

Submissions in response to the closing submissions of Counsel Assisting the Royal Commission into the Casino Operator and Licence

2 August 2021

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1. Introduction

1.1 These submissions:

1.1.1 address the terms of reference set out in the Letters Patent signed by the Governor of Victoria, the Honourable Linda Dessau, on 22 February 2021, appointing the Honourable Ray Finkelstein AO QC as Commissioner and Chairperson of the Royal Commission into the Casino Operator and Licence, and

1.1.2 respond to the closing submissions of Counsel Assisting the Commission dated 20 July 2021 (**Closing Submissions**),¹ in relation to:

(a) the responsible service of gaming (gambling) (**RSG**) by Crown Melbourne Limited (**Crown**), and

(b) insofar as they relate to RSG, changes to the regulation of casinos,

having regard to the evidence given to the Commission.

1.2 These submissions supplement the submission of the Victorian Responsible Gambling Foundation (**Foundation**) dated 31 May 2021, provided in response to questions posed by the Commission.²

1.3 The Foundation has:

1.3.1 subject matter expertise in relation to RSG, and

1.3.2 a particular interest in the findings and recommendations the Commission may make in relation to Crown's RSG and changes to the related regulatory framework as it applies to casinos.

1.4 The Foundation is an independent statutory authority with the dual legislative objectives of reducing the prevalence of problem gambling and the severity of harm related to gambling, and fostering responsible gambling in Victoria.³

1.5 The Foundation is independent from both industry and the Victorian Commission for Gambling and Liquor Regulation (**Regulator**). The need for independence from the Regulator was emphasised in the Second Reading Speech of the Victorian Responsible Gambling Foundation Bill: *The creation of the foundation acknowledges concern in the community that there is a tension between the role of government as a regulator of gambling*

¹ COM.0500.0001.0494.

² Public Submission 60.

³ *Victorian Responsible Gambling Foundation Act 2011*, s 5.

*activities, a beneficiary of gambling taxation revenue and a body responsible for delivering problem gambling programs and services.*⁴

1.6 Its functions include:

1.6.1 undertaking and funding research in relation to gambling harm and its impact on individuals, communities and affected others, together with other research on gambling

1.6.2 conducting and facilitating education and information programs, including to increase community awareness of the risks associated with gambling

1.6.3 funding therapeutic and financial counselling services for people experiencing gambling harm (for example, Gambler's Help)

1.6.4 undertaking preventative and other activities to address determinants of problem gambling, and

1.6.5 providing information and advice in relation to the issue or grant of licences, permits, approvals, authorisations, registration or allocations under gambling legislation.⁵

1.7 The Commission heard evidence from three industry experts on the topic of RSG, including two employees of the Foundation: Chief Executive Officer Shane Lucas and Branch Head for Research & Evaluation Rosa Billi.

2. Gambling harm

2.1 Counsel Assisting note in the Closing Submissions that gaming (gambling⁶) at the casino operated by Crown in Melbourne (**Melbourne Casino**) has the potential to inflict harm.⁷

2.2 It was accepted by Crown in evidence that the harms associated with gambling do not just affect 'problem gamblers', but also affect individuals who gamble, individuals who do not gamble and the broader community.⁸

2.3 It was also accepted by Crown that:

2.3.1 gambling harm is a very serious problem,⁹ and

⁴ Hansard, Legislative Assembly, Wednesday 12 October 2011, p. 3676.

⁵ *Victorian Responsible Gambling Foundation Act 2011*, s 6.

⁶ The importance of the nomenclature used is addressed in section 11.

⁷ Closing Submissions, p. 115: 1.1.

⁸ Bauer at [T1119, ln 41–47] and [T1120, ln 1–13]; Emery at [T1487, ln 42–47] and [T1488, ln 1–17].

⁹ Bauer at [T1120, ln 43–45].

- 2.3.2 the prevalence of problem gambling at the Melbourne Casino is likely to be higher than in the Victorian population more generally.¹⁰

3. Summary of matters addressed

- 3.1 Counsel Assisting address RSG at Crown in Chapter 6 of the Closing Submissions. Chapter 20 of the Closing Submissions addresses changes to the regulation of casinos, including changes required to enable research to be undertaken in relation to RSG in a casino environment.
- 3.2 Having regard to the evidence at the Commission hearings in relation to Crown's RSG and the regulatory framework in which Crown operates, the Foundation makes submissions and recommendations on the following topics addressed in the Closing Submissions:
- 3.2.1 the adequacy of Crown's responsible gaming advisor (**RGA**) model for intervening with people who may be at risk of harm from gambling, in particular in relation to Crown's:
- (a) adoption of observable signs
 - (b) RSG training, and
 - (c) staffing levels on the Melbourne Casino's gambling floors
- 3.2.2 breaks in gambling to reduce gambling harm
- 3.2.3 limits set by customers (time and money)
- 3.2.4 Crown's marketing, loyalty program and other inducements
- 3.2.5 exclusion
- 3.2.6 uncarded play and cashless gambling (for example, digital wallet technology)
- 3.2.7 the importance and impact of language used by Crown, industry and in the regulatory framework in relation to 'problem gamblers', 'problem gambling', 'problem gamers' and 'gaming'.
- 3.3 In making the recommendations in paragraphs 4.5.3(a)(i), 4.5.3(c)(ii), 5.2.2(c) and 7.3.1 the Foundation recognises that, while the evidence base for the recommendations may not yet

¹⁰ Emery at [T1471, ln 40–44].

be settled, consistent with the precautionary principle as it applies in the public health field,¹¹ a cautious approach should be adopted with respect to preventing and reducing harm from gambling.

4. Adequacy of Crown's responsible gaming advisor model for intervention

4.1 Observable signs

4.1.1 Counsel Assisting submit that:

- (a) a central feature of Crown's Responsible Gambling Code of Conduct (**Code**)¹² is the 'observable signs' of gambling harm¹³
- (b) the Code includes 13 observable signs modified from academic research referenced in the Code, and¹⁴
- (c) Crown 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.

4.1.2 Crown's Code, and training in relation to observable signs, includes only 13 of the 30 signs in the Thomas et al list of observable signs validated in Victoria (**Validated Observable Signs**).¹⁵

4.1.3 Crown accepted, however, that:

- (a) the Thomas et al study is highly relevant to the Melbourne Casino insofar as Crown has a very extensive electronic gaming machine (**EGM**) environment¹⁶
- (b) early intervention with a person sitting at an EGM is, according to the Thomas et al study, just as desirable at the Melbourne Casino as it would be at a pub or a club¹⁷

¹¹ 'If a public health risk poses a serious threat, lack of full scientific certainty should not be used as a reason for postponing measures to prevent or control the public health risk': *Public Health and Wellbeing Act 2008*, s 6.

¹² Exhibit RC0110 COM.0005.0005.0001: Crown Responsible Gambling Code of Conduct (Version 6), July 2019, tendered 1 June 2021.

¹³ Closing Submissions, p. 121: 3.15.

¹⁴ Closing Submissions, p. 122: 3.16, citing Exhibit RC0110 Crown Responsible Gambling Code of Conduct (Version 6), July 2019, COM.0005.0005.0001 at .0010.

¹⁵ Bauer at [T1202, ln 45–47] and [T1203, ln 2–32].

¹⁶ Bauer at [T1281, ln 44–47].

¹⁷ Bauer at [T1153, ln 4–12] and [T1282, ln 18–40].

- (c) length of play is a factor that is particularly pronounced for players of EGMs,¹⁸ and
- (d) by comparison to other venues there is a heightened risk in the Melbourne Casino that people will fall 'into the zone' where their gambling becomes harmful compared to pubs and clubs,¹⁹ making the way that the Melbourne Casino delivers breaks in play and its other harm minimisation measures very important.²⁰

4.1.4 Crown also accepted that the occurrence of observable signs suggests that harm might already be occurring, albeit at different degrees,²¹ and that the purpose of observable signs is to catch something that might get bad before it gets worse.²²

4.2 Crown's application of observable signs

4.2.1 Crown's policy and processes for intervening when its customers display any of Crown's 13 stated observable signs, or gamble for periods of play in excess of the Play Periods Policy (which, in the Foundation's submission and Crown's own evidence, is not based on research) are created and established as a referral model.

