



Victorian Commission for
Gambling and Liquor Regulation

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22 December 2020

Our ref: CF/16/788-1

Ms Helen Coonan
Chair
Crown Resorts Ltd
8 Whiteman Street
SOUTHBANK 3006

and

Mr Andrew Demetriou
Chair
Crown Melbourne Ltd
8 Whiteman Street
SOUTHBANK 3006

Private & Confidential

By email: [REDACTED]

Dear Ms Coonan and Mr Demetriou,

VCGLR's China Investigation – Propositions

The VCGLR has been closely monitoring the Inquiry of the Honourable Patricia Bergin SC, conducted pursuant to section 143 of the *Casino Control Act 1992* (NSW).

Among other things, the written and oral evidence presented at the Inquiry have caused the VCGLR to issue statutory notices which have required the production of documents to the VCGLR. The documents produced pursuant to those notices have included the written submissions that have been made to the Inquiry by both Counsel Assisting the Inquiry and by Crown Resorts Limited.

In that context, I am writing to formally advise you that, based on both the evidence that has been given at the public hearings and the submissions that have been made in respect of that evidence, the VCGLR will now proceed as follows:

1. the draft report in respect of the China arrests, that was most recently provided to Crown for comment in May 2019, will be reconsidered;
2. in the context of that reconsideration, Annexure A to this letter sets out a series of factual propositions which are based on the VCGLR's assessment of both the evidence and submissions at the Inquiry, as well as certain written legal advice that has been produced by Crown to the VCGLR, since the draft report was provided in May 2019.

The VCGLR is minded to act on the basis of the factual propositions for the purpose of the VCGLR's China investigation.

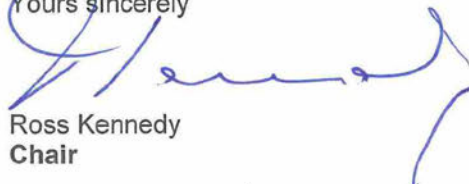
Please let the VCGLR know as soon as possible whether Crown disputes any of the propositions set out in Annexure A to this letter. If any of the propositions are disputed, please state the basis for disputing the proposition. The VCGLR considers that a process of seeking to agree a series of propositions for the purpose of finalising the draft report is preferable to the alternative of a protracted process by which the VCGLR would exercise its compulsory powers to obtain further evidence.

3. in addition to the propositions that are set out in Annexure A, please also note that:
- a. certain matters have arisen during the Inquiry that have caused the VCGLR to become concerned about the degree of candour that Crown has displayed in its dealings with the VCGLR. These matters include, among other things:
 - i. contradictions between a presentation that Joshua Preston gave to the VCGLR in the immediate aftermath of the China arrests and the submissions and concessions that Crown has now made at the Inquiry. *Prima facie*, that presentation failed to mention certain important matters which may have affected the course of the VCGLR's investigation;
 - ii. the extent to which Crown may have failed to comply with its statutory obligations to produce documents to the VCGLR which have since been produced to the Inquiry. Among other things, these documents include emails relating to the very important matter of the extent to which events were known by certain board members, particularly, Mr Johnston, before the arrests in October 2016. Among other things, the apparent failure to produce these documents may have affected the course of the VCGLR's investigation by creating an impression that knowledge of the matters relevant to China was limited to Crown's executive level staff;
 - b. based on the evidence and submissions that have been made at the Inquiry, the VCGLR will now be separately considering the extent to which the probity of individual executives and/or directors requires further investigation and/or regulatory action.

Whilst I will be writing to you further in respect of the matters set out in numbered paragraphs 1 and 3 above, would you please make the necessary arrangements for Crown to provide its responses to the propositions that are set out in Annexure A, within 10 business days from the date of this letter (on or before 8 January 2021).

