



Tuesday 19 June 2018

Ms Catherine Myers
Chief Executive Officer
Victorian Commission for Gambling and Liquor Regulation
Level 3, 12 Shelley Street
RICHMOND VIC 3121

Dear Ms Myers

Sixth Review of the Casino Operator and Licence

I acknowledge receipt of your letter dated 15 June 2018 and its enclosures.

The purpose of this letter is to respond to the proposed revisions to the Executive Summary and Conclusions in the opening section of the draft Sixth Review Report dated 21 May 2018 and to propose specific drafting amendments to the opening section.

We will write to you separately in relation to the revised draft 'China section' and related observations derived from the China investigation and the draft 'Crown China Investigation Summary Report' dated 6 June 2018.

We acknowledge that a number of changes have been made to the content of this section in response to our initial feedback and we appreciate the Commission taking that feedback on board. We further thank the Commission for considering our comments on the recommendations in the draft report and are pleased to advise that Crown will support the amended recommendations.

We nevertheless remain deeply concerned by one central aspect of the commentary contained in this section, being the drawing of general conclusions about our governance, risk management and culture from the disciplinary proceedings in the review period, together with some of the commentary on responsible gambling. We have articulated our concerns under the following headings.

Disciplinary Matters

In the commentary in the 'Suitability' section (page 6) it is said that there have been 'failings in governance and risk management'. Reference is then made to three disciplinary actions raising questions as to the 'existence of a culture conducive to compliance'.

Other parts of the Executive Summary and the draft Sixth Review Report itself suggest that only the last two disciplinary matters raise, in the VCGLR's opinion, questions about the effectiveness of governance and risk arrangements with an underlying common theme of 'insufficient sensitivity to the requirements of the regulatory regime'.

These disciplinary matters must be considered in the context of the entire five year review period and the totality of the Melbourne Casino's operations. In light of the proposed Executive Summary and Conclusions, it appears necessary to make some further comment on these matters, even though we had hoped that both we and the VCGLR could regard them as closed.

The first related to an operational change to Fully-Automated Table Games (**FATGs**) configuration in November 2015. This was done following extensive consultation with the Department of Justice of the Victorian Government which obtained Ministerial clarification of the proposed implementation of the state-wide pre-commitment system (**YourPlay**).



The matter is mentioned in the draft Report (page 103) without any reference to risk management, governance or culture. If any adverse conclusion on these subjects is contemplated, it is incumbent on the VCGLR, as a matter of procedural fairness, to set out the basis for the VCGLR's views and allow Crown an appropriate opportunity to respond, including, if necessary, with input from the Department of Justice.

Are we to take it, however, from the fact that the Executive Summary only refers to the two more recent disciplinary matters that no such conclusions were drawn from the YourPlay episode? That being the case, references to the YourPlay episode should come out of the Executive Summary and Conclusions.

The first of the remaining two matters concerned the VCGLR's 'show cause' notice dated 28 December 2016. That notice alleged 21 breaches relating to documenting of arrangements with junket operators. Of those 21:

- (a) 8 were withdrawn;
- (b) 6 related to poor handwriting (notwithstanding that Crown could specify the content);
- (c) 5 involved failures to list junket players' names on a Junket Agreement Form (notwithstanding that all player names were listed in SYCO, a system which the VCGLR regularly audits, and in three cases a printout of the names was put into the packet with the Agreement, as had been done for the previous three years with no issue being raised by VCGLR audits. Whilst we accept that the information should have been included in the approved form, the failure to include it did not mean the information was lost or unavailable to be reviewed by the VCGLR);
- (d) one related to a failure to list front money of a Junket Agreement Form (notwithstanding that the front money was listed in SYCO and the Settlement Sheet, both of which the VCGLR audits); and
- (e) one concerned a failure to notify the VCGLR of a new junket operator in 2013, which was a result of human error by an employee who was performance managed as a result and no longer works for Crown.

The VCGLR itself described the breaches as 'generally administrative in nature'.

