Royal Commission
into the Casino
Operator and Licence

Closing submissions of Counsel Assisting the Commission

July 2021

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Royal Commission into the Casino Operator and Licence
Closing submissions of Counsel Assisting

1 Introduction

1 Establishment of the Commission

1.1 On 22 February 2021, the Governor of Victoria, the Honourable Linda Dessau, signed letters patent[1] appointing the Honourable Ray Finkelstein AO QC as Commissioner and Chairperson of the Royal Commission into the Casino Operator and Licence.

1.2 The Commission was established following an inquiry conducted by the Honourable Patricia Bergin SC for the New South Wales Independent Liquor and Gaming Authority (**Bergin Inquiry**), which concluded on 1 February 2021 that:

(a) Crown Sydney Gaming Pty Ltd (**Crown Sydney**)[2] was not a suitable person to continue to give effect to the Barangaroo restricted gaming licence; and

(b) Crown Resorts Ltd (**Crown Resorts**) was not a suitable person to be a close associate of the person holding that restricted gaming licence.[3]

1.3 The Bergin Inquiry also found that, among other things, Crown Resorts:[4]

(a) facilitated money laundering through the Southbank and Riverbank accounts unchecked and unchanged in the face of warnings from its banks;

(b) disregarded the welfare of its China-based staff putting them at risk of detention by pursuing an aggressive sales policy and failing to escalate risks through the appropriate corporate risk management structures; and

(c) entered into or continued commercial relationships with junket operators who had links to Triads and other organised crime groups.

1.4 Some of the conduct canvassed by the Bergin Inquiry related to the Melbourne Casino operated by Crown Melbourne Ltd (**Crown Melbourne**) and other conduct related to the casino in Perth operated by Burswood Ltd (which is also a subsidiary of Crown Resorts).[5]

1.5 By the Letters Patent, this Commission was established to inquire into and report on the following terms of reference:[6]

(a) whether Crown Melbourne is a suitable person to continue to hold the casino licence under the *Casino Control Act 1991* (Vic) (**CCA**);

(b) whether Crown Melbourne is complying with the CCA, the *Casino (Management Agreement) Act 1993* (Vic), the *Gambling Regulation Act 2003* (Vic) (together with any regulations or other instruments made under any of those Acts), and any other applicable laws;

(c) whether Crown Melbourne is complying with the Crown Melbourne Contracts;[7]

1 As amended on 25 February 2021 and 10 June 2021.
2 A wholly-owned subsidiary of Crown Resorts Ltd.
3 Letters Patent, [4].
4 Letters Patent, [5].
5 Letters Patent, [6].
6 Letters Patent, [10].
7 Defined in the Letters Patent to mean the documents referred to in s 25(1)(c) of the CCA.

(d) whether it is in the public interest for Crown Melbourne to continue to hold the casino licence in Victoria;

(e) if the Commissioner considers that Crown Melbourne is not a suitable person, or that it is not in the public interest for Crown Melbourne to hold the casino licence in Victoria, what action (if any) would be required for Crown Melbourne to become a suitable person, or for it to be in the public interest for Crown Melbourne to continue to hold the casino licence in Victoria;

(f) whether Crown Resorts is a suitable associate[8] of Crown Melbourne;

(g) if the Commissioner considers that Crown Resorts is not a suitable associate of Crown Melbourne, what action (if any) would be required for Crown Resorts to become a suitable associate of Crown Melbourne;

(h) whether any other existing associates of Crown Melbourne are not suitable associates of Crown Melbourne;

(i) if the Commissioner considers that any other existing associates of Crown Melbourne are not suitable associates of Crown Melbourne, what action (if any) would be required for those persons to become suitable associates of Crown Melbourne;

(j) whether the Commissioner considers changes to relevant Victorian legislation, including the CCA and the *Victorian Commission for Gambling and Liquor Regulation Act 2011* (Vic), as well as the Crown Melbourne Contracts, are necessary for the State to address the Commissioner's findings and implement his recommendations;

(k) whether there are any other matters necessary to satisfactorily resolve the matters set out in paragraphs (a) to (j) above.

1.6 In these submissions, a reference to "**Crown**" is a reference to Crown Melbourne and Crown Resorts.

2 Structure of Submissions

2.1 These submissions address each of the terms of reference in paragraph (a) to (j) above. However, the terms of reference are addressed in a thematic way, along with other matters that have been explored through the evidence given to this inquiry.

2.2 The submissions are structured as follows:

(a) Crown's relationship with the Victorian Commission for Gambling and Liquor Regulation (**VCGLR**);

(b) Responsible Service of Gaming (**RSG**);

(c) non-disclosure of underpayment of tax;

(d) the China Union Pay practice;

(e) anti-money laundering (**AML**);

(f) operation of overseas office in Malaysia;

(g) junkets;

(h) corporate structure and corporate governance;

(i) risk management framework;

(j) culture;

[8] Defined in the Letters Patent to mean a suitable person to be associated with the management of a casino under the CCA.

(k) Crown Melbourne's and Crown Resorts' suitability;

(l) public interest;

(m) whether any other existing associates of Crown Melbourne's existing associates are not suitable associates of Crown Melbourne;

(n) what action would be required for Crown Melbourne and Crown Resorts to become suitable;

(o) compliance and breaches;

(p) licence recommendations;

(q) law reform.

3 Treatment of Evidence

3.1 The Commission is established and conducted under the *Inquiries Act 2014* (Vic) (**Inquiries Act**).

3.2 Under section 12 of the Inquiries Act, the Commission has power to conduct its inquiry in any manner that it considers appropriate, subject to:

(a) the requirements of procedural fairness;

(b) the letters patent establishing the Royal Commission; and

(c) the Inquiries Act and its regulations and any other Act.

3.3 Under section 14 of the Inquiries Act, the Commission is not bound by the rules of evidence or any practices or procedures applicable to courts of record and may inform itself on any matter as it sees fit.

3.4 However, the Commission has not disregarded the rules of evidence insofar as they assist it to administer "substantial justice" to the parties affected by the work of the Commission.[9]

3.5 The issue of relevance and tendering of evidence has been approached having regard to the broad nature of the Commission's terms of reference and its function as an inquiry.

3.6 In turn, this broad approach guided the information sought by the Commission under notices issued under section 17(1) of the Inquiries Act to parties such as Crown, the VCGLR and advisers of Crown (among others).

3.7 The Commission has received and dealt with claims for legal professional privilege and confidentiality over documents or parts of documents produced or withheld from production from the Commission in accordance with legal principles. The Commission's practice directions[10] set out the procedure adopted when a party claims privilege or confidentiality over a document. Under section 32 of the Inquiries Act, a party is not entitled to withhold production of a document from the Commission on the basis that it is subject to legal professional privilege. Where necessary for the purposes of the inquiry, the Commission has compelled production of documents otherwise subject to a claim of legal professional privilege.

3.8 Further, the Commission made a number of orders under section 26 of the Inquiries Act restricting the publication of information in documents produced to the Commission. Where relevant, those documents, along with publicly available documents, are referred to and relied on in these submissions.

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[9] See *R v The War Pensions Entitlement Appeal Tribunal; Ex Parte Bott* (1933) 50 CLR 228 at 256 (Evatt J).

[10] Practice Direction 3 (Production of Documents and Document Management Protocol).

3.9 The documentary materials were also explored in the hearings of the Commission through witnesses who were compelled to attend and give evidence under section 17(1). The hearings were conducted in public in accordance with the procedures set out in the practice directions,[11] although where necessary they were closed to the public under section 24 of the Inquiries Act. Transcripts redacted for legal professional privilege or confidentiality have been made public. The oral evidence received by the Commission at those public hearings is also referred to and relied on in these submissions.

4 Standard of Proof

4.1 As the rules of evidence do not apply to the Commission, strictly there is no onus of proof on any party relevant to or affected by the Commission.[12]

4.2 However, as the Commission is charged with reporting the findings of its inquiry, it must be guided by some standard. The approach taken by other Commissions asked to consider whether criminal or dishonest conduct or serious forms of misconduct has occurred has been to apply the civil standard of proof, on the balance of probabilities, in accordance with the principles set out in *Briginshaw v Briginshaw*.[13] It is submitted this approach should be followed in this Commission.

4.3 The standard in *Briginshaw v Briginshaw* was expressed as requiring a fact to be proved to the "reasonable satisfaction" of the tribunal, which satisfaction cannot be achieved by inexact or indirect evidence.[14] The principles in *Briginshaw v Briginshaw* reflect the conventional perception that members of society do not ordinarily engage in fraudulent or criminal conduct, and a court should not make such a finding lightly.[15]

4.4 The principle in *Briginshaw v Briginshaw* was stated as follows (emphasis added):[16]

> *The truth is that, when the law requires the proof of any fact, the tribunal must feel an actual persuasion of its occurrence or existence before it can be found. It cannot be found as a result of a mere mechanical comparison of probabilities independently of any belief in reality. Except upon criminal issues to be proved by the prosecution,* ***it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal****. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved.* ***The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations*** *which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters* ***"reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony, or indirect inferences****.*

4.5 But no matter how grave the evidence is, a finding that a party engaged in fraudulent or criminal or dishonest conduct does not require the criminal standard of proof – the tribunal need only be "reasonably satisfied".[17]

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11 See Practice Direction 2 (General Information), Practice Direction 5 (Conduct of Public Hearings), Practice Direction 6 (Conduct of Public Hearings in a Virtual Environment).
12 *Bushell v Repatriation Commission* (1992) 175 CLR 408 at 425 (Brennan J).
13 (1938) 60 CLR 336 at 361-362. See, eg, *Royal Commission into Trade Union Governance and Corruption*, Interim Report, 15 December 2014 at 5-6 [15]-[20]; Royal *Commission into Trade Union Governance and Corruption*, Final Report, December 2015, Vol 1 at 52-53 [123]-[126]; *Royal Commission into the Management of Police* Informants, Counsel Assisting Submissions with respect to Terms of Reference 1 and 2, Vol 1 at 9-11 [41]-[46].
14 (1938) 60 CLR 336 at 361-362.
15 *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 171.
16 (1938) 60 CLR 336 at 361-362.
17 *Rejfek v McElroy* (1965) 112 CLR 517 at 521.

4.6 Applying the *Briginshaw v Briginshaw* standard, when considering whether a fact has been proved to the reasonable satisfaction of the tribunal, the tribunal must consider the strength of the evidence and take into account:

(a) the seriousness of the allegation made;

(b) the inherent unlikelihood of an occurrence of a given description; or

(c) the gravity of the consequences flowing from a particular finding.

5 Interpretation of Terms of Reference

5.1 There are two key terms in the terms of reference that require consideration in order for the Commission to make findings:

(a) suitable person; and

(b) public interest.

5.2 These terms are found in section 20 of the CCA, which provision gives the gambling and liquor regulator, the VCGLR, the power to cancel, suspend or vary a casino licence, ie, take "disciplinary action"[18], where there are "grounds for disciplinary action". Under section 20(1), "grounds for disciplinary action" is defined to include circumstances where:

(a) the casino operator is, for specified reasons, considered to be no longer a suitable person to hold the licence;[19]

(b) for specified reasons, it is considered to be no longer in the public interest that the licence should remain in force.[20]

Suitable person

5.3 The term "suitable person" is not defined in the CCA. However, that phrase is referred to in other parts of the CCA, in particular section 9, which sets out the matters to be considered in determining an application for a casino licence. Section 9(1) provides that to first obtain a casino licence, a person must be considered by the VCGLR as a "suitable person" by reference to particular attributes set out in section 9(2) of the CCA.

5.4 In general terms, those attributes require that the applicant for the casino licence (and its associates) be of good repute, having regard to character, honesty and integrity, and be of sound and stable financial background.[21] The applicant is also required to, in general terms, have adequate financial resources and sufficient business ability to ensure the viability and success of the casino.[22]

5.5 In regard to those matters, a company acts through individuals, including its agents, whose conduct will be relevant to the assessment of suitability. In the same way that individuals within and associated with an organisation may change, so can a company's suitability. It is anticipated that Crown will say that relatively recent changes in the composition of the Boards, and its association with others who have influenced its affairs and conduct over time, are relevant to the assessment of suitability. Such a proposition ought be accepted.

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[18] This term is defined in s 20(1) as meaning "the cancellation or suspension of a casino licence, the issuing of a letter of censure, the variation of the terms of a casino licence or the imposition of a fine not exceeding $1 000 000".

[19] Para (d) of the definition of "grounds for disciplinary action".

[20] Para (e) of the definition of "grounds for disciplinary action".

[21] See s 9(2)(a) and (b) of the CCA.

[22] See s 9(2)(c), (d) and (e). For completeness, s 9(2)(f) and (g) concern the applicant's or associate's business associations with an individual not of good repute, and the directors, officers and anyone connected with the ownership, administration or management of the operations or business of the applicant being a suitable person to act in that capacity.

5.6 It is further anticipated that Crown will rely on ongoing reforms and changes contemplated in the future as relevant to the assessment of suitability. This raises the issue about the relevance and treatment of past and future conduct in the assessment of suitability.

5.7 Guidance on the process to adopt in determining the suitability of a licence holder to hold a licence can be drawn from overseas jurisdictions, such as in *In re Bally's Casino Application* (1981) 10 NJAR 356 (***Re Bally's***) and *R v Knightsbridge Crown Court, ex parte International Sporting Club (London) Ltd* [1982] 1 QR 304 (***Knightsbridge***). In both cases, a question arose about the extent to which past and future conduct was relevant to the assessment of suitability.

5.8 In *Re Bally's*, the New Jersey Casino Control Commission considered that, to determine suitability, the Commission had to make a predictive judgment about how the individual would conduct themselves in the future, which in turn was determined by an investigation into the individual's character.[23] The New Jersey Casino Control Commission considered this to be so as the "good character requirement heads off the risk of wrongdoing" and it "assures to the extent practicable honest performance", which in turn "meets the public expectation that casinos and the industries which directly serve them will be operated by individuals of unquestionable honesty and integrity".[24] The New Jersey Casino Control Commission was of the view that the suitability to participate in the casino gaming industry "supplies concreteness to the concept of 'good character'". Accordingly, the New Jersey Casino Control Commission found that they had to "look to an individual's past conduct as a guide to how that individual is likely to operate a casino facility in the future".[25]

5.9 The approach in *Re Bally's* was considered in the Bergin Inquiry.[26] There, it was considered that the assessment of character and suitability centred on taking a "holistic view" of the casino licence holder, including "the assessment of the integrity of corporate governance and risk management structures and the adherence to adopted policies and procedures".[27]

5.10 In *Knightsbridge*, the question before the Court was in terms of the extent to which the companies were fit and proper persons to hold the licence by reference to their past misconduct.[28] The Court considered that the question of whether a licence holder is a fit and proper person must be determined in light of the circumstances existing at the time of the appeal as well as considering any past misconduct, and that the weight to be accorded past misconduct will vary according to the circumstances of the case.[29]

5.11 The Court also noted that, in the case of a publicly listed company, even where the company seeks change itself, such as by a restructure, there may be cases where the wrong-doing of the licence holder may be so flagrant and so well publicised that no amount of restructuring of the company can restore the confidence in it as the fit and proper person to hold a licence, but that other less serious breaches may be capable of being cured by a restructuring.[30]

5.12 Three observations flow from the analysis and conclusions set out above.

5.13 First, to inquire into and report on whether Crown Melbourne is a suitable person to hold the casino licence, will require the Commission to consider whether Crown Melbourne is of

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23 *In re Bally's Casino Application* (1981) 10 NJAR 356 at 366-367.
24 *In re Bally's Casino Application* (1981) 10 NJAR 356 at 367.
25 *In re Bally's Casino Application* (1981) 10 NJAR 356 at 367.
26 Bergin Inquiry, Vol 2, Part 2.4 Suitability at 337 [14].
27 Bergin Inquiry, Vol 2, Part 2.4 Suitability at 338 [17]-[18].
28 *R v Knightsbridge Crown Court, ex parte International Sporting Club (London) Ltd* [1982] 1 QR 304 at 317.
29 *R v Knightsbridge Crown Court, ex parte International Sporting Club (London) Ltd* [1982] 1 QR 304 at 317-318. See also *Victorian Building Authority v Tsaganas* [2017] VSCA 248 (Tate, Osborn and Kaye JJA) at [33]: "Thus hypothetically if registration is suspended for three years the question at the time of suspension as to likely fitness at the end of that period requires a predictive judgment which is not necessarily determined by a conclusion as to past misconduct".
30 *R v Knightsbridge Crown Court, ex parte International Sporting Club (London) Ltd* [1982] 1 QR 304 at 318.

good repute, having regard to Crown Melbourne's (character, honesty and integrity. Similar considerations need to be addressed in relation to Crown Melbourne's existing associates.

5.14 Second, in determining this question, the Commission is engaged in both a predictive assessment about the way in which Crown Melbourne will conduct itself in the future, informed by an investigation into Crown Melbourne's character, and an examination of the past conduct of Crown Melbourne.

5.15 Third, determining suitability will require a holistic view of Crown Melbourne, including the integrity of its corporate governance and risk management structures and the adherence to adopted policies and procedures.

5.16 On this basis, there are several matters that are relevant to the consideration of suitability, which are considered throughout in these submissions, including:

(a) how Crown Melbourne has conducted itself in its dealings with the casino regulator, the VCGLR;

(b) Crown Melbourne's past and present conduct, and culture of compliance and assessment of risk, within the levels of senior management and by its directors;

(c) whether the recent revision of the Board and management and changes in its association with its controlling shareholder, are sufficient to rectify deficiencies in Crown, that gave rise to the findings in Bergin and other inappropriate conduct not considered by that inquiry;

(d) Crown's remediation plan and culture reform program and their relevance to suitability.

Public interest

5.17 The term "public interest" is defined in section 3(1) of the CCA to mean "public interest or interest of the public (except in section 74) having regard to the creation and maintenance of public confidence and trust in the credibility, integrity and stability of casino operations". In this way, the phrase "public interest" must be read as limited to public trust and confidence in the operation of casinos, rather than encompassing a broader notion that would ordinarily be found in the meaning of that phrase.[31]

5.18 The concept of public interest is inherently connected to the concept of suitability, in that where a licence holder is of good character, this will "meet the public expectation that casinos and the industries which directly serve them will be operated by individuals of unquestionable honesty and integrity".[32] However, as noted above, the concept of suitability is multifaceted and is not solely determined by character, honesty and integrity. There is also an issue as to whether, if a licence holder meets the requirements of suitability, it might nevertheless fail the public interest test. "Public interest" is discussed further in Section 15, Public Interest.

6 Procedural fairness

6.1 As noted above, under section 12 of the Inquiries Act, the Commission has power to conduct its inquiry in any manner that it considers appropriate, subject to the requirements of procedural fairness (among other things).

6.2 Further, section 36(1) of the Inquiries Act requires the Commission to be satisfied of the following matters where it proposes to make a finding adverse to a person:

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[31] See the analysis of Mr Habersberger QC in *First Triennial Report of Investigation into the "Casino Operator and Licence" under section 25 of the Casino Control Act 1991*, 30 June 1997, COM.0017.0001.0001 at .0009.

[32] *In re Bally's Casino Application* (1981) 10 NJAR 356 at 367.

(a) the person is aware of the matters on which the proposed finding is based; and

(b) the person has had an opportunity, at any time during the course of the inquiry, to respond to those matters.

6.3 The requirement to afford procedural fairness will also attach where an administrative decision will affect the rights, interests and legitimate expectations of an individual in a direct and immediate way.[33]

6.4 The Commission has taken a number of steps to ensure the parties affected by the Commission's work have been afforded procedural fairness in accordance with section 12 and 36(1).

6.5 In relation to the conduct of the hearings, the Commission has published practice directions setting out procedures for the way in which a person may seek leave to appear before the Commission,[34] and for the way in which witnesses will be called to give evidence, witness statements are to be prepared, examination and cross-examination- is to be conducted.[35] Each of those procedures has allowed the relevant individuals an opportunity to respond to the matters on which a proposed finding may be based.

6.6 In relation to matters on which a proposed adverse finding may be based, Counsel Assisting has made the relevant individuals aware of this potential through the course of the preparation of witness statements, and during the questions put to those individuals at the oral hearings.

6.7 For the reasons set out later in these submissions, Counsel Assisting submit that it is open to the Commission to make adverse findings as to suitability in respect of:

(a) Crown Melbourne;

(b) Crown Resorts;

(c) Ms Helen Coonan; and

(d) Mr Xavier Walsh.

6.8 In respect of each individual to whom a potential adverse finding relates, Counsel Assisting has outlined the nature of each finding that is open to be made (see Section 16, Suitability of Existing Associates and Solicitors Assisting the Commission will notify the relevant individuals that the findings have been sought and provide an opportunity to respond.

6.9 Paragraph 6.7 sets out the extent to which individuals are intended to be the subject of an adverse finding. However, throughout the course of this inquiry, including in these submissions, Counsel Assisting has identified evidence in relation to individuals named in these submissions and put propositions to witnesses who were called that is or was critical of individuals, or that may be perceived to be critical. To the extent those individuals are employees of Crown, Counsel Assisting expect Crown to make submissions on their behalf in relation to any actual or perceived criticisms or adverse comments. To the extent those individuals are current directors of Crown, Counsel Assisting note that such directors have been separately represented and their representatives have participated in the hearings. Counsel Assisting expect the current directors' legal advisers to make submissions on their behalf in relation to any actual or perceived criticisms or adverse comments.

6.10 To the extent persons named in these submissions are no longer employees, directors or legal advisers of Crown, the Solicitors Assisting the Commission will ensure they are

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[33] *Kioa v West* (1985) 159 CLR 550 at 584; *Annetts v McCann* (1990) 170 CLR 596 at 598; *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564 at 577.

[34] See Practice Direction 1 (Applications for Leave to Appear).

[35] See Practice Direction 5 (Conduct of Public Hearings).

provided with a copy of these submissions and invite them to make written submissions and seek leave to make oral submissions in response.

2 Executive Summary

1 Executive summary

1.1 Under the terms of reference, among other things, the Commission is required to consider:

(a) whether Crown Melbourne is a suitable person to continue to hold the casino licence under the CCA;

(b) whether Crown Resorts is a suitable associate[36] of Crown Melbourne;

(c) whether any other existing associates of Crown Melbourne are not suitable associates of Crown Melbourne;

(d) to the extent Crown Melbourne, Crown Resorts or an existing associate is not suitable, what action (if any) would be required to become suitable;

(e) whether Crown Melbourne is complying with the CCA and other regulations and applicable laws; and

(f) whether any changes to the CCA and other legislation are necessary.

Basis

1.2 In the time available, this Commission explored various issues through witnesses and evidence, which broadly fell into the categories outlined in paragraph 12.2 in Section 1, Introduction and are outlined in more detail in these submissions.

1.3 The assessment as to suitability and public interest contained in these submissions are based on:

(a) The issues that were explored through and the evidence that has been given in this inquiry;

(b) The matters that were the subject of the Bergin Inquiry and the findings in the Bergin Report;

(c) The corporate structure and character of both Crown Melbourne and Crown Resorts taking a holistic view of Crown Melbourne and the integrity of corporate governance and risk management structures of Crown and the adherence to adopted policies and procedures.

1.4 On that basis, and having regard to the overall evidence, it is submitted that it is open to the Commission to make the following findings.

Crown Melbourne and Crown Resorts

1.5 The question of suitability of Crown Melbourne and Crown Resorts has been approached together. As discussed in Section 11, Crown Melbourne's corporate structure and governance, Crown Melbourne is dependent on Crown Resorts operationally and their affairs are intimately connected.

1.6 On the basis of the overall evidence, it is open to the Commission to find that Crown Melbourne is not a suitable person to continue to hold the casino licence under the CCA and that Crown Resorts is not a suitable associate of Crown Melbourne.

1.7 In particular, this submission is made having regard to:

[36] Defined in the Letters Patent to mean a suitable person to be associated with the management of a casino under the CCA.

(a) the matters that were the subject of the Bergin Inquiry and the findings in the Bergin Report, including the specific finding that Crown Resorts is not a suitable person to be a close associate of the Licensee of the Sydney Casino;

(b) the further breaches and compliance related matters that were explored in this inquiry, including that the breaches and compliance issues were serious, systemic or occurred with knowledge of senior executives of Crown; and

(c) various issues and evidence explored in this inquiry, which raises issues going to the character and integrity of Crown's senior executives and directors and are therefore a reflection of Crown's character, integrity and culture.

Whether it is in the public interest for Crown Melbourne to continue to hold the casino licence in Victoria

1.8 On the basis of the overall evidence, it is open to the Commission to find that it is not in the public interest that Crown Melbourne continue to hold the casino licence in Victoria.

What action would be required for Crown Melbourne or Crown Resorts to become suitable or for it to be in the public interest for Crown Melbourne to continue to hold the casino licence in Victoria

1.9 The only way in which Crown Melbourne can return to a position of suitability is if those regulating its affairs (VCGLR and government) are prepared to give Crown Melbourne the time that it needs to implement the necessary reforms and are prepared to trust that Crown Melbourne will diligently pursue those reforms, and that the end result, whatever form it might take, is something that will be acceptable.

1.10 It is open, on all of the evidence before this Commission, for those regulating Crown Melbourne's affairs to doubt whether they could ever trust Crown Melbourne again.

1.11 Having regard to the nature and extent of Crown's failings, the task of reform is enormous, the path is uncertain, and the outcomes are speculative.

1.12 While the evidence suggests the reform of Crown may be possible, it will be complicated and nothing short of complete, holistic, bottom up and -down reform is required. It will take time and demonstrated commitment to the implementation of the required changes.

1.13 At this point in time, it is not possible for this Commission to prescribe or describe with any particularity or precision what actions would be required for Crown Melbourne and Crown Resorts to become suitable. It is also not desirable to do so for the following reason. This Commission can only make findings and recommendations. Having regard to the Commission's findings and recommendations, the VCGLR may decide to commence a disciplinary action. The appropriate sanction would be a matter for the VCGLR in the exercise of its discretion under s 20 of the CCA. It would not be desirable to limit the VCGLR's discretion by suggesting a prescriptive pathway to suitability.

1.14 However, what is clear is that if Crown Melbourne is permitted to continue to hold the casino licence, it cannot and should not be trusted to implement the reform process unsupervised. This is discussed further in Section 19, Licence Recommendations.

Existing associates who are not a suitable associate

1.15 On the basis of the evidence before this Commission, it is open to the Commission find that each of:

(a) Ms Helen Coonan; and

(b) Mr Xavier Walsh,

are not a suitable associate of Crown Melbourne.

1.16 Ms Coonan is currently the Executive Chairman of Crown Resorts. She became a director of Crown Resorts almost 10 years ago. She was a director of Crown Resorts during the events that were the subject of consideration in the Bergin Inquiry. The evidence regarding her involvement in the underpayment of gaming tax matter raises issues of character and integrity.

1.17 Mr Xavier Walsh is currently the Chief Executive Officer of Crown Melbourne, a role he assumed in December 2020. His involvement in the Bonus Jackpots underpayment of gaming tax matter goes back to mid 2018. His recent handling of the underpayments of tax issue and the manner in which it was not brought to the attention of this Commission is of deep concern and raises issues of character and integrity.

What action would be required for existing associates to become suitable

1.18 Ms Coonan has been a director of Crown Resorts for a considerable period of time, including during the events that were the subject of the Bergin Inquiry. In the interests of introducing further independence and Board renewal to Crown, it is not desirable or necessary for this Commission to identify any future action required.

1.19 The matters of integrity that underlie the basis on which it is open to find that Mr Walsh is not a suitable associate precludes the identification of action that could be undertaken for future suitability.

Compliance and breaches

1.20 Numerous breaches and potential breaches of the CCA, other applicable laws and the Crown Melbourne Contracts have been identified based on evidence available to the Commission. Some of the breaches are admitted by Crown, including serious breaches based on the work of the Bergin Inquiry. It is open to the Commission to find that other potential breaches identified have been established on the evidence available to the Commission. However, some potential breaches that have been identified require further investigation and analysis.

Licence recommendations

1.21 It is open to the Commission to find that Crown Melbourne is presently unsuitable, and/or that it is not in the public interest that Crown Melbourne continue to hold the casino licence in Victoria, and:

(a) accept that Crown Melbourne is capable of returning to suitability and make recommendations to facilitate the path back to suitability.

(b) alternatively, conclude that, in combination, the past failings of Crown Melbourne are so great, and the path to redemption so enormous, involved, unpredictable and time consuming, that neither the VCGLR nor the State of Victoria could have the required confidence that the casino operator will reach a satisfactory state of suitability, or that the required trust and confidence in the licensee could be restored, within an acceptable time frame – and that as a consequence the casino licence should be cancelled.

1.22 If the Commission is prepared to recommend that Crown be entrusted with a chance to regain its suitability, subject to proper supervision, it would seem that the real test of whether Crown has achieved its aspirations for reform will be the suitability review slated for 2023. It would be for the regulator then to decide whether Crown Melbourne has reformed, and is, at that point in time, suitable.

1.23 Before making a recommendation that the casino licence should be cancelled, the Commission should consider, to the extent possible and practical, the effect of cancellation.

1.24 Cancellation of the casino licence with immediate effect, for example, would be highly disruptive - having the potential to cause significant harm to many third parties who have had no involvement whatsoever in the misconduct of Crown Melbourne over the years. The impact of immediate cancellation would likely have inestimable negative consequences for many people, at least in the short term.

1.25 Any cancellation of the casino licence would need to provide adequate time for adjustment, including but not limited to, the conduct of an application process for a new licensee. A deferral of the date of cancellation could provide for a period within which a more orderly transition to a new licensee can be achieved – say a year to eighteen months. Crown Melbourne could reapply for the casino license at that time, by which time it would need to be able to demonstrate that it is suitable, rather than on the path to suitability.

1.26 Leaving Crown in effective control of the casino, a licensee found to be unsuitable, cannot occur unless that control were subject to supervision of some kind – whether a manager under s 22, or a monitor, which would need to be implemented by legislative amendment to create the office of a supervisor.

3 List of Key People

Name	Position(s)	Period of appointment at Crown (to the extent known)
Crown (current and former directors and employees)		
Howard Aldridge	Managing Director, Crown Aspinall London	
Edwin Aquino	Revenue Audit Manager, Crown Melbourne	
Matthew Asher	Strategy and Innovation Manager – Gaming Machines, Crown Melbourne	
Ken Barton	Former Chief Executive Officer, Crown Resorts	24 January 2020 – 14 February 2021
	Former Director, Crown Resorts	3 March 2020 – 15 February 2021
	Former Chief Financial Officer, Crown Resorts	March 2010 – January 2020
	Former Director, Crown Melbourne	19 July 2010 – 15 February 2021
Sonja Bauer	Group General Manager, Responsible Gaming, Crown Melbourne	1 April 2017-present
	Responsible Gaming Management Committee member, Crown Melbourne	26 February 2009 - Present
	Former Self-Exclusion Revocation Committee member, Crown Melbourne	5 April 2017-30 January 2020
Steven Blackburn	Chief Compliance and Financial Crime Officer, Crown Resorts	24 February 2021 - present
Angelina Bowden-Jones	Global Head of Tax, Crown Resorts	October 2013 – present
Bruce Carter	Non-Executive Director, Crown Resorts	12 April 2021 – present
Michael Chen	Former President, International Marketing, Crown	16 January 2012 – 6 March 2017
Helen Coonan	Interim Executive Chairman, Crown Resorts	15 February 2021 – present
	Chairman, Crown Resorts	January 2020 – present
	Director, Crown Resorts	2 December 2011 – present

Name	Position(s)	Period of appointment at Crown (to the extent known)
	Chair of the Crown Resorts Foundation	2015 – present
	Responsible Gaming Committee member, Crown Resorts	Approx. Feb 2021 - present
	Risk Management Committee member, Crown Resorts	Approx. Feb 2021 – present
	Safety and Sustainability Committee member, Crown Resorts	Approx. Feb 2021 – present
	Director, Crown Melbourne	16 February 2021 – present
	Audit Committee and Compliance Committee member, Crown Melbourne	Approx. Feb 2021 – present
	Director, Burswood Limited (Crown Perth)	18 February 2021 – present
	Director, Crown Sydney Gaming Pty Ltd	15 February 2021 – present
Andrew Demetriou	Former non – executive Director, Crown Resorts	29 January 2015 – 11 February 2021
	Former non – executive Director, Crown Melbourne	30 January 2020 – 11 February 2021
Nicholas Emery	Chief Marketing Officer, Crown Resorts	January 2018 - Present
Barry Felstead	Former Chief Executive Officer – Australian Resorts	August 2013 – December 2020
Michelle Fielding	Group Executive General Manager, Regulatory and Compliance, Crown Resorts	1 January 2021
	Chair of the Person of Interest Committee, Crown Resorts	Approx. October 2020
	Whistle-blowers Committee member, Crown Resorts	Various
	Executive Risk and Compliance Committee, member, Crown Melbourne	Various
	Compliance Committee member, Crown Melbourne	Various
Alicia Gleeson	Executive General Manager of Human Resources, Crown Melbourne	Junes 2013 – present

Name	Position(s)	Period of appointment at Crown (to the extent known)
Alfread Gomez	Former Executive Vice President China, Crown Resorts	
Sarah Jane Halton	Non-executive director, Crown Resorts	May 2018 – present
	Chair of Board Risk Management Committee, Crown Resorts	December 2019 – present
	Audit & Corporate Governance Committee member, Crown Resorts	February 2020 – present
	People, Remuneration and Nomination Committee member, Crown Resorts	March 2021 – present
	Responsible Gaming Committee member, Crown Resorts	March 2021 – present
	Safety and Sustainability Committee member, Crown Resorts	March 2021 – present
Greg Hawkins	Former Chief Executive Officer, Crown Melbourne	28 May 2012 – 30 August 2013
Peter Herring	Commenced as IT information officer at Crown Melbourne	18 April 1994
	Group General Manager, Product, Strategy & Innovation	December 2013 – present
Professor John Horvath	Former non-executive Director, Crown Resorts	22 June 2010 - 14 April 2021
Guy Jalland	Former non-executive Director, Crown Resorts	16 April 2018 - 10 February 2021
Michael Johnston	Former non-executive director, Crown Resorts	6 February 2015 – 16 October 2016
Antonia Korsanos	Non-executive director, Crown Resorts	23 May 2018 – present
	Non-executive director, Crown Melbourne	September 2018 – present
	Chair of the Audit Committee, Crown Melbourne	5 September 2018 – present
	Responsible Gaming Committee member, Crown Resorts	20 June 2018 – present
	Risk Management Committee member, Crown Resorts, Crown Resorts	23 October 2019 – present

Name	Position(s)	Period of appointment at Crown (to the extent known)
	Chair of the Audit and Corporate Governance Committee, Crown Resorts	18 February 2020 – present
	Chair of Crown Melbourne	17 February 2021 – present
	Safety and Sustainability Committee member, Crown Resorts	5 March 2021 – present
	Chair of the People, Remuneration and Nomination Committee, Crown Resorts	5 March 2021 – present
Louise Lane	Former General Manager of AML, Crown Resorts	Ceased October 2019
Peter Lawrence	General Manager VIP Customer Service, Mahogany Room, Crown Melbourne	April 2012-Present
	Former General Manager – Table Games, SKYCITY Entertainment Group, Auckland, New Zealand	November 2010 - January 2012
	Former Vice President – International Marketing, Marina Bay Sands	August 2009 - July 2020
	Former Senior Vice President – VIP Service, Melco Crown Entertainment Group, Auckland, New Zealand	August 2007- July 2010
	Former General Manager – Table Games / International Business, SKYCITY Entertainment Group, Auckland, New Zealand	July 1998-June 2007
	Former Vice President – Mahogany Room Operations, Crown Casino, Melbourne	May 1994 - July 1998
	Former VIP Operations Manager – Adelaide Casino	January 1987 - November 1993
	Various Table Game Dealer positions at casinos in Australia, the United Kingdom, and Bahamas	March 1981 - December 1986
Jessica Liu	Crown China Sales Employee	
Richard Longhurst	General Manager Surveillance, Crown Melbourne	October 2004 – November 2013
Jose Machado	Commercial and Finance Manager, Gaming, Crown Resorts	May 2018-April 2021

Name	Position(s)	Period of appointment at Crown (to the extent known)
	Finance Manager Gaming, Crown Resorts	May 2016-May 2018
Mark Mackay	Executive General Manager, Gaming Machines, Crown Melbourne	July 2017 - present
Mary Manos	Former Director, Crown Sydney Gaming and General Counsel and Company Secretary, Crown Resorts	30 June 2017 - 17 February 2021
Steve McCann	Managing Director and Chief Executive Officer, Crown Resorts	1 June 2021 - present
Alan McGregor	Interim Company Secretary, Crown Resorts	18 February 2021 – present
	Chief Financial Officer, Crown Resorts	20 August 2020 – present
	Former Chief Financial Officer, Australian Resorts	August 2014 - August 2020
	Former Chief Financial Officer, Crown Melbourne	April 2013 - August 2014
	Former General Manager Corporate Services, Crown Perth	April 2005 - April 2013
Harold Mitchell	Former non-executive Director, Crown Resorts	10 February 2011 – 22 February 2021
Nigel Morrison	Non-executive director, Crown Resorts	31 March 2021 – present
	Non-executive director, Crown Melbourne	23 April 2021 – present
	Audit and Corporate Governance Committee member, Crown Resorts	Approx. May 2021 – present
	People, Remuneration and Nomination Committee member, Crown Resorts	Approx. April 2021 – present
	Responsible Gaming Committee member, Crown Resorts	Approx. June 2021 – present
	Safety and Sustainability Committee member, Crown Resorts	Approx. June 2021 – present
	Risk Management Committee member, Crown Resorts	Approx. March 2021 – present
	Audit Committee member, Crown Melbourne	Approx. May 2021 – present

Name	Position(s)	Period of appointment at Crown (to the extent known)
	Chair of Compliance Committee, Crown Melbourne	Approx. May 2021 – present
	Former Chief Operating Officer, Crown Melbourne (then known as Crown Limited)	1997 – 2000
	Former Chief Financial Officer, Crown Melbourne (then known as Crown Limited)	1993 – 1997
Jason O'Connor	Director, Innovation and Strategy, Crown Melbourne	February 2019 – present
	Former Executive General Manager, VIP Gaming and General Manager of VIP International, Crown Resorts	2011 – 13 October 2016
	Various senior strategy, commerce and financial roles, Crown Melbourne	1997 – 2011
John Poynton	Former non-executive Director, Crown Resorts	20 November 2018 – 28 February 2021
Joshua Preston	Former Chief Legal Officer – Australian Resorts, Crown Resorts	March 2017 – December 2020
Ishan Ratnam (Ishan Terrence Kunaratnam)	Former President – International VIP Development, Crown Resorts	12 December 2012 - 5 March 2021
Chris Reilly	General Manager – Director Corporate Affairs Crown Resorts	September 2018-Present
John Salomone	Chief Financial Officer, Australian Resorts	August 2020 – present
	Group Financial Controller, Crown Resorts	June 2007 – August 2020
	Various accounting roles	1994 – June 2007
Michelle Siegers	Chief Risk Officer, Crown Resorts	December 2020 – present
Tim Spearman	Human Resources Manager – Support Services, Crown Melbourne	June 2013 – present
Neil Spencer	Executive General Manager Gaming Machines, Crown Melbourne	June 2010 – March 2016
	Senior Vice President, Gaming Systems & Innovation, Crown Resorts	August 2008 – June 2010

Name	Position(s)	Period of appointment at Crown (to the extent known)
Nicholas Stokes	Group General Manager, Anti-Money Laundering, Crown Resorts	19 November 2019 – present
	AML/CTF Compliance Officer, Crown Sydney, Crown Melbourne, and Crown Perth	2 November 2020 – present
Indran Subramanian	International Business Operations Manager, Crown Melbourne	August 1994 – present
Debra Tegoni	Former Executive General Manager, Legal and Regulatory Services, Crown Melbourne	9 July 2015 – 1 July 2017
Craig Walsh	Executive Director Security and Surveillance, Crown Melbourne	2018 – present
	General Manager Security and Surveillance, Crown Melbourne	2013 – 2018
	General Manager Security, Crown Melbourne	2010 – 2013
	Senior Security Operations Manager	2009 - 2010
Xavier Walsh	Chief Executive Officer, Crown Melbourne	9 December 2020 – present
	Director, Crown Melbourne	15 February 2021 – present
	Chief Operating Officer, Crown Melbourne	October 2013 – 9 December 2020
	Responsible Gaming Management Committee	14 February 2014 – Present
Nick Weeks	Executive General Manager for Transformation and Regulatory Response, Crown Resorts	11 March 2021 – present
Tony Weston	Chief People and Culture Officer, Crown Resorts	7 June 2021 – present
Jan Williamson	Senior Legal Counsel, Crown Melbourne	29 October 2001 – present
	General Manager of Legal, Crown Melbourne	1 March 2021 – present
Benny Xiong	International Sales Manager, Crown Resorts	January 2012 – present

Name	Position(s)	Period of appointment at Crown (to the extent known)
Matthew Young	Manager, Strategy and Investor Relations, Crown Resorts	September 2018 – present
VCGLR		
Timothy Bryant	Team Leader (Investigations), Compliance Division	
Jason Cremona	Manager of Licence Management and Audit, Licensing Division	
Alex Fitzpatrick	Director of Licensing	
Rowan Harris	Principal Major Licence Officer	
Miriam Holmes	Special Counsel, VCGLR Legal Services Division	
Catherine Myers	Chief Executive Officer	
Adam Ockwell	Director, Compliance Division	
Tracy Shen	Senior Auditor, License Management & Audit	
Steven Thurston	Licence Manager	
Crown Advisors		
Alexander Carmichael	Managing Director, Promontory Financial Group	
Travis Costin	Head of Finance, ANZ	
Lisa Dobbin	Partner, Deloitte	
Cara Hartnett	Partner, Risk Advisory, Deloitte	
Neil Jeans	Principal, Initialism	
Dr Murray Lawson	Director, Risk Advisory, Deloitte	
Andrew Maher	Partner, Allens Linklaters	
Matthew McCarthy	Partner, Allens Linklaters	
Katherine Shamai	Partner, Grant Thornton	

Name	Position(s)	Period of appointment at Crown (to the extent known)
Glen Ward	Partner, MinterEllison	
Victoria Whitaker	Partner, Risk Advisory, Deloitte	
John Yiannakou	Senior Associate, Allens Linklaters	
Leon Zwier	Partner, Arnold Bloch Leibler	
Junkets (operators and players)		
Alvin Chau	Junket Operator, Suncity Junket	
Zezhai Song	Junket Operator, Song Junket	
Joseph Wong (Yoseph Prawira)	Junket Player	

4 Crown's relationship with the VCGLR

1 Introduction

1.1 A factor relevant to the suitability of Crown Melbourne is the manner in which it interacts with those who are required, by law, to look into its affairs.[37] To this end, this section deals with the importance of the relationship with the regulator.

1.2 This section is structured as follows:

(a) First, it outlines the importance of the relationship with the regulator.

(b) Second, it details what the case studies have shown about the past and current state of the relationship.

1.3 The case studies show that Crown's relationship with the regulator has not always been open, transparent and cooperative. Crown has approached investigations and disciplinary action brought by the regulator in a defensive and combative manner. Crown has also failed to respond cooperatively where Crown's interests should have been aligned with the interests of the regulator. These matters have had a detrimental impact on the relationship.

1.4 The section of these submissions dealing with culture (Section 13), discusses whether the relationship can change for the better and what is required.

2 Importance of the Relationship with the Regulator

Establishment and role of the VCGLR

2.1 The VCGLR is the independent statutory authority that regulates Victoria's gambling and liquor industries.[38]

2.2 The VCGLR was established under section 6 of the *Victorian Commission for Gambling and Liquor Regulation Act 2011* (Vic) (**VCGLR Act**) and commenced as the new authority for gambling and liquor regulation on 6 February 2012.[39] The VCGLR Act transferred to the VCGLR the roles and functions of its predecessor, the Victorian Commission for Gambling Regulation (**VCGR**) as well as the Director of Liquor Licensing, and the Liquor Licensing Panel.[40]

2.3 The VCGLR's functions and duties with respect to gambling are relevantly contained in the VCGLR Act and the CCA.

VCGLR Act – functions and duties

2.4 Section 9 of the VCGLR Act sets out the functions of the VCGLR. They include relevantly to:

(a) perform the regulatory, investigative and disciplinary functions conferred on the VCGLR under the VCGLR Act, the CCA and the *Gambling Regulation Act 2003* (Vic) (section 9(1)(a));

(b) undertake licensing, approval, authorisation and registration activities under gambling legislation (section 9(1)(b));

(c) promote and monitor compliance with gambling legislation (section 9(1)(c)); and

(d) detect and respond to contraventions of gambling legislation (section 9(1)(d)).

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37 Relevant to s 9(2)(a) of the CCA.
38 Victorian Commission for Gambling and Liquor Regulation, Annual Report, 2011-2012, 5.
39 The VCGLR Act came into operation on 6 February 2012; Victorian Special Gazette (No. 423) 21 December 2011, page 4.
40 Victorian Commission for Gambling and Liquor Regulation, Annual Report, 2011-2012, 5.

2.5 Section 9(3) of the VCGLR Act imposes a duty on the VCGLR to inform itself of the objects of the CCA (among others) when performing functions or duties or exercising powers under that Act.

CCA – functions and duties

2.6 Section 140 in Part 10 of the CCA provides the object of the VCGLR for the purposes of the CCA. That object is to maintain and administer systems for the licensing, supervision and control of casinos, for the purpose of:[41]

(a) ensuring that the management and operation of casinos remains free from criminal influence or exploitation;

(b) ensuring that gaming and betting in casinos is conducted honestly; and

(c) fostering responsible gambling in casinos in order to:

(i) minimise harm caused by problem gambling; and

(ii) accommodate those who gamble without harming themselves or others.

2.7 Section 141 in Part 10 sets out the functions of the VCGLR under the CCA. Those functions include that the VCGLR must:

(a) oversee the operation and regulation of casinos (section 141(2)(a));

(b) consider any system of controls and administrative and accounting procedures of the VCGLR to ensure that the taxes, charges and levies payable under the CCA are paid and must approve or reject the system (section 141(2)(ab));

(c) advise the Minister concerning policy in relation to supervision and inspection of casinos (section 141(2)(b));

(d) do all things it is authorised or required to do under the CCA, including but not limited to (section 141(2)(c)):

(e) supervise directly the operation of casinos and the conduct of gaming and betting within them (section 141(2)(c)(i));

(i) detect offences committed in or in relation to casinos (section 141(2)(c)(iii));

(ii) ensure that the taxes, charges and levies payable under the CCA are paid (section 141(2)(c)(viii));

(f) prepare and give to the Minister such reports concerning the operation of casinos and the conduct of gaming and betting in them as the Commission thinks fit or as the Minister may request (section 141(2)(c)(ix)); and

(g) investigate and report to the Minister on the matters referred to in section 25 (section 141(2)(c)(x)).

2.8 Section 142 also gives the VCGLR the authority to enter into agreements, on or after 1 December 1992, with the approval of the Minister on behalf of the State for or in connection with the establishment and operation of casinos (section 142(1)).

Supervision of Crown

2.9 One way in which the VCGLR undertakes supervision of Crown is by conducting investigations, such as general investigations under section 24 of the CCA, and regular investigations under section 25 of the CCA.

[41] See also s 1 of the CCA for the general purpose and aim of the CCA.

2.10 Under section 25, regular investigations must be undertaken not later than 3 years after the commencement of the operations in a casino, and thereafter at intervals not exceeding five years.

2.11 In undertaking a general investigation in respect of Crown Melbourne, section 25 requires the VCGLR to investigate and form an opinion as to whether or not:

(a) Crown Melbourne is a suitable person to continue to hold the casino licence (section 25(1)(a));

(b) Crown Melbourne is complying with the CCA, the *Casino (Management Agreement) Act 1993* (Vic) and the *Gambling Regulation Act 2003* (Vic) and the regulations made under any of those Acts (section 25(1)(b));

(c) Crown Melbourne is complying with the transaction documents (as defined in the Management Agreement between Crown Melbourne and the State) and any other agreements between Crown Melbourne and the State that impose obligations on the casino operator in relation to gambling (section 25(1)(c)); and

(d) it is in the public interest (by reference to the creation and maintenance of public confidence and trust in the credibility, integrity and stability of casino operations) that the casino licence should continue in force (section 25(1)(d)).

2.12 Section 25(2) requires the VCGLR to report its findings and opinion to the Minister, giving reasons for its opinion, and take whatever action it considers appropriate in light of the findings.

2.13 Since Crown was granted its casino licence on 19 November 1993, the VCGLR has undertaken six reviews under section 25.[42] These reviews have each required the VCGLR to have regular interaction with Crown.

2.14 Another way in which the VCGLR supervises Crown is through issuing notices to Crown or its employees under section 26 of the CCA to provide information, produce a document or attend an examination to answer questions.

VGCLR's regulatory approach

2.15 The way in which Crown interacts with the regulator while it performs its functions and duties such as undertaking investigations under sections 24 or 25 is crucial to the VCGLR discharging its regulatory duties under gambling legislation such as the CCA.

2.16 This is because the VCGLR employs a "risk-based" approach to regulation, as noted in its "Regulatory Approach" document published on its website.[43] In particular, the VCGLR has five overarching principles that guide its approach to regulation: risk-based, proactive, collaborative, transparent and targeted.[44]

2.17 In respect of the risk-based approach to regulation employed by the VCGLR, the Commission received a report and heard evidence from Ms Elizabeth Arzadon, an expert on corporate culture and its influence on conduct and risk outcomes.[45]

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[42] The VCGLR (and its predecessor the VCGA) has reported under s 25 on the following occasions: 30 June 1997, for the period 30 June 1994 to 30 June 1997 (**First Review**); 30 June 2000, covering the period 1 July 1997 to 30 June 2000 (**Second Review**); 30 June 2003, covering the period 1 July 2000 to 30 June 2003 (**Third Review**); 30 June 2008, covering the period 1 July 2003 to 30 June 2008 (**Fourth Review**); 30 June 2013, covering the period 1 July 2008 to 30 June 2013 (**Fifth Review**); 30 June 2018, covering the period 1 July 2013 to 30 June 2018 (**Sixth Review**).

[43] VCGLR, VCGLR's Regulatory Approach, n.d. p 5.

[44] VCGLR, VCGLR's Regulatory Approach, n.d. p 5.

[45] Exhibit RC0477 Elizabeth Arzadon Expert Opinion regarding Cultural Change at Crown Melbourne, June 2021, COM.0007.0001.0178 at .0181.

2.18 It is Ms Arzadon's opinion that, where a regulator takes a risk-based approach, it places a high degree of reliance on the integrity of internal control processes within supervised entities and preserves its limited resources to examine issues of the highest risk.[46]

2.19 The risk-based approach to regulation is used by modern regulators in a range of sectors, including in financial services and healthcare.[47] But regardless of the sector in which risk-based regulation is employed, it necessarily requires a particular dynamic between regulators and regulated entities.[48] That is, unlike more intrusive forms of regulation that directly access and control entities – such as the New Jersey approach – risk-based regulators rely heavily on a dynamic or culture of transparency, responsiveness and collaboration with regulated entities in order to form a view on the highest risks within the entity, by which in turn all of its supervisory activities are then guided.[49]

2.20 Ms Arzadon explained that under a risk-based model, the regulator determines the most material risks the operator needs to manage and focuses its supervision on those activities. One of the implications is that the regulator has to rely on the entity's controls around other risks which it is not directly supervising. One of the reasons the regulator takes this approach to supervising the most material risks, is to manage the tension between finite resources and their responsibilities for oversight or supervision.[50]

2.21 In Ms Arzadon's opinion, a regulator taking a risk-based approach to supervision will be more likely to form an accurate view of the highest risks within the entity, and in turn more likely to effectively perform its regulatory functions and duties, if the dynamic between the regulator and regulated entity is based on three mutually reinforcing characteristics:[51]

(a) aligned purpose – this ensures that both parties have a clearly articulated and agreed goal of acting in the best interest of the sector and its key stakeholders;

(b) substantiated trust – where both parties discuss issues honestly and transparently, respond to challenges constructively and address issues in a fair and reliable manner; and

(c) two-way respect – where diversity of perspective is supported ensuring that both parties genuinely listen to each other and give consideration to the others' perspective when making decisions and invest effort in finding solutions that meet the legitimate goals of both parties.

2.22 In these circumstances, Ms Arzadon opines that, to support effective outcomes, the dynamic between the VCGLR and Crown needs to exhibit an appropriate aligned purpose, substantiated trust, and two-way respect.[52] To the extent there is a lack of aligned purpose, trust and respect between the VCGLR and Crown, this will be detrimental to the regulatory relationship and ultimately to the effectiveness of the VCGLR's ability to regulate Crown's conduct and achieve its regulatory aims.

2.23 Ms Arzadon has made observations about the past and current dynamic between the VCGLR and Crown. In effect, Ms Arzadon identifies a number of matters that, in her

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46 Exhibit RC0477 Elizabeth Arzadon Expert Opinion regarding Cultural Change at Crown Melbourne, June 2021, COM.0007.0001.0178 at .0183.
47 Exhibit RC0477 Elizabeth Arzadon Expert Opinion regarding Cultural Change at Crown Melbourne, June 2021, COM.0007.0001.0178 at .0183.
48 Exhibit RC0477 Elizabeth Arzadon Expert Opinion regarding Cultural Change at Crown Melbourne, June 2021, COM.0007.0001.0178 at .0184.
49 Exhibit RC0477 Elizabeth Arzadon Expert Opinion regarding Cultural Change at Crown Melbourne, June 2021, COM.0007.0001.0178 at .0184.
50 T3945:43 – T3946:9 (Arzadon).
51 Exhibit RC0477 Elizabeth Arzadon Expert Opinion regarding Cultural Change at Crown Melbourne, June 2021, Com.0007.0001.0178 at .0184; T3947:20-35, T3948:8-15 (Arzadon).
52 Exhibit RC0477 Elizabeth Arzadon Expert Opinion regarding Cultural Change at Crown Melbourne, June 2021, COM.0007.0001.0178 at .0184.

opinion, suggest the current dynamic is characterised by misaligned purpose, mistrust and lack of respect.[53] Numerous Crown witnesses agreed that Crown has not had an open and honest relationship with the VCGLR in the past and that various incidents have contributed to a deterioration in the relationship.[54] Crown witnesses who were asked the question agreed Crown's relationship with the VCGLR should be an open, honest, transparent and constructive relationship.[55] There are numerous incidents that suggest it is not. This is a matter relevant to suitability. The capacity for Crown to change the dynamic with the regulator and its culture generally is discussed in the culture section of these submissions (see Section 13).

3 Case Studies

3.1 The Commission heard evidence about three examples that demonstrate Crown's failure to be open, transparent and cooperate with the VCGLR:

(a) Crown's lack of cooperation with the VCGLR in its investigation into arrests of Crown employees (of Crown Melbourne, Crown Resorts and Crown Resorts Pte Ltd) in China between October 2016 and August 2017 (**China Arrests Investigation**);

(b) Crown's lack of cooperation with the VCGLR in working to implement Recommendation 17 made in the Sixth Casino Review; and

(c) Crown's recent lack of cooperation in the VCGLR disciplinary action in relation to certain junket entities.

3.2 Each example will be taken in turn below. Other examples including Crown's concealment and lack of forthrightness with the VCGLR in relation to the underpayment of gaming tax issue are discussed elsewhere (see for example, Section 5, Non-disclosure of potential underpayment of tax).

China Arrests Investigation

Introduction

3.3 In relation to this issue, the Commission heard evidence from Mr Timothy Bryant, Team Leader (Investigations) in the Compliance Division of the VCGLR.[56]

3.4 Mr Bryant gave evidence that the Compliance Division is responsible for promoting, investigating, auditing and enforcing compliance with Victoria's gambling and liquor laws.[57] He gave evidence that one of the more important roles of the Compliance Division is conducting routine inspections and investigations in relation to regulated entities.[58]

3.5 Mr Bryant has considerable experience and extensive qualifications as a regulatory investigator.[59] In his current role he leads a team of up to four inspectors and investigators who conduct investigations.[60] Mr Bryant's evidence was that in his role as team leader he is responsible for investigating and managing investigations that are more complex and sensitive in nature, which includes investigations in relation to the casino, licensed premises - liquor licensed premises and in the gambling space.[61]

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53 Exhibit RC0477 Elizabeth Arzadon Expert Opinion regarding Cultural Change at Crown Melbourne, June 2021, COM.0007.0001.0178 at .0185.
54 T2278:21-24 (Morrison); T3241:31-35 (X Walsh); T3761:4-8; (Coonan); T3661:6-21 (closed hearing – Korsanos).
55 T3656:22-41 (Korsanos – closed hearing).
56 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0002, [8]; T36:28-32 (Bryant).
57 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0003, [12].
58 T39:6-12 (Bryant).
59 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, [VCG.9999.0001.0002 at .0001-.0002, [3]-[9]]; T38:19-36 (Bryant).
60 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0003, [12].
61 T39:14-22 (Bryant).

Background to China Arrests Investigation

3.6 The VCGLR undertook the China Arrests Investigation between July 2017 and February 2021.[62]

3.7 Mr Bryant's evidence was that he became involved in the China Arrests Investigation in November 2017, shortly after the detention of Crown employees in China.[63]

3.8 He said that the scope of the China Arrests Investigation did not change over time, and its predominant focus was the circumstances surrounding the detentions and the corporate governance of Crown.[64] Specifically, the scope of the China Arrests Investigation was to:[65]

(a) examine the circumstances surrounding the detentions and convictions of Crown's employees in China;

(b) examine Crown's corporate governance relating to the circumstances that led to the detentions and convictions; and

(c) collect any information which could be relevant to the suitability of Casino Special Employees (**CSEs**) who were convicted and continue to be employed with Crown, noting that any action with respect to the suitability of individual CSEs would need to follow the process set out in the CCA.

3.9 Mr Bryant explained that the China Arrests Investigation moved through four "stages" after its commencement in July 2017:[66]

(a) **Stage one**: commenced in July 2017 and concluded in about November 2017;

(b) **Stage two**: commenced in around November 2017, when Mr Bryant became responsible for conducting the investigation, and concluded in around June 2018, when it became apparent that Crown's late disclosure of relevant information would prevent the investigation from being finalised before the Sixth Casino Review report was due. Mr Bryant had carriage of the China Arrests Investigation throughout stage two;

(c) **Stage three**: commenced in July 2018 when Ms Catherine Myers, the CEO of the VCGLR, requested that Ms Miriam Holmes, Special Counsel in the VCGLR's Legal Services Division, review the material the investigation had gathered and assist with the preparation of a detailed report setting out an analysis of that material and further documents that Crown disclosed to the VCGLR during this stage. Stage three concluded in around June 2019, after the VCGLR finalised its draft *Report into the Imprisonment of Crown Staff from October 2016 to August 2017 in the People's Republic of China* dated 28 May 2019 (**Draft China Report**) and provided it to Crown for comment. Mr Bryant worked closely with Ms Holmes during stage three.

(d) **Stage four**: commenced following the completion of the Draft China Report in around June 2019 and the receipt of Crown's comments. Stage four also involved the preparation of a detailed report with the assistance of counsel. Stage four concluded with the provision of the final report for the China Arrests Investigation (**Final China Report**) to the Minister and announcement of the Royal Commission in February 2021. Mr Bryant was part of the working group (**Working Group**) involved in stage

62 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0005-.0006, [18], [20].
63 T41:24-34 (Bryant).
64 T42:12-18 (Bryant).
65 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0005, [19];T42:3-10 (Bryant).
66 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0005-.0006, [20].

four reporting to the Crown Governance Steering Committee (**Steering Committee**) and was responsible for the investigative component of stage four.

3.10 The Final China Report was prepared under section 24(3) of the CCA in respect of an investigation conducted under section 24(1) to (2) of the CCA.[67]

3.11 Mr Bryant gave evidence about the way in which the Final China Report was prepared. He explained that the Working Group was responsible for examining material produced in a class action against Crown as well as the evidence before the Bergin Inquiry to determine whether there was any material that had not been provided to the VCGLR through the China Arrests Investigation.[68]

3.12 Mr Bryant gave evidence that the China Arrests Investigation was continuing at the time that the Sixth Casino Review report was published in June 2018.[69]

3.13 The Sixth Casino Review report does not refer to or deal with the China Arrests Investigation, but does refer to the existence of the investigation.[70] The China Arrests Investigation was not finalised by June 2018 because of the delays by Crown in providing documents to the VCGLR.[71] Accordingly, it continued after the Sixth Casino Review report was published.[72]

3.14 Mr Bryant's evidence was that, following a 60 Minutes program aired in late July 2019, which brought to light some further information that caused the VCGLR to continue its investigation, the Bergin Inquiry commenced.[73] The China Arrests Investigation continued throughout the Bergin Inquiry.[74]

3.15 The China Arrests Investigation concluded in 2021 with the final report being provided to the Minister for Consumer Affairs, Gaming and Liquor Regulation at the time when this Royal Commission was announced.[75]

Crown's failures to cooperate

3.16 Mr Bryant's evidence was that, over the course of the China Arrests Investigation, Crown failed to provide the VCGLR with the level of cooperation that he would expect of a regulated entity that is the only casino in Victoria.[76]

3.17 Mr Bryant identified four key ways in which Crown had failed to cooperate with the VCGLR:[77]

(a) failure to provide a transparent account of the arrests of employees in China, in particular Mr Preston's presentation to the VCGLR on 31 August 2017 did not disclose the extent of Crown's knowledge about the crackdown by the Chinese government;

(b) failure by Crown executives and employees who were interviewed by the VCGLR to display the level of candour that was to be expected to be afforded to the regulator;

(c) failure to disclose documents to the VCGLR in a timely way, with disclosure by Crown significantly influenced by what occurred during the course of a shareholder class

67 Exhibit RC0001a Statement of Timothy Michael Bryant, 15 April 2021, VCG.9999.0001.0002 at .0006, [21(b)].
68 T43:28 – T44:4 (Bryant).
69 T40:35-46 (Bryant).
70 T41:13-22 (Bryant).
71 T41:36-42 (Bryant).
72 T41:44 – T42:1 (Bryant).
73 T42:20-41 (Bryant).
74 T42:37-41 (Bryant).
75 T42 lines 43-T43-1 (Bryant).
76 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0046, [138].
77 T44:30- T45:37 (Bryant); Exhibit RC0001a, Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0046 -.0047, [138].

action in the Federal Court commenced against Crown in connection with the China detentions (**class action**), including in respect of documents previously withheld from the VCGLR on the basis of legal professional privilege;

(d) a shift in Crown's position given concessions it made in the Bergin Inquiry that had not been offered to the VCGLR at any point during the China Arrests Investigation before the Bergin Inquiry.

3.18 Before addressing each failure, it is first necessary to outline a key chronology of events of the China Arrests Investigation.

Key chronology of events

3.19 As noted above, the China Arrests Investigation commenced in July 2017.[78]

3.20 On 31 August 2017, Mr Joshua Preston, Crown's then Chief Legal Officer, gave a presentation to the VCGLR at VCGLR's offices (**August 2017 Presentation**).[79]

3.21 The August 2017 presentation concerned the background to and outcomes of the China arrests, Crown's risk management framework and Crown's subsequent rationalisation of its operations in Asia.[80] Mr Bryant was not present at the presentation as it happened before his involvement in the China Arrests Investigation (which started in around 27 November 2017).[81] Mr Bryant gave evidence that Crown gave presentations to the VCGLR from time to time.[82] He could not recall what prompted the presentation from Mr Preston at that time.[83]

3.22 During September and October 2017, the VCGLR made two informal requests for documents from Crown by email and followed these requests up in October and November 2017.[84]

3.23 In November 2017, Mr Bryant assumed the role of Team Leader in the Compliance Division of the VCGLR and became responsible for the China Arrests Investigation.[85] In December 2017, he came to the view that Crown's responses to the informal requests, which were largely confined to specific materials that should have been readily available, were taking too long.[86] Mr Bryant considered it appropriate for all future requests for information and examinations to be made by formal notices issued under section 26 of the CCA.[87]

3.24 The VCGLR issued two notices on 4 January 2018 and 2 February 2018.[88]

3.25 Crown provided its response to the 4 January notice on 19 January and 1 February 2018, and its response to the 2 February notice on 16 February 2018.[89] In the 16 February 2018 response, Crown also brought to the VCGLR's attention for the first time that it had recently undertaken restoration of back-up tapes for the purpose of the class action. It had not done this in its review of its database for documents responsive to the VCGLR's notices, but these tapes may fall within the scope of the notices and if so, Crown would provide a copy to the VCGLR.[90]

78 Exh bit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at _0005, [18].
79 Exh bit RC0001d Crown Presentation to the Victorian Commission for Gambling & Liquor Regulation, August 2017, VCG.0001.0001.9002; Exh bit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0007, [28].
80 Exh bit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0007, [28].
81 Exh bit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0007 to .0008, .0010, [28], [34]-[35].
82 T46:2-9 (Bryant).
83 T46:11-14 (Bryant).
84 Exh bit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0009 to .0010, [31]-[33].
85 Exh bit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0010, [34]-[37].
86 Exh bit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0011, [36]-[38].
87 Exh bit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0011, [36]-[38].
88 Exh bit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0011 to .0012, [39]-[41].
89 Exh bit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0011 to .0013, [40], [42].
90 Exh bit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0013, [43].

3.26 Mr Bryant's evidence was that he was mindful of the need to progress the investigation and could not wait months for the restoration process to be completed.[91] Instead, he decided to issue notices under section 26 to require Crown employees to attend for interviews. This included Mr Jason O'Connor, Executive General Manager VIP Gaming, Crown Resorts, and Mr Barry Felstead, CEO of Australia Resorts at the time of the detentions in China.[92]

3.27 Mr Bryant conducted the interviews of Mr O'Connor on 8 March 2018, and Mr Felstead on 28 March 2018.[93] At the interviews, Mr Bryant put to Mr O'Connor and Mr Felstead:[94]

(a) an article published by Reuters headed "China's president just declared war on global gambling" (**Reuters article**); and

(b) the issue raised in an email dated 10 July 2015 between Mr Michael Chen and Mintz which stated that "we had another staff member yesterday in Wuhan visited by local police on a tip off that he was organising tours for gambling [being the **2015 Incident**]. He was requested to furnish a letter from the company proving that he worked for Crown [being the **letter to police**]".

3.28 On 7 and 8 June 2018, Crown produced further emails to the VCGLR responsive to the notices, identified in the course of reviewing material restored from backup tapes for discovery in the class action (**June 2018 material**).[95]

3.29 On 8 June 2018, Mr Bryant had finalised the summary report for the China Arrests Investigation (**Summary Report**) before receiving the June 2018 material, and it was issued to Crown that day for comment together with draft sections about the China Arrests Investigation the VCGLR proposed to include in the Sixth Casino Review report.[96]

3.30 By 12 June 2018, Mr Bryant had reviewed the June 2018 material, and had formed the view it was clearly of interest to the investigation.[97] By 18 June 2018 the VCGLR wrote to Crown saying that the ongoing provision of documents had affected the ability of the VCGLR to conclude its investigation.[98]

3.31 On 19 June 2018, Crown wrote to the VCGLR objecting to the inclusion of any commentary relating to the China Arrests Investigation in the Sixth Casino Review report on the basis that the investigation was incomplete.[99]

3.32 On 26 June 2018, Crown provided its response to the Summary Report, in which it strongly disputed any purported findings and conclusions that were adverse to Crown and asserting that procedural fairness must be afforded if the findings or conclusions are adopted.[100]

3.33 In July 2018, Mr Bryant was informed that commentary on the China Arrests Investigation was not included in the Sixth Casino Review report.[101]

3.34 On 23 August 2018, the VCGLR issued a further notice to Crown under section 26 requesting all outstanding documents that the VCGLR required (including a list of previous notice requests that Crown had not responded to or advised there were no documents falling within the scope of the notice) to finalise the China Arrests Investigation.[102]

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91 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0013, [44].
92 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0013 to .0014, [44].
93 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0015, .0016, [47], [52].
94 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0014 to .0016, [46], [49], [52].
95 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0019 to .0020, [58]-[59].
96 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0020, [60].
97 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0020 to .0021, [62]-[63].
98 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0025, [70].
99 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0026, [73].
100 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0126, [74].
101 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0027, [76]-[77].
102 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0028, [78]-[79].

3.35 On 21 September 2018, Crown produced four volumes of documents in response to the 23 August notice,[103] and a further 7 documents on 12 October 2018.[104] In both responses, Crown noted that further documents may emerge as Crown continued its discovery review for the class action.[105]

3.36 On 14 November 2018, the VCGLR sent a letter to Crown stating it expected it to fully comply with all notices issued to date by 5 December 2018.[106]

3.37 On 5 December 2018, Crown produced 8 folders of additional material, and on 18 March 2019, it produced a further 85 documents which it said were identified following Crown's "review of the subset of key documents discovered to date which it had identified as most likely to be of relevance in the class action" (**March 2019 batch**).[107]

3.38 On 19 May 2019, the VCGLR provided the Draft China Report to Crown for comment.[108]

3.39 The Crown Resorts Board meeting at which the directors discussed Crown's proposed response to the Draft China Report is discussed in paragraph 3.110.

3.40 On 26 June 2019, Crown provided its response to the Draft China Report. It stated that it had no objection to the VCGLR reporting to the Minister under section 24(3) that it had completed an extensive investigation into the matter and the results were that, among other things Crown "have accepted in principle that their risk management framework could deal more directly with the risk of adverse legal action in a foreign jurisdiction, and appropriate mitigation strategies".[109]

3.41 On 28 July 2019, the TV programme 60 Minutes aired an exposé that raised new information about the China Arrests Investigation.[110]

3.42 On 14 August 2019, the Bergin Inquiry was established in response to the allegations in the 60 Minutes exposé and other allegations in the media.[111]

3.43 On 11 September 2019, Mr Bryant was asked to be part of the Working Group established to investigate or respond to the new material raised in the media about the China arrests and assist in the preparation of the Final China Report.[112] The Working Group reported to the Steering Committee.[113]

3.44 On 23 September 2019, the VCGLR sent a letter to Crown advising it was continuing the China Arrests Investigation in light of the allegations in the media.[114]

3.45 On 15 January 2020, Minter Ellison wrote to the VCGLR advising it no longer pressed legal professional privilege claims over communications between Crown and Wilmer Hale filed in evidence in the class action, which were annexures to witness statements.[115]

3.46 On 27 February 2020, the VCGLR issued a section 26 notice requiring Crown to produce the witness statements and unredacted versions of the material over which legal professional privilege had been waived.[116]

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[103] Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0029, [81].
[104] Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0030, [84].
[105] Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0029 to .0030, [82]-[84].
[106] Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0030, [85].
[107] Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0030 to .0031, [86].
[108] Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0032, [91].
[109] Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0033 to .0034, [94].
[110] Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0034, [96].
[111] Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0035, [98].
[112] Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0035, [99].
[113] Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0035, [99].
[114] Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0036, [102].
[115] Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0038, [110]-[111].
[116] Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0038 to .0039, [112].

3.47 On 11 March 2020, Crown produced documents in response to the section 26 notice.[117]

3.48 On 26 May 2020, the Working Group prepared a report titled *Crown China Investigation – Analysis of new material* for the Steering Committee setting out its analysis of the class action witness statement documents produced on 11 March 2020, and made recommendations about changes that should be made to the Draft China Report.[118]

3.49 Between 17 and 24 August 2020 and 3 and 9 September 2020, the Bergin Inquiry conducted public hearings at which Mr Felstead and Mr O'Connor gave evidence.[119]

3.50 On 1 October 2020, the VCGLR issued a notice under section 26 to Crown to produce a list of documents examined and referred to by the Bergin Inquiry, including emails relating to the 2015 Incident and the letter to police, which had not previously been produced to the VCGLR.[120]

3.51 On 9 October 2020, Crown produced the documents sought on 1 October 2020 noting that the email chains relating to the 2015 Incident and the letter to police "were not produced in response to the notice issued on 23 March 2019 because they were then subject to a claim for legal professional privilege".[121]

3.52 On 26 November 2020, the VCGLR issued a notice under section 26 to Crown to produce copies of closing submissions of counsel assisting the Bergin Inquiry.[122]

3.53 On 22 December 2020 the VCGLR wrote to Crown seeking its position in respect of a series of factual propositions which were based on the VCGLR's assessment of Crown's evidence and submissions to the Bergin Inquiry and other material that Crown had produced to the VCGLR since providing the Draft China Report in May 2019 (**Statement of Propositions Regarding China**).[123]

3.54 On 22 January 2021, Crown provided the VCGLR with its response to the VCGLR's Statement of Propositions Regarding China, rejecting the VCGLR's propositions and responding forcefully to the VCGLR's investigation.[124] Ms Coonan signed the letter outlining Crown's response. Ms Coonan agreed sufficient attention was not given to the letter and Crown was behaving exactly as it had in the past.[125]

3.55 On 19 February 2021, the VCGLR briefed the Hon Melissa Horne MP, Minister for Consumer Affairs, Gaming and Liquor Regulation with the Final China Report. As part of Mr Bryant's role in the Working Group, he was consulted and asked to provide materials to assist in the preparation of the Final China Report.[126]

First failure – non-transparent account in August 20017 presentation

3.56 Mr Bryant gave evidence that the first way in which Crown had failed to cooperate was in relation to information provided in the August 2017 Presentation.

3.57 The August 2017 presentation noted various matters about the China arrests, including that:[127]

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117 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0039, [113].
118 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0039, [114].
119 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0040, [115]-[116].
120 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0041, [119].
121 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0041, [122].
122 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0044, [131].
123 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0044, [133].
124 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0045, [134].
125 T3766:8-25 (Coonan).
126 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0046, [135].
127 Exhibit RC0001d, Crown Presentation to the Victorian Commission for Gambling & Liquor Regulation, August 2017, VCG.0001.0001.9002 at .0005; Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0008, [29]-[30]; T488-40 (Bryant).

(a) "[i]n early 2015, Chinese state media quoted an official of the Chinese government as saying that there was to be a crackdown on corruption and illegal activities, including gambling".

(b) "Crown had heard many rumours that illegal gambling was occurring in China … and understood [the 2015] crackdown to be targeting such gambling, rather than targeting the provision of assistance to customers to arrange visits to foreign or Macau casinos";

(c) Crown had received advice from Mintz, a risk management company, that: "according to sources working in the Public Security Bureau (PSB) in China, most provincial levels of the PSB had intelligence units that routinely monitored people engaging in gambling"; and

(d) "Crown continues to believe that its risk management framework and its risk management practices were and remain sound".

3.58 Mr Bryant's evidence was that after the August 2017 Presentation, Crown produced material in the June 2018 material and the March 2019 batch that he considered showed that some of the information in the August 2017 Presentation was inaccurate.[128]

3.59 In particular, the August 2017 Presentation:[129]

(a) suggested that, at the time of the employees' arrests, Crown was not aware of the risks that Chinese authorities were cracking down on foreign casinos such as Crown; and

(b) purported to provide a summary of advice from Mintz on page 6, that stated that "according to sources working in the Public Security Bureau (PSB) in China, most provincial levels of the PSB had intelligence units that routinely monitored people engaged in gambling".

3.60 Following a review of the March 2019 batch against the August 2017 Presentation, Mr Bryant set out his views about the inaccuracies in the August 2017 Presentation in a memorandum to Mr Adam Ockwell, the Director of the Compliance Division and a member of the Steering Committee (**April 2019 Memorandum**).[130] Mr Bryant's evidence was that he noted in the April 2019 Memorandum the following inaccuracies:

(a) As he had previously noted after reviewing the June 2018 Materials, the August 2017 Presentation at page 6, stated that Mintz had advised Crown that the PSB "routinely monitored people engaged **in gambling**", whereas the Mintz advice disclosed in the March 2019 batch revealed that Crown was advised that the PSB "routinely monitor people **who work in the gambling business**"[131] – Mr Bryant's saw the difference between these two sentences as significant;[132] and

(b) In the August 2017 Presentation at page 12, Crown stated that "Crown staff were instructed to: Not hand out promotional materials that referred to gaming facilities or terms of play (Crown did not produce such materials for distribution in China)", whereas the March 2019 batch included details that:[133]

[128] T46:34-45 (Bryant).
[129] T47:4-T49:36 (Bryant).
[130] Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0007 and .0031 [12], [87]; Exhibit RC0001bbb Memorandum regarding the China Investigation, 2 April 2019, VCG.0001.0002.6411; T51:34 - T5214.
[131] Exhibit RC0001bbb Memorandum regarding the China Investigation, 2 April 2019, VCG.0001.0002.6411 at .0004, [23A]; Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0031, [88].
[132] T56:6-17 (Bryant).
[133] Exhibit RC0001bbb Memorandum regarding the China Investigation, 2 April 2019, VCG.0001.0002.6411 at .0004, [23B]; T65:26-45 (Bryant).

(i) a shipment of gambling promotional materials in boxes from Crown to China was held at China's customers office in Guangzhou, which contained personalised invitations that required patrons to provide $1 million front money to participate in a gambling event; and

(ii) an email from the Hong Kong office, accompanying Crown promotional magazines (which contained details of gambling events in Australia) giving instructions for 300 promotional magazines (gambling version) to be hand-delivered to employees from China, for use in China.

3.61 In relation to paragraph 3.60(a) above, Mr Bryant's evidence was that in the interviews of Mr O'Connor and Mr Felstead, the position was that in early 2015, the crackdown was not in relation to overseas -based casinos attempting to lure gamblers but rather about corruption and gambling in China.[134] Accordingly, to change the substance of the Mintz advice from the PSB routinely -monitored "people who work in the gambling business" to "people engaged in gambling" was significant and important in the context of how Crown was trying to position to the VCGLR what had occurred in China around that time.[135]

3.62 The difference was significant for Mr Bryant because it showed the extent to which Crown was willing to admit what had occurred in China, willing to drill down into what happened and Crown's risk management strategies – that is, if Crown was not willing to admit there had been a crackdown about overseas-based casinos in China, they could not take the risk mitigation steps that they needed to take.[136]

3.63 In relation to paragraph 3.60(b) above, Mr Bryant's evidence was that, during the interviews with Crown witnesses, they were at pains to remind him that they operated in a low-key manner in China, and that included not handing out gambling material.[137] The gambling material could be distinguished from non-gambling material – it specifically referred to gambling events.[138]

3.64 It was significant that Crown was sending and distributing gambling material in China as they had told the VCGLR they were operating in a low-key manner in circumstances where that occurred after the crackdown in 2015, about which Crown was aware, and by doing so it put its staff (and Crown) at risk of prosecution in China.[139]

3.65 A further point raised during the course of Mr Bryant's evidence was in relation to an email dated 25 March 2015 sent from Mr Michael Chen, President, International Marketing for Crown based in Hong Kong to Mr Jason O'Connor, the Executive General Manager of VIP gaming at Crown, forwarding an email from Mr Randy Phillips of the Mintz Group.[140]

3.66 The email from Mr Phillips attached a memorandum from himself to Mr Chen titled "Ongoing Corruption Investigations in Macau", which stated that Mintz "learned that the Guandong PSB had recently received instructions from central PSB to step up monitoring of foreign gambling companies' marketing activities throughout China".[141]

3.67 Mr Bryant regarded this information as providing clear advice from Mintz that the PSB was targeting and monitoring foreign gambling companies and this had not been disclosed to the

134 T57:20-45 (Bryant).
135 T57:20-45 (Bryant).
136 T57:47-T5810 (Bryant).
137 T66:2-11 (Bryant).
138 T66:13-23 (Bryant).
139 T67:37 - T68:27 (Bryant).
140 Exhibit RC0004 Email from Michael Chen to Jason O'Connor, 26 March 2015, VCG.0002.0001.0012; T58:20 - T5926 (Bryant).
141 Exhibit RC0004 Email from Michael Chen to Jason O'Connor, 26 March 2015, VCG.0002.0001.0012 at .0003; T58:20 - T60:5 (Bryant).

VCGLR in August 2017.[142] Mr Bryant's evidence was that this memorandum had been available to Crown at the time of the presentation.[143]

Second failure – lack of candour from Crown executives

3.68 Mr Bryant's evidence was that, during Mr O'Connor's and Mr Felstead's interviews in March 2018:[144]

(a) neither Mr O'Connor nor Mr Felstead would concede that there had been a crackdown in China on overseas based casinos trying to attract gamblers;

(b) neither Mr O'Connor nor Mr Felstead admitted that they had ever seen the Reuters article;

(c) in respect of the 2015 Incident and letter to police:

(d) Mr O'Connor stated he had a vague recollection of the event but could not recall being made aware of the 2015 Incident at the time, and had no recollection of the letter to police;

(e) Mr Felstead stated he could not recall receiving any emails about the 2015 Incident but the letter to police "rings a bell".

3.69 Mr Bryant's evidence was that, after the interviews in March 2018, there were documents produced to the VCGLR and evidence given to the Bergin Inquiry that showed that Crown executives – Mr O'Connor and Mr Felstead – had not been forthright in those interviews.

3.70 The relevant documents were produced in the June 2018 material,[145] March 2019 material and in a production that sought those documents that was examined and referred to by the Bergin Inquiry, that had not been produced to the VCGLR.[146] Each will be considered in turn below, as well as the evidence given before the Bergin Inquiry.

June 2018 material

3.71 In the June 2018 material, there were four particular emails that Mr Bryant considered showed that Mr O'Connor and Mr Felstead had not been forthright regarding their recollection of key incidents in relation to China's crackdown in 2015.[147]

3.72 The **first** was an email dated 7 February 2015 from Mr Chen to Mr O'Connor copying Mr Felstead titled "Re CORRECTED – CHINA to crack down on foreign casinos seeking Chinese gamblers".[148] The email also attached the Reuters article.[149] Mr Felstead replied to Mr Chen's email, copying Mr O'Connor stating "[t]his suggests we may need to delay our plays on establishing physical office presence in China. Also, this raises the alert level on the safety of our staff …".[150]

3.73 Mr Bryant's evidence was that this email showed that Mr O'Connor and Mr Felstead were aware in at least February 2015 that the crackdown was broader than they suggested, in that it was not a general crackdown on illegal activity but rather a crackdown on foreign

142 T59:28 - T60:19 (Bryant).
143 T59:21-25.
144 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0014 to .0016, [46], [49], [52].
145 T69:45-T70:11 (Bryant).
146 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0041, [119]-[121].
147 T69:45 - T7011 (Bryant).
148 Exhibit RC0001nn Addendum report of Crown China Investigation, 8 June 2018, VCG.0001.0002.3330.
149 Exhibit RC0001nn Addendum report of Crown China Investigation, 8 June 2018, VCG.0001.0002.3330; Exh bit RC0001a Statement of Timothy Bryant, 15 April 2021 VCG.9999.0001.0002 at .0021 to .0022, [65].
150 Exhibit RC0001nn, Addendum report of Crown China Investigation, 8 June 2021, VCG.0001.0002.3330; Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021 VCG.9999.0001.0002 at _0022, [66(b)].

casinos in China.[151] This was in contrast to Mr O'Connor's evidence during the interview with the VCGLR that he was not aware of a specific crackdown on the casino industry in China and did not "recall any discussions about crackdowns specifically on casinos or gambling operators".[152]

3.74 The **second** was an email dated 11 February titled "RE: agenda for today" containing an agenda for a meeting or phone hook-up between Mr O'Connor, Mr Felstead, Mr Chen and Mr Ishan Ratnam.[153] Point 2 of the agenda stated: "Industry chatter re marketing crackdown. Avoid travel to mainland China for a while" and point 4 of the agenda stated: "Offices in China, Defer".[154]

3.75 The **third** was an email chain dated 8 February 2015 from Ms Jessica Liu (Crown China sales employee) to Mr Alfread Gomez, Executive Vice President China Crown Resorts, noting that Ms Liu "just got an update new from Shen Yang police bureau, since 2015 they will take strict action to hear the 5 type gamble behaviour. One of is to heat overseas casino staff and agency …", which Mr Gomez forwarded to Mr Chen on the same date stating "[c]ould you check with our lawyers on the seriousness of this one in China for our team based in China. Many have called and express concern when news came out in the social media. Here is another link" (attaching the Reuters article).[155]

3.76 The **fourth** was an email dated 7 February 2015 from Mr Howard Aldridge, Managing Director Crown Aspinalls London titled "China", attaching the Reuters article stating "Are you guys in Melbourne making any adjustments to the FY16 business plan based upon which is happening in China. Also, is there any concerns for the Crown staff working in China …".[156] On 9 February 2015, Mr O'Connor responded that "[t]hese issues will, undoubtedly bring considerable discussion during the planning process … Personally, I'm very concerned with the international business near term prospects for reasons I'm sure your well aware of … As for the staff, we are always very concerned for their well being and Michael is consulting our lawyers … In the meantime we all need to take extra care".[157]

March 2019 batch

3.77 Mr Bryant gave evidence that following receipt of the March 2019 batch, he had noticed an inconsistency between the answers that Mr Felstead had given in the interview and the documents he had reviewed, which suggested Mr Felstead must have been aware of the 2015 Incident and letter to police.[158]

3.78 There were two email chains that were the basis of Mr Bryant's view.

3.79 The **first** was an email dated 10 July 2015 from Mr O'Connor to Mr Felstead.[159] This email said that "[w]e had another employee questioned by the Chinese police yesterday. He seems to have been accused of organising gambling operations or something".[160]

3.80 On reviewing this email, Mr Bryant considered that what Mr Felstead said in his interview was not frank as this email clearly identified that he had been aware at the time that an

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[151] Exhibit RC0001nn Addendum report of Crown China Investigation, 8 June 2018, VCG.0001.0002.3330; T70:12-33 (Bryant); Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0022, [65(d)].
[152] T69:26-37 (Bryant).
[153] Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0021, [66].
[154] Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0021, [66].
[155] Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0023 to .0024, [67].
[156] Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0024 to .0025, [68].
[157] Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0024 to .0025, [68].
[158] T56:19-35, T57:5-12, T75:21-46, T76:1-21 (Bryant).
[159] Exhibit RC0006 Email chain between Jason O'Connor to Barry Felstead, 10 July 2015, CRL.638.001.0129; T76:30-43 (Bryant).
[160] T77:1-12 (Bryant).

employee in China had been accused of organising gambling operations, which was illegal at the time and remains illegal today.[161]

3.81 Mr Bryant's evidence was that the fact of this email was a matter Mr Felstead should have remembered at the time of his interview with Mr Bryant, whether or not the document was put to him.[162]

3.82 The **second** was an email chain from Wilmer Hale, Crown's solicitors in Hong Kong, forwarded by Mr Chen to Ms Jan Williamson and Mr O'Connor.[163] The email was ultimately forwarded to Mr Felstead, with Ms Williamson asking if Mr Tim Spearman could sign the letter on behalf of Crown Resorts Pte Ltd, being the Singaporean registered Crown company based on Hong Kong.[164] In response to this question, Mr Felstead said "fine by me".[165]

3.83 This indicated to Mr Bryant that Mr Felstead (1) had been aware of the request for a letter, that the response that Crown gave in the letter did not mention that Crown Resorts operates a casino and that the response gave the Chinese police no opportunity, without further investigation, to make a connection between Crown Resorts and gambling.[166]

3.84 Mr Bryant's evidence was that, while undertaking the investigation, he had identified matters where he regarded the information provided as misleading. OBJ He identified the information he considered misleading in a memorandum prepared in November 2020:[167]

(a) First, Crown's statements that the Chinese Government crackdown was not about trying to lure Chinese gamblers to overseas-based casinos.[168]

(b) Second, Crown's insistence that the substance of the Chinese government's questioning of Crown employees was about a gambler and not Crown's operations in China (Mr Bryan noted that when he came to prepare his statement he softened the language in relation to the issue).[169]

Evidence before the Bergin Inquiry

3.85 The VCGLR sought these documents from Crown on 1 October 2020 under a section 26 notice.[170]

3.86 The notice relevantly sought:

(a) in paragraph (g) an email from Mr Chen, forwarded by Mr O'Connor to Mr Felstead, regarding the 2015 Incident; and

(b) in paragraph (r), the letter to police confirming Mr Benny Xiong was employed by Crown Resorts Pte Ltd.

3.87 Mr Bryant's evidence was that Mr O'Connor and Mr Felstead gave different evidence to the Bergin Inquiry than they did to the VCGLR in their interviews in March 2018.

3.88 Mr O'Connor gave different evidence about:

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161 T77:1-35 (Bryant).
162 T77:37- T78:2 (Bryant).
163 Exhibit RC0007 Email chain between Barry Felstead to Jan Williamson, 10 July 2015, VCG.0001.0002.6070; T79:16-40 (Bryant).
164 T79:42 - T80:1 (Bryant).
165 T80:3-6 (Bryant).
166 T80:8-47 (Bryant).
167 Exhibit RC0001aaaa Memorandum regarding misleading statements at VCGLR interviews regarding the detention of Crown employees in China, 10 November 2020, VCG.0001.0002.6071; T115:3-12 (Bryant).
168 T116:17-27 (Bryant).
169 T116:29-39 (Bryant).
170 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0041, [119].

(a) the crackdown in China, where he readily conceded at the Bergin Inquiry that the crackdown was broader, in that there was a crackdown on overseas-based casinos.[171] In response to a question from counsel assisting the Bergin Inquiry, about whether Mr O'Connor became "aware of an announcement by the Chinese authorities that they were cracking down on foreign casinos recruiting Chinese citizens to gamble in other countries", Mr O'Connor said "[y]es, I was aware of that announcement";[172]

(b) the Reuters article, when he was asked by counsel assisting the Bergin Inquiry about the article, which Mr Bryant had shown and asked Mr O'Connor about in his interview in 2018. He was asked whether "this announcement by the Chinese authorities had the potential to create a risk to Crown's existing business operation in China", to which Mr O'Connor agreed saying he "interpreted this to represent a risk to [Crown's] business" and agreed that it was a matter that he needed to treat seriously.[173]

3.89 Mr Felstead gave different evidence about:

(a) the crackdown in China, because he conceded that it was "common knowledge" among Crown senior management that at that time the Chinese Government crackdown on foreign casinos was quite a different dimension to the existing crackdown on corruption;[174] and

(b) the issue of the 2015 Incident, in that he readily and frankly conceded the issue.[175]

3.90 Mr Bryant's evidence was that he was surprised and disappointed at how Mr Felstead had responded to the VCGLR interview.[176]

3.91 Mr Bryant's evidence was that he was frustrated by Mr O'Connor's change in behaviour with the Bergin Inquiry and how long it took to uncover the truth due to Crown's level of cooperation through the interviews and provision of material, and that Crown had assertively refuted almost every conclusion the VCGLR had drawn in the draft report prepared for the investigation in June 2018.[177] In particular, that there was a clear failure in the application of Crown's risk management processes and governance structures to what happened in China.[178]

3.92 Once Mr O'Connor and Mr Felstead had given that evidence at the Bergin Inquiry, Mr Bryant had considered whether to reinterview them.[179] However, the VCGLR decided to neither re-examine nor write to them ask them to explain the perceived inconsistencies in their evidence.[180] Mr Bryant's evidence was that this decision was made as Crown had been provided with the draft China Report, and Mr O'Connor and Mr Felstead had been afforded the opportunity to explain what had occurred at the interviews.[181]

3.93 Mr Bryant's evidence was that, in hindsight, now that he has access to all the documents that were not available during the course of the investigation, he certainly considers that at times the interviewees lied to him at the interview in relation to what they were and were not aware of.[182]

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171 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0040, [117(a)]; Exh bit RC0005, ILGA Transcript of Interview (O'Connor) 2 September 2020, COM.0002.0023.0115 at .0191 line 20; T70:45: T71:6 (Bryant).
172 T71:35-45 (Bryant).
173 T71:47-T72:47 (Bryant).
174 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0040, [117(b)].
175 T78:18-31 (Bryant).
176 T78:18-40 (Bryant).
177 T73:2-37 (Bryant).
178 T73:39 - T74:21 (Bryant).
179 T74:45 - T75:17 (Bryant).
180 T82:1-24 (Bryant).
181 T74:45 - T75:17 (Bryant).
182 T108:41 - T109:1 (Bryant).

3.94 Mr Felstead and Mr O'Connor will be afforded the opportunity to provide submissions in relation to the matters raised in Mr Bryant's statement and evidence.

Third failure – delay in providing information to VCGLR

3.95 Mr Bryant's evidence raised three issues in relation to the delay in providing information to the VCGLR during the China Arrests Investigation:

(a) First, Crown was not forthcoming in its disclosure of the information relevant to the China Arrests Investigation, in that Crown's responses to the section 26 notices issued by the VCGLR were often delayed or incomplete, which prevented the VCGLR from finalising its investigation and from including information about the China arrests in the Sixth Casino Review report.[183]

(b) Second, Crown's production of material to the VCGLR, such as the March 2019 batch and the restoration of backup tapes, was often influenced by what it had identified as relevant for discovery in the class action rather than separately considering what was responsive to the section 26 notice.[184]

(c) Third, Crown disclosed documents to VCGLR over which it waived legal professional privilege approximately two and a half years after the VCGLR commenced its investigation, and only after it waived privilege in those documents in the class action.[185]

Delayed production and effect on investigation

3.96 Mr Bryant's evidence was that, before he became involved in the investigation, the team sought documents from Crown on an informal basis by email.[186] Requests were made in September and October 2017, and the first batch of production was made by Crown in November 2017.[187]

3.97 By the time that Mr Bryant became involved at the end of November 2017, he decided to put in place deadlines and rigour by adoptinga formal approach and requiring the production of documents under section 26 notices.[188] Mr Bryant adopted this approach as he considered the responses were taking too long in circumstances where the VCGLR's previous requests were largely confined to specified documents that he expected would be readily available to Crown to produce.[189] The VCGLR continued to issue section 26 notices throughout the investigation until November 2020.[190]

3.98 Mr Bryant's evidence was that Crown's responses to notices were piecemeal in nature, in that they were spread over multiple responses, and critical information was provided for the first time at a late stage when Crown was in the process of finalising a report.[191]

3.99 In respect of the piecemeal approach taken by Crown, Mr Bryant gave evidence that the VCGLR continued to receive Crown's productions in response to section 26 notices months after the initial production was made. For example:

(a) On 7 and 8 June 2018, Crown produced the June 2018 material in response to section 26 notices issued by the VCGLR in January and February 2018, which

[183] T82:41 - T83:11 (Bryant); Exh bit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0047, [138(b)].
[184] Exh bit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0031, .0047, [86(b)], [138(c)].
[185] Exh bit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0048, [138(e)].
[186] T84:44 - T85:29 (Bryant).
[187] Exh bit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0009, [31]-[32]; T84:44 - T85:29 (Bryant).
[188] T84:44 - T85:32 (Bryant).
[189] T52:27 - T53:39 (Bryant); Exh bit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0011, [38].
[190] T85:39-47 (Bryant).
[191] T83:13-23 (Bryant).

material Crown had identified in the course of reviewing material restored from backup tapes for discovery in the class action.[192]

(b) On 21 September 2018, Crown produced four volumes of documents in response to a section 26 notice sent on 23 August 2018,[193] and a further seven documents on 12 October 2018.[194] In both responses, Crown noted words to the effect that further documents may emerge as Crown continued its discovery review for the class action.[195]

(c) Following a letter from the VCGLR, in which it identified information missing from Crown's production on 12 October 2018 and stated it intended to complete its investigation in the near future, so required all outstanding documents to be produced by 5 December 2018, Crown produced:

(i) on 5 December 2019, eight folders of additional material;[196] and

(ii) on 18 March 2019, the March 2019 batch which was responsive to notices issued in February and August 2018, comprising a further 85 documents which Mr Bryant considered could have been produced earlier, and included new substantive information relevant to the investigation.[197]

3.100 Mr Bryant's evidence was that, in total, Crown produced around 15 to 20 lever arch folders of material.[198]

3.101 In respect of the delay, Mr Bryant's evidence was that it seemed that every time the VCGLR was close to completing a report in relation to the investigation, more material would be provided.[199] This happened on three occasions:[200]

(a) First, on 8 June 2018, the VCGLR provided Crown with a Summary Report on the findings to date of the China Arrests Investigation, and Crown produced the June 2018 material on 7 and 8 June 2018. On reviewing the June 2018 material, it became apparent that the material strengthened the findings in the Summary Report and would have been put to the Crown executives in their interviews had it been available.[201]

(b) Second, on 15 January 2020, new information arose from Crown's waiver of legal professional privilege in the class action over communications with Wilmer Hale.[202]

(c) Third, on 22 December 2020, the VCGLR learned that Crown had given evidence to the Bergin Inquiry that it accepted its risk management structures and processes were not used and failed in respect of the China arrests, in contrast to the position taken by Crown with the VCGLR.[203] The concessions made by Crown to the Bergin Inquiry prompted the VCGLR's request for a response from Crown to the VCGLR's Statement of Propositions Regarding China.[204]

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192 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0019 to .0020, [58]-[59]; T86:18-41 (Bryant).
193 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0029, [81]; T86:43-T87:19 (Bryant).
194 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0030, [84].
195 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0030 to .0031, [82]-[84]; T86:43 - T87:19 (Bryant).
196 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0030, [86(a)];
197 T54:4-26 (Bryant); Exh bit RC0001a, Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0031, [86(b)].
198 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0029 to .0030, [84]-[86]; T86:43-T87:19 (Bryant).
199 T83:21-23 (Bryant).
200 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at _0047, [138(b)].
201 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0020 to .0021, [62].
202 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0038, [110].
203 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0044, [132].
204 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0044. [133].

3.102 Mr Bryant also gave evidence that Crown redacted the documents it produced to the VCGLR on the basis of relevance and confidentiality.[205] Mr Bryant gave evidence that the VCGLR did not consider it appropriate that Crown redact on the basis of relevance or confidentiality, as the regulator would take all steps to protect the integrity of any material produced.[206] Mr Bryant gave evidence that on 23 August 2018, the VCGLR sent a letter outlining to Crown that documents had to be produced without redactions (other than for legal professional privilege).[207] Mr Bryant's evidence was that, after 23 August 2018, Crown no longer made redactions to documents other than for legal professional privilege.[208]

3.103 Mr Bryant gave evidence that he discussed his concerns internally about the way in which Crown was engaging with the VCGLR.[209] Mr Bryant outlined his concern about the delay and the way in which Crown had engaged with the VCGLR in the April 2019 Memorandum to Mr Ockwell.[210]

3.104 Mr Bryant's evidence was that he included these observations in memoranda to the VCGLR Commissioners to make clear his frustration with the process and the impact Crown's approach had had on the timeliness for finalising the investigation and the Final China Report.[211] However, Mr Bryant's evidence was that ultimately his key focus was on progressing the investigation, and he did not want to get side-tracked by this with issues relating to document production, despite how important that matter was to the course of the investigation.[212]

3.105 Mr Bryant considered it was appropriate for the VCGLR to consider whether it should take steps against Crown for failing to produce documents under the section 26 notices, but ultimately did not want to distract from the China Arrests Investigation.[213] Mr Bryant was not aware of any steps taken by the VCGLR against Crown under section 27 of the CCA in respect of non-compliance with a section 26 notice, nor in the course of the China Arrests Investigation.[214] Mr Bryant's evidence was that this was something that the VCGLR would be considering as part of its final report and outcomes.[215]

3.106 On 22 January 2019, the VCGLR wrote to Crown (through Minter Ellison) and invited them to put on a statement about the process that it took in responding to the section 26 notices.[216] Mr Bryant's evidence was that Crown never provided such a statement or any explanation or justification for its approach to compliance with the section 26 notices.[217]

3.107 Mr Bryant considered that Crown would have been well aware of what the purpose of the investigation was, as the purpose was outlined to employees and executives in correspondence and at the outset of the interviews, which is clear from the transcripts of the interviews.[218] At least in the first notice sent to Crown the notice contextualised the investigation by giving some background.[219]

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205 T93:7-18 (Bryant).
206 T84:35 - T85:6 (Bryant).
207 Exhibit RC0001a, Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0028 to .0029, [79]-[80]; T95:8-18 (Bryant).
208 T95:20-29 (Bryant).
209 T54:40 - T55:6, T83:43 - T84:3 (Bryant).
210 T54:28-43 (Bryant).
211 T84:5-37 (Bryant).
212 T55:8-29 (Bryant).
213 T89:10-25 (Bryant).
214 T89:27-41 (Bryant).
215 T89:43 - T90:1 (Bryant).
216 Exhibit RC0001zz Letter from Adam Ockwell to Richard Murphy, 22 January 2019, VCG.0001.0002.3363; T92:37-47 (Bryant).
217 T92:4-18 (Bryant).
218 T91:15-27 (Bryant).
219 Exhibit RC0001k Letter from Stephen Berriman to Michelle Fielding, 4 January 2018, VCG.0001.0002.3307; T93:40-46, T94:1-3 (Bryant).

3.108 The VCGLR's concerns with Crown's approach were raised in the Draft China Report, which the VCGLR provided to Crown on 19 May 2019.[220] In particular:

(a) At page 20, the VCGLR dealt with Crown's provision of material and cooperation with the VCGLR. Mr Bryant considered it should have been obvious to Crown that this section was discussing production of documents under section 26 notices for the purposes of this investigation.[221]

(b) At page 21, the Draft China Report stated under "Incomplete search for documents" that "[t]he VCGLR has issued a wide variety of requests for documents during the investigation" and that on 29 May 2018 "Crown advised the VCGLR that 'primarily for the purpose discovery of documents in their class action' they have restored tapes", which suggested that Crown did not undertake a thorough and diligent search for documents answering the VCGLR's notice under section 26 until the discovery process required by the Federal Court for the class action.[222]

3.109 Mr Bryant's evidence was that, by raising this in the Draft China Report, he was bringing Crown's conduct not only to the attention of the VCGLR, but also bringing to Crown's attention his frustrations with the delays.[223] Mr Bryant's evidence was that he noticed no change to Crown's approach to document production after they were provided with the Draft China Report.[224]

3.110 The Draft China Report was provided to the Board ahead of its meeting in June 2019. Ms Korsanos gave evidence that she read a copy of the Draft China Report when it was provided to the Board ahead of its meeting in June 2019.[225] Ms Korsanos gave evidence that she was concerned by the issues raised in the report, in that she was not aware of the level of knowledge that had existed within Crown about the China arrests matter.[226] Despite those concerns and the detail contained in the Draft China Report, the Board did not ask questions, suggest further inquiry be made or require an explanation from management about the events and failings that led to the China arrests.

3.111 Ms Korsanos was taken to the minutes from the Board meeting at which the Draft China Report was discussed.[227] She accepted that in the Board's consideration of the Draft China Report, there was no discussion of whether insisting that a summary report be provided to the VCGLR would hurt the relationship with the regulator.[228] It was put to Ms Korsanos that at no point in the Board minutes or any other Board papers regarding this issue does it appear that the Board had regard to Crown's relationship with the regulator or the regulator's statutory functions and obligations and how Crown's position might affect that.[229]

3.112 Ms Korsanos conceded that she has realised during her time at Crown that there was a defensive culture, and that the Board meeting on 12 June 2019 where Crown's response to the Draft China Report was discussed demonstrated "that defensive culture … coming

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220 Exh bit RC0001kk Letter from Catherine Myers to John Alexander, 8 June 2018, VCG.0001.0002.3333; Exh bit RC0001a, Statement of Timothy Bryant, 15 April 2021 VCG.9999.0001.0002 at .0032, [91].
221 T91:31-41 (Bryant).
222 T91:43 - T92:19 (Bryant).
223 T92:21-26 (Bryant).
224 T92:28-32 (Bryant).
225 T3652:7-15 (Korsanos - closed hearing).
226 T3652:27 - T3653:3 (Korsanos - closed hearing).
227 Exh bit RC0278, Crown Resorts Limited Board Meeting Minutes, 12 June 2019, CRL.503.001.0005 at .0010-.0011; T3653:10-42 (Korsanos - closed hearing).
228 T3657:11-17 (Korsanos - closed hearing).
229 T3659:30-T3670:14, T3653:2-3 (Korsanos - closed hearing).

through".[230] Ms Korsanos agreed that that defensive culture contributed to a deterioration in the relationship with the regulator.[231]

3.113 Further, Ms Korsanos' evidence was that she did not challenge a recommendation or the ultimate decision by the Board to suggest that a much shorter executive summary, together with a response from Crown, be provided to the Minister.[232]

3.114 The Board's decision to suggest that a much shorter executive summary be provided to the Minister, rather than the full report, is a telling sign of its attitude to transparency and cooperation with the VCGLR. There may be a variety of reasons why Crown sought to respond as it did. The result was that the Board condoned the defensive approach to the VCGLR's investigation and failed to take the opportunity to be transparent and cooperate with the VCGLR in the China Arrests Investigation. Had the directors probed management and questioned recommendations that were made, the result may have been different.

3.115 Mr Bryant also gave evidence about the Final China Report. He did not draft the Final China Report but had input into it, in that he provided materials that went into the draft and was involved in close reviews of the draft report.[233]

3.116 Mr Bryant gave evidence about the comments made in the Final China Report about Crown's attitude to production to the VCGLR throughout the China Arrests Investigation.

3.117 He confirmed that the description in that report of Crown as "belligerent" throughout the course of the investigation was consistent with his experience of Crown's behaviour (although he would not have necessarily used that word and instead would have described the behaviour as almost aggressive or defensive in asserting their position contrary to what the facts of the investigation had shown).[234] Mr Bryant considered that as a result of the Bergin Inquiry, Crown became more cooperative in the investigation, particularly when they shifted their position in relation to agreeing that their risk management procedures had not been appropriately applied after the VCGLR provided them with the second draft report in July 2019.[235] It is regrettable that it took so long.

3.118 Mr Bryant agreed with the statement at paragraph 743 of the Final China Report, that

> *production of documents continued, on a drip-feed basis, particularly after the shareholder class action was commenced, and it would seem that Crown may have conducted more thorough document searches in the context of its discovery obligations to those which it had previously conducted in purported compliance with the Commission's directions for the production of documents.*[236]

Mr Bryant also agreed with the statement that:

> *[i]t is particularly concerning to the Commission that this would seem to suggest that the document searches conducted by Crown in response to the Commission exercising its compulsory powers were less thorough and diligent than those undertaken for the purpose of the class action litigation.*[237]

230 T3660:16-26 (Korsanos - closed hearing).
231 T3661:6-21 (Korsanos - closed hearing).
232 T3655:42-46 (Korsanos - closed hearing).
233 T96:2-5, T98:30-40 (Bryant).
234 T96:2-42, T98:42-47 T99:1-12 (Bryant).
235 T96:44-47, T97;2-19 (Bryant).
236 T97:40-47, T98:1-11 (Bryant).
237 T98:13-24 (Bryant).

3.119 Ms Fielding gave evidence that, as at 28 June 2021, she had not read the entirety of the Final China Report.[238] Nor had she asked someone in her team to read it and provide a report.[239] Ms Fielding agreed that it was a significant report on a significant matter.[240]

3.120 Ms Fielding agreed that it was concerning that the regulator would describe Crown's approach to the investigation as belligerent.[241]

3.121 Ms Fielding agreed that if Crown delayed in providing documents and gave production in a piecemeal way, and was belligerent to the VCGLR, then that was unacceptable.[242][243]

Production reactive to class action

3.122 As noted above, Mr Bryant gave evidence that on occasion Crown produced documents that were responsive to the VCGLR that were only located due to Crown's efforts in identifying documents for discovery in the class action.

3.123 This became apparent to Mr Bryant on 16 February 2018,[244] when Crown identified that in its review of its database for documents for discovery in the class action, it was undertaking restoration of back-up tapes (which it had not done for the VCGLR notices), and was reinforced on seven occasions:

(a) First, on 23 and 29 May 2018, Crown identified that, in the course of reviewing the material restored from back up tapes for discovery in the class action, Crown had identified further documents, which it produced as the June 2018 material.[245]

(b) Second, on 12 June 2018, in response to Mr Bryant's query about whether the June 2018 material was going to be the final production of documents, Minter Ellison responded that "this is the final production, subject to anything further being found in the course of dealing with the class action".[246]

(c) Third, on 21 September 2018, Minter Ellison sent a letter in response to a section 26 notice sent on 23 August 2018 stating that Crown understood that the VCGLR may wish to reserve its position in reopening the investigation "if further documents or evidence is uncovered in the course of the class action".[247]

(d) Fourth, on 12 October 2018, Crown produced a further seven documents it said were not identified in previous searches and that other documents may emerge as Crown continued its review of the tranche 2 discovery dataset in the class action.[248]

(e) Fifth, on 18 March 2019, Crown produced the March 2019 batch which comprised 85 documents that it said were identified following Crown's "review of the subset of key documents discovered to date which it had identified as most likely to be of relevance in the class action".[249]

(f) Sixth, on 12 June 2019, Crown produced further material stating that discovery in the class action was now complete and that

238 T2647:12-31 (Fielding).
239 T2648:26-30 (Fielding).
240 T2647:12-31 (Fielding).
241 T2649:2-15 (Fielding).
242 T2667:16-19 (Fielding).
243 T2650:42-46, T2651:1-7(Fielding).
244 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at _0013, .0029, [43], [83];
245 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0019 to .0020, [57]-[59];
246 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0020, [61];
247 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0029, [82];
248 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0030, [84];
249 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0031, [86(b)].

> *[a]ccordingly, the enclosed documents will be the final set furnished to the VCGLR unless further discovery is ordered or further documents are obtained from external sources.*[250]

(g) Seventh, on 15 January 2020, Crown produced documents to the VCGLR over which a claim of legal professional privilege was previously pressed, and which claim had been waived in the class action.[251]

3.124 Mr Bryant's expectation was that Crown would have approached responding to the VCGLR's notice and its discovery obligations in the class action with the same level of seriousness.[252]

3.125 Mr Bryant's evidence was that the further documents that were produced in 2019 and into 2020, appeared to be prompted by the documents being located for the purposes of the class action, which gave Mr Bryant the impression that Crown was not undertaking searches for documents responsive to the section 26 notices, but rather Crown was producing these further documents to the VCGLR where they had come to the attention of Crown through the class action discovery process and were also responsive to section 26 notice.[253]

3.126 Ms Fielding conceded that she could understand why the VCGLR was frustrated by Crown's production being dictated by its discovery obligations in the class action.[254]

Documents withheld on the basis of legal professional privilege

3.127 Mr Bryant gave evidence about how Crown disclosed documents the subject of legal professional privilege in the class action approximately two and a half years after the VCGLR commenced its investigation.[255]

3.128 This occurred in two respects: first, by disclosing advices from Wilmer Hale in the class action, and second by disclosing documents to the Bergin Inquiry.

3.129 First, on 15 January 2020 the VCGLR was provided with advices sought by Mr Chen from Wilmer Hale between February 2013 and March 2015 regarding China's crackdown in 2015, which Crown waived legal professional privilege over in the class action.[256] The disclosure of these documents also showed that Crown had sought legal advice on the issue as far back as 2011 or 2012, and in turn showed that Crown executives had knowledge of these matters.[257] Mr Bryant's impression was that Crown provided the material to the VCGLR on the basis that the material was becoming public in any case, so in that sense it was coincidental.[258]

3.130 The production of the Wilmer Hale advices was relevant to the China Arrests Investigation because a key part of the investigation was that Crown had relied on legal advice in relation to Chinese law and had interpreted it in a particular way, a proposition that the VCGLR could not test.[259]

3.131 Mr Bryant's evidence was that, if the VCGLR had been provided with these advices at an earlier stage in the investigation, it would have had the opportunity to ask questions about

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250 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0033, [93].
251 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0038, [110].
252 T88:22-26 (Bryant).
253 T87:21-47, T88:1-7 (Bryant).
254 T2651:9-20 (Fielding).
255 T101:11-17 (Bryant).
256 Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0039, [114(a)]; T101:43-46, T102:1-20, T103:31-46 (Bryant).
257 T101:28-41 (Bryant).
258 T104:1-11 (Bryant).
259 T102:25-40 (Bryant).

the material during the interviews, and also would have had an opportunity to assess the scope and nature of the advice and whether or not it was reasonable.[260] Mr Bryant's assessment of the advices was that the instructions for the advice were very narrow in that they did not set out the extent of Crown's operations in China, nor did they take into account the Chinese authorities' interpretation of their own laws.[261]

3.132 Mr Bryant's evidence was also that these documents evidenced that Crown had more awareness about the nature of the crackdown in China and the potential risk to its employees than it represented to the VCGLR during the China Arrests Investigation.[262] This was part of the reason why Mr Bryant became aware that Mr Felstead and Mr O'Connor had a greater understanding about the extent of the crackdown in China in 2015.[263]

3.133 Second, in early December 2020, the VCGLR was provided with a copy of the written submissions made by counsel assisting the Bergin Inquiry, which showed that Crown may have produced documents in the Bergin Inquiry that were otherwise subject to legal professional privilege, but it appeared to have done so pursuant to an arrangement where those documents were produced but otherwise kept confidential for use by the Bergin Inquiry for its investigation.[264]

3.134 Mr Bryant gave evidence that at no point in the course of the China Arrests Investigation did Crown approach the VCGLR to ask the VCGLR to agree a similar arrangement whereby privilege documents could be produced but kept confidential.[265] Mr Bryant's evidence was that, had Crown asked this, that would have assisted with the conduct of the investigation.[266]

Fourth failure – shift in position

3.135 Mr Bryant gave evidence that Crown shifted in its position by making concessions during or after the Bergin Inquiry that were not offered to the VCGLR at any point before the Bergin Inquiry.[267]

3.136 Mr Bryant's evidence was that, in contrast to Crown's position in relation to the Summary Report and Draft China Report, Crown made concessions during or after the Bergin Inquiry in two ways:

(a) First, Crown's submissions to the Bergin Inquiry conceded that risk management structures were not engaged, and the issues in China were not escalated to the board level, which was unacceptable.[268]

(b) Second, following Crown's submissions to the Bergin Inquiry, Crown provided a response to a letter from the VCGLR regarding those submissions in which it accepted that its risk appetite was not set by the board, but rather it had tried to manage the risk "on the ground," and that there was a failure of risk management structures.[269]

3.137 Crown's position conveyed to the VCGLR from the commencement of the China Arrests Investigation, and throughout 2018, was that it had an adequate risk management framework.[270] By July 2019, Crown had softened in that position, and by the time of the Bergin Inquiry, they had conceded that there were failings in the risk management

[260] T102:42 - T103:11 (Bryant).
[261] T103:13-24 (Bryant).
[262] T101:17-26 (Bryant).
[263] T101:22-26 (Bryant).
[264] T104:28-42 (Bryant).
[265] T105:30-35 (Bryant).
[266] T105:42-45 (Bryant).
[267] T105:47 - T106:5 (Bryant).
[268] Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0044, [132].
[269] Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0044 to .0046, [133]-[134].
[270] T106:6-16 (Bryant).

framework.[271] Crown made these concessions to VCGLR, albeit late in the piece.[272] Mr Bryant's evidence was that, had Crown taken that approach at the outset, it would not have been necessary to undertake the protracted and reasonably intensive investigation that the China Arrests Investigation became.[273]

3.138 Mr Bryant gave evidence that Crown's initial approach to the China Arrests Investigation, when he first became involved, was that there were three or four key incidents that occurred that Crown did not want to accept or acknowledge were key risk indicators or incidents.[274] Mr Bryant felt that in undertaking the investigation, at every step the VCGLR had to very thoroughly and diligently work to try to prove the point it was making about Crown's approach to risk.[275] He felt the investigation was particularly protracted because of the position that Crown took in this way, along with the incomplete state of disclosure of documents and that they were provided on a staggered basis, all of which made it difficult to finalise the investigation.[276]

What Crown's conduct during the China Arrests Investigation showed

3.139 Crown's defensive approach to the VCGLR's China Arrests Investigation frustrated and prolonged an investigation which ran for over three years. Crown failed to appreciate that its interests were aligned with the VCGLR, in terms of understanding the circumstances that led to the China arrests and ensuring Crown had in place robust systems and processes that would ensure a similar issue would not arise again in the future. It is inexplicable that that defensive stance continued during the Bergin Inquiry in 2020, when Crown's renewal program and culture reform purportedly began. The VCGLR has now completed its investigation and made a number of findings which are adverse to Crown. The defensive stance taken by Crown was not justified in light of the VCGLR's findings. The approach taken has undoubtedly contributed to a deterioration in Crown's relationship with the VCGLR.

Recommendation 17

Introduction

3.140 In relation to the issue of Crown's engagement with the VCGLR on the implementation of Recommendation 17 from the Sixth Casino Review, the Commission heard evidence from Mr Jason Cremona, Manager of Licence Management and Audit Team (**LMA**) in the Licensing Division.[277]

3.141 Mr Cremona has worked at the VCGLR since its inception in 2012.[278] He has been working in gambling regulation and auditing since he obtained his Bachelor in Commerce in 1997, at which time he commenced with the Victorian Casino and Gaming Authority (**VCGA**) as an assistant auditor and maintained audit positions since that time.[279] Mr Cremona gave evidence that a significant proportion of his work since 1997 has involved auditing Crown.[280]

3.142 Mr Cremona directly reports to Ms Alex Fitzpatrick, Director of Licensing, and he has approximately 16 to 18 staff that report to him, being various line managers in relation to each of the functions that his team performs.[281]

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[271] T106:18-32 (Bryant).
[272] T106:39-46 (Bryant).
[273] T107:1-6 (Bryant).
[274] T107:17-22 (Bryant).
[275] T107:22-25 (Bryant).
[276] T107:27-32 (Bryant).
[277] Exhibit RC0008 Statement of Jason Cremona, 15 April 2021, VCG.9999.0001.0001 at .0001, [1].
[278] T125:22-29 (Cremona).
[279] T125:44-46, T126: 1-6 (Cremona).
[280] T126:8-13 (Cremona).
[281] T126:15-34 (Cremona).

Scope of Recommendation 17

3.143 In response to a request from the Commission that the VCGLR provide an example that illustrates how cooperative and responsive Crown has been in its dealings and approach to dealing with the VCGLR, Mr Cremona identified the implementation of Recommendation 17 in the Sixth Casino Review, which related to money laundering.[282]

3.144 Mr Cremona was not involved in the review process to prepare the Sixth Casino Review Report.[283] Mr Cremona said that his team, LMA, was allocated the responsibility for assessing Crown's implementation of the Sixth Casino Review recommendations.[284] His team comprised himself, Mr Rowan Harris (Principal Major Licence Officer) and Steven Thurston (Licence Manager).[285]

3.145 Recommendation 17 was set out on page 138 of the Sixth Casino Review Report in the following terms:[286]

> *… by 1 July 2019, Crown undertake a robust review (with external assistance) of relevant internal control statements, including input from AUSTRAC, to ensure that anti-money laundering risks are appropriately addressed.*

3.146 The Sixth Casino Review provided further context for the purpose of Recommendation 17. Specifically, it stated that:[287]

> *The VCGLR observes that to assist in mitigating the risks associated with junkets, the current internal control statements for junkets could be strengthened with the inclusion of more robust controls in relation to the identification of individual junket players and their associated gaming transactions when participating in junkets.*

3.147 Mr Cremona's evidence was that there were three parts to Recommendation 17:

(a) first, that there was to be a robust review by Crown of the relevant internal control statement/s (**ICS**);

(b) second, that the review had to be done with external assistance; and

(c) third, that Crown had to seek input from AUSTRAC about its review.[288]

3.148 Mr Cremona's view was that Recommendation 17 required Crown to assess the suitability of relevant ICSs and at a minimum ensure greater visibility of individual junket players and their gaming activity, such as contributions to the front money of the junket programs, and in general, ensure that AML risks were appropriately mitigated via these controls in the ICSs.[289]

3.149 Mr Cremona explained that an ICS was required under section 121 of the CCA, being a suite of controls that govern how Crown should conduct its business.[290] Crown cannot conduct operations in the casino unless the VCGLR has approved the ICS, and the CCA establishes a lengthy process for approval.[291]

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282 T128:7-24 (Cremona).
283 T127:43 - T128:5 (Cremona).
284 Exhibit RC0008 Statement of Jason Cremona, 15 April 2021, VCG.9999.0001.0001 at .0006 at [15].
285 Exhibit RC0008 Statement of Jason Cremona, 15 April 2021, VCG.9999.0001.0001 at .0006 at [15].
286 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, COM.0005.0001.0776 at .0917; T128:43 - T129:2 (Cremona).
287 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, COM.0005.0001.0776 at .0917; T129:38 - T130:3 (Cremona).
288 T129:4-17 (Cremona).
289 Exhibit RC0008 Statement of Jason Cremona, 15 April 2021, VCG.9999.0001.0001 at .0009, [26].
290 T129:19-25 (Cremona).
291 T129:27-36 (Cremona).

