

DECISION AND REASONS FOR DECISION

13 March 2024

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In the matter of a determination pursuant to section 36H(2) of the *Casino Control Act 1991*.

Commission: Fran Thorn, Chair
Andrew Scott, Deputy Chair
Ron Ben-David, Deputy Chair
Claire Miller, Commissioner
Chris O'Neill, Commissioner

Date of decision: 13 March 2024

Decision: For the reasons attached to this decision, the Victorian Gambling and Casino Control Commission has determined that it is clearly satisfied that:

- (a) Crown Melbourne is suitable to operate the Melbourne Casino; and
- (b) it is in the public interest for the Melbourne Casino Licence to remain in force.

Signed: Fran Thorn



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Introduction

1. The Commission may, in its sole discretion, determine that it is clearly satisfied that Crown Melbourne is suitable to operate the Melbourne Casino and that it is in the public interest for the Melbourne Casino Licence¹ to continue in force. It has engaged in a close examination of the facts to reach a level of satisfaction synonymous with the requirement that it be clearly satisfied. The phrase clearly satisfied is not defined in the legislation, but the Commission must reach a state of actual persuasion to be clearly satisfied.
2. To be suitable to operate a casino an operator must at least obey the law; act honestly and with integrity; deter illegal and immoral behaviour; not exploit gamblers; actively minimise gambling harm and cooperate fully and candidly with its regulators.²
3. Since Crown Melbourne was granted the Melbourne Casino Licence in 1993, its suitability to hold the Melbourne Casino Licence and the public interest in that licence continuing in force has been regularly reviewed. At the time of the 2018 review, there was speculation³ about Crown Melbourne's suitability. Crown staff had been arrested in China (**China arrests**), and there were allegations of money laundering at the Melbourne Casino.
4. Crown Melbourne hindered the VCGLR⁴ in its investigation of the China arrests, and that investigation was incomplete when the 2018 suitability review concluded. Separately, authorities in New South Wales decided to inquire into the suitability of a Crown company nominated to operate a casino in that state (**Bergin Inquiry**).
5. In early February 2021, reports were produced by the Bergin Inquiry and the VCGLR.
6. The Bergin Inquiry found the Crown company nominated to operate a casino in New South Wales unsuitable and Crown Melbourne an unsuitable associate. Those conclusions were based on findings of money laundering at the Melbourne and Perth Casinos.⁵ They were also based on management and governance failures at the Melbourne Casino, including those related to the arrest of staff in China and junket operations having become a conduit through which the Melbourne Casino was exposed to organised crime.

¹ Defined by section 3 of the *Casino Control Act 1991* (Vic) (**Casino Control Act**).

² In considering the issue of suitability, any matter relevant to a person being fit and proper and operationally capable may be considered. Issues of repute, character, honesty and integrity of officers and directors are also relevant.

³ See generally the Sixth Casino Review Report, "Key Events During the Review Period", including references to allegations made by an independent member of the Federal Parliament and advertisements published by the Crown Group of Companies in October 2017.

⁴ Being the Victorian Commission for Gambling and Liquor Regulation (**VCGLR**), as it was then known.

⁵ The Perth Casino is a casino that is also operated by a company within the Crown Group.

7. The VCGLR's report on the China arrests identified significant failures in risk management, governance, and employee safety.
8. In late February 2021, a Royal Commission was established in Victoria to inquire into Crown Melbourne's suitability to hold the Melbourne Casino Licence and the public interest in the continuation of that licence (**Royal Commission**). That Royal Commission found Crown Melbourne unsuitable. It found Crown Melbourne had engaged in illegal, dishonest, unethical, and exploitative conduct. It described Crown Melbourne's wrongdoing as alarming, particularly because its privilege to hold the Melbourne Casino Licence is conditional on its suitability, which demands good character, honesty, and integrity.
9. The Royal Commission found Crown Melbourne:
 - a. Failed to serve its gambling products responsibly.
 - b. Placed staff overseas at risk, even after the China arrests.
 - c. Underpaid casino tax.
 - d. Facilitated or ignored money laundering.
 - e. Assisted wealthy customers in breaching foreign currency laws.
 - f. Hindered regulators, including by giving false and misleading information.
10. According to the Royal Commission, these failures occurred because:
 - a. The then board of Crown Melbourne failed to ensure that the company satisfied its legal, ethical, and moral obligations.
 - b. Senior executives were indifferent to their ethical, moral, and legal obligations.
 - c. Internal and external lawyers failed to counsel Crown Melbourne not to engage in contravening conduct.
 - d. The former executive chairman of Crown Melbourne's parent company, Crown Resorts, and his company influenced Crown Melbourne.
11. Notwithstanding these matters, the Royal Commission did not recommend immediate cancellation of the Melbourne Casino Licence. Instead, the Royal Commission recommended that Crown Melbourne be supervised while it further implemented an existing reform program. According to the Royal Commission, that reform program would likely return Crown Melbourne to suitability and, if it succeeded, benefit Victoria. Crown Melbourne was granted a two-year period to reform.
12. Despite the Royal Commission's confidence about Crown Melbourne's reform, the Commission commenced a project to ensure the orderly transition to a new casino operator if that reform failed. The Commission considered this work necessary having regard to the nature and extent of the wrongdoing and the possibility that Crown Melbourne would be incapable of returning to suitability within the permitted two-year timeframe.

