ROYAL COMMISSION INTO THE CASINO OPERATOR AND LICENCE

FINAL SUBMISSIONS OF THE VICTORIAN COMMISSION FOR GAMBLING AND LIQUOR REGULATION

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PART 1 INTRODUCTION

The structure of these submissions and executive summary

1. These are the written submissions of the Victorian Commission for Gambling and Liquor Regulation (**VCGLR**) to the Royal Commission into the Casino Operator and Licence (**Commission**).

2. The VCGLR acknowledges that the Minister for Consumer Affairs, Gaming and Liquor Regulation (**Minister**) has commissioned a separate review to advise on the necessary structural and governance arrangements to casino regulation in Victoria (**Regulatory Review**). The VCGLR is committed to implementing the Commission's recommendations and stands ready to work within any reformed regulatory framework adopted following the Regulatory Review. In the interim, these submissions are made by reference to the existing regulatory framework for casino regulation in Victoria.

3. These written submissions are structured as follows:

4. **Part 2** addresses the question of Crown's suitability. In that Part, we outline:

    a. the approach that the VCGLR must take when considering Crown Melbourne's suitability when undertaking its review and monitoring functions under the *Casino Control Act 1991* (Vic) (**Act**); and

    b. the implications arising from the Commission finding that Crown Melbourne is unsuitable to continue to hold the casino licence.

5. For the reasons set out in Part 2, the VCGLR does not take a position as to whether Crown Melbourne is currently suitable to continue to hold the casino licence or whether it is in the public interest for Crown Melbourne to hold its casino licence. However, the VCGLR submits that:

    a. if the Commission ultimately recommends that the casino licence should be cancelled, it would be preferable for the Commission to also recommend that there be legislative change to give effect to that recommendation without the need for the VCGLR to take disciplinary action afresh;

    b. on the other hand, if the Commission concludes that Crown Melbourne is currently not suitable but is capable of returning to suitability, in fulfillment of its terms of reference the Commission should identify what action is required for Crown Melbourne to become a suitable person to continue to hold the casino licence under the Act. There are two aspects to this:

        i. First, it is preferable for the Commission to specify the steps that Crown Melbourne must take to achieve suitability. At this stage there is no clarity

about what this may involve, because Counsel Assisting have not proposed a clear path to suitability in their submissions; and

ii. Second, the Commission should make recommendations to enable the effective supervision of Crown's implementation of its reform process.

6. In relation to supervision, Counsel Assisting have proposed that an independent monitor be appointed to scrutinise the reform process. The VCGLR makes the following observations about this proposal:

i. First, for such a proposal to be successful, there must be clarity about what is to be monitored. This is because the powers and role of the monitor need to be tailored to the reform process that it is to be entrusted with supervising. This underscores the importance of the Commission specifying a path to suitability if it finds that Crown is capable of returning to suitability.

ii. Second, any monitor must be independent from Crown, but it need not and, in the VCGLR's submission, should not be independent of the VCGLR. The monitor may be an outsourced provider (or providers) with appropriate resources and expertise in the areas which require reform for Crown to return to suitability. However, the VCGLR submits that the monitor should report to the VCGLR and receive its powers by way of delegation from the VCGLR. This would ensure that there is no unnecessary duplication and the work undertaken by regulator and monitor is collaborative and complementary. Information and intelligence about Crown Melbourne's reform activities should be appropriately captured and retained for the regulator's future use and to supplement and develop the regulator's expertise.

iii. Third, a related observation is that the VCGLR is presently able to nominate a person to assist or advise it in the performance of its functions under the Act. Using this power, the VCGLR could engage experts such as an expert to undertake a forensic review of Crown's anti-money laundering reform agenda. With legislative enhancements, this person could perform a broader role.

iv. Finally, any legislative amendment to establish a monitor to supervise Crown's reform process should contain provision for Crown to fund the costs of the monitor. Crown should also fund the cost of any person nominated by the VCGLR to assist it in the performance of its functions.

7. A further option that the Commission may wish to consider if it finds that Crown is presently unsuitable but capable of returning to suitability is a recommendation that the VCGLR use its existing powers under the Act to suspend the casino licence and appoint a manager to operate the casino temporarily, while Crown undertakes the reform steps necessary to become a suitable person to continue to hold the casino licence under the Act. It would be preferable for the Commission to also recommend legislative change to give effect to that recommendation without the need for the VCGLR to take disciplinary action afresh.

8. **Part 3** contains a contextual overview of other recent suitability assessments that have been undertaken in respect of Crown: the VCGLR's sixth casino review and the Bergin Inquiry.

9. **Part 4** sets out the VCGLR's submissions about the relationship between Crown and the VCGLR. The VCGLR submits that Crown has failed to conduct itself in a manner that is open and transparent with the VCGLR. On the contrary, its approach to the VCGLR has been characterised by conduct ranging from the casually recalcitrant through to the overtly belligerent and threatening. Indeed, it is a reflection of the depth of Crown's routine subterfuge that the extent of it has only become apparent to the VCGLR through evidence that has come to light before the Commission as a result of its use of coercive powers. Crown's approach to its relationship with the VCGLR has made the VCGLR's task of regulating Crown unnecessarily challenging. This is particularly so because of the limited confines of the VCGLR's legislative powers and financial resources and in circumstances in which the VCGLR is required to apply a risk-based approach to regulation of the casino operator. Regrettably, Crown's attitude has meant that it has resisted the many opportunities it has been presented with to self-reflect on the need for reform. There has been a clear pattern of Crown complying with the form but not the substance of the VCGLR's recommendations.

10. The VCGLR's assessment of Crown's relationship with it is based on evidence before the Commission of:

    a. Crown's failure to co-operate with the VCGLR's China arrests investigation by:

        i. giving a misleading presentation to the VCGLR in August 2017 (at around the time that Crown's staff were convicted in China);

        ii. the general approach to document production in the course of the China arrests investigation, including hiding behind claims of legal professional privilege, and the effect this had in delaying the VCGLR's consideration of the matter; and

iii. Crown's failure to make the same concessions that it eventually made in the Bergin Inquiry.

b. Crown's failure to co-operate in the implementation of the sixth casino review recommendations, especially in relation to recommendation 17 (which was directed to the risk that players were using junket operators as a means of avoiding anti-money laundering measures) by:

i. accepting the recommendation, without reservation, but then disingenuously proceeding to seek "clarification" and delaying in commencing implementation;

ii. frustrating the VCGLR's attempts to obtain clarification including by failing to respond to correspondence from the VCGLR;

iii. misleading the VCGLR about the nature and extent of Crown's engagement with AUSTRAC;

iv. obfuscating by focusing on a broader Crown Anti-Money Laundering project and the strict wording of the recommendation rather than compliance with the plain intention of the recommendation; and

v. inappropriately (or as Counsel Assisting put it, "appallingly") threatening to "call the Minister".

c. Crown's failure to co-operate with the VCGLR's disciplinary action in respect of certain junket operators by adopting an approach to the disciplinary action that was contrary to the representations that had been made by Helen Coonan, in December 2020.

d. Crown's concealment of its underpayment of tax, including:

i. "the improper introduction and concealment of…deductions"[1] in 2011 and 2012;

ii. the failure to act in accordance with legal advice it had received that certain deductions should not be made;

iii. the chaotic and ineffective handling of the issue by Crown in the context of its response to the Commission, including the apparent failures of both Ms Coonan and Xavier Walsh to appreciate the importance of the matter; and

[1] Closing submissions of Counsel Assisting the Commission, July 2021, COM.0500.0001.0380 at 82.

iv. the extent to which, even as at the date of these written submissions, Crown remains uncertain about the quantum of the tax that it has underpaid and the extent to which improper deductions may have also been made.

e. Crown's failure to disclose to the VCGLR a number of potential breaches of the Act which it disclosed to the Commission in response to compulsory notices.

11. **Part 5** sets out the VCGLR's response to Counsel Assisting's submissions on areas for potential legislative amendment. The VCGLR submits that a more rigorous process should be available for conducting both periodic suitability reviews and general investigations, than is currently available to the VCGLR. For example, the evidence has shown that the VCGLR's effectiveness has been hampered by its inability to compel the production of documents over which Crown has claimed legal professional privilege. Further powers and funding are necessary for the VCGLR to undertake both an adequate assessment of suitability on a periodic basis and also adopt the more intensive style of regulation that is now called for. This may include legislative amendment providing for:

a. a provision in the Act modelled on section 32 of the *Inquiries Act 2014* (Vic) providing for conditional abrogation of legal professional privilege in respect of the production of documents in response to a notice;

b. powers to require the casino licensee to retain independent experts requested or approved by the VCGLR and on terms approved by the VCGLR; to provide such experts with direct access to Crown's information systems; and for the VCGLR to be provided with access to unredacted versions and all of the versions of their reports. This would provide the VCGLR with the benefit of the views of skilled experts who have access to the necessary information and can effectively use that information;

c. powers which could allow the VCGLR to take disciplinary action against the casino licensee for a failure to properly implement any recommendations that are made in the course of any periodic suitability review;

d. a requirement that the casino licensee maintain breach registers and report breaches and likely breaches to the VCGLR as they occur, in the same way that Australian Financial Services (**AFS**) licensees are required to under section 912D of the *Corporations Act 2001* (Cth);

e. a power to direct the casino licensee to provide a written statement to the VCGLR containing specified information about the business being conducted by the licensee or its representatives, to complement the powers currently conferred by

section 26 of the Act which provide for the casino licensee to provide "information" and "records";

f. the power in section 26 of the Act to be enhanced to enable examination of people on oath or affirmation;

g. the types of protections that are afforded to "whistle blowers" as contained in Part 9.4AAA of the *Corporations Act 2001*, to facilitate and encourage Crown staff to report concerns to the VCGLR;

h. powers analogous to those that exist in New South Wales requiring the casino licensee to fund disciplinary investigations and reviews;

i. powers to compel and/or accept and enforce undertakings from the casino licensee and its associates similar to those which apply in respect of associates of the licensee pursuant to section 28A(4A) of the Act, section 133F of the *Liquor Control Reform Act 1998* (Vic) and in respect of ASIC's regulatory functions pursuant to section 93AA of the *Australian Securities and Investments Commission Act 2001* (Cth);

j. a positive duty to be imposed on Crown Melbourne to ensure that its operations are conducted efficiently, honestly and fairly. Drawing further upon the AFS regime, the objects of the Act and the evidence at this Commission, the VCGLR submits that any positive duty that is imposed should not only include a general duty, but should also include specific duties to address deficiencies in the statutory regime as identified in the evidence before this Commission. These are detailed in Part 5.3 below;

k. equivalent direct obligations to be imposed on the directors and associates of the casino operator, a breach of which would be an express ground to terminate a relevant associateship; and

l. enhanced powers for the VCGLR which ensure that Crown cannot deploy Commonwealth secrecy provisions that exist in anti-money laundering and counter-terrorism financing (**AML/CTF**) legislation as a tool to avoid producing the information the VCGLR needs to properly regulate Crown.

12. In **Parts 5.5-5.7**, we also outline the VCGLR's reservations about some of Counsel Assisting's proposals that:

a. the VCGLR appoint a director to Crown's board;

b. the VCGLR be provided with the power to license junkets; and

c. a shareholder's interest in Crown Melbourne should not exceed 5%, whether by direct interest or "look through".

13. **Part 6** addresses certain other concerns raised by Counsel Assisting.

14. **Part 7** sets out the Conclusion to these submissions. First, the VCGLR reiterates that it has and will continue to cooperate with this Commission. Second, the VCGLR stands ready, once properly resourced and with its powers enhanced following legislative amendment to undertake the seventh casino review and continue its role in monitoring the casino and its associates.

PART 2 CROWN'S SUITABILITY AND ITS IMPLICATIONS

Part 2.1 The requirement of "suitability" under the *Casino Control Act 1991* (Vic)

15. The "suitability" of Crown Melbourne and its associates are matters that the VCGLR is required to consider in the course of:

    a. assessing applications made under section 9 of the Act, which require an assessment of whether:

       > … the applicant, and each associate of the applicant… is a suitable person to be concerned in or associated with the management and operation of a casino.

    b. conducting the reviews pursuant to section 25 of the Act, which require an assessment of:

       > whether or not the casino operator is a suitable person to continue to hold the casino licence

    c. monitoring if associates remain suitable.[2]

16. There is no definition of "suitable person" in the Act, nor is the concept of "suitability" explored. Although "suitable" is of potentially wide meaning, its legislative context supplies "sufficient precision".[3] That context includes the purposes of the Act, the objects of the VCGLR under the Act, and the provisions of the Act that guide the VCGLR in the exercise of its powers. The purposes and objects of the Act include:

    a. ensuring that the management and operation of casinos remains free from criminal influence or exploitation; and

    b. ensuring that gaming in casinos is conducted honestly.[4]

17. The object of the VCGLR under the Act is to maintain and administer systems for the licensing, supervision and control of casinos, for the purposes of achieving these two objects of the Act.[5] In addition, it is also an object of the VCGLR to foster responsible gambling in casinos.[6] As the VCGLR observed in its most recent suitability review of Crown, "the care with which Crown Melbourne offers its gambling product to patrons, especially those who are most vulnerable to harm from gambling, also reflects on its general suitability to hold the casino licence".[7]

18. In these circumstances, the factors that the decision maker is required to consider must be determined by implication from the subject matter, scope and purpose of the Act.[8] It

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2 Section 28A of the Act.
3 *Cunliffe v the Commonwealth* (1994) 182 CLR 272 at 302 (Mason CJ).
4 Section 1(a)(i) and (ii) of the Act.
5 Section 140(a) and (b) of the Act.
6 Section 140(c) of the Act.
7 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, COM.0005.0001.0776 at .0863.
8 *Director of Public Transport v XFJ* [2010] VSC 319 at [51].

follows that the concept of suitability should be understood by reference to the purpose for which the assessment is being made, including to the extent that such purpose is specified by section 9 of the Act. It is suitability to hold a casino licence, and suitability to be concerned in or associated with the management and operation of a casino, which are relevant.

19. Section 9 provides substantial guidance as to the matters to be examined when considering suitability.

    a. In relation to the casino operator and its associates, these are whether:

        i. they are persons of good repute, having regard to character, honesty and integrity;

        ii. they are of sound and stable financial background; and

        iii. their business associations are appropriate having regard to character, honesty and integrity and whether they have undesirable or unsatisfactory financial resources.[9]

    b. In relation to the casino operator alone, these are whether:

        i. it has a satisfactory ownership, trust or corporate structure;

        ii. it has financial resources that are adequate to ensure the financial viability of the casino and has the services of persons who have sufficient experience in the management and operation of a casino;

        iii. it has sufficient business ability to maintain a successful casino; and

        iv. each director, executive officer and secretary and any other relevant officer is a suitable person to act in that capacity.[10]

20. The above features indicate that a suitable person to be concerned in or associated with the management and operation of a casino for the purposes of section 9 of the Act must at least be a fit and proper person and be operationally capable. In making its five yearly assessments of Crown's suitability, the VCGLR has construed the phrase "suitable person" in section 25 in the same way. It takes into account any matters relevant to a person being fit and proper and operationally capable, in determining whether a person is a suitable person to continue to hold the casino licence. When assessing this question, the VCGLR looks to two of the key purposes set out for the system of licensing, supervision and control in the Act:

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9 Sections 9(2)(a), (b) and (f) of the Act. See also section 28A of the Act where the same matters are required to be considered by the VCGLR in its ongoing monitoring of an associate's suitability.

10 Sections 9(2)(c), (d), (e) and (g) of the Act.

a. ensuring that the management and operation of casinos remains free from criminal influence or exploitation; and

b. ensuring that gaming in casinos is conducted honestly.

Part 2.2 VCGLR makes no submissions on Crown's suitability

21. By its terms of reference, this Commission is required to make an assessment of Crown Melbourne's suitability to continue to hold Victoria's only casino licence. It is also required to determine if it is in the public interest for Crown Melbourne to continue to hold the casino licence.

22. These are tasks normally entrusted to the VCGLR under the Act. The VCGLR is required to assess Crown's suitability at intervals not exceeding 5 years.[11] The last assessment was made in 2018 and covered the period 1 July 2013 to 30 June 2018. The next review must be completed by June 2023. In addition, the VCGLR can suspend or cancel the casino licence as part of disciplinary action under section 20 of the Act. Finally, the suitability of associates of the licensee is monitored by the VCGLR under section 28A of the Act.

23. The VCGLR notes the submissions by Counsel Assisting that it is open to the Commission to conclude that Crown Melbourne is not suitable and that it is no longer in the public interest for it to hold the casino licence.[12]

24. The VCGLR makes no submissions in reply about these matters and wishes to explain briefly why that is the case. There are three reasons.

