TRIM ID: CD/22/9916

Decision and reasons for decision

In the matter of disciplinary action against Crown Melbourne Ltd pursuant section 20(1)(dc) of the *Casino Control Act 1991.*

Commission:	Fran Thorn, Chair Deirdre O'Donnell, Deputy Chair Danielle Huntersmith, Commissioner Andrew Scott, Commissioner
Date of Decision:	27 May 2022
Date of Reasons:	30 May 2022
Decision:	For the reasons attached to this decision, the Victorian Gambling and Casino Control Commission has decided to: (a) take disciplinary action in respect of Crown Melbourne Ltd and impose a fine of $80,000,000 ($80 million) for its illegal conduct in breaching sections 68 and 124 of the *Casino Control Act 1991* (Vic), payable within 28 days of the date of this decision; (b) require Crown Melbourne Ltd to pay the Commission's costs of this disciplinary action.
Signed:	
	Fran Thorn
	Chair

Table of Contents

Background and context

1. During 2021, a Royal Commission was conducted into the Victorian Casino Operator and Licence (**RCCOL**).

2. Among other things, the RCCOL considered terms of reference directed at whether Crown Melbourne Ltd (**Crown Melbourne**)[1] is suitable to hold the Melbourne Casino Licence and is complying with its obligations, including legislative obligations arising from the *Casino Control Act 1991* (Vic) (**CCA**).[2]

3. The RCCOL found that Crown Melbourne is unsuitable.[3]

4. Because Crown Melbourne is unsuitable the operations of the Melbourne Casino are currently being supervised by a Special Manager, whilst Crown Melbourne attempts to reform itself.

5. Within 90 days after receiving the Special Manager's final report, the Victorian Gambling and Casino Control Commission (**Commission**) will be called upon to decide whether it is clearly satisfied that Crown Melbourne has done enough to become suitable such that it might again enjoy the privilege of holding the Melbourne Casino licence, unsupervised.

6. Within that broader context, the RCCOL made several findings of specific instances of misconduct and/or illegal conduct by Crown Melbourne.

7. One of those instances concerned financial interactions between Crown Melbourne and some of its customers; the manner in which those interactions were recorded and then, in turn, the impact those matters had in the context of Crown Melbourne's legislative obligation to maintain accurate accounting records.[4]

8. The RCCOL described this matter as the China Union Pay (**CUP**) or CUP process.

[1] In its capacity as the holder of the Melbourne Casino Licence.
[2] See RCCOL Final Report, Vol 1, Ch 1, p4.
[3] See RCCOL Final Report, Vol 1, Ch 1, pp4-5.
[4] Being an obligation that is imposed by section 124(1) of the CCA.

9. The RCCOL found (and Crown Melbourne accepted, both in the course of the RCCOL and expressly again in the course of the Commission's consideration of this matter)[5] that the CUP process was illegal in that it contravened both section 68(2)(c) of the CCA and also caused Crown Melbourne to contravene section 124(1) of the CCA.

10. The Commission is empowered to take disciplinary action in respect of findings by the RCCOL.[6]

11. Crown Melbourne accepts that it is appropriate for the Commission to take disciplinary action in respect of its illegal conduct constituted by the CUP process, on the ground that the RCCOL found that it was illegal.[7]

12. Crown Melbourne has also sought to emphasise that *it accepts that the CUP process was completely unacceptable and that it deeply regrets that the practice was ever allowed to occur.*[8]

Crown Melbourne's illegal conduct

13. The RCCOL found that the CUP process involved the following:

> *The [Crown Towers] hotel issued a room charge bill to the patron, falsely asserting that the hotel had provided services to the person. The patron would pay the bill [using their credit card or debit card] and be given a voucher acknowledging receipt of funds. Then the patron, accompanied by a Crown VIP host, took the voucher to the cage and exchanged it for cash or chips.*[9]

14. According to the RCCOL, this process was devised because:

> *China had imposed restrictions on Chinese nationals transferring money out of [China]. Between the years 2012 and 2016, a Chinese national could not transfer more than USD50,000 per year to another jurisdiction. The Chinese currency restrictions were well known to Crown Melbourne executives. The CUP process was devised to enable the illegal transfer of funds from China.*[10]

---

[5] Crown Melbourne's submissions on disciplinary action, [2].
[6] Insofar as they concern findings of conduct that was illegal and/or constituted serious misconduct – see section 20(1)(dc) of the CCA.
[7] Crown Melbourne's submissions on disciplinary action, [2].
[8] Crown Melbourne's submissions on disciplinary action, [27].
[9] See RCCOL Final Report, Vol 2, Ch 13, p171, [14].
[10] See RCCOL Final Report, Vol 2, Ch 13, p171, [13].

