REPORT

Inquiry under section 143 of the
Casino Control Act 1992 (NSW)

1 February 2021

VOLUME 1

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Report of the Inquiry under section 143 of the *Casino Control Act* **1992 (NSW)**

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Control Act 1992 (NSW)

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1 February 2021

Mr Philip Crawford
Chairperson
Independent Liquor and Gaming Authority
4 Parramatta Square
12 Darcy Street
Parramatta NSW 2150

Dear Mr Crawford

Inquiry under section 143 of the *Casino Control Act* 1992 (NSW)

I refer to the Instruments of Appointment dated 14 August 2019 and 23 June 2020 to preside at an Inquiry under section 143 of the *Casino Control Act* 1992 (NSW) into the matters referred to in the Instruments of Appointment.

The Report is submitted herewith in accordance with paragraph 22 of the Instrument of Appointment dated 23 June 2020.

By way of assistance, the questions posed in paragraph 16 of the Instrument of Appointment dated 23 June 2020 and the answers thereto and the recommendations identified in accordance with paragraph 17 of that Instrument are included in summary form in the Annexure to this letter.

I formally record my sincere gratitude to Counsel Assisting, Solicitors Assisting and all other legal and administrative support staff assisting the Inquiry.

Yours sincerely

[SIGNED]

The Honourable P A Bergin SC

Annexure

Answers to questions in Paragraph 16 of the Instrument of Appointment dated 23 June 2020

PARAGRAPH 16(a):

QUESTION: Whether the Licensee is a suitable person to continue to give effect to the Barangaroo restricted gaming licence?

ANSWER: No.

PARAGRAPH 16(b):

QUESTION: Whether Crown Resorts is a suitable person to be a close associate of the Licensee?

ANSWER: No.

PARAGRAPH 16(c):

QUESTION: In the event that the answer to either (a) or (b) above is no, what, if any, changes would be required to render those persons suitable?

ANSWER: These matters are dealt with in Chapter 4.6 of the Report.

PARAGRAPH 16(d):

QUESTION: Whether the disposal of shares held by CPH in Crown Resorts to Melco or KittyHawk, on or around 6 June 2019, constituted a breach of the Barangaroo restricted gaming licence or any other regulatory agreement?

ANSWER: No.

PARAGRAPH 16(e):

QUESTION: Whether the agreement by CPH to dispose of the second tranche of shares in Crown Resorts to Melco or KittyHawk on or before 30 September 2019 constituted a breach of the Barangaroo restricted gaming licence or any other regulatory agreement?

ANSWER: No.

PARAGRAPH 16(f):

QUESTION: Whether the transfer of the shares in Crown Resorts referred to in (d) above, constituted a breach of the Barangaroo restricted gaming licence or any other regulatory agreement?

ANSWER: No.

Recommendations in accordance with Paragraph 17 of the Instrument of Appointment dated 23 June 2020

It is recommended that:

1 Section 4A of the *Casino Control Act* be amended to include an additional object of: Ensuring that all licenced casinos prevent any money laundering activities within their casino operations.

2 The Independent Casino Commission (ICC) be established by separate legislation as an independent, dedicated, stand-alone, specialist casino regulator with the necessary framework to meet the extant and emerging risks for gaming and casinos.

3 The ICC have the powers of a standing Royal Commission comprised of Members who are suitably qualified to meet the complexities of casino regulation in the modern environment.

4 The *Casino Control Act* be amended to make clear that any decision about a casino licence and any disciplinary action that may be taken against a licensee is solely that of the ICC, and that any term of a regulatory agreement that has been entered into by the Government or the Authority is of no effect to the extent that it purports to fetter any power of the ICC arising under the *Casino Control Act*.

5 The *Casino Control Act* be amended to ensure that the casino supervisory levy is paid to the ICC or recognised in the budget of the ICC.

6 The *Casino Control Act* be amended to make provision for each casino operator to be required to engage an independent and appropriately qualified Compliance Auditor approved by the ICC, to report annually to the ICC on the casino operator's compliance with its obligations under all regulatory statutes both Commonwealth and State in particular the *Casino Control Act,* the *Casino Control Regulation* and the terms of its licence.

7 The *Casino Control Act* be amended to make provision in respect of the Compliance Auditor's obligations in line with the following:

> If the Compliance Auditor, in the course of the performance of the Compliance Auditor's duties, forms the belief that:
>
> (a) activity within the casino operations may put the achievement of any of the objects of the *Casino Control Act* at risk; or
>
> (b) a contravention of the *Casino Control Act* or the regulations or of any other Commonwealth or New South Wales Act regulating the casino operations has occurred or may occur;

the Compliance Auditor must immediately provide written notice of that belief concurrently to the casino operator and to the ICC.

8 Consideration be given to an amendment to the *Casino Control Act* to include a provision similar to Singapore legislation for the concurrent reporting by the casino operator of suspicious transactions to AUSTRAC and the ICC.

9 The Authority consider amendment to casino operators' licences to impose an obligation to monitor patron accounts and perform heightened customer due diligence, the breach of which provisions will be regarded as a breach of the Licence and give rise to possible disciplinary action.

10 The *Casino Control Act* be amended to impose on casino licensees an obligation that they require a Declaration of Source of Funds for any cash over the amount as determined by the ICC modelled on the reform introduced in British Columbia discussed in Chapter 5.1.

11 The *Casino Control Act* be amended to prohibit casino operators in New South Wales from dealing with Junket operators.

12 The *Casino Control Act* be amended to impose on any applicant for a casino licence an express requirement to prove that it is a suitable person by providing to the ICC "clear and convincing evidence" of that suitability. This should apply to all suitability assessments under the *Casino Control Act*, including in the context of retaining a casino licence or in any five yearly review or for approval as a close associate.

13 The definition of "close associate" under the *Casino Control Act* be repealed and replaced to mean:

(a) any company within the corporate group of which the licensee or proposed licensee (Licensee) is a member;

(b) any person that holds an interest of 10 per cent or more in the Licensee or in any holding company of the Licensee ("holding company" as defined in the *Corporations Act* 2001 (Cth) so as to capture all intermediate holding companies);

(c) any director or officer (within the meaning of those terms as defined in the Corporations Act) of the Licensee, of any holding company, or of any person that holds an interest of 10 per cent or more in the Licensee or any holding company; and

(d) any individual or company certified by the Authority as being a "close associate".

14 The *Casino Control Act* be amended to include a provision that the cost of the investigation and determination of the suitability of any close associate of any applicant for a casino licence or any existing casino licensee be paid

to the ICC in advance of the investigation and determination in the amount assessed by the ICC. Such amendment should include a provision for repayment of any over-estimate or payment of any shortfall against the estimate made by the ICC before the publication of the ICC's determination.

15 Item 4 of Schedule 1 of the *Casino Control Act* be amended to ensure that any transaction involving the sale or purchase of an interest in an existing licensee or any holding company of a licensee which results in a person holding an interest of 10 per cent or more in a licensee or holding company of the licensee is treated as a "major change" event.

16 The *Casino Control Act* be amended to provide that a person may not acquire, hold or transfer an interest of 10 per cent or more in a Licensee of a casino in New South Wales or any holding company of a Licensee without the prior approval of the ICC.

17 An amendment be made to section 34 of the *Casino Control Act* to permit the regulator to apply to the Court for an injunction to restrain "any person" in respect of a breach of the above recommended provision or to obtain appropriate orders in connection with an interest acquired, held or transferred in breach of the provision.

18 The "gaming and liquor legislation", as defined in section 4 of the *Gaming and Liquor Administration Act* 2007 (NSW) be reviewed for the purpose of considering amendments to ensure clarity and certainty in relation to the powers to be given to the new independent specialist casino regulator and consequential enactment of amendments to relevant legislation.

19 In any legislative review and/or consideration of legislative powers for the ICC, it would be appropriate to consider an express provision to include ASIC as one of the relevant agencies to which the ICC may refer information. It would also be appropriate to consider the inclusion of any other relevant agency not already expressly included in the legislation.

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PART 1

Background

Chapter 1.1

Introduction

1 Crown Resorts Limited (Crown) is a public company listed on the Australian Stock Exchange (ASX). Crown operates "integrated resorts" in Melbourne and Perth featuring "luxury accommodation and award-winning dining, world class gaming, conferencing, shopping and entertainment facilities".[1] A casino is integrated into each of the resorts, Crown Melbourne and Crown Perth, the licensing and operations of which are subject to regulation by statutory authorities in Victoria and Western Australia respectively.[2]

2 Since 8 July 2014 Crown's wholly owned subsidiary, Crown Sydney Gaming Pty Ltd (the Licensee) has been the holder of a Restricted Gaming Licence to operate a Restricted Gaming Facility in premises located at Barangaroo on the Sydney Harbour foreshore (the Barangaroo Casino).[3] The operation of the Barangaroo Casino is subject to the regulation of the New South Wales statutory authority the Independent Liquor and Gaming Authority (the Authority).

3 On 30 May 2019 a sale of Crown shares (the Share Sale Agreement) triggered a series of events that, combined with publication in the media during July and August 2019 of allegations of illegal and/or improper conduct by Crown (the Media Allegations), caused the Authority to establish an Inquiry under section 143 of the *Casino Control Act* 1992 (NSW) *(Casino Control Act)*.

4 At the time of the Share Sale Agreement, the vendor of the shares, CPH Crown Holdings Pty Limited (CPH Crown Holdings), a wholly-owned subsidiary of Consolidated Press Holdings Pty Ltd (CPH), held approximately 46.1 per cent of the ordinary shares in Crown.[4] It agreed to sell 19.99 per cent of those shares (135,350,000 shares) to Melco Resorts & Entertainment Limited (Melco) for $1,759,550,000.

5 Melco is a developer, owner and operator of integrated resorts, including gaming, entertainment and casino resort facilities in Asia, operating in Macau, the Philippines and elsewhere. Melco and Crown (and before it Publishing and Broadcasting Limited (PBL)) had previously been in a joint venture between approximately 2004 and mid-

2017, operating casinos in Macau and the Philippines as Melco Crown Entertainment Limited (MCE).

6 CPH Crown Holdings agreed to sell its shares to Melco in two equal tranches.[5] The first tranche of 67,675,000 shares was transferred to Melco's nominee, MCO (KittyHawk) Investments Pty Ltd (KittyHawk), a wholly owned subsidiary of Melco, on 6 June 2019 at a purchase price of $879,775,000. The second tranche of 67,675,000 shares at a purchase price of $879,775,000 was to be transferred to Melco by 30 September 2019.

7 On 6 June 2019 Melco advised the Authority that it intended to seek "approvals" for representation on the Crown Board and "relevant subsidiary boards, and for the acquisition of further shareholdings in Crown should Melco take a decision to do so in future". Melco advised the Authority that approval was sought for Mr Lawrence Ho; Mr Geoff Davis; Ms Stephanie Cheung; Ms Akiko Takahashi; Mr Evan Winkler and Mr Clarence Chung to become "close associates" of the Licensee and directors of Crown's associated entities, Crown Sydney Holdings Pty Limited (Crown Sydney Holdings) and Crown Sydney Property Pty Limited (Crown Sydney Property).

8 Melco also sought approval to become a "close associate" of the Licensee "to allow it the flexibility to increase its ownership in" Crown "over time". Melco contended that: (i) "merely" incrementally increasing its shareholding in Crown above 19.9 per cent would not necessarily make it a "close associate" of the Licensee; and (ii) this would depend on the size of its total holding from time to time and the influence it could actually bring to bear on the Licensee's business at the relevant time. However, Melco advised the Authority that at some point an increased holding in Crown would likely give it "significant influence over the management or operations" of the Licensee's business and it would at that time become a "close associate" of the Licensee. Melco advised the Authority that to "provide flexibility for future acquisitions" it intended to "apply now for approval to become a 'close associate' of" the Licensee.

9 The Authority established the Inquiry by Instrument of Appointment dated 14 August 2019 (Terms of Reference). The Terms of Reference provided relevantly:

> **Part A - Melco Changes**
>
> 6. In or about late May 2019:
>
> (a) Melco Resorts & Entertainment Ltd (Melco) entered into a Share Sale Agreement (SSA) with CPH Crown Holdings Pty Ltd (CPH) to acquire approximately 19.99% of the shares in Crown;
>
> (b) CPH, in accordance with the terms of the SSA, disposed of approximately 9.99% of the shares in Crown to Melco or its nominee,

MCO (KittyHawk) Investments Ltd (KittyHawk), a company registered in the Cayman Islands;

(c) Melco announced its proposal to increase its shareholding in Crown;

(d) Melco announced its proposal to seek representation on the board of Crown by any combination of Mr Lawrence Ho, Mr Geoff Davis, Ms Stephanie Cheung, Ms Akiko Takahashi, Mr Evan Winkler and Mr Clarence Chung; and

(e) Melco announced its proposal that it and Mr Lawrence Ho, Mr Geoff Davis, Ms Stephanie Cheung, Ms Akiko Takahashi, Mr Evan Winkler and Mr Clarence Chung become close associates of the Licensee.

These events or proposed events are the "Melco Changes".

7. Section 35 of the *Casino Control Act,* inter alia, requires the Authority to inquire into the suitability of persons becoming close associates of the Licensee. You are requested to inquire into and report upon:

(a) the identity of any person who has or will become a close associate of the Licensee and the date upon which such person or persons has or will become a close associate of the Licensee as a result of the Melco Changes;

(b) whether such person or persons:

(i) are of good repute, having regard to character, honesty and integrity;

(ii) have any business association with any person, body or association who is not of good repute, having regard to character, honesty, integrity, or has undesirable or unsatisfactory financial sources; and

(iii) are otherwise not suitable to be associated with the Licensee; and

(c) any matter reasonably incidental to these matters.

Part B - Suitability Review

8. On and from 27 July 2019, the Nine Network, the Sydney Morning Herald, The Age and other media outlets have broadcast or published material which raised various allegations into the conduct of Crown and its alleged associates and business partners and raised questions as to whether the Licensee

remains a suitable person to hold a restricted gaming license for the purposes of the *Casino Control Act* (Allegations).

9. The Allegations include, but are not limited to, allegations that Crown or its agents, affiliates or subsidiaries:

   (a) engaged in money-laundering;

   (b) breached gambling laws; and

   (c) partnered with junket operators with links to drug traffickers, money launderers, human traffickers, and organised crime groups.

10. You are requested, in response to the Allegations, to inquire into and report upon (Suitability Review):

   (a) whether the Licensee is a suitable person to continue to give effect to the Barangaroo restricted gaming license;

   (b) whether Crown is a suitable person to be a close associate of the Licensee;

   (c) in the event that the answer to either (a) or (b) above is no, what, if any, changes would be required to render those persons suitable;

   (d) whether or not the disposal of shares held by CPH in Crown to Melco or KittyHawk, on or around 6 June 2019, constituted a breach of the Barangaroo restricted gaming license or any other regulatory agreement;

   (e) whether or not the agreement by CPH to dispose of the second tranche of shares in Crown to Melco or KittyHawk honor before 30 September 2019 constitutes a breach of the Barangaroo restricted gaming license or any other regulatory agreement;

   (f) whether the transfer of the shares in Crown referred to in (d) and (e) above, constitutes or will constitute, a breach of the Barangaroo restricted gaming license or any other regulatory agreement; and

   (g) any matter reasonably incidental to these matters.

Part C - Regulatory Framework and Settings

11. You are requested to:

(a) inquire into and report upon the efficacy of the primary objects under the *Casino Control Act* in an environment of growing complexity of both extant and emerging risks for gaming and casinos;

(b) undertake a forward -looking assessment of the Authority's ability to respond to an environment of growing complexity of both extant and emerging risks for gaming and casinos;

(c) identify recommendations in order to enhance the Authority's future capability, having regard to the changing operating environment; and

(d) in so inquiring and reporting in respect of paragraphs 9(a) to 9(c), take into account domestic and international best practice with respect to gaming operation and regulatory frameworks.

10 These Terms of Reference required investigation and report to the Authority "as soon as reasonably practicable" in relation to five broad areas. The first was investigation into the circumstances surrounding the Share Sale Agreement and its consequences (Share Sale Review). The second was investigation into the suitability of Melco and some of its officers to become close associates of the Licensee (Melco Review). The third was investigation into the veracity of the Media Allegations (Media Allegations Review). The fourth was investigation in response to the Media Allegations as to the suitability of the Licensee to continue to hold and give effect to the Barangaroo Licence and the suitability of Crown to be a close associate of the Licensee (Suitability Review). The fifth was investigation into the adequacy of the regulatory framework and settings for the regulation of the operation of casinos in New South Wales (Regulatory Review).

11 On 28 August 2019 CPH Crown Holdings and Melco agreed to extend the date for completion of the sale of the second tranche of shares under the Share Sale Agreement to 31 May 2020 and/or pending the outcome of the Inquiry.

12 On 5 September 2019 Melco advised the Authority that it would now only propose Mr Geoff Davis and Mr Evan Winkler for approval as directors of Crown. It also advised the Authority that no applications for approval as close associates would be made in respect of the other individuals notified on 6 June 2019 "since no board representation will be sought for those individuals".

13 On 21 January 2020 in the first Public Hearing of the Inquiry Counsel Assisting made opening submissions and outlined a structure and plan for the balance of Public Hearings of the evidence commencing on 24 February 2020. At that time it was

anticipated that the evidence would conclude by July 2020 followed by hearings for submissions anticipated to conclude by August 2020 and thereafter a Report to the Authority "as soon as reasonably practicable".[6]

14 On 6 February 2020 CPH Crown Holdings and Melco entered into a Deed entitled "Termination of certain obligations – Share sale agreement" pursuant to which Melco was relieved of its obligations to purchase the second tranche of shares.[7] As a consequence of the termination of Melco's obligations under the Share Sale Agreement, Melco held 67.675 million shares in Crown, equivalent to approximately 9.99 per cent of the total issued shares.

15 On 6 February 2020 Melco's solicitors notified the Authority that Melco "withdraws all of its applications for approval" of any of its officers as close associates of the Licensee and that it "no longer intends to seek approvals for representation on the board of Crown Resorts Limited and does not intend to acquire further shareholdings in Crown Resorts Limited".

16 In January 2020 the first reports of the outbreak of the novel coronavirus, COVID-19, in Wuhan Province in China were filtering through the international media. The spread of the virus into New South Wales and the rapid responses by both the State and Federal Government led to the implementation of various health measures including social distancing.

17 Public hearings of evidence commenced on 24 February 2020 and continued to 27 February 2020. As more stringent restrictions on community movement were introduced including the requirement to work from home where feasible, the structure and timing of Public Hearings of the Inquiry were adjusted.

18 Another matter relevant to that adjustment was a legal challenge mounted by Melco in the Supreme Court of New South Wales in early February 2020. That challenge was in relation to the extent of the Inquiry's powers under the *Royal Commissions Act* 1923 (NSW). A first instance judgment delivered on 11 February 2020 limiting the powers of the Inquiry was overturned unanimously on appeal on 12 March 2020.[8] Melco's application for special leave to appeal from the judgment of the NSW Court of Appeal was refused by the High Court on 10 June 2020.[9]

19 The Inquiry's powers under the *Royal Commissions Act* 1923 (NSW) are extensive and intrusive. Witnesses who are compelled to give evidence and companies and persons who are compelled to produce documents are not able to resist answering questions or producing documents on the ground of legal professional privilege or other claims of privilege including privilege against self-incrimination.[10]

20 The urgency with which the NSW Court of Appeal dealt with the appeal meant that there was no significant delay in the proceedings of the Inquiry. However the spread of the pandemic intervened.

21 On 3 April 2020 the Authority announced that the further work of the Inquiry would be deferred until it determined that it would be safe and practicable to resume that work.[11]

22 On 29 April 2020 an ASX announcement recorded that an entity owned by funds managed or advised by The Blackstone Group Inc (Blackstone) and its affiliates had purchased shares representing a 9.99 per cent shareholding in Crown from Melco.[12]

23 On 1 May 2020 a further announcement on the ASX recorded that KittyHawk and other companies in the Melco Group ceased to have any relevant interest or voting power in Crown on 29 April 2020.[13]

24 On 23 June 2020 the Authority announced that the work of the Inquiry was to resume "immediately" and that following the changes in the ownership of the KittyHawk shares in Crown, the Terms of Reference of the Inquiry had been updated and amended to reflect the fact that Melco was no longer the subject of any inquiry as to its suitability as a close associate of the Licensee.

25 The Amended Terms of Reference dated 23 June 2020 (Amended Terms of Reference) provide relevantly as follows:

> 5. On 14 August 2019 the Authority issued an Instrument of Appointment to the Honourable Patricia Bergin SC (the Commissioner) to preside at an inquiry under section 143 of the *Casino Control Act* into the matters referred to in the Instrument of Appointment.
>
> 6. In or about late May or early June 2019:
>
> (a) Melco Resorts & Entertainment Limited (Melco) entered into a Share Sale Agreement (SSA) with CPH Crown Holdings Pty Ltd (CPH) to acquire approximately 19.99% of the shares in Crown Resorts;
>
> (b) CPH, in accordance with the terms of the SSA, disposed of approximately 9.99% of the shares in Crown Resorts to Melco's nominee, MCO (KittyHawk) Investments Limited (KittyHawk), a company registered in the Cayman Islands;
>
> (c) Melco announced its proposal to increase its shareholding in Crown Resorts;
>
> (d) Melco announced its proposal to seek representation on the board of Crown Resorts by any combination of Mr Lawrence Ho, Mr Geoff

Davis, Ms Stephanie Cheung, Ms Akiko Takahashi, MrEvan Winkler, and Mr Clarence Chung; and

(e) Melco announced its proposal that it and Mr Lawrence Ho, Mr Geoff Davis, Ms Stephanie Cheung, Ms Akiko Takahashi, Mr Evan Winkler, and Mr Clarence Chung become close associates of the Licensee.

7. On or about 28 August 2019 Melco entered into a deed with CPH to amend the SSA which made the sale of the remaining 9.99% of the shares in Crown Resorts (Second Tranche) subject to conditions that:

(f) there was no finding or recommendation by the Authority or by the Commissioner which would, or which could reasonably be expected to, restrict completion of the sale of the Second Tranche occurring and the Authority not otherwise objecting to completion; and

(g) Melco received written notice from each of the Authority, the Victorian Commission for Gambling and Liquor Regulation and the Western Australian Gaming and Wagering Commission that Melco was a suitable person to be associated with the management of a casino, each such notification either being unconditional or on conditions acceptable to Melco acting reasonably.

8. On or about 5 September 2019 Melco notified the Authority that Melco was only seeking representation on the board of Crown Resorts by Mr Evan Winkler and Mr Geoff Davis.

9. On or about 6 February 2020 Melco:

(a) entered into an agreement with CPH Crown which terminated its obligation to purchase the Second Tranche;

(b) announced that it did not currently intend to increase its existing shareholding in Crown Resorts; and

(c) announced that it did not intend to seek representation on the board of Crown Resorts.

10. On 3 April 2020, as an interim procedure, the Authority decided and directed the Commissioner pursuant to s 143(5) of the *Casino Control Act* that most of the work of the inquiry established by the event referred to in paragraph 5 be deferred until further direction.

11. On 29 April 2020 it was announced on the Australian Stock Exchange that "an entity owned by funds managed or advised by The Blackstone Group Inc. and its affiliates" had purchased shares representing 9.99% shareholding of the issued capital in Crown Resorts, from Melco. On 1 May 2020 it was announced

on the Australian Stock Exchange that Kittyhawk and other group companies named in the announcement including Melco ceased to have a relevant interest, or voting power, in Crown Resorts.

12. On 23 June 2020, the Authority decided and directed that from 23 June 2020 the work of the inquiry established by the event referred to in paragraph 5 resume.

Amendment

13. Pursuant to section 143 of the *Casino Control Act* the Authority directs that the matters into which the Commissioner is to inquire and report upon are amended as follows.

Part A - Suitability Review

14. On and from 27 July 2019, the Nine Network, the Sydney Morning Herald, The Age and other media outlets have broadcast or published material which raised various allegations into the conduct of Crown and its alleged associates and business partners and raised questions as to whether the Licensee remains a suitable person to hold a restricted gaming license for the purposes of the *Casino Control Act* (Allegations).

15. The Allegations include, but are not limited to, allegations that Crown or its agents, affiliates or subsidiaries:

    (a) engaged in money-laundering;

    (b) breached gambling laws; and

    (c) partnered with junket operators with links to drug traffickers, money launderers, human traffickers, and organised crime groups.

16. You are requested, in response to the Allegations, to inquire into and report upon (Suitability Review):

    (a) whether the Licensee is a suitable person to continue to give effect to the Barangaroo restricted gaming license;

    (b) whether Crown is a suitable person to be a close associate of the Licensee;

    (c) in the event that the answer to either (a) or (b) above is no, what, if any, changes would be required to render those persons suitable;

    (d) whether or not the disposal of shares held by CPH in Crown to Melco or KittyHawk, on or around 6 June 2019, constituted a breach of the

Barangaroo restricted gaming license or any other regulatory agreement;

(e) whether or not the agreement by CPH to dispose of the second tranche of shares in Crown to Melco or KittyHawk honor before 30 September 2019 constitutes a breach of the Barangaroo restricted gaming license or any other regulatory agreement;

(f) whether the transfer of the shares in Crown referred to in (d) and (e) above, constitutes or will constitute, a breach of the Barangaroo restricted gaming license or any other regulatory agreement; and

(g) any matter reasonably incidental to these matters.

Part B - Regulatory Framework and Settings

17. You are requested to:

(a) inquire into and report upon the efficacy of the primary objects under the *Casino Control Act* in an environment of growing complexity of both extant and emerging risks for gaming and casinos;

(b) undertake a forward-looking assessment of the Authority's ability to respond to an environment of growing complexity of both extant and emerging risks for gaming and casinos;

(c) identify recommendations in order to enhance the Authority's future capability, having regard to the changing operating environment; and

(d) in so inquiring and reporting in respect of paragraphs 17(a) to 17(c), take into account domestic and international best practice with respect to gaming operation and regulatory frameworks.

26 Accordingly the second area of investigation, the Melco Review, was removed from the Amended Terms of Reference, leaving the other four areas to be investigated and reported upon to the Authority with a reporting date of 1 February 2021.[14]

27 The Public Hearings of the Inquiry resumed on 27 July 2020 and concluded on 20 November 2020. The witnesses who gave evidence during the Public Hearings are listed in Appendix 12.

28 National and international casino regulators and law enforcement agencies were consulted concurrently with the other work of the Inquiry. The co-operation and assistance of those agencies listed in Appendix 13 is acknowledged with gratitude.

29 The anticipated (and actual) completion date for construction of the integrated resort at Barangaroo, including the Barangaroo Casino, was in early December 2020. Crown

indicated during evidence before the Inquiry that the tentative date for commencement of operations of the Barangaroo Casino was 14 December 2020.[15] Crown and the Licensee subsequently notified the Authority that they wanted the approval for "part of a limited and supervised commencement of operations" and proposed that gaming activities be permitted to commence in a restricted and limited manner from 21 December 2020.[16]

30 On 18 November 2020 Crown announced that the Board had determined that gaming operations would not commence in December 2020 and that the Authority had deferred its consideration of a number of applications required for the commencement of gaming operations until February 2021. Crown also announced that it would continue to focus on opening the non-gaming operations in consultation with the Authority in the absence of the commencement of gaming operations.[17]

31 In those circumstances, at the time of the submission of this Report it is understood that gaming operations at the Barangaroo Casino have not commenced.

Chapter 1.2

The Casino Market and the VIP Segment

Legalised casinos in Australia

1 The first legal casino in Australia was the Wrest Point Casino in Tasmania established in 1968 by the *Wrest Point Casino Licence and Development Act* 1968 (Tas).

2 Casinos have now been legalised in every State and Territory of Australia. A number of these casinos are part of larger integrated resorts. In addition to the Barangaroo Casino, the following 13 casinos have been licensed:[1]

(a) The Casino Canberra in the ACT;

(b) The Star in Sydney (The Star Sydney) in New South Wales;

(c) The Mindil Beach Casino Resort (formerly SKYCITY) in Darwin and Lasseters Hotel Casino in Alice Springs in the Northern Territory;

(d) The Treasury Brisbane, The Reef Hotel Casino in Cairns, The Star Gold Coast and The Ville Resort - Casino in Townsville in Queensland;

(e) Adelaide Casino in South Australia;

(f) Wrest Point Casino in Hobart and Country Club Casino in Launceston in Tasmania;

(g) Crown Melbourne in Victoria; and

(h) Crown Perth in Western Australia.

3 In some Australian casinos, the VIP segment of the casino market has become significant. This is the case with Crown Melbourne, Crown Perth, The Star Sydney,

The Star Gold Coast and to a lesser extent, Mindil Beach Casino Resort in Darwin and Treasury Brisbane.

The emergence of global VIP casino market

4 Two of the world's largest casino hubs are Las Vegas in Nevada, which was the first State in the United States to legalise casinos, and Macau, which is a Special Administrative Region that has been governed by Mainland China since 1999. While these two locations have been the global leaders, casinos have now emerged in many parts of the world.

5 An important development in many casinos around the world in particular those in Macau and Las Vegas, has been the emergence of the Very Important Person (VIP) segment of the casino market (VIP casino market). This is now a global market, with casinos all around the world competing for VIP patrons.[2]

6 In general terms, VIP patrons are those people willing to place very large bets at casinos. There is significant variation in how different casino operators and different jurisdictions define the VIP segment of the market in relation to expected minimum bets.[3]

7 VIP patrons can be distinguished from mass market players. VIP patrons are also sometimes distinguished from premium players. While premium players also place very large bets they deal with casino operators directly rather than through Junket operators as an intermediary.[4]

8 VIP patrons are sometimes referred to as VVIPs (Very, Very Important Persons), high rollers, rolling chip players and rebate players.[5] In China VVIP players are referred to as "whales".[6]

9 The vast majority of VIP patrons come from Mainland China.[7] The VIP casino market has expanded and has become increasingly competitive over the last decade or so, coinciding with the boom in the Chinese economy.[8]

10 The emergence of the global VIP casino market can be traced back to the early 2000s. Increased outbound Chinese tourism following the loosening of travel restrictions in China, as well as the break-up of the casino monopoly in Macau which was previously present under the Portuguese regime, caused Macau's gaming revenue to soar.[9] The first American casino opened in Macau in 2004 and was "fantastically successful" due to Chinese VIP players.[10]

11 Control of Macau was transferred from the Portuguese Republic to China in 1999. Gaming is the most important sector of Macau's economy. Growth in that sector has been driven primarily by visitors from Mainland China and in particular by high

rollers from Mainland China.[11] Historically, around 70 per cent of Macau's total gaming revenues was derived from high rollers.[12]

12 In 2006 Macau surpassed Las Vegas as the world's largest gaming market, built heavily on the back of VIP gambling.[13]

13 The global VIP market was described in 2016 in a Crown Strategy Workshop as follows:[14]

- VIP casino business was an oligopoly for many years
  - In January 2005, only 4 truly high-end large scale integrated resorts existed in the world that served VIPs from Asia (Bellagio, MGM, Caesars, and Crown Melbourne)
- Today, there are more than 40 high end choices for VIP gamblers (Crown Melbourne, Crown Perth, Star Sydney, SkyCity, RWS, MBS, Venetian, Sands Macau, SCC, COD, Wynn Macau, MGM Macau, Grand Lisboa, Galaxy StarWorld, Galaxy Macau, Venetian, Palazzo, COD Manila, Solaire, RWM, Wynn USA, Encore USA, Caesars, MGM, Bellagio) with another dozen or so 2nd tier choices (Les A, Crown Aspinalls, Crockfords, Naga, Walker-Hill, Seven Luck, Saipan, Jeju, etc).

Terminology

14 It is convenient at this point to note some terminology relevant to the VIP casino market.

15 To play games at casinos, players must exchange money for chips. In the main gaming rooms in Australian casinos, chips are sold directly to casino patrons at gaming tables and via cashier desks. The cashier's desk is commonly referred to as the "cage". The cage is where patrons purchase and redeem chips for cash or cash equivalents.[15]

16 In the VIP system, "dead chips" (also called junket chips or non-negotiable chips) are sold or lent by the casino operator to Junket operators.[16] Junket participants cannot acquire dead chips directly from the casino operator.[17] Dead chips can only be used in play and cannot be redeemed for money. However, a winning player is paid in "live chips" which can be redeemed for cash in the casino or (if the player is a Junket participant) given to the Junket promoter in exchange for more dead chips. The process of the Junket operator continuing to provide Junket participants with dead chips is known as "rolling" which is why dead chips are sometimes referred to as "rolling chips".[18] The rolling process enables the Junket operators to keep track of a Junket participant's turnover.[19] Turnover is the amount of money that is actually wagered in the casino.[20]

17 All the agreements between casino operators and Junket operators are based upon the Junket operator bringing a certain volume of play into the casino. The Junket operator will deposit "front money" with casinos in advance of the arrival of a Junket or a premium player. The front money is used to buy chips.[21]

18 Casino operators often pay Junket operators and Junket participants rebates to incentivise them to wager more at the casino.[22] The premium direct and Junket segments are sometimes referred to as "rebate play".[23] Premium direct players must also provide certain minimum front money.[24] The Star's international rebate business consists of international Junket programs, international premium direct players and international premium mass players.[25]

19 At Crown, rebates take various forms including a commission percentage on a VIP patron's turnover, a discount on actual losses or a rebate on a win/loss (where the customer and Crown have a pre-negotiated share of paying winnings or collecting losses).[26]

20 Baccarat is the game of choice for VIP players. This is because the house advantage (sometimes referred to as the "house edge") is lower than for other games on offer at casinos.[27] The house advantage is the statistical advantage the casino operator holds in any particular game as it is played over time.[28] The higher the house edge, the less the casino will pay out on average. The corollary is that the lower the house edge, the more the casino will pay out over time and the more potential there is for the patron to make a profit.

21 Another popular VIP game is the card game Blackjack. To a lesser extent VIP patrons also play Roulette, which features a spinning wheel with 37 or 38 squares on the rim.[29]

The historical evolution of Junkets and their functions

22 Junkets are a well-recognised part of the international casino landscape. Junkets identify VIP patrons and make arrangements for them to travel to gamble in particular casinos, often by offering enticements such as free travel and accommodation. In return, casino operators pay Junket operators commissions which in some jurisdictions such as Macau and Australia are based upon the Junket participant's turnover during any particular Junket program.[30] In some jurisdictions, including Macau and Australia, Junkets may also advance credit to Junket participants and enforce debts incurred by those participants.[31]

23 In Australia, the casino operator enters into contractual arrangements with the Junket operators, sometimes referred to as "junket promoters",[32] rather than with the individual Junket participants.[33] The contractual relationship is between the casino operator and the Junket operator. If the casino operator extends credit to the Junket

operator, it looks to the Junket operator to pay the debt. It is a matter for the Junket operator how the debt is received from the Junket participant.

24 In Australia, Junket operators must agree with the casino operators to deposit a minimum level of front money prior to being permitted to operate a Junket program at the casino.[34]

25 The experience in Macau with Junkets is relevant for three reasons. First, the services provided by Junkets operating in Australia have a number of similarities to those services provided by Junkets in Macau. Secondly, many of the Junkets with which Crown and The Star have collaborated within Australia are based in Macau. Thirdly, a factor upon which these casino operators have relied in deciding whether to deal with Junkets in Australia is the fact that those Junkets have been licensed by the casino regulator in Macau. The Macau regulator, the Gaming Inspection and Coordination Bureau, is commonly referred to as the DICJ (Direcção de Inspecção e Coordinenanação de Jogos).

26 The operation of Junkets in Nevada (referred to as "independent agents") is markedly different to Macau Junkets.

Macau VIP gaming promoters

27 Macau Junkets are now known as "VIP gaming promoters" and may operate as corporations or individuals. [35]

28 It is often said that the origins of Junkets can be traced back to Macau in the 1930s with the recruitment activity of a group known as *Jin-Ke* which literally means "introducing customer" in Mandarin. The Jin-Ke worked to lure Hong Kong gamblers to Macau to play fantan which was a Chinese game with some similarities to roulette. This Jin-Ke system survived in the early days of the exclusive concession granted to Dr Stanley Ho's company Sociedade de Turismo e Divesoes de Macau (STDM) in the 1960s and evolved during the 1970s into *Daa Ma Zai* (meaning "chip rollers"). The chip rollers were engaged by STDM to sell non-negotiable chips to VIP casino patrons. This system was the beginning of the modern form of Junkets in Macau. In order to handle the significant growth in casino gambling, STDM engaged third parties not only to recruit gamblers but also to invite large-scale Junkets to operate private VIP gambling rooms in its casinos.[36] These Junkets were able to extend credit to gamblers, something which at that time STDM was prohibited by law from doing.[37]

29 By the 1980s VIP rooms in Macau casinos were often operated by Junkets. The then monopoly casino operator STDM essentially rented out VIP rooms to Junkets and thereby removed the risk of having to collect debts from players. The Junket operators managed the cages in the VIP rooms.[38]

30 Junket operators in Macau perform numerous functions. They locate VIP patrons using extensive networks throughout Mainland China; they arrange for patrons' funds to be transferred from China and make chips available in casinos; they often extend credit to patrons; and they also facilitate travel, including arranging visas and flights. They also source entertainment, both legal and illegal, for Junket participants.[39]

31 By the 1990s Asian organised crime groups known as "triads" were directly participating in the operation of the VIP rooms within Macau. This resulted in reforms being enacted by the Macau legislature in 2002 which amongst other things required licensing of Junket operators and generally increased oversight of the Junket system.[40]

32 The Junket system is complicated in Macau with many layers of networks and informal agreements based upon friendships and relationships.[41]

Nevada independent agents

33 Nevada's first unofficial Junket took place in 1961 when a Nevada casino shareholder flew his friends to Nevada for a weekend of gambling and entertainment.[42] The resulting income derived from these visitors paved the way for the modern system of Junkets in Nevada which are known as "independent agents".[43]

34 From 1962 to 1970 independent agents were common in major hotels in Nevada but it was not until 1972 that the Nevada Gambling Commission attempted to regulate Junkets due to the criminal infiltration of Junket operators and incidents of violence in collecting debts from patrons. Effective Junket regulation came in 1982 when the Special Investigations Unit of the Commission was given responsibility for Junket reporting and compliance.[44]

35 Independent agents generally play a far more limited role in Nevada than in places like Macau and Australia. In Nevada the agreements are between casino operators and the players.[45] This means that it is the casino operators that are at risk when credit is extended to players. Independent agents are like premium service providers likened to executive travel agents acting as a concierge, butler and assistant. They also recruit the players.[46]

36 In Nevada it is illegal for independent agents to extend credit to a Junket player. It is the casinos that extend credit to the players and may on occasion ask independent agents to assist them in collecting debts incurred by the players introduced to the casinos by the independent agents.[47]

37 Junkets in Nevada are not sub-contracted by casino operators to operate VIP gaming rooms or the cages within those rooms.[48]

38 Generally, Junkets in Macau and Australia are remunerated differently from those in Nevada. In Macau and Australia Junkets are generally remunerated on the basis of the total number of rolling chips (that is, non-negotiable chips) they purchase for the particular Junket visit or by an agreed win/loss split (for example, a Junket may agree to bear 40 per cent of the net win (or loss), which is sometimes referred to as a revenue sharing arrangement).[49] By contrast, in Nevada, independent agents/Junket operators were traditionally paid a flat fee per head to bring in Junket participants.[50]

39 As affluent Chinese gamblers travel beyond Macau and other Asian gambling destinations, elements of the Macau Junket system are travelling with them.

Junkets and VIP patrons from Mainland China

40 There is a strong relationship between VIP patrons from Mainland China and Junkets.[51] In Australia, as in Macau, casino operators are heavily dependent on Junkets for the continued success of the VIP market segment of their revenues.[52] This is for a number of reasons. First, there are legal restrictions on the promotion of gambling in Mainland China.[53] One of the important functions fulfilled by Junkets is therefore to attract VIP players in Mainland China to overseas casino destinations.[54] Secondly, in places like Australia and Macau, Junkets also play an important role in providing credit to Junket participants and making funds and chips available to them.[55] Macau Junkets have been described as operating like "mini-banks".[56] Thirdly, in Australia and also in Macau, Junkets are responsible to the casinos for the debts of their participants and they therefore assume the risk of non-payment and the role of enforcing debts.[57] While the commissions made by Junkets cut into the profits of casino operators, the quid pro quo is that the casino operators assume less risk.[58]

Melco captures a share of the VIP casino market

41 Melco in the joint venture with Crown opened the first integrated resort featuring a casino in Taipa, Macau in May 2007. It was originally known as Crown Macau but was soon renamed Altira. Melco subsequently opened two other integrated resorts featuring casinos in Macau, being City of Dreams located in Cotai in June 2009 and Studio City also located in Cotai in October 2015.[59] Altira was targeted at Asian VIP patrons, whereas City of Dreams was targeted at premium mass market customers including families, business travellers and VIP patrons.[60] In addition, Melco opened City of Dreams in Manila in February 2015.

42 When Altira was opened in Macau in May 2007 it struggled financially because too much of the casino was dedicated to the mass market, as opposed to VIP gaming.[61] Altira subsequently pivoted towards the VIP casino market and the joint venture entered into a deal with a gaming promoter (i.e. Junket) AMA to bring VIP patrons to Altira and paid it above market commissions.[62] Melco's 2008 Annual Report recorded

that the unique operating structure at Altira Macau "delivers working capital, the life blood of this business, to gaming promoters in a way that insulates us from credit risk".[63]

43 By January 2008 Altira had "shot up from 3 per cent of the Macau market to 18 per cent" and attributed this success to Altira's relationships with gaming promoters.[64]

44 By 2013 Melco had "a significant share" of the Macau VIP gaming market, the largest VIP gaming market in the world.[65]

45 The relationships with Junket operators were the key to the success of Altira.[66]

Key developments in international VIP market

The Chinese corruption crackdown

46 In the period 2009 to 2011 the VIP casino market in Macau boomed.[67] This was a product of a long economic boom in China resulting in the emergence of a new class of highly wealthy people; and the fact that gambling in Mainland China was illegal.[68]

47 However, in more recent times there have been significant disruptions in the VIP casino market in Macau as well as elsewhere in the world following the crackdown on corruption in Mainland China initiated in late 2012 by Chinese President Xi Jingping.[69]

48 The gaming sector became a key focus of the Chinese corruption crackdown.[70] In December 2014 President Xi Jingping visited Macau to highlight the far reach of his anti-corruption campaign and urged its government to diversify its economy to reduce dependence on casino revenue.[71] Thereafter, the Macau government implemented a number of measures to improve regulation in the gaming industry including the introduction of a new anti-money laundering law and a tightening of Junket regulation.[72] Macau tightened anti-money laundering regulation in 2016 and 2017 by requiring casino operators and gaming promoters (Junkets) to identify, report and prevent money laundering in their casinos. This included a requirement to verify gaming patrons' identities. As part of an attempt to control the movement of currency ATMs in Macau now have facial recognition software and a withdrawal limit.[73]

49 Fearing they would come under the watch of the Chinese authorities, VIP patrons from Mainland China abandoned Macau in large numbers. Data available on the DICJ's website indicates that gross revenue from VIP baccarat dropped from $MOP 212.5 billion in 2014 to $MOP 127.8 billion in 2015.[74] By 2015 the Macau casinos were seeing major impacts, with the VIP numbers plummeting.[75]

50 In 2011 the share of VIP room revenue as a percentage of gross casino revenue was at its highest at 73 per cent. Gross casino revenue in Macau peaked in 2013.[76] From 2012, the percentage of VIP revenue of total casino revenue has steadily fallen. In 2019 VIP gaming revenue was down to 46 per cent.[77]

51 The table below, which is based upon figures published on the DICJ's website, shows the gross casino revenue and VIP room revenue from 2008 to 2018:[78]

Year	Gross casino revenue in MOP million (games of chance)	VIP room revenue in MOP million (VIP baccarat)	Gross casino revenue in USD million (games of chance)	VIP room revenue in USD million (VIP baccarat)	VIP room share of gross casino revenue
2008	108,772	73,772	13,631	9,245	68%
2009	119,369	79,834	14,959	10,004	67%
2010	188,343	135,648	23,602	16,999	72%
2011	267,867	196,126	33,567	24,577	73%
2012	304,139	210,850	38,113	26,422	69%
2013	360,749	238,524	45,207	29,890	66%
2014	351,521	212,535	44,050	26,634	60%
2015	230,840	127,818	28,927	16,017	55%
2016	223,210	118,960	27,971	14,907	53%
2017	265,743	150,673	33,301	18,881	57%
2018	302,846	166,097	37,951	20,814	55%

52 When Macau's gaming revenue peaked in 2013 Junket operators accounted for around 70 per cent of that revenue. In other words, VIP patrons (mainly from Mainland China) betting through Junkets were worth $USD 31.5 billion to casinos in Macau.[79]

53 However, the Chinese government's crackdown on corruption did not put an end to the habits of VIP patrons from Mainland China. Rather, it pushed those patrons elsewhere. VIP patrons from Mainland China looked for casino experiences in locations beyond Macau.[80]

54 By 2012 around one fifth of casino revenues along the Las Vegas strip was derived from Mainland Chinese gamblers generally playing baccarat.[81] The corruption crackdown in China gave rise to thriving casino industries in surrounding areas including the Philippines, Vietnam, Laos and South Korea,[82] where there is less scrutiny and regulation of casino operations and less stringent anti-money laundering regulation.[83] In addition, Crown sought to capitalise on this crackdown and marketed aggressively in Mainland China to build its share of the global VIP casino market.

55 By early 2015, Crown's VIP International strategic business plan recorded the following:[84]

> **The prevailing feature of the current international market place is uncertainty.**
>
> - Since the commencement of their term approximately 2 years ago, the Chinese central government has embarked on a sustained 'anti-corruption' campaign.
> - Government is also trying to close down the uncontrolled outflow of currency, and the "underground banking system" that supports it. This has also brought attention to the use of China Union Pay cards to access money overseas.
> - The most recent development was an announcement that authorities are taking a stand against foreign casinos seeking to attract business out of China. This announcement was made about 1 month ago (and likely contributed to the softer than expected CNY period).
> - These policy statements have been underlined by a series of high profile arrests and executions.
>
> …
>
> - Players (especially high value players) are choosing not to demonstrate "conspicuous consumption" (particularly by gambling).
> - Junkets are being much more cautious about moving funds across borders.
> - Macau based junkets are consolidating and/or closing junket rooms following the dramatic declines in the VIP market there.
> - Constraints on liquidity and the junket financing system have brought pressure to Crown's debt collection outcomes and debt write off expense rate.
> - Competition for business amongst our expanding competitor set has increased. More casinos are chasing a declining market.
>
> ***However, in a difficult market, opportunities are available:***
>
> - Some customers are choosing to continue to gamble, but at locations other than Macau or Singapore.
> - The global market contraction has been offset in Australia by some high end customers choosing to visit here instead of Macau or Singapore, which has delivered strong growth to both Crown and Echo.

56 Prior to COVID-19, there were indications that the VIP market was recovering from the Chinese corruption crackdown and that VIP patrons were returning to Macau.[85]

In 2016 three of Asia's biggest gaming operators, Wynn Macau, Sands China and Melco, all reported recovering businesses for VIP patrons.[86] In the last quarter of 2016 Macau's VIP gambling revenue rose 13 per cent to $MOP 33.3 billion (USD $4.16 billion) after three years of downturn.

Emergence of the premium mass market segment

57 In tandem with the decline of the VIP casino market and the tightening of regulations in Macau, a premium mass market has emerged.[87] Casino operators around the world have been focusing more strongly on this market in recent times.[88] Junkets are not involved with this cohort.[89]

58 Patrons in this market attend casinos independently rather than coming as Junket participants. They play regularly and bet substantial sums although not as much as VIP patrons.[90] They have a lower front money level which means they usually do not have access to the VIP salons or VIP gaming areas.[91]

59 Crown's premium mass market segment are local premium players who gamble in either the main floors or VIP rooms, depending on their VIP status.[92]

Increased Junket competition and consolidation

60 Junkets have become increasingly competitive over time, leading to a process of consolidation, with smaller operators being pushed out of the market.[93] This has been driven partly by difficulties faced by Junket operators in enforcing debts and partly by the Chinese corruption crackdown, which has driven a number of Junkets out of business, or at least out of Macau and into less regulated casino markets.[94]

61 Some Junkets have become very large and sophisticated operations and some of them are listed on the world's stock exchanges.[95] Junkets have also diversified their services and product offerings and some have moved into casino operations and other businesses such as foreign exchange.[96] For example, Junket operator Suncity is said to have diversified into financial and wealth management services in addition to its Junket services.[97]

62 Casino operators have chosen to foster relationships with Junket operators who have the greatest revenue potential, making it difficult for smaller Junkets to compete and causing some to cease operating.[98] By way of illustration, in 2015, the DICJ licensed 182 gaming promoters in Macau whereas by 2020 only 95 were licensed.[99]

Rise of the VIP casino market in Australia

63 Over time, the VIP casino market became increasingly significant to some of the Australian casino operators, particularly to Crown Melbourne, Crown Perth and The Star.

64 In October 2014 Crown's VIP International vision was to become "the dominant long-haul integrated resort destination brand for Asian gaming customers."[100] Crown initially perceived the Chinese crackdown on corruption as an opportunity to capture a greater share of the international VIP casino market. However, as the fortunes of the VIP casino market have fallen in Macau, so they have eventually fallen for Crown.

65 The growing number of visitors from China was singled out as a highlight in Crown's 2015 results. Its Annual Report recorded that it had "put additional resources into VIP international marketing over the last year and that has helped deliver strong growth in VIP program play turnover of 41.8 per cent."[101]

66 Crown's 2019 Annual Report recorded a normalised net profit after tax of $368.6 million, which was down 4.7 per cent on the previous year. Crown reported that "this decline was primarily due to the reduction in VIP program play turnover at Crown's Australian resorts". VIP program turnover was $38.0 billion, which was down 26.1 per cent from the previous year. This was said to reflect the "challenging trading conditions in the international VIP market." More specifically, it was reported that in 2019, normalised VIP program play revenue at Crown Melbourne was $441.4 million, down 25.4 per cent with turnover of $32.7 billion. At Crown Perth, VIP program play revenue was $72.0 million, down 30.1 per cent with turnover of $5.3 billion.[102] Crown's VIP revenue at both Crown Melbourne and Crown Perth, as a percentage of overall revenue, peaked in 2015 at 31.63 per cent and 25.56 per cent respectively.[103] However, as percentage of normalised earnings, the contribution in 2015 of 19.73 per cent and 1.84 per cent respectively is not as significant.[104] Crown prepared a table for the Inquiry which sets out the VIP program play earnings contribution from 2014 to 2019:[105]

Australian Resorts - VIP program play earnings contribution

					Normalised at 1.35%		
		Total revenue	VIP program play revenue	VIP as a % of total	Total contribution	VIP contribution	VIP as a % of total
2014	Melbourne	1,931.2	501.2	25.95%	561.8	59.8	10.65%
	Perth	883.6	173.1	19.59%	241.6	(1.6)	(0.67%)
	Aus Resorts	2,814.7	674.3	23.96%	803.4	58.2	7.24%
2015	Melbourne	2,233.9	706.6	31.63%	662.1	130.6	19.73%
	Perth	975.3	249.3	25.56%	254.4	4.7	1.84%
	Aus Resorts	3,209.2	955.9	29.79%	916.5	135.3	14.76%
2016	Melbourne	2,312.5	676.5	29.25%	673.3	110.1	16.35%
	Perth	922.0	202.8	21.99%	259.9	(1.4)	(0.55%)
	Aus Resorts	3,234.4	879.2	27.18%	933.2	108.7	11.64%
2017	Melbourne	1,994.8	340.3	17.06%	588.8	36.2	6.15%
	Perth	830.1	109.3	13.17%	244.8	0.3	0.11%
	Aus Resorts	2,824.9	449.7	15.92%	833.7	36.5	4.37%
2018	Melbourne	2,279.1	591.8	25.97%	645.0	84.6	13.11%
	Perth	844.5	103.0	12.20%	248.8	7.2	2.89%
	Aus Resorts	3,123.6	694.9	22.25%	893.8	91.8	10.27%
2019	Melbourne	2,155.4	441.4	20.48%	589.5	50.1	8.51%
	Perth	799.4	72.0	9.00%	221.8	(0.3)	(0.13%)
	Aus Resorts	2,954.9	513.4	17.38%	811.3	49.9	6.14%

The Star Entertainment Group, which operates The Star Sydney, as well as casinos in Brisbane and the Gold Coast, does not provide a detailed breakdown of its operating revenue in its Annual Reports. In its Annual Report for 2019, The Star Entertainment Group reported revenue from VIP program play as $572.9 million.[106] This was a decline in VIP revenue on the previous corresponding period. The Star Entertainment Group's VIP revenue peaked in 2018 with $826.7 million in revenue.[107]

Mr Packer's role in encouraging Crown to deal with Junkets

67 Mr Packer played a key role in encouraging Crown's relationships with Junkets. He was one of the key driving forces in bringing Macau Junkets into Crown's casinos in Australia.[108]

68 From 2013 Crown became increasingly reliant upon Junkets to generate turnover in the VIP international segment.

69 Prior to entry into the Melco joint venture Mr Packer travelled to Macau on at least six occasions to conduct his own due diligence and to form an understanding of how the casino industry operated in Macau.[109] It was during this period that Mr Packer became familiar with Junkets in the promotion of VIP gaming in casinos and formed the view that Junkets were "very important in the VIP side of the business."[110]

70 Mr Packer understood that from a casino operator's perspective, an advantage of dealing with Junkets was to transfer the credit risk so that the casino operator could enforce a debt against the Junket operator rather than the patron.[111]

71 By 2012 Mr Packer was planning to take some of the share of the Macau VIP market.[112] His intention "subject to regulatory approvals" was to bring the Macau casino operator model, which depended to no small extent upon relationships with Junkets, to Crown's Australian resorts.

72 Mr Packer's vision for Barangaroo Casino also depended upon Junkets. It is not in dispute that the VIP gaming facilities at Barangaroo Casino were necessary to make the project commercially viable.[113] Mr Packer aimed to treble Australia's current share of the international VIP gambling market by leveraging Crown's joint venture in Macau.[114] In 2012/2013, Mr Packer understood that the Junket operator model had worked well in Macau and he wanted to bring that model to Crown in Sydney.[115] As part of Crown's business strategy in 2015, Crown was to work with Melco to execute Melco's business strategy of continuing to develop Junket relationships.[116]

Crown's platform Junket strategy

73 In late 2014 early 2015 Crown devised a strategy to develop closer ties with selected large Junkets referred to as the "platform junket strategy". This strategy was implemented in the period 2016 to 2019. Some of the platform Junkets were referred to adversely in the Media Allegations.

74 In January 2015 Crown's aim was to unlock the platform Junket strategy because it apprehended that it was not realising its full potential. It was proposed to align the Crown VIP International sales team with major Junkets. The goal was to "support the super junkets to lower our credit risk and grow business faster." At this time the platform Junkets were identified as Suncity, Guangdong Club (including Chan Yan To), David Group, Jimei, Song Junket/Gold Group, MegStar, Tak Chun, Chinatown and Oriental Group.[117] As noted elsewhere in the Report, the Guangdong Club is an offshoot of the Neptune Group Junket.

75 Crown's 2015 "Junket Platform Strategy" identified "the paradox" that "Junkets that can finance customers have difficulty influencing customers; Junkets that can influence customers, we have difficulty financing". It was explained:

- **Largest most credit-worthy junkets have few direct customer relationships. They are not sales organisations – they are marketing platforms**
  - Yet, we are most comfortable having these junkets finance customers
  - As a result, we focus our sales efforts on pushing and selling these large junkets, but these large junkets in turn are unable to sell customers to come to Crown because they do not have access to the players
  - These large junkets historically competed on service in Macau.

- **Smaller junkets and agents often have direct customer relationships, but are risky and hard to approve credit for**
  - When we successfully develop them, they can have good performance
  - But doing so requires long sales cycles, and unrealised turnover potential
  - And results, in large junkets feeling like we are competing for their agents and key players.

76 Platform Junkets were seen as "junket partners". The essence of the initiative was "to work a little closer with some of the Junkets for mutual benefit with the objective of introducing new business to Crown."

77 By early 2016, when the VIP casino segment of the market was looking increasingly uncertain, Crown's strategy remained to "unlock the platform junkets"; and to "identify and collaborate with key credit worthy 'platform junkets' who are prepared and able to finance players" when Crown was not so prepared. Crown saw this as providing the "sales team a 'fall-back' position for when new (or existing) customers present credit barriers".[118]

78 In April 2016 Crown's aim was to accelerate and deepen the platform Junket initiative.[119] A Key Accounting Issues paper contained within the 16 August 2016 Crown Board Papers recorded the following:[120]

> As discussed in previous Audit Committee meetings, Crown is steering more Chinese premium players towards Junkets (this is our platform junket strategy) as collections from major junkets are far less risky than premium players. Crown will still offer credit to selected Chinese premium direct customers but in most instances new players (that Crown finds) are matched up with a junket.

79 Crown's internal operations language referred to Crown "partnering" with or "collaborating" with the platform Junkets.[121] Crown provided support to these Junkets including business development support to Suncity and the Guangdong Club.[122] Individual staff members were allocated full time in providing this support.[123]

VIP gaming rooms and Junkets in Australia

80 Crown and The Star have both established special rooms separated from the main floors of the casinos in which VIP gaming may take place. VIP gaming rooms or areas have restricted access and are only available to VIP patrons, who often attend the casinos as Junket participants or who otherwise come directly to the casino as premium direct patrons. These patrons are offered more personalised service than in

the general mass market gaming areas. As noted above, special chips – sometimes referred to as "rolling chips" or "non-negotiable chips" are made available to VIP players.

81 As at August 2020 Crown Melbourne had VIP rooms including the Teak Room, and the Mahogany Room, and private salons within those VIP rooms.[124] In addition there were 11 higher end salons in Crown Melbourne for the use of VIP patrons either as Junket participants or who come to the casino directly.[125] Suncity utilised a casual Junket room referred to as Pit 86 in the Teak Room in Crown Melbourne, not exclusively for Suncity's use.[126] Crown Melbourne has a private room which is used predominantly by the Meg-Star Junket.[127]

82 At Crown Perth there is a VIP Room, the Pearl Room, which has three private salons within it, as well as is a private salon at the top of Crown Metropol and four or five private gaming salons in Crown Towers.[128]

83 In early January 2014, Crown Melbourne entered into arrangements with its largest Junket operator, Alvin Chau, to open the Suncity Room.[129] Although the commercial/contractual relationship was with the individual, Mr Chau, the operating VIP Room was referred to and labelled the Suncity Room. This room was located next to the Teak Room and was a VIP room made exclusively available to Suncity Junket players. At Suncity's instigation, this arrangement came to an end in August 2019.[130] Operations in the Suncity room are discussed in further detail in Chapter 3.4 of this Report.

84 There are 20 "Gaming Salons" used for the VIP business at The Star Sydney. These are private rooms located in The Darling Hotel and The Star Grand Hotel towers. The Star also has "Gaming Rooms" such as the Sovereign Room and the Chairman's Room, which are private gaming areas for players on The Star Sydney's loyalty memberships. These Gaming Rooms are approved by the Authority.[131]

85 Until September 2019 The Star had a designated VIP room for Mr Iek's Junket, which is closely linked with the Suncity Junket.[132] It is understood that Alvin Chau was the financier of the Iek Junket.[133] This designated room was located on Level 1 of The Star's Darling Hotel and was branded the Suncity Room,[134] and was for Suncity's exclusive use in the period from 1 July 2017 to 1 September 2019.[135]

86 The Iek (Suncity) Junket operated a "service desk" in this room. While cash could be accepted at that desk it would be brought through to the cage for the buy-in to take place.[136]

87 The Iek Junket ceased using the Suncity Room in around August 2019, and at that time was moved to another Gaming Room located in one of The Star's hotel towers. That room does not carry Suncity branding.[137]

Chapter 1.3

Regulation of Casinos in New South Wales

Legalisation of casinos in New South Wales

1 The legalisation of casinos in New South Wales was a controversial and protracted process. The operation of casinos, sometimes known as gaming houses, had long been illegal under English law. That prohibition was adopted in Australia.

2 By 1960 the position in the United Kingdom had changed, and over time the Australian States and Territories followed suit. Casinos opened in Tasmania and the Northern Territory in the 1970s. During the mid-1980s to early 1990s casinos were opened in Queensland, Western Australia, South Australia and the Australian Capital Territory. New South Wales and Victoria were the final two States to open legal casinos in the mid-1990s.

3 In 1971 it was recommended to the NSW Government that casinos be introduced in the form of the restricted British "club" style rather than the commercial American model. The rationale for legalising casinos was to permit an "irrepressible demand" for gambling in casinos.[1] However, under pressure from anti-casino opposition, the NSW Government did not proceed with that recommendation.[2]

4 During the early 1980s further consideration was given to the proposal and in 1985 the NSW Government announced that a casino would be included in the redevelopment project for Darling Harbour. The following year the *Darling Harbour Casino Act* 1986 (NSW) (*Darling Harbour Casino Act*) was enacted and made provision for the establishment of the first casino in New South Wales.

5 However, difficulties arose when the NSW Police Board objected to the proposed casino licensee and the NSW Government reversed its decision to grant the licence.

Litigation ensued and ultimately the NSW Government agreed to compensate the disappointed licensee.

6 Before a licensee suitable to the Police Board could be identified, there was a change of government and the incoming government moved to repeal the *Darling Harbour Casino Act*. On 18 May 1988 the then Premier, the Hon Mr Nicholas Greiner said: [3]

> As the coalition parties perceived that the infiltration of organized crime into a casino was almost impossible to avoid, I made an election promise that there would be no legal casino in this State. We were of the view also that, on economic and social grounds, there was no desirability or justification for a casino.

7 Sentiment had changed by 1991 when the NSW Government announced a new proposal to open two casinos in Sydney.

8 A process of collaboration between the governments of New South Wales and Victoria led to the passage of the *Casino Control Act* 1991 (Vic) in Victoria and the *Casino Control Act* in New South Wales, which were in similar terms. The principles underpinning both the New South Wales and Victorian statutes were largely based upon the regulatory principles recommended by the Hon Xavier Connor QC[4] in two reports in 1983 (the 1983 Report) and 1991 (the 1991 Report).[5]

9 The 1983 Report considered the legalisation of casinos in Victoria, including the measures which could be taken to "prevent undesirable persons from having a financial or other connection with, or being in a position to influence any aspect of the operations of casinos".[6] Mr Connor QC's review was extensive, including an overseas tour and taking evidence from international and local regulators.[7]

10 Mr Connor QC formed the view that should casinos be legalised, they would need to be subject to a very high level of ongoing control. He noted the following:[8]

> To those unfamiliar with casinos, the degree of control which has been found necessary may seem at first to be somewhat far-fetched. Once the dangerous and volatile nature of casino gambling is understood, however, the absolute necessity for competent ongoing strict, even draconian, control becomes clear. The degree and form of control will vary in some respects according to the type of casino; but there are many measures of control and supervision which apply to any casino. Control may be ineffective because it is corrupt, it may also be ineffective because it is incompetent, albeit honest.

11 Mr Connor QC also noted that experience had demonstrated that overseas casino operators had shown themselves to be adept at appearing to happily accept the conditions laid down for the conduct of casinos but then subsequently exerting considerable pressures on governments to relax restrictions. He observed that the

process of regulating casinos was a "constant wearing down process, like water pressing against a dyke, ready to flood through any opening that occurs."[9]

12 Following receipt of the 1983 Report, the Victorian Government determined to legalise casinos, and asked Mr Connor QC to make recommendations on the form the regulatory legislation should take. This was the subject of the 1991 Report.[10]

13 Thereafter, the New South Wales and Victorian Governments worked together to draft casino control legislation. During the second reading of the Victorian Casino Control Bill, the Minister said:[11]

> The government has worked closely with the New South Wales government, which also is preparing casino legislation based on the Connor report. The Bill mirrors closely the current New South Wales draft Bill, and indeed the two Bills are almost identical in format and wording. This consistency of approach will be of benefit to prospective tenderers for casino licences and will offer to both States the same high level of stringent control and regulation of casino operations.
>
> In order to exclude criminal activity and influence from the casinos, legislation designed to provide strict control over all aspects of the operation of casinos is required. The government believes the Bill will achieve that objective, based on the Connor report and the experience of interstate and overseas legislation.

14 On 6 August 1991, the Premier of New South Wales announced that an inquiry would be conducted by the former Chief Justice of New South Wales, Sir Laurence Street AC KCMG into the NSW Government's proposal to enact the draft Casino Control Bill and establish two casinos.

15 Sir Laurence was requested to conduct his inquiry with a view to ensuring that:

(a) The management and operation of casinos remain free from criminal influence and exploitation;

(b) Casinos were not used to dispose of and launder proceeds of criminal activity; and

(c) Gaming in casinos was conducted honestly.

16 Sir Laurence concluded that the Casino Control Bill was "in the tradition of what the 1983 Connor Report called 'the absolute necessity for on-going, strict, even draconian control' of a legal gambling industry".[12]

17 The main concern about introducing legalised casinos was that they would inevitably bring crime. However, Sir Laurence said that so long as three factors were satisfied, this risk could be controlled. The three requirements were:[13]

- the selection of a casino operator whose integrity and commitment to preserving a crime-free environment in, and in relation to, the casino was assured;
- the formulation of a comprehensive regulatory structure for the operation of the casino; and
- the diligent enforcement of that regulatory structure.

18 Sir Laurence emphasised the importance of independence of the Regulator as follows:[14]

> Independence from political and industry pressures, combined with a structure which maintains the organisational and personal integrity of the Casino Control Authority, is vital to protect the system from criminal influence and exploitation.

19 Sir Laurence also emphasised that cooperation with other Australian agencies would contribute to the overall efficiency of casino control and that there were advantages in adopting an integrated national approach.[15] He observed that:[16]

> Casino operators, control authorities, and law enforcement agencies throughout Australia have a very real interest in sharing knowledge of risk and vulnerability in the operation of casinos. Law enforcement agencies in particular have a common interest in sharing criminal intelligence relevant to the gaming industry. This situation requires a nationally co-ordinated approach.

20 Sir Laurence also referred to the unique role and function of the casino regulator as follows: [17]

> The Authority's objects are to ensure the casino industry remains free from criminal activity and dishonest gaming. These objects set it apart from the usual public authority. Its field of activities is particularly at risk of criminal penetration and it requires every legislative assistance to enable it to function effectively in the protection of the public interest. Without being strictly a law enforcement agency, its functions are the administration of a comprehensive regulatory scheme for the prevention of criminal activity and detecting and punishing misconduct. It is empowered to impose pecuniary sanctions of a magnitude almost unparalleled for a non-judicial authority. In the discharge of its functions it will fill a crime prevention and, in a complementary sense, a criminal investigatory role. It must be assisted to receive free rather than guarded access to criminal information from agencies here and elsewhere. Its responsibilities are not comparable with those of other public authorities.

The original *Casino Control Act* 1992 (NSW)

21 The *Casino Control Act* commenced on 15 May 1992. The Act provided for the operation of only one casino in New South Wales. It established the Casino Control

Authority as a specialised casino regulator and set up a framework for the licensing, control and ongoing supervision of the casino.

22 The *Casino Control Act* was based upon what is known as the "New Jersey" regulatory model. New Jersey legalised casinos in Atlantic City in 1976, and a powerful regulatory system was put in place in an attempt to avoid the problems that had plagued casinos in Nevada where organised crime had infiltrated the casinos.[18] The underlying foundation of the New Jersey system was that participation in the lucrative casino industry was a privilege rather than a right and the price of participation was that casino operators were subject to ongoing rigorous monitoring of their operations and subject to control by the regulator with very extensive powers.[19]

23 Key features of the *Casino Control Act* in its original form included:

(a) A specialist, standalone and independent casino regulator (then called the Casino Control Authority), responsible for licensing the casino operator and approving its procedures (ss 5, 133-136 and 141);

(b) The creation of a separate Office of Director of Casino Surveillance, which was responsible for direct supervision of the casino and investigation of the suitability of persons associated with the casino (ss 102-104);

(c) Specialist casino inspectors to supervise the operations of the casino including the handling and counting of money in the casino, who were to be stationed at the casino around the clock (ss 105-113);[20]

(d) A stringent, rigorous and independent selection procedure for the casino operator, which required consideration of the suitability of the casino operator and its close associates (ss 5, 11-18);

(e) A reassessment every three years of the casino operator's suitability to continue holding the casino licence and a determination of whether the presence of a casino remained in the public interest (s 31);

(f) Vetting of all "special" employees involved in the conduct of gaming and other persons with the capacity to exert significant influence over the operations of the casino (ss 12 and 44);

(g) Oversight of all significant supply contracts entered into by the casino or the casino operator's associates, including the ability of the Authority to object to proposed contracts and require their termination (ss 37-42); and

(h) A prohibition on the casino operator providing credit to patrons (s 74).

24 It should be noted that despite the prohibition on providing any form of credit to patrons in section 74, casino operators were permitted to cash bank cheques and establish deposit accounts to credit amounts payable by way of cash, bank cheques or traveller's cheques (s 75). Cheques could be exchanged under section 75 for cash, chips or chip vouchers.

25 A further key feature of the original regulatory framework was section 124 which required the Casino Control Authority to approve a detailed system of controls and procedures governing the day to day operations of the casino. Section 124 in its original form provided:

> (1) A casino operator is not to conduct operations in the casino unless the Authority has approved in writing of a system of internal controls and administrative and accounting procedures for the casino.
>
> (2) Any such approval may be amended from time to time, as the Authority thinks fit.
>
> (3) An approval or amendment of an approval under this section takes effect when notice of it is given in writing to the casino operator concerned or on a later date specified in the notice.
>
> (4) It is a condition of a casino licence that the casino operator must ensure that the system approved for the time being under this section for the casino is implemented.

26 In its original form, section 125 of the *Casino Control Act* made very detailed provision for the matters to be subject of the internal controls and procedures. This represented a prescriptive model of regulation. It provided as follows:

> (1) A system of internal controls and administrative and accounting procedures approved for the purposes of section 124 is to include (but is not limited to) details of the following:
>
> (a) accounting controls and procedures, including the standardization of forms, and the definition of terms, to be used in operations in the casino;
>
> (b) procedures, forms and, where appropriate, formulas for or with respect to the following:
>
> (i) hold percentages and their calculation;
>
> (ii) revenue drop;
>
> (iii) expense and overhead schedules;
>
> (iv) complimentary services;

(v) salary arrangements;

(vi) personnel practices;

(vii) junkets (as defined in section 76);

(viii) cash equivalent transactions;

(c) job descriptions and the system of organising personnel and chain of command authority so as to establish diversity of responsibility among employees engaged in operations in the casino and identification of primary and secondary supervisory positions for areas of responsibility, which areas must not be so extensive as to be impractical for an individual to supervise effectively;

(d) procedures for the conduct and playing of games;

(e) procedures and standards for the security of gaming machines and for the payment and recording of gaming machine' prizes;

(f) procedures within a cashier's cage for the receipt, storage and disbursement of chips and cash, the cashing of cheques, the redemption of chips and the recording of all transactions pertaining to gaming operations;

(g) procedures for the collection and security of money at the gaming tables and other places in the casino where games are conducted;

(h) procedures and forms for the transfer of chips to and from the gaming tables and other places in the casino where games are conducted and from and to a cashier's cage;

(i) procedures for the transfer of money from the gaming tables and other places in the casino where games are conducted to other areas of the casino for counting;

(j) procedures and forms for the transfer of money or chips from and to a gaming area;

(k) procedures and security for the counting and recording of revenue;

(l) procedures and security for the transfer of money from the casino to a bank and from a bank to the casino;

(m) procedures for the security, storage and recording of chips utilised in the gaming operations in the casino;

(n) procedures and standards for the maintenance, security and storage of gaming equipment;

(o) procedures for the payment and recording of winnings associated with games where the winnings are paid by cash or cheque;

(p) procedures for the issue of chip purchase vouchers and the recording of transactions in connection there with;

(q) procedures for the cashing of cheques and recording of transactions by cheque;

(r) procedures for the establishment and use of deposit accounts;

(s) procedures for the use and maintenance of security and surveillance facilities, including catwalk systems and closed circuit television systems;

(t) procedures governing the utilisation of security personnel within the casino;

(u) procedures for the control of keys used or for use in operations in the casino.

(2) For the purposes of an approval or amendment of an approval, controls and procedures may be described narratively or represented diagrammatically, or by a combination of both methods.

27 Section 125 was repealed in 2009.[21] Since then it has been left to the Casino Control Authority to determine what, if any, matters are to be included in the system of internal controls and procedures.

28 Section 126 of the *Casino Control Act* in its original form also warrants specific mention. Section 126(1) originally required the casino operator to maintain all of its bank accounts in New South Wales, making this a condition of the licence. The Casino Control Authority had to authorise each of the bank accounts. However, in 2009, this requirement was removed so that the casino operator may maintain bank accounts with any bank or financial institution, whether located in or outside Australia,[22] with the Casino Control Authority to be provided with details of the accounts.

29 The other key component of the original regulatory framework was the coming into effect of the *Casino Control Regulation* 1995 (NSW) on 6 September 1995. This was one week before the temporary casino first commenced operations. This regulation made provision for various matters including the regulation of Junkets.

Key changes to the regulatory scheme over time

30 As originally enacted the *Casino Control Act* did not contain an objects clause, although section 140 identified the purposes of the then Casino Control Authority in terms which are almost identical to the objects clause that was introduced with effect from

1 July 2011, when a new section 4A was inserted.[23] Section 4A, entitled "Primary objects of Act", provides:

> (1) Among the primary objects of this Act are:
>
> (a) ensuring that the management and operation of a casino remain free from criminal influence or exploitation, and
>
> (b) ensuring that gaming in a casino is conducted honestly, and
>
> (c) containing and controlling the potential of a casino to cause harm to the public interest and to individuals and families.
>
> (2) All persons having functions under this Act are required to have due regard to the objects referred to in subsection (1) when exercising those functions.

31 Following a series of legislative and regulatory amendments and changes in administrative arrangements over a 28 year period, the current regulatory framework in New South Wales bears little resemblance to that recommended by Sir Laurence Street. Some of the key changes are as follows.

32 First, there is no longer a standalone casino regulator in New South Wales. On 1 July 2008, the Casino Control Authority was abolished.[24] Its functions were subsumed into a more generalist regulator, which between 1 July 2008 to 28 February 2012 was called the Casino, Liquor and Gaming Authority, and which from 1 March 2012 has been known as the Independent Liquor and Gaming Authority.[25] This body has responsibility not only for casino regulation, but also for the regulation of gaming and poker machines, registered clubs and liquor licensing across New South Wales.[26]

33 Secondly, there is a real question as to whether the Authority remains or can be seen to remain independent from the NSW Government.

