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## 1) Introduction

My instructors act for Crown Resorts Limited (“**Crown**”) in relation to a Victorian state gaming tax issue arising under the *Casino (Management Agreement) Act 1993* (Vic). The issue concerns principally the definition of “Gross Gaming Revenue” in Clause 2 of Schedule 1 to that Act 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;”

I have previously been briefed and provided a written opinion in this matter on 19 June 2021 (“19 June Opinion”) and a supplementary opinion on 4 July 2021 (“4 July Opinion”).<sup>1</sup>

Crown has subsequently provided my instructors an additional level of detail in relation to Category 3 of the Bonus Jackpots (“**Matchplay**”) referred to in my Opinions.

Counsel assisting the Victorian Royal Commission has expressed the serious view at 1.171 – 1.189 that under Matchplay, at the time that a Crown Reward Member uses his or her Reward or Loyalty Points to obtain free Pokie Credits which Crown loads onto an Electronic Gaming Machine (“**EGM**” or “**pokie**”), Crown “receives” “money’s worth” (being the Loyalty Points) from the “conduct” of games within the casino (being the loading of the Pokie Credits on the EGM) and that this, of itself, falls within the definition of “Gross Gaming Revenue”.

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<sup>1</sup> Contrary to the understanding of Counsel assisting the Royal Commission expressed at 1.154, I had been provided with the joint advice dated 19 December 2014 from Mr Neil Young QC and Mr Christopher Young concerning “winnings”, as well as their joint advice dated 9 February 2016 concerning “winnings” and had examined those advices in detail.

My instructors have been provided with a letter from the Victorian Commission for Gambling and Liquor Regulation (“VCGLR”) dated 15 July 2015 (“**the VCGLR Letter**”) expressing a view at paragraphs 8 and 11 that Crown must include in the calculation of Gross Gaming Revenue the face value of *cashable chips at the time that Crown receives them as bets* from gamblers who have obtained those chips by redeeming “free play vouchers” or “FPVs” and “lucky money” vouchers given to them at no cost by Crown.

The VCGLR view (which I share) is based on the opinion of Leslie Glick QC dated 10 July 2015 provided to VCGLR. Mr Glick QC’s view is contrary to the view jointly expressed by Mr Neil Young QC and Mr Christopher Young in separate opinions dated 23 December 2013 (Free Play Vouchers), 19 December 2014 (Lucky Money) and 30 January 2015 (Free Play Vouchers). Their view is that a bet made with a cashable chip is not the receipt of a sum of money because the FPV or Lucky Money voucher was not purchased by the patron. I was provided in June 2021 in Appendix J to my brief these opinions. I was also given in Appendix J a copy of an email from Mr Christopher Young dated 28 October 2015 to Debra Tegoni that indicates the VCGLR adopted Mr Glick QC’s opinion as correct and which then proceeds to critique Mr Glick QC’s opinion.

Counsel assisting the Royal Commission appears to have misunderstood Mr Glick QC’s opinion as being that “free bets are sums received”. See Appendix H to my brief in this matter, para 1.192 and footnote 733. Mr Glick QC’s opinion is that cash or cashable chip bets are sums received.

I am requested to consider the additional details and documents in the context of Matchplay with a view to opining on whether my previous views are impacted.

I am requested to advise in writing:

- (a) Whether my views as expressed in the 19 June Opinion in respect of Category 3 of the Bonus Jackpot categories (‘Matchplay’) are changed in light of the additional material contained in my brief.

(b) Whether my views as expressed in the 19 June Opinion are impacted by:

- the VCGLR Letter; or
- The views expressed by Leslie Glick QC in his Memorandum of Advice dated 10 July 2015

(c) Whether, upon consideration of the excerpted submissions of Counsel assisting the Royal Commission, my views are altered.

(d) Any other matter I consider to be relevant.