4.2.2 As noted by Counsel Assisting in the Closing Submissions,²³ Crown says that the responsibility for delivering RSG and implementing its Code rests with all staff. If a staff member sees an observable sign, they are to contact either Crown's Responsible Gambling Centre, or their manager.²⁴ An RGA then makes the judgement about what is to be done.²⁵ There is a small number of RGAs working at any point in time relative to the size of the venue and number of customers on the gambling floor.²⁶ The RGAs are not walking the floor the whole time,²⁷ and the nature of their work means that there may be times when no RGAs are available on the floor, or available to attend when a matter is escalated, given the range of other tasks to which they are required to attend.²⁸

¹⁸ Bauer at [T1132, ln 19–28], based on her reading of the literature.

¹⁹ Bauer at [T1145, ln 30–37].

²⁰ Bauer at [T1145, ln 39–43].

²¹ Bauer at [T1126, ln 3–10] and [T1127, ln 4–5].

²² Bauer at [T1129, ln 8–25].

²³ Closing submissions at p. 122: 3.19, referencing Bauer at [T1178, ln 40 – T1179, ln 2].

²⁴ Bauer at [T1157, ln 32–47], [T1158, ln 1–4] and [T1166, ln 7–13].

²⁵ Bauer at [T1159, ln 6–9].

²⁶ Bauer at [T1204, ln 14–47] and [T1205, ln 2–46].

²⁷ Bauer at [T1174, ln 23–41].

²⁸ Bauer at [T1174, ln 23–46], [T1175, ln 20–24 and [T1238, ln 40–45].

4.2.3 The Closing Submissions note that²⁹ the success of the RGA program is therefore dependent on:

- (a) the observable signs adopted by Crown in its Code being sufficient to describe identifiable signs of gambling harm
- (b) staff on the floor being trained in observable signs³⁰ and able to recall and identify the common observable signs of gambling distress³¹
- (c) adequate staff on the floor with sufficient time to both observe people gambling and refer what they have seen to their manager or an RGA,³² and
- (d) adequate numbers of RGAs being available to intervene appropriately with people when showing signs of gambling distress.

4.3 Staff training on the observable signs

4.3.1 Crown's policy and processes for intervening when people gambling display any of its 13 stated observable signs depend, in part, on staff on the floor being trained to understand the observable signs³³ and able to identify the common observable signs of gambling distress.³⁴

4.3.2 Counsel Assisting note in the Closing Submissions that the training of Crown's staff is critical to the success of the system.³⁵

4.3.3 Despite this, and unlike other Victorian gambling venues, Crown itself determines the scope of, and carries out, RSG training for its staff.

4.3.4 The scope of the RSG training for other gambling venues in Victoria is determined by the Department of Justice and Community Safety (**DJCS**) and the Foundation, and the face-to-face training is delivered by the Foundation through its Venue Support Program. This process is designed to ensure:

- (a) the provision of RSG training incorporates emerging research, industry best practice and changes to regulation of the industry

²⁹ Closing Submissions at p. 122: 3.20.

³⁰ Bauer at [T1178, ln 40–44] and [T1202, ln 4–21].

³¹ Bauer at [T1179, ln 7–18].

³² Bauer at [T2223, ln 2–21].

³³ Bauer at [T1178, ln 40–44], [T1179, ln 7–18] and [T1202, ln 4–21].

³⁴ Bauer at [T1179, ln 7–18].

³⁵ Closing Submissions at p. 123: 3.27.

- (b) gambling venue staff are equipped with the knowledge and practical skills needed to provide gambling in a way that minimises harm to those gambling, and
- (c) staff can assist those who may be having problems with their gambling or are gambling at risky levels.³⁶

4.3.5 The August 2020 report of Crown's appointed Responsible Gaming Advisory Panel referred to five hours of training being the standard for staff education, designed to provide the *skills and knowledge required to provide responsible gambling services, and to assist those customers who have issues with problem gambling.*³⁷

4.3.6 Crown's evidence is that food and beverage staff are provided with 45 minutes of induction training and then a further hour of training, of which a relatively small component is spent discussing observable signs.³⁸ Counsel Assisting note in the Closing Submissions that: *[a] Crown Melbourne employee generally has approximately 15 minutes of relevant training on observable signs, plus a refresher training every two years. Plainly that is inadequate given the reliance placed on rank and file staff to identify observable signs [footnotes omitted].*³⁹ The Foundation agrees with this submission.

4.3.7 The Foundation also agrees with Counsel Assisting's submission that it is concerning that Crown does not know if the training is effective.⁴⁰

4.4 Number of responsible gaming advisors

4.4.1 Crown accepted in evidence that, as a general principle, it is desirable for all people gambling in a venue to be visible to staff so that signs of potential gambling harm can be observed,⁴¹ and that given the large number of people gambling at the Melbourne Casino the more overt signs are more likely to be noticed by the RGAs and other staff rather than more subtle observable signs.⁴²

4.4.2 As noted by Counsel Assisting in the Closing Submissions, in other gambling venues in Victoria it is a requirement that there be at least one responsible gaming officer available in each EGM venue⁴³ (noting a maximum of 105 EGMs is

³⁶ Hansard, Assembly, Second Reading of the Gambling Legislation Amendment Bill 2015, Wednesday 16 September 2015, p. 3286.

³⁷ Exhibit RC0109: CRW.998.001.0301: Statement of Sonja Bauer, 5 May 2021, tendered 1 June at [19].

³⁸ Bauer at [T1196, ln 31–47] and [T1197, ln 2–26].

³⁹ Closing Submissions at p. 123: 3.29.

⁴⁰ Closing Submissions at p. 123: 3.30.

⁴¹ Bauer at [T1139, ln 29–42].

⁴² Bauer at [T1181, ln 33–47] and [T1182, 2–22].

⁴³ Closing Submissions at p. 124: 3.36.

permitted in Victorian gambling venues), whereas Crown currently has one RGA for roughly 870 EGMs.⁴⁴

- 4.4.3 The Foundation agrees with the submission of Counsel Assisting that: *it is simply impossible for the RGAs to discharge all their duties*⁴⁵ and that the number of RGAs is deficient.⁴⁶

4.5 Conclusion and recommendations

- 4.5.1 The Foundation agrees with the submission of Counsel Assisting that, in practice, Crown's RGA system does not deliver what is required by its Code.⁴⁷ In particular, the Foundation agrees with the following matters set out in the Closing Submissions:⁴⁸

- (a) reliance on Crown's floor staff to 'observe' is inadequate given:
 - (i) their limited training and absence of later testing of their recollection of that training
 - (ii) their limited ability to observe given their other commitments
- (b) identifying the observable signs can be complex, and
- (c) the number of RGAs on the gambling floor is insufficient to guarantee that an RGA is available to respond when required.

- 4.5.2 Indeed, evidence was given by a Mahogany Room host, and accepted by Executive General Manager, Gaming Mr Mark Mackay as consistent with his experience, that people regularly gamble for more than 12, 14, 16, 18 and even 24 hours in a row at the Melbourne Casino,⁴⁹ suggesting that Crown's current system of intervention does not work.

- 4.5.3 The Foundation submits:

- (a) with respect to the observable signs:
 - (i) unless and until independent, peer-reviewed research is conducted and shows a rational basis for different observable signs to be adopted in a casino environment, Crown should be required to adopt

⁴⁴ Closing Submissions at p. 124: 3.36; Bauer at [T1205, ln 24–37].

⁴⁵ Closing Submissions at p. 124: 3.38.

⁴⁶ Closing Submissions at p. 125: 3.39.

⁴⁷ Closing Submissions, p. 121: 3.21.

⁴⁸ Closing Submissions, p. 121: 3.22 and following.

⁴⁹ Mackay at [T1768, ln 31–40].

all of the Validated Observable Signs in its Code for its customers using EGMs⁵⁰

- (b) with respect to RSG training:
 - (i) consistent with other Victorian venues, RSG training for Crown staff should be:
 - (A) developed by DJCS in conjunction with the Foundation, to ensure that it incorporates emerging research and best practice, and
 - (B) delivered by DJCS and the Foundation, and subject to independent evaluation
- (c) with respect to the number of RGAs:
 - (i) research is required in relation to:
 - (A) the optimum number of dedicated RGAs on a gambling floor to ensure behavioural indicators are observed and intervention is timely, and
 - (B) what factors influence adequate staffing on a gambling floor, for example, the types of gambling, size and layout of the venue, number of EGMs or other gambling forms, percentage of people playing 'uncarded', total number of patrons and time of day
 - (ii) pending completion of this research, there should be consistency with other Victorian venues with a minimum of one RGA on Crown's gambling floors per 105 EGMs at all times, with enough RGAs available to also observe other forms of gambling such as fully/semi-automated table games, and carry out the other functions that RGAs are required by Crown to perform.

