

**IN THE MATTER OF THE CASINO (MANAGEMENT AGREEMENT) ACT 1993
AND IN THE MATTER OF CROWN MELBOURNE LIMITED**

MEMORANDUM OF ADVICE

1. My advice has been sought by the Victorian Commission of Gambling and Liquor Regulation regarding an issue which has arisen with respect to the calculation of gross gaming revenue as that term is defined in the *Consolidated Management Agreement* entered into between The State of Victoria and Crown Melbourne Ltd., the operator of the Melbourne Casino ("The Management Agreement"). Pursuant to 6(1) of the *Casino (Management Agreement) Act 1993*, the Management Agreement is ratified and "takes effect as if it had been enacted in this act".
2. Crown's operation of the Casino is governed by, amongst other things, the Management Agreement. Pursuant to Clause 22.1 of the Management Agreement, Crown is obliged to pay a monthly "Casino Tax" to the State of Victoria. The amount of the Casino Tax is calculated as a specified percentage of the "Gross Gaming Revenue", ("GGR") as that term is defined in the Management Agreement, for each relevant month.
3. The term "Gross Gaming Revenue" is defined in Clause 2 of the Management Agreement as follows:

"Gross gaming revenue means the total of all sums, including cheques and other negotiable instruments, whether collected or not, received in any period by the company from the conduct or playing of games within the Temporary Casino or the Melbourne Casino (as the case may be) less the total of all sums paid out as winnings during that period in respect of such conduct or playing of games but excluding any 'commission-based players' gaming revenue."
4. As part of its day-to-day activities, Crown undertakes a number of promotional activities. These promotional activities include the

distribution to patrons of "free play vouchers." ("FPVs") The FPVs may be exchanged by patrons for chips for playing at a gaming table at the Casino or may be exchanged for cash.

5. As its name suggests, FPVs are issued by Crown to recipients at no cost to the recipients; the face value of the voucher, however, plainly represents an expense to Crown.
6. The particular issue which has arisen and upon which my opinion is now sought is whether the face value of "free play" vouchers issued by Crown are properly included in the calculation of gross gaming revenue (and therefore to be included in the calculation of the Casino Tax).
7. Crown has previously included the face value of FPVs in its calculation of the GGR for purposes of determining the monthly Casino Tax. Crown has now asserted that the inclusion of the face value of FPVs as a component of the GGR calculation of Casino Tax is and has been an error. Crown submits that the face value of free play vouchers does not form part of "the total of all sums ... received in any period by the Company from the conduct or playing of games within the ... Melbourne Casino ..." Crown has sought the advice of Mr Neil Young QC and Mr Chris Young as to whether the face value of the FPVs is properly to be included in the calculation of the GGR. I have been very usefully provided with a copy of two opinions signed by counsel with respect to this issue and dated 19 December 2014 and 30 January 2015. It is the opinion of those counsel that the face value of FPVs "ought not to be included in the calculation of GGR for the purposes of determining Crown's liability in respect of the payment of casino tax."
8. I respectfully disagree with that opinion. In my opinion, the face value of FPVs is plainly and properly to be included in the calculation of the GGR as forming part of "the total of all sums ... received ... by the company from the conduct or playing of games ... within the Casino."

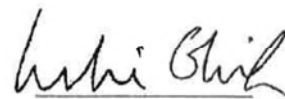


chips = fungible/referable/
made valuable by
the money exchanged
for them

9. In paragraph 13 of the 30 January 2015 memorandum of advice, Counsel observed: "unlike standard chips, free play vouchers and chips do not represent a sum of money to Crown. Crown does not receive any sum from the player for the free play vouchers and chips. That conclusion accords with the ordinary meaning of revenue as income that arises in the course of ordinary activities of an entity ... Crown receives no income or inflow or other financial enhancement from the issue of free play vouchers and chips."
10. These statements, whilst accurate, miss the point. Counsel retained by the Casino conflate two concepts. Sums received and the concept of revenue and income. Put shortly, the question is not whether the face value of the FPV when received by the Casino constitutes income or revenue as those terms are commonly understood for purposes of the *Income Tax Assessment Act* or for any other purpose, but rather, whether an FPV, when converted into a chip and received by the Casino, represents a sum received by the Casino in the conduct of gambling.
11. The definition of GGR in Clause 2 of the Management Agreement invites attention to two critical integers. First, can the face-value of the FPV when converted into chips and gambled at the Casino, be said to constitute or represent a "sum" received by the Casino? Second, if so, has that "sum" been received from the conduct or playing of games within the Casino? In my opinion, the answer is "yes" to both of these integers. The question to which the Management Agreement directs attention, is whether the receipt by Crown of an FPV represents a "sum", being the face-value of the FPV received from the conduct or playing of games within the Casino.
12. When the FPVs are converted into chips and the chips are gambled at the casino, it represents the receipt by the Casino of a "sum" being the value of the chips gambled at the Casino, and which receipt has arisen from the conduct or playing of games at the Casino. The definition of GGR fixes the

classification at the point of "receipt" by Crown. It is simply not to the point that at one step removed, the chips which are received by Crown and which plainly have a face-value, may be traced to a voucher which in turn may have been issued for no cost to the gambler. By analogy, if a gambler wins at a table and thereby doubles his or her money, those winnings may be said to be sourced in funds provided to the gambler by Crown. If the gambler gambles the winnings, they do not lose their status as sums received by Crown because they may have been sourced from funds provided by Crown.

13. In my opinion, the FPV when converted into a chip and thereafter gambled at the Casino plainly represents a "sum" received by the Casino from the conduct of playing games within the Casino. For this purpose, it does not matter that the chip was sourced from an FPV. That is an irrelevant fact. When that chip (converted from an FPV) is gambled at a table, it represents a sum received by the casino.
14. In my opinion, the face value of FPVs is plainly included in the calculation of gross gaming revenue as that term is defined in the Management Agreement.
15. I should add that my construction of the GGR definition in Clause 2 of the Management Agreement is the same whether construed according to contractual provisions or as legislation governed by the *Interpretation of Legislation Act 1984* (Vic).



Leslie Glick Q.C.
Owen Dixon Chambers West
10 July 2015