

Bill: Balguy's report on
Star City, NSW

Tax Rate

NSW - tax rate is in a separate document + will be up for renegotiation when the exclusivity period expires.

Casino Taxes Agreement for Sydney Harbour Agreement.

Legal fees - the casino operator must directly pay the Regulator's legal fees + all other costs except the Triennial Review
 The Regulator uses Clayton Utz.

Internal Audit - Star City outsources its internal audit to KPMG. + David Gurrthey allegedly asked + found this out for himself.

Tabcorp - Tabcorp was forced to use its best endeavours to change its Constitution - it was a condition precedent to approval of the takeover. -
 When Tabcorp took over Star City + again
 " " " " Jupiters

Casino Operations v. sig.
 Agreement.

Management Agent etc Tabcorp + Horras for 1st 3 years after Tabcorp bought Star City

Customer Service Audit + Customer Comments - all outsourced to GMP Buxton + Arthur Anderson.

* Get a copy of the Tabcorp Constitution
 Letter from PC to NSW CCA for a copy of Tabcorp Deed

Tabcorp

Tabcorp Deed ^{6/10/99} created when Tabcorp took over Star City.

- we could ask NSW CCA for a copy if we need it.

cl. 5 - Amendment to T constitution.

cl. 8 - Fa's Operations + Maintenance Agreements (controlled les?)

Sched. 3
cl. 10 - Additional Australian Casino Interests

Sched 3 - Covenants + Warranties of Tabcorp

Supplemental Minutes
Approval + Covenant Acknowledgement.

Tab Constⁿ Rule 136(i) NSW CCA will retain its current disciplinary powers + Tabcorp's Constitution will

"complimentary + incidental" cl. 10 - Tabcorp Deed

cl. 19(i) must reimburse the CCA for all expenses incurred in response to a request to amend the Constitution

Pt 5 - Repairs + Maintenance

Pt 6 - Insurance

Meeting.

Initiatives should continue to focus on - Total L to T to A
 monitored on a quarterly basis - which should
 be kept at 60%

To achieve effective monitoring - continuous
 disclosure ^{rule} of ASX Listing Rule 3

Need ^{annual} audited accounts - in 3 months of
 year-end

Austⁿ Accounting Stds will be replaced on 1/1/05
 by the International Acc. Stds.

Audit C'ttee Charter should be applied to Crown
 Crown to adhere to the ASX Audit Charter - look
 at ASX website
 + CERP 9.

Crown should be provided with an annual budget +
 provide quarterly stats on compliance + divergence
 from the budget.

Chris Marcker

Areas investments by Crown both downstream & upstream to PBL related companies

Handling downstream - should then be together - not a problem - the parent co can fix up any problems.

Rory Ferguson.

Suggests def of Total Liabilities is OK

Total Assets - should revisit

- ① Intangible Assets - Crown Management Rights
- Investment in

Should delete other intangibles

existing level of intangibles is ~~ok~~ & small - OK

Concern lies in potential worth - purchase of other business + inclusion of identifiable goodwill - should be independently appraised to Authority's satisfaction.

- ② Any loans to PBL related Companies
should also be deducted from the Total Assets
figure - ^{with drop} \$1.5 bill → \$3.75 mill potential

or - come back to the Authority for approval.

Upstream investments - for investments greater than the materiality figure (\$125 mill)
They should provide a guarantee.

If they decide to demerge.

If a Co. above Crown invests in the courses,
Crown would keep Crown marginal

They can freely invest downstream without affecting their Total Assets figure => encourages purchases by Crown

Its only investments by Companies upstream or Crown that would affect the Total Assets figure.

Extract from
Triennial Review
of NSW Star City
Casino

CHAPTER EIGHT

COMPLIANCE AND OTHER MATTERS

COMPLIANCE

In September 2001 Star City appointed a Compliance Manager with responsibility to oversee the effective implementation of a compliance program. The holder of that position reports to both the CEO of Star City and the Executive General Manager for Corporate, Legal and Compliance, who also holds the title General Counsel of TABCORP.

The compliance program has been formulated in accordance with the relevant Australian Standard. Its aim is to develop an appropriate compliance culture which encompasses legal, ethical and social obligations.

Star City advises that significant progress has been made in implementing the first two elements, that is the structural and operational elements of the Australian Standard as well as commencing the third, on maintenance of the program.

The developments to date include:

- Board and senior management commitment to the compliance program;
- Establishment of a Management Compliance Committee and Charter;
- Legal Risk assessment of Star City's key legal risks and prioritisation of risks (which includes illegal/undesirable activity);
- Introduction of a continuous and monthly breach reporting system;
- Education and training of staff;
- Establishment of staff compliance hotline and help desk policy and procedure, including whistleblower protection;
- Establishment of a project team to review and select appropriate software for a legal obligations register and electronic compliance management system; and
- Analysis of customer complaints handling system and guest feedback.

The fact that the program has not yet been "rolled out" to line staff is reflected in the very low awareness by those staff interviewed for this Investigation of the presence

of a compliance program or manager. Similarly, use and knowledge of the hotline has been very limited, again, no doubt reflecting that the program has not been brought to the attention of line staff. This obviously needs to occur and we understand, will shortly.

Measures have not been developed in relation to the compliance program. However, applying indicia broadly accepted as indicating whether an organisation has a culture of compliance supports that such a culture is emerging at Star City. In particular, and from our interviews with staff and other information available to us, compliance is seen to be part of Star City's core business. Management and staff are comfortable reporting issues which are generally acted on promptly and appropriately and there is a commitment from senior management to compliance.

2003 Audit of Compliance Program

The first external audit of the compliance program was conducted by KPMG in October 2003. Many aspects of the program including the commitment by senior management to the program, management supervision, operating procedures, complaint handling system, record keeping, accountability and capacity to identify and rectify issues were considered to constitute "strong practice".

The audit noted with approval Star City's proposed:

- Acquisition of an IT based compliance management system and a resource to administer it;
- Development of a program to track training relating to its regulatory obligations;
- Development of a more formal process for reward and recognition in the compliance area; and
- Development of reporting for key performance indicators.

The areas identified for improvement concerned aspects of identifying compliance issues and following up action items identified by the legal risk assessment.

Management Compliance Committee

A Management Compliance Committee was established comprising the CEO of Star City, Executive General Manager for Corporate, Legal and Compliance of TABCORP and the Compliance Manager. It meets quarterly, prior to each Board meeting. The Compliance Manager provides detailed reports to each meeting on matters such as compliance with gaming legislation and regulations, reports of illegal and undesirable activity and financial transactions reporting.

A review of the information provided to each meeting indicates that issues including the presence of minors, responsible service of alcohol, identifying excluded persons, appropriate procedures for a range of gaming related issues as well as harassment and bullying receive the attention of senior management.

Conclusion

There can be no doubt that Star City has in place a thorough, comprehensive and impressive system which is overseen in a highly competent and focussed manner. The continued emphasis upon compliance and the full implementation of the program should result in the timely identification and resolution of matters which may otherwise cause concern to a regulator.

It is our view that the Authority needs to pay close attention to the operation of this program. Its continued effective functioning will be an excellent indication of positive cultural change, which was identified as necessary in 2000.

Integral to its current prospects of success, in our view, is the continuation of the seniority of the position of Compliance Manager, the integrity and quality of the holder of the position and the demonstrated commitment by all members of senior management. We think it would require some special circumstances, not easily imagined, to justify moving away from the current model of a Compliance Manager in a senior position given genuine support from the top.

LAW ENFORCEMENT

In earlier chapters we have indicated that the representatives of law enforcement agencies with whom we spoke were each approving of the co-operation received from Star City when called upon to provide access or other assistance.

Part of the reform which followed the 2000 Report was to establish regular meetings at various levels between the NSW Police, Star City and the Authority to facilitate the exchange of information and the timely exclusion of appropriate people.

Executive Intelligence Meetings

Executive Intelligence Meetings have been held monthly, attended by the Authority's Chief Executive, the Detective Superintendent in charge of the NSW Police Casino Intelligence Unit and the General Manager, Legal and Asset Protection, Star City. The first meeting was held in March 2002.

We understand that these meetings permit full and frank discussions with appropriate action being taken by the casino operator when required.

Operations Intelligence Meetings

This fortnightly meeting is attended by Star City's Investigations Manager, staff from the Authority and representatives from the Police Casino Intelligence Unit. We understand that in the main, the meeting achieves its objective. From a perusal of the minutes of the meetings appropriate matters are raised, information is shared, patrons are monitored and where appropriate excluded.

We note that a rationale behind the structuring of this and the Executive meeting was to ensure that the latter monitored the effectiveness of the Operational meeting. Accordingly any issues arising from the meeting of front line staff can and should be addressed when they occur by reference to senior members of each organisation represented. One matter has caused concern to the police.

We understand that earlier this year the police provided Star City's Investigations Manager with a photograph of persons in whom the police were interested. The purpose of supplying the photograph was to display it in the surveillance and security rooms and prompt staff to contact police if they were observed.

Some months later the photograph or a copy thereof was sent to Star City by a solicitor acting for one of the subjects.

Each of the photographs provided to the Surveillance and Security Departments had been positioned on their respective noticeboards. However, each was missing when the Investigator sought to access them, following the letter from the solicitor.

We accept that for various reasons, including construction work, the security rooms were not secure during the time the photograph was displayed and that arrangements have been put in place to ensure that police information is now securely stored.

Meetings with Local Police

Star City's Security Manager and the Chief Executive and Operations Manager of the Authority meet with police from the City Central Local Area Command each month. We understand that they discuss matters relating to local crime including violence in the retail arcade, liquor licensing issues, thefts, assaults and the like, and relevant trends.


Conclusion

We are satisfied that the structures which are in place should enable appropriate communication between the NSW Police and the casino operator to ensure that the operation of the casino remains free from criminal influence or exploitation and that gaming is conducted honestly.

**Bill Balgowan**

23/03/2004 11:14 AM



To: Sylvia Grobtuch/OGR@Ogr
 cc: Peter Cohen/OGR@Ogr, Rowena Scheffer/OGR@Ogr, Cate Carr/OGR@Ogr, Lyn Corneliussen/OGR@Ogr
 Subject: Re: Casino Agreement - letter from Crown dated 22 March 2004 

Sylvia

I confirm that I briefly discussed with Peter Cohen my initial comments on the attached letter from Crown, just before Peter had to go to the Authority meeting. There were two main points (para 7 regarding Clause 23 - Inspection of Records and para 9 regarding redundant Clauses 6-12 and 14-20) and some other points:

(a) Clause 23 - Inspection of Records:

Crown are proposing to delete this clause in their redraft of the Casino Agreement. The Notes of the Meeting of 23 February 2004, which were prepared by you and me state:

"RC - Crown believes that this Clause is much too broad in scope. It wants the clause reviewed in light of specific legislative obligations. It should be narrowed to cover records inspections relating only to the Melbourne Casino.

BF – That would involve someone making subjective decisions. The Authority would want to retain its comprehensive rights of inspection.

PC – in light of removing the single purpose restriction, this change would make sense so Crown's other business/es could not be subject to this regulator's scrutiny. The regulator is concerned with what happens on the casino gaming floor, which is different from what happens in the multi-deck carpark. The clause would have to be amended as a consequence of the removal of the single purpose restriction.

SG – Other records could be relevant to an "associate" inquiry.

AGREED – Crown will submit a redraft for consideration by the OGR."

(b) Clauses 6-12 and 14-20 which relate to Development of the Casino

Crown are proposing to delete all these clauses in their redraft of the Casino Agreement. The Notes of the Meeting of 23 February 2004 state:

"RC – Crown proposes that all these clauses be deleted. Crown would also like to see the OGR's list of redundant clauses.

SG – We believe that the matter of redundant clauses could be addressed in a comprehensive preamble to the proposed Variation Agreement.

AGREED that Crown to submit their proposed redraft for consideration."

(c) Progress made by Crown with Drafting of Clauses

Crown has not progressed the review of the Casino Agreement very much since our last meeting on 23 February 2004. The letter does not contain any new redrafts of any clauses and is merely a progress report incorporating a summary of Crown's view of: (i) Clauses to be drafted by Crown; (ii) Matters still under consideration; and (iii) Clauses to be drafted by the OGR. It advises that Crown anticipates that a revised Agreement will not be available for our review until "early next month"

(d) OGR/Maddocks Initial Draft Deed of Variation

The Working Party briefed Maddocks on Friday 5 March 2004 regarding the initial working draft of the proposed Deed of Variation. In its letter dated 10 March, Maddocks advised that they expected to have the draft to us by the cob on Monday 15 March, or more likely on Wednesday 17 March 2004. After we provided Maddocks with more information on 16 March 2004, it was agreed that Maddocks could have a couple more days to complete the draft and they would aim to have the draft to us by Friday 19 March.

Rowena and I both spoke with Maddocks yesterday regarding the availability of the draft. It was not sent to us on Friday because Warwick Isherwood was interstate. It was not sent to us yesterday because Warwick was tied up in other meetings. They now hope to get it to us today. They told Rowena yesterday that they will be providing both the proposed draft Deed of Variation and a draft conformed copy of the proposed amended Casino Agreement.

We have had a number of meetings and telephone discussions with our Financial Consultants. They are obliged to have their draft report to us by cob on Thursday 8 April 2004 and their final report to us by Friday 16 April 2004.

Bill

Sylvia Grobtuch

Sylvia Grobtuch
23/03/2004 09:28 AM
To: Bill Balgowan/OGR@Ogr, Rowena Scheffer/OGR@Ogr, Cate Carr/OGR@Ogr, Lyn Corneliusen/OGR@Ogr
cc:
Subject: Casino Agreement - letter from Crown

Copy of letter from Crown is attached.

Bill, Peter has asked whether it accords with your view of the meeting outcomes.

Sylvia

----- Forwarded by Sylvia Grobtuch/OGR on 23-03-04 09:25 AM -----

Peter Cohen
23-03-04 08:32 AM
To: Sylvia Grobtuch
cc:
Subject: Casino Agreement ** Virus Checked by OGR IT**

Sylvia

Rowen rang me late yesterday to advise that he would email me this letter (see attachment). Clearly his intention was for me to have it prior to the Board meeting so I could advise the Board that the matter is progressing. I propose to advise the Board today in my oral report that it has just been received, it confirms Crown's position on those matters that have been raised and that we are in the process of checking that Crown's position is still as we understood it would be at the 23 February meeting.

Peter

----- Forwarded by Peter Cohen/OGR on 23/03/2004 08:27 AM -----

Jacinta Illingworth

To: "Peter Cohen [REDACTED]"

<[REDACTED]>

cc:

22/03/2004 06:09 PM

Subject: Casino Agreement ** Virus Checked by OGR IT**

<<cohen - casino agreement.pdf>>

Regards,
Jacinta

Jacinta Illingworth
Executive Assistant to CEO
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cohen - casino agreemen

22/03/2004 17:11 +61 3 9292 77
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CROWN CASINO

PAGE 01/03

CONF: 200310078100284



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**EXECUTIVE OFFICE
FACSIMILE**

Date: 22 March 2004 *pc 23/3/04* *S*
 To: Peter Cohen
 Company: Office of Gambling Regulation
 Facsimile No: (03) 9651-4999
 From: Rowen Craigie
 Subject: Proposed Amendments to the Casino Agreement
 Total Pages: (Including this page) 3

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Sally

*Please register +
refer to Sylvia*

Refer

*Rowen
for the file pls.
SS 26/3.*



ROWEN CRAIGIE
Chief Executive Officer

Telephone (61-3) 9292 7234
Facsimile (61-3) 9292 7257

22 March 2004

Mr Peter Cohen
Acting Director of Gaming & Betting
Acting Director of Casino Surveillance
Office of Gambling Regulation
Level 5, 35 Spring Street
Melbourne Vic 3000

Dear Mr Cohen

Proposed Amendments to the Casino Agreement

I refer to our meeting of 23 February 2004 in relation to a number of proposed changes to the Casino Agreement.

Clauses to be drafted by Crown

We are progressing with the redraft of the Casino Agreement which will include the following amendments:

1. A clause providing that at least 75% of Crown Board meetings will be held in Melbourne each year;
2. A clause providing that at least 75% of Crown's Senior Management meetings will be held in Melbourne each year;
3. A clause providing that a Company Secretary of Crown will be located in Melbourne;
4. A clause providing that the CEO of Crown and those senior executives of Crown directly responsible to the CEO will be located in Melbourne;
5. A clause providing that any changes to the composition or Charter of the Audit Committee or the Compliance Committee will be notified to the Authority;
6. Revisions to clause 22 to delete a number of redundant clauses including the single purpose entity provision;
7. The deletion of clause 23 as section 108 of the Casino Control Act 1991 provides the requisite powers for requesting information in relation to the casino operations;
8. A revision to clause 29 and a number of other complimentary clauses to narrow the focus from "Assets and Rights" to "Casino Assets";
9. The deletion of a number of redundant clauses including clauses 6 to 12 and clauses 14 to 20



Matters still under consideration

Confidentiality

Crown is still considering the ramifications of deleting or revising clause 36 regarding the confidentiality provisions surrounding both the Casino Agreement and the Casino Licence. At this stage, it is anticipated that an amendment will be made to clause 36 to allow for the Casino Licence to become a publicly available document while preserving the confidentiality of the Casino Agreement due to the commercial and sensitive nature of various matters it contains.

Market Share of Commission Based Play (CBP)

It is not possible to guarantee that Crown will maintain a minimum level of CBP or maintain a minimum market share in the face of increasing world wide competition. Crown's international VIP business will be headquartered in Melbourne. Its future success will be a function of the future gaming and taxation policies of international Governments relative to those of future Victorian Governments. For example, if a future Victorian government was to remove the smoking exemption from Crown's international gaming rooms, Crown would become instantly uncompetitive in the Asian high roller market and suffer a massive loss of CBP volume.

Clause 22 – Debt to Equity Ratio

A preliminary review has been undertaken by Crown as to whether the debt to equity ratio remains the most appropriate financial measure. We are still considering this issue but are yet to identify an alternative measure.

Clauses to be drafted by the Office of Gambling Regulation

It was agreed at our meeting that draft revisions or additional clauses would be provided by the Office of Gambling Regulation in regard to the following matters:

- Improved Standard for Audit Requirements
- Management Reports
- Insurance Requirements

Given our first hand dealings with the Insurers, Crown will include a revised clause 35 in the draft Agreement to take account of the change in the global insurance environment but we await your suggestions on the remaining two points.

I anticipate a revised Agreement will be available for your review early next month.

Yours sincerely



Rowen Craigie
Chief Executive Officer



Rowena Scheffer

15/03/2004 05:38 PM

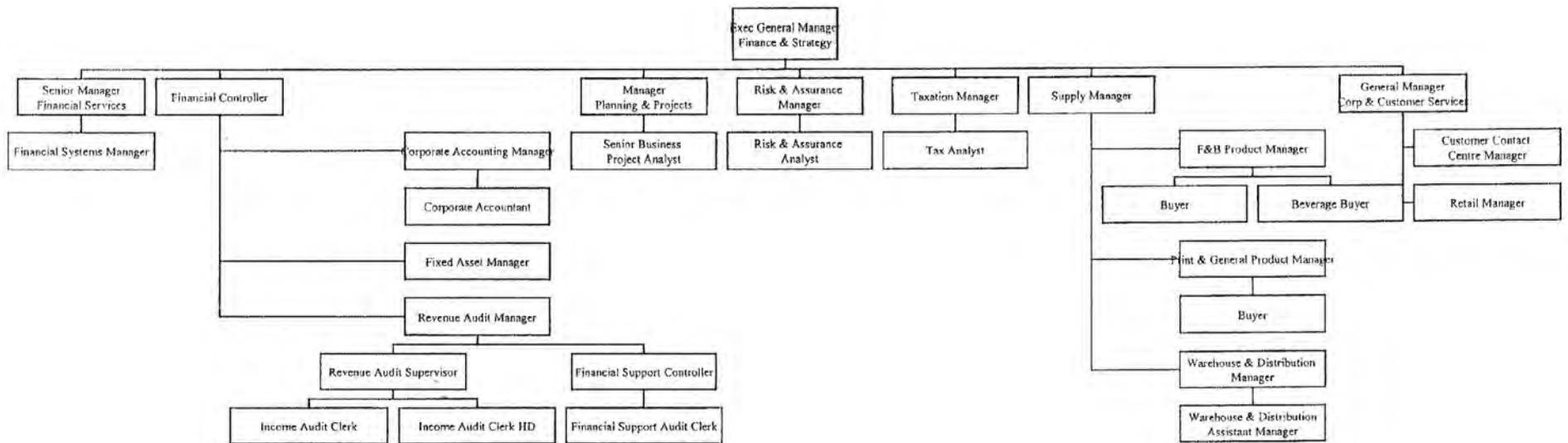
To: Sylvia Grobtruch/OGR@OGR, Bill Balgowan/OGR@Ogr
CC:
Subject: Maddocks' Advice on the Casino Agreement

I have just spoken with Warwick I. and he is happy to make the suggested changes to his letter.

Rowena.



Organisation Chart (Licence Only)
 Business Unit : Administration & Support
 Department : Finance & Strategy - Chart 3



→ Rowena

Commercial in Confidence**CASINO AGREEMENT REVIEW/RENEGOTIATION****Draft Notes of Meeting held on 23 February 2004 from 10.30 am in the VCGA Boardroom**

Important Note: This document was prepared from notes taken at the meeting by Sylvia Grobtuch and Bill Balgowan. Comments reflect the general discussion only and are not verbatim. They are not Minutes of the Meeting.

CROWN

Rowen Craigie
David Courtney
Mike Sugrue
Jack Troost

VCGA

Brian Forrest, Chairman

OGR

Peter Cohen
Sylvia Grobtuch
Bill Balgowan

(A) Introductory Comments

- BF – We have reviewed your letter of 28 January 2004 and have some comments on it. Are there any additional matters that Crown wishes to be raised in the review?
- RC – There are some extra matters, but these are minor.
- RC – The central issue is removal of the single purpose company restriction and whether the Minister had any issues.
- RC – Crown management hoped to negotiate a single package of all the proposed amendments that they could submit to their Board on a single occasion with a strong recommendation that the Board approve the whole package.
- PC – We want to know what the other issues are before we comment on your letter.
- RC – Could you let us know whether the Minister has replied to the Authority's letter and also the status of the legal advice that the Authority was seeking?
- BF – We can now deal with the whole package of issues. The Minister has told the Authority to proceed to negotiate some additional terms.
- BF – Lets start with the Crown letter of 28 January 2004.

(B) Comments on Crown's Letter of 28 January 2004**(1) Location of Crown Board Meetings**

- BF – At least 75% of the Board Meetings should be held in Melbourne
- RC – agreed on basis that there are 4 meetings per year.

AGREED: At least 75% to be held in Melbourne.

RC to submit the first draft of these provisions to SG.

Commercial in Confidence

There was then discussion on whether Crown had an electronic copy of the Casino Agreement.

Since Crown had an e-copy of the Casino Agreement, it agreed to forward an e-copy to SG. SG – The new Deed of Variation will require a number of appropriate Recitals.

SG - OGR to work from Crown's e-copy of the Casino Agreement which Crown will e-mail to us shortly.

(2) **Company Secretary**

AGREED: At least one to be located in Melbourne.

(3) **Location of Crown's Senior Management**

AGREED – CEO and all of the CEO's "direct reports"/senior management of Crown to be located in Melbourne i.e. currently about 9 Crown Management are reporting direct to CEO.

To include Head of Finance and Head of Operations, whatever their formal titles are. Should be linked to the titles, which are in the ICM.

(4) **Crown's Senior Management Meetings**

BB – We need to also address the matter of the monthly PBL/Crown Management Meetings.

RC – The location of these meetings in either Melbourne or Sydney depend on the availability of people.

AGREED – At least 75% Crown's Senior Management Meetings to be held in Melbourne.

(5) **Audit Requirements**

RC – They have made a change to the audit program so no need for further action. Crown is committed to maintaining these improvements going forward.

BB – Whilst the Authority acknowledges that the situation has improved, it wants to see further improvements and wants to formalise these changes by specifying the requirements in the Casino Agreement.

BB & PC – One specific missing issue is what the external auditor's program will comprise i.e. key issues in the ICM to be addressed on a rotating basis, so that nothing significant is missed/ omitted over a period of time.

PC – Asked Crown for words re audit charter as ordered recently by the Authority to continue and Crown agreed to let the regulator know of changes to the composition of the Audit Committee or Compliance Committee or to their Charters (in advance if they know of changes to occur).

AGREED - OGR to draft these provisions for Crown's comment.

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(6) Audit & Compliance Committees

RC - Since submitting the new Audit and Compliance Charters (on 28 January 2004) the two Committees have had their first meetings and decided to make some minor changes to the two Charters.

RC - Revised Charters to be submitted after Crown May Board Meeting. The structure won't alter, but some clauses will. One other matter that they were considering was whether they should be monitoring tenancies compliance. For example what should Crown be doing if a tenant loses a liquor licence? Another matter was how should they handle a litigation matter that has a significant financial component? They were also considering how the Crown Audit Committee interface with the PBL Audit Committee.

BB – If Crown is amending its Audit and Compliance Committee Charters, it should incorporate some amendments that the OGR have already identified as being necessary. They should note that OGR believes that copies of the Charters should be attached to the Casino Agreement and that the Authority should be immediately notified of any changes made to these documents.

BB – In the case of the Compliance Committee Charter, the “Role and Responsibilities” should include specific mention of “the other Transaction Documents” and to the “ICM”.

AGREED: Crown will consider adding under the “receive reports” heading, reference to the ICM and the Transaction Documents.

(7) Petelex and Deed of Undertaking and Guarantee

PC – A new Guarantor's Deed has been received and is going to the Authority meeting tomorrow.

(8) PBL Subsidiaries

BB – A further letter was sent to PBL on this matter on 20 January 2004.

(9) Management Reports

BF – the reports that the Authority wants Crown to provide or make available were detailed in item 11 of the attachment of my letter to Crown dated 18 November 2003.

RC - Crown will be happy with this wording in the proposed Deed. However, Crown would be nervous if the Authority wanted to specify the format and would like the clause to be general, so that changes over time can be accommodated.

AGREED: OGR to draft a clause as per part 11 and include any other reports or documents or material whatsoever requested by the regulator e.g. exclusions appeals.

(SG **Subsequent Note:** Could also include in the clause: the right to inspection; right to receive copies; documents relating to or from the Crown Board Meeting or PBL/Crown Monthly Management Meetings).

Commercial in Confidence

AGREED:-We need to discuss separately what from exclusion order files is released to the regulator and Crown and how i.e. psychologist's reports are regarded by the client as highly confidential.

(C) CROWN EXTRA ISSUES

1. Insurance Management Reports

The existing requirements are currently too prescriptive in the new insurance climate.

AGREED: OGR to redraft clause 35.

2. Clause 29 - Disposal of assets and rights without Authority's prior approval.

DC - Crown believes this clause should be restricted to casino assets eg. exclude the second carpark. Who cares who actually owns the second carpark?

SG – the non-casino assets may be relevant to Crown's obligation to maintain the Complex world class standard. There are issues relating assets or parts of the Melbourne Casino Complex, which are located on land outside the Site Lease.

AGREED: Crown to draft a provision here for the Authority's comment.

(D) DISCUSSION ON WORLD CLASS CASINO

DC – Crown accepts that it is obliged to maintain the Complex to a world class standard.

SG – This matter is not part of the negotiation

RC – Crown is concerned that it is being benchmarked against the large luxury casinos on the Las Vegas strip where the tax rate is only 6%. If the world class casinos in Las Vegas have child creches, does this mean that Crown should have one? What would people like Tim Costello say about Crown if it did have a child creche?

RC – Crown is happy to open that box, if we want to do so. We need to look at other aspects. Crown's ability to deliver a world class casino is affected by the regulatory environment → so Crown needs to put an argument about tax rates → lower tax rates could deliver better entertainment.

BF – We are not here to speak about tax rates.

PC - Tax charges are for the Minister. Crown is different from the Las Vegas casinos. Firstly it is a monopoly. Las Vegas is not the only model.

RC – Crown has spent \$5 million on its Customer Support Centre. How is this taken into account?

PC – The Foxswood Casino is a relevant comparison because it has a large amount of repeat business.

DC - responsible gambling, technology, customer service are all part of the world class casino.

PC - audit process, breadth of games offered also.

PC – not an issue for this negotiation

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(C) CROWN EXTRA ISSUES continued

3. Clause 22 - Appointment of Directors, Share controls, etc

RC - Crown sees Clause 22 requirements and reports as redundant or duplicating ASIC requirements and associate requirements of the Casino Control Act. They are overly prescriptive.

AGREED – Crown will submit a redraft of Clause 22 and the OGR will only look at it, but there was no agreement regarding the future content of Clause 22.

4. Clause 30.3 Consent re Leases and Supplementary Agreement –

RC – Crown believes this Clause should be restricted to Casino Assets only.

AGREED – Crown will submit a redraft and the OGR will only look at it.

5. Clause 23 – Inspection of Records.

RC - Crown believes that this Clause is much too broad in scope. It wants the clause reviewed in light of specific legislative obligations. It should be narrowed to cover records inspections relating only to the Melbourne Casino.

BF – That would involve someone making subjective decisions. The Authority would want to retain its comprehensive rights of inspection.

PC – in light of removing the single purpose restriction, this change would make sense so Crown's other business/es could not be subject to this regulator's scrutiny. The regulator is concerned with what happens on the casino gaming floor, which is different from what happens in the multi-deck carpark. The clause would have to be amended as a consequence of the removal of the single purpose restriction.

SG – Other records could be relevant to an “associate” inquiry.

AGREED – Crown will submit a redraft for consideration by the OGR.

6. Clause 32 –Complement Agreements

DC - Possibly all of these agreements have expired or are no longer relevant to the authority. In the extreme case, none of them are relevant today.

BB - The Operations Agreement is one Complementary Agreement that still very relevant and important to the Authority.

AGREED - That Crown will submit a revised draft of this Clause.

Commercial in Confidence

7. **Clauses 6-12 and 14-20 re Development and Completion of the Casino –**

RC – Crown proposes that all these clauses be deleted. Crown would also like to see the OGR's list of redundant clauses.

SG – We believe that the matter of redundant clauses could be addressed in a comprehensive preamble to the proposed Variation Agreement.

AGREED that Crown to submit their proposed redraft for consideration.

(E) MINISTER'S ISSUES

1. **Confidentiality of the Casino Licence and Casino Agreement**

RC – Crown were uncertain what requirements may “come out of the Minister's Office”.

SG – The Russell Report in May 2000 recommended that the Government make public all Government Contracts or negotiate their release, which was in accordance with the Government's policy of increasing transparency. This included the Casino Licence/Casino Agreement and Licence.

BF – The Minister has agreed that the Authority can pursue the issues of negotiating with Crown for the release of the Casino Licence and the Casino Agreement to the public.

RC – Does the Minister really want to initiate a public debate in 2004 on what should happen on expiry of the casino licence in 2033? Does the Minister want this to be the subject of debate in the media, similar to what is happening now with the gaming licences which expire in 2012?

(Note: SG departed at 12.00 pm.)

RC – Crown recently had an analyst call them the other day wanting to know what was likely to happen when their Casino Licence expired, because he was looking at the matter of various gaming operator licences expiring.

RC – Crown would consider possibly releasing the Casino Licence but not the Casino Agreement.

AGREED: Crown will come back to the OGR with its response.

2. **Retention of High Roller Market Share**

PC – The Minister has a concern about Crown's retention of its current High Roller market share.

RC – Crown has invested much more than all the other Australian casinos to attract and retain its market share of high rollers. Clearly its aim will be to continue maintaining its market share. But how do you mandate this? The short answer is to cut the tax rate.

RC – Some of its Asian High Rollers have now been regularly visiting Crown every year for several years. But it is a well known fact that players like to “property hop”. This is a

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common occurrence in Las Vegas. If you own more than one property, you can generally get the patrons to hop from one of your properties to another of your properties and thus retain the business within the group. This is what the big US casino companies work hard on achieving.

RC – The risk for Crown’s high roller market is what Matthew Slater going to do in this market segment. Whether he is going to reopen Sky City to the high roller market to complement the three Jupiters’ casinos in Queensland. (He also referred to: 4 + 1 = 7!) It would be ideal to have a network of several casinos in Australia to attract a high proportion of the world high roller market.

RC – It is a “death sentence” to remain a single property casino company.

RC – It is clear that Australia is rapidly moving to a single TAB pool. This is expected to occur within 5 years. Who would have thought this was possible 10 years ago with each State having its own stand alone TAB? If Crown remains a single purpose company, to use the TAB analogy, how could it compete against a network of Sydney, Perth, Brisbane and the Gold Coast?

RC – As an extreme point, how could Crown remain a “world class” property against such competition? It would get run – over! You only have to look at the Imperial Palace casino in Las Vegas. It decided to remain as a single property casino company and has just continued to go down hill.

(F) CONCLUDING COMMENTS

1. Power to Negotiate

PC – We have the power to negotiate a package of changes to the Casino Agreement, which we will submit to the Authority for its approval. Crown would submit the same package to its Board for approval. If both the Authority and Crown agree to the proposals, they will then be submitted to the Minister for his written approval.

2. Measures of Financial Health

PC – We are giving some consideration to the matter of the on-going financial health of Crown, in the event that the single purpose restriction is removed. We would expect Crown to be also giving some thought to the changes which may be appropriate for the regulator.

3. Reporting Requirements

BF – Just to clarify that it was agreed that the Authority/OGR would progress the matter of the reports that it will require going forward. In particular the Authority will require reports on (a) Budgets; (b) Capital Expenditure; (c) Audit Matters; and (d) Compliance Matters.

RC – We understand that but we only ask that the Authority keep the specification of its requirements as general as possible to accommodate changed circumstances.

4. Next Meeting

It was agreed that the next meeting would take place shortly after the Authority and Crown exchange the above mentioned draft documents.

SG/WLB

Victorian Casino and Gaming Authority

Confidential Internal Working Document

~~For Authority Meeting # 229 on 21 October 2003~~First meeting with Crown Ltd
on 23/2/04

Review of the Casino Agreement
List of possible proposed amendments.

Proposed Amendment to the Casino Agreement	Ready for discussion with Crown Limited
1. Public availability of the Casino Agreement	yes
2. Public availability of the Casino Licence.	yes
3. Retaining current market share of commission based players' business in Victoria to maximise gross gaming revenue.	NO
4. Maintain the Casino Complex to world class standards, including: (a) addressing expenditure on new capital and large maintenance capital projects (capital expenses); (b) addressing expenditure on ongoing maintenance and cleanliness (operating expenses). [see also item 16(a)]	yes
5. Independence of the directors of Crown Limited.	yes
6. Audit requirements [see also items 16(b), (c) and (e)]	yes
7. Composition of and reporting structure for the Audit Committee [see also items 16(d) and (e)]	yes
8. Composition of and reporting structure for the Compliance Committee [see also items 16(f) and (g)]	yes
9. Full compliance with the Deed of Undertaking [see also item 16(h)]	NO
10. Consequences for non-compliance with the Deed of Undertaking [see also item 16(h)]	NO
11. Measures of Financial Health; eg - debt/equity ratio, reduction of capital [see also items 16(i) and (j)]	NO
12. Location of Crown's Board meetings.	Yes
13. Location of Crown's senior management and management meetings.	Yes
14. Location of Crown's company secretary	Yes

Proposed Amendment to the Casino Agreement	Ready for discussion with Crown Limited
15. Location of Crown's bank accounts for Melb. Casino operations.	NO
16. Information/documents to be provided or made available to the Authority, including: (a) A report on Crown's capital annual expenditure program and reports on actual expenditure; [located with Item 4]	yes
(b) A report on Crown's internal and external audit programs and any changes to the programs [see also item 6] (c) A report on adherence to or divergence from the internal and external audit programs [see also item 6]	Yes
(d) Provide details of membership of Crown's Audit Committee and any changes to the reporting structure and membership of the committee [see also item 7]; (e) Make available for inspection, or copies if requested of, Audit Committee agendas, papers and minutes of meetings [see also items 6 and 7].	yes
(f) Provide details of membership of Crown's Compliance Committee and any changes to the reporting structure and membership of the committee [see also item 8]; (g) Make available for inspection, or copies if requested of, Compliance Committee agendas, papers and minutes of meetings [see also item 8].	yes
(h) Notice of any new subsidiaries of PBL; [see also items 9 and 10]	NO
(i) A report on Crown's annual budget; [see also item 11]	yes
(j) A report on adherence to or divergence from the budget; [see also item 11]	yes
(k) Continuous Disclosure to the Authority under ASX guidelines.	NO
17. Insurance Obligations under Schedule Five.	NO
18. Quarantining Crown from its other ventures.	NO

Review of the Casino Agreement

Position Paper - Item 1

Public Availability of the Casino Agreement

What does the proposal describe?