I note that Counsel assisting the Royal Commission engaged (at paragraph 1.183 of Appendix H to this brief) in speculation as to what was in my mind when I sought further instructions about Matchplay. I did not, in seeking instructions to understand the facts, consider that Crown had a “potential exposure on Matchplay”.

More significantly, my thinking to date (contrary to paragraph 1.188 of Appendix H to this brief) has never been that Crown “receives” either a pokie credit or a loyalty point or that they are “exchanged”. My thinking to date has been simply that Crown provides free bets to Reward Members and that this does not fall within Gross Gaming Revenue. Counsel assisting the Royal Commission, with the greatest respect, appears to have misapprehended my Opinions as well as Mr Glick QC’s opinion.

Nevertheless, I approach my reconsideration of the issues with this additional material mindful of the observations of Lord King LC in *Galton v Hancock* (1743) 2 Atk. 427, at 439:

I always thought it a much greater reproach to a judge to continue his error rather than retract it.

These observations may be said to apply also to Counsel.

## 2) Summary of Opinion

I confirm my view that the gambling of Pokie Credits in all categories including Matchplay – being the making of free bets on EGMs – does not fall within the definition of Gross Gaming Revenue.

The VCGLR Letter and Mr Glick QC's opinion, which concern *only cashable* chips received by Crown when gambled by the patrons of the casino, expresses a view that I both considered and thought to be plainly correct when I provided my Opinions. Crown is, at that point in time, receiving sums of money (facilitated by cashable chips) for the conduct or playing of games. That is because the patrons are gambling with their own money (in contrast to making free bets).

I agree with Mr Glick QC's view that the historical fact that a Free Play Voucher was issued by Crown at no cost to the patron is wholly irrelevant to whether or not Crown receives a sum from the conduct or playing of games at the casino at the point in time when the cashable chips are gambled.

The correct assumption underlying this view is that the prior conversion of Free Play Voucher by the patron into cash or cashable chips is not itself the receipt by Crown of a sum, nor is it part of the conduct or playing of games at the casino. Crown's Gross Gaming Revenue is not in any way increased in money (or in money's worth) because the patron has cash or cashable chips in his or her hands instead of the Free Play Voucher. Crown receives nothing by that conversion. Rather, at that point in time Crown *pays* money because Crown's contingent liability represented by the Free Play Voucher, which, as Mr Glick QC points out, "plainly represents an expense to Crown", is crystallised when presented by the patron and discharged by Crown's actual issue of cashable chips, which represent cash. Crown's monetary resources are thereby reduced by this marketing expense. Crown's monetary resources *from the conduct or playing of games* are affected, by way of increase, only as and when the cashable chips are subsequently gambled. It is at that point when Crown's Gross Gaming Revenue is increased.

It follows without a shadow of a doubt that under Matchplay, when Crown's system loads Pokie Credits onto a Reward Member's EGM to allow him or her to make free bets, Crown neither receives money (or money's worth) nor is that event the conducting or playing games within the definition of Gross Gaming Revenue. Counsel assisting the Royal Commission has proffered an alternative view that is unarguable.

### 3) Background

I am instructed that Crown Rewards members are able to earn Crown Rewards Points by playing EGMs (Pokie Points), playing table games including electronic table games (table game points) and for particular spending in hotels, restaurants, bars, retail, etc (lifestyle points).

One of the principal options available to Crown Rewards members is to redeem Crown Rewards Points, howsoever earned, to make free bets on the pokies. The mechanism for this to occur is that Crown's systems allow for the loading of special Pokie Credits onto the Reward Member's EGM. This reward arrangement is referred to as Matchplay.

Crown Rewards Points which have been earned as Pokie Points are not able to be redeemed or used for table play or electronic table games.

In order to complete the redemption of Crown Rewards Points, the member uses his or her membership card at the EGM and, through the player menu, selects the Pokie Credits option. The member must enter their PIN before selecting a pre-determined denomination (or enter another dollar amount). On confirmation, the Pokie Credits appear on the EGM.