15. The RCCOL also found that the illegal conduct constituted by the CUP process:
    a. was a documented and approved process within Crown Melbourne;[11]
    b. took place between 2012 and 2016;[12]
    c. occurred on a large scale both as to frequency and size of transactions;[13]
    d. involved transactions of a total value that was up to $160 million;[14]
    e. *"was plainly against [Crown Melbourne's] interests for, having breached section 68, Crown Melbourne was at risk of being caught and subjected to disciplinary action."*[15]

16. The CUP process is otherwise described in detail in Volume 2, Chapter 13 of the RCCOL Report.

The nature and importance of the provisions contravened by Crown Melbourne

17. Crown Melbourne has breached sections 68 and 124 of the CCA.

18. Section 124 requires Crown Melbourne to keep accurate accounting records. It is an important provision that is directly relevant to the statutory functions of the Commission to the extent that they include:
    a. ensuring that the handling and counting of money in the Melbourne Casino is supervised;[16]
    b. checking casino records as required;[17]
    c. ensuring that the taxes, charges and levies payable under the CCA are paid.[18]

19. These accounting records are inevitably also relied upon by the myriad other persons or entities who might have cause to consider them, including to the extent that Crown Melbourne was a subsidiary of the ASX listed Crown Resorts Limited.

---

[11] Being a finding of an independent investigation conducted by senior and junior counsel that was commissioned by the directors of Crown Resorts Limited, subsequently accepted by Crown Melbourne and Crown Resorts in its written closing submissions to the RCCOL, p269, [H.27.], [H.28](a), and cited with approval by the RCCOL (see RCCOL Final Report, Vol 2, Ch13, p171, [12]).
[12] *Ibid*.
[13] *Ibid*.
[14] See RCCOL Final Report, Vol 1, Ch 1, p2, [9].
[15] See RCCOL Final Report, Vol 2, Ch13, p177, [58].
[16] See section 141(c)(ii) of the CCA.
[17] See section 141(c)(vi) of the CCA.
[18] See section 141(c)(viii) of the CCA.

20. For its part, section 68 is important in establishing certain parameters around which Crown Melbourne is permitted to financially interact with its casino customers. In doing so, section 68 is, among other things, a component in achieving the Commission's legislative functions of:
    a. ensuring that the Melbourne Casino remains free of criminal influence or exploitation;[19] and
    b. fostering responsible gambling in order to minimise harm caused by problem gambling and accommodating those who gamble without harming themselves or others.[20]

21. That section 68 is important is well understood by anyone who has more than a passing familiarity with casino operations. As the 1983 *Report of the Board of Inquiry into Casinos in the State of Victoria* put the matter:

> *Credit has almost routinely been the principal source of trouble with casinos. Casino management is generally anxious to be in a position to extend credit at its discretion to favoured gamblers. It increases casino turnover as well as encouraging gamblers to gamble beyond their means. The granting of credit leads to all kinds of problems particularly relating to skimming and collecting the unpaid debts of gamblers who live out of State. The way to eliminate problems relating to credit is simply to prohibit it.*[21]

The extent of Crown Melbourne's illegal conduct

22. The illegal conduct constituted by the CUP process was both systematic and extensive.

23. It occurred over a period of five years (2012-2016) and resulted in 2,769 separate transactions (that is, 2,769 separate instances of illegal conduct by Crown Melbourne in breach of section 68 of the CCA).

24. The combined value of the transactions the subject of the illegal conduct is $163,892,289.[22]

25. To the extent that Crown Melbourne's breaches of section 68 also infected its accounting records, Crown Melbourne was in breach of section 124 of the CCA for at least the five-year period in which the CUP process was in operation.

[19] Sections 1(a)(i) and 140(a) of the CCA.
[20] Section 140(c) of the CCA.
[21] [16.43].
[22] Crown Melbourne's response to section 26 notice dated 5 May 2022, p8.

26. Significantly, the CUP process was also illegal conduct from which Crown Melbourne derived considerable revenue.

27. In that regard, in the course of this matter, the Commission exercised its statutory powers to compel Crown Melbourne to provide the details of the revenue derived from its illegal conduct, for each year the CUP process was in operation.

28. Although it is apparent to the Commission from Crown Melbourne's response that it does not know, exactly, the revenue derived from its illegal conduct, Crown Melbourne has estimated that (not accounting for what it described as *expenses such as commission, complimentary allowance [and] gaming tax*) it derived what it calls *theoretical revenue* of $32,422,983 from the CUP process.

