

COMMISSIONER: THE HONOURABLE RAY FINKELSTEIN AO QC**IN THE MATTER OF A ROYAL COMMISSION
INTO THE CASINO OPERATOR AND LICENCE****MELBOURNE, VICTORIA****SUBMISSIONS ON BEHALF OF JASON PATRICK O'CONNOR**

- 1 On 3 June 2021, the Commission granted Mr Jason Patrick O'Connor leave to file a witness statement and to make submissions as to what findings, if any, should be made about his conduct.
- 2 On 15 June 2021, Mr O'Connor filed a statement.¹ He was not required to give evidence before the Commission, or cross-examined on his statement.
- 3 These submissions are filed in relation to what findings ought be made in relation to Mr O'Connor. To that end, Mr O'Connor respectfully submits that:
- (a) the Commission ought not make any finding that Mr O'Connor lied, or was untruthful, to Mr Timothy Bryant, Team Leader (Investigations) in the Compliance Division of the Victorian Commission for Gambling and Liquor Regulation (the **VCGLR**) in his interview on 8 March 2018; and
 - (b) there are no other matters upon which findings are open to the Commission in relation to Mr O'Connor personally.²
- 4 Mr O'Connor has, since February 2019, been employed by Crown Melbourne Limited, a subsidiary of Crown Resorts Limited (**Crown**) as Director – Innovation and Strategy.³
- 5 Mr O'Connor was the Executive General Manager of VIP International, and then Group Executive General Manager of VIP International, at Crown from 2011 until about 13 October 2016.⁴ From May 2013, Mr O'Connor reported directly to Mr Barry Felstead, who was then the Chief Executive Officer of Crown Perth, and later, Chief Executive Officer – Australian Resorts.⁵
- 6 On 13 October 2016, Mr O'Connor was detained by Chinese authorities.⁶ He was detained until 13 August 2017, and was convicted by the Shanghai Baoshan District

1 Witness Statement of Jason Patrick O'Connor dated 15 June 2021 (**Statement**) JOC.0000.0005.0001.

2 See further, paragraph 20 below.

3 Statement at [1], [8].

4 Statement at [7].

5 Statement at [9].

6 Statement at [8].

People’s Court of the People’s Republic of China of the crime of gambling.⁷ His detention in China was harrowing and traumatic.⁸

7 On his return from China in August 2017, he did not return to work at Crown immediately. He was given leave as he required significant time to recover from his experience of being detained in China. As it transpired, he was on leave from August 2017 until February 2019.⁹

8 Soon after he returned from China, but he cannot precisely recall when, Mr Joshua Preston, then Crown’s Chief Legal Officer – Australian Resorts, informed him that the VCGLR wanted him to attend their offices to discuss with him the circumstances surrounding his arrest in China. MinterEllison was engaged by Crown and also acted for Mr O’Connor and he met with either Mr Richard Murphy or his colleagues before the VCGLR interview. Mr O’Connor has no recollection of those meetings and he has only been able to confirm that any took place by having regard to his personal Google Calendar at around this time.¹⁰

9 While the VCGLR wanted to meet with Mr O’Connor as early as October 2017, he did not feel ready to do so. He recalls Mr Preston suggesting a deferral and offering to speak with the VCGLR to delay the discussion. His understanding is that the VCGLR then agreed to defer the meeting.¹¹

10 At the time of the VCGLR interview on 8 March 2018:¹²

(a) Mr O’Connor had returned to Australia in August 2017 after being detained in China for a period of ten months. This had been an emotionally traumatic period in his life.

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

7 Statement at [45]-[46].

8 Statement at [41].

9 Statement at [22](f), [47].

10 Statement at [12].

11 Statement at [13].

12 Statement at [22].

- (f) Mr O'Connor had not yet returned to work, and at that point had no reason to turn his mind to work related matters. Crown was allowing him the time and space that he needed to attend to his recovery.
- (g) It was the first time he had been asked to re-visit many events which he had spent time trying to push out of his memory since his return to Australia.

11 It is against that background that the evidence given by Mr O'Connor on 8 March 2018 ought be considered.

12 Mr O'Connor was open and truthful in the VCGLR interview, answering each question that was asked of him to the best of his ability.