Aim of Recommendation 17

3.150 Mr Cremona's evidence was that at the time of the Sixth Casino Review the VCGLR's view was that there was an obvious gap in the requirements of the ICSs.[292]

3.151 In particular, at the time of the Sixth Casino Review there was no procedure in place for individual junket players to make known the proportion of their contribution to the front money.[293]

3.152 The ICSs in place at the time concerned junket operators and players who were not junket players (individual premium players) and so did not require information about individual junket players.[294] Mr Cremona's evidence was that for Crown's ICSs to identify and record the flow of junket player funds within the junket, at a minimum, would assist in minimising the AML risk for Crown.[295]

3.153 In general terms, a junket is an arrangement between the casino and the junket operator to facilitate a period of gambling by junket players, and in return for bringing to the casino those players, the casino pays the junket operators a commission based on the collective gambling of the group.[296]

3.154 Mr Cremona's understanding was that for the casino to determine how much it has to pay the junket operator, it only needs to ascertain how much has been gambled by the junket as a whole, rather than how much each individual has gambled or brought to the table.[297]

3.155 When a junket arrives at the casino, the front money for gambling (being how much money the junket starts with) is "put up" by the junket operators, and the casino would not know how much each junket player contributed to that front money.[298]

3.156 Unless there was some procedure in place for requiring individual junket players or the junkets to make that known, it would not be known by the casino.[299]

3.157 Mr Cremona's evidence was that Crown's Junket and Premium Player ICS (**Junkets ICS**) required visibility of the front money contributed by premium players, and junket operators, but not junket players.[300]

3.158 At the time of the Sixth Casino Review, the relevant ICS contained requirements for individual premium players in relation to front money, and Mr Cremona gave evidence that there should not be a distinction drawn between an individual premium player and a junket player to ensure there was the same level of transparency for contributions to front money from junket players as for individual premium players.[301]

3.159 Mr Cremona's evidence was that Crown treated the junket operator as the customer, and although there was visibility over the junket operator's transaction with Crown, there was none at the level of the individual junket players for contributions to front money.[302]

3.160 For this reason, page 138 of the Sixth Casino Review, where Recommendation 17 is set out, discussed the concept of treating individual junket players and non-junket players

[292] T134:34-39 (Cremona).
[293] T131:24-28 (Cremona).
[294] T131:34-46(Cremona).
[295] T153:20-29 (Cremona).
[296] T130:14-24 (Cremona).
[297] T130:32-46 (Cremona).
[298] T131:1-16 (Cremona).
[299] T131:18-22(Cremona).
[300] T131:4-17 (Cremona).
[301] T132:19-46 (Cremona).
[302] T132:1-15 (Cremona).

(being premium players) in the same way in respect of transparency over front money contributions.[303]

3.161 Mr Cremona gave evidence that being able to identify individual junket players and their associated transactions would provide greater visibility over source of funds and to ensuring those contributions were not from illicit activities.[304] Mr Cremona agreed that anonymity is an important part in successful money laundering activities and although the removal of that might not stop money laundering it could be a powerful disincentive and assist Crown to mitigate that risk.[305]

3.162 Mr Cremona's evidence was that the VCGLR's concerns underpinning the reasoning for Recommendation 17 were the same as those outlined by AUSTRAC in a document published in late 2020 titled "Junket Tour Operations in Australia – Money Laundering and Terrorism Financing Risk Assessment" (**AUSTRAC Report**).[306]

3.163 The AUSTRAC Report:

(a) identified vulnerabilities in junket tour operations – being that they are exposed to a high level of money laundering and terrorism financing vulnerability, and that a key vulnerability is the lack of transparency and level of anonymity created by the pooling of all players' funds and transactions under the name of the junket tour operator, and that the financial arrangements between the junket tour operator and the junket players are not disclosed to the casino – Mr Cremona agreed this sentiment reflected the view held by the VCGLR during the course of his assessment of the implementation of Recommendation 17;[307]

(b) noted the nature and extent of money laundering threats associated with junkets, and that junkets are exposed to infiltration by transnational serious and organised crime groups[308] – Mr Cremona agreed that it was well-known that the nature and extent of money laundering threats associated with junkets is high, and junkets are exposed to infiltration by transnational and serious organised crime -groups;[309]

(c) noted that AUSTRAC assesses that the general risk profile of persons involved in junkets is high, as under current arrangements it is not possible to clearly determine beneficial ownership and control of the funds while the use of cash increases anonymity – Mr Cremona's evidence was that these observations were consistent with his understanding of the VCGLR's intention in pursuing Recommendation 17.[310]

(d) noted the range of practices used by casinos to mitigate the risk of junkets, including retaining detailed records of gaming activity of junket players and recording all gambling activities – Mr Cremona's evidence was that these practices were consistent with what is said in the Sixth Casino Review in relation to Recommendation 17 at page 138, with the addition that Crown is required to actively

303 T132:17-29 (Cremona).
304 T133:31-36 (Cremona).
305 T133:38 - T134:1 (Cremona).
306 Exhibit RC0010 Report on Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment, 2020, COM.0005.0001.1137; T134:41-T13534 (Cremona).
307 Exhibit RC0010 Report on Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment, 2020, COM.0005.0001.1137 at .1141; T135:3-34 (Cremona).
308 Exhibit RC0010 Report on Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment, 2020, COM.0005.0001.1137 at .1153, .1157; T135:36-40 (Cremona).
309 T135:42-T136:9 (Cremona).
310 Exhibit RC0010 Report on Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment, 2020, COM.0005.0001.1137 at .1163; T136:17 - T137:19 (Cremona).

monitor the level of turnover from each junket player, although this does not resolve the issue of anonymity.[311]

3.164 Mr Cremona gave evidence that in November 2018, he and Mr Harris engaged with Ms Miriam Holmes, one of the employees who worked on the Sixth Casino Review, to discuss the background to the recommendations.[312]

3.165 Ms Holmes advised him that the concerns giving rise to Recommendation 17 were consistent with concerns raised in the AUSTRAC Report.[313] In particular, that:[314]

(a) the VCGLR, other regulators and law enforcement agencies are aware of the significant potential risks of money laundering through casinos, in particular through junket operations;[315] and

(b) while the Melbourne casino conducts Know Your Customer (**KYC**) due diligence on the customer, being the junket operator, there are no KYC requirements for participants. This arrangement results in cash or other funds being moved through the junket, where neither the source of funds, the owner of funds nor the identity of the individual conducting the betting transaction or cash deposit is known.[316]

3.166 Mr Cremona gave evidence that what the VCGLR was requiring Crown to do by Recommendation 17 was to essentially include those parts of the ICS relevant to premium players in relation to identifying front money contributions in the ICS relevant to junkets, and that he would expect this to take a very small amount of time.[317]

3.167 Mr Cremona observed that one of the purposes of the CCA is to avoid the infiltration or exploitation or influence of criminal activity, and that if the ICS included in it statements about monitoring or identifying junket player activity, the ICS would be enforceable by the VCGLR and give the VCGLR regulatory power with respect to money laundering facilitated through junkets.[318]

Crown's unwillingness to cooperate with Recommendation 17

3.168 Mr Cremona's evidence was that Crown's response to implementing Recommendation 17 was the worst example of Crown's cooperation with the VCGLR, or was an example of where Crown was the least cooperative with the VCGLR.[319]

3.169 For the purpose of these submissions, Crown's response to implementing Recommendation 17 can be broken into four parts:

(a) first, Crown's initial response to implementation of Recommendation 17 after the Sixth Casino Review was published in June 2018;

(b) second, the VCGLR's attempts to clarify the requirements for implementation of Recommendation 17;

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311 Exhibit RC0010 Report on Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment, 2020, COM.0005.0001.1137 at .1178; T137:21 - T138:12 (Cremona).
312 T150:24-45 (Cremona).
313 Exhibit RC0010 Report on Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment, 2020, COM.0005.0001.1137; T152:4-12 (Cremona).
314 Exhibit RC0009k Table regarding monitoring of Sixth Casino Review Recommendations, September 2018, VCG.0001.0002.6171; T151:1-6 (Cremona).
315 Exhibit RC0009k Table regarding monitoring of Sixth Casino Review Recommendations, September 2018, VCG.0001.0002.6171 at .0023; T151:20-36 (Cremona).
316 Exhibit RC0009k Table regarding monitoring of Sixth Casino Review Recommendations, September 2018, VCG.0001.0002.6171 at .0024; T151:38-47 (Cremona).
317 T161:21-45 (Cremona).
318 T164:14-34 (Cremona).
319 T247:14-17 (Cremona).

(c) third, Crown's failure to progress the implementation by May 2019 (two months before the implementation due date); and

(d) fourth, Crown's attempt at implementation.

3.170 Each part will be taken in turn below.

Crown's initial response to Recommendation 17

3.171 Mr Cremona gave evidence that Recommendation 17 was expressly supported by Crown when the Sixth Casino Review was prepared.[320] This support was set out in a letter from Crown to the VCGLR dated 4 June 2018.[321]

3.172 Mr Cremona gave evidence that the process was that Crown was given an initial draft of the Sixth Casino Review Report to comment on and then subsequently had a second opportunity to comment on the recommendations and the content of the report.[322]

3.173 Mr Cremona gave evidence about the approach the VCGLR took with Crown to track the progress of the implementation of the recommendations once the Sixth Casino Review Report was published.

3.174 Initially this was through the quarterly licence management meetings the VCGLR held with Crown to discuss licence management issues.[323] Mr Cremona's evidence was that the minutes of these meetings are circulated to all of the participants, and at the resumption of the next meeting they are commented upon or varied in the course of an exchange of emails to ensure that the minutes reflect all attendees' understanding of what was discussed.[324]

3.175 Mr Cremona gave evidence that the first quarterly licence management meeting after the Sixth Casino Review was held on 25 September 2018.[325] Present at that meeting was Alex Fitzpatrick, Mr Cremona's manager and the then-acting CEO of the VCGLR, and attendees from Crown being Mr Xavier Walsh, Mr Joshua Preston, Ms Michelle Fielding and Ms Sonja Bauer.[326]

3.176 At this meeting, the recommendations from the Sixth Casino Review were discussed.[327] The minutes recorded:[328]

> *Recommendation 17: Crown noted that it had spoken to senior managers from AUSTRAC regarding this recommendation. The VCGLR will provide greater clarity of the recommendation and consult with AUSTRAC. Action item 4 (below).*

3.177 Mr Cremona's evidence was that this was the first time he had engaged with Crown on the recommendations and it was the first time Crown sought any clarity on the recommendations.[329] He stated that Crown sought to clarify why the recommendation was necessary and what the expectation was from the outcome of the review.[330]

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320 T138:37-40 (Cremona).
321 Exh bit RC0009b Letter from Barry Felstead to Catherine Myers, 4 June 2018, VCG.0001.0001.1804; T139:11-24 (Cremona).
322 T139:6-9 (Cremona).
323 T139:31 - T140:7 (Cremona).
324 T140:18-34 (Cremona).
325 Exh bit RC0009d Minutes of the VCGLR and Crown Quarterly Licence Management Meeting, 25 September 2018, VCG.0001.0002.3504; T140:9-12 (Cremona).
326 T140:41-46 (Cremona).
327 Exh bit RC0009d Minutes of the VCGLR and Crown Quarterly Licence Management Meeting, 25 September 2018, VCG.0001.0002.3504 at .0001; T140:36-39 (Cremona).
328 Exh bit RC0009d Minutes of the VCGLR and Crown Quarterly Licence Management Meeting, 25 September 2018, VCG.0001.0002.3504 at .0003; T141:1-23 (Cremona).
329 T141:30-36 (Cremona).
330 T141:38-43 (Cremona).

3.178 Mr Cremona's evidence was that the VCGLR was surprised at this point – after the process undertaken in June before publishing the Sixth Casino Review – that Crown was seeking clarity about a recommendation.[331]

3.179 Ms Fielding gave evidence that she did not dispute that Crown told the VCGLR at this meeting that it had engaged with AUSTRAC about Recommendation 17, but was not sure whether they had done so at this point as Mr Preston was responsible for dealings with AUSTRAC.[332]

VCGLR's attempts to clarify Recommendation 17

3.180 Between September 2018 and March 2019, the VCGLR took steps to ensure that what was required in implementing Recommendation 17 was clear for Crown, and tracked Crown's progress in relation to implementation.

3.181 The VCGLR did this in a number of ways:

(a) between October 2018 and March 2019, met and discussed with Crown and sent correspondence about the VCGLR's expectations of how Recommendation 17 was to be implemented, allowing Crown opportunities to work through any uncertainties; and

(b) met with AUSTRAC to ascertain where Crown was up to in its engagement with it, and for the purpose of Recommendation 17.

Dedicated meeting in October 2018

3.182 Mr Cremona's evidence was that the VCGLR held a meeting with Crown on 31 October 2018 to work through each of the recommendations.[333] Such meetings occurred every three months and were dedicated to detailed engagement about the implementation of the recommendations.[334]

3.183 The minutes for this meeting noted in respect of Recommendation 17:[335]

> *VCGLR to provide its expectations of this recommendation.*
>
> *Crown noted that AUSTRAC has not expressed concern with Crown's procedures in respect of the Junkets ICS and regulates Crown through its AML Program. The VCGLR advised that in their view part of this recommendation is about ensuring greater visibility of individual junket players and their gaming activity to ensure that anti-money laundering risks are appropriately addressed. Therefore, it is expected that the review of the appropriate ICS, which will include the junkets and premium player programs ICS, will vary the applicable ICS to enable the same level of transparency for individual junket player activity as there is for premium players.*
>
> *In reviewing the ICS, Crown would need to seek input from the VCGLR in conjunction with AUSTRAC regarding record keeping in relation to individual junket players (which Crown noted is not required by the Recommendations) …*

3.184 Mr Cremona gave evidence that, from this meeting:

(a) it was his understanding that Crown had discussed the ICS (or the issues around the Junkets ICS procedures) with AUSTRAC;[336] and

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331 T142:2-13 (Cremona).
332 T2654:5-13 (Fielding).
333 T141:45-T142:39 (Cremona).
334 Exhibit RC0009f Minutes of Sixth Casino Review Recommendations meeting, 31 October 2018, VCG.0001.0002.3505 at .0001.
335 Exhibit RC0009f Minutes of Sixth Casino Review Recommendations meeting, 31 October 2018, VCG.0001.0002.3505 at .0003; T143:6-31 (Cremona).
336 T145:11-17 (Cremona).

(b) he considered that the VCGLR provided clarity around Recommendation 17.[337]

3.185 Ms Fielding gave evidence that she assumed she told the VCGLR at the meeting that AUSTRAC had not expressed concern with the Junkets ICS and had been asked to convey that point by Mr Preston.[338] These statements conveyed the impression that AUSTRAC had been consulted in relation to Recommendation 17 and the Junkets ICS. Ms Fielding did not accept these propositions.[339] Ms Fielding's responses should be rejected. Mr Cremona's evidence was that he was surprised at the level of clarification sought by Crown about Recommendation 17 (among others) in October 2018.[340] This was because Crown had supported all of the recommendations.[341]

VCGLR's efforts to clarify after October 2018 meeting

3.186 As a result of Mr Cremona's surprise at Crown seeking clarification, he called Ms Fielding on 31 October 2018 to discuss his concerns.[342]

3.187 Ms Fielding gave evidence that she was not personally involved in the implementation of Recommendation 17, but was the contact point for Crown during its exchanges with the VCGLR on implementation.[343]

3.188 After Mr Cremona's call with Ms Fielding, he followed up with correspondence to Crown asking Crown to seek clarity if necessary as soon as possible, and sought updates on the status of implementation on the following dates:

(a) 7 November 2018;[344]

(b) 9 November 2018;[345]

(c) 10 December 2018;[346] and

(d) 3 January 2019.[347]

3.189 Mr Cremona's evidence was that he did not receive a response from Crown to the correspondence sent on 7 or 9 November 2018.[348] Ms Fielding agreed that Crown did not respond to these emails.[349]

3.190 In the 9 November email to Crown, Mr Cremona had asked Crown to seek any clarification needed as soon as possible. He said that "[t]o ensure Crown addresses the recommendation within the timeframe, and to the satisfaction of the Commission, if Crown requires any clarification from the Commission then it should seek this clarity as soon as possible. Please note that the Commission will not consider redefinition or amendment of any of the recommendations detailed in the report." Mr Cremona's evidence was that he did not receive a response to that letter.

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337 T143:33 - T144:33 (Cremona).
338 T2654:26 - T2655:5 (Fielding).
339 T2655:7-40 (Fielding).
340 T145:46 - T146:9 (Cremona); Exhibit RC0008 Statement of Jason Cremona, 15 April 2021, VCG.9999.0001.0001 at .0014, [48].
341 T146:11-28 (Cremona).
342 Exhibit RC0008 Statement of Jason Cremona, 15 April 2021, VCG.9999.0001.0001 at .0015, [50].
343 T2651:29 - T2652:4 (Fielding).
344 T146:30-45 (Cremona).
345 Exhibit RC0009i Letter from Jason Cremona to Michelle Fielding, 9 November 2018, VCG.0001.0002.6164; T147:12 - T14812 (Cremona).
346 T153:31-39 (Cremona).
347 T154:5-21 (Cremona).
348 Exhibit RC0008 Statement of Jason Cremona, 15 April 2021, VCG.9999.0001.0001 at .0017, [58]; T147:7 - T148:17 (Cremona).
349 T2656:28-34 (Fielding).

3.191 Mr Cremona did not consider it was common for the VCGLR's correspondence to go unanswered from Crown, and he had hoped that Crown would have treated communications in relation to the Sixth Casino Review quite seriously.[350]

3.192 Having not received any response to the 7 or 9 November 2018 emails, Mr Cremona sent an email to Ms Fielding on 10 December 2019 seeking an update on, among others, Recommendation 17.[351]

3.193 The VCGLR sought another progress update in the 3 January 2019 email, which was received 18 January 2019.[352] The update stated that "Crown has met with AUSTRAC to discuss this recommendation" and that "Internal controls are being reviewed".[353]

3.194 The impression conveyed by this statement was that Crown had met with AUSTRAC to discuss the Junkets ICS and, to that end, had given AUSTRAC the Junkets ICS.

3.195 Mr Cremona's understanding of the progress update was that it suggested that Crown were engaging with AUSTRAC and progressing the Recommendation, although he considered that the update could have been clearer.[354] Mr Cremona understood that the context of the discussion was that it was more about the AML program as opposed to the ICS.[355]

3.196 Despite the above update, Ms Fielding did not dispute that as at 20 February 2019 (see paragraph 3.199), AUSTRAC had not seen or been consulted by Crown about the suitability of the ICS.[356] Ms Fielding gave evidence that, although she provided the update on 18 January 2019, she had no personal knowledge as to whether Crown had met with AUSTRAC to discuss Recommendation 17.[357]

VCGLR meetings with AUSTRAC

3.197 Mr Cremona gave evidence that on 20 February 2019, he met with AUSTRAC without Crown in relation to Recommendation 17.[358] The purpose of the meeting was to ensure that AUSTRAC understood the VCGLR's position and expectations with respect to Recommendation 17.[359]

3.198 The minutes from the meeting record that the VCGLR explained its position to AUSTRAC at this meeting.[360]

3.199 Mr Cremona's notes from the meeting record that the VCGLR was told by [redacted] of AUSTRAC that as at 20 February 2019 AUSTRAC had not seen nor been consulted about the suitability of the ICS, and that the ICS were only discussed briefly with Crown and in those discussions Crown had expressed uncertainty about Recommendation 17.[361]

3.200 Ms Fielding did not dispute that at this point AUSTRAC had not seen nor been consulted with on the suitability of the ICSs.[362]

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350 T148:19-33 (Cremona).
351 Exhibit RC0008 Statement of Jason Cremona, 15 April 2021, VCG.9999.0001.0001 at .0017 to .0018, [59].
352 T154:5-21 (Cremona).
353 Exhibit RC0009n Section 25 – Recommendations Table, 18 January 2019, VCG.0001.0002.6038; T154:21-29 (Cremona).
354 T154:31 - T155:7 (Cremona).
355 T158:16 - T159:13 (Cremona).
356 T2658:5-27 (Fielding).
357 T2656:36 - T2657:29 (Fielding).
358 Exhibit RC0009p Agenda of the VCGLR and AUSTRAC Meeting – Sixth Casino Review Recommendation 17, 20 February 2019, VCG.0001.0002.6177; T155:34-37 (Cremona).
359 T155:39 - T156:2 (Cremona).
360 T156:11-20 (Cremona).
361 Exhibit RC0009r Minutes of VCGLR and AUSTRAC Meeting, n.d. VCG.0001.0002.6423; T156:32-T157:3 (Cremona).
362 T2658:18-27 (Fielding).

3.201 From his discussions with AUSTRAC, Mr Cremona realised that Crown's discussions with AUSTRAC were brief and not substantive, and potentially unrelated to Recommendation 17.[363]

3.202 At the 20 February meeting with AUSTRAC, Mr Cremona explained the VCGLR's objective in relation to Recommendation 17 , and on 22 February 2019 followed this up in an email to AUSTRAC.[364]

3.203 That email stated:[365]

> *As discussed at the meeting, the VCGLR's view is that, at a minimum, the focus of this recommendation is about ensuring greater visibility of individual junket players and their gaming activity (record keeping that should inform reporting of any suspicious matters by Crown) to ensure that anti-money laundering risks are appropriately addressed. Therefore, it is expected that Crown's review of the relevant ICSs, including the Junket and Premium Player Programs ICS, will vary the applicable ICSs to determine the same level of transparency for individual junket player activity as there is for premium players.*
>
> *As also discussed, the proposed timeline for completion of the review of the relevant ICSs is the end of April 2019.*

3.204 Mr Cremona's evidence was that, as at 22 February 2019, AUSTRAC knew the VCGLR's focus for Recommendation 17,[366] and that the focus as expressed to AUSTRAC was consistent with what Crown had been told months earlier.[367] As at February 2019, Mr Cremona did not understand there had been any discussions between Crown and AUSTRAC in relation to that discrete issue.[368]

3.205 Mr Cremona was surprised to hear that Crown's engagement with AUSTRAC was not progressing, and he would have liked Crown to have been actively engaging with AUSTRAC at that point in time.[369]

VCGLR's attempt to clarify following AUSTRAC meeting

3.206 On 22 February 2019, Mr Harris sent an email to Michelle Fielding about the meeting with AUSTRAC and the VCGLR's expectations about Recommendation 17.[370] Mr Harris said among other things:[371]

> *The VCGLR advised that it is expected that the review of relevant ICSs, which will include the Junket and Premium Player Programs ICS, will determine the suitability of the ICS in maintaining appropriate information to assist in the detection and mitigation of money laundering.*
>
> *In the course of your review of the relevant ICSs, the VCGLR requests that the relevant ICSs are made available to AUSTRAC for their input to the review, and to ensure the recommendation is appropriately addressed. The Commission has advised AUSTRAC that it is expected that Crown will formally consult with it to seek*

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363 T159:5-21 (Cremona).
364 Exhibit RC0009s Email from Rowan Harris to [redacted] and Jason Cremona, 22 February 2019, VCG.0001.0002.6248; T159:2-44 (Cremona).
365 Exhibit RC0009s Email from Rowan Harris to [redacted] and Jason Cremona, 22 February 2019, VCG.0001.0002.6248; T159:32-44 (Cremona).
366 T159:46 - T160:2 (Cremona).
367 T160:4-7 (Cremona).
368 T160:9-13 (Cremona).
369 T158:1-11 (Cremona).
370 Exhibit RC0009t Email from Rowan Harris to Michelle Fielding and Jason Cremona, 22 February 2019, VCG.0001.0002.3513; T160:15-19 (Cremona).
371 Exhibit RC0009t Email from Rowan Harris to Michelle Fielding and Jason Cremona, 22 February 2019, VCG.0001.0002.3513; T160:21-43 (Cremona).

its view, and a formal response is expected to inform Crown's response to the Commission in relation to its addressing of the recommendation.

The Commission looks forward to receiving and assessing the details of Crown's review, and the input provided by AUSTRAC, in relation to recommendation 17 by 1 July 2019.

3.207 Mr Cremona's evidence was that to his knowledge Ms Fielding gave no response to this email.[372] Ms Fielding's evidence was that she drafted a response and sent it to Mr Preston, but he did not progress it.[373]

3.208 Mr Cremona said that he sent the email to be fully transparent with Crown about what was required to implement the Recommendation, as there were approximately three months left until it was required to be implemented and the VCGLR had put all processes in place to ensure Crown were well aware of what it expected.[374]

March dedicated meeting

3.209 Mr Cremona gave evidence that, on 13 March 2019, the VCGLR met with Crown at another dedicated meeting for the Sixth Casino Review recommendations.[375] Mr Preston and Ms Fielding were present at the meeting.[376] Mr Cremona was surprised that Mr Preston attended this "working level" meeting.[377]

3.210 Ms Fielding said this was the first time Mr Preston had attended one of these dedicated meetings and agreed that it was unusual, but she explained that he was there because he wanted to speak to the VCGLR about Recommendation 17.[378]

3.211 At this meeting, Mr Preston advised the VCGLR that Crown had been having ongoing meetings with AUSTRAC to "develop a joint AML program across Crown Melbourne and Perth Casinos" and that the "joint (Crown Perth/Crown Melbourne) AML program would be reviewed by an external party and was a "significant piece of work".[379]

3.212 Ms Fielding acknowledged that there was a mismatch between the VCGLR pushing its interpretation of Recommendation 17 and Mr Preston talking in terms of the AML program.[380] Ms Fielding's evidence was that she told Mr Preston he had to address the Junkets ICS, and he had agreed with that.[381]

3.213 The minutes of the meeting noted:

(a) "[t]he VCGLR believes that the joint AML program is not linked to recommendation 17".[382]

(b) "JP advised that Crown consults with AUSTRAC on its ICSs and that the strongest control is the joint AML program", which Mr Cremona said was the strongest control enforceable by AUSTRAC, but not by the VCGLR.[383]

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372 T160:21 - T161:2 (Cremona).
373 T2658:29-47 (Fielding).
374 T161:1-17 (Cremona).
375 Exhibit RC0009y Draft minutes of Crown- VCGLR Sixth Casino Review dedicated meeting, 12 March 2019, VCG.0001.0002.6021; T162:2-11 (Cremona).
376 T162:38-41 (Cremona).
377 Exhibit RC0008 Statement of Jason Cremona, 15 April 2021, VCG.9999.0001.0001 at .0025, [78].
378 T2659:35 - T2660:15 (Fielding).
379 Exhibit RC0009y Draft minutes of Crown- VCGLR Sixth Casino Review dedicated meeting, 12 March 2019, VCG.0001.0002.6021; T163:25-37 (Cremona).
380 T2660:17-22 (Fielding).
381 T2661:38 - T2662:6 (Fielding).
382 Exhibit RC0009y Draft minutes of Crown- VCGLR Sixth Casino Review dedicated meeting, 12 March 2019, VCG.0001.0002.6021; T163:35-37 (Cremona).
383 T164:36 - T165:2 (Cremona).

(c) "[i]n addition, the strengthening of internal controls would be somewhat limited to the AML internal program/processes and the 'framework documents'. [Mr Preston] believes the fundamental issue re AML/CTF is the internal AML/CTF program, not the ICSs".[384]

(d) "… enquired if 'suitability of control statements' has been discussed with AUSTRAC, as required by the recommendation. JP advised that it has not been discussed, and is of the view that the suitability of the AML/CTF program was more important than the ICS suitability in relation to Crown's approach to AML. JC advised that although the AML/CTF program was important, it was not the key consideration in line with the recommendation".[385] Mr Cremona's evidence was that there was push-back at this point from Crown about whether or not it should even undertake to implement the Recommendation.[386]

3.214 Mr Cremona's evidence was that during the meeting, no one suggested Crown should protect junket players' anonymity, nor did anyone address the substance or policy reasoning behind Recommendation 17.[387] Mr Cremona's view was that there was "almost an attempt to block out that observation".[388]

3.215 Mr Cremona's evidence was that the AML program should support the ICS in identifying or monitoring junket player activity[389]

Failure to progress the implementation by May 2019

3.216 Mr Cremona gave evidence that by May 2019, the VCGLR still had not seen any review of the ICS, nor any external advice to Crown about the ICS, nor had it received the results of any feedback from AUSTRAC.[390] This was two months before the deadline for implementation, on 1 July 2019.

3.217 On 3 May 2019, Mr Harris received a further status update from Ms Fielding.[391] The update stated in relation to Recommendation 17 that:[392]

> *Crown has met with AUSTRAC to discuss this recommendation. A new joint AML Program across Crown's Australian resorts is being developed and will be reviewed by an external party. AUSTRAC is being kept informed of progress.*

3.218 Once again, the impression conveyed by this statement was that Crown had met with AUSTRAC to discuss the Junkets ICS and, to that end, had given AUSTRAC the Junkets ICS.

3.219 Ms Fielding gave evidence that although she prepared the status update, she did not know whether the ICS had gone to AUSTRAC.[393]

3.220 Mr Cremona's evidence was that, in reviewing this update, he noted that:[394]

(a) there was no indication from Crown's update that it had sought AUSTRAC's views in relation to the suitability of its ICS regarding preventing money laundering;

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384 T165:4-10 (Cremona).
385 T165:33-41 (Cremona).
386 T165:43-47 (Cremona).
387 T168:11-21 (Cremona).
388 T168:21-23 (Cremona).
389 T164:1-12 (Cremona).
390 T168:44 - T169:17 (Cremona).
391 Exhibit RC0009gg Updated Section 25 Recommendations Table, 2 May 2019, VCG.0001.0002.6023; T169: 24-30 (Cremona).
392 Exhibit RC0009gg Updated Section 25 Recommendations Table, 2 May 2019, VCG.0001.0002.6023; T169:24-30 (Cremona).
393 T2662:8-41 (Fielding).
394 Exhibit RC0008 Statement of Jason Cremona, 15 April 2021, VCG.9999.0001.0001 at .0031 at [97].

(b) only preliminary discussions had taken place with AUSTRAC on the ICS, yet draft changes had been proposed for management review;

(c) Crown did not appear to be addressing Recommendation 17, consistent with Rowan Harris's email to Michelle Fielding of 22 February 2019.

3.221 On 8 May 2019, a paper was prepared for a meeting of the VCGLR Commissioners for its consideration and noting, which was prepared by others but ultimately reviewed by Mr Cremona before being provided to the Commission.[395]

3.222 The paper noted that LMA had articulated the VCGLR's expectations in relation to Recommendation 17, and set out Crown's response. It noted that section 121 of the CCA should "form the basis of all ICSs even if those controls are relevant to the expectations of another regulator".[396] The paper noted that

> *[i]n general, Crown appears to be reluctant to involve a review of any ICSs in its response to the recommendation and does not believe AUSTRAC should be consulted about the adequacy of those documents.*[397]

3.223 The paper expressed concern that "discussions with Crown and its response to date do not appear to address the recommendation", but that

> *in Crown's scheduled update provided on 2 May … it is noted that 'internal controls are being reviewed, preliminary discussions with AUSTRAC have taken place and draft changes have been made for management to review'.*[398]

3.224 In Attachment 1 to the paper, there was a table that recorded the status of items and noted for Recommendation 17 "not on track".[399] Mr Cremona's evidence was that the intention behind the paper was to provide an early indication of LMA's concerns and to make sure the Commission was aware of the issue and lack of progress and could intervene if necessary.[400]

3.225 On 20 May 2019, there was a conversation between Mr Harris (Mr Cremona's direct report) and [redacted] of AUSTRAC in relation to AUSTRAC's input into Crown's review of the relevant ICS.[401] Mr Harris took a file note of the meeting where he recorded that:[402]

> *a) [redacted] has had one brief conversation with Crown in relation to AUSTRAC's input into recommendation 17. …*
>
> *b) No [ICSs] had been provided to AUSTRAC for its review*
>
> *c) [redacted] advised that 'Crown is pushing back on reviewing the relevant ICSs, in particular the Junkets and Premium Player Program (ICS).*
>
> *d) [redacted] further advised that [Mr Preston] did not seem to understand why the ICSs need to be reviewed.*

395 Exhibit RC0009hh Sixth Casino Review recommendations – progress update, 8 May 2019, VCG.0001.0001.0094; T169:41 - T171:4 (Cremona).
396 T171:11-33 (Cremona).
397 T171:43 - T172:6 (Cremona).
398 T172:8-16 (Cremona).
399 T172:26-31 (Cremona).
400 T172:21-24 (Cremona).
401 Exhibit RC0009ii File note by Rowan Harris regarding Sixth Casino Review – Recommendation 17, 20 May 2019, VCG.0001.0002.3131; T172:33-47 (Cremona).
402 Exhibit RC0009ii File note by Rowan Harris regarding Sixth Casino Review – Recommendation 17, 20 May 2019, VCG.0001.0002.3131; T173:2-19 (Cremona).

3.226 The call suggested to Mr Cremona that, 11 months after the Sixth Casino Review was published, Crown had not made any meaningful progress on Recommendation 17 in respect of its engagement with AUSTRAC, or in any respect.[403]

VCGLR's concerns communicated to Crown

3.227 On 21 May 2019, Mr Cremona provided Ms Fitzpatrick with an update on Recommendation 17. He raised concerns about Crown's position, and then put the discussion in an email dated 22 May 2019.404 The purpose of the email was to brief Ms Fitzpatrick ahead of another Commission meeting about the major risks and concerns.405

3.228 Mr Cremona stated in the email that:

> *[t]o date Crown have been very much 'non-committal' in terms of the extent of consultation with AUSTRAC and have deviated focus of the recommendation from the suitability of ICS's re AML, to the suitability of Crown's overall AML/CTF Program ...*

a program over which the VCGLR, and more particularly Mr Cremona's team LMA, had no oversight.[406] Attached to the email was a draft letter to Mr Preston setting out the concerns conveyed in the email.[407]

3.229 Mr Cremona's evidence was that the VCGLR's concerns were that Crown was not clear about the extent to which it had discussed the ICSs with AUSTRAC, or whether they were being discussed at all.[408]

3.230 At the Commission meeting, on 23 May 2019, the risks identified by Mr Cremona were noted.[409]

3.231 Later that day, the VCGLR sent the letter to Mr Preston (which had been attached to Mr Cremona's email to Ms Fitzpatrick).[410] The letter expressed concern that Crown may not meet the intended outcomes of Recommendation 17 by the relevant date, stating:[411]

> *Based on discussions with Commission staff and Crown's written updates, Crown appears reluctant to undertake a written review of any relevant [ICSs] with input from AUSTRAC.*
>
> *At a minimum, to implement [Recommendation 17], the Commission expects that Crown provides AUSTRAC with the relevant ICSs, including the Junket and Premium Player Program ICS, to inform the review and assist Crown in ensuring that AML risks are appropriately addressed through its AML problem as well as the ICSs.*

3.232 Mr Cremona's evidence was that, at this point, he was not aware that Crown had provided the ICS to AUSTRAC or sought external assistance as required by Recommendation 17.[412]

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403 T173: 25-41 (Cremona).
404 Exhibit RC0009jj Email from Jason Cremona to Alex Fitzpatrick, 22 May 2019, VCG.0001.0002.3525; T174:2-17 (Cremona).
405 T174:47 - T175:8 (Cremona).
406 Exhibit RC0009jj Email from Jason Cremona to Alex Fitzpatrick, 22 May 2019, VCG.0001.0002.3525; T174:27-44 (Cremona).
407 Exhibit RC0009kk Letter from Alex Fitzpatrick to Joshua Preston, 22 May 2019, VCG.0001.0002.3527; T175:10-21 (Cremona).
408 T175:36-40 (Cremona).
409 Exhibit RC0009ll Minutes of the VCGLR Commission Private Session Meeting, 23 May 2019, VCG.0001.0002.6028; T176:23-29 (Cremona).
410 Exhibit RC0009mm Letter from Alex Fitzpatrick to Joshua Preston, 23 May 2019, VCG.0001.0002.3021; T176:31-42 (Cremona).
411 Exhibit RC0009mm Letter from Alex Fitzpatrick to Joshua Preston, 23 May 2019, VCG.0001.0002.3021; T177:2-16 (Cremona).
412 T177:20-24 (Cremona).

3.233 On 24 May 2019, Ms Fielding called Mr Cremona about the 23 May letter, which Mr Cremona described in an email to Ms Fitzpatrick as Ms Fielding "responding pretty aggressively to the letter".[413] Mr Cremona also said that

> *[p]rimarily she was of the view, as expected, that I, and the tone of the letter, misrepresented Crown and they 'did not say they would seek input from AUSTRAC', amongst other concerns,*
>
> and that
>
> *[b]ecause she said Josh was 'furious' and would most probably 'call the Minister], I have just briefed Catherine on the matter noting my concerns and that I stand by the risk that was presented to the Commission and the response to Crown.*[414]

3.234 Mr Cremona said he was taken aback by the tone, aggressive nature and the fact that Crown would escalate the matter to the Minister.[415] Mr Cremona did not ever recall an occasion on which Crown said it would escalate a matter to the Minister.[416]

3.235 Ms Fielding agreed that she responded aggressively in the telephone call.[417] Ms Fielding's evidence was that she was asked by Mr Preston to call Mr Cremona and "make clear to him how unhappy [Mr Preston] was" that the VCGLR said Crown appeared "reluctant" to undertake a review of any relevant ICSs with input from AUSTRAC.[418] Ms Fielding's evidence was she was asked to respond in a "firm manner".[419] Ms Fielding conceded that she did not consider it appropriate to call the VCGLR and say Crown was going to elevate this issue to the Minister, but that she did it because she was prompted to say it by Mr Preston and by Mr Chris Reilly, Corporate Affairs, who was in her office when she made the call to Mr Cremona.[420] Ms Fielding accepted that it was concerning that although she was uncomfortable saying these things to Mr Cremona, she did it anyway.[421]

3.236 Ms Fielding's evidence was that she would not ring Mr Cremona, or anyone else at the VCGLR, using that tone again, whether or not she was asked to.[422]

3.237 Ms Fielding's evidence was that Crown was aware that Recommendation 17 required a genuine review of the ICS with input from AUSTRAC and external assistance.[423] She said that she understood that this would first require having a discussion with AUSTRAC about Recommendation 17, and then providing them with the ICSs that they were required to have input on.[424]

3.238 Ms Fielding accepted that Crown should have sent the ICSs to AUSTRAC well before when it did.[425]

Crown's attempt at implementation

3.239 On 14 June 2019, Mr Preston sent an email to Ms Fitzpatrick attaching Crown's response to the 23 May 2019 letter.[426] The letter noted that "Crown is keen to ensure that the VCGLR

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413 Exhibit RC0009nn Email chain between Alex Fitzpatrick and Jason Cremona, 24 May 2019, VCG.0001.0002.3531; T178:5-20 (Cremona).
414 T178:5-20 (Cremona).
415 T178:31-43 (Cremona).
416 T179:4-9 (Cremona).
417 T2663:37-47 (Fielding).
418 T2663:25 - T2664:24 (Fielding).
419 T2664:26-30 (Fielding).
420 T2665:15 - T2666:-4 (Fielding).
421 T2666:6-15 (Fielding).
422 T2666:41-47 (Fielding).
423 T2652:23-T2653:17 (Fielding).
424 T2653:14-27 (Fielding).
425 T2666:38-39 (Fielding).
426 Exhibit RC0009oo Email from Joshua Preston to Alex Fitzpatrick, 14 June 2019, VCG.0001.0002.6424; Exh bit RC0009pp, Letter from Joshua Preston to Alex Fitzpatrick, 13 June 2019, VCG.0001.0002.6425; T182:39-45 (Cremona).

does not have fixed or predetermined views about the process followed by Crown, or the final outcome of the process followed by Crown" and set out the actions it had taken in respect of Recommendation 17.[427] Some of the actions were:

(a) "reviewed all of its ICSs";

(b) "identified the ICSs with potential relevance to anti-money laundering risks";

(c) "considered these ICSs against the backdrop of Crown's existing AML/CTF Compliance Framework"; and

(d) "prepared proposed amendments to these ICSs where appropriate".[428]

3.240 The letter also noted that external advice had been sought on the ICSs from Initialism, who provided advice on Recommendation 17 to Crown on 21 June.[429]

3.241 Mr Cremona's evidence was that, at that point, he had not seen any evidence that that work had been undertaken.[430]

3.242 On 28 June 2019, three days before the implementation deadline for Recommendation 17, Mr Harris sent an email to Mr Cremona,[431] Mr Harris reported to Mr Cremona that Crown only commenced engagement with AUSTRAC on 30 May, and a meeting was held with AUSTRAC on 14 June.[432]

3.243 Mr Cremona's evidence was that Crown provided the ICS to AUSTRAC for the first time nearly a year after the Sixth Casino Review was published, and only after the 23 May letter was sent – further, the VCGLR only knew this because AUSTRAC told it, not Crown.[433]

Results of the review

3.244 On 1 July 2019, Mr Felstead made a submission to the VCGLR in relation to Recommendation 17, which set out the results of the ICS review.[434]

3.245 Crown stated it had undertaken a "robust review" of the ICS.s – Mr Cremona's evidence was that the VCGLR did not consider whether the review was robust, but rather the "intention behind the recommendation".[435] Mr Cremona's evidence was that the proposed changes Crown made, in respect of the inclusion of Crown's AML/CTF Program and a specific risk of "Criminal influence and exploitation", were not matters required by Recommendation 17.[436] That is, neither of these proposed inclusions did anything to address the risk with which Recommendation 17 was concerned.[437]

3.246 Under the heading "External Assistance", Crown set out that it had undertaken an external review and engaged Initialism.[438] Crown did not say when it had done that and did not provide VCGLR with a copy of Initialism's report at that time.[439] Mr Cremona's evidence was that during the course of his team addressing the recommendations, it was usual for Crown

427 T183 lines 1-22 (Cremona).
428 Exhibit RC0009pp Letter from Joshua Preston to Alex Fitzpatrick, 13 June 2019, VCG.0001.0002.6425; T183:24-29 (Cremona).
429 T183 36-T184:12 (Cremona).
430 T183:31-34 (Cremona).
431 T179:2-17 (Cremona).
432 Exhibit RC0009qq Email chain between Rowan Harris, Jason Cremona and Steve Thurston, 28 June 2019, VCG.0001.0002.3129; T180:16-21 (Cremona).
433 T180:24 - T182:1 (Cremona).
434 Exhibit RC0009tt Letter from Barry Felstead to Catherine Myers, 1 July 2019, VCG.0001.0001.0037; T186:16-T187:12 (Cremona).
435 T187:40 - T188:14 (Cremona).
436 T187:2-12, T188:16-46, T189:1-46 (Cremona).
437 T190:12-T191:23 (Cremona).
438 T193:4-7 (Cremona).
439 T193:7-14 (Cremona).

not to provide the VCGLR with a report but rather summarise it and provide that summary to the VCGLR.[440]

3.247 Mr Cremona's evidence was that the VCGLR did not obtain a copy of Initialism's report until 28 August 2019, after having to request a copy of it.[441]

3.248 On 15 August 2019, there was a Commission meeting at which the issue of whether a final finding on Recommendation 17 would be deferred pending provision of the Initialism report to the VCGLR was considered.[442] At the meeting, the VCGLR instead resolved to undertake the work itself.[443]

3.249 On 21 August 2019, the VCGLR informed Crown of the outcome of its review of Crown's submission in relation to Recommendation 17, and also requested a copy of the Initialism report and advised that it had resolved to conduct a further independent review of Crown's ICSs with external assistance.[444] Mr Cremona's evidence was that by doing this the VCGLR effectively made it clear to Crown that it was not happy with the results of the work done by Crown and was going to undertake the work itself.[445]

3.250 On 28 August 2019, Crown sent a letter to the VCGLR enclosing a copy of the Initialism report.[446] When Initialism's report was provided, claims for confidentiality and for legal professional privilege were made over the report.[447]

3.251 Mr Cremona's recollection of the Initialism report was that it endorsed Crown's suggested amendments to the ICS, rather than proposing independent suggestions about how the ICS could be strengthened to address the observation made in the Sixth Casino Review. Mr Cremona found this unusual.[448]

3.252 Mr Cremona did not consider that the report amounted to a proper response to Recommendation 17.[449] In particular, there was no mention of front money in the report, which was a concept central to the junket player issue the VCGLR had identified in relation to Recommendation 17.[450]

3.253 On 9 September 2019, a paper was prepared for a Commission meeting regarding Mr Cremona's team's review of the Initialism report.[451] The paper stated that as the Initialism report did not identify any significant concerns in relation to Crown's ICS, it was recommended that there should be agreement that Recommendation 17 had been met, noting the further work to be completed.[452]

3.254 In summary, Mr Cremona considered that the reality was that Crown did not engage with AUSTRAC on the ICS until 30 May 2019, 11 months after the Sixth Casino Review was published, and relied on a report from Initialism which it did not provide to the VCGLR until requested sometime later, and the proposed amendments did not address the intention

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440 T193:16-37 (Cremona).
441 T184:36-44 (Cremona).
442 Exh bit RC0009yy Minutes of VCGLR Commission Private Session Meeting, 15 August 2019, VCG.0001.0002.6024; T199:19-31 (Cremona).
443 T199:33-36 (Cremona).
444 T199:38 - T200:1 (Cremona).
445 T200:3-8 (Cremona).
446 Exh bit RC0009aaa Letter from Neil Jeans to Ross Kennedy, 28 August 2019, VCG.0001.0001.0072; T200:10-15 (Cremona).
447 T184:46-T185:4, T200:17-23 (Cremona).
448 T185:6-14 (Cremona).
449 T185:16-34 (Cremona).
450 T185:16-34 (Cremona).
451 Exh bit RC0009bbb Memorandum regarding the Sixth Casino Review — recommendations 5 and 17, and progress of recommendations 10, 11 and 14, 9 September 2019, VCG.0001.0001.0073; T200:33-39 (Cremona).
452 Exh bit RC0009bbb Memorandum regarding the Sixth Casino Review — recommendations 5 and 17, and progress of recommendations 10, 11 and 14, 9 September 2019, VCG.0001.0001.0073 at .0006 [26]; T200:33-43 (Cremona).

clearly stated by the VCGLR in relation to Recommendation 17 at page 138 of the Sixth Review.[453]

VCGLR's assessment and response

3.255 On 2 August 2019, Mr Harris sent an email attaching a draft internal memorandum regarding LMA's position on Crown's response to Recommendation 17.[454] The covering email set out three options:[455]

(a) accept that Crown has met the recommendation;

(b) accept that Crown has met the recommendation but VCGLR is not happy with the outcome; and

(c) decide that Crown has not met the recommendation.

3.256 Mr Cremona's evidence was that the VCGLR decided to pursue the second option and to also say to Crown that the VCGLR would review the situation.[456]

3.257 Mr Cremona's evidence was that if VCGLR pursued option 3 (Crown had not met the recommendation) that would have required Crown to undertake a further review, which the team at that point regarded as an unacceptable outcome as Crown understood what was required by the recommendation and Mr Cremona could not "put faith in Crown to deliver the outcomes if we were to require a second review".[457]

3.258 Further, Crown had technically met the requirements of the recommendation, in that they had engaged with AUSTRAC, engaged an external consultant and reviewed the ICS, but not in a way that substantively engaged with the recommendation.[458] Mr Cremona's evidence was that "it was minimalist at best".[459]

3.259 Mr Cremona's evidence was that the risk identified by the review required immediate correction and undue delay was not appropriate, and he considered that the process would be further delayed if the VCGLR reverted to Crown seeking a further review.[460]

3.260 On 29 October 2019, Mr Ross Kennedy, the Chair of the VCGLR, sent a letter to Mr Preston stating the outcome of the process, that the VCGLR had resolved to progress the matter and was going to implement its own review of the ICS.[461]

3.261 After this, a number of steps were undertaken – the VCGLR retained Senet Legal, and on 28 May 2020 accepted the recommendations of the Senet Review.[462] The ICS were then redrafted, Crown was consulted in relation to the redrafting, the amended ICSs were sent to the Commission for approval and were approved, with Crown being advised of the amendments.[463]

What Crown's conduct in implementing Recommendation 17 showed

3.262 The VCGLR's requirements and expectations in relation to the implementation of Recommendation 17 were clear from the outset. There is no excuse for the misleading

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453 T197:38 - T198:12 (Cremona).
454 Exhibit RC0011 Email from Jason Cremona to Steve Thurston, 2 August 2019, VCG.0001.0002.6033; Exh bit RC0012 Memorandum in Progress from Rowan Harris to Alex Fitzpatrick (Jason Cremona et al cc'd) regarding Sixth Casino Review – Recommendation 17, 2 August 2019, VCG.0001.0002.6034; T193:45-T194:17 (Cremona).
455 Exhibit RC0011 Email from Jason Cremona to Steve Thurston, 2 August 2019, VCG.0001.0002.6033; T195:2-19 (Cremona).
456 T195:21-29 (Cremona).
457 T195:31-44, T198:38-47 (Cremona).
458 T196:15-34 (Cremona).
459 T196:36 (Cremona).
460 T199:4-7 (Cremona.
461 T200:45 - T201:18 (Cremona).
462 T201:20-23 (Cremona).
463 T201:23-26 (Cremona).

statements or impressions conveyed to the VCGLR in relation to Crown's alleged engagement with AUSTRAC. It is no excuse that Ms Fielding was merely a messenger and not the person responsible for Recommendation 17. The statements made to the VCGLR should have been accurate and Crown should have engaged with the requirements of Recommendation 17 in the manner required and expected by the VCGLR. Recommendation 17 is, unfortunately, a telling example of Crown's lack of respect and transparency in its dealings with the VCGLR.

3.263 The appalling threat to call the Minister is dealt with in Section 16, Suitability of Existing Associates – Michelle Fielding.

3.264 Senior Counsel for Crown put to Mr Cremona that there are other instances where Crown had cooperated with the VCGLR.[464] First, Crown, as a regulated entity, is expected to cooperate with its regulators. Second, such a position does not engage with Mr Cremona's evidence that Crown's response to implementing Recommendation 17 was the worst example of Crown's cooperation with the VCGLR, or an example of where Crown was the least cooperative with the VCGLR.[465]

VCGLR disciplinary action in relation to certain junket entities

Background

3.265 On 2 October 2020, the VCGLR issued a notice to Crown Melbourne under section 20(2) of the CCA requiring Crown to show cause why disciplinary action should not be taken on the basis that Crown failed to implement clause 2.5.1 of the Junkets ICS in respect of four named junket entities, thereby constituting a breach of section 121(4) of the CCA.

3.266 On 27 April 2021, the VCGLR handed down its decision.[466] It determined that Crown failed to comply with its regulatory obligations during relevant periods, namely, obligations that required Crown to implement a robust process to consider the ongoing probity of junket entities, and that grounds for disciplinary action exist. The VCGLR determined to impose a fine of $1 million and take other actions.

VCGLR's concerns about the regulatory relationship

3.267 Towards the end of the decision, the VCGLR raised an additional matter which it considered "relevant to the nature of the regulatory relationship that the [VCGLR] considers ought to exist between Crown and the [VCGLR]."[467]

3.268 The matter concerned a presentation given to the Commission in December 2020 by Ms Coonan and Mr Xavier Walsh, having been appointed CEO of Crown Melbourne on 9 December 2020. The VCGLR decision records that, whilst at the presentation Crown had indicated a desire to work collaboratively with the VCGLR, the approach taken by Crown at the show cause hearing in January 2021 was "at odds" with Crown's statements during the presentation in December 2020.[468]

3.269 The VCGLR stated in its decision:

> *270. The Commission considers it highly regrettable that, so soon after being given a presentation which included these specific statements from Ms Coonan and Mr Walsh, at the hearing before the Commission on 21 January 2021 (and in the written submissions that were produced on 5 February 2021), Crown*

[464] See for example, T97:1-36 (Bryant).
[465] T247:14-17 (Cremona).
[466] Exhibit RC0292 VCGLR Decision and Confidential Reasons for Decision, 27 April 2021, VCG.0001.0002.6984.
[467] Exhibit RC0292 VCGLR Decision and Confidential Reasons for Decision, 27 April 2021, VCG.0001.0002.6984, [256].
[468] Exhibit RC0292 VCGLR Decision and Confidential Reasons for Decision, 27 April 2021, VCG.0001.0002.6984, [266] – [270]. .

would take an approach that was so clearly at odds with the matters that had been expressed at the meeting on 17 December 2020.

271. The Commission had been hopeful, following the presentations from Ms Coonan and Mr Walsh, that a more co-operative approach would in fact be taken to regulation, commensurate with Crown's privileged position as both the sole holder of a casino licence in Victoria and also, as a corporate citizen who enjoys (specifically insofar as the matters referred to in these confidential reasons are concerned) a degree of self-regulation as a result of the reforms that occurred in 2004.

272. The Commission considers this matter to have been Crown's first opportunity to have demonstrated, by its deeds, that it had altered its previous approach to regulatory matters.

273. Regrettably, the Commission's experience has been that there has not, in fact, been any alteration in Crown's approach.

3.270 Ms Coonan made the following statement to the VCGLR at a presentation on 17 December 2020, in the presence of Mr Barton and Mr X Walsh:[469]

> *But the main point is to say that you have my absolute personal commitment to work with you to see through what we need to do in Victoria, as indeed in any other jurisdiction, and I did want you to know that you can pick up the phone to me on any occasion and that I'm very much committed, as is indeed, my board and management to making the changes and improvements that we know will be appropriate as you align, no doubt, with the recommendations from New South Wales and maybe have additional ones of your own.*

3.271 Notwithstanding Ms Coonan's clear remarks, one month later, Mr X Walsh had reverted to a defensive position, which seemed the customary norm in terms of Crown's dealings with the VCGLR. Mr X Walsh defended the robustness of Crown's junket probity processes,[470] notwithstanding the contents of the Draft FTI Report and the Deloitte report, discussed in Section 10, Junkets.

3.272 Ms Coonan said she had nothing to do with Mr X Walsh's submissions to the VCGLR in relation to the disciplinary action.[471] Mr X Walsh said if he had his time again, he was "not sure" Crown would have adopted that position.[472]

3.273 At the time of the presentation and disciplinary action hearing, Ms Coonan and Mr X Walsh were the most senior executives at Crown Resorts and Crown Melbourne respectively. Ms Coonan and Ms Korsanos gave evidence that Crown recognises the need to restore its relationship with the regulator.[473] It is most concerning that having embarked upon its reform program and purportedly set about changing the tone from the top, Ms Coonan's attempts were ineffective and her message was not heard by the Crown Melbourne CEO. This is a reason to be sceptical of Crown's commitment to reform or a reason to conclude that Crown's efforts to embed a new culture and reform its relationship with the regulator will take time.

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469 Exhibit RC0438 Transcript of Proceedings - VCGLR Record of Meeting, 17 December 2020, VCG.0001.0002.8348 at P3:12.
470 Exhibit RC0292 VCGLR Decision and Confidential Reasons for Decision, 27 April 2021, VCG.0001.0002.6984, [256].
471 T3852:15-21 (Coonan).
472 T3333:4-14 (X Walsh).
473 T3768:33-41 (Coonan); T3670:31-34 (Korsanos).

5 Non-disclosure of underpayment of tax

1.1 Crown Melbourne has underpaid casino taxes. Certain deductions that led to the tax underpayment were concealed from the regulator. Crown failed to disclose those matters to the Commission.

1.2 The matters raised in this Chapter provide grounds for a finding that Crown Melbourne is not suitable to hold the casino licence, having regard to its character, honesty and integrity.

Overview

1.3 Under the Management Agreement, Crown Melbourne must pay casino tax to the State.[474] The tax is calculated as a percentage of Crown Melbourne's "Gross Gaming Revenue" (**GGR**).[475] The percentage was 22.97% in 2009 and increased by 1.72% each year until 2014.[476]

1.4 GGR is defined in clause 2 of the Management Agreement to mean:[477]

> *… the total of all **sums**, including cheques and other negotiable instruments whether collected or not, **received in any period** by the Company **from the conduct or playing of games** within the Temporary Casino or the Melbourne Casino (as the case may be) **less** the total of all **sums paid out as winnings during that period in respect of such conduct or playing of games** but excluding any Commission Based Players' Gaming Revenue …*

1.5 At all relevant times, Crown Melbourne treated expenses associated with the following electronic gaming machine (**EGM**) loyalty promotions as "sums paid out as winnings":

(a) category 1: Pokie credit rewards (Welcome Back / free credits program);

(b) category 2: Mail outs (Bonus pokie offers);

(c) category 3: Pokie credits (Matchplay);

(d) category 4: Random Riches (carded lucky rewards);

(e) category 5: Jackpot Payments;

(f) category 6. Consolation;

(g) category 7: Pokie credit tickets; and

(h) category 8: Bonus Jackpots (dining, hotel and parking).

1.6 The categories can be briefly explained as follows:

(a) categories 1, 2, 4 and 7 involve Crown providing loyalty program members pokie credits (that are not redeemable for cash), which allow free gambling on an EGM;[478]

(b) category 3 (Matchplay) involves a member converting their loyalty program points into pokie credits, which then allow gambling on an EGMs;[479]

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474 Exh bit RC0502 Consolidated Management Agreement, 20 September 1993, COM.0005.0001.1056 at .1090, Part 4. The Management Agreement is ratified by, and takes effect as if it had been enacted in, the *Casino (Management Agreement) Act 1993* (Vic).

475 Exh bit RC0502 Consolidated Management Agreement, 20 September 1993, COM.0005.0001.1056 at .1092, clause 22.1.

476 Exh bit RC0502 Consolidated Management Agreement, 20 September 1993, COM.0005.0001.1056 at .1092, clause 22.1.

477 Exh bit RC0502 Consolidated Management Agreement, 20 September 1993, COM.0005.0001.1056 at .1066 (emphasis added).

478 As to the specifics of each program, see Exhibit RC0425c List of loyalty program promotions in respect of which Crown makes deductions, n.d., CRW.512.191.0036 at .0036 and .0037, categories 1, 2, 4 and 7.

479 Exh bit RC0425c List of loyalty program promotions in respect of which Crown makes deductions, n.d., CRW.512.191.0036 at .0036, category 3.

(c) category 5 (Jackpot Payments) are time-based jackpots where members can win rewards (such as cash, credits, fixed prizes or gift cards) at random on participating EGMs;[480]

(d) category 6 (Consolation) is a promotion by which the member has the chance to receive double their base-game wins for a specified time;[481] and

(e) category 8 (Bonus Jackpots) comprises the deduction of expenses associated with dining rewards, free hotel accommodation and free parking gifted to loyalty members.[482]

1.7 Crown Melbourne treated the amounts associated with categories 1 to 7 (save for fixed prize Jackpot Payments promotions such as cash or gift cards) as both "sums … received" and "sums paid out as winnings".[483] By contrast, Crown Melbourne treated expenses associated with category 8 (Bonus Jackpots) as "sums paid out as winnings", but not "sums … received".

1.8 This Chapter addresses the following issues:

(a) First, the improper manner in which Crown Melbourne began deducting the Bonus Jackpots expenses from GGR, including the concealment of those deductions from the regulator.

(b) Second, the misleading disclosure regarding Bonus Jackpots made by Crown to the regulator in June 2018.

(c) Third, Crown's failure to address the improper Bonus Jackpots deductions between June 2018 and January 2021.

(d) Fourth, how Crown dealt with the Bonus Jackpots deductions after this Commission was announced.

(e) Fifth, the quantum of the underpayment of taxes.

1.9 Before proceeding, it is necessary to note one further matter. In these submissions, the phrase Bonus Jackpots is used to describe "category 8" – i.e. the deduction of dining, hotel and parking expenses from GGR. The documents in evidence sometimes use the phrase Bonus Jackpots in that way. At other times, those documents use the phrase Bonus Jackpots to describe all eight categories. It is necessary to keep that in mind to avoid confusion.

The First Issue: the improper introduction and concealment of the Bonus Jackpots deductions

The proposal to deduct dining expenses as Bonus Jackpots (2011-2012)

1.10 The first documented proposal dealing with Bonus Jackpots is an internal Crown presentation document dated October 2011, titled "Gaming Machines Food Program Initiative".[484] The proposal relevantly said.[485]

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480 Exhibit RC0425c List of loyalty program promotions in respect of which Crown makes deductions, n.d., CRW.512.191.0036 at .0037, category 5.

481 Exhibit RC0425c List of loyalty program promotions in respect of which Crown makes deductions, n.d., CRW.512.191.0036 at .0037, category 6.

482 Exhibit RC0425c List of loyalty program promotions in respect of which Crown makes deductions, n.d., CRW.512.191.0036 at .0037, category 6.

483 See Exhibit RC0424 Supplementary Statement of Alan McGregor, 1 July 2021, CRW.998.001.0508 at [23]; Exh bit RC0424a Bonus Jackpot spreadsheet, 26 June 2021, CRW.512.192.0002 (as to the various programs).

484 Exhibit RC0801 Crown Melbourne Gaming Machines Food Program Initiative Presentation, October 2011, CRW.512.156.1072 at .1072.

485 Exhibit RC0801 Crown Melbourne Gaming Machines Food Program Initiative Presentation, October 2011, CRW.512.156.1072 at .1079.

Transfer the issuance of control of the Gaming Machine Food Program from Syco to Dacom [i.e. the EGM operating system]

Classify the Gaming Machines Food Program to be a Bonus/Jackpot as per Welcome Back (earn X receive Y)

Allow the Gaming Machine Food Program Costs to be a Gaming Machine Tax Deduction

Reduce:

- *Gaming Machines Total Revenue*
- *Reduce Marketing Costs*
- *Reduce Tax*

Increase:

- *Gaming Machines Profit*
- *Gaming Machines Margin*

1.11 The presentation may have been discussed on 12 October 2011 in a meeting attended by Mr Peter Herring, Mr Neil Spencer and Ms Debra Tegoni (Crown Melbourne's in-house counsel) although the evidence is unclear on that point.[486]

1.12 Even at that early stage, the evidence indicates that Crown had decided to conceal the proposal from the regulator. A file note dated 24 October 2011 records the following:[487]

> *MF [Michelle Fielding] to ask Edwin [Aquino] how the tax is represented, as in,* ***will it become obvious that we have a larger outgoing as "winnings" paid for EGMs*** *→ Edwin will send sample through*

1.13 On 6 March 2012, the proposal became a "live project".[488] The motive for the project appears to have been an attempt to offset the annual 1.72% increase in casino taxes.

1.14 On 22 March 2012, Mr Herring received a memorandum from Mr Edwin Aquino (Revenue Audit Manager).[489] The memorandum appeared to record the views of Mr Aquino, Justine Henwood and Greg Foord. It said:

> *I refer to your proposed reclassification of Gaming Machines Food Program to be part of the Bonus Jackpot and allow the promotional costs to be a Gaming Machine Tax deduction…*
>
> *Factoring in the refurbishment, economic environment, impacts from negative publicity and the increase in Gaming Machines Gaming Tax by 1.72% in 1 July 2012,* ***we are of the opinion that the proposed change will not be noticed by the VCGLR.***
>
> *We would recommend the Gaming department prepares a roll forward style explanation in the event that the VCGLR questions the budgeted gaming tax once our budgets are eventually submitted. We are happy to assist in this process.*

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[486] Exhibit RC0821 Meeting invite from Peter Herring to Neil Spencer and Debra Tegoni, 12 October 2011, CRW.560.001.0046 at .0046.

[487] Exhibit RC0267 File Note regarding 'winnings', 24 October 2011, CRW.520.005.3249 at .3249 (emphasis added).

[488] Exhibit RC0800 Email chain between Peter Herring, Debra Tegoni and Greg Hawkins, 6 March 2012, CRW.512.156.1061 at .1061.

[489] Exhibit RC0773 Memorandum regarding Proposal Classifying Gaming Machines F&B Promotional Program to be part of Bonus Jackpot, 22 March 2012, CRW.512.135.0054 at .0054 (emphasis added).

1.15 On 28 March 2012, Ms Tegoni provided her opinion in a memorandum to Mr Herring and copied to Mr Spencer. The memorandum addressed the risk of adopting the proposal.[490] The final paragraph said this:

> ***Provided extending the reclassification of the gaming machine's food program does not alert anyone's interest and so a review in tax payable****, the risk appears fairly low and if required a reasonable argument can be put to justify our position. The risk may increase as and when more deductions are included over time …*

1.16 The October 2011 presentation was updated in March 2012 to include the observations in the 22 March 2012 memo from Mr Aquino. It also enclosed Ms Tegoni's memorandum.[491] The updated presentation proposed that the roll out of the deductions be staged, at a cost of $950,000.[492] The only rational explanation for the roll out proposal was to conceal the deductions from the regulator, who Crown was intentionally keeping in the dark.[493] It is not clear to whom the presentation was given, though it appears it may have been reviewed on 30 March 2012 by Mr Hawkins, Mr Longhurst, Mr Spencer and Mr Herring.[494]

1.17 In about July 2012, Crown Melbourne commenced deducting dining expenses associated with its loyalty program from the calculation of GGR.[495]

1.18 While not clear on the face of the presentations, Mr Herring's second witness statement to this Commission explains that the dining rewards expenses deducted from GGR occurred where (at least in some instances) a loyalty member was – by reason of their loyalty status – already entitled to that benefit.[496]

Round 2 - the proposal to deduct hotel and car parking as Bonus Jackpots (2013)

1.19 On 25 March 2013, a presentation titled "F14 Business Plan Gaming Machines"[497] was presented to several senior Crown personnel.[498] The broad distribution of the presentation suggests that the deductions were well known within the organisation.

1.20 On 10 April 2013, Ms Tegoni met with Mr Spencer and Mr Herring about further proposed deductions from GGR. Ms Tegoni's file note of the meeting is important, as it is the first contemporaneous document evidencing the true nature of the Bonus Jackpots deductions:[499]

- *Basically they are saying that parts of the Crown Signature Club Program, which have been a cost of doing business for the program will be allocated as a deduction where it can be linked with play.*

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490 Exhibit RC0328 Memorandum regarding Proposal Classifying Gaming Machines F&B Promotional Program to be part of Bonus Jackpot, 28 March 2012, CRW.512.117.0047 (emphasis added).

491 Exhibit RC0224 Crown Me bourne Gaming Machines Food Program Initiative Presentation, March 2012, CRW.512.117.0019 at .0030.

492 Exhibit RC0224 Crown Me bourne Gaming Machines Food Program Initiative Presentation, March 2012, CRW.512.117.0019 at .0028. The roll out of the deductions was ultimately compressed: see Exhibit RC0830 Email chain between Richard Longhurst, Neil Spencer and Peter Herring, 30 March 2012, CRW.560.001.0629 and Exhibit RC0833 Email chain between Greg Hawkins and Peter Herring et al, 4 April 2012, CRW.560.001.0702.

493 Exhibit RC1231 Second Statement of Peter Herring, CRW.998.001.0551 at .0552 [10]; T2724:21-47 (Fielding).

494 Exhibit RC0826 Email chain between Richard Longhurst, Neil Spencer and Peter Herring, 30 March 2012, CRW.560.001.0288.

495 Exhibit RC0821 Meeting invite from Peter Herring to Neil Spencer and Debra Tegoni, 12 October 2011, CRW.560.001.0046; Exhibit RC0424a Bonus Jackpot spreadsheet, 26 June 2021, CRW.512.192.0002 (summary tab).

496 Exhibit RC1231 Second Statement of Peter Herring, 14 July 2021, CRW.998.001.0551 at .0552 [9].

497 Exhibit RC0837 Crown F14 Business Plan Gaming Machines, March 2013, CRW.560.001.0796. at .0796.

498 Exhibit RC0236 Meeting invite regarding Gaming Machines Tax Initiative, 12 October 2011, CRW.512.117.0001. The required attendees were: Greg Hawkins, Debra Tegoni, Justine Henwood, Mario Natoli, Neil Spencer, Nicholas Kurban, Peter Coyne, Peter Crinis, Richard Longhurst, Sean McCreery, Greg Foord, Matthew Luttick, Teesh Brien, Zoe Li, Marie Braden, Peter Herring, Vartika Kalapala, Clayton Peister, Brianne McIntyre. The optional attendees were Rowan Craigie, Ken Barton and Jacinta Chalmers.

499 Exhibit RC0329 File Note regarding Gaming Machines Tax Initiatives – Round 2, April 2013, CRW.512.156.1047 at .1047 (emphasis added).

- *Essentially it is an internal adjustment whereby where the reward, wining in terms of deduction under the Casino Management Agreement (can be linked to play) than a transfer price deduction will be deducted.* ***If there is no link to play eg silver members who are entitled to general free car parking, Crown will in its discretion continue to offer, as a benefit of membership, car parking****. We may be forced to defend this at some point with the Regulator but it is agreed that it is the issue of "winnings" like the other deductions that will potentially be an issue and also this with an additional element of us providing a member benefit and deducting it when it is linked to play, which on one view is appropriate.*
- ***This also applies to the hotel benefits***

1.21 The note makes clear that Bonus Jackpots involved deducting from GGR expenses associated with free car parking and free hotel accommodation where (at least in some instances) a loyalty member was – by reason of their loyalty status – already entitled to those benefits.[500] That is confirmed in the presentation attached to Ms Tegoni's file note (the Crown Melbourne "Gaming Machines Tax Initiatives – Round 2").[501] To suggest such benefits – to which a member was already entitled before the relevant gambling event occurred – were won during the gambling event might properly be characterised as a scam.

1.22 Furthermore, Crown concealed its conduct from the regulator in several ways. For example, internally, Crown described the free car parking, free hotels, and dining rewards as Bonus Jackpots only for purposes of GGR.[502] They were not jackpots in any true sense of the word.[503]

1.23 The car parking deductions appear to have commenced very late in the 2013 financial year, and the hotel deductions commenced in the 2014 financial year.[504]

Crown is advised on what constitutes a winning

1.24 On 19 December 2014, Crown Melbourne received legal advice from eminent members of counsel[505] about Commission Based Players' Gaming Revenue (which is defined in the Management Agreement in relevantly the same way as GGR).[506] The advice concluded (with respect, correctly) that complementary allowances such as food and beverage costs were not "sums paid out as winnings".[507] Counsel said (at [24]):

> *In our opinion. Complimentary Allowances are not "winnings". Such allowances do not bear the character of a "sum paid out as winnings" but are in the nature of gifts or gratuities, albeit Crown calculates the value of the gift or gratuity based on a player's turnover. Allowances may only be applied to accommodation, food and beverage and airfare costs, and may not be redeemed for cash. We accept that a "winning" may be a non-monetary prize, but we do not see that a gift whose size is calculated*

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500 As is noted above, the same is true of the dining rewards.
501 Exhibit RC0329 File Note regarding Gaming Machines Tax Initiatives – Round 2, April 2013, CRW.512.156.1047 at .1054-.1056.
502 T1626:7-17 (Mackay); T1651:13-17 (Mackay); T2716:34-47 (Fielding); T2717:2-35 (Fielding).
503 As to jackpots, see T1603:25-T1604:43 (Mackay). Mr Mackay accepted the Bonus Jackpots do not met the definition of a gaming machine jackpot or what a jackpot commonly means: T1626:19-43 (Mackay); T1663:22-40 (Mackay).
504 Exhibit RC0424a Bonus Jackpot spreadsheet, 26 June 2021, CRW.512.192.0002. Only $47,015 of car parking deductions were made in the 2013 financial year, whereas in excess of $1.5 million of car parking deductions were made in the 2014 financial year.
505 Exhibit RC0206 Memorandum regarding Casino Tax, 19 December 2014, MEM.5001.0002.8014.
506 "Commission Based Players' Gaming Revenue" is defined to mean "the total of all sums, including cheques and other negotiable instruments whether collected or not, received … by the Company from the conduct or playing of games … by Commission Based Players less the total of all sums paid out as winnings during that period to Commission Based Players in respect of such conduct or playing of games".
507 See, in particular, Exhibit RC0206 Memorandum regarding Casino Tax, 19 December 2014, MEM.5001.0002.8014 at .8016 [11(d)] and .8019 [24].

by reference to turnover or losses is capable of being a "prize". Complimentary Allowances are not awarded to the winner of a game.

1.25 Notwithstanding that unequivocal advice, Crown Melbourne continued to deduct Bonus Jackpots expenses from GGR. No adequate explanation was provided to the Commission as to why.

The Second Issue: Crown's Misleading Disclosure to the Regulator

The regulator asks Crown about Bonus Jackpots

1.26 On 29 June 2017, the VCGLR and Crown Melbourne met for an operational meeting. The minutes of the meeting record that:

(a) Ms Tracy Shen (of the VCGLR) "queried about the impact of different jackpot type[s] on EGM revenue calculation";[508]

(b) Mr Matthew Asher (of Crown Melbourne) advised "there wasn't much difference to EGM revenue calculation" and that "[b]onus jackpot includes free play, multiply time, multiple last bet and welcome back voucher etc";[509]

(c) Ms Shen "requested a breakdown of bonus jackpots for one day";[510]

(d) action item 1 was for Mr Asher to "provide a breakdown of bonus jackpot for one day".[511]

1.27 The limited disclosure made by Crown Melbourne in the meeting is unsurprising given that at the time, Crown was consciously concealing the Bonus Jackpots deductions from the regulator.

1.28 On 7 July 2017, Ms Shen sent the minutes of the meeting to Mr Asher and said there were "a couple of action items for your attention".[512] Ms Shen followed Mr Asher up on 18 July 2017, and again on 8 November 2017.[513]

1.29 No response to those emails was produced to the Commission.[514]

1.30 On 28 May 2018, Ms Cate Carr (Executive Director, Office of Liquor, Gaming and Racing, Department of Justice) emailed Ms Catherine Myers (CEO of the VCGLR) as follows:[515]

Crown wants to give a benefit to a high value gaming machine player. They award them "free loyalty points", which can then be converted by the player into gaming machine credits when the player inserts his or her card into an EGM.

Crown accounts for this as a "bonus jackpot" - see below - even though the amount is not related to gaming machine play as would be the case with other jackpots (which are 'won' at the gaming machine - I don't see how it could be considered to be a "prize")

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508 Exhibit RC0760 VCGLR Crown Business as Usual Operational Meeting Minutes, 29 June 2017, CRW.008.015.1268 at .1268.
509 Exhibit RC0760 VCGLR Crown Business as Usual Operational Meeting Minutes, 29 June 2017, CRW.008.015.1268 at .1268.
510 Exhibit RC0760 VCGLR Crown Business as Usual Operational Meeting Minutes, 29 June 2017, CRW.008.015.1268 at .1268.
511 Exhibit RC0760 VCGLR Crown Business as Usual Operational Meeting Minutes, 29 June 2017, CRW.008.015.1268 at .1269.
512 Exhibit RC0759 Email chain between Michelle Fielding, Joshua Preston and Jason Cremona, 29 May 2018, CRW.008.015.1264 at .1266.
513 Exhibit RC0759 Email chain between Michelle Fielding, Joshua Preston and Jason Cremona, 29 May 2018, CRW.008.015.1264 at .1265.
514 Note, however, that a response may have been provided: see Exhibit RC0816 Email chain between Michelle Fielding and Peter Herring et al, 31 May 2018, CRW.520.024.8262.
515 Exhibit RC0864 Email chain between Tracy Shen and Jason Cremona et al, 29 May 2018, VCG.0001.0002.8488 at .8488.

Because it is deemed a 'bonus jackpot' the amount is not taxable as "Gross Gaming Revenue" under the Casino Management Agreement because jackpots are considered winnings (i.e. total revenue minus winnings = taxable GGR)

I think this is worthy of investigating ...

1.31 The next day, Mr Jason Cremona (of the VCGLR), followed up with Ms Michelle Fielding, asking for "Crown to provide a detailed breakdown of Bonus Jackpots [i.e. categories 1 to 8], i.e.; what is the value of bonus jackpots made up of".[516] Mr Cremona noted that the regulator had been asking for similar information "for some time, and this has not been forthcoming".[517]

1.32 On 31 May 2018, Mr Cremona sent another email to Ms Fielding, outlining his understanding of matters, based on his discussion with "Peter" [Herring].[518] The email said "[c]an you please advise if I am correct in my interpretation".

Senior Crown personnel scramble to workshop a response

1.33 Mr Cremona's emails caused much concern for senior personnel at Crown. That is unsurprising in the circumstances. Crown Melbourne was making highly questionable deductions, and the VCGLR was asking questions about those deductions.

1.34 Ms Fielding forwarded Mr Cremona's email of 31 May 2018 to Mr Herring, Mr Barry Felstead, Mr Joshua Preston and Mr Xavier Walsh for their review.[519]

1.35 On 1 June 2018, Mr Herring responded to Ms Fielding, copying Mr Xavier Walsh and Mr Preston, saying "let's discuss as there are a few points I think we need to clarify/adjust and get some assistance with a position before replying".[520]

1.36 On 2 June 2018, Mr Herring told Ms Fielding that "I've got all the info we just need to craft the response and run it past XW [Xavier Walsh] and Josh [Preston]".[521]

1.37 On 4 June 2018, Ms Fielding circulated a draft response to Mr Felstead, Mr Preston, Mr Xavier Walsh, Mr Mackay, Mr Alan McGregor and Mr Herring for their review. She also arranged a meeting on 5 June 2018 to discuss the response, at the request of Mr McGregor.[522] The invitees were Ms Fielding, Mr Felstead, Mr Preston, Mr Xavier Walsh, Mr Mark Mackay, Mr McGregor and Mr Herring.

1.38 At 6:58am on 5 June 2018, Mr Herring made some minor amendments to the draft response.[523]

1.39 At 10:30am on 5 June 2018, Mr McGregor forwarded the proposed response to Mr Ken Barton (and Mr Herring, Ms Fielding, Mr Felstead, Mr Preston, Mr Xavier Walsh and Mr Mackay) saying "[b]efore we submit the response, due later today, we wanted to have a discussion to agree the content".[524] It is telling that the regulator's request for information was elevated to Mr Felstead and Mr Barton. It suggests Crown was concerned about the regulator's enquiry.

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[516] Exhibit RC0759 Email chain between Michelle Fielding, Joshua Preston and Jason Cremona, 29 May 2018, CRW.008.015.1264 at .1264.
[517] Exhibit RC0759 Email chain between Michelle Fielding, Joshua Preston and Jason Cremona, 29 May 2018, CRW.008.015.1264 at .1264.
[518] Exhibit RC0332 Email chain between Michelle Fielding and Nicole Wendt et al, 4 June 2018, CRW.512.153.0134 at .0136.
[519] Exhibit RC0816 Email chain between Michelle Fielding and Peter Herring et al, 31 May 2018, CRW.520.024.8262 at .8262.
[520] Exhibit RC0331 Email chain between Michelle Fielding and Peter Herring, 2 June 2018, CRW.520.010.9959 at .9959.
[521] Exhibit RC0331 Email chain between Michelle Fielding and Peter Herring, 2 June 2018, CRW.520.010.9959 at .9959.
[522] Exhibit RC0332 Email chain between Michelle Fielding and Nicole Wendt et al, 4 June 2018, CRW.512.153.0134 at .0134.
[523] Exhibit RC0824 Email chain between Peter Herring and Michelle Fielding et al, 5 June 2018, CRW.560.001.0222 at .0222.
[524] Exhibit RC0817 Email chain between Alan McGregor and Peter Herring et al, 5 June 2018, CRW.527.001.4670 at .4670.

1.40 At 11:44am on 5 June 2018, Mr McGregor sought confirmation as to the quantum of the "Bonus Jackpots".[525] Just 15 minutes later, Mr McGregor was provided a response which said that in February 2018, the "gross value of bonus jackpots was $7.8m".[526] Less than an hour later, further figures were provided to Mr Herring, Mr McGregor, Mr Xavier Walsh and Ms Fielding.[527]

1.41 At 1:16pm on 5 June 2018, Ms Fielding responded to Mr Cremona's email.[528] The email said the following under the heading Bonus Jackpots:

> *Based on Pokie Points earned on Gaming Machines*
>
> - *Carpark 25 Pokie Points in a day*
> - *Valet Parking for Black and Platinum Crown Rewards - 1,000 Pokie Points*
> - *Hotel Night Benefits Crown Rewards Rewards Black - 1,000 Pokie Points*
> - *Hotel Night Benefits Crown Rewards Rewards Platinum - 1000 Pokie Points*
> - *Dining Rewards, the amount issued is based on Pokie Points earned on Gaming Machines during a visit example:*
>   - *Receive $7.50 Dining Reward by earning 150 points on gaming machines in a day*

1.42 By that email, Crown made partial disclosure to the regulator. Crown's response was, however, misleading because it failed to disclose the matters set out in paragraphs 1.16 to 1.22 above. So much has substantively been conceded by Crown.[529]

1.43 Crown remained concerned about the deductions Crown Melbourne was making.

1.44 Ms Fielding forwarded her email to Mr Cremona to Mr Felstead, Mr Preston, Mr McGregor, Mr Xavier Walsh, Mr Mackay, Mr Herring and Mr Barton.[530] Again, it is telling that a simple response to the regulator was elevated to Mr Barton and Mr Felstead.

1.45 Less than two hours after Ms Fielding responded to Mr Cremona, Mr Herring sent Mr Preston an email explaining the nature of the deductions made by Crown Melbourne from GGR.

1.46 At 9:40pm on 5 June 2018, Mr Preston forwarded Mr Herring's email to Ms Fielding and asked her to send "any relevant legislative/regulatory provisions that will assist in analysing the bonus structures".[531]

1.47 Crown was so concerned about its position, Crown Resorts ultimately sought external legal advice on the issue (which is discussed below).

The regulator responds to Ms Carr

1.48 On 6 June 2018, Mr Cremona emailed Ms Myers,[532] who then emailed Ms Carr and said:[533]

> *… I provide the following dot points which hopefully address the various concerns expressed:*

[525] Exhibit RC0813 Email chain between Alan McGregor and Matthew Luttick et al, 5 June 2018, CRW.520.011.1432 at .1432.
[526] Exhibit RC0829 Email chain between Matthew Luttick and Alan McGregor et al, 5 June 2018, CRW.560.001.0619 at .0619.
[527] Exhibit RC0784 Email chain between Edwin Aquino and Peter Herring et al, 5 June 2018, CRW.512.147.0399 at .0399.
[528] Exhibit RC0151 Confidential email chain, 6 June 2018, MEM.5001.0003.0842 at .0843.
[529] Exhibit RC1231 Second Statement of Peter Herring, 14 July 2021, CRW.998.001.0551.
[530] Exhibit RC0780 Email chain between Michelle Fielding and Barry Felstead et al, 5 June 2018, CRW.512.139.0037 at .0037.
[531] Exhibit RC0819 Email chain between Joshua Preston, Michelle Fielding and Peter Herring, 5 June 2018, CRW.540.011.3676 at .3676.
[532] Exhibit RC0861 Email chain between Tracy Shen and Jason Cremona et al, 8 June 2021, VCG.0001.0002.8485 at .8485.
[533] Exhibit RC0863 Email chain between Tracy Shen and Jason Cremona et al, 7 June 2021, VCG.0001.0002.8487 at .8487.

- *Current Crown system capabilities allow players to convert loyalty points and promotional vouchers earned, into credits on gaming machines. As these are not accompanied by cash into the machine, they are treated as 'bonuses' paid out by Crown, in addition to standard EGM game wins or jackpot wins. Since inception, Crown has been able to deduct bonuses from gaming machine revenue.*
- *Bonus jackpots/prizes differ from standard 'jackpots'…*
- *Using the definition of 'bonus jackpots' as defined in the Technical Requirements, and articulated in your email, it is not a condition that the EGM must award the prize, nor does the awarding of the prize have to relate to gaming machine play. The technical requirements, which are severely outdated … require an external device to instruct the EGM to pay a prize. Since Crowns inception, the interpretation of 'bonus jackpot/prizes' has included bonus credits to the EGM, transfer of rewards points to credits, and awarding redeemable prizes, ie; food and beverage vouchers, car park passes, etc.*

In relation to the Gross Gaming Revenue (GGR) calculation applied to gaming machines at the Casino, the calculation extends beyond revenue minus winnings. GGR is calculated as Turnover less game wins less jackpots (contributions plus start-out) less bonuses.

Upon redeeming a 'bonus', as a credit to a machine or a tangible prize (F&B voucher as an example), the impact on the GGR calculation is:

1. *Credits to Machine: Turnover is accumulated, as such credits cannot be cashed out, and so is bonus jackpots. Therefore, the net tax impact of the bonus payouts is nullified.*

2. *Awarding of F&B Voucher or other redeemable voucher: upon redemption, the GGR calculation accounts for the value of this as a bonus prize. This clearly only include 'bonus vouchers' awarded through the conduct of gaming on the gaming machine…*

Essentially, because Crown has awarded 'bonuses' from/to a gaming machine, and has not received a cash inflow for the awarding of the prize, it has always been an allowable deduction from Gaming Revenue…

1.49 At this juncture, three points can be made.

1.50 **First**, it is regrettable that the regulator failed to appreciate the true character of what was occurring. In part, that was due to Crown's conduct, including its initial concealment and its subsequent misleading response to Mr Cremona's enquiries. Nevertheless, it is submitted the regulator should have done more with the information provided by Crown.

1.51 **Second**, Crown was not aware of the position adopted by the regulator. As will become clear, Crown remained concerned that the regulator was "digging around".

1.52 **Third**, on 2 June 2021, the regulator informed the Commission of the following:[534]

Until the matter was raised in the hearing on 7 June 2021 by Counsel Assisting the Royal Commission, the VCGLR was unaware that Crown was deducting amounts in respect of certain 'bonus jackpots' from its Gross Gaming Revenue amounts.

[534] Exhibit RC0929 VCGLR Supplementary Answers to Questions from the Royal Commission, 2 June 2021, VCG.9999.0004.0007 at .0004 [4(a)].

1.53 The contemporaneous documents suggest that is not correct as an absolute proposition.

The Third Issue: Crown's Failure to address the improper Bonus Jackpots Deductions after June 2018

1.54 As a result of the regulator "digging around",[535] and because "obviously there was a concern" that Crown was not on solid ground after the exchange with the regulator in June 2018,[536] Crown sought legal advice from Minter Ellison (**Minters**).

2018 – the first advice from Minters

1.55 On 17 October 2018, Mr Preston sought advice from Mr Glen Ward (of Minters) about the deductibility of Bonus Jackpots from GGR.[537] The instructions provided to Mr Ward were – on the documents produced to the Commission – inadequate. While Mr Ward was provided several relevant documents, he did not receive the "Crown Melbourne Gaming Machines Tax Initiatives – Round 2" presentation[538] (which made clear Crown was treating benefits to which members were already entitled by reason of their loyalty status, as winnings from gambling).

1.56 On 19 October 2018, Mr Ward took instructions from Mr Preston, Mr Herring and Ms Fielding. A Minters file note records the following:[539]

> *Health check re food + hotel + carpark program*
>
> *… Bonus jackpots not broken down into types of jackpots*
>
> *… Belief that VCGLR would know that credit rewards are being deducted*
>
> *… item 8 does not meet def [definition] of bonus jackpot b/c not using ICT*
>
> *… evidence over time where we can show [the VCGLR] had clear visibility*

1.57 On 25 October 2018, Mr Ward provided a draft advice to Crown.[540] While the advice noted possible arguments available to Crown to defend the deductions, it correctly said as follows:[541]

> *21. The VCGLR:*
>
> *(a) was not advised of this change in the treatment of Gaming Machine Food Program costs;*
>
> *(b) has not approved the Gaming Machine Food Program as a Bonus Jackpot.*
>
> *22. Documents issued at the time of the introduction of these changes to the Gaming Machine Food Program speak of, among other things, the benefit to the bottom line of including these Bonus Jackpots, and the likelihood of the VCGLR detecting this change in treatment.*
>
> *…*

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535 T1655:39-42 (Mackay). Cf. T2729:1-9 (Fielding).
536 T3250:22-37 (X Walsh); T3262:39-45 (X Walsh).
537 Exhibit RC0150 Confidential email, 17 October 2018, MEM.5001.0003.1774.
538 Exhibit RC0150 Confidential email, 17 October 2018, MEM.5001.0003.1774; Exhibit RC0762 Email from Melanie McGrail to Joshua Preston, 17 October 2018, CRW.009.002.4238. See also Exh bit RC0152 Confidential email, 18 October 2018, MEM.5001.0003.0850; Exhibit RC0153 Confidential email, 18 October 2018, MEM.5001.0003.0830; Exhibit RC0154 Confidential email chain, 19 October 2018, MEM.5001.0003.1732; Exhibit RC0155 Confidential email chain, 24 October 2018, MEM.5001.0003.1264; and Exhibit RC0812 Email chain between Joshua Preston, Glen Ward and Michelle Fielding, 30 October 2018, CRW.520.011.0683.
539 Exhibit RC0856 File Note regarding Crown General 'Winnings', 19 October 2018, MEM.5025.0001.0001.
540 Exhibit RC0156 Confidential, 25 October 2018, MEM.5000.0002.9492; Exhibit RC0156a Confidential memorandum, 25 October 2018, MEM.5000.0002.9493.
541 Exhibit RC0156a Confidential memorandum, 25 October 2018, MEM.5000.0002.9493 at .9494-9495.

> *26. On a strict interpretation of Gross Gaming Revenue, to constitute a deductible, the amounts must be "won" by the punter or otherwise paid out as winnings. On its terms, this definition would not seem to capture credits earned simply by repeat play, which is what the Gaming Machine Food Program involves.*
>
> *27. The concept of loyalty credits accruing based on level of play does not logically fit within the concept of a jackpot, either as that term is commonly understood, or as it is defined in the CCA (which is a very narrow, technical definition).*

1.58 On 27 October 2018, Mr Preston forwarded the draft advice to Ms Fielding and Mr Herring and said: "Can you please review the note and send to me any comments you have. **Please do not forward the note or discuss it with others at this stage** as we want to discuss your comments/queries, then get a revised/updated version from Glen before circulating it".[542]

1.59 On 2 November 2018, Mr Preston emailed Mr Ward a marked up version of the advice.[543] A fair reading of the amendments shows Crown was pushing back and seeking to persuade Mr Ward to change his advice. Ms Fielding's evidence to the contrary should not be accepted.[544] The proposed mark ups did not disclose to Mr Ward that certain benefits "won" were in fact benefits to which players were already entitled by virtue of their loyalty program status.

1.60 On 14 November 2018, Mr Ward circulated an updated advice, which largely rejected Crown's proposed amendments, and left unchanged Mr Ward's original conclusions.[545]

1.61 On 13 December 2018, Mr Preston forwarded the updated advice to Mr Xavier Walsh and said: "Please see attached as discussed. **Please do not circulate the advices or discuss them with others before speaking to me**".[546]

1.62 According to Mr Mackay, this advice was known to the directors.[547]

1.63 The advice made clear Crown Melbourne was on "shaky legal ground" in deducting the Bonus Jackpots.[548] In disregard of Mr Ward's advice, Crown continued to allow expenses associated with Bonus Jackpots to be deducted from GGR.

1.64 Ms Fielding's evidence was she did not think to discuss the issue with the regulator – "ie come clean",[549] because "that was the culture at the time, it wasn't something that was done. It was that Crown made its own decisions and it wasn't being transparent. That's the truth of it".[550]

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542 Exhibit RC0838 Email from Joshua Preston to Michelle Fielding and Peter Herring, 27 October 2018, CRW.563.002.0491 at .0491 (emphasis added).
543 Exhibit RC0157 Confidential email, 2 November 2018, MEM.5001.0001.6689 at .6689; Exh bit RC0157a Confidential memorandum, 25 October 2018, MEM.5001.0001.6690.
544 T2712:18-38 (Fielding).
545 Exhibit RC0158 Confidential email chain, 14 November 2018, MEM.5000.0001.5438; Exhibit RC0158a Confidential memorandum, 14 November 2018, MEM.5000.0001.5440; Exhibit RC0158b Confidential memorandum, 14 November 2018, MEM.5000.0001.5444.
546 Exhibit RC0840 Email from Joshua Preston to Xavier Walsh, 13 December 2018, CRW.563.010.4237; Exhibit RC0840a, Memorandum regarding Gaming Machines Bonus Jackpot Program Initiative - GGR Treatment, 14 November 2018, CRW.563.010.4238 at .4238 (emphasis added).
547 T1663:44-T1664:7 (Mackay).
548 T2720:43-46 (Fielding); T2721:1-4 (Fielding).
549 T2721:12 (Fielding).
550 T2721:10-24 (Fielding).

2019 – the second advice from Minters

1.65 In April 2019, the regulator provided Crown with a draft technical requirements document (**draft TRD**).[551] Ms Fielding and Mr Preston incorrectly thought the draft TRD might alter Mr Ward's advice.[552]

1.66 On 9 July 2019, Ms Fielding sent a letter to Mr Ward which:

(a) said Crown Melbourne had been provided with a new draft TRD for its comment by the VCGLR;

(b) said the draft TRD refers to Gaming Machine Bonus Jackpots; and

(c) asked Mr Ward to "review the references to Bonus Jackpots in the Proposed TRD and provide any supplementary or amended advices as to the position of the Gaming Machines Bonus Jackpot Program at Crown".[553]

1.67 It is open to infer Crown sought further advice because it remained concerned about the deductions of Bonus Jackpots, especially given the advice received from Mr Ward in 2018.

1.68 On 18 November 2019, Mr Ward provided a further advice, the substance of which had not changed from the November 2018 advice.[554] The advice summarised the 2018 advice, and made clear the draft TRD (which has not yet been implemented)[555] was irrelevant. It said:

> *11. Ultimately, the question of whether deductions made in respect of the Gaming Machine Bonus Jackpot Program meet the statutory definition of sums 'paid out as winnings' is a question of statutory construction, and not to be resolved by reference to other documents…*[556]

1.69 Regrettably, the advice also commented on risk (rather than the lawfulness of the deductions):

> *17. We understand in this respect that the VCGLR has made certain enquiries during the course of 2018 in relation to Crown Melbourne's treatment of Bonus Jackpots, but to date the VCGLR has not raised any specific issue about the composition of Bonus Jackpots or the treatment of Gaming Machine Bonus Jackpot Program costs as a deductible. Helpfully, under the New TRD, there is less scope for the VCGLR to raise issues with Crown's treatment of the Gaming Machine Bonus Jackpot Program*[557]

1.70 On 12 December 2019, Ms Fielding forwarded the advice to Mr Xavier Walsh and Mr Herring.[558]

1.71 According to Mr Mackay, the directors and Mr McGregor were aware of this advice.[559]

1.72 Notwithstanding the advice, Crown continued to allow expenses associated with Bonus Jackpots to be deducted from GGR. It is submitted such conduct was entirely unacceptable.

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551 Exhibit RC0814a Letter from Jason Cremona to Michelle Fielding, 16 April 2019, CRW.520.011.4236 at .4236.
552 Exhibit RC0814 Email from Michelle Fielding to Joshua Preston, 15 May 2019, CRW.520.011.4235 at .4235.
553 Exhibit RC0159 Confidential letter, 9 July 2019, MEM.5001.0003.9394 at .9394.
554 Exhibit RC0204b Confidential email chain, 24 February 2021, CRW.512.135.0026; Exhibit RC0160 Confidential memorandum 18 November 2019, MEM.5002.0009.2582.
555 T1670:20-23 (Mackay).
556 Exhibit RC0160 Confidential memorandum 18 November 2019, MEM.5002.0009.2582 at .2583, [11].
557 Exhibit RC0160 Confidential memorandum 18 November 2019, MEM.5002.0009.2582 at .2584, [17].
558 Exhibit RC0204b Confidential email chain, 24 February 2021, CRW.512.135.0026.
559 T1672:6-9 (Mackay).

2020 – Crown elects to take no action on Bonus Jackpots

1.73 On 10 September 2020, a GST dispute between Crown Melbourne and the Commissioner of Taxation was resolved in Crown Melbourne's favour.[560] That prompted a meeting between Crown and the Victorian Department of Treasury and Finance.[561]

1.74 On 17 September 2020, Mr Chris Reilly sent an email to Mr Xavier Walsh, Mr Matthew Young, Mr Herring, Ms Fielding, Mr Barton and Mr Felstead which sought "a chat to go through some outstanding and historical tax and regulatory matters to pull together a finalised list".[562]

1.75 That led to a flurry of internal Crown emails regarding the deduction of Bonus Jackpots from GGR calculations.[563] Two emails are of note.

1.76 **First**, the email sent by Mr Herring to Ms Fielding on 21 September 2020, which suggested Crown had (in June 2018) been "very specific and clear on all deductions" in its dealings with the regulator,[564] which Mr Herring forwarded to Mr Walsh the following day.[565] As discussed above, that statement was not correct.

1.77 **Second**, on 21 September 2020, Ms Fielding emailed Mr Xavier Walsh Mr Ward's 2019 advice.[566]

1.78 On 22 September 2020, Mr Walsh invited Mr Reilly, Mr Barton, Mr McGregor, Mr Felstead, Mr Preston, Mr John Salomone, Ms Fielding, Mr Herring and Mr Young to a meeting regarding "GST Judgement – DTF – Next Steps".[567]

1.79 A contemporaneous file note recorded the following:[568]

> *Bonus Jackpots 2012 → $4 million …*
>
> *$40 million …*
>
> *Is it deductable → what are the components*
>
> *Has it been approved …*
>
> *1994 → no one looked at it*
>
> *90% ok going forward →*

1.80 Mr Xavier Walsh gave evidence that "the question of whether the bonus jackpots were deductible at all was raised"[569] at the meeting, and that "everyone at the meeting understood that there was a residual risk" as to the deductions.[570]

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560 *Crown Melbourne Ltd v Commission of Taxation* [2020] FCA 1295. The judgment was appealed, the appeal has been heard, and judgment is reserved.
561 Exhibit RC0333 Email from Chris Reilly to Xavier Walsh et al, 17 September 2020, CRW.512.147.1275.
562 Exhibit RC0333 Email from Chris Reilly to Xavier Walsh et al, 17 September 2020, CRW.512.147.1275.
563 Exhibit RC0334 Email chain between Peter Herring and Michelle Fielding et al, 21 September 2020, CRW.520.009.9863; Exhibit RC0335 Email chain between Peter Herring and Michelle Fielding et al, 21 September 2020, CRW.520.010.1222; Exh bit RC0241 Email chain between Michelle Fielding, Peter Herring and Jason Cremona, 21 September 2020, CRW.512.117.0077; Exhibit RC0336 Email from Michelle Fielding to Xavier Walsh, 21 September 2020, CRW.563.003.9164 (which attached the 18 November 2019 advice from Mr Ward); Exhibit RC0771 Email chain between Peter Herring and Xavier Walsh et al, 22 September 2020, CRW.512.135.0032; Exhibit RC0768 Email from Michelle Fielding to Xavier Walsh, 22 September 2020, CRW.512.135.0031; Exh bit RC0839 Email chain between Xavier Walsh and Alan McGregor et al, 22 September 2020, CRW.563.002.5830; Exh bit RC0788 Email from Michelle Fielding to Xavier Walsh, 22 September 2020, CRW.512.147.1279; Exhibit RC0787 Email chain between Michelle Fielding and Xavier Walsh, 22 September 2020, CRW.512.147.1277.
564 Exhibit RC0335 Email chain between Peter Herring and Michelle Fielding et al, 21 September 2020, CRW.520.010.1222.
565 Exhibit RC0839 Email chain between Xavier Walsh and Alan McGregor et al, 22 September 2020, CRW.563.002.5830.
566 Exhibit RC0336 Email from Michelle Fielding to Xavier Walsh, 21 September 2020, CRW.563.003.9164 (which attached the 18 November 2019 advice from Mr Ward).
567 Exhibit RC0337 Meeting invite from Xavier Walsh to Chris Reilly et al, 22 September 2020, CRW.512.147.1276.
568 Exhibit RC0802 File note regarding GST – Case, 22 September 2020, CRW.512.180.0005.
569 T3254:36-47 (X Walsh).
570 T3255:24-28 (X Walsh).

1.81 Following that meeting, Crown took no steps to remedy the position. That was so notwithstanding the 2019 advice from Mr Ward had recently been brought to the attention of Mr Xavier Walsh by Ms Fielding.

1.82 Crown thus continued to allow expenses associated with Bonus Jackpots to be deducted from GGR. It is submitted such conduct – which occurred less than a year ago – was entirely unacceptable.

1.83 Ms Fielding gave evidence that:[571]

(a) before this Commission was announced, she had a discussion with Mr Xavier Walsh about disclosing the "tax treatment" to the regulator (which did not occur and there was no evidence of any steps being taken to effect such disclosure); and

(b) she had a subsequent discussion with Mr Xavier Walsh after the Commission was announced, where she said raising the matter with the regulator at that point would "look disingenuous".

1.84 That evidence should not be accepted. The suggestion that the matter was going to be disclosed is inconsistent with Mr Xavier Walsh (along with Ms Fielding and others) sitting on the matter since at least 2018. Further, the evidence is not supported by any contemporaneous documents.

The Fourth Issue: How Crown dealt with the Bonus Jackpots Deductions after this Royal Commission was announced

23 February 2021 – the discussion between Mr Xavier Walsh and Ms Helen Coonan

1.85 On 23 February 2021, the day after this Commission was announced, Mr Xavier Walsh raised the deductions with Ms Coonan in a weekly catch-up meeting.[572] Mr Xavier Walsh prepared an agenda for the meeting. It provided as follows:

6. Compliance

- *Legacy issue*

1.86 "Legacy issue" was a reference to the "tax issues".[573] The cryptic nature of the description is telling. The way in which it was recorded, without explanation or precis, as compared with other issues on the agenda suggests the issue was regarded as sensitive.[574]

1.87 Mr Xavier Walsh gave evidence that at the time of the meeting, he thought Crown Melbourne's potential tax underpayment was approximately $40 million.[575]

1.88 Mr Xavier Walsh took notes during the meeting.[576] Next to the phrase "[l]egacy issue", he wrote:[577]

- *Helen [Coonan] to consider*
- *XW [Xavier Walsh] to think about how best to communicate*

1.89 According to Mr Xavier Walsh, the phrase "how best to communicate" was a reference to how best to disclose the matter to the regulator.[578]

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571 T2733.1 - T2734.6 (Fielding).
572 Exhibit RC0358 Memorandum regarding Crown Melbourne Weekly Catch Up Agenda, 23 February 2021, CRW.512.135.0073.
573 T3220:10-17 (X Walsh).
574 T3224:28-30 (X Walsh).
575 T3223:36-39 (X Walsh).
576 T3219:31-37 (X Walsh).
577 Exhibit RC0358 Memorandum regarding Crown Melbourne Weekly Catch Up Agenda, 23 February 2021, CRW.512.135.0073 at .0074.
578 T3222:18-20 (X Walsh).

1.90 He also gave the following evidence about the meeting:[579]

> *Q. She didn't direct you did she to get the information together and give it to the lawyers for advice in that meeting did she?*
>
> *A. No, she definitely told me to pull the information together. She was, you know, concerned regarding the matter to, you know, establish a position, and that was left to me. And obviously she --- I don't know what I was thinking when I wrote "Helen to consider" but she ---*
>
> *Q. Do you think the note you wrote at the time of the meeting is wrong?*
>
> *A. No, well, Mr Finanzio,* ***she was definitely going to consider the matter****, but she did ask me to pull the information together. I had given her a verbal.*
>
> *…*
>
> *Q. Which lawyers was she asking you to give it to?*
>
> *A. The lawyers when they were appointed.*

1.91 Mr Xavier Walsh went on to say:[580]

> *Q. You weren't sure what she was going to say to that legacy issue, were you, when you raised it with her?*
>
> *A. I wasn't, but I was confident, based on the discussions and communication she previously had was, look, "Now is the time, that anyone who has any concerns on any matter, please raise them", and I was confident she would take it in the manner which she did, which was thank me for raising it, and please look into it.*

1.92 According to Ms Coonan, Mr Xavier Walsh told her the following:[581]

(a) there was a "legacy matter" related to the "deductions or calculations of the jackpot tax";

(b) "the program had been approved by the VCGLR but not the change that had been made in 2012";

(c) "there was a memorandum … that had involved senior people at Crown, in which it was suggested that … the VCGLR had not been informed and they probably wouldn't notice";

(d) he was "worried about it as a transparency issue and something was likely to come out in the Commission"; and

(e) the problem had "been cured or fixed" and that in 2018, the regulator had a "thorough look at it, and it was now fine" and the "technical documents now reflected this …"

24 February 2021 – the discussion between Mr Xavier Walsh and Mr Mackay

1.93 At 9.00am on 24 February 2021,[582] Mr Xavier Walsh met Mr Mackay.[583] Mr Mackay's file note[584] from the meeting recorded the following:[585]

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[579] T3221:6-46 (X Walsh) (emphasis added).
[580] T3225:13-20 (X Walsh).
[581] T3802:42-T3803:17 (Coonan).
[582] Exhibit RC0203 Mark Mackay Calendar, 24 – 26 February 2021, CRW.512.131.0233; Exh bit RC0359 Meeting Invite from Xavier Walsh to Mark Mackay, 24 February 2021, CRW.512.147.0756.
[583] Exhibit RC0202 File Note regarding tax deductable expenses, 24 February 2021, CRW.512.135.0075.
[584] T2125:47 - T2126:2 (Mackay).
[585] Exh bit RC0202 File Note regarding tax deductable expenses, 24 February 2021, CRW.512.135.0075 (emphasis added).

** Bonus Jackpots*

- ***latent** issue*
- *Tax deductible expenses against Gaming Rev*
- *VCGLR review [i.e. the June 2018 correspondence with Mr Cremona[586]]*
- ***Helen reviewing** to revert to XW*

→ *Pull together a document for review on what is deducted, value of deductions – 2012-21*

1.94 During the meeting:

(a) Mr Xavier Walsh asked Mr Mackay to give him an idea about what the underpayment of tax might have been;[587]

(b) Mr Xavier Walsh directed Mr Mackay to "prepare or pull together the impact of those deductions made under the loyalty program";[588]

(c) Mr Xavier Walsh used the word "latent" to mean the tax issue that had been concealed;[589]

(d) Mr Xavier Walsh said he had spoken with Ms Coonan "about the bonus jackpots and the concern on them being deductions from gross gaming revenue";[590] and

(e) Mr Xavier Walsh said he was "reviewing the bonus jackpots latent issue with Helen in regards to the Royal Commission".[591]

1.95 The:

(a) contemporaneous file note of Mr Xavier Walsh;

(b) contemporaneous file note of Mr Mackay;

(c) evidence of Mr Xavier Walsh; and

(d) evidence of Mr Mackay,

all suggest that Ms Coonan was (contrary to her evidence) to review or consider the issue.

1.96 It is open for the Commissioner to prefer the evidence of Mr Xavier Walsh over the evidence of Ms Coonan insofar as it concerns the 23 February 2021 meeting, especially where Mr Xavier Walsh's evidence is supported by contemporaneous documents.

Mr Mackay speaks to Mr Herring and Mr Machado – the spreadsheet is being prepared

1.97 Almost immediately following his meeting with Mr Xavier Walsh, Mr Mackay spoke to Mr Herring about the tax issue.[592] Mr Mackay asked Mr Herring to send him "any detail he had on the bonus jackpots in regards to the breakout of each of them".[593]

1.98 Mr Herring promptly began emailing Mr Mackay documents relating to the tax issue.[594]

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586 T2128:30-47 (Mackay).
587 T3224:2-6 (X Walsh). See also T2126:21-26 (Mackay).
588 T1610:29-34 (Mackay).
589 Exhibit RC0201 Gross Gaming Revenue Spreadsheet 17 June 2021, CRW.512.156.2466; T2126:13-16 (M Mackay); T2127:20-22 (Mackay).
590 T2129:16-19 (Mackay).
591 T2131:22-28 (Mackay).
592 T2134:28-37 (Mackay).
593 T2135:20-21 (Mackay).
594 Exhibit RC0204 Confidential email chain, 24 February 2021, CRW.512.139.0040; Exhibit RC0204a Confidential email chain, 24 February 2021, CRW.512.135.0035; Exhibit RC0204b Confidential email chain, 24 February 2021, CRW.512.135.0026; Exhibit RC0204c Confidential email chain, 24 February 2021, CRW.512.135.0067.

1.99 On 24 and 25 February 2021, Mr Mackay instructed Jose Machado to prepare a spreadsheet showing the relevant calculations.[595] The spreadsheet was structured so that deductions with different perceived legal risks were separately identified.[596] That is why the spreadsheet ultimately prepared was broken down into Bonus Jackpots, Welcome Back, and Matchplay and others.

1.100 According to Mr Mackay, the different legal risks associated with the various deductions were known to people in the organisation, including himself, Mr Xavier Walsh, Mr Herring, Ms Fielding, Mr Preston and Ms Coonan.[597]

The 25 February 2021 meeting between Mr Xavier Walsh, Mr Herring, Mr Mackay and Ms Fielding

1.101 On 25 February 2021, Mr Mackay prepared a document titled "Bonus Jackpots Review".[598]

1.102 At 2:45pm that day, Mr Mackay met with Mr Xavier Walsh, Mr Herring and Ms Fielding about the "legacy issues".[599]

1.103 Mr Herring recalls that at the meeting, Mr Xavier Walsh said he had discussed the matter with Ms Coonan.[600]

1.104 No file notes of the meeting were produced to the Commission.

The 26 February 2021 meeting between Mr Xavier Walsh, Mr Herring and Mr Mackay – the final spreadsheet

1.105 Between 9:42am and 10:40am on 26 February 2021,[601] Mr Mackay updated the spreadsheet prepared by Mr Machado.[602]

1.106 Mr Mackay accepted that:

(a) the spreadsheet[603] dealt with an aspect of the gaming taxes paid by Crown Melbourne from the 2014 financial year to the 2019 financial year, and showed that, in calculating the amount of gambling tax payable, Crown Melbourne deducted expenses associated with Crown's loyalty program;[604]

(b) the spreadsheet showed the "tax impact" of Crown Melbourne deducting the loyalty program expenses when calculating the gambling tax payable;[605]

(c) by "tax impact", Mr Mackay meant the amount Crown Melbourne saved by deducting those loyalty program expenses when calculating the gambling tax payable;[606] and

(d) if Crown Melbourne was not entitled to deduct these amounts, that the additional tax payable would be $167.829 million (excluding supertax).[607]

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595 Exhibit RC0792 Email from Jose Machado to Mark Mackay, 24 February 2021, CRW.512.153.0114; Exhibit RC0790 Email chain between Jose Machado and Mark Mackay, 24 February 2021, CRW.512.153.0102; Exhibit RC0794 Email chain between Jose Machado and Mark Mackay, 24 February 2021, CRW.512.153.0159; Exhibit RC0793 Email chain between Jose Machado and Mark Mackay, 25 February 2021, CRW.512.153.0125.
596 T2137:4-12 and 36-41 (Mackay).
597 T2138:20-47 (Mackay).
598 Exhibit RC0161 Confidential report, 25 February 2021, CRW.510.059.0592.
599 Exhibit RC0203 Mark Mackay Calendar, 24 – 26 February 2021, CRW.512.131.0233; Exhibit RC0205 Email chain between Michelle Fielding and Jan Williamson et al, 14 June 2021, CRW.512.139.0051.
600 Exhibit RC1231 Second Statement of Peter Herring, 14 July 2021, CRW.998.001.0551 at .0554 [14].
601 T2140:37-41 (Mackay).
602 T1608:13-43 (Mackay).
603 Exhibit RC0147 Crown Me bourne Bonus Points and Bonus Jackpots Earnings report, 26 February 2021, CRW.510.059.0594.
604 T1609:17-27 (Mackay).
605 T1609:34-38 (Mackay).
606 T1609:40-44 (Mackay).
607 T1610:6-12 (Mackay).

1.107 After updating the spreadsheet, Mr Mackay spoke to Mr Herring about the accuracy of the figures in the document.[608]

1.108 At 11:30am on 26 February 2021, Mr Mackay met with Mr Xavier Walsh and Mr Herring to discuss the spreadsheet.[609] Mr Mackay knew the spreadsheet was sensitive,[610] and did not email the document to Mr Xavier Walsh.[611]

1.109 According to Mr Mackay, he and Mr Xavier Walsh understood the potential exposure was about $170 million excluding super tax and penalty interest.[612]

Mr Mackay's subsequent involvement

1.110 At some point (possibly after the 26 February 2021 meeting), Mr Mackay discussed ambiguities of the gaming tax calculation with Ms Fielding.[613] Why that was necessary is unclear, given Mr Mackay's involvement in the matter had (on his evidence) ended.[614]

1.111 Mr Mackay's evidence was that he did not have any further conversations about the spreadsheet until his hearing before the Commission on 7 June 2021.[615] Documents produced to the Commission suggest that evidence was not correct.[616]

The 1 March 2021 meeting

1.112 On 1 March 2021, Mr Xavier Walsh attended a meeting with Mr Reilly, Mr Salome, Mr Young, Ms Fielding, Mr McGregor, Ms Jan Williamson, Ms Anne Siegers and Ms Angelina Bowden-Jones.[617]

1.113 Ms Williamson's file note records that the tax issue was discussed.[618] Most of the attendees had been aware of the tax issue since 2018.[619] Mr Xavier Walsh had Mr Mackay's spreadsheet at the meeting.[620]

1.114 Mr Xavier Walsh's evidence was that a purpose of the meeting was to flag to those in attendance that the "tax bonus jackpot" was a live issue.[621]

1.115 Mr Xavier Walsh's evidence was that some of the matters discussed were: whether or not Crown had an arguable position on the potential underpayment of gaming tax; whether the gaming tax could be offset against other taxes where there might have been overpayment; whether Crown could rely on the draft TRD; and the public perception in relation to disclosure of the underpayment of gaming tax.[622]

608 T2140:43-T2141:19 (Mackay).
609 Exhibit RC0203 Mark Mackay Calendar, 24 – 26 February 2021, CRW.512.131.0233; Exh bit RC0359 Meeting Invite from Xavier Walsh to Mark Mackay, 24 February 2021, CRW.512.147.0756.
610 T2141:37-40 (Mackay).
611 T2141:29-35 (Mackay).
612 T1610:6-47, T1611: 1-47, T1612: 1-10, 41-44, T1615: 9-19 (Mackay); Exhibit RC0203 Mark Mackay Calendar, 24 – 26 February 2021, CRW.512.131.0233; Exhibit RC0147 Crown Melbourne Bonus Points and Bonus Jackpots Earnings report, 26 February 2021, CRW.510.059.0594.
613 T2142:7-25 (Mackay).
614 T2141:47-T2142:5 (M Mackay). See also T2142:13-31 (Mackay).
615 T2142:4-5 (Mackay).
616 Exhibit RC0791 Email from Jose Machado to Mark Mackay, 3 March 2021, CRW.512.153.0105; Exhibit RC0220 Email from Jose Machado to Mark Mackay, 4 March 2021, CRW.512.153.0132; Exhibit RC0221 Email from Mack Mackay to Simon Noonan, 20 April 2021, CRW.512.156.1826.
617 Exhibit RC0205 Email chain between Michelle Fielding and Jan Williamson et al, 14 June 2021, CRW.512.139.0051; Exhibit RC0359 Meeting Invite from Xavier Walsh to Mark Mackay, 24 February 2021, CRW.512.147.0756; T3233:7-28 (X Walsh).
618 Exhibit RC0338 File Note regarding Tax Bonus Jackpot, 1 March 2021, CRW.512.175.0001; T3230:31-36 (X Walsh).
619 T3234:24-32 (X Walsh).
620 T3232:21-32 (X Walsh).
621 T3232:5-19 (X Walsh).
622 T3234:34-47; T3235:1-27 (X Walsh).

Mr Xavier Walsh's meeting with Ms Halton

1.116 Mr Xavier Walsh gave evidence that he discussed the tax issue with Ms Jane Halton on either 3 or 4 March.[623] According to Mr Xavier Walsh he told Ms Halton:

(a) about the advice that Crown received in 2012 and 2018, which he described as equivocal;[624] and

(b) that the VCGLR had a "very close look at it in 2018" and that the draft TRD would cure any issues going forward, but would not resolve the issue historically.[625]

1.117 Ms Halton gave the following evidence about the conversation:[626]

> *… he told me, and it is in the context of a "bring out your dead" broader admonition … "One thing that I've become aware of, it reflects badly on culture, it is an issue from two thousand" --- and I believe he said "12" --- "in respect of something that wasn't fulsomely disclosed and there is a note, a document, that talks about not telling the VCGLR something." I believe he said "jackpot", he didn't say "tax", and he said that, however this matter was disclosed to the VCGLR in --- subsequently in 2018. And that was about the extent of it.*

1.118 Ms Halton said:

(a) the issue was not described as an unpaid tax issue, and Mr Xavier Walsh said the issue had been "fixed up in 2018";[627]

(b) that she was left with the impression the issue raised was one of culture;[628]

(c) she was not told Mr Xavier Walsh had known about the matter since 2018;[629]

(d) the issue of concealment from the regulator was not made clear to Ms Halton;[630] and

(e) it concerned her that Mr Xavier Walsh downplayed the issue.[631]

Mr Xavier Walsh's meeting with Ms Antonia Korsanos and Mr Nigel Morrison

1.119 Mr Xavier Walsh's evidence was that on 9 March 2021 he met with both Mr Morrison and Ms Korsanos and provided them with the same information he had provided Ms Halton.[632]

1.120 Ms Korsanos remembered the meeting with Mr Morrison, and gave the following evidence about what was said:

> *A. The discussion was focused on more a cultural issue. Mr Walsh mentioned that he'd come across a presentation from 2012 that made some references that represented the poor culture and lack of transparency in a change that was made to the tax calculation at the time. The focus was about the comment in the presentation and what --- and how that would be looked upon. He did mention that there was a reference … an internal advice…*
>
> *And also that the situation had been --- sorry, the calculation had been audited a few years ago, about three years ago, and full transparency had been made and then also subsequently cured through a technical requirements document update. So the conversation was about the lack of*

623 T3237:19-29 (X Walsh); T3237:47-T3238:7 (X Walsh).
624 T3238:9-40 (X Walsh).
625 T3238:42-47 (X Walsh); T3239:1-3 (X Walsh).
626 T3608:11-23 (Halton).
627 T3608:25-37 (Halton).
628 T3609:16 (Halton).
629 T3609:39-42 (Halton).
630 T3610:7-26 (Halton).
631 T3610:47 - T3611:15 (Halton).
632 T3239:21-46 (X Walsh).

transparency, the lack of engagement and openness with the VCGLR, and again representative of poor culture. Focused on the comment more than anything …

Q. Did he also mention external advice?

A. No, he didn't.

Q. Did he tell you what that advice said or the effect of the advice?

A. Along the lines of "It can be done but the VCGLR could argue against it." Something along those lines.

Q. What did you take away as the concern that he was raising with you at that point? Was it the issue about non-disclosure to the VCGLR or transparency to the VCGLR?

A. It wasn't an issue --- it was definitely a culture and lack of transparency and poor engagement with the VCGLR. It wasn't an issue on whether there was a concern on that calculation.

