Victorian Commission for Gambling and Liquor Regulation

DECISION AND CONFIDENTIAL REASONS FOR DECISION[1]

In the matter of an inquiry into whether there are grounds to take disciplinary action against Crown Melbourne Ltd under section 20 of the *Casino Control Act 1991* (Vic) for contravention of section 121(4) of the *Casino Control Act 1991* (Vic).

Commission:
Mr Ross Kennedy PSM, Chair
Ms Helen Versey, Deputy Chair
Ms Deirdre O'Donnell PSM, Deputy Chair
Ms Danielle Huntersmith, Commissioner
Mr Andrew Scott, Commissioner

Date of hearing: 21 January 2021

Appearances:
Mr Kane Loxley of Counsel (instructed by Mr Robert Meade, MinterEllison Lawyers) on behalf of Crown
Mr Xavier Walsh, Chief Executive Officer, Crown Melbourne Ltd
Mr Ken Barton, Director, Crown Melbourne Ltd and Managing Director and Chief Executive Officer, Crown Resorts Ltd
Ms Michelle Fielding, Group General Manager of Regulatory Compliance, Crown Resorts Ltd
Mr Scott May, Counsel Assisting the Commission
Mr Cameron Warfe, Counsel Assisting the Commission

Date of decision: 27 April 2021
Date of reasons: 27 April 2021

[1] These reasons for decision are marked confidential in circumstances where Crown has asserted that this matter has involved consideration of protected information for the purpose of the *Gambling Regulation Act* 2003 (Vic). Furthermore, these reasons are also marked confidential in circumstances where Crown has asserted that this matter has involved consideration of issues that *"could provide those wishing to exploit the [Melbourne] casino's operations with valuable information in relation to how [Crown's] controls and procedures operate, particularly those procedures and controls designed to identify, mitigate and manage money laundering risks"*. Crown has in those circumstances asked that the information and documents that it has provided to the Commission in the course of this matter *"be regarded with due sensitivity and confidentiality, and that Crown be consulted prior to any publication"* of the documents Crown has referred to in the course of this matter or the information contained therein.

Victorian Commission for Gambling and Liquor Regulation

Confidential Reasons for Decision

Decision:

The Victorian Commission for Gambling and Liquor Regulation (**Commission**) determines that there are grounds for disciplinary action against Crown Melbourne Ltd (**Crown**) in accordance with section 20 of the *Casino Control Act 1991* (Vic) and has determined to:

1. Impose a fine in the amount of $1 million, payable within 28 days of the date of this decision; and
2. Issue a letter of censure to Crown, which will include directions that Crown:
   a. not recommence junket operations at the Melbourne casino until such time as Crown applies to and receives permission from the Commission to recommence junket operations. Any such application must demonstrate how Crown has addressed the Commission's concerns as identified in these reasons for decision; and
   b. provide the Commission with monthly reports on the progress of implementing the reform programs outlined in the Reform Agenda it identified to the Commission during the course of this matter, including the:
      i. development of information sharing protocols with law enforcement agencies;
      ii. execution of a detailed work plan for implementing the recommendations in the Deloitte Review;
      iii. implementation of an organisational restructure that would result in the creation of a specific Financial Crime Department within Crown (incorporating Anti Money Laundering and Compliance), which will be separate from Crown's other business units and have direct reporting lines to Crown's board.

Signed:

[redacted]

Ross Kennedy PSM

Chair

Victorian Commission for Gambling and Liquor Regulation

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Confidential Reasons for Decision

Introduction

1. It is illegal to operate a casino in Victoria unless that casino has been licensed by the Victorian Commission for Gambling and Liquor Regulation (**Commission**). Crown Melbourne Ltd (**Crown**) is the holder of a casino licence and operates the Melbourne casino accordingly.

2. The objectives of both the Commission[2] and the *Casino Control Act 1991* (Vic) (**Casino Control Act**)[3] include those of establishing a system of licensing, supervision, and control which, among other things, ensures that the management and operation of the Melbourne casino remains free from criminal influence and exploitation.

3. One of the ways in which that objective is achieved is through Crown's legislative obligation to implement approved systems of controls and procedures,[4] including the system of controls and procedures known as the *"Internal Control Statement Junket and Premium Player Programs…"* (**Junket ICS**).

4. Clause 1 of the Junket ICS states:

> *"The objective of this Internal Control Statement is to ensure that Crown remains free from criminal influence and exploitation through:*
>
> (a) *the application of effective processes; and*
> (b) *the maintenance of detailed and accurate documentation*
>
> *relating to Junket and Premium Player Program activity, the introduction of players and VIP International Telephone betting…"*

5. This objective is expressly supported by the *"minimum standards and controls"* that are set out in clause 2 of the Junket ICS, which include, among others, minimum standards for:

> (a) the establishment of an audit trail for the purpose of documenting the terms of the agreement that Crown has entered into with its junket operators, junket players or premium players;

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[2] Section 140(a) of the Casino Control Act.
[3] Section 1(a)(i) of the Casino Control Act.
[4] Section 121 of the Casino Control Act.

(b) the completion of signed letters of introduction;[5]

(c) the requirement that processes of independent review be established for authorisation and approval of those players who are relevant for the purpose of the Junket ICS;

(d) the provision of data and reporting to the Commission; and

(e) insofar as clause 2 specifically includes a minimum standard for audits, the requirement in clause 2.5.1 that:

"Crown will ensure that it has robust processes in place to consider the ongoing probity of its registered Junket Operators, Junket Players & Premium Players".

The relationship between Crown and those referred to in the Junket ICS

6. As will be apparent from the nature of the obligations that are referred to in clause 2 of the Junket ICS, those obligations are of a type that apply in the context of ongoing business relationships that Crown has established with specific individuals or entities.

7. In that context, the junket operators, junket players and premium players referred to in the Junket ICS are (or were) a highly profitable segment of Crown's business operations at the Melbourne casino. Generally, they wager and, in some cases, lose, large amounts of money.

8. Crown pays rebates or commissions to the junket operators, junket players and premium players referred to in the Junket ICS which are calculated by reference to the total amount that has been wagered by that individual or entity, in the specified period.

9. Although these relationships might also include other terms, including minimum "buy-in" requirements and arrangements by which junket operators might, for example, guarantee any credit that Crown extends to a particular player, ultimately, these relationships all have the same objective.

10. That objective is to facilitate or assist Crown in bringing gamblers who are variously described as "premium players", "high rollers" or "VIPs" to the Melbourne casino to gamble, so that Crown can derive a profit from their gambling activities at the Melbourne casino.

[5] Which in-turn must themselves contain certain specified information.

11. Indeed, the fact that Crown has curated and maintained business relationships of this nature is expressly recognised in the *Casino Control Act*, including to the extent that the terms *"junket"* and *"premium player arrangement"* are expressly defined in ways which recognise the payment of:

> *"...a commission [by Crown] based on the turnover of play in the casino attributable to the persons introduced by the organiser or promoter or otherwise calculated by reference to such play".*[6]

12. It is in the context of the business relationships that Crown has curated and established with its junket operators, junket players and premium players that the Junket ICS serves the important regulatory purpose of ensuring that these relationships do not become a conduit through which the Melbourne casino is exposed to criminal influence or exploitation.

The evolving approach to regulating those referred to in the Junket ICS

13. The regulatory approach that has been adopted to ensure that junket operators, junket players and premium players do not become a conduit through which the Melbourne casino is exposed to criminal influence or exploitation has evolved over time.

14. At the time of the enactment of the Casino Control Act in 1991, the predecessor of the Commission was required to expressly approve the individuals or entities who organised or promoted junkets at the Melbourne casino, but there was no prescribed process by which that occurred.

15. In 1998, that approach was varied by legislative amendment and the introduction of additional regulations which both prescribed the relevant approval process and conferred a power on the relevant director of the Commission's predecessor to approve junket operators.

16. That system persisted until 2004, when a process of deregulation occurred and, among other things, the prescribed approval process that had been in place since 1998 was removed.

17. At this time, structural changes were also made which meant that Crown, for the purpose of operating the Melbourne casino, adopted a range of minimum standards and controls, in the form of what are known as Internal Control Statements or ICSs.

[6] See section 3 of the Casino Control Act.

18. In the context of this process of deregulation however, specific requirements in respect of junket probity assessments did not form part of the ICS-based approach to regulation until 2015, when Crown proposed that it would begin conducting VIP telephone betting.

19. At this time, specific requirements were introduced, in the form of the Junket ICS, relating not only to the VIP telephone betting that Crown sought to commence at that time, but also in respect of junket and premium player programs, and the introduction of players. The Junket ICS to which this matter specifically relates deals with each of junket and premium player programs; VIP telephone betting; and the introduction of players accordingly.

20. It will be apparent, having regard to these matters, that the Commission is considering this disciplinary proceeding in the context of a regulatory environment where Crown not only enjoys the privilege of being the sole holder of a casino licence in Victoria, but also where it enjoys a degree of self-regulation that did not exist for at least the first thirteen years of the life of the Melbourne casino.

Investigation, show cause notices and Crown's limited concessions

21. Between July and October 2019, media articles were published which suggested that the Melbourne casino may have been exposed to criminal influence or exploitation and that this exposure had occurred in the context of ongoing junket and/or premium player relationships that Crown had established (**2019 media articles**).

22. During 2020, similar allegations to those made in the 2019 media articles were made during an inquiry that was conducted in New South Wales.[7]

23. As a result, the Commission investigated the matters referred to in both the 2019 media articles and at the NSW Inquiry and:

    (a) on 2 October 2020 issued a notice for Crown to show cause why disciplinary action should not be taken on the ground that Crown had contravened the Casino Control Act in respect of the:

        i. junket agent, Simon Pan (also known as Zhao Yuan Pan);

[7] Those allegations being made in or about October 2020 during an inquiry conducted pursuant to section 143 of the *Casino Control Act 1992* (NSW) (**NSW Inquiry**).

ii. junket operator, Zezhai Song;

iii. junket player, Joseph Wong (also known as Yoseph Prawira and Wong Kiia Tai);

(b) on 17 November 2020 issued an amended notice which required Crown to also show cause in respect of one further individual, namely the junket operator Alvin Chau (also known as Chau Cheok Wa).

24. Both notices were issued pursuant to section 20(2) of the Casino Control Act and required Crown to show cause why disciplinary action should not be taken, on the ground that Crown may have contravened section 121(4) of the Casino Control Act by failing to implement its obligation under clause 2.5.1 of the Junket ICS to ensure that it had robust processes in place to consider the ongoing probity of its registered junket operators, junket players and premium players.

25. In response to the show cause notices, Crown made several written submissions,[8] including an initial written submission that was made on 30 October 2020.

26. That submission included a letter, signed by Crown Director Mr Ken Barton, which, among other things, acknowledged that:

(a) Crown has in the past had relationships with junkets where media and due diligence reports have referred to allegations of criminal links;

(b) Crown must improve its due diligence in relation to junkets;

(c) due diligence has been too focused on the junket operator; it must expand to those who represent, finance, and guarantee the junket;

(d) Crown needs to improve its ability to recognise patterns and associations and to draw together connective threads;

(e) compliance and anti-money laundering teams need to have a clear role in the approval process for junkets and a right of veto over junket relationships; and

[8] Being submissions dated 30 October 2020, 12 December 2020, and 5 February 2021. Each of these submissions were accompanied by various attachments or annexures, all of which have been carefully considered by the Commission.

(f) due diligence in relation to junkets, including as part of the approval process, needs to involve comprehensive analysis assisted by the latest technology, and must include an examination of transaction histories.

27. Mr Barton's letter also outlined a series of steps that Crown intends to take to address these and other matters.[9]

28. Shortly after Mr Barton's letter, on 17 November 2020, Crown publicly announced that:

> *"The board has determined that Crown will permanently cease dealing with all junket operators…Crown will only recommence dealing with a junket operator if that junket operator is licensed or otherwise approved or sanctioned by all gaming regulators in the States in which Crown operates".*

29. On 21 January 2021, the Commission heard oral submissions from Crown, including submissions made by Crown's Chief Executive Officer, Mr Xavier Walsh, that Crown:

> *"…agree[s] with the commission that [Crown] should not be dealing with the four persons noted in the particulars [to the show cause notices], and in coming to that conclusion is based not only on further review and a different set of eyes internally looking at that decision-making process but also in terms of the commission's – the commission's concerns as raised in the show cause notice and elsewhere…*
>
> *"…Crown agrees that we should not deal with the four persons listed in the show cause notice, I can advise that or reiterate that Mr [Prawira] or Mr Wong was issued a WOL, or withdrawal of licence, in November [2020] following the show cause notice at late October [2020].*
>
> *"Mr Song and Mr Chau had stop codes applied to their accounts in December 2020. The stop codes prevent them from entering any of the VIP rooms at Crown or indeed, participating in a program, a gaming program at Crown, and those…two individuals were referred to the person of interest committee, which resolved to issue them with a withdrawal of licence…for completion, Mr Pan was issued with a withdrawal of licence in August 2019. As I say, we note the concerns of the Commission in relation*

[9] As will be evident from the specific terms of the decision to which these reasons relate, the Commission has had specific regard to those steps in arriving at its decision.

to the four persons subject to the show cause, and those concerns were factored into our decision-making". [10]

30. In general terms, the various concessions that were made to the Commission during this matter are consistent with concessions that had previously also been made by current or former directors of Crown's parent company, Crown Resorts Ltd, during the NSW Inquiry.[11]

31. Notwithstanding those concessions however, at the hearing before the Commission, Mr Walsh emphasised that:

> *"Crown does not concede that we have breached our ICSs as articulated in the show cause notice…The requirement of the ICS is that we have a…robust process for establishing or performing due diligence on junket operators. We believe we had that process, but that's not to say that the process wasn't foolproof, and I don't think that the obligation is one to have a foolproof process".*[12]

32. With respect to Mr Walsh, his submission grossly misstates Crown's obligation.

33. Crown is not simply obliged to *"have a robust process".*

34. Rather, as section 121(4) of the Casino Control Act makes clear, Crown is legislatively obliged to *implement* a robust process – the words of the statute are clear:

> *"The casino operator must ensure that the system approved for the time being under this section for the casino is* ***implemented****".* [emphasis added]

35. The question for the Commission then is not - as Crown would have it - simply one of whether Crown had a process. Rather, the question is whether Crown implemented its process.

