IN THE MATTER of:

ROYAL COMMISSION INTO THE CASINO OPERATOR AND LICENCE

SUBMISSIONS OF THE STATE OF VICTORIA

IN RESPONSE TO COUNSEL ASSISTING'S CLOSING SUBMISSIONS

1. The State of Victoria makes the following submissions in response to the *Closing submissions of Counsel Assisting the Commission* dated 20 July 2021.

Introduction

2. As recited in the letters patent establishing the Royal Commission, the aims of the system for licensing, supervision and control of casinos established under the *Casino Control Act 1991* include promoting tourism, employment, and economic development generally in the State.[1] These benefits can only appropriately accrue to the Victorian community from the casino operated by Crown Melbourne Ltd (**Crown**) if the risk of criminal influence and exploitation with respect to the management and operation of the casino is properly managed, and if Crown complies with all of its obligations to the State and the community and is and remains otherwise suitable to be the licensed casino operator. Critically, those obligations include meeting its tax obligations which arise from the licence granted to it to operate Victoria's only casino and appropriate measures to minimise the harm gambling can inflict on individual gamblers and the community.

3. After the findings of the Bergin Inquiry indicated that Crown may not be meeting its anti-money laundering obligations and that Crown Sydney Gaming Pty Ltd was not suitable to hold a casino licence in NSW, the State Government[2] established this Royal Commission to conduct an independent inquiry into Crown's suitability as Victoria's only licensed casino operator and related matters. Consistently with the independence

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1 Letters patent issued to the Hon Ray Finkelstein AO QC dated 22 February 2021, paragraph 2(c); see also *Casino Control Act 1991*, s 1(a)(iii).

2 Through advice to Her Excellency the Governor resulting in the letters patent issued on 22 February 2021.

of the inquiry from government, the State does not now seek to address the serious factual matters that the Royal Commission has uncovered or to contend for particular findings in relation to those matters.

4. Rather, the State confines these submissions to the following four matters:

   (a) the implications of certain provisions of the Management Agreement scheduled to the *Casino (Management Agreement) Act 1993* in relation to the potential cancellation, suspension or variation of Crown's casino licence, if the Victorian Commission for Gambling and Liquor Regulation (**VCGLR**) were to take such action in accordance with Counsel Assisting's closing submissions;

   (b) the suggestion by Counsel Assisting that the Royal Commission consider recommending the appointment of a manager or monitor to Crown;

   (c) comments by Counsel Assisting on the Ministerial Direction relating to Responsible Gambling Codes of Conduct that has applied to the casino operator since 19 September 2018;[3] and

   (d) a general outline of the State's intentions for addressing and in due course resolving Crown's underpayment of casino taxes, revealed by the inquiry and now acknowledged by Crown.

(1) Management Agreement provisions relating to cancellation, suspension or variation of Crown's casino licence

5. Counsel Assisting submit that it is open to the Royal Commission to find that Crown is not suitable to hold the casino licence or it is no longer in the public interest for Crown to hold it.[4] Counsel Assisting's submissions raise a number of possible consequences of such findings, some of which involve some form of potential cancellation, suspension or variation of Crown's authority to operate the casino under the casino licence.

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3 Exhibit RC0511, COM.0013.0001.0312, *Victoria Government Gazette*, S 430, 17 September 2018, pp.3-6.

4 See [1.5]-[1.8], pages 23-24; [3.1]-[3.10], pages 264-265; [1.10]-[1.39], pages 267-272.

6. As Counsel Assisting have submitted,[5] in making its recommendations it will be appropriate for the Royal Commission to take into account their potential consequences, including the risks and timeframes associated with any cancellation, variation or suspension of the casino licence. Further, paragraph 10(j) of the letters patent directs the Royal Commission to inquire into and report on whether changes to Victorian legislation and the "Crown Melbourne Contracts"[6] are needed to implement its recommendations. Paragraph 12 of the letters patent requires the Royal Commission to have regard to the financial impact of its recommendations on the State.

Regulatory regime - licence cancellation, suspension or variation

7. The casino licence was granted to Crown on 19 November 1993 following entry into:

   (a) an agreement between the Victorian Casino Control Authority (a predecessor of the VCGLR), on behalf of the State, and Crown, pursuant to s 142 of the *Casino Control Act* (**the Casino Agreement**); and

   (b) an agreement between the Minister, for and on behalf of the State, and Crown, pursuant to s 15 of the *Casino Control Act*, ratified by the *Casino (Management Agreement) Act* (**the Management Agreement**).