The last of the disciplinary matters concerned a three-week trial of 'blanking plates' on 17 of 2,628 gaming machines which, importantly, did not alter the return to player on the machines. The VCGLR found that the decision to conduct the trial was made by a small group of Crown staff who did not believe that prior VCGLR approval was required. The VCGLR has previously approved the use of blanking plates on many other machines, and not just on a trial basis. Approximately 380 machines currently have approved blanking plates. Moreover, as the VCGLR noted, Crown acted quickly to cease the trial following the complaint and Crown has no history of disciplinary action being taken relating to electronic gaming machines.

Crown takes compliance seriously and has always done so. The above comments should not be taken to suggest otherwise. But it is important to appreciate the context and details of particular disciplinary matters if any general observations are to be made about them. Further, Crown responded to the issues raised by the disciplinary matters in a timely and decisive manner. We refer the Commission to PwC's assessment mentioned below, which makes it clear that the risk framework is well embedded in Crown and appropriate responsive steps were taken.

Extensive scrutiny of casino operations

Crown has been subject to around 1,500 audits by the VCGLR in the review period, and VCGLR inspectors are on site constantly. Crown itself had undertaken approximately 15,000 spot checks and



compliance follow-ups and there have been approximately 17,000 hours of internal and external audit work in the review period. This extensive scrutiny has resulted in a lower level of disciplinary action than in the previous review period, when our commitment to compliance was not questioned.

No basis for the suggestion of cultural compliance issues

It is therefore unfair and unjustified to aggregate the separate disciplinary matters in the review period as suggestive of a cultural issue. The concept of culture involves a whole organisation and its general attitudes and behaviour over a sustained period. In a business the size and complexity of Crown's, some human errors are unfortunately inevitable, but unless there is a significant number of them which are not addressed in a timely and appropriate fashion, they cannot properly be regarded as reflective of the culture of the organisation. With each of the disciplinary matters, Crown has worked hard to rectify any issues and improve on its systems and operating procedures, where appropriate. This is evidenced clearly by the assessment of PwC referred to below.

Crown corporate governance and risk management

Crown prides itself on its relationship with governments and regulators in Australia and overseas. We always endeavour, to the best of our abilities, to meet our regulatory obligations under relevant legislation and in accordance with guidance provided by regulators. Crown has worked hard at all times to ensure that its corporate governance and risk management practices are at the highest level.

We have openly communicated with the VCGLR (through regular meetings with VCGLR management and throughout the s25 Review process) regarding the work being done on our compliance processes and risk management framework to ensure that they are in accordance with best practice in our industry. We are, therefore, dismayed by the suggestions in the Executive Summary that the disciplinary matters constitute 'failures of risk management and governance' or call into question 'the effectiveness of the governance and risk arrangements'.

In our view, there is no basis whatsoever for the final report to state or imply that the isolated and separate disciplinary matters justify questions being raised about our culture, general compliance framework, governance or risk management framework and processes.

The draft report itself does not identify any specific flaw in our risk management or governance processes which justifies the general observations in the Executive Summary. This represents a failure of procedural fairness and risks causing unwarranted damage to Crown's reputation.

The same can be said of the gratuitous comment (on page 3 of the Executive Summary) that Crown's risk management is 'apparently mechanistic in operation'. This is evidently a criticism, but it should be deleted as it is not a fair description of our processes, particularly in light of the very positive assessment of our risk management framework by PricewaterhouseCoopers (**PwC**) (which we understand is to be an annexure to the report, and which was first shown to us late yesterday).

The PwC assessment does not support any adverse comment being made in the Executive Summary about our risk management framework or our compliance culture. It uses measured language to make suggestions for areas of enhancement and maturity, which we endorse.

Responsible gambling

Crown also prides itself on its responsible gambling approach and remains disappointed by some of the commentary in the Executive Summary relating to this subject. In particular, it is said that there has been 'no step-change in Crown's approach to responsible gambling'. This implies that Crown was under some obligation to make a 'step-change', when it was not. As the report itself acknowledges, Crown has made some improvements to its responsible gambling measures during the review period and it will continue to make improvements in the future, without requiring any 'step-change'.