⁵⁰ Lucas at [T1565, ln 14–19]. See Table B in Exhibit RC0145: Statement of Shane Peter Lucas VRGF.0002.0001.0017: Statement of Shane Peter Lucas, 10 May 2021, tendered 4 June 2021 (**Lucas Statement**) at [96.8].

5. Breaks in gambling

5.1 Evidence in relation to breaks

- 5.1.1 Counsel Assisting refer to the fact that one of the observable signs in the Code is *often gambles for long periods without a break*, and that this is an important sign because [an] extensive period of gambling on EGMs is a well-recognised pathway to significant gambling harm.⁵¹
- 5.1.2 Crown's evidence demonstrated its recognition that breaks in gambling, taken at an appropriate time, might minimise the possibility of harmful behaviour arising.⁵² As noted by Counsel Assisting, Crown's Code does not, however, expressly define the terms 'often', 'long periods' or what is meant by a 'break'.⁵³
- 5.1.3 While it is well recognised in published research, and by Crown, that breaks in play are important for harm minimisation, there is limited research on:
- (a) the length of the break required to stop gambling being 'continuous', and
 - (b) when a break should be taken to prevent harm.
- 5.1.4 Further, the evidence shows that research is required as to the adequacy of the nature or type of break taken. For example, research as to whether a break in play to attend a prize draw (described by Counsel Assisting as a 'happy break'⁵⁴) constitutes an adequate interruption to play or a continuation or encouragement to play for longer. In this regard, the Foundation notes that Chief Marketing Officer Mr Nicolas Emery conceded in his evidence that the timing of promotional draws in Crown's Mahogany Room – at two-hour intervals – 'isn't a random number plucked out of the air', it leaves 1.5 hours between the end of the first draw and the beginning of the next draw, and part of the decision for this timing could have been to time the draws close enough to encourage someone to stay around and keep gambling until the next draw.⁵⁵

5.2 Conclusion and recommendations

- 5.2.1 The Foundation agrees with the submission of Counsel Assisting that:

⁵¹ Closing Submissions, p. 125: 3.40.

⁵² Bauer at [T1129, ln 32–47], [T1130, ln 1–18], [T1132, ln 12–17] and [T1146, ln 9–22].

⁵³ Closing Submissions at p. 125: 3.41.

⁵⁴ Finanzio QC at [T1147, ln 2–3].

⁵⁵ Emery at [T1476, ln 23–46], [T1478, ln 29–47], [T1479, ln 1–5].

- (a) Crown's Play Periods Policy (both in its current terms and as proposed to be amended) does not ensure that its customers who often gamble for long periods without a break:
 - (i) 'will be' approached by a staff member who 'will' offer assistance, or
 - (ii) 'will be' referred to an RGA or to management for referral to the RGA⁵⁶
- (b) it is unsatisfactory from an RSG perspective that:
 - (i) the first time that an RGA will consider whether to approach a customer (under the current Play Periods Policy) is when they have been gambling for 12 hours, and
 - (ii) even at that point, the RGA will only observe a customer, and not interact with them unless they are displaying another observable sign.⁵⁷

5.2.2 The Foundation submits that:

- (a) independent, peer-reviewed research is required in relation to:
 - (i) the adequacy of breaks in play to prevent or reduce gambling harm by reference to:
 - (A) the length and nature of the break
 - (B) product (for example EGMs, table games)
 - (C) venue (for example casino gambling floor, pubs), and
 - (ii) the most appropriate ways a gambling venue can enforce breaks
- (b) a pilot and evaluation should be conducted based on the research, and
- (c) unless and until this research is conducted, Crown should be required to:
 - (i) adopt at the Melbourne Casino all of the Validated Observable Signs, including 'often gambles for long periods (3+ hours) without a [15-minute] break',⁵⁸ and

⁵⁶ Closing Submissions, p. 126: 3.50.

⁵⁷ Closing Submissions, p.127: 3.53.

⁵⁸ Lucas at [T1565, ln 14–19]. See Table B in Lucas Statement at [96.8].

- (ii) amend its Play Periods Policy to ensure that it is consistent with the Thomas et al observable sign with respect to length of play without a break.

6. Limits on length of play and spend and Crown's Code

6.1 Enforcing limits set by customers

- 6.1.1 Counsel Assisting note in the Closing Submissions that:

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).⁵⁹

- 6.1.2 Crown's Code states, at page 15:

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 and referrals to specialist support as required.⁶⁰

- 6.1.3 This commitment is less proscriptive than the commitment in the codes adopted by other Victorian venues, which state that EGM venue operators are required to:

...take all reasonable steps to prevent and minimise harm from the operation of gaming machines in the approved venue, including by monitoring the welfare of gaming machine players, discouraging intensive and prolonged gaming machine play and intervening when a person is displaying behaviour that is consistent with gambling harm.⁶¹

- 6.1.4 Crown's evidence was it was unlikely there would be an interaction with a person gambling if that person was not also displaying another visible observable sign⁶² and notwithstanding that 'a person sitting quietly in the corner of the casino, gambling alone for 12 hours on end but not showing any other sign' can still be a sign of possible problem gambling.⁶³

⁵⁹ Closing Submissions, p. 130: 4.9, referencing T1353:45–T1354:24 (Bauer).

⁶⁰ Exhibit RC0110 at page 15.

⁶¹ Mackay [T1685 In 2-8]; Exhibit RC0163 Ministerial Direction No S 85, 21 February 2020, COM.0013.0001.0233 at .0234.

⁶² Bauer [T1235, 1268- 1269].

⁶³ Bauer [T1267].

6.1.5 Problem gambling is characterised by having difficulties in limiting time and/or money which leads to adverse consequences for the gambler, others, or the community.⁶⁴

6.1.6 Crown accepted in evidence that:

- (a) gambling for longer, or spending more than intended,⁶⁵ can lead to significant harm⁶⁶
- (b) it is desirable that customers be encouraged to set realistic and affordable limits, as much as a customer can be guided on their own limits,⁶⁷ and
- (c) one way to foster responsible gambling is to intervene at the point where someone has reached their limit.⁶⁸

6.2 Recommendations

6.2.1 As noted in the Foundation's Submission dated 31 May 2021, provided in response to questions of Counsel Assisting the Commission, the following practices with respect to length of play and money limits would be better practice with respect to RSG at Crown Melbourne:⁶⁹

- (a) monitor and intervene, informed by the Validated Observable Signs
- (b) enable a universal system (i.e. an enhanced state-wide YourPlay scheme) that requires customers to set a binding money and/or time gambling limit(s).

6.2.2 This is supported by research that shows that:

- (a) continuous forms of gambling are associated with an increased risk of harm⁷⁰

⁶⁴ Exhibit RC0181: VRGF.0002.0001.0001: Statement of Rosa Billi, 10 May 2021, tendered 8 June 2021 (**Billi Statement**) at [33] citing Neal, P, Delfabbro P, O'Neil M (2005) Problem Gambling: Towards a Definition of Harm: Gambling Research Australia.

⁶⁵ Bauer at [T1131, ln 6–31].

⁶⁶ Bauer at [T1132, ln 1–10].

⁶⁷ Bauer at [T1349, ln 18–26].

⁶⁸ Bauer at [T1353, ln 45–47], [T1354, ln 1–47] and [T1355, ln 1–7].

⁶⁹ Paras 34 and 63.5.1

⁷⁰ Dickerson (2003), 'Exploring the limits of "Responsible Gambling": harm minimisation or consumer protection' *Gambling Research*, 15, 29–44; Williams, R. J., Hann, R., Schopflocher, D., et al. 2015. *Quinte longitudinal study of gambling and problem gambling*. Ontario Problem Gambling Research Centre; Delfabbro, P.H. 2011, *Australasian gambling review*. South Australia: Independent Gambling Authority.