8. Since the Management Agreement was first ratified, ten deeds of variation have been entered into by the State and Crown (and ratified by amendments to the *Casino (Management Agreement) Act*), the most recent deed of variation (the Tenth Deed of Variation) having effect from 21 October 2014.[7]

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5 See [1.23]-[1.25], pages 25-26; [1.64]-[1.70], pages 341-342.

6 Defined in clause 9(a) of the letters patent as the documents referred to in s 25(1)(c) of the *Casino Control Act*, the scope of which includes the Management Agreement.

7 See Management Agreement, clauses 2.1(a), 2.2, and the *Casino and Gambling Legislation Amendment Act* (No 73 of 2014), which amended the *Casino (Management Agreement) Act* to introduce s 6J, ratifying the Tenth Deed of Variation, and which received Royal Assent on 21 October 2014. For completeness we note that certain clauses of the Tenth Deed of Variation, not relevant to this advice, took effect on 3 September 2014: Management Agreement, clause 2.2.

9. By the Tenth Deed of Variation, clauses were inserted into the Management Agreement known as the "Regulatory Certainty" provisions:[8]

   (a) limiting the power of the State and the VCGLR to:

      (i) cancel and vary Crown's Casino Licence (clause 24A.2(a)(i));

      (ii) increase the rates of casino tax (clause 24A.2(a)(ii)); or

      (iii) impose any new casino tax (subject to certain exceptions) (clause 24A.2(a)(iii));

   (b) containing an acknowledgement by the State that Crown would suffer loss and damage in the event that Crown's Casino Licence was cancelled or varied in breach of clause 24A.2(a)(i) and that the ordinary principles for breach of contract would apply (clause 24A.2(b)), meaning that the damages payable for breach of clause 24A.2(a) are uncapped;

   (c) by which the State and Crown agreed that certain specified actions (or any series of such actions) may give rise to compensation being payable by the State to Crown in accordance with a formula and expert determination process (clause 24A.2(3)-(6) and Annexure 1).

10. Under the *Casino Control Act* there are five kinds of disciplinary action (including cancellation, suspension or variation of a licence) and eight categories of "grounds for disciplinary action" defined in s 20(1).

11. Those grounds relevantly include that:

   (a) Crown has contravened a provision of the *Casino Control Act*, the *Gambling Regulation Act* or a condition of Crown's casino licence — s 20(1)(b);

   (b) Crown "is, for specified reasons, considered to be no longer a suitable person to hold the licence" — s 20(1)(d);

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8 See Schedule 11 to the *Casino (Management Agreement) Act*.

(c) there have been "repeated breaches" by Crown of its Responsible Gambling Code of Conduct — s 20(1)(db); and

(d) "for specified reasons, it is considered to be no longer in the public interest that the licence should remain in force" — s 20(1)(e).

12. The ground of contravention of a provision of Crown's casino licence in s 20(1)(b) of the *Casino Control Act* could include a breach of the Management Agreement, provided certain procedural requirements are met.[9]

13. The "public interest" is relevantly defined in s 3 of the *Casino Control Act* as the public interest or interest of the public "having regard to the creation and maintenance of public confidence and trust in the credibility, integrity and stability of casino operations".

14. The effect of the Regulatory Certainty provisions is that the State has acknowledged a right for Crown to be compensated in accordance with the principles of breach of contract for loss and damage suffered in the event that Crown's Casino Licence is cancelled or varied other than:

(a) by mutual prior agreement of the State and Crown; or

(b) in accordance with section 20 the Casino Control Act (except for s 20(1)(e)) (**Section 20 Carve-Out**).

15. Where the Section 20 Carve-Out is available, prior to any suspension, variation or cancellation of Crown's Casino Licence, the VCGLR must comply with the procedural requirements in s 20 of the Casino Control Act.