When the Pokie Credits are used, the EGM will firstly record the amount as a bet placed, and therefore revenue, and at the same time record the amount as a Bonus Jackpot and the amount is deducted from revenue. As a result of these entries in the EGM, the net amount recorded as revenue through the use of Pokie Credits is zero. I have opined that this end result is correct because Crown's debiting and crediting of amounts referable to Pokie Credits do not record any underlying monetary transactions that fall within the definition of Gross Gaming Revenue.

Crown Rewards points (in this case Pokie Points) are expressed and communicated to members in terms of number of points the member has. Pokie Credits for free play on an EGM are expressed in terms of monetary value. I am

instructed that one Crown Rewards point has a nominal value of one cent for the purpose of its redemption and conversion into Pokie Credits.

As with all other Pokie Credits that I have analysed in my Opinions, the relevant Pokie Credits in relation to Matchplay must be played on an EGM and cannot be redeemed for cash or any other item. They represent a free bet. They cannot be converted back to Crown Rewards Points.

Another possible option for the use of Crown Rewards points is that they may be redeemed for cash, via a Table Play voucher mechanism. The Reward Member redeems Reward points for a Table Play voucher, goes to a table and presents the Table Play voucher to the dealer, who will issue him or her with cashable chips. A Reward Member might choose not to play at the table and cash in those chips, in which case no actual gambling occurs. There is no effect on Gross Gaming Revenue because the reduction in the cashable chip count is offset by treating the Table Play voucher as part of turnover. If gambling does occur

I have been provided the following documents:

Appendix A – Crown Witness Statement and related attachments of Peter Herring to the Royal Commission;

Appendix B – Statutory declaration by Peter Herring in relation to the Crown Rewards program as it relates to EGMs;

Appendix C – Memorandum dated 21 June 2021 from Arnold Bloch Leibler ('ABL') to Christopher Archibald QC, Christopher Carr SC and Anna Dixon

Appendix D – Memorandum of Advice dated 5 July 2021 from Christopher Archibald QC and Anna Dixon in relation to the above;

Appendix E – Memorandum of Advice dated 5 July 2021 from Christopher Archibald QC and Anna Dixon in relation to the above;



Appendix F – Letter dated 15 July 2015 from the VCGLR to Crown Melbourne Limited (‘Crown Melbourne’) in relation to the treatment of Free Play Vouchers and Lucky Money for the purposes of calculating Victorian casino tax;

Appendix G – Letter dated 16 July 2021 from the VCGLR to Crown in respect of potential underpayment of Victorian casino tax;

Appendix H – An excerpt from the submission by Counsel Assisting the Royal Commission (‘the Excerpt’);

Appendix I – A copy of a letter of advice my instructors provided to Crown in respect of Matchplay bonuses.

Appendix J – Memorandum of Advice dated 10 July 2015 from Leslie Glick QC

Appendix K – Sundry Opinions from Neil Young QC and Christopher Young;  
and

Appendix L – Joint Memorandum of Advice dated 19 December 2014 from Neil Young QC and Christopher Young in relation whether Premium Player Commissions and Junket Program Commissions are ‘winnings’ for the purposes of calculating Victorian casino tax

#### 4) Opinion and analysis

My views on Matchplay are unchanged.

There can be no doubt that where a patron makes a free bet on an EGM using the relevant Pokie Credits, Crown does not receive a sum within the definition of Gross Gaming Revenue. Contrary to the apparent understanding of Counsel assisting the Royal Commission (para 1.192 and footnote 733), Mr Glick QC did not opine otherwise.

I note the view I reached accords with that of the UK Supreme Court in *London Clubs Management Ltd v Revenue and Customs Commission* [2021] 2 All ER 333 (*'London Clubs'*). The leading judgment was given by Lord Kitchen, with whom Lord Carnwath and Lady Black agreed. Lord Kitchen said at 44:

... when a gambler places a bet using a Non-Neg, no money is appropriated to the bet. If the gambler loses, the Non-Neg is placed in the drop box but no right to money passes to the casino. When the casino allows a gambler to bet with a Non-Neg, it is, in a sense, allowing the gambler to bet with the casino's own money. Put another way, from the point of view of the casino, a Non-Neg amounts to a free bet. As such, the Non-Neg has no real world value to the casino when the gambler loses it...": at [44].