- (b) in the case of EGMs, a universal system that requires all users to set limits, and under which those limits are enforced, is likely to be an effective means of reducing the risk of harm,⁷¹ and
- (c) a universal system that prevents use once pre-set limits are reached would both normalise the concept of setting limits and ensure that people have access to accurate records of their spending.⁷²

6.3 The Foundation also submits that:

6.3.1 there should be greater public education about time and money limits to prevent gambling harm.

6.3.2 Crown should be required to:

(a) assist people who gamble at the Melbourne Casino to set time and money limits appropriate for the individual

(b) include in its Code an obligation to:

take all reasonable steps to prevent and minimise harm from the operation of EGMs in the Melbourne Casino, including by monitoring the welfare of people who use EGMs, discouraging intensive and prolonged EGM use and intervening when a person is displaying behaviour that is consistent with gambling harm

(c) stop people from continuing to gamble at the Melbourne Casino when one of their selected limits is reached (for example, by a technological solution that prevents continued gambling beyond a selected limit).

6.4 The Foundation also submits that:

6.4.1 Further research is required to provide guidance to Crown, other gambling providers and people who gamble, about the limits on gambling beyond which there is a risk of experiencing problem gambling or harm. Applied research is required to translate existing evidence about annual limits to daily/weekly/sessional periods, and how they relate to specific products, for example table games, fully/semi-automated table games and EGMs.

⁷¹ Ibid.

⁷² Rintoul & Thomas (2017) *Pre-commitment systems for electronic gambling machines: Preventing harm and improving consumer protection* (AGRC Discussion Paper No. 9). Livingstone et al. (2019), *Identifying Effective Policy Interventions to Prevent Gambling-Related Harm*, Victoria: Victorian Responsible Gambling Foundation.

- 6.4.2 It is also apparent from the evidence provided to the Commission that the question of what an appropriate money limit is for an individual, in order to reduce their risk of harm and of developing problem gambling, is not a simple issue.⁷³ It requires further research both in Australia and internationally.

7. Marketing – loyalty programs and inducements

7.1 The purpose of marketing programs

- 7.1.1 Crown's evidence in relation to the purpose of its marketing programs was unremarkable. As noted by Counsel Assisting in the Closing Submissions, a marketing goal of Crown's promotions is to get people to come to the Melbourne Casino, and to encourage people when they come to gamble more.⁷⁴
- 7.1.2 Counsel Assisting's Closing Submissions comprehensively traverse Crown's evidence in relation to specific aspects of its promotions and their purpose.
- 7.1.3 Crown's evidence included that:
- (a) the object of having cash giveaways is to get people to come to the Melbourne Casino, principally so they will gamble⁷⁵
 - (b) the purpose of having promotions such as dinners, tickets and cash draws on site is to get patrons to come back and gamble⁷⁶
 - (c) Mahogany Room hosts proactively contact clients and entice them to come to the Melbourne Casino to gamble, and arrange for customers to collect gifts, like tickets, from the Melbourne Casino,⁷⁷ although in contrast the hosts do not speak to clients about the amount of money they are gambling or if they can afford it.⁷⁸
- 7.1.4 Crown evaluates the success of a promotion predominantly by whether it drives visitation and whether or not people spend while at the Melbourne Casino – put simply, increase in visitation and gambling spend.⁷⁹

⁷³ Billi Statement at [43]; Billi at [T1811, ln 20–34].

⁷⁴ Closing Submissions, p. 132: 4.19. See also Emery at [T1463, ln 35–47] and [T1464, ln 1–3].

⁷⁵ Emery at [T1460, ln 33–46] and [T1461, ln 1–5].

⁷⁶ Emery at [T1473, ln 26–47] and [T1474, ln 1–4]; Mackay at [T1760, ln 27–47] and [T1761, line 2].

⁷⁷ Mackay at [T1760, ln 27–47] and [T1761, line 2].

⁷⁸ Mackay at [T1765, ln 44–47] and [T1766, ln 1–8].

⁷⁹ Emery at [T1468, ln 10–23].

7.1.5 Similarly, Crown's loyalty program incentivises people to gamble. Crown wants to get people to the Melbourne Casino to spend more money.⁸⁰

7.1.6 Crown accepted in evidence that:

- (a) people who exhibit problem gambling will tend to have higher gambling turnovers
- (b) Crown's loyalty program rewards higher turnover customers, and
- (c) on average, 'problem gamblers' are, therefore, likely to 'benefit' more from Crown's loyalty program than other people who might gamble in a safe manner.⁸¹

7.1.7 While there is limited research on the topic, the existing research shows:

- (a) a strong association between loyalty programs and problem gambling,⁸² and
- (b) loyalty programs might encourage someone who gambles to engage in riskier behaviour in response to the inducements available through the loyalty program and that riskier behaviour is a step on the pathway to gambling harm.⁸³

7.1.8 Crown acknowledged in evidence that an option available to it is to stop all of the benefits associated with its loyalty program and then introduce the ones that are safe once the research is done, but this is not the pathway Crown is adopting.⁸⁴

7.2 Direct marketing

7.2.1 With respect to direct marketing material, Crown's evidence was that it does not:

- (a) review harm minimisation initiatives in response to research or with external stakeholders such as the Foundation before sending out promotional material
- (b) consider whether the people to whom the material is sent can afford to gamble at the levels required to qualify for the promotion⁸⁵

⁸⁰ Emery at [T1509, ln 32–46].

⁸¹ Emery at [T1505, ln 29–47] and [T1506, ln 1–10].

⁸² Billi at [T1823, ln 38–47] and [T1824, line 2].

⁸³ Billi at [T1826, ln 13–19].

⁸⁴ Emery at [T1514, ln 18–38].

⁸⁵ Emery at [T1468, ln 18–23].

despite recognising that as a responsible corporate citizen, Crown should be taking more proactive steps before marketing to people.⁸⁶

7.2.2 Crown also gave evidence that it did not adopt the proposal set out in the **Regulator's** Report of the Sixth Review⁸⁷ to review harm minimisation initiatives in response to research and in conjunction with external stakeholders such as the Foundation. This could include, for example, consultation before sending out promotional material.

7.3 Conclusion and recommendations

7.3.1 The Foundation submits that:

- (a) Crown's Code be reviewed:
 - (i) including its obligations with respect to direct marketing to prevent and reduce harm
 - (ii) periodically to ensure that the Code incorporates emerging research and industry best practice
- (b) Crown should be required to review harm minimisation initiatives in response to research and in conjunction with external stakeholders including the Foundation before sending out promotional material
- (c) consistent with the precautionary principle as it applies in the public health field,⁸⁸ the incentives offered by Crown to encourage people to attend the Melbourne Casino or to gamble should be stopped, unless and until independent research of the type referred to in paragraph 7.3.2(d) shows that there is no association with gambling harm. In this regard, and as noted by Counsel Assisting in the Closing Submissions:

... 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.⁸⁹

⁸⁶ Emery at [T1472, ln 11–20].

⁸⁷ Exhibit RC0002: COM.0005.0001.0776: VCGLR Sixth Review of the Casino Operator and Licence, June 2018, tendered 17 May 2021.

at [122–123]; Bauer at [T1414, ln 46–47], [T1415, ln 1–47], [T1416, ln 1–39].

⁸⁸ *Public Health and Wellbeing Act 2008*, s 6; Billi at [T1829, ln 3–47] and [T1830, ln 1–45].

⁸⁹ Closing Submissions, p. 132: 4.20, referencing: Hasna [T9: ln 14–25] ("[O]n that occasion I got called in to pick up Phil Collins tickets, because you go in and pick them up, I went into 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.").

- 7.3.2 The Foundation also submits that research is required in relation to loyalty programs. In this regard it is noted that:
- (a) Crown acknowledged in its evidence that while there is limited research on the relationship between loyalty programs and inducements and gambling harm, there is a potential risk that loyalty programs put people experiencing problem gambling at greater risk⁹⁰
 - (b) Crown is proposing to conduct some research into its loyalty program to determine if there are any aspects of the loyalty program that may be causing harm, and what measures can be put in place to control those risks⁹¹
 - (c) while the Foundation would not seek to discourage Crown from undertaking research, the Foundation considers the public benefit of any research is maximised when it is independent of industry, peer reviewed and made publicly available to build on the body of knowledge on the topic. Further, the proposed research methodology must be assessed to ensure it offers the best possible approach for investigating particular questions posed about the association between loyalty programs and gambling harm or problem gambling⁹²
 - (d) accepting that the existing research shows there is a strong association between loyalty programs and gambling harm,⁹³ the Foundation submits that research in relation to loyalty programs and incentives should focus on how to prevent or minimise harm, rather than be limited to the question of whether there is a causal link.⁹⁴

8. Electronic gaming machines at the Melbourne Casino

8.1 The Foundation agrees with the submission of Counsel Assisting that:

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.⁹⁵

⁹⁰ Bauer at [T1346, ln 36–46],[T1347, ln 1–3].