Should your executives or advisers have any questions in respect of either Annexure A, or the steps that the VCGLR will now be taking, they should not hesitate to contact Mr Scott May (Director, Legal Services & General Counsel) on [REDACTED] or via email [REDACTED]

Yours sincerely



Ross Kennedy
Chair

cc: Mr Ken Barton, [REDACTED]
Mr Chris Reilly, [REDACTED]
Ms Michelle Fielding, [REDACTED]

ANNEXURE A
PROPOSITIONS

Introduction

1. Crown Resorts Limited and Crown Sydney Gaming Pty Ltd have made written submissions¹ (**Crown's Submissions**) to an inquiry that is being conducted under section 143 of the *Casino Control Act 1992* (NSW) (**the NSW Inquiry**). Among other things, Crown's Submissions address the circumstances that led to the detention, in China, of 19 Crown employees in October 2016. A redacted version of Crown's Submissions has been provided to the VCGLR.
2. Crown's Submissions are responsive to those made by Counsel Assisting the NSW Inquiry, which include a document referred to as a "Statement of Issues and Contentions" (**Statement of Issues**). That Statement of Issues in turn includes a series of matters that Counsel Assisting the NSW Inquiry assert are "*matters not in issue.*"
3. For its part, Crown's Submissions, among other things:
 - a. do not "*dispute that failings occurred in relation to China*";
 - b. set out a series of very detailed concessions, including those that are set out under the headings B1, B2 and Annexure A to Crown's Submissions;
 - c. do not address (and thereby do not overtly dispute) certain other submissions that have been made by Counsel Assisting;
 - d. specifically seek to reject certain individual submissions, being primarily those that are described in paragraph 65(a)-(g) and at heading B5 of Crown's Submissions.
4. Many material matters that are now set out in the Statement of Issues or Crown's Submissions were not disclosed by Crown in relation to the VCGLR's investigation into the circumstances of the detention of Crown's staff in China.
5. As such, many of the matters that are either now conceded or not disputed by Crown represent new or fresh evidence for the purpose of both the VCGLR's investigation into the circumstances that led to the detention of Crown's staff in China and the draft report that has been prepared by the VCGLR in respect of that investigation.

¹ CRL.769.001.0001.

6. Furthermore, since it was provided with the draft report that has been prepared by the VCGLR, Crown has also purported to waive legal professional privilege on certain advice it received in respect of its operations in China, prior to the arrests in October 2016. The provision of this advice also represents the provision of new or fresh evidence for the purpose of the VCGLR's investigation.
7. It is now necessary and appropriate for the VCGLR to reconsider both the content and recommendations of its draft report.
8. In that context, the purpose of this document is to invite Crown to concede the propositions which follow, so that they might then, in turn, be used as a basis for revisiting the VCGLR's draft report.

Propositions that Crown is invited to concede

The VCGLR invites Crown to state whether it disputes any of the following propositions for the purpose of the VCGLR's China Investigation or, if they are disputed, to provide details of the basis upon which any proposition is disputed.

Matters specifically conceded at the NSW Inquiry

1. all concessions made in the Crown Submissions, including those that are made under the headings B1, B2 and in Annexure A to those Submissions;
2. the matters characterised as "*matters not in issue*" and set out in paragraphs 1 – 17 inclusive of the Statement of Issues and that, in respect of paragraph 12c of the Statement of Issues, in addition to the employee referred to in that paragraph, two other China-based Crown employees were also questioned by Chinese police, prior to the detentions that occurred in October 2016, namely:
 - a. Herbert Jia, who was taken to a police station for questioning by Chinese police in September 2014;
 - b. the employee who is referred to at paragraph 73(c) of Crown's Submissions as "JX" who, along with the employee that is referred to by Counsel Assisting in the Statement of Issues as being relevant for the purpose of the letter that was provided to Chinese authorities in July of 2015 ("BX"), was also detained for questioning in or around July 2015;
3. in respect of paragraph 18 of the Statement of Issues, rather than having conducted no review (as was submitted by Counsel Assisting the NSW Inquiry), Crown has in

fact conducted the review that is described in detail at paragraphs 177-190 of Crown's Submissions. Furthermore, in respect of that review:

- a. at no time during the VCGLR's investigation did Crown disclose to the VCGLR the fact that Crown was conducting a review, albeit one that was legally privileged;
- b. at no time has the progress or outcome of Crown's legally privileged review been disclosed to the VCGLR.