13. After the Royal Commission, legislation was enacted to establish the supervisory position of the Special Manager and create unprecedented regulatory control over the Melbourne Casino.
14. The Special Manager has produced reports primarily directed at "Requirements" set by Appendix I of the Royal Commission's report. The Special Manager's reports are focused on the issues the Royal Commission identified as the basis for finding Crown Melbourne unsuitable. Broadly, those failures were categorised collectively as responsible service of gambling, governance, risk management, culture, financial crime, regulatory compliance, and cooperation.
15. The Commission has carefully considered the Special Manager's reports. It is satisfied that the Special Manager has assessed all relevant matters and that a significant body of evidence supports the Special Manager's conclusions.
16. The Special Manager's reports refer to the Commission's work since the Royal Commission, relevant to suitability, including the Commission's investigations into:
 - a. The suitability of Blackstone Inc., which is now, in effect, the owner of Crown Melbourne and of individuals who are now directors and officers of Crown Melbourne.
 - b. Matters that resulted in disciplinary action, based on findings of the Royal Commission.
 - c. Crown Melbourne's financial viability.
 - d. Certain operational regulatory matters referred to later in these reasons.
17. The Commission has carefully considered the reports of the Royal Commission, the Bergin Inquiry, and that of a West Australian Royal Commission conducted into the Perth Casino.⁶
18. By reference to these sources, the Commission has considered whether it is clearly satisfied that Crown Melbourne is suitable to hold the Melbourne Casino Licence and whether it is in the public interest that the Melbourne Casino Licence continue in force.
19. Unless it is clearly satisfied on the issues of suitability and the public interest that the Melbourne Casino Licence continue in force, the Melbourne Casino Licence is automatically cancelled.⁷

⁶ As well as the publicly available answers, information, documents, and things given or produced during these inquiries.

⁷ See section 361(1) of the Casino Control Act.

20. The Commission considers that the matters to which it must have regard⁸ are sufficient for it to be clearly satisfied of the decision it has made.
21. These reasons set out the basis for the Commission's decision, based on those matters to which it must have regard.
22. These reasons also describe why, quite apart from its decision, the Commission considers the ongoing implementation of Crown Melbourne's reform should continue to be scrutinised, including to ensure the ongoing implementation of what is known as the Melbourne Transformation Plan.⁹

⁸ See section 36H(3)(a) of the Casino Control Act.

⁹ Noting that the Special Manager's term of appointment will conclude in mid-2024 and, as is noted in the Special Manager's final report, the Commission is empowered to continue the directions made by the Special Manager as it sees fit.

Part 1 – Suitability

23. Suitability is not a mathematical exercise. It is a value judgment that requires the Commission to consider and synthesise all the relevant factors to determine whether, it is clearly satisfied that an entity is or is not a suitable person.