Further, the descriptions of Crown's approach to responsible gambling as 'reactive' and 'self-referenced' are subjective. Crown maintains that it is ahead of its peers when its whole investment in responsible gambling measures is taken into account.

Particular text

Against the background of the above themes, our comments on specific parts of the draft text are as follows:

Text	Reference	Comment
<i>'... a change in strategic direction for Crown Resorts from one of international expansion to a conservative approach focussed on completing major capital projects in Melbourne and Sydney ...'</i>	Page 2, last dot point	The reference to 'conservative' implies that Crown's earlier approach was otherwise. We suggest that the word 'conservative' be deleted.
<i>'Failures of risk management and governance, contributing to compliance slippages domestically and the detention of 19 Crown staff in China in October 2016, and ...'</i>	Page 3, third dot point	There were no failures of risk management and governance which contributed to disciplinary matters. No such failures have been properly articulated or analysed.
<i>'No step-change in Crown's approach to responsible gambling.'</i>	Page 3, fourth dot point	This implies that Crown was under some obligation to make a step-change when it was not, as stated above.
<i>'Well documented, the process is apparently mechanistic in operation ...'</i>	Page 3, line 19	As above, this criticism is vague and unwarranted and should be deleted. It is not supported by the PwC assessment.
<i>'In respect of risk management and governance, the failures are evidenced by two matters where the VCGLR imposed historically significant fines by way of disciplinary action, and in the detention of 19 Crown staff in China in October 2016. The outcomes is that the effectiveness of the governance and risk arrangements in the Review Period must be questioned.'</i>	Page 3, lines 25-29	For the reasons outlined above (and to be outlined in our response to the China investigation), this section is unfair and unjustified.
<i>'Underlying the two matters was insufficient sensitivity to the requirements of the regulatory regime.'</i>	Page 3, lines 33 and 34	This was not an underlying theme of the two disciplinary matters. As stated above, the two matters were separate, in different parts of the organisation, and it is unfair to link them by some supposed 'underlying ... insufficient sensitivity'.
<i>'However, in light of the community's expectations, Crown will need to be innovative and proactive in effectively implementing harm minimisation strategies over the coming period, and will have to demonstrate greater compliance and risk rigour, to ensure that Crown Melbourne is still seen as a suitable licensee in 5 years' time.'</i>	Page 4, lines 20-24	This commentary significantly overreaches the VCGLR's role in this review. It suggests a level of pre-judgement about matters which may be of significance in the course of the seventh review. That is inappropriate, and very likely to be misconstrued by media commentary to say that Crown will not be regarded as a suitable licensee in the seventh review unless it demonstrates greater compliance and risk rigour to the VCGLR's satisfaction. We refer further to the VCGLR's commentary in the Fifth Review Report, informed by legal advice, as to the matters relevant to the assessment of suitability.