34 In 2006 the Casino Control Authority lost its ability to employ its own staff and instead its staff were employed by the NSW Government as public sector employees.[27] The staff of the Authority were transferred to a standalone division of the public service, known as the Casino Control Authority Division and headed by the Chief Executive of the Casino Control Authority. In 2008, the Casino Control Authority Division was abolished and staff were transferred to the (then) Department of Arts, Sport and Recreation.[28]

35 After the Authority was established, public sector employees who were employed to work at the Authority were answerable to the Chief Executive of the Authority.[29] However, on 1 February 2016, the role of Chief Executive was abolished and from that time the Authority had no assigned staff.[30] The staff were assigned to a Government Department, within an administrative division known at various times as the Office

of Liquor, Gaming and Racing and, more recently, Liquor & Gaming NSW. These staff were not answerable to the Authority, but instead to the head of the Government Department. From 1 July 2019 the administrative division of Liquor & Gaming NSW has been moved into the Department of Customer Service and restructured so that the staff are dispersed across the "Better Regulation Division" of the Department.[31] As at January 2020 almost all of the Authority's statutory functions are performed by the Department under delegation from the Authority.[32]

36 Furthermore, when the Authority was originally established, it was not subject to Ministerial direction, except in relation to certain prescribed matters.[33] In 2016 at the same time that the role of the Chief Executive was abolished, the Authority was expressly subjected to ministerial direction in relation to all its functions, except the grant, suspension or cancellation of licences, the imposition, variation or revocation of licence conditions and the taking of disciplinary action.[34] The then Chair of the Authority, Mr Chris Sidoti, resigned in the wake of these changes.[35] Further, in 2018, the Authority's right to receive gaming fees and levies was removed and since that time have been under the control of the Department.[36]

37 Thirdly, on 1 February 2016 the positions of specialist casino inspectors were abolished and 19 out of 20 inspectors took voluntary redundancy.[37] Since that time there have been no specialist casino inspectors and instead, inspectors have duties extending across casinos, gaming, and liquor licensing. Further, the 24/7 presence of inspectors at the casino was rolled back and replaced by a system of random visits by inspectors to the casino.[38]

38 Fourthly, in 2009 the periodic review of the casino operator's continuing suitability to hold the casino licence was changed from at least every three years to a period not exceeding five years.[39] More recently there have been proposals that the periodic suitability review should be scrapped altogether and the *Casino Control Act* has been amended so that the timing of these reviews can be altered by Regulations.[40]

39 Fifthly, the degree of surveillance of casino operations has decreased. According to *Liquor & Gaming NSW's Regulatory Priorities 2018-2020* publication, "A shift to a more contemporary and risk-based approach to casino regulation was introduced in March 2018, as part of the Government's response to the Casino Modernisation Review."[41]

40 Sixthly, the regulation of Junkets has changed substantially, as will be discussed in further detail below.

41 Seventhly, as originally framed, the *Casino Control Act* required that virtually every person employed by, or contracted to the casino in a management capacity or involved in the conduct of gaming or handling of money or chips, be subject to probity checks and be licensed by the regulator.[42] Employees working in the casino needed to be assessed and approved by the regulator for the particular tasks they

undertook.[43] Over time, these controls have been relaxed. The classes of persons now licensed have been reduced and the requirement for their suitability to perform the particular type of work to be assessed has been removed.[44]

42 Eighthly, as originally enacted, the *Casino Control Act* required that most of the significant contracts which the casino entered into with suppliers needed to be reviewed by the Regulator.[45] These were known as "controlled contracts". This stemmed from a concern that if organised crime could not enter by the front door, it could go in the side doors.[46] These controls have also been relaxed. Over time, the classes of contracts which were excluded from the definition of a "controlled contract" under the Regulations have increased,[47] and the monetary amount required to qualify a contract as a "controlled contract" increased.[48] Since August 2018, the Regulations have excluded variations to "controlled contracts" from the operation of section 36 of the *Casino Control Act*, including as to the prices and length of the contract.[49] This means a contract could be substantially varied after notification to the Authority, without triggering any requirement to submit the contract for further review.

43 Ninthly, while the *Casino Control Act* prohibits the casino operator from providing credit to patrons, the Authority has approved a wholly owned subsidiary of the casino operator's parent company, Echo Entertainment Group, as a provider of credit to players on a program as part of a Junket or on an individual premium program at The Star.[50]

44 It is also relevant to note that administrative arrangements for the Authority and its predecessors have changed repeatedly. These changes are discussed in more detail later in this Report.

45 The original scheme under the *Casino Control Act* provided for the payment of casino duty into New South Wales consolidated revenue (s 114) and established a community benefit fund into which the casino operator was obliged to pay a community benefit levy (s 115, now known as the Responsible Gambling Fund). A further levy, the casino supervisory levy, was established in 2013 by the *Casino Control Amendment (Supervisory Levy) Act* 2013 (NSW), which inserted section 115A into the *Casino Control Act*. The Restricted Gaming Licence is exempt from payment of the casino supervisory levy by virtue of clause 51(4) of the *Casino Control Regulation* 2019.

46 A further development of critical importance was the enactment of the amendments to the *Casino Control Act* consequent upon the decision to permit the grant of a restricted gaming facility licence for the Barangaroo Casino. These changes were made by the *Casino Control Amendments (Barangaroo Restricted Gaming Facility) Act 2013* (NSW), which commenced on 27 November 2013. These amendments are discussed later in this Report.

Modernisation Review and the move to "risk-based regulation"

47 A key development was the February 2016 report by Mr Peter Cohen of the Agenda Group entitled *Casino Modernisation Review*. This is also discussed later in the Report.[51]

48 The acceptance by the NSW Government of many of the recommendations in this Report signalled a change in the regulatory philosophy underpinning the *Casino Control Act*, with a shift away from a prescriptive to a risk-based approach to regulation and a model of co-regulation between the Authority and the Department.[52]

Background to the Casino Modernisation Review

49 Mr Cohen is the former Executive Commissioner and CEO of the (then) Victorian Commission for Gambling Regulation and is currently the Director, Regulatory Affairs for The Agenda Group.[53] His review was conducted at least partly as a result of an agreement reached by Crown and the NSW Minister for Gaming that there would be a review of casino gaming regulation in New South Wales. This agreement was recorded in the original Framework Agreement and the July 2014 Amended and Restated Framework Agreement, the terms of which are discussed in more detail elsewhere in this Report.

50 It was agreed that the Review would involve consulting with stakeholders and interested parties including casino operators in New South Wales and the Authority, with a view to establishing a regulatory regime which:

(a) Operates neutrally to all casino operators in New South Wales;

(b) Reflects best practice;

(c) Achieves regulatory efficiency; and

(d) Has regard to certain matters raised by Crown in Annexure H to the Amended and Restated Framework Agreement. [54]

The Casino Modernisation Review

51 Mr Cohen interviewed regulators, operators and specialist advisers with experience in Macau, Victoria, Queensland, Singapore and Las Vegas together with various local "stakeholders" and others.[55]

52 Mr Cohen reported that the existing regulatory scheme in New South Wales was based on a 1990s approach to casino regulation, which led to "unnecessary regulatory interference, which constrained innovation and competition for international and interstate players, whilst costing the State more to regulate than necessary". [56] He

contrasted the highly prescriptive approach of the Singaporean regulator with Victoria's more risk-based approach.[57]

53 Mr Cohen made 197 recommendations that he suggested were necessary for:

(a) Casinos to be more agile, making them better equipped to compete nationally and internationally;

(b) The regulator to be able to fulfil its responsibilities at lower cost but with enhanced efficiency;

(c) Both casinos and regulator achieving a better allocation of risk so that, where appropriate, operational risks aligned with the primary beneficiaries of those risks, being the operators; and

(d) Customers having a better experience as a result of improved service because of competition.[58]

54 Mr Cohen suggested that the recommendations for change fell into the following three categories:[59]

(a) Modifications to the regulatory arrangements, including changes to legislation;

(b) Changes to practices undertaken by the operators to complement the changes to regulatory arrangements; and

(c) Cultural and possibly structural changes within the regulator to facilitate the new regulatory arrangements and operator practices.

55 Mr Cohen recommended that there should be a "single regulator" of the two casinos because this would be a most cost effective and efficient approach. He noted that the model of the Authority combined with Liquor and Gaming NSW was satisfactory and could be considered a "single regulator having two arms". [60]

56 Mr Cohen doubted that regular periodic reviews of an operator's suitability under section 31 provided any particular value to the NSW Government and recommended that they be abolished. He noted that the regulator had other powers available to it to consider suitability of the casino operators at the time any issue arose. He also said that given the investments operators had made it was "not believable" that a section 31 review would find it was no longer in the public interest that a casino licence continue in force. [61]

57 Mr Cohen recommended that specialist casino inspectors be abolished and consolidated with non-casino gaming inspectors into a single inspectorate and that the permanent presence of inspectors from casinos be removed. [62]

58 He noted that Crown Melbourne did not need to seek prior approval from the Victorian regulator for the offering of credit to non-Australian resident players on a premium player program or a Junket and that Crown Melbourne accepted cheques from local players and, prior to clearance of such cheques, allowed gamblers to utilise such funds. Mr Cohen observed that this had been the practice in Victoria for the past 20 years without concern of criminal exploitation or influence. He suggested that involving the regulator in this process did not add to the integrity of gaming. He noted that Crown Sydney was permitted to offer credit to premium players and Junkets and recommended that The Star be permitted to do this in order to achieve competitive neutrality.[63]

59 Mr Cohen found that in practice, Junkets were regulated under the casino operator's internal controls and that this was best practice. He doubted the value of certain regulations in respect of Junkets but nevertheless recommended they remain in place as a "fallback position".[64] Crown opposed the retention of these regulations asserting that Junkets could be managed by internal controls.[65]

60 Mr Cohen said that law enforcement agencies had expressed concern to him that insufficient information was made available to them regarding Junket players and the specific amounts each gambled. However, he concluded that it was "unclear" what law enforcement would do with such information once in their possession, given the speed of mobility of these players. Mr Cohen also concluded that it was "not enough that law enforcement agencies seek information for the sake of receiving it",[66] and that the Authority needed to be satisfied that it would serve a legitimate law enforcement purpose before it required information to be provided to it.[67]

61 Mr Cohen also recommended that a different approach be taken to the context of internal controls required under section 124 of the *Casino Control Act*. He observed that the highly prescriptive systems of internal controls were "a residue of the New Jersey style of regulation".[68] He expressed the view that the more modern approach was to require a "principles-based" control manual which highlighted matters but did not prescribe detailed procedures. He suggested that the principles-based internal controls could be supported by more detailed Standard Operating Procedures (SOPs), which could be developed by the casino operator and would not need to be approved by the regulator. He recommended that the casino operator should be required to provide SOPs to the regulator for possible discussion, but that such discussion would not prevent the casino operator from continuing with a procedure it had in place.[69]

62 Mr Cohen reported that it was now considered to be better practice for the regulator to transfer risks to the operator and that "the casino operator should have suitable controls in place to manage its own affairs without the need for the regulator to intervene."[70]

NSW Government's 2017 response to the Casino Modernisation Review

63 In November 2017 the NSW Government published its response to the Casino Modernisation Review which was generally supportive of the recommendations made by Mr Cohen.[71]

64 The NSW Government supported the model of risk-based regulation, and a move away from "overly prescriptive requirements to a risk-based, intelligence led model".[72] It also supported the proposal that internal controls should be the primary tool for the regulation for Junkets, with regular auditing of compliance.

65 The recommendation that periodic suitability reviews under section 31 of the *Casino Control Act* be abolished was not supported.[73]

66 There was support for the proposal that The Star and Crown Sydney should be able to extend credit to premium players as long as they were international players.[74]

67 The NSW Government noted that Liquor & Gaming NSW had already transitioned away from a 24/7 inspectorate presence in the casino and merged casino inspection activity in the Liquor & Gaming Inspectorate.[75]

Amendments in response to the Casino Modernisation Review

68 In the wake of the Casino Modernisation Review, changes were made to the *Casino Control Act* on 21 March 2018. During the second reading speech for the *Casino Control Amendment Bill* 2018, the Minister for Lands and Forestry and Minister for Racing said that the legislation streamlined regulatory complexity where the risk of harm is low and implemented aspects of the NSW Government's response to the Casino Modernisation Review to ensure a closer alignment between regulatory risk and the level of regulatory oversight, thereby allowing the regulator to focus on where the more serious problems arise.[76]

69 During the second reading speech for the amending bill, the then Minister for Racing, the Hon. Mr Toole, said:[77]

> The Casino Control Amendment Bill 2018 also provides for greater flexibility in how requirements are met by providing for greater use of internal controls rather than prescribing everything in legislation. Internal controls are documented controls and administrative and accounting procedures, prepared by the licensee and approved by the Independent Liquor and Gaming Authority. They can be quickly updated to reflect

> changes in community standards, industry circumstances, compliance and enforcement practices, or the level of risk presented by a given practice. For example, changes to section 65 mean that rather than requiring the casino operator to seek Independent Liquor and Gaming Authority approval of plans to rearrange its gaming areas, internal controls can establish expected outcomes for changes to gaming area layouts. Changes to section 45 mean that the Independent Liquor and Gaming Authority will no longer approve the form of identification to be worn by licensed casino special employees. Instead, the form of casino special employee identification will be dealt with by the casino via an approved internal control.
>
> The changes to the Act are not a one-way street. While providing flexibility through greater use of internal controls, there will be stronger penalties for failing to comply with them. The bill amends section 124 of the Casino Control Act 1992 to introduce a new offence against an operator for breaching a specific internal control or administrative or accounting procedure, with a maximum penalty of $22,000.

70 The Minister also said that the amendments: [78]

> will remove redundant and overly prescriptive legislative and administrative requirements and introduce an intelligence-led regulatory approach based on outcome-focused internal controls. The bill will provide competitive neutrality between the two casino operators, The Star and Crown Sydney, and the bill will improve harm minimisation measures. It is irrefutable that there is much about a casino's operations that require strong regulatory oversight. There are risks of money laundering and other forms of criminality, or of unfair games being conducted. However, it is also true that not everything that happens at a casino is high risk and warrants the highest level of control, legislative obligations and regulatory reach. With this in mind, the Casino Control Amendment Bill 2018 will remove redundant or excessive provisions and allow the Government to adopt a risk-based approach to regulating casinos.

71 The *Casino Control Amendment Act* 2018 (NSW) came into force in 2018. Section 124 was amended so as to make compliance with an internal control a condition of the licence, and to make a contravention of the internal controls approved by the Authority an offence under section 124(4).[79]

72 The amendment to section 124, particularly providing that a breach of the Internal Control Manual (ICM) is an offence, heightened the importance of the ICM, as non-compliance would amount to a breach by the casino operator of the *Casino Control Act*.[80]

Chapter 1.4

Anti-Money Laundering Regulation in Casinos

1 Money laundering is a process of legitimising or hiding proceeds or instruments of crime. It blends criminal and legitimate activities and is the common element in almost all serious and organised crime.[1]

2 Casinos are particularly vulnerable to money laundering. The flexibility and agility of money launderers is recognised internationally as the amount that is laundered through various institutions, including casinos, each year is equivalent to 2 to 5 per cent of global GDP.[2]

International framework

3 The Financial Action Task Force (FATF), a global money laundering and terrorist financing watchdog, was established in 1989 for the purpose of developing and promoting policies to combat money laundering.[3] Australia is a founding member of FATF.

4 In April 1990, the FATF issued a set of forty recommendations for implementing effective anti-money laundering measures. These measures were designed to increase the transparency of the financial system and give countries the capacity to successfully take action against money launderers. In 1996 the FATF recommendations were revised to reflect evolving money laundering trends and techniques, and to broaden their scope well beyond drug-money laundering. [4]

5 In October 2001, in the wake of the 9/11 terrorist attacks in the United States, the FATF expanded its mandate to deal with funding of terrorist acts and terrorist organisations, and promulgated the Eight (later expanded to Nine) Special Recommendations on Terrorist Financing. The FATF Recommendations were revised a second time in 2003, and have now been endorsed by over 180 countries.

The FATF Recommendations are recognised internationally as the best practice standard for anti-money laundering and countering the financing of terrorism.[5]

6 The FATF recommended that each nation should have an anti-money laundering and counter-terrorism financing framework embodying the following features:

(a) Money laundering is made a criminal offence;

(b) Mechanisms are established to trace cash and other forms of value;

(c) A legal framework is in place to enable the freezing of assets and confiscation of the proceeds of crime; and

(d) Each country engages in reciprocal assistance with other countries in respect of anti-money laundering and countering the financing of terrorism.

7 Australia has implemented all four features of the FATF recommended framework:

(a) Money laundering offences have been created at Commonwealth and State level;[6]

(b) A reporting framework has been put in place and a central authority created to receive that information;[7]

(c) Legislation has been passed at the Commonwealth and State levels enabling the freezing and confiscation of assets;[8] and

(d) Australia engages with other FATF member countries.[9]

Money laundering in casinos

8 There are various mechanisms by which money may be laundered in casinos. For example, cash derived from a criminal enterprise can be used in the casino to purchase chips. Chips may then be redeemed in cash, cheque or money transfer and following that redemption, present as having been derived from a legitimate source. Another mechanism is where a criminal organisation deposits funds into a casino operator's bank account for use by a casino patron. The patron may then purchase chips and later redeem them, again creating the appearance that the funds have been derived from a legitimate source. Electronic funds transfers facilitating the flow of money both in an out of a casino can also be used to launder money.

9 An obvious reason why casinos can be vulnerable to money laundering is because of the large volumes of cash with which they deal. However, cash is not the only way that money moves into and out of casinos in Australia. In many respects, casinos are not unlike banks. They engage in a myriad of financial transactions. They maintain

customer accounts, exchange foreign currency, facilitate electronic funds transfers and act as money transmitters, maintain safety deposit boxes, act as cheque cashers and write cheques.

10 However unlike the customers of a bank, casino patrons have no reason to disclose to a casino their business or professional activities. There is often little observable basis for distinguishing between those patrons laundering funds in the casino and all other casino patrons.[10]

11 In 2009, the FATF published a report entitled "Vulnerabilities of Casinos and Gaming Sector" (FATF Report), which considered various money laundering methods and techniques in casinos.[11]

12 The FATF Report discussed a particular money laundering technique commonly used in casinos known as "structuring" or "smurfing". This involves the distribution of a large amount of cash into smaller transactions in order to minimise suspicion and evade threshold reporting requirements.[12] Common methods of structuring were identified as including:[13]

- Regularly depositing or transacting similar amounts of cash, which are below a country's reporting disclosure limit;
- The use of third parties to undertake transactions using single or multiple accounts;
- Multiple individuals sending funds to one beneficiary; and
- Transferring funds into third party accounts.

13 Another risk identified by the FATF Report was the deposit accounts and lines of credit offered to casino patrons with less scrutiny and customer due diligence requirements than financial institutions. FATF concluded that the frequent movement of funds between financial institutions and the casinos, or between casino accounts held in different casinos may be vulnerable for money laundering. It was noted that deposits into casino accounts by wire transfers or bank cashier's cheques where funds are then cashed out or moved to other accounts with minimal or no gambling activity was a method of money laundering.[14] FATF considered that indicators of money laundering using casino accounts included:[15]

- Frequent deposits of cash cheques, bank cheques, or wire transfers into a casino account;
- Casino account transactions conducted by persons other than the account holder;
- Large amounts of cash deposited from unexplained sources;

- Multiple individuals transferring funds to a single beneficiary;
- Structuring of deposits, withdrawals or wire transfers;
- Using third parties to undertake wire transfers and structuring of deposits;
- Transfers with no apparent business or lawful purpose;
- Use of multiple names to conduct similar activity; and
- Transfer of company accounts to casino accounts.

14 The FATF Report noted that both Junkets and VIP gaming rooms were considered areas which posed serious risks of money laundering.[16]

History of AML/CTF regulation in Australia

15 Australia's first attempt to regulate money laundering commenced in 1988 with the passage of the *Cash Transactions Report Act* 1988 (Cth).[17] It was aimed at tracking cash transactions and it created the Cash Transactions Reports Agency.[18]

16 Under section 7 of that Act, a "cash dealer" was required to report cash transactions of $10,000 or more to the Director of the Cash Transactions Reports Agency. A cash dealer included financial institutions, corporations, insurers and others including "a person who carries on a business of operating a gambling house or casino".[19]

17 In 1992 the Act was amended and renamed the *Financial Transaction Reports Act* 1988 (Cth).[20] The Cash Transactions Report Agency was renamed the Australian Transaction Reports and Analysis Centre - AUSTRAC.[21] The amendments extended to requiring reporting where cash dealers in Australia sent or received international funds transfer instructions into or out of Australia where the cash dealer was not acting as or for a bank.[22]

18 In 2005 FATF evaluated Australia's compliance with the 2003 Forty Recommendations on Money Laundering and Nine Special Recommendations on Terrorism Financing.[23] At that time, Australia was already reviewing its anti-money laundering and terrorism financing (AML/CTF) regime and these two reviews culminated in the passage of the *Anti-Money Laundering and Counter-Terrorism Financing Act* 2006 (Cth) (AML/CTF Act).[24]

19 The AML/CTF Act is complemented by the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* (Cth) (AML/CTF Rules). The AML/CTF Rules are issued by the CEO of AUSTRAC and provide the detail for the broader obligations set out in the AML/CTF Act.

20 The AML/CTF Act commenced on 12 December 2006. During the second reading speech to the Bill that became the Act, the Minister said:[25]

> The Anti-Money Laundering and Counter-Terrorism Financing Bill extends the current regulatory regime imposed by the Financial Transaction Reports Act 1988. This act was developed at a time when most financial transactions were conducted face to face and over the counter at branches of financial institutions. The Financial Transactions Reports Act regime needs to be upgraded to combat the substantial changes to money laundering and terrorism financing risks associated with the increase in cashless, non-face-to-face electronic transactions and global development in value transfer technology.
>
> Most of the provisions of the Financial Transactions Reports Act will eventually be superseded by the Anti Money Laundering and Counter-Terrorism Financing Bill; however, those provisions which apply to cash dealers who are not reporting entities under the bill will continue to apply.

Reporting entities

21 The AML/CTF Act imposes a number of customer identification requirements and reporting obligations on "reporting entities". Section 5 defines a "reporting entity" as a person who provides a "designated service".

Designated service

22 The definition of designated services in section 6 of the AML/CTF Act is complicated and proceeds through two stages. At the first stage, it is necessary to see whether a service provided by a person falls within one of four tables contained in section 6 and what the tables say about the customer to whom the service is provided. At the second stage, it is necessary to determine whether the "geographical link" test is satisfied which raises a question about whether the service is provided at or through a "permanent establishment".

23 The four tables which relate to designated services are:

(a) Table 1, which relates to "financial services" and which itemises 54 designated services and specifies who the customer is in relation to the provision of each of these services;[26]

(b) Table 2, which relates to "bullion", and which itemises two designated services and specifies who the customer is in relation to the provision of each of these services;[27]

(c) Table 3, which relates to "gambling services", and which itemises 14 designated services and specifies who the customer is in relation to the provision of each of these services;[28] and

(d) Table 4, which provides that the regulations may prescribe other designated services and specify who the customers is in relation to those services.

24 In respect of "gambling services", Table 3 includes:

(a) Item 1 - receiving or accepting a bet placed or made by a person, where the service is provided in the course of carrying on a gambling business;

(b) Item 3 - introducing a person who wishes to make or place a bet to another person who is willing to receive or accept the bet, where the service is provided in the course of carrying on a gambling business;

(c) Item 4 - paying out winnings in respect of a bet, where the service is provided in the course of carrying on a gambling business; and

(d) Item 8 – exchanging money or digital currency for gaming chips or tokens, or betting instruments, where the service is provided in the course of carrying on a business.[29]

25 Items 11 to 13 of Table 3 are concerned with designated services provided in the capacity of being an "account provider". Item 11 is concerned with acting in the capacity of an account provider and opening an account, with the customer being the holder of the account. Item 12 is concerned with acting in the capacity of an account provider and allowing a person to become a signatory to the account, in which case the customer is the signatory. Item 13 is concerned with acting in the capacity of an account provider and allowing a transaction to be conducted in relation to an account, in which case the customer may be the holder of the account and each other signatory to the account.[30]

26 "Account" specifically includes a credit card, loan, or money held in the form of units.[31] However, a person only provides a designated service in respect of an account, under Items 11 to 13 of Table 3, if:

(a) The "account provider" is a person who provides one of the "gambling services" listed in items 1, 2, 3, 4, 6, 7, 8 or 9 of Table 3; and

(b) The purpose or one of the purposes, of the account is to facilitate the provision of one of those gambling services; and

(c) The service is provided in the course of carrying on a business.[32]

27 The opening of an "account" for a customer will only amount to a designated service under Table 3 of section 6 if the account provider provides gambling services, does so in the course of carrying on a business, and the account is being used for the purpose of facilitating the gambling services it provides.

28 While Table 3 is expressly concerned with gambling services, it is also possible that a casino operator will provide financial services and so provide a designated service for the purposes of Table 1 of section 6. In particular, Items 31 and 32, which deal with providing a "remittance service", are relevant.

29 Item 31 of Table 1 provides that a designated service is provided when the provider acts in the capacity of a "non-financier" carrying on a business of giving effect to "remittance arrangements", accepting an instruction from a transferor entity for the transfer of money or property under a "designated remittance arrangement". In this case, the customer is the transferor entity.

30 Item 32 of Table 1 provides that a designated service is provided when the provider acts in the capacity of a "non-financier" carrying on a business of giving effect to "remittance arrangements", making money or property available, or arranging for it to be made available, to an ultimate transferee entity as a result of a transfer under a "designated remittance arrangement". In this case, the customer is the ultimate transferee entity.

31 It is not necessary to explore the definitions of "non-financier", "designated remittance arrangement" or "remittance arrangement" in detail. It suffices to note that casino operators are "non-financiers", a "remittance arrangement" is an agreement or arrangement to transfer funds, and a "designated remittance arrangement" is where a non-financier accepts an instruction to transfer funds or makes the funds available pursuant to such an instruction.

The geographic link test and the concept of a "permanent establishment"

32 As mentioned above, determining whether a person provides a designated service proceeds through two stages. The second stage requires consideration of the "geographic link" test set out in section 6(6). Integral to this test is the notion of a "permanent establishment" of a person. This expression is defined in section 21(1) as "a place at or through which the person carries on any activities or business, and includes a place where the person is carrying on activities or business through an agent."

33 The effect of section 6(6) is that a designated service must be provided by the person:

(a) At or through the person's permanent establishment in Australia;

(b) At or through the person's permanent establishment of the person in a foreign country provided that the person is a resident of Australia; or

(c) At or through the person's permanent establishment in a foreign country provided that the person is a subsidiary of a company that is a resident of Australia.

34 The term "resident" is defined in section 14. Section 14 sets out a series of rules for when individuals, companies, trusts, partnerships, corporations sole and bodies politic will be taken to be residents.

Customer identification requirements

35 Part 2 of the AML/CTF Act imposes obligations on reporting entities to take certain steps to verify the identities of their customers. In particular, reporting entities must carry out a procedure to verify a customer's identity before providing a designated service to that customer.[33]

36 However, the AML/CTF Rules modify these obligations in respect of certain industries and Chapter 10 modifies them in relation to casinos. The customer identification procedures and ongoing customer due diligence requirements must be set out by a reporting entity in Part B of its AML/CTF compliance program.

The obligation to enrol

37 Under section 51B of the AML/CTF Act, a person who provides a designated service must apply to the CEO of AUSTRAC to be enrolled as a "reporting entity" within 28 days of commencing to provide the designated services. Failure to do so is a civil penalty offence.

The obligation to report

38 A "reporting entity" is obliged to report various matters to the CEO of AUSTRAC. These reporting obligations are set out in Part 3 of the AML/CTF Act and in particular include obligations to report:

(a) Suspicious matters, where the reporting entity suspects on reasonable grounds that the person is not who they claim to be or if there is a suspicion of money laundering (amongst other things);[34]

(b) Threshold transactions, being $10,000 or more of physical currency;[35]

(c) International funds transfer instructions (IFTIs), which are instructions to transfer money or property to either Australia from another country or another country from Australia;[36]

(d) Anti-money laundering and counter-terrorism financing compliance reports, which are typically reported to AUSTRAC on an annual basis, although AUSTRAC can, and has, waived this requirement on occasion.[37]

The "tipping off" offence

39 Within the AML/CTF Act there are also provisions which are intended to protect against the risk that the person in respect of whom a suspicious matter report is made will be "tipped off" that a report has been made in relation to their activities. The obvious purpose of such a section is to prevent that person from taking actions which could prejudice the investigation or potential prosecution of themselves or others for money laundering offences, by for example informing other perpetrators, the concealment of evidence or leaving the jurisdiction.

40 Section 123 is commonly referred as the "tipping off" provision. In summary it provides that if a suspicious matter reporting obligation arises or has arisen and the reporting entity has reported to the CEO of AUSTRAC under section 41(2), the reporting entity must not disclose that information to others.

41 Notably however, the section only applies where the entity is a reporting entity and an obligation to report has arisen. Section 124 provides that suspicious matter reports are not admissible in evidence in any Court or tribunal proceedings.

The obligation to have an AML/CTF Compliance Program

42 A further obligation imposed upon reporting entities by the AML/CTF Act is the requirement to develop and maintain an anti-money laundering and counter-terrorism financing compliance program (Compliance Program).[38] A failure to comply with Part A of the Compliance Program exposes a reporting entity to a civil penalty.[39]

43 There are two types of Compliance Programs. First, there are "standard" Compliance Programs. Standard Compliance Programs apply to a particular reporting entity.[40] Secondly, there are "joint" Compliance Programs, which apply to each reporting entity that from time to time belongs to a particular "designated business group".[41] A designated business group is defined as a group of two or more persons where each member of the group has elected in writing to be a member of the group and the election was made in accordance with the AML/CTF Rules.[42] The requirements of both types of Compliance Programs are broadly similar. During the Inquiry Crown was planning to move from having a standard Compliance Program for each of Crown Melbourne and Crown Perth to a Joint Compliance Program relating to both Crown Melbourne and Crown Perth, as well as to Crown Sydney when it commences operations.

44 Both a standard Compliance Program and a joint Compliance Program must be divided into Parts A and B.[43] Both Parts A and B of the Compliance Program must comply with the requirements of the AML/CTF Rules.

45 The primary purpose of Part A of the Compliance Program is to identify, mitigate and manage the risk that a reporting entity may "reasonably face" that the provision by it of the designated services at or through a permanent establishment in Australia might (inadvertently or otherwise) involve or facilitate money laundering or the financing of terrorism.[44] According to AUSTRAC this approach "recognises that industry sectors are best placed to identify and manage the money laundering risks they face."[45]

46 Requirements under Part A include:

(a) An obligation to include an AML/CTF risk awareness training program, that gives the person's employees appropriate training at appropriate intervals having regard to the AML risks reasonably faced by the organisation;[46]

(b) A requirement to include an employee due diligence program to determine whether, and in what manner, to screen prospective employees who may be in a position to facilitate money laundering or counter-terrorism offences;[47]

(c) A requirement that Part A be approved by and be subject to ongoing oversight of the reporting entity's board and senior management;[48]

(d) A requirement that the reporting entity designate a person at management level as the "AML/CTF Compliance Officer", although that person may have other duties;[49] and

(e) An obligation to have a regular and independent review of Part A.[50]

47 Part A of the Compliance Program includes a requirement that a reporting entity adopt a money laundering and terrorist financing risk assessment specific to that reporting entity. This assessment needs to consider the risk posed by its customers, the designated services provided, the method by which those services are delivered and any foreign jurisdictions with which they deal.[51]

48 Understanding the risks to the reporting entity's business is critical and the program is required to be regularly reviewed and updated.[52] Reporting entities must also factor in any applicable AUSTRAC guidance material and feedback from AUSTRAC, including anything AUSTRAC have circulated or published such as risk assessments specific to the reporting entity's sector.[53]

Customer due diligence

49 Part B of the Compliance Program has the sole or primary purpose of setting out customer identification procedures.[54] It is focused on reporting entities identifying and verifying customers[55] and beneficial owners[56] including politically exposed persons (PEPs).[57] It must include the processes and procedures for know your customer (KYC)[58] and their beneficial owners.[59]

50 Customer due diligence is a necessary function as it helps measure and consider risk by understanding the source of funds and the source of wealth of a particular customer.[60] Unlike the Part A component of a Compliance program, there is no legal requirement for a reporting entity to have the Part B component of the program reviewed by an auditor.[61]

51 Customer identification procedures under the AML/CTF Act can be altered by the AML/CTF Rules providing exemptions based on the type of designated service that is provided.[62]

Know Your Customer requirements generally

52 Sections 27 to 39 of the AML/CTF Act determine the requirements for the verification of customers of reporting entities. Specifically, section 35 requires reporting entities to take the actions specified in the AML/CTF Rules,[63] within the time stipulated.[64]

53 Additionally, if a reporting entity is unable to verify the identity of an individual, it is required to give written notice that it is unable to identify the individual[65] and offer the individual an alternative means of verifying their identity.[66]

54 The AML/CTF Rules provide that a Compliance Program applicable to a reporting entity must include a procedure to collect at a minimum the customer's full name; date of birth; and residential address (KYC information).[67]

55 The AML/CTF Rules require that the reporting entity's Compliance Program include "appropriate risk-based systems and controls" to enable the reporting entity to determine whether any further KYC information is required to be collected from a customer.[68]

56 A reporting entity's Compliance Program is also required to verify that the relevant KYC information collected from customers[69] is based on reliable and independent documentation and/or reliable and independent electronic data.[70] Accordingly, a reporting entity's Compliance Program is required to:

- Collect the KYC information;[71]

- Verify the customer's name, address or date of birth;[72] and
- Verify that the documents relied upon for identification verification have not expired.[73]

57 Additionally, the AML/CTF Act contains a requirement for reporting entities to obtain KYC information and conduct Enhanced Customer Due Diligence (ECDD) when a customer is a company.[74] Equivalent or similar requirements apply to domestic,[75] foreign registered[76] and unregistered companies.[77]

Customer due diligence in casinos

58 Chapter 10 of the AML/CTF Rules govern casinos specifically and cover customer identification, and verification of identity of patrons.[78] It provides exemptions to certain ordinary rules including:

(a) An exemption to the requirement to collect KYC information on casino patrons in respect of specified gambling services that are considered designated pursuant to Table 3 of section 6 of the AML/CTF Act, provided that they involve an amount of less than $10,000;[79] and

(b) An exemption in relation to transactions that involve $10,000 or more that involve the patron giving or receiving only gaming chips or tokens.[80]

59 However, these exemptions do not apply when the reporting entity determines it should obtain and verify KYC information as required by its ECDD program.[81]

60 Casinos are required to perform customer due diligence in respect of certain designated services including the following:

(a) If the casino determines that in accordance with its enhanced customer due diligence program it should obtain and verify any KYC information;[82]

(b) If the casino provides a customer one of the following, which amounts to $10,000 or more:[83]

i. The purchase of or redemption of gaming chips;

ii. The making of a bet or receiving winnings; or

iii. The paying out winnings in respect of a game played on a gaming machine.

(c) If the casino provides a customer one of the following:[84]

i. The opening of an account with the casino;

ii. The exchanging of currency at the casino; or

iii. Receiving from casinos a designated service that is covered in Table 1 of s 6 of the AML/CTF Act.

61 The casino is not required to undertake record keeping of the following designated services:[85]

(a) The receiving or accepting a bet placed;

(b) Placing or making a bet on behalf of a person;

(c) Accepting the entry of a person into a gambling game; and

(d) Paying out winnings in chips or tokens.

62 A casino will be required to verify customer information as soon as it commences to provide another designated service or where a suspicious matter reporting obligation arises.[86]

Enhanced customer due diligence

63 Chapter 15 of the AML/CTF Rules requires a reporting entity to have an enhanced due diligence program,[87] which provides a model for customers that the reporting entity has escalated to high risk and who will therefore be subject to closer monitoring.[88]

64 Enhanced due diligence must apply if:[89]

- The reporting entity determines money laundering or terrorism financing risk is high;
- The designated service is being provided to a customer or beneficial owner who is a foreign PEP;
- A suspicious matter reporting obligations arises; or
- The reporting entity is entering into or proposes to enter into a transaction with a party that is physically present in or is a company incorporated in a prescribed foreign country.

Ongoing customer due diligence

65 The AML/CTF Act also requires reporting entities to perform "ongoing customer due diligence" (OCDD).[90] The requirements for OCDD to be conducted are set out in the AML/CTF Rules, and include the collection and verification of up to date documents.[91]

66 Reporting entities are required to monitor the customers to whom they provide a designated service and identify, mitigate and manage any reasonable risk of money laundering or terrorism financing.[92] These requirements extend to enhanced due diligence programs and a reporting entity will be required on review of a customer to obtain information from a third party source and clarify or update the KYC information on the customer.[93]

Transaction monitoring program

67 Reporting entities are required to include a Transaction Monitoring Program (TMP) in the Part A component of their Compliance Programs.[94] The TMP must include appropriate risk-based systems and controls to monitor the transactions of customers.[95] It must have the capacity to identify any transaction that appears to be suspicious within the terms of section 41 of the AML/CTF Act.[96]

68 Importantly, the TMP should have regard to complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or visible lawful purpose.[97] TMP's can be manual, fully automated or a combination of both.[98] They must be able to target the relevant vulnerabilities.[99]

The role of the AML/CTF Compliance Officer

69 The AML/CTF Compliance Officer is "responsible for making sure your business complies with the AML/CTF obligations". The AUSTRAC published guidance provides examples of the duties of the AML/CTF Compliance Officer including:[100]

- Reporting regularly to the Board and senior management about how the business is meeting its obligations under the AML/CTF Act and alerting them it if is not;
- Helping to create, implement and maintain internal policies, procedures and systems for AML/CTF Compliance; and
- Taking day-to-day responsibility for the AML/CTF Program.

70 The Compliance Officer is usually a senior officer who has some independence from the business and has access to the executive and the Board for independent reporting and management purposes. This independence is important in ensuring that the officer is not influenced or constrained in their duties.[101]

The obligation to mitigate and manage the risks of money laundering

71 More is required from a reporting entity than compliance with its reporting obligations.[102] The primary purpose of Part A of a reporting entity's Compliance

Program is to ensure that it not only identifies its risks of money laundering, but that it also mitigates and manages those risks.

72 A reporting entity must also undertake a risk assessment. This assessment needs to consider the risk posed by its customers, the designated services provided, the method those services are delivered and any foreign jurisdictions with which that they deal.[103]

73 The reporting entity develops its Compliance Program to establish steps to identify, prioritise, and control risks, and monitor how effectively risks are being managed. In formulating this framework a reporting entity is better equipped to determine the risks of dealing with a particular customer prior to the commencement of a business relationship. Consequently, a decision may be made not to transact with that customer which ultimately assists in preventing money laundering.

74 The obligation to report arises in Part 3 of the AML/CTF Act. Breach of those obligations is a civil penalty offence.[104] The obligation to have a compliance program which includes Part A, arises under Part 7 of the AML/CTF Act. The failure to comply with Part A is a civil penalty offence.[105]

75 Where a suspicion is identified, triggering a reporting obligation to AUSTRAC, the reporting entity should monitor the risk associated with the suspicious matter in terms of its vulnerability to money laundering.[106] One such consideration is whether to continue the business relationship with that specific customer or customers who have a similar risk profile.

76 The UK Gambling Commission in its guidance on the prevention of money laundering and combatting the financing for terrorism outlined steps which may be taken following a suspicious matter report:[107]

> Casino operators should also note that, in the Commission's view, the reporting defence is not intended to be used repeatedly in relation to the same customer. In the case of repeated SAR submissions on the same customer, it is the Commission's view that this is not a route by which operators can guarantee a reporting defence retrospectively. If patterns of gambling lead to an increasing level of suspicion of money laundering, or to actual knowledge of money laundering, operators must seriously consider whether they wish to allow the customer to continue using their gambling facilities. Casino operators are, of course, free to terminate their business relationships if they wish and, provided this is handled appropriately, there will be no risk of 'tipping off' or prejudicing an investigation. However, operators should think about liaising with the law enforcement investigating officer to consider whether it is likely that termination of the business relationship would alert the customer or prejudice an investigation in any other way.

77 Assessment of the money laundering and terrorism financing risks posed to a reporting entity is a continuing obligation focused around constant improvement. The need for a reporting entity to be both proactive in identifying and managing risks and responsive in mitigating issues as they arise is vital to having an effective Compliance Program that responds to the known vulnerabilities of a casino. This proactiveness and responsiveness is a key hallmark of a culture of compliance.

Money laundering offences

78 As mentioned earlier, one of the key features of the FATF framework to combating money laundering is the imposition of criminal sanctions. This has occurred at both Commonwealth and State levels in Australia.

79 Money laundering is criminalised by Part 10.2 of the *Criminal Code Act* 1995 (Cth) (Criminal Code). The Criminal Code treats the concepts of "proceeds of crime" and "instruments of crime" separately:

(a) "Proceeds of crime" is any money or other property wholly or partly derived or realised, directly or indirectly, by any person committing an offence against a law of Australia or a foreign country that may be dealt with as an indictable offence;[108]

(b) "Instruments of crime" is money or other property that is used or used to facilitate the commission of an offence.[109]

80 The Criminal Code makes it unlawful to deal in money or property that is the proceeds of crime or the instruments of crime if the person so dealing intentionally does so,[110] or is reckless[111] or negligent[112] to that fact (in decreasing order of seriousness and maximum penalties). Division 5 of the Criminal Code deals with the fault elements of intention, knowledge, recklessness and negligence.

81 Recklessness is where a person is aware of a substantial risk that a circumstance or result will occur and having regard to that known circumstance or result, it is unjustifiable to take that risk.[113] The question of whether taking a risk is unjustifiable is one of fact.[114] A person has knowledge of a circumstance or a result if they are aware that it exists or will exist in the ordinary course of events.[115]

82 New South Wales, Victoria and Western Australia have each enacted slightly different provisions within their criminal legislation.[116]

The effect of section 51 of the AML/CTF Act

83 One effect of registration with AUSTRAC as a reporting entity is to confer an immunity to certain Commonwealth money laundering offences where the reporting entity has

made certain reports to AUSTRAC, including suspicious matter reports. This is because section 51 of the AML/CTF Act effectively negates the knowledge component of those offences, providing:[117]

> If a person, or an officer, employee or agent of a person, communicates or gives information under section 41, 43, 45 or 49, the person, officer, employee or agent is taken, for the purposes of Division 400 and Chapter 5 of the Criminal Code, not to have been in possession of that information at any time.

84 Clearly enough the protection conferred by section 51 does not apply to entities which are not reporting entities.

The need for a culture of compliance and proactivity

85 The vulnerability of casinos to money laundering make establishing a culture of compliance and proactivity within the casino essential to combatting criminal influence. The FATF Report noted that persons with large amounts of disposable cash are attractive customers in casinos, which makes it imperative that the casinos have not only integrity, but a commitment to preventing crime.[118] The FATF observed relevantly:[119]

> Importantly commercial reward systems often provide bonuses or remuneration for "middle management" based on revenue-based performance criteria. These may not take into account the protection of the primary asset (the casino licence) and unless an appropriate management culture is in place within the operator these may work against maintaining a crime-free environment.

86 The FATF Report considered the need for greater cooperation between AML/CTF regulators and enforcement agencies and front line compliance staff within casinos.[120]

87 The American Gaming Association put it this way:[121]

> There is no more effective way to foster a positive culture than to have the casino's senior leadership and Board of Directors (whether directly or through the Board's Audit or Compliance Committee) engaged in the AML compliance effort, receiving periodic updates on regulatory developments, changes to the program, resources, and audit findings by regulators and by other independent compliance reviews.

88 If casinos are to avoid succumbing to "revenue pressures", a culture of compliance is required to be embedded at the Board of directors and executive management level, with them "all being on board to understand that anti-money laundering is a large risk".[122]

89 A positive culture of compliance and proactivity is "absolutely fundamental" in respect of both ensuring an effective money laundering regime and in managing the

tension between revenue pressure and the requirement for compliance with regulatory regimes.[123]

Some relevant questions

90 The recent publication of the American Gaming Association "Best Practices for Anti-Money Laundering Compliance 2019-2020" is replete with wisdom and common sense. Whilst recognising that there are many factors relevant to the risk assessment of money laundering in a particular casino, it suggested it should begin by asking the following basic questions:[124]

1. What are the entry and exit points at the casino for patron funds that may come from illicit sources?

2. What casino departments or employees are best positioned to detect the entry and exit of such funds?

3. What are the characteristics of transactions that may involve illicit funds or are funds of patrons who are more likely to engage in suspicious activity?

4. What measures (including automation) do we have in place to mitigate these risks?

5. How effective are these measures?

91 These questions are but a starting point.

Chapter 1.5

Vulnerability of Junkets to Organised Crime

1 During the 1990s there were triad turf wars in Macau fuelled by the desire to secure control over VIP gaming rooms.[1] However, with the handover of Macau to China in 1999 a more stable environment emerged.[2] Junkets were "gentrified" in the sense of becoming more business-like, visible and acceptable, but criminality in respect of debt collection and money laundering remained.[3]

2 It is certainly not suggested that every Junket is necessarily involved in organised crime or illegal activity. However, over a very lengthy period caution has been expressed about the need to be vigilant to guard against links between Junkets and organised crime. In 2013 the United States China Economic and Security Review Commission reported to the US Congress that "Macau junket operations have a history of affiliation with Asian organized crime".[4] It also reported that Mr Burnett (the head of the Nevada Casino Regulator) had said: "It is common knowledge that the operation of VIP rooms in Macau casinos had long been dominated by Asian organised crime".[5]

3 It is the credit-providing and debt-enforcing functions of Junkets that make them vulnerable to infiltration by organised crime. There are strict limits on the amount of money that individuals can carry or otherwise transfer out of Mainland China. Junkets have been implicated in money laundering by relying on underground banks smuggling cash out of China.[6]

4 It is illegal to collect gambling debts in Mainland China. Extra-judicial means including threats of violence are utilised to encourage debtors to repay monies. In a 2008 study by Macao Polytechnic Institute of 99 high rollers from Mainland China who were identified in newspapers as excessive gamblers, it was found that seven died from murder or suicide and a further 15 were sentenced to death, usually for embezzlement.[7]

5 It was essential for all local Junket operators in Macau to have some relationship with a triad group. Reasons for this included:[8]

(a) Protecting their VIP rooms against incursions by other Junkets;

(b) Protecting against their clients being poached;

(c) Providing security during the transportation of cash; and

(d) Providing security to VIP patrons, cross-border transportation of cash from China and simply just as a display of power.

6 Although "triad membership was not a prerequisite for being VIP-room contractors or *damazai*, many of them were actually triad members."[9] It was explained that:[10]

> Junkets are attractive, because they take care of the grey area between what the law says and the practicality of moving money, people and enforcement from mainland China into Macau and elsewhere.

Junkets and money laundering

7 The potential link between Junkets and money laundering is well recognised.[11] Junkets have also been identified as vulnerable to money laundering. As explained by the FATF:[12]

> A vulnerability of junket programmes is that they involve the movement of large amounts of money across borders and through multiple casinos by third parties. Junket participants generally rely on the junket operators to move their funds to and from the casino. This creates layers of obscurity around the source and ownership of the money and the identities of the players.

8 Mr Peter German QC, who conducted a review of money laundering in British Columbia in Canada, found that:[13]

> Criminal entities are known to use legal and illegal gambling venue to launder the proceeds of crime, entertain high-value assets related to organized crime, recruit influential patrons, orchestrate junket operations and solicit favour and influence those deemed corruptible.

9 AUSTRAC has also recognised that casino-based tourism both nationally and internationally is potentially susceptible to money laundering and common risks include:[14]

(a) People carrying large amounts of cash into or out of countries;

(b) Junket operators moving large sums electronically between casinos or to other jurisdictions; and

(c) Layers of obscurity around the source and ownership of money on Junket tours.

10 In the Sixth Review of the Casino Operator and Licence report the Victorian Commission for Gambling and Liquor Regulation (VCGLR) confirmed that:[15]

(a) The VCGLR, other regulators and law enforcement agencies were aware of the significant potential risks of money laundering through casinos particularly through Junket operations; and

(b) Junket operations in Australian casinos are vulnerable to exploitation by organised crime to launder money to facilitate the concealment of criminal wealth.

Underground banking

11 Certain Junkets in Macau function as part of an underground banking system:[16] "By providing these services the Junkets have evolved into a major component of an informal financial system operating at the heart of the gaming sector in Macau".[17]

12 The Australian Institute of Criminology has said (citations omitted):[18]

> Underground banking is a generic term used to describe any informal banking arrangements which run parallel to but generally independent of the formal banking system. Underground banking systems are also referred to as alternative remittance systems, informal funds transfer systems, and informal value transfer systems. Particular types of underground banking systems are also used to describe the underground banking process. These include *hawala* (India) *hundi* (Pakistan) and *fei ch'ien* (China).
>
> …
>
> Whatever term is used the basic principle of underground banking remains the same - it involves the transfer of the value of currency without necessarily physically relocating it.

The "Vancouver model"

13 It is well-recognised that underground banking systems have been used to facilitate money laundering.[19] The way in which the underground banking system can be used by Junkets to launder money through casinos has been described as the "Vancouver model", an expression which is used to describe the process by which drug traffickers utilised the underground banking system and casinos in Vancouver as a hub.[20]

14 In March 2018 the Vancouver model was explained as follows:[21]

> Chinese citizens wish to relocate some of their wealth from China to Canada. To do so they agree to accept cash in Canada from a lender. At that point a settling of accounts occurs, app to app, between the person making the loan and an underground banker in China. The catch is that the provenance of the cash loaned in Canada is unclear. It generally comes in the form of stacks of $20 bills, wrapped in a fashion that more closely resembles drug proceeds than it does cash originating at a financial institution. The Chinese individual will then buy-in at a casino with the cash gamble and either receive higher denomination bills or a cheque upon leaving the casino. The lender is both servicing a drug trafficking organization by laundering its money and the Chinese gambler by providing him or her with Canadian cash.

15 The Vancouver model involves:[22]

> "clipping the ticket both ways", meaning that it will double its share of profits by providing services at both ends of the same transaction. The 'genius' of the scheme is the ability to achieve two objectives and be paid for both in the same transaction.

16 A recent example of the Vancouver model in action comes from a recent prosecution by the Department of Justice US Attorney's Office Southern District of California. The Attorney's Office announced in February 2020 that two men had recently pleaded guilty for operating unlicensed money transmitting businesses and explained:[23]

> Their guilty pleas are believed to be the first in the United States for a developing form of unlawful underground financial institution that transfers money between the United States and China, thereby circumventing domestic and foreign laws regarding monetary transfers and reporting, including United States laundering scrutiny and Chinese capital flight controls.
>
> … [the defendants] would collect US dollars in cash from various third parties in the United States and deliver that cash to a customer, typically a gambler from China who could not readily access cash in the United States due to capital controls that limit the amount of Chinese yuan an individual can convert to foreign currency at 50,000 per year. Upon receipt of the US dollars, the customer (ie the gambler) would transfer the equivalent value of yuan (using banking apps on their cell phones in the United States) from the customer's Chinese bank account to a Chinese bank account designated by [the defendants].

17 The great risk of Junkets being connected with organised crime will remain while ever there are restrictions on the flows of currency out of Mainland China, it is illegal to promote gambling in China and it is illegal to enforce gambling debts in China.[24]

Recognition of links between Junkets and organised crime

18 The evidence established that organised crime groups have been widely reported to be involved in the Junket industry for many years.[25]

19 The evidence also established that: (i) triad activities with Junkets are notorious and well-known in Macau;[26] (ii) there have been accusations in Macau of casinos openly colluding with Junket operators who have ties with organised crime;[27] and (iii) if people have no idea that Macau casino Junkets have a background in organised crime and have allegations of money laundering surrounding their business, then they clearly have not looked at the internet or the news for about 20 years.[28]

20 This is consistent with the views expressed in casino industry publications and with the broader academic literature.[29]

A key risk - the opaque nature of Junket operations

21 A key problem associated with ensuring the integrity of Junkets and in gaining an assurance that they are not linked to organised crime lies in the opaque nature of Junket operations. In a 2019 media article, the head of the Australian Criminal Intelligence Commission (ACIC), was quoted as saying that the "lack of transparency of casino Junket operations, anonymity of participants and obscurity around beneficial ownership, source and distribution of Junket funds provide opportunities for criminal exploitation."[30]

22 Casino operators do not have visibility over dealings between Junket operators and patrons and casino operators do not know who stands behind or is associated with Junket operators.[31]

23 It is difficult to understand ownership structures, beneficial ownership or who is ultimately behind that corporate entity of a Junket.[32] The complexity was described as follows:[33]

> So it's like a pyramid. Most junket operations are like pyramids. The junket operator is at the top. They're the interface with the casino. Now, a sub-junket will be people that are out also looking for clients. They may have their own junket business. Probably very small, two, three person operation. And they will often team up with the junket because they don't necessarily have relationship at a specific casino. They may deal direct with some casinos but not with others. So – but if their player wants to go to a casino and they know a junket operator has a relationship, they will deal directly with the junket operator and get a commission from the junket operator.
>
> A collaborator is usually lower down the chain. They could be looking for customers on the mass casino floor. So they will be hunting for people that they see spending quite a lot of money, trying to entice them to join, to go into a VIP room or join a junket. They may be looking for people in other jurisdictions to join a junket. But they probably are not of a sufficient – in a sufficient position to actually deal directly with the casino, to grant credit.

> So, essentially, they're like spotters. They're spotting customers for the casinos. Now, there has been a requirement for collaborators to be registered with the DICJ but it's my understanding that, again until recently, that has not been the case; that they were not actually registered. But now, subjunkets and collaborators that are working for a specific junket operator are being required to be registered.

24 Junket companies can source deposits from investors who then receive a dividend in return and this allows the Junket company to provide credit to casino patrons. If the patron then loses money they will owe a debt to the Junket operator, not the casino.[34]

25 Another important aspect of Junket operations are the Junket financiers. In a 2016 article in *Gambling Insider* it was reported that Junkets in Macau were "largely bankrolled by corporate investors and Macau's super rich."[35]

26 If there is reason to think that a Junket may have links with organised crime it would be appropriate to do further due diligence on that matter:[36]

> It would involve interviews; reviews of documents; identification of sources of funds, who are the guarantors; looking for documented ties to triad societies; looking for evidence of precursor money laundering efforts, such as dodging capital controls, and the like, opacity in ownership, lots of offshore entities…

27 Junket representatives work for Junket operators, as agents, and are responsible for the day to day running of the Junket operations. Junket representatives coordinate and manage players on a Junket program, including distributing chips for Junket players to use for gaming. They are also authorised to act on behalf of the Junket operator.[37] Junket representatives often accompany Junket players at the casino.[38]

28 Junket licensing investigations are most difficult investigations because of the level of secrecy Junkets usually maintain and because they do not keep accurate records.[39]

29 Guarantors are an essential part of Junkets.[40] As the name suggests, a Junket guarantor is responsible for money if the Junket operator cannot pay debts.[41]

30 It is also possible that the Junket operator is just the "front man". For this reason, and as discussed elsewhere in this Report, it is important that due diligence conducted on a Junket is not limited merely to the Junket operator.

Chapter 1.6

Regulation of Junkets

1 In earlier times when investigating the legalisation of gambling casinos in New South Wales the Honourable Edwin Lusher QC strongly recommended that Junkets be banned in the event a casino was legalised in New South Wales.[1] However, the model of Junkets upon which his report was premised was closer to the Nevada model than the Macau model. Mr Lusher QC explained:[2]

> They were operated into Navada [sic], Great Britain, Europe and the Caribbean. They have been looked upon with disfavour in many countries because of their open exploitation of the gambler and the questionable means of credit enforcement and other undesirable features.

2 Mr Xavier Connor QC found that Junkets had created problems in other countries because credit was generally given and strong-arm enforcement methods had sometimes been used to collect casino debts. He recommended:[3]

> I think that junkets should be permitted subject to specific approval of each one by the licensing body which should have an unfettered discretion to grant or withhold the approval. In that way I believe that, by the imposition of conditions and by monitoring the junkets themselves, the evils that have been associated with them could be avoided. If any such evils did show up the licensing body could simply refuse to approve any more.

3 In 1991 Sir Laurence Street AC KCMG concluded that notwithstanding many submissions supporting the blanket ban of Junkets, "since most junkets involved gamblers from overseas, the concern for the local gambling population would appear to be minimal".[4] On that basis, a recommendation was made that any risk arising from Junkets could be controlled by the making of appropriate regulations.[5]

Junkets under the Casino Control Act

4 The regulatory framework for Junkets in New South Wales was originally far more prescriptive than it is today.

5 As originally enacted, the *Casino Control Act* did refer to Junkets. The regulation of Junkets was principally left to the internal controls and to the regulations. As discussed earlier, section 124 made it a condition of the licence that the casino operator have an approved system of internal controls and procedures in place. One of the matters that was required by section 125 to be addressed in these internal controls was Junkets.

6 Section 76 of the *Casino Control Act* originally provided:

> (1) The regulations may make provision for or with respect to regulating or prohibiting:
>
> (a) the promotion and conduct of junkets involving a casino; or
>
> (b) the offering to persons individually of inducements to take part in gambling at a casino.
>
> (2) In particular, the regulations may:
>
> (a) impose restrictions on who may organise or promote a junket or offer inducements; and
>
> (b) require the organiser or promoter of a junket, or a casino operator, to give the Authority advance notice of the junket and to furnish to the Authority detailed information concerning the conduct of and the arrangements for the conduct of any junket; and
>
> (c) require any contract or other agreement that relates to the conduct of a junket or the offer of an inducement to be in a form and contain provisions approved of by the Authority; and
>
> (d) require the organiser or promoter of a junket, or a casino operator, to give specified information concerning the conduct of the junket to participants in the junket.

7 Section 76(3) defined a Junket as:

> any arrangement for the promotion of gaming in a casino by groups of people (usually involving arrangements for the provision of transportation, accommodation, food, drink and entertainment for participants in the arrangements, some or all of which are paid for by the casino operator or are otherwise provided on a complimentary basis).

8 Clearly, this definition did not comprehend certain important functions of Junkets such as their role in the provision of credit or the enforcement of gambling debts. This was remedied in May 2010 when the definition of Junket was amended.[6] Since that time section 76 has provided that a Junket means:

(a) an arrangement involving a person (or a group of people) who is introduced to a casino operator by a promoter who receives a commission based on the turnover of play in the casino attributable to the person or persons introduced by the promoter (or otherwise calculated by reference to such play), or

(b) an arrangement for the promotion of gaming in a casino by groups of people (usually involving arrangements for the provision of transportation, accommodation, food, drink and entertainment for participants in the arrangements, some or all of which are paid for by the casino operator or are otherwise provided on a complimentary basis).

9 The first set of regulations made under the *Casino Control Act* were contained in the *Casino Control Regulation* 1995 (1995 Regulation), which took effect on 6 September 1995 just before the temporary casino opened.

10 Clause 13 of the 1995 Regulation made it an offence for a casino operator or casino employee to act as a promoter of a Junket (or representative of a promoter) involving the casino. A "promoter" was defined in clause 3 to mean a person:

(a) who organises, promotes or conducts a junket; and

(b) who is not employed by the casino operator but receives a commission from the operator.

11 A "representative" was defined in clause 3 as a person:

(a) who is authorised by a promoter to act on the promoter's behalf in the organisation, promotion or conduct of a junket; and

(b) who is not employed by the casino operator.

12 Clause 14(1) of the 1995 Regulation made it an offence for a person to act as a representative of a Junket promoter unless that person was duly authorised by the promoter. Clause 14(2) required a copy of the statement of authorisation to be provided to the Authority. Clause 14(3) made it an offence for the casino operator to allow a person to act as a representative of a promoter unless the casino had received the statement of authorisation.

13 Of particular note, clause 15 of the 1995 Regulation required the Casino Control Authority to approve all promoters as well as all representatives. Clause 15 made it an offence for a person to act as a promoter (or representative of the promoter) without the Casino Control Authority's written approval, and also made it an offence for a casino operator to permit a person to act as a promoter (or representative of a promoter) without the Casino Control Authority's approval. Under clause 15(6), the Casino Control Authority could withdraw approval of a promoter or representatives at any time by way of written notification to the approval holder.

14 Clause 16 of the 1995 Regulation obliged the casino operator to notify the Casino Control Authority if it became aware that a promoter or representative had been convicted in New South Wales or elsewhere.

15 Clause 17 of the 1995 Regulation required the casino operator to provide the Casino Control Authority and the Director of Casino Surveillance such written notice of proposed Junkets as the Casino Control Authority requested in writing. Such details were to be provided at least 24 hours prior to the Junket participants taking part in gaming at the casino. Clause 17(3) also obliged the casino operator to provide the Casino Control Authority and Director with a list of Junket participants as soon as practicable after receiving that information. A failure to do so was a criminal offence.

16 Clause 18 of the 1995 Regulation made it an offence for a promoter to fail to ensure that the promoter or his or her representative accompanied the Junket participants at the casino.

17 Clause 19(1) of the 1995 Regulation required the casino operator to provide the Casino Control Authority and the Director with a written report on each Junket within 48 hours after the completion of the Junket. Clause 19(2) obliged the casino operator to provide the Casino Control Authority with a written report on all Junkets concluded in the previous month.

18 The 1995 Regulation was automatically repealed with effect from 1 September 2001[7] and was replaced by the *Casino Control Regulation* 2001. The Junket provisions were re-numbered and the only relevant change to the Junket provisions was in clause 15 to permit a casino operator to organise, promote and conduct a Junket on its own behalf and clause 16 included restrictions on a casino employee's involvement. The amendments in 2004 did not change the Junket framework.

19 In its original form, the *Casino Control Regulation* 2009 (2009 Regulation) again replicated this framework. However, a significant change was made with effect from 1 September 2009 when the responsibility for approving Junket operators and Junket representatives was removed from the Casino Control Authority. The previous clause provided that a person must not act as a promoter without the Casino Control Authority's approval. This clause did not appear in the revised 2009 Regulation.

The Authority's 2013 review of Junkets

20 In 2013 the Authority conducted a review of The Star's Junket arrangements. The Authority reviewed The Star's Junket promoters for the period 1 January 2012 to 31 January 2013. During that period, 156 individual Junket programs had been conducted by 55 Junket operators.[8]

21 The 2013 Junket Review was part of the follow up from the periodic investigation of the casino operator conducted under section 31 in 2011. That investigation had found that law enforcement agencies were concerned about some Junket operators working from Macau. Subsequently, the Authority had strengthened its working relationships with AUSTRAC and the Australian Crime Commission.[9]

22 The 2013 Junket Review concluded that:[10]

> The Star has comprehensive, risk based procedures in place to limit any junket promoters and their players that may have backgrounds of a suspect nature dealing with The Star. This includes checks conducted through Google, World Check and Lisle Security Consultants Co Ltd, a company specialising in junket operator player checks operating out of Macau. It is not considered that at this stage as a public company The Star could put in place any further checking procedures to determine the suitability of their junket operators.

23 It was noted that the principal of Lisle Security Consultants was Mr Lisle, a retired Superintendent of the Royal Hong Kong Police. The Star had used this company since 2010 firstly in relation to larger Junket operators and further, at the time of the report in relation to every new Junket operator. The report further concluded that the Investigations Manager at The Star found information provided by Lisle Security Consultants to be more reliable than World Check and its information was more intelligence focused and not limited to open source media.[11]

24 The Australian Crime Commission advised the Authority that none of the 55 Junket operators with whom The Star dealt during that period were of interest to them.[12]

25 It also emerged from the 2013 Junket Review that the Authority placed considerable weight on the AML/CTF regulatory regime as an integrity check on Junket operators. In this regard, it was stated:[13]

> AUSTRAC legislation also places significant 'know you client' responsibilities which require the ongoing monitoring of junket operators and players which did not previously exist when the Authority was responsible for approvals and it is not considered there are any deficits between AUSTRAC and casino regulation which would require the Authority to again become involved in the approval process as it was prior to August 2009.

September 2014 Four Corners allegations about Junkets

26 In September 2014 the ABC broadcasted a *Four Corners* program called "High Rollers, High Risk" in which it was asserted that "Australian casinos that target Asian VIP gamblers to boost their profits could run a serious risk of exposure to organised crime according to a range of law enforcement and security experts." It was noted that "until recently Australia only had a slender share of the VIP market."[14] The program

questioned: "How big is the risk that organised crime will infiltrate Australian casinos as they open up more to the high roller trade?"[15] Further details of this program are discussed elsewhere in this Report.

27 It suffices to note at this point that the allegations were largely directed at Crown, and it was noted that the then proposed casino at Barangaroo would be "pitched exclusively at VIP high rollers".[16] In particular, it was alleged that Melco Crown had dealt with a number of Junkets which had links to organised crime including Suncity.[17] Named individuals included Ng Man Sun (AMA/AMAX), Cheung Chi Tai (Neptune) and Cheok Wa (Alvin) Chau (Suncity).

28 The program noted that Neptune Group and Suncity brought high-rollers to both The Star and Crown Melbourne and Crown Perth.[18]

29 There was also associated media coverage at this time in which similar allegations were ventilated.[19] *The Sydney Morning Herald* reported on 17 September 2014 that:[20]

> The program found James Packer's Melco Crown Entertainment and its rival Echo Entertainment have links with colourful Macau junket operators some of which in turn are said to be associated with triad crime gangs. These junkets bring Chinese highrollers across from the mainland to gamble in Macau and now it appears to Australia as well.

30 *The Sydney Morning Herald* also reported on 17 September 2014:[21]

> In response to questions from Fairfax Media this week as to what steps the government was taking to address the Four Corners allegations a spokesperson for Troy Grant the NSW Minister for Hospitality Gaming and Racing and the Arts said the NSW government has confidence in the Independent Liquor and Gaming Authority to identify any matters of concern and take appropriate action to continue to ensure The Star casino and the proposed Crown Restricted Gaming Facility at Barangaroo are free from criminal influence and exploitation.

The Authority commissions a review

31 Following the *Four Corners* broadcast, the Authority sought assistance from Mr Peter Cohen of the Agenda Group to conduct a review of the available material about existing approaches to the oversight of Junket operations in Australian casinos.[22]

32 The report was commissioned because the Authority was concerned that these were serious allegations and the procedures surrounding the regulation of Junkets had changed in 2009. The Authority wanted to assess the efficacy of those procedures in 2015.[23]

33 The Authority sought:[24]

- A review of the available material about existing approaches to arrangements for the oversight of junket operations in Australian casinos.
- Within the existing legislative structure, a review of the Authority's approach to oversight of junket operations at The Star including the relevant internal controls.
- A review of sample audits of The Star's junket due diligence checking process.

Mr Cohen's views on the *Four Corners* broadcast

34 In February 2015 Mr Cohen provided his report to the Authority entitled "Report on the Review of Junket Processes in New South Wales".[25] He reported that the *Four Corners* broadcast "erred in its understanding of the substantial differences between Junket activities in Macau and every other jurisdiction which has Junkets, including New South Wales".[26] He concluded that this made the findings in that broadcast "irrelevant".[27]

35 Mr Cohen claimed that *Four Corners* erred for three reasons. First, Macau probity assessments operated under a different model to that in New South Wales whereby a person who serves time in prison had their criminal record expunged. This meant that the people named as Macau Junket promoters with a criminal record in the past did not technically have a criminal record in Macau. Mr Cohen noted that "while it is tempting to suggest that this model is problematic for gambling regulatory purposes, other regulators elsewhere could equally argue that Australia's spent convictions and ten-years' clear National Police Certificate approach is equally flawed".[28]

36 Secondly, Mr Cohen said Junkets operated under a completely different model in Macau compared with Australia and that in Australia they were "glorified travel agents" who recruited high net worth individuals to play, consolidated front money and provided the funds to the casino.[29] Mr Cohen noted that other than some mechanical steps such as handling the money and providing evidence of player residence, the Junket operator "has no role in the casino".[30]

37 Thirdly, with respect to allegations of money laundering, Mr Cohen said the example of the purchase and refund in the case of a watch purchase was evidence of avoidance of Chinese currency controls and difficult to accept that the purpose was for money laundering.[31]

38 Mr Cohen's treatment of the *Four Corners* allegations was superficial at best and did not in substance address many of the concerns that had been raised in that program. The characterisation of a Junket as a "glorified travel agent" is a serious misdescription which fails to acknowledge the credit providing and debt enforcing

functions of Junkets, or the vulnerability of Junkets to infiltration by organised crime.[32]

39 While it may be accepted that there are some differences in the way in which Junkets operate in Macau and in Australia respectively, including because casino operators in Macau may sub-contract the operations of VIP rooms to Junket operators, there are still some key similarities. Moreover, Mr Cohen failed to recognise the serious money laundering concerns that exist in relation to Macau Junket operations.

Mr Cohen's review of the comparative local and international regulatory regimes for Junkets

40 Mr Cohen found that the two reasons for regulating Junkets were to protect the integrity of gaming and to protect tax revenue. He also concluded that in relation to "traditional" Junkets, which he defined as all of those but Macau Junkets, the integrity concerns "did not stack up".[33] He suggested it was for each casino regulator to decide whether they should be responsible for the practice of Junket promoters outside of casinos.[34]

41 Mr Cohen suggested it was necessary to take into account risks to the regulator from regulating. He identified a risk as unnecessary involvement of the regulator which could then be blamed by the casino operator for a lack of commercial success. He found that casino regulators had assumed risks in being required to approve Junket operators because they lacked the capacity to independently verify information. Mr Cohen described Junket operators as "glorified travel agents" and to the extent that they provided credit to players and collected debts, these were matters "external to the operations of the casino".[35]

42 Mr Cohen noted that the regulatory framework for Junkets in New South Wales was contained in Internal Controls approved under section 124 and in the 2009 Regulation. He observed that in 2009, New South Wales had adopted the Victorian model in that the Authority ceased approving Junket operators. However, in contrast to Victoria, in New South Wales the casino operator was still required to advise the Authority of all Junket activity, including when Junket activity would take place and the level of front money that would be provided.[36]

43 Mr Cohen reviewed the differing approaches to regulation of Junkets between Victoria, Queensland, Western Australia, Singapore and Macau. He found that the New South Wales regulatory framework was similar to that in Victoria, which was an example of "permissive regulation".[37] The Victorian system recognised that:[38]

(a) Junket players were powerful and wealthy;

(b) A Junket operator "plays no role in what happens inside the casino";

(c) Junket operators must meet the Commonwealth government's visa requirements; and

(d) Casino operators have to comply with obligations under the AML/CTF Act.

44 Mr Cohen said that a benefit of making casino operators responsible for conducting due diligence on Junket operators was to transfer the integrity risk to them.[39]

45 He noted that the Victorian regulator still audited Junket player activity to ensure the correct rates of tax were collected and could audit the casino operator's records to ensure that satisfactory evidence of Junket players' residential status were maintained.[40]

46 Mr Cohen considered that ten years after the implementation by Victoria of this "risk-based" approach to Junket regulation "it is clear that the scheme can be considered a success" and that no material or systemic concerns had been identified since the new model had been introduced.[41] He did not refer to any evidence in support of that assertion.

47 In relation to current Junket regulator practices in New South Wales, Mr Cohen found that while regulations 14 to 19 of the 2009 Regulation dealt with Junkets, in practice much of the regulatory control of Junkets was effected by internal controls of The Star which had been approved by the Authority.[42] He noted that even though regulations were "not all being used" Junkets were still being "adequately controlled".[43]

48 Mr Cohen considered that regulations 14 to 18 were no longer necessary (albeit they could be retained as a "fallback" position if desired) for the following reasons:[44]

(a) The restrictions in regulations 14 and 15 on casino operators or their employees operating Junkets could be dealt with by way of internal controls;

(b) The requirement in regulation that operators authorise representatives and provide written notification of such to the Authority was unnecessary;

(c) Regulation 17 (dealing with written notification of criminal convictions to the Authority) was unnecessary since the Authority had no use for this information since it no longer approved Junkets; and

(d) Regulation 18 (dealing with advanced notice of Junkets) had no effect since the Authority had not issued any written notice requiring such reports to be given.

49 Mr Cohen considered that regulation 19 (which required reports be provided regarding Junkets to the Authority after their completion) was effective and working well.[45]

50 At a high level, Mr Cohen's view was that the regulation of Junkets in New South Wales should follow the Victorian permissive approach and the use of internal controls as the method of regulating them. He also expressed the view that the regulatory risk in relation to investigation and approval of Junket operators should be with the casino operator.[46]

51 With regard to the provision of credit in New South Wales, Mr Cohen noted that the casino operator was not permitted to offer credit to players directly, and that whilst in general terms that was appropriate, since Junket and VIP players were sophisticated high net worth individuals, the ban on the provision of credit to them was an "unnecessary protection".[47] However, he did not recommend any legislative change to address this matter.

December 2018 amendments

52 Following Mr Cohen's Junket review and also from the Casino Modernisation Review (discussed elsewhere), substantial amendments were made to the 2009 Regulation with effect from 21 December 2018. These amendments were made by the *Casino Control Amendment (Miscellaneous) Regulation* 2018. The amendments omitted clauses 15 to 19 in their entirety.[48] The only remaining provision which regulated Junkets is clause 14, which provides:

> (1) A casino operator must not act as a representative of a promoter of a junket involving the casino.
>
> Maximum penalty: 100 penalty units.
>
> (2) However, a casino operator may organise, promote and conduct such a junket on his or her own behalf.
>
> (3) The junket may be organised, promoted and conducted by the casino operator personally or by a casino employee at the direction of, and on behalf of, the operator.

53 Clause 14 of the *Casino Control Regulation* 2019, which took effect on 1 September 2019, is in the same form.

54 Some of the matters that were specified in clause 14 to 19 are now to be found in the relevant internal control relating to Junkets, which is discussed below.

55 On 21 December 2018 the Authority approved a new suite of 14 internal controls for The Star, entitled Internal Control Manual 1 through to Internal Control Manual 14. The introduction of these new controls was in accordance with Mr Cohen's recommendation in the Casino Modernisation Review that the "traditional 1990s

model" of high prescriptive internal controls be replaced with "principles-based" controls which highlighted certain matters but did not prescribe detailed procedures.

Internal Control Manual 8: Rebate Play

56 Internal Control Manual 8 is entitled "Rebate Play" (ICM 8: Rebate Play) and relates to premium player arrangements and Junkets, which are together defined as "Rebate Play".[49]

57 The operational objectives for ICM 8: Rebate Play are as follows:[50]

1. Appropriate and authorised persons are allowed to participate in Rebate Programs.

2. Rebate Play revenue is identifiable from non-Rebate Play.

3. Rebate gaming activity is accurately calculated and reported.

4. Detect and appropriately respond to persons who engage in activities of an illegal/undesirable nature.

5. Comply with obligations under the *Anti Money Laundering and Counter-Terrorism Financing Act 2006 and Rules* (Cth) (AML/CTF law).

58 The materially significant risks identified with respect to Junkets are as follows:[51]

B. Inadequate identification and probity checks on Junket Promoters, Junket Representatives and participants allow Rebate Programs to operate with people who:

- have relevant criminal convictions or connections;
- are on a DFAT or other law enforcement agency sanctions list that is accessible to the Casino Operator; or
- represent an unacceptable money laundering or terrorism financing risk;

…

D. Notification and reporting is not sufficient or provided to the Casino Regulator within the required timeframe of:

- commencement of play of the Junket where a direction for such notification has been issued;
- settlement documentation of the Junket or individual patron; or

- convictions of a Junket Promoter or Junket Representative;

…

J. The Casino Regulator and law enforcement agencies not provided adequate information on activities of junket operators.

59 The relevant controls specified in respect of the eligibility and suitability of Junkets are:[52]

3. The minimum identification requirements will be specified in the SOPs and will include:

(a) Know Your Customer information; and

(b) Enhanced Customer Due Diligence information.

4. Background security and suitability checks on Junket Operators/Promoters and Junket Representatives will be undertaken that are no less than the current equivalent of the Thomson Reuters World Check database *(control of risk B)*.

5. Junket Operator/Promoters and Junket Representatives will only be authorised to conduct junkets if the Casino Operator is satisfied that the Junket Operator/Promoter or Junket Representative meets all probity requirements specified in SOPs *(control of risk B,J)*.