1. It is proposed that the Authority should negotiate with Crown Limited to publicly disclose as much of the Casino Agreement as possible.

Why has this proposal been made?

2. The Report to the Government of the Audit Review by Professor E W Russell, Mr E Waterman and Dr N Seddon, entitled *Contracting, Privatisation, Probity and Disclosure in Victoria 1992 – 1999*, dated May 2000, (“the Russell Report”) recommended that –

“where existing government contracts contain confidentiality clauses which prevent their being disclosed in full, the government should negotiate with the relevant contractors to secure their consent to disclosing as much of the contracts as possible” (at p. 4).

What will the proposal fix or change?

3. If Crown Limited agrees with the proposal, it will end public speculation and ill-informed debate about Crown’s contractual obligations to the Authority.

What will happen if the proposal is not adopted?

4. Nothing. The status quo will remain the same.

Review of the Casino Agreement

Position Paper - Item 2

Public Availability of the Casino Licence

What does this proposal describe?

1. This proposal is for the Government to publicly disclose as much of the Casino Licence as possible.

Why has this proposal been made?

2. The Report to the Government of the Audit Review by Professor E W Russell, Mr E Waterman and Dr N Seddon, entitled *Contracting, Privatisation, Probity and Disclosure in Victoria 1992 – 1999*, and dated May 2000, (“the Russell Report”) conducted a case study into the Crown Casino. One of the Report’s Principal Recommendations drawn from the case study was that -

“The secrecy surrounding the Casino Licence appears unnecessary, as there is no likelihood in the foreseeable future that a casino licence will be granted to a competitor. The Review sees no reason for the conditions of the Licence to be kept confidential and recommends that the terms of the Casino Licence be publicly disclosed” (pp. 108 and 138).

3. Transparency of Government actions and decision-making is also a principle which the current Government advocates.

What will the proposal fix or change?

4. Public disclosure of the Licence will provide to the public more practical information about the terms of the Casino Licence and will end public speculation and ill-informed debate about the conditions of the Casino Licence. It would also be consistent with the Government’s principle of transparency and would also.

What will happen if the proposal is not adopted?

5. Nothing. The status quo will remain the same.

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Review of Casino Agreement

Position Paper – Item 3

THIS ITEM IS NOT READY TO DISCUSS WITH CROWN AS WAITING FOR THE MINISTER'S RESPONSE TO THIS PROPOSAL

Proposal: Retaining current market share of, or proportion of revenue derived from, the Commissioned Based Players' ("CBP's") business in Victoria to maximise gross gaming revenue.

What does the Proposal describe?

1. It is proposed that any amendments to the Casino Agreement preserve the benefits currently experienced as a result of the Single Purpose Restriction, one of which is Crown's valuable CBP gaming business, so that this source of gaming revenue is not lost to the State.

Why is the Proposal on the List?

2. This proposal is on the List because Crown has requested the removal of the Single Purpose Restriction. Despite CBP profit margins being the lowest and this sector of casino gaming revenue being the most volatile, it is considered that the CBP sector is integral to the Melbourne Casino's business.
3. Government tax revenue derived from CBP's represents around 15% of its total revenue (Russell Report). Currently, the tax rate applied is 10% including a Community Benefit Levy of 1%. The tax rate on EGM's and Regular Tables is 22.25% including the 1% Community Benefit Levy. The Crown CBP gambling sector experiences the lowest margins as the "Return to Player" is the highest. Also, Crown has to forgo about one third to one half of this margin in commission payments and complementary expenses in order to attract this type of patron to Melbourne.
4. Nevertheless, it has been suggested that the CBP's may also have a substantial investment impact on the State economy.

What is the Proposal going to Fix?

5. This proposal seeks to preserve the benefits currently experienced as a result of the Single Purpose Restriction, two of which are-
 - protection of Crown's CBP business and the tax revenue earned by the State;
 - ensuring that Crown remains sufficiently focused on the Melbourne Casino Complex to maintain it to world class standards.
6. These two benefits are interlinked because it is considered that the Melbourne Casino's ability to attract CBP players is integral to the Casino being of world class standard.

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What will happen if the proposal is not adopted?

7. If Crown were to lose its CBP gambling base or it were to be significantly reduced, then this would seriously detract from the Melbourne Casino and Entertainment Complex being considered and maintained as a world class facility. Importantly, the State's tax revenue base would be detrimentally affected.
6. Either of these results would mean that the Casino Agreement would be failing to preserve the benefits currently experienced as a result of the Single Purpose Restriction on Crown.

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Review of Casino Agreement

Position Paper – Item 4 -

Maintain the Casino complex to world class standards

1. The obligation on Crown to maintain the Melbourne Casino and the Casino Complex to world class standards arises from two clauses in the Casino Agreement.
2. First, the Casino Agreement obliges Crown to operate the casino having regard to best practices in international casinos of a similar size and nature (clause 28 of the Casino Agreement).
3. Operating a casino, having regard to best practices in international casinos of a similar size and nature, creates an obligation on Crown to operate and maintain both a casino and a casino complex, with all the usual accompanying features of entertainment, retail and hotel facilities, to world class standards.
4. Second, if the Single Purpose Restriction is to be removed, such an amendment to the Agreement should nevertheless preserve the benefits currently experienced as a result of the Single Purpose Restriction, one of which is ensuring Crown remains focussed on maintaining the Casino and Casino Complex to world class standards.
5. The following amendments are proposed to achieve these goals.

Item 4(A) - Addressing expenditure on new capital and large maintenance capital projects (capital expenses)

What does the Proposal describe?

1. It is proposed that the Casino Agreement be amended to regulate Crown's commitment to new capital and large maintenance capital projects (Capital Expenditure).

Why is the Proposal on the List?

2. The Authority has an obligation to enforce the Casino Agreement which has included a restriction on Crown to remain a Single Purpose entity. Removal of this Restriction would create a risk of the Casino Operator becoming distracted from its operation and maintenance of the Melbourne Casino and Casino Complex, to the detriment of world class standards of those businesses.
3. To regulate and monitor Crown's compliance with these standards, the Authority would require annual Capital Expenditure Budget Summary Reports with considerable detail itemising proposed expenditure under the headings "Existing Facilities" and "Major New Construction". All capital expenditures, which extend beyond one year, would have to be indexed for inflation. Details also need to be provided on the actual amount of capital expenditure for each financial year.

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4. Under Clause 16.6 of the *Melbourne Casino Operations Agreement*, which is a Complementary Agreement between Crown and Crown Management P/L, Crown is obliged to make Capital Expenditure (CapEx) allocations to a Capital Reserve Account. This clause states :

“The Annual Plans and Budget will, for the financial years commencing on and after 1 July 1998, provide for the establishment of a special reserve account for Capital Expenditure in accordance with clause 16.2 and 16.4 (“Capital Reserve Account”) by payment of cash from the Casino Bank Account to a special interest bearing account, the amount to be calculated on the basis of -

- (a) the percentage allocations of revenue provided in the Financial Projections for refurbishment;
- (b) the amount of other annual capital expenditure at the rate anticipated in the Financial Projections; and
- (c) in years later than those dealt with by the Financial Projections, a manner consistent with the methodology in (a) and (b).”

5. In a letter to the Authority dated 14 April 1999, PBL made the following commitment in Point (e) on Page 3: “PBL will ensure that Crown expends a minimum of \$300 million over the next 10 years to improve and maintain the Crown Casino assets.”
6. It is recommended that the Authority should ensure that these Capital Expenditure commitments / requirements are enforced by amending the Casino Agreement.

What is the Proposal going to Fix?

7. This proposal will reduce the risk of Crown not spending sufficient funds on the upkeep and modernisation of the Melbourne Casino and Entertainment Complex in order for it to operate and be maintained as a world class facility.

What will happen if the proposal is not adopted?

8. The Melbourne Casino may lose its position of being considered as a world class casino which would breach clause 28 of the Agreement and result in a reduction of the benefits that derive from Crown functioning as a single purpose entity.

Item 4(B) - Addressing expenditure on ongoing maintenance and cleanliness (Operating Expenses)

What does the Proposal describe?

1. For the reasons discussed above, the proposal is to amend the Agreement to expressly oblige Crown to spend sufficient funds on :
- Cleaning,
 - Repairs & Maintenance, and

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- Refurbishment.

Why is the Proposal on the List?

2. The Casino Agreement obliges Crown to operate the casino having regard to best practices in international casinos of a similar size and nature (clause 28 of the Casino Agreement).
3. Operating a casino having regard to best practices in international casinos of a similar size and nature creates an obligation on Crown to operate and maintain both a casino and a casino complex, with all the usual accompanying features of entertainment, retail and hotel facilities, to world class standards.
4. To date, Crown has acknowledged its obligation to maintain the casino as a world class facility.
5. Clause 8.2 of the Operations Agreement, which is a Complementary Agreement between Crown and Crown Management P/L, obliges Crown Management to -

"supervise and direct the management and operation of the Casino and Ancillary Facilities [the hotel, restaurants, car park etc] to a first class standard comparable to world class international casinos, hotels and other facilities equivalent to those comprising the Casino and Ancillary Facilities and shall ensure that all gaming is conducted in accordance with the highest standards of honesty, integrity and courtesy."
6. It is recommended that the Casino Agreement be amended to expressly include this obligation so that it becomes more specifically enforceable by the Authority, to the same standards and level of detail set out in the Operations Agreement.

What is the Proposal going to Fix?

7. The amendment will ensure that the Melbourne Crown Casino and Entertainment Complex is kept well maintained and clean to international class standards.

What will happen if the proposal is not adopted?

8. The Melbourne Casino may lose its position of not being considered as a world class casino which would breach clause 28 of the Agreement and result in a reduction of the benefits that derive from Crown functioning as a single purpose entity.

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Review of the Casino Agreement**Position Paper – Item 16(a)****Information/documents to be provided to the Authority including; a report on Crown's annual capital expenditure program and quarterly reports on actual expenditure; (See also item 4)**

1. Crown's quarterly financial reports to the Authority should be expanded to provide details on its budget and actual expenditure on capital works (CapEx). These capex reports should provide the level of detail provided in the following table, which has been provided by Crown on previous occasions. The report should distinguish between expenditure on "Existing Facilities" and "Major New Constructions".

	Bud	Act	Bud	Act	Bud	Act	Bud
	'01	'01	'02	'02	'03	'03	'04
Existing Facilities							
New Upgraded Gaming Machines		1.6	9.0		6.9	8.9	
New and Upgraded Table Games		5.4	3.8		0.9	1.6	
Gaming Equip. Replacement		3.2	0.5		0.3	1.1	
Table Games Equip. Replacement		0.8	0.1		0.2	1.3	
MIS		10.0	12.2		2.7	8.4	
Property Refurbishment		7.6	10.1		8.8	9.3	
Building Infrastructure		9.6	2.6		1.7	3.9	
Furniture & Fittings / Plant & Equip.		4.5	4.4		1.5	1.4	
		42.7	42.7		23	35.9	
Major New Construction							
Promenade Hotel		3.1	20.6		66.5	45.8	
Total Capital Expenditure		45.8	63.3		89.5	81.7	

Note: The figures in this table have been previously provided by Crown. The missing figures are possibly available in the OGR files, but would need to be located.

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Review of the Casino Agreement

Position Paper - Item 5

Independence of the directors of Crown Limited

What does this proposal describe?

1. This proposal describes including a provision in the Casino Agreement that requires Crown to ensure that at least one third of its directors are considered to be independent.

Why has this proposal been made?

2. Crown has a Board of eight directors. Clause 14.2 of Crown's Constitution states that:

"At any given time at least one third of the Board must consist of persons who can be fairly considered as independent of the Sponsors and their respective Associates."
3. Before Crown merged with PBL, Crown's Sponsors included companies such as Hudson Conway P/L. Since the merger, Crown no longer has any Sponsors, as defined by the Casino Agreement. Therefore, clause 14.2 is no longer effective.
4. Crown's Constitution has not been amended to address this issue and, as a consequence, it does not properly regulate the question of the independence of its directors.
5. According to the ASX Corporate Governance Principles 2.1 and 2.2, in order to ensure that the Board discharges its responsibilities and duties most effectively, it is recommended that the Chairman and the majority of the Board should be independent. Guidance as to what may constitute an independent director can be drawn from the New York Stock Exchange's definition of an independent director. The definition of "independence" will be the same as that defined by the ASX or ASIC.
6. The Authority identified this as an issue of concern in its Second Triennial Review Report of June 2000 (at p.27). After the Second Triennial Review, Crown indicated to the Authority that it would be reviewing its Constitution in relation to this issue. Crown subsequently advised the Authority on 18 March 2003 that it had completed its review of its Constitution and had decided to not amend it.
7. In the Third Triennial Review Report (p. 12) the Authority reiterated its concern expressed in the Second Triennial Review Report, that "*the proper level of decision making for the Crown board, which requires a degree of independence from the parent company*" has not been adopted by Crown Limited.

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8. Until recently, none of the directors of Crown Limited are independent of Crown's executive management or of significant income produced or provided by shareholdings in Crown's parent company, PBL, or as a fee for service (not including director's fees). In late 2003, three new directors were added as "independent" Directors of Crown. However, these three people are only "independent" directors of PBL, they are not "independent" for the purposes of Crown.

What will the proposal fix or change?

9. It would improve the corporate governance of Crown to introduce a portion of independence to decisions made by the Crown Board of Directors.
10. By adopting a corporate structure in accordance with the ASX or ASIC guidelines, the State could also be assured that there is an effective board that is committed to adequately discharging its responsibilities and duties by ensuring that decisions are made in the best interests of all of Crown's stakeholders, rather than the holding company.

What will happen if the proposal is not adopted?

11. The corporate governance of Crown would not be functioning at an optimum level or according to the best practice as recommended by the ASX. Perceptions could exist that decisions made by the directors of Crown would not be impartial if all the directors of Crown are also directors or executives of the PBL Group of companies.

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Review of the Casino Agreement

Position Paper - Item 6

Audit Requirements

What does the proposal describe?

1. In the Third Triennial Review Report, the Authority expressed a view that Crown should outsource its internal audit function or, alternatively, increase the resources in this area and change reporting structures so that the head of the internal audit unit reports to the CEO and to the Board and not through any line manager.

Why has this proposal been made?

2. In the Third Triennial Review of the Casino Operator and Licence, the Authority noted that it continues to be dissatisfied with Crown's inadequate allocation of resources for its internal audit program. The Authority was also dissatisfied with the scope and content of the external audit reports supplied by Crown in that they have not demonstrated whether the Internal Control Manual (ICM) is adequate or whether Crown has been fully complying with it. Departures by Crown from the ICM have also been the subject of disciplinary action by the Authority.
3. The Authority's dissatisfaction to a large extent stems from the fact that, since the Arthur Andersen Report, (commissioned by the Authority in 1999) into the risks associated with all the regulator's statutory functions, Crown has failed to remedy the shortcomings which the Authority had identified in the Second Triennial Review Report. One of the recommendations made by Arthur Andersen, in its report dated January 2000, was that Crown be required to *"demonstrate that their own internal audit programs are risk based and that all key risks are reviewed"*.
4. As a consequence, the Authority at its meeting on 2 May 2000 determined that negotiations be commenced with Crown with a view to amending the ICM requiring Crown to outsource its internal auditing functions. In a letter of 25 September 2000, Crown advised the Authority that it was strongly opposed to its internal auditing function being outsourced. Based upon Crown's promise that additional staff would be recruited to enhance its internal audit function, the Authority agreed to not require Crown to outsource its internal audit function.
5. However, in an investigation into Crown's internal audit program for the 2002/2003 financial year, the Authority found that Crown's projected allocation of 700 staff hours to its internal audit function was quite inadequate. Crown subsequently advised that –

"Additional areas of audit activity are determined each year based on an ongoing risk assessment process and emerging issues. The total amount of audit work is for any year, consequently far greater than just the scheduled program elements".

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What will the proposal fix or change?

6. More information regarding its audit program will be received from Crown, which will result in greater clarity and certainty as to whether Crown is complying with the ICM.

What will happen if the proposal is not adopted?

7. Insufficient information will be available for the Authority to ascertain whether problems exist in relation to compliance with the ICM.

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Review of the Casino Agreement

Position Paper - Item 7

Composition of and reporting structure for the Audit Committee.

What does the proposal describe?

1. This proposal is to amend the Casino Agreement to address the Authority's concern that Crown did not have a separate and independent Audit Committee, especially in view of the fact that the Crown Board meets only four times a year.

Why has this proposal been made?

2. Such concern stemmed from that fact that the "Directors' Report" section of Crown's Annual Reports for 2001 and 2002 stated that "the company has three Committees – the Audit Committee, the Compliance Committee and the Remuneration Committee". However, the Authority found limited documentation from Crown's Audit Committee during its inspection of Crown's documents that reflected such a structure. This prompted a letter of inquiry from the Authority to Crown. Responding by letter of 27 March 2003, Crown advised that "the Audit Committee and its functions are dealt with by the full Board of Crown Limited". It also advised that the Crown Board considered audit matters only twice in 2000, twice in 2001 and three times in 2002.
3. In its Submission dated 28 January 2004, Crown has provided a copy of its new Audit Committee Charter. The Agreement should also provide that the Authority must immediately be advised of any changes made to the Charter or the composition of the Committee.

What will the proposal fix or change?

4. By having a separate and independent Audit Committee, it is likely that any audits conducted would better reflect the standard of casino operations and would be a better indicator of whether Crown is complying with the ICM.

What will happen if the proposal is not adopted?

5. The Audit Committee will continue to not function independently of the Board. If the Internal Auditor is unable to report directly to the Board, rather than through the line manager, its views may be compromised or problems or concerns may not be detected, or not detected early enough, if those charged with detecting them have other, possibly conflicting, interests (for example, as members of another Committee).

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Review of the Casino Agreement

Position Paper - Item 8

Composition of and reporting structure for the Compliance Committee.

What does the proposal describe?

1. The proposal is for the Casino Agreement to be amended to address the Authority's view, which was expressed in the Third Triennial Review, that-
 - there should be an independent Compliance Committee; and
 - the Compliance Committee should have an appropriate reporting structure that reflects its obligations under the original Enforceable Undertaking entered into with the Australian Securities and Investment Commission ("ASIC").

Why has this proposal been made?

2. During investigations for the Third Triennial Review, the Authority found that, on 1 March 2000, Crown replaced the Board-based Compliance Committee with a management-based compliance committee chaired by Crown's Chief Executive Officer. This diminution in status of the Compliance Committee falls short of best practice for a company holding a casino licence and of its previous commitments to the Authority when compared to other Casinos around the world. The Triennial Review Report noted that:

"By comparison, the Compliance Program for Park Place Entertainment Inc, which has large casinos in Nevada and New Jersey in the USA, states that its Compliance Committee must have at least five members and that a majority of them must be non-officers of the company."

By having a management-based compliance committee, any breaches by Crown may be inadvertently overlooked or, at worst, concealed from the Board. To this extent, it would be difficult to hold the Board accountable.

3. In October 2002, Crown's external auditors (Ernst & Young) identified two significant breaches of the Internal Control Manual relating to failures by Crown's Internal Audit Department in the financial year ended on 30 June 2002. It is essential that internal failures which lead to problems such as this be identified and addressed effectively at an early stage.
4. While the Authority accepts that casino operations can be adequately controlled from the management level, it expects that, if Crown is to exercise best practice standards, Crown's Compliance Committee should be returned to Board level.
5. In its Submission dated 28 January 2004, Crown has provided a copy of its new Compliance Committee Charter. The Agreement should also provide that the Authority must immediately be advised of any changes made to the Charter or the composition of the Committee.

What will the proposal fix or change?

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6. By having a separate and independent Compliance Committee, the Committee may act as an early warning system in identifying serious breaches of the ICM and will be better equipped to deal with and report to the Board in an effective manner.

What will happen if the proposal is not adopted?

7. With the cut-backs in funding and having the compliance committee at management level, Crown may not be fully equipped to address internal failures or concerns at a sufficiently early stage to avoid breaches of the ICM.

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Review of the Casino Agreement

Position Paper – Item 9

THIS ITEM REQUIRES FURTHER DISCUSSION WITH THE OGR BEFORE DISCUSSION WITH CROWN.

Deed of Undertaking & Guarantee

What does the proposal describe?

1. The proposal describes a need to ensure that Publishing and Broadcasting Limited (“PBL”) delivers to the Authority and the State New Guarantee Agreements executed by its subsidiary, Petelex Pty Ltd (“Petelex”), and other relevant subsidiaries, as required by clause 6.2 of the Deed of Undertaking and Guarantee (“the Deed”).

Why has this proposal been made?

2. Under the Deed, the PBL Group of companies guarantee that the Crown Group of companies will meet the ‘Guaranteed Obligations’ under the ‘State Documents’, which are the obligations under the Casino Control Act 1991, the Casino Licence, the Casino Agreement, the Management Agreement, the Site Lease and the State Charge.
3. Under clause 6.1(a) of the Deed, if PBL acquires or creates a subsidiary, it is required to deliver to the Beneficiaries (the Authority and the State) a New Guarantee Agreement if the subsidiary, in effect, holds a broadcasting licence or a core title and either holds more than 10% of the total assets or has more than 10% of the operating profit of the PBL Group.
4. Petelex owns about 65 subsidiaries of PBL, including Nine Network Australia Pty Ltd and Australian Consolidated Press Limited, which together control most of PBL’s television and magazine interests.
5. PBL has indicated in a letter to the Chairman of the Authority, dated 18 March 2003, that it does not believe it is required to procure a New Guarantee Agreement from Petelex. This view is contrary to the legal advice the Authority has received from Maddocks, which is that Petelex is required to provide a New Guarantee Agreement as it clearly owns more than 10% of the assets of the PBL Group and/or contributes more than 10% of the Group’s consolidated net profit.
6. The Office of Gambling Regulation has also identified a number of other recently acquired or created subsidiaries that may be obliged to provide a New Guarantee Agreement to the Authority and the State.

What is the proposal going to fix?

7. The proposal to require PBL to deliver to the Beneficiaries New Guarantee Agreements from Petelex and other relevant subsidiaries will strengthen the existing guarantees given to the Authority and the State under the Deed. It will address PBL’s current disinclination to comply with the Deed in relation to Petelex.

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What will happen if the proposal is not adopted?

8. While Petelex is not a party to a New Guarantee Agreement, the strength of the existing guarantee is reduced.

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Review of the Casino Agreement

Position Paper – Item 10

THIS ITEM REQUIRES FURTHER DISCUSSION WITH THE OGR BEFORE DISCUSSION WITH CROWN.

Consequences for non compliance with the Deed of Undertaking and Guarantee

What does the proposal describe?

1. The proposal describes amendment of clause 31.2 of the Casino Agreement to enable the Authority to serve a show cause notice on Crown under section 20(2) of the *Casino Control Act 1991* (“the Act”) for PBL’s non-compliance with the Deed.

Why has this proposal been included in the list?

2. Under clause 4.5 of the Deed of Guarantee and Undertaking (“the Deed”), the Authority may issue a notice to Crown Limited under section 20(2) of the Act, but only if PBL fails to deliver to the State a letter of credit. There are currently no consequences under the Deed if PBL fails to comply with any other obligations under the Deed, such as ensuring relevant subsidiaries execute a New Guarantee Agreement under clause 6 of the Deed.
3. There are two options for addressing the problem of non-compliance with Deed. They are:
 - (i) Amend the Deed to make non-compliance with clause 6 an Event of Default under the Deed. This would entitle the Authority to serve notice on the casino operator under section 20(2) of the Casino Control Act requiring the casino operator to show cause why disciplinary action should not be taken against it for PBL’s default under the Deed. This option is not recommended because it would require the approval of the Minister for Gaming, PBL, Crown Limited and each of the sixteen other guarantors under the Deed to amend the Deed.
 - (ii) Amend the Casino Agreement so that that non-compliance with clause 6 of the Deed will constitute a breach of the Casino Agreement so as to entitle the Authority to serve a show cause notice on the casino operator under section 20(2) of the Act. This option is the recommended option because Crown Limited and the Minister have already agreed in principle to amendment of the Casino Agreement.

What is the proposal going to fix?

4. The proposal would fix the current situation whereby the Authority has no statutory or contractual power to address or regulate PBL’s non-compliance with clause 6 of the Deed.

What will happen if the proposal is not adopted?

5. PBL will continue to be able to create or acquire significant subsidiaries without procuring a New Guarantee Agreement from them if required by the Deed. This

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situation reduces the strength of the existing guarantees under the Deed and leaves the State vulnerable. It also undermines the Authority's position as a party to the Deed and as the statutory regulator of the casino operator.

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Review of the Casino Agreement

Position Paper – Item 11

THIS ITEM REQUIRES FURTHER DISCUSSION WITH THE OGR BEFORE DISCUSSION WITH CROWN.

Measures of financial health

NOTE: Commercial and financial advice is being sought by the Legal and Legislation Branch of the OGR regarding possible alternative and appropriate tests of Crown's and PBL's financial health.

Why has this proposal been made?

1. It is proposed that the Casino Agreement be amended to reduce the maximum amount of debt that Crown may carry without approval of the Authority.
2. Clause 22.1(m) of the Casino Agreement currently prohibits Crown's Total Liabilities from exceeding 60% of Total Assets. As pointed out in the *Third Triennial Review of the Casino Operator and Licence*, Crown has not breached the 60% debt/equity ratio. Following its acquisition of Crown in June 1999, PBL subscribed additional equity which resulted in a substantial reduction in the ratio from close to 60% to less than 20%. This, however, increased again in August 2002 when Crown used \$1,000M to buy back 840.3M shares from PBL, increasing the ratio to 42%.
3. The 60% debt/equity ratio was included in the Casino Agreement to ensure that the casino licence holder remained financially stable during the development phase of the casino project, when the company would be expected to carry a high level of debt due to construction and commissioning costs. Now that the development phase of the casino project is complete, it is reasonable to reduce the allowable debt/equity ratio to ensure that Crown remains financially stable.
4. The average solvency ratio for Australian casino and gaming companies for the period 2001-2003 was 47%. Crown's average solvency ratio over this same period was 37%, whilst PBL had an average of 46%. This is in contrast with the average solvency rate for overseas casino companies of 75%. (It should be noted that these figures are for a relatively short period of time and no allowance has been made for the possibility that unusual circumstances may have influenced the business of the companies during this time.)
5. It is recommended, therefore, that the agreement be amended to reduce the debt/equity ratio to 46%, which is considered to be a much more appropriate level and in line with PBL's average during the period 2001-2003. Alternately, the amendment could be the higher ratio of 50%, being roughly equivalent to the average for all Australian casino and gaming companies.
6. Clause 22.1(ma) of the Casino Agreement imposes a 60% debt/equity ratio on PBL and its subsidiaries. We do not intend proposing that this be amended. Although 50% may be considered more appropriate, PBL is a large and diversified group and it should not be as constrained as Crown.

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What will the proposal fix or change?

7. It will ensure that the amount of debt that Crown incurs is maintained at a reasonable level and thereby ensure that Crown remains financially stable.

What will happen if the proposal is not adopted?

8. Crown's debt/equity ratio may, at some time in the future, exceed 50% (this may be more likely if the single purpose restriction is removed and Crown acquires other casino interests).

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Review of the Casino Agreement

Position Paper – Item 12

Location of Crown's Board meetings

Why has this proposal been made?

1. It is proposed that the Casino Agreement be amended to require at least 75%^z of all Crown Board meetings to be held in Melbourne.
2. The Crown Board currently meets approximately 4 times per year, with most meetings being held in Melbourne.

What will the proposal fix or change?

3. The purpose behind such a requirement is to ensure that Crown is not controlled by a remote Board, unfamiliar with the local environment within which the casino business operates and unavailable to address urgent issues at the casino.

What will happen if the proposal is not adopted?

4. Nothing. The Crown board will continue to meet as at present.

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Review of the Casino Agreement

Position Paper – Item 13

Location of Crown's senior management and management meetings

Why has this proposal been made?

1. It is proposed that the Casino Agreement be amended to require Crown to be managed by personnel located in Melbourne.
2. It is proposed that this requirement apply to all senior management, including the Chief Executive Officer, the Chief Financial Officer, the Chief Operating Officers, and other senior managers such as the heads of the various operating divisions.

What will the proposal fix or change?

3. The purpose of such a requirement is to:
 - assist the Authority to carry out its regulatory functions by providing ease of access to relevant company officers, especially where access is urgently required; and
 - ensure that senior management maintain a thorough understanding of Crown's operations by being colocated with, or based near, the Melbourne casino business.

What will happen if the proposal is not adopted?

4. Crown may, at some time in the future, decide to locate senior management in a place other than Melbourne (this may become more likely if the single purpose restriction is removed and Crown acquires other casino interests interstate).

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Review of the Casino Agreement

Position Paper – Item 14

Location of Crown's company secretary

Why has this proposal been made?

1. It is proposed that the Casino Agreement be amended to ensure that at least one Company Secretary appointed by Crown continues to be located in Melbourne.
2. The *Corporations Act* 2001 stipulates that a company secretary must “ordinarily reside in Australia”. Crown currently has two Company Secretaries, one based in Melbourne and the other in Sydney.
3. Crown has stated that having a Company Secretary located in both Sydney and Melbourne “enhances the focus on corporate governance and ensures the company meets and discharges its legal obligations”. From the Authority’s point of view, having at least one of Company Secretary located in Melbourne would also facilitate the service of notices etc on Crown.

What will the proposal fix or change?

4. The proposal would ensure that at least one Company Secretary is located in Melbourne.

What will happen if the proposal is not adopted?

5. Crown may decide, at some time in the future, to not locate a Company Secretary in Melbourne (this may become more likely if the single purpose restriction is removed and Crown acquires other casino interests interstate).

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Review of the Casino Agreement

Position Paper – Item 15

THIS ITEM REQUIRES FURTHER DISCUSSION WITH THE OGR BEFORE DISCUSSION WITH CROWN.

Location of Crown's bank accounts for the Melbourne Casino operations

Why has this proposal been made?

1. It is proposed that the Casino Agreement be amended to reinforce the requirement that Crown either locate all bank accounts for its Melbourne Casino operations in Victoria or sweep all non-Victorian accounts into a Victorian account on a daily basis.
2. Section 123(1) of the *Casino Control Act 1991* requires Crown to keep and maintain separate bank accounts at “an authorised deposit-taking institution in the State for all banking transactions arising under this Act”. Any such bank accounts must be approved by the Authority.
3. The Internal Control Manual includes a procedure for the opening and operation of other bank accounts.
4. The requirement under section 123 is, however, limited to accounts for *transactions arising under the Act*. Crown may have other accounts relating to its Melbourne Casino operations that do not fall within the scope of section 123. It would be desirable that all accounts relating to the Melbourne Casino are located in the state, making it less onerous for OGR to monitor and inspect the accounts on behalf of the Authority. This will also avoid any possible jurisdictional difficulties that may be associated with accounts held outside Victoria.

What will the proposal fix or change?

5. The proposal will ensure that all bank accounts associated with Crown's casino operations are located in Victoria, or be swept on a daily basis into a Victorian account, thereby ensuring convenient access for compliance monitoring and inspection purposes and removing any possibility that jurisdictional issues may arise in relation to the Authority's enforcement activities.
6. The proposal will also allow the Authority, where Crown is in breach of the new requirement, to issue a Notice under clause 31.2 of the Casino Agreement requiring Crown to remedy the breach. If Crown failed to comply with the notice, the Authority could issue a “show cause notice” under section 20(2) of the *Casino Control Act 1991*. This process would apply to all bank accounts related to the casino (rather than be limited to those arising under the Act, as at present) and would allow the Authority to take as soon as a breach became apparent, rather than having take disciplinary action at a much later stage.

What will happen if the proposal is not adopted?

7. Nothing. The status quo will remain.

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Review of the Casino Agreement

Position Paper - Items 16(b) and (c)

Information/Documents to be provided to the Authority:

- **A report on Crown's internal and external audit programs and any changes to the programs**
- **A report on adherence to or divergence from the internal and external audit programs**

What does this proposal describe?

1. To amend the Casino Agreement to require Crown to report on Crown's internal and external audit programs, any changes to the programs and on adherence to or divergence from the internal and external audit programs.

Why has this proposal been made?

In the Third Triennial Review of the Casino Operator and Licence, the Authority was critical of Crown's inadequate allocation of resources for its internal audit function. In a letter dated 18 June 2003, Crown responded to the Authority's findings by suggesting:

"that the Authority's conclusions were misinformed. That the Authority's finding that Crown's schedule internal audit program for the 2002/2003 financial year amounted to a total of only 700 hours was based upon limited information."

Crown also advised that the internal audit program document obtained and reviewed by the Authority:

"was only part of Crown's three year internal audit plan. This plan details the schedule elements of the internal audit program for each year. Additional areas of audit activity are determined each year based on an ongoing risk assessment process and emerging issues. During the year ended 30 June 2003, Crown conducted in excess of 2400 hours of internal audit not the '700 hours' which underpins the Authority's finding."

The Authority's findings were based upon the information previously provided by Crown of the projected internal audit activity. To assist the Authority to assess Crown's audit activities, Crown should provide to the Authority reports on Crown's internal and external audit programs. It is also recommended that should there be any changes to Crown's schedule audit programs, the Authority should be advised in writing of such changes within 30 days.

What will the Proposal fix or change?

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The proposed provision of the above mentioned information should assist the Authority in monitoring Crown's compliance with its internal and external audit programs as advised by Crown.

What will happen if the proposal is not adopted?

The Authority will not have adequate information on which to base an assessment of Crown's internal audit program and any departures by Crown from the program.

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Review of the Casino Agreement

Position Paper - Items 16(d) and (e)

Information/Documents to be provided or made available to the Authority:

- **Provide details of membership of Crown's Audit Committee and any changes to the reporting structure and membership of the Committee and proposed dates of meetings.**
- **Make available for inspection, or copies if requested of, Audit Committee agendas, papers and minutes of meetings.**

What does this proposal describe?

1. To amend the Casino Agreement to require Crown Limited to report on membership of its Audit Committee, any changes to the reporting structure and membership of the Audit Committee and to provide the Authority with a copy of the Audit Committee agendas, papers and minutes of meetings.

Why has this proposal been made?

The Authority is concerned that Crown does not have a separate and independent Audit Committee, especially in view of the fact that the Crown Board meets only four times a year.

By requiring Crown to provide the Authority with a list of members on the Audit Committee, the Authority is better able to examine and determine the appropriateness of the committee's membership. Should there be a change to the membership of the Audit Committee, the Authority should be advised in writing within 30 days.

What will the Proposal fix or change?

The availability of the Audit Committee agendas, papers and minutes of meeting will assist the Authority to better monitor the activities of the Audit Committee and help to alleviate the Authority's concerns in relation to the independence of the Audit Committee.

What will happen if the proposal is not adopted?

The current unsatisfactory situation will continue.

