



DirectLine: [REDACTED]
 Email: [REDACTED]
 OurRef: COMPLIANCE_675759

23 February 2021

By Email [REDACTED]

Ms Debra Lusty
 Manager, Assessment & Determination
 Licensing Division
 Victorian Commission for Gambling and Liquor Regulation
 Level 3, 12 Shelley St
 RICHMOND VIC 3121

Dear Ms Lusty

Conduct of Casino Special Employees Victorian Court of Appeal Decision

We refer to the Victorian Commission for Gambling and Liquor Regulation's **(Commission) letter** dated 2 February 2021 to Mr Ken Barton **(Letter)**, requesting further information from Crown Resorts Limited and/or Crown Melbourne Limited **(Crown)** in respect of the Conduct (as defined in your letter) of casino special employees referred to in the decision of the Victorian Court of Appeal in *OPV HOU* [2020] VSCA190 (30 July 2020) (the **Decision**).

Crown notes that the only aspect of the Conduct which formed part of the Decision was the conduct around the interviews of those arrested, not their actual arrest and detention;

As you would be aware Mr Barton has resigned his directorships and stood down as Chief Executive Officer of Crown Resorts Limited. Given that the employees involved in the Conduct as defined in the Letter were employed by Crown Melbourne Limited, I provide this response to the Commission in the absence of Mr Barton.

Background

The Court of Appeal in the case of *OPV Hou* [2020] VSCA190 (30 July 2020), which was an appeal by the Director of Public Prosecutions from the interlocutory decision of His Honour Judge Smith, found that:

Crown special employee licensed employees **(special employee)** and more particularly a special employee having responsibility for Security and Surveillance is an investigating official **(10)** as



defined in Section 464(2) of the ~~Crimes Act 1958~~ **(Act)**. Accordingly, as an IO a special employee is required to read the Section 464A(3) caution to an alleged detained offender if they propose to question that person further than asking for their name and address (see para 130 of the judgment).

This was the first time, as far as Crown was aware, that Security and Surveillance personnel were defined as an IO under the Act. Crown has almost 27 years of operational experience. Over the course of these years, special employee licensed Crown Security Officers and Investigators in the Security Investigation Unit have not been considered, nor has the question been raised as to whether special employees are IO's under the Act. The arrest and detention of the persons on 1 May 2017, which included a dealer employed by Crown at that time, was as a result of a Surveillance Department Investigation into an alleged dealer collusion incident, where the losses to Crown were estimated at the time of arrest to be approximately \$900,000. The "modus operandi" of the scam and the full extent of those possibly involved (i.e. patrons and employees) was not known at the time of the arrest and detention of those persons on 1 May 2017. It is against this background that the Conduct of the special employees, it is submitted, should be considered.

Set out in **Annexure A** is Crown's responses to questions 1 to 8, of the Commission's letter. **Annexure B** lists documents attached to this response.

I hope the information provided assist you with your enquiries. Should you have any further queries please do not hesitate to contact me directly.

Yours sincerely

A black rectangular redaction box covering the signature of the sender.

Xavier Walsh

Chief Executive Officer
Crown Melbourne Limited



Annexure A IVCGLR Questions and Crown's Response

QUESTION

1. **'Whether any other casino special employees were involved in the Conduct;'**

RESPONSE

The casino special employees involved in the Conduct (including those set out in the Letter) were:

David De Francesco Security Investigation Unit (SIU) Operation Manager no longer employed by Crown who spoke with patron Yixuar CUI;

Jasor Mc Hutchison SIU Lead Investigator current employee who spoke with the former Crown employee Michael HOU (HOU);

Wayne Eales Security & Services Officer- current employee who did not speak with any of the accused but was present with David De Francesco;

Manuel Lyberis Security & Services Officer- no longer employed by Crown who spoke briefly with HOU and

Craig Walsh- Executive Director, Security & Surveillance current employee who spoke briefly with HOU.