General

4. the totality of the events that occurred in China constitute a failure of Crown's risk management, corporate governance, ethics and culture;
5. most of the executives who were employed and involved in the events that culminated in Crown staff being arrested, convicted and sentenced in China remain executives of Crown today;
6. most of the directors who held office during the period which culminated in Crown staff being arrested, convicted and sentenced in China remain directors of Crown today;
7. even if the position articulated at paragraph 65(c) of Crown's Submissions (namely that Crown rejects that management appreciated that there was a material risk that staff would be "*arrested and convicted for gambling crimes*" [emphasis added])² were accepted, it was nevertheless understood by Crown management that:
 - a. detention, including arbitrary detention, was common in China;
 - b. the risk that Crown staff might be detained existed, regardless of any legal interpretation which might have been made or was available in respect of "*gambling crimes*";
 - c. the risk that Crown staff might be detained was increased by reason of Crown's staff being either directly or indirectly involved with Chinese gamblers and gambling activity;
 - d. the risk that staff might be detained in China made it necessary for:
 - i. all of Crown's staff in China to be given training about how they should conduct themselves, if and when they were detained or questioned;
 - ii. a protocol to be developed and circulated to Crown staff operating in China, which included instructions about how they should conduct themselves, if and when they were detained or questioned;

² Repeated at paragraph 164 and following.

- iii. external legal advice to be obtained about Chinese criminal law insofar as it concerns gambling;
- iv. external legal advice to be obtained about whether Crown's business operations in China could (or should) be formally registered and licensed by Chinese authorities;
- v. external government relations advice to be obtained, which included advice about the steps that Crown staff in China might take to minimise the risk that they might be detained;
- e. Crown's staff in China were themselves concerned and/or fearful that they would be detained by reason of their employment;

(contextual risk factors)

8. in addition to the concessions made in paragraphs 59 and 73 of Crown's Submissions:

- a. the contextual risk factors should have also been "*exposed to wider consideration and assessment through Crown's risk-management structures and procedures (through which they would have come to the attention of the wider board)*";
- b. unless the contextual risk factors were also "*exposed*" to risk management structures and the board it would be impossible for either the risk management structure or the board to assess properly the relevance of the matters that are the subject of the specific concessions set out in subparagraphs 73(a) – (d) of Crown's Submissions;

(conceded risk escalation events)

Knowledge of the Board

- 9. not all of those who were directors in the period between 2010 and the arrest of Crown staff in October 2016 were aware, prior to the arrests, that Crown employed staff who lived and worked in China;
- 10. Ms Coonan's uncontradicted evidence to the NSW Inquiry that:
 - a. "*the risk appetite of [the board] would be nil...*"³ had the board been informed of those conceded risk escalation events that are constituted by the questioning of Crown staff in China by Chinese police; the request by Chinese police for a letter confirming the employment of one of those Crown staff

³ T4421/15 – 21.

- members who had been questioned and the fact that these events occurred shortly after Chinese police had arrested South Korean casino employees;
- b. *"it's not worth the candle if you've got these kinds of escalating risks"*⁴; should be accepted;
11. the uncontradicted evidence that, in Mr Rankin's opinion, the conceded risk escalation event constituted by the arrest of South Korean casino staff in June 2015, meant that Crown would need to be on "high alert" and the training of Crown staff in China would need to be extensively reviewed, should be accepted;⁵
12. Mr Packer's uncontradicted evidence to the NSW Inquiry that:
- a. each of Mr Craigie, Mr Johnston and himself:
 - i. were aware of Mr Rankin's opinion of the need for "high alert," arising from the conceded risk escalation event constituted by the arrest of South Korean Casino staff;
 - ii. failed to bring that matter to the attention of the board and *"the three of us are all guilty of that"*⁶; and
 - b. had he been aware that *"there was a risk of [Crown staff] being arrested and going to jail"* he *"absolutely"* would have acted to either remove Crown's staff from China or to stop Crown's operations in China;⁷ should be accepted.

