

Royal Commission into the Casino Operator and Licence

Submissions of Xavier Walsh in Reply

2 August 2021

Introduction

- 1 These submissions are made on behalf of Xavier Walsh in response to the written submissions of Counsel Assisting the Commission provided on 20 July 2021.
- 2 Mr Walsh will be leaving Crown on 20 August 2021 on terms that he is presently discussing with Crown. Accordingly, he will not be an associate of Crown when the Commission provides its final report. In those circumstances Mr Walsh submits that the Commission need not and ought not make any findings in respect of his suitability as an associate of Crown Melbourne.
- 3 Notwithstanding the above, Mr Walsh adopts Crown's submissions to the effect that no adverse findings should be made in respect of him and wishes to bring additional matters set out below to the attention of the Commission in support of that submission.

Anti-money laundering: Southbank and Riverbank accounts

- 4 Counsel Assisting have submitted that Mr Walsh's response to the risk of money laundering through bank accounts in the names of Southbank Investments Pty Ltd (**Southbank**) and Riverbank Investments Pty Ltd (**Riverbank**) "gives cause for concern" and shows "at the very least a naïve or laissez faire approach to the high risk of a casino being exploited for money laundering purposes."¹ Further, Counsel Assisting submit that these matters bear upon Mr Walsh's "integrity" and have the consequence that it is open to this Commission to find that Mr Walsh is not a suitable associate.²
- 5 Mr Walsh does not resile from the concession he made in evidence that he should have caused the emails that Travis Costin (Group Finance & Treasury Manager Crown Resorts) sent to him and others on 22 January 2019 about the closure of

¹ COM.0500.0001.0001 Closing submissions of counsel assisting the Commission at .0656 [4.13] and .0657 [4.16].

² COM.0500.0001.0001 Closing submissions of counsel assisting the Commission at .0661 [4.47].

Southbank's accounts by ASB and ANZ to be escalated,³ and that it was a failure on his part not to do so.⁴ However, that acknowledged failure has not been fairly characterised in Counsel Assisting's submissions. In particular, the implication by Counsel Assisting that Mr Walsh was indifferent to the likelihood that structuring was occurring in the Southbank and Riverbank accounts in a way that impugns his integrity is not premised on an accurate and complete analysis of the evidence before this Commission.

6 The passages of particular concern in Counsel Assisting's submissions are as follows:

- (a) [4.9], which refers to concerns raised by Crown's bankers with Mr Costin about suspicious transactions in the Southbank and Riverbank accounts;
- (b) [4.10], which refers to Mr Walsh's role as a member of the senior management team between 2014 and 2019, and his responsibilities in relation to risk from November 2018; and
- (c) [4.11], which states:

In January 2019, ASB notified Mr Costin that it proposed to close Southbank's bank accounts based on concerns that the accounts were being used for money laundering. Mr Walsh's first reaction was not to raise concern about the possible use of the accounts for money laundering purposes but instead was to query whether or not an account could be set up with a different bank. The Bergin Report noted the fact that this matter had not been brought to the attention of Crown's Risk Management Committee or the Crown Melbourne Board by senior management, which included Mr Walsh.

7 The question of what other officers of Crown (including Mr Costin) knew between 2014 and 2019 about the risk of money laundering is not relevant to an assessment of *Mr Walsh's* integrity. A proper analysis of the nature of Mr Walsh's failure to escalate the closure of Southbank's bank accounts by ASB and ANZ, and the inferences that might be drawn from that failure about his integrity, must centre on what *Mr Walsh* knew, and what it was open to him to do in the light of that knowledge.

8 In that regard, insofar as [4.9]-[4.10] of Counsel Assisting's submissions imply that Mr Walsh was aware of specific concerns raised by Crown's bankers about structuring

³ T3294:35-38 (X Walsh). The initial email of 22 January 2019 referred to the closure of Southbank's ASB account in New Zealand, and a second email of the same date referred to ANZ having previously closed Southbank's accounts in Australia.

