

December 2020



## **Crown Resorts Limited**

### **Legal and Regulatory Update**

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#### **CROWN RESORTS**

##### *Class Action*

The Applicant has made application for the trial date (9 November 2020) to be vacated which the court has granted. The new trial date has been fixed to commence on 25 October 2021 with an expected duration of six weeks.

The Applicant has foreshadowed an amendment (the nature and extent of which is currently unknown) to the Applicant's statement of claim to be served in February 2021 after Commissioner Bergin's findings have been handed down. Crown's lawyers continue to liaise with the Applicant's lawyers on this to ascertain the proposed changes and also on the timing. Unless agreement can be reached on the proposed changes and timing of those changes well prior to February 2021 a request will be made to the court to list a case management conference as soon as possible.

##### *GST Matter*

As previously reported, on 10 September 2020, her Honour Justice Davies of the Federal Court of Australia handed down judgment in favour of Crown and Burswood in these proceedings. The proceedings concern the GST treatment of commissions and win and loss rebates in respect of foreign patrons who attend Crown's casinos as part of a junket. Her Honour found that commissions and win and loss rebates form part of the gambling supplies Crown and Burswood make and should be included in their global GST amount. Her Honour's judgment was in respect of two sample tax periods out of 100 tax periods in dispute.

On 2 November 2020, the Commissioner of Taxation filed a Notice of Appeal to the Full Court of the Federal Court of Australia in respect of the two sample tax periods. The Court has advised that the appeals in respect of the two sample tax periods will be listed for hearing between 3 May 2021 and 28 May 2021 in the May 2021 Full Court sitting period. Crown will be contacted by the Court in February 2021 regarding arrangements for the hearing of these appeals.

In relation to the remaining 98 tax periods, Crown and the Commissioner have agreed a protocol to enable her Honour's judgment to extend to all of the remaining periods. Crown has produced requested documentation to the Commissioner for a further four sample tax periods. The Commissioner is currently reviewing this material and if the Commissioner is satisfied with it, it is anticipated that orders will be made in favour of Crown and Burswood in relation to the remaining 98 tax periods by February 2021. It is

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*ASIC – 2020 Financial Report*

On 13 October 2020, Crown received an information request in respect of the financial report for the year ended 30 June 2020. Crown responded to the information request by the due date and has not yet received any further correspondence from ASIC on this matter.

**AUSTRALIAN RESORTS**

For updates on AML/CTF matters, please refer to **Agenda Item 7**.

*Payroll Audit*

As previously reported, to ensure Crown is complying with its payroll and enterprise agreement obligations to its staff, a comprehensive review is being undertaken by external experts (legal and employment relations) across Perth and Melbourne. The review process is well underway. The model has been reviewed by Deloitte, and payment compliance calculations are being audited internally for accuracy.

Engagement with the Fair Work Ombudsman's office continues, and further updates will be provided as available.

*ETS Update*

At the OH&S Committee, the Committee was presented with a paper on recent Environmental Tobacco Smoke which are actively being considered by management.

Please refer to the attached memorandum which provides a detailed update on the Declared Smoking Areas at Crown's properties in Melbourne, Perth and Sydney.

*IHG Trade Mark Matter*

Detailed updates in relation to this matter have previously been provided. Discussions continue between IHG and Crown in relation to the dispute related to the parties' respective use of the CROWNE PLAZA and CROWN brands for hotel services. REDACTED - PRIVILEGE

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**CROWN MELBOURNE***VCGLR Section 25 Review Recommendations*

The date for the Recommendation 20 meeting is yet to be scheduled. Crown had proposed that the meeting be scheduled in January 2021. The VCGLR has indicated, however, that a number of its representatives will not be available during January and has expressed an interest to delay the meeting to February 2021. Currently proposed dates are 3 or 10 February with a preference for 10 February.

*VCGLR Show Cause Notice*

As previously reported, on 2 October 2020 the VCGLR served Crown with a Show Cause notice under section 20 of the *Casino Control Act 1991 (Vic)*. The notice, in broad terms, sought an explanation of Crown's dealings with

A response to the notice was prepared and submitted by Crown on 30 October 2020. To date, the VCGLR has not responded substantively to Crown's response.

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On 17 November 2020, the VCGLR served Crown with an amended version of the Show Cause notice, which sought additional explanations in respect of Crown's dealings in respect of Cheok Wa (Alvin) Chau and the Suncity junket. The due date for response to the notice is 4 December 2020.

*VCGLR Section 26 Notices*

The VCGLR has continued to serve notices to produce documents and information under section 26 of the *Casino Control Act 1991* (Vic). Principally, these have been directed at matters arising in the course of the public hearings of the NSW Casino Inquiry. Generally, the information sought under the notices since October has included:

- (a) copies of the Controlling Shareholder Protocol, the Services Agreement, and all other agreements of this nature between Crown and any shareholder;
- (b) copies of all statements of issues and contentions, and closing submissions, filed by the participants in the Inquiry;
- (c) copies of all witness statements filed by Crown witnesses;
- (d) information relating to three large cash transactions at the Suncity service desk involving ██████████, ██████████ during January and February 2018;
- (e) information regarding actions taken by Crown in respect of Mr Veng Anh, the Crown employee the subject of media reporting (including a segment on 60 Minutes) in February 2020; and
- (f) copies of the reports prepared by Grant Thornton and Initialism into suspected money laundering in the Southbank and Riverbank accounts.