I considered Mr Glick QC's opinion dated 10 July 2015 when forming my views. Mr Glick QC's opinion is confined to the situation where an FPV or Lucky money voucher is converted into cash or a cashable chip, i.e. where the patron might not to bet at all and may cash out that chip. Mr Glick QC's opinion, and the VCGLR Letter that adopts it, are clearly correct. There can be no doubt that:

"when [a cashable] chip (converted from an FPV) is gambled at a table, it represents a sum received by the casino".

This view is also supported by the decision of the UK Supreme Court in *London Clubs*:

... when a gambler plays with cash chips in a casino, he is not staking the chips but the money those cash chips represent which he has deposited with the casino. When the gambler uses the chips to make a bet in a game, the money those chips represent is appropriated to the bet the gambler is making. If the gambler loses the bet, the right to the money those chips represent passes to the casino. If, on the other hand, the gambler wins the bet, then, depending on the rules of the game, the gambler will be entitled to a prize comprising the money he has bet and a further monetary prize, the size of which will usually be related to the size of the bet the gambler has made and the odds of him winning. The gambler will be given cash chips which represent

the money he has won and he can use those chips and the money they represent to place further bets or he may encash the chips.

As Mr Glick QC correctly points out, it is an irrelevant fact that the patron's cashable chips are sourced from an FPV. Likewise, it is an irrelevant fact how a Reward Member's free Pokie Credits are sourced.

I have considered the contrary joint view of Mr Neil Young QC and Mr Christopher Young (as well as Mr Christopher Young's comments on Mr Glick QC's opinion). Their joint opinion deals with FPVs and Lucky money vouchers that are redeemed for non-cashable chips and with FPVs and Lucky money vouchers that are redeemed for cashable chips. They discern no difference between a right to a free bet on the one hand and, on the other, a right to money, which the patron may choose to spend by playing a table game. They focus on the (irrelevant) fact that in both cases the FPVs and Lucky money vouchers are provided at no cost to the patron.

Their joint opinion insofar as it relates to cashable chips is plainly wrong, because the difference between Crown providing a cashable chip, which a Reward Member may immediately encash, and a free non-cashable chip, which he or she must use to gamble, is obvious and profound. As the UK Supreme Court observed in *London Clubs* (at 44):

... Non-Negs are very different from cash chips which represent money deposited by the gambler, or money which he has won or been given to encourage him to bet. Non-Negs do not represent money to which the gambler is entitled and, unlike cash chips, they cannot be encashed or exchanged for goods or services

The conclusion that Mr Neil Young QC and Mr Christopher Young express about non-cashable chips, i.e. free bets, is plainly correct, but not for the reason that they give (being that the FPV was issued at no cost). A bet placed with non-cashable chips is not a bet with money to which the gambler is entitled. Mr Glick QC and the VCGLR Letter do not discuss bets placed with non-cashable chips and do not suggest that they fall within the definition of Gross Gaming Revenue.

Mr Glick QC correctly observes that an FPV is an expense of Crown, being a contingent liability incurred by Crown which crystallises if and when the FPV is presented and is discharged by issuing cashable chips. It would be arrant nonsense to suggest that when Crown discharges its monetary liability to a patron who presents the FPV by payment to the patron then Crown receives the FPV as money's worth. The FPV is spent, it is in Crown's hands a worthless piece of paper. As Lord Kitchen put it, at 44:

when a gambler places a bet using a Non-Neg, no money is appropriated to the bet. If the gambler loses, the Non-Neg is placed in the drop box but no right to money passes to the casino. When the casino allows a gambler to bet with a Non-Neg, it is, in a sense, allowing the gambler to bet with the casino's own money. Put another way, from the point of view of the casino, a Non-Neg amounts to a free bet. As such, a Non-Neg has no real world value to the casino when the gambler loses it in a bet save in so far as it may be said that a contingent liability of the casino to pay out according to the rules of the game in which it is played is eliminated. But in my view, this does not instil in the Non-Neg a "value, in money or money's worth. ... The assignability of the Non-Neg cannot and does not affect its value to the casino.