The suitability matters identified by the Royal Commission

Responsible Service of Gambling

24. The Royal Commission found Crown Melbourne exploited customers by encouraging them to gamble beyond their means. The culture of Crown Melbourne prioritised profit over the well-being of customers. It failed to cultivate a safety-oriented approach that considered potential harm. Crown Melbourne applied superficial measures to give an appearance of compliance but encouraged problem gambling by failing to:

- a. Prevent extended periods of gambling.
- b. Adequately train staff to implement its responsible service of gambling program.
- c. Mitigate the risks in “high roller” areas at the Melbourne Casino where it instead incentivised staff to encourage problem gambling.
- d. Prevent prohibited gambling on electronic gaming machines, including simultaneous gambling on multiple devices.
- e. Adequately implement or enforce exclusion programs.
- f. Ensure marketing and promotions did not target the vulnerable.
- g. Engage with stakeholders to support responsible service of gambling-related research.

25. As the Special Manager has reported, in November 2022, the Commission fined Crown Melbourne \$120 million for failures relating to extended periods of gambling and prohibited forms of gambling on electronic gaming machines. In April 2023, it also fined Crown Melbourne \$30 million for practices that allowed cheques to be used in a way that increased the risk of gambling harm. The Commission also exercised its statutory powers to prevent Crown Melbourne from directly marketing to vulnerable people.

Responsible Service of Gambling reforms

26. In December 2023, a system of mandatory carded gambling was introduced for electronic gaming machines at the Melbourne Casino. That system has significantly reduced the risk that systemic breaches of the type identified by the Royal Commission might occur. Under the system, customers must pre-set gambling limits. By December 2025, this system will also apply to table gambling.

27. The system of mandatory carded gambling is given the force of law by amendments made to Part 5 of the Casino Control Act. These amendments make it an offence for Crown Melbourne to allow an Australian resident to gamble on an electronic gaming machine unless they have a relevant account and gambling limits have been set.
28. In December 2023, new regulations¹⁰ came into force to support the pre-commitment system. These regulations require Crown Melbourne to ensure the efficacy of the system and prescribe various requirements relating to the identity of gamblers, cashless gambling requirements and the payment of winnings. These regulations also impose requirements regarding collecting and retaining information required to investigate and prosecute matters relating to gambling harm. There are also regulations to assist those with a gambling problem to self-exclude from the Melbourne Casino.
29. Through the work of the Commission and government, Crown Melbourne has also introduced a new Responsible Gambling Code of Conduct to address matters such as time spent gambling.
30. The Special Manager reports that, between their appointment and final report, there was no evidence of maladministration, or illegal or improper conduct indicative of the serious and systemic failures previously identified by the Royal Commission and elsewhere.
31. The Special Manager reports that most of the responsible service of gambling measures nominated by Crown Melbourne during the Royal Commission have been implemented. Improvements that exceed those matters have also been implemented. The Special Manager also reports that reforms have been implemented, which have:
 - a. Increased in the size and remuneration of staff whose role it is to monitor the responsible service of gambling (although work remains to be done on staffing levels at surge times and on weekends).
 - b. Adequately funded the responsible service of gambling program.
 - c. Reformed training programs so employees are clear about their responsible service of gambling responsibilities.
 - d. Reformed exclusion programs so that customers are effectively monitored, identified when at risk, encouraged to self-exclude when appropriate and self-exclusion breaches are monitored.

¹⁰

Casino Control Regulations 2023.

The Commission's view of the Responsible Service of Gambling reforms

32. Based on the matters identified immediately above, the Commission has formed the view that the legislative changes supporting carded play and matters reported by the Special Manager (such as Crown Melbourne's active redress of failures to protect gamblers from exploitation, as well as its implementation of what is known as the Player Health Strategy) mean that the matters identified by the Royal Commission have been comprehensively addressed. There is no evidence that gamblers are being systemically exploited at the Melbourne Casino, as they were in the past.
33. It is, however, inevitable that some gamblers may engage in risky gambling practices. Isolated incidents will occur, and the Commission will require those incidents to be addressed seriously and comprehensively going forward. Some aspects of Crown Melbourne's reforms also remain ongoing, including insofar as they concern the support of research into gambling harm and staffing at surge times and on weekends. Measures are being implemented by both Crown Melbourne and the Commission to ensure the historical matters identified by the Royal Commission are not repeated.
34. The Commission will continue to closely scrutinise the effectiveness and implementation of Crown Melbourne's responsible service of gambling reforms by issuing a statutory direction. This monitoring is necessary to ensure that the public is adequately protected from the harm gambling can cause now and into the future.

