

IN THE MATTER OF THE *CASINO (MANAGEMENT AGREEMENT)*
ACT 1993 AND THE PAYMENT OF CASINO TAX
ON FREE PLAY VOUCHERS

JOINT MEMORANDUM OF ADVICE

A. Introduction

1. We are asked to advise Crown Melbourne Ltd (Crown) about its liability to pay "casino tax" on "Free Play" vouchers and chips which are distributed by Crown as part of its promotional activities.
2. Crown is the licensed operator of Crown Casino. It was formerly known as Crown Ltd.
3. In our opinion, "Free Play" vouchers and chips ought not to be included in the calculation of Gross Gaming Revenue for the purposes of determining Crown's liability in respect of the payment of casino tax.

B. Casino Tax

4. Crown operates the casino in accordance with the provisions of the *Casino (Management Agreement) Act 1993* (the Management Act). That Act ratifies the Management Agreement for Crown Casino. The effect of ss 6-6I is that the Management Agreement, and the Deeds of Variation thereto, take effect as if they had been enacted by the Management Act. Section 7 of the Management Act provides that if a provision of the Management Agreement is inconsistent with the *Casino Control Act 1991*, the provision of the Management Agreement prevails and the application of the *Casino Control Act 1991*, in relation to the Crown Casino, is modified accordingly.
5. Sections 112A, 113 and 114 of the *Casino Control Act 1991* impose various taxes, charges and levies upon Crown as the operator of Crown Casino. However, these provisions are effectively supplanted by section 11 of the Management Act. Section 11(1) provides that the payments to the State for which provision is made by Part 4 of the Management Agreement are taxes, fees, charges and other payments payable

by Crown in lieu of taxes and levies payable under sections 112A, 113 and 114 of the *Casino Control Act 1991*.

6. Clause 22.1 of the Management Agreement (as varied) provides that while the casino licence remains in force, Crown must pay, among other things, "casino tax" to the State each month. The amount of the casino tax is calculated as a specified percentage of the Gross Gaming Revenue for the month in question.
7. Gross Gaming Revenue is defined in the Management Agreement (as varied) as follows:

Gross Gaming Revenue means 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 of 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.

C. Free Play vouchers and chips

8. "Free Play" vouchers and chips are distributed by Crown as a promotional activity. The vouchers and chips are physical items that entitle the holder to exchange them for chips at a gaming table or at the Cage for chips or cash.¹
9. Those promotional activities are designed to bring attention to various games and to encourage participation in gaming activities. "Free Play" vouchers and chips are issued by Crown to players or potential players at no charge to the players or potential players.
10. The procedure for the use of "Free Play" vouchers is as follows. Free Play vouchers can be presented at a gaming table for chips or presented at the Cage for chips. Free Play vouchers and chips can also be exchanged for cash. Upon presentation of a voucher, chips are handed to the player. Chips can only be used for wagering and remain in play until they are lost by the player.

D. The inclusion of "Free Play" vouchers in Gross Gaming Revenue

11. We are asked whether the face value of "Free Play" vouchers and chips should be included in the calculation of Gross Gaming Revenue for the purposes of determining Crown's liability in respect of the payment of casino tax.

¹ We are briefed with numerous examples of "Table Play Vouchers", "Promotional Coupons" and "Bonus Table Play" vouchers. The conditions of the "Table Play Voucher" include the following: "Present this voucher at any table game. The voucher will be exchanged for cash chips to the value of \$5. No partial redemption."

12. In our opinion, the answer is “no”.
13. “Free Play” vouchers and chips that are issued and subsequently recovered by Crown do not constitute a “sum ... received” in any period by Crown from the conduct or playing of games within the casino. Unlike standard chips, “Free Play” vouchers and chips do not represent a sum of money to Crown. Crown does not receive any sum from the player for the “Free Play” vouchers and chips. That conclusion accords with the ordinary meaning of “revenue” as income that arises in the course of ordinary activities of an entity² and with the definition of that concept in *Statement of Accounting Concepts: Definition and Recognition of the Elements of Financial Statements* (SAC4, 1995). Crown receives no income or inflow or other financial enhancement from the issue of “Free Play” vouchers and chips.
14. While the fact that “Free Play” vouchers and chips may be exchanged for cash makes them more like a negotiable instrument, it is our view that they are not negotiable instruments in the relevant sense envisaged by the Management Agreement. It is necessary to consider the definition of “Gross Gaming Revenue” more closely. The definition is concerned to identify “sums ... received” by Crown from the conduct or playing of games. The express inclusion of cheques and negotiable instruments serves to remove any doubt that sums due to Crown as payee of an instrument must be brought to account. That emphasises, however, that the definition of “Gross Gaming Revenue” is concerned to identify sums received by Crown, including by way of cheques and negotiable instruments, where Crown is the holder (as payee) of the negotiable instrument. Even assuming a “Free Play” voucher is a negotiable instrument, it would be one in which the player (not Crown) is the holder or payee of the negotiable instrument. It remains the case that Crown receives nothing from the negotiable instrument.
15. We are aware that this may lead to a situation in which a player uses chips obtained by redeeming a voucher to play a game and upon winning the game and taking the winnings there will be a deduction in the amount of the winnings made by Crown from Gross Gaming Revenue. This might be thought to be incongruous in that Crown will make a deduction from Gross Gaming Revenue for the winnings without recognising any sums received. We see no incongruity. That is precisely what occurs when Crown issues vouchers at no charge and a player subsequently

² *Chemq Ltd v Shephard Investments International Ltd* (2007) 62 ACSR 359 at [151]-[152] (WASCA).

wins at a game. No doubt if vouchers are issued on a large scale or in large amounts and a large number of players win games it may be an unsustainable business model for Crown, but the revenue effect is as we have identified above.

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NEIL YOUNG
Ninian Stephen Chambers



Ninian Stephen Chambers