QUESTION

2. **'What documents, policies/procedures and/or staff training Crown had in place as at 1 May 2017 regarding detention of individuals until the arrival of a police officer (and provide copies);'**

RESPONSE

The policies, procedures and training in place as at 1 May 2017 are set out below.

Documents

(a) Crown Security & Services Operational Manual (Manual) Version 6;

As at 1 May 2017, Crown had in place the Manual (issued April 2014) that outlines the process for exercising the powers of arrest under s 458 of the *Crimes Act 1958* (Vic) and the detention of persons to hand over to Victoria Police;

(b) The Security Operations Standard Operating Procedures (SOPs) (Version 6.0); particularly cl. 2.1.10 Detention of a Person and

(c) SIU Investigator Procedure and Code of Conduct.

All **attached**.



Training

Crown frontline Security staff (Security Services Managers (and Acting), Senior Security Officers and Security & Services Officers), receive formally scheduled training, as well as face-to-face refresher training, including training regarding the Manual. In addition, there are daily and weekly debriefs of incidents involving the arrest and detention of patrons and supplementary training as and when required. Further to this, as part of the continual improvement process, Security Management regularly review processes and procedures.

Further, all Security & Service Officers at Crown are required to obtain and maintain a valid Private Security Individual Licence - Crowd Controller, issued by the Licensing Regulation Division of Victoria Police, which requires the holding of security licence qualifications, Certificate II. The Certificate II training is conducted by a Registered Training Organisation (RTO) of which Crown College is one such RTO. Security & Services Officers may have obtained their Certificate II qualification either via Crown College or another RTO. The Certificate II course includes training concerning the law regarding arrest and detention, screening entry into a premises, monitoring or controlling behaviour in a premises and removing any person from a premises.

Background

SIU Investigators, due to their qualifications and knowledge of the Manual, were experienced as at 1 May 2017 in the exercise of the powers of arrest and detention of patrons (see further below).

A large majority of the people involved in the Conduct had formal qualifications from previous careers in Victoria Police. Craig Walsh and David De Francesco were commissioned officers within Victoria Police, working at a large number of criminal investigation units, throughout their career. Jason McHutchison had also worked at a number of criminal investigation units throughout his 10+ years with Victoria Police. All had completed Detective Training School, brief checking courses and numerous other courses relating to the rules of evidence and arrest procedures.

Jason McHutchison held at the time (and continues to hold) a Private Security Individual Licence (Crowd Control, Investigator and Bodyguard) issued by the Licensing Regulation Division of Victoria Police. Jason McHutchison is also enrolled in a Diploma of Government Investigation course commencing at the end of February 2021.

QUESTION

3. *Whether documented policies/procedures and/or staff training regarding detention of individuals had been provided to the casino special employees involved in the Conduct and if so, details of when it was provided (and provide copies);*

RESPONSE

Crown refers to its answer to question 2 above and attaches the relevant training records.



QUESTION

4. *'Whether these policies/procedures were followed by the casino special employees in relation to the Conduct;'*

RESPONSE

The casino special employees followed the policies and procedures in place as at 1 May 2017 concerning the arrest and detention of suspects.

QUESTION

5. *'What changes Crown has made (if any) to documented policies/procedures and/or staff training following the Conduct or following the Court of Appeal decision (and provide copies);'*

RESPONSE

Following the Decision Crown updated the Manual to include the legal requirement to issue the s464A(3) caution irrespective of whether it is intended to subsequently question a person following arrest (page 9 of the Manual). The caution has also been included in the flow chart within the Manual headed 'Patron Behaviour Requiring Security Intervention' (page 10 of the Manual).

Furthermore, all Security & Service Officers and Managers carry a pocket sized orange 'Caution Card' on their person whilst undertaking their functions in the course of their duties.

Security & Service Officers are reminded of their powers to arrest, cautioning of suspects and not to question suspects (other than the obtaining of their name and address) at security muster briefings and as per Security Directive 05.2020.