…

9. Where a Junket Operator or Junket Representative is no longer suitable to conduct a junket the approval to conduct a junket will be revoked as soon as practicable *(control of risk B)*.

10. The Casino Operator will report to the Casino Regulator within 7 days of becoming aware of a Junket Promoter or Junket Representative becoming (or having been) the subject of any of the following *(control of risk B, J):*

(a) a criminal charges;

(b) a finding of criminal guilt;

(c) a conviction; or

(d) any other matter that the Casino Regulator or the Commissioner of Police has prescribed in writing to the casino operator as a probity event.

60 The relevant controls specified in respect of the monitoring and oversight of Junket operators and participants in Junkets are:[53]

15. An ongoing periodic re-assessment of established Junket Operators and Representatives will be conducted in accordance with SOPs *(control of risk B).*

16. Actions staff are required to take to appropriately monitor and maintain oversight of junket participants particularly regarding activities relevant to Junket Operator/Promoter and Junket Representative probity will be specified in SOPs *(control risk B).*

17. The SOP will detail but may not be limited to the following actions *(control of risks B, C):*

    (a) Investigate unusual activity that may indicate money laundering or terrorism financing; and

    (b) Lodge Suspicious matters reports.

61 The internal controls also make provision about what reports and notifications the casino operator needs to provide the Casino Regulator about Junkets. Significantly, these reporting obligations are only triggered where the Casino Regulator makes a specific request for the reports.[54]

62 In some ways ICM 8 goes further than the former regulations, by requiring ongoing and periodic reassessment of Junket operators and representatives and requiring the development of procedures to investigate unusual activities indicative of money laundering and to lodge suspicious matter reports.[55]

63 There is no real detail in the Internal Controls about the nature of the probity investigations that should be undertaken. That detail is left to the casino operator to determine and specify in its SOPs.

Chapter 1.7

Casino Licence in New South Wales to 2013

1 The *Casino Control Act* is the principal legislation regulating casinos in NSW. Its key terms are discussed elsewhere in this Report. For now, it suffices to note that Part 2 of the *Casino Control Act* deals with the licensing of casinos.

2 Since the commencement of the *Casino Control Act*, section 6 has provided that only one casino licence may be in force under the Act at any particular time and the casino licence applies to one casino only. However, this provision was amended on 27 November 2013 to add section 6(2) which provides that a restricted gaming licence may be granted under the Act to operate the Barangaroo Casino. Section 6(2) also provides that only one restricted gaming licence may be in force under the Act at any one time.[1]

3 As originally enacted and as remains the case today, a casino licence is granted pursuant to section 18(1) of the *Casino Control Act*. Pursuant to section 18(2) the licence may be granted subject to such conditions as the Authority thinks fit. According to section 20, a casino licence remains in force for the period for which it was granted (as is specified in the licence) unless it is cancelled and surrendered. Section 21 has always provided that a casino licence confers no right of property and is incapable of being assigned or mortgaged, charged or otherwise encumbered.

Process leading to the grant of the casino licence

4 The *Casino Control Act* commenced on 15 May 1992.

5 In May 1993 the Casino Control Authority invited expressions of interest for the establishment and operation of a temporary and permanent casino and applications for a casino licence. Amongst others, Darling Casino Ltd (DCL) and Sydney Harbour Casino Pty Ltd (SHC) lodged expressions of interest and applications and in January

1994 the Casino Control Authority announced that it had shortlisted these two companies.[2] DCL was a bid consortium consisting of Mr Kerry Packer's PBL and the US casino operator Circus Circus.[3]

6 On 6 May 1994 the Casino Control Authority announced that while both DCL and SHC had satisfied its requirements, SHC had been chosen as the preferred applicant. SHC was a consortium of the Showboat Group of Companies and Leighton Properties Pty Ltd, which was a subsidiary of the publicly listed company Leighton Holdings Pty Ltd.[4]

7 Following certain adverse media reporting about the members of the consortium, on 16 August 1994 the Casino Control Authority announced that an inquiry would be conducted pursuant to section 143 of the *Casino Control Act* to investigate certain probity issues relating to consortium members. That inquiry was conducted by Mr Tobias QC and its findings were made public on 15 December 1994. Mr Tobias QC found that by reason of the influence of certain officers, the Leighton entities (Leighton Group) were not of good repute.[5]

Grant of casino licence

8 On 14 December 1994 the Casino Control Authority adopted Mr Tobias QC's findings and concluded that the Leighton Group was not of good repute. However, the Casino Control Authority also found that the Leighton Group had ceased to be a close associate of SHC within the meaning of section 13(1) of the *Casino Control Act* since its shareholding and management interests had been placed in a trust. The independent trustee was required *inter alia* to dispose of the Leighton Group's shareholding and management interests in SHC within 5 years and in the meantime to refrain from exercising voting rights or influencing the appointment of directors of SHC.[6]

9 Consequently, on 14 December 1994 the Casino Control Authority granted the first casino licence in New South Wales to SHC. SHC was a wholly owned subsidiary of Sydney Harbour Casino Holdings Limited (SHCH), a public company listed on the Australian Stock Exchange.[7] The licence was granted for a period of 99 years, unless cancelled or surrendered.

10 Also on 14 December 1994 the NSW Government entered into a Casino Exclusivity Agreement for a period of 12 years (Exclusivity Agreement).[8]

11 DCL's subsequent legal challenge to the decision to grant the licence to SHC failed.[9]

12 In January 1997 PBL announced that it had entered into arrangements with Showboat by which PBL would gain control of the management of the casino and 10 per cent of the shares in SHCH. However, on 3 May 1997 PBL announced that it had terminated the proposed arrangements.[10]

Temporary then permanent casino

13 On 13 September 1995 a temporary casino commenced operations at wharves 12 and 13 at Pyrmont Bay, Sydney. The temporary casino contained 150 gaming tables (115 on the main floor and 35 on a private gaming floor) and 500 gaming machines. The gaming machines were the same as those approved for the operation in New South Wales registered clubs, which included poker machines. The gaming tables provided a range of recognised table games approved by the Casino Control Authority including baccarat, blackjack and roulette.[11]

14 On 26 November 1997 the permanent casino commenced operations on the site of the former Pyrmont Power Station. The Casino Control Authority was the registered proprietor of that site and leased it to a corporate entity related to the licensee.[12]

15 The permanent casino commenced with 200 gaming tables (160 on the main floor and 40 on a private gaming floor) and 1,500 gaming machines.[13] The permanent casino offered the same games as the temporary casino as well as derivations of blackjack and poker. The permanent casino offered a suite of new gaming machines and introduced multi-terminal gaming machines and video draw poker gaming machines.

16 Shortly before the opening of the permanent casino, SHC changed its name to Star City Pty Ltd and from that time, the casino was known as "Star City".

17 On 14 December 1994 Star City entered into the Casino Duty and Responsible Gambling Levy Agreement with the NSW Government. This was to give effect to the obligation under section 120 of the *Casino Control Act* to enter into an agreement by which Star City was to pay duty to the NSW Government. The agreement set out the amount of casino duty and the amount of responsible gambling levy to be paid by Star City until 30 June 2008.[14] This agreement has been amended on a number of occasions.

First periodic review of the casino operator

18 Pursuant to section 31 of the *Casino Control Act*, the Authority is required to periodically review whether the casino operator remains a suitable person to continue giving effect to the licence and whether it is in the public interest that the casino licence should continue in force. Originally such reviews were to occur at intervals not exceeding 3 years after that grant of the licence. However, on 26 June 2009 that period was extended to "not exceeding 5 years".[15]

19 Six reviews have been conducted under section 31 of the casino operator licensee. In each case, the review proceeded by way of an investigation under section 143. In each case, it was concluded that the licensee was a suitable person to continue to give effect

to the casino licence and that it was in the public interest that the licence continue in force.

20 The first section 31 review was conducted by Mr McClellan QC who reported in December 1992. Of note, Mr McClellan QC found that money laundering was not a significant problem at the casino.[16] However, Mr McClellan QC observed:[17]

> Under Commonwealth legislation neither AUSTRAC nor casino operators are permitted to provide details of information regarding cash transactions and suspect transactions to casino regulatory agencies. It is my view that if this position were reversed there would be a number of benefits for all concerned.
>
> The casino regulatory agencies are well placed to examine cash transactions and to provide appropriate advice to relevant law enforcement agencies in order to facilitate the activities of those agencies. In addition, the availability of the information would be of significant benefit to casino regulators who are charged with the obligation to keep casinos free from criminal influence or exploitation. Without access to all necessary information, casino regulators are not able to undertake their functions as effectively as they might otherwise be able to.

21 Although the CEO of AUSTRAC now establishes MOUs with casino regulators there is a need for the Authority to have far better access to information of this type which is discussed later in the Report.

Junket operations commenced

22 Junkets first emerged as part of the casino landscape in New South Wales on 14 December 1998 when Star City commenced internal commission-based play operations.[18] In October 1998 the government had approved a separate tax rate (of a flat 10 per cent) for gaming revenue derived from the casino's proposed new International Junket/Premium Player Commission Programs. The purpose of this reduced tax rate was to enable the licensee to offer competitive commission rebates based on betting or losses to attract premium foreign gamblers.[19] Internal Control Procedures were developed to govern international commission program operations.[20]

23 As is discussed elsewhere in the Report, Junket operations increased substantially over time at the casino. It was an "important" part of the business and in FY19 the VIP normalised earnings were 11.8 per cent of Star Entertainment Group's total earnings ($66 million).[21]

Second periodic review of the casino operator

24 In 2000 Mr McClellan QC conducted a second periodic review of the casino pursuant to section 31 of the *Casino Control Act*, and reported on 15 December 2000. While Mr

McClellan QC was ultimately satisfied of the licensee and its close associates' probity and that the continued operation of the licence was in the public interest, he also recorded some disturbing developments. He found that an inappropriate culture had developed in the private gaming area known as the Endeavour Room, where there was loan sharking, money laundering and sexual harassment. Of the 100 gamblers with the largest turnovers in the period April 1988 to March 2000 40 per cent of the local players on the list were known to various law enforcement agencies. Mr McClellan QC was satisfied that money laundering had occurred at the casino and that AUSTRAC was concerned about the licensee's under-reporting. He recommended changes to Endeavour Room operations to reduce the risk of money laundering.[22]

25 However, Mr McClellan QC accepted that the licensee's parent company (by then, the publicly listed Tabcorp Holdings Ltd which had acquired SHCH in 1999) had determined to make the necessary changes to culture.[23]

26 Mr McClellan QC also referred to Junkets, noting that one reason for the popularity of Junkets was the prospect of anonymity to the individual Junket player (since the Junket operator rather than the Junket participant settles the account). He recommended that the licensee be required to record and provide to the Authority details of the buy-ins and cash-ins by Junket participants, including the amount of the final settlement to which they are entitled.[24]

27 Mr McClellan QC also made reference to the power to exclude patrons, which he described as "an important mechanism for achieving an environment in which criminal influence is diminished." He explained:[25]

> It is obvious that a fundamental conflict exists. People prepared to gamble significant sums of money are attractive customers for a casino even if their money is sourced from criminal activity. Notwithstanding this conflict, the Sydney casino came into being after acceptance of the principles of the Street Report. This must mean that persons known or reasonably believed to be engaged in criminal activity or whose source of funds are reasonably believed to come from criminal ventures should be excluded from the casino.

28 Chapter 8 of Mr McClellan QC's 2000 report was devoted to culture. He warned:[26]

> It follows that to be a suitable customer of the Endeavour Room a person must be prepared to regularly gamble relatively large sums of money. Unless appropriate guidelines informed by an adequate corporate culture are in place, those who provide services to the player will be unlikely, if the level of play is satisfactory, to question the source of the funds or take action when loan sharking prostitution or intoxication of patrons occurs. Unless great care is taken it may not be long before such activities become an accepted part of activity in the Endeavour Room.

29 Following the 2000 report Star City suspended its Junket operations.[27] They did not resume until 1 January 2006.

30 In a special report to the Authority dated May 2002 Mr Walker SC and Ms Furness found that "significant progress" had been made with respect to problems previously identified in the Endeavour Room. However, they found that hosts, co-ordinators and security officers who were interviewed still generally had a poor understanding of money laundering and what to look for such that "the issue of money laundering needs further careful consideration".[28]

Corporate developments and the third and fourth periodic reviews of the casino operator

31 In November 2003 the casino's holding company Tabcorp merged with Jupiters Limited,[29] resulting in Tabcorp acquiring three Queensland casinos (then known as Conrad Jupiters on the Gold Coast, Conrad Treasury in Brisbane and Jupiters Townsville).[30] It was proposed to create a single sales and marketing team for the international rebate business to market both Star City and Jupiters' casinos, although it was recognised that Star City was the main international rebate business casino.[31]

32 In January 2006 Star City re-entered the international rebate business via both premium direct and Junket programs.[32] At that time, the Casino Control Authority was responsible for approving Junket operators. The scale of Junket operations was much smaller at that time than it has been in recent years. According to the Casino Control Authority's 2006/07 Annual Report:[33]

> At the end of the 2005/06 reporting period, 21 applications for approval to be a junket operator or representative remained under consideration. In the 2006/07 reporting period, 15 applications for approval to be a junket operator or representative were lodged with the Authority. The Authority approved 19 provisional approvals and 26 full approvals. Five approvals were not given, 15 applications are still under consideration for full approval.

33 Further section 31 reviews took place in 2003[34] and 2006.[35]

New exclusivity arrangements and the emergence of Echo Entertainment Group Limited

34 On 14 September 2007 the Exclusivity Agreement expired.

35 On 26 June 2008 the Casino Duty and Responsible Gambling Levy Agreement was amended and the Deed of Amendment and Restatement was approved by the NSW Legislative Assembly on 25 November 2008. Clause 3 provides that Star City was to pay a non-refundable annual fee of $6 million to the Authority.[36]

36 Following negotiations and Star City's agreement to pay a fee of $100 million, on 5 June 2009 the NSW Government granted an Amended Exclusivity Agreement for the period from 14 November 2007 to 13 November 2019.[37]

37 Also on 5 June 2009 the casino licence was amended by way of a "Notification of Amendment of the Casino Licence under Section 22 of the Casino Control Act". The amended licence is in terms similar to the original licence.[38]

38 In 2010 Tabcorp embarked up a demerger of its casino businesses from its wager, gaming and keno businesses. Echo Entertainment Group Limited (Echo) was incorporated on 2 March 2011 to facilitate the demerger. As a result of the demerger, Echo assumed control of Star City, the Jupiters Hotel and Casino on the Gold Coast, Jupiters Townsville and Treasury Casino and Hotel in Brisbane.[39]

39 On 20 May 2011 Echo entered into "The Echo Deed" with the Casino Control Authority. The Deed focused mainly on compliance, and Echo's acquisition of all the shares in Star City, specifically from Tabcorp Investments.[40]

40 On 15 September 2011 Star City Pty Limited changed its name to The Star Pty Limited and the Star City casino was renamed The Star.[41]

Fifth periodic review of the casino operator

41 In 2011 Ms Furness SC conducted a further section 31 review of The Star, and reported in December 2011. By the time of this review, the Endeavour Room had been replaced by the Sovereign Room, which consisted of the Platinum Suite and eight small inner rooms. There was also a further separate private members room in the Gold Suite.[42] By this time the Authority was no longer required to approve Junket operators.

42 Ms Furness SC noted in her report that she had been approached by a number of the licensee's staff members who expressed concerns about the casino's changing culture.

43 Ms Furness SC recommended that "a culture in which compliance with obligations is valued should be encouraged. There should not be key performance indicators which in effect value not reporting incidents more highly than doing so."[43]

2012 public inquiry into the casino operator

44 In 2012 a public inquiry was conducted by Ms Furness SC under section 143 of the *Casino Control Act* into particular aspects of The Star's conduct. The Authority called

the inquiry because it believed that it had not received a full and timely account of the cessation of the employment of the former Managing Director of Star City.[44]

45 Ms Furness SC concluded that there had been prompt, proper and thorough investigation (free of external influence) of the allegations made by two of The Star's managers of sexual harassment against the Managing Director.[45] Ms Furness considered that it was a matter for the Casino Control Authority as to whether or not there were grounds for disciplinary action against The Star.[46] Ultimately, the Casino Control Authority considered there were and imposed a fine of $100,000.[47]

Authority approves applications by Crown and Genting to increase their shareholdings in Echo

46 On 24 February 2012 Crown announced that it held a 10 per cent interest in Echo.[48] On the same day Crown lodged an application with both the Casino Control Authority and the Queensland Government seeking consent to increase its shareholding in Echo beyond 10 per cent.[49] That application led to a probity investigation into Crown and its close associates.

47 As discussed elsewhere in the Report it was also in February 2012 that Mr Packer commenced negotiations for the establishment of a high-end hotel and casino development at Barangaroo in Sydney.

48 Following a probity review, on 10 May 2013 the Authority approved an application by Crown to acquire more than 10 per cent (and up to 23 per cent) of the issued share capital of Echo as the ultimate holding company and owner of The Star subject to certain conditions.[50]

49 On 3 September 2015 the Authority approved an application by Genting Hong Kong Limited (Genting) to acquire more than 10 per cent (and up to 23 per cent) of the issued share capital of Echo, again on conditions.[51]

50 As it turned out, neither Crown nor Genting acted on its approvals.

51 In November 2015 Echo changed its name to The Star Entertainment Group Limited (Star Entertainment Group).[52]

Sixth periodic review of the casino operator

52 A further section 31 review was conducted into the licensee by Dr Horton QC in 2016. In a report dated 28 November 2016 Dr Horton QC concluded:[53]

> The Star is resistant to infiltration by organised crime and other criminal influences. It, and those closely associated with it, appear to be of good repute, seem to have sound and stable financial backgrounds. The Star has no business association, so far

> as I have been able to ascertain with a person or body that is not of good repute or which has undesirable or unsatisfactory financial sources.

53 This was the first section 31 review to devote any real attention to Junket operations at The Star. Dr Horton QC said:[54]

> Junkets present a risk to the integrity of the Casino, by virtue of the very large amounts of money involved, the potential illicit sources of those funds, and issues relating to junket promoters and the nature of their business. They also represent an important, and growing, part of the Casino's business, and are one means by which international visitors, and business, is attracted.

54 Dr Horton QC also noted the recent growth in The Star's Junket operations:[55]

> For the 2015/2016 financial year, junkets represented 4.4% of actual earnings before interest, tax, depreciation and amortisation (EBITDA) for The Star Group, or 15.9% of normalised EBITDA (ie controlling for non-recurring expenses or revenue). In the last five years, The Star's share of the Australian junket market, based on turnover, has grown from 28% to 43%.

55 Dr Horton QC observed that Junkets present an opportunity for the introduction of tainted funds at various entry points and were vulnerable to money laundering and exploitation by criminal influences.[56]

56 Dr Horton QC found that The Star was aware of the risks that Junkets presented and that it had in place procedures to address those risks. He described the due diligence procedures The Star had in place for vetting Junket operators, and observed that Junket representatives were vetted in the same way. Dr Horton QC said "part of the proper scrutiny of Junkets … is knowing who are the Junket representatives."[57] He also said that "in all the interviews with law enforcement and like bodies, there was no assertion made that the Junket component of The Star's business is being conducted less than honestly."[58]

57 Dr Horton QC also referred to the arrests of Crown staff in Mainland China in October 2016 and recorded that The Star had assured him that "its business model differs from that operator".[59]

58 Dr Horton QC observed: [60]

> A second casino-like operation is in the course of being established. The Star Casino, and casinos like it, are becoming more technologically based, and increasingly they seek to attract, in addition to customers from the domestic market, gamblers – especially 'high rollers' – and visitors from overseas. This greater complexity justifies a regulatory framework better directed to the regulation of different, and perhaps more elaborate, threats to the integrity of those businesses and to the public interest.

Recent developments

59 In addition to the casino The Star incorporates two 5-star hotel towers and serviced apartments, a 16 room day spa, an international designer retail collection, an event centre, the Sydney Lyric Theatre, an international nightclub and more than 20 food and beverage outlets, including a number of fine dining restaurants. The Star is a key tourist attraction in Sydney.[61]

60 Star Entertainment Group reported that in the financial year 2018-19 it paid $360 million in taxes and levies for its Sydney casino and $544 million in total in Australia (Sydney and Queensland).[62] These figures have been relatively consistent over the past 5 years.[63]

61 In 2019 The Star made an application to the NSW Department of Planning for a development at Pyrmont which was to involve:[64]

- a new hotel and residential tower proposed to be operated by The Ritz-Carlton; and
- additional food and beverage, retail, function and event space, as well as other resort facilities and attractions.

62 The NSW Government rejected the proposal for the development of the Ritz-Carlton Tower.[65]

63 In 2020 the new Sovereign Room was completed, with the official launch taking place on 3 July 2020. The Star claims it is Sydney's best premium gaming and entertainment venue.[66]

Chapter 1.8

Restricted Gaming Licence at Barangaroo

1 In around February 2012 Mr James Packer met with then NSW Premier Mr Barry O'Farrell OA, at the home of media identity Mr Alan Jones. Mr Packer outlined his vision to build a $1-billion-plus hotel, casino and entertainment complex at Barangaroo.[1] Later in February 2012 concept plans for a state-of-the-art, 350 room hotel and casino at Barangaroo were released to the media.[2]

2 On 2 August 2012, Crown announced to the ASX that it had signed an Exclusive Dealing Agreement with Lend Lease Corporation Limited in relation to a proposed development of a hotel, casino and entertainment complex at Barangaroo.[3]

3 On 10 August 2012 Mr O'Farrell met with Mr Packer and advised him of a new three-stage framework for infrastructure development that the Government had put in place in January 2009, known as an unsolicited proposal process. The Premier advised Crown to use the process for the Barangaroo project.[4]

4 On 17 August 2012 the NSW Government updated its unsolicited proposal process to remove the requirement for an independent evaluation as to whether a project should be allowed to avoid a tender process.[5]

5 On 6 September 2012 Crown submitted an unsolicited proposal to build and operate an integrated hotel resort complex at Barangaroo.[6] In support of its proposal Crown contended that the development would see up to $1 billion invested in New South Wales and a $400 million annual contribution to the New South Wales economy. Crown's proposal made it clear that VIP gaming would be an essential element to the commercial viability of the project. Crown's vision was to create a world-class, six-star hotel resort at Barangaroo. The NSW Cabinet signed off on stage one of the unsolicited proposal process on 25 October 2012.[7]

6 On 21 June 2013 Crown lodged an unsolicited proposal with the State of NSW.[8]

7 On 4 July 2013 the NSW Government announced its decision to allow the Crown Unsolicited Proposal to advance to the final stage of the unsolicited proposals process.[9] On 18 July 2013 Crown and the State of NSW entered into the Stage 3 agreement, the objective of which was to finalise all outstanding issues with a view to Crown submitting a binding offer in accordance with the Unsolicited Proposals Guidelines.[10]

8 On 11 November 2013 Crown announced that it had entered into agreements with the NSW Government for the development of a six-star luxury hotel resort at Barangaroo.[11] One of the agreements entered into by the State of NSW, Crown, the Licensee and Crown Sydney Property was the Framework Agreement. The terms of this agreement and its subsequent amendment on 7 July 2014, as well as other associated regulatory agreements, are discussed elsewhere in this Report. The Framework Agreement prescribed the key terms of the Restricted Gaming Licence as well as the key terms of the legislative amendments to facilitate the grant of that Licence.

The Crown Sydney vision

9 The vision for Crown Sydney was explained in Crown's unsolicited proposal dated 21 June 2013 signed by Mr Packer in his capacity as Chairman of Crown. The project was for Sydney's first six-star hotel resort with 350 hotel rooms and suites, 80 luxury apartments, signature restaurants, bars, luxury retail outlets, pool and spa facilities, conference rooms and VIP gaming facilities. It was explained that the "VIP gaming facilities at the Crown Sydney Hotel Resort are necessary to make such a world-class project commercially viable."[12]

10 Mr Packer explained:[13]

> I believe that Crown Sydney will be able to almost treble the volume of VIP business coming to Sydney from Asia, and in particular, China. Unlike Echo, Crown has the advantage of being able to leverage its joint venture in Macau – Melco Crown Entertainment (MCE). MCE has a significant share of the Macau VIP gaming market which is the largest VIP gaming market in the world. In addition, Crown has an extensive sales network through Asia and a proven track record of attracting high net worth tourists and VIP gaming customers from Asia to Australia for almost 20 years.

11 Mr Packer also explained that Crown's project was "underpinned by Crown's unrivalled understanding of the Asian tourist market" and that "no other company has had the same success in bringing these high discerning tourists to Australian hotel resorts, an element which will be critical in making the Crown Sydney Hotel Resort project a success."[14] He continued:[15]

> It is important to note that Crown Sydney will not offer poker machines or low limit tables and the VIP gaming facilities will not be accessible by the NSW general public – it will be a members only facility. As such, VIP gaming at Crown Sydney will minimise the issue surrounding problem gambling. Based on Crown Melbourne's experience, it is estimated that only 5% of local gaming patrons would play in such a restricted gaming facility.

12 Mr Packer understood from Crown's involvement in the joint venture with Melco in Macau that Junkets were very important in the VIP side of the business.[16] He understood that the Junket model had worked well in Macau and he wished to bring that model to Crown Sydney.[17]

Legislative amendments to facilitate Grant of Restricted Gaming Licence

13 Following the NSW Government's selection of the Crown Unsolicited Proposal, the *Casino Control Act* was amended to provide for an application process under which a Restricted Gaming Licence could be issued and granted by the Authority. The amendments to the Act commenced operation on 27 November 2013.[18]

14 The Barangaroo restricted gaming facility is defined as a "casino" for the purposes of the *Casino Control Act*. It is described as a restricted gaming facility and the Licence is described as a restricted gaming licence because of restrictions on gaming at the facility which are imposed by the *Casino Control Act* and by the terms of the Licence.

15 Section 3 of the Act was amended to provide that although the Licence is not a casino licence, it is similar in nature to it and is treated as a casino licence for the purposes of the *Casino Control Act*.

16 Section 22(2A) introduced the restriction that conditions of the restricted gaming licence can only be amended with the agreement of the holder of the licence.[19]

17 The restrictions imposed by sections 22A and 22B of the *Casino Control Act* include that:

(a) The installation or use of poker machines is not lawful in the facility unless expressly authorised by an Act of Parliament;

(b) There are minimum bet limits for games which are approved to be played at the facility; and

(c) Only persons who are members or guests of the facility are authorised by the licence to participate in any gaming.

18 Further, section 89A is to the effect that the *Smoke-free Environment Act* 2000 does not apply to the Barangaroo Casino.[20]

Direction approving Crown Sydney to apply for Restricted Gaming Licence

19 On 12 December 2013 the then Minister for Tourism, Major Events, Hospitality and Racing and Minister for the Arts, Mr George Souris, wrote to the Authority advising that pursuant to section 13A of the *Casino Control Act* he had approved Crown Sydney as the applicant to apply for a restricted gaming licence to operate a restricted gaming facility at Barangaroo.[21] This was in the the form of a Ministerial Direction pursuant to section 5A of the *Casino Control Act* and contained the terms and conditions of the Restricted Gaming Licence.

20 On 16 December 2013 Crown Sydney applied to the Authority for approval to be granted a Restricted Gaming Licence as an approved applicant under the *Casino Control Act*. In assessing the application, the Casino Control Authority was required to determine if Crown Sydney and all close associates of Crown Sydney were suitable to be concerned in or associated with the management and operation of the proposed Barangaroo Restricted Gaming Facility. It was also necessary to consider all business associates of Crown Sydney and of its close associates.

Crown probity processes

21 By this time there had been a recent previous assessment of the suitability of Crown and its close associates in 2013 when Crown sought to increase its shareholding in Echo.

2012 - 2013 suitability assessment

22 The first of these assessments arose from Crown's 24 February 2012 ASX announcement that it held a 10 per cent interest in Echo,[22] which was and remains the operator of The Star casino in Sydney and other casinos in Queensland. That same day Crown lodged an application with both the Authority and the Queensland Government seeking consent to increase its shareholding in Echo beyond 10 per cent.[23]

23 Crown's application on behalf of itself and two wholly owned subsidiaries (Crown Applicants) sought:

(a) Written approval that the Crown Applicants were suitable persons to be concerned in or associated with the operation of The Star;

(b) Written consent to acquire voting power in excess of 10 per cent in Echo Entertainment Group (which, due to subsequent amendments to the application, was set at a 23 per cent cap); and

(c) Written consent to be entitled to hold a deemed relevant interest in more than 5 per cent of the shares in Star City Holdings Limited, a wholly owned subsidiary of Echo and the immediate holding company of The Star.[24]

24 On 21 March 2012 the Authority determined that it would consider Crown's application on the basis that it had received an application for approval of a proposed "major change" under section 53 of the *Casino Control Act*.

25 The Authority had to be satisfied that Crown, its associated companies and relevant office-holders were suitable to become involved in the management and operation of The Star. This included CPH and its associated companies and office-holders, which at the relevant time held a 48.09 per cent interest in Crown (CPH Close Associates).[25]

26 The Authority's investigations extended beyond Crown and the CPH Close Associates to relevant entities and individuals considered by the Authority to be business associates of Crown and the CPH Close Associates, including in relation to overseas jurisdictions. This included Mr Lawrence Ho as well as Melco Crown Entertainment Ltd (as it then was), a company in which Crown then held a 33.6 per cent interest and which operated integrated casino resorts in Macau.[26]

27 On 10 May 2013 the Authority approved the Crown Applicants as suitable persons to be concerned in or associated with the operation or management of The Star Sydney. In its decision, the Authority stated that it had considered that its approval would result in relevant individuals and entities connected to or associated with the Crown Applicants becoming close associates of The Star, including Mr Packer and CPH.[27]

28 Shortly after the Authority granted its approval on 10 May 2013, Crown divested itself of its entire shareholding in Echo. However the approval relevant to the suitability assessment was in respect of the application for the Barangaroo Casino Licence.

2014 New South Wales suitability assessment

29 In its assessment of Crown's application for the Barangaroo Casino Licence in 2014, section 13A(3) of the *Casino Control Act* required the Authority to take into account any information relevant to the application that was received by it in its suitability review in 2013.

30 The Authority's 2014 assessment considered a wide range of material sourced from a number of regulatory and enforcement agencies both nationally and internationally, probity inquiries, public submissions, and legal and financial advice.

31 The 2014-2015 Annual Report of the Authority included the following:[28]

> Because we had our significant prior probity investigation of Crown to rely on, the conduct of the investigations was completed in short timeframes without compromising the quality of advice given to the Authority.

32 On 8 July 2014 the Authority granted approval to Crown to operate the proposed Barangaroo Restricted Gaming Facility from 15 November 2019.[29] The Authority was satisfied that the applicants, their associated companies and relevant office-holders, met the probity and suitability criteria as stipulated in section 13A(2) of the *Casino Control Act*. However a condition was imposed on Crown requiring it relevantly to the extent to which it was within its powers to do so, to ensure that the late Mr Stanley Ho or any of the named Stanley Ho Associates from acquiring any direct, indirect or beneficial interest in Crown or its subsidiaries.[30]

Grant of Restricted Gaming Licence and ancillary agreements

33 On 8 July 2014 the Authority granted the Licence to the Licensee pursuant to section 18 of the *Casino Control Act*. The Licence permits gaming to be conducted at the Barangaroo Casino from 15 November 2019 for a term of 99 years.[31] On 8 July 2014 numerous agreements were entered into, the terms of which are discussed elsewhere in the Report.[32]

34 In July 2014 Crown paid $100 million to the State of NSW. Crown also gave various guarantees about the value of the Licence in terms of gaming taxes payable to the State, including that that the aggregate gaming taxes received from the Crown Sydney and The Star in the first three years of gaming having commenced at Crown Sydney will be at least three times the value of the gaming taxes paid by The Star in the year prior to gaming commencing at Crown Sydney. Crown also guaranteed that the value of the gaming taxes will be at least $1 billion to the State over the course of the first three years.[33]

The terms of the Restricted Gaming Licence

35 Clause 8(1) of the Licence provides that the total floor space of the Barangaroo Casino cannot be more than the lesser of 20,000 square metres and 20 per cent of the total gross floor area of the Crown Sydney Hotel Resort.

36 The Licence permits table games to be operated but prohibits poker machines (clause 4). It also prescribes minimum bet limits (clause 5), which:

(a) in the case of baccarat, blackjack or roulette is the higher of $30 for baccarat, $20 for blackjack and $25 for roulette or an amount which the Authority is satisfied is the lowest minimum bet for the relevant game in a comparable VIP

gaming area in Melbourne Crown Casino or if that casino ceases to exist, another comparable casino; and

(b) in the case of any other game, at the election of the Licensee, either the amount agreed between the Licensee and the Authority, or the Authority is satisfied is the lowest minimum bet for the relevant game in a comparable VIP gaming area in Melbourne Crown Casino or if that casino ceases to exist, another comparable casino.

37 There is no limit on the number of table games within the Barangaroo Casino; and gaming may be conducted 24 hours a day, seven days of the week, every day of the year (clauses 8(b) and 8(c)).

38 The Barangaroo Casino is only open to VIP Members, VIP Members' Guests and the Licensee's Guests and is not open to the general public (clause 6.1). A "VIP Member" is defined in clause 1 to mean:

a person who:

(a) is a Rebate Player; or

(b) any other person who:

(1) has applied for membership of the Restricted Gaming Facility, has been granted membership by the Licensee having regard to the VIP Membership Policy; and

(2) continues to hold a membership in accordance with the VIP Membership Policy and the Membership Review Policy.

39 Clause 1 defines a "Rebate Player" to mean:

an international or interstate resident (including residents of an Australian Territory) who participates in VIP Gaming either individually or as a participant in a junket, in accordance with a system of internal controls and administrative and accounting procedures applicable to that person agreed with the Authority and lodges the requisite front money.

40 The Licence expressly contemplates that junkets will be involved in the operations of the Casino, included in the definition of a "Rebate Player" in clause 1.

41 The expression "front money" is not defined in the Licence. However, as discussed elsewhere, it is a reference to a buy-in, whereby a junket operator transfers money to Crown as front money for the Junket players to commence gaming.[34]

42 The term "VIP Member's Guest" is defined in clause 1 to mean "a bona fide guest of a VIP Member determined in accordance with the VIP Guest Policy".

43 The term "VIP Membership Policy" is defined in clause 1 to mean "the VIP membership policy determined by the Licensee from time to time which relates" to the Barangaroo Casino and "which is consistent with the principles agreed between the Licensee and the State of New South Wales". The term "VIP Guest Policy" is defined in clause 1 to mean "the VIP guest policy determined by the Licensee from time to time which relates" to the Barangaroo Casino and which "is consistent with the principles agreed between the Licensee and the State of New South Wales".

44 Clause 6.2(a)(2) of the Licence imposes a 24 hour cooling off period for applications for membership of residents from New South Wales who cannot demonstrate, to the reasonable satisfaction of the Licensee, a track record of VIP gaming at other casinos.

45 Clause 6.2(d) imposes an obligation upon the Licensee to carry out regular reviews (at a minimum each 12 months) of each VIP Member's gaming activity to assess whether they should remain a VIP Member.

46 Clause 8(e) of the Licence provides that, subject to the *Casino Control Act*, the conditions of the Licence may only be amended by agreement between the Authority and the Licensee.

PART 2

The Operational Landscape

Chapter 2.1

Crown and the Licensee

Crown's Corporate Structure

1 On 12 December 2007 PBL divested its gaming interests from its media interests, resulting in the creation of Crown Limited, as the entity holding PBL's casino assets.

2 Crown's corporate structure is complex and spans multiple jurisdictions.

3 Crown is the ultimate holding company of subsidiaries which hold casino licenses in Sydney, Melbourne and Perth: Crown Sydney Gaming Pty Ltd, Crown Melbourne Ltd and Burswood Ltd respectively.

4 On 17 October 2013 Crown Sydney Gaming Pty Ltd was registered.[1] It is a wholly owned subsidiary of Crown via by Crown Sydney Holdings Pty Ltd and Crown Entertainment Group Holdings Pty Ltd. Crown Sydney Gaming Pty Ltd holds the Restricted Gaming Licence.

5 As at 3 December 2020, the directors of the Licensee were Mr Ken Barton (appointed 17 October 2013) and Ms Jane Halton (appointed 3 March 2020). Mr John Alexander resigned as a director on 24 January 2020 and Ms Mary Manos resigned as a director on 16 March 2020. As at 3 December 2020 the company secretaries were Ms Manos (appointed 30 June 2017) and Mr Joshua Preston (appointed 30 June 2017). With effect from 1 January 2021, Mr Preston ceased to be a company secretary of the Licensee.

6 Crown became the ultimate owner of Crown Melbourne Limited (Crown Melbourne) at the time of the PBL demerger.[2] As at August 2020, Crown Melbourne had a number of wholly owned subsidiaries including Crown Resort Pte Ltd (Crown Singapore), a company incorporated in Singapore which employed Crown's China-based staff, and Southbank Investments Pty Limited (Southbank).[3]

7 Burswood Limited operates Crown Perth. It was also acquired by Crown at the time of the PBL demerger. As at August 2020 Riverbank Investments Pty Limited (Riverbank) was a subsidiary of Burswood Limited.[4]

8 In addition to its Australian casino assets, Crown is the ultimate owner of Aspinalls Club Ltd which conducts Crown London Aspinalls. Crown London Aspinalls was initially a joint venture which was acquired by Crown in 2011. Other gaming interests held by Crown include ownership of Betfair Ltd, an online gambling company, and an interest in the Aspers group, which owns regional casinos in the United Kingdom. Lists of Crown's major controlled entities are also found in Crown's Annual Reports.

9 As at August 2020, Crown Asia Investments Pty Ltd (Crown Asia) was a wholly owned subsidiary of Crown.[5] This company held Crown's interest in Melco during the period of the Melco–Crown Joint Venture.

Crown's Major Shareholder

10 CPH is a private investment company ultimately owned by Consolidated Press International Holdings Limited (CPIHL), a company incorporated in the Bahamas.

11 Mr James Packer is one of the ultimate beneficial owners of CPIHL.[6] As at May 2019, Mr Packer was the governing director of CPIHL.

12 CPH is the Australian owner of a number of subsidiaries and related companies, together with which it has been a major shareholder in Crown since its formation (CPH Group). Its current directors are Mr Michael Johnston and Mr Guy Jalland. Its previous directors include the late Mr Kerry Packer (from 1960 until 2005), and Mr James Packer (from 1992 until 2018).[7]

13 At the time of the PBL demerger, the CPH Group acquired approximately 38 per cent of Crown's allocated shares. From 2009 until 2013, this shareholding was increased year on year until in 2013 the CPH Group owned 50.01 per cent of Crown's shares. The shares in Crown were principally held by CPH and Bareage Pty Ltd, with other CPH subsidiaries holding smaller shareholdings.

14 CPH Crown Holdings was registered in December 2014. Mr Johnston has been the sole director of CPH Crown Holdings since its registration.[8]

15 In the 2014-15 financial year CPH Crown Holdings became the CPH subsidiary which held the majority of Crown's shares, holding 50 per cent of issued capital in Crown as at 1 September 2015. As at 31 August 2020 it held 35 per cent of issued capital in Crown, with other CPH entities holding 1.81 per cent.

16 Since 2008 Crown's Board of directors has had at least two CPH nominated directors. At present, CPH's nominees on Crown's Board are Mr Jalland, Mr Johnston and Mr Poynton. Mr Johnston was appointed as a CPH nominee to the inaugural Crown Board, along with Mr Ashok Jacob (2008 – 2014). In addition to having directors on the

Crown Board, previous Chairmen Mr James Packer and Mr Robert Rankin were also nominees of CPH.

17 Due to the size of CPH's interest in Crown, a number of CPH entities and individuals have been approved as close associates of the Licensee. This includes CPH, Mr James Packer, Mr Johnston and Mr Jalland.[9]

Crown's Casino Licences in Victoria and Western Australia

18 The licences in operation in Victoria and Western Australia were acquired by PBL through its takeover of Crown Melbourne and Burswood Limited in June 1999 and September 2004 respectively.

The Victorian Licence

19 Crown Melbourne holds a licence to operate a casino in Melbourne (the Melbourne Casino Licence). The Melbourne Casino Licence came into force on 19 November 1993 and is subject to the *Casino Control Act* 1991 (Vic). The Melbourne Casino Licence was issued following the entry by Crown Melbourne Limited into a management agreement with the State of Victoria on 20 September 1993 (Management Agreement), and a casino agreement with the VCGLR, on 21 September 1993 (Casino Agreement).[10]

Management Agreement

20 The *Casino (Management Agreement) Act* 1993 (Vic) provided that the Management Agreement was ratified and took effect as if it had been enacted by that Act.[11] The execution of the Management Agreement was a condition precedent to the grant of the Melbourne Casino Licence. By the Management Agreement, the State of Victoria provided assurances to Crown Melbourne to facilitate the financing of the Melbourne Casino, and Crown Melbourne provided to the State assurances regarding the timely completion of the casino. The Management Agreement's terms included State approval for the VCGLR's grant of the Melbourne Casino Licence, provisions relating to payment of a casino supervision and control charge, and general obligations on Crown Melbourne to comply with the applicable laws and authorisations required for its operation. Since its institution, the Management Agreement has been varied on ten occasions, including to extend the period of the licence and to increase the number of gaming machines permitted in the casino.[12]

Casino Agreement

21 The Casino Agreement was entered into under section 142 of the *Casino Control Act* 1991 (Vic). The Casino Agreement promised the grant of the Melbourne Casino Licence, and stipulated temporary and ongoing conditions of the Melbourne Casino Licence. Execution of a number of transaction documents and other agreements were

conditions precedent to the Casino Agreement. Since its execution, the Casino Agreement has been amended on eleven occasions.

22 The Casino Agreement imposes obligations on Crown Melbourne, including:

(a) To conduct its operations in a manner that has regard to the best operating practices in casinos of a similar nature and size;

(b) To comply with all laws applicable to the matters arising under the Casino Agreement;

(c) To obtain and renew all authorisations required for Crown Melbourne to conduct its operations;

(d) Corporate governance obligations, such as notifying the VCGLR of any changes to the Audit or Compliance Committees, and the minimum number of directors to be on the Crown Melbourne Board; and

(e) To make available for inspection by the VCGLR all records, accounts and information held by or on behalf of Crown Melbourne.

23 The Casino Agreement also imposes an obligation on Crown to use its best endeavours to conduct the business of any other Australian casino in a manner which is beneficial to that business and to Crown Melbourne, which promotes tourism and economic development in Victoria, and in a manner which is not detrimental to the interests of Crown Melbourne. Under the Casino Agreement, Crown is further obliged (on a rolling four year basis) to headquarter its gaming business in Melbourne, make Crown Melbourne Crown's flagship casino in Australia, and maintain Crown Melbourne as the dominant commission based player casino in Australia.

Melbourne Casino Licence

24 The Melbourne Casino Licence came into force on 19 November 1993 with a forty year term. In 2014 the duration of the licence was extended to 2050. The Melbourne Casino Licence includes terms concerning:[13]

(a) The gaming equipment permitted to operate, including table games and gaming machines;

(b) Amendment of the licence conditions, such that the conditions cannot be amended by the VCGLR without written approval of Crown Melbourne (except as disciplinary action under the Casino Control Act); and

(c) The consequences of a breach of licence, to the effect that if the licence is contravened the VCGLR may cancel, suspend or vary the licence terms.

The Western Australian Licence

25 Crown, through its subsidiary Burswood Limited, holds a licence to conduct a casino in Perth (Burswood Casino Licence). The Burswood Casino Licence was granted following the passage of the *Casino Control Act* 1984 (WA), which provided the administrative mechanisms to licence and regulate casinos in Western Australia, and the *Casino Control (Burswood Island) Agreement Act* 1985 (WA), which on 25 March 1985 ratified the agreement between the State of Western Australia and the developers of the Burswood Island casino resort complex (Burswood Island Agreement).[14]

Casino Control Act 1984 (WA)

26 Section 21 of the *Casino Control Act* 1984 (WA) provides for the making and grant of casino gaming licences in Western Australia. The legislation imposes obligations on licensees for the payment of fees and taxes, and stipulates that the assignment of a licence must be with the approval of the Minister and the Regulator, the Gaming and Wagering Commission (the WA Commission). The *Casino Control Act* 1984 (WA) provides that the WA Commission regulates casinos, including through authorising games, making directions as to internal controls, accessing records, and banning individuals from casinos. Section 19 provides that the Minister may enter into agreement with respect to the construction and establishment of a casino complex.

Burswood Island Agreement

27 The *Casino Control (Burswood Island) Agreement Act* 1985 (WA) governs the agreement between the Minister responsible for the administration of the *Casino Control Act* 1984 (WA) and the developers of the Burswood Island casino complex, being the trustees and managers of the Burswood Property Trust. The *Casino Control (Burswood Island) Agreement Act* 1985 (WA) attaches the Burswood Island Agreement as a schedule, and includes terms relating to the requirement for the WA Commission to be notified and probity approvals sought where shareholdings in the Company rise above 10 per cent.

28 Several of the obligations under the Burswood Island Agreement have been fulfilled, such as those relating to the initial development of the casino resort complex, however a number of obligations remain ongoing. Since the Burswood Island Agreement was entered into, there have been fifteen supplementary amendments to it. The eighth supplementary agreement, made on 18 June 2003, contains a large number of amendments, including as regards to table games and machines permitted to operate in the casino, the tax regime imposed upon the casino, and the constitution of Burswood Limited.

Burswood Casino Licence

29 The Burswood Casino Licence[15] was granted to West Australian Trustees Limited, trustee of the Burswood Property Trust, on 24 December 1985, pursuant to section 21(4) of the *Casino Control Act* 1984.

30 The licence has minimal terms, stipulating only that the licence is subject to the conditions set out in clause 21(d) and (e) of the Burswood Island Agreement. Clause 21(d) places restrictions upon casino operators accepting credit wagers, extending credit, making loans, and providing cash or chips in respect of a credit card transaction. Clause 21(e) is more expansive, making it a condition that the licence holder complies with directions given by the WA Commission. Directions may be made in respect of "the system of internal controls and administrative and accounting procedures that apply to the gaming operations of the casino licensee", and to cause the licensee to "adopt, vary, cease or refrain from any practice in respect of the conduct of the gaming operations of the casino licensee or the playing of any game in the licensed casino".[16]

31 On 28 October 1997 the licence was assigned to Burswood Nominees Pty Ltd, the entity acquired by PBL in 2004.[17]

Chapter 2.2

Crown Achievements

1 Crown is Australia's largest gaming and entertainment group and makes significant contributions to the Australian community and its economy. It is a major employer; contributes very significant amounts to the revenues of Victoria, Western Australia and the Commonwealth; pays dividends to its many shareholders; provides training and educational opportunities and, through its philanthropic arm, the Crown Foundation, makes a valuable contribution to cultural and charitable causes.

A significant contributor to government revenue

2 In the 2019 financial year alone Crown paid over $650 million in taxes to all levels of government in Australia representing approximately two-thirds of Crown's pre-tax profits.[1]

3 Since 2014 Crown has paid approximately $812.4 million to the revenue of the Commonwealth through corporate income taxes.[2]

4 Since 2014 it has contributed approximately of $1.4 billion to the revenue of the State of Victoria by way of general player casino taxes, commission-based player taxes and the community benefit levy; and approximately $400 million to the revenue of Western Australia by way of statutory levies on gross gaming revenue and commission-based players' gaming revenue.[3]

A source of income for shareholders

5 In the period since 2014, Crown has paid annual dividends to its shareholders totalling $3.1 billion.[4] The amount of the dividend paid has varied over that period but has ranged from approximately $269.5 million in 2014 to $1.03 billion in 2017.[5]

A significant provider of employment

6 Crown is a major Australian employer directly employing approximately 25,000 people across its Australian resorts, with approximately 16,500 associated with

Crown Melbourne and another 8,500 at Crown Perth.[6] It is the largest single-site private sector employer in both Victoria and Western Australia employing people in over 700 different roles.[7]

7 In addition to the direct employment, Crown indirectly supports approximately 4000 local business in Victoria and Western Australia through its procurement activities which inject approximately $900 million annually into those economies.[8]

8 Crown has been repeatedly recognised as an employer of choice at the State and national level in Australia, and has received various awards including:

(f) Victorian Employer of the Year in 2012 and 2013;

(g) Australian Employer of the Year in 2013 and 2015; and

(h) Employer of Choice in 2014, 2015 and 2016.

9 Within the workplace, Crown operates various diversity and inclusion programs, including an Indigenous Employment Program focused on making a positive impact on the lives of Aboriginal and Torres Strait Islander people in Australia. Crown's Indigenous Employment Program has provided over 850 Indigenous employment opportunities and has entered into a parity agreement with the Department of the Prime Minister and Cabinet for attaining a 3.1 per cent Indigenous workforce. Crown has been recognised in these efforts by membership of the 'Elevate' group, the highest level of endorsement granted by Reconciliation Australia.

10 CROWNability is another employment program designed to provide people with a disability an opportunity to build an employment pathway within Crown; and to build meaningful careers within a disability confident organisation.

11 In addition, Crown operates Gender Equity and Crown Pride programs intended to provide a workplace where LGBTI+ Crown employees can work confidently and comfortably.

12 Since 2017 Crown has operated a Gender Fitness digital initiative, an in-house IT solution designed to increase awareness of diversity and inclusion through measuring the contribution made by participants in work meetings. Since 2018 it has expanded domestic violence support to employees which provides uncapped paid leave for full-time and uncapped unpaid leave for part-time employees experiencing domestic violence.

13 In the 2019 financial year Crown became a corporate sponsor of Women in Gaming and Hospitality Australasia, an industry driven not-for-profit organisation for advancing women in gaming and hospitality.

A significant contributor to the success of the tourism industry

14 Crown is also a major drawcard for tourists and contributes to the tourism based economy within the States in which it operates. A survey conducted by Tourism Research Australia in 2011 ranked Crown Melbourne as the third most visited tourist destination in Victoria for international visitors.

15 An assessment commissioned by Crown from ACIL Allen Consulting in 2018 considered that Crown's Australian Resorts contributed approximately $4.4 billion to Australia's real GDP, with Crown Melbourne contributing approximately $3.2 billion and Crown Perth contributing approximately $1.2 billion.

A significant source of capital expenditure

16 Further contribution to the Australian economy comes from Crown's expenditure on capital works including new resorts and upgrades to existing properties. Since 2014 Crown's net capital expenditure has been in the order of $3.1 billion across its Australian Resorts.[9]

17 Property-wide projects undertaken at Crown Melbourne have included the addition of the luxury Crown Metropol Melbourne, the expansion and redevelopment of its gaming facilities, the upgrading of the existing hotel facilities and the enhancement of the retail, dining and entertainment facilities.

18 Since September 2012, a property-wide refurbishment and expansion of Crown Perth has occurred at an estimated cost of $645 million.[10]

19 In 2014 Crown Melbourne was named the best integrated resort of the year in the International Gaming Awards and Crown Towers was named Australia's best hotel by both Luxury Travel Magazine and the Asia Pacific Hotel Awards.

20 The construction of the restricted gaming facility at Barangaroo is estimated to have contributed approximately $2.2 billion in capital expenditure to the economy of New South Wales.[11]

A provider of education and training

21 Crown has developed training and development opportunities through its Crown College, a Registered Training Organisation operating under the Australian Qualifications Framework across four levels.

22 During the 2019 financial year, more than 7,500 employees participated in technical, leadership, health and safety, and customer service training at Crown College, receiving more than 370,000 hours of training. During that period more than 870 employees were enrolled in Certificates III and IV, and Diploma level qualifications

at the College. Since its establishment more than 8,500 apprentices and trainees have graduated.

23 In 2017 Crown extended its training programs for international students by establishing Crown College International, to provide international students with vocational education and training in hospitality, patisserie and culinary studies. As at 30 June 2019 Crown had received over 400 applications from international students from 21 different countries with signs of continued growth. However this will require reassessment post COVID-19.

24 The quality of the training Crown provides has been recognised by awards for Excellence in Tourism Education and Training in Victoria in 2013, 2014 and 2015, and in Western Australia in 2016, 2017 and 2018.

Crown's philanthropic contribution to the community

25 The Crown Resorts Foundation is Crown's philanthropic arm providing financial support to programs in the areas of community welfare, education, health care and research, the arts and the environment, as well as providing assistance, donations and support to a broad range of community activities, local sporting clubs and various charities.

26 In July 2014 the Crown Resorts Foundation, in partnership with the Packer Family Foundation, announced a $200 million National Philanthropic Fund to provide assistance to a community partnership and indigenous education fund to help support organisations working to improve the education, life skills and ultimately employment prospects of young Australians, with a particular focus on providing opportunities for Indigenous Australians.

27 The National Arts Fund accounts for $55 million of the National Philanthropic Fund and aims to improve access to and availability of the arts to young Australians by supporting projects that help build the arts capacity of school teachers, and make arts programs more accessible to communities.

28 Crown's community partnerships have included the National Centre in Indigenous Excellence, Reconciliation Australia, The Salvation Army, Mission Australia, NSW Branch of United Voice Trade Union, The Australian Ballet and the Sydney Theatre Company. During the financial year ending 30 June 2019 the Fund allocated approximately $83 million in grants to 300 recipients.

29 In January 2020 the Crown Resorts Foundation and the Packer Family Foundation pledged a donation of $4 million in addition to the $1 million pledged in November 2019 to bushfire relief charities to assist with recovery from the devastating bushfires in New South Wales during that period.[12]

Chapter 2.3

Melco Resorts & Entertainment Limited

Establishment of Melco Resorts & Entertainment Limited

1 Melco Resorts & Entertainment Limited was originally incorporated in the Cayman Islands as Melco PBL Holdings Limited (Melco PBL) on 17 December 2004[1] pursuant to a joint venture arrangement (Melco Crown Joint Venture) between Melco International Development Limited (Melco International) and PBL. PBL's interest in the Melco Crown Joint Venture was acquired by Crown under a spin off arrangement completed in 2007.

2 After its original incorporation, Melco PBL subsequently changed its name to:

(a) Melco PBL Entertainment (Macau) Limited in July 2006;

(b) Melco Crown Entertainment Limited in May 2008; and

(c) its current name of Melco Resorts & Entertainment Limited in March 2017.

3 The single entity known by these various names over time is referred to as Melco.

4 The Melco-Crown Joint Venture was conceived under a Heads of Agreement between Melco International and PBL dated 11 November 2004.[2]

5 Melco was established as the joint venture company between Melco International and PBL with the intention for it to become the holding company of a gaming and entertainment group engaged in the gaming, entertainment and hospitality businesses in the Asia-Pacific and Greater China regions.[3]

6 At the time of the establishment of the Melco-Crown Joint Venture, Melco International was listed on the Hong Kong Stock exchange. Its Chairman was the late

Mr Stanley Ho.[4] As at May 2005, Mr Lawrence Ho, the late Mr Stanley Ho and interests associated with them owned 52.8 per cent of the issued shares in Melco International.[5]

7 At the time of the establishment of the Melco Crown Joint Venture, PBL was listed on the ASX. Its Executive Chairman was Mr James Packer. PBL was a diversified media and entertainment company, the core businesses of which included television production and broadcasting, magazine publishing and distribution, gaming and entertainment. Its wholly owned subsidiary, Crown Limited, owned and operated the Crown Casino in Melbourne. In 2004 it had acquired Burswood Limited which owned and operated the Burswood International Resort Casino in Perth.[6]

8 Pursuant to a subscription agreement dated 23 December 2004, PBL agreed to acquire, through its wholly owned subsidiary PBL Asia Investments Limited (PBL Asia), 50 per cent of the shares in Melco so that it would have an equal shareholding with Melco International for the purpose of the Melco-Crown Joint Venture.[7]

9 On 8 March 2005, Melco International and PBL entered into a Shareholders' Deed in relation to Melco to give effect to the subscription agreement.[8] As at that date, the shareholders in Melco were:[9]

(a) Melco Leisure and Entertainment Limited (Melco Leisure), a wholly owned subsidiary of Melco International, which had a 50 per cent interest; and

(b) PBL Asia, which had a 50 per cent interest.

10 As at May 2005, Melco held 100 per cent of the shares in Melco PBL International Limited, which in turn had an 80 per cent interest in Melco Entertainment Limited (Melco Entertainment).[10]

The Stanley Ho Connection : Great Respect

11 An important event, in giving context to the Melco Transaction which is the subject of paragraphs 16(d), 16(e) and 16(f) of the Amended Terms of Reference, is the joint venture entered into between Melco Leisure and Great Respect Limited (Great Respect) (Melco-Great Respect Joint Venture) pursuant to a Memorandum of Agreement dated 28 October 2004.[11] In particular, an understanding of the Melco-Great Respect Joint Venture is necessary to appreciate the relationship between Melco and Great Respect, and to consider whether the interest obtained by Melco (and indirectly Great Respect) under the Share Sale Agreement executed on 30 May 2019 was in breach of various regulatory agreements entered into in connection with

the Barangaroo Casino. That issue is considered in further detail in Chapter 4.7 of this Report.

12 Great Respect is a limited liability company incorporated in the British Virgin Islands. In an announcement to the Hong Kong Stock Exchange dated 11 May 2005, Melco International described Great Respect as "a company controlled by discretionary family trust of Dr Stanley Ho".[12]

13 Pursuant to the Melco-Great Respect Joint Venture, it was agreed that, among other things:

(a) Great Respect would use its best efforts to apply to the Macau Government for the grant of lease and development rights over a piece of land in Cotai, Macau (Cotai Land);

(b) Melco Leisure would have a 50.8 per cent interest in any rights granted by the Macau Government over the Cotai Land, while Great Respect would hold the remaining 49.2 per cent interest;[13]

(c) The intention was that the Cotai Land would be used to construct an integrated casino and entertainment resort project, which became known as the "City of Dreams";[14] and

(d) The Macau Government granted the relevant lease and development approval to Melco Hotels and Resorts (Macau) Ltd (Melco Hotels), a subsidiary of Melco Leisure, on 21 April 2005, and those terms were accepted in principle by Melco Hotels on 10 May 2005.[15]

14 On 11 May 2005:[16]

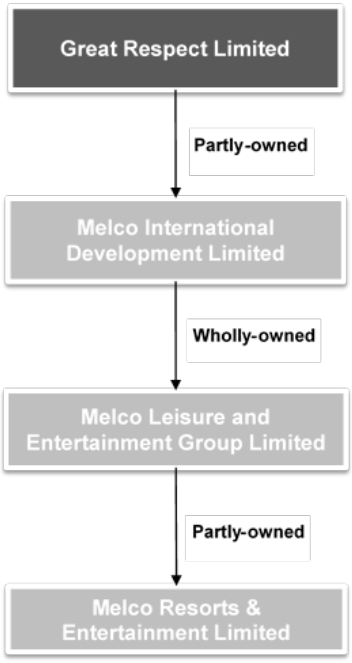
(a) Great Respect, Melco Entertainment and Melco International entered into an Assignment Agreement, pursuant to which Great Respect agreed to assign its 49.2 per cent interest in the Melco-Great Respect Joint Venture to Melco Entertainment (to be used for the purpose of the Melco-Crown Joint Venture), in return for which it would be issued convertible notes in Melco International in the aggregate amount of HK$1.175 billion; and

(b) Melco Leisure and Melco Entertainment entered into a Deed of Transfer and Deed of Assignment, pursuant to which Melco Leisure agreed to transfer its 50.8 per cent interest in the Melco-Great Respect Joint Venture to Melco Entertainment (also to be used for the purpose of the Melco-Crown Joint Venture).

15 The Deed of Transfer and Deed of Assignment was later amended pursuant to an Amendment Deed dated 16 December 2009 so that Great Respect would be issued with 298,982,188 shares in Melco International upon conversion of the convertible notes.[17]

16 Between 12 September 2012 and 19 September 2012, Great Respect exercised the conversion rights attaching to the convertible notes and was issued with 298,982,187 shares in Melco International, representing a 19.5 per cent interest at that time.[18]

17 Relevant for Chapter 4.7, a summary of the above can be depicted by:



Chapter 2.4

Crown/Melco Relationships

History of the Melco-Crown Joint Venture

1 On 11 September 2006, PBL completed a purchase from Wynn Resorts (Macau) SA (Wynn Macau) under which an entity incorporated by PBL, then called PBL Entertainment (Macau) Limited (PBL Macau) acquired the right to obtain a sub-concession from Wynn Macau to conduct gaming operations in Macau.

2 On 22 November 2006, following approval from the Macau Government on 10 October 2006, PBL Macau, which by then had been renamed Melco PBL Gaming (Macau) Limited (Melco PBL Macau), became a wholly owned subsidiary of Melco for the purpose of the Melco-Crown Joint Venture.[1] In turn, Melco PBL Macau held 100 per cent interests in two entities, then called Melco Hotels and Resorts (Macau) Limited and Great Wonders Investments Limited, that were used to conduct gaming facilities for the purpose of the Melco-Crown Joint Venture, as well as all of the gaming assets and business of the Mocha Clubs used in leasing gaming machines and providing ancillary gaming management services.[2]

3 On 19 December 2006, Melco became separately listed on the NASDAQ, following which interests in Melco have been held in both ordinary shares and American depository shares listed on the NASDAQ.[3]

4 Following a global public offering of its shares in connection with the NASDAQ listing, by March 2007, the interests of Melco Leisure and PBL Asia in Melco were reduced to 41.4 per cent each, while the remaining 17.2 percent interest was held publicly.

5 As at 30 March 2007, the directors of Melco included Lawrence Ho (who was also Melco's co-chairman and chief executive officer), James Packer (who was also Melco's co-chairman along with Lawrence Ho), John Alexander and Rowen Craigie, along with John Wang, Clarence Chung, Thomas Jefferson Wu, Alec Tsui, David Elmslie and Robert Mactier.[4]

6 On 8 May 2007, PBL announced its intention to spin off its existing entertainment and gaming assets (the latter including PBL's interest, through PBL Asia, in Melco), into two separate entities, Crown Limited (which would hold PBL's gaming business) and Consolidated Media Holdings Limited (which would hold PBL's media business).

7 Crown completed its acquisition of PBL's gaming business under the spin off arrangement on 12 December 2007. As at that date, Crown's wholly owned subsidiary, Crown Asia Investments Pty Ltd (Crown Asia), held 37.9 per cent of the shares in Melco.

8 As at March 2008, Crown Asia and Melco Leisure each had a 37.85 per cent interest in Melco, while the remaining 24.3 per cent interest was held publicly.

9 On 7 December 2011, Melco was listed on the Main Board of the Hong Kong Stock Exchange, and remained dual listed on the Hong Kong Stock Exchange and the NASDAQ until it was delisted from the Hong Kong Stock Exchange on 3 July 2015.

10 As a result of various intervening acquisitions, as at 5 April 2016, Crown Asia and Melco Leisure each held 34.29 per cent of the shares in Melco, with the remaining interest held publicly.

11 Between May 2016 and May 2017, Crown Asia disposed of all of its shares in Melco by three transactions.

12 In May 2016, Crown Asia entered into an agreement with Melco for the repurchase of part of its shareholding in Melco, such that, on completion, Crown Asia's shareholding in Melco reduced from 34.3 per cent to 27.4 per cent.

13 In December 2016, Crown Asia entered both a share sale agreement with Melco International and an underwriting agreement with three underwriters which, on completion of both transactions, resulted in Crown Asia's shareholding in Melco reducing from 27.4 per cent to 11.2 per cent.

14 In May 2017, Crown Asia entered into an agreement with Melco for the repurchase of its remaining interest in Melco Resorts.

15 By 15 May 2017, Crown Asia ceased to be a shareholder of Melco.

16 As at 11 April 2018, Melco Leisure held 51.06 per cent of the shares in Melco.

17 At the time of the Share Sale Agreement, Melco Leisure's interest in Melco had increased to 54.9 per cent.

Overseas Casino Operations

18 During the period of the Melco-Crown Joint Venture (and since its termination), Melco conducted three major casino-based operations in Macau:

(a) Altira Macau, a casino hotel located at Taipa, Macau and which opened on 12 May 2007;

(b) City of Dreams, an integrated urban casino resort located in Cotai, Macau and which opened on 1 June 2009; and

(c) Studio City, a cinematically-themed integrated entertainment, retail and gaming resort in Cotai, Macau and which opened on 27 October 2015.

19 Melco's business also included non-casino based gaming operations in Macau at eight Mocha Clubs, which formed the largest non-casino based operations of electronic gaming machines in Macau.

20 Melco also operated the City of Dreams Manila, an integrated resort in the Philippines, which opened in December 2014.

Chapter 2.5

Contractual Framework for Barangaroo Casino

Regulatory agreements governing Barangaroo Casino

1 Pursuant to subsection 142(1) of the *Casino Control Act*, with the approval of or at the direction of the Minister, the Authority may conduct negotiations and enter into agreements on behalf of the State of New South Wales for or in connection with the establishment and operation of a casino and any development of which a casino or proposed casino forms part.

2 According to subsection 142(2), such regulatory agreements may only contain terms which are approved by the Minister and that are not inconsistent with the *Casino Control Act*.

3 On 6 September 2012 Crown submitted an unsolicited proposal to the Authority to build and operate the Barangaroo Casino.

4 While it continued to negotiate with the State and the Authority in connection with its proposal to operate (through the Licensee) the proposed Barangaroo Casino, between 2012 and 2013 Crown sought to increase its shareholding in the operator of the only existing casino in New South Wales at that time, The Star.

5 On 24 February 2012 Crown (then called Crown Limited) made an application to the Authority seeking:

(a) Written approval that Crown and its wholly owned subsidiaries Pennwin Pty Limited (Pennwin) and Crown Entertainment Group Holdings Pty Limited (Crown Entertainment), as relevant "close associates", be considered suitable persons to be concerned in or associated with the operation or management of The Star;

(b) Written consent to acquire voting power in excess of 10 per cent in Echo as the ultimate holding company and owner of The Star; and

(c) Written consent to be entitled to hold a deemed relevant interest in more than 5 per cent of the shares in Star City Holdings Limited, a wholly owned subsidiary of Echo and the immediate holding company of The Star.

6 Following the conduct of a probity review, the Authority announced on 10 May 2013 that it had granted the approvals and consents sought by Crown, subject to the execution of various regulatory agreements under section 142 of the *Casino Control Act*.[1]

7 One of those regulatory agreements was the "Crown Group Consents and Approvals Deed" (Crown Deed), executed on 10 May 2013 by the Authority, Crown, Pennwin and Crown Entertainment.[2]

8 The Crown Deed imposes a number of restrictions on Crown, Pennwin and Crown Entertainment, including a shareholding cap of 23 per cent in relation to shares held in Echo. It also includes an undertaking by Crown that it will, to the extent that it is within its power, prevent the late Mr Stanley Ho or any entities related to Stanley Ho from acquiring any direct, indirect or beneficial interest in Crown (the Undertaking). The nature of the prohibition in the Undertaking is considered later in the Report.

9 Crown continued its negotiations with the State and the Authority in relation to the Barangaroo Casino.

10 On 27 November 2013 amendments to the *Casino Control Act* (contained in new section 13A) commenced, providing for an application process under which a restricted gaming licence might be granted by the Authority to operate the Barangaroo Casino.

11 On 16 December 2013, the Licensee applied to the Authority seeking the Authority's approval to be issued the Licence.

12 On 8 July 2014, following the conduct of a further probity review in relation to the application, the Authority announced that it had granted the Licence to the Licensee, subject to the execution of a number of further regulatory agreements pursuant to section 142 of the *Casino Control Act*.[3]

13 The Licence, dated 8 July 2014 between the Authority and the Licensee, includes a broad range of operational matters in relation to the Barangaroo Casino, including the types of gaming activities permitted (clause 4), minimum bet limits for different games (clause 5), membership restrictions in VIP areas (clause 6), the maintenance of appropriate air quality to combat smoking impacts (clause 7) and permitted

occupation and operating hours (clause 8). This is dealt with in detail earlier in the Report.[4]

14 The section 142 regulatory agreements were:

(a) An Amended and Restated Framework Agreement (Framework Agreement), dated 7 July 2014, between the State, Crown, the Licensee, Crown Sydney Property Pty Ltd (Crown Sydney Property) and Crown Sydney Holdings Pty Ltd (Crown Sydney Holdings).[5] This agreement is an amended version of an original agreement executed on 11 November 2013 and sets out, in clause 3, the various "Roadmap Steps" to be undertaken by the parties to progress the Licensee's operation of the Barangaroo Casino, from the application stage through to the execution of subsequent regulatory and other agreements. The Framework Agreement also deals with other material matters in relation to the operation of the Barangaroo Casino, including VIP gaming (clause 5), commitments and undertakings from each of the parties (clauses 6 and 7) and termination rights (clause 10);

(b) A CPH Group Deed, dated 8 July 2014, between the Authority and CPH.[6] This agreement confirms the Authority's satisfaction that each of the "CPH Close Associates" is a suitable person to be concerned or associated with the operation or management of the Licensee and the Barangaroo Casino (clause 3.1(a)), and the Authority's satisfaction that each "CPH Approved Person" is a suitable person to be associated or connected with the ownership, operation or management of one or more of the "CPH Close Associate Entities" in any of the capacities of director, executive officers, secretary or other officer for the purpose of the *Casino Control Act* (clause 3.1(b));

(c) A State Crown Financial Deed (Financial Deed), dated 8 July 2014, between the State, Crown, the Licensee, Crown Sydney Property, Crown Sydney Holdings and the Authority. This agreement provides for compensation to be paid to Crown if a "Trigger Event" occurs (clause 5 and annexure 1), including if:[7]

> [T]he State or the Authority takes any action that has the effect of cancelling the VIP Gaming Licence, other than the revocation or termination by the Authority of the VIP Gaming Licence in accordance with section 23(1) of the Gaming Legislation (except where the Authority is relying on section 23(1)(e) of the Gaming Legislation as a grounds for disciplinary action.

The Financial Deed includes other provisions requiring Crown, the Licensee, Crown Sydney Property and Crown Sydney Holdings to maintain insurance cover (clause 6), to meet financial covenants, reporting and audit responsibilities (clause 7) and to deliver appropriate hotel resort features as part of the Barangaroo Casino development (clause 15);

(d) A Duty and Responsible Gambling Levy Agreement, dated 7 July 2014, between the Authority and the Licensee.[8] This agreement fixed the amount of duty and responsible gambling levy to be paid by the Licensee in connection with the operation of the Barangaroo Casino pursuant to Part 8 of the *Casino Control Act*;

(e) A Financial Arrangements Agreement, dated 8 July 2014, between the Authority, the Licensee and the State.[9] This agreement includes undertakings by the Licensee in relation to the payment of taxation amounts (clause 8), provision to the Authority of a bank guarantee in the amount of $100 million, subject to adjustment (clause 9) and the payment of relevant duties and responsible gambling levies (clause 10);

(f) A Guarantee and Indemnity, dated 8 July 2014, by Crown in favour of the Authority and the State;[10]

(g) A Guarantee and Indemnity, dated 8 July 2014, by Crown Sydney Holdings in favour of the Authority and the State;[11]

(h) A Guarantee and Indemnity, dated 8 July 2014, by the Licensee in favour of the Authority and the State;[12]

(i) A State Crown Security Deed, dated 8 July 2014, between the Authority, the State and the Licensee.[13] Pursuant to this agreement, the Licensee granted security interests over certain property and gave undertakings to the Authority and the State to secure the Licensee's performance of its obligations and the payment of amounts owing under the regulatory agreements entered into in connection with the Barangaroo Casino (clause 5);

(j) A Share Security Deed, dated 8 July 2014, between the Authority, the State and Crown Sydney Holdings.[14] Pursuant to this agreement, Crown Sydney Holdings granted security interests over its shares (and rights incidental to those shares) in the Licensee to the Authority and the State to secure the performance by Crown Sydney Holdings of its obligations and the payment of amounts owing under the regulatory agreements entered into in connection with the Barangaroo Casino (clause 5);

(k) A Mortgage of Sublease, dated 8 July 2014, between the Authority, the State and the Licensee.[15] Pursuant to this agreement, the Licensee granted a mortgage over a sublease of land and buildings (granted to the Licensee by Crown Sydney Property to be used for the purpose of the Barangaroo Casino) to the Authority and the State to secure the Licensee's performance of its obligations and the payment of amounts owing under the regulatory agreements entered into in connection with the Barangaroo Casino (clause 5);

(l) A VIP Gaming Management Agreement (VIP Agreement) dated 8 July 2014, between the Authority, Crown, the Licensee, Crown Sydney Property and Crown Sydney Holdings.[16]

This agreement contains various covenants and warranties provided by Crown (clauses 5.3 and 6 and schedule 1), the Licensee (clauses 5.1 and 6 and schedule 3), Crown Sydney Property and Crown Sydney Holdings (clauses 5.2 and 6 and schedule 4) in favour of the Authority, as well as, among other things, certain undertakings and acknowledgements by the parties in connection with the operation of the Barangaroo Casino (clauses 7 to 11), a requirement for the Authority to be satisfied as to the suitability of any purchaser of shares in the Licensee, Crown Sydney Property or Crown Sydney Holdings (clause 13) and an undertaking by the Licensee that it will at all times remain a suitable person to give effect to the Licence and the *Casino Control Act* during the term of the Licence (clause 14(a)).

The Undertaking (clause 2.4 of Schedule 2), outlined in detail below, is included as one of the covenants and warranties provided by Crown; and

(m) A Common Terms Deed, dated 8 July 2014, between the State, Crown, the Licensee, Crown Sydney Property, Crown Sydney Holdings and the Authority.[17] This agreement sets out various defined terms and common principles of interpretation to apply across all of the regulatory agreements entered into in connection with the Barangaroo Casino.

Stanley Ho prohibition

15 The Undertaking is contained in clause 2.4(b) of Schedule 2 of the Crown Deed and the VIP Agreement and includes relevantly:

> To the extent to which it is within its power to do so, Crown will ensure that it prevents:
>
> …
>
> (b) Stanley Huang Sun Ho or a Stanley Ho Associate from acquiring any direct, indirect or beneficial interest in:
>
> (i) Crown
> (ii) a Subsidiary of Crown
> (iii) Melco Crown; or
> (iv) a Subsidiary of Melco Crown.

16 Schedule 3 of the Crown Deed lists the 58 entities and individuals identified as the "Stanley Ho Associates".

17 The Relevant Clause is replicated in clause 2.4 of Schedule 1 of the VIP Agreement. There are 59 "Stanley Ho Associates" listed in Schedule 2 of the VIP Agreement, adding Profit Boom Investment Limited to the 58 entities listed in Schedule 3 of the Crown Deed.

18 The Relevant Clause was intended to replicate a similar condition imposed by the Pennsylvania Gaming Control Board over the Pennsylvanian gaming licence held by the Crown Group.[18]

19 The Stanley Ho Associates identified in the Crown Deed and the VIP Agreement include Great Respect which is a limited liability company incorporated in the British Virgin Islands.

Crown Board consideration of regulatory agreements

20 It is appropriate to refer to the Crown Board's consideration of the Undertaking in the Crown Deed and the VIP Agreement, because it is of some significance to the determination of the questions in paragraphs 16(d) to (f) of the Amended Terms of Reference.