Q. So he didn't mention it was an issue about underpayment of tax?

A. Correct…

Q. You had no idea about the quantum in mind either?

A. No …

1.121 Mr Xavier Walsh's statement about the draft TRD document was misleading (as is clear from Mr Ward's 2019 advice).[633] Given what she came to learn, Ms Korsanos was concerned about what Mr Xavier Walsh failed to disclose to her.[634]

Conversations with Mr Morrison

1.122 Mr Morrison did not give evidence about the 9 March 2021 meeting.

1.123 Mr Morrison recalled a brief conversation (of about 30 seconds[635]) with Mr Xavier Walsh on 19 or 22 March 2021.[636] Mr Morrison left the conversation with the impression that Mr Xavier Walsh recently came across an issue,[637] within the last few weeks.[638] Mr Morrison did not understand from that discussion that there was an issue regarding underpayment of tax.[639]

1.124 Mr Morrison's evidence was that:

(a) it was concerning that this issue had not been disclosed to him in circumstances where it was known to Ms Coonan and Mr Xavier Walsh;[640] and

(b) he would be concerned if Mr Xavier Walsh had known about the issue for years.[641]

RFI-002 (10 March 2021)

1.125 On 10 March 2021, the Commission issued a request for information (**RFI-002**), which sought disclosure from Crown Melbourne of conduct that would or might breach the *Casino (Management Agreement) Act 1993* (Vic), or the Management Agreement.[642]

633 T3700:25 - T3701:26 (Korsanos).
634 T3697:38-42 (Korsanos).
635 T2282:39-40 (Morrison).
636 T2249:34-40 (Morrison).
637 T2250:1-2 (Morrison).
638 T2249:42-46 (Morrison); T2250:1-2 (Morrison).
639 T2245:5-9 (Morrison).
640 T2247:4-9 (Morrison).
641 T2250:4-8 (Morrison).
642 Exhibit RC0148 Letter from Solicitors Assisting to Crown, 10 March 2021, CRW.0000.0002.0180 at .0181 [1(b)] and .0182, [5(b)].

1.126 In response to RFI-002, Crown Melbourne did not disclose any of the deductions associated with categories 1 to 8.

The non-disclosure of categories 1 to 7

1.127 In response to RFI-002, Crown Melbourne should have disclosed the deductions in respect of categories 1 to 7. That is so for the following reasons.

1.128 **First**, Crown Resorts, and its Board, have each received separate advices, which conclude that Crown Melbourne's deductions in respect of category 5 were overstated (though the quantum of the improper deductions differs in the advices).[643]

1.129 **Second**, as is discussed further below, Crown was in possession of an advice suggesting free bets were sums received.[644] Whether the advice is right or wrong is not to the point. RFI-002 called for disclosure of conduct that would or *might* breach the *Casino (Management Agreement) Act 1993* (Vic) or the Management Agreement.

1.130 **Third**, there are, as is explained below, differing degrees of risks associated with the category 1 to 7 deductions. Crown was alive to those risks. As Mr Mackay explained:[645]

> *Q. Right. Going back to my question, if you were entitled to make the deductions, the spreadsheet would have been unnecessary. There must have been at least a concern from Mr Walsh's part, possibly your part, that they were not deductible, otherwise you wouldn't have conducted the exercise; you agree with that?*
>
> *A. Yes, I agree with that …*
>
> *Q. During the course of that discussion you accept, don't you, that it was obvious to both you and Mr Walsh that if these amounts were not deductible, that was the company's potential exposure, was more than $167 million?*
>
> *A. Yes, I agree completely.*
>
> *Q. And that was the purpose of doing this, it is the only logical purpose of doing this, to work out what was the exposure?*
>
> *A. I agree. Definitely agree…*
>
> *Q And so you agree with me that you have known, since at least February 2021, that Crown either was not entitled or there was a real risk Crown was not entitled to deduct some or all of the expenses identified in your spreadsheet?*
>
> *A. Yes.*

1.131 To the extent Mr Xavier Walsh's evidence on that issue differs (he said he was not concerned about the $167 million figure, and that he was only interested in the Bonus Jackpots deductions),[646] the evidence of Mr Mackay should be preferred. That is because Mr Mackay's evidence is supported by:

(a) the contemporaneous documents – the spreadsheet included deductions relating to categories 1 to 8, not just the Bonus Jackpots (and there was no suggestion that Mr Xavier Walsh queried the inclusion of categories 1 to 7 in the spreadsheet at the time); and

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643 Exhibit RC0919 Supplementary Opinion regarding the Crown Melbourne Victorian state gaming tax issue, 4 July 2021, CRW.512.207.0001; Exhibit RC0920 Memorandum of Advice regarding Casino Tax Under the *Casino (Management Agreement) Act 1993* (Vic), 5 July 2021, CRW.512.207.0015.

644 Exhibit RC0926e Memorandum of Advice regarding the *Casino (Management Agreement) Act 1993* and Crown Me bourne, 10 July 2015, CRW.900.007.1471.

645 T1611:45 - T1612:5 (Mackay); T1615:9-19 (Mackay); T1634:26-31 (Mackay).

646 T3227:24-47 (X Walsh); T3228:1-12(X Walsh).

(b) the conduct of Crown Resorts – after the examination of Mr Mackay on 7 June 2021, Crown Resorts and its directors sought advice on the lawfulness of deducting categories 1 to 8 (not just the Bonus Jackpots).

1.132 The non-disclosure to the Commission in response to its specific request is regrettable. Crown did not raise categories 1 to 7 with its lawyers (Allens Linklaters (**Allens**)), prior to 7 June 2021, notwithstanding the production of Mr Mackay's spreadsheet in February 2021.

1.133 That said, there are mitigating circumstances. In particular:

(a) the risks associated with the deductions for categories 1 to 7 were very different to the risks associated with the deductions in respect of the Bonus Jackpots; and

(b) during the course of the Commission (but only after 7 June 2021), Crown Resorts and the Crown Resorts Board furnished advices to the Commission addressing the deductibility of categories 1 to 8.

<u>The non-disclosure of Bonus Jackpots</u>

1.134 The Bonus Jackpots deductions plainly fell within the scope of RFI-002. They were not disclosed by Crown until after the issue was identified by the Commission, and flagged by Counsel Assisting in the cross examination of Mr Mackay on 7 June 2021.

1.135 Precisely why the Bonus Jackpots were not disclosed to the Commission is addressed below.

Communications between Allens and Crown about Bonus Jackpots

1.136 Mr Maher is a senior partner at Allens. He gave evidence about why the Bonus Jackpots issue was not disclosed.

1.137 Mr Maher said when Allens was first retained by Crown in early March 2021, Mr Reilly "fleetingly" mentioned the "tax issue" to Mr Maher.[647] Mr Xavier Walsh gave evidence that he flagged the issue with Allens in early March (but not in any "great detail"), though no contemporaneous document evidencing that disclosure was produced.[648]

1.138 On 18 March 2021, there was a meeting between Crown and Allens.[649] The attendees at the meeting from Crown were Mr Xavier Walsh, Mr McGregor, Ms Williamson, Mr Rob Meade and Mr Herring, and from Allens were Mr Maher, Mr Matthew McCarthy and Mr John Yiannakou.[650] As the contemporaneous file note from the meeting makes clear, Mr Xavier Walsh did disclose the Bonus Jackpots deductions to Allens at the meeting. However, as appears to have occurred in his discussions with Ms Halton, Ms Korsanos and Mr Morrison, Mr Xavier Walsh (and the other Crown representatives at the meeting) appear to have downplayed the issue. For example, according to Mr Maher, Mr Xavier Walsh:

(a) did not tell Allens that from 2012, a conscious decision was made not to disclose the matter to the regulator;[651]

(b) told Allens the impression that could be formed is that Crown cheated on its taxes, not that it had cheated on its taxes;[652]

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647 T2338:13-30 (Maher); T2339:30-34 (Maher); T2338:5-24 (Maher).
648 T3235:35-47 (X Walsh); T3236:4-28 (X Walsh).
649 Exhibit RC0228 Letter from Allens to Solicitors Assisting, 7 June 2021, CRW.0000.0003.0893; Exhibit RC0229 Confidential File Note, 19 March 2021, CRW.0000.0003.0895; Exhibit RC0230 File Note regarding meeting between representative of Crown and Allens, 19 March 2021, CRW.0000.0003.0895.
650 Exhibit RC0230 File Note regarding meeting between representative of Crown and Allens, 19 March 2021, CRW.0000.0003.0895 at .0895.
651 T2309:32-46 (Maher); T2328:6-12 (Maher).
652 T2309:20-30 (Maher); T2310:1-6 (Maher).

(c) did not tell Allens in clear terms that Crown had received advice there was a possibility, or something greater than a possibility, that Crown Melbourne had made improper deductions;[653]

(d) did not tell Allens that Crown sought advice from Minters because the regulator was digging around;[654]

(e) did not tell Allens that he had discussed the matter with Ms Coonan within 24 hours of the Commission being announced;[655]

(f) did not tell Allens that following the meeting with Ms Coonan, he asked Mr Mackay to prepare a spreadsheet,[656] and the purpose of Mr Mackay's spreadsheet was to calculate Crown Melbourne's potential exposure;[657]

(g) did not tell Allens about relevant advice Crown had received from Counsel in 2014 as to the meaning of winnings (which, if provided to Mr Maher, would have caused him to advise Crown to make a disclosure)[658] – it is not clear if Mr Xavier Walsh was aware of the advice, but Mr McGregor was at the meeting and aware of the advice;[659]

(h) did not tell Allens about the potential exposure in respect of columns B (Welcome Back) and C (Matchplay and others) of the spreadsheet,[660] notwithstanding that (according to Mr Mackay) he had discussed the potential quantum of the underpayment with Mr Mackay weeks earlier as being $170 million;[661]

(i) did not tell Allens that Crown Melbourne does not make the deductions in respect of table games;[662]

(j) did not tell Allens that Crown only describes the expenses as jackpots internally for purposes of calculating GGR;[663] and

(k) did not tell Allens that Crown Melbourne was also exposed to super tax and penalty interest.[664]

1.139 It is helpful to contrast how Mr Xavier Walsh described the tax issue in different circumstances. When Mr Xavier Walsh spoke with Mr Mackay on 24 February 2021, he described the issue as a "latent issue" (i.e. a concealment),[665] yet when he spoke to Mr Maher he appears to have said the documents gave the impression there had not been disclosure to the regulator.[666]

1.140 Mr Walsh disagreed that he downplayed the significance of the issue at the 18 March 2021 meeting.[667] By contrast, Mr Maher accepted that if Mr Xavier Walsh had properly instructed him, the tax issue would have been disclosed to the Commission.[668]

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653 T2311:13 - T2312:43 (Maher).
654 T2319:18-23 (Maher).
655 T2319:37-42 (Maher).
656 T2320:2-6 (Maher).
657 T2320:8-11 (Maher).
658 T2321:42 - T2322:39 (Maher). T2322:41-45 (Maher).
659 Exhibit RC0424g File note regarding tax advices which directly or indirectly relate to the deductibility of expenses associated with loyalty programs, n.d., CRW.512.192.0003.
660 T2324:8-12 (Maher).
661 T2324:21-25 (Maher).
662 T2326:22-26 (Maher); T2328:47 - T2329:4 (Maher).
663 T2326:41 - T2327:28 (Maher).
664 T2327:30-44 (Maher).
665 T2126:9-16 (Mackay).
666 T2304:47 - T2305:7 (Maher); T2316:32-40 (Maher).
667 T3267:8-12 (X Walsh).
668 T2321:14-17 (Maher); T2322:28-34 (Maher); T2326:37-40 (Maher); T2334:1 - T2335:9 (Maher); T2345:14 - T2346:6 (Maher).

1.141 To the extent Mr Xavier Walsh's evidence[669] about what was said at the meeting differs from the evidence of Mr Maher, the evidence of Mr Maher should be preferred.

1.142 In any event, Crown subsequently provided a folder of key documents relating to the Bonus Jackpots issue to Allens. If read, the documents in the folder would have caused Allens to advice Crown to disclose the matter to the Commission. That said, not all the matters identified in paragraph 1.138 were disclosed in the documents provided to Allens.[670] Further, the summary note provided by Mr Xavier Walsh and included in the folder was not a fair summary of the underpayment of tax issue.[671]

1.143 After the meeting, Mr Xavier Walsh never personally followed up the issue with Mr Maher, though his evidence was he followed up the issue with Crown's internal lawyers.[672]

1.144 In a statement produced after his examination, Mr Maher said he was informed by Mr Yiannakou (of Allens), that Ms Williamson and Mr Meade followed him (and another Allens lawyer, Mr McCarthy) up about the tax issue in April 2021.[673] Both Mr McCarthy and Mr Yiannakou were at the 18 March 2021 meeting.

1.145 One possible inference is that each individual from Crown and Allens simply forgot about this issue. Such an inference would not be open if the significance of the Bonus Jackpots deductions had been properly explained. As Mr Maher made clear, if anyone from Crown had explained that there was a possibility that Crown Melbourne had cheated on its taxes for nearly a decade, in the context of a Royal Commission established to examine possible misconduct, the matter would have been disclosed. In the circumstances, the most likely inference is that the matter was downplayed by Mr Xavier Walsh in the meeting, and pursued thereafter in a lacklustre way, diminishing the significance of the issue, among many other issues, for the lawyers at Allens to consider.

1.146 The evidence thus indicates that there are several reasons why the matter was not disclosed to the Commission:

(a) As discussed above, Mr Xavier Walsh downplayed the matter. That said, it must be acknowledged he raised the matter and provided documents to Allens for consideration.

(b) Other senior Crown personnel at the 18 March 2021 meeting, including Mr McGregor, Ms Williamson and Mr Herring failed to speak up. They could, and should, have explained the seriousness of the issue.

(c) An oversight by Allens – they should have reviewed the documents provided by Mr Xavier Walsh carefully. Allens apologised to the Board for their role in the non-disclosure.[674]

669 T3260:39 - T3267:12 (X Walsh).
670 T2336:25 - T2337:47 (Maher).
671 T2256:13-46 (Morrison); T2257:1-25 (Morrison); T2258: 8-13 (Morrison). Exhibit RC0225 Timeline Review Briefing Note, n.d., CRW.512.117.0035 at .0035 contained a disclaimer ("Note this timeline does not reference the external legal advice regarding the overarching GGR winnings definition").
672 T2339:36-43 (Maher); T3269: 33-45 (Walsh).
673 Exhibit RC0915 Statement of Andrew Maher, 25 June 2021, CRW.998.001.0501 at .0501 [3].
674 T2253.22-31 (Morrison).

Crown's response to RFI-002

1.147 Crown Melbourne provided responses to RFI-002, via Allens, on 22 and 24 March 2021,[675] and again on 20 April 2021.[676] The responses included detailed breach schedules.

1.148 Crown Melbourne considered the breach schedules carefully,[677] and made substantive changes to the breach schedules.[678] Mr Xavier Wash was sent the breach schedules.[679]

1.149 Mr Xavier Walsh was sent the draft breach schedules, and should have raised the fact that the Bonus Jackpots issue was not disclosed in those schedules.[680] The same can be said of the other Crown personnel who received the draft breach schedules, including Ms Coonan, Ms Fielding, Ms Williamson, Mr Young, and Mr McGregor.

7 June 2021 Board Meeting

1.150 There was a Crown Resorts Board meeting on 7 June 2021. During the course of the meeting, a media article about the tax issue (which was the subject of examination in the Commission earlier that day) was brought to the attention of the directors.[681] Ms Halton gave evidence that she first heard about the issue on 7 June 2021 when she read the media article.[682] Ms Halton's evidence was that she was shocked by what was reported in the article.[683] Ms Korsanos[684] and Mr Morrison[685] gave similar evidence.

1.151 Mr Morrison's evidence was everyone at the meeting was shocked by the magnitude of the allegations in the article, although Mr Morrison now knows that Ms Coonan was aware of the matter.[686] Ms Coonan did not inform her fellow directors about her knowledge of the matter,[687] which, as explained above (even on Ms Coonan's own evidence), was significant.

The Fifth Issue: The quantum of the underpayment

1.152 Set out below is an explanation of the quantum of Crown Melbourne's underpayment of casino taxes.

1.153 Four advices have been received by the Commission since 7 June 2021:

(a) advice from senior counsel to Crown Resorts dated 19 June 2021, dealing with the deductibility of categories 1 to 8 for purposes of calculating GGR (**First Crown Advice**);[688]

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675 Exhibit RC0243 Letter from Allens to Solicitors Assisting, 22 March 2021, CRW.0000.0003.1037; Exhibit RC0149 Letter from Allens Linklaters to Solicitors Assisting, 24 March 2021, CRW.0000.0003.0013; RC0149a, Breach of Legislation and Contracts table, 24 March 2021, CRW.0000.0003.0015; Exhibit RC0149b Breach of AML/CTF Rules table, 24 March 2021, CRW.0000.0003.0062.

676 Exhibit RC0244 Letter from Allens to Solicitors Assisting, 21 April 2021, CRW.0000.0002.0097; Exhibit RC0244a Schedule 1, 21 April 2021, CRW.0000.0002.0099; Exhibit RC0244 b Schedule 2, 21 April 2021, CRW.0000.0002.0151; Exh bit RC0244c Schedule 3, 21 April 2021, CRW.0000.0002.0166.

677 T2347:9-17 (Maher); T2349:5-8 (Maher).

678 T2346:45-T2347:7 (Maher); T2349:2-3 (Maher).

679 Exhibit RC0914 Email chain between Matthew McCarthy and Xavier Walsh et al, 23 March 2021, CRW.512.176.0023; Exhibit RC0907 Email from Matthew McCarthy to Xavier Walsh et al, 23 March 2021, CRW.512.176.0008; Exh bit RC0909 Email from Matthew McCarthy to Xavier Walsh et al, 22 March 2021, CRW.512.176.0010; Exh bit RC0910 Email chain between Matthew McCarthy and Xavier Walsh et al, 24 March 2021, CRW.512.176.0012; Exh bit RC0911 Email chain between Matthew McCarthy and Xavier Walsh et al, 24 March 2021, CRW.512.176.0014; Exhibit RC0912 Email chain between Matthew McCarthy and Michelle Fielding et al, 24 March 2021, CRW.512.176.0017; Exhibit RC0904 Email from Matthew McCarthy to Tanya Baini et al, 18 April 2021, CRW.512.176.0001.

680 T3270:15 - T3271:27 (X Walsh).

681 T2258:31-47 (Morrison).

682 T3605:24-47 (Halton); T3507:1-6 (Halton).

683 T3606:3-10 (Halton).

684 T3693.23 - T3694.24 (Korsanos).

685 T2258:31 - T2259:25 (Morrison).

686 T2259:12-47 (Morrison); T2260:2-25 (Morrison).

687 T2259:24-27; T2260:2-18 (Morrison).

688 Exhibit RC0842 Memorandum regarding Crown Gaming Tax, 19 June 2021, CRW.900.007.0081.

(b) advice from senior and junior counsel to the Crown Resorts Board, dated 5 July 2021, dealing with the deductibility of categories 1 to 8 for purposes of calculating GGR (**First Board Advice**);[689]

(c) advice from senior counsel to Crown Resorts dated 4 July 2021 dealing with the deductibility of Jackpot Payments for purposes of calculating GGR (**Second Crown Advice**);[690] and

(d) advice from senior and junior counsel to the Crown Resorts Board, dated 5 July 2021, dealing with the deductibility of Jackpot Payments for purposes of calculating GGR (**Second Board Advice**).[691]

1.154 It is regrettable that the authors of the advices were not informed that the Bonus Jackpots involved deducting from GGR expenses associated with free car parking, free hotel accommodation and dining rewards where (at least in some instances) a loyalty member was – by reason of their loyalty status – already entitled to those benefits. [692]

Bonus Jackpots (Category 8)

1.155 The First Board Advice concludes that none of the Bonus Jackpots are deductible. With respect, that is plainly correct.

1.156 The First Crown Advice concludes that:

(a) the expenses associated with free hotel accommodation and free car parking were not properly deductable for purposes of calculating GGR; and

(b) the deductions in respect of dining rewards were deductable for purposes of calculating GGR (although the author accepted reasonable minds might differ about the issue).

1.157 It is not necessary to set out our concerns regarding how the First Crown Advice approached the question of dining rewards.[693] That is because Crown has conceded the point. Mr Steve McCann gave the following evidence:[694]

> *… but I do also want to make the point that there are two amounts … currently within Crown's contemplation as the most … likely amounts [i.e. the First Crown Advice and the First Board Advice]. We will be paying the higher amount with interest, and we will then discuss with Treasury whether in fact that is the right amount. We will not be paying the lower amount.*

1.158 Further, Ms Coonan had the following exchange with the Commissioner:[695]

> … *Am I right in assuming that at the moment the Crown position is the second opinion, which would leave you owing about $37.5 million plus interest [i.e. the position in the First Board Advice] … ?*

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689 Exhibit RC0844a Memorandum from Chris Arch bald QA, Chris Carr SC and Anna Dixon to Crown Resorts, 21 June 2021, CRW.900.008.0388.

690 Exhibit RC0919 Supplementary Opinion regarding the Crown Me bourne Victorian state gaming tax issue, 4 July 2021, CRW.512.207.0001.

691 Exhibit RC0920 Memorandum of Advice regarding Casino Tax Under the *Casino (Management Agreement) Act 1993* (Vic), 5 July 2021, CRW.512.207.0015.

692 *Intentionally blank*.

693 In short compass, they include matters such as (in our respectful view): (a) assuming the question was one of contractual constructions (see *Kidd v The State of Western Australia* [2014] WASC 99 at [110]-[115]); (b) misapplying *Crown Melbourne Ltd v Commission of Taxation* [2020] FCA 1295; (c) failing to properly address the concept of "winnings"; and (d) failing to address the temporal aspect of the GGR definition, that arises by reason of the word "period" (in the context of sums received) and the phrase "that period" (in the context of sums pad out as winnings), with the relevant period being monthly.

694 T3507:45 - T3508:7 (McCann).

695 T3842:10-15 (Coonan).

A. Yes.

1.159 The position now adopted by Crown is not surprising. Loyalty program benefits are not winnings from a gaming machine event – they are calculated and obtained based on turnover.[696] "Win, lose or draw" loyalty points are awarded.[697]

1.160 No doubt that helps explain why, in July 2021, Crown Melbourne informed the regulator it would cease deducting the Bonus Jackpots expenses from the GGR calculation.[698]

1.161 Crown has said that it will pay the underpayment in respect of Bonus Jackpots, and it will then discuss with the State whether that is the right amount. The matters set out below may be relevant for those discussions.

Jackpot Payments (Category 5)

1.162 Both the Second Crown Advice, and the Second Board Advice, agree the Jackpot Payments deductions were overstated. The advices differ as to the quantum of the improper deductions. The amounts involved are not significant by comparison to Bonus Jackpots and Matchplay.

Matchplay (Category 3)

1.163 Matchplay involves a loyalty program member using an EGM to convert a loyalty point, into a pokie credit, to gamble on the EGM.[699]

1.164 Before turning to the substantive analysis, it is necessary to say something about how loyalty points operate at Crown.

1.165 Crown Rewards members can earn Crown Rewards points when they gamble on EGMs (called pokie points), when they gamble on table games (called table games points) and when they spend on hotels, restaurants, bars, clubs, retail and entertainment within Crown (called life style points).[700]

1.166 Crown treats loyalty points that are earned as liabilities.[701] Each point has a notional value of one cent.[702]

1.167 Under the applicable rules (Crown Rewards Rules), members can "exchange"[703] loyalty points to gamble, to acquire goods and services at several non-Crown outlets in the Melbourne Casino complex, and to acquire goods and services at several Crown owned outlets in the Melbourne Casino complex.[704]

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696 T1635:14-28 (Mackay).
697 T1607:1-5 (Mackay).
698 Exhibit RC0887, Email from Susan Cassinides to Jason Cremona, 5 July 2021, VCG.0001.0004.9208; Exh bit RC0888 Email chain between Jason Cremona and Susan Cassinides, 7 July 2021, VCG.0001.0004.9207.
699 As to the process, see Exhibit RC0425c List of loyalty program promotions in respect of which Crown makes deductions, n.d., CRW.512.191.0036 at .0036, item 3.
700 See Exhibit RC0425c List of loyalty program promotions in respect of which Crown makes deductions, n.d., CRW.512.191.0036 at .0036, item 3.
701 Exh bit RC0434g Crown Resorts Annual Report, 2020, CRW.512.012.1461 at .1567 and .1586, notes 1.6(u) and 15.
702 Exh bit RC0425 Statement of Peter Herring, 30 June 2021, CRW.998.001.0502 at .0507 [12].
703 Exh bit RC1250 Crown Rewards Rules, 1 August 2019, CRW.510.046.1352 at .1356, clause 7.2.1. Clause 7.2.1 says "Points" may be exchanged for "Awards" by presenting. "Points" means "any points… which the Member may have accumulated as a Crown Rewards Member", "Awards" means "goods and/or services made available to Member that may be exchanged for Points". Based on a preliminary review of historical versions of Crown Rewards Rules (provided by Crown to the Commission on 14 July 2021), it appears that there has been the ability for members to exchange points for goods and services (or "benefits" and/or "rewards") since prior to May 1997.
704 Exh bit RC0425 Statement of Peter Herring 30 June 2021, CRW.998.001.0502 at .0505, [9]-[10]; Exhibit RC0425c List of loyalty program promotions in respect of which Crown makes deductions, n.d., CRW.512.191.0036 at .0036, item 3.

1.168 When members elect to exchange their loyalty points for goods or services at non-Crown owned outlets, the outlet invoices Crown for payment.[705] The following evidence was given:[706]

> *COMMISSIONER:* *Yes. Let's say I go to a fancy watch company and buy my $50,000 watch with my pokie points … so far I've got the store out of pocket, not by $50,000, but if I forget margins and that kind of thing, $50,000. I take it Crown that then pays the store so that it gets its $50,000 for the watch that I've just taken away or put on?*
>
> *A* *That's my understanding of how it works, Commissioner, yes.*
>
> *COMMISSIONER:* *Okay. And this is probably completely irrelevant, but do you pay the rack rate or do you get a discount?*
>
> *A.* *I think the customer would pay whatever rate they negotiate and we would pay --- **because the points all have a value**, we would pay, again I'm not an expert in this area, but my understanding is we would pay the value of whatever the customer paid to the store.*
>
> *COMMISSIONER:* *The points have a value. So I would know I have $50,000 worth of points. I think it is 100 points a dollar.*
>
> *A.* *A dollar, yes.*
>
> *COMMISSIONER:* *So I can go into the shop … and say there is a $50,000 watch and I have $50,000 worth of points. I give the voucher to the shop, they give me the watch, you pay the shop?*
>
> *A.* *Yes, that's a lot of points, but, yes. You are correct, yes.*

1.169 When members elect to exchange loyalty points for goods or services at Crown owned outlets, Crown credits its revenue account and debits liabilities (and then reduces a member's loyalty points balance).[707]

1.170 The Crown Rewards Rules do not appear to contain any prohibition on the transfer of loyalty points (only a prohibition on the transfer of Privileges).[708]

Analysis

1.171 Counsel Assisting submit the better view is that when a member converts loyalty points to pokie credits in the context of Matchplay:

(a) there is a sum received by Crown Melbourne; and

(b) there is no sum paid out as winnings by Crown Melbourne.

1.172 The second proposition appears to be common ground, whereas the first proposition is in controversy. The following matters are relevant.

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[705] T3520:17-28 (McGregor); T3363:29-44 (X Walsh).

[706] T3363:46 - T3364:12 (X Walsh) (emphasis added).

[707] T3520:42-1 (McGregor); Exhibit RC0434g Crown Resorts Annual Report, 2020, CRW.512.012.1461 at .1567 and .1586, notes 1.6(u) and 15. According to at least one advice received by Crown Melbourne, the fact that it credits its revenue account on receipt of a loyalty point may be relevant in considering whether that constitutes a sum received (see Exhibit RC0799pp Memorandum of Advice regarding the Payment of Casino Tax on "Lucky Money", 19 December 2014, CRW.900.007.0419).

[708] There was an express prohibition on transferring points in historical versions of the Crown Rewards Rules. This appears to have changed on 1 October 2009 (see Exhibit RC1254 Crown Club Rules flyer, 2008, CRW.512.225.0011 at .0012, clause 3.4 and Exhibit RC1257 Crown Signature Club Rules, 1 October 2009, CRW.512.225.0029)). That may mean the position before and after 2009 could differ.

1.173 **First**, it is important to understand what the analysis is *not* about. It is not about the treatment of loyalty program points under different legislative regimes, such as the federal goods and services tax regime, the federal income tax regime and the State net wagering revenue regime.

1.174 Rather, the focus is on the proper construction of the text of the definition of GGR in accordance with the well settled principles of construction. The GGR definition sets out "an artificial sectoral formula which has left matters of deduction out and which can equally bring matters into account even if they would not fall to be included under conventional accounting principles".[709]

1.175 **Second**, the Management Agreement draws a distinction between "sums" (e.g. the definition of GGR) and "sums of money" (e.g. definition of force majeure event). The former is broader than the latter. It is submitted that the word "sums" in the definition of GGR means money or money's worth. The meaning of the phrase "money's worth" is context specific. That said, the phrase has often been given a board meaning in the cases.[710] Construing "sums… received" to mean "money's worth" ensures Crown cannot reduce its casino tax by exchanging chips or credits for "money's worth".[711]

1.176 While not free from doubt, the better view appears to be that loyalty points are "money's worth". They are in substance a form of tender at the Melbourne Casino, capable of being used like money throughout the Melbourne Casino complex.[712] To adopt the language of the cases, the loyalty points are: (a) "equivalent to money" in that they are "essentially material", not an "emotional or spiritual reward";[713] (b) capable of being "used like money";[714] and (c) something "worth money"[715] (as is clear from Crown's own accounts).[716] Another indication of "money's worth" is something capable of being converted into money,[717] though depending on the context, something capable of being used to acquire goods and services may be sufficient.[718]

1.177 In *Johnson v R* 2010 TCC 321 (Tax Court of Canada), Paris J concluded that loyalty points used to purchase an airline ticket constituted a payment.[719] Paris J said (at [26]):

> *In this case, I find that the points given up by the Appellant for the ticket were a right, since they were exchangeable for air transportation services at his request, and that they had a value that could be expressed in money since the services for which they*

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[709] *London Clubs Management Ltd v Revenue and Customs Commission* [2021] 2 All ER 333 at [64] speaking of a different legislative context.

[710] See e.g., *Gideons International Service Mark* [1991] RPC 141, *R v Burt & Adams Ltd* [1999] 1 AC 247 (in the context of gambling taxes); *Hance v Commissioner of Taxation* [2008] FCAFC 196, [98]-[100]; *Brookfield Multiplex Ltd v International Litigation Funding Partners Pte Ltd* (2009) 256 ALR 427 (overturned on appeal), [15]-[19] (which neatly summarises the relevant authorities); *Harris v Victorian Electoral Commission* [2020] VSC 676.

[711] It does not follow that points are "sums paid out as winnings" because, as now appears to be conceded, players do not win points in the relevant sense.

[712] See the Crown Rewards Rules: see Exhibit RC1250 Crown Rewards Rules, 1 August 2019, CRW.510.046.1352 at .1357, clause 8.1: "Where a Member's Point and another legal form of tender have been used to purchase goods …".

[713] *Gideons International Service Mark* [1991] RPC 141, 143.

[714] *R v Burt & Adams Ltd* [1999] 1 AC 247, 263.

[715] *R v Burt & Adams Ltd* [1999] 1 AC 247, 253.

[716] Given the GGR calculation is to be performed each month, it is l kely that the value of the points will be their face value (i.e. the value of the bet in the context of Matchplay): see *London Clubs Management Ltd v Revenue and Customs Commission* [2021] 2 All ER 333 (in a different legislative context) at [40]. Note however at [64]. It is accepted that the reduction in points might be characterised as the discharge of a contingent obligation, or that it might render impossible the contingency. Either characterisation (extinguishment of an obligation or rendering a contingency impossible) is able to be valued.

[717] See *London Clubs Management Ltd v Revenue and Customs Commission* [2021] 2 All ER 333, [38]. If there is no proh bition on the transfer of Crown Rewards points under the applicable rules, then that would mean the points are (at least as a matter of legal theoretically) convertible to cash.

[718] *London Clubs Management Ltd v Revenue and Customs Commission* [2021] 2 All ER 333, [43]: "*Non-Negs* [i.e. free bets] *do not represent money to which the gambler is entitled and, unlike cash chips, they cannot be enchased* ***or exchanged for goods or services***" (emphasis added).

[719] The case has been cited with apparent approval on several occasions: see e.g. *Air v R* 2011 TCC 248; *Bul River Mineral Corp Re* 2015 BCSC 113; and *JEKE Enterprises Ltd v. Northmont Resort Properties Ltd* 2016 BCSC 401.

> *could be exchanged was offered for sale to arm's length parties at a fixed price. Also, the points could be purchased for three cents apiece* [from the loyalty program provider via its website[720]]. *By redeeming his points, the Appellant gave what was due for the services and therefore "paid" for them within the ordinary meaning of that word…*

1.178 It is not suggested *Johnson* is determinative – the context and legislative regime were different. There are also differences (but many similarities) between the loyalty points in that case and Crown Rewards points.[721] *Johnson* is nevertheless relevant because it illustrates that loyalty points are conceptually able to constitute "money's worth".

1.179 **Third**, under the Crown Rewards Rules (clause 7.2), a customer "exchanges" loyalty points for "Awards" (which can include credits for gambling). The ordinary meaning of the word exchange is "the act or an instance of giving one thing and receiving another in its place",[722] "the action, or an act, of reciprocal giving and receiving",[723] "give and receive reciprocally",[724] and "an act of giving one thing and receiving another".[725]

1.180 In the context of Matchplay, the following exchange takes place:

(a) Crown *receives* loyalty points from the customer,[726] and gives the customer pokie credits; and

(b) the customer gives Crown loyalty points, and receives pokie credits from Crown.

1.181 On *receipt* of the points, Crown reduces a customer's points balance. The receipt is of a sum, because the point is "money's worth".

1.182 **Fourth**, it does not appear to matter that the loyalty points can be rendered valueless by Crown under the Crown Rewards Rules.[727] That is because for purposes of the GGR calculation (in the context of Matchplay), the relevant point in time is when the points are exchanged for credits. At that point in time, Crown had not rendered the points valueless.

1.183 **Fifth**, Crown Melbourne's potential exposure on Matchplay was not lost on the author of the First Crown Advice.

1.184 On 14 June 2021, those instructing the author of the advice said in an email in respect of Categories 1, 2, 4, 5, and 7:[728]

> *… there was no sum received in relation to the pokie credit in the first place. And therefore from a Casino Tax perspective it does not belong in Gross Turnover. Backing it out [by claiming it as a sum paid out as winnings] is effectively an accounting correction. And the question is not relevant as to whether the creation of the pokie credit is a sum paid out as a winning …*

1.185 The author of the First Crown Advice responded by asking "What about Pokie Credits (Matchplay)."[729]

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720 See at [11]. There was no suggestion in the case that members were able to transfer their points to other parties.
721 Unlike in *Johnson*, Crown Rewards points are able to be used for the purchase of many different types of goods and services.
722 Australian Concise Oxford Dictionary (5th Edition).
723 Shorter Oxford English Dictionary (6th Edition).
724 Shorter Oxford English Dictionary (6th Edition).
725 The Pocket Macquarie Dictionary (2nd Edition).
726 The receipt is real: the applicable rules envisage that Crown may be forced to return points to members – see Exhibit RC1250 Crown Rewards Rules, 1 August 2019, CRW.510.046.1352 at .1357, clause 8.1.
727 See e.g. Exhibit RC1250 Crown Rewards Rules, 1 August 2019, CRW.510.046.1352 at .1355, .1359 and .1361, clauses 3, 14 and 16. Counsel Assisting has not considered the enforceability of clauses 3, 14, and 16.
728 Exhibit RC0903 Email chain between Mark Tafft and Mark Robertson, 14 June 2021, ENY.0001.0002.0090 at .0090.
729 Exhibit RC0903 Email chain between Mark Tafft and Mark Robertson, 14 June 2021, ENY.0001.0002.0090 at .0090.

1.186 Those instructing responded in the following terms:[730]

> *Will still be saying no sum … received. Just need to deal with the points transfer to get to that conclusion.*

1.187 The reference to "the points transfer" appears to be a refence to the exchange of a loyalty point to a pokie credit. A more detailed explanation of the exchange is set out below:[731]

> *To complete the exchange the member must insert their membership card into the gaming machine and, via the player menu on the service window, select the Pokie Credits option.*
>
> *One Crown Rewards point has a nominal value equivalent 1 cent of Pokie Credit.*
>
> *Next, the member must enter their PIN before selecting a pre-determine denomination (or entering another amount in dollars). Once confirmed, the Pokie Credits are available to be used on gaming machines.*
>
> *Once the Pokie Credits are redeemed/used the gaming machine will record the amount as a Bonus Jackpot and the amount will be deducted from Revenue for that gaming date.*
>
> *Once Crown Reward points are exchanged for Pokie Credits they must be played on gaming machines and cannot be redeemed for cash or any other item at Crown Melbourne.*

1.188 Thus, the thinking appears to have been as follows:

(a) once a member elects to gamble, she or he converts a loyalty point to a pokie credit for that purpose (which can then only be used to gamble); and

(b) what is received by Crown is the pokie credit, not the loyalty point.

1.189 Such an approach is, at least arguably, unduly narrow. A sum may be received from the "**conduct or** playing of games". A loyalty point is received by Crown from the conduct of games. The word "conduct" must mean something different to "playing". It is submitted that the conduct of a game relevantly includes the use of a gaming machine to load credits onto that gaming machine to facilitate play (gambling). In other words, a buy in forms part of the conduct of a game.

1.190 Matchplay operates the same way for commission-based and non-commission based players.[732] Crown Melbourne has deducted Matchplay costs in that context, separately from the deductions from GGR.

Free play (Categories 1, 2, 4 and 7)

1.191 Categories 1, 2, 4 and 7 involve a patron receiving a free bet. The advices received by Crown Resorts and its Board proceed on the basis that:

(a) the free bets are not sums received; and

(b) the deductions (as sums paid out as winnings) reverse the improper treatment of the free bet as a sum received.

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730 Exhibit RC0903 Email chain between Mark Tafft and Mark Robertson, 14 June 2021, ENY.0001.0002.0090 at .0090.
731 Exhibit RC0425c List of loyalty program promotions in respect of which Crown makes deductions, n.d., CRW.512.191.0036 at .0036, category 3.
732 T3523:21-24 (McGregor).

1.192 One advice has been received by the Commission from Senior Counsel suggesting that free bets are sums received.[733] The position in respect of these categories may therefore be the subject of debate in due course between the State and Crown.

Consolidation (Category 6)

1.193 Counsel Assisting make no comment on Category 6.

Quantum

1.194 According to calculations performed by Crown, if:

(a) Bonus Jackpots were not deductable (which appears to be common ground); and

(b) Matchplay did involve a sum received (which Crown disputes),

Crown Melbourne's total exposure from 2005[734] (including interest and supertax, and allowing for offsets) is $459,677,261 (for GGR) and $20,780,039 (for Commission Based Players' Gaming Revenue).

1.195 The total exposure is thus $480,457,500, plus some further amount (not yet quantified) in respect of the over-deduction of Jackpot Payments. Of that amount, approximately $50 million (including interest and supertax, and allowing for offsets) relates to Bonus Jackpots and is now conceded by Crown.

Conclusion

1.196 The following matters are important.

1.197 **First**, the matters raised in this Chapter strongly suggest Crown Melbourne is not suitable to hold the casino licence. In particular:

(a) the improper Bonus Jackpots deductions should never have been introduced;

(b) the improper Bonus Jackpots deductions should never have been concealed;

(c) Crown should have made full and frank disclosure to the regulator, at least, in June 2018;

(d) the improper Bonus Jackpots deductions should have been remedied after:

(i) the receipt of Mr Ward's advice in November 2018;

(ii) the receipt of Mr Ward's advice in November 2019;

(iii) the internal meeting in September 2020;

(e) the deductions in respect of categories 1 to 8 (and in particular the Bonus Jackpots) should have been disclosed to the Commission in response to RFI-002;

(f) counsel engaged by Crown Resorts and its Board should have been properly briefed; and

(g) the letters sent by Crown Resorts to the State and to the regulator on 1 July 2021 did not comprise a full disclosure misleading (as is explained further below).

1.198 But for this Commission, Crown would likely have continued deducting the Bonus Jackpots from the calculation of GGR. It likely would also have continued deducting the entirety of

[733] Exhibit RC0926e Memorandum of Advice regarding the *Casino (Management Agreement) Act 1993* and Crown Melbourne, CRW.900.007.1471. Note that that advice was written prior to the Supreme Court's recent decision in *London Clubs Management Ltd v Revenue and Customs Commission* [2021] 2 All ER 333, where the *majority* held that free bets did not form part of the "banker's profits" (in a different regulatory context).

[734] In the time available, Crown was unable to produce figures from earlier periods.

the Jackpots Payments (a practice that, given the Second Board Advice and Second Crown Advice, will presumably now stop).

1.199 **Second**, Crown Resorts Board's failure to be aware that Crown Melbourne had been underpaying casino taxes for many years, and its failure to ensure those matters were brought to attention of the regulator and the Commission are of concern.

1.200 **Third**, even on her own evidence, Ms Coonan knew enough to be on notice that there was a serious (albeit on her evidence historical) issue worthy of investigation. Ms Coonan failed to ensure Crown investigated the matter. She failed to ensure Crown disclosed the matter to the regulator and the Commission. She failed to ensure the underpayments (which would have been uncovered if an investigation had been undertaken) were remedied. This was a recent test of Ms Coonan's ability to reform Crown, which she failed.

1.201 **Fourth**, Ms Coonan's public statement was as follows:

> *I directed him [Xavier Walsh] to get the information together and give it to the lawyers for advice and disclosure to the Commission.*

1.202 Notwithstanding that statement, Ms Coonan failed to inform her own lawyers (Arnold Bloch Leibler) of the matter.[735]

1.203 **Fifth**, Mr Morrison's view was that:

(a) if a director of a company knew the company was concealing improper tax deductions from a regulator, that director should not remain on the Board;[736] and

(b) he would struggle to support the view that senior management should remain with the company if they knew about the concealment from the regulator, or that there was a real risk of underpayment of tax.[737]

1.204 If the Commissioner adopted the same view, it would mean a number of Crown executives would need to depart.[738]

1.205 **Sixth**, on 1 July 2021 Mr McCann signed letters (in substantially similar terms) which were sent to the Department of Treasury and Finance and the regulator about the tax issue.[739] The letters relevantly said:

> *In short, we have received preliminary advice [i.e. the First Crown Advice[740]] there has been an under-reporting of casino tax liability of approximately $8.8 million (excluding interest) over the period FY2013 to date, related to the incorrect deduction of certain bonus rewards referable to free accommodation and car parking provided to patrons…*
>
> *I am informed the balance relates to amounts which should not be recognised as revenue to begin with and have therefore been validly offset, with the vast majority relating to bonuses involving "free" bets (as represented by non-redeemable Pokie Credits).*

1.206 The letters did not comprise a full disclosure, because:

(a) they referred to only one advice received by Crown Resorts, being the advice most favourable to Crown;

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735 Exhibit RC0916 Letter from Solicitors Assisting to Leon Zwier, 29 June 2021, CRW.0000.0003.1217; Exhibit RC0917 Email from Leon Zwier to Solicitors Assisting, 29 June 2021, CRW.0000.0003.1313.
736 T2264:31-26 (Morrison).
737 T2264:43-46 (Morrison).
738 Note also Exhibit RC1231 Second Statement of Peter Herring, CRW.998.001.0551 at .0555 [15]-[16].
739 Exhibit RC0414 Letter from Steve McCann to David Martine, 1 July 2021, CRW.512.204.0001; Exhibit RC0933 Letter from Steve McCann to Catherine Myers, 1 July 2021, CRW.512.204.0003; T3468:26-40 (McCann); T3481:22-32 (McCann).
740 T3481:3-6 (McCann).

(b) they failed to mention that the First Crown Advice said reasonable minds may differ on the question of the deductibility of the dining expenses; and

(c) they failed to mention Crown Melbourne had received advice that dining expenses were not deductible.

1.207 Mr McCann's evidence was that he was unaware of the specifics of most of the earlier advices when he signed the letters.[741] It is true Mr McCann only recently joined Crown Resorts.

1.208 Mr McGregor assisted with the drafting of the letters,[742] and briefed Mr McCann on the matter.[743] Mr McGregor had an intimate knowledge of the issue,[744] and was aware of at least some of the earlier advices. He did not speak up.

1.209 The members of the Crown Resorts Board, who were informed of the figure to be put into the letters, also failed to speak up.[745]

[741] T3470:41-42 (McCann); T3472:36-44 (McCann); T3475:8-17 (McCann).
[742] T3473:2-7 (McCann).
[743] T3475:23-35 (McCann); T3480:28-40 (McCann).
[744] So much is clear on the documents. Exhibit RC1231 Second Statement of Peter Herring, 14 July 2021, CRW.998.001.0551 at .0055 [16].
[745] T3474:40 - T3475:6 (McCann).

6 Responsible Service of Gaming[746]

1 Introduction

1.1 Gaming at the casino has the potential to inflict harm. Crown Melbourne's responsible service of gaming (**RSG**) obligations are intended to minimise such harm. Relevant to Crown Melbourne's suitability is the extent to which it complies with the law and its responsible service of gaming obligations. Such matters are relevant to reputation, character and integrity; and compliance is relevant to whether Crown has sufficient business ability to maintain a successful casino.[747]

1.2 Crown Melbourne must comply with the RSG regime created by the CCA, the *Gambling Regulation Act 2003* (Vic) and the Casino Agreement.[748] Under the regime, Crown Melbourne:

(a) must, as a condition of its casino licence, must implement a Responsible Gambling Code of Conduct (**Code**) that complies with applicable regulations and directions (section 69, CCA);

(b) is, subject to certain exceptions, prevented from extending "credit" (section 68, CCA); and

(c) must conduct its operations "in a manner that *has regard to* the *best operating practices* in casinos of a similar size and nature" to the Melbourne Casino (clause 28, Casino Agreement).[749]

1.3 If those obligations are breached and in particular if there are repeated breaches of Crown Melbourne's Code, the VCGLR may take disciplinary action, which can include the cancellation, suspension or variation of the casino licence.[750]

1.4 It is open for the Commission to find that Crown Melbourne has:

(a) continually failed to implement its Code in contravention of section 69 of the CCA;

(b) continually contravened section 68 of the CCA; and

(c) contravened clause 28 of the Casino Agreement.

1.5 The manner in which the contraventions have arisen, and the manner in which Crown Melbourne has approached its RSG obligations, leave open for this Commission to find that:

(a) having regarding to its character and integrity, Crown Melbourne is not a suitable person to hold the casino licence; and

(b) it is not in the public interest for Crown Melbourne to continue to hold the casino licence.

2 The evidence

2.1 The Commission heard extensive evidence regarding the RSG.

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[746] While the phrase "responsible service of gaming" is commonly used, it is hoped that in time the nomenclature will change to the "respons ble service of gambling".

[747] Section 9(2)(a) and (e) of the CCA.

[748] The Casino Agreement is an agreement between Crown Melbourne (recorded as Crown Casino Ltd) and the VCGLR (recorded as its predecessor, the Victorian Casino Control Authority) dated 21 September 1993. Exhibit RC0435 Consolidated Casino Agreement, 21 September 1993, COM.0005.0001.0985.

[749] Exhibit RC0435 Consolidated Casino Agreement, 21 September 1993, COM.0005.0001.0985 at .1027 (clause 28 (emphasis added)).

[750] See paragraphs (b), (d) and (db) and (e) of the definition of "grounds for disciplinary action" in section 20(1) of the CCA.

2.2 The following Crown employees gave evidence on the RSG:

(a) Ms Sonja Bauer, Group General Manager Responsible Gaming at Crown Resorts since 2017;[751]

(b) Mr Nicolas Emery, Chief Marketing Officer at Crown Resorts;[752]

(c) Mr Mark Mackay, Executive General Manager of Gaming Machines at Crown Melbourne;[753]

(d) Mr Peter Lawrence, General Manager VIP Customer Service in the Mahogany Room at Crown Melbourne;[754]

(e) Mr Steven Blackburn, Group Chief Compliance and Financial Crime Officer at Crown Resorts;[755]

(f) current and former Crown Melbourne hosts (who service patrons who are regular gamblers with significant turnover), including one former host and one current host working in the Mahogany Room (the high roller room at the Melbourne Casino); and

(g) junior level Crown Melbourne staff, including dealers, food and beverage attendants, and a Responsible Gaming Advisor (**RGA**), as to their direct experience of the actual operation of RSG services implemented at the Melbourne Casino.

2.3 The Commission heard evidence from three industry experts on the topic of RSG:

(a) Dr Sarah MacLean, Associate Professor, Social Work and Social Policy at La Trobe University;

(b) Shane Lucas, Chief Executive Officer of the Victorian Responsible Gambling Foundation (**Foundation**); and

(c) Rosa Billi, Branch Head for Research and Evaluation of the Foundation.

2.4 The Commission also heard evidence from:

(a) Manorani Guy, President of the Victorian Working Group on International Student Employability (VicWISE); and

(b) counsellors who support problem gamblers.

2.5 Finally, and perhaps most importantly, the Commission heard evidence from several patrons about their direct experience of the RSG regime at the Melbourne Casino, and received a number of written submissions from members of the community concerning RSG.

3 The Code and section 69

Statutory requirement to implement a Code

Section 69 and the ministerial direction

3.1 Section 69 of the CCA provides as follows:

> *It is a condition of a casino licence that the casino operator implement a Responsible Gambling Code of Conduct that complies with –*

[751] T1108:28-31 (Bauer); T1111:46 - T1112:1 (Bauer); Exh bit RC0109 Statement of Sonja Bauer, 5 May 2021, CRW.998.001.0301 at .0301.
[752] T1455:30-32 (Emery); Exhibit RC0133 Statement of Nicolas Emery, 5 May 2021, CRW.998.001.0271 at .0271.
[753] T1602:9-12 (Mackay); Exhibit RC0146 Statement of Mark Mackay, 5 May 2021, CRW.998.001.0287 at .0287.
[754] T1731:28-35 (Lawrence); Exhibit RC0171, Statement of Peter Lawrence, 28 May 2021, CRW.998.001.0401 at .0401.
[755] T2916:14-18 (Blackburn); Exhibit RC0309 Statement of Steven Blackburn, 21 April 2021, CRW.998.001.0036 at .0036.

(a) regulations made for or with respect to Part 4C in Schedule 1 to the Gambling Regulations Act 2003; and

(b) each direction under section 10.6.6(1) of that Act that applies in relation to the casino operator.

3.2 There are currently no relevant regulations made under the *Gambling Regulation Act 2003* (Vic)..

3.3 The relevant ministerial direction made under section 10.6.6(1) of the *Gambling Regulation Act 2003* (Vic) that applies to the casino operator came into effect on 19 September 2018 (**Crown Ministerial Direction**).[756] Crown Melbourne's Code must meet the standards and requirements, and must include the contents, that are set out in the Crown Ministerial Direction.[757]

3.4 Part 2 of the Crown Ministerial Direction (titled "Contents of a Code") relevantly provides as follows:[758]

Responsible gambling message

A code must:

(a) include a responsible gambling message that identifies the relevant person's[759] commitment to responsible gambling; and

(b) require the display of that responsible gambling message wherever the relevant person conducts gambling so that it will be clearly visible to members.

…

Interaction with customers

A code must require the relevant person to interact with customers to foster responsible gambling and must identify how this will occur.

In particular, a code must specify a process for interacting with those customers who:

(a) have requested information about, or assistance with, a gambling problem or self-exclusion; and

(b) are displaying indicators of distress that may be related to problem gambling.

A code must require that interaction with customers occurs in a manner that respects the customer's right to privacy.

…

The gambling environment

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[756] Exhibit RC0511, Victorian Government Gazette regarding the Gambling Regulation Act 2003, 17 September 2018, COM.0013.0001.0312. Note the ministerial direction issued under section 10.6.6(1) of the *Gambling Regulation Act 2003* (Vic), Victoria, *Victorian Government Gazette,* No. S 85, 21 February 2020 (**2020 Ministerial Direction**) (Exhibit RC0518 Victorian Government Gazette regarding the Gambling Regulation Act 2003, 21 February 2020, COM.0013.0001.0953), applies to, and imposes greater obligations on, a "venue operator", being a club or hotel venue. The 2020 Ministerial Direction does not apply to the casino operator. While there are circumstances in which the casino operator is taken to be the holder of a venue operator's licence for the purpose of Chapter 3 of the *Gambling Regulation Act 2003* (Vic) (see section 3.5.1), the 2020 Ministerial Direction is made under Chapter 10 of the *Gambling Regulation Act 2003* (Vic), and references to a "venue operator" in Chapter 10 are not take to include the casino operator.

[757] *Gambling Regulation Act 2003* (Vic), section 10.6.6(1).

[758] Exhibit RC0511, Victorian Government Gazette regarding the Gambling Regulation Act 2003, 17 September 2018, COM.0013.0001.0312 at .0318.

[759] "Relevant person" is defined in the Crown Ministerial Direction, as amended by the 2020 Ministerial Direction, to include the casino operator (Exhibit RC0511 Victorian Government Gazette regarding the Gambling Regulation Act 2003, 17 September 2018, COM.0013.0001.0312 at .0314; Exhibit RC0518 Victorian Government Gazette regarding the Gambling Regulation Act 2003, 21 February 2020, COM.0013.0001.0953 at .0957).

A code must identify what the relevant person will do:

(a) to discourage customers from engaging in extended and intensive gambling; and

(b) where appropriate, to ensure customers are made aware of the passage of time.

3.5 By reason of those provisions, Crown Melbourne's Code must:

(a) include a message that identifies its commitment to responsible gambling and require the display of that message wherever it conducts gambling; and

(b) include a process for interacting with customers to foster responsible gambling, including identifying how this will occur by specifying a process for interacting with customers who:

(i) have requested information about or assistance with a gambling problem or self-exclusion; and

(ii) are displaying "indicators of distress" that may be related to problem gambling; and

(c) identify how it will discourage customers from engaging in extended and intensive gambling and ensure where appropriate customers are made aware of the passage of time.

Meaning of "implement" under section 69

3.6 The word "implement" is not defined or prescribed in the CCA. In those circumstances, the term must be construed in accordance with settled principles of statutory construction.

3.7 For the purpose of section 69, to "implement" a Code means more than recording in writing a set of obligations that comply with section 69 of the CCA. It also means carrying into effect what is written. Any other construction would lead to an absurd result. Thus, under section 69, Crown Melbourne must:

(a) prepare and publish a Code the content of which complies with section 69 of the CCA (including the Crown Ministerial Direction); and

(b) ensure that the obligations contained in its Code are complied with on the Melbourne Casino floor.

3.8 The focus of the Commission was on the second of the two requirements.

The Code

The different versions of the Code

3.9 Crown Melbourne published its first Code in June 2009, following the insertion of section 69 in the CCA.[760]

[760] Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, COM.0005.0001.0776, .0805; Section 69 was inserted by section 57 of the *Gambling Legislation Amendment (Problem Gambling and Other Measures) Act 2007* (Vic), and came into effect on 1 December 2008: see the Scrutiny of Acts and Regulations Committee, Alert Digest No 15 of 2007, 20 November 2007 https://www.parliament.vic.gov.au/archive/sarc/Alert_Digests_07/07alt15body.htm.

3.10 Between June 2009 and the commencement of the Commission, Crown Melbourne published six versions of its Code.[761] During the hearings, the seventh version of the Code was published.[762]

3.11 Notwithstanding the number of versions, the central RSG obligations have, as a very general proposition, remained relatively consistent in each version of the Code.[763]

3.12 The examination of Ms Bauer focussed on the sixth version of the Code,[764] which does not relevantly differ from the seventh version. For present purposes, references to the Code are to the sixth version, unless otherwise stated.

Content of the Code

3.13 The Code includes Crown Melbourne's responsible gambling message in various places:[765]

(a) on page 2: "… [t]his Code represents our commitment to our customers and employees regarding harm minimisation and responsible gaming";

(b) on page 3:

(i) "Crown's responsible gaming initiatives are focused on minimising the potential for risks for the small number of customers who may develop difficulties associated with their gaming behaviours";

(ii) "Crown is committed to providing responsible gaming services by making available information, assistance and resources regarding responsible gaming matters";

(iii) "Crown's Code describes and demonstrates how we execute this commitment. It is our objective to ensure that Crown ***remains a world leader*** in responsible gaming practices and, at a minimum, that we comply with the legal requirements regarding responsible gaming as contained in the *Casino Control Act 1991* (Vic) and the *Gambling Regulation Act 2003* (Vic)"; and

(iv) "Crown's commitment to harm minimisation and the responsible service of gaming includes the Responsible Gaming Centre (**RGC**), a purpose built facility where responsible gaming programs, services and resources are available, including a dedicated and specially trained team of staff, managers and professionals. They deliver Crown's responsible service of gaming initiatives and provide a focal point for interacting with customers who may need support";

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761 Exh bit RC0712 Crown Melbourne Responsible Gambling Code of Conduct Version 1, 26 May 2009, VCG.0001.0002.0065; Exh bit RC0716 Crown Melbourne Responsible Gambling Code of Conduct Version 2, September 2010, VCG.0001.0002.0069; Exh bit RC0714 Crown Melbourne Responsible Gambling Code of Conduct Version 3, November 2012, VCG.0001.0002.0067; Exh bit RC0713 Crown Melbourne Responsible Gambling Code of Conduct Version 4, July 2016, VCG.0001.0002.0066; Exhibit RC0715 Crown Melbourne Respons ble Gambling Code of Conduct Version 5, October 2016, VCG.0001.0002.0068; Exh bit RC0110, Crown Melbourne Responsible Gambling Code of Conduct Version 6, July 2019, COM.0005.0005.0001.

762 Exh bit RC0694 Responsible Gambling Code of Conduct, 7 May 2021, CRW.512.097.0101.

763 The following is noted:

- At all times, Crown Melbourne's Code has stated that a "customer displaying signs of distress or unacceptable behaviour will be approached by a staff member who will offer assistance …" (first version (dated 26 May 2009), second version (dated September 2010) and third version (dated November 2012)) or a "customer displaying observable signs that may be related to potential problem gaming behaviours or unacceptable behaviour will be approached by a staff member who will offer assistance…" (fourth version (dated July 2016), sixth version (dated July 2019) and current version (dated May 2021)).
- The first and second versions of Crown Melbourne's Code said that an observable sign was "gambling for extended periods without a break". The third version of its Code referred to "[s]howing a pattern of gambling for long periods without a break". The fourth, fifth, sixth and current versions of its Code refer to "[o]ften gambles for long periods without a break".
- The fourth version of Crown Melbourne's Code says it will refer people displaying observable signs to RGLOs or senior management. The fifth version of its Code also says "[p]ersons displaying these types of behaviours will be referred to RGLOs or senior management". The sixth and current versions of its Code say: "Persons displaying these types of behaviours will be referred to RGAs or management for referral to the RGA".

764 Exh bit RC0110 Crown Respons ble Gambling Code of Conduct (Version 6), July 2019, COM.0005.0005.0001.

765 Exh bit RC0110 Crown Respons ble Gambling Code of Conduct (Version 6), July 2019, COM.0005.0005.0001 (emphasis added).

(c) on page 4, under the heading "Crown's Responsible Gaming Message":

(i) "Crown's responsible gaming message is simple yet meaningful – 'Awareness Assistance Support'. This is the commitment to harm minimisation and support for customers whereby:

- Awareness – supporting harm minimisation by building awareness of responsible gaming programs and services for staff and customers;
- Assistance – contributing to harm minimisation by providing assistance to customers in managing their gaming behaviours;
- Support – delivering a supportive environment where the potential for harm is minimised and a culture of responsible gaming support so embedded in the organisation"; and

(ii) "[i]n addition to the 'Awareness Assistance Support' message, Crown also uses 'Stay in Control', which forms part of Crown's original Responsible Gaming message".

3.14 Crown Melbourne's Code sets out the actions it will take to foster responsible gaming. Relevantly, these include:[766]

(a) on pages 6 to 7, under the heading "Responsible Gaming awareness, assistance and support" Crown Melbourne lists the items included in its responsible gaming programs, including:

(i) the establishment of the RGC;

(ii) the availability of a self-exclusion program that "informs and encourages applicants to seek counselling and assistance";

(iii) information about YourPlay where "Crown encourages and supports customers who play Electronic Gaming Machines (**EGMs**) to set money and/or time limits";

(iv) the availability of psychologists "experienced in the field of problem gambling to assist customers and family members"; and

(v) a Chaplaincy Support Service;

(b) on page 8 that "Crown … encourages customers to gamble within their means and budget";

(c) on pages 13 to 14, under the heading "Interaction with customers", the Code states that:

(i) "Crown is committed to providing a world-class entertainment experience for our customers and exceptional levels of customer service in all areas. This includes being aware of our customer and our responsibility to foster responsible gaming and harm minimisation. All relevant employees, are trained in the responsible service of gaming when they are inducted into the business and on an ongoing basis where applicable";

(ii) "Crown employees are instructed that, when approached by customers who request information or assistance with a gaming problem; request information on Self Exclusion; or display other observable signs that may be related to their gaming behaviours, to refer them, as soon as practicable, to Crown specialist assistance via their supervisor/manager to the RGC"; and

[766] Exhibit RC0110 Crown Responsible Gambling Code of Conduct (Version 6), July 2019, COM.0005.0005.0001 at .0005, .0006, .0008-.0010 (emphasis added).

(iii) "[t]he RGC is staffed by RGAs who are specially trained in all aspects of Crown's responsible gaming programs, including recognising observable signs which may be related to potential problem gambling behaviour. The RGAs are supported by Psychologists and a Chaplain to assist those customers who may be experiencing difficulties with their gaming behaviours"; and

(d) on pages 14 to 17, under the heading "RGC", explains how Crown Melbourne will identify problem gambling behaviour and deal with that behaviour. In particular, the Code:

(i) states that "[a]s part of delivering exceptional customer service, our staff are encouraged to engage with our customers. A **customer displaying observable signs that may be related to potential problem gambling behaviours** or unacceptable behaviour **will be approached** by a staff member who **will offer assistance** and referrals to special support as required";

(ii) explains that observable signs "are seen or reported behaviours or patterns of behaviour which **are potential indicators that a person may be experiencing problems with their gaming behaviours**" which are "seen or reported in context and usually more than one is displayed to indicate potential problems with gaming", and that "[o]bservable signs are included in Crown's Responsible Service of Gaming training";

(iii) identifies that observable signs "may include, but are not limited to" a list of 13 signs adapted from signs identified in three academic studies into problem gambling, specifically referenced in the Code;

(iv) says one observable sign is "[o]ften gambles for long periods without a break";

(v) states that "[p]ersons **displaying these types of behaviours will be referred to RGAs or management for referral to the RGA**"; and

(vi) states that "[r]esponsible gaming interactions are recorded in the Responsible Gambling Register".

The observable signs

3.15 A central feature of the Code is the "observable signs" of gambling harm.[767] The observable signs are non-exhaustively listed on page 16 of the sixth version of the Code as: self-disclosure of a problem with gaming or request to self-exclude; requests for assistance from family and/or friends concerned about an individual's gaming behaviour; children left unattended whilst parent/guardian gambles; gets angry while gaming or shows signs of distress during or after gaming; often gambles for long periods without a break; witnessed or heard that a customer was trying to borrow money for gaming; significant decline in personal grooming or appearance; observed conflict over gaming between family members or friends; unrealistic remarks about gaming; complains to staff about losing or blames the casino or gaming product for losing; secretive or embarrassed about being at the casino or stays on to gamble when friends leave the venue; gambles without reacting to what is going on around him/her and avoids contact or conversation with others; frequent visits to the ATM.[768]

[767] T1124:44 - T1125:5 (Bauer).
[768] Exhibit RC0110 Crown Responsible Gambling Code of Conduct (Version 6), July 2019, COM.0005.0005.0001 at .0010.

3.16 The 13 observable signs in the Code are modified from academic work referenced in the Code.[769] That academic work identifies 40 such signs.[770]

3.17 Crown Melbourne included the 13 observable signs in its Code without undertaking any further research to support either the use of a more limited number of observable signs or the selection of those limited number of signs.[771]

Staff training on the 13 observable signs

3.18 All staff training on observable signs at every level of the organisation is based on the list of 13 observable signs in the Code.[772]

3.19 Crown Melbourne says that the responsibility for delivering RSG and implementing its Code rests with all staff.[773] This includes gaming staff and food and beverage staff.[774] According to Crown:[775]

(a) all staff members are charged with looking for "observable signs" of problem gambling, and acting in accordance with the Code when they are identified; and

(b) a staff member who identifies an observable sign is required to report the observable sign, triggering a response from an RGA.

3.20 The essential premise of the system is that:

(a) the list of "observable signs" sufficiently describes the identifiable signs of problem gambling;

(b) all staff are sufficiently trained to understand and appreciate an observable sign when they see it;

(c) if a staff member sees an "observable sign", they remember their training and contact the RGA; and

(d) upon receiving the notification from the staff member, the RGA is actually available to attend the patron to deliver the interaction required by its Code.

The system for identifying observable signs is defective

3.21 In practice the system does not deliver what is required by the Code.

3.22 This is so for four reasons.

3.23 **First**, identifying signs of problem gambling can be complex.

3.24 Some of the observable signs are obvious. If a patron requests self-exclusion, then clearly an observable sign has been established. If a patron punches a gaming machine and yells at the machine then, equally, that is a sufficiently overt sign that an observable sign has been established.

3.25 By contrast, other signs may be confused for behaviour not related to problem gambling. Someone exhibiting rowdy behaviour, for example, may be mistaken for someone who has consumed excessive alcohol or is otherwise misbehaving. Further, there are more subtle

[769] Exhibit RC0121 Gambling Research Australia Validation Study of In-Venue Problem Gambler Indicators, February 2014, COM.0013.0001.0403.
[770] Exhibit RC0121 Gambling Research Australia Validation Study of In-Venue Problem Gambler Indicators, February 2014 COM.0013.0001.0403 at .0410-.0411.
[771] T1203:42 - T1204:3, 26-35 (Bauer); T1425:33 - T1426:1 (Bauer).
[772] T1423:12-33 (Bauer).
[773] T1178:40 - T1179:2 (Bauer).
[774] T1142:33-47 (Bauer).
[775] T1157:29 - T1158:2 (Bauer); T1179:12-18 (Bauer).

signs which would be difficult for staff to observe, such as extensive periods of play without breaks.

3.26 Identifying and then acting upon an observable sign involves judgement and skill, which not all staff have or understand that they are expected to have.

3.27 **Second**, because Crown Melbourne places so much reliance upon all staff – not just RGAs – as the principal way in which observable signs of problem gambling will be identified, the training of those staff is critical to the success of the system.[776]

3.28 Crown Melbourne provides staff training at three points:[777]

(a) induction – this runs for 45 minutes of which only 10 minutes are dedicated to observable signs;[778]

(b) advanced session – this runs for an hour every two years of which only five minutes are dedicated to observable signs;[779] and

(c) online "refresher" training – the training is not repeated or refreshed more frequently than every two years.[780]

3.29 Thus, a Crown Melbourne employee generally has approximately 15 minutes of relevant training on observable signs, plus a refresher training every two years.[781] Plainly that is inadequate given the reliance placed on rank and file staff to identify observable signs.[782]

3.30 A further concern is that Crown Melbourne does not know if the training is effective. It does not[783] evaluate whether staff understand the training, remember the training, or put the training into effect.[784]

3.31 **Third**, the Commission heard evidence from rank and file staff members who, according to Crown, play a crucial role in identifying observable signs. The staff were chosen randomly from different parts of the casino's operations. In summary, the evidence was that:

(a) staff were unable to recall few, if any, observable signs;[785]

(b) staff, including those such as food and beverage staff, did not see RSG as part of their responsibilities;[786] and

(c) staff had very rarely, if ever, referred a person to an RGA for assistance.[787]

3.32 The majority of the time, staff members are undertaking their primary job, and unless an observable sign is overt, it is unlikely staff members will identify those signs.[788] Further, when the Melbourne Casino is busy, rank and file staff simply have no time to perform their

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776 T1150:45 - T1151:1-42 (Bauer); T1153:14-22 (Bauer).
777 Exhibit RC0114 Responsible Service of Gaming training, n.d., CRW.510.048.0217; Exhibit RC0113 Responsible Service of Gaming for Senior Managers (advanced) session plan, January 2020, CRW.512.050.0013; Exhibit RC0109 Statement of Sonja Bauer, 5 May 2021, CRW.998.001.0301 at .0332; T1184:29 - T1185:10 (Bauer); T1186:1-34 (Bauer); T1187:8-22 (Bauer); T1188:5-43 (Bauer); T1196:9-13 (Bauer).
778 Exhibit RC0109s Responsible Service of Gaming Induction session plan, January 2020, CRW.512.050.0008, at .0011 - .0012.
779 Exhibit RC0109t Responsible Service of Gaming for Senior Managers (advanced) session plan, January 2020, CRW512.050.0013 at ,0017
780 Exhibit RC0109p Responsible Gaming: Gaming Machines Additional Focus Refresher Presentation, n.d. CRW.510.048.0413.
781 T1194:41 - T1195:6 (Bauer); T1196:39-T1197:2 (Bauer). Slightly longer periods of training are available to special employees, see Exhibit RC0109c Responsible Gaming Training and Information Sessions Report, March 2021, CRW.510.052.7366.
782 That the training modules are approved by the VCGLR, is more a reflection on the regulator than an endorsement of the training: T1424:45 - T1425:1-25 (Bauer).
783 T1190:42 - T1191:1 (Bauer); T1191:19-24 (Bauer).
784 T1191:32-36 (Bauer).
785 T479:1-4 (Employee 1); T489: 39-41 (Employee 2); T498:39-43 (Employee 3); T508:39-41 (Employee 4).
786 T479:30 - T480:14 (Employee 1); T486:38-41 (Employee 2); T486:39-41 (Employee 2); T499:44-500:17 (Employee 3); T530:8-26 (Employee 5), T540:2-6 (Employee 5), T542:41-45 (Employee 5).
787 T480:6-23 (Employee 1); T490:45 - T491:27 (Employee 2); T510:38 - T511:2 (Employee 4).
788 T1179:28-41(Bauer).

principal functions while also implementing the Code in the manner contemplated by Crown Melbourne.[789]

3.33 **Fourth**, assuming a staff member identifies an observable sign and refers the matter to an RGA, there is no guarantee that an RGA will be able to respond. This is because there is, and always has been, an insufficient number of RGAs.[790]

3.34 Prior to the VCGLR completing its Sixth Review of the Casino Operator and Licence (**Sixth Review**), Crown Melbourne employed seven RGAs, meaning there were only one to two RGAs on duty at any one time.[791] The number of RGAs increased from seven to 12, at the insistence of the regulator, following the regulator's findings in the Sixth Review.[792] With 12 RGAs employed, there are never more than three RGAs on duty at any one time.[793] In May 2021, in direct response to the concerns raised in this Commission, the Crown Resorts Board endorsed a plan (discussed at Part 5 below) to, amongst other things, employ four more RGAs at the Melbourne Casino.[794]

3.35 Whether the number of RGAs is seven, 12 or 16, it is insufficient to implement its Code.

3.36 The ratio of RGAs to EGMs is significantly lower at the Melbourne Casino than every other gambling venue in Victoria, which have a ratio of not less than one responsible gambling officer for every 105 EGMs.[795] In contrast, the Melbourne Casino has approximately 2600 EGMs, with approximately 870 EGMs for each RGA, assuming there are three RGAs on the floor at any one time.[796] Further, unlike other venues, the Melbourne Casino has approximately 440 gaming tables that are also the responsibility of RGAs.[797]

3.37 On top of this, the duties of an RGA are extensive. The position description of an RGA includes the following responsibilities:[798]

(a) if a person seeks to self-exclude, an RGA must conduct that process, which requires interviews and forms to be completed;

(b) where a person is discovered onsite in breach of a self-exclusion order, an RGA is required to participate in the process of removing the person;

(c) an RGA must deliver training and coaching to new RGAs;

(d) an RGA must provide information and guidance both internally to Crown Melbourne and to customers about compliance with the Code; and

(e) an RGA must assist with the management of the RSG budget.

3.38 In the circumstances described above, it is simply impossible for the RGAs to discharge all their duties. The difficulty of the RGA's role is brought into sharper focus when it is recalled that:

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789 T1160:2-18 (Bauer).
790 T1206:16-38 (Bauer).
791 T1406:39-44 (Bauer).
792 T1167:46-47 (Bauer); T1168:4-42 (Bauer).
793 T1174:28-31 (Bauer); T1205:29-32 (Bauer); T1233:19-26 (Bauer).
794 Exhibit RC0642a Responsible Gaming Organisational Chart, May 2021, CRW.510.073.1673; Exhibit RC0122 Letter from Allens Linklaters to Solicitors Assisting the Royal Commission, 26 May 2021, CRW.0000.0003.0677.
795 T1205:4-15, 34-37 (Bauer); *Gambling Regulation Act 2003* (Vic), section 3.4.1(3); Exh bit RC0163 Minister Direction No S 85, 21 February 2020, COM.0013.0001.0233 at .0236 (clause 7.2).
796 T1204:11-24 (Bauer); T1205:24-32 (Bauer). Even if there were four RGAs on the floor, the ratio of 1 RGA to 650 EGMs would still be inadequate.
797 T1205:39-46 (Bauer); T1206:1 (Bauer).
798 Exhibit RC0111 Respons ble Gaming Advisor Position Description, 3 June 2019, CRW.510.048.0559.

(a) the Melbourne Casino has approximately 13,000 unique visitors each day,[799] many of whom will exit and then re-enter the casino floor several times a day;[800] and

(b) in the years 2016 to 2019, there were approximately 22 to 23 million (non-unique) people who visited the Melbourne Casino each year.[801]

3.39 Crown Melbourne has never conducted any quantitative analysis or empirical study of the true demand for the services of the RGAs.[802] The only conclusion open on the evidence is that the number of RGAs is deficient.

Often gambles for long periods of time without a break

3.40 One of the 13 observable signs in the Code is "often gambles for long periods without a break". That is an important sign, because extensive periods of gambling on EGMs is a well-recognised pathway to significant gambling harm.[803]

3.41 The Code does not expressly define the terms "often", "long periods", or what is meant by a "break".[804] Those matters are to be ascertained by reference to the academic work referred to in the Code.

3.42 The most recent study referred to in the Code is the "Validation study on in venue- problem gambler indicators".[805] This study concluded that gambling "for three hours or more without a proper break"[806] was suggestive of problem gambling. Another study referred to in the Code noted "[w]hile most may not agree that the lower end of the range (1 hour) is indicative of anything serious, certainly five to six hours and beyond would raise concerns …".[807]

3.43 Accordingly, the phrase "long periods" used in the Code can be understood as meaning somewhere between three to six hours.[808]

The Play Periods Policy

3.44 Crown Melbourne has had eight versions of its play period policy, which seeks to implement the Code insofar as length of time of gambling is concerned (**Play Periods Policy**). The Play Periods Policy applies only to carded play by members of Crown's loyalty program.[809]

3.45 From December 2019, the Play Periods Policy (version 1.6) provided that:[810]

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799 Exhibit RC0143 Crown Melbourne Average Daily Unique Visitations report, 1 June 2021, CRW.512.107.0251; T1529.12-27 (Emery).
800 T1529.29-44 (Emery).
801 T1181:22-31 (Bauer).
802 T1175:26 - T1176:2 (Bauer).
803 T1806:23-46 (Billi); T1808:19-35 (Billi); T1810:27-33 (Billi).
804 At pages 21-22 of the current version of the Code, under the heading "Breaks in play", Crown Melbourne explains how it will discourage customers from engaging in extended and intensive gambling and make them aware of the passage of time by encouraging them to "take regular breaks from gaming" (Exh bit RC0110 Crown Responsible Gambling Code of Conduct (Version 6), July 2019, COM.0005.0005.0001 at .0012). Crown Melbourne states in the current version of the Code that such encouragement may take various forms including "verbal encouragement by staff for customers to take refreshment breaks" (Exh bit RC0110 Crown Respons ble Gambling Code of Conduct (Version 6), July 2019, COM.0005.0005.0001 at .0013).
805 Exhibit RC0121 Gambling Research Australia Validation Study of In-Venue Problem Gambler Indicators Report, February 2014, COM.0013.0001.0403.
806 Exhibit RC0121 Gambling Research Australia Validation Study of In-Venue Problem Gambler Indicators, February 2014, COM.0013.0001.0403 at .0410.
807 Exhibit RC0550 Report regarding Current Issues Related to Identifying the Problem Gambler in the Gambling Venue, August 2002, CRW.510.004.3314 at .3321 (section 1.2 under the heading "Length of playing sessions").
808 Crown Me bourne has admitted five or more hours was the appropriate trigger for identifying problem gambler behaviour: see Exhibit RC0570 Letter from Debra Tegoni to Rowan Harris, 20 November 2015, CRW.510.052.7201 at .7205.
809 T2166:15-28 (Bauer).
810 Exhibit RC0698 Play Periods Policy version 1.6, December 2019, CRW.510.052.5928.

(a) members who have "continuous ratings" (i.e. how long someone has been playing)[811] for a 24 hour period without appropriate breaks will not be permitted to remain on the gaming floor and will be directed to take a 24 hour break;

(b) gaming staff or an RGA will "interact or observe as appropriate" with customers at the 12, 16 and 20 hour mark to encourage members to take a break from play; and

(c) if a member is displaying any (other) observable signs during the conversation or observation, staff will request the member take a break.

3.46 In December 2020, the Play Periods Policy (version 1.7) changed so that:[812]

(a) the period of continuous play that would trigger a direction to leave the floor and take a break was reduced from 24 hours to 18 hours;

(b) gaming staff or an RGA are required to "interact or observe as appropriate" with customers at the 12, 15 and 17 hour mark; and

(c) if a member is displaying any (other) observable signs during the conversation or observation, staff will request the member take a break.

3.47 During the course of the Commission, and in response to this Commission, in May 2021 Crown Resorts Board endorsed a plan that, amongst other things, would result in a change to its Play Periods Policy. The substance of this policy change in respect of "domestic players" is as follows:[813]

> *Domestic Players – 12 hours in a 24 hour period with observation/intervention at eight and 10 hours. Customers will not be able to play for more than 48 hours in a week.*

3.48 The following is of note:

(a) as far as the Commission is aware, the change has not yet been formally documented;

(b) on the information provided, it is not clear how the new policy operates. That is not surprising. As is explained below, it was developed and approved in just six days, in circumstances where the person responsible for the changes did not understand how the Play Periods Policy is carried out in practice;[814] and

(c) the word "domestic" at Crown Melbourne usually refers to Australian customers other than Victorians, although its meaning in this context is unclear.[815]

The difficulties with the Play Period Policy

3.49 The following difficulties exist with the Play Period Policy.

3.50 **First**, the time periods in the policy are contrary to the Code, with the odd result that acting in accordance with the policy will give rise to a breach of the Code. Under the policy, no action is taken if a customer often gambles for long periods (three to six hours). The policy does not ensure that those who often gamble for long periods without a break:

(a) "will be" approached by a staff member who "will" offer assistance; or

(b) "will be referred to RGAs or management for referral to the RGA".

3.51 The terms of the policy therefore countermand the relevant requirements of the Code.

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811 T2164:31 - T2165:34 (Bauer).
812 Exhibit RC0116 Play Periods Policy Version 1.7, December 2020, VCG.0001.0002.8046
813 Exhibit RC0122 Letter from Allens Linklaters to Solicitors Assisting the Royal Commission, 26 May 2021, CRW.0000.0003.0677.
814 T3054:4-37 (Blackburn).
815 T1483:10-1485.6 (Emery).

3.52 **Second**, the technology relied on by Crown Melbourne is deficient. RGAs receive an alert when a patron reaches the times specified in the Play Periods Policy.[816] That means an RGA is not alerted if a patron plays continuously without a break for more than three to six hours. The problem is systemic and makes compliance with the Code impossible.

3.53 **Third**, the Commission heard evidence that in practice (under version 1.7 of the Play Period Policy which was in force when the evidence was given):[817]

(a) the first time that an RGA will consider whether to approach a customer is when they have been gambling for 12 hours; and

(b) even at that point, the RGA will only observe a customer (not interact with the customer) unless the customer is displaying some other observable sign.

3.54 That is plainly unsatisfactory from a RSG perspective. In making that submission, we make no criticism of the RGAs, who have been asked to perform an impossible task.

3.55 **Fourth**, if an RGA receives and actions a play period alert, it is recorded in the Responsible Gaming Register (**Register**), which is intended to record the actions taken by an RGA.[818] If the RGA is unable to action the alert – because they are busy with other duties – then nothing is recorded in the Register.[819] This means Crown does not keep a record of unactioned alerts.

3.56 **Fifth**, while it is acknowledged that one RGA gave evidence that she would "very rarely" be unable to respond to a play period alert,[820] the objective evidence shows:

(a) in some cases there may be no intervention at all in response to an alert, even where gaming occurs for an extensive number of hours;[821]

(b) there can often be delays of several hours between the receipt of an alert, and the alert being actioned by the RGA.[822]

3.57 **Sixth**, many patrons who gamble at the Melbourne Casino are uncarded players. There is no equivalent policy (like the Play Periods Policy) for uncarded play.[823] The periods in the Play Periods Policy may apply to uncarded players. However, because uncarded play cannot be tracked using Crown Melbourne's technology, RGAs and staff must rely on mere observations to ascertain if a customer may have been gambling for a long period without a break.

3.58 The following is of note:

(a) there is no system to help staff track how long an uncarded player has been playing;[824]

(b) the only means by which Crown Melbourne can know how long an uncarded player has been gambling is by relying on observations from its staff[825] (which, on the evidence, is not a reliable or effective system); and

(c) given the staffing levels of RGAs, level of training of rank and file staff and their general preoccupation with their principal function, the size and layout of the Melbourne Casino, and Crown Melbourne's lack of systems to track uncarded

816 T1163:39 - T1164:16 (Bauer); T1228:35-42 (Bauer); T1232:16-26 (Bauer).
817 T1062:37 - T1063:3 (Employee 7).
818 T1253:4-28 (Bauer); T1256:31-42 (Bauer).
819 T1256:31-42 (Bauer).
820 T1074:6-19 (Employee 7).
821 T1261:13-T1262:42 (Bauer); T1062:37 - T1063:3 (Employee 7).
822 T1252:20-29 (Bauer); T1257:46 - T1258:3 (Bauer), T1259:31-38 (Bauer); Exhibit RC0118 Observable Signs Report, n.d., COM.0014.0001.0011.
823 T2166:10-33 (Bauer).
824 T1263:14-19 (Bauer); T1066:47 (Employee 7); T1067:1-20 (Employee 7).
825 T1228:44-47 (Bauer); T1229:2-23 (Bauer); T1262:44 - T1263:19 (Bauer).

players, it has been and remains the case that uncarded players can gamble at the Melbourne Casino for extensive periods without any interaction from Crown Melbourne staff.[826]

3.59 This is particularly troubling given many problem gamblers prefer anonymity and for that reason are the least likely to play with a card.[827]

3.60 As Ms Bauer accepted, a simple solution would be for Crown Melbourne to require all players to use a card to gamble.[828] An RGA gave evidence that from her perspective, "it would be much, much easier for [her] to do [her] job if people were playing carded".[829] Crown Melbourne has had the ability to implement such a change since 2013.[830]

Breach of section 69

3.61 Crown Melbourne has systematically permitted customers to be left alone on the Melbourne Casino floor for significant periods without any assistance or intervention. The practice continues today. By acting in accordance with its own Play Periods Policy, Crown Melbourne has continuously failed to comply with the obligations under the Code, in breach of section 69 of the CCA and Crown Melbourne's casino licence condition.

3.62 That in and of itself is a sufficient ground to find Crown Melbourne unsuitable.

3.63 There is nothing in the RSG enhancements hastily prepared in May 2021 (discussed below at Part 5 below) that alters the position. Mr Blackburn frankly conceded a 12-hour play policy was unreasonable.[831]

4 Other indicia of RSG failures

4.1 Until June 2021, the Code said Crown Melbourne was a "world leader" in responsible gaming practices.[832] Rightfully, Crown Melbourne no longer holds that view.[833]

4.2 The evidence demonstrated several RSG concerns.

The Mahogany Room

4.3 Mahogany Room hosts:

(a) proactively contact clients and entice them to come to the Melbourne Casino to gamble;[834]

(b) arrange for customers to collect gifts such as tickets from, and invite patrons to dinners at, the Melbourne Casino, in the hope that when the customer enters the complex they will gamble;[835]

(c) do not speak to clients about the amount of money they are gambling or if they can afford it;[836]

826 T1264:33-41 (Bauer).
827 T1264:7-18 (Bauer); T1068:24-47 (Employee 7); T1070:1-11 (Employee 7).
828 T1263:21-31 (Bauer).
829 T1070:42-45 (Employee 7).
830 T1263:38 - T1264:5 (Bauer).
831 T3051:42-47 (Blackburn).
832 T1119:12-20 (Bauer).
833 T1119:12-20 (Bauer).
834 T1760:27-31 (Lawrence).
835 T1760:33 - T1761:2 (Lawrence).
836 T1765:44 - T1766:8 (Lawrence).

(d) do not engage with customers about their welfare[837] (and, indeed, before 24 March 2021, irresponsibly permitted customers to gamble even if they owed the casino money[838] with the practice only changing in response to this Commission[839]);

(e) rarely ask customers to take a break from gambling;[840]

(f) continue to contact clients even if they tell the host they need to take a break from gambling;[841] and

(g) do not suggest to clients that they should self-exclude and are instructed to discourage people from self-exclusion.[842]

4.4 The reason for such conduct is the culture at the Mahogany Room, which disregards Crown Melbourne's RSG obligations. Indeed, the head of services at the Mahogany Room could recall just one occasion where he referred someone to an RGA.[843]

The Average Punter

4.5 Regular gamblers gave evidence to the Commission that they, or others they observed, were left to gamble at the Melbourne Casino for extensive periods without being checked

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837 T20:32-41 (Hasna) ("[L]*ook, your well-being is never an issue, and you are sort of – how you are managing or feeling, these questions are never – they never arise at the casino, especially in Melbourne. It's never an issue. Your well-being and how you are travelling and how you are financially, whether you are struggling or not, they are never questions that are raised"); T31:29-35 ("At no stage was I ever asked… any questions in terms of how I'm feeling, how I'm coping, whether I needed any assistance, whether I should possibly take a break, especially after major losses*"); T76:5-21 (Anonymous witness) ("*Q: … Is the casino staff and the hosts, are they encouraged to get people in no matter what if they know someone has a problem or are they astute and they try to help people with that? A: They don't try to help anybody in there. At the end, Mahogany has a certain cash amount that they have to maintain for tax purposes, from what I understand. Therefore, they want people in there gambling. Q: Have you ever seen, for example, someone gambling who looks tired or might have been there for a while and someone come along and tap them on the shoulder and say, "You've been here for a long time, why don't we get a drink and have a break"? A: No.").* To the extent the evidence of Mr Lawrence differed, it should not be accepted: T1766:12 - T1767:7 (Lawrence).

838 T1773:5-9 (Lawrence).

839 T1774:45 - T1775:20 (Lawrence)

840 T33:16-29 (Hasna) ("Q: *And if you were to gamble – if you were to gamble for 10 hours in a row, or 11, 12, 13, have you gambled those periods? A: I have on many occasions. … Q: Has anyone tapped you on the shoulder to have a break? A: Never. Never"); T28:15-22 (Anonymous Witness) ("There's people—yeah, no, there's definitely people in there for more than 24 hours, absolutely. 24 hours, 26 hours, 28 hours. … Look, I reckon you would probably find 10 to 15 people per week would do those sorts of hours in the Mahogany Room*"); T561:12-16 (Employee 6) ("*Q: And people used to gamble in the Mahogany Room for 24 hours without a substantial break; that's right, isn't it? A: Yes."*). To the extent the evidence of Mr Lawrence differed, it should not be accepted: T1767:4 - T1768:40 (Lawrence).

841 T43:15-26 (Anonymous Witness) ("Q: *And if you – someone had been getting angry or someone had had a big loss and they were one of our customers, and they said, "Going to have a break for a while", how is it you would respond to that sort of thing? A: I guess we would take it into consideration, however we would still not be a stranger to them. As if they had taken a break, I wouldn't not contact them. I was always asked to contact them and make sure that they were okay and continue to offer them, hey, look, you may not want to gamble, but he might want to go to the football, so give him football tickets, or they might want to come in for a bit of dinner, sometime"*); T568:18-30 (Employee 6) ("*Q: Let's say you've got a black cardholder who normally comes in two or three times a week and hasn't turned up for two weeks. Do you still contact them? A: Yes. Q: Am I right that if they haven't been in for a while, what you do is say to them – and again it's not a criticism, it is the way the job is structured – but you say "Why don't you come in, grab some dinner, we'll go to the footy"? A: Yes"*); T1768:42-T1769:26 (Lawrence).

842 T43:38 - T44:17 (Anonymous Witness) ("*Q And if someone said to you, "Oh, I'm going to self-exclude, not just have a break", what would you say in response, in the usual course of conduct? How would you normally respond to that? A: We would sort of ask if they – I would ask if – if it was one of my clients, I would ask if they are okay, sort of advise that if they do go down the road of self-exclusion just because they've had one bad day on the table, it is going to take more than 12 months to get back in, and when you do get back in you have to go through the Government. It is a big process. So we sort of were asked to steer them away from that option and maybe say, "Hey, look, instead of self-excluding, maybe just take time off and go to the football next weekend and take time to cool down, go home. Cool your heels and let's speak in a few days time". That's the road we went down. Q: When you say you were told… who was it that was telling you? A: Told or advised, I mean, yeah, sort of – to certain customers – it was our management team…*"), see also T572:6-19 (Employee 6) *("And it wouldn't surprise you if it [discouraging self exclusion] happened a bit more occasionally in the Mahogany Room because hosts are there to make their money and they make their money by people coming in to gamble? A. Yes*"); T45:1-11 (Anonymous Witness) ("*I would basically say if you do gown down the road of self-excluding, it's a minimum of 12 months. Then you have to have an assessment by the Government… I would sort of talk them out of it, I guess, in that way. I wouldn't say talk them out of it if they were in a really, really bad spot, but I would definitely advise or push the fact that it's not just, "Hey, it's 12 months off and you can come back in"… I would make out it was a pretty big process, a pretty big thing."*); T45:13-19 (Anonymous Witness) ("*Q: If a person was in relatively serious financial trouble, or seemed to be… you didn't feel obliged to say, "Look, self-exclude, get out of here for year"? A: It wasn't—it wasn't in the nature of the office to do that sort of thing. I mean, if—yeah—no, not really. No.*"); T567:46 - T568:4 (Employee 6) ("*Q: … [I]t's not part of your job to suggest to people that they should self-exclude? A: No.*"); To the extent the evidence of Mr Lawrence differed, it should not be accepted: T1769:28 - T1772:24 (Lawrence).

843 T1792:13-19 (Lawrence).

on.[844] One witness gave evidence that if someone at the Melbourne Casino had asked her if she was okay, and suggested she take a break, she thinks it would have helped her avoid prison.[845] Others in international communities have been victims of loan sharks at the Melbourne Casino.[846]

4.6 Counsellors and social workers who work with gamblers also gave evidence that their clients would gamble for days, and sleep in their car or at the Melbourne Casino, and that they had never seen or heard of any Melbourne Casino staff approaching people asking them to take a break.[847] Regrettably, gambling harm at the Melbourne Casino has resulted in criminal activity[848], forced prostitution[849], and even suicide.[850]

Pre-commitment

4.7 YourPlay is a Victorian Government initiative where patrons can pre-set money and/or time limits for gambling on EGMs. Where the patron reaches the limit, the patron will receive an alert. Customers can, however, continue gambling after reaching a limit.

4.8 The Code says YourPlay "encourages and supports customers" who play EGMs.[851] But, in practice, Crown Melbourne has no visibility over patrons who use YourPlay.[852] Patrons can set unrealistic limits (e.g. $1 million daily loss limit and 24 hour daily time limit).[853]

4.9 If a patron reaches a pre-set time or money limit, Crown Melbourne staff take no action (there being no regulatory obligation on them to do so).[854]

4.10 In August 2020, a report of Crown's RSG advisory panel noted that a limitation of the YourPlay system was that limits are not strictly enforced, as players can continue playing after reaching their self-imposed limit.[855] Notwithstanding that advice, nothing has changed at the Melbourne Casino. But things could have changed. To that end, the following evidence of Mr Blackburn is important:[856]

> *Q. Do you agree that Crown should not permit a person to continue gambling if they reach a pre-determined YourPlay time or money limit?*
>
> *A. I do.*
>
> …
>
> *Q. So Crown obviously can't, at the moment the way things are, set limits for patrons. Do you agree customers should be encouraged by Crown to set realistic and affordable YourPlay limits consistent with what the Foundation's recommendation is?*
>
> *A. I do.*

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844 T76:2-21 (Anonymous Witness); T89:8-19 (Anonymous Witness); T5:4-22 (Mitchell); T7:1-26 (Mitchell); T9:26-37 (Mitchell); T22:22-41 (McDonald); T15:43-47 (Du); T16:1-47 (Du); T17:1-5 (Du).
845 T2077:28-43 (Anonymous Witness); T2078:26-31 (Anonymous Witness); T2079:3-5 (Anonymous Witness).
846 T1303:22-32 (Bauer); T1851:35-41 (Guy); T1852:13-26 (Guy).
847 T413:46-T415:11 (Anonymous Witness); T392:17-T393:12 (Anonymous Witness); T1072:19-22 (Anonymous Witness).
848 T1092:6-17 (Anonymous Witness); Public submission of Ms C Crawford, 23 April 2019, SUB:0004.0024.0002.
849 T395:22-T396:25; T396:39-T397:33 (Anonymous Witness).
850 Exhibit RC0525 Coroners Prevention Unit Response to Data Request regarding Death relating directly or indirectly to the CrownCasino Complex, 6 May 2021, COM.0013.0001.1465; Exhibit RC0520 Table of Crown Melbourne related deaths, 29 October 2019, COM.0013.0001.0987
851 Exhibit RC0110 Crown Responsible Gambling Code of Conduct (Version 6), July 2019, COM.0005.0005.0001 at .0008.
852 T1353:18-23 (Bauer)
853 Exhibit RC0145 Statement of Shane Peter Lucas, 10 May 2021, VRGF.0002.0001.0017 at .0041-.0042 [93].
854 T1353:45 - T1354:24 (Bauer).
855 Exhibit RC0109d, Responsible Gaming Advisory Panel Review of Crown Resort's Responsible Gaming Programs and Services, August 2020 CRW.526.007.7005 at .7063.
856 T3062:34-38 and T3064:16-28 (Blackburn).

Q. Do you agree with me that if Crown wanted to have limits and make sure players, when they reached pre-determined limits, stop playing, it is big enough and it has the resources, if it has the will it could make these things happen?

A. I do.

EGMs at the Casino

4.11 There is a strong link between EGMs and gambling harm. That is because of the features of EGMs, including:[857]

(a) the rapid speed of play relative to other forms of gambling;

(b) the lack of natural breaks;

(c) product characteristics such as near-misses and losses disguised as wins; and

(d) the house edge being up to 13%, which is much greater than most other gambling products in the Melbourne Casino.

4.12 The risk of harm is more significant in respect of EGMs operating in unrestricted mode (which can only occur at the Melbourne Casino) where there are no bet limits, no pay out restrictions, no bank note acceptor restrictions, and continuous play is permitted.[858]

4.13 Nevertheless, a common practice at the Melbourne Casino is for customers to use picks to hold down the play button on EGMs, thereby enabling continuous gambling.[859] The practice occurs most commonly among black and platinum loyalty members, who make up over half of gambling turnover from loyalty members at the Melbourne Casino.[860] Crown Melbourne's position is that customers are discouraged from playing with a Crown branded pick, but that customers will not necessarily be stopped from playing that way if they are not using a Crown branded pick.[861]

4.14 There is also an irresponsible practice at the casino of people playing multiple EGMs at the same time.[862]

4.15 It is unacceptable that such practices occur. All other gambling venues in Victoria, other than the Melbourne Casino, have an obligation to "take all reasonable steps to prevent and minimise harm from the operation of gaming machines in the approved venue".[863] Mr Mackay could think of no logical reason why the same obligation should not be imposed on Crown Melbourne.[864] Customers at the Melbourne Casino face a greater risk of harm than customers at other gaming venues in Victoria due to the existence at the Melbourne Casino of EGMs that can operate in unrestricted mode.[865]

Evaluation

4.16 Crown Melbourne does not evaluate or measure the effectiveness of its RSG processes or systems.[866] Crown Melbourne knows it has this "gap".[867] So does the VCGLR.[868] But as at

[857] T1680:39 - T1681:26 (Mackay); T1807:10 - T1808:1 (Billi).
[858] T1808:9 - T1809:40 (Billi); Exh bit RC0145 Statement of Shane Peter Lucas, 10 May 2021, VRGF.0002.0001.0017 at .0041 [88].
[859] T1686:9.23 (Mackay).
[860] T1686:25 - T1687:19 (Mackay).
[861] T1687:41 - T1688:10 (Mackay).
[862] . T1689:32 - T1693:33 (Mackay).
[863] T1685:2-8 (Mackay); Exhibit RC0163 Minister Direction No S 85, 21 February 2020, COM.0013.0001.0233 at .0234.
[864] T1685:36-39 (Mackay).
[865] T1682:33-47 (Mackay).
[866] T1307:28-34 (Bauer).
[867] T1312:41-47 (Bauer).
[868] T1310:41 - T1311:3 (Bauer).

1 June 2021, Crown Melbourne was yet to take the basic step of employing an evaluation manager.[869]

4.17 It is a major failing, reflective of its character and integrity, that Crown Melbourne is yet to progress any evaluation of the effectiveness of its RSG systems, particularly so where Crown Melbourne has the data to do the evaluative work.[870]

Marketing

4.18 Mr Emery, Crown Resorts' Chief Marketing Officer, gave evidence about various marketing activities at the Melbourne Casino.[871] The following points are noted about the marketing at Crown.

4.19 **First**, promotions are designed to draw people into the Melbourne Casino so they will gamble.[872] If marketing entices customers to gamble more frequently, and gamble larger amounts, that is a successful outcome.[873] Crown evaluates the success of a promotion predominantly on whether it drives visitation and whether or not participants in the promotion spend money while at the Melbourne Casino.[874] All of that is unsurprising – the higher the gambling turnover, the higher Crown's profits will likely be.[875]

4.20 **Second**, the consequences of marketing promotions can be devastating for Victorian customers. For example, a black tier member came to the casino to collect "free" Phil Collins tickets, and lost $30,000 gambling.[876] Mr Emery accepted that was a "good outcome" from a marketing perspective.[877]

4.21 **Third**, before Crown Melbourne invites loyalty program members to participate in promotions, it does not consider the circumstances of the member, whether they can afford to participate in the promotion,[878] or player data analytics relevant to RSG (other than stop codes).[879] Crown Melbourne considers loyalty status data to ensure that high value customers receive the high value offers.[880]

4.22 **Fourth**, Crown Melbourne does not send marketing material to those loyalty program members with "stop codes" on their accounts.[881] Mr Emery accepted that the number of persons with RSG related stop codes is small, rending the measure inadequate.[882]

4.23 **Fifth**, Crown Melbourne has structured its loyalty program so it rewards higher turnover customers, meaning problem gamblers are more likely to benefit from the program as compared to people who gamble in a safe manner.[883]

4.24 **Sixth**, between FY2016 and FY2020, the total amount spent by Crown Melbourne on marketing and awards activity was about $2.5 billion, being about $500 million annually.[884] By contrast, the amount spent on RSG in 2019 was $1.9 million.[885]

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869 T1313:6-9 (Bauer).
870 T1317:24-27 (Bauer).
871 Exhibit RC0133 Statement of Nicolas Emery, 5 May 2021, CRW.998.001.0271 at .0272 [11] onwards.
872 T1460:33 - T1461:5 (Emery); T1473:20 - T1474:4 (Emery).
873 T1461:9-22 (Emery).
874 T1468:6-16 (Emery).
875 T1458:29-32 (Emery).
876 T9:14-25 (Hasna) ("[O]*n that occasion I got called in to pick up Phil Collins tickets, because you go in and pick them up, I went in to pick them up and I dropped 30,000. So going in to pick up Phil Collins tickets cost me $30,000 for my friends that went to watch him… Nothing is for free, it's all calculated, it's pretty smart. They know how to play you and they play you quite well.*").
877 T1474:6-19 (Emery); T1475:30-40 (Emery); T1475:42-45 (Emery).
878 T1468:18-23 (Emery).
879 T1468:30 - T1469.10 (Emery).
880 T1468:30-39 (Emery). Also T1468:47 - T1469:10 (Emery).
881 T1468:37-45 (Emery); T1469:18-21 (Emery).
882 T1470:12 - T1473:5 (Emery).
883 T1505:29-44 (Emery).
884 T1485:40 - T1486:1 (Emery).
885 T1486:8-18 (Emery).

Research

4.25 Crown acknowledges that one of its weaknesses is it does not share data.[886] Crown Melbourne could offer assistance to problem gamblers in its loyalty program by sharing data with researchers, or conducting its own research into the link between loyalty programs and problem gambling.[887] It could use that information to make meaningful changes to its loyalty program structures so that it was not exploiting problem gambling for profit. Crown Melbourne collects data from its loyalty program that could be used for this purpose.[888]

4.26 But it does not do any of those things.[889] And, as Mr Emery fairly and properly acknowledged, the reality is Crown Melbourne is not serious about research into RSG and problem gambling.[890]

The Responsible Gaming Centre

4.27 Crown Melbourne's Code describes its Responsible Gaming Centre (**RGC**) as a "world first responsible gaming initiative".[891] The role the RGC and psychologists play in reducing harm to customers and ensuring Crown Melbourne complies with its RSG obligations is unclear at best.

4.28 As to the RGC, the following matters are noted:

(a) some employees who gave evidence told the Commission that they had never been to the RGC in the course of their employment at the Melbourne Casino and did not know where it was located;[892] and

(b) interviews of customers who are considering self excluding are conducted in open waiting room areas near the entrance to the RGC, such that their interview is essentially being conducted in public.[893]

4.29 Crown Melbourne markets the RGC as a place where customers can see a psychologist for "assistance".[894] The service is a once-off referral process, with psychologists acting as casino employees, providing their services having regard to the sensitivities of Crown Melbourne's business.[895] The psychologist position description states that the role requires "strong business orientation, with the ability to view the business perspective on issues relating to customers; as well as political sensitivity regarding issues pertaining to customers and the business, to consider all decision in the context of both the business and the customer's needs".[896] This is not consistent with how the role of the psychologist is conveyed in its Code.

4.30 Further, for years, there has persistently been a low number of customers accessing the psychologists. Between 2016 and 2020, the psychologists saw between 24 to 32 customers each year.[897]

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886 Exhibit RC0109d Responsible Gaming Advisory Panel Review of Crown Resort's Respons ble Gaming Programs and Services, August 2020, CRW.526.007.7005; T1369:39 - T1370:16 (Bauer).
887 T1508:28-32 (Emery).
888 T1298:7-14 (Bauer); T1508:28-32 (Emery).
889 T1298:16-20 (Bauer).
890 T1515:43 - T1516:13 (Emery).
891 Exhibit RC0110 Crown Responsible Gambling Code of Conduct (Version 6), July 2019, COM.0005.0005.0001 at .0005.
892 T479:23 - T480:4 (Employee 1); T490:31-43 (Employee 2); T499:7-20 (Employee 3).
893 T1217:4-40 (Bauer); Exhibit RC0109d Respons ble Gaming Advisory Panel Review of Crown Resort's Responsible Gaming Programs and Services, August 2020, CRW.526.007.7005 at .7010.
894 Exhibit RC0110 Crown Responsible Gambling Code of Conduct (Version 6), July 2019, COM.0005.0005.0001 at .0009.
895 T1213:26-29 (Bauer).
896 Exhibit RC0109cc Responsible Gaming Psychologist Position Description, 27 February 2015, CRW.510.046.3474.
897 T1212:29-31 (Bauer).

Self-Exclusion

4.31 Four points are worth noting on self-exclusion.

4.32 **First**, Crown Melbourne's self-exclusion process is not made known to customers.[898]

4.33 **Second**, Crown Melbourne will only provide information about self-exclusion on request and staff are directed not to prescribe a self-exclusion- order.[899] This is problematic given the people least likely to request a pamphlet about self-exclusion are those with a gambling problem.[900]

4.34 **Third**, some Crown Melbourne staff actively discourage patrons from self-exclusion.[901]

4.35 **Fourth**, Crown Melbourne has recently implemented a comprehensive system of facial recognition to detect possible breaches by -self-excluded individuals.[902] This technology could have been comprehensively implemented from as early as 2014.[903] The delay is concerning.

CONCLUSION

4.36 The RSG is not part of the culture or fabric of Crown Melbourne. It is treated as a compliance requirement. Further, even as a matter of compliance, Crown Melbourne has failed in discharging its RSG obligations. These are serious matters which reflect on Crown's character and integrity and ability to maintain a successful casino.

5 Crown's proposed improvements

Proposed Improvements

5.1 On 24 May 2021, the Crown Resorts Board passed a resolution approving what it described as RSG "enhancements".[904]

5.2 The "enhancements" involved the following for purposes of Crown Melbourne:[905]

(a) the employment of a new "Manager RG", "RG Administration Officer", four new RGAs and a part time "RG Psychologist (Research)";

(b) the recruitment of additional RGAs with priority given to those from culturally and linguistically diverse (CALD) backgrounds, including language skills that are underrepresented in the staff profile but overrepresented in persons experiencing harm from gambling;

(c) increased remuneration for RSG staff;

(d) new play period time limits for domestic players (12 hours in a 24 hour period, with "observation/intervention" at 8 and 10 hours) and international premium program players;

(e) support for a State-wide exclusion register;

(f) the permanent cessation of the Bingo program and the Bus/Red Carpet Program;

(g) subject to the direction of the Victorian Government, a move to cashless gaming "over time";

898 T1337:27-39 (Bauer); T1338:16-47 (Bauer).
899 T1336:5 - T1337:39 (Bauer); T1338:16-47 (Bauer).
900 T1337:41-45 (Bauer).
901 T571:32-17 (Employee 6).
902 T2579:8 30 (C Walsh).
903 T2597:9-12 (C Walsh); T3794:46 - T3795:16 (Coonan).
904 Exhibit RC0696 Crown Resorts Board Meeting Minutes, 24 May 2021, CRW.512.097.0130.
905 Exhibit RC0122 Letter from Allens Linklaters to Solicitors Assisting the Royal Commission, 26 May 2021, CRW.0000.0003.0677 at .0679.

(h) controls to ensure that direct to member offers do not require customers to exceed historical behaviours (spend or visit frequency) in order to get their first benefit;

(i) replacing gaming vouchers received on sign up to Crown's loyalty program, Crown Rewards, with non-gaming/promotional vouchers;

(j) undertaking research into whether there are any aspects of the Crown Rewards program that are causing harm and what measures can be put in place to control that risk; and

(k) all future employee incentives will consider RSG implications.

Effect of Improvements

5.3 The evidence shows these changes were a knee jerk reaction to this Commission. So much was accepted by Mr Emery, Mr Mackay and Mr Blackburn.[906] So much is also made clear from the brief timeline set out below.

5.4 Before the Commission's first hearing, RSG was not a priority issue for the Crown Resorts Board.[907] Following the first hearing (where the Commissioner talked about the RSG at length), the directors of Crown Resorts exchanged emails about RSG on 27 March 2021,[908] 28 March 2021,[909] and 29 March 2021.[910]

5.5 On 18 May 2021, the directors of Crown Resorts directed Mr Blackburn to urgently include in a paper he was preparing on RSG "enhancements" things that could be started or done immediately so that Crown Melbourne was in the "best position for statements" to the Commission.[911]

5.6 On 24 May 2021, the Crown Resorts Board approved the RSG "enhancements".[912]

5.7 Several issues arise.

5.8 **First**, the RSG enhancements were developed urgently[913] in six days between 18 May 2021 and 24 May 2021. The urgency was driven by Crown's intention to have something positive to say in the statements for the Commission.[914] Before 18 May 2021, the RSG paper detailing the proposed RSG improvements being prepared by Mr Blackburn had only included reference to RSG staff capacity and remuneration.[915]

5.9 **Second**, the person who proposed the "enhancements" – Mr Blackburn – had no experience, training or expertise in RSG.[916] Mr Blackburn only started working at Crown Resorts on 24 February 2021, two days after this Commission was called.[917] He was hired for his considerable expertise in financial crime, not to assist in developing and monitoring RSG at Crown's casinos.[918]

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906 T1499:39-42 (Emery); T1708:23-T1709:15 (Mackay); T3049:33 - T3050:3 (Blackburn). See also Exhibit RC0652 Email chain between Steven Blackburn and Helen Coonan et al, 20 May 2021, CRW.510.073.4534.
907 T3796:26-30 (Coonan).
908 Exhibit RC0211 Email chain between Sonja Bauer, John Horvath and Helen Coonan, 27 March 2021, CRW.510.073.3979.
909 Exhibit RC0212 Email from Sonja Bauer to John Horvath, 28 March 2021, CRW.510.073.3981.
910 Exhibit RC0213 Email chain between Sonja Bauer and John Horvath et al, 29 March 2021, CRW.510.073.3982.
911 Exhibit RC0324 File note regarding meeting between Sonja Bauer and Steven Blackburn, 18 May 2021, CRW.510.073.3969. See also T3038:41 - T3041:35 (Blackburn) and T3049:2-47 (Blackburn).
912 T3056:22-26 (Blackburn).
913 Exhibit RC0217 Email from Rowan Cameron to Sonja Bauer, 19 May 2021, CRW.512.124.0063; T3048:38-47 (Blackburn); T3049:2-9 (Blackburn).
914 T3049:37-47 (Blackburn); T3050:1-3 (Blackburn).
915 T3041:5-13 (Blackburn).
916 T3019:30-38 (Blackburn); T3020:39-43 (Blackburn).
917 T2916:2-12 (Blackburn).
918 T3019:40 - T3020:2 (Blackburn).

5.10 **Third**, each of the proposals are things that, at a minimum, Crown Melbourne should already be doing. As Mr Blackburn put it, they are common sense changes.[919]

5.11 **Fourth**, the development of the "enhancements" raises concerns about the RSG team at Crown Melbourne. The RSG team told Mr Blackburn a 12 hour play period was reasonable.[920] There is, of course, no basis to suggest that a 12 hour play period is reasonable. The following exchange between Mr Blackburn and the Commission took place:[921]

> *COMMISSIONER:* *If the 12 hours is absurdly wrong, what does that tell you about your team who were pushing it? They say 12 hours is fine. Let's say they are wrong … but what would it tell you about the team you have if 12 hours is absurd?*
>
> *A.* *That I need to revisit my team.*
>
> *COMMISSIONER:* *Yes. And what does that mean. When you use the word "revisit", what do you mean by the word "revisit"?*
>
> *A.* *I need to understand the expertise they apply in reaching conclusions of that nature. I need to apply judgment to it.*

5.12 **Fifth**, the "enhancements" were developed and approved without regard to Crown Melbourne's obligation under clause 28 of Casino Agreement to conduct its operations "in a manner that has regard to the ***best operating practices*** in casinos of a similar size and nature" to Crown Melbourne.[922]

5.13 **Sixth**, the regulator noted in the Sixth Review that where there has been change in Crown Melbourne's responsible gambling practice, this has largely been driven by regulatory and other external pressures.[923] The development of the "enhancements" on the fly, to respond to the Commission, demonstrates the position identified by the VCGLR remains true.

6 Section 68

6.1 A separate, but related, issue is Crown Melbourne's failure to comply with section 68 of the CCA. The section provides as follows:

> *Credit etc.*
>
> *(1)* *In this section—*
>
> *cheque means a cheque (other than a traveller's cheque) that—*
>
> *(a)* *is drawn on an account of an authorised deposit-taking institution for a specific amount …*
>
> *(2)* *Except to the extent that this section otherwise allows, a casino operator must not … in connection with any gaming or betting in the casino—*
>
> *…*
>
> *(b)* *lend money or any valuable thing; or*
>
> *(c)* *provide money or chips as part of a transaction involving a credit card or a debit card; or*

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919 T3033:25-29 (Blackburn).
920 T3047:1 - T3048:28 (Blackburn).
921 T3048:18-34 (Blackburn).
922 T3056:44 - T3057.43 (Blackburn); Exhibit RC0435 Consolidated Casino Agreement, 21 September 1993, COM.0005.0001.0985 at .1027 (clause 28) (emphasis added).
923 Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, COM.0005.0001.0776 at .0704.

> *(d) extend any other form of credit; or*
>
> *…*
>
> *(3) A casino operator may establish for a person a deposit account to which is to be credited the amount of any deposit to the account comprising—*
>
> *(a) money; or*
>
> *(b) a cheque payable to the operator; or*
>
> *(c) a traveller's cheque.*
>
> *(4) The operator may issue to a person who establishes a deposit account and debit to the account chip purchase vouchers or money, not exceeding in total value the amount standing to the credit of the account at the time of issue of the vouchers or money.*
>
> *(5) The operator may, in exchange for a cheque payable to the operator or a traveller's cheque, issue to a person chip purchase vouchers of a value equivalent to the amount of the cheque or traveller's cheque.*
>
> *(6) A cheque accepted by the operator may, by agreement with the operator, be redeemed in exchange for the equivalent in value to the amount of the cheque of any one or more of the following—*
>
> *(a) money;*
>
> *(b) cheque payable to the operator;*
>
> *(c) chip purchase vouchers;*
>
> *(d) chips.*
>
> *…*

6.2 The following observations are relevant.

6.3 **First**, section 68 contains, in part, a prohibition on a casino operator extending credit. That is an obvious measure consistent with the RSG.

6.4 **Second**, the section is not concerned only with credit. For example, under section 68(3) a person can deposit money into a deposit account, and then withdraw that money under subsection 68(4). That does not involve the giving of credit.

6.5 **Third**, sections 68(3) and 68(4) are concerned with deposit accounts. A patron may credit a deposit account with money, traveller's cheque, or a cheque payable to Crown Melbourne. Funds must be standing to the credit of the account before it is debited (i.e. before Crown Melbourne gives the patron a chip purchase voucher or money).

6.6 According to Crown Melbourne, a deposit account:

(a) allows a customer to transfer funds to Crown Melbourne and keep them on deposit, rather than entering or leaving the Melbourne Casino with large amounts of cash or chips;[924] and

(b) is a ledger account, not a separate bank account created for each customer.[925]

6.7 It is, in effect, a running account of debits and credits. It does not involve the giving of credit.

[924] T1734:26-43 (Lawrence).
[925] T1734:45 - T1735:13 (Lawrence).

6.8 **Fourth**, sections 68(5) and 68(6) are concerned with a cheque cashing facility (**CCF**). A CCF involves credit in the true sense.

6.9 Under section 68(5), a customer exchanges a cheque made out to Crown Melbourne, for money or a chip purchase voucher (which can then be exchanged for chips). Under section 68(6), the customer can redeem the cheque on payment of the amount of the cheque.[926]

6.10 According to Crown Melbourne:

(a) under a CCF, Crown Melbourne provides funds to a customer before a cheque clears, and in that sense takes on a credit risk;[927]

(b) the CCF permits one-off transactions (as distinct from a deposit account which is an ongoing running balance).[928]

6.11 **Fifth**, by operation of section 68(1), a blank cheque is not a cheque.

6.12 **Finally**, by section 68(8) (not extracted above), a different regime applies to persons who are not ordinarily resident in Australia. The analysis in this Chapter relates to persons who are ordinarily resident in Australia.

Crown Melbourne's practices and breaches

6.13 The following practices occur at Crown Melbourne.

6.14 **First**, Crown Melbourne will deposit cheques into a deposit account that are made out to the customer, rather than to Crown Melbourne.[929] This is a common practice.[930] Crown Melbourne has an arrangement with its bank so that it can do this.[931] This practice is contrary to section 68(3)(b). On the evidence, it is open to find that Crown Melbourne regularly contravenes section 68(3)(b) of the CCA.

6.15 **Second**, Crown Melbourne has a long-standing, documented, practice of releasing funds from a deposit account before they have cleared.[932] Crown Melbourne produced documents showing the release of funds from deposit accounts before cheques have cleared, and the notation made on the account once cheques have cleared.[933] On the evidence, it is open to find that Crown Melbourne regularly contravenes section 68(4) of the CCA .

6.16 **Third**, the evidence of a current host and a former host was that the cage would accept blank cheques (i.e. where everything is filled in except the amount of the cheque).[934] One host gave the following evidence:

> *Q* *Let's say I've got a blank cheque. I can sign a blank cheque and give it to the cage and get chips and net it off depending on how I go?*
>
> *A.* *Yes.*
>
> *…*

[926] Redemption must occur within the "time specified" in section 68(7), which is five days: Exhibit RC1289 Crown Melbourne Standard Operating Procedures – Cheque Cashing & Credit Facilities Version 16, 12 October 2020, VCG.0001.0002.8188 at ..0007; Exhibit RC1290 Internal Control Manual – Part III Cheque Cashing, May 1997, VCG.0001.0002.8187.
[927] T1738:45 - T1739:5 (Lawrence).
[928] T1740:34-39 (Lawrence).
[929] T1735:41 - T1736:8 (Lawrence); T1778:22 - T1779:12 (Lawrence); Exh bit RC0177 Crown Melbourne Cheque to Ahmed Hasna, 9 May 2016, CRW.512.097.0057.
[930] T1736:19-25 (Lawrence).
[931] T1736:7-17 (Lawrence); See for example Exhibit RC0177 Crown Melbourne Cheque to Ahmed Hasna, 9 May 2016, CRW.512.097.0057; Exhibit RC0171 Statement of Peter Lawrence, 28 May 2021, CRW.998.001.0401 at .0406 [14].
[932] T1741:22-43 (Lawrence); Exhibit RC0173 Crown Melbourne Early Release of Funds Matrix, 24 February 2021, CRW.512.097.0062.
[933] For example, see Exhibit RC0701 Crown Southbank Patron Activity Inquiry – Bank Cheque, n.d., CRW.512.167.0001; T1745:3-8 (Lawrence).
[934] T51:26-43 (Anonymous Witness); T579:44 - T580.14 (Employee 6).

Q And that is something that happens for important customers?

A. Yes.

Q. As a matter of course?

A. Yep.

6.17 Mr Lawrence gave the following evidence:[935]

COMMISSIONER: … the counter cheque that is provided by the Crown staff is not filled in until an appropriate time when it is worked out how much the patron actually owes to make good his gambling for the day or evening or whatever it might be … and then the amount is filled in?

A. Yes.

COMMISSIONER: So that is quite possible, isn't it?

A. That's possible, yes. A consolidation, perhaps, as ---

COMMISSIONER: At the end of the day or end of a period of whatever it might be?

Yes. Yes.

6.18 Crown Melbourne appears to have a practice of providing a player with chips, and then filling in the amount of the counter cheque at the close of play.[936] That is a breach of section 68. A blank cheque is not a cheque for purposes of that section as it is not drawn for a specific amount. On the evidence, it is open to find that Crown Melbourne regularly contravenes section 68 of the CCA, via the use of blank cheques.[937]

A Case Study – the importance of section 68

6.19 The following case study is illustrative of the importance of compliance with section 68 of the CCA.

6.20 The Commission heard evidence from a former black tier member who was addicted to gambling. He regularly gambled in the Mahogany Room, on one occasion for a period of 12 hours (without intervention) and on another occasion for a period of 26 hours (without intervention).[938]

6.21 The patron (who operated a deposit account):[939]

(a) gave the cage at the Mahogany Room a $100,000 cheque, which was approved for the early release of funds;

(b) was given a $100,000 chip purchase voucher;

(c) lost the $100,000 gambling; and

(d) was informed that the cheque was subsequently dishonoured.

6.22 Had section 68 been complied with, there would not have been any early release of funds and the patron would have been given an opportunity after depositing the cheque to reflect on whether he wished to gamble.