Knowledge and conduct of Crown's senior executives

13. in addition to the concessions that are the subject of paragraph 68 of Crown's Submissions:
- a. the Crown executives who were aware of some or all of the contextual risk factors and the conceded risk escalation events included:
 - i. Barry Felstead;
 - ii. Jason O'Connor;
 - iii. Rowen Craigie;
 - iv. Michael Chen;
 - b. in the absence of notifying the board or engaging Crown's risk management structures in respect of either the contextual factors or the conceded risk escalation events, some or all of the executives referred to in sub-paragraph

⁴ T4421/23 – 33.

⁵ INQ.100.001.0290. NSW Inquiry exhibit M193.

⁶ T3755/42–47.

⁷ T3619/3 – 33.

13(a) above engaged in conduct by which they attempted to manage the risk of detention, including by, from time-to-time:

- i. obtaining the external legal and government relations advice;
- ii. providing the protocol and/or training to Crown's China-based staff about what they should do if detained;

(executive attempts at risk management)

- c. at no time did the executive attempts at risk management consider the matters that have been conceded by Crown at paragraphs 4 – 10 inclusive of Annexure A to Crown's Submissions;

Risk Management Structures (prior to the arrests)

14. in addition to the concessions that are the subject of paragraphs 70 and 71 of Crown's Submissions, the risk management structures that Crown had in place, prior to the arrests in October 2016:

- a. relied almost exclusively on executive-level staff to both identify and classify risks associated with Crown's business, including the risk that Crown's staff in China might be detained;
- b. either:
 - i. included no mechanism by which risks were included, other than by executive identification; or
 - ii. the mechanisms by which risks might be included, other than by executive identification, were inadequate to the extent that they failed to identify any or all of the contextual risk factors, the conceded risk escalation events or the executive attempts at risk management;
- c. whilst a risk titled "*foreign political interference*" was identified, the identification and subsequent management of that risk did not cause any board or board committee to consider any of the contextual risk factors, the conceded risk escalation events or the executive attempts at risk management;

15. in respect of the risk management structure that existed at Crown prior to the arrests in October 2016:

- a. the same executive-level staff (including those referred to in paragraph 13(a)(i)-(iv) above) who were responsible for risk identification were also

- incentivised by reference to the profits that were derived from Crown's business performance in China; and
- b. Mr O'Connor's uncontradicted evidence to the NSW Inquiry, that the business pressure on VIP International was beyond the capacity of the unit to deliver and that any conservative expectations would not be well received by Crown Resorts⁸, should be accepted;
16. in respect of the assertion at paragraph 197 of Crown's Submissions that the matters in China do not disclose "*any substantial defect in the risk management structures*" that existed prior to China arrests, that is a submission that can only be sustained if one ignores the substantial defects constituted by the failures to identify the:
- a. contextual risk factors;
 - b. the conceded risk escalation events;
 - c. executive attempts at risk management;

Informal reporting lines

17. in addition to the formal reporting lines that existed prior to the arrests, informal reporting lines also existed in respect of Crown's China operations, known as the "CEO Meetings" and the "VIP Working Group";

Management of external Advice (Criminal Law)

18. in respect of the concessions made at paragraph 60 of the Crown Submissions, the management of the advice there referred to was further inadequate to the extent that:
- a. it was obtained by Mr Chen, who is not a lawyer;
 - b. neither the content, nor the factual assumptions upon which the advice that was obtained by Mr Chen was considered by Crown's internal or external Australian lawyers, at any time prior to the detention of Crown staff in China in October 2016;
19. it was only after the VCGLR had provided Crown with a copy of its draft report that Crown purported to waive legal professional privilege on a limited number of the advices that were obtained by Mr Chen and provided copies of those advices to the VCGLR;

⁸ T2013/1 – 2014/2.

