IN THE MATTER OF CROWN RESORTS LIMITED

AND IN THE MATTERS OF HOTEL CARD TRANSACTIONS AND FUNDS TRANSFERS BY ASSOCIATES OF CUSTOMERS

MEMORANDUM OF ADVICE

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MEMORANDUM OF ADVICE

1. We are instructed on behalf of the Board of Crown Resorts Limited (**Crown**) to assist our instructing solicitors to investigate, and to advise urgently, in relation to two matters asserted recently by a Crown employee to have been past practices of Crown involving 'circumventing government laws' to assist in money laundering by patrons of Crown's casino.

2. In particular, one practice at Crown Melbourne involved Crown receiving payment at Crown Towers Hotel from international VIP customers using a credit or debit card (ordinarily a China Union Pay (**CUP**) card), with the funds then made available to the patron for gaming at the casino (**the CUP process**).

3. A second asserted practice involved Crown receiving funds from a patron (or for that patron's benefit) which had been transferred within Australia by a second patron, and in respect of which the first patron had transferred to the second patron equivalent funds in China, thus without entailing an international transfer.

4. We are instructed that, in response to the assertion of such practices, the board of Crown has initiated this investigation, and Crown and our instructors have undertaken searches for relevant documents. In the time for investigation and preparing this advice (around six weeks), Crown and its board have been responding to and preparing for royal commissions in Victoria and Western Australia, and we understand this advice to have been sought urgently in that connection. We have been provided with documents and have interviewed a number of current and former Crown employees (on a voluntary and unsworn basis), although several did not agree to be interviewed (see Schedules 1 and 2).

5. In relation to any practice of receiving funds transferred within Australia in reciprocation of equivalent transfers in China between patrons, we have not been able to identify evidence indicating the existence of such a practice.

6. Our advice in relation to these matters is set out under the headings below.

SUMMARY

CUP process

7. From 2012 to 2016, Crown allowed international VIP patrons at Crown Melbourne to use a credit or debit card at the Crown Towers Hotel to authorise a transfer of funds to Crown, the value of which would then be made available to the same patrons at the Melbourne casino. Over that period, over $160 million was received by Crown through the CUP process.[1]

8. Our advice relates to identifying the practice which existed and whether the process was apt to contravene any Australian laws. Our advice does not, and could not in the time available, or perhaps without compulsory powers, involve a definitive analysis of whether individual transactions involved contraventions of Australian law. In particular, we have not examined any evidence as to the source of the funds that patrons accessed or the pattern of transactions carried out by the CUP process which may indicate features of potential money laundering. Any such information could significantly alter our advice, particularly in relation to whether any criminal offences may have taken place.

9. Our investigation produced some evidence that Crown promoted the availability of the CUP process overseas, including in jurisdictions (such as China) where the local law restricted promotion of gambling. Whether the promotion of the CUP process was legal according to foreign law is not within the scope of this advice. However, we have not identified any Australian law which may be breached by reason of it being contrary to a foreign law for the CUP process to be carried out in Australia or promoted in a foreign jurisdiction (assuming it be the fact).

10. For the purpose of assessing whether or not Crown's use of the CUP process complied with Australian law, on the evidence available to us, we consider that:

    (a) there are grounds to conclude that the CUP Process contravened section 68(2) of the *Casino Control Act 1991* (Vic) (**CCA**) by providing money or chips as part of a transaction involving a credit or debit card;

[1] CRW.900.001.0044, Main Cage Purchase spreadsheet document.

(b) there are not sufficient grounds to conclude that transactions undertaken by the CUP process necessarily involved a contravention of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (**AML Act**) or the *Anti-Money Laundering and Counter-Terrorism Financing Rules* (Cth) (**AML Rules**); and

(c) otherwise, there are not sufficient grounds to conclude that the process necessarily involved contravention of any other laws or commission of any criminal offences under the following Acts:

(i) *Gambling Regulation Act 2003* (Vic);

(ii) *Crimes Act 1958* (Vic); and

(iii) *Criminal Code* (Cth).

11. We observe immediately that internal legal advice was obtained, and revealed a risk that the CUP process breached section 68(2) the CCA.[2] Crown decided to run that risk. While Crown staff from the gaming business professed to abide by compliance and legal advice, Michelle Fielding (in the compliance team) suggested that internal advice was provided in the context of a culture that placed significant pressure on the compliance team (and perhaps also the legal team) to achieve the desires of the commercial side of Crown's business.

12. Regardless of the internal advice received, senior Crown executives, including Jason O'Connor [redacted], held reservations that the CUP process did not pass the 'pub test' or the 'sniff test'. By involving card transactions at Crown's hotel in connection with gaming, such reservations aligned with their awareness of the general prohibition in section 68(2)(c), and of internationally publicised concerns with use of CUP cards in Asia for gaming and to avoid currency controls. Crown executives were aware of a widely known process at casinos in Macau pursuant to which fake sale transactions were processed by third parties in nearby shopfronts, thereby avoiding CUP's reported restrictions on its cards being used to obtain cash or to purchase gambling products. In 2014, senior Crown executives shared a newspaper article that

[2] See, e.g. WN.514.063.0229, email from Michelle Fielding to Matt Sanders and copied to Jason O'Connor on 9 August 2012; CRW.523.002.0159, Confidential Memorandum containing legal advice from Debra Tegoni dated 17/09/13; CRW.523.002.0121, Email dated 30 /09/2013 from Debra Tegoni to [redacted] copying Jason O'Connor; CRW.523.001.0030, Email from Ms Tegoni to Mr O'Connor on 17 October 2014.

described the Macanese process as violating 'China's anti-money laundering regulations as well as restrictions on currency exports' and as providing a 'conduit' for 'corrupt officials and business people to send money out of the country'.[3]

Reciprocal transactions between patrons

13. We did not identify any evidence of a practice, of which Crown staff were aware, involving receipt by Crown of funds from transfers within Australia between patrons which were reciprocated in China or overseas. We were instructed that searches had not produced any documents which revealed such a practice or any occasions on which transactions of that kind had occurred. Each of the interviewed Crown staff (current and former) denied awareness of any occasion on which transactions of that kind had occurred. It was beyond the scope of this advice to carry out an accounting review of all potentially relevant transactions.

14. It is clear, however, that Crown permitted third party remittances in the relevant period, meaning that one person could transfer money to Crown for another person's benefit. By receiving such payments, Crown established the conditions by which it could become involved in the kind of reciprocated transactions that we were asked to explore.

15. In this regard, it was commonplace[4] for Crown to receive funds in connection with international transfers carried out by patrons with "money changers" (some licensed and others not), involving a transfer to the money changer in an overseas location, and the remittance by the money changer from funds it held in Australia. The circumstances in which such transactions were undertaken were beyond the scope of our instructions.

16. As the evidence provided to us is not comprehensive of all Crown's operations, and the reported assertion did not identify a timeframe for such conduct, we can only conclude that it was possible that such transactions between patrons occurred. In general, Crown should have been aware of risks attaching to receipt of funds from third parties. This advice does not extend to a wider review of the adequacy and implementation of Crown's processes to address such risks.

[3] See paragraph 117 below.
[4] Crown has now ceased accepting payments from third parties.

FACTUAL BACKGROUND

17. We set out below a summary of the facts as we are able to assess on the evidence available to us. We have relied upon the documentary record where possible. However, the investigation and this advice have been prepared with urgency, and there was a wide potential timeframe over which the asserted practices were undertaken. Further, we have not been able to interview all relevant witnesses, and the responses of most witnesses lacked detail about the events occurring 5-10 years ago. Moreover, there were a number of people who did not agree to be interviewed. Accordingly, the investigations able to be conducted in the time available were not able to be sufficiently exhaustive to dispel the possibility of additional relevant circumstances which may be material in relation to the conclusions which we have been able to reach.

Structure of Crown business

18. In Australia, Crown has conducted casino businesses in Melbourne and in Perth. We set out below a brief summary of the structure of relevant parts of Crown's business as it relates to the Melbourne casino, and key personnel involved:

    (a) the VIP International business group, by which Crown sought international patrons under 'programs' which provided additional benefits in exchange for commitments by the patrons to game in larger amounts (VIP patrons);

    (b) the Hotel division, which ran hotels adjacent to the casino at which many VIP patrons ordinarily stayed;

    (c) the Cage, being the division responsible for receiving deposits and providing funds to patrons in connection with gaming (described as the banking arm of the casino); and

    (d) corporate support services including legal and compliance teams.

VIP International

19. From at least 2008, Crown was assertively targeting VIP gaming customers living outside Australia. This was done primarily through the efforts of the VIP International business unit, which was dedicated to attracting VIP gamblers from overseas to Crown's

casinos.[5] In the relevant period, it employed approximately 150-200 people in the VIP International Department in Australia and in the overseas marketing team (which had offices in various parts of Asia).[6] In 2013, the VIP program play turnover at Melbourne alone was $38.9 billion, and in 2016 it was $50.1 billion.[7] It was a significant part of Crown's business, and in 2012-2016 it was undergoing significant growth.

20. From 2011 to October 2016, Jason O'Connor was the Group Executive General Manager of VIP International Gaming.[8] He was the ultimate decision-maker in the VIP International business unit.[9] He is still employed by Crown, however has not worked on the VIP International side of the business since he returned from China (after a period of imprisonment there).

21. From 2013, Barry Felstead was the CEO of Australian Resorts, and the most senior executive responsible for international business.[10] Mr O'Connor reported to Mr Felstead.[11] Mr Felstead no longer works for Crown.

22. Rowen Craigie was the Managing Director and Chief Executive Officer of Crown from 2007 to 2017. Mr Felstead reported to Mr Craigie.[12] Mr Craigie no longer works for Crown.

23. The VIP International leadership team also included Confidential and Roland Theiler. Confidential Mr Theiler was Senior Vice President of International Business from 2011 (and had been employed by Crown in that area for several years earlier). Confidential Mr Theiler reported directly to Mr O'Connor. They are no longer employed by Crown, although Mr Theiler

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[5] VCG.0001.0001.0001 at VCG.0001.0001.0001_0022, and VCG.0001.0001.0001_0023, at [79]- [82], Final Report by VCGLR entitled "Report into the Imprisonment of Crown staff from October 2016 to August 2017 in the People's Republic of China", provided to Minister for Consumer Affairs, Gaming and Liquor Regulation on 19 February 2021.
[6] Ibid at CRW.507.002.1244.
[7] Ibid at CRW.507.002.1243.
[8] Transcript of Proceedings, *Inquiry under section 143 of the Casino Control Act* 1992 (NSW), 2 September 2020, p 1868 at [10].
[9] The Honourable Patricia Bergin SC *Inquiry under section 143 of the Casino Control Act* 1992 (NSW) at p 255 [22].
[9] Ibid at p 243 [23].
[10] Transcript of Proceedings, *Inquiry under section 143 of the Casino Control Act* 1992 (NSW), 2 September 2020, p 1924 at [20].
[11] Ibid p 129 at [16].
[12] The Honourable Patricia Bergin SC *Inquiry under section 143 of the Casino Control Act* 1992 (NSW) at p 219 [16]; Transcript of Proceedings, *Inquiry under section 143 of the Casino Control Act* 1992 (NSW), 20 August 2020, p 1441 at [20].

is a party to a services agreement whereby he has agreed to provide "specialist strategic advice and business support for Crown" for 12 months effective from 1 February 2021.

24. In 2012, Matt Sanders worked as a Strategy Manager for VIP International. After Mr Sanders left Crown in early 2013, he was replaced by [redacted] who reviewed the China Union Pay procedure. He stated that he reported 'mostly' to [redacted], but Mr O'Connor tasked him with a review of the CUP Process in 2013, and with responsibility for liaising with gaming, banking, finance and legal in relation to the project. [redacted] is still employed by Crown.

25. The gaming side of Crown's business relied on a casino management system called 'Syco'. Gaming customers have Syco numbers assigned to them, and the accounts linked with these numbers include information such as the customer's address and gaming history. VIP International team members had access to the information held in Syco, although information of certain kinds or in relation to certain customers required authority.

Hotel

26. Crown ran three hotels adjacent to the Melbourne casino, including 'Crown Towers Hotel'.

27. [redacted] was, in the relevant period, the [redacted] for the three Melbourne hotels owned by Crown. His role encompassed oversight of the finance team for hotels, whereas gaming was a separate business unit within the same company. He was a key point of contact between Crown and NAB, and agrees that he would have had some responsibilities in relation to reviewing the terms and conditions associated with the card terminals. [redacted] is still employed by Crown.

28. [redacted] was a [redacted] for the three Melbourne hotels owned by Crown in the relevant period. Her main jobs were to develop training material, train staff, and liaise with different departments whenever a new process was established. She created a number of the Work Instruction documents that explained how hotel staff should process the transactions. [redacted] is still employed by Crown.

29. The hotel reservation system at Crown is called Opera. Items charged to a guest's room are managed through this system, and purchases of chips through the CUP process were

therefore transacted through this system. Hotel staff did not have access to information in Syco.

Casino Cage

30. The Cage conducted the receipt and payments to patrons related to gaming, and relevant accounting records for the patron's account and transfers within Crown's business. Physically, there is a Cage located on the casino floor of Crown Melbourne, and another one connected to the Mahogany Room (a private room for gaming by VIPs).

31. The key software platform for Cage staff was Syco, and Cage staff had access to information it contained.

32. Crown maintained a transaction account within the Syco system for every international VIP patron, which recorded amounts deposited for the benefit of the patron and amounts withdrawn (as money or chips) for gaming or as winnings (known as a DAB account). Other kinds of accounts for storing money or chips could also be associated with a patron's Syco account, although these are not relevant for current purposes.

33. The Cage issues Chip Purchase Vouchers (CPVs) and Chip Exchange Vouchers (CEVs) to customers. The process for issuing a CPV is that a customer will put money in their DAB account, and then will have the capacity to obtain a CPV to the value of that money or less (which will draw down on the money in their DAB account). The CPVcan then be exchanged for casino chips at a gaming table. A CEV works in a very similar way, the only difference being that if a customer does not have a DAB account, they can simply purchase a CEV which can then be exchanged for chips at the table.

34. The Cage had an Internal Control Statement, and Standard Operating Procedures (SOPs) for Cage operations. These were lodged with and approved by the VCGLR.

35. Cage staff were responsible for several aspects of AML compliance, in particular ensuring that sufficient identity details were recorded for the patron and raising relevant reports (for example, for threshold transactions involving the deposit or release of at least $10,000 in cash).

36. Stephen Hancock has worked in the Cage in a senior leadership role for many years, and since 2015 as General Manager.

Legal and Compliance Teams

37. Crown's corporate support services included a legal team and a compliance team.

38. Debra Tegoni was Executive General Manager, Legal and Regulatory Services at Crown Melbourne in the relevant period and was also the AML/ CTF Compliance Officer. She was on the executive team that reported to the CEO (Mr Felstead). She is no longer employed by Crown and did not agree to be interviewed for the purpose of this investigation.

39. Michelle Fielding was the Group General Manager, Compliance in the relevant period. Although qualified as a lawyer, and reporting to Ms Tegoni,[13] she said that the work of the Compliance team was not engaged in legal practice. The work was principally concerned with compliance with requirements under the CCA. She is still employed by Crown as head of the complaince team.

40. [redacted] was the [redacted] (for the purpose of applicable anti-money laundering legislation) throughout the relevant period.[14] His job involved monitoring transactions from day to to day, and ensuring that Crown complied with its reporting responsibilities.[15] He reported at various times in the relevant period to Ms Fielding and Ms Tegoni. [redacted] is still employed in the same position at Crown.

41. Joshua Preston was the head of the legal department in Perth in the relevant period.[16] After a restructure in 2017, he became the Chief Legal Officer across Melbourne and Perth.[17] He is no longer employed by Crown and we have been unable to interview him.

Chronology of Events: CUP Process

42. By 2012 - 2016, Crown Melbourne's capacity to attract Chinese 'high rollers' to gamble in its VIP rooms was a major commercial priority for the company.[18] VIP International

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[13] The Honourable Patricia Bergin SC *Inquiry under section 143 of the Casino Control Act 1992 (NSW)* p 316 at p 316 [116].
[14] Transcript of Proceedings, *Inquiry under section 143 of the Casino Control Act* 1992 (NSW), 4 September 2020, p 2147 at [20].
[15] Transcript of Proceedings, *Inquiry under section 143 of the Casino Control Act* 1992 (NSW), 4 September 2020, p 2147-8.
[16] The Honourable Patricia Bergin SC *Inquiry under section 143 of the Casino Control Act* 1992 (NSW) p 529 at [28].
[17] Ibid at p 529, [29].
[18] Ibid at p 249, [60].
[18]See, e.g. the 2013 Annual Report which stated VIP Program Play turnover for the year was $38.9 billion, an increase of 9.2% on the previous year. Customers from China were said to be the driving force behind the strong

therefore aimed to enhance Crown Melbourne's attractiveness to patrons of this kind, a majority of whom were from mainland China.[19]

43. It appears to have been well known at the higher levels of VIP International that Chinese law prohibited large amounts of money from exiting the country, and there were comparable restrictions in other countries, though most people we interviewed were not certain of the details and could not say when they became aware of the issue. Mr O'Connor said he was well aware, prior to 2016, of the difficulty in remitting funds from China and the prohibition on sending more than $50,000 offshore, and that this was common knowledge. Confidential also said she was aware of this prohibition. By early 2015, Crown's VIP International strategic business plan recorded that "[the Chinese central government] is also trying to close down the uncontrolled outflow of currency, and the "underground banking system" that supports it. This has also brought attention to the use of China Union Pay cards to access money overseas."[20]

44. According to Mr O'Connor, prior to the introduction of the CUP process, Crown was receiving messages and requests from customers about whether they could use their CUP cards to access money. Such requests sometimes came from Chinese customers planning to visit and making enquiries about how they would pay, and at other times they came from customers at Crown who had exhausted their credit lines with Crown and their other accessible funds.

2012

Commencement of CUP process

45. The commencement of the CUP process appears to have originated in 2012, initially responsive to requests from customers rather than planned as an offering by Crown. However, Crown staff were also conscious (and increasingly so in the period up to 2016) of a similar facility provided by Crown's competitor, Star Casino.

46. On 8 August 2012, [redacted] (Crown's Vice President South China) asked VIP International team member William MacKay whether "the creditcard facility is in place" as he had two patrons who wished to fly to Crown that night, but who only had access

growth. The Honourable Patricia Bergin SC *Inquiry under section 143 of the Casino Control Act* 1992 (NSW) p 249 at [62] and Ex M48.

[19] Ibid at [9].

[20] Ibid at [55], and Ex M169.

to funds via their Union pay credit or debit cards, and who wanted to draw down $200,000.[21] Mr MacKay consulted with Mr Sanders, requesting a 'once off' transaction while the process awaited official sign-off.[22]

47. Mr Sanders proposed a process whereby Crown Towers would raise a room charge, and 'the room bill' would be immediately settled with the card, following which the cash would be released at the Cage.[23] He stipulated that pre-approval would be required from Richard Longhurst (Chief Operating Officer of Gaming) and Mr O'Connor.[24] He also sought advice from Ms Tegoni and Ms Fielding in Crown's internal legal and compliance teams.

48. The following day, on 9 August 2012, Ms Fielding sent an email to Mr Sanders (copying Ms Tegoni) with the following advice about the legality of using a credit card as "surety for the issuance of credit" or "for the purpose of selling chips" to a patron, with express reference to sections 68 and 81AA of the CCA:[25]

- The law prevents taking a 'cash advance' from a credit card both on the gaming floor and within 50m from any casino entrance;
- It further prevents the provision of cash or chips as part of a transaction involving a credit card or debit card;
- However, Crown is provided with an exemption to this rule, where the chips are provided on credit to a person not ordinarily resident in Australia, and that person is participating in a junket or premium player arrangement.
- "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."

49. Ms Fielding concluded that "noting the above risks", Crown could sell and provide chips from a credit card (or use the card as a surety) to international patrons only, in circumstances where those patrons were participating in a junket or premium player arrangement.[26] In that case, Crown could deposit those chips into the patron's deposit

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[21] CWN.514.061.8246 at CWN.514.061.8251, Email from [redacted] to William MacKay on 8 August 2012.
[22] CWN.514.061.8246 at CWN.514.061.8251, Email from William MacKay to Matt Sanders on 8 August 2012.
[23] CWN.514.061.8246 at CWN.514.061.8250, Email from Matt Sanders to William Mackay and others on 8 August 2012.
[24] Ibid.
[25] CWN.514.063.0229, email from Michelle Fielding to Matt Sanders on 9 August 2012.
[26] CWN.514.063.0229 at CWN.514.063.0230, email from Michelle Fielding to Matt Sanders on 9 August 2012.

account in the normal course of dealing, however Crown could not provide a cash advance from the patron's credit card.[27]

50. Mr O'Connor and Confidential have said in interview with us that they were aware of the general prohibition on providing credit, and held (and continued to hold) reservations about the adoption of a facility whereby a credit card could be used to purchase gaming chips.

51. Nevertheless, on the same day as Ms Fielding's email of advice, Mr O'Connor approved use of a card transaction under the proposed process for Mr Liang's customer, to a maximum of $200,000.[28] The first transaction then occurred the following day for $50,000.[29]

52. From that time onwards until the process ended in 2016,[30] Crown Melbourne permitted international patrons to purchase chips via credit and debit cards.