Crown Deed

21 The Crown Deed was considered by the Crown Board at its meeting on 20 February 2013.

22 The Minutes of the meeting record that the Secretary of Crown at the time, Michael Neilson, made a presentation to the Board in relation to the matters referred to in a Memorandum which he had prepared and included in the consolidated board papers for the meeting.[19]

23 The Memorandum, addressed to the Crown directors and dated 15 February 2013, included the following:[20]

> As you are aware, Crown has applications pending with both the NSW Independent Liquor and Gaming Authority (ILGA) and the Queensland Office of Liquor and Gaming Regulation (OLGR) for approval to increase its shareholding in Echo Entertainment Group Limited (Echo) above 10% …
>
> As part of the approval process, both ILGA and OLGR require Crown and CPH to execute Deeds in favour of their respective States …
>
> Negotiations over the Deed to be signed with the State of NSW (NSW Deed) are almost complete …
>
> A summary of the key terms of the NSW Deed is set out in Annexure A and a copy of the draft NSW Deed will be made available at the Board Meeting.

24 The "NSW Deed" referred to in the memorandum is the Crown Deed. Annexure A of the Memorandum, entitled "Key Terms of NSW Deed", included the following:[21]

> Crown also covenants to (a) provide ILGA periodically with certain agreed information regarding junket operators used by MCE in Macau, and (b) monitor and report periodically to ILGA regarding ownership interests of and commercial dealings with Stanley Ho and his associates (similar to what is currently done for the Pennsylvania Gaming Control Board)."

25 The Minutes of the Crown Board meeting of the board of Crown Resorts on 20 February 2013 record that, after Mr Neilson spoke to his Memorandum and "sought authority to execute the Deeds once negotiations had been completed", the Board resolved that:[22]

- having carefully considered the terms of the draft NSW Deed and the draft QLD Deed, the Directors concluded that they were acceptable to the Company and that it was in the best interests of the Company to enter into the Deeds; and
- any two Directors or any one Director plus a Company Secretary … be authorised to execute Deeds either in the form produced to the meeting or in any other form approved by the Authorised Parties, as well as all such ancillary documents as may be required in order to implement the transactions contemplated by the Deeds, for and on behalf of the Company.

26 Both Mr Johnston and Mr Jalland (by telephone) attended this Board meeting on 20 February 2013 but denied reviewing the draft Crown Deed at or before the Board meeting, notwithstanding what was recorded in the Minutes of the meeting.[23]

27 Mr Johnston suggested that the Minutes were inaccurate insofar as they indicated that the directors had reviewed the agreement rather than the key terms identified in Mr Neilson's Memorandum.[24]

28 However Mr Johnston admitted that, at the meeting, Mr Neilson had specifically drawn the Board's attention to the fact that the draft Crown Deed contained covenants requiring Crown Resorts to report periodically to the Authority regarding ownership interests and commercial deals with the late Mr Stanley Ho and his associates. Both Mr Johnston and Mr Jalland admitted that that they were aware that in general terms the Crown Deed contained provisions intended to prevent entities associated with the late Mr Stanley Ho from taking an interest in Crown.[25]

VIP Agreement

29 The Crown Board Meeting of 29 October 2013 included a presentation of slides in which the Board was taken "through the key commercial terms of the proposed agreement with the State of NSW" in connection with the Barangaroo Facility with an outline of "the key legal documents".[26]

30 The presentation slides included the following:[27]

> The regulatory agreements for Crown Sydney will include:
>
> - An amendment to the Casino Control Act to authorise the issue of a restricted gaming licence and regulate the restricted gaming facility
> - A restricted gaming licence with a term of 99 years to be issued to Gaming Co
> - A VIP Gaming Management Agreement with ILGA
> - A Financial Deed with the NSW Government
> - Security documents in favour of the NSW Government and ILGA
> - A Framework Agreement with the NSW Government to implement the project.

31 By the time of the Crown Board meeting on 29 October 2013, the Crown Board therefore may be taken to have known that the regulatory agreements in connection with the Barangaroo Casino would include the VIP Agreement. This was admitted by Mr Johnston in his evidence to the Inquiry, although it was not so admitted by Mr Jalland.[28]

32 A further Crown Board meeting was held on 7 August 2014. It was noted that on 8 July 2014 the Restricted Gaming Licence had been granted and that a number of Agreements between the Crown, the State of NSW and the Authority had been executed.[29]

33 A Board paper, entitled "Crown Sydney Restricted Gaming Licence" dated 7 August 2014, identified the VIP Agreement as one of the agreements executed by Crown, the State and the Authority on 8 July 2014 to "give effect to steps under the Framework Agreement or under the State Crown Financial Deed Term Sheet". It included the following in relation to the VIP Agreement (referred to as the VGMA):[30]

> The VGMA is the equivalent of the Casino Agreement in Victoria and sets out the agreement between Crown and ILGA in relation to various operational and probity issues for the restricted gaming facility. The issues dealt with in the VGMA include:

- Covenants from Crown to provide regular financial and other reporting to ILGA;
- Restrictions on the appointment of new directors and on shareholders acquiring above certain thresholds without ILGA's approval;
- Restrictions on Crown participating in joint ventures in new jurisdictions without ILGA first being satisfied as to the probity of its joint venture partners;
- Crown to provide further information and attend meetings with ILGA where required; and
- Key operational agreements must first be approved by ILGA.

34 There was no specific reference to the VIP Agreement provisions designed to prevent the late Mr Stanley Ho or his related entities from acquiring a direct, indirect or beneficial interest in Crown. However Mr Johnston and Mr Jalland accepted that from this time to time that the VIP Agreement contained provisions intended to prevent entities associated with the late Mr Stanley Ho from acquiring an interest in Crown.[31]

35 Mr Johnston and Mr Jalland agreed that they were reminded of the VIP Agreement and the Crown Deed in the context of the Crown Board meeting on 19 February 2019. The CEO Report, included in the Board papers for that meeting, referred to ongoing unresolved negotiations with Liquor & Gaming New South Wales to amend the agreements and noted that both agreements required Crown to provide a series of undertakings to the Authority in relation to its interest in Melco.[32]

Chapter 2.6

Crown Corporate Structures

Corporate governance documents

1 Since 2015 the Annual Reports of Crown have included a Corporate Governance Statement identifying the extent to which Crown had followed the best practice recommendations set by the ASX Corporate Governance Council (Principles and Recommendations) during the relevant twelve month period.

2 In the period from 2015 Crown had a Board Charter updated from time to time which identified principles in respect of the composition of the Board and its independence, duties, responsibilities and powers, the role of the Company Secretary and proceedings at Board meetings.[1] During the same period each Board Committee Board also had a Charter.[2]

3 During the period since 2015, Crown also had a Code of Conduct for Directors which had been in force since February 2008 which recorded Crown's expectations of the conduct of directors.[3] Those expectations included that a director:

- Must recognise that the primary responsibility is to Crown's shareholders as a whole, but should where appropriate have regard to the interests of all Crown's stakeholders;
- Must not make improper use of information acquired as a director;
- Must not allow personal interests, or the interests of any associated person, to conflict with the interests of Crown;
- Should not engage in conduct likely to bring discredit upon Crown;
- Has an obligation at all times to comply with the spirit as well as the letter of the law and with the principles of this code; and
- Must encourage the reporting and investigating of unlawful and unethical behaviour.

4 In the period since 2015, Crown also had a Code of Conduct for Employees which had been in force since August 2008. Clause 1 of this Code included the following:[4]

> It is a fundamental principle of Crown Resorts Limited that all of our business affairs shall be conducted legally, ethically and with strict observance of the highest standards of integrity and professionalism.

5 Clause 2.3 provided that a compliance culture was required with respect to industry regulations, legislation and self-imposed internal controls. Clause 2.6 identified areas of potential conflict of interest and the requirement that employees guard against any possibility of conflict of interest or potential conflict of interest during their employment with Crown.

6 The Code of Conduct for Directors and the Code of Conduct for Employees were replaced by a single Code of Conduct dated July 2020.[5] Clause 1.2 provides that the Code applies to everyone who works for Crown, including directors, officers, employees, contractors, consultants, agents and third parties.

7 Clause 1.1 includes the following:

> It is imperative that our services are carried out lawfully, ethically, honestly and responsibly and with the highest standards of integrity and professionalism.

8 Clause 2.1 contains a specific provision relating to anti-money laundering and counter–terrorism financing (AML/CTF). It recorded that Crown is committed to complying with its obligations under applicable AML/CTF laws and regulations. It provides that all new employees are required to undertake AML/CTF risk awareness training upon commencement of employment, and all existing employees are required to undertake ongoing training at regular intervals.

9 Clause 2.7 addresses conflicts of interest. It includes the following:

> A conflict of interest exists where interests are divided, or could be perceived to be divided, between two or more parties. You are required to guard against any possible or perceived conflict of interest in carrying out your duties.

10 Clause 2.19 of the new Code of Conduct relates to media comment and records that Crown is committed to maintaining a professional image by ensuring that any commentary to the media is truthful, honest and consistent.

Crown's Board structure and personnel 2015

11 At the commencement of 2015, Crown had 10 directors: James Packer (Executive Chairman), John Alexander (Executive Deputy Chairman), Rowen Craigie (Chief Executive Officer and Managing Director), Helen Coonan (independent, non-executive director), Rowena Danziger (independent, non-executive director),

Geoffrey Dixon (independent, non-executive director), Professor John Horvath (independent, non-executive director) Harold Mitchell (independent, non-executive director), Benjamin Brazil (independent, non-executive director) and Michael Johnston (non-independent, non-executive director).[6]

12 Mr Andrew Demetriou was appointed as an additional independent non-executive director of Crown Resorts on 29 January 2015.[7]

13 In 2015, Crown had eight Board Committees: Audit & Corporate Governance (chaired by Mr Brazil), Corporate Social Responsibility (chaired by Ms Coonan), Finance (chaired by Mr Dixon), Investment (chaired by Mr Packer) Nomination and Remuneration (chaired by Mr Dixon), Occupational Health & Safety (chaired by Ms Danziger), Responsible Gaming (chaired by Professor Horvath) and Risk Management (chaired by Mr Dixon).

14 The only changes in personnel on the Crown Board in 2015 were that Mr Packer was replaced as Chairman in August 2015 by Mr Robert Rankin.[8] Mr Rankin was the chief executive officer of CPH at the time of his appointment as Chairman and a CPH nominee on the Board of Crown.[9] Mr Packer resigned from the Board on 21 December 2015.[10]

Changes in Board personnel in 2017-2019

15 There were no changes in Board membership during 2016. A number of changes occurred in the aftermath of the China Arrests. Mr Packer attributed a good deal of blame for the China Arrests to Mr Rankin and Mr Craigie.[11] On 10 January 2017, Crown announced that Mr Rankin was stepping down as Chairman of Crown effective 1 February 2017 and that Mr Alexander had been appointed as Executive Chairman with effect from that date. It was also announced that Mr Rankin would remain as a director; Mr Packer had been appointed as a director of Crown following receipt of a nomination by CPH, and subject to receipt of all regulatory approvals; and Mr Guy Jalland had been nominated by CPH to fill the next casual vacancy on the Crown Board, or by the expansion of the size of the Board at the next AGM, if approved by shareholders.[12]

16 Mr Craigie resigned as Chief Executive Officer and Managing Director on 28 February 2017.[13]

17 During 2017 Mr Brazil resigned from the Board on 12 April 2017, Mr Rankin resigned on 21 June 2017 and Ms Danziger resigned on 26 October 2017.[14]

18 Mr Packer's re-appointment as a director became effective on 3 August 2017.[15] However, Crown announced on 21 March 2018 that Mr Packer had resigned as a director that day for personal reasons.[16]

19 In 2018 Mr Jalland was appointed to the Board on 16 April 2018. Ms Halton and Ms Korsanos were appointed on 23 May 2018. Mr John Poynton was appointed as a nominee of CPH on 20 November 2018 to fill the vacancy created on Mr Packer's resignation.[17]

20 Mr Dixon resigned as a director on 24 October 2019 following the 2019 AGM.[18]

Senior officers of Crown 2015-2019

21 There were very few changes in the senior officers ranks of Crown below Board level in the period 2015-2019. In 2015 both Mr Michael Neilson and Ms Mary Manos were joint Company Secretaries of Crown and Mr Neilson was General Counsel.[19] Mr Neilson resigned on 30 June 2017 after which Ms Manos became General Counsel and Company Secretary.[20]

22 In 2015 the other principal officers of Crown were Mr Ken Barton (Chief Financial Officer), Mr Barry Felstead (Chief Executive Officer – Australian Resorts) and Mr Todd Nisbet (Executive Vice President, Strategy and Development).[21] Each of these three officers remained in the same positions in 2019.[22]

Mr Alexander's role as executive chairman

23 In the period after February 2017, Mr Alexander served as both chairman and Chief Executive Officer of Crown. This was not unprecedented. Mr Packer had served as Executive Chairman in the period up to August 2015. Mr Alexander had served as Executive Deputy Chairman since 2007.

24 The 2017,[23] 2018[24] and 2019[25] Crown Annual Reports recorded that the appointment of an executive chairman was a departure from Recommendation 2.5 of the ASX Corporate Governance Council's Third Edition of the Corporate Governance Principles and Recommendations,[26] which recommended that the Chair of the Board of a listed entity should be an independent director and, in particular, should not be the same person as the CEO of the entity. Each of those Annual Reports stated that the Board believed that Crown's Executive Chairman was "well placed to act on behalf of shareholders and in their best interests as a whole".

25 Since 2018 there had been moves by the independent directors of Crown to separate the role of Chairman and Chief Executive Officer. In December 2018 emails exchanged between Mr Johnston and Mr Jalland referred to a proposed Board agenda item planned by Mr Dixon and Professor Horvath for the role of Chairman and CEO to be separated. Mr Johnston and Mr Jalland agreed to "push the item off until the new year" as neither of them could attend the meeting in person.

26 In February 2019 the Board commenced discussions about the merits of the existing structure which did not separate the roles of CEO and Chairman. The Board had under consideration the merits and corporate governance benefits of appointing an independent chair and instigating a process to identify a new CEO. This included an intention to appoint a search firm to identify a new CEO that would include both internal and external candidates.

27 The process of changing the governance structure was suspended in the wake of the receipt of the Wynn takeover proposal and the establishment of this Inquiry.

28 Prior to the 2019 Crown Annual General Meeting shareholders and proxy advisers criticised the lack of an independent Chairman and Crown's failure in October 2019 to follow best practice in corporate governance in this regard.

Board reshuffle January 2020

29 On 8 January 2020 the six independent directors at that time (Professor Horvath, Ms Halton, Mr Demetriou, Ms Coonan, Ms Korsanos and Mr Mitchell) prepared a Memorandum to the Crown Board setting out a number of resolutions to give effect to structural changes in Crown's corporate governance. These principally involved resolutions to terminate the Services Agreement with Mr Alexander as CEO, to appoint to Mr Ken Barton as CEO and to appoint Ms Coonan to the Chairman's role.

30 The Memorandum included the following:

> Directors remain conscious of the importance of resolving the executive and governance structure for Crown going forward. This was underscored by Shareholder questions and criticism from proxy advisors at and before the October AGM. These criticisms have served to raise the issue that Crown is lagging the best practice corporate model and have given some added impetus to the proposal that the Crown Board should be led by an independent Chair to provide supervision of the operations and that the Board should appoint a separate CEO to head management of the Company going forward.
>
> Although these mooted changes to the corporate governance of Crown have been underway for some time, the independent Directors are overwhelmingly of the view that such changes should now be brought to a conclusion. These changes will also be provided to ILGA as important information underpinning the way in which Crown intends it(s) corporate governance to operate into the future.

31 Changes were announced by Crown on 24 January 2020. The ASX/Media Release recorded that Ms Coonan had been appointed as Chair of Crown and that Professor Horvath had been appointed as Deputy Chair. It was also announced that Mr Barton had been approved as Managing Director and that Mr Alexander had stepped down as Executive Chairman. The announcement also recorded that the Boards of Crown

Melbourne, Burswood Ltd and the Licensee had appointed a non-executive director as Chair to each of those Boards. Mr Demetriou was appointed as the Chair of Crown Melbourne, Mr Poynton was appointed as Chair of Burswood and Ms Halton was appointed as Chair of the Licensee.[27]

Further changes announced during 2020

32 On 22 October 2020 Crown issued an ASX/Media Release recording that Mr Alexander had retired that day as a director of Crown following its Annual General Meeting. It was announced that Mr Alexander would remain as an executive of Crown until January 2021. The Release also recorded that Professor Horvath had announced his intention to retire as a director of Crown but that given his role on the Crown Melbourne Board, Professor Horvath would remain as a director of Crown until alternative arrangements were in place.[28]

33 Ms Coonan's address to the Annual General Meeting on 22 October 2020 included the following:[29]

> In the area of Board renewal, the Board accepts that there needs to be an injection of new perspectives and expertise on our Board. These changes need to be undertaken in a considered and thoughtful manner to ensure an orderly transition.
>
> I also recognise the importance of independent directors, and I will ensure the Board renewal process involves the recruitment of astute, qualified and fiercely independent Directors working in the best interest of all shareholders. CPH remains a significant shareholder, and I appreciate that this relationship needs to be appropriately managed.
>
> I want to reassure our various stakeholders that we are listening, and changes will be made.

Chapter 2.7

Crown Risk Management Structure

1 Crown's Risk Management framework is made more complex by the corporate structure of Crown and its licence-holding subsidiaries.

Crown's 2008 Risk Management Policy

2 Crown's Risk Management policy dated February 2008 (2008 Policy) provided a broad description of the risk management processes at Crown and its wholly owned operating businesses, including Crown Melbourne.[1] The 2008 Policy was applicable in the period leading up to the October 2016 China Arrests.

3 While the Crown Board assumed ultimate responsibility for risk management of Crown, it delegated oversight responsibility for risk management and internal control of major risks to the Crown Risk Management Committee (Crown RMC).[2]

4 The 2008 Policy provided that:

(a) The Crown RMC would meet regularly to review the effectiveness of its risk management systems, processes and internal controls and would report its findings to the Crown Board (clause 1);

(b) Each of Crown's wholly owned operating business units (Crown Businesses) would have its own risk management committee responsible for maintaining and reviewing the risk profile of its business on a regular basis and for reporting to the Crown RMC twice per year (or more regularly as requested) (clause 2);

(c) Risk Registers were in place across all Crown Businesses to catalogue material financial as well as non-financial risks to each business (clause 3.1), and were to include a description of identified material risks, the likelihood and impact

of each risk and the response to identified risks. Identifiable risk mitigation strategies were also to be recorded (clause 3.3). The individual Risk Management Committees were responsible for the preparation and maintenance of the Risk Registers and their review. Each relevant Crown Business' CEO, senior executives and the Crown RMC were responsible for the regular review of the Risk Registers to ensure they remained "relevant to the changing nature of each Crown Business and to ensure that appropriate action was taken where necessary" (clause 3.2);

(d) Each Crown Business was responsible for identifying, assessing and managing material risks to their business through their individual risk management committees, which included senior managers of the relevant business who had a strong understanding of it and were best equipped to identify the associated risks (clause 4.1); and

(e) Each Crown Business would provide for reporting on risk management in its regular monthly reporting.

5 The 2008 Policy also provided for the engagement of an independent external party to review Crown's risk management system and internal controls at least every three years, and report the results of that review to Crown (clause 5).

6 One of the goals of the 2008 Policy was to build a culture of risk awareness and a sense of ownership of risk. In order to develop that culture, Mr Stuart, the General Manager of Risk and Assurance at Crown Melbourne from 2007 to 2018, considered that it was important that the senior managers in the business units understood that they had a responsibility for managing risks and needed to coordinate with him on his internal audit activities.[3]

7 The 2008 Policy made no mention of "risk appetite". Nor did it specify how the risk management framework worked to support the identification of material risks to ensure that Crown was operating within its "risk appetite".

The risk management framework at Crown Melbourne up to 2016

8 At all times whilst the 2008 Policy was in force, the management of risk for the VIP International business was supposed to be reported formally through Crown Melbourne.[4]

9 In accordance with the 2008 Policy, Crown Melbourne had its own risk management committee (Crown Melbourne RMC). However, this was not a sub-committee of the Crown Melbourne Board but rather a management committee. It reported to the relevant Crown Melbourne Board sub-committee being the Audit Committee (Crown Melbourne Audit Committee) the purpose of which was to assist the Crown

Melbourne Board to fulfil its corporate governance responsibilities in relation to financial reporting, corporate control and risk management, and internal and external audit.[5] At all relevant times up to the China Arrests, the members of the Crown Melbourne Audit Committee included Ms Danziger (Chair) and Mr Barton. Mr Felstead regularly attended the Crown Melbourne Audit Committee meetings as an invitee.[6]

10 In the period leading up to the China Arrests in October 2016, the formal risk management process for Crown Melbourne was coordinated by Mr Stuart, who reported to Ms Tegoni and Mr Felstead.[7] Mr Stuart prepared Annual Risk Management Plans to manage "material" risk exposures. These plans were provided to the Crown Melbourne Audit Committee for approval and once approved were monitored and reported on by the Crown Melbourne RMC. The Crown Melbourne RMC reported any changes to risk since the last annual risk management plan to the Crown Melbourne Audit Committee by the Risk Management Reports.[8]

11 Mr Stuart depended on Senior Management in the business units and also the Risk Committees and the executive team to identify the risks faced by various business units.[9] It was Management's responsibility to:[10]

(a) Identify the risks in relation to the VIP International business for Mr Stuart to include in the Risk Registers and Risk Profiles; and

(b) Through discussions with Mr Stuart, identify the mitigation controls which were appropriate to regulate the identified risks.

12 The key risk documents that were utilised included the following:

(a) Departmental Risk Registers which "identified and characterised different risks applicable to the relevant department (or small groups of departments), set out the controls designed to mitigate those risks, identified the most likely outcomes if the risks materialised, and set out certain other details";[11]

(b) Departmental Risk Profiles which included diagrams showing various risks to the department and a document setting out the definitions of the risks;[12]

(c) Risk Registers identified the risks to each respective business group, while the Risk Profiles considered the "likelihood" and "consequence" of each risk occurring.[13] The Risk Profile diagrams measured the "likelihood" of a risk occurring on the x axis and the consequence of each risk occurring on the y axis of the Risk Profile. Each axis had a measurement of 1 to 5, depending on the general likelihood of the risk occurring and the severity of the consequence of that risk occurring;[14] and

(d) There were also Risk Management Plans and the Risk Management Reports. Both Plans included the Corporate Risk Profile, which aggregated the risks and identified in the departmental risk profiles high and significant risks determined through the annual risk management process.[15]

13 The Crown Melbourne risk management process was an annual process that commenced in around August each year and culminated in the presentation of the annual Risk Management Plan to the Crown Melbourne Audit Committee each November.[16] In the period 2014 to 2016, this process included coordinated workshop style meetings with executives and senior staff of various departments in Crown Melbourne to discuss and review the Departmental Risk Registers and Departmental Risk Profiles for each department; to consider whether the controls remained appropriate; to consider new and emerging risks; to consider generic risks; and to obtain relevant input from various departments.[17] This collaborative process was the foundation for the annual Crown Melbourne Risk Management Plan.[18]

14 The VIP International business representatives were involved in the preparation of the Gaming Operations Risk Register which was supposed to capture and record any risks relevant to the VIP International business.[19]

15 The Corporate Risk Profile into which the risks from the Risk Registers were mapped was approved by the Crown Melbourne RMC and the Crown Melbourne executive team before it was provided to the Crown Melbourne Audit Committee.[20]

16 In the period 2014 to 2016 Mr Stuart arranged two meetings each year with the Crown Melbourne executive team. These meetings included Mr Felstead and Mr O'Connor as the two most senior executive managers responsible for the VIP International business. The purpose of these meetings was to report and discuss updates to the Corporate Risk Profile prior to its presentation to the Crown Melbourne Audit Committee. These dicussions included the risk ratings in the Corporate Risk Profile, any new risks which had been identified and the mitigation controls required to regulate those risks. These meetings also provided the opportunity for executives to assess the Corporate Risk Profile "as a collective group of executives and trade ideas on it" prior to its presentation to the Audit Committee.[21]

17 In 2013 the VCGLR reviewed Crown Melbourne's Risk Management Plans and Risk Management Reports and concluded that Crown Melbourne had "established a clearly articulated risk management and assurance framework, setting out the roles of each of the different reporting entities with input into the risk management process".[22]

18 The problems identified during the Inquiry were related more to the application of the risk management framework than the framework itself, although it is clear that there were some deficiencies in the framework.

Risk Management at Crown

19 The risk management processes at Crown Melbourne were intended to feed into Crown's risk management processes.[23]

20 From at least the financial year 2008, the Crown RMC was a Crown Board sub-committee with delegated responsibility for the oversight of risk management and internal control of major risks.[24] Throughout the period 2008 to 2016, the members of that committee were Mr Dixon (Chair), Ms Danziger and Mr Craigie.

21 The Crown RMC Charters dated February 2014 and August 2016 respectively required the Crown RMC to meet at least twice per year.[25] It did so in the financial years 2009 to 2016.

22 In the period 2014 and 2016, the key documents that were provided to the Crown RMC included:[26]

(a) A document referred to as a "Report Against Material Risks" which typically identified the "high" risks to Crown and sometimes included the "significant" risks. This document drew relevantly upon the risks identified through the Crown Melbourne risk management process discussed above; and

(b) A document referred to as a "risk profile" which was reviewed annually by the Crown RMC (Crown Risk Profile). The Crown Risk Profile comprised a table setting out (among other things) various risks, the definitions of those risks, the ratings of those risks, and the controls designed to mitigate them; documents providing further detail on the risk likelihoods and consequences referred to in the main table; and a diagrammatic risk matrix summary". It also included risk rated as "low", "moderate" and "significant". Senior executives, senior legal counsel and Mr Stuart typically discussed any proposed updates to the Crown Risk Profile before it was presented to the Crown RMC for discussion and approval. In particular, Mr Stuart provided input into this document drawing upon his knowledge of the risks affecting Crown Melbourne.

23 It was intended that information relating to risks associated with the VIP International business would flow into Crown by virtue of Mr Stuart's regular attendance at the Crown RMC.[27]

24 The "Report Against Material Risks" and any updates or other changes to the document since the previous meeting were discussed at each of the Crown RMC meetings.[28] The Crown Risk Profile was also reviewed and discussed, and updates to the Risk Profile were approved.

25 It was intended that the Crown Board would obtain information relating to risk management issues through various sources including:

(a) The minutes of the Crown RMC meetings included in the Board papers;[29]

(b) Regular attendance by Mr Felstead, a key executive responsible for the VIP International business, at the Crown Board meetings. Mr Felstead had a standing invitation to attend these meetings by virtue of his position as Chief Executive Officer – Australian Resorts and was required to report on all aspects of the business for which he was responsible, including the VIP International business;[30] and

(c) Discussions regarding risk management issues at the Crown Board meetings.[31]

Improvements in Crown's approach to risk management during 2017 to 2019

26 In the aftermath of the China Arrests in October 2016 Crown took a number of steps to improve its risk management framework and systems.

27 In December 2017 Crown appointed Ms Anne Siegers as Group General Manager for Risk and Audit. Ms Siegers was instrumental in updating a number of Crown's risk management processes.

28 In August 2018 Crown adopted a new Risk Management Policy.

29 In February 2019 Crown retained Deloitte Risk Advisory Pty Ltd (Deloitte) to review aspects of its risk management framework consequent upon VCGLR's June 2018 Sixth Review in which it recommended the strengthening of Crown's Risk Management Framework and systems. Deloitte reported in June 2019.

30 In June 2019 the Crown Board approved a new Risk Management Strategy and a revised version of the Crown RMC Charter.

31 In June 2020 Crown revised and amended its Risk Management Strategy.

The appointment of Ms Siegers

32 In December 2017 Crown appointed Ms Anne Siegers as the Group General Manager for Risk and Audit. Prior to joining Crown, Ms Siegers held a number of roles as an auditor, consultant, and in risk and audit for a range of organisations, including

Westpac Banking Corporation, NRMA, the University of Newcastle and the Newcastle Permanent Building Society.[32]

33 Ms Siegers' position was newly created at the time she joined Crown. The main objective of the new role was to create a group function for audit and risk in preparation for the opening of Crown Sydney. However Ms Siegers also has responsibility for Crown Melbourne and Crown Perth. In this regard she has implemented a group function to manage risk by creating separate teams for risk and audit across Crown's properties. She also provides localised support and assistance to Crown's international operations.[33]

34 Ms Siegers identified a number of areas for improvement of Crown's risk management processes including the need to formally set and document Crown's risk appetite. Ms Siegers considered it was important to formalise the risk appetite of the company to express to the rest of the organisation the level of risk the Board anticipates the organisation will take in the pursuit of its objectives.[34]

VCGLR's Sixth Review

35 In June 2018 the VCGLR published the Sixth Review Report. It identified a number risk management failures, evidenced by three disciplinary actions taken by the VCGLR, two which resulted in "historically significant" fines.[35] However, the VCGLR reported that Crown had "demonstrated a commitment to improving its risk management and compliance by adding executive capacity at the group level across risk and audit, and regulatory and AML/CTF compliance".

36 The Sixth Review Report made a number of recommendations relevantly in three areas: corporate governance and risk; regulatory compliance and responsible gambling. It was recommended that Crown:

(a) Develop a change program to fully engage its independent directors in "proactive strategic oversight" regarding the operations of Crown Melbourne, with the program to be ultimately submitted to the VCGLR for approval;

(b) Conduct a review of the required qualifications for Committee Chairs set out in the Charters, and ensure that the appointees' qualifications satisfied the requirements;

(c) Undertake an assessment of the "robustness and effectiveness" of its risk framework and systems, including reporting lines in the chain of command, with a view to upgrading both when required and obtaining external advice in relation to them;

(d) Conduct a review of internal controls to ensure Crown's regulatory and compliance department is aware of all projects and works in progress for which regulatory approvals might be relevant, including internal controls that relate to money laundering; and

(e) Crown convene annual round table sessions to brief key internal staff on the VCGLR's risk-based approach to regulation, with a focus on how that approach relies on the integrity of Crown's internal processes.

37 During its investigations for the Sixth Review in May 2018 the VCGLR engaged PwC Australia to provide it with advice on Crown Melbourne's risk systems. The PwC Report[36] considered Crown Melbourne's risk identification, risk culture and risk response. Relevantly, PwC concluded that:

(a) Crown Melbourne had an "adequate" risk management framework that "incorporated regular engagement and adequate systems and processes to identify, evaluate and report" on the risks facing Crown Melbourne;

(b) Executives and management of Crown Melbourne found that risk culture was seen as "embedded in the daily business and operation" and risk information was communicated throughout the business up to the Risk Management Committee and Board; and

(c) It was necessary to prioritise the establishment of a risk appetite for material risks and reporting risk performance measures relative to appetite on a regular basis.

Risk Management Policy August 2018

38 In August 2018 the Crown Board adopted an updated Risk Management Policy which included the following:[37]

(a) Recording that Crown's objective was to identify material risks and manage those risks within the risk appetite of the Board;

(b) Removing the requirement for each of Crown's wholly owned Crown Businesses to report periodically to the Crown Head Office noting any changes in their divisional risk profile. This was replaced by a requirement that each Crown Business provide quarterly updates to the Crown RMC on their material high risks;

(c) The removal of a risk management committee for each of Crown's Businesses, which were replaced by a risk management framework for each business unit; and

(d) Amendments to the content of the Risk Registers, including a requirement to include the consequence of each identified risk (both inherent and residual), a description of the key controls in place that mitigate that risk, as well as the strategy against each identified risk.

The 2019 Deloitte Report

39 In February 2019, Crown engaged Deloitte to provide an assessment of its risk management program.[38] This engagement followed upon Recommendation 3 of the VCGLR Sixth Review Report which was:[39]

> The VCGLR recommends that, by 1 July 2019, Crown assesses the robustness and effectiveness of its risk frameworks and systems, including reporting lines in the chain of command, and upgrade them where required. This assessment should be assisted by external advice.

40 Deloitte was briefed with a draft Crown Risk Management Strategy and requested to consider Crown's risk strategy, its "risk operational model", its risk reporting and its risk information systems and risk monitoring, including key risk indicators.

41 Deloitte also confirmed the limits of its review as:[40]

> Our engagement was limited to assessing the design of the risk management program. We did not assess the degree to which the risk management framework had been embedded in the organisation and how well it is operating.

42 Deloitte's Report in June 2019 included the following:[41]

(a) The identification of a number of areas for improvement in Crown's Risk Operational model, including Crown's risk governance framework and the "Three Lines of Defence";

(b) A recommendation that Crown amend its Risk Management Strategy to clearly define risk ownership and risk management accountability to ensure it supports "the consideration of risk in all decision making";

(c) Advice that Crown's Risk Management Strategy did not refer to the Crown RMC's role in oversighting the Board's desired risk culture, even though it formed a part of the Second Line of Defence, with a recommendation that the role of the Board should include the setting of Crown's desired risk culture;

(d) A conclusion that Crown's Risk Management Strategy, Risk Policy and various Committee Charters "set out expectations with regard to the reporting and oversight of risk" with all material risks being summarised within the "Corporate Risk Profile"; and

(e) The identification of some areas for improvement in risk reporting.

Risk Management Strategy June 2019

43 At the 15 November 2018 meeting of the Crown RMC, Ms Siegers presented a "Risk Appetite Paper" suggesting that the Crown Board approve seven different "impact categories". Each category would have both a qualitative and quantitative threshold "trigger".[42] The Crown RMC resolved to recommend the adoption of this approach to the Boards of Crown, Crown Melbourne and Crown Perth.

44 The Committee was also provided with an overview of the proposed Crown Risk Management Strategy, which was to be presented to the Risk Management Committee for approval once finalised.[43]

45 In June 2019 the Board approved a new Risk Management Strategy, which represented a major overhaul of Crown's approach to risk management. Relevantly, the 2019 Risk Management Strategy recorded that:[44]

(a) It is for the Crown Board to set Crown's risk appetite and oversee its risk management framework at least annually;

(b) Ultimate responsibility for risk management rested with the Board but it can have in place a committee to oversee risk;

(c) The Board should adopt a number of risk management principles, including that effective risk management requires a strong, robust and pervasive risk culture which is consistent with Crown's values and risk appetite;

(d) The "three lines of defence" risk governance model would apply, pursuant to which the CEO, executives and senior management formed the first line of defence and would assume ownership of and accountability for managing material risks; the Group General Manager – Risk and Audit formed the second line of defence and had no operational business reporting line or revenue generating responsibilities; and an independent internal audit function formed the third line of defence;

(e) There were seven impact categories against which risk appetite was to be assessed which were:

(i) Financial;

(ii) Brand/reputation;

(iii) Regulatory/legal;

(iv) People;

(v) Customers/patrons;

(vi) Infrastructure; and

(vii) Strategy/business sustainability;

(f) A qualitative statement and quantitative metrics in respect of each of these impact categories was proposed. For example, in relation to the Brand/Reputation impact category, the qualitative statements were "Maintain shareholder confidence" and "Retain public confidence in the Crown brand" and the quantitative metrics were "Internal event creating a sustained share price loss > 5%" and "Sustained negative national or international media coverage – any event";

(g) Risk appetite would be translated through a Risk Matrix which defines likelihood and impact thresholds, the combination of which gives rise to a risk rating; and

(h) Crown's risk identification and evaluation strategy involved both a "top down" and "bottom up" risk assessment. The top down assessment was embedded in ongoing engagement with the Board while the bottom up assessment originates in each business unit.

46 Also in June 2019 the Crown Board approved a revised version of the Crown RMC Charter. Relevantly, this increased the number of times the Crown RMC was required to meet per year from two to four.[45]

Changes to risk management during 2020

47 At the 10 June 2020 Crown RMC meeting Ms Siegers provided an update regarding recent work conducted on Crown's Risk Profile. Relevantly, Ms Siegers noted that the Risk Profile had been updated to align with the rest of the organisation's risk methodology, and that additional information had been provided for each risk in the Profile.[46]

48 In June 2020, Crown amended the June 2019 Risk Management Strategy.[47] The key amendments were enhancing the risk culture section, and incorporating references to Crown Sydney. It included a new Part 4 recording that management was required to monitor "Risk Culture" which was defined as:

> The system of values and behaviours present in an organisation that shapes decisions and actions of staff in relation to risk taking. It determines the collective ability of all staff to:

- Identify, understand, openly discuss and act on both current and future risks to the organisation; and
- Operate consistently within the Risk Appetite.

49 This Part also recorded that underpinning Crown's Risk Culture are Crown's values, identified as:[48]

(a) We act respectfully;

(b) We are passionate;

(c) We work together; and

(d) We do the right thing.

50 Also in June of 2020 Crown adopted a revised Risk Management Policy which:[49]

(a) Removed Crown Board's delegation to the Crown RMC of responsibility for risk management and internal control of major risks. Instead, the Crown RMC was required to "oversee Crown's risk management and compliance frameworks";

(b) Included a requirement for the risk management frameworks that apply to each of Crown's wholly owned operating business units to align with Crown's overall Risk Management Strategy and Risk Appetite;

(c) Required the Risk Registers prepared for Crown's wholly owned operating business units to be reviewed on a regular basis by senior executives and the Crown RMC with "regard to Crown's Risk Appetite"; and

(d) Inserted a requirement that the Crown RMC undertake a regular review of Crown's Risk Management Policy to "ensure it remains consistent with Crown's objectives, regulatory requirements and recommendations".

51 Although there are other proposals Crown has proffered to the Authority in respect of improving its Risk Management mechanisms, these are the Policies and Strategies in place at the time of submission of this Report.

Chapter 2.8

Sharing Information with CPH and James Packer

1 The Crown name is for many people synonymous with the Packer name. The establishment and growth of Crown's gaming empire particularly with the development of integrated resorts in Australia, Macau and the Philippines have earned it both national and international recognition for its achievements and successes.[1]

2 It is an empire that has employed thousands of people during its lifetime, contributing monetary value to both its shareholders and the community generally. It is clear that millions of Australians and overseas visitors have enjoyed the Crown experience whether it be in the gambling, entertainment or leisure activities provided in its integrated resorts.

3 It has been courted by international casino operators and has regarded such approaches, not unreasonably, as a recognition of its powerful positioning in the casino industry.

4 The driving force behind the establishment and development of this empire has undoubtedly been James Packer.

5 Mr Packer has been supported in this quest by a group of people who have demonstrated unswerving loyalty to him for many years. The longevity of their service combined with their deep loyalty and true belief in Mr Packer's "vision" have contributed not only to Crown's successes but also to the deep fissures that developed in its fabric.

6 Mr Packer's presence on the Crown Board as Chairman and then as a director clearly instilled confidence in those around him.

7 Mr Packer's departure from the Board in December 2015 and the development of arrangements to share confidential information with him in 2016 coincided with events, some of which had tragic consequences for Crown's employees in China. Although he returned to the Board as a director for but a short period from August 2017 he departed again in early 2018. Further arrangements were made for the sharing of confidential information with him which, once again, coincided with events that have had rather tragic consequences for the Company itself with the establishment of this Inquiry in August 2019.

8 The extent and nature of Mr Packer's power whilst at the helm of the Crown Board and in continuing to manoeuvre it remotely after his departure from the Board assisted not only by his loyal team of corporate operatives but also by the information sharing arrangements that had been fastened onto the corporate structure has been the subject of investigation as a matter incidental to the question of the suitability of Crown and the Licensee.[2]

9 This Chapter reports upon the outcome of that investigation.

Mr Packer as Chairman

10 Mr Packer served as the Executive Chairman of Crown from its establishment in late 2007 as a separately listed entity to 13 August 2015.[3] He claimed that his role as Executive Chairman was to "monitor the strategy, the management, the capital employment and the operating results" of the Company.[4] He agreed that the Chairman of a publicly listed company has an important role to play in setting the culture, business ethics and values of the organisation.[5]

11 Mr Packer accepted that as Executive Chairman of Crown between 2007 and 2015 he led the company "with a powerful personality".[6] He tentatively accepted that during that same period those in managerial positions were motivated to please him.[7] When this more human element of those fulfilling managerial roles wishing to please him was explored with Mr Packer in his evidence, his responses exposed his abiding approach and particular interest in the business.[8] His evidence was as follows:[9]

> Q. It would appear from what I have read thus far that there is an element, or there was an element at the time that you were Chairman, of a desire to please you. You understand that, don't you?
> A. Possibly, Madam Commissioner. Possibly.
>
> Q. Is it a mere possibility, Mr Packer?
> A. If you look at our financial budgets and forecasts, they never pleased me because we always missed them, and that was probably right towards the top of my list of important things, so I don't think it would be fair to say that I was always being pleased by people.

Q. It's the other way round though; it was their desire to please you, do you not think?
A. I don't know, Madam Commissioner. I mean, I always asked for conservative budgets. I never participated in the budgeting process myself. And we always ended up missing our budgets and our four-year plans by a significant margin. Whether that was people trying to please me or whether that was people trying to justify the capex that we had committed to the business, because we have spent probably $4 billion of capex over the last 10 years in Australia, which for a company our size is an enormous number. And that capex was spent on the basis of the - sorry, Madam Commissioner?

Q. So they weren't giving you the bad news in relation to the budgets?
A. Well, the budgets-the actuals never hit the budgets.

Q. So the bad news wasn't reflected in the budgets; is that right?
A. It always came later.

12 The measure that Mr Packer applied to test whether people were motivated to please him was whether they provided budgets within which the actuals could be "hit". Mr Packer wanted conservative budgets that could be met whereas he believed the budgets were too optimistic. He suggested inferentially that if people wanted to please him they would be providing him with a budget that could be met rather than ones that could not be met.

13 Although this questioning sought to elicit from Mr Packer a possible explanation as to why he had been kept in the dark as he claimed he was in respect of a number of matters, for instance with people only delivering good news to him, he said that he could not explain how this had happened.[10]

14 In any event, Mr Packer's role as Chairman until the time that he resigned from the Board in 2015 took Crown through a period of growth and success with the Melco Crown joint venture providing shareholders with the return that was in excess of "six times their money" invested.[11]

15 Mr Packer claimed that his aim was always to have "strong independent directors" on the Crown Board and emphasised that CPH directors had always represented a lower percentage of the Board than the CPH shareholding.[12]

Relationships with other directors and executives

16 During his tenure as Crown's Executive Chairman, Mr Packer established CEO Meetings so that he could receive regular briefings on matters relevant to Crown's business ahead of Board meetings including updates concerning Crown's VIP International business.[13] The CEO meetings were attended by Crown Management and Mr Packer's "key advisers within CPH" including Mr Johnston and Mr Jalland.

17 Mr Johnston, as one of CPH's nominees on the Crown Board from 2007, agreed that he had "shown complete loyalty to Mr Packer".[14] Mr Jalland was not appointed to the Crown Board until 2018.

18 Mr Alexander, who was appointed as a director of Crown on 6 July 2007 and was Crown's Executive Deputy Chairman until 2017 when he was appointed as Executive Chairman serving in that role until 24 January 2020, agreed that his "first loyalty has been to Mr Packer for many years".[15] Mr Alexander said that when Mr Packer "was making suggestions about the business, I had cause to listen."[16]

19 Mr Demetriou who was appointed as an independent director of the Crown Board from January 2015 regarded Mr Packer as "somewhat of a visionary" whose advice was "invaluable" to Crown.[17] In April 2019 he wrote to Mr Packer advising him that he remained "committed to serving the best interests of Crown, and most importantly, you".[18]

20 Mr Mitchell had a long-standing tie to the Packer family. He was provided with a substantial interest free loan from the late Mr Kerry Packer at a time when he was financially vulnerable.[19]

21 At the executive level, Mr Barton and Mr Felstead were very loyal to Mr Packer, "as were most executives".[20] The relationship between Mr Packer and Mr Felstead was, in particular, a "close relationship".[21]

22 Mr Ratnam was another executive who has had a long standing relationship with the Packer family, first with the late Mr Kerry Packer and then with Mr James Packer. Mr Ratnam first met Mr James Packer in 1997 and has performed various roles including as butler, host and personal assistant.[22] In about October 2014, Mr Ratnam was entrusted with the title 'Special Assistant to the Chairman' by Mr Packer to conduct dealings on his behalf with VIP customers.[23] Mr Packer expected that as a person with complete loyalty to him Mr Ratnam would inform him of important issues in relation to the VIP International business of which he became aware.[24]

Special interest in the business of VIP International

23 Although Mr Packer claimed that he had no more interest in VIP International than any other aspect of Crown's business, he agreed that since at least 2012 he became a key stakeholder in Crown's VIP International business "in the sense that Crown Sydney was aiming for the VIP market, in particular".[25]

24 Mr Packer recognised that the future success of Crown Sydney and the Barangaroo Casino relied heavily upon the VIP International business, particularly its operations in China, in marketing Crown Sydney to the Chinese tourists as an integrated resort in a sophisticated luxury tourist destination.[26]

25 Mr Packer was "drawn to the mathematics of the VIP business". He received regular updates at each CEO meeting with respect to the turnover of each region. During the 2012 to 2014 financial periods China was the region that reported the highest compound annual growth rate in turnover year on year.[27]

26 In March 2013 Mr Packer asked Mr Johnston to participate in the Crown VIP working group.[28] It was intended that Mr Johnston's skill set could assist the VIP International business with a number of its issues which included debt, currency controls and pricing.[29] Mr Johnston attended those meetings to offer advice particularly to Mr Felstead and Mr O'Connor. Mr Johnston updated Mr Packer from time to time on the issues in relation to the VIP International business that he had asked him to focus on and he thought were worthy of Mr Packer's attention.[30]

Installing a new Chairman – Mr Rankin

27 On 10 November 2014 Mr Rankin was appointed as CPH's Chief Executive. CPH intended to nominate Mr Rankin as a director of the Crown Board and the Melco Board, subject to the required probity, Board and shareholder processes.[31]

28 On 30 July 2015 Mr Rankin was appointed as a director of the Crown Board and on 13 August 2015 he replaced Mr Packer as Chairman of Crown. In an ASX Media Release Mr Packer was recorded as having said that: [32]

> Rob Rankin has my complete trust and respect as an executive and he will do an outstanding job as Chairman. Given our global growth and aspirations, this is the right time for the company to make this change. I look forward to working closely with him.

29 Mr Packer regarded Mr Rankin as an expert in China and an expert in compliance.[33]

Attempts to privatise Crown

30 From time to time CPH assessed various options for possible privatisation of Crown.[34]

31 In November 2015 Mr Packer and Mr Rankin explored opportunities with various private equity firms to contribute capital with CPH to achieve privatisation of Crown.[35]

32 Mr Packer conducted negotiations with one private equity firm to participate on the basis that it would take equity in the Company. It was proposed that the firm would make a sizeable contribution of equity and one of the firm's principals would join the Board of the privatised Crown. [36]

33 After some negotiations the firm advised that it would only be able to look at having one of its funds contribute $400 million to a privatisation, subject to due diligence.[37] Mr Packer regarded this response as inconsistent with what he thought had been

previously agreed at a higher level of contribution and he took the view that the firm had misled him.

34 On 25 November 2015 in response to the advice that he had received from the firm, Mr Packer wrote an email containing a serious threat to one of the businessmen in the firm.

A shameful and disgraceful incident

35 Mr Packer accepted that his conduct in making the threat was "shameful" and "disgraceful". He also accepted that the communications were "totally unsuitable for a director of a public company as a close associate of a licensee of a casino".[38]

36 Mr Packer accepted that he understood that at the time of this conduct, he had obligations to Crown to act ethically and with the highest standards of integrity.[39] He said that at the time that he wrote the email he had "clearly forgotten" he had an obligation to Crown not to engage in conduct likely to bring discredit upon Crown. He gave the following evidence:[40]

> Q. Do you accept that your conduct in these emails reflects adversely on your character, don't you?
> A. I think my medical state is what it reflected most on.
>
> Q. You mean at the time that you wrote them, Mr Packer?
> A. Yes, Madam Commissioner.
>
> Q. How can the New South Wales regulator have any confidence in your character or integrity in light of your communications in these emails?
> A. Because I'm being treated now for my bipolar.
>
> Q. How can the New South Wales regulator ...
> A. ... disease.
>
> Q. How can the New South Wales regulator have any confidence in your character or integrity in light of your conduct in these emails?
> A. Because I was sick at the time.
>
> Q. And do you say that you resigned from Crown Resorts because you were sick at the time?
> A. Yes.
>
> Q. And did you disclose that to your colleagues on the board of Crown Resorts?
> A. I can't recall.

37 Although Mr Packer's evidence was that it came as a surprise to him that the businessman felt that he had been put in fear by the communications, it is understandable that the businessman had viewed it this way.

38 The threat was made in an email dated 25 November 2015 and by 1 December 2015 there had been a metaphoric shaking of hands. However it appears that representatives of the press became aware of at least some of the communications as rumours about them bubbled along for some years.[41]

39 It is clear that Mr Packer believes that his bipolar disorder from which he claims he was suffering at the time in November/December 2015, albeit undiagnosed, was causative of his shameful and disgraceful conduct. The candour of Mr Packer's voluntary disclosure of his bipolar disorder was an explanation, rather than an excuse, for his conduct. However it was also proffered as a basis upon which the Authority could be satisfied that such conduct was aberrant and that there is no basis for concern that it would occur again so long as his disorder is treated.

40 Counsel Assisting submitted that this incident is a matter upon which a report should be made to the Authority recommending that it give consideration to whether Mr Packer should remain as an approved close associate of the Licensee.

41 Mr Packer's admission that his conduct in 2015 was inappropriate for a close associate of the Licensee is itself relevant to any review that may be conducted of his present suitability as a close associate of the Licensee.

42 It is exquisitely a matter for the Authority to decide whether to give consideration to the question of Mr Packer remaining as an approved close associate of the Licensee. This conduct, together with Mr Packer's evidence referred to in Chapter 4.7 of the Report that he forgot about the Undertaking that Crown had provided to the Authority in relation to preventing the late Mr Stanley Ho from acquiring an interest in Crown would be a proper basis upon which the Authority could decide to take such a step.

43 All of the confidential exhibits and medical evidence provided during the course of the Inquiry will be available to the Authority to assist it in any review that it might determine to conduct. However if such a consideration is to occur these would no doubt need supplementing.

44 There is no doubt that the conduct was both serious and disgraceful. Equally there is no doubt that it was conduct that was inconsistent with that expected of a director of a public company and certainly a close associate of the Licensee. There is obviously no doubt that Mr Packer has suffered ill health since that time.

45 It is reasonable to conclude that Mr Packer's expressions of shame and disgrace were genuine. These expressions and the ignominy of the exposure of both the conduct and the expressions of shame and disgrace in Public Hearings of this Inquiry and the media reporting thereon may be regarded as mitigating factors by the Authority in any considerations of Mr Packer's suitability as a close associate upon which the Authority may embark.

Ill-health and departure from the board – 21 December 2015

46 On 21 December 2015 Crown issued an ASX Media Release announcing that Mr Packer had resigned as a director of Crown effective immediately. The Media Release recorded Mr Packer's explanation of his motivation for his resignation as follows:[42]

> I have taken this decision over several months following the smooth transition by Rob Rankin into the company Chairman's role and the stable and cohesive functioning of the board and the senior management team during the period that I have transitioned overseas.
>
> Now is the right time for me to focus my endeavours on my new role with Crown, as I outlined to shareholders when I stepped aside as Chairman in August. I intend to devote my energies to a number of key development projects in Sydney, Melbourne and Las Vegas as well as Crown's online platforms.
>
> Of course, I remain incredibly passionate about Crown and its world-class integrated resort businesses. Crown is my biggest professional priority and represents the vast majority of my net wealth …
>
> I am very confident that, together with my colleagues on Crown's able Board, led by Rob as Chairman, we can deliver on these projects for all shareholders …
>
> I wish Rob and the rest of the Board well. I will remain in constant contact with them all, as we continue to build a world-class luxury tourism and entertainment brand.

47 The Media Release recorded Mr Rankin's statement that:[43]

> However, this is not an ending but a phase and an internal transition. James will continue to have a very active involvement in Crown in his new role and as the major shareholder of the company. And, of course, as the major shareholder, it is open to James to return to the Crown Board at some time in the future.

48 Mr Packer accepted that the Media Release at the time of his resignation from the Board on 21 December 2015 made no reference to him being unwell. He said that he had "hoped that it would stay a private matter" and gave the following evidence:[44]

> Q. And plainly you weren't truthful to the shareholders of Crown Resorts about the real reason you were resigning; do you agree?
> A. There should have been something mentioned in the release; I agree, Mr Bell.

49 Although Mr Packer did not agree with the proposition, it would be expected that he and Mr Rankin, who was copied in on the subject emails, would have had a discussion about his disgraceful conduct more likely in the context of Mr Packer's then ill-health. It is understandable that Mr Packer may have wished that his ill-health would be kept as a "private matter". However persons who are adjudged "suitable" under the *Casino*

Control Act must be of the highest character, integrity and honesty. Mr Packer's disgraceful and shameful conduct fell below that measure in November 2015. It is probable that his resignation was in recognition of falling below that measure, exposing Crown and Mr Packer personally to possible investigation by Authorities, had the businessman complained to them.

50 Mr Packer's resignation came as a surprise to Mr Alexander, with Mr Packer having provided no indication at a Crown Board meeting just five days earlier that he intended to resign.[45] Mr Alexander could not recall asking Mr Packer why he was departing although he believed he "was keen to hand over the responsibilities of being Chairman to somebody else" and he "saw in Mr Rankin somebody who was going to, perhaps, at that time, embark upon some value-adding, restructuring moves for the company."[46]

51 The "new role" to which Mr Packer and Mr Rankin referred in the Media Release of 21 December 2015 was a proposed executive role for Mr Packer as President, Global Strategy. Following Mr Packer's resignation from the Board, negotiations continued between CPH and Crown in relation to an Agreement for Mr Packer's new role.[47] It is apparent that there was also discussion about the establishment of a formal arrangement for the provision of services by CPH to Crown under a Services Agreement. However at a Crown Board meeting on 24 February 2016 Mr Rankin advised that CPH did not wish to proceed with the Agreement in respect of Mr Packer's new role nor a Services Agreement between Crown and CPH having regard to a privatisation proposal then being considered by Hellman & Friedman.[48]

52 It is apparent that the privatisation proposal fell away and the proposal for a Services Agreement between Crown and CPH was revived in mid-2016. Although Mr Packer was no longer on the Crown Board it is obvious that he was receiving information in circumstances where there was no formal contract or arrangement governing that process. Up to this point CPH Executives had been providing services to Crown on a *pro bono* basis. Those Executives had received Crown confidential information for the purpose of providing those services to Crown and that information had been shared with others within CPH. It was thought appropriate to formalise an arrangement between CPH and Crown to govern the provision of services by CPH Executives and the receipt of confidential information by them and CPH.

Services Agreement

53 On 1 July 2016 Crown entered into a Services Agreement with CPH. The Recitals to the Services Agreement, recorded that up to that point CPH had permitted Crown to have access to certain "CPH Executives" for the purpose of assisting Crown in its business at no charge to Crown. Those Recitals also recorded that from the date of the Agreement, CPH would continue to "allow" Crown to "access CPH Executives" for the

purpose of assisting it in its business, but subject to the terms of the Services Agreement, including the requirement that Crown made payment to CPH where it elected to take such services.[49]

54 The Services Agreement defined CPH Executives as "an officer, executive, employee or contractor of CPH or of a related body corporate listed in Schedule 1" of the Agreement. It also included any other officers as agreed between CPH and Crown, but excluded Mr Packer and Mr Rankin, or any other person CPH from time to time notified Crown was not covered by the definition. Schedule 1 listed the CPH Executives and their hourly rates at that time, including Mr Johnston, Mr Jalland and Mr Mark Arbib.[50]

55 The "Services" to be provided by the CPH Executives were defined as "the provision of executive, management or operational services" in connection with the "Business". The "Business" was defined as "the business and undertaking of Crown Resorts or other member of the Group from time to time". The "Group" included Crown, any subsidiary, any company in which Crown owned at least 20 per cent of the issued share capital, and any other entity that was connected with Crown by a common interest in an economic enterprise, for example, a partner or another member of a joint venture.[51]

56 The agreed regime was that Crown could request CPH to provide one or more of its Executives to provide the abovementioned Services. The cost of the Services were capped at $8 million (excluding GST) for the calendar year 2016, and as agreed between the parties in any subsequent calendar year. CPH was entitled to refuse to provide access to the CPH Executives if the cap had been exceeded.[52]

57 The Services Agreement provided that the CPH Executives' appointments as directors of Crown were not affected as those appointments were to operate independently of the Agreement.[53]

58 It was agreed that the Executives would be paid a Service Fee in accordance with their hourly rate and that such rate would be increased in accordance with the CPI in January 2017. Any additional increase had to be notified by CPH to Crown and agreed by Crown. CPH was required to issue invoices to Crown in the form of tax invoices for the provision of the Services on a monthly basis and such fees excluded any long term incentive payments or other bonuses payable to the CPH Executive by CPH.[54]

59 Clause 11 of the Services Agreement provides as follows:

> 11 **CONFLICTS OF INTEREST**
>
> 11.1 **Conflicts procedure**
>
> If Crown Resorts, CPH or a CPH Executive perceives any actual or potential Conflict of Interest arising out of the provision of the Services by a CPH Executive the Parties will cause Crown Resorts' Managing Director and CPH's Managing Director, or their respective nominees from time to time, to meet or otherwise confer so as to resolve the conflict. Crown Resorts and CPH may agree to exclude the CPH Executive from the relevant work or take any other steps necessary to eliminate the conflict.

60 The Services Agreement included the following definition:

> **Conflict of Interest** means circumstances in which, due to a direct or indirect relationship (commercial or otherwise and including any potential relationship or opportunity or inducement or any such situation which comes into existence subsequent to the commencement of this Agreement) involving one Party (including a member of the Group) or its personnel and another person or entity, that Party is unable to discharge its obligations under this Agreement to the other Party (including a member of the Group) in an objective and independent manner to the best of its ability.

61 Clause 14 of the Services Agreement provided as follows:

> 14. **CONFIDENTIALITY**
>
> 14.1 **Use and disclosure of Confidential Information**
>
> (a) Subject to clause 14.4, a Party (the **Recipient**) which acquires Confidential Information of another Party (**Discloser**) must not:
>
> (i) use any of the Confidential Information except to the extent necessary to exercise its rights and perform its obligations under this Agreement; or
>
> (ii) disclose any of the Confidential Information except in accordance with clause 14.2, 14.3 or (in the case of CPH) 14.4.
>
> (b) For the purposes of this clause 14, a Party includes a member of the Group.
>
> 14.2 **Disclosures to personnel and advisers**
>
> (a) The Recipient may disclose Confidential Information to an officer, employee, agent, contractor, or legal, financial or other professional adviser if:

(i) either:

(A) the disclosure is necessary to enable the Recipient to perform its obligations or to exercise its rights under this Agreement; or

(B) the Recipient is CPH; and

(ii) prior to disclosure, the Recipient informs the person of the Recipient's obligations in relation to the Confidential Information under this Agreement and obtains an undertaking from the person to comply with those obligations.

(b) Subject to clause 14.4, the Recipient must ensure that any person to whom Confidential Information is disclosed under paragraph (a) keeps the Confidential Information confidential and does not use it for any purpose other than as permitted under paragraph (a).

14.3 **Disclosures required by law**

(a) Subject to paragraph (b), the Recipient may disclose Confidential Information that the Recipient is required to disclose:

(i) by law or by order of any court or tribunal of competent jurisdiction; or

(ii) by any government agency, stock exchange, financial market or other regulatory body.

(b) If the Recipient is required to make a disclosure under paragraph (a), the Recipient must:

(i) to the extent possible, notify the Discloser immediately it anticipates that it may be required to disclose any of the Confidential Information;

(ii) consult with and follow any reasonable directions from the Discloser to minimise disclosure; and

(iii) if disclosure cannot be avoided:

(A) only disclose Confidential Information to the extent necessary to comply; and

(B) use reasonable efforts to ensure that any Confidential Information disclosed is kept confidential.

14.4 **Use and Disclosure by CPH**

(a) The parties agree that, before, on and after the date of this Agreement, CPH and certain CPH Executives have been provided with, and will continue to receive, Confidential Information of Crown Resorts:

(i) while CPH is the major shareholder of Crown Resorts;

(ii) for the purposes of CPH or for the purposes of allowing CPH Executives to provide services (including Services) to Crown Resorts; or

(iii) while a CPH Executive is a director of Crown Resorts or a committee member of any Crown Resorts executive committee.

(b) The parties agree that, subject as set out in clause 14.4(c), CPH may use such Confidential Information of Crown Resorts for its own purposes.

(c) CPH may disclose such Confidential Information of Crown Resorts to third parties, provided that:

(i) the third parties have provided an undertaking to CPH for purposes of clause 14.2(a)(ii);

(ii) the disclosure of such Confidential Information is for a lawful purpose; and

(iii) the disclosure of such Confidential Information does not constitute a breach of a confidentiality or secrecy obligation owed by Crown Resorts to a third party and CPH is aware, or Crown Resorts has notified CPH, that such disclosure would constitute such a breach.

14.5 **Destruction**

On termination of this Agreement, and subject to any terms of this Agreement to the contrary, a Party must, if requested in writing by the other Party:

(a) return to the requesting Party all documents and other materials containing, recording or referring in any way to the Confidential Information of the requesting Party; and

(b) erase or destroy in another way all electronic and other intangible records containing, recording or referring to the Confidential Information of the requesting Party,

which are in the possession, power or control of the Party or of any person to whom the that Party has given access.

14.6 **Continuation**

The obligations under this clause continue after a CPH Executive has ceased to provide the Services and after the termination of this Agreement.

62 It is apparent that CPH decided that it was entitled to disclose Crown's Confidential Information to Melco during the negotiations in respect of the Share Sale Agreement referred to in the next Chapter. The CPH Parties contended that this entitlement was recorded in clause 14.4(b) of the Services Agreement which provided that:

> The parties agree that, subject as set out in clause 14.4(c), CPH may use such Confidential Information of Crown Resorts for its own purposes.

63 Clause 14.4 (c) provided relevantly that:

> (c) CPH may disclose such Confidential Information of Crown Resorts to third parties, provided that:
>
> …
>
> (iii) the disclosure of such Confidential Information does not constitute a breach of a confidentiality or secrecy obligation owed by Crown Resorts to a third party and CPH is aware, or Crown Resorts has notified CPH, that such disclosure would [not] constitute such a breach.

64 It is clear that clause 14.4(c) of the Services Agreement has within it a typographical error in that the word "not" should be inserted in the last line of sub- paragraph (iii) before the words "constitute such a breach" as contained in the square brackets in the clause extracted above.

65 Even if one accepts for the purposes of this discussion that such disclosure is not necessarily connected to the provision of Services under the Services Agreement, the proviso evidences that the parties intended that Crown would be made aware of the disclosure so that it could consider whether its own arrangements in respect of either confidentiality or secrecy obligations with other parties were affected by CPH's intended disclosure "for its own purposes".

66 It may be argued that it was unnecessary to inform Crown of the intended disclosure if CPH formed its own view that such disclosure would not place Crown in breach of its confidentiality or secrecy obligations to its third parties. It may also be argued that such a construction should not be favoured because of the significance to Crown where CPH is using the information "for its own purposes" irrespective of the

interests of Crown; and that it was intended that disclosure to Crown would occur concurrently with CPH considering the prospect of such a breach itself.

67 Additionally, the CPH directors who were concurrent Crown directors, Mr Johnston and Mr Jalland, claimed quite adamantly that they were only operating in the Share Sale Agreement negotiations as CPH directors. Even if that is accepted, it does not appear that CPH formed a positive view in accordance with clause 14.4(c) that the disclosure would not constitute such a breach by Crown. Indeed as discussed in the next Chapter, the lengths to which CPH went to claim that it held the benefit of the letter to Melco "on trust" for Crown and could enforce it on behalf of Crown suggest that it did not form such a positive view.

68 This construction of clause 14.4(c) of the Services Agreement has not been the subject of debate but is referred to for the purpose of highlighting the complexities to Mr Johnston's multiple concurrent obligations and yet a further justification for the Chairman's decision on 21 October 2020 to terminate both the Services Agreement and the Controlling Shareholder Protocol, the provisions of which are discussed later in this Chapter.

69 The arrangements under the Services Agreement included provision of Services by Mr Johnston who was both a CPH director and a Crown director. The problem was that it involved him in the provision of services at a management or operational level which would create problems in the future. These matters are discussed later in this Report.

Attempts to reduce debt

70 Since late 2015 Mr Packer had earnestly been pursuing a plan for the CPH Group to significantly reduce its debt levels.

71 Various asset sales by CPH in the period to 2017 resulted in a significant reduction in the portfolio diversity of the CPH Group. By late 2017 the CPH Group's shareholding in Crown represented approximately 83 per cent of the CPH Group's gross assets.[55]

Mr Packer returns to the Board in 2017

72 After the Crown employees were arrested in China in October 2016 further changes were made to the structure of the Crown Board.

73 On 10 January 2017 Crown issued an ASX Media Release announcing that Mr Rankin would be stepping down as Chairman of Crown effective from 1 February 2017 at which point Mr Alexander would replace Mr Rankin as Executive Chairman.[56]

74 This change involved Mr Alexander taking on the dual role of Chairman and CEO of Crown, a position that would cause further problems for the Company in its resistance to the advice of proxy advisers that such a structure was inconsistent with corporate best practice.

75 Mr Alexander understood Mr Rankin's departure was because "the major shareholder thought that a change needed to be made" and that Mr Packer blamed Mr Rankin for the China Arrests and "he was obviously very disappointed about – by what happened".[57]

76 Mr Packer's view that Mr Craigie was also to blame for the China Arrests was a factor in Mr Craigie's decision to leave Crown around the same time.[58]

77 Crown's Media Release dated 10 January 2017 included the following:[59]

> In addition, James Packer has been appointed as a director of Crown Resorts, following the receipt of a nomination by Consolidated Press Holdings Pty Ltd (CPH), the major shareholder of Crown Resorts. Mr Packer's appointment as a director of Crown Resorts is subject to the receipt of all regulatory approvals (if any).

78 On 18 May 2017 Crown issued an ASX Media Release updating the market on the appointment process for Mr Packer, announcing that:[60]

> All necessary regulatory approvals for the appointment of James Packer as a director of Crown Resorts Limited have now been received. Mr Packer's application for appointment as a director will be considered by the Crown Resorts Board at its June or August board meeting.

79 On 3 August 2017 Crown issued a further ASX Media Release announcing that "the appointment of James Packer as a director of Crown has become effective today following the receipt of all necessary consents and approvals".[61]

80 Mr Johnston understood Mr Packer's return to Crown's Board was motivated by the China Arrests, as "it was considered appropriate that Mr Packer came back on the Board to have an appropriate degree of influence."[62]

Mr Packer resigns from the Crown Board in 2018

81 On 21 March 2018, Crown issued an ASX Media Release announcing that Mr Packer had resigned as a director for "personal reasons".[63]

82 On the same day, Mr Packer also resigned as a director of various other entities within the CPH Group of companies.

83 A CPH spokesperson announced that Mr Packer was suffering from mental health issues and he intended to step back from all commitments.[64] It was also reported that

Mr Packer was "believed to be in the United States where he is receiving help for depression and anxiety".[65]

84 Within a few months of the public announcement of Mr Packer's resignation from Crown's Board in 2018, CPH and Mr Packer personally "began to receive approaches from entities expressing interest in some form of transaction to acquire an equity interest in Crown".[66]

A proposal for amendment to the Services Agreement

85 On 23 August 2018 Mr Johnston, as a director of CPH, wrote to Mr Barton proposing that as Mr Packer had resigned as a director of Crown and CPH, it would be in the interests of both companies to agree to a minor amendment to the Services Agreement to allow Crown to continue to provide its confidential information to Mr Packer "as it has done in the past".[67]

86 Mr Johnston proposed that the Services Agreement should be amended to include Mr Packer and could be effected by signing the letter in which it was noted that Mr Packer: (i) had resigned from Crown and CPH boards; (ii) remained the controlling shareholder of CPH which "effectively is the controlling shareholder" of Crown; and (iii) had been provided with confidential information about Crown in the past either because he was a director of Crown or because of his position with CPH.

87 Mr Johnston proposed that Crown and CPH would agree from the date of the signing and returning of the letter of 23 August 2018 that: (i) Crown would continue to provide Mr Packer with confidential information about Crown; (ii) such information would be provided to Mr Packer as the controlling shareholder of CPH, the major shareholder of Crown; (iii) whereas Mr Packer could use such information for his own purposes, the disclosure of it (whether by Mr Packer or CPH) could only be made subject to clause 14.4 (c) of the Services Agreement; and (iv) CPH would ensure that Mr Packer complied with the terms of the Agreement in the letter and would indemnify Crown in respect of any loss or liability it suffered as a consequence of Mr Packer breaching the terms of the Agreement with regard to such information.

A different Proposal

88 On 19 September 2018 the Remuneration Committee (Mr Dixon, Professor Horvath, Mr Mitchell and Ms Manos; with Messrs Alexander, Barton and Johnston present as invitees) resolved that after "careful consideration" of the CPH proposal to amend the Services Agreement it was decided that "rather than amending the Services Agreement, it would be preferable for a standalone 'Controlling Shareholder Protocol' to be established which does not link the sharing of information with the provision of services".[68]

89 On 14 October 2018 Mr Johnston advised Mr Packer by email that CPH and Crown were to enter into a "protocol" to which he was not party and that CPH was required to seek his confirmation that he would keep confidential all Crown's confidential information that he received "similar to the obligation that Crown Resorts directors have and the obligations imposed on CPH under the Services Agreement". Mr Johnston advised Mr Packer that it would suffice if he would reply to the email "I undertake to keep all Crown Resorts' confidential information confidential". On 15 October 2018 Mr Packer responded in those terms.[69]

90 On 15 October 2018 Ms Manos wrote to the Remuneration Committee members referring to the discussion at the previous meeting in relation to the adoption of a "formal Shareholder Protocol" between CPH and Crown which "primarily regulates the sharing of information with James Packer" and attaching a version of the Shareholder Protocol which had been through several iterations and was now in a form satisfactory to CPH.[70] Ms Manos advised the Committee members that the item had been added to "other business" for the Board Agenda for October because it was "appropriate that this arrangement be brought to the full Board's attention". Ms Manos also advised that CPH had obtained an "undertaking" from Mr Packer that he would keep Crown information confidential.

91 On 16 October 2018 Professor Horvath advised Ms Manos, with copies to the other Committee members and including Mr Alexander, Mr Barton and Mr Johnston that he would "support" the proposal. However, he suggested there be a "quick phone hook-up" because "this is a possible contentious issue at the Board".[71]

92 On 31 October 2018 the Crown Board met and noted that the Nomination and Remuneration Committee had recommended that it approve entry into the Controlling Shareholder Protocol. The Board received advice from Ms Manos that when Mr Packer ceased to be a director of Crown, it was no longer able to provide him with confidential information and that it was proposed that Crown enter into the Controlling Shareholder Protocol "to regulate the sharing of Company information with CPH and Mr Packer". The Board resolved that it was in the "best interests" of Crown to adopt and enter into the Controlling Shareholder Protocol.[72]

93 The Controlling Shareholder Protocol (Protocol) was executed on 31 October 2018. Mr Jalland and Mr Johnston executed the Protocol on behalf of CPH. Ms Manos and Mr Alexander executed the Protocol on behalf of Crown.[73]

Controlling Shareholder Protocol

94 The purpose of the Protocol was "to establish a general guide for the sharing of information" by the Crown Board and management "with CPH and the ultimate owner of CPH, James Packer".[74]

95 The Protocol recorded that Crown was "committed to responsible corporate governance, including compliance with laws and regulations" governing its relationship with its controlling shareholder, CPH.[75]

96 The Protocol included the following:

> ***Relationship with Services Agreement, constitution and policies***
>
> 1.4 Nothing in this protocol affects the operation of the Services Agreement dated 1 July 2016 between the Company and CPH (**Services Agreement**). In particular, but subject to paragraph 1.5, clause 14 of the Services Agreement prevails over this protocol to the extent of any inconsistency.
>
> 1.5 To the extent this protocol deals with the provision by the Company of Confidential Information to James Packer, this protocol prevails to the extent of any inconsistency with clause 14.
>
> 1.6 This protocol is intended to operate alongside and is to be read together with, the Company's Board Charter, Code of Conduct for Directors and Code of Conduct for Employees. For the avoidance of doubt, the disclosure of Confidential Information in accordance with this protocol has been authorised by Crown and applies despite clause 2.5 of the Code of Conduct for Employees.

97 The defined terms in the Services Agreement were imported into the Protocol.[76] The Protocol includes the following:

> **2. Controlling Shareholder Protocol**
>
> ***Board decision-making***
>
> 2.1 The Company acknowledges that its directors can act in the interests of CPH as the controlling shareholder, where to do so would be in the interests of the Company or its shareholders as a whole. The duty of the Directors to act in the best interests of the shareholders as a whole includes having due regard to the interests of CPH as the controlling shareholder.
>
> …
>
> 2.3 **Considerations for the disclosure of confidential information**: The Company acknowledges that each Director or officer is therefore required to act carefully before revealing information of the Corporate Group to anyone else (including CPH) and must consider, among all other relevant matters:
>
> (a) **Best interests**: whether disclosure is in the best interest of the Corporate Group, which will often involve a consideration of whether the recipient has a genuine need to know to perform some duty or role for the Corporate Group;

(b) **Detriment or benefit**: whether disclosure will be to the Corporate Group's detriment or someone else's benefit;

(c) **Improper**: whether disclosure is 'improper'; and

(d) **Breach of confidence**: whether disclosure would breach an obligation of confidence owed by either the Director or officer or the Corporate Group to someone other than the Corporate Group.

Disclosure to CPH where benefit to the Company

2.4 Notwithstanding the above, the Company recognises that in certain instances it may be appropriate to disclose information to CPH and to James Packer as the ultimate controller of CPH if disclosure would benefit the Company and not benefit CPH in any capacity other than as a shareholder of the Company.

98 The regime requiring Crown's directors and officers to act "carefully" before revealing the information to CPH or to Mr Packer imposed on those directors and officers an obligation to consider all relevant matters, but in particular those matters identified in clause 2.3. The Protocol specifically allowed the directors and officers of Crown to provide "price sensitive" or other sensitive information to CPH or Mr Packer in certain necessary circumstances, the examples of which were "regulatory reasons, compliance reasons or to comply with CPH's own private requirements".[77] In those circumstances, the parties to the Protocol agreed to a procedure with respect to price sensitive or other sensitive information. That procedure was as follows:

2.8 It is agreed that:

(a) the Corporate Group [Crown and its subsidiaries] may disclose Confidential Information to:

(i) CPH while it is a substantial shareholder of the Company and the Directors include two or more persons who have been nominated for election to the Board by or on behalf of CPH;

(ii) CPH Executives for the purposes of allowing the CPH Executives to provide services to the Company;

(iii) a CPH Executive who is a director of the Company or a member of any Company Board or committee; and

(iv) James Packer where:

(A) he owns or controls CPH and where disclosure of the Confidential Information is permitted to CPH under paragraph (a)(i); and

(B) he has provided an undertaking to CPH to maintain the confidentiality of the Confidential Information;

(b) CPH may disclose Confidential Information acquired from the Corporate Group to James Packer where disclosure by the Corporate Group is permitted under paragraph (a)(iv).

(c) The Company may also disclose Confidential Information to any person to whom CPH is permitted to disclose Confidential Information under clause 14 of the Services Agreement or paragraph (b).

2.9 The procedures do not displace but instead are intended to be read together with clause 14 of the Services Agreement but, subject to clause 1.5 of this protocol, the Services Agreement prevails to the extent of any inconsistency.

99 There were certain authorised representatives who were able to provide the confidential information who had the following important obligation:

2.12 In all circumstances, prior to the disclosure of Confidential Information, the Company requires each Authorised Representative to assess the Confidential Information request and to be satisfied that the disclosure of Confidential Information would be appropriate, having regard to this protocol.