36. Furthermore, in the specific context of clause 2.5.1 of the Junket ICS, it is not only the question of implementation that falls to be considered. There is also the additional consideration of whether Crown's processes were in fact "robust".

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[10] T6[4]-[30].
[11] This includes those of Mr Alexander (former Chairman of Crown Resorts), 2 October 2020, T3561; Professor John Horvath (Director, Crown Resorts), 14 October 2020, T4179; and Ms Helen Coonan (Chair, Crown Resorts), 16 October 2020, T4491.
[12] T5[13].

Crown's general or overarching submissions

37. As is evident from the nature of the concessions it made, Crown did not confine itself in dealing with this matter to addressing the specific issues that are referred to in the show cause notices. Rather, Crown also made several general or overarching submissions.

38. Those overarching submissions included submissions to the effect that Crown does not accept that its processes in respect of the four matters referred to in the show cause notices were not "robust".

39. Crown says the term "robust" is akin to "comprehensive" or "extensive" and is a concept that should be considered subjectively.[13]

40. Crown also says that, in evaluating whether its processes were "robust", the Commission should have regard to the timing of the events outlined in the particulars, and the relevant standards that were expected at the time.

41. In that regard, Crown says that its current standards, industry practice and community expectations have changed since the matters referred to in the show cause notices[14] and, whilst its processes may not be considered "robust" by current standards, they were (Crown says) nonetheless "robust", based on the expectations that Crown says were applicable at the relevant time.

42. Crown further submits that the standard of its probity processes depends, in part, on the risk appetite that it had subjectively decided to adopt at the relevant time.[15] Crown also says that its risk appetite has decreased since the matters referred to in the show cause notices occurred.

43. Crown also says that whilst there may be elements of the matters referred to in the show cause notices that highlight shortcomings, these matters do not represent a systemic failure.

44. The final matter in respect of Crown's general or overarching submissions is to note that, in a way that is somewhat contradictory to the analysis that Crown has itself invited by

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[13] As to the issue of Crown's assertion that the test is a subjective one, the Commission notes in particular Mr Walsh's submissions made during the hearing that was conducted on 21 January 2021 at T8/46 and following.
[14] As to that submission, the Commission notes in particular Mr Walsh's submission made during the hearing that was conducted on 21 January 2021 at T11/35 and following.
[15] As to that submission, the Commission notes in particular Mr Walsh's submission made during the hearing that was conducted on 21 January 2021 at T12/1 and following.

submitting that the four instances referred to in the show cause notices do not constitute evidence of a systemic failure, Crown has also been anxious to ensure that the Commission restricts itself to considering this matter in a way that does not stray beyond the matters that have specifically been referred to in the show cause notices.[16]

45. In seeking to balance that contradictory position, the Commission notes that it has restricted itself accordingly, except to the extent that Crown's own submissions have themselves required the Commission to address more general or overarching issues, including that of whether the four matters referred to in the show cause notices do in fact constitute evidence of a systemic failure.

The Commission's view of Crown's general or overarching submissions

46. Noting the approach Crown adopted in making its general or overarching submissions, it is necessary for the Commission to address them in its reasons.

47. The Commission considers that the term "robust" should be given its ordinary meaning. The Macquarie Dictionary defines "robust" to mean "strong and healthy, hardy or vigorous". The Commission considers that the appropriate question is whether Crown implemented its processes in a way that was "strong" and/or "vigorous" and has considered the specific matters referred to later in these reasons accordingly.

48. Otherwise, the Commission has, for convenience, divided its consideration of Crown's overarching submissions into four parts, namely those of Crown's submissions in respect of:

    (a) the way Crown gathers probity information;

    (b) the way Crown assesses probity information;

    (c) the way Crown records reasons for its decisions;

    (d) Crown's other overarching submissions about how its processes should be assessed.

[16] As to that submission, the Commission notes in particular the submission of Counsel for Crown, Mr Loxley, at the hearing on 21 January 2021 at T13/18 and following.

The way Crown gathers probity information

49. Crown went to some lengths to describe to the Commission the processes it uses to gather information relevant to the probity decisions it is obliged to make. It is clear to the Commission that the information that Crown gathers is limited.

50. In that regard, the process appears to be that Crown relies heavily, if not exclusively, on information obtained from third parties to identify any probity issues that may arise in respect of the persons or entities with which it does business.

51. Similarly, the evidence indicates that when specific matters arise which suggest that there may be probity issues with a particular junket operator or junket player, Crown relies, almost exclusively, on information obtained from third parties such as media outlets, records kept by law enforcement agencies, databases, and external due diligence investigators. There is little or no evidence to suggest that Crown's processes include or included a mechanism by which it seeks information directly from the person or entity whose probity it is obliged to consider, when or if a specific probity issue has been identified in respect of that person.

52. The Commission considers it incongruous that Crown does not seek information directly from the junket operator, junket player or premium player with whom it has curated or established a business relationship when probity issues are identified.

53. In the Commission's view, a direct line of communication, once established, must be utilised in such a way that:

    (a) Crown would generally decline to commence a business relationship with a junket operator, junket player or premium player unless that person or entity is prepared to engage in direct communication with Crown;

    (b) before deciding to engage with any junket operator, junket player or premium player, any adverse matters that have been identified from the third-party sources to which Crown has had reference should be put to the relevant junket operator, junket player or premium player. Indeed, quite apart from the extent to which that would be necessary in the context of Crown's regulatory obligations, directly putting such matters would also be justified as a matter of fairness to the person or entity whose probity is being assessed;

(c) the adequacy or otherwise of the response or explanation received by Crown should then be weighed as part of it implementing its robust probity process;

(d) when and if additional adverse matters become known during any business relationship Crown has decided to establish with any junket operator, junket player or premium player, those matters should likewise be put to the relevant person or entities. This would enable Crown to assess whether it could or should continue to maintain its relationship, whilst at the same time discharging its regulatory obligations;

(e) contemporaneous records of the matters put and responses received should be kept by Crown for reasons which include allowing the Commission to consider matters in the most efficient way possible.

54. In addition to its failure to engage directly with those referred to in the Junket ICS, Crown also did not seek to suggest that any of the third-party information providers from whom it obtains probity information were made aware by Crown of the purpose for which Crown sought such information. Importantly in the Commission's view, this included there being no evidence that any of these third-party providers (particularly the third-party due diligence investigators that Crown retained) had any understanding of the regulatory obligations with which Crown must comply.

55. In this context the Commission has carefully analysed the third-party due diligence reports that Crown specifically referred to, including to the extent that they were attached to Crown's written submissions.

56. Notwithstanding that these reports were all created after 2015 (when Crown was subject to the requirements of clause 2.5.1 of the Junket ICS), those reports are bereft of any detail which suggests that Crown's probity processes involved a mechanism whereby it told its third-party information providers or investigators that:

(a) Crown was seeking information specifically in the context of it seeking to discharge its obligation under the Junket ICS;

(b) the Junket ICS has the objective of ensuring that Crown remains free from criminal influence and exploitation; and

(c) Crown was seeking a report which would be used by Crown for the purpose of its executives making decisions about probity, in accordance with Crown's regulatory obligations.

57. Crown presented no evidence that it provided its third-party investigators with such information and the Commission considers that Crown's apparent failure to do so is indicative of a process that was far from robust. The Commission also considers that such a failure to provide information in this regard is indicative of a process that is superficial and one which did not genuinely seek to engage with the issues at hand.

The way Crown assesses probity information

58. In addition to the superficial way in which Crown goes about collecting probity information, the Commission is also concerned about the submissions Crown made about how it assesses the information it receives, such as it is.

59. In that regard, Crown says that it collates and relies on the information it has obtained from third-party sources for the purpose of making decisions about the probity of the junket operators, junket players and premium players with whom it has established business relationships.

60. In the context of Crown's submission to that effect however, there appears to be significant uncertainty about precisely who it is within Crown's corporate structure that is or was responsible for assessing information for the purposes of Crown making decisions about the probity of those junket operators, junket players and premium players.

61. In that regard, the evidence in the public hearings that were conducted in the NSW Inquiry suggested that after 2017 it was the following three individuals who appeared to have been responsible for deciding with which junket operators, junket players and premium players Crown would establish or maintain business relations:

(a) Michael Johnston, who is or was, variously:

i. a former director of Crown's parent company Crown Resorts Ltd;

ii. a director of Consolidated Press Holdings Pty Ltd (**CPH**), which is both a major shareholder in Crown Resorts Ltd and also the private investment company of the former chairman of Crown Resorts Ltd, James Packer;

iii. an adviser to each of CPH and Mr Packer;

(b) Barry Felstead, who was both the chief executive officer of Crown's Australian Resorts and a director of Crown;

(c) Joshua Preston, who was the former chief legal officer of Crown's parent company, Crown Resorts Ltd.

62. Crown's evidence and submissions specifically in respect of the four matters that are identified in the show cause notices however contradict the evidence that was given to the NSW Inquiry, particularly to the extent that:

(a) in the examples the subject of this proceeding, the decision-making processes that were applied by Crown were ad-hoc and not formally considered, at least collectively, by Messrs Johnston, Felstead and Preston at all. Rather, the highest the evidence can be put is that these three individuals were involved, to varying degrees, in considering matters of probity in respect of the individuals referred to in the show cause notices. Furthermore, in certain instances, at least Messrs Felstead and Preston purported to act unilaterally to approve Crown's ongoing relationship with those individuals;

(b) quite apart from the evidence specifically in relation to the matters referred to in the show cause notice, the documents Crown produced to the Commission (and attached to its written submission)[17] also contradict the evidence that was given to the NSW Inquiry, to the extent that the "Charter"[18] for Crown's Persons of Interests (or POI) Committee suggest that it is or ought to be the "POI" Committee that is responsible for determining whether particular persons or entities should be permitted to continue to transact or interact with Crown, at the Melbourne casino.

It is by no means clear what delineation there was between those matters of probity that are or were considered by Messrs Johnston, Felstead and Preston on the one hand and those that are considered by the POI Committee on the other.

63. The Commission considers that this lack of clarity about precisely who is responsible for making decisions in respect of probity and the failure to properly apply what was said in

[17] Dated 5 February 2021.
[18] CRL.787.001.0010.

evidence at the NSW Inquiry to have been its process to be further evidence of a process that was not robust.

64. In addition to this lack of clarity, the Commission also notes that Crown produced no evidence upon which the Commission could be satisfied that any or all of Messrs Johnston, Felstead and Preston understood Crown's probity obligations. Whilst there is little doubt that these three men are very experienced, Crown produced no evidence to suggest that they were, as a matter of fact, properly trained and equipped to make the probity decisions that were apparently left to them.

65. Indeed, that is particularly so in respect of Mr Johnston in circumstances where the multiple roles he held may not have given him the opportunity to prioritise Crown's regulatory obligations when it came to considering matters of probity. Rather, by reason of his simultaneous roles as a director of Crown Resorts Ltd, whilst also being a director of a major shareholder (CPH), Mr Johnston was in a position where the investment priorities of CPH may have conflicted with the regulatory obligations of Crown.

66. Crown produced no evidence to suggest that this possible conflict was identified, let alone actively managed, as part of the role Crown apparently considered Mr Johnston had in approving its relationships with junket operators, junket players and premium players.

67. In the Commission's opinion, in the absence of specific processes for managing the potential conflict that was created by Mr Johnston's multiple positions, Mr Johnston should never have been considered by Crown to have been one of the persons upon whom Crown relied to make probity decisions in respect of Crown's junket operators, junket players and premium players.

The absence of records in respect of probity-related decisions

68. The evidence and submissions Crown made to the Commission are bereft of any suggestion that Crown's relevant probity processes included contemporaneously recording the reasons why probity decisions were made, or the basis upon which they were made.

69. As such, the Commission was left with the distinct impression that part of Crown's response to the show cause notices involved Crown itself attempting to understand retrospectively, before then seeking to justify, the reason why certain decisions were made.

70. Indeed, the extent to which it was necessary for Crown to adopt such an approach in responding to the show cause notices is perhaps not surprising when one considers the following exchange that occurred between Counsel Assisting the NSW Inquiry and Mr Johnston during the public hearings of the NSW Inquiry:

> *"MS SHARP: But do you accept you did not document the reasons why you gave your approval?*
>
> *MR JOHNSTON: Yes, I accept that. Yes".*[19]

71. In any event, having regard to both the impression Crown gave and also the concession Mr Johnston made at the NSW Inquiry, the Commission considers that a process which requires Crown to respond to show cause notices by first retrospectively taking steps to understand its own decisions, before it can then proceed to attempt to explain those decisions to the Commission, is further evidence of a system that is not only superficial but also one that is not robust for the purpose of Crown's obligations pursuant to clause 2.5.1 of the Junket ICS.

Crown's other overarching submissions

72. Meanwhile, in respect of the other overarching submissions that Crown made, the Commission rejects Crown's submission that the question of whether Crown implemented a robust system should be determined subjectively. Crown pointed to no authority to support that proposition.

73. Furthermore, in the Commission's view, the subjective opinions of those who were responsible for Crown's systems and procedures at the time are of little assistance in addressing the matters that fall to be considered in respect of the show cause notices. In particular:

    (a) most, if not all, of those who, it would seem, were charged with making relevant decisions have now departed from Crown;

    (b) Crown did not provide details of the reasons or other evidence from the decision makers, by which they sought to explain their decisions. Therefore, even if Crown were correct and a subjective approach should be taken there is not, as a matter

[19] 29 September 2020, T3155/16-19.

of fact, any evidential basis upon which such a subjective assessment could be reviewed by the Commission, in respect of the matters specifically referred to in the show cause notices;

(c) Crown has now expressly acknowledged that, contrary to the subjective decisions of those who were responsible for Crown's systems and processes at the time, Crown should not in fact be doing business with the four persons referred to in the show cause notices.

74. The Commission also rejects the submission that the relevant standard has changed since the matters referred to in the show cause notices occurred.