53. On 6 September 2012, Mr Sanders wrote to the Hotel Duty Managers and the Manager of the Cage, Mr Hancock, to explain the procedure for putting through these transactions.[31] Andrew Cairns, the General Manager of Crown Towers in the relevant period, was also copied into this email, as was Mr O'Connor.

54. The email set out essential aspects of the CUP process. It stipulated:

- International sales staff to advise Will Mackay or Matt Sanders when patron requests to use the credit card facility, including the following information:
  - Patron full name
  - SYCO patron ID
  - Estimated date of transaction
  - Crown Towers booking reference (if available)
  - Amount requested
  - Credit card (e.g. China Union Pay, Amex etc.)
- Will Mackay or Matt Sanders to provide Andrew Cairns and Stephen Hancock with the above information and appropriate approvals

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[27] Ibid.
[28] CWN.514.081.1752, Email from Jason O'Connor to Matt Sanders on 9 August 2012.
[29] CWN.514.061.8246 at CWN.514.061.8247, Email from Stephen Hancock to Matt Sanders and William Mackay on 10 August 2012.
[30] CRW.514.051.0782, VIP International Credit and Debit Cash Out Review dated 6 June 2013, which reported "Since August 2012, Crown has permitted International Patrons to obtain access to their funds via cash outs on credit cards."
[31] CWN.514.062.5688 at CWN. 514.062.5689, Email from Matt Sanders to Hotel Duty Managers and others, 6 September 2012.

- Sales staff/ Mahogony Room Service Manager to notify Crown Towers duty manager at least 30 minutes prior to transaction
- Patron must be present for transaction with a credit card in their name and a matching valid passport
- Crown Towers duty manager to take a copy of patron's passport and raise a charge on patron's room including the amount requested and credit card processing fee
- Crown Towers Duty Manager to process credit card for full amount;
- Hotel to provide patron with copy of approved credit card receipt and Opera invoice;
- Mahogany Room Cage will deposit the approved funds (excluding transaction fee) into the patron's DAB account.

55. The process described in the email did not refer to any monetary limit to be generally imposed on such transactions, or any requirement that staff confirm whether the patron was internationally domiciled, on a junket, or on a premium player arrangement. However, these appear to be matters which were to be addressed by the VIP International team and not contemplated to be administered by the hotel staff.

56. On 11 September 2012 Ms Fielding emailed Mr Sanders, Mr O'Connor, Mr Cairns and others, copying in Ms Tegoni.[32] Her email stated that the measurements had been completed between the Towers front desk and the Mahogany Room, as well as the main gaming floor. She advised that only two of the terminals were reliably more than 50m from the Mahogany Room, and that those were the only terminals that could be used for the process. Ms Fielding also told Mr O'Connor and others "it would be less problematic if the entire process of withdrawing the cash and signing the credit card withdrawal slip could be conducted at these Towers terminals."[33]

57. This advice seems to have been directed at ensuring compliance with section 81AA of the CCA, which prohibits a casino from allowing cash facilities to be provided within 50m of a casino entrance. It seems inconsistent, however, with Ms Fielding's previous advice that the process could *not* be used to facilitate a cash advance.[34]

58. We have not been able to establish whether the CUP Process was ever used to withdraw cash, although it appears to have been structured only to provide for funds to be available

[32] CWN.514.063.5838, Email from Michelle Fielding to Jason O'Connor and others on 11 September 2012.
[33] Ibid.
[34] CWN.514.063.0229 at CWN.514.063.0230, Email from Michelle Fielding to Matt Sanders on 9 August 2012.

at the Cage. Although the Cage processes enabled a patron to withdraw cash from their DAB account in the Cage, and this could have occurred immediately after the DAB account was credited with funds obtained pursuant to the CUP process, such transactions would be subject to Crown's ordinary AML procedures.

2013

VIP working group explores remittance options

59. The VIP working group was a forum of meetings between Crown and representatives of Crown's significant shareholder Consolidated Press Holdings (**CPH**), first convened in 2013.[35] It was made up of VIP International executives and senior CPH personnel, including Mr Felstead, Mr O'Connor, Mr Theiler, Mr Craigie, Michael Johnston (then a director at both Crown and CPH), and Steve Bennett (then CPH Treasurer). The purpose of the group was to be an advisory group that worked to grow the VIP business.

60. One key focus of the group was the exploration of options available to international patrons to remit funds to Crown. According to Mr Felstead, this focus reflected the fact that after 2012 an increasing number of countries were bringing in currency movement restrictions. Mr Bennett was considered a useful asset to these discussions in part because he had strong banking industry connections.

61. On 9 April 2013, the 'VIP Review Workshop # 1' occurred. The Summary of Work Streams record a 'work stream' for which Mr Felstead and Mr O'Connor were responsible, which was assigned the task "Look into whether there is an opportunity for patrons to use China Union Pay to access $".[36] It is not entirely clear how this entry reconciles with the existing usage of the CUP Process at Crown Melbourne, but it may indicate consideration of consolidating or expanding the process.

62. On 29 April 2013 the VIP Review Workshop # 2 was conducted.[37] Later, on 4 June 2013, a 'status update' was circulated, [38] which was also used as an agenda for a meeting the following day. That document detailed that Mr Felstead, Mr O'Connor, and Mr Bennett were exploring options for assisting patrons to remit money to Crown, including

[35] The Honourable Patricia Bergin SC *Inquiry under section 143 of the Casino Control Act 1992 (NSW)* p 245 at [39].
[36] CWN.514.071.3304 at CWN.514.071.3305, document titled "VIP Review Workshop # 1 held on 9 April 2013".
[37] CWN.514.072.2620, document entitled VIP Review Workshop #2 - 29 April 2013.
[38] CWN.514.072.7809, email from Brad Kady to VIP Working Group members dated 3 June 2013.

by engaging in discussions with the companies Regal Crown, Telebite, and PayEco.[39] The Regal Crown option had some similarities to the CUP process that was already in place at Crown, in that Regal Crown was a merchant acquirer of China Union Pay and claimed that they could accept Chinese currency from Crown in China and then pay Hong Kong currency to Crown in Hong Kong.[40]

63. Mr Theiler stated that none of these options were ever found suitable or implemented.

Ongoing use of CUP process

64. On 6 June 2013, a report was produced entitled "VIP International Credit and Debit card cash out review".[41] The document appears to have been prepared by [redacted], who emailed it to Mr O'Connor requesting his approval for the revised policy on 12 June 2013.[42] It seems likely that the document was produced to inform the VIP Working Group.

65. In the 10 months or so since the process was commenced, 14 patrons had withdrawn $2.1m, of which $1.8m had been from CUP cards.[43] The transactions had ranged in value from $5,000 to $450,000 and the transactions had been undertaken using both credit cards and debit cards.[44] The review identified risks and provided a summary of options to mitigate these, including a prohibition on the use of company credit cards.[45]

66. To protect against the risk of contraventions of AML rules, the document suggested a risk mitigation option that would require the Cage to ensure that 'funds withdrawn from credit card are deposited into the DAB account for the same person'.[46] It is unclear whether this control was in place prior to that time.

67. The document also made certain recommendations about how the policy document could be adjusted, including that a cap of $200,000 'for credit transactions per transaction' be imposed, and that it specify that the Cage held responsibility for

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[39] CWN.514.072.7810 at CWN.514.072.7818, document entitled "VIP Workshop # 3 – 4 June 2013".
[40] CRW.523.002.0046 at CRW.523.002.0047, email from Roland Theiler to Debra Tegoni dated 11 February 2014.
[41] CWN.514.051.0782, document entitled "VIP International credit and debit card cash out review 6 June 2013".
[42] CWN.514.051.0781, Email [redacted] to Mr O'Connor on 12 June 2013.
[43] CWN.514.051.0782, document entitled "VIP International credit and debit card cash out review 6 June 2013".
[44] Ibid.
[45] CWN.514.051.0782, at CWN.514.051.0783, document entitled "VIP International credit and debit card cash out review 6 June 2013".
[46] Ibid.

compliance with AML requirements.[47] It recommended that [redacted], or [redacted] or above should be able to approve transactions of less than $100,000, and that only the VIP International GM (Mr O'Connor) or above should be able to approve transactions of greater than $100,000.[48]

68. The document indicated that the transactions that had been processed to date had involved not only credit cards, but also debit cards.[49] According to the review, by 6 June 2013, $0.7 million had been withdrawn using debit cards, whereas $1.4 million had been accessed using credit cards. This use of both kinds of cards was described by [redacted] as 'the original process' in a later email.[50] We consider it likely that both credit and debit cards were used from the beginning of the CUP process (and we have not found any documents which suggest the contrary, or which suggest that any change was made to this aspect of the policy over time).

Legal advice re CUP rules in context of potential Regal Crown deal

69. On 12 June 2013, Paul Jenkins of Ashurst lawyers, provided legal advice to Mr Bennett, with a copy to Mr O'Connor and Mr Theiler, in relation to terms for a contract between Crown and Regal Crown under which Regal Crown would become a merchant acquirer of transactions using CUP cards[51] which made the following points:

- In relation to CUP cards issued in China, legal restrictions apply to their use outside of China. They can only be used at merchants who have been assigned a merchant category code (MCC), which is identifiable by the relevant issuer/ CUP when it is used at the merchant's terminal.
- The foreign exchange authority in China publishes a list of MCCs. These are divided into three categories, including a 'prohibited' category.
- CUP is required by law to ensure merchant acquirers (such as Regal Crown) have set the MCCs for their merchants in accordance with the MCC categories.
- According to the list, a merchant engaging in gaming/ casino business must be assigned the MCC of 7995 which is classified as prohibited.
- This means that payment via a CUP bankcard issued in China to a merchant with the MCC 7995 will be rejected by the issuer of the bankcard.

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[47] Ibid.
[48] Ibid.
[49] Ibid.
[50] CRW.900.001.0022, Email from [redacted] to [redacted] and [redacted] copying to [redacted] on 23 August 2013.
[51] CWN.514.051.0604, Email from Paul Jenkins to Steve Bennett on 12 June 2013.

- Given the business nature of Crown, it is likely that it should be assigned an MCC of 7995.

70. Mr Jenkins stated that "it will be important for Crown to ensure that the provision of the proposed acquiring services by RC will not occur in breach of the contract between RC and CUP (as this would cause, or eventually cause, payments to Crown to be rejected by the issuer/ CUP)".[52]

71. NAB was the 'merchant acquirer' in relation to the CUP Process occurring at Crown Towers. We have not seen any documents to suggest that Mr Jenkins' advice caused questions to be asked about whether the appropriate MCC had been assigned to the NAB terminal at the hotel or whether the transactions undertaken by the CUP Process were occurring in breach of any conditions of the CUP card scheme.

Discussions re Perth roll-out of CUP

72. On 20 June 2013, discussions occurred involving [redacted], Mr O'Connor, and [redacted] about the roll out of the CUP process in Perth.[53] To introduce CUP process in Perth required regulatory approval.

73. On 2 July 2013, [redacted] asked Mr Preston and other employees of Crown Perth to 'refrain from submitting this to DRGL for now as we are currently refining the China Union Pay process in Melbourne'.[54] This email was copied to Ms Tegoni, [redacted] Mr Theiler, Ms Fielding and others. There is no contemporaneous detail of the refinements.

Mid 2013: Confusion regarding credit/ debit card use

74. In July 2013, [redacted] was assisting to develop the Work Instruction for the Hotel staff regarding the CUP Process.

75. On 22 July 2013 [redacted] sought clarification regarding whether the CUP Process could occur using credit as well as debit cards.[55] On 23 July 2013, [redacted], who was an income audit supervisor at Crown, wrote to [redacted]

[52] CWN.514.051.0604 at CWN.514.051.0606, Email from Paul Jenkins to Steve Bennett on 12 June 2013.
[53] CWN.514.051.0781, CWN.514.051.0781, Emails between [redacted] Mr O'Connor, and [redacted] on 20 June 2013.
[54] CRW.523.002.0381 at CRW.523.002.0385, Email from [redacted] to Joshua Preson and others on 2 July 2013.
[55] CRW 900.001.0001 at CRW 900.001.0002, Email from [redacted] to [redacted] on 22 July.

and indicated that "We should not be charging to credit option for main cage paid outs even though this has previously been incorrectly processed. Credit card payments should be used for all other means except the paid out option".[56]

76. On 23 August 2013, Confidential advised [redacted] that credit cards and debit cards would be accepted, at least until the redrafted policy was released. Confidential stated that she had confirmed this with Andrew Cairns.[57]

77. Relying on that email, on 23 August 2013, [redacted] emailed the first hotel work instruction to Confidential Andrew Cairns, [redacted] and others.[58] It was approved by Andrew Cairns.[59]

Further Legal Scrutiny of CUP Process – mid to late 2013

78. On 10 July 2013, Mr Theiler emailed Ms Williamson with several questions. Importantly, he asked "China Union Pay – are we using it correctly?"[60] Mr Theiler stated in interview that this request for information would have come from Mr O'Connor.

79. On 18 July 2013, Ms Williamson forwarded Mr Theiler's email to Ms Tegoni, with her comments, which she said in interview contained information gleaned from conversation with Mr Theiler. In particular, Ms Williamson commented that CUP "Is a CPH initiative" and that "Apparently in China Union Pay [there] are conditions about not to be used for gaming purposes. Roland was to send through emails on this but has not as yet".[61] This email provides an indication that Mr Theiler had some awareness that CUP prohibited the use of cards for gaming purposes, and that he passed this awareness to Ms Williamson (and in turn to Ms Tegoni). The evidence is clear that Ms Tegoni was the lawyer who had carriage of legal issues relevant to the CUP Process.

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[56] CRW 900.001.0001 at CRW 900.001.0002, Email from [redacted] to [redacted] on 23 July 2013.
[57] CRW.900.001.0022, Email from Confidential to [redacted] and [redacted], copying to [redacted] and others, on 22 August 2013.
[58] CRW.900.001.0022, Email from [redacted] to Confidential, [redacted] and others on 23 August 2013.
[59] CRW.900.001.0026, Copy of Work Instruction entitled Document entitled "How to Process a Main Cage Purchase for a Union Pay Gaming Guest" , which states on page 1 that it was issued on 02/08/2013 and approved by Andrew Cairns on 23/08/2013.
[60] CRW.523.002.0355, Email from Roland Theiler to Jan Williamson on 10 July 2013.
[61] CRW.523.002.0355. Email from Jan Williamson to Deb Tegoni on 18 July 2013.

80. In July 2013, there was also a review by Crown (including Ms Tegoni) in relation to whether the terms of Crown's banking arrangements permitted the CUP Process, and consideration of how the terms offered by CBA or NAB compared in this regard. Although Crown had been using NAB as its merchant facility provider, it was considering whether to move its business to CBA.

81. On 26 July 2013 Mr Theiler forwarded an email from [redacted] at the CBA to Ms Tegoni (it is not apparent whether a copy was provided to Mr O'Connor or others).[62] [redacted] email indicated that "there are some unique operational considerations in relation to Union Pay transactions that you may need to be aware of".[63] That email pointed to several constraints on CUP transactions, three of which were of particular relevance:[64]

- Cannot be used to process cash out;
- Cannot be used to place bets or purchase gaming chips;
- Cannot be used to purchase foreign currency.

82. The email from CBA also provided information that 96% of CUP cards were debit cards.[65]

83. In forwarding the above email to Ms Tegoni, Mr Theiler outlined the procedure being employed at that time, and noted that NAB was the current merchant acquirer for Crown but that Crown may soon be changing to CBA. He concluded his email by stating "I will call you later this afternoon to discuss my question".[66] Mr Theiler said in interview that he does not now recall his question.

84. In fact, although in due course Crown Towers moved to using CBA as the merchant provider for its card terminals, it nevertheless retained a single NAB card terminal which was used for the 'chip purchase' transactions under the CUP Process.[67]

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[62] CRW.523.002.0167, Email from Roland Theiler to Debra Tegoni on 26 July 2013.
[63] CRW.523.002.0167 at CRW.523.002.0168, Email from [redacted] to [redacted] on 18 June 2013, apparently forwarded to Roland Theiler.
[64] Ibid.
[65] Ibid.
[66] CRW.523.002.0167, Email from Roland Theiler to Debra Tegoni on 26 July 2013.
[67] Around 17 September 2013, it appears the legal team were concerned that CBA terminals may have been used to process transactions of this kind: CRW.523.002.0159. However emails between the hotel staff suggest that the hotel was still using NAB terminals for all transactions until at least 23 September 2013 (CRW.900.001.0013, Email from [redacted] on 23 September 2013). Further, the history of hotel work instructions indicate that the NAB POS was always the terminal used. [redacted] recalled that once CBA terminals were placed in the hotel, the remaining NAB terminal was the only terminal permitted to be used for the CUP process.

85. On 5 August 2013, there was a further VIP Review Workshop meeting. Mr Felstead, Mr O'Connor and Mr Bennett reported that discussions with mobile payment solutions Telebite/ PayEco, Regal Crown, and Everforex resulted in an assessment that these were "unlikely to provide a solution for Crown – seem to circumvent regulations".[68] The record of this meeting states the following in relation to China Union Pay:[69]

- Crown is currently accepting China Union Pay debit cards for transactions via the hotel through NAB. CUP proposals received from NAB and CBA – NAB fee 1.55%, CBA 1.48%.
- Initial legal view on 'Global Cash Access' (international players using credit card to withdraw from ATMs) is 50 metre rule from the gaming floor.
- Follow up items:
    (a) RT to follow up more detailed review of legal position re CUP debit cards and Global Cash Access. Both being reviewed by Crown Legal.
    (b) Expecting a GCA proposal mid August when GCA travel to Aust for Gaming conf.
    (c) Decision re CUP debit cards and Global Cash Access.
    (d) JO to check how Genting are using Regal Crown type suppliers.

86. On or around 16 September 2013, apparently as part of the legal review prompted by the VIP working group meeting and perhaps in conjunction of Crown Towers' consideration of moving to CBA as a merchant provider, Ms Tegoni reviewed the NAB terms and conditions for a Merchant Agreement and made notes on it.[70] Her notes referred to the "Warranty we give re legality" and that "Transaction will be invalid if illegal".[71] The words 'commercial risk' are included in these notes,[72] which may indicate concern that if the transaction was not legal, Crown could be unable to retain the funds.

87. On 16 September 2013, Ms Tegoni also printed an article out from China Briefing News and placed it in her file, with the title "Getting Cash Money RMB Out of China".[73] It

[68] CWN.514.078.5671 at CWN.514.078.5683, Document entitled "VIP Work Streams Meeting- 5 August 2013".
[69] Ibid.
[70] CRW.523.002.0178, NAB Merchant Agreement (annotated).
[71] Ibid.
[72] Ibid.
[73] CRW.523.002.0270. Op-ed commentary by Chris Devonshire-Ellis for website *China Briefing News*, dated 11 November 2011 "Getting Cash Money RMB Out of China" (printed 16 September 2013).

discussed the obstacles for Chinese nationals remitting funds to Crown, given that "Chinese nationals are able to transfer the equivalent of US$2,000 per day into a foreign bank account, however Chinese nationals face a US$50,000 annual ceiling when exchanging RMB into foreign currencies while foreign nationals do not face such restrictions." On the same date, and perhaps after conducting this research, Ms Tegoni made a separate file note which suggests that she was aware that there was a possibility that the CUP Process transactions occurring at Crown Towers contravened a Chinese law.[74] She wrote "Transaction NOT valid if it's illegal. Where?? Discretion if breaches laws or sanctions of another country."[75]

88. Again on 16 September 2013, Ms Tegoni emailed Mr Theiler asking whether there had been any advice provided by NAB about the specifics of the goods or services provided by Crown, that could vary their terms and conditions.[76] She also said "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?"[77]

89. On 17 September 2013, [redacted] wrote to Ms Tegoni, with a copy to Mr Theiler, stating 'I've had a look through all my correspondence and there's nothing along the lines that you were asking about. And I definitely do not recall any conversations with anyone external suggesting that it wasn't an acceptable practice.'[78] [redacted] told us that he is now unsure as to what this related. The sequence of evidence suggests he reviewed whether NAB had advised Crown in relation to whether CUP cards could not be used for gambling purposes.

90. On 17 September 2013, Ms Tegoni wrote a 'note to file' recording her legal opinion on the CUP issue.[79] In summary, she noted:

- The 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 which may be readily converted to cash) as a 'purchase' rather than a 'cash out'. This suggests CUP can process such transactions;

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[74] CRW.523.002.0334, Tab 33 'China Union Pay Chronology Documents'.
[75] CRW.523.002.0338, Tab 33 'China Union Pay Chronology Documents'.
[76] CRW.523.002.0251, Email from Debra Tegoni to Roland Theiler on 16 September 2013.
[77] CRW.523.002.0251, Email from Debra Tegoni to Roland Theiler on 16 September 2013.
[78] CRW.523.002.0121 at CRW.523.002.0132, Email from [redacted] to Debra Tegoni on 17 September 2013.
[79] CRW.523.002.0159, Note to File by Debra Tegoni on 17 September 2013, recording the subject as "China Union Pay".