⁴ T3294.19-44 (X Walsh).

in accounts held by Southbank and Riverbank, but chose to ignore those concerns, that should be rejected. Properly analysed, all that Mr Walsh knew by 22 January 2019 was that ANZ and ASB had decided to close the Southbank accounts because the continued provision of banking services through those accounts was outside their risk appetite, having regard to anti-money laundering legislation. Mr Walsh did not know (as others in Crown apparently did) that ANZ, CBA and ASB were concerned that money laundering was *in fact* occurring through the accounts.

9 Mr Walsh accepts that ASB's decision on 22 January 2019 to close the Southbank's New Zealand account (and the subsequent email from Mr Coston disclosing the previous closure of Southbank's accounts by ANZ) should have been escalated by him, even if he did not know of ASB and ANZ's specific concerns about those accounts. However, it is respectfully submitted that that failure, having regard to what Mr Walsh knew at the relevant time, and Mr Walsh's understanding of the role of others at Crown in dealing with anti-money laundering issues and Crown's relationship with its banks, does not speak to Mr Walsh "integrity" in the manner suggested by Counsel Assisting.

10 The following matters are relevant.

11 **First**, the Southbank and Riverbank accounts were established many years before Mr Walsh joined Crown. Those accounts served a legitimate purpose: to afford gamblers privacy about the use of their funds (ie, the accounts allowed them to transfer funds to Crown for gambling purposes, without Crown's name appearing on their bank statements).⁵ The Office of Gambling Regulation in Victoria advised Crown that it had no objection "in principle" to international patrons making deposits to Crown Melbourne through the Southbank account to afford those patrons privacy.⁶ It was not necessary to obtain the WA regulator's approval for the use of the Riverbank account although the bank account details were provided to the regulator.⁷ Thus, there mere existence of the Southbank and Riverbank accounts, and the use of them by patrons for gambling, was not indicative of illegality.

12 **Secondly**, Mr Walsh joined Crown Melbourne as its Chief Operating Officer in October 2013 and remained in that position until December 2020 (when he was appointed Crown Melbourne's Chief Executive Officer). Mr Walsh's responsibilities

⁵ T3292.6-19 (X Walsh).

⁶ Bergin Report, p 207 [17].

⁷ Bergin Report, p 208 [21].

as Chief Operating Officer included gaming operations being tables and machines, primarily local Melbourne customers and some interstate; security and surveillance, maintenance and cleaning.⁸ Mr Walsh did not have responsibility for the operation of the Southbank and Riverbank accounts. The operation of the Southbank and Riverbank accounts was handled by Crown's Corporate Finance team, not Mr Walsh.⁹ Further, the Riverbank account relates to Crown Perth, not Crown Melbourne.

13 **Thirdly**, although Counsel Assisting correctly observes that the Bergin Report concluded that various red flags had been raised between 2014 and 2019 concerning indications of money laundering through the Southbank and Riverbank bank accounts, there is no suggestion in the Bergin Report, or in the evidence before this Commission, that Mr Walsh was aware of those red flags. The issues raised by Crown's bankers were dealt with by Michael Neilson (General Counsel of Crown), Debra Tegoni (Legal Officer and AML Compliance Officer for Crown Melbourne), Joshua Preston (Legal Officer and AML Compliance Officer for Crown Perth), Louise Lane (Group General Manager of AML), Ken Barton (as his role as Chief Financial Officer, Crown Resorts) and Mr Costin.¹⁰ There is no suggestion in the Bergin Report, or in the evidence in this Commission, that any of those individuals informed Mr Walsh of the specific concerns raised by Crown's bankers about money laundering in the Southbank and Riverbank accounts.

14 **Fourth**, on 22 January 2019, ASB sent a letter to Mr Costin stating that it proposed to close Southbank's New Zealand bank account. Mr Costin forwarded that letter to Mr Walsh and others on the same day. The submission made by Counsel Assisting at [4.11] that "Mr Walsh's first reaction was not to raise concern about the possible use of the accounts for money laundering purposes but instead was to query whether or not an account could be set up with a different bank", with the apparent implication that Mr Walsh deliberately ignored a "red flag" in a way that impugns his integrity, does not have fair regard to:

- (a) the actual contents of ASB's letter and subsequent emails sent by Mr Costin to Mr Walsh;
- (b) the circumstances in which Mr Walsh received those emails; and

⁸ See First Statement of Xavier Walsh CRW.998.0001.0001 at .0002 [9].