75. In that regard, although the processes in respect of junket operators, junket players and premium players may have evolved or varied over time, the objectives of the Casino Control Act, the Commission, and the Junket ICS have always been to ensure that the Melbourne casino remains free from criminal influence or exploitation. That is an objective or standard that has been set for both the Commission and Crown by Parliament.

76. Crown produced no evidence to support its claim that there had been a change in standards or community expectations since the occurrence of the matters referred to in the show cause notices. Without such evidence, Crown's submission on that topic must be rejected.

77. In the Commission's view, the expectations of, and the corresponding obligations imposed on, Crown are the same now as they were when the matters occurred and there is nothing (beyond Crown's bald submission unsupported by evidence) which would lead the Commission to accept that there had been any shift in expectations which might affect the way in which the concept of "robust" should be interpreted.

78. In the Commission's view, there is also no proper basis upon which it could be submitted that Crown's risk appetite is in any way relevant to a proper assessment of whether its probity processes were both robust and implemented. That is a subjective consideration and, as the Commission has already noted, this matter needs to be considered objectively.

79. Crown has, at all relevant times, been obliged to *"ensure that Crown remains free of criminal influence and exploitation".* Whatever Crown's *"risk appetite"* is from time to time cannot relieve Crown of that obligation.

80. What is called for is an objective assessment of whether Crown's processes were robust (applying the ordinary meaning of that word) and furthermore an objective assessment of whether that robust system was, in fact, implemented. Unless the process actually is implemented, it cannot be described as robust.

81. Finally, in respect of the overarching matters put by Crown, there is the submission that the four specific examples referred to in the show cause notices are not indicative of a systemic failure.

82. On that point, the Commission notes that Crown again provided no evidence to the Commission in support of that submission. It did not, for example, seek to establish that its processes were, in the overall sense, robust by reference to other instances where Crown had appropriately considered and dealt with matters of probity, pursuant to its obligations under the Junket ICS. In the absence of such evidence, Crown's submission in respect of whether the four matters referred to in the show cause notices do not demonstrate a systemic failure is nothing more than a further example of a bald assertion, unsupported by evidence.

83. As has already been noted, Crown responded to a notice to produce documents, made three separate written submissions, and also made oral submissions.

84. Crown was given ample opportunity to provide evidence to the Commission in support of its case and in several respects failed to do so. In the absence of evidence upon which it might be concluded that the four examples referred to in the show cause notices constitute aberrations, a conclusion to that effect could not be reached.

85. Consequently, the Commission rejects Crown's submission that the four instances identified in the show cause notices are not indicative of a systemic failure.

The specific matters referred to in the show cause notices

Particular 1 (Mr Pan)

86. It is alleged that Crown, being the holder of a casino licence, at the Melbourne casino in the State of Victoria on 5 September 2017[20] did fail as the casino operator to ensure that the system approved for the time being under section 121(4) was implemented by failing to establish the business interests of the junket agent, Mr Simon Pan (aka Zhao Yuan Pan), therefore failing to request and obtain all available and relevant information regarding Mr Pan in accordance with clause 2.5.1 of the Junket ICS.

The evidence in respect of Mr Pan

87. The 2019 media articles referred to earlier in these reasons alleged that Crown had engaged with Mr Pan since 2011 notwithstanding that:

    (a) he was the owner of a brothel located at 39 Tope Street, South Melbourne;[21]

    (b) his brothel had been prosecuted for breaches of Victorian prostitution laws in the County Court of Victoria and that law enforcement agencies had repeatedly lodged documents in court identifying Mr Pan as owning brothels involved in serious criminal activity and with suspected ties to organised crime.

88. Mr Pan became a junket agent (as distinct from a junket operator) at Crown on 29 December 2012 and performed duties in the period in which the Junket ICS was in force, on behalf of the junket operator Mr Ngok Hei Pang, on 5 September 2017.

89. In this role, on 5 September 2017, Mr Pan had authorisation to act on behalf of the junket operator Ngok Hei Pang and thereby perform common junket operator duties including buy-ins, partial settlements, cash outs, deposits, withdrawals, and program settlements.

90. Publicly available records are consistent with the 2019 media allegations to the extent that:

    (a) company records reveal that:

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[20] Being a date upon which Mr Pan conducted a junket, at the Melbourne casino, on behalf of the Junket Operator Mr Ngok Hei Pang.

[21] While the relevant media report alleged that Mr Pan was the owner of the brothel, as noted further in these reasons, Mr Pan was in fact the director of the company that operated the brothel.

i. Mr Pan was a director of a company known as Triple 8 International Pty Ltd (**Triple 8**) from as early 1999; and

ii. as of 2004, Triple 8's principal place of business was 39 Tope Street, South Melbourne.

(b) Court records reveal that:

i. Triple 8 and Mr Pan were involved in several court and tribunal proceedings, including two County Court of Victoria cases in 2015;

ii. in one case (although Mr Pan was not named as a defendant), the accused persons were charged with money laundering offences in connection with the operation of four brothels, including a brothel located at Triple 8's principal place of business, 39 Tope Street, South Melbourne.

Furthermore, the publicly available judgement from this case also noted that the proceeds of crime that were relevant for the purpose of the money laundering allegation had been realised from offences against the *Sex Work Act 1994* (Vic), and that the offending period had occurred in 2013.

91. In addition to the above, the Commission established the following matters during its investigation:

(a) in January 2013, the Australian Federal Police (**AFP**) had made enquiries of Crown, during which it had told Crown that Mr Pan was a person of interest in an investigation that the AFP was conducting. Crown also provided records to the AFP in respect of its investigation of Mr Pan;

(b) in November 2014 Victoria Police sought information from Crown in respect of Mr Pan for the purpose of an investigation it was conducting into allegations of human trafficking, illegal brothels and money laundering, in respect of which Mr Pan was a person of interest;

(c) in February 2017, Victoria Police again sought information from Crown in respect of Mr Pan for the purpose of an investigation it was conducting;

(d) on 21 February 2019, Mr Pan's licence to remain at the casino was withdrawn by Crown for a period of 3 months, because of abusive behaviour towards Crown staff and repeated conduct in seeking to sign-in banned patrons.

92. Otherwise, according to Crown, although it did not retain records in respect of the initial and ongoing probity checks it conducted in respect of Mr Pan, Crown says those searches did not reveal any adverse material in respect of Mr Pan.

Crown's submissions in respect of Mr Pan

93. Although Crown ceased dealing with Mr Pan in August 2019 (before the show cause notices were issued) and accepts that:

    (a) Mr Pan is not a person with whom Crown should be doing business; and

    (b) it should have established Mr Pan's *"business interests"* earlier than when it did, in July 2019;

    Crown also submits that the matters relevant to Mr Pan cannot be relied upon as the basis of a finding that the systems Crown implemented were not robust.

94. In that regard, Crown submits that, on its proper construction, clause 2.5.1 of the Junket ICS is limited in its application to junket operators, junket players and premium players. It says, as Mr Pan was a junket *agent* (as distinct from a junket operator or player) and therefore:

    "As a matter of construction, the legal obligation imposed by clause 2.5.1 does not extend to junket agents presently or retrospectively".[22]

95. As Mr Walsh put the matter on behalf of Crown at the hearing on 21 January 2021:

    "…The difficulty I have is that the agent is not specific – in terms of acknowledging or conceding that we've breached the ICS is that the agent [is] not called out in that clause. And I can only assume that that [is] deliberate, because agent is referred to in other obligations throughout the ICS, including by [clause] 2.5.2".[23]

[22] Crown's first written submission at [13].
[23] T8/30.

The Commission's findings in respect of Mr Pan

96. Although the Commission accepts that Mr Pan was a junket agent (as distinct from a junket operator or junket player) and that clause 2.5.1 does not expressly refer to junket agents, the Commission does not accept Crown's submission that, when one has regard to the specific facts, insofar as they are relevant to Mr Pan and his principal Mr Pang, the matters relating to Mr Pan do not demonstrate a failure by Crown to comply with its obligation to implement a robust probity process in respect of its junket and premium player operations, in the manner alleged in the show cause notices.

97. In that regard, although Crown says it conducted initial probity checks in respect of Mr Pan,[24] Crown produced no evidence to the Commission about any steps it took to identify and understand the nature of the "agency" relationship that existed between the registered junket operator and Mr Pan's principal, Mr Pang, on the one hand and Mr Pan as Mr Pang's agent on the other.

98. In the Commission's view, without Crown knowing (and being able to demonstrate to the Commission) the precise nature of that relationship, it would be impossible for Crown to make an informed assessment of important matters such as:

    (a) whether the relationship between Mr Pang and Mr Pan needed to be considered for the purpose of determining whether Mr Pang was a junket operator with whom Crown should continue to do business;

    (b) the relevance of Mr Pan's conduct to any assessment of Mr Pang's probity;

    (c) the extent to which Mr Pang's position as a junket operator was appropriate and could be maintained while Mr Pan remained as his agent;

    (d) the extent to which Crown was complying with its regulatory obligations, including those arising under clause 2.5.1 of the Junket ICS, having regard to the precise nature of the relationship that existed between Mr Pang and Mr Pan.

[24] The Commission notes that Crown says it conducted such searches but did not retain the results and therefore was unable to produce them to the Commission. That failure to retain results is notwithstanding that the objectives of the Junket ICS, as set out in clause 1 of that document, expressly include the maintenance of detailed and accurate documentation.

99. If the "agency" agreement between Mr Pan and Mr Pang was informal and not evidenced by a written agreement, then Crown should have met with both Mr Pang and Mr Pan so that they could provide Crown with the details of the nature of the arrangement that existed between them.

100. Furthermore, in the context of Crown's submission about the precise words of clause 2.5.1, the Commission is very concerned that Crown made no submission and referred the Commission to no evidence by which the Commission might have assessed precisely what Crown knew about the agency agreement or arrangement that existed between Mr Pang and Mr Pan.

101. In its various written and oral submissions Crown did not, for example, refer the Commission to any specific contract or agency agreement between Mr Pang and Mr Pan by which the Commission could have properly understood the precise nature of the relationship that existed between them and in turn properly assessed the position that Crown urged upon the Commission, based upon Mr Pan's status as an agent of the junket operator Mr Pang.

102. In the Commission's view, it is only by arming itself with this most basic of information that Crown and in turn the Commission could assess properly whether it was appropriate for Crown to maintain a business relationship with Mr Pang (as a junket operator) or determine the extent to which the nature of Mr Pang's relationship with Mr Pan might have been relevant to Crown discharging its obligations pursuant to clause 2.5.1 of the Junket ICS.

103. As matters transpired however, based on its submissions and the evidence to which it specifically took the Commission in the course of this matter, it would seem that Crown had little or no visibility of the precise nature of the relationship between Mr Pang and Mr Pan.

104. It is likely that such lack of visibility in turn meant that when important events occurred specifically in respect of Mr Pan, Crown was not able to assess the relevance of those events insofar as they concerned matters of probity.

105. Furthermore, quite apart from its failure to properly understand (or explain to the Commission) the precise nature of the relationship that existed between Mr Pang and Mr Pan, the Commission also considers that there are other aspects of this matter that demonstrate a failure to implement a robust process.

106. In that regard, Crown pointed to no evidence and made no submission to the Commission to the effect that, when it was advised by both the AFP and Victoria Police that Mr Pan was a person of interest in investigations (including money laundering investigations in respect of which Crown provided police with information to assist them in their enquiries), Crown even considered whether to:

    (a) ask Mr Pang about his agency relationship with Mr Pan;

    (b) analyse its records for the purpose of making its own assessment of whether Mr Pan had been engaged in the type of activity that was the subject of the police investigations;

    (c) consider the precise nature of the requests that had been made by police and the extent to which they might have been relevant to Crown's ongoing relationship with Mr Pang in his capacity as a junket operator;

    (d) conduct searches of publicly available information, such as the court judgments and company extracts that were identified in the course of this matter.

107. Rather, based on the information and submissions that Crown made to the Commission, Crown did very little.

108. In the Commission's view, Crown's failure to actively respond to the fact of the police investigations is evidence of a failure to implement a robust process to consider ongoing probity, particularly when one considers:

    (a) the nature of the allegations that were being made;

    (b) the fact that Mr Pan was expressly identified as being a person of interest in the investigations;

    (c) the allegations specifically involved issues of money laundering which are, by any measure, issues to which a casino operator should be sensitive;

    (d) that Crown's own conduct in producing information to the police was likely to have assisted in those investigations.

109. The Commission also considers it inexplicable that Crown made no submissions and pointed to no evidence that, in 2015, when clause 2.5.1 of the Junket ICS came into force,

Crown took steps to retrospectively consider the approaches it had received in respect of Mr Pan from the AFP and Victoria Police. In the Commission's view, such retrospective consideration was plainly necessary as part of a robust probity process in circumstances where Crown intended to maintain the business relationship it had established with Mr Pang and his agent Mr Pan, including to the extent that Mr Pan performed common junket operator tasks on behalf of his junket operator principal Mr Pang on 5 November 2017.

110. Crown gave no explanation for taking no active steps in response to the police investigations.

111. The absence of an active response to the police investigations can however be contrasted with Crown's response to the 2019 media articles which were, for the most part, to the same effect as the matters that were the subject of the police investigations.

112. In that regard, whilst Crown did not consider the information it had received directly from police to have constituted a reason for it to conduct further enquiries in respect of Mr Pan, Crown's position seems to have changed when those matters were made public by reason of the 2019 media articles which, based upon the evidence produced to the Commission, does appear to have prompted a response from Crown.

113. On that point, Crown produced no evidence and made no submission which could allow the Commission to assess why specific enquiries from police would not prompt it to conduct its own further enquiries but allegations in the media that were essentially to the same effect would do so.

114. In the Commission's view, there is no justifiable reason why Crown did not conduct its own further enquiries as soon as it became aware of the police investigations and at the time that clause 2.5.1 of the Junket ICS specifically came into effect.

115. In all of the circumstances, insofar as they relate to Mr Pan, the Commission considers the distinction Crown seeks to draw based upon Mr Pan's status as a junket agent to be artificial and misconceived.

116. Crown had important information available to it that was relevant not only to Mr Pan's ongoing probity but also to that of Mr Pang.