25. The first reason is that, this Commission having been established to answer the very questions that the VCGLR would broadly ordinarily be required to address in its periodic review, the VCGLR considers that it is inappropriate for it to express a view. The Government has made a clear decision that it wants to be advised by this Commission equipped as it is with the extensive powers conferred by the *Inquiries Act 2014* (Vic), powers which exceed those of the VCGLR in a number of important respects, and with significantly greater resources than the VCGLR.[13]

26. The second reason is related to the first. It is possible that the VCGLR will be called upon to consider the suitability of the licensee and its associates when this Commission concludes. In the absence of legislative amendment, as it presently stands, whatever recommendations this Commission makes regarding suitability can be implemented only

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11 Section 25 of the Act.

12 Closing submissions of Counsel Assisting the Commission, July 2021, COM.0500.0001.0380 at chapters 14 and 15.

13 See discussion of the VCGLR's powers in Part 5 below.

by the VCGLR. It would be inappropriate for the VCGLR to express a view now in circumstances where it could later be said that it had pre-judged any such questions.

27. Finally, the VCGLR has been privy to most, but not all, of the evidence that has been adduced in this inquiry. Some of the evidence has been the subject of non-publication orders.

28. For those reasons, the VCGLR does not make any submissions about whether Crown Melbourne is presently suitable to hold the casino licence. Nor does it make any submissions about whether it is in the public interest for Crown Melbourne to continue to hold the Melbourne casino licence.

Part 2.3 What are the implications of a finding of unsuitability?

Cancellation or suspension

29. Having submitted that Crown is not presently suitable to hold the casino licence, Counsel Assisting submit that the Commission has a choice between:

    a. recommending that the casino licence be cancelled; or

    b. making recommendations facilitating the path back to suitability.

30. There is at least one further option that is not examined in detail in the submissions of Counsel Assisting. The casino licence could be suspended and a manager appointed to operate the casino temporarily pursuant to section 22 of the Act. Under section 22(6), any such manager is deemed to be the holder of the casino licence, assumes full control and responsibility for the business of the casino operator in respect of the casino and, importantly, may employ such staff as may be required to operate the casino. Further, while the casino licence is under the control of the manager, the VCGLR has the power to determine what proportion of the net earnings of the casino are paid to consolidated revenue, and what proportion are paid to Crown.[14] We note that Crown has indicated that certain outcomes of this Commission may impact on its solvency. The interaction of the manager's powers under section 22 of the Act with the *Corporations Act 2001* administration powers may need to be an issue for consideration.

Need for legislative amendment to avoid duplication

31. In the absence of legislative amendment by Parliament, a recommendation by this Commission that the casino licence be cancelled or suspended could only be implemented by the VCGLR taking disciplinary action under section 20 of the Act. Such action may only be commenced if one or more of the statutory grounds identified in

[14] See section 22(8) of the Act.

section 20(1) are present. There is a question about whether a finding by this Commission, without more, would be a sufficient basis for action under section 20.

32. Even if the answer to that question is yes, there is sufficient basis for action, the section 20 process would be inefficient, would duplicate the process to date, and potentially be lengthy and costly. The VCGLR would have to examine the evidence of suitability afresh and potentially consider different or somewhat more limited evidence. Such an inquiry by the VCGLR would necessarily proceed on a different evidentiary basis, given the VCGLR has not been able to access all of the evidence in this Commission and would not have the powers to do so. As the evidence before this Commission reveals, the suitability landscape is constantly changing. New directors and senior officers are being appointed, and new policies, procedures and systems are being implemented by Crown. Further, this process would occur in circumstances where the VCGLR currently has fewer powers than a standing Royal Commission.

33. The VCGLR submits that the public interest is not served by it having to engage in a further lengthy and costly legal process to give effect to a recommendation or finding of this Commission that the licensee is unsuitable, or that it is not in the public interest for Crown Melbourne to continue to hold the casino licence or that the licence be cancelled or suspended, and re-determine what should occur with the casino licence.

34. The VCGLR notes the State's intention to legislate to enable the VCGLR to give effect to the findings of this Commission. The Premier when announcing this Commission also announced the Government's intention to give the VCGLR whatever powers are necessary to give effect to the findings of this Commission. The terms of reference also state that the Commission is to inquire into and report on whether it considers changes to the relevant Victorian legislation are necessary for the State to address the findings and implement the recommendations of this Commission.

35. Under paragraph 12 of its terms of reference, this Commission is to have regard to the most practical, effective and efficient way to address its recommendations. Having regard to this, if this Commission recommends that Crown's licence should be cancelled or suspended, it would be preferable for it also to recommend that there be legislative change to give effect to that recommendation without the need for the VCGLR to engage in the disciplinary action process.

Seventh casino review and legislative reform

36. As Counsel Assisting correctly observe, the next test of whether Crown is suitable will be the VCGLR's seventh casino review which must be completed by June 2023. Counsel Assisting express concerns about the thoroughness of such a review process given the limited powers of the VCGLR under the current relevant empowering legislation

compared to those of this Commission. The VCGLR shares those concerns. It submits that the Commission should recommend that the VCGLR be given the powers of a standing Royal Commission to carry out its vital and complex work of overseeing Crown's operations. The VCGLR addresses its proposed legislative amendments further in Part 5 below.

Supervision of Crown required

37. If, on the other hand, the Commission concludes that Crown Melbourne is capable of returning to suitability, the VCGLR agrees with Counsel Assisting that Crown should not be left to implement its reform process unsupervised.

Statutory monitor

38. Counsel Assisting also submit that there should be a statutory monitor with extensive powers to scrutinise the reform process. The VCGLR does not oppose the concept of a statutory or independent monitor, but the VCGLR considers it important to establish the powers and role of the monitor and how it will report to the regulator.

39. The VCGLR considers that it would be appropriate for the monitor to have extensive powers and to report to the VCGLR on Crown's achievement of its reform process to inform the VCGLR's assessment of Crown's suitability. This would ensure that the monitor fulfills its role of monitoring Crown's reform process and the VCGLR is then enabled to perform its role to assess Crown's suitability to hold the casino licence. Such reporting would also ensure that information and intelligence about the casino operator is appropriately captured and retained for the future, when a monitor may no longer be required. The legislation should ensure Crown pays for the monitor. The VCGLR addresses the concept of monitors further in Part 5 below.

Expert appointed under section 29(3) of the VCGLR Act

40. The VCGLR is presently able to nominate a person to assist or advise it in the performance of its functions under the *Victorian Commission for Gambling and Liquor Regulation Act 2011* (Vic) (**VCGLR Act**).[15] Using section 29(3) of the VCGLR Act, the VCGLR could engage various experts – such as an independent expert to undertake a forensic review of Crown's anti-money laundering reform agenda, and others to monitor Crown's implementation of other reforms. This section could be expanded so that such a person (or persons) would be equipped with the necessary and appropriate authority and powers, and would share information with and remain answerable to and report to the VCGLR. The legislation should also clearly enable the VCGLR to be fully compensated by Crown for its costs in engaging such experts.

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15 Section 29(3) of the VCGLR Act.

Recommendations on any desired path to suitability

41. If the Commission considers that Crown Melbourne is not a suitable person, and the Commission reports, as is required by the terms of reference, on what action (if any) would be required for Crown Melbourne to become a suitable person, the VCGLR welcomes the Commission's observations as to:

    a. the areas for reform, and any approaches that can most effectively identify areas for reform, and
    b. the methods for the VCGLR to most effectively evaluate Crown's actions and reform outcomes, including identifying any key priorities and timelines.

42. The VCGLR considers that these observations will be relevant to the Commission's fulfillment of its terms of reference, which require the Commission to identify what action is required for Crown Melbourne to become a suitable person to continue to hold the casino licence under the Act.[16]

[16] Letters Patent, [10(e)].

PART 3 PREVIOUS ASSESSMENTS

Part 3.1 The Sixth Casino Review

43. The VCGLR's report of the sixth periodic review of the Melbourne casino operator undertaken pursuant to section 25 of the Act (**Review Report**) assessed the period from 1 July 2013 to 30 June 2018. That review affirmed:[17]

    a. the casino operator's suitability;

    b. its compliance with key gambling laws;

    c. its compliance with the casino transaction documents; and

    d. that it was in the public interest that the casino licence should continue in force.

44. Importantly, the Review Report identified a number of areas for improvement, predominantly with respect to the casino operator's corporate governance and its approach to responsible gambling, which were addressed through twenty recommendations.[18] To varying degrees, each of the issues highlighted in the recommendations of the sixth review has been a focus of attention by the Commission.

45. Finally, the Review Report notes the importance of trust in the casino operator providing assurances as to how it will conduct itself, in light of the risk-based regulatory approach followed by the VCGLR.[19] The "significantly less prescriptive" regulatory model currently in place was also said to impose an obligation on the casino operator to "understand the community's regulatory expectations and deliver against them".[20] As the submissions of Counsel Assisting document,[21] much has occurred since this report was written to erode that trust. It is apparent that Crown did **not** understand the VCGLR's and the community's regulatory expectations and it did **not** deliver against them.

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17 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, COM.0005.0001.0776 at .0787.

18 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, COM.0005.0001.0776 at .0791-.0794.

19 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, COM.0005.0001.0776 at .0790.

20 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, COM.0005.0001.0776 at .0790.

21 Closing submissions of Counsel Assisting the Commission, July 2021, COM.0500.0001.0380 at chapter 4.

Part 3.2 The Bergin Inquiry

46. The Bergin Inquiry reported on 1 February 2021. It made findings that relevantly included that:

    a. another company in the Crown group, Crown Sydney Gaming Pty Ltd, is not a suitable person to continue to give effect to the Barangaroo restricted gaming licence; and

    b. Crown Resorts Ltd is not a suitable person to be a close associate of a licensee.

47. Findings and observations of the Bergin Inquiry that are presently relevant were that:

    a. There were problems with the application of the risk management framework and deficiencies in the framework itself.[22]

    b. Under the controlling shareholder protocol, James Packer continued to be provided with Crown Resorts Ltd's confidential information, and to heavily influence important decisions affecting the operations of the company and its employees and officers, even though he had no position in the company at the time.[23] In doing so, Mr Packer was not accountable to anyone:[24]

> Mr Alexander was reporting to Mr Packer. Mr Barton was reporting to Mr Packer. Mr Felstead was reporting to Mr Packer. Mr Johnston was reporting to Mr Packer.
>
> Mr Packer did not report to anyone.

    c. Consolidated Press Holdings Pty Ltd (**CPH**) had entered an agreement to sell Crown Resorts Ltd shares to Melco at a time when Michael Johnston (a director of both CPH and Crown Resorts Ltd) had access to price sensitive information about Crown Resorts Ltd.[25]

    d. When the media broke the stories about the China arrests, junket relationships and money laundering through the Southbank and Riverbank accounts:

        i. the Board was given a false impression by its senior executives and lawyers that there was a lack of foundation to those allegations;[26]

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22 Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at 137 [18].

23 Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at 170 [125].

24 Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at 182 [187]-[188].

25 Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at 190 [43]-[45].

26 Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at 199 [18].

ii. those allegations needed serious independent assessment, which did not occur before the Board went on the offensive to defend its operations;[27]

iii. the Board's public response contained various errors and ill-founded assertions in the course of defending Crown's actions and improperly attacked the integrity of the relevant journalists, and that of Jenny Jiang (one of the employees that had been imprisoned in China as a result of her work for Crown).[28]

e. The mishandling of the money laundering allegations and governance oversight of the Southbank and Riverbank accounts prior to the Board going on the offensive was described in a manner that closely replicates the governance patterns revealed in this Commission:

i. the public response to the money laundering allegations conveyed the message that Crown denied that it had facilitated money laundering or that it had turned a blind eye to that activity;[29]

ii. the Board was led into a false sense of comfort that its AML/CTF program was "comprehensive" by "a series of steps and decisions infected by extraordinarily poor judgment";[30]

iii. warning signs indicated that money laundering was or was likely to be occurring in the Southbank and Riverbank accounts from at least January 2014;[31]

iv. after an urgent enquiry on 10 July 2018, and an "inexplicable delay" in responding three months later, Crown provided misleading information to the New Zealand bank ASB Bank Limited (**ASB**), on 2 October 2018, and ASB eventually closed its Southbank account on 22 January 2019. Neither ASB's concerns, nor the closure of the account, were raised with the Crown Resorts Ltd Board or with its Risk Management Committee;[32]

v. after the Commonwealth Bank of Australia (**CBA**) raised concerns that its Southbank and Riverbank accounts had been used for money laundering on

27 Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at 199 [19]-[20].
28 Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at 199-202 [21]-[30].
29 Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at 206 [10].
30 Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at 233-234 [165]-[166].
31 Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at 210 [38].
32 Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at 216-219 [69]-[80].

10 December 2018, it notified Crown on 4 October 2019 that it would close the accounts. CBA's concerns were eventually raised with the Risk Management Committee and the Board in December 2019;[33]

vi. from 18 November 2020 Crown conceded on the basis of the report of Initialism that it is more probable than not that money laundering occurred on the various Southbank and Riverbank accounts as a result of cuckoo smurfing activity.[34]

48. The Bergin Inquiry concluded that the reason Crown was unsuitable was because of its "poor corporate governance, deficient risk management structures and processes and a poor corporate culture".[35]

49. When considering "suitability", the Bergin Report noted that the issues identified were "not historical deficiencies" but rather that there were "very clear and present problems",[36] and that there were "present and very deep corporate cultural problems within Crown".[37] The Bergin Report also noted that at the conclusion of the public hearings in that inquiry, Crown was still not able to detect problems for itself and remedy them.[38]

33 Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at 220-221 [85]-[92].
34 Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at 227-228 [126].
35 Exhibit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at 568 [8].
36 Exhibit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at 549 [45].
37 Exhibit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at 552 [52].
38 Exhibit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at 567-568 [6].

PART 4 THE RELATIONSHIP BETWEEN CROWN AND THE VCGLR

Part 4.1 An open and transparent relationship?

50. It was apparent to Steven Blackburn, Crown's newly appointed Group Chief Compliance and Financial Crime Officer, that Crown had an "aggressive approach to the relationship [with the VCGLR]".[39] The evidence that was presented to him was that there had once been a "collaborative conducive relationship" and then "the relationship had soured".[40] He put this down to the arrival of Joshua Preston, at which time Crown's treatment of the VCGLR "became aggressive".[41]

51. The VCGLR is the casino operator's primary regulator in Victoria, and is therefore a critical stakeholder to an organisation like Crown.[42] The relationship between Crown and the VCGLR is centrally relevant to an assessment of Crown's culture.[43] The hallmarks[44] of a positive relationship with a regulator which suggest a strong corporate culture include candour, transparency, honesty, cooperation, proactive correspondence, and prompt responses to requests for information and documents.[45]

52. In contrast, Crown's approach to its engagement with the regulator has been to withhold information, avoid disclosure of potential breaches and then to deny any shortcomings that are eventually discovered by the regulator. Through the Commission it has come to light that in some instances Crown has intentionally hidden important matters from the VCGLR.[46] Subterfuge appears to have been a routine approach taken by Crown staff in their dealings with the regulator. This is evident in the casually recalcitrant note by Crown's audit manager when discussing the reclassification of Crown's Gaming Machines Food Program to be part of the Bonus Jackpot: "we are of the opinion that the proposed change will not be noticed by the VCGLR".[47]

53. The current legislative regime is reliant in part on Crown self-regulating in important areas, including through the use of Internal Control Statements (**ICS**), approved for the purposes of sections 121 and 122 of the Act. This regulatory model can only succeed

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39 T3068:37 (Blackburn).
40 T3069:1-4 (Blackburn).
41 T3069:1-4 (Blackburn).
42 T1958:4-18 (Whitaker).
43 T1957:34 – T1958:2 (Whitaker).
44 See also Exhibit RC0477 Elizabeth Arzadon Expert Opinion regarding Cultural Change at Crown Melbourne, June 2021, COM.0007.0001.0178.
45 T1958:20 – T1959:4 (Whitaker).
46 Examples include the Bonus Jackpot issue (see Exhibit RC0360 Memorandum regarding Proposal Classifying Gaming Machines F&B Promotional Program to be part of Bonus Jackpot, 22 March 2012, CRW.512.139.0089) and the China presentation to the VCGLR (see Exhibit RC0001d Crown Presentation to the Victorian Commission for Gambling & Liquor Regulation, August 2017, VCG.0001.0001.9002).
47 Exhibit RC0360 Memorandum regarding Proposal Classifying Gaming Machines F&B Promotional Program to be part of Bonus Jackpot, 22 March 2012, CRW.512.139.0089.

where the regulated entity is open and transparent with its regulators. It cannot be said that Crown's relationship with the VCGLR was open and transparent.