29. The information that Crown Melbourne produced to the Commission in respect of the revenue derived from the CUP process is set out in the following table:

Theoretical Revenue on HCT @ Crown Melbourne

Financial Year	HCT value [*1]	Average turns [*2]	Estimated Turnover (HCT value x Average turns)	Theoretical Revenue [*3] (Estimated Turnover x Theoretical Win rate of 1.35%)
FY2013	$2,734,500	18.0	$49,111,620	$663,007
FY2014	$10,479,094	14.0	$146,602,525	$1,979,134
FY2015	$36,978,988	15.6	$575,698,401	$7,771,928
FY2016	$83,928,065	12.9	$1,086,029,161	$14,661,394
FY2017	$26,149,955	11.7	$306,738,972	$4,140,976
Subtotal	**$160,270,602**	**13.5**	**$2,164,180,680**	**$29,216,439**

Other items	
Notable Debt Redemption [*4]	$674,437
HCT Surcharge Fees [*5]	$2,532,107
	$3,206,544

TOTAL	**$32,422,983**

Notes:

[*1] FY split of HCT transaction activity sourced from Deloitte (13/04/2022).

[*2] Calculated as total VIP International program turnover, divided by corresponding front money (Crown Melbourne TG only).

[*3] Above does not take into account expenses such as commission, complimentary allowance, gaming tax.

[*4] This relates to the debt redemption dated 31 January 2014 described in Crown's response to a s26 notice dated 22 October 2021 (Request 7, paragraph 15). As a debt redemption is not wagered, this amount has been deducted from FY2014 HCT value and included as an amount of direct revenue, unmoderated by turnover and theoretical revenue multipliers.

[*5] Refer to final Deloitte Report, para 4.31 to 4.33 and Table 13 (Pages 37 and 38).

30. The illegal conduct constituted by the CUP Process was undeniably profitable for Crown Melbourne.

31. The CUP Process was also extensive in that, since the RCCOL, Crown Melbourne has identified that it was illegal conduct that:
    a. occurred at three separate hotels operated by Crown Melbourne;
    b. involved the use of point-of-sale equipment provided by at least three separate banking institutions;
    c. went beyond the use of just CUP cards and also included VISA, Mastercard, American Express and EFTPOS cards, as is depicted in the table immediately below:[23]

Card Type	No. of transactions	Value of Transactions (gross, including fees) ($)	Percentage of total value
China Union Pay	1,397	115,190,134	70.28%
VISA	801	30,851,226	18.82%
Mastercard	488	12,695,692	7.75%
American Express	72	5,012,217	3.06%
EFTPOS	11	143,020	0.09%
TOTAL	**2,769[4]**	**163,892,289[5]**	**100.00%**

Source: OPERA, NAB POS Statements, Monthly Bank Reconciliations and Deloitte analysis

32. Crown Melbourne has, quite properly, accepted these matters that have become known since the RCCOL for the purpose of the Commission's consideration of this matter, including to the extent that it accepts that, although the CUP process primarily involved the use of CUP cards, it also involved the use of other cards and as depicted in the table immediately above.[24]

Other matters of aggravation

33. In addition to the systematic and extensive nature of Crown Melbourne's illegal conduct, the Commission considers that there are also several other matters of aggravation in this case.

[23] Deloitte report on Hotel Card Transactions dated 19 November 2021, p10.
[24] Crown Melbourne's response to an exercise of compulsory powers by the Commission in the course of this matter included the following: *Crown Melbourne accepts that the [transactions] described in the Deloitte report [from which the table extracted above was drawn] are those transactions that were accepted by Crown Melbourne in its written submissions to the RCCOL as being transactions that breached section 68(2)(c) of the CCA and that a finding of a breach of s 124(1) was open.*

34. Many of these matters were, quite properly, acknowledged by Crown Melbourne in its written submissions to the RCCOL and accepted in the course of evidence given at the RCCOL by at least one Crown senior executive. [25]

35. Relevantly, the matters which Crown conceded before the RCCOL include:

    a. Crown Melbourne was aware of the risk that the CUP process could be illegal as a breach of section 68 of the CCA, but decided to run that risk[26] (this was also a risk that senior executives and internal lawyers at Crown Melbourne were aware of at or shortly after the CUP Process started in August 2012);[27]

    b. Crown Melbourne's internal legal advice obtained, purportedly for the purpose of 'signing off' on the CUP process, was infected by significant pressure to achieve the desires of the commercial side of Crown's business;[28]

    c. to the extent that the internal legal advice was to the effect that the CUP process was not a breach of section 68 of the CCA, it was wrong;[29]

    d. it is not far-fetched to imagine that organised crime figures took advantage of the CUP process;[30]

    e. the CUP process may have involved Crown Melbourne dealing with the proceeds of crime;[31]

    f. there is a degree of dishonesty in having gaming charges described in the way they were and appearing on a hotel account / bill;[32]

    g. the CUP process misled the card provider, China Union Pay, and the other financial institutions whose cards were used, and had the potential to mislead any law enforcement agency looking at the bank records with an eye to what the card holder was paying for;[33]