117. The Commission considers it inexplicable that, at no time prior to its decision to cease junket operations, did Crown appear to consider the extent to which the matters relevant to Mr Pan

(including the outcome of the enquiries Crown made in response to the media articles and its decision to terminate its relationship with Mr Pan in August 2019) might also be relevant to the question of whether Mr Pang is a person with whom Crown should do business.

118. The Commission also considers it inexplicable that on the one hand Crown would seek to persist with its position based on a strict interpretation of clause 2.5.1 whilst at the same time (in a manner that is somewhat contradictory), both Mr Walsh and Ms Fielding (Crown's Group General Manager of Regulatory Compliance) expressly conceded to the Commission on 21 January 2021 that, in certain circumstances (having regard to the specific facts of a specific matter), a robust process does require Crown to include consideration of the agents of the junket operators that are expressly referred to in clause 2.5.1 and that in at least one other instance, Crown had done precisely that.[25]

119. Although the Commission does not consider (in circumstances where clause 2.5.1 of the Junket ICS does not expressly refer to junket *agents*) that in every case Crown would need to specifically consider the conduct of the agents of junket operators for the purpose of ensuring that the probity processes that it has implemented were robust, in the specific case of Mr Pan and his principal Mr Pang, such consideration was plainly necessary.

120. The Commission considers that in this particular case, Crown's failure to consider the relevance of Mr Pan's conduct (particularly insofar as it concerned his business interests and the information that Crown either had or should have had available to it as a result of both publicly available information and police investigations) to the ongoing relationship that Crown curated with Mr Pan's junket operator principal, Mr Pang, is further evidence of a failure to implement robust processes, as required by clause 2.5.1.

121. The Commission considers that particular 1 is made out.

Particular 2 (Mr Song)

122. It is alleged that Crown, being the holder of a casino licence, at the Melbourne casino in the State of Victoria between 4 January 2016 and 23 March 2020 did fail as the casino operator to ensure that the system approved for the time being under section 121(4) was implemented by failing to make attempts to verify the accuracy of media allegations in

[25] As to those concession see transcript of the hearing that was conducted on 21 January 2021 at T22/11 and following.

relation to Mr Zezhai Song, therefore, failing to request and obtain all available and relevant information regarding Mr Song in accordance with clause 2.5.1 of the Junket ICS.

The evidence in respect of Mr Song

123. The 2019 media articles alleged that Mr Song is or was:

(a) a junket operator at the Melbourne casino;

(b) named in a Chinese court case in 2003 as running a large illegal gambling syndicate in eastern China;

(c) involved in a proceeds of crime matter that was considered by the Victorian Supreme Court in 2016.

124. During its investigation, the Commission confirmed that Mr Song was a registered junket operator at the Melbourne casino from at least 11 June 2009.

125. Furthermore, since 24 December 2015 (in the period in which the Junket ICS was in force), Mr Song had conducted approximately seventy junket operations and personally attended the Melbourne casino on three occasions.

126. In its submissions to the Commission in respect of Mr Song, Crown referred, among other things, to a due diligence report which was prepared for Crown Melbourne's parent company, Crown Resorts Ltd, dated 12 December 2016 (**Song C6 Report**). Among other things, the Song C6 Report corroborated the 2019 media allegations to the extent that it identified two specific matters under the heading *"Potential Red Flags"*.

127. The first of those was that:

> *"According to an article dating from 16 July 2003 in News Sina, [Mr Song] was involved in a court case together with a criminal gang he took part in. The court case took place on 15 July 2003, at the Huishan District Court, Wuxi City, Jiansu Province, China.*
>
> *"According to the article SONG [and others] were engaged in an illegal gambling criminal gang. The gang operating on (sic) September 2001 in Wuxi City.*

"The court found that the criminal group had held a total of 300 instances of illegal gambling from September 2001 to December 2002, and it had acquired a total of RMB 2,400,000 (GBP 276,497) worth of illegal gambling winnings.

"On 1 August 2003, Song…was sentenced to 2 years and 8 months of prison and had RMB 300,000 (GBP 34,562) confiscated. Further to this, all illegal gambling winnings of the group were confiscated by the authorities."

"Limited information could be identified on the subject of this report, [Mr SONG]…

"…Chinese media reveals that the subject has had an extensive history in the gambling business. The earliest report in Chinese media about the individual dates from 2003, and according to the subject had been reportedly engaged in an illegal gambling operation in Wuxi City, Jiangxi province, since September 2001.

"The subject's criminal gang made a profit of RMB 2,400,000 (GBP 276,497) of illegal gambling winnings. This money was later confiscated by the authorities, states Chinese media".

128. Meanwhile, the second of the *"Potential Red Flags"* was to the effect that a restraining or freezing order had been made in respect of a Lamborghini motor vehicle on suspicion that the vehicle had been purchased using *"proceeds or an instrument of the crimes of money laundering or tax avoidance occurring during gambling activity on casino junket tours".* The report further stated in respect of this matter that:

"The money for the car, a total of USD747,000 (GBP 591,600) was sent from SONG Zezhai's junket account at Crown Casino Melbourne on 16 December 2012.
The Court revealed that earlier [Mr SONG] had issued a letter stating that [the associate of Mr Song who had been the subject of the restraining order] is appointed as one of his representatives at Crown Casino. The letter stated that all his representatives are authorised to withdraw and deposit money from his junket account.
"As of October 2016 the case is still ongoing".

Crown's submissions in respect of Mr Song

129. Notwithstanding the matters referred to in the Song C6 Report, the primary submission Crown makes in respect of Mr Song is that it was unable to verify whether the "Mr Song"

referred to as having been convicted and sentenced for gambling crimes in China in mid-2003 was the same "Mr Song" as Crown had been doing business with since June 2009.

130. As Crown's CEO, Mr Walsh, put it during the Commission's hearing of this matter:

> *"[o]ur understanding was internally, that we had had-that there was a strong indication it was correct, but we just couldn't verify it".*[26]

131. In that context, Crown submitted that it took various steps to verify the issue, including:

(a) having senior management consider the Song C6 Report and seek other information in respect of the matters referred to in it;[27]

(b) conducting due diligence checks, which revealed no additional adverse material;

(c) confirming that the Mr Song with whom Crown was dealing was also involved in gaming activities at a range of other casinos;

(d) confirming that the Mr Song with whom Crown was dealing had not been prevented from entering Australia.

132. Notwithstanding those matters however, Crown says it could not verify that the Mr Song who was a Crown junket operator had in fact been imprisoned for gambling offences in China.

133. Crown also submitted that matters referred to in the show cause notices relating to Mr Song are incapable of forming a proper basis for the Commission to find that Crown failed to implement a robust process because:

(a) the alleged conviction and sentencing for gambling crimes is historic, having occurred in 2003;

(b) the failure to verify that the allegation in fact related to Mr Song is not indicative of a systemic issue;

(c) it was Crown's engagement with a third-party due diligence company which resulted in the matter being identified.

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[26] T26/15.
[27] See for example Crown VIP Operational Team meeting minutes CRL.509.017.4594.

The Commission's findings in respect of Mr Song

134. In the Commission's view there are several aspects of Crown's response to this matter that clearly establish that Crown's processes for considering the ongoing probity of its junket operators were inadequate and, in addressing those matters, the Commission considers it appropriate that it should deal with the two *"red flags"* identified in the Song C6 Report separately.

135. First, in respect of the *"red flag"* constituted by the possible conviction and sentencing of Mr Song for gambling crimes in China, the Commission considers it to be a glaring omission that, after it was identified as a potential issue (apparently in 2016, being a time when Crown was obliged to implement clause 2.5.1 of the Junket ICS), no one ever asked Mr Song directly whether he had in fact been convicted and sentenced for gambling crimes.

136. In that regard, the highest the evidence can be put is that shortly after the Song C6 Report was received by Crown (in December 2016), a Crown executive, Ishan Kunaratnam,[28] was tasked by his colleague Roland Theiler[29] to conduct a meeting, not with Mr Song, but rather with his agent, Pei Liang Zhang.

137. Whilst the purpose of that meeting was apparently so that Mr Kunaratnam could ask Mr Zhang whether he knew if his principal had been convicted and sentenced for gambling crimes in China, the outcome of the meeting was equivocal in that Mr Zhang could not, or would not, say either way.

138. The Commission considers it inexplicable in these circumstances that no one ever asked Mr Song the question directly.

139. The Commission also considers it inexplicable that, in the course of his submissions to the Commission, Mr Walsh would say that in his opinion Crown *"...should have gone and asked Mr Song directly. I – I – I certainly can concede that [but] whether that leads to there [being] no robust process is what I argue the alternative".*[30]

[28] President of VIP Development, Crown Resorts.
[29] Senior Vice President of International Business Operations, Crown Melbourne.
[30] Transcript of the hearing that was conducted on 21 January 2021 at T27/18.

140. The Commission considers that Crown should have made enquiries direct with Mr Song and there is no proper basis to argue that Crown's processes were robust in circumstances where it failed to do so.

141. Furthermore, the Commission also considers it inexplicable that after the meeting between Mr Kunaratnam and Mr Zhang, Crown's attempts to verify whether Mr Song had in fact been convicted and sentenced for gambling crimes in China appear to have ceased and Crown gave no explanation for not making further attempts at verification.

142. Crown did not explain to the Commission why its processes would justify (or necessitate) Mr Kunaratnum making indirect enquiries with third parties, but those systems would not also justify direct enquiries being made.

143. In the absence of such an explanation, the Commission is particularly concerned about the possibility that direct enquiries were not made in order to avoid the possibility that Mr Song would confirm that he had in fact been convicted of gambling crimes.

144. In addition to the very limited attempts at verification, there are also several other matters arising from the first "red flag" referred to in the Song C6 Report that justify the Commission concluding that Crown's probity processes in respect of Mr Song were inadequate.

145. Those matters are:

(a) Crown gave no explanation as to why it did not itself (prior to the Song C6 Report) identify the media article which gave rise to the possibility that Mr Song had been convicted and sentenced for gambling crimes in China in 2003. The Commission considers that lack of explanation to be important, particularly when one considers that:

i. the Song C6 Report expressly states that *"…Chinese media reveals that the subject has had an extensive history in the gambling business"* and that the 2003 report referring to his imprisonment for gambling crimes is just *"the earliest report"*. The clear inference from the report is that the publicly available media record is extensive and goes beyond a specific 2003 article;

ii. it would be reasonable to expect that even the most elementary of probity checks, conducted either before Crown commenced its business

relationship with Mr Song or in 2015 when Crown expressly became subject to the requirements of clause 2.5.1 of the Junket ICS, would have included the simple type of internet search that would have revealed the possibility that Mr Song had been convicted and sentenced for gambling crimes in China. In that regard, the work undertaken by Commission investigators in respect of this matter suggests that the media article referring to the Mr Song who was convicted and sentenced for gambling crimes in 2003 was almost certainly publicly available (at least in Chinese) from the simplest of Google searches, from the time that conviction and sentencing occurred in 2003;

(b) in circumstances where it had not previously identified the publicly available media article or articles, Crown did not explain why it took until mid-December 2016 to obtain the third-party due diligence check in the form of the Song C6 Report. Indeed, the Commission is particularly concerned about this apparent delay to the extent that the Song C6 report was not obtained until:

i. some fifteen years after Crown established a business relationship with Mr Song in June 2009; and

ii. approximately one year after clause 2.5.1 was inserted into the Junket ICS;

(c) Crown did not explain what it was that prompted it to obtain the Song C6 Report, including whether it was prompted by some specific information that had been received by Crown in respect of Mr Song or alternatively whether it was part of a tardy change in the processes that Crown sought to implement following the introduction of clause 2.5.1 into the Junket ICS.

146. Overall, the Commission considers it to be well made out that Crown failed to comply with clause 2.5.1 of the Junket ICS insofar as it concerns its handling and limited attempts to verify the potential conviction and sentencing of Mr Song for gambling crimes in China.

147. Furthermore however, the Commission is of the same view insofar as Crown's handling of the second *"red flag"* that is referred to in the Song C6 Report is concerned.

148. In that regard, the Commission notes that notwithstanding that it was expressly identified in both the Commission's show cause notices and also the Song C6 Report (which was

attached to Crown's written submissions), this is a matter that was not addressed by Crown in the submissions it made to the Commission.

149. The Commission considers it incongruous (particularly having regard to the possibility that Mr Song may have been convicted and sentenced for gambling crimes in China), that Crown seems to have made no attempt to investigate the circumstances by which a restraining or freezing order was granted by the Supreme Court of Victoria in respect of a Lamborghini motor vehicle that had been purchased using funds derived from Mr Song's Crown junket account.

150. Mr Song had, apparently, vouched for the person who had withdrawn the funds from that account on the basis that he was a representative of Mr Song and authorised to withdraw and deposit money from that account.

151. Furthermore, this issue remained live in the period after 2015, when clause 2.5.1 was introduced into the Junket ICS, particularly to the extent that, as the Song C6 Report notes, the litigation in which the freezing or restraining order was granted was still on foot in October 2016, shortly before the Song C6 Report was prepared.[31]

152. In the Commission's view, a robust probity process would plainly require that the imposition of a freezing or restraining order by the Supreme Court of Victoria which directly involved Mr Song and the operation of his Crown Melbourne junket account be further considered by Crown as part of the robust probity process it was or is obliged to have implemented. Indeed, the Commission further takes that view in circumstances where Crown had, on its own submission, been unable to verify whether Mr Song had in fact been convicted of gambling crimes in China.

153. A robust process should have resulted in Crown being on high alert in respect of Mr Song and caused it to have specifically investigated the second red flag accordingly.

154. The Commission considers that Particular 2 has been made out.

Particular 3 (Mr Wong/Prawira)

155. It is alleged that Crown, being the holder of a casino licence, at the Melbourne casino in the State of Victoria between 4 May 2018 and 7 May 2018, did fail as the casino operator to

[31] That report being dated 12 December 2016.

ensure that the system approved for the time being under section 121(4) was implemented by failing to have regard to the purpose of the Junket ICS in determining whether to re-engage Mr Joseph Wong (aka Yoseph Prawira/Wong Kiia Tai) (**Mr Wong/Prawira**), therefore, failing to exercise appropriate discretion in re-engaging Mr Wong in accordance with clause 2.5.1 of the Junket ICS.

