald (private hearing)	Self-exclusion programs at Crown
	BZ (private hearing)	Crown Rewards loyalty program and the role of hosts
5 May 2021	Binbin Du (private hearing)	Responsible gambling and gambling addiction
6 May 2021	DZ (private hearing) DY (private hearing) Carolyn Crawford (private hearing)	Responsible gambling and gambling addiction
7 May 2021	Acting Assistant Commissioner Michael Frewen, Crime Command, Victoria Police (closed hearing)	Crime and investigations

Date	Witness name and employer	Торіс
10 May 2021	Assistant Commissioner Christopher Gilbert, Intelligence and Covert Support Command, Victoria Police (closed hearing)	Crime and investigations
17 May 2021	Timothy Bryant, Team Leader, Investigations, Compliance Division, VCGLR	Relationship between Crown and the regulator China arrests
18 May 2021	Jason Cremona, Manager, Licensing Management and Audit Team, VCGLR	Money laundering VCGLR Sixth Casino Review Recommendation 17
20 May 2021	Dr Murray Lawson, Director, Risk Advisory Practice, Deloitte Touche Tohmatsu	Junkets
	Nicholas (Nick) Stokes, Group General Manager Anti-Money Laundering, Crown Resorts Limited	Junkets and money laundering
	EZ (private hearing)  EX (private hearing)  EY (private hearing)	Responsible gambling
21 May 2021	Nick Stokes (cont.)	Junkets and money laundering
21 Mdy 2021	Crown Melbourne Employee 1 (closed hearing)	Responsible service of gaming
	Crown Melbourne Employee 2 (closed hearing)	
	Crown Melbourne Employee 3 (closed hearing)	
	Crown Melbourne Employee 4 (closed hearing)	
	Crown Melbourne Employee 5 (closed hearing)	
	Crown Melbourne Employee 6 (closed hearing)	
24 May 2021	Katherine Shamai, Partner, Risk Consulting, Grant Thornton Australia Ltd	Money laundering

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Date	Witness name and employer	Торіс
25 May 2021	Neil Jeans, Principal, Initialism (part closed hearing)	Money laundering
26 May 2021	Neil Jeans (cont.) Lisa Dobbin, Partner, Australian Financial Crime, Deloitte (part closed hearing)	Money laundering
27 May 2021	Alexander Carmichael, Managing Director, Promontory Financial Group (closed hearing)	Money laundering
	Crown Melbourne Employee 7 (closed hearing) FZ (private hearing)	Responsible service of gaming
1 June 2021	Sonja Bauer, Group General Manager, Responsible Gaming, Crown Resorts Limited	Responsible service of gaming
2 June 2021	Sonja Bauer (cont.)	Responsible service of gaming
3 June 2021	Sonja Bauer (cont.)	Responsible service of gaming
4 June 2021	Nicolas Emery, Chief Marketing Officer, Crown Resorts Limited Dr Sarah MacLean, Associate Professor, Social Work and Social Policy, La Trobe University Shane Lucas, CEO, VRGF	Responsible service of gaming  Responsible gambling
7 June 2021	Mark Mackay, Executive General Manager, Gaming Machines, Crown Melbourne Limited (part closed hearing)	Taxation and responsible service of gaming
8 June 2021	Peter Lawrence, General Manager, VIP Customer Service, Crown Melbourne Limited	Responsible service of gaming
	Rosa Billi, Branch Head, Research and Evaluation, VRGF	Responsible gambling
	Manorani Guy, President, Victorian Working Group on International Student Employability (VicWISE)	Gambling addiction
	GZ (private hearing)	

Date	Witness name and employer	Topic
9 June 2021	Cara Hartnett, Partner, Risk Advisory, Deloitte Victoria Whitaker, Partner, Risk Advisory, Deloitte	Risk management and culture at Crown
	Anne Siegers, Chief Risk Officer, Crown Resorts Limited	Risk management, China arrests and junkets
10 June 2021	Anne Siegers (cont.)	Risk management, China arrests and junkets
18 June 2021	A Police Officer in the Organised Crime Intelligence Unit, Victoria Police (closed hearing)	Crime and investigations and money laundering
21 June 2021	Mark Mackay (recalled)	Taxation, responsible service of gaming
	Sonja Bauer (recalled)	Responsible service of gaming
22 June 2021	Nigel Morrison, Non-Executive Director, Crown Melbourne Limited and Crown Resorts Limited	Taxation and legal advices
	Andrew Maher, Partner, Allens Linklaters (closed hearing)	Legal advices (taxation)
23 June 2021	Crown Melbourne Employee 8 (closed hearing) Crown Melbourne Employee 9	Crown Towers Hotel financial transactions
	(closed hearing)	
	Crown Melbourne Employee 18 (closed hearing)	
	Crown Melbourne Employee 10 (closed hearing)	
	Crown Melbourne Employee 15 (closed hearing)	
24 June 2021	Security Officer 1, Private Security Company (closed hearing) Security Officer 2, Private Security Company (closed hearing)	Junkets
25 June 2021	Robin (Craig) Walsh, Executive Director, Security and Surveillance, Crown Melbourne Limited	Security and surveillance at Crown Melbourne (including criminal influence and money laundering)

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Date	Witness name and employer	Торіс
28 June 2021	Michelle Fielding, Group Executive General Manager, Regulatory and Compliance, Crown Resorts Limited (part closed hearing)	Regulatory compliance (including taxation and money laundering)
29 June 2021	Richard Murphy, Partner, MinterEllison (closed hearing)	China arrests, overseas operations and legal advices
1 July 2021	Steven Blackburn, Group Chief Compliance and Financial Crime Officer, Crown Resorts Limited (part closed hearing)	Money laundering, Crown Towers Hotel financial transactions and responsible service of gaming
2 July 2021	Jan Williamson, General Manager, Legal, Crown Melbourne Limited (part closed hearing)	Legal advices (including taxation, overseas operations and Crown Towers Hotel financial transactions)
5 July 2021	Xavier Walsh, CEO and Director, Crown Melbourne Limited (part closed hearing)	Taxation, risk management, junkets, money laundering
6 July 2021	Nick Weeks, Executive General Manager, Transformation and Regulatory Response, Crown Resorts Limited	Remediation plan and reform
	Stephen McCann, CEO and Managing Director (pending probity), Crown Resorts Limited	Transforming culture, taxation
	Alan McGregor, CFO and Interim Company Secretary, Crown Resorts Limited	Responsible service of gaming, money laundering and taxation
7 July 2021	Sarah (Jane) Halton, Non- Executive Director, Crown Resorts, Director and Chair, Crown Sydney (part closed hearing) Antonia Korsanos, Non-Executive Director, Crown Resorts Limited, Chair of Crown Melbourne Limited (part closed hearing)	Risk management, culture, governance, China arrests, taxation

Date	Witness name and employer	Торіс
8 July 2021	Helen Coonan, Executive Chairman, Crown Resorts Limited, Chair, Crown Resorts Foundation Limited and Director, Crown Melbourne Limited	China arrests, relationship with the regulator, responsible service of gaming, taxation, governance
9 July 2021	Robyn McKern, Partner, McGrathNicol Elizabeth Morris (Arzadon), Managing Director, Kiel Advisory Group	Money laundering  Culture within Crown, transforming organisational culture



