REPORT UNDER STANDING ORDER 52 ON DISPUTED CLAIM OF PRIVILEGE

Crown Casino VIP Gaming Management Agreement

The Hon Keith Mason AC QC

31 July 2019

This Report should be read together with my Report of 21 October 2014 and the Report of the Legislative Council Privileges Committee dated November 2014 (Report 72). Consistent with the recommendations of those Reports, the House resolved on 12 November 2014 to make public parts of the Crown Casino VIP Management Agreement. The contents of Schedule 2 remained redacted, there being no dispute at that stage as to the claim of privilege relating to that Schedule.

Schedule 2 (presently redacted) serves to define (in part) an expression found in clause 2.4 of Schedule 1 of the Agreement.

Clause 2.4 of Schedule 1 (un-redacted) provides:

> "***Prevention of associations with Stanley Ho***
> *To the extent to which it is within its power to do so, Crown* [Resorts Ltd] *will ensure that it prevents:*
> *(a) Any new business activities or transactions of a material nature between Stanley Huang Sun Ho or a Stanley Ho Associate and Crown....*
> *(b) Stanley Huang Sun Ho or a Stanley Ho Associate from acquiring any direct, indirect or beneficial interest in:*
> *(1) Crown;*
> *(2) A Subsidiary of Crown;*
> *(3) Melco Crown* [Entertainment Ltd]*; or*
> *(4) A Subsidiary of Melco Crown; and*
> *(c) Stanley Huang Sun Ho from:*
> *(1) Holding a Relevant position in Crown, a Subsidiary of Crown, Melco Crown or a Subsidiary of Melco Crown; or*
> *(2) Exercising a Relevant Power over the business or affairs of either Crown, a Subsidiary of Crown, Melco Crown or a Subsidiary of Melco Crown."*

Schedule 2 contains a long list of entities and individuals deemed associates of Stanley Ho for the purposes of the Agreement. As indicated, its details have been disclosed only to Members at this stage.

On 20 June 2019, Mr Justin Field MLC wrote to the Clerk disputing the claim of privilege over Schedule 2. Copy of this letter is attached as Annexure 1. In it Mr Field states that Crown Resorts has informed the market that it has been notified that Consolidated Press Holdings had sold a 19.9% stake in Crown Resorts to Melco Resorts & Entertainment Ltd, an entity controlled by Mr Laurence Ho, the son of Mr Stanley Ho.

I was appointed the independent legal arbiter to report as to the dispute. My Report on the West Connex Business Case dated 8 August 2014 explains the general principles touching a claim of privilege in this context and the role of the independent legal arbiter. Consistent with my practice

over recent years, I requested that the Department of Premier and Cabinet (DPC) be advised of the dispute, provided with Mr Field's letter and invited to make any additional comments, with Mr Field being copied into this request.

In the upshot, the Independent Liquor & Gaming Authority, responding through DPC, indicated that it did not for itself maintain any privilege claim in respect of Schedule 2. However, DPC does maintain its original claim of privilege over the Schedule, adopting the reasons set out in Annexure A to a letter dated 2 July 2019 from Crown Resorts Ltd. That letter states that the claim is based upon "public interest immunity because the document contains commercially sensitive information and is commercial-in-confidence". The detailed reasons are set out in Annexure A to the letter. The letter stipulates that those reasons are themselves commercial-in-confidence and requests DPC also to make a claim for privilege over Annexure A. DPC has made such a claim.

I have had regard to Annexure A. But there is no guarantee that I would do likewise if the situation repeated itself. I asked the relevant parties to consent to the Clerk making available to Mr Field, on a confidential basis, the full details of the claim of privilege as presently formulated and pressed. Crown Resorts declined to give this consent. At my request, the Clerk Assistant – Committees, in the absence of the Clerk, requested DPC to inform Crown Resorts that I shall be considering whether this withholding of consent will or may preclude me from having any regard to Annexure A. This was done on 4 July. Crown Resorts has not altered its stance.

It is unnecessary for me to decide whether the exercise in which I am engaged obliges me as a matter of law to afford to Mr Field the same opportunity that I elected to afford to those pressing the original claim of privilege to develop and defend their position. In doing so, I acted out of a sense of fairness and also to ensure that I do not overlook anything important. It is a matter of regret that Crown Resorts have not reciprocated. Had I known in advance that this would have happened I probably would not have offered the opportunity to supplement the submissions made with respect to the claim of privilege raised in 2014.