The evidence in respect of Mr Wong/Prawira

156. The 2019 media articles referred to earlier in these reasons alleged that Mr Wong/Prawira was an arms dealer who had been permitted to gamble at the Melbourne casino whilst he was subject to sanctions that had been imposed by the United Nations.

157. It was also alleged that Mr Wong/Prawira was subject to a travel ban and had his assets frozen between 2004 and 2015 for his involvement with the former President of Liberia, Joseph Taylor.[32]

158. The Commission has investigated these matters and verified that, on 16 March 2004, Mr Wong/Prawira was listed as an individual subject to the travel restrictions imposed by resolution 1521(2003) of the United Nations Security Council on the basis that he was an *"[a]rms dealer in contravention of UNSC resolution 1343"* and that he had *"[s]upported former President Taylor's regime in effort(s) to destabilize Sierra Leone and gain illicit access to diamonds".*[33]

159. On 14 June 2004, Mr Wong/Prawira was also the subject of an asset freeze as a result of United Nations Security Council Resolution 1532(2004) which sought to prevent the former President Taylor, his immediate family, close allies and associates from *"using misappropriated funds and property to interfere in the restoration of peace and stability in Liberia and the sub-region".*[34]

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[32] In 2012, Joseph Taylor was convicted of various war crimes and crimes against humanity, particularly for his role in supplying and encouraging rebels in Sierra Leone to murder, rape and terrorise people in order to gain control of Sierra Leone's diamond fields. In addition to sourcing illicit diamonds, Joseph Taylor also reportedly gained significant revenue from the timber trade, where he permitted predatory loggers access to Liberia's forests, including the Oriental Timber Company.

[33] United Nations, 'Security Council Committee on Liberia updates travel ban list' (Press Release SC/8569, 1 December 2005) < https://www.un.org/press/en/2005/sc8569.doc.htm>.

[34] SC Res 1532, UN Doc S/RES/1532 (12 March 2004).

160. Mr Wong/Prawira was or is also on the board of a company known as the Oriental Timber Company, which, according to the publicly available 2017 appeal judgment of a three-judge panel in the Hague,[35] was a company which, in the early 2000s (among other things):

    (a) former President Taylor referred to as his *"pepperbush"*, which is[36] a Liberian expression that means something that is important in a financial or family context and something in which someone places a personal interest;

    (b) through former President Taylor, received both large areas of land for the purpose of logging operations and also the control of the Liberian port of Buchanan;

    (c) paid money directly to former President Taylor and made purchases on his behalf;

    (d) was an entity in which *"the political, financial and private interests of [former President Taylor]…were strongly intertwined";*

    (e) transported, stored and distributed weapons, through the Liberian port of Buchanan, in contravention of a United Nations arms embargo.

161. In addition to that, the judgment of the Court was that the former chairman[37] of the Oriental Timber Company was convicted of being an accessory to war crimes committed in Liberia between 2000 and 2002.

162. Meanwhile, on 24 June 2008 (during the period in which he was subject to United Nations sanctions), Mr Wong/Prawira became a junket player at the Melbourne casino, using the name or alias Yoseph Prawira.

163. Crown did not identify that the Mr Wong/Prawira who had become a junket player using the name of Yoseph Prawira was the same person who was the subject of the United Nations sanctions.

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[35] *The Public Prosecutor v Gus Kouwenhoven* [2017] (s-Hertogenbosh Court of Appeal, The Netherlands) <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHSHE:2017:1760>. ECLI:NL:GHSHE:2017:2650, Gerechtshof 's-Hertogenbosch, 20-001906-10 English translation (rechtspraak.nl)

[36] According to the judgment which in turn referred to an explanation given by the former chairman of the Oriental Timber Company.

[37] Joseph Gus Kouwenhoven.

164. Rather, Crown:

(a) obtained a copy of an Indonesian passport that had been issued to Mr Wong/Prawira under the name Yoseph Prawira;

(b) conducted searches, including searches of what is known as the "World Check database" in respect of the name Yoseph Prawira;

(c) identified no matters on the World Check database regarding Yoseph Prawira;

(d) as no matters were identified, Crown says that no records of the searches that were conducted in respect of the name Yoseph Prawira were either produced by the database or kept by Crown.

165. Subsequently, Crown also:

(a) obtained updated copies of the Indonesian passport and Indonesian identification card that had been issued in the name of Yoseph Prawira;

(b) conducted further checks of the World Check database which continued to produce no matches for Yoseph Prawira;

(c) obtained a letter from the Indonesian National Police dated 21 October 2014, to the effect that no person known as Yoseph Prawira was wanted by Indonesian authorities.

166. In February 2015 however, Crown conducted further checks on the World Check database which, at this time, identified that Yoseph Prawira was the same person as Mr Joseph Wong and/or that Yoseph Prawira was a known alias for Mr Wong/Prawira.

167. After it became aware that Joseph Wong and Yoseph Prawira were one and the same person, Crown withdrew Mr Wong/Prawira's licence to enter and remain in the casino on 2 March 2015.

168. Later, on 7 August 2017, Crown's parent company, Crown Resorts Ltd, received a third-party due diligence report in respect of Mr Wong/Prawira (**Wong C6 Report**). Among other things, the Wong C6 Report confirmed that Mr Wong/Prawira was a person who used several aliases.

169. It also contained similar details to those that were already known in respect of Mr Wong/Prawira, including the extent to which he had been the subject of action taken by the United Nations.

170. This report also contained additional information however, including under the heading *"Potential Red Flags"*, that:

> *"On 11 January 2005, [Mr Wong/Prawira], along with four other associates, was committed to prison for six months by the High Court of Singapore. The Court decision was the result of [Mr Wong/Prawira's] failure to disclose asset information as a representative of Borneo Jaya Pte Ltd and Natura Holdings Pte Ltd".*

171. Notwithstanding these matters, in September 2017, Mr Wong/Prawira was again authorised to become an active junket player by Crown, shortly after the United Nations sanctions in respect of him were lifted.

172. From September 2017, Mr Wong remained an active junket player at the Melbourne casino, including by attending the Melbourne casino between 4 May 2018 and 7 May 2018.

173. Mr Wong was still an active junket player when Crown suspended and then terminated its junket operations in late 2020.[38]

174. In relation to its decision to reinstate Mr Wong's licence to enter the casino on 20 September 2017 (about a month after it had received the Wong C6 Report), Crown explained that this decision was based on several factors, including:

    (a) checks that were conducted by Crown which confirmed that the United Nations sanctions against Mr Wong/Prawira were lifted on 2 September 2015;

    (b) Mr Wong/Prawira being granted multiple entries to Australia, as evidenced by a copy of a visa issued in February 2016;

    (c) a letter dated 11 February 2016 issued by Singaporean authorities confirming that Mr Wong/Prawira had also been granted the right to travel and enter Singapore;

[38] Pursuant to the relevant ASX announcement, Crown suspended all junket operations until 30 June 2021. On 17 November 2020, Crown later announced that it would permanently cease dealing with all junket operators and that it will only recommence dealing with a junket operator if that junket operator was licensed or otherwise approved or sanctioned by all gaming regulators in the States in which Crown operates.

(d) a further letter from the Singapore Police Force dated 21 April 2016, which indicated that Mr Wong/Prawira was no longer a "designated person" because the United Nations sanctions to which he had been subject were no longer in effect; and

(e) searches conducted by Crown (apparently in respect of Mr Wong/Prawira's source of wealth) which confirmed that Mr Wong/Prawira is the Chief Executive Officer of a company that owns a licence on which forest logging occurs, noting that the licence was issued by the Indonesian Government.

175. Crown also provided the Commission with other records, including emails which record some of the communications between Crown senior executives in respect of whether Crown should re-instate Mr Wong/Prawira's authority to attend the Melbourne casino, following the United Nations sanctions being lifted. These emails included an email authored by the former CEO of Crown's Australian Resorts, Mr Felstead, by which he appears to have unilaterally made the decision to reinstate Mr Wong/Prawira's authority to attend the Melbourne casino.

176. A further record provided by Crown was that of correspondence from a lawyer acting for Mr Wong dated 20 May 2016 which responded to various questions posed by Crown regarding the United Nations sanctions.[39] This letter included submissions to the effect that Mr Wong/Prawira:

(a) denied any wrongdoing;

(b) volunteered for interviews with Interpol in 2003, however, no charges were laid against him;

(c) did not hold an interest in any companies that were subjected to any investigation in relation to the United Nations sanctions;

(d) was an investor in the Oriental Timber Company and although he retained a seat on the board at the time of the alleged events leading to the United Nations sanctions, he claimed that the Oriental Timber Company did not engage in any illegal acts;

[39] CWN.517.004.1497.

(e) had since been granted travel rights to Singapore, Malaysia, Hong Kong, China and the European Union; and

(f) had a legitimate source of funds/wealth which originated from timber trading and other business ventures.

Crown's submissions in respect of Mr Wong/Prawira

177. The crux of Crown's argument in relation to Mr Wong/Prawira is that the decision to reinstate Mr Wong/Prawira's licence was an evaluative judgement made by Crown's senior executives, on behalf of Crown.

178. Crown also submits that, as Mr Wong/Prawira was not charged with or convicted of any crimes, it would be incorrect for the Commission to consider Mr Wong's situation to be comparable to that of a person who had served a criminal sentence for committing an offence. Crown says that, in circumstances where Mr Wong/Prawira had not been convicted and sentenced for a crime, it did not fail to have regard to the purpose of the Junket ICS in making the evaluative judgement to reinstate Mr Wong's licence.

The Commission's findings in respect of Mr Wong/Prawira

179. With respect, Crown's submissions are contradicted by the documentary record it has produced and attached to its written submissions, particularly to the extent that, quite apart from any matters arising from the United Nations sanctions to which Mr Wong/Prawira was subject, the Wong C6 Report is clear (as the Commission has already noted) that:

> *"On 11 January 2005 the subject [i.e., Mr Wong/Prawira], along with four other associates, was committed to prison for six months by the High Court of Singapore. The court decision was a result of [Mr Wong/Prawira's] failure to disclose asset information as a representative of Borneo Jaya Pte. Ltd. and Natura Holdings Pte Ltd".*

180. In the Commission's view, it is inexplicable that it seems, even in the course of its submissions to the Commission, that this matter of imprisonment for what would appear, at least *prima facie* to be a deception-related matter, was not identified and considered as part of the evaluative process in which Crown says it engaged.

181. In the event that Mr Wong/Prawira was committed to prison as a result of something other than a criminal conviction (for example as a result of being in contempt arising from a failure to comply with a Court order to disclose asset information), the Commission considers any strict distinction between a criminal conviction on the one hand and committal to prison in contemptuous circumstances to be of no moment.

182. Crown should have considered Mr Wong/Prawira's committal to prison for a *prima facie* deception-related matter specifically. It should have also taken steps to obtain further details from the High Court of Singapore's records which might have allowed it to carefully consider precisely why it was that Mr Wong/Prawira had been imprisoned by that Court and the relevance of that imprisonment to Crown's decision to establish or maintain a business relationship with him.

183. Verification of matters through the obtaining of publicly available Court records in a jurisdiction such as Singapore is not difficult.

184. Furthermore, quite apart from the extent to which Crown's submissions are contradicted by the documents it has produced, the Commission notes that there are also several other matters about the way Crown dealt with Mr Wong/Prawira which are indicative of a probity process that was not robust.

185. The first of those matters is that yet again in respect of Mr Wong/Prawira there is no evidence that Crown, at any stage, sought to engage directly with him in respect of his alleged conduct (other than to the extent that it received submissions from a solicitor acting on his behalf as referred to earlier in these reasons).

186. The Commission considers it inexplicable, for example, that Crown would not have sought to meet with Mr Wong/Prawira and ask him important questions such as:

> *Why did you use an alias to gamble at the Melbourne casino when you were subject to UN sanctions?*

187. This question has never been addressed by Crown, in any of:

(a) the evaluative process it says it undertook at the time when considering whether to reinstate Mr Wong/Prawira's authority to gamble;

(b) the evidence it has produced to the Commission in response to the show cause notices; or

(c) the submissions it has made to the Commission in respect of this matter.

188. In the Commission's view, quite apart from any direct link that might have existed between Mr Wong/Prawira and criminal conduct or the United Nations sanctions, Mr Wong/Prawira had shown himself to be a person who had a propensity to deception, not just generally, but indeed specifically in the context of his dealings with Crown.

189. Crown could and should have asked Mr Wong/Prawira why he had used an alias and, subject to the response he gave, the associated question of why he had taken steps to deceive Crown.

190. Crown should have evaluated his answer to those questions for the purpose of determining whether, having regard to its regulatory obligations (including those referred to in the Junket ICS), Crown could be justified in re-establishing its relationship with Mr Wong/Prawira.

191. The Commission considers it inexplicable that Crown would not seek to address the extent to which Mr Wong/Prawira may have deceived it, either at the time or since.

192. The Commission also considers it inexplicable, given the nature of Mr Wong/Prawira's deception, that Crown accepted at face value and did not go behind the matters that were submitted to Crown by Mr Wong/Prawira's solicitor.

193. Indeed, that is particularly so in respect of Mr Wong/Prawira's solicitor's submission that:

(a) Mr Wong/Prawira did not hold an interest in any companies that were subjected to any investigation in relation to the United Nations sanctions; and

(b) he was an investor in the Oriental Timber Company and although he had a seat on the board at the time of the occurrence of the alleged events leading to the United Nations sanctions, he claimed that the Oriental Timber Company did not engage in any illegal acts.

194. That submission by Mr Wong/Prawira's solicitor was false, as a matter of public record, including to the extent that:

    (a) the investigation that was conducted in respect of the links between the Oriental Timber Company, former President Taylor and the United Nations sanctions is set out in significant detail in the publicly available judgment of the appeal Court in the Hague;

    (b) the appeal Court in the Hague expressly found, as a matter of fact, that there were close links between the Oriental Timber Company and former President Taylor, including to the extent that former President Taylor referred to the company as his *"pepperbush"*.[40]

195. Those findings, of significant judicial authority, were both publicly available (had Crown taken the time to look) and furthermore in direct contradiction to the submission that the *"Oriental Timber Company did not engage in any illegal acts"*.