100 CPH provided an undertaking to keep the information confidential and also to enforce any undertaking provided by Mr Packer to CPH.[78] The Protocol also included the following:

Inside information

2.15 The insider trading provisions in Division 3 of Part 7.10 of the Corporations Act and similar provisions in other jurisdictions and directors' statutory and fiduciary duties not to make improper use of their position or of corporate information can give rise to both criminal and civil liability for not only the person that acts on inside information but also the person who provides the inside information. Confidential Information may include inside information. Accordingly:

(a) **Obligations of CPH, CPH executives and James Packer**: CPH, each CPH Executive and James Packer must not whilst they or any of them are in possession of inside information in relation to the Company or the Group, do anything which would be reasonably likely to contravene section 1043A(1) or (2) of the Corporations Act; and

(b) **CPH direction obligation**: CPH must direct each officer, employee, agent, contractor or legal or other professional adviser of CPH or of a related body corporate of CPH who may possess or be given any inside information in relation to the Company or the Corporate Group

> not to do anything which would be reasonably [understood] to contravene section 1043A(1) or (2) of the Corporations Act.

101 CPH indemnified Crown and its subsidiaries and each director and other officer against all losses and damage and claims incurred as a result of any breach by CPH or Mr Packer of any obligation of confidentiality under the Protocol.[79]

102 The Protocol was to be read in a manner that was consistent with Crown's Corporate Governance Policies and other Charters and its content was to be kept confidential. The Protocol applied until the Crown Board resolved that it ceased to apply.[80]

Communications under the Protocol

103 Following the execution of the Protocol, Crown's confidential information was regularly provided to Mr Packer by numerous people. This included Mr Alexander, in his capacity as Crown's Executive Chairman; Mr Barton, in his capacity as Crown's Chief Financial Officer; Mr Felstead, in his capacity as Chief Executive Officer of Australian Resorts; and Mr Nisbet, in his capacity as Crown's Executive Vice President of Strategy and Development.

104 Information was also provided to Mr Packer by Mr Demetriou in his capacity as a Crown director.

105 Mr Alexander regularly provided high level information to Mr Packer in meetings and by email on topics including trading results and financial forecasts, his proposed initiatives as Executive Chairman and considerations at Board meetings.[81]

106 Mr Barton provided financial reports to Mr Packer on an almost daily basis from the time the Controlling Shareholder Protocol was executed.[82] That included the provision of EBITDA reports, monthly management accounts and financial forecasts.

107 Mr Felstead provided regular reports to Mr Packer on the Tables business in Melbourne and Perth as well as updates in relation to the VIP International business.[83]

108 Mr Nisbet provided reports to Mr Packer on Crown's development projects, including construction and sales data in connection with the Barangaroo Casino as well as litigation updates and new investment sources.[84]

109 Mr Demetriou provided reports by email to Mr Packer on what occurred at Board meetings.[85]

110 In addition to the receipt of this information, Mr Packer was also provided with confidential information concerning Crown by one of CPH's nominees on the Board of Crown, Mr Johnston.[86]

111 It is appropriate at this juncture to review some of the communications that occurred purportedly under the Controlling Shareholder Protocol with Mr Packer.

112 In an email to Mr Alexander dated 21 November 2018, Mr Packer wrote:[87]

> I don't believe Ken's FYF [Financial Year Forecast]. Can you pls ensure that you have been through and believe the numbers are being brought to me in Aspen.

113 Mr Packer expected Mr Alexander to ensure that he had been through the numbers before he took them to him in Aspen.[88] Mr Alexander agreed that this email from Mr Packer could be considered an instruction.[89]

114 In an email to Mr Barton dated 23 November 2018, Mr Packer wrote:[90]

> I know Mike has spoken to you about preparing a downside plan for me.
>
> I don't believe your FYF [Financial Year Forecast] and am sick of always missing budgets and being unlucky in VIP.
>
> Please prepare something for me that I can bank and can look at the net debt levels at through a conservative downside prism.

115 Mr Barton replied to that email advising Mr Packer, "Yes, Mike and I have spoken and I'll put together a full plan with a conservative downside scenario".[91]

116 Mr Packer's evidence in respect of this exchange was as follows:[92]

> Q. You expected Mr Barton to do what you had asked and prepare for you a conservative financial year forecast, didn't you?
> A. Well, that was Mr Barton's job.
>
> Q. Yes. But you were asking him to prepare something for you that you could bank; correct?
> A. Those are the words in the email, Mr Bell, so yes.
>
> Q. Yes. And you expected Mr Barton to do that, didn't you?
> A. Yes

117 The distinct impression one is entitled to take from this exchange is that Mr Packer perceived that Mr Barton owed him, rather than Crown, an obligation to do his "job". Mr Packer had only recently departed from the Crown Board where he was entitled to require Mr Barton to do his "job" rather than from the position in which he found himself in November 2018.

118 However Mr Packer was not merely requesting that Mr Barton provide him with confidential information, in this case, a financial plan, which Crown had already prepared in the ordinary course of business based on the independent financial

expertise and forensic judgment of Mr Barton and other Crown employees. Rather, Mr Packer was issuing an instruction to Mr Barton to not only specially prepare that information, but also to do so in accordance with the conservative parameters he had specifically identified.[93]

119 This was not the only occasion during his evidence that Mr Packer made such an observation about Mr Barton's role. In an exchange in relation to an email in May 2019 referred to later in this Chapter in relation to some confidential figures provided to Mr Packer at the time of the Melco transaction, Mr Packer gave the following evidence:[94]

> Q. I'm not suggesting you would have used the figures to determine the price, but no doubt these figures would have been of interest to you in assessing that price, would they not?
> A. Not really.
>
> Q. Can we have a look at exhibit ---
> A. I think I was over the numbers ---
>
> Q. Sorry?
> A. I was going to say I think I was over the numbers better than Mr Barton was.
>
> Q. Well, if that's the case, why did you ask him for a financial forecast that he believed in?
> A. Because it's his job.
>
> Q. But his job wasn't to tell you things. His job was to work for Crown.
> A. No, his job Madam Commissioner, there was a budgeting process that was done at this time every year and so I was curious - I was curious about that. I—
>
> Q. I understand you were curious, but his job was as CFO of Crown, was it not?
> A. Yes, Madam Commissioner.

120 This evidence reinforces the reasonableness of the impression to be gleaned from Mr Packer's evidence that he regarded Mr Barton as having a "job" to report to him and to do as he asked of him, rather than leaving it to Crown's officers to require Mr Barton to perform his obligations for Crown. It is clear that Mr Packer had been so used to his immersion in the machinations of the Crown business that it was but second nature to him to require the same level of information that he had been used to receiving as a director to make judgments about Crown's financial position on a daily basis and to demand better from those officers who were managing, or at least attempting to manage, its financial position.

121 In an email to Mr Alexander dated 27 November 2018, Mr Packer wrote:[95]

> Dear John,
>
> I understand you are on a world trip looking at restaurants.
>
> As the restaurants were supposedly locked in when I last saw you this seems excessive to me. We have trading questions to answer and all hands should be on deck and head office costs kept to a minimum.
>
> And do we need an overall cost cutting plan to immediately implement including travel plans for our executives?

122 Shortly thereafter Mr Alexander replied in the following terms (adjusted for clarity):[96]

> Thanks for this. Firstly, it's not a world trip: I am with Peter Crinis and we will be in NY and London briefly to close out to restaurant deals: the omikase inside Nobu (NY) and the fine diner (Level 24) in London. Yes, the concepts are all locked in but not the actual deals. This is pressing because the designs for all have to be done by early next year. The Italian restaurant deal will be signed next week, Nobu is agreed in principle as you know but design (the designer who did Malibu and Houston) is due in Sydney early in the New Year, the steak and fish is done (design virtually complete) and the all-day restaurant design done but we have to finalise and because Guillame has all sorts of competing issues. All I am trying to do is give you something to [be] proud of and something that works, especially in a destinations sense. [I]t's not something that I have to do but frankly, it simply wasn't happening and Todd is chasing final designs and operators. In terms of the unacceptable trading results yes, all hands should be on deck; mine are but you have a scoreboard attendant culture at Crown and precious little proactively. You should recall our conversation around budget time when I told you [I] wasn't happy with the budget because we were going backwards (as [were] at least 3 other directors) but we let it pass. And I was also told not to upset Barry and Ken, love them dearly but there has been [no] proactive response to the budget shortfalls. Which obviously, belatedly, has to change. You will get a FY forecast which will be at least $10 million below the previous. Leaving VIP to one side, the main problem is premium tables in both Perth and Melbourne and in the latter, spend per visit rather than visitation which is up. In Perth, you need a new operating model across the entire business because the revenue model is going to be under stress for the foreseeable future. In terms of reacting to the new forecast, I have already signalled no STIs which equate to circa $14 million. It won't be enough. Yes travel is obvious but I need the authority to control across the company, along with everything else. Maybe we should start with Aspen and do it via teleconferencing although I suspect you will want the personal contact. We should also table not just cuts, including staff, but salaries. But once we do this, Kumbaya is over.

123 Mr Packer replied to Mr Alexander's email as follows:[97]

> Let's be very clear hitting the numbers is more important to me than Crown SYDNEY. If we don't hit the numbers I won't be here as a shareholder and Crown SYDNEY will just be an apartment to me. I will sell the company.
>
> I do recall in Aspen saying I was happy with the budget numbers presented (which I was assured would be hit).
>
> Anyway I am over being captain good guy to everyone. Go hard my friend you have my blessing.

124 Mr Packer gave the following evidence in relation to this exchange:[98]

> Q. So Mr Alexander was raising with you a significant question of whether he should proceed with cost-cutting measures including staff and salaries, and he also referred to short-term incentives; do you see that?
> A. Yes.
>
> Q. And this was a significant management decision which Mr Alexander was raising?
> A. I would say Mr Alexander was proposing.
>
> Q. Yes. And, in your email, you were telling him that he had your blessing to do that, to implement those cost-cutting measures; correct?
> A. I agreed with his proposal. Yes.
>
> Q. Yes. And you expected Mr Alexander to act on what you said and implement those cost-cutting measures, didn't you?
> A. I expected Mr Alexander to act on what he said and what I agreed with –
>
> Q. You expected –
> A. --- and implement those cost-cutting measures.
>
> Q. Yes. You were giving him your blessing to implement cost-cutting measures, he having sought it; correct?
> A. Correct.

125 This exchange demonstrates the depth of Mr Packer's involvement in very important decision-making affecting both the operations of the Company and its employees and officers notwithstanding the fact that he had departed from the Crown Board and held no position with Crown at the time. Notwithstanding Mr Alexander's obvious commercial resilience over years of exposure to hard-nosed business operators, this exchange exposed a rather surprising element of subservience to Mr Packer. This is evidenced in part by his plea that he was only trying to give Mr Packer "something to

be proud of" combined with his "proposal", as Mr Packer described it, for Mr Packer to approve the implementation of cost-cutting measures to both staff and salaries.

126 It is also clear that Mr Alexander had been directed to ensure that he did not upset Mr Felstead and Mr Barton, even though it is clear that he took the view that they were not responding appropriately to the budget shortfalls. Thus his reference to "Kumbaya" (harmony and/or unity); Mr Packer's obvious preferred position at least with Mr Felstead and Mr Barton vis-à-vis Mr Alexander. An environment that Mr Alexander warned Mr Packer would be over if the cost cutting measures proposal was approved by him.

127 This was not simply a major shareholder proffering advice or views about commercial operations. The irresistible conclusion from this presentation is that Mr Packer was deeply involved in managerial manoeuvring and significant decisions of the Company.

128 On 5 December 2018, Mr Packer wrote to Mr Barton in the following terms: [99]

> Hi Ken,
>
> Another bad day … When are you going to have the downside plan for me? Thanks Ken, for working hard on all this, in difficult times.

129 On 11 December 2018 Mr Demetriou wrote to Mr Packer as he had promised he would give him feedback after the Board meeting. He suggested that they were behind budget because of the poor September and that the company was down primarily in one area, being Tables. He advised that although traffic was at normal levels, the "spend" was down; VIP was seen as "steady" with "machines up", but with "tables struggling". Mr Demetriou observed that there was definitely a lack of "confidence" in the market and made some observations about the reasons for that. However, he advised that there was no evidence to support any reputational damage, but suggested rather that the issue was "Tables".[100]

130 Mr Demetriou also observed that during the previous 18 months, Management had to contend with a number of matters, including a VCGLR audit, the "China fallout, settlement with Staff, Class Action" and an AUSTRAC investigation. He made the observation that Crown was at risk of being like the Australian Cricket Team "Timid, reactionary. Not bold or aggressive".[101] He also made the observation that he believed that they had the right team with Mr Alexander, Mr Nisbet, Mr Felstead and Mr Barton "to lead the charge".[102]

131 On 12 December 2018 Mr Felstead reported to Mr Packer that there was "a lot of work into cost savings" across both Melbourne and Perth. There was also the reduction of

Table open hours in both properties. Mr Felstead also reported on the main revenue projects that were being reviewed in both Melbourne and Perth.

132 By 9 January 2019 Mr Barton reported to Mr Packer that the two local business forecasts were in line with current results and assumed "no major uplift" for the year ahead. He also reported that "VIP volumes" had been "a bit soft recently", but that he was hopeful for a better year ahead. He referred to cost savings of around $23 million and advised that he was looking for further savings to ensure that the target of $860 million FYF were "hit".[103]

133 On 9 January 2019 Mr Felstead reported to Mr Packer that the main issue in the business, both in Melbourne and Perth, is "International where volumes have slowed in recent times". He advised that they were looking for Board approval to re-engage activities in Singapore and Malaysia with the hope that prior to the Lunar New Year, one large customer arriving later in the month would assist with their business from "in house junkets". Mr Felstead also reported that Ishan (Mr Ratnam) would be travelling extensively from 17 January "to chase business".[104]

134 On 1 February 2019 Mr Packer asked Mr Felstead whether he had any thoughts beyond the obvious, having regard to the fact that January had been "terrible".[105] Mr Felstead responded agreeing that January was a "shocker" with the main disappointment being "VIP where we have seen very low volumes across both Melbourne and Perth". However, he reported that as they were getting closer to Lunar New Year, they were expecting some "decent players".[106]

135 Mr Felstead also reported that the Mahogony "high end local overall" was still a concern as they were "not seeing our very top end Chinese locals playing to the levels they were playing at last year". He then discussed the prospect of some promotion of happy hour type of events to stimulate visitation. He also reported on the continual challenge in Perth with more and more venues closing down due to the economy.[107]

136 On 5 February 2019 Mr Barton reported to Mr Packer in relation to the current thinking that "following the very poor January in both local businesses and continuing softness in VIP volumes particularly out of Macau/China, our forecast will come down from the $860m". Mr Barton also reported that International had been "very patchy" and that from all reports the "VIP market is getting harder in all the major regions particularly Macau and China". He advised that the comprehensive reforecast for VIP indicated that the company would be down around $15 million to $18 million on the current forecast across both properties.[108]

137 In an email to Mr Barton dated 12 February 2019 Mr Packer wrote:[109]

> Ken can you please prepare/show me the latest financial plan that goes out FY22. Make it conservative as I am getting angry with always missing our plans.
>
> I'm around till Thursday mid-morning

138 Mr Packer agreed that he expected Mr Barton to provide him with a conservative financial plan that he had requested by Thursday mid-morning or to "get in touch with me".[110]

139 On 25 February 2019 Mr Packer expressed some concerns to Mr Alexander as to why Star and Sky City were doing so well in the local business when Crown was doing "so badly".[111] On the same day, Mr Alexander responded by indicating that the gap was in "international" because of the deferral of visits from Crown's top two players. He advised Mr Packer that they would be spending a lot of time "finding out any other learnings" and that "at least the strength of their tables business bodes well for Barangaroo".[112]

140 On 28 February 2019 Mr Johnston and Mr Barton wrote a joint email to Mr Packer referring to the "weaker than expected results in January and February" and advising that they had completed a "full reforecast for the balance of F19 ". They also advised that the F19 EBITDA was "now forecast at $802m, down from the previous $834m". That email included the following:[113]

> In addition, a reforecast has been done on the expected volume from the VIP business and again the forecast for the remainder of the year assumes the current level of activity continues for the remainder of the year.
>
> A summary of the changes from the previous forecast is included in the attached pack.
>
> We are in the process of preparing a forecast to F22 on the basis of the new F19 forecast. The basis for the forecast is that the current market conditions continue through the plan period and the only improvements above the current rate occur through known initiatives where completion is within our control.
>
> We will also highlight other potential upsides on both revenues and costs that are in the process of being worked up and potentially incorporated into the base plans going forward.
>
> Happy to take you through F19 when it suits you and we will be sending through the F20-22 planned by the end of next week.

141 On 1 March 2019 Mr Packer wrote to Mr Barton in the following terms (adjusted for clarity):[114]

> Ken I think all of you have had your heads in the sand this year.

> We never meet our plans and I'm sick of it. Make sure for your own sake that we achieve the FY 20 plan.

142 On 2 March 2019 Mr Packer wrote again to Mr Barton with copies to Mr Alexander and Mr Felstead in the following terms:[115]

> Sorry Ken I meant everyone.

143 Mr Packer was asked about the use of the expression "for your own sake" in this exchange. He gave the following evidence:[116]

> Q. You were making a threat to the senior executives of Crown Resorts, weren't you?
> A. No, I was saying that I expected them to hit their budgets. I was frustrated because I had been saying ---
>
> Q. Sorry to cut you off.
> A. I was frustrated - I was frustrated because I had been saying for a good part of the previous financial year that people were being too optimistic and bad news kept on flowing in slowly.
>
> Q. You were making it clear to the senior executives, Mr Johnston, Mr Alexander, Mr Felstead and Mr Barton, that you expected the forecasts to be met or there would be consequences. Is that a fair way of putting it?
> A. I'm not sure. I might have just been being dramatic.
>
> Q. You certainly expected these executives to ensure that they made the financial year '20 plan. You were making that abundantly clear; do you agree?
> A. Yes, Mr Bell.
>
> Q. And I've shown you a number of emails now. You expected the senior executives to carry out the instructions which you were giving them this time, didn't you?
> A. I think the only instructions I was giving them was to hit their budgets.

144 The language employed by Mr Packer reflects aggressive expectation and entitlement and properly characterises Mr Packer's communications as instructions, not mere requests for information or the giving of "advice".

145 The force of Mr Packer's instruction is emphasised with his reference to his anger. CPH's submission that this exchange merely reflected Mr Packer's "deep commitment to the business and its success, for the benefit of all shareholders (including himself)" does not ameliorate the substance of the communication as one which reflects an instruction upon which Mr Packer expected Mr Barton to act.[117] This communication goes well beyond the manner in which CPH sought to characterise it

as a simple reminder "that the CEO of a company should meet budgets which had been set".[118]

146 It is apparent that in early 2019 there were approaches and negotiations in respect of some form of sale of CPH's interest in Crown. On 13 March 2019 Mr Alexander wrote to Mr Packer referring to some recent meetings that he had with UBS and advising that further meetings were planned the following week in Los Angeles. Mr Alexander advised Mr Packer that he would try to ring him the following day because he preferred "minimal emails".[119]

147 On 22 March 2019 Wynn Resorts made a non-binding indicative proposal to merge Crown and Wynn.[120] Crown responded to that proposal on 26 March 2019 advising that it would not be in the best interests of Crown shareholders to progress Wynn's proposal in its then current form because of its deficiencies in relation to "valuation, structure and level of conditionality".[121]

148 A number of emails between Mr Packer and Mr Alexander as the Wynn transaction was being negotiated clearly reflect Mr Packer taking a prominent, proactive role in shaping the course of a major business decision. In this case, one which could have led to an alteration of the entire capital structure and strategic direction of Crown.

149 There was also communication between Mr Packer and Mr Demetriou in respect of this important proposed transaction. On 5 April 2019 Mr Packer informed Mr Demetriou that Wynn's latest offer was one that he thought should be accepted, and advised as follows:[122]

> As the 46% controlling shareholder I have thought long and hard about this. Our business is not growing, in fact it's going backwards and that's not good enough when we've spent the Capex we have.
>
> We have to get rid of all the senior management (including JA) if we want to stand alone and I don't want to do that.
>
> W is the best casino brand in the world and it's a compliment that they think our properties are compatible.
>
> I've run or watched over Crown for 20 years and I believe we should sell.

150 Mr Packer invited Mr Demetriou to give him his thoughts and to make sure that he spoke to Mr Jalland when he got to Melbourne the following week for the Crown Board meeting.[123]

151 Mr Demetriou responded promptly on the same day advising that he had not seen the latest Wynn offer, but understood that it may be provided at the Board meeting. He advised Mr Packer that he had "absolute confidence" that the Crown Board would

consider everything before it and make the right call. He also made the rather fawning commitment to serving the best interests of Crown "and most importantly, you."[124]

152 In an email to Mr Packer dated 7 April 2019, Mr Alexander wrote referring to his previous conversation with Mr Matthew Maddox, CEO of Wynn:[125]

> Hi James,
>
> Just tried to call … spoke to Matt, all good, understand the need to clarify structure, need to ensure price certainty as much as possible, understood the need to preserve price for a scheme meeting which could be in a year's time, agreed the advisers/bankers should start immediately on solution/s and will come back before our board meeting on same, ideally with answers we can live with.

153 In an email of 8 April 2019, Mr Packer informed Mr Alexander that he had spoken with Mr Maddox concerning the negotiations with Wynn.[126] These negotiations were "leaked" into the public domain and Mr Packer and Mr Alexander then engaged in further email exchanges on 9 April 2019 in relation to what Crown should do in the circumstances.[127]

154 There was an article in the press in "Street Talk" which Mr Packer saw and suggested to Mr Alexander that it probably meant that they had to "publicly reply".[128]

155 Wynn made an announcement to the market that the negotiations with Crown had been made public and that it had withdrawn from any further negotiations.

156 On 11 April 2019 Mr Alexander wrote to Mr Packer advising that he was just "dealing with the fallout from the leak and cancellation of offer". He continued:[129]

> This will pass shortly. Have not [heard] further from Matt, but will wait until the Boston decision comes down before further contact. Lloyd finding out more about the Macau component…which is critical to any go forward…

157 These emails reinforce Mr Packer's expectation, with which Mr Alexander complied in his continued engagement with Mr Packer as the transaction evolved, that he be actively involved in the negotiations with Wynn and the decisions to be made by Crown in relation to Wynn's takeover proposal. It is apparent that Mr Packer was in fact playing an active role in the negotiations by speaking directly with Wynn's CEO.

158 On 22 April 2019 Mr Felstead wrote to Mr Packer about the "tough year to date". He expressed the view that he was happy with the local main floor machines and that they had also "gained solid market share from pubs and clubs". He advised that the only positive was that the international variance to "theo" [theoretical] was "well

under control" although tables and food and beverage in Melbourne had been very soft.[130]

159 In May 2019 after the Wynn negotiations had been terminated Mr Packer was approached by Mr Lawrence Ho and the negotiations began in respect of the purchase by Melco of CPH Crown Holdings' shareholding, or part thereof, as referred to elsewhere in the Report.[131]

160 On 3 May 2019 Mr Packer wrote to Mr Barton by email with a copy to Mr Alexander and Mr Johnston in the following terms:[132]

> Ken,
>
> Have you got a forward financial forecast that you believe in yet?
>
> I'm only interested till the end of 22.
>
> [If] the online business JA and you told me was so good goes broke do we still have to pay the last payable and for how much.
>
> Let's assume no more buy backs. I want to see what peak net debt is after we have paid for Crown Sydney 100%.
>
> James

161 On the same day Mr Barton responded to Mr Packer with copies to Mr Alexander and Mr Johnston:[133]

> Hi James
> In relation to the Financial Plan, the current timing is to have detailed business units plan information early in the week of May 13th. We should be able to review those and have an agreed Plan to you during that week. That will give us full P&L, cash flow and balance sheet to F22.
>
> DGN is currently cash break-even and is expected continue at that level. They are working on a new product that will be released mid next year. Any future payment is contingent on EBITDA in CY20 (6x multiple) so it will depend entirely on whether the current business performs and the new product is successful.
>
> Noted re the buybacks. With the new Plan numbers we will be able to highlight net debt through the Plan period including peak debt which will be just prior to Sydney opening and pre-completion of the apartment sales.
> Regards
> Ken

162 On 5 May 2019 Mr Barton forwarded the "Daily EBITDA" to Mr Alexander, Mr Jalland, Mr Johnston and Mr Packer with copies to Mr Felstead, Mr Nisbet, Ms Manos, Mr Arbib, Mr Bitar and Mr Ratnam.[134]

163 It is apparent that Mr Barton was not in a position until 17 May 2019 to provide a response to Mr Packer in relation to the Financial Plan that he sought on 3 May 2019. On this occasion Mr Barton wrote not only to Mr Packer, Mr Alexander and Mr Johnston but also to Mr Felstead, in the following terms:

> Hi James.
>
> We have a first cut of the Financial Plan that we've shared with JA, Mike and Brad. They would like a few days to review and give us comments so we should be in a position to take you through it next week.
> Regards Ken

164 On 21 May 2019 Mr Johnston wrote to Mr Barton, Mr Felstead, Mr Alexander and Mr Packer with a copy to Mr Kady in the following terms: [135]

> Guys
>
> I set out below some discussion points for our call this evening
>
> 1. I would take out reference to the 10 year CAGR 08-18 and reference the 5 year CAGR.
> 2. References to issues related to the change of Government should be removed and discussion on potential for improved sentiment added.
> 3. I think the revenue growth assumptions for FY21 and FY22 (currently assumed at 3.6% in each year) should be higher. The spend per customer in table games should be assumed to normalise again from there. Thus FY19 is only the base for FY20 not the whole plan.
> 4. VIP 1 Gaming machine growth should likewise be higher (currently assumed to be 8.5%) for FY 21 and beyond. What costs are assumed in Singapore and HK for this initiative (i.e. Employment costs for new sales staff).
> 5. For Perth (only) we should assume a more significant impact from the tap and go initiative for FY21 and beyond.
>
> Regards Mike

165 The Share Sale Agreement with Melco was executed on 30 May 2019 and is the subject of discussion elsewhere in the Report.

166 This transaction was, to put it neutrally, very controversial. None of the independent directors of the Crown Board were made aware of its imminence. They were only informed of the transaction after it had been executed.

167 There was a Crown Board meeting on 12 June 2019. The communications between Mr Packer and Mr Alexander continued. On that day Mr Packer wrote to Mr Alexander asking "Any news?". Mr Alexander responded as follows:[136]

> No. My friend, just finished a 4 hour Crown Resorts board meeting, all good. Formalised amongst other things the process to find a new CEO … independent directors have calmed down since your share sale, good in camera session at the end and nothing negative about Melco. Main immediate task, which is in the hands of our outside lawyers and management, is to get the commentary from the VCGLR draft report into China - Crown and board in and committees in clear - but some gratuitous commentary about Barry and Michael Chen, removed. We have until the end of the month to do so, and there is no certainty about whether the final report, or just a summary, will be released at all [by] the Minister. But we have to assume so. On a flight to Sydney right now, at Seven all day tomorrow for 3 board meetings. I'm then going to take a week's break, in Capri, with Alice before the new financial year starts. The independents want the fin plan resisted, which we will do; upwards, of course. I will keep you posted of anything significant, as always.

168 In this extraordinary exchange Mr Alexander was reporting on not only the content of what had occurred at the Crown Board Meeting but also what had occurred during an In Camera session of the Board with an indication that nothing negative had emerged about Melco from that session.

169 Mr Packer was not merely receiving confidential information but confidential information which should have remained secret to those who took part in the "In Camera" session. If it was important enough for the Crown Board to retreat into secrecy in such a session it is difficult to understand how there would be any justification for communicating, albeit in general terms, any content or outcome of discussions in that session. Clearly Mr Alexander felt comfortable enough to do so notwithstanding the fact that Mr Packer was not an appointed director of Crown. That comfort came no doubt from Mr Alexander's perception of Mr Packer's exquisitely close involvement in the management decisions of Crown.

170 This was just weeks before the media storm was to impact Crown's operations and this Inquiry was announced.

The contractual regime

171 The contractual regime that was put in place to share information with Mr Packer was carefully considered by the Crown Board and was a regime to which those involved in sharing such information should have adhered.

172 Each request for confidential information should have been the subject of consideration of the matters identified in clause 2.3 of the Protocol. Any disclosure to Mr Packer had to satisfy the requirement that it be in Crown's best interests with the consideration "often" whether Mr Packer had a genuine need to know of the information to "perform some duty or role" for Crown. Mr Packer did not have any particular duty or role that he was performing at the time that all of these communications took place. He had been specifically excluded from the definition of

CPH Executive in the Services Agreement. There was nothing in the Controlling Shareholder Protocol that suggested the appointment of Mr Packer to any particular "role" or to any imposition of any "duty" that he was expected to perform. Indeed the decision to adopt the Protocol rather than the Services Agreement was to ensure there was no link to the provision of any services by Mr Packer.

173 Other considerations that were required at the time that any confidential information provided to Mr Packer were whether the disclosure may be to Crown's detriment or to someone else's benefit and whether the disclosure was "improper".

174 There is no doubt that none of the individuals who were providing information to Mr Packer gave any thought to the requirements of clauses 2.3 and 2.4 of the Protocol. It was effectively 'business as usual'. Mr Packer made "time critical" requests and demands for information and if it was not provided within that time critical zone, he would follow up immediately to ensure the information was provided promptly.

175 His expressions of "anger" and the suggestions that the Crown officers respond to him "for your own sake" were not mere bombast. Mr Packer expected Crown directors and officers to comply with his instructions and requests. He took the view that he could remove individuals from their posts, for example, Mr Rankin. Mr Alexander's unchallenged evidence was that Mr Rankin's departure as Chairman was because Mr Packer at a time when he was not a Crown director "thought a change needed to be made". Another example is Mr Packer's communication with Mr Demetriou in which he suggested that if one particular course was adopted Mr Alexander would have to be removed and he did not wish to do that.

176 The irresistible conclusion from the evidence is that Mr Packer took the view and behaved in a manner consistent with the view that he was still in control of Crown. He was endorsing cost-cutting measures; he was demanding that financial plans met his requirements; and he was still deciding whether directors should stay in particular positions. He saw it as Mr Barton's "job" to comply with the requests that he made of him. He did not appreciate that his departure from the Crown Board did not entitle him to do so. He candidly claimed that he believed he was entitled to communicate and behave in the manner identified in the communications.

177 The communications demonstrate that Mr Packer perceived Crown as "his" company. His powerful personality, his time critical requests, his venting of frustration when his requests were not met including the domineering language, for example, "for your own sake", all fed into a regime of Crown's corporate operatives kowtowing to him.

178 It is clear that Mr Packer believed that what he was doing was in the best interests of Crown. That motivation could not be challenged.

179 However the Controlling Shareholder Protocol was not an imprimatur for Mr Packer to behave as he did. It did not entitle him to make the demands on the officers and staff of Crown and to set policy and make decisions in the manner that has been identified in these communications. It permitted him to receive confidential information in circumstances in which the pre-requisites to that receipt in clauses 2.3 and 2.4 of the Protocol were met. Sadly those pre-requisites were never properly considered and the corporate governance structures upon which a great deal of time had been spent to create, were compromised.

180 Although it is clear that the communications referred to above demonstrate a sharing of information with Mr Packer in a free-flowing unchecked manner, it is appropriate to say something about some very significant failures to share information with Mr Packer including at the time that he was serving as Chairman and later as a director and then in the less formal environment from 2018.

181 As discussed elsewhere in the Report, a significant escalation of the risk to the staff in China was the questioning of the employee by the Chinese police. This was never reported to Mr Packer, notwithstanding that at the time of this questioning he was the Chairman of Crown. His corporate operatives, Mr Johnston and Mr Felstead, were both well aware of the questioning of the employee in mid-2015 and neither advised Mr Packer of this occurrence.

182 Another aspect of Crown's operations in respect of which Mr Packer was kept in the dark was the operation of the Southbank and Riverbank accounts. As elsewhere detailed in this Report those accounts were infiltrated and exploited by criminal elements, probably including international criminal organisations.

183 It is not possible to conclude at what date the criminal infiltration into the Southbank and Riverbank accounts commenced. It was at least 2014. This was during Mr Packer's role as Executive Chairman of Crown and subsequently as a director of Crown. It was Mr Packer's evidence that he knew nothing about these two companies through which hundreds of millions of dollars were deposited and swept into the accounts of Crown's casinos.

184 There was no suggestion made to Mr Packer by those representing Crown or Mr Barton that Mr Packer was advised of ANZ's concerns in 2014 that the accounts contained the indicia of money laundering. No documentary evidence has been provided to the Inquiry that would suggest that Mr Barton advised Mr Packer of this at any time.

185 Perhaps this was another indication of not providing the "bad news" to Mr Packer. In any event, it is inexplicable that the Chairman of the Company should not have been advised that its major banker had decided to close a subsidiary's account because of the indicia of money laundering. It is also clear that Mr Packer was not made aware

of similar concerns being entertained by Commonwealth Bank of Australia (CBA) and ASB Bank Limited (ASB) with the ultimate closure of both accounts for the same concerns.

186 Mr Packer believed that his operatives, Mr Barton and Mr Felstead and to an extent Mr Johnston, were taking care of the business whilst he did what he did best on the "mathematical" side of things. Mr Packer had nothing but good intentions for Crown but its structure and operations were compromised by his remote management and manoeuvring of the corporate empire.

187 Mr Alexander was reporting to Mr Packer. Mr Barton was reporting to Mr Packer. Mr Felstead was reporting to Mr Packer. Mr Johnston was reporting to Mr Packer.

188 Mr Packer did not report to anyone.

Chapter 2.9

Melco Share Transaction May 2019

Background to the negotiation of the Melco Transaction

1 At the time of the execution of the Share Sale Agreement on 30 May 2019 the eleven appointed directors of Crown were:

(a) John Alexander;

(b) Helen Coonan;

(c) Andrew Demetriou;

(d) Geoffrey Dixon;

(e) Jane Halton;

(f) John Horvath;

(g) Guy Jalland;

(h) Michael Johnston;

(i) Antonia Korsanos;

(j) Harold Mitchell; and

(k) John Poynton.

2 Further, during that period:

(a) Mary Manos was Crown's general counsel and company secretary;

(b) Mr Johnston, in addition to his role as a director of Crown, was also the sole director of CPH Crown, and a director of CPH Crown's ultimate Australian holding company, CPH;

(c) Mr Jalland, in addition to his role as a director of Crown, was also the managing director of CPH; and

(d) Mr Packer, despite having ceased to be a director of Crown on 21 March 2018 continued to have an ultimate controlling interest in both CPH and CPH Crown (as noted earlier in this report). In turn, those entities together owned approximately 46.10 per cent of the shares in Crown.[1]

Negotiations with Wynn

3 As discussed elsewhere within a few months of the public announcement of Mr Packer's resignation from the Crown Board on 21 March 2018 CPH and Mr Packer personally "began to receive approaches from entities expressing interest in some form of transaction to acquire an equity interest in Crown".

4 CPH and Mr Packer were willing to consider those approaches because, by that time, Crown's Australian business was "significantly underperforming relative to CPH's expectations", due to, among other things, a downturn in the Australian property market and the regulatory issues concerning Crown's VIP business in China. Those developments caused Mr Packer and Mr Jalland to question the stability of Crown's earnings and in turn exposed "the vulnerability of the CPH Group's dependence on its investment in Crown".

5 In or around June 2018 Mr Ken Moelis, chairman and CEO of investment bank Moelis & Company, contacted Mr Packer to ascertain whether he would be receptive to an approach by United States casino operator Wynn Resorts (Wynn) to negotiate a "control transaction" in relation to Crown. Mr Packer conveyed that he was not interested in an approach at that time. Instead, Mr Packer, Mr Johnston and Mr Jalland, pursued negotiations with other parties.

6 In or around December 2018 Mr Packer, Mr Johnston and Mr Jalland met and had discussions with another entity which did not lead to an acceptable outcome for CPH and it was decided to reopen discussions with Wynn.

7 In March 2019 Mr Packer contacted Mr Moelis and indicated that he would be open to an approach "particularly if a large portion of the consideration was in scrip that would provide the CPH Group with a material ongoing investment in Crown's integrated resorts".

8 On 11 March 2019 Mr Matthew Maddox, CEO of Wynn, spoke with Mr Alexander and informed him that Wynn was considering putting a confidential change of control proposal to Crown.

9 On 22 March 2019 Mr Maddox sent Mr Alexander a letter setting out the terms of Wynn's confidential, non-binding indicative proposal.[2] Wynn's proposal was to acquire 100 per cent of the issued capital of Crown by way of scheme of arrangement, with Crown shareholders to be offered AUD$7.125 cash and 0.0404 Wynn shares for each Crown share they held. The offer was subject to various conditions, including completion of an exclusive confirmatory due diligence process, unanimous support from the Crown Board for the proposal to proceed, the execution of a binding scheme implementation agreement and obtaining all relevant regulatory approvals.

10 At 9:00pm on 24 March 2019 the Crown Board held a meeting for the primary purpose of considering Crown's disclosure obligations in relation to Wynn's proposal, while deferring substantive consideration of Wynn's offer until a further meeting of the Crown Board to be held at 11:30am on 25 March 2019.[3]

11 The Minutes of the 25 March 2019 Meeting record the Board's observations in relation to Wynn's proposal, including that:[4]

- The Proposal appears opportunistic and is not compelling;
- Further work would need to be done to make a more detailed assessment of value, execution risk and options for the Company;
- Subject to the valuation work being completed, the view was that the Proposal does not adequately reflect the value of the Company's gaming licenses and the potential of its Crown Sydney Project.

12 The Board resolved that Wynn's proposal be rejected on the basis that it was not in the best interests of Crown, while also resolving to arrange for the completion of forecast and valuation work "given that Wynn could revert with a superior proposal".[5]

13 On 26 March 2019 Mr Alexander sent a letter to Mr Maddox formally rejecting Wynn's offer on behalf of Crown. The letter included: [6]

> With the assistance of our financial advisers, we have determined that it would not be in the best interests of Crown shareholders to progress your Proposal in its current form as it is deficient in terms of valuation, structure and level of conditionality.
>
> As it relates to valuation, we see material value drivers for the business in the near to medium term which we expect to increase the current earnings base of the business. For instance, the current earnings of the business are at a five year low due to a number of specific factors. In addition, one of the material value drivers is our Crown

> Sydney project, which will be a truly world-class six star hotel with premium gaming facilities attractive to customers on a global stage.

14 Following further negotiations, Mr Maddox sent a letter to Mr Alexander on 3 April 2019 outlining a revised confidential, non-binding indicative proposal under which Crown shareholders would be offered consideration with an implied value of AUD$14.75 per share, made up of 50 per cent cash and 50 per cent new Wynn shares.[7]

15 The Crown Board intended to hold a meeting at 7:30am on 10 April 2019 to consider Wynn's revised proposal and the analysis of the proposal provided by Crown's corporate adviser, UBS.[8]

16 However, news of Wynn's revised proposal leaked in the media on or around 8 April 2019. An ASX Media Release issued on 9 April 2019 noted media reports about the revised proposal and announced the following:[9]

> Crown confirms that it is in confidential discussions with Wynn regarding a potential change of control transaction following approaches to Crown by Wynn.
>
> The Crown Board has not yet considered the most recent proposal by Wynn.

17 On the same day, Wynn issued a Press Release to the market in Las Vegas which included the following:[10]

> Following the premature disclosure of preliminary discussions, Wynn Resorts has terminated all discussions with Crown Resorts concerning any transaction.

18 On 10 April 2019 Crown issued an ASX Media Release which included the following:[11]

> Crown notes that Wynn has announced that it has terminated all discussions with Crown concerning any transaction.

19 Mr Alexander understood that Wynn's termination of the discussions with Crown occurred because, after the proposed control transaction had been leaked publicly, Wynn had been informed by regulators in jurisdictions in which it operated its business in Nevada, Massachusetts and Macau that they may oppose the transaction. Mr Alexander concluded that "a revisitation was probably most unlikely" in terms of any further approach from Wynn in the future.[12]

20 After the termination of negotiations with Wynn, CPH was briefly approached by another unnamed United States casino operator about a possible acquisition of CPH's interest in Crown but the approach was withdrawn before any substantive discussions occurred.[13]

Initial negotiations with Melco

21 On 9 April 2019 Lawrence Ho wrote to Mr Packer in the following terms:

> I saw the news on Wynn/Crown hit the tape and wanted to check in to make sure that everything was okay with you. I could not tell from the press if the offer was friendly/unfriendly but am hoping for the best.

22 On 10 April 2019 Mr Packer replied to Mr Ho, stating "I would love to speak to you and get your advice."

23 Following further discussions between the two, Mr Ho emailed Mr Packer on 29 April 2019 informing him that he was back in Beijing and would like to speak to Mr Packer when he had some spare time.

24 Also on 29 April 2019 Mr Packer sent an email to Mr Jalland saying "I need to speak to you re Lawrence. Potentially good news."[14]

25 Mr Ho and Mr Packer agreed at some time between 29 April 2019 and 30 April 2019 that Mr Jalland on behalf of CPH Crown Holdings and Mr Evan Winkler on behalf of Melco would have a discussion to take forward a formal proposal from Melco to acquire an interest in CPH Crown Holdings' shares in Crown.[15]

26 On 30 April 2019 Mr Jalland and Mr Winkler first spoke and agreed to have a more substantive discussion about the proposed transaction in a few days' time.[16]

27 On 3 May 2019 Mr Packer sent an email to Mr Barton, with copies to Mr Alexander and Mr Johnston in the following terms:[17]

> Have you got a forward financial forecast that you believe in yet? I'm only interested till the end of 22. Is (sic) the online business JA and you told me was so good goes broke do we still have to pay the last payable and for how much. Let's assume no more buybacks. I want to see what peak net debt is after we have paid for Crown Sydney 100%.

28 Mr Barton replied as follows:[18]

> In relation to the Financial Plan, the current timing is to have detailed business units plan information early in the week of May 13th. We should be able to review those and have an agreed Plan to you during that week. That will give us full P & L, cash flow and balance sheet to F22.

29 On 4 May 2019 Mr Johnston provided a number of discussion papers to Mr Packer identifying options for CPH Crown Holdings to dispose of some or all of its shares in Crown. One of those options included Alvin Chau's Suncity as one of these investors.

30 On or around 4 May 2019 or 5 May 2019 Mr Jalland informed Mr Johnston that he was thinking about a potential sale of 19.99 per cent of Crown's shares by CPH Crown Holdings to Melco. Mr Jalland expressed the view that this had a number of benefits from CPH Crown Holdings' point of view.

31 In an email of 5 May 2019 Mr Johnston recorded that Mr Jalland was "thinking about a 19.99 per cent sale to Lawrence (i.e. no approval is required) at a premium with perhaps Crown providing Lawrence (by way of conditional share issue) with an incentive to substantially grow the VIP business".[19]

32 Later on 5 May 2019 Mr Johnston informed Mr Jalland of the advantages and disadvantages of the sale which he had identified.[20]

33 After 5 May 2019 Mr Johnston continued to develop his thinking about an option that involved a takeover of Crown but now contemplated Melco would require a pre-bid stake of 19.99 per cent. On 7 May 2019 Mr Johnston informed Mr Jalland that was thinking about this option.[21]

34 On about 8 May 2019 Mr Jalland and Mr Winkler met in person in Los Angeles. During that meeting, Mr Jalland asked if Melco would be interested in buying a 19.99 per cent shareholding in Crown from CPH Crown Holdings for cash. Mr Winkler said he would consider the proposal and then meet again with Mr Jalland.[22]

35 On about 8 May 2019 following his meeting with Mr Winkler, Mr Jalland informed Mr Johnston that Melco was considering the idea of acquiring a 19.99 per cent stake in Crown.[23]

36 Mr Johnston further developed the option of a takeover of Crown by Melco but with Melco acquiring a pre-bid stake of 19.99 per cent. Mr Johnston communicated that thinking to Mr Jalland on or around 9 May 2019.[24]

37 On 17 May 2019 Mr Barton sent an email to Mr Packer with copies to Mr Alexander, Mr Johnston and Mr Felstead advising that a first draft of the financial plan which Mr Packer had requested on 3 May 2019 had been prepared. Mr Barton advised that the draft plan had been provided to Mr Alexander, Mr Johnston and Mr Kady and that they would like a few days to review it and provide their comments before he would be in a position to take Mr Packer through it the following week.[25]

38 Some days after 8 May 2019 Mr Winkler informed Mr Jalland that Melco was open to the idea of purchasing a 19.99 per cent shareholding in Crown from CPH Crown Holdings.[26] By around 18 May 2019 Mr Jalland had informed Mr Johnston that Melco had indicated the purchase was an interesting opportunity that it wanted to explore further.[27] Mr Johnston then sent an email to Mr Kady on 18 May 2019 advising that he

had spoken to Mr Jalland and that "apparently Evan rang him back today and said they are investigating the 19.99% variant (i.e. us at 26%)".[28]

39 Between 18 May and 23 May 2019 there were a number of telephone calls between Mr Jalland and Mr Winkler. There were discussions about the price at which 19.99 per cent of Crown's shares would be sold. Mr Jalland informed Mr Winkler that CPH Crown Holdings would require a price with a $13 handle. In the second last of the telephone calls, Mr Winkler said that Melco would consider a price of $13.00 per share. Mr Jalland said that he would discuss this further with Mr Packer and call Mr Winkler back. In one of the calls, Mr Winkler also informed Mr Jalland that Melco would complete a purchase of half of the shares promptly but would need until 30 September 2019 for the other half to allow sufficient time to raise financing.[29]

Mr Johnston's review of Crown's draft Financial Plan

40 By 21 May 2019 Mr Johnston had reviewed the draft Financial Plan for Crown which Mr Packer had requested. On that date, he sent an email to Mr Barton, Mr Felstead, Mr Alexander and Mr Packer with a copy to Mr Kady. He set out five "discussion points" for a telephone call to be held that evening:[30]

1. I would take out references to the 10 year CAGR 08 – 18 and reference the 5 year CAGR.

2. References to issues related to the change of Government should be removed and discussion on potential for improved sentiment added.

3. I think the revenue growth assumptions for FY 21 and FY 22 (currently assumed at 3.6% in each year) should be higher. The spend per customer in table games should be assumed to normalise again from there. Thus FY 19 is only the base for FY 20 not the whole plan.

4. VIP 1 gaming machine growth should likewise be higher (currently assumed to be 8.5%) for FY 21 and beyond. What costs are assumed in Singapore and HK for this initiative (i.e. employment costs for new sales staff).

5. For Perth (only) we should assume a more significant impact from the tap and go initiative for FY 21 and beyond.

41 Mr Johnston agreed that the changes which he was suggesting in paragraphs 3, 4 and 5 of his email would have the effect of making the financial forecasts "more optimistic" for FY 21 and FY 22.[31] Mr Barton also agreed that those suggestions would, if adopted, result in a favourable increase in Crown's projected financial position.[32]

42 On the evening of 21 May 2019 Mr Johnston had a telephone call with Mr Barton and Mr Kady. He believed there was one modification made to the draft Financial Plan in accordance with paragraph 3 of the suggestions contained in his email earlier that

day, to use a slightly higher assumed growth rate in table game revenue. After the draft Financial Plan was modified, it was then provided to Mr Packer.[33]

43 Mr Johnston did not inform Mr Barton at the time he was reviewing and suggesting changes to the draft Financial Plan that CPH Crown Holdings was negotiating a sale of Crown's shares to Melco. Mr Barton first learned about the share sale on the evening of 30 May 2019 after the Share Sale Agreement was announced.[34]

44 Mr Johnston claimed that he was reviewing the draft Financial Plan and making suggestions in relation to it as part of the normal Crown budget process in his capacity as a CPH Executive providing services to Crown under the Services Agreement.[35]

45 Mr Johnston was the sole director of CPH Crown Holdings and a director of CPH at this time. He was aware that there were advanced negotiations by CPH Crown Holdings to sell 19.99 per cent of its shares in Crown to Melco.[36] He was being kept informed by Mr Jalland of the status of those negotiations at all times.[37]

46 "Inside information" is defined coextensively in both section 1042A of the *Corporations Act* 2001 (Cth) (*Corporations Act*) and clause 3 of Crown's Securities Trading Policy dated 11 December 2018[38] to mean information which is not "generally available" and which, if it were generally available, a reasonable person would expect it to have a material effect on the price or value of a company's shares.

47 Clause 4.1 of the Securities Trading Policy prohibits Crown's directors, employees and close associates from trading in any of Crown's securities while in possession of inside information. For that purpose, "trading" may be taken to include, pursuant to clause 3 of the Securities Trading Policy:

(a) applying for, acquiring or disposing of shares;

(b) procuring another person to do so; and

(c) communicating inside information to a third party where the person knows, or ought reasonably to know, that the third party would be likely to acquire, dispose of or engage in other dealing in relation to the shares or procure another person to do so.

48 Clause 2 of the Securities Trading Policy defined a "close associate" of a director to include a company managed by a director of Crown or directly or indirectly controlled by a director.

49 The prohibition in clause 4.1 of the Securities Trading Policy is consistent with the prohibition on insider trading contained in section 1043A of the *Corporations Act*.

50 Mr Barton believed the information included in the draft Financial Plan reviewed by Mr Johnston and provided to Mr Packer was price sensitive information which was not publicly available.[39]

51 Mr Johnston denied that the information included in the draft financial plan was price sensitive because it was consistent with market consensus views.[40]

Continued negotiations

52 On 23 May 2019, Mr Johnston and Mr Kady prepared further discussion materials for Mr Packer to consider alternatives to a sale of 19.99 per cent of Crown's shares to Melco. These alternatives included a possible sale to Suncity. However, Mr Packer made it clear to Mr Johnston that he wished to proceed with the proposed sale to Melco.[41]

53 Later on 23 May 2019, Mr Packer advised Mr Jalland and Mr Ho that he was supportive of proceeding with the sale of 19.99 per cent of the issued shares in Crown to Melco for a price of $13 per share.[42]

54 Thereafter, the terms of the agreement were negotiated and documented by the solicitors for CPH Crown Holdings and the solicitors for Melco.[43]

Provision of confidential information to Melco Resorts

55 On 29 May 2019, Mr Johnston and Mr Jalland sent a letter on behalf of CPH to Melco in relation to the proposed share sale. The letter recorded that "CPH intends to provide Melco with certain confidential information in relation to Crown" and that CPH would provide that information to Melco if it acknowledged and agreed to various confidentiality undertakings. [44]

56 The letter also recorded that any breach or threatened breach of the confidentiality restrictions "may cause irreparable harm to CPH and the members of the Crown Group, for which damages alone may not be an adequate remedy". The letter affirmed that Crown itself, along with each other member of the Crown Group, was entitled to the benefit of the confidentiality restrictions, and included the following:[45]

> CPH holds the benefit of this document on its own behalf and on trust for Crown and each of Crown's related bodies corporate (together, Crown Group) in so far as the Confidential Information is the information of Crown or any member of the Crown Group, and may enforce this document on behalf of the members of the Crown Group.

57 After Melco provided the required confidentiality undertakings, Mr Johnston and Mr Jalland, on behalf of CPH, sent a further letter to Melco on 29 May 2019 enclosing "certain confidential information in relation to Crown".[46] The information included details of:[47]

(a) Crown's 2019 results, in particular the extent to which Crown's EBITDA for 2019 would differ from analyst consensus expectations;

(b) Crown's 2020 projections, in particular the extent to which Crown's management expected that budgeted EBITDA would differ from analyst consensus expectations";

(c) CPH's strategic view in relation to the Zantran class action commenced against Crown and in particular its view in relation to settlement;

(d) Segment earnings for Crown's operations in Perth;

(e) Crown's court proceedings involving the ATO and CPH's views on prospects of success; and

(f) Costings associated with the Barangaroo Casino, expected completion date, the number of units the subject of executed sales contracts and aggregate purchase prices.

58 Mr Johnston accepted that the information in the draft Financial Plan which he had received from Mr Barton in May 2019 was relevant to giving the estimations of financial performance and projections which he and Mr Jalland provided to Melco prior to the Melco Transaction being consummated.[48]

59 Mr Johnston denied that any of the confidential information provided to Melco on 29 May 2019 was "inside information" under the *Corporations Act* or the Securities Trading Policy, claiming that the information:[49]

(a) was consistent with, and did not go beyond the scope of, what had already been provided to the market; and

(b) had been provided to Melco out of an "abundance of caution" to avoid the perception that CPH Crown Holdings was trading in the shares of Crown while in possession of information that was not known to Melco.

Exchange of contracts

60 The Minutes of a meeting of CPH Crown Holdings held at 3:55pm on 30 May 2019 record the presence of both Mr Johnston and Jalland as directors.[50] This was in fact a mistake as Mr Johnston was the only director of CPH Crown Holdings at that time. The Minutes record that Mr Johnston determined that the Share Sale Agreement would benefit CPH Crown Holdings, and that it would be in the best interests of CPH Crown Holdings to agree to a price of $13 per share for Crown's shares.[51] Mr Johnston assessed that it was in the best interests of CPH Crown Holdings to agree to a price of

$13 a share. In forming that view he took into account all the financial information concerning Crown that was available to him at that time.[52]

61 Contracts were exchanged for the Share Sale Agreement at approximately 6:00pm that evening.[53]

62 On the evening of 30 May 2019 after the Share Sale Agreement had been executed, Mr Johnston attempted to contact each of the Crown directors by telephone and also sent an email to advise them of the transaction. [54]

Knowledge of the Share Sale Agreement

63 Mr Alexander,[55] Ms Coonan,[56] Mr Demetriou,[57] Ms Halton,[58] Professor Horvath,[59] Ms Korsanos,[60] Mr Mitchell[61] and Ms Manos[62] only became aware of the Share Sale Agreement after it was executed. Mr Dixon likewise was not aware of the Share Sale Agreement before its execution and only became aware of it in media reports on the morning of 31 May 2019.[63]

64 Mr Poynton first became aware of the transaction constituted by the Share Sale Agreement in a telephone call with Mr Packer at approximately 9:30am Perth time (or 11:30am AEST) on 30 May 2019.[64] Mr Packer informed Mr Poynton that there would be a sale to Lawrence Ho that "will be 19% over two tranches". He informed Mr Poynton that "you will hear more about it shortly".[65]

65 After speaking with Mr Packer on 30 May 2019 Mr Poynton attempted to call Mr Alexander but was unable to contact him as he was in transit on an aircraft.[66]

66 Mr Johnston and Mr Jalland were actively involved in the negotiation and execution of the Share Sale Agreement along with Mr Packer, and they therefore clearly knew of its existence before it was executed.

Motivation for keeping the Share Sale Agreement secret

67 In explaining why he kept the Share Sale Agreement secret from the rest of the Crown directors until after its execution, Mr Jalland explained:[67]

> I considered that I had a strict duty of confidentiality to CPH regarding the proposed share sale.
>
> During my time with the CPH Group, it has not been my practice to disclose information about the business affairs of the CPH Group to anyone unless there is a need to do so.
>
> Since becoming a director of Crown Resorts, it has been my practice only to communicate with the other directors of Crown Resorts, excluding Mr Johnston, about the activities of the CPH Group on a "need-to-know" basis. Prior to the execution

> of the Share Sale Agreement, I did not consider that there was any such reason or requirement to inform the other directors of Crown Resorts, excluding Mr Johnston, about the proposed sale.

68 Mr Johnston was concerned to maintain the secrecy of the Share Sale Agreement until after its execution because of the leak which had occurred in relation to the Wynn transaction. He wanted to avoid the same result occurring in relation to the Share Sale Agreement. He explained:

> In early May 2019, Mr Jalland and I discussed that we should keep communications about any potential transaction concerning CPH Crown's shareholding in Crown strictly confidential within the CPH Group. In that discussion, Mr Jalland and I said words to the effect that those discussions should not go beyond Mr Packer, Mr Jalland, Mr Kady and me (other than to obtain legal advice), and that we should not involve investment bankers or other third parties. I subsequently had a similar discussion with Mr Kady.
>
> I was particularly focused on confidentiality and limiting who had knowledge of any proposed transaction concerning CPH Crown's shareholding in Crown, given the recent experience of a leak leading to the termination of the proposed Wynn transaction.
>
> My working assumption … was that the potential transaction would not be discussed with anyone from Crown unless and until it had been consummated.

69 CPH Crown Holdings had received legal advice about how to communicate the Share Sale Agreement to Crown directors and key management personnel. It also received advice that there were no "approvals required" and the CPH directors did not have to disclose the Share Sale Agreement to Crown.[68] Based on that legal advice and his further discussions with Mr Jalland and Mr Kady, Mr Johnston decided that he would make calls to Crown directors and key management personnel if and when the Share Sale Agreement had been executed".[69]

PART 3

Paragraph 15 of Amended Terms of Reference/ The Media Allegations

Chapter 3.1

Troubling Developments

1 By June 2019 a confluence of events was occurring the significance of which would not be appreciated by Crown until very much later.

2 On 30 May 2019 the Melco Share Sale Agreement had been executed without Crown's knowledge or concurrence which left the Crown Board scrambling to understand its ramifications from both a commercial and regulatory perspective.

3 In June 2019 Deloitte reported to Crown identifying a number of areas where improvement was required including the need for: (i) the Crown Board to set the risk culture of the organisation; and (ii) the Risk Management Committee to oversee the implementation and operation of that risk culture.[1]

4 Also by June 2019 the VCGLR had provided Crown with the confidential draft of a report into the China Arrests which identified serious failures in its risk management processes. This had caused the Crown Board in early July 2019 to request the then Chairman/CEO, Mr Alexander, to require an explanation from Mr Felstead in respect of failures to convey to the full Board "the level of risk involved in Crown operating in China".[2]

5 In June 2019 Mr Neil Jeans of Initialism furnished his report on the Transaction Monitoring Program within Part A of Crown's AML policy.[3] Initialism had not been retained to review Crown's full AML Policy.

6 Over the previous year a group of Nine/Fairfax journalists had been investigating Crown's activities in China and in Australia consequent upon what was referred to as "one of the largest corporate leaks" that had ever occurred in Australia.[4] The journalists had obtained many thousands of Crown's internal documents and were preparing to publish in both the print media and on television, allegations that would have very serious consequences for Crown.

7 On 23 July 2019, Nine/Fairfax journalist Mr Nick McKenzie sent an email to employees of both Crown and CPH advising that he was preparing a report examining Crown's

conduct in China as well as its dealing with Junket operators. It sought the answer to 63 questions some of which focused on whether Crown: [5]

- wilfully or recklessly breached Chinese laws in relation to gambling; and
- partnered with Junkets with ties to serious organised crime or to politically exposed persons/Junkets whose activities may raise concerns in respect of Australia's national security.

8 A team of people within Crown and CPH worked urgently on investigating the allegations and preparing a response to the questions. That team was led by Mr Preston and Mr Felstead with guidance from Mr Richard Murphy, a partner of the law firm MinterEllison who had the carriage of the Class Action that had been commenced against Crown in the Federal Court of Australia in 2017.

9 That response was provided to the Nine/Fairfax press at around 6.40pm on 25 July 2019 in terms that included the following:[6]

> There is currently a class action being pursued in relation to the detentions, which Crown is defending. We are therefore unable to comment on the specific allegations you have raised.
>
> Further, Crown denies any breach of China law, the company has not been accused or charged by Chinese authorities with any offence. Crown further refutes any suggestion that it knowingly exposed its staff to the risk of detention in China.
>
> On the subject of junket operators and individuals, Crown does not comment on its business operations with particular individuals or businesses. Crown notes that it has a comprehensive AML/CTF program which is subject to regulatory supervision by AUSTRAC.

10 On Saturday 27 July 2019, *The Sydney Morning Herald* and *The Age* broke the story on Crown in a lengthy article published in both papers entitled "Crown Unmasked Gangsters, gamblers and Crown casino: How it all went wrong."[7]

11 On 28 July 2019 Channel 9 broadcast the *60 Minutes* program entitled *Crown Unmasked*.

12 Between 27 July 2019 and mid-August 2019 there were numerous newspaper articles published that referred not only to the allegations that were to be and had been published in the *60 Minutes* program but also to money laundering allegations specifically through Crown's bank accounts in the names of its subsidiaries, Southbank and Riverbank.

13 The *60 Minutes* program "*Crown Unmasked"*, referred to the "tens of thousands of documents" from inside Crown's corporate headquarters having been "leaked" to the journalists of the Nine Network, *The Sydney Morning Herald* and *The Age* who had

conducted a year-long investigation spanning Australia, Hong Kong, Mainland China and Macau. The journalists claimed that they had drawn on dozens of sources including Crown insiders, government officials and court and business records.[8]

14 The Media Allegations included claims that:

- Crown knew that its China-based staff were breaching Chinese gambling laws;
- Crown had failed to recognise or respond appropriately to obvious risks to the safety of its staff in China;
- Crown had partnered with Junket operators that were backed by organised crime syndicates, including allegedly triad-controlled drug trafficking and money-laundering groups;
- Crown was wilfully blind or recklessly indifferent to engaging with these Junket operators with criminal associations.
- Money had been laundered in Crown's Australian casinos and Crown had failed to rigorously enforce its anti-money laundering controls;
- Money had been laundered through the accounts of Crown's subsidiaries, Southbank and Riverbank;
- Crown had helped bring criminals through Australia's borders in ways that raised serious national security concerns; and had lobbied Federal Government officials, including the Australian Consulate office in China, to expedite visas for members of Junkets.

15 Allegations of connections between Crown's casino operations and organised crime were not new. Previous television programs in 2014 and 2017 had alleged that Australian casinos, including those operated by Crown, had targeted Asian VIP gamblers to boost their profits and in doing so ran the serious risk of exposure to organised crime.[9]

16 In response to the publication of the media allegations Mr Preston and Mr Felstead were tasked to prepare an investigation which was provided to the Crown directors for an urgent Board meeting conducted by telephone on 30 July 2019.[10] Mr Murphy also contributed to the report, in particular, the first part of the report was entitled "General Commentary (as per Richard Murphy)" and included the following:[11]

> The '60 Minutes' programme and related articles in the Fairfax press contain a mis-mash of hyperbole, exaggeration, unsubstantiated allegations, unsupported connections and outright falsehoods, laced with speculative, ill-informed or

> misinformed opinions of self-appointed experts of dubious authority (and in one case, dubious integrity).

17 The substance of this General Commentary was that the allegations that Crown flouted the law in China were incorrect; that it was misleading to characterise Junket operators as Crown's business partners; that Crown had comprehensive anti-money laundering programs supervised by AUSTRAC; and whenever Crown became aware of potentially unlawful conduct it communicated its concerns to the relevant regulator.[12]

18 Much of the information that was provided to the Crown Board by Mr Felstead and Mr Preston with Mr Murphy's endorsement led the Crown directors into thinking that it was the subject of a deceitful campaign by the media in which false allegations had been made against it.

19 The truth of the matter was that the allegations that had been made against Crown needed serious independent assessment which included analysis and review of the conduct of Mr Felstead and Mr Preston, the very people who had been conscripted to provide the Crown Board with information in response to the media allegations.

20 Armed with what it thought was a proper basis to make a robust defence of its operations, the Crown Board went on the offensive.

21 On 31 July 2019, the Crown Board issued an ASX/Media Release referring to its announcement of 30 July 2019 attaching "A Message from the Crown Resorts Board of Directors". That Message was entitled "Setting the record straight in the face of a deceitful campaign against Crown" and is attached as Appendix 4 to the Report. It included the following:

> The '60 Minutes' programme on Sunday night and related articles in the Fairfax Press have unfairly attempted to damage Crown's reputation.
>
> As a Board, we are extremely concerned for our staff, shareholders and other stakeholders, as much of this unbalanced and sensationalised reporting is based on unsubstantiated allegations, exaggerations, unsupported connections and outright falsehoods.
>
> Crown operates in one of the most highly regulated industries in Australia and takes its responsibility to comply with its obligations very seriously.

22 The Message included the claim that there were numerous examples of poor or misleading journalism. In this regard the directors claimed among other things that the publications failed to include any reference to the fact that Junkets were an established and accepted part of casino operations; that Crown had ceased dealing

with a number of named Junket operators; and none of the named international players had gambled at Crown venues for at least three years.

23 It also dealt with the following matters:

> **Junket operators**
>
> Much was sought to be made in the programme of the conduct of 'Crown's junket operators'. In fact the junkets are not Crown's. They are independent operators who arrange for their customers to visit many casinos globally. Crown deals with junkets and their customers in essentially the same way as other international casinos.
>
> Macau-based junkets are required to be licensed there and are subject to regulatory oversight and probity checks. There are also other casino regulators in Australia and overseas which review junket operators and their dealings with licensed casinos.
>
> Crown itself has a robust process for vetting junket operators, including a combination of probity, integrity and police checks, and Crown undertakes regular reviews of these operators in the light of new or additional information.

24 A "Response" was published in *The Sydney Morning Herald* which included the following relevant to Junkets:

> Our reporters have not implied the junket operators are owned by Crown Resorts. They are, however, repeatedly listed in Crown's own corporate document as "partners". The company pays major commissions to these partners to recruit high-stakes Chinese gamblers to Australia, often many millions of dollars a year. The junket operators are also licensed by Crown. They have special privileges to operate in its Casinos. SunCity has its own high-roller gaming room.
>
> Macau's system of registering junkets is not robust. The US government in 2013 released a report that found that organised crime infiltration of Macau junkets was entrenched.
>
> Our reporters found open source documents from court cases in Australia and China, and other sources of information, that reveal Crown has failed to conduct adequate due diligence on its junket partners. For instance, some have been identified in court cases or media reporting as alleged criminals or parts of triad gangs.

25 The Message also dealt with the topic of the arrests of Crown staff in China in 2016. It was claimed that the *60 Minutes* program was a "rehash" of an earlier *Four Corners* program and continued:

> The foundation of the criticism of Crown in the programme is that Crown knew that the conduct of its staff constituted an offence in China and that it deliberately flouted the law.
>
> This is wrong. Crown was not charged with or convicted of any offence in China.

> The relevant prohibition under Chinese law is contained in Article 303 which concerns arranging 'gambling parties'. At all times Crown understood that its staff were operating in a manner which did not breach that provision.
>
> Also, at all relevant times, Crown obtained legal and government relations advice from reputable, independent specialists. The fact that staff were nevertheless detained and convicted is not an indication that the advice was wrong or disregarded, but an illustration of the challenges involved in anticipating how foreign laws can be interpreted and enforced.
>
> The '60 Minutes' programme featured a former junior employee and several purported experts. Whether they were paid for the '60 Minutes' appearance was not disclosed. Also, the objectivity of the former employee is open to question on the basis that she made an unsuccessful demand for compensation from Crown over 50 times her annual salary.

26 The last paragraph of this section of the Board's Message was a reference to a former employee, Ms Jenny Jiang, who had been interviewed during the *60 Minutes* program. The strategy of this powerful Board of a public company alleging that a young woman who had been imprisoned for simply doing her job may lack objectivity because she had made a claim for compensation was obviously endorsed by its external advisers, notwithstanding advice from its Company Secretary and in-house legal counsel, Ms Manos, to exercise "caution".[13]

27 It was clearly intended to be conveyed that Ms Jiang's claim for compensation was outrageous and inappropriate because it amounted to 50 times her annual salary. It was not disclosed that this salary was $28,000 per annum. The decision to attack this former employee in the strategy of attacking the journalists for allegedly failing to disclose their reliance on a person who allegedly lacked objectivity exposed the unfortunate underside to the Board's persona and as recorded later in this Chapter is a blot on Crown's corporate charater.

28 The Response in *The Sydney Morning Herald* included the following in respect of the China Arrests:

> Crown staff were convicted of gambling offences in China and multiple experts, including the former chief of intelligence for the Royal Hong Kong Police, have said publicly that Crown's dealings in China were foolhardy, high-risk and in potential breach of the laws the Crown staff were ultimately found to have broken. Crown's own internal files reveal they suggested to Chinese staff they obtain foreign work permits so it would appear they were not working in China when, in fact, they were.
>
> Jenny Jiang was not paid for her interview. Nor did she seek payment. Her staff certificates and internal company appraisals describe her employment in glowing terms. Crown sought to pay her $60,000 after her arrest in return for Ms Jiang not

criticising the company. She refused this offer. The program accurately reflected her position and job title.

29 The Message also dealt with the topic of money laundering. It included the following:[14]

> **Anti-money laundering**
>
> The programme also made various allegations of money-laundering, implying that Crown facilitates it, or turns a 'blind eye' to it. In fact Crown has a comprehensive anti-money laundering and counter-terrorism financing program which is subject to ongoing regulatory supervision by AUSTRAC. Crown takes its regulatory obligations very seriously, and works closely with all of its regulatory agencies, including state and federal law enforcement bodies. Crown provides a range of information in a proactive manner in accordance with its regulatory obligations, including the reporting of all transactions over $10,000 and the reporting of suspect transactions of any value.
>
> As Nine/Fairfax would be aware, Crown is bound by non-disclosure provisions in legislation relating to anti-money laundering and counter-terrorism financing, and by privacy considerations. Crown is therefore constrained in responding to many of the unfounded allegations made in the media reports relating to various individuals/organisations, or in disclosing details of matters it has reported to AUSTRAC or two other investigative/enforcement authorities.

30 The assertion that Crown was constrained from responding to money laundering allegations because of non-disclosure provisions in the AML/CTF Act to the extent that allegations were made about cash transactions in the Suncity Room at the Suncity cash desk lacked foundation. These did not involve designated services provided by Crown and accordingly, the non-disclosure provisions did not apply.

31 The pursuit by the Media continued. On 31 July 2019 Mr Nick Toscano, a journalist with *The Age* wrote to Crown asking for a response to questions concerning the Southbank and Riverbank accounts. One of the questions requested a response to "concerns from law enforcement agencies that multiple organised crime entities" had deposited proceeds of crime into the accounts and asking how such entities had been able to deposit those funds. The journalist also asked what governance measures had been implemented by the Crown directors to mitigate the "obvious risk that criminal money would be deposited" into the accounts.[15]

32 Although Mr Preston was a designated AML Compliance Officer for Crown he did not look at the bank statements of Southbank and Riverbank that were the subject of these very serious allegations of money laundering. Rather he provided further advice to the Crown Board that those accounts were dealt with in the same manner as all of

Crown's other accounts and were covered by Crown's AML policy. This was not the true position.[16]

33 On 5 and 6 August 2019 the article published in *The Sydney Morning Herald* and *The Age* included allegations that criminals had targeted the operation of the Southbank and Riverbank accounts, the relevant details of which are extracted in the next Chapter.

34 Crown published a further full-page advertisement on 6 August 2019 in very similar terms to its first Message. There was no reference to the allegations that had been published in respect of the Southbank and Riverbank accounts.[17]

35 On 9 August 2019 Mr Jeans attended a Crown Risk Management Committee meeting to provide an oral report on his analysis of the Transaction Monitoring Program within Crown's AML policy. This was of course only one part of Crown's AML policy and certainly not a comprehensive review of the whole of the AML policies and processes. Mr Jeans was not briefed with or asked to report on any aspect of Crown's subsidiaries, Southbank and Riverbank.

36 On 14 August 2019 the confluence of these troubling developments resulted in the Authority issuing the Terms of Reference for this Inquiry.

Chapter 3.2

Money Laundering

1 Paragraphs 15(a) and 16 of the Amended Terms of Reference require investigation and report upon the suitability of the Licensee and Crown "in response to" the Allegations relevantly for this Chapter that Crown, or its agents, affiliates or subsidiaries engaged in money laundering.

Media Allegations

2 The relevant article in which the main money laundering claims were made was entitled *Crown's firms used to launder drug funds* published in *The Sydney Morning Herald* on 5 August 2019 and in *The Age* on 6 August 2019. The article included the following:[1]

> Drug traffickers have used two private companies that were set up by Crown Resorts with Crown executives as directors to bank suspected proceeds of crime, federal investigations have alleged.
>
> Investigators traced money from a number of suspected or convicted drug traffickers and money launderers flowing into the bank accounts of the two companies, Southbank Investments Pty Ltd and Riverbank Investments Pty Ltd, between 2012 and 2016, according to former officials.

3 The article referred to a number of statements made by former investigators with the Australian Federal Police (AFP) and AUSTRAC. It identified the nature of the two companies, Southbank as a $100 company and Riverbank as a $2 company. It also identified the then directors of those companies as Mr Felstead, Mr Alexander and Mr Barton but carefully reporting that there was no suggestion that those executives knew about criminals depositing the funds into the accounts. However the following very serious allegation was made:

> One source said that federal police believed the two Crown companies were used by criminal entities because they believed that the money they deposited into them would not be closely scrutinised.

4 The article also referred to specific instances of the AFP and AUSTRAC identifying "money-remitting agents" depositing funds into the accounts for "Chinese high rollers" and the claim that when police arrested a known money launderer they uncovered deposit slips for Riverbank.

5 The *60 Minutes* program also made claims of money laundering not within the Southbank and Riverbank accounts, but rather physically through the Crown Melbourne casino. The program included 2012 footage of Roy Moo collecting $191,000 in cash in a shopping bag and taking it to Crown Melbourne to launder it through the casino, some of the detail of which is referred to in Chapter 3.4 of the Report. It was also alleged that the risk profile of the Junket operators with whom Crown was dealing with the consequent exposure to money laundering activity required it to have high levels of due diligence, a topic also discussed in Chapter 3.4.

6 On 15 October 2019 further footage emerged in the media depicting many hundreds of thousands of dollars in cash being removed from opaque shopping bags or in one instance a suitcase and counted at the Suncity desk within Crown Melbourne casino. It was alleged that these were further examples of money laundering in Crown's premises.

Crown Board Response

7 The Crown Board Message of 31 July 2019 responded to the allegations of money-laundering in the Crown Melbourne casino made in the *60 Minutes* program and replicated in some of the print media. This was prior to the publication of the articles in which the allegations of money laundering through the Southbank and Riverbank accounts were made. However at the time of the publication of the Message Crown had received questions relevant to the operation of Southbank and Riverbank from a journalist with *The Age*.

8 The Crown Board's Message included the following:

> **Anti-money laundering**
>
> The programme also made various allegations of money laundering, implying that Crown facilitates it, or turns a 'blind eye' to it. In fact Crown has a comprehensive anti-money laundering and counter-terrorism financing program which is subject to ongoing regulatory supervision by AUSTRAC. Crown takes its regulatory obligations very seriously, and works closely with all of its regulatory agencies, including state and federal law enforcement bodies. Crown provides a range of information in a proactive manner in accordance with its regulatory obligations, including the reporting of all transactions over $10,000 and the reporting of suspect transactions of any value.

> As Nine/Fairfax would be aware, Crown is bound by non-disclosure provisions in legislation relating to anti-money laundering and counter-terrorism financing, and by privacy considerations. Crown is therefore constrained in responding to many of the unfounded allegations made in the media reports relating to various individuals/organisations, or in disclosing details of matters it has reported to AUSTRAC or two other investigative/enforcement authorities.

Message conveyed

9 It is clear that the Crown Board understood that what was being suggested in the Media Allegations was that it facilitated money laundering in its casino; and that it turned a blind eye to that activity.

10 The reasonable reader of the Crown Board's Message would understand that Crown denied that it facilitated money laundering or turned a blind eye to such activity. In support of this denial Crown proffered what it described as a "comprehensive" anti-money laundering program with the suggestion that it "proactively" complied with its obligations. It also called in aid the secrecy provisions of the AML/CTF Act implying that although there was more to be said in its defence, legislative constraint prevented Crown from doing so.