Commercial sensitivity, contractual and equitable obligations to maintain "commercial-in-confidence" and criteria that would give rise to public interest immunity in a litigious context do not in themselves generate the basis for upholding privilege in the present context (see generally the WestConnex Report and, more particularly, the two Reports cited at the beginning of this Report). Nothing in Annexure A to the Crown Resorts letter of 4 July 2019 persuades me that the claim of privilege with respect to Schedule 2 of the Agreement should be upheld now that it has been challenged by a Member. The subject matter is obviously a matter of potential and legitimate interest to the House whose deliberations could be impeded were access to be restricted to the member alone.

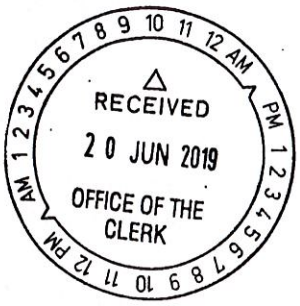
For the assistance of the House, I attach as Annexure 2 a copy of the Crown Resorts letter of 4 July 2019, reminding the House that Crown Resorts (and DPC) have requested that Annexure A of it should be considered privileged. I do not think that it is, but its confidentiality can be a matter for the House when it decides what to do with my Report.

In my evaluation, a valid claim of privilege is not established with respect to Schedule 2 of the Crown Casino VIP Gaming Management Agreement.

Keith Mason

20 June 2019

David Blunt
Clerk of the Legislative Council
NSW Parliament



Dear Mr Blunt

RE: Dispute of Claim of Privilege - VIP Gaming Management Agreement.

I am writing to dispute a claim of privilege over Schedule 2 of the '*VIP Gaming Management Agreement*' (Agreement), published as a result of a 2014 Standing Order 52 motion (SO52).

On Thursday October 2, 2014, an un-redacted version of the '*VIP Gaming Management Agreement*' (Agreement) between the Independent Liquor and Gaming Authority (on behalf of the NSW Government) and Crown Resorts and related parties was produced as a result of an SO52. The Department of Premier and Cabinet (DPC) asserted privilege over the document as well as the detailed reasons for asserting privilege.

On 13 October 2014, Dr John Kaye disputed the claim of privilege over certain parts of the document and the reasons for asserting privilege.

As a result of that dispute, the majority of the Agreement was released to the public.

Schedule 2 of the Agreement relating to *Entities and Individuals Deemed Associates of Stanley Ho* was not subject to the dispute of privilege by Dr Kaye and remains privileged.

Schedule 2 relates to *Section 2.4* of the document, which is public, titled '*Prevention of associations with Stanley Ho*'. This section requires Crown to prevent, among other things, Stanley Ho or an associate from acquiring any direct, indirect or beneficial interest in:

(1) Crown;
(2) A Subsidiary of Crown;
(3) Melco Crown; or
(4) A Subsidiary of Melco Crown

On 31 May 2019 Crown Resorts informed the market that it had been notified that Consolidated Press Holdings had sold a 19.9% stake in Crown Resorts to Melco Resorts & Entertainment Limited.

Melco Resorts & Entertainment Limited is controlled my Mr Laurence Ho, the son of Mr Stanley Ho.

Direct Line: +61 3 9292 8834
Direct Fax: +61 3 9292 8808
E-mail: mary.manos@crownresorts.com.au

2 July 2019

Department of Premier and Cabinet
52 Martin Place
SYDNEY NSW 2000

BY EMAIL

Dear Sir

Request for production of Schedule 2 to the redacted VIP Gaming Management Agreement

Reference is made to the letter from David Blunt, clerk of the Parliaments, dated 20 June 2019, to the Honourable Keith Mason AC QC with respect to the dispute over the claim of privilege over Schedule 2 of the VIP Gaming Management Agreement. Schedule 2 of the Agreement relates to Entities and Individuals deemed associates of Stanley Ho.

Crown Resorts Limited (**Crown Resorts**) requests that the Department of Premier and Cabinet makes a claim for privilege over Schedule 2 of the VIP Gaming Management Agreement on the grounds of public interest immunity because the document contains commercially sensitive information and is commercial-in-confidence.

We further note that the detailed reasons for the claim of privilege are also commercial-in-confidence. As such, we set out our reasons for the claim for privilege in **Annexure A** to this letter. Crown Resorts requests that the Department of Premier and Cabinet also make a claim for privilege over the contents of **Annexure A**.

Yours faithfully

Mary Manos
General Counsel and Company Secretary
Crown Resorts Limited

Cc: Independent Liquor & Gaming Authority

Annexure A

Crown Resorts' reasons for the claim for privilege

Commercial in Confidence

The content of this Annexure A are commercial in confidence.