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Review of the Casino Agreement

Position Paper - Items 16(f) and (g)

Information/Documents to be provided or made available to the Authority:

- **Provide details of membership of Crown's Compliance Committee and any changes to the reporting structure and membership of the Committee.**
- **Make available for inspection, or copies if requested of, Compliance Committee agendas, papers and minutes of meetings.**

What does this proposal describe?

1. To amend the Casino Agreement to require Crown Limited to report on membership of Crown's Compliance Committee, any changes to the reporting structure and membership of the Committee and a copy of the Compliance Committee agendas, papers and minutes of meetings.

Why has this proposal been made?

During the period of the Review, the Authority identified that Crown had problems in ensuring compliance with regulatory requirements relating to corporate governance. Crown's external auditors (Ernst & Young) identified in October 2002 two significant breaches of the Internal Control Manual relating to failures by Crown's Internal Audit Department in the financial year ending on 30 June 2002.

By requiring Crown to provide the Authority with a list of members on the Compliance Committee, the Authority is better able to examine and determine the appropriateness of its membership. Should there be a change to the membership of the Compliance Committee, the Authority should be advised in writing within 30 days.

The availability of the Compliance Committee agendas, papers and minutes of meeting will assist the Authority to better monitor the activities of the Compliance Committee.

What will the Proposal fix or change?

It will allow the Authority to better scrutinise the function of the Compliance Committee and to ensure that Crown continues to exercise best practice standards for a company holding a casino licence.

What will happen if the proposal is not adopted?

The current unsatisfactory situation will continue.

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Review of the Casino Agreement

Position Paper – Item 16(h)

THIS ITEM NEEDS TO BE RECONSIDERED BY THE OGR AND MAY BE DELETED. NOT TO BE DISCUSSED WITH CROWN AT THIS STAGE.

Information/documents to be provided to the Authority, including Notice of any new subsidiary of PBL

What does the proposal describe?

1. The proposal describes amendment of clause 22 of the Casino Agreement (Conditions Relating to Company Structure) to make it an obligation on the casino operator to give the Authority notice of any new subsidiary of PBL.

Why has this proposal included in the list?

2. There is currently no obligation on PBL to advise the Authority of any new subsidiaries created or acquired by PBL. This makes it difficult for the Authority to monitor PBL's compliance with the Deed of Undertaking and Guarantee ("the Deed") in a timely manner.

What is the proposal going to fix?

3. The proposal will fix the type of situation that has arisen in relation to Petelex PTY Ltd and possibly in relation to some other recently acquired subsidiaries of PBL where PBL failed to give the Authority notice of the matters in clause 6.1(1) of the Deed.

What will happen if the proposal is not adopted?

4. If the Authority is not properly notified as to the acquisition or creation of a subsidiary by PBL, it adversely affects the Authority's ability to monitor PBL's compliance with the Deed and the subsidiary's assets may remain beyond the reach of the guarantees under the Deed.

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Review of the Casino Agreement

Position Paper – Item 16(i)

A report on Crown's annual budget

Why has this proposal been made?

1. It is proposed to amend the Casino Agreement to require Crown to give the Authority a report on its annual budget.
2. Clause 25.2 of the Casino Agreement requires Crown to immediately notify the Authority of any information necessary to ensure that the Authority is able to make an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the company. Crown must also provide, within 15 days of the end of each quarter, a report consisting of:
 - profit and loss accounts and cash flow statements comparing budget against year to date;
 - a balance sheet as at the last day of March, September and December; and
 - budgeted profit and loss and cash flow statements to the end of the current financial year.
3. Section 128 of the Act also requires Crown to submit to the Authority reports relating to the operations of the casino containing the information specified by the Authority in writing.

What will the proposal fix or change?

4. In the past, when it was a publicly listed company, Crown was reluctant to provide quarterly reports, comparing year to date results against its budget, because it claimed this was price sensitive information. Crown was of the view that providing this information would breach the ASX Listing Rules on continuous disclosure. In response, the Authority agreed to waive the requirement under the Casino Agreement to provide this information on the basis that Crown would, instead, provide the Authority with a copy of its approved budget, which would enable the Authority to make its own comparison.
5. Although from the Authority's point of view it may be desirable to enforce the requirement to provide quarterly reports, comparing year to date results against its budget, as currently provided for in the Casino Agreement, an alternative would be to amend the agreement to reflect current practice.

What will happen if the proposal is not adopted?

6. The status quo will remain, with some confusion as to the level of information that Crown is required to provide and the time by which such information should be provided.

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Review of the Casino Agreement

Position Paper – Item 16(j)

A report on adherence or divergence from the budget

Why has this proposal been made?

1. Clause 25.4 of the Casino Agreement requires Crown to provide Quarterly Financial Reports to the Authority in the form specified in Schedule Four of the Casino Agreement. This specifies the following items
 - Profit and Loss Account and Cashflow Statement comparing budget against actual for the year to date;
 - Balance Sheet at last days of March, September and December; and
 - Budgeted Profit and Loss and Cashflow Statements to the end of the current financial year.
2. In response to letters from Crown dated 19 July 1995, 27 October 1995 and 15 November 1995, the Authority at its meeting on 21 November 1995, agreed to waive, until further notice, the obligations on Crown to comply with certain parts of clause 25.4. This decision was conveyed to Crown in a letter dated 24 November 1995. Paragraph (d) stated that “The requirements to compare ‘budget against actual’ for the year to date and to provide budgets ‘to end of current financial year’ are waived until after the permanent casino is opened, when the matter will be reconsidered.”
3. It is understood that the Authority subsequently agreed to accept receipt from Crown of a copy of its annual budget as satisfying its obligations with respect to the provision of budget figures. This matter is currently being researched.
4. Each year since the permanent casino opened, Crown has made a presentation to the Director of Casino Surveillance and other regulatory staff on its budget for the coming year. This traditionally occurred in July or August and on three occasions coincided with presentations for the three Triennial Reviews. In 2003, Crown questioned why it had to provide a copy of its budget prior to the submittal of its September Quarterly report in October 2003. It appears that Crown is not so forthcoming with this information as in the past and that it may in future be necessary to formally require such budget information.

What will the proposal fix or change?

5. The proposal will clarify what information is required by the Authority and the time by which such information must be provided by Crown. It would, therefore, remove the need for requests to be made to Crown for the information.

What will happen if the proposal is not adopted?

6. There would be uncertainty regarding Crown’s obligations to provide the important financial information to the Authority leading to uncertainty as to whether Crown is in breach of its obligations.

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Review of the Casino Agreement

Position Paper – Item 16(k)

THIS ITEM REQUIRES FURTHER DISCUSSION WITH THE OGR BEFORE DISCUSSION WITH CROWN.

Continuous disclosure

Why has this proposal been made?

1. It is proposed that the Casino Agreement be amended to require Crown to give to the Authority some of the same type of information that Crown would be required to give the Australian Stock Exchange Limited (“ASX”) if Crown were a publicly listed company. It is also proposed that the Casino Agreement be amended to allow the Authority to inspect Crown Board or Management Committee minutes and papers as required, without having to issue a notice under section 26 of the *Casino Control Act* 1991.
2. Under clause 25 of the Casino Agreement, Crown is required to give the Authority:
 - immediate notice of any information necessary to ensure that the Authority is able to make an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the company;
 - notice of any event or circumstance which would be material to the company having regard to the definition of materiality in Australian Accounting Standard AAS5; and
 - a copy of any notices or information given to, or received from, the Australian Securities and Investment Commission (the notice or information must be given to the Authority on the day it given or received).
3. The Third Triennial Review of the Casino Operator and Licence stated that the Authority would like to establish a process whereby Crown will inform the Authority of specific matters that are necessary for the Authority to carry out its regulatory function. The Authority indicated that its role would be enhanced if Crown were required to give the Authority any information that a publicly listed company is required to give the ASX under the continuous disclosure obligations contained in the ASX Listing Rules.
4. Clause 25.1 of the Casino Agreement requires Crown to give the Authority any information that it would be required to give the ASX if Crown were a listed company. Crown is not, however, required to comply with this requirement, as it is not a listed company in the normal sense. (Crown does, however, have unsecured notes that are listed and, for this reason, must still submit some reports to the ASX. When these notes mature in August 2005 there will be a diminution in the amount of information available to the public and the Authority.)
5. Although some of the information a company is required to disclose under the Listing Rules is not really appropriate to Crown as a wholly owned subsidiary of PBL, it is

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proposed that the information Crown should be required to give the Authority under an amended clause 25.1 would include:

- any information that a reasonable person would expect to have a material effect on financial viability or stability of the company;
 - information relating to any share buy-back scheme or other capital reduction scheme;
 - any reorganisation of the company's capital, any call on its shares or any proposed issue of shares;
 - the outcome of any resolution put to a meeting of shareholders;
 - the contents of any prepared announcement to be presented to a meeting of shareholders;
 - a copy of any document sent to shareholders; and
 - details of any "notifiable interest" of a director and any change to that interest.
6. It should be noted that although some of the above listed information may not be relevant to Crown at present, the Casino Agreement should be amended so that it takes into account possible changes to Crown's ownership or structure in the future. For example, Crown may sell some of its shares, which would then bring the requirements relating to shareholder meetings and notices into operation.

What will the proposal fix or change?

7. The proposal will ensure that the Authority has access to all the information that is necessary to enable the Authority to carry out its regulatory functions.

What will happen if the proposal is not adopted?

8. The status quo will remain. The Authority may not become aware of a change in Crown's circumstances until long after the event, which could have an adverse effect on the regulation of casino operations.

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Review of the Casino Agreement

Position Paper No. 17

THIS ITEM REQUIRES DISCUSSION WITH THE OGR BEFORE IT CAN BE DISCUSSED WITH CROWN

Insurance

Why has this proposal been made?

1. It is proposed to amend the Casino Agreement to remove all obligations on Crown to insure items or events relating to the construction phase of the Casino Project, as these are now obsolete. It is also proposed to update the remaining provisions to bring them into line with the cover that is available in today's insurance market.

Background

2. Clause 35(1) of the Casino Agreement requires Crown to insure and keep insured all of its Assets and Rights¹ for the risks set out in Schedule 5 of the Agreement for both construction phase and operations phase of the casino project.
3. Schedule 5 also specifies the limits of liability, the amount of any excess and the period of cover. Clause 35(1) also requires "the interests of the State, the Authority and any Mortgagees to be noted by endorsement on the policy".
4. It should be noted that the Lease for the Casino site between the Minister for Finance for the State of Victoria and Crown Limited also imposes an obligation on Crown to insure and keep insured each and all of its interests and each and all of the Minister's interests in:
 - the Site and every part of the Site;
 - all buildings, structures, extensions and improvements on the Site;
 - all equipment, fixtures, fittings and other assets used in or in connection with the Site.
5. Crown has, therefore, a legal obligation to insure, separate from that imposed by the Casino Agreement, albeit an obligation that is not as specific as that imposed by the Casino Agreement. It would appear, on the face of it, that this obligation would require Crown to maintain most, if not all, of the insurance cover listed in Schedule 5.
6. The most important difference between the obligation to ensure under the Casino Agreement and the obligation under the Lease is, however, that a breach of the obligation to insure under the Lease is not grounds for the Authority to issue a "show cause" notice under section 20 of the Act². If Crown fails to comply with the

¹ "Assets and Rights" is defined in clause 2 of the Casino Agreement as meaning "all the present and future undertaking, property, assets and rights of or held by the Company".

² It is, however, arguable that the Authority could issue such a notice under clause 25.2 of the Management Agreement on the grounds the Crown was in breach of clause 41(e) of the Management Agreement which requires Crown to "comply with the terms and conditions of each Lease to which it is a

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obligation to insure under the Lease, the Minister has the capacity to issue a notice requiring Crown to remedy the breach and ultimately to regain possession of the Site if Crown fails to comply with the notice.

7. While there commercial imperatives for Crown to maintain appropriate insurance, it is also important for either the State or the Authority to monitor and regulate the maintenance of insurance as the State has an insurable interest in the Site and the Casino Complex. From a regulatory point of view, it is more efficient and expedient for the Authority to continue to monitor and enforce Crown's insurance obligations because the Minister has not appointed any other person to do this for him. It is also easier for the Authority to enforce Crown's obligations via disciplinary proceedings than it would be for the Minister to enforce the lease with a threat of regaining possession of the Site.

What will the proposal fix or change?

8. The proposal will remove the regulation of many of the types of insurance policies in Schedule Five that the Authority has no interest or jurisdiction to monitor

Policy excess

9. As pointed out in the advice provided to the Authority by Sparke Helmore, solicitors, in March 2003, a number of the insurance policies maintained by Crown do not comply with the requirements set out the Schedule 5. This non-compliance mostly relates to the level of the excess applying to each policy.
10. Crown maintains that it has complied with the Casino Agreement. It argues that clause 35.1(a)(i) requires that Crown maintain insurance for the *risks* and *amounts* set out in Schedule 5, meaning the risks in set out in columns 1 and 4, and the amounts set out in column 2. Crown claims to have complied with these requirements.
11. Crown also argue that, even if its interpretation of clause 35 is incorrect, changed market conditions mean that some of the policy excesses in Schedule 5 are not attainable in today's insurance market. Apart form some concerns about the level of excess in relation to Crown's Directors and Officers insurance and its crime cover, Sparke Helmore shares this view. Crown indicated in its letter to the Authority dated 16 April 2003, that it would make a submission to the Authority seeking amendments to clause 35 and Schedule 5. Crown may, therefore, raise these issues during the negotiations on the review of the Casino Agreement.
12. The options in relation to the level of excess prescribed by Schedule 5 are to either:
 - remove the excess limits from Schedule 5; or
 - replace the excess limits from Schedule 5 with levels that are appropriate having regard to today's insurance market. Further advice could be sought

party where failure to do so would have a material adverse effect on the Casino Assets or the operation of the Temporary Casino or the Melbourne Casino".

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from Sparke Helmore on this matter if it is decided to revise, rather than delete, the excess requirements.

Notice of any occurrence that may give rise to a claim

13. Clause 35(1)(e) of the Casino Agreement requires Crown to:

immediately after it becomes aware that it has occurred, notify the Authority of any occurrence which gives or might give rise to a claim or right to claim under any insurance policy.

14. In theory, this would require Crown to notify the Authority every time a Crown owned motor vehicle is involved in an accident with another vehicle or every time a Crown employee completes an incident report form.

15. In practice, Crown only provides monthly a Public Liability Insurance Report and Claims History Summary. These reports give details of all public liability claims and a summary of open and closed claims under the various insurance policies³.

16. Given the onerous nature of the obligation imposed by clause 35(1)(e) and the fact that it is neither being complied with nor enforced, consideration should be given to removing this obligation altogether or, alternatively, amending the Casino Agreement to reflect current practice in a way that is considered adequate for the Authority's purposes.

What will happen if the proposal is not adopted?

17. The insurance provisions contained in the Casino Agreement would remain out of date and out of step with the current market.

³ This reporting arrangement was agreed to by the Authority in November 2000.

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Review of Casino Agreement

Position Paper – Item 18

THIS ITEM IS NOT READY FOR DISCUSSION WITH CROWN

Quarantining Crown from other ventures – Responding to a removal of the Single Purpose Restriction

1. Further commercial and legal advice is being obtained by the OGR on how to protect the State's interest in the Melbourne Casino and Entertainment Complex if Crown embarks upon other ventures if the single purpose restriction is removed from the Casino Agreement.

Meeting with Maddocks 5/3/04

Estoppel re Govt agencies. - Advice re working

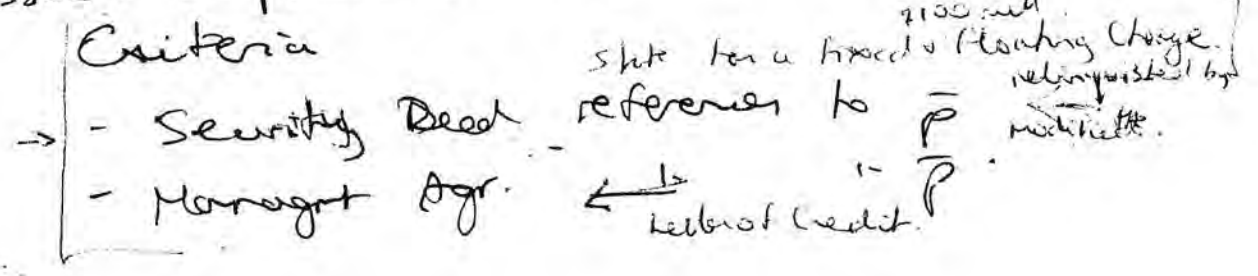
Instructions for Maddocks.

Mark's operations

① - functions of each area of management for the casino business - IS.

② - send types of insurance to replace Schedule five.

+ Issue ^{need policy on} - disposal of Casino Assets. - what



⇒ draft ^{BLN.} response to Minister re High rollers. business

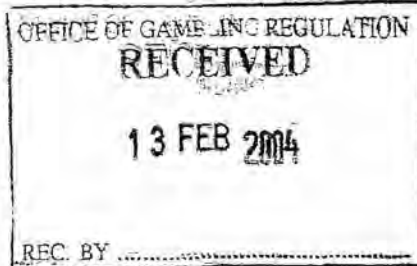
ask Paul Fuller to look at - whether into we will be requesting will be of value to us - Bar (should be regulated?)

- ③ Note of Meeting
- ④ Ring fencing clause - Lobby Link

CORP 2001/0147/00004



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File Ref No: 6947/01/2
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13 FEB 2004

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5/35 Spring Street
MELBOURNE VIC 3000

Dear Mr Forrest *Brian*

REVIEW OF CASINO AGREEMENT

Thank you for your letter dated 18 November 2003 regarding the VCGA's review of the Casino Agreement.

In relation to the terms of agreement referred to in your letter, I would like the Authority to include the first two terms of agreement in its negotiations with Crown. These are: (1) making the Casino Agreement publicly available, and (2) making the Casino Licence publicly available.

With respect to the third term of agreement (requiring Crown to retain current market share of the commission based players' business in Victoria to maximise gross gaming revenue), I wish to receive further advice from your office regarding the enforcement implications of this term prior to making a final decision.

Yours sincerely



JOHN PANDAZOPOULOS
Minister for Gaming

Sylvia

Dear disunn

Peter 13/2/04



VICTORIAN CASINO AND GAMING AUTHORITY

12 FEB 2004

FAXED

Mr Rowen Craigie
Chief Executive Officer
Crown Limited
8 Whiteman Street
SOUTHBANK VIC 3006

Dear Mr Craigie

REVIEW OF THE CASINO AGREEMENT

I refer to your letter of 28 January 2004 in which you suggest we meet to discuss the proposed amendments to the Casino Agreement.

I will be happy to meet with you with some officers from the Office of Gambling Regulation, who will contact you to arrange a suitable time.

Yours sincerely



BRIAN FORREST
Chairman

MESSAGE CONFIRMATION

12/02/2004 10:15
 ID-OFFICE GAMBLING REGULATION NO2

DATE	S.R-TIME	DISTANT STATION ID	MODE	PAGES	RESULT
12/02	00'20"	61392927298	CALLING	01	OK 0000

12/02/2004 10:14 OFFICE GAMBLING REGULATION NO2 → 092927298 NO.766 001



VICTORIAN CASINO AND GAMING AUTHORITY

17 FEB 2004

FAXED

Mr Rowen Craigie
 Chief Executive Officer
 Crown Limited
 8 Whiteman Street
 SOUTHBANK VIC 3006

Dear Mr Craigie

REVIEW OF THE CASINO AGREEMENT

I refer to your letter of 28 January 2004 in which you suggest we meet to discuss the proposed amendments to the Casino Agreement.

I will be happy to meet with you with some officers from the Office of Gambling Regulation, who will contact you to arrange a suitable time.

Case: 2001/0147/00002



**EXECUTIVE OFFICE
FACSIMILE**

Date: 28 January 2004

To: Mr Peter Cohen

Company: Office of Gambling Regulation

Facsimile No: 9651 4999

From: Rowen Craigie

Subject: Casino Agreement

Total Pages: (Including this page) 11

S.

CONFIDENTIALITY NOTE

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Please find following letter regarding the review of the Casino Agreement.

Christine
3 copies pls. & return to Peter.
Thurs SF. 4/2



ROWEN CRAIGIE
Chief Executive Officer

Telephone (61-3) 9292 7234
Facsimile (61-3) 9292 7257

28 January 2004

By confidential fax: (03) 9651 4999
Page 1 of 3

Mr Brian Forrest
Chairman
Victorian Casino and Gaming Authority
35 Spring Street
MELBOURNE VIC 3000

Dear Brian

Review of the Casino Agreement

I refer to your letters dated 18 November 2003 and 22 January 2004 and the discussions held with Office of Gambling Regulation ("OGR") management on 23 December 2003.

At the meeting with the OGR, it was reiterated that the Authority has yet to determine the final list of proposed variations and that additional input was being sought from the Minister for Gaming.

Similarly, Crown management has not yet sought input from the Crown Board beyond the issue of removing the single purpose restriction.

Crown management is prepared to recommend to the Board of Crown that if the single purpose restriction is removed from the Casino Agreement, then the Board should agree to the following variations to the Agreement:

1 Location of Board meetings

It is considered reasonable that a majority of these meetings be held in Melbourne each year.

2 Company secretary

Crown currently has joint Company Secretaries located in Sydney and Melbourne. It is reasonable that at least one company secretary be located in Melbourne.



Mr Brian Forrest
Victorian Casino and Gaming Authority

Page 2
21 January 2004

3 Location of Crown's Senior Management

It is reasonable that Crown's senior management be located in Melbourne but the Casino Agreement should not specify particular titles (other than the Chief Executive Officer of Crown) as this locks Crown into a particular organization structure. All organizations (whether public or private) go through processes of restructure and position title changes which inevitably render any prescriptive drafting obsolete.

4 Location of Crown's Senior Management Meetings

It is reasonable that almost all of Crown's senior management meetings be held in Melbourne. However it was agreed at the meeting with OGR management that this requirement did not apply to PBL/Crown meetings which would continue to be held either in Sydney or Melbourne as has been the case for the last three years.

5 Improved Standard for Audit Requirements

Crown is pleased that the Authority acknowledges the improvement in the scope and content of Crown's external audit reports. Crown is committed to maintaining these improvements going forward. If the Authority wishes to draft a form of words that expresses that ongoing commitment, Crown management would be happy to respond.

At the meeting with OGR management, Crown management undertook to provide further information on a number of matters raised in your letter of 18 November 2003.

This additional information is set out below.

1 Audit and Compliance Committees

The composition and reporting structure of the Audit and Compliance Committees at Crown has been improved by elevating these committees from management committees to Board Committees and appointing a majority of independent Directors to each Committee.

The Audit Committee is made up of the following directors:

- Richard Turner (Chairman/Independent)
- Rowena Danziger (Independent)
- Geoff Kleemann

The Compliance Committee is made up of the following directors:

- Kevan Gosper (Chairman/Independent)



Mr Brian Forrest
Victorian Casino and Gaming Authority

Page 3
21 January 2004

- Lawrence Muir (Independent)
- Peter Yates

The charters for these committees are attached.

2 Peteflex/Deed of Undertaking and Guarantee

PBL will be responding directly to the Authority's letter dated 20 January 2004 on this matter.

3 PBL Subsidiaries

PBL will provide a list of subsidiaries to the Authority in accordance with its obligations under the Deed of Undertaking and Guarantee.

4 Management Reports


Crown management is always happy to provide reports to the Authority. If the Authority wishes to specify the details and frequency of those reports it needs, Crown will respond. Crown would however caution against being too prescriptive in a Casino Agreement as the Authority's needs and the information available may change over-time, rendering such prescriptive clauses obsolete.

While the exchange of correspondence on the Casino Agreement over the last two months has proved useful, I believe we are now at the point where face to face negotiations over proposed drafting variations would be efficient and expeditious.

I would therefore like to propose that a meeting with the relevant personnel from the Authority/OGR and Crown be convened at your earliest convenience to commence the drafting process.

I look forward to discussing this matter with you soon.

Yours faithfully


Rowen Craigie
Chief Executive Officer

2 attachments



Crown Limited

Audit Committee Charter

Purpose

The purpose of this charter is to govern the operations of the Crown Limited Audit Committee (Committee). The Committee will review the charter at least annually and refer any proposed changes to the Board of Directors of Crown Limited (Board) for approval.

Functions

The primary function of the Committee is to assist the Board to fulfil its Corporate Governance responsibilities in relation to:

- Financial reporting
- Corporate control and risk management
- External and internal audit

Constitution and Membership

The Board will appoint Committee members (members). Periodically, membership of the Committee will be assessed by the Board and alternate members considered.

The Committee will comprise:

- a minimum of two Directors independent of the management of Crown Limited (Crown);
- such persons as determined from time to time by the Board.

The Chief Executive Officer and Chief Financial Officer will attend the Committee meetings.

The Board will appoint an independent Director as Chairman of the Committee. The Chairman will have a significant background in accounting and / or financial management disciplines. The Chairman may in turn appoint a Deputy Chairman.

The quorum for any meeting is two members.

The Committee will maintain direct lines of communication between members, Crown's external auditor, Crown's internal audit department and senior management.

The Committee may periodically engage expert consultants to assist the Committee to fulfil its responsibilities.

Roles and Responsibilities

Financial Reporting

The Committee is responsible for overseeing Crown's financial reporting and conveying its observations to the Board. Ultimate responsibility for ensuring Crown's financial disclosures adequately portray the company's financial condition, results of operations, plans and long-term commitments rests with the Board.

In discharging its responsibility the Committee will receive, examine and recommend to the Board the half year and full year financial reports of Crown.

The Committee may recommend to the Board a change or changes to accounting policy as appropriate. In doing so the Committee will firstly obtain an opinion as to the appropriateness of any change from Crown's external auditor.

Corporate Control and Risk Management

The Committee is responsible for ensuring the adequacy and effectiveness of Crown's corporate control and risk management systems.

In discharging its responsibility the Committee will receive and disseminate information from Crown's external auditor and internal audit department regarding:

- The effectiveness of Crown's internal control systems
- Systems established to assess, monitor and manage key risk exposures
- Systems established to ensure compliance with relevant legislative and regulatory requirements

- Findings and recommendations made by either Crown's external auditor or internal audit department and management's responses including:
 - The report to the Committee and Board by Crown's external auditor detailing external audit results
 - The annual report prepared by Crown's internal audit department summarising audit work undertaken in the previous 12 months, key findings, recommendations and outcomes

The Committee will report to the Board any significant unresolved differences of opinion between management, Crown's external auditor or internal audit department, and ensure appropriate resolution of the above.

External and Internal Audit

The Committee is responsible for recommending to the Board the appointment, reappointment, removal and remuneration of Crown's external auditor.

The Committee may recommend to the Board the appointment and removal of Crown's Head of Internal Audit.

The Committee will periodically review and ensure the independence of Crown's external auditor and internal audit department, having regard to relationships with Crown beyond external or internal audit, which could impair independence or judgment of Crown. In particular, the Committee will consider annually any non-audit services provided by the external auditor and include a statement in Crown's annual report as to whether, in the opinion of the Committee, the provision of those non-audit services is compatible with the independence of the external auditor.

The Committee will review the scope and materiality of audit work performed by Crown's external auditor, having regard to any areas of identified risk.

The Committee will ensure the adequate staffing of Crown's internal audit department.

The Committee will approve the annual internal audit plan, including resourcing of proposed audit work.

The Committee may request Crown's internal audit department to perform reviews, investigations or other services in respect of matters of interest or concern to the Committee.

Meetings

The Committee will meet at least twice annually and additionally as required by the Committee or the Board.

The Committee may meet with either representatives of Crown's external auditor or internal audit department, as appropriate.

Minutes of meetings will be recorded retained and approved by the Board as being an accurate record of Committee meetings.

October 2003



Crown Limited

Compliance Committee Charter

Purpose

The purpose of this charter is to govern the operations of the Crown Limited Compliance Committee (Committee). The Committee will review the charter at least annually and refer any proposed changes to the Board of Directors of Crown Limited (Board) for approval.

Functions

The primary function of the Committee is to ensure that Clause 19.2 of the Crown Limited (Crown) Articles of Association (Duty to Maintain Casino Licence) is fulfilled. The Committee also has the responsibility to:

- assist the Board in ensuring compliance by Crown with all other legislative and regulatory requirements; and
- deal with compliance issues that are brought before it either on its own motion or from outside the Committee.

Constitution and Membership

The Board will appoint Committee members (members). Periodically, membership of the Committee will be assessed by the Board and alternate members considered.

The Committee will comprise:

- a minimum of two Directors independent of the management of Crown;
- such other persons, as determined from time to time by the Board.

The Chief Executive Officer and Chief Financial Officer will attend the Committee meetings at the invitation of the Chairman.

The Board will appoint an independent Director as Chairman of the Committee. The Chairman will have a significant understanding of Crown's regulatory obligations. The Chairman may in turn appoint a Deputy Chairman.

The quorum for any meeting is two members.

The Committee will maintain direct lines of communication between members and senior management.

The Committee may periodically engage expert consultants to assist the Committee to fulfil its obligations.

Roles and Responsibilities

- The Committee will have an appropriate general understanding of the regulatory requirements applicable to Crown under:
 - (i) the disclosure, reporting and notification provisions of the Corporations Act and ASX Listing Rules (by virtue of unsecured notes – ASX Code – CROHB – which are actively traded);
 - (ii) gaming legislation and regulations, including the *Casino Control Act 1991* and *Gambling Regulation Act 2003*;
 - (iii) the Management Agreement with the State and Casino Agreement with the Victorian Casino and Gaming Authority;
 - (iv) liquor licensing legislation;
 - (v) fire, safety, smoking and security legislation and regulations;
 - (vi) food handling legislation together with Hazards Analysis Critical Control Point (HACCP) systems;
 - (vii) employment, environmental and privacy legislation;
 - (viii) the *Australian Standard on Compliance Programs 1998 AS3806*; and
 - (ix) all other legislation and regulations, as appropriate
- The Committee will:
 - (i) provide advice as to communications to and from Crown concerning compliance matters;
 - (ii) review and suggest amendments to announcements, reports and notifications made in compliance with or in respect of regulatory requirements as appropriate;
 - (iii) review compliance with specific financial covenants contained in any of the above documents;
 - (iv) receive reports as follows:
 - Confirmation that all disclosures, reports and notifications have been made to comply with the Corporations Act and ASX Listing Rules, if applicable.
 - An Exception Report on all compliance issues as it applies to:
 - gaming legislation and regulations, including the *Casino Control Act 1991*; and

- the Management Agreement and the Casino Agreement as it applies to the conduct of gaming and ancillary matters related to the supervision and monitoring of casino operations by the VCGA;
- An Exception Report on all compliance issues as it applies to:
 - liquor licence legislation;
 - fire, safety and smoking regulations;
 - food handling legislation including HACCP;
 - employment, environmental, social and privacy legislation; and
 - all other relevant compliance matters not expressly otherwise mentioned or dealt with by the Board.
- Litigation to which Crown is a party or on threatened or potential litigation involving Crown.

Meetings

The Committee will meet at least twice annually and additionally as required by the Committee or the Board.

Minutes of meetings will be recorded, retained and approved by the Board as being an accurate record of Committee meetings.

October 2003

WORKING PARTY FOR REVIEW OF THE CASINO AGREEMENT
Agenda For Meeting at 11.30 am on 21 January 2004 in Meeting Room 1

1. Feedback from January 04 Authority Meeting re Maddocks' advice.
2. Second opinion being sought from VGS.
3. Report back on progress of reviewing housekeeping amendments.
4. Report back on progress of reviewing Crown's insurance obligations.
5. Report back on progress of reviewing.
 - statutory and contractual consequences of licensee's financial failing; and
 - engagement of financial consultant for test of Crown's financial health and quarantining of Crown Casino business from other activities.
6. Petelex and other PBL subsidiaries.
7. Other business.

**CONSULTATION WITH JAMES SYME, VICTORIAN GOVERNMENT
SOLICITOR, RE PROVIDING HIS ADVICE ON THE CASINO
AGREEMENT TO MADDOCKS.**

I spoke to the Chairman on 2 March 2004 to advise that Warwick Isherwood of Maddocks had asked whether he could have a copy of the VGS advice.

The Chairman said it would be OK subject to my contacting James Syme and asking, as a matter of courtesy, whether it was OK with him.

On 3 March 2004, I rang VGS and spoke with Mr Syme's assistant, Cheryl, regarding this matter. She spoke with Mr Syme and left me a message saying that he had said it was fine to give the advice to Maddocks.



SYLVIA GROBTUCH



Maddocks

Lawyers
 140 William Street
 Melbourne Victoria 3000 Australia
 Telephone 61 3 9288 0555
 Facsimile 61 3 9288 0666
 Email info@maddocks.com.au
 www.maddocks.com.au
 DX 259 Melbourne

Email Letter

From
 Warwick Isherwood

Date
 2/03/2004

Direct
 [REDACTED]

Email
 [REDACTED]

To
 Ms Sylvia Grobtuch

Firm/Company
 Victorian Casino &
 Gaming Authority

Email
 [REDACTED]

Our Ref WJI:5023648

Dear Sylvia

Amendments to the Casino Agreement

Thank you for talking with me yesterday.

I confirm a meeting is to be held at our offices on Friday, 5 March 2004 at 10.30am.

Besides myself, the attendees from our side will be Miriam McDonald and Robert Gregory.

I understand that, besides yourself, Bill Balgowan and Rowena Scheffer will be attending. Are there any other proposed attendees?

I further understand that the purpose of the meeting is to discuss the advices that you have received both from ourselves and the Victorian Government Solicitor. As mentioned, it would be very helpful to us if we could review the opinion of the Victorian Government Solicitor as, without that review, we will not be able to reply to the opinion of James Syme in any substantial manner. Naturally, our objective is not to criticize the opinion of Mr Syme, who is a experienced and well-respected practitioner, but to understand the reasons he has given and to consider the way forward in such a manner that protects the Authority and furthers its goals.

I am particularly interested in seeing the reasons behind any query there may be on the power of the Minister to enter into an agreement. It seems to me that Ministers have authority to enter into contracts on behalf of the government connection with any subject matter which properly comes within their portfolio (see Seddon on Government Contracts and *Kidman v Commonwealth* (1925) 37 CLR 233 at 239-240).

[5023648/WJI/M0246054:1]

Interstate office
 Sydney
 Affiliated offices
 Adelaide, Beijing, Brisbane, Colombo,
 Dubai, Hong Kong, Jakarta, Kuala Lumpur,
 Manila, Mumbai, New Delhi, Perth,
 Singapore, Tianjin

Page 02

I look forward to hearing from you.

Yours faithfully
Maddocks

Transmission authorised by:
Warwick Isherwood
Partner



VICTORIAN CASINO AND GAMING AUTHORITY

22 JAN 2004

Mr Rowen Craigie
 Chief Executive Officer
 Crown Limited
 8 Whiteman Street
 SOUTHBANK VIC 3006

Dear Mr Craigie

REVIEW OF THE CASINO AGREEMENT

I refer to the review of the Casino Agreement and your request, made in a meeting with the Acting Director of Gaming and Betting, Acting Director of Casino Surveillance held on 23 December 2003, for a more detailed description of what the Victorian Casino and Gaming Authority is seeking in relation to the following proposed terms of agreement:

- an improved standard for audit requirements;
- the location of Crown's Board meetings;
- the location of Crown's senior management and management meetings; and
- the location of Crown's company secretary.

Further details are provided as follows:

Improved standard for audit requirements

In the Authority's *Report on the Third Triennial Review of the Casino Operator and Licence* (the Triennial Review Report), the Authority noted that it continues to be dissatisfied with Crown's inadequate allocation of resources for its internal audit program. The Authority was also dissatisfied with the scope and content of the external audit reports provided by Ernst & Young because they had not demonstrated whether the Internal Control Manual (ICM) is adequate or whether Crown has been complying with it.