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935 T1757:46 - T1758:17 (Lawrence).
936 T1757:24 - T1758:17 (Lawrence).
937 There is a separate practice of requiring a blank personal cheque on file to establish a CCF: T1763:30-39 (Lawrence).
938 T1787:45 - T1788:29 (Lawrence).
939 T1779:14-44 (Lawrence); T1780:15-26 (Lawrence); Exhibit RC0178 Crown Southbank Patron Receipt, 9 May 2016, CRW.512.097.0122.

6.23 After losing the $100,000, the patron told his host he was in financial trouble and was considering self-excluding himself.[940] Mr Lawrence understood the patron was in financial trouble.[941] He was also aware that the patron had previously self-excluded.[942]

6.24 Mr Lawrence proposed that the patron continue gambling, maintain all his black card privileges, and repay the $100,000 from future gambling winnings.[943] The patron struck some luck, repaid Crown Melbourne, but then continued to gamble losing a significant amount of money.[944]

6.25 Mr Lawrence agreed that his decision to allow the patron to continue to gamble while in debt to Crown Melbourne was irresponsible and possibly predatory.[945] The reason it happened, as Mr Lawrence agreed, was because the culture in the Mahogany Room is focused on profit.[946]

6.26 This very sad story would not have occurred if Crown Melbourne complied with the requirements of section 68, and only debited funds standing to the credit of a deposit account.

940 T1780:28-36 (Lawrence); T1783:18-28 (Lawrence).
941 T1780:38 - T1781:13 (Lawrence); T1784:10-28 (Lawrence).
942 T1784:39 - T1785:28 (Lawrence).
943 T1781:15 - T1782:24 (Lawrence).
944 T1782:4-24 (Lawrence).
945 T1786:6-13 (Lawrence).
946 T1789:21-27 (Lawrence); T1790:2-14 (Lawrence).

7 Hotel Transactions/China Union Pay practice

1 Introduction

1.1 A further area of Crown's operations relevant to its suitability, having regard to character, honesty and integrity, concerns what has become known as the Hotel Transactions or China Union Pay (**CUP**) practice. The CUP practice is also relevant to whether Crown has sufficient business ability to maintain a successful casino because the practice demonstrates significant compliance failures, which were either not detected or were ignored by Crown.[947]

1.2 This practice, which existed at Crown from at least 2012 to 2016, involved Crown receiving payments from international guests (staying at Crown Hotels) using a credit or debit card (predominantly but not exclusively a CUP card), with the funds then made available to those guests at the Cage on the casino floor.

1.3 Crown accepts that such transactions were made in breach of section 68(2) of the CCA.[948]

1.4 Section 68(2)(c) of the CCA prohibits the casino operator, in connection with any gaming or betting in the casino, from providing money or chips as part of a transaction involving a credit or debit card.

1.5 Various Crown officers and employees accept that the transactions, or aspects of them, were illegal,[949] wrong,[950] misleading,[951] ethically concerning,[952] dishonest[953] and irresponsible.[954] Some Crown employees including a Senior Executive held reservations, at the time that the practice was on foot, that it did not pass the 'pub test' or the 'smell test'.[955]

1.6 Notwithstanding those features, the CUP practice was neither ad hoc nor clandestine.[956] At least 1679 such transactions were processed between 2012 and 2016, to the tune of at least $160 million.[957] Individual transactions ranged from $500 to $2.8 million.[958] The practice was formalised into policies[959] and staff were trained in how to process such transactions.[960] The practice involved Crown staff from all levels of the organisation.[961]

1.7 The practice was brought about in response to customer requests and as a means of avoiding currency restrictions/capital controls in China.[962] The adoption and development of the practice was facilitated by in-house lawyers and compliance staff who provided advice on the risk of getting caught (and defensive arguments should that occur) rather than advice on whether the practice was legal or compliant.[963]

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947 Sections 9(2)(a) and 9(2)(e) of the CCA.
948 Exhibit RC0377 COM.0001.0029.0001.
949 T2934:19-21 (Blackburn). See also Exhibit RC0268 CRW.900.002.0001.
950 T2945:34-43 and T2958:14-15 (Blackburn); Exhibit RC0382 CRW.900.004.0053 at [51].
951 T2432:1-23 (Employee 10); T2944:19-26 (Blackburn); Exh bit RC0383 CRW.900.004.0044 at [42].
952 Exhibit RC0315 CRW.512.137.0008. See also T2949:5-15 (Blackburn).
953 T2943:36-44 (Blackburn).
954 Exhibit RC0382 CRW.900.004.0053 at [51].
955 Exhibit RC0268 at [12]; Exh bit RC0382 CRW.900.004.0053 at [50] and Exhibit RC0383 CRW.900.004.0044 at [40].
956 Save that there was a concern about the regulator knowing about it.
957 Exhibit RC0313 CRW.900.001.0044.
958 Exhibit RC0313 CRW.900.001.0044. See also Exhibit RC1232 CWN.514.014.7853; T2422:11-12 (Employee 10).
959 See for example Exhibit RC0941 CRW.523.002.0331; Exhibit RC0942 CRW.900.003.1900; Exh bit RC0943 CRW.900.001.0026; Exhibit RC0944 CRW.900.003.1905; Exh bit RC0945 CRW.900.003.1914; Exhibit RC0314 CRW.900.003.1925; Exh bit RC0947 CRW.523.002.0005; Exhibit RC0949 CRW.523.002.0001.
960 T2420:36-37 and T2421:45-46 (Employee 10); T2957:22-25 (Blackburn).
961 T2961:28 - T2962:14 (Blackburn).
962 Exhibit RC0315 CRW.512.137.0008. See also T2957:37-38 (Blackburn).
963 See for example Exhibit RC0263 CWN.514.063.0229; Exhibit RC0265 CRW.523.001.0030 and T2688:26-39 (Fielding).

1.8 The CUP practice ceased in November 2016 shortly after the arrest in China of Crown staff,[964] although there was pressure in 2018 and 2019 to re-introduce the practice.[965]

1.9 The full extent of the anti-money laundering consequences of the practice are not yet known but the practice itself is a typology behaviour that may be indicative of money laundering. The practice circumvented anti-money laundering monitoring and reporting. It demonstrated a severe failure by Crown to take prudent and appropriate steps to prevent risks that by this practice Crown might facilitate the laundering of proceeds of crime.

1.10 The existence of the practice, the means by which it was facilitated, and the circumstances of it coming to light, all shed light on the question of Crown Melbourne's present suitability to continue to hold the casino licence and the suitability of Crown Resorts as an associate of Crown Melbourne. The involvement of individuals who remain at Crown raises doubts about the likely effectiveness or outcome of the pathway to suitability.

Structure of this section

1.11 This section of the closing submissions addresses the following matters:

(a) a description of the practice and how and why the practice came into being;

(b) the extent of the practice;

(c) the money laundering consequences of the practice;

(d) how the matter came to light during the course of this Commission;

(e) the main conclusions from Crown's own legal investigation into the practice;

(f) a matter concerning an alleged practice of reciprocal transfers;

(g) other matters; and

(h) what it tells us about Crown.

2 The Hotel Transactions/CUP practice

2.1 As described by the legal opinion dated 1 June 2021 obtained by the directors of Crown Resorts, the Hotel Transactions or CUP practice involved the following discrete steps:[966]

(a) a Crown customer (usually an international VIP guest accompanied by a Crown VIP host) made a 'purchase' with a credit or debit card on the card terminal at Crown Towers Hotel;

(b) the Hotel staff provided an invoice or voucher to be taken by the customer to the Cage on the casino gaming floor;

(c) the customer or the VIP host then provided the invoice or voucher to the Cage, which led the Cage to credit the customer's DAB account with the value of the voucher;

(d) the customer was then able to obtain from the Cage, chips, a chip purchase voucher or possibly cash.

2.2 The practice, said to be a 'CPH initiative',[967] developed both in response to customer requests,[968] and as a means of circumventing currency restrictions in China.[969] As to the

964 T2428:5-12 (Employee 10); Exhibit RC268d CRW.512.048.0003.
965 T3179:41 - T3180:30 and T3181:47 - T3182:17 (Williamson).
966 Exhibit RC0268 CRW.900.002.0001 at .0050. The legal advice also sets out at paragraphs 17 to 180 the factual background to the CUP process.
967 Exhibit RC0350 CRW.523.002.0355; T3187:16 - T3188:6 (Williamson).
968 Exhibit RC0382 CRW.900.004.0053 at [21] and [25].
969 Exhibit RC0315 CRW.512.137.0008.

latter, during the period of its operation at Crown, it was generally known or thought within Crown that Chinese nationals could transfer no more than the equivalent of US$50,000 per year out of China.[970]

2.3 An interesting feature of the practice is that the prohibition on providing chips as part of a credit or debit card transaction, was well known within certain parts of Crown, namely, by the in-house legal and compliance teams and those who ran the Cage.[971] Notwithstanding that knowledge, neither the legal team, the compliance team nor the Cage personnel stood in the way of the practice being developed and implemented.

2.4 Indeed, the adoption and development of the practice was facilitated by an internal legal and compliance team who provided advice on the risk of getting caught (and defensive arguments should that occur) rather than advice on whether the practice was legal or compliant.[972]

2.5 For example, legal advice provided on 9 August 2012 by Michelle Fielding and Debra Tegoni:[973]

(a) identified the prohibition in section 68(2) of the CCA;

(b) identified an exception to the prohibition;

(c) raised a "risk" that the proposal (to debit a patron's credit card for the purpose of selling chips to the patron) did not fall within the exception;

(d) identified an argument which Crown could make in reply to the regulator, "if the matter arises"; and

(e) otherwise, "noting the risks", gave a green light to the process.

2.6 The legal advice demonstrates an extraordinary appetite for breaking the law, and a concerning tendency to give risk advice in response to a request for legal or compliance advice.[974]

2.7 Another example of the legal advice provided on the issue reveals that any concern on the part of Crown as to the legality of the transactions, was not a concern about breaking the law, but rather whether the legal risk might create a consequential "commercial risk for Crown". In her legal note-to-file dated 17 September 2013, Debra Tegoni describes the question she was asked as follows:[975] (emphasis added)

> *Question: If the use of a China Union Pay card at Crown ultimately to purchase chips, as a legal transaction,* ***such that it would not be at risk of being clawed back and so create a commercial risk for Crown****.*

2.8 While expressed awkwardly, the query appears to be whether the transactions were legal, because if not, there was a commercial risk for Crown.

2.9 When questioned on this issue, Michelle Fielding's evidence was that at times, there was significant pressure (in the form of being argumentative and pushing back and going back and forth) applied by the commercial departments to compliance and legal.[976]

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970 See for example Exhibit RC0953 CRW.900.004.0053 at [14]; Exhibit RC0959 CRW.900.004.0044 at [43] and [56]; Exhibit RC0955 CRW.900.004.0001 at [14].
971 Exh bit RC0956 CRW.900.004.0095 at [21] and [30]; Exhibit RC0263 CWN.514.063.0229; Exhibit RC0265 CRW.523.001.0030. A consequence of the proh bition was that the Cage in Melbourne did not have an EFTPOS machine.
972 T2688:26-39 (Fielding).
973 Exh bit RC0263 CWN.514.063.0229.
974 Another similar example is at Exh bit RC0265 CRW.523.001.0030 and Exhibit RC0268n CRW.523.002.0121.
975 Exh bit RC0268q CRW.523.002.0159.
976 T2697:36-44; T2698:5-13 (Fielding).

3 The extent of the practice

3.1 There is evidence that the practice did not start earlier than 2012[977] and stopped in 2016.[978] Attempts were made to re-introduce the practice in 2018 and 2019 but it appears that those attempts were rebuffed.[979]

3.2 In terms of quantum, at least $160 million was transacted via this process, across at least 1679 individual transactions[980] although it could transpire to be more.[981]

3.3 Guests staying at each of Crown Towers, Crown Metropol and Crown Promenade in Melbourne were able to use the practice.[982] There is evidence that only international guests staying at one of Crown's hotels could avail themselves of these transactions.[983]

3.4 Attempts were made to roll-out the practice at Crown Perth.[984] One impediment to that roll-out was the prospect that the WA regulator might telephone the Victorian regulator.[985] It appears that the China arrests put an end to the proposed roll-out of the practice in Perth.

4 Money laundering consequences

4.1 The money laundering consequences of the CUP practice are yet to be fully known.[986] In the time available to the Commission, it was not possible to comprehensively explore the money laundering consequences of the practice.

4.2 What is known (and acknowledged by Crown) is that:

(a) the practice is a typology behaviour that may be indicative of money laundering;[987]

(b) no transaction reporting or AML monitoring by Crown would have occurred in relation to the hotel transactions;[988] had they flowed through ordinary channels, reporting would likely have occurred;[989]

(c) any retrospective AML/CTF reporting by Crown to AUSTRAC will be six or seven years late; and late reporting significantly inhibits AUSTRAC and the law enforcement agencies who use AUSTRAC reporting data from doing what they need to do;[990]

(d) it is entirely conceivable that the CUP practice might have involved Crown in dealing with the proceeds of crime;[991]

(e) it is not far-fetched to imagine that organised crime figures took advantage of the CUP practice;[992]

(f) there was a severe failure by Crown to take prudent and appropriate steps to prevent risks that the CUP practice might facilitate illegal or unlawful conduct;[993]

977 Exhibit RC0953 CRW.900.004.0053 at [31].
978 See for example Exh bit RC0268d CRW.512.048.0003; T2428:5 - T2429:10 (Employee 10); Exh bit RC0958 CRW.900.004.0085 at [52]; Exhibit RC0955 CRW.900.004.0001 at [60]; Exhibit RC0954 CRW.900.004.0026 at [36]; T3180:1-17 (Williamson).
979 T3179:41-T3180:30 and T3181:47 - T3182:17 (Williamson).
980 Exhibit RC0313 CRW.900.001.0044; Exhibit RC0268 CRW.900.002.0001 at .0004)
981 T2939:19-36; T2970:31-34 (Blackburn).
982 Exhibit RC0313 CRW.900.001.0044.
983 T2429:23-38 (Employee 10); Exhibit RC0958 CRW.900.004.0085 at [22].
984 Exhibit RC0268 CRW.900.002.0001 at [72].
985 Exhibit RC0954 CRW.900.004.0026 at [37].
986 T2951:47 - T2952:2 (Blackburn).
987 Exhibit RC0316 DTT.010.0006.0007. See also T2966:44 - T2967:2 (Blackburn).
988 T2432:43 - T2433:38 (Employee 10).
989 Exhibit RC0315 CRW.512.137.0008. See also T2949:19-26 and T2953:29-35 (Blackburn).
990 T2952:39 - T2953:3 (Blackburn).
991 Exhibit RC0268 CRW.900.002.0001 at .0076. See also T2936:29-38 and T2937:8-17 (Blackburn).
992 Exhibit RC0268 CRW.900.002.0001 at .0077. See also T2936:40-44 (Blackburn).
993 Exhibit RC0268 CRW.900.002.0001 at .0087. See also T2936:46 - T2937:6 (Blackburn).

(g) the practice made it very much easier to launder money at Crown;[994] and

(h) the practice also compromised the banks' ability to accurately report transactions because it obscured the fact that the transactions were with the casino, rather than the hotel.[995]

4.3 Furthermore, the legal advice commissioned by the Crown directors remarks at how little attention was paid to the money laundering consequences of the transactions on those occasions when Crown's internal lawyers were consulted as to the legality of the process.[996]

4.4 Crown has engaged Deloitte (or more specifically, expanded the scope of Deloitte's existing Forensic Review) to consider some of the possible money laundering consequences of the Hotel Transactions practice.[997]

4.5 Deloitte will consider whether cash was provided to customers (either at the hotel desk or the cage), whether Crown ought to have made TTR and SMR reports concerning the transactions, and whether the practice was more extensive than presently thought (ie whether it occurred in Crown's Perth casino; whether it started earlier than 2012 and finished later than 2016; and whether $160 million is an underestimate).[998] Deloitte will examine whether Crown staff were performing on-going customer due diligence and extended customer due-diligence and will identify the customers involved where possible.[999]

4.6 Deloitte is expected to report on these matters by 28 September 2021.[1000] Although Mr Steve Blackburn, Crown's new Group Chief Compliance and Financial Crime Officer, plans to provide this Commission with a copy of the Deloitte report upon receipt by Crown,[1001] the late-September time-frame means the Deloitte report will not be able to be considered by this Commission.

Parallels with earlier money laundering problems

4.7 In addition to the above, there are parallels between the Hotel Transaction practice, and the Southbank and Riverbank aggregation problem, discussed elsewhere in these submissions. Steve Blackburn readily conceded those parallels, including that:

(a) the Hotel Transaction practice was another example whereby Crown staff developed, whether intentionally or unintentionally, practices which circumvent and by-pass anti-money laundering monitoring and scrutiny;[1002]

(b) no one recognised or detected, or there was no system or process which picked up the fact that these transactions were occurring in circumvention of anti-money laundering scrutiny and corrected.[1003]

4.8 Steve Blackburn was also prepared to concede that:

(a) there was a degree of dishonesty in describing gambling charges as a payment to the hotel rather than a payment to the casino;[1004]

994 T2937:46-T2938:9 (Blackburn).
995 Exhibit RC0315 CRW.512.137.0008. See also T2949:28-39 (Blackburn).
996 Exhibit RC0268 CRW.900.002.0001 at [93], [95], [98].
997 Exhibit RC0316 DTT.010.0006.0007.
998 T2969:2 - T2970:46 (Blackburn).
999 T2970:41 - T2971:4 (Blackburn).
1000 Exhibit RC0476 CRW.512.217.0008 at 0011.
1001 T2952:9-16 (Blackburn).
1002 T2944:29-40 (Blackburn).
1003 T2956:11-21 (Blackburn).
1004 T2943:29-39 (Blackburn).

(b) there was a degree of dishonesty in having gambling charges appear on a hotel bill;[1005] and

(c) that any law enforcement agencies who were looking at relevant credit card bills would be misled as to the nature of the charges.[1006]

4.9 We understand that the legal advice dated 1 June 2021 has been provided by Crown to AUSTRAC,[1007] which may choose to expand its present investigation into Crown to include the Hotel Transactions practice. We nonetheless submit that it is open to the Commission to specifically refer the matter to AUSTRAC.

5 How the matter came to light

5.1 The evidence suggests that the CUP practice ceased in 2016. It might therefore accurately be called a *historical* practice. However, there are conclusions which can be drawn as to Crown's *present* culture, from the circumstances by which the matter came to light in 2021, and the manner in which Crown has addressed the issue.

How the matter came to light

5.2 The matter came to light when, on 16 March 2021, during a Crown leadership and development training session, a Crown employee made a number of statements concerning money laundering at Crown. A surveillance report was logged the following day. The surveillance report included the following details (the employee's name has been omitted):[1008]

> *"Information received from a Surveillance source:*
>
> *During LDP Learning Block 2 on 16/03/21 one of the attendees [name omitted] was heard to make a large amount of remarks relating to money laundering and Crown staff being aware and assisting in money laundering activities with patrons.*
>
> *Before beginning in earnest [name omitted] remarked "we're all Crown here, so I can talk about this".*
>
> *[name omitted] then went on to make the following claims (paraphrased).*
>
> - *Crown staff, presumably talking about the hosting team, were aware that international patrons were engaged in money laundering activities. "We knew there was money laundering happening"*
> - *Hosting staff were given instruction from "higher ups" to identify, implement or create new methods of circumventing "government laws" (spoken about in the context of money laundering)*
> - *one method of money laundering involved international patrons getting in touch with patrons based out of Australia. The first patron would transfer money (example $5M) from their account in a Chinese bank to an account at a Chinese bank belonging to the second patron (based out of Australia). The second patron would then independently transfer the same amount from is account at an Australian Bank to an unspecified location in Australia (either an Australian bank account belonging to the first patron or straight to Crown as a 3rd party TT). This would prevent large amount (sic) of cash from crossing international lines, potentially allowing it to dodge additional government scrutiny.*

[1005] T2943:41-44 (Blackburn).
[1006] T2944:19-26 (Blackburn).
[1007] Exhibit RC1292 CRW.510.087.0338.
[1008] Exhibit RC0244b CRW.0000.0002.0151 at 0164. Another contemporaneous account of what was said at the training session is set out in Exh bit RC0935 CRW.512.048.0046.

- *a second method involved having a high action international patron staying at a hotel (ie Crown Towers). They (the hosting or hotel staff) would charge an "incidental charge" ([name omitted] failed to specify an amount) to the hotel invoice of the patron. The patron would then settle their hotel bill, including the incidental charge, using "tap and go". This would transfer money from an international account to Crown to settle the amount on the hotel room. They money for the incidental charge would then be made available to the patron, potentially at the cage, for the purpose of gaming.*

  [name omitted] stated that the rules regarding the above were a lot looser prior to "China happening", relating to the detainment of a number of Crown, stating on more than one occasion "China changed everything"."

5.3 On any interpretation, the matters raised by the employee were serious and significant allegations about operations at Crown.

What did Crown do in response?

5.4 First, it is evident that the Crown Resorts directors acted promptly to urgently investigate the allegations.

5.5 Second, on 21 April 2021, the allegations, including a copy of the Surveillance Report, and the fact that an urgent investigation had been commenced, were disclosed to this Commission.

5.6 Third, the legal opinion obtained by the Crown Resorts directors was provided to the Commission shortly after receipt by the Crown Resorts directors.

5.7 Fourth, according to the Crown Resorts' press release dated 7 June 2021, Crown Resorts notified the VCGLR and proposed to notify other relevant regulators and the Western Australian Royal Commission.[1009]

5.8 Fifth, Crown expanded the scope of Deloitte's phase 2 forensic investigation to include a number of money laundering matters relating to the CUP issue.[1010]

5.9 Each of these matters reflects well on the current board of Crown Resorts. It shows a willingness to expose the company to outside scrutiny, a greater acceptance of the need for transparency, and a more open approach to regulators. This acceptance of the need for transparency was further emphasised when the board of Crown Resorts and Crown waived legal professional privilege in respect of the CUP issue generally.[1011]

5.10 These actions are consistent with the evidence given by Steve Blackburn as to the culture which he has observed since he commenced employment at Crown. When examined on the CUP issue and questioned about what it revealed about Crown's culture, Steve Blackburn remarked that in his professional experience, the usual focus of the 'fight' about financial crime was at the board level, where he would have to justify the risk/value proposition.[1012] Steve Blackburn's evidence was that by contrast with his usual experience, he confronted no resistance at Crown.[1013]

5.11 However, in light of the evidence discussed elsewhere in this report regarding Crown's relationship with the VCGLR, including matters as recent as this year, it is open to query whether Crown might have been so transparent in the absence of an on-going Royal Commission.

[1009] Exhibit RC0377 COM.0001.0029.0001.
[1010] Exhibit RC0476 CRW.512.217.0008.
[1011] T2679:6-11; T2679:33-37; T2680:30-34; T2695:14-30.
[1012] T2963:18-29 (Blackburn).
[1013] T2963:25-33 (Blackburn). See also T2978:4-12 (Blackburn).

Matters of concern

5.12 Otherwise, and on the other side of the ledger, there are some matters of concern relating to Crown's *present* culture, which arise from the circumstances of this matter coming to light.

5.13 First, it is concerning that of the 16 attendees at the Leadership and Development session on 16 March 2021, only one attendee sought to report the very serious allegations made by the whistle blower.

5.14 The following conclusions are available to be drawn from the fact that all bar one attendee stayed silent and did not report on the matters raised at the training session:

(a) that Crown employees are too scared to report such matters;

(b) that aspiring leaders at Crown fear for their future career progression if they report such matters;

(c) that the other attendees did not see anything wrong with what was being described (such that it was worthy of reporting); and

(d) that the other attendees considered that what was being described was such common knowledge within Crown that it was not worthy of a report.

5.15 Steve Blackburn agreed that the first two conclusions could be drawn from the fact that all bar one attendee stayed silent on the allegations raised at the training session.[1014] He did not agree that the second two conclusions were available to be drawn.[1015]

5.16 Notwithstanding Mr Blackburn's reluctance to agree, the third and fourth conclusions are available to be drawn, especially when considering the high number of employees who, across the 1679 illegal transactions, from 2012 to 2016, would have been involved in different parts of the practice, from processing the transactions at the hotel desk, accompanying the international VIPs to the Cage, processing the transactions at the Cage, and formalising the practice into policies.

5.17 When questioned on this point, Mr Blackburn's evidence was that he hoped the concept of money laundering would be 'front of mind' for Crown employees today whereas it may not have been 'at the time'.[1016] Given that the matters under consideration are the reactions of employees on 16 March 2021, Mr Blackburn acknowledged that his hope was for a radical and rapid change in the culture of Crown.[1017] No evidence of any such rapid and radical change between March and July 2021 was presented to the Commission.[1018]

5.18 The second matter of concern is that, beyond the obtaining of the 1 June 2021 legal advice and the engagement of Deloitte as referred to above, it is not clear that anything further is being done about the Hotel Transactions/CUP practice.

5.19 Michelle Fielding, notwithstanding her role as Group Executive General Manager, Regulatory and Compliance, is not inquiring as to who should take responsibility for the practice having occurred, not looking back to see what went wrong in order to ensure it doesn't happen again, and is not looking back to ensure that the practice is not occurring in a different way with different cards in breach of the CCA.[1019] The failure or disinclination to

[1014] T2930:22-T2931:3; T2931:31-39 (Blackburn).
[1015] T2931:43-T2932:43 (Blackburn).
[1016] T2933:10-14 (Blackburn).
[1017] T2933:10-21 (Blackburn).
[1018] See Exhibit RC0465 McGrathNicol Forensic Review AML/CTF Report Part 1, 5 July 2021, MGN.0001.0001.0001 for McGrathNicol's findings as to employee awareness of AML/CTF risks and perception of the changing AML/CTF environment at Crown.
[1019] T2693:21 - T2695:12 (Fielding).

conduct a root cause examination, is not isolated to this matter. Other failures by Crown to conduct root cause analyses are discussed elsewhere in these submissions.

5.20 One available conclusion is that the 1 June 2021 legal advice was obtained to demonstrate some bona fides to this Commission and the Deloitte engagement expanded in order to satisfy AUSTRAC. As nothing further appears to be arising from the episode, this again raises queries as to what Crown's approach would have been absent the active scrutiny of a Royal Commission.

6 Conclusions from Crown's legal advice

6.1 As noted above, following receipt of the Surveillance Report, the board of Crown Resorts sought legal assistance to urgently investigate and advise. That legal investigation resulted in an opinion dated 1 June 2021 from Senior and Junior Counsel.[1020] The opinion was provided to the Commission on 6 June 2021.

6.2 The opinion concludes that:

(a) the CUP process involved breach by Crown as a casino operator of section 68(2) of the CCA;[1021]

(b) the CUP process did not involve any breach of section 121(1) of the CCA;[1022]

(c) the CUP process did not breach the *Gambling Regulation Act* 2003 (Vic);[1023]

(d) there are insufficient grounds to conclude that transactions undertaken by the CUP process necessarily involved a contravention of the AML/CTF Act or Rules;[1024]

(e) the CUP process did not involve Crown committing the offence of obtaining financial advantage by deception;[1025]

(f) the material available did not disclose the commission by Crown of the offence of false accounting;[1026] and

(g) Senior and Junior Counsel did not have grounds to conclude that Crown committed any offence against sections 400.3 to 400.9 of the *Criminal Code* (Cth) by reason of following the CUP process.[1027]

6.3 The legal opinion was tempered by some significant caveats and limitations. In particular, Senior and Junior Counsel noted that:

(a) their advice did not involve a definitive analysis of whether individual transactions involved contraventions of Australian law;[1028]

(b) they were not able to speak to a number of former Crown employees which prevented them from expressing any firm opinion as to whether, in any particular instance, Crown committed the offences of false accounting or money laundering.[1029]

6.4 Further, no hotel staff were interviewed as part of the Crown legal investigation and the staff who were interviewed, were not asked whether they suspected that money transacted via this process comprised the proceeds of crime. Some employees have since corresponded

[1020] Exhibit RC0268 CRW.900.002.0001.
[1021] Exhibit RC0268 CRW.900.002.0001 at [183].
[1022] Exhibit RC0268 CRW.900.002.0001 at [219]-[221].
[1023] Exhibit RC0268 CRW.900.002.0001 at [222].
[1024] Exhibit RC0268 CRW.900.002.0001 at [10(b)].
[1025] Exhibit RC0268 CRW.900.002.0001 at [287].
[1026] Exhibit RC0268 CRW.900.002.0001 at [305].
[1027] Exhibit RC0268 CRW.900.002.0001 at [349].
[1028] Exhibit RC0268 CRW.900.002.0001 at [8].
[1029] Exhibit RC0268 CRW.900.002.0001 at [249].

with the Commission to advise that they do not consider the notes of their interviews are accurate.

6.5 In those circumstances, and by reason of the limited time available to this Commission to further explore these matters, it is open to the Commission to refer these matters to law enforcement authorities for further investigation.

7 The reciprocal transfer allegations

7.1 As noted above, the matters raised in the leadership and development training session on 16 March 2021, included an allegation as to a second method of 'circumventing government laws'.

7.2 This method of money laundering reportedly involved international patrons getting in touch with patrons based out of Australia. The first patron would transfer money (for example $5 million) from their account in a Chinese bank to an account at a Chinese bank belonging to the second patron (based out of Australia). The second patron would then independently transfer the same amount from is account at an Australian Bank to an unspecified location in Australia (either an Australian bank account belonging to the first patron or straight to Crown as a third-party TT). This would prevent large amounts of cash from crossing international lines, potentially allowing it to dodge additional government scrutiny.[1030]

7.3 The legal investigation instigated by the Crown Resorts directors did not identify any evidence of such a practice of which Crown staff were aware.[1031] However Steve Blackburn accepted the proposition that it could transpire that the allegation was a revelation rather than allegation.[1032]

7.4 Indeed, some individuals interviewed for the purpose of the 1 June 2021 legal advice had some awareness of the issue. For example:

(a) a former Crown employee had heard of it occurring with junkets;[1033]

(b) Confidential advised that it happened;[1034] and

(c) Jason O'Connor would not rule it out.[1035]

7.5 Mr Blackburn also agreed with the proposition set out the 1 June 2021 legal advice that Crown *should have been aware* of the risks attached to the receipt of funds from third parties.[1036]

7.6 As to that risk, Crown moved to prohibit transfers from third parties over the course of 2020, notwithstanding that Crown had been running the casino since the 1990s.[1037] Steve Blackburn accepted that it was a possible conclusion from those facts, that Crown will only act to implement barriers to money laundering when facing the blistering scrutiny of Commission of Inquiry and the like.[1038]

[1030] Exhibit RC0244b CRW.0000.0002.0151 at 0164.
[1031] Exhibit RC0268 CRW.900.002.0001 at [5] and [13].
[1032] T2973:3-7 (Blackburn). Steve Blackburn's evidence is that Deloitte are looking into this practice in their Phase 2 investigation: T2972:35-40.
[1033] Exhibit RC0959 CRW.900.004.0044 at [60]-[62].
[1034] Exhibit RC0958 CRW.900.004.0085 at [14].
[1035] Exhibit RC0953 CRW.900.004.0053 at [76].
[1036] Exhibit RC0268 CRW.900.002.0001 at [16]; T2973:11-20 (Blackburn).
[1037] T2973:22-37 (Blackburn).
[1038] T2973:39-43 (Blackburn).

8 Other matters

The original whistle-blower's evidence

8.1 An intriguing feature to this aspect of the Commission's enquiries is that when questioned by Counsel Assisting, the original whistle-blower (using that term in an informal manner) backed away from, and in one respect, denied, the comments attributed to him in the Surveillance report dated 17 March 2021.

8.2 In particular, the whistle blower:

(a) could not recall (but did not deny) saying something to the effect of, "Crown staff are aware that international patrons were engaged in money laundering activities";[1039]

(b) repeatedly gave evidence that he did not make *specific* comments about money laundering at the 16 March 2021 training session;[1040] but was evasive when asked whether he spoke *generally* about money laundering;[1041]

(c) denied using the "exact words" attributed to him, but was unwilling or unable to give evidence as to the words he did use in the training session;[1042] and

(d) specifically denied that other people at Crown told him about identifying or implementing or creating new methods of circumventing government laws[1043] (he was clear that no-one ever actually gave directions like that).[1044]

8.3 On the other hand:

(a) he did recall saying something to the effect of the comments attributed to him concerning the hotel transaction issue (the "second method" referred to in the Surveillance Report)[1045] but said that when he mentioned it at the training session, he thought he was wrong;[1046] and

(b) he did recall saying something to the effect of the comments attributed to him concerning the reciprocal transfer issue (the "one method" referred to in the Surveillance Report)[1047] although confessed that he may have exaggerated it a little bit[1048] and that his source of information was office banter and rumours.[1049]

8.4 Plainly, Employee 15 knew of the comments attributed to him – there is no other explanation for why that employee referred to "my exact comments"[1050] "the comments"[1051] and "those comments"[1052] before the substance of the comments were put to him. He was interviewed by his manager and two Crown in-house lawyers shortly after making the comments.[1053] In that interview, he was asked to keep the contents of what he told them confidential.[1054] This, together with the fact that he was compelled to give evidence and may

[1039] T2453: 37-43; T2455:37-46 (Employee 15).
[1040] T2450:37-46; T2453:45 - T2454:19 and T2455:27-35 (Employee 15).
[1041] T2450:37 - T2451:14 and T2453:45 - T2454:19 (Employee 15).
[1042] See for example T2459:20-38 (Employee 15).
[1043] T2461:44 - T2462:8 (Employee 15).
[1044] T2462: 8-9 (Employee 15). Note however his evidence that operations managers would ask him if he could let customers play under the $10,000 threshold: T2462:26:T2463:18 (Employee 15).
[1045] T2466:11-17 (Employee 15).
[1046] T2467:1-2 (Employee 15).
[1047] T2464:46 - T2465:8 (Employee 15).
[1048] T2465:42-43 (Employee 15).
[1049] T2454:13-14 (Employee 15).
[1050] T2450:44 (Employee 15).
[1051] T2453: 26 (Employee 15).
[1052] T2453:31 (Employee 15).
[1053] T2471:3 - T2473:12 (Employee 15).
[1054] T2473:9-10 (Employee 15). A note of that interview is Exhibit RC0936 CRW.512.048.0044.

have perceived the circumstances as involving giving evidence against his employer, might explain his reluctance in the witness box.

8.5 In any event, Employee 15's reluctance in the witness box does not detract from the significance of the matters raised by him on 16 March 2021. The subsequent Crown legal investigation validated large parts of the comments attributed to Employee 15 in the training session. The Deloitte investigation, and any possible expansion of AUSTRAC's investigation, may yet validate the remainder of those comments.

Further possible breaches of the AML/CTF Act

8.6 In the course of examining the Hotel Transaction practice, a number of invoices were produced by Crown in response to Notices to Produce 174 and 175.[1055] Employee 10 was asked questions about a particular invoice[1056] which did not involve any hotel accommodation or incidental services. Whilst the invoice specified a room number, the evidence from Employee 10, who was a senior and experienced hotel employee, was that any room number starting with a '9' at Crown Towers does not exist,[1057] and such room numbers are used as a way of transacting with someone without that person having to stay in Crown accommodation.[1058]

8.7 The invoice in question[1059] involved no accommodation or hotel service. As Employee 10 explained:

> *I would assume on this occasion he had purchased something for somebody else and that person wanted to pay by credit card for it, and so we facilitated that charge. So this transaction has nothing to do with the hotel other than the fact that we have taken cash to give to* Co *and charged it to the other person.*

8.8 This issue raises the prospect of a contravention of section 74(1A) of the AML/CTF Act. On 29 June 2021, Crown's solicitors wrote to the Commission notifying the Commission that in facilitating these transactions, Crown may have provided a registrable designated remittance service in contravention of section 74(1A) of the AML/CTF Act.[1060] The letter sets out that Crown is investigating the extent to which other similar transactions have also been facilitated at its hotels and whether Crown has been 'carrying on business of giving effect to remittance arrangements'. We recommend that the Commission specifically refer this matter to AUSTRAC for further investigation.

9 What does this tell us about Crown?

9.1 Contrary to Mr Blackburn's assertion that this was a "singular incident, not necessarily indicative of broader issues"[1061], this episode is another example of systemic and cultural problems at Crown, namely:

(a) a preparedness to conduct illegal, misleading and unethical transactions;

(b) a preparedness to breach laws, both Victorian and those of other countries;[1062]

(c) a tendency to consider the lawfulness of conduct as a matter of risk;

(d) a tendency, whether deliberate or otherwise, to find ways of circumventing anti-money laundering monitoring and scrutiny;

[1055] Exhibit RC0962 CRW.512.168.0004; Exhibit RC0963 CRW.512.168.0031; Exhibit RC0964 CRW.512.168.0040; Exhibit RC0965 CRW.512.168.0042; Exhibit RC0966 CRW.512.168.0078.
[1056] Exhibit RC0965 CRW.512.168.0042. See T2438:29-T2439:39 (Employee 10).
[1057] T2438:2-4 (Employee 10).
[1058] T2437:38-47 (Employee 10).
[1059] Exhibit RC0965 CRW.512.168.0042.
[1060] Exhibit RC1260 CRW.0000.0002.0193.
[1061] T2926:40-41 (Blackburn).
[1062] T2946:23 - T2947:42 (Blackburn).

(e) a reluctance to investigate or address the root cause of actions in breach of legal obligations; and

(f) a preparedness to keep things from the regulator.

9.2 Crown's conduct in urgently investigating the allegations, accepting transparency and being more open with the regulator are signs of improvement to Crown's culture and practices. However, those 'green shoots' are insufficient to ground a conclusion that any significant turn-around of culture has occurred.

8 Money laundering

1 Introduction

1.1 Notwithstanding that Crown Melbourne has been operating the Melbourne Casino for decades, and the existence for that entire period of a legislative regime for anti-money laundering regulating the provision of gambling services,[1063] Crown is presently at only an '*early stage of maturity*' in its ability to manage the risk of money laundering at its casinos.[1064]

1.2 Consistent with it only recently reaching an early state of maturity, Crown has been the subject of money laundering allegations for a number of years. Certain of those allegations were examined and substantiated by the Bergin Inquiry. This Commission has examined further evidence of money laundering at the Melbourne Casino and of practices which circumvented anti-money laundering scrutiny. Because of the importance of a strong and effective financial crime program to avoid criminal exploitation of the operations of the casino, this Commission has looked carefully at how Crown has addressed in the past, and proposes to address in the future, money laundering risk.

1.3 Largely as a result of revelations of money laundering through its bank accounts, Crown has embarked on a program of significant reform to the way it addresses the risk of financial crime including money laundering. The program of reform is impressive in its scope and ambition and appears properly targeted and prioritised.

1.4 However, it reflects poorly on Crown that such a program of reform was not commenced much earlier, either by reason of the known link between casinos and money laundering, or in response to the airing of money laundering allegations. While those reforms remain pending, there are grounds to conclude that Crown is not presently suitable to hold the casino licence.

1.5 Up until recently, Crown has not prioritised its anti-money laundering obligations. Further, in addressing allegations and revelations of money laundering, Crown has not always acted with candour, rigour or haste. These matters, which reflect on Crown's character, honesty and integrity, are examined below. These matters and Crown's present state of preparedness to combat money laundering are also relevant to whether Crown has sufficient business ability to maintain a successful casino, being one that is able to manage the risk of money laundering. In light of those matters and the overall evidence, it is open to the Commission to find that Crown Melbourne is not a suitable person to continue to hold the casino licence under the CCA.

Context

1.6 Casinos pose an inherently high risk of criminal activity and influence.[1065] They are known to attract money launderers.[1066] Unchecked, casinos will be used to facilitate money laundering by both individual criminals and those involved in organised crime.[1067]

1.7 A key aim of the CCA is to ensure that the management and operation of casinos remains free from criminal influence or exploitation.[1068] The ability of a casino operator to detect and deter money laundering is an important element in ensuring that the operations of the

[1063] See Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, chapter 1.4, for a summary of anti-money laundering regulation in casinos.
[1064] Exhibit RC0310 CRW.998.001.0177 at [26]; Exhibit RC0100 PROM.0001.0036.0003.
[1065] Exhibit RC0465 MGN.0001.0001.0001 at 3.5.1. As expressed by Mr Blackburn, casinos are amongst the industries where the risk of money laundering and terrorist financing is greatest, particularly given the extensive use of cash by casino customers: Exhibit RC0311b CRW.512.081.1791.
[1066] See Exhibit RC0099y FATF Report *Vulnerabilities of Casinos and Gaming Sector*, March 2009 COM.0007.0001.0099. See also AUSTRAC Report, *Money Laundering in Australia 2011* CRW.INQ.220.002.0020.
[1067] Exhibit RC0465 MGN.0001.0001.0001 at 3.5.1.
[1068] CCA s (1)(a)(i).

casino remain free from criminal exploitation. A casino operator who knowingly permits its operations to be exploited by money launderers, and potentially also one who unknowingly does so, cannot be suitable to hold or continue to hold a casino licence under the CCA.

1.8 The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)* (**the AML/CTF Act**) recognises the use of casinos by those seeking to launder the proceeds of crime. The AML/CTF Act provides for measures to detect, deter and disrupt money laundering and serious financial crime. The AML/CTF Act specifically regulates the provision of gambling services.[1069] Crown is subject to various obligations under the AML/CTF Act in respect of its operations.

Bergin Inquiry findings

1.9 One of the key findings of the Bergin Inquiry, and an important context to this Commission's inquiries, is that Crown facilitated money laundering at its Melbourne and Perth casinos. The Bergin Inquiry was tasked with inquiring into the suitability of Crown Sydney and Crown Resorts in the context of media allegations that Crown Resorts or its agents, affiliates or subsidiaries engaged in money laundering.

1.10 Relevantly, the Bergin Inquiry found that:

(a) the processes adopted by Crown enabled or facilitated money laundering through Crown's Southbank and Riverbank accounts;[1070]

(b) it is more probable than not that money laundering occurred in the Southbank and Riverbank accounts;[1071] and

(c) Crown's conduct enabled money laundering to occur.[1072]

1.11 Other relevant findings of the Bergin Inquiry include that there was a practice of aggregating individual transactions in Crown's internal systems which compromised Crown's AML Team's capacity to identify examples of structuring occurring in the Southbank and Riverbank accounts.[1073] The Bergin Inquiry revealed that Crown's money laundering problems encompassed both the enabling of money laundering and the existence of practices which resulted in the failure to detect it.

1.12 Critical to the Bergin Inquiry's findings, were reports commissioned by Crown (and prepared by Grant Thornton and Initialism) that were tendered to that Inquiry in November 2020. Those reports, which revealed indications of money laundering on Crown's Southbank and Riverbank accounts, were provided by Crown to the Bergin Inquiry two days before the close of public hearings.[1074] There was accordingly little opportunity for the Bergin Inquiry to explore the circumstances and constraints of those reports.

1.13 The Honourable Patricia Bergin SC made the following comment in her report published on 1 February 2021 about the Grant Thornton and Initialism reports:[1075]

> *The Authority should also be aware that the reports that were provided to the Inquiry two days before the close of the Public Hearings were merely annexed to yet another statement by Mr Barton and were not the subject of separate evidence by the authors of those reports. There has been no forensic testing in any forum in this Inquiry of the process by which the ambit of the instructions that were given was decided; the detail*

[1069] See AML/CTF Act s.6, table 3. See also the Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No.1), chapter 10.1.
[1070] Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at 232 [153]-[154].
[1071] Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at 227 [126].
[1072] Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001.
[1073] Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at 226 [116].
[1074] Exhibit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at 569 [13]; Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at 227 [125].
[1075] Exhibit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at 569 [13].

of the process that was adopted; the nature of the access to documents and/or individuals for the purpose of the analysis; and/or the conclusions that were reached in those reports.

1.14 In part, this Commission's inquiries into money laundering takes up where the Bergin Inquiry left off.

1.15 This Commission also looked more broadly at Crown's performance in the area of anti-money laundering. This Commission looked beyond money laundering through Crown's bank accounts, to other avenues of money laundering through the casino. This Commission looked at Crown's present state of preparedness to counter money laundering, and examined Crown's plans to uplift and improve its anti-money laundering performance.

Evidence

1.16 This Commission examined evidence from a number of sources both internal and external to Crown. The Commission heard from a number of AML/CTF experts, a number of Crown employees and a witness from law enforcement.

1.17 In respect of the AML/CTF experts, the Commission heard evidence from:

(a) Katherine Shamai – a Partner at Grant Thornton and the author of the Grant Thornton reports into the Southbank and Riverbanks accounts;

(b) Neil Jeans – the Principal of Initialism and one-time AML advisor to Crown;[1076]

(c) Lisa Dobbin – a Partner at Deloitte and the person leading the Deloitte forensic investigations into a range of AML matters at Crown;

(d) Alex Carmichael – Managing Director of Promontory Financial Group and author of a report into Crown's vulnerabilities to financial crime and a report assessing Crown's strategic AML capability; and

(e) Robyn McKern – a Partner at McGrathNicol and the person who led McGrathNicol's forensic review into certain aspects of how Crown addresses money laundering risks at its casinos.

1.18 From Crown, the Commission heard evidence from:

(a) Steven Blackburn - Crown's recently appointed Group Chief Compliance and Financial Crime Officer;

(b) Nick Stokes - Crown's Group General Manager Anti-Money Laundering and AML/CTF Compliance Officer;

(c) Alan McGregor - Crown's Chief Financial Officer; and

(d) Craig Walsh – Executive Director Security and Surveillance, Crown Melbourne.

1.19 A number of Crown employees gave evidence on the related matter of the Hotel Transactions/CUP practice, on the basis that their identities would remain confidential. Many other Crown witnesses gave evidence of a general nature as to Crown's plans to uplift its anti-money laundering program.

1.20 Finally, the Commission heard evidence from a law enforcement officer from Victoria Police.

Format of this section

1.21 The first part of this section of submissions takes up where the Bergin Inquiry left off and examines the circumstances and constraints of the reports tendered to the Bergin Inquiry into money laundering on the Southbank and Riverbank bank accounts. This section looks

[1076] T439:27-35 (Stokes).

at what conclusions can be drawn as to Crown's candour in revealing the extent of potential money laundering on its bank accounts.

1.22 The second part of this section looks at the evidence as to money laundering on Crown's other accounts, including Crown's bank accounts (other than the Southbank and Riverbank accounts) and Crown's DAB accounts. Broadly speaking, this part looks at whether Crown's money laundering problems go beyond the Southbank and Riverbank accounts.

1.23 The third part of this section considers the sufficiency of Crown's responses to the revelations of money laundering in its casinos.

1.24 The fourth part looks beyond money laundering on Crown's accounts and examines Crown's present state of preparedness to counter money laundering at its casinos generally. In this section, we examine Crown's plans for the future remediation of its AML framework and the likely success or otherwise of those plans.

1.25 The final part sets out other relevant observations about Crown made during the course of the evidence on money laundering, relevant to Crown Melbourne's suitability to continue to hold the casino licence.

2 Southbank, Riverbank and money laundering on other accounts

Background

2.1 Relevant background to the issue of money laundering on Crown's Southbank and Riverbank bank accounts is set out in the Bergin Report.

2.2 By way of summary:

(a) Southbank Investments Pty Limited and Riverbank Investments Pty Ltd were incorporated on 1 August 1996 and 15 May 2003 respectively;[1077]

(b) the purpose of incorporation and the opening of bank accounts in the names of Southbank and Riverbank was to afford Crown's international patrons "privacy" and was responsive to a desire not to have Crown's name appear on customers' bank statements;[1078]

(c) Southbank and Riverbank originally held accounts with HSBC. In 2013, HSBC decided to discontinue its relationship with Southbank and Riverbank following a strategic review of the gaming sector.[1079] Southbank then opened an account with CBA and Riverbank with ANZ;[1080]

(d) hundreds of millions of dollars flowed through the Southbank and Riverbank accounts into the Crown Melbourne and Crown Perth bank accounts annually;[1081]

(e) both bank accounts were closed in December 2019.[1082]

[1077] Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at 207 [14] and [18].
[1078] Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at 207-208. See also Exhibit RC0382 CRW.900.004.0053 at [15] which suggests that the accounts were established in response to a desire not to have Crown's name on customer's bank statements.
[1079] Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at 208 [22].
[1080] Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at 208 [23].
[1081] Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at 208 [24].
[1082] Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at 221 [92]. See also Exhibit RC0042 GTA.0001.0001.1012.

2.3 The Bergin Report recounts the various red-flags that were raised from 2014[1083] onwards[1084] concerning indications of money laundering through those accounts, to which Crown was alerted, but ignored.[1085] Those matters are not repeated here.

2.4 What the Bergin Inquiry did not glean, because the Grant Thornton and Initialism reports into Southbank and Riverbank were tendered so late, was that:

(a) the analysis conducted by Grant Thornton and Initialism into Southbank and Riverbank (and presented in the reports tendered to the Bergin Inquiry) was deliberately curbed by way of limited instructions; and

(b) at the time Crown instructed Grant Thornton and Initialism to conduct an investigation into Southbank and Riverbank, it had grounds to suspect that money laundering on its accounts went beyond the Southbank and Riverbank accounts.

2.5 These, and other matters, are considered below.

Context: recommendation to conduct a money laundering review of Crown's accounts

2.6 In August 2019, some 13 months before Crown finally acted to engage external parties to review the Southbank and Riverbank accounts, Crown's then external AML adviser, Neil Jeans, recommended that Crown conduct a review of its bank accounts in light of allegations of money laundering.

2.7 The relevant context for Mr Jeans' recommendation is that in August 2019, there was a series of media publications which reported that federal investigators had alleged that drug traffickers used two private companies, set up by Crown, to bank suspected proceeds of crime. The media publications reported that federal investigators had traced money from a number of suspected or convicted drug traffickers and money launderers flowing into the bank accounts of Southbank Investments Pty Ltd and Riverbank Investments Pty Ltd, between 2012 and 2016.[1086]

2.8 Co-incidentally, Mr Jeans was scheduled to give a presentation to the board of Crown Resorts on 20 August 2019 concerning his review of Crown's AML/CTF Transaction Monitoring Program, which Mr Jeans had conducted in late 2018 and early 2019.[1087]

2.9 On the day of the board meeting, while waiting to enter the board room, Mr Jeans had a conversation with Louise Lane, Crown's then Group General Manager of AML.[1088] Mr Jeans told Ms Lane that in his opinion, it would be appropriate for someone to look at the activity in the bank accounts – to see whether and to what extent the activity alleged in the press was in fact occurring.[1089] Mr Jeans told Ms Lane that Crown needed some forensic analysis and that he knew someone who could do that very forensic analysis, namely Grant Thornton.[1090] Mr Jeans' recommendation was not limited to the Southbank and Riverbank accounts, but extended to Crown's bank accounts more generally.[1091]

[1083] See for example Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at 210 [39]-[45], 212 [49]-[50].
[1084] See for example Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at 215 [61], 215 [64], 219 [79]-[80].
[1085] See for example Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at 212 [48], 215 [59]-[60], 215 [61], 215 [64].
[1086] See Exhibit RC0754 Article written by Nick McKenzie et al titled Crown Investments Companies were used to launder drug funds, authorities believe, 5 August 2019, COM.0022.0001.0001.
[1087] See Exhibit RC0062b INI.0004.0001.0008; T726:23-25 (Jeans).
[1088] T726:18-32 (Jeans).
[1089] T726:18-32 (Jeans).
[1090] T727:11-24 (Jeans).
[1091] T726:34-41 (Jeans).

2.10 Ms Lane's response to Mr Jeans' recommendation was that she accepted that it would be a good idea, and that she would consider it with Crown management.[1092] She said that she would welcome an introduction to Grant Thornton.[1093]

2.11 To facilitate the investigation recommended, Mr Jeans, when he returned to his office, sent an email to Ms Lane setting out the name and contact details for Katherine Shamai at Grant Thornton.[1094] That introduction resulted in a request from Minter Ellison to Grant Thornton to send through some written instructions for the purpose of framing an engagement letter, however Grant Thornton did not hear back from Minter Ellison.[1095]

2.12 Notwithstanding Mr Jeans' recommendation and the introduction he facilitated to Grant Thornton, and the media allegations about money laundering, Crown did not act to conduct such an investigation at that time.[1096]

2.13 Approximately one year later, in the context of a separate conversation, Mr Jeans repeated his recommendation, this time to Mr Preston.[1097]

2.14 In around August 2020, Mr Preston telephoned Mr Jeans, in the context of the Bergin Inquiry, to discuss with Mr Jeans the prospect of Initialism conducting a transaction monitoring review to look at data sources.[1098] As part of that conversation, Mr Jeans asked whether Crown had undertaken a review of the Riverbank and Southbank accounts which were featuring large in the Bergin Inquiry at that time. When Mr Preston answered "*no*", Mr Jeans reiterated his recommendation that it would be a good idea to do so.[1099]

2.15 Mr Jeans repeated the recommendation a further time to Mr Barton and Minter Ellison in early to mid-September 2020.[1100] On that occasion, Mr Jeans said that given the allegations that were being made in the Bergin Inquiry, it would be sensible for Crown to understand what activity was occurring through the Southbank and Riverbank bank accounts.[1101]

2.16 There was no commitment from Crown at that point to undertake the investigation recommended by Mr Jeans.[1102]

Context: Internal investigation

2.17 Whether as a result of Mr Jeans' repeated prompting or otherwise as a result of the probing by the Bergin Inquiry,[1103] in around September 2020, Crown conducted its own internal investigation into cash deposits into the bank accounts of Riverbank and Southbank.[1104]

2.18 That investigation started by looking for potential structured deposits to the Southbank and Riverbank accounts.[1105] It identified 102 instances where:

(a) two or more cash deposits of less than $10,000, but totalling more than $10,000, were made to either the Riverbank or Southbank bank account;

(b) the deposits were within a 72 hour period; and

[1092] T726:43 - T727:5 (Jeans).
[1093] T727:36-38 (Jeans).
[1094] Exhibit RC0064 INI.0001.0001.1680; T728:4-46 (Jeans).
[1095] T657:22-26 (Shamai).
[1096] T729:12-16 (Jeans) T656:45 - T657:3 (Shamai).
[1097] T729:18-41; T732:24-29 (Jeans).
[1098] T731:15-27 (Jeans).
[1099] T730:26 - T732:9 (Jeans).
[1100] T729:18-45; T732:35-38; T734:38-46; T735:11-12 (Jeans).
[1101] T734:38-46 (Jeans).
[1102] T735:4-6 (Jeans).
[1103] T3535:29-34 (McGregor).
[1104] See Exhibit RC0042 GTA.0001.0001.1012. An update on that investigation (dated 13 October 2020) is at Exhibit RC0043 GTA.0001.0001.7254.
[1105] Exhibit RC0042 GTA.0001.0001.1012 at [3].

(c) the deposits were credited to a nominated patron account.[1106]

2.19 The internal investigation identified that in each of these instances, the multiple deposits were aggregated when details of them were entered into SYCO.[1107] A memorandum concerning the internal investigation recorded that this meant that the multiple deposits were not identified as individual deposits when they were reviewed by the AML team.[1108] As at 29 September 2020, it was proposed that the internal investigation include a corresponding review of the other casino bank accounts for Crown Melbourne and Crown Perth.[1109]

2.20 By 15 October 2020, the investigation had expanded to include the Crown Melbourne and Crown Perth bank accounts.[1110] A memo dated 15 October 2020 prepared by Alan McGregor, then CFO of Crown Resorts, recorded that a full analysis of banking transactions through all banks across the period from 2013 to 2019 had been conducted to identify, where possible, cash deposits under the $10k threshold.[1111]

2.21 The results of Mr McGregor's investigation were summarised as follows:[1112]

	Potential Cash Deposits <$10k - Transactions						Potential Cash Deposits <$10k - Value					
	SB CBA	RB ANZ	RB CBA	CM ANZ	CP ANZ	Total	SB CBA	RB ANZ	RB CBA	CM ANZ	CP ANZ	Total
2013	-	185		203		388	$ -	$ 1,517,895		$ 1,631,674		$ 3,149,569
2014	102	112	42	51	9	316	$ 666,661	$ 934,114	$ 266,684	$ 377,036	$ 61,558	$ 2,306,053
2015	83		54	24	20	181	$ 414,906		$ 317,665	$ 143,490	$ 141,597	$ 1,017,658
2016	150		24	18	3	195	$ 1,009,798		$ 154,660	$ 108,000	$ 24,000	$ 1,296,458
2017	61		3	11	9	84	$ 277,876		$ 23,890	$ 72,900	$ 53,000	$ 427,666
2018	13		-	8	3	24	$ 50,875		$ -	$ 41,300	$ 20,636	$ 112,811
2019	7		-	14	-	21	$ 43,580		$ -	$ 88,980	$ -	$ 132,560
Total	**416**	**297**	**123**	**329**	**44**	**1,209**	**$ 2,463,696**	**$ 2,452,009**	**$ 762,899**	**$ 2,463,380**	**$ 300,791**	**$ 8,442,775**

2.22 Notably, the analysis set out in the above table appears to be the first steps only of identifying potential structured transactions. This summary identifies deposits of less than $10,000, but does not take the further steps of identifying which of those transactions, for example, were made within a 72-hour period and were credited to a nominated patron account (although this type of analysis was occurring at the time).[1113]

2.23 Nonetheless, Mr McGregor's investigation revealed that in terms of the value of deposits, there was an equivalent value of sub-$10,000 deposits on the Crown Melbourne account as compared to the Southbank account.[1114] In terms of the number of sub-$10,000 transactions, the Crown Melbourne account had approximately 20 per cent fewer transactions than the Southbank account.

2.24 By reason of the approximate equivalence of the sub-$10,000 deposits on each of the Southbank and Crown Melbourne accounts, in conjunction with the earlier analysis indicating structured transactions on the Southbank account, this information gave Crown reason to suspect that money laundering on its accounts went beyond the Southbank and Riverbank accounts, and extended to the Crown Melbourne account at the very least.

2.25 It was in this context, that Grant Thornton and Initialism were engaged to investigate the Southbank and Riverbank accounts only. It is this context which permits a finding that by instructing Grant Thornton and Initialism to investigate the Southbank and Riverbank

[1106] Exh bit RC0042 GTA.0001.0001.1012 at [3].
[1107] Exh bit RC0042 GTA.0001.0001.1012 at [4].
[1108] Exh bit RC0042 GTA.0001.0001.1012 at [4].
[1109] Exh bit RC0042 GTA.0001.0001.1012 at [10].
[1110] Exh bit RC0045 GTA.0001.0001.1082 at 1082.
[1111] Exh bit RC0045 GTA.0001.0001.1082 at 1084 and 1082.
[1112] Exh bit RC0045 GTA.0001.0001.1082 at 1084. 'SB' is short for Southbank; 'RB' is short for Riverbank; 'CM' is short for Crown Melbourne and 'CP' is short for Crown Perth: T3537:45-T3538:12 (McGregor).
[1113] Exh bit RC0045 GTA.0001.0001.1082 at 1085.
[1114] T3538:26-47 (McGregor).

accounts only (with a view to presenting the results of that investigation to the Bergin Inquiry)[1115] Crown was not being candid or forthright.

Engagement of Grant Thornton and Initialism to investigate Southbank and Riverbank

2.26 Some 13 months after it was first recommended by Initialism (which delay indicates a lack of haste and appropriate prioritisation), and after two follow-up recommendations, and in the context of on-going investigations and scrutiny of the Bergin Inquiry, Crown finally acted in October 2020 to engage Grant Thornton and Initialism to conduct a review of the transactions on the Southbank and Riverbank bank accounts to look for evidence of money laundering. The express purpose of such reviews was for tendering to the Bergin Inquiry.[1116]

2.27 However, the reviews commissioned by Crown were not fulsome or comprehensive. The scope of the investigation was confined. To the extent that the reports were commissioned in order that they be provided to the Bergin Inquiry, and in the context of what Crown knew about cash transactions under $10,000 on the Crown Melbourne account, it cannot be said that by so doing, Crown was being candid or forthright in its presentation.

Limitations on the Grant Thornton investigation

2.28 Both Grant Thornton and Initialism were engaged by Crown to investigate transactions on the Southbank and Riverbank accounts.[1117] It was a two-party engagement whereby Grant Thornton performed the forensic data analysis and Initialism took Grant Thornton's data analysis and performed further specific investigations based on that data analysis.[1118]

2.29 Grant Thornton's work was divided into phases. The work in Phases 1-3, involving identifying instances of structuring, was reported in the reports presented to the Bergin Inquiry.[1119] There were significant limitations on the scope of the Grant Thornton's Phases 1-3 investigation into money laundering on Crown's bank accounts. Those limitations, which were largely a function of the instructions given by Crown, were as follows.

2.30 *First*, Grant Thornton was instructed to look only at Southbank and Riverbank's $AU bank accounts, and not the foreign currency bank accounts held by those entities.[1120]

2.31 *Second*, Grant Thornton's investigation examined the Southbank and Riverbank bank accounts in isolation from each other, notwithstanding the plausible scenario that a money launderer might structure deposits across the two accounts.[1121]

2.32 *Third*, Grant Thornton was not instructed to identify a full set of potential structured transactions.[1122] Rather, Grant Thornton was instructed to look for only three of the nine structuring scenarios first identified by Neil Jeans of Initialism.[1123] The forensic tool built by Grant Thornton to analyse the bank transaction data looked for those three scenarios only and excluded the other six scenarios.[1124]

2.33 *Finally*, and perhaps most importantly, Grant Thornton was instructed to look only at the Southbank and Riverbank bank accounts, and not the bank accounts of Crown Melbourne

[1115] T765:8-11; T740:4-5 (Jeans).
[1116] T765:8-11; T740:4-5 (Jeans). See also Exhibit RC0041 GTA.0001.0001.1010.
[1117] Exhibit RC0041 GTA.0001.0001.1010.
[1118] Exhibit RC0041 GTA.0001.0001.1010 T701:33-46 (Jeans).
[1119] Exhibits RC0041 GTA.0001.0001.1010; RC0035 GTA.0001.0001.7029; RC0037 GTA.0001.0001.6777 and RC0038 GTA.0001.0001.3853.
[1120] T634:6-9; T634:37-41 (Shamai).
[1121] T620:20-43 (Shamai).
[1122] T673:39-43 (Shamai).
[1123] T622:30 - T623:11 (Shamai). See also Exhibit RC0039 GTA.0001.0001.1120. See also T757:43-47 (Jeans).
[1124] T622:45 - T623:5 (Shamai).

Ltd or Burswood Nominees Ltd.[1125] This limitation was a feature of Crown's instructions to Grant Thornton notwithstanding that, as noted above:

(a) at the time of Grant Thornton's instruction, Crown's internal analysis revealed equivalent volumes of transactions under the $10,000 TTR threshold on the Crown Melbourne Ltd account;[1126] and

(b) it had originally been proposed that the scope of the Grant Thornton (and Initialism) work *include* the bank accounts of Crown Melbourne Ltd and Burswood Nominees Ltd.[1127]

Consequent understatement of the extent of structuring

2.34 In her evidence to the Commission, Katherine Shamai accepted that each of the first, second and third limitations noted above meant that there was a real potential (and in respect of the third – at least a theoretical possibility) that the volume of structuring activity identified by Grant Thornton in its Southbank and Riverbank reports was therefore understated.[1128]

Reasons for limitations

2.35 Crown proffered no explanation for excluding the foreign currency bank accounts from the Grant Thornton review of Southbank and Riverbank. One available explanation is that Crown's earlier partial review of the Southbank and Riverbank foreign exchange accounts found no cash deposits that could readily be identified, although that partial review conceded that "*further review may be required*".[1129] Alternatively, Mr McGregor's evidence was that those accounts were set up for TT transactions only.[1130]

2.36 In respect of the three v nine scenarios instruction, the decision to limit the investigation to three structuring scenarios was made by Nick Stokes in discussion with Neil Jeans.[1131] Katherine Shamai of Grant Thornton did not participate in that decision; nor could she recall being informed of the rationale for excluding the other six scenarios.[1132]

2.37 The decision to limit the scenarios to three, could not have been made on the basis that searching for the nine scenarios would be more cumbersome, difficult, or cost materially more. In her evidence to the Commission, Ms Shamai noted that it would have been "*quite straightforward*" to add the other six scenarios to the forensic tool used to analyse the bank transaction data.[1133] It would have involved "*tweaking the rules slightly*".[1134] Those few tweaks would not have materially increased the cost.[1135]

[1125] T636:3-17 (Shamai).
[1126] Exhibit RC0044 GTA.0001.0001.1079 and RC0045 0001.0001.1082.
[1127] Exhibit RC0052 INI.0001.0001.2464; T735:39 - T736:5 (Jeans); T740:44-47 (Jeans). Note also that Grant Thornton and Initialism were provided with the relevant bank statements for Crown Melbourne Ltd dating back to January 2013: T736:7 - T737:12 (Jeans).
[1128] T634:6-15 (Shamai); T634:35-47 (Shamai) (exclusion of foreign currency accounts); T620:39-43 (Shamai) (failure to search for structuring across the accounts); T623:13-18 (Shamai) (exclusion of remaining six structuring scenarios). An example of the structuring which was excluded from the Grant Thornton analysis by reason of that analysis being limited to three of the nine possible scenarios was explored with Katherine Shamai in her evidence at T631:23-35. See also Exhibit RC0043 GTA.0001.0001.7254.
[1129] Exhibit RC0045 GTA.0001.0001.1082 at 1082.
[1130] T3547:3-4 (McGregor).
[1131] Exhibit RC0068 INI.0002.0001.0901; T761:5-10 (Jeans).
[1132] T623: 34-41 (Shamai).
[1133] T624:12-28 (Shamai).
[1134] T624:22-23 (Shamai).
[1135] T667:26-40 (Shamai).

2.38 Further, Ms Shamai's evidence was that if Crown was genuinely interested in uncovering the full extent of structuring on the Southbank and Riverbank accounts, she could not think of any defensible reason to exclude the additional six scenarios from analysis.[1136]

2.39 Mr Jeans' evidence was that in his discussion with Nick Stokes of Crown, Mr Stokes considered that over a longer period, the transaction activity was less likely to be structuring.[1137] Mr Jeans said that the timing was also raised (ie insufficient time to consider all nine scenarios), but he said it was not a real issue because running the other six scenarios would have been "*de minimus*" in terms of time and cost.[1138]

2.40 Mr Jeans agreed that Crown's decision to limit the structuring scenarios to be searched for to three (down from nine) was:

(a) contrary to his previous recommendation;[1139]

(b) the bare minimum level of scenarios;[1140] and

(c) not what was proper or appropriate or sensible, but one 'couldn't get away with doing less'.[1141]

2.41 By contrast, when questioned by Counsel for Crown, Mr Jeans agreed that:

(a) there was no industry standard about how far out one goes timewise when looking for structuring;[1142]

(b) it is appropriate to consider the scenarios in light of the industry you are dealing with;[1143]

(c) there is the potential to create "*noise*" or "*false positives*" if you go too wide;[1144] and

(d) the three scenarios that were used would best and most directly identify structuring in the Riverbank and Southbank accounts.[1145]

2.42 Mr Jeans' evidence on this point was therefore somewhat equivocal. His evidence should be considered in conjunction with Ms Shamai's evidence that she could not think of any defensible reason to exclude the additional six scenarios from analysis.[1146] Furthermore, if a Grant Thornton data analysis using the nine structuring scenarios had produced some false positives, presumably those false positives would have been weeded out or eliminated by Initialism's qualitative follow-on investigation.

2.43 Finally on this point, McGrathNicol's adoption of the three scenarios for their own forensic analysis does not further support the limitation of the scenarios from nine down to three. McGrathNicol's choice of the three scenarios was partly to enable a comparison with other testing that had been done and party a function of the limited time available to conduct the analysis.[1147]

[1136] T673:24-29 (Shamai).
[1137] T762:8-17 (Jeans).
[1138] T764:3-13 (Jeans).
[1139] T762:41-47 (Jeans).
[1140] T762:44 - T763:5 (Jeans).
[1141] T763:7-10 (Jeans).
[1142] T866:6-10 (Jeans).
[1143] T866:12-15 (Jeans).
[1144] T866:26-36 (Jeans).
[1145] T866:38-42 (Jeans). Some of Mr Jeans' answers to questions posed by counsel for Crown, did not necessarily accord with his earlier evidence. For example, Neil Jeans (and Katherine Shamai for that matter) gave evidence that each of AUSTRAC, FinCEN and ACAMS (from whose definitions of structuring the original nine scenarios were drawn) were authoritative bodies in the anti-money laundering area:T622: 24-28 (Shamai); T758:39-43 (Jeans). Mr Jeans further acknowledged that none of the three authoritative definitions specified a time-cap on the period for structuring and therefore did not justify putting a time-cap on the structuring scenarios to be searched for: T760:34-44 (Jeans).
[1146] T673:24-29 (Shamai).
[1147] T3897:10-13 (McKern).

2.44 As to whether the limitation to search for only three of the nine possible structuring scenarios resulted in any missed transactions:

(a) Mr Jeans' evidence was that when he did his analysis, Initialism ran a number of the longer data scenarios based on the Grant Thornton data and did not discover any other cash transactions[1148] however, he revealed at a later point that this was a limited sample-based review,[1149] in contrast to Grant Thornton's full (non-sample based) review;[1150] and

(b) Grant Thornton did conduct some further analysis, over and above the three scenarios, but only as to one or two of the remaining six scenarios. That analysis did not feature in the Grant Thornton Riverbank and Southbank reports.[1151]

Exclusion of the Crown Melbourne and Burswood Nominees accounts

2.45 The explanation offered for why the Grant Thornton Phases 1-3 work excluded examination of the Crown Melbourne and Burswood Nominees accounts was that the Southbank and Riverbank accounts were a priority at that time[1152] (in Neil Jeans' words, they were "*prioritised because of their relevance to the Bergin Inquiry*").[1153]

2.46 Similarly, Katherine Shamai gave evidence that in a discussion she had with Neil Jeans, Richard Murphy from MinterEllison and someone from Crown, just prior to the Grant Thornton formal engagement, she was told that the Riverbank and Southbank accounts were a high priority at that point in time and that the Crown Melbourne and Burswood Nominees accounts were to be reviewed "at a later point".[1154]

2.47 This explanation about priorities and relevance to the Bergin Inquiry does not accord with the scope of that Inquiry. Whilst the Bergin Inquiry was tasked with examining specific media allegations regarding money laundering on the Southbank and Riverbank accounts, it was also tasked with conducting a general suitability review in response to the media allegations of money laundering.[1155] It is untenable to assert that if the Grant Thornton and Initialism reports had included an equivalent analysis concerning the Crown Melbourne and Burswood Nominees accounts, that the Bergin Inquiry would have disregarded those matters or considered them irrelevant to the suitability question.

2.48 Furthermore, there was no practical impediment to Crown instructing Grant Thornton and Initialism to include the Crown Melbourne and Burswood Nominees accounts in their original review.[1156] Indeed, that was the original proposal.[1157] At some point, there must have been a deliberate decision to confine the Grant Thornton and Initialism analysis to the Southbank and Riverbank accounts only.[1158]

2.49 Another explanation for the exclusion of the Crown Melbourne and Burswood Nominees bank accounts was that there was a "*very limited time window*" to undertake this piece of work because Crown sought to provide the work to the Bergin Inquiry which was wrapping

[1148] T763:20-24 (Jeans).
[1149] T869:3-29 (Jeans).
[1150] T608:20-23 (Shamai).
[1151] T672:14 - T673:22 (Shamai). See also T683:21-T684:23 (Shamai).
[1152] T636:25 - T637:9 (Shamai).
[1153] T740:44-47 (Jeans). See also Exhibit RC0401 CRW.001.001.8593 at 8594.
[1154] T636:25 - T637:9 (Shamai).
[1155] Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at 5, points 9 and 10.
[1156] T655:32-36 (Shamai).
[1157] Exhibit RC0052 INI.0001.0001.2464.
[1158] The results of that decision were a confined instruction to Grant Thornton and Initialism. That instruction was communicated by Minters on 13 October 2020: see Exhibit RC0041 GTA.0001.0001.1010.

up in mid-November 2020.[1159] Neil Jeans gave evidence that this rationale was raised in discussions between him, Crown and Crown's legal advisers.[1160]

2.50 Mr Jeans readily conceded that this timing problem was of Crown's own making, because it had delayed in commencing the investigation, which could have commenced at least 13 months earlier when Mr Jeans first recommended it.[1161]

2.51 Further, to our knowledge, there is no evidence that Crown was forthright and candid to the Bergin Inquiry, by informing the Bergin Inquiry of the possibility of further money laundering on accounts other than the Southbank and Riverbank accounts. To our knowledge, Crown did not inform the Bergin Inquiry that its own internal analysis revealed volumes of transactions under the $10,000 TTR threshold on the Crown Melbourne Ltd account which were equivalent to those on the Southbank account.[1162] Rather, the Bergin Inquiry was informed by Crown that Crown "*brought forward*" the Grant Thornton report because Crown considered that it was the "*right and proper thing to do*" and that Crown wanted to ensure that the Bergin Inquiry had "*complete and up-to-date information*".[1163] It is open to reject that proposition.

An equivalent analysis for Crown Melbourne and Burswood Nominees

2.52 The Commission heard evidence that an equivalent analysis (equivalent to that performed by Grant Thornton on the Southbank and Riverbank accounts) on the Crown Melbourne and Burswood Nominees accounts was to be conducted at some point after Grant Thornton had completed the Southbank and Riverbank reviews.[1164] It is not known whether Crown proposed to provide such an analysis, late, to the Bergin Inquiry.

2.53 Katherine Shamai gave evidence that in a discussion she had with Neil Jeans, Richard Murphy from Minter Ellison and someone from Crown, just prior to the Grant Thornton formal engagement, she was told the Crown Melbourne and Burswood Nominees accounts were to be reviewed "*at a later point*".[1165]

2.54 No precise "*later point"* was specified to Katherine Shamai at that time.[1166] As at 9 December 2020, Grant Thornton had not received the bank data on which to conduct the analysis, and Katherine Shamai was surprised to receive an enquiry from Neil Jeans as to the progress of the equivalent analysis of the Crown Melbourne and Burswood Nominees bank accounts.[1167]

2.55 This evidence casts serious doubt on the veracity of a statement by Ken Barton to the VCGLR on 20 November 2020.

2.56 On that date, Mr Barton wrote to the VCGLR enclosing copies of the Grant Thornton final and interim reports on the Southbank and Riverbank accounts, and the Initialism report regarding indications of money laundering on those accounts. In his letter, Mr Barton stated:[1168]

> *Crown has instructed Grant Thornton and Initialism to undertake equivalent analyses to those contained in the Reports in relation to the bank accounts operated by Crown Melbourne Limited and Burswood Nominees Limited.*

[1159] T739:43-46; T740:1-5 (Jeans).
[1160] T739:30-46 (Jeans).
[1161] T740:7-35 (Jeans).
[1162] Exhibit RC0044 GTA.0001.0001.1079; RC0044a GTA.0001.0001.1082; RC0045 GTA.0001.0001.1082.
[1163] Transcript of the NSW Casino Inquiry, 18 November 2020, T5621:3-41.
[1164] T636:25 - T637:15 (Shamai).
[1165] T636:25 - T637:15 (Shamai).
[1166] T637:11-15 (Shamai).
[1167] T638:21-42 (Shamai); Exhibit RC0046 INI.0001.0001.2545.
[1168] Exhibit RC0047 VCG.0001.0002.2001.

2.57 Ms Shamai's evidence was that Mr Barton's statement, from her perspective, was incorrect.[1169]

2.58 In circumstances where Ms Shamai confirmed in her evidence that:

(a) she was the engagement partner for the work;[1170]

(b) she was the person to contact if the instructions to Grant Thornton were changed or expanded,[1171]

(c) if she didn't know about it, then it was fair to assume that Grant Thornton was not instructed to do that work;[1172]

it is open to the Commission to find that when Ken Barton told the VCGLR that Crown had instructed Grant Thornton to undertake the equivalent analysis on the Crown Melbourne and Burswood Nominees account, that statement was untrue. Another possibility is that there was a miscommunication internal to Crown. Crown has not sought to advance that contention.

Commencement of the equivalent analysis

2.59 As it transpired, sometime after 9 December 2020, Grant Thornton did receive an oral instruction from Crown's law firm, Allens, to undertake the equivalent analysis on the Crown Melbourne and Burswood Nominees accounts.[1173]

2.60 To that end, approximately 80%-90%[1174] of the bank statements for Crown Melbourne and Burswood Nominees for the period 2013 to 2019[1175] were uploaded for Grant Thornton's review.[1176] The review was commenced in January 2021[1177] and as at the end of February 2021, it was "*not very far off*" being complete.[1178] The data analysis part was complete[1179] but the quality review process was not complete.[1180]

2.61 Although it was proposed that Grant Thornton prepare a report documenting the analysis results for the Crown Melbourne and Burswood Nominees accounts,[1181] such reports did not come into existence because Grant Thornton was advised by Allens to stop work because they were engaging another party to perform the analysis.[1182]

2.62 Other than to point out that in February 2021, Crown had engaged another party to perform the analysis,[1183] Crown did not seek to explain why Grant Thornton's work was ceased at the 11th hour.[1184]

[1169] T640:1 - T641:5 (Shamai).
[1170] T603:12-14 (Shamai).
[1171] T604:17-27 (Shamai).
[1172] T640:27-39 (Shamai).
[1173] T641:17-34; T642:36-41 (Shamai).
[1174] T649:19-20 (Shamai). At a later point in her evidence, after speaking with some staff members over the lunch break, Katherine Shamai's evidence was that the analysis was substantially less complete than she had originally thought: see T666:30 - T667:7 (Shamai). See also Exhibit RC0748 GTA.0000.0003.0003.
[1175] T647:1-4 (Shamai).
[1176] T643:6-33 (Shamai); Exhibit RC0048 INI.0001.0001.1621.
[1177] T644:19-24; T644:44-47 (Shamai). Exh bit RC0049 INI.0001.0001.2306 (in conjunction with evidence at T645:7-18).
[1178] T651:44 - T652:3 (Shamai).
[1179] T651:44-47 (Shamai).
[1180] T652:15-16 (Shamai).
[1181] Exhibit RC0051 GTA.0001.0001.7050.
[1182] T651:21-27 (Shamai).
[1183] T3547:34-39 (McGregor).
[1184] Through her lawyers, Ms Shamai advised the Commission on 3 June 2021 that on 25 February 2021, Ms Shamai met with Mr Simon Sherwood and Ms Caroline Marshall of Allens Lawyers who advised Ms Shamai that the services of Grant Thornton were no longer required and that they had decided to engage with another service provider: see Exhibit RC0748 GTA.0000.0003.0003.

2.63 The other party engaged to perform the analysis was Deloitte. This engagement is discussed further below.

Initialism's Southbank and Riverbank report

2.64 As with the Grant Thornton Southbank and Riverbank investigation, but to a lesser degree, the Initialism investigation into the Southbank and Riverbank accounts was constrained.

2.65 *First*, as noted above, the review was limited to the Southbank and Riverbank accounts.[1185]

2.66 *Second*, the review was limited to the $AU accounts only and not the accounts held by Riverbank and Southbank in foreign currencies.[1186]

2.67 *Third*, Initialism relied on the data analysis performed by Grant Thornton and thus any limitations in that review would have carried over to Initialism's review, save to the extent that Initialism carried out any broader investigation.[1187]

2.68 *Fourth*, Initialism did not assess Crown's handling of the transactions, and did not review Crown's identification, management and mitigation of the matters identified.[1188] This, notwithstanding that such an assessment could have occurred.[1189]

2.69 *Fifth*, it was not part of the scope of work to make recommendations in light of the revelations in the report.[1190]

Initialism's conclusions

2.70 Following completion of its review, Initialism concluded that:

(a) Crown's operation of the Southbank and Riverbank accounts resulted in a potential vulnerability that the accounts could be exploited for the purposes of laundering the proceeds of crime; [1191]

(b) there were transactions indicative of the money laundering techniques of structuring, smurfing and cuckoo smurfing on the Riverbank and Southbank accounts;[1192] and

(c) it was reasonable to assume that any apparent structuring through the Riverbank and Southbank accounts would be indicative of money laundering.[1193]

2.71 In addition to structuring, Initialism concluded:

(a) that there was activity indicative of cuckoo smurfing via the quick cash deposit channel;[1194]

(b) that there were international transfers in the hundreds of thousands of dollars and millions of dollars that were indicative of cuckoo smurfing;[1195]

(c) that there were payments in the hundreds of thousands of dollars, and one in the millions of dollars, which had payment descriptors which were inconsistent with the

[1185] T707:32 - T708:6 (Jeans).
[1186] T735:29.37 (Jeans).
[1187] T708:8-43 (Jeans).
[1188] T709:14 - T710:18 (Jeans).
[1189] T764:15-42 (Jeans). Initialism was expressly included in an AUSTRAC exemption from the tipping-off provisions in the AML/CTF Act: T764:27-34 (Jeans).
[1190] T765:2-14 (Jeans).
[1191] Exhibit RC0062 INI.0000.0005.0001 at [43]; T711:30-36 (Jeans).
[1192] Exhibit RC0062c INI.0004.0001.0038 at appendix A; T711:38 - T712:1 (Jeans).
[1193] Exhibit RC0062 INI.0000.0005.0001 at [46]; T712:3-10 (Jeans).
[1194] T747:16-21 (Jeans).
[1195] T747:29 - T748:7 (Jeans).

underlying purpose of the payment to Crown which were thus indicia of money laundering.[1196]

2.72 As to the extent of the indications of money laundering on the Southbank and Riverbank accounts, Initialism's investigation revealed:

(a) 117 instances of structuring to avoid the $10,000 cash reporting threshold through the Riverbank account;[1197]

(b) 53 instances indicative of structuring to avoid the $10,000 reporting threshold through the Southbank account.[1198]

2.73 Initialism's investigation revealed many examples of transactions whereby someone anonymously deposited cash into Crown's Southbank or Riverbank account, Crown allocated that money into a particular patron's deposit account and then released those funds at the casino end without that particular patron being present.[1199] Whilst Mr Jeans was uncomfortable describing such transaction patterns as "*extra-ordinary*", he was happy to observe that it was "*absolutely unusual activity*".[1200]

2.74 He also agreed that the practice which he observed of the Crown cage staff releasing money to people other than the patron from whose account the funds were taken, was a practice which facilitated money laundering.[1201]

2.75 Neil Jeans estimated that the indications of money laundering which Initialism identified were in the multiples of millions of dollars.[1202]

Observations

2.76 A number of observations can be made in light of the above facts.

2.77 Firstly, in terms of the substantive money laundering facts, it reflects poorly on Crown, including on its good repute, and ability to maintain a successful casino, that transactions indicative of structuring, smurfing, and cuckoo smurfing, each not new money laundering techniques,[1203] were facilitated and allowed to go undetected on Crown's Southbank and Riverbank accounts for so long.

2.78 Second, by instructing Grant Thornton and Initialism to investigate only the Southbank and Riverbank accounts, in the context where Crown intended to provide the reports to the Bergin Inquiry and had reason to suspect that the money laundering problems extended beyond those accounts, Crown did not display candour.

2.79 Thirdly, it appears that Crown did not prioritise any investigation into the allegations of money laundering, and only acted when it became untenable, in the context of the Bergin Inquiry, to do nothing. Crown's investigation into money laundering at that point in time did not extend to what was proper or appropriate or sensible, but one 'couldn't get away with doing less'.[1204]

Money laundering on other Crown accounts – what is the extent of the problem?

2.80 This part of the submissions considers the evidence as to money laundering on Crown's other accounts, including both bank accounts (other than the Southbank and Riverbank

[1196] T749:6-41 (Jeans). Mr Jeans later gave evidence that a misleading descriptor on a payment is not, in itself, indicative of money laundering: see T840:11-16 (Jeans).
[1197] Exhibit RC0062 INI.0004.0001.0038 at page 0052.
[1198] Exhibit RC0062 INI.0004.0001.0038 at page 0052.
[1199] Exhibit RC0062 INI.0004.0001.0038 at appendix A; T717:4-30 (Jeans).
[1200] T717:18-25 (Jeans).
[1201] T722:13-31 (Jeans).
[1202] T746:13-39 (Jeans).
[1203] T766:4-44 (Jeans).
[1204] T763:7-10 (Jeans).

accounts) and Crown's DAB accounts. In broad terms, this section looks at whether Crown's money laundering problems are more wide-spread than previously thought.

Money laundering on other Crown bank accounts

2.81 The most important piece of evidence or analysis as to the extent of money laundering on Crown's bank accounts is yet to be completed. That analysis, when it becomes available, will comprise the results of a forensic investigation by Deloitte, into Crown's Patron Accounts.

2.82 By way of background, in February 2021, in response to specific suggestions made in the Bergin Report as part of a broader pathway to render Crown Sydney suitable,[1205] Crown engaged Deloitte to conduct a forensic review of Crown's bank accounts to ensure that the criminal elements that Commissioner Bergin found had infiltrated the Southbank and Riverbank accounts, had not infiltrated any other accounts (**the Deloitte Phase 2 Forensic Review**).[1206]

2.83 Although not yet complete, it is expected that this forensic review will reveal whether there are indications of money laundering on a range of Crown Patron Accounts, being Crown bank accounts into which patrons can deposit money.

2.84 It was originally expected that the Deloitte Phase 2 Forensic Review would be completed by 25 June 2021.[1207] The completion date was then extended to mid to late August 2021[1208] and the most recent information is that it is now not due to be completed until late September 2021.[1209] As such, its results will not be available in time to be considered and included in this Commission's report.

2.85 This timing is unfortunate. As to timeframes, Ms Dobbin agreed that:

(a) if Deloitte had started its work in November 2020, the results would likely have been available to this Commission;[1210]

(b) there was no impediment to Crown engaging Deloitte to perform this task at an earlier point;[1211] and

(c) Crown could have done a similar review at any point in time since they opened the Casino.[1212]

2.86 Anticipating the possibility of not having this evidence available in time, the Commission examined some provisional or preliminary findings of the Deloitte Phase 2 Forensic Review. Those provisional findings were contained in a Deloitte excel workbook[1213] provided to the Commission in May 2021. The provisional findings were that there were 14 Crown bank accounts which had "*evidence of money laundering*".[1214] However, when questioned about the "*evidence of money laundering*" entry in the workbook concerning, Ms Dobbin clarified that the entries therein were "*initial indicators*" of money laundering, rather than "*evidence' of money laundering*".[1215]

[1205] Exhibit RC0084a DTT.002.0001.6479.
[1206] Exhibit RC0084a DTT.002.0001.6479.
[1207] Exhibit RC1291 CRW.512.073.0106.
[1208] T935:20-23 (Dobbin).
[1209] Exhibit RC0476 CRW.512.217.0008.
[1210] T935:25-30 (Dobbin).
[1211] T935:32-43 (Dobbin).
[1212] T936:10-14 (Dobbin).
[1213] Exhibit RC0092 DTT.010.0004.0031.
[1214] Exhibit RC0092 DTT.010.0004.0031 at tab titled "Method and Summary".
[1215] Exhibit RC0092 DTT.010.0004.0031; T928:3-9 (Dobbin). See also T927:6-T928:9 (Dobbin). The document itself, refers to 'evidence' of money laundering: Exhibit RC0092 DTT.010.0004.0031 at tab titled "Method and Summary".

2.87 Ms Dobbin's evidence about the matters set out in the workbook included four important qualifications, and underscored the provisional nature of the contents of the workbook. The qualifications were that:

(a) given the stage of analysis that Deloitte was at, she was not in a position (or it was too early) to be making conclusions;[1216]

(b) the results set out in the Summary Tab of the relevant excel spreadsheet[1217] were probably on the basis of specified processes that were being applied;[1218]

(c) Ms Dobbin had not "*quality assured or reviewed*" the document;[1219] and

(d) the workbook appeared to set out a record of an analysis performed at a point in time, but she was not sure whether the results were superseded or were still accurate.[1220]

2.88 In those circumstances, it is submitted that little weight can be given to the preliminary findings as set out in Deloitte's excel workbook.

2.89 Although not necessary in order to formulate a conclusion as to suitability, if the Commission wishes to draw any conclusions as to the likelihood of indications of money laundering on bank accounts other than the Southbank and Riverbank accounts, the following evidence is relevant.

Evidence from Grant Thornton and Initialism

2.90 When questioned on this topic, Katherine Shamai's evidence was that it was "*probable*" that the transaction activity evident on the Southbank and Riverbank accounts is likely to have continued on other Crown bank accounts after the closure in December 2019 of the Southbank and Riverbank accounts.[1221]

2.91 Similarly, Mr Jeans' evidence was also that after the closure of the Southbank and Riverbank accounts, it was his opinion that the transaction activity evident on those accounts is likely to have continued but on other Crown bank accounts.[1222]

McGrathNicol forensic review

2.92 In contradistinction to Ms Shamai's and Mr Jeans' opinions set out above, the McGrathNicol forensic review of transactions on Crown's Patron Accounts, did not reveal any indications of structuring.[1223]

2.93 Using the Deloitte bank transaction data for the period 1 July 2019 to 22 February 2021,[1224] McGrathNicol searched for transactions indicative of structuring.[1225] For the purpose of the analysis, transactions indicative of structuring was defined as two or more cash deposits in respect of a single patron below $10,000 that, when combined over a set period (24, 48 or 72 hours), totalled more than $10,000.[1226]

2.94 Based on that criteria, McGrathNicol did not identify any transactions indicative of structuring over the period 1 July 2019 to 22 February 2021.[1227]

[1216] T928:46-47; T986:13-15 (Dobbin).
[1217] Exhibit RC0092 DTT.010.0004.0031.
[1218] T928:3-5 (Dobbin).
[1219] T933:10-12 (Dobbin).
[1220] T933:19-22 (Dobbin).
[1221] T656:2-19 (Shamai).
[1222] T765:39-44 (Jeans).
[1223] Exhibit RC0465 MGN.0001.0001.0001 at 15 and section 5.7.
[1224] Exhibit RC0465 MGN.0001.0001.0001 at 15.
[1225] Exhibit RC0465 MGN.0001.0001.0001 at 15.
[1226] Exhibit RC0465 MGN.0001.0001.0001 at section 5.5.2.
[1227] Exhibit RC0465 MGN.0001.0001.0001 at section 5.7.4(c); T3883:45 - T3884:2 (McKern).

2.95 In terms of limitations, the McGrathNicol review:[1228]

(a) was limited to transactions where the bank account narrative included a reference to cash and where a patron ID was able to be identified;

(b) did not look at structuring using a combination of cash and bank transactions;[1229] and

(c) did not conduct (by reason of the limited timeframe) a deep reconciliation with those narratives where a clear patron account could not be extracted.

2.96 By reason of time and data limitations, the McGrathNicol forensic analysis was not as comprehensive as the Deloitte forensic analysis is expected to be. An important distinction between the two forensic reviews is that Deloitte will examine over seven years of bank transactions, whereas McGrath Nicol reviewed data for the period of 1 July 2019 to 22 February 2021.[1230] As is acknowledged in other parts of the McGrath Nicol report, the impact of Covid-19 and the related closures of the casino in 2020, may have impacted the data (at least for part of the period) by reason of lower patronage numbers.

2.97 In the circumstances, it is submitted caution should be exercised, pending completion and receipt of the Deloitte Phase 2 Forensic Review, in concluding that the indications of money laundering evident on Crown's Southbank and Riverbank accounts, extended beyond those bank accounts.

DAB accounts

2.98 There is a different story however when it comes to Crown's DAB accounts. DAB is an acronym used at Crown for Deposit Account Balance. DAB accounts are ledger accounts in the names of Crown patrons, used by Crown to account for monies deposited with it by patrons.[1231]

2.99 McGrathNicol performed a forensic analysis over the DAB accounts, looking for potential structuring, defined as two or more cash deposits in respect of a single patron below $10,000 that when combined over a set period (24, 48 or 72 hours) totalled more than $10,000.[1232]

2.100 McGrathNicol's analysis found 1,914 individual transactions concerning 272 unique patrons met this criteria within the 72 hour window including 1,472 transactions by 174 patrons within a 48 hour window and 908 transactions by 174 patrons in the 24 hour window.[1233] The most recent transaction for Melbourne which met the criteria occurred on 25 May 2021 and the most recent transaction for Perth which met the criteria occurred on 16 June 2021.[1234]

2.101 McGrathNicol cautioned that the behaviours identified through this analysis may relate to genuine gaming behaviour and that additional information including the gaming records and statement of funds declaration would add to an understanding of whether the behaviour was indicative of money laundering activity. McGrathNicol recommended further investigation of these transactions.[1235]

2.102 It is noted that Deloitte's Phase 2 Forensic Review excludes any similar analysis of transactions on the DAB accounts.[1236]

[1228] Exhibit RC0465 MGN.0001.0001.0001 at 45-46.
[1229] Exhibit RC0465 MGN.0001.0001.0001 at section 5.7.4(d).
[1230] Exhibit RC0465 MGN.0001.0001.0001 at 15.
[1231] T900:10-36 (Dobbin); Exhibit RC0465 MGN.0001.0001.0001 at footnote 12.
[1232] Exhibit RC0465 MGN.0001.0001.0001 at 14.
[1233] Ibid; T3879:13-28 (McKern).
[1234] Exhibit RC0465 MGN.0001.0001.0001 at 14.
[1235] Exhibit RC0465 MGN.0001.0001.0001 at 14.
[1236] T3938:23-28 (McKern); T3003:2-3 (Blackburn).

Parking of funds in the DAB accounts

2.103 In addition to indications of structuring on the DAB accounts, McGrathNicol's forensic review revealed another money laundering typology, that of 'parking' of funds, within Crown's DAB accounts.[1237]

2.104 As explained by McGrathNicol, parking of funds may be indicative of money laundering activity because it creates a temporal distance between the source and the use of the funds and in this way is a form of layering.[1238]

2.105 McGrathNicol's analysis of the DAB and safe-keeping accounts[1239] with a balance of excess of $50,000 as at 15 June 2021[1240] revealed that:

(a) 41 DAB accounts had not had a recorded transaction since 2019 with the highest balance of these accounts being $1.5 million; and

(b) 45 safe-keeping accounts had not had a recorded transaction since 2020 with the highest balance of those accounts being $7,079,089.[1241]

2.106 Again, McGrathNicol articulated a significant caveat as to the above results. The caveat concerned Covid-19. In particular, McGrathNicol noted that the restrictions imposed due to Covid-19, and the effect this had on interstate travel and patron activity, may be a factor in the interpretation of data.[1242]

Conclusions as to indications of money laundering on the DAB accounts

2.107 The McGrathNicol forensic review has identified preliminary indications of both structuring and parking on Crown's DAB accounts. This channel of potential money laundering is not being considered in the Deloitte Phase 2 Forensic Review. It is worthy of further investigation.

2.108 To complete this section, it will be noted that Mr Blackburn's evidence is that that Crown is implementing new transactional monitoring rules on the DAB accounts that will potentially identify instances of parking.[1243] This is presumably a forward looking rather than a backwards looking exercise. When questioned as to why it had taken so long for Crown to take action about parking, given that parking is a money laundering typology that has been available to patrons since Crown first made DAB accounts available to patrons, Mr Blackburn's answer was "Because I'm here".[1244]

Other observations

2.109 Further matters relevant to Crown's present suitability can be found in the manner and circumstances in which Crown has instructed Deloitte to perform the Phase 2 Forensic Review.

2.110 The first observation in this regard, is that the Deloitte forensic review is being undertaken as a step on the pathway for suitability for Crown Sydney, and is not in that context, a pro-active initiative on the part of Crown.[1245] By way of illustration, it will be observed that the

[1237] Exhibit RC0465 MGN.0001.0001.0001 at 13.
[1238] Exhibit RC0465 MGN.0001.0001.0001 at 13 and 5.4.1. See also the explanation given by Alex Carmichael at T1024:16-20.
[1239] These accounts are operated in the same manner as the DAB accounts: see Exhibit RC0465 MGN.0001.0001.0001 at section 4.1.3 and T3881:20-31 (McKern).
[1240] T3881:38-39 (McKern).
[1241] Exhibit RC0465 MGN.0001.0001.0001 at 13.
[1242] Exhibit RC0465 MGN.0001.0001.0001 at section 5.4.5. See also T3883:1-15 (McKern).
[1243] T3003:11-13; T3004:6-24 (Blackburn).
[1244] T3004:26-32 (Blackburn).
[1245] Exhibit RC0084a DTT.002.0001.6479; T887:6-32; T888:34-42 (Dobbin).

formulation of Deloitte's scope of work was first developed in the context of a draft letter to the NSW ILGA.[1246]

2.111 Second, Crown attempted, unsuccessfully, to limit the Deloitte Phase 2 Forensic Review to three years of bank transactions rather than seven.[1247] As to the appropriate time period, Ms Dobbin's evidence was that a seven-year period was more appropriate and usual, and that the longer period gave a better opportunity to identify money laundering.[1248]

2.112 Third, it is notable that the DAB accounts are excluded from the Deloitte review.[1249] They are excluded, notwithstanding that transaction activity on the DAB accounts, in and of itself, is a significant area of potential money laundering activity.[1250]

2.113 Fourth, the Deloitte work is not looking at how Crown broadly manage anti-money laundering risks associated with transactional activity within Crown's internal gaming accounts.[1251]

2.114 These matters reveal an entity that is seeking to do the least possible to be in a position to open its Sydney casino.

2.115 Finally, and incidentally, the provisional results of the Deloitte Phase 2 Forensic Review has revealed the sheer number of Crown bank accounts which customers could and can use in a manner similar to the Southbank and Riverbank accounts (as at 26 May 2021, Deloitte had identified 44 such accounts[1252]) and that Crown had many such accounts in foreign currencies.[1253]

2.116 On this issue, Lisa Dobbin agreed that:

(a) the ease of money laundering monitoring is greatly enhanced by having a single account;[1254]

(b) there is a greater risk of failure in monitoring for money laundering if there are multiple accounts.[1255]

2.117 It will be noted that Steve Blackburn is looking to rationalise the number of Patron Accounts at Crown and would agree with a recommendation from this Commission that Crown be limited to a single Patron account for each of its Melbourne, Sydney and Perth casinos.[1256]

Other evidence of money laundering

2.118 Lastly, the Commission heard evidence from an experienced Victoria Police officer as to organised crime, junkets and other matters. The evidence of this officer was that in his experience, there is money laundering at the casino on a daily basis - that in the junkets, "*it is rife"*.[1257] As to junkets, his evidence was that they observed suspected illicit funds flooding into junket accounts on a daily basis.

2.119 Outside of junkets, his evidence was that they observed or had intelligence concerning a lot of lower-level suspected money laundering.[1258]He told the Commission that the most basic kind of money laundering, involved running dirty money into the casino, getting chips,

[1246] Exh bit RC0085 DTT.007.0002.6036; T889:6-11 (Dobbin).
[1247] Exh bit RC0084a DTT.002.0001.6479; Exh bit 85; Exhibit 86. See also T890:7-893:19 (Dobbin).
[1248] T895:5-10; T897:11 (Dobbin).
[1249] T899:14-20; T900:43 - T901:39 (Dobbin).
[1250] T902:2-8; 36-39 (Dobbin).
[1251] Exh bit RC0084a DTT.002.0001.6479 at 6; T944:20-32 (Dobbin).
[1252] T912:15-20 (Dobbin).
[1253] T917:29-T918:12 (Dobbin).
[1254] T919:38-40 (Dobbin).
[1255] T920:27-32 (Dobbin).
[1256] T2999:15-25 (Blackburn).
[1257] T2079:38-45 (Anonymous Witness).
[1258] T2080:27-31 (Anonymous Witness).

playing for a small period of time and then cashing that in for a Crown cheque. His evidence is that that type of money laundering would happen on a close to daily basis. [1259]

3 Response to money laundering revelations

3.1 This next section of the submissions considers the sufficiency of responses by Crown to the money laundering findings set out in the Grant Thornton and Initialism reports. This section examines Crown's decisions in respect of the patrons identified in the Grant Thornton and Initialism reports; and new controls introduced by Crown in respect of its Patron Accounts.

Retention of the patrons identified in the Grant Thornton and Initialism reports

3.1 The Grant Thornton Riverbank report identified a total of 52 individual patrons in the potential structured transactions.[1260] The Grant Thornton Southbank Report identified a total of 30 individual patrons in the potential structured transactions.[1261]

3.2 Helpfully, each of Grant Thornton's Southbank and Riverbank reports grouped the structured transactions by Patron ID, making it a simple task to identify those patrons on whose accounts the structured activity was taking place.

3.3 Similarly, the Initialism report on Southbank and Riverbank included Appendices which were arranged by patron identification number or otherwise from which the patron identification number was readily apparent.[1262] Accordingly, by at least mid-November 2020, the identities of the patrons on whose accounts the structuring and cuckoo smurfing transactions occurred, were known to Crown.

3.4 On 18 March 2021, the VCGLR wrote to Crown, referring to the patrons identified in the Grant Thornton and Initialism reports, and querying whether Crown's Significant Player Review has had regard to the reports, and in particular, considered the "*suitability of the patrons identified in those reports to continue to be customers of Crown*".[1263]

3.5 In a reply letter dated 24 March 2021, it was revealed that the process that Crown was undertaking to address the observations in the Grant Thornton and Initialism Riverbank and Southbank reports, involved undertaking a "*historical look-back*" of transactions to determine whether any "*retroactive reporting*" to AUSTRAC was required, which lookback was on-going at the time of writing.[1264] The letter revealed that to the extent that suspicious matters are identified in the course of the look-back, Crown proposed to undertake enhanced customer due-diligence (which includes a requirement to consider whether to continue to have a business relationship with the patron).[1265] The letter further explained that Crown did not deem it necessary to expand or amend the Significant Player Review to consider the suitability of patrons referred to in the reports.[1266]

3.6 Putting to one side the curious use of the word 'historical' in circumstances where the patrons presumably remained *current* customers of Crown, it is evident from this letter that Crown did not move to immediately investigate and consider whether to cease dealing with each of patrons on whose accounts there was indications of money laundering behaviour. It

[1259] T2080:8-10.
[1260] Exhibit RC0037 GTA.0001.0001.6777.
[1261] Exhibit RC0038 GTA.0001.0001.3853. By contrast, Crown has identified 111 persons whose accounts were associated with unusual activity as identified by the Grant Thornton and Initialism reviews: VCG.0001.0002. It is presumed that the difference is explained by the inclusion of other patrons on whose accounts there was usual (but not structuring) activity.
[1262] Exhibit RC0062c INI.0004.0001.0038.
[1263] Exhibit RC0053 VCG.0001.0002.2002.
[1264] Exhibit RC0054 VCG.0001.0002.2011 at .0002.
[1265] Exhibit RC0054 VCG.0001.0002.2011.
[1266] Exhibit RC0054 VCG.0001.0002.2011 at .0002.

is also apparent that Crown did not act with any haste, given that the lookback was still on-going as at late March 2021.

3.7 Katherine Shamai was asked whether this was an appropriate response. Her evidence was that:

(a) the next step (following revelation of the structuring activity) is to investigate whether or not the structuring is being done with the knowledge of the patron in order to determine the root cause of it and whether the patron is an appropriate person that Crown should be dealing with;[1267] and

(b) she would expect such an investigation to commence immediately after the evidence of the structuring came to light.[1268]

3.8 Critically, Ms Shamai's evidence was that the danger in delaying the commencement of that type of investigation is that it allows the behaviour to continue.[1269] She agreed that a reporting entity whose facilities were knowingly being used for money laundering would be expected to act with reasonable haste.[1270]

3.9 Crown's response to the suggestion that Crown should have acted with due haste in respect of the known patrons on whose accounts the structuring was occurring was to point out that Initialism identified that the majority of structuring identified was indicative of cuckoo smurfing,[1271] in respect of which the patrons may have been unaware.[1272]

3.10 That response does not explain any delay in investigating those incidents of structuring which were not cuckoo smurfing. Further, the evidence presented to the Commission was equivocal as to whether the incidents of cuckoo smurfing necessarily meant that the patron involved was an innocent party.[1273] On that point, Mr Jeans' evidence was that further investigation would be required in order to confirm that the patron was not involved.[1274] Lastly, the approach taken by Crown, that 'cuckoo smurfing must mean an innocent customer' does not take into account that in many instances, Initialism's conclusions (that the activity was indicative of cuckoo smurfing), were expressed in qualified language (eg "this activity *may be* indicative of cuckoo smurfing").[1275]

A change of heart

3.11 In May 2021, potentially as result of discussions between Crown and the VCGLR, Crown had a change of heart, and decided to subject the patrons to the Significant Players Review process.[1276] It will be observed that Crown's process remained on-going as at May 2021.

Conclusion

3.12 In all the circumstances, Crown's approach lacked due haste and rigour. Further, it is open to the Commission to find that in failing to commence an immediate investigation into all of the patrons identified in the Grant Thornton and Initialism reports, Crown took the risk that the transactional behaviour identified by Grant Thornton and Initialism, would continue

[1267] T658:46 - T659:6 (Shamai).
[1268] T659:8-12 (Shamai).
[1269] T659:14-17 (Shamai). Relevantly, Ms Shamai's evidence was that it was 'probable' that the transaction activity evident on the Southbank and Riverbank accounts is likely to have continued on other Crown bank accounts after the closure in December 2019 of the Southbank and Riverbank accounts: T656:2-19 (Shamai).
[1270] T662:19-31 (Shamai).
[1271] See the re-examination of Katherine Shamai at T684 - TP685 and of Neil Jeans at T839:36-41.
[1272] This is consistent with the view taken internally at Crown in response to its October 2020 investigation: see Exh bit RC0045 GTA.0001.0001.1082 at .1085.
[1273] See the evidence of Katherine Shamai at T684:33 - T685:7. See also the evidence of Neil Jeans at T724:19-31.
[1274] T724:19-31 (Jeans).
[1275] T718:21-44 (Jeans). See also the qualified language used by Mr Jeans in his report at Exh bit RC0062c INI.0004.0001.0038 at, for example, .0052.
[1276] See Exhibit RC0399 CRW.512.078.0001.

(noting that when the Southbank and Riverbank bank accounts were closed, patrons were notified of the bank details for the Crown Melbourne and Crown Perth bank accounts).[1277]

Controls introduced in response to the revelations

3.13 A second aspect to Crown's response to the Grant Thornton and Initialism revelations concerned the introduction of new policies and controls over Crown's Patron Accounts.[1278] There were some earlier iterations of these controls introduced during the course of 2020,[1279] however Crown's position is that 1 December 2020 was the date from which the new controls were largely operational.[1280]

3.14 The new polices and controls comprised at least:

(a) a Third-Party Transfers and Money Remitters Policy Statement;[1281]

(b) a Return of Funds Policy Statement;[1282] and

(c) a Bank Transfer Notification.[1283]

3.15 To assess the efficacy of those polices and controls, Crown:

(a) engaged Initialism to review transactions on the Crown Melbourne Ltd and Burswood Nominees Ltd bank accounts to assess whether the prohibitions relating to cash payments and third-party transfers were being observed by customers and enforced by Crown;[1284] and

(b) engaged Deloitte to conduct a controls assessment[1285] (this work is known as the Deloitte Phase 1 work).

3.16 Importantly, the Initialism and Deloitte reviews as described above concern Crown's present control state, not its historical control state.[1286]

Initialism results

3.17 Initialism's Review of Crown Melbourne's and Burswood Nominees' Patron Accounts[1287] identified a series of deposits which might have been cash deposits in breach of the prohibition on cash deposits, but it could not conclude one way or the other because of a lack of data.[1288]

3.18 The Initialism review also identified scores of potential telegraphic transfer deposits from third parties (including money remitters) which appeared not to have been returned.[1289] Insofar as they were not returned, that would be contrary to Crown's policy and also indicate that Crown itself was not adhering to its own policy of returning funds.[1290] Initialism could not come a final conclusion on these transactions because Initialism was not provided with the necessary information from Crown.[1291] Accordingly, Initialism's results were provisional or interim results only.[1292]

[1277] See for example Exhibit RC0096 CRW.512.040.0001.
[1278] T947:29 - T948:19 (Dobbin).
[1279] See for example Exhibit RC0074 CRW.512.025.0970; RC0075 CRW.512.025.0972.
[1280] T947:41-46; T954:37-41 (Dobbin - closed hearing); Exhibit RC0084a DTT.002.0001.6479 at .0006.
[1281] Exh bit RC0094 CRL.742.001.0101.
[1282] Exh bit RC0095 CRW.512.025.1110.
[1283] Exh bit RC0096 512.040.0001. This is an example of a bank transfer notification.
[1284] Exh bits RC0069 INI.0005.0001.0466; RC0070; Exhibit RC0062 INI.0005.0001.0462 at [105]; T780:27 - T781:3 (Jeans).
[1285] T947:29-37 (Dobbin); Exhibit RC0084a DTT.002.0001.6479.
[1286] T948:1-5 (Dobbin).
[1287] Exh bit RC0062n INI.0004.0001.0709.
[1288] Exh bit RC0062n INI.0004.0001.0709 at appendices B, C and E; T784:30-47 (Jeans).
[1289] Exh bit RC0062n INI.0004.0001.0709 at appendix F; T785:9-37; T859:45 - T860:7 (Jeans).
[1290] Exh bit RC0062n INI.0004.0001.0709 at appendix F; T785:9 - T786:37 (Jeans).
[1291] T787:34-36 (Jeans).
[1292] T788:7-9; T786:47 - T787:1; T787:34-36 (Jeans).

3.19 Notwithstanding the provisional nature of Initialism's review, Mr Neil Jeans did agree with the proposition that, as concerns the non-return of funds deposited in contravention of Crown's new policies, it was unlikely (but possible) that they were returned.[1293]

3.20 By reason of Crown's non-responsiveness to Initialism's provisional work, the final results of this Initialism work is not available to the Commission.

Deloitte results

3.21 Deloitte's Phase 1 controls assessment – as to design effectiveness - concluded that the design of the patron account controls was aligned with industry practice and effective in addressing cash structuring and cuckoo smurfing.[1294]

3.22 However, Deloitte also concluded that the patron account controls:

(a) are not yet sufficiently mature to be effective on a sustainable basis;[1295] and

(b) needed significant enhancement from a design perspective.[1296]

3.23 In her oral evidence to the Commission, Lisa Dobbin agreed that Deloitte had "serious concerns" about the designs of those controls.[1297] Certain weaknesses in the design and sustainability of the controls are set out in the Deloitte Phase 1 Report (which is subject to a non-publication order) and the oral evidence of Ms Dobbin given in closed hearing.[1298]

3.24 At various parts of the Deloitte Phase 1 report, Deloitte refers to the maturity of the control process, and the maturity of different casinos around the world.[1299] When questioned on comparative maturity, Lisa Dobbin's evidence was that Crown's control framework was less mature than the most mature,[1300] and "*in the ball park, if you like, kind of average*".[1301]

3.25 Plainly, there is an immaturity demonstrated by the fact that the prohibitions on cash deposits, third party deposits and money remitter deposits were only introduced in late 2020, in the context where Crown has been running the casino since 1994.

3.26 Deloitte's Phase 1 controls assessment – as to operational effectiveness – concluded that the process followed by Crown staff in accepting deposits was largely in line with policy.[1302]

McGrathNicol

3.27 Deloitte's findings are broadly backed-up by the McGrathNicol assessment, which found that if effectively implemented, Crown's new Patron Account Controls will prevent and deter certain types of money laundering; but that they had the hallmarks of being implemented at speed and in an ad hoc manner; and are immature, manual and at risk of being unsustainable.[1303]

Observations as to Crown's UAR process

3.28 As part of Deloitte's control assessment, Deloitte also looked at Crown's UAR (Unusual Activity Report) processes and identified a number of deficiencies in that process.[1304]

[1293] T787:3-16 (Jeans).
[1294] T956:29-39 (Dobbin - closed hearing).
[1295] T957:6-10 (Dobbin - closed hearing).
[1296] T957:12-15 (Dobbin).
[1297] T957:18-22 (Dobbin).
[1298] T957:28-30; T958:4-38; T959:27-30; T959:32-39; T959:37-39; T960:14-20 (Dobbin).
[1299] Exhibit RC0084e DTT.010.0002.0008 at, for example, .0008.
[1300] T962:17 (Dobbin).
[1301] T962:20-21 (Dobbin).
[1302] Exhibit RC0084e DTT.010.0002.0008 at .0039.
[1303] T3875:10-32 (McKern).
[1304] T968:22-30; T969:29-35; T971:28-31;T971:44-46; T972:1-3; T972:5-13 (Dobbin).

Incidental observations

3.29 In the course of performing the Phase 1 Assessment of Patron Account Controls, Deloitte made a number of other incidental observations, for example:

(a) training was largely "*on-the-job*";[1305]

(b) there was a lack of formal or consistent documentation in some cases;[1306] and

(c) there was an inconsistency in the way controls were applied in some cases.[1307]

3.30 It is expected that these matters will be addressed by Crown in its action plan in response to the Deloitte Phase 1 report recommendations.

Scale of the task ahead

3.31 The 42-page Deloitte Assessment of Crown's Response to Deloitte's Patron Account Controls illustrates the large scope of work which Crown must undertake in order to implement Deloitte's recommendations.[1308] Lisa Dobbin agreed that "*there is a lot to do*", that it would take very many months;[1309] notwithstanding that this was "*a very small part of the overall AML program*".[1310] Ms Dobbin estimated that it might take six months before the processes were bedded down.[1311]

3.32 Deloitte's assessment of Crown's response to the Deloitte recommendations:[1312]

(a) assumes that the implementation is delivered effectively and to a high standard;

(b) was an assessment as to the words on the paper; and

(c) did not evaluate the capability of the staff who will implement the reforms.

Differences between the Deloitte and Initialism results

3.33 By contrast with Initialism's work (which only reached draft stage), Deloitte's analysis: [1313]

(a) found no cash deposits over the period under analysis; and

(b) found no third-party transfers (including remitters) that were not refunded.

3.34 It is not known whether these differences are a function of the Initialism report being incomplete. Initialism was not asked to finalise the report.[1314] Deloitte were not provided with Initialism's draft report.[1315]

Conclusion

3.35 Crown has introduced Patron Account controls in response to the revelations of money laundering behaviour on its Patron Accounts. Whilst those controls are presently immature, it is expected that with some significant further work, those controls will be effective and become embedded.

4 Present state of preparedness

4.1 The next part of these submissions looks beyond money laundering on Crown's accounts and examines Crown's present state of preparedness to counter money laundering at its

[1305] T972:29-32 (Dobbin).
[1306] T972:34-37 (Dobbin).
[1307] T972:39-43 (Dobbin).
[1308] Exhibit RC0084f DTT.010.0002.0007.
[1309] T974:6-23 (Dobbin).
[1310] T975:21-22 (Dobbin).
[1311] T977:30 - T978:7 (Dobbin).
[1312] T976:21-42 (Dobbin).
[1313] T982:18-29 (Dobbin).
[1314] T784:8-11 (Jeans).
[1315] T973:7-15 (Dobbin).

casinos generally. In this section, we examine Crown's plans for future remediation of its AML process and systems; the likely success or otherwise of those plans; and the question of how long it may take.

Crown's present state

4.2 In respect of Crown's present state of preparedness, the Commission has heard evidence from:

(a) Steve Blackburn;

(b) Nick Stokes;

(c) Promontory; and

(d) McGrathNicol.

4.3 As to individual aspects of Crown's present program, the Commission has heard evidence from:

(a) Deloitte; and

(b) Initialism.

4.4 The evidence from these different sources is broadly consistent. The preponderance of evidence is that Crown has significant, current vulnerabilities to financial crime and only a basic or preliminary state of preparedness to counter money laundering and financial crime generally.

4.5 Of particular note, Steve Blackburn's assessment is that Crown is at a 'foundational level' or 'early state of maturity' in respect of the management of financial crime risk.[1316] McGrathNicol's assessment is that if Crown's overall financial crime maturity is 'foundational', it is only "barely and recently so".[1317]

4.6 We set out below short summaries of the evidence from each of these sources. In some instances, detailing the evidence would involve revealing Crown's present vulnerabilities to money laundering. Non-publications orders have been made over specific evidence on the basis that publication of that evidence may give rise to a risk of exploitation by those seeking to launder money through Crown's casinos. Accordingly, the summaries do not descend into detail.

Steven Blackburn

4.7 As noted above, Mr Blackburn's assessment is that Crown is at a 'foundational level' or 'early state of maturity' in respect of the management of financial crime risk.[1318] Mr Blackburn's evidence is that by assessing the overall maturity of Crown's financial crime program as foundational, he means that it has a compliant Joint AML/CTF Program; most processes are documented; foundational resources and capability are in place; largely manual processes are deployed; and basic controls and systems are operating.[1319]

4.8 Mr Blackburn's evidence is that of the constituent elements of the overall financial crime program, the majority of elements are foundational with a small number of elements at either an initial stage or transitioning to foundational.[1320]

[1316] Exhibit RC0310 CRW.998.001.0177 at [26]; RC0311a CRW.512.081.1750 at .1751-.1753.
[1317] Exhibit RC0465 MGN.0001.0001.0001 at 10.
[1318] Exhibit RC0310 CRW.998.001.0177 at [26]; RC0311a CRW.512.081.1750 at .1751-.1753.
[1319] Exhibit RC0311 CRW.998.001.0177 at [8].
[1320] Exhibit RC0311 CRW.998.001.0177 at [9].

Nick Stokes

4.9 Nick Stokes' evidence is that Crown has the foundations of a robust framework from an AML/CTF control perspective.[1321] His evidence to the Commission was that there is presently absent other AML framework matters and tools which operational staff think should exist within Crown.[1322]

Promontory

4.10 Promontory's work for Crown has involved two phases. Phase One was a vulnerability assessment looking at Crown's vulnerability to AML/CTF typologies. Phase Two was a forward-looking assessment of the capabilities that Crown will need in order to maintain an effective AML/CTF compliance program.[1323]

4.11 Promontory's Phase One report provides a detailed assessment of Crown's present vulnerabilities to financial crime.[1324] On any reading, it is a sobering and concerning evaluation and itemisation of Crown's current vulnerabilities. The report contains a multitude of recommendations as to how Crown best address those vulnerabilities and improve its policies, processes and systems.

4.12 Some of the recommendations are common sense measures in respect of commonly accepted typologies.[1325] The fact that those measures were not in place at the time of Promontory's evaluation, calls into serious question the existence (at that time at least) of any will or desire, alternatively sufficient resources, to counter money laundering at Crown.

4.13 Mr Carmichael's assessment as to maturity is that in respect of the areas identified in the Promontory's Phase One report, there are indications of controls being only partially effective and requiring attention.[1326] When asked whether there were any aspects of Crown's overall AML control framework which could be described as 'mature' or ; 'optimal', the most that Mr Carmichael could say was that some individual elements were 'consistent with industry practice'.[1327] Similarly, McGrathNicol observe that no elements of the financial crime eco-system were assessed by Mr Blackburn has being 'optimal', meaning fully operational, robust and implemented efficiently.[1328]

4.14 Of particular note is the additional advice given by Promontory to Crown. That advice is set out at section 4.5 of the Phase One report. Promontory noted that Crown's AML/CTF control environment was undergoing a period of significant change and enhancement. The advice provided by Promontory, based on experience working with organisations implementing major changes, is that there are some fundament elements required for effective and sustained transformation. Based on the materials Promontory were provided, two of those elements were under-developed at Crown (a transformation strategy and a change management process).[1329] The risks of proceeding with change without those two elements included inefficiencies, ineffectiveness, introducing new problems, data loss and the loss of process integrity.[1330]

4.15 Promontory's Phase Two work for Crown is described in a draft report dated 20 June 2021 titled Strategic Capability Assessment.[1331] Rather than being a score card as to Crown's

[1321] T444:11-15 (Stokes).
[1322] T444:20-30 (Stokes).
[1323] Exhibit RC0099 PROM.0000.0005.0001 at [11].
[1324] Exhibit RC0100 PROM.0001.0036.0003.
[1325] See for example the measures concerning identification procedures and verification. See also T1035:16-38 (Carmichael).
[1326] T1034:20-27 (Carmichael).
[1327] T1034:29-46 (Carmichael).
[1328] Exhibit RC0465 MGN.0001.0001.0001 at 9.3.8.
[1329] Exhibit RC0100 PROM.0001.0036.0003 at 4.5.
[1330] Exhibit RC0100 PROM.0001.0036.0003 at 4.5.1.
[1331] RC0397 PROM.0001.0037.0001.

present capability, the Phase Two work has focused on providing a possible target operating model for Crown.[1332] The contents of the report illustrate just how far Crown has to travel before it reaches a target state on AML and financial crime.