Context of determination

11 As discussed, paragraph 15(a) of the Amended Terms of Reference uses the expression "engaged in money laundering". The Inquiry has proceeded on the basis that the determination of the suitability questions in paragraph 16 is "in response to" the Media Allegations that: (a) Crown facilitated money laundering or turned a blind eye to such activity in the Southbank and Riverbank accounts; and (b) facilitated money laundering and/or turned a blind eye to such activity in the Crown Melbourne casino.

12 In this Chapter the veracity of those Media Allegations will be determined. The claims in respect of Southbank and Riverbank span a number of years from 2014 and it is necessary to review quite a deal of documentary evidence of Crown's conduct during that six year period. The determination of the allegations relating to the alleged money laundering in Crown Melbourne casino is in a different context. Clearly the footage of many hundreds of thousands of dollars in cash is evidence of the events. It is the surrounding circumstances and systems that were in place at the time that require analysis as to whether such activity can reasonably be described as money laundering.

Money Laundering through bank accounts

13 It is intended to deal first with the allegations relating to the money laundering in the Southbank and Riverbank accounts and then the allegations of money laundering in the Crown Melbourne casino.

Southbank

14 A shelf company incorporated on 1 August 1996 became known as Southbank on 21 October 1996.[2]

15 Throughout its history Southbank has had at least one company secretary. The present secretaries are Ms Manos and Mr Preston. Mr Preston was appointed on 12 August 2014, and Ms Manos was appointed on 30 June 2017.

16 As at 1 January 2021 the recorded directors of Southbank were Mr Felstead who was appointed on 8 November 2013 and Mr Barton who was appointed on 30 June 2017. As discussed elsewhere, from 2013 Mr Felstead was the CEO of Australian Resorts until January 2021. Mr Barton was the CFO of Crown until January 2020 when he was appointed as the CEO of Crown. Mr Alexander had been a director of Southbank from 22 March 2017 to 24 January 2020. The former CEO of Crown, Mr Craigie, was a director between 9 January 2002 and 22 March 2017.

A matter of "privacy"

17 In late 2001 the Office of Gambling Regulation in Victoria, as the VCGLR was then known, advised Crown that it had no objection "in principle" to its proposal that its international patrons would be permitted to make deposits to Crown Melbourne through the Southbank account in order to afford those patrons "privacy". One of the conditions of such permission was the provision to the regulator of quarterly reports of the details of deposits into the account. Although this occurred for a relatively short period it then developed into the current regime of the quarterly reports to the regulator of only the total assets and total liabilities of Southbank. There was thus no regulatory visibility of the actual deposits made into the account as was originally envisaged by the Office of Gambling Regulation.

Riverbank

18 Burswood Partnership Pty Ltd incorporated on 15 May 2003 became known as Riverbank on 14 November 2005.

19 The directors of Riverbank are recorded as Mr Felstead who was appointed on 26 March 2007 and Mr Barton who was appointed on 12 August 2014. Mr Alexander

was a director between 22 March 2017 and 24 January 2020. Mr Craigie was a director between 29 October 2008 and 22 March 2017.

20 There are currently two company secretaries appointed to Riverbank. Ms Manos and Mr Preston were appointed on 30 June 2017.[3] Previous company secretaries have included Mr Neilson from 17 December 2007 to 30 June 2017 and Mr Jalland from 8 November 2005 to 6 December 2007.

21 The purpose of Riverbank was also to afford its international patrons privacy. Those patrons made deposits to Crown Perth through the Riverbank account. It is apparent that it was not necessary to obtain the WA regulator's approval for the use of this account although the bank account details were provided to the regulator.

Operation of the accounts

22 Southbank and Riverbank originally held bank accounts with HSBC. In 2013, HSBC decided to discontinue its relationship with Southbank and Riverbank following a strategic review of the gaming sector.

23 Southbank then opened an account with CBA and Riverbank opened an account with ANZ.

24 It is not in issue that hundreds of millions of dollars flowed through the Southbank and Riverbank accounts into the Crown Melbourne and Crown Perth accounts annually.

25 Crown circulated the details of the two accounts including the BSB and Account Numbers to their patrons.[4] Crown advised its patrons that when making a deposit, the Crown patron identification number should be referenced so that the deposited funds could be credited to the appropriate patron's deposit account at the relevant casino.[5]

26 It advised patrons that if this was not done it would be necessary to provide the casino with evidence of the deposit to enable Crown to credit the appropriate patron deposit account.[6] This could be done by providing the cage or VIP International unit with a receipt from the bank, or from internet banking, or a phone screenshot setting out the nature of the transfer that had occurred.[7] The reconciliation of the patron number with the deposit was performed by the VIP International unit or the cage.[8]

27 When funds accumulated in the Southbank and Riverbank accounts they would be transferred or "swept" into Crown's bank accounts. This occurred at regular intervals and does not appear to have been triggered by any particular levels of funds within the bank accounts. It is likely that staff members of the finance and credit division of Crown Melbourne or Crown Perth respectively conducted these sweeps.

Monitoring of the accounts

28 In addition to crediting deposits to a patron deposit account, staff in the cages of Crown Melbourne or Crown Perth entered details of the deposits made into Southbank or Riverbank accounts into Crown's SYCO database.

29 SYCO is an electronic customer relationship management system used by Crown Melbourne and Crown Perth which recorded, amongst other things, details of the name, address and date of birth of a customer and potentially a photograph of the customer, accessible by staff members at the cage and other areas of the casino.[9]

30 SYCO also played an important role in the transaction monitoring program of the casinos. The entries in the SYCO system could be accessed and reviewed by members of the AML Team for the purposes of identifying suspicious transactions or patterns of transactions.[10]

31 However the way in which deposits into Southbank and Riverbank were dealt with by the cage staff was inconsistent. Some cage staff at both Crown Melbourne and Crown Perth aggregated numerous deposits made to the credit of a single patron account into one SYCO entry, rather than recording each individual deposit as a separate entry.[11] Although some SYCO entries recorded only the aggregate of deposits in the comment field, others recorded both the aggregated amount and the individual deposit amounts in the comment field of the record.

32 The AML Teams at Crown Melbourne and Crown Perth would then extract reports from SYCO to review the deposits for AML purposes.[12]

33 However, the process of aggregation at the cage obscured the number and nature of the deposits which constituted the aggregated amount and therefore did not give a complete picture of what was occurring in the underlying bank accounts. Important information which could be seen in the bank statements was lost in the process of data entry into the SYCO system.

34 Crown's practice in relation to aggregation was raised in an email from ANZ to Crown on 31 March 2014 in the following terms:[13]

> We would like to clarify some points concerning reporting to AUSTRAC.
>
> It is our understanding from our previous conversations that when it comes to amounts deposited in accounts, Crown would aggregate deposits through the course of a day and report the aggregated amount. However, this differs for cash received at the casino itself, where we understand only amounts over the AUD10K threshold are reported.

35 ANZ understood from its discussions with Crown that aggregation of smaller deposits in Crown's accounts was a practice that Crown adopted. However, the position is unclear since on 2 April 2014 Mr Costin replied: [14]

> Where cash is deposited in the cage, where it is under the $10k threshold they are not reported as threshold transactions. If multiple receipts from the same patron under the threshold are placed on the same day Crown would then report suspicious transactions rather than a threshold transaction.

36 Perhaps unsurprisingly, as ANZ's question related to bank accounts rather than the process at the cage, Ms Brown from ANZ followed up with Mr Costin by asking whether this position regarding threshold transactions was applied in the same manner with cash deposits into a bank account at different branches.

37 Mr Costin's reply later that day was that: [15]

> My understanding is it is the same for bank accounts as it is for cash deposits made into the cage.

Red flags and warnings

38 Warning signs and red flags indicating money laundering was or was likely to be occurring in the Southbank and Riverbank accounts were made known from at least January 2014.

39 On 31 January 2014, approximately 6 months after the account was opened, ANZ raised concerns with Crown regarding multiple cash deposits indicative of structuring occurring within Riverbank's account. ANZ wrote to Mr Costin in the following terms:[16]

> As discussed, we would like to discuss the operation of Riverbank Investments bank account see a series of questions below. This has been sparked by internal investigations identifying a series of suspicious transaction ie multiple deposits on the same day at different Perth branches of cash amounts of under $10,000. (around $8000 to $9,000) by the same person.

40 In an internal email the same day copied to Mr Barton, Mr Costin expressed the unfounded belief that the accounts could not receive cash deposits.[17] He also responded to ANZ asking for further details of the transactions.[18]

41 ANZ provided Mr Costin with a detailed spreadsheet listing specific transactions over a number of days in January 2014, indicating that the amount of these deposits was under the cash reporting threshold of $10,000 and the fact that they were made to the same patron account but at different branches of the bank on the same or following day.[19]

42 The spreadsheet also included images of the deposit slips, many of which were incomplete and some of which gave no details at all as to the identity of the person making the deposit.[20] At the same time ANZ sought answers to the following questions:[21]

> What is the Purpose of the account / what is it currently being used for?
>
> All funds are being transferred from this account to the Burswood account. Why are deposit being made into this account and not directly in to the Burswood account? Why is this account being used as a conduit account?
>
> What is the reason for establishing a separate legal entity to conduct this activity?
>
> How does the customer keep track of who is depositing into the account?
>
> Who is actually depositing into the account? Are they local, foreign or a combination of both? What countries are the depositors from? How many depositors use this account?
>
> Is it common practice for the customer to accept cash deposits?
>
> This account appears to be being used as a patron account for Burswood, what is the regular (other) patron accounts utilised by Burswood
>
> Why has the entity utilised "investments" in their company name?
>
> What other 'investment' accounts under the crown group are also being utilised in a similar fashion.
>
> What (if any) monitoring is occurring over the account by the customer? Has the customer made any reports to any regulator body on the activity occurring through the account?

43 On 31 January 2014 Mr Costin emailed Mr Barton in the following terms:[22]

> I have spoken to Craig on this and he has explained what has been happened on the transactions. These are overseas patrons who use a money changer to provide the money into Crown's account where Crown cannot accept the money in that currency (he mentioned Indonesian and Malaysian customers).
>
> In terms of Paul's queries I can take him through the use of the account name etc. but am not 100% sure what we should/shouldn't mention around the use of company names.

44 The "Craig" referred to in the email is Mr Spence who at that time was the CFO of Crown Perth.

45 In response to Mr Costin, Mr Barton recommended that Mr Costin first speak to Mr Birch at ANZ.[23] There is no evidence that any written response to ANZ's queries was ever provided by Crown, nor is there any evidence that Mr Costin, Mr Barton or anyone else at Crown elevated ANZ's concerns or queries to Crown's Risk Management Committee or any member of the Boards of Crown, Crown Perth or the directors of Riverbank.[24]

46 On 3 February 2014, a meeting was held at Crown Melbourne's offices between Mr Costin and Mr Birch of ANZ.[25] Following the meeting, Mr Costin emailed Mr Theiler (a Senior Vice President of International Business) noting:[26]

> I just had a meeting with ANZ to discuss some transactions that occurred through Riverbank Investments, specifically money changers putting in multiple transactions.
>
> I got ANZ comfortable around the accounts, but the one outstanding question was why the money changer deposits multiple amounts under $10k at different branches.

47 Two important matters emerge from this email. First, clearly Mr Costin thought he needed to "get ANZ comfortable" with the accounts, notwithstanding that ANZ had raised serious concerns that the Riverbank account had been used for money laundering. Secondly, the "one outstanding question" had not been answered, despite the obvious answer being that the deposits were the indicia of money laundering. The deposits were being made at different branches to avoid a single branch or any one bank teller seeing the total amount of the cash being deposited that day or over a series of days, in an attempt to avoid triggering the banks' threshold transaction reporting obligations. Indeed this was evidently why ANZ had queried the transactions in the first place.

48 Despite being made aware of ANZ's concerns on 31 January 2014, and of the particular transactions ANZ identified in the spreadsheet, it appears that no one at Crown took any steps to review the balance of the bank statements of Riverbank's ANZ account. Had this been done, it would have been evident that structuring had not only occurred in January 2014 but that the accounts up until that time were riddled with examples of the same thing. The bank statements from this time until the accounts were closed, continue to show evidence of structuring of cash deposits with 61 further cash deposits indicative of structuring being made after 31 January 2014.[27]

49 On 27 March 2014 another meeting took place between representatives of ANZ and Crown. Those present included Mr Neilson (General Counsel of Crown), Ms Tegoni (Legal Officer and AML Compliance Officer for Crown Melbourne), Mr Preston (Legal Officer and AML Compliance Officer for Crown Perth), Mr Barton and Mr Costin.[28]

50 The fact that a meeting had been held with Crown's bankers relating to issues of money laundering was not brought to the attention of Crown's Risk Management

Committee, the Crown Perth Board or the Crown Board or the directors of Riverbank.[29]

51 On 31 March 2014 Mr Barton retained a consultancy firm, Promontory Australasia (Sydney) Pty Limited (Promontory) to undertake a review of the AML/CTF Programs at Crown Melbourne and Crown Perth.[30] Mr Barton and Mr Costin met again with ANZ on 29 April 2014, at which time ANZ informed Crown that the Riverbank account would be closed in July 2014.[31]

52 Following this decision, Mr Barton directed Mr Costin to inform Crown Melbourne and Crown Perth patrons "to stop making multiple in branch cash deposits below the threshold".[32] On 29 April 2014, Mr Costin emailed numerous staff within Crown stating:[33]

> ANZ have advised that they will be closing the Riverbank Investments accounts… and have also advised that the Asian patron deposit accounts for Southbank Investments in Hong Kong and Singapore are to be closed.
>
> The closure of the Riverbank accounts was expected…can customers be advised by relevant people that multiple cash deposits in branch under the $10,000 reporting threshold will not be accepted in the new CBA accounts, as we don't want this process to occur again with CBA in six months' time deciding to close the Riverbank and Southbank accounts due to the suspect transactions.

53 The same day, Mr Theiler replied:[34]

> We have already instructed our relevant office managers to advise customers not to make multiple deposits under $10,000 and we will continue to remind them.

54 On 29 April 2014 following notification that ANZ intended to close the Riverbank account, Mr Hancock wrote to Mr Costin in terms that included the following:[35]

> Good luck with finding a new bank, you'll have contacts in every major and minor bank in Asia within a few short years as we continue to open and close accounts.

55 On 29 September 2014, Mr Barton received a copy of Promontory's report (Promontory Report).[36] The Report noted that Promontory had reviewed Crown's manual transaction monitoring and without conducting any testing it was able to infer that Crown Melbourne and Crown Perth implemented the manual controls in a manner consistent with the requirements of their AML/CTF Programs. Notwithstanding that Mr Barton had commissioned the report to give ANZ comfort in circumstances where transactions indicative of money laundering had been identified, Promontory was not alerted to the existence of the Southbank and Riverbank accounts. Nor was it advised of the issues which ANZ had identified in

those accounts. Accordingly, the Promontory Report did not address any of those issues.[37]

56 Promontory observed that the procedures and documentation for Crown's cash transactions report monitor's (CTRM) review of bank statements was deficient and reported that:[38]

> Without such procedures and documentation the transaction monitoring process seems to depend largely on the CTRMs experience with AML/CTF issues and familiarity with Crown Melbourne's business.

57 Mr Barton subsequently provided the Promontory Report to Mr Birch at ANZ.[39]

58 On 5 March 2015 Mr Birch provided Mr Barton with some commentary on the Promontory Report analysis and suggested that Mr Barton have Crown's AML team review that commentary. Although a little lengthy, it is appropriate for discussion elsewhere in the Report to extract the whole of the relevant commentary. It was in the following terms:[40]

> **Analysis**
>
> **KYC Information:**
>
> It appears only minimum information is obtained for patrons including name, DOB and residential address. For ANZ the minimum collect requirements per is name, DOB, address, occupation, Citizenship/Nationality for individual customers.
>
> Whilst World Check screening is performed on all junket operations, patrons non-credit or patrons credit there is no evidence of client review or rejection/exit from adverse media, sanction or PEP related notifications where these would be deemed above Crowns risk appetite. ANZ screen all customers against mandated Sanctions lists. It also screens all customers against Politically Expose[d] Persons Lists and Crime and Terrorists lists (Worldcheck). Further ANZ has a Transaction Monitoring Program to alert potentially suspicious/unusual activity and ANZ. Risk rating of customers is automatically set at "Low" unless or until the AML/CTF Officer or Cash Transaction reporting Manager decides to elevate the CRR, which would not be re-assessed for another 2 years. ANZ has an automated solution to determine customer risk based on attributes within the customer profile. The level of risk will determine the frequency in which reviews are completed.
>
> Review of customers with significant or high risk rating is done on a 2 year cycle whereas ANZ performs this on a 1 year or 6 monthly cycle or where an event is triggered.
>
> Crown's CDD [Customer Due Diligence] is not aligned to ANZ's customer risk rating requirements for example ANZ has automated solution to calculate customer risk and all customers are risk rated. ANZ has a policy position on managing High Risk

> Customers and on certain Restricted Customer types. Understanding the ultimate beneficial owner is not mandatory whereas ANZ is required under the minimum standards to know and identify the ultimate beneficial owner. Under Australian CDD reforms and AU KYC Policy now require beneficial ownership information to be collected for all entity types with a risk based approach to verifying.
>
> **Enhanced Due Diligence (EDD)**
>
> In the areas of EDD Crown does not prescribe any mandatory approach or information that must be collected, this is not in line with ANZ's EDD process where we prescribe certain collection of artefacts.
>
> There is no evidence in the report which indicates where EDD has been performed and where heightened risk or a trigger event had led to escalation for review or ultimately exited. In two instances a patron had been charged or convicted and there was no evidence of review by Crown of the client account.
>
> **Transaction Monitoring**
>
> Transaction monitoring is largely manual based on desktop reviews of reports, there is no automation and again there appears to be no evidence of any exits, following submission to AUSTRAC for SMR's or CTTR's.
>
> There was no evidence in the report determining the effectiveness of these transaction monitoring scenarios or what the approach is for monitoring, i.e. such as data mapping which generate exception reports and what constitutes unusual or suspicious patterns of activities?

59 On 6 March 2015, Mr Barton replied to Mr Birch in the following terms:[41]

> This seems to largely be a comparison with ANZ's processes not a commentary on the Promontory report. It's not clear what the implications are of a difference in the approach to some of the processes between ANZ and Crown would be. Are there any specific area that should be addressed from this comparison?

60 Despite the concerns Mr Birch had raised, and the very helpful commentary ANZ provided, no changes to the operation or monitoring of the Southbank or Riverbank bank accounts were made at this time.[42]

AUSTRAC questions

61 A meeting was held between AUSTRAC and Crown representatives in December 2016 at which AUSTRAC queried whether Southbank should be enrolled as a reporting entity in its own right.[43]

62 After this meeting, internal legal advice suggested that the Southbank account had "no other function than the mere conduit for the receipt" of patron's funds. The view

was formed that Southbank was therefore not providing a designated service under the AML/CTF Act. It was noted that AUSTRAC "might have an argument" if particular circumstances were satisfied, but the internal advice suggested that this was probably not the case. That advice identified a "further ground" for Crown to argue which was that Southbank "does not carry on a business but merely operates a bank account".[44]

63 The issue that AUSTRAC had raised emerged again later when Crown apparently sought external legal advice as to whether Southbank and Riverbank were reporting entities by reason of providing a designated remittance service.

64 The query by AUSTRAC was a red flag that the regulator was concerned about the operations of Southbank and an indication that Crown needed to take seriously what was occurring through the accounts of Southbank and Riverbank. There is no evidence that anyone in Crown recognised this red flag at the time.

AML Related Questions from ASB

65 Southbank also held an account with ASB Bank in New Zealand, a subsidiary of CBA.

66 On 10 July 2018 Ms Tauira, a Transaction Relationship Manager from ASB, requested a call with Mr Costin to ask him what she described as "urgent" due diligence questions regarding the operation of the Southbank account.[45]

67 On 11 July 2018 at Mr Costin's request, Ms Tauira provided those questions to him in writing as follows:[46]

> Please confirm if your ASB bank account is:
> 1. 1. subject to Crown Casino's board/senior management governance/oversight?
> 2. 2. covered by Crown Casino's AML Programme?
> 3. 3. covered by Crown Casino's internal AML audit?
> 4. 4. covered by Crown Casino's regulator's periodic audit?
> 5. 5. regulated by any regulator in New Zealand (e.g. Department of Internal Affairs)?
>
> Please confirm if you have your own:
> 6. 6. transaction monitoring in place to detect unusual activity in the ASB account?
> 7. 7. process and procedures in place to identify cash deposits into the account?
> 8. 8. process and procedures in place to confirm the source of cash deposits?
>
> For each of the 8 questions above, can you please provide something to confirm this? (e.g. policies/procedures resources that specifically confirm each point).

68 The same day Mr Costin forwarded ASB's queries to Ms Lane, the then Group General Manager of AML.[47]

69 There was an inexplicable delay in responding to ASB. However on 2 October 2018 nearly three months after ASB's urgent query, Mr Costin sent the response to ASB

with answers drafted by Ms Lane (with Crown's response in italics):[48]

> Please confirm if your ASB bank account is:
>
> 1. 1. subject to Crown Casino's board/senior management governance/oversight? *Yes*
>
> 2. 2. covered by Crown Casino's AML Programme? *Yes*
>
> 3. 3. covered by Crown Casino's internal AML audit? *Yes*
>
> 4. 4. covered by Crown Casino's regulator's periodic audit? *Yes. The VCGLR is also notified and supplied with a copy of the all approved bank accounts (pertaining to patron accounts) when a new account is requested to be approved.*
>
> 5. 5. regulated by any regulator in New Zealand (e.g. Department of Internal Affairs)? *Apart from regular legal requirements, the account is not regulated by a regulator in New Zealand*
>
> Please confirm if you have your own:
>
> 6. 6. transaction monitoring in place to detect unusual activity in the ASB account? *Yes*
>
> 7. 7. process and procedures in place to identify cash deposits into the account? *Crown reviews all incoming and outgoing international funds transfers and regularly reviews the account in the CBA online system to identify any cash deposits. Crown understands that ASB will record and include on the statement when a cash deposit is made into Crown's account at an ASB branch*
>
> 8. 8. process and procedures in place to confirm the source of cash deposits? *Where required, Crown may undertake enquiries as to the source of cash deposits.*

70 These responses were misleading. There were serious shortcomings in the transaction monitoring of the Southbank and Riverbank accounts. There is no evidence to support the suggestion that Crown made source of funds enquiries in respect of deposits into the Southbank and Riverbank accounts.

71 As to question 1, the majority of the Crown Board knew nothing about these accounts let alone providing "oversight" of its ASB bank account or indeed any of its bank accounts.[49]

72 The answer to question 2 was an oversimplification, as Southbank was not enrolled as a reporting entity meaning the ASB account was not "covered by" the Crown Melbourne AML/CTF Program or any AML audit. Instead, at best, transactions through that bank account were monitored by Crown Melbourne on the basis that the funds deposited into Southbank ultimately flowed to it.

73 The response to question 4 implies that the ASB account was audited by the VCGLR. The information that Crown provided to the VCGLR were quarterly statements of the net assets and liabilities rather than bank account statements.[50]

74 As to the answer to question 6, although transaction monitoring was in place, Crown by this time had been made aware by ANZ and Promontory that the transaction monitoring processes had deficiencies. Transactions consistent with structuring were continuing in the CBA accounts of Southbank. In those circumstances, whilst transaction monitoring may have been "in place" it had already been demonstrated by ANZ to be ineffective and had an audit been done, it would have been evident that it remained ineffective.

75 Finally, the processes and procedures in respect of identifying cash deposits in Southbank and Riverbank's accounts were subject to aggregation errors the possibility of which ANZ had alerted Crown in 2015 and which were continuing to occur after that time. Thus, whilst officers of Crown Melbourne and Crown Perth may regularly have reviewed accounts in the SYCO system to identify cash deposits, they were not able to properly monitor the risks which the cash deposits posed from an AML perspective.

76 On 2 November 2018 Ms Tauira raised urgent queries with Mr Costin regarding payments totalling $15 million over the previous two years by a Crown patron which she said required investigation and sought particular information from Mr Costin. There was a subsequent internal discussion as to whether or not Crown would provide that information to ASB on the basis of privacy concerns.[51] Ultimately it was not provided.

77 On 23 November 2018 Ms Tauira raised a further question regarding Southbank, this time in relation to the issue of its status as a reporting entity:[52]

> Can you please confirm if Southbank Investments is an AML CTF reporting entity in Australia?
>
> We must note that from our investigations we can't see that Southbank Investments is a reporting entity in NZ. Please refer here if you have questions on what this means.
>
> Please come back to me as soon as you can today.

78 Mr Costin replied in the following terms:[53]

> No, Southbank Investment is not an AML CTF reporting entity in Australia. The AML CTF reporting entity is Crown Melbourne, the parent company and operator of the gaming facility.

79 On 22 January 2019 ASB notified Crown they were closing Southbank's accounts for reasons that included the information that had been provided by Crown.[54]

80 Despite ASB obvious concerns, including in relation to transactions through the account, none of these concerns or the fact of the closure of the accounts were escalated to Crown's Risk Management Committee or the Crown Melbourne Board or Crown Board. This is despite Xavier Walsh, then Chief Operating Officer of Crown Melbourne, Mr Preston and Ms Lane being informed of ASB's decision.[55]

81 Even then, on 22 January 2019, Mr Walsh emailed Mr Costin asking:[56]

> Are we able to set up an account with a different bank? Or is that not an option?

82 Mr Costin replied to Mr Walsh copying Mr Preston and Ms Lane, in the following terms:[57]

> I would think it is unlikely with the brief look at banks that operate in New Zealand. ANZ have already shut down our Southbank Investment accounts in Australia due to AML concerns (hence the switch to CBA in Australia), the Chinese, European and US banks won't go anywhere patron accounts, which really only leaves us with Westpac and Bank of New Zealand (owned by NAB).
>
> Given the royal commission the banks have become incredibly risk averse (Louise and I are meeting with CBA on Thursday to provide our relationship manager with some background to try and make sure they don't close our Australian accounts). Happy to have a chat with NAB and Westpac to see what they think but I would be hesitant to promise anything.

83 The red-flag of ASB closing Southbank's bank accounts did not prompt any further review of the wisdom of permitting Southbank and Riverbank to continue to operate bank accounts or any detailed review of the bank accounts statements of those companies or Crown's AML processes.[58]

84 No action was taken to close down the operations of Southbank or Riverbank or implement additional controls to prevent the accounts being exploited for the purposes of money laundering.

Questions from CBA

85 On 10 December 2018 CBA raised queries with Crown regarding the operation of the Southbank and Riverbank accounts.[59] On 11 December 2018 Mr Costin emailed Ms Lane:

> So the ASB queries have finally reached CBA. Happy for you to respond directly if you want or you can go through me.[60]

86 On 20 December 2018 Crown responded to these queries as follows (Crown's response in italics):[61]

> Could you please confirm that Southbank Investments is covered under Crown's existing AML Program as a Designated Business Group? *Southbank Investments Pty Limited is a related body corporate of Crown but is not part of its "designated business group" for the purposes of the AML/CTF Act (as it is not a reporting entity). In any event, all TTs sent and received by Crown (including through Southbank Investments) as part of remittance arrangements are covered by Crown's AML/CTF Programs.* ·
>
> What measures does Southbank undertake to identify and verify the identity of the individuals for whom it is accepting funds? *Under Crown's AML/CTF Program, Crown conducts the know your customer checks - identification and face-to face verification against Primary ID provided by the customer - in advance of accepting an outbound instruction from a customer and/or before providing funds to the customer on an inbound instruction. Once the KYC process has been conducted by Crown as the non-financier, the instruction will be accepted for the transferor of an outbound transfer and/or the money will be made available to the ultimate transferee on an inbound transfer. In addition, Crown uses the Dow Jones Risk & Compliance product to screen all active customers to detect if the customer is a PEP/sanctioned/on a watch list, which includes those customers that are the transferor (on an outbound transfer) and the transferee (on an inbound).* ·
>
> What measures does Southbank have in place to identify and prevent the receipt of illegitimate funds? *Crown reviews the Southbank Investments account daily and all inbound and outbound transfers as part of its Transaction Monitoring Program. The purpose of the review is to identify and appropriately action any potentially unusual transactions or patterns of transactions.* ·
>
> What remedial actions have been taken in respect of the VCGLR finding, regarding Junket arrangements? *The VCGLR finding in respect of junket arrangements concerned internal processes and procedures (including legibility of handwriting) – it did not relate to KYC or any AML/CTF matters. Remedial steps have been undertaken in respect of these internal processes.*

87 The response regarding identity verification was made in circumstances where during this period Crown Melbourne and Crown Perth were receiving moneys which had been deposited by companies in cash into the accounts of Southbank and Riverbank. It is not apparent how the casinos could have ascertained the identity of

individuals making cash deposits into those accounts, particularly in circumstances where Southbank and Riverbank accepted deposits via the anonymous QuickCash method. Further, despite directing patrons that the accounts would not accept transfers from companies, Southbank and Riverbank accepted transfers from companies, such that the ultimate source of funds was obscured.

88 In February 2019 Ms Lane met with CBA's account management team to discuss Crown's AML controls.[62] Again, these meetings and the CBA's concerns were not notified to Crown's Risk Management Committee or the Boards of Crown, Crown Melbourne or Crown Perth.

89 As discussed earlier, on 5 and 6 August 2019 the article exposing the allegations that money laundering was occurring in the Southbank and Riverbank accounts was published in *The Sydney Morning Herald* and *The Age*.[63]

90 On 27 August 2019, there was a meeting with CBA between Ms Lane, Mr Costin, Mr Barton and Mr McGregor. At the meeting, CBA indicated that the issues identified in the article raised red flags and that an investigation of the accounts had identified information in relation to transactions in the accounts that CBA could not share with Crown.[64] Clearly, telegraphing that CBA was concerned that the accounts had been used for the purposes of money laundering.

91 On 4 October 2019 Mr Barton and Mr Costin attending a meeting with CBA who notified them of the impending closure of the Southbank and Riverbank accounts.[65]

92 CBA's decision to close the accounts was made known to Crown's Risk Management Committee, the Crown Board and the Boards of Crown Melbourne and Crown Perth in December 2019.[66]

Crown's Investigations of the Media Allegations

93 On 31 July 2019, Mr Barton and Mr Preston received an email from Ms Stipanov (Corporate Affairs at Crown) which forwarded an email from Mr Toscano (a reporter at *The Age)* which included the following questions:[67]

- For what purpose were Riverbank Investments Pty and Southbank Pty Ltd set up?
- Why do they have the name "investments" in the company names, given a principle task of these companies was receiving money from Chinese gamblers and/or junkets?
- Did you consider the risk that those depositing funds in these companies may claim to authorities (including in countries where gambling is illegal) they were involved in investment activity rather than gambling activity?

- How do you respond to concerns from law enforcement agencies that multiple organised crime entities have deposited the proceeds of crime into the accounts of these two entities?
- What governance did Crown executives on the board of directors apply to their activities to mitigate the obvious risk that criminal money would be deposited into their accounts?
- How have multiple criminal entities been able to deposit funds into the accounts of these companies?
- What have these funds been used for? Could any of those purposes be described as an investment?
- How do you respond to allegations from former law enforcement agents that the companies were set up to evade anti-money-laundering laws?
- How do you account for the use of these companies to engage in suspected money laundering?
- How many notifications have Crown's executives who are on the boards of these two companies ensured have been made to AUSTRAC or the AFP about the funds placed into these companies?

94 Mr Preston caused internal enquiries to be undertaken in relation to Crown's AML/CTF programs, to see if they were responsive to the Southbank and Riverbank accounts, and spoke with Ms Lane as part of the enquiries.[68] He prepared a memorandum to Mr Johnston and Mr Andy Carr, Executive Vice President, Business Development dated 4 August 2019, which was copied to Mr Felstead.[69]

Ms Lane's Internal Investigation

95 Subsequent to the publication of the article on 5 August 2019, Ms Lane took steps to conduct a review of the Southbank and Riverbank accounts.

96 On 6 August 2019 Ms Lane requested the bank statements of the Southbank account.[70] She also emailed Adam Sutherland (AML Manager) noting an allegation in the article and then requesting Mr Sutherland's assistance in the following terms:[71]

> "In a separate incident in early 2017, a Crown bank account was used to send hundreds of thousands of dollars to a drug trafficker, according to multiple sources aware of the transaction. The sources said Crown had failed to alert Australia's money laundering agency, Austrac, about the high-risk money transfer."
>
> Hi Ads,
>
> I have been through the Southbank accounts for January — April 2017

> Can you please check the persons flagged below as receiving a cash transfer during the period of "hundreds of thousands of dollars", for the outbound transaction details (the TR), if it was an IFTI and whether we filed SMRs or received LEAs in respect thereof.
>
> I will review Riverbank and the Crown accounts separately.

97 Over a number of days between 6 August and 20 August 2019, Ms Lane conducted a manual review of the Southbank bank statements, including reviewing hardcopies of bank statements with a highlighter on the floor of her office; cross-checking suspicious activity with SYCO entries; and checking whether Crown had submitted suspicious matter reports appropriately.[72]

98 Due to the highly intensive manual process of reviewing the statements, Ms Lane formed the view that she would either need additional internal support to complete the review or the task would need to be done externally.[73]

99 On 20 August 2019 Ms Lane spoke with Mr Jeans (Principal of Initialism) about obtaining external forensic assistance to review the Southbank and Riverbank bank accounts. Mr Jeans advised Ms Lane that she should consider obtaining forensic support from Grant Thornton.[74] The same day Mr Jeans introduced Ms Lane to Ms Shamai of Grant Thornton by email noting "Crown need some support to forensically analyse internal bank accounts".[75]

100 On 21 August 2019 Ms Lane emailed Mr Preston regarding the proposed external review providing the communications with Mr Jeans and Grant Thornton:[76]

> I would like to utilise the services of Grant Thornton (or another party, as you see fit) to run some analysis over the Southbank Investments and Riverbank Investments accounts. This analysis should be under Minter Ellison's direction and reportable to you as Chief Legal Officer.
>
> As I have mentioned previously, I have started this process but it is incredibly time consuming and I suspect will be easily done by a party with the right systems to enable us to run rules over the data (Crown is not there yet with Sentinel, but will be).
>
> This analysis will be useful in any subsequent discussions with CBA about closure of these accounts, and will point to any areas that we can improve. It may also point to areas of concern we might want to raise with CBA as our banker in respect of CBA's AML/CTF processes.
>
> In the alternative, if this is something that we want done internally, then we will need additional hands to do it.

101 Mr Preston and Ms Lane discussed obtaining MinterEllison's advice on the issue and whether Grant Thornton's review would be subject to legal professional privilege. It was agreed that Ms Lane would obtain the advice.[77]

102 There was a call between Glen Ward (Partner at MinterEllison) and Ms Lane for 8 minutes from 3:30pm on 22 August 2020 and another call between Mr Ward and Mr Preston for over 2 minutes on the same day.[78]

103 At 3:37pm that day, Ms Lane emailed Ms Shamai's details to Mr Ward copying Mr Preston on that email.[79]

104 On about 21 August 2019 Mr Preston received advice from MinterEllison "that there was a real risk that any third party review of the Southbank Investments and Riverbank Investments accounts would not be subject to legal professional privilege".[80] Mr Preston could not recall if he received this advice via Ms Lane or directly from a lawyer at MinterEllison.[81]

105 Sometime after 21 August 2019 Mr Preston formed the view that it was not necessary to conduct a comprehensive review of the Southbank and Riverbank accounts on the basis that nothing had been specifically identified as matching the allegations raised by the media and on his understanding that Crown's transaction monitoring program covered the Southbank and Riverbank bank accounts.[82]

106 On 26 August 2019, Ms Lane emailed Mr Ward at MinterEllison in the following terms:[83]

> Can you please advise if you progressed any further in respect of the bank accounts that we discussed last week?
>
> Appreciate this might be a tomorrow job; keen to keep abreast of where you are up to.

107 On 29 August 2019 Ms Lane emailed Mr Ward again:[84]

> Can you please provide an update on the SBI and RBI work with GT.

108 On 29 August 2019 Mr Ward replied to Ms Lane copying Catherine Macrae (Partner at MinterEllison):[85]

> Apologies, I was in Court all day on the class action.
>
> I have spoken with GT.
>
> Catherine (copied) will likely assist this workstream, given the ILGA inquiry, etc and events of today. One of us will call you tomorrow.

109 Ms Lane went on leave from 31 August 2019 to 22 September 2019 and left her role at Crown in early October 2019 having apparently taken no further steps in relation to the matter.[86]

110 The existence of these investigations only came to light on and from 17 November 2020. This was in part due to the fact that the relevant documents relating to these matters were not produced by Crown until that date. Up until that time, the Inquiry had proceeded on the assumption that no one at Crown had reviewed the bank statements of Southbank and Riverbank until September 2020.

111 On 31 July 2020 when Mr Preston was giving evidence he was shown the bank statements of Southbank and Riverbank. He confirmed that he had not previously reviewed the accounts but gave no indication that he was aware of any other person having done so.[87]

112 On 28 August 2020 Mr Preston provided a written statement to the Inquiry which included the following:[88]

> During the course of my evidence before the Inquiry, I was shown a number of historical bank statements for the Riverbank bank account. That caused me to instruct my team to conduct an immediate review of that account.
>
> The review identified that Cage staff who were responsible for reviewing online bank statements for the Riverbank bank account did not, it would appear, identify and escalate a number of transactions of potential structuring.

113 Once again there was no mention of Ms Lane's review of the accounts in August 2019 or her advice to Mr Preston that a more detailed review, either internally with added resources, or externally with Grant Thornton should occur.

Internal investigation of the aggregation issue

114 Nevertheless in September 2020 there was an internal investigation into the aggregation issue. The existence of this investigation became known to the Inquiry during Mr Demetriou's oral evidence in which he referred to a memorandum from Mr Marais, the General Manager of Legal and Compliance to Mr Barton dated 29 September 2020.[89]

115 The purpose of the memorandum was to update Mr Barton on the internal investigation which the AML, Compliance and Credit Teams within Crown Melbourne and Perth had been undertaking into cash deposits into the Southbank and Riverbank accounts. The memorandum attempted to quantify the extent of the problem of aggregation of cash deposits within a defined subset of transactions through the Southbank and Riverbank bank accounts. The subset of transactions looked at were instances where there were: (i) two or more cash deposits of less than

$10,000, but totalling more than $10,000, made to either the Southbank or Riverbank bank accounts; (ii) the deposits were within a 72-hour period; and (iii)the deposits were credited to a nominated patron account.[90]

116 Crown ultimately accepted that there was aggregation of certain transactions in the entries in the SYCO system and that this compromised the AML Team's capacity to identify examples of structuring occurring in the Southbank and Riverbank accounts when they were reviewing them in the SYCO system.[91]

Mr Barton's queries of Mr Sutherland in September 2020

117 On 9 September 2020 prior to giving his oral evidence to the Inquiry, Mr Barton asked Mr Sutherland (now Group Senior Manager AML) whether the Southbank and Riverbank bank statements were reviewed in response to the Media Allegations.[92] Mr Sutherland replied to Mr Barton on the same day:[93]

> As discussed please, see the attached emails. Louise was looking into the bank statements before she left trying to identify the "drug trafficker" referred to in the Age article from early August 2018. We identified some potential hits, we looked into those at the time and could not link any adverse information or LEA interest to those customers. Some of the transfers also related to funds that were likely winnings. We also discounted some because we made some reports to AUSTRAC.
>
> What I didn't know at that point in time was that the transaction The Age was referring to was from the Riverbank (transfer to Nan HU – the subject of Veng Ann's evidence last week) and we were concentrating on the Melbourne accounts (I believe LL did do some investigation of the Riverbank account too).
>
> At the time I was helping Louise to try and identify the transaction or transactions in the article to see what reporting was done and the status of the customer. Unfortunately at the time I did not put my mind to other potential issues with the accounts. We did look at multiple Customers SYCO accounts at the time to look at TTs vs gaming activity and any relevant SMRs/LEA interest.
>
> I don't think Louise got around to engaging a third party to conduct a review, as I mentioned she went on leave between this period and her leaving in early October.

118 Mr Sutherland's "attached emails" were: (i) an email from Ms Lane to Mr Preston on 7 August 2019 attaching the Southbank bank statements;[94] and (ii) the email extracted earlier titled "FW: Forensic Support" dated 21 August 2019 from Ms Lane to Mr Preston with the advice to engage Grant Thornton to review the Southbank and Riverbank accounts or to conduct an internal review.[95]

119 On 23 September 2020 Ms Manos gave her oral evidence to the Inquiry that she did not consider that she would be expected to review the Southbank and Riverbank bank

statements herself.[96] When asked why they had not been reviewed, she replied that she was "not sure".[97]

120 On 23 September 2020 Mr Barton gave evidence to the Inquiry that no review of Southbank or Riverbank was undertaken to look at whether there had been any instances of possible money laundering, with the exception of the review previously mentioned by Mr Preston occurred in August or September 2020.[98]

121 At some time after giving her evidence on 23 September 2020 Ms Manos had a conversation with Mr Sutherland in which he informed her that he thought Ms Lane had looked into the Media Allegations concerning Southbank and Riverbank and had asked to see bank statements of each company.

Ms Manos' queries Mr Sutherland

122 After giving evidence on 23 September 2020 and after watching or reading transcripts of the Inquiry proceedings including Counsel Assisting's closing submissions Ms Manos became aware that the Inquiry was proceeding on the basis of an understanding that Crown did not undertake any review of the Southbank or Riverbank bank statements. She formed the view that the investigations which Mr Sutherland had informed her Ms Lane had performed were not known to the Inquiry.[99]

123 On 9 November 2020 Ms Manos called Mr Sutherland to confirm that the emails regarding the review of the bank statements by Ms Lane had been produced to the Inquiry.[100] The same day Mr Sutherland forwarded an email to Ms Manos attaching the email that he had sent to Mr Barton on 9 September 2020.[101]

124 On 10 November 2020 Ms Manos telephoned Mr Barton and asked him to check his inbox for the email from Mr Sutherland dated 9 September 2020. Ms Manos also caused a further review to be undertaken of email records of relevant Crown AML staff including Ms Lane.[102]

The indicia of money laundering within the bank accounts

125 Three reports which examined issues relating to money laundering in the bank accounts were provided to the Inquiry in mid-November 2020, being two reports of Grant Thornton comprising forensic data analysis of the Southbank and Riverbank accounts and one report by Initialism reviewing the Southbank and Riverbank accounts for indications of money laundering.

126 Despite previously resisting the proposition that the Southbank and Riverbank bank statements contained evidence indicative of money laundering, from 18 November 2020 Crown conceded on the basis of the report of Initialism that it is more probable

than not that money laundering occurred in the Southbank and Riverbank accounts as a result of cuckoo smurfing activity.[103]

127 Crown contended that it is not possible to identify whether specific transactions or series of transactions like these were in fact money laundering. Rather it was contended that they were indicative of money laundering.

128 The Initialism Report concluded that the activity indicative of money laundering in the accounts is more likely to be representative of cuckoo smurfing due to the way in which Crown operates the bank accounts in an omnibus fashion similar to trust accounts operated by other businesses.[104] This is because Crown retained ownership and control of the Southbank and Riverbank accounts and the payments to Crown appeared to be for a legitimate purpose.[105] Based upon Initalism's analysis, cuckoo smurfing exploited legitimate payments for the purpose of gaming by Crown patrons and replaced those funds with illegitimate funds.[106]

129 Initalism's view that the suspicious transactions in the accounts of Southbank and Riverbank are likely to be indicative of cuckoo smurfing may be correct. However, caution should be exercised before adopting such a view until a proper end-to-end analysis of each transaction is undertaken.

The scale of the problem

130 The Grant Thornton and Initialism Reports identify various types of transactions, indicative of money laundering in the bank accounts of Southbank and Riverbank. These comprised:

(a) Structured cash deposits below the reporting threshold of $10,000 comprising:

i. 407 deposits to the Riverbank accounts under the reporting threshold between July 2013 and July 2017 totalling $3,252,796;[107]

ii. 280 deposits to the Southbank accounts under the reporting threshold between November 2013 and April 2019 totalling $2,144,620;[108]

(b) Large QuickCash deposits comprising 269 QuickCash deposits between August 2014 and December 2015 totalling $11,359,589.50 to the Southbank and Riverbank accounts (as further discussed below, QuickCash was a method of depositing cash at CBA which provided relative anonymity to the person making the deposit);

(c) International electronic funds transfers by third-party individuals comprising 90 transfers in the period July 2013 to July 2019 totalling $35,491.196 to the Southbank and Riverbank accounts;

(d) International electronic funds transfers by third-party companies comprising 31 transfers in the period January 2014 to July 2019 totalling $19,612.787 in the period January 2014 to July 2019;

(e) Electronic funds transfers by overseas money remitters comprising 599 transfers in the period July 2013 to November 2019 totalling $271,102,231 to the Southbank and Riverbank accounts;

(f) Domestic electronic funds transfers by third party individuals comprising 25 transfers in the period October 2013 to July 2016 totalling $3,380,553 to the Southbank and Riverbank accounts; and

(g) Transfers containing inconsistent payment descriptors, including: "Payment for Goods"; "Travel money and expenses"; and "Personal investment in company".

131 In addition to the inconsistent payment descriptors identified by Grant Thornton and Initialism, further examples included "purchase house"; "medical expenses"; "returning loan"; and "for business".

Cash Deposits under reporting threshold

132 The bank accounts included numerous instances of transactions of the type which ANZ had identified in January 2014 in which cash deposits were made at different branches of a bank within a short period of time, to the same patron number or a relatively limited number of patron numbers.

133 Grant Thornton and Initalism's reports have confirmed the continuation of this style of structuring deposits under the reporting threshold in the CBA accounts following the concerns that were raised by ANZ in 2014. This activity continued in the CBA Southbank account from November 2013 to April 2019, although on a diminished basis from the middle of 2017.[109] The structured deposits continued in the new CBA Riverbank account from May 2014 to July 2017.

134 The only step taken by Crown in relation to the concerns raised by ANZ was a direction by Mr Barton that customers be told to refrain from making multiple deposits under the reporting threshold. Whatever else might be said of this direction, it was ineffective.

Quickcash Deposits

135 There were numerous examples of cash deposits made by a method described by CBA as "QuickCash". This involved the person depositing the cash, placing it with a deposit

slip in a sealed envelope and then placing the envelope into a "QuickCash Chute" or a "QuickCash Safe".[110]

136 Whilst there was no evidence as to which method was used, the Terms and Conditions for QuickCash indicate that access to the "QuickCash Safe" is reserved for a subset of bank customers called "QuickCash Safe Customers" who are then provided with a key to the trap of the QuickCash safe.[111] There is no evidence that Southbank or Riverbank were "QuickCash Safe Customers" and even if they were, under the Terms and Conditions they were required to keep the key under their control and use it only for the purpose of enabling their representative to make deposits using the envelope.[112] It appears that the deposits made to the Southbank and Riverbank accounts referred to as "QuickCash" deposits in their bank statements were made by third party deposits by way of a chute which did not require a key.

137 The risk this posed in terms of money laundering was that cash deposits via a sealed envelope provided anonymity for the person making the deposit and meant that person's identity could not be verified.

138 Deposits were made into QuickCash machines at CBA branches over the reporting threshold but split into smaller transactions, made on the same day, in the same geographic area and to the same patron number (usually around $50,000 per deposit).

139 The deposit of cash into bank accounts in any manner where the identity of the person making the deposit cannot be identified with a reasonable level of certainty, presents an inherent and obvious risk of money laundering since the source of the funds is obscured.

140 On the face of the bank statements, although not designed to avoid the reporting threshold, multiple smaller deposits made via the QuickCash method were evidently suspicious.

141 Similar to the conclusions made in relation to the structured deposits under the reporting threshold, the Initialism report identified that these QuickCash deposits appear to be indicative of cuckoo smurfing based upon the number of deposits at different branches, the value of the deposits, the customer not being domiciled in Australia and cash deposits being made in a different state of Australia to the location of Crown's casinos.[113]

Transfers by companies and overseas money remitters

142 The Initialism Report identified the use of third party companies and overseas money remitters to deposit money into the Southbank and Riverbank accounts as indicative of cuckoo smurfing.

143 The risk of accepting transfers from companies and money remitters was that the true identity of the person making the deposit was obscured and any audit trail was made more difficult to follow.

144 Since at least November 2014, the banking instruction details provided to patrons wishing to make a deposit into the Riverbank account included the following:[114]

> Please indicate in transfers, the Crown Patron Number in which the funds are in favour of. Payments must be from a Personal Bank Account (No Company or Business accounts will be accepted)

145 Similarly, from at least September 2015, the instructions regarding deposits to the Southbank account included the following:[115]

> Please note:
>
> Payments must be from a Personal Bank Account (no Company/Business or Trust accounts will be accepted).

146 Despite these instructions apparently indicative of Crowns policies the bank statements of both Southbank and Riverbank include hundreds of transfers from companies and money remitters. It is clear that the instructions were ignored and were not enforced.

147 Some examples demonstrate the scale of the unchecked misconduct.

148 Transfers were made by Pai Pai Supply Chain Ltd (Pai Pai) a company incorporated in Hong Kong amounting to 53 deposits over a four-month period in 2016 to at least 20 different patron accounts totalling $31.8 million.

149 Transfers were also made by a company, Mobicrea Innovation Furniture (HK) Limited (Mobicrea), which made 41 deposits between September 2016 and January 2018 to various patron numbers totalling $19.7 million.

150 The Initialism Report identified 100 payments into the Riverbank accounts and 502 payments into the Southbank account between 2013 and 2019 by overseas money remitters making transfers for the benefit of Crown customers.[116] Additionally, the Initialism Report records that such overseas money remitters often used unrelated company names to make the payments in order to conceal that the payment was in fact made by an overseas money remitter.[117]

Veracity of the Southbank and Riverbank Media Allegations

151 There was debate, appropriately, about the care that must be taken in reaching conclusions in respect of matters that occurred some years ago. This has been

referred to as "retrospective bias" with detailed arguments and references to cases analysing retrospective and prospective fact-finding. The simple reality is that fact finders are usually determining matters that occurred in the past. They must not apply a counsel of perfection but they should have regard to common sense realities. It is necessary to take into account the relevant surrounding circumstances and contexts in which those persons, the subject of the review, were operating at the particular time.

152 As the Chairman recognised in her evidence in the Inquiry, Crown's conduct certainly "enabled" money laundering to occur.[118]

153 There can be no doubt that the processes adopted by Crown outlined above enabled or facilitated money laundering through the Southbank and Riverbank accounts.

154 The veracity of the Media Allegation that Crown facilitated money laundering through the Southbank and Riverbank accounts is established.

155 The very serious consequences of this highly unsatisfactory conduct exposed in the recitation of these facts is dealt with elsewhere in the Report, in particular in Chapter 4.3 dealing with Crown's corporate character and Chapter 4.5 dealing with the question of Crown's present suitability.

156 The question of whether the Media Allegation that Crown "turned a blind eye" to the money laundering through the Southbank and Riverbank accounts is more complex. The expression is said to derive from an incident in the life of Vice Admiral Nelson, as he was at the time of Battle of Copenhagen in 1801, when he did not wish to accept a signal that had been sent to him, albeit that he had seen it. It is said that he observed that he was entitled to be "blind" sometimes.[119]

157 The reasonable reader of the Media Allegations would understand from such an imputation that it was being alleged that Crown saw or knew that money laundering was occurring in the accounts and intentionally turned away from it.

158 When Crown's major banker notified it in 2014 of its concerns of the indicia of money laundering in the Riverbank account, it is obvious that Crown knew that money laundering was probably occurring, so much so that the then CFO Mr Barton gave an instruction to the effect that that those who were structuring should be directed to stop structuring. This was not turning a blind eye but rather giving a direction that the practice cease, irrespective of the highly inappropriate nature of the direction.

159 The cavalier attitude adopted by the Crown employees in relation to the later questions posed by both the CBA and ASB is also quite extraordinary and highly inappropriate for officers of a close associate of a Licensee of a casino.

160 However the question is whether the evidence establishes that Crown knew of money laundering and did nothing about it. That is, that Crown saw it and then intentionally looked away making itself "blind" to such activity.

161 It is important to identify the difference between what was happening during the course of the Public Hearings of the Inquiry and the events between 2014 and August 2019 when the Media Allegations were made and the Inquiry was established.

162 In the former setting in the Public Hearings the directors and officers of Crown were being challenged as to why the events of the earlier years and indeed the publication of the Media Allegations in August 2019 would not have driven any reasonable and responsible person inexorably to the conclusion that the Southbank and Riverbank bank statements should be reviewed. Such a failure in the circumstances may have been a proper basis for a contention that Crown turned a blind eye to either allegations or the reality of money laundering.

163 This was a challenge based on: (i) the obviousness of the structuring on the face of page after page of the bank statements requiring no expertise to identify it; and (ii) the premise adopted by all, including the directors of Crown, that no Crown officer had actually looked at those bank statements since the publication of the Media Allegations. This was an erroneous premise, caused by Crown itself in failing to properly respond to a Summons in February 2020 and officers who knew that Ms Lane had reviewed the bank statements in August 2019 failing to disclose this fact to the Inquiry until November 2020 after the Public Hearings of the evidence had concluded.

164 The serious and unsatisfactory consequences of this failure to disclose Ms Lane's review and the rejection of her proposal to conduct a more detailed review with the assistance of external expertise because such a review would probably not be protected by legal professional privilege and thus not protected from the gaze of this Inquiry is dealt with later in the Report. However it is sufficient in this analysis to observe that this step was taken on legal advice in rather intense circumstances in which Crown was facing a myriad of Media Allegations and considering the consequences of numerous other matters referred to earlier in Chapter 3.1.

165 The fact that the then AML Compliance Officer and Chief Legal Officer, Mr Preston, or the then CFO Mr Barton whose close involvement with these problems is outlined in the facts recited earlier, did not look at the bank statements after the Media Allegations was yet another step along the way to the Crown Board being led into its false sense of comfort that its AML/CTF program was as described in its Message, "comprehensive", and justified it in its public defence to the Media Allegations.

166 This was not evidence of turning a blind eye to money laundering in the accounts. It was an outcome that occurred from a series of steps and decisions infected by extraordinarily poor judgment.

167 The latter setting in the events between 2014 and August 2019 outlined earlier in this Chapter was a non-forensic environment in which Crown was operating commercially within its processes for dealing with money laundering threats including its AML/CTF program supported, as Crown understood it, by its electronic management system, SYCO.

168 The bank statements were apparently reviewed by the cage staff who then entered the transactional data into the SYCO system. The evidence establishes that the cage staff, in the main, aggregated the structuring entries in the bank statements into a single entry of their sum total into the SYCO database. The evidence also establishes that the AML team reviewed the entries in the SYCO system for the purposes of identifying suspicious transactions and complying with Crown's obligations under the AML/CTF Act. There were a couple of hints in a few entries in the SYCO system that could have alerted a vigilant member of the AML team to the prospect of structuring such that the actual bank statements could have been called for and reviewed. However on balance it is reasonable to conclude that the aggregation process compromised the AML Team's capacity to do its work properly.

169 The Crown team were looking. They were not looking away. It was just that they could not see.

170 The veracity of the Media Allegation that Crown "turned a blind eye" to money laundering in the Southbank and Riverbank accounts is not established.

Money laundering in the Casino

171 As discussed earlier, the Media Allegations included a claim that money was laundered through the Crown Melbourne Casino.

172 The specific allegation in the *60 Minutes* program related to the Roy Moo incident in 2012 discussed in Chapter 3.4. There can be no doubt that this transaction involved money laundering in the Casino.

173 The footage in the *60 Minutes* program was supplemented in the evidence in the Inquiry by the footage that was published in October 2019 of incidents in 2017 and CCTV still photographs of incidents in 2018.

174 On 15 October 2019, the media published footage said to be leaked from casino inspectors in Victoria showing wads of cash being removed from opaque bags in a private room reserved for the Suncity Junket and raised questions over Crown's

enforcement of money laundering controls.[120] This footage derived from videos that had been posted on a website of Federal parliamentarian, the Hon Mr Andrew Wilkie MP. That footage depicted three separate instances of large amounts of cash being exchanged for chips.[121] It is not in dispute that the three incidents depicted all occurred at the Suncity cash desk.

175 The first incident which occurred in December 2017 depicts a man removing multiple bundles of cash amounting to many hundreds of thousands of dollars from a black cardboard shopping bag. The bundles are arranged neatly on the desk by the cashier who then provides the man with plaques (a form of chips). The cashier then puts the bundles of cash through a cash counting machine.

176 The second incident depicts a man placing chips on the Suncity cash desk for which the Suncity cashier exchanges cash. The Suncity staff are then seen using a calculator and reaching into a drawer under the desk which contains cash. The cash is counted through the cash counter by the staff and is handed to the man. The man then appears to give some of the cash back to the Suncity staff (perhaps appears by way of a tip), which they place off to the side of the desk. This incident also appears to have occurred in December 2017.

177 The third incident but earlier in time on 10 May 2017 depicts a man placing a blue cooler bag onto the Suncity desk and unzipping it. He unpacks many bundles of $50 notes wrapped in elastic bands from the cooler bag and places them in stacks on the cash desk.

178 There is no issue in respect of the content of that footage. It is stark. It is obvious. It is clear that hundreds of thousands of dollars of cash was transported into the casino in shopping bags in these incidents. The cash was exchanged for chips and plaques at the Suncity desk and the money was counted in a money counter on the Suncity desk. It appears that no checks were made as to the source of the cash. It also appears that no particular documentary evidence was made available to identify the person providing the cash. However it is apparent that the person was probably known to the Suncity personnel. Each transaction was on the face of it trouble-free.

179 Further evidence of large cash transactions taking place at the cash desk in the Suncity room were seen in CCTV stills from 5 January 2018 and 9 February 2018. The stills show men attending the Suncity cash desk and presenting bundles of cash.

180 The CCTV still photographs of the 5 January 2018 transaction depicts a man being assisted by a Suncity employee to remove bundles of cash from a suitcase on the floor in front of the desk. The volume of cash is much larger than that which emerged from the black shopping bag or the blue cooler bag. On this occasion the denomination appears to be $50 notes, again wrapped in elastic bands.[122]

181 The second set of CCTV still photographs of the 9 February 2018 transaction depicts bundles of cash on the Suncity desk wrapped in cellophane and elastic bands. The denomination of the bundles on this occasion appears to be $100 notes.[123]There are also photographs of the Suncity staff counting this cash.

Control imposed on the amount of cash at the Suncity desk

182 In March 2018 there was a report from the Crown Melbourne business unit that large amounts of cash were being stored at the Suncity desk. In response, the International VIP Team reviewed the cash desk arrangements in the Suncity Room.[124]

183 On 24 March 2018 Ms Maguire wrote to Mr Ricky Lee asking for his help to inform Suncity senior staff that due to changes in Crown's regulatory procedures, cash transactions at the desk were no longer permitted. Ms Maguire said "we would like them to reduce the amount of cash held at their service desk to $100k and this cash is only to be used [for] non-gaming transactions eg shopping etc". Ms Maguire advised that Suncity staff would need to take their customers wishing to deposit or withdraw cash to one of Crown's main cages.[125]

184 On 17 April 2018 Mr Indran Subramaniam (Vice President International Business Operations) and Ms Maguire met with the Suncity Service Manager and the Suncity Finance Officer and advised them that all customer deposits must be transacted at the Mahogany Room cage with a requirement for the provision of the "ID" of the person depositing for third party transactions, and that the amount Suncity could hold at their desks was up to $100,000 as petty cash, which was not to be used for gaming purposes.[126] The Suncity representatives were advised that these changes would take effect on 20 April 2018.[127] The evidence also indicates that Mr Lee spoke to Mr Alvin Chau on 17 April 2018 regarding the prohibition on cash transactions at the Suncity desk.[128]

185 This evidence establishes that on 20 April 2018 (the date on which the new controls took effect) Mr Subramaniam discussed the new controls with the staff of Suncity and was informed by them that they had approximately $5.3 million in cash in the various drawers and cupboards at the Suncity desk.[129] This money was counted by Mr Subramanian and other Crown staff and placed in "cage bags". Mr Subramaniam then asked that all drawers at the Suncity cash desk be opened for inspection.[130] At this time an additional $300,000 in cash was found.[131]

186 After the cash was discovered, Mr Subramaniam asked the Suncity Finance Manager whether he would like the funds to be deposited in a bank. According to Mr Subramaniam the finance manager replied that "his boss did not want to".[132] Accordingly, the $5.6 million in cash was taken to the Mahogany room cage and

deposited in the Suncity patron deposit account. The cash counting machine was removed from the Suncity desk at this time.[133]

187 On 4 May 2018, Crown received an information request from Victoria Police in respect of the $5.6 million kept at the Suncity desk, to which it responded.[134]

188 On 5 May 2018 Mr Subramanian completed a second audit of the drawers and cupboards in the Suncity room and found all to be in order.[135]

Further communication with AUSTRAC

189 On 25 May 2018 Crown wrote to AUSTRAC setting out the controls which had been put in place in the Suncity Room, including the restriction on holding more than $100,000 at the Suncity desk.[136]

190 In mid-2018 the Suncity Room was relocated so that entrance to the room was via the Mahogany Room. This meant that the identity of persons entering was recorded and that Suncity no longer had a private entrance.

191 On 19 December 2018 a backpack containing $250,000 was taken from behind a curtain in the Suncity Room to two men waiting in a car outside the casino.[137] The men in the car were subsequently arrested by police as they were attempting to deposit the cash at a branch of the Westpac Bank in Melbourne.[138]

192 As a result of this event, Crown added an additional control under which Suncity staff could only take bags into the room that were clear plastic so that surveillance could observe what was being taken into the Suncity Room.[139]

Veracity of the Media Allegation of money laundering in the casino

193 The fact that there is a large volume of cash transacted in a casino does not mean that it is money laundering. It obviously equates with a very large risk of money laundering. However the only allegation of money laundering in the Media Allegations that was proved in a Court and relied upon by the *60 Minutes* program was that relating to Mr Moo. That was clearly money laundering through Crown Melbourne casino.

194 The veracity of the Media Allegation that Crown facilitated money laundering through the Crown Melbourne casino in 2012 is established.

195 The balance of the footage and CCTV stills demonstrate beyond any doubt very real concerns that the money taken from the suitcase and the shopping bags was more probably than not money that was to be laundered. Whether it be connected to organised crime or simply money that had not been declared is not known. However

it was obviously highly risky and it was clearly apparent that no questions were asked by the Suncity personnel about the source of those funds.

196 The transactions, the subject of the supplementary footage and CCTV still photographs occurred in May and December 2017 and January and February 2018. Crown took action somewhat belatedly in April 2018.

197 However, it is clear from the steps that Crown took: (i) to stop the cash transactions in the Suncity Room with the requirement that any cash be transacted at the Crown cash desk; and (ii) to impose conditions on the amount of cash that could be held in the Suncity Room; and (iii) limiting the cash so held to non-gambling use, militates against any finding that Crown "turned a blind eye" to money laundering in that Room.

198 The veracity of the Media Allegation that Crown turned a blind eye to money laundering through the Crown Melbourne casino is not established.

Chapter 3.3

China Arrests

1 Paragraphs 15(b) and 16 of the Amended Terms of Reference require investigation and report upon the suitability of the Licensee and Crown "in response to" the Allegations relevantly for this Chapter that Crown "breached gambling laws". The investigations and hearings on this topic have proceeded on the basis that these Allegations relate to the conduct of Crown's VIP International operations in China and the arrests of 19 of its employees in China in October 2016 referred to during the Inquiry inclusively as "the China Arrests".

2 The expression "breached gambling laws" in the Allegations identified in paragraph 15(b) of the Amended Terms of Reference has been investigated upon the basis that Crown knew that its China-based staff were breaching Chinese gambling laws. There has also been investigation of the other Media Allegations that were made in relation to the China Arrests.

3 It is necessary to determine the nature and veracity of those Media Allegations to enable the determination of the questions posed in paragraph 16 of the Amended Terms of Reference, as to whether "in response to" them, the Licensee and/or Crown remain suitable persons within the meaning of that expression in the *Casino Control Act*.

4 This Chapter deals first with the relevant events in Crown's VIP International operations in China and then the determination of the veracity of the Media Allegations.

Media Allegations

5 In July and August 2019, various media outlets published allegations relating to Crown's operations in China and the arrests of its China-based staff in October 2016. Articles published in the print media and broadcast in the *60 Minutes* program conveyed the following relevant Allegations that were the subject of investigation:

(a) Crown knew that its China-based staff were breaching Chinese gambling laws;

(b) Crown exposed its staff to the risk of detention in China;

(c) Crown disregarded the welfare of its employees as they were offered "huge bonuses" to lure Chinese high rollers to gamble at Crown's Australian casinos;

(d) Even as it became likely Chinese police were closing in, Crown directed its China-based sales staff to keep promoting gambling but to do so "under the radar";

(e) Crown instructed staff to falsely claim to the Chinese authorities that they were not working for Crown in China but were working in other locations; and

(f) Crown's operations in China cast doubt over its corporate governance practices.

Crown's Response to the Media Allegations

6 In response to the Media Allegations the Crown Board's ASX/Media Release entitled "Message from the Crown Board of Directors" on 31 July 2019 included the following in relation to the China Arrests:[1]

> Crown did not know that the conduct of its staff in China constituted an offence in China, and did not deliberately breach any laws;
>
> Crown was not charged with or convicted of any offence in China. Crown understood that its staff were operating in a manner which did not breach Article 303 of the Chinese criminal law;
>
> At all relevant times Crown obtained legal and government relations advice from reputable independent specialists. The detention and conviction of its staff was not an indication that the advice was wrong or disregarded, but an illustration of the challenges involved in anticipating how foreign laws can be interpreted and enforced; and
>
> The *60 Minutes* program featured a former junior employee and several purported experts. Whether they were paid for the *60 Minutes* appearance was not disclosed. Also, the objectivity of the former employee is open to question on the basis that she made an unsuccessful demand for compensation from Crown of over 50 times her final annual salary.

7 Crown's public response to the Media Allegations focused on and refuted the core allegation that Crown knew that the conduct of its staff in China constituted offences in China and that it deliberately flouted Chinese law. The Board's Message conveyed that Crown had acted on all the government and legal relations advice that was obtained in respect of its VIP International operations in China. The Board's Message did not address the other Media Allegations. However a spokesperson for Crown

apparently interviewed prior to the *60 Minutes* program was recorded as having said that Crown "refutes any suggestion that it knowingly exposed its staff to the risk of detention in China".

8 It is appropriate at this juncture to deal with the relevant events in Crown's International operations in China before determining the veracity of the Media Allegations.

The origins of Crown's VIP International Business

9 Prior to the demerger of PBL in late 2007, a feature of its gaming division was the generation of revenue from VIP high roller players, who used the exclusive private gaming areas at Crown Melbourne and Crown Perth and enjoyed exclusive benefits.

10 Mr Craigie, as the Chief Executive Office of PBL Gaming, was responsible for the oversight of the PBL gaming division and importantly its VIP marketing efforts, which as early as March 2007 were focused on offshore expansion.[2]

11 Following the demerger of PBL and the establishment of Crown in late 2007 as a separate listed entity, the importance of VIP high roller players and in particular VIPs from the Asian region continued.

12 Crown wanted to target international VIP gamblers living outside Australia, who participated in a Junket or received commissions and other benefits based on turnover of play through "premium player" program agreements with Crown.[3] These players were actively targeted by Crown to generate revenue for the Australian resorts. In Crown's 2008 Annual Report, the then CEO, Mr Craigie, reported as follows:[4]

> Crown has also built an extensive database of VIP High Roller players across the Asian region supported by an experienced sales network. Over the years, Crown's reputation for high-level service and quality gaming facilities has earned it significant loyalty from this market.

VIP International

13 The "sales network" to which Mr Craigie referred was operated by the VIP International business unit within Crown Melbourne,[5] which formally reported to the Crown Melbourne Board.[6]

14 The VIP International business unit was responsible for managing all of Crown's overseas operations, such as Crown London Aspinalls, and also the identification and development of relationships with international VIP gamblers to visit Crown's casinos in Australia.[7] The 2008 Annual Report included the following: [8]

> Crown Melbourne has one of the largest single-site VIP gaming operations in the world. The complex is strongly marketed throughout Asia, a feature of which is the promotion of Melbourne and Victoria as attractive tourist destinations.

15 In pursuit of its objectives and to facilitate its business activities, the VIP International business unit established and maintained overseas sales teams and operations in various jurisdictions including Malaysia, Thailand, China and Singapore.[9]

16 Those sales teams' efforts were not only intent on growing gaming revenue directly from VIP players but also increasingly on growing revenue from Junket play.[10]

17 The Junket operators provided Crown with a further channel to market to VIP players as well as the possibility of accessing new VIP customers, including from China and other jurisdictions. [11] As described elsewhere one advantage of dealing with Junkets was the ability for Crown to reduce its credit risk and allowing it to enforce a debt against the Junket operator rather than the patron.[12]

18 The VIP International business unit provided dedicated resources within the region to foster its relationships with key Junket operators, including operators in Macau and Hong Kong.[13] Mr Packer, as the Chairman of Crown from its inception in 2007 until August 2015, played an important role in building relationships with Junket operators.[14] By 2014 Crown's relationship with Junkets had become of such importance that it had developed a so called 'Platform Junket Strategy' which was intended to drive business to Australia and minimise Crown's credit risk by directing VIP players to a 'platform junket'. As discussed elsewhere the platform Junkets were Junket operators who had standing with Crown and whom Crown could trust with respect to commission risk and financial risk.[15]

19 As discussed earlier the importance of the VIP International business to Crown and the Licensee was reflected in the plans for the development of the Barangaroo Casino.[16]

20 In Crown's view, the future success of Crown Sydney and the Barangaroo Casino was reliant in part upon the efforts of the sales network of the VIP International business and Junket operators in marketing Crown Sydney as an integrated resort that catered to the VIP players as a sophisticated luxury tourist destination.[17].

21 Mr Packer intended to leverage the success of the Junket operator model in Macau and implement the same model to Crown Sydney. Specifically, he aimed to treble Australia's current share of the international VIP gambler market, by leveraging Crown's joint venture in Macau.[18]

Management of VIP International

22 From August 2013 Mr Felstead took up the role as Chief Executive Officer of Australian Resorts, and as such was the most senior executive responsible for the VIP International business unit. He reported to Mr Craigie as Managing Director and Chief Executive Officer of Crown. Mr Felstead and Mr Craigie were in regular contact as dictated by the needs of the business.[19]

23 As Group Executive General Manager of VIP International Gaming from 2011 to October 2016, Mr O'Connor was the ultimate decision-maker in the VIP International business unit. He reported to the Chief Executive Officer of Crown Melbourne and subsequently to Mr Felstead. Mr O'Connor communicated with Mr Felstead several times a week and he involved Mr Felstead in major strategic decisions, such as decisions pertaining to pricing, capital investments and critical customer relationships within the VIP International business and any other issues concerning the VIP International business which Mr O'Connor considered to be important. Mr O'Connor is currently employed by Crown as a Director of Innovation and Strategy.[20]

24 From February 2012 Mr Chen was one of Mr O'Connor's direct reports and they regularly discussed matters relevant to the VIP International business. During the period of 2014 to 2016, Mr O'Connor spoke to Mr Chen by telephone very often; at least once a day and sometimes more.[21]

25 Mr Chen was based in Hong Kong and held the position of President of International Marketing. He was the most senior internationally-based member of the VIP International business. Mr Chen was viewed by Mr O'Connor as the person on the ground who was best positioned to identify and monitor any potential risks in the China market, with the assistance from his sales team and various other external consultants he engaged on behalf of Crown. The Crown Position Description for Mr Chen's role indicated that he was "responsible for providing broad leadership and strategic direction to advance the Company's VIP market segment" including "Asian relationship management and development and growth of Crowns VIP client base".[22]

26 A number of Senior Vice Presidents responsible for different geographic regions or business lines within VIP International reported to Mr Chen such as Mr Stefan Albouy, Senior Vice President – China & Taiwan until around mid-2013.[23] Mr Chen was a key player in many of the events that followed and which ultimately culminated in the arrest of Crown's staff. Mr Chen is no longer employed by Crown.

27 In addition to Mr Felstead, Mr O'Connor and Mr Chen, others in the VIP International unit included Jacinta Maguire, General Manager of Commercial, Roland Theiler, Senior Vice President of International Business, and Ishan Ratnam. These individuals comprised what was internally referred to as the "VIP International leadership team".

From around 2013, they were the key individuals involved in commercial decisions on behalf of the business unit. Mr Johnston certainly also played a role in the management and direction of the VIP International business, although the extent, purpose and nature of this role was a matter of significant debate and is addressed further elsewhere in the Report.[24]

28 In 2015 to 2016 Mr Ratnam reported to Mr Felstead,[25] and held a number of titles including Vice-President of Entertainment, Vice President of Capital Golf Course, and President of VIP Development. His role largely involved running the Capital Golf Club, which sat within the VIP International business, unit and promoting non-gaming events on roadshows on behalf of Crown. From at least October 2014, Mr Ratnam was also conferred the title "Special Assistant to the Chairman", at the time being Mr James Packer. The title was honorary, and intended to signal respect to VIP patrons who met Mr Ratnam but were unable to meet Mr Packer. Mr Ratnam also confirmed that from around 2015, he was personal assistant, butler and host to Mr Packer whenever Mr Packer visited Melbourne. Mr Ratnam is currently employed by Crown as the President of VIP Development.[26]

29 Mr Theiler was the Senior Vice President of International Business. Mr Theiler was based in Melbourne and reported to Mr O'Connor. His role was largely to manage the operations of the Corporate Jet services. From at least September 2014 his direct reports included the Aviation Manager, Chief Pilot, Flight Scheduler, Flight Attendants and engineers.[27] Mr Theiler is currently employed by Crown as the Senior Vice President – International Business.[28]

30 Ms Maguire was the Group General Manager of the VIP International Business Operations. She also reported to Mr O'Connor. Ms Maguire was based in Melbourne and her role was to manage the operations of the business with respect to its accounts, finance and credit control.[29] Ms Maguire is currently employed by Crown as the Group General Manager of International Business Operations.

Reporting the business of VIP International

31 During the period from 2013 to 2016 there were a variety of ways in which information regarding the performance and business of VIP International was shared and reported both within Crown Melbourne and into Crown itself. One aspect of this was the reporting and management of risk for VIP International, which is addressed elsewhere.

Trading updates

32 Mr Felstead prepared a weekly report referred to as a "trading update" (or similar), which contained information on how the VIP International business was performing,

as well as the Australian business as a whole. These trading updates were sent to Mr Craigie, Mr Ken Barton, Mr Michael Neilson, Mr Michael Johnston, and Mr Packer.[30]

CEO Meetings

33 Information regarding the VIP International business was reported to Crown via the so called "CEO Meetings" which involved the Chairman, Crown management and select CPH personnel. These meetings were established by Mr Packer around July 2014.[31]

34 The purpose of the CEO Meetings was to brief Mr Packer on matters relevant to Crown's business prior to Crown Board meetings. Regular attendees were Mr Packer (or in his absence, Mr Alexander as Deputy Chairman), Mr Craigie, Mr Felstead, Mr Neilson, Mr Todd Nisbet who was the Executive Vice President of Strategy and Development, and Mr Karl Bitar, who was the Head of Government Relations.[32]

35 CPH personnel also regularly attended the CEO Meetings, such as Crown and CPH director, Mr Johnston, and Mark Arbib, who worked for CPH in a business development role. They, including Mr Jalland, were exposed to Crown Management and to CEO reports. The purpose of the exposure, as Mr Craigie understood it, was so that Mr Packer's three "key advisers within CPH", being Mr Johnston on financial matters, Mr Jalland on legal matters and Mr Arbib on government relations and media would be in a better position to advise him.[33]

36 Mr O'Connor often attended the CEO Meetings, and either he or Mr Felstead would present an update on the VIP International business. The VIP International business updates had structured reporting topics, such as turnover by region, and outstanding debts owed to Crown by VIP International customers. No minutes were kept of the CEO Meetings.[34]

37 The VIP trading updates prepared by Mr Felstead were not tabled at Board meetings, or otherwise presented to the Board. This is despite the VIP trading updates being included in the papers prepared for the CEO Meetings, which largely comprised of papers to be tabled at the following Crown Board meeting, such as the CEO report, the management accounts and development updates.