External Advice (Business Law)

20. at no time did Crown hold a licence of any kind to conduct business in China and the board was never informed that it is generally necessary to hold a licence in order to conduct business in China;
21. prior to the arrests in October 2016, Crown obtained legal advice about the licensing obligations of businesses in China constituted by advice that was obtained by:
 - a. Mr Chen, who is not a lawyer;
 - b. Crown's internal Australian lawyers, including Debra Tegoni and Jan Williamson;
22. copies of the legal advice that was variously obtained by Mr Chen, or the internal Australian lawyers Ms Tegoni and Ms Williamson:
 - a. was not made available to the board, prior to the arrests in October 2016;
 - b. was not considered as part of Crown's risk management structures, prior to the arrests;
 - c. has never been provided to the VCGLR and is a matter about which Crown continues to assert legal professional privilege;
 - d. to the extent that it is referred to in the Crown Submissions, is a topic that continues to be the subject of redactions, based upon assertions of legal professional privilege;
23. in the context of the ongoing assertion of legal professional privilege in respect of the business law advice, the matters submitted at paragraphs 140 – 185 of the *"Submissions of Counsel Assisting: China Arrests"*⁹ are accurate and accepted by Crown, except to the extent that the Crown Submissions seek to assert that:
 - a. no regulatory action was taken by Chinese authorities, against Crown, for a failure to comply with its business law obligations in China;
 - b. it remains unclear (notwithstanding that external advice was sought) whether Crown did or did not in fact require a licence to operate in China;
 - c. the conduct of Crown management (presumably including the Australian lawyers Ms Tegoni and Ms Williamson), in respect of the business law advice, was not unethical;

⁹ Which were produced to the VCGLR by Crown in an unredacted form in response to a notice that was issued by the VCGLR dated 26 November 2020.

Risk management structures (post-arrests)

24. in respect of the matters referred to at paragraph 189 of the Crown Submissions, the changes to the risk management structures which have been implemented since the China arrests:

- a. were not implemented until February and June 2020, being dates that are well after the VCGLR had provided its draft report to Crown in May 2019;
- b. continue to rely, for the most part, on senior executives to both identify and classify any risks associated with Crown's business operations;
- c. notwithstanding the *"three lines of defence"* and *"bottom up"* approach:
 - i. do not contain a mechanism by which junior staff could have their risk management concerns (including concerns that they might be detained because of their employment by Crown) escalated to the risk management committee of the board, without the endorsement of the senior executives in charge of the relevant business unit;
 - ii. neither Crown's *"whistle blower policy"* nor its current risk management structures contain any protections for junior staff who might seek to act as *"whistle blowers"* and elevate the type of risk that existed in respect of Crown's operations in China, without the approval or endorsement of the senior executives in charge of the relevant business unit;
- d. are incomplete and Crown *"remains in the process of considering...further improvements to its risk management frameworks."*¹⁰

Remedial steps (governance, ethics and culture)

25. in respect of what is described at heading B6 of the Crown Submissions as *"the aftermath of the China arrests: remedial steps"*, the remedial steps that have been taken by Crown have not included any review and/or remediation of Crown's governance, ethics or culture, by reference to the events that occurred in China (except the apparent attempts Ms Siegers has made in the context of her changes to Crown's risk management structures to *"embed a culture whereby all significant events and risks [are] brought to the attention of the relevant risk management processes and committees"*).¹¹

¹⁰ Crown's Submissions at [190]

¹¹ Crown's Submissions at [191(e)]