McGrath Nicol

4.16 McGrathNicol's investigations and analysis found that Crown's approach to management of ML/TF risk is a 'work in progress' and is far less advanced than could reasonably be expected of an entity which has been providing gaming services for some 30 years and subject to obligations to operate a risk-based AML/CTF Program to mitigate and manage risk for some 15 years.[1333]

4.17 Referring to Mr Blackburn's 'foundational' assessment, McGrathNicol's view is that if Crown's financial crime program is foundational, it is "only barely and recently so".[1334]

4.18 McGrathNicol's work was very significantly informed by a series of interviews, workshops and surveys of Crown staff, ranging from 'on the floor' staff to senior managers and those in between. McGrathNicol's staff survey, conducted in June 2021, indicates that Crown employees are of the view that Crown has made progress with AML.[1335] In particular:

(a) the proportion of respondents who assess the likelihood of money laundering occurring at Crown as 'Highly or Extremely Likely' (now as compared to pre-covid) has almost halved to 23%; and

(b) the proportion of respondents who consider it 'Very Unlikely or Unlikely' has doubled to almost 50%.[1336]

4.19 Despite the improvement suggested by these results, it remains of concern that almost one in four of the staff surveyed assess the likelihood of money laundering occurring at Crown as either highly or extremely likely.

Deloitte

4.20 Deloitte's Phase 1 work on Patron Account Controls is discussed at paragraphs 3.21 to 3.26 above and therefore is not repeated here.

Initialism

4.21 Neil Jeans' evidence, and in particular, the June 2021 Transaction Monitoring Review,[1337] provides evidence of Crown's present state in respect of the discrete area of transaction monitoring. In summary, The Initialism Transaction Monitoring Review found that Crown is complying with its statutory monitoring and reporting obligations.[1338] The Initialism review also found that Crown has refined and evolved its transaction monitoring program to address the findings of Initialism's review in 2019 and that since Initialism's 2019 review, Crown has moved from largely relying on the manual review of system-generated reports to a blend of manual and automated monitoring.[1339]

4.22 Insofar as Crown's transaction monitoring program still relies on manual monitoring Mr Jeans agreed that the risks of manual monitoring included human error, lack of training,

[1332] T1037:36 - T1038:10 (Carmichael).
[1333] Exh bit RC0465 MGN.0001.0001.0001 at .9.
[1334] Exh bit RC0465 MGN.0001.0001.0001 at .10.
[1335] Exh bit RC0465 MGN.0001.0001.0001 at .9.
[1336] Exh bit RC0465 MGN.0001.0001.0001 at .9.
[1337] Exh bit RC1351 CRW.512.188.0001.
[1338] Ibid CRW.512.188.0001 at 0004-0005.
[1339] Ibid CRW.512.188.0001 at 0005.

staff shortage and susceptibility to a culture which did not prioritise compliance or anti-money laundering.[1340]

4.23 The Initialism review also revealed that Crown's automated transaction monitoring system sources data from Crown's SYCO system, which itself is in part dependent on the manual input of data. Initialism observed that the manual input of data is both central to Crown's operations and a significant vulnerability of Crown's transaction monitoring process.[1341]

Crown's future plans

4.24 Crown future plans for an uplift of its AML capability are set out in two documents prepared by Steve Blackburn:

(a) first, a Financial Crime & Compliance Board Pack dated 24 May 2021;[1342] and

(b) second, a memo dated 7 June 2021 setting out proposed actions and timeframe for implementation in response to the Deloitte Phase 1 report and the Promontory Vulnerability Assessment.[1343]

4.25 The Financial Crime & Compliance Board Pack set out the details of Mr Blackburn's assessment of the current state of maturity of Crown's financial crime and compliance programs. It also sets out his proposals for enhancing and uplifting those programs through the Financial Crime and Compliance Change Program (**the FCCCP**).

4.26 The FCCCP plan is impressive in its scope and ambition. McGrathNicol has reviewed the FCCCP plan and concludes that it is comprehensive and appropriately prioritised.[1344]

How long will it take?

4.27 The Commission heard a range of evidence as to how long it will take Crown to uplift its AML controls.

4.28 For example, Lisa Dobbin, speaking only of the reforms recommended in the Deloitte Phase 1 report concerning Patron Account controls, agreed that there was a lot to do and that it would take months to implement.[1345] In terms of assessing whether the reforms were working or not, Ms Dobbin's assessment that it would take a further 6-12 months from the time the reforms went live, to test and determine whether they were working properly.[1346]

4.29 Alex Carmichael, speaking about Crown's broader control framework, gave evidence as follows:[1347] (emphasis added)

> *Q.* *Mr Carmichael, if Crown* were to implement every single one of the implementations you've set out in the phase 1 report, how long do you estimate it would take them to implement those recommendations?
>
> *A.* *That's a difficult question. I think there are some recommendations that would be implementable very quickly. But for example, the transaction monitoring one I think will take some time. It is not as easy as defining the exact place to be. We m*ade reference to that particular recommendation, to the need to have a proper framework which they can put in place right away, but then there is an evolutionary process to make sure that the scenarios are

[1340] T826:40 - T827:14 (Jeans).
[1341] T827:39 - T828:27 (Jeans).
[1342] Exhibit RC0311a CRW.512.081.1750. Further details are set out in Mr Blackburn's third witness statement: Exh bit RC0311 CRW.998.001.0414 at [14].
[1343] Exhibit RC0311g CRW.512.112.0001.
[1344] Exhibit RC0465 MGN.0001.0001.0001 at .11.
[1345] T974:2-23 (Dobbin).
[1346] T977:30 - T978:7 (Dobbin). As to Crown's progress on implementing the reforms, Mr Blackburn has reported to the Crown Resorts board that of the 29 actions items Crown devised to address the Deloitte recommendations, 16 have been completed, and 12 are due to be completed between the end of June and November 2021: Exhibit RC0311g CRW.512.112.0001.
[1347] T1036:27 - T1037:4 (Carmichael).

actually performing as expected, identifying the right kinds of information, and that iterative process will take some time, and it is difficult to say exactly how long before they are considered to be completely effective.

Q. *You've used the phrase* "some time"; does that mean it is a matter of months or years?

A. *It's my experience with having performed remediation at major global financial institutions around the world that it is quite possible that these --- **some of these will take years**. But, again, it depends on where you set the bar. In order t*o take action, they should be able to take action reasonably quickly.

4.30 Mr Blackburn, Crown's recently appointed Group Chief Compliance and Financial Crime Officer, has not forecast how long he thinks it will take to deliver the FCCCP.[1348]

4.31 Rather he has set an aspirational date of **31 December 2022** to deliver the target maturity state, with several outcomes delivered prior to that date.[1349] Other documents reveal some targets dates stretching into **2023** where the reforms require technology or systems changes.[1350] In respect of reforms requiring technology, McGrathNicol observe that the financial crime projects involved are at a very preliminary stage and are not yet scoped or costed.[1351]

4.32 Finally, McGrathNicol consider that Crown is at the early stages of an uplift; that there is a significant amount of work yet to do;[1352] and that there is 'considerable risk' associated with achieving an advanced stage of maturity in the proposed timeframe, because of the ambitious nature of the target and the dependencies and risks (which are discussed below).[1353]

4.33 In the circumstances, by reason of:

(a) the pending nature of the financial crime reforms;

(b) Crown's present state of maturity; and

(c) the importance of a strong and effective financial crime program to avoid criminal exploitation of the operations of the casino;

it is open to the Commission to find, on this basis alone, that Crown Melbourne is not suitable to continue to hold the casino licence.

Likely success of the plans

Key risks

4.34 McGrathNicol's assessment is that there are many risks to successful implementation of Crown's FCCCP. It assesses the critical risks as being funding, technology and people.[1354]

4.35 As to funding, McGrathNicol's evidence was that funding was a key dependency but within Crown's means and not a high risk issue.[1355] Further, Mr Blackburn said that he did not

[1348] See T3011:2-5 (Blackburn).
[1349] Exhibit RC0311a CRW.512.081.1750 at .1751.
[1350] See for example Exh bit RC0311g CRW.512.112.0001 at .0002. See also Exhibit RC0311 CRW.998.001.0414 at [15]; Exhibit RC0311g CRW.512.112.0001 at .0034 and .0035. See also T3013:26-40 (Blackburn).
[1351] Exhibit RC0465 MGN.0001.0001.0001 at .11.
[1352] T3876:35-47 (McKern).
[1353] Exhibit RC0465 MGN.0001.0001.0001 at .79-80.
[1354] Exhibit RC0465 MGN.0001.0001.0001 at .11.
[1355] T3886:38-T3887:7 (McKern).

receive any push-back in respect of his 'budget ask' to double the size of the financial crime and compliance team.[1356]

4.36 As to technology, McGrathNicol observes that there are presently unbudgeted FCCCP related IT requirements; and that there are several other major IT projects planned for the same period as the FCCCP, some of which will align and some of which may compete with the FCCCP.[1357]

4.37 As to people, McGrathNicol observes that a key dependency is attracting skilled employees in significant numbers, absorbing them and having them quickly scale the learning curve, noting that they are unlikely to bring casino experience.[1358] On this point, Mr Blackburn told the Commission that he was encouraged by the overwhelming response to his jobs postings and that he expects to have at least all of the critical roles filled by no later than the end of September.[1359]

4.38 Steve Blackburn has identified that Crown's AML reforms are dependent on:

(a) sustained funding, including further material and ongoing investment in capacity, capability and technology, for the longevity of the program;[1360]

(b) the commitment, engagement and support of the 'whole organisation' – because proposed changes will have implications for other Crown functions including Technology, Operations, Finance, Surveillance & Security; Procurement and Human Resources;[1361]

(c) the recruitment of new financial crime permanent employees;[1362] and

(d) the commitment of the Crown Group's leadership team and board of directors.[1363]

4.39 It will be observed that McGrathNicol's and Mr Blackburn's assessments of the key dependencies are not dissimilar.

4.40 Overall, McGrathNicol's assessment is that the FCCCP will give rise to a significant change in Crown's performance in AML/CTF over the ensuing 18 months. This is on the basis that McGrathNicol considers that:[1364]

(a) Mr Blackburn has the capability track record and standing to lead such an ambitious program;

(b) the FCCCP is comprehensive and appropriately prioritised;

(c) there is currently a rare window of opportunity to embed new processes and practices, including those which may be challenging to customers, in an environment of lower patronage;

(d) employees in the first line of defence are ready, willing and able to uphold the rules;

(e) overall, employees had a real concern to 'get this right'.[1365]

[1356] T3011:21-31 (Blackburn).
[1357] Exhibit RC0465 MGN.0001.0001.0001 at .79.
[1358] Exhibit RC0465 MGN.0001.0001.0001 at .11.
[1359] T3012:29-32; T3013:16-18 (Blackburn).
[1360] Exhibit RC0311 CRW.998.001.0414 at [6], [15]; Exh bit RC0311b CRW.512.081.1791 at .1792.
[1361] Exhibit RC0311b CRW.512.081.1791 at .1792.
[1362] Exhibit RC0311 CRW.998.001.0414 at [16]; Exhibit RC0311a CRW.512.081.1750 at .1761-.1764.
[1363] Exhibit RC0311 CRW.998.001.0414 at [15].
[1364] Exhibit RC0311 CRW.998.001.0414 at .11.
[1365] Exhibit RC0465 MGN.0001.0001.0001 at .11-.12.

Sustainability of reform

4.41 One question is whether the reform program will be sustained when the Crown is no longer subject to scrutiny by Royal Commissions and the like.

4.42 On this point, we note McGrathNicol's finding that Crown's journey towards a modern and effective AML/CTF regime was seeded in or about 2017 but that little progress was made until around September/October 2020.[1366] That was the time that the Bergin Inquiry was uncovering evidence of behaviours and transactions indicative of money laundering.[1367]

4.43 McGrathNicol further refers to Mr Blackburn's observations as to the timing and significant investment by Crown and notes that the investment occurred subsequent to the appointment of Ms Bergin SC to conduct her Inquiry.[1368]

4.44 Similarly, when questioned by Counsel Assisting, to the extent that Steve Blackburn was able to refer to AML reforms which pre-dated his time at Crown, he agreed that most coincided with the duration of the Bergin Inquiry.[1369]

4.45 Consistent with the above, Nick Stokes, when speaking of the difficulties he experienced in obtaining more AML staff[1370] said that he did not start getting traction until there was both a change in personnel and the ILGA Inquiry.[1371] He also stated that the ILGA Inquiry and the AUSTRAC enforcement action 'really kicked off in people's minds that we need to change and think about risks differently."[1372]

4.46 This evidence points to a conclusion that scrutiny by powerful external bodies has provoked and accelerated change and reform at Crown. It also demonstrates that such reform was not on the agenda and not supported prior to that external scrutiny. This give cause for concern as to the sustainability of reform at Crown.

Commercial pressure

4.47 One risk not raised by either McGrathNicol or Mr Blackburn is the risk of commercial pressure to reduce AML scrutiny of transactions within the casino. McGrathNicol's employee surveys and focus groups revealed at least some customer dissatisfaction with some of Crown's new AML reforms.

4.48 For example, McGrathNicol received feedback from Crown employees about the newly introduced Source of Funds policy which requires customers to complete a declaration explaining the source of the funds they have presented in cash which exceeds $25,000 on any calendar day. The feedback from employees through the focus groups is that that two out of three cash transactions which meet the threshold do not proceed either because the customers prefer to walk away or the declaration doesn't meet requirements.[1373] This raises the prospect of further commercial pressure counter-acting the inclination to improved AML processes and policies. When asked about the matter, Robyn McKern of McGrathNicol noted that such commercial pressure applies to all AML controls and needs to be managed with strong leadership and commitment.[1374]

[1366] Exh bit RC0465 MGN.0001.0001.0001 at .9.
[1367] Exh bit RC0465 MGN.0001.0001.0001 at .9.
[1368] Exh bit RC0465 MGN.0001.0001.0001 at .10.
[1369] T2964:23-47 (Blackburn).
[1370] T380:2-10 (Stokes).
[1371] T380:16-39 (Stokes).
[1372] T385:45 - T386:6 (Stokes).
[1373] Exh bit RC0465 MGN.0001.0001.0001 at .19 and 8.5.11.
[1374] T3888:1-14 (McKern).

5 Other observations

5.1 This section sets out other relevant observations about Crown made during the course of the evidence on money laundering, relevant to Crown Melbourne's suitability to continue to hold the casino licence

No root cause analysis

5.2 One area of concern, not unique to the money laundering evidence, has to do with Crown's failure to conduct a root cause analysis - in particular Crown's failure to follow through with the proposed Initialism root cause analysis into the non-escalation of potential structuring on the Southbank and Riverbank accounts.

5.3 That issue is also known as the aggregation problem. It was described by Mr Jeans as follows:[1375]

> *This was a key issue that was identified by the Bergin Inquiry whereby transactions that had been received by cash into the bank accounts were not actually being recorded as cash or being recorded in an exact way within the SYCO system, the Crown system. So, for example, if I had received five payments of under $10,000, those were being rounded up and a single transaction was being recorded by the cage and/or the staff at Crown. As a result, the threshold transactions --- there was one threshold transaction being reported but effectively Crown weren't in a position, when they undertook their transaction monitoring, to be able to identify that this was a structured payment, potentially indicative of money laundering.*

5.4 Conducting a root-cause analysis was something which Initialism was tasked with completing.[1376] It was also something which Crown instructed AUSTRAC that it would undertake.[1377] Crown specified to AUSTRAC that it would be done 'with the involvement of Mr Jeans'.[1378]

5.5 Mr Jeans gave evidence that it would be fundamental for a root cause analysis to be undertaken to understand what went wrong.[1379] He also agreed that in the absence of a root cause analysis, there is a real danger that the problems will be on-going.[1380]

5.6 Ultimately, Initialism did not conduct the root cause analysis.[1381] Instead, in October 2020, Crown conducted an internal audit assessment of the Southbank and Riverbank account transaction monitoring.[1382] The internal audit resulted in a cursory three-page draft assessment with only high-level exploration of how the problem came about and, with further high-level only observations and recommendations.

5.7 In re-examination of Mr Jeans, Mr Jeans was taken to Crown's recent controls changes to ban cash deposits and third-party deposits and the proposition was put to him that, assuming those controls were properly implemented, there was no continuing real danger by reason of not having conducted a root cause analysis.[1383] Mr Jeans' response was qualified both as to the assumption and the consequence. He responded that assuming [the controls] were implemented, it certainly would have reduced the danger.[1384] As is

[1375] T750:22-43 (Jeans). The issue is also described by Crown in a letter to AUSTRAC dated 20 August 2020: Exh bit RC0067 CRL.768.002.3501.
[1376] Exhibit RC0066 INI.0001.0001.2917; Exhibit RC0065 INI.0001.0001.2424.
[1377] Exhibit RC0067 CRL.768.002.3501 at .3503.
[1378] Exhibit RC0401 CRW.001.001.8593 at .8596.
[1379] T755:38-45 (Jeans).
[1380] T755:47 - T756:30 (Jeans).
[1381] T754:38-44 (Jeans).
[1382] Exhibit RC0744 CRW.510.058.0006.
[1383] T840:29 - T844:8 (Jeans).
[1384] T844:7-8 (Jeans).

discussed above, at paragraphs 3.21 to 3.26 of these submissions, the evidence is that the changes are effective in addressing cash structuring and cuckoo smurfing,[1385] but not yet sufficiently mature to be effective on a sustainable basis[1386] and still require significant enhancement from a design perspective.[1387]

Use of technology

5.8 The evidence examined by the Commission relevant to anti-money laundering and technology leads to two observations, relevant to both suitability and any pathway to suitability.

5.9 First, it is evident that Crown has not exploited its existing technology for anti-money laundering purposes. Although Crown has substantial technology infrastructure, that infrastructure has not been actively used to detect money laundering.

5.10 McGrathNicol's observation is that Crown has substantial, sophisticated technology infrastructure and capacity, including an IT team of some 180 FTE.[1388] McGrathNicol further observe that:

(a) the technology is visible on the casino floor in the form of security, surveillance, automated gaming and data capture via membership cards; but that

(b) the capacity has been developed for and directed towards priorities other than AML/CTF and to the extent that it supports AML/CTF functions, it has been more by coincidence than design.[1389]

5.11 McGrathNicol identified those other priorities as being surveillance and the mechanism of Crown's gaming.[1390]

5.12 Steve Blackburn has also remarked that Crown's surveillance program appears 'property centric'.[1391] The non-exploitation of existing technology for AML purposes reflects poorly on Crown's priorities.

5.13 Second, it is equally evident that technology is a critical partner in the fight against financial crime. Promontory's Phase Two report for Crown contains a number of recommendations regarding Crown's possible future use of technology as an AML control.[1392]

Projects which examine only part of the problem or issue

5.14 Another feature of the evidence which emerged on money laundering was a tendency on the part of Crown to instruct external parties to examine only part of the problem or issue. An obvious example is the Grant Thornton and Initialism reviews into Southbank and Riverbank discussed above.

5.15 A second example was Crown's engagement of Initialism in October 2020 to review the design adequacy but not also the operational effectiveness of Crown's AML/CTF program.[1393]

5.16 A third example is the Initialism input into the VCGLR's 6th Review Recommendation 17 which is discussed elsewhere in these submissions. That work was described by Neil

[1385] T956:29-37 (Dobbin).
[1386] T957:6-10 (Dobbin).
[1387] T957:12-15 (Dobbin).
[1388] Exhibit RC0465 MGN.0001.0001.0001 at .74; T3886:6-7 (McKern).
[1389] Exhibit RC0465 MGN.0001.0001.0001 at .74. Exceptions identified by McGrathNicol include Sentinel and the investigations into digital verification: T3886:19-22 (McKern).
[1390] T3886:7-9 (McKern).
[1391] Exhibit RC0311a CRW.512.081.1750 at .1776.
[1392] Exhibit RC0397 PROM.0001.0037.0001.
[1393] T770:44 - T771:25 (Jeans).

Jeans as 'a very limited piece of work'[1394]; and he agreed with the proposition that the Initialism letter of opinion was not a proper response to Recommendation 17, which Mr Jeans attributed to the limited scope of work he was requested to undertake.[1395] Mr Jeans further agreed with the proposition that Crown was 'borrowing his reputation' to satisfy one of the VCGLR's recommendations.[1396]

5.17 A fourth example is the Initialism 2018/2019 transaction monitoring review[1397] which was limited to the design adequacy of the program[1398] and on a sample basis.[1399]

5.18 A fifth example is the Initialism 2021 Transaction Monitoring Review which did not include analysis of what happens in SYCO,[1400] notwithstanding that SYCO acts as the single source of truth for financial transactions related to gaming activity and that Crown's automated transaction monitoring program sources data from the SYCO system.[1401]

5.19 A sixth example is the IFTI review which Initialism was instructed to undertake in December 2020 and January 2021.[1402] Initialism was instructed to look at the completeness of the IFTI reports submitted,[1403] but not:

(a) whether the IFTI reports were submitted within the statutory time frame of 10 days;[1404]

(b) whether there were any international funds transfer instructions that were not reported to AUSTRAC;[1405]

(c) to conduct an end-to-end implementation review of Crown's IFTI reporting.[1406]

5.20 As to the IFTI Review, Mr Jeans agreed with the proposition that that it was not a very comprehensive review. Mr Jeans' evidence was that it was a 'very limited review'.[1407] He stated that the vast majority of IFTI reviews which he had done in the past had been a 'front and back' review with potential recommendations for improvement.[1408]

5.21 These matters are examples of what, it is open to conclude, is a pattern of behaviour, whereby Crown instructs external experts with confined terms of reference which have the effect of understating or minimising matters which reflect poorly on Crown.

[1394] T804:45-46 (Jeans).
[1395] T807:44-T808:12 (Jeans).
[1396] T808:14-22 (Jeans).
[1397] Exh bit RC0062b INI.0004.0001.0008.
[1398] T813:17-21 (Jeans).
[1399] T813:23-33 (Jeans).
[1400] T836:26-27 (Jeans).
[1401] T827:39 - T828:1 (Jeans).
[1402] Exh bit RC0062m INI.0004.0001.0320 at [104].
[1403] T794:6-7 (Jeans).
[1404] T797:31-35; 41-45 (Jeans).
[1405] T798:16-35 (Jeans).
[1406] T798:5-9 (Jeans).
[1407] T798:37-46 (Jeans).
[1408] T799:30-32 (Jeans).

9 Operation of Overseas Office in Malaysia by Crown

1 Introduction

1.1 Whether Crown Melbourne complies with the law and its legal obligations is a matter relevant to its suitability.[1409] Also relevant is whether it has sufficient business ability to establish and maintain a successful casino.[1410] A "successful casino" is a casino that complies with its obligations and has in place appropriate structures and processes to meet its compliance requirements.

1.2 A number of case studies examined in the hearings showed that Crown had a practice of analysing its activities in terms of "risk" instead of in terms of what was legal/permitted or compliant, with the result that non-compliance and dubious practices were permitted and tolerated. The establishment and operation of its overseas offices, particularly in Malaysia, and the China UnionPay practice are examples of this. The China UnionPay issue is dealt with in Section 7, Hotel transactions/China Union Pay. These matters bear on Crown's suitability and prospects for reform.

1.3 This section is structured as follows:

(a) the evidence relating to Crown's overseas offices and, in particular, the Malaysian office;

(b) analysis of the evidence and its impact on Crown's suitability.

2 Evidence relating to Crown's Malaysian Office

2.1 The Commission heard evidence from four witnesses relevant to the issue of Crown's overseas operations after the China arrests:

(a) Jan Williamson, General Manager of Legal at Crown Melbourne;

(b) Richard Douglas Murphy, a partner at the law firm Minter Ellison;

(c) Sarah Jane Halton, non-executive director of Crown Resorts; and

(d) Alan Frank McGregor, Chief Financial Officer of Crown Melbourne.

2.2 The Commission has also received documents in relation to this issue pursuant to Notices to Produce issued to Crown. Below is a summary of the evidence and documents.

2.3 After 19 Crown staff were arrested in China in October 2016, Crown sought to review its overseas operations to mitigate the risk of detention in other locations.[1411]

2.4 As at 22 December 2016, Crown had offices in a number of countries in Asia, including two representative offices in Malaysia operated through its subsidiary company Crown Australia Pty Ltd, one in Kuala Lumpur and another in East Malaysia.[1412]

2.5 On 22 February 2017, Mr Murphy presented to the Crown Resorts Board in relation to the China arrests.[1413] He proposed obtaining legal and strategic advice in relation to the other

[1409] Such matters are relevant to reputation, character and integrity: s 9(2)(a) of the CCA.
[1410] Section 9(2)(e) of the CCA.
[1411] T2835:16-23 (Murphy).
[1412] T2838:13-17 (Murphy).
[1413] T2835:41-44 (Murphy).

centres in which Crown operated in Asia, including Macau, Hong Kong, Singapore, Thailand, Malaysia, Indonesia, Vietnam and Taiwan.[1414]

2.6 In February 2017 Mr Murphy was instructed or assisted in preparing documents to set out a proposed operating model and operating protocols for Crown's overseas offices.[1415]

2.7 On 14 February 2017, Mr Murphy emailed Debra Tegoni, Executive General Manager, Legal and Regulatory Services, Crown Melbourne Ltd, a document entitled *Risk matrix - operational activities offshore*, a preparatory document into which he had input, which was prepared for the purposes of developing the ongoing operating model.[1416] As its title suggests, the focus was on risk.

2.8 In early March 2017, Mr Murphy prepared a summary document relating to various overseas jurisdictions.[1417] On 3 March 2017, Mr Murphy sent a document to Crown entitled *Draft - Proposed operating model for the VIP business*.[1418]

2.9 This document acknowledged that Crown had staff on the ground in Malaysia,[1419] and it stated: Privileged

Privileged

2.10

2.11 In April 2017, Mr Murphy presented to the Crown Resorts Board in relation to the revised operating model for overseas.[1422]

2.12 At its meeting on 27 April 2017, the Board noted, after consultation with various members of the Risk Management Committee, that management had restructured its VIP operating model to establish a regional hub in Hong Kong, close its other Asian offices and develop operating protocols.[1423] Privileged

Privileged Afterwards, Mr Murphy assisted in the development of the VIP operating protocols.[1425]

2.13 Ms Williamson has been an in-house lawyer with Crown since 29 October 2001,[1426] at all relevant times she has been senior legal counsel.[1427] On 1 March 2021, Ms Williamson became General Manager of Legal at Crown.[1428]

2.14 Although offices were closed in March 2017, Ms Williamson said that staff in Malaysia continued to work locally from their own homes.[1429] Those individuals were permitted to keep up their relationships with Malaysian customers but gaming related discussions were required to take place via Hong Kong or out of Australia.[1430] They were meeting with and

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[1414] T2836:13-18 (Murphy).
[1415] T2838:33-37 (Murphy).
[1416] T2838:39-47, T2839:1-35 (Murphy); Exhibit RC0294 Email from Richard Murphy to Debra Tegoni and Michael Neilson, 14 February 2017, MEM.5000.0003.2976; Exhibit RC0295 Draft proposed operating model, n.d., MEM.5000.0003.2977.
[1417] T2843:24-45 (Murphy).
[1418] T2843:47 - T2844:5 (Murphy); Exhibit RC0296 Draft Proposed operating model for VIP business, n.d., MEM.5000.0003.2263.
[1419] T2844:42-46 (Murphy).
[1420] T2848:37-43 (Murphy).
[1421] T2849:1-5 (Murphy).
[1422] T2851:30-34 (Murphy).
[1423] T2852:2-27 (Murphy); Exhibit RC0298 Crown Resorts Board Meeting Minutes, 11 December 2018, CRL.506.007.5589 at .5597; Exhibit RC0299 VIP International Procedures Presentation, 12 April 2017, CRW.510.050.0420.
[1424] Exhibit RC1262 File note of Richard Murphy regarding presentation to CWN Board Meeting, 27 April 2017, MEM.5000.0002.4250 at .4251.
[1425] T2852:29-33 (Murphy).
[1426] Exhibit RC0327 Statement of Jan Williamson, 12 June 2021, CRW.998.001.0433 at .0433 [4].
[1427] T3087:44-46 (Williamson).
[1428] T3088:1-9 (Williamson).
[1429] T3141:30 - T3142:14 (Williamson - closed).
[1430] T3141:39-45 (Williamson - closed).

having non-gaming related discussions with patrons and potential patrons, and promoting Crown as an integrated resort.[1431] See paragraph 2.35 below in relation to 'non-gaming' related discussions.

2.15 In late 2018, Crown decided to reconsider its overseas operations.

2.16 At the Crown Resorts Board meeting on 11 December 2018, the Board noted that management was considering a proposal to reengage local staff in Singapore and Malaysia in non-gaming related meetings.

2.17 In the meeting with the Crown Resorts Board, on 11 December 2018, Mr Murphy told the Board:

> *...local Malaysian staff operating in Malaysia would also appear to be 'low risk' of enforcement action provided that they are careful not to approach customers who have a faith-based objection to gaming.*[1432]

2.18 This advice was derived from strategic advisory firm Hakluyt, and was about enforcement risk, not legal risk.[1433]

2.19 On 7 February 2019, Mr Murphy assisted Barry Felstead, Chief Executive Officer - Australia Resorts, Crown Resorts Limited, in the preparation of a memorandum to the Risk Management Committee in relation to the VIP operating model for Malaysia and Singapore.[1434] Privileged

2.20 Privileged [redacted] The Crown Resorts board approved a similar resolution a short time afterwards, before 8 May 2019.[1440]

2.21 Mr Felstead then prepared a separate proposal in relation to Malaysia for the Risk Management Committee meeting on 8 May 2019.[1441] The background section of Mr Felstead's memorandum noted:[1442]

> *We refer to the "VIP Operating Model - Malaysia and Singapore" paper dated 7 February 2019 that was considered at the Risk Management Committee meeting held on Monday, 11 February 2019. That paper sought approval from the Committee to adjust the approved VIP Operating Model [...] to now permit staff to be based in Malaysia and Singapore [...]*

[1431] T3142:29-37 (Williamson - closed hearing).
[1432] T2865:16-25 (Murphy).
[1433] T2865:42-47 (Murphy); T2866:1-11 (Murphy).
[1434] T2870:36-47 (Murphy); Exhibit RC0301 Crown Resorts Risk Management Committee Meeting Minutes, 11 February 2019, CRW.507.004.0879 at .0890 and .0896.
[1435] T3558:27-45 (Halton).
[1436] T3559:12-15 (Halton); Exhibit RC0428 Crown Resorts Risk Management Committee Meeting Minutes, 11 February 2019, CRL.506.006.5619.
[1437] T3560:1-6 (Halton).
[1438] Exhibit RC1263 Risk Management Committee Meeting Minutes, 25 February 2019, CRL.506.006.5622; T3560:8-15 (Halton).
[1439] Exhibit RC1264 Risk Management Committee Meeting Minutes, 25 February 2019, CRW.507.004.1471 at .1474.
[1440] Exhibit RC0429 Crown Resorts Risk Management Committee Meeting Diligent Pack, 8 May 2019, CRW.507.004.1786 at .1789.
[1441] Exhibit RC0429 Crown Resorts Risk Management Committee Meeting Diligent Pack, 8 May 2019, CRW.507.004.1786 at .1789.
[1442] T3560:17-23 (Halton); Exhibit RC0429 Crown Resorts Risk Management Committee Meeting Diligent Pack, 8 May 2019, CRW.507.004.1786 at .1789-.1791.

The Singapore element of the proposal was separated from the Malaysian element and was recently approved by both the Committee and Crown Resorts Limited Board.

Management has now progressed the Malaysian element [...]

To support the Malaysia Proposal, management has prepared a Risk Assessment [...]

Management advises that the Malaysia Proposal contains a range of existing and enhanced protocols designed to address and reasonably mitigate the risks, with the residual risk rating being LOW, as support [sic] by MinterEllison, Hakluyt and local Malaysian lawyers.[1443]

2.22 The proposal was supported by a letter of advice from Mr Murphy dated 16 April 2019.[1444]

2.23 Privileged

2.24

2.25 The same letter stated:

Privileged

2.26

[1443] T3560-T3563 (Halton); Exhibit RC0429 Crown Resorts Risk Management Committee Meeting Diligent Pack, 8 May 2019, CRW.507.004.1786 at .1789-.1791.
[1444] Exhibit RC1265 Letter from Richard Murphy to Joshua Preston, 16 April 2019, MEM.5000.0002.7837.
[1445] Exhibit RC1265 Letter from Richard Murphy to Joshua Preston, 16 April 2019, MEM.5000.0002.7837 at 7838.
[1446] T2872:30 - T2873:30 (Murphy); see also Exhibit RC1265 Letter from Richard Murphy to Joshua Preston, 16 April 2019, MEM.5000.0002.7837 at .7843.
[1447] T2873:43-47 (Murphy); see also Exhibit RC1265 Letter from Richard Murphy to Joshua Preston, 16 April 2019, MEM.5000.0002.7837 at .7844.

Privileged

2.27 Mr Murphy accepted that if staff conduct in Malaysia, in following the protocols, was interpreted to mean that they were promoting overseas casinos, that there was a risk to staff of being detained in Malaysia.[1449] This was clearly signalled in the legal advice.

2.28 On 15 April 2019, Mr Murphy reviewed a document prepared by Joshua Preston,[1450] in which certain additional controls were proposed for when staff were based in Malaysia. These controls included preventing Privileged
Privileged

2.29 Mr Murphy accepted that the reality of these engagements was to turn wealthy individuals from potential patrons to real patrons.[1452]

2.30 During the relevant period, FTI Consulting were also engaged by MinterEllison to provide monitoring reports relating to gambling and foreign casinos in Singapore, Malaysia and Macau.[1453] The stated purpose of these updates was to stay abreast of the political environment and how that might feed into the way the laws were interpreted and enforced.[1454] One wonders why the monitoring reports were necessary if Crown was complying with the law. However, Mr Murphy explained that he saw it as his role as the external lawyer to Crown to help Crown appreciate what the laws were and how to duly mitigate the risk of Privileged

2.31 Ms Halton is a non-executive director of Crown Resorts Limited, and has been a director of Crown since May 2018.[1456] Ms Halton is the Chair of the Crown Board Risk Management Committee, a position she has held since December 2019, although in practice the role actually commenced in 2020.[1457] Ms Halton gave evidence in relation to the operation of overseas offices by Crown Privileged
Privileged

2.32 Ms Halton was aware that in early 2017, Crown restructured its overseas operations, closing its offices in Asia and creating a regional hub in Hong Kong, and that staff were provided operating procedures while working in Hong Kong and visiting other parts of Asia.[1459]

2.33 Ms Halton was taken to a VIP Operating Model – Risk Assessment Malaysia, which was an attachment to Mr Felstead's memorandum prepared for the Risk Management Committee meeting on 8 May 2019. Privileged
Privileged

[1448] T2874:42 – T2875:14 (Murphy).
[1449] T2879:7-14 (Murphy).
[1450] T2883:27-38 (Murphy); Exhibit RC0303 VIP Operating Model – Risk Assessment Malaysia, n.d., MEM.5001.0003.2698.
[1451] T2884:15-34 (Murphy).
[1452] T2885:39 – T2886:1 (Murphy).
[1453] T2887:13-42 (Murphy).
[1454] T2887:40-42 (Murphy).
[1455] T2888:41 – T2889:2 (Murphy).
[1456] Exhibit RC0427 Statement of Jane Halton, 28 April 2021, CRW.998.001.0152 at .0152 [2].
[1457] T3555:16-24 (Halton).
[1458] T3556:13 - T3557:6 (Halton).
[1459] T3557:8-24 (Halton).
[1460] T3563:10-22 (Halton); Exhibit RC0429 Crown Resorts Risk Management Committee Meeting Diligent Pack, 8 May 2019, CRW.507.004.1786 at .1794.

2.34 Privileged [redacted]

2.35 [redacted]

2.36 Crown's purpose in establishing overseas offices and having staff located overseas must have been to attract patrons to its casino to gamble. Privileged [redacted] Privileged That was precisely the conduct identified in the legal advice as potentially an offence under Malaysian law.

3 Analysis of Evidence and Impact on Suitability

3.1 The evidence heard by the Commission discloses that:

(a) in the wake of the arrest of 19 staff in China in October 2016, Crown sought to continue its overseas operations following a similar "low key" approach;

(b) until redundancies were effected in 2021, Crown maintained staff in Malaysia, who carried out engagement with Crown customers, although Crown Board members sought to ensure that that engagement was confined to low risk activities;

[1461] T3563:1 – T3564:46 (Halton); Exhibit RC0429, Crown Resorts Risk Management Committee Meeting Diligent Pack, 8 May 2019, CRW.507.004.1786 at .1794.
[1462] T3564:33-38 (Halton).
[1463] T3563:28-34 (Halton).
[1464] T3565:3-8 (Halton).
[1465] T3565:20-40 (Halton).
[1466] T3565:20-40 (Halton); T3566:34-43 (Halton).
[1467] T3567:2-7 (Halton).
[1468] T3568:27-35 (Halton).
[1469] T3569:3-7 (Halton).
[1470] T3569:29-42 (Halton).
[1471] T3569:9-34 (Halton).

(c) Privileged

(d)

(e) under Malaysian law, staff found guilty of promoting gambling in Malaysia faced possible penalties of fines or up to five years imprisonment;

(f) the strategies used by Crown in Malaysia were similar to those adopted in China – they emphasised ensuring that staff minimise risk by keeping a low profile, and focused on risk mitigation rather than compliance;

3.2 This approach, despite the lesson that Crown's China detentions offered, was flawed. It placed Crown staff in Malaysia at risk of detention. In the aftermath of its experiences in China, to focus on lowering risk, rather than complying with the law was unacceptable. Malaysian law made promotion of gambling illegal.

3.3 The emphasis by Crown witnesses on promoting the "resort" side of Crown's work unfortunately continued those self-same practices, albeit with more caution, that had been pursued in China.

3.4 Crown casino attracts patrons for the purpose of gambling. By promoting the resort in a manner that sought to avoid ethnic Malay people, Crown demonstrated that it was aware that its activities could be perceived as promoting gambling.

3.5 In late 2020, Crown management commenced a review of its VIP operating protocols overseas. Privileged
Privileged It appears that the "risk" approach to compliance continues.

[1472] Exhibit RC0342 Crown Risk Management Committee Meeting Minutes, 19 November 2020, CRW.507.005.6116 at .6212; Exhibit RC1266 Email chain between Mary Manos, Jan Williamson and Kyle Wombolt, 7 January 2021, CRW.510.050.0715 at .0718.

10 Junkets

1 Introduction

1.1 Junkets were explored in this Commission because they were, until November 2020, a significant part of the casino business.

1.2 Crown's approach to junkets is relevant to suitability in two ways: reputation (by reason of association with organised crime) and whether Crown ensured that it had in place adequate processes to ensure the ongoing probity of junket tour operators (**JTOs).**[1473]

1.3 The Bergin Inquiry established that junkets have exposed Crown Melbourne to money laundering risks and potential for criminal exploitation. Further, AUSTRAC assesses the JTO sector as being subject to a high level of ML/TF vulnerability.

1.4 As set out below:

(a) there is a question whether junkets should be allowed to be part of the casino business;

(b) the current regulatory regime which leaves junkets to be regulated by internal control statements is unsatisfactory and Crown should not be left to its own devices to approve junkets;

(c) if junkets are to be allowed in the future, the legislation should be amended to require junkets or junket tour operators to be licensed or approved by the VCGLR.

2 Junkets overview

2.1 A junket is an arrangement whereby a person or group of people is introduced to a casino operator by a junket organiser or promoter who receives a commission based on the turnover of play in the casino attributable to the persons introduced by the organiser or promoter or otherwise calculated by reference to such play.[1474]

2.2 Arrangements between casinos and JTOs vary. Typically:

(a) the arrangement is between the casino and the JTO;

(b) JTOs identify prospective junket players, and provide "front money" to the players;

(c) players arrive at the casino and are provided with specialised chips to the equivalent value of the front money provided;

(d) at the end of the program, the casino calculates turnover to determine whether the junket won or lost. This also determines the amount of tax payable to the State Government, and the commission payable to the JTO.

2.3 Junkets are either arranged by the JTO, or on their behalf by a junket tour representative (or agent) (**JTR** or **JTA**). In the above arrangements, the casino has no relationship with the JTA or player: only the JTO.

2.4 Junkets were a profitable component of the Melbourne Casino, facilitating gambling by VIP or high wealth players, primarily from other countries. Crown Melbourne made hundreds of millions of dollars in revenue from junkets between 2017 and 2019.[1475]

[1473] Section 9(2)(a) and (e) of the CCA
[1474] CCA, s 3(1).
[1475] Exh bit RC0455 Spreadsheet regarding Junket Operators and Premium Players revenue, n.d., CRW.512.012.3149.

3 Legislative framework

3.1 The objectives of the *CCA* are to establish a system for the licensing, supervision and control of casinos which, among other things, with the aims of ensuring that the management and operation of casinos remains free from criminal influence and exploitation.[1476]

3.2 One way these objectives are achieved is through Crown's legislative obligation to implement approved systems of controls and procedures for the casino.[1477] As part of this obligation, Crown is required to adopt a range of minimum standards and controls in the form of Internal Control Statement/s (**ICS**). ICS are approved by the VCGLR.

3.3 Crown's junket program was regulated through the Internal Control Statement Junket and Premium Player Programs (**Junkets ICS**).[1478]

3.4 Specific requirements in respect of junket probity assessments formed part of the Junkets ICS. It required Crown to "ensure that it has robust processes in place to consider the ongoing probity of its registered Junket Operators, Junket Players and Premium Players".[1479]

3.5 The obligation to ensure probity therefore sits squarely with Crown. This has not always been the case: when the CCA was first implemented, the VCGLR's predecessor was responsible for approving individuals or entities or who organised or promoted junkets at the Casino.

4 Regulator concerns regarding junkets, money laundering and criminal exploitation

4.1 Each of the VCGLR (generally in the Sixth Casino Review[1480] and, specifically, regarding Crown's Junkets ICS) and AUSTRAC (generally, regarding casinos and JTOs) have raised concerns about the risks associated with casinos dealing with JTOs.

4.2 The Commission heard evidence from Mr Jason Cremona, Manager of Licence Management and Audit in the Licensing Division at the VCGLR, which focused on Crown's implementation of the VCGLR's recommendations in the Sixth Casino Review.

4.3 Mr Cremona's statement and evidence focussed on the implementation of Recommendation 17. Mr Cremona's evidence is set out in Section 4, Relationship with the regulator.

4.4 What is relevant to note is that the VCGLR raised a concern with Crown's regulation of junkets through Recommendation 17 of the Sixth Casino Review.

4.5 Recommendation 17 was made in the context of the VCGLR's examination of Crown's compliance regarding AML/CTF. The Sixth Casino Review specifically identifies that: [1481]

(a) Crown Melbourne has:

> *developed and updated its AML/CTF program, established reporting arrangements with AUSTRAC to provide the required reports, implemented customer due diligence procedures, undertaken staff training and undertaken*

[1476] CCA, s 1(a)(i), (ii), 1(b).
[1477] CCA, s 121.
[1478] Exh bit RC0969 Internal Control Statement: Junket and Premium Player Programs version 10, 24 December 2015, DTT.001.0002.0367.
[1479] Exh bit RC0969 Internal Control Statement: Junket and Premium Player Programs version 10, 24 December 2015, DTT.001.0002.0367, cl 2.5.1.
[1480] Exh bit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, COM.0005.0001.0776 at .0917-.0918.
[1481] Exh bit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, COM.0005.0001.0776 at .0913.

> *internal audits in relation to compliance with AML/CTF obligations, among other things, in order to meet its AML/CTF obligations;*

(b) the VCGLR is aware of the significant potential risks of money laundering through casinos, particularly through JTOs. The VCGLR referred to two case studies demonstrating Crown had previously been utilised by individuals to launder money;[1482]

(c) JTOs are vulnerable to exploitation by organised crime to launder money to facilitate the concealment of criminal wealth:

> *The VCGLR then observed that in order to assist in mitigating the risks associated with junkets, Crown's ICS could be strengthened with the inclusion of more robust controls in relation to the identification of individual junket players and their associated gaming transactions when participating in junkets.*[1483]

4.6 In this way, the VCGLR was clear that the risk was associated with the anonymity afforded to the individual players on a junket.

4.7 Through the VCGLR's Recommendation 17, Crown was obliged to consult with AUSTRAC regarding its Junkets ICS. As is set out elsewhere, implementation of that recommendation was challenging.

4.8 The VCGLR's concerns regarding anonymity are entirely consistent with findings later made by AUSTRAC in the AUSTRAC Report.[1484]

4.9 Having drawn on a range of information (including Suspicious Matter Reports submitted by reporting entities, and intelligence and information collected from Australian Commonwealth and State Government agencies, banks and casinos), the AUSTRAC Report noted that the overall money laundering and terrorism financing (ML/TF) risk associated with the JTO sector is high.[1485] This is based on separate assessments of the criminal threat environment, the vulnerabilities present in the sector and the consequences associated with the criminal threats.

4.10 The AUSTRAC Report observed that:[1486]

(a) some JTOs have been exploited, and in some instances infiltrated, by serious and transnational criminal entities;

(b) money laundering through JTOs has been associated with (among other things) the onshore supply of large volumes of cash for unknown purposes, and extensive cash, remittance and gambling-related transactions by JTOs and JTRs through bank accounts;

(c) offsetting arrangements used by JTOs to facilitate the movement of funds for junket activity have, in some circumstances, been targeted and exploited for the purpose of evading capital flight restrictions and for money laundering;

(d) suspicious activities have been observed in JTO bank accounts.

4.11 AUSTRAC ultimately assesses the JTO sector as being subject to a high level of ML/TF vulnerability. A key vulnerability is the lack of transparency and level of anonymity around

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[1482] Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, COM.0005.0001.0776 at .0915-.0916.
[1483] Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, COM.0005.0001.0776 at .0917.
[1484] Exhibit RC0010 Report on Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment, 2020, COM.0005.0001.1137.
[1485] Exhibit RC0010 Report on Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment, 2020, COM.0005.0001.1137 at .1140.
[1486] Exhibit RC0010 Report on Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment, 2020, COM.0005.0001.1137 at .1141, .1153-.1154, .1156.

junket players and by pooling all players' funds and transactions under the name of the JTO.[1487]

4.12 Mr Nick Stokes is the Group Manager for AML at Crown. He commenced on 19 November 2019. Mr Stokes agreed with the risks identified in the AUSTRAC Report: in particular, those concerning the risks and vulnerabilities associated with junket operations.[1488] Mr Stokes also identified in his evidence that when he first joined Crown, that the offsetting arrangements used by JTOs "*raised alarm bells*" for him.[1489]

5 Crown's own reviews and the Bergin Inquiry

5.1 Crown has commissioned several independent groups to review its junket arrangements. This includes engagement of:

(a) FTI Consulting in August – September 2019 to undertake a review of the policies and procedures for conducting due diligence research into existing and new JTOs and Premium Players. This included a review of sources of information, research methodology and relevant third party research platforms utilised by Crown in its internal due diligence process, in order to provide an assessment as to the effectiveness and defensibility of its approach to due diligence on JTOs and Premium Players;[1490]

(b) Deloitte in April – August 2020 to review Crown's decision-making processes related to JTOs and persons of interest. This included identification of opportunities for Crown to enhance its junket operator and POI due diligence and decision making frameworks;[1491]

(c) the Berkeley Research Group in August 2020 to undertake a due diligence investigation into various junket operators and representatives.[1492]

5.2 The work completed by FTI Consulting and Deloitte is discussed in Section 6 below.

5.3 The work Berkeley was engaged to undertake specifically focussed on particular individuals. It involved making a series of inquiries to provide verification of probity of individuals involved in Crown's junket program. The inquiries included discussions with industry sources, senior executives in relevant industries, industry sources, and regulatory and local contacts in regions relevant to the persons being investigated.

5.4 There was nothing new or market leading about the work that Berkeley was engaged to complete for Crown: it was not the case that a new way of conducting due diligence had been discovered. Instead, the level of investigation undertaken by Berkeley into the specific individuals had always been available to Crown: it had simply chosen not to descend into the level of detail and organised reporting offered by Berkeley until August 2020.[1493]

5.5 The Berkeley Report provided affirmation of matters concerning certain individuals, which Crown previously regarded as unproven.[1494] Aspects of the Berkeley Report also provide a further basis to conclude that there are significant risks associated with junkets and close associations with organised crime.

[1487] Exh bit RC0010 Report on Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment, 2020, COM.0005.0001.1137 at .1141.
[1488] T0364:31-43 (Stokes).
[1489] T0367:26 - T368:20 (Stokes); noting that Mr Stokes did not outright accept the proposition: it was qualified.
[1490] Exh bit RC0192 FTI Consulting Review of Due Diligence Procedures for Operators and Premium Players Crown Resorts Ltd report, 10 September 2019, FTI.0001.0001.3087.
[1491] RC0354i, Deloitte Junket Due Diligence and Persons of Interest Process Review Report, 26 August 2020, CRL.658.001.0122.
[1492] Noting that the content of parts of the Berkeley Report are subject to non-publication orders made by the Commission.
[1493] T3305:3 – T3306:41 (Walsh).
[1494] T3305:3 – T3306:41 (Walsh).

5.6 The Berkeley Report was obtained during the Bergin Inquiry. Referring to the Berkeley Report and other matters, the Bergin Inquiry considered there was evidence that established connections between Crown JTOs and organised crime. Through the Bergin Inquiry, Crown ultimately conceded that on the material available, Crown could not have been satisfied that individuals associated with three of the junkets it had dealings with were of good repute or that there was no information available that would disqualify them going forward.[1495]

5.7 The Bergin Report identifies that Crown's relationship with Mr Chau of the Suncity junket was a "*very important relationship*". The Bergin Report observes that Suncity operated a high roller private gaming room inside the Melbourne Casino for whom Suncity "*generated billions in gaming turnover and hundreds of millions in gross winnings*". The Bergin Report raises concerns that there was no documentation of the rationale for the continuation of the relationship with Mr Chau, even in the face of reports obtained by Crown which contained "red flags" regarding Mr Chau. These red flags included links to organised crime.[1496]

5.8 The Bergin Report details Crown's relationship with Suncity, tracing the beginning of the relationship through to Crown's decision to cease its dealings with Suncity and Mr Chau (and with junket operators more generally).[1497] The gravamen of the Bergin Report's findings in connection with Crown's relationship with Suncity and Mr Chau is:

(a) **Crown coveted business with Suncity**: Mr Chau was "*duchessed*" by Crown's senior management from 2014,[1498] and Crown entered into arrangements with Mr Chau to open the Suncity room as early as January 2014. The Suncity room was a VIP room made exclusively available to players who were affiliated with the Suncity junket.[1499]

(b) **Crown failed to adequately scrutinise its relationship with Suncity**: Although Crown commenced dealing with Suncity in early 2014, Crown did not undertake a review of the relationship until 4 January 2017.[1500] This review formed part of Crown's review of its junket relationships following the China Arrests in October 2016. While Crown performed subsequent annual reviews of its relationship with Suncity on March 2018 and 4 March 2019, the Bergin Inquiry was unable to ascertain whether an annual review occurred in 2020. The Bergin Report also found that Crown failed to escalate the status of its relationship with the Suncity junket to the review panel of senior management (Mr Felstead, Mr Preston and Mr Johnston) to determine whether Crown ought to cease dealing with Suncity or Mr Chau.

(c) **Crown overlooked links between Suncity and organised crime:** The Bergin Report documents the information gathered by Crown on Mr Chau. This information extended to various due diligence dossiers on Mr Chau, including reports by Wealth-X suggesting that Mr Chau was a former Triad,[1501] and information obtained by Crown from US Government reports revealing that the US Government considered that Mr Chau had links to organised crime.[1502] Further, despite reports on 1 September 2017 suggesting that Mr Chau received a large amount of cash that had been taken from

[1495] Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at .0318 [47] regarding The Company, Roy Moo and the Hot Pot Junket; at .0322 [71], regarding the Neptune Group junket, and at .0323 [83], regarding the Chinatown Junket.
[1496] Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at .0319 [50]–[56].
[1497] Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at .307, [51].
[1498] Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at .307, [54].
[1499] Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at .28, [83].
[1500] Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at .307, [54]-[55].
[1501] Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at .308, [57].
[1502] Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at .308, [58].

the Bangladesh Central Bank, Crown went no further than reviewing Mr Chau's risk rating upon receiving this information.[1503]

5.9 These factors engendered an environment that enabled Suncity to engage in acts of money laundering at the Melbourne Casino. One incident recounted in the Bergin Report involves the discovery of $5.6 million in cash in the Suncity Room, which Crown personnel only discovered after a discussion between Crown employees and Suncity staff regarding the imposition of further controls on the Suncity room. The discussion between Crown and Suncity staff was triggered by a report from the Crown Melbourne business unit.[1504] Following the discovery, Crown, at Suncity's request, deposited the money in the Suncity patron deposit account. This incident was the subject of a law enforcement request from Victoria Police on 4 May 2018, and a catalyst for the imposition of augmented controls in the Suncity room.[1505]

5.10 The Bergin Report outlines numerous other instances of alleged money laundering at the Suncity cash desk. In one example, the Bergin Report refers to footage published by the media on 15 October 2019 of three separate instances of large amounts of money being exchanged for gaming chips.[1506] According to the Bergin Report, the "*stark*" footage makes plain that "*hundreds of thousands of dollars of cash was transported into the casino in shopping bags in these incidents*".[1507] In another example, the Bergin Report details large cash transactions occurring at the cash desk of the Suncity room as depicted by CCTV stills of 5 January 2018 and 9 February 2018.[1508] The Bergin Report observes that the CCTV stills of 5 January 2018 show a Suncity employee assisting a man to remove bundles of cash from a suitcase on the floor of the Suncity cash desk, with the denomination appearing to consist of $50 notes wrapped in elastic bands.[1509]

5.11 The Bergin Report found that in mid-2018 the Suncity room relocated, so that the room no longer had a private entrance.[1510] In spite of this 'enhanced' measure, on 19 December 2018, a backpack containing $250,000 was taken from the Suncity Room to two men waiting in a car outside the casino. The men were subsequently arrested after attempting to deposit the cash at a bank in Melbourne.[1511] Following this episode, Crown introduced an additional control requiring Suncity staff to only take bags that were made of transparent plastic into the Suncity room.[1512]

6 Crown's processes

6.1 As set out in paragraph 3.4 above, Crown regulated its junket program through the Junkets ICS.

6.2 The Junkets ICS identifies minimum standards and controls for Crown's:

(a) maintenance of structured documented processes;

(b) creation and maintenance of an audit trail for monitoring and recording of Junket and Premium Player Programs, the introduction of Players and VIP telephone betting;

(c) independent review, authorisation and approvals;

(d) provision of data and reporting; and

[1503] Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at .308, [61].
[1504] Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at .336, [182].
[1505] Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at .236, [186].
[1506] Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at .234-235 [174].
[1507] Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at .235, [178].
[1508] Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at .235, [178].
[1509] Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at .235, [178].
[1510] Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at .235, [178].
[1511] Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at .237, [191].
[1512] Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at .237, [192].

(e) audit (including for the purpose of assurances regarding probity).

6.3 The VCGLR identified in the Sixth Review that the Junkets ICS could be strengthened "in relation to the identification of individual junket players and their associated gaming transactions".

6.4 The difficulties that the VCGLR encountered in enforcing Crown's implementation of Recommendation 17 is set out in detail at Section 4, Relationship with the Regulator at [3.246]-[3.263]. We refer to the entirety of those submissions for context, but note for the time being that the VCGLR considered that Crown pushed back on the implementation of Recommendation 17 insofar as it required a review of the Junket ICS in consultation with AUSTRAC.[1513]

6.5 Two months after Recommendation 17 was due for completion, and after media allegations were aired to the effect that Crown had partnered with junket operators that had links to organised crime, Crown (through its lawyers, Minter Ellison) engaged FTI Consulting to review Crown's policies and procedures for conducting due diligence research into existing and new JTOs and Premium Players in order to provide an assessment as to the effectiveness and defensibility of Crown's approach to due diligence on JTOs and Premium Players.

6.6 A "draft" report was provided by Minter Ellison to Crown on 10 September 2019. The draft report did not conclude that Crown's junket probity processes were defensible or robust. The draft report made 29 recommendations about ways in which Crown could improve its due diligence research into existing and new JTOs and Premium Players.

6.7 Among other things, the draft FTI Report specifically identified that due diligence should be conducted on JTAs, not just JTOs; and recommended that the outcome of all executive management decisions on due diligence in files (particularly where the decision is to continue doing business with a JTO who has been the subject of potentially adverse reports) be recorded. The draft report also recommended that Crown "build capability" of its staff in undertaking due diligence research: the clear implication being that the then-existing capability was insufficient. Ms Siegers, Crown Resorts' Chief Risk Officer accepted that the draft FTI Report revealed significant gaps in Crown's due diligence processes at the time the draft FTI Report was prepared.[1514]

6.8 The draft FTI report does not appear to have made its way to relevant stakeholders at Crown. Indeed, the evidence from numerous witnesses was that they had never seen the report and had not been made aware of its content or recommendations.[1515] The evidence is that:

(a) the fact of the FTI Consulting engagement was reported to the Brand Committee during August 2020;

(b) the draft FTI report was never tabled at a Risk Management Committee meeting or a Brand Committee meeting and was never considered by the Risk Management Committee; [1516]

(c) no Brand Committee member enquired about the status of the engagement or followed up about whether or not a report had been prepared.[1517]

[1513] T2662:2 – T2663:33 (Fielding).
[1514] T2021:23-42 (Siegers).
[1515] See, for example, evidence given by Ms Anne Siegers T2013:25-26 and T2015:2-10.
[1516] T2021:44 – T2022:12 (Siegers); T3576:29-38 (Halton).
[1517] T3576:29 - 3577:27 (Halton); T3582:18 (Halton).

6.9 The draft FTI Report does not appear to have been shared with others at Crown outside of the Brand Committee. The failure to identify highly relevant findings (even in circumstances where those findings were only expressed in draft) and report on them exposes a failure of Crown's risk management procedures and processes. Ms Siegers (who was not part of the Brand Committee) confirmed in evidence that if the draft FTI Report identified that Crown's probity processes regarding junkets was not in fact robust (as was required by the Junkets ICS) then at least some kind of response was required:[1518] it is submitted that the most appropriate response would have been intervention from the Board, and an approach to the VCGLR by Crown. Neither of those things occurred.

6.10 It appears that no changes were made to Crown's Junkets ICS following Crown's receipt of the draft FTI Report.

6.11 Having previously engaged FTI Consulting, Crown then engaged Deloitte to conduct a review of Crown's decision-making processes related to JTOs and persons of interest (POI). Deloitte's scope was to identify opportunities for Crown to enhance its JTO and POI due diligence and decision-making frameworks, and to review relevant policies and procedures.

6.12 Interestingly, the draft FTI Report and the Deloitte Report were both completed by Dr Murray Lawson, who had moved from FTI Consulting to Deloitte in the intervening period between issuing the draft FTI Report and the instructions being issued regarding the Deloitte Report. This came to light after Dr Lawson's evidence and was not explained. It is noted that the scope of the instructions to Deloitte were different and narrower than the instructions to FTI. No doubt, that could be attributed to the results of the draft FTI Report.

6.13 The Deloitte Report made 27 recommendations. Regarding JTOs, the Deloitte Report noted that the probity assessment was primarily managed by the Crown Credit team (who had not received proper AML training), and made several recommendations about incorporating the AML, Compliance, and Security and Surveillance teams into the due diligence process. Regarding POIs, the Deloitte Report noted that an informal process had existed for a number of years and which was led by risk, but which would benefit from additional structures being added to the patron decision assessment tool and record keeping for the POI Committee. The recommendations reinforced the need for additional staff training on a variety of matters (including AML, open source searches and so on) and for the probity processes to include junket players.

6.14 Dr Lawson confirmed in his evidence that in making the recommendations set out in the Deloitte Report, Deloitte identified areas of concern in Crown's probity arrangements for JTOs and POIs from a risk or AML perspective.[1519] He did not agree that Crown was only doing the bare minimum, but did accept that Crown's processes were "not as strong as [they] needed to be".[1520] However, Dr Lawson had also been surprised to learn that, prior to Mr Stokes joining Crown in November 2019, Crown's AML team comprised a team of one.[1521]

6.15 Expanding on the findings made in the Deloitte Report, Dr Lawson:

(a) noted in evidence that if a "red flag" was identified through the due diligence process, there was no requirement to highlight the existence of the red flag and no requirement to record how the information forming the red flag had been considered and resolved through the decision making process. Dr Lawson considered it was important that if a

[1518] T2030:15-22 (Siegers).
[1519] T0285:37-41 (Lawson).
[1520] T0316:20-33 (Lawson).
[1521] T0291:24-45 (Lawson).

red flag was registered, that it formed part of the consideration when a decision was made and how it was resolved;[1522]

(b) agreed that a lack of documentation particularly around "reasoning and rationales" was an ongoing theme through the Deloitte Report;[1523]

(c) in the context of Crown's approach to purchasing third party reports regarding individuals as part of the probity process, that Crown sought to limit "the more costly searches", accepting that JTOs contributed millions of dollars in revenue to Crown each year.[1524]

6.16 Dr Lawson was also involved in presenting to the Crown Board about the business model concerning junket operations on 16 June 2020.[1525] The presentation focussed on how junkets work, what they are, and some of the general risks associated with the business model. When asked, the first risk that Dr Lawson identified was the "obscurity of beneficial ownership" (consistent with the VCGLR's and AUSTRAC's findings), and that there have been JTOs linked to organised criminal groups.[1526]

6.17 Dr Lawson confirmed that Crown accepted all of the recommendations set out in the Deloitte Report.[1527]

6.18 Mr Stokes had been interviewed by Deloitte for the purpose of Deloitte preparing their report. During that interview, Mr Stokes had observed that:

(a) Crown's AML team should be "more involved" in providing opinions to the business about the risks of particular relationships with JTOs;[1528]

(b) AML needed to have a role in reviewing the results of the due diligence reports that were produced through the probity process.[1529]

6.19 Mr Stokes expanded on the problems he identified with Crown's junket due diligence processes in his evidence. He identified that when he joined Crown, Crown's due diligence process did not focus on the junket agent at all: Crown's processes did not look beyond the JTO. Mr Stokes considered this was problematic, because from his banking experience, it is "*important to understand the risks involved by looking at who is behind the corporate entity, the beneficial owners, the shareholders, the controllers*".[1530] Further, in the context of junkets, Crown's existing Know Your Customer (KYC) obligations did not extend to understanding where individual players were sourcing their money from which, depending on the players' risk rating, was problematic.[1531]

6.20 Since Mr Stokes has joined Crown, there have been several changes to Crown's AML/CTF programs. Some changes of particular importance were mentioned during his evidence, including an increase in staff for the AML team,[1532] and implementation of an automated transaction monitoring system.[1533]

6.21 Mr Stokes was asked why some of these more recent initiatives had not been implemented by others before he joined Crown. He was directly asked whether Crown was taking its

[1522] T0301:15-46 (Lawson).
[1523] T0302:1-7 (Lawson).
[1524] T0307:3-17 (Lawson).
[1525] T0328:1-9 (Lawson).
[1526] T0328:19-25 (Lawson).
[1527] T0299:34 (Lawson).
[1528] T0370:33-38 (Stokes).
[1529] T0371:18-24 (Stokes).
[1530] T0375:4-14 (Stokes).
[1531] T375:16-36 (Stokes).
[1532] T0379:29-42 (Stokes).
[1533] T0380:41 - T0381:25 (Stokes).

AML obligations seriously, and whether the heart of the problem was mindset and attitude and commitment.[1534]

6.22 Mr Stokes' response was:[1535]

> *What I can say on that is when I had made inquiries as to why the casinos were quite light on AML/CTF compliance, the answers I got was, well, we've had AUSTRAC come in and review and they haven't given us any significant feedback. And there was a misunderstanding that an AUSTRAC review was an independent review…*
>
> *In addition, the only independent review that was conducted that I could gauge from the time when I joined was an internal independent review in 2016.*

6.23 Mr Stokes did not accept in terms that Crown was not taking its AML obligations seriously; or that the issue was one of mindset, attitude and commitment. However, it is apparent from his evidence that prior to his commencement at Crown, Crown had not employed somebody with his level of experience or expertise in order to ensure Crown was complying with its AML obligations. Crown had not interrogated its processes and had not considered whether it should be doing more than the bare minimum required by law. In failing to interrogate its processes and implement precisely the types of initiatives that Mr Stokes has been responsible for, the clear implication is that Crown was not doing enough which, at the very least, must come back to the attitude of the entity to its obligations.

6.24 The implication of these reports and evidence is that Crown's probity processes were not robust. They were required to be, to comply with Crown's obligations under the *Casino Control Act*. Indeed, Crown defended its processes through its engagement with the VCGLR on the implementation of Recommendation 17 and in the disciplinary action in 2020 – 2021 (see Section 4, Relationship with the regulator).

7 Crown's current position on junkets

7.1 On 2 November 2020, Crown approved amendments to its AML / CTF program. The program now provides in part that

> ***Until reversed by a decision*** *of the Crown Board, the Crown Entities will not offer Designated Services to a Junket Operator or to Customers introduced to a Crown Entity via a Junket.*[1536]

7.2 As a result, Crown is not currently able to offer Designated Services to JTOs. However, the plain language of the program leaves itself open to the Crown Board changing its position in respect of junkets.

7.3 On 17 November 2020, Crown announced that:[1537]

> *The Board has determined that Crown will permanently cease dealing with all junket operators, subject to consultation with gaming regulators in Victoria, Western Australia and NSW…*
>
> *Crown will only recommence dealing with a junket operator if that junket operator is licensed or otherwise approved or sanctioned by all gaming regulators in the states in which Crown operates.*

[1534] T0382:10-29 (Stokes).
[1535] T0382:31-43 (Stokes).
[1536] Exhibit RC0023d Crown Resorts Joint AML/CTF Program Part A, n.d., CRW.514.002.0110 at .0117, cl 3, emphasis added.
[1537] Exhibit RC0009fff ASX Media Release regarding Future Junket Relationships – updated, 17 November 2020, VCG.0001.0002.6158.

7.4 The announcement implicitly contemplates recommencement of operations with JTOs in particular circumstances: specifically, if "approved" or "sanctioned" by gaming regulators in the states where Crown operates.

7.5 During the course of the Commission on 19 May 2021, solicitors for Crown expressed Crown Resorts' and Crown Melbourne's intentions as follows:[1538]

> *[Each entity] confirms that it:*
>
> *has ceased dealings with international junket operators;*
>
> *has ceased dealings with junket tour operators;*
>
> *does not intend to deal with international junket operators in the future (whether by staff based in Australia or otherwise); and*
>
> *does not intend to deal with junket tour operators in the future.*
>
> *The only remaining engagement that Crown has with junket operators concerns the termination of agreements; its collection of some outstanding debts; and the return of funds and property belonging to some of them.*

7.6 The 19 May 2021 letter appears to convey Crown's present state of mind and intention in relation to dealings with junket tour operators. This, of course, may change.

8 Conclusion

8.1 The findings in the Bergin Inquiry in relation to Crown's association with JTOs with links to organised crime, and Crown's failure to cease certain relationships in the face of obvious indicators of ML risk and reputational issues, are relevant to Crown's suitability. Although it is past conduct, it shows that Crown has demonstrably failed to properly address ML/CTF risk through its Junkets ICS and it also pushed back on recommendations from its regulator designed to address some of those risks.

8.2 The findings in the AUSTRAC Report provide a compelling justification to ban junkets at the Casino. JTOs and JTAs bring a high level of ML/CTF risk into the casino as well as the potential for criminal exploitation.

8.3 The current regulatory regime which leaves junkets to be regulated by internal control statements is unsatisfactory. According to its experts, Crown's probity processes were substandard. Crown should not be left to its own devices to approve junkets because it has shown that it is unable to do this satisfactorily and regulatory oversight is therefore required. If junkets are to be allowed in the future, the legislation should be amended to require junkets or junket tour operators to be licensed or approved by the VCGLR.

[1538] Exhibit RC0461 Letter from Allens to Solicitors Assisting, 19 May 2021, CRW.0000.0003.0572.

11 Crown Melbourne's corporate structure and governance

1 Introduction

1.1 A matter relevant to Crown Melbourne's suitability is whether it has a satisfactory ownership or corporate structure and whether it has sufficient business ability to establish and maintain a successful casino.[1539]

1.2 This matter requires an examination of Crown Melbourne's corporate structure, governance structure and risk management framework.

1.3 Large organisations often involve complex organisational structures and arrangements which can result in one organisation being dependent on another for its financial or operational viability. Crown is no different. Crown Melbourne is operationally dependent on Crown Resorts. Both organisations have directors in common and share resources. Indeed, the VCGLR in its Sixth Review stated that Crown Resorts had a significant influence on the governance structure of Crown Melbourne and that any governance assessment required consideration of the corporate governance structure of both companies.[1540]

1.4 As discussed below, the affairs of Crown Melbourne and Crown Resorts are interconnected. As a result, in order to have proper regard to Crown Melbourne's corporate and governance structures, it is necessary to also have regard to Crown Resorts' corporate and governance structures.

1.5 Overall, the corporate and governance structures alone do not suggest that Crown Melbourne or Crown Resorts is unsuitable. However, the matters discussed below raise concerns and identify matters that require further consideration and attention. Parties with leave to appear should proceed on the basis that the matters discussed below may form part of the recommendations made by the Commission and make submissions accordingly.

1.6 An additional matter relevant to suitability is Crown Melbourne's financial suitability.[1541] The Commission obtained a report from McGrathNicol, which raised no substantive issues.[1542] On the evidence available to the Commission, there are presently no grounds for concern in relation to financial suitability. However, the COVID-19 pandemic has caused significant disruption and uncertainty. Crown recently announced that it expects to record a statutory loss after tax for the full year ended 30 June 2021.[1543] Further, Crown Melbourne is the subject of a formal enforcement investigation by AUSTRAC's Enforcement Team, and on 7 June 2021 it was announced that AUSTRAC's Regulatory Operations branch has identified potential serious non-compliance with the AML/CTF Act and AML/CTF Rules by Crown Perth and that AUSTRAC has initiated a formal enforcement investigation.[1544] If AUSTRAC's investigation leads to enforcement action, Crown may incur financial penalties. Furthermore, the quantum of potential underpayment of taxes has not been quantified and the implementation of Crown's proposed reforms are likely to result in increased costs (eg. changes to its RSG and AML programs)._As a result, Crown Melbourne's financial suitability is a matter which should remain under review.

[1539] CCA, s 9(2)(c); (e).
[1540] Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, COM.0005.0001.0776 at .0833.
[1541] CCA, s 9(2)(b).
[1542] Exhibit RC0932 McGrathNicol Project Queen Workstream 1: Financial Suitability Report, 14 April 2021, MGN.0002.0001.0001.
[1543] Crown Resorts ASX Media Release regarding Trading and Earnings Update, 5 July 2021.
[1544] Exhibit RC0377 ASX Media Release regarding Update in Relation to Regulatory Compliance Matters, 7 June 2021.

2 Corporate structure

2.1 Crown Melbourne operates the Melbourne Casino under a licence granted under the CCA. It is a wholly owned subsidiary of Crown Resorts. Crown Resorts is the ultimate holding company of subsidiaries which hold casino licences in Sydney, Melbourne and Perth: Crown Sydney Gaming Pty Ltd, Crown Melbourne and Burswood Ltd respectively.[1545] The Melbourne Casino is the largest of the wholly owned casinos of Crown Resorts.[1546]

2.2 Crown Resorts is an ASX listed company. CPH is a majority shareholder of Crown Resorts, holding 36.81% of the issued shares as at 31 August 2020.[1547] CPH is a private investment company ultimately owned by Consolidated Press International Holdings Limited (**CPIHL**), a company incorporated in the Bahamas. Mr James Packer is one of the ultimate beneficial owners of CPIHL.[1548]

3 Majority shareholder influence

3.1 The Bergin Inquiry considered the influence of Mr Packer, as well as CPH, on Crown Resorts' corporate governance and risk management processes.[1549] Their influence was characterised as "ubiquitous and powerful".[1550] For Crown Resorts' directors who had duties and obligations towards Crown Resorts and CPH, such as Mr Johnston, the interests of Crown Resorts appeared to be coterminous with CPH's interests.[1551] Accordingly, the Bergin Inquiry considered that the corporate needs of Crown Resorts were not given precedence over the corporate needs or desires of CPH.[1552]

3.2 Mr Packer's influence over Crown Resorts was assisted by a "loyal team" of corporate executives as well as information sharing arrangements, particularly the Controlling Shareholder Protocol.[1553] The Bergin Inquiry considered that:

(a) The degree of loyalty showed by CPH nominee directors and Crown Resorts executives to Mr Packer was considerable. Directors showed "complete loyalty" [1554] or their "first loyalty" [1555] to Mr Packer, were committed to serving him[1556] or had longstanding ties.[1557] Most executives, including Mr Barton and Mr Felstead, were considered "very loyal" to him.[1558]

(b) The capacity of Mr Packer to influence Crown's operations was also facilitated in part by provisions of the Services Agreement and the Controlling Shareholder Protocol.[1559] The evidence showed Mr Packer behaved in a manner consistent with the view that "he was still in control of Crown" even when he departed from the Crown Resorts Board. He expected that Crown Resorts directors and officers "comply with his

[1545] Exh bit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at .0113 [3], [6].
[1546] Exh bit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, COM.0005.0001.0776 at .0821.
[1547] Exh bit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at .0114 [15]. CPH holds these issued shares in Crown through its subsidiaries.
[1548] Exh bit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at .0114 [10]-[11].
[1549] Exh bit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0616-7 [114].
[1550] Exh bit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0575 [90].
[1551] Exh bit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0450 [121].
[1552] Exh bit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0463 [164], .0583 [137].
[1553] Exh bit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at .0158 [8].
[1554] Exh bit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at .0160 [17] (Mr Johnston).
[1555] Exh bit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at .0160 [18] (Mr Alexander). The relationship between Mr Alexander, a former Chairman and CEO of Crown, and Mr Packer has been characterised as follows: "[w]hatever the late Mr Kerry Packer and then Mr James Packer wanted was what was done"; Exh bit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0522 [56].
[1556] Exh bit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at .0160 [19] (Mr Demetriou).
[1557] Exh bit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at .0160 [20] (Mr Mitchell).
[1558] Exh bit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at .0160 [21].
[1559] Exh bit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0587 [21].

instructions and requests". His communications fed into "a regime of Crown's corporate operatives kowtowing to him".[1560]

3.3 The Bergin Inquiry stated that the real power in Crown was exercised by Mr Packer by virtue of his personality and the "somewhat supine attitude" adopted by Crown's operations.[1561]

3.4 Mr Packer's influence, although well-intentioned, had "disastrous consequences"[1562] for Crown. The adverse effects "permeated Crown's operations in China, its choice of Junket operators, the complexities of the Melco Share Sale Agreement and the total blackout of information relating to Southbank and Riverbank".[1563] In particular, Mr Packer's influence:

(a) contributed to the aggressive sales culture and higher risk appetite for the VIP International Business[1564] where Mr Packer was a "key stakeholder".[1565] The Bergin Inquiry considered in this business, profit was the main driver to the detriment of Crown staff;[1566]

(b) was an important factor behind the blurred reporting lines and development of the VIP International Business' own culture which meant that risks were not escalated through Crown's corporate governance and risk management structures to the Crown Board.[1567] Senior directors and executives "reported" to Mr Packer and yet did not share important information about criminal infiltration of the Southbank and Riverbank accounts, and the risk to Crown staff arising from Chinese police questioning a Crown employee.[1568]

3.5 The Bergin Inquiry considered that poor corporate governance contributed to the issues which affected Crown.[1569] These issues included, among other things:

(a) A lack of effective governance of the VIP International Unit where there was an aggressive pursuit of profit to the detriment of other considerations.[1570]

(b) Mr Packer's remote management of Crown which compromised Crown's structure and operations[1571] such as, for example, leading to blurred or dysfunctional reporting lines.[1572]

(c) The underutilisation of Crown's risk management structures which had the effect that there was not a proper flow of risk information to the Crown Resorts Board and committees.[1573]

(d) Conflicts of interest, particularly between duties and interests owed by executives to CPH and Crown Resorts, which were not recognised.[1574]

[1560] Exh bit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at .0192-3 [174]-[179].
[1561] Exh bit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0587 [20].
[1562] Exh bit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0587 [19].
[1563] Exh bit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0587 [20].
[1564] Exh bit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0573 [80].
[1565] Exh bit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at .0160 [23].
[1566] Exh bit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0575 [91].
[1567] Exh bit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0575-6 [90]-[95].
[1568] Exh bit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at .0193-4 [180]-[188].
[1569] Exh bit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0572 [72], .0585 [8], .0588 [22].
[1570] Exh bit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at .0307-8 [304]; Exhibit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0571-2 [71]-[72].
[1571] Exh bit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at .0193 [179], .0194 [186]-[187]; Exh bit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0422 [17].
[1572] Exh bit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0575-6 [91]-[95].
[1573] This issue is considered in greater detail in the section dealing with 'risk management'.
[1574] Exh bit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0422 [17], .0437 [79], .0450 [121]-[122], .0583 [137].

(e) Failure to share material information between Board members.[1575]

(f) Mismanagement of legal advice.

3.6 The Bergin Inquiry recommendations in relation to governance focussed on minimising the influence of CPH and Mr Packer. It considered that mechanisms were required to prevent a return to "a dysfunctional environment" even though the Services Agreement and the Controlling Shareholder Protocol had been terminated.[1576] In particular, it recommended that:

(a) no person be allowed to hold a shareholding of more than 10% in a licensed casino operator without prior regulatory approval;[1577]

(b) that it be a licence condition that any plan to share confidential information with CPH and/or Mr Packer be subject to regulatory approval.[1578]

3.7 The Bergin Inquiry also recommended the restructuring of the Board[1579] and "jettisoning" the "remaining vestiges" of the "serious imbalance" caused by the influence of CPH over Crown's operations with some of its directors descending into the lower tiers of Crown's management.[1580] In this regard, Crown Resorts has since removed all CPH nominee directors.[1581]

3.8 In evidence to this Commission, Ms Coonan agreed that as a significant shareholder, CPH (and Mr Packer), exerted a lot of influence on the Crown Resorts Board, the strategic direction of Crown as well as Crown's culture.[1582] As part of Crown's cultural reform "to reset the tone at the top", Ms Halton gave evidence to the effect that Crown had been looking to appoint high quality executives who were not 'beholden" to CPH (or Mr Packer).[1583]

3.9 The above matters demonstrate that where a majority shareholder is in a position to exert influence over the Board and senior executives, it can have undesirable consequences for a casino licence holder.

3.10 The situation that arose for Crown Melbourne under Mr Packer's influence needs to be addressed so that it is not repeated in the future, whether or not Crown Melbourne retains the licence.

3.11 In 1983, Xavier Connor was alive to problems associated with the influence brought to bear on a licensee by significant shareholders. Connor observed that:[1584]

> *There should be no power to transfer a licence, which should be personal to the holder. It is essential that the licensing body be given amble power to investigate proposed changes either in the corporate structure of a company which holds a licence or in a group of companies of which it is part. The essential object of all such investigations is to expose the seat of effective control, which may often be hidden; and then to regulate it. So too should there be a power to investigate any proposed sales of shares which bring about a change in the corporate structure. …. Any person or corporation with a 5% shareholding should automatically be subject to an investigation by the licensing body. A shareholding of that size, and in some cases*

[1575] Exhibit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0515 [28].
[1576] Exhibit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0587 [21].
[1577] Exhibit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0653 [108]-[110].
[1578] Exhibit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0587 [21].
[1579] Exhibit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0587 [22].
[1580] Exhibit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0484-5 [11].
[1581] Exhibit RC0434 Statement of Antonia Korsanos, 27 April 2021, CRW.998.001.0104 at .0122 [99(a)].
[1582] T3735:15-27 (Coonan).
[1583] T3602:36 - T3603:16 (Halton); T3625:10-35 (Halton).
[1584] Report of Board of Inquiry into Casinos in the State of Victoria, prepared by Xavier Connor (1983) at 16.24.

even smaller, may be sufficiently significant, in combination with other shareholdings, to effect vital changes in personnel and policy.

3.12 Regulating the entity with effective control of the licensee is not without its complexity. One complication that arises in this case is that Crown Melbourne is a wholly owned subsidiary of Crown Resorts and the 'influence' that was or may be exerted on Crown Melbourne arose or may arise from a significant shareholder's interest in Crown Resorts.[1585]

3.13 The influence of a majority shareholder could be addressed by a requirement that a shareholder's interest in Crown Melbourne, whether a direct interest or a "look through", not exceed 5% without scrutiny by and permission of the regulator. Consideration would need to be given to the existing structure and how that might be achieved. Consideration will also need to be given to the fact that it would necessitate a sell-down of a majority shareholder's interests in Crown Melbourne and the timeframe in which that should occur.

3.14 Parties with leave to appear should provide submissions to the Commission on any recommendation the Commission might make to the effect that a shareholder's interest in Crown Melbourne should not exceed 5%, whether by direct interest or "look through", how to give effect to such a recommendation and the length of time that is considered desirable to give effect to a recommendation to that effect.

4 Governance structure

4.1 Under the Casino Agreement, Crown Melbourne is required to have an Audit Committee and a Compliance Committee.[1586]

4.2 The committees of the Crown Resorts Board comprise: an Audit and Corporate Governance Committee; a People, Remuneration and Nomination Committee; a Safety and Sustainability Committee; a Responsible Gaming Committee; and a Risk Management Committee.[1587]

4.3 Functions undertaken by the various Crown Resorts Board committees are performed on behalf of Crown Melbourne, as well as Crown Resorts and other Crown entities.[1588] Crown Melbourne does not have a separate risk management framework or committee and is entirely dependent on Crown Resorts in that regard.[1589] Crown Resorts does not have a casino licence and therefore does not need a Responsible Gaming Committee. The functions undertaken by the Crown Resorts Responsible Gaming Committee can only be necessary to satisfy the obligations of Crown Melbourne and other Crown entities that hold a casino licence.

4.4 There may be commercial justifications for this structure and these arrangements, in terms of economies of scale, efficiency, information and resource sharing. However, it suggests that, in a practical sense, Crown Melbourne does not have operational or functional control of the Melbourne Casino, which have been delegated to the Crown Resorts Board committees. It is not apparent how it addresses the fact that a director's duties of

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[1585] For the purpose of this submission a majority shareholder means a person holding (beneficially or otherwise) 10% or more of the shares.

[1586] Exhibit RC0435, Consolidated Casino Agreement, 21 September 1993, COM.0005.0001.0985 at 0989 cl 2 ('Audit Committee') 0991 cl 2 ('Compliance Committee'), .1017 cl 22.1(u)-(v), .1051-2 Schedule 5.

[1587] Exhibit RC0434 Statement of Antonia Korsanos, 27 April 2021, CRW.998.001.0104 at .0105-6 [8].

[1588] Exhibit RC0434 Statement of Antonia Korsanos, 27 April 2021, CRW.998.001.0104 at .0107 [10]:It is Ms Korsanos' evidence that the corporate governance framework of Crown Melbourne is limited to the Crown Melbourne board and two committees prescr bed by regulatory requirements and that, as a subsidiary of Crown Resorts, Crown Melbourne also operates within the Crown Resorts governance framework.

[1589] Exhibit RC0427 Statement of Jane Halton, 28 April 2021, CRW.998.001.0152 at .0166 [104]-[105]: It is Ms Halton's evidence that the Crown Me bourne Audit Committee focusses on risk and audit but there is a Risk Management Committee for Crown Resorts and Crown Melbourne adopts the risk management framework of Crown Resorts.

monitoring and oversight are non-delegable because it is not clear how Crown Melbourne directors monitor and oversee the actions of group management.

4.5 Further, it also fails to have proper regard to the Casino Agreement. The intent behind clause 22 of the Casino Agreement was to establish a real connection to Victoria, requiring senior executives and the company secretary to reside in Victoria and that most meetings of the Board of Crown Melbourne and of its senior executives be held in Melbourne. It may be inferred that this was to ensure operational control and oversight of the casino business would not move away from the casino.

4.6 In late 2020, Crown sought legal advice from Herbert Smith Freehills about restructuring its internal corporate governance structure from a decentralised model to a centralised model. This is an aspect of the remediation plan that has been put forward to the ILGA.[1590]

4.7 In September 2020, the Crown Resorts Board provided in principle approval for the proposal and it is noted that Crown intends to engage with regulators in relation to the proposed transition.[1591] As at 27 April 2021, there had been no transition to a centralised governance model. It remains a matter under consideration by Crown.[1592] In her evidence to the Commission on 7 July 2021, Ms Korsanos stated that the matter was still under consideration.[1593]

4.8 In general terms, under a centralised governance structure, the parent company directly oversees and controls the operations of subsidiaries. In contrast, a localised or decentralised structure is where oversight and control functions are delegated to or remain with the subsidiary company.[1594]

4.9 Under a centralised governance structure, centralised risk management may lead to an aggregation and analysis of information at a group level which could enable or contribute to:[1595]

(a) Effective assessment and mitigation of risks across the corporate group;

(b) Consistency in risk management across the corporate group;

(c) Flexible and timely reaction to risks across the corporate group;

(d) Efficiencies arising from economics of scale.

4.10 Risks associated with multiple governance, risk and compliance functions and frameworks may be reduced under a centralised governance structure. These include:

(a) Duplication of costs and management time;

(b) Failure to address risks because of assumptions that they are already being addressed by another part of the corporate group;

(c) Quality of reporting, including issues arising from potentially inconsistent reporting from subsidiaries to parent company;

(d) Failure to leverage work and governance improvements from one subsidiary to another.

4.11 A key failure in corporate governance identified in the Bergin Inquiry was blurred or dysfunctional reporting lines which led to inadequate information flows to the Crown Resorts

[1590] Exhibit RC0409 Letter from the ILGA to Helen Coonan, 1 April 2021, CRW.512.093.0001 at .0006.
[1591] Exhibit RC0416d, Memorandum regarding Remediation Plan – Progress and Reporting, 21 May 2021, CRW.512.110.0060 at [5].
[1592] Exhibit RC0434 Statement of Antonia Korsanos, 27 April 2021, CRW.998.001.0104 at .0123 [103].
[1593] T3671:40-45 (Korsanos).
[1594] Takahiro Yasui, OECD Corporate Governance Working Paper No 20 – Corporate Governance of Financial Groups, 28 July 2016 at 13.
[1595] International Association of Insurance Supervisors, Issues Paper – Approaches to Group Corporate Governance; Impact on Control Functions, October 2014 at 18 [31].

Board and committees. Inadequate information flows are a clear risk under a decentralised governance model and that particular risk is minimised under a centralised model.

4.12 A centralised governance structure may also have additional benefits over and above risk management. Efficiencies may arise from centrally managing certain functions such as procurement, payment, remuneration, human resources and compliance. For example, it would be efficient to have one set of procurement policies and benefits of scale if contracts with suppliers were negotiated centrally for the entire group rather than at a subsidiary level.

4.13 On the other hand, while there are risks and downsides associated with a decentralised corporate structure, that structure may have the following benefits from a risk management perspective:[1596]

(a) Contribute to clear responsibility, accountability and shorter reporting lines at the subsidiary level;

(b) Facilitate compliance with local regulatory requirements and changes, and ensure timely response to market changes and opportunities at the subsidiary level;

(c) Enable focus on risks and issues which specifically impact the subsidiary, and therefore ensure risk management is aligned better with the risks facing that subsidiary.

4.14 The key challenges under these alternative structures may be summarised as follows:[1597]

> *In a centralized model, the focus of the challenges is the balance which needs to be struck between effective direction at the group level on the one hand and* ***sufficient regard for local obligations, risks and circumstances on the other****. In a centralized model sufficient information and authority for group key players* ***and autonomy for the key players at entity level are needed to achieve good governance.***
>
> *In a more decentralized group the focus of the challenges is on the implementation of group governance requirements and the coordination of the objectives and policies of the entities to ensure that the entities and their key players take sufficiently into account the group perspective, without which there might be a risk of entities pursuing separate and incompatible goals and taking risks that the group would find unacceptable. Therefore to achieve effective governance within such a group,* ***sufficient coordination and oversight from the group level and adequate information flows are needed****.*
>
> *(emphasis added)*

4.15 Ms Korsanos explained that, in her view, the ability to centralise certain functions, particularly compliance functions, would allow Crown to achieve a better quality and consistency of operations.[1598] Ms Korsanos said that the pooling of resources and focusing across the business would result in better quality of outcomes and a higher benchmark in compliance, financial crimes and responsible gaming by looking consistently across the business.[1599]

4.16 Ms Korsanos gave evidence to the effect that Crown was not a "conglomerate of different operations".[1600] Under a centralised structure, the intention was to pool resources and focus

[1596] International Association of Insurance Supervisors, Issues Paper – Approaches to Group Corporate Governance; Impact on Control Functions, October 2014 at 19 [33].
[1597] International Association of Insurance Supervisors, Issues Paper – Approaches to Group Corporate Governance; Impact on Control Functions, October 2014 at 20 [35].
[1598] T3672:20-41 (Korsanos).
[1599] T3672:31-41 (Korsanos).
[1600] T3672:36-41 (Korsanos).

across the entire business. By looking consistently across the properties, the intention was to achieve better quality outcomes and a higher benchmark in compliance.

4.17 Ms Korsanos suggested the process of compliance can be consistent across the properties even though the requirements of compliance will vary in each State in which Crown operates. Compliance from a process and systems perspective can be centrally managed while the responsibility for ensuring compliance under the regulatory regime in Victoria would rest with Crown Melbourne. Ownership and accountability for compliance can lie at each location.[1601]

4.18 Ms Korsanos said that, under the centralised model, resources would still be required by Crown Melbourne. She explained that the responsible gaming team would still be needed on the ground along with risk managers. The financial crimes team would need to remain. Ms Korsanos spoke to a need to get the balance right between what could be centralised and what would remain on the ground for both accountability and visibility.[1602]

4.19 Ms Korsanos recognised that a risk with the centralised structure was that things could "fall through the cracks" if there was not a clear line of accountability at the business level. The model required a "good line of sight on what is expected at every level of the business".[1603]

4.20 In the centralised structure, Ms Korsanos suggested that Crown Resorts would have a level of decision-making at the centre/top and also a delegated level of responsibility/decision-making,[1604] but Crown Melbourne would have a localised management leadership.[1605] In discussion with the Commissioner it was clarified that a distinction is to be drawn between decision-making on matters of principle (which would be centralised) and decision-making on operational matters (which lie with the subsidiaries).[1606]

4.21 The following concerns arise from the proposed centralised structure.

4.22 The detail is yet to be articulated and from that, it might be inferred, that the proposed centralised structure has not been the subject of proper consideration by the directors of Crown Melbourne.

4.23 It is not clear what is contemplated in terms of decision-making: which entity will make decisions on behalf of Crown Melbourne, what decision-making will be delegated and to whom, what is proposed in terms of Crown Melbourne directors monitoring and overseeing actions of group management and what mechanisms or controls will be put in place to ensure decisions are made in the best interests of Crown Melbourne.

4.24 A concern that arises about the extent to which a centralised governance structure will divert control and resources away from Crown Melbourne.

4.25 Ms Korsanos suggested that, under a centralised model, the regulator should have interface at both the Crown Resorts and Crown Melbourne level.[1607] However, it is not clear how that could be achieved. The regulator's powers relate to the holder of the casino licence, not its related entities.

4.26 Moreover, a centralised structure might be in breach or contrary to the terms of clause 22 of the Consolidated Casino Agreement. Clause 22 stipulates conditions in relation to Crown Melbourne's company structure. This includes the following:

[1601] T3673:13-37 (Korsanos)
[1602] T3673:44 - T3674:15 (Korsanos).
[1603] T3675:3-11 (Korsanos).
[1604] T3677:1-7 (Korsanos): The Commissioner queried whether the delegated decision-makers were 'real' decision-makers. Ms Korsanos considered that they were.
[1605] T3684:1-8 (Korsanos).
[1606] See the discussion at T3678:5-14 (Korsanos).
[1607] T3674:42-43 (Korsanos).

(a) 75% of meetings of the Crown Melbourne's Board of Directors, and meetings of its Senior Executive Managers, are held in Melbourne each year.[1608]

(b) Crown Melbourne's Senior Executive Managers reside in Victoria. This covers Crown Melbourne's Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, any director who is an executive officer, and the heads of Gaming, Surveillance, VIP business, and Compliance.[1609] This is within the context where Crown Melbourne needs five directors to be appointed[1610] and prior regulatory approval for any appointment.[1611]

(c) Crown Melbourne ensures that at least one Company Secretary resides in Victoria.[1612]

4.27 It is not apparent that the Crown Melbourne Board has turned its mind to the intention behind the Casino Agreement, which is to ensure operational control and oversight of the casino business is not moved away from the casino.

4.28 Any amendment to Crown Melbourne's memorandum or articles of association to give effect to the centralised governance structure requires prior regulatory approval.[1613] This process will occur within the context where Crown Resorts is contractually required to use its best endeavours to ensure that other properties conduct their business in a manner beneficial to Crown Melbourne and not to Crown Melbourne's detriment.[1614] Crown Melbourne is also required to notify the regulator of any change to the charters of the Audit Committee and Compliance Committee.[1615]

4.29 It is not certain if the Crown Melbourne Board has considered the above issues or if and how it intends to address them.

4.30 It is expected that the proposed centralised governance model will come before the Crown Boards imminently. It will be a matter for the directors of Crown Melbourne to consider the detail and whether a centralised governance model is ultimately in the best interests of Crown Melbourne.

4.31 For present purposes, the main concerns in relation to Crown Melbourne's corporate and governance structures relate to:

(a) Majority shareholder influence. The VCGLR's opinion in the Sixth Review that the relationship between Mr Packer and his controlling interest, and the good governance of the companies, was "well mediated" by the operation of the boards, committees and the role of independent directors[1616] is unsustainable in light of the findings of the Bergin Inquiry;

(b) The extent to which the current structure means that, in a practical sense, Crown Melbourne does not have operational or functional control of the Melbourne Casino, which has effectively been delegated to Crown Resorts. In this regard, the VCGLR's statement that it appeared, at least based on its review of documentary material, the operation of the Crown Melbourne Board was merely "a formal exercise" is relevant.[1617]

[1608] Exhibit RC0435 Consolidated Casino Agreement, 21 September 1993, COM.0005.0001.0985 at .1014 cl 22.1(b)-(ba).
[1609] Exhibit RC0435 Consolidated Casino Agreement, 21 September 1993, COM.0005.0001.0985 at .0997-8 cl 2 ('Senior Executive Manager, .1014 cl 22.1(bb).
[1610] Exhibit RC0435 Consolidated Casino Agreement, 21 September 1993, COM.0005.0001.0985 at .1014 cl 22.1(e).
[1611] Exhibit RC0435 Consolidated Casino Agreement, 21 September 1993, COM.0005.0001.0985 at .1014 cl 22.1(d).
[1612] Exhibit RC0435 Consolidated Casino Agreement, 21 September 1993, COM.0005.0001.0985 at .1014 cl 22.1(bc).
[1613] Exhibit RC0435 Consolidated Casino Agreement, 21 September 1993, COM.0005.0001.0985 at .1015 cl 22.1(k). Further to this Crown Me bourne may terminate requirements to comply with cl 22(ra) (as specified in that subclause) but Crown Melbourne is required to have the headquarters of its gaming business in Melbourne and to be Crown Group's flagship casino.
[1614] Exhibit RC0435 Consolidated Casino Agreement, 21 September 1993, COM.0005.0001.0985 at .1016-7 cl 22.1(r).
[1615] Exhibit RC0435 Consolidated Casino Agreement, 21 September 1993, COM.0005.0001.0985 at .1017 cl 22.1(t)-(u).
[1616] Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, COM.0005.0001.0776 at .0846.
[1617] Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, COM.0005.0001.0776 at .0835.

(c) Although their interests may be aligned, the directors of Crown Melbourne owe duties to Crown Melbourne and the above delegation means it is not apparent how the directors are properly discharging their duties as directors of Crown Melbourne.

4.32 Overall, these matters alone do not suggest Crown Melbourne or Crown Resorts are unsuitable. However, they identify matters for future consideration and potential improvement.

5 Governance and leadership

5.1 There have been a number of departures from the Crown Boards since February 2020: John Horvath; Andrew Demetriou; John Alexander; Guy Jalland; Michael Johnston; Ken Barton; Harold Mitchell, John Poynton, and Barry Felstead.[1618] There have also been a number of changes at the executive level since February 2021.[1619]

5.2 The current directors of Crown Resorts have been appointed on the following dates:

(a) Helen Coonan: appointed since December 2011.[1620]

(b) Jane Halton: appointed since May 2018.[1621]

(c) Antonia Korsanos: appointed director from May 2018.[1622]

(d) Nigel Morrison: appointed since March 2021.[1623]

(e) Steve McCann: appointed since June 2021 subject to regulatory approval.[1624]

(f) Bruce Carter: appointed since April 2021 subject to clearance.[1625]

5.3 The current directors of Crown Melbourne have been appointed on the following dates:

(a) Xavier Walsh appointed since February 2021.[1626]

(b) Antonia Korsanos: appointed Chair since February 2021[1627]

(c) Helen Coonan: appointed since February 2021.[1628]

(d) Nigel Morrison: appointed since April 2021.[1629]

5.4 Rowena Danzinger, a long-tenured director of Crown Melbourne, is intending to retire.[1630]

5.5 The number of committees and issues currently facing the directors suggest the boards are stretched at present and would be assisted by further appointments.

5.6 Crown has been embarking on a board renewal strategy (with the assistance of Korn Ferry since November 2020) to have six to seven directors (plus the CEO) to allow for an orderly succession going forward. Crown's objective is also to have at least 3 independent director appointments by the 2021 AGM to support its reform agenda.[1631] Ms Korsanos confirmed in

[1618] Exhibit RC0434 Statement of Antonia Korsanos, 27 April 2021, CRW.998.001.0104 at .0105-6 [8], .0107 [11]; Exh bit RC0437 Statement of Helen Coonan, 28 April 2021, CRW.998.001.0526 at .0536 [30(g)-(h)].
[1619] Exhibit RC0434 Statement of Antonia Korsanos, 27 April 2021, CRW.998.001.0104 at .0109 [20].
[1620] Exhibit RC0437 Statement of Helen Coonan, 28 April 2021, CRW.998.001.0526 at .0526 [2].
[1621] Exhibit RC0427 Statement of Jane Halton, 28 April 2021, CRW.998.001.0152 at .0152 [2].
[1622] Exhibit RC0434 Statement of Antonia Korsanos, 27 April 2021, CRW.998.001.0104 at .0104 [3].
[1623] Exhibit RC0223 Statement of Nigel Morrison, 15 June 2021, CRW.998.001.0447 at .0449 [4].
[1624] Exhibit RC0419 Statement of Steve McCann, 15 June 2021, CRW.998.001.0459 at .0459 [2].
[1625] Exhibit RC0931 Statement of Bruce Carter, 12 June 2021, CRW.998.001.0438 at .0438 [2].
[1626] Exhibit RC0352 Statement of Xavier Walsh, 16 April 2021, CRW.998.001.0001 at .0001 [3].
[1627] Exhibit RC0434 Statement of Antonia Korsanos, 27 April 2021, CRW.998.001.0104 at .0104 [3]-[4].
[1628] Exhibit RC0434 Statement of Antonia Korsanos, 27 April 2021, CRW.998.001.0104 at .0107 [11].
[1629] Exhibit RC0223 Statement of Nigel Morrison, 15 June 2021, CRW.998.001.0447 at .0449 [4].
[1630] Exhibit RC0437 Statement of Helen Coonan, 28 April 2021, CRW.998.001.0526 at .0537 [30(n)]; Exhibit RC0434 Statement of Antonia Korsanos, 27 April 2021, CRW.998.001.0104 at .0107 [11].
[1631] Exhibit RC0434 Statement of Antonia Korsanos, 27 April 2021, CRW.998.001.0104 at .0116 [57]-[63], .0123 [101]; Exh bit RC0437 Statement of Helen Coonan, 28 April 2021, CRW.998.001.0526 at .0535 [30(c)], .0536 [30(j)].

her evidence that Crown was seeking to recruit further directors. She stated the ideal composition for the Crown Resorts Board would be seven non-executive directors plus the CEO and Managing Director but acknowledged that it takes time to get a new director through the approval process.[1632] Ms Halton also gave evidence that Crown has been looking to recruit "very high quality executives" to bring in the professional skills and experience needed for a "complete reset".[1633] Ms Coonan has also stated that out of this process, there will be opportunities to consider the composition, requirements and capabilities of the board at Crown Melbourne, including attracting independent directors for appointment.[1634]

5.7 Ms Korsanos also accepted that there would be merit in bringing external expertise in relation to the Responsible Gaming Committee.[1635]

6 External appointment to the Board of Crown Melbourne

6.1 There is merit in the board of an ASX listed entity having a majority of independent directors. Those directors can effectively challenge, question and monitor management and hold them to account. They can bring an independent and fresh perspective to decision-making. They can also add value by bringing relevant competency, experience and ethical behaviour.[1636] A director is independent when:

(a) they are not aligned with the interests of management or a substantial holder; and

(b) can bring independent judgment to bear on issues before the board.[1637]

6.2 A board comprised of a majority of independent directors would ideally have a culture "where intelligent inquiry and independent opinion are encouraged and where the views of experts on the board or dominant board members are not automatically deferred to without investigation". [1638]

6.3 The interests of Crown Melbourne could be further protected or advanced by the appointment of a director who is independent of and does not also have an appointment to any other Crown entity.

6.4 A further option is to mandate the appointment of an independent director appointed by the VCGLR. Such a person should have no role with or prior association with the VCGLR.

7 Governance and Board committees

7.1 Ms Korsanos indicated that the number of Board committees was being considered and that there would likely be an element of consolidation going forward.[1639]

7.2 The evidence given to the Commission, including by Crown employees, calls into question the effectiveness of the committees that support the Boards of Crown Resorts and Crown Melbourne highlighting:

(a) limited information being provided to the committees and subsequently to the Board;

(b) directors not being inquisitive or not challenging management; and

[1632] T3684:36 - T3685:1 (Korsanos).
[1633] T3603:12-16 (Halton).
[1634] Exhibit RC0437 Statement of Helen Coonan, 28 April 2021, CRW.998.001.0526 at .0537 [30(n)].
[1635] T3687:19 - T3688:1 (Korsanos). Ms Korsanos did not consider that external expertise was needed for other committees (noting that the People, Remuneration and Nomination Committee already relied on external consultants when needed).
[1636] ASX Corporate Governance Principles and Recommendations, Fourth Edition, February 2019, 12 (Recommendation 2.1); Australian Institute of Company Directors, Role of non-executive directors, 31 October 2017, 2-3.
[1637] ASX Corporate Governance Principles and Recommendations, Fourth Edition, February 2019, 13-14 (Recommendation 2.3).
[1638] Australian Institute of Company Directors, Role of non-executive directors, 31 October 2017, 3.
[1639] T3685:38-45 (Korsanos).

(c) the need for proper ownership of matters relating to compliance to ensure the information that is provided to the committees and the Board has the appropriate 'compliance' focus. This is demonstrated by reference to how the committees and Board dealt with the FTI report and the VCGLR's investigation in relation to the China arrests.

7.3 Crown should identify how or what aspects of its current organisational structure and framework addresses the concerns identified through these examples and would prevent similar issues occurring in the future.

FTI report

7.4 FTI Consulting was engaged by MinterEllison, on behalf of Crown, in August 2019 to undertake a review of the policies and procedures for conducting due diligence research into existing and new JTOs and Premium Players. It was an important step because it was intended to provide Crown with a defensive position in response to the media allegations that Crown had partnered with junket operators that had links to organised crime.

7.5 The fact of the FTI Consulting engagement was reported to the Brand Committee on 22 August 2019.[1640] However, there was no further follow up by management. Further, no member of the Brand Committee enquired about the status of the engagement or followed up about whether or not a report had been prepared.[1641] In the result, the draft FTI report did not make its way to relevant stakeholders at Crown. The consequences were that Crown continued to deal with junket operators until August 2020 and resisted assertions (in the Bergin Inquiry and during the VCGLR disciplinary action) that its processes in relation to junkets were not robust.

VCGLR's investigation in relation to the China arrests

7.6 Ms Fielding was asked about the division of work between legal and compliance at Crown, noting that Ms Fielding has a compliance role. Her response was that "it is quite a blurred line and quite a difficult thing to explain".[1642]

7.7 Crown Melbourne has a Compliance Committee; and Ms Fielding is now a regular invitee. Membership is comprised of Board members.[1643] The Compliance Committee has a charter. It provides that the function of the Compliance Committee is to ensure that Crown Melbourne fulfils its obligations in clause 19.2 of the Articles of Association (Duty to Maintain Casino Licence). It is also responsible for assisting the Crown Melbourne Board to monitor compliance by Crown Melbourne with all other legislative and regulatory requirements, and to deal with compliance or related issues brought before it.[1644] It must be the case that the Compliance Committee is a key mechanism by which the Crown Melbourne Board is updated about compliance issues identified at Crown Melbourne.

7.8 While Mr Preston was at Crown, Ms Fielding prepared the regulatory report that was included in the diligent pack for Compliance Committee meetings (heavily edited by Mr Preston).[1645] The litigation report, in contrast, was dealt with by Mr Preston or Ms Williamson.[1646]

[1640] Exh bit RC0430, Crown Resorts Brand Committee Meeting Minutes, 22 August 2019, CRL.622.001.0112 at .0113.
[1641] T3576:29 - T3577:27 (Halton); T3582:18 (Halton).
[1642] T2671:22-29 (Fielding).
[1643] T2676:4-8 (Fielding).
[1644] Exh bit RC0427q Crown Me bourne Compliance Committee Charter, August 2020, CRW.512.043.0063 at .0063 [2]. The Compliance Committee Charter is required to be reviewed annually. Clause 2 in the 2020 version is consistent with the August 2011 version (Exhibit RC1230 Crown Melbourne Compliance Committee Charter, August 2011, CRW.512.022.0559 at .0559 [2]).
[1645] T2673:31-34 (Fielding).
[1646] T2673:31-34 (Fielding).

7.9 During the VCGLR's China Arrests Investigation, Crown obtained detailed legal advices that would have been relevant to the VCGLR's China Arrests Investigation. Ms Fielding accepted that the minutes of the Compliance Committee meetings did not identify whether those advices were reported or provided to the Compliance Committee.[1647] Indeed, Ms Fielding herself was not across the detail of some of those matters. Ms Fielding's evidence was that she was not dealing with the VCGLR's China Arrests Investigation.

7.10 When asked whether she was concerned that, in her role as Compliance Manager, she was not kept updated in this regard, her response was that she "would rather know than not" but noted that Mr Preston was at the time "the most senior compliance person" dealing with those issues, and was across the detail of them.[1648] It is submitted that Ms Fielding should not have been content to leave these matters to others; further, that Crown's structures in place at the time should have required her to have some involvement.

7.11 Ms Fielding's response highlights what must be seen as a failing of Crown's management or governance structures through this period: material updates obtained by individuals were not reported through Crown's committees (in this case, the Compliance Committee), and Crown's Compliance Manager was not permitted to be across those updates. She had no visibility about whether the Board was being updated in relation to those matters, or not. She did not have information made available to her which was important for her to execute her duties; and she did not take steps to seek that information out. It appears that even though "the most senior person dealing with compliance" was appraised of those matters, they were not reported to the Board, at least not through the formal mechanisms in place for reporting by Committees and then for discussion by the Board or not in sufficient detail.

7.12 Either an appropriate organisational structure existed but was not utilised; or, the organisational structure was insufficient. Ms Fielding's evidence appeared to be the latter.

7.13 Ms Fielding was asked what improvements could be made to the organisational structure to ensure Crown's Compliance Manager had better oversight of compliance related matters and matters that would bear upon the relationship with the VCGLR.[1649] Ms Fielding identified that Crown has made "significant" improvements to its organisational structure recently.[1650] She cited examples including that she "no longer report[s] into the operational business at Crown Melbourne", but instead into "Steve Blackburn at Crown Resorts", and that as a result of this restructure, the "blurred lines [have] largely been fixed".[1651] It is not clear how these matters would address the issues or concerns identified.

7.14 She later accepted that although her own reporting line was fixed, in fact if the legal department continued to deal with compliance matters that she might require insight into, then the organisational structure would continue to perpetuate the problems that have been described above.[1652] Ms Fielding accepted that this was something that Crown certainly could address.[1653]

[1647] T2676:22-46 (Fielding).
[1648] T2676:41 - T2677:1 (Fielding).
[1649] T2677:3-8 (Fielding).
[1650] T2677:10 (Fielding).
[1651] T2677:12-15 (Fielding).
[1652] T2677:34-42 (Fielding).
[1653] T2677:38-42 (Fielding).

12 Risk management framework

1 Introduction

1.1 Risk management is a core pillar of corporate governance;[1654] and recognising and managing risk is considered a crucial part of the role of the board and management. [1655]

1.2 Accordingly, an inquiry into the risk management framework of Crown Melbourne is necessary.

1.3 The Bergin Inquiry found that problems with Crown's approach to risk management which were identified by the Inquiry related to the application of Crown's risk management framework, although there were some deficiencies in the framework itself.[1656]

1.4 Evidence before this Royal Commission in relation to Crown's risk management framework, systems and processes included:

(a) Oral evidence from Ms Anne Siegers, Chief Risk Officer for Crown Resorts since December 2020. Ms Siegers joined Crown Resorts in 2017 as the Group General Manager of Audit and Risk;

(b) Oral evidence from Ms Jane Halton, Crown Resorts Director and current Chair of the Risk Management Committee. Ms Halton became Chair of the Risk Management Committee from December 2019;

(c) A witness statement and oral evidence from Ms Cara Hartnett, partner from Deloitte, addressing the nature and scope of Deloitte's review into Crown's risk management program in 2019, and key findings, conclusions and recommendations of that review;[1657]

(d) Expert evidence from Mr Peter Deans, who was instructed by solicitors assisting the Royal Commission to prepare a report outlining his opinion on the effectiveness and robustness of the risk management framework and systems of Crown Resorts. He did so by reference to the business environment and risk management practices evidenced in relevant Crown Resorts documentation from January 2019 to 25 March 2021.[1658]

1.5 In summary, the events surrounding the arrest of 19 Crown employees in its operations in China (**China Arrests**) demonstrated a clear failure of Crown's risk management framework, systems and processes. Since then, Crown has undertaken steps to improve them. Ms Siegers, the Chief Risk Officer, has been responsible for implementing these improvements.

1.6 Based on the evidence before the Commission, the core fundamentals of a risk management framework appear to be in place. However, there are also clear areas for enhancement.

1.7 Critically, there has been no independent assessment of the robustness and effectiveness of the risk management framework, systems or processes, or their appropriateness to Crown as a casino operator. Nor has there been any root cause analysis of the failures in

[1654] Exh bit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0345 [26].
[1655] ASX Corporate Governance Principles and Recommendations Fourth Edition, February 2019, 26.
[1656] Exh bit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at .0149 [18].
[1657] Exh bit RC0183 Statement of Cara Hartnett, 16 April 2021, DTT.0000.0005.0054; T1876:42 - T1906:26 (Hartnett).
[1658] Exh bit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0004 [1.10].

Crown's risk management framework, systems and processes in relation to the China Arrests.

1.8 It is submitted Crown's existing risk management framework, systems and processes would benefit from:

(a) Crown implementing the recommendations made by Mr Peter Deans.[1659] In that regard, Ms Halton assured the Commission the recommendations would be considered carefully;[1660]

(b) A formal assessment of the robustness and effectiveness of the risk management framework, systems and processes and their appropriateness to Crown as a casino operator (**External Review**). It is noted that there has not previously been an External Review and the first External Review is scheduled for 2022;[1661] and

(c) Ms Halton should be personally responsible for overseeing Crown's response to the implementation of the recommendations made by Mr Deans and the External Review.

2 Introduction to risk management

2.1 Risk management is the culture, processes and structures that are directed towards taking advantage of potential opportunities while managing potential adverse effects.[1662] It involves identification, evaluation and prioritisation of risks to support informed decision-making.[1663]

2.2 Effective risk management has the following benefits:[1664]

(a) An organisation can identify new opportunities, and challenges associated with current opportunities, when it properly considers risk.

(b) An organisation can identify and appropriately manage risks which may originate in one part of the organisation but impact another part or parts.

(c) By identifying or anticipating risks and establishing appropriate responses, an organisation can:

(i) reduce surprises and related costs or losses while profiting from advantageous developments; and

(ii) increase stability in the organisation's performance.

(d) An organisation can appropriately allocate resources to deal with a particular risk.

(e) An organisation is more resilient as it has greater capacity to anticipate and respond to change.

2.3 Effective risk management is particularly important for casino operators because significant risk and compliance requirements are inherently associated with licensed gambling operations. This necessitates that an entity operating a casino have a strong understanding of the risks faced and emerging, establish parameters for an acceptable level of risk-taking, and that the entity's Board takes steps to ensure that management operates within those limits.

[1659] Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0038-46 [4.1]-[4.33].
[1660] T3614:44 - T3615:4 (Halton).
[1661] T1979:19-42; T1987:7-17; T1991:42 – T1992:29 (Siegers). See also Exhibit RC0427 Statement of Jane Halton, 28 April 2021, CRW.998.001.0152 at .0162 [92] regarding schedule of the External Review.
[1662] Australian Institute of Company Directors, Risk Management – Role of the Board, 2016, 1.
[1663] Australian Institute of Company Directors, Not-For-Profit Governance Principles, Principle 5 – Risk Management, 30 January 2019, 2.
[1664] Committee of Sponsoring Organisations of the Treadway Commission, Enterprise Risk Management – Integrating with Strategy and Performance – Executive Summary, June 2017, 3-4.

3 Events which have called into question Crown's risk management framework or approach

China Arrests

3.1 The Bergin Inquiry concluded that the China Arrests demonstrated that Crown's risk management structures and corporate governance practices were compromised in its operations in China.[1665]

3.2 Risks to the China based staff were not adequately assessed, managed and escalated. Numerous corporate and cultural failures contributed to this event, including:[1666]

(a) Failure to prudently assess and escalate developments in China.

(b) Ineffectual and underutilised risk management and compliance structures.

(c) Blurred lines of reporting.

3.3 Crown conceded before the Bergin Inquiry[1667] that there was a series of failures to prudently assess and escalate important developments in the operating environment in China to the board-level risk committees and wider board. Crown International VIP senior executives were aware of significant developments and escalation of risks and did not expose them to wider consideration and assessment through Crown's risk management structures and procedures. There were serious misjudgements that developments in China could be managed "on the ground". The Board was denied control of the risk appetite of the company in relation to Crown's China operations.

3.4 The Bergin Inquiry made a number of critical findings.

3.5 First, the Board failed in its fundamental responsibility to set, monitor and communicate risk appetite. To the extent it was set informally, risk appetite was excessive and inappropriate for a casino licensee. The Board encouraged management to take inappropriate risks in the pursuit of its success in the strategically important VIP International Business.[1668] It was accepted in evidence from Crown witnesses that the risk appetite was too aggressive leading up to the China Arrests.[1669]

3.6 Second, there were deficiencies in various documents designed to capture risks. For instance:[1670]

(a) Corporate Risk Profiles did not identify the real nature of the risks associated with the VIP International Business, breach of gaming laws or regulatory change.

(b) Measures adopted by the VIP International Business on the ground were not documented in risk management controls, which made those measures incapable of being monitored and reviewed to determine their appropriateness.

3.7 Third, Crown's risk management structures had been compromised by blurred reporting lines. The line of reporting, which avoided the Risk Management Committee and Crown Board, was dysfunctional and compromised. The Board was ultimately prevented from knowing anything about the China Arrests, other than the profitability of the VIP International business unit.[1671]

[1665] Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at .0309 [313].
[1666] Exhibit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0572 [72].
[1667] Exhibit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0572 [73]-[76].
[1668] Exhibit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0573 [77].
[1669] Exhibit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0573 [79].
[1670] Exhibit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0573 [79].
[1671] Exhibit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0576 [95].

3.8 Fourth, Crown was complacent in respect of the identified serious risks, which generated from a confident culture within the VIP International business unit. This prevented a proper analysis of the events which were unfolding in China.[1672]

3.9 The Bergin Inquiry acknowledged that Crown proposed changes to its risk management structures.[1673] It also observed that in the absence of an inquiry into the causes which led to the China Arrests, "Crown could not propound with any confidence that it had established appropriate risk structures to address the deficiencies that resulted in the China Arrests".[1674]

3.10 Ms Korsanos in her statement to this Commission identified the deficiencies in Crown Resorts' corporate governance framework that contributed to the failures in relation to the China Arrests as follows:[1675]

> *Risk was not escalated to the Board. This was influenced by the blurring of reporting lines and leadership that ignored formal reporting lines. Management were influenced by a commercially driven culture over risk management and compliance at a level beyond acceptable risk in line with maintaining the safety of employees and gaming regulatory requirements. The VIP business operated in its own silo separate from the rest of the business. I don't believe the risk appetite for Crown's operations in China was appropriately set or monitored.*

3.11 Similarly, Ms Halton acknowledged in her statement that some failures (reporting, escalation, skill, knowledge culture and appropriate diligence and lack of questioning) which contributed to the Bergin Report's conclusions went to the operation of the risk management framework.[1676] In evidence, Ms Halton accepted that staff were not comfortable "speaking up" because management was pushing them to promote the casino.[1677]

3.12 In her evidence to this Commission, Ms Siegers accepted that she was brought in after the China Arrests to overhaul the risk management system.[1678] However, she rejected the proposition that the China Arrests demonstrated that Crown's risk management framework needed to be fixed. This is evident in the following exchange between Ms Siegers and Counsel Assisting:[1679]

> *Q. Ah, but when you joined, it was definitely in need of fixing, and since then, you've continued the process of enhancement; would you agree with that?*
>
> *A. Again, you are using the word "fixing". "Fixing" for me means that it is broken. It's not an assessment I came to, when I started, that it was broken.*
>
> *Q. So you had 19 staff members arrested in China and detained, and you don't think the risk management framework was broken?*
>
> *A. You are assuming in that statement that the risk management framework is the source of the arrests. I don't know that that is necessarily the case.*

3.13 In light of the findings in the Bergin Report and concessions by Ms Korsanos and Ms Halton, Ms Siegers' position that Crown's risk management framework was merely in need of "enhancement" in light of the China Arrests is unsustainable.

[1672] Exhibit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0575 [89].
[1673] Exhibit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0576 [96].
[1674] Exhibit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0574 [85].
[1675] Exhibit RC0434 Statement of Ms Antonia Korsanos, 27 April 2021, CRW.998.001.0104 at .0125 [110].
[1676] Exhibit RC0427 Statement of Jane Halton, 28 April 2021, CRW.998.001.0152 at .0175 [186].
[1677] T3589:46 - T3590:3 (Halton).
[1678] T1971:16-20 (Siegers).
[1679] T1971:33-47 (Siegers).