- Proceeds of crime issues if not a legal transaction;
- Ts and Cs suggest that transaction is not valid if illegal;
- Transaction cannot be processed to give cash;
- If it is illegal for Chinese resident to gamble OS (don't think it is) then that a matter for resident, subject to proceeds of crime and NAB Ts and Cs;
- There is a technical risk that the transaction is 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 transaction could be illegal unless NAB have changed[80] their Terms and Conditions or specified that using a China Union Pay 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.

91. The final line of the document states "I advised Roland of all of this on 17/09/2013".[81]

92. On 17 September 2013, Ms Tegoni sent an email to [redacted], with a copy to Mr Theiler, to advise of a requirement that the CUP card not be used for cash transactions, as doing so would contravene the merchant rules, and the accounts should record the transaction as a 'purchase' (of a CPV to exchange for chips at the Cage).[82]

93. The 'note to file' is not a particularly clear statement of advice. It apparently surveys potential illegality of the CUP Process in relation to Chinese laws against gambling overseas, CCA requirements for transactions related to gaming, and the terms of NAB's merchant facility agreement. It does not refer to any other aspects of Crown's AML procedures, such as had been raised in the communications at paragraph 88 above. Nevertheless, it seems that Ms Tegoni conveyed to Mr Theiler that she had some doubts in relation to the legality of the CUP Process, though these fell short of a refusal to give it her endorsement.

94. Mr Theiler stated in interview that he does not now recall Ms Tegoni's advice, but that he does not recall being troubled by any legal risk in relation to the CUP process, and that if there was a legal risk, he considered that Ms Tegoni would have said not to proceed. He also did not recall whether he reported the advice to Mr O'Connor (although

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[80] Ms Tegoni had asked for confirmation of the current NAB terms (CWN.539.081.3049, Email Debra Tegoni to [redacted] dated on 8 October 2015). [redacted] confirmed this in somewhat equivocal terms (CWN.539.081.3049, Email [redacted] to Debra Tegoni 8 October 2015) It is unclear to us whether it was ever properly clarified whether the terms had been changed, or that the a new letter of offer was obtained. We have proceeded on the assumption that the NAB terms on which Ms Tegoni relied (provided to us from Ms Tegoni's file) were current throughout the relevant period.

[81] Ibid at CRW.523.002.0161.

[82] CRW.523.002.0121 at CRW.523.002.0131, Email from Debra Tegoni to [redacted] 17 September 2013.

his practice was to do so), but he said it was likely in the circumstances that Mr O'Connor would have simply asked to the effect "did Deb say no?" and been provided with a similarly simplified response.

95. On 18 September 2013, Mr Hancock emailed Mr Theiler advising "I have come up with a process where we can issue a commission based CPV to the patron without having to run it through the patrons account".[83] It is understood that "CPV" in this context meant "Chip Purchase Voucher". Mr Theiler sent this email to Ms Tegoni, who stated it sounded good and said "better to have the funds going straight to Crown account not patron account".[84] It is unclear why Ms Tegoni took this view, however it may be that she considered that a direct deposit into the patron's DAB account was edging too close to giving the customer cash and breaching the NAB terms and conditions. In this connection, it is notable that Ms Tegoni does not seem to have raised any concerns to ensure Crown's AML procedures at the Cage were sufficient to monitor when and how patrons were receiving chips or cash from funds received by the CUP Process.

96. The evidence indicates that a refined process to that suggested by Mr Hancock was adopted by 9 October 2015, when Ms Tegoni sent an amended version of the VIP International Policy to [redacted] Mr O'Connor, and [redacted], indicating that upon receipt of the documents from the Hotel, the Cage could either be provided with a CEV (which is a similar document to the CPV initially suggested by Mr Hancock),[85] or the approved funds could be deposited straight into the customer's DAB Account.[86]

97. On 19 September 2013, Ms Tegoni and Mr Theiler spoke. According to Ms Tegoni's note of the conversation, she provided the following advice: [87]

- The NAB terms and conditions permit quasi-cash, gaming chips
- No transactions for cash – need to change this process plus record as a purchase not cash
- Legal transaction in Australia as long as compliant with CCA and follow NAB rules. Slight risk transaction completed on gaming floor.

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[83] CRW.523.002.0146, Email from Stephen Hancock to Roland Theiler on 18 September 2013.
[84] CRW.523.002.0146, Email from Debra Tegoni to Roland Theiler 18 September 2013.
[85] See paragraph 137 below; CRW.523.001.0026, 9 October 2015 email from Debra Tegoni to [redacted] Jason O'Connor, and [redacted] and attachment.
[86] CRW.523.001.0026, Email from Debra Tegoni to [redacted], Jason O'Connor, and [redacted] on 9 October 2015.
[87] CRW.523.002.0144, handwritten file note of Debra Tegoni dated 19/9/13 and titled "Co with Roland Theiler".

98. It appears from this email that in Ms Tegoni's view, the only legal issues were (a) whether the process conformed to the contract with NAB; and (b) whether the process was compliant with the *Casino Control Act 1991* (Vic). Ms Tegoni appears to have formed the opinion that the contract between CUP and NAB was not something she was required to consider to any extent, at least not in providing advice regarding the legality of the process in Australia.

99. On 23 September 2013, [redacted] wrote to [redacted] stating "I just reviewed the last month's worth of data and noticed that PM accounts are being set up for guests that are not staying in house (even though I have advised that they must be an in-house guest)."[88] Later that day [redacted] forwarded this email through to Ms Tegoni asking "Does the cardholder have to be staying in-house?"[89] She replied stating "I will call you to discuss this on Wednesday to ensure we are clear on all aspects".[90]

100. On 30 September 2013, in response to the above email chain, Ms Tegoni emailed her legal advice about the CUP issue to [redacted], Mr Theiler and Mr O'Connor.[91] Ms Tegoni advised that:

- The EFTPOS machine used needed to be more than 50 metres from the gaming floor, to comply with ss 81AA and 81AAA of the CCA. "There has and remains a risk that providing cash access via the hotel would breach these provisions on the basis that if the guest decides to purchase chips at the Cage to complete their transaction, then the transaction could be said to be concluded on Casino footprint. We have assessed that risk as low."
- Subject to section 66(8), section 68(2) of the CCA prohibits the provision of money or chips as part of a transaction involving a debit or credit card;
- The section 66(8) exemption applies if chips are provided on credit to an international resident participating in a junket or premium program, so it is 'preferable' that those two conditions be confirmed and that the guest be required to be a hotel guest;
- Roland Theiler will identify limits etc to address commercial risks.

101. Nothing in that advice dealt with how section 66(8), which was limited to when chips were provided on 'credit', applied to a 'purchase' on a debit or credit card at the hotel.

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[88] CRW.523.002.0121 at CRW.523.002.0128, email from [redacted] on 23 September 2013.
[89] Ibid.
[90] Ibid.
[91] CRW.523.002.0121, Email from Debra Tegoni to [redacted], copying to [redacted] Roland Theiler, and Jason O'Connor, on 30 September 2013.

102. The provision of advice on the application of sections 81AA and 81AAA of the CCA (which relate to the provision of cash) is unexplained in circumstances where (only 11 days earlier) Ms Tegoni had advised that the facility should not be used to access cash. It may be that Ms Tegoni considered this advice was necessary because the process was capable of providing cash, notwithstanding the clear provision in the policy against doing so.

103. Mr O'Connor said in interview that he does not recall reading the 30 September 2013 advice that was emailed to him, or being concerned about the 'risks' to which Ms Tegoni pointed.

104. On 24 October 2013, at a "VIP Review Work Streams" meeting was attended by Mr Johnston, Mr Felstead, Mr Barton, Mr O'Connor, Mr Theiler and others.[92] The minutes record, under the heading 'Foreign Currency – CUP': [93]

- Look into whether there is an opportunity for patrons to use China Union Pay and Global Cash Access.
- Progressed discussions with mobile payment solution providers such as Telebite/ PayEco, Regal Crown and Everforex. Unlikely to provide a solution for Crown – seem to circumvent regulations.
- Crown is currently accepting China Union Pay debit cards for chip voucher purchase transaction via the hotel through NAB. Internal legal has reviewed and comfortable with the way Crown is accepting China Union Pay debit cards. So far have had c. 30 patrons use for up to $200k at a time (Crown limit).

105. These notes suggest that as of 24 October 2013, the VIP Working Group took the view that the process had been adequately reviewed by Crown's legal team and that legal team was 'comfortable'. This appears to have paved the way for the continued use of the CUP Process, and its eventual expansion to higher values of money.

October 2013 VIP International Credit and Debit Card cash out policy

106. On 4 October 2013, the October 2013 VIP International 'Credit and Debit Card cash out policy' was distributed by [redacted] to Mr O'Connor, [redacted] Mr Theiler and [redacted][94] (among others), with the statement 'would greatly appreciate if you could

[92] CWN.514.051.3907 at CWN.514.051.3916, Document entitled "VIP Work Streams – Meeting 24 October 2013".
[93] CWN.514.051.3907 at CWN.514.051.3914, Document entitled "VIP Work Streams – Meeting 24 October 2013".
[94] [redacted] said in interview that she believes she was involved in the development of this policy.

share with your teams as required'.[95] The policy did not depart significantly from the steps identified in the first Matt Sanders email, except that it required that a maximum withdrawal limit of $200,000 per day be imposed, and all transactions had to be approved by specified persons from VIP International. A list of details were to be collected by international sales staff and provided to the transaction approver, including the patron's name, Syco ID, and their passport nationality and passport number. The Crown Towers duty manager was responsible for ensuring a photocopy was taken of the relevant passport, although the policy stipulated "Cage to verify customer for AML purposes".[96]

December 2013: Removal of daily limit; increase of transaction limit to $500,000

107. On 5 December 2013, Mr Theiler wrote to VIP International Offices, copying in various people including Mr O'Connor, [redacted] and Mr Theiler, and stated "please note that we have increased the limit of **$200,000 per day** to **$500,000 per transaction** for China Union Pay transactions".[97] He proceeded, "Please inform your customers of the ability to use China Union Pay at Crown Melbourne. At this stage the facility is not operative at Crown Perth."[98]

108. In response to a query about the daily limit, Mr Theiler said "We haven't set a limit [redacted]'.[99]

109. The change in Crown's policy, without a daily limit, raises questions about why a transaction limit was imposed at all. When first asked in interview about why a cap was imposed on the CUP Process, Mr O'Connor explained that he did not think that the CUP Process passed the "pub test" and thought it was not "a good look" for customers to be accessing large amounts of money by card transaction. When later asked about why the transaction limit changed to $500,000 *per transaction,* Mr O'Connor said he was unsure, but hypothesised that it may have been to avoid being placed on an 'exception list' for

[95] CRW.523.002.0029 and CRW.523.002.0030, Email from [redacted] to Mr O'Connor and others on 4 October 2013, and attached policy.
[96] CRW.523.002.0029 at CRW.523.002.0030, VIP International credit and debit card cash out policy, October 2013.
[97] CRW.523.002.0029, email from Roland Theiler to VIP International Offices and others on 5 December 2013.
[98] Ibid. We note that this email could be considered to be evidence of an instruction to promote gambling in jurisdictions where gambling was prohibited. This is considered to be beyond the scope of our advice.
[99] INQ.950.002.0131, Email from Mr Theiler to [redacted], 5 December 2013.

a bank or card payment system (such as CUP), attracting unwanted attention as party to transactions listed as being exceptional.

2014

CUP process used to transact over $500,000 per customer per day day

110. On 31 January 2014, $824,437 was transacted by a single customer in a day.[100] This appears to be the first transaction in excess of $500,000, presumably taking advantage of the recent change in policy.[101]

Regal Crown considered as merchant acquirer of CUP

111. Mr O'Connor met with Regal Crown in Hong Kong on or around 13 February 2014, to further explore the question of whether they could become a merchant acquirer of CUP for Crown.[102]

112. On 11 February 2014 Mr Theiler conveyed Ms Tegoni's concerns by email to Jason O'Connor.[103] These included:

- Do CUP know that the transactions are gaming related?
- Can we review the agreement between RC and CUP?
- How can we be assured that RC have a proper AML reporting process in place?

113. It is unclear why Ms Tegoni was inclined to ask whether CUP knew that transactions were gaming related, in relation to the use of Regal Crown as a merchant acquirer, but not in relation to NAB acting as Crown's merchant acquirer for the CUP Process. Ms Tegoni's unwillingness to be interviewed about the CUP Process has hampered our ability to fully consider the matters which Crown addressed in adopting and pursuing the CUP Process.

[100] CRW.900.001.0044, Main Cage Purchase spreadsheet document.
[101] However, we have not reviewed documentation indicating whether the total transaction was comprised of multiple smaller transactions within the new policy limit.
[102]CRW.523.002.0046 at CRW.523.002.0047, Email from Roland Theiler to Debra Tegoni, copying to Jason O'Connor, on 11 February 2014.
[103] CRW.523.002.0046 at CRW.523.002.0047, Email from Roland Theiler to Jason O'Connor, copying to Debra Tegoni, on 11 February 2014.

Further discussions about rolling CUP process out in Perth

114. On 24 February 2014, Mr O'Connor emailed Ms Tegoni about their discussions with Josh (presumably Mr Preston) regarding the use of CUP in Perth.[104] Mr O'Connor sought an opportunity to speak with Ms Tegoni regarding "perceived challenges", and said "One issue is what the VCGLR might do if contacted by the Perth regulator, which Josh feels is likely to happen."[105]

115. Ms Tegoni's file contains a note of conversation that appears to have followed, apparently involving herself, [redacted] Mr O'Connor, and Mr Preston.[106]

116. Mr O'Connor said in interview that he does not recall being concerned about negative consequences that may flow if the Victorian regulator was informed of the process, although he accepted that it is at least possible that he and those involved in the conversation were aware that there was some risk of non-compliance.

Discussions regarding CUP and risks of circumventing Chinese currency laws

117. On 13 March 2014, Mr O'Connor sent to both Ms Tegoni and Mr Felstead an email containing a link to a Reuters article,[107] which identified a growing practice whereby China UnionPay cards were used to purchase cash from Macau shops masquerading as jewellery sellers, so that the money could be spent in Macau casinos.[108] The article pointed out that this practice, which is described as occurring quite openly in Macau, 'violates Chinese anti-money laundering regulations as well as restrictions on currency exports, according to Chinese central bank documents reviewed by Reuters'. It also stated:[109]

> Fake sale cash-backs [described in the article as charging a 'purchase' to a CUP card, and in fact providing cash to the patron] are widespread. The practice violates China's anti-money laundering regulations as well as restrictions on currency exports, according to Chinese central bank documents reviewed by Reuters.

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[104] CWN.523.002.0046, Email from Jason O'Connor to Debra Tegoni on 24 February 2014.
[105] Ibid.
[106] CRW.523.002.0045, File note by Debra Tegoni dated 24/2/14 with heading "Phil/ DT/ Josh/ Jason".
[106] Ibid.
[107] CWN.548.010.0692 and CWN.548.010.0694; Emails from Jason O'Connor to Barry Felstead and Debra Tegoni, respectively, both dated 13 March 2014 and about three hours apart.
[108] CRW.900.001.0033 at CRW.900.001.0034, James Pomfret, Reuters "Special Report: How China's official bank card is used to smuggle money" 12 March 2014.
[109] CRW.900.001.0033 at CRW.900.001.0034, James Pomfret, Reuters "Special Report: How China's official bank card is used to smuggle money" 12 March 2014.

> Chinese authorities also fear the UnionPay conduit is being used by corrupt officials and business people to send money out of the country.

118. The article quoted the head of Fudan University's China Centre for Anti-Money Laundering Studies as saying that the CUP card is 'a major tool' for money laundering.[110] The article also made it clear that, whilst CUP might tacitly tolerate transactions of this nature, it was certainly not prepared to do so openly. It stated: [111]

> In a written response to questions for this article, UnionPay said it "has always strictly prohibited the swiping of cards for cash without any goods being purchased and has collaborated from many sides to boost the investigation of such risks".
>
> According to UnionPay's "Operating Regulations," overseas banks participating in the UnionPay system are required to close the accounts of merchants found to be engaged in frauduelent transactions.

119. Mr O'Connor appears to have been keen to know Ms Tegoni's views on the article, as he also tried to call her about it. When she emailed him to ask why he called, he said "I just wanted to alert you to a reuters special report published in the last day or two, dealing with China Union Pay. I'll send you the link."[112]

120. Mr O'Connor told us that he would have sent this email because of the reference to CUP. He said that in his view, the CUP process adopted by Crown was different to the Macau 'cash purchase' process because Crown was not trying to do something that was misleading, or to make the transaction look like something that it was not. Despite sending the article to Ms Tegoni, there is no evidence and Mr O'Connor does not recall seeking further legal advice about the CUP process.

121. On 24 March 2014 Mr O'Connor discussed the Reuters article by email with Michael Chen.[113] Mr O'Connor said 'Makes me doubly wary of our friends Gordon and Michael' (referring, it seems, to Regal Crown employees who were seeking to pursue a business relationship with Crown).[114] Mr Chen responded, stating "Should be no more wary than any other route though…"[115] Mr O'Connor replied, "Agree- although they are touting

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[110] CRW.900.001.0033 at CRW.900.001.0036, James Pomfret, Reuters "Special Report: How China's official bank card is used to smuggle money" 12 March 2014.
[111] CRW.900.001.0033 at CRW.900.001.0039, James Pomfret, Reuters "Special Report: How China's official bank card is used to smuggle money" 12 March 2014.
[112] CWN. 514.039.4906, email from Jason O'Connor to Debra Tegoni on 13 March 2014.
[113] CWN.502.060.7825, Email from Michael Chen to Jason O'Connor, 24 March 2014. Mr Chen had sent to Mr O'Connor an abridged version which had been edited for Yahoo News.
[114] Ibid, Email from Jason O'Connor to Michael Chen, 24 March 2014.
[115] CWN.502.060.7825, Email from Michael Chen to Jason O'Connor, 24 March 2014.

some formally endorsed connection with CUP to bring credibility to their operations. I'm not sure that is really there".[116]

122. It appears from this correspondence that Mr O'Connor was aware that there were real questions to be asked in relation to whether Crown's use of CUP cards fell within CUP's rules.

123. On 15 May 2014, when the Risk Management Committee met, Mr Barton informed the Committee of an increased level of Chinese Government scrutiny of China Unionpay cash withdrawal processes in Macau.[117] It was noted that this issue would be added to the list of Melco Crown Entertainment regulatory risks for monitoring and review. It seems that the risks of the CUP Process were considered by the Committee in association with potential impacts on Melco Resorts properties, which included several casinos in Macau. We have not found any evidence that Mr Barton or the Committee was aware that the CUP Process was being implemented in Crown Towers.

October 2014 - further discussions regarding legal implications of CUP

124. On 17 October 2014, Ms Tegoni emailed Mr O'Connor to 'clarify' provisions of the CCA. Her advice read as follows:[118]

> 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.

[116] Ibid, Email from Jason O'Connor to Michael Chen, 24 March 2014.
[117] CRW.507.011.4884 at CRW.507.011.4885, Risk Management committee minutes, 15 May 2014.
[118] CRW.523.001.0030, Email from Debra Tegoni to Jason O'Connor on 17 October 2014.

> 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 maybe 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).

125. When taken to this email, Mr O'Connor stated in interview that he could not remember it, but he did not agree that it suggested Crown was concerned less about whether it was complying with the law than the risk of getting caught.

2015

April 2015 - Concerns regarding regulator scrutiny and Star's use of CUP process

126. On 27 April 2015 Ms Tegoni wrote a file note which appears to have recorded a conversation with Mr O'Connor.[119] The notes are difficult to decipher, and hard to understand without explanation by Ms Tegoni, and Mr O'Connor did not recall the conversation. However the notes appear to state, among other things:

- Star via NAB - pls explain requests Chinese Govt [illegible] of transactions
- Now not the time to push harder
- Ok to continue within limit $500k
- Proactively- regulator
- My suggestion close down before if going to happen anyway

127. Mr O'Connor stated in interview that he recalls being aware that Star was conducting much larger CUP transactions than Crown in the relevant period, but he did not recall any discussions with Ms Tegoni on this topic. He was provided with Ms Tegoni's file note, and indicated a total inability to recall to what the conversation related.

128. The notes seem to suggest that Mr O'Connor had become aware that NAB had received 'please explain requests' in relation to similar transactions by Star (albeit of a higher

[119] CRW.528.004.0051, file note by Debra Tegoni headed "TF Jason" and dated 27 April 2015.

value). The conclusion of the discussion appears to have been that the CUP process could continue at Crown provided it did not grow too large. Importantly, Ms Tegoni also seems to have considered that the CUP process might ultimately catch the attention of the regulator, and that regulatory attention (by local regulators or foreign agencies) might result in the process coming to an end – a perspective that seems inconsistent with a confidence in the propriety of the CUP process. It can only be inferred that any 'suggestion' Ms Tegoni gave to 'close down' the CUP Process was not accepted, and there is no evidence that Ms Tegoni provided further advice in writing or to press the issue.