38 From August 2015 upon the appointment of Mr Rankin as Chairman, the CEO Meetings were discontinued.[35]

VIP Working group meetings

39 In 2013 quite possibly at Mr Packer's instigation, but certainly with his approval, the "VIP Working Group" was established. The group was intended to be an advisory group comprising VIP International executives and senior CPH personnel to support

the development and growth of the VIP business and to assist with issues that might arise.[36]

40 Regular CPH attendees were Mr Johnston, the then Group Investment Manager Brad Kady and the then Treasurer, Steve Bennett. Regular attendees from the VIP International business were Mr Felstead, Mr O'Connor and Mr Chen. During the period April 2013 to October 2016, Mr Theiler was a regular attendee of the VIP Working Group, whilst Ms Maguire attended less frequently. Mr Barton and Mr Ratnam attended less frequently.[37]

41 The VIP Working Group met approximately monthly for the first 12 months after which the frequency started to reduce. In 2014 there were approximately four or five meetings. In the period February 2015 to October 2016, the VIP Working Group met on approximately four occasions.[38]

42 The purpose of the VIP Working Group was for the CPH attendees to provide guidance and advice to the senior executives of VIP International. Topics included debt, provision of credit for customers, operational issues, opportunities to grow the business, and strategies relating to the Chinese market. In particular, Mr Craigie's evidence was that:[39]

> Both Mike and James are very numerate and probably to understand the complexity of the VIP business you need to understand the volatility of win rates; you need to understand how the various rebate programs work. It was –it was sort of a natural fit for Mike's skill set. He is mathematically inclined and financially numerate, and that was obviously of assistance to Barry and Jason.

43 While the VIP Working Group did not have a formal management or decision making role, it played an important role in providing guidance on decisions in relation to the VIP International business in the period up to October 2016. Mr Felstead said that various decisions or strategies for VIP International were endorsed by the VIP Working Group before being implemented and that the VIP Working Group considered the approach to staffing for the VIP International business.[40]

44 Mr Felstead conceded that on some occasions he provided more information to the VIP Working Group than through Crown's proper reporting lines.[41]

45 In addition to the VIP Working Group, Mr Johnston also attended ad hoc telephone conferences from time to time with key members of the management of the VIP International business, which typically included Mr Felstead, Mr Chen and Mr Ratnam to discuss operational issues concerning the VIP International business.[42] Mr Johnston's role as a director of Crown, his expertise in financial matters and his perceived role as a business leader to senior executives of VIP International was to become pivotal in later events.

Reporting VIP International business to Mr Packer

46 Mr Johnston, Mr Ratnam and Mr Felstead also communicated with Mr Packer directly on matters relevant to the VIP International business or matters that they considered important.

47 Mr Packer confirmed that in the period leading up to his resignation as director of Crown in December 2015, he expected Mr Ratnam, Mr Johnston and Mr Felstead, as persons who had shown complete loyalty to him for many years, to inform him of any important issues in relation to the VIP International business of which each individual became aware.[43]

48 However, Mr Packer was not made aware by any of his loyal subordinates in the period up to December 2015 of a number of relevant and important matters. This included the questioning of a staff member in Wuhan by the Chinese police in July 2015 and the requirement by the Chinese police for Crown to provide a letter confirming his employment.[44]

VIP International business strategy

49 Each year during the period between approximately March and May, VIP International executives engaged in business planning for the VIP International business to set its plans and objectives for the forthcoming period. Those plans were ultimately endorsed by the Crown Board.[45]

50 The plans were intended to have regard to the current circumstances of the business unit and set financial and other targets and objectives for the forthcoming period. A review of the financial plans for the period from 2013 to 2016 reveals much about the business of VIP International, its commercial priorities and the challenges that the business faced.

51 The VIP International F14 Business Plan for Melbourne and Perth acknowledged that many important drivers of Crown's VIP business were "under pressure". Reference was made to the "Chinese political change process" that had affected liquidity and currency movements and had rippled across the region. The plan referred to the effect this was having on top end players and large Macau based Junkets.[46]

52 The follow-up presentation to the VIP International F14 Business Plan dated 3 April 2013 included as a goal "to outperform the growth of Macau VIP segment", with an observation that "Crown is more dependent on the top end of the market and therefore our prospects will depend on how the market emerges and settles post the Chinese political handover". The five key strategies developed were:

(a) Key Junket profit sharing;

(b) Revised incentive deals for premium players;

(c) Rationalise international sales team;

(d) Senior executive travel to Asia; and

(e) Review the economic model.

53 The plan acknowledged that senior executive travel was valuable in that it "allows direct promotion of our properties and of upcoming events". Minimum frequencies for trips to Asia were also set for senior executives including Mr Felstead and Mr O'Connor with eight trips each per year.[47]

54 The business plan also acknowledged that the "sustainability of the current model is seriously challenged", making reference to an "increasing customer dependency on credit and increasing restrictions on cross border currency movement" that was "bringing further pressure on profits via debt collections".[48]

55 Crown's Financial Plan and Budget for Financial Years 2014 to 2017 dated 16 July 2013 reflected similar sentiments. Key objectives included capitalising on the strong regional growth of the VIP market to regain some of the share of the Asian VIP market lost to the new integrated resorts in Asia.[49] The plans and objectives for the VIP International business included the evolution of the "junket strategy by developing a suite of flexible and compelling tiered offers in the market" and building "the premium direct base business via a fresh approach to more targeted incentives and leveraging its new leadership team."

56 In May 2014 the Crown Board adopted a business plan for VIP International which was intended to increase the contribution of the VIP International business to the profitability of the group. Crown's Financial Plan and Budget for 2015 to 2018 was presented to the board by Mr Felstead. At that time the key objectives for the business included:[50]

(a) To capitalise on growth of the VIP market and regain some of the share of the Asian VIP market lost to the new integrated resorts in Asia;

(b) To grow business from Mainland China through offering incentives and experiences, and executives visiting China; and

(c) Focusing on debt risk and management.

57 Around 17 March 2015 a detailed five year plan for the VIP International business was prepared which was presented to the Boards of Crown and Crown Melbourne and

incorporated into Crown's F16-F20 Strategic Business Plan Executive Review – VIP International dated 17 March 2015[51]. This strategic business plan recorded that uncertainty was the "prevailing feature of the current international market place".[52] It identified as an opportunity for growth the "ongoing corruption crackdown in China and weakening economic conditions in China".

58 The Executive Review also referred to the "legal constraints" preventing Crown from marketing gaming in most of Asia.[53] It was noted that the proposed "platform Junket strategy gains traction and delivers growth".[54]

59 The Crown Financial Plan & Budget for the Financial Years 2017-2020, dated 22 May 2016, continued to include recognition of the highly uncertain state of the market, particularly in China and Macau.[55] Performance in the financial year commencing July 2016 was projected to be flat compared to the previous financial year. However, the plan committed to driving the platform Junket strategy, enhancing senior sales capability, advancing debt security and recovery initiatives in Mainland China and increasing the presence in the region from senior management.

60 The business plans are indicative of a consistent and sustained attempt to grow the revenue of the VIP International business to support Crown's financial performance. The uncertainty in the region was well known and recognised as one of the challenges to be overcome by the business. The organisation's increased emphasis on the VIP International business, and its relationship to Mainland China, was also expressed publicly in Crown's Annual Reports during this period.

61 For example, the 2013 Annual Report included the following:[56]

> VIP Program Play turnover for the year was $38.9 billion, an increase of 9.2% on the previous year. Customers from China are still the driving force behind the strong growth, and there has been an improvement in business from South East Asia.

62 In the 2015 Annual Report, Mr Rankin reported in his Chairman's Message:

> A stand-out was the strong growth in international VIP program play turnover across Crown's Australian resorts. This followed greater investment in our VIP international marketing.
>
> The ongoing boom in outbound Chinese tourism is a major positive for our resorts and very encouraging given our ongoing pipeline of investment in high quality tourism assets.

Incentivisation and the focus on performance

63 VIP International senior executives and staff were highly incentivised based on the performance of the VIP International business.

64 As a senior executive of Crown, Mr Felstead was awarded short-term incentives based on key performance objectives, which included, the achievement of VIP turnover growth and market share. In 2015, Mr Felstead received a short-term incentive payment of 40 percent of his total employment cost, at a value of $864,000.

65 Mr O'Connor participated in a short-term incentive plan which applied to roles with "the ability to influence the financial performance of VIP Gaming", which provided for an annual cash bonus on the achievement or exceeding Crown's VIP gaming targets.

66 The remuneration of executive directors and relevant senior management including Mr Felstead and Mr O'Connor was ultimately determined by the Crown Board, on the basis of the recommendation made by Nomination and Remuneration Committee (now the People, Remuneration and Nomination Committee).

67 As President of International Marketing, Mr Chen participated in long and short-term incentive plans based on the revenue of VIP International. Mr Chen was eligible for a yearly bonus capped at 250 per cent of his total annual remuneration, under his short-term incentive plan. Separately, Mr Chen was eligible for a maximum bonus of 200 per cent of his commencing annual remuneration paid across four years, under his long-term incentive plan. According to his payment summary for the financial year ending 30 June 2015, Mr Chen received a "VIP Bonus" of USD $1,823,649.55.

68 In the period up to October 2016, the VIP International sales staff (with the exception of administrative staff) also earned bonus payments or commissions from Crown, based on turnover targets, including the turnover of VIP customers in their region and the collection of gambling debts from customers. The bonus arrangements were used to encourage the performance of the sales teams within the VIP International business.

69 On 24 September 2013 Mr Chen emailed the VIP International team about the "F14 Short-Term Incentive Plan", which included the introduction of the "New Customer Bonus" and the "Big Customer Bonus", which were incremental bonuses on top of the base program. He advised that:[57]

> The important thing to note is that we now have a bonus program that has proven to payout significant bonuses for great performance. In F13, we had a payout range that started at 0% (some colleagues did not earn bonuses) to over 100%.
>
> We are building a performance-culture at Crown, and I can commit to everyone that great performance will be well-rewarded…

70 On 27 September 2013 Mr Chen emailed the VIP International team advising that the first round of quarterly bonuses would be issued for those teams that are "in the green" on their scorecards as well as the "New Customer Bonuses".[58] He reminded his

team that "to receive a new customer bonus you must proactively register that new customer (prior to a trip) and that customer must have fully repaid any credit".

71 The performance of staff within the VIP International team was closely monitored. On 22 November 2013 Mr Chen shared with the VIP International team some performance metrics and updated them on the "key priorities and initiatives". He expressed his disappointment at the performance of some team members, commenting that it is "unacceptable for us to be down 30-60% in markets that are growing at 15%", referring to the Macau/Hong Kong markets. Mr Chen's email also referred to the tools used by Crown to incentivise staff and drive performance:[59]

> Over the last year we have gotten tremendous support from top management to increase the level of support for our sales team. We have substantially increased benefits (vacation time and healthcare); we have revamped the bonus program (quarterly bonuses, big payouts for performance), and we have introduced tools to put more power in the hands of the sales team (CrownForce, TTW). The Company will continue to invest by introducing sales training to our world. I hope that everyone on the team recognizes how unique this support has been in industry. It is time that we all reciprocate by raising our performance, commitment, and loyalty to the Company.

72 In 2016 Mr Chen advised the VIP International team:[60]

> Those of you who are not yet at minimum acceptable, I remind everyone that all it takes is a couple of big customers to carry you into bonus land. You don't keep trying you'll never get those customers in. For those of you who are qualified to receive a bonus, remember that your plans are uncapped. The more you sell, the more you will make.

The opportunity in China

73 One of the key markets of Crown's VIP International business had, for many years, been its operations in China, which were intended to take advantage of the rise of the middle class in China and the increasing propensity of the Chinese citizens to travel.[61]

74 Crown recognised that the continued growth of the VIP International business would be fuelled by the continued expansion of the VIP gaming market in China, underpinned by the strong growth in the Chinese economy, growth in individual wealth and easing of travel restrictions for Chinese nationals. By 2011 China had become the largest market for high value international VIP players.[62]

75 Crown acknowledged that in order expand its tourism footprint, it needed to recognise that what the Chinese tourists ultimately wanted was luxury travel, luxury hotels, signature restaurants, quality entertainment, gaming and high-end retail.[63]

76 Crown's increased presence in the China region led to the continued growth of VIP International turnover in Australia. Crown Melbourne's VIP Program Play achieved an all-time record of $26.9 billion,[64] and $31 billion,[65] in 2010 and 2011 respectively with turnover increasing year on year from 2012 to 2014.[66]

The business of promoting Crown in China

77 Initially the VIP International business operated in China with its sales staff travelling to Mainland China from neighbouring countries, such as Macau and Hong Kong, to meet with existing or prospective Chinese VIP customers.[67] This occurred as early as 2000 with the appointment of a Sales Manager for North East Asia who was responsible for sourcing Asian-based Junket groups and individual premium players to Crown.[68]

78 Subsequently Crown consolidated its presence in China by having its staff who lived and worked in various regions of China conduct its marketing activities.

79 By 2012 and in the period up to October 2016, the China-based staff were employed by Crown Resort Pte Ltd,[69] a subsidiary of Crown incorporated in Singapore (Crown Singapore),[70] the directors of which were Mr Craigie and Mr Felstead.[71]

80 The role of the sales team in China was to maintain relationships with existing VIP gaming customers in China, to establish and consolidate relationships with high value gamblers who had not previously visited Crown and to market Crown's wholly owned properties to those existing and potential new customers.[72]

81 The staff engaged in a range of business activities, which included:[73]

(a) Recruiting customers to travel to and gamble at Crown's casinos in Australia;

(b) Assisting customers to apply for lines of credit issued by Crown to be used at its casinos in Australia;

(c) Assisting customers with their travel arrangements to Australia for the purpose of visiting Crown's casinos, including relevant visa applications; and

(d) Encouraging customers to settle any debts owed to Crown.

82 Members of senior management regularly travelled to China to undertake roadshows on behalf of Crown. This included Mr Felstead, Mr O'Connor, Mr Chen and Mr Ratnam visiting the various regions of China to promote lifestyle and non-gaming events as well as promoting Crown Melbourne and Crown Perth to new and existing VIP players.[74] They would meet with players over lunch or dinner or at other social occasions to promote the gambling business and other Crown assets.

83 These roadshows were welcomed by many VIP gamblers based in Mainland China as they presented them with the opportunity to socialise with very senior members from Crown. These roadshows also presented an opportunity for Crown to build relationships with clients to encourage Chinese nationals to come visit Crown as a destination.[75]

The business operations and practices in China

84 The staff in China were initially divided into three regions. However on 7 August 2013 a memorandum was issued by Mr O'Connor and Mr Chen to the VIP International team confirming that the China team was to be restructured into seven regions, in order to "provide each region with greater opportunities to maximise growth".[76]

85 The regions were China Southwest, China South, China Central, China Shanghai, China Mid-East, China Mid-North and China North.[77] The teams within each region broadly comprised of Administrative Assistants and International Sales Managers who collectively reported to a Director of International Sales. The Director of International Sales for each region separately reported to the Senior Vice President of China, who subsequently reported to the President of International Marketing, Mr Chen.[78]

86 As at September 2014, approximately 20 staff lived and worked in Mainland China. Between September 2014 and October 2016, Mr Alfread Gomez (the Senior Vice President, China) who was based in Malaysia was responsible for the teams in China and reported to Mr Chen. [79]

87 Neither Crown nor any subsidiary held any form of licence, authorisation or approval to operate or conduct business activities of any kind in Mainland China.[80]

88 At various times between 2011 and October 2015, Crown obtained legal advice relating to the legality of its business activities in China or which included comment or observations about these matters. Those involved in the VIP International business appear to have formed the view, based on an interpretation of the legal advice, that it was legal for Crown to employ staff in China to promote gambling without any business licence as long as Crown was not conducting an office in China.[81] Crown's position was, it appears, that a business licence would only be required in circumstances where it sought to establish an office in China.[82]

89 Without any form of approved licence or representative office, Crown's China-based staff were typically required to work from their residential homes to conduct their marketing activities.[83] However, from at least 2012, VIP International's senior management started to operate an unofficial office in Guangzhou by renting a residential apartment in Guangzhou to support its business activities and to process visa applications for its Chinese customers.[84]

90 By at least May 2012 this was known to the Crown Melbourne legal team and several Crown executives as Crown executive Stefan Albouy emailed a proposal to upgrade and formalise the office to Mr Chen, Mr O'Connor, and others describing the existing office arrangements as "unsuitable", "subject to random checks by authorities" and "posing many risks".

91 Mr Albouy's email advised that the Guangzhou team handled visas for all "China regions" and he proposed that the Guangzhou visa team move into new premises near the Australian consulate with business registration and to "give the team a more safe and professional environment to work in". No steps were taken to implement Mr Albouy's proposal, and it is apparent that Crown continued to lease the same premises in Guangzhou until at least 2015.

92 The rent for the Guangzhou office was paid by Crown. The office contained equipment including photocopiers, computers and hard drives, as well as gifts, and confidential documents containing customer information. It carried no Crown signage. An email address entitled "Guangzhou Office" was used by staff members.

93 The office was used by staff to perform administrative functions related to processing visa applications for VIP players. Between 2012 and 2016, the Guangzhou team was responsible for assisting with visa applications for all of Macau, Hong Kong, and Mainland China. The "Guangzhou Office" moved to new premises in 2015 and operations continued until the arrests in 2016.

94 Following the China Arrests, the premises continued to be leased on a rolling basis under the names of the employees, as negotiated between Mr Chen and the property's owner in October 2016. The lease continued until August 2017, with an employee of Crown Singapore attending the building to pay bills and maintenance fees, under the instruction not to enter the office.

95 Prior to the China Arrests, several members of Crown's management team were aware of the existence of the Guangzhou office, including Mr O'Connor, Mr Chen, and Ms Jan Williamson. Others, including Ms Tegoni, Mr Theiler, and Mr MacKay were copied onto emails concerning the Guangzhou Office. Mr O'Connor gave evidence to the Inquiry that the existence of the unofficial premises in Guangzhou "wasn't a secret" in Crown Melbourne.[85]

96 Other executives involved in VIP International, Mr Craigie, Mr Ratnam, and Mr Felstead, explained that they were unaware of the existence of the Guangzhou Office prior to the arrests of the staff in October 2016. Mr Craigie said he had not authorised the office. Both Mr Packer and Mr Alexander said that they were not aware of the office and had not authorised it.

97 The establishment of the Guangzhou Office was contrary to management's understanding of the business laws of China, which were interpreted to mean that it would be legal to operate in China without a business licence as long as no office was being conducted.[86]

98 Mr Craigie accepted that the unofficial office in Guangzhou appeared to be an attempt to disguise from the Chinese authorities the fact that Crown was conducting an office in Guangzhou.[87]

99 Many directors agreed that the conduct of management in establishing the clandestine office in Guangzhou was inconsistent with the fundamental principle of Crown that all of its business affairs be conducted legally, ethically and with strict observance of the highest standards of integrity.[88]

100 Whatever the background, the Guangzhou office was part of Crown's business in China.

Chinese law in respect of the promotion of gambling

101 Sixteen of the 19 employees of Crown who were arrested and detained were ultimately charged and convicted with gambling offences contrary to Article 25 and Article 303 of the Criminal Law of the People's Republic of China.

102 The following are the English translations from the original Chinese text, as admitted by Crown in the Australian Federal Court proceedings *Zantran Pty Limited v Crown Resorts Limited* (VID 1317/2017) (Class Action).[89] At the relevant time:

(a) Article 303 of the Chinese Criminal Law relevantly provided:

> Whoever, for the purpose of profit, gathers a crowd to gamble, or undertakes gambling as a business shall be sentenced to fixed-term imprisonment of three years or less, detention or surveillance and shall be subject to a fine.[90]

(b) Article 25 of the Chinese Criminal Law provided:

> A joint crime refers to the situation where two or more persons intentionally commit a crime jointly.
>
> Where two or more persons negligently commit a crime jointly, it will not be punished as a joint crime; those who should bear criminal liability shall be separately punished in accordance with the crime that they have committed.[91]

(c) Article 1 of Interpretation No. 3 [2005] of the Supreme People's Court entitled the "Interpretation of the Supreme People's Court and Supreme People's Procuratorate about Some Issues Concerning the Application of Law in

Gambling Criminal Cases" (the Supreme People's Court Interpretation) provided (effective from 13 May 2015):[92]

> Any of the situations set out below, if undertaken for the purpose of profit, will constitute 'gathering a crowd to gamble' as provided by Article 303 of the Criminal Law:
>
> (1) Organising three or more persons to gamble and generating illegitimate profits by taking a cut of the winnings in amounts that equal 5,000 yuan or more in aggregate;
>
> (2) Organising three or more persons to gamble where the amount gambled is 50,000 yuan or more in aggregate;
>
> (3) Organising three or more persons to gamble where the number of people participating in the gambling is 20 persons or more in aggregate;
>
> (4) Organising 10 or more persons who are citizens of the People's Republic of China to go abroad to gamble, from which kickbacks or referral fees are collected.

103 In addition to the Supreme People's Court Interpretation, there was a further interpretation issued by the Supreme People's Court's Criminal Division in May 2005 (Criminal Division Interpretation).[93]

104 With respect to the application of Article 303 of the Criminal Law, it was submitted by counsel for Crown and the Licensee and accepted by the Inquiry that the key passage of the Criminal Division Interpretation provided that:[94]

> First the number of persons organised is not calculated on an aggregate basis. It is necessary that 10 or more PRC citizens are organised at one time to go abroad to gamble … The phrase "at one time" can be translated as on a single occasion.

105 The understanding of the law of Crown executives and directors was based on the legal advice given to Crown from time to time prior to the arrests in October 2016.[95] However, none of the legal advice in that period referred to the Criminal Division Interpretation.

106 It would appear that at the time, the relevant Chinese criminal law was understood by those Crown executives and directors who considered the issue, being Mr Craigie, Mr Felstead and Mr O'Connor as turning on two precise questions of interpretation, namely:

(a) Whether the staff in China were organising a total of more than 10 Chinese citizens to travel to Crown or venues to gamble on one single occasion, or

whether the number of 10 citizens could be accumulated over a number of occasions; and

(b) That it would be legal for the staff in China to receive a commission from Crown based on the amount of the gamblers' turnover, but it would be illegal for the staff in China to receive a commission from the gambler directly,

(collectively, the Two Criminal Law Questions).

107 Mr Craigie had a broad understanding that the Two Criminal Law Questions were involved. In relation to the number of people recruited, Mr Craigie said that he "learnt about the concept of 'group gambling' and that the definition of a group was no more than 10. But at the time I wasn't across the specifics of that". Nonetheless, Mr Craigie accepted "… it would be particularly unsafe to rely on some technical construction of Chinese law in those circumstances",[96] bearing in mind his assessment that China was a riskier place for the staff to be in than in other jurisdictions.

108 Mr Felstead gave evidence to the Inquiry that, in February 2015, he broadly understood that the Two Criminal Law Questions were involved.[97]

109 Mr O'Connor understood that both of the Two Criminal Law Questions had to be triggered before there would be a breach of Article 303.[98] Mr O'Connor gave evidence to the Inquiry that while he continued to refer to legal and other advice at the time, he "assessed that through the eyes of a Westerner and … didn't fully appreciate that China's legal system doesn't operate the same way as the Western legal system does and just because one might feel that they are on the right side of the strict letter of the law doesn't necessarily mean that that's the way it will be applied in China".[99]

110 It was generally accepted or believed by Crown directors and management in the period prior to the arrests that:

(a) The legal system in China was different to the legal system in Australia;[100]

(b) China was a country where the law may be enforced inconsistently;[101]

(c) There was a risk of arbitrary action by the Chinese authorities;[102] and

(d) In the period up to October 2016, China was a riskier place for Crown staff to be working than in Australia.[103]

111 In these circumstances, it was critically important to properly assess the risks involved in conducting the business of Crown in China having regard to the precise questions of interpretation of Chinese law on which Crown was relying as the basis for the legality of its operations.

Legal advice obtained by Crown in respect of the criminal law between 2012 and 2016

112 Between 2012 and 2016, Crown engaged international law firm WilmerHale to provide legal advice to Crown regarding Crown's business activities in China and the relevant Criminal Law in China.

2012 - Advice on a changing political landscape

113 From around 2012 the political landscape in China began to change. As described elsewhere, the Chinese government had announced a corruption crackdown. This in turn had caused a downturn in Macau's VIP market and the opportunity to redirect business from Chinese VIP gamblers to Crown's casinos in Australia. These events were recognised by those within Crown as an opportunity to further increase VIP International turnover.[104]

114 While the opportunity was apparent, so too were the potential risks. In June 2012 Mr Chen retained WilmerHale to provide advice about the rumours of a crackdown and the impact of the business in China. WilmerHale advised that that there was little risk of Crown's staff receiving "a criminal charge" for the existing activities in China and there was little risk of them being detained for any reason.[105]

115 On 13 June 2012 WilmerHale further advised that Crown could "decrease risks" by ensuring that its employees did not refer customers to particular "money moving agents".[106]

116 In June 2012 Mr Chen warned WilmerHale that the Crown employees attending a proposed conference call with them on 14 June 2014 were "especially nervous ... and more junior" and that they should be "wary of how things may be perceived out of full context".[107] WilmerHale advised that it was not "illegal to be selling offshore gaming within China" but that there were laws that prohibited the marketing of gaming onshore for more than 10 people. However, advice was given that because gaming is a "sensitive topic" Crown should be "cautious and avoid openly marketing".[108]

2013 – Advice on marketing a casino business in China

117 On 19 February 2013, WilmerHale provided Mr Chen with "a summary of relevant regulations and their enforcement and practical implications on marketing overseas casino business in China".[109] WilmerHale advised that:

> ...to constitute an offence of organizing group gambling ... in connection with organizing overseas gambling, two elements must be shown at the same time (a) organise/gather 10 or more PRC citizens for overseas gambling; and (b) the organizer benefits from such activities by receiving a kick back or a referral fee. In

> other words, the organizer conducts such activities for purpose of make a profit for himself.
>
> …a normal employee of a casino is unlikely to be deemed as a "principal" or found guilty under Criminal Law by merely marketing or participating in casino operation, if such employee is not directly making a profit from doing so.
>
> We have also done some research and so far, we are not aware of any notable case where employees of an overseas casino in China were arrested and convicted of criminal liability by merely marketing overseas casino in China. Having said the above, we note that if an employee participates in money laundering activities and receives gains therefrom, such employee may be subject to a separate criminal or administrative charge of money laundering or evasion of foreign exchange regulations…

118 The advice from WilmerHale was circulated to various Crown executives, including Mr O'Connor, Mr Albouy, Mr Theiler and Ms Tegoni.[110]

119 On the following day, Mr Albouy emailed various staff in the VIP International team in response to the advice that:[111]

> While all the below gives comfort to the legal aspect of the gaming laws in China, the recent sentiment and messages we are receiving is that the matter is far more serious and I do not believe we can risk relying on the information below when it comes to protecting our team. The issue is not the conviction, as we discussed today, but the fact the authorities 'may' apprehend our team for questioning which we need to avoid at all costs.

120 On 19 May 2013 Mr Chen sought advice from WilmerHale in terms that included the following:[112]

> One of our junket operators called us today and told us he was detained by authorities in Guangzhou. He reported that over 100 "agents"/junkets had been detained for questioning. This operator said he was not allowed to leave China for one year. He also claimed that the government had revised the laws governing the organisation of gambling trips and that one no longer needed to be receiving a commission in order to be in violation of the rule prohibiting the organisation of gambling for more than 10 people.
>
> I was wondering if you could verify whether such law has indeed been changed or verify that it has not?

121 On 22 May 2013 WilmerHale advised that they had checked the law and that it remained "unchanged". Advice was also given that "there was no new judicial interpretation in this regard" and Guangdong and Guangzhou public security seemed to engage in regular crackdowns on local gambling and in particular gambling machines.[113]

February 2015 - Legal advice regarding the casino crackdown

122 On 9 February 2015 Mr Chen wrote to WilmerHale forwarding an article that had been published during the previous few days in relation to the Chinese government targeting foreign casinos trying to attract Chinese gamblers. Mr Chen advised as follows:[114]

> We have a very nervous China staff seeking guidance on whether this should change any of their protocols and behaviours. We are also in the midst of a major recruiting effort which this impacts.
>
> I would like some advice from Wilmer as to what you all know about this initiative and advice as to how it should or should not impact us. Obviously, I'd like to be able to calm the nerves of both staff and prospective candidates.
>
> Time is of the essence here. I look forward to your reply.

123 On the same day, WilmerHale wrote to Mr Chen confirming that it appeared that the Ministry of Public Security had conducted a press conference on 6 February 2015 in which one of the topics was a "crack down on internet gambling and foreign casino's representative offices in China which facilitates Chinese individuals to gamble overseas".[115]

124 WilmerHale also advised that although they had conducted some research on recent enforcement cases relating to the closure of foreign casinos' representative offices in China, they had found very little information. However, there was reference to a number of cases where the offices in China were closed and "employees were detained", but that those cases involved not only facilitating gambling, but also money laundering which was described as the offices directly helping their customers transfer money offshore. WilmerHale advised that based on that research the important points were as follows:

- Foreign resort/hotel's rep offices and employees in China are protected under law so long as the rep offices/employee's activities are not in violation of law. Introducing hotel/resort facilities to potential customers itself should not be any problem because this is what the rep offices are supposed and licensed to do (liaison and marketing).
- Employees should certainly not be involved in any money laundering activities. Employees should also avoid dealing with government officials to the extent they can because of the ongoing anti-corruption campaign.
- Given the highlighted government efforts to crack down on rep offices with core business to facilitate Chinese individuals gambling abroad, the company's rep offices/employees in China should focus its business on introducing the hotel/resort and facilities, rather than engaged in any

> activities which may be viewed as directly facilitating Chinese individuals gambling offshore.

125 On 10 February 2015 Mr Chen asked WilmerHale whether there had been any change in the laws that would alter their previous advice regarding Crown's activities in China. That request included the following:[116]

> As you may recall, the prior understanding of the law was that organizing groups of 10 or more for gambling while receiving a commission was clearly illegal. Since none of our staff receive commission, we were in compliance with that law.

126 On the same day, WilmerHale responded advising that there had been "no recent change to law". Mr Chen then asked the further question: "How about if staff assists or refers with remittances of money?" In response, WilmerHale advised as follows:[117]

> If staff knows about a third party engaged in money laundering activities and still makes introduction or referral, it will be problematic under law. If staff knows that certain arrangement to remit the money is not in compliance with law, and still assists the customer to do so, it will also be problematic.
>
> Given the current enforcement environment, it will be prudent for staff not to be involved in the money-moving activities because it can be easily interpreted as an effort to facilitate overseas gambling.

June 2015 – Legal advice regarding arrests of South Korean operatives

127 On 22 June 2015, advice was sought from WilmerHale following the arrests in China of a number of South Korean casino employees.[118] Mr Chen was concerned to understand the basis upon which the South Korean casino marketing staff had been arrested and whether their activity was beyond what the Crown employees "normally would do".[119] He also indicated that he has "a nervous team", so would "appreciate any prompt information".

128 On 23 June 2015 WilmerHale advised, amongst other things, that:[120]

(a) The potential charges included luring Chinese to gamble in Korean casinos and violation of Chinese foreign currency policies.

(b) The 14 Korean employees were not based in China but had travelled to China for the marketing activities. They worked with local Chinese travel agencies to lure the gamblers to go to Korea.

(c) These arrests should be read in the context of the government's "continued crackdown on corruption in recent years". As anti-corruption enforcement was focused on Macau, Chinese gamblers started to travel to other places and

South Korea had been one of the most popular destinations for Chinese VIP gamblers.

October 2015 – advice regarding CCTV News Story

129 In response to a broadcast on Chinese national television channel called 'CCTV' (CCTV Program) the VIP International team sought updated advice from WilmerHale. The CCTV Program was *Topics in Focus*, and addressed the subject of foreign casinos and their networks inside China, with a particular focus on the issue of foreign casinos marketing to Chinese citizens, highlighting South Korean casino operations.

130 The CCTV Program included a discussion of the legal prohibitions on promoting gambling, and summed up the hard-line approach taken by the Chinese government in relation to foreign casinos. A Chinese official was interviewed and explained that since February 2015, the Ministry of Public Security had been running a campaign against gambling, which included "gathering intelligence information and breaking down the chain of personnel and capital infiltrating China from overseas casinos".

131 Mr Chen sought the following advice:[121]

> Could you please advise us what your firm is hearing about the current state of affairs with regards to the activities we are undertaking in China?
>
> The attached report has shaken many of our team members and we need to have a responsible understanding of the environment has materially changed, if there are any new laws, or whether there are new risks we should be managing for.

132 On 15 October 2015, WilmerHale advised that the Chinese law itself had not changed, confirming that "organizing overseas gambling" (defined as organizing 10 or more Chinese nationals to gamble overseas and receive a commission or introduction fee) remained a criminal offence.[122]

133 WilmerHale highlighed the reasons for the actions taken by the Chinese authorities against the South Korean casinos, noting that:[123]

> The marketing efforts are clearly gambling. The marketing materials seized by the police show that the casinos offer free hotel, free air tickets, other free entertainment services to Chinese nationals so long as they gamble at the casinos. These are the evidence used by the police department to prove that the marketing activities are illegal and the Korean casino representatives have been organizing overseas gambling.
>
> In addition, there are illegal money laundering and foreign exchange evasion activities. The Korean casinos and their representatives appear to work closely with some Chinese domestic travel agencies to receive money from Chinese gamblers. The

> money is then wired to underground money laundering organizations in China, and eventually wired to Korean casino.

134 Mr Chen sought clarification as to whether Crown should "proceed with business as usual per prior advice, or is there a need to take different precautions than what we have done previously". WilmerHale advised as follows:[124]

> Under the current environment, it appears important that our marketing (and marketing materials) does not expressly promote the casino business. It is also important to ensure that our employees (in their individual capacity or in the capacity as your employees) do not get involved in any activities which may potentially raise money-laundering or foreign exchange evasion issues.

135 On 16 October 2015, WilmerHale advised that the team in China should not refer guests to money changers, and that if the guests needed to change money, "they can do so in China through the banks, or they can go to Hong Kong to change the money."[125]

136 The legal advice that Crown obtained between 2012 and 2016 is important to a number of the issues relevant to the Inquiry's consideration of the arrests in China.

Relevant events affecting Crown's VIP International business in China in the period 2013 to 2016

2013

137 On 22 February 2013, Crown announced its results for the half year ended 31 December 2012. The announcement included the following:[126]

> Normalised VIP program play revenue increased 15.2% to $327.90 million on turnover of $24.3 billion. Crown's strategy to source new customers from China, combined with the attraction of its exceptional VIP facilities have helped grow this business.

138 Despite the apparent successes of the VIP International business during 2013 there was a heightened sense of caution among VIP International staff. This is evidenced by a communication on 25 March 2013 from Mr Chen to Mr O'Connor and to Mr Felstead noting that two of Crown's sales staff in Chengdu had been sighted regularly with a customer who had been recently detained. It was observed that the two employees were at risk of being called in for questioning by the Chinese authorities. Mr Chen highlighted what he thought was an important consideration of the staff based in China as follows:[127]

> While they are not at any criminal risk, exposing them to questioning puts at risk other customers and puts at risk the Company (because we have them in uncontrolled questioning where they may be pressured to disclose information that we deem

confidential).

139 Mr Chen advised Mr Felstead and Mr O'Connor that the staff had left China and travelled to Hong Kong. He concluded "It makes sense for us to be cautious".

140 On 26 March 2013 Mr Chen wrote again to Mr Felstead, with a copy to Mr O'Connor, in terms that included the following:[128]

> Folks in the VIP industry have long been very sensitive to the actions of the Chinese government. There has been much misinformation in the field about the legalities of what we do and the rights people have if they were identified to be marketing casinos in China.
>
> I am pleased to let you know that we initiated a formal consultation with an international Law firm last year whose China practice is co-led by former US Ambassador Charlene Barshefsky. We received definitive advice that the activities that we undertake in China do NOT violate any criminal laws. That said, when persons of interest are detained in China…the government will often spread its tentacles quite wide to gather information to build its case against it[s] high value target…
>
> We have provided all China staff with the attached protocol to follow in the event such a knock on the door arrives … I support the precautionary measure of pulling out of … and … from Chengdu at this time until the … situation calms down…
>
> This is one thing that it is important to understand when it comes to the China team. They are living in constant fear of getting tapped on the shoulder. In a country where due process is inconsistently applied, it is a risky place to be for all of our team…
>
> Most folks in the industry just think it is in [a] gray area and that they are at risk of arrest. The truth is they are [not] engaging in any criminal activity; however, because of the variety of reasons one may still be detained without due process, staff have cause to take precautions.

141 The email attached Reception Guidelines that had been provided to Crown by WilmerHale in 2012. The document also included "instructions" that were to "apply in the event that officials of Chinese government authorities (including but not limited to public security bureau (police), the administration of industry and commerce, state secrets bureau, customs or tax bureau) arrive to conduct an investigation". The document included various instructions including to "remain calm, polite and courteous toward the officials at all times".[129]

142 The document included instructions that the staff were "not under any circumstances" to give Chinese authorities "any official office badges or pass keys or grant any official further access to the internal office area except as permitted by management". The document also included details of "emergency call" numbers including numbers for Mr Chen in Hong Kong, for internal legal being General

Counsel, Ms Tegoni in Melbourne and the external Counsel in Beijing, being Kenneth Zhou at WilmerHale.[130]

143 In around 2013, Crown also began to engage with Mintz Group, a global investigations and advisory group. On 12 July 2013 the Mintz Group Asia wrote to Mr Chen with a copy of its article entitled *China: Signs of economic reform but challenges remain for foreign players* in which it recorded that:[131]

> While the draw of China's large and growing market might be worth the risk, foreign companies must enter with full anticipation of a lack of transparency, fairness, and accountability under the country's laws.

144 The corruption crackdown which had started in 2012 was continuing to develop in China with the establishment in early July 2013 of the National Development and Reform Commission (NDRC), the Chinese agency leading investigations into pricing and alleged bribery practices.[132]

145 Nevertheless, Mr Chen was focused on the need for improved team output. On 18 July 2013 Mr Chen emailed the VIP International team about a referral program known as "Network Asia" to attract new talent to join the team. He noted that "we will need to expand our sales team if we are to grow our business at the pace we want. The market is very large and we still only have 2 per cent of the worldwide market for VIP baccarat".[133]

146 However, an email from the Mintz Group on 1 October 2013[134] attaching an article written by Mintz Group indicated, by reference to the NDRC that "this aggressive stance against foreign companies is not 'business as usual'." On 15 October 2013 Mr O'Connor suggested that an addition of "Foreign Political Policy" risk to the Risk Register as a risk which impacts on the international business.[135] The Register was amended to record as a "significant" risk to Crown Melbourne's performance "political actions in a country from which a significant volume of international business is derived". The Risk Register defined the nature of the risk arising from the Chinese Central Government policy restricting one or more of currency movement, real estate development, international travel of politicians and dignitaries.[136]

2014

147 Caution within the VIP International business unit continued into early 2014. In March 2014 Mr Veng Anh, the then Vice President of International Business Operations in the hosting team at Crown Melbourne, exchanged a series of text messages with Mr O'Connor. Those text messages report that Mr Anh had heard from someone some "inside information from China, strictly silent". The message indicated that from April to May, the Chinese Government would begin arresting people, including those with "*anything to do with gambling or moving money out of the*

country". Mr Anh advised that there was a warning not to enter China at this time and that Crown should remove all its staff for one month.[137]

148 Mr O'Connor advised Mr Anh that Mr Chen had also heard that same news from someone else who was connected to his informant who had also informed "Ishan" (referring to Ishan Ratnam, the special assistant to Mr James Packer). Mr Anh informed Mr O'Connor the information was "very accurate and usually" comes from his "insider information who works for the government". Mr O'Connor suggested to Mr Anh that it was a "bit alarming".[138]

149 The rumour of the crackdown being extended to casino businesses prompted an email exchange between Mr O'Connor, Mr Theiler and Mr Chen suggesting that outstanding debts should be collected "ASAP" because of the crackdown.[139]

150 Mr Chen also approached WilmerHale in respect of the "rumours" of the Chinese Government crackdown on corruption targeting gambling. WilmerHale advised that it had not been able to confirm an upcoming campaign targeting gambling, but rather a continuing crackdown on corruption. It advised Crown to put in place more robust internal controls, particularly when dealing with Government officials.[140] Mr Chen accepted this advice, with a copy to Mr O'Connor and Mr Felstead in his response to WilmerHale. Mr Chen also shared the advice with one of his colleagues, Mr Gomez, who suggested that there would "need to be caution".[141]

Issues with remittances and associated legal advice

151 In mid-August 2014 a bank in China made an inquiry with a Crown employee as a result of which Mr Chen sought advice from WilmerHale on 19 August 2014. WilmerHale emailed Mr Chen regarding a conversation with an employee referred to in this Report as CY.[142] The email indicated that CY had expressed concerns about doing business in China without any formal registration.[143] It further provided advice against the use of "descriptions which may cause unnecessary complications in the "note" column, such as "VIP funds" in this instance". WilmerHale advised that "if the wire transfer is to pay salaries/allowances/bonuses/consulting fees to the company's employees or consultants on the ground, we should say so. If the wire transfer is to reimburse local personnel for their business expenses incurred, we should say so or more generally "services/consulting fees".

152 WilmerHale advised further as follows:

> I do not know what kind of contracts that we have with our employees/consultants on the ground. It is fine for a foreign company without any presence in China to sign services/advisory/consulting contracts with Chinese nationals. The contract should be clear, though, on relevant scope of services, e.g., marketing and promotion of our

> hotel & resort, and some general terms on services fees. These contracts will become evidence on what our employees do in China.
>
> I [learned] from [CY] that we do not or no longer have any duly registered rep offices/travel services agency companies in China. In other words, she is concerned about doing businesses without any formal business registrations in China. It may be advisable to set up and maintain some formal business registrations, such as a rep office, in China so that (a) we at least have some formal business registrations to conduct business on the ground, and (b) when we pay employees/consultants, we can pay the rep office and the rep office will pay its employees, so that we can avoid direct payments from an overseas corporate account to bank accounts of individual employees/advisors in China.

153 Subsequently, Mr Chen informed Mr O'Connor that there had been an inquiry from a bank in China, and asked for confirmation that all wires to overseas staff to have generic references and nothing to do with "VIP" or "gaming". In response, Mr O'Connor provided instructions asking that "remittances are sent with very careful descriptors". All accounts payable staff of Crown were then instructed to ensure that all China funding templates did not display "VIP funding", and any customer reference would be described as "services/consulting fees".[144]

Structural issues

154 On 28 August 2014 Mr Alexander wrote to Mr Johnston, with a copy to Mr Felstead, observing that Crown was facing a number of confronting structural issues including the Chinese Government crackdown on high rollers in China. Mr Alexander indicated that he would like to speak to Mr Johnston about a plan in respect of these matters. Mr Johnston forwarded the email exchange to Mr Kady, the Head of Investments for the CPH Group, with the note "FYI re next VIP meeting".[145]

Doubling down and 'profit milking' in China

155 During 2014 Mr Chen regularly encouraged the VIP International team in China to improve their sales and marketing activities. For instance, in February 2014 Mr Chen reported to his team the results they delivered during the Chinese New Year period and reminded them that it was critical that they "do not take [their] foot off the accelerator" and that each of them should "urgently consider what offers and deals [they] can bring to market to keep the momentum going". In June 2014 he suggested there were two weeks left to have "a great shot at setting records everywhere" saying they should leave "no stone unturned".[146]

156 In August 2014 Mr Chen proposed to Mr Felstead two alternative approaches to progress the VIP International business in China. The first described as the "double down" approach, was to maintain aggressive targets, continue promotional activities, and market Crown's casinos as alternative destinations to Macau. The second, dubbed

the "austerity, profit milking approach" was to "cut our projections and expectations", freeze hiring, and "reduce promotional intensity". In his email to Mr Felstead summing up the two approaches, Mr Chen stated that "It all really depends on the risk appetite of the Company… The Double Down approach is probably easier to get buy-in for, but would expose the Company to a lot more risk".[147]

157 Mr Chen said that chasing the "high top line growth targets" in the environment was definitely possible, but would come "with far greater risks than in the past and be more resource intensive". Mr Felstead suggested that a broader discussion on this topic should occur including with Mr Johnston.[148]

158 On 20 September 2014 Mr Chen emailed Mr O'Connor, Mr Felstead and Mr Ratnam a draft memorandum entitled "Q1 Performance Memo" for their discussion "in advance of the CPH meeting Sept 29".[149] The memorandum covered, amongst other things, a six-point action plan that was consistent with the double down approach according to Mr Felstead.[150] It included targeting high value customers, targeting major players from Junkets that had lapsed, collaborating with Junkets establishing overseas businesses, preparing detailed market plans, upgrading the sales team, and cost review.

159 The strategy of attracting additional VIP business to Crown by utilising Macau Junket operators was ultimately incorporated into the business plans of Crown Melbourne and Crown Perth.[151] VIP International continued with a strategy to increase sales, and pursue targets aggressively throughout 2014, 2015 and 2016, as evidenced by communications to the VIP International staff.[152]

Questioning of staff in 2014

160 On 19 September 2014 Mr HJ,[153] a Director of International Marketing - Central China, emailed Mr Chen and Mr Gomez informing them that he had been questioned by the police the previous day about his regular contact with an individual identified as a patron in 2012, and about what his job involved. Mr HJ's account was that he told the police that he was doing "Crown Hotel marketing in China" and he only assisted with hotel accommodation in Melbourne.[154] This was reported to various individuals on the same day including Mr O'Connor, Ms Williamson and Ms Tegoni.

Performance despite concerns

161 In October 2014 at the VIP Marketing Kickoff Workshop for F15, it was noted that the sales team in many countries, especially in China, were "operating under constant threat of being detained, questioned, and harassed with regards to their customers and their activities".[155]

162 One part of the role of Crown's staff in China was to collect gambling debts and this activity caused concerns. On 14 October 2014 Mr Chen suggested to Mr O'Connor that Crown engage a security firm for sales staff when they were involved in debt collection, following two situations where "things went south".[156] Mr O'Connor responded by suggesting that Crown did not intentionally send staff into dangerous and risky circumstances, nor did it expect staff to put themselves in such circumstances. He suggested that in the event that the "risk assessment is elevated", it should be dealt with on a "case by case basis" and advised that if the circumstances warranted it, he would be supportive of the proposal for the use of a security firm. However, he was concerned not to formalise the arrangement because it might send a message to the team that they were to commence an aggressive collections strategy which was not his desire.[157]

163 Despite these concerns, Mr Chen continued to notify the sales team in China that it was "imperative" that they outperform their competitors, notwithstanding that the VIP market had been under extreme pressure due to the tightening of AML restrictions and the Chinese Government's "crackdown on corruption, and tightening credit standards".[158]

164 The pressure to generate revenue at the time was not only placed on the sales team in China but also on executives including Mr Felstead. On 11 November 2014 Mr Chen emailed Mr Felstead setting out the changes happening in the market and their impact on the VIP business. Mr Chen made the point that they "should aggressively go after capturing GREATER than our fair share by being smarter than our competitors" and "need to be cautious about taking extreme action that significantly dilutes profitability or hurts our competitive position long-term". Mr Felstead responded in terms that included the following:[159]

> The point I need to make loud and clear is that our owners have spent far (infinitely) more on VIP facilities, infrastructure and sales resources at Melbourne and Perth than at all the other properties in Australia (and New Zealand) combined.
>
> With all this investment, seeing a property such as The Star outperform Crown Melbourne is a very bitter pill to swallow. This is even harder for me to deal with as I am constantly talking up to our Board our facilities, in house staff and our sales team.

165 By the end of 2014 gaming revenue in Macau contracted for the first time since foreign companies were allowed to do business in Macau. The "junket system" described as "Macau's financing system for high rollers" was most affected after 16 per cent of Junkets closed in 2014 and gaming revenue plummeted by 30 per cent in December 2014 alone.[160]

2015

166 During January 2015 the Sales Summit VIII Synthesis was held focusing predominantly on Junkets.[161] In mid-January 2015, in a "recap" of the Summit, Mr Chen informed Mr Felstead, with a copy to Mr O'Connor and Mr Ratnam, that financial year 2016 would likely be "the year when China policy eases again and this overflow of diverted business to Australia returns to Macau".[162]

167 The Sales Summit document indicated that a popular proposal was to establish physical offices in Beijing, Shanghai and Guangzhou.[163] On 23 January 2015 Mr O'Connor asked Mr Chen how he felt about the proposal to establish offices in China. [164] Mr Chen responded that "it would be very good. Will help a lot". Mr O'Connor then asked, "[a]re you not sensitive to the "legal" implications". Mr Chen responded that he was, and that his "support is predicated on us getting comfortable. Jacinta leading investigation".

168 In early February 2015 an "All-Hands Meeting" was held and attended by the VIP International team members, including the sales staff in China.[165] The presentation slides set out, amongst other things, the mid-year financial performance of the various teams including the seven China-based teams. The advice given to the sales teams included "Sell to the end. Fight every battle (e.g. Post-sale, lost sale, steal sale)". The strategy for the remainder of the financial year was set out including the acceleration of momentum and creating a sense of urgency to "pick up the money before window closes on folks avoiding Macau".

169 The critical initiatives included selling the remaining major events and unlocking the Junket platform.[166]

170 Pressure to improve performance continued into early 2015 and was directed at Mr O'Connor and Mr Chen by Mr Felstead, who made comments to them about VIP's poor performance in comparison with their competitors. On 5 February 2015 Mr Felstead wrote to Mr O'Connor and Mr Chen informing them that they both needed to get their heads around the issue of growing the VIP business whilst Chinese high rollers were avoiding Macau because of the crackdown, and criticising them for their lacklustre results in comparison to Echo. Mr Felstead indicated that the problem of Echo outperforming Crown was "not going away".[167]

171 On the same day, Mr O'Connor responded to Mr Felstead with a copy to Mr Chen, pointing out that the "very first question we need to ask ourselves is do we want to grow top line or bottom line?". Mr O'Connor stated that he had asked Mr Felstead previously and "the answer was clearly bottom line" and that was what they had been trying to do. He further stated that "if that's changed and we now want to push turnover, there are a bunch of things we can do", suggesting that they could increase

commissions, loosen credit, offer debt discounts, throw around lucky money and flog free jets and free rooms.[168]

February 2015 - Crackdown announcement

172 On 6 February 2015 the Chinese Ministry of Public Security made an announcement that China was cracking down on foreign casinos seeking to attract and recruit Chinese citizens to travel abroad for gambling (Crackdown Announcement).

173 The Crackdown Announcement was widely reported in international media. On 7 February 2015 media reports included the claim that President Xi Jinping had "officially declared war on the global gambling industry" and warned casinos that Chinese citizens would be gambling much less in China, neighbouring countries and in the USA.[169]

174 On 9 February 2015 Asia Gaming Brief published the following report:[170]

> Casinos around Asia are desperately trying to lure players from China as its government makes gambling in the regional hub Macau increasingly uncomfortable for big spenders. But Hua Jingfeng, a deputy bureau chief at the Ministry of Public Security, said authorities will crack down on companies trying to tap into the Chinese market.
>
> "Some foreign countries see our nation as an enormous market, and we have investigated a series of cases," according to a transcript on state-media websites. "A fair number of neighbouring countries have casinos, and they have set up offices in China to attract and drum up interest from Chinese citizens to go abroad and gamble. This will also be an area that we will crack down on."

175 The Crackdown Announcement quickly came to the attention of senior executives within VIP International. News of the crackdown was also captured in media monitoring services that were sent to a number of Crown's executives and directors, including Mr Packer, Mr Alexander, Mr Craigie and Mr Johnston.[171]

176 On 7 February 2015 Mr Chen and Mr O'Connor circulated news articles regarding the crackdown on foreign casinos, with a copy to Mr Felstead. On the same day, Mr Felstead responded to both Mr Chen and Mr O'Connor that it was "another good challenge for you both".[172] This was a response that Mr Felstead regretted. He said that he had intended to convey to both Mr Chen and Mr O'Connor the need for a plan to be developed to appropriately respond to the risk.[173]

177 Mr Chen responded to Mr Felstead, with a copy to Mr O'Connor in the following terms:[174]

> For us.

> This suggests we may need to delay our plans on establishing physical office present in China.
>
> Also, this raises the alert level on the safety of our staff. Recently, Nelson Wong from MGM immediately left China when he heard news of increased scrutiny on overseas casinos.
>
> We will need to assess the threat level. I will convene a call with WilmerHale to get their insight and advice.
>
> We should also discuss this week on our call the increasingly serious issues our customers are facing in moving funds to repay debts. I have a good case study to go over.

178 The Crackdown Announcement made the staff in China nervous. On 8 February 2015 Jessica Liu wrote to her "Boss", Alfred Gomez with "Shen Yang news". Miss Liu advised that she had received an 'update' that in 2015 the Shen Yang Police Bureau "will be taking strict action" in respect of "overseas casino staff and agency which is set up and located in mainland". Miss Liu asked Mr Gomez whether "we should inform our management about it since I am very nervous".[175]

179 On 8 February 2015 Mr Gomez responded to Miss Liu in the following terms:[176]

> I will speak to management accordingly, and you should not be nervous.
>
> As mention[ed] yesterday, their targets are junket reps, and casino people from Korea that collect cash.
>
> We are not junket rep or agents and we do not handle cash matters in China. We are promoting ultimate experience in Australia, and inviting them for events and stay in our hotel, which also provide gaming facilities.
>
> The new business platform that Michael have presented will help you a lot for your region.

180 The Crackdown Announcement also prompted enquiry from other senior executives within Crown. On 7 February 2015 Howard Aldridge of Crown London Aspinalls wrote to Mr O'Connor in relation to newspaper articles relating to the "crackdown" in China. Mr Aldridge's communication included the following:[177]

> Are you guys in Melbourne making any adjustments to the FY16 business plan based upon what is happening across China.
>
> Also, is there any concerns for the Crown staff working in China.
>
> Maybe we can add this to the topics for discussion when I am in Melbourne.

181 On 9 February 2015 Mr O'Connor responded to Mr Aldridge in the following terms: [178]

> Happy to discuss this Howard.
>
> These issues will, undoubtedly bring considerable discussion during the planning process (which is yet to commence).
>
> Personally, I'm very concerned with the international business near term prospects for reasons I'm sure you're well aware of. Our challenge will be convincing our masters that they need to temper their expectations, but with the development plans ahead, talk of conservative expectations won't be well received.
>
> As for the staff, we are always very concerned for their wellbeing and Michael is consulting our lawyers to get a clearer view of what this really means. In the meantime, we all need to take extra care.

182 Mr O'Connor was concerned that the expectations of business volumes and profits on the VIP International business by those to whom he reported were greater than its ability to deliver. He felt "there was something of a disconnect between the business volumes and profits that our business unit was able to deliver relative to what was expected".[179]

183 On 10 February 2015 Mr Aldridge informed Mr O'Connor and Mr Chen that he had heard that MGM had "sent out a directive to their managers not to travel to China to meet players or collect debts" noting that this was only "second hand, but makes a bit of sense."[180]

February 2015 – Advice to staff and further legal advice

184 On Monday 9 February 2015 Mr Chen wrote an email addressed to "VIP International Offices" in terms that included the following:[181]

> Thank you all for your attention, your participation, and your engagement in last week's All Hands-Meeting. I thought it was our best session yet and I can feel everyone's energy level and excitement WOOOOOOOOH!!!!...
>
> Just as we departed our All-Hands Meeting, a number of articles came out this past weekend regarding the Chinese government seeking to crack down on Chinese gambling abroad. It is still unclear what this will actually mean for us, and I wanted to let all of you know that we are actively investigating the reports to fully understand the implications.
>
> Rest assured that the safety and security of our staff is of paramount importance. At this stage, it is critical that nobody overreacts to the news, while at the same time, we take precautions to ensure the safety and security of our staff. Let me share with you what we are doing:

1. We have engaged one of the world's best law firms and political consultants to provide us advice on this matter. We should have some feedback soon. Once we do, I will share that with you.

2. We will be applying for HKG/Singapore work permits for all of our China staff that does not currently hold a foreign passport. This is purely a precautionary measure that will allow you to say that you work out of an overseas location and are on business travel in China.

3. I am re-circulating the guidelines and process we have in place that you should follow, if you are ever requested by a government official for an interview.

In addition to the steps, I wanted to remind everyone to take normal precautions. It is important to be reminded that we have been given advice from outside counsel the activities that we currently undertake (that is the promotion of overseas gambling and tourism) are indeed legal in China. What is clearly illegal under China law according to our outside counsel, is the organising of gambling group of 10 or more people AND the receipt of commissions for that work. Since everyone here is an employee of Crown and NOT receiving commissions, we are not in violation of any known laws.

That said, China policies are always subject to change. We are closely monitoring the situation and will advise of any new news. We will also take appropriate actions to safeguard our staff. Please do not hesitate to call me if you have any questions or concerns. I hope to have some more information to share in the next couple of days.

185 Attached to that email were the Reception Guidelines referred to earlier that had been first provided to Crown by WilmerHale in 2012.

186 The Crackdown Announcement prompted a reassessment of a number of aspects of Crown's business in China by VIP International executives. Other than deciding to avoid travelling to Mainland China for a while, the outcome was not to stop or alter the business operations being conducted in China but to attempt to make them less overt.

187 On 10 February 2015 Mr Chen forwarded WilmerHale's advice to Mr Felstead, Mr O'Connor and Mr Ratnam, with the rather robust following approach:[182]

Given the advice, I would still be supportive of pushing forward with the establishment of hotel offices in key cities, but keeping all gaming related content out of the offices (eg program agreements, credit apps, etc). We could even phase in the implementation where VIP folks use it for meeting space initially and then eventually get setup with desk space.

I have already circulated a communication to the VIP staff regarding protocols and procedures related to any approaches they may get from government officials.

> With the advice below, I will follow up with another to help calm the staff and give them confidence that Company is taking these things seriously and has protocols in place to deal with issues that may arise.
>
> We can discuss more tomorrow.

188 On the same day, Mr Felstead responded to Mr Chen with a copy to others, including Mr O'Connor in the following terms:[183]

> I am reluctant to proceed with offices in China at this point in time, I believe it to be too big a risk, having them operate as non gaming offices doesn't seem overly practical to me.

189 On 10 February 2015 Mr Chen suggested to Mr O'Connor that having regard to the advice they had received, they should consider appointing "one Chinese speaking point person based in Australia to be handling any remittance issues." In response, Mr O'Connor advised Mr Chen that the "issue concerns me" and that they should discuss it with Mr Felstead on the following day.[184]

190 On 11 February 2015 a discussion was held between Mr Felstead, Mr O'Connor, Mr Chen and Mr Ratnam covering various topics.[185] With respect to the Crackdown Announcement, the group agreed to avoid travel to Mainland China for a while. The group also discussed and agreed to defer the opening of offices in China. With respect to the advice from WilmerHale, an action item recorded for Mr O'Connor was to prepare a list of options and recommendations to avoid China based staff providing sensitive information to customers.

191 On 12 February 2015, Mr Ratnam emailed Matthew Csidei of CPH, with a copy to Mr Felstead, regarding the use of logos on the tails of the private jets used to transport high rollers from China to Crown's properties in Australia in the following terms:[186]

> With the announcement late last week from the Chinese government on targeting Chinese citizens visiting foreign casinos, what are your thoughts on us losing the logo on the tails of the Globals.
>
> They are currently in the final stages of readiness, if we agree we can get them done with minimum setbacks.
>
> They can always go back at a later stage.

192 Mr Csidei responded that it was a "great idea" to get rid of the logos, to which Mr Ratnam agreed.[187] Mr Ratnam then arranged for the logos to be removed from the private jets, without discussing the decision with Mr Johnston or ever communicating the fact of removal with Mr Packer.[188] Mr Ratnam believed this would help to make the business of Crown in China of targeting Chinese citizens to visit its casinos more "under the radar".[189]

193 Despite the Crackdown Announcement, day-to-day business in China apparently continued unabated. On 17 February 2015 Mr Chen emailed the VIP International Offices stating the following: [190]

> In the spirit of trying to WIN EVERY BATTLE, could each of you reply to this email to let me know which customers or junkets you know have trips planned to SYDNEY or SKYCITY. Based on the namelist (sic), we will consider making some special offers to bring them to our properties…
>
> I would like replies by today so that we can start thinking about how to influence the business over to us.

194 On 20 February 2015, *The Australian* published an article entitled "VIP Influx a windfall for Crown Resorts", which confirmed Crown's ongoing strategy to "ramp up its marketing-pitch to high-rollers from China". The article interviewed Mr Craigie, who was recorded as having said that:[191]

> There is no doubt China will be the major source of tourism and high-end gaming expenditure for the world going forward. Australia still has a very small share of that market. It is possible for Australia to experience very good growth in VIP even if Macau is in decline.

195 On 24 February 2015, Mr Chen wrote again to WilmerHale advising that the "climate has gotten quite destabilised" and that Crown had competitors that "have pulled their entire teams out of China". Mr Chen asked WilmerHale to advise whether they thought that Crown "executives should be avoiding entering China and whether we should be pulling staff out?"[192]

196 On 25 February 2015 WilmerHale advised as follows:[193]

> I agree that it seems prudent to limit travels of senior executives to Mainland China at this point given that the regulatory environment is being tightened up and the picture is not entirely clear. I am not sure whether it has come to the point that you have to pull the entire team out of China. One option is that you could have some key employees tentatively work outside China (e.g., Hong Kong).

197 On the same day, Mr Chen responded that in the following terms: [194]

> Interesting. I was prepared to go into China but your advice is causing me to have second thoughts.

198 On 27 February 2015 the Vice President – Sales Operations, asked Mr Chen whether he had received feedback from the law firm and political consultant referred to in his email to the team at VIP International on 9 February 2015, as they had not been provided with an update. On 28 February 2015 Mr Chen advised "I know. Baz wants me to do it verbally".[195]

199 On 4 March 2015 Mr O'Connor emailed Mr Chen suggesting that they should reconsider travelling to Mainland China. Mr Chen responded on the same day confirming that he was "getting further advice from ex-CIA".[196]

200 On 5 March 2015 Mr Johnston had a telephone conference with Mr Felstead, Mr O'Connor and Mr Chen.[197] Mr Johnston was able to identify the date because there was an entry in his diary which said "urgent call".[198] There was some controversy regarding the substance and effect of this conversation which is explored in greater detail later in the Report. However, Mr Johnston accepted that the Crackdown Announcement did cause him "some concern" when he became aware of it and that he appreciated that this was an important issue in relation to the VIP International business in China given that it escalated the risk to the safety of the staff in China.[199]

201 On 13 March 2015 the Mintz Group, engaged by VIP International since early March 2015 to "conduct a quick turnaround risk assessment of the current situation related to corruption investigations in Macau, and their potential effect on [Crown] personnel in Mainland China", advised Mr Chen as follows:[200]

> Bottom Line Assessment Thus Far - proceed with marketing efforts, but keep them low-key, with small groups at a time, and no publicity. It would be well advised to avoid cell phone and text message communications dealing with marketing efforts, and limit overall use to the degree possible while in country. Concerning business cards, would also limit that to known, specific customers, and avoid distributing to random individuals.

202 On 13 March 2015 Mr Chen participated in a team conference call for which he prepared a written note on "Key Messages".[201] A calendar invitation sent to the VIP International team and Ms Williamson of the legal team at Crown Melbourne for the meeting indicates that the meeting was to be moderated by Mr Chen to "discuss recent Chinese government statements about promotion of overseas gambling".[202]

203 The "Key Messages" document provided, amongst other things, the following messages to the VIP International team:

(a) Crown had retained WilmerHale and the Mintz Group;

(b) Staff should not over-react to rumours;

(c) Regarding the rules, the promotion of gambling overseas is not illegal so long as the employees "are not organizing groups of 10 or more people AND receiving a commission for doing so", and employees "absolutely should not be facilitating customers to launder money" and it is very important that they "do not receive any commissions from money changers or other money movers".

204 The "Key Messages" document contained a summary of the advice from WilmerHale in the following terms: [203]

> (a) Foreign resort/hotel's rep offices and employees in China are protected under law so long as the rep offices/employees' activities are not in violation of law. Introducing hotel/resort facilities to potential customers itself should not be any problem because this is what the rep offices are supposed and licensed to do (liaison and marketing).
>
> (b) Employees should certainly not be involved in any money laundering activities. Employees should also avoid dealing with government officials to the extent they can because of the ongoing anti-corruption campaign.
>
> (c) Given the highlighted government efforts to crack down on rep offices with core business to facilitate Chinese individuals gambling abroad, the company's rep offices/employees in China should focus its business on introducing the hotel/resort and facilities, rather than engaged in any activities which may be viewed as directly facilitating Chinese individuals gambling offshore.
>
> (d) There is no recent change to law.

205 Mr Chen also said that he would not ask staff members to do anything that he would not do himself and that he would be proceeding with the roadshow.

206 On 16 March 2015 Mr Neilson circulated papers ahead of the CEO meeting, which was to be held on 18 March 2015 to Mr Alexander, Mr Johnston, Mr Rankin, Mr Jalland, Mr Craigie and Mr Barton.[204] The papers included a VIP Update. The VIP Update contained the following statement:[205]

> Turnover across the February Chinese New Year period was suppressed due to the absence of large players, either direct or under junkets. Reasons could be related to recent Chinese government statements, indicating a campaign against foreign casinos targeting Chinese patrons.

207 The VIP Update reported the Crackdown Announcement as a financial threat and characterised the risk as a possible reason for turnover across the Chinese New Year period being less than expected.[206] The VIP Update did not, however, report to the CEO Meeting the increased risk to the safety of staff or the decision by the VIP International executives to defer their own travel as a consequence of the Crackdown Announcement.

208 This VIP Update was not included in the papers for the next Crown Board meeting on 30 March 2015. The Crackdown Announcement was not mentioned in the CEO Report included in the Board papers for that meeting.

209 The Crackdown Announcement was referred to in various versions of a draft FY16 to FY20 strategic business plan being reviewed by VIP International executives in 2015.[207] Mr Felstead and Mr Craigie both confirmed that these draft business plans were typically reviewed by VIP International executives and once they were in final form, were presented by VIP International to the executive group of Crown Melbourne, which typically consisted of Mr Craigie and Mr Barton. The plans were then modified and abridged before being presented to the Board of Crown Melbourne. The plans were then further abridged before ultimately being presented to the Crown Board.[208] The final versions of those documents presented to the Board of Crown Melbourne and the Crown Board did not refer to a Crackdown Announcement.[209]

210 Despite the key messages previously given to the VIP International team on 13 March 2015 about the legality of their activities in China and his confirmation that the roadshow would proceed, on 23 March 2015 Mr Chen emailed Mr O'Connor providing instructions on where to deposit his pay cheque if he was "detained in China during any payroll payment period". Mr O'Connor forwarded the instructions to two staff at Crown Melbourne, suggesting that it is "probably wise for someone else, in addition to myself, to hold this information".[210]

211 On 25 March 2015 the Mintz Group wrote to Mr Chen setting out their findings in relation to the ongoing corruption crackdown in Macau to assist in assessing the risk to staff in China. The report was then circulated by Mr Chen to Mr O'Connor on the following day.[211]

212 The report from the Mintz Group set out information from sources within the Chinese Public Security Bureau (PSB) which indicated that it had stepped up monitoring of the marketing activities of foreign gambling companies operating in China. Mintz Group reported that the PSB had a network of informants, including casino representatives from overseas. Mintz Group's advice included the following:[212]

> Risk assessment:
>
> There is clearly enhanced attention underway from relevant PRC authorities concerning foreign casino marketing activities in mainland China. The motivation for this effort is likely manifold, to include certainly aspects of the current anti-corruption campaign, as well as likely rent-seeking opportunity on the part of China to redistribute the pie in the coming reauthorisation of business licences. On this latter point, there is strong recognition that foreign firms have made tremendous profits from their Macau licences and an effort could very well be underway to address this issue for greater local benefit, particularly concerning who ultimately ends up receiving licence renewals as well as profit-sharing obligations. The coming months likely will feature an increasing level of scrutiny by PSB, and possibly other, authorities directed at foreign casino marketing and other personnel in the mainland,

though it's likely to be uneven in its application by authorities similar to other areas of investigatory concern.

Operational recommendation:

Though there is little doubt that there will be increased scrutiny on the marketing efforts of foreign casinos in Mainland China, as of now there does not appear to be clear guidance issued to relevant authorities concerning exactly what they are to do about it, but rather have passed along the task to at least several provincial public security bureaus – particularly Guangdong – to come up with a plan of action. It is not clear as of yet exactly how broadly this instruction was disseminated from the central public security bureau leadership, but it should be assumed that it likely has had wide distribution. This is a subject worthy of continued monitoring in the coming months to ascertain exactly how widespread this order was sent, and more importantly, how the provincial and local authorities plan to enforce it.

Given this current state of affairs, it would still seem prudent to proceed with planned marketing efforts, but keep them low-key, ideally with small groups at a time, and little to no publicity. It will be very important for each marketer to stay strictly within the legal guidance provided thus far by your legal counsel concerning their assessment of relevant Chinese law restricting groupings to less than 10 persons. It will be equally as important for each marketer to follow the established protocol company has developed concerning how to react should they be questioned by authorities, and how to communicate same back to the company.

Communications: It will be well advised to avoid cell phone and text message communications dealing with marketing efforts to the degree possible, and limit overall use while in country. Not unlike normal business conditions in China, but with the recognition that your industry is now under a greater microscope, each person should assume that all communications are either being actively monitored, or very well could be gathered later (digital email/texts/posts) should a specific investigation ensue. It is for this reason that a phone call is better than a digital message, simply for the reason that it usually requires live monitoring to be productive for an investigation should one occur.

Concerning distribution of business cards or other hard copy marketing materials, would also suggest limiting that to known, specific customers, and avoid distributing to random individuals.

Final thoughts:

If history and experience is any guide, given the apparent political prominence of the anti-corruption campaign, it's link to Macau, as well as the economic rent-seeking benefits of going after foreign casino operators for the reasons listed above, it is likely that relevant Chinese authorities will pursue this crackdown with greater than average vigor. With that in mind, it would seem likely that provincial authorities tasked with putting together and carrying out a plan to more aggressively monitor

> foreign casino marketing activities will get their act together relatively quickly, and there will be a desire to show results within the coming 2-3 months. This does not mean that all marketing efforts should cease within this period – or even afterwards – just that each marketing effort should be considered with the above environment in mind, ensure strong adherence to Chinese law and company guidance on how your personnel are to conduct their marketing efforts in country, and maintain effective communication.

South Korean Arrests – June 2015

213 In mid-June 2015 employees of South Korean casino operators, Paradise and Grand Korea Leisure, were arrested and detained by Chinese authorities.[213] Around this time various executives of Crown received media monitoring alerts referring to articles about the arrests.[214]

214 On 20 June 2015 Mr Chen reported the detention of the Korean staff to Mr Felstead, Mr O'Connor, Mr Gomez and Mr Ratnam, that he was obtaining further advice from their advisers in China and that he was trying to "determine the facts and whether the level of risk has changed".[215]

215 On the same day, Mr Chen emailed Mr Felstead, Mr O'Connor and Mr Ratnam confirming that the arrests of the Korean staff in China indeed occurred, that the reason for detainment was not known yet and that the Mintz Group was "making inquiries with the PSB".[216] In response to this, Mr Ratnam suggested that "a trip into China for the Aug roadshow will be important as a sign of support to our staff".[217]

216 Mr Chen also emailed the VIP International team on 20 June 2015 confirming that 14 staff working in the South Korean casinos in China were indeed detained, that advice was being obtained and reminded them of the protocol in the event one is approached by the officials.[218]

217 On 20 June 2015 Mr Felstead sent an email to Mr Johnston reporting on the South Korean arrests and saying "we will dig around and see if there's any more to this".[219]

Crown Chairman advises "high alert" – 24 June 2015

218 On 24 June 2015 Mr Barton wrote to Mr Rankin, soon to be Chairman of Crown, and Mr Craigie, then CEO of Crown, copying the publication in "Asia Update" entitled "China Sets No-Marketing Tone with South Korean Casinos" reporting on the arrests of the South Korean Casino employees. Mr Rankin responded on the same day in the following terms:[220]

> Thanks Ken. We should be on high alert for this type [of] regulatory action in China.

> Specifically, the training of new in country sales staff should be reviewed and be extensive.

219 On the same day, Mr Craigie forwarded Mr Rankin's response to Mr Felstead, who then wrote to Mr Craigie in the following terms:[221]

> Thanks Rowen, we got this information last week. We have been doing this for a while now, all staff in the region are trained around what to do and what not to do. We also seek regular updates from relevant third parties on what the current political climate dictates. Word is that there have been long-term issues with the Korean properties around currency movements and compliance which has upset the Chinese authorities.

220 After receiving that email, Mr Craigie forwarded Mr Felstead's response to Mr Rankin.[222] However, Mr Craigie did not notify his colleagues on the Crown RMC of the risk of arrest. Mr Craigie conceded that forwarding the emails back and forth between Mr Felstead and Mr Rankin was insufficient to discharge his obligation in his role and was premised on an assumption that Mr Felstead and the VIP International team would respond to the arrest of the Korean casino staff.[223]

221 Mr Packer was not aware of Mr Rankin's instruction to be on high alert. However, he and Mr Rankin discussed and agreed simultaneously that Crown needed to be on high alert and Mr Packer tasked Mr Rankin with going back and doing a due diligence of Crown's operations in China with Mr Craigie "to make sure that we were okay".[224] Mr Packer did not have a discussion with Mr Craigie or Mr Rankin about informing the rest of the Crown Board about that work stream. Mr Packer accepted that the three of them, himself, Mr Rankin and Mr Craigie were "all guilty for that".[225]

222 In mid-June 2015 Mr Chen asked for further advice from the Mintz Group in respect of the arrests of the South Koreans so that Crown could understand any "implications".[226] He requested them to consider the key question, being "why them if they were undertaking normal activity like we do. Or can we verify those folks were doing something untoward".

223 On 24 June 2015 the Mintz Group provided a compilation of source information concerning the arrests, including some comments from a source in Macau on the question of why the Koreans were arrested, noting that:[227]

> The group was trying to lure and assist Chinese gamblers to go to Korea to play at their two 'foreigner only' casinos in Korea. It also seems that they were assisting with the transfer of funds and that seems to be when the trouble arose. Apparently, local Chinese from a travel agency were also arrested. The opinion in Macau is that this group of Korean Casino Marketers were not familiar with the laws in China about foreign exchange control and were ignorant, or perhaps indifferent, regarding the current Central Government's policy on combating Anti-Money Laundering.