Governance, Culture and Risk Management

35. The governance, culture and risk management failures identified by the Royal Commission were wide-ranging. They encompassed governance structures, day-to-day management, and client-facing staff culture. Directors and senior managers took inappropriate risks to maximise profit at the expense of legal, regulatory, and social obligations.
36. The welfare of employees and customers was adversely affected, and the consequences were catastrophic. Gamblers' lives were ruined, Crown Melbourne engaged in illegal conduct, and Crown employees were sentenced to terms of imprisonment in China.

37. This occurred because:
- a. Directors failed to ensure Crown Melbourne satisfied its legal, moral and social obligations.
 - b. The influence of the former executive chairman of Crown Resorts was considerable, and conflicts of interest were allowed to exist.
 - c. There was an absence of board or management independence from owners, shareholders, or others¹¹ and a tendency to exploit grey areas, particularly with the assistance of lawyers.
 - d. Risks¹² were not elevated for board consideration.¹³

Governance, Culture, and Risk Management reforms

38. As the Special Manager has reported, the Commission insisted on significant changes to Crown Melbourne's governance when approving the acquisition of Crown Melbourne's parent company by Blackstone Inc. The Crown Melbourne board was reconstituted and now consists of four independent and two non-independent directors.¹⁴ The former executive chairman of Crown Resorts and his company no longer hold any form of interest.¹⁵
39. To avoid repeating the historical influence that has been exerted on Crown Melbourne, the Commission's approved acquisition by Blackstone Inc. was subject to conditions that it does not interfere, influence, or attempt to influence Crown Melbourne's officers or employees. New legislative provisions and regulations fortify these requirements.
40. Part 3A, Division 3 of the Casino Control Act makes it a condition of the Melbourne Casino Licence that Crown Melbourne has a majority independent board and independent senior management. It is also now a condition of the Melbourne Casino Licence that most Crown Melbourne directors are not connected with any holding company of Crown Melbourne. New regulations prescribe the functions, periods and categories that apply to the independence requirements.¹⁶
41. As the Special Manager also reports, the Commission has investigated several directors and officers of Crown Melbourne to become associates of Crown Melbourne. The Special Manager has confirmed no evidence of maladministration since their appointment.

¹¹ Such as executives of former shareholder companies. See generally the Bergin Inquiry report and the VCGLR's report on the arrest and conviction of Crown Employees in China, particularly at paragraph 189.

¹² Such as those referred to in paragraphs 35 and 36.

¹³ The Bergin Inquiry made findings similar to those of the Royal Commission.

¹⁴ The Crown Melbourne Board comprises Ian Silk (Chair), Helen Silver AO, Henriette Rothschild, Christopher Tynan, Ciarán Carruthers, and Mary Waldron. Mr. Silk, Ms. Silver, Ms. Rothschild, and Ms. Waldron are designated as independent directors. Relevant board charters require the independent directors to certify their independence annually.

¹⁵ There is also now a statutory five per cent limit on shares held directly or indirectly in Crown Melbourne unless otherwise approved by the Commission—Casino Control Act, section 36U.

¹⁶ *Casino Control Regulations 2023*.

Governance

42. On governance, the Special Manager reports that Crown Melbourne has:
- a. Significantly enhanced its board independence and oversight.
 - b. Appropriately implemented both the letter and spirit of the governance requirements.
 - c. An independent board that is operating independently in practice and demonstrating leadership and diligence with a clear focus on Melbourne-specific issues.
 - d. Implemented arrangements to enable the Crown Melbourne board to oversee key functions and for executives to take their instructions from, and act in the interests of, Crown Melbourne.
 - e. Taken steps to enhance the governance and effectiveness of its management committees.

Risk Management

43. On risk management, the Special Manager reports that Crown Melbourne has satisfactorily addressed the matters necessary for remediating the systemic failures¹⁷ identified by the Royal Commission. Changes to risk management frameworks, functions and reporting recommended by the independent expert nominated by the Royal Commission have been implemented. Crown Melbourne has built a strong foundation for the future of its risk management function by:
- a. Operationalising its three lines of defence model regarding financial crime.
 - b. Delivering a risk uplift program, which includes a revised risk management framework, risk and controls framework, and risk appetite statement.
 - c. Operationalising a new governance, risk, and compliance system and risk profiles for business units.
 - d. Delivering a policy uplift program and embedding policy management in its business-as-usual operations.
 - e. Mapping gaming-related obligations in Crown Melbourne's governance, risk, and compliance system, which will shortly be extended to non-gaming obligations.
 - f. Establishing a policy and practice for consistently identifying, recording, and reporting incidents and breaches.
 - g. Commissioning an external review to test the effectiveness of its risk management framework, systems, and processes.