May 2015: Concerns re CUP questioning NAB about transactions

129. On 3 May 2015 Ms Tegoni wrote a file note which appears to have recorded a conversation with Mr O'Connor.[120] The note referred to Chad Barton (who was the CFO of Star Casino at the time), [redacted] and another person called Greg (whose last name is indecipherable). The note suggests that Mr Barton provided an "update" which stated that CUP had informally contacted NAB to ask whether NAB was sure that Echo was using the facility appropriately. NAB had asked Echo and was waiting for a response. It states "Chad is proposing to introduce per customer per day transactions [indecipherable] likely to be even lower than our caps".[121] There is reference to proposed further discussions with NAB, and a reference to "NAB – Regulator", but we have not identified any evidence of such further communications, and the notes are difficult to understand without commentary from Ms Tegoni or Mr Preston.

130. Significantly, the note also appears to contain the line "NAB knows and trying to formulate a response".[122]

131. It appears that Mr O'Connor had been informed and believed that employees of NAB were aware that the CUP transactions were being used for gaming purposes, but were reluctant to reveal this to CUP.[123]

132. However, it seems from the note that Mr O'Connor and Ms Tegoni may also have held concerns in relation to whether NAB would contact the "regulator". Mr O'Connor stated

[120] CRW.528.004.0011, File note by Ms Tegoni dated 3/5/15 with the heading "TF Jason". Publicly available information indicates that Chad Barton was the CFO of Star Casino between 2014 and 2019.
[121] Ibid.
[122] Ibid.
[123] See NAB fees referred to in "Credit and debit card cash out policy: October 2013", CRW.523.002.0028.

in interview that he has no memory of the conversation with Echo in relation to NAB, and in the absence of any assistance from Ms Tegoni, it is difficult to form any developed views in relation to Crown's approach to the information.

Late 2015 policy changes and concerns re legality of CUP process

133. On 10 September 2015, Confidential attended a meeting that appears to have involved herself, [redacted], Ms Tegoni and Mr O'Connor.[124] Following the meeting, Confidential emailed these three people 'recapping' the meeting by indicating required actions that:[125]

- any changes to the policy document or hotel standard operating procedure were to be reviewed by Ms Tegoni, and
- a standard template be provided for requests.

134. Ms Tegoni's notes from 10 September 2015 are difficult to decipher, but they seem to record concern that patrons must not be permitted to use this process to access physical cash as this would breach AML provisions if not reported. Ms Tegoni wrote "$10,000 CHIPS not a cash transaction".[126]

135. That same day, Ms Tegoni emailed [redacted] copying in Mr O'Connor, Confidential and [redacted].[127] She referred to the Hotel process document entitled "How to Process a Main Cage Purchase for a Gaming Guest", and stated 'the document requires amendment as the process document is not accurate'.[128] She also noted that she wanted to know how long the NAB corporate terms from 2013 would be in place and requested this be confirmed, and that she be updated in the future regarding revised offers to NAB's terms and conditions.

136. On 18 September 2015 Ms Tegoni wrote to [redacted] requesting that the title of the policy be changed, so as to ensure that the word "Gaming" was deleted from it.[129]

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[124] CRW.523.002.0008, email from Confidential to [redacted], Debra Tegoni and Jason O'Connor on 10 September 2015.
[125] Ibid.
[126] CRW.523.002.0010, file note of Debra Tegoni dated 10 September 2015.
[127] CRW.523.002.0007, email from Debra Tegoni to Confidential Jason O'Connor and [redacted] on 10 September 2015.
[128] Ibid.
[129] CWN.514.007.7677, Email from Debra Tegoni to [redacted] on 18 September 2015.

137. On 9 October 2015 Ms Tegoni emailed [redacted] with an amended version of the October 2014 policy, stating "Both Steve Hancock and I have reviewed the document. Please see the attached per the marked up changes".[130] The marked up document suggested that the previous title "Credit and debit card cash out policy" be replaced with a new name "Pre-approved bank transactions from hotel guests". The amended policy also suggested that the procedure document be changed such that the Cage could either complete a Chip Exchange Voucher or deposit the approved funds into the patron's DAB account.

138. On 28 October 2015 Ms Tegoni exchanged emails with [redacted] which indicate that there was some uncertainty regarding whether the 2012 terms and conditions regulating Crown's use of NAB's card facilities were the most up-to-date ones.[131] Ultimately, Ms Tegoni appears to have decided to assume the 2012 conditions constituted the most-up-to-date version of the terms and conditions.[132]

139. On the same day, Mr O'Connor wrote to Ms Tegoni (in response to this email chain, which was forwarded to him) stating "Are you still happy with this? By the way, I heard recently Echo have no limits on their corresponding transactions and are therefore allowing customers to transact much higher values."[133]

140. On 11 December 2015, Ms Tegoni spoke to Alex Carmichael, the Managing Director of Promontory Group Australasia, a consultancy company with a specialisation in regulatory issues,[134] and that in 2014 had conducted a review of the AML/CTF Programs at Crown Melbourne and Crown Perth.[135]

141. It seems that Mr Carmichael told Ms Tegoni the "heat in CUP is suffocating".[136] Ms Tegoni's notes also record:[137]

- "CUP- Chinese Govt – crusade against corruption effectively shut down a lot of junkets operating out of Macau. Ceased.

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[130] CRW.523.001.0026, 9 October 2015 email from Debra Tegoni to [redacted], Jason O'Connor, and [redacted] Confidential and attachment.
[131] CWN. 539.081.3049 at CWN. 539.081.3050, Email from Debra Tegoni to [redacted] 8 October 2015.
[132] CWN. 539.081.3049, Email from Debra Tegoni to [redacted] 28 October 2015.
[133] Ibid, Email from Jason O'Connor to Debra Tegoni 28 October 2015.
[134] CRW.512.042.0004, File note by Debra Tegoni dated 11/12/15 and headed "Promontory". Publicly available information indicates that Mr Carmichael held that role at the time, and indicates the services provided by Promonotory.
[135] The consultancy work provided by Promontory to Crown was discussed in The Honourable Patricia Bergin SC *Inquiry under section 143 of the Casino Control Act* 1992 (NSW) at p 213 [51].
[136] CRW.512.042.0004, File note by Debra Tegoni dated 11/12/15 and headed "Promontory".
[137] Ibid.

- 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

142. Ms Tegoni also wrote the words "Shut down. Stay ahead of current Regulators".[138]

143. The import of these notes is unclear without clarification from Ms Tegoni, but there is a reasonable inference to be drawn that Ms Tegoni was aware at this point that the Chinese government was scrutinising the use of CUP. What is not clear is what Ms Tegoni's concerns were in relation to the current regulators, and whether or not this concern related to the Chinese government's increased scrutiny of the transactions.

Daily transaction numbers increase

144. In 2015 and 2016 there were at least eight occasions on which a single client transacted over $500,000 per day. It appears that when this occurred, the 'approvers' Mr O'Connor and Confidential were keen to ensure that the individual transactions did not exceed $500,000. For example, on 21 May 2015 Mr O'Connor permitted [redacted] to access $2 million but specified that the withdrawals must occur in transctions of no more than $500,000 each.[139] Similarly, on 8 January 2016 Confidential approved a withdrawal of $1 million but indicated "$500,000 per transaction please".[140]

145. Mr O'Connor said in interview that he was unable to recall these larger scale uses of the CUP process by individual customers, or the instruction he gave that they be broken into $500,000 transactions. As noted above,[141] he indicated that one reason for imposing a limit of $500,000 per transaction whilst still allowing multiple transactions per day may have been to avoid Crown appearing on exception lists.

146. Confidential acknowledged that her instruction that large withdrawals be made via multiple transactions of $500,000 'doesn't look ideal'. She said she did not think she would have made those approvals without having first either consulted someone or seen

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[138] Ibid at CRW.512.042.0005, File note by Debra Tegoni dated 11 December 2015 and headed "Promontory".
[139] CWN.514.014.3810 at CWN.514.011, Email from Jason O'Connor to [redacted] on 20 May 2015.
[140] CWN.502.008.3274, Email from Confidential to [redacted] and Jason O'Connor on 8 January 2016.
[141] See paragraph 109 above.

someone else (such as Mr O'Connor) approve chip purchases of over $500,000 in that way.

2016

Continued concerns re legality of CUP process

147. On 24 February 2016 Ms Tegoni spoke with Mr Hancock, and then [redacted] regarding AML reporting obligations and the CUP process.[142] The topic appears to be whether or not the CUP process complied with IFTI rules, what might be considered 'suspicious' (presumably for the purpose of suspicious transaction reports), and large threshold transactions. It appears [redacted] may have told Ms Tegoni that funds would only be reported if a third party was involved.

148. On the same day Ms Tegoni asked her Executive Legal Assistant to find out what the legal prohibition in China on taking currency out of China, stating first "I understand the limit is 50,000—can we check the exact requirement and whether there is any extension to loading up credit or debit cards etc? …. No calling anyone at this stage please."[143] At around this time, a typed document was placed on Ms Tegoni's file entitled "Research – Chinese Currency Laws".[144] It stated that 'licensed Chinese banks will not allow customers to send more than US $50 000 out of China each year' and that 'Chinese banks have begun tracking transactions where a single foreign account received $US 200 000 in a 90 day period'.[145]

149. By this point, Ms Tegoni was apparently aware that it was very likely that the use of the CUP process entailed steps which were inconsistent with Chinese currency control laws, and she probably understood that use of the CUP process to facilate movements of funds contrary to those laws was an area of newfound concern for the Chinese government. Moreover, Ms Tegoni's desire that her assistant not call anyone about the issue are consistent with a desire to avoid wider attention being brought to the CUP process. We have not encountered any evidence that Ms Tegoni escalated any concerns she may have held to anyone higher in the organisation than Mr O'Connor.

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[142] CRW. 528.003.0014, File note by Debra Tegoni dated 24 February 2016.
[143] CRW.528.004.0013, Email from Debra Tegoni to Executive Assistant Legal on 24 February 2016.
[144] CRW.528.004.0012, Typed document entitled "Research – Chinese Currency Control Laws".
[145] Ibid.

Update on CUP "numbers" provided

150. On 11 March 2016 Mr O'Connor provided an update on the CUP 'numbers' to Mr Felstead and Ms Tegoni. It stated:[146]

- Total of $105 million transacted to date
- In F16, certain customers had transacted in the millions, including [redacted] ($3,590,000.00, [redacted] ($3,445,000.00, [redacted] ($3,050,000.00) and others, with at least eleven customers transacting over a million dollars in total.

151. The substance of these observations indicates the volume is relatively significant. It seems open to conclude that these 'numbers' were sufficiently material to the commercial strategy of Crown to be the reason that the CUP process was not reined in, even as the risks involved in the process became more apparent.

Planned Perth roll-out of CUP process and expansion to higher-value transactions

152. On 10 March 2016, Mr Felstead was in contact with Mr Preston to discuss the legal implications of rolling out the CUP process in Perth.[147] That day, Ms Tegoni had emailed Mr Felstead with the remark "As just discussed, below are the relevant provisions – most relevant is S68(2)(c) as highlighted. I have just had a very quick look at the WA Casino Control Act and I can't see the same provisions so maybe it's not an issue for Perth or at least not the same issue but Josh is obviously best to judge that."[148]

153. On 11 March 2016, Ms Tegoni made a file note of a conversation with Mr Preston.[149] The topic appears to have been the possibility of rolling out the CUP process in Perth. The note records "Remote possibility—remote—Melb situation- Reg nervous". It also states "Conversation could still occur between Vic and Perth regulator. Position remains the same." This note, like some others we have already identified, is open to the interpretation that Ms Tegoni was concerned to avoid the consequences for Crown of scrutiny of the CUP process.

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[146] CRW.528.004.0033, Email from Jason O'Connor to Barry Felstead and Debra Tegoni on 11 March 2016.
[147] CRW.528.004.0036, Email from Barry Felstead to Joshua Preston on 10 March 2016.
[148] CRW. 528.004.0036 at CRW.528.004.0037, Email from Debra Tegoni to Barry Felstead on 10 March 2016.
[149] CRW.528.004.0041, File note by Debra Tegoni dated 11 March 2016 with heading "Tf Josh Preston".

154. Also on 11 March 2016 Ms Tegoni made a file note of a conversation with Mr O'Connor. It stated "Agreed—CUP – NAB to offer what Star is being offered. JOC will go to [indecipherable] and let me know afterwards next Thursday".[150]

155. A meeting occurred on 21 March 2016 between Mr Felstead, Mr O'Connor, Ms Tegoni and Mr Preston. It is apparent from the file note of this meeting that Crown was, at this point, keen to expand the use of CUP to cover the high volumes of money being transacted at Star. A typed file note records the outcomes of the meeting, which were:[151]

- Josh Preston will clarify with second in charge at the WA Regulator that he can do debit and credit cards on EFTPOS on the casino floor – similar process as to Crown Melbourne;.
- Acknowledged that there is a risk that the WA Regulator will talk to the Victorian Regulator.
- In which case, Debra Tegoni will offer the explanation on section 68(2)(c) and also section 68(8).
- If not we agreed that the amendments would wait for the modification review of the legislation and we would continue doing what we are doing with the interpretation we have adopted.
- Commercially and to mitigate this Jason to action and get the contact at NAB that STAR use to get the 10m daily approval limit.
- Then Jason and Debra to talk to [redacted] regarding the relationship with NAB and confirming those terms and conditions for the Merchant Agreement.
- Josh Preston to confirm whether we can use NAB and so negotiated position for $10m daily (as per STAR) could be confirmed from NAB for both Perth and Melbourne
- If not, Josh will check ANZ terms.
- Once we have confirmation from NAB the daily commercial limits will be changed according to the NAB terms and conditions, and the adopted interpretation of section 68 (Vic) will apply.
- Further, Jason will reinforce that the facilities are only available for truly international patrons (not those who have permanent residency in Australia) and that any transaction where the instructions seem suspicious will be escalated and reported immediately.
- Deb to talk to [redacted] about reporting any suspicious transactions with regard to this.

[150] CRW.528.004.0009, File note by Debra Tegoni dated 11 March 2016 with heading "Jason".
[151] CWN.569.002.5318, Typed File Note by Debra Tegoni with ehading "File Note – Confidential and Legally Privileged" and dated 21 March 2016.

156. In one sense, this file note appears to demonstrate that Ms Tegoni and Mr O'Connor held hope that the CUP process would be acceptable to the regulators; however in another sense it suggests that they understood that there was a degree of creativity about "the interpretation we have adopted" and that their use of the process was of uncertain legitimacy.

157. Another important aspect of the note is that the intention appeared to be that the card transactions in the Perth version of the CUP Process would occur on the casino floor. This gives some support to the proposition that the CUP Process was undertaken in Crown Towers due to a belief that this was required by the Victorian regulatory regime, rather than because it helped to convey the misleading impression that the transactions were not for a gaming purpose.

158. On this same date, Ms Tegoni wrote to Mr Hancock requesting weekly reports of CUP transactions for herself and [redacted], 'now and ongoing please'.[152] She said '[w]e need to be vigilant that the players using this service are truly international" and said "if any suspicions in instructions we escalate and report for AML please – as per usual".[153]

Concerns re CUP "attention" on Star transactions

159. On 4 May 2016 Mr O'Connor wrote to [redacted] (from NAB), and said "I've heard that our counterparts at Star Entertainment in Sydney (who also bank with NAB) have recently attracted some attention from CUP, so would like to understand what that might mean for us, I would appreciate an opportunity to discuss this with you, or someone else, at your convenience."[154]

160. On 19 May 2016 a meeting is recorded in the calendar of [redacted] (Crown financial controller) as involving him with Mr O'Connor, and [redacted] and Mr [redacted] from NAB, presumably on the topic of Mr O'Connor's 4 May email.[155]

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[152] CRW.528.003.0010, Email from Debra Tegoni to Stephen Hancock, copying [redacted], 11 March 2016.
[153] Ibid.
[154] CRW.512.049.0144 at CRW.512.049.0146, Email from Jason O'Connor to [redacted] on 4 May 2016.
[155] CRW.512.049.0144, Calendar invitation for 19 May 2016 at 10.30am with Jason O'Connor listed as "Organiser".

161. On 20 May 2016 Ms Tegoni made a file note of a phone call she had with Jason O'Connor. It stated, among other things:[156]

- I asked Jason how he went with his NAB meeting on Thursday 19 May. Jason said everything he knew about Sydney is basically confirmed, that Sydney had become too greedy and so it had raised the attention of CUP.
- CUP had reached out to NAB and asked if NAB were ok with the transactions.
- Jason said that whilst NAB were quite careful the message that he received was, they were ok with what we were doing but don't overdo it. There needed to be a justification such that the amounts going through could be justified in that Crown for example, rooms are expensive, customers can buy expensive items such as jewellry and handbags etc but that we should not push the envelope. He stated that they had been tracking our averages and it was 76,000 which they were comfortable with but that Sydney had gone too far.
- Basically on that basis Jason said that it was business as usual and that they wouldn't change any limits.

162. This file note further supports a belief by Crown staff that NAB was aware of the nature of the transactions carried out by the CUP Process, and was willing for Crown to proceed accordingly, within the current limits. It tends to negate any suggestion that Crown deceived NAB. However, the premise remains that CUP was not made aware that the transactions were connected with gambling. Although there is a shortage of other evidence that would be necessary to prove that Crown and NAB acted in concert to deceive CUP, the note certainly raises that as a realistic possibility.

163. Confronted with the issue of potentially misleading CUP as to the nature of the transactions, Mr O'Connor stated in interview that he recalled speaking to a woman at NAB about this, but that he was wholly reliant on Ms Tegoni's file note referred to in paragraph 161 above as to the content of the discussion. He did not agree that 'deceive' or 'mislead' accurately described Crown's conduct, but said that the issue discussed with NAB *was* a matter of the transactions looking like they were not gambling transactions, and he suggested the intention was to avoid the transactions appearing on a bank's exception list. Despite the increasing discussions over 2015–2016 and evident concern about scrutiny by CUP and the Chinese government of the use of CUP cards, there does not seem to have been any impetus to stop the roll-out of the use of the CUP process in Perth.

[156] CRW.900.001.0043, File note by Ms Tegoni on 20 May 2016.

Continued contemplation of Perth roll-out of CUP

164. On 26 June 2016, Mr O'Connor emailed [redacted] indicating that "The NAB deal allows us to do what we are currently doing. The CBA deal wouldn't".[157] [redacted] replied indicating that the CBA deal would not impact the NAB terminal,[158] to which Mr O'Connor said "Let's make sure we retain the ability to put NAB in Perth as well".[159]

165. On 6 October 2016, [redacted] told Mr O'Connor that in relation to rolling out the CUP process in Perth, "there is a final meeting with finance, legal etc this afternoon—should get final approval and therefore be rolled out tomorrow or over the weekend at the latest".[160]

166. Mr O'Connor replied, with a copy to [redacted], "Don't forget to let the sales team know once it's in place, but be careful what you say. Just say something like "customers can now use their CUP cards in Perth in the same way as Melbourne".[161] There was insufficient opportunity in interview with Mr O'Connor to seek an explanation of this email.

167. [redacted] when asked in interview about this email, said she could not explain the admonition to 'be careful what you say', but suggested it may have been a reference to being cautious in publicising the existence of the facility, as a commercial secret, to other casinos.

End of the CUP Process

168. It appears to be uncontroversial that the process ended in October 2016, in the immediate aftermath of the arrests in China of numerous Crown staff. Both Mr Theiler and Ms Williamson explained in interview that, at this point, the pendulum swung and Crown became very risk averse in an effort not to jeopardise their staff in China (including Mr O'Connor, who was one of those arrested).

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[157] CWN.565.014.4890, Email from Jason O'Connor to [redacted] on 26 June 2016.
[158] Ibid, Email from [redacted] to Jason O'Connor on 27 June 2016.
[159] Ibid, Email from Jason O'Connor to [redacted] on 27 June 2016.
[160] CWN.514.038.5092, Email from [redacted] to Jason O'Connor on 6 October 2016.
[161] CWN.514.038.5092, Email from Jason O'Connor to [redacted] to on 6 October 2016.

169. According to our information, the last CUP transaction was processed on 23 October 2016.[162] A file note dated 24 October 2016 entitled "China Status" indicates that China Union Pay had been discontinued.[163]

170. By 15 November 2016, it is clear that Crown were instead seeking to send patrons to a bank branch where they could attempt to withdraw money.[164]

Reciprocal transactions between patrons

171. We addressed the asserted practice of reciprocal funds transfers with most current and former Crown staff that we interviewed: whether the interviewee had ever heard suggestion of a process by which a patron located overseas had transferred money from their bank account in China to another patron's bank account in China, and in return the recipient then transferred funds in Australia to the other party's Australian's bank account for use in gaming at Crown, or directly to Crown on their behalf.

172. In short, none of the interviewees said they were aware of it occurring, and there were no documents briefed to us which indicated it occurred or that Crown staff were aware of such circumstances occurring. Several interviewees noted the similarity of the asserted process with the use of "money changers", being international remittance service intermediaries.

173. Mr Felstead said he was not aware of such a process between patrons. Similarly, Mr O'Connor said he was not aware of money being transferred in this way between two patrons, but that he would not rule it out.

174. Confidential said that she had heard of the process occurring, but only insofar as it involved transfers from junket patrons to junket operators (not patron to patron transfers). She believes she was advised of this by members of the VIP International service team, however she cannot recall the details of when she received this information or who passed it on. We consider this to be beyond the scope of the particular process we have been asked to advise on, which relates to transfers between individuals.