In the Triennial Review Report, the Authority expressed a view that Crown should outsource its internal audit function or, alternatively, increase the resources in this area and change reporting structures so that the head of the internal audit unit reports to the CEO and/or the Board and not through any line manager.

The Authority acknowledges that, since the Triennial Review Report, the scope and content of the external audit reports supplied by Crown have improved. It is suggested that, subject to further progress on this matter being made during the ordinary course of business, the negotiations regarding the Casino Agreement provide an opportunity to clarify, and cement in place, Crown's obligation to submit to the Authority an improved standard of external audit report and more information regarding its audit program.

Location of Crown's Board meetings

This proposal is that the Casino Agreement be amended to require most, or a certain proportion (for example, 75%), of Crown Board meetings to be held in Melbourne.

Location of Crown's senior management and management meetings

This proposal is that the Casino Agreement be amended to require Crown to be managed by personnel located in Melbourne. This requirement should apply to all senior management, including the Chief Executive Officer, the Chief Financial Officer, the Chief Operating Officer, and other senior managers such as the heads of the various operating divisions. It is also proposed that the Casino Agreement be amended to require Crown to hold most (for example 80%) of its senior management meetings in Melbourne. This would include the current PBL/Crown management meetings and any similar meetings.

Location of Crown's company secretary

This proposal is that the Casino Agreement be amended to ensure that at least one Company Secretary appointed by Crown continues to be located in Melbourne. The *Corporations Act* 2001 stipulates that a company secretary must "ordinarily reside in Australia".

The Authority acknowledges that Crown currently has two Company Secretaries, one based in Melbourne and the other in Sydney and that Crown has stated that having a Company Secretary located in both Sydney and Melbourne "enhances the focus on corporate governance and ensures the company meets and discharges its legal obligations". From the Authority's point of view, however, it is considered vital that at least one Company Secretary is located in Melbourne in order to facilitate the service of notices and other documents on Crown.

Yours sincerely



BRIAN FORREST
Chairman

Cc. Mr Mike Sugrue, Compliance Manager, Crown Limited

**Authority Meeting
Private Session**

4(b) ~~Crown Limited – New Bank Accounts – Jakarta~~

Members considered a paper regarding an application of 31 December 2003 from Crown Limited for the opening of two new bank accounts for Crown Resort Pte Ltd, a wholly owned subsidiary of Crown Limited, in Jakarta, Indonesia.

Members noted that Crown Limited is required to seek the Authority's approval to open and operate bank accounts, pursuant to section 123 of the *Casino Control Act* 1991 and Section 1.2 of Part II E of the approved system of accounting and internal controls (ICM).

Members also noted that:

- the new accounts are to be used for office administration;
- the accounts, to be opened and operated with Bank Commonwealth, Wisma Metropolitan 2, Jl Jendral Sudirman 29-31, Jakarta 1920, Indonesia, have the following numbers –

[REDACTED]

- Crown Limited has advised that these new accounts will replace the two existing office administration bank accounts with Citibank, which are in the name of a local company, as part of a restructuring of the company's overseas marketing operations.

Members agreed, pursuant to section 1.2 of Part II E of the approved system of accounting and internal controls, to approve the opening and operation of the following new office administration bank accounts by Crown Resort Pte Ltd with Bank Commonwealth, Wisma Metropolitan 2, Jl Jendral Sudirman 29-31, Jakarta 1920, Indonesia:

[REDACTED]

4(c) Review of Casino Agreement

Members considered a paper providing a status report on the review of the Casino Agreement by the Authority's Sub-Committee.

Members noted that:

- the Sub-Committee held its third meeting on 14 November 2003 as a result of which –
 - ✓ the terms of agreement the Authority may require from Crown Limited in exchange for removing the single purpose restriction from the Casino Agreement were decided;

**Authority Meeting
Private Session**

4(c) Review of Casino Agreement (continued)

- ✓ the Chairman gave Crown Limited notice of these items, except for three matters falling outside the Authority's jurisdiction, in a letter dated 18 November 2003;
- ✓ the three matters falling outside the Authority's jurisdiction were referred to the Minister for Gaming for his consideration in a letter dated 18 November 2003; and
- ✓ the list of items comprising the proposed terms of agreement was also referred to a commercial law firm, Maddocks, for advice.



**Authority Meeting
Private Session**

4(c) Review of Casino Agreement (continued)

- Crown Limited, at a meeting held 23 December 2003 with the Acting Director of Gaming and Betting, requested through its Chief Executive Officer that the Authority provide a more detailed description of what the Authority is seeking in relation to –
 - ✓ an improved standard for audit requirements;
 - ✓ the location of Crown Limited board meetings;
 - ✓ the location of Crown Limited senior management and management meetings; and
 - ✓ the location of the Crown Limited company secretary;
- Crown Limited has not yet made a submission in response to the Authority's letter of 18 November 2003 but has provided oral advice that the company expects to have done so by 23 January 2004;
- a number of matters arising out of the legal advice provided by Maddocks have been referred to the Victorian Government Solicitor for his opinion; and
- to expedite the related matter of Petelex Pty Ltd, letters have been prepared for the Chairman's signature.

Members agreed:

- to note the legal advice from Maddocks;
- to authorise the Chairman to provide Crown Limited with the further details requested in the form of the draft letter submitted as Attachment 4 of the paper;
- to authorise the Sub-Committee formed to review the Casino Agreement to do all things necessary to expedite the review process on behalf of the Authority; and
- to proceed independently with the matter of Petelex Pty Ltd given the desirability of proceeding expeditiously with this matter.

ITEM 5 LICENSING and APPROVALS

5(a) Controlled Contract – New – Chocolatier (Aust) Pty Ltd

Members considered a paper regarding the proposed controlled contract between Crown Limited and Chocolatier (Aust) Pty Ltd for the supply of chocolates within the Crown complex.

Members agreed, noting that inquiries have not disclosed any reason why Crown Limited should not enter into this contract, that the Authority not object to the proposed controlled contract, as required by section 30 of the *Casino Control Act 1991*.

Meeting with James Syme ? Jan
Feb 04

1.

Not:

Re - removal of Authority's objects -

is not other body put in place. to take
up the regulatory role.

The powers that are left are still broad

we^o not likely to be constrained by our
objectives in negotiating -

2. DUG.

A good idea to amend the G(MA)^{Act} but
not essential at this stage.

s.6(2) If you have the power to enter into an
agreement, you have the power to
~~exercise~~ exercise it, power of it is not mentioned
in the defn of "Transaction Documents"



**VICTORIAN
GOVERNMENT
SOLICITOR**

Your Reference:

Level 2, 55 St. Andrews Place
East Melbourne, Vic. 3002
P.O. Box 4356QQ
Melbourne 3001
Tel: (03) 9651 0444
Fax: (03) 9651 0449
DX 300077

When Replying OGR.0400883

Please Quote:

Mr James Syme:CAL

Tel: [REDACTED]

21 January 2004

Ms Rowena Scheffer
Solicitor
Office of Gambling Regulation
PO Box 1988R
MELBOURNE Vic. 3001

22 JAN 2004

Dear Ms Scheffer,

Review of the Casino Agreement

I refer to your letter of instructions of 19 January 2004. Thank you for your instructions to advise on the matters set out in your letter.

This matter will be handled by me personally. My direct line is [REDACTED].

My current charge out rate is \$284 per hour plus GST. I note that this rate represents a 20 per cent discount to the benchmark rate established for partners of private sector legal firms undertaking work for Government as administered by the Director of Government Legal Services. From time to time other personnel may be requested to provide input or to review work undertaken and this time will be charged at their normal hourly rate. I shall let you know if the involvement of other solicitors is likely to be significant. Accounts will normally be rendered monthly unless the amounts involved are minimal.

Normally I try and nominate a time for the advice to be provided. However, I think this is a little premature because of the volume of material to digest and I note the proposed meeting at your premises next Wednesday, 28 January.

This office's standard terms and conditions for the supply of legal services will apply to this engagement unless a variation to those terms is agreed. If you are not familiar with these and would like a copy, please let me know and I will be happy to forward them to you.

Should you have any concerns about any aspects of the service provided by this office, please contact me or my Deputy, James Ruddle.

Yours faithfully

[REDACTED]
James Syme
Victorian Government Solicitor



Office of Gambling Regulation

Mr James Syme
 Victorian Government Solicitor
 Level 2
 55 St Andrews Place
 MELBOURNE VIC 3002

Level 5, 35 Spring Street
 Melbourne Victoria 3000
 Australia
 PO Box 1988R Melbourne
 Victoria 3001 Australia
 Telephone: +61 3 9651 3333
 Facsimile: +61 3 9651 3777
 website: www.ogr.vic.gov.au

20 January 2004

Dear Mr Syme

REVIEW OF THE CASINO AGREEMENT

I refer to my letter of 19 January 2004 on this matter and now enclose for your attention a copy of the three memoranda of legal advice by Maddocks, Lawyers, dated 1 December 2003, 12 December 2003 and 24 December 2003.

I confirm that you and a colleague will be attending a meeting at this office at **11.00 am, Wednesday 28 January 2004**. The meeting will be held in the **Board Room, Level 5, 35 Spring Street, Melbourne**.

Attending the meeting from this office will be the members of the Working Party for the Review, Sylvia Grobtuch, Bill Balgowan, Lyn Corneliusen, Cate Carr, Rowen Harris, Mike Lee and myself.

Yours sincerely



ROWENA SCHEFFER
 Solicitor



(Toll)road to prosperity

AGE Wed 5.9.01

MARKETS

JAMES CHESSELL

Just how close are the Victorian Government and Transurban to brokering a deal that would allow the City Link operator to change from a single to a multi-tollroad company?

Transurban was unable — and a spokesman for the transport minister unwilling — to talk about it yesterday, but speculation suggests a decision is not far away. In a recent report, Salomon Smith Barney analyst Sanjay Magotra tipped a verdict "within the next few weeks".

To bid for additional infrastructure projects, Transurban needs the State Government to lift restrictions limiting its scope to City Link alone.

Transurban has set up an office in Sydney and a partnership with Macquarie Bank to bring it closer to new projects such as the Western Sydney Orbital.

The tollroad group, whose representatives recently visited the United Kingdom, is also looking for opportunities in Europe and North America. So there appears to be a good deal of confidence on its part that the government will lift restrictions.

If this is to occur, however, it is believed the Bracks Government

SUMMARY: The market closed higher, boosted by strength in the banking sector, particularly a bounce by National Australia Bank. However, the session was quiet, with investors cautious ahead of a possible announcement on interest rates today by the Reserve Bank. The All Ordinaries Index closed 12.3 points stronger at 3228.2.

■ Yesterday's All Ords



needs to be satisfied that City Link's Melbourne commuters will not effectively subsidise any other developments. The shares closed two cents higher at \$4.37.

News that Hewlett-Packard intends to spend a whopping \$US25 billion (\$A47 billion) buying Compaq to produce a company that makes only slightly less money than IBM proved just the ticket for a listless stockmarket yesterday afternoon.

With Wall Street taking a break, the local sharemarket perked up on expectations the deal might provoke a much-needed rally on the tech-heavy Nasdaq market.

News Corp, which closed 14 cents lower at \$15.80 and usually tracks reasonably close to the Nasdaq, is expected to rise should any rally in the United States materialise.

What's this, a stockbroking firm that makes money? *C'est impossible!* Well not quite. Perth outfit Euroz reported a \$758,964 net profit for the year to June after losing almost half a million dollars the year before. At a time when many broking houses are struggling, Euroz, which boasts six analysts and 11 advisers, announced a dividend of four cents a share.

"We are not trying to be everything to everybody and we have kept our overheads to a minimum,"

said executive director Shane Gherbaz.

But like many others in the industry, the firm expects the tough times to continue. Since mid-July, Mr Gherbaz estimates, trading levels have fallen 15 per cent. The shares closed two cents stronger at 52 cents.

Big Kev's stock sank to 26 cents yesterday, meaning long-term shareholders, who have watched their investment all but halve in value since the company listed at the start of August, are in desperate need of some solace.

Who better to provide it than the big man himself. Last week he snapped up 100,000 shares at around 31 cents each.

Petaluma recovered slightly after shedding 53 cents on Monday when the premium wine group revealed it had managed only 8 per cent profit growth to \$6.8 million for the year to June. Chairman Brian Croser was confident Petaluma would lift net profit by a double-digit percentage in 2001-02.

Others agree, but the bar has been lowered. UBS Warburg cut its 2002 profit forecast by 18 per cent to \$8.2 million and 2003 estimates by 19 per cent to \$9.4 million due to Petaluma's higher-than-expected cost base.

The reporter holds Transurban shares.

Transurban on road to change



INFRASTRUCTURE

Transurban Group, operator of Melbourne's City Link tollway, moved closer to a planned restructure after yesterday receiving court approval for a scheme meeting.

At the meeting next month, Transurban will ask security holders to approve a proposal releasing it from its "single purpose" restriction. ✕

It had already reached agreement with the Victorian Government allowing it to undertake activities beyond the operation of City Link.

Transurban said last month the restructure would allow it to expand by taking stakes in other toll road and transport infrastructure projects.

Under the restructure, the City Link businesses would be effectively quarantined from Transurban's new operations.

AGE 19.10.01 ✕^{AAP}

PBL/Burswood
 → (S.G.)

MEDIA MONITORS
 Phone: 03 9348 9191



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Bin: 0000
 Brief: OFG

Sydney Morning Herald Friday 26/12/2003
 Business News Page 50
 Circulation: 253,740
 Size: 359.06 sq.cms.

PBL gets the OK to buy into Burswood

Wendy Frew

Kerry Packer's Publishing & Broadcasting has received probity approval from the WA Gaming Commission for its investment in Burswood less than three months after it made a \$77.3 million raid on the casino and resort operator.

In October, PBL snapped up 14.2 per cent of the company at \$1.12 a share, valuing Burswood at \$543 million and snookering any rival bidders. The purchase lifted PBL's stake to 15.7 per cent.

The WA Gaming Commission's swift approval stands in stark contrast with the prolonged inquiry into Mr Packer's interest in Sydney Harbour Casino in 1997.

NSW's Casino Control Authority (CCA) was still looking into the proposed deal five months after PBL said it would pay \$342 million for Sydney casino's management rights and 10 per cent in the casino itself.

It would have been the third time, and probably the most thorough, Mr Packer had been checked by gaming authorities and the CCA had estimated it could take as long as six months.

Frustrated with the delays and reportedly because he believed he had a chance to take over John Fairfax Holdings - publisher of *The Sydney Morning Herald* - Mr Packer pulled out of the Sydney deal in May that year.

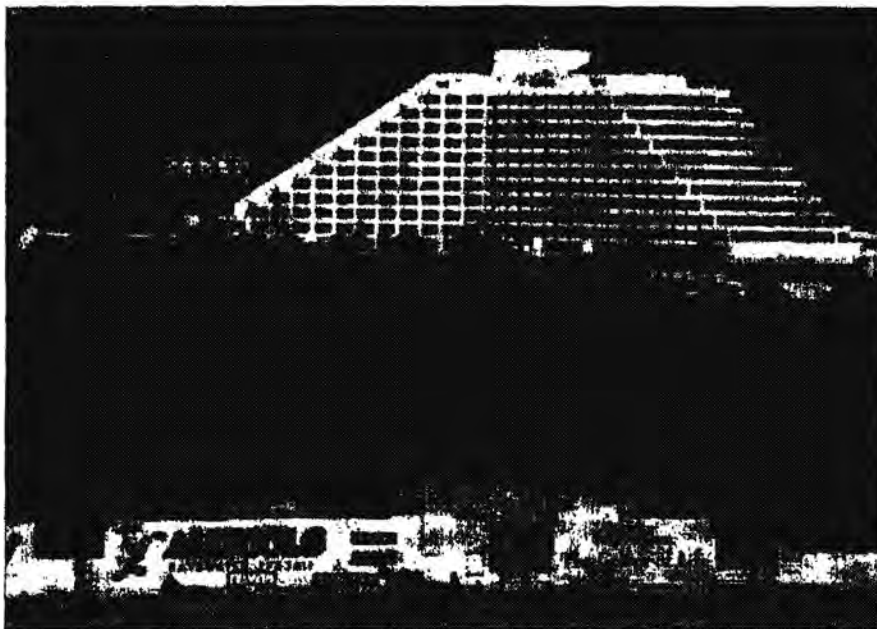
PBL, which owns Melbourne's Crown casino, had been widely tipped as the most likely bidder for Burswood because of the potential synergies between their high-roller businesses.

Chief executive Peter Yates said in October that the Burswood bid was "strategic" and PBL had no plans to raise its stake.

However, some analysts expect it to eventually launch a full bid for Burswood and possibly to split PBL into media and gaming operations.

Burswood shares last traded at \$1.15.

PBL rose 11c to \$12.11.



Glittering prize... PBL has said it has no plans to build a bigger stake in Burswood but some analysts aren't so sure. Photo: Jim Rice

ph Paul Fallon12/12/03

10:10 am

ph Mobile
ph work- LMTRC
no answer

ph PF . 15/12/03

LMTRC on mobile.
no answer on work phone

ph PF 19/12/03 - same as before.



(work no. from work)

LMTRC . His mobile phone had been stolen
in a burglary

- Message left from PF on 17/12/03 at 6:00pm

TIA Paul Fallon

Mon 22/12/03

- Discussed his experience, qualifications etc
will send in a resume + CV's

ph Tim Cave

8/12/03

9:30 am He's just gone to a meeting LMTRC

Order new purchasing guidelines

Order \$15,000 - don't need three quotes. He recommended:

Paul Fallon probity adviser
+ Chartered accountant

He'll be way less than half the price of the
big five firms

ph P. Fallon

ph Mob.
work

8/12/03

10:50 am

→ LMTRC

to answer.

ph firm Holcombe

8/12/03

When Paul was with the VCCA, Paul was the
manager of Probity Investigation. He did
a lot of financial analysis of the early bids.

This was taken over by the Financial Panel Paul then
became the Commercial Manager - the CC Authority.

+ monitored thousands of things.

He has since done similar work for the
Docklands - Prisons - Projects.

T/A or Warwick Iskenwood

12/12/03

They are answering each proposed change against the
 test - is it
 for - against the present objectives
 or neutral to the " " of

- ~~The Authority~~ The Authority?
- Does it fall to the Authority or the Minister to require it in the agreement?

He is away next week. Their Memo
 of advice on each proposed clause will
 be finished after he gets back

I asked him to include an assessment of
 changing insurance requirements. d.35

Peter Cohen

04/12/2003 11:53 AM

To: Rowena Scheffer/OGR@Ogr
cc: Sylvia Grobtuch
Subject: Specialist accounting knowledge re casino agreement

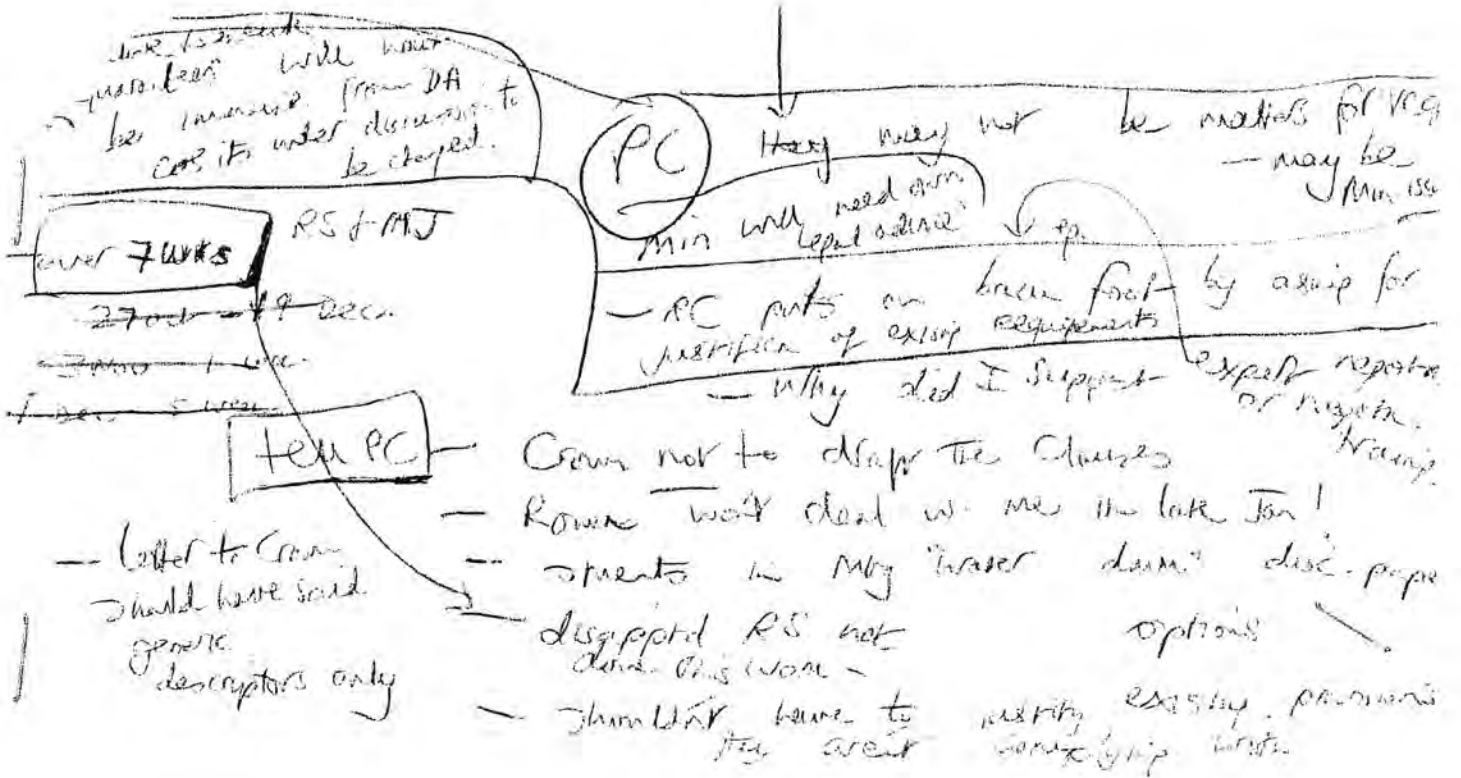
Rowena

I saw Tim Cave yesterday so asked his advice regarding specialist commercial advice. He doesn't have a panel, but he uses Paul Fallon - who may well have provided the original advice used for the casino agreement. You will need to check with Phyllis about the rules with respect to engagement, but if Paul was involved in the original advice he may be the best person and we may be able to engage him without going to tender/quotes on the basis of this specialist knowledge. Tim Cave will have Paul's contact details.

Peter



Meeting bln 23. Dec 03
Sylvia C. (he notes), WLB,
Peter C.
Rowen Craigie (Crown)



work is done
transfers will have
be insurance from DA
costs under discussion to
be changed.

PC

They may not be suitable for VCG
- may be Min 155

Min will need some legal advice

RS & MJ

- RS puts on brown foot by asking for justification of existing requirements
- why did I support experts reports or reports from Crown?

over 7 weeks

27 Oct - 9 Dec

3 Nov - 1 Dec

7 Dec - 5 Jan

then PC

Crown not to change the clauses

- Rowen not deal w. me the late Jan!

- statements in my "water dam" disc. paper

- disappointed RS not done this work - options

- should have to verify existing parameters & consistency with

- letter to Crown should have said generic descriptors only

Casino Control Act 1991
Act No. 47/1991

Part 10—Powers and Functions of the Authority

s. 142

S. 141(2)(ab)
inserted by
No. 93/1993
s. 29.

S. 141(2)(b)
amended by
No. 34/1993
s. 17(2)(a).

S. 141(2)(c)
amended by
No. 34/1993
s. 17(2)(a).

- (2) Without limiting its other functions, the Authority—
- (a) must oversee the operation and regulation of casinos;
 - (ab) must consider any system of controls and administrative and accounting procedures proposed by the Director to ensure that the taxes, charges and levies payable under this Act are paid and must approve or reject the system;
 - (b) must advise the Minister concerning policy in relation to supervision and inspection of casinos;
 - (c) must do all things it is authorised or required to do under this Act.

142. Authority may enter into agreements

S. 142(3)
inserted by
No. 38/2002
s. 17.

- (1) On or after 1 December 1992, with the approval of the Minister, the Authority may enter into agreements (on behalf of the State) for or in connection with the establishment and operation of casinos.
- (2) Such an agreement may provide that all or specified obligations imposed by the agreement are to be considered to be conditions of the relevant casino licence and such a provision has effect accordingly.
- (3) The Authority cannot enter into any agreement under this section on or after the commencement of section 17 of the **Gaming Legislation (Amendment) Act 2002**.



18 NOV 2003

The Hon John Pandazopoulos MP
 Minister for Gaming
 Level 15
 55 Collins Street
 MELBOURNE VIC 3000

Dear Minister

REVIEW OF THE CASINO AGREEMENT

I refer to the review of the Casino Agreement (the Agreement) by the Victorian Casino and Gaming Authority and the request by Crown Limited (Crown) to remove the single purpose restriction from the Agreement.

The Authority decided that it is prepared to consider Crown's request further. On behalf of the Authority, the Acting Director of Gaming and Betting advised Crown of the Authority's decision and provided Crown with a summary of the reasons for the imposition of the 'single purpose' restriction and the benefits it provides to the State. A copy of the Director's letter of 26 September 2003 is attached.

The Authority has decided on a number of the terms of agreement it may require of Crown. A list of these proposed terms is attached and this list is also being brought to Crown's attention so it may commence its consideration of the terms. Further terms are still being considered by the Authority and these will be brought to your attention as soon as they have been further developed.

Some of the proposed terms of agreement are drawn from the benefits the State currently derives from the single purpose restriction, as outlined in the Director's letter referred to above. Others derive from the Authority's findings in the Third Triennial Review of the Casino Operator and Licence.

The list of proposed terms of agreement drawn up by the Authority does not, at this stage, include a comprehensive list of the redundant clauses that should be deleted from the Agreement. It also does not yet include the Authority's review of the insurance requirements for Crown in Schedule Five of the Agreement.

Terms of agreement referred to you

The Authority wishes to bring to your attention some additional terms of agreement that you may wish to consider should be required of Crown in exchange for removal of the single purpose restriction. These are:

letter
to
Minist
Nov 03

Level 5
 55 Spring Street
 Melbourne
 Vic 3000
 P.O. Box 1988R
 Melbourne
 Vic 3001

tel 03 9651 3333

fax 03 9651 3777

1. Making the Casino Agreement publicly available;
2. Making the Casino Licence publicly available; and
3. Requiring Crown to retain current market share of the commission based players' business in Victoria to maximise gross gaming revenue.

Position Papers have been prepared in relation to these three possible terms of agreement and they are attached for your information. In relation to the first two possible terms, the Authority has no objection to the Casino Agreement and the Casino Licence being made publicly available. Whether or not they should be made public is a matter for Government policy and for this reason the Authority is referring these possible terms to you.

The third possible term of agreement has been referred to because your powers under the *Casino Control Act* 1991 may be exercised having regard to the objects of the Act, which include promoting tourism, employment and economic development generally in the State.

Please advise me if you want the Authority to negotiate with Crown any of these three terms of agreement or other terms of agreement on your behalf.

Yours sincerely

A solid black rectangular box redacting the signature of Brian Forrest.

BRIAN FORREST
Chairman

Review of the Casino Agreement by the Victorian Casino and Gaming Authority

Terms of agreement required by the Authority in exchange for removal of the 'single purpose' restriction- Part A

1. Crown to maintain the Melbourne Casino and Entertainment Complex to world class standards, including:
 - (a) addressing expenditure on new capital and large maintenance capital projects (capital expenses), and
 - (b) addressing expenditure on ongoing maintenance and cleanliness (operating expenses);
2. At least one third of the directors of Crown Limited to be independent;
3. Improved standard for audit requirements;
4. Improved standard for composition of and reporting structure for the Audit Committee;
5. Improved standard for composition of and reporting structure for the Compliance Committee;
6. Compliance with the Deed of Undertaking and Guarantee;
7. Consequences for non-compliance with the Deed of Undertaking and Guarantee;
8. Location of Crown's Board meetings;
9. Location of Crown's senior management and management meetings;
10. Location of Crown's company secretary; and
11. Crown to provide, or make available upon request, to the Authority specified information or documents, within certain time limits, including:
 - (a) Reports on Crown's annual capital expenditure program and reports on actual expenditure;
 - (b) Reports on Crown's internal and external audit programs and any changes to the programs;
 - (c) Reports on adherence to or divergence from the internal and external audit programs;
 - (d) Membership of Crown's Audit Committee and any changes to the reporting structure and membership of the committee;
 - (e) Audit Committee agendas, papers and minutes of meetings;
 - (f) Membership of Crown's Compliance Committee and any changes to the reporting structure and membership of the Committee;
 - (g) Compliance Committee agendas, papers and minutes of meetings;
 - (h) Notice of any new subsidiary of PBL;
 - (i) A report on Crown's annual budget; and
 - (j) A report on adherence to or divergence from the annual budget.

Review of the Casino Agreement

Position Paper - Item 1

Public Availability of the Casino Agreement

What does the proposal describe?

1. It is proposed that the Authority should negotiate with Crown Limited to make the Casino Agreement publicly available.

Why has this proposal been made?

2. The Report to the Government of the Audit Review by Professor E. W. Russell, Mr E. Waterman and Dr N. Seddon, entitled *Contracting, Privatisation, Probity and Disclosure in Victoria 1992 – 1999*, dated May 2000, (“the Russell Report”) recommends that –

“where existing government contracts contain confidentiality clauses which prevent their being disclosed in full, the government should negotiate with the relevant contractors to secure their consent to disclosing as much of the contracts as possible” (at p. 4).

What will the proposal fix or change?

3. It may make the Casino Agreement available to the public, if Crown Limited agrees with the proposal.

What will happen if the proposal is not adopted?

4. Nothing. The status quo will remain the same.

Review of the Casino Agreement

Position Paper - Item 2

Public Availability of the Casino Licence

What does this proposal describe?

1. This proposal is for the Government to make the Casino Licence publicly available.

Why has this proposal been made?

2. The Report to the Government of the Audit Review by Professor E W Russell, Mr E Waterman and Dr N Seddon, entitled *Contracting, Privatisation, Probity and Disclosure in Victoria 1992 – 1999*, and dated May 2000, (“the Russell Report”) conducted a case study into the Crown Casino. One of the Report’s Principal Recommendations drawn from the case study was that -

“The secrecy surrounding the Casino Licence appears unnecessary, as there is no likelihood in the foreseeable future that a casino licence will be granted to a competitor. The Review sees no reason for the conditions of the Licence to be kept confidential and recommends that the terms of the Casino Licence be publicly disclosed” (pp. 108 and 138).

3. Transparency of Government actions and decision-making is also a principle which the current Government advocates.

What will the proposal fix or change?

4. It will make the Casino Licence available to the public. This would be consistent with the Government’s principle of transparency and would also allow more practical information about the terms of the Casino Licence to be provided to the public.

What will happen if the proposal is not adopted?

5. Nothing. The status quo will remain the same.

Review of Casino Agreement

Position Paper – Item 3

Retaining current market share of Commissioned Based Players' ("CBP's") business in Victoria to maximise gross gaming revenue.

What does the Proposal describe?

1. It is proposed that the Casino Agreement be amended to safeguard Crown's CBP gaming business, so that source of gaming revenue is not lost to the State.

Why is the Proposal on the List?

2. Despite CBP profit margins being the lowest and this sector of casino gaming revenue being the most volatile, it is considered that the CBP sector is integral to Crown's business.
3. Government tax revenue derived from CBP's represents around 15% of its total revenue (Russell Report). Currently, the tax rate applied is 10% including a Community Benefit Levy of 1%. The tax rate on Egm's and Regular Tables is 22.25% including the 1% CBL. The Crown CBP gambling sector experiences the lowest margins as the "Return to Player" is the highest. Also, Crown has to forgo about half of this margin in commission payments and complementary expenses in order to attract this type of patron to Melbourne.
4. Nevertheless, it has been suggested that the CBP's may also have a substantial investment impact on the State economy.

What is the Proposal going to Fix?

5. This proposal seeks to protect Crown's CBP business and the tax revenue earned by the State and to ensure that Crown maintains the Melbourne Casino Complex to world class standards. It is considered that an integral part of the casino being of world class standard is its ability to attract CBP players.

What will happen if the proposal is not adopted?

6. If Crown were to lose its CBP gambling base or it were to be significantly reduced, then it would seriously detract from the Melbourne Casino and Entertainment Complex being considered and maintained as a world class facility. Importantly, the State's tax revenue base would be affected too.



VICTORIAN CASINO AND GAMING AUTHORITY

18 NOV 2003

Mr Rowen Craigie
 Chief Executive Officer
 Crown Limited
 8 Whiteman Street
 SOUTHBANK VIC 3006

Dear Mr Craigie

REVIEW OF THE CASINO AGREEMENT

I refer to the review of the Casino Agreement (the Agreement) by the Victorian Casino and Gaming Authority and the request by Crown Limited (Crown) to remove the single purpose restriction from the Agreement.

The Authority has decided on a number of the terms of agreement it may require of Crown. A list of these proposed terms is attached. Further terms are still being considered by the Authority and these will be brought to your attention as soon as they have been further developed.

Some of the proposed terms of agreement are drawn from the benefits the State currently derives from the single purpose restriction, as outlined in the letter of 26 September 2003 from the Acting Director of Gaming and Betting to Crown. Others derive from the Authority's findings in the Third Triennial Review of the Casino Operator and Licence.

The list of proposed terms of agreement drawn up by the Authority does not, at this stage, include a comprehensive list of the redundant clauses that should be deleted from the Agreement. It also does not yet include the Authority's review of the insurance requirements for Crown in Schedule Five of the Agreement.

Yours sincerely

BRIAN FORREST
 Chairman

*Chmn
 to
 Crown
 18 Nov*

Level 5
 35 Spring Street
 Melbourne
 Vic 3000
 PO Box 1988R
 Melbourne
 Vic 3001

Tel 03 9651 3333

Fax 03 9651 3777

Review of the Casino Agreement by the Victorian Casino and Gaming Authority

Terms of agreement required by the Authority in exchange for removal of the 'single purpose' restriction- Part A

1. Crown to maintain the Melbourne Casino and Entertainment Complex to world class standards, including:
 - (a) addressing expenditure on new capital and large maintenance capital projects (capital expenses), and
 - (b) addressing expenditure on ongoing maintenance and cleanliness (operating expenses);
2. At least one third of the directors of Crown Limited to be independent;
3. Improved standard for audit requirements;
4. Improved standard for composition of and reporting structure for the Audit Committee;
5. Improved standard for composition of and reporting structure for the Compliance Committee;
6. Compliance with the Deed of Undertaking and Guarantee;
7. Consequences for non-compliance with the Deed of Undertaking and Guarantee;
8. Location of Crown's Board meetings;
9. Location of Crown's senior management and management meetings;
10. Location of Crown's company secretary;
11. Crown to provide, or make available upon request, to the Authority specified information or documents, within certain time limits, including:
 - (a) Reports on Crown's annual capital expenditure program and reports on actual expenditure;
 - (b) Reports on Crown's internal and external audit programs and any changes to the programs;
 - (c) Reports on adherence to or divergence from the internal and external audit programs;
 - (d) Membership of Crown's Audit Committee and any changes to the reporting structure and membership of the Committee;
 - (e) Audit Committee agendas, papers and minutes of meetings;
 - (f) Membership of Crown's Compliance Committee and any changes to the reporting structure and membership of the committee;
 - (g) Compliance Committee agendas, papers and minutes of meetings;
 - (h) Notice of any new subsidiary of PBL;
 - (i) A report on Crown's annual budget; and
 - (j) A report on adherence to or divergence from the annual budget.