⁹¹ Bauer at [T1346, ln 36–46], [T1347, ln 1–3]; Exhibit RC0126: VCG.0001.0002.8318: Letter from Xavier Walsh to Catherine Myers, 26 May 2021, tendered 2 June 2021, at p.3.

⁹² Billi at [T1822, ln 30–47] [T1823, ln 1–3].

⁹³ Billi at [T1823, ln 5–47], [T1824, line 2], [T1825, ln 29–46] and [T1827–1828].

⁹⁴ Billi at [T1827, ln 7–14].

⁹⁵ Closing Submissions, p. 345: 1.16.

8.2 In this regard the Foundation notes that:

- 8.2.1 Counsel Assisting state in the Closing Submissions that Crown accepted the research that there is a strong link between EGMs and gambling harm.⁹⁶ Crown also accepted that the risk of harm for people using EGMs may be exacerbated at the Melbourne Casino more than at other EGM venues by reason of both the number of machines and the higher limits on restricted machines.⁹⁷
- 8.2.2 The Foundation's evidence to the Commission was that the research-based conclusions⁹⁸ about the risks of harm for people using EGMs would be even more strongly expressed in relation to EGMs that operate in unrestricted mode.⁹⁹
- 8.2.3 Crown accepted in evidence that aligning the management of its EGMs with the regulatory restrictions in place at other Victorian venues would reduce the harm caused by gambling at the Melbourne Casino.¹⁰⁰

9. Exclusion

9.1 Counsel Assisting note the following matters with respect to self-exclusion in the Closing Submissions:

Four points are worth noting on self-exclusion.

First, Crown Melbourne's self-exclusion process is not made known to customers.

Second, Crown Melbourne will only provide information about self-exclusion on request and staff are directed not to prescribe a self-exclusion order. This is problematic given the people least likely to request a pamphlet about self-exclusion are those with a gambling problem.

Third, some Crown Melbourne staff actively discourage patrons from self-exclusion.

Fourth, Crown Melbourne has recently implemented a comprehensive system of facial recognition to detect possible breaches by self-excluded individuals. This technology could have been comprehensively implemented from as early as 2014. The delay is concerning.¹⁰¹

[Footnotes omitted]

⁹⁶ Closing Submissions at p. 131: 4.11; Mackay [T1680, In 39–47] and [T1681, In 2–4].

⁹⁷ Mackay at [T1682, In 30–47].

⁹⁸ Billi Statement at [40].

⁹⁹ Billi at [T1809, In 30–35].

¹⁰⁰ Mackay at [T1682, In 30–40], [T1683, In 2–13] and [T1685, In 10–14].

¹⁰¹ Closing Submissions, p. 134: 4.31–4.35.

- 9.2 Research on self-exclusion programs shows that to be effective, consumer information should be clear and easy to access, transparent in its operation, offer a range of time periods for exclusion, facilitate additional support to the person who is excluding, be accessible outside of the venue and supported by appropriately trained staff with sound knowledge of support and treatment options,¹⁰² and properly monitored and enforced.
- 9.3 In addition, programs should be independently evaluated to measure effectiveness and ensure no unintended harmful consequences.¹⁰³
- 9.4 The Foundation's submits:
- 9.4.1 There should be:
- (a) a single exclusion program (**Exclusion Program**) that applies to all Victorian land-based gambling venues, and
 - (b) a state-wide exclusion register (**Exclusion Register**), that is capable of being well understood and well monitored, should be established.¹⁰⁴
- 9.4.2 The Exclusion Program should:
- (a) be developed in accordance with independent peer-reviewed research and periodically evaluated and amended as required based on research
 - (b) be simple and easy to access, and well promoted through various channels such as in venue, member newsletters, websites, media and social media
 - (c) cover all exclusion options available to people attending gambling venues
 - (d) be operated independently of gambling providers and with strong linkages through to support services
 - (e) require gambling providers to have appropriate enforcement mechanisms in place, such as facial recognition technology, or mandatory carded play.

10. Carded play / cashless gambling

- 10.1 While the Closing Submissions do not expressly address cashless gambling, they do address¹⁰⁵ the difficulties associated with tracking how long a person has been gambling if they are gambling uncarded, and note:

¹⁰² Thomas, A et al (2016) – Review of electronic gaming machine pre-commitment features: Self-exclusion. Melbourne: Australian Institute of Family Studies; Gainsbury, Sally M (2014) *Review of Self-exclusion from Gambling Venues as an Intervention for Problem Gambling*, Journal of Gambling Studies 30(2), p. 229–251.

¹⁰³ Ibid.

¹⁰⁴ Lucas at [T1575, ln 46–47] and [T1576, ln 2–19].

¹⁰⁵ Closing Submissions, p. 127: 3.57–3.60.

As Ms Bauer accepted, a simple solution would be for Crown Melbourne to require all players to use a card to gamble.¹⁰⁶

and that:

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”.¹⁰⁷

- 10.2 A number of public submissions to the Commission support or reference the introduction of cashless gambling,¹⁰⁸ including as a harm minimisation strategy.¹⁰⁹ The public submission of the Australasian Gaming Council refers to ‘digital wallet trials’ being underway in NSW.¹¹⁰
- 10.3 While a move to solely cashless gambling presents opportunities to assist in monitoring gambling behaviour with the dual benefits of providing data to:
- 10.3.1 track gambling behaviours with respect to time and money spent on gambling, to support appropriate intervention – on this point the evidence to the Commission was that carded play would mean that Crown could keep track of everyone’s length of play, and that this would facilitate RSG,¹¹¹ and
- 10.3.2 assist research into behaviour associated with gambling harm,
- it also carries a risk of increasing gambling harm given the frictionless nature of the transaction, meaning there is less likelihood of time for reflection, and the potential to make it difficult for people to track their spending during gambling.¹¹²
- 10.4 Other risks have also been identified by the research, including that cashless gambling encourages higher spending, cash transactions are felt as more painful (and less associated with reward) than cashless payments, and cashless methods can reduce the efficacy of existing harm reduction measures that make people take a physical break or have interpersonal contact, for example, to access cash.¹¹³
- 10.5 As such, unless structured appropriately, cashless gambling could put people at increased risk of gambling harm. Any move towards cashless forms of gambling therefore needs to be developed and seen through a gambling harm reduction lens,¹¹⁴ and should only be

¹⁰⁶ Referring to T1263:21–31 (Bauer).

¹⁰⁷ Referring to T1070:42–45 (Employee 7).

¹⁰⁸ For example, Public Submission #14 (Catherine Sommerville), #20 and #89 (Stephen Mayne), #28a (Elizabeth Mitchell), #42 (Turning Point – Monash Addiction Research Centre), #61 (Alliance for Gambling Reform), #75 (School of Public Health and Preventative Medicine, Monash University) and #82 of Tim Costello.

¹⁰⁹ Public Submission #82 of Tim Costello.

¹¹⁰ Public Submission #59 at page 33

¹¹¹ Bauer at [T1262, In 44–47] and [T1263, In 1–31].

¹¹² Lucas at [T1554, In 9–22].

¹¹³ Hare S (2020) Cashless Gaming Literature Review - unpublished.

¹¹⁴ Lucas at [T1554, In 28–41].

implemented in association with well-planned harm reduction measures that reduce the risk of continuous gambling and include:

- 10.5.1 a universal system that requires people who gamble to set limits and that prevents use when those pre-set limits are reached¹¹⁵
 - 10.5.2 information and education about the time and money limits that are appropriate
 - 10.5.3 enforced break periods of at least 15 minutes every three hours, based on the research presently available.¹¹⁶
- 10.6 The Foundation recommends that, if cashless gambling or digital wallets are to be introduced or trialled in Victoria, a system with a harm prevention focus should first be developed and piloted in order to assess its effectiveness.