¹⁷ Being the matters identified in Appendix I of the Royal Commission's final report, the VCGLR's report on the arrest of Crown Staff in China, and the NSW Bergin Report.

44. Relatedly, the Special Manager also reports that Crown Melbourne has significantly improved and strengthened its integrity framework. It has:
- a. Revised its code of conduct and implemented policies to support that code in areas such as conflicts of interest, gifts, tips and gratuities.
 - b. Developed an appropriate anti-bribery and corruption framework.
 - c. Improved its whistleblower framework, to support the receipt and management of whistleblower disclosures.
 - d. Implemented training programs and communication campaigns to improve employee awareness of and compliance with integrity framework policies and procedures, encourage employees to report concerns, and embed behaviours promoted by the updated policies.
45. The Commission recognises, however, that Crown Melbourne is still implementing three-year risk management and compliance strategies to advance its risk and compliance maturity levels, including to improve its management of public complaints.

The Commission's view of the Governance, culture, and risk management reforms

46. Based on the matters identified immediately above, the Commission considers the issues identified by the Royal Commission and elsewhere have been comprehensively addressed. Board and management independence from owners, shareholders and others is now a condition of the Melbourne Casino Licence.
47. There is no evidence that the culture at Crown Melbourne presently prioritises profit over governance, risk management and compliance. The matters reported by the Special Manager and the Commission's consideration demonstrate that the pursuit of profit has been rebalanced to address matters of good governance. There is no evidence to suggest that profit is being prioritised over matters of governance making it less likely that the welfare of staff or customers will be compromised.
48. Crown Melbourne has committed to the reforms necessary to address those issues. The momentum of those reforms will make it difficult for Crown Melbourne to deviate from full implementation.
49. However, governance, culture, and risk management reforms are critical to ensuring that historical wrongdoing is not repeated. The proximity of the relationship between Crown Melbourne and its parent company, Crown Resorts, also creates a possibility that Crown Melbourne's independence could be compromised, particularly at the executive and operational level.
50. As such, quite apart from its clear satisfaction with the suitability of Crown Melbourne, the Commission will direct Crown Melbourne to fully implement and report on its ongoing reforms in governance, culture and risk management.

Financial Crime

51. A casino operator who knowingly or recklessly permits a casino to be exploited for financial crime, including money laundering, is unsuitable. The Royal Commission and other inquiries found Crown Melbourne unsuitable because it:
- a. Facilitated or ignored money laundering through junket operations and a bank account known as the Southbank account.
 - b. Facilitated money laundering and other forms of financial crime by implementing the China Union Pay or “CUP” process.
 - c. Failed to have sufficiently robust systems to detect and deter money laundering and other financial crime both generally and in the specific context of its junket and premium gambler operations.
52. As the Special Manager has reported, in May 2022, the Commission fined Crown Melbourne \$80 million for implementing the “CUP” Process. In April 2023, it has also fined Crown Melbourne \$30 million for implementing cheque practices that may have facilitated money laundering at the Melbourne Casino. In July 2023, the Federal Court also imposed civil penalties of \$450 million on Crown Melbourne and Crown Perth for their historic anti-money laundering failures.
53. The Commission directed an independent review of Crown Melbourne’s financial crime processes after the Royal Commission to evaluate reforms concerning its premium or VIP gamblers.¹⁸ It also issued a statutory direction to control the limited reactivation of Crown Melbourne’s overseas marketing operations to ensure that those operations do not again become a conduit by which the Melbourne Casino is exposed to financial crime or that staff are placed at risk of arrest, as they were in China and elsewhere.

Financial Crime reforms

54. The Special Manager’s reports confirm extensive reforms regarding financial crime. The operation of the Southbank account has ceased, and the Commission now maintains greater oversight on Crown Melbourne bank accounts. Junkets are banned, and premium gamblers are subject to greater scrutiny due to a Commission direction. The Commission investigated and confirmed that conduct like the CUP process is not continuing, and the Special Manager has found no evidence of maladministration or misconduct such as systemic financial crime at Crown Melbourne.