Part 4.2 Crown's approach to implementation of the sixth review

54. Implementation of the recommendations contained in the Review Report has taken place in the years following its publication in June 2018.[48] Evidence was given by Jason Cremona about the implementation of recommendation 17 of the Review Report. This evidence is summarised in Counsel Assisting's submissions[49] and will not be repeated here. The VCGLR agrees with the submission that Crown's response to the recommendation is a "telling example of Crown's lack of respect and transparency in its dealings with the VCGLR".[50]

55. In addition, other evidence before the Commission about the implementation of recommendations 3, 6, 8 and 14 demonstrates that recommendation 17 was not an isolated example of Crown's approach. This evidence, which is summarised below, shows a clear pattern of conduct by Crown in its engagement with the regulator when implementing the Review Report:

    a. to take a literal approach to what was required by each recommendation, rather than looking to assist the regulator to achieve the substantive outcomes and spirit underpinning each recommendation;

    b. not to provide the VCGLR with information and expert reports unless and until the VCGLR directly asked for it; and

    c. to frame any remedial action taken as "enhancements" to avoid admitting past shortcomings.

56. In combination, these approaches by Crown made the VCGLR's regulatory task more difficult than it needed to be.

Recommendation 3

57. Recommendation 3 required Crown to assess the robustness and effectiveness of its risk framework and systems, including reporting lines in the chain of command, and upgrade them where required (assisted by external advice).[51] This recommendation was

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48 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, COM.0005.0001.0776 at .0791-.0794.

49 Closing submissions of Counsel Assisting the Commission, July 2021, COM.0500.0001.0380 at 61 [3.140] – 78 [3.262].

50 Closing submissions of Counsel Assisting the Commission, July 2021, COM.0500.0001.0380 at 79 [3.264].

51 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, COM.0005.0001.0776 at .0791.

made in the context of comments that Crown was not sufficiently capable of anticipating risks and addressing them when they arose.[52]

58. Anne Siegers, Crown Resorts Limited's Chief Risk Officer, confirmed that she had the role of addressing recommendation 3 on behalf of Crown.[53] Most of the elements in Crown's response to recommendation 3 were designed by her.[54] Crown's response to recommendation 3 was merely an assessment of the robustness of "the design" of the risk framework and systems, and not of the framework and system in operation or how it was embedded, despite what was said to the VCGLR.[55]

59. In February 2019, Crown retained Deloitte, which provided advice in the form of a Risk Framework Review in June 2019.[56] Cara Hartnett of Deloitte notes in her statement that Crown wanted a "high level, desktop advice and challenge on the design of the risk management framework" and that they did not want "an exhaustive or highly sophisticated review identifying what best practice is and all the gaps that they could have against that".[57] The limited nature of Crown's instructions to Deloitte set out in Ms Hartnett's statement are not reflected in the report itself, nor in any of the Crown's communications with the VCGLR about the report. Ms Hartnett gave evidence that she was aware that the scope of Deloitte's brief did not match the requirements of recommendation 3.[58] She had conveyed this limitation to Crown and her evidence was that Crown had understood it and was not concerned by it.[59]

60. Ms Siegers accepted that a review of the robustness and effectiveness of the risk framework and systems, as required by recommendation 3, is much broader than the desktop review undertaken by Deloitte.[60] However, Ms Siegers did not agree that what Crown had asked Deloitte to do did not satisfy the requirements of recommendation 3. The way she read that recommendation was that it did not require the external party to conduct the whole review, it merely required Crown to conduct that review with the assistance of external advice.[61] She said that she sought the assistance she thought she needed, which was advice on ensuring that the design of the elements that she was upgrading were adequate.[62] When Counsel Assisting suggested that the requirement of external advice was to ensure some objectivity in the assessment, Ms Siegers' evidence

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52 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, COM.0005.0001.0776 at .0845.
53 T1973:31-44 (Siegers).
54 T1981:34 – T1982:2 (Siegers).
55 T1987:44 – T1988:17 (Siegers).
56 Exhibit RC0183 Statement of Cara Hartnett, 16 April 2021, DTT.0000.0005.0054 at .0054 [6].
57 Exhibit RC0183 Statement of Cara Hartnett, 16 April 2021, DTT.0000.0005.0054 at .0054 [5].
58 T1886:5-22 (Hartnett).
59 T1886:24-35 (Hartnett).
60 T1981:12-15 (Siegers).
61 T1981:17-32 (Siegers).
62 T1981:17-32 (Siegers).

was that she was qualified to provide this objectivity because she was new to Crown and performing a "second line function", the purpose of which was to be objective.[63]

61. On 1 July 2019 Crown had written to the VCGLR asserting its compliance with the requirements of recommendation 3.[64] That letter does not mention Deloitte by name, or refer to any report, or reveal how late in the review process Deloitte had been briefed. It merely notes that Crown "sought advice from an external advisory firm on the major elements of the program".[65] The assessment of Crown's risk framework and systems took place between December 2017 and March 2018, without Deloitte's assistance, and Deloitte was only consulted after the "enhancement" program was designed by Crown.[66]

62. Crown's self-assessment of its risk framework and systems concluded that "risk was fundamentally well understood and managed within the business and operations" although conceded that there were "a number of opportunities for enhancements".[67] This letter is consistent with Crown's general approach to its communication about deficiencies alleged by the VCGLR, which is to deny that what is in place is deficient, while offering to introduce "enhancements" (the implication being that Crown is doing more than is necessary to meet the relevant standard by "enhancing" the current, already adequate, systems). In this way, Crown has historically avoided making concessions, while at the same time avoiding conflict with the regulator.

63. On 5 August 2019 the VCGLR's Licensing Division recommended to its Commission that the VCGLR agree that Crown has implemented recommendation 3 subject to being provided with a copy of the external advisor's executive summary and/or recommendations.[68] On 3 September 2019 the VCGLR made a direct request for the Deloitte report.[69] That request reflected the VCGLR's understanding that the Deloitte report had "informed the assessment of Crown's risk framework and systems".[70] To the extent that this overstated the role performed by Deloitte, it was not corrected by Crown.

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63 T1982:4-10 (Siegers).

64 Exhibit RC0189 Letter from Barry Felstead to Catherine Myers, 1 July 2019, VCG.0001.0001.0065.

65 Exhibit RC0189 Letter from Barry Felstead to Catherine Myers, 1 July 2019, VCG.0001.0001.0065 at .0002.

66 Exhibit RC0189 Letter from Barry Felstead to Catherine Myers, 1 July 2019, VCG.0001.0001.0065; T1981:34 – T1982:2 (Siegers).

67 Exhibit RC0189 Letter from Barry Felstead to Catherine Myers, 1 July 2019, VCG.0001.0001.0065 at .0065.

68 Exhibit RC0715 Crown Melbourne Responsible Gambling Code of Conduct Version 5, October 2016, VCG.0001.0001.0068.

69 Exhibit RC0194 Letter from Ross Kennedy to Joshua Preston, 3 September 2019, CRW.510.029.1861.

70 Exhibit RC0194 Letter from Ross Kennedy to Joshua Preston, 3 September 2019, CRW.510.029.1861.

64. Ms Siegers confirmed that Crown did not provide the VCGLR with a copy of the Deloitte report in its first letter reporting on compliance with recommendation 3.[71] Ms Siegers stated that, after discussing the matter with Mr Preston, she did not think it was a "requirement" of delivering recommendation 3 to provide a copy of the 2019 Deloitte report to the VCGLR, because the required outcome was that Crown seek assistance from external advisors, and they had done that.[72] This is illustrative of Crown's "don't ask, don't tell" approach to its engagement with the VCGLR. It is the antithesis of the open, constructive and transparent approach to be expected of a licensed entity.

65. In a letter of 13 September 2019 Crown provided the Deloitte report and stated that it had not originally provided the report to the VCGLR because Deloitte had not approved its release to the VCGLR, and it had taken until that time for the release to be approved through Deloitte's "various internal processes".[73] This explanation sits uncomfortably with the evidence given by Ms Hartnett. Her evidence was that she participated in a meeting with Crown on 27 March 2019 in which there was a discussion about the use of the 2019 Deloitte report and the potential for it to be provided to the VCGLR as part of Crown's response to recommendation 3.[74] Ms Hartnett's evidence was that Deloitte had no difficulty with providing the 2019 Deloitte report to the VCGLR and that it understood this was a probability.[75] Ms Hartnett gave evidence that Deloitte was not asked to consent to the provision of this report to the VCGLR until around August or September 2019.[76] Had her permission been sought earlier, she would have readily given it.[77]

Recommendation 6

66. Recommendation 6 required Crown to review its allocation of staffing resources to increase the number of work hours available to responsible gambling and intervention with patrons. The context was that VCGLR was not confident that Crown had sufficient staffing to proactively intervene early and offer assistance to persons at potential risk of harm.[78] Crown's implementation of this recommendation was explored with Sonja Bauer, the person in charge of responsible service of gambling (**RSG**) at Crown.

67. Ms Bauer was asked about how Crown arrived at the size of the increase in staff with RSG responsibilities. Ms Bauer's recollection was that this increase was decided upon

71 T1990:42-46 (Siegers).
72 T1991:1-23 (Siegers).
73 Exhibit RC1522 Letter from Joshua Preston to Ross Kennedy, 13 September 2019, VCG.0001.0001.0056.
74 T1896:23-34 (Hartnett).
75 T1897:6-21 (Hartnett).
76 T1897:6-21 (Hartnett).
77 T1905:41-45 (Hartnett).
78 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, COM.0005.0001.0776 at .0874.

without any analysis or documents being prepared by her.[79] Ms Bauer gave evidence that the staffing increase was discussed as a reaction to the VCGLR's review.[80]

68. Mr Blackburn's evidence was that when he first met with Ms Bauer, he asked her whether she had adequate resources and the gist of her response was that she did not have adequate staff numbers.[81]

69. It is difficult to reconcile Ms Bauer's evidence, and what she told Mr Blackburn, with what Crown said in its letter to the VCGLR dated 23 December 2019 about its implementation of recommendation 6:[82]

> In addressing the Recommendation, Crown completed a review of the resourcing of the Responsible Gaming Department and determined to increase its staffing compliment from 7 to 12. Upon completing the resourcing review, Crown was of the view that **this increase in resources adequately addressed the element of the Recommendation regarding having adequate staff available for intervention duties with patrons**. (emphasis added)

70. Whilst this letter was signed by Barry Felstead, Ms Bauer's evidence was that she was involved in preparing Crown's RSG responses to the Review Report, although they went out under the hand of Mr Felstead.[83] Although the above letter refers to a "review of the resourcing of the Responsible Gaming Department", and later to the "resourcing review", Ms Bauer's evidence was that before implementing recommendation 6, there was no study or any quantitative analysis completed by Crown to identify whether the 12 full-time equivalent RSG staff members were adequate to service the need.[84]

71. Once the issue of RSG became the focus of the Commission, Crown adopted a more rigorous process:

    a. Crown now proposes to increase its RSG staff by a further 14.25 full time equivalents;[85]

    b. Ms Bauer was asked to provide input into the increased staffing levels, which she did in writing, after she had consulted with the general managers of RSG in each property as to an "ideal complement" of staffing;[86]

79 T1170:36-45 (Bauer).
80 T1173:8-16 (Bauer).
81 T3073:1 – T3074:47 (Blackburn).
82 Exhibit RC0462x Letter from Barry Felstead to Catherine Myers, 23 December 2019, CRW.510.029.2969.
83 T2181:20-32 (Bauer).
84 T1175:26 – T1176:2 (Bauer).
85 T1176:12-20 (Bauer).
86 T1177:33-38 (Bauer).

c. Ms Bauer accepted that when staffing levels were increased to 12 after Crown had purported to implement recommendation 14, that this increased staffing level was less than ideal.[87]

72. The more recent report prepared by the Responsible Gambling General Managers suggests that even now, there are insufficient resources to apply the policies that Crown has in place.[88]

Recommendation 8

73. Recommendation 8 required Crown to develop and implement data analytics tools for all patrons to proactively identify patrons at risk of harm from gambling.

74. Mr Cremona gave evidence that there was "push back" from Crown in relation to recommendation 8.[89] This involved Crown providing the VCGLR with a heavily redacted expert report, which Crown eventually provided in unredacted form with no explanation of why it had been redacted.[90] It also appears that Crown provided the VCGLR with inaccurate information about what it had done to implement recommendation 8:

a. Crown had told the VCGLR when it purported to implement recommendation 8 that "the more accurate Play Period reporting will result in a member being approached *in the lead up to 12 hours* on site (where the member's longest continuous break from gaming has been less than 2 hours)".[91]

b. This was an incorrect description of the policy that Crown had put in place, which in fact only involves a responsible gambling assistant checking on carded customers when there has been 12 hours or more of continuous play.[92]

c. Importantly, the alerts sent by Splunk have nothing to do with time "on site",[93] contrary to what Crown told the VCGLR when it reported on its implementation of recommendation 8.[94]

Recommendation 14

75. Recommendation 14 required Crown to develop and implement a responsible gambling strategy focussing on the minimisation of gambling related harm to persons attending

87 T1178:5-22 (Bauer).
88 T2216:32 – T2220:3 (Bauer).
89 T244:23-36 (Cremona).
90 T245:8-21, T245:25-31 (Bauer).
91 T2187:38 – T2188:26 (Bauer) (emphasis added).
92 T2193:23-34 and T2194:4 (Bauer).
93 T2195:41 – T2196:47 (Bauer).
94 T2187:38 – T2188:26 (Bauer).

the casino, by 1 July 2019. The narrative following this recommendation in the report states that:[95]

> The strategy should provide opportunities for regular review of harm minimisation initiatives in response to research and in conjunction with external stakeholders such as the VRGF.
>
> In developing this strategy, Crown Melbourne should work with the VCGLR and VRGF to consider and assess the nature of intervention initiatives, and the risk of harm to the person in particular circumstances.

76. Crown did not work with the Victorian Responsible Gambling Foundation (**VRGF**) when it developed its responsible gambling strategy for the purposes of implementing recommendation 14.[96] The Chief Executive Officer of the VRGF, Shane Lucas, gave evidence that during the tripartite meetings with Crown and the VCGLR in relation to recommendations 10 and 11, the VRGF had indicated that it was willing and able to assist Crown with recommendation 14.[97]

77. Ms Bauer was not aware of Crown having consulted the VRGF in its development of the strategy required by recommendation 14.[98] She did not know why Crown had not consulted with the VRGF on something as important as the development of a strategy on gambling-related harm,[99] and agreed that there would be benefit to Crown in discussing the matter with a subject matter expert such as the VRGF.[100]

78. When confronted with the suggestion that Crown's approach to the implementation of the recommendations in the sixth review was to do exactly what the recommendation says and no more, Ms Bauer countered with the example that the VRGF had been approached with respect to recommendations 10 and 11.[101] However unlike recommendation 14 (where consultation with the VRGF is referenced in the surrounding commentary), those recommendations required consultation with the VRGF "in terms".[102] Ms Bauer accepted that one interpretation of these events was that where an RSG recommendation like recommendation 14 did not in terms recommend that there be consultation with the VRGF, it did not happen, and that Crown had taken a very literal approach to implementation of the VCGLR's recommendations.[103]

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95 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, COM.0005.0001.0776 at .0902.
96 T1559:39 – T1560:17 (Lucas).
97 T1559:39 – T1560:17 (Lucas).
98 T1414:46 – T1415:8 (Bauer).
99 T1414:46 – T1415:8 (Bauer).
100 T1415:35-42 (Bauer).
101 T1415:44 – T1416:23 (Bauer).
102 T1416:25-39 (Bauer).
103 T1416:25-39 (Bauer).

Part 4.3 Crown's approach to the China arrests investigation

79. The China arrests investigation, Crown's lack of cooperation with that investigation, and the effort involved in properly investigating what occurred within Crown, represent a low point in Crown's relationship with the VCGLR. This is reflected in the criticisms of Crown's engagement with the investigation that are contained in both the Draft Crown China Investigation Summary Report dated 6 June 2018 and the final report dated 19 February 2021, discussed below. Those reports do not capture the full extent to which Crown hampered the VCGLR's investigation and misled it, which has only fully come to light through the Commission and is detailed in the statement of Tim Bryant, the principal VCGLR investigator.

80. The VCGLR commenced the China arrests investigation in July 2017.[104] Early in its investigation, on 31 August 2017, in a clear attempt to "shape the narrative", Crown gave a presentation to the VCGLR and reassured it that "Crown continues to believe that its risk management framework and its risk management practices were and remain sound".[105] The VCGLR investigator, Mr Bryant, gave evidence that the VCGLR subsequently came across documents which showed that Crown had not been transparent in this presentation and that Crown was in fact aware that the Chinese government was cracking down on overseas-based casinos before the arrests occurred.[106] In its presentation on 31 August 2017 Crown misrepresented to the VCGLR that the legal advice it had received related to "people engaged in gambling", whereas it in fact warned of the routine monitoring of "people who work in the gambling business".[107]

81. In November 2017, Mr Bryant took on the role of Team Leader in the Compliance Division of the VCGLR, which included management of the China arrests investigation.[108] After reviewing the investigation file on 15 December 2017, Mr Bryant concluded that a broader range of information from Crown was needed than had been requested, and that the VCGLR should start using its formal information gathering powers because it had taken Crown too long to voluntarily provide the confined information requested by the VCGLR up to that point in the investigation.[109] Mr Bryant's statement details the many

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104 Exhibit RC0008 Statement of Jason Cremona, 15 April 2021, VCG.9999.0001.0001; Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0005 [18].