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[9] Clause 11 of Crown's Casino Licence provides that clause 31.2 of the Casino Agreement and clause 25.2 of the Management Agreement set out events which constitute a contravention of Crown's Casino Licence, and which each enable the VCGLR to "cancel, suspend or vary the terms of this licence pursuant to section 20 of the Casino Control Act", subject to the Master Security Agreement. Relevantly, clause 25.2 of the Management Agreement and clause 31.2 of the Casino Agreement provide that (subject to the Master Security Agreement) it is a contravention of a condition of Crown's Casino Licence, enabling the VCGLR to serve a notice on Crown pursuant to s 20(2) of the Casino Control Act, if Crown commits a breach of any provision of the Management Agreement and Casino Agreement respectively, and certain other requirements are met, enabling Crown to remedy the breach (if it is capable of remedy).

Regulatory regime – other events triggering potential compensation

16. In addition to clause 24A.2, clause 24A.3 of the Management Agreement provides another avenue by which the State might become liable to compensate Crown for financial losses.

17. Under clause 24A.3, the State and Crown agree that "certain other actions or series of actions" by the State, VCGLR, or any other State authority or body[10] "may give rise to compensation being payable by the State" to Crown as a 'Trigger Event' (being those set out in Annexure 1 to the Management Agreement).[11] The calculation of such compensation is by way of a formula set out in clause 2 of Annexure 1 to the Management Agreement. In very general terms, the formula involves the application of a multiple of the annualised negative impact on the EBIDTA of Crown that results from the relevant action (or series of actions) by the State or the VCGLR.

18. The damages payable pursuant to clause 24A.3 are capped at $200 million for all 'Trigger Events' occurring in any term of a Victorian Government, subject to annual adjustments for CPI in accordance with the formula.[12] No compensation will be payable to Crown under clause 24A.3 for a 'Trigger Event' where it arises from disciplinary action validly taken against Crown.[13]

19. Relevantly for present purposes, the State's obligation to pay compensation to Crown in accordance with clause 24A.3 for a 'Trigger Event' may be triggered if:

    (a) the VCGLR, the State, or any other State authority or body takes any action or series of actions which has the effect of:

        (i) reducing maximum bets on, among other things, gaming machines (except where all other Australian State and Territory Governments have taken substantially the same action or series of actions);

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10 Management Agreement, Annexure 1, chapeau to clause 1.1.

11 Management Agreement, clause 24A.4.

12 Management Agreement, Annexure 1, clause 2.2.

13 Management Agreement, Annexure 1, clause 2.3(b).

(ii) removing, reducing in number or amending or restricting the then current manner in which gaming machines in unrestricted mode within the Melbourne Crown Casino are permitted to operate;

(iii) removing, reducing in number or restricting or amending or amending the then current manner in which ATMs are permitted to operate within the Melbourne Casino Complex (except where all other Australian State and Territory Governments have taken substantially the same action or series of actions);

(iv) introducing any form of mandatory pre-commitment, other than the requirement for players of gaming machines operating in unrestricted mode to set time and net loss limits using the state-wide pre-commitment system (except where all other Australian State and Territory Governments have introduced mandatory pre-commitment with a similar effect); or

(v) restricting or amending the then current manner in which Crown's loyalty scheme is permitted to operate (except where all other Australian State and Territory Governments have taken substantially the same action or series of actions); and

(b) such action (or series of actions) has the effect of adversely impacting Crown's EBITDA;[14] and

(c) the action (or series of actions) is without Crown's prior written consent.[15]

Overview of relevant submissions by Counsel Assisting

20. In Section 19 of their closing submissions (particularly at [1.7] and [1.60]-[1.63], pages 336 and 341), Counsel Assisting submit that in the event that the Royal Commission finds that Crown is not suitable to hold the casino licence or it is no longer in the public

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14 Management Agreement, Annexure 1, clause 1.1(b). The adverse impact must be more than "$1 million per annum as assessed by the Company acting reasonably": Management Agreement, Annexure 1, clause 2.3(a).

15 Management Agreement, Annexure 1, chapeau to clause 1.1.

interest for Crown to hold it, the appropriate means for potential implementation of those findings would be for the VCGLR to consider taking disciplinary action against Crown under s 20(1) of the *Casino Control Act*.