196. There is also no explanation as to why either Mr Wong/Prawira or his solicitor were not expressly asked to address the circumstances which had resulted in him being imprisoned for six months by the High Court of Singapore in January 2005, after that matter was expressly identified in the Wong C6 Report in August 2017.

197. In failing to specifically address these matters in respect of Mr Wong/Prawira, Crown plainly failed to ensure that it had robust processes in place to consider the ongoing probity of this junket player and failed to comply with clause 2.5.1 of the Junket ICS.

198. The Commission finds that Particular 3 is made out.

Particular 4 (Mr Chau)

199. It is alleged that Crown, being the holder of a casino licence, at the Melbourne casino in the State of Victoria between approximately April 2018 and July 2019 did fail as the casino operator to ensure that the system approved for the time being under section 121(4) was implemented in relation to junket operator Mr Alvin Chau (aka Chau Cheok Wa) by failing to have regard to incidents of non-compliance by Mr Chau and/or Suncity during ongoing

[40] That finding having been made on 17 April 2017, being a date that was some five months before Crown came to consider whether it should re-establish its business relationship with Mr Wong/Prawira following the lifting of the United Nations sanctions in September 2017.

probity assessments, therefore failing to consider all available and relevant information regarding Mr Chau in accordance with clause 2.5.1 of the Junket ICS.

The evidence in respect of Mr Chau

200. Probity-related allegations were made in respect of Mr Chau at the NSW Inquiry.

201. In the context of both those allegations and the matters referred to in the show cause notices, the documents that were attached to Crown's submissions reveal that Mr Chau is the chairman of Suncity Group Holdings Ltd (**Suncity**), a company which, among other things, provides travel agency and junket services. He became a registered junket operator at the Melbourne casino on 10 September 2009 and remained both an active junket operator and premium player until Crown suspended and then ceased all junket operations in late 2020.[41]

202. The commercial relationship that has existed between Crown, Suncity and Mr Chau in the period between 2009 and late 2020 resulted in enormous sums being wagered via the junket operated by Mr Chau. Indeed, as a Crown internal risk assessment put the matter in November 2018 (being an attachment to one of Crown's written submissions to the Commission), in the period *"FY15 through year to date FY18"* the turnover of the junket operated by Mr Chau and Suncity *"has exceeded $20.5 billion".*[42]

203. As well as being highly profitable, Crown's relationship with Mr Chau and Suncity also involved specific areas within the Melbourne casino being designated for the exclusive use of their junket operations. Again, as the same internal risk assessment put the matter:

> *"In January 2014, Crown Resorts Limited [i.e., Crown's parent company]…agreed with Suncity International Limited (an entity forming part of the Suncity Group of which [Mr Chau] is the founder and ultimate beneficial owner) that it would (amongst other things) procure Crown Melbourne to reserve a room at Crown Melbourne that can accommodate up to three gaming tables (Pit 86) for the exclusive use of [Mr Chau's] junket group".*[43]

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[41] Pursuant to the relevant ASX announcement, Crown suspended all junket operations until 30 June 2021. On 17 November 2020, Crown later announced that it would permanently cease dealing with all junket operators and that it would only recommence dealing with a junket operator if that junket operator was licensed or otherwise approved or sanctioned by all gaming regulators in the States in which Crown operates.
[42] CRL.500.005.6185
[43] Ibid.

204. Furthermore, the Commission notes that the reservation of this particular area within the Melbourne casino for Mr Chau's junket operations also carried with it other obligations, including that Mr Chau's junket operation would:

    (a) maintain an A$150,000,000 non-negotiable chip roll from gaming at its tables;

    (b) engage at least two permanent "Sun City" staff to be located in Melbourne to provide support to the "Sun City" business and its customers and to liaise with Crown Melbourne staff as required.[44]

205. By having the exclusive use[45] of a specific area within the Melbourne casino, Mr Chau and his junket operations were in a privileged position.

206. Concurrently however, several probity-related matters in respect of Mr Chau also arose during Crown's business relationship with him.

207. The first of these was that probity checks Crown conducted revealed that Mr Chau may have been a member of a criminal organisation known as the 14K Triad society and/or involved in criminal conduct.

208. Although in its second written submission to the Commission Crown said that it did not become aware of these matters until after it had established its business relationship with Mr Chau, Crown nevertheless decided that it would continue that relationship after it became aware of these matters. The stated reasons for this included:

    (a) Crown was unable to verify the reports of triad and/or criminal involvement;

    (b) Suncity is listed on the Hong Kong Stock Exchange and as such Mr Chau would be subject to certain requirements by reason of his status as the chairman of a listed company;

    (c) Suncity and/or Mr Chau were authorised to conduct junkets at other casinos, such as those in Macau.[46]

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[44] CRL.609.007.8731.
[45] CRL.500.005.6185.
[46] Throughout its ongoing relationship with Suncity and Mr Chau, Crown also periodically continued to undertake probity checks.

209. Secondly, in May 2016, Crown received a "secret dossier" in respect of Mr Chau which was prepared by an entity known as "Wealth-X". Among other things, that dossier included a biography of Mr Chau which included the following:

> *"Chau was born in Macao in 1974…He appears to have been a former member of the 14K Triad's Macao branch in the 1990s, and was reportedly in charge of loan sharking and gambling under the leadership of Kuok Koi Wan. After Wan was sentenced to more than 14 years imprisonment in 1999, Chau started his own gang and advanced in the Macao and Hong Kong Society…"*

210. That dossier also included details of Mr Chau's political profile and noted that:

> *"Chau served as a Standing Committee Member of the Guangdong Provincial Committee of the CPPCC, a Chinese-based governmental organization which serves as a political advisory body to the People's Republic of China. He is also a Committee Member of the Guangdong Province Returned Overseas Chinese Association, a Guangdong, China-based organisation led by the Communist Party of China."*

211. Thirdly, in December 2016, Crown's parent company Crown Resorts Ltd also received a third-party due diligence report (**Chau C6 Report**) which identified *"Potential Red Flags"* in respect of Mr Chau including that:

> *"The subject is a [politically exposed person] in his own capacity. He is a member of the 11th Chinese People's Political Consultative Conference of the Guangdong Provincial Government, China.*
>
> *"Adverse media reports about the subject and his associated individuals and businesses were identified and are presented below:*
>
> - *…*
> - *According to media reports, **Chau** is associated to Beng Yaju, an individual reportedly affiliated with Chinese criminal syndicates".*

212. Fourthly, in January 2017, a further dossier was prepared by a third party known as *"Wealthinsight"* which included that:

> *"In 2012, the US government reported that Mr Chau and two other individuals were involved in organized crime and were restricted to do business only in Macau and*

China. The US government insisted that the Macau government enforce strong regulations with respect to Macau casino business to curb money-laundering due to unlicensed gambling".

213. Fifthly, also in 2017, the Australian Transaction Reports and Analysis Centre (**AUSTRAC**) conducted a compliance review in respect of Crown's junket operations and on 8 June 2017 sent an email to Crown which:

    (a) made reference to Mr Chau being both a foreign politically exposed person and also having a substantial criminal history;
    (b) requested documentation evidencing Crown's consideration of the appropriateness of Crown continuing to engage with Mr Chau; and
    (c) requested an explanation as to how Crown considered its business relationship with Mr Chau to be consistent with its commitment to the objectives of anti-money laundering legislation.

214. Sixthly, according to Crown's own internal risk assessment, from at least October 2017[47] *"a number"* of large cash transactions had occurred at the area of the Melbourne casino that had been reserved for Mr Chau's junket operations between Mr Chau *"on the one hand and his key players, or unknown third parties, on the other".*

215. Seventhly, some nine months after the 2017 AUSTRAC enquiries, in or about March 2018, two events occurred which may or may not have been related. Those events were:

    (a) a large amount of cash was discovered in the part of the Melbourne casino that had been reserved for use by Mr Chau and his junket operation (**initial cash discovery**);[48] and

    (b) Crown introduced additional cash controls specifically in respect of Mr Chau's junket operations.

    These additional controls are evidenced by an email Crown's Group General Manager International Business Operations, Jacinta Maguire, sent to her colleague Ricky Lee on Saturday 24 March 2018 with the subject line *"Suncity Cash Transactions"* and which included the following:

[47] CRL.500.005.6185.
[48] Annexure C to Crown's third written submission, referring to CRL.615.001.0486

"We would like your help to inform Suncity senior staff that due to changes in our regulatory procedures, cash transactions at [the Suncity] service desk and salon 86 are no longer permitted. We would like them to reduce the amount of cash held at their service desk to $100k and this cash is only to be used to (sic) non gaming transactions eg shopping etc…".[49]

Ricky Lee's subsequent reply on 16 April 2018 confirmed that Mr Chau's junket operation staff had indeed been advised of these additional cash controls at or about the time Ms Maguire had asked this information to be communicated.[50]

216. Eighthly, following the initial cash discovery and communication of the additional cash controls, it appears that Crown may have considered it necessary to take yet further steps to effect the implementation of the additional cash controls that Ricky Lee had already communicated to Mr Chau's junket staff. In that regard:

(a) on or about 17 April 2018, Crown again advised Mr Chau's junket staff about additional controls and this time, it would seem, also advised that these additional controls would take effect on 20 April 2018;

(b) on 20 April 2018, Crown staff attended the part of the Melbourne casino that had been reserved for use by Mr Chau and Suncity to confirm that the additional cash controls had in fact been implemented, at which time Crown staff in effect became aware that Mr Chau's junket operation had been unwilling or unable to comply with the additional cash controls in that they located:

i. an amount of $5.3 million at Mr Chau's junket operation "desk";

ii. an additional $300,000 located in cupboards at Mr Chau's junket operation "room";

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[49] CRL.500.005.3496. Ricky Lee subsequently confirmed that these matters had been communicated to Suncity staff, in accordance with Ms Maguire's instructions, when on 16 April 2018, Ricky Lee sent an email to Ms Maguire (also copied to Ishan Ratnam (Kunaratman) and Roland Theiler) which included the following words: *"As discussed we have verbally communicate (sic) with their in house operation team about 5 weeks ago in regard to handling cash from players".*

[50] Further, to the extent that there remains any uncertainty about when it was that Mr Chau's junket staff were informed about the additional cash controls that Ms Maguire sought to implement, the Commission also notes the content of the email between Ms Maguire and her colleague Indran Subramaniam on 16 May 2018 which refers to Crown *"sales team"* having *"advised their [i.e., Mr Chau's junket operation] executives directly in Macau"* on a date prior to 17 April 2018 (see CRL.609.007.8703).

(**second cash discovery**)

(c) after the second cash discovery, on 5 May 2018, Crown conducted a subsequent audit, which Crown now says (contrary to the evidence that its former chief legal officer gave to the NSW Inquiry)[51] confirmed that Mr Chau's junket operations were complying with the additional controls; and

(d) on 11 May 2018, Crown implemented yet a further control to require that any of Mr Chau's junket patrons who were depositing more than $300,000 had to be approved by senior Crown VIP business executives.

Crown's submissions in respect of Mr Chau

217. Crown submits that, notwithstanding:

(a) the extent of the evidence which suggests Mr Chau's links to organised crime;

(b) his status as a politically exposed person (**PEP**);

(c) the content of Crown's own risk assessment and its reference to *"a number of large cash transactions"*;

(d) the multiple discoveries of cash;

(e) Suncity's apparent failure to comply with the additional controls that Crown itself implemented at or about the same time as the initial cash discovery which, in turn, resulted in the second cash discovery;

it took appropriate steps to consider those matters and, in doing so, decided that it should continue to engage in a business relationship with Mr Chau.

218. In that regard, Crown submits that it responded to probity information it received in respect of Mr Chau in that it:

(a) in February 2014, raised Mr Chau's risk rating to "significant;"

[51] In that regard, the Commission notes that whilst the evidence of Crown's former chief legal officer to the NSW Inquiry suggested that Suncity was not compliant, text messages subsequently produced to the Commission *prima facie* tended to contradict that evidence. CLR.609.007.8749.

(b) on 5 June 2017 (some six months after it had received the Chau C6 Report on or about 12 December 2016), raised Mr Chau's risk rating to that of a "high risk PEP," based on the matter referred to in that report;

(c) also on 5 June 2017, a Crown staff member asked Crown's former chief legal officer, Mr Preston, to consider Mr Chau's approval as a junket operator following which, on 16 June 2017, Mr Preston decided to approve the ongoing relationship between Crown and Mr Chau, notwithstanding the elevation of his PEP status.

219. Crown submits that, in these circumstances, it had regard to both Mr Chau's PEP status and his alleged criminal links in determining whether to engage or continue to engage Mr Chau as a junket operator at the Melbourne casino.

220. Crown also says that it took steps to consider the probity issues arising from its staff making both the initial cash discovery and the second cash discovery in the part of the Melbourne casino that was reserved for use by Mr Chau's junket in that:

(a) it introduced the additional controls referred to earlier in these reasons;

(b) at least in respect of the second cash discovery, it lodged a threshold transaction report with AUSTRAC and then subsequently engaged with AUSTRAC to address various queries it had raised in response to that report;

(c) Crown's former chief legal officer, Mr Preston, sent an email to his colleagues Messrs Johnston and Felstead[52] in which he identified:

i. the fact of the second cash discovery and also the nature of AUSTRAC's enquiries;

ii. the nature of Crown's response to those enquiries;

iii. the nature of the additional controls that had or would be introduced in respect of Mr Chau's junket operations as a result.

221. Crown places some emphasis on Mr Preston having sent this email as it says it demonstrates that each of the recipients were not only made aware of the second cash

[52] CRL.501.039.5141.

discovery but were also the three most senior Crown directors and/or officers who, according to Crown, were responsible for making probity decisions.

The Commission's findings in respect of Mr Chau

222. In the Commission's view, there are several aspects to the actions (or lack thereof) Crown took in respect of the escalating risks associated with Mr Chau that plainly demonstrate a failure to implement a robust probity process.