11. The importance and impact of language in relation to gambling harm

11.1 'Responsible gambling'

- 11.1.1 The language used to describe gambling-related issues has evolved since the establishment of the Foundation and the framework for regulating 'responsible' gambling in 2012.
- 11.1.2 The Foundation's experience, research and data have reinforced the need to approach gambling harm as a public health issue. A range of harms can occur without a person satisfying any recognised indicators of problem gambling.¹¹⁷
- 11.1.3 The Foundation's 2018–19 Victorian Population Gambling and Health Study¹¹⁸ found that:
 - (a) more than 36,000 Victorians (or 0.7 per cent of Victoria's adult population) are 'problem gamblers'
 - (b) 'problem gamblers' accounted for only 30 per cent of the total count of harms experienced by people in Victoria who gamble.

¹¹⁵ Rintoul & Thomas (2017) *Pre-commitment systems for electronic gambling machines: Preventing harm and improving consumer protection* (AGRC Discussion Paper No. 9). Livingstone et al. (2019), *Identifying Effective Policy Interventions to Prevent Gambling-Related Harm*, Victoria: Victorian Responsible Gambling Foundation.

¹¹⁶ Lucas at [T1565, ln 14–19]. See Table B in Lucas Statement at [96.8].

¹¹⁷ Billi Statement at [35.2].

¹¹⁸ Billi Statement at [34], citing Rockloff et al (2020). 'Victorian Population Gambling and Health Study 2018–2019' at p. 23.

- 11.1.4 The language used in relation to gambling and its harms are important in the context of community understanding of gambling harm.¹¹⁹
- 11.1.5 Terms such as ‘responsible gambling’ and ‘gamble responsibly’ as used by the gambling industry and reflected in the legislative and regulatory framework, have the effect of placing the focus of preventing and reducing harm on the individual, rather than on gambling products themselves, which may carry an inherent risk of harm, and the way in which they are provided.¹²⁰
- 11.1.6 The use of this language can also have the effect of stigmatising the individual experiencing gambling harm and shifting the primary focus of the cause of harm from the gambling products to the behaviours of the people gambling.
- 11.1.7 Foundation research shows that this focus on individual behaviours can be a barrier to people seeking help.¹²¹
- 11.1.8 The concept of gambling harm seen through a public health lens focuses on the impact of gambling activity across the broader population.¹²²

11.2 ‘Gaming’

- 11.2.1 The language used throughout the Closing Submissions, and much of the evidence given to the Commission included that of ‘gaming’.
- 11.2.2 Counsel Assisting note in the Closing Submissions, that:

While the phrase “responsible service of gaming” is commonly used, it is hoped that in time the nomenclature will change to the “responsible service of gambling”.¹²³

- 11.2.3 The Foundation supports this statement.
- 11.2.4 Indeed, this view is supported by the evidence in private hearing of a person who gambled at the Melbourne Casino who noted the following: *And just the way they promoted it as a, as pretty much an – entertainment.*¹²⁴

¹¹⁹ Lucas Statement at [24].

¹²⁰ Lucas Statement at [24].

¹²¹ Lucas Statement at [24].

¹²² Lucas Statement at [24].

¹²³ fan 746.

¹²⁴ Witness [T4, ln 1–2].

11.3 Crown's Code

11.3.1 Some clear examples of the use of the language of 'problem gambling' and 'gaming' and the onus that this language places on the person gambling rather than the provider are found in Crown's Code, for example:

On page 1: *...we recognise that some of our customers have difficulties with gaming responsibly ...*

While the decision to gamble lies with the individual and represents a choice based on the individual's circumstances, we recognise that to make that choice responsibly ... (emphasis added)

On page 2: *This Code represents our commitment to our customers and employees regarding harm minimisation and responsible gaming.*

Responsible gaming occurs in a regulated environment where the potential for harm associated with gaming is minimised and customers can make informed decisions when they participate in gaming based on their individual circumstances.

On page 3: *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. (emphasis added)*

11.4 Recommendation

11.4.1 The language of the regulatory framework (for example, responsible gambling codes of conduct, the *Victorian Responsible Gambling Foundation Act 2011*, *Gambling Regulation Act 2003*, and *Casino Control Act 1991*) should be restated to focus their operation on the prevention and reduction of gambling harm by the responsible service of gambling by providers, rather than fostering 'responsible gambling'.

12. Research

12.1 Crown research

12.1.1 Counsel Assisting note in the Closing Submissions that:

Crown acknowledges that one of its weaknesses is it does not share data. 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. 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.

But it does not do any of those things. And, as Mr Emery fairly and properly acknowledged, the reality is Crown Melbourne is not serious about research into RSG and problem gambling.¹²⁵

[Footnotes Omitted]

- 12.1.2 This is so notwithstanding Crown's evidence that the prevalence of problem gambling at the Melbourne Casino is likely to be higher than in the Victorian population and the population of people who gamble more generally.¹²⁶
- 12.1.3 Little or no research has been undertaken by Crown in relation to:
- (a) the link between its supply of gambling products and either problem gambling or gambling harm¹²⁷
 - (b) the effectiveness of Crown's implementation of its Code¹²⁸
 - (c) the association between Crown's loyalty program and inducements, and increased gambling and gambling harm,¹²⁹ or
 - (d) the differences between its Code and responsible gambling codes of conduct implemented by other Victorian gambling venues, and the impact of those differences on people who gamble.¹³⁰
- 12.1.4 Specifically, Crown's evidence was to the effect that it has not:

¹²⁵ Closing Submissions, p. 133: 4.25, citing: Exhibit RC0109 Annexure d, Responsible Gaming Advisory Panel Review of Crown Resort's Responsible Gaming Programs and Services, August 2020, CRW.526.007.7005; T1369:39–T1370:16 (Bauer).

¹²⁶ Emery at [T1471, ln 40–44].

¹²⁷ Bauer at [T1305, ln 16–32] and [T1307, ln 22–34].

¹²⁸ Bauer at [T1191, ln 19–36], [T1230, ln 27–47], [T1231, ln 1–11], [T1305, ln 45–47] and [T1306, ln 1–3], [T1307, ln 22–34].

¹²⁹ Bauer at [T1297, ln 41–47], [T1298, ln 1–20].

¹³⁰ Bauer at [T1274, ln 15–43], [T1281, ln 44–47].

- (a) relied upon or identified research that supports whether its proposed number of full-time equivalent RGAs is adequate to service the need on the gambling floors of the Melbourne Casino¹³¹
- (b) surveyed its staff after training to ask whether or not they remember what an observable sign is¹³²
- (c) tested whether its staff follow the stated obligation to communicate any relevant observations to incoming staff on the change of shift – nor is there a formally documented policy to this effect¹³³
- (d) adopted in its Code all of the Validated Observable Signs despite recognising the Thomas et al study as important research¹³⁴ and relevant insofar as Crown has a very extensive EGM environment¹³⁵ – nor included as an indicator of problem gambling, gambling for as little as three hours of continuous play without a proper break¹³⁶
- (e) set the time periods in its Play Periods Policy (current and proposed) based on research¹³⁷
- (f) undertaken any analysis to determine a causal or other link between loyalty programs and problem gambling, despite having the data to do so¹³⁸
- (g) measured the effectiveness of its RSG program¹³⁹
- (h) assessed or critiqued the timelines of the delivery of reminders under the Play Periods Policy, or collected data about the Play Periods Policy¹⁴⁰
- (i) put in place any metric or system for analysing what the outcomes of its RSG processes are and therefore whether they are effective¹⁴¹
- (j) adopted the proposals set out in the Regulator’s Report of the Sixth Review to:¹⁴²

¹³¹ Bauer at [T1175, ln 26–47] and [T1176, line 2].

¹³² Bauer at [T1191, ln 19–36], [T1305, ln 45–47] and [T1306, ln 1–3].

¹³³ Bauer at [T1230, ln 27–47] and [T1231, ln 1–11].

¹³⁴ Bauer at [T1274, ln 15–43].

¹³⁵ Bauer at [T1281, ln 44–47].

¹³⁶ Bauer at [T1274, ln 24–43] and [T1284, ln 1–3].

¹³⁷ Bauer at [T1285, ln 2–46] and [T1286, ln 1–18], [T1397, ln 44–47], and [T1398, ln 1–25].

¹³⁸ Bauer at [T1297, ln 41–47], [T1298, ln 1–20].

¹³⁹ Bauer at [T1305, ln 16–32].

¹⁴⁰ Bauer at [T1305, ln 39–43].