21. In Section 15.2 of their closing submissions ([2.1]-[2.11], pages 272-274), Counsel Assisting refer to the availability of cancellation on the "public interest ground" set out in s 20(1)(e) of the *Casino Control Act*, and to clause 24A.2 of the Management Agreement. They note that the State of Victoria may be exposed to potential liability for breach of clause 24A.2, in the event that Crown's licence is cancelled. However, (at [2.11] on page 274) they submit that the compensation provisions do not preclude consideration of disciplinary action by the VCGLR on the public interest ground.

22. In the course of these submissions, at [2.10](c), Counsel Assisting observe:

> *It might be said that the right to compensation creates a significant monetary disincentive to administer the CCA in the manner in which it was intended and fundamentally corrodes an important pillar in the CCA. It also creates the appearance of a significant conflict or tension between the proper administration of the CCA and the financial position of the State of Victoria.*

State's responding submissions

23. The State acknowledges the force of Counsel Assisting's submission at [2.10](c) and respectfully submits that Counsel Assisting's analysis of the availability of disciplinary action under s 20(1)(e) of the *Casino Control Act* merits further consideration. It is submitted that Counsel Assisting's analysis of the availability of s 20(1)(e) may be unsound. It is at least reasonably arguable that clause 24A.2 of the Management Agreement includes a statutory prohibition preventing the VCGLR from cancelling Crown's casino licence on the ground specified in s 20(1)(e) of the *Casino Control Act*, and that legislative amendment may be required if such a recommendation is made.

24. Clause 24A.2(a)(i) of the Management Agreement provides (emphasis added):

"*The State or the Authority [i.e., the VCGLR[16]]* ***must not*** *without [Crown's] prior written consent, take any action or series of actions that has or will have the effect of:*

(i) cancelling or varying the Casino Licence, ***other than*** *the revocation, termination, suspension or variation by the Authority of the Casino Licence in accordance with section 20 of the Casino Control Act (****except where*** *the Authority is relying on section 20(1)(e) of the Casino Control Act as a ground for disciplinary action); …* "

25. Clause 24A.2(a)(i) of the Management Agreement on its terms imposes a contractual prohibition on the State or the VCGLR taking certain action without Crown's consent.

26. Further, the Management Agreement, as amended by each of the ten Deeds of Variation set out in Schedules 2-11 to the *Casino (Management Agreement) Act*, takes effect as if it had been enacted in that Act: ss 6-6J. Section 7(1) of the *Casino (Management Agreement) Act* provides that if a provision of the Management Agreement is inconsistent with a provision of the *Casino Control Act*:[17]

(a) the provision of the Management Agreement prevails; and

(b) the application of the *Casino Control Act* in relation to the Melbourne Casino Licence and Melbourne Casino Operator is modified accordingly.

27. Not only was the *Casino (Management Agreement) Act* enacted after the *Casino Control Act*, but the Tenth Deed of Variation was made and clause 24A was added to the Management Agreement and the *Casino (Management Agreement) Act* after the most recent amendment of s 20(1) of the *Casino Control Act*.[18]

28. The apparent effect of these provisions is that the contractual prohibition in clause 24A.2(a)(i) is also a statutory prohibition taking precedence over s 20(1)(e) of the

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16 See clause 3.1 of the Tenth Deed of Variation, set out in Schedule 11 to the *Casino (Management Agreement) Act*, which amended the definition of the "Authority" in clause 2 of the Management Agreement to refer to the VCGLR.

17 Referred to in s 7 as the "Principal Act", but see s 3 of the *Casino (Management Agreement) Act*.

18 *Casino and Gambling Legislation Amendment Act 2014*, No. 73/2014, s 8, which received the Royal Assent on 21 October 2014 and commenced on 22 October 2014. Section 20(1) of the *Casino Control Act* was last amended by the *Gambling Regulation Amendment (Pre-commitment) Act 2014*, No. 4/2014, which received the Royal Assent on 11 February 2014 and commenced on 30 March 2014.

Casino Control Act, and preventing the VCGLR from taking the action specified in the clause, unless that action comes within the part of the clause that follows the words "other than…". That part of the clause is a carve-out from the prohibition imposed by the earlier part of clause 24A.2(a)(i). However, the carve-out is itself subject to an exception, where the VCGLR is relying on s 20(1)(e) of the *Casino Control Act* as a ground for disciplinary action.