[25] Stephen Blackburn.
[26] Written Closing Submissions of Crown Melbourne and Crown Resorts, p270, [H.28](b), citations omitted.
[27] See RCCOL Final Report, Vol 2, Ch13, p172 [17] – [19], Vol3, Ch18, p62, [51].
[28] Written Closing Submissions of Crown Melbourne and Crown Resorts, p270, [H.28](c), citations omitted.
[29] Written Closing Submissions of Crown Melbourne and Crown Resorts, p270, [H.28](d), citations omitted.
[30] Written Closing Submissions of Crown Melbourne and Crown Resorts, p270, [H.28](f), citations omitted.
[31] Written Closing Submissions of Crown Melbourne and Crown Resorts, p270, [H.28](g), citations omitted.
[32] Written Closing Submissions of Crown Melbourne and Crown Resorts, p271, [H.30](a), citations omitted.
[33] Written Closing Submissions of Crown Melbourne and Crown Resorts, p271, [H.30](b), citations omitted.

h. assisting a patron to breach another jurisdiction's currency controls is wrong and ethically concerning, even if not illegal;[34]

i. if reporting to AUSTRAC in respect of the CUP process was required, failing to do so at the relevant time would hinder AUSTRAC and law enforcement agencies in their efforts to investigate money laundering and organised crime;[35]

j. overall, the evidence (at the RCCOL) surrounding the CUP process suggests a severe failure by Crown to take prudent and appropriate steps to prevent risks that the CUP process might entail or facilitate illegal or unlawful conduct, and that those failures appeared to have an explanation in an environment in which compliance staff felt significant pressure to provide solutions that were favourable to Crown's commercial interests, and in which any unfavourable answers might be overridden by management.[36]

36. The Commission considers that these are all significant matters of aggravation for the purposes of these disciplinary proceedings, particularly given the CCA's legislative objectives of ensuring that the operation of the Melbourne Casino remains free of criminal influence or exploitation.

37. There are however also other matters that should be added to those that have been acknowledged by Crown Melbourne, including that:

a. the illegal conduct constituted by the CUP Process was pre-emptively designed in such a way as to make it not only clandestine but also so that it was "covered up" after the fact by the production of invoices that were designed to obscure the true nature of the transactions recorded in those invoices;

b. as well as being wrong and infected by commercial pressure, the internal legal advice that was purportedly obtained was in large part directed not at the central question of whether the CUP process was or was not illegal, but rather at what Crown Melbourne *"would argue in reply"* in the event that its clandestine conduct was ever discovered by its regulators.[37]

In the Commission's view, it is wholly unacceptable for a casino licensee whose privilege to operate a casino is at all times conditional on it being suitable to approach questions of

[34] Written Closing Submissions of Crown Melbourne and Crown Resorts, p271, [H.30](c), citations omitted.
[35] Written Closing Submissions of Crown Melbourne and Crown Resorts, p271, [H.30](d), citations omitted.
[36] Written Closing Submissions of Crown Melbourne and Crown Resorts, p270, [H.28](h), citations omitted.
[37] See RCCOL Final Report, Vol3, Ch18, p62, [51].

legality on the basis of pre-emptively identifying arguments it might make in the event of regulatory scrutiny.

In the Commission's view, any matter about which there are concerns about legality should be fully disclosed to the regulator so that both the regulator and the regulated entity can be satisfied about the matter, before the relevant conduct is engaged in.

c. as well as being a severe failure by Crown to take prudent and appropriate steps to prevent the risk that the CUP process might entail or facilitate illegal or unlawful conduct, the Commission also considers this to have been another example of the same type of risk management, governance and cultural failures that were described in detail in the report the Commission's predecessor, the Victorian Commission for Gambling and Liquor Regulation (**VCGLR**) prepared in respect of what are known as the China arrests, which was referred to by the RCCOL.

   In that report, the VCGLR carefully considered the extent to which important matters should have been, but were not, elevated either within Crown Melbourne's formal risk management processes or otherwise to board level for consideration.