175. [redacted] said he had not heard of this process, but suggested members of the service team may know because they spoke with customers.

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[162] CRW.900.001.0044, Main Cage Purchase spreadsheet document.
[163] CRW.512.048.0003, File note dated 24 October 2016.
[164] CRL.605.015.8321 at CRL.605.015.8322, Email from [redacted] to [redacted] on 15 November 2016.

176. Mr Theiler said that Crown had a policy of accepting third party payments until this policy was stopped in April 2020. He said that prior to that time, Crown had always accepted third party transfers, including from money changers, and that Crown would also make third party payments on instructions. He could not, however, recall any suggestion that funds received by Crown were the second half of an inappropriate transaction occurring overseas.

177. [redacted] said he considered it entirely possible that this process occurred, but he could not provide an example of any occasion on which he learned that it had occurred.

178. [redacted] said he had not heard of such a process occurring (unsurprisingly, given his role on the Hotel side of the business). [redacted] was similarly unaware of any such process.

179. Mr Hancock likewise said he was not aware of such a process.

180. [redacted] said he had never heard of the process, though he noted that in his role he would not have been aware of transactions taking place outside of Crown. He was not aware of any suspicious matter reports being submitted in relation to such events.

POTENTIAL CONTRAVENTIONS ARISING FROM CUP PROCESS

181. We have considered whether the circumstances described above provide grounds to conclude that Crown committed a breach of any law governing its operations, or a criminal offence.

182. The laws which we address below are as follow:[165]

(a) Sections 68, 81AA, 8AAA, and 121 of the *Casino Control Act 1991* (Vic)

(b) Part 3 (reporting obligations) of the *Anti-Money Laundering and Counter-Terrorism Financing Act* (Cth)

(c) Sections 82, 83, and 193 to 195A of the *Crimes Act 1958* (Vic)

(d) Parts 400.3 to 400.8 of the *Criminal Code* (Cth)

[165] We note that there were no relevant amendments to the statutory offences we consider below during the period we are considering that impact upon this advice.

Section 68 of the CCA

183. We consider that, contrary to Crown's internal legal and compliance advice, the CUP process involved breach by Crown as a casino operator of section 68(2) of the CCA.

184. Section 68 provides as follows:

> *68 Credit etc.*
>
> (2) Except to the extent that this section otherwise allows, a casino operator must not, and an agent of the operator or a casino employee must not, in connection with any gaming or betting in the casino—
>
> (a) accept a wager made otherwise than by means of money or chips; or
>
> (b) lend money or any valuable thing; or
>
> (c) provide money or chips as part of a transaction involving a credit card or a debit card; or
>
> (d) extend any other form of credit; or
>
> (e) except with the approval of the Commission, wholly or partly release or discharge a debt.
>
> …
>
> (8) Despite subsection (2), a casino operator may provide chips on credit to a person who is not ordinarily resident in Australia for use while participating in—
>
> (a) a premium player arrangement with the casino operator; or
>
> (b) a junket at the casino—
>
> if the casino operator and the person satisfy the requirements of any relevant controls and procedures approved by the Commission under section 121 in respect of a premium player or a junket player (as the case may be).

185. The issues raised by the CUP Process, as noted in the various internal advices by Ms Tegoni and Ms Fielding, are whether the dealings fall within s 68(2)(c), and whether they may be subject to the exemption in subsection (8).

186. There are aspects of the language and interaction of the statutory provisions which invite consideration, and we state briefly some straightforward principles of interpretation. The task of statutory construction must begin, and end, with a consideration of the

statutory text.[166] The text is to be considered in context.[167] The context includes the sentence within which the words appear,[168] the entirety of the statute (which is assumed to be intended to give effect to harmonious objectives, and to give work to every word in the statute),[169] as well as the general purpose and policy of the provision and the mischief it is seeking to remedy.[170]

187. Whilst the legal meaning of the text will ordinarily correspond with the grammatical meaning of the text, that will not always be so. The context, purpose, consequences of a literal construction, or the canons of construction may require a departure from the literal or grammatical meaning of the words used.[171] A construction that would promote the purpose underlying a statute is to be preferred to one that does not.[172] However, the general purpose of a statute may say 'nothing meaningful' about a provision, the text of which clearly enough conveys its intended operation.[173] It is the text of a statute that is to be applied, rather than any received wisdom or prevailing opinion about the type of circumstances in which it is likely to apply.[174]

188. Section 68 of the CCA establishes a scheme that governs the financial interactions of a casino operator and its customers. The purpose of the limitations imposed were not the subject of explicit comment in either the explanatory memorandum or second reading speech for the CCA. However, the policy behind the provisions can be seen to emerge from the 1983 *Report of the Board of Inquiry into Casinos in the State of Victoria*,[175] which was instrumental in the enactment of the CCA.[176] In that report, the Board of Inquiry stated that '[c]redit has almost certainly been the principal source of trouble with casinos'[177] and recommended a ban on casinos giving credit.[178]

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[166] *Federal Commissioner of Taxation v Consolidated Media Holding Ltd* (2012) 250 CLR 503 at [39]; *Thiess v Collector of Customs* (2014) 250 CLR 664 at [22].
[167] *Federal Commissioner of Taxation v Consolidated Media Holding Ltd* (2012) 250 CLR 503 at [39], *CIC Insurance Ltd v Bankstown Football Club* (1997) 187 CLR 384 at 408.
[168] *Elizabeth Bay Road Pty Ltd v The Owners - Strata Plan No 73943* (2014) 88 NSWLR 488 at [82].
[169] *Project Blue Sky v Australian Broadcasting Authority* (1998) 194 CLR 355 at [69]-[71].
[170] *CIC Insurance Ltd v Bankstown Football Club* (1997) 187 CLR 384 at 408.
[171] *Project Blue Sky v Australian Broadcasting Authority* (1998) 194 CLR 355 at [78].
[172] *Interpretation of Legislation Act 1984*, section 35(a).
[173] *R v A2* (2019) 373 ALR 214 at [35].
[174] *Stingel v Clark* (2006) 226 CLR 442 at [26].
[175] Xavier Connor, *Report of the Board of Inquiry into Casinos in the State of Victoria* (29 April 1983).
[176] The history is conveniently traced in The Honourable Patricia Bergin SC, *Report of the Inquiry under section 143 of the* Casino Control Act *1992* (NSW) at [8] to [12].
[177] At [16.43].
[178] At [16.43].

189. The report also identified a difficulty with the carrying of cash around a casino,[179] and suggested that it be addressed by both cheque cashing facilities within the casino[180] and banking facilities within a casino which could issue chip purchase vouchers.[181] It may be that the prohibition in s 68(2) extending beyond credit cards to debit cards owes something also to the harm-minimisation policy of seeking to restrict a gambler's ability to obtain ready access to their funds within or around the casino.[182]

190. The report also recommended that junkets, which ordinarily offer credit, should be permitted to operate subject to being approved by the regulator.[183] Whilst the scheme in s 68 differs to some degree from that envisaged by the Board of Inquiry, the basic elements can be seen to be drawn from the Report – a restriction on a casino operator providing credit, the acceptance of cheques by casino operators, the requirement to cash those cheques within a particular time, the establishment of deposit accounts within the casino from which vouchers for chip purchases can be issued, and a carve-out for junkets (albeit extended to foreign premium players).

Section 68(2)

191. Subject to the carve-outs in the remainder of the section, s 68(2)(c) provides that a casino operator must not, 'in connection with any gaming or betting in the casino', 'provide money or chips as part of a transaction involving a credit card or a debit card'.

"in connection with gaming or betting in a casino"

192. The language used to identify the scope of the prohibition – 'in connection with' – has a wide meaning, and merely requires that one thing has 'something to do with' the other thing.[184]

193. In our view it is undeniable that the transactions involved in the CUP process were undertaken *in connection with* gaming or betting in the Crown casino. The process provided for the hotel staff to provide an invoice to the patron, to be taken to the casino Cage and provided in order to receive a credit of the funds transacted by credit or debit

[179] At [16.44].
[180] At [16.44].
[181] At [16.45].
[182] A policy also present in the later-introduced ss 81AA and 81AAA of the CCA.
[183] At [16.51].
[184] See, eg, *Brar v R* (2016) 263 A Crim R 67 at [47].

card into the patron's DAB account,[185] and enabling the provision of chips (or, perhaps, cash) from the Cage, on the gaming floor.

194. However, there is no evidence for us to conclude that the CUP process was used to provide cash to a patron at the hotel desk, available for uses not in connection with gaming. The terms of NAB's merchant facility agreement with Crown precluded use of the terminal for providing cash to a patron, and in 2013, after Ms Tegoni reviewed the terms, she advised that the CUP Process documents (including the invoice issued at the hotel) expressly describe the transaction as a purchase (see paragraph 92 above).

195. Further, as observed by numerous of the Crown staff interviewed, the commercial purpose of the CUP process was to enable customers to obtain funds to gamble at the casino rather than cash to use elsewhere. We have not otherwise identified any evidence that the process was used for the patron to receive cash.

196. Against this view, it may be contended that the execution of the card transaction in the hotel was a separate transaction, in connection with hotel services, rather than providing money or chips and in connection with gaming. Indeed, this proposition was identified in Ms Tegoni's email of advice to Mr O'Connor on 17 October 2014 (see paragraph 124 above). However, in our view it adopts an unduly narrow and unrealistic view of the relationship between the card transaction and gaming, especially in view of the requirement to take a document from the hotel to the Cage, as provided by the CUP Process. Ms Tegoni immediately noted in her email that "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". She then referred to reliance on the exemption under subsection (8), which we address below.

197. It follows that the condition in the chapeau to s 68(2) was satisfied in relation to the CUP process, and the prohibition in s 68(2)(c) applied to the CUP process. We turn then to that prohibition.

"provision of money or chips as part of a transaction involving a credit card or a debit card"

198. The prohibition forbade Crown from providing 'money or chips as part of a transaction involving a credit card or a debit card'. Although the process involved use of a debit or

[185] Note that establishment of a DAB account is provided by s 68(3).

credit card at the hotel, and resulted in receiving chips at the casino Cage (there is no evidence of directly obtaining cash), there is an issue as to whether the provision of chips is characterised as "part of a transaction involving" a card, or whether the "transaction" for the purpose of section 68(2)(c) is complete in the hotel such that it does not "involve" provision of money or chips.

199. The text of section 68(2) reveals a purpose of broad scope, seeking to regulate by the five subparagraphs various ways in which payments for gaming might be facilitated by the casino operator, including discharge of debts. The language adopted is also apt to be understood broadly, with "transaction" being apposite to arrangements wider than a specific contract, emphasised by the term "part of a transaction", and "involving" being wider and more general than directing attention to the payment mechanism from use of a card.[186] Accordingly, a proper application of section 68(2)(c) would appear to capable of extending to a collection of related dealings which connect provision of money or chips and payment by a credit or debit card.

200. The discrete relevant components of the CUP Process can be summarized as follows:

a) The customer made a 'purchase' with a credit or debit card on the card terminal at the Hotel.

b) The Hotel staff provided an invoice or 'voucher' to be taken by the customer to the Cage, accompanied by a gaming staff member and who may carry the document.

c) The customer or the gaming staff member then provided the invoice or 'voucher' to the Cage, which led the Cage to credit the customer's DAB account with the value of the voucher.

d) The customer was then able to obtain from the Cage either a credit into the DAB account, gaming chips, a CPV, or possibly cash out.

201. On one view the "transaction" may be confined to the processing of the card settlement on the card terminal, and is complete in the hotel premises, before chips are provided. As noted above, this view was contemplated in some of the advice provided by Ms Tegoni. However, in our opinion, even a transaction at the hotel "involved"

[186] "The word 'involves' has of course a very wide and imprecise meaning and if the transfer of the shares is the object of the 'scheme' the transfer from each shareholder may surely be described as 'involved' in the scheme": *Australian Consolidated Press Ltd v Australian Newsprint Mills Holdings Ltd* (1960) 105 CLR 473, 480 (Dixon CJ).

provision of chips because it was payment in an agreement for the customer to obtain chips at the casino Cage, with delivery of the Opera invoice recording payment.

202. But in any event, a broader and better view in our opinion, which conforms to the text and purpose of section 68, is that the relevant transaction for the purpose of section 68(2)(c) embraced the entire CUP process, including the provision of chips, despite the payment taking place in the hotel.

203. The fact that separating the place of payment from the place of providing chips required Crown's processes to insert additional steps does not alter the basic nature of that single transaction or convert it into multiple transactions.

204. It follows that the CUP process infringed the prohibition in section 68(2), unless it was authorised by section 68(8).

Section 68(8)

205. Section 68(8) provides an exception to s 68(2). It permits a casino operator to 'provide chips on credit to a person' in certain limited circumstances. We will not dwell on the limited circumstances in which the exception operates, because the exception only extends to permit a casino operator to 'provide chips on credit to a person', and we do not consider that the CUP process involved Crown providing chips "on credit".

206. At the outset, it may be noted that there can be no suggestion of credit provided to a patron in circumstances where a debit card is used, as such a card draws on the customer's own funds. The initial internal legal advice in 2012 had focused upon use of credit cards and, although there was information provided to Crown staff by Commonwealth Bank in 2013 that 96% of CUP cards were debit cards,[187] in allowing and approving the CUP Process to include debit cards the significance of that information may have been overlooked or there may have been a degree of inertia in approaching a process which had been established.

207. The meaning of the expression 'provide chips on credit to a person', in its context, appears relatively straightforward. It is directed at a casino operator providing chips to a person in consideration for the person undertaking to repay to the operator the value

[187] CRW.523.002.0167 at CRW.523.002.0168, Email from [redacted] to [redacted] apparently forwarded to Roland Theiler.

of the chips (or some other agreed amount) in future. Crown did precisely that, in accordance with the exemption in subsection (8), for premium players.

208. The CUP process was different. It did not involve the customer agreeing to repay Crown the value of the chips (or some other agreed amount) in future. Instead, it involved the customer providing payment to Crown settlement of a card transaction on Crown's NAB card terminal. The transaction on the NAB card terminal discharged the customer's obligation to pay Crown for the chips. The customer therefore did not obtain *credit* from Crown. The transaction did not involve the provision of chips *on credit* by Crown to the customer.

209. Beyond the straightforward meaning of the expression 'provide chips on credit to a person', it may be contended that 'on credit' contemplates a transaction where credit is provided by someone *other* than the casino operator, either to the customer (*eg* a credit card provider)[188] or to the casino operator (*eg* if cleared funds by card transaction are not immediately received). Under its merchant facility agreement, NAB agreed to pay an amount to Crown,[189] subject to compliance with various conditions of the contract between NAB and Crown, and subject to the possibility of NAB requiring Crown to repay that amount in certain circumstances.[190]

210. However, both such constructions appear to us to be inconsistent with a purposive construction of the exemption (and would have no apparent source in the 1983 inquiry report). The provision is not concerned with the terms of a customer's financing from third parties, and whether credit was obtained from someone other than the casino operator. Similarly, the exemption is not concerned with the terms on which the casino operator might receive funds from a third party if the customer has discharged obligations to pay for chips.

211. We note that Ms Tegoni, in advice that she provided in both 2014 and 2015, to Mr O'Connor, [redacted] and Ms Fielding, appeared to reach the conclusion that we have just expressed, and hence that the CUP process did not fall within the exception in

[188] A construction to this effect was suggested in the initial advice sent by Ms Fielding on 9 August 2012.
[189] CRW.523.002.0178 at 523.002.0224, NAB Merchant Agreement (annotated).
[190] CRW.523.002.0178 at CRW.523.002.0227 and CRW.523.002.0224 [9.2], NAB Merchant Agreement (annotated).

section 68(8).[191] She thus advised that Crown would have 'to rely on the fact that the transaction is not "in connection with any gaming or betting in the casino"'[192] (but, as we noted above, then warned that '[o]bviously we may fail in any defence in this manner').

212. In this regard, it appears that the rationale for advising on compliance of the CUP Process shifted over time. The initial advice sent by Ms Fielding in 2012 was focused on use of credit cards and relied on the exemption in section 68(8). The subsequent advice by Ms Tegoni in 2014 dismissed the exemption (albeit not on the ground that debit cards were then covered by the process) and relied on the transaction occurring in the hotel as precluding the connection to gaming which triggered the prohibition in section 68(2).[193] Although weaknesses in this analysis and risks of non-compliance were acknowledged in the advice, Mr O'Connor and others in the VIP International business appeared to understand the advice as providing approval for the process to continue. It appears that a degree of commercial momentum in Crown's gaming business may have inhibited a careful revisting of the issue of compliance and stopping use of the facility on that ground.

213. Accordingly, and as apparently concluded by Crown's internal legal advice by 2014, we consider that it was not open for Crown to rely on the exemption in section 68(8) in relation to the CUP process.[194]

Section 81AA of the CCA

214. Section 81AA(1) of the CCA prohibits a casino operator providing a cash facility (defined in s 3(1) to include an EFTPOS facility) within 50 metres of an entrance to the casino, that allows a person to obtain in a single credit card or debit card transaction in

[191] CRW.523.002.0178 at CRW.523.001.0030, NAB Merchant Agreement (annotated). In doing so, the advice appears not to have addressed the role of debit cards at all, which would in any event not meet the exemption in section 68(8).
[192] CRW.523.002.0178 at CRW.523.001.0031, NAB Merchant Agreement (annotated).
[193] CRW.523.001.0030, Email from Debra Tegoni to Jason O'Connor on 17 October 2014.
[194] We note that we have not overlooked the potential conflict between section 68(8) and section 3.1.31 of the *Gambling Regulation Act* 2003 (Vic). Section 3.1.5(1) of the *Gambling Regulation Act* provides that, for the purposes of Chapter 3, a casino operator is taken to be the holder of a venue operator's licence. Section 3.5.31 prohibits a person who holds a licence under the Act (and thus, by application of section 3.1.5(1), a casino operator) from making a loan or extending any form of credit to any person to enable that person or any other person to play a gaming machine in an approved venue. This prohibition might be perceived to conflict with the permission given by section 68(8), to offer credit for gaming. We consider that section 68(8), which explicitly permits the giving of credit to particular individuals in particular circumstances, prevails over the general prohibition in section 3.5.31 of the *Gambling Regulation Act*, to the extent of any inconsistency.

excess of $200 cash. A more stringent requirement applies to cash advances on credit cards pursuant to s 81AA(2).

215. We understand that Deloitte are instructed to investigate whether cash was provided pursuant to any of the transactions conducted under the CUP process. Regardless of the answer to that question, so long as the card facilities used in each transaction were more than 50 metres from the entrance to the casino, we do not consider that this provision was breached by the CUP process. That is because s 81AA governs the placement of the cash facility, which is defined as an EFTPOS machine. Accordingly, for the purposes of this provision, it does not matter whether cash was dispensed at the Cage.

216. In any event, we have had no means of ascertaining now whether the EFTPOS terminals used in this process years ago were in fact within 50 metres of the entrance of the casino, though we note that – at least from the time when the process was formally documented – there was a requirement to similar effect which was obviously designed to ensure compliance with this rule.[195]

Section 81AAA of the CCA

217. We make similar observations in relation to section 81AAA, which concerns 'alternative cash access facilities' within 50 metres of the entrance to the casino.

218. In essence, even if cash were provided as part of the CUP process, and even assuming that the EFTPOS facilities utilised were treated as falling within 'alternative cash access facilities', we have no way of ascertaining whether the EFTPOS machine used for any particular transaction breached the prohibition on proximity to the casino.

Section 121 of the CCA

219. Section 121(1) of the CCA requires a casino operator to have a system of internal controls and administrative and accounting procedures that have been approved by the regulator. Section 121(4) of the CCA requires that the casino operator ensure that the system is implemented.

220. Section 122 sets out the elements that must be included in the system. Pertinently, s 122(1)(o) required the casino to have approval for 'procedures for the issue of chip

[195] CWN.514.063.5838, Email from Michelle Fielding to Jason O'Connor and others on 11 September 2012, stating 'measurements have been completed' and stipulating that a particular terminal must be used for CUP Process as it is the only one reliably more than 50m from the Mahogany Room Cage.

purchase vouchers and the recording of transactions in connection therewith', and s 122(1)(q) required that the system include procedures for the establishment and use of deposit accounts.

221. We have reviewed the Internal Control Statements for the Cage, which have been provided to us. We do not perceive that the CUP process involved any breach of those procedures.

***Gambling Regulation Act 2003* (Vic)**

222. We have considered the *Gambling Regulation Act* 2003 (Vic). We do not consider that there was anything in the CUP process that breached that Act.

***Anti-money Laundering and Counter-Terrorism Finance Act 2006* (Cth)**

223. Part 3 of the AML Act establishes a regime pursuant to which certain information must be reported to AUSTRAC. Reporting entities are legally obliged to lodge reports.