VICTORIAN CASINO & GAMING AUTHORITY

FACSIMILE COVER SHEET

OFFICIAL CORRESPONDENCE

FAXED

Handwritten signature/initials

TO: Mr Rowen Craigie
Chief Executive Officer
Crown Ltd

FAX NUMBER: 9292 7730

NUMBER OF PAGES: 3 (INCLUDING COVER SHEET)

SUBJECT: Review of the Casino Agreement

FROM: Mr Brian Forrest, Chairman

PHONE: 9651 3333

DATE: 18/11/03

MESSAGE:.....
.....
.....
.....
.....
.....

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Difficulties: If you experience any difficulty with the receipt of this transmission, please telephone or fax us on the number listed below.

**LEVEL 5 / 35 SPRING STREET
MELBOURNE VICTORIA
AUSTRALIA 3000**

**PO Box 1988R,
MELBOURNE VICTORIA
AUSTRALIA 3001**

Tel +61 (0) 3 9651 3333 Fax +61 (0) 3 9651 3777

R. Schette



REVIEW OF THE CASINO AGREEMENT

PAPERS

for

MEETING NO 3

held on

FRIDAY 14 NOVEMBER 2003

commencing 9.30 am

at

**THE BOARD ROOM
LEVEL 5
35 SPRING STREET
MELBOURNE**

3rd
Sub-
c'Hee
Meet

Position
Papers

REVIEW OF THE CASINO AGREEMENT

Third Meeting of the Sub-Committee of the Victorian Casino and Gaming Authority

AGENDA

- Time:** 9.30 am, Friday 14 November 2003, Board Room
- Attendees:** Mr Brian Forrest
Ms Una Gold
Ms Christine Neville
Mr Peter Cohen, Acting Director of Gaming and Betting, Acting Director of Casino Surveillance
Members of the OGR Working Party –
Ms Rowena Scheffer, Mr Bill Balgowan, Ms Lyn Corneliusen, Mr Rowen Harris, Mr Michael Lee and Ms Cate Carr.

ORDER OF BUSINESS:

Items for Consideration:

Item 1 Present/ In Attendance/ Apologies

- 1(a) Present
- 1(b) In attendance
- 1(c) Apology

Item 2 Business of the Meeting

- 2(a) Minutes of previous meeting (See draft Minutes attached).
- 2(b) Draft Position Papers that discuss each possible item that could be negotiated with Crown Limited; (see Attachment).
- 2(c) Status report to Authority meeting on 18 November 2003.

Item 3 Other Business

- 3(a) Inspection of Casino Complex by Working Party

Item 4 Next Meeting

Review of the Casino Agreement

**List of possible items which may be required in exchange for removal of the
'single purpose' restriction.**

Suggested Amendment to the Casino Agreement	Clause of the Casino Agr'mt
1. Public availability of the Casino Agreement	36.1
2. Public availability of the Casino Licence.	new
3. Retaining current market share of commission based players' business in Victoria to maximise gross gaming revenue.	28
4. Maintain the Casino Complex to world class standards, including: (a) addressing expenditure on new capital and large maintenance capital projects (capital expenses); (b) addressing expenditure on ongoing maintenance and cleanliness (operating expenses). (c) Quarantining of the Melb. Casino business. . [see also item 16(a)]	new
5. Independence of the directors of Crown Limited.	new
6. Audit requirements [see also items 16(b), (c) and (e)]	new
7. Composition of and reporting structure for the Audit Committee [see also items 16(d) and (e)]	new
8. Composition of and reporting structure for the Compliance Committee [see also items 16(f) and (g)]	new
9. Full compliance with the Deed of Undertaking [see also item 16(h)]	
10. Consequences for non-compliance with the Deed of Undertaking [see also item 16(h)]	31.2

11. Measures of Financial Health; eg - debt/equity ratio, reduction of capital [see also items 16(i) and (j)]	22.1(m)
12. Location of Crown's Board meetings.	new
13. Location of Crown's senior management and management meetings.	new
14. Location of Crown's company secretary	new
15. Location of Crown's bank accounts for Melb. Casino operations.	new
16. Information/documents to be provided to the Authority, including:	25
(a) A report on Crown's capital annual expenditure program and reports on actual expenditure; [see also item 4]	
(b) A report on Crown's internal and external audit programs and any changes to the programs [see also item 6]	25
(c) A report on adherence to or divergence from the internal and external audit programs [see also item 6]	25
(d) Membership of Crown's Audit Committee and any changes to the reporting structure and membership of the committee [see also item 7]	25
(e) Audit Committee agendas, papers and minutes of meetings [see also items 6 and 7]	25
(f) Membership of Crown's Compliance Committee and any changes to the reporting structure and membership of the committee [see also item 8]	25
(g) Compliance Committee agendas, papers and minutes of meetings [see also item 8]	25
(h) Notice of any new subsidiary of PBL; [see also items 9 and 10]	
(i) A report on Crown's annual budget; [see also item 11]	25
(j) A report on adherence to or divergence from the budget; [see also item 11]	25
(j) Other items; eg: ASX requirements.	25

VICTORIAN CASINO AND GAMING AUTHORITY

COMMERCIAL-IN-CONFIDENCE

ITEM 1 PRESENT/IN ATTENDANCE/APOLOGIES

VICTORIAN CASINO AND GAMING AUTHORITY

COMMERCIAL-IN-CONFIDENCE

ITEM 2. BUSINESS OF THE MEETING

2A Minutes of Previous Meeting

2B Draft Position Papers

2C Status Report to Authority

VICTORIAN CASINO AND GAMING AUTHORITY**SUB COMMITTEE
REVIEW OF CASINO AGREEMENT****MINUTES OF MEETING NO 2****HELD IN
THE BOARD ROOM
LEVEL 5
35 SPRING STREET
MELBOURNE****FRIDAY 17 OCTOBER 2003
COMMENCING 9.45 AM****ITEM 1 PRESENT/ IN ATTENDANCE/ APOLOGIES****1 (a) Present**

Mr Brian Forrest, Chairperson
Ms Una Gold
Ms Christine Neville

1 (b) In Attendance

Mr Peter Cohen, Acting Director of Gaming and Betting
Acting Director of Casino Surveillance
Ms Sylvia Grobtuch, Assistant Director Legal and Legislation
Mr Bill Balgowan, Casino Project Manager
Ms Lyn Corneliusen, Solicitor
Ms Rowena Scheffer, Solicitor
Ms Cate Carr, Solicitor
Mr Michael Lee, Licensing Operations and Policy Branch
Mr Kenneth McLeod, Secretariat Officer

1 (c) Apologies

Mr Rowan Harris, Gambling Operations and Audit Branch

Sub Committee – Review of Casino Agreement

ITEM 2 Business of the Meeting

2(a) Minutes of Previous Meeting

Members agreed that the minutes of Meeting No 1 be confirmed.

2(b) Revised List of Items for Consideration

Members considered a revised list setting out possible items that may be required in exchange for removal of the single purpose provisions, copies of which formed part of the papers provided for the meeting.

Members noted, in respect of the revised list, that:

- the original list has been expanded and now includes the following major matters –
 - ✓ public availability of the casino licence;
 - ✓ Authority approval for reduction of capital; and
 - ✓ compliance with obligation to maintain the casino complex to world class standards;
- the matter of public availability of the casino licence arose out of a recommendation appearing in a report on Government contracts by Professor Bill Russell;
- the matter of Authority approval for reduction of capital relates to alternatives to the debt/equity ratio as a useful measure of financial health;
- the matter of compliance with maintaining the casino complex to world class standards relates to observations made as part of the second and third triennial reviews of the casino operator and licence;
- in relation to the independence of Crown directors, emerging new tests developed by the New York Stock Exchange may prove useful in clarifying what is meant by ‘independent’ in this context; and
- the matter of compliance with the Deed of Undertaking relates to capturing all future structural changes and providing for consequences for non-compliance in the form of disciplinary action.

Members agreed that:

- the list be categorised into matters that are negotiable by the Authority and those that are not; and
- position papers be provided to the Sub-Committee on the various matters proposed to be negotiated by the Authority.

Sub Committee – Review of Casino Agreement

2(c) **Publishing and Broadcasting Limited Subsidiaries**

Members noted a document tabled by the Casino Project Manager containing the Group Structure for Publishing and Broadcasting Limited as at 9 August 2002.

2(d) **Results of Research into Solvency Ratios of other Casino Operators**

Members noted a document tabled by the Casino Project Manager containing the following information in the form of charts and data in relation to solvency ratios for casino and gaming related companies:

- ✓ Australian casinos and gaming companies for 2001-2003;
- ✓ Overseas casinos (United States and New Zealand) for 2002-2003;
- ✓ Crown (Consolidated) for 1998-2003; and
- ✓ Publishing and Broadcasting Limited.

2(e) **Casino Agreement – Progress Report – Clauses for Deletion or Updating**

Members noted advice that, as part of the review of the Casino Agreement, an additional project is being undertaken by the Working Party to identify clauses of the document that should be either deleted or updated to reflect the current situation.

Members also noted that the clauses relating to insurances are to be subjected to close scrutiny.

2(f) **Audit Issues Concerning the Casino Operator - Progress Report**

Members noted, from an oral report by the Casino Project Manager, that the Working Party is in the process of collecting and examining information around:

- ✓ the Crown Limited audit program;
- ✓ Nevada Gaming Commission data;
- ✓ New Jersey Gaming Commission data; and
- ✓ the Crown Limited ICM.

Members also noted advice from the Acting Director that Crown Limited is proposing to examine its audit and compliance structures at a board meeting scheduled to be held Tuesday 21 October 2003.

2(g) **Authority Meeting of 21 October 2003 - Status Report**

Members noted the Status Report paper prepared to inform the Authority of the progress of the sub-committee, copies of which formed part of the papers provided for the meeting.

Sub Committee – Review of Casino Agreement**ITEM 3 Other Business****3(a) Inspection of Casino Complex by Working Party**

Members noted that the Casino Project Manager intends to e-mail Working Party members with optional dates for conducting an inspection of the Melbourne Casino.

Members also noted that the proposed dates, in preferred order, are:

- ✓ 24 October 2003;
- ✓ 23 October 2003; and
- ✓ 30 October 2003.

ITEM 4 Next Meeting

Members agreed that the next meeting of the sub-committee be determined at the Authority meeting scheduled to be held on Tuesday 21 October 2003.

The meeting closed at approximately 10.50 am

12/11/03
DRAFT of 27/10/03

Review of the Casino Agreement

Position Paper - Item 1

Public Availability of the Casino Agreement

What does the proposal describe?

1. It is proposed that the Authority should negotiate with Crown Limited to make the Casino Agreement publicly available.

Why has this proposal been made?

2. The Report to the Government of the Audit Review by Professor E W Russell, Mr E Waterman and Dr N Seddon, entitled *Contracting, Privatisation, Probity and Disclosure in Victoria 1992 – 1999*, dated May 2000, ("the Russell Report") recommends that –

"where existing government contracts contain confidentiality clauses which prevent their being disclosed in full, the government should negotiate with the relevant contractors to secure their consent to disclosing as much of the contracts as possible" (at p. 4).

What will the proposal fix or change?

3. It may make the Casino Agreement available to the public, if Crown Limited agrees with the proposal.

What will happen if the proposal is not adopted?

4. Nothing. The status quo will remain the same.

The A has no objection to the CA being made public - that is a matter for the Minister

DRAFT of 10/11/03

Review of the Casino Agreement

Position Paper - Item 2

Public Availability of the Casino Licence

What does this proposal describe?

1. This proposal is for the Government to make the Casino Licence publicly available.

Why has this proposal been made?

2. The Report to the Government of the Audit Review by Professor E W Russell, Mr E Waterman and Dr N Seddon, entitled *Contracting, Privatisation, Probity and Disclosure in Victoria 1992 – 1999*, and dated May 2000, (“the Russell Report”) conducted a case study into the Crown Casino. One of the Report’s Principal Recommendations drawn from the case study was that -

“The secrecy surrounding the Casino Licence appears unnecessary, as there is no likelihood in the foreseeable future that a casino licence will be granted to a competitor. The Review sees no reason for the conditions of the Licence to be kept confidential and recommends that the terms of the Casino Licence be publicly disclosed” (pp. 108 and 138).

3. Transparency of Government actions and decision-making is also a principle which the current Government advocates.

What will the proposal fix or change?

4. It will make the Casino Licence available to the public. This would be consistent with the Government’s principle of transparency and would also allow more practical information about the terms of the Casino Licence to be provided to the public.

What will happen if the proposal is not adopted?

5. Nothing. The status quo will remain the same.

See as in 1

Draft of 10/11/03

Review of Casino Agreement

Position Paper – Item 3

Retaining current market share of Commissioned Based Players' ("CBP's") business in Victoria to maximise gross gaming revenue.

What does the Proposal describe?

1. It is proposed that the Casino Agreement be amended to safeguard Crown's CBP gaming business, so that source of gaming revenue is not lost to the State.

Why is the Proposal on the List?

2. Despite CBP profit margins being the lowest and this sector of casino gaming revenue being the most volatile, it is considered that the CBP sector is integral to Crown's business.
3. Government tax revenue derived from CBP's represents around 15% of its total revenue (Russell Report). Currently, the tax rate applied is 10% including a Community Benefit Levy of 1%. The tax rate on Egm's and Regular Tables is 22.25% including the 1% CBL. The Crown CBP gambling sector experiences the lowest margins as the "Return to Player" is the highest. Also, Crown has to forgo about half of this margin in commission payments and complementary expenses in order to attract this type of patron to Melbourne.
4. Nevertheless, it has been suggested that the CBP's may also have a substantial investment impact on the State economy.

What is the Proposal going to Fix?

5. This proposal seeks to protect Crown's CBP business and the tax revenue earned by the State and to ensure that Crown maintains the Melbourne Casino Complex to world class standards. It is considered that an integral part of the casino being of world class standard is its ability to attract CBP players.

What will happen if the proposal is not adopted?

6. If Crown were to lose its CBP gambling base or it were to be significantly reduced, then it would seriously detract from the Melbourne Casino and Entertainment Complex being considered and maintained as a world class facility. Importantly, the State's tax revenue base would be affected too.

*In the Auth we have been the proposer of being considered
 responsible for the
 economic drop of the State
 To it may wish to address this issue*

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Review of Casino Agreement

Position Paper – Item 4

Maintain the Casino complex to world class standards, including :

Item 4(A) - Addressing expenditure on new capital and large maintenance capital projects (capital expenses)

What does the Proposal describe?

1. It is proposed that the Casino Agreement be amended to regulate Crown's commitment to new capital and large maintenance capital projects (Capital Expenditure).

Why is the Proposal on the List?

2. The Authority has an obligation to monitor these projects as it in turn has an obligation to report to the Minister in each triennial review under section 25 of the Casino Control Act 1991. The Government is responsible for promoting economic development and tourism. It is in the Government's interest that the Melbourne Casino and Entertainment Complex be operated and maintained as a world class facility.
3. To do this, the Authority would require annual Capital Expenditure Budget Summary Reports with considerable detail itemising proposed expenditure under the headings "Existing Facilities" and "Major New Construction". All capital expenditures, which extend beyond one year, would have to be indexed for inflation.
4. Under Clause 16.6 of the *Melbourne Casino Operations Agreement*, which is a Complementary Agreement, Crown is obliged to make Capital Expenditure (CapEx) allocations to a Capital Reserve Account. This clause states :

for use by Crown Management

"The Annual Plans and Budget will, for the financial years commencing on and after 1 July 1998, provide for the establishment of a special reserve account for Capital Expenditure in accordance with clause 16.2 and 16.4 ("Capital Reserve Account") by payment of cash from the Casino Bank Account to a special interest bearing account, the amount to be calculated on the basis of -

 - (a) the percentage allocations of revenue provided in the Financial Projections for refurbishment;
 - (b) the amount of other annual capital expenditure at the rate anticipated in the Financial Projections; and
 - (c) in years later than those dealt with by the Financial Projections, a manner consistent with the methodology in (a) and (b)."
5. In a letter to the Authority dated 14 April 1999, PBL made the following commitment in Point (e) on Page 3: "PBL will ensure that Crown expends a minimum of \$300 million over the next 10 years to improve and maintain the Crown Casino assets."

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Review of Casino Agreement

Why is the Proposal on the List? Cont'd.

6. It is recommended that the Authority should ensure that these Capital Expenditure commitments / requirements are enforced by amending the Casino Agreement.

What is the Proposal going to Fix?

7. This proposal will reduce the risk of Crown not spending sufficient funds on the upkeep of the Melbourne Casino and Entertainment Complex in order for it to operate and be maintained as a world class facility.

What will happen if the proposal is not adopted?

8. Crown may lose its position of not being considered as a world class Casino and Entertainment Complex which would have a negative impact on being a tourist destination and could affect its suitability to continue to hold the casino licence.

Item 4(B) - Addressing expenditure on ongoing maintenance and cleanliness (Operating Expenses)

What does the Proposal describe?

1. The proposal is to reduce the risk of Crown not spending sufficient funds on :
 - Cleaning,
 - Repairs & Maintenance, and
 - Refurbishment.

Why is the Proposal on the List?

2. A contractual obligation on Crown to expressly maintain the Melbourne Casino and Entertainment complex to international standards does not exist in any of the agreements between Crown and either the State or the Authority.
3. The Casino Agreement and the Management Agreement contain obligations on Crown-
 - to **construct the Casino** to a high quality, international casino standard (clause 13 of the Management Agreement);
 - to ensure that the **retail businesses** in the Casino Complex are carried on at an international casino standard (clause 20.1 of the Management Agreement); and
 - to **operate the casino** having regard to best practices in international casinos of a similar size and nature (clause 28 of the Casino Agreement).

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Review of Casino Agreement

Why is the Proposal on the List? Cont'd.

4. None of these Agreements specifically address the ongoing "maintenance" of the Casino or the Casino Complex to world class standards. However, the phrase "to operate the casino at international casino standards" implies that it should also be maintained to that standard. To date, Crown has acknowledged its obligation to maintain the casino as a world class facility.
5. It is recommended that the Casino Agreement be amended to expressly reinforce this obligation so that it becomes enforceable.
6. Clause 8.2 of the Operations Agreement, which is a Complementary Agreement between Crown and Crown Management P/L, obliges Crown Management to -

"supervise and direct the management and operation of the Casino and Ancillary Facilities [the hotel, restaurants, car park etc] to a first class standard comparable to world class international casinos, hotels and other facilities equivalent to those comprising the Casino and Ancillary Facilities and shall ensure that all gaming is conducted in accordance with the highest standards of honesty, integrity and courtesy."
7. The only way the Authority can enforce the Operations Agreement is through clause 32 of the Casino Agreement which provides that:

"The Company undertakes that it will not, without the prior written consent of the Authority:

 - (a) Give or recognise any waiver under a Complementary Agreement [which includes the Operations Agreement]...where to do so would have a material and adverse effect on the Company's **ability to construct or operate** the ... Melbourne Casino in accordance with this document."

Why is the Proposal on the List?

8. Again, the obligation is limited to the "construction and operation" of the Casino. There is some doubt whether Clause 32 could be used by the Authority to ensure that Crown "maintains" the Casino to world class standards.

What is the Proposal going to Fix?

9. It will ensure that the Melbourne Crown Casino and Entertainment complex is kept well maintained and clean to international class standards.

What will happen if the proposal is not adopted?

10. Crown may fail to be viewed as a world class international tourist attraction and this in turn may affect Government revenue if visitors are lost

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Review of Casino Agreement**Position Paper – Item 4 (C)****4(C) - Quarantining Crown from other ventures**

1. Further commercial and legal advice is required on how to protect the State's interest in the Melbourne Casino and Entertainment Complex if Crown embarks upon other ventures if the single purpose restriction is removed from the Casino Agreement.

Advice

DRAFT of 10/11/03

Review of the Casino Agreement

Position Paper - Item 5

Independence of the directors of Crown Limited

What does this proposal describe?

1. This proposal describes including a provision in the Casino Agreement that requires Crown to ensure that at least one third of its directors are considered to be independent.

Why has this proposal been made?

2. Crown has a Board of eight directors. Clause 14.2 of Crown's Constitution states that:

"At any given time at least one third of the Board must consist of persons who can be fairly considered as independent of the Sponsors and their respective Associates."
3. Before Crown merged with PBL, Crown's Sponsors included companies such as Hudson Conway P/L. Since the merger, Crown no longer has any Sponsors, as defined by the Casino Agreement. Therefore, clause 14.2 is no longer effective.
3. Crown's Constitution has not been amended to address this issue and, as a consequence, it does not properly regulate the question of the independence of its directors.
4. According to the ASX Corporate Governance Principles 2.1 and 2.2, in order to ensure that the Board discharges its responsibilities and duties most effectively, it is recommended that the Chairman and the majority of the Board should be independent. Guidance as to what may constitute an independent director can be drawn from the New York Stock Exchange's definition of an independent director. *Advice*
5. Currently, none of the directors of Crown Limited are independent of Crown's executive management or of significant income produced or provided by shareholdings in Crown's parent company, PBL, or as a fee for service (not including director's fees).
6. The Authority identified this as an issue of concern in its Second Triennial Review Report of June 2000 (at p.27). After the Second Triennial Review, Crown indicated to the Authority that it would be reviewing its Constitution in relation to this issue. Crown subsequently advised the Authority on 18 March 2003 that it had completed its review of its Constitution and had decided to not amend it.

DRAFT of 10/11/03

7. In the Third Triennial Review Report (p. 12) the Authority reiterated its concern expressed in the Second Triennial Review Report, that "*the proper level of decision making for the Crown board, which requires a degree of independence from the parent company*" has not been adopted by Crown Limited.

What will the proposal fix or change?

8. It would improve the corporate governance of Crown to introduce a portion of independence to decisions made by the Crown Board of directors.
9. By adopting a corporate structure recommended by the ASX, the public could also be assured that there is an effective board that is committed to adequately discharging its responsibilities and duties by ensuring that decisions are made in the best interests of Crown, rather than the holding company.

What will happen if the proposal is not adopted?

10. The corporate governance of Crown would not be functioning at an optimum level or according to the best practice as recommended by the ASX. Perceptions could exist that decisions made by the directors of Crown would not be impartial if all the directors of Crown are also directors or executives of the PBL Group of companies.

DRAFT – 10/11/03

Review of the Casino Agreement

Position Paper - Item 6

Audit Requirements

What does the proposal describe?

1. In the Third Triennial Review Report, the Authority expressed a view that Crown should outsource its internal audit function or, alternatively, increase the resources in this area and change reporting structures so that the head of the internal audit unit reports to the CEO and to the Board and not through any line manager.

Why has this proposal been made?

2. In the Third Triennial Review of the Casino Operator and Licence, the Authority noted that it continues to be dissatisfied with Crown's inadequate allocation of resources for its internal audit program. The Authority was also dissatisfied with the scope and content of the external audit reports supplied by Crown in that they have not demonstrated whether the Internal Control Manual (ICM) is adequate or whether Crown has been fully complying with it. Departures by Crown from the ICM have also been the subject of disciplinary action by the Authority.
3. The Authority's dissatisfaction to a large extent stems from the fact that, since the Arthur Andersen Report, (commissioned by the Authority in 1999) into the risks associated with all the regulator's statutory functions, Crown has failed to remedy the shortcomings which the Authority had identified in the Second Triennial Review Report. One of the recommendations made by Arthur Andersen, in its report dated January 2000, was that Crown be required to "*demonstrate that their own internal audit programs are risk based and that all key risks are reviewed*".
4. As a consequence, the Authority at its meeting on 2 May 2000 determined that negotiations be commenced with Crown with a view to amending the ICM requiring Crown to outsource its internal auditing functions. In a letter of 25 September 2000, Crown advised the Authority that it was strongly opposed to its internal auditing function being outsourced. Based upon Crown's promise that additional staff would be recruited to enhance its internal audit function, the Authority agreed to not require Crown to outsource its internal audit function.
5. However, in an investigation into Crown's internal audit program for the 2002/2003 financial year, the Authority found that Crown's projected allocation of 700 staff hours to its internal audit function was quite inadequate. Crown subsequently advised that –

“Additional areas of audit activity are determined each year based on an ongoing risk assessment process and emerging issues. The total amount of audit work is for any year, consequently far greater than just the scheduled program elements”.

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What will the proposal fix or change?

6. More information regarding its audit program will be received from Crown, which will result in greater clarity and certainty as to whether Crown is complying with the ICM.

What will happen if the proposal is not adopted?

7. Insufficient information will be available for the Authority to ascertain whether problems exist in relation to compliance with the ICM.

DRAFT –10/11/03

Review of the Casino Agreement

Position Paper - Item 7

Composition of and reporting structure for the Audit Committee.

What does the proposal describe?

1. This proposal is to amend the Casino Agreement to address the Authority's concern that Crown does not have a separate and independent Audit Committee, especially in view of the fact that the Crown Board meets only four times a year.

Why has this proposal been made?

2. Such concern stemmed from that fact that the "Directors' Report" section of Crown's Annual Reports for 2001 and 2002 stated that "the company has three Committees – the Audit Committee, the Compliance Committee and the Remuneration Committee". However, the Authority found limited documentation from Crown's Audit Committee during its inspection of Crown's documents that reflected such a structure. This prompted a letter of inquiry from the Authority to Crown. Responding by letter of 27 March 2003, Crown advised that "the Audit Committee and its functions are dealt with by the full Board of Crown Limited". It also advised that the Crown Board considered audit matters only twice in 2000, twice in 2001 and three times in 2002.

What will the proposal fix or change?

3. By having a separate and independent Audit Committee, it is likely that any audits conducted would better reflect the standard of casino operations and would be a better indicator of whether Crown is complying with the ICM.

What will happen if the proposal is not adopted?

4. The Audit Committee will continue to not function independently of the Board. If the Internal Auditor is unable to report directly to the Board, rather than through the line manager, its views may be compromised or problems or concerns may not be detected, or not detected early enough, if those charged with detecting them have other, possibly conflicting, interests (for example, as members of another Committee).

DRAFT – 10/11/03

Review of the Casino Agreement

Position Paper - Item 8

Composition of and reporting structure for the Compliance Committee.

What does the proposal describe?

1. The proposal is for the Casino Agreement to be amended to address the Authority's view, which was expressed in the Third Triennial Review, that-
 - there should be an independent Compliance Committee; and
 - the Compliance Committee should have an appropriate reporting structure that reflects its obligations under the original Enforceable Undertaking entered into with the Australian Securities and Investment Commission ("ASIC").

Why has this proposal been made?

2. During investigations for the Third Triennial Review, the Authority found that, on 1 March 2000, Crown replaced the Board-based Compliance Committee with a management-based compliance committee chaired by Crown's Chief Executive Officer. This diminution in status of the Compliance Committee falls short of best practice for a company holding a casino licence and of its previous commitments to the Authority when compared to other Casinos around the world. The Triennial Review Report noted that:

"By comparison, the Compliance Program for Park Place Entertainment Inc, which has large casinos in Nevada and New Jersey in the USA, states that its Compliance Committee must have at least five members and that a majority of them must be non-officers of the company."

By having a management-based compliance committee, any breaches by Crown may be inadvertently overlooked or, at worst, concealed from the Board. To this extent, it would be difficult to hold the Board accountable.

3. In October 2002, Crown's external auditors (Ernst & Young) identified two significant breaches of the Internal Control Manual relating to failures by Crown's Internal Audit Department in the financial year ended on 30 June 2002. It is essential that internal failures which lead to problems such as this be identified and addressed effectively at an early stage.
4. While the Authority accepts that casino operations can be adequately controlled from the management level, it expects that, if Crown is to exercise best practice standards, Crown's Compliance Committee should be returned to Board level.

What will the proposal fix or change?

5. By having a separate and independent Compliance Committee, the Committee may act as an early warning system in identifying serious breaches of the ICM and will be better equipped to deal with and report to the Board in an effective manner.

DRAFT – 10/11/03**What will happen if the proposal is not adopted?**

6. With the cut-backs in funding and having the compliance committee at management level, Crown may not be fully equipped to address internal failures or concerns at a sufficiently early stage to avoid breaches of the ICM.

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Review of the Casino Agreement

Position Paper – Item 9

Deed of Undertaking & Guarantee

What does the proposal describe?

1. The proposal describes a need to ensure that Publishing and Broadcasting Limited (“PBL”) delivers to the Authority and the State New Guarantee Agreements executed by its subsidiary, Petelex Pty Ltd (“Petelex”), and other relevant subsidiaries, as required by clause 6.2 of the Deed of Undertaking and Guarantee (“the Deed”).

Why has this proposal been made?

2. Under the Deed, the PBL Group of companies guarantee that the Crown Group of companies will meet the ‘Guaranteed Obligations’ under the ‘State Documents’, which are the obligations under the Casino Control Act 1991, the Casino Licence, the Casino Agreement, the Management Agreement, the Site Lease and the State Charge.
3. Under clause 6.1(a) of the Deed, if PBL acquires or creates a subsidiary, it is required to deliver to the Beneficiaries (the Authority and the State) a New Guarantee Agreement if the subsidiary, in effect, holds a broadcasting licence or a core title and either holds more than 10% of the total assets or has more than 10% of the operating profit of the PBL Group.
4. Petelex owns about 65 subsidiaries of PBL, including Nine Network Australia Pty Ltd and Australian Consolidated Press Limited, which together control most of PBL’s television and magazine interests.
5. PBL has indicated in a letter to the Chairman of the Authority, dated 18 March 2003, that it does not believe it is required to procure a New Guarantee Agreement from Petelex. This view is contrary to the legal advice the Authority has received from Maddocks, which is that Petelex is required to provide a New Guarantee Agreement as it clearly owns more than 10% of the assets of the PBL Group and/or contributes more than 10% of the Group’s consolidated net profit.
6. The Office of Gambling Regulation has also identified a number of other recently acquired or created subsidiaries that may be obliged to provide a New Guarantee Agreement to the Authority and the State.

What is the proposal going to fix?

7. The proposal to require PBL to deliver to the Beneficiaries New Guarantee Agreements from Petelex and other relevant subsidiaries will strengthen the existing guarantees given to the Authority and the State under the Deed. It will address PBL’s current disinclination to comply with the Deed in relation to Petelex.

Draft of 10/11/03

What will happen if the proposal is not adopted?

8. While Petelex is not a party to a New Guarantee Agreement, the strength of the existing guarantee is reduced.

Draft of 10/11/03

Review of the Casino Agreement

Position Paper – Item 10

Consequences for non compliance with the Deed of Undertaking

What does the proposal describe?

1. The proposal describes amendment of clause 31.2 of the Casino Agreement to enable the Authority to serve a show cause notice on Crown under section 20(2) of the *Casino Control Act* 1991 (“the Act”) for PBL’s non-compliance with the Deed.

Why has this proposal been included in the list?

2. Under clause 4.5 of the Deed of Guarantee and Undertaking (“the Deed”), the Authority may issue a notice to Crown Limited under section 20(2) of the Act, but only if PBL fails to deliver to the State a letter of credit. There are currently no consequences under the Deed if PBL fails to comply with any other obligations under the Deed, such as ensuring relevant subsidiaries execute a New Guarantee Agreement under clause 6 of the Deed.
3. There are two options for addressing the problem of non-compliance with Deed. They are:
 - (i) Amend the Deed to make non-compliance with clause 6 an Event of Default under the Deed. This would entitle the Authority to serve notice on the casino operator under section 20(2) of the Casino Control Act requiring the casino operator to show cause why disciplinary action should not be taken against it for PBL’s default under the Deed. This option is not recommended because it would require the approval of the Minister for Gaming, PBL, Crown Limited and each of the sixteen other guarantors under the Deed to amend the Deed.
 - (ii) Amend the Casino Agreement so that that non-compliance with clause 6 of the Deed will constitute a breach of the Casino Agreement so as to entitle the Authority to serve a show cause notice on the casino operator under section 20(2) of the Act. This option is the recommended option because Crown Limited and the Minister have already agreed in principle to amendment of the Casino Agreement.

What is the proposal going to fix?

4. The proposal would fix the current situation whereby the Authority has no statutory or contractual power to address or regulate PBL’s non-compliance with clause 6 of the Deed.

What will happen if the proposal is not adopted?

5. PBL will continue to be able to create or acquire significant subsidiaries without procuring a New Guarantee Agreement from them if required by the Deed. This situation reduces the strength of the existing guarantees under the Deed and leaves the State vulnerable. It also undermines the Authority’s position as a party to the Deed and as the statutory regulator of the casino operator.

Draft of 10/11/03

Review of the Casino Agreement

Position Paper – Item 11

Measures of financial health

Advice

Why has this proposal been made?

1. It is proposed that the Casino Agreement be amended to reduce the maximum amount of debt that Crown may carry without approval of the Authority.
2. Clause 22.1(m) of the Casino Agreement currently prohibits Crown's Total Liabilities from exceeding 60% of Total Assets. As pointed out in the *Third Triennial Review of the Casino Operator and Licence*, Crown has not breached the 60% debt/equity ratio. Following its acquisition of Crown in June 1999, PBL subscribed additional equity which resulted in a substantial reduction in the ratio from close to 60% to less than 20%. This, however, increased again in August 2002 when Crown used \$1,000M to buy back 840.3M shares from PBL, increasing the ratio to 42%.
3. The 60% debt/equity ratio was included in the Casino Agreement to ensure that the casino licence holder remained financially stable during the development phase of the casino project, when the company would be expected to carry a high level of debt due to construction and commissioning costs. Now that the development phase of the casino project is complete, it is reasonable to reduce the allowable debt/equity ratio to ensure that Crown remains financially stable.
4. The average solvency ratio for Australian casino and gaming companies for the period 2001-2003 was 47%, Crown's average solvency ratio over this same period was 37%, whilst PBL had an average of 46%. This is in contrast with the average solvency rate for overseas casino companies of 75%. (It should be noted that these figures are for a relatively short period of time and no allowance has been made for the possibility that unusual circumstances may have influenced the business of the companies during this time.)
5. It is recommended, therefore, that the agreement be amended to reduce the debt/equity ratio to 46%, which is considered to be a much more appropriate level and in line with PBL's average during the period 2001-2003. Alternately, the amendment could be the higher ratio of 50%, being roughly equivalent to the average for all Australian casino and gaming companies.
6. Clause 22.1(ma) of the Casino Agreement imposes a 60% debt/equity ratio on PBL and its subsidiaries. We do not intend proposing that this be amended. Although 50% may be considered more appropriate, PBL is a large and diversified group and it should not be as constrained as Crown.

Draft of 10/11/03

What will the proposal fix or change?

7. It will ensure that the amount of debt that Crown incurs is maintained at a reasonable level and thereby ensure that Crown remains financially stable.

What will happen if the proposal is not adopted?

8. Crown's debt/equity ratio may, at some time in the future, exceed 50% (this may be more likely if the single purpose restriction is removed and Crown acquires other casino interests).

Draft of 10/11/03

Review of the Casino Agreement

Position Paper – Item 12

Location of Crown's Board meetings

Why has this proposal been made?

1. It is proposed that the Casino Agreement be amended to require all Crown Board meetings to be held in Melbourne.
2. The Crown Board currently meets approximately 4 times per year, with most meetings being held in ~~Sydney~~. *Melbourne*

What will the proposal fix or change?

3. The purpose behind such a requirement is ensure that Crown is not controlled by a remote Board, unfamiliar with the local environment within which the casino business operates and unavailable to address urgent issues at the casino.

What will happen if the proposal is not adopted?

4. Nothing. The Crown board will continue to meet as at present.

Draft of 10/11/03

Review of the Casino Agreement

Position Paper – Item 13

Location of Crown's senior management and management

Why has this proposal been made?

1. It is proposed that the Casino Agreement be amended to require Crown to be managed by personnel located in Melbourne.
2. It is proposed that this requirement apply to all senior management, including the Chief Executive Officer, the Chief Financial Officer, the Chief Operating Officers, and other senior managers such as the heads of the various operating divisions.