105 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0008 [30].

106 T24:35 – T25:30 (Bryant).

107 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0031-.0032 [88]; Exhibit RC0001d Crown Presentation to the Victorian Commission for Gambling & Liquor Regulation, August 2017, VCG.0001.0001.9002; T27:27-30, T33:33 – T34:17, and T37:34 – T38:14 (Bryant).

108 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0010 [34].

109 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0010 [36] – .0011 [38].

frustrations and difficulties that he faced in obtaining information from Crown, including his concerns about non-compliance with notices issued under section 26 of the Act requiring the production of documents.[110]

82. During the second phase of the investigation, Mr Bryant conducted interviews with numerous Crown employees. Prior to conducting these interviews, Mr Bryant had expected Crown's "full cooperation" and that those interviewed would provide "complete answers" and make appropriate concessions.[111] Mr Bryant was "struck" during these interviews by the refusal of a number of witnesses to "concede the obvious proposition that there had been a crackdown in China on overseas-based casinos trying to attract gamblers".[112] The relevant interchanges are set out in Mr Bryant's statement.[113]

83. A particular concern of Mr Bryant's was that despite the issuance of section 26 notices, he did not have key existing Crown documentation prior to these interviews, which he considered might have assisted the interviewees to recall key events.[114] In his statement Mr Bryant gives evidence that he formed the view that "during those interviews, Crown executives had not been as forthright as possible regarding their recollection of certain key incidents including the February 2015 crackdown and other casinos changing operations or withdrawing from China".[115] Under examination Mr Bryant stated that in hindsight he considered that Crown at times "lied" to him at these interviews about what they were and were not aware of.[116]

84. During these interviews, business planning documents and lower level planning documents that were a part of Crown's risk assessment framework were referred to by Crown employees.[117] These fell within the scope of the 2 February 2018 section 26 notice but had not been provided to the VCGLR.[118] The VCGLR wrote to Crown on 14 May 2018 regarding its non-compliance and asking why it should not certify that non-

110 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0015 [47]-[48], .0016 [50]-[51], .0016-.0017 [53]-[54], and .0018-.0021 [56]-[62].
111 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0014-.0015 [46].
112 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0014-.0015 [46].
113 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0014-.0015 [46].
114 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0020-.0021 [62].
115 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0020-.0021 [62].
116 T86:41-43 (Bryant).
117 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0015 [47].
118 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0015 [47].

compliance under section 27 of the Act.[119] On 28 May 2018 Crown responded, arguing that the relevant documents were not responsive to the relevant notice because they were concerned with "market outlook" and did not record risks or the conduct of any risk assessment.[120] On that same day, Crown's lawyers Minter Ellison wrote to the VCGLR to inform it that during its review of material for discovery in defence of a class action against Crown, Minter Ellison had identified "a small number of documents" that may fall within the VCGLR notices.[121]

85. These further documents were provided to the VCGLR in zip files on 7 and 8 June 2018.[122] These belatedly provided documents were "clearly of interest to the investigation and would have been put to the Crown executives in interviews" had they been made available in time.[123] However, by this stage Mr Bryant had already finalised the Investigation Summary Report into the matter, which the VCGLR had provided to Crown for comment on 8 June 2018.[124] In this way, Crown executives avoided answering difficult questions about these documents prior to the finalisation of the report, and the VCGLR's efforts to determine precisely where the shortcomings had occurred were frustrated.

86. Mr Bryant formed the view that these belatedly provided documents strengthened the findings of his Investigation Summary Report because they: [125]

    a. highlighted additional risk incidents, including a warning from the Chinese police;

    b. revealed mitigation strategies that were put in place by Crown at the time, including avoiding mainland China and delaying setting up offices there;

    c. revealed that Michael Chen may have held concerns that he would be detained in 2015, and had communicated this to Crown;

    d. gave a clear sense that Crown were aware of a Chinese government crackdown on gambling from February 2015 onwards; and

    e. indicated a perceived pressure to meet targets despite the escalated environment.

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119 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0017 [54].

120 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0018-.0019 [56].

121 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0019 [58].

122 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0019-.0020 [59].

123 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0020 [62(c)].

124 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0020 [60].

125 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0020-.0021 [62(a)].

87. On 18 June 2018 the VCGLR wrote to Crown asking it to disregard the Investigation Summary Report, noting it was likely to be altered given the material that had just been provided on 7 and 8 June 2018.[126] The letter stated that Crown's ongoing provision of documents had affected the VCGLR's ability to conclude its investigation, and it sought an explanation about why the material was provided so late, given Crown was required to produce it in response to the 2 February 2018 notice.[127] The letter contained a demand for the provision of all outstanding documents responsive to previously issued notices by 2 July 2018.[128] It also requested that Crown identify why various documents had been redacted.[129]

88. On 28 June 2018 Crown responded to the Investigation Summary Report[130] (despite the VCGLR's advice to disregard it). Crown informed the VCGLR that the "purported findings and conclusions of VCGLR Compliance Division staff" were "strongly disputed".[131] In that letter Crown claimed that procedural fairness required that it be provided with an opportunity to bring forward evidence and make submissions.[132] The implicit claim in this letter that Crown was yet to be provided with an opportunity to provide the VCGLR with evidence of its side of the story is surprising, in the context of the difficulties the VCGLR faced in obtaining information from Crown over the course of the China arrests investigation. Crown's response also claimed that particular evidence had not been presented in a "balanced" way and that Compliance Division staff were affected by "confirmation bias".[133]

89. The concessions later made by Crown to the Bergin Inquiry in relation to the China arrests provide a stark contrast to the belligerent attitude displayed by Crown in its response to the VCGLR's Summary Report.[134]

90. Between July and August 2018 the VCGLR undertook a review of the matters needed to finalise the China arrests investigation in light of the assertions made by Crown in its

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126 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0025 [70].

127 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0025 [70].

128 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0025 [70].

129 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0025 [71].

130 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0026 [74].

131 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0026 [74].

132 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0026 [74].

133 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0026-.0027 [75].

134 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0044 [132].

letter of 26 June 2018.[135] As a result of this review, the VCGLR issued a further section 26 notice on 28 August 2018, which painstakingly outlined all of the previous notice requests that had been made and either not responded to, or in response to which no documents had been provided by Crown.[136] That notice requested that Crown review all its materials to identify whether it was in possession of any further material caught by those earlier notices, by 21 September 2018, and renewed the request to identify the basis of redactions and the refusal to provide particular information.[137]

91. In response to the 28 August 2018 notice, Crown produced 4 volumes of documents on 21 September 2018.[138] A letter from Minter Ellison on that date indicated that Crown might uncover further documents or evidence during the class action.[139]

92. More documents were provided by Minter Ellison on 12 October 2018 and it was foreshadowed that more may emerge during the second tranche of discovery in the class action.[140]

93. On 14 November 2018 the VCGLR wrote to Crown identifying further information that was still missing from Crown's response, noting Crown's obligations under section 26 of the Act and providing a deadline of 5 December 2018 for any further evidence or submissions that Crown considered relevant to the investigation.[141] That letter notes the difficulties that the VCGLR had in correlating the documents that Crown provided on 21 September 2018 with the VCGLR's requests, because when Crown produced documents to the VCGLR, it did not link them to the various items requested in the relevant section 26 notice.[142] It also noted that the "VCGLR would be concerned if its section 26 notices were not complied with and were considered ancillary or secondary to civil litigation and its associated discovery processes".[143]

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135 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0028 [78].

136 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0028 [79].

137 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0028 [79].

138 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0028-.0029 [80].

139 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0029 [82].

140 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0030 [84].

141 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0030-.0031 [86].

142 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0030-.0031 [86].

143 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0030-.0031 [86].

94. On 5 December 2018 Crown produced eight folders of additional material.[144] On 18 March 2019 Crown produced a further 85 documents, which Minter Ellison indicated were responsive to the VCGLR's notices.[145]

95. The batch of documents Crown provided to the VCGLR on 18 March 2019 contained the important legal and government relations advice from the Mintz Group that had originally been referred to in Crown's August 2017 presentation to the VCGLR (whilst maintaining privilege in the advice itself).[146] The provision of this advice to the VCGLR revealed that Crown had misrepresented the contents of that advice during the presentation noted above.[147] This was a material misrepresentation about some of the most important evidence in the investigation. That the representation was made by Crown's Chief Legal Officer adds to the seriousness of the conduct.

96. The VCGLR prepared a draft report dated 28 May 2019 and it was provided to Crown for comment on 29 May 2019.[148]

97. On 29 May 2019 the VCGLR also asked Crown to explain why the 18 March 2019 batch of material had not been provided in response to previous notices, when it all appeared to have been readily available at the time compliance with those notices was due.[149]

98. On 12 June 2019 Crown produced further documents that were relevant to the investigation which had been discovered in the Crown class action.[150] In the letter accompanying that material, Minter Ellison explained that the work done for discovery by Crown was "necessarily much more extensive than even the comprehensive efforts Crown has made to respond in detail to the VCGLR's various notices and requests for documents and information over the course of its investigation (20 or so such notices and requests commencing informally in July 2017 and proceeding more formally through 2018)".[151]

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144 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0030-.0031 [86].

145 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0030-.0031 [86].

146 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0031-.0032 [88]; Exhibit RC0001d Crown Presentation to the Victorian Commission for Gambling & Liquor Regulation, August 2017, VCG.0001.0001.9002.

147 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0031-.0032 [88]; Exhibit RC0001d Crown Presentation to the Victorian Commission for Gambling & Liquor Regulation, August 2017, VCG.0001.0001.9002.

148 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0005-.0006 [20] and .0032 [91]. The statement erroneously refers to 19 May 2019 rather than 29 May 2019.

149 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0032 [90].

150 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0033 [93].

151 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0033 [93].

99. It is open to this Commission to conclude that Crown had no intention of assisting the VCGLR's investigation into the China arrests, or complying with the requests for documents in the section 26 notices beyond what it was already doing to progress its defence of the concurrent class action.[152] The VCGLR's notices were only belatedly complied with where relevant material was identified as part of the Federal Court's discovery processes. In light of the documents Crown was able to uncover with reasonable efforts to discharge its discovery obligations, it is open to this Commission to find that Crown did not take reasonable steps to comply with the legal obligations imposed by section 26 of the Act at any stage during the China arrests investigation. It is not clear whether Crown's decision to waive legal professional privilege over the legal advice it ultimately disclosed to the VCGLR was taken purely to advance Crown's own commercial interests in the class action,[153] although that is an available inference.

100. On 26 June 2019 Crown stated that it had no objection to the VCGLR reporting to the Minister on the basis that the results of the investigation were that:[154]

    a. Crown remains suitable to hold a casino licence and no regulatory or disciplinary action is warranted;

    b. the VCGLR has made recommendations to Crown about internal reporting and risk management processes in relation to its Asian operations; and

    c. Crown "have accepted in principle that their risk management framework could deal more directly with the risk of adverse legal action, in a foreign jurisdiction, and appropriate mitigation strategies".

101. This concession by Crown on 26 June 2019 was the first time since the China arrests investigation commenced in July 2017 that Crown had acknowledged that there could be any improvement in its risk management framework.[155]

102. The proposed report to the Minister under section 24(3) of the Act was quickly overtaken by events – on 28 July 2019 an episode of *60 Minutes* brought to light new information relevant to the China arrests investigation,[156] and the Bergin Inquiry was established under section 143 of the *Casino Control Act 1992* (NSW) on 14 August 2019.[157]

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152 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0029 [83].

153 T82:20-22 (Bryant).

154 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0033-.0034 [94].

155 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0034 [95].

156 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0034 [96].

157 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0035 [98].

103. From September 2019 the VCGLR began to look at the new revelations that had emerged through the media reports and requested contact details from Crown for the employees who had been detained so they could be interviewed.[158] This request appears to have been ignored by Crown.[159] On 9 October 2019 a section 26 notice was issued by the VCGLR to obtain that information.[160] On 16 October 2019 Crown provided that information under cover of a letter referring to confidentiality obligations owed to it by those employees and agreeing to allow them to speak with the VCGLR as long as Crown representatives were present.[161] The letter denigrated Crown's employee Jenny Jiang.[162]

104. The VCGLR sought information about the alleged duties of confidentiality relied upon by Crown, details of the privilege claims made by Crown and the reasons why Crown considered it necessary to attend any discussion with the former employees.[163] Crown responded, withdrawing its assertion that its privilege claims were an impediment to the VCGLR's enquiries with the former employees, but claimed that it should be allowed to be involved in the employee interviews "as a matter of procedural fairness".[164]

105. On 15 January 2020 Minter Ellison eventually notified the VCGLR that it had served statements of evidence in its defence of the class action and had thereby waived legal professional privilege in the Wilmer Hale communication.[165] A further 558 pages of documents were subsequently provided by Crown on 11 March 2020.[166] This material contained information that was centrally relevant to the investigation and required changes to be made to the draft report dated 28 May 2019.[167]

106. In August and September 2020 Crown witnesses gave evidence at the Bergin Inquiry about the China arrests.[168] Mr Bryant gave evidence in this Commission about the

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158 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0035-.0036 [99]-[102].

159 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0036 [103].

160 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0036 [103].

161 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0036-.0037 [104].

162 Exhibit RC0001mmm Letter from Minter Ellison to Adam Ockwell, 16 October 2019, VCG.0001.0002.3376.

163 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0037 [106].

164 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0037-.0038 [107].

165 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0038 [111].

166 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0039 [113].

167 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0039-.0040 [114].

168 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0040 [115]-[116].

disparity between what the VCGLR was told and the attitude of Crown towards the VCGLR in the course of the China arrests investigation on the one hand, and Crown's engagement and co-operation with the Bergin Inquiry on the other:[169]

> My overall impression of the evidence that Crown executives and employees provided to the NSW Inquiry was that they were more willing to concede that there were shortcomings in Crown's handling and response to the China arrests than Crown had been in the course of the China Arrests Investigation. I also noted that some witnesses acknowledged that they had been aware of the nature of the Chinese authorities' crackdown on off-shore casinos before the China arrests.

107. Mr Bryant gave specific examples in his witness statement of evidence given by Jason O'Connor and Mr Felstead at the Bergin Inquiry that were "at odds with the statements that Crown executives made to me when I interviewed them".[170]

108. On 1 October 2020 the VCGLR issued a further section 26 notice seeking a list of the documents that had been examined and referred to in the Bergin Inquiry and an explanation of whether (and if not why not) two specific email chains relating to the interview of an employee by Chinese police in 2015 had not been produced in response to earlier notices.[171] Documents were produced on 9 October 2020. Minter Ellison explained that those email chains had not been produced because at the time they were subject to a claim of legal professional privilege.[172]

109. Among the documents provided by Minter Ellison on 9 October 2020 was an email chain that revealed that Michael Johnston had been made aware of the 2015 incident involving the Crown employee being interviewed by Chinese police.[173] This was the first evidence the VCGLR had seen to indicate that the 2015 incident was escalated to someone at board level and contradicted the position taken by Crown in Minter Ellison's letter of 17 May 2017 that the 2015 incident was not considered to have any wider implications or to be of any real significance, and was not seen by others "up the reporting line".[174]

110. Mr Bryant considered that Crown had not been open, and had in fact misled the VCGLR, in the course of the China arrests investigation.[175] Overall he described Crown as:

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169 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0040 [117].

170 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0040-.0041 [117]-[118].

171 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0041 [119].

172 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0041 [122].

173 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0041-.0042 [123].

174 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0042 [124].

175 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0042-.0043 [126]-[128].

a. "aggressive", and as having used delay tactics;[176] and

b. having failed to provide full and frank information and to co-operate[177].

111. Crown has never explained the inconsistency between what it told the VCGLR during the China arrests investigation and the position it took in the Bergin Inquiry.[178]

112. The final China Report was eventually provided to the Minister on 19 February 2021.[179] This was more than three and a half years after it commenced, and in excess of 5 years after the events under investigation took place. Mr Bryant observed that had Crown adopted the position it ultimately took in the Bergin Inquiry from the outset of his investigation, it would not have been necessary for the VCGLR to undertake such a protracted and resource intensive investigation. He also noted that in his view:[180]

> had Crown been prepared to acknowledge its shortcomings in relation to the China detentions at an earlier stage, it could have taken steps to address those shortcomings and improve its level of compliance several years ago.