Mr Glick QC and the VCGLR Letter obviously and correctly proceed on the basis that a patron's redemption of an FPV for cash paid by Crown or for cashable chips issued by Crown is not the receipt by Crown of a sum at all, let alone a receipt of a sum from the conduct or playing of games, within the definition of Gross Gaming Revenue.

It is only when the patron places a bet at the casino with the cashable chip that Crown receives a sum within the definition of Gross Gaming Revenue. And that is because the patron is betting his or her money. As was also observed in *London Clubs*:

People do not game in order to win chips; they game in order to win money. The chips are not money or money's worth; they are mere counters or symbols used for the convenience of all concerned in the gaming.

Turning to Matchplay, accumulated Reward Points represent a contingent liability of Crown to a patron to allow a free bet. A patron's "exchange" of Reward Points for Pokie Credits loaded by Crown onto an EGM is obviously not the receipt by Crown of a sum within Gross Gaming Revenue. It is the means by which the free bet is provided.

Counsel assisting the Royal Commission appears, however, to have submitted that the mere conversion of Reward Points into some thing (e.g. chips or Pokie Points or Pokie Credits) which can be utilised by a patron for placing bets is itself the “receipt” by Crown of a “sum” from the “conduct or playing of games” within the casino within the definition of Gross Gaming Revenue.

The argument is constructed as follows. First, a sum includes “money’s worth”. Second, Loyalty points are money’s worth to the Reward Member and are assignable by the Reward Member. Third, the Reward Member “exchanges” with Crown Loyalty points for Pokie Credits. So the Reward Member “receives” Pokie Credits and Crown “receives” Loyalty points. Fourth, loading a Pokie Credit onto an EGM is the “conduct” of games within the casino. Therefore, Crown receives a sum from the conduct of games within the casino.

If that is indeed the argument, it is pure sophistry constructed to achieve a desired result. It finds no support in any other Counsel’s opinion with which I have been provided or in the VCGLR Letter.

In my opinion, that submission to the Royal Commission is unarguable. On this view, the conversion of Reward Points into a \$100 cashable chip at the casino cage, which a potential gambler places in his or her pocket, immediately falls within Gross Gaming Revenue as does the subsequent actual \$100 bet, if any, with that chip. So, on this view, Crown would receive a sum of \$100 from the “conduct” of games and a further sum of \$100 from the “playing” of games. The reality, as set out in the VCGLR Letter, is that Crown would receive \$100 if and when the bet is actually made, for it is receiving a sum of money that otherwise it is obliged to pay to the patron.

The language of Gross Gaming Revenue, like the language of the UK gaming legislation discussed in the *London Clubs case* at [89]:

... strongly suggests that what is in contemplation is receipts **in the sense of real sums received by the [casino]** ...

In short, Crown’s discharge of its obligations to patrons who have earned Reward or Loyalty Points by giving them cashable chips or by loading Pokie Credits onto

an EGM is not the receipt by Crown of anything at all, let alone a sum it receives from the conduct of games within the casino.

The authorities are replete with examples of persons who try, though various means, to achieve a result that involves the receipt or payment of a real sum. I have already adverted to *Saxton's case*, where the aim of the arrangement, which involved an exchange of cheques, was to treat a shareholder's unpaid liability to pay up shares as paid to the Company which could then use the money it received to lend to the shareholder. The High Court held that the Company received nothing:

It never was intended that the Company should put any funds under the control of the supposed borrowers, nor even incur an obligation to do so. The Company after issuing its cheques remained entitled to recover back the very cheques or their proceeds. It was one inseverable transaction which could not, and was not intended to, increase the total assets of the Company. The Company was to obtain nothing.