What will the proposal fix or change?

3. The purpose of such a requirement is to:
 - assist the Authority to carry out its regulatory functions by providing ease of access to relevant company officers, especially where access is urgently required; and
 - ensure that senior management maintain a thorough understanding of Crown's operations by being colocated with, or based near, the casino business.

What will happen if the proposal is not adopted?

4. Crown may, at some time in the future, decide to locate senior management in a place other than Melbourne (this may become more likely if the single purpose restriction is removed and Crown acquires other casino interests interstate).

Draft of 10/11/03

Review of the Casino Agreement

Position Paper – Item 14

Location of Crown's company secretary

Why has this proposal been made?

1. It is proposed that the Casino Agreement be amended to ensure that at least one Company Secretary appointed by Crown continues to be located in Melbourne.
2. The *Corporations Act 2001* stipulates that a company secretary must "ordinarily reside in Australia". Crown currently has two Company Secretaries, one based in Melbourne and the other in Sydney.
3. Crown has stated that having a Company Secretary located in both Sydney and Melbourne "enhances the focus on corporate governance and ensures the company meets and discharges its legal obligations". From the Authority's point of view, having at least one of Company Secretary located in Melbourne would also facilitate the service of notices etc on Crown.

What will the proposal fix or change?

4. The proposal would ensure that at least one Company Secretary is located in Melbourne.

What will happen if the proposal is not adopted?

5. Crown may decide, at some time in the future, to not locate a Company Secretary in Melbourne (this may become more likely if the single purpose restriction is removed and Crown acquires other casino interests interstate).

Draft of 10/11/03

Review of the Casino Agreement

Position Paper – Item 15

Location of Crown's bank accounts for the Melbourne Casino operations

Why has this proposal been made?

1. It is proposed that the Casino Agreement be amended to reinforce the requirement that Crown locate all bank accounts for its Melbourne Casino operations in Melbourne.
2. Section 123(1) of the *Casino Control Act* 1991 requires Crown to keep and maintain separate bank accounts at "an authorised deposit-taking institution in the State for all banking transactions arising under this Act". Any such bank accounts must be approved by the Authority.
3. The requirement under section 123 is, however, limited to accounts for *transactions arising under the Act*. Crown may have other accounts relating to its Melbourne Casino operations that do not fall within the scope of section 123. It would be desirable that all accounts relating to the Melbourne Casino are located in the state, making it less onerous for OGR to monitor and inspect the accounts on behalf of the Authority. This will also avoid any possible jurisdictional difficulties that may be associated with accounts held outside Victoria.

What will the proposal fix or change?

4. The proposal will ensure that all bank accounts associated with Crown's casino operations are located in Melbourne, thereby ensuring convenient access for compliance monitoring and inspection purposes and removing any possibility that jurisdictional issues may arise in relation to the Authority's enforcement activities.
5. The proposal will also allow the Authority, where Crown is in breach of the new requirement, to issue a Notice under clause 31.2 of the Casino Agreement requiring Crown to remedy the breach. If Crown failed to comply with the notice, the Authority could issue a "show cause notice" under section 20(2) of the *Casino Control Act* 1991. This process would apply to all bank accounts related to the casino (rather than be limited to those arising under the Act, as at present) and would allow the Authority to take as soon as a breach became apparent, rather than having to take disciplinary action at a much later stage.

What will happen if the proposal is not adopted?

6. Nothing. The status quo will remain.

Draft of 10/11/03

Review of the Casino Agreement**Position Paper – Item 16(a)**

Information/documents to be provided to the Authority including; a report on Crown's annual capital expenditure program and quarterly reports on actual expenditure; (See also item 4)

1. Crown's quarterly financial reports to the Authority should be expanded to provide details on its budget and actual expenditure on capital works (CapEx). These capex reports should provide the level of detail provided in the following table, which has been provided by Crown on previous occasions. The report should distinguish between expenditure on "Existing Facilities" and "Major New Constructions".

	Bud	Act	Bud	Act	Bud	Act	Bud
	'01	'01	'02	'02	'03	'03	'04
Existing Facilities							
New Upgraded Gaming Machines		1.6		9.0		6.9	8.9
New and Upgraded Table Games		5.4		3.8		0.9	1.6
Gaming Equip. Replacement		3.2		0.5		0.3	1.1
Table Games Equip. Replacement		0.8		0.1		0.2	1.3
MIS		10.0		12.2		2.7	8.4
Property Refurbishment		7.6		10.1		8.8	9.3
Building Infrastructure		9.6		2.6		1.7	3.9
Furniture & Fittings / Plant & Equip.		4.5		4.4		1.5	1.4
		42.7		42.7		23	35.9
Major New Construction							
Promenade Hotel		3.1		20.6		66.5	45.8
Total Capital Expenditure		45.8		63.3		89.5	81.7

Note: The figures in this table have been previously provided by Crown. The missing figures are possibly available in the OGR files, but would need to be located.

DRAFT – 10/11/03

Review of the Casino Agreement

Position Paper - Items 16(b) and (c)

Information/Documents to be provided to the Authority:

- **A report on Crown's internal and external audit programs and any changes to the programs**
- **A report on adherence to or divergence from the internal and external audit programs**

What does this proposal describe?

1. To amend the Casino Agreement to require Crown to report on Crown's internal and external audit programs, any changes to the programs and on adherence to or divergence from the internal and external audit programs.

Why has this proposal been made?

In the Third Triennial Review of the Casino Operator and Licence, the Authority was critical of Crown's inadequate allocation of resources for its internal audit function. In a letter dated 18 June 2003, Crown responded to the Authority's findings by suggesting:

"that the Authority's conclusions were misinformed. That the Authority's finding that Crown's schedule internal audit program for the 2002/2003 financial year amounted to a total of only 700 hours was based upon limited information."

Crown also advised that the internal audit program document obtained and reviewed by the Authority:

"was only part of Crown's three year internal audit plan. This plan details the schedule elements of the internal audit program for each year. Additional areas of audit activity are determined each year based on an ongoing risk assessment process and emerging issues. During the year ended 30 June 2003, Crown conducted in excess of 2400 hours of internal audit not the '700 hours' which underpins the Authority's finding."

The Authority's findings were based upon the information previously provided by Crown of the projected internal audit activity. To assist the Authority to assess Crown's audit activities, Crown should provide to the Authority reports on Crown's internal and external audit programs. It is also recommended that should there be any changes to Crown's schedule audit programs, the Authority should be advised in writing of such changes within 30 days.

What will the Proposal fix or change?

DRAFT – 10/11/03

The proposed provision of the above mentioned information should assist the Authority in monitoring Crown's compliance with its internal and external audit programs as advised by Crown.

What will happen if the proposal is not adopted?

The Authority will not have adequate information on which to base an assessment of Crown's internal audit program and any departures by Crown from the program.

DRAFT - 10/11/03

Review of the Casino Agreement

Position Paper - Items 16(d) and (e)

Information/Documents to be provided to the Authority: *or made available*

- *the* Membership of Crown's Audit Committee and any changes to the reporting structure and membership of the Committee.
- Audit Committee agendas, papers and minutes of meetings. *made available*

What does this proposal describe?

*to inspect & request
provided if requested.*

1. To amend the Casino Agreement to require Crown Limited to report on membership of its Audit Committee, any changes to the reporting structure and membership of the Audit Committee and to provide the Authority with a copy of the Audit Committee agendas, papers and minutes of meetings.

Why has this proposal been made?

The Authority is concerned that Crown does not have a separate and independent Audit Committee, especially in view of the fact that the Crown Board meets only four times a year.

By requiring Crown to provide the Authority with a list of members on the Audit Committee, the Authority is better able to examine and determine the appropriateness of the committee's membership. Should there be a change to the membership of the Audit Committee, the Authority should be advised in writing within 30 days.

What will the Proposal fix or change?

The provision of the Audit Committee agendas, papers and minutes of meeting will assist the Authority to better monitor the activities of the Audit Committee and help to alleviate the Authority's concerns in relation to the independence of the Audit committee.

What will happen if the proposal is not adopted?

The current unsatisfactory situation will continue.

DRAFT – 10/11/03

Review of the Casino Agreement

Position Paper - Items 16(f) and (g)

Information/Documents to be provided to the Authority:

changes as per 16(d) & (e)

- **Membership of Crown's Compliance Committee and any changes to the reporting structure and membership of the Committee.**
- **Compliance Committee agendas, papers and minutes of meetings.**

What does this proposal describe?

1. To amend the Casino Agreement to require Crown Limited to report on membership of Crown's Compliance Committee, any changes to the reporting structure and membership of the Committee and a copy of the Compliance Committee agendas, papers and minutes of meetings.

Why has this proposal been made?

During the period of the Review, the Authority identified that Crown had problems in ensuring compliance with regulatory requirements relating to corporate governance. Crown's external auditors (Ernst & Young) identified in October 2002 two significant breaches of the Internal Control Manual relating to failures by Crown's Internal Audit Department in the financial year ending on 30 June 2002.

By requiring Crown to provide the Authority with a list of members on the Compliance Committee, the Authority is better able to examine and determine the appropriateness of its membership. Should there be a change to the membership of the Compliance Committee, the Authority should be advised in writing within 30 days.

The provision of the Compliance Committee agendas, papers and minutes of meeting will assist the Authority to better monitor the activities of the Compliance Committee.

What will the Proposal fix or change?

It will allow the Authority to better scrutinise the function of the Compliance Committee and to ensure that Crown continues to exercise best practice standards for a company holding a casino licence.

What will happen if the proposal is not adopted?

The current unsatisfactory situation will continue.

Draft of 10/11/03

Review of the Casino Agreement

Position Paper – Item 16(h)

Information/documents to be provided to the Authority, including Notice of any new subsidiary of PBL

What does the proposal describe?

1. The proposal describes amendment of clause 22 of the Casino Agreement (Conditions Relating to Company Structure) to make it an obligation on the casino operator to give the Authority notice of any new subsidiary of PBL.

Why has this proposal included in the list?

2. There is currently no obligation on PBL to advise the Authority of any new subsidiaries created or acquired by PBL. This makes it difficult for the Authority to monitor PBL's compliance with the Deed of Undertaking and Guarantee ("the Deed") in a timely manner.

What is the proposal going to fix?

3. The proposal will fix the type of situation that has arisen in relation to Petalex PTY Ltd and possibly in relation to some other recently acquired subsidiaries of PBL where PBL failed to give the Authority notice of the matters in clause 6.1(1) of the Deed.

What will happen if the proposal is not adopted?

4. If the Authority is not properly notified as to the acquisition or creation of a subsidiary by PBL, it adversely affects the Authority's ability to monitor PBL's compliance with the Deed and the subsidiary's assets may remain beyond the reach of the guarantees under the Deed.

Draft of 10/11/03

Review of the Casino Agreement

Position Paper – Item 16(i)

A report on Crown's annual budget

Why has this proposal been made?

1. It is proposed to amend the *Casino Agreement* to require Crown to give the Authority a report on its annual budget.
2. Clause 25.2 of the *Casino Agreement* requires Crown to immediately notify the Authority of any information necessary to ensure that the Authority is able to make an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the company. Crown must also provide, within 15 days of the end of each quarter, a report consisting of:
 - profit and loss accounts and cash flow statements comparing budget against year to date;
 - a balance sheet as at the last day of March, September and December; and
 - budgeted profit and loss and cash flow statements to the end of the current financial year.
3. Section 128 of the Act also requires Crown to submit to the Authority reports relating to the operations of the casino containing the information specified by the Authority in writing.

What will the proposal fix or change?

4. In the past, when it was a publicly listed company, Crown was reluctant to provide quarterly reports, comparing year to date results against its budget, because it claimed this was price sensitive information. Crown was of the view that providing this information would breach the ASX Listing Rules on continuous disclosure. In response, the Authority agreed to waive the requirement under the *Casino Agreement* to provide this information on the basis that Crown would, instead, provide the Authority with a copy of its approved budget, which would enable the Authority to make its own comparison.
5. Although from the Authority's point of view it may be desirable to enforce the requirement to provide quarterly reports, comparing year to date results against its budget, as currently provided for in the *Casino Agreement*, an alternative would be to amend the agreement to reflect current practice.

What will happen if the proposal is not adopted?

6. The status quo will remain, with some confusion as to the level of information that Crown is required to provide and the time by which such information should be provided.

Draft of 10/11/03

Review of the Casino Agreement

Position Paper – Item 16(j)

A report on adherence or divergence from the budget

Why has this proposal been made?

1. Clause 25.4 of the Casino Agreement requires Crown to provide Quarterly Financial Reports to the Authority in the form specified in Schedule Four of the Casino Agreement. This specifies the following items
 - Profit and Loss Account and Cashflow Statement comparing budget against actual for the year to date;
 - Balance Sheet at last days of March, September and December; and
 - Budgeted Profit and Loss and Cashflow Statements to the end of the current financial year.
2. In response to letters from Crown dated 19 July 1995, 27 October 1995 and 15 November 1995, the Authority at its meeting on 21 November 1995, agreed to waive, until further notice, the obligations on Crown to comply with certain parts of clause 25.4. This decision was conveyed to Crown in a letter dated 24 November 1995. Paragraph (d) stated that “The requirements to compare ‘budget against actual’ for the year to date and to provide budgets ‘to end of current financial year’ are waived until after the permanent casino is opened, when the matter will be reconsidered.”
3. It is understood that the Authority subsequently agreed to accept receipt from Crown of a copy of its annual budget as satisfying its obligations with respect to the provision of budget figures. This matter is currently being researched.
4. Each year since the permanent casino opened, Crown has made a presentation to the Director of Casino Surveillance and other regulatory staff on its budget for the coming year. This traditionally occurred in July or August and on three occasions coincided with presentations for the three Triennial Reviews. In 2003, Crown questioned why it had to provide a copy of its budget prior to the submittal of its September Quarterly report in October 2003. It appears that Crown is not so forthcoming with this information as in the past and that it may in future be necessary to formally require such budget information.

What will the proposal fix or change?

5. The proposal will clarify what information is required by the Authority and the time by which such information must be provided by Crown. It would, therefore, remove the need for requests to be made to Crown for the information.

What will happen if the proposal is not adopted?

6. There would be uncertainty regarding Crown’s obligations to provide the important financial information to the Authority leading to uncertainty as to whether Crown is in breach of its obligations.

Draft of 10/11/03

Review of the Casino Agreement

Position Paper – Item 16(k)

Continuous disclosure

Why has this proposal been made?

1. It is proposed that the Casino Agreement be amended to require Crown to give to the Authority some of the same type of information that Crown would be required to give the Australian Stock Exchange Limited (“ASX”) if Crown were a publicly listed company. It is also proposed that the Casino Agreement be amended to allow the Authority to inspect Crown Board or Management Committee minutes and papers as required, without having to issue a notice under section 26 of the *Casino Control Act* 1991.
2. Under clause 25 of the Casino Agreement, Crown is required to give the Authority:
 - immediate notice of any information necessary to ensure that the Authority is able to make an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the company;
 - notice of any event or circumstance which would be material to the company having regard to the definition of materiality in Australian Accounting Standard AAS5; and
 - a copy of any notices or information given to, or received from, the Australian Securities and Investment Commission (the notice or information must be given to the Authority on the day it given or received).
3. The Third Triennial Review of the Casino Operator and Licence stated that the Authority would like to establish a process whereby Crown will inform the Authority of specific matters that are necessary for the Authority to carry out its regulatory function. The Authority indicated that its role would be enhanced if Crown were required to give the Authority any information that a publicly listed company is required to give the ASX under the continuous disclosure obligations contained in the ASX Listing Rules.
4. Clause 25.1 of the Casino Agreement requires Crown to give the Authority any information that it would be required to give the ASX if Crown were a listed company. Crown is not, however, required to comply with this requirement, as it is not a listed company in the normal sense. (Crown does, however, have unsecured notes that are listed and, for this reason, must still submit some reports to the ASX. When these notes mature in August 2005 there will be a diminution in the amount of information available to the public and the Authority.)
5. Although some of the information a company is required to disclose under the Listing Rules is not really appropriate to Crown as a wholly owned subsidiary of PBL, it is proposed that the information Crown should be required to give the Authority under an amended clause 25.1 would include:

Draft of 10/11/03

- any information that a reasonable person would expect to have a material effect on financial viability or stability of the company;
 - information relating to any share buy-back scheme or other capital reduction scheme;
 - any reorganisation of the company's capital, any call on its shares or any proposed issue of shares;
 - the outcome of any resolution put to a meeting of shareholders;
 - the contents of any prepared announcement to be presented to a meeting of shareholders;
 - a copy of any document sent to shareholders; and
 - details of any "notifiable interest" of a director and any change to that interest.
6. It should be noted that although some of the above listed information may not be relevant to Crown at present, the Casino Agreement should be amended so that it takes into account possible changes to Crown's ownership or structure in the future. For example, Crown may sell some of its shares, which would then bring the requirements relating to shareholder meetings and notices into operation.

What will the proposal fix or change?

7. The proposal will ensure that the Authority has access to all the information that is necessary to enable the Authority to carry out its regulatory functions.

What will happen if the proposal is not adopted?

8. The status quo will remain. The Authority may not become aware of a change in Crown's circumstances until long after the event, which could have an adverse effect on the regulation of casino operations.

From: Sylvia Grobtuch on 22/10/2003 06:25 PM
To: Bill Balgowan/OGR@Ogr, Rowena Scheffer/OGR@Ogr, Lyn Corneliusen/OGR@Ogr, Michael Lee/OGR@Ogr, Rowan Harris/OGR@Ogr, Cate Carr/OGR@Ogr
cc:
Subject: Position Paper for the Sub-Committee

Good Afternoon All.

As you will recall, the Sub-Committee has asked us for a Position Paper which covers each proposal in our table.

I have allocated the proposals to you as detailed on the attached updated version of our table.



Table of Proposals - WP tasks - 22

I only need a few paragraphs on each proposal. Please address the following in your paragraphs:

- (a) What does the proposal describe?/ Why has this proposal been included in this list?
- (b) What is the proposal going to fix?
- (c) What will happen if the proposal is not adopted?

The Authority decided yesterday that items 1, 2 and 3 on the table will be more appropriately dealt with by the Minister. However, we will still be addressing them in the position paper, so the Authority can give the Minister the benefit of work done to date.

May I have your draft material on email to me (with a copy to Rowena) by no later than cob Tuesday 28 October. Don't hesitate to send material as you prepare it, instead of waiting til it is all ready.

Thanks

Sylvia

VICTORIAN CASINO AND GAMING AUTHORITY**SUB COMMITTEE
REVIEW OF CASINO AGREEMENT****MINUTES OF MEETING NO 2****HELD IN
THE BOARD ROOM
LEVEL 5
35 SPRING STREET
MELBOURNE****FRIDAY 17 OCTOBER 2003
COMMENCING 9.45 AM****ITEM 1 PRESENT/ IN ATTENDANCE/ APOLOGIES****1 (a) Present**

Mr Brian Forrest, Chairperson
Ms Una Gold
Ms Christine Neville

1 (b) In Attendance

Mr Peter Cohen, Acting Director of Gaming and Betting
Acting Director of Casino Surveillance
Ms Sylvia Grobtuch, Assistant Director Legal and Legislation
Mr Bill Balgowan, Casino Project Manager
Ms Lyn Corneliusen, Solicitor
Ms Rowena Scheffer, Solicitor
Ms Cate Carr, Solicitor
Mr Michael Lee, Licensing Operations and Policy Branch
Mr Kenneth McLeod, Secretariat Officer

1 (c) Apologies

Mr Rowan Harris, Gambling Operations and Audit Branch

ITEM 2 Business of the Meeting

Sub Committee – Review of Casino Agreement

2(a) Minutes of Previous Meeting

Members agreed that the minutes of Meeting No 1 be confirmed.

2(b) Revised List of Items for Consideration

Members considered a revised list setting out possible items that may be required in exchange for removal of the single purpose provisions, copies of which formed part of the papers provided for the meeting.

Members noted, in respect of the revised list, that:

- the original list has been expanded and now includes the following major matters –
 - ✓ public availability of the casino licence;
 - ✓ Authority approval for reduction of capital; and
 - ✓ compliance with obligation to maintain the casino complex to world class standards;
- the matter of public availability of the casino licence arose out of a recommendation appearing in a report on Government contracts by Professor Bill Russell;
- the matter of Authority approval for reduction of capital relates to alternatives to the debt/equity ratio as a useful measure of financial health;
- the matter of compliance with maintaining the casino complex to world class standards relates to observations made as part of the second and third triennial reviews of the casino operator and licence;
- in relation to the independence of Crown directors, emerging new tests developed by the New York Stock Exchange may prove useful in clarifying what is meant by ‘independent’ in this context; and
- the matter of compliance with the Deed of Undertaking relates to capturing all future structural changes and providing for consequences for non-compliance in the form of disciplinary action.

Members agreed that:

- the list be categorised into matters that are negotiable by the Authority and those that are not; and
- position papers be provided to the Sub-Committee on the various matters proposed to be negotiated by the Authority.

2(c) Publishing and Broadcasting Limited Subsidiaries

Members noted a document tabled by the Casino Project Manager containing the Group Structure for Publishing and Broadcasting Limited as at 9 August 2002.

Sub Committee – Review of Casino Agreement

2(d) Results of Research into Solvency Ratios of other Casino Operators

Members noted a document tabled by the Casino Project Manager containing the following information in the form of charts and data in relation to solvency ratios for casino and gaming related companies:

- ✓ Australian casinos and gaming companies for 2001-2003;
- ✓ Overseas casinos (United States and New Zealand) for 2002-2003;
- ✓ Crown (Consolidated) for 1998-2003; and
- ✓ Publishing and Broadcasting Limited.

2(e) Casino Agreement – Progress Report – Clauses for Deletion or Updating

Members noted advice that, as part of the review of the Casino Agreement, an additional project is being undertaken by the Working Party to identify clauses of the document that should be either deleted or updated to reflect the current situation.

Members also noted that the clauses relating to insurances are to be subjected to close scrutiny.

2(f) Audit Issues Concerning the Casino Operator - Progress Report

Members noted, from an oral report by the Casino Project Manager, that the Working Party is in the process of collecting and examining information around:

- ✓ the Crown Limited audit program;
- ✓ Nevada Gaming Commission data;
- ✓ New Jersey Gaming Commission data; and
- ✓ the Crown Limited ICM.

Members also noted advice from the Acting Director that Crown Limited is proposing to examine its audit and compliance structures at a board meeting scheduled to be held Tuesday 21 October 2003.

2(g) Authority Meeting of 21 October 2003 - Status Report

Members noted the Status Report paper prepared to inform the Authority of the progress of the sub-committee, copies of which formed part of the papers provided for the meeting.

ITEM 3 Other Business

3(a) Inspection of Casino Complex by Working Party

Sub Committee – Review of Casino Agreement

Members noted that the Casino Project Manager intends to e-mail Working Party members with optional dates for conducting an inspection of the Melbourne Casino.

Members also noted that the proposed dates, in preferred order, are:

- ✓ 24 October 2003;
- ✓ 23 October 2003; and
- ✓ 30 October 2003.

ITEM 4 Next Meeting

Members agreed that the next meeting of the sub-committee be determined at the Authority meeting scheduled to be held on Tuesday 21 October 2003.

The meeting closed at approximately 10.50 am

Draft

REVIEW OF THE CASINO AGREEMENT

Second Meeting of the Sub-Committee of the Victorian Casino and Gaming Authority

2nd
Sub
C'ttee
Meeting

AGENDA

Time: 9.30 am, Friday 17 October 2003, Board Room

Attendees: Mr Brian Forrest
Ms Una Gold
Ms Christine Neville
Mr Peter Cohen, Acting Director of Gaming and Betting, Acting Director of
Casino Surveillance
Members of the OGR Working Party –
Ms Sylvia Grobtuch, Mr Bill Balgowan, Ms Rowena Scheffer, Ms
Lyn Corneliusen, Mr Michael Lee.
Assisting the Working Party – Ms Cate Carr, Solicitor

ORDER OF BUSINESS:

Items for Consideration:

Item 1 Present/ In Attendance/ Apologies

- 1(a) Present
- 1(b) In attendance
- 1(c) Apology received from Mr Rowan Harris

Item 2 Business of the Meeting

- 2(a) Minutes of previous meeting (See draft Minutes attached).
- 2(b) Tabling of a revised list of preliminary ideas of possible items required in exchange for removal of the 'single purpose' restriction; (see Attachment).
- 2(c) PBL subsidiaries and the Deed of Undertaking.
- 2(d) Results of research into solvency ratios of other casino operators. (document to be tabled at meeting "Benchmarking Analysis of Gearing Ratios – Overseas and Australian Casinos").

- 2(e) - Progress report on preparation of a list of clauses in the Casino Agreement that could be deleted or updated.
- 2(f) - Progress report on audit issues concerning the casino operator.
- 2(g) - Status report to Authority meeting on 21 October 2003. (Board paper is attached for reference).

Item 3 Other Business

Item 4 Next Meeting

VICTORIAN CASINO AND GAMING AUTHORITY

**SUB COMMITTEE
REVIEW OF CASINO AGREEMENT**

MINUTES OF MEETING NO 1

**HELD IN
THE BOARD ROOM
LEVEL 5
35 SPRING STREET
MELBOURNE**

**WEDNESDAY 8 OCTOBER 2003
COMMENCING 9.30 AM**

ITEM 1 PRESENT/ IN ATTENDANCE/ APOLOGIES

1 (a) Present

Mr Brian Forrest, Chairperson
Ms Una Gold

1 (b) In Attendance

Mr Peter Cohen, Acting Director of Gaming and Betting
Acting Director of Casino Surveillance
Ms Sylvia Grobtuch, Assistant Director Legal and Legislation
Mr Bill Balgowan, Casino Project Manager
Ms Lyn Corneliusen, Solicitor
Ms Rowena Scheffer, Solicitor
Ms Cate Carr, Solicitor
Mr Rowan Harris, Gambling Operations and Audit Branch

Mr Michael Lee, Licensing Operations and Policy Branch
Mr Kenneth McLeod, Secretariat Officer

1 (c) Apologies

Ms Christine Neville

ITEM 2 Introduction of Working Party Members

The Assistant Director Legal and Legislation introduced the members of the Working Party to the Sub-Committee members in her capacity as Chair of the Working Party.

ITEM 3 Business of the Meeting

3(a) Tabling of Documents (Agenda – Items for Consideration 1 and 2)

Ms Scheffer tabled copies of the following documents –

- letter of 12 September 2003 from the Minister for Gaming to the Chairman of the Authority in response to the Authority's advice as to the proposed review of the Casino Agreement; and
- letter of 26 September 2003 from the Acting Director of Gaming and Betting to the Chief Executive Officer of Crown Limited regarding the proposed removal of the "single purpose" provision in the Casino Agreement.

3(b) Role of the Sub-Committee (Agenda – Item for Consideration 3)

Members noted that, in establishing the Sub-Committee, the Authority has not delegated any of its powers to the Sub-Committee.

Members agreed that the Sub-Committee should operate on the basis of identifying all matters relevant to the review, progressing those matters as far as possible and making recommendations to the Authority as appropriate.

Members also agreed that status reports as to the progress of the review be provided to the Authority from time to time.

3(c) Role of the Working Party (Agenda – Item for Consideration 4)

Members noted that the role of the Working Party, comprised of staff of the Office of Gambling Regulation, would be to research and investigate the matters identified as relevant to the review and submit options and proposals to the Sub-Committee for consideration.

3(d) Review Process and Timeframe (Agenda – Items for Consideration 5 to 10)

Members noted advice from the Assistant Director Legal and Legislation that the review, excepting consideration of the Crown Limited proposal to remove paragraph 22.1(p) of the Casino Agreement, which is a priority matter, could take between six and fifteen months to complete.

3(d) Review Process and Timeframe (Agenda – Items for Consideration 5 to 10)

Members agreed, in respect of the review process, that:

- the review be undertaken with a view to recommending that the Authority reach a position of being able to clearly indicate to Crown Limited all the matters the Authority is proposing including changes to the Casino Agreement and undertakings required from the casino operator or Publishing and Broadcasting Limited;
- the Authority limit its negotiations with Crown Limited to the regulatory matters identified on the list with all non-regulatory matters, in which the Government may have an interest, to be referred to the Minister for Gaming for his consideration at an appropriate future stage in the process;
- once all the matters proposed for negotiation have been identified and approved by the Authority, they be referred to a firm of commercial lawyers for proper drafting of descriptions and development as a Heads of Agreement document;
- the list of matters for consideration by the Sub-Committee be re-cast to provide brief generic descriptions and each matter be identified as regulatory or non-regulatory; and
- the list of matters to be re-cast and further developed by the Working Party is to include any issues identified as appropriate that arise from the third triennial review of the casino operator and licence.

ITEM 4 Other Business (Agenda – Item for Consideration 11)

Nil.

ITEM 5 Next Meeting (Agenda – Item for Consideration 12)

Members agreed that the next meeting of the sub-committee be held on Friday 17 October 2003, commencing 9.30 am.

The meeting closed at approximately 10.35 am

Need a position paper on each of these items
~~as~~ A more detailed

ATTACHMENT

Review of the Casino Agreement

List of possible items required in exchange for removal of 'single purpose' restriction.

Suggested Amendment to the Casino Agreement	Clause of the Casino Agr'mt	Refer to Minister for Gaming
1. Public availability of the Casino Agreement	36.1	
2. Public availability of the Casino Licence.	new	
3. Review maximum permissible debt/equity ratio – and/or restriction on loans by Crown.	22.1(m)	
4. Authority approval for reduction of capital.	new	
5. Independence of the directors of Crown Limited.	new	
6. Compliance with the Deed of Undertaking.	new	
7. Consequences for non-compliance with the Deed of Undertaking	31.2	
8. Ongoing market share of Commission based players' business in Victoria	new	
9. Compliance with obligation to maintain the Casino Complex to world class standards.	new	
10. Location of Crown's Board meetings.	new	
11. Location of Crown's senior management.	new	
12. Location of Crown's senior management meetings	new	
13. Location of Crown's company secretary	new	
14. Location of Crown's bank accounts for Melb. Casino operations.	new	
15. Audit requirements.	new	

Suggested Amendment to the Casino Agreement	Clause of the Casino Agr'mt	Refer to Minister for Gaming
16. Composition of and reporting structure for the Audit Committee.	new	
17. Composition of and reporting structure for the Compliance Committee.	new	
18. Information/documents to be provided to the Authority, including: (a) Notice of any new subsidiary of PBL;	25	
(b) A report on Crown's annual budget;	25	
(c) A report on adherence to or divergence from the budget;	25	
(d) A report on Crown's capital annual expenditure program and reports on actual expenditure;	25	
(e) A report on Crown's internal and external audit programs and any changes to the programs;	25	
(f) A report on adherence to or divergence from the internal and external audit programs;	25	
(g) Membership of Crown's Compliance Committee and any changes to the reporting structure and membership of the committee;	25	
(h) Compliance Committee agendas, papers and minutes of meetings;	25	
(i) Membership of Crown's Audit Committee and any changes to the reporting structure and membership of the committee; and	25	
(j) Audit Committee agendas, papers and minutes of meetings.	25	
k)		

OFFICE OF GAMBLING REGULATION

REVIEW OF THE CASINO AGREEMENT – STATUS REPORT

PURPOSE

1. To provide Members with a status report of the review of the Casino Agreement by the Sub-Committee.

BACKGROUND

2. At its meeting on 23 September 2003, the Authority established a Sub-Committee to assist it in reviewing the Casino Agreement. Members of the Sub-Committee are the Chairman, Ms Gold and Ms Neville. The Authority agreed that the Sub-Committee is to –
 - (a) gather necessary information to progress this matter; and
 - (b) identify outcomes that are desired by the State and the Authority and develop options, in conjunction with external legal advice, that could achieve the desired outcomes.
3. To assist the Sub-Committee, the Director of Gaming and Betting (the Director) has established a staff based Working Party, which is chaired by Ms Sylvia Grobtuch, Assistant Director, Legal and Legislation.
4. By letter of 26 September 2003, the Director advised Crown of the Authority's decision and provided a summary of some of the reasons for the imposition of the single purpose restriction in the Casino Agreement and the benefits it provides to the State. A copy of the letter is attached.
5. By letter of 12 September 2003, the Minister for Gaming wrote to the Authority advising that he approves of the Authority's intention to review the Casino Agreement.

COMMENTS

6. The Sub-Committee held its first meeting on Wednesday 8 October 2003. Subject to approval of the minutes of that meeting, the Members of the Sub-Committee agreed–
 - the review be undertaken with a view to recommending that the Authority reach a position of being able to clearly indicate to Crown Limited (Crown) all the matters the Authority is proposing (including changes to the Casino Agreement and undertakings required from the casino operator or PBL);

- to recommend that the Authority limit its negotiations with Crown to regulatory matters and refer to the Minister for Gaming, at a future stage in the process, for his consideration, non-regulatory matters in which the Government may have an interest; and
 - that the list of regulatory matters, when agreed upon by the Authority, are to be referred to a commercial law firm for advice.
7. The Sub-Committee also considered a draft list of items prepared by the Working Party that might be negotiated with Crown Limited in exchange for removal of the single purpose covenant.
8. The Sub-Committee agreed to meet again on Friday 17 October 2003.

RECOMMENDATION

9. That Members agree –
- that the review be undertaken with a view to the Authority reaching a position of being able to clearly indicate to Crown all the matters the Authority will be proposing (including changes to the Casino Agreement and undertakings required from the casino operator or PBL);
 - that the Authority limit its negotiations with Crown to regulatory matters and refer to the Minister for Gaming, at a future stage in the process, for his consideration, non-regulatory matters in which the Government may have an interest; and
 - which items the Authority should propose be part of the negotiation with Crown and which items it will submit to the Minister for Gaming for his consideration, the list of which will be presented to the Members at the meeting.

Recommended:

PETER COHEN
Acting Director of Gaming and Betting
Acting Director of Casino Surveillance

REVIEW OF THE CASINO AGREEMENT

First Meeting of the Sub-Committee of the Victorian Casino and Gaming Authority

AGENDA

Time: 9.30 am, Wednesday 8 October 2003, Board Room

Attendees: Mr Brian Forrest

Ms Una Gold

Members of the OGR Working Party –

Ms Sylvia Grobtuch, Mr Bill Balgowan, Ms Rowena Scheffer, Ms
Lyn Corneliusen, Mr Rowan Harris, Mr Michael Lee.

Assisting the Working Party – Ms Cate Carr, Solicitor

(Please note there are no meeting papers apart from this Agenda and the Attachment).

ORDER OF BUSINESS:

Introduction of Working Party Members

Items for Consideration:

1. Tabling of Minister's response to the Chairman's letter advising of the Authority's proposed review of the Casino Agreement.
2. Tabling of the Acting Director's letter of 26 September 2003 to Crown Limited.
3. Role of the Sub-Committee, including relationship to the Authority.
4. Role of the OGR Working Party.
5. General Process to be followed for the Review/General Time frame for the Review.
6. Time frame for consideration of Crown's request for deletion of clause 22.1(p) relating to Crown required to be a single purpose company.
7. Liaison with Gaming Policy Unit (GPU)/Liaison with the Minister/Use of external commercial lawyers.
8. Inquiries with interstate casino regulatory agencies
9. Brief outline of preliminary work which has been carried out to date by Working Party members

10. Tabling of the Working Party's preliminary ideas of matters (including significant amendments to the Casino Agreement) to be possible negotiation points in exchange for removal of 'single purpose' restriction. (see Attachment).
11. Decision as to which possible matters are to be -
 - further researched by the Working Party;
 - recommended by the Sub-Committee to the Authority; and
 - referred to GPU for consideration as Government policy.
11. Other business.
12. Date of next meeting.