⁹ T3285.3-10 (X Walsh).

¹⁰ Bergin Report, Part 3, p 210-221.

(c) the reason for Mr Walsh being sent a copy of ASB's letter of 22 January 2019 in the first place.

15 ASB's letter of 22 January 2019 was attached to Mr Costin's email to Mr Walsh of the same day. Mr Costin's email to Mr Walsh disclosed no more than that ASB had decided to close its Southbank account in New Zealand. Mr Walsh apparently received Mr Costin's email on his iPhone.¹¹ Further, there was nothing in Mr Costin's email which itself flagged that the attached letter from ASB needed to be reviewed, nor did Mr Walsh have responsibility for the operation of Crown's bank accounts in any event. Accordingly, Mr Walsh's receipt of ASB's letter clearly did not occur in the same forensic environment as that in which the letter is being considered by this Commission.

16 Further, even a close review of ASB's letter to Mr Costin dated 22 January 2019 does not suggest that it is likely that Southbank's New Zealand account was being used for money laundering. The letter stated as follows¹²

We have recently conducted a review of our banking services for SOUTHBANK INVESTMENTS PTY LTD and; unfortunately I need to provide notice that ASB will not be able to continue providing any banking services to SOUTHBANK INVESTMENTS PTY LTD beyond 8th March 2019.

*Our review considered a number of factors including the type of business and the information provided by you. Unfortunately, ASB has determined that the continued provision of banking services to SOUTHBANK INVETSMENTS [sic] PTY LTD **is outside of its risk appetite.***

Please arrange to close and move all banking facilities held by SOUTHBANK INVESTMENTS PTY LTD with ASB to an alternative financial services provider by 8th March 2019. If this is not completed we will close all such accounts effective 8th March 2019 and send you a bank cheque for remaining funds (if any) to the address held on file.

The decision has been made in conjunction with ASB's obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and in accordance with the applicable terms and conditions; specifically section 10 of the Business, Rural and Corporate Banking Terms and Conditions which can be found on ASB's website.

17 The specific issues that ASB raised with Mr Costin about the use of the account¹³ are not referred to in the letter of 22 January 2019 and were not otherwise disclosed by

¹¹ See the email in response from Mr Walsh dated 22 January 2019 CRL.605.016.6009.

¹² CRL.605.015.7834 [Bold emphasis added].

¹³ Letter dated 11 July 2018 from ASB to Crown (referred to in the Bergin Report, Part 3, p 216); letter dated 2 November 2018 from ASB to Crown (Bergin Report, Part 3, p 218); letter dated 10 December 2018 from CBA to Crown (Bergin Report, Part 3, p 220).

Mr Costin to Mr Walsh. The letter of 22 January 2019 suggests that ASB is closing Southbank's New Zealand account because its operation was outside ASB's "risk appetite", being a general risk associated with an account of that nature, rather than a concern about specific transactions in the Southbank account, or because of a perceived deficiency in Crown's anti-money laundering program.

- 18 That impression was confirmed by subsequent emails Mr Costin sent to Mr Walsh. On 22 January 2019, after Mr Walsh asked whether another account could be set up, Mr Costin wrote to Mr Walsh in the following terms:¹⁴

Hi Xavier

I can take a look for you and let you know but I would think it is unlikely with the brief look at banks that operate in New Zealand. ANZ have already shut down our Southbank Investment accounts in Australia due to AML concerns (hence the switch to CBA in Australia), the Chinese, European and US banks won't go anywhere patron accounts, which really only leaves us with Westpac and Bank of New Zealand (owned by NAB)

***Given the royal commission the banks have become incredibly risk averse** (Louise and I are meeting with CBA on Thursday to provide our relationship manager with some background to try and make sure they don't close our Australian accounts). Happy to have a chat with NAB and Westpac to see what they think but I would be hesitant to promise anything*

Trav

- 19 Mr Costin again wrote to Mr Walsh on 5 February 2019 in the following terms:¹⁵

Hi Xavier

*I have had a discussion with NAB on Friday and Westpac today on the likelihood of having a new account open in New Zealand and the feedback I have received is that **neither of the banks would have the appetite to open new patron deposit accounts in New Zealand for Crown.***

*NAB was a flat no, Westpac will ask internally but said it was **not very likely in the current environment that there would be the risk appetite for these sort of accounts.** If anything comes from Westpac I will let you know but for now we should operate as if we won't have NZD onshore accounts from now on*

Trav

- 20 Again, each of these emails conveyed the impression that Crown's bankers (and prospective bankers) did not consider the return on providing banking services on gambling patron accounts to be worth the risks associated with accounts of that

¹⁴ CRL.605.016.6009 [Bold emphasis added].