The submission that "sum" *received* includes "money's worth" *received* is arguable, but goes nowhere for it reinforces that what is in contemplation is receipts in the sense of real sums received by Crown that increase its gaming revenue.

As Mr Glick QC pointed out, Crown plainly incurred an expense when it issued a Free Play Voucher. Likewise, Crown incurs a liability as and when the Reward Member earns Loyalty points. And it may be said that the Reward Member receives money's worth from Crown, for the Reward Member is thereby entitled to convert those points into tangible benefits that would otherwise cost money.

The idea, however, that Crown "receives money's worth" when the patron converts his or her Reward Points into Pokie Credits loaded onto an EGM is unintelligible. Crown is simply establishing the mechanical means by which the Reward Member may make the free bet. Crown is no closer to receiving any real sum from the conduct or playing of games at the casino. The observations of Rich J, with whom McTiernan J concurred, in *Prior's case* (1940) 6 ATD 5, which concerned whether a taxpayer mortgagee had received interest on a debt because it had agreed that it be capitalised and took further security, are apposite

to the issue of when it can be said that a person, who is entitled to a sum of money, actually receives that money:

the facts show that the deceased got nothing except a new obligation to pay in exchange for an existing obligation to pay. He was no nearer getting his money or of transferring it into anything of any value...

To see whether income has been derived one must look to realities. Usually payment of interest by cheque involves a receipt of income, but payment by a valueless cheque does not. "For income tax purposes receivability without receipt is nothing" — *Law of Income Tax*, Sir Houldsworth Shaw and Baker, p 111. You do not transform interest into an accretion of capital by writing out words on a piece of paper. There must be some reality behind them. Some accretion of value to corpus. The facts in this case show that there was not "an actually realised or realisable profit" — *Cross v London and Provincial Trust Ltd* ., [1938] 1 KB 792 at p 798. All that happened in this case was to change a forlorn hope of interest into a still more forlorn hope of capital.

Crown is not entitled to any money at all. The conversion of Loyalty Points into Pokie Credits loaded onto an EGM for the benefit of the Reward Member is merely Crown's internal mechanical means by which it provides the free bets to which the Reward Member is entitled. It has only a hope of receiving money in the future, in that the Reward Member might, after he or she has used up the free bets, then bet with real money.

I note that this hopeless argument was available to the revenue authorities in the *London Club* case, where free gaming vouchers were exchanged for non-negotiable chips. I am unsurprised that the argument was not put and that the Supreme Court saw (at [12]) that the correct outcome of the issue before it clearly could not depend on whether the casino issued non-negotiable chips directly or in exchange for free gaming vouchers.

How a patron, who may choose to gamble at a casino, historically obtained the right to do so for free is a fact wholly irrelevant to the definition of Gross Gaming Revenue. The only relevant question under Matchplay is whether a free bet at the point in time it is made represents a sum received by Crown. The answer to that question is not in doubt.

Apart from a few further observations, it is not necessary to descend into any detail because the submission of Counsel assisting the Royal Commission is

contrary to the plainly correct VCGLR position as amplified by Mr Glick QC's opinion (correctly understood).

The first point is that the definition of Gross Gaming Revenue uses the word "sum" and is expanded to include instruments that amount to payments of money (in contrast to the UK legislation which refers to "money or money's worth"). That being said, it is unlikely that a court would accept that a casino could avoid casino tax by receiving valuable property as a bet. The observations of Lord Halsbury LC in *Tennant v Smith* [1892] AC 150 at 157 are apposite:

the Act refers to money payments made to the person who receives them, though, of course, I do not deny that if substantial things of money value were capable of being turned into money they might for that purpose represent money's worth and be therefore taxable

Colourful examples exist where a gambler has lost all but a valuable piece of jewellery which the casino then agrees will have a value for one final bet. That agreed value may be taken as a cash wager received by the casino: see the diamond necklace discussion in the *London Clubs case*; cf. *J C Williamson's Tivoli Vaudeville Pty Ltd v Federal Commissioner of Taxation* [1929] HCA 33; (1929) 42 CLR 452

But that does not occur when Crown discharges its legal obligation to a Reward Member arising from the redemption of Loyalty Points. What, may it be asked, is the substantial thing of money value that Crown receives instead of money? It receives nothing at all.