ATTACHMENT

OGR Working Party for Review of The Casino Agreement

Preliminary ideas of possible matters (including amendments to the Casino Agreement) to be points for negotiation in exchange for removal of 'single purpose' restriction.

Suggested Amendment	Refer to GPU?	
1. Removal of the Confidentiality requirement of the Casino Agreement ("CA") [cl. 36.1]	Yes	
2. Reduce maximum permissible debt/equity ratio from 60% to ? [cl. 22.1(m)] within a specified time frame.	Yes	Address the debt/equity ratio
3. Require ^{on behalf of} all directors of Crown to be independent. ^{Independence of Directors of Crown}	No	
4. PBL to ensure all relevant subsidiaries execute a New Guarantee Agreement in accordance with the Deed of Undertaking (problem – PBL is not a party to the CA).	No	
5. Add to grounds of possible D/A under cl. 31.2 if PBL doesn't ensure all relevant subsidiaries execute a New Guarantee Agreement in accordance with the Deed of Undertaking	No	
6. Crown to retain current market share of Commission based players' business in Victoria	No Yes	whole of Govt issue.
7. All Board meetings of Crown to be held in Melbourne.	No	
8. All senior management meetings senior management of Crown to be based in Melbourne.	No	
9. All Crown bank accounts to be based in Melbourne.	No	
10. ^{→ Keep Gov. Secretary based in Melbourne.} Any gaming interests outside Victoria not to be used as leverage for the Government's or Authority's determination of any tax rates or fees.	Yes	whole of Govt issue
11. The following information to be provided to the Authority	No	
(a) any new subsidiary of PBL, to be provided within 30 days of each creation or acquisition		
(b) A report on Crown's annual budget, to be provided by 15 July of the financial year to which the budget applies.		
(c) Annual report by (date?) of each year on Crown's internal and external audit programs and any changes to the programs, to be provided within 30 days of each change.		

Suggested Amendment	Refer to GPU?
(d) Quarterly reports on adherence to or divergence from the budget and the internal and external audit programs.	
(e) Membership of Crown's Compliance Committee and any changes to the reporting structure and membership of the committee, to be provided within 30 days of each change.	
(f) Compliance Committee agendas, papers and minutes of meetings, to be provided within 30 days of each meeting.	
<i>made available to O&R staff.</i>	
12. <i>Minimum audit requirements</i>	

13. *Compliance Committee to be a Board based committee + to include at least one independent director.
+ not to be changed without prior written approval of the Authority.*

From: Sylvia Grobtuch on 09/10/2003 01:16 PM
To: Bill Balgowan/OGR@Ogr, Rowena Scheffer/OGR@Ogr, Lyn Corneliusen/OGR@Ogr, Michael Lee/OGR@Ogr, Rowan Harris/OGR@Ogr, Catherine Carr/OGR@Ogr
cc: Ken Mcleod/OGR@Ogr, Peter Cohen/OGR@Ogr
Subject: Review of Casino Agreement - the confidentiality of Sub-Committee material

Thanks for attending the Sub-Committee meeting yesterday and for all of your contributions to date. We are making some good progress, and I will organise a time for the Working Party to meet again shortly.

Peter and I have discussed issues of confidentiality which arose from yesterday's Sub-Committee meeting. The Sub-Committee made it clear that its role is distinct from that of Government and that, if there are matters they identify as suitable for referral to the Minister, they will formally refer them to him (and not to GPU directly).

Accordingly, please do not discuss any of the matters under review with GPU or any other external persons or bodies, unless the Authority has approved this occurring on its behalf. You may of course continue to obtain information from other regulators on the usual confidential basis.

Sylvia

Review of the Casino Agreement ("CA")

Minutes of Meeting of the OGR Working Party on Wednesday 1 October 2003

Attendees: Sylvia Grobtuch (Chair), Bill Balgowan, Rowena Scheffer, Rowan Harris and Mike Lee.

Action Items

1. Mike to compare 8th Deed of Variation of the CA with the previous CA to prepare a list of the amendments effected by the Variation and to check any errors in the conformed copy.
2. Rowena to chase up letter from Minister to Chairman approving review of Casino Agreement
3. Rowena to liaise with Secretariat Manager to arrange first meeting of the Sub-Committee next week.
4. Rowan to research debt/equity ratios of other casino businesses.
5. Bill to start identifying issues that the Sub-Committee should be recommended to consider when reviewing the CA.
6. By next meeting, each member of working party to be familiar with the Triennial Review Report and the Report of the Commercial Compliance Working Party.
7. Rowena to dig out 'pre-signed' versions of the CA that describe the information the casino operator must submit to the Authority.

Still to do:

- Draft letter to Maddocks. Lawyers.
- Inquiries with interstate casino regulatory agencies regarding any contractual or statutory restrictions on conduct of casino business or competing businesses (by letter from Chairman or by phone inquiry first?)
- Draw up agenda for Sub-Committee meeting on 8 October 2003.

Next Meeting: 2.00 pm, Monday 6 October 2003 (brought forward from 8 October because of Sub-Committee Meeting on that day).



Office of Gambling Regulation

Mr Rowen Craigie
 Chief Executive Officer
 Crown Limited
 8 Whiteman Street
 SOUTHBANK VIC 3006

Level 5, 35 Spring Street
 Melbourne Victoria 3000
 Australia
 PO Box 1988R Melbourne
 Victoria 3001 Australia
 Telephone: +61 3 9651 3333
 Facsimile: +61 3 9651 3777
 website: www.ogr.vic.gov.au

26 SEP 2003

Dear Mr Craigie *Rowen*

PROPOSED VARIATION OF THE CASINO AGREEMENT – REMOVAL OF THE ‘SINGLE PURPOSE’ RESTRICTION

The Victorian Casino and Gaming Authority has considered the request of Crown Limited (Crown) to delete paragraph 22.1(p) of the Casino Agreement and thereby remove the restriction on Crown’s ability to conduct non-complementary businesses without the Authority’s approval.

At its meeting on 23 September 2003, the Authority decided that it is prepared to consider Crown’s request further.

The Authority has established a sub-committee to review the Casino Agreement, with a view to amending it, and has agreed that the Sub-Committee will give priority to consideration of Crown’s request regarding clause 22.1(p) as part of the whole review.

To assist the Sub-Committee I have been asked by the Authority to establish a working party of Office of Gambling Regulation officers, which I have done.

You have requested information as to what matters need to be considered when determining how best to approach the removal of the ‘single purpose’ restriction. I am not yet in a position to advance proposals as to these matters. However, I can advise that the Working Party will be considering proposals which produce the same or similar outcomes for the State as provided by the ‘single purpose’ restriction. In this regard, I am happy to provide you with a summary of the reasons for the imposition of the ‘single purpose’ restriction and the benefits it provides to the State. They are:

- maintaining the Melbourne Casino and Entertainment Complex as a world quality facility and as an Asset of the State;
- to maximise for Victoria the employment benefits generated by a large business;
- preservation of Victoria’s significant share of the gaming market in Australia;

- preservation of Victoria's significant market share of the commission based player business;
- to ensure the casino operator does not have a conflict of interest between its obligations to Victoria and obligations that would arise from operating a competing business in another State or Territory;
- retention of the State's reputation, and the reputation of the Melbourne Casino and Entertainment Complex in particular, as a premier tourist destination; and
- to ensure the casino operator remains focussed on managing and operating the Melbourne Casino at a best practice standard.

This is not a comprehensive list of the reasons and benefits that may be considered by the Authority and the Minister for Gaming when deliberating Crown's request.

The Working Party will be in contact with you shortly regarding any information it may require you to provide to assist it in determining Crown's request as quickly as possible.

Yours sincerely



PETER COHEN
Acting Director of Gaming and Betting
Acting Director of Casino Surveillance



Office of Gambling Regulation

FACSIMILE COVER SHEET OFFICIAL CORRESPONDENCE

TO:	Mr Rowen Craigie, Chief Executive Officer, Crown Limited	
FAX NO:	9292 7257	
FROM:	Mr Peter Cohen Acting Director of Gaming and Betting Acting Director of Casino Surveillance	
FAX No:		
DATE:	26 September 2003	
SUBJECT:	Review of the Casino Agreement	
No. Pages including cover sheet	Three	

MESSAGE:

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MESSAGE CONFIRMATION

26/09/2003 17:32
ID=OFFICE GAMBLING REGULATION NO2

DATE	TIME	S.R-TIME	DISTANT STATION ID	MODE	PAGES	RESULT
26/09	17:29	00'59"	61392927257	CALLING	03	OK 0000

Auth. Paper of Sept. 03

OFFICE OF GAMBLING REGULATION

REVIEW OF THE CASINO AGREEMENT

PURPOSE

1. To inform Members of the Minister's response to the Authority's indication that it intends to review the Casino Agreement ("the Agreement") and to recommend a course of action for reviewing the Agreement.

BACKGROUND

2. By letter of 5 August 2003, the Chairman asked the Minister for Gaming for his initial approval of the Authority's intention to commence a review of the terms of the Casino Agreement as soon as possible, with a view to renegotiating those terms with Crown Limited. A copy of the Chairman's letter is at **Attachment 1**. The Director of Gaming and Betting made a similar request of the Minister with a Briefing Note of 28 July 2003 that explained the purpose and contents of the Casino Agreement.
3. In response to the Briefing Note the Minister agreed to this request. At the time of writing this paper, the Minister's affirmative response to the Chairman's letter had been drafted, as requested by the Minister.

COMMENTS

4. In seeking the Minister's approval on behalf of the Authority, the Chairman undertook that the Authority will seek the Minister's prior written approval of all proposed changes to the Agreement, in accordance with clause 4 of the Agreement, and will also liaise with the Director, Gaming and Racing, in relation to any matters that might be relevant to Government policy.
5. A review of the Casino Agreement will require-
 - an assessment of the purpose, scope and deficiencies of the Agreement;
 - an assessment of what the Authority would like the Agreement to achieve;
 - consideration of what changes Crown would like to be made to the Agreement;
 - liaising with the Director, Gaming and Racing, regarding the effect of Government policy on proposed changes to the Agreement;
 - negotiation with Crown regarding proposed changes to the Agreement;
 - submission of the proposed amendments to the Minister for his approval in writing; and
 - execution of the amended Agreement.
6. It is suggested that an efficient approach to managing this project will be for the Authority to establish a sub-committee, to be assisted by a working party comprising some appropriate members of staff of the Office of Gambling Regulation.

Specific Request From Crown Regarding Single Purpose Restriction

7. By letter of 25 August 2003 to the Chairman of the Authority, Crown has asked for the "single purpose entity restriction" to be deleted. A copy of Crown's letter is at **Attachment 2**. Copies of the relevant clauses in the Casino Agreement are at **Attachment 3**. Crown also wrote to the Minister with the same request. A copy of that letter is at **Attachment 4**.
8. Crown has indicated to the Director of Gaming and Betting that it would like the Authority to determine this request as soon as possible, ahead of the Authority's proposed review of the whole Agreement.
9. Crown states it does not know the original reason for this restriction and is unaware of any other casino or gambling operator in Australia that is limited in this way. The reasons for the restriction are explained below.

History of clause 22.1 (p)

10. In an early draft of the Casino Agreement, drafted by Minter Ellison, Solicitors in mid 1993 for the VCCA, the relevant clauses provided:

“(q) the Company must not carry on or conduct any business other than the businesses contemplated by or authorised under this document [the Casino Agreement] and the Casino Licence except with the prior written approval of the Authority; and

(p) the Company must not establish or acquire a Subsidiary except with the prior written approval of the Authority.”

11. On 9 August 1993, Crown's solicitors, Blake Dawson Waldron (“Blakes”), asked for these two clauses to be amended (as underlined) to read as follows:

“(p) the Company must not carry on or conduct any business other than the businesses contemplated by or authorised under this document and the Casino Licence or incidental to or complementary with those businesses except with the prior written approval of the Authority; and

(q) the Company must not establish or acquire a Subsidiary unless it relates to an incidental or complementary business referred to in paragraph (p) except with the prior written approval of the Authority.”

For the purposes of paragraphs (p) and (q), a business is incidental or complementary to the contemplated businesses if a dominant purpose of the business is to operate in support of or in conjunction with the contemplated businesses.”

[Explanation – further clarification of meaning of incidental or complementary as requested of Blakes by Minter Ellison.]

12. Blakes' suggestion was accepted by the VCCA after the VCCA made the following amendment to the third paragraph (underlined).

“22.4 For the purposes of paragraphs (p) and (q) a business is incidental or complementary to the contemplated businesses if a dominant purpose of the business is to operate in support of and in conjunction with the contemplated businesses in order to increase or preserve the revenue of those contemplated businesses.”

13. The Agreement was signed in that form by Crown and the VCCA on 21 September 1993, after the Minister had given his written consent.
14. When Publishing and Broadcasting Limited ("PBL") merged with Crown in June 1999, the Casino Agreement was amended with the addition of the following paragraph immediately after paragraph (q):
 - (r) the Holding Company Group [the PBL Group of companies], if it pursues anywhere in Australia a business similar to that of the Company [Crown], will use its best endeavours to ensure that such business is conducted in a manner:
 - (i) which is beneficial both to that business and to the Company and which promotes tourism, employment and economic development generally in the State of Victoria; and
 - (ii) which is not detrimental to the Company's interests."
15. The purpose of this amendment was to acknowledge that, while PBL would not be stopped from purchasing a casino interstate, if it did, it could not operate that casino to the detriment of the Melbourne Casino. The restriction on Crown remained in place.

Reasons for the Single Purpose Restriction

16. There are a number of reasons for the Single Purpose Restriction on Crown and PBL:
 1. To ensure that the employment benefits of operating a large casino remain in Victoria. The Restriction ensures that Crown does not shift management of the Melbourne Casino interstate where it might otherwise own and operate another casino. It was reported in the media that, when permitting Tabcorp Holdings Limited to buy Jupiters Casino, the Queensland Government made it a condition that Tabcorp operate its Casino Division from Brisbane.
 2. To prevent the casino operator from shifting or threatening to shift significant sources of casino revenue, such as the high roller business, to an interstate or overseas casino, as a bargaining tool for reduced tax rates or to gain a commercial advantage from the Government.
 3. To ensure the casino operator avoids having a conflict of interest in operating a competing casino and is not distracted from focusing on ensuring the Melbourne Casino and Entertainment Complex does remain an important world quality tourist attraction and generates maximum revenue for the State.
 4. In the event of disciplinary action requiring the Authority to suspend or cancel the casino licence and appoint a manager under section 22 of the *Casino Control Act* 1991, the process could be hampered by the likelihood of such an action having an adverse impact on some other entwined casino business owned by Crown and probably using the Crown name.

Comparison with other casino operators and Victorian gaming operators

17. Crown's comparison with Tabcorp and Tattersall's fails to take into account that the Melbourne Casino is constructed on land owned by the State and leased to Crown for 99 years. Crown is obliged to maintain and update the entire Complex for the term of the lease. The lease does not contain a right of renewal.

18. The State does not have a vested interest in Tabcorp's and Tattersall's gaming capital infrastructure in Victoria. Tabcorp's interstate expansion does not create a conflict with the source of revenue its gaming operations provide to the State.
19. Crown asserts that no other Australian casino is subject to the Single Purpose clause. This is not correct. It is believed that the Star City Casino is subject to a virtually identical "single purpose" clause in its casino operations agreement, although this still needs to be confirmed. (Note that this is confidential information of which Crown may not be aware and it should not be publicly disclosed.)

RECOMMENDATION

20. That Members agree –
 - (a) to establish a sub-committee to review the Casino Agreement, with a view to amending it;
 - (b) to request the Director of Gaming and Betting to allocate appropriate members of OGR staff to assist the Authority's sub-committee in this task; and
 - (c) in relation to Crown's request to remove the single purpose restriction –
 - (i) to advise Crown that the Authority is prepared to consider Crown's request further, for which the letter to Crown is to be settled by the Chairman;
 - (ii) that this item be the first order of business of the sub-committee;
 - (iii) that the sub-committee is to gather the information required to progress this issue, such as research into the position of other casinos interstate and a detailed submission from Crown on its plans; and
 - (iv) that the sub-committee is to identify outcomes that are desired by the State and the Authority and develop options, in conjunction with external legal advice, that could achieve the desired outcomes.

Recommended:

PETER COHEN

Acting Director of Gaming and Betting

Acting Director of Casino Surveillance

CCRM: 2001/0147/00001



Minister For Gaming

55 Collins Street,
Melbourne, Victoria 3000
GPO Box 4509RR
Melbourne, Victoria 3001
Telephone: (03) 9651 9320
Facsimile: (03) 9651 9915

1 2 SEP 2003
RECEIVED
1 6 SEP 2003
REGISTRATION

Mr Brian Forrest
Chairman
Victorian Casino and Gaming Authority
Level 5, 35 Spring Street
MELBOURNE VIC 3000

Dear Mr Forrest *Brian*

REVIEW OF THE CASINO AGREEMENT

I refer to your letter of 5 August 2003 advising of the intention of the Victorian Casino and Gaming Authority to commence a review of the terms of the Casino Agreement with a view to renegotiating those terms with Crown Limited.

I approve of such a course of action, noting that the Authority will seek my prior written approval of any proposed changes to the Agreement and will liaise with the Director, Gaming and Racing, in relation to any matters that might be relevant to Government policy.

Yours sincerely



JOHN PANDAZOPOULOS MP
Minister for Gaming



15/08/2003 12:29 +61 3 9292 77
+61-3-9292-77

CROWN CASINO PAGE 01/03

CONF: 2003/0078/00138



Crown Limited
8 Whitlam Street
SOUTHBANK VIC 3006
ACN 006 973 262

Telephone: 61 3 9292 7234
Facsimile: 61 3 9292 7730

**EXECUTIVE OFFICE
FACSIMILE**

Date: Tuesday, 26 August 2003
To: Peter Cohen
Company: Office of Gambling Regulation
Facsimile No: (03) 9651 4999
From: Rowen Craigie
Subject: Proposed Variation of the Casino Agreement
Total Pages: (Including this page) 3

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Christie
Please copy to
Rowena / Bill & me.
~~Rowena~~
This one to Rowena for her
file
Sylvia 01/09/03

Sally
This letter is addressed to Brian,
though faxed to me - please
ensure Brian has a copy.

Peter 26/8/03

*Done
ES 27/8/03*

→ *Sylvia*
for your attention please
*Peter
21/8/03*



ROWEN CRAIGIE
Chief Executive Officer

Telephone (61-3) 9292 7234
Facsimile (61-3) 9292 7257

25 August 2003

Mr. Brian Forrest
Chairman
Victorian Casino and Gaming Authority
Level 5
35 Spring Street
MELBOURNE VIC 3000

Dear Brian

Proposed Variation of the Casino Agreement – Removal of the "Single Purpose Restriction"

The purpose of this letter is to request a variation of the Casino Agreement by deletion of paragraph 22.1(p), which is referred to generally as the "single purpose entity restriction".

That restriction prevents Crown from conducting any business other than the Melbourne Casino without the prior written approval of the Victorian Casino and Gaming Authority.

Crown does not know the original reason for this restriction and is unaware of any other casino or gambling operator in Australia that is limited in this way. For example, TABCORP and Tattersall's have extensive and diverse gambling operations throughout Australia and have publicly flagged an interest in overseas diversification.

Further, given the Victorian Government's stated commitment to promote the export oriented development of Victorian companies and industries, it is incongruous that one of Victoria's most successful companies should be restrained from competing both nationally and internationally.

At present, Crown is recognised as one of the best casinos in the world. Crown currently has the greatest market share of international high roller business of any casino in the world. This segment of Crown's operation generates hundreds of millions of dollars of foreign revenue and the resultant taxation revenue to the State. The flow on benefits from the associated high end international tourism to Victoria are also significant.

The gambling industries in Australia, USA and Asia worldwide are competing worldwide to be at the forefront of technology, marketing, training and expertise. In particular, it is seen currently that there are significant advantages to be gained by broadening the activities of a gambling operator beyond a single property or gambling product.

Mr. Brian Forrest
Victorian Casino and Gaming Authority



Page 2
25 August 2003

Crown wishes to retain its current leadership position. To do so, Crown considers that it needs to be able to respond to rapid industry and technological changes that are taking place. Should Crown find it necessary to expand its operations so as to both protect and grow its market share, Crown submits that it is in the interests of both the State and Crown that Crown be allowed to do so.

The Australian and international casino markets are currently undergoing a period of rationalisation of the number of operators, even though new markets are emerging. Crown believes that there is an appreciable risk that the size and scale of merged operations both in Australia and worldwide will make it difficult for Crown to continue to compete effectively in key areas, which in time, will see Crown's position and market share eroded.

Accordingly, Crown requests that the single purpose entity restriction is deleted from the Agreement.

I have separately written to the Minister for Gaming seeking his approval to this request, in accordance with clause 4 of the Agreement.

Should you require any additional information I would be happy to discuss this further.

Yours sincerely



Rowen Craigie
Chief Executive Officer

02 07 2013 07:36 FAX

001



~~Mrs~~ Rowers
for ~~Rowers~~ your file on
his matter pls. Sylvia 3/9/03.

FACSIMILE TRANSMISSION
FROM THE OFFICE OF THE MINISTER FOR GAMING

TO Sylvia Grobtuch
FROM Kerri Hereward
DATE 3 September 2003
PAGES (incl. this page) Three
SUBJECT Crown letter

Sylvia, Niki requested that I provide you with a copy of this (though you may have already seen it).

cheers,

Kerri Hereward
Department Liaison Officer
Ph: [REDACTED]

02:07, 2013 07:36 FAX

002



ROWEN CRAIGIE
Chief Executive Officer

25 August 2003

The Hon John Pandazopoulos MP
Minister for Gaming
Level 15
55 Collins Street
MELBOURNE VIC 3000

Dear Minister

Proposed Variation of the Casino Agreement – Removal of the “Single Purpose Restriction”

I am writing to advise that Crown has written to the Victorian Casino and Gaming Authority to request a variation of the Casino Agreement by deletion of paragraph 22.1(p), which is referred to generally as the ‘single purpose entity restriction’.

That restriction prevents Crown from conducting any business other than the Melbourne Casino without the prior written approval of the Victorian Casino and Gaming Authority.

Crown does not know the original reason for this restriction and is unaware of any other casino or gambling operator in Australia that is limited in this way. For example, TABCORP and Tattersall’s have extensive and diverse gambling operations throughout Australia and have publicly flagged an interest in overseas diversification.

Further, given the Victorian Government’s stated commitment to promote the export oriented development of Victorian companies and industries, it is incongruous that one of Victoria’s most successful companies should be restrained from competing both nationally and internationally.

At present, Crown is recognised as one of the best casinos in the world. Crown currently has the greatest market share of international high roller business of any casino in the world. This segment of Crown’s operation generates hundreds of millions of dollars of foreign revenue and the resultant taxation revenue to the State. The flow on benefits from the associated high end international tourism to Victoria are also significant.

The gambling industries in Australia, USA and Asia worldwide are competing worldwide to be at the forefront of technology, marketing, training and expertise. In particular, it is seen currently that there are significant advantages to be gained by broadening the activities of a gambling operator beyond a single property or gambling product.



The Hon. John Pandazopoulos MP

Page 2
25 August 2003

Crown wishes to retain its current leadership position. To do so, Crown considers that it needs to be able to respond to rapid industry and technological changes that are taking place. Should Crown find it necessary to expand its operations so as to both protect and grow its market share, Crown submits that it is in the interests of both the State and Crown that Crown be allowed to do so.

The Australian and international casino markets are currently undergoing a period of rationalisation of the number of operators, even though new markets are emerging. Crown believes that there is an appreciable risk that the size and scale of merged operations both in Australia and worldwide will make it difficult for Crown to continue to compete effectively in key areas, which in time, will see Crown's position and market share eroded.

Crown has proposed to the VCGA that the single purpose entity restriction is deleted from the Agreement.

Accordingly, we seek your approval pursuant to clause 4 of the Agreement for the variation to the Agreement.

Should you require any additional information I would be happy to discuss this further.

Yours sincerely

Rowen Craigie
Chief Executive Officer



VICTORIAN CASINO AND GAMING AUTHORITY

05 AUG 2003

The Hon John Pandazopoulos MP
 Minister for Gaming
 Level 15
 55 Collins Street
 MELBOURNE VIC 3000

Dear Minister

REVIEW OF THE CASINO AGREEMENT

In the Report of 30 June 2003 regarding the Third Triennial Review of the Casino Operator and Licence, the Victorian Casino and Gaming Authority recommended that the Casino Agreement with Crown Limited should be reviewed.

The purpose of this letter is to seek your initial approval of the Authority's intention to commence a review of the terms of the Casino Agreement as soon as possible, with a view to renegotiating those terms with Crown Limited.

The Casino Agreement was entered into by the Authority, under section 142 of the *Casino Control Act 1991* ("the Act"), on 21 September 1993.

Under section 142(4) of the Act, the Authority may amend or vary an existing agreement into which it entered before 19 June 2003 (the commencement date of section 17 of the **Gaming Legislation (Amendment) Act 2002**).

Clause 4 of the Casino Agreement states that "*Subject to the prior approval in writing of the Minister, the parties may from time to time by agreement in writing vary any provision of this document.*"

The reasons for a review, as outlined in the Third Triennial Review Report, are:

- to realign Crown's obligation as the casino licensee to provide information to the Authority with the Authority's obligation to regulate certain minimum corporate standards for Crown;
- to provide for the removal of redundant clauses relating to the construction of the Casino and Casino Complex;

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 15 Spring Street
 Melbourne

Vic 3000
 PO Box 1988R
 Melbourne

Vic 3001

tel 03 9651 3333

fax 03 9651 3777

- to make the Agreement more relevant by reflecting the changed corporate structure of the casino operator; and
- to make Crown's insurance obligations under Agreement more relevant in light of the altered insurance environment since 1993.

In accordance with clause 4 of the Agreement, the Authority will seek your prior written approval of any proposed changes to the Agreement. The Authority will also liaise with the Director, Gaming and Racing in relation to any matters that might be relevant to Government policy.

Yours sincerely



BRIAN FORREST
Chairman

**Authority Meeting
Private Session**

- ✓ that the Authority supports the Crown Limited policy as set out in its correspondence and recommends that the policy as it relates to unidentifiable monies and identifiable jackpot monies be implemented immediately;
- ✓ that the Authority will be recommending legislative amendment to implement the suggested policy in relation to identifiable non-jackpot winnings of excluded persons and minors; and
- the Chairman write to the Minister for Gaming suggesting legislative amendment to implement the policy in relation to identifiable winnings, both jackpot and non-jackpot.

4(b) Crown Limited – Insurance Policies under the Casino Agreement

Members considered a paper regarding correspondence received from Crown Limited in response to an invitation from the Authority to provide an explanation in relation to specified aspects of the casino operator's compliance with its insurance obligations under clause 35 of the Casino Agreement.

Members noted that:

- the Crown Limited correspondence suggests that the casino operator is fully compliant with the provisions of the Casino Agreement;
- in the report for the Third Triennial Review, the Authority endorses the Crown Limited request to review the Casino Agreement, including the requirements relating to insurance policies for the Melbourne building and business;
- under section 142 of the *Casino Control Act* 1991 the Authority may, with the approval of the Minister, enter into agreements (on behalf of the State) for or in connection with the establishment and operation of casinos; and
- clause 4 of the Casino Agreement states that "Subject to the prior approval in writing of the Minister, the parties may from time to time by agreement in writing vary any provision of this document".

4(b) Crown Limited – Insurance Policies under the Casino Agreement (continued)

Members agreed that:

- pursuant to the provisions of section 142 of the *Casino Control Act* 1991 and clause 4 of the Casino Agreement, the approval of the Minister for Gaming be sought to review and update the Casino Agreement; and
- a decision regarding whether Crown Limited is sufficiently compliant with clause 35 of the Casino Agreement be deferred until after the Minister for Gaming has received the report of the Third Triennial Review and responded to the Authority's request for approval to review and update the Casino Agreement.

*Extract from Ministerial brief by Sarah Harvey to Minister.
- Sept 2003*

Single Entity Clause in the Casino Agreement

Crown seeks an amendment to the Casino Agreement. This Agreement is between the Crown and the Authority and may be amended by the Authority at any time with the consent of the Minister for Gaming (i.e. no legislative change is required).

The amendment Crown seeks is to remove clause 22.1(p), which prevents Crown from conducting any business other than the Melbourne Casino without the approval of the Authority.

The original rationale for this clause was to ensure that during the development and construction of the casino the operator remained focussed on the provision of a world class casino facility for Victoria.

Crown asserts that no other Australian casino is subject to this clause. This is not correct. At least one other major Australian casino is subject to a virtually identical "single purpose" clause in its casino agreement (note that this is confidential information of which Crown is probably not aware, and it should not be publicly disclosed).

Crown also argues that this objective is no longer appropriate given the rationalisation and consolidation of the gaming industry.

In its recent triennial review report, the Authority recommended that the Government consider renegotiation of the Casino Agreement in its entirety. It is recommended that you consider this proposal and the other amendments to the Casino Agreement sought by Crown (see below) in the context of a complete review of the Agreement. The post 2012 review of gaming operator licences may be an appropriate framework in which to conduct a review of the Agreement.

Recommendation - That you agree to a complete review of the Casino Agreement in which all issues raised by Crown will be considered



Office of Gambling Regulation

Ms Sarah Harvey
Gambling Legislation Review Unit
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Australia
PO Box 1988R Melbourne
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11 AUG 2003

Dear Sarah

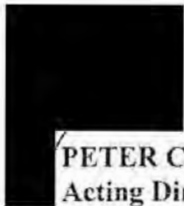
CASINO AGREEMENT

Please find enclosed a copy of the Casino Agreement to assist you in advising the Minister for Gaming on the recent submission from Crown Limited that the Casino Agreement should be amended.

Please note that the Casino Agreement is confidential. You are requested to not divulge the Agreement or any part of the Agreement to any person other than the Minister's staff or persons directly assisting the Minister in his consideration of Crown's submission. You are also requested to not copy the Agreement.

It would be appreciated if you could return this copy of the Agreement to the Office of Gambling Regulation when you have no further use for it.

Yours sincerely



PETER COHEN
Acting Director of Gaming and Betting
Acting Director of Casino Surveillance

Ministerial Brief – Minister for Gaming



Cover Sheet

Subject: REVIEW OF THE CASINO AGREEMENT

RECEIVED
 OFFICE OF THE MINISTER
 DOJ File: 29 JUL 2003
 MB No:
 PURCHASE# 15168

The Minister for Gaming

	Name:	Position:	Extn:	Signature:	Date:
Author	Rowena Scheffer	Solicitor, Legal and Legislation Branch	13279	[Redacted]	28/7/03
Supported by:	Margot Johnson	Acting Assistant Director, Legal and Legislation Branch	13115	[Redacted]	28.7.03
Supported by:	Peter Cohen	Acting Director of Gaming and Betting Acting Director of Casino Surveillance	13118	[Redacted]	28.7.03

Approval Required By: N/A

approved
 [Redacted]
 28/7/03

Recommendation/s

1.	That you give initial approval to the Victorian Casino and Gaming Authority commencing a review of the Casino Agreement with a view to amending the Agreement.	<input checked="" type="checkbox"/> Approved <input type="checkbox"/> Not Approved
----	--	---

By the Minister for Gaming:

[Redacted Signature]

JOHN PANDAZOPOULOS MP
 Minister for Gaming
 Date: 2/8

Ministerial Brief – Minister for Gaming

Subject: REVIEW OF THE CASINO AGREEMENT

Purpose:

1. To provide you with background information regarding the Casino Agreement, which the Victorian Casino and Gaming Authority has recommended be reviewed with a view to amending it.

Background:

2. In the Report of 30 June 2003 regarding the Third Triennial Review of the Casino Operator and Licence, the Authority recommended that the Casino Agreement with Crown Limited ("Crown") should be reviewed.
3. The Casino Agreement was entered into by the Authority, under section 142 of the *Casino Control Act 1991* ("the Act"), on 21 September 1993. It is one of about twelve "Transaction" agreements that support the licensing, construction and regulation of the Melbourne Casino.
4. A copy of the Casino Agreement is attached. It is a confidential document (clause 36) and has never been released to the public. Disclosure to you is permitted under clause 36.1(e) as it is necessary for the purpose of obtaining your consent for an amendment to the Agreement.
5. The parties to the Casino Agreement are the Authority and Crown. The matters that the Agreement deals with include:
 - The development of the Melbourne Casino, to the point of completion.
 - Provision of facilities for the Authority's casino inspectors.
 - Warranties and conditions relating to the Crown's corporate structure and corporate governance, some of which require the Authority's approval before they can be changed.
 - The Authority's power to inspect company records upon demand.
 - Automatic disclosure to the Authority of specified information relevant to an ongoing assessment of Crown's assets and liabilities, financial position, profits and losses and the prospects of Crown.
 - Grant of the casino licence and rights of certain exclusivity.
 - Limits on encumbrances over the assets and rights of Crown.
 - A breach of the Agreement that is not remedied within a specified time can be a ground for disciplinary action under the Act.
 - Specified minimum insurance requirements to be maintained by Crown and approved by the Authority.
6. Under section 142(4) of the Act, the Authority may amend or vary an existing agreement into which it entered before 19 June 2003 (being the commencement

date of section 17 of the *Gaming Legislation (Amendment) Act 2002*). This includes the Casino Agreement.

7. Clause 4 of the Casino Agreement states that “*Subject to the prior approval in writing of the Minister, the parties may from time to time by agreement in writing vary any provision of this document.*”
8. Since 1993, the Casino Agreement has been amended eight times. The majority of amendments have been to clause 22 relating to Crown Limited’s corporate structure and corporate governance.

Issues/Comments:

9. The main reasons for a review, as outlined in the Third Triennial Review Report, are:
 - to realign Crown’s obligation to provide information to the Authority with the Authority’s function to regulate certain minimum corporate standards for Crown;
 - to provide for the removal of redundant clauses, such as those relating to the establishment of the Temporary Casino and the construction of Melbourne Casino;
 - to make the Agreement more relevant by reflecting the changed corporate structure of the casino operator; and
 - to make Crown’s insurance obligations under Agreement more relevant in light of the altered insurance environment since 1993. The Authority has been waiving Crown’s obligation to comply with some specified levels of insurance cover and excess as the Authority accepts that these aspects of insurance cover are not available in today’s tougher insurance market.
10. There are many other minor aspects of the Agreement that need updating to reflect Crown’s ownership by Publishing and Broadcasting Limited (“PBL”) and the fact that Crown is not a publicly listed company. Only a few consequences of these changes were acknowledged when the Agreement was last amended on 2 June 1999 when PBL bought Crown.

Proposed Procedure

11. In accordance with clause 4 of the Casino Agreement, the Authority will seek your prior written approval of all proposed changes to the Agreement.
12. The Authority will also liaise with the Director, Gaming and Racing in relation to any matters that might be relevant to Government policy.

Options:

13. You have two options. **Option 1.** The first option is to advise the Authority that you will not approve any changes to the Agreement, which will terminate the proposed review.
14. **Option 2.** The second option is for you to give initial approval to the Authority to commence a review. This will allow you to be subsequently briefed in detail

about exactly which amendments might be proposed and why. Even though you will have given initial approval for a review, you retain the power under clause 4 of the Casino Agreement to veto any specific proposed amendments you do not agree should be made. **This is the recommended option.**

Consultation

15. Crown Limited requested in its submission to the Authority for the Third Triennial Review that the Casino Agreement be reviewed and updated.

Recommendation

16. That you give initial approval to the Victorian Casino and Gaming Authority commencing a review of the Casino Agreement with a view to amending the Agreement.

Author: Rowena Scheffer

Tel Ext No: [REDACTED]

Date: 28 July 2003

VICTORIAN CASINO CONTROL AUTHORITY

STRICTLY PRIVATE AND CONFIDENTIAL

CORPORATE, OWNERSHIP AND FINANCIAL STRUCTURE

POLICY PAPER

1. OBJECTIVE

The objective of this paper is to recommend policies for adoption by the Authority regarding corporate, ownership and financing structure requirements for the Melbourne Casino.