¹⁵ CRL.605.016.6009 [Bold emphasis added].

nature, rather than there being a specific concern about transactions in the Southbank account or Crown's anti-money laundering program. To the extent that Mr Costin (and others at Crown) understood otherwise, there is no suggestion that they shared that knowledge with Mr Walsh.

21 Further, Mr Walsh explained that the ASB account was in New Zealand, and his responsibilities for domestic gaming included New Zealand. Thus, the closure of the account would affect customers for which Mr Walsh had responsibility.¹⁶ The fact that Mr Costin sent the email of 22 January 2019 to Mr Walsh does not, therefore, suggest an understanding between Mr Costin and Mr Walsh that Mr Walsh was to involve himself in the transactions in the Southbank account more generally. Mr Walsh was being copied into the emails for operational reasons, rather than because he was involved in the relationship between Crown and its bankers.

22 **Fifthly**, ASB's letter dated 22 January 2019 related to *Southbank's* account in New Zealand. The letter did not address *Riverbank's* patron gambling accounts (Riverbank being an account established for the use of gamblers in Western Australia). Therefore, the suggestion made by Counsel Assisting that Mr Walsh's response to ASB's letter dated 22 January 2019 is probative of Mr Walsh's attitude towards the risk of money laundering through *Riverbank's* accounts¹⁷ is, on any view, misplaced.

23 **Sixthly**, it is unclear what the response might have been, had Mr Walsh asked for more detail about why Southbank's ASB account in New Zealand had been closed. In that context, it is relevant to recall that when media allegations were made in July 2019, including as to the likelihood of money laundering through Crown's accounts, Crown's board issued a strongly worded media release denying those allegations, based on a report prepared with the involvement of Mr Felstead and Mr Preston. In that regard, Commissioner Bergin observed:¹⁸

The substance of this General Commentary was that the allegations that Crown flouted the law in China were incorrect; that it was misleading to characterise Junket operators as Crown's business partners; that Crown had comprehensive anti-money laundering programs supervised by AUSTRAC; and whenever Crown became aware of potentially unlawful conduct it communicated its concerns to the relevant regulator."

¹⁶ T3289.15-25 (X Walsh).

¹⁷ COM.0500.0001.0001 Closing submissions of counsel assisting the Commission at .0656 [4.13].

¹⁸ Bergin Report, Part 3, p 198-199.

“Much of the information that was provided to the Crown Board by Mr Felstead and Mr Preston with Mr Murphy’s endorsement led the Crown directors into thinking that it was the subject of a deceitful campaign by the media in which false allegations had been made against it.

- 24 Against that background, there may have been real practical difficulties in Mr Walsh pursuing details about the closure of Southbank’s ASB account in New Zealand, whether in the Crown Melbourne’s Executive Risk and Compliance Committee (**ER&C Committee**) or otherwise, in circumstances where even Crown’s board had not been provided with accurate information about the risk of money laundering when the matter was directly raised by the media.
- 25 The six matters set out above are not put before the Commission to diminish Mr Walsh’s acknowledgment that it was a failure on his part not to escalate the fact of closure of Southbank’s accounts when that came to his attention on 22 January 2019. Mr Walsh accepts that as a member of the ER&C Committee, he should have raised the closure of the accounts with the other members of the ER&C Committee. He should have sought more information about the reasons for the closures. It was a failure by Mr Walsh not to do so. It was a failure notwithstanding that: Mr Walsh was unaware of the existence of suspicious transactions in any of Southbank’s accounts; he was unaware of any deficiency in Crown’s anti-money laundering program as applied to those accounts; and members of the ER&C Committee included persons who were directly responsible for Crown’s relationship with its banks and the application of Crown’s anti-money laundering program.¹⁹
- 26 Mr Walsh’s concern, however, is that having been candid with the Commission, his evidence has been mischaracterised. In particular, his evidence has not been understood (as it should be) as suggesting he has learned from a misjudgement; rather, it has been unfairly deployed as being a matter that evidences his lack of integrity, in the sense that he has been dishonest or has shown such a deficiency in character that it “precludes the identification of action that could be undertaken for future suitability.”²⁰
- 27 That finding suggested by Counsel Assisting is most serious. It would have grave personal and professional implications for Mr Walsh. Accordingly, such a finding would require:

¹⁹ See the attendees at the Committee meetings of 21 May 2019 CRL.639.001.0140 and 30 July 2019 CRL.639.001.0148. Those attendees included Mr Preston, Mr Felstead, Mr Barton and Ms Manos.

²⁰ COM.0500.0001.0001 Closing submissions of counsel assisting the Commission at .0661 [4.47].

- (a) a clear, comprehensive, and accurate analysis of Mr Walsh's failing, based on a complete review of all relevant evidence; and
- (b) a clear nexus between that failing and Mr Walsh's likely future conduct in relation to compliance with Crown's legal obligations.

28 It is respectfully submitted that Counsel assisting's submissions do not contain that clear, comprehensive, and accurate analysis. The failing that Mr Walsh has admitted does not suggest that Mr Walsh knew of likely criminal conduct and decided to ignore it. Mr Walsh's failure to not ask further questions or to raise the emails at the ER&C Committee was an error of judgement, which Mr Walsh has acknowledged, but not one that speaks to his integrity.

29 Further, Mr Walsh's acknowledgment of his failing to escalate the closure of the accounts suggests an awareness by Mr Walsh that a mistake had been made, that he has reflected on how matters should have been dealt with more appropriately, and that it is therefore unlikely that such a failure will occur again. In that regard, Mr Walsh adopts the submissions of Crown in Section C of its submissions, and in particular, the references to the evidence of Ms Whitaker and Ms Arzadon to the effect that self-reflection and ownership of problems are important factors driving cultural change.

Anti-money laundering: Mr Chau's request to transfer funds

30 At [4.14]-[4.16], Counsel Assisting submits that an email sent by Mr Walsh on 12 November 2020 concerning Alvin Chau's request for a transfer of funds from the Star Casino to Crown shows "at the very least a naïve or laissez faire approach to the high risk of a casino being exploited for money laundering purposes."

31 Mr Walsh respectfully submits that that submission should not be accepted, for the reasons set out in Annexure C.2 of Crown's submissions. In addition, it should be noted that Counsel Assisting have misquoted Mr Walsh's email in a way that gives it a different character to the email that he in fact sent.

32 Counsel Assisting submit at [4.14] that Mr Walsh wrote (underlining added):

Given the money has come from the Star and the Star email says the money has come from China ... I would have thought we can accept payment

33 Framed in that way, the email appears to be an assertion by Mr Walsh that the payment can be accepted because it comes from an unidentified third party in China. However, Mr Walsh's email in fact stated (underlining added):

Given the money has come from the Star email says the money has come from Chau Cheok Wa (refer extract below), so it is not a third party transfer, I would have thought we can accept payment.

However, I am available to discuss if you have a different view Nick.

- 34 Quoted correctly, and in the context of subsequent communications referred to in Crown's submissions, the email does not carry the meaning suggested by Counsel Assisting.

Bonus Jackpots

- 35 In about 2012, Crown decided to start treating the costs of its "Gaming Machine Food Program" as deductions for the purposes calculating its casino tax. A slide pack was prepared which contained a statement from the Finance and Revenue Audit department to the effect that in their opinion "the proposed change will not be noticed by the VGCLR".²¹
- 36 Mr Walsh was not at Crown when this decision was made or implemented. Mr Walsh became aware of the 2012 presentation, and Crown's expectation at that time that the change would not be noticed by the VGCLR, in around May or June 2018.²² Numerous other persons holding senior management positions at Crown also received the slide pack (although it is unclear precisely when they did so).²³
- 37 Mr Walsh gave evidence that he was uncomfortable about what he read in the slide pack.²⁴ In that regard, Counsel Assisting criticises Mr Walsh in the following terms:²⁵

Despite having harboured concerns since that time [ie, since May or June 2018], Mr Walsh took no steps to address those concerns by suggesting or ensuring Crown Melbourne report the issue to the VGCLR. This was so, despite being of the view that there was a potential that Crown had cheated on its taxes; and despite having had many opportunities to disclose the matter.