We refer to the letter dated 20 June 2019 by Justin Field MLC to the Clerk of the Legislative Council in which, inter alia, Mr Field disputes the claim of privilege over Schedule 2 of the VIP Gaming Management Agreement (**Agreement**) as a result of a 2014 Standing Order 52 motion (**SO52**).

Crown Resorts objects to the production of Schedule 2 and requests that the Department of Premier and Cabinet makes (or maintains) a claim for privilege on the grounds of public interest immunity because Schedule 2 of the Agreement contains commercially sensitive information and is commercial in confidence.

Crown Resorts will suffer significant commercial detriment in the event that the contents of Schedule 2 of the Agreement are publicly disclosed. Crown Resorts agreed to the content of Schedule 2 of the Agreement on the basis that Schedule 2 of the Agreement would be kept confidential. If the schedule was to be made publicly available, there is a genuine risk that Crown Resorts' competitors and others who oppose Crown Resorts' business would be able to misuse the information in order to gain an unfair commercial advantage for themselves or disrupt Crown Resorts' business or the orderly trading in Crown Resorts' shares.

Crown Resorts does not understand that the sale by Consolidated Press Holdings of its Crown Resorts' shares to Melco is subject to any regulatory approval by NSW Independent Liquor & Gaming Authority (**ILGA**). Melco has stated this publicly and it accords with Crown Resorts' understanding of the legal position. Further Crown Resorts was not in a position to prevent the transaction between Melco and CPH pursuant to which Melco acquired the Crown Resorts' shares, although the fact that Crown Resorts was not involved in that transaction and the subtlety of the obligation that is imposed on Crown Resorts under clause 2.4 of Schedule 2 to the Agreement (namely that the obligation is a qualified one by reference to the extent that Crown Resorts is able to do something to prevent an acquisition of its shares by a person named in Schedule 2) will not likely be made clear in likely adverse and misinformed commentary about the sale that would eventuate, following public disclosure of the schedule.

In and prior to 2014 ILGA undertook a thorough investigation to determine whether there were any links between Melco, Laurance Ho and the persons referred to in Schedule 2 of the Agreement being Mr Stanley Ho and his affiliates. ILGA did not find any links and therefore concluded there was no association with the schedule 2 persons and Crown Resorts arising as a result of the 2014 arrangements that existed between CWN and Melco.

In this regard it is important also to note that:

(i) Melco has also stated publicly that it will seek probity approval, including from ILGA, either to allow it to increase its shareholding in Crown Resorts beyond 20% (which Crown Resorts considers will require regulatory approval) or to allow its nominees to be appointed to the Crown Resorts' board; and

(ii) ILGA is entitled at any time to investigate the casino operator or any person who, in the opinion of ILGA, is an associate of the casino operator. In this context Crown Resorts will

suffer significant commercial detriment in the event that Schedule 2 to the Agreement is made public.

In this regard it is also in Crown Resorts' commercial interest that ILGA (and the other regulators in Australia) are able to undertake their enquiries and make their determinations in relation to Melco's probity approval applications (which will be made public at the end of their investigations) without regard to the misinformation that may be generated by the media if the Schedule is made public. For instance media commentary suggesting an on-going association between Melco and some or all of the persons who are referred to in Schedule 2 to the Agreement, in circumstances where ILGA has already conducted an examination of this matter, determined that no association exists and is free at any time, and will in the context of the probity applications that Melco has said it will make, be able to re-examine the matter.

Finally, Schedule 2 arose from negotiations following ILGA's investigations of Crown Resorts' suitability to hold a restricted gaming licence and these investigations specifically considered whether any of the persons referred to in Schedule 2 to the Agreement had links with Melco and Mr Laurance Ho, with whom, at the time, Crown Resorts' had a material commercial agreement regarding its joint venture and material shareholding in Macau casino operator, Melco Crown Resorts Limited, a joint venture and shareholding that has since terminated. As mentioned above IGLA determined there were no links between Melco and Mr Laurence Ho and any of the persons referred to in Schedule 2 to the Agreement.

It is in the public interest that companies be full and frank in their disclosures to ILGA in the course of licence applications and that any negotiations, agreements and special conditions arising out of such disclosures and investigations remain confidential and not prejudice the commercial interests of the disclosing company.

For these reasons we ask that the Department of Premier and Cabinet makes a claim for privilege on the grounds of public interest immunity because Schedule 2 to the VIP Gaming Management Agreements