113. The final China Report addresses a number of serious concerns that the VCGLR had with Crown's approach to the investigation, which materially hampered the VCGLR:[181]

a. Crown did not act consistently with its position of privilege as the sole holder of the casino licence in Victoria;

b. Crown's approach was "changeable, and at times, unnecessarily belligerent";

c. it appears that Crown intentionally gave the VCGLR an inaccurate impression in its initial engagement with the regulator, which was later contradicted by its concessions in the Bergin Inquiry;

d. Crown's compliance with the VCGLR's powers of compulsion was less thorough and less diligent than those undertaken for the defence of Crown's class action;

e. during the investigation there was a change from "purported overt attempts at helpfulness" to "an approach of belligerence";

f. Crown drip fed the VCGLR documents and information according to its own timetable and at various points inundated the VCGLR with a large volume of unsorted documents with no guidance about what they were responsive to;

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176 T77:9-12 (Bryant). Steven Blackburn's evidence also confirms Crown's "aggressive" approach towards the VCGLR (see T3068:37 (Blackburn)).

177 T93:9-23 (Bryant). See the concession made on this point at T2650:42 – T2651:7 (Fielding).

178 T60:6-39 (Bryant).

179 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0046 [136].

180 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0048 [138(f)].

181 Exhibit RC0003 VCGLR Final China Investigation Report, 19 February 2021, VCG.0001.0001.0001 at .0118-.0123.

g. Crown co-operated and made concessions to the Bergin Inquiry in a manner that contrasted with its engagement with the VCGLR; and

h. the VCGLR had to ask Crown to make the same concessions in respect of its investigation as Crown had made to the Bergin Inquiry.

114. The VCGLR had previously reflected its concerns with Crown's engagement in Part 9 of the Draft Crown China Investigation Summary Report dated 6 June 2018, including that:[182]

a. Crown refused to provide the VCGLR with the legal advice provided to it by Wilmer Hale lawyers on the basis of legal professional privilege;

b. Crown were tardy in providing the VCGLR with material;

c. documents that were clearly responsive to a section 26 notice issued by the VCGLR were not provided, and their existence was only discovered when interviewees referred to them in their interviews, with Crown then arguing that they were not responsive to the notice; and

d. Crown did not undertake a thorough and diligent search for documents in order to comply with the section 26 notices.

115. At 12.2 of the Draft Summary Report the VCGLR concluded that Crown's responses to the VCGLR's requests and demands was a concern.[183]

116. Mr Bryant's understated summary of the chronology of Crown's cooperation is that "Crown failed to provide the VCGLR with the level of cooperation that I would expect of a regulated entity that has the privilege of being the operator of the only casino in Victoria".[184] In his evidence, Crown's attitude to the China arrests investigation is highlighted by:

a. its failure at the outset to provide a transparent account of what happened or disclose the extent of its knowledge;

b. its delayed and incomplete disclosure of information;

c. the fact that it did not undertake available searches for documentation responsive to the section 26 notices that it subsequently undertook for the defence of its class action;

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182 Exhibit RC0001ll Crown China Investigation Summary Report, 6 June 2018, VCG.0001.0002.3334 at .0020.

183 Exhibit RC0001ll Crown China Investigation Summary Report, 6 June 2018, VCG.0001.0002.3334 at .0024.

184 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0046-.0048 [138].

d. its executives' and employees' lack of candour during interviews;

e. its privileged documents revealing that Crown knew more than it admitted to the VCGLR; and

f. its failure to make any of the concessions to the VCGLR that it made in the Bergin Inquiry until some limited concessions were made in response to propositions that had been formulated by the VCGLR in late January 2021.

117. Crown's belligerent approach to the China arrests investigation continued into 2021.[185] The evidence of this is summarised in the submissions of Counsel Assisting and will not be repeated here.[186]

118. Ms Siegers gave evidence that she was brought into Crown after the China arrests, effectively to overhaul the risk management system.[187] The narrative that Ms Siegers employed with respect to the changes that she has introduced since her arrival is that they were "enhancements" to Crown's risk management framework.[188] When Counsel Assisting suggested that this was a euphemism for something that needs fixing when something has gone wrong,[189] Ms Siegers refused to accept that the risk management system needed "fixing".[190] Ms Siegers did not accept that the arrest of 19 of Crown's staff members in China indicated that the risk management framework was broken.[191] Ms Siegers was confident to continue to defend the risk management framework that was previously in place, despite having merely scanned the VCGLR's report into the China arrests.[192]

119. In response to risk management questions about the China arrests, Ms Siegers said that a large part of what occurred was outside Crown's control, namely the actions and objectives of the Chinese government.[193] For this reason she did not accept that Crown could have averted the arrests despite the warnings that it had.[194] This evidence was contrary to that given by Helen Coonan, Executive Chairman of Crown Resorts Limited, who readily accepted that the arrests could have been averted if the risk management framework had operated properly. This is clearly correct.[195] When counsel for the VCGLR suggested that the arrests represented a significant failure of the Crown risk

185 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0044-.0046 [133]-[134].
186 Closing submissions of Counsel Assisting the Commission, July 2021, COM.0500.0001.0380 at 290-291 [5.50]-[5.56].
187 T1971:16-20 (Siegers).
188 T1971:22-31 (Siegers).
189 T1971:22-31 (Siegers).
190 T1971:33-39 (Siegers).
191 T1971:41-47 (Siegers).
192 T2037:15-25 (Siegers).
193 T2036:8-16 (Siegers).
194 T2036:8-16 (Siegers).
195 T3848:30-37 (Coonan).

management process at that time, Ms Siegers was only prepared to accept that they were "communication failings".[196] It is noted that Ms Siegers currently holds the position of Chief Risk Officer. Despite that, she had not as at the date of giving evidence to this Commission, found the time to read the final China arrests report,[197] a matter that Ms Coonan described as "regrettable".[198]

Part 4.4 Crown's approach to the junkets investigation and disciplinary process

120. In 2020 the VCGLR commenced an investigation into aspects of Crown's management of junket operators that work out of the Melbourne casino. Consistent with the regulatory engagements between Crown and the VCGLR already discussed, Crown claimed it was compliant with the relevant ICS and did not provide important information to investigators during the investigation. As in other areas, much has come to light about Crown's junket operations during the Commission that was not previously known to the VCGLR. Crown's engagement with the regulator on this recent occasion indicates that it has taken the same approach to engagement with the regulator as it has in the past, despite its assurances that change has occurred.

121. 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. In contrast to the regime that was originally enacted in 1991, in 2004, the legislation removed provisions that previously required the licensing/approval of junket operators. Following this, the legislative regime has required a high degree of self-regulation by Crown with respect to junket probity.

122. On 2 October 2020 the VCGLR issued a show cause notice pursuant to section 20(2) of the Act with respect to a junket agent, a junket operator and a junket player.[199] On 17 November 2020 an amended notice added a further junket operator to the notice.[200] The notices alleged contraventions of section 121(4) of the Act by failing to implement the obligations under clause 2.5.1 of the Junket and Premium Player Program ICS (**Junkets ICS**).[201]

123. Crown made an initial written submission to the VCGLR on 30 October 2020, which outlined a series of steps that it intended to take to address the matters it had conceded

196 T2035:45 – T2036:6 (Siegers).
197 T2037:21-25 (Siegers).
198 T3850:27 (Coonan).
199 Exhibit RC1523 Letter from Ross Kennedy to Barry Felstead, 2 October 2020, VCG.0001.0002.2501.
200 Exhibit RC1524 Letter from Ross Kennedy to Ken Barton, 17 November 2020, VCG.0001.0002.2504.
201 Exhibit RC292 VCGLR Decision and Confidential Reasons for Decision, 27 April 2021, VCG.0001.0002.6984 at .0008 [24].

in that submission.[202] On 17 November 2020 Crown publicly announced that it would permanently cease dealing with all junket operators.[203] Further written submissions were provided by Crown on 12 December 2020, oral submissions were made on 21 January 2021,[204] and further written submissions were provided on 5 February 2021.[205]

124. The VCGLR expressed the view in its reasons for decision that the submission made by Crown's Chief Executive Officer, Xavier Walsh, that Crown had not breached its ICS because it had a robust process, "grossly misstates Crown's obligation".[206] The VCGLR also considered that some of the evidence and submissions made to it during that inquiry had contradicted the evidence that was given to the Bergin Inquiry.[207] In her evidence, Ms Coonan accepted that this was the case.[208] The VCGLR "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 reasons why certain decisions were made".[209]

125. It is recognised that Mr Walsh acknowledged in this Commission that the approach Crown adopted to this investigation was ill-advised and likely counter-productive.[210]

126. On 27 April 2021 the VCGLR determined that there were grounds for taking disciplinary action against Crown in accordance with section 20 of the Act in relation to Crown's junket operations.[211] It determined to impose a $1 million fine on Crown and to direct that Crown not recommence junket operations until given permission to do so by the VCGLR and that Crown provide the VCGLR with monthly reports on the progress of its reform agenda.[212] In arriving at this determination the VCGLR observed that there were several aspects of Crown's approach to the junkets investigation which were "inconsistent with

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202 Exhibit RC1525 Letter from Ken Barton to Cameron Warfe, 30 October 2020, VCG.0001.0002.2502.

203 Exhibit RC292 VCGLR Decision and Confidential Reasons for Decision, 27 April 2021, VCG.0001.0002.6984 at .0009 [27].

204 Exhibit RC366 VCGLR Transcript of Proceedings in the Matter of Crown Melbourne, 21 January 2021, VCG.0001.0002.6532.

205 Exhibit RC1526 Letter from Ken Barton and Xavier Walsh to Scott May and Cameron Warfe, 5 February 2021, VCG.0001.0002.8090; Exhibit RC292 VCGLR Decision and Confidential Reasons for Decision, 27 April 2021, VCG.0001.0002.6984 at .0008 [25] and .0009-.0010 [29].

206 Exhibit RC292 VCGLR Decision and Confidential Reasons for Decision, 27 April 2021, VCG.0001.0002.6984 at .0010 [32].

207 Exhibit RC292 VCGLR Decision and Confidential Reasons for Decision, 27 April 2021, VCG.0001.0002.6984 at .0016 [62].

208 T3823:12 – T3824:5 (Coonan).

209 Exhibit RC292 VCGLR Decision and Confidential Reasons for Decision, 27 April 2021, VCG.0001.0002.6984 at .0017 [69].

210 T3324:25-40 (X Walsh).

211 Exhibit RC292 VCGLR Decision and Confidential Reasons for Decision, 27 April 2021, VCG.0001.0002.6984 at .0002.

212 Exhibit RC292 VCGLR Decision and Confidential Reasons for Decision, 27 April 2021, VCG.0001.0002.6984 at .0002.

the concepts of contrition and cooperation that the Commission is obliged to consider".[213] These included:[214]

a. instances where submissions were made that were contradicted by the evidence to which Crown itself sought to refer;

b. the various submissions that Crown made that were unsupported by any evidence whatsoever;

c. Crown's submission that the relevant assessment was a subjective one, in circumstances where it failed or was unable to produce contemporaneous records of why decisions were made or to produce evidence from those who made the decisions;

d. its insistence on the VCGLR taking a confined approach to the inquiry whilst itself introducing many broad and general matters requiring the VCGLR's careful consideration;

e. Crown witnesses persisting in the justification of activity that the CEO had conceded was inconsistent with his expectations;

f. Crown's refusal to accept failures in respect of junkets whilst announcing to the media that all junket operations would cease; and

g. Crown's failure to meaningfully engage with the statutory objective of ensuring that the management and operation of the Melbourne casino remains free from criminal influence or exploitation.

127. In its decision the VCGLR made concluding observations that were extraneous to the outcome but were relevant to the regulatory relationship that it considered ought to exist with Crown.[215] The decision noted that the VCGLR had been told by Ms Coonan on 17 December 2020 that Crown wanted to work collaboratively with the VCGLR, and to have open lines of communication so that they could negotiate their shortcomings to get a good outcome.[216] It went on to express disappointment that on 21 January 2021 (and in the written submissions on 5 February 2021) Crown would take an approach that was

213 Exhibit RC292 VCGLR Decision and Confidential Reasons for Decision, 27 April 2021, VCG.0001.0002.6984 at .0065-.0066 [259].

214 Exhibit RC292 VCGLR Decision and Confidential Reasons for Decision, 27 April 2021, VCG.0001.0002.6984 at .0065-.0066 [259].

215 Exhibit RC292 VCGLR Decision and Confidential Reasons for Decision, 27 April 2021, VCG.0001.0002.6984 at .0067 [265].

216 Exhibit RC292 VCGLR Decision and Confidential Reasons for Decision, 27 April 2021, VCG.0001.0002.6984 at .0067-.0068 [266].

so clearly at odds with those sentiments, just one month later.[217] This disappointment is palpable:[218]

> The Commission considers this to have been Crown's first opportunity to have demonstrated, by its deeds, that it had altered it previous approach to regulatory matters.
>
> Regrettably, the Commission's experience has been that there has not, in fact, been any alteration in Crown's approach.

128. It has now come to light through this Commission that:

    a. FTI Consulting was engaged by Minter Ellison in early August 2019 to review Crown's junket program;[219]

    b. a report was prepared by FTI Consulting that reached the conclusion that Crown should:[220]

        i. extend the scope of people it performs due diligence on;

        ii. require declarations of particular effect from junket operators; and

        iii. enhance its documentation of the junket operator due diligence process and its training provided to staff regarding open search research skills;

    c. the FTI Consulting report bears a strong similarity to the review that was undertaken by Dr Murray Lawson for Crown 12 months later when he had moved to Deloitte;[221] and

    d. Mr Preston advised the Crown Brand Committee at its meeting of 22 August 2019 that a review was being undertaken by FTI Consulting of the company's junket procedures.[222]

129. Ms Siegers accepted in cross examination that if Board members had been made aware that a conclusion of the FTI Consulting report was that Crown's junket process was not robust enough to satisfy the relevant ICS, this fact should have been communicated to the VCGLR.[223]

130. The conclusions reached in the FTI Consulting report were available to Crown over 12 months before similar issues were raised by the VCGLR. Between October 2020 and

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217 Exhibit RC292 VCGLR Decision and Confidential Reasons for Decision, 27 April 2021, VCG.0001.0002.6984 at .0068 [270].

218 Exhibit RC292 VCGLR Decision and Confidential Reasons for Decision, 27 April 2021, VCG.0001.0002.6984 at .0069 [272]-[273].

219 T2009:44 – T2010:12 (Siegers).

220 Exhibit RC0192 FTI Consulting Review of Due Diligence Procedures for Operators and Premium Players Crown Resorts Ltd Report, 10 September 2019, FTI.0001.0001.3087.

221 T2016:23 – T2017:30 and T2018:23 – T2019:43 (Siegers).

222 Exhibit RC0430 Crown Resorts Brand Committee Meeting Minutes, 22 August 2019, CRL.622.001.0112.

223 T2030:15-22 (Siegers).

February 2021 Crown was asserting to the VCGLR that its junkets vetting process was "robust" despite the same issues for improvement having been raised by its own expert the year before, and despite the concessions Ms Coonan had made during the Bergin Inquiry. Rather than accepting that improvements were needed on the basis of the expert's views and the regulator's views, Crown actively defended the faulty system that was in place. It is unsurprising that Jane Halton, Non-Executive Director of Crown Resorts Limited, characterised Crown's approach to the process as "deeply regrettable".[224]

131. It has also come to light through the Commission that a review had been commissioned by Crown from Deloitte that was additional to the review that Crown had referred to in its response to the VCGLR's show cause notices. In Crown's submissions to the VCGLR of 30 October 2020 Ken Barton, a Director of Crown Melbourne Limited, noted that he had engaged Deloitte to conduct a review of Crown's decision-making processes as to junket operators.[225] It is most unfortunate that Crown disclosed some, but not all, of the work that Deloitte had or was undertaking that was relevant to the matters that were the subject of the show cause notices. The VCGLR only became aware of Crown's decision to engage Deloitte to review its bank accounts days before Lisa Dobbins of Deloitte gave evidence to this Commission on the subject, and only after Deloitte had issued its Phase 1 report and made recommendations to Crown.[226] In a letter to the VCGLR dated 21 May 2021, Crown provided the Deloitte report concerning phase 1 of the review dated 26 March 2021.[227]

132. Further, until evidence was given at the Bergin Inquiry, Crown appear not to have made the VCGLR aware that:

    a. Crown implemented cash controls in the Suncity Room in April 2018 as a result of large cash transactions, and the junket operator, Alvin Chau/Suncity, subsequently breached these controls when $5.6 million worth of cash was discovered on the same day the cash controls became effective. The VCGLR was further unaware that AUSTRAC had raised concerns with Crown in around June 2017 regarding its engagement with Mr Chau. The VCGLR considers that this information was relevant to the suitability of Mr Chau as a junket operator at the Melbourne casino, and the extent to which Crown complied with its probity obligations under the Junkets ICS. Additionally, although the VCGLR served a notice to Crown under

224 T3586:28 (Halton).
225 Exhibit RC1525 Letter from Ken Barton to Cameron Warfe, 30 October 2020, VCG.0001.0002.2502 at .0002.
226 Exhibit RC0440 File note regarding VCGLR Answers to Questions from the Royal Commission, 2 June 2021, VCG.9999.0002.0002 at .0005.
227 Exhibit RC1528 Letter from Xavier Walsh to Catherine Myers, 21 May 2021, VCG.0001.0002.8455.

section 26 of the Act on 9 August 2019[228] requiring Crown to produce all records of any probity monitoring it conducted regarding Mr Chau, none of the records or information produced by Crown made reference to the concerns raised by AUSTRAC or the fact that Suncity had breached the cash controls implemented by Crown.[229] This may potentially amount to a failure by Crown to comply with the VCGLR's notice under section 26 of the Act, and this breach is under consideration by the VCGLR;

b. Crown was in possession of a list of junket operators who may be associated with the Chinatown Junket and with Tom Zhou who was allegedly the financial backer of the Chinatown Junket.[230] Although the relevant section 26 notice requested information from Crown regarding its engagement with Mr Zhou, Crown's response to the VCGLR indicated that Mr Zhou was not a junket operator at the Melbourne casino. Crown further indicated that Mr Zhou was previously engaged by Crown at the Melbourne casino as a junket player, and that he voluntarily excluded himself from the Melbourne casino in 2010. The VCGLR considers that Crown should have notified the VCGLR of these matters, particularly as Mr Zhou was a named person of interest in the section 26 notice. The VCGLR notes that had it been aware of these matters, the VCGLR's investigation into junket operations at the Melbourne casino would likely have been expanded to include a consideration of the entities known to Crown who were associated with the Chinatown Junket; and

c. Crown had engaged the Berkeley Research Group (**BRG**) on or about 11 August 2020 to investigate the probity/suitability of certain junket entities, including Mr Chau and Zezhai Song. BRG prepared a report dated 12 September 2020,[231] which was only produced to the VCGLR on 2 November 2020,[232] as part of the VCGLR's disciplinary action proceeding against Crown.