Counsel assisting the Royal Commission appear to have misunderstood what is meant by the *receipt* of "money's worth". Money's worth is some valuable thing that *the recipient* can turn into money and so represents money received by the recipient.

So it may be said that a Reward Member, by accumulating Reward or Loyalty Points under his or her arrangements with Crown, acquires a contractual right to obtain from Crown a benefit of value to the Reward Member. That benefit itself be money's worth *to the Reward Member*, if assignable. Or it might otherwise give rise to the receipt *by the Reward Member* of money's worth depending on



the relevant benefit. For example, a personal free night at a Crown hotel free is not the receipt of money's worth, as *Tennant v Smith* itself illustrates, but a David Jones gift card would be the receipt of money's worth. To refer to Reward points as valuable "property" begs the question. They are given content only by the legal rights that they represent *as against Crown*. The Reward Member is given a right to a discount off any food & beverage bill, or a right to free cashable chips, or a right to a free bet on the pokies etc. When the Reward Member exercises a contractual right to have a free bet on the pokies due to having an accumulation of Reward points, Crown must allow that to happen. This involves it preparing the EGM in a certain way by "loading" the EGM with special Pokie Credits; Crown is merely discharging its contractual *obligation* to allow the Reward Member to place free bets if it wishes.

Crown is not *receiving* money's worth by discharging its obligation to permit a Reward Member to have a free bet. The idea is nonsense. Crown does not receive Loyalty Points "as substantial things of money value capable of being turned into money"; they simply do not exist in Crown's hands at all. The same point is made in the *London Clubs case* (at [91]):

"Money's worth" in section 11(10)(a) refers to real economic value to which the banker has access and which therefore can add to his profits. It does not include value to which only the gambler has access. Hence, it does not include the putative exchange value for the gambler of selling a Non-Neg to a third party who wants to gamble. Even if the Non-Neg is assignable, this is not value to which the banker has access in any real sense. If the banker wants to sell chips to another gambler, he will sell him regular chips.

This reasoning applies *a fortiori* to Reward or Loyalty Points. Their "exchange" by a patron for Pokie Credits is not an exchange in the sense of a barter of actual property that each party *receives* from the other, as suggested several times by Counsel assisting the Royal Commission. As Professor Hanbury once pointed out:

Looseness of language may lead to looseness of thinking, and looseness of thinking to a decision round which criticisms subsequently rage and will not be checked.

The Reward or Loyalty Points earned by the patron represent Crown's contractual liability to allow the patron to make free bets on the pokies. By loading Pokie Credits onto an EGM Crown is discharging that liability. Crown is no closer to any real sum of money or money's worth from the conduct or

playing of games at the casino where a Reward member actually makes a free bet, let alone readying an EGM to allow that to happen. That argument is not evident in the VCGLR letter or in Mr Glick QC's opinion, and could not be seriously put to a Court.

With compliments  
Personal Information



**M L Robertson QC**

28 July 2021

**RE: VICTORIAN CASINO TAXES**  
**EX PARTE: CROWN RESORTS LIMITED**

## Further Supplementary Opinion

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Attn: Fiona Moore, Legal Practitioner Partner, EY

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**Ground Floor, Wentworth Chambers**  
**180 Phillip St**  
**Sydney NSW 2000**

**Personal Information**

**Level 27 Chambers**  
**Hitachi Building**  
**239 George St**  
**Brisbane QLD 4000**

**Personal Information**