The primary objective for the Authority should be to determine corporate, ownership and financial structures for the Casino which are financially viable and sustainable. This will allow the Authority to meet its statutory requirements for probity assessment and performance review and to retain appropriate controls over the Casino Licence and operations.

2. ISSUES

There are three major issues involved:

- (i) financial and corporate structuring issues including:
 - allowing flexibility to submit commercially viable financial structures; and
 - restrictions on mortgaging the Casino Licence to financiers;
- (ii) the controlling shareholders of the owner/operator of the Casino must be subjected to the appropriate probity checks; and
- (iii) restrictions to be placed on foreign ownership of the Casino.

3. CORPORATE STRUCTURE

3.1 Objective

The Authority has the ultimate control of the Casino, its Licence and operations through the specific powers provided under the Act and the terms which it may require in the Management Agreement with the entities holding the Casino Licence and operating the Casino.

The structures adopted by the consortia should not detract from that ultimate control.

3.2 Structure

The Registrants should be free to submit structural alternatives which suit their particular needs. Nonetheless, the Authority should have a preference for a structure of the type illustrated in Attachment 1. From a structural perspective, the diagram illustrates a separation of the Licence ownership from the management or operational activity involved in the Melbourne Casino Project. It also envisages that ownership of the licensee entity ("Licensee") and the operator entity ("Operator") may not necessarily be identical. The purpose of this split structure is to provide the Authority with greater flexibility in ensuring that the Casino, its operations and ownership are maintained at the standards which are prescribed by the Act and by the Authority from time to time. These matters are more fully described in Attachment 1.

In the event that the Preferred Finalist requires an alternative structure, the Authority should ensure that it is still capable of effectively controlling the Licence and the operations of the Casino through the Management Agreement and the power to appoint a manager in place of the Licensee.

A structure which does not separate the rights and obligations of the Licensee and Operator, whilst effectively reducing the flexibility that the Authority may have to deal with the various potential breaches of probity, (as outlined in Attachment 1) may still be an appropriate structure. The powers vested in the Authority to control the Licence and operations of the Casino are equally as effective where the Licensee is also the Operator of the Casino.

3.3 Legal Implications

The Act has been drafted so as to ostensibly exclude the preferred corporate structure as outlined above. The Act does not contemplate a structure whereby the Licensee and the Operator are separate entities.

It is envisaged that a Management Agreement between the Licensee and the Authority will be legislated and that potentially this agreement could facilitate amendments to the Act to address the preferred corporate structure.

Clearly if the Preferred Finalist does not require any amendments to the Act to accommodate its preferred corporate structure and that, in the opinion of the Authority, the structure is appropriate then amending legislation for this purpose will not be required.

3.4 Form of Legal Entity

The Registrant should be free to adopt whichever form of entity best suits their financial and operational parameters. In this context, Registrants could use as the Licensee or the Operator any of the following entities:

- (i) a public or private company;
- (ii) a limited or unlimited partnership;
- (iii) a listed or unlisted unit trust;
- (iv) direct ownership by founding or principal investors ("Founding Shareholders"); or
- (v) an incorporated or unincorporated joint venture

It is noted here that the recent Federal Budget altered the tax treatment of partnerships which may reduce their relevance to the Casino project. Whichever form of entity is adopted, the Authority must:

- (a) be able to satisfy itself that it is able to identify the individuals who ultimately control the investment in the respective entities;
- (b) require the lodgement of six monthly financial accounts and annual consolidated audited accounts for both the Licensee and the Operator;
- (c) be able to prohibit or restrict the transfer of interests in both the Licensee and the Operator (discussed further under Section 4 Ownership Structures, below);
- (d) if any party having an interest in the Licensee or Operator fails to satisfy probity or other relevant requirements, be able to ensure the disposal of that party's interest.

3.5 Recommendations

- The corporate structure proposals from Registrants will require independent accounting/legal opinion that the structures are viable and satisfy legal requirements, including those required by the Authority, particularly so far as they relate to probity issues.
- The Authority should indicate to Registrants that it has a preferred corporate structure as detailed in Attachment 1 but that it is prepared to negotiate alternative structures where necessary.
- The Licensee and the Operator must be capable of lodging with the Authority six monthly financial accounts and annual consolidated audited financial accounts and be required to do so.
- The corporate structure must be in a form such that the Authority can be satisfied that it can trace ultimate ownership (control) of interests or shares in either the Licensee or Operator and, if need be, to effect a sale or transfer of those shares or interests.
- The Authority should be prepared to promote amending legislation to allow for the separation of the Operator and Licensee functions if requested to do so by the Preferred Finalist.

- The Authority should insist that the Management Agreement include clauses which restrict the activities of the Licensee to those associated with owning and operating a Casino.

4 OWNERSHIP STRUCTURES

4.1 Objective

There are several issues to be pursued by the Authority as follows:

- (i) maintenance of effective control of the Licence and operations of the Casino even if there is a dominating shareholder;
- (ii) participation by the general public in a share float;
- (iii) considerations of restrictions on foreign ownership.

4.2 Control

Commercially, it is important to commence with a scenario of sufficient flexibility to allow for one or more Founding Shareholder(s) to have corporate control of the Licensee. Both the financiers and the Authority will benefit if a reputable dominant Founding Shareholder is primarily responsible for the development of the Casino Project giving comfort (or even guarantees) that it will be constructed on time and within budget. However, this does raise some issues in relation to corporate control.

The Founding Shareholder(s) should be permitted to introduce additional founding shareholders during the formative years of construction development. Control of the Casino Licence by the Authority is capable of being maintained by use of the appropriate probity and supervision mechanisms.

It may also be appropriate for one or more of the Founding Shareholders to hold a controlling interest in the Operator, (where the Operator is a separate entity to the Licensee as contemplated in 2.2(b) above).

The principal concerns for the Authority of a dominating shareholder are as follows:

- (i) Probity risks;
- (ii) Commercial management;
- (iii) The Authority's ability to maintain adequate control for whatever reasons, if a conflict developed with the dominating shareholder.

These concerns have been addressed by other states, especially recently in Queensland where it was stipulated that the Licensee should have no fewer than three Founding Shareholders who would have equal Board representation regardless of the relative size of each of their investments. Furthermore, the Queensland Government stipulated that a maximum of

40% of the Licensee was to be offered to the Australian public by way of a share float. Restrictions on foreign ownerships were also imposed.

It is important to explore the reasoning behind and the outcome of the Queensland experience before concluding on an appropriate shareholding structure for the Melbourne Casino.

The Brisbane Licence was awarded in the second quarter of 1992 to Jupiters - an established publicly listed, Australian Unit Trust. It appears that the selection process decision making by the Queensland Government became heavily influenced by the need to achieve the particular ownership structure and in so doing may have significantly disadvantaged some contenders for the licence.

The major problems encountered by the tenderers for the Brisbane casino appear to have been centred on securing the required three Founding Shareholders and maintaining foreign ownership at only 40% of the founding shareholding. Australia, generally, has an insignificant number of investors who are willing to commit the necessary sums required of a Founding Shareholder and furthermore such investors are usually unwilling to commit to a tenderer's proposal until such time as they are awarded the casino licence. This creates the classic "chicken and egg" dilemma.

The Queensland Government apparently recognised this problem during the final stages and in an attempt to rectify the position the Government proposed to the finalists that the Queensland Public Trustee would be available to act as a Founding Shareholder provided that it was funded into its investment by the "real" founding shareholders.

Another outcome of this process was the development of a number of creative and, in some instances, artificial structures which were designed to technically comply with the Government's requirements.

It appears that in the final analysis the choice had to be made on the basis of which structure would stand the rigours of public scrutiny - clearly any technical or artificial structures would have failed this test. To re-open the tender process with different ground rules was apparently not an option.

The final decision to award the licence to Jupiters was made despite the Queensland Government's stated preference to promote competition between operators within the South East Queensland region. The final decision appears to have included this compromise and notwithstanding that Jupiters' bid may have been superior in other aspects, the compromise appears to have been forced upon the Government by it stipulating an unnecessarily rigid ownership structure at the outset.

In order to avoid a similar situation in Victoria, the Authority should rely upon the powers provided to it under the Act - particularly in relation to probity, supervision and control - rather than stipulating a particular ownership format. These powers are sufficient to ensure that a

shareholder who is a controlling shareholder cannot abuse its position to the detriment of the Victorian Government. The Authority can retain control of the Licence notwithstanding that corporate control of the Licensee or Operator is vested in one or two controlling shareholders.

4.3 Founding Shareholder(s)

In relying upon its powers the Authority should establish a flexible approach to the Founding Shareholder issue by allowing up to 100% ownership by a single founding shareholder, who may be foreign, but with strict requirements to comply with all other State and Federal laws - particularly as they relate to foreign ownership of Australian assets or corporations.

By adopting this flexible approach, the Authority may remove many of the financial obstacles which will confront consortia in securing investors for the project. It may also materially enhance the chances of success of the project and the revenue to the Government.

So as to ensure that commercial ownership and control of the Licensee and Operator remain acceptable for the purposes of the Act, the Authority should also establish strict guidelines covering the transfer and change of ownership of the shareholding of the Licensee and the Operator. In this regard the Authority should be concerned with changes in shareholding or directorships which may lead to a change in control of either the Licensee or Operator.

The Act requires that the Authority be notified of all changes in shareholding or control and specifically that all major changes be approved by the Authority. The Act does not define "major" but it is reasonable to adopt a similar approach as that used by the Australian Stock Exchange (ASX) in dealing with "substantial shareholdings" whereby the ASX is notified of all shareholdings in excess of 5% of the issued capital. The 5% threshold would appear to be a reasonable level at which the Authority can establish its approval requirements, whilst retaining its rights to investigate any share transfer or series of transfers.

It would also appear appropriate for the Authority to adopt guidelines contained in the Corporations Law in dealing with "interested parties" or "associates" for the purposes of determining the 5% threshold.

All changes in directorships should be approved by the Authority and be subject to the appropriate probity checks.

4.4 Public Ownership

The issue of public ownership by way of a public share offering may well prove to be more of a political issue than a commercial or financial issue. If Founding Shareholders are judged to be "suitable" persons to own and operate a casino and they wish to retain 100% ownership of the Licensee, (and are capable of doing so), then there appears to be little

However, for many of the reasons which have been presented above, the Authority should resist any unnecessary restrictions upon foreign Founding Shareholders.

Foreigners will need to comply with the requirements of the Foreign Acquisitions and Takeovers Act. However, to the extent that they are able to meet the requirements imposed upon them by the Foreign Investment Review Board, no further requirements should be insisted upon by the Authority. The Authority will need to ensure that a foreign bid complies with the various requirements of the Foreign Acquisition and Takeovers Act and that it is assessed as financially viable prior to any final decision being made on the granting of the Casino Licence.

4.6 Recommendations

It is recommended that the Authority adopt a flexible approach to the ownership structures whereby:

- A single Founding Shareholder who owns and controls up to 100% of the Licensee and/or the Operator be permitted ie. no maximum shareholding limit to be specified.
- There should be no restriction on foreign ownership other than as imposed by the Foreign Investment Review Board.
- The Authority should not insist on the public listing of the Licensee unless this is a political imperative. However, in the event that a public listing is deemed essential, then it should take place no later than eight years after commencement of casino operations with a preferred option of five years. The share offering to the public be set at a preferred minimum of 30% of the issued capital. However, the Authority must be willing to consider a Registrant's request to vary this minimum requirement if a particular consortium's circumstances dictate an alternative requirement or if prevailing market conditions appear likely to make it uncommercial for a public float to occur.
- Founding Shareholders be permitted to dispose of up to 100% of their shareholding provided that the Casino is developed and operating to the satisfaction of the Authority and provided that the transferee(s) meets the required standards (including probity) as established by the Authority.
- A share allotment or transfer representing 5% or more of the issued capital of the Licensee or Operator will require the Authority's approval prior to registration in the Licensee's/Operator's share register. Transfer of shares by associates (as defined in the Act) of 5% or more of the issued capital (when grouped) or transfers which may give rise to a shareholding of 5% or more (when grouped) will also require the approval of the Authority.

5. FINANCIAL STRUCTURES

The financing structure is likely to include separate construction and post construction finance facilities. The characteristics and risks attaching to each facility are different and accordingly the bankers' requirements will also differ.

5.1 Objective

The Authority should ensure that whatever financial structures are proposed they:

- are bankable and deliverable within the proposed time frame;
- do not create inappropriate financial risks for the Project; and
- do not impinge on the Authority's capacity to control the Licence.

5.2 Issues

The issues to be considered when assessing the financing structures include the debt:equity ratio, timing and return from any planned public float, tax consequences of the proposed structure, likely sources of funding and the loan security requirements.

It is important that the Authority establish policy guidelines in relation to the debt:equity ratio and the loan security requirements so far as they relate to the Casino Licence. Brief discussion of the other issues is included below.

5.3 Debt:Equity Ratio (Gearing)

The gearing which will be acceptable for each stage of the development may differ. For example, construction finance may be largely debt with minimal initial equity contribution on the proviso that subsequent equity funding (to replace much of the debt) is assured. Furthermore, the acceptable gearing ratio may vary from proposal to proposal depending upon the relative financial strengths of the sponsors and the level of support they are willing to provide in the form of guarantees, collateral security etc.

The issue of whether the Authority should nominate a maximum gearing ratio needs some consideration (eg. maximum 75% debt).

Whilst there is some evidence elsewhere in Australia which may indicate that a 50:50, debt:equity ratio is desirable, there is little justification to suggest that this ratio should be set as a mandatory minimum. It is highly likely that commercial judgements and prudence will lead to a 50:50 ratio, but in some instances it may be that a higher or lower gearing ratio is more appropriate.

The State Government's cash flow position should be protected by insisting that its fees and taxes are paid prior to interest payments and therefore in the event that there is insufficient cash flow to meet interest payments, the guarantor (if any) would be expected to make appropriate payment.

It is highly likely that the Financier would want to ensure that all payments of tax, fees etc to the Authority are made on time so as to protect the Licence. However, this degree of protection, whilst useful will not prevent the financial collapse of an over-gear'd Casino Licensee.

In the assessment of the proposals submitted by Registrants, the Finance Advisory Panel will rank proposed gearing ratios relative to the overall cash flows of the project and to the risk of non-payment of taxes and fees to the Authority. This review will give a low ranking to any proposals which are deemed to be risky.

In consideration of the foregoing it would seem inappropriate at this point for the Authority to stipulate a maximum permissible gearing ratio.

5.4 Mortgaging the Licence

The Act in effect permits the licence to be mortgaged subject to approval by the Authority. As a general proposition, the ability or otherwise of a consortium to mortgage the licence could affect the bankability of the project. Nonetheless, alternative forms of security to enable a financial structure to be considered bankable could be provided by the principal investors (Founding Shareholders). Collateral security could be effected, for example, by way of guarantees provided by such investors.

If the Licence is mortgaged in favour of financiers there is a risk, albeit a small risk, that the Licence could fall into the hands of an inexperienced operator, for example, a financier. At a practical level, however, that risk is minimal given the powers held by the Authority under the Act to suspend, to cancel or to vary the terms of the Licence. Because of the existence of those powers, the intrinsic value of a mortgage over the Licence must be regarded as questionable and the existence or otherwise of a mortgage assumes lesser importance from the point of view of the Authority.

The other consequence of these powers is that financiers are likely to approach the Authority and seek to negotiate cure periods to enable them to remedy any actual or loan default.

5.5 Other Issues

Matters relating to a public float were discussed in Section 4 above. However, a thorough review of the terms and conditions of any proposed float will be undertaken by financial consultants for the Authority to determine the likely market acceptability thereof.

Debt funds are likely to be sourced both domestically and internationally. It will be important for the Authority to assess the credibility of the Registrant's financial advisor and financial arranger to ensure that they are capable of delivering the proposed financing package.

The tax consequences of any proposed structures will be thoroughly assessed and, if necessary, Registrants will be requested to obtain tax rulings from the Commissioner of Taxation. Tax based financing should be acceptable provided all risks have been adequately identified and are borne by the Registrants.


5.6 Recommendations

The Authority should adopt a flexible approach to proposed financing structures:-

- That no limits on the gearing ratio be specified. The Authority should, however, indicate that the level of proposed equity in the Licensee will be regarded as having a direct bearing on the Authority's assessment of the financial viability of the project.
- The Authority should not permit a mortgage to be created which encumbers the Licence but should be prepared to negotiate with financiers regarding appropriate loan security.
- Accept tax based financing structures provided the Registrant bears all risks and is willing to provide tax indemnities to the Victorian Government if necessary and provide appropriate tax rulings.

6. CONCLUSIONS

The Authority is asked to note the advice of its financial advisors contained herein and to support the recommendations made in Sections 3.5, 4.6 and 5.6.


P J Connolly
Chief Executive Officer

20 August 1992

PREFERRED CORPORATE STRUCTURE

1. Corporate Structure Diagram

The diagram on Page 3 illustrates the recommended arrangements for the Authority's preferred corporate structure.

The principal feature of this recommended structure allows for the separation of the Licensee and Operator functions and provides for separate ownership structures for the Licensee and the Operator. "P" references on the diagram refer to potential breaches of probity outlined under "Operation of the Preferred Structure".

2. Operation of the Preferred Structure

The Authority is able to pursue its rights under various scenarios as outlined in Section 4.

By providing for a structure that separates the Licensee and the Operator structure the Authority is able to "quarantine" its actions to remedy any breaches of probity which may arise and thereby reduce the impact of a breach on innocent parties and minimise any loss of tax revenue to the Government.

The financiers may well require a similar structure under the terms of any financing arrangements so as to clearly identify and possibly mitigate any opportunity for loss.

3. Shareholding Structures of Operator

The Operator may be:

- (i) A wholly owned entity (subsidiary) of the Licensee
- (ii) A partly owned entity of the Licensee
- (iii) An entity which is either partly or wholly owned by one or more of the Founding Shareholder(s)
- (iv) A totally arms length entity which has no other ownership or management connection with the Licensee or the Founding Shareholder(s) (ie. a contract operator).

4. Operations of the Preferred Structure

P1 The Founding Shareholder(s) is found to have breached probity

The remedy available is for the Authority to appoint a manager to control the shares or units held in the Licensee with a view to securing a purchaser thereof.

It is envisaged that, from a practical view point, the Authority would instruct the Founding Shareholder to remedy the breach of probity or sell its shares in the Licensee in a designated time-frame, to a person suitable to the Authority, failing which the Authority will take control of the shares.

Some interaction with financiers is likely whereby they may require "step-in" rights so as to protect their rights.

P2 The Licensee is found to have breached probity

The remedy in this instance will be for the Authority to have the right to appoint a manager to assume full control and responsibility for the Licence and business of the Casino Licensee pending remedy of the probity breaches or cancellation of the licence and issue of a new licence to a new Licensee/owner.

Breaches of probity by the Licensee are considered to be financially the most serious of offences as both financier and shareholder may be substantially disadvantaged.

The Authority should also require the assignment of the Licensee's rights under the Casino Operating Agreement with the Operator. This will ensure continuity of operation. (Some negotiations may be necessary in relation to rent etc).

In order to reduce the likelihood of financial problems arising from other business dealings which may lead to the Licensee becoming an unsuitable person to hold a Licence the Authority should insist that the Licensee's activities are limited by the Management Agreement specifically to the ownership and operation of the Casino and related approved activities.

Financiers, if any, are likely to insist on similar restrictions. Therefore, the Authority should insist that the Licensee be a sole-purpose entity.

P3 The Casino Operator is found to have breached probity

In this instance the Authority will have the right to appoint its nominee as operator and assume all rights and/or reduced obligations under the Casino Operating Agreement. Matters relating to the rights of staff would need to be clearly addressed but it is envisaged that all Casino staff would be retained by the Authority's nominee (some disruptions would be inevitable). The Authority should insist that the Operator be a sole-purpose Australian based entity.

P4 A Shareholder(s) who owns more than 20% of the Casino Operator breaches probity

The remedy is similar to that described in P1 above. Additionally, the Authority would reserve the rights to act in accordance with P2 or P3 as described above in the event that it was unable to rectify the position.

Extract of Minutes of Meeting #9

- 4.9 *It was agreed that for the next Authority meeting a paper addressing the impact of confidentiality and FOI on Probity Investigations, be prepared.*

ITEM 5 CORPORATE OWNERSHIP AND FINANCIAL STRUCTURE

- 5.1 The CEO outlined the background to the development of the paper by Westpac and the key structural aspects of separation of the Casino Licensee from the Operator. The matter was discussed and various issues raised, including legislative powers to endorse such an arrangement and the benefits/complexities involved in sending further information to Registrants on the preferred corporate structure.
- 5.2 *It was agreed to defer consideration of the second recommendation under paragraph 3.5 in the paper and to amend the 5th recommendation by including the words "seek advice on" in lieu of "be prepared to promote".*
- 5.3 *The Authority adopted the following recommendations:*
- (a) *The corporate structure proposals from Registrants will require independent accounting/legal opinion that the structures are viable and satisfy legal requirements, including those required by the Authority, particularly so far as they relate to probity issues.*
 - (b) *The Licensee and the Operator must be capable of lodging with the Authority six monthly financial accounts and annual consolidated audited financial accounts and be required to do so.*
 - (c) *The corporate structure must be in a form such that the Authority can be satisfied that it can trace ultimate ownership (control) of interests or shares in either the Licensee or Operator and, if need be, to effect a sale or transfer of those shares or interests.*
 - (d) *The Authority should seek advice on amending legislation to allow for the separation of the Operator and Licensee functions if requested to do so by the Preferred Finalist.*
- 5.4 The CEO briefly addressed issues relating to ownership of the Licensee/Operator referring to experiences in Queensland and the implications for the Melbourne Casino Project.
- 5.5 After discussion, it was proposed by the Chairman that the specific recommendations in this area did not need to be approved at this time and that the main consideration was the emphasis on the Authority adopting a flexible approach in assessing Registrant's proposals.
- 5.6 *It was resolved that the Authority adopt a flexible approach to the ownership structures and that the issues listed in the paper under paragraph 4.6 Recommendations be noted.*
- 5.7 On the matter of financing structures, the Authority considered that a similar approach to that determined for ownership structures should apply.

- 5.8 *It was agreed that the Authority endorse the recommendation to adopt a flexible approach to proposed financing structures and note the specific issues listed under the recommendations in paragraph 5.6 of the paper.*

ITEM 6 DRAFT ANNUAL REPORT

- 6.1 The Chairman advised that for security reasons photographs of Authority Members or Authority staff would not be included in the report. Any other photos included in the report had to be carefully selected to ensure that the subject matter did not give any false impressions or were misleading on issues of site location or casino structure etc.
- 6.2 The CEO apologised for the inadequate quality of the draft, explaining that he had been unable to spend sufficient time editing the format due to the crisis caused by Westpac.
- 6.3 *It was agreed that any comments Members had on the draft should be submitted to the CEO by early next week (ie week commencing 31 August).*
- 6.4 *The Authority agreed that a meeting of the Finance and Audit Committee be arranged in the second week of September to approve the financial statements. It was resolved also, that the Chairman and Chief Executive be authorised to finalise the Report in time for printing and presentation to the Minister by 30 September 1992.*

ITEM 7 CHIEF EXECUTIVE'S REPORT

- 7.1 Sections 1 to 4, 6 and 7 of the report were noted.
- 7.2 Section 5 - Marriner
- 7.2.1 The CEO elaborated on the situation regarding Mr Marriner's proposal and referred to the legal opinion outlined in the paper on "Consultative Evaluation Process" (Item 7 of the Agenda).
- 7.2.2 Considerable discussion was generated on the implications of that legal opinion and the treatment of any applications received after December 1992 as well as its relevance to the notification previously given to non-conforming registrants.
- 7.3 Section 9 - Gaming Casinos
- 7.3.1 The CEO read the reply received from St Kilda Football Club which contained a reluctant agreement to cease the use of the word casino in their advertising.
- 7.3.2 The Chairman relayed the nature of the response received from the Chief Executive of the Gaming Commission on the matter, This suggested that the Commission's newsletter be used as a vehicle to alert other venues with gaming machines to the problem of referring to their facilities as casinos.

VCGA Legal and Legislation Branch - Register of MattersRecord No: Date Requested: Matter Title Branch Name: Structuring Officer: Phone Number: Work Allocated To: Advice Required By: Client File Provided: File No: Date File Returned to Client: Legal File Requested: File No: Date Legal File Archived: Copy of Advice Gone to Index: Notes: Date Completed: Signed Off:

Transurban Group Investor Report

Transurban is an international pioneer in the development and operation of advanced electronic toll roads and acknowledged as a leader in the global market for intelligent transport solutions.

Overview

Transurban is an international pioneer in the development and operation of advanced electronic toll roads and acknowledged as a leader in the global market for intelligent transport solutions. Transurban developed and now operates electronic tolling on CityLink, a 22-kilometre urban motorway in the Australian city of Melbourne. Built entirely with private funding, CityLink is the first fully electronic toll road in Australia. Its successful completion changed the face of the transport system in Melbourne, a city of 3.5 million people and 2 million vehicles. The company transformed toll road travel into an, 'open-road' experience.

Product Uniqueness

Over 650,000 electronic toll transactions are processed daily on CityLink. The complex technology and systems integration needed to achieve this are central to CityLink's success and a key component of Transurban's expertise.

The sheer scale and complexity of CityLink's operations established a benchmark in multi-lane freeflow electronic toll road systems, and signalled the arrival of Transurban as a major player in this growing international market.

With its 'cornerstone asset' now successfully established, Transurban actively pursues new business opportunities with governments, cities and communities to tailor and deliver transport solutions.

One such opportunity is the company's latest project, the 39-kilometre Western Sydney Orbital (WSO), which, when completed in 2007, will be Australia's longest electronically tolled road. Transurban will also deliver and operate the new road's tolling system. The design and construction will cost AUD\$1.5 billion.

The Orbital represents the first major step in Transurban's expansion into new markets, where it aims to leverage its leadership in toll road operation, technology and customer service.

Transurban have a 40 per cent stake in the WestLink Consortium Limited, which will build and run the WestLink M7.

End-to-end capability & expertise

Transurban's unique end-to-end capability is backed by a team with deep knowledge and understanding of what is needed to successfully develop major transport infrastructure projects.

Transurban's key areas of expertise include:

- Acknowledged leadership in toll road customer service models and management
- Experience in operating a major toll road which is a test bed for innovation
- Integration of the technologies required to make advanced electronic tolling work
- Traffic projection and modelling
- Development management
- Concession & risk management

Transurban listed on the Australian Stock Exchange in 1996 and is now one of the Top 100 companies on the exchange. At August 2003, Transurban had an enterprise value of \$4.4 billion and a Standard & Poors credit rating of A-.

August 2002

Total market cap 3162.174

Net profit -79.300

EPS - \$ -0.132

P/E ratio 2001 -46.97

Dividend - \$ 0.0525

EV/EBITDA -126.93

Yield 0.85

Franking N/A

Net Asset Value 2068.46

Bvps 4.06

Price to book 1.53

Debt/Equity ratio 78.71

Return on Equity -3.83

Return on Capital Employed -1.51

Historical Financials

Transurban started the year 2002 as a single-purpose entity, legally restricted to the business of developing and operating Melbourne Citylink. The Group reported a net loss of \$67.2 million for the 6 months ended 30 June 2002. The loss before tax for the year was \$161 million. The result for the year included several one-off items: revenue of \$153.6 million from the settlement of the company's dispute with Transfield Obayashi; recognition of \$235.5 million of costs associated with debt refinancing; the effect of a change in the assumptions used to value the Concession Note liability; and the additional depreciation of \$35 million from a revaluation of the CityLink asset recorded in the financial statements of Transurban Holdings Limited and the Transurban Holding Trust. Excluding these items, the result was a loss of \$79.3 million.

During the year, in line with its restructuring strategy, Transurban reduced its monthly customer service and marketing costs to \$2.5 million, down from \$3.5 million a year earlier and \$4.5 million 18 months earlier. In Sydney, one of the biggest markets in the world for greenfield toll road projects, the Group secured positions in consortia bidding on three major developments in that city:

The Western Sydney Orbital, and

Transurban, like other large-scale infrastructure projects with huge up front investment costs, Melbourne CityLink will run a paper loss for a number of years, however, the company is cash-flow positive, and able to make distributions. In March, the company made a 10 cent distribution as part of the proposed 20 cent distribution. The second instalment should come August 2003.

Current State of Market Sector

The private sector must change its approach to delivering road infrastructure or governments will stop handing it responsibility for new projects, according to Kim Edwards, managing director of Australian toll road developer, owner and operator, Transurban.

Speaking at a national infrastructure investment finance forum in Sydney recently, Mr Edwards said that it was important that industry understood and responded to major changes in the way that governments and communities viewed private investment in transport.

"Unless we adapt, we in the private sector will not continue to be given the responsibility for vital infrastructure we have enjoyed in recent years," he said.

Mr Edwards said many governments worldwide were still reluctant to embrace private funding and that much of the Australian community remained unconvinced. With the benefits of hindsight the toll road industry now recognised that too little focus had been placed on the operational phase of new projects.

A "focussed, robust owner and operator with a long-term view is important to all stakeholders," said Mr Edwards.

Mr Edwards said that Transurban had developed an understanding of the things that mattered to government, and how to deliver on them.

"I would go as far as saying we have realised we are not just in the roads business," he said.

"Transurban are helping deliver better social, economic and environmental outcomes for the community - and we are making money for investors by doing it."

The company believes the best way to attract new customers and maintain strong relationships with existing ones is to continuously review and refine the range of tolling products and services to keep up with market needs. Since its inception, CityLink has become a testing ground for new technologies and innovation in the development and delivery of tolling products and services.

Transurban believes that Australia, as an early adopter and innovator, has a competitive advantage in private sector involvement in the provision of infrastructure.

Because of the success in pioneering the CityLink project, the company is a recognised world leader in the implementation of electronic toll collection. In addition, it has one of the largest skill bases in Intelligent Transport Systems (ITS) in Australia.

Transurban is therefore in a strategic position to exploit global opportunities on these fronts. In the year to June 2002 alone, CityLink hosted more than 20 groups from Europe, Asia, South America and North America looking at ways of involving the private sector in road projects.

Right now, the worldwide market for ITS is exploding and Australia is currently one of the largest international markets for this type of activity.

Analysts' Recommendations

Despite inherent reluctance, increasingly governments are turning to the private sector to help provide infrastructure, as they are either unable, or unwilling, to raise the funds required for new projects. As a result the demand for private sector investment continues to expand.

Privately financed electronic toll roads allow governments to provide the fast, efficient transport systems their communities require without increasing public debt.

According to Wilson HTM Investment Group, the 12 month target share price has increased 12 per cent to \$5.60 while cash-flow and distribution forecasts have also increased.

Due to the high depreciation charge it is well anticipated that negative NPAT figures should be recorded for the next few years. However, free cash flow is forecast to stay at high levels (\$100 million in 2003 and \$120 million in 2004) as CityLink revenues grow while operating costs and interest expense are contained.

Risk profile

Toll road projects require substantial investment up front. But once operating, they provide low risk, predictable income streams, which are typically protected from inflation:

- There are risks in all investments, but in toll roads the risks decline dramatically once construction is complete;
- Toll roads are built and operated on the basis of a 'concession agreement' with a government. Concession agreements typically allow tolls to rise in line with local consumer price indexes, and so revenue streams – and therefore distributions to investors – are protected from inflation;
- In developed countries, traffic levels on major urban roads have historically grown faster than the economy

• Overall,

the \$2.23 billion Western Orbital to be built by Westlink consortium includes Transurban (40%), Leighton (10%), Abigroup (10%) and Macquarie Infrastructure Group (40%).

Under the contract the Transurban Group has invested \$392 million in the project. The investment is funded from the recent \$430 million issue of convertible adjustable rate securities (CARS).

The Western Sydney Orbital provides Transurban Group with increased diversification and exposure to another toll road as well as the Sydney market.

Transurban provides a relatively low risk investment with a strong revenue growth outlook from its core activity, the CityLink toll road in Melbourne and its second major project, the Western Sydney Orbital toll road (WSO).

Wilson HTM Investment Group recommends Adding on the basis of:

- Attractive valuation and indicated 12 month return
 - Increasing, +5.0 per cent distributions (tax deferred)
 - Revenue growth virtually assured from the compound impact of toll increases and traffic growth
 - WSO value to Transurban of 37cps with excellent upside
 - Ability to participate in new projects, the immediate prospects being Melbourne's Mitcham Frankston Freeway
- Key to Transurban's success is its understanding of risk and how to manage it. The greatest risks in any toll road project are in the early years of development.

The risks were clearly demonstrated on the CityLink project, as was Transurban's ability to manage them and deliver solutions:

- When a dispute between two major construction contractors threatened to delay the project, Transurban stepped in to ensure a settlement;
- When companies contracted to manage customer service failed to meet expectations, Transurban took the job on itself and delivered the service customers expected;
- When design and construction issues with the contractor led to major problems in the Burnley Tunnel, a key section of the Link, Transurban again stepped in to ensure the problems were fixed.

For Transurban, the challenge does not end with the successful completion of a project.

There is further potential for growth in the Australian market. One estimate indicates Australia is spending about \$2 billion less per year than is needed to keep up with the transport needs of business.

Solutions to traffic problems are increasingly involving Intelligent Transport Systems (ITS), 'smart' traffic technologies that improve infrastructure performance and make it more convenient for customers to use.

Transurban has an edge in the field, having implemented purpose-designed technologies across all CityLink operations, from traffic incident detection to electronic tolling to customer management. As one of the pioneers in ITS, the company has gained valuable knowledge and skills through continually consulting with users and other stakeholders on the elements that make a road smart, safe and also simple to use.

Balance Sheet Strengths

Quarterly increases in tolls have had no demonstrable effect on traffic levels. Revenue on CityLink is projected to be about AUD\$230 million for the 2002-03 financial year, and the concession from the Australian state of Victoria extends for 34 years.

This is typical of the long life of this asset class. The combination of long life, low operational risk and the protection of the concession agreement make Transurban an attractive company for many investors.

The support for Transurban among Australia's major financial institutions reflects the relative maturity of infrastructure as an investment sector in the country. What makes Transurban particularly attractive to investors is the company's end-to-end approach. The skills and expertise put the company in a unique position to manage risks and extract the maximum value from each project for its security holders.

Operating performance

The most recent indications of performance, for the year ending 30 June 2003, have been positive. Average daily transaction volumes on CityLink grew 6.8 per cent for the year while average weekday transaction volumes were up 6.6 per cent. Toll and fee revenue for the same period was \$232.1 million (net of GST), an increase of 11.2 per cent over the previous year.

The average daily transaction volume for the June quarter 2003 was 566,187 a 5 per cent increase over the June quarter 2002. This is a good result as there were 61 weekdays in the June quarter 2003 compared to 62 in the June quarter 2002. Traffic levels are higher on weekdays than on weekends.

Toll and fee revenue for the June quarter 2003 was \$58.6 million net of GST, an amount that includes year-end revenue adjustments of \$0.6 million relating to prior periods. Excluding these adjustments, the revenue for the quarter was 8.8 per cent higher than for the June quarter 2002.

Earnings outlook

Transurban generated free cash flow of \$54 million in the first half 2003 and paid a distribution of 10 cents per security. Wilson HTM Investment Group have forecast a free cash flow of \$60 million for the second half and a distribution of 10 cents per share.

Earnings and cash flow are forecast to increase again in FY04, to be capable of supporting an increase in distribution to 23 cents for the year.

At this point, it appears that cash flow in FY05 will be reduced by approximately \$45 million by the expiry of the infrastructure bonds, leading to a reduced distribution of 24 cents per share.