VCGLR Sixth Casino Review

3.14 The VCGLR Sixth Casino Review considered the issue of risk management amongst other matters.

3.15 It made two overarching observations.

3.16 First, it identified, by reference to the PwC Report it had commissioned,[1680] that Crown's risk management framework and approach was documented, and processes were in place to support its implementation. A potential area of improvement was to establish a "risk appetite" for material risks and regularly report risk performance measures relevant to appetite.[1681]

3.17 Second, it considered that Crown Melbourne's risk management processes were detailed and documented and appeared by design to capture what was relevant. However, the VCGLR also stated that "*Crown Melbourne has experienced risk failings relevant to its primary licence*." It referred to two matters which had been the subject of disciplinary action (non-compliance with internal controls and making changes to gaming machines without the required regulatory approval) and then observed:[1682]

> *These matters suggest that, despite Crown having extensive documented risk management and compliance processes,* ***the company was not sufficiently capable of anticipating risks and addressing them when they arose****. The VCGLR has concluded that there is scope for strengthened internal governance.*
>
> *(emphasis added)*

3.18 Even though the VCGLR considered the risk management framework was sufficiently documented, there were clear issues with Crown's capacity to anticipate and address risks.

3.19 VCGLR Recommendation 3 (discussed below) recommended that Crown assess the robustness and effectiveness of its risk frameworks and systems, including reporting lines in the chain of command, and upgrade them where required. It further recommended that this assessment be undertaken with the assistance of external advice.

4 Objects or usual features of a risk management framework

4.1 A board of a listed entity is expected to:

(a) Set out the nature and extent of risk the organisation is prepared to accept in pursuit of its purpose (ie, the "risk appetite").[1683]

(b) Establish a sound risk management framework[1684] that manages risk as an integral part of the decision-making process.[1685]

4.2 An effective (or sound) risk management framework will have processes or mechanisms in place to:[1686]

(a) Identify (and document) risks, including emerging risks.

(b) Regularly review risks facing the organisation and update risk registers.

[1680] Exh bit RC0427a PWC Crown Melbourne Risk Management Process Assessment, 23 May 2018, CRL.581.001.3365.
[1681] Exh bit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, COM.0005.0001.0776 at .0844.
[1682] Exh bit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, COM.0005.0001.0776 at .0845.
[1683] Australian Institute of Company Directors, Not-For-Profit Governance Principles, Principle 5 – Risk Management, 30 January 2019, 3.
[1684] ASX Corporate Governance Principles and Recommendations Fourth Edition, February 2019, 26.
[1685] Australian Institute of Company Directors, Not-For-Profit Governance Principles, Principle 5 – Risk Management, 30 January 2019, 3.
[1686] Australian Institute of Company Directors, Risk Management – Role of the Board, 2016, 2; See also Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0012 [3.2].

(c) Determine the materiality of risks and develop plans to prevent risk events and/or minimise the impact of risk events when they occur.

(d) Formulate and update risk management processes and procedures to address significant risks.

(e) Monitor the organisation's risk culture to ensure it is consistent with the board's risk appetite and risk priorities.

(f) Monitor the extent to which the organisation's risk management processes and procedures have been implemented and are operating effectively.

(g) Monitor and evaluate the personnel within the organisation responsible for risk management.

4.3 There is no agreed "right approach" to risk management other than high-level principles and a range of tools and techniques to select from. Differences in the design and implementation of risk management frameworks arise from different business activities, organisational and ownership structures as well as risk profiles.[1687] Even so, the following features of a risk management framework are expected in a company of the size and nature of Crown.

4.4 First, there is an approved document outlining the organisation's approach to governance and oversight of risk management. Its content would include:[1688]

(a) statements, policies and procedures dealing with risk appetite;

(b) processes for identification, assessment and reporting of risks;

(c) roles and responsibilities within an organisation; and

(d) general risk management reporting.

4.5 Second, risk appetite is defined, and metrics are determined, based on material business risks.[1689] A risk matrix, designed to assist management to identify and assess risk, would usually have:

(a) a table of financial and non-financial descriptors (phrases or statements that describe what the outcome would look like) to assist business and risk managers to determine the risk rating;[1690] and

(b) detailed guidance on determining the likelihood of the event occurring.[1691]

4.6 Third, there are governance, policies and practices that test and report on internal controls.[1692]

[1687] Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0010 [2.14]-[2.15].
[1688] Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0020 [3.37].
[1689] Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0025 [3.57].
[1690] Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0025 [3.55].
[1691] Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0025 [3.55].
[1692] Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0027 [3.63].

4.7 Fourth, there is timely and insightful reporting of risks to the board and management.[1693] This should usually include:[1694]

(a) reporting against risk appetite;

(b) reporting of key risk indicators, regulatory breaches and other compliance incidents; and

(c) reporting of risk management issues arising from internal or external audits.

5 Features of Crown's risk management framework

Key parts of the framework

5.1 The key documents comprising the framework which outlines Crown's approach to management and reporting of risk are the Risk Management Policy and Risk Management Strategy.[1695]

5.2 The Risk Management Policy sets out how risk will be managed at an operating level. It states that each business will be responsible:[1696]

(a) for implementing the risk management framework which is articulated in the Risk Management Strategy;

(b) maintaining and reviewing the risk profile of its business regularly; and

(c) reporting material changes to the Risk Management Committee.

5.3 It also sets out the expected content of risk registers, namely that a risk register is to include:[1697]

(a) a description of identified material risks;

(b) the likelihood and consequence of each risk;

(c) a description of key controls in place to mitigate the risk; and

(d) strategy against each identified risk.

5.4 The Risk Management Strategy states that the key elements of Crown's risk management framework are:[1698]

(a) The Crown Risk Governance Framework;

(b) The Risk Appetite and how it is operationalised; and

(c) Crown's risk management processes and methodology.

Crown's Risk Governance Framework

5.5 Crown adopts the 3 lines of defence model:[1699]

(a) The first line represents operational functions who own and manage risks. This is the operational management which reports to senior management.

[1693] Exh bit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0029 [3.72].
[1694] Exh bit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0029 [3.74].
[1695] Exh bit RC0427 Statement of Jane Halton, 28 April 2021, CRW.998.001.0152 at .0153 [20]; T1974:32-43 (Siegers).
[1696] Exh bit RC0427 Statement of Jane Halton, 28 April 2021, CRW.998.001.0152 at .0153 [22].
[1697] Exh bit RC0427o Crown Resorts Risk Management Policy, March 2021, CRW.512.043.0051 at .0053.
[1698] Exh bit RC0427l Crown Resorts Risk Management Strategy, April 2021, CRW.512.041.0055 at .0060.
[1699] Exh bit RC0427l Crown Resorts Risk Management Strategy, April 2021, CRW.512.041.0055 at .0061, 0064-0067; Exhibit RC0427 Statement of Jane Halton, 28 April 2021, CRW.998.001.0152 at .0153 [23]-[24].

(b) The second line owns the risk framework and provides the link between the board and management. This is the risk management, compliance and AML functions. The Chief Risk Officer is responsible for the risk management function of Crown.[1700]

(c) The third line provides independent assessment on a regular basis of the framework and controls. It includes internal audit which reports directly to the Crown board and committees, and which is structured to be independent from the first line.[1701] The Group General Manager – Internal Audit is responsible for the internal audit function.[1702]

Risk Appetite

5.6 The Risk Management Strategy sets out the risk appetite for Crown Resorts and Crown Melbourne, which is the same for both entities.[1703]

5.7 The overarching risk appetite statement provides that:[1704]

(a) Crown's risk appetite allows measured commercial risk in pursuit of strategic objectives while managing and minimising risk in its operations; and

(b) Crown is willing to accept material commercial risks but only where it falls within pre-defined limits and parameters.

5.8 The risk appetite states that there should be "systematic compliance with all legal, regulatory, statutory and contractual obligations".[1705] Effort is focussed on material risks.[1706] Crown does not have appetite to accept material risks related to, among other things:[1707]

(a) regulatory, legal or statutory requirements, including in respect of financial crime;

(b) any association with or influence from criminal elements; and

(c) any activity that would be inconsistent with its social license to operate.

5.9 The Risk Management Strategy outlines qualitative statements and quantitative metrics which define the Board's appetite and its tolerance for individual risk events.[1708] Crown has acknowledged that there may be "residual risks" from previous "liberal" risk appetites, which would need to be identified and remediated where inconsistent with the current risk appetite.[1709]

Operationalisation of the Risk Appetite

5.10 The risk appetite is translated into thresholds that enable Crown to operate within the articulated level of risk. This translation is facilitated through a risk matrix. In this matrix, a risk rating arises from the combination of a likelihood rating and a consequence rating. The risk rating is inherent (without consideration of existing controls) or residual (taking into account the controls which are already in place). There is a risk map which represents the escalation levels associated with a particular rating.[1710]

[1700] Exhibit RC0427l Crown Resorts Risk Management Strategy, April 2021, CRW.512.041.0055 at .0066.
[1701] Exhibit RC0427l Crown Resorts Risk Management Strategy, April 2021, CRW.512.041.0055 at .0066-7.
[1702] Exhibit RC0427l Crown Resorts Risk Management Strategy, April 2021, CRW.512.041.0055 at .0067.
[1703] Exhibit RC0427l Crown Resorts Risk Management Strategy, April 2021, CRW.512.041.0055 at .0067-72; Exhibit RC0427 Statement of Jane Halton, 28 April 2021, CRW.998.001.0152 at .0152 [7]-[8].
[1704] Exhibit RC0427l Crown Resorts Risk Management Strategy, April 2021, CRW.512.041.0055 at .0067.
[1705] Exhibit RC0427 Statement of Jane Halton, 28 April 2021, CRW.998.001.0152 at .0153 [15].
[1706] Exhibit RC0427 Statement of Jane Halton, 28 April 2021, CRW.998.001.0152 at .0153 [14].
[1707] Exhibit RC0427l Crown Resorts Risk Management Strategy, April 2021, CRW.512.041.0055 at .0067-8.
[1708] Exhibit RC0427l Crown Resorts Risk Management Strategy, April 2021, CRW.512.041.0055 at .0068.
[1709] Exhibit RC0427 Statement of Jane Halton, 28 April 2021, CRW.998.001.0152 at .0153 [18].
[1710] Exhibit RC0427l Crown Resorts Risk Management Strategy, April 2021, CRW.512.041.0055 at .0071.

Risk Management Processes and methodology

5.11 The risk management process and methodology are encapsulated in these steps: risk identification, analysis and evaluation; risk treatment; communication and consultation; monitoring and review; recording and reporting.[1711]

5.12 Risk identification involves what Crown's characterises as "top-down" and "bottom-up" risk assessment processes. These involve considering risks arising at the strategic level and from the organisation's operating environment, as well as at a granular level for each business unit. These processes identify the businesses' material risks and lead to Crown's risk profile.[1712]

5.13 The Risk Management Function is responsible for co-ordinating and facilitating these risk assessment processes and preparing the corporate risk profile. The corporate risk profile forms the basis of the internal audit plan, so that the "third line of defence" is aligned to the organisation's material risks.[1713] The Risk Management Function is also primarily responsible for monitoring compliance with risk appetite and escalating material risks to the Board.[1714]

5.14 In relation to the adequacy of the existing framework, systems and processes, Mr Peter Deans observed:[1715]

> *Overall, I am unable to reach the conclusion that the Group's risk management frameworks and systems are effective and robust based on the matters outlined above in this section. In my opinion, whilst the risk management frameworks and policies are not fundamentally deficient, there are design and reporting weaknesses in the risk management frameworks that need to be addressed.*
>
> *In my opinion, the Group would need to demonstrate the effective implementation of the requirements of the frameworks in the areas of risk appetite, risk reporting incorporating agreed key risk indicators, operation of the three lines of defence, and oversight by the Risk Management Committee and Audit and Corporate Governance Committee.*

Improvements since 2017

5.15 At the Risk Management Committee meeting on 25 March 2021, Ms Siegers presented four papers under the agenda item 'Risk Reporting' including:[1716]

(a) Risk Management Framework Progress and Update: This was said to be prompted by ILGA 'discussions' about the topic of risk processes and culture. Ms Siegers' paper summarised the strategy implemented by Crown over the previous three years in relation to the risk management framework;

(b) Material Risk Report;

(c) Risk and Compliance Culture Framework; and

(d) Emerging Risks.

5.16 Ms Siegers' Risk Management Framework Progress and Update paper records that following the China Arrests in 2016, Crown embarked on a review and enhancement of its risk management processes.[1717] It assessed the risk management framework in place, and

[1711] Exhibit RC0427l Crown Resorts Risk Management Strategy, April 2021, CRW.512.041.0055 at .0073-4.
[1712] Exhibit RC0427l Crown Resorts Risk Management Strategy, April 2021, CRW.512.041.0055 at .0075.
[1713] Exhibit RC0427l Crown Resorts Risk Management Strategy, April 2021, CRW.512.041.0055 at .0075.
[1714] Exhibit RC0427l Crown Resorts Risk Management Strategy, April 2021, CRW.512.041.0055 at .0075-6.
[1715] Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0036-7 [3.104]-[3.105].
[1716] Exhibit RC0427g Crown Resorts Risk Management Committee Diligent Pack, 25 March 2021, CRW.512.004.0001 at .0024-82.
[1717] Exhibit RC0427g Crown Resorts Risk Management Committee Diligent Pack, 25 March 2021, CRW.512.004.0001 at .0025.

how risk was managed and reported in December 2017 and early 2018. Crown identified three main gaps:

(a) A lack of formalisation and documentation of the risk expectations of the Board regarding risk management.

(b) A misalignment between the documented elements of the risk appetite and the actual risk appetite of the company.

(c) A lack of effective escalation and reporting mechanisms within the risk framework.[1718]

5.17 The main enhancements introduced by Crown to address these three areas are summarised below.[1719]

5.18 First, the three lines of defence was introduced in Crown from early 2018 – a core principle of the APRA standards of risk governance which apply to the financial services industry in Australia.[1720] This was initiated through the separation of the risk (second line) and audit (third line) portfolios. There are now two separate heads for these different departments – the Chief Risk Officer for risk and the Group General Manager – Internal Audit, for audit.

5.19 Second, there were enhanced reporting lines for the risk management function. Prior to 2018, the most senior risk and audit professional within Crown reported to the Chief Legal Officer of each property who, in turn reported to the Chief Legal Officer, Australian Resorts, which role reported to the CEO, Australian Resorts.

5.20 Since December 2020, the Chief Risk Officer has reported directly to the CEO of Crown Resorts and is also invited to sit on the boards of Crown's other subsidiaries. The Chief Risk Officer also has reporting lines to the chairs of the Risk Management Committee and the Crown Melbourne Audit Committee.[1721] The Chief Risk Officer is also a Group Executive position, which is said to enhance communication flows and ensure effective challenge on decision-making.[1722]

5.21 Third, the Executive Risk and Compliance Committee was introduced in 2018 across Perth and Melbourne. It is a management committee rather than a sub-committee of the Crown Melbourne or Perth Board (as appropriate).[1723] The purpose of this committee is to ensure that information, which is to be presented to the relevant Board or Board sub-committee, is properly discussed by the executives. This is designed to ensure the completeness and accuracy of information that is escalated to the board, and for discussion of events which may indicate systemic or recurring issues to be identified and escalated, where appropriate.

5.22 Fourth, the Crown Resorts Board first approved a Risk Management Strategy in June 2019, to ensure that the risk expectations of the Board were formally documented. This document included Crown's articulation of its risk appetite (first approved by the Crown Resorts Board in December 2018), which followed a process whereby Crown updated its documented risk matrix to ensure that it reflected the actual appetite of the organisation.

5.23 The Risk Management Strategy was later expanded to include:

(a) an articulation of the Board's expectations with respect to risk culture; and

[1718] Exhibit RC0427g Crown Resorts Risk Management Committee Diligent Pack, 25 March 2021, CRW.512.004.0001 at .0025.
[1719] Exhibit RC0427g Crown Resorts Risk Management Committee Diligent Pack, 25 March 2021, CRW.512.004.0001 at .0027-31.
[1720] Exhibit RC0427g Crown Resorts Risk Management Committee Diligent Pack, 25 March 2021, CRW.512.004.0001 at .0027.
[1721] T1969:45 - T1970:8 (Siegers).
[1722] Exhibit RC0427g Crown Resorts Risk Management Committee Diligent Pack, 25 March 2021, CRW.512.004.0001 at .0027; Exhibit RC0187 Crown Resorts Risk Management Framework Progress Report, n.d., CRW.512.044.0114.
[1723] T1971:1-6 (Siegers).

(b) additional wording around plain English versions of the risk appetite statements.[1724]

5.24 Fifth, the risk matrix (which translates the risk appetite into thresholds)[1725] has been updated. The residual risk ratings were associated with escalation levels to address the lack of effective escalation and reporting within the framework. Also, there have been enhancements to risk reporting.[1726] This is reflected in, among other things, the reporting against tolerances expressed in risk appetite as well as of smaller events (in the summary section of a material risk report) which may not yet reach the reporting threshold or be associated with a material risk.

5.25 Sixth, there has been an increase in:[1727]

(a) the allocation of resources to the risk management function – prior to 2018 the risk function was "lightly resourced" and focused on delivering basic risk artefacts (risk profiles and risk reports to the Board) with reliance on the business to "fill any gap left".[1728] As of March 2021, there are seven full time equivalent employees in the Risk function, with three roles under recruitment;[1729] and

(b) the frequency of meetings of the risk management committee, which increased to four in 2017, then to six in mid-2020.

5.26 Seventh, the risk management function has been rolling out a program to ensure:

(a) there is a risk profile for every material area of the business; and

(b) effective communication flow between the operational areas and the Board,

although the roll out of this initiative stopped during 2020 due to the impacts of the COVID-19 pandemic, the process is "resuming".[1730]

5.27 Eighth, the Board approved a risk and compliance culture framework in March 2021.[1731] The purpose of the framework is to articulate how Crown will measure the risk and compliance elements of its culture.[1732] The Risk Culture report is to be presented to the Risk Management Committee quarterly and will provide insights into Crown's Risk and Compliance culture.[1733]

5.28 To this can be added Ms Halton's summary of changes to the risk management framework, and the process of escalating risks, in her statement to the Commission.[1734]

Further planned enhancements

5.29 Ms Siegers considers that Crown's "risk management and compliance requirements are well articulated and commensurate with the size and complexity of Crown Resorts". [1735]

[1724] Exh bit RC0187 Crown Resorts Risk Management Framework Progress Report, n.d., CRW.512.044.0114; See also T2006:23-27 (Siegers).
[1725] Exh bit RC0427g Crown Resorts Risk Management Committee Diligent Pack, 25 March 2021, CRW.512.004.0001 at .0033. The risk matrix is built around seven risk categories that reflect the types of impact that any risk event can have.
[1726] See also Exhibit RC0187 Crown Resorts Risk Management Framework Progress Report, n.d., CRW.512.044.0114 at Oct-20.
[1727] Exh bit RC0427g Crown Resorts Risk Management Committee Diligent Pack, 25 March 2021, CRW.512.004.0001 at .0028.
[1728] Exh bit RC0427g Crown Resorts Risk Management Committee Diligent Pack, 25 March 2021, CRW.512.004.0001 at .0032.
[1729] Exh bit RC0427g Crown Resorts Risk Management Committee Diligent Pack, 25 March 2021, CRW.512.004.0001 at .0028; nb the Report indicates that these resourcing requirements are as at March 2020, but this appears to be an error and should read March 2021.
[1730] Exh bit RC0427g Crown Resorts Risk Management Committee Diligent Pack, 25 March 2021, CRW.512.004.0001 at .0030.
[1731] Exh bit RC0187 Crown Resorts Risk Management Framework Progress Report, n.d., CRW.512.044.0114 at Apr-21.
[1732] T2002:32-36 (Siegers).
[1733] Exh bit RC0427g Crown Resorts Risk Management Committee Diligent Pack, 25 March 2021, CRW.512.004.0001 at .0033.
[1734] Exh bit RC0427 Statement of Jane Halton, 28 April 2021, CRW.998.001.0152 at .0157-8 [48]-[70].
[1735] Exh bit RC0427g Crown Resorts Risk Management Committee Diligent Pack, 25 March 2021, CRW.512.004.0001 at .0077.

5.30 She explained that Crown is in a "continuous improvement environment" and gave evidence to the following effect:[1736]

> *Even though something is in place, doesn't mean, from my perspective, that it is finished and I will never look at it again. It just means that we've set it up, we have it, and I will, therefore, continuously enhance it [sic] as part of my program.*

5.31 Crown still has some work to do in order to "enhance the capacity of implementing the risk requirements in keeping with the articulated objectives".[1737] There is no specific risk event reporting and analysis program in place. Crown has not developed the infrastructure necessary to ensure day to day use of risk tools. It has only started to develop key compliance indicators for the organisation.[1738] In summary, the planned focus to increase capacity is on the following:[1739]

(a) Finalising the risk profiles across the organisation.

(b) Developing and maturing the Key Risk Indicators, Compliance and Key Risk and Compliance Indicator Dashboards.

(c) Developing a risk event program identification and reporting.

(d) Developing risk tools to support the business decision-making processes.

(e) Enhancing overall risk management capability through targeted training.

5.32 Ms Siegers considered that some of Mr Deans' recommendations concerning Crown's Risk Management Committee Charter, Audit and Corporate Governance Committee Charter, Internal Audit Function, Risk Management Framework and Risk Management Reporting could be implemented by Crown.[1740] However, she also considered that there were some recommendations which should not be adopted by Crown (Recommendations 17, 18, 20, 21). Ms Halton explained that the Risk Management Committee will meet in August 2021 and consider Mr Deans' recommendations.[1741] Ms Halton has assured the Commission the recommendations will be considered carefully.[1742]

6 Recommendation #3

6.1 In its Sixth Casino Review, the VCGLR made the following recommendation:[1743]

> *The VCGLR recommends that, by 1 July 2019, Crown assess the robustness and effectiveness of its risk framework and systems, including reporting lines in the chain of command, and upgrade them where required. This assessment should be assisted by external advice.*

6.2 For the purpose of implementing this recommendation, Crown engaged Deloitte.

6.3 Deloitte was engaged to assess the design of Crown Melbourne Limited's risk management program and provide observations, where appropriate, for improvement.[1744] It assessed the risk and governance documentation relating to risk management. The scope of

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[1736] T2005:16-19 (Siegers).
[1737] Exh bit RC0427g Crown Resorts Risk Management Committee Diligent Pack, 25 March 2021, CRW.512.004.0001 at .0077.
[1738] Exh bit RC0427g Crown Resorts Risk Management Committee Diligent Pack, 25 March 2021, CRW.512.004.0001 at .0076.
[1739] Exh bit RC0427g Crown Resorts Risk Management Committee Diligent Pack, 25 March 2021, CRW.512.004.0001 at .0077.
[1740] Exh bit RC0433 Memorandum regarding the Royal Commission's Expert Report on the Risk Management Frameworks and Systems of Crown Resorts, 6 July 2021, CRW.512.210.0001.
[1741] T3614:25-29 (Halton).
[1742] T3614:44 - T3615:4 (Halton).
[1743] Exh bit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, COM.0005.0001.0776 at .0846.
[1744] Exh bit RC0183 Statement of Cara Hartnett, 16 April 2021, DTT.0000.0005.0054 at .0054 [3]. The engagement letter in this exhibit at [3] was replaced by Exhibit RC0972 Letter from Deloitte to Alan McGregor, 12 February 2019, DTT.001.0002.0042: see T1877:26-42 (Hartnett).

engagement was confined to a high level, desktop advice and challenge on the design framework[1745] or a "documentation review".[1746]

6.4 The Deloitte engagement was limited. Critically, the Deloitte engagement:

(a) did not assess the degree to which the risk management framework had been embedded in the organisation and how well it was operating;[1747]

(b) did not consider whether the risk management framework was appropriate for Crown's business;[1748]

(c) did not involve an "exhaustive or highly sophisticated review" comparing Crown's risk management framework against best practice;[1749] and

(d) was restricted to the risk management practices in place as at 31 March 2019.[1750]

6.5 An engagement which considered the effectiveness and robustness of the risk management framework would have involved interviewing a range of stakeholders,[1751] a more extensive document review[1752] and taken more time to complete.[1753]

6.6 In cross-examination, Ms Siegers:

(a) accepted that she was responsible for instructing Deloitte, along with Mr Preston;[1754] and

(b) accepted that the engagement of Deloitte, which was limited to assessing design, was narrower than assessing the robustness and effectiveness of Crown's risk framework.[1755]

6.7 Ms Siegers gave evidence to the effect that she did not want Deloitte to engage in an assessment of the robustness and effectiveness risk management framework. Her evidence was as follows:[1756]

Q. But you didn't want them to do a full and comprehensive assessment of the robustness and effectiveness of Crown's risk management framework, did you?

A. No, because a lot of the elements were not in place yet, so doing an assessment of how well it was implemented would not have been do-able at that stage.

…

Some of the others were newly implemented and so there was not an enormous amount of data for them to test the consistent application of those processes.

6.8 Ms Siegers, nevertheless, gave evidence that she considered Crown complied with the requirements of Recommendation #3. When the issue was directly put to her, she answered:[1757]

[1745] Exhibit RC0183 Statement of Cara Hartnett, 16 April 2021, DTT.0000.0005.0054 at .0054 [5].
[1746] T1879:7-37 (Hartnett).
[1747] Exhibit RC0972 Letter from Deloitte to Alan McGregor, 12 February 2019, DTT.001.0002.0042 at _0001 [2.2]; Exhibit RC0183f, Deloitte Crown Melbourne Risk Management Framework Report, June 2019, DTT.001.0002.0061 at _0003 [1.2]; T1881:34 - T1882:16 (Hartnett).
[1748] T1882:22-26 (Hartnett).
[1749] Exhibit RC0183 Statement of Cara Hartnett, 16 April 2021, DTT.0000.0005.0054 at .0054 [5].
[1750] Exhibit RC0183f, Deloitte Crown Melbourne Risk Management Framework Report, June 2019, DTT.001.0002.0061 at _0003 [1.2].
[1751] T1883:40 - T1884:32 (Hartnett).
[1752] T1884:42 - T1885:16 (Hartnett).
[1753] T1885:31-35 (Hartnett).
[1754] T1980:9-15 (Siegers).
[1755] T1980:33 - T1981:15 (Siegers).
[1756] T1979:36 - T1980:7 (Siegers).
[1757] T1981:27-32 (Siegers).

> *[T]he recommendation does not request that the external party conduct the whole review. It requests that Crown conduct that review with the assistance of external advice. So I sought the assistance I felt I needed, which was on ensuring that the design of the elements that I was upgrading as requested in the recommendation were adequate.*

6.9 Ms Siegers then gave evidence that she is in a position to assess whether the framework and systems are sufficiently robust and effective. After confirming she designed most of the elements, she gave the following evidence:[1758]

> *Q. Do you think you are really in a position to be objective about the elements that you had just put in place, as to whether or not they were sufficiently robust and effective?*
>
> *A. Yes.*
>
> *Q. You think you could judge for yourself objectively whether or not the systems you designed were robust and effective?*
>
> *A. Yes*
>
> *Q. Did you not think that what the Recommendation was really getting at was a need for some objectivity?*
>
> *A. The purpose of a second line function is to be more objective. And so being new to Crown, having been hired to provide those enhancements, I actually felt I was qualified to identify what elements were required and implement them, yes.*

6.10 Ms Siegers also gave evidence that she felt that she had responded to the recommendation and "VCGLR agreed. They closed that recommendation a short while later."[1759] Crown advised VCGLR on 1 July 2019 that it had complied with Recommendation 3 when it concluded (emphasis added):[1760]

> *Crown considers that the **completion of the assessment of the robustness and effectiveness of its Risk Framework and systems**, including reporting lines in the chain of command, and upgrade of them where required, has been completed in satisfaction of Recommendation 3 of the Sixth Review.*

6.11 Crown's advice to VCGLR was:[1761]

(a) It conducted an extensive review of existing processes and practices and found "risk was fundamentally well understood and managed within the business and operations".

(b) This internal review found that there were enhancements which could be made to the key framework elements.

(c) The PwC Review confirmed the internal assessment that overall risk management was effective but that there were "areas of enhancement and maturity possible relative to best practice".

(d) Following this internal review and taking into account PwC's input, Crown implemented enhancements to its framework.

[1758] T1981:40 - T1982:10 (Siegers).
[1759] T1986:44-47 (Siegers).
[1760] Exhibit RC0189 Letter from Barry Felstead to Catherine Myers, 1 July 2019, VCG.0001.0001.0065 at .0003.
[1761] Exhibit RC0189 Letter from Barry Felstead to Catherine Myers, 1 July 2019, VCG.0001.0001.0065 at .0002-3.

(e) To further ensure "the robustness of enhancements being introduced", Crown Melbourne engaged Deloitte and Deloitte confirmed that Crown's risk management framework and design were consistent with the ISO 31000:2018 Risk Management.

(f) Deloitte made recommendations to its risk management framework which would be incorporated and/or considered as to their relevance or appropriateness for Crown.

6.12 It is submitted that Ms Siegers was genuine in giving her evidence. However, the Deloitte engagement did not meet the expectations set out in Recommendation 3. It is incongruous to assert:

(a) Deloitte could not engage in an assessment of the effectiveness and robustness of the risk management framework; but

(b) Crown, in particular Ms Siegers, was perfectly capable of making that same assessment objectively.

6.13 There are two possibilities arising from Ms Siegers' evidence to the Commission.

6.14 The first is that Crown could not have assessed the robustness and effectiveness of the risk management framework before 1 July 2019; the elements of the risk management framework were still in development or had not yet been fully implemented. Contrary to the position it took to VCGLR in its letter dated 1 July 2019, Crown should have informed VCGLR that it was not capable of meeting Recommendation 3 and negotiated or discussed a less stringent requirement in the interim (at least).[1762] The failure to do so illustrates that Crown Melbourne did not exhibit the type of openness and candour that would be expected in its relationship with the regulator.

6.15 The second possibility is that Crown could have asked Deloitte to undertake that assessment, and inexplicably failed to do so.

6.16 Ms Siegers' position that it was sufficient for her to make the assessment of robustness and effectiveness[1763] is unconvincing. The purpose behind the requirement that Crown was "assisted with external advice" was to provide an objective, independent assessment of the robustness and effectiveness of the risk management framework. Such an assessment would either confirm or challenge Crown's internal assessment. It is inconceivable that Crown could have stated it complied with Recommendation 3 notwithstanding its own internal assessment if Deloitte was engaged to consider the effectiveness and robustness of the risk management system and concluded that it was not capable of assessing the robustness and effectiveness of the risk management framework for the reasons given by Ms Siegers in evidence.

6.17 Moreover, Mr Deans has opined that the limitations in the scope of the Deloitte engagement meant that Deloitte was unable to assist Crown to assess the effectiveness of the framework as required by Recommendation 3.[1764]

6.18 In accepting that Crown met the requirements of Recommendation 3, the VCGLR considered that the Deloitte report was "fit for purpose" on the basis that any limitations arising from the scope of the Deloitte engagement were addressed by the PwC Report in May 2018.[1765] The VCGLR considered it was possible that Crown may not have completed its assessment with "external advice" by the deadline given that the Deloitte report was submitted to Crown on 20 June 2019. However, it was willing to accept that

[1762] T1988:42 - T1989:17; T1990:13-30 (Siegers).
[1763] See especially T1990:17-26 (Siegers).
[1764] Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0035 [3.97].
[1765] Exhibit RC0973 Memorandum regarding VCGLR Sixth Review of the Casino Operator and Licence – Recommendations 3 and 15 and Progress Report on Other Recommendations, 2 December 2019, VCG.0001.0002.6151 at .0003 [10(c)]-[11].

Recommendation 3 was implemented even if the outcomes of Crown's assessment were not genuinely informed by the Deloitte report because there was "alignment between Crown's assessment with most recommendations".[1766]

6.19 The VCGLR's decision to accept the Crown's assessment of the robustness and effectiveness of the risk management framework and systems was adequately assisted by external advice was premature. Crown's engagement of Deloitte clearly did not involve an assessment into the robustness and effectiveness of Crown's risk management framework, systems and processes. It is difficult to see how Crown received any "assistance" from external advice merely because there appeared to be alignment between the outcomes of Crown's assessments and most of Deloitte's recommendations. It was open to the VCGLR to:

(a) insist that the Deloitte review consider how well the risk management framework was embedded and operating rather than rely on the PwC Review's consideration of that issue;[1767] or

(b) accept that Crown could not meet the expectations of Recommendation 3 and impose a less stringent requirement.

6.20 The more probable explanation is that Crown could not have met the requirements of Recommendation 3 as at June 2019. Crown should have engaged and been more open and transparent with the VCGLR.

7 Recommendations for improvement

Positive aspects

7.1 There are positive aspects of Crown's risk management framework and systems, particularly in recent times (since 2018).

7.2 First, the core fundamentals of a risk management framework are in place.[1768] There are documented frameworks and processes that could enable Crown to have effective risk management.[1769] The key foundational documents contain the main elements, in particular:

(a) The Risk Management Committee Charter, which is a key governance document, has the foundational elements within it to enable the Group to establish and maintain risk management frameworks, governance and processes.[1770]

(b) The length and content of the Risk Management Strategy is consistent with what would be expected of an Australian publicly listed group of the size and nature of Crown.[1771]

7.3 Second, the frameworks and the Group's approach to risk management are supported by an established Risk Management Function.[1772] The position description of the Chief Risk Officer is consistent with what is expected for an organisation such as Crown Resorts. The

[1766] Exhibit RC0973 Memorandum regarding VCGLR Sixth Review of the Casino Operator and Licence – Recommendations 3 and 15 and Progress Report on Other Recommendations, 2 December 2019, VCG.0001.0002.6151 at .0004 [17]-[18].
[1767] Exhibit RC0973 Memorandum regarding VCGLR Sixth Review of the Casino Operator and Licence – Recommendations 3 and 15 and Progress Report on Other Recommendations, 2 December 2019, VCG.0001.0002.6151 at .0003 [10(c)].
[1768] Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0035 [3.95].
[1769] Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0036 [3.99].
[1770] Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0014 [3.9].
[1771] Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0021 [3.39].
[1772] Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0036 [3.103].

creation of this role is expected to have a positive impact on risk management practices within the group.[1773]

7.4 Third, while some risks clearly have not been properly ventilated through Crown's risk management framework, systems and processes,[1774] there is some evidence to suggest Crown has the structures and processes in place to identify some key business risks and elevate them for discussion within its governance structures.[1775] Processes are in place for the Risk Management Committee to reasonably identify areas of significant business risk or exposure, and new and emerging risks.[1776] There appears to be a demonstrated focus on controls by management.[1777]

7.5 Fourth, there is now evidence of improved reporting of business and risk matters generally to the Risk Management Committee and the Executive Risk and Compliance Committee. This includes reporting and documenting a wide range of business and risk issues reflecting the range which may face Crown,[1778] and reporting a vast array of data and information.[1779]

7.6 Notwithstanding, there are several areas for further enhancement. The main areas are summarised below.

Enhancements to documents governing risk management framework

7.7 Enhancements should be made to documents governing the risk management framework,[1780] or the position descriptions of key persons in the framework.[1781]

7.8 In general terms, the enhancements concern recommended inclusions/insertions or expansions to existing documents which are designed to improve the overall oversight, governance and risk management of Crown.[1782] They include:

(a) A rolling agenda for the Risk Management Committee so that specific categories of risk are discussed in depth at regular intervals.[1783]

(b) An explicit outline of the role of the Risk Management Committee in overseeing the resourcing, operation and effectiveness of the Risk Management Function.[1784]

[1773] Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0034 [3.88]-[3.89].
[1774] T3605:24-33 (Halton): It is remarkable that the issue regarding Crown's underpayment of gaming tax only came to the attention of the Chair of the Risk Management Committee on 7 June 2021:
[1775] Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0025-6 [3.58]-[3.60].
[1776] Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0028 [3.68].
[1777] Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0028 [3.71].
[1778] Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0029 [3.72].
[1779] Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0029 [3.74]; See eg Exhibit RC0974 Crown Corporate Risk Profile Annual Review, n.d., CRW.510.020.5092.
[1780] Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0038-40 [4.4]-[4.11] (Recommendation 1-8 for the Risk Management Charter), .0041-3 [4.13]-[4.19] (Recommendation 9-15 for the Charter of the Audit and Corporate Governance Committee); See also .0014 [3.11]-[3.12] (Risk Management Charter) and .0016 [3.18] (Charter of the Audit and Corporate Governance Committee).
[1781] Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0043 [4.20] (Recommendation 16 – Internal Audit Function), .0018 [3.27], .0019 [3.30] (Position Description of Group General Manager – Internal Audit).
[1782] Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0038 [4.3], .0041 [4.12].
[1783] Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0039 [4.5].
[1784] Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0039 [4.6].

(c) A section outlining the role of the Risk Management Committee in relation to matters raised by internal or external audit.[1785]

(d) A section clearly establishing oversight, review and assessment of important responsibilities which have been delegated to the Chief Risk Officer/management.[1786]

Enhancements to Risk Management Strategy

7.9 The Risk Management Strategy is a key or core component of the risk management framework. Enhancements to that document include:

(a) A stand-alone risk appetite statement that:

(i) has business risks documented in greater detail;

(ii) specifies the protocols in place for reviewing and changing the risk appetite due to changes in the internal or external environment;[1787] and

(iii) has detailed statements on appetite for each specific risk and quantitative measures.[1788]

(b) Greater clarity on the roles of subsidiary boards and their relationship with the Risk Management Committee, and the Audit and Corporate Governance Committee.[1789]

Enhancements to Risk Management Reporting

7.10 Risk reporting by the Risk Management Function was "continuing to evolve". As part of this evolution, it was considered that:

(a) A larger set of risks should be reported to the Risk Management Committee than the current risks contained in the Risk Management Strategy.[1790]

(b) The Risk Management Committee and management should develop and agree on a suite of qualitative measures to better monitor and report on whether Crown was operating within or outside risk appetite. To the extent that the organisation was operating outside appetite, the Risk Management Committee should monitor management's progress to bringing the relevant risk issue within appetite.[1791]

7.11 The recommended enhancements are similar to some of Deloitte's recommendations concerning risk appetite and qualitative/qualitative metrics. Deloitte considered:

(a) Crown's risk appetite statement could benefit from qualitative statements which included a "clearer statement of acceptable risk tolerances".[1792]

(b) Greater clarity could be provided in relation to the reporting of risks against risk appetite, and the definition and value of triggers to support timely escalation.[1793]

[1785] Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0039 [4.7].
[1786] Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0040 [4.10].
[1787] Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0043 [4.22].
[1788] Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0044 [4.23]; see also at .0025 [3.55].
[1789] Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0044 [4.26].
[1790] Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0044 [4.26].
[1791] Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0044 [4.26].
[1792] Exhibit RC0183f, Deloitte Crown Me bourne Risk Management Framework Report, June 2019, DTT.001.0002.0061 at _0006 [2.1.4(a)].
[1793] Exhibit RC0183f, Deloitte Crown Me bourne Risk Management Framework Report, June 2019, DTT.001.0002.0061 at _0007-8 [2.3(a)].

7.12 The risk management expert agreed with Deloitte's position, as reflected in the recommendations above.[1794]

8 Conclusion

8.1 Since the China Arrests in 2016 which revealed a breakdown in the risk management frameworks and systems of Crown, Crown has taken positive steps towards establishing effective risk management frameworks and systems.

8.2 There are, however, further steps that must be undertaken to enhance the existing documented frameworks and systems. These are reflected in the recommendations from Mr Deans. These recommendations should be adopted and implemented by Crown to demonstrate that it has a suitable corporate structure for the purpose of maintaining its licence.

8.3 In her evidence to the Commission, Ms Halton accepted that Mr Deans' report was a considered report which would be treated "very seriously". She observed that the report was "very helpful" and expressed gratitude to the Commission for providing it.[1795] This further serves to illustrate the utility of the recommendations proposed by Mr Deans and underscores the submission that Ms Halton should be tasked with overseeing implementation of those recommendations.

8.4 With respect to Ms Siegers, who is an extremely qualified professional, Counsel Assisting are concerned that Ms Siegers perceives that she is in a position to be objective in relation to Crown's risk management framework, of which she is the primary author. Ms Siegers appears to have peremptorily dismissed some of Mr Deans' recommendations,[1796] which Ms Halton has acknowledged as "helpful". This has informed the submission below.

8.5 Mr Deans stated that he was not in a position to assess the robustness and effectiveness of Crown's risk management frameworks and systems. There has been no external review assessing robustness and effectiveness. Nor has there been any root cause analysis of the China Arrests.

8.6 For all of the above reasons, it is submitted that Crown's existing risk management framework, systems and processes would benefit from:

(a) Crown implementing the recommendations made by Mr Peter Deans;[1797]

(b) An External Review of the robustness and effectiveness of the risk management framework, systems and processes and their appropriateness to Crown as a casino operator, every three years to ensure that it is designed to meet the changing landscape in which Crown is operating. The first External Review is currently scheduled for 2022;[1798] and

(c) The Chair of the Risk Management Committee, currently Ms Halton, being personally responsible for overseeing Crown's response to the implementation of the recommendations made by Mr Deans and the External Review.

[1794] Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0023 [3.47]-[3.48].
[1795] T3614:1 - T3615:4 (Halton).
[1796] Exhibit RC0433 Memorandum regarding the Royal Commission's Expert Report on the Risk Management Frameworks and Systems of Crown Resorts, 6 July 2021, CRW.512.210.0001.
[1797] Exhibit RC0971 Peter Deans Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited, 29 June 2021, COM.0007.0002.0001 at .0004 [1.10].
[1798] Exhibit RC0427 Statement of Jane Halton, 28 April 2021, CRW.998.001.0152 at .0162 [92].

13 Culture

1 Introduction

1.1 In 2017, the ASX published updated Corporate Governance Principles and Recommendations (ASX Principles). The ASX Principles set out recommended corporate governance practices for entities listed on the ASX that are intended to achieve good governance outcomes. Among the eight principles is the third principle that a listed entity should instil and continually reinforce a culture across the organisation of acting lawfully, ethically and responsibly.

1.2 The vulnerability of casinos to money laundering and criminal influence of exploitation reinforces the need to establish a culture of compliance within casinos. Corporate governance structures and risk management processes and policies are relevant to establishing and maintaining a strong and robust risk culture and a culture of compliance.

1.3 Culture has been defined to mean "systematically reinforced behavioural norms and mindsets that help or hinder various business outcomes." Culture change has been defined as "a transformation in the behavioural norms, mindsets and system reinforcers of an organisation, including a change in outcomes."[1799]

1.4 It is clear from the Bergin Report that Crown had serious cultural problems. The evidence in this Commission reinforces that view and suggests that the cultural problems are ongoing. Crown accepts that culture reform is necessary and therefore impliedly accepts there is a problem with the culture which needs to change. Those matters are relevant to Crown Melbourne's suitability.[1800]

1.5 Crown current directors have been upfront about the need for culture reform. Relevant to what action (if any) would be required for Crown Melbourne to become suitable (and for Crown Resorts to become a suitable associate) is whether Crown's culture can change and how long that might take.

1.6 This submission details:

(a) what makes a good corporate culture;

(b) cultural problems identified through the Bergin Inquiry and Bergin Report, including concessions made by Crown directors about the contribution of culture to the failures identified in the Bergin Report;

(c) evidence that Crown has been on notice of some of those issues since 2018 and yet has not taken steps to address them;

(d) evidence that Crown has had opportunities through other failures to examine the root cause analysis for those failures (including cultural failures contributing to them), and has not taken steps to do so;

(e) numerous cultural failings at Crown that have been explored through this Commission;

(f) acknowledgement by Crown witnesses that culture reform is desperately needed at Crown;

(g) steps Crown is taking, largely in combination with work being conducted by Deloitte, to progress culture reform;

[1799] Exhibit RC0477 Elizabeth Arzadon Expert Opinion regarding Cultural Change at Crown Melbourne, June 2021, COM.0007.0001.01 at .0181.

[1800] Culture is relevant to character and business ability: s 9(2)(a) and (e) of the CCA.

(h) expert evidence heard by the Commission about the challenges Crown faces in successfully implementing culture reform in a way that is self-sustaining.

What makes good corporate culture?

1.7 In examining Crown's corporate culture, it is useful to start with some observations about good corporate culture in general.

1.8 Ms Victoria Whitaker is a partner at Deloitte with approximately 20 years' experience in ethics, cultural integrity and corporate responsibility.[1801] Deloitte has been engaged by Crown to conduct a multi-stage culture review, which is described in more detail later in this submission.

1.9 Ms Whitaker provided a statement to the Commission[1802] and attended to give evidence on 9 June 2021. During her evidence, she was asked about indicators of good organisational or corporate culture. Ms Whitaker agreed that fundamental behaviours required within an organisation are people adhering to norms of behaviour including obeying the law, doing the right thing, and respecting others.[1803]

1.10 Other indicators of good culture include an environment where:

(a) leaders set clear expectations,[1804] but also respond to feedback;[1805]

(b) the Board and leadership of the organisation have contributed to the definition of what "good" looks like and are aligned and upholding that within their own professional practices;[1806]

(c) staff are confident and feel safe to speak up when they have identified something has gone wrong and that information cascades up through the organisation;[1807]

(d) problems are identified and solved in a timely way; and people are willing to take account for the decision that they make and are aware of and taking account of the risks that they are responsible for.[1808]

1.11 Evidence regarding the extent to which Crown has failed to achieve these indicators of good corporate culture – and evidence regarding the extent to which Crown is endeavouring to embark on a path where these behaviours are upheld – are discussed below in these submissions.

What findings were made about Crown's culture in the Bergin Report?

1.12 During the Bergin Inquiry, it was necessary to closely examine Crown's culture and integrity, in order to properly assess Crown's suitability as required by the terms of reference of that inquiry.

1.13 The Bergin Report noted that:

> *the problems with corporate culture that have been recognised and accepted by a number of the Crown directors have far more significant consequences and needs for reform.*[1809]

[1801] T1908:32-36 (Whitaker).
[1802] Exhibit RC0184 Statement of Ms Victoria Whitaker, 16 April 2021, DTT.0000.0005.0009.
[1803] T1911:8-14 (Whitaker).
[1804] T1911:16-20 (Whitaker).
[1805] T1912:24-30 (Whitaker).
[1806] T1911:28-29 (Whitaker).
[1807] T1911:40-44 (Whitaker).
[1808] T1911:46 - 1912:10 (Whitaker).
[1809] Exhibit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0553 [6].

1.14 The Bergin Report further noted that analysis of (as the defined term is used in the Bergin Report) "China Arrests Facts" reveals "*the development of a flawed corporate culture*" at Crown.[1810]

1.15 In the context of assessing Crown's suitability as a licence holder and how it might become a suitable licence holder in NSW, the Bergin Report noted that:[1811]

> *As has been discussed elsewhere, there is a big difference between acceptance of the existence of problems that beset Crown when confronted with them in a process such as this and having the culture and open-mindedness to detect the problems for oneself and remedy them. At the conclusion of the Public Hearings Crown still suffered from the absence of the ability in this latter regard. In any process of conversion to suitability Crown will have to work much harder on this aspect of its existence.*
>
> *…*
>
> *The Authority would understand that many of the problems that rendered the Licensee and Crown as unsuitable, stem from poor corporate governance, deficient risk management structures and processes and a poor corporate culture, in the areas the subject of the Amended Terms of Reference.*

1.16 These are strongly worded findings that identify deficiencies in Crown's corporate culture.

1.17 The Bergin Report made a number of observations about the then-current Crown directors, including three Crown directors who remained at the time of this Commission.

1.18 It is clear from the Bergin Report then that Crown has had serious cultural problems. It is also clear that each of Ms Coonan, Ms Halton and Ms Korsanos recognised that Crown faced serious cultural problems, and that there was a need to address those problems.

1.19 Ms Coonan, Ms Halton and Ms Korsanos each gave evidence before the Bergin Inquiry between 13 and 20 October 2020. The Bergin Report was published in February 2021.

The extent to which the failings identified in the Bergin Report are attributable to culture

1.20 Ms Halton and Ms Korsanos both produced statements to the Commission in response to requests for statements, where those requests set out specific questions for each to respond to.

1.21 Ms Halton and Ms Korsanos both responded to questions concerning the deficiencies in Crown's processes that led to the conclusions in the Bergin Report. Consistent with their evidence before the Bergin Inquiry, each of Ms Halton and Ms Korsanos referred to Crown's culture (among other things) in responding to these questions.

1.22 Ms Halton responded to the question "What deficiencies in Crown Resorts' or Crown Melbourne's risk management framework, systems or processes contributed to the failures identified in the conclusions in the Bergin Report" by stating:[1812]

> *A number of specific failures including in reporting, escalation, skill, knowledge, culture, appropriate due diligence and care and lack of questioning are reported in the Bergin report. In some instances these go to the operation of the risk management framework.*

[1810] Exh bit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0571, [70].
[1811] Exh bit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0585, [6], [8].
[1812] Exh bit RC0427 Statement of Jane Halton, 28 April 2021, CRW.998.001.0152 at .0175 - .0176 [186] – [187].

> *Successful implementation of any risk strategy requires a range of policies and actions which are mutually reinforcing. These include a culture of disclosure, analysis and compliance.*

1.23 Ms Halton confirmed in evidence that the matters set out in the first paragraph extracted above are her explanation of the factors that led to Crown's failings, rather than simply summarising what the Bergin Report found.[1813] Ms Halton's statement then proceeds to set out the steps that she considers Crown is taking in order to address the deficiencies in Crown's risk management framework, systems and processes.

1.24 Ms Halton also acknowledged in evidence that there was or had been a lack of psychological safety at Crown, which could be used as a lens to analyse some of the issues that had been explored through the Bergin Inquiry:[1814] for example, regarding the China Arrests, that staff were not comfortable and did not feel as though they could speak up; and that a failure from senior people within the organisation to speak up where they are aware of an issue could also be explained on the basis of a psychological safety issue.[1815] Ms Halton also referred to individual risk appetites as potentially forming part of the same problem.[1816]

1.25 Ms Korsanos identified five deficiencies in the operation of Crown Resorts' corporate governance framework when responding to the question "What deficiencies in Crown Resorts' corporate governance framework contributed to the failures identified in the conclusions in the Bergin Report?".[1817] This list included "poor culture underpinned by a drive for profits".[1818]

1.26 Ms Korsanos noted that the Crown Resorts board was and is addressing deficiencies identified in the Bergin Report through a "significant" reform agenda. In doing so, she noted that:[1819]

> *I believe the success of the reforms being implemented will be underpinned by a change in character and a risk management and compliance culture.*
>
> *Any change in culture must be driven by leadership. The new board and executive leadership team will be critical to this change…*

1.27 Each of Ms Halton and Ms Korsanos thus recognise that Crown's culture has been a problem for Crown. Where asked, each acknowledge that Crown is taking steps to address its culture (among other problems).

2 Further evidence regarding Crown's culture

Perceptions of Crown's culture at the beginning of Deloitte's engagement

2.1 This section discusses the evidence that has emerged in relation to Crown's culture through Deloitte's engagement to undertake a culture review of Crown. It provides evidence of Crown's culture at the end of and after the Bergin Inquiry.

Deloitte's scope of work

2.2 Crown have engaged Deloitte to:[1820]

[1813] T3602:14-28 (Halton).
[1814] T3589:30-38 (Halton).
[1815] T3590:1-21 (Halton).
[1816] T3590:25 (Halton).
[1817] Exhibit RC0434 Statement of Antonia Korsanos, 27 April 2021, CRW.998.001.0104 at .0124 [108].
[1818] Exhibit RC0434 Statement of Antonia Korsanos, 27 April 2021, CRW.998.001.0104 at .0124 [108](b).
[1819] Exhibit RC0434 Statement of Antonia Korsanos, 27 April 2021, CRW.998.001.0104 at .0124 [115], [116].
[1820] Exhibit RC0184 Statement of Victoria Whitaker, 16 April 2021, DTT.0000.0005.0009, .0009, [13].

Provide an assessment of the maturity of the existing approach to organisational culture, conduct a current state of Crown Resorts' organisational culture (including risk culture), establish the target state culture, assess the gaps between the target state and current state organisational culture, and prepare a roadmap on how to close the gaps.

2.3 The work is being carried out in four phases. These are:[1821]

(a) Phase 1: assess cultural architecture;

(b) Phase 2: revise culture framework and conduct measurement;

(c) Phase 3: derive the insights;

(d) Phase 4: define the target culture state and roadmap.

2.4 Ms Victoria Whitaker is the lead partner at Deloitte delivering these workstreams. As identified in paragraph 1.8, Ms Whitaker has 20 years of expertise in ethics, cultural integrity and corporate responsibility.[1822] In addition to providing a written statement, Ms Whitaker gave evidence to the Commission on 9 June 2021.

2.5 Ms Whitaker confirmed that in terms of timeframes and completion of the phases, phase one has been completed (though the report has only been provided in draft).[1823] The second and third phases are expected to be completed in August 2021 (having been pushed out from an initial estimate of July 2021). Ms Whitaker said phase four would then require a further eight to twelve weeks from completion of phase three, however, according to Mr Nick Weeks, Executive General Manager, Transformation and Regulatory, phase four has been brought forward to 16 August 2021.[1824]

2.6 Setting the scope of Deloitte's engagement got off to a slow start, and the timing for the deliverables has shifted. In Ms Whitaker's statement, for example, it is identified that Deloitte first proposed its workplan for the culture review in August 2020.[1825] The proposal was amended following discussions with Crown and the phase one engagement was not signed off until 23 November 2020.[1826] The phase two and three engagement was not signed off on until 15 February 2021.[1827] At the time Ms Whitaker gave evidence, the phase four engagement had not yet been signed off, however, that has now been brought forward.[1828] Mr Weeks agreed this was the critical phase.[1829]

Engagement with Crown employees

2.7 Although tasked with the specific phases of work set out in paragraph 2.3 above, Ms Whitaker engaged at a relatively early stage in discussions with some senior individuals at Crown in order to gain insights into the culture at Crown.[1830] This is not the same as Deloitte's detailed engagement with hundreds of Crown employees and focus groups which have taken place as part of the phase two and three work.

[1821] Exhibit RC0184 Statement of Victoria Whitaker, 16 April 2021, DTT.0000.0005.0009, .0010 [12].
[1822] Exhibit RC0184 Statement of Victoria Whitaker, 16 April 2021, DTT.0000.0005.0009, .0009 [1].
[1823] T1948:1-12 (Whitaker).
[1824] T1949:9-47 (Whitaker); T3401:7-10 (Weeks).
[1825] Exhibit RC0184 Statement of Victoria Whitaker, 16 April 2021, DTT.0000.0005.0009, .0009 [5].
[1826] Exhibit RC0184 Statement of Victoria Whitaker, 16 April 2021, DTT.0000.0005.0009, .0010 [7].
[1827] Exhibit RC0184a Letter from Victoria Whitaker to Anne Siegers, DTT.005.0001.0222.
[1828] T1949:22-28 (Whitaker), noting that evidence was given explaining the delay on the basis that it was important for new Crown executives to have commenced in their roles before this work could be signed off.
[1829] T3401 (Weeks).
[1830] Exhibit RC0184 Statement of Victoria Whitaker, 16 April 2021, DTT.0000.0005.0009, .0015 [56]; 0016, [69].

2.8 A number of negative cultural observations were made to Ms Whitaker by Mr Ken Barton (interviewed at the time he was still engaged as CEO of Crown Resorts) and Ms Alicia Gleeson, Executive General Manager of Human Resources at Crown Melbourne.

2.9 Ms Whitaker was asked to identify in her statement any cultural deficiencies or other problems identified by the staff member or officer being interviewed.[1831]

2.10 In that context, Ms Whitaker's summary of her interview with Mr Barton included the following potential cultural deficiencies:[1832]

(a) the Bergin Inquiry showed that there are examples where people have not investigated and solved underlying issues, when things have gone wrong;

(b) there is a culture that is reactive to risk – and of people raising things once, but not continuing to raise risks;

(c) there are perceptions that people did not hold others to account when things had gone wrong;

(d) there may be issues with the siloed focus across properties and business units;

(e) there may be fear around speaking up and communicating bad news, potentially due to adverse consequences;

(f) there may be lack of clarity around who to go to when something goes wrong;

(g) there may be times that team members find it hard to say no to customers, where they have perhaps not broken a law but the action does not fit within community expectations;

(h) there are perceptions that management may be focussed on performance and growth as opposed to base compliance and the effect of those obligations;

(i) there is a need for more board involvement and direction on culture.

2.11 Also in that context, Ms Whitaker's summary of her interview with Ms Gleeson included the following potential cultural deficiencies:[1833]

(a) organisational structure potentially creating disjointed culture across Melbourne and Pert properties, with the operational teams being "powerful" in the business;

(b) Crown's people are perceived to be feeling "quite battered";

(c) there are some areas where psychological safety may be poor;

(d) managers potentially feel pressured to meet financial targets;

(e) there is a perception that few questions are received back from the Board on people elements reported up to the Board;

(f) KPIs have shifted to focussing on financial indicators (away from lifting engagement scores);

(g) there may be some permafrost in middle management meaning messages are not filtering through the business, and capability lacking at lower management.

[1831] Exhibit RC0184 Statement of Victoria Whitaker, 16 April 2021, DTT.0000.0005.0009, .0015 [20].
[1832] Exhibit RC0184 Statement of Victoria Whitaker, 16 April 2021, DTT.0000.0005.0009, .0016 [71] – [77].
[1833] Exhibit RC0184 Statement of Victoria Whitaker, 16 April 2021, DTT.0000.0005.0009, .0015 [57] – [61], [67].

2.12 Ms Whitaker was taken through the detail of the notes set out in her statement, and the notes themselves during her evidence.[1834] She confirmed that there was a strong similarity between what Mr Barton and Ms Gleeson conveyed in their interviews.[1835]

2.13 Ms Whitaker noted that Deloitte had not yet completed the current state assessment of Crown's culture,[1836] and explained in evidence that she had not shared Mr Barton's or Ms Gleeson's concerns with members of the Crown board. However, Ms Whitaker accepted that perhaps she should have reported what she had been told by Mr Barton and Ms Gleeson to members of the Crown Resorts board,[1837] given the seriousness of the issues raised and the respective positions of the individuals reporting these concerns.

2.14 In summarising the issues that Ms Whitaker learned about through interviewing Mr Barton and Ms Gleeson, Ms Whitaker confirmed that in a general sense, the types of matters that were described to her were:

(a) a lack of psychological safety;

(b) the Board not providing feedback;

(c) permafrost in middle management;

(d) people not being held to account;

(e) lack of clarity in escalating issues;

(f) people investigating problems without reporting them; and

(g) a sense of complacency about needing to report problems.[1838] Ms Whitaker confirmed that these matters painted a "pretty grim picture" of the culture at Crown.[1839]

2.15 Ms Whitaker also had an opportunity to identify any positive aspects of Crown's culture that had come to the fore in the context of the Deloitte phase two and three work. Ms Whitaker identified:[1840]

(a) the really strong commitment to the purpose of the organisation: to create memorable experiences;

(b) staff are committed to working together;

(c) a really strong commitment to compliance;

(d) the general sentiment of the survey responses that Deloitte had received at the time of Ms Whitaker's evidence "was more positive" than she had expected it to be.

3 Evidence of Crown's culture pre-dating Deloitte's engagement

3.1 The matters examined by this Commission were broader than the matters examined in the Bergin Inquiry. They also shed light on Crown's culture in the period preceding, and reinforced some of the findings in, the Bergin Report. They are discussed here because they are relevant insofar as they identify the extent of Crown's cultural problems and suggest that remnants of Crown's cultural problems remain to this day.

[1834] Exhibit RC0185, DTT.006.0001.0669; Exhibit RC0186, DTT.006.0001.0664.
[1835] T1932:16-19 (Whitaker).
[1836] T1940:16-21, T1944:11-14 (Whitaker).
[1837] T1944:15-25 (Whitaker).
[1838] T1939:16 -1940:8 (Whitaker).
[1839] T1940:10-14 (Whitaker).
[1840] T1942:26 – 1943:10 (Whitaker).

2018 employee experience survey and the development of Crown "values"

3.2 In 2018, Crown commissioned an "employee experience" survey with the assistance of Swinburne University (Employee Experience Survey). A copy of the summary of the findings of the report was provided to Deloitte as part of their engagement (Survey Findings).[1841]

3.3 The Survey findings set out five "employee segments" at Crown, together with detail about the experience of employees in each of those segments in the course of their employment at Crown. The survey touches on a number of different employee experiences.

3.4 Ms Halton was taken to the Survey Findings during her evidence.[1842] Ms Halton was shown PDF p 60 of the Survey Findings, which sets out the percentage of "agree" or "strongly agree" responses received across the employee segments when responding to questions regarding communication, processes, leadership and psychological safety. Across all segments, psychological safety was either the lowest or equal lowest "agree" or "strongly agree" response, with responses at 19, 38, 55, 60 and 68% across each of the employee segments.

3.5 Ms Halton was asked about this response rate. Ms Halton observed that she did not have any benchmarking to compare these values to. Accepting that in the ordinary course, benchmarking is a helpful way to understand the responses, Ms Halton went on to confirm that "we need to be unambiguous. People need to have psychological safety, particularly in a regulated environment".[1843]

3.6 This evidence prompted the following exchange:[1844]

> ***Counsel assisting:*** *Exactly. So benchmarking is completely irrelevant, isn't it, Ms Halton, because you want 100 per cent of your workforce to feel safe in speaking up? That is the message you are trying to get across at the moment, isn't it?*
>
> ***Ms Halton:*** *No, it's not, actually. What I would say is I want to know what would be considered benchmark, you aspire to better than benchmark, you always do, but how much time it takes you to get above benchmark and how you do that is one of the things you think about. If you are significantly below benchmark, it tells you something about your existing processes. That's not the point I'm making. The point I'm making is this particularly important, but then how you respond to it is one of the things you would be thinking about.*
>
> ***Counsel assisting****: Ms Halton, I would accept your answer in any other circumstance other than the present circumstance where Crown has lost its licence in Sydney and is addressing issues about present suitability. I want to suggest to you that what Crown is aspiring to now is 100 per cent on this* ***scorecard.***
>
> ***Ms Halton:*** *I agree with you. I agree with you. And can I make the point that the licence in Sydney is on foot, it is not lost. That's an important point.*

3.7 The effect of Ms Halton's evidence is that although benchmarking is an important way to understand the statistics at PDF p 60 of the Survey Findings, in Crown's context as a regulated entity and as a result of its current circumstances, Crown has had (at least as at 2018) a large number of its employees *not* agreeing or strongly agreeing with statements to the effect that they feel that they have psychological safety at work. That is unsatisfactory.

[1841] Exhibit RC0431 Swinburne University Crown Employee Experience Research Report, DTT.010.0003.0040.
[1842] T3590:34 (Halton).
[1843] T3594:11-17 (Halton).
[1844] T3594:19-42 (Halton).

Crown is currently, and must, strive for *all* employees to feel as though they have psychological safety at work.

3.8 The Survey Findings are 120 pages long. It contains a number of "areas for [employee experience] improvement". In the context of culture, this includes "improved management".[1845]

3.9 Ms Halton could not recall that the Survey Findings specifically made their way to the Board,[1846] though documents produced by Crown to the Commission in response to a Notice to Produce suggest that at least some then-current Board members were emailed a copy of the report prepared following the completion of the Employee Experience Survey.

3.10 A review of the Crown Resorts and Crown Melbourne Board diligent packs suggests that the Employee Experience Survey was not included as part of the prereading for a Board meeting and the findings were not discussed in the forum of a Board meeting. Ms Halton accepted as much in her evidence; though she considered that broad topics of staff welfare and culture had been discussed.[1847]

3.11 There is one reference to the Employee Experience Survey in a memo prepared by Ms Mary Manos which was included in a diligent pack for the June 2019 Crown Resorts Board meeting. This was in the context of Ms Manos preparing a paper to the board regarding company values.[1848] In that context, Ms Manos notes that an outcome of the Employee Experience Survey was the development of a set of company values. Ms Manos does not provide further detail regarding the Employee Experience Survey.

3.12 When shown Ms Manos' note regarding company values, Ms Halton commented that the purpose of the discussion was:[1849]

> *… about engaging with staff at all levels in the business in respect of our purpose. And you can see those values, which had come, as I understood it, from preliminary work done with staff and this was about driving those issues right across the business.*

3.13 It appears that the Employee Experience Survey, consistent with Ms Halton's evidence, was commissioned to provide a basis for the development of a series of Crown values which would be rolled out across the business. However, that does not take away from the fact that the Survey Findings included problematic issues that Crown does not appear to have grappled with (beyond looking to the development of the Crown values themselves).

3.14 It is submitted that the Survey Findings identify issues with Crown's culture as at 2018 which were not ultimately acted upon in a meaningful way.

3.15 Following the Survey Findings, it took Crown twelve months to roll out the Crown values.[1850]

Other failures to carry out root cause analysis

3.16 Separately to the Employee Engagement Survey, Crown has had opportunities to carry out a root cause analysis to unpick what led to the China Arrests and separately the media allegations the subject of the Bergin Inquiry. It appears that Crown has not chosen to do so.

[1845] Exhibit RC C0431 Swinburne University Crown Employee Experience Research Report, August 2018, DTT.010.0003.0040, at _0022.
[1846] T3595:6-17 (Halton).
[1847] T3595:2:36 (Halton).
[1848] Exhibit RC0432 Crown Resorts Board Meeting Diligent Pack, 12 June 2019 CRL.506.007.8404, .8822.
[1849] T3598:30-37 (Halton).
[1850] T3599:38-41 (Halton).

3.17 Whether or not it should have done so was put to Ms Anne Siegers in evidence. Ms Siegers was brought in to Crown following the China Arrests, "to effectively overhaul the risk management system" at Crown.[1851]

3.18 Ms Siegers has not undertaken a root cause analysis into the China Arrests. Her evidence is that by the time she joined Crown, "many of the factors, people, individuals, were no longer in place and, therefore, it was not – it was too late for me to do a root cause analysis".[1852] She went on to say that she "believe[s] there is always lessons to be learned from the past" and that "root cause analysis is important".[1853]

3.19 Having given evidence that it was "too late" for such analysis to be conducted by the time that Ms Siegers joined Crown, presumably her evidence that "root cause analysis is important" is to the effect that Crown should have (but failed to) arranged the analysis shortly after the China arrests; and, such analysis could no longer be productively carried out.

3.20 There has been no evidence that Crown itself has undertaken such a root cause analysis of either the China arrests or the circumstances leading up to the media allegations.

3.21 Crown also appears to have failed in some cases to properly account for analysis of these same issues where they have been presented the opportunity to do so by other entities. The VCGLR, for example, has prepared a confidential report into the China Arrests, taking the form of a report under s 24 of the CCA.[1854] Crown's Compliance Manager, the person charged with ensuring Crown's obligations with its legislative frameworks and for operating as the point-person for the relationship with the VCGLR, gave evidence that she has not had time to read it.[1855]

3.22 It is submitted that the above matters demonstrate that Crown has a history of poor culture (by reference to the matters set out in the Employee Experience Survey and as recounted by Mr Barton and Ms Gleeson to Ms Whitaker). Crown's failure to act quickly (or at all; beyond development and rollout of Crown 'values') in response to problems identified in the Employee Experience Survey that it commissioned echoes the way in which Crown has also failed to enquire into what must be accepted as failures of its risk and compliance framework in the context of the China Arrests.

3.23 In failing to examine these issues, Crown may be displaying complacency as well as a lack of "curiosity", or a "growth mindset": both important behaviours to be modelled by leaders in Ms Whitaker's view when looking for indicators of good corporate culture.[1856]

3.24 The lack of "curiosity" also identifies other potential cultural problems, namely, a lack of insight and acceptance of the need for change, which are necessary conditions to drive and sustain meaningful change.

3.25 It appears that Crown has failed to enquire into matters regarding its culture where it has had the opportunity to do so, and that there is a basis for the public to be sceptical about the drivers for, and Crown's commitment to, change, in Crown's current circumstances.

3.26 It is relevant to note that the basis for scepticism was put to witnesses in the course of evidence, but it was not accepted. For example, Ms Halton did not accept in evidence that employees or the general public had cause to be sceptical about Crown's current reform plan as purely reactive to the Bergin Report. However, Ms Halton did (sensibly) concede

[1851] Counsel Assisting's words, with which Ms Siegers agreed: T1971:16-20 (Siegers).
[1852] T2007:17-24 (Siegers).
[1853] T2007:32-33, 43-44 (Siegers).
[1854] Exhibit RC0003 VCGLR Confidential Report of Investigation into China Arrests, VCG.0001.0001.0001.
[1855] T2647:18-27 (Fielding).
[1856] T1912:28-40 (Whitaker).

that there are a number of changes Crown has implemented in response to the Bergin Report, which could have been initiated a long time ago.[1857] Mr Weeks, who was brought in to Crown to specifically assist with its remediation program, also agreed that there was no reason a number of the reforms could not have commenced at an earlier stage.[1858]

3.27 It was suggested to Mr Weeks that if it was the case the culture issues identified by Mr Barton to Ms Whitaker had been identified within the organisation at least two years prior to the engagement of Deloitte, but that the current directors had not addressed them, it would be reasonable to doubt whether they had a genuine commitment to turning things around. Mr Weeks accepted the proposition, but noted that it is "difficult to answer in a binary way". He considered that it was important to understand how information "emerged" in terms of those cultural problems, and what responsibility the senior leadership in the company had to address it themselves.[1859]

4 Other cultural issues identified through the course of the hearings

4.1 Several serious issues regarding Crown's culture have emerged through the examination of other topics by this Commission. Some of these topics and issues were:

(a) Crown's relationship with the VCGLR, focussing on the lack of candour and openness in its dealings in a general sense;

(b) bonus jackpots tax treatment;

(c) the development of the CUP practice;

(d) ongoing issues regarding the approach to compliance with Crown's AML/CTF obligations.

4.2 Each of these matters are described in more detail in the following sections of these submissions: Section 4, Relationship with the regulator, Section 5, Non-disclosure of potential underpayment of tax, Section 7, Hotel transactions/China Union Pay practice, Section 8, Money laundering. The brief summaries of relevant evidence set out in this section are intended only to highlight the additional cultural failings at Crown that have occurred and been examined, rather than to set out in detail all relevant evidence on these issues.

4.3 As was also described during the hearings, there have been many personnel changes at Crown. The effect of those changes is that often the people who had led particular workstreams with the VCGLR, for example (putting to one side whether or not they were the most appropriate people in the organisation to lead those workstreams); or, who developed particular initiatives (for example, the CUP process) are no longer at Crown and were not called to give evidence before the Commission.

4.4 The Commission instead heard evidence on these matters from individuals who either were at Crown at the relevant time but were not closely involved in the relevant conduct, or, who have since joined Crown but have had an opportunity to review documentary evidence regarding the relevant conduct.

Relationship with VCGLR

4.5 It is clear on the evidence of Mr Tim Bryant and Mr Jason Cremona that they experienced difficulties in their dealings with Crown in the context of the China Arrests investigation and the implementation of Recommendation 17. Detail about their evidence (and the evidence

[1857] T3600:31-38, T3601:5-10 (Halton).
[1858] T3419:15-30 (Weeks).
[1859] T34176:43 - 3417:10 (Weeks).

of Crown in response) is set out in Section 4, Relationship with the regulator. As set out in that section, part of the reason that Mr Bryant and Mr Cremona experienced these difficulties was because of the culture at Crown and the defensive approach the organisation took as a whole to dealings with its regulator.

4.6 Several witnesses commented in evidence on the conclusions that might be drawn from the documentary record about the state of the relationship between Crown and the VCGLR. For example, Mr Morrison acknowledged in evidence that, having had the opportunity to review documents and correspondence between the VCGLR and Crown, that it appeared (in the context of the taxation issue) that:

(a) there was no open and honest relationship with the VCGLR;[1860]

(b) Crown had an attitude that "if they didn't think it was overly important and they could get away with it, they did".[1861]

4.7 Ms Coonan's evidence was to a similar effect.[1862]

4.8 Mr Blackburn's evidence was that, having:[1863]

> *interacted with others that had had engagement with the VCGLR in the past, it became apparent to me that there was a fairly aggressive approach to the relationship, and one that was not how I would approach a relationship with a key regulator.*

4.9 This was in the context of Mr Blackburn's broader evidence that in his previous roles, the relationship between the organisations he has worked in and the regulator has been "critically important".[1864]

4.10 Ms Korsanos also agreed that she came to realise that there was a defensive culture at Crown vis-à-vis the VCGLR.[1865]

4.11 To the extent that witnesses were asked about the importance of Crown having an open, honest and cooperative relationship with the VCGLR, they all agreed that was important. The evidence suggests, and numerous witnesses agreed, the relationship had not been open, honest and cooperative.[1866] Crown says it is committed to changing this. The concern is that recent interactions with the VCGLR have not followed through on this commitment (see section 4, Relationship with the regulator and in particular [3.124]-[3.275]]).

Bonus Jackpots – gaming revenue tax

4.12 Regarding the taxation issue, Mr X Walsh is an individual who has been at Crown for a long time and who had knowledge of the treatment of bonus jackpots from mid 2018. His evidence was that he did not mention the matter to Ms Coonan and other directors until early 2021 and, when he did, it was in the context of a cultural issue that had previously been an issue (rather than potentially ongoing taxation avoidance).

4.13 In one sense, it is encouraging that cultural issues in the relationship between Crown and its regulator are being discussed. In another sense, and as is described in more detail in Section 16, Suitability of existing associates, it is concerning that an ongoing potential tax liability was not clearly identified to Ms Coonan and other directors. It is also concerning that in downplaying the issue as a cultural issue, Mr Walsh did not feel that he could 'speak

[1860] T2278:21-24 (Morrsion).
[1861] T2278:15-34 (Morrison).
[1862] T3761:4-8 (Coonan).
[1863] T3068:35-39 (Blackburn).
[1864] T3068:1-2 (Blackburn).
[1865] T3660: 22-39 (Korsanos).
[1866] T2278:21-24 (Morrison); T2761:4-8 (Coonan).

up' and identify the more concerning issue to his co-directors, namely, potential concealment from and failure to be fulsome with the VCGLR. The underpayment of tax issue is dealt with in detail in Section 5, Non-disclosure of potential underpayment of tax, and those submissions should be considered in their entirety.

4.14 Relevantly for current purposes, Mr X Walsh had the following exchange with the Commissioner during his evidence in the context of the tax issue:[1867]

> ***COMMISSIONER:*** *Did anybody in the organisation at all, up until the end of 2020, say, around the time of the September meeting, before or after the September meeting, did anybody say, "Why don't we go to the VCGLR and just explain what happens, why we've done it, how it works and try and sort it out"; ie, come clean?*
>
> ***Mr X Walsh:*** *No, Commissioner, not that I recall.*
>
> ***COMMISSIONER:*** *What does it tell you about the organisation?*
>
> ***Mr X Walsh:*** *I think that's --- it says that our culture was poor, and I know this is only a short time ago, but there has been enormous change in personnel both at the management level and the Board since this time. But it wasn't good enough.*

4.15 The effect of this evidence, and that of the witnesses referred to immediately above, is that Crown has had a poor culture in dealing with the VCGLR.

4.16 In spite of Mr X Walsh's evidence that there has been "enormous change" at Crown more recently, when dealing with the VCGLR in January 2021, Mr X Walsh conceded that the approach taken was "characteristic" of the way that Crown had previously engaged with the VCGLR (that is, it is submitted, in an uncooperative manner).[1868]

4.17 Indeed, a number of Crown initiatives were not shared by Crown with the VCGLR until the course of this Commission. A list of those matters, as prepared by the VCLGR, was put to Ms Coonan in evidence.[1869] Ms Coonan also accepted during her evidence that "the VCGLR are discovering in the course of this Commission [things that] still reflect aspects of the old Crown at play".[1870] This, together with Mr Walsh's interaction with the directors in relation to the treatment of bonus jackpots, is recent evidence that would tend to suggest that remnants of Crown's culture problems still remain despite the directors' best efforts to turn things around.

CUP

4.18 The CUP issue is important as it highlights some recent issues in relation to Crown's culture. In the context of the CUP issue, it is positive that once an issue was raised, during March 2021, Crown's directors promptly sought advice about the issue and once that advice was finalised, provided notice of it to the Commission.

4.19 However, there are concerning matters regarding Crown's culture that have also emerged from the evidence on the CUP issue.

4.20 In the context of the events leading up to Crown's directors obtaining advice regarding the CUP issue, Mr Blackburn (Group Chief Compliance and Financial Crime Officer) was asked about a meeting attended by 15 Crown employees on 16 March 2021. One staff member logged a formal surveillance report regarding the disclosures made during that session.[1871]

[1867] T3260:23-37 (X Walsh).
[1868] T3333:4-14 (X Walsh).
[1869] See from T3771:9 (Coonan).
[1870] T3773:20-24 (Coonan).
[1871] T2929:41 - 2930:3 (Blackburn).

4.21 It was put to Mr Blackburn that there were a number of conclusions available to be drawn from the fact that the balance of the attendees at the meeting did not report the matters discussed at the training session, being that:

(a) Crown employees are too scared to report such matters;

(b) aspiring leaders at Crown fear for their future career progression if they report such matters;

(c) everyone else who was at the training session did not see anything wrong with what was being described such that it was worthy of a report;

(d) other Crown staff considered that what was described was such common knowledge within Crown that it was not worthy of a report.

4.22 Mr Blackburn agreed that the first two propositions were available conclusions, but not the third and fourth.[1872] Mr Blackburn mentioned there may be other available conclusions, but went on ultimately to state that he was:[1873]

> *… disappointed that others did not raise the issue. It is possible that they did not consider the gravity of the comments and that, to me, is a problem from a cultural perspective at the time.*

4.23 It should be noted that counsel for Crown disputed the factual basis on which the above propositions were put to Mr Blackburn; that is, that the surveillance report did not faithfully record the effect of the discussions during the meeting on 16 March 2021.

Other observations regarding problematic elements of Crown's culture in evidence

4.24 Mr Blackburn gave evidence about the state of Crown's culture as he observes it. He stated that the "culture I have come into is not reflected in the culture that I've see evidenced through this past activity [referring to the CUP issue]".[1874] He further stated that in his role at Crown in terms of implementing AML/CTF initiatives, he has not encountered any resistance and in fact "many business partners [] are actually coming to me with solutions".[1875] Mr Blackburn "absolutely" hoped that between 16 March 2021 and 1 July 2021 that there has been "radical change" in the culture at Crown.[1876]

4.25 Notwithstanding Mr Blackburn's positive outlook on Crown's culture vis-à-vis AML/CTF issues currently, he confirmed he did not like the consequence-based approach set out in the April 2021 Crown employee code of conduct.[1877]

4.26 Further, Mr Blackburn was asked during his evidence about the SWOT analysis set out in the December 2018 Crown Resorts diligent pack.[1878] In the context of amendments proposed to be made to Crown's VIP program, the document identifies a "threat" to the VIP program play business, because there may be tightening AML regulations and closure of bank accounts. Mr Blackburn's response to this document was to say:[1879]

> *This is a problem. I don't like seeing this sort of thing in a document. I haven't seen anything since I've been at Crown that includes that sort of language.*
>
> *…*

[1872] T2930:21 – 2932:19 (Blackburn).
[1873] T2932:31-33 (Blackburn).
[1874] T2962:37-38 (Blackburn).
[1875] T2963:29-33 (Blackburn).
[1876] T2933:10-19 (Blackburn).
[1877] T2976:11-26, 42-45 (Blackburn), T2977:4-9 (Blackburn), Exhibit RC0318, Crown Resorts Limited Code of Conduct, April 2021, CRW.510.095.0016
[1878] Exhibit RC0319 Crown Resorts Limited Board Meeting Minutes CRW.507.004.5747 at .5835.
[1879] T2981:9-17 (Blackburn).

It is a problem, though, and it is suggestive of culture that was in place at that time.

4.27 Crown's attitude to its relationship with JTOs, prior to the media allegations, is a further interesting case study in Crown's approach to its compliance obligations and, it is submitted, Crown's culture. Crown's approach to junkets over time and the failings it has experienced in this space are set out in Section 10, Junkets. For present purposes, it is sufficient to note that (consistent with findings made in the Bergin Report) Crown could – and should – have done more in order to meet its legal obligations to keep itself free from criminal influence. It did not do so until late 2020, after it had had (and missed) a number of opportunities to closely consider its JTO relationships.

4.28 Ms Fielding noted in evidence that she considers that "part of what went wrong with Crown's culture, without being aware of it itself, was it became a little bit too insular and that is the casino industry as a whole rather than just Crown".[1880] This evidence demonstrates two issues: firstly, the issue that Ms Fielding means to raise; that Crown *was* too insular. The second is that Crown appears to have had no checks and balances in place to enable it to realise that this was the case.

5 The path forward

5.1 Current Crown directors have been upfront in their evidence about the need for Crown to reform its corporate culture. This is apparent on the statements of Ms Halton and Ms Korsanos, referred to in paragraphs 1.22, 1.25 and 1.26. Indeed, this year, Crown appointed both a Chief People and Culture Officer and an Executive General Manager, Transformation and Regulatory, who have each given evidence about the role they hope to play in transforming Crown's culture.

5.2 Several witnesses observed that they consider there has been a strong push to change Crown's culture, particularly recently. For example, Ms Halton noted Mr McCann's commitment, his "absolute[] determin[ation]"[1881] to change the culture of Crown; while Ms Coonan observed that although Crown is "on a journey" (rather than at the destination), "progress has been absolutely enormous" at Crown in terms of its reform program, and particularly concerning culture.[1882] Mr McCann confirmed in his evidence that his impression of Crown's staff is that they are "crying out for the ability to speak up, the ability to be involved, the ability to restore the pride in the organisation that they used to feel but currently is obviously challenging":[1883] the implication being that they are welcoming the cultural changes that Crown is implementing and are willing, as a group, to embrace change.

5.3 Much of the evidence given by witnesses before the Commission regarding Crown's reformed culture has focussed on Crown's approach of setting "the tone from the top".

5.4 The importance of setting the "tone from the top" was described by Ms Whitaker in her evidence. She identified that she considered that this is a "very important part of effecting cultural change", because:[1884]

> *The tone at the top will be what people are able to respond to and it is an important influencer and shaper of culture within an organisation. It's not the only thing, but it is an important one.*

[1880] T2677:19-21 (Fielding).
[1881] T3646:23-27 (Halton).
[1882] T3774:38-46 (Coonan).
[1883] T3485:26-32 (McCann).
[1884] T1913:26-35 (Whitaker).

5.5 Mr X Walsh spoke in general terms about the status of Crown's reformation. He noted in evidence that "All I can say is you have to make a start somewhere, and I think there are demonstrable changes coming, and it needs to come from the top".[1885] He noted that frontline staff "are just trying to do a good job each and every day" and that they "need the right leadership, direction and messaging" (from the organisations' leaders) in order for Crown to be successful.[1886]

5.6 Ms Halton provided an explanation of the way that she considers she is contributing to the "tone from the top". Her evidence was that she has:

(a) spoken with a range of "senior managers in the business to reinforce" the message that Crown needs to "find all examples of non-compliance and behaviour that is below the standard we should be expected to adhere to".[1887] She emphasised in her evidence that she is looking for a "higher standard than just straight compliance";[1888]

(b) has been "looking to recruit very high quality executives who are, and if I can put this term colloquially, are not beholden".[1889] Ms Halton later clarified this evidence, to confirm that she meant to refer to high quality executives who were not beholden "*to CPH*".[1890]

(c) feels as though these has been "much more authority with these business-wide messages basically since late February, early March".[1891]

5.7 When asked to comment on changes in Crown's culture since the departure of eight former directors in recent months, Ms Halton's evidence was that she has observed a:

(a) "genuine change in the candour and the engagement of senior management";[1892]

(b) "huge amount of effort amongst staff", noting that they have "been very positive about the messages we have been giving, about what it takes to put this company back on the straight and narrow".[1893]

5.8 Ms Korsanos reflected in her evidence about the "defensive" culture at Crown, when she first became a director in 2018.[1894] Ms Korsanos was open about the fact that she gained "a lot more knowledge" through the Bergin Inquiry, which gave her more insight about what she had experienced or seen prior to and during that Inquiry.[1895] She considers that the "changes to the Board and changes to management" are the biggest and most significant.[1896]

5.9 Ms Korsanos also noted that in the "current environment"[1897] (that is, post mid-February or March 2021) that she considered it was easier for the Board to get its message across: the changes to the Board acted as a circuit breaker.[1898]

5.10 A strong message about the tone from the top has therefore emerged from the evidence.

5.11 However, as Mr Weeks said, "talk is easy".[1899] Changing the tone from the top is not enough to effect lasting change on its own: as much was said by Ms Whitaker when explaining the

[1885] T3340:2-4 (X Walsh).
[1886] T3340:5-6 (X Walsh).
[1887] T3602:20-43 (Halton).
[1888] T3602:43-44 (Halton).
[1889] T3603:12-13 (Halton).
[1890] T3625:28-39 (Halton).
[1891] T3604:2-5 (Halton).
[1892] T3644:37-39 (Halton).
[1893] T3645:1-7 (Halton).
[1894] T3660:22-26 (Korsanos).
[1895] T3660:41-45 (Korsanos).
[1896] T3660:46 – 3661:4 (Korsanos).
[1897] T3664:3-4 (Korsanos).
[1898] T3664:3-17 (Korsanos).
[1899] T3391:24 – T3392:17 (Weeks).

importance of the tone from the top (see above at paragraph 5.4), which Ms Whitaker confirmed later by stating that "simply changing the top will only get you part of the way. There are other activities that would drive that change that you are looking for".[1900]

5.12 As an example where positive changes appear to be occurring, Mr Stokes considered that attitude changes resulting in Crown taking a "more proactive" approach in their AML obligations have arisen through "a combination of many things", including going through the Bergin Inquiry and AUSTRAC enforcement actions,[1901] as well as the appointments of Mr Blackburn, Mr Weston and Mr Weeks.[1902]

5.13 Ms Whitaker went on in her evidence to describe the importance of root cause analysis when undertaking drivers of culture. She said:[1903]

> *I think what we look for, when we are thinking about, is we really try to unpack why are people making the decisions that they are making, and what is driving that poor behaviour? Some of it may be the nature of the character of the individual. That of course is a contributing factor, but we try to look for all the other contributing factors that are perhaps externally driven that are driving that behaviour. So whether that is pressure from a leader, whether it is a poorly designed system or process, whether it is rewards or consequent management frameworks being improperly designed or not effectively used, we will look for all of those things to try to understand why they think what they are doing is the right thing, and then we seek to put the right mechanisms in place to guide them and make it easy for them to make the right decision.*

5.14 It is clear on Ms Whitaker's evidence that in addition to the "tone from the top", it will be critically important for Crown to be able to identify factors that have driven poor behaviour, and implement mechanisms that address those behaviours.

5.15 Ms Whitaker's evidence is similar, in some respects, to that of Ms Arzadon, an expert who provided an opinion to the Commission on Cultural Change at Crown Melbourne. Ms Arzadon's evidence is set out in more detail in section 8 below. Relevantly, Ms Arzadon's evidence identified that although she had seen a lot of evidence of Crown *telling* people something like "you should speak up", that is not the same as "trying to understand why they might not speak up". [1904] It is this work to understand the root cause of the behaviours which is not, it is submitted, addressed in Crown's current reform program or through setting the "tone from the top", though the tone is clearly a relevant input in driving change.

5.16 There has been some evidence that, although the "tone from the top" has been "set", some individuals appear not to be supported in the journey of Crown's evolution. The extent to which Crown is able to create an environment where individuals are supported will be a key next step and perhaps Crown's failure to do so is indicative of ongoing cultural problems at the organisation. These matters are discussed in detail in the Section 16, Suitability of existing associates.

6 Crown's cultural uplift program

6.1 As is clear from the evidence of the executives and Board members who gave evidence before the Commission, culture is an important matter for Crown and something which many individuals are spending significant time considering. Ms Coonan's statement

[1900] T1953:3-5 (Whitaker).
[1901] T0385:25-47 (Stokes).
[1902] T0386:2-6 (Stokes).
[1903] T1954:31-44 (Whitaker).
[1904] T3977:8-13 (Arzadon).

describes the "cultural uplift program" as a "key component" of Crown's wider reform program.[1905]

6.2 Mr Nick Weeks has been brought into Crown on a twelve month contract as the Executive General Manager, Transformation and Regulatory Response.[1906] His role involves three areas: oversight of the remediation plan provided to the ILGA following publication of the Bergin Report, overseeing and coordinating the range of projects that Crown has identified and are described in its Remediation Plan, and reporting to senior management and the Board about each of these work streams.[1907]

6.3 With respect to culture, Mr Weeks notes in his statement that "Crown is in the midst of a significant phase of work that is designed to improve its culture".[1908] He goes on to state that he has "observed a company that recognises that it needs to rebuild its key regulatory relationships".[1909]

6.4 When asked during evidence to reflect on the misconduct and cultural issues identified in the Bergin Inquiry and specifically to identify the cultural issues at Crown that were driving the misbehaviours, Mr Weeks noted:[1910]

(a) Crown prioritised profit over all those other considerations that a company with a good culture would balance more evenly;

(b) people in the organisation in positions of influence and power that were exercising very poor judgment in terms of some of the decision-making that occurred;

(c) the quality of reporting and the escalation of issues in the organisation was not occurring in the way that it ought to be.

6.5 Mr Weeks went on to identify that he considered there were a number of motives behind the company's desire to reform. He considered that "some of them have been spurned by the regulatory scrutiny that the company has been under".[1911] However, he also considered that he had detected and observed "a desire from the directors in particular to reform the company" and that there is a drive to turn the company around.[1912]

6.6 Mr Weeks was frank in his evidence that many of the reforms Crown is currently implementing "should have been in place for a lot longer" and agreed with the proposition that, because of the timing, it is possible to be "somewhat sceptical about whether or not there is a genuine commitment to reform as opposed to a purely reactionary response to reform".[1913]

6.7 Mr Weston has also provided a statement to the Commission. In it, he states that he considers that the Crown leadership team "is very invested in the Culture Change Program and my role within the organisation".[1914] He considers that the Culture Change Program has been prioritised by the Board.[1915]

[1905] Exhibit RC0437 Statement of Helen Coonan, CRW.998.001.0526, .0546 [82](a).
[1906] T3381:40-47 (Weeks).
[1907] Exhibit RC0416 Statement of Mr Nick Weeks, 7 June 2021, CRW.998.001.0423 at .0425; .0426, [18] – [20].
[1908] Exhibit RC0416 Statement of Mr Nick Weeks, 7 June 2021, CRW.998.001.0423 at .0431, [37].
[1909] Exhibit RC0416 Statement of Mr Nick Weeks, 7 June 2021, CRW.998.001.0423 at .0432.
[1910] T3387:3-12 (Weeks).
[1911] T3391:13-18 (Weeks).
[1912] T3391:18-22 (Weeks).
[1913] T3391:6-13 (Weeks).
[1914] Exhibit RC0478 Statement of Tony Weston, CRW.998.001.0521 at [10].
[1915] Exhibit RC0478 Statement of Tony Weston, CRW.998.001.0521 at [10].

7 Current status of Deloitte's culture review and the time required for implementation

7.1 When Ms Whitaker gave evidence on 9 June 2021, she said Deloitte's scope of work would not be complete until eight to twelve weeks after the completion of phase three (due for completion in August). When Mr Weeks gave evidence, he said the timeframe had been brought forward and considered that Crown would "be able to quantify the implementation of the roadmap" for cultural change by 16 August 2021.[1916]

7.2 Mr McCann confirmed that in mid-July, Crown planned to hold a senior leadership forum comprising a combination of senior management and some up-and-coming performers. He explained the purpose of that conversation as "to discuss where we are headed from here" and that the forum would be informed by the draft report form Deloitte regarding Crown's current state.[1917] Mr McCann's evidence was to the effect that the plan from there was to finalise the report, "having had input from that senior leadership forum", and that Deloitte would then produce a subsequent document for discussion around the future state and the roadmap to that future state.[1918]

7.3 Mr McCann noted the importance as part of this cultural reform project of ensuring that Crown's purpose as an organisation aligns with the purpose of the regulator, in accordance with Ms Arzadon's recommendations in her report.[1919]

7.4 The fourth phase of Deloitte's work is the most critical.[1920] It is the phase where the target culture state will be identified and the roadmap for change will be designed. In the expert opinion of Ms Elizabeth Arzadon, whose evidence is discussed in detail from paragraph 8.2 below, it is the stage of a cultural reform project that can take the longest. Ms Arzadon's report identifies that embedding culture can take between three to five years.[1921] Mr McCann, speaking from his experience with Lendlease and leading a large cultural change project there, noted that the change took two years.[1922]

7.5 Mr Weeks was asked about the time required to achieve change, specifically the timeframe nominated by Ms Arzadon. His evidence was that:[1923]

> *I think that to embed culture across an organisation takes time. I think you can achieve cultural change more quickly, but to properly embed it takes time. Whether it takes three to five years, I will let others assess, but I agree it takes time to embed it properly.*

7.6 Mr Weeks agreed that embedding is vitally important, though qualified this by stating that "changing it and changing it quickly is equally important so you get that momentum for change".[1924]

7.7 It was suggested to Ms Arzadon during her evidence that perhaps given the fundamental shift in the makeup of the Board, that cultural change might happen faster. Ms Arzadon did not accept that proposition.[1925] Whether change is a two year process (as proposed by Mr McCann in the context of Lendlease) or three to five year process (as reported by Ms Arzadon), it is highly relevant to recall that the circumstances Crown will be facing at the

[1916] T3401:42-47 (Weeks); see also Exhibit RC0478 Statement of Tony Weston, CRW.998.001.0521 at [19](d).
[1917] T3485:39-44 (McCann).
[1918] T3485:45-47 (McCann).
[1919] T3486:7-13 (McCann).
[1920] T3401:7-17 (Weeks).
[1921] Exhibit RC0447 Expert Report of Ms Elizabeth Arzadon, Cultural Change at Crown Melbourne, COM.0007.0001.0178 at .0197.
[1922] T3490:5-14 (McCann).
[1923] T3402:11-15 (Weeks).
[1924] T3402:21-23 (Weeks).
[1925] T3973:2-20 (Arzadon).

completion of the two or three or five year period are likely to be very different to the circumstances that it finds itself in today. Today, there are clear benefits for Crown if it engages in good conduct. However, Ms Arzadon noted that, in the future:[1926]

> *say about three or five years, the conditions will change, and this is what happens often with organisations that are placed into mandated culture change, that later on down the road when things go back to normal, then the usual pattern, which is that revenue generation is rewarded and compliance is less naturally rewarded, that's when you have prioritisation of revenue over compliance and conduct.*

7.8 It is therefore critical that the Deloitte roadmap and Crown's "embedding" phase focus on activities that will permit Crown's culture to be self-sustaining and bring together the purpose of compliance and conduct with revenue generation. Fundamentally, in Ms Arzadon's opinion, there first needs to be some kind of reconciliation between Crown's profit or revenue generation purposes and its conduct and compliance obligations. Ms Arzadon said she has not seen any evidence that this step has been taken or is contemplated.[1927] This is discussed further in paragraph 8.8 below.

8 Ms Arzadon's report and opinion

8.1 Ms Elizabeth Arzadon is an expert on corporate culture and its influence on conduct and risk outcomes. She has 20 years' experience as a strategy and independent adviser diagnosing culture and designing change programs within a range of organisations. In particular, Ms Arzadon has extensive experience working with Australian and international financial sector regulators.[1928] Ms Arzadon explained the parallels between the financial sector and casino industries.[1929]

8.2 Ms Arzadon was asked to complete a specific scope of work in a specific time period. She was provided with key documents, but not many documents. She did not carry out a culture review of Crown,[1930] and was not asked to do so. Ms Arzadon was clear that in order to reach the conclusions that she did, she drew on her long experience in analysing corporate culture and cultural change.[1931]

8.3 In order to understand Crown's relationship with its regulator in Victoria, Ms Arzadon set out some background about available supervisory models for casinos. The first, the "New Jersey" model, is "characterised by extremely high levels of prescriptive guidance and intrusive supervision, with control and enforcement as key priorities". The second is the "risk based" model, employed by the VCGLR. This approach "places a high degree of reliance on the integrity of internal control processes within supervised entities, preserving limited regulatory resources to examine issues of highest risk".[1932]

8.4 Ms Arzadon observes that risk-based regulators "rely heavily on a culture of transparency, responsiveness and collaboration with supervised institutions" in order to form an accurate view of the highest risks within the regulated entity.[1933] Ms Arzadon notes that these favourable outcomes are more likely to be achieved if the relationship between the regulator and the institution have an aligned purpose, substantiated trust and two-way respect.[1934]

[1926] T3950:33-44 (Arzadon).
[1927] T3950:15 – 3951:12 (Arzadon).
[1928] Exhibit RC0477 Expert Report of Ms Elizabeth Arzadon, Cultural Change at Crown Me bourne, COM.0007.0001.0178 at .0181.
[1929] T3943:27 – 3944:14 (Arzadon).
[1930] T3981:18 (Arzadon).
[1931] T3945:8-30 (Arzadon).
[1932] Exhibit RC0477 Expert Report of Ms Elizabeth Arzadon, Cultural Change at Crown Me bourne, COM.0007.0001.0178 at .0183.
[1933] Exhibit RC0477 Expert Report of Ms Elizabeth Arzadon, Cultural Change at Crown Me bourne, COM.0007.0001.0178 at .0184.
[1934] Exhibit RC0477 Expert Report of Ms Elizabeth Arzadon, Cultural Change at Crown Me bourne, COM.0007.0001.0178 at .0184.

8.5 Evidence before this Commission was to the effect that Crown is endeavouring to make improvements in its relationship with the VCGLR.[1935] Certainly Ms Coonan's evidence is that she has been making a concerted effort in respect of Crown's relationship with the NSW Regulator; and that progress is being made on the development of an open and direct relationship between the VCGLR and Crown's Board and management.[1936]

8.6 As between Ms Coonan, Ms Halton and Ms Korsanos, much is said of the 'turning point' in mid-February 2021 in terms of Crown's culture. However, as identified in paragraph 4.17 above, remnants of the cultural problems from the past appeared as recently as one month after Ms Coonan's dealings with the VCGLR in December 2020. Similarly, the VCGLR were taken somewhat by surprise by concessions Crown made in the course of the Bergin Inquiry, when it had taken a contrary position in responding to the VCGLR's requests for information in the course of the China Arrests investigation.[1937] It may be the case that Crown's actions are yet to catch up with its words.

8.7 In spite of these complex challenges in the relationship between the VCGLR and Crown, Ms Arzadon's view is that Crown "can change, but the road ahead is long".[1938] That Crown can change is a matter agreed upon, importantly, by Crown's current CEO, Mr McCann.[1939]

8.8 Ms Arzadon identifies that in order for meaningful and lasting change to occur, among other things, an improved sense of corporate purpose is required.[1940] Her report is clear that Crown requires a purpose driven culture that "fundamentally reconciles the corporation's multiple purposes".[1941] Part of her conclusion is that Crown needs to deliver "new thinking about [its] purpose, strategy, operations and financial model, and solutions that can somehow deliver financial results within the frame of good conduct – not simply without breaking the law".[1942]

8.9 Ms Arzadon expanded on these matters in her oral evidence on 9 July 2021. She confirmed that in her view, alignment of purpose between regulated entity and regulator is the most critical element in the relationship.[1943] Mr McCann noted in his evidence that it would be an important part of Crown's reform project to ensure that its purpose as an organisation aligns with the purpose of the regulator.[1944] Although important, Ms Arzadon's ultimate view is that more is required than simply aligning with the regulator. She noted in evidence that "having observed a number of attempted culture changes in large organisations, there is a common pitfall", where there is no "reconciliation between the primary profit motive of any listed company, and the conduct and compliance obligations".[1945] In her view, key to ensuring cultural change is self-sustaining at Crown is a reconciliation of these matters: Crown must "bring together the purpose of compliance and conduct with revenue generation".[1946]

8.10 Problems that can arise when the purpose of compliance conflicts with revenue generation were explored at length through the Bergin Inquiry and also in these submission in Sections 7 and 10 (Hotel transactions/China Union Pay and Junkets, respectively). . A clear example of the type of issue that can arise was neatly put to Mr Blackburn in his evidence, as

[1935] T2667:1-43 (Fielding).
[1936] Exhibit RC0437 Statement of Helen Coonan, CRW.998.001.0526 at .0548, [82](o).
[1937] Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at 0044 [132].
[1938] Exhibit RC0477 Expert Report of Ms Elizabeth Arzadon, Cultural Change at Crown Melbourne, COM.0007.0001.0178 at .0180.
[1939] T3501:31-32 (McCann).
[1940] Exhibit RC0477 Expert Report of Ms Elizabeth Arzadon, Cultural Change at Crown Melbourne, COM.0007.0001.0178 at .0197.
[1941] Exhibit RC0477 Expert Report of Ms Elizabeth Arzadon, Cultural Change at Crown Melbourne, COM.0007.0001.0178 at .0199.
[1942] Exhibit RC0477 Expert Report of Ms Elizabeth Arzadon, Cultural Change at Crown Melbourne, COM.0007.0001.0178 at .0202.
[1943] T3946:32-37 (Arzadon).
[1944] T3486:7-13 (McCann).
[1945] T3950:15-24 (Arzadon).
[1946] T3951:1-3 (Arzadon).

extracted at paragraph 4.26 above. These are real issues, particularly for an organisation in Crown's line of business.

8.11 Ms Arzadon was unable to identify any evidence in the materials that she had been provided with to suggest that Crown is taking or contemplating taking the step of aligning the purpose of compliance and conduct with revenue generation: she had only seen reinforcement of the need to be compliant.[1947] This is something that Crown needs to urgently and closely consider, along with the question of why staff have a fear of speaking up.

8.12 Further, Ms Arzadon commented in her evidence that Deloitte's phase four work is the kind of work which is really the beginning of a culture change program. Deloitte's phase four work involves defining the aspirational state and developing the roadmap for change, and establishing the government, measurement and reporting frameworks that will support that change.[1948]

8.13 The work that will follow from Deloitte's phase four involves development of four types of actions: ensuring people have a compelling reason to change, having systems that reinforce the change; building skill in order to engage in new behaviours, and ensuring leaders are role modelling behaviours.[1949] To be successfully implemented as lasting and self-sustaining change, each of these actions need to be specifically designed based on the gap analysis taking into account the current and future state.[1950]

8.14 It was evident from Ms Arzadon's responses to questions on this topic that she had not seen examples of these types of actions as yet. None were put to her by counsel for other parties: it is submitted that is because they do not yet exist.

8.15 Ms Arzadon referred in her report to the appointment of Mr Nick Weeks and Mr Tony Weston, two individuals with a considerable level of responsibility for the success of Crown's cultural change program. Ms Arzadon noted that neither have "deep culture change expertise".[1951]

8.16 Ms Arzadon noted the importance of Crown engaging with appropriately qualified experts to support it on its journey of cultural change. As acknowledged by several witnesses before the Commission, culture is very nuanced and difficult to measure. Ms Arzadon considered that it is very important in the context of how components of a change program are designed and the significance of certain components that may not be appreciated by a lay person: expert assistance is required.[1952]

8.17 Ms Arzadon was asked about her observations particularly regarding Mr Weston in evidence. She was asked whether, having been provided with additional detail about Mr Tony Weston's employment history since her report had been prepared, she considered it was necessary to moderate any of the comments she had made about Mr Weston's level of expertise. Ms Arzadon confirmed her views that Mr Weston certainly appears to have generalist HR experience, including some experience in cultural work, but that he is not a specialist in this area.[1953] In contrast, Ms Arzadon agreed that Ms Victoria Whitaker is an expert in the area of cultural reform:[1954] Ms Whitaker is a specialist.[1955]

[1947] T3951:5-12 (Arzadon).
[1948] T3996:26 – 3997:10 (Arzadon).
[1949] T3997:12-30 (Arzadon).
[1950] T3997:33-39 (Arzadon).
[1951] Exhibit RC0477 Expert Report of Ms Elizabeth Arzadon, Cultural Change at Crown Melbourne, COM.0007.0001.0178 at .0193.
[1952] T3948:38-44 (Arzadon).
[1953] T3970:8-29 (Arzadon).
[1954] T3968:30-37 (Arzadon).
[1955] T3970:27-29 (Arzadon).

8.18 Senior counsel for CPH put a number of propositions to Ms Arzadon to the effect that nobody to date has carried out a proper root cause analysis of the cultural deficiencies at Crown, and further, given the current global (pandemic) and local (multiple Royal Commissions, for example) conditions, the results of any root cause analysis and cultural survey work is likely to be skewed in a way that is not properly representative of Crown's corporate culture.[1956]

8.19 Senior counsel for CPH went on to explore whether the employee surveys carried out every year, for example, in 2018, were likely to be a better indicator of culture at Crown that the findings made through the Bergin Inquiry or findings which might be made by Deloitte. Ms Arzadon was unable to agree with that proposition, because she understood some executive KPIs had been calculated by reference to engagement scores, which can skew results.[1957]

8.20 It may be true that there has not been a proper root cause analysis of Crown's corporate culture carried out recently. It is likely to be true that Ms Whitaker's work will need to be very carefully carried out and conducted with, as Mr Hutley put to Ms Arzadon, a high degree of professional scepticism.[1958]

8.21 To the extent that no root cause analysis has previously been conducted, blame falls squarely onto Crown's shoulders. It had opportunities to recognise its shortcomings – for example; through the identification of a lack of psychological safety in the 2018 Survey Findings; and opportunities for detailed root cause analyses to be conducted following traumatic events, including the China Arrests. Crown did not take these opportunities.[1959] When the actions of the VCGLR presented Crown with an opportunity to review its conduct – whether in the context of the China Arrests or the junkets disciplinary action – Crown responded in a way that was obstructive rather than collaborative. Some of those behaviours have been exhibited as recently as December 2020.

8.22 In any event, while there might not be an analysis that identifies the root cause of the cultural failings, it is abundantly clear there are cultural problems.

8.23 Crown is right to press ahead with its cultural reform project and it appears from evidence given to this Commission that its executives and directors are conscious of the key role that culture is taking in Crown's reform. Ms Arzadon's observations in her report are apt: the road ahead will be long.

[1956] T3983:17 – 3992:11 (Arzadon).
[1957] T3993:1-37 (Arzadon).
[1958] T3994:40 - 3995:4 (Arzadon).
[1959] See Section 133 above.

14 Suitability of Crown Melbourne and Crown Resorts

1 Introduction

1.1 Under the terms of reference, among other things, the Commission is required to consider:

(a) whether Crown Melbourne is a suitable person to continue to hold the casino licence under the CCA; and

(b) whether Crown Resorts is a suitable associate of Crown Melbourne.

1.2 "Suitable Associate" is defined in the terms of reference to mean a suitable person to be associated with the management of a casino under the CCA.

1.3 As set out in Section 1, Introduction, the term "suitable person" is not defined in the CCA. However, that phrase is referred to in other parts of the CCA, in particular s 9, which sets out the matters to be considered in determining an application for a casino licence. Section 9(1) provides that to first obtain a casino licence, a person must be considered by the VCGLR as a "suitable person" by reference to particular attributes set out in s 9(2) of the CCA.

1.4 In general terms, those attributes include that the person: (a) is of good repute, having regard to character, honesty and integrity; (b) is of sound and stable financial background; (c) has a satisfactory corporate structure; (d) has adequate financial resources, and (e) has sufficient business ability to establish and maintain a successful casino.[1960]

2 Approach to suitability

2.1 It is appropriate to approach the question of suitability of Crown Melbourne and Crown Resorts together. As discussed in Section 11, Crown Melbourne's Corporate Structure and Governance, Crown Melbourne is dependent on Crown Resorts operationally. Three of the directors of Crown Melbourne are also directors of Crown Resorts. The corporate character and operations of Crown Melbourne and Crown Resorts are intimately connected.

2.2 In considering whether Crown Melbourne is of good repute, having regard to Crown Melbourne's character, honesty and integrity, regard may be had to the character, honesty and integrity of the directors. The directors must be capable of ensuring Crown Melbourne complies with the law, and all of its obligations. The VCGLR must be able to place trust in the directors and feel confident that the directors will bring the appropriate rigour to the management and operation of the casino.

2.3 Further, in determining the question of suitability, the Commission is engaged in both a predictive assessment about the way in which Crown Melbourne will conduct itself in the future, informed by an investigation into Crown Melbourne's character, and an examination of the past conduct of Crown Melbourne.

2.4 Finally, determining suitability will require a holistic view of Crown Melbourne, including the integrity of its corporate governance and risk management structures, and the adherence to and implementation of adopted policies and procedures.

[1960] See s 9(2)(a) to (e). For completeness, s 9(2)(f) and (g) concern the applicant's or associate's business associations with an individual who is not of good repute, and the directors, officers and anyone connected with the ownership, administration or management of the operations or business of the applicant being a suitable person to act in that capacity.

3 Suitability of Crown Melbourne and Crown Resorts

3.1 In June 2018, the VCGLR published the Sixth Casino Review Report. It covered the period 1 July 2013 to 30 June 2018. The VCGLR came to the overall conclusion that Crown Melbourne remained a suitable person to hold the casino licence.[1961]

3.2 This conclusion was reached notwithstanding that the period of review covered some of the matters that were examined in the Bergin Inquiry. At the time, the VCGLR's investigation into the China Arrests was ongoing but had not been completed.

3.3 Subsequently, the Bergin Inquiry was announced to inquire into and report on various media allegations. The Bergin Inquiry concluded on 1 February 2021 and made a number of findings in its report, including that Crown Resorts:

(a) was not a suitable person to be a close associate of the Licensee of the Sydney Casino;[1962]

(b) facilitated money laundering through the Southbank and Riverbank accounts unchecked and unchanged in the face of warnings from its bankers;

(c) disregarded the welfare of its China-based staff putting them at risk of detention by pursuing an aggressive sales policy and failing to escalate risks through the appropriate corporate risk management structures; and

(d) entered into or continued commercial relationships with junket operators who had links to Triads and other organised crime groups. [1963]

3.4 The findings in the Bergin Inquiry, in light of the matters in paragraph 2.1, provide a proper basis to find that Crown Melbourne and Crown Resorts were not a suitable person at the conclusion of the hearings in the Bergin Inquiry in late 2020.

3.5 Specifically, in its correspondence with the Commission on 17 March 2021 Crown conceded that it was open to the Bergin Inquiry to make the principal findings concerning money laundering, China arrests and junkets. Crown also conceded, that by reason of those findings, Crown Resorts was not suitable to be a close associate of Crown Sydney. However, Crown cavils with the notion that those unsuitability findings continue to be of application to Crown.[1964]

3.6 In the time available, this Commission has identified further conduct involving grave, systemic breaches of the law and issues of non-compliance. The breaches and other non-compliance issues involved or occurred with the knowledge of senior executives in positions of authority and trust.

3.7 Further, the Commission has identified a culture within Crown demonstrating an unwillingness to be transparent with regulators, a reluctance to make full and proper disclosure of issues or problems and, at times, an attitude of belligerence. Such an approach on the part of the casino licence holder cannot be countenanced.

3.8 The tax breaches, in particular, identify concealment, non-disclosure and other conduct that speaks to the character and integrity of Crown Melbourne and others that were involved. Significantly, the breaches and other non-compliance issues compromised the trust and confidence that is needed in the casino licence holder.

[1961] Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, COM.0005.0001.0776 at .0784.
[1962] Letters Patent, [4].
[1963] Letters Patent, [5].
[1964] Exhibit RC1268 Letter from Antonia Korsanos and Helen Coonan to Ray Finkelstein, 17 March 2021, CRW.0000.0002.0174.

3.9 Each of these matters are a reflection of Crown Melbourne's and Crown Resorts' character, integrity and culture. In some cases, they also highlight deficiencies in Crown's organisational and governance structures.

3.10 On the basis of the evidence before the Commission, and for the reasons set out in these submissions, it is open to the Commission to find that:

(a) Crown Melbourne is not a suitable person to continue to hold the casino licence under the CCA; and

(b) Crown Resorts is not a suitable associate of Crown Melbourne.

15 Public Interest

1 Introduction

1.1 The terms of reference require, among other things, that the Commission inquire into and report on whether it is in the public interest for Crown Melbourne to continue to hold the casino licence in Victoria.

1.2 Section 20(1)(e) of the CCA also provides for cancellation of the casino licence, where:

> *for specified reasons, it is considered to be no longer in the public interest that the licence should remain in force.*

1.3 Under section 3(1) of the CCA, 'public interest' is defined as:[1965]

> *public interest or interest of the public (except in section 74) having regard to the creation and maintenance of public confidence and trust in the credibility, integrity and stability of casino operations.*

1.4 In *Regina v Knightsbridge Crown Court. Ex Parte International Sporting Club (London) Ltd and Another* Griffiths LJ wrote for the court how this loss of public confidence and trust might result in the cancellation of a casino licence:

> *We have no hesitation in saying that past misconduct by the licence holder will in every case be a relevant consideration to take into account when considering whether to cancel a licence. The weight to be accorded to it will vary according to the circumstances of the case. There may well be cases in which the wrongdoing of the company licence holder has been so flagrant and so well publicised that no amount of restructuring can restore confidence in it as a fit and proper person to hold a licence; it will stand condemned in the public mind as a person unfit to hold a licence and public confidence in the licensing justices would be gravely shaken by allowing it to continue to run the casino. Other less serious breaches may be capable of being cured by restructuring.*[1966]

The meaning of "public interest"

1.5 It is necessary to begin by identifying the meaning of "public interest" under the CCA.

1.6 In 1997, Mr D. J. Habesberger QC (as his Honour then was) provided the following advice:[1967]

> *Understanding what is required by the … [public interest] limb … is rather more difficult. A number of points can be made concerning its construction. First, the phrases "public interest" or "interest of the public" are defined for the purposes of the Act … as meaning:*
>
> *"[the] public in or interest of the public (except in section 74) having regard to the creation and maintenance of public confidence and trust in the credibility, integrity and stability of casino operations"*

[1965] Although the definition of 'public interest' has been amended twice since the CCA's enactment – in 2000 and 2005 – neither amendment materially altered the meaning of the term: see, *Third Triennial Review of the Casino Operator and Licence* (June 2003), Appendix 3, *Legal Advice of Mr Peter Hanks QC*, noting 'In this context, it is significant that the definition of "public interest" in s 3(1) of the Act was not changed in any substantial way in 2000, and the definition continues to define that term as "public interest or interest of the public…having regard to the creation and maintenance of public confidence and trust in the credibility, integrity and stability of casino operations". The relevant amending legislation was the *Gambling Legislation (Miscellaneous Amendments) Act 2000* (Vic), No. 88/2000, and the *Racing and Gaming Acts (Police Powers) Act 2005* (Vic), No. 55/2005.

[1966] [1982] 1 Q.B. 304, at 318.

[1967] First Casino Review, p 5.

In my opinion, this definition of the phrase "public interest" is quite restricted compared to what it might have been thought to encompass without the enforced statutory guidance. It is limited to certain aspects of "casino operations" rather than a broader approach to the question of "public interest".

Secondly, there can be no doubt that the subject of matter of [the public interest limb,] … whatever that may be, is not the same as [the suitability limb].

Thirdly, the distinction between the casino operator and casino operations is to be found in the Act itself. Part 3 of the Act is with the "Supervision and Control of Casino Operators", whereas Part 5 deals with "Casino Operations".

1.7 It is not clear if the advice intended to confine "public interest" to those matters set out in Part 5. That may not have been the intention. The Act defines "operations" as follows:

***operations**, in relation to a casino, means—*

(a) the conduct of gaming and approved betting competitions in the casino;

(b) the management and supervision of the conduct of gaming and approved betting competitions in the casino;

(c) money counting in, and in relation to, the casino;

(d) accounting procedures in, and in relation to, the casino;

(e) the use of storage areas in the casino;

(f) other matters affecting or arising out of, activities in the casino;

1.8 That definition, when read into the definition of public interest, appears to expand the scope of "public interest" beyond only those matters regulated by Part 5 of the CCA.

1.9 This is not a case where the precise boundaries of the meaning need be resolved. The analysis below proceeds on the basis that the "casino operations" are not confined by the matters regulated by Part 5. However, even if one confined the analysis to those matters (including, for example, RSG), it would lead to the same outcome.

Analysis

1.10 The evidence of current directors and senior management of Crown goes a long way toward establishing that Crown has lost the confidence of key stakeholders by its sustained misconduct,[1968] and that although it aims to win back that confidence over time, Crown faces a very significant task in seeking to do so.[1969]

1.11 It is open for the Commission to find on the strength of those concessions alone that, at the very least, Crown does not *presently* enjoy the trust and confidence of the public (in the relevant sense).[1970]

[1968] T3387:3-5 (Weeks) (*In his evidence to the Commission, Mr Weeks conceded that in reflecting on the Bergin Report in February, or early March 2021, his view was that the overriding cultural issue and fundamental failing at Crown was that they prioritised profit over all other considerations that a company with a good culture would balance more evenly*); T3838:37-42 (Coonan) (*Ms Coonan accepted Counsel Assisting's proposition that the Board regards Crown's reform agenda as absolutely necessary in order to regain the confidence of Crown's stakeholders and of the public*); T3861:5-18 (Coonan) (*Ms Coonan accepts a level of personal responsibility and accountability, as a director of Crown, for Crown's past failings*).

[1969] T3601:12-23 (Halton) (*When asked why changes took a long time to implement, Ms Halton noted that people at Crown are working very hard to firmly put in place arrangements that are consistent with Crown's social licence going forward, which Crown's stakeholders would expect*); T3861:5-18 (Coonan) (*Ms Coonan stated that although the majority of the old directors left Crown following the Bergin Inquiry, she believes that she had a new appreciation of the problems facing Crown and a duty to do what she could to fix them in the interests of Crown, its employees, its shareholders and its stakeholders*).

[1970] T3510:9-11 (McCann) (*When asked by the Commissioner about the tension between profit on the one hand, and running a straight business on the other, Mr McCann stated that he is of the view that the long-term viability and sustainability of Crown requires both a social license and a regulatory licence to operate*); T3510:4-16 (McCann) (*Mr McCann stated that the focus on social issues on responsible gaming, environmental and other social issues more broadly in the community has changed*

1.12 In fairness, people in senior positions at Crown who appeared as witnesses did make the point in their evidence before the Commission that the company does sincerely intend to win back public confidence and is prepared to make the necessary efforts to achieve that end.[1971] The Commission is required to take those no doubt sincere intentions into account in making a judgement as to whether or not it remains in the public interest for Crown to remain the licensee. The relative weight to be given to those intentions must be weighed against other relevant factors. In this case, the evidence of sincere future intentions must be weighed against the gravity of the misconduct which has led to the loss of confidence and trust, and the realistic prospects that trust and confidence in this particular licensee are capable of being restored.

1.13 The list of misconduct which has given rise to a loss of confidence and trust is at the most serious end of the spectrum, having regard to the purposes of the CCA and the nature of the obligations imposed upon a licensee.

1.14 The evidence of sincere future intention to reform must be measured against the following factors, many of which have been explored in more detail in other parts of this submission:

(a) Crown's misconduct, including systemic and repeated failings as:

(i) An AML/CTF reporting entity;

(ii) A provider of responsible gaming;[1972]

(iii) A casino that guards against organised crime influences at the casino;

(iv) A taxpayer;

(v) An employer who failed to prioritise employee safety; and

(vi) A regulated entity who was more concerned with risk of getting caught, than with compliance.[1973]

(b) The duration of that misconduct in present times and going back over many years;[1974]

(c) The extent of rehabilitation required;[1975]

(d) The uncertain time that it will take; and[1976]

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exponentially and that Crown must keep pace with the change); T3838:37-42 (Coonan) (*Ms Coonan accepted Counsel Assisting's proposition that the Board regards Crown's reform agenda as absolutely necessary in order to regain the confidence of Crown's stakeholders and of the public*).

[1971] T3435:15-19 (Weeks) (*In response to a question from the Commissioner, about the level of confidence one can have about Crown's future when the spotlight is turned off, Mr Weeks referred to the importance of having quality people in organisations, that care about their reputation, have strong ethical grounding, understand their role and exercise good judgment*); T3435:19-20 (Weeks) (*Mr Weeks stated that he believed that Crown now has these types of people*); Exh bit RC0434 Statement of Antonia Korsanos, 27 April 2021, CRW.998.001.0104 at .0112 (*In her witness statement to the Commission, Ms Korsanos stated that "significant resources and effort are being invested in support of implementing the reform agenda"*).