224 On 28 June 2015 the Mintz Group advised Mr Chen that the PSB contact said the Koreans were:[228]

> Extremely aggressive in the way that they approached the business. ... The core issue of the case is about the cash that they were taking out of China for their new clients, and it eventually got them arrested. The source said, the inbound cash is also significant, and it's used for substantial client entertainment etc. These Koreans have been contravening Chinese currency laws for some time, and it's a relatively isolated case (other junkets are also being monitored though, as we've covered before). Given the above, I'm convinced this was an isolated case, though pursued in the environment we know is present which is more careful monitoring of activities and not allowing activities to become too high profile. Let me know your thoughts on anything further you'd like us to collect.

225 On the same day Mr Chen forwarded the advice from the Mintz Group to Mr Felstead, Mr O'Connor and Mr Ratnam, commenting that "this should give us a good degree of comfort to continue with business as usual, but ensuring we are low profile and remaining in small groups while in China".[229]

226 On the same day Mr Felstead forwarded the advice from the Mintz Group to others within Crown, namely Ms Tegoni, Mr Neilson, Mr Craigie, Mr Johnston and Mr Barton.[230] Mr Felstead recalled having briefed Mr Johnston on the situation over the telephone at a VIP Working Group meeting.[231]

Questioning of staff by Chinese police

227 In July 2015 two members of Crown's staff within the VIP International team were questioned by the Chinese police in relation to their involvement in gambling activities. They are referred to below as Mr BX and Mr JX.

228 On 9 July 2015 a VIP International staff member based in Wuhan China, referred to as Mr BX, was approached and questioned by the Chinese police.[232]

229 After his questioning, Mr Chen spoke directly with Mr BX and during that conversation, Mr Chen became aware of a request from Mr BX that a letter be provided to the police confirming Mr BX's employment.[233]

230 On the same day, Mr Zhou of WilmerHale also spoke with Mr BX about the interview by the police, and advised Mr Chen by email on 9 July 2015 in the following terms including a template for the proposed letter to the police:[234]

> He said that the interview was straightforward. The police department asked him what he does, and he said that he is an employee of Crown Hotel and assists Chinese tourists who are interested to go to Australia and visit the hotel in preparing visa application materials. The police department said that somebody has reported that he organizes overseas gambling tours, and he said that he had no knowledge about it. He

> believes that police department was persuaded by his explanation because he has a good record. The police department needs a letter from Crown to confirm that he is an employee of Crown.
>
> Based on the above, I would think that the letter should be very simple and straightforward. Here is my suggested languages (pls feel free to adjust wording as you see fit).
>
> "Crown Letterhead
>
> [Date]
>
> To whom it may concern,
>
> This is to confirm that [Mr BX] passport no./PRC ID no.: XXXX) is an employee of [name of the employing Crown entity] which is part of Crown Resorts/hotels in Australia. [Add one or two sentences on Crown Resorts, such as it is a well-known resort/hotel in Australia with long history].
>
> Best regards,
>
> Crown Resorts"

231 The proposed letter did not mention that Crown operated two casinos in Australia but indicated that a description of Crown should be included.

232 Later on 9 July 2015, Mr Chen reported the questioning of Mr BX by email to Ms Jan Williamson, who was a lawyer in the internal legal team at Crown Melbourne, with a copy to Mr O'Connor, in the following terms:[235]

> He was told by police that a tipster reported that he was organizing going [sic] tours. [Mr BX] denied it and said he worked for Crown Resorts and assisted in organizing leisure trips for customers.
>
> After two hours, he was released. The police requested that Crown furnish a letter prior to 12pm tomorrow corroborating his statement.
>
> …If you have no objection, we will prepare the letter per the Wilmer-Hale template. I will send you the final version and barring any hanged [sic] before 11am China time tomorrow, we will provide such letter to the police.

233 On the same day, Ms Williamson forwarded the email chain containing WilmerHale's advice to Ms Tegoni, who was the Executive General Manager, Legal and Regulatory Services, at the time.[236] In her evidence to the Inquiry, Ms Tegoni confirmed she became aware around this time that the Chinese police had required Crown to confirm Mr BX's employment status. However, Ms Tegoni was unable to recall whether she had read the email when she received it.[237]

234 Ms Williamson also emailed Ms Tegoni attaching the proposed letter for Mr BX and seeking her advice as to who should sign the letter.[238] Ms Tegoni said that during this time she was focused on identifying who would be the appropriate person within Crown to sign the letter and probably did not read the content of the letter. She was not aware that the last sentence of the letter omitted any mention of the fact that Crown was in the business of operating casinos.[239]

235 Concurrently, Mr Chen sought advice from the Mintz Group, who affirmed the approach to comply with the letter requested by the police but noting that they "must also consider that the request for the letter has the effect of contributing to an evidentiary pile that PSB could decide to draw upon in the future".[240]

236 On the same day, Mr Chen forwarded to Ms Williamson the advice received from the Mintz Group, and noted:[241]

> Based on this, the suggested draft by Wilmer seems appropriate. It is factual about his employment with Crown, and does not get into anything about role, which could be used in the future.

237 On 10 July 2015 Ms Williamson obtained WilmerHale's confirmation that the letter requested for Mr BX should be "from his direct employing entity" which was Crown Singapore.[242] In the course of arranging the letter for the Chinese police, Ms Williamson emailed Mr Neilson on the same day to ask which employing entity the letter should come from. Ms Williamson recalled that she had a telephone conversation with Mr Neilson, however she did not recall the substance of that conversation or any subsequent discussions with Mr Neilson about this topic at any time up to October 2016.[243] Some eighteen minutes later, Ms Williamson sent a further email to Mr Neilson confirming that the letter should be from Crown Singapore.[244] Mr Neilson had no recollection of the emails or the issue that was being raised in them.[245] Mr Neilson did not recall raising the issue with anyone else at Crown.[246]

238 Ultimately, Mr Felstead authorised the letter to be signed on behalf of Crown Singapore.[247] The signed letter was emailed and couriered to Mr BX.[248] The terms of the letter was set out as follows:

> This is to confirm that Mr [BX] …is an employee of Crown Resort Pte Ltd (Hong Kong), which is a subsidiary of Crown Melbourne Limited (ABN 46 006 973 262) and is part of the Crown Resorts Limited (ABN 39 125 709 953) group of companies ("Crown Resorts"). Crown Resorts is one of the leading hotel, resort and entertainment companies in Australia and is listed on the Australian Stock Exchange.[249]

239 After providing the requested letter to the Chinese police, on 10 July 2015 Mr BX provided Mr Chen his notes, in Chinese, from the police interview. Mr Chen then wrote to Ms Williamson with a copy to Mr O'Connor, suggesting that someone in

Melbourne translate the notes, noting that they did not want it spread too widely "so as not to alarm anyone".[250]

240 On 15 July 2015, Ms Williamson obtained the English translation of Mr BX's notes which she provided to Mr Chen and Mr O'Connor.[251] The translated notes on Mr BX's interview by the police recorded the following:[252]

(a) The questioning took place because Mr BX had been reported by an informant for organising gambling tours to Australia;

(b) He worked for Crown and his role was to assist customers in visa applications without mentioning anything about organising overseas gambling tours;

(c) He does not know whether those customers gambled in Australia;

(d) He did not work in an office but worked at home; and

(e) The police requested that he provide a "certificate of employment" before 12:00pm the following day.

241 Mr O'Connor and Ms Williamson said that they appreciated Mr BX had not been truthful in the answers he gave the Chinese authorities.[253] Mr O'Connor specifically confirmed his awareness that Mr BX was in fact involved in organising gambling tours to Crown's casinos in Melbourne and Perth.[254]

242 Mr JX was the second employee who was questioned by the Chinese police in July 2015.[255] On 10 July 2015 Mr O'Connor emailed Mr Felstead in relation to the letter requested by the police for Mr BX, noting that they had "another employee questioned by the Chinese police".[256] Similarly, in Mr Chen's request to the Mintz Group for advice on 10 July 2015, Mr Chen informed that they had "another staff member yesterday in Wuhan visited by the local police on a tipoff" that he was organizing tours for gambling.[257]

243 On 10 July 2015 Mr Felstead forwarded the email chain containing Mr Chen's email of 9 July 2015 and the email from WilmerHale of 9 July 2015 relating to the police questioning of staff in Wuhan and the request for a letter to Mr Johnston, commenting that this is "what we will be up against in China at the moment".[258] Mr Felstead also forwarded the email chain to Mr Ratnam on the same day, with a note being "let's discuss over lunch Loban"[259] (Loban being the word for 'boss' in Mandarin).[260]

244 Mr Johnston was the only director of Crown who was made aware that Mr BX had been questioned by the Chinese police in July 2015 or that a letter had been provided by Crown in relation to that questioning at any time up to the China Arrests.[261] Mr Johnston did not raise this event with any of the other directors of Crown.

245 Mr Packer was not informed by Mr Ratnam,[262] or Mr Johnston,[263] or Mr Felstead,[264] or otherwise, of the questioning of a Crown employee in Wuhan by the Chinese police, and the provision of a letter to the Chinese police by a Crown Resorts subsidiary on behalf of the employee.[265]

246 In light of the questioning of Crown's staff, on 10 July 2015, at Mr Felstead's request, Mr O'Connor asked Mr Chen to provide a summary of what other casinos were doing in relation to their sales staff in China.[266] On 14 July 2015 Mr Chen emailed Mr O'Connor, indicating that so far "all competitors continue to have staff in China".[267] This included Echo which, the emails stated, had withdrawn its staff earlier in the year. Mr O'Connor said that he did not investigate whether Crown's competitors who were conducting business in China had a business licence.[268]

247 The VIP International Business Update dated 23 July 2015 which was provided to the CEO Meetings did not include anything related to the questioning of these two staff members.[269] Mr O'Connor told the Inquiry this was because there was a defined format for the updates.[270]

Business as usual?

248 On 12 August 2015 Mr Chen emailed the VIP International team about out-performing their competitor, Echo, on "every dimension of the business (volume performance and growth) except for credit". The team was instructed to "act on every opportunity, react with speed and urgency, and outwit and out hustle our competition".[271]

249 On the same day (being 6 months after the Crackdown Announcement), Mr O'Connor received an email from Mr Todd Nisbet in relation to the operation against foreign casinos known as "Chain Break".[272] Mr O'Connor could not recall the reference to Operation "Chain Break" nor could he recall discussing with Mr Felstead the ongoing operation of the Crackdown Announcement from February 2015. Mr O'Connor was satisfied that Mr Felstead knew what was occurring in China.

250 Two meetings of the Crown Board also took place on 12 August 2015. It was during a break in proceedings or between meetings that Mr Johnston raised the arrests of the South Korean casino operators with some of the Board members, at which time he communicated the fact of the arrests and the legal advice he understood had been obtained by the VIP International business.[273]

251 Ms Danziger (a member of the Crown Risk Management Committee at the time), Ms Coonan, Mr Demetriou, and Professor Horvath each had learnt about the arrests from a conversation with Mr Johnston which occurred prior to or after a Board meeting.

Further announcement by the Chinese authorities in October 2015

252 On 13 October 2015 the CCTV Program was broadcast. The CCTV Program came to the attention of Mr Chen and other China-based staff of Crown. On 14 October 2015 Mr Chen sought advice from both WilmerHale and the Mintz Group, noting that the program had "shaken many of our team members and we need to have a responsible understanding [if] the environment has materially changed, if there are any new laws, or whether there are new risks we should be managing for".[274] He also impressed the need for urgent advice given the VIP International team were scheduled to have a marketing roadshow the following week.[275]

253 On 15 October 2015 the Mintz Group advised Mr Chen in the following terms:[276]

> We've made a number of key inquiries with knowledgeable sources, and all seems to be pointing to a dedicated effort against these Korean targets rather than a broad-based effort, though the backdrop remains as we've identified earlier that there is interest in monitoring all foreign casino marketing in the mainland. We'll have more for you tomorrow, but as of now, your team should not feel overly concerned.

Staff advised to avoid "overt sales"

254 On 15 October 2015, following the CCTV Program Mr Chen advised the Crown staff via the email address "VIP International Offices" as follows:[277]

> Good morning everyone. I wanted to let everyone know that we have seen the recent CCTV news story on the detainment of Korean casino marketers.
>
> We have engaged our advisers inside China to investigate the situation, to talk to the Public Security Bureau and to advise us of any changes to China law and or policy.
>
> While we are waiting for the results, please continue to take sensible safeguards and precautions.
>
> For now, please continue to 1) keep meetings with guests to small groups with no more than 3-4 Crown staff in any one meeting 2) avoid any overt sales and marketing activity.
>
> We should have some more specific guidelines before the end of the week.

255 On 19 October 2015 the Mintz Group provided a further update to Mr Chen, advising that their sources had pointed to the recent arrests being directed at the Korean entity in question and not part of a broader crackdown, and that the team "should be in good shape for its activities this week, though the same ground rules are suggested as we discussed earlier".[278]

256 On 20 October 2015 Mr Chen reported to Mr O'Connor with a copy to Mr Felstead and Mr Ratnam the advice received from WilmerHale and the Mintz Group. Mr Chen provided a summary of the advice in the following terms:[279]

> [The Mintz Group] have made inquiries to high level contacts within the Public Security Bureau, and they have been advised that this was a targeted effort against the Korean casinos - not part of a broad based effort against foreign casinos. The reason the Korean casinos have been targeted is because of their overt efforts in both promotion (ha,bling (sic) specific collateral) of gambling and movement of money (overt use of travel agents and mules to move money). Additionally, there is heightened sensitivity around neighbouring casinos to China.
>
> Mintz has advised that our team should not be concerned beyond the need to take normal precautions as per our standard protocol. They continue to monitor the situation carefully and will advise us if anything changes.

257 Mr Chen reported to Mr Felstead, Mr O'Connor and Mr Ratnam that WilmerHale had advised that "there has been no change to the law on promotion of gambling. Their advice was to refrain from activities that may be seen to be aiding and abetting illegal money movements".[280]

258 Mr O'Connor wrote to Mr Chen asking him to "gauge the mood of the team in China" during his travels and to let him know if he sensed any "heightened concerns".[281] In response, Mr Chen confirmed that there was "definitely heightened concerns" and that he would hold a conference call that week to address questions.[282]

259 Mr Ratnam also responded, indicating that he was "happy to fly in for a few days to show support as well".[283]

260 On the same day, Mr Chen arranged a conference call with various staff including staff within the VIP International team to "discuss the recent crackdowns in China against the Korean casinos".[284]

2016

261 On 21 January 2016 an article was published on China's tightening control on currency movements offshore.[285]

262 On 25 February 2016 Mr Craigie and Mr Felstead were circulated a draft of a presentation that was to be given to the VCGLR the following day.[286] Mr Felstead provided his comments to remove the slide relating to the corruption crackdowns in China, because he was "not sure how wise it is to talk about corruption crackdowns in China to this group". The feedback was incorporated by Ms Fielding, the General Manager – Compliance, Crown Melbourne. Mr Felstead accepted that it appeared that he was not keen to discuss the corruption crackdown in China with the VCGLR but

could not recall why that was so.[287] Mr Craigie said he was not clear why Mr Felstead had used this language as the corruption crackdown had been widely publicised and indeed, had been previously referred to in Crown's results.[288]

263 On 18 April 2016 Mr Chen circulated the updated version of the "Crown Strategy Workshop April 2016" to various recipients including Mr O'Connor, Mr Felstead and Mr Ratnam.[289] This document made reference to the VIP market continuing to be under pressure and described the China policy as being "unfavourable", referring to the continuation of the anti-corruption campaign and the government's continued "intense scrutiny of money movements".Various short term strategies were proposed. A medium term strategy that was identified was to accelerate and deepen the platform Junket initiative. A long term strategy was to accelerate a complete transformation of the sales team into professional sales team.[290]

264 On 28 April 2016 Mr Chen provided the VIP International team with an update on the team's financial performance and upcoming events, with a copy to Mr Felstead and Mr O'Connor. Mr Chen reminded the team about their entitlement to bonuses in the following terms:[291]

> Those of you who are not yet at minimum acceptable. I remind everyone that all it takes is a couple of big customers to carry you into bonus land. If you don't keep trying, you will never get those customers in. For those of you who are qualified to receive a bonus, remember that your plans are UNCAPPED. The more you sell, the more you will make! So let's keep the momentum going and FINISH THE YEAR STRONG!

265 On 29 May 2016 Mr Gomez instructed various staff in the VIP International team to promote CrownBet's promotion to their customers that "likes to bet sports, like football and soccer betting".[292] In response the Regional Vice President – China East Region Sales Team, emailed Mr Gomez that "internet gambling is illegal in China. Sales Team will take high risk! So please think carefully. Thanks!"

266 On 16 June 2016 Mr Chen emailed the VIP International team on their financial performance for F16, indicating that:[293]

> It is essential that we exceed $73b. This is a team that always beats its goals. The next few days are critical for us to do that. **Please do everything you can** individually to promote Aspinalls Golden Ball to the right level customer (>AUD $1m FM) and promote trips for a strong finish to the year.
>
> Let's also make a hard push on collections to make sure we don't miss out on credit to count towards your bonuses for F16.

267 On 26 June 2016 Mr Chen wrote to Mr Felstead advocating reasons why his performance review should be favourable. That communication was forwarded by Mr Felstead to Mr Connor on 27 June 2016. It included the following:[294]

> I have committed myself to doing what's right for the Company, coaching the team relentlessly, and pushing for higher and higher performance. I have taken on the risks of being prosecuted in China, threatened bodily harm by customers, and abused health-wise by the demands to entertaining in this job.
>
> ...
>
> I am speaking up now, because I have made commitments to my family that these sacrifices are worth it do (sic) to what I could bring to the family.

268 One of the examples that Mr Chen included in the attachment to his communication with Mr Felstead was an example of a "major customer win" being "SunCity relationship with Alvin".[295]

269 On 6 October 2016 Mr Chen wrote to the sales staff indicating that it was "crunch time" and that they were at a "critical juncture". He advised that they were "far behind" the budgets and requested that they "aggressively" go through their target lists, and to make sure that everyone is "called and called regularly". He also suggested that they should not take "no" for an answer and that there was "always a way".[296]

270 On 13 October 2016 Mr Chen wrote again to the sales team advising that it was "time to go after our biggest customers".[297]

The arrests

271 Between 13 and 14 October 2016 a series of coordinated raids on the homes of Crown staff in Mainland China was conducted. It was at this time that nineteen Crown employees were arrested and questioned by the Chinese authorities. Mr Connor was visiting China as part of a VIP International roadshow at that time and he was one of the nineteen employees arrested[298]. Mr Chen, who was in Hong Kong at the time, was not arrested.

272 It is not in issue that nineteen of the Crown employees subsequently pleaded guilty to a charge of assembling a crowd to engage in gambling in breach of Article 303 of the *Criminal Law of the Peoples Republic of China*.

273 On 26 June 2017, sixteen of the nineteen employees were sentenced to fixed terms of imprisonment and fined; five of whom were sentenced to 10 months' imprisonment; and 11 of whom were sentenced to nine months' imprisonment. The other three (administrative staff), including the interviewee on the *60 Minutes* program were exempted from criminal penalty. The employees who were sentenced to

imprisonment were senior management, including Mr O'Connor and members of the sales team.

Veracity of the Media Allegations

274 As discussed at the commencement of this Chapter, it is necessary to determine the veracity of the Media Allegations. For ease of reference they are repeated here:

(a) Crown knew that its China-based staff were breaching Chinese gambling laws;

(b) Crown exposed its staff to the risk of detention in China;

(c) Crown disregarded the welfare of its employees as they were offered "huge bonuses" to lure Chinese high rollers to gamble at Crown's Australian casinos;

(d) Even as it became likely Chinese police were closing in, Crown directed its China-based sales staff to keep promoting gambling but to do so "under the radar";

(e) Crown instructed staff to falsely claim to the Chinese authorities that they were not working for Crown in China but were working in other locations; and

(f) Crown's operations in China cast doubt over its corporate governance practices.

275 The first Media Allegation referred to above will be considered separately. It is convenient to consider the veracity of the second to fifth Media Allegations together as they relate to similar claims of knowing exposure of Crown staff in China to various risks. The final Media Allegation in relation to corporate governance will be considered separately.

Crown knew its staff were breaching Chinese gambling laws

276 The first Media Allegation was that Crown knew that its employees in China were breaching Chinese gambling laws.

277 Crown's employees were charged with offences pursuant to Article 303 and Article 25 of the Chinese Criminal Law. They all pleaded guilty to those charges, were convicted and all but three were imprisoned after conviction. Each of the employees had been detained for varying periods prior to the matters coming to Court for hearing. It was obviously an horrendous time for all of them.

278 Although there was a suggestion that some pleas of guilty may have been entered to achieve a shorter period of detention rather than in recognition of any culpability, it

is not appropriate to explore this any further in this Inquiry. The fact is that pleas of guilty were entered, whatever may have been the motivation.

279 In its Message in response to the Media Allegations published on 31 July 2019 the Crown Board observed that as a corporate entity Crown was not charged with or convicted of any offence in China. In addressing the first Media Allegation the Crown Board claimed that it understood at all times that its China-based employees were operating within the law in China.

280 It is clear from the detail of the events recounted earlier in this Chapter that Crown regularly sought advice from what it regarded as a reputable law firm to guard against the prospect of any breaches of Chinese gambling laws. The fact that the process of managing, sharing and reacting to these advices may have been mishandled is not to the point that Crown knew that its employee's conduct was in breach of the gambling laws.

281 The fact that Crown may have failed: (i) to properly recognise clear warning signs and risks to the safety of the staff in China from possible questioning and detention by the Chinese authorities; and (ii) to escalate those warning signs and risks to the appropriate risk management structures and to the Board does not establish that Crown knew that its employees were breaching gambling laws. Rather it is indicative of other serious problems.

282 Counsel Assisting submitted that there is no proper evidentiary basis to conclude that Crown knew that its China-based employees were breaching Chinese gambling laws. That submission is accepted.

283 The veracity of the Media Allegation that Crown knew that its employees were breaching gambling laws in China is not established.

Crown placed its employees at risk

284 As indicated earlier the second to fifth Media Allegations will be considered in this section of the Chapter.

285 The risks to which Crown allegedly exposed its employees were the risks of questioning, detention and possible conviction and imprisonment; the risks that were ultimately realised.

286 The second Media Allegation was that Crown exposed its staff to the risk of detention in China.

287 The fact that Crown kept pushing the employees to make greater sales in the face of the questioning of its employees by the Chinese authorities; the arrests of the South Korean casino employees; and the targeted crackdown on foreign casinos in

combination, even with care being taken from the luxury of retrospection, establishes that Crown behaved recklessly to the prospect that their own employees could be detained whether for questioning or worse by the Chinese authorities.

288 It is true that the full Crown Board did not know of the questioning of the Crown employees by the Chinese authorities. It is also true that only some members of the Crown Board were informed by Mr Johnston of the arrests of the South Korean casino employees but were informed that the circumstances were distinguishable from the way in which Crown operated and there was no need for concern. Some of the Crown Board knew of the targeted crackdown on foreign casinos.

289 However senior management and one of the Board members, Mr Johnston, knew of all of these things. With that knowledge they did not remove the staff from risk and thus exposed them to the risk of detention in China.

290 The veracity of the second Media Allegation is established.

291 The third Media Allegation was that Crown disregarded the welfare of its employees and pushed them to make greater sales by offering them "huge bonuses".

292 There is no issue that Crown adopted an overly aggressive sales approach in China during the period that was reported upon in the Media Allegations. The China-based employees were offered bonuses that in many walks of life would be regarded as "huge".

293 The employees in China were operating in an environment where President Xi Jinping had announced a crackdown on corruption and in February 2015 a further more focused crackdown on foreign casinos targeting and luring Chinese nationals to gamble overseas. Such a focused crackdown was clearly a risk to Crown's employees in China who were obviously seeking to lure Chinese nationals to gamble at Crown's casinos in Australia.

294 The risk escalated further after the arrests of the South Korean casino employees. Further advice was taken by Crown and it was suggested that operations should not be "overt".

295 When the employees were questioned by the Chinese Police and in particular when the second employee was questioned in July 2015 and a letter of confirmation of his employment was requested, the risks became far more serious. As discussed earlier, it was clear or should have been clear at this time that an informant was providing the Chinese authorities with information about Crown's operations.

296 The communications between Mr Chen and other Crown officers and with the external advisers indicate that he was in some respects considerate of the employees'

predicament. There are references to staff members being "very nervous"[299]; and some with "definitely heightened concerns".[300]

297 Mr Chen's communications show that he did have regard to the employee's expressions of fear and concern and asked WilmerHale to assist in settling them down, in particular the more junior employees. However WilmerHale was in no position to give the appropriate consideration to the employees' welfare. That was Crown's responsibility. If Mr Chen and his superiors had exercised proper care for the employees' welfare it would be expected that rather than an external legal adviser giving what can only be regarded as equivocal advice for feeling safe in the work environment in all the circumstances developing at the time, it would be expected that the employees could and should have been removed from the risky environment, either physically or by cessation of duties, rather than being pressed into more intensive selling with the offer of the opportunistic bonuses.

298 The aggressive pursuit of profit was favoured to the disregard of the welfare of the employees in China.

299 The veracity of the third Media Allegation is established.

300 The fourth and fifth Media Allegations relate to the camouflaging of Crown's operations in China with the consequent risks to staff.

301 The fourth Media Allegation was that even as it became likely that the Chinese police were closing in, Crown directed its China-based sales staff to keep promoting gambling but to do so "under the radar".

302 There is no doubt on the evidence that the allegation that Crown staff in China were advised to continue to promote gambling "under the radar" is correct. The communications in relation to the need not to act in an "overt" fashion when promoting Crown's gambling business is supportive of this conclusion.

303 There is also no doubt that such a direction and the continuation of the practice of pressing the staff to make more sales occurred during a time when it was known that employees had been questioned by the Chinese police.

304 It is clear that after Crown had access to information that established that at least one and probably more informants were assisting the Chinese authorities and the Crown employees were questioned by the Chinese police about allegedly breaching gambling laws, Crown offered bonuses to the employees to continue selling its business and to do so covertly. There was evidence relating to whether Crown had a business license to operate in China and also in relation to the unofficial office that operated in Guangzhou. Although these matters relate also to the problems with

Crown's corporate governance, they are relevant to the claim in the Media Allegation that Crown had instructed its staff to operate "under the radar".

305 Although it was suggested that this approach was merely in recognition of the sensitivities and the culture of the country, it is obvious that the main aim was to try to camouflage Crown's operations in China. It is one thing to put in place systems to protect the welfare of an employee. It is quite another to maintain pressure on an employee with the offer of bonuses and push for greater sales and at the same time avoid bringing them to notice. The emphasis ultimately was on the latter rather than the former.

306 Crown suggested that because there was "clear air" between the events of 2015 and the arrests in 2016 Crown would not have been concerned about the safety of the employees in China. This proposition is not persuasive. As the former head of the Royal Hong Kong Police Criminal Intelligence Bureau said:[301]

> In China my experience has been that the Chinese government often sends a warning. The pebble has dropped in the water, the ripples go out and if you're tuned in you can see that something has changed.

307 However the questioning of two members of Crown's staff by the Chinese police in the context of the involvement of informants and the other escalating risks was more than the metaphoric "pebble". Clearly the Chinese police were "closing in" in their own time.

308 The veracity of the fourth Media Allegation has been established.

309 The fifth Media Allegation that Crown had instructed its staff to falsely claim that they were not working in China but were working in other locations obviously came from one of the "leaked" documents, which is referred to earlier in the recitation of the facts. It was Mr Chen's email in which the idea that he would obtain the visas from other jurisdictions was recorded. The *60 Minutes* program quoted the content of that document, conveying the impression in the context of the broadcast that such instruction had been given.

310 It is clear that Mr Chen had the idea that he would obtain foreign visas for the staff so that they could falsely claim to the Chinese authorities that they were not working in China but rather working in other locations. Notwithstanding that at one stage Mr Chen may have been planning to give such an instruction this idea, as bad as it was, was not implemented. The evidence establishes that the staff were not advised or instructed to inform the Chinese authorities that they were working in other locations.

311 The veracity of the fifth Media Allegation that Crown instructed its staff to falsely make such a claim is not established.

Problems with Corporate Governance

312 The final Media Allegation is that Crown's operations in China cast doubt over its corporate governance practices.

313 The evidence established beyond any doubt and indeed it was accepted by the Crown directors that Crown's risk management structures and corporate governance practices were compromised in its operations in China.

314 The veracity of the sixth Media Allegation that Crown's business operations in China cast doubt over its corporate governance practices is established.

Chapter 3.4

Junkets and Organised Crime

1 Paragraphs 15 (c) and 16 of the Amended Terms of Reference require investigation and report upon the suitability of the Licensee and Crown "in response to" the Allegations relevantly for this Chapter that Crown partnered with Junket operators with links to drug traffickers, money launderers, human traffickers and organised crime groups.

Media Allegations

2 The material published in the print media in July and August 2019 and in the *60 Minutes* programme broadcast in July 2019 alleged that Crown had partnered in particular with seven Junket operators named in the Media Allegations as having links to organised crime groups. Those Junket operators were: (1) The Company; (2) Roy Moo; (3) the Hot Pot Junket; (4) the Suncity Junket; (5) the Neptune Group; (6) the Chinatown Junket; and (7) the Song Junket.

3 It was also alleged that Crown had failed to conduct appropriate due diligence into the Junket operators with which it entered into agreements. It was alleged that "Crown junket, after Crown junket with underworld ties" had been uncovered, suggesting that Crown "was either wilfully blind or recklessly indifferent" to its Junket operator links to organised crime groups.[1]

Crown's Response

4 On 31 July 2019 the Crown Board responded to some of the Media Allegations in respect of its Junket relationships in the Message referred to in the previous Chapter. It included the following:

> Crown operates in one of the most highly regulated industries in Australia and takes its responsibility to comply with its obligations very seriously.
>
> There are numerous examples of poor or misleading journalism which include:
>
> …

(c) extensive references in the '60 Minutes' programme to alleged criminal connections of an organisation said to be called 'the Company'. Crown has had no dealings or knowledge of any organisation of that name or description;

(d) there was no sense conveyed in either the '60 Minutes' programme or in subsequent media reporting that junkets are an established and accepted part of the operations of international casinos; and

(e) no reference was made to the facts that:

(i) the parent of the SunCity junket is a large company listed on the Hong Kong Stock Exchange which operates globally; and

(ii) Crown does not now deal with any of the other junket operators or players mentioned in the programme, apart from one local player, and none of the international players mentioned have gambled at Crown venues for at least three years.

Junket operators

Much was sought to be made in the programme of the conduct of 'Crown's junket operators'. In fact the junkets are not Crown's. They are independent operators who arrange for their customers to visit many casinos globally. Crown deals with junkets and their customers in essentially the same way as other international casinos.

Macau-based junkets are required to be licensed there and are subject to regulatory oversight and probity checks. There are also other casino regulators in Australia and overseas which review junket operators and their dealings with licensed casinos.

Crown itself has a robust process for vetting junket operators, including a combination of probity, integrity and police checks, and Crown undertakes regular reviews of these operators in the light of new or additional information.

5 In a subsequent full-page advertisement some days later Crown adjusted what it had said about Suncity, without correcting the statement that it was a large Junket that was registered on the Hong Kong Stock Exchange. It is accepted that this was an erroneous claim in the Message. Although it repeated some of the content of the original Message, the subsequent advertisement also highlighted the fact that no reference had been made in the Media Allegations to the fact that Suncity, said to be a large Macau licenced Junket, arranged customer visits not only to Crown, but also to other major casinos in Australia and New Zealand and at least 15 other casinos globally.

Message conveyed

6 There is no issue that at the time of the publication of the Media Allegations junkets were, as the Crown directors claimed in their Message, "an established and accepted part of the operations of international casinos".

7 The Message would have conveyed to the reasonable reader that Crown does exactly what every other international casino does in relation to Junkets and that Junket operators and their dealings are reviewed by Australian and international regulators.

8 Crown was clearly suggesting that what had been published in the Media Allegations was part of a false and misleading campaign against it. It mounted a strong defence to the suggestions that it partnered with Junket operators with links to organised crime. In response to the allegation that it was wilfully blind or recklessly indifferent to such links it put forward the defence that it had a robust process of due diligence and investigation of its Junket operators.

9 A reasonable reader of the Message and the subsequent Advertisement would understand that Crown was seeking to justify its relationship with the Suncity Junket in particular, not only on the basis of its own "robust process for vetting junket operators" but also on the basis that many other casinos both nationally and internationally also had dealings with Suncity.

Crown's obligations

10 The Licensee and Crown are obliged to ensure that they only deal with Junket operators who are persons of "good repute".[2]

11 This concept is discussed in detail elsewhere in the Report and is unnecessary to repeat in this factual review of the Media Allegations. However it is appropriate to observe that Junket operators with whom Crown has a business association should have a reputation or be known to be a good person taking into account what is known about the person generally but also taking into account the person's character, integrity and honesty.[3]

Some developments

12 It is appropriate to refer to some significant events and decisions taken by Crown after the commencement of the Public Hearings dealing with the Media Allegations relating to Crown's relationships with Junkets. Although these matters are discussed elsewhere in the Report, it is appropriate to also refer to them at this point because they have an impact on the extent of the review of the evidence and the nature of the determination relevant to the questions posed in the Amended Terms of Reference.

13 In opening the first Public Hearing on 21 January 2020, Counsel Assisting outlined the Media Allegations in relation to Junkets and identified each of the above-mentioned Junket operators and the claims that Crown had failed to conduct appropriate due diligence into the Junket operators with which it entered into agreements. It was made clear that, subject to any concessions that might be made by Crown, it would be necessary to explore the veracity of the Media Allegations in evidence in the then forthcoming Public Hearings.

14 By reason of the suspension of the work of the Inquiry for some months consequent upon COVID-19, the evidence relating to Junkets did not commence until late July 2020. However Crown had embarked on much preparation for those hearings with its Chief Legal Officer, Mr Preston, preparing numerous Statements of Evidence relating to Crown's due diligence on Junket operators, its practices in dealing with Junket operators, the identification of the particular Junket operators with which it dealt and the various reviews of those Junket operators over the years.[4]

15 The approach adopted by Crown through Mr Preston's evidence at the commencement of the evidence in the Public Hearings in July 2020 was consistent with the approach that it had adopted in its Message published in July 2019 that Crown had been deeply wronged by a shocking and deceptive media campaign against it.

16 In the circumstances, it was necessary to explore many aspects of Crown's relationships with its Junket operators. This included, but was certainly not limited to, the identification of the particular individuals with whom Crown contracted to provide Junket services, the steps it took to check on the repute of each of the Junket operators both prior to entry into those contractual relationships and during the course of the relationship, the information that it held relevant to whether some of its Junket operators were not of good repute and the decisions it made when such information was brought to its attention.

17 After the exposure in the evidence of some of the problems with Crown's relationships with its Junket operators, the Crown Board made a decision in August 2020 to suspend its operations with Junkets so that it could review not only some of the aspects of those problems that had then been identified in the evidence but also its future relationship with Junket operators generally. In September 2020 the Crown Board decided to extend that suspension to 30 June 2021 to conduct a proper assessment of the situation. Crown also retained the Berkeley Research Group to assist it with its assessment of its relationships with Junket operators. These steps were rather timely and not difficult to implement having regard to the fact that there was a prohibition on international travel and Crown's Casinos were closed consequent upon the introduction of Health Orders relating to COVID-19.

18 During the Public Hearings each of the Crown directors gave evidence about the perceived complexities of dealing with Junket operators. One particular circumstance that was highlighted was the difficulty of checking the veracity of claims such as those

made in the Media Allegations. These matters are discussed later in the Report.[5] Some directors telegraphed in their evidence that the Crown Board would probably give serious consideration to the question of whether it should or would be dealing at all with international Junket operators.

19 Crown made the very significant announcement on 17 November 2020 that it had decided, subject to any licensing or authorisation by all regulators in the jurisdictions in which it operates, it would permanently cease dealing with international Junket operators.

Context of the determination

20 Notwithstanding these developments, it is necessary to determine the veracity of the Media Allegations for the purpose of reporting to the Authority "in response to" those findings or as a result of those findings, whether the Licensee and Crown are suitable persons within the meaning of that expression in the *Casino Control Act*.

21 However these developments, together with a number of concessions that have been made by Crown both in the evidence of the Chairman and some other directors and in its final submissions, obviate the need to descend into greater detail than otherwise may have been necessary had such developments and concessions not occurred.

22 This Chapter focuses on the factual issues of whether the veracity of the Media Allegations that: (i) Crown partnered with Junket operators with links to organised crime; and (ii) Crown was wilfully blind or recklessly indifferent to the existence of such links has been established.

23 It is not in issue that in numerous instances Crown had information which included claims and allegations that some of the Junket operators named in the Media Allegations had what are reasonably described as "links" to organised crime groups. It is also not in issue that after receipt of such information Crown continued its relationship with some of the Junket operators the subject of the information that it held. It is also not in issue that Crown ceased its relationship with all China-based Junket operators, except for perhaps one of them, after its review of its operations consequent upon the China Arrests in October 2016.

24 It is not in issue that the Crown directors believed at the time they published the Message and subsequent Advertisement in July 2019 and August 2019 respectively that Crown had a "robust" due diligence process for assessing whether to enter into and/or continue its relationships with Junket operators. However as recognised by Crown's Chairman in her evidence such a description is not apt, even though its processes in this regard may have been "extensive".[6]

25 It is also not in issue that those persons who were in a position to determine whether Crown's relationships with particular Junket operators should commence or

continue, did not have any clear guidance as to the proper approach to be taken to publicly available reputational information and allegations about the particular Junket operator. There was no bar of tolerance set against which the decision makers could test the information and allegations; for instance that Crown would not tolerate Junket operators who had persistent public claims made against them of connections to organised crime groups and triads. The decision makers were left wallowing in a pool of uncertainty grappling with serious allegations but harbouring concerns that they should not proceed to reject an application or terminate an agreement until there was a recorded criminal conviction against any particular person. This was highly inappropriate. The matter should have been clarified after proper consultation with and direction from the Crown Board. This was not done.

26 In any event, the fact that these concerns existed is relevant to the Media Allegation that Crown's attitude to the existence of the Junket operators' links to organised crime was wilfully blind or recklessly indifferent. The fact that there was no guidance for Crown's corporate operatives is also relevant to this claim.

27 As has been discussed elsewhere, the VIP International business unit was pivotal to Crown's relationship with international Junket operators. Crown's Senior Management witnesses in the Public Hearings who had responsibilities in respect of Crown's Junket operations were Mr Felstead, as the CEO of Australian Resorts and the Head of the VIP business unit, and Mr Preston as the Chief Legal Officer, with responsibilities including reviewing Crown's relationships with its Junket operators.

28 Mr Johnston also had responsibilities in respect of Crown's Junket operations. As discussed later, he was involved in the review of Crown's Junket operations after the China arrests in 2016. He was also a member of a panel with Mr Felstead and Mr Preston, set up in about 2017 for the purpose of reviewing any particular Junket operator that was escalated to the review panel for consideration of whether Crown should continue with its relationship or whether its risk rating should be adjusted. Mr Johnston claimed that he provided these services to Crown as a CPH Executive under the Services Agreement which is discussed in Chapter 2.8 of this Report.

29 Both Mr Felstead and Mr Preston have very recently left Crown's employment. Although some of their evidence is reviewed later in the Report in the assessment of Crown's corporate character, it suffices in this section of the Report to observe that their evidence demonstrated, at the very least, the real need for refreshment of their two positions.

30 It is understood that Mr Johnston remains as a director of Crown but has been relieved of the burden of a number of his responsibilities on the numerous Committees on which he served. It is also the case that the Services Agreement under which Mr Johnston purported to provide the Services in relation to Junkets has been terminated. Mr Johnston's evidence is also reviewed later in the Report in the assessment of Crown's corporate character. It is not necessary to detail that evidence

further in this Chapter, other than to observe that Mr Johnston's involvement at a managerial level of reviewing Junkets and to decide whether lucrative business contracts should be terminated or adjusted whilst acting as a director of Crown, a director of CPH, a director of CPH Crown Holdings and a CPH executive purportedly providing Services to Crown was a very flawed idea indeed.

31 Subject to these observations, it is in this context that the evidence in respect of Crown's relationship with the named Junket operators will be reviewed for the purpose of determining the veracity of the Media Allegations.

Partnered with Junkets

32 The establishment of Junkets and their adoption in Australia is dealt with in Part 1 of the Report. Relevantly to the discussion in this Chapter, Crown's practice was to deal only with individuals, rather than with corporations, as Junket operators. This is so notwithstanding that in some instances the Junkets and the VIP salons from which they operated within Crown Melbourne and/or Crown Perth may have been referred to by corporate names and used corporate signage, for instance, the 'Suncity Room'.

33 The use of the expression "partnered" excited debate. Although Crown took a rather legalistic approach to the expression throughout the Inquiry to suggest that it is an inappropriate description of its operations, it is clear that such language was used by Crown itself in the VIP International business unit and even Mr Packer seemed very comfortable with that expression.[7] Crown had different arrangements with its Junket operators, one of which was a revenue sharing arrangement. Mr Packer described the two ways in which Junkets operate with casinos. Put "simplistically", as Mr Packer suggested, the first is on a negotiated rate with a slight discount to theoretical, taking the ups and downs on the luck of how the cards fall from that point; the second is a revenue sharing arrangement which means that whatever the total revenue is from the Junket, it is split as agreed between the Junket operator and the casino. Mr Packer accepted that a revenue sharing arrangement is a form of "economic partnering".[8]

34 It is true that the documentary material signed by individual Junket operators and Crown has not been the subject of review for the purposes of deciding whether the relationship was one of a legal "partnership". It appears that from a legal point of view Crown was entering into commercial contracts with individuals who operated their own businesses and had separate arrangements with the members of the Junket they brought to Crown casinos.

35 However the expression, "partnered", as used in the publications from which the Media Allegations arise is to be understood in the vernacular or more informal context. The reasonable reader of the Media Allegations would understand from the expression in that context that Crown was teaming up, co-operating or collaborating with the Junket operators.

Links to organised crime

36 The expression used in the Media Allegations in respect of which the Amended Terms of Reference require inquiry and report, is that the particular Junket operators had "links" to organised crime groups.

37 The Media Allegations arose from numerous articles and the *60 Minutes* broadcast, within which there is some journalistic licence and at times a lack of precision. However, the relationships between organised crime groups and particular individuals in the shady underworld in which they operate is itself not an environment of precision. Indeed the lack of ability to be precise about some of the operations and operatives is an attribute such organisations strive to achieve to ensure their continued existence.

38 The expression "links" in the context in which it was used in the Media Allegations is to be understood that it was alleged that those Junket operators had connections or relationships, or associations with organised crime groups.[9]

The Junket Operators

39 Notwithstanding the developments referred to earlier, it is intended to review relevant parts of the evidence taking into account those matters that are not in issue to determine: (i) whether Crown had any business association with the Junket operators named in the Media Allegations; (ii) whether there was any available information in support of the claim that those Junket operators had links to organised crime; (iii) whether Crown had access to or possession of such information in respect of those alleged links; (iv) the relevant steps, if any, Crown took in respect of information that it held that those Junket operators had such links; and (v) whether Crown's conduct demonstrated a wilful blindness or reckless indifference to the existence of such links.

40 It is convenient for good forensic reasons to deal with the first to third named Junket operators together and then to deal separately with the balance of the Junket operators named in the Media Allegations.

The Company, Roy Moo and the Hot Pot Junket

41 The evidence establishes that the first named Junket operator in the Media Allegations, known as The Company has tentacles throughout numerous operations and organisations in various international jurisdictions. Much of the business of The Company is connected to drug trafficking and money laundering.[10]

42 At the time that the Crown Board responded publicly to the Media Allegations in the Message of 31 July 2019 and claimed that it had no knowledge or dealings with The Company there was nothing that could have reasonably alerted it to any link between

any of its Junket operators and an entity of that name. It is accepted that this could not have been reasonably discovered until October 2019 after the publication of a *Reuters* exposé by Tom Allard entitled "The Hunt for Asia's El Chapo". That article identified The Company (sometimes referred to as the Sam Gor Syndicate) as an alliance of five of Asia's triad groups, including the 14K Triad, and the top illegal drug syndicate, in Asia with links to drug trafficking in Australia.[11] Tse Chi Lop was identified in the article as the leader of The Company/Sam Gor Syndicate with the suggestion that he is "in the league of El Chapo or maybe Pablo Escobar."[12]

43 The second named Junket operator in the Media allegations, Roy Moo, suffered a conviction for money laundering in 2013 and was imprisoned. Roy Moo had been a Junket representative of a Junket operator with Crown between approximately 1997 and 2013. Soon after becoming aware of Roy Moo's criminal conduct Crown barred him from attending Crown Melbourne and his subsequent applications to have such a prohibition removed have been unsuccessful.

44 The *60 Minutes* program included footage of Roy Moo collecting cash in the ubiquitous shopping bag and presenting it to Crown. It was asserted that the money was laundered on behalf of The Company.

45 There is no doubt that the money laundered by Roy Moo came from the proceeds of criminal activity by the international drug trafficking syndicate, The Company. There is no doubt that the money was laundered through Crown Melbourne. Roy Moo claimed that he did not know the funds were the proceeds of crime but suffered the conviction and imprisonment in any event. There was capacity for Crown to discover the connection with The Company after the *Reuters* publication by linking its contents back through a case study relating to Roy Moo in the VCGLR Sixth Review of Crown published in June 2018 which referred to Sam Gor.[13]

46 On 22 January 2021 in what was described as "a stunning coup" for the AFP, Tse Chi Lop was arrested in the Netherlands pending an application for his extradition to Australia to face charges in respect of his involvement in "multiple billion-dollar drug importations into Australia".[14]

47 Crown accepted that it dealt with the third named Junket operator in the Media Allegations said to be linked to organised crime groups, the Hot Pot Junket, through its operator Ng Chi Un. Tse Chi Lop is the "suspected silent partner" in the Hot Pot restaurant business in Macau. Crown ultimately accepted that on the available material at the time it could not have been satisfied Ng Chi Un, was of good repute.[15]

Suncity Junket

48 The fourth named Junket operator in the Media Allegations, Suncity, requires a more detailed analysis. It was of course the Junket operator in respect of which the Crown Board sought to defend its relationship in the Message published in July 2019. It

continued in its relationship with Suncity at that time and it was only adjusted late in August 2019, not by Crown, but by Suncity taking what might be seen as diversionary action in the face of the Inquiry.

49 Suncity operates Junkets in numerous jurisdictions nationally and internationally.

50 Suncity is controlled by Alvin Chau who first became a Junket operator at Crown Melbourne in September 2009 and Crown Perth in June 2010.[16]

51 It was alleged in the Media Allegations that Suncity was affiliated with The Company and that Alvin Chau was a member or former member of the 14K Triad. Those allegations included reference to Crown's arrangement with Suncity for a high roller private gaming room inside Crown Melbourne with the claim that money had been laundered in that room. It was claimed that Crown's due diligence in respect of Suncity and Alvin Chau was inadequate.[17]

52 Numerous allegations have been made about Suncity and Alvin Chau over the years in the worldwide media suggesting that Alvin Chau was a key member of the 14K Triad.[18]

53 The Suncity Junket is one of Crown's largest platform Junkets. It has generated billions in gaming turnover and hundreds of millions in gross winnings for Crown.

54 This was clearly a very important relationship for Crown and Alvin Chau was duchessed by Crown Senior Management and Mr Packer. Mr Felstead met him in 2014.[19] Mr Packer met him in 2015 to build a business relationship because Suncity was the biggest Junket operator in Macau.[20] Mr Ratnam met with him on a number of occasions and reported back to Mr Packer about these meetings and the level of business Suncity was bringing to Crown[21] and Mr Packer continued to monitor the relationship between Crown and Suncity.[22]

55 It appears that Crown first reviewed its relationship with Suncity on 4 January 2017, as part of Crown's review of Junket relationships following the China arrests in October 2016.[23] Annual reviews of the Suncity Junket relationship were subsequently conducted on 26 March 2018 and 4 March 2019. However there is no documentation of the rationale for the continuation of the relationship with Alvin Chau.[24] It is not known if an annual review was conducted in 2020. It is clear that the Suncity Junket was not escalated to the review panel of Mr Felstead, Mr Preston and Mr Johnston at any time for it to consider whether Crown should continue dealing with Suncity or Alvin Chau.

56 The information gathered by Crown on Alvin Chau included various due diligence dossiers from the agency Wealth-X in May 2016 and January 2017; an enhanced due diligence report from C6 Group in December 2016; and a WealthInsight dossier in April 2016.[25]

57 The Wealth-X reports contained information that Alvin Chau was a former Triad member and had continued associations with former triad members.[26]

58 By 1 April 2016, Crown had information relating to US Government reports that Alvin Chau had links to organised crime.[27] The Wealth-X dossier dated 26 May 2016 included a report that Alvin Chau:[28]

> Appears to have been a former member of the 14K Triad's Macao branch in the 1990's, and was reportedly in charge of loan sharking and gambling under the leadership of Kuok Koi Wan. After Wan was sentenced to more than 14 years imprisonment in 1999, Chau started his own gang...

59 On 8 June 2017 AUSTRAC requested that Crown provide it with "documentation evidencing Crown's consideration of the appropriateness of continuing to provide designated services to Alvin Chau."[29] It is apparent that there was no further communication with AUSTRAC at this time about its enquiry nor was the enquiry escalated to the Crown Board.[30]

60 On 16 June 2017 without documenting any reason or rationale, Mr Preston granted approval for Crown to continue its relationship with Alvin Chau.[31]

61 On 1 September 2017 media coverage suggested that Alvin Chau received a large amount of cash that had been stolen from the Bangladesh Central Bank. Although a review of Alvin Chau's risk rating followed the receipt of this information it did not lead to any consideration of whether he or Suncity should remain as a Junket operator at Crown.[32]

62 Following various incidents in the Suncity Room, including the location of $5.6 million in cash, a money laundering risk assessment of Alvin Chau (as "CCW") was conducted on 20 November 2018. It included the following:[33]

> Given the size and scope of the Suncity junket operator's operations, Crown Melbourne has assessed the due diligence materials available to it and has determined that it is appropriate to continue to do business with the ultimate beneficial owner, CCW.
>
> Following a World Check result in June 2017 identifying CCW as a Foreign Politically Exposed Person (due to his position as a member of a political advisory body), CCW's customer risk assessment was increased in accordance with the Crown Melbourne AML/CTF Program to 'high'.
>
> Moreover, Crown Melbourne is aware of negative press on CCW, including his potential links to Triads (as noted in ECDD conducted on him however notes that this commentary remains media speculation and that, to date, CCW has not been charged with an offence and has received his annual police clearance in Macau pursuant to the requirements of his DICJ (junket operator) license in that jurisdiction.

> Given the enhancement of existing controls, introduction of new controls, reporting numbers, law enforcement inquiries and no further adverse media it is concluded that the Risk Assessment conducted and its findings in April 2018 are still relevant and current Risk level is to be maintained at "HIGH".

63 In early 2020 there was a slight change in Crown's tone to the assessment of its relationship with Suncity. In a memorandum to Mr Felstead on 3 March 2020, Mr Preston noted that whilst various external due diligence reports referred to Alvin Chau having connections with Triads, the only source of this information was media reports. Mr Preston also noted that Crown was not able to verify an allegation that had been made that the Hong Kong Jockey Club refused to conduct business with Alvin Chau. Mr Preston advised Mr Felstead that Crown should reassess whether to continue to conduct business with Alvin Chau including in light of activities in the Suncity room since 2017.

64 In August 2020 Crown commissioned the Berkeley Research Group to undertake a due diligence investigation into various Junket operators and representatives. The Berkeley Research Group Report dated 12 September 2020 contains numerous adverse references to Alvin Chau, including that:[34]

> Chau has been reported to have worked as a "henchman" ... under the former leader of the 14K ... triad's Macau branch, Wan Kuok-koi ... more commonly known as "Broken Tooth" Koi. Broken Tooth was arrested in 1998 and was sentenced to 13 years for possessing weapons, money laundering and illegal gambling in November 1999.

65 By this time Crown had suspended its operations with all its Junket operators including Suncity and Alvin Chau.

The Neptune Group

66 It is not in issue that through various individuals the fifth named Junket operator in the Media Allegations, the Neptune Group, has been a Junket operator with Crown since at least 2005 and that over the years there have been numerous media allegations that the Neptune Group is linked to organised crime.

67 Neptune Group Limited (Neptune Group) is a company listed on the Hong Kong Stock Exchange.

68 The Neptune Group's former owner Cheung Chi Tai first made an application to be a Junket operator with Crown in 2005.[35]

69 In numerous media reports over the years Cheung Chi Tai was named as a triad boss and in 2015 he was reported to have been the subject of a lengthy investigation into alleged money laundering of the equivalent of $232 million through bank accounts in

Hong Kong resulting in his assets being frozen. In that same year Crown put stop codes on his account.[36]

70 There were numerous other individuals connected to the Neptune Group with whom Crown dealt as Junket operators.[37] It is clear that some of those individuals were the subject of adverse media reports that they too were linked to organised crime groups.[38] The Berkeley Research Group Report also dealt with some of the allegations in relation to these individuals and their reported links to organised crime and money laundering allegations.

71 Notwithstanding these reports, Crown continued its relationship with members of the Neptune Group. However it made a concession that the information in respect of some of these individuals would be enough to disqualify them "going forward".[39]

Chinatown Junket

72 The sixth named Junket operator in the Media Allegations was the Chinatown Junket.

73 Tom Zhou was identified in the Media Allegations as the operator of the Chinatown Junket and was described as follows: [40]

> The leaked documents reveal how Crown Resorts formed a deep business partnership with Mr Zhou — an international fugitive, alleged crime boss and the subject of an Interpol red notice, according to multiple security officials with knowledge of the matter. Crown helped Mr Zhou's associates get Australian visas, according to the leaked Crown data.
>
> Mr Zhou is a multi-millionaire Crown "junket" operator whose "Chinatown junket" specialises in luring gamblers from China to the casinos in Melbourne and Perth.
>
> …
>
> Inside Crown Resorts' casino high-roller operations, Zhou was royalty. The staff who dealt with Crown's VIP gamblers had nicknamed him "Mr Chinatown". And what Mr Chinatown wanted, Mr Chinatown got.
>
> …
>
> But Zhou is no ordinary Crown partner. He is, in fact, an international criminal fugitive, the subject of an Interpol red notice for financial crime that netted him tens of millions of dollars. He is supposed to be arrested immediately if he crosses a country's border.

74 On 28 July 2019, it was asserted in the *60 Minutes* program "Crown Unmasked" that Tom Zhou was "Crown's most lucrative Melbourne junket operator" and is the "single biggest junket operator in Australia".[41]

75 The evidence establishes that Tom Zhou has not been a Junket operator at Crown but rather a "financier" of a number of Chinatown branded Junkets. However Crown's

Vice President International Customer Services understood Tom Zhou to be the "boss" of the Chinatown Junket.[42]

76 Tom Zhou became a premium player at Crown on 24 February 2006 at Crown Perth. However he appears to have had a continued presence at Crown casinos over the years and on 11 February 2019 a Withdrawal of Licence (WOL) was issued against him excluding him from Crown's premises due to an assault on another patron.[43]

77 It is clear that prior to October 2016 Crown knew that Tom Zhou was the financier of the Chinatown Junket.[44]

78 Over the years Crown has conducted World-Check searches on Tom Zhou which did not reveal any adverse entries. [45] Since he was not a Junket operator, Crown's due diligence did not extend beyond World-Check searches and as at August 2019, Crown's credit control department did not have a due diligence summary on file for him.[46]

79 After the July/August 2019 Media Allegations, Crown carried out Dow Jones Risk and Compliance and Factiva searches which did not produce any results in Mr Zhou's name or other names by which he is known.

80 Since July 2019 there have been media reports detailing Tom Zhou's alleged links to criminal activity, including that he is an international fugitive, an alleged crime boss and the subject of an Interpol red notice.[47]

81 In January 2020 Tom Zhou was arrested and extradited to China for suspected money laundering and corruption.[48]

82 There were numerous individuals operating under the banner of the Chinatown Junket with Crown. Although evidence was given that Crown had stopped all business with the Chinatown Junket in November 2016, this was ultimately accepted as erroneous.[49]

83 It was clear to Crown that the Chinatown Junket operators were linked to Tom Zhou. The individuals who purported to operate as Junket operators for the Chinatown Junket may well be described as "front men". The analysis of those individuals also indicates that it was not possible for Crown to have a real or proper understanding of their repute so as to be satisfied that they were of good repute.

Song Junket

84 The seventh named Junket operator in the Media Allegations with alleged links to organised crime groups was the Song Junket. It is named after the Junket operator with whom Crown deals, Zezhai Song.

85 From early August 2019, there were Media Allegations about the Song Junket. It was alleged that Zezhai Song was named in a Chinese Court in 2003 as running a large

illegal gambling syndicate in eastern China that engaged in extortion. He was also allegedly named in a 2016 proceeds of crime case in the Victorian Supreme Court.[50]

86 Zezhai Song became a Junket operator at Crown Melbourne in May 2009, and at Crown Perth in October 2010.[51] He was also a Junket player, with his last rating as a Junket player on 25 July 2016.[52]

87 On 28 May 2013, Zezhai Song's risk rating was recorded by Crown as "Significant."[53]

88 There is no issue that the Song Junket was important to Crown and Mr Packer met with Zezhai Song in 2015 in order to strengthen their business relationship.[54]

89 Crown obtained an Enhanced Due Diligence Report from the C6 Group dated 12 December 2016 in relation to Zezhai Song. It included allegations that Zezhai Song had been engaged in an illegal gambling operation in Wuxi City, Jiangxi province, from September 2001 which resulted in him being convicted for gambling crimes in China in 2003 and sentenced to imprisonment.[55] The C6 Report contained hyperlinks to all the open source material it had relied upon to report to Crown. Crown representatives discussed this report at a VIP Operations meeting on 20 December 2016. The Minutes of that meeting record that no further information was available about the 2003 conviction. An action item was listed as "Ask Ishan/Veng to ask Song about imprisonment issue."[56] However, there is no evidence that anyone from Crown asked Zezhai Song about this matter, and certainly nothing is recorded in the VIP Operation Team Minutes that such a conversation took place.

90 In January 2017, Crown conducted a review of the Song Junket. A due diligence worksheet regarding Zezhai Song referred to the C6 Group Report as follows:[57]

> Reported that Song was sentenced to 2 years and 8 months imprisonment in August 2003 for engaging in an illegal gambling criminal gang in Wuxi City, China; RMB 2.4 m in illegal gambling winners were confiscated.

91 It was noted that there was no record of Zezhai Song on World-Check, WealthInsight or Wealth-X and that no further information was available from C6 about the conviction. Crown approved continuing to deal with Zezhai Song and the Song Junket.

92 On 12 June 2018 and 4 March 2019 Crown conducted further annual Junket operator reviews on Zezhai Song. On each occasion Zezhai Song was approved as a Junket operator.[58]

93 On 7 March 2019 Crown Melbourne entered into a Non-Exclusive Overseas Gaming Promotion Agreement with Zezhai Song.[59] Subsequently Crown obtained a copy of a Macau Government issued Police Record Certificate in respect of Mr Song as part of its annual Junket operator renewal process, the most recent of which was dated 8 May 2019. It is apparent that the Certificate did not record the conviction that had been referred to in the 2016 due diligence report from the C6 Group.

94 The Song Junket has included numerous Junket representatives. One representative, referred to as ZPL, was the subject of a criminal investigation and is a very good example of cross pollination in the world of Junkets.[60] In September 2020 the Berkeley Research Group reported to Crown that in addition to assisting Zezhai Song, ZPL also served as a liaison for Alvin Chau of the Suncity Junket. He may have also been a Junket representative of one of the Chinatown Junkets.

95 Mr Preston advised Mr Felstead and Mr Barton in a memorandum dated 25 June 2020 that Crown should reassess its relationship with Zezhai Song. He suggested that Crown should seek advice from MinterEllison on the risks of continuing to do business with Zezhai Song and that any due diligence exercise should also focus on ZPL.

96 The Berkeley Research Group report confirmed that Zezhai Song's case was heard by the Huishan Procuratorate Court in July 2003, but that the sentencing process was not a matter of public record. That report identified a discrete source that was able to provide commentary on Zezhai Song's sentence, which matched other information regarding Zezhai Song being sentenced to 2 years and 8 months in August 2003.[61]

97 Although Crown dealt with Zezhai Song as a Junket operator from 2009, it did not become aware of the reports that he had been charged with running an illegal gambling syndicate in China until it obtained the due diligence report in 2016. However it continued its relationship with Zezhai Song as the Song Junket operator until all its Junket operations were suspended in August 2020.

Others

98 There was evidence in relation to other Junket operators and other individuals who were representatives of numerous Junkets. That evidence suggested that arrangements in respect of those Junket operators similar to those referred to above were in place with numerous representatives with mobility between various Junkets.[62]

99 Having regard to the developments and concessions referred to earlier, it is not necessary to traverse the detail of this other evidence. However it is recorded and available to the Authority within the transcripts of the Public Hearings and the relevant Exhibits of the Inquiry.[63]

Veracity of Allegations of links to organised crime groups

100 It is clear that there was certainly information within the public domain that supported the Media Allegations that some of the Junket operators with whom Crown was dealing had links to organised crime groups.

101 The organisation known as The Company was both a group of organised criminals and one that had clear links to other organised crime groups. Although Roy Moo was convicted and imprisoned in relation to the money laundering offences he maintained a lack of knowledge of any involvement with The Company. Roy Moo was a Junket representative rather than a Junket operator as claimed in the Media Allegations. However it is clear that the funds laundered through Crown by Roy Moo were the proceeds of crime that were linked to activities of the organised crime group, The Company.

102 As discussed earlier, Crown's concession in relation to the Hot Pot Junket made it unnecessary to descend into the detail of the evidence. However the probabilities on the evidence are that there were connections between the operatives of that Junket and organised crime groups.

103 The evidence establishes that it is probable that Alvin Chau had a former association with the 14K Triad group and continued his associations with the members of Triads groups. There were clearly links between Mr Chau, the Suncity Junket and organised crime groups.

104 Tom Zhou was not a Junket "operator". He stood behind the Junket as the "financier". However the connections between Tom Zhou and the organised crime groups and his subsequent arrest are all relevant matters to the alleged connection between the Chinatown Junket operators and the organised crime groups. There were such connections between the Chinatown Junket and organised crime groups.

105 It is clear that there were connections between the Neptune Junket and organised crime groups and indeed, Crown made a concession that the information in respect of some of the individuals involved in the Neptune Group would be enough to disqualify them from dealing with Crown in the future.

106 The allegations of the connections between Zezhai Song and his Junket and organised crime groups are in part reliant upon the conviction that Zezhai Song suffered in 2003. As has been discussed there have been difficulties in assessing the precise details of that conviction albeit that there is information within the Berkeley Research Group report which suggests that the allegation that he suffered a conviction and consequent imprisonment is probably true. However it may be that the conviction is now spent. It is probable that Zezhai Song and his Junket had the links as alleged.

107 The veracity of the Media Allegations that there were Junket operators with which Crown partnered that had links to organised crime is established.

Wilful blindness or reckless indifference

108 The claim that was made in the *60 Minutes* program that Crown was "wilfully blind or recklessly indifferent" to the existence of links between its Junket operators and

organised crime groups is not a matter expressly identified in paragraph 15 of the Amended Terms of Reference. However having regard to the fact that it was a matter dealt with by Counsel Assisting and Crown in Public Hearings it is appropriate to report upon it to the Authority. It is also a matter that goes to Crown's suitability and may be understood as a matter "incidental" to the matters in paragraph 15 of the Amended Terms of Reference.[64]

109 It is convenient to say something about Crown's due diligence processes for assessing Junket operators that were in place during the relevant period covered by the Media Allegations.

Changes to due diligence processes over time

110 As is described in more detail below, Crown's due diligence procedures in respect of vetting Junket operators have changed over time. The procedures have moved through the following four stages:

(a) The period prior to September 2014 (which is when the *Four Corners* program "High Rollers High Risk" was broadcast);

(b) The period from around October 2014 to October 2016 (when 19 Crown staff members were arrested in Mainland China);

(c) The period from November 2016 until mid-2017, when a broad review of the VIP International business was conducted in the aftermath of the China arrests; and

(d) The period from around mid-2017 to the around August 2020 (when all Junket relationships were suspended pending a review of Junket operations).

The period prior to September 2014

111 Crown accepted that in the period prior to September 2014, the process of approving a new Junket operator was as follows:[65]

(a) An application was submitted by one of Crown's in-market sales team members who were also responsible for collecting identification documents;

(b) The application would then be sent to the VIP International team and they would undertake a verification step whereby that applicant's *bona fides* would be tested. This would include verification as to whether they were a Junket operator established in other jurisdictions and that they were legitimate in their request to be established as a Junket operator with Crown;

(c) The VIP International team would then seek evidence of their ability to perform the expected function of a Junket operator; and

(d) Once that test was satisfied the application was provided to Crown's compliance team who would prepare a formal licence document and also undertake a further background check against the database World-Check.[66]

112 However, documentary evidence shows that in conducting the above checks the focus was more on the creditworthiness of the Junket operator than on his or her probity.[67]

113 The decision of whether to approve a Junket operator was not subject to sign-off from the senior executive level at Crown.[68] The ultimate decision making responsibility rested with Mr O'Connor.[69]

114 Mr O'Connor said that a "critical" part of the test was that the Junket operator himself was required to secure a visa and actually come to Australia and present at the property. Mr O'Connor said that:[70]

> We saw that as an important step because border control authorities in Australia had access to, we believed, a lot more robust information and intelligence than we did and we thought that that was a good test if a junket operator was able overcome their test which involved character suitability, then that gave us confidence – a little more confidence that probity was as it ought to be.

115 During this period there was very little due diligence conducted on Junket operators. Further, there is a certain circularity in Crown relying upon the grant of a visa as an integrity check since, as will be discussed below, on numerous occasions Crown actively supported the grant of visas to patrons from overseas.

Due diligence from around October 2014 to October 2016

116 After the *Four Corners* program "High Rollers – High Risk" was broadcast, Crown undertook a review of the allegations that were raised in the report. Mr O'Connor initiated a compliance probity review to test the veracity of the accusations. The compliance team consisted of Ms Michelle Fielding and her team who reported to Ms Debra Tegoni.[71]

117 Mr O'Connor claimed that improvements were made to the due diligence procedure for Junkets following the revelations, which included "some extra diligence checking against some of those other databases."[72] He was not able to specify any other improvement made to the due diligence procedure.[73] In any event, nothing was brought to the attention of the Crown Board to indicate that anything had changed in relation to Crown's management of Junket operators.[74] The only change to the process during this period was that on some occasions information from additional databases was obtained. However, searches performed as part of due diligence were often limited to World-Check searches.[75]

The period from November 2016 to mid-2017

118 In the aftermath of the arrests of the Crown employees in China in October 2016, Crown reviewed certain aspects of its VIP International business, and changes were made to the due diligence process for Junket operators.[76] The team that conducted the review was sometimes referred to as the "VIP Committee", [77] and included Mr Johnston, Mr Felstead, Mr Neilson, Ms Tegoni, Mr Theiler and on some occasions, Mr Craigie and Mr Preston.[78]

119 As part of this review, Crown decided to stop dealing with any Junket operators who were domiciled in China.[79] Crown said this led it to cease dealing with over 100 Junket operators.[80]

120 The VIP Committee minutes for 20 December 2016 refer to a review of Junkets with a turnover of over $10 million in the previous three years. The Verification procedures included the following:[81]

(a) Obtaining a copy of the DICJ Junket licence;

(b) Company search of licence holder; and

(c) Speaking to personnel at other casino operators.

121 No reference was made to obtaining third party due diligence reports which suggests that this remained the exception rather than the rule. Although there is no reason to think that Crown did not continue to obtain World-Check searches.

122 Significantly, those minutes also record that Junket due diligence profits had been prepared for two Junket operators and "a profile is being prepared for all Junkets as we become aware of a visit".[82] The clear implication is that until this point in time, Crown did not maintain Junket due diligence profiles in its records. While it is the case that Crown maintained patron credit profiles, these only contained very limited reference to due diligence information. As the name suggests, the credit profiles were focused on credit worthiness rather than probity. These minutes also disclose that up to that point only a small percentage of the Junket operators Crown dealt with had been confirmed as holding DICJ licences.[83]

The period from mid-2017 to August 2020

123 From mid-2017 a prospective applicant would complete a New Junket Operator Application providing a range of information and documentation. The credit control team (within the VIP International business) then undertook a due diligence procedure on the proposed Junket operator. The credit control team obtained credit and due diligence reports from third party providers, including Dow Jones, Acuris, WealthInsight and Wealth-X (but no longer World-Check).[84] At this stage the focus was on both the creditworthiness of the operator, and the probity of the operator.[85]

124 If the credit control team decided to recommend that the applicant be approved to enter into a Junket arrangement, it prepared a due diligence profile for the applicant.[86]

125 From July 2017 Mr Johnston, Mr Felstead and Mr Preston made the final decision regarding whether to approve new Junket operators. Due diligence profiles prepared by the credit control team were circulated to each of them via email for review and approval and the prospective Junket operator would not be approved unless each of them granted approval.[87] However, the rationale for determining whether to approve new Junket operators was not documented.[88]

126 From mid-July 2017 Crown also reviewed relationships with existing Junket operators on an annual basis. These reviews would most often be conducted solely by the credit control team. When "material new information" was received, or a material change occurred in a profile of a Junket operator such as receiving adverse information, the review would be escalated to Mr Preston, Mr Johnston and Mr Felstead to make a final decision.[89] However, since July 2017, annual reviews had only been escalated to Mr Preston, Mr Johnston and Mr Felstead on five occasions.[90] This may suggest a lack of rigour in the annual reviews. Crown accepted that one of the shortcomings identified by Deloitte is the need to have clearer defined escalation points and triggers for further investigation. Crown also accepted the need for the provision of clearer guidelines and education for persons responsible for collecting and collating relevant information from across the business, including those in sales and services roles.[91]

127 It was accepted that a tension, or a perceived tension, could exist in letting the people in the operational side of the business (responsible for increasing business in the VIP international team), have the final say on the vetting of Junket operators.[92]

128 Crown accepts there is a need for greater input from Crown's compliance and AML teams into the due diligence assessment for Junkets.[93] In the event that Junket operations resume, Crown proposes that its new Head of Compliance & Financial Crimes will make the final decision on whether to have relationships with particular Junket operators.[94]

Concessions

129 Crown's significant concessions in respect of its due diligence processes for assessing Junket operators include the following matters:

(a) There have been shortcomings in its Junket due diligence processes and its most recent formulation of processes do not eliminate all risks associated with Junkets including because a casino operator can never have full information;[95]

(b) The scope of its due diligence process has been too narrowly focused on the Junket operator;[96]

(c) A number of the directors accepted that the due diligence and review processes applied to Junkets had deficiencies,[97] were not sufficiently robust[98] or could be improved.[99] Mr Alexander, the Chair and CEO for much of the relevant period, observed that the Board had a "false sense of comfort" in relation to the processes for reviewing Junkets.[100] Ms Coonan said that one of the deficiencies in the assessment process was in not casting the net widely enough to people associated with Junkets; and[101]

(d) Crown Board papers for August and September 2020 acknowledge shortcomings in Junket procedures including that due diligence carried out on some Junket operators "either did not identify all necessary information or was not analysed sufficiently to accurately assess the risk."[102]

130 In April 2020 Crown commissioned Deloitte to undertake a review of its Junket program. Deloitte advised Crown in its 26 August 2020 Report that a number of improvements were required in respect of Junket operations. These included the need to better define risk and probity and ensure a clearer pathway for decision making and gathering more robust information and data.[103]

131 As discussed earlier, in August 2020 the Crown Board resolved to suspend its relationships with all Junket operators, and on 17 November 2020 decided to end its Junket operation altogether subject to certain conditions.

Veracity of allegation of wilful blindness and reckless indifference

132 The context of the Media Allegation that Crown was wilfully blind or recklessly indifferent to its Junket operators having links to organised crime was that it was not merely an isolated incident of such connections but included the seven named Junket operators. The mere fact of numbers does not equate to wilful blindness or reckless indifference.

133 It is clear that Crown had numerous structures in place to deal with Junket operators. It is also clear that it adjusted those structures from time to time. There were annual reviews and although the outcome of those reviews may be troubling, the fact is that the process was in place for a proper determination to be made. The fact that a determination may have been infected with error or failed to take into account appropriate matters does not mean that the decision maker was wilfully blind to obvious matters or even blind without being wilfully blind to matters. It is also the case that it does not equate to an indifference or reckless indifference to the facts before the decision maker.

134 It is not as though Crown had no processes in place for the review of Junket operators. If that had been the case the Media Allegation that Crown was wilfully blind or recklessly indifferent to relevant matters may have had some foundation.

135 The gravamen of the allegation of wilful blindness and reckless indifference required more than the implied reliance on the fact that these were not isolated incidents and involved seven named Junket operators. It is the case that Crown dealt with very many international Junket operators evidenced in part by the fact that when it ceased its operations in China from November 2016 it terminated its relationships with over 100 Junket operators in Mainland China.

136 It is obvious that Crown acted promptly to ban Roy Moo and to serve a WOL on Tom Zhou. It is also clear that it gave consideration to the publicly available information in respect of the named Junket operators. It did not ignore it or suggest it was something that should not be considered as perhaps a wilfully blind or recklessly indifferent person might do. The fact that it gave consideration to it and reached what in many respects may be regarded as an unjustified conclusion is not wilful blindness or reckless indifference. It may be flawed but it was earnest.

137 The only example that requires closer analysis is the Suncity Junket and Alvin Chau. In this particular instance there was a crossover between the due diligence process and the information that was able to be gleaned from what was happening in the Suncity Room. Clearly there were the obvious red flags of very large volumes of cash not under Crown's supervision in that Room concurrently with publications that the Junket operator had links to organised crime groups. That concurrency should have alerted Crown to the obvious and urgent need to terminate its relationship with Suncity.

138 However the evidence demonstrates that Mr Preston was not so much recklessly indifferent or wilfully blind to these matters but rather moved at such a glacial pace in his considerations of obviously urgent matters that any organised crime group with operatives moving laundered money through the Suncity Room would be confident that they would not be troubled by any confrontation. The suggestions that lawyers be consulted about whether relationships should continue with certain Junket operators discloses a flawed structure in which business decisions that were urgent were converted into possible, and only possible, suggestions of legal advice.

139 The evidence also demonstrates that there were flawed structures for reviewing particular Junket operations. If Crown had been recklessly indifferent or wilfully blind to the relevant matters, it would not have bothered creating a review panel in the first place. However it is clear that the need to ensure that the obligation to repel criminal influence and exploitation takes precedence over the maintenance of a relationship with a very lucrative Junket operator was not achieved.

140 Notwithstanding the very unsatisfactory aspects of the evidence of Mr Felstead, Mr Preston and Mr Johnston referred to later in the Report, this does not justify a finding of wilfulness and recklessness in respect of the links that clearly existed between the named Junket operators as referred to above and organised crime groups.

141 Blind though they might have been to things that should have been obvious, Crown's operatives were not wilful. Nor were they indifferent to such links. Rather their consideration was flawed and in some respects rather befuddled. It may also have been, as Mr Alexander said in his evidence, Crown's operatives were suffering from "a degree of allegation fatigue".[104]

142 The veracity of the Media Allegation that Crown was wilfully blind or recklessly indifferent is not established.