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228 Exhibit RC1529 Letter from Adam Ockwell to Joshua Preston, 9 August 2019, VCG.0001.0002.2500.

229 Crown responded to the section 26 Notice on 14 August 2019 (Exhibit RC1544 Letter from Richard Murphy and Glen Ward to Adam Ockwell, 14 August 2019, VCG.0001.0004.0578), 16 August 2019 (Exhibit RC1530 Letter from Richard Murphy and Glen Ward to Adam Ockwell, 16 August 2019, VCG.0001.0002.2520), and 23 August 2019 (Exhibit RC1531 Letter from Glen Ward to Adam Ockwell, 23 August 2019, VCG.0001.0004.0014).

230 During the Bergin Inquiry, Mr Jason O'Connor gave evidence that by around 2015 or around 2016, he was aware that Tom Zhou was the financial backer of what Crown referred to as the Chinatown junkets. Mr O'Connor and the then Senior Vice President of Crown's VIP Department, Mr Veng Anh, described Mr Zhou as a "silent shareholder" of the junkets associated with the Chinatown junket.

231 Exhibit RC0453 Berkeley Research Group Confidential Investigative Report regarding Chau Cheok Wa et al, 12 September 2020, CRL.703.001.0001.

232 Exhibit RC1532 Letter from Richard Murphy to Adam Ockwell and Scott May, 2 November 2020, VCG.0001.0002.2503. See also Exhibit RC1525 Letter from Ken Barton to Cameron Warfe, 30 October 2020, VCG.0001.0002.2502.

133. In responding to the concerns raised by the VCGLR in its formal investigation of Crown's junket operation, Crown took unilateral action and informed the regulator of what it was doing after the fact. The VCGLR was advised of the suspension and subsequent permanent cessation of junket operations informally and at about the same time as those matters were reported to the market. [233] The VCGLR was not advised that Crown was considering suspending or terminating its junket operations prior to the relevant announcements, nor was it advised of the reasons why such consideration was being given.[234]

134. Crown's failure to consult with the VCGLR before making a final decision to suspend its junket operations is difficult to reconcile with the obligations it has under clause 22.1(ra)(ii) of the Consolidated Casino Agreement.[235] That clause requires that Crown "endeavour to maintain the Melbourne Casino as the dominant Commission Based Player casino in Australia".[236]

Part 4.5 Crown's recent failure to be transparent

135. The VCGLR considers it should be informed by Crown directly of important matters concerning Crown as they arise and prior to those matters being made public, and that it should not have to find out such information from other forums. Various instances of this occurring have been discussed in the context of the issues canvassed above. In addition to those already referred to, there have been other miscellaneous instances of the VCGLR finding out about important issues in respect of Crown's operation of the Melbourne casino indirectly through the Bergin Inquiry or the Commission. The VCGLR also considers that these matters should have been the subject of prior discussions between Crown and the VCGLR.

136. For example, until evidence was given at the Bergin Inquiry, the VCGLR was unaware that:

    a. several banks had raised money laundering concerns with Crown regarding the Southbank and Riverbank accounts between 2014 and 2018, and that these concerns were the reason for the closure of bank accounts by the Australia and New Zealand Banking Group (**ANZ**) and ASB. Further, the VCGLR was unaware that Crown had sought to persuade ANZ to keep the Riverbank accounts open despite the money laundering concerns that were raised, and that Mr Barton had

233 Exhibit RC0440 File note regarding VCGLR Answers to Questions from the Royal Commission, 2 June 2021, VCG.9999.0002.0002 at .0006 [7].

234 Exhibit RC0440 File note regarding VCGLR Answers to Questions from the Royal Commission, 2 June 2021, VCG.9999.0002.0002 at .0006 [8].

235 Exhibit RC0440 File note regarding VCGLR Answers to Questions from the Royal Commission, 2 June 2021, VCG.9999.0002.0002 at .0006 [9].

236 Exhibit RC0435 Consolidated Casino Agreement, 21 September 1993, COM.0005.0001.0985.

asked Travis Costin of Crown to direct Crown staff to advise patrons not to deposit multiple cash deposits below $10,000 into accounts held by Crown's subsidiary companies;

b. Crown engaged Promontory to conduct a review of its AML/CTF program as a result of the concerns raised by ANZ in March 2014, and that Crown failed to brief Promontory on the existence of the Southbank and Riverbank accounts at the time of this review;

c. in August 2019, Crown's AML General Manager, Louise Lane, recommended to Mr Preston that a forensic review of the Southbank and Riverbank accounts should be conducted, and that Grant Thornton be engaged to conduct this work. Evidence was also given by Mr Preston to the Bergin Inquiry that one of the reasons he decided not to proceed with the review was that he had received advice from Minter Ellison that such a review would not be protected by legal professional privilege; and

d. Crown received reports from Initialism and Grant Thornton about their review of the Southbank and Riverbank accounts. These reports were tendered to the Bergin Inquiry on 17 November 2020. Crown only provided the VCGLR with a copy of these reports on 20 November 2020,[237] in response to a section 26 notice issued by the VCGLR on 18 November 2020.[238]

137. The VCGLR was further unaware of the following matters until evidence was given, or immediately prior to relevant evidence being given at or to the Commission:

a. Initialism's and Grant Thornton's reviews of the Southbank and Riverbank accounts were limited to three potential scenarios of structuring rather than 9 possible scenarios as initially identified by Initialism;

b. provisional results of Phase 2 of Deloitte's review indicated that potential money laundering may have occurred in Crown Perth's bank account up until 18 February 2021;

c. Crown had engaged a Responsible Gaming Advisory Panel comprising Professor Alexander Blaszczynski PhD of Rawdon Consultancy (Chair), Professor Paul Delfabbro PhD of Adelaide University, and Professor Lia Nower JD, PhD of Rutgers University, to conduct a review of Crown's responsible gambling framework and strategy. The VCGLR was further unaware that the Panel had provided Crown with its report in August 2020 titled *Review of Crown Resort's*

237 Exhibit RC0047 Letter from Ken Barton to Alex Fitzpatrick, 20 November 2020, VCG.0001.0002.2001.

238 Exhibit RC1527 Letter from Alex Fitzpatrick to Ken Barton, 18 November 2020, VCG.0001.0002.2013.

Responsible Gaming Programs and Services, A report from the Responsible Gaming Advisory Panel. The VCGLR only became aware of the Panel's report when the Commission provided the VCGLR with a copy of the witness statement of Ms Bauer dated 5 May 2021;

d. the junket agent, Mr Simon Pan, gambled at the Perth casino up until January 2021, despite the fact that his licence to enter and/or remain in the Melbourne casino was withdrawn by Crown in August 2019. This matter was only brought to the VCGLR's attention on 6 May 2021 when the Commission provided the VCGLR with a copy of the witness statement of Xavier Walsh dated 16 April 2021. On the following day (7 May 2021), the VCGLR received a letter from Mr Walsh indicating that, amongst other things, while a Notice Revoking Licence was recorded against Mr Pan's Perth casino profile in June 2020, stop codes were not placed on his Crown Perth account until December 2020.[239] Crown also did not apply stop codes to each of the multiple accounts held by Mr Pan. This resulted in Mr Pan visiting the Perth casino 29 times between August 2019 and 15 January 2021;

e. certain breaches, or potential breaches by Crown of the Act had occurred at the Melbourne casino. The VCGLR was only made aware of these matters when it received a letter from the Commission dated 30 March 2021 requesting information from the VCGLR about a schedule of breaches submitted by Crown; and

f. that from 2012 to 2016, Crown had the practice of receiving payment at Crown Towers Hotel from international VIP customers using a credit card or debit card, with the funds then made available to the patron for gaming at the casino. The VCGLR was further unaware that in 2013, Crown received internal legal advice that revealed a risk that this practice breached section 68(2) of the Act, but that it decided to run that risk. The VCGLR was only made aware of this on 6 June 2021 when Mr Walsh provided the VCGLR's CEO, Catherine Myers with a memorandum of advice it received on 1 June 2021 about this issue, after the same memorandum had been provided to this Commission.[240]

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239 Exhibit RC1533 Letter from Xavier Walsh to Ross Kennedy, 7 May 2021, VCG.0001.0002.8170.

240 Exhibit RC1534 Email from Xavier Walsh to Catherine Myers, 6 June 2021, VCG.0001.0002.8447; Exhibit RC1535 Memorandum of Advice from Christopher Archibald QC, Chris Carr SC and Anna Dixon to Crown Resorts Limited regarding hotel card transactions and funds transfers by associates of customers, 1 June 2021, VCG.0001.0002.8448.

PART 5 FURTHER CHANGES TO CASINO REGULATION

139. In this Part, the VCGLR addresses Counsel Assisting's proposed legislative amendments and makes suggestions with respect to further or different amendments.

Part 5.1 A casino monitor or engagement of experts

140. Counsel Assisting submit that if Crown is permitted to keep the casino licence it must be supervised to ensure that it implements its promised reform program effectively.[241] Whilst the VCGLR agrees that supervision of Crown's implementation would be necessary if Crown were to keep the casino licence and that the appointment of a monitor is one way to ensure that its reform program is implemented effectively, another way of ensuring this occurs is by requiring Crown to provide independent verification of reform, to the satisfaction of the VCGLR.

141. In that regard, given the myriad of areas in which Crown is failing, a single supervisor is unlikely to possess the necessary expertise in the many and varied fields involved in the reform process – corporate governance, cultural change, anti-money laundering, responsible gambling, junket probity and risk management. Only an expert in each of these fields will be able to ascertain whether reform has occurred, been embedded, and is likely to succeed.

142. In the course of the VCGLR's periodic reviews under section 25 of the Act the regulator relies upon independent consultants in areas where it does not have in-house expertise, to the extent that resources permit. Further, as can be seen in the sixth casino review, recommendations are made in the periodic review process that require Crown to obtain the input of independent experts.[242] Although it is now clear that the VCGLR needs to play a much greater role in ensuring that relevant experts have been appropriately instructed by Crown, the VCGLR maintains that the retention of independent experts, who report to the VCGLR, is another appropriate way of ensuring that relevant reforms are made, and of assessing their effectiveness. This is the approach likely to be taken by the VCGLR in its conduct of the seventh casino review.

143. Counsel Assisting has submitted that a "monitor with extensive powers" is the only conceivable way that any confidence could be gained that the reform process is progressing appropriately.[243] As explained above, the VCGLR does not agree that this is the only conceivable way of monitoring the reform process. However, the VCGLR is

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241 Closing submissions of Counsel Assisting the Commission, July 2021, COM.0500.0001.0380 at 339 [1.36].

242 Recommendations 3, 8, 9, 17.

243 Closing submissions of Counsel Assisting the Commission, July 2021, COM.0500.0001.0380 at 339 [1.37].

not opposed to this concept and submits that any bespoke role of this kind should be funded by Crown.

144. The VCGLR notes that under the section 29(3) of the VCGLR Act, provision is already made for the VCGLR to nominate a person to assist or advise the VCGLR in the performance of its functions. This provision could be amended to provide for the proposed monitor or monitors to be appointed by the VCGLR, paid for by the casino licensee, and granted the appropriate powers. Section 29(3) may require further amendment to broaden the powers of the person appointed to assist the VCGLR and to ensure they can equivalently use the powers at the VCGLR's disposal to avoid unnecessary regulatory burden and duplication of effort.

145. Furthermore, the VCGLR also submits that if a recommendation is made to amend the VCGLR Act to allow for the appointment of a monitor (or monitors) with extensive powers, this monitor (or monitors) should be an expert appointed by the VCGLR, whose role is determined by the VCGLR and reports to the VCGLR.

146. Ensuring that any monitor (or monitors) reports to the VCGLR is important because the collection and maintenance of the consolidated information that is likely to be obtained during any supervision of the reform process is in the public interest. If the role of the monitor ends once the reform program is completed, that knowledge may be lost, unless the monitor has reported to the VCGLR. Reporting also prevents the VCGLR and the monitor from duplicating tasks and requests for information.

147. Finally, before any recommendation for the appointment of a monitor or monitors is made, it must be clear what work the monitor or monitors will do. At this stage there is no clarity regarding precisely what will be monitored, because a clear path to suitability has not been proposed by Counsel Assisting.

Part 5.2 Sufficiency of current periodic review process and investigative powers

148. Counsel Assisting submit that it is open to the Commissioner to be apprehensive about the thoroughness of the VCGLR's future periodic reviews.[244] Counsel Assisting note that the extraordinary powers of this Commission were necessary to "get at the truth", and that the ordinary review process under section 25 of the Act may not be an adequate vehicle for undertaking a suitability assessment.[245] Whilst the VCGLR does not accept that its periodic reviews have been anything other than "thorough", within the context of the powers and funding it is provided to undertake that task, it does agree that the ordinary review process under section 25 of the Act (and the VCGLR's investigative

244 Closing submissions of Counsel Assisting the Commission, July 2021, COM.0500.0001.0380 at 339 [1.46].

245 Closing submissions of Counsel Assisting the Commission, July 2021, COM.0500.0001.0380 at 339 [1.46].

powers more generally) are nowhere near sufficient to uncover the issues that this Commission, and the Bergin Inquiry, have uncovered.

149. The VCGLR would welcome a finding by this Commission that a more rigorous process should be available for conducting both periodic suitability reviews and general investigations, than is currently available to the VCGLR.

150. The VCGLR submits that it should be given the types of broader powers that have allowed the two recent inquiries into Crown to "get at the truth", particularly so that its periodic reviews can provide an adequate assessment of suitability. In particular, the VCGLR considers, and the evidence on Crown's response to the China arrests as set out in Part 4.3 above has shown, that its effectiveness has been hampered by its inability to compel the production of legally privileged documents.

151. The following additional legislative amendments would provide the VCGLR with the powers, information and funding necessary to undertake both an adequate assessment of suitability on a periodic basis and also adopt the more intensive style of regulation that is now plainly called for:

    a. a provision in the Act modelled on section 32 of the *Inquiries Act 2014* (Vic) providing for conditional abrogation of legal professional privilege in respect of the production of documents in response to a notice.

    b. powers to require the casino licensee to retain independent experts on terms approved by the VCGLR; to provide such experts with direct access to Crown's information systems; and for the VCGLR to be provided with access to unredacted versions of their reports. This would provide the VCGLR with the benefit of the views of skilled experts who have access to the necessary information and can effectively use that information.

    c. powers which could allow the VCGLR to take disciplinary action against the casino licensee for a failure to properly implement any recommendations that are made in the course of any periodic suitability review.

    d. a requirement that the casino licensee maintain breach registers and report breaches and likely breaches to the VCGLR as they occur, in the same way that AFS licensees are required to under section 912D of the *Corporations Act 2001* (Cth). Among other things, AFS licensees must notify the Australian Securities & Investments Commission in writing of any "significant" breach of their obligations under section 912A, section 912B or financial services laws, as soon as practicable and in any event within ten business days of becoming aware of the breach or

likely breach.[246] This obligation has the benefit of explicitly setting out the VCGLR's disclosure expectations of Crown and will assist with the reform of Crown's corporate culture.

e. An enhanced version of section 26 of the Act to enable the VCGLR to give directions which require the casino licensee to provide a written statement or affidavit to the VCGLR containing specified information about the business being conducted by the licensee, or its representatives. Such a power would be analogous to that which is applied to AFS licensees pursuant to section 912C of the *Corporations Act 2001* and will complement the powers currently conferred by section 26 of the Act which provide for the casino licensee to provide "information" and "records" (i.e. existing records rather than providing an explanation on oath in response to the regulator's queries).

f. a power to examine persons pursuant to section 26 on oath or affirmation (there presently being no power to administer an oath or affirmation). As the VCGLR's experience in the course of the China arrests investigation has demonstrated, executives of the Casino Licensee were not candid with the VCGLR when they were interviewed, without an oath or affirmation, for the purpose of that investigation.[247]

g. the types of protections that are afforded to "whistle blowers" as contained in Part 9.4AAA of the *Corporations Act 2001,* having regard to:

   i. the existence of the deeds that were signed by Crown's employees in China and their consequential reluctance to speak to the VCGLR in the course of its China arrests investigation;[248] and

   ii. the evidence of "employee 10" and "employee 15" at this Commission as described in Counsel Assisting's submissions, including the apparent reluctance of senior staff to report the "China Union Pay" issue[249] as well as

246 Similar obligations are imposed on financial services licensees in the United Kingdom where the Financial Conduct Authority's principle 11 and the Prudential Regulation Authority's fundamental rule 7 not only require licensees to be open and cooperative with regulators but in the case of principle 11, that licensees give notice of "*anything relating to the firm of which the appropriate regulator would reasonably expect notice*".