Text	Reference	Comment
<p><i>'However, as explored in Part 2, there have been failings in governance and risk management. Three disciplinary actions taken in the Review Period raise questions as to the existence of a culture conducive to compliance. The relative recency of the last disciplinary action means that this is a work in progress, but it is clear that Crown has taken decisive steps to address organisational weaknesses in gambling compliance.'</i></p>	<p>Page 6, lines 32 -37</p>	<p>As stated above, Crown disputes that the disciplinary actions reflect failings in governance and risk management or raise a question about compliance culture or organisational weaknesses in gambling compliance.</p>
<p><i>'In addition, examination of its money laundering compliance, which is primarily regulated by Austrac, confirmed that improvement was called for during the Review Period.'</i></p>	<p>Page 7, lines 23 to 26</p>	<p>This is a gratuitous remark which is not supported by the outcome of Austrac's reviews.</p>
<p><i>'Part 2 discusses the governance questions raised by incidences leading to disciplinary action fines of \$150,000 for non-compliance with junket paperwork requirements and \$300,000 for varying the operation of 17 gaming machines without VCGLR's approval. Part 4 raises the separate issue as to the impact of these matters on the credibility of casino operations because of what they say about compliance. The answer is that the fines and the follow-up action to address procedures are adequately dealt with both the breaches and the impact of those matters on the credibility of operations.'</i></p>	<p>Page 8, lines 13 to 21</p>	<p>Part 2 does not discuss governance questions raised by the disciplinary actions. It merely observes that the matters occurred and there is scope for strengthening governance. The reference to Part 4 seems to be saying that the VCGLR accepts that it is satisfied about the steps Crown has taken to address the disciplinary matters, but the text gives the impression that there is a lingering credibility issue. This whole section should be deleted or substantially redrafted.</p>
<p><i>'However, there is scope for it (Crown Melbourne) to develop a better understanding of and approach to the regulation of its principal business licence, the Casino licence, and its organisational approach to regulation has not generated great success in the Review Period.'</i></p>	<p>Page 10, lines 23 to 25</p>	<p>This is gratuitous and untrue. Crown well understands the licensing regime and the regulation of its business. Its organisational approach has generated substantial compliance with all aspects of suitability as the Sixth Review has concluded.</p>
<p><i>'Confidence that Crown's own assessment of expectations will meet its regulators must be seen in the light of the detention of staff in China during the Review Period and disciplinary actions by the VCGLR.'</i></p>	<p>Page 10, lines 26 to 28</p>	<p>As above and our response to the China investigation.</p>
<p><i>'The withdrawal of pre-commitment facilities on FATGs in 2015 identified an approach under which Crown sought to have a non-compliance situation regularised by a change to the rules, noting that only when it became clear that this would occur was the non-compliance addressed.'</i></p>	<p>Page 10, first dot point</p>	<p>This is not a fair summary of the essence of this matter as outlined above. The matter concerned an operational consequence of the rollout of state-wide pre-commitment requirements.</p>
<p><i>'Responses concerning the failed recording of junket details suggest a view that the holding of the missing data in the casino management system was an effective substitute for compliance, and ...'</i></p>	<p>Page 10, second dot point</p>	<p>Again, this is not a fair precise of Crown's position. The data was not 'missing' because it was otherwise recorded, but Crown has not sought to effectively substitute such recording for compliance with the regulatory form.</p>



Text	Reference	Comment
<i>'Concerning the use of unapproved gaming machine types, the VCGLR found that the relevant staff did not consider it necessary to consult or obtain advice about the legality of what was proposed.'</i>	Page 10, third dot point	Again, this is not a fair summary of the disciplinary matter. As the VCGLR itself said, 'a small group of Crown staff who did not believe that prior VCGLR approval was required' erroneously proceeded with the trial on that basis. As outlined above, human error is inevitable, but it is unfair to suggest that this error, in context, is a symptom of a wider problem.
<i>'Crown has a complex set of institutional governance arrangements which can be seen to operate in a mechanistic way. Despite the directors and senior executives' belief that processes work well, Crown has experienced setbacks during the Review Period.'</i>	Page 11, lines 16 to 19	As above, the 'mechanistic' criticism is unwarranted and should be deleted. It is not supported by the PwC assessment. The reference to 'setbacks', which is presumably a reference to the disciplinary matters, should also be deleted.
<i>'In addition, the disciplinary action concerning the use of unapproved gaming machine types demonstrated that changes of regulatory significance could be made without the awareness of directors and senior executives.'</i>	Page 11, lines 25 to 28	Again, this is not a fair reflection of the context of the blanking buttons trial.
<i>'The VCGLR was satisfied that Crown's institutional governance arrangements operate to ensure that Mr James Packer's 46% controlling interest in Crown Resorts is appropriately exercised. However, management of this matter will require the ongoing engagement of the Chairman and the independent directors.'</i>	Page 11, lines 29 to 33	The 'However' suggests that there is some basis for concern that, without ongoing vigilance, some governance problem may emerge. The second sentence should be deleted, particularly as it is followed by a paragraph saying that enhancements to risk management and compliance has gone some way to addressing 'these concerns'. The concerns can be read to refer to ongoing management of Mr Packer's interest.

We are available to meet with you, Commissioners or VCGLR staff at any time if that would assist in relation to the finalisation of the Review report.

Yours sincerely

Barry Felstead
Chief Executive Officer – Australian Resorts