- 38 It is respectfully submitted that that criticism unfair insofar as it suggests that Mr Walsh was indifferent to the possibility of the VGCLR continuing to be misled, or the likelihood of Crown "cheating" on its taxes.

²¹ Exhibit RC0224, CRW.512.117.0019 at .0030.

²² T3216.27; T3239.17 (X Walsh).

²³ Rowan Craigie, Greg Hawkins, Justine Henwood, Richard Longhurst, Neil Spencer, Debra Tegoni, Barry Felstead, Ken Barton, Xavier Walsh, Alan McGregor, Joshua Preston, Mark Mackay and Michelle Fielding: Herring II at [16].

²⁴ T3216.24-46 (X Walsh).

²⁵ COM.0500.0001.0001 Closing submissions of counsel assisting the Commission at .0660 [4.34].

39 As Crown points out in its submissions in Section A, there are two matters of concern in relation to the underpayment of tax:

- (a) the decision in 2012 to commence making deductions in respect to the Gaming Machine Food Program without bringing that intention clearly to the attention of the VGCLR (and to implement that approach on a continuing basis thereafter); and
- (b) Crown's decision to treat those costs as being deductible without clear legal advice those deductions were allowable.

40 As to (a), Mr Walsh was concerned about Crown's failure in 2012 to be candid with the VGCLR when he became aware of it in May or June 2018. However, the fact that Mr Walsh did not escalate that concern must be considered in the context of his understanding that the VGCLR had undertaken an investigation of the deduction of the costs of Bonus Jackpots promotions "in an enormous amount of detail and not asked any further questions".²⁶ That is to say, although Mr Walsh was concerned about an apparent lack of candour by other officers of Crown occurring six years earlier, it was not apparent to him that the VGCLR *remained* unaware of the basis upon which Crown was claiming deductions.

41 As to (b), Mr Walsh was not otherwise aware that the deductions lacked a proper legal basis. Mr Walsh was aware of legal advice to the effect that there was *doubt* about whether the deductions could be claimed. However, it would not be fair infer from the fact that Mr Walsh was aware of equivocal legal advice that he was indifferent to the prospect of Crown "cheating" on its taxes, particularly in a context where Mr Walsh was aware that the VGCLR had reviewed the basis on which those deductions had been made and had made no objection to it.

42 It should also be remembered that Mr Walsh was not appointed CEO of Crown Melbourne until December 2020 and did not become a director of Crown Melbourne until 15 February 2021. Mr Walsh reported to Mr Felstead and Mr Barton while he was Chief Operating Officer, and continued to report to Mr Barton even after he became Crown Melbourne's Chief Executive Officer. Both Mr Felstead and Mr Barton were aware of the taxation issue from at least the time that Mr Walsh became aware

²⁶ T3242.24 (X Walsh); T3248.43-47 to T3249.15 (X Walsh)

of it.²⁷ Further, the taxation issue was discussed in a meeting on 22 September 2020,²⁸ from which it emerged that Mr Barton was taking steps to deal with that issue (among other taxation issues) with the Department of Treasury and Finance.²⁹ In that context, the submission that Mr Walsh can be criticised for not having “disclosed” the taxation issue is, with respect, overstated.

- 43 Mr Walsh otherwise adopts the submissions of Crown in Section G, including as to the events following Ms Coonan’s appointment as Executive Chairman.

Date: 2 August 2021

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²⁷ Herring II at [8]; T3242.38 - T3243.16 (X Walsh).

²⁸ T3252.39 et seq (X Walsh).

²⁹ T3255.9-12; T3256.46-T3257.10; T3255.9-12 (X Walsh).