Crown has responded to all notices.

*Australian Resorts – AUSTRAC Enforcement Team investigation*

As previously reported, on 2 October 2020, AUSTRAC advised Crown Melbourne in writing that in light of its identification of potential non-compliance by Crown Melbourne with the AML/CTF Act and Rules, it had referred the Assessment to its Enforcement team to carry out an investigation, noting that it has the discretion to widen the scope of the investigation original s 167 Notice.

On 16 October 2020, AUSTRAC issued Crown Melbourne with information requests in relation to this investigation. Crown Melbourne has responded to a substantial number of AUSTRAC's questions, with further tranches to be provided on 16 December 2020 and 18 January 2021.

At this stage, AUSTRAC has not made a decision regarding the appropriate regulatory response, including whether or not enforcement action will be taken, noting that outcomes of the investigation may be no action or compromise one or more of the following: civil penalty order, infringement notice, enforceable undertaking, remedial direction or appointment of an external auditor or no action.

In November 2020, Crown received reports prepared by Grant Thornton and Initialism that identified transactions through the Riverbank and Southbank bank accounts between 2013 to 2019 that were, in their opinion, indicative of potential money laundering. These reports were provided to the ILGA Inquiry as part of Crown's closing submissions and to AUSTRAC, the VCGLR and ILGA shortly after. Given the conclusions in the reports, Crown has also offered to brief the Australian Federal Police (AFP) on the findings in the reports and intends to provide them to the WA Gaming Commission. Crown has not received a response from the AFP to date.

It is proposed that the Chairman and the CEO will meet with Nicole Rose, CEO of AUSTRAC and Peter Soros, Deputy CEO Regulatory Strategy at AUSTRAC during the week commencing 7 December 2020. The

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meeting will provide an opportunity to update AUSTRAC on Crown's program of AML/CTF enhancements and to explain matters that arose during closing submissions in the ILGA Inquiry, including the Grant Thornton and Initialism reports and the steps Crown has and is taking in relation to their findings.

Work to implement the newly adopted Program and introduce new AML/CTF controls continues. As part of this process, Promontory and Initialism have been retained to assist Crown to undertake a new enterprise-wide money laundering and terrorism financing risk assessment.

#### *Building Cladding Issue – Crown Melbourne*

Work progresses in relation the various workstreams previously identified in relation to this matter.

Crown is still awaiting the BAB's final determination on this matter.

Crown is proactively replacing small sections of cladding along the Podium riverfront during this low traffic period and has conducted additional testing on the other buildings in the complex. A fire risk assessment is being sought from our external consultants to enable us to better understand risks posed and potential mitigation options.

### **CROWN PERTH**

#### *Regulatory Engagement*

The level of Regulator scrutiny has increased over Crown Perth in response to the ILGA Inquiry. In particular, the Commission:

- requested the appearance of the Chief Executive Officer – Crown Resorts, at its October meeting to discuss Crown's response to matters raised at the ILGA inquiry; and
- has expressed their intention to add an additional level of scrutiny over future submissions made by Crown Perth.

Crown Perth will continue to be proactive in keeping the Commission apprised of matters relating to the ILGA Inquiry.

In this respect, Crown Perth is preparing a submission to the Commission broadly relating to the ILGA Inquiry and has proactively lodged a submission with the Commission proposing amendments to its Casino Manual, comprising:

- patron deposits will only be accepted into one bank account in the name of the licensee, Burswood Nominees Limited, which has been approved by the Commission;
- under no circumstances will deposits conducted by the Cage be aggregated in Crown Perth's SYCO system;
- junket operators being prohibited from Crown Perth until the junket operator has been licensed or otherwise approved or sanctioned by all gaming regulators in the States in which Crown operates; and
- third party money transfers are prohibited unless approved in exceptional circumstances with the prior written approval of the Chief Operating Officer and the Group General Manager, Money Laundering.

These amendments, which are immediate controls to particular operational issues identified through the course of the ILGA Inquiry, will be considered by the Commission at its November meeting.

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*Smoking Exemption*

By way of background, in compliance with conditions imposed as part of the exemption issued to Crown Perth which permits indoor smoking in the International Gaming Facilities (Pearl Room, Sky Salon and Crown Towers Salons), Crown Perth submits six monthly reports to the Director General of the Department of Health, and Western Australian WorkSafe Commissioner. The reports confirm Crown Perth's compliance with the conditions of the smoking exemption.

In August 2020, the Western Australian WorkSafe Commissioner (most recently appointed in December 2018) requested additional information from Crown Perth in relation to the scope of the exemption; the smoke extraction technology used; the three yearly reviews provided by an external consultant as to whether the technology is considered "world's best practice"; and whether it was Crown Perth's intention to no longer rely on the smoking exemption.