29. The proper interpretation of clause 24A.2(a)(i) may therefore be that cancellation as a form of disciplinary action under s 20(1)(e) is not available to the VCGLR, because it would fall outside the Section 20 Carve-Out and thus conflict with the statutory prohibition in clause 24A.2(a)(i). Given that clause 24A.2 prevails to the extent of any inconsistency with s 20(1) of the *Casino Control Act*, it would arguably be beyond power for the VCGLR to purport to cancel the licence under s 20 on the ground specified in s 20(1)(e). In light of these provisions, there are potential constraints on the VCGLR purporting to take action to cancel the licence under s 20(1)(e).

30. There would also be a real risk of liability on the part of the State (absent variation by consent and/or legislative amendment) for breach of the prohibition in clause 24A.2 if the VCGLR were to purport to cancel the licence under s 20(1)(e). That is because clause 24A.2(b) of the Management Agreement provides:

> "*The State acknowledges that the Company will suffer loss and damage in the event of breach of paragraph (a) and the State and the Company acknowledge that the ordinary principles for breach of contract apply*."

31. The above analysis applies equally to variation of the licence, which is also covered by the prohibition in clause 24A.2(a)(i). It may also apply to suspension, assuming suspension is to be regarded as a form of variation for the purposes of clause 24A.2(a)(i).

32. For these reasons, in the event that the Royal Commission is inclined to recommend that the VCGLR should consider cancellation or variation of the licence (including suspension), it is submitted that the Royal Commission should have regard to the potential financial consequences for the State of a recommendation that the VCGLR consider cancellation or suspension of the licence on the ground specified in s 20(1)(e) of the *Casino Control Act*.

33. Further, a referral to the VCGLR for disciplinary action under the *Casino Control Act* could be akin to having the VCGLR re-conduct aspects of this Royal Commission's inquiry and could entail significant costs and delay. An alternative approach to achieve the implementation of any Royal Commission recommendations regarding cancellation, variation or suspension of the casino licence could be through legislative changes, not through referral to the VCGLR.

34. Finally, there is risk that Crown might claim that certain other changes that are suggested by Counsel Assisting in their submissions[19] would constitute a 'Trigger Event' under the Management Agreement, enlivening Crown's compensation entitlements under clause 24A.3 and Annexure 1 of the Management Agreement. It is submitted that the Royal Commission should also have regard to this risk in formulating its recommendations.

(2) Appointment of a manager or monitor

35. In their written and oral closing submissions, Counsel Assisting submit that Crown should not be left in control of the casino without supervision of some kind (at [1.26], page 26; [1.36]-[1.40], page 339; transcript 20 July 2021, pages 4036-4037). In particular, they suggest that either: (i) a manager should be appointed, pursuant to s 22 of the *Casino Control Act*; or (ii) a monitor should be appointed, which would require legislative reform.

36. Section 22(1) of the *Casino Control Act* provides that, if a casino licence is suspended, cancelled or surrendered, the VCGLR may, "if it is satisfied that it is in the public interest to do so, by instrument appoint a manager of the casino for the purposes of this section". In appointing a manager, the VCGLR must also have regard to the suitability of that person: s 22(2). Once appointed, the manager is deemed to hold the casino licence on the same terms as the previous casino operator (subject to such modifications as the VCGLR determines), assumes full control of and responsibility for the business of the casino operator in respect of the casino and may retain for use in the casino any property of the casino operator, must conduct casino operations in accordance with the

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19 See, e.g., [3.60], page 128 (carded play); [4.7]-[4.10], page 130 (pre-commitment); [1.15]-[1.16], pages 344-345 (unrestricted mode and bet limits on gaming machines).

Casino Control Act, and may employ staff to operate the casino: s 22(6). If another licence is subsequently granted in respect of the casino, the appointment of the manager is automatically terminated: s 22(4).

37. Counsel Assisting suggest that, if Crown is found not to be suitable, "a period of suspension and supervision under the current provisions of the Casino Control Act would be open, that is a combination of sections 20 and 22" (transcript 20 July 2021, page 4037 lines 7-9). However, as can be seen from the provisions of s 22 described above, the *Casino Control Act* does not contemplate that a manager would be appointed to supervise the running of the casino by a suspended licensee. Instead, s 22 provides for the appointment of a manager to run the casino, if the incumbent casino operator's licence is suspended or cancelled. Nor does the legislation contemplate that a manager might supervise the implementation of a reform agenda by a suspended (or cancelled) licensee while also running the casino. Regulations may be made with respect to the functions of a manager (s 22(7)), but it is apparent that "supervision" of the kind contemplated by Counsel Assisting is outside the scope of those functions.