223. In that regard, just as the Commission has noted in respect of the other individuals referred to in the show cause notices, the documentary record relevant to Mr Chau is bereft of evidence to suggest that Crown ever made enquiries directly with Mr Chau in respect of the various matters that were identified in respect of his probity.

224. Indeed, in the specific context of Mr Chau, the Commission considers the absence of such evidence to be particularly acute because Crown's second written submission says that Crown was in direct communication with Mr Chau, at least in April 2018 when Crown *"contacted Mr Chau and other Suncity representatives"*.[53]

225. In the context of Crown's obligation to implement a robust probity process, the Commission considers it inexplicable that at no time between 2009 and 2020 (and particularly in the period after clause 2.5.1 of the Junket ICS was introduced in 2015) did Crown take the opportunity to use the direct line of communication that it had established with him to put to Mr Chau directly the matters it had identified.

226. The Commission also considers it inexplicable that, based on the written submissions and documents attached to those submissions, a third-party due diligence report, following the commencement of clause 2.5.1 of the Junket ICS in 2015, was not obtained until May 2016. Such a report should have been obtained earlier.

227. In any event, more concerning to the Commission is the lack of specific action in relation to the matters that are referred to in the three external and one internal risk management reports that Crown obtained in respect of Mr Chau in the period between 2016 and 2018.

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[53] See paragraph 11(k) of Crown's second written submission. Also see CRL.500.005.3496 which includes an email on 16 April 2018 from Jacinta Maguire to her colleague Ricky Lee in the context of the additional cash controls that Crown sought to implement in respect of Mr Chau's junket operations in the following terms *"Hi Ricky Are you able to discuss this with Alvin [i.e., Mr Chau] if you are seeing him today?"*

228. These reports revealed an inordinately large number of probity matters in respect of Mr Chau, each of which should have been put to him directly. The Commission considers it incongruous that Mr Chau was never asked to explain to Crown matters including:

    (a) his political connections in China;

    (b) the United States Government's reports that were referred to in the *"Wealthinsight"* report that Crown appears to have commissioned; and

    (c) his alleged links to triads.

229. Furthermore, quite apart from its failure to make enquiries directly with Mr Chau, there are also other aspects of the events that have been identified in respect of him and his junket operations that demonstrate a failure to have a robust probity process. Those matters are the following.

230. First, there is Crown's failure to comply with its own procedures insofar as they concern Mr Chau.

231. In that regard, the Commission notes that Mr Chau's PEP status was revealed to Crown as early as December 2016, when Crown received the Chau C6 Report. Notwithstanding that however:

    (a) Crown did not increase Mr Chau's PEP status to "high" until six months later in June 2017;

    (b) Crown gave no explanation for that delay, other than to say that the relevant report was not forwarded to the relevant staff member until June 2017.

232. Secondly, specifically in respect of the initial cash discovery, there is no evidence to suggest that:

    (a) Crown made any enquiries at all in respect of the initial cash discovery and Crown provided the Commission with no submissions or evidence which could allow it to assess important matters such as the amount of cash that was found; precisely where it was found; the source of that cash and any explanation that might have been given by Mr Chau's junket employees about it;

    (b) Crown reported the initial cash discovery to AUSTRAC;

(c) if Crown did not report the initial cash discovery to AUSTRAC, why Crown treated the initial cash discovery differently to the second cash discovery (which was reported to AUSTRAC).

233. The Commission is particularly concerned about the absence of such evidence or submissions, considering that the emails Crown referred to in the course of its submissions clearly suggest that the initial cash discovery was at the very least a factor in the changes described in the various *"Suncity Cash Transactions"* emails that were sent between Ms Maguire and her colleagues, referred to earlier.[54]

234. In those circumstances, the Commission is also concerned that Crown appears to have considered this initial discovery of cash important enough to justify it:

(a) changing its procedures;

(b) no longer permitting cash transactions at the part of the Melbourne casino that had been reserved for the exclusive use of Mr Chau's junket operations;

(c) reducing the amount of cash being held by Mr Chau's junket operations,

however, at the same time, there is no evidence to suggest that any specific consideration was given to the more important questions of whether, in addition to these matters, Crown could or should ask Mr Chau about these issues or continue to conduct business with him as a result of these significant developments.

235. Furthermore, as well as that, the Commission is also very concerned about the extent to which the combination of the emails between Jacinta Maguire and Ricky Lee referred to above directly contradict the submission Crown made to the Commission about these matters.

236. In that regard, Crown's second written submission is to the effect that Crown did not notify Mr Chau's junket staff about the increased controls for the area of the Melbourne casino that had been reserved for the exclusive use of Mr Chau's junket until 17 April 2018 and furthermore, this notice included the fact that the relevant changes would not take effect until 20 April 2018.[55]

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[54] CRL.500.005.3496
[55] Crown's second written submission at 16.1.

237. Based on the emails between Jacinta Maguire and Ricky Lee however, the Commission rejects that submission. Suncity was plainly the subject of additional controls, specifically relating to matters of cash transactions, and which furthermore required Mr Chau's junket operations to *"reduce the amount of cash held at their service desk to $100k and this cash is only to be used to (sic) non gaming transactions eg shopping etc…"*.[56]

238. Mr Chau's junket staff were informed of this requirement well prior to 20 April 2018 (when the second cash discovery occurred) and Ricky Lee's email of 16 April 2018 to the effect that the additional controls had been communicated to Mr Chau's junket staff *"about five weeks ago"* confirms as much.[57] Indeed, so too does Indran Subramaniam's email to Ms Maguire on 16 May 2018 to the extent that it sets out a chronology of the matter and specifically refers to the fact that Crown's sales team had advised Mr Chau's junket executives of the additional cash controls, prior to 17 April 2018 *"directly in Macau"*.[58]

239. In those circumstances, in the Commission's view, Crown's consideration of the second cash discovery should have considered the specific question of why Mr Chau's junket operations had failed to comply with the additional controls that had already been communicated to them, well before the second cash discovery had occurred.

240. Evidently, it did not, and the Commission considers this to be yet another example of an instance where Crown has failed to implement a robust probity process pursuant to its obligation under clause 2.5.1 of the Junket ICS.

241. Thirdly, in respect of the specific issue of the second cash discovery:

    (a) Crown produced no evidence to suggest that, to the extent the second cash discovery constituted a breach of Crown's own controls, Crown made enquiries for the purpose of determining whether this breach had been deliberate or inadvertent.

        The Commission considers this to be a particularly serious issue as, quite apart from any matters that might have been identified in respect of Mr Chau's conduct by third parties or which had occurred elsewhere, this was an issue that occurred both at the Melbourne casino and also concerned the very important issue of

[56] CRL.500.005.3496
[57] Ibid.
[58] CRL.609.007.8703

Mr Chau's junket operations' compliance with the controls that Crown itself had sought to implement, specifically in respect of those operations.

In the Commission's view, a contravention of Crown's own controls plainly required Crown to consider why those controls had not been complied with.

Further, serious consideration needed to be given as to whether any reason that might have been proffered by Mr Chau for non-compliance raised questions as to whether Crown should continue the business relationship with him.

Put simply, Crown should have, at the time of the second cash discovery, made enquiries to determine whether it could still trust Mr Chau and his junket operations. It did not.

Instead, the highest the matter is put is that:

i. in the weeks prior to the second cash discovery, Ricky Lee told Mr Chau's junket staff of the additional cash controls that are referred to in Ms Maguire's email of 24 March 2018;

ii. on 17 April 2018 (the day before the second cash discovery), Ricky Lee also told Mr Chau about these matters directly;[59]

iii. on 20 April 2018 (i.e., two days after the second cash discovery) *"Crown...contacted Mr Chau and other Suncity representatives to reiterate the new procedures which were taking effect on that date"*;[60]

iv. on 11 May 2018 (a few weeks after the discovery), Ricky Lee appears to have again contacted Mr Chau, told him about the AUSTRAC investigation into the matter and also told him to *"hire a lawyer"* to discuss the matter with AUSTRAC and provide evidence of the source of funds.[61]

In the Commission's view, something more than mere reiteration and advice to Mr Chau that he should hire a lawyer were called for. Crown should have used its direct communication with Mr Chau to ask him why Crown's controls had not been

[59] CRL.609.007.8103.
[60] Crown's second written submission at paragraph 11(k).
[61] CRL.609.007.8103.

complied with. Mr Chau's explanation should have also been contemporaneously recorded;

(b) Crown also did not address the Commission on precisely who it was that provided it with the details of the second cash discovery that Crown reported to AUSTRAC.

In that regard, the Commission notes that it was not provided with such information, notwithstanding that an email that Crown produced in redacted form (the redactions said to have been made based on compliance with money laundering secrecy provisions) indicates that Crown's former chief legal officer, Mr Preston, provided AUSTRAC with *"the details and background of the $5.6 million cash deposit"*.[62]

In the absence of these matters being directly communicated to the Commission, it has been left to do the best it can based on an incomplete documentary record. However, based on that documentary record, the Commission notes that the evidence on this point, such as it is, suggests that Crown may not have in fact made any direct enquiries with its approved junket operator, Mr Chau, to determine the source of the cash located at the time of the second cash discovery.

Rather, the highest the evidence can be put is that, according to an email Crown's Vice President of International Business Operations, Indran Subramaniam, sent to Ms Maguire,[63]

"…the cash was an accumulation over the years of cash outs etc…

"…I did ask would they not prefer to deposit these funds in a bank and use it accordingly. Alvin [which appears to be a reference to Mr Chau's junket operations finance manager Alvin Leong Keng Hong, as distinct from a reference to Mr [Alvin] Chau himself] advised his boss did not want too". (sic)

This email raises at least three issues relevant to the question of whether Crown's processes were "robust":

[62] CRL.501.039.5141.
[63] CRL.609.007.8703.

i. the Commission is left to wonder why no direct enquiries were made with Mr Chau himself;

ii. the Commission is concerned that the probity processes which Crown had in place in the period prior to the second discovery of cash were such that the *"accumulation"* that is referred to in Mr Subramaniam's email could have been allowed to occur in the part of the Melbourne casino that had been specifically reserved for Mr Chau's junket operations;

iii. the Commission is also concerned that such an accumulation was in addition to the initial discovery of cash and that, together, these discoveries are likely to have involved a very large amount of money indeed.

(c) Meanwhile, Crown also did not address the Commission on the extent to which the emails that Crown attached to its written submissions relevant to the second cash discovery suggest that there was a significant lack of candour shown by Mr Chau's junket operations staff at the time of that discovery. As Mr Subramaniam's email to Ms Maguire on 16 May 2018 describes, after Crown's staff were told by Mr Chau's staff on 20 April 2018 that $5.3 million was being held in various drawers and cupboards in the part of the Melbourne casino that was for the exclusive use of Mr Chau's junket:

"At this point we asked for additional [Crown] officers…

"…I then asked for all the drawers etc to be opened for an inspection.

"At this time I found another A$300,000 in cash, this was over looked by them. This was added to the initial cash handed to us".

There is no evidence to suggest that Crown gave any specific consideration to the at least *prima facie* lack of candour that was shown by Mr Chau's junket staff in not producing all of the cash that was being held in the relevant area but rather waiting for the additional $300,000 to be discovered by Crown's staff.

The Commission is concerned about the extent to which the purported explanation that the additional $300,000 had been "overlooked" might have withstood an appropriate level of scrutiny.

(d) Crown produced no evidence to suggest that it actively considered the relevance of the issues arising from the second cash discovery for the purpose of its ongoing relationship with Mr Chau. In that regard, although Crown points to the email by which Mr Preston brought the matter to Messrs Felstead and Johnston's attention and says that email demonstrates the matter was considered, in the Commission's view, that email does no such thing.

All that email does is simply note that events had occurred. There is no evidence that Mr Preston's email prompted any discussion or decision-making process to be engaged in by anyone, let alone a joint decision by Messrs Preston, Felstead and Johnston.

In the Commission's view, simply noting such an important matter in an email does not constitute the implementation of a robust process.

(e) In the absence of these matters however, Crown, did seek to submit that it should be considered to have appropriately dealt with the second cash discovery because it took steps to engage with AUSTRAC about it.

The Commission disagrees.

The evidence about Crown's engagement with AUSTRAC in respect of the second cash discovery (such as it is), constitutes little more than a formal notification and response to subsequent requests for information.

In the Commission's view there is an important distinction between reporting and responding to information requests by AUSTRAC regarding a specific junket operator on the one hand and specifically considering the issue that resulted in that reporting on the other.

There is, as the Commission has already noted, no evidence that the specific matters relevant to Mr Chau were ever specifically considered in the context of Crown's regulatory obligations including, as they do, the specific obligation that Crown has to implement probity processes that are robust in respect of junket operators such as Mr Chau.

Mr Preston should have specifically raised and considered these matters by reference to Crown's regulatory obligations and the outcome of that consideration should have been contemporaneously recorded in a way that could have allowed the Commission to make an efficient and detailed assessment of the appropriateness of that consideration.

The failure to take these steps is yet a further example of a failure by Crown to implement a robust probity process pursuant to its obligation under clause 2.5.1 of the Junket ICS.

242. Fourthly, the Commission also notes that the events that occurred in the years that followed were also inadequate, particularly to the extent that none of the initial cash discovery, the additional controls arising from that discovery, nor the second cash discovery, in apparent contravention of those additional controls, were specifically mentioned as part of the annual reviews that Crown conducted in respect of Mr Chau in 2018 and 2019.

243. Indeed, such was the level of the Commission's concern about this issue that it was a matter that was specifically raised with Crown at the hearing that was conducted in January 2021.