¹⁴¹ Bauer at [T1307, ln 22–34].

¹⁴² Exhibit RC0002: COM.0005.0001.0776: VCGLR Sixth Review of the Casino Operator and Licence, June 2018, tendered 17 May 2021.
at [122–123]; Bauer at [T1414, ln 46–47], [T1415, ln 1–47], [T1416, ln 1–39].

- (i) consult with the Foundation:
 - (A) in relation to the development of a responsible gambling strategy focused on the minimisation of gambling-related harm to persons attending the Melbourne Casino
 - (B) to consider and assess the nature of Crown's intervention initiatives, and the risk of harm to the person in particular circumstances,

despite the Foundation stating that it was willing and able to assist,¹⁴³ and Crown's Group General Manager, Responsible Gambling Ms Sonja Bauer acknowledging in evidence that there would be benefit to Crown in discussing its RSG strategy with a subject matter expert body such as the Foundation, and that Crown looks to the Foundation 'for a number of elements',¹⁴⁴ or

- (ii) review harm minimisation initiatives in response to research and in conjunction with external stakeholders such as the Foundation, for example, before sending out promotional material. Nor does it consider whether the people to whom the material is sent can afford to gamble at the levels required to qualify for the promotion,¹⁴⁵ despite recognising that as a responsible corporate citizen, Crown should be taking more proactive steps before marketing to people¹⁴⁶

- (k) considered relevant research in marketing and conducting its (now discontinued) Red Carpet Program.¹⁴⁷

12.2 Need for independent, peer-reviewed research

12.2.1 The Foundation's role of combining gambling harm-related service delivery and research functions as a stand-alone organisation, means that it is uniquely placed to carry out research in relation to the Melbourne Casino.

12.2.2 The Foundation both conducts and publishes its own research and awards research grants.¹⁴⁸ This research is independent. It is not funded by the gambling industry. The Foundation is independent from both industry and the Regulator.

¹⁴³ Lucas at [T1560, ln 5–27].

¹⁴⁴ Bauer at [T1415, ln 24–42].

¹⁴⁵ Emery at [T1468, ln 18–23].

¹⁴⁶ Emery at [T1472, ln 11–20].

¹⁴⁷ Mackay at [T1702, ln 14–18].

¹⁴⁸ Billi Statement [11].

12.2.3 The Foundation's research is subject to academic peer review¹⁴⁹ at the methodology and final draft report stage.¹⁵⁰

12.3 Research to inform responsible service of gambling policy and practice

12.3.1 There was an abundance of evidence given during the course of the Commission's hearings that further research is required on the topics of Crown's RSG and gambling harm. In particular, there is a pressing need for new or additional independent and peer-reviewed research to inform:

(a) the legislative framework required to prevent gambling harm at casinos and specifically Crown Melbourne, and

(b) Crown's Code of Conduct

in relation to the following topics:

(c) limits on play, time, money and frequency

(d) breaks in play, both length and nature to constitute a break in continuous gambling so as to minimise the risk of gambling harm

(e) adequate supervision of people who gamble and the number of trained people on the gambling floor required to both observe effectively and intervene appropriately

(f) the impact of loyalty programs on gambling behaviour and the potential for incentives to cause harm.

12.3.2 The Foundation is presently in the middle of its 'Monitoring and Surveillance, Harm, Gambling Products, Gambling Environment, Recovery and Support' research agenda. The research topics in paragraph 12.3.1 are consistent with the topics of 'Harm' and 'Gambling Environment'.

12.4 Access to data

12.4.1 The Foundation agrees with, and adopts, the submission of Counsel Assisting that there should be a positive obligation on Crown to make its gambling data available

¹⁴⁹ Billi Statement at [17].

¹⁵⁰ Billi at [T1800, ln 4–17].

to industry bodies, including to the Regulator, relevant Victorian government departments and agencies, and to the Foundation and other researchers.¹⁵¹

12.4.2 The Foundation also agrees with the submission of Counsel Assisting that:

*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 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.*¹⁵²

12.4.3 Further, in order to carry out, or fund others to carry out, research in relation to gambling harm and its prevention at the Melbourne Casino, in addition to access to data, the Foundation requires visibility as to how Crown's gambling products and RSG processes are developed and delivered in practice.¹⁵³

12.4.4 The Foundation does not currently receive any data for its research from Crown.¹⁵⁴ Nor does it have regulatory or statutory power to compel the provision of data.¹⁵⁵ While the Foundation welcomes the offer made by Crown's Counsel, Mr Borsky QC, in the public hearings,¹⁵⁶ this does not impose an obligation on Crown to provide data to facilitate the work of the Foundation.

12.5 Public awareness campaigns

12.5.1 The evidence supports a pressing need for public information to encourage behaviour change and help seeking (for example, through the Gambler's Help service system and prevention programs) to minimise the potential for gambling harm in relation to:

- (a) selection of time and money limits for play and the risks of exceeding appropriate limits
- (b) the benefits of breaks in play, and
- (c) exclusion programs.

¹⁵¹ Closing Submissions, p. 347: 1.35.

¹⁵² Closing Submissions, p. 347: 1.35.

¹⁵³ Lucas at [T1564, ln 23–47], [T1565, ln 1–26].

¹⁵⁴ Lucas at [T1549, ln 8–11].

¹⁵⁵ Lucas Statement at [17].

¹⁵⁶ Borsky QC at [T1582, ln 14–20] - *Crown is absolutely open to discussing with [the Foundation], the kinds of data that would be of assistance to [it]. So I take it you will take up that invitation and reach out to Crown in an attempt to define the parameters of the data that you might be after to advance your objectives and facilitate your work.*

12.5.2 The Foundation's research has identified several groups in the community that are at greater risk of gambling harm. They include people with comorbid conditions such as mental ill-health, young people (in particular men aged 18 to 24 years), First Nations people and people from some CALD communities.¹⁵⁷ It is important, therefore, that such campaigns are targeted to reach these groups and others and encourage behaviour change and help seeking through the Gambler's Help service system and prevention programs. The Commission received evidence to this effect in respect of the experiences of international students at the Melbourne Casino, in particular that:

- (a) their experience was different to that of other members of CALD communities¹⁵⁸
- (b) there is insufficient information and education of international students on the topic of gambling and gambling harm, and
- (c) there is a need to look at the best form of messaging to ensure that it reaches them.¹⁵⁹

13. Summary and recommendations

13.1 Cost of gambling and gambling-related expenditure

13.1.1 The total cost to the community of gambling in Victoria is significant. Based on 2014–2015 data it was conservatively estimated to be \$7 billion.¹⁶⁰ Of this, approximately 75 per cent was borne by people who gamble, their families and their social networks.

13.1.2 As noted by Counsel Assisting, Crown's evidence is that between FY2016 and FY2020 the total cost of all marketing and rewards activity at Crown was about \$2.5 billion, being about \$500 million a year.¹⁶¹ That money is spent to get people into the Melbourne Casino and spending money gambling at the casino.¹⁶²

¹⁵⁷ Lucas Statement at [28.4.2].

¹⁵⁸ Manorani Guy, President of the Victorian Working Group on International Student Employability (VicWISE) at [T1850, In 12–18].

¹⁵⁹ Guy at [T1853, In 43–47] and [T1854, In 2–20].

¹⁶⁰ Billi Statement at [35.5]; Billi at [T1804, In 2–4].

¹⁶¹ Counsel Assisting at p. 132: 4.24; Emery [T1485, In 40–46 and [T1486, In 1–18]. See also Exhibit RC0133: CRW.998.001.0271 Statement of Nicholas Emery, 5 May 2021, tendered 4 June 2021 at [12].

¹⁶² Emery [T1485, In 40–46 and [T1486, In 1–18]. See also Exhibit RC0133: CRW.998.001.0271 Statement of Nicholas Emery, 5 May 2021, tendered 4 June 2021 at [12].

13.1.3 The gambling industry advertising spend in Victoria in 2019 was estimated at \$70 million.¹⁶³ This excluded sponsorships and in-program content, as well as other forms of advertising such as direct marketing.