38. There are other challenges with the regime in s 22 that should also be taken into account. First (as recognised by Counsel Assisting by speaking of "a combination of sections 20 and 22"), it is apparent that s 22 is intended to operate following the suspension, cancellation or surrender of a casino licence under s 20 (in respect of suspension or cancellation) or s 21 (in respect of surrender). The better view may be that s 22 would still be available if the licence were suspended or cancelled by another mechanism (as to which, see the discussion in the section (1) of these submissions), but the place of s 22 in the legislative scheme raises a question about that. Second, in order to appoint a manager, the VCGLR must be satisfied that the manager is suitable and that it is in the public interest to appoint them. This would add another layer to the complexity of the VCGLR's task (particularly if the VCGLR was also expected to decide on Crown's suitability and/or the public interest under s 20) and it is apparent that finding a suitable manager to run an international casino of the size — and with the present difficulties — of the Melbourne casino might not be straightforward.

39. Accordingly, it is submitted that the appointment of a manager under s 22 of the *Casino Control Act* would not, of itself, produce the "supervision" that is contemplated by

Counsel Assisting. Of course, if Crown's licence is suspended or cancelled, it may be that the appointment of a manager to run the casino is appropriate (notwithstanding the challenges identified above).

40. As to the appointment of a "monitor", the State first observes that the *Casino Control Act* confers on the VCGLR the fundamental function of "oversee[ing] the operation and regulation of casinos" as a regulator. Thus, the legislation does not currently contemplate that the VCGLR could have a function of closely supervising the running of the casino, but it does provide for the regulator to have an oversight role.

41. Accordingly, if the Royal Commission recommends that an office of "monitor" be created, with the object of supervising Crown, the powers and functions of the monitor would need to be carefully specified. In particular, the powers of the monitor to control and report on Crown's functions and the implementation of its reform agenda, and the relationship between those powers and the oversight functions of the regulator, would need to be clear.

42. It would be essential to ensure that the functions and powers of a monitor complemented, and did not conflict with, the functions and powers of the regulator.

(3) Ministerial Direction on Responsible Gambling Codes of Conduct

43. In Section 6.3 of their closing submissions (commencing at [3.3], page 117), Counsel Assisting refer to the 2018 and 2020 Ministerial Directions made under s 10.6.6(1) of the *Gambling Regulation Act 2003*, which deal with Responsible Gambling Codes of Conduct.[20] The 2018 Ministerial Direction applies to Crown. The 2020 Ministerial Direction applies to other venue operators. As Counsel Assisting observe,[21] the 2020 Ministerial Direction imposes greater obligations on a "venue operator" (being a club or hotel venue) than the 2018 Ministerial Direction imposes on Crown.

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20 Exhibit RC0511, COM.0013.0001.0312, *Victoria Government Gazette*, No S 430, 17 September 2018, pp.3-6, 'Gambling Regulation Act 2003, Ministerial Direction pursuant to section 10.6.6, Responsible Gambling Codes of Conduct'; Exhibit RC0518, COM.0013.0001.0953, *Victoria Government Gazette*, No S 85, 21 February 2020, 'Gambling Regulation Act 2003, Ministerial Direction pursuant to section 10.6.6, Responsible Gambling Codes of Conduct'. See also Counsel Assisting's closing submissions at pages 131 (paragraph 4.15), 344-345 (paragraphs 1.11-1.16).

21 Counsel Assisting's closing submissions, page 117, footnote 756.

44. In oral submissions, Counsel Assisting submitted that the interpretation of the Ministerial Direction applicable to Crown as casino operator "leaves much room for poetic licence" (transcript 20 July 2021, page 4017 lines 3-4). In Section 20 of their written submissions (at [1.14] and [1.16], pages 344 and 345), Counsel Assisting noted that the 2020 Ministerial Direction "imposed more prescriptive requirements on a number of areas of responsible service of gaming", including a requirement to take all reasonable steps to prevent and minimise harm from the operation of gaming machines, and submitted that:

> "*Having regard to the increased risks of harm from gambling at the Melbourne Casino a less prescriptive approach to regulating the Melbourne Casino than is adopted for the regulation of pubs and clubs cannot be supported.*"

45. The State considers there is merit in reviewing the Ministerial Direction applicable to the casino operator and that this should be done in light of current evidence of best practice for minimisation of gambling harm in the environment of a casino. It is important to note that there are significant differences between the operating environment of a large casino designed to attract visitors from overseas and the gaming lounge of a local pub or club, and that the Ministerial Directions are intended to reflect these different settings. It would therefore not be appropriate merely to adapt the language of the 2020 Ministerial Direction and apply the entirety of its substantive content directly to the casino.