224. Crown is a reporting entity for purpose of the AML Act. It is required to provide the following reports to AUSTRAC:

(a) Threshhold transaction reports, being $10,000 or more of physical currency;[196]

(b) International funds transfer instructions reports (being instructions to transfer money or property to Australia from another country or to another country from Australia) (**IFTIs**);[197]

(c) Suspicious matter reports where Crown suspects on reasonable grounds that the person is not who they say they are or if there is a suspicion of money-laundering through the proceeds of crime (among other things) (**SMRs**);[198]

(d) Anti-money laundering and counter-terrorism financing compliance reports, which are typically reported to AUSTRAC on an annual basis.[199]

225. Crown is also required to prepare and maintain an AML / CTF compliance program.[200] Such a program is broken into two parts, namely Part A and Part B.

[196] Anti-Money Laundering and Counter Terrorism Financing Act 2006 (Cth), section 42.
[197] Ibid sections 45 and 46.
[198] Ibid section 41.
[199] Ibid section 47.
[200] Ibid sections 80- 84.

226. Part A requires that a reporting entitity identify, mitigate, and manage the risk of the reporting entity being used for money laundering or terrorism financing. It includes:

(a) A money laundering and terrorist financing risk assessment of the reporting entity (such as the casino licensee) that is regularly reviewed and updated;

(b) The board and senior management approval and their ongoing oversight of the reporting entity's AML / CTF compliance program;

(c) Having an AML / CTF compliance officer at the management level to manage the reporting entity's compliance with obligations;

(d) An employee due diligence program to identify any employees of the reporting entity that may put the reporting entity at risk of money laundering or terrorism financing;

(e) An AML/ CTF risk awareness training program for employees so the reporting entity knows the risks to the reporting entity and and what they must look out for;

(f) Consideration of guidance material and feedback from AUSTRAC, including anything they have circulated or published such as risk assessments specific to the gaming sector;

(g) Systems and controls to make sure the reporting entity meets its AML/ CTF reporting obligations;

(h) Ongoing customer due diligence systems and controls to make sure information collected about a customer or beneficial owner is reviewed and kept up to date, and to determine whether extra information should be collected/ verified. This includes transaction monitoring and enhanced customer due diligence programs.

227. Part B includes the Know Your Customer (KYC) requirements and due diligence. It requires operators to have in place and undertake a compliance program which is focused on identifying customers including politically exposed persons. Casinos must perform due diligence on persons who deposit money with them, and comply with the "know your customer" requirements. These include:

(a) The customer information a reporting entity is to collect and verify to make sure they are who they claim to be;

(b) The customer information a reporting entity must collect and verify about beneficial owners;

(c) How the reporting entity responds to discrepancies in that customer information, and

(d) How the reporting entity decides when they should collect additional information about a customer.

228. Crown had an AML/ CTF compliance program which addressed the processes required for reporting. We have not reviewed it in detail for compliance or standard more generally. Assessing whether or not each transaction complied with the various obligations in the AML/ CTF compliance program is beyond the scope of this advice.

229. Since we have not detected any evidence that the CUP Process involved the release of cash, no threshold transaction reporting was required. If, however, the forensic analysis being undertaken by Deloitte reveals that cash was released as a result of the process, a threshold transaction reporting obligation will have arisen if more than $10,000 in cash was released.

230. The next question relates to whether the CUP Process created an obligation to make an IFTI Report to AUSTRAC in relation to the transactions undertaken by the CUP Process. Section 45 of the AML Act (a civil penalty provision) relevantly provides that an IFTI report must be provided to AUSTRAC by the recipient of an international funds transfer instruction transmitted into Australia. We are not aware that Crown submitted (and have proceeded on the basis that it did not submit) IFTI reports in respect of the funds received by the CUP Process. Indeed, our researches have not identified a clear guidance or practice in Australia stipulating the making of IFTI reports (by financial institutions or other recipients) in respect of funds received under foreign issued credit or debit cards. However, we understand that Crown has recently notified AUSTRAC of the existence of transactions by the CUP Process. It is beyond the scope of this advice to provide comprehensive or definitive advice in relation to this issue.

231. There are difficult questions of fact and construction in relation to whether funds received by Crown from transactions on foreign issued credit and debit cards may entail

an IFTI. We have not explored so as to establish the technical detail of the electronic communications and payment processes carried out for credit and debit card transactions by the CUP Process, with Crown's merchant facility provider (NAB) and the card scheme (CUP or others) and a customer's bank. We set out in general terms the process, as we understand and assume, of the transaction when a credit card or debit card was used:

(a) First, as to authorisation of the transaction:

  (i) The customer produced a card at Crown's NAB point of sale terminal at the Crown Towers hotel desk;

  (ii) Crown's NAB point of sale system captured the customer's account information and the transaction details, and securely sent that information to NAB;

  (iii) NAB sent a request to CUP to obtain an authorisation from the customer's issuing bank;

  (iv) CUP submitted the transaction to the customer's issuing bank for authorisation;

  (v) The issuing bank authorised the transaction and routed the response back to Crown;

(b) Secondly, in relation to subsequent settlement of funds:

  (i) The issuing bank drew on the customer's own funds (in the case of a debit card) or the issuing bank's own funds (in the case of a credit card or debit card overdraft, with a corresponding deduction from the customer's credit facility);

  (ii) the issuing bank sent funds to CUP;

  (iii) CUP then sent payment to NAB; and

  (iv) NAB credited the funds in Crown's account.

232. Section 46 of the AML Act provides for four types of IFTIs. As the CUP process involved transfer of funds into Australia using financial institutions, the applicable IFTI (type 2) attracts the criteria of an electronic financial transaction (EFTI) as defined in section 8.

233. Section 8(1) provides that a relevant EFTI[201] arises where a payer instructs an ordering financial institution to transfer money controlled by the payer on the basis that the money will be paid by the beneficiary financial institution to (or made available in an account held for) a payee.

234. The most important issue is whether the CUP Process gave rise to an instruction by the payer which ultimately was received by Crown. It is not feasible on information available to us to discern whether the presentation of a card by the customer at Crown's NAB terminal initiates an "instruction" to an ordering institution (such as the customer's bank), and that the settlement process through the card scheme passes on that instruction so as to be received by Crown. We understand that guidance formerly issued (and now withdrawn) by AUSTRAC[202] indicated a position that the process did *not* give rise to an instruction by the cardholder, and no different position or precedent has established to the contrary. Resolution of the issue in respect of the CUP Process transactions would require a detailed and specific inquiry into the electronic transaction process beyond the scope of the investigation of Crown's operations with which we have assisted.

235. We note that in the case of transactions by credit card (or debit cards involving an overdraft), the funds may not be relevantly "controlled" by the payer because they are drawn from the customer's bank on a line of credit (rather than the customer's own funds). Further, for completeness, we note that there may not be an international element if the relevant funds transfer is conducted within Australia, for example by a correspondent bank or agent of the card scheme.

236. In relation to suspicious matter reports (SMRs), we have not examined the circumstances relating to individual transactions undertaken by the CUP Process, and are not in a position to advise in relation to whether Crown failed to meet its obligations in relation to any matter. We are instructed that Crown has retained Deloitte to conduct a review which may address the AML compliance of transactions undertaken as part of the CUP process.

237. Aside from considering individual transactions, it is clear that Crown's AML processes did provide for SMRs, but a question may arise whether the CUP Process transactions

[201] Multiple-institution-person-to-person electronic funds transfer instruction: s 8(1) of the AML Act.
[202] AUSTRAC, *Public Legal Interpretation No 11*.

were adequately analysed or considered for the purpose of considering suspicious matters. [redacted], who reviewed reports of Crown's financial transactions each morning, did not receive reports of the funds remitted by the CUP Process (even following the request in 2016 referred to in paragraph 158 above). The transaction reports reviewed by him did not distinguish a CUP Process transaction from any other. He said in interview that there was not necessarily particular information germane to CUP Process transactions which would cause them to be suspicious of themselves, but such reports would have added to the body of information available for him to perform his role. There were several SMRs issued by Crown in connection with some of the transactions by the CUP Process, but they were described in reports (as explained by [redacted] as being raised by circumstances other than the CUP Process transaction. We have not undertaken for the purpose of this advice any wider review of the adequacy of Crown's processes for identifying suspicious matters.

238. In conclusion, on the evidence available to us and within the scope of our advice, we do not have grounds to conclude that the CUP Process involved (commonly or on any occasion) a failure to follow Crown's processes for reporting in accordance with the AML Act.

Criminal offences – general considerations

239. It is important to make three general points about criminal offences, and corporate criminal liability, in order to explain the approach we have taken below.

240. *First*, it is always necessary to examine the particular criminal offence in contemplation to determine whether the nature of the offence is such that it is capable of being committed by a corporation. Each of the offences we consider below is capable of being committed by a corporation.

241. *Secondly*, and relatedly, because a corporation is a legal person, so that a corporation's guilt of a criminal offence depends upon the law attributing the acts and mental states of individuals to the corporation,[203] it is necessary to identify whose acts and states of mind constitute those of the company for the purposes of the particular offence. The rules of attribution for criminal offences are not immutable. For the Victorian offences that we consider below, they depend upon the construction of the statute, and are to

[203] *Northside Developments Pty Ltd v Registrar-General* (1990) 170 CLR 146 at 171–2.

some extent contingent on the facts of in relation to each particular transaction.[204] For the offences under the *Criminal Code* (Cth) (**the Code**) that we consider below, they depend upon the rules established by Part 2.5 of the Code.

242. For the purpose of each of the offences we consider below, the physical acts of those Crown employees who were engaged in the CUP process, who were acting in accordance with the company's policy and within their area of responsibility, would be attributed to Crown.

243. There is a greater degree of complexity in the issue of whose mental state would be attributed to Crown for the purposes of criminal liability, and the answer depends upon the particular offence in contemplation. We will therefore deal with that issue whilst dealing with the discrete offences below.

244. *Thirdly*, it is necessary to distinguish between those criminal offences that may involve ongoing conduct, and those that may only relate to discrete episodes or transactions. A single offence of money laundering may involve a series of transactions which are part of a single ongoing offence.[205] This is true where the alleged money laundering involves 'a number of acts of a similar nature ... connected with one another, in the time and place of their commission or by their common purpose, in such a way that they could fairly be regarded as forming part of the same transaction or criminal enterprise'.[206]

245. In the case of such an ongoing offence, it is necessary that the requisite *mens rea* (criminal state of mind) be present throughout the ongoing period of the offending.[207] It follows that it is possible to consider whether Crown committed a money laundering offence at a relatively high level of abstraction, by examining the ongoing process, and considering whether any requisite mental state was present throughout that period.

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[204] *DPP Reference No 1 of 1996* [1998] 3 VR 352 at 354-5; *Director General, Department of Education and Training v MT* [2006] NSWCA 270; (2006) 67 NSWLR 237, 242 [17].
[205] See, eg, in relation to a former version of the Victorian offence of money laundering, *R v Beary* (2004) 11 VR 151 at [27] and [29], in relation to a former NSW version of the offence *R v Carl Moussa Trad, Peter Younan & Raymond Younan* (Unreported, 19/2/1996, Gleeson CJ, Badgery Parker J and Abadee J), and in relation to the Commonwealth offence *Tan v R* (2011) 35 VR 109 at [36]. We note that section 400.12 of the Code was included to make it explicit that money laundering may be charged as an ongoing offence, as the legislative history demonstrates. *The Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002* (Cth) introduced section 400.12. The Explanatory Memorandum for that Act explained that what became section 400.12 was intended to enact recommendation 31 of the Australian Law Reform Commission *Confiscation That Counts: A Review of the Proceeds of Crime Act 1987* (ALRC Report 87, 30 June 1999). Recommendation 31 stated that 'Money laundering charges should be able to be pleaded in a single charge as a continuing criminal enterprise involving transactions over a specified period'.
[206] *DPP v Merriman* [1973] AC 584 at 607.
[207] *Mustica v R* (2011) 31 VR 367 at [34].

246. By contrast, other criminal offences may only relate to a particular transaction, so that they cannot be committed on an ongoing basis. A good example of such an offence is false accounting. That offence may not be committed on an ongoing basis; rather, a discrete offence is committed each time there is a relevant instance of making a false account. It follows that the inquiry into whether Crown committed the offence of false accounting must be analysed at a granular level, by examining whether the elements of the offence are present in relation to each particular transaction. Notwithstanding that the ultimate question of whether such an offence was committed requires a granular examination, we consider for present purposes that it is preferable that we approach the issue at a higher level. We have reached that conclusion for a number of reasons.

247. Primarily, we apprehend that the Board's concern in briefing us is to determine whether the system that was engaged in breached the law. It is both sufficient and desirable to approach that issue at a level of abstraction, by examining the policies and practices rather than by analysing particular transactions.

248. Next, we apprehend that the Board is anxious to have, and act upon, our advice as a matter of urgency. We consider that the time involved in analysing each individual transaction, and the circumstances that attended it, would require a very detailed review of each transaction. In essence, we would have to conduct the type of investigation which typically takes police many months, or indeed sometimes years.

249. Finally, given that our instructors have had difficulty persuading some of those no longer in the employ of Crown to speak to us, we consider that it would be unlikely that we would obtain the types of material and statements that investigatory bodies are typically able to obtain, and which we would require in order to express any firm opinion as to whether, in any particular instance, Crown committed the offences of false accounting or money laundering.

Obtaining Financial Advantage by Deception

250. The offence of obtaining financial advantage by deception is created by section 82 of the Crimes Act 1958 (Vic). That provision provides as follows:

> *82 Obtaining financial advantage by deception*
>
> (1) A person who by any deception dishonestly obtains for himself or another any financial advantage is guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum).

(2) For purposes of this section deception has the same meaning as in section 81.

251. There are three principal issues that are pertinent to whether the CUP process involved any breach of section 82. The relevant elements of the offence are advantage, deception and dishonesty.

252. *First*, the question of whether Crown obtained a financial advantage as the result of the CUP process. We are confident that this was the case, although precisely how that might be formulated would depend upon some evidence as to the precise workings of the process. Regardless of how it might be formulated, the notion of a financial advantage, which was intended to have a broad operation and avoid technicalities, encompasses the financial benefit that Crown obtained through the payment it ultimately received as a consequence of the card transaction.[208]

253. *Secondly*, in our view, for Crown to have committed this offence, the person who must have had the requisite *mens rea* was Mr O'Connor.

254. As we have already noted, the identification of the embodiment of the company for this purpose depends upon a construction of the governing statute, as well as upon broader principles and the facts of the particular case. In a similar statutory context, involving a large corporation engaging in allegedly deceptive conduct, Lord Reid opined that it was normally the board of directors, the managing director, or a member of senior management to whom had been delegated 'full discretion to act independently of instructions from [the Board]' in a particular area, who would 'hear and speak' as the company, and thus would constitute the mind of the company.[209] Section 83 of the *Crimes Act* is consistent with that approach.

255. In this case, it appears to us that Mr O'Connor had full responsibility for making the decision to implement (or not implement) the CUP process. That is, it seems to us that he had been delegated an independent area of responsibility that encompassed determining whether to engage in the CUP process. The emails that have been provided to us, as well as the comments of [redacted], Mr Theiler and Mr O'Connor in

[208] The breadth of the concept was discussed in *R v Vasic* (2005) 11 VR 380 at [16]-[17].
[209] *Tesco Supermarkets Ltd. v. Nattrass* [1971] 2 All ER 128 at 171-2 (Lord Reid).

interview, suggested that [redacted] and Mr Theiler sought legal advice from Ms Tegoni, and reported up to Mr O'Connor, who then made a decision.

256. Of course, to reach a concluded view on that issue, we would need to consider Mr O'Connor's position description, as well as other documentation that bore upon his decision-making power in this regard. Moreover, we have not neglected to consider that Mr O'Connor did not manage the hotel side of the business, which actually processed the card transactions. However, we consider that it is relatively clear that the hotel side of the business was acting under the direction of the VIP International side of the business, and thus under Mr O'Connor's direction, when it put in place the procedure for processing the CUP transactions. As [redacted] explained in his interview, the CUP process was of no interest to the hotel side of the business, because it was revenue neutral for that side of the business, so the process was conducted only at VIP International's behest.

257. It follows that we consider that, for the CUP process to mean that Crown engaged in false accounting, it would be necessary that Mr O'Connor had the requisite *mens rea*.

258. The *mens rea* for false accounting is 'dishonesty'. That word has different meanings in different legal contexts.[210] In the context of the dishonesty offences in Division 2 of Part 1 of the Crimes Act 1958 (including false accounting), 'dishonesty' requires that the accused person acted without any belief in the legal right to engage in the impugned conduct.[211] We turn, then, to whether – in our opinion – Mr O'Connor had that *mens rea*.

259. The material that we have summarised above suggests a concern at the prospect of the CUP process being investigated by the regulator, or at transactions being queried by CUP. The material also suggests that Mr O'Connor knew that such transactions involved Crown facilitating breaches of Chinese currency controls.

260. We interviewed Mr O'Connor twice, early in our investigation of the CUP process, and then again towards the end of that process.

261. Our impression on both occasions was that he presented as an honest and relatively straightforward interviewee.

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[210] Indeed, in *Peters v R* (1998) 192 CLR 493 – the various judgments provide several different possible meanings of dishonesty in the context of a single offence.
[211] *R v Salvo* [1980] VR 401.

262. Mr O'Connor freely stated that his concern that the CUP process did not pass 'the pub test' had led him to limit the amount that could be accessed under the CUP process. However, when pressed, he was unable to identify what made him feel uncomfortable with the CUP process, which is consistent with his use of the expression 'the pub test', which suggests a nebulous sense of public disfavour rather than a concrete sense of illegality. When asked further questions, and again consistent with his use of the expression 'the pub test', he stated that his concern was not with the lawfulness of the CUP program, but rather with how it would be perceived in the public eye if the program received publicity. Also in this connection, his answer to why the CUP Process was amended to provide for individual transactions of up to $500,000 but with no daily limit was a postulation of avoiding attention by financial institutions.

263. In March 2014, Reuters published an article that examined the process, common in Macau, of charging a 'purchase' to a CUP card and instead providing cash to the cardholder.[212] The article prominently reported the view of an apparently authoritative Chinese legal source that such a process breached both China's money laundering and capital export laws.[213] Mr O'Connor separately forwarded that article, without any commentary or explanation, to Ms Tegoni and Mr Felstead on an evening in March 2014.[214]

264. When pressed on issues related to that email, Mr O'Connor said that he was not in the habit of forwarding news articles without any commentary or explanation. He was unable to recall why he had done so in this instance. He did not believe that there was anything that he wanted to say about the article that he did not want to put in writing. He did not remember any subsequent conversation with either Mr Felstead or Ms Tegoni about that article. We took him specifically to three paragraphs early in the article, which dealt with the use of CUP cards to obtain cash by putting a false 'purchase' through an Card terminal, and which suggested that such a process breached both

[212] CRW.900.001.0033, James Pomfret, Reuters "Special Report: How China's official bank card is used to smuggle money" 12 March 2014.
[213] CRW.900.001.0033 at CRW.900.001.0034, James Pomfret, Reuters "Special Report: How China's official bank card is used to smuggle money" 12 March 2014.
[214] CWN.548.010.0694, Email from Jason O'Connor to Debra Tegoni on 13 March 2014; CWN.514.052.3945, Email from Jason O'Connor to Barry Felstead on 13 March 2014.

China's money laundering and capital export laws.[215] He described that information as 'common knowledge', and no surprise to him.

265. Mr O'Connor stated that he thought China imposed a limit on individual's ability to export currency from China to $50k per year. He indicated that Crown regularly received money that would appear to have been remitted from China in breach of this prohibition. When we pointed out that the CUP process involved Crown directly in the extraction of money from China, and indeed did so in response to the commercial needs of Crown, he seemed to accept that there was a qualitative difference between Crown passively accepting money that might have been remitted from China in breach of currency export controls, and Crown actively involving itself in a process designed to allow people to extract money from China in breach of those controls. However, he appeared to us to hold a genuine belief that Crown receiving such money was lawful, as it was regularly done without any issue.

266. When we took Mr O'Connor to Ms Tegoni's email of 30 September 2013,[216] in which she gave advice about the CUP process, he stated that he did not remember that advice. He suggested that he read the advice as approving the process, even when we took him to areas that suggested that there was uncertainty about the lawfulness of the process.

267. There is an additional reason to consider that Mr O'Connor was likely to have believed that Crown was legally entitled to do what it was doing. The NAB terms and conditions explicitly permitted CUP cards to be used to purchase 'gaming chips', which might be thought to have impacted upon his belief as to the lawfulness of the process.

268. We have also considered what is likely to have been 'reported up' to Mr O'Connor, as bearing upon his state of mind. Ms Tegoni made a file note of advice about the CUP process that she had given in conference to Mr Theiler.[217] Before we took him to that advice, Mr Theiler suggested that Ms Tegoni invariably said either 'yes' or 'no' to a project, and never gave advice that might result in Crown operating within a legal 'grey area'. When we took him to the advice that Ms Tegoni's file note suggested she had given to him in conference, he said that he did not take either that document nor the

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[215] CRW.900.001.0033 at CRW.900.001.0034, James Pomfret, Reuters "Special Report: How China's official bank card is used to smuggle money" 12 March 2014. We took him specifically to the middle three paragraphs on page 2 of the article as extracted in folder entitled "Supplementary Brief".

[216] CRW.523.002.0121, Email from Debra Tegoni to [redacted], copying Jason O'Connor, on 30 September 2013.