244. In response, Crown took a series of varying approaches, including those of:

(a) Mr Walsh, who quite properly accepted (at least in respect of the second cash discovery) that:

"Would it have been preferable to have the 5.6 million references? Yes. You know, it would – it would then be a – a record that's, you know, available to be seen, you know, historically, you know, whereas at the moment, you're asking me questions on a document where it's not reflected and again, we're taking the benefit of the knowledge of the people that are here today to confirm that – that there was an awareness of it. But you know, obviously, it would have been ideal if it was actually in the – the – in the documents themselves so it's there in memoriam".[64]

(b) solicitor for Crown, Mr Meade, who submitted that the due diligence profiles which Crown produced to the Commission were created by Crown's VIP credit team (as

[64] T45/15 and following.

distinct from Crown's anti-money laundering team), and these staff members may not have been privy to the information due to the non-disclosure provisions in the AML/CTF Act;[65]

(c) Crown's second written submission which was to the effect that the risk assessments did (in the absence of specific reference to the matters that had occurred) outline large cash transactions as occurring in the part of the Melbourne casino that had been reserved for Mr Chau's junket operations and this would have included the second cash discovery.[66]

245. In the Commission's view these explanations are not only unsatisfactory but are also indicative of a probity process that is far from robust, for at least the following reasons:

(a) none of these explanations addresses the failure to specifically refer to the additional controls Crown says it established;

(b) the fact that the second cash discovery occurred in the area within the Melbourne casino that was exclusively used by Mr Chau's junket operations is not a matter that, in the Commission's opinion, would have prevented that issue from being disclosed to any or all persons within Crown's organisational structure who might need to know about it;

(c) indeed, Mr Preston, in his capacity as the former chief legal officer of Crown, would appear to have been of the same opinion, particularly to the extent that he appears to have had no hesitation in emailing his then colleagues Messrs Johnston and Felstead to inform them about the matter;

(d) as well as Mr Preston's email, the documents that were attached to Crown's written submissions include several examples of instances where matters relating to the second cash discovery were discussed between Crown staff. These emails do not suggest that anyone within Crown considered the second cash discovery to be a matter that was the subject of any form of secrecy provisions at the time and certainly not provisions of the extent to which Crown sought to assert in the course of its submissions in this matter.

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[65] T44/14 and following.
[66] At page 9 of that submission.

246. In the circumstances, the Commission considers Crown's submissions as to why the fact of the additional controls and the second cash discovery were not referred to in the subsequent risk assessments to have been disingenuous and those submissions are rejected.

247. Rather, with respect to him, the Commission tends to agree with Mr Walsh to the extent that he too would have expected to have seen direct and specific consideration of not only the second cash discovery but also the failure of Mr Chau's junket operations to comply with the additional controls as part of these risk assessments that were conducted in 2018 and 2019.

248. In the Commission's view Crown's failure to specifically consider each of the initial cash discovery; the second cash discovery; the apparent failure to comply with the additional cash handling controls that were implemented as a result of the initial cash discovery; and the apparent lack of candour shown by Mr Chau's junket staff at the time of the second cash discovery to be yet a further illustration of Crown's failure to implement a robust probity process in respect of Mr Chau and his junket operations.

249. The Commission finds that Particular 4 has been made out.

Matters relating to what disciplinary action should be taken

250. As the Commission has found each of the four matters referred to in the show cause notices to have been made out, it is necessary for it to now turn to consider the issue of what, if any, disciplinary action should be taken because of those findings.

251. The forms of disciplinary action that the Commission may take include:

    (a) taking no action;

    (b) issuing a letter of censure;

    (c) varying the terms of the casino licence;

    (d) imposing a fine not exceeding $1 million; and/or

    (e) cancelling or suspending the casino licence.[67]

[67] CC Act s 20(1) (definition of 'disciplinary action').

252. Sections 140 and 141 of the Casino Control Act set out the Commission's objects and functions. The primary function of any disciplinary action is to further the object of ensuring compliance by industry participants with their legislated obligations.

253. In carrying out its disciplinary functions, the Commission considers all the circumstances of a particular case in determining the appropriate disciplinary action. The following matters will be relevant to assessing the appropriate disciplinary action in a particular case:

    (a) the objects of the Casino Control Act, including the need to ensure that the management and operation of casinos remains free from criminal influence or exploitation;[68]

    (b) the nature, extent and seriousness of identified grounds, including the period over which they extended;[69]

    (c) the past compliance history of the casino operator, as well as whether evidence suggests that the casino operator fosters and encourages a culture of compliance with the Casino Control Act;[70]

    (d) the level of cooperation with the Commission or other authorities responsible for enforcement under the Casino Control Act;[71]

    (e) remorse, contrition and/or corrective actions taken by the casino operator to improve management of the premises;[72] and

    (f) any other mitigating or exacerbating circumstances relevant to the matter.

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[68] CC Act s 1(a)(i).
[69] *Buzzo Holdings Pty Ltd and Anor v Loison* [2007] VSC 31 [33]-[34]; *Hodgkin v Planet Platinum Ltd (Occupational and Business Regulation)* [2011] VCAT 725 [328].
[70] *Parr v K Marketing Pty Ltd (Occupational and Business Regulation)* [2010] VCAT 1108 [24].
[71] *Starera PL v Melbourne CC* [2000] VCAT 213 [114].
[72] Ross v Planet Platinum Ltd *(Occupational and Business Regulation)* [2012] VCAT 11670 [134].

254. In this case, the Commission notes that it and its predecessor, the Victorian Commission for Gambling Regulation (**VCGR**), have relevantly acted by taking disciplinary action in respect of Crown and its internal control statements on three previous occasions.[73] Those matters occurred:

    (a) on 8 September 2011 when the then VCGR issued a letter to Crown for a failure to notify it of two new non-resident junket operators as required by section 2.7 of the approved Internal Control Statement, but no further action was taken;

    (b) on 6 December 2017 when the Commission imposed a fine of $150,000 in respect of 13 contraventions of section 121(4) of the Casino Control Act in relation to audit documentation required under the Junket ICS;

    (c) on 7 May 2019 when the Commission imposed a fine of $25,000 in respect of a contravention of section 121(4) of the Casino Control Act in relation to the non-notification of a resident junket operator under the Junket ICS.

255. The show cause notices included an invitation to Crown to address the relevance of the these matters, in the event that the particulars in the show cause notices were made out, particularly insofar as those matters related to further instances of non-compliance with Crown's internal control statements.[74]

256. In circumstances where Crown adopted a position that, it said, there were no grounds for taking disciplinary action, Crown declined to act on that invitation and made no submissions on penalty.

257. In those circumstances, although it must proceed without the benefit of any submissions from Crown on the appropriate disciplinary action to be taken, the Commission notes that there are several matters relevant to the issue of penalty which fall to be considered. Those matters are the following.

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[73] In that regard, the Commission also notes that whilst it has also taken other regulatory action, including in 2018 when the Commission took disciplinary action against Crown for failing to comply with section 3.5.5(5) of the *Gambling Regulation Act 2003*, which resulted in the imposition of a fine amounting to $300,000, as well as the issuing of a letter of censure, the Commission has not considered this issue insofar as it concerns the penalty to be imposed in this matter as it did not specifically relate to Crown's internal control statements.

[74] See paragraphs 13 and 14.

258. First, this is, in effect, the fourth occasion upon which the Commission or its predecessor has been required to take regulatory action on the specific issue of Crown's compliance insofar as it concerns junket operations, internal control statements and/or the Junket ICS.

259. Secondly, there were several aspects of Crown's approach to this matter which were inconsistent with the concepts of contrition and cooperation that the Commission is obliged to consider. Most notably, those matters included:

(a) the instances where submissions were made that are contradicted by the evidence to which Crown itself sought to refer, including, for example, the extent to which on Crown's own documents Mr Wong/Prawira had been committed to prison in 2005 for what appears to have been a deception-related matter and yet Crown submitted that his position was not comparable to that of a person who had been committed to prison for a criminal offence;

(b) the various submissions that Crown made that were unsupported by any evidence whatsoever including, for example, Crown's submissions that there had been a change in relevant standards and community expectations, and that, notwithstanding the four matters referred to in the show cause notices, those matters were not indicative of a systemic failure of Crown's probity processes;

(c) the inconsistency created by Crown's submission that the assessment called for was a subjective one and, in the context of that submission, Crown's failure and/or inability to produce:

i. contemporaneous records of why decisions were made; and

ii. in the absence of such contemporaneous records, failing to produce evidence from those who, Crown says, made the relevant subjective decisions;

(d) the inconsistency created by Crown's submission that the Commission was obliged to take a confined or narrow approach to this matter on the one hand, whilst at the same time seeking to introduce many matters on a broader or more general level and furthermore introducing those matters in a way that specifically required the Commission to consider those matters carefully;

(e) certain instances where those representing Crown adopted what can only be described as inconsistent positions as between themselves. These inconsistencies included in particular the position taken as to why the initial cash discovery, additional controls and second cash discovery relating to Mr Chau were not specifically referred to in the subsequent risk assessments that Crown undertook. On that topic, Mr Walsh in his capacity as CEO was correct when he said he would have expected to have seen them "in there". They should have been "in there".

The Commission is deeply troubled that others who appeared for Crown persisted in seeking to justify the failure to specifically refer to these matters in the risk assessments, even after Mr Walsh had quite properly made this concession;

(f) the general inconsistency created by the concession that Crown should not be doing business with the four persons referred to in the particulars; Crown's decisions to cease all junket operations and only recommence with the approval of regulators; however, at the same time, Crown's refusal to accept that any (let alone all) of the matters referred to in the show cause notices constituted failures as alleged;

(g) the failure to engage, at least in any meaningful or detailed way, with the statutory objective of ensuring that the management and operation of the Melbourne casino remains free from criminal influence or exploitation.

260. In addition to these matters, the Commission also notes that there are other matters of aggravation. They are:

(a) Crown's failure to implement a robust process to consider the probity of the relevant junket entities occurred over an extended period. The consequences of this failure were significant in that Crown has conceded that the entities identified should not have been engaged by Crown;

(b) the seriousness of this matter, in that Crown's conduct by continuing to engage with junket operators and players who it has now conceded were, in short, operators and persons with whom it should not have been conducting business is directly relevant to the objective of the Casino Control Act and Junket ICS to the

extent that they seek to ensure that the operation of the Melbourne casino remains free from criminal influence or exploitation;

(c) in the course of the Commission's investigation of this matter, it issued a direction to Crown under section 26 of the Casino Control Act for it to produce material regarding relevant junket entities. A number of documents were produced by Crown in response to this notice well after the date for compliance had passed. This is evidenced by a letter dated 2 November 2020 where Crown's solicitors, Minter Ellison, conceded that Crown did not provide the Commission with certain material which fell within the scope of the section 26 notice. The Commission is entitled to expect timely compliance with statutory notices.

261. In all of the circumstances, the Commission has determined that this matter is very serious and notwithstanding Crown's:

(a) belated decision to cease all junket operations;

(b) reform project to which it referred in the course of this matter,

there are several matters of aggravation and Crown's response has been inadequate.

262. Consequently, the Commission has determined to impose the maximum fine of $1 million and issue a letter of censure in the terms referred to in the decision that was set out above.

Two final matters in closing

263. Finally, in closing, there are two additional matters that the Commission considers appropriate to record as part of these reasons.

264. In doing so, the Commission notes that these are not matters that are strictly relevant to the Commission's consideration of the outcome of this matter.

265. They are however matters that the Commission considers it appropriate to formally record as part of these confidential reasons, particularly having regard to the nature of the regulatory relationship that the Commission considers ought to exist between Crown and the Commission.

266. The first of these matters is that on 17 December 2020 the current Chair of Crown's parent company, Crown Resorts Ltd, Ms Helen Coonan, and others met with the Commission and

gave a presentation. During that presentation, Ms Coonan expressed the desire of herself, Crown and Crown Resorts Ltd to work collaboratively with the Commission. Among other things, Ms Coonan said:

> *"I think it is absolutely critical that we have lines of communication open and that as we negotiate what I would call perhaps some of our shortcomings we're able to work through them together so that we do get a good outcome".*[75]

267. Mr Walsh also spoke at that presentation. For his part, he gave a very detailed description of what it is that Crown now intends to do to ensure the probity of certain players that he described as Crown's *"top local and domestic customers".*[76]

268. In the course of doing so, Mr Walsh emphasised the importance that Crown now intends to place on matters referred to earlier in these reasons such as the extent to which Crown will now establish direct communication with those customers and require them to complete certain *"forms"* in respect of matters such as their source of wealth. As Mr Walsh put it:

> *"We give the customers a couple of weeks to fill that in. If they do not complete it to our satisfaction, then we put stop codes on them and they are not allowed to enter any of our premium rooms or participate in the Crown award program".*[77]

269. Indeed, as Mr Walsh also said in respect of those customers who Crown may not consider it appropriate to deal with:

> *"…the approach we're taking is the onus is on the customer. It's not necessarily on us in that instance, you know. They've got to demonstrate to us why we should reconsider".*[78]

270. The Commission considers it highly regrettable that, so soon after being given a presentation which included these specific statements from Ms Coonan and Mr Walsh, at the hearing before the Commission on 21 January 2021 (and in the written submissions that were produced on 5 February 2021), Crown would take an approach that was so clearly at odds with the matters that had been expressed at the meeting on 17 December 2020.

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[75] T2/43-45.
[76] T11/4.
[77] T12/40-46.
[78] T14/8-9.

271. The Commission had been hopeful, following the presentations from Ms Coonan and Mr Walsh, that a more co-operative approach would in fact be taken to regulation, commensurate with Crown's privileged position as both the sole holder of a casino licence in Victoria and also, as a corporate citizen who enjoys (specifically insofar as the matters referred to in these confidential reasons are concerned) a degree of self-regulation as a result of the reforms that occurred in 2004.

272. The Commission considers this matter to have been Crown's first opportunity to have demonstrated, by its deeds, that it had altered its previous approach to regulatory matters.

273. Regrettably, the Commission's experience has been that there has not, in fact, been any alteration in Crown's approach.

274. The distinction between Mr Walsh's statements recorded in the transcript on 17 December 2020 on the one hand and those recorded in the transcript on 21 January 2021 on the other are very difficult to reconcile.

275. The second matter that the Commission notes is that some of the issues that have been referred to in these confidential reasons were also the subject of specific consideration in the context of the final report which followed the NSW Inquiry. As that final report was made publicly available when it was tabled in the New South Wales Parliament, the Commission has taken the view that as a matter of fairness to Crown, it was appropriate to consider the extent to which any of the Commission's findings might be inconsistent with those that were made following the NSW Inquiry.

276. Having undertaken such a process the Commission considers it appropriate to note that, whilst there are some differences to the context in which matters were being considered by the NSW Inquiry, none of the Commission's findings are inconsistent with those that were made following the NSW Inquiry.