(4) Underpayment of casino tax

46. In Section 5 of their closing submissions (pages 81-112), Counsel Assisting address five issues relating to the non-disclosure of underpayment of taxes, levies or other payments (**casino tax**) owing by Crown to the State under Part 4 of the Management Agreement.

    (a) The first of those issues (at [1.10]-[1.25], pages 82-86) addresses:

        (i) Crown's introduction of food and beverage expenses into its bonus jackpot deductions in financial year 2012, with an apparent motive Counsel Assisting describes as attempting to offset an annual tax increase, and in a manner Counsel Assisting describes as involving concealment from the VCGLR;

(ii) the inclusion of car parking and hotel accommodation expenses in bonus jackpot deductions from a time that is not certain, but which Counsel Assisting infer to be financial years 2013 and 2014 respectively; and

(iii) the alleged receipt by Crown of legal advice from eminent counsel in December 2014 that was inconsistent with Crown's deductions of such expenses.

(b) The second, third and fourth issues address what Counsel Assisting characterise as misleading disclosures to the VCGLR in the period June 2017-June 2018 (at [1.26]-[1.47], pages 86-88), failure by Crown to address improper bonus jackpot deductions after June 2018 up to the announcement of this Royal Commission in February 2021 ([1.54]-[1.84], pages 90 to 94), and how Crown dealt with the bonus jackpot deductions after the announcement of the Royal Commission (at [1.85]-[1.151], pages 94-105), culminating in criticism of the conduct of a number of Crown employees and officers, and of the CEO of Crown and of the chair of Crown Resorts Ltd.

47. The State regards the allegations outlined above as very concerning. The State regards candour and straight dealing in the matter of the casino operator's taxation obligations as centrally important to the role of a casino operator. Save to make that general observation, the State does not make any submission about Counsel Assisting's submissions regarding the matters of fact outlined above.

48. The fifth issue addressed in Section 5 of Counsel Assisting's submissions is the quantum of Crown's underpayment of casino taxes (at [1.152]-[1.195], pages 105-112). The revenue interests of the State are directly engaged by the matters addressed in this section.

49. On 27 July 2021 Crown made payment to the VCGLR of $61,545,414.09 on the basis of its advice that this sum represents an underpayment of casino tax (and penalty interest) since 2012 and relates to the incorrect deduction of free accommodation, car parking and dining rewards as 'bonus jackpots', as well as 'jackpot payments' (other than cash and pokie credits) provided to patrons in connection with play on Crown's electronic gaming machines. The State acknowledges the payment by Crown, however

the State submits that it is yet to be established whether the payment represents the full extent of the underpayment of casino tax owing by Crown.

50. In addition to those amounts, Counsel Assisting submit that a large amount of "Matchplay" awards/benefits (category 3) should have been counted as additions to Gross Gaming Revenue and not as deductions, meaning that a greater amount of casino tax was underpaid. Noting the indications of Counsel Assisting that the total extent of Crown's underpayment may be as much as $480 million, the State proposes to engage with Crown after the Royal Commission has delivered its final report to finalise these matters and to secure payment of any shortfall in casino tax and corresponding penalty interest.[22] The full and complete payment of Crown's tax obligations is key to Crown achieving the economic development objectives that underpin the awarding of the casino licence and, more broadly, delivering the value to Victorian taxpayers that was promised by the establishment of the casino.

2 August 2021

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[22] It is, of course, open to Crown to pay to the State any amount of unpaid casino tax and penalty interest that it considers is owing prior to the delivery of the Royal Commission's final report. The State would receive such a payment without prejudice to its rights to ensure that Crown pays all of the casino tax and penalty interest that it owes.