SIU Investigators and selected SIU employees will now attend yearly refresher face-to-face training on the Manual including areas such as the use of force. -----

Law Enforcement personnel attend (on an informal ad hoc basis) Security management meetings as guest speakers. The Crown Security and Surveillance Departments and SIU work closely with Law Enforcement both when on site and generally. Victoria Police from Southbank attend the Crown site on Friday and Saturday nights.

Any DVR recordings relating to investigation arrests are immediately downloaded and stored in Crown's case management system for access if required.

Relevant documents referred to above are attached.



QUESTION

6. ***'Whether Crown has conducted any review (internal or external) of the Conduct (and if so, a copy of any such review);***

RESPONSE

Crown conducted an informal review and debrief of the matter including the investigation leading up to the arrest of the offenders and the Conduct. Further, Crown sought and obtained external legal advice from its criminal lawyers. This advice is subject to legal professional privilege, however, Crown waived privilege in the limited circumstances of this instance and that advice is **attached** (Annexure B, No 8).

QUESTION

7. ***'Whether Crown has conducted any disciplinary investigation or taken any employment disciplinary action or other action in relation to the casino special employees and, if so, an explanation of same and detail of the current status and'***

RESPONSE

Following the Decision on 30 July 2020, those employees who were still employed by Crown Melbourne Limited were retrained (in addition to all employees within the Security Department who might exercise the power of arrest). Crown respectfully points out that prior to the Decision which held that casino special employees were IO's, it was not a requirement to issue a caution post an arrest.

QUESTION

8. ***'Any other information Crown would like the Commission to be aware of regarding this matter.'***

RESPONSE

Since the opening of Crown there have been hundreds of arrests made by Crown Security & Services Officers and Crown Investigators (large collusions thefts involving both employees and patrons etc.) which had progressed to court and were successfully prosecuted. The defence before His Honour Judge Smith that the 'voir dire' argued what was regarded as a novel point (which the Court of Appeal accepted) that Crown Investigators or Security Officers would be considered **'investigating officials'** under 464 of the *Crimes Act* and the caution was required to be read if suspects were to be questioned other than the obtaining of their name.

Upon the arrest of all persons in relation to this matter, Police (Melbourne CIU) were immediately contacted and were on site within 20 minutes of the arrest. Police then viewed footage and were briefed by the Surveillance Department and it was not until 3 hours later that HOU (the Crown employee) was administered the caution.



During the Magistrate's Court committal, WANG pled guilty and provided police with a statement and an undertaking to provide evidence against the co-accused. SHUM was acquitted, as no admissions were made and HOU and CU were committed to stand trial in the County Court before His Honour Judge Smith.

Prior to the commencement of the trial WANG refused to give evidence and a 'voir dire' was held, to have admissions made to Police by the accused excluded from evidence. It was at this stage that defence counsel raised the argument that Crown Security & Service Officers and SIU Investigators were IO's. This was heavily contested by the Office of Public Prosecutions.

On Wednesday 18 March 2020, the Judge ruled that the Crown Investigators arresting HOU and CU were 'Investigating Officials' and that they should have provided the caution.



Annexure B Policies Procedures Training

Item	Document	Version/Date
1.	Crown Security & Services Operational Manual	Version 6.0 - April 2014
2.	Standard Operating Procedures	Version 6.0 VCGLR Approved 19 December 2014
3.	Security Directive No 5 - 2020	August 2020
4.	SI Investigation Procedures, Code of Ethics	SI Investigation Procedure - 11.5 Code of Ethics - 12 October 2016
5.	Training Records (of those employees involved in the Conduct): <ul style="list-style-type: none"> • Craig Walsh • Jason McHutchison • David DeFrancesco • Manuel Lyberis • Wayne Eales 	Current as of February 2021
6.	Crown Security & Services Operational Manual	V8.0 - November 2020
7.	Caution Card	October 2020
8.	Tony Hargreaves & Partners, Lawyers advice	30 July 2020