247 See Closing submissions of Counsel Assisting the Commission, July 2021, COM.0500.0001.0380 at 46-52 [3.56]-[3.85]. Executives of the Casino Licensee were more candid when under oath in the Bergin Inquiry.

248 Exhibit RC0003 VCGLR Final China Investigation Report, 19 February 2021, VCG.0001.0001.0001 at .0018-.0020.

249 Closing submissions of Counsel Assisting the Commission, July 2021, COM.0500.0001.0380 at 148 [5.13].

the request by Crown's in-house lawyers that matters relating to this issue be kept confidential;[250]

The VCGLR intends that in the future Crown's staff can safely, confidently and confidentially report matters to the regulator and receive the appropriate statutory protections.

h. powers analogous to those that exist in New South Wales,[251] which require the casino licensee to fund disciplinary investigations and reviews, for reasons including that this would disincentivise the behaviour seen in the China arrests investigation which resulted in a 3.5-year investigation and the type of approach that was taken to the VCGLR's Disciplinary Action that is the subject of the reasons that were published on 27 April 2021.[252]

i. powers to compel and/or accept and enforce undertakings from the casino licensee similar to those which apply in respect of associates of the licensee pursuant to section 28A(4A) of the Act and in respect of ASIC's regulatory functions pursuant to section 93AA of the *Australian Securities and Investments Commission Act 2001* (Cth).

j. enhanced powers for the VCGLR which ensure that Crown cannot deploy Commonwealth secrecy provisions that exist in anti-money laundering and counter-terrorism financing (AML/CTF) legislation as a tool to avoid producing the information the VCGLR needs to properly regulate Crown.

Part 5.3 Introduction of a positive duty

152. Counsel Assisting propose that in the context of Crown failing to adopt preventative measures to minimise Key Risks "one option which presents is to impose a positive duty on Crown Melbourne".[253]

153. Although the VCGLR generally supports a proposal to introduce such a general duty, it further submits that the nature of any such duty should include a recognition that the duty would be imposed in the context of a licensed regulatory environment.

154. In that regard, Crown presently operates the Melbourne casino within a licensed environment analogous to the AFS licensing regime in the *Corporations Act 2001*.

250 Closing submissions of Counsel Assisting the Commission, July 2021, COM.0500.0001.0380 at 151-152 [8.4], citing: T2473:9-10 (Employee 15); Exhibit RC0936 File note regarding meeting with Kevin Zhou page 1, 23 March 2021, CRW.512.048.0044.

251 See, eg, *Casino Control Act 1992* (NSW) sections 16, 35A, and 51.

252 Exhibit RC0290 VCGLR Decision and Confidential Reasons for Decision, 27 April 2021, VCG.0001.0002.6984.

253 Closing submissions of Counsel Assisting the Commission, July 2021, COM.0500.0001.0380 at 346 [1.26].

Section 912A of the *Corporations Act 2001* requires an AFS licensee to do all things necessary to ensure that their services are provided efficiently, honestly and fairly. Positive duties of this kind are appropriate in a licensed environment, particularly because there is inevitably a significant knowledge differential (and therefore power differential) between the casino licence holder and members of the public who may use the licensee's services.

155. Drawing upon the AFS regime, the objects of the Act and the evidence at this Commission, the VCGLR submits that any positive duty that is imposed should not only include a general duty, but should also include specific duties to:

    a. assist the VCGLR in the conduct of its regulatory operations;

    b. not mislead the VCGLR (and make any instances of misleading conduct a ground for disciplinary action or an offence);

    c. ensure that the operation of the Melbourne casino remains free from criminal influence or exploitation;

    d. ensure that gaming in the Melbourne casino is conducted honestly;

    e. take reasonable steps to ensure that its associates and casino special employees comply with their obligations under the Act;

    f. ensure that the casino licensee has adequate risk management systems;

    g. comply with its obligations under the Act and the *Casino (Management Agreement) Act 1993* (Vic), and any relevant agreements; and

    h. comply with any other obligations that might be prescribed by regulations.

Part 5.4 Direct obligation on Crown directors

156. Counsel Assisting proposes that a direct obligation be imposed on the directors of the casino operator to take reasonable steps to ensure its business is conducted with honesty and integrity and in a transparent manner vis-a-vis the regulator.[254] It is also proposed that directors could be required to ensure that Crown has in place appropriate governance and risk management structures. The VCGLR supports these proposals but as has already been noted, is of the view that such obligations should not only exist in respect of directors, but also in respect of the licensee itself.

157. Insofar as such a duty were to apply to directors and/or associates, the VCGLR also submits that a breach of these positive obligations should be an express ground upon

254 Closing submissions of Counsel Assisting the Commission, July 2021, COM.0500.0001.0380 at 348 [1.36].

which the VCGLR could take steps to terminate the association of that person with the casino operator.

158. The VCGLR notes that presently, under section 28 of the Act, if the VCGLR determines that an associate is unsuitable to be concerned in or associated with the business of the casino operator, the VCGLR may require the associate to terminate the association with the casino operator.

Part 5.5 A VCGLR-appointed director

159. At paragraph 6.4 on page 217 of their final submissions, Counsel Assisting submit that an option to improve Crown's governance may be "to mandate the appointment of an independent director appointed by the VCGLR". This unprecedented suggestion has not been the subject of any evidence. The VCGLR has reservations about the idea. It could compromise its independence and place the appointee in the invidious position of having dual loyalties. It is not a recommendation that should be made without an examination of the benefits and risks – an examination that has not been conducted in this inquiry.

Part 5.6 Shareholding interest in Crown Melbourne should not exceed 5%

160. At paragraph 3.14 on page 211 of their final submissions, Counsel Assisting stated that:

> Parties with leave to appear should provide submissions to the Commission on any recommendation the Commission might make to the effect that a shareholder's interest in Crown Melbourne should not exceed 5%, whether by direct interest or "look through", how to give effect to such a recommendation and the length of time that is considered desirable to give effect to a recommendation to that effect.

161. In response to this proposal, the VCGLR notes that, generally speaking, the larger the size of a shareholder's interest in Crown, the larger the potential to exert influence over the casino operator. However, the evidence does not demonstrate that an interest exceeding 5% will in and of itself lead to a shareholder exerting inappropriate or unacceptable influence. There are several existing institutional investors with shareholdings in Crown which exceed 5%. Other than CPH, the VCGLR is not aware, and no evidence has been given to the Commission, of another large shareholder in Crown that has exerted its power in a manner that is unacceptable for a person who is concerned in or associated with the ownership, management or operation of the business of the casino operator. The VCGLR observes that it is not necessarily the percentage of shareholding which gives rise to concerns. Rather, it is the conduct of the particular significant shareholder.

162. The VCGLR has sought to make use of its powers of compulsion in the Act to require CPH to give undertakings for the purpose of minimising the influence of CPH on the

operations of Crown.[255] Should CPH refuse to provide the required undertakings, or breach them, the VCGLR can take the action available to it under the Act to ensure that CPH's association with the casino operator is terminated.

163. The VCGLR expects that this power, coupled with the further enhancements to the VCGLR's powers outlined in these submissions, will be sufficient to address the concerns that Counsel Assisting have expressed about the risk of CPH or another significant shareholder exerting unacceptable influence on the casino operator. However, the VCGLR acknowledges that it addresses this issue from a regulatory perspective and not a policy perspective. The Government is best placed to address the question of policy.

Part 5.7 Banning Junkets

164. At paragraph 8.3 on page 206 of their final submissions, Counsel Assisting submit:

> The current regulatory regime which leaves junkets to be regulated by internal control statements is unsatisfactory. According to its experts, Crown's probity processes were substandard. Crown should not be left to its own devices to approve junkets because it has shown that it is unable to do this satisfactorily and regulatory oversight is therefore required. If junkets are to be allowed in the future, the legislation should be amended to require junkets or junket tour operators to be licensed or approved by the VCGLR.

165. In respect of Counsel Assisting's proposal of requiring junkets or junket tour operators to be licensed or approved by the VCGLR, whilst this is ultimately a policy matter for Government, the VCGLR points out that:

a. The Bergin Report recommended junkets no longer be permitted at all.[256]

b. The findings in the AUSTRAC Report provide sound reasons to ban junkets at the casino. JTOs and JTAs bring a high level of ML/CTF risk into the casino as well as the potential for criminal exploitation.

c. Any regulatory licensing regime will face difficulties in assessing, verifying and ensuring the probity of junket entities given they are commonly foreign entities, require the provision of intelligence and evidence from Commonwealth and overseas agencies, and require adequate resourcing to thoroughly investigate.

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255 See Exhibit RC1536 Letter from DLA Piper to Ashurst, 26 July 2021, VCG.0001.0006.0019; Exhibit RC1537 Letter from Ashurst to DLA Piper, 26 July 2021, VCG.0001.0006.0022 (enclosing Exhibit RC1520 Email from Guy Jalland to Scott May, 26 July 2021, VCG.0001.0006.0023; and Exhibit RC1521 Email chain between Guy Jalland, Murray Smith and Phillip Crawford, 15 March 2021, VCG.0001.0006.0024); Exhibit RC1538 Letter from DLA Piper to Ashurst, 28 July 2021, VCG.0001.0006.0017; Exhibit RC1539 Letter from Ashurst to DLA Piper, 29 July 2021, VCG.0001.0006.0018; Exhibit RC1540 Letter from DLA Piper to Ashurst, 30 July 2021, VCG.0001.0006.0021; and Exhibit RC1541 Letter from Ashurst to DLA Piper, 30 July 2021, VCG.0001.0006.0020.

256 Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at v [Recommendation 11].

d. Doing so may be seen to transfer the obligation of a casino operator, who should, as a suitable person, ensure that the entities they do business with, including junkets, are themselves suitable, to the regulator. This probity assessment would then need to be taxpayer funded, quite unfairly given that the casino operator receives the vast majority of the benefits from engaging with junket operators.

e. Licensing of junkets appears to contradict previous government policy, under which the Government has removed responsibility for licensing of junket operators from the regulator.

166. The VCGLR notes that as matters currently stand, the VCGLR has directed Crown to cease all junket operations and not recommence junket operations at the Melbourne casino until such time as Crown applies to and receives permission from the VCGLR to recommence junket operations. Any such application must demonstrate how Crown has addressed the Commission's concerns as identified in the VCGLR's reasons for decision in the disciplinary action it took against Crown concerning junket operations at the Melbourne casino.[257]

[257] See Part 4.4 above. Exhibit RC292 VCGLR Decision and Confidential Reasons for Decision, 27 April 2021, VCG.0001.0002.6984 at .0002.

PART 6 CONCERNS RAISED

Part 6.1 The risk-based approach

167. The VCGLR submits that overall Counsel Assisting's submissions represent a fair assessment of the challenges that it has faced in undertaking its role of regulating the Melbourne casino and its licensee. The evidence shows that an absence of transparency and candour on the part of Crown has permeated the relationship between Crown and the VCGLR (since at least the conclusion of the sixth casino review).[258] The behaviour of Crown has frustrated the effectiveness of applying a risk-based regulatory model to casino operations.

168. Counsel Assisting appears to suggest that the risk-based approach to regulation has been "adopted by the VCGLR" as a matter of choice.[259] In fact, adopting a risk-based approach is common to most, if not all, Victorian regulators. Guidance provided by the then Victorian Competition and Efficiency Commission, in April 2015, notes that "regulation should be designed to facilitate a risk-based approach by regulators" and outlines how to use risk-based systems to develop policy and to design, administer and enforce any ensuing regulation. The guidance note is "aimed at…regulators administering and enforcing regulation".[260] Accordingly, the VCGLR adopted a risk-based approach (to its entire regulatory remit, not just the casino) to set and deliver priorities and manage resources. Further, under section 9(4) of the VCGLR Act, the VCGLR must, when performing functions or duties or exercising its powers under gambling legislation or liquor legislation, have regard to any decision-making guidelines issued by the Minister under section 5.

169. Given the breadth of the VCGLR's regulatory ambit, a risk-based approach is also practically necessary because the VCGLR does not have the resources to thoroughly investigate every potential contravention of which it becomes aware. Nor does it have the coercive powers necessary to support its investigations. Counsel Assisting's submissions support a conclusion that a more intensive style of regulation is called for. The VCGLR also supports this conclusion, and notes that this will require legislative amendment, as discussed above.

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258 Closing submissions of Counsel Assisting the Commission, July 2021, COM.0500.0001.0380 at 40 [2.23] citing: T2278:21-24 (Morrison); T3241:31-35 (X Walsh); T3761:4-8; (Coonan); T3661:6-21 (closed hearing – Korsanos).

259 Closing submissions of Counsel Assisting the Commission, July 2021, COM.0500.0001.0380 at 343 [1.8].

260 Smart Regulation: Grappling with Risk, guidance note, April 2015 <https://www.vic.gov.au/sites/default/files/2019-06/Smart-regulation-Grappling-with-risk-Guidance-Note.pdf>.

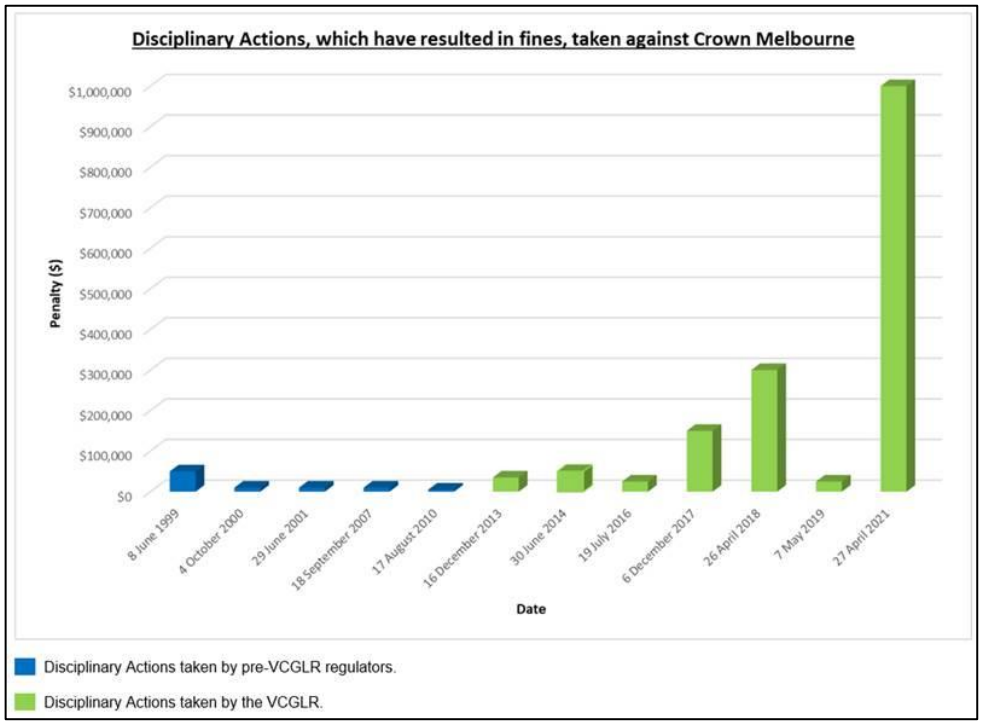
Part 6.2 Enforcement action

170. The VCGLR does, however, take issue with Counsel Assisting's submission that the VCGLR "has not demonstrated a willingness to take meaningful enforcement action".[261] On the contrary, the VCGLR has demonstrated a willingness to do precisely this by the following major recent examples:

    a. completing a painstaking investigation into the China arrests, despite the many obstacles that Crown placed in its way, and preparing an extensive, and damning, report to the Minister; and

    b. taking disciplinary action against Crown for breaching its Junkets ICS and imposing the maximum financial penalty available under the Act ($1 million), prohibiting junket operations until the VCGLR had given permission for them to resume and requiring Crown to report monthly on the implementation of its reform program.