[1972] T3798:8-11 (Coonan) (*Ms Coonan stated that she believes that the responsible service of gambling is a very important part of Crown's social licence to operate*); T3798:34-38 (Coonan) (*She conceded that the current state of Crown's responsible service of gaming needs some further enhancements and attention*).

[1973] T3392:39-42 (Weeks) (*Mr Weeks also stated that the directors of Crown had conveyed to him the need to materially improve Crown's engagement with its regulators, which was described to him as poor*).

[1974] T3387:5-12 (Weeks) (*Mr Weeks stated that there were people in the organisation in positions of influence and power that were exercising very poor judgment in terms of some of the decision-making that occurred, and he stated that it was his sense that the quality of reporting and escalation of issues at Crown had not been occurring in a way it ought to have been*).

[1975] T3838:44-47 (Coonan); T3839:1-27 (Coonan) (*Ms Coonan agreed that Crown's reform agenda would involve a considerable amount of work, and that it would take time*).

[1976] T3839:2-5 (Coonan) (*Ms Coonan accepted that some aspects of Crown's reform agenda have already been achieved, and that some will take time*); T3861:26-37 (Coonan) (*When asked by Mr Borksy if the issues at Crown have all been fixed, Ms Coonan stated that the substantive problems that were identified in the Bergin Report have either been attended to or are in the course of being attending to*); T3861:26-37 (Coonan) (*In saying this, Ms Coonan added that she recognises that there may be additional matters arising out of the Commission that need to either be overlaid on what's been achieved in the reforms so far or dealt with separately, bearing in mind there are separate jurisdictions that Crown operate in*). T3435:23-26 (Weeks) (*Mr Weeks stated that this will not guarantee success and that those people need to build the systems and processes within Crown to ensure that issues that have emerged in the past don't occur, and are elevated and dealt with earlier if they do*); T3435:15-36 (Weeks) (*Mr*

(e) The uncertainty of the outcome.[1977]

1.15 Although the scope of the Bergin Inquiry was narrow, and its terms of reference were not specifically directed to the Melbourne Casino, it unearthed a multitude of problems.

1.16 In correspondence with this Commission regarding the findings of the Bergin Inquiry, Crown accepted that:

(a) Between 2013 and 2017, in the case of the Riverbank accounts, and between 2013 and 2019 in the case of the Southbank accounts, third parties engaged in apparent money laundering through the Riverbank and Southbank accounts. Crown inadvertently facilitated or enabled this activity despite concerns being raised by its bankers.

(b) Between 2015 and 2016, the pursuit of an aggressive VIP sales policy and failing to escalate risks through the appropriate corporate risk management structure, put China-based staff at risk of detention.

(c) Between 2012 and 2020, having relied on its due diligence, Crown entered into and/or continued commercial relationships with some "Junket" operators after becoming aware of a number of allegations in national and international media reports of links between those operators and Triads or other organised crime groups.[1978]

1.17 It might be said that in written correspondence with this Commission, Crown was guarded and precise in the way that it described its response to the Bergin findings.

1.18 In their oral evidence before this Commission, current directors were more direct, accepting in substance that what was revealed by Bergin were significant matters, borne of a deeply flawed organisation.[1979]

1.19 This Commission has brought to light even more and equally serious examples of problems, which extend deep into the many layers of the organisation.

1.20 In the context of this Commission, the following additional matters have come to light:

(a) Extensive underpayment of taxes by Crown Melbourne and the concealment of that matter from the VCGLR;

(b) The misuse of a China UnionPay credit facility through Crown's hotel, over the period 2012-2016 for the provision of credit to Crown VIP guests, in breach of the CCA and disregarding Crown's AML/CTF reporting obligations;

(c) Exposure of Crown staff to the risk of detention, even after the China arrests, through the continuation of VIP marketing operations in Malaysia until Crown made those staff redundant this year;

Weeks also noted that cultural change takes time, and when people come into an organisation, they are new to it. To correctly understand the culture, these people need to spend time within Crown, including on the gaming room floor, at the bars and in the offices, to be clear of what standards are and are not accepted).

[1977] T3861:26-37 (Coonan) (*Ms Coonan added that she recognises that there may be additional matters arising out of the Commission that need to either be overlaid on what's been achieved in the reforms so far or dealt with separately, bearing in mind there are separate jurisdictions that Crown operate in*); T3510:4-16 (McCann) (*Mr McCann stated that the focus on social issues on responsible gaming, environmental and other social issues more broadly in the community has changed exponentially and that Crown must keep pace with the change*).

[1978] Exhibit RC1268, Letter to the Hon Ray Finkelstein from A Korsanos and H Coonan Response to RFI-1, 17 March 2021, tendered 16 July 2021 CRW.0000.0002.0174 at .0175.

[1979] T3387:3-5 (Weeks) (*In his evidence to the Commission, Mr Weeks conceded that in reflecting on the Bergin Report in February, or early March 2021, his view was that the overriding cultural issue and fundamental failing at Crown was that they prioritised profit over all other considerations that a company with a good culture would balance more evenly*); T3838:37-42 (Coonan) (*Ms Coonan accepted Counsel Assisting's proposition that the Board regards Crown's reform agenda as absolutely necessary in order to regain the confidence of Crown's stakeholders and of the public*); T3861:5-18 (Coonan) (*Ms Coonan accepts a level of personal responsibility and accountability, as a director of Crown, for Crown's past failings*).

(d) A pattern of conduct in its engagement with the regulator, the VCGLR, that aggressively sought to defer responses to legitimate inquiries of the VCGLR, delay responses to the VCGLR and/or engage in a strategy of spurious denial or rejection of obvious propositions or concerns held by the VCGLR in the discharge of its function in investigating the causes of the China arrests and the nature of Crown's relationship with junket players and operators.

1.21 Mr McCann conceded that the findings from the Bergin Inquiry and the Commission, "called into question the suitability of Crown to hold gaming licences as well as its social licence to operate as a trusted company which employs thousands of people and operates in an industry which by its nature must be heavily regulated and socially responsible."[1980]

1.22 To adapt the language of Griffiths L.J. in the *Knightsbridge* case referred to above at 1.4 this Commission now faces just such a case where the wrongdoing of Crown "*has been so flagrant and so well publicised that no amount of restructuring can restore confidence in it as a fit and proper person to hold a licence*."[1981]

1.23 The Casino licence is a privilege – awarding an entity with a monopoly to make significant money from a product that can be harmful.

1.24 As Sir Laurence Street observed in his 1991 Report in relation to the establishment of a casino in NSW:

> *The philosophy behind the strict approach to regulation is that participation in the gambling industry is a privilege which is granted only after suitability according to strict criteria has been demonstrated. To be eligible for a casino operator's licence, an applicant must be shown to be willing and able to conduct operations honestly and in the public interest, in accordance with all applicable rules and regulations. Further, effective regulation requires that potential licensees be subject to a wide and continuing duty to disclose all information which may from time to time be needed to ensure that these public policies are followed and regulatory controls obeyed. Fitness to participate can only be determined after full disclosure of all relevant information. The onus is on those who seek the privilege of being licensed to demonstrate their eligibility.*[1982]

1.25 In Victoria, Xavier Connor QC, writing on the subject of whether there should be a casino at all observed:

> *A casino licence should be regarded as a privilege and not as a right.*[1983]

1.26 The CCA intends that this privilege is entrusted to a licensee who has the confidence of the public to discharge those duties diligently. The high standards imposed by the CCA are deliberate. The CCA does not contemplate or countenance that the licence should be reposed in some lesser entity on the pathway to redemption. The current state of affairs is uncertain and highly unstable.

1.27 In 1991, as the Victorian Parliament debated the introduction of a licenced casino to the State of Victoria, the members of the Legislative Assembly and Legislative Council worried aloud about some of the ways in which the licensing of the casino in Melbourne might go wrong.

[1980] Exhibit RC0419 Statement of Steve McCann, 15 June 2021, CRW.998.001.0459 at .0466.
[1981] *Regina v Knightsbridge Crown Court. Ex Parte International Sporting Club (London) Ltd and Another* [1982] 1 Q.B. 304, at 318.
[1982] Inquiry into the Establishment and Operation of Legal Casinos in NSW Report prepared by The Honourable Sir Laurence Street AC (1991), 121. Available at: https://www.nswcasinoinquiry.com/previous-reports; see also Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021 at 33.
[1983] Report of Board of Inquiry into Casinos in the State of Victoria, prepared by Xavier Connor (1983), 16.29. Available at https://www.nswcasinoinquiry.com/previous-reports.

1.28 For example, in the second reading of the *Casino Control Bill*, Member for Kew and then Shadow Attorney-General Ms Jan Wade expressed concerns as to whether the Casino Control Bill made proper provision for the regulation of casinos. She noted that the establishment of a casino in Victoria involved a lot more than its mere development, referring to the setting of new taxes and ensuring that proper controls are instituted, especially when the history of casinos in other parts of the world shows how easily criminal elements might infiltrate their management structures.[1984]

1.29 Mr Honeywood, Member for Warrandyte worried about the problems of excessive gambling.[1985]

1.30 Then Government Treasurer, Mr Roper, referred to a decision of the Cain government in the early 1980's, which determined not to proceed with establishing a casino in Victoria and expressed concern about how a large, open casino could operate in a city the size of Melbourne without encouraging or allowing the introduction or expansion of crime.[1986]

1.31 Mr Roper stated that although the proposal has significant economic benefits for the State of Victoria, a number of sensitive social issues need to be considered in relation to gambling and the impact that it has on some sections of the Victorian community, referring to a number of reports on casinos, criminal activities and concerns about money laundering which have been prepared for various governments.[1987]

1.32 Under Crown, all of the core issues that the Honourable Members were worried about have now come to pass.

1.33 Crown acknowledges that there remain important issues not yet resolved, including:

(a) Corporate organisational structure, including matters of fundamental significance such as whether to be organised and controlled as a group centrally or locally run;[1988]

(b) Management of significant potentially competing interests;[1989]and

(c) Significant unresolved cultural issues manifesting themselves as recently as this year.[1990]

1.34 Notwithstanding the obvious need for self-reflection, retrospective review and reform from October 2020 – Crown is only a very short way down the path. Some key replacement personnel, while seemingly competent in their own right, have little or no experience in casinos:

[1984] Victoria, *Parliamentary Debates,* Legislative Assembly 28 May 1991, 2535 (Jan Wade, Shadow Attorney-General).
[1985] Victoria, *Parliamentary Debates,* Legislative Assembly 28 May 1991, 2548 (Phillip Honeywood, Economic and Budget Review Committee).
[1986] Victoria, *Parliamentary Debates,* Legislative Assembly 9 November 1993, 1506 (Thomas Roper, Shadow Minister for Sport, Recreation, Racing and Gaming).
[1987] Victoria, *Parliamentary Debates,* Legislative Assembly 9 November 1993, 1513 (Thomas Roper, Shadow Minister for Sport, Recreation, Racing and Gaming).
[1988] T3679:23-26 (Korsanos) (*When asked by the Commissioner about Crown's proposed decentralised model, Mr Korsanos stated that the model that Crown will use is still under consideration*); T3672:14-47 (Korsanos) (*When asked by the Commissioner about the benefits to Crown Melbourne, of a proposed centralised corporate structure, Ms Korsanos said that they would include the ability to centralise certain functions and in particular the compliance function. She stated that the she thinks that Crown Melbourne can achieve better outcomes, better quality outcomes and a higher benchmark in compliance, financial crimes and responsible gaming by looking consistently across the business*).
[1989] T2925:41-47 (Blackburn); T2926:1-5 (Blackburn) (*Mr Blackburn acknowledges he is required to focus on many things in his role*).
[1990] T3697:38-40 (Korsanos) (*Ms Korsanos was asked by Counsel Assisting about Mr Xavier Walsh and the way in which Mr Walsh disclosed the issue of the underpayment of gaming revenue tax to her in a meeting on 9 March 2021*); T3698:35-43 (Korsanos) (*Ms Korsanos stated she was unaware of exactly what Mr Walsh knew at the time, but his approach to the issue concerned her with regard to the message that the directors have been putting to the team and the employees*); T3699:10-45 (Korsanos) (*On an assumption that Mr Walsh knowingly didn't inform the board of this issue, despite having knowledge of these matters since 2018, Ms Korsanos stated that she would not comfortable that Mr Walsh is the appropriate person to be the Chief Executive Officer of Crown Melbourne Limited*).

(a) Steven Blackburn, Crown's key to redressing its AML/CTF failings is from the banking sector;

(b) Stephen McCann, Crown's incoming CEO, comes from the property development sector;

(c) Bronwyn Weir, Crown's Governance Officer, had 'no experience in the gaming or casino sectors' prior to joining Crown.[1991]

1.35 It is true that other replacement personnel have experience in the gaming and casino sectors:

(a) Bruce Carter, incoming director at Crown, was a director of SkyCity Entertainment Group Limited, from 2010-March 2021.[1992]

(b) Nigel Morrison, has significant gaming experience, some of which has been with Crown.[1993]

1.36 New key personnel have taken a long time to source, some not having yet commenced, some having commenced only a short time ago, others still being actively sought out – including numerous replacement directors such as Bruce Carter who was invited to join the Board of Crown Resorts on or about 12 April 2021[1994] and Nigel Morrison who was invited to join the Board of Crown Resorts on 28 January 2021.[1995] Ms Korsanos accepted that there have been very significant changes to the number of members and executives on the Board of Crown Resorts.[1996]

1.37 Finding good people to take significant roles in a casino is inherently difficult because of the process of approvals required. It is made even more difficult when the organisation is beset by scandal, subject to multiple investigations and possible takeovers.

1.38 There has been considerable delay in populating key positions in middle management such that in the interim Crown has (and will continue to be) reliant on many people in the middle ranks of the organization who represent the cultural norms that have led to the current malaise.

1.39 On balance, the gravity of the past misconduct continuing until recent times, along with the extent of "restructuring" required, makes it open for this Commission to find that it is not in the public interest for Crown to remain as the licensee.

2 Potential claims by Crown – Cancellation on public interest grounds

2.1 Cancellation of Crown's casino licence on the public interest ground under s 20(1)(e) of the CCA may give rise to a claim for damages by Crown against the State of Victoria.

2.2 The Tenth Deed of Variation between the State of Victoria and Crown Melbourne dated 3 September 2014 inserted a new Part 5A into the Management Agreement, ostensibly for the purpose of providing Crown with "Regulatory Certainty".

2.3 Clause 24A.2 of the Consolidated Management Agreement (as amended) relevantly provides as follows:

[1991] Exhibit RC1267 Statement of Bronwyn Weir, 17 June 2021, CRW.998.001.0489 at .0490.
[1992] Exhibit RC0419 Statement of Bruce Carter, 12 June 2021, CRW.998.001.0438 at .0439.
[1993] Exhibit RC0223 Statement of Nigel Morrison, CRW.998.001.0447 22 June 2021 at .0439.
[1994] Exhibit RC0419 Statement of Bruce Carter, 12 June 2021, CRW.998.001.0438.
[1995] Exhibit RC0223 Statement of Nigel Morrison, CRW.998.001.0447 22 June 2021 at .0451.
[1996] T3664:4-9 (Korsanos).

24A.2 (a) The State or the Authority must not without the Company's prior written consent, take any action or series of actions that has or will have the effect of:

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

…

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

2.4 Clause 24A.3 further provides:

> *The State and the Company agree that certain other actions or series of actions by the State or the Authority may give rise to compensation being payable by the State to the Company.*

2.5 Clause 1.1 of Annexure 1 to the Consolidated Management Agreement sets out the various 'Trigger Events' for the purpose of Clause 24.3, the occurrence of which confer upon Crown a right to compensation. In broad terms, trigger events relate to specified changes to the conduct of operations at the Melbourne Casino. The overarching right to compensation if a trigger event occurs is capped at $200 million (but indexed for each year after 2015).

2.6 Cancellation of the licence on the grounds set out in section 20(1), including the public interest ground in section 20(1)(e), would not constitute a "Trigger Event".

2.7 Under clause 24A.2 of the Consolidated Management Agreement, the State of Victoria may be exposed to potential liability for breach of the Management Agreement for which 'the ordinary principles for breach of contract apply'. Unlike the compensation entitlements specified for "Trigger Events", there is no express cap on the quantum of damages which may be claimed or awarded for any such breach.

2.8 Section 156 of the CCA states that no right to compensation against the State of Victoria arises in relation to the cancellation, suspension or variation of the terms of the licence, or an amendment of the conditions of a licence, under the CCA.

2.9 Section 7 of the *Casino (Management Agreement) Act 1993* (Vic) may have the effect of displacing s 156 of the CCA so that, in the event of a cancellation reliant upon the public interest ground, Crown may remain entitled to pursue a claim for damages where the grounds for cancellation arise on or after the date of implementation of the Tenth Variation.

2.10 It should be observed that:

(a) It is apparent that the provisions generating a right to compensation were introduced at the same time as part of Tenth Deed of Variation, which also included a new clause – clause 21A – which provided that Crown pay the State of Victoria $250 million at the time of that variation, and pay a further $250 million on 1 July 2033.

(b) The underlying rationale for these provisions is unclear.

(c) It might be said that the right to compensation creates a significant monetary disincentive to administer the CCA in the manner in which it was intended and fundamentally corrodes an important pillar in the CCA. It also creates the appearance

of a significant conflict or tension between the proper administration of the CCA and the financial position of the State of Victoria.

2.11 In any event, the provisions do not preclude consideration of disciplinary action on the public interest ground, nor do they require consideration of the possible need to pay compensation in the assessment of whether or not the ground is made out.

16 Suitability – Existing Associates

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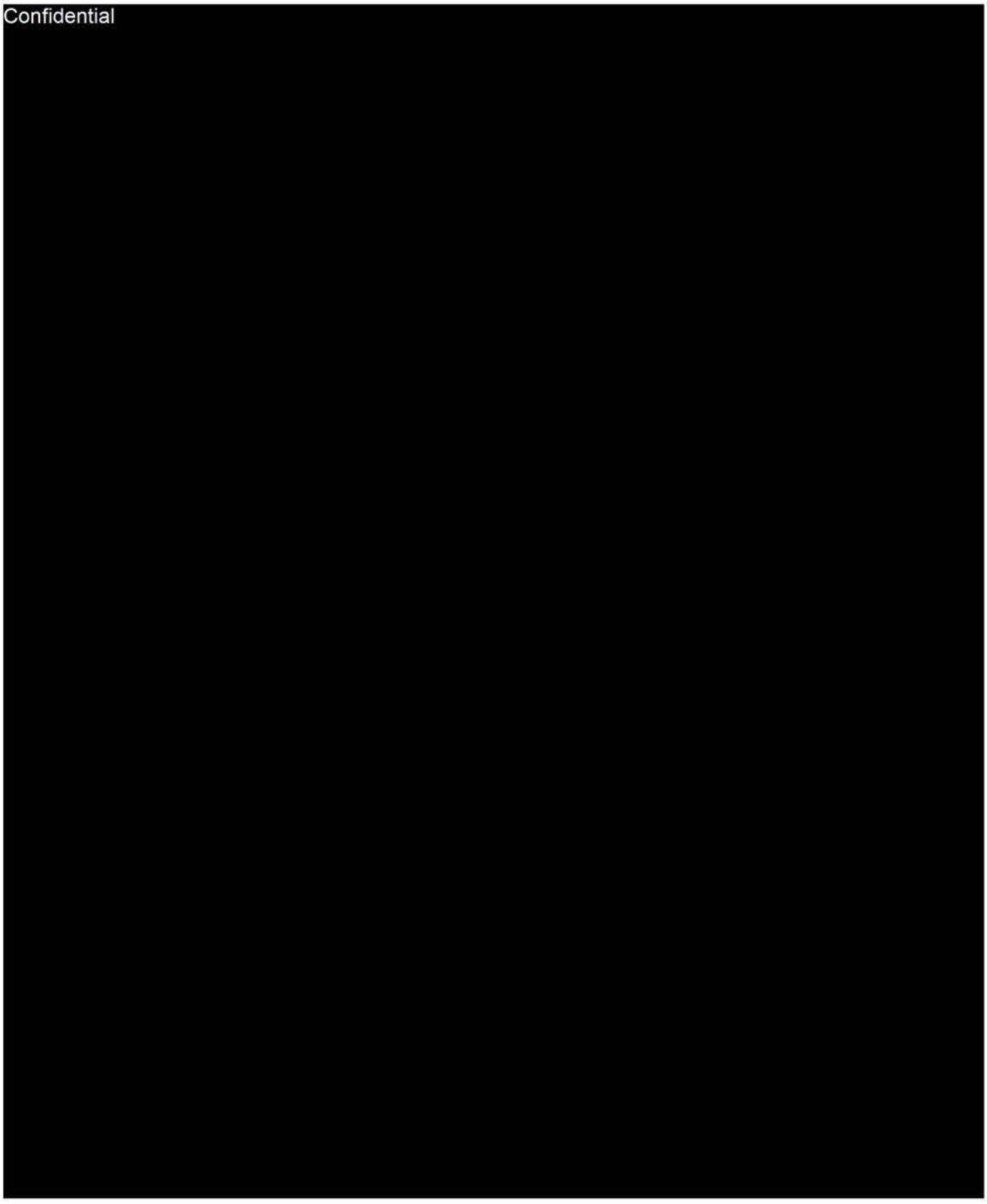

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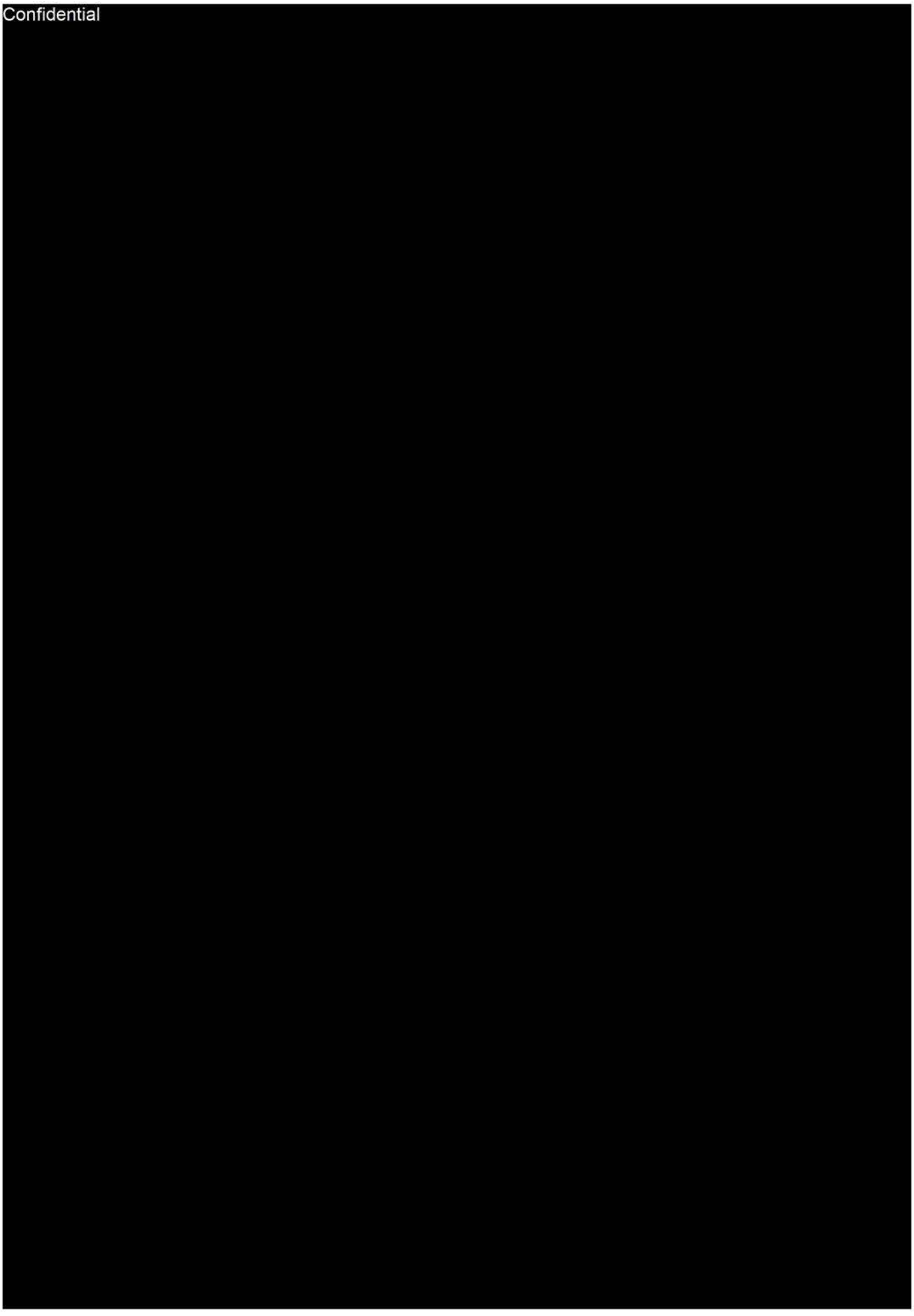

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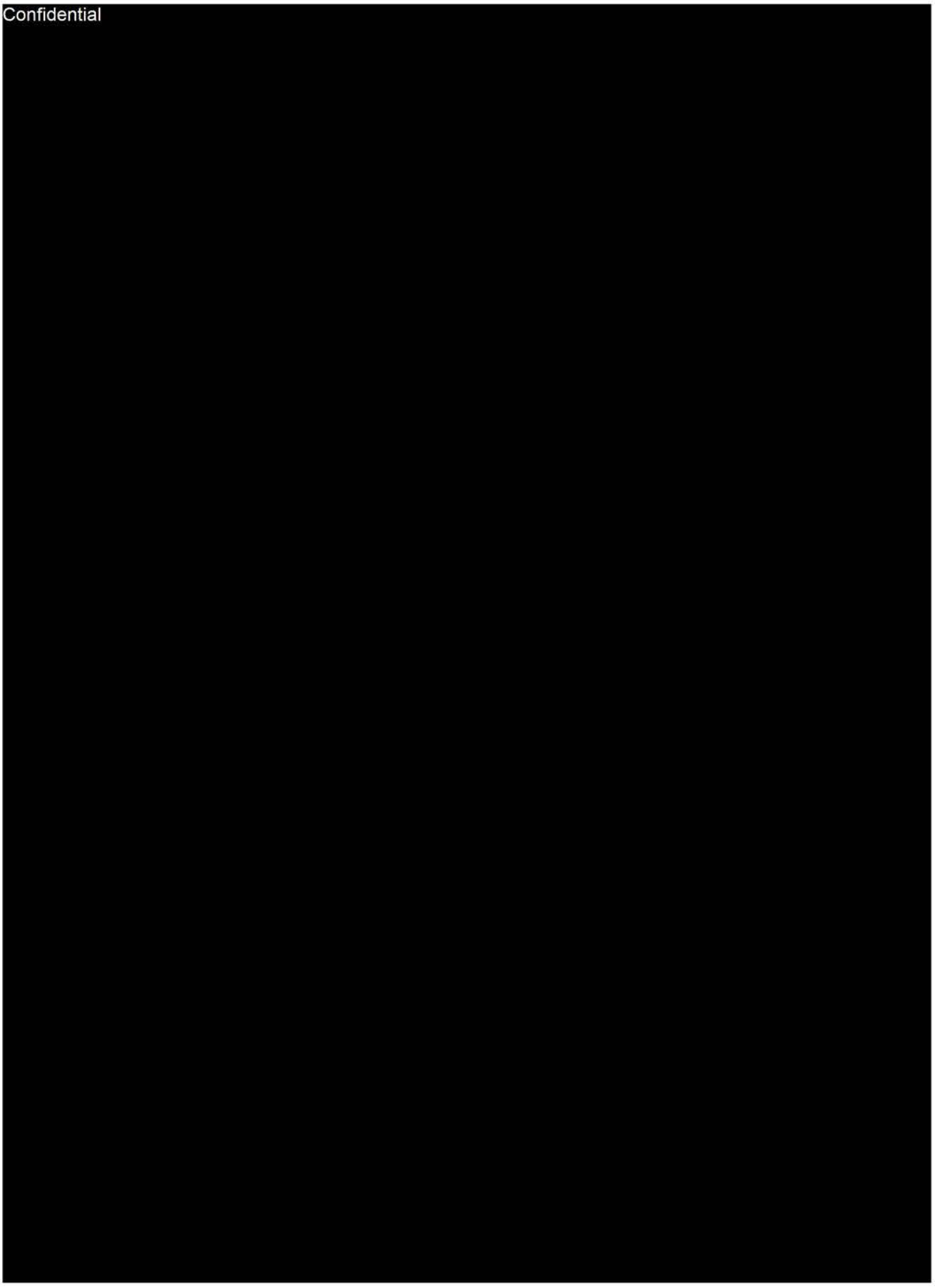

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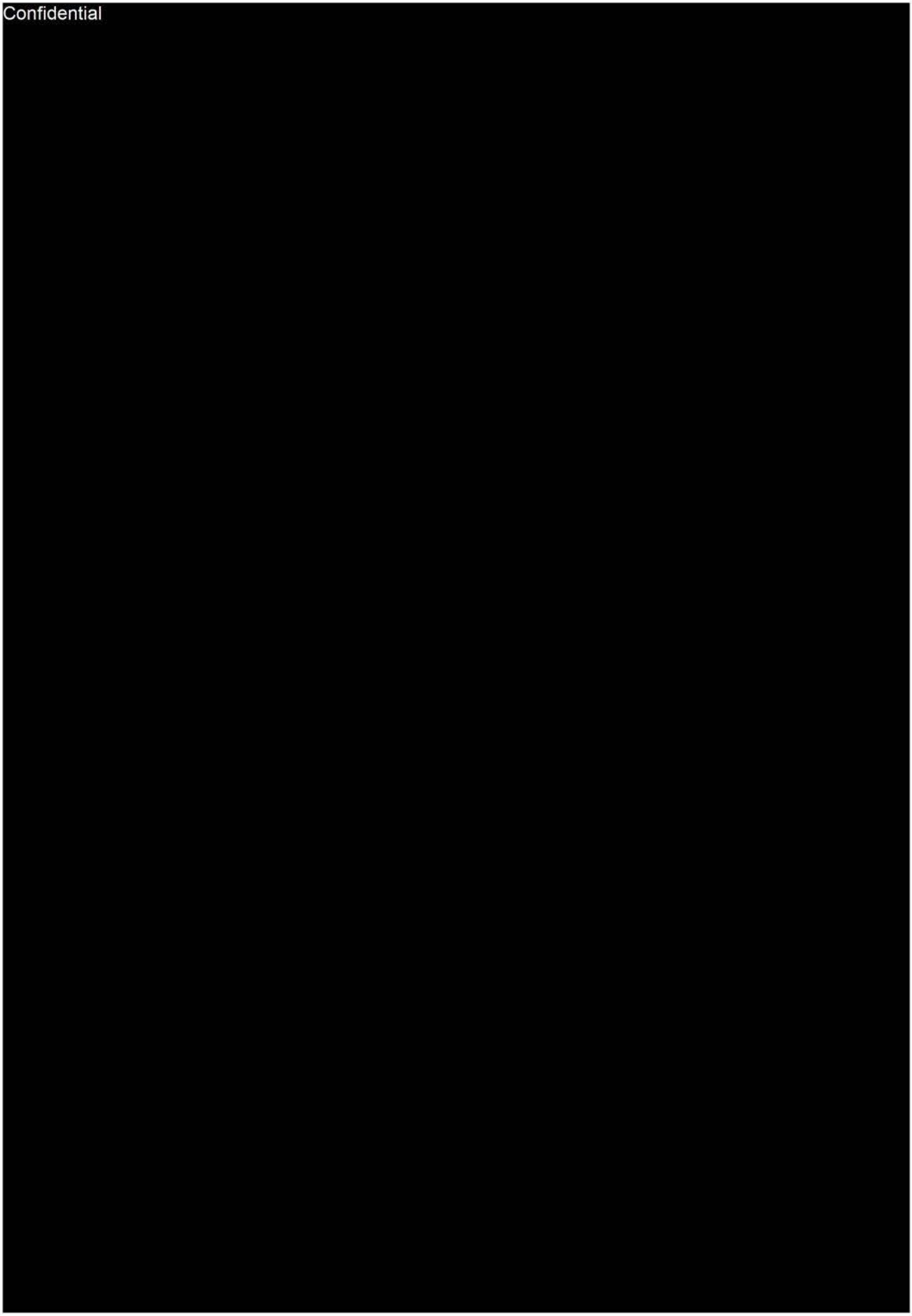

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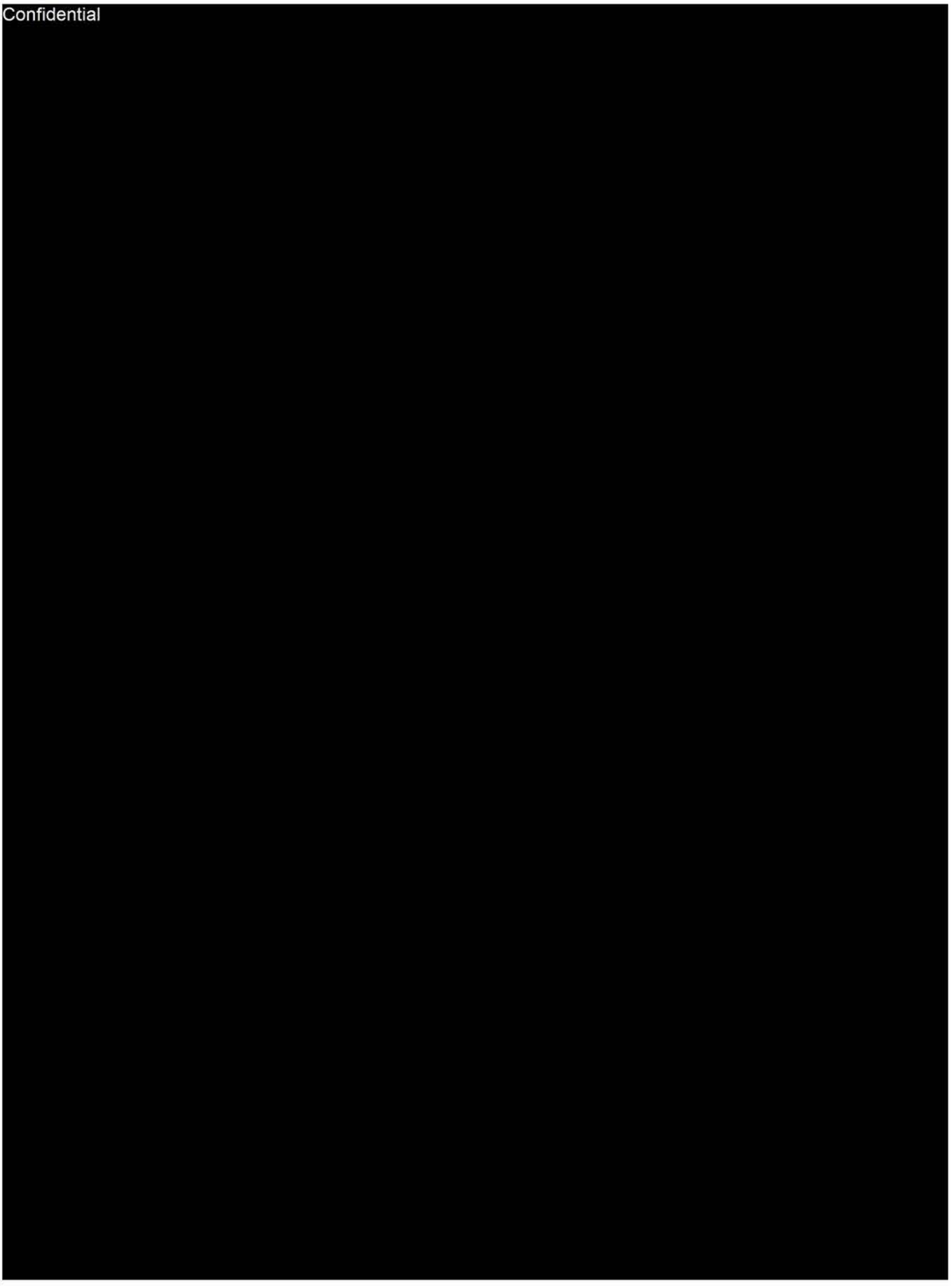

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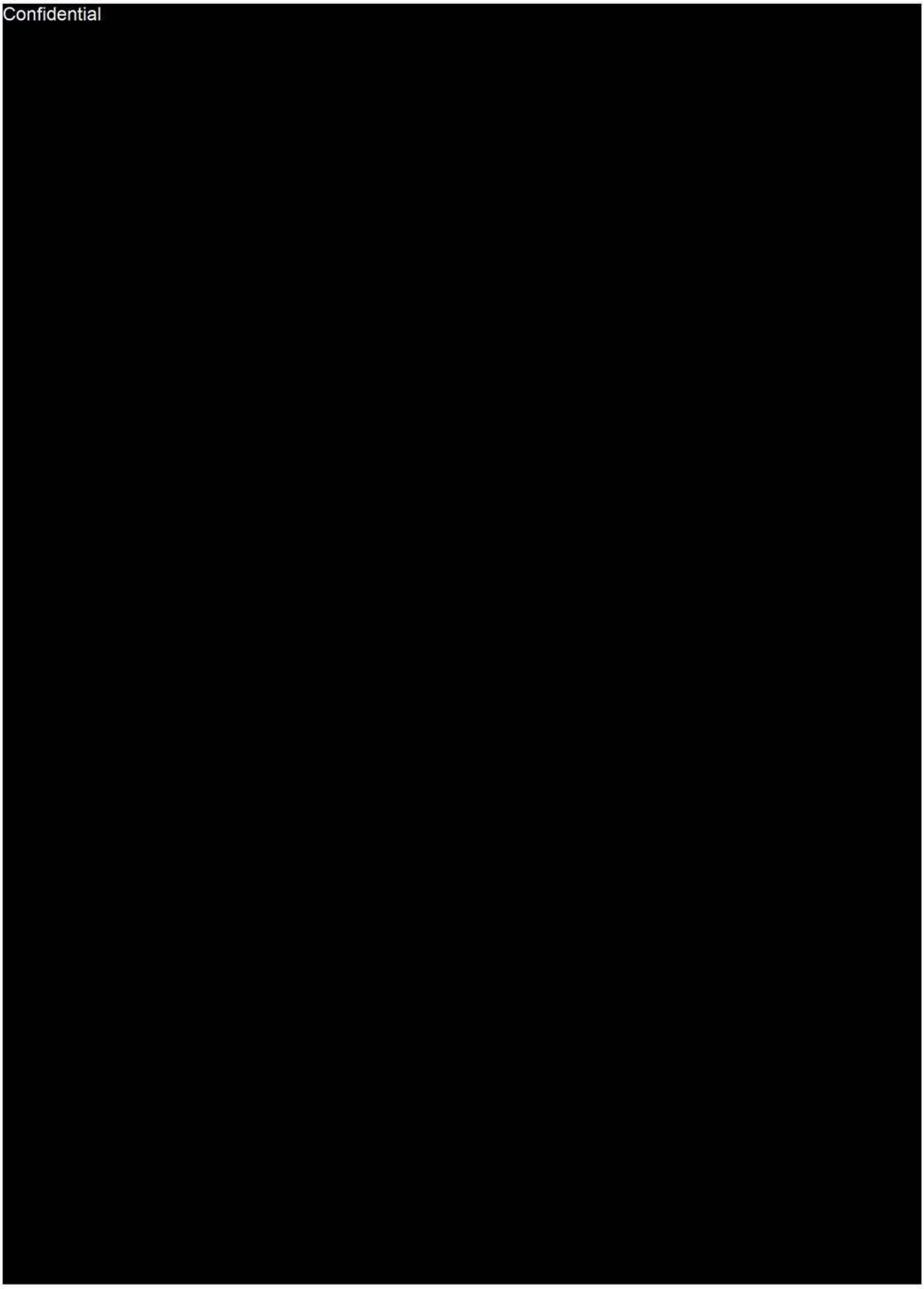

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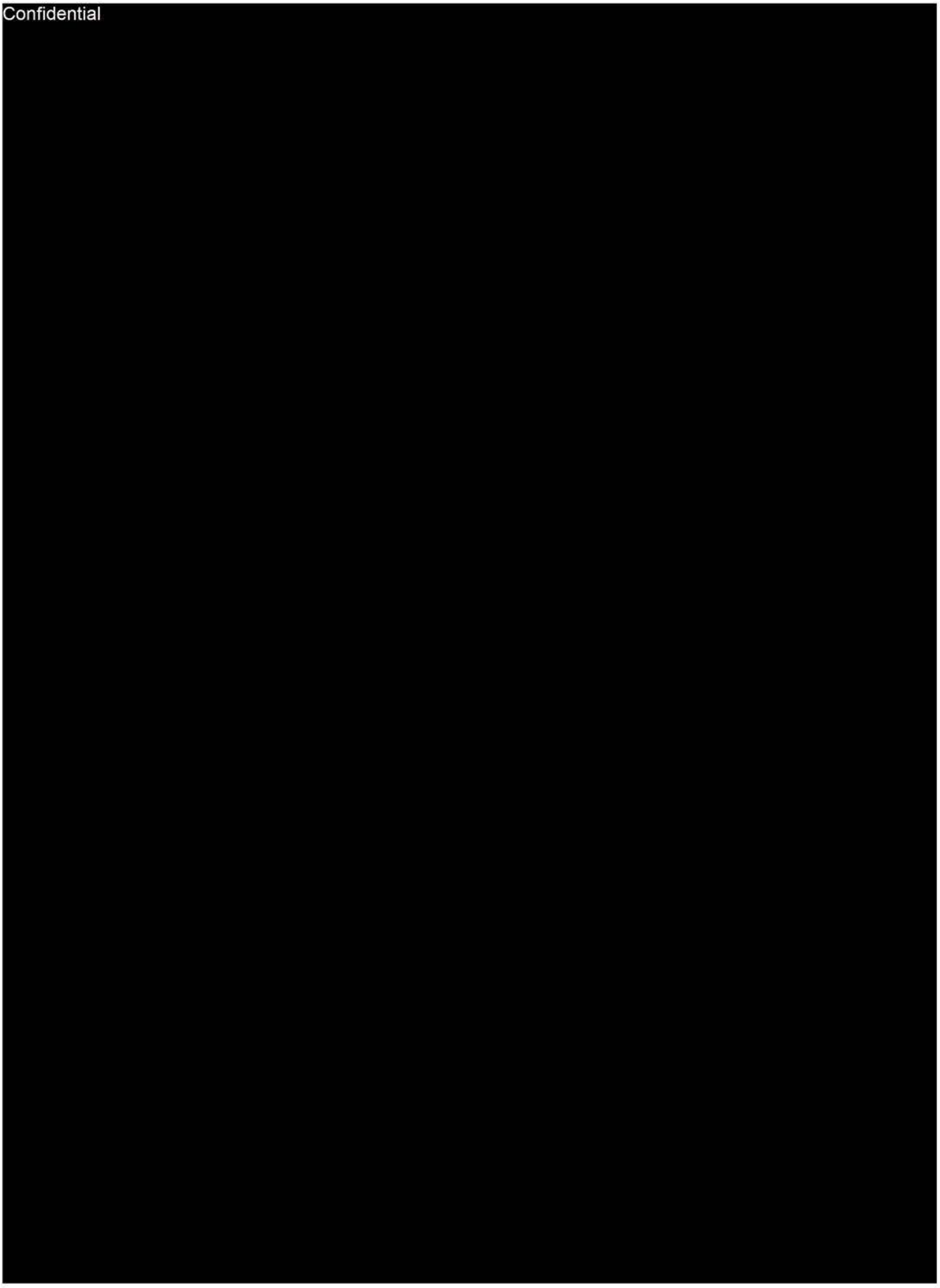

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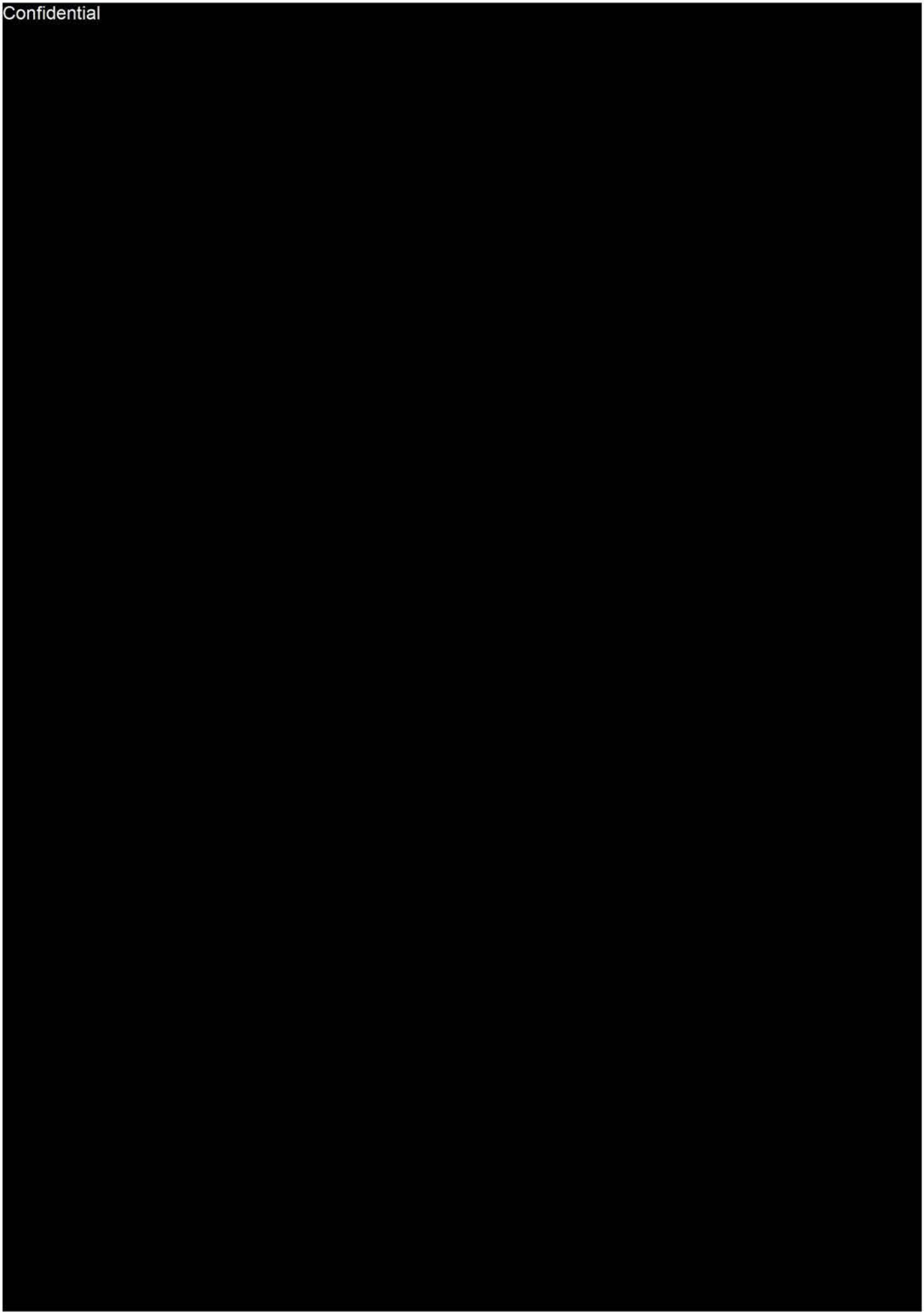

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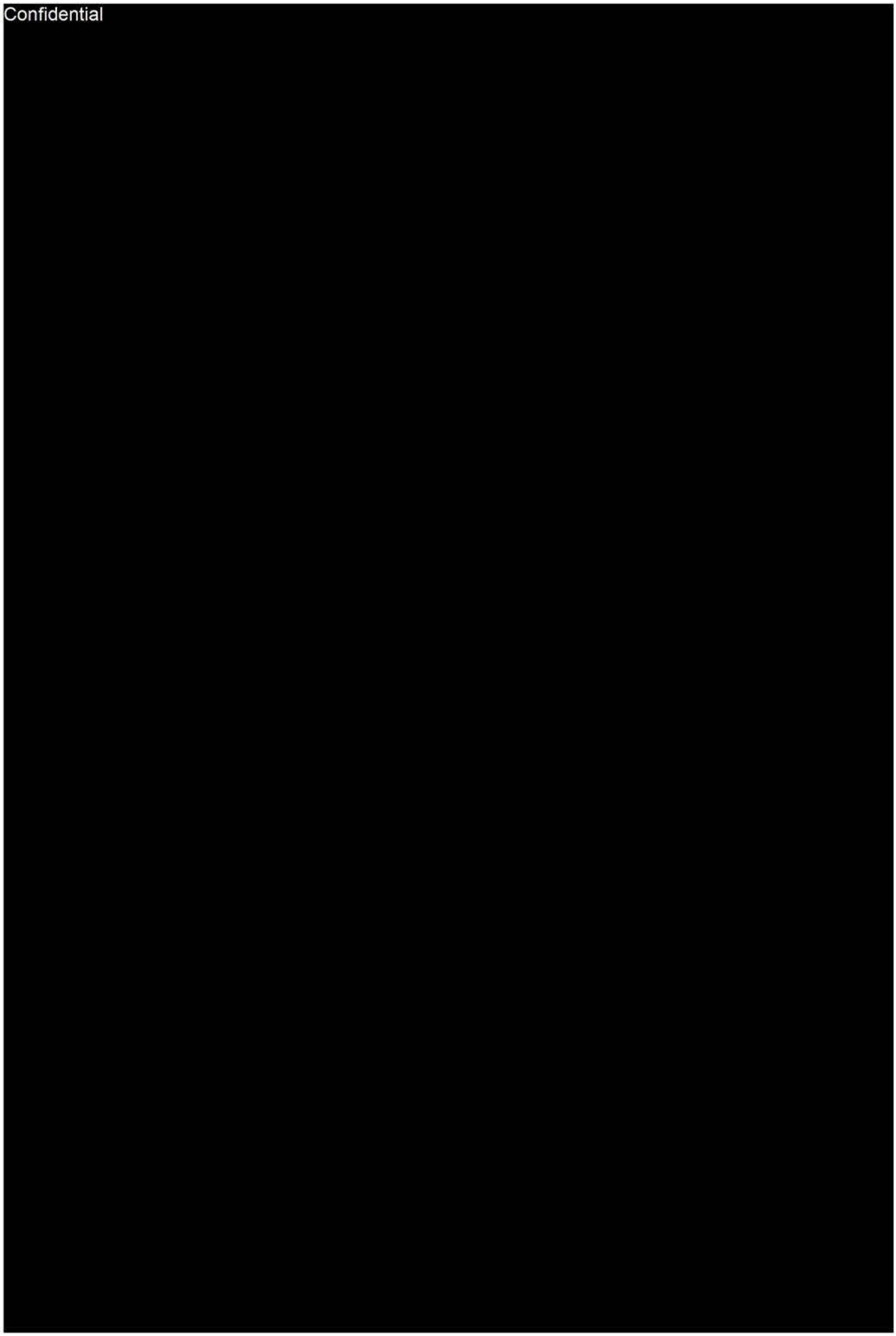

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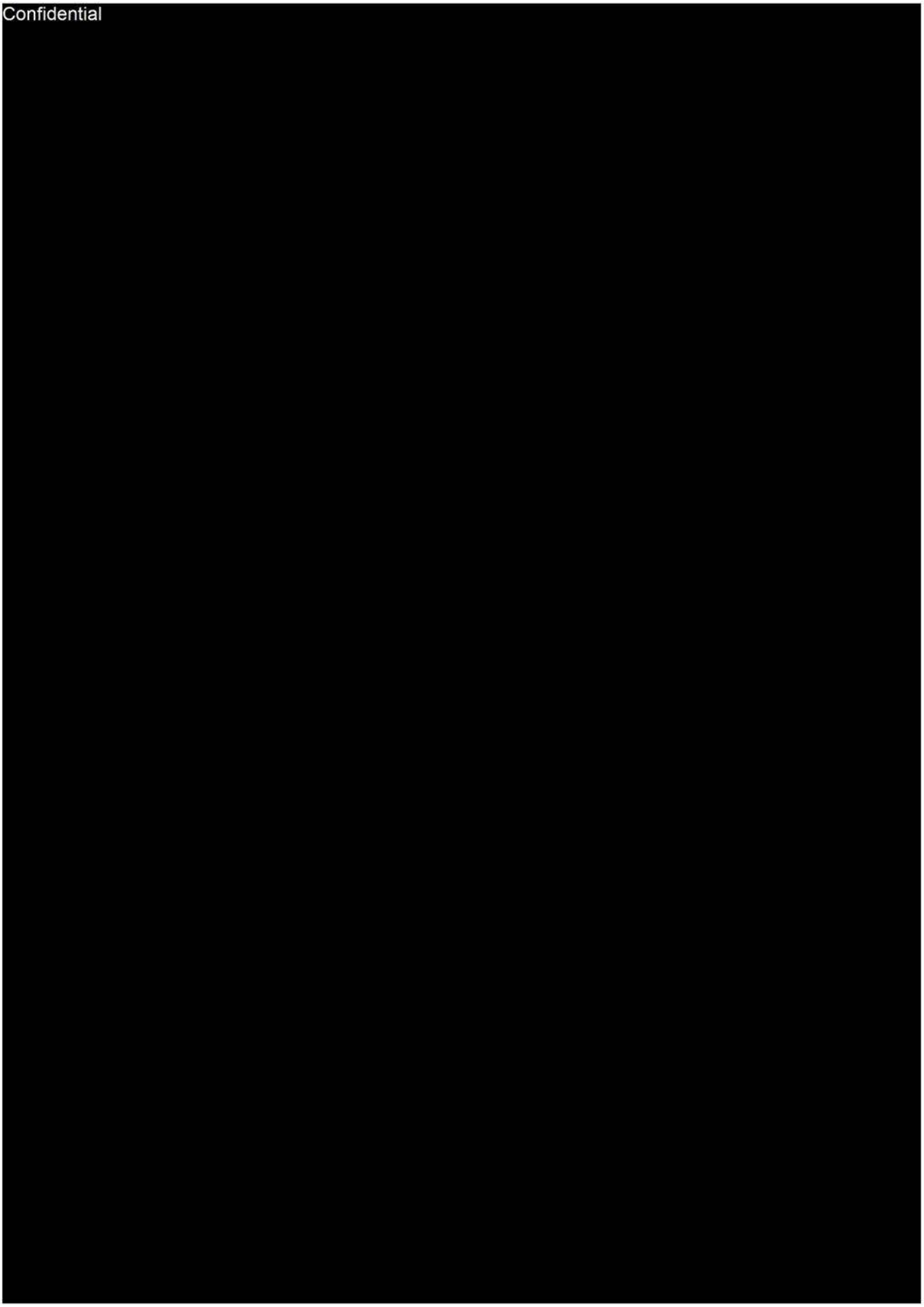

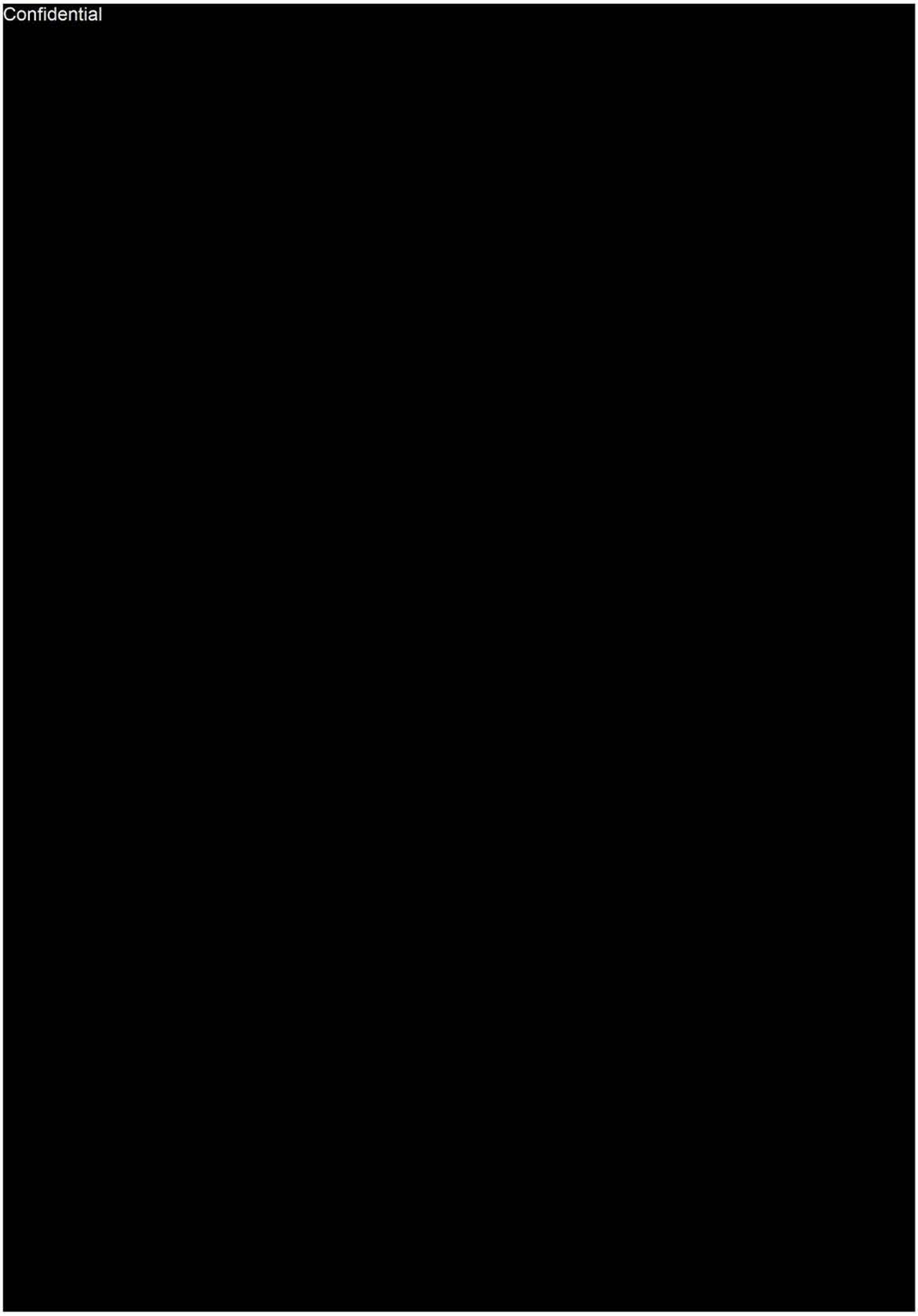
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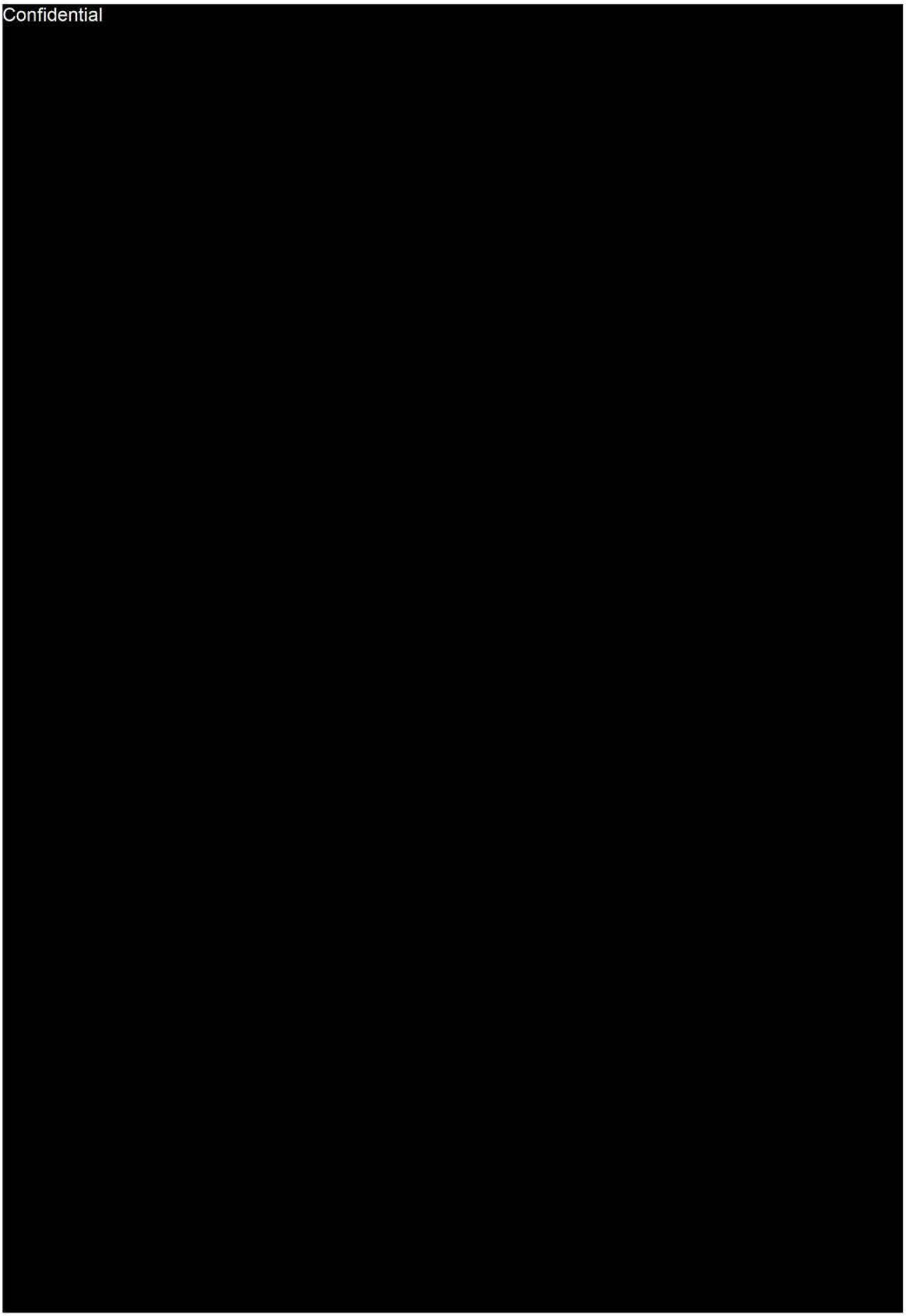

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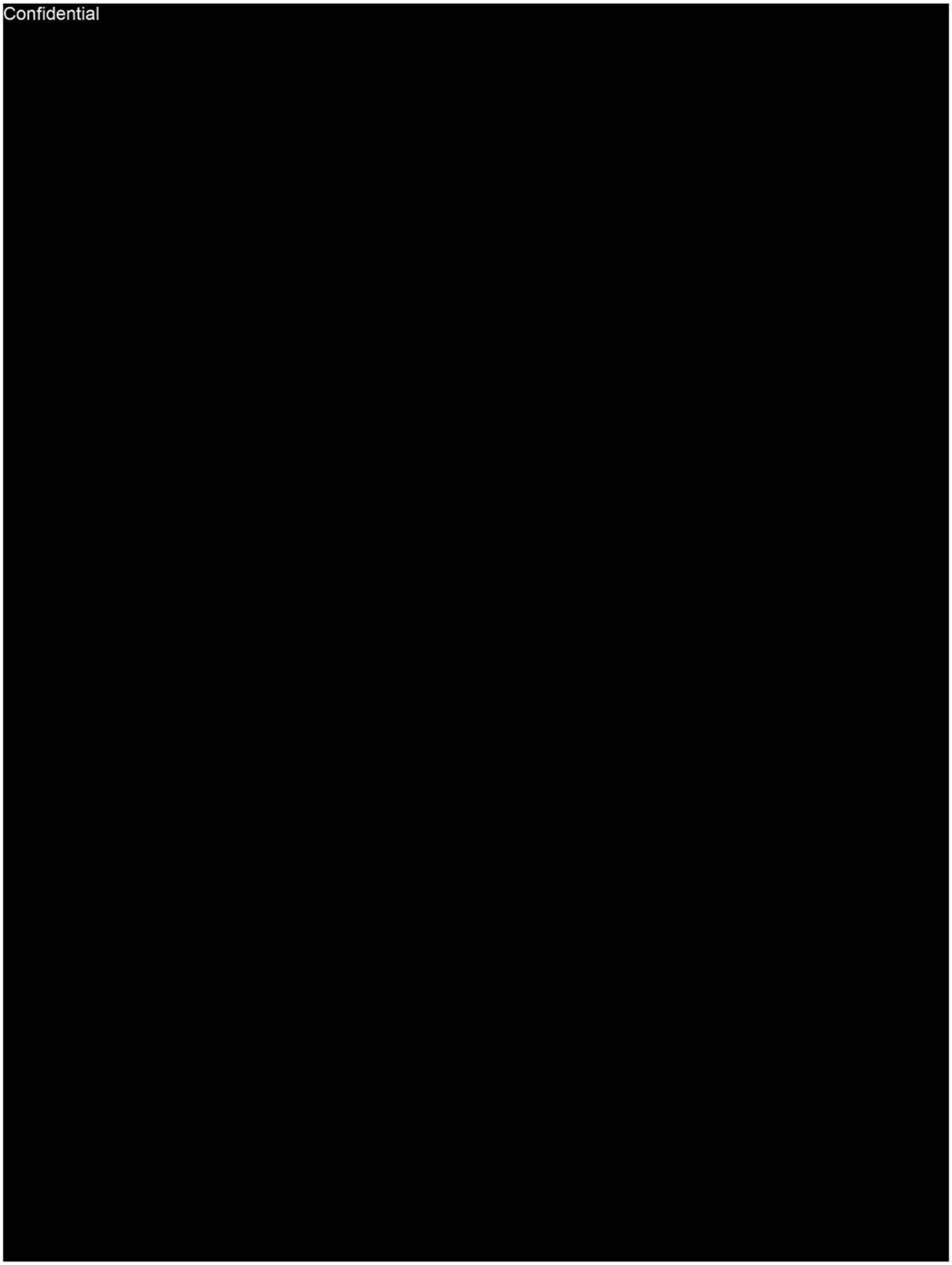

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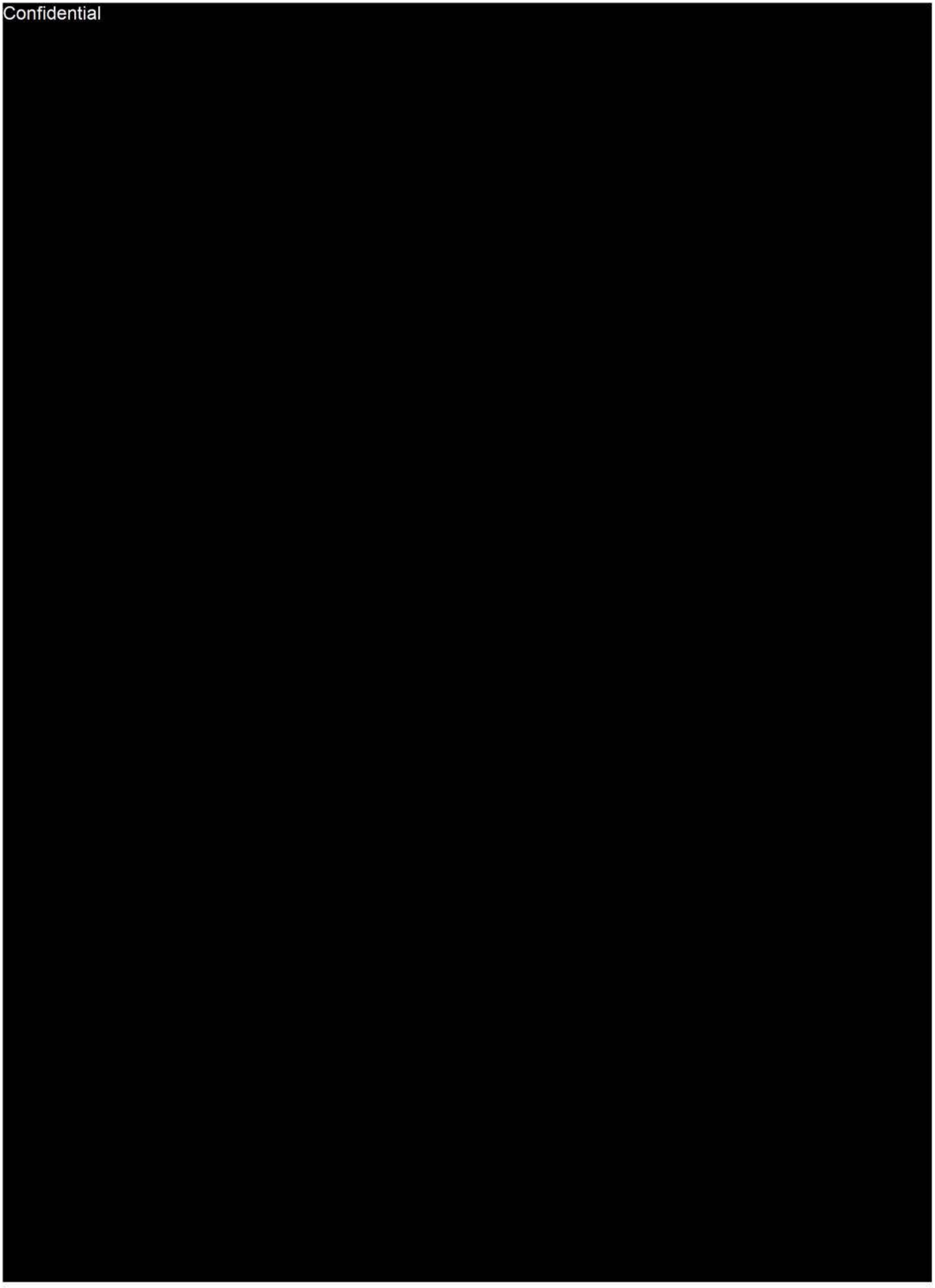

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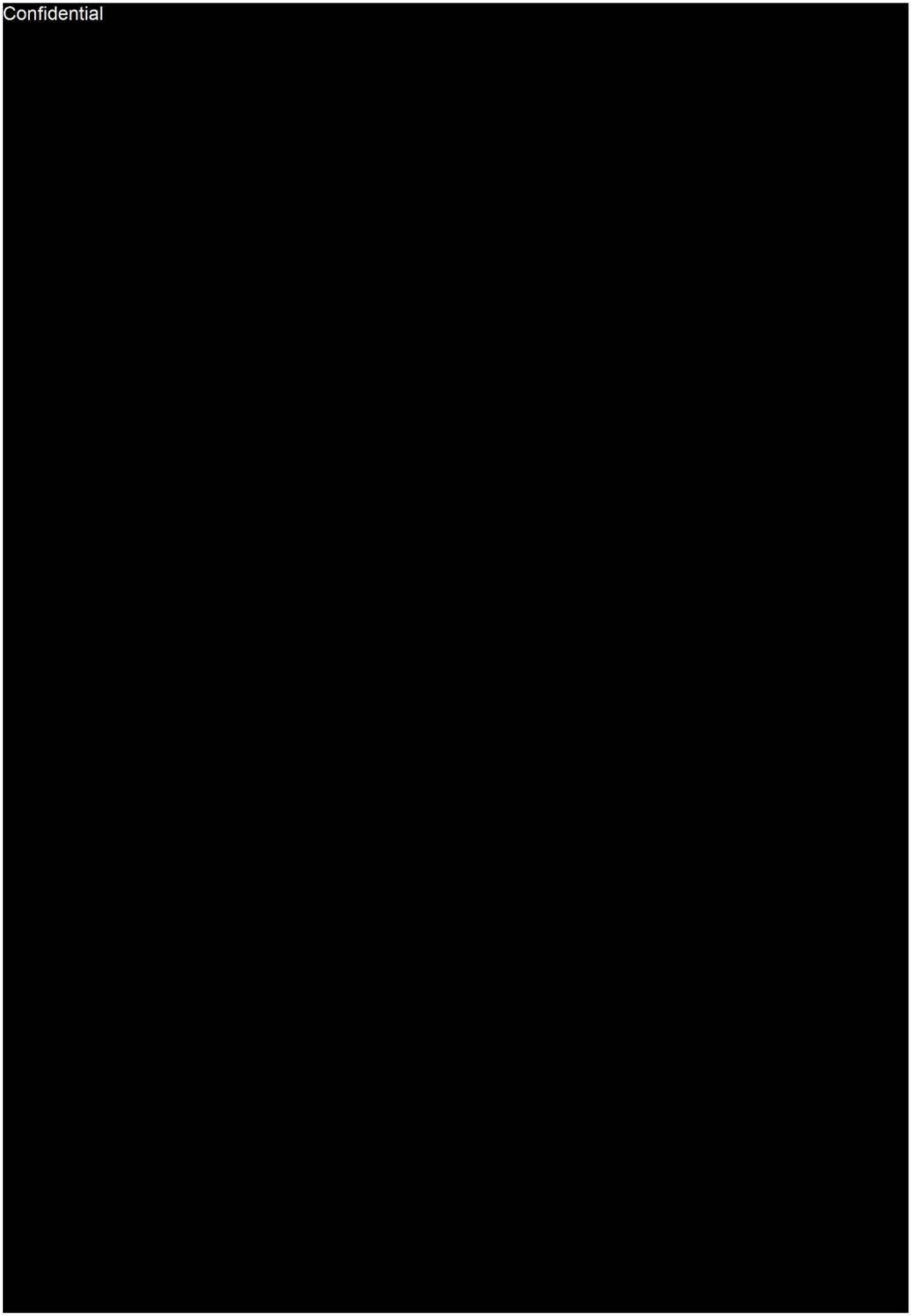
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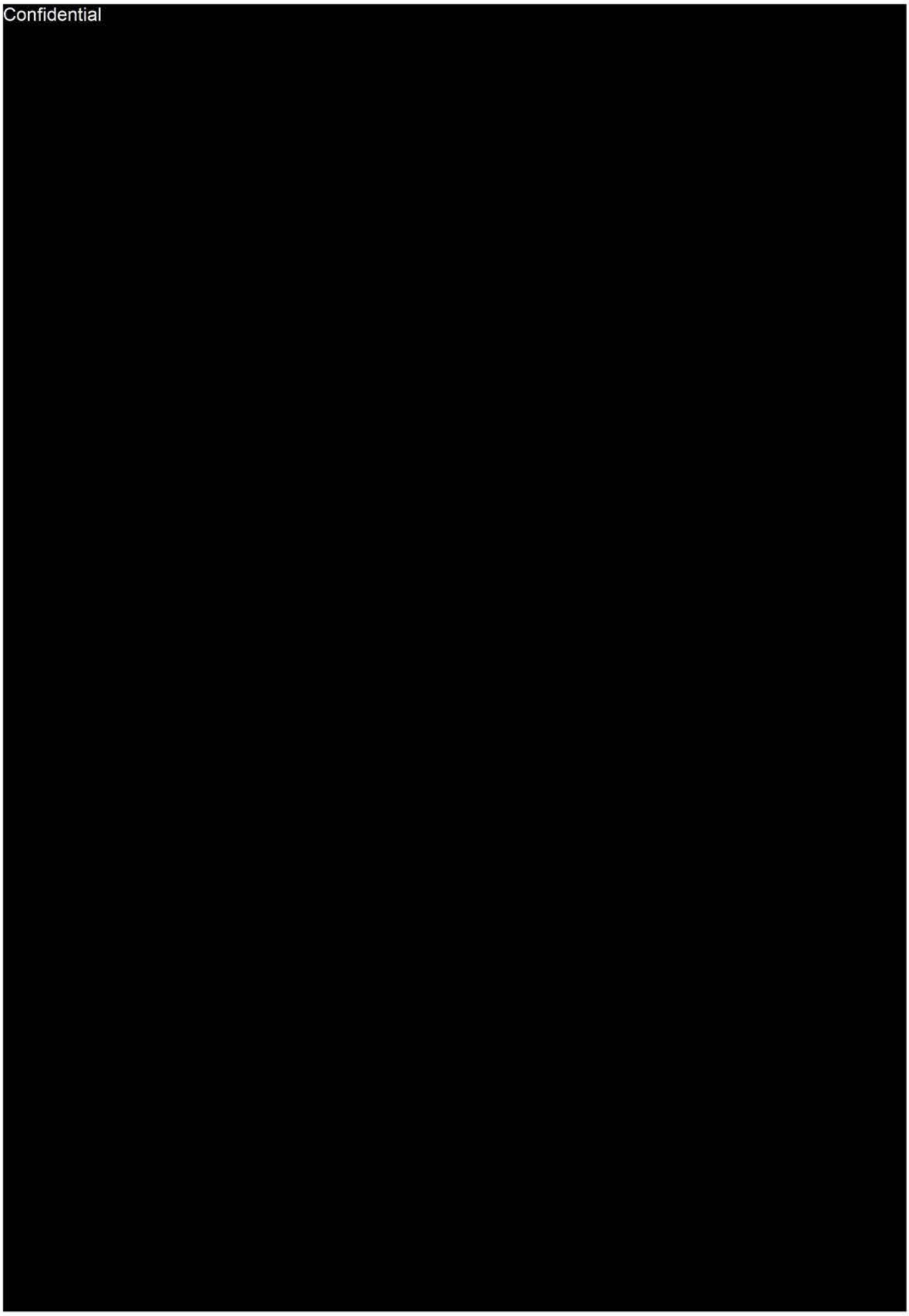

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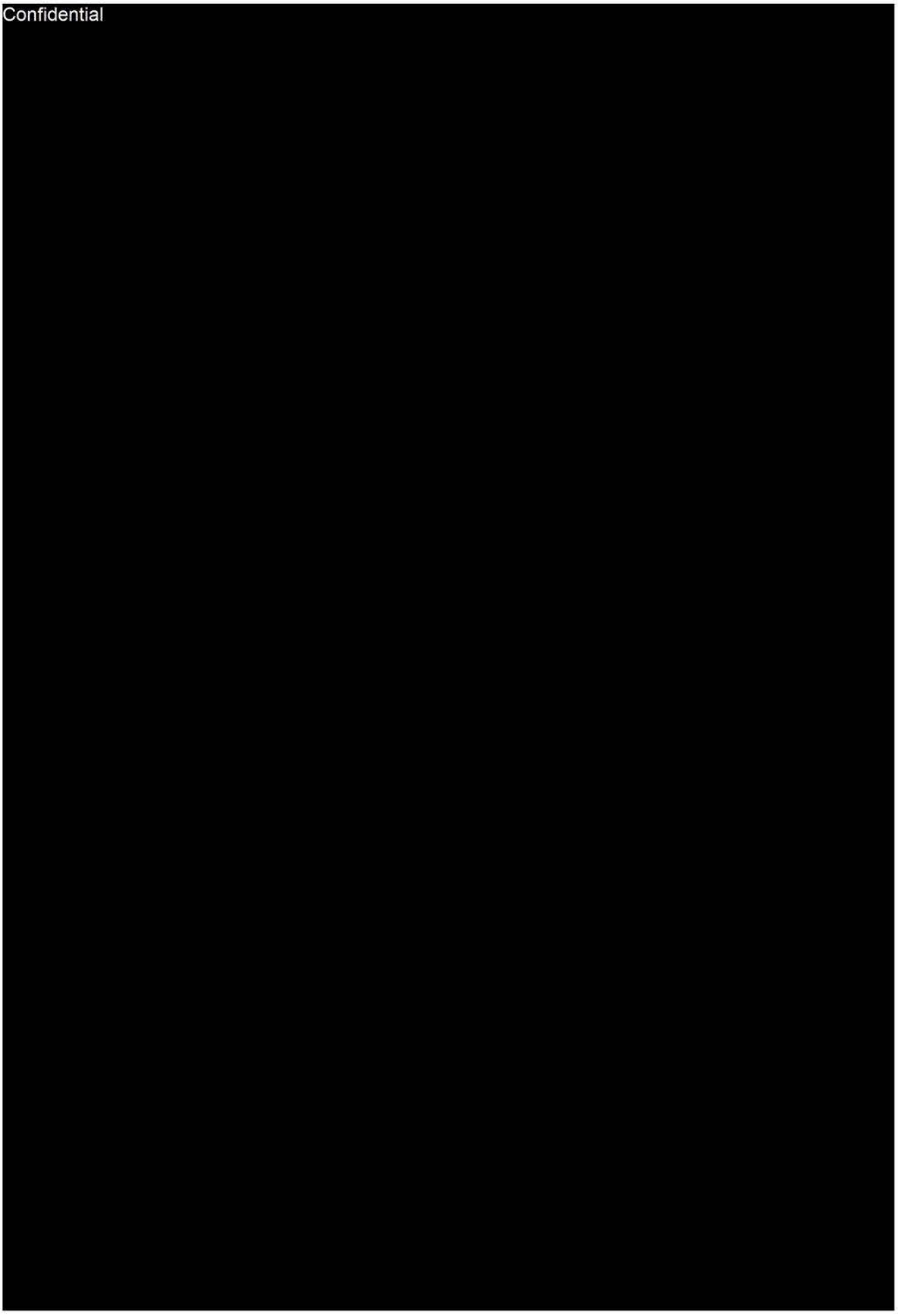

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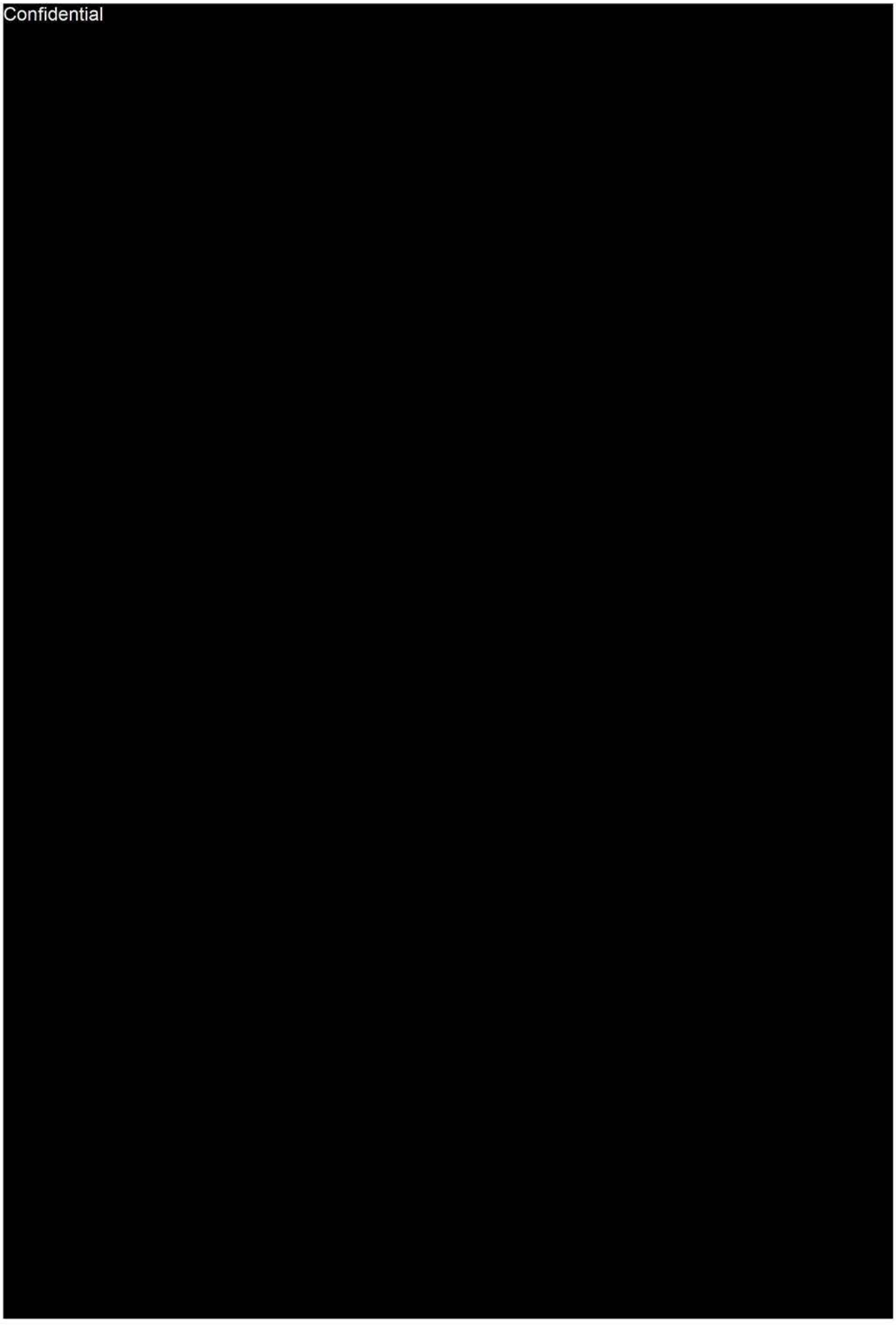

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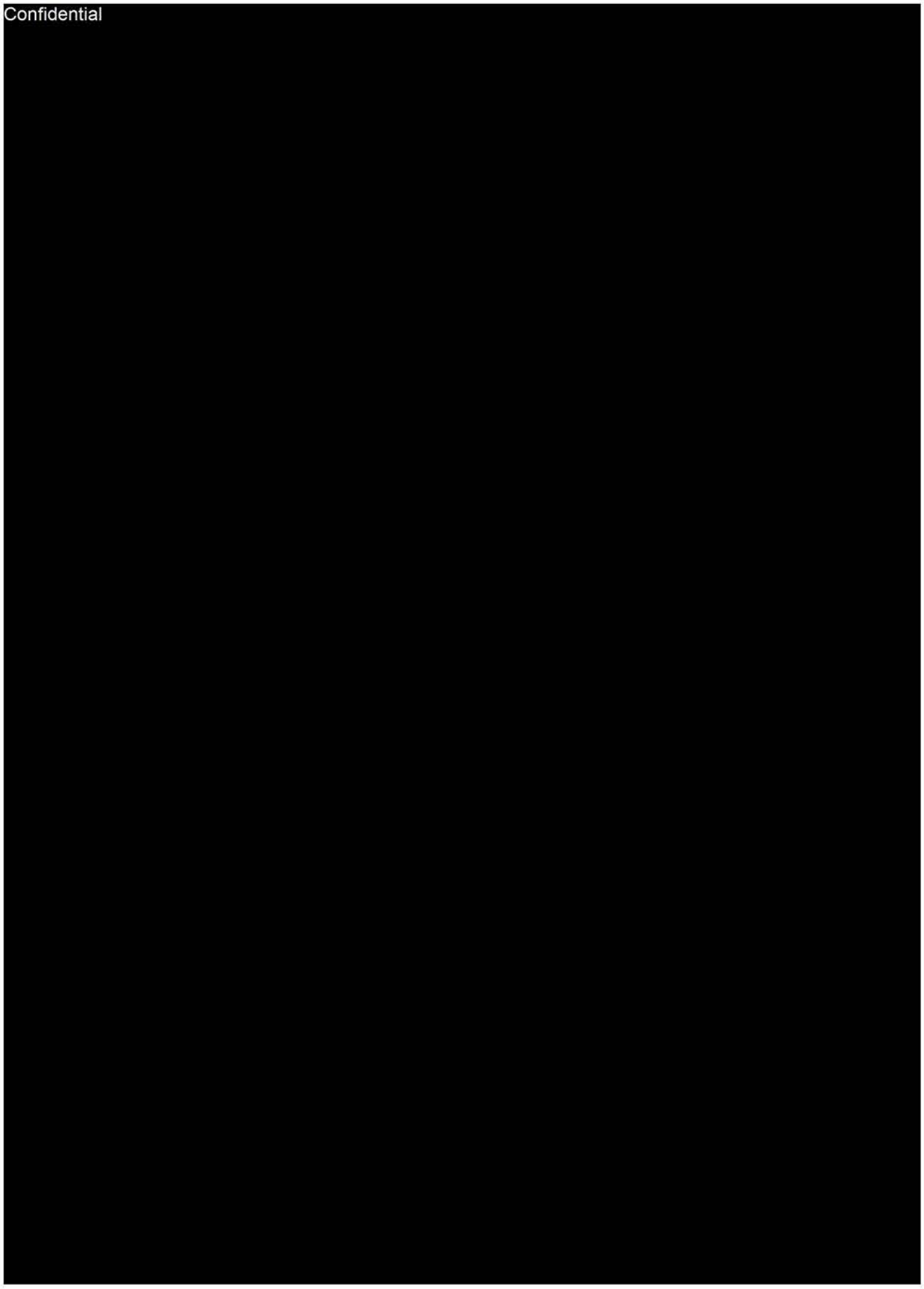

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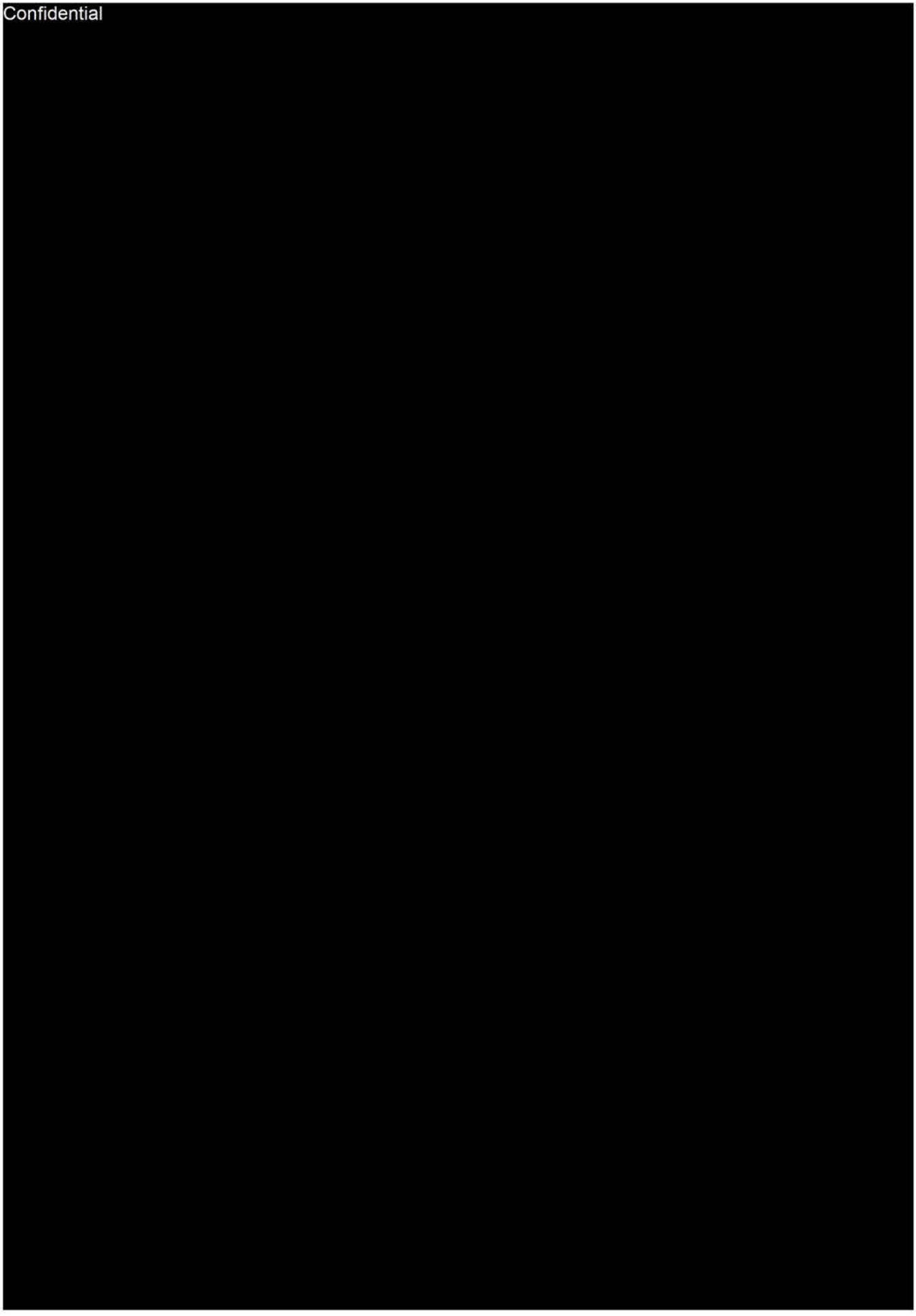

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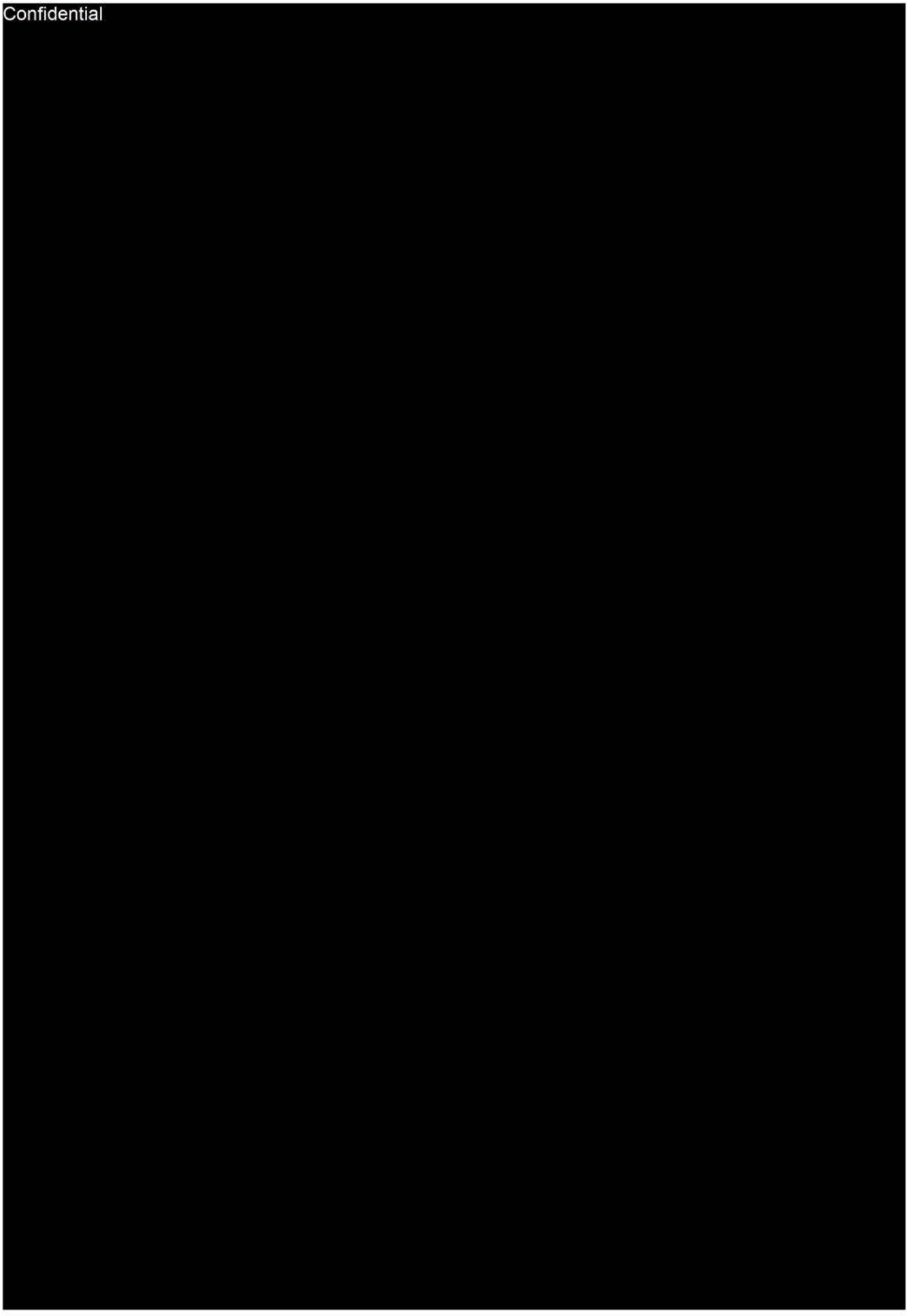

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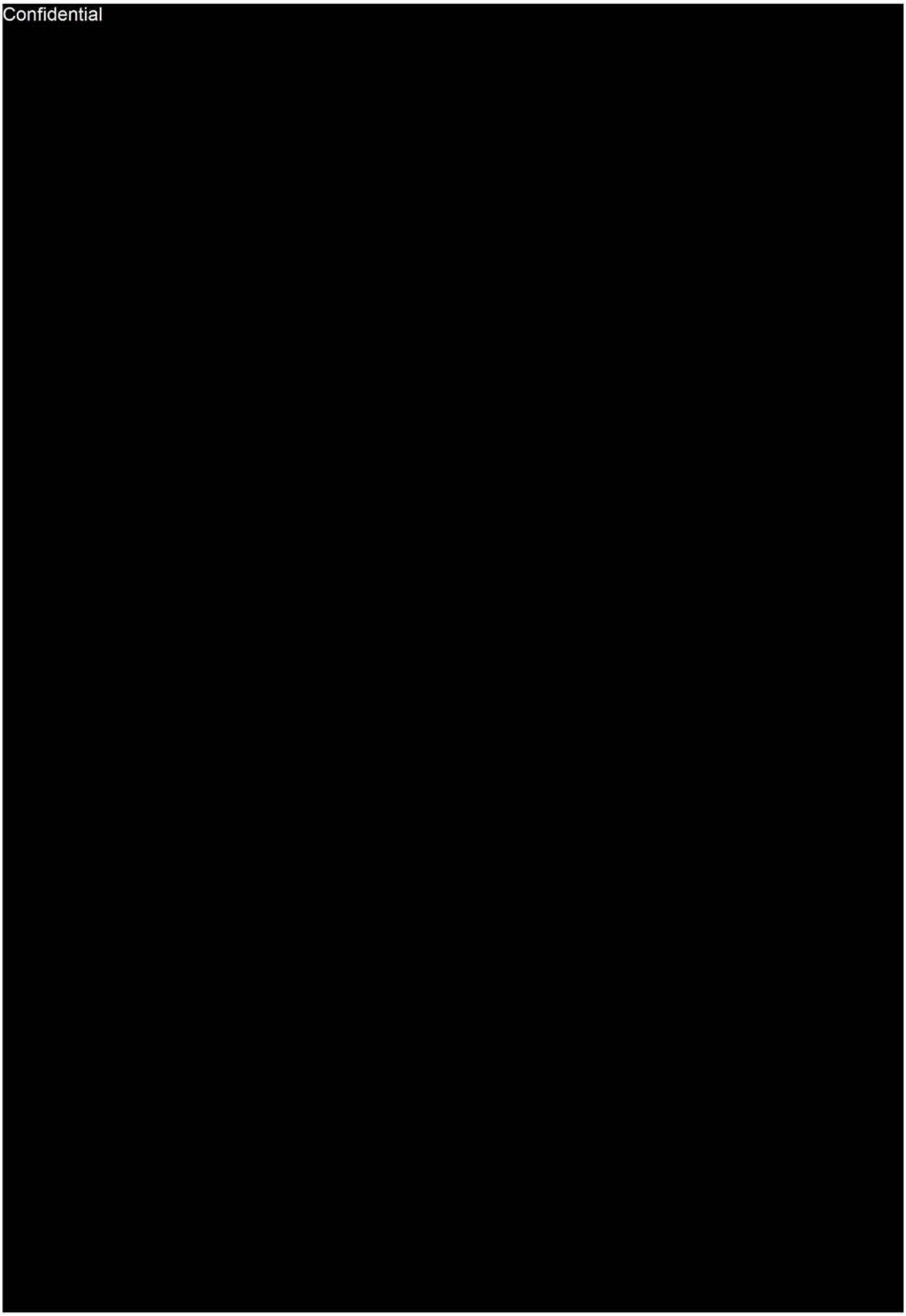

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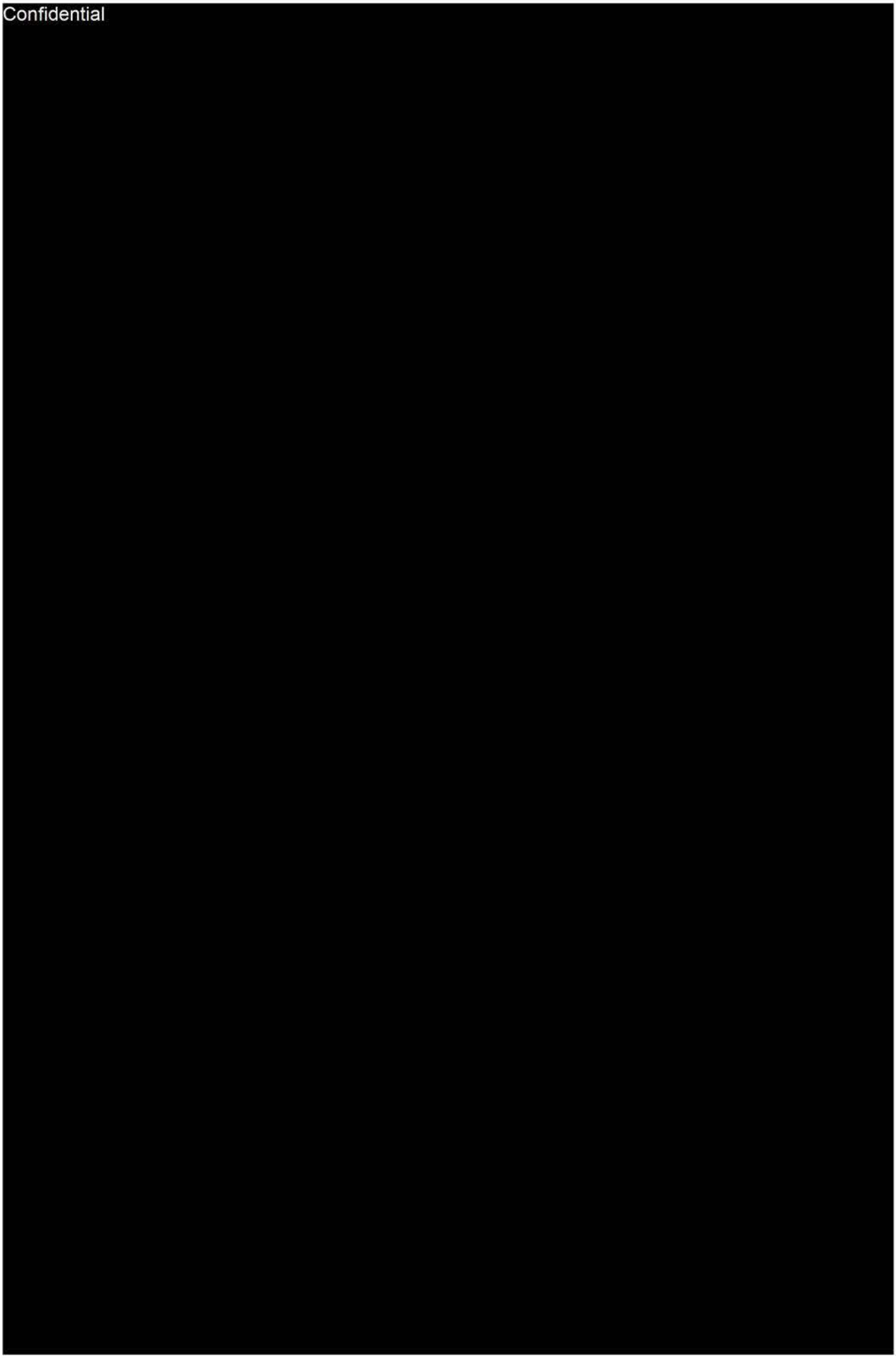

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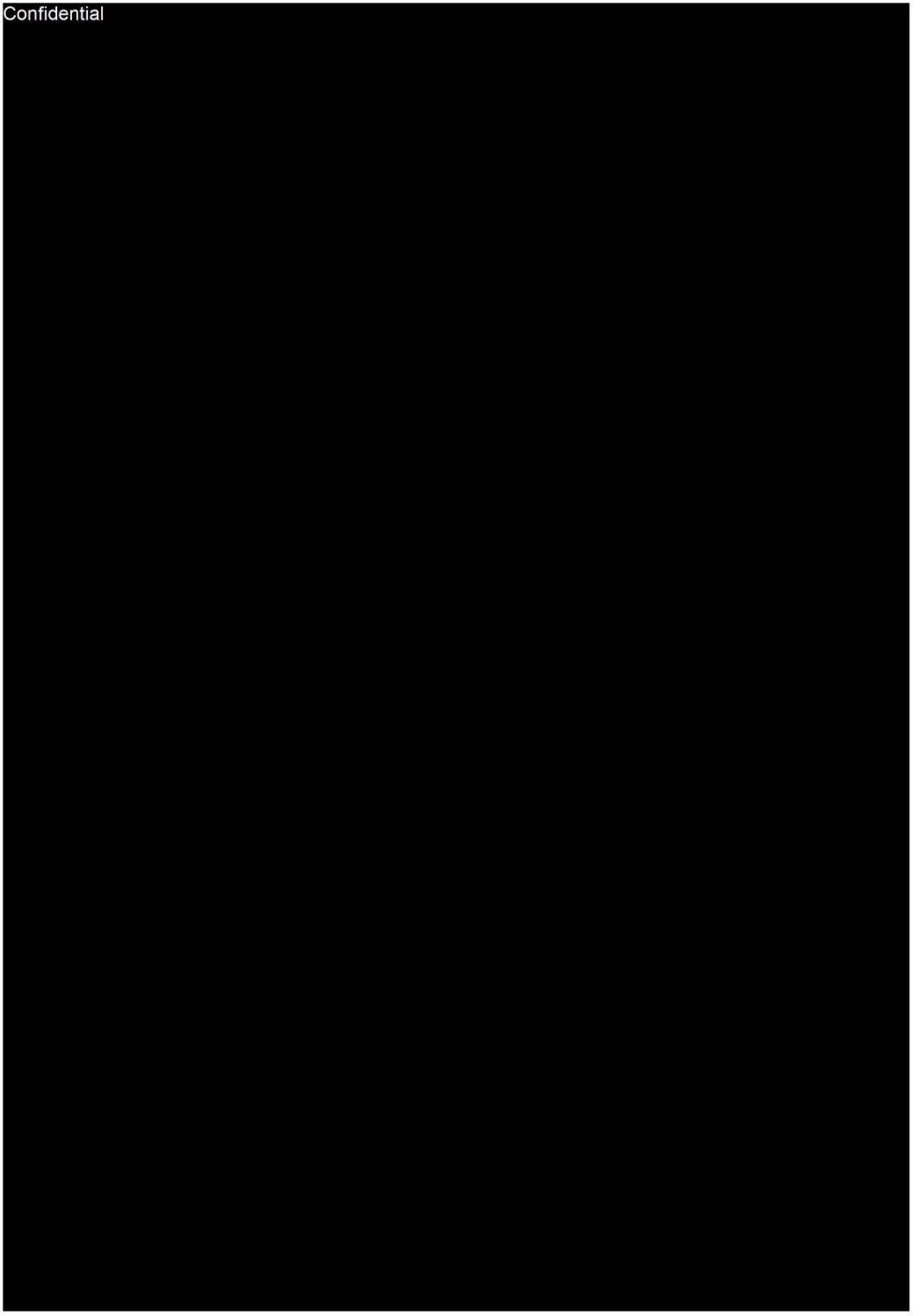

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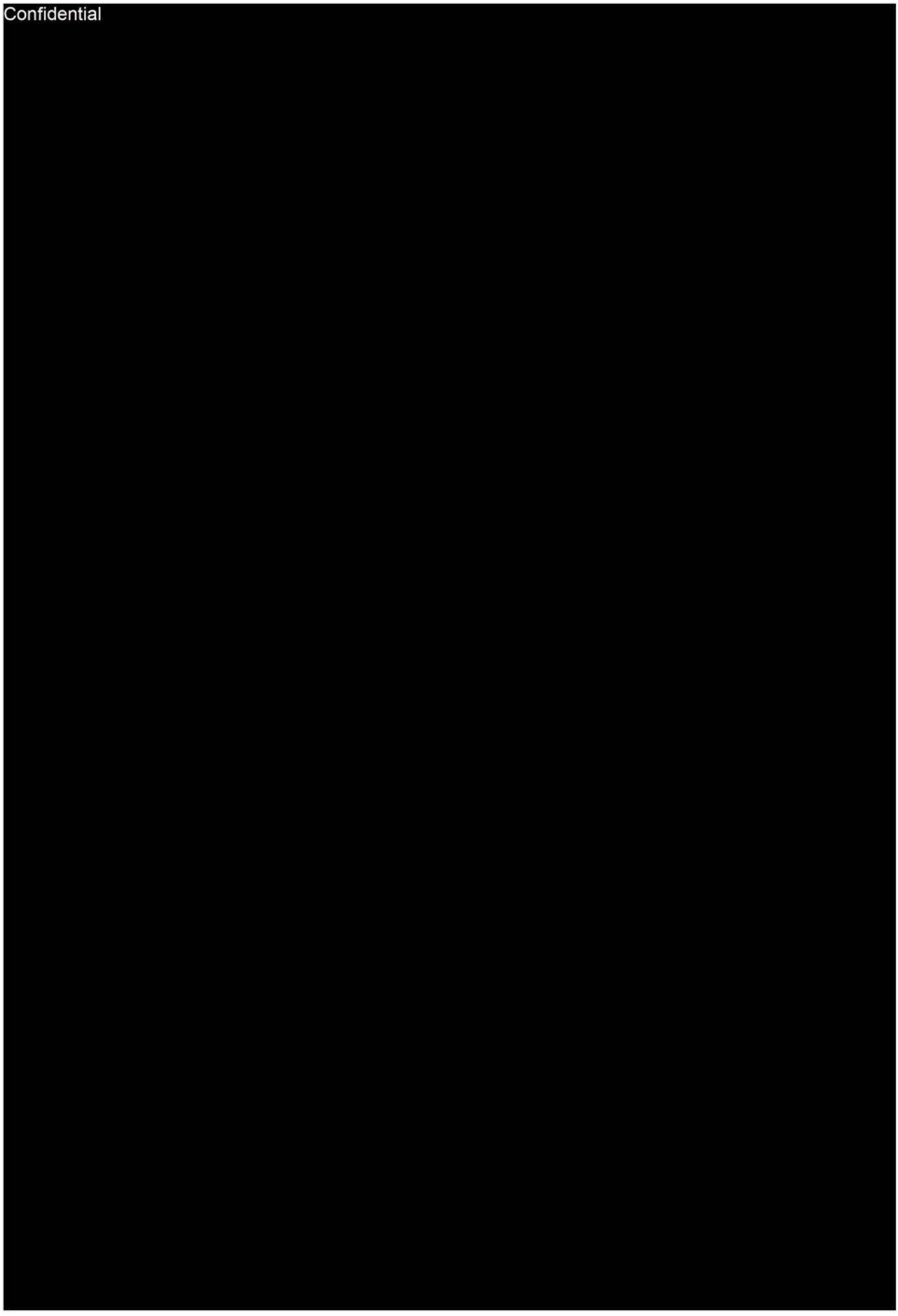

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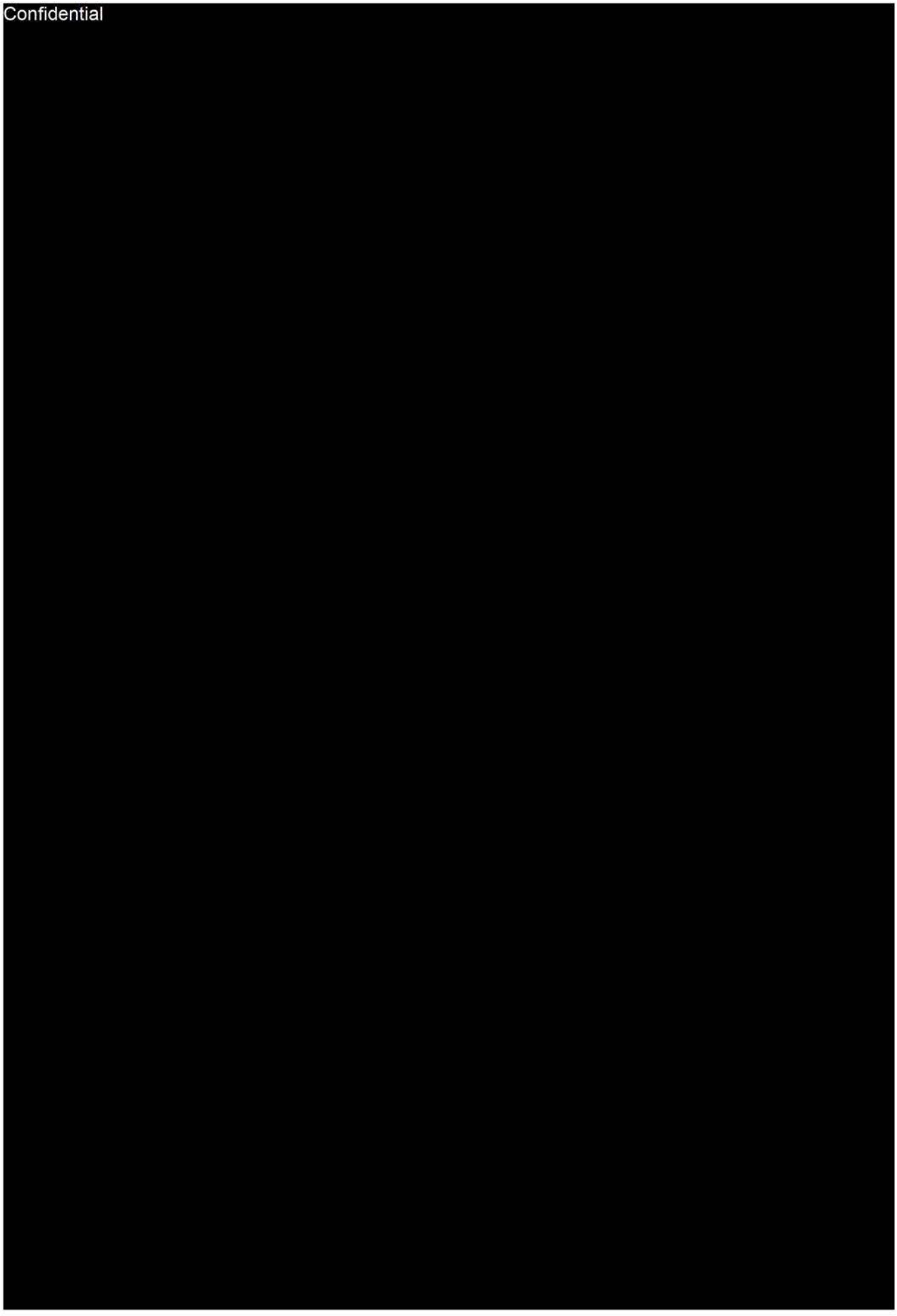

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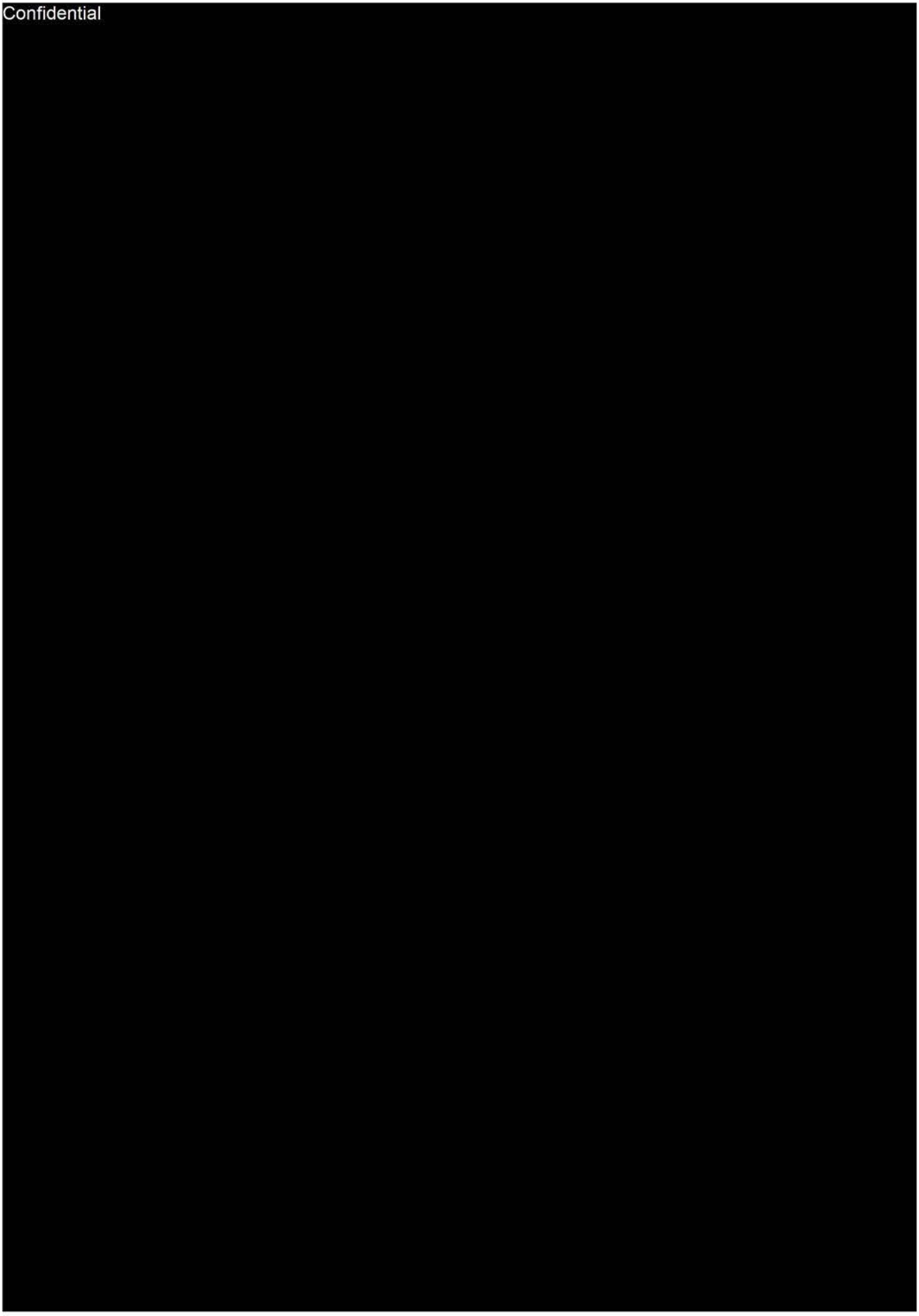

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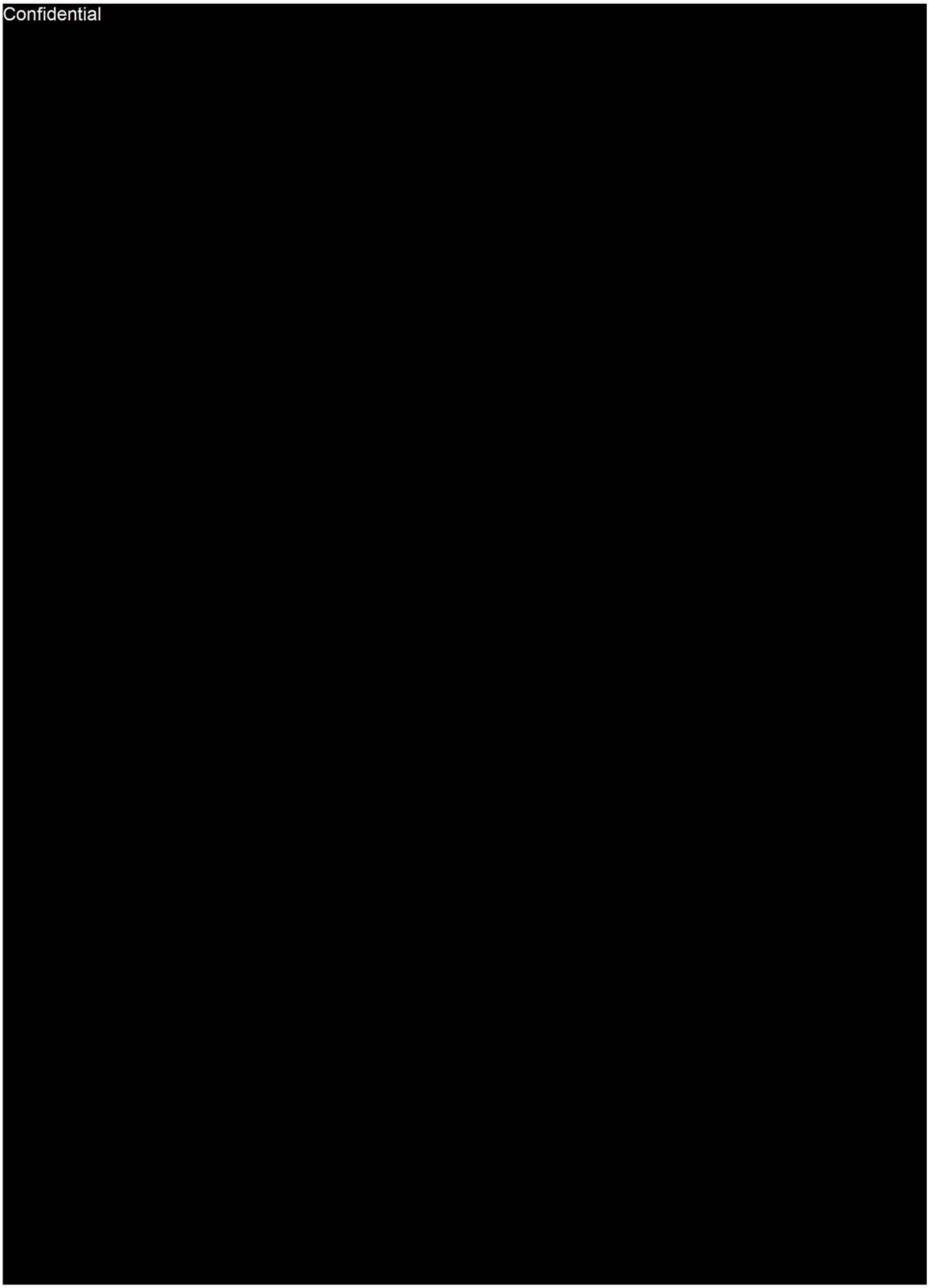

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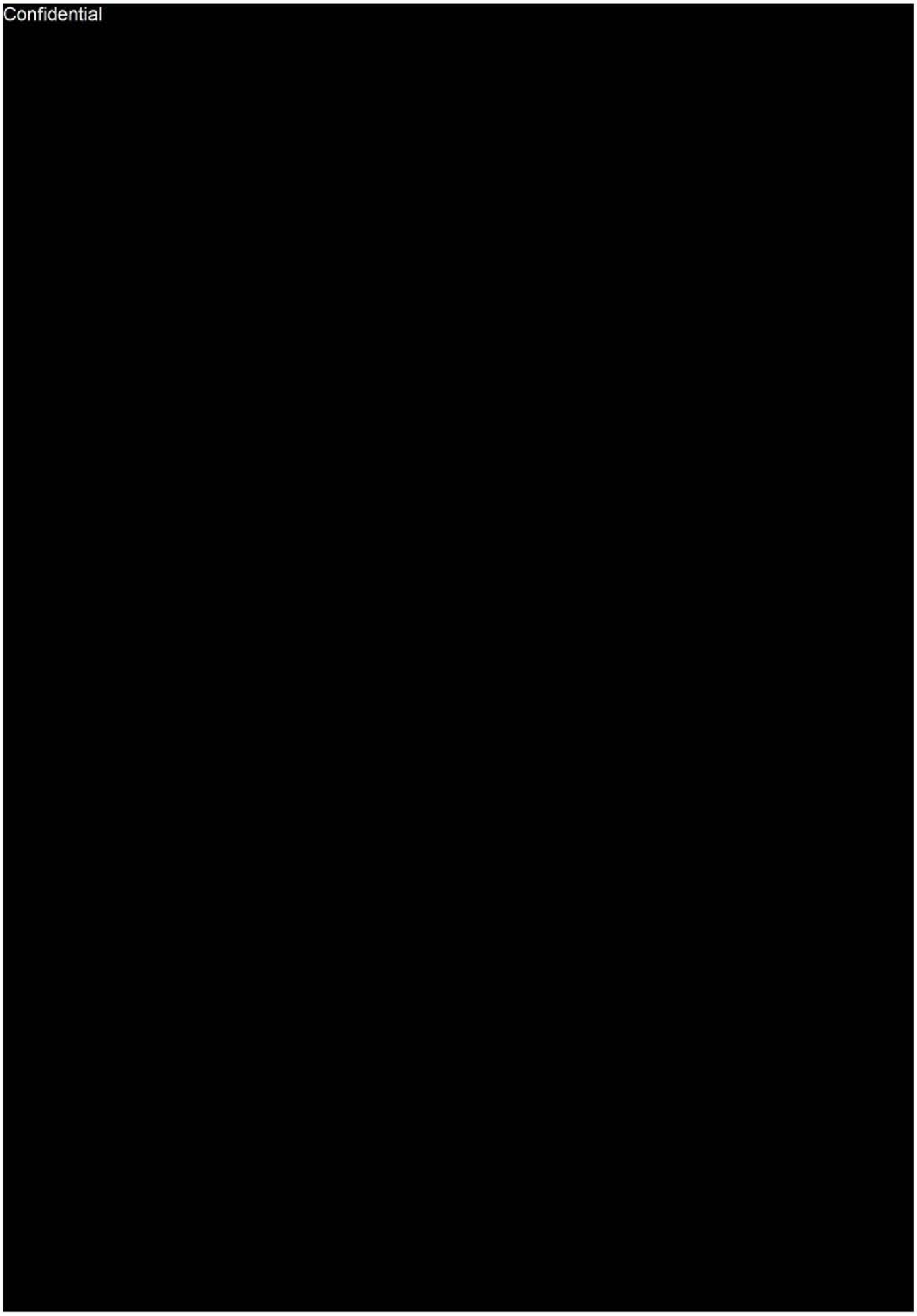

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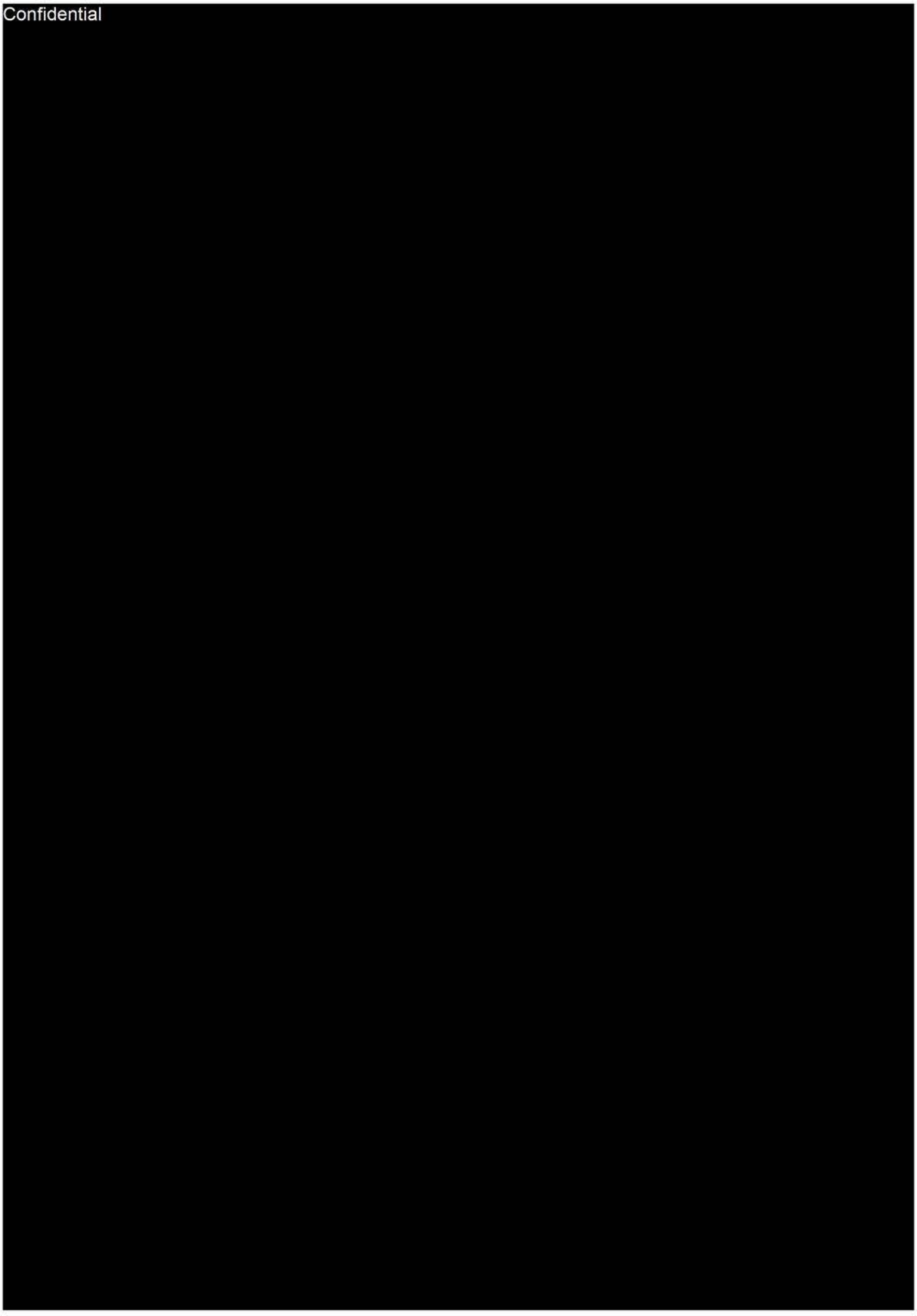

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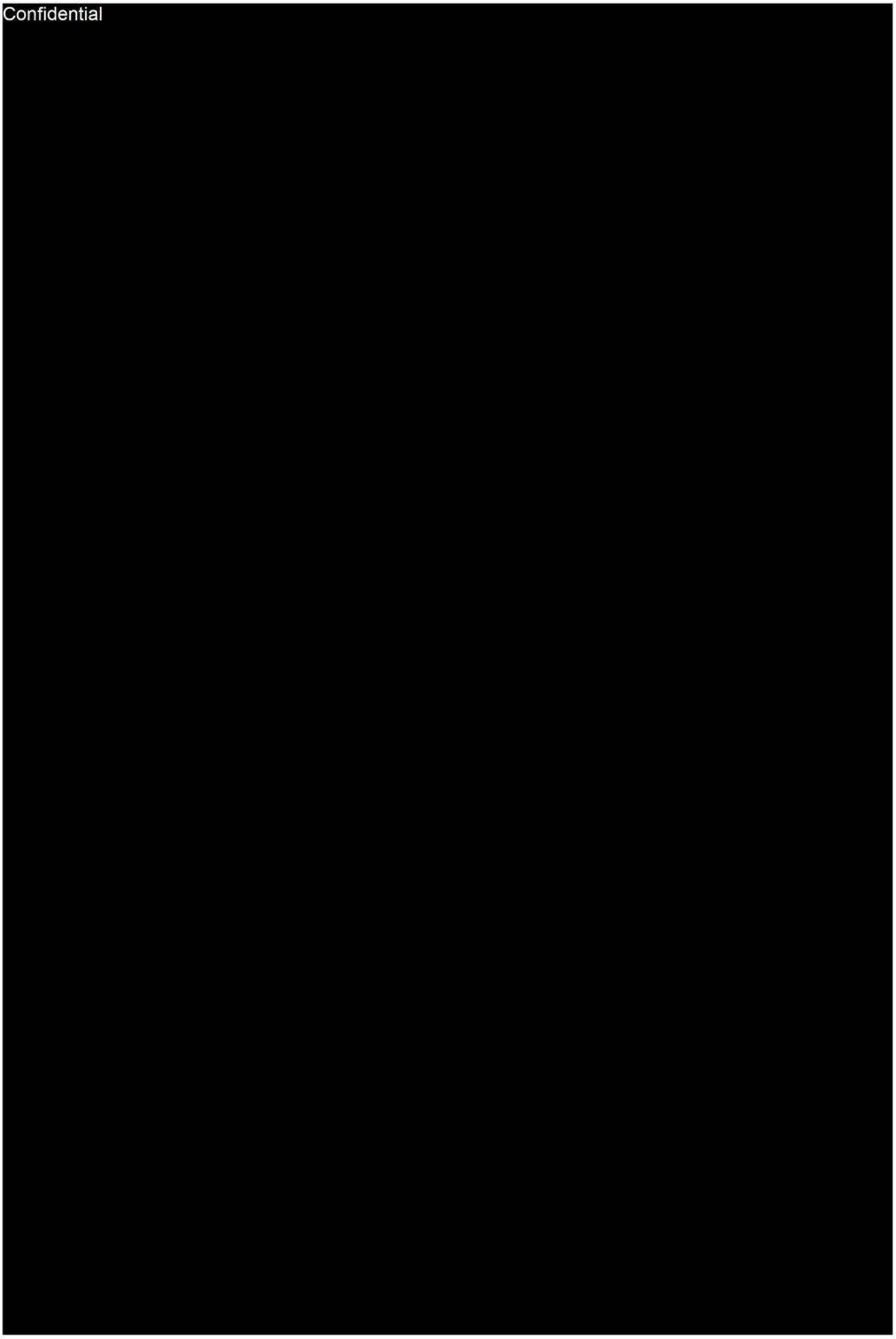

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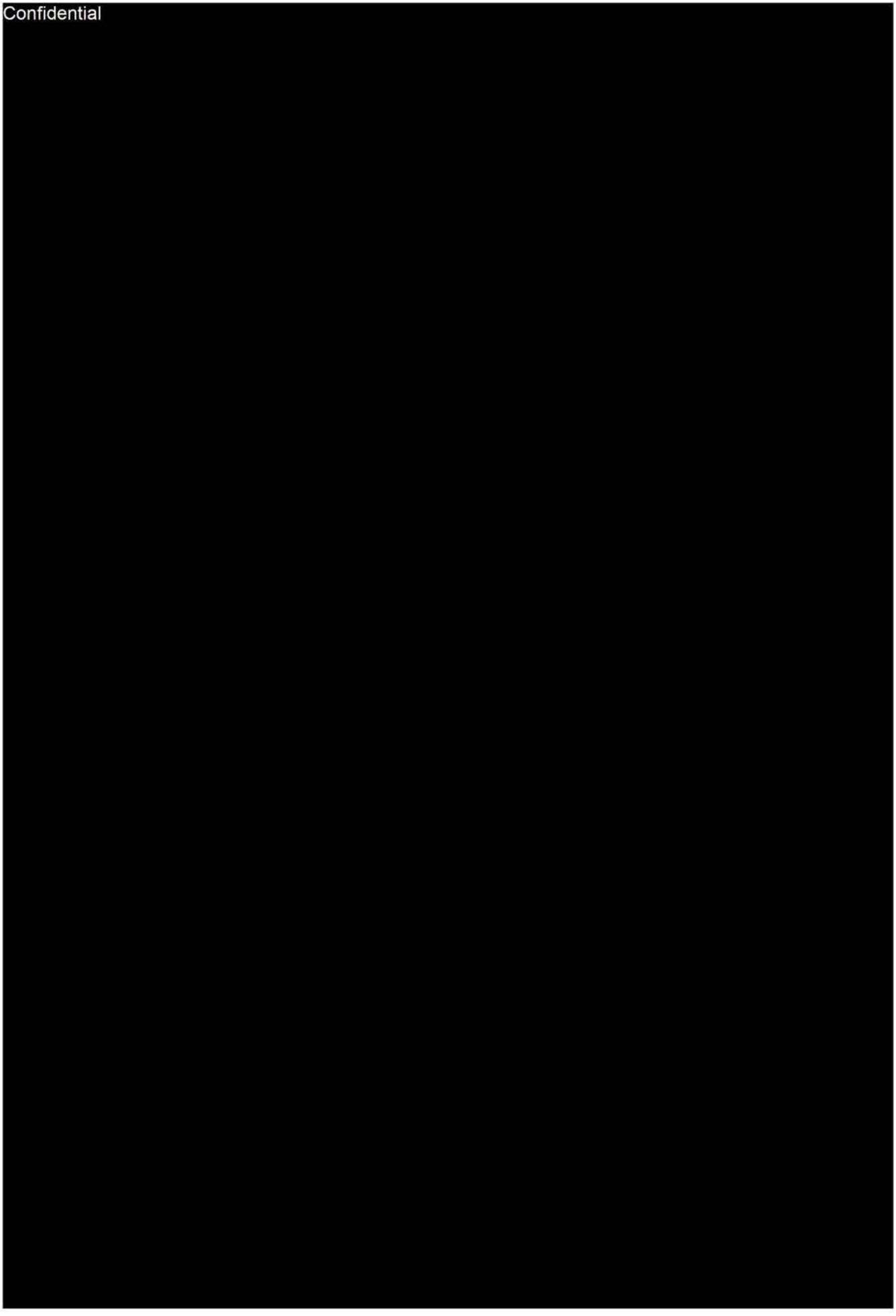

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17 Actions required to become suitable

1 Introduction

1.1 As submitted in Section 14, Suitability of Crown Melbourne and Crown Resorts, , it is open on the evidence before the Commission for the Commission to find that Crown Melbourne is not a suitable person, and that Crown Resorts is not a suitable associate of Crown Melbourne. That submission is arrived at on the basis that it is appropriate to approach the questions of suitability of Crown Melbourne and Crown Resorts together.