¹⁸ As reported by the Special Manager.

55. The introduction of mandatory precommitment, referred to earlier, requires gamblers' identities to be verified and controls the use of cash at the Melbourne Casino. It further diminishes the likelihood of financial crime. New regulations have been made to support mandatory pre-commitment.¹⁹ They prescribe the approach for confirming gamblers' identity and require collecting and retaining information necessary to allow the Commission to prosecute its mandate of ensuring the Melbourne Casino remains free of financial crime.
56. The Special Manager reports that Crown Melbourne has significantly reformed its approach to managing financial crime risk. It has implemented a legislatively compliant anti-money laundering and counter-terrorism financing program that is adequately resourced and governed. Policies, systems, processes, and controls are also embedded to identify, mitigate, and manage financial crime risk. The board provides effective and meaningful oversight on financial crime, and Crown Melbourne has effectively:
- a. Implemented all recommendations made by independent experts retained in response to the NSW Inquiry and the Royal Commission.
 - b. Implemented the recommendations of a 2021 Risk Assessment.
 - c. Invested in people, processes, and systems to better mitigate financial crime risk and detect suspected incidents.
 - d. Established financial crime resourcing commensurate with what would be expected for an operation the size of the Melbourne Casino.
 - e. Conducted audits and reviews to assure compliance with legislative obligations and appropriately actioned relevant findings.

The Commission's view of the Financial Crime reforms

57. Based on the matters described immediately above, the Commission has formed the view that the systemic financial crime matters identified by the Royal Commission and elsewhere have been comprehensively addressed. The reforms implemented are extensive and significantly reduce the likelihood of these historical issues reoccurring. In addition to the matters reported by the Special Manager this has been confirmed by an independent expert the Commission directed Crown Melbourne to retain.²⁰
58. However, casinos remain vulnerable to financial crime. They are environments where individuals will constantly try and exploit vulnerabilities in the systems designed to avoid such crimes. Ongoing vigilance remains imperative.
59. As such, there will be ongoing scrutiny to ensure the historical failures are not repeated and the necessary reforms are fully implemented. The Commission will direct Crown Melbourne to implement fully and regularly report to the Commission on implementing its financial crime reforms.

¹⁹ *Casino Control Regulations 2023*.

²⁰ Being a matter on which the Special Manager has also reported.

Regulatory Compliance and Cooperation

60. Regulatory compliance and cooperation are closely associated with suitability. Before the Royal Commission, Crown Melbourne failed to fully comply with its obligations to pay casino tax and did not cooperate with regulators. It provided false or misleading information, delayed and frustrated investigations by unnecessarily redacting documents, sought to contest matters that should not have been disputed, sought to weaponise claims of legal professional privilege, made submissions with little or no evidentiary support and was dismissive and uncooperative in implementing recommendations made by the then VCGLR.

Regulatory Compliance and Cooperation reforms

61. As the Special Manager reports, since the Royal Commission, the Commission has assessed Crown Melbourne's regulatory compliance and cooperation during disciplinary actions and formal investigations. In the immediate aftermath of the Royal Commission, Crown Melbourne's response to these matters did not indicate a suitable entity. The Commission detailed this in its Responsible Service of Gambling Disciplinary Reasons.²¹

62. More recently, Crown Melbourne has behaved in a manner synonymous with a suitable entity. It has made submissions that are appropriate and supported by evidence. The Special Manager reports favourably on regulatory compliance and cooperation by noting that Crown Melbourne has established constructive relationships and better information sharing with law enforcement agencies. It works collaboratively with its regulators and actively identifies and escalates compliance breaches with the Commission and other regulators.

63. As the Special Manager has reported, Crown Melbourne has resolved all disciplinary action matters that followed the Royal Commission. It has paid fines of \$250 million, including a fine of \$20 million for underpayment of tax.²² As required, it has paid the Commission's costs of taking disciplinary action. It has also paid the Commission's costs of considering the issues of suitability and the public interest and undertaking the work to ensure arrangements were in place to transition to an alternative casino operator if the Commission was not clearly satisfied with suitability and the public interest. Crown Melbourne has also paid the Special Manager's costs and resolved Federal Court litigation brought by AUSTRAC, which resulted in a civil penalty of \$450 million.