[217] CRW.523.002.0159, Note to File by Debra Tegoni containing confidential memorandum of legal advice.

abovementioned 30 September 2013 email as suggesting any uncertainty about the lawfulness of the process.

269. If what Mr Theiler told us, and the reactions he said he had to those documents in conference, accurately represented how he would have responded in 2013, then when he 'reported back' to Mr O'Connor (as he agreed he would have), his 'report' would not have suggested uncertainty about the lawfulness of the process. We did not reach any firm view as to Mr Theiler's credibility. However, even if (contrary to what he told us) Mr Theiler did perceive from Ms Tegoni's advice that there were legal risks in the CUP program, we have no basis for believing that he reported such risks to Mr O'Connor.

270. Ms Tegoni declined to speak to us, and in fact made it clear that she did not want to be contacted about this matter again. This meant that we were unable to ascertain from her whether she gave any additional advice to either Mr Theiler, [redacted] or Mr O'Connor.

271. Ultimately, on the material and recollections that we have to work from, we think that Mr O'Connor was likely to have received the message that the CUP process was lawful. Even if he had received the message that there was a risk of non-compliance with certain provisions of the *Casino Control Act*, that is a long way short of the *mens rea* required for dishonesty. Having considered all the material provided to us, the probabilities of the situation, and our perception of Mr O'Connor as an honest witness, we consider that he believed the CUP program to be lawful. The initial advice sent by Ms Fielding in August 2012 supports this position.

272. We have also considered whether Mr O'Connor may have had a different mindset when the 'informal' CUP process began in August 2012, before it became a formally documented process the subject of legal advice from Ms Tegoni. However, we have not uncovered (either in our interviews or in the documentation) any basis for a conclusion that, at that earlier time, Mr O'Connor did not believe that the CUP process was lawful. The initial advice sent by Ms Fielding in August 2012 supports this position.

273. All told, we do not consider that, at any relevant time, Mr O'Connor – and thus Crown – held the *mens rea* that is necessary for the commission of the offence of false accounting.

274. We have also considered whether Mr Felstead might be taken to be the embodiment of Crown for the purposes of the *mens rea* for false accounting, given his overall

management responsibility, and given that he had some oversight of Mr O'Connor's management approval of the project. In that eventuality, we would still not consider that Crown possessed that *mens rea*. When we spoke to him, Mr Felstead told us that, though he never spoke to the legal team himself or saw the legal advice himself, he was informed that the CUP process was given the legal 'tick'. That is consistent with this information having been reported to the VIP working group,[218] and the absence of any documents in our brief to suggest that any legal advice was given directly to Mr Felstead. Mr Felstead also noted, as had Mr O'Connor, that other casinos (including Star City in Sydney) used the CUP card to provide cash or chips to customers, as indicating to him that this was an ordinary and lawful process.

275. We took Mr Felstead to the Reuters article that we discussed above, which Mr O'Connor emailed him on 13 March 2014 without accompanying commentary.[219] He, like Mr O'Connor, said that the aspects of the article that we identified above were common knowledge at Crown. Mr Felstead, though, drew a distinction between the 'false transactions' involved in that process, and the genuine purchase of gaming chips pursuant to the CUP process. In our view, the material available to us does not provide a basis for believing that Mr Felstead had the dishonest state of mind necessary to establish this offence, if he were taken to be the embodiment of Crown for these purposes.

276. *Thirdly,* the requisite deception is the critical part of the offence. There are perhaps a number of ways in which deception may have arisen:

(a) as to CBA (for any early transactions), CBA's terms precluded transactions in connection with gaming chips;

(b) as to NAB, its terms precluded illegal transactions and obtaining cash, but permitted 'quasi-cash' transactions;

(c) as to CUP, which may have had terms with its card-holder customers precluding use in connection with gaming.

277. The Deloitte investigation, which will reveal whether any transactions were conducted on CBA card terminals, or were conducted on NAB terminals but resulted in the direct

[218] CWN.514.051.3907 at CWN.514.051.3914, Document entitled "VIP Work Streams – Meeting 24 October 2013".
[219] CWN.514.052.3945, Email from Jason O'Connor to Barry Felstead on 13 March 2014.

provision of cash, will determine whether any deception was practised on CBA or on NAB. However, we have not seen any evidence that either took place. In this regard, we note the information provided to Mr O'Connor in 2015 and 2016 as to NAB's awareness of the nature of the transactions.[220]

278. In considering whether CUP was deceived by Crown, we have considered whether it might be said that CUP approved the transactions because Crown led CUP to believe that the transactions were for hotel purchases, rather than for a gambling purpose. If the 2013 Ashurst advice is correct, CUP would not have honoured – indeed, would not have authorised – the CUP transactions if they had been conducted on a card terminal that was allocated an MCC that indicated Crown was using the card terminal in connection with its gaming business.[221]

279. It seems clear enough that the sole NAB card terminal was retained at the Hotel for the purpose of it being utilised in connection with the CUP process. We considered whether that was done in order permit the use of the Hotel's MCC, rather than an MCC associated with gaming, thereby deceiving CUP, and possibly also NAB.

280. If that were the case, it would suffice to establish this element of the offence.[222] However, we have not seen any evidence that the NAB card terminal was retained for that purpose. Rather, we think it much more likely that the card terminal was retained because Ms Tegoni thought that the NAB terms and conditions permitted its use in connection with the CUP process, and because there was already such a machine available at the Hotel, and section 81AAA of the CCA precluded the obtaining of a separate machine at the Cage.

281. It is, of course, possible that other information, beyond the MCC number, was provided to CUP, and led it to settle on the transactions. However, we do not have evidence of the detail of the electronic process carrying representation by Crown, or any other particular circumstances.

282. In considering this issue, it is also necessary to recall the file note Ms Tegoni made on 20 May 2016 of a conversation between Mr O'Connor and herself.[223] She wrote that Mr O'Connor advised her that CUP had reached out to NAB and asked whether NAB were

[220] See paragraphs 130 to 131 and 161 to 162 above.
[221] CWN.514.051.0604, Email from Paul Jenkins to Steve Bennett on 12 June 2013.
[222] *R v Clarkson* [1987] VR 962 at 980.
[223] CRW.900.001.0043, File note by Ms Tegoni on 20 May 2016.

'ok with the transactions'. Her note recorded 'Jason said that whilst NAB were quite careful the message that he received was, they were ok with what we were doing but don't overdo it. There needed to be a justification such that the amounts going through could be justified in that Crown for example, rooms are expensive, customers can buy expensive items such as jewellry and handbags etc but that we should not push the envelope".

283. If it could be established that the incorporation of transaction limits into the CUP process, albeit while permitting multiple transactions, was for the purpose of deceiving CUP into believing that each transaction was a hotel purchase of some kind, and that it had that effect, the 'deception' element of the offence may well be made out.

284. However, the 20 May 2016 file note is the high water mark of evidence in support of this theory. Taking all the evidence together, we do not consider that the material provides an adequate basis for such a conclusion. One reason for this is that it is not at all clear that Mr O'Connor took the view that the CUP process needed to be kept within certain limits in order to perpetrate a deceit against CUP. Indeed, Mr O'Connor gave the plausible explanation that larger transactions might draw attention to Crown's customers apparently moving large amounts of money out of China in breach of Chinese currency controls.

285. *Secondly*, there is no evidence that CUP was in fact deceived. Bearing in mind that some customers were transacting over a million dollars per day on their CUP cards from 2015 onwards – and doing so at a hotel that had an obvious connection with a casino – it seems entirely plausible that CUP was in fact aware of the likely nature of the transactions. This is particularly so in light of the Reuters article considered by Mr O'Connor, which indicated that the practice of putative 'purchases' to facilitate large cash withdrawals was both commonplace and unabashed in Macau. The most natural explanation for the CUP's failure to query these transactions, or to impose more conservative card transaction limits, is that CUP was happy for the transactions to proceed (at least up until the Chinese government 'crack down').

286. We therefore do not think that the material available to us demonstrates that the CUP process involved a deception on the CUP, on account of the use of the Hotel terminal and its associated MCC.

287. For this reason, we have concluded that the CUP process did not involve Crown committing the offence of obtaining financial advantage by deception.

False Accounting

288. As we have already observed, although false accounting is a discrete rather than a continuing offence, we have approached the matter at a level of generality that we consider appropriate to our task. We have therefore reached a general opinion about whether the practice was apt to constitute false accounting, rather than a specific opinion that particular transactions do or do not constitute false accounting.

289. Section 83 of the *Crimes Act 1958* (Vic) provides as follows:

> *83 False accounting*
>
> (1) Where a person dishonestly, with a view to gain for himself or another or with intent to cause loss to another—
>
> (a) destroys, defaces, conceals or falsifies any account or any record or document made or required for any accounting purpose; or
>
> (b) in furnishing information for any purpose produces or makes use of any account, or any such record or document as aforesaid, which to his knowledge is or may be misleading, false or deceptive in a material particular—
>
> he is guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum).
>
> (2) For purposes of this section a person who makes or concurs in making in an account or other document an entry which is or may be misleading, false or deceptive in a material particular, or who omits or concurs in omitting a material particular from an account or other document, is to be treated as falsifying the account or document.

290. For reasons we set out below, we consider that the material does not provide a basis for us to conclude that Crown committed the offence of false accounting. The following are important considerations in us reaching that opinion. The relevant elements of the offence are acting with a view to gain, false record and dishonesty.

291. *First*, the CUP process *did* involve Crown acting with a view to it receiving a gain. False accounting has been described as an inchoate offence, because it is the purpose of obtaining a 'gain', rather than its achievement, that is pertinent.[224] 'Gain' is defined in

[224] *R v Jenkins* (2002) 6 VR 81 at [31].

section 71 in a way that includes obtaining a property right such as a chose in action, which is what Crown sought to receive through the CUP process.

292. *Secondly*, we have some unresolved concerns in relation to whether the CUP process involved Crown falsifying an account or record or document made or required for an accounting purpose. We have not identified any falsified record, or where in the process such a record might arise, although we consider that it is quite possible that the process did produce a false accounting record.

293. We do not have any material in relation to the accounting purposes and workings of a card terminal, and obtaining such material would have prevented us providing this advice in a timely way. Nevertheless, we assume that card transaction would have required a Crown employee to identify a transaction as a 'purchase' or 'cash out' transaction by selecting an option on the card terminal. The NAB terms and conditions explicitly deal with which option should be selected for particular transactions.[225] Whilst mindful of the 'false assumptions' against which the Court of Appeal has warned in the context of this particular aspect of this offence,[226] we also assume that such a selection will, at least sometimes, be required for an accounting purpose, because it will determine whether the customer's bank is entitled to charge interest to the customer (as banks will sometimes be permitted to immediately charge interest on cash withdrawals, but not necessarily on purchases). We therefore assume that the CUP process did involve Crown making an accounting record, namely that the transaction was a 'purchase'.

294. A record is false for these purposes if it is misleading in a material particular.[227] For the purpose of our examination of this issue, we have assumed that the version of the NAB EFTPOS terms and conditions that was contained in Ms Tegoni's file governed Crown's conduct in connection with the NAB card terminal at all relevant times.[228] The NAB terms and conditions required that Crown not process a CUP transaction 'to give the [CUP] cardholder cash', and such a prohibition prevailed over all other conditions in the terms and conditions.[229] However, the terms and conditions also explicitly

[225] CRW.523.002.0178, NAB Merchant Agreement (annotated) at p 37.
[226] *R v Jenkins* (2002) 6 VR 81 at [49].
[227] Section 83(2) of the *Crimes Act*.
[228] CRW.523.002.0178, NAB Merchant Agreement (annotated) at (That document has a notation on CRW.523.002.0249 labelling it as 'copyright' 2011, but we have proceeded on the basis that it was the up-to-date version that Ms Tegoni had asked for, and from which she worked).
[229] CRW.523.002.0178, NAB Merchant Agreement (annotated) at CRW.523.002.0209, [3.5] and [3.5](e).

envisaged Crown processing on a nominated card (which Ms Tegoni's handwritten note on the NAB documents states included the CUP card),[230] a 'quasi-cash transaction (a purchase of goods easily converted into cash such as gaming chips, money orders or foreign cash) as a purchase transaction not a cash out transaction'.[231] The NAB terms and conditions thus explicitly authorise such a transaction being described as a 'purchase'. Therefore, so long as the CUP process involved the purchase of gaming chips or vouchers, we do not consider that there was any relevant falsification of an account, record or document made for any accounting purpose, on this basis.

295. We have inquired into whether some transactions, especially before the formal policy was introduced in September 2013, may well have resulted in the provision of cash at the Cage, rather than gambling chips. There are some indicia that such a process might have taken place. By way of example, the 'VIP International Credit and debit card cash out review, 6 June 2013' referred to the CUP process as involving 'cash out', rather than a chip purchase.[232] [redacted]hought that he was probably the author of that document, and seemed to accept that there may well have been transactions involving the patron being given cash by the Main Cage rather than chips. In such a case, it is likely that the transaction was misdescribed as a 'purchase' when entered into the card system on the NAB, and that such a misstatement was material, because it caused NAB to authorise a cash withdrawal which was explicitly prohibited by the terms and conditions.

296. We understand that our instructors have retained Deloitte to examine all transactions the subject of the CUP process, so that any transactions that involve the direct obtaining of cash will be identified by Deloitte. If there were any such cash transactions, on the assumption that that they were nonetheless described as 'purchases', it is our opinion that the transactions would have involved the falsification of a record required for an accounting purpose.

297. That is so because the NAB terms and conditions explicitly required that Crown not process a CUP transaction 'to give the [CUP] cardholder cash',[233] and that requirement was not eroded by (indeed, it prevailed over) the term that permitted a 'purchase of

[230] And we assume this notation to be correct.
[231] CRW.523.002.0178, NAB Merchant Agreement (annotated) at CRW.523.002.0214, [4.1](k).
[232] CWN.514.051.0782, 'VIP International Credit and Debit Card Cash Out Review' dated 12 June 2013.
[233] CRW.523.002.0178, NAB Merchant Agreement (annotated) at CRW.523.002.0209, [3.5] and [3.5](e).

goods easily converted into cash'.[234] The NAB terms and conditions drew a bright line between permitting a transaction involving the purchase of goods that could be converted into cash, and a transaction that involved the provision of cash itself to the customer.

298. The CUP process involved Crown and the customer engaging in a single transaction, regardless of the fact that Crown engaged in several internal processes within that transaction. The customer made a putative 'purchase' on the pin pad at the Hotel. The customer obtained from the Cage one of: a credit into the DAB account; gaming chips; or possibly cash out. Thus, the transaction engaged in by Crown and the customer discharged the customer's obligation to pay Crown. As we have previously said, for Crown to insert internal layers that were required for internal accounting purposes does not alter the basic nature of that single transaction.

299. It follows that, so long as the CUP process involved the provision of gaming chips or vouchers, we do not believe that this aspect of the transactions involved the making of a false accounting record. If it involved the provision of cash, we would reach the contrary conclusion.

300. We have also considered the possibility that transactions may have been processed on a CBA card terminal. Given there was a dedicated NAB card terminal kept for the precise purpose of the CUP process, we think it unlikely that the CBA card terminals would have been used. However, if a CBA card terminal was used, it is at least apparent that Ms Tegoni thought that would breach the CBA terms and conditions.[235] Were it in fact the case that the Deloitte review shows that transactions involved in the CUP process were undertaken using a CBA card terminal, it would be necessary to examine whether those transactions involved the falsification of a record required for an accounting purpose (by selecting the 'purchase' option on the card terminal), and whether the *mens rea* for false accounting existed, especially in light of the view expressed by Ms Tegoni that carrying out the CUP process on a CBA card terminal was not permitted by the contract between Crown and the CBA.

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[234] CRW.523.002.0214 at [4.1](k).

[235] We have not been provided with the T&Cs for the CBA terminals, however in an email from the CBA to Roland Theiler, which was forwarded to Ms Tegoni, the CBA stated that UnionPay transactions cannot be used to place bets or purchase gaming chips or to purchas foreign currency: CRW.523.002.0252.

301. Our final concern in respect of this issue is a significant one, and one about which we were unable to reach a concluded view. It appears from the advice Crown received on 12 June 2013 from Paul Jenkins of Ashurst, which was copied to Mr O'Connor and Mr Theiler, that, for Crown to charge CUP cards, it had to be allocated a merchant category code (**MCC**) corresponding to the type of business it was conducting.[236] We have not been able to determine which MCC was allocated, and who was involved in the selection of that number. Nor have we been able to establish how the category is communicated or conveyed. It may be the case that an MCC number simply designates the primary business of the merchant who is using the terminal, or the predominant nature of transactions that will be run through that terminal, rather than guaranteeing that all transactions will be of a particular character.

302. However, assuming that Mr Jenkins' advice was correct, it seems that – had Crown been allocated a MCC indicating the CUP process was being used in a gaming business – CUP would have declined the transactions. It is at least possible that using the hotel card terminal may have resulted in a false impression being created, that the transactions were for the purchase of goods or services of a 'hotel-type'.

303. We do not consider, however, that any such false impression is likely to have involved the making of a false record made or required for an accounting purpose. The Court of Appeal has emphasised that looseness on this issue will not suffice.[237] We are not satisfied that the material shows that, by using a card terminal from the hotel, Crown employees thereby made any accounting record that the transaction involved a purchase of the kind indicated by the MCC number. Whilst the use of the hotel card terminals might have created a false impression within CUP, it did not involve the making of a false accounting record.

304. *Thirdly*, we repeat, *mutatis mutandis*, our observations about the requisite *mens rea* for false accounting. It is Mr O'Connor whose mental state matters. He must have 'deliberately and intentionally [made] a false accounting statement knowing it to be false', without any belief in a legal right to do so.[238] We do not consider that the material demonstrates that he was of that state of mind.

[236] CWN.514.051.0604, Email from Paul Jenkins to Mr O'Connor and Mr Theiler.
[237] *R v Jenkins* (2002) 6 VR 81 at [55]-[57].
[238] *DPP v Gerathy* (2018) 55 VR 478 at [40], [45].

305. In light of the foregoing, it is our view that the material available to us does not disclose the commission by Crown of the offence of false accounting.

Money Laundering Offences in the Criminal Code (Cth)

306. The *Criminal Code* (Cth) contains a suite of money laundering offences, with cascading maximum penalties depending upon the mental state and quantity involved.

307. It is desirable to say something generally about money laundering offences at this point. Some offences involve dealing with the 'proceeds of crime', which is generally defined broadly to include property acquired directly or indirectly from a crime, or that has been transformed into some different form of value. Some other offences involve dealing with property that is reasonably suspected of being the proceeds of crime (and the suspicion might be either that of the person dealing with the property, of the informant, or of the Court).[239] Others involve dealing with an 'instrument of crime', which is generally defined to mean something that is intended to be used in the commission of a crime.

308. Money laundering offences therefore require a 'predicate offence' from which are derived the 'proceeds of crime' that are the subject of the charge, or in which it is intended to utilise the 'instrument of crime' that is the subject of the charge. It follows that money laundering charges require either the existence of a past crime (from which the proceeds of crime are derived) or an intended future crime (in which the instrument of crime is intended to be used). This means that money laundering offences require a temporal distinction between the predicate offence and the charged conduct. The need for this temporal distinction means that the 'dealing' that is said to constitute the money laundering, cannot also be a constituent part of the predicate offence.[240]

309. Certain factors make it entirely conceivable that the CUP process might have involved Crown dealing with either an instrument of crime or proceeds of crime. Modern organised crime is commonly transnational in nature, so that cross-border movement of money is essential to such crime. A method of avoiding strict rules on the cross-border

[239] See, for example, section 123 of the *Confiscation Act* 1997 (Vic), which was repealed by the *Crimes (Money Laundering) Act* 2003 that enacted in its stead the current section 195 of the *Crimes Act* (Vic), and see also the current section 400.9 of the *Criminal Code* (Cth), and see also *DPP v Pastras* (2005) 11 VR 449 and *DPP v Marell* (2005) 12 VR 581.
[240] See, eg, *Chen v DPP (Cth)* (2011) 83 NSWLR 224 at [23], *Milne v R* (2014) 252 CLR 149 at [9] and [37].

movement of money is therefore prone to be of assistance to organised crime. Recalling that the CUP process was available to junket players, and that certain junkets had connections to organised crime, it is not at all far fetched to imagine that organised crime figures took advantage of the CUP process.

310. However, our investigation cannot realistically determine whether the CUP process was in fact utilised in that way. Doing so would require not only a granular analysis of particular transactions, but also collateral information about the persons involved and the origins of, or ultimate use of, the funds received pursuant to the CUP process after they left Crown. Plainly, that analysis requires consideration of circumstances extending far beyond the ambit of the transaction within Crown, and could not readily be carried out by anyone other than police or other official investigative bodies, who have the benefit of evidence-gathering powers and techniques that we are not able to deploy. That said, it is worth observing that none of the material we have received indicates that any particular transaction involved money that was derived from, or destined to be used in, a particular crime.

311. In light of the foregoing, the following analysis is confined to whether the CUP process involved the systematic commission of money laundering, regardless of the origins or intended destination of the funds received pursuant to the CUP process.

312. There is no material to suggest that the CUP process inherently involved Crown dealing with funds intended to be used in a future crime, and thus dealing with an 'instrument of crime'.