13 At paragraphs 3.68, 3.72-3.76 of Section 4, Counsel Assisting identified various matters in respect of which Mr Bryant considered that Mr O'Connor had not been truthful or forthright. As to each of them:

- (a) It is right that Mr O'Connor did not concede in his interview with Mr Bryant that there had been a crackdown in China on overseas-based casinos trying to attract gamblers. But there is no reason to doubt the truthfulness of his evidence at the time. Frankly, Mr O'Connor explained in his evidence before this Commission that:¹³

My understanding of the announcement made in February 2015 was that it was part of the Chinese government's long-running anti-corruption campaign against Chinese citizens, including casino customers. While my understanding of the focus of the anti-corruption campaign at that time was genuinely held at the time, subsequent events have shown that my understanding was mistaken. I now accept, as my evidence to ILGA demonstrated, that the crackdown at that time was targeting the casino industry itself, rather than customers of those casinos.

- (b) As to the Reuters article,¹⁴ Mr O'Connor was asked to comment on it by Mr Bryant,¹⁵ which he did.¹⁶ Mr O'Connor had no recollection of it at the time of it being put to him at the VCGLR interview. He did, however, as he went on to explain during the VCGLR interview, have a recollection of the events that the article was describing and he provided his interpretation of those events.
- (c) As to the 2015 Incident and the letter to police, Mr O'Connor's evidence was that he had a vague recollection of those events.
- (d) Mr O'Connor was not a recipient of the email referred to at paragraph 3.75.¹⁷

¹³ Statement at [36].

¹⁴ Counsel Assisting's Closing Submissions dated 20 July 2021 (**Closing Submissions**): COM.0500.0001.0380 at .0428 [3.68(b)], .0428-.0429 [3.72]-[3.73], .0429 [3.76].

¹⁵ Exhibit RC0001w, VCGLR Transcript of Interview (O'Connor), 8 March 2018: VCG.0002.0011.0001 at .0005. See also, Statement at [33].

¹⁶ Exhibit RC0001w, VCGLR Transcript of Interview (O'Connor), 8 March 2018: VCG.0002.0011.0001 at .0005. See also, Statement at [33].

¹⁷ Closing Submissions: COM.0500.0001.0380 at .0429, [3.75]. Email chain dated 8 February 2015 from Ms Jessica Liu, Crown China sales employee, to Mr Alfreed Gomez, Executive Vice President China

- 14 There is no reason for Mr O'Connor to be criticised for his evidence in respect of these matters. He had just returned from China and, by reason of his fragile mental state, had not even returned to work (and did not do so for almost another year). He had not prepared for the interview in any meaningful way.¹⁸ The answers he gave were truthful, and reflected his recollection of the relevant events. To say, as Mr Bryant appears to suggest, that Mr O'Connor was aware of the level of risk to which Crown staff, and he personally, were exposed, yet that Mr O'Connor allowed himself to travel to China, and thereby expose himself to the risk that ultimately materialised in the form of his detention, beggars belief. That being so, it is clear that Mr O'Connor was truthful in his evidence, when he explained what he understood to be the nature of the crackdown in China. The fact that he was mistaken does not mean that what he said at the VCGLR interview was a lie, or otherwise untruthful in any way.
- 15 Of course, no criticism can be made of Mr O'Connor for any failure to produce documents.¹⁹ He did not even return to work until February 2019.
- 16 Mr O'Connor's unchallenged evidence is that, having reviewed documents after the VCGLR interview, in the context of preparing his statement for a class action involving Crown²⁰ and preparing for his appearance at the Independent Liquor and Gaming Inquiry (the **ILGA Inquiry**), Mr O'Connor indeed learned that he had been party to an email chain with that Reuters article included, and that some analysis, advices and discussions occurred in relation to the article and the events it described. These matters were subsequently explored in his evidence during the ILGA Inquiry. It is not appropriate, let alone permissible,²¹ to now look at Mr O'Connor's evidence before the VCGLR – two years earlier – through a prism of the many times that Mr O'Connor has prepared for, and given, evidence about such matters.
- 17 Indeed, Counsel Assisting point, frankly, to the fact that Mr Bryant's evidence was that, "in hindsight",²² now that he has access to all the documents he considered that Mr O'Connor was lying. But it is that very hindsight which ought not be used to found the making of a very serious allegation against Mr O'Connor – namely that he lied in an interview with a regulator. That finding ought not be made, having regard to the matters set out above.
- 18 As to the conduct of the VCGLR's investigation, Mr O'Connor was, unfortunately, not afforded an opportunity to explain any of these matters to Mr Bryant, or to the VCGLR in a further interview. Mr Bryant, having specifically considered whether to re-interview Mr O'Connor, declined to do so or even to write to him in relation to those

Crown Resorts, referred to in Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021: VCG.9999.0001.0002 at .0023-.0024, [67].