²¹ Those reasons will be made publicly available from the VGCCC's website (vgccc.vic.gov.au)

²² As well as penalty interest.

The Commission's view of Crown Melbourne's Regulatory Compliance and Cooperation

64. Crown Melbourne's regulatory compliance and cooperation is presently that of a suitable entity. The Commission expects Crown Melbourne's suitable approach to regulatory compliance and cooperation to continue.
65. If there is a return to the obstructionist, unhelpful and misleading approach taken before the Royal Commission, the Commission will consider making use of the full suite of enhanced regulatory powers now at its disposal.

Other matters relevant to suitability

66. As the Special Manager reports, the Commission has investigated several matters for their relevance to suitability. These have included the matter of financial viability and certain operational regulatory matters.

Financial Viability

67. The Casino Control Act requires²³ that before a casino licence can be granted, the Commission must consider whether the operator can obtain adequate financial resources to ensure the casino's financial viability.
68. During disciplinary action, Crown Melbourne produced evidence that caused the Commission to become concerned about Crown Melbourne's financial viability. The Commission also became concerned when auditor going concern certification was conditional on letters of financial support from companies related to Crown Melbourne. The Commission considered the enforceability of those letters of financial support and the effect unenforceability might have on financial viability.
69. The Commission sought information from Crown Melbourne and its associates, Crown Resorts and Blackstone Inc. It also directed Crown Melbourne to engage independent experts to give an opinion.
70. As well as ensuring that Crown Melbourne satisfied the legislative preconditions of suitability, investigating these matters was necessary to determine whether Crown Melbourne was operationally capable. An investigation was also necessary so the Commission could consider whether Crown Melbourne could continue to fund its ongoing reform program and whether it could satisfy the significant ongoing investment that will be necessary for Crown Melbourne to remain the dominant commission-based player casino in Australia and the Crown Group's flagship casino in Australia as required by the Melbourne Casino Agreement.²⁴

²³ Section 9(2)(d).

²⁴ See clause 22.1(ra).

71. Crown Melbourne submitted to the Commission that it has access to adequate financial resources to ensure the financial viability of the Melbourne Casino and its auditors have certified that it can continue as a going concern.
72. The Commission has had regard to the multi-billion-dollar investment that was made to acquire Crown Melbourne, that, when required, funding has been provided for the extensive and ongoing commitment to capital investment and the significant costs associated with Crown Melbourne's reform. In the ordinary course of business, the commitments in the letters of support are likely to be met. The significant financial obligations arising from the fines and costs orders made by the Commission and the Federal Court, as well as the costs of the Commission considering suitability, the public interest, an alternative casino operator and the costs of the Special Manager, have all been met by Crown Melbourne.
73. Based on these matters, the Commission is satisfied that Crown Melbourne is financially viable. There is no evidence supporting a conclusion that Crown Melbourne is not financially viable.
74. Ongoing commitment to reform, however, remains necessary. Longer-term financial viability is also subject to the financial performance of the Melbourne Casino. As such, the Commission will continue to carefully scrutinise the financial viability of Crown Melbourne and require regular reports on this issue. If necessary, it will exercise compulsory powers to compel the production of information.

Operational Regulatory Matters

75. Since Crown Melbourne was found unsuitable, the Commission has sought to identify other suitability-related matters. It has written to other regulators and law enforcement agencies around Australia who have confirmed that there are no matters relevant to suitability currently the subject of investigation by them.
76. Operational regulatory matters have also been identified and considered for their potential relevance to suitability. These matters have been referred to by the Special Manager, including Crown Melbourne's responses to the Royal Commission-based disciplinary actions, disciplinary issues concerning senior Crown Resorts staff, an alleged failure to comply with responsible service of gambling obligations and an ongoing matter concerning an investigation into an alleged underpayment of staff.
77. Crown Melbourne's response to the Royal Commission-based disciplinary actions contributed to the basis upon which the Commission could assess Crown Melbourne's regulatory compliance and cooperation, referred to earlier.