171. Other recent examples of enforcement action against Crown include taking disciplinary action against Crown for failure to notify the VCGLR of a new junket operator which resulted in a $25,000 fine, and taking disciplinary action against Crown for the use of button blanks on gaming machines without prior approval installation of blanking button which resulted in a $300,000 fine and a letter of censure. Further, the VCGLR has foreshadowed taking further enforcement action against Crown in its China Report. In **Figure 1** immediately below we show the disciplinary actions that have been taken against Crown Melbourne which have resulted in fines.



261 Closing submissions of Counsel Assisting the Commission, July 2021, COM.0500.0001.0380 at 343 [1.9].

172. Rather than demonstrating a lack of willingness on the part of the VCGLR to take enforcement action against Crown Melbourne, the evidence before the Commission shows that the VCGLR does take appropriate and meaningful action when it identifies breaches. The VCGLR's approach is consistent with its publicly available Regulatory Approach.[262] However, in doing so, the VCGLR's ability to take regulatory action has at times been frustrated by:

    a. the extent to which Crown's lack of transparency has meant that the regulator was not told about important matters;

    b. its lack of power to investigate in an efficient and cost-effective manner;

    c. the steps Crown took to obstruct the VCGLR in its attempts to find out more; and

    d. the insignificant deterrent effect of the maximum monetary penalty for disciplinary action, when compared to the size of the financial benefits to be obtained from breaches.

Part 6.3 Oversight of Crown

173. Counsel Assisting raise three other concerns about the VCGLR's oversight of Crown to which the VCGLR seeks to respond briefly.

174. The first of these concerns the Bonus Jackpot taxation issue. At paragraph 1.50 on page 89 of their submissions, Counsel Assisting submit, in relation to the emails that passed between Crown and the VCGLR in 2018, that the VCGLR "should have done more with the information provided by Crown". To the extent that this is intended as a criticism it is unfair for the following reasons:

    a. as Counsel Assisting themselves note, Crown actively misled the VCGLR on this issue from 2012 until 2018 and even in 2018, Crown's responses to Mr Cremona's inquiries were less than fulsome and frank;

    b. at paragraph 1.52 of their submissions Counsel Assisting suggests that the VCGLR's letter of 2 June 2021 (which should be a reference to the VCGLR letter to the Commission of 8 July 2021) may not have accurately described the VCGLR's awareness of the deductions. With respect, Counsel Assisting appear to disregard the adjective "certain" in the passage quoted at paragraph 1.52 on page 89. Since June 2018, the VCGLR was aware in general terms of the eight categories of bonus jackpots; and

262 See <https://www.vcglr.vic.gov.au/about-us/regulatory-structure/regulatory-approach>.

c. very recently, Crown has paid approximately $61 million in outstanding tax liabilities, pending its calculation of such further liabilities as might remain outstanding. [263]

175. Secondly, at paragraph 3.2 on page 264 of their final submissions, Counsel Assisting observe that the conclusion of suitability was reached "notwithstanding that the period of review covered some of the matters that were examined in the Bergin Inquiry".[264] This observation insufficiently acknowledges that the VCGLR expressly (and quite properly) disregarded its incomplete China arrests investigation in reaching its view about suitability. The Review Report notes that the VCGLR had not taken into account "anything of what has been learned to date in respect of the detention of the 19 Crown staff in China".[265] The report also notes that the VCGLR had intended to complete its investigations and include the outcomes in the findings, analysis and recommendations of the sixth review.[266] However, this was not possible because Crown failed to provide full disclosure of documents and information at the start of the investigation and did not produce all of that material before the conclusion of the sixth review.[267] Crown relied on claims of legal professional privilege to delay disclosure of documents – such a tactic clearly could not have been implemented in the context of a standing Royal Commission. Crown's lack of co-operation in the conduct of this investigation is also discussed in Part 4 above.

176. The VCGLR also observes that Crown adopted an aggressive approach to ensure that the sixth review report was quarantined from the China arrests investigations on the grounds that this investigation was not complete and had not made findings. This included Crown making the threat of obtaining an injunction against the VCGLR to ensure the exclusion of the incomplete China arrests investigation in the sixth review report, and the VCGLR obtaining Senior Counsel's advice on this issue and in accordance with such advice excluding reference to the ongoing China arrests investigation from the sixth review report.

177. The VCGLR also observes that there are tight timeframes for it to complete the section 25 casino review process and that such a review cannot be delayed or extended. The findings of the section 25 casino review process constitute a point in time observation by

263 Exhibit RC1542 Letter from Helen Coonan to Catherine Myers, 27 July 2021, VCG.0001.0006.0015.

264 Closing submissions of Counsel Assisting the Commission, July 2021, COM.0500.0001.0380 at 264.

265 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, COM.0005.0001.0776 at .0855.

266 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, COM.0005.0001.0776 at .0855.

267 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, COM.0005.0001.0776 at .0855.

the VCGLR of Crown's suitability which can be revisited by the VCGLR later as more information and documents become available to it.

178. Thirdly, at paragraph 4.31 on page 215, Counsel Assisting submit that the conclusion in the sixth casino review report that the relationship between Mr James Packer (via his company CPH) and Crown was "well mediated" is "unsustainable in light of the findings of the Bergin Inquiry". In reply, the VCGLR notes that, this assessment was made by the VCGLR based on the facts made available to the VCGLR by Crown at the time. The observation was made at a point in time and made in the absence of the VCGLR being able to take into account the issues regarding the arrests of Crown staff in China, having been unable to complete its investigation due to Crown's actions and approach to the investigation. Since the time of the sixth casino review, the VCGLR has:

    a. raised the issue of CPH and Mr Packer's influence in the China arrests report;[268] and

    b. sought to make use of its powers of compulsion to require CPH to give undertakings for the purpose of minimising the influence of Mr Packer and his company CPH on the operations of Crown.[269]

179. Further, at paragraph 6.19 on page 235 Counsel Assisting submits that "The VCGLR's decision to accept Crown's assessment of the robustness and effectiveness of the risk management framework and systems was adequately assisted by external advice was premature." As is evident in Part 4 above, Crown was not cooperative in its implementation of this recommendation of the sixth review and assessments were made by the VCGLR based on information provided to it by Crown at the time.

180. In relation to the VCGLR's use of its powers of compulsion to require CPH to give undertakings limiting CPH's influence on the casino operator, the VCGLR has informed CPH that for reasons which have included the matters that are raised in the China arrests report, it has formed the requisite opinion under section 28A(4A)(b) of the Act that CPH has exerted its power in a manner that is unacceptable for a person who is concerned in or associated with the ownership, management or operation of the business of the casino operator. CPH has offered a voluntary undertaking but has sought to rely on an equivalent informal undertaking contained in an email to ILGA as a basis to assert that it is no longer bound by the Act.[270] This stance is redolent of the attitude that has

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268 Exhibit RC0003 VCGLR Final China Investigation Report, 19 February 2021, VCG.0001.0001.0001 at .0039-.0041.

269 Exhibit RC1542 Letter from Helen Coonan to Catherine Myers, 27 July 2021, VCG.0001.0006.0015.

270 See Exhibit RC1536 Letter from DLA Piper to Ashurst, 26 July 2021, VCG.0001.0006.0019; Exhibit RC1537 Letter from Ashurst to DLA Piper, 26 July 2021, VCG.0001.0006.0022 (enclosing Exhibit RC1520 Email from Guy Jalland to Scott May,

characterised Crown's approach towards the VCGLR and has been the subject of criticism in Counsel Assisting's submissions. It has done nothing to dissuade the VCGLR from its view that CPH's conduct is unacceptable for a person who is concerned in or associated with the ownership, management or operation of the business of the casino operator.

181. The VCGLR has informed CPH that, notwithstanding CPH's view that the Act does not apply to it, the VCGLR intends to use its powers of compulsion in section 28A(4A)(b). The VCGLR considers this to be the appropriate mechanism by which the VCGLR can require CPH to give undertakings and, if necessary, take action to enforce any breach or failure to provide them. Further, the VCGLR considers there is no reason why the mechanism that has been prescribed by the Parliament should not be applied in these circumstances, particularly having regard to the extent to which CPH has acknowledged, by its proffering of a proposed informal undertaking, that action must be taken so as to mitigate the risks associated with its ongoing relationship with the operator of the Melbourne casino.

182. If CPH fails to provide the requisite undertakings, the VCGLR will consider seeking to exercise its powers under the Act to terminate the association between Crown and CPH.[271]

26 July 2021, VCG.0001.0006.0023; and Exhibit RC1521 Email chain between Guy Jalland, Murray Smith and Phillip Crawford, 15 March 2021, VCG.0001.0006.0024); Exhibit RC1538 Letter from DLA Piper to Ashurst, 28 July 2021, VCG.0001.0006.0017; Exhibit RC1539 Letter from Ashurst to DLA Piper, 29 July 2021, VCG.0001.0006.0018; Exhibit RC1540 Letter from DLA Piper to Ashurst, 30 July 2021, VCG.0001.0006.0021; and Exhibit RC1541 Letter from Ashurst to DLA Piper, 30 July 2021, VCG.0001.0006.0020.

271 See sections 28A(4B) and (5) of the Act.

PART 7 CONCLUSION

Part 7.1 Cooperation with the Commission

183. The VCGLR has co-operated and will continue to cooperate with this Commission and sincerely thanks this Commission, and the large team of Counsel Assisting and Solicitors Assisting for all their hard work and efforts to date.

184. The VCGLR stands ready, once properly resourced and with its powers enhanced following legislative amendment to undertake the seventh casino review and continue its role in monitoring the casino and its associates.

185. The VCGLR proposes that the cost of further reviews under section 25 of the Act or any other special investigation into the casino licensee be borne by the licensee. The benefit of this proposal is that the cost of future reviews is appropriately funded by the licensee and not the Victorian taxpayer.

2 August 2021

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SCHEDULE 1: SUMMARY OF KEY PROVISIONS IN THE CURRENT LEGISLATIVE SCHEME FOR REGULATION OF CASINOS

1. The scheme for the regulation of casino operators in Victoria is contained in the *Casino Control Act 1991* (Vic) (the **Act**). The purposes of the Act include the establishment of a system for the licensing, supervision and control of casinos with the aims of:

    a. ensuring that the management and operation of casinos remains free from criminal influence or exploitation;

    b. ensuring that gaming in casinos is conducted honestly;

    c. promoting tourism, employment, and economic development generally in the State.

2. Section 8 of the Act makes provision for applications to be made to the VCGLR for casino licences and section 9 prohibits the VCGLR from granting such a licence unless it is satisfied that the applicant and each associate is a suitable person to be concerned in or associated with the management and operation of a casino. Section 9(2) makes provision for particular matters that the VCGLR must consider in forming a view about the suitability of an applicant and its associates, including whether:

    a. each person is of good repute, having regard to character, honesty and integrity;

    b. each person is of sound and stable financial background;

    c. the applicant has sufficient business ability to establish and maintain a successful casino; and

    d. each office holder is a suitable person to act in that capacity.

3. Section 13 allows licences to be granted for any term specified in the licence and on any conditions not inconsistent with the Act. Section 14 allows the VCGLR to make an exclusivity agreement with a casino operator, with the approval of the Minister.

4. Section 20 of the Act provides a show cause process for the taking of disciplinary action against a casino operator by the VCGLR. Once the casino operator has had an opportunity to make submissions about proposed disciplinary action, and the VCGLR has considered those submissions, the VCGLR may take disciplinary action against the casino operator as the VCGLR sees fit. Section 20 defines the grounds for disciplinary action, which include:

    a. the operator has contravened the *Gambling Regulation Act 2003* (Vic) or a condition of the licence;

    b. the operator is considered to be no longer a suitable person to hold the licence;

c. there have been repeated breaches of the Responsible Gambling Code of Conduct; and

d. it is considered to be no longer in the public interest that the licence should remain in force.

5. Section 3(1) of the Act defines “public interest” as “public interest… having regard to the creation and maintenance of public confidence and trust in the credibility, integrity and stability of casino operations”.

6. Section 23 of the Act empowers the VCGLR to give a casino operator a written direction relating to the conduct, supervision or control of operations in the casino and the operator must comply with that direction. These directions cannot be inconsistent with the Act or the conditions on the casino licence.

7. The VCGLR is provided with an ad hoc investigation power in section 24 of the Act, and the VCGLR is required by section 25 of the Act to undertake investigations every 5 years. Under section 24 the VCGLR is required to form an opinion as to:

a. whether or not the casino operator is a suitable person to continue to hold the licence;

b. whether or not the casino operator is complying with specified laws; and

c. whether or not it is in the public interest that the casino licence should continue in force (noting the definition of public interest in section 3(1)).

8. Section 26 of the Act empowers the VCGLR to issue notices for the production of information and records relevant to the casino operator and to require individuals to attend for examination in relation to matters relevant to the casino operator. That section expressly abrogates the privilege against self-incrimination, although evidence of a self-incriminatory kind may not be used against a person in criminal proceedings (other than proceedings under the Act). A failure to comply with a notice under section 26 without reasonable excuse may be punished by the Supreme Court of Victoria under section 27.

9. Section 28 of the Act imposes requirements on the casino operator to communicate defined major changes to the VCGLR before they occur, where possible, and other defined major changes and any prescribed minor changes within a specified time. Major changes are defined as those relating to people becoming associates of the casino. Although regulations can be made prescribing major changes beyond those set out in section 28 and minor changes, there are not currently any prescribed.

10. Section 30 of the Act requires the casino operator to give the VCGLR notice before it enters into “controlled contracts” and provides for the VCGLR to object to these contracts, in which case the casino operator is prohibited from entering into the contract.

11. Section 36 empowers the VCGLR to seek an injunction against a casino operator, including if it has engaged in conduct that constitutes a breach of the Act or its licence.

12. Section 38 of the Act mandates that certain casino employees (known as "special employees") are required to be licensed by the VCGLR, including casino employees who:

    a. work in a managerial capacity or are authorised to make discretionary decisions that regulate operations in a casino; and

    b. conduct gaming or handle money or chips, perform security, operate gaming equipment or other activities specified by the VCGLR.

13. Section 43 requires the VCGLR to "investigate each application" and section 52 allows the VCGLR to cancel licences and provides grounds for that and other disciplinary action to be taken by the VCGLR in relation to special employees.

14. Section 58 requires casino operators to provide training courses for special employees. Section 58A mandates specific compulsory training for special employees in relation to gaming machines, which is to be approved by the VCGLR under section 58B of the Act.

15. Part 5 of the Act empowers the VCGLR to approve the layout of casinos, the games played, the gaming equipment used and the rules of play.

16. Section 69 of the Act provides that it is a condition of the casino licence that the casino operator implement a Responsible Gambling Code of Conduct that complies with the relevant regulations.

17. Part 7 of the Act is entitled "Casino Regulation". Many of the provisions of this Part have been repealed. Section 105 and 106 of the Act empower inspectors to enter the casino to ascertain whether or not the casino operator is complying with the requirements of the Act and to assist in the detection of the commission of offences against the Act in the casino.

18. Section 121 prohibits a casino operator from conducting operations unless the VCGLR has approved "a system of internal controls and administrative and accounting procedures for the casino". That section makes it an offence for the casino to fail to implement the approved system, and imposes a penalty of 50 penalty units (currently valued at $9,087) for that offence. Section 122 specifies that the system mandated by section 121 must contain certain details, including with respect to:

    a. accounting procedures;

    b. recording of revenue;

    c. chain of command authority;

d. the playing of games and approved betting;

e. the handling of chips and cash and the recording of transactions with chips and cash;

f. the establishment and use of deposit accounts;

g. the use of security; and

h. the conduct of junkets or premium player arrangements.

19. Section 123 of the Act requires the VCGLR to approve the separate banking accounts held by the casino.

20. Part 10 sets out the functions and powers of the VCGLR. Section 140 specifies its objects as having the following purposes:

a. ensuring that the management and operation of casinos remains free from criminal influence or exploitation;

b. ensuring that gaming and betting in casinos is conducted honestly; and

c. fostering responsible gambling in casinos in order to:

i. minimise harm caused by problem gambling; and

ii. accommodate those who gamble without harming themselves or others.

21. Section 141 specifies that the VCGLR has functions that include overseeing the operation and regulation of casinos and the other functions specified in the Act, including:

a. supervising directly the operation of casinos and the conduct of gaming and betting within them;

b. detecting offences committed in or in relation to casinos;

c. investigating and reporting to the Minister on the matters referred to in section 25 (regular investigations of suitability); and

d. ensuring that the taxes and levies payable under the Act are paid.

22. Section 166 empowers the VCGLR to direct a casino to provide information that may be of assistance to law enforcement agencies. It is a condition of the casino licence that the casino comply with such a direction.