¹⁸ Where Mr O'Connor's interview was conducted before he had even returned to work, Mr Bryant's evidence that Mr O'Connor, through Crown, could have had access to all of the documents for the purposes of the VCGLR interview ought not be accepted as correct: T73.19-23 (Bryant).

¹⁹ cf. Closing Submissions: COM.0500.0001.0380 at .0428 [3.70].

²⁰ Statement at [24]-[27]. Mr O'Connor's statement dated 17 December 2019 VCG.0002.0046.0002 at 0119 was ultimately filed in Proceeding No. VID1317/2017 in the Federal Court of Australia. That proceeding remains pending in that Court.

²¹ As to the effect of hindsight bias in analysing such matters, see, for example, *Rosenberg v Percival* (2001) 205 CLR 434 at 441-442 [16]; *Commissioner of Main Roads v Jones* (2005) 79 ALJR 1104 at 1106 [5]. See also, R Finkelstein "Decision-making in a Vacuum" (2003) 29(1) *Monash University Law Review* 12, 24-25.

²² Closing Submissions: COM.0500.0001.0380 at .0431 [3.93].

matters.²³ Particularly having regard to the circumstances that Mr O'Connor faced – that is, him being on leave and having just returned from his detention in China – and that Mr Bryant considered Mr O'Connor's evidence over two years later to the ILGA Inquiry as a basis for the serious allegations now made, it might be said that not re-engaging with Mr O'Connor was procedurally unfair. At the very least, it was an unfortunate oversight that Mr O'Connor was not given the opportunity to explain these matters. To that end, Mr O'Connor's position was (plainly) different to Mr Felstead, and any finding made in respect of Mr Felstead cannot, and should not, be applied to Mr O'Connor.

- 19 In any case, for all of these reasons, to the extent that it be necessary to make a finding as to Mr O'Connor's evidence before the VCGLR, the Commission ought not make any finding that Mr O'Connor lied, or was untruthful, in his interview on 8 March 2018.
- 20 There are no other matters upon which it is open to make findings in respect of Mr O'Connor personally. Insofar as Mr O'Connor is mentioned in Counsel Assisting's Closing Submissions:
- (a) in relation to "reciprocal transfer allegations",²⁴ it notes that the 1 June 2021 legal advice recorded that he "would not rule ... out" the occurrence of the "reciprocal transfer allegations", but no adverse, or other, findings are sought against him; and
 - (b) in relation to the China Union Pay issue,²⁵ it notes that he was the recipient of various emails in relation to the issue in August and September 2012, but, again, no adverse, or other, findings are sought against him.
- 21 It bears emphasis that the 1 June 2021 legal advice described Mr O'Connor as an "honest and relatively straightforward interviewee"²⁶ and that he "was likely to have received the message that the CUP process was lawful".²⁷

Dated: 2 August 2021.

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²³ T82.1-24 (Bryant). See also, T75.5-17 (Bryant). See also, Closing Submissions: COM.0500.0001.0380 at .0431 [3.92].

²⁴ Closing Submissions: COM.0500.0001.0380 at .0529, [7.4](c).

²⁵ Closing Submissions: COM.0500.0001.0380 at .0697, fns 2409 and 2410.

²⁶ Exhibit RC0268, Final memorandum of Advice-Crown Resorts, CUP process and transfers by associates of customers - 1 June 2021: CRW.900.002.0001 at .0064, [261]. See also, .0067 [271].

²⁷ Exhibit RC0268, Final memorandum of Advice-Crown Resorts, CUP process and transfers by associates of customers - 1 June 2021: CRW.900.002.0001 at .0067 [271].