13.1.4 By contrast:

- (a) Crown spent less than \$1.9 million on RSG in 2019¹⁶⁴
- (b) the allocation of the Foundation's budget to research last financial year was \$1.37 million¹⁶⁵
- (c) the allocation of the Foundation's budget for strategic communication and marketing campaigns, including sponsorships, was \$9.12 million.¹⁶⁶

13.2 Recommendations regarding interim and ongoing protection for the community

13.2.1 The Foundation submits that there is a range of matters that ought to be addressed with respect to Crown's RSG irrespective of whether the Commission adopts Counsel Assisting's submissions as to whether Crown is suitable to hold the licence to operate the Melbourne Casino, or it is in the public interest that it do so. In this regard, the Foundation notes that the Closing Submissions contemplate that there will, at a minimum, be a period of time for which Crown will continue to operate the Melbourne Casino. In this regard the Foundation notes that Counsel Assisting submit, among other things, that:

- (a) *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:*
 - (i) *accept that Crown Melbourne is capable of returning to suitability and make recommendations to facilitate the path back to suitability*
 - (ii) *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*

¹⁶³ Nielsen Media Research: <https://www.bandt.com.au/revealed-australias-biggest-ad-spender-as-media-advertising-spend-soars-26-yoy/>.

¹⁶⁴ Emery [T1485, In 40–46 and [T1486, In 1–18].

¹⁶⁵ Lucas Statement at [29.2].

¹⁶⁶ Lucas Statement at [29.4].

*an acceptable time frame – and that as a consequence the casino licence should be cancelled.*¹⁶⁷

- (b) *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.*¹⁶⁸
- (c) *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.*¹⁶⁹

13.2.2 Counsel Assisting make the submission that:

*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.*¹⁷⁰

13.2.3 The Foundation agrees with this statement and recommends that a consistent approach be adopted as follows:

- (a) Crown should be required to:
 - (i) amend its Code to:
 - (A) adopt all of the Validated Observable Signs in its Code for customers using EGMs
 - (B) include an obligation to take all reasonable steps to prevent and minimise harm from the operation of EGMs in the Melbourne Casino, including by monitoring the welfare of people who use EGMs, discouraging intensive and prolonged EGM use and intervening when a person is displaying behaviour that is consistent with gambling harm.

¹⁶⁷ Closing Submissions, p. 25: 1.21.

¹⁶⁸ Closing Submissions, p. 25: 1.23.

¹⁶⁹ Closing Submissions, p. 25: 1.25.

¹⁷⁰ Closing Submissions, p. 345: 1.16.

- (C) amend its Play Periods Policy to ensure that it is consistent with the Thomas et al observable sign: 'often gambles for long periods (3+ hours) without a [15-minute] break'.
 - (ii) review its Code periodically to ensure that the Code incorporates emerging research and industry best practice
 - (iii) review harm minimisation initiatives in response to research and in conjunction with external stakeholders including the Foundation before sending out promotional material.
- (b) RSG training for Crown staff should be:
- (i) developed by DJCS in conjunction with the Foundation, to ensure that it incorporates emerging research and best practice, and
 - (ii) delivered by DJCS and the Foundation.
- (c) There should be a minimum of one RGA on Crown's gambling floors per 105 EGMs at all times, with enough RGAs available to also observe other forms of gambling such as fully/semi-automated table games, and carry out the other functions that RGAs are required by Crown to perform.
- (d) The incentives offered by Crown to encourage people to attend the Melbourne Casino or to gamble should cease immediately, unless and until independent research shows that there is no association with gambling harm.

13.3 Other recommendations regarding regulation of gambling

13.3.1 The Foundation submits that:

- (a) Time and money limits
 - (i) Crown should be required to:
 - (A) monitor and intervene with customers, informed by the Validated Observable Signs
 - (B) enable a universal system (i.e. an enhanced state-wide YourPlay scheme) that requires customers to set a binding money and/or time gambling limit(s)

- (ii) there should be greater public education about realistic time and money limits
- (iii) Crown should be required to:
 - (A) assist people who gamble at the Melbourne Casino to set time and money limits appropriate for the individual, and
 - (B) stop people from continuing to gamble at the Melbourne Casino when one of their selected limits is reached (for example, by a technological solution that prevents continued gambling beyond a selected limit).
- (b) Exclusion
 - (i) there should be a single Exclusion Program that applies to all land-based gambling venues, and a state-wide Exclusion Register that is capable of being well understood and well monitored should be established.
 - (ii) the Exclusion Program should:
 - (A) be developed in accordance with independent peer-reviewed research and periodically evaluated and amended as required based on research
 - (B) be simple and easy to access, and well promoted through various channels such as in venue, member newsletters, websites, media and social media
 - (C) cover all exclusion options available to people attending gambling venues
 - (D) be operated independently of gambling providers and with strong linkages through to support services
 - (E) require gambling providers to have appropriate enforcement mechanisms in place, such as facial recognition technology, or mandatory carded play.
- (c) Cashless gambling
 - (i) while a move to solely cashless gambling presents opportunities to assist in monitoring gambling behaviour with the dual benefit of

providing data, it also carries risks of increasing gambling harm. As such, if cashless gambling is to be introduced in Victoria, a cashless gambling system with a harm minimisation focus should first be developed and piloted in order to assess its effectiveness.

13.4 Recommendations regarding the regulatory framework

13.4.1 Language

- (a) the language of the regulatory framework (for example, the responsible gambling codes of conduct, *Victorian Responsible Gambling Foundation Act 2011*, *Gambling Regulation Act 2003*, and *Casino Control Act 1991*) should be restated to focus their operation on the prevention and reduction of gambling harm by the responsible service of gambling, rather than fostering 'responsible gambling'.

13.4.2 Provision of data

- (a) as proposed by Counsel Assisting, there should be a positive obligation on Crown to make its gambling data available to industry bodies, including data being made available to the Regulator, relevant Victorian government departments and agencies, and to the Foundation and other researchers.¹⁷¹

13.4.3 Consultation

- (a) the Foundation has an important role to play in assisting both Government and industry with limiting the risk of harm caused by proposed gambling products or proposed product features, the delivery of gambling products, and the evidence base to support effective RSG obligations. At present, Crown is not required to consult with the Foundation in relation to these matters, or to take into account the Foundation's recommendations, whether directly or via the Regulator, and
- (b) the Foundation should be consulted, and regard had to its expertise, in relation to:
 - (i) the issue or grant of licences, permits, approvals, authorisations, registration or allocations under gambling legislation consistent with its functions under section 6 of its establishing Act,¹⁷² and
 - (ii) any approval for:

¹⁷¹ Closing Submissions, p. 347: 1.35.

¹⁷² *Victorian Responsible Gambling Foundation Act 2011*, s 6.

- (A) new gambling products or proposed product features, and
- (B) Crown's policies in relation to RSG.

13.5 Recommendations regarding research and the role of the Foundation

13.5.1 Research should be undertaken in relation to the following topics as they apply to the Melbourne Casino:

- (a) Staffing, observation and intervention
 - (i) the optimum number of dedicated officers on a gambling floor to ensure behavioural indicators are observed and intervention is timely, and
 - (ii) what factors influence adequate staffing on a gambling floor, for example, the types of gambling, size and layout of the venue, number of EGMs or other gambling forms, percentage of people playing 'uncarded' and total number of customers and time of day.
- (b) Breaks in play
 - (i) the adequacy of breaks in play to prevent or reduce gambling harm by reference to:
 - (A) both length and nature to constitute a break in continuous gambling so as to minimise the risk of gambling harm
 - (B) gambling product
 - (C) the environment of the Melbourne Casino, and
 - (ii) the most appropriate ways a gambling venue can enforce breaks.
- (c) Limits
 - (i) what an appropriate money limit is for an individual who gambles in order to reduce their risk of harm and of developing problem gambling
 - (ii) applied research to translate the existing research in relation to annual limits to daily/weekly/sessional periods, and how they relate to specific products, for example table games, fully/semi-automated table games and EGMs.

- (d) Loyalty programs and incentives
 - (i) focused on how to prevent or minimise harm (not whether there is a causal link).

13.5.2 Public information and behaviour change campaigns should be undertaken in relation to the following topics:

- (a) selection of time and money limits for play and the risks of exceeding appropriate limits
- (b) the benefits of breaks in play, and
- (c) exclusion.

13.5.3 The Foundation is the appropriate body to undertake:

- (a) the independent research referred to in paragraph 13.5.1
- (b) the public information and behaviour change campaigns referred to in paragraph 13.5.2, and
- (c) as it does for other venues, RSG training of Crown staff as referred to in paragraph 13.2.3(b)(ii).