On 29 October 2020, Crown Perth representatives met with the Worksafe Commissioner in order to provide an overview on the smoking exemption and associated controls. The Worksafe Commissioner sought clarification on the scope of the exemption (how the exemption relates to the Crown Towers salons) and the project to introduce 100% outside area to the Pearl Room, and has advised that he will request this further information in writing in due course. The Worksafe Commissioner did not raise any concerns with respect to Crown Perth's compliance with the conditions of the exemption.

On 5 November 2020, the Worksafe Commissioner (pursuant to Section 43 of the Occupational Safety and Health Act 1984) requested production of the last three years of air performance and ventilation and air contaminant monitoring data. Crown Perth provided these records on 17 November 2020.

*Electronic Gaming Machines – Speed of Play*

In October 2020, the Commission raised a concern with respect to Crown Perth demonstrating compliance with the Western Australian Appendix to the Australian/New Zealand "Gaming Machine National Standard 2019" (Standard) in particular clause WA4.2 (Item 2) relating to the speed of play.

Although an Accredited Testing Facility certification is obtained for each electronic game confirming theoretical compliance with the Standard, the Commission is seeking further explanation from Crown Perth demonstrating actual (in play) compliance with the Standard and to ultimately justify to the Commission the basis for Crown Perth retaining the current speed of play.

Crown Perth is working with the Regulator in respect of this matter and has provided a submission to the Commission for its consideration at the November 2020 meeting.

*Cashless – Use of EFTPOS*

The following update is provided with respect to the use of EFTPOS (Debit Card) at Crown Perth:

- the project to implement EFTPOS terminals on gaming tables at Crown Perth is now at the conclusion of Phase 2. As previously reported, this was the pilot phase of the project, involving 24 tables for 13 weeks;
- additional EFTPOS terminals have been ordered for Phase 3, but have not yet arrived;
- the outcomes of Phase 2 are currently in the process of being reviewed, including the outcomes of the customer survey. This will allow Crown to consider whether any additional RG measures are required, and to determine which gaming tables should be included in Phase 3;
- since the previous report, there have been no RG Concerning Behaviour Reports raised in relation to EFTPOS, and no further adverse media. Two isolated complaints have been received through Crown's

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complaint management system, essentially stating the opinion that EFTPOS should not be permitted on gaming tables; and

- the first 3 months of Phase 3 will be the subject of a report to the Commission.

#### *Crown Towers Perth Residual Land – Sale and Development Agreement*

Crown Perth is preparing a formal request to the Minister's Office seeking removal of the obligation to develop the land or alternatively an extension of time.

### **CROWN SYDNEY**

#### *Regulatory matters*

A detailed update on outstanding regulatory matters is included at **Agenda Item 5.3**.

Under the Crown Sydney agreements with ILGA and the State of New South Wales, Crown Sydney Gaming is required to provide two bank guarantees in the amount of \$100 million each in favour of ILGA immediately prior to the date that VIP Gaming at Crown Sydney actually commences. Crown is liaising with ILGA in respect of this requirement and the provision of bank guarantees is still subject to the receipt of credit approval by ANZ and NAB, which has been postponed due to the deferral of commencement of gaming operations. The prior written approval of ILGA is required for the entry into the facility agreements required to deliver these bank guarantees.

Crown Sydney Gaming also requires the prior written approval of ILGA to allow it to finance its operating costs through intercompany loans and issues of capital as these concepts are captured under the major change provisions of the Casino Control Act. Crown is continuing to progress these approvals with ILGA.

#### *ILGA Inquiry*

Please refer to **Agenda Item 8** for a detailed update on the ILGA Inquiry.

#### *ASIC Notices*

As previously reported, in May 2020, ASIC commenced an investigation into potential breaches of section 180 of the *Corporations Act 2001* (Cth) which relate to Crown and Crown Sydney Gaming Pty Ltd.

Crown has sought to engage constructively with ASIC and has provided information and documents in response to notices issued by ASIC. ASIC has, on multiple occasions, thanked Crown for its assistance and cooperation in this regard.

In recent weeks, ASIC has served three notices on Crown, calling for production of:

- (a) the Controlling Shareholder protocol;
- (b) documents relating to the terms of employment and duties of Mr Barry Felstead; and
- (c) all documents produced by Crown to the NSW Casino Inquiry in response to summonses issued prior to May 2020.

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In recent discussions, ASIC has advised that it has expanded the scope of its investigation in response to matters that have arisen in the course of public hearings of the NSW Casino Inquiry. The recent notices are consistent with that indication.

ASIC has informally advised that it has not settled on any future steps for its investigation, but that it is considering whether any of the matters the subject of the Inquiry are relevant to the Board. They have also indicated that while no official decision has been made, there is a possibility that interviews with directors may be sought, pursuant to section 19 of the *Australian Securities and Investments Commission Act 2001* (Cth). ASIC has also confirmed that it intends to provide reasonable notice ahead of taking any further steps in this regard.

*NSW Supervisory Levy*

There is no update on this matter since the October 2020 report.