313. We turn to whether it inhered in the CUP process that Crown was dealing with the 'proceeds of crime'. For the purposes of the money laundering offences in the *Criminal Code*, money or other property is the proceeds of crime if it 'wholly or partly derived or realised, directly or indirectly, by any person from the commission of an offence against a law of the Commonwealth, a State, a Territory or a foreign country that may be dealt with as an indictable offence…'[241]

314. We have not seen any material to suggest that the money obtained through the CUP process was the product of any Victorian or Commonwealth offence.[242] (Funds

[241] Section 400.1(1).
[242] We have separately considered the possibility that Crown may have committed the offence of false accounting, and concluded that the material does not provide a foundation for concluding that it has committed any such offence.

obtained through the CUP process are not the proceeds of crime by reason of it being obtained through the infringement of section 68 of the CCA, as breach of that provision is not a criminal offence.)

315. It follows that a money laundering offence could only conceivably have been committed if the proceeds of the CUP process could be seen as the proceeds of a foreign indictable offence. Because many of the patrons using the CUP Process were Chinese (or used CUP cards which, it may be inferred, were issued in China or on Chinese bank accounts), Chinese criminal law is significant to whether any money laundering offence has been committed.

316. We are not instructed as to Chinese law as it applied in 212-2016, but have reviewed the evidence for indications and as to Crown's awareness of the state of Chinese law in particular.

317. There is some limited indication of the state of Chinese law in the legal advices provided by WilmerHale to Mr Chen. On 19 February 2013, WilmerHale provided Mr Chen with "a summary of relevant regulations and their enforcement and practical implications on marketing overseas casino business in China". WilmerHale advised, *inter alia,* that: [243]

> "We have also done some research and so far, we are not aware of any notable case where employees of an overseas casino in China were arrested and convicted of criminal liability by merely marketing overseas casino in China. Having said the above, we note that if an employee participates in money laundering activities and receives gains therefrom, such employee may be subject to a separate criminal or administrative charge of money laundering or evasion of foreign exchange regulations…"

318. In September 2013 Ms Tegoni printed out an article for her CUP file from "China Briefing News" which stated: [244]

> China employs strict currency regulations that are designed to prevent large amounts of currency moving out of the country…. Chinese nationals are able to transfer the equivalent of US$2000 per day into a foreign bank account, however Chinese nationals face a US$50 000 annual ceiling when exchanging RMB into foreign currencies while foreign nationals do not face such ceilings.

[243] The Honourable Patricia Bergin SC *Inquiry under section 143 of the Casino Control Act* 1992 (NSW) at p 259 [117], Ex M22; Ex M27.
[244] CRW.523.002.0270. Op-ed commentary by Chris Devonshire-Ellis for website *China Briefing News*, dated 11 November 2011 "Getting Cash Money RMB Out of China" (printed 16 September 2013).

319. On 13 February 2015 Mr Chen asked 'How about if staff assists or refers with remittances of money?' WilmerHale responded: [245]

> If staff knows about a third party engaged in money laundering activities and still makes introduction or referral, it will be problematic under law. If staff knows that certain arrangement to remit the money is not in compliance with law, and still assists the customer to do so, it will also be problematic.

320. The currency controls which were in place in China were also discussed in the Reuters article circulated by Mr O'Connor to Ms Tegoni and Mr Felstead, which discussed the practice of customers using China Union Pay cards to 'purchase' cash from stores willing to put these transactions through as general sales. The article stated:[246]

> The withdrawal [of HK$300 000] far exceeded the daily limit of 20,000 yuan, or $3,200, in cash that individual Chinese can legally move out of the mainland… The practice violates China's anti-money-laundering regulations as well as restrictions on currency exports, according to Chinese central bank documents received by Reuters.

321. In June 2015, the Mintz Group advised Mr Chen about the arrest of a number of South Korean casino employees in the following terms:[247]

> The core issue of the case is about the cash that they were taking out of China for their new clients, and it eventually got them arrested… These Koreans have been contravening Chinese currency laws for some time, and it's a relatively isolated case (other junkets are also being monitored though, as we've covered before).

322. For the purposes of this advice, we assume it to be correct that using China Union Pay cards to pay large sums of money (say, over AUD $50,000) for either cash or chips is contrary to Chinese currency controls, however we note that this would only establish money-laundering if the Chinese currency controls make using a credit card or debit card overseas to obtain cash or purchase gambling chips, of a value in excess of the given amount, an indictable offence.

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[245] The Honourable Patricia Bergin SC *Inquiry under section 143 of the Casino Control Act* 1992 (NSW) at p 216 [126], Ex M143.
[246] CRW.900.001.0033 at CRW.900.001.0034, James Pomfret, Reuters "Special Report: How China's official bank card is used to smuggle money" 12 March 2014.
[247]The Honourable Patricia Bergin SC *Inquiry under section 143 of the Casino Control Act* 1992 (NSW) at p 283 at [224], Ex M202.

323. We have no expertise in Chinese law. However, we consider it unlikely that Chinese law creates any indictable offence that both has extraterritorial reach, and would prohibit transactions of the kind involved in the CUP process. For this reason, although we cannot advise on the topic of Chinese law, we very much doubt that the essential predicate for any money laundering offence exists.

324. Even assuming that there was some indictable offence in China that criminalised a customer engaging in the CUP process in Australia, that would not necessarily mean that the physical elements of a money laundering offence were established. As we have already stated, it is essential to all money laundering offences that there be a temporal distinction between the predicate offence and the 'dealing' that constitutes the money laundering. It therefore follows that it is critical to understand the precise scope of any Chinese predicate offence, in order to determine what dealing has taken place *after* that offence was complete, as it is only after the commission of the predicate offence that the money or property becomes the proceeds of that offence.

325. If Crown engaged in a transaction with the property that is the proceeds of a Chinese indictable offence, subsequent to that offence being complete (and thus at a time when the property was the proceeds of crime), then Crown will have 'dealt with' that property if it received, possessed or disposed of that money or property.[248] The CUP process clearly involved Crown receiving the patron's money.

326. If Crown has engaged in such a transaction in relation to the proceeds of crime then the next issue to be determined would be whether Crown had the *mens rea* that would render it guilty of one of the cascading offences from section 400.3 to 400.8 (we will consider the section 400.9 offence, which is differently constituted, separately).

327. The successive provisions from section 400.3 to section 400.8 deal with offences in relation to different quantums. Within each section, there is a series of offences that are differentiated by the mental state of the accused at the time of the dealing. Subsection (1) of each section creates an offence where the accused *believes* that the money or property is proceeds of crime. Subsection (2) of each section creates an offence where the accused is *reckless* as to the fact that the money or property is proceeds of crime.

[248] *Criminal Code* (Cth), section 400.2

Subsection (3) of each section creates an offence where the accused is *negligent* as to the fact that the money or property is proceeds of crime.

328. Should it be the case that the CUP process involved Crown dealing with the proceeds of crime – a matter that depends, as we have said, upon Chinese law (or upon the law of any other foreign state whose nationals used the CUP process) – it would be necessary to next consider whether Crown had any of the mental states that would render such dealing criminal.

329. Whether a corporation had the mental state required for proof of an offence under the Code is to be determined by applying the rules in Part 2.5 of the Code. Those rules differ from the rules of attribution we have discussed above in relation to the Victorian statutory offence of false accounting. It suffices for present purposes to observe that a corporation may have the mental states of intention, knowledge or recklessness if it 'expressly, tacitly or impliedly authorised or permitted the commission of the offence',[249] including where 'a high managerial agent… intentionally, knowingly or recklessly engaged in the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the commission of the offence',[250] or where 'a corporate culture existed within the body corporate that directed, encouraged, tolerated or led to non-compliance with the relevant provision',[251] or where 'the body corporate failed to create and maintain a corporate culture that required compliance with the relevant provision'.[252]

330. We have already expressed the view that Mr O'Connor, who is a high managerial agent, authorised the relevant conduct, being employees engaging in the CUP process. Hence, his mental state with respect to the money being the proceeds of crime is critical. If he knew, or was reckless (ie if he was aware of a substantial risk, which it was unjustifiable to take[253]), that the money was the proceeds of crime, then it would follow that Crown had the mental state of knowledge or recklessness.

331. In light of our observations above about Mr O'Connor's mental state, we do not consider that he *knew* that the money or property received pursuant to the CUP process was proceeds of crime, as we do not consider that he knew that the money was the proceeds

[249] *Criminal Code* (Cth), section 12.3(1).
[250] *Criminal Code* (Cth), section 12.3(2)(b).
[251] Section 12.3(2)(c).
[252] Section 12.3(2)(d).
[253] Section 5.4.

of a Chinese criminal offence (*cf* in breach of a civil provision limiting the export of currency).

332. As to recklessness, we consider the issue of corporate culture to be much more problematic. The Bergin Report exposed the flaws in the general corporate culture of Crown at the relevant time. It is far beyond the scope of our task to re-investigate that issue. It suffices to note that the Bergin Report stated that 'many of the problems that rendered the Licensee and Crown as unsuitable, stem from poor corporate governance, deficient risk management structures and processes and a poor corporate culture, in the areas the subject of the Amended Terms of Reference'.[254] Whilst that suggests a profoundly defective corporate culture, it does not necessarily lead to satisfaction of the test of recklessness for this particular offence. Recklessness requires awareness of a substantial risk of the prohibited circumstance or result, and that in the circumstances known to the offender it was unjustifiable to take that risk. Despite the defective corporate culture of Crown at the relevant time, and the knowledge in management of Chinese currency controls, we do not think that the conduct reaches the level of recklessness.

333. We turn to negligence. Section 12.4 of the Code applies s 5.5 of the Code to a corporation. A corporation is negligent if its conduct involves 'such a great falling short of the standard of care that a reasonable [corporation] would exercise in the circumstances' and 'such a high risk that the physical element exists or will exist' 'that the conduct merits criminal punishment for the offence'.[255]

334. We have given anxious consideration to this issue. On the one hand, the persons involved in management sought legal advice from the most senior lawyer within Crown, Ms Tegoni, and she did not raise any concerns about dealing with the proceeds of crime. Moreover, whilst a trained lawyer might consider her legal advice in relation to the CUP process to be deficient, those in management who received that advice were not legally trained, and might reasonably expect that there would be absolute clarity in that legal advice if there were a risk of dealing with the proceeds of crime. On the other hand, senior management – and most particularly Mr O'Connor – were well aware of Chinese currency controls.

[254] The Honourable Patricia Bergin SC *Inquiry under section 143 of the Casino Control Act* 1992 (NSW), p 252.
[255] Section 5.5.

335. The test for negligence on the part of a corporation permits the aggregation of the conduct of employees, so as to assess whether the corporation 'as a whole' was negligent.[256] We are acutely conscious that Ms Tegoni refused to speak to us, and that we are therefore limited in understanding her mindset and the legal analysis that she undertook. However, we do have the benefit of her file, which includes a typed file note on the legality of the CUP process, on which someone (we assume Ms Tegoni) has made handwritten annotations. The fact that Ms Tegoni went to the trouble of typing the 3 page file note and annotating it makes it seem a considered expression of her thinking. That note includes the words, following a description of the use of the CUP card for the CUP process: 'we assume it's a legal transaction (or POC issues)'.[257]

336. The expression 'POC' in this context is an apparent reference to 'proceeds of crime'. Ms Tegoni therefore obviously had in mind that there were issues with proceeds of crime if the transaction was not lawful. Later in her file note, she referred to the possibility that Chinese law rendered it illegal for a Chinese patron to gamble overseas as 'a matter for the individual patron' (*cf* a matter that ought concern Crown), but added in handwriting 'subject to POC and NAB trans…'[258] It is therefore clear enough that Ms Tegoni recognised that if the CUP process breached Chinese law, that might result in the funds acquired in that way being the proceeds of crime.

337. Some six months after Ms Tegoni wrote that filenote, O'Connor sent her the Reuters article that cited an apparently credible legal expert for the proposition that the use of CUP cards for ostensible purchases, which in fact resulted in cash being provided, breached Chinese money laundering and currency control laws.[259] When we spoke to him, Mr O'Connor described such statements as unsurprising and 'common knowledge' within Crown.

338. It seems to us that, at least from that point, it should have been apparent to Ms Tegoni that there was a real issue as to whether Crown was dealing with the proceeds of crime when dealing with the funds procured through the CUP process.

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[256] Section 12.3(2).
[257] CRW.523.002.0159 at CRW.523.002.0161., Note to File by Debra Tegoni on 17 September 2013, recording the subject as "China Union Pay".
[258] Ibid.
[259] CRW.523.002.0023, VIP International Credit and Debit Card Cash Out Policy prepared by [redacted]

339. Given that it was Ms Tegoni who was responsible for ensuring the legality of the process, what we perceive to be her failings in this regard are to be attributed to Crown in assessing whether it was negligent.

340. Returning to the elements required for negligence, we repeat that the conduct must involve 'such a great falling short of the standard of care that a reasonable [corporation] would exercise in the circumstances' and 'such a high risk that the physical element exists or will exist' 'that the conduct merits criminal punishment for the offence'. The words 'meriting criminal punishment' are important, as they convey the significantly higher test for criminal negligence than for tortious negligence.[260]

341. We consider that Crown's conduct in engaging in the CUP process, despite knowledge at high levels that it was apparently contrary to Chinese currency controls, fell short of the standard of care that a reasonable corporation would exercise in the circumstances. Despite the fact that Crown knew that there were strict currency controls in place in China, no substantial effort was made to establish what the legal position was in relation to these currency breaches, and whether the Chinese laws were equivalent to indictable offences or had extraterritorial application.

342. However, we do not consider that the conduct involved 'such a high risk that the physical element exists or will exist' that the conduct merited criminal punishment. The physical element required the CUP process to involve dealing with the proceeds of a Chinese indictable offence. Whilst we strongly suspect that the CUP process was inconsistent with Chinese currency controls (or some other Chinese regulation), we do not consider that it was likely that any such rule constituted an indictable offence, and had extraterritorial operation so as to prohibit the CUP process.

343. We are therefore not of the view that, even through the aggregation of the conduct of various employees, Crown 'as a whole' was negligent in the technical sense required by the Code.

344. It follows that the material does not lead us to consider that Crown committed any of the money laundering offences contained in ss 400.3 through 400.8. We turn next to section 400.9.

[260] *King v R* (2012) 245 CLR 588 at [80].

345. We have already observed that the section 400.9 offences are differently constituted to the offences contained in ss 400.3 to 400.8. That is because the section 400.9 offences do not require proof that the property is *actually* the proceeds of crime, but only that it is *reasonably suspected* to be the proceeds of crime. The elements of the section 400.9 offences require that a person deals with money or other property, that it is reasonable to suspect that the money or property is the proceeds of crime, and that the money or other property has a certain value (the value differentiates between the sub-s (1) and the sub-s (1A) offence). The critical issue in relation to the section 400.9 offences is therefore whether 'it is reasonable to suspect that the money or property is proceeds of crime'. The relevant suspicion is that of the tribunal of fact, not the offender.[261]

346. The relevant suspicion must be about a matter of fact, rather than law, as a Court must determine the law, rather than act on a 'suspicion' as to the state of the law. Of course, foreign law *is* a matter of fact rather than law.[262] However, we do not think that it is tenable to suggest that a court would have sufficient knowledge to 'suspect' the detailed state of Chinese criminal law, or should act on the basis of such a general suspicion. Whilst judicial notice may be taken of foreign law in some circumstances, the state of Chinese law – and particularly something so specific as whether it contains an indictable offence which the CUP process infringed – could not be said to be sufficiently notorious as to permit judicial notice to stand in lieu of evidence.[263] Thus, although the section 400.9 offences only require that there be a *reasonable suspicion* as to the money or property being the proceeds of crime, the commission of the offence ultimately turns on what the evidence shows as to the state of Chinese law.

347. Consequently, there is no difference in outcome whether one applies the reasonable suspicion test in section 400.9, or makes a definite finding as to the property being the proceeds of crime for the purposes of ss 400.3 to 400.8.

348. Therefore, just as the material does not lead us to consider that Crown committed any of the money laundering offences contained in ss 400.3 through 400.8, we reach the same conclusion in respect of section 400.9.

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[261] So much is obvious by reason of the inclusion of the Defence in section 400.9(5), by which a person may exculpate themselves if they establish on the balance of probability that they had no reasonable grounds for suspecting that the money was derived or realised, directly or indirectly, from some form of unlawful activity.
[262] *Mokbel v R* (2013) 40 VR 625 at [22], see also *Evidence Act* 2008 (Vic) section 174.
[263] *Cf Mokbel v R* (2013) 40 VR 625 at [26].

349. For these reasons, we do not consider that we have grounds to conclude that Crown committed any offence against ss 400.3 to 400.9 by reason of following the CUP process. However, we emphasise that, for reasons we have explained, we consider it entirely plausible that individual transactions may have involved Crown dealing with the proceeds of crime or an instrument of crime. Whether Crown had the mental state required for any of the money laundering offences in such a case would depend, inter alia, upon Crown's knowledge or investigations about the particular funds involved in that transaction..

Money laundering offences in the Crimes Act 1958 (Vic)

350. Sections 193 – 195A of the *Crimes Act 1958* (Vic) enact the Victorian money laundering offences.

351. By virtue of section 193, property is the proceeds of crime if it is the proceeds of an offence against a law of a country outside Australia 'that would have constituted' one of a defined category of offences 'if it had been committed in Victoria'. That provision in effect creates a dual-criminality test; the foreign offence must be such that it would have 'constituted' one of the defined offences if committed in Victoria.

352. We have considered the list of defined offences set out in Schedule 1 to the *Confiscation Act* 1997. None of them are apparently engaged by the CUP process (whilst the offence set out in cl 10(p) of Schedule 1 to the *Confiscation Act* 1997 prohibits accepting a bet as part of a transaction involving a credit card, that offence does not govern conduct in a casino[264]).

353. There is therefore no present basis for concluding that the CUP process involved the commission of any of the money laundering offences created by the Victorian *Crimes Act.*

ASSERTED PRACTICE OF RECIPROCAL TRANSACTIONS BETWEEN PATRONS

354. We inquired into the question of whether there was a practice, of which Crown staff were aware, involving receipt by Crown of transfers of funds from within Australia

[264] See *Gambling Regulation Act* 2003 (Vic) section 4.7.6(c).

between patrons which were reciprocated in China or overseas.[265] We found that this was unable to be substantiated by evidence.

355. In the relevant period, however, Crown did permit individuals to transfer money into other individuals Crown accounts. By doing so, Crown established the conditions whereby it could become involved in the kind of reciprocated transactions that we were asked to explore.

356. We were also advised about a common practice at Crown in the relevant period, whereby Crown would accept funds from "money changers" (some licensed and others not), involving a transfer to the money changer in an overseas location, and the remittance to Crown by the money changer from funds it held in Australia. The circumstances in which such transactions were undertaken were beyond the scope of our instructions.

357. Having found the allegation about the reciprocal transactions to be unsubstantiated, we have not formed an opinion regarding the legal implications if these transactions did in fact occur, to Crown's knowledge.

CONCLUSION

358. For the reasons we have set out, we consider that in relation to the CUP Process:

(a) The material establishes that Crown breached section 68 of the CCA; and

(b) The material does not establish that Crown committed any criminal offence, or breached any other law, including the AML Act.

359. In relation to the asserted practice of reciprocal funds transfers, we do not consider that the material establishes that this occurred.

360. Nonetheless, despite the limits of the material which we have been able to consider in the relatively truncated time for investigation and this advice, the material that we have addressed suggests a severe failure by Crown (during the period 2012–2016 in particular) to take prudent and appropriate steps to prevent risks that the CUP process might entail or facilitate illegal or unlawful conduct. Those failures appeared to have an explanation in an environment in which, for example, Crown's Compliance Manager felt significant pressure to provide solutions that were favourable to Crown's

[265] See paragraphs 171 to 180 above.

commercial interests, and in which any unfavourable answers might be overridden by management. The Crown business adopted and pursued the CUP Process in the face of legal, compliance and foreign risks that were variously identified, including incompatibility with foreign currency control laws and money-laundering risks, and senior management considered that the process did not pass the 'pub test'. There was a real risk that the CUP process might involve unlawful or illegal conduct, and (aside from the position with respect to section 68 of the CCA), investigations of individual transactions may reveal those risks to have been realised, including as a means by which organised crime may have laundered money.

Dated: 1 June 2021

C M Archibald QC **Chris Carr SC** **Anna Dixon**

Schedule 1: Staff of Crown (current and former) interviewed

1. [redacted] 21 April 2021
2. [redacted] 22 April 2021
3. Roland Theiler: 22 April 2021
4. Jason O'Connor: 23 April 2021 and 21 May 2021
5. Stephen Hancock: 5 May 2021.
6. [redacted]: 26 April 2021
7. Jan Williamson: 26 April 2021
8. Barry Felstead: 28 April 2021
9. [redacted] 6 May 2021
10. Confidential [redacted] 18 May 2021
11. [redacted] 19 May 2021

Schedule 2: Staff of Crown (current and former) unable to be interviewed

1. Debra Tegoni – declined request to be interviewed.
2. Michael Johnston – did not respond to request to be interviewed.
3. Joshua Preston – did not respond to attempts to be contacted.