1.2 To the extent the Commission considers that Crown Melbourne is not a suitable person, or that it is not in the public interest for Crown Melbourne to hold the casino licence, the terms of reference requires the Commission to inquire into and report on what action (if any) would be required for Crown Melbourne to become a suitable person, or for it to be in the public interest for Crown Melbourne to continue to hold the casino licence.

1.3 A similar requirement arises in respect of Crown Resorts if the Commissioner considers that Crown Resorts is not a suitable associate of Crown Melbourne. In those circumstances, the Commission must inquire into and report on what action (if any) would be required for Crown Resorts to become a suitable associate of Crown Melbourne.

2 Current reform program

2.1 To consider what action is required to make Crown Melbourne and Crown Resorts suitable, it is first necessary to consider what action Crown Melbourne and Crown Resorts have undertaken to date or are currently undertaking to improve their position on suitability. This question will be approached by considering reforms of Crown Melbourne and Crown Resorts together, for the same reasons as the suitability analysis in Section 17, Actions required to become suitable. For convenience Crown Melbourne and Crown Resorts will be referred to as Crown unless otherwise indicated.

2.2 During the Bergin Inquiry, Crown commenced a "reform program" which it has continued since the findings in that inquiry. Some of the reforms are complete, and some are ongoing. The reform program and its progress is set out in detail in Appendix, Crown Reforms.

2.3 The reform program was the subject of evidence from a number of Crown witnesses including Helen Coonan, Antonia Korsanos, Nick Weeks and others.[2432]

2.4 The reforms fall under 10 broad headings: leadership renewal; organisational structure; VIP business restructure; junkets; major shareholder relationship; financial crime; risk; audit; culture; and Responsible Service of Gaming (**RSG**). It is convenient to address each in turn.

2.5 **Leadership renewal**: Since the Bergin Inquiry:

(a) six non-executive directors resigned from Crown Resorts: Guy Jalland, Michael Johnston, Andrew Demetriou, Harold Mitchell, John Poynton and Professor John Horvath. Former CEO, Ken Barton, also resigned.

(b) General counsel and company secretary, Mary Manos, and the Chief Legal Officer, Josh Preston, also resigned.

(c) Crown Resorts has appointed:

(i) two new directors: Nigel Morrison and Bruce Carter; and

[2432] See, for example, Exhibit RC0437 Statement of Helen Coonan, 5 July 2021, CRW.998.001.0526; Exhibit RC0424 Statement of Antonia Korsanos, 27 April 2021, CRW.998.001.0104; Exhibit RC0416 Statement of Nick Weeks, 7 June 2021, CRW.998.001.0423.

(ii) four new executives: Steve McCann as Chief Executive Officer and Managing Director, Nick Weeks as Executive General Manager for Transformation and Regulatory Response, Steven Blackburn as Chief Compliance and Financial Crime Officer and Tony Weston as Chief People and Culture Officer.

2.6 **Organisational structure**: Crown has made several organisational changes and is considering introducing a new centralised governance structure for the Crown Group.

2.7 **VIP business structure**: Crown has restructured its VIP business model, including closing all remaining offshore offices.

2.8 **Junkets and premium players**: Crown has:

(a) ceased dealings with international junket operators and junket tour operators;

(b) undertaken a review of top-end local players;

(c) developed a new patron decision assessment tool to manage and assess risk; and

(d) commissioned an independent review of its current processes and policies for junket operators, premium players and persons of interest.

2.9 **Major shareholder relationship (CPH)**: Crown:

(a) has terminated the Controlling Shareholder Protocol and Services Agreement; and

(b) no longer has CPH appointed directors (Mr Johnston, Mr Jalland and Mr Poynton) on the Crown Resorts board, following their resignations.

2.10 **Financial crime (AML/CTF)**:

(a) Crown has introduced the following measures:

(i) a joint AML/CTF Program across Crown's properties;

(ii) new restrictions on cash deposits, aggregation and third party payments;

(iii) new bank account monitoring processes;

(iv) new case management system to document and process suspicious transactions;

(v) increased resourcing to the Compliance and Financial Crimes Department headed by Mr Blackburn, the new Chief Compliance and Financial Crime Officer.

(b) Crown has commissioned independent reviews by professional services firms into the robustness of its new AML/CTF Program and to recommend further reform measures.

2.11 **Risk management**: Crown has:

(a) introduced a new risk management strategy and an enhanced risk reporting process to executive management and the Crown Resorts Board;

(b) created a new Executive Risk and Compliance Committee at each property, and the role of a Chief Risk Officer; and

(c) increased the frequency and duration of Risk Management Committee meetings.

2.12 **Audit and assurance**: Crown has:

(a) separated the risk and internal audit functions;

(b) created the role of a new Group General Manager, Risk and Audit; and

(c) obtained a Quality Assessment of the Internal Audit Department from the Institute of Internal Auditors Australia.

2.13 **Culture**: Crown has:

(a) engaged Deloitte to assess its current culture and maturity and assist to implement a cultural reform program, and

(b) appointed Tony Weston in the new role of Chief People and Culture Officer.

2.14 **RSG**: Crown has made the following changes:

(a) introduced new time limits on gaming machine, table games and EGMs;

(b) curtailed a number of promotional and reward programs;

(c) supported the creation of a State-wide self-exclusion register;

(d) hired additional staff to support its RSG functions;

(e) engaged the Responsible Gaming Advisory Panel to provide advice into aspects of Crown's responsible gaming programs that have been the subject of criticism by this Commission.

3 Action required

3.1 The assessment of Crown Melbourne and Crown Resorts as unsuitable is not one made lightly. It is made on the basis of evidence showing grave and systemic breaches of the law, where, over many years, there have been sustained breaches of the public's trust and confidence in Crown to administer the casino licence.

3.2 Further, the nature and extent of the reform program outlined above serves to reinforce the deep-seated nature of Crown's problems, and its present unsuitability. It demonstrates that Crown has not simply been the subject of sporadic breaches or shortcomings, but that it has institutionalised failings which presents as a daunting challenge.

3.3 If the seriousness of the conduct that has rendered Crown unsuitable can be rectified at all, it will require deep systemic and cultural change. That kind of change can only happen with the assistance of time and the right people.

3.4 Even with time, it will not happen as a matter of course from the measures Crown has introduced or is in the process of introducing to date. While the measures undoubtedly make improvements to various degrees, they do not go far enough to change the assessment of Crown Melbourne and Crown Resorts as being unsuitable to hold the licence. To effect deep systemic and cultural change, as Crown must, it will be confronted with significant and fundamental changes to all aspects of the ways in which it conducts business.

3.5 Crown has consistently demonstrated its ability to betray the public trust reposed in it. While it has shown repentance for that conduct during this Commission, it is open on the evidence for those regulating Crown Melbourne's affairs to doubt whether they can trust Crown Melbourne to both put itself on the path to suitability and arrive there. Having regard to the gravity of the nature and extent of its failings, the task of reform is enormous, the path is uncertain, and the outcomes are speculative.

3.6 Ultimately, there is considerable uncertainty about the specific reform that needs to be undertaken at Crown to assess it as suitable, and about the length of time that task will take, because the evidence in this Commission has exposed the breadth and depth of Crown's current problems. In the short time available to the Commission, it has uncovered inappropriate and illegal conduct, and conduct that falls well short of the legislative requirements for the assessment of suitability. That conduct was both historical, and current at the time of the hearings. The issues that have been explored in this Commission have expanded, rather than contracted, the reform agenda. The issue of the underpayment

of gaming tax was unearthed by this Commission and, but for this Commission, may have continued undetected.

3.7 Real and sustained change will require the right people and the right commitment. In effect, Crown must achieve a very substantial – if not complete – transformation of its structure and culture, and of its policies and practices. There can be no certainty that the current directors and senior executives who assured the Commission of their capabilities and commitment to change will be there in the future, or that they can implement this transition.

3.8 Moreover, there is reason to doubt whether the required reform can be achieved when legacy issues continue to pervade Crown. This concern is demonstrated by the following:

(a) The evidence of Crown's approach to dealing with regulators, and in particular the VCGLR, the features of which were Crown's lack of transparency, candour and belligerence.

(b) The complacency surrounding RSG was not something to which Crown paid proper attention until this Commission. Ms Sonia Bauer, Group General Manager for Responsible Gaming at Crown Melbourne, was defensive and unable to accept the glaringly obvious – that for too long Crown has not done enough and its actions were well below what was required to meet its RSG obligations.

(c) The underpayment of gaming tax was an issue current senior officers and managers of Crown have known about for years. There is no evidence that those individuals took any steps to disclose or address the issue: to the contrary the evidence disclosed an approach of concealment

(d) Compliance has been poor and individuals in senior compliance roles were unable or felt they were unable to properly address issues.

3.9 As a result, there is doubt whether Crown can achieve the required reform while Ms Bauer and Ms Fielding occupy senior positions in RSG and Compliance. Ms Bauer and Ms Fielding have been at Crown for about 20 years, while serial wrongdoing has occurred. The positions they occupy need to be refreshed. Crown should also review the role that other executives and senior officers played in the underpayment of tax issue.

3.10 The task of reform may not be impossible, but at the very least it will be complicated and difficult. At a minimum, the evidence has shown that nothing short of complete, holistic, bottom up and top down reform is needed. This level of reform will not be achieved by Board renewal alone. Nor will it be achieved by an assessment of culture. The current governance and cultural structures must be stripped back and rebuilt.

3.11 At this point in time, it is not possible for this Commission to prescribe or describe with any particularity or precision what actions would be required for Crown Melbourne and Crown Resorts to become suitable. However, it is apparent to the Commission that the reform process will need to be both dynamic and transformative. There is no "quick fix" available to Crown. The announcement of new policies or changes in response to the issues disclosed to the Commission, as Crown has done in the past, will not suffice.

3.12 The features of the reform program announced by Crown which are referred to above appear to be appropriate, but are only part of the transformation process which will be ongoing. The transformation of Crown will require a demonstrated commitment to the **implementation** of these changes. Because of the dynamic nature of the reform process it will become apparent that choices will need to be made by those in control of Crown. Essentially those choices will involve decisions regarding implementation of measures to comply with Crown's statutory, licence and social obligations, at the expense of profit.

3.13 It would be unwise and unproductive for this Commission to attempt to predict those choices for the above reasons and one further reason. This Commission can only make findings

and recommendations. Having regard to the Commission's findings and recommendations, the VCGLR may decide to commence a disciplinary action. The appropriate sanction would be a matter for the VCGLR in the exercise of its discretion under s 20 of the CCA. It would not be desirable to limit the VCGLR's discretion by suggesting a prescriptive pathway to suitability.

3.14 However, what is clear to the Commission is that if Crown Melbourne is permitted to continue to hold the casino licence, it cannot and should not be trusted to implement the reform process unsupervised. This is discussed further in Section 21, Licence Recommendations.

18 Breaches

1 Introduction

1.1 The terms of reference require the Commission to inquire into and report on whether Crown Melbourne is complying with:

(a) The CCA, the Casino (Management Agreement) Act 1993, the Gambling Regulation Act 2003 (together with any regulations or other instruments made under any of those Acts), and any other applicable laws; and

(b) The Crown Melbourne Contracts.[2433]

1.2 Although the terms of reference require the Commission to inquire into and report on the issue of breaches as a separate matter, the nature and extent of the breaches discussed in this section are also relevant to Crown's suitability.

1.3 This section of the submissions identifies actual breaches of the CCA, other applicable laws and the Crown Melbourne Contracts based on evidence available to the Commission, including the oral evidence of the witnesses that have been called by the Commission and the documents produced to this Commission by various parties. These actual breaches are breaches of:

(a) Section 68 of the CCA at paragraph 3.2 below;

(b) Section 69 of the CCA at paragraph 3.6 below;

(c) Section 124 of the CCA at paragraphs 3.9 – 3.10 below; and

(d) Clause 22.1 of the Management Agreement[2434] at paragraph 3.39 below.

1.4 In the time available to the Commission, it has not been possible to do more than identify other breaches as potential breaches and those matters may require further consideration. Those that have been identified are potential breaches of:

(a) Section 123 of the CCA at paragraph 3.8 below;

(b) Clause 48.1(b) of the Management Agreement at paragraph 3.42 below;

(c) Clause 22 of the Casino Agreement[2435] at paragraphs 3.19 - 3.37 below.

Disciplinary action for breaches

1.5 This section of the submissions identifies actual and potential breaches as required by the terms of reference. As set out below, the regulator may take disciplinary action against Crown in respect of some of the breaches. It is a matter for the regulator in the exercise of its discretion to decide whether to take disciplinary action and what sanctions to impose.

Casino Control Act

1.6 Section 20(1) of the CCA enables the Regulator to take disciplinary action against Crown on the stated grounds set out in that subsection.

1.7 Grounds for disciplinary action arise where:

> *"…the casino operator, a person in charge of the casino, an agent of the casino operator or a casino employee has contravened a provision of this Act or the Gambling Regulation Act 2003 or a condition of the licence."*

[2433] 'Crown Melbourne Contracts' means the documents referred to in s 25(1)(c) of the CCA.
[2434] Incorporating the Tenth Deed of Variation, 3 September 2014.
[2435] Incorporating the Twelfth Variation Agreement, 26 September 2019.

Casino Agreement

1.8 The Casino Agreement provides that it is a contravention of a condition of the casino licence enabling the regulator to serve a show cause notice preceding disciplinary action under section 20(2) of the CCA if any of the following events occurs: a letter of credit default, the appointment of a liquidator or receiver, the site lease is terminated, **and** in particular, under clause 31.2(a)

> *(a) the Company commits a breach of any provision of this document (other than clauses 32.1 and 32.2), and the Authority has given a notice ('Notice') to the Company detailing the particulars of the breach unless:*
>
> *(i) if the breach is capable of remedy:*
>
> *(A) it is remedied within the cure period allowed in the Notice which shall not be less than 60 days to the reasonable satisfaction of the Authority; or*
>
> *(B) the Company:*
>
> *(i) is diligently pursuing a course of action which could reasonably be expected to remedy the breach in a period of time reasonably acceptable to the Authority; and*
>
> *(ii) is making satisfactory progress with such course of action; or*
>
> *(ii) if the breach to which the Notice refers is not capable of remedy:*
>
> *(A) the Company is complying to the reasonable satisfaction of the Authority with any reasonable requirements of the Authority in relation to the breach or is attending to the reasonable redress of the prejudice arising from the breach, default or event in the manner specified in the Notice; or*
>
> *(B) the payment of damages constitutes in the reasonable opinion of the Authority, as the case may be, proper redress and the required amount of damages is paid within 15 Business Days of the date for payment as specified in the Notice;*

Management Agreement

1.9 Reciprocal provisions in clause 25.2 of the Management Agreement concern breaches of that agreement and provide for the same processes in the event of a breach

1.10 As a consequence, a breach of a provision in the Casino Agreement or the Management Agreement (in respect of which the VCGLR has served the requisite notice and which is not capable of remedy) will constitute a breach of a condition of the licence for the purposes of section 20(1)(b) of the CCA.

2 Admitted breaches

2.1 On 10 March 2021, the Commissioner wrote to Crown Melbourne asking it to identify whether, since 1 January 2010, Crown Melbourne has engaged in conduct that would, or might, breach any provision of the:

(a) *Casino Control Act 1991* (Vic);

(b) *Casino (Management Agreement) Act 1993* (Vic);

(c) *Gambling Regulation Act 2003* (Vic);

(d) *Gambling Regulations 2015* (Vic);

(e) *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth);

(f) *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007*; and/or

(g) *Financial Transaction Reports Act 1988* (Cth).[2436]

2.2 Crown Melbourne identified over a hundred potential or actual breaches in its initial and subsequent responses to this letter,[2437] many of which were minor. Most of the more serious breaches discussed in this section of the submissions derive from the investigative work of this Commission and the work of the Bergin Inquiry.

3 Breaches of CCA, applicable laws and contracts

3.1 This part of the submission sets out the evidence and analysis relating to Crown's actual and potential breaches of, in the following order, the:

(a) Casino Control Act;

(b) Gambling Regulation Act; and

(c) Casino Agreement or Management Agreement, which constitute breach of the casino licence.

Casino Control Act 1991

Section 68

3.2 As discussed in Section 7, Hotel transactions/China Union Pay Practice, Crown has admitted that the CUP practice was in breach of section 68(2) of the CCA.

3.3 There are also several breaches of section 68 of the CCA based on the evidence of Mr Peter Lawrence, General Manager VIP Customer Service in the Mahogany Room at Crown Melbourne since April 2012.

3.4 As described in Section 6, Responsible Service of Gaming, sections 68(3) and (4) regulate how Crown Melbourne can use a deposit account to extend credit. Under s 68(3), where a customer wants to credit their deposit account with a cheque, Crown Melbourne can only do that if the cheque is made payable to Crown Melbourne. Under s 68(4), Crown Melbourne can only debit from the account (to issue chip purchase vouchers or money) an amount that does not exceed the amount of credit on the account.

(a) In relation to practices that occur in the Mahogany Room, including establishing and using deposit accounts and cash chequing facilities.

(b) Cheques made out to persons other than the casino are exchanged for chips.

(c) Blank cheques kept on file and not cashed within 5 days.

3.5 These issues have been discussed more fully in Section 6, Responsible Service of Gaming of the submissions relating to responsible service of gaming.

Section 69

3.6 Section 69 of the CCA regulates the Responsible Gaming Code of Conduct.

3.7 As discussed more fully above in Section 6, Responsible Service of Gaming of the submissions, Crown Melbourne has systematically permitted customers to be left alone on

[2436] Exh bit RC0148 Letter from Solicitors Assisting to Crown Melbourne Directors, 10 March 2021, CRW.0000.0002.0180.

[2437] Exh bit RC0244 Letter from Allens to Solicitors Assisting, 21 April 2021, CRW.0000.0002.0097; Exh bit RC0244a, Schedule 1, 21 April 2021, CRW.0000.0002.0099; Exhibit RC0244b, Schedule 2, 21 April 2021, CRW.0000.0002.0151; Exhibit RC0244c, Schedule 3, 21 April 2021, CRW.0000.0002.0166; Exhibit RC0149, Letter from Allens Linklaters to Solicitors Assisting, 24 March 2021, CRW.0000.0003.0013; Exh bit RC0149a, Breach of Legislation and Contracts table, 24 March 2021, CRW.0000.0003.0015; Exhibit RC0149b, Breach of AML/CTF Rules table, 24 March 2021, CRW.0000.0003.0062.

the casino floor for significant periods without any assistance or intervention. The practice continues today. By acting in accordance with its own Play Periods Policy, Crown Melbourne has continuously failed to comply with the obligations under the Code, in breach of section 69 of the CCA and Crown Melbourne's licence condition.

Section 123

3.8 The text of section 123 is:

> *A casino operator must ----*
>
> *Keep and maintain separate accounts, as approved by the Commission, at an authorised deposit taking institution in the State for use for all banking transactions arising under this Act in relation to the operator;*

3.9 On a strict reading, Crown Melbourne may have breached section 123 of the CCA. Under the Casino Agreement, Crown Melbourne is the casino operator. Pursuant to sections 68(3) and (6) of the CCA, the establishment of a deposit account and the provision of chips are transactions arising under the CCA. Southbank Investments Pty Ltd is a wholly owned subsidiary of Crown Melbourne.[2438] Crown Melbourne did not operate the bank itself, but through its subsidiary. The evidence to establish this breach in more than a technical sense is equivocal. However, it does raise an issue for potential law reform, see Section 18, Changes to the regulation of casinos'.

Section 124

3.10 Section 124(1) provides:

> *A casino operator must keep such accounting records as correctly record and explain the transactions and financial position of the operations of the casino.*

3.11 On a plain reading, this means that Crown Melbourne must keep such accounting records as correctly record and explain transactions. This is not a novel phrase, it appeared in Corporations Law as section 289 and dates back as far as section 161 of the *Companies Act 1961* (Vic).[2439] Rogers CJ in *AWA Ltd v Daniels (t/a Deloitte Haskins & Sells)* (1992) 10 ACLC 933 at 959:

> *The section requires that such books be kept as are necessary "to exhibit and explain the transactions and financial position of the trade or business of the company" cf sec 161.* ***The evident policy of that requirement is that the accounts should disclose or exhibit the financial position of the company at all times and at any time.*** *They must be such as to enable one to say at any point of time where, in a financial sense, the company is, and it is not enough that they be such as to enable a competent accountant by producing a set of accounts long after the happening of the events to which they, ie the cheque butts, receipts and so on relate, to say where it has been and to establish the fact that it is then insolvent and unable to carry on. The whole policy of the section is to prevent this from happening, that is to say to prevent its officer from flying the company blind and upon its crash, and without having any information capable of sustaining the opinion, from then saying that he thought he had more altitude.*[2440]

3.12 In *Van Reesema* v *Flavel* (1992) 7 ACSR 225 at 229, the Full Court of the Supreme Court of South Australia held, per King CJ:

[2438] Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at .0113; 101, [6].
[2439] See *Companies Act 1961* (Vic) s 161A, available at http://classic.austlii.edu.au/au/legis/vic/repealed_act/ca1961107/s161a.html (accessed 20 July 2021).
[2440] Rogers CJ was here citing from the judgment of Bur J in *Manning v Corey & Sumner* (1974) CLC 40-140 at 28,017; (1974) WAR 60 at 62.

The expression "accounting records" in its ordinary connotation is, in my opinion, apt to include the various books of prime entry such as cashbook and journal as well as the ledgers.

A. Evidence of Breach of 124(1): Aggregation

3.13 In the Bergin Inquiry Report, it was recorded:

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. 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.

The AML Teams at Crown Melbourne and Crown Perth would then extract reports from SYCO to review the deposits for AML purposes.

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.[2441]

3.14 The point of prime entry, in the case of Crown casino was the cage, where patrons and others made deposits into their patron accounts. By aggregating transactions together, it is open for the Commission to find that Crown staff breached the terms of section 124(1) of the CCA.

B. Evidence of Breach of 124(1): China UnionPay

3.15 In addition to the breach of section 68(2) identified at paragraphs 3,2-3.5 ,above, the CUP process may also have constituted a breach of section 124(1) of the CCA.

3.16 The invoicing processes for the CUP process as disclosed by Employee 10 revealed, as discussed in more detail at section 7, Hotel transactions / China Union Pay practice above that Crown recorded the CUP transactions, by which customers made payments at the hotel reception desk by credit or debit card in return for chips provided at the cage, as hotel expenses.

3.17 The invoicing further used practices which were misleading, by recording the CUP transactions against false room numbers which 'did not exist'.[2442]

3.18 It is open to the Commission on this evidence to find that the CUP process constituted a breach of section 124(1) of the CCA because the invoicing did not 'correctly record and explain' the transactions that occurred.

Casino Agreement

Breach of conditions relating to company structure — CCA Clause 22.1(r)

3.19 Clause 22 of the Casino Agreement imposes certain obligations on Crown Melbourne.

3.20 Clause 22.1(r) requires that Crown Resorts, in relation to casino businesses pursued elsewhere in Australia, will use its best endeavours to ensure that such businesses are conducted in a manner:[2443]

[2441] Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021, COM.0005.0001.0001 at 0221; 209, [31]-[33].
[2442] T2438:2-4 (Employee 10).
[2443] Exhibit RC0435 Casino Agreement, 21 September 1993, COM.0005.0001.0985 at .1016.

(a) beneficial to Crown Melbourne and promotes tourism, employment and economic development generally in Victoria; and

(b) in a manner which is not detrimental to Crown Melbourne's interests.

3.21 Two potential breaches of clause 22.1 by Crown Resorts have been identified.

3.22 First, Crown's conduct in developing facilities elsewhere, particularly in NSW, would seem inconsistent with its best endeavours obligation to ensure that its business is conducted for the benefit of Crown Melbourne and the interests of the State of Victoria as set out in Clause 22.1(r)(a). No evidence has been provided to the Commission as to how Crown Resort's non-Victorian business activities have benefitted Crown Melbourne or the State.

3.23 Secondly, it is open to the Commission to find that Crown Resort's project for the development of the Sydney casino is detrimental to Crown Melbourne's interests.

3.24 In this regard, the Bergin Inquiry noted the commitment of Crown Resorts to provide short term and long term guarantees to the NSW Government, including that it would receive $1 billion in gaming taxes from the operation of Crown Sydney.[2444]

3.25 In its proposal to the NSW Government (**Crown Sydney Proposal**), Crown Resorts proposed two alternative options in terms of tax rates. One of the options included:[2445]

> *"(Option B) upfront licence fee of 250 million, tax rate of 9% including GST on international and interstate VIP revenue, tax rate of 23% (including GST) on local VIP revenue"*

3.26 This option was associated with the guarantee of $1 billion in gaming taxes:[2446]

> *"In the case of Option B only Crown Sydney will pay gaming taxes of at least 1 billion to the State over the first 15 years of full operation of the Hotel Resort financial years 2022 to 2036)."*

3.27 Further, Crown Resorts stated that the NSW Government could expect increases in taxes following the opening of Crown Sydney on the following basis:[2447]

> *"Given that Crown Sydney will significantly grow the size of the international* ***interstate and local VIP table gaming markets*** *Gross Gaming Tax GGT payable and State Gaming Tax Revenue received by the NSW Government are expected to increase following the opening of Crown Sydney." (emphasis added)*

3.28 It is clearly contemplated by Crown Resorts that the development of the VIP casino by Crown Sydney would result in a tax guarantee and tax take for NSW at the expense of the Melbourne casino.[2448] Not only would Crown Sydney have an interest to maximise VIP gaming in NSW to reduce its exposure under its guarantees, but the favourable tax rate in NSW would also drive that outcome.

Breach of localisation conditions – Clauses 22 (1)(ba) and (bb) and 22.1(ra)(ii)-(iii)

3.29 Clause 22(ra) requires that Crown Melbourne:

(a) ensure Crown Resorts locates its headquarters in Melbourne.

(b) maintain the Melbourne Casino as the dominant Commission Based Player casino in Australia.

[2444] Exhibit RC1293 Letter from James Packer to Mr Chris Eccles, 21 June 2013, CRW.INQ.010.004.0001 at 0002.
[2445] Exhibit RC1293 Letter from James Packer to Mr Chris Eccles, 21 June 2013, CRW.INQ.010.004.0002 at .0009.
[2446] Exhibit RC1293 Letter from James Packer to Mr Chris Eccles, 21 June 2013, CRW.INQ.010.004.0001 at .0009.
[2447] Exhibit RC1293 Letter from James Packer to Mr Chris Eccles, 21 June 2013, CRW.INQ.010.004.0001 at .0009.
[2448] In this regard, see Transcript of the NSW Casino Inquiry 8.10.20 (T-3708-3710.21).

(c) ensure Crown Resorts maintains Melbourne Casino as the flagship casino of Crown Resorts' gaming business.

3.30 The Crown Sydney Proposal is replete with statements which tend to suggest that this particular obligation was not given adequate consideration by Crown Resorts. Further, it seems clear that Crown's VIP business strategy in relation to Sydney was to establish the Sydney casino as the predominant VIP casino within the Crown group.

3.31 First, the Crown Sydney Proposal stated that Sydney had yet to capitalise on opportunities from "massive growth in Asian tourism, particularly from China" and there were "many attractions of Sydney for high net worth tourists and VIP players."

3.32 Second, the Crown Sydney Proposal stated that "incorporating world-class VIP gaming into such a hotel resort will provide a further attraction to high net worth tourists from China and other Asian countries and will make the project commercially viable."[2449]

3.33 Third, Crown Resorts referred to the "International VIP gaming market" which was expected to be $4,400 billion in FY22. " It considered that placing an "iconic world-class resort" on "one of the world's greatest harbours with one of the world's best VIP gaming facilities" might be able to "attract more high net worth international gaming customers than projected." This is particularly where Crown had strong "brand recognition" in China and Macau which "accounted for c.75% share of the global VIP gaming market." [2450]

3.34 Fourth, the proposed "iconic six-star hotel" will "generate high-end tourism for Sydney and significantly grow the size of the international, interstate and local VIP gaming markets."[2451] This was in the context where Crown clearly thought Sydney was underperforming by only attracting "0.7%" of the share of the international VIP gaming market and that Crown "can grow Sydney's share of the global VIP gaming market."[2452]

3.35 Fifth, the Crown Sydney Proposal highlighted numerous potential benefits for NSW including:[2453]

(a) Helping NSW to become "more competitive with domestic and international tourist destinations."

(b) Assisting NSW in attracting a greater share of Asia's booming outbound tourism market.

(c) Attracting a greater share of international VIP gaming players.

3.36 Based on the above, Crown Resorts was intending to establish a casino business in Sydney to capitalise on an extremely large and lucrative international gaming market worth $4,400 billion. It did so on the basis that Sydney was uniquely placed to take an increased share of this market. In evidence to the Bergin Inquiry, Mr Packer stated that the "upside" for Crown Sydney was in the international gaming market.[2454] The proposal was pitched in a manner which suggests that Crown Sydney would compete with, and attract a greater share, of this market in contradistinction to other jurisdictions (domestic and international).

3.37 Given the clear objective of Crown Sydney Proposal, it raises serious questions over whether there was any consideration given to Crown Resorts' obligations under clause 22(ra).

[2449] Exhibit RC1293 Letter from James Packer to Mr Chris Eccles, 21 June 2013, CRW.INQ.010.004.0002 at .0005.
[2450] Exhibit RC1293 Letter from James Packer to Mr Chris Eccles, 21 June 2013, CRW.INQ.010.004.0002 at .0011.
[2451] Exhibit RC1293 Letter from James Packer to Mr Chris Eccles, 21 June 2013, CRW.INQ.010.004.0002 at .0005.
[2452] Exhibit RC1293 Letter from James Packer to Mr Chris Eccles, 21 June 2013, CRW.INQ.010.004.0002 at .0023.
[2453] Exhibit RC1293 Letter from James Packer to Mr Chris Eccles, 21 June 2013, CRW.INQ.010.004.0002 at .0013.
[2454] Transcript of the NSW Casino Inquiry (T3710-13).

Casino (Management Agreement) Act 1993

3.38 The Management Agreement is set out in Schedule 1 of the *Casino (Management Agreement) Act 1993* (Vic) (**CMAA**). The CMAA provides, at section 6(1) that the Management Agreement takes effect as if it were part of the CMAA.

Clause 22.1

3.39 Clause 22.1 of the Management Agreement provides for the payment of casino tax.

3.40 Crown has been underpaying taxes to the State of Victoria. This breach has been admitted by Crown as noted at Section 5, Non-disclosure of potential underpayment of tax. The only issue of contention is the quantum of the underpayment.

Clause 48(1)(b)

3.41 Clause 48.1(b) requires that Crown Melbourne comply with all laws applicable to the matters arising under the Casino Agreement.

3.42 The provision is mirrored in clause 41.1(b) of the Management Agreement, giving it legislative force, and meaning that Crown Melbourne must comply with all laws applicable to matters arising under the Casino Agreement.

3.43 This is relevant to the gaming tax breaches (see Section 5, Non-disclosure of potential underpayment of tax) and also to breaches of other legislation, such as the following anti-money laundering legislation:

(a) *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth);

(b) Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007; and/or

(c) *Financial Transaction Reports Act 1988* (Cth),[2455]

3.44 Crown's potential breaches of Australia's anti-money laundering legislation are discussed in Section 8, Money Laundering.

[2455] Exhibit RC0148 Letter from Solicitors Assisting to Crown Me bourne Directors, 10 March 2021, CRW.0000.0002.0180.

19 Licence Recommendations

1.1 The Terms of Reference contemplate that the Commission will inquire into and report on whether Crown Melbourne is a suitable person to continue to hold the casino licence under the Casino Control Act and whether it is in the public interest for it to continue to hold the casino licence in Victoria.

1.2 If the Commission finds that Crown is not suitable, and/or that it is not in the public interest for it to continue to hold the casino licence in Victoria, the Commission is asked to do two things:

(a) inquire into and report on what action (if any) would be required for Crown Melbourne to become suitable, or for it to be in the public interest for Crown Melbourne to continue to hold the casino licence in Victoria?

(b) make any recommendations that the Commission considers appropriate arising from its inquiry.

1.3 For the reasons already advanced, Counsel Assisting submit that, having regard to all of the evidence, it is open to find that Crown Melbourne is not presently suitable, and that further, it is not in the public interest that Crown Melbourne continue to hold the casino licence in Victoria.

1.4 This submission is not based on isolated or trifling indiscretions or breaches capable of easy and quick rectification or expiation.

1.5 On the evidence:

(a) The matters underpinning a finding of unsuitability involve grave, systemic breaches of the law, and equally importantly, sustained breaches of the trust and confidence reposed in Crown Melbourne to administer the casino licence;

(b) Crown will remain in a state of “present unsuitability” for some time – up to five years; and

(c) Whether it ultimately achieves a state of suitability, or is able to positively assert that the public interest favours its retention of the casino licence, cannot be guaranteed and would be dependent on matters that cannot be guaranteed, such as retention of key senior executives.

1.6 It is appropriate to examine the consequences that such a finding would produce under the CCA.

1.7 The nature and extent of the evidence and activities which underpin the findings that Crown is not presently suitable to be the licensee, and/or that it is not in the public interest for it to continue to hold the casino licence in Victoria, would enliven the VCGLR’s powers to commence disciplinary action, as defined by s 20(1) of the CCA.

1.8 The term “disciplinary action” is defined to mean “the cancellation or suspension of a casino license, the issuing of a letter of censure, the variation of the terms of the casino licence or the imposition of a fine not exceeding $1,000,000”.

1.9 By the grant of a licence under the CCA, the licensee is the repository of a unique privilege. With that privilege comes important social and legal responsibilities.

1.10 The CCA contemplates that a casino licence will not be granted to any person or entity that does not live up to the standards set by the Act.

1.11 The CCA does not contemplate that an entity in Crown's current state, with the litany of serious failings which have been discovered in two inquiries, could be granted a casino licence.

1.12 Crown Melbourne is not an applicant for the licence, but instead the incumbent licensee.

1.13 The CCA does contemplate that the licensee may stray from the standards set by the Act in terms of suitability and public interest, and that it may even breach the Act or casino licence from time to time, without putting the licence at risk. Infractions, indiscretions and breaches of a licence by the licensee are addressed by the lesser consequences of censure, fine or even suspension.

1.14 The CCA contemplates that there is a point beyond which the failings are so grave, that cancellation of the casino licence is the only appropriate course.

1.15 Failings of suitability, loss of trust and confidence in the integrity of casino operations and breaches of the magnitude unearthed in these and earlier inquiries render censure, fine or even suspension inappropriate.

1.16 The conduct of Crown Melbourne to date, and its current state of affairs, presents a licensee that has been, and continues to be, the antithesis of what is expected of a licensee under the CCA.

1.17 The only way in which Crown Melbourne can return to a position of suitability is if those regulating its affairs (VCGLR and government) are prepared to give Crown Melbourne the time that it needs to implement the necessary reforms and are prepared to trust that Crown Melbourne will diligently pursue those reforms, and that the end result, whatever form it might take, is something that will be acceptable.

1.18 It is open, on all of the evidence, for those regulating Crown Melbourne's affairs to doubt whether they could ever trust Crown Melbourne again.

1.19 Trust in the licensee is at the core of the legislative framework regulating casinos in Victoria.

1.20 Crown Melbourne has betrayed the trust reposed in it time and again over many years. In substance, Crown Melbourne accepts that to be the case, and is asking to be given a second chance.

1.21 Returning to the Terms of Reference, in light of the overall evidence, it is open to the Commission to find that Crown Melbourne is presently unsuitable, and/or that it is not in the public interest that Crown Melbourne continue to hold the casino licence in Victoria, and:

(a) accept that Crown Melbourne is capable of returning to suitability and make recommendations to facilitate the path back to suitability. To that end, one option would be to recommend the appointment of an independent monitor to closely scrutinise and report upon Crown Melbourne's progress of reform, similar to that which occurred in relation to the Licensee of the Sydney Casino following the Bergin Inquiry.

(b) alternatively, conclude that, in combination, the past failings of Crown Melbourne are so great, and the path to redemption so enormous, involved, unpredictable and time consuming, that neither the VCGLR nor the State of Victoria could have the required confidence that the casino operator will reach a satisfactory state of suitability, or that the required trust and confidence in the licensee could be restored, within an acceptable time frame – and that as a consequence the casino licence should be cancelled.

1.22 The Terms of Reference require the Commission, in making any recommendations, to have regard to the most practical, effective and efficient way to address the matters arising from the Inquiry and the financial impact of any recommendations for the State

1.23 It is therefore appropriate to consider these two options in more detail and in that light.

Path back to suitability

1.24 The evidence could be said to establish that it is *possible* for Crown Melbourne to take steps to reform itself. That evidence is recounted in other parts of these submissions and is not repeated here.

1.25 The overall evidence also establishes that:

(a) The task of reform is much greater than that which confronted the Bergin Inquiry;

(b) Reform is necessary across the whole organisation, and in areas left largely untouched by the Bergin Inquiry;

(c) There is considerable uncertainty about the detail and shape of any reform agenda, and in particular, what the corporate structure of a reformed Crown Melbourne would be; and

(d) There is considerable uncertainty about the length of time required to achieve a "reformed Crown" – being a Crown Melbourne which could be described as suitable to hold the casino licence.

1.26 Much of the uncertainty arises from the actions or failings of Crown itself.

1.27 In addition to its many failings, Crown has been reluctant to date to embark upon thorough retrospective or root cause analysis. Crown has been hampered in delivering the reform it needs by its delay in getting rid of old management and directors and securing new directors.

1.28 The current directors are spread thin across the business and are involved much more in management issues than is ordinarily desirable for directors. There is difficulty and delay in securing the right people for key roles, particularly while the company is under the scrutiny of inquiries probing into its affairs. That is not a situation which will end soon. There remains the Western Australian Royal Commission. Whatever else might flow from these inquiries, ongoing close scrutiny of present and past conduct should be expected, with the potential for further revelations of poor conduct.

1.29 The question posed by the Terms of Reference "what action (if any) would be required be required for Crown Melbourne to become suitable" – can only be answered in the most general terms.

1.30 There is a reasonable basis for saying this complete reformation is *possible* – in the sense that corporate reforms have been known to occur in the past, that change of personnel, approach and culture has been known to be achievable.

1.31 Given what has emerged in this hearing, the path back to suitability is less clear because of the breadth and depth of Crown's current problems.

1.32 Suitability will not be achieved simply by Board renewal. Board renewal itself has been difficult to achieve in the current environment. Structural reform is required. The extent of the cultural problems which exist within the organisation create a high degree of uncertainty about how much time is required before reform and a self-sustaining culture will be achieved.

1.33 Giving the Commission less, rather than more confidence, is the fact that these hearings have expanded, rather than narrowed, the reform agenda.

1.34 The exploration of issues and evidence by this Commission has uncovered inappropriate conduct, sometimes illegal conduct, certainly not conduct befitting a suitable person. In the limited time that this Commission has had to explore Crown's affairs it has unearthed significant examples of poor behaviour, on occasion accidentally.

1.35 The evidence does not elucidate a clear pathway with certain outcomes, beyond the observation that with the right people and the right commitment the required change can be achieved.

1.36 The only "action" which could be described with any certainty, is that if Crown Melbourne is permitted to keep the casino licence, it cannot and should not be trusted to implement the reform process unsupervised.

1.37 A monitor with extensive powers to closely scrutinise the reform process, with powers to look into every aspect of Crown Melbourne's affairs, past and present, is the only conceivable way, having regard to Crown Melbourne's track record, that any confidence could be gained that the reform process was progressing appropriately. The powers of a monitor should be extensive and include powers to obtain access to documents and advice, and to interrogate staff.

1.38 This will be best implemented by legislative amendment to create the office of a supervisor.

1.39 The work of the monitor will be extensive. The monitor should have power to appoint experts to assist in the task of supervision, and to conduct investigations of their own.

1.40 Given the size of the task, the cost of supervision will be considerable. The cost of supervision should, in all the circumstances, be borne by the licensee. Again this is something which would best be introduced by legislation, rather than to rely on reaching agreement with Crown.

1.41 The licensee is subject to a review of its suitability at least every 5 years under s 25 of the CCA. On the assumption that the next review is not brought forward, a review of its suitability will occur again in 2023.

1.42 Crown maintains that it can achieve the important milestones of its reform program within a relatively short time frame.

1.43 If the Commission is prepared to recommend that Crown be entrusted with a chance to regain its suitability, subject to proper supervision, it would seem that the real test of whether Crown has achieved its aspirations will be the suitability review slated for 2023.

1.44 It would be for the regulator then to decide whether Crown Melbourne has reformed, and is, at that point in time, suitable.

1.45 It must be observed that in the period between 2010 and 2021 there were two reviews carried out under s 25 – 2013 and 2018 by the VCGLR. In both instances Crown Melbourne was declared by the VCGLR to be suitable notwithstanding conduct which, if brought to light in the context of those reviews, might have militated against such a finding.

1.46 It is open for the Commission to be apprehensive about the thoroughness of any such review in the future. It has only been the extraordinary powers of inquiries like this Commission which have been able to get at the truth in the past, and whether an ordinary review process under s 25 of the CCA is an adequate vehicle for undertaking a suitability assessment in the circumstances is something about which there might be legitimate concern.

Cancellation

1.47 It is appropriate to put the notion of cancellation into perspective.

1.48 Cancellation is a sanction which is imposed as a result of wrongdoing on the part of the licensee.

1.49 In *Regina v Knightsbridge Crown Court. Ex Parte International Sporting Club (London) Ltd and Another* [1982] 1 Q.B. 304, at 318, Griffiths LJ wrote for the court how this loss of public confidence and trust might result in the cancellation of a casino licence (emphasis added):

We have no hesitation in saying that past misconduct by the licence holder will in every case be a relevant consideration to take into account when considering whether to cancel a licence. The weight to be accorded to it will vary according to the circumstances of the case. ***There may well be cases in which the wrongdoing of the company licence holder has been so flagrant and so well publicised that no amount of restructuring can restore confidence in it as a fit and proper person to hold a licence; it will stand condemned in the public mind as a person unfit to hold a licence and public confidence in the licensing justices would be gravely shaken by allowing it to continue to run the casino. Other less serious breaches may be capable of being cured by restructuring.***

It is also right that the licensing justices or the Crown Court on an appeal should have regard to the fact that it is in the public interest that the sanction of the cancellation of a licence should not be devalued. It is obvious that ***the possibility of the loss of the licence must be a powerful incentive to casino operators to observe the gaming laws and to run their premises properly****. If persons carrying on gaming through a limited company can run their establishment disgracefully, make a great deal of money and then when the licence is cancelled sell the company to someone who because he is a fit and proper person must be entitled to continue to hold the licence through the company, it will seriously devalue the sanction of cancellation.*

...this is a consideration that falls to be taken into account when deciding whether or not to exercise the discretion to cancel and not at the point at which the court is considering whether or not one of the grounds for cancellation has been established.

1.50 The conduct of Crown Melbourne, over many years, is conduct of the most serious kind. The conduct has infected every part of the business, including those parts of the business which are required to minimise the harm which might be caused by the product which Crown Melbourne delivers – RSG.

1.51 In the ordinary course, an important question for the regulator in determining the appropriate sanction, is the gravity of the conduct which enlivens the power to take disciplinary action.

1.52 It is appropriate and necessary to have regard to and place considerable weight upon the past and recent conduct of Crown Melbourne which has led to the findings of present unsuitability, and loss of trust and confidence in Crown Melbourne to deliver on its obligations as the licensee.

1.53 As the evidence both before the Bergin Inquiry, and before this Commission demonstrate - the corporate failings of Crown run deep. Extensive change of personnel across the organisation will be required but is not, by itself, sufficient. Embedding a significant shift in the culture of the organisation will be necessary, but not necessarily easy. True reform will require a cultural change that is self-sustaining.

1.54 In broad terms, it is a relatively straightforward thing to articulate the things which must change. But the true test is in implementing that change. Crown, through various of its officers, have openly acknowledged the need for change as long ago as October 2020, under the scrutiny of the Bergin Inquiry, and only after all other attempts to defend its position in that Inquiry had obviously failed.

1.55 The evidence in this Commission reveals how hard it can be to implement reform. How hard it is to find the right people, how difficult it can be to change habits, approaches or cultural settings that have been acquired over a long period of time. Key personnel have only just started at the company, others are yet to start.

1.56 To the extent that past and present conduct is relevant in this assessment, it is open to the Commission to find:

(a) *First* – the past conduct revealed by the Bergin Inquiry was very serious by itself, but this Commission has unearthed new aspects of past conduct which are also significant in their own right, contributing to a conclusion that the past conduct across the business as a whole was deeply problematic; and

(b) *Second* - notwithstanding Crown's attempts to draw a distinction between the 'Old Crown' and the 'New Crown' – aspects of the behaviour that led to the many and varied significant failings remain on display in quite recent times.

1.57 The CCA demands that a licensee is suitable, rather than in transition to suitability.

1.58 The CCA contemplates that the casino licence is reposed in a person who is capable of maintaining the trust and confidence of the community in the credibility, integrity and stability of casino operations.

1.59 Crown is neither of those things at present, and based upon the past and recent past, it is open for the Commission to find that the path of transition is too uncertain and speculative. If the Commission is not satisfied that Crown is capable of reform, or not sufficiently certain of the outcome of the reform agenda at this time, then it must follow that the Commission could recommend cancellation of the licence.

1.60 It is appropriate to consider the manner which cancellation might be effected under the existing provisions of the CCA.

1.61 Leaving aside any legislative amendment to the CCA:

(a) Under the CCA, cancellation is a potential outcome of disciplinary action.

(b) Only the VCGLR has the power to take disciplinary action.

(c) To take disciplinary action against Crown Melbourne, the VCGLR would be required engage the process prescribed by s 20(2) of the Act and then to form its own view of the matter.

(d) If VCGLR concluded that cancellation was appropriate, it would do so by the giving of a notice to that effect.

(e) The cancellation would take effect on the giving of a notice or on a later date specified in the notice.

1.62 Under the current provisions, the CCA would not permit the VCGLR to rely solely on the findings of this Commission to determine whether, or not, the casino licence should be cancelled. The VCGLR is likely to be limited in the ways that it might use the findings of this Commission in the commencement of any process of cancellation.

1.63 Accordingly, if this Commission were to conclude that Crown Melbourne's licence should be cancelled, giving effect to that outcome would likely require a further process undertaken by the VCGLR, or alternatively legislative amendment.

1.64 Before making a recommendation that the casino licence should be cancelled, the Commission should consider, to the extent possible and practical, the effect of cancellation.

1.65 There is little doubt that cancelling the casino licence will be highly disruptive. If the decision is taken that it is no longer appropriate for Crown Melbourne to hold the casino licence in Victoria, some level of disruption will be inevitable, but if the end result is the grant of a new licence to a person who is suitable, then that disruption may itself be in the public interest in the long run.

1.66 While some level of disruption is inevitable, the manner and timing of cancellation will likely influence the extent of disruption.

1.67 Cancellation of the casino licence with immediate effect, for example, would be highly disruptive - having the potential to cause significant harm to many third parties who have had no involvement whatsoever in the misconduct of Crown Melbourne over the years. The impact of immediate cancellation would likely have inestimable negative consequences for many people, at least in the short term.

1.68 Any cancellation of the casino licence would need to provide adequate time for adjustment, including but not limited to, the conduct of an application process for a new licensee.

1.69 Section 20(5) permits that the cancellation can be deferred by specifying a later date in the notice. In this way, cancellation would be to the same effect as a variation of the casino licence (which is also permitted by s 20(4) of the CCA) which shortens the term of the licence. In either case, the casino licence would come to an end at some specified time in the future, providing adequate time for planning and arrangements to be made for the potential transition to a new licensee.

1.70 It is worth observing that nothing could preclude Crown Melbourne from reapplying for the casino license at that time, by which time it would need to be able to demonstrate that it is suitable, rather than on the path to suitability. Cancellation of the casino licence in the manner described above, with the opportunity to reapply, would provide real incentive to implement its reform program.

20 Changes to the regulation of casinos

Introduction and background

1.1 Finally, the terms of reference require the Commission to consider whether changes to relevant legislation, including the CCA and the Victorian Commission for Gambling and Liquor Regulation Act 2011, as well as the Crown Melbourne Contracts, are necessary for the State to address the Commission's findings and to implement the recommendations.

1.2 In part, this Section proceeds on the basis that the Commission accepts the submissions made above and makes the findings and recommendations set out.

1.3 At the time this Commission was established, the Premier announced that work had commenced to establish an independent casino regulator, and that the Minister for Consumer Affairs, Gaming and Liquor Regulation had commissioned a review to advise on the necessary structural and governance arrangements (Regulatory Review). This Regulatory Review has been occurring in parallel with this Commission.[2456] The Terms of Reference for this Commission make it clear that this Commission should conduct its inquiry without unnecessarily replicating the Regulatory Review.

1.4 The intention to establish an independent casino regulator and the commissioning of the Regulatory Review makes it clear that the regulation of the casino in Victoria will be an area of legislative reform in the near future.

1.5 Without seeking to replicate the work of the Regulatory Review, there are observations which may be made concerning the regulation of the Melbourne Casino given the evidence which is before this Commission.

1.6 Since its establishment in 2012, the work of the Victorian Commission for Gambling and Liquor Regulation (VCGLR) has been directed to "transforming its operations into a modern, risk-based regulator".[2457] This shift from a prescriptive regulatory approach towards a risk-based approach has been significant, resulting in Crown effectively self-regulating key areas of its Melbourne Casino operations including, relevantly, junket operations and responsible service of gaming.

1.7 The evidence before the Commission demonstrates significant failures on the part of Crown to self-regulate in these areas and provides a basis for any new regulatory model adopted by the Victorian Government to eschew the risk-based model as ineffective.

1.8 The risk-based regulatory approach adopted by the VCGLR presupposes that Crown appreciates the social licence under which it operates and that Crown will behave in a way which is transparently consistent with the overarching objectives of the regulatory framework within which it operates. It involves trust. It also involves an expectation that when the casino operator fails to satisfy its statutory obligations, action will be taken by the regulator.

1.9 In the circumstances, where Crown has been combative, and has legalistically pursued ways around the regulatory environment in the pursuit of profit, and where the VCGLR has not demonstrated a willingness to take meaningful enforcement action, there are grounds to conclude that the risk-based approach has failed. The lure of significant profits for Crown has proved to be too great for Crown to be trusted to operate in a manner which is consistent with achieving the overarching objectives of the regulatory framework in which it operates.

[2456] Daniel Andrews, 'Royal Commission into Crown Melbourne' (Media Release, 22 February 2021).
[2457] Victorian Commission for Gambling and Liquor Regulation, *Victorian Commission for Gambling and Liquor Regulation Corporate Plan 2017-20* (Report, July 2017) 8.

1.10 The evidence heard by this Commission has demonstrated that Crown cannot be trusted to operate in a manner which is consistent with the overarching objectives of the CCA across a number of key areas. One of these key areas is the responsible service of gaming.

Code of Conduct

1.11 A Responsible Gambling Codes of Conduct (**Code**) was first introduced to improve responsible gambling practices at the Melbourne Casino and required the casino operator to implement a Code approved by the regulator.[2458] The requirement that the Code be approved by the regulator was removed in 2017 and replaced with a requirement that the Code comply with the Ministerial directions issued under section 10.6.6(1) of the *Gambling Regulation Act 2003* (Vic) that applied in relation to the casino operator (and any applicable regulations made under that Act).[2459]

1.12 Under these changes, the Casino Operator became responsible for ensuring its Code complies with the Ministerial directions issued under section 10.6.6(1) of the *Gambling Regulation Act 2003* (Vic).

1.13 The current Ministerial directions under section 10.6.6(1) of the *Gambling Regulation Act 2003* (Vic) that are applicable to Crown provides Crown with the flexibility to develop its own approach to achieving the objective of responsible gambling. Crown's responsible service of gaming failings, which have been outlined in the evidence before the Commission, indicate that affording such flexibility to Crown is not appropriate. Crown cannot be trusted to prioritise the objective of responsible gaming over profits.

1.14 In February 2020, a new Ministerial direction was issued under section 10.6.6(1) of the *Gambling Regulation Act 2003* (Vic) which applied only to venue operators (such as pubs and clubs), and not the casino.[2460] This new direction imposed more prescriptive requirements on a number of areas of responsible service of gaming, including requirements that venue operators:

(a) take all reasonable steps to prevent and minimise harm from the operation of gaming machines in the approved venue;

(b) take all reasonable steps to ensure the gaming machine area and entrances to the gaming machine area are monitored at all times gaming machines are available for gaming; and

(c) ensure a responsible gambling officer is available in the gaming machine area at all times gaming machines are available for gaming. With a statutory limit of 105 machines applying to all gaming machine venues outside the casino, this obligation, in effect, requires 1 responsible gambling officer for every 105 gaming machines.[2461]

1.15 Evidence before the Commission has demonstrated that:

(a) there is a heightened risk of harm from gambling to those playing at the Melbourne Casino as compared to those playing at other venues such as pubs and clubs;[2462] and

(b) gaming machine customers at the Melbourne Casino face a greater risk of harm than gaming machine customers at other gaming venues in Victoria, as, unlike other

[2458] *Gambling Legislation Amendment (Problem Gambling and Other Measures) Act 2007* (Vic) s 57, inserting *Casino Control Act 1991* (Vic) s 69.
[2459] *Casino Control Act 1991* (Vic) s 69, as amended by *Gambling Regulation Amendment (Gaming Machine Arrangements) Act 2017* (Vic) s 58.
[2460] Exhibit RC0518 Victorian Government Gazette regarding the Gambling Regulation Act 2003, 21 February 2020, COM.0013.0001.0953.
[2461] *Gambling Regulation Act 2003* (Vic) s 3.4.1(3).
[2462] T1145:30-43 (Bauer).

gaming venues, unrestricted machines at the Melbourne Casino have no maximum bet limit while restricted machines have twice the bet limit.[2463]

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

Introduction of positive obligations to reduce risks

Purposes and objectives of the legislation regulating casinos in Victoria

1.17 The *Casino Control Act 1991* (Vic) and the *Gambling Regulation Act 2003* (Vic) (the Acts) both set out purposes and objectives.

1.18 Relevantly, section 1 of the *Casino Control Act 1991* (Vic) provides that the purposes of that Act are:

> *(a) to establish a system for the licensing, supervision and control of casinos with the aims of—*
>
> *(i) ensuring that the management and operation of casinos remains free from criminal influence or exploitation; and*
>
> *(ii) ensuring that gaming in casinos is conducted honestly; and*
>
> *(iii) promoting tourism, employment, and economic development generally in the State;*
>
> *(b) to provide for actions that may be taken by the Chief Commissioner of Police with the aim of ensuring that the casino complex remains free from criminal influence or exploitation.*

1.19 Similarly, section 1.1(2) of the *Gambling Regulation Act 2003* (Vic) provides that the main objectives of that Act are:

> *(a) to foster responsible gambling in order to—*
>
> *(i) minimise harm caused by problem gambling; and*
>
> *(ii) accommodate those who gamble without harming themselves or others;*
>
> *(ab) to ensure that minors are neither encouraged to gamble nor allowed to do so;*
>
> *(b) to ensure that gaming on gaming machines is conducted honestly;*
>
> *(c) to ensure that the management of gaming equipment and monitoring equipment is free from criminal influence and exploitation;*
>
> *(d) to ensure that other forms of gambling permitted under this or any other Act are conducted honestly and that their management is free from criminal influence and exploitation.*

1.20 As such, the purposes and objectives of the Acts indicate that the key risks sought to be addressed by the Acts are the risks of:

(a) harm caused by problem gambling;

(b) dishonest conduct of gaming;

(c) minors gambling; and

(d) criminal influence and exploitation,

[2463] T1682:33-47 (Mackay).

(**Key Risks**).

1.21 There are a range of obligations imposed on Crown Melbourne under each of the Acts.

1.22 While each of the obligations imposed on Crown Melbourne must be interpreted by reference to the purposes and objectives of the relevant Act,[2464] neither Act imposes a general obligation on Crown to take measures to prevent or minimise the Key Risks.

1.23 Under clause 28 of the Casino Agreement between the VCGLR and Crown (Casino Agreement), Crown Melbourne is under an obligation to conduct its operations in the Melbourne Casino in a manner that has regard to the best operating practices in casinos of a similar size and nature to the Melbourne Casino.[2465] However, the Casino Agreement does not include equivalent purposes or objectives to those included in the Acts, and does not require Crown Melbourne to have regard to those types of matters when having regard to best operating practices in other casinos.

1.24 The operating practices of casinos of a similar size and nature to the Melbourne Casino are likely to be developed by reference to the statutory framework operative in each respective jurisdiction. To comply with its obligations under clause 28 of the Casino Agreement, Crown Melbourne is not required to consider whether the purposes or objectives of the statutory framework in the relevant jurisdictions align with those in the Victorian context. Further, this general obligation to have regard to best operating practices does not create a positive obligation on Crown Melbourne to seek to eliminate or minimise the Key Risks.

1.25 The Commission has heard evidence of Crown's reluctance to adopt preventative measures to mitigate the Key Risks. The delayed implementation of facial recognition technology to reduce self-exclusion breaches,[2466] Crown's identified weakness in relation to data analytics which can be used to better identify problem gamblers[2467] and resistance to strengthening anti-money-laundering measures,[2468] are examples of preventative measures which Crown has not adopted proactively but which appear to have been implemented only on the recommendation and insistence of the VCGLR or other regulatory bodies in the other States in which Crown operates or seek to operate.

1.26 Where Crown has demonstrated that it cannot be trusted to, on its own accord, adopt preventative measures to minimise the Key Risks. Accordingly, one option which presents is to impose a positive duty on Crown Melbourne.

Positive legislative obligations to achieve the key purposes and objectives

1.27 General duties to take reasonably practicable steps to minimise risks of particular harms occurring are imposed in other legislative contexts. This includes Victoria's workplace safety legislation[2469] and in the reforms to the environmental protection legislation.[2470] For example, under workplace safety legislation, Victorian employers are under a duty to provide, for their employees, so far as reasonably practicable, a safe working environment.[2471]

[2464] *Interpretation of Legislation Act 1984* (Vic) s 35.
[2465] Exhibit RC0435 Consolidated Casino Agreement, 21 September 1993, COM.0005.0001.0985 at .1027.
[2466] T2594:20-32; T2596:45-T2597:2 (C Walsh).
[2467] Exhibit RC0125 Crown Me bourne Responsible Gaming Strategic Plan 2018-2020, n.d; CRW.510.029.6278 at .6287, which identified data analytics as a weakness identified by a SWOT analysis undertaken by Crown. Also, in Exhibit RC0002 VCGLR Sixth Review of the Casino Operator and Licence, June 2018, COM.0005.0001.0776 at .0785, the VCGLR noted that the use of player data analytics by Crown in support of intervention remained in a trial state five years after the VCGLR's recommendations in the Fifth Casino Review and ten years after being first raised with Crown.
[2468] T176:40 - T180:21 (Cremona).
[2469] *Occupational Health and Safety Act 2004* (Vic).
[2470] *Environmental Protection Act 2017* (Vic).
[2471] *Occupational Health and Safety Act 2004* (Vic) s 21(1).

1.28 A similar general positive duty could be imposed on the casino operator under the CCA to require the casino operator to take reasonably practicable steps to prevent or minimise the Key Risks.

1.29 Determining what is "reasonably practicable" would be a balancing act that would need to be defined with regard to the nature of casinos generally. Similar to the approach adopted in section 6 of the *Environmental Protection Act 2017* (Vic), what is reasonably practicable in the context of a casino could be framed by reference to matters such as the likelihood of a risk eventuating and the degree of harm that might result, balanced with what the casino operator knows, or ought reasonably know, about ways to eliminate or reduce the risk, the suitability of methods to do so and the associated cost.

1.30 For Crown to comply with an obligation to take reasonably practicable steps to reduce the risks of the Key Risks occurring, Crown could also be subject to a legislative obligation to demonstrate that:

(a) it has drawn on reliable and reputable sources of information to inform itself; and

(b) it is staying abreast of the developments over time as new research, technology, systems and processes.

1.31 Imposing appropriate penalties to support these types of positive duties could ensure that the VCGLR is not required to wait until harm occurs before it is permitted to take action against Crown. For example, the VCGLR would not need to wait for Crown Melbourne to repeatedly breach its Code before the VCGLR could take action against it for failing to implement preventative measures to reduce the risk of harm caused by problem gambling.[2472]

1.32 These general duties could assist in creating a stronger deterrent for implementing operating practices and procedures which are not appropriately informed by current research, technology, systems and processes. For example, the general duties, and the penalties applicable to the breach of those duties, could deter Crown from implementing operating practices such as Crown's current play period policy, in respect of which the Commission heard evidence that it was adopted despite not being supported by any research.[2473]

1.33 Such positive duties to take preventative steps could be further supplemented by imposing a positive obligation on Crown Melbourne to notify the VCGLR as soon as practicable after it becomes aware of a breach of these positive duties.

1.34 Provided appropriate penalties are provided for in respect of a failure to comply with the duty to notify, a duty to notify may also assist to promote a culture within Crown in which employees 'speak up' and notify management of potential breaches. This may be particularly the case if the penalties that may be imposed on Crown for the breach of the general duty to minimise the Key Risks are less severe than the penalties for a breach of the obligation to notify the VCGLR of a breach of the general duty.

1.35 Further, a positive obligation on Crown to make its gambling data available to industry bodies may contribute to ensuring that these types of positive duties are effective in managing the Key Risks. This would include data being made available to the VCGLR and other relevant Victorian departments and government agencies, as well as to the Victorian Responsible Gambling Foundation and other researchers. Sharing data in this way would allow Crown's preventative measures to be informed by research relevant to the casino context by enabling the development of deeper insights into risks that arise in the casino

[2472] *Casino Control Act 1991* (Vic) s 20(1)(db) (definition of 'grounds for disciplinary action').
[2473] T1288:41 T1289:2 (Bauer).

context, and may arm the VCGLR with the information it needs to better enable it to develop a more informed approach to how it regulates the casino.

Accountability by directors

1.36 A further way to ensure Crown has appropriate procedures and systems in place to minimise the Key Risks would be legislative reform directed to imposing accountability on the directors of the casino operator to take reasonable steps to ensure Crown's business is conducted with honesty and integrity and in a transparent manner vis-à-vis with the regulator. Directors could also be required to ensure Crown has in place appropriate governance and risk management structures. A regime analogous to the accountability regime introduced by the Banking Executive Accountability Regime (BEAR) should be considered.

1.37 The BEAR is regulated by the prudential regulator (APRA), a regulator concerned with risk and risk management. A fundamental reason for the introduction of the BEAR[2474] was to improve the governance and accountability in the major banking institutions in Australia at a time when public confidence in the banking system was in need of repair. Those sitting at the top of the governance structures had continuously failed to take responsibility for issues that had arisen within their institutions and destroyed public trust in the banking system.[2475]

1.38 The BEAR aims to insert clear lines of accountability within a banking institution to improve governance and drive a strong risk culture from the top down.[2476] Four mechanisms are directed to achieving this: accountability obligations; remuneration obligations; notification obligations; and providing the regulator with powers where an obligation is breached.[2477]

1.39 In general terms, the relevant provisions create a scheme that imposes obligations on "accountable persons" (being directors and senior executives) to act with honesty and integrity, be transparent with the regulator and take reasonable steps to protect the entity from matters that would present significant risk to the entity.[2478] The entity must prepare and provide to the regulator accountability statements for each accountable person that identifies the operations for which they are accountable, and an accountability map that shows collectively how the responsibilities of accountable persons come together to cover all aspects of the entity's operations.[2479] There are also requirements for deferring variable remuneration, and for notifying the regulator upon any change to the "accountable persons" or any breach of accountability obligations. Where breaches occur the regulator may seek a civil penalty to enforce compliance.

1.40 The BEAR is a dynamic process where entities are expected to have honest discussions internally to develop a clear, transparent and common understanding of who is accountable, what actions are expected from them and how consequences will be applied for any failure to meet those obligations.[2480] This facilitates opportunities for reflection on, and refinement of, operational and governance structures and practices, which in turn strengthens the risk

[2474] The BEAR was introduced by Part 1 of Schedule 1 to the *Treasury Laws Amendment (Banking Executive Accountability and Related Measures) Act 2018* (Cth) which inserted Part IIAA into the *Banking Act 1959* (Cth), and came into effect on 1 July 2018.
[2475] See, eg, G30, *Banking Conduct and Culture: A Permanent Mindset Change*, November 2018 at 6 https://group30.org/images/uploads/publications/aaG30_Culture2018.pdf.
[2476] APRA Information Paper, Implementing the Banking Executive Accountability Regime, 17 October 2018 at 4 https://www.apra.gov.au/sites/default/files/information_paper_implementing_the_bear.pdf.
[2477] APRA Information Paper, Implementation of the Banking Executive Accountability Regime (BEAR), 17 October 2018 at 8[1.2] https://www.apra.gov.au/sites/default/files/2020-12/BEAR%20information%20paper%20December%202020.pdf.
[2478] *Banking Act 1959* (Cth), Part IIAA.
[2479] APRA Information Paper, Implementation of the Banking Executive Accountability Regime (BEAR), 17 October 2018 at 9 https://www.apra.gov.au/sites/default/files/2020-12/BEAR%20information%20paper%20December%202020.pdf.
[2480] APRA Information Paper, Implementing the Banking Executive Accountability Regime, 17 October 2018 at 7 https://www.apra.gov.au/sites/default/files/information_paper_implementing_the_bear.pdf.

culture practices at all levels.[2481] The introduction of an analogous system for the casino operator merits consideration.

[2481] APRA Information Paper, Implementing the Banking Executive Accountability Regime, 17 October 2018 at 7 https://www.apra.gov.au/sites/default/files/information_paper_implementing_the_bear.pdf.

Appendix: Crown Reforms

Crown's Key Reforms since the Bergin Inquiry

This table summarises the key reforms that Crown has introduced since the commencement of the inquiry under section 143 of the *Casino Control Act 1992* (NSW) (the Bergin Inquiry). It is not an exhaustive record of all evidence relevant to those reforms.

1 AML and CTF

Date	Reference[2482]	Description	Details
New standards, systems, programs and policies			
Dec 2019	Exhibit RC418 Crown Resorts Remediation Plan (Mark Up), 30 June 2021 CRW.512.196.0053 (**Exhibit RC418**) at .0073	Riverbank and Southbank accounts	Closure of the Riverbank and Southbank bank accounts.
8 April 2020	Exhibit RC418 CRW.512.196.0053 at .0074	Third party payments ban	Executive Office Memorandum to relevant Crown employees stating that Crown will no longer make or receive payments to or from third parties without prior written approval from the property CEO or equivalent and the AML/CTF Compliance Officer.
As at 9 Nov 2020	Exhibit RC1270 Crown Resorts Submission to ILGA, 9 November 2020,	Cash deposit controls	Direction that all cash deposits on Crown's premises take place through the Cage. Direction prohibiting patron cash deposits into Crown's bank account.

[2482] The Commission acknowledges that there is a vast body of evidence relating to these reforms. The table is intended to be a timeline and is not exhaustive of all relevant evidence.

Date	Reference[3482]	Description	Details
	CRL.743.001.0021 (**Exhibit RC1270**) at .0029		
Nov 2020	Exhibit RC418 CRW.512.196.0053 at .0079 Exhibit RC1271 Crown Resorts Board Diligent Pack, 2 November 2020, CRW.507.005.5199 (**Exhibit RC1271**) at .5211	Enhanced customer due diligence process	Adoption of enhanced customer due diligence process in Crown's AML/CTF Policies and Procedures, including a risk assessment and escalation process for customers.
2 Nov 2020	Exhibit RC418 CRW.512.196.0053 at .0065 Exhibit RC0416 Annexure b, Letter from Crown Resorts to Phillip Crawford, 15 March 2021 CRW.525.001.1581 (**Exhibit RC0416)** at .1614	Joint AML/CTF Program	The Boards of Crown Melbourne and Crown Resorts (along with Crown Perth and Crown Sydney) endorsed the development and implementation of a Joint AML/CTF Program across Crown's operations in NSW, Victoria and WA. Part A of the program was endorsed by the boards of each of the reporting entities on 2 November 2020. Part A provides for, among other things, greater Board and senior management oversight and responsibility for driving a positive culture of AML/CTF compliance.
12 Nov 2020	Exhibit RC418 CRW.512.196.0053 at .0073	Prohibition of Aggregation	Crown issued a direction to Crown staff that under no circumstance should transactions be aggregated in the customer management system (**CMS**).
16 Nov 2020	Exhibit RC418 CRW.512.196.0053 at .0075	Third party Transfers and Remitters Policy	Crown adopted the Third Party Transfers and Money Remitters Policy, which states that Crown: • does not accept payments from third parties (including money remitters) into its accounts for the benefit of a Crown customer; and

Date	Reference[3482]	Description	Details
			• will not make payments to third parties (including money remitters) on behalf of a Crown customer.
	Exhibit RC418 CRW.512.196.0053 at .0074	Joint Program	Crown introduced a manual rule for bank statement monitoring, which requires bank statements be monitored weekly and cash deposits reviewed to identify suspicious transactions.
4 Jan 2021	Exhibit RC418 CRW.512.196.0053 at .0075	Return of Funds Policy	Implementation of the Return of Funds Policy, which states that Crown will: • only accept payments that are transferred into its bank account from personal bank accounts belonging to a patron seeking to transfer funds to Crown; • return the following types of payments: a) cash deposits; b) funds transferred from a company or trust bank account (unless approved}; c) funds transferred by a third party for the benefit of a Crown patron account (unless approved); d) funds transferred when the description or narration is misleading as to purpose; and e) funds transferred where the patron has not provided a receipt or supporting documentation.
3 Feb 2021	Exhibit RC418 CRW.512.196.0053 at .0077	Transaction Monitoring Program roll out	The Financial Crime Team at Crown Melbourne (and Crown Perth) commenced monitoring and dispositioning of Sentinel alerts in the Rules Feature. There are currently 15 Sentinel rules, which cover two key risk areas, being cash transactions and high risk alerts. The alerts are automated in Sentinel, but the dispositioning and triage process is manual.

Date	Reference[3482]	Description	Details
			Crown anticipated that this would be completed by 30 June 2021.
18 Feb 2021	Exhibit RC418 CRW.512.196.0053 at .0070	Reduction in thresholds for Significant Cash Deposits	Reduction of cash thresholds under the Significant Cash Deposit Policy
17 Feb 2021	Exhibit RC1244 Crown Resorts Board Diligent Pack, 17 February 2021, CRW.507.006.1070 (**Exhibit RC1244)** at .1157 Exhibit RC418 CRW.512.196.0053 at .0079	Daily feeds to ANZ	Engaging with ANZ to obtain direct electronic daily feeds of bank statements in order to automate and facilitate the process of identifying anomalies for AML exception reporting. As of 30 June, testing for daily feeds had commenced for Crown accounts.
22 Feb 2021	Exhibit RC418 CRW.512.196.0053 at .0068	Corporate Policy Statement on Source of Funds	Revision of Corporate Policy Statement on Source of Funds Policy now provides that when a customer reaches certain cash deposit limits on a calendar day at the cage or a gaming location, specific actions must be taken.
12 April 2021	Exhibit RC418 CRW.512.196.0053 at .0079	Digitised UAR process	Digitised UAR process went live to frontline staff via the AML portal. The following components of the digitised process are currently functional: • UAR form; • UAR review and tirage fields; • Investigation report; and • SMR decisioning fields.

Date	Reference[3482]	Description	Details
21 May 2021	Exhibit RC418 CRW.512.196.0053 at .0070 to .0071	Reduction in thresholds for Significant Cash Deposits	Crown implemented a further direction to the Significant Cash Policy to lower the cash deposit thresholds at the cage for Crown Melbourne and Crown Sydney:
Ongoing as of 30 June 2021	Exhibit RC418 CRW.512.196.0053 at .0066	Case management of suspicious transactions	Implementation of a case management system to properly document and process incidents involving the potential for money laundering. This process has been developed to identify and report incidents through the newly created Unusual Activity Reports (**UARs**), which are submitted internally for review by the Financial Crime team. The Financial Crime Team then determines whether to file a suspicious matter report with AUSTRAC and/or to conduct enhanced customer due diligence.
Organisational/structural reforms			
August 2019	Exhibit RC1270 CRL.743.001.0021 at .0027	Increased resourcing of AML team	Creation of a 'Group' AML function.
	Exhibit RC1270 CRL.743.001.0021 at .0027 and .0033		Appointment of a Group General Manager-AML.
As at 20 Oct 2020	Exhibit RC1272 Crown Risk Management Committee Minutes, 20 October 2020, CRW.510.032.0436 at .0440 Exhibit RC418 CRW.512.196.0053 at .0081	Enhanced AML training	Roll out of a revised online AML/CTF "Awareness" training module. As at 23 June 2021: • 11,766 Crown employees (93%) completed; and • 3,345 Crown Melbourne contractors completed.

Date	Reference[3482]	Description	Details
10 Sept 2020	Exhibit RC1273 Second Statement of Antonia Korsanos to the Bergin Inquiry, 13 September 2020, CRL.693.001.0010 at .0013 [43] Exhibit RC1270 CRL.743.001.0021 at .0031	New Compliance and Financial Crime Department	Crown Resorts Board approved the establishment of a new Compliance and Financial Crimes Department independent of business units with direct reporting lines to the Board.
14 Oct 2020	Exhibit RC418 CRW.512.196.0053 at .0089	New POI Group Committee	Introduction of new Persons of Interest (**POI**) Group Committee (became active on 14 October 2020), with a decisioning tool developed and in operation.
19 Oct – 14 Dec 2020	Exhibit RC418 CRW.512.196.0053 at .0061 to .0062 RC437 Statement of Helen Coonan, tendered 8 July 2021, CRW.998.001.0526	Appointments	• 19 October: New Financial Crime Investigations Officer Melbourne • 21 October: New Group Senior Manager Financial Crime – Customer Investigations • 2 November: Nick Stokes, Head of Financial Crime and Group Money Laundering Officer, as AML/CTF Compliance Officer for each of the Crown reporting entities • 21 December: Group Senior Analyst Financial Crime – Customer Investigations; Group Financial Crime Manager – Data Analytics • 4 Jan 2021: two Group Financial Crime Analysts • 11 Jan 2021: Group Senior Manager Financial Crime – Customer Intelligence and Due Diligence
20 Oct 2020	Exhibit RC418 CRW.512.196.0053 at .0082	Employee Due Diligence screening	All internal Crown roles allocated an AML risk category for Employee Due Diligence screening. On 20 Oct 2020, Crown undertook an initial screen of 6,100 employees.

Date	Reference[3482]	Description	Details
As at 9 Nov 2020	Exhibit RC1270 CRL.743.001.0021 at .0031	New Departmental roles	New roles within the Compliance and Financial Crimes Department: • Head of Compliance and Financial Crimes; • Head of Culture and Human Resources; • Head of Internal Audit; and • Head of VIP Operations.
24 Feb 2021	Exhibit RC418 CRW.512.196.0053 at .0058	Executive Appointment	Stephen Blackburn commenced as Chief Compliance and Financial Crime Officer.
8 March 2021	Exhibit RC418 CRW.512.196.0053 at .0082	AML/CTF board training	Delivery of new face-to-face AML/CTF training module to the Boards and senior management of Crown Resorts, Crown Melbourne, Crown Sydney and Crown Perth.
10 May 2021	Exhibit RC418 CRW.512.196.0053 at .0059	Appointment	Jessica Ottner commenced as Group General Manager – Internal Audit. Group General Manager has a functional reporting line to the CFO and direct reporting line to the Audit and Corporate Governance Committee)
24 May 2021	Exhibit RC418 CRW.512.196.0053 at .0063 and .0088 to .0089	Increased resourcing of Financial Crime and Compliance team and high-level financial crimes maturity target	The Board approved a plan presented by Mr Blackburn for the future direction, capabilities and structure of the Financial Crime and Compliance team. The plan authorised: • a targeted future state maturity for financial crime; • an assessment of capability and capacity required to deliver the targeted future state maturity; • an increase in Full Time Equivalent in the team from 56 to 111, with interim resources provided by PwC; • introduction and development of best practice risk assessment and reporting;

Date	Reference[3482]	Description	Details
			• enhanced reporting and oversight regime coupled with a comprehensive approach to assurance and training; • control uplifts to address ML/TF vulnerabilities; • changes to reporting and data analytics capability; • changes to deployment of Crown's surveillance capabilities; and • a roadmap to guide the delivery of the Financial Crime and Compliance Change Program.
15-23 June 2021	Exhibit RC418 CRW.512.196.0053 at .0060 to .0061	Appointments	14 senior positions proposed under the Financial Crime and Compliance Change program were advertised both internally and externally including: • Group Executive General Manager - Financial Crime Risk and MLRO; • Group Executive General Manager - Financial Crime Operations; • Group General Manager – Financial Crime Governance; • Group General Manager – Financial Crime Advisory; • Group General Manager – Financial Crime Intelligence Unit; • Group General Manager – Financial Crime and Compliance Assurance; • Group General Manager – Financial; • Crime and Compliance Solutions; • Group General Manager – Financial Crime Regulatory Strategy • Group Head of Financial Crime and Compliance Change Management and Communications; • Group Head of Financial Crime and Compliance Customer Intelligence and Due Diligence; • Group Head of Financial Crime and Compliance Data Analytics;

Date	Reference[3482]	Description	Details
			• Group Head of Financial Crime and Compliance Assurance; • Group Head of Financial Crime and Compliance Assurance Solutions; • Group Head of Financial Crime Investigations and Screening; and • Group Head of Financial Crime Reporting.
As at June 2021	Exhibit RC418 CRW.512.196.0053 at .0073	AML oversight	Inclusion of AML/CTF as a standing agenda item for: • Crown Melbourne Executive Risk and Compliance Committee; • Crown Resorts Board; and • Crown Resorts Risk Management Committee. Detailed AML/CTF updates were provided to the Crown Resorts Board in Nov 2020 and Feb 2021.
Third Party Reviews			
Target Feb 2021	Exhibit RC1244, CRW.507.006.1070 at .1156	Initialism Review of Joint Program	Completion of Initialism review and refinement of the Joint Program.
22 Feb 2021	Exhibit RC418 CRW.512.196.0053 at .0085	Deloitte Forensic Review	Deloitte engaged by Crown to conduct a forensic review and controls assessment to address the recommendations in the Bergin report. Three phases: • Phase 1 assessed the design and operating effectiveness of Crown's current Patron Account Controls; • Phase 2 will confirm whether there are transactional patterns or behaviours indicative of any money laundering typologies through historic or current Crown patron accounts, the typologies identified in the Grant Thornton and Initialism Reports; and

Date	Reference[2482]	Description	Details
			• Phase 3 will provide comfort to the Crown Resorts Board and Regulators as to whether Crown's broader control framework appropriately mitigates the risk of any transactions similar to those identified in Phase 2 continuing to occur through the Crown's current patron accounts. Phase 1 is complete. Phase 2 and 3 are to be finalised in August to September 2021.
April 2021	Exhibit RC418 CRW.512.196.0053 at .0076 to .0078	Initialism's Draft Report on Crown's transaction monitoring program	Initialism draft transaction monitoring source information review. The review noted that Crown has addressed the recommendations in its April 2019 review.
24 May 2021	Exhibit RC418 CRW.512.196.0053 at .0064	Promontory financial crimes vulnerability report	Promontory's report on 'Phase 1: AML Vulnerability Assessment' finalised. The report will inform the enterprise-wide ML/TF risk assessment. The Financial Crime team has identified proposed controls to address vulnerabilities identified in the report (endorsed by the Crown Resorts Board). Crown proposes to finalise ML/TF risk assessment, methodology and a report to the Board by November 2021.
Ongoing	Exhibit RC418 CRW.512.196.0053 at .0064	Financial Crimes vulnerability assessment	Crown and PwC have established an ML/TF EWRA Design Authority that meets fortnightly.

2 Relationship with CPH

Date	Reference	Description	Details
21 Oct 2020	Exhibit RC418 CRW.512.196.0053 at .0060	Termination of CPH relationship	• Termination of the Controlling Shareholder Protocol. Crown noted that it was also willing to undertake to ILGA that similar arrangements won't be entered into in the future should that be required. • Termination of the Services Agreement.
Feb 2021	Exhibit RC418 CRW.512.196.0053 at .0060	Departures	Resignation of directors from the Board of Crown Resorts: Johnston, Jalland and Poynton.

3 Junkets and Premium Players

Date	Reference	Description	Details
New standards, systems, programs anfd policies			
25 Sept 2020	Exhibit RC1270 CRL.743.001.0021 at .0028 ASX/Media Release	Dealings with Junket Operators	Suspension of all dealings with Junket operators until at least 30 June 2021.

Date	Reference	Description	Details
Oct 2020-ongoing	Exhibit RC1274 Crown Resorts Board Diligent Pack, 21 October 2020, CRW.507.005.4667 at .4703 Exhibit RC418 Crown Resorts CRW.512.196.0053 at .099	Significant Player Review	Significant Player Review of top-end local players to determine whether (i) to continue to deal with the patron; (ii) further investigation is required; or (iii) cease to do business with the patron. Reviews completed for in excess of 1,000 Melbourne customers. Of the customers referred to the Persons of Interest (POI) Group Committee, 47 Withdrawal of Licence (WOL) issued either at the meeting or subsequently for failure to provide sufficient Source of Wealth information. A new workstream (~40 customers) has been initiated to review former international customers now domiciled in Melbourne. These individuals are undergoing reviews similar to the top end locals with 17 now approved as a customer
12 Oct 2020	Exhibit RC1275 Crown Melbourne Standard Operating Procedures – Junket and Premium Player Programs Version 14, 12 October 2020, CRW.510.045.4522	Standard Operating Procedure: Junket and Premium Player Program	Approval of Junket and Premium Player Program Standard Operating Procedure.
17 Nov 2020	Exhibit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 (**Exhibit RC0970**) at .0552 [2] and .0556 [28] ASX/Media Release	Dealings with Junket Operators	Crown announced it would permanently cease dealing with Junket operators, subject to any regulatory licensing or approval arrangements that may be put in place in the future.
17 Dec 2020	Exhibit RC1276 Crown Melbourne Internal Control Statement: Junket and Premium Player Programs,	Internal Control Statement: Junket and	Approval of Junket and Premium Player Program Internal Control Statement.

Date	Reference	Description	Details
	Version 11.0, CRW.514.001.0191	Premium Player Program	
Feb 2021	Exhibit RC1244, CRW.507.006.1070 at 1158 Exhibit RC418 CRW.512.196.0053 at .0101	Credit approval process separated from Premium Player due diligence	Separation of credit decision making process from the Premium Player due diligence and approval process.
	Exhibit RC1224 Letter from Xavier Walsh to Scott May and Cameron Warfe, 5 February 2021, CRW.500.010.0001 at .0003 Exhibit RC418 CRW.512.196.0053 at .0098	Patron Decision Assessment Tool	Development of POI Decision Assessment Tool to manage, quantify and record the risk rating of persons of interest.
18 May 2021	Exhibit RC418 CRW.512.196.0053 at .0098	Dealings with Junket Operators	Each of Crown Resorts and Crown Melbourne confirmed to the Victorian Royal Commission that it: • has ceased dealings with international junket operators; • has ceased dealings with junket tour operators; and • does not intend to deal with international junket operators in the future (whether by staff based in Australia or otherwise).

Date	Reference	Description	Details
Organisational/structural reforms			
Jan 2020	Exhibit RC1270 CRL.743.001.0021 at .0028	Appointment	Crown engaged Stratium Global and Nick Kaldas to drive the development of Crown's risk management processes and relationships and information protocols with law enforcement agencies.
18 August 2020	Exhibit RC418 CRW.512.196.0053 at .0098 to .0099	Oversight of Junket due diligence and POI assessment	Crown Board resolved that the Risk Management Committee is the most appropriate forum for oversight of any Junket due diligence and POI assessment.
14 Oct 2020	Exhibit RC0970, COM.0005.0001.0334 at .0556539 [30]	POI Committee expansion	Expansion of POI Committee as a group-wide committee covering Crown Perth, Crown Melbourne and the Barangaroo Casino, with a decisioning tool developed and in operation.
Third Party Reviews			
10 Sept 2019	Exhibit RC192 FTI Consulting Review of Due Diligence Procedures for Operators and Premium Players Crown Resorts Ltd report, 10 September 2019, FTI.0001.0001.3087	FTI Consulting Draft Report on Junket Operators and Premium Players	• An independent review of the current policies and procedures for conducting due diligence research into existing and new Junket Operators ("Operators") and Premium Players. • Did not consider the suitability and effectiveness of Crown's assessment of the creditworthiness of Operators.
26 Aug 2020	Exhibit RC456 Deloitte Junket Due Diligence and Persons of Interest Process Review, 26	Deloitte Junket Review	Deloitte Junket Due Diligence and Persons of Interest Process Review – final report

Date	Reference	Description	Details
	August 2020, DTT.001.0002.0385		
10 Sept 2020	Exhibit RC418 CRW.512.196.0053 at .0098		Crown Board endorsed a work plan for the implementation of Deloitte's recommendations. The response to recommendations has been de-prioritised given the Board resolution regarding ongoing junket relationships, however other recommendations are still being progressed in the greater context of customer due diligence enhancements.

4 Risk Management

Date	Reference	Description	Details
New standards, systems, programs and policies			
Nov 2018	Exhibit RC418 CRW.512.196.0053	Articulation of Risk Appetite	Crown Resorts Board approved a formal risk appetite.
June 2019	Exhibit RC418, CRW.512.196.0053 at .0090	Risk Management Strategy	Crown Resorts Board approved a risk management strategy (which incorporated the risk appetite statement). Strategy is reviewed annually.
August 2019	Exhibit RC1347 Crown Melbourne Board Diligent Pack, 13 August 2019, CRW.502.002.3535 at .3864	Enterprise Risk Management System	Completed roll out of a standardised Enterprise Risk Management system in Melbourne to collate risk information and facilitate reporting across the Group.

Date	Reference	Description	Details
	Exhibit RC418 CRW.512.196.0053 at .0093		
June 2020	Exhibit RC418 CRW.512.196.0053 at .0090 to .0091	Update to 2019 Risk Management Strategy	Risk management strategy updated to include a section on risk culture.
As at 15 March 2021	Exhibit RC0416 CRW.525.001.1581 at .1628 Exhibit RC418 CRW.512.196.0053 at .0091 to .0092	Risk Reporting	Enhanced risk reporting to the Risk Management Committee (**RMC**). The RMC now receives: • an executive summary of emerging risks around the business; • risk appetite dashboards which report against the seven risk categories in the risk appetite statement; • proposed adjustments to risk profile based on the key events discussed; • an update on material risks; and • a summary of key risk indicators divided into the seven risk categories. Provision of RMC minutes in full to Crown Resorts Board, and the Chair of the RMC provides an update to the Board on key matters considered during the RMC meeting.
Organisational/structural reforms			
July 2018	Exhibit RC418 CRW.512.196.0053 at .0922	Establishment of ERCC	New Executive Risk and Compliance Committee (**ERCC**) established in Melbourne.

Date	Reference	Description	Details
Oct 2020	Exhibit RC418 CRW.512.196.0053 at .0091 to .0092	Risk Governance	Changes to the meeting arrangements of the RMC: • increased frequency of RMC meetings from 2 to 6 per annum; • increased meeting time of three hours for each meeting; and • addition of emerging risk, compliance and AML issues as standing agenda items.
Dec 2020	Exhibit RC418 CRW.512.196.0053 at .0056 to .0057	New Chief Risk Officer role	Creation of new Chief Risk Officer (**CRO**) role reporting directly to the CEO (or equivalent), reporting directly to the CEO of Crown Resorts (or equivalent) with a reporting line to the Risk Management Committee. The CRO is also a member of the Executive Team for each property.
1 July 2019	Exhibit RC0462 Annexure j, Letter from Barry Felstead to Catherine Myers, 1 July 2019, CRW.510.029.1767 at .1768 and .1772 Exhibit RC1270 CRL.743.001.0021 at .0029	Increased resourcing of Risk team	Addition of two Risk Managers and an additional Risk Analyst.
As at June 2021	Exhibit RC418 CRW.512.196.0053 at .0092 to .0093	Coordinating ERCC and RMC meetings	ERCC and RMC meetings now coincide to ensure executives are aware of what is going to the RMC and can ensure that all relevant information for each property is being escalated.
Third Party Reviews			

Date	Reference	Description	Details
June 2019	Exhibit RC418 CRW.512.196.0053 at .0093	Deloitte Report on Crown Risk Management Framework	Deloitte provided its report on Crown Melbourne's Risk Management Framework. All recommendations have been implemented with the exception of one recommendation that proposed a change in name of one of Crown's risk policy documents.

5 Audit and Assurance

Date	Doc ID or Source	Description	Details
Organisational/Structural reform			
Sept 2020	Exhibit RC418 CRW.512.196.0053 at .0056	Organisational restructure	Risk and Internal Audit functions separated and reporting lines elevated.
10 May 2021	Exhibit RC1270 CRL.743.001.0021 at .0029	Appointments	Creation and appointment of new Group General Manager – Risk and Audit role (commenced on 10 May 2021).
Third Party Reviews			
Oct 2020	Exhibit RC418 CRW.512.196.0053 at .0102	Quality Assessment of Internal Audit Department	Crown obtained a Quality Assessment of the Internal Audit Department from the Institute of Internal Auditors Australia. The review concluded that the Crown Internal Audit Department is operating professionally and generally confirms with the Internal Audit Standards.

6 Corporate Governance and Organisational Structure

(a) Governance Restructure and Renewal

Date	Reference	Description	Details
Sept 2020	Exhibit RC418 CRW.512.196.0053 at .0055 to .0056	Centralised governance structure	Crown Resorts Board provided in principle approval for a proposed new centralised governance structure for the Crown group.
Crown Resorts			
24 Jan 2020	Exhibit RC1270 CRL.743.001.0021 at .0029 ASX/Media release	Board Appointment	Appointment of Helen Coonan as Chairman of Crown Resorts.
31 Dec 2020	Exhibit RC1277 Deed of Separation – Joshua Preston and Crown Resorts, December 2020, CRW.709.015.3345	Senior Executive departure	Joshua Preston resigned as Chief Legal Officer of Crown Resorts.
22 Oct 2020-15 Apr 2021	Exhibit RC418 CRW.512.196.0053 at .0053	Board departures	The following individuals have resigned as directors of Crown Resorts: • Oct 2020: Retirement of John Alexander; • 10 Feb 2021: Resignation of Guy Jalland and Michael Johnston; • 12 Feb 2021: Resignation of Andrew Demetriou; • 15 Feb 2021: Resignation of Ken Barton; • 22 Feb 2021: Resignation of Harold Mitchell; • 28 Feb 2021: Resignation of John Poynton; and • 15 April 2021: Resignation of Professor John Horvath.

Date	Reference	Description	Details
15 Feb 2021	Exhibit RC437 Statement of Helen Coonan, CRW.998.001.0526	Board appointment	Appointment of Helen Coonan as Executive Chairman of Crown Resorts.
16 Feb 2021	Exhibit RC1244, CRW.507.006.1070 at .1575 Exhibit RC418 CRW.512.196.0053 at .0057	Separation of General Counsel and Secretary roles	Separation of General Counsel and Company Secretary roles.
17 Feb 2021	Exhibit RC1278 Deed of Separation – Mary Manos and Crown Resorts, 17 February 2021, CRW.512.049.0147	Executive Departures	Departure of Mary Manos as General Counsel and Company Secretary of Crown Resorts.
28 Feb 2021	Exhibit RC1279 Deed of Separation – Ken Barton and Crown Resorts, 14 February 2021, CRW.516.002.2696		Departure of Ken Barton as Chief Executive Officer of Crown Resorts.
11 Mar 2021	Exhibit RC416 Statement of Nick Weeks, tendered 6 July 2021, CRW.998.001.0423 at .0059	Executive Appointment	Nick Weeks commenced as Executive General Manager, Transformation and Regulatory Response.
6 April – 10 May 2021	Exhibit RC418 CRW.512.196.0053 at .0053	Board Appointments	These individuals were appointed as directors of Crown Resorts: • 6 April 2021: Nigel Morrison commenced as an independent director;

Date	Reference	Description	Details
			• 12 April 2021: Bruce Carter (as non-executive director, subject to regulatory approvals); and • 10 May 2021: Steven McCann (as Managing Director).
10 May 2021	ASX/Media Release	Executive Appointments	Appointment of Steve McCann as Chief Executive Officer of Crown Resorts, subject to regulatory approvals.
21 Jun 2021	Exhibit RC418 CRW.512.196.0053 at .0058		Betty Ivanoff commenced as General Counsel of Crown Resorts but will not act in a licenced capacity until regulatory approvals are received.
Crown Melbourne			
1 Jan 2021	Exhibit RC418 CRW.512.196.0053 at .0057	Board Departure	Barry Felstead resigned as director of Crown Melbourne.
	Exhibit RC1348 Crown Melbourne Resolution, n.d., CRW.525.002.8496.	Executive Departure	Joshua Preston resigned as Company Secretary of Crown Melbourne.
12 Feb 2021	Exhibit RC1349 Crown Melbourne Compliance Committee Diligent Pack, 25 May 2021, CRW.510.102.0156 at .0180.	Executive Departure	Andrew Demetriou resigned as Chairman of Crown Melbourne.
15 Feb – 27 Apr 2021	Exhibit RC418 CRW.512.196.0053 at .0054	Board Appointments	The following individuals have been appointed as directors of Crown Melbourne: • 15 Feb 2021: Xavier Walsh;

Date	Reference	Description	Details
	T3725:38-41 (Coonan).		• 16 Feb 2021: Helen Coonan; and • 27 April 2021: Nigel Morrison.

(b) VIP Business Restructure

Date	Reference	General	Details
New standards, systems, programs and policies			
Jan 2021	Exhibit RC418 CRW.512.196.0053 at .0059	Australian-based VIP model	Board approved the transition to an Australian based VIP model, with the closure of all remaining offshore offices, and cessation of employment of overseas domiciled sales team employees.
May 2021	Exhibit RC418 CRW.512.196.0053 Exhibit RC1280 Crown Resorts Board Meeting, 24 May 2021, CRW.512.103.0440 at .0505	Restructure of VIP operational functions	• VIP now operates solely as a Business Development function reporting to CEO of Crown Melbourne. • The remaining operational roles for VIP business have been integrated with existing Crown Melbourne functions (e.g. Finance, Marketing, Business Operations).
Organisational/Structural Reforms			
Apr 2021	Exhibit RC418 CRW.512.196.0053 at .0060	Executive Departures	Departure of VIP Executives Roland Thieler, Jacinta Maguire and Ishan Ratnam from Crown.

Date	Reference	General	Details
	Exhibit RC0409 Letter from the ILGA to Helen Coonan, 1 April 2021, CRW.512.093.0001 at .0009		
Pending	Exhibit RC1244, CRW.507.006.1070 at. 1152	New Head of VIP	New Head of VIP role to be created (on hold given impact of COVID-19 on international travel).
Third Party review			
As at May 2021	Exhibit RC0408 Letter from Helen Coonan to Phillip Crawford, 7 May 2021, CRW.512.077.0101 at .0104 Exhibit RC418 CRW.512.196.0053 at .0059	Risk Assessment Advice	Herbert Smith Freehills has been retained to undertake a risk assessment of certain foreign markets to enable Crown to understand the legal, political and practical implications of marketing to potential customers in those countries.

7 Responsible Service of Gaming

Date	Reference	General	Details
New standards, systems, programs and policies			
Dec 2020	T1236-1237 (Bauer).	Play Period Policy	Play Period Policy: hours were dropped from 24 hours to 18 hours

Date	Reference	General	Details
	Exhibit RC116, Play Periods Policy Version 1.7, December 2020, VCG.0001.0002.8046		
Feb 2021	Exhibit RC109 Statement of Sonja Bauer, 5 May 2021, CRW.998.001.0301 at .0328 [124] T1344:1-6 (Bauer).	Online Self-exclusions process	Introduction of an online self-exclusion process. Ms Bauer noted in her cross examination that uptake by patrons has been small so far.
Feb 2021	Exhibit RC109 Statement of Sonja Bauer, 5 May 2021, CRW.998.001.0301 at .0358 [198](g)	Predictive Data Modelling Tool	Crown re-introduced the Crown Model, a predictive data modelling tool that assists in identifying potential problematic play.
24 May 2021	Exhibit RC418 CRW.512.196.0053 at .0102 Exhibit RC0122, Letter from Allens Linklaters to Solicitors Assisting the Royal Commission, 26 May 2021, CRW.0000.0003.0677 at .0677 to .0680	Responsible Gaming Plan	Crown Resorts Board endorsed a plan to increase operational, clinical, management and report staff for the Responsible Gaming function across Crown's casinos. The plan includes: • the addition of 14.25 Full Time Equivalent roles to Crown's RSG's function (bringing Crown's total FTE in the RSF function to 52.8; a 37% increase in FTE); • Time limits on play at Gaming Machines, Table Games and EGM: o Domestic Players – 12 hours in a 24 hour period with observation/intervention at eight and 10 hours. Customers will not be able to play for more than 48 hours in a week; o International Premium Program Players – staying less than seven days - 18 hours in a 24 hour period with interventions at hours 12, 14 and 16. Players staying for longer than 7 days would align with Domestic Player limits (not applicable to Crown Perth); • Crown support for a state-wide exclusion register;

Date	Reference	General	Details

			• Crown Melbourne ceasing the Bingo program for Crown Rewards members;
			• Crown Melbourne ceasing the 'Red Carpet Program';
			• Recruitment of additional Responsible Gaming Advisors, with priority given to those from culturally and linguistically diverse backgrounds;
			• Cashless:
			  ○ subject to the direction of the respective State governments, Crown intends to move to cashless gaming over time;
			  ○ ATMs will still be placed no closer than 50m from the gaming floor for Crown Melbourne; and
			  ○ Note acceptors will not allow for more than $500 cash to be inserted at any one time for un-carded play;
			• Introduction of marketing controls to ensure direct-to-member offers do not require customers to exceed historical behaviours (spend or visit frequency) for first benefit;
			• Crown Rewards:
			  ○ Crown will replace gaming vouchers on signing up to the Crown Rewards Program with a non-gaming/promotional voucher instead; and
			  ○ Review/Research of the Loyalty Program;
			• Employee incentive plans to consider responsible gambling implications.

Required to be in operation by 1 Jul 2022	T1159:20-42 (Bauer). T1160:25-40 (Bauer). T1161:23-47 (Bauer). T1165:1-23 (Bauer).	Monitoring tool for un-carded play	In her evidence before the Victorian Royal Commission, Sonja Bauer (Group General Manager – Responsible Gaming) stated that: '*we've more recently employed a system that will assist the observation of play periods … to address that issue of persons who are playing un-carded or that we would like to be able to monitor as best we can and interact and observe and intervene as required… We've been working on it for a while and we commenced a trial in the last week or two… [this technology is] part of our ongoing resolution to deal with Recommendation 8(b) of the Sixth Review of the Casino Operator and Licence.*'

Date	Reference	General	Details
Third Party Reviews			
Aug 2020	Exhibit RC109 Annexure d, Responsible Gaming Advisory Panel Review of Crown Resort's Responsible Gaming Programs and Services, August 2020, CRW.526.007.7005	Advisory Panel Review of Responsible Gaming Framework	Final Report from the Responsible Gaming Advisory Panel on Crown Resorts' Responsible Gaming Framework. The terms of reference included a review of current responsible gaming practices, policies and procedures; identification of existing strengths; and the identification of gaps or weakness that required attention. Crown requested that the Panel also consider the recommendations contained in the 2018 Sixth Review of the Casino Operator and Licence.
15 Jun 2021	Exhibit RC418 CRW.512.196.0053 at .0105	Responsible Gaming Advisory Panel	The Crown Resorts Board directed management to engage the Responsible Gaming Advisory Panel to provide advice into aspects of Crown's responsible gaming programs that have been the subject of criticism by the RCCOL.

8 Culture

Date	Reference	General	Details
New standards, systems, programs and policies			
Dec 2020	Exhibit RC418 CRW.512.196.0053 at .0094 to .0095.	Culture Reform Program	Crown Resorts Board endorsed the Cultural Reform Program plan. The Plan is broken into the following key areas: • laying the foundations and tone from the top 2021; • reviewing and refining Crown's strategic intent; • clarifying Crown's Purpose and Values;

Date	Reference	General	Details
			• assessing Crown's current culture; • Assessing the gaps and planning remediation; • implementing a governance structure; • developing and implementing a measurement process; • audit and information sharing; • engaging key stakeholders, including Crown's regulators in relation to the Purposes and Values; and • plan to embed the evolution of the Purpose and Values.
Partially complete	T3405:27-29 (Weeks).	New company-wide values	Roll out of new company-wide values and a culture reform program with a range of initiatives.
Organisational/structural reforms			
Aug-Dec 2020	Exhibit RC1281 Crown Resorts Board Diligent Pack, 10 August 2020, CRW.507.005.2230 at .2245 Exhibit RC1282 Crown Resorts Board Diligent Pack, 9 December 2020, CRW.507.005.7457 at .7516	Senior Accountability	Ken Barton (as the then CEO) met with the top 20 executives.
2020	Exhibit RC418 CRW.512.196.0053 at .0096	Short-term Incentive Structure	Implementation of a revised short-term incentive structure (**STI**) for each member of Crown's key management personnel eligible to receive an STI including deferral and forfeiture in the

Date	Reference	General	Details
			event of any adverse compliance or regulatory events. A deferral and forfeiture structure will be maintained for the new CEO.
7 June 2021	Exhibit RC418 CRW.512.196.0053 at .0059	Executive Appointment	Tony Weston commenced as new Chief People and Culture Officer.
As at Mar 2021	Exhibit RC418 CRW.512.196.0053 at .0097 Exhibit RC449 Crown Presentation to the VCGLR, 23 March 2021, tendered 8 July 2021, VCG.0001.0002.8337 at .8337_0017	Compliance and Risk KPOs	Introduction of mandatory Compliance and Risk KPOs for all salaried staff.
20 Jan 2021	Exhibit RC184 Statement of Victoria Whitaker, 16 April 2021, DTT.0000.0005.0009, PDF p 15 T1915:9-15 (Whitaker).	Deloitte Draft Report	Deloitte submitted a draft report of Phase 1 to Crown, which involved the development of a framework to assess Crown's existing culture and its maturity.
Jun 2021	T3402-T303 (Weeks).	Monitoring implementation of Remediation Plan	Appointment of an independent expert (Kroll) to assess the adequacy and monitor the effectiveness of the Remediation Plan (for ILGA).