78. The senior-staff disciplinary issues were isolated matters and immaterial to suitability. Similarly, the responsible service of gambling matter was an isolated incident. It occurred before the introduction of mandatory carded play, when the law's application was unclear and later amended. It would be very unlikely to occur in the Melbourne Casino as it presently exists. It was not evidence of the type of systemic failure identified by the Royal Commission.
79. Aspects of this isolated responsible service of gambling matter, however, remain the subject of ongoing consideration by the Commission and may give rise to specific regulatory action.
80. Regarding underpayment of staff, the Special Manager reports that Crown Melbourne has concluded an enforceable undertaking with the Fair Work Ombudsman and paid its staff amounts outstanding. However, any action the Victorian Wage Inspectorate might take is unknown and, therefore, cannot yet be considered. Subject to the outcome of any action taken by the Victorian Wage Inspectorate, the Commission may consider this matter further.

The Commission's view of Crown Melbourne's suitability

81. For the reasons set out above, the Commission is clearly satisfied that Crown Melbourne is suitable to operate the Melbourne Casino.

Part 2 – Public Interest in the continuation of the Melbourne Casino Licence

82. For the Melbourne Casino Licence to remain in force, the Commission must be clearly satisfied that the Melbourne Casino Licence remains in the public interest having regard to the creation and maintenance of public confidence and trust in the credibility, integrity, and stability of casino operations. The Commission's inquiry is confined and not concerned with the broad public policy question of whether a casino should exist in Victoria.
83. The issue is whether it is in the public interest that the Melbourne Casino Licence²⁵ continue in force. The licence is the focus of the public interest inquiry, and the relevant concept of the public interest is defined as that having regard to the creation and maintenance of public confidence and trust in the credibility, integrity and stability of casino operations.²⁶ The Commission has approached the public interest as licence and operations focused accordingly.

The Commission's view on the Public Interest

84. Legislative changes enacted after the Royal Commission have significantly increased the regulatory control over operations at the Melbourne Casino. These changes include those described earlier pursuant to which the Commission has imposed fines of \$250 million.
85. Crown Melbourne must now self-report breaches and is legislatively required to cooperate with the Commission. It must also implement Commission recommendations made following reviews.
86. Additional powers allow the Commission to direct Crown Melbourne to engage or cease conduct and to retain experts²⁷ to report to the Commission. The Commission has used these powers extensively; several examples are referred to earlier in these reasons. The Commission has directed Crown Melbourne to engage in a foundational review of its internal control statements to ensure the Commission can relevantly control, rather than merely supervise, casino operations and to ensure there are no undocumented processes or procedures that are unknown to the Commission. The Commission has also established a protocol for dealing with claims of legal professional privilege, which Crown Melbourne historically used to impede the effective regulation of the Melbourne Casino.

²⁵ Defined as the licence issued to the company now known as Crown Melbourne in November 1993.

²⁶ Public confidence and trust in the credibility, integrity and stability of casino operations derives its content from the relevant subject matter, scope, purpose and objectives. That includes ensuring that the Melbourne Casino remains free of criminal influence or exploitation, ensuring that gambling is conducted honestly, promoting tourism and economic development, and fostering responsible gambling.

²⁷ At Crown Melbourne's expense.

87. These matters establish public confidence and trust in the credibility, integrity, and stability of casino operations.
88. The Commission has considered the extent to which the Melbourne Casino Licence has not been reviewed for several years and contains legacy references to matters no longer relevant to the Melbourne Casino as it exists today. These are not significant or material references for the future operation of the Melbourne Casino Licence. This is not a consideration that impacts the Commission's conclusion on the public interest in continuing the Melbourne Casino Licence.
89. The Commission has also considered that, in certain circumstances, the terms of the Melbourne Casino Licence and Melbourne Casino Agreement can prevail over certain legislative obligations. The Commission has formed the view that the limited prevailment contained in the Melbourne Casino Licence and Casino Agreement does not impact the conclusion the Commission has reached on the public interest having regard to the:
- a. Significantly increased regulatory powers the Commission now has at its disposal.
 - b. Extent to which variation or cancellation of the Melbourne Casino Licence and Agreement remains available through either disciplinary action, a unilateral decision by the parliament or with the consent of Crown Melbourne.
 - c. Commercial certainty created by this limited prevailment and the extent to which it positively impacts the Casino Control Act's legislative purpose of promoting tourism, employment, and economic development in Victoria.
90. Based on the matters identified in paragraphs 84 - 89 above, the Commission is clearly satisfied that the Melbourne Casino Licence remains in the public interest regarding the creation and maintenance of public confidence and trust in the credibility, integrity, and stability of casino operations.