   The very same observations are applicable in this instance and it is of particular concern to the Commission that, notwithstanding the significance of this matter by reference to:

   i. value of transactions;

   ii. number of transactions;

   iii. risk of contravention;

   there is no evidence that, at any time over the five years in which it was in operation, the CUP process was ever elevated for consideration by the board of Crown Melbourne.

38. The CUP process should have been considered by the board of Crown Melbourne and the risks associated with it (including the extent to which it may have been illegal) specifically addressed. It also should have been the subject of a resolution by the board of Crown Melbourne before the process was implemented in 2012.

39. Executives and internal lawyers should not have been left as the final decision makers. That those executives and internal lawyers did not escalate the matter and instead looked to pre-emptively

identify arguments Crown Melbourne might rely upon in the event of regulatory scrutiny speaks ill of Crown Melbourne's culture at the time.

40. Furthermore, the reason why the CUP process came to an end in 2016 and the fact that it was not, at that time, disclosed to the Commission's predecessor is, in the Commission's, view also an aggravating factor.

41. In that regard, according to the RCCOL, rather than being stopped because of genuine concerns associated with the legality of the conduct, the CUP process only ceased because Crown staff were arrested in China.

42. Those arrests were an event that had consequences which included:
    a. the number of gamblers attending Crown Melbourne from China significantly reduced and consequently so too would the number of gamblers who were likely to avail themselves of the illegal conduct constituted by the CUP process;
    b. an increase in the regulatory scrutiny to which Crown Melbourne was exposed and thereby increased the possibility that the existence of the CUP process might be discovered by regulators, including the Commission's predecessor, the VCGLR.

43. Given the extent of the regulatory intervention that followed the China arrests[38] and the relevance of the CUP process to the patrons that Crown Melbourne was procuring from China, it is notable that the existence of the CUP process was not disclosed to the VCGLR when it was considering the issues associated with those arrests.

44. Ultimately, were it not for the candour of a single Crown Melbourne employee at a leadership development course in March 2021 (some five years after the practice was stopped) and the simultaneous requirement that Crown report any possible breaches of its obligations to the RCCOL, Crown Melbourne's illegal conduct might never have been identified.

45. Crown Melbourne's conduct insofar as it concerned the CUP process between the entirety of 2012 (when the process started) and March 2021 (when it was reported) is a matter of aggravation.

[38] Being interactions that are extensively described in the RCCOL Final Report, Vol 2, Ch 10, pp85-103.

Matters in mitigation

46. Crown Melbourne made submissions to the RCCOL which addressed the CUP process. They included submissions that the CUP process was historical (having ceased in 2016) and that:

> *"…as soon as the [then] current Board became aware of [the] historical [CUP] practice, Crown commenced an urgent, independent investigation and shared the results with the RCCOL, the [Commission's predecessor] and other regulators. Accordingly, while the CUP process is undoubtedly an example of past poor conduct, it is also a significant demonstration of Crown's new and improved culture."*[39]

47. Although it had already made submissions such as these to the RCCOL, the Commission decided that it was appropriate for Crown Melbourne to also be given the opportunity to provide information and make submissions specifically for the purpose of this disciplinary proceeding. The primary reason why the Commission extended that opportunity to Crown Melbourne was that during and after the RCCOL, Crown Melbourne had continued to investigate the CUP process and it seemed to the Commission possible that those investigations may have revealed further information that might be relevant to the Commission's consideration of this matter.

48. For the most part, Crown Melbourne's submissions for the purpose of this disciplinary proceeding are a repeat of the submissions it previously made to the RCCOL, particularly to the extent that they have emphasised:
    a. the historical nature of the practice;
    b. its prompt investigation and regulatory disclosure in 2021, including as an indicator of demonstrated rehabilitation;
    c. its acceptance of senior counsel's advice about the illegality of Crown Melbourne's conduct, following its disclosure in 2021;
    d. its acceptance of criticisms of Crown Melbourne by counsel assisting the RCCOL, based upon the CUP process;
    e. cultural change (since disclosure in 2021) and, what it says, is the consequent unlikelihood of the CUP process re-occurring.

[39] Written Closing Submissions of Crown Melbourne and Crown Resorts, p270, [H.28](b), citations omitted.

49. In addition to those general submissions, Crown Melbourne also made several submissions by reference to the specific types of disciplinary action that the Commission is empowered to take in respect of this matter. The Commission considers those specific submissions in further detail below.

50. Before the Commission does that however, it is appropriate to record that, in an overall sense, and subject to a particular exception referred to later in these reasons (at paragraphs 78-90 below), Crown Melbourne's response to this matter has been more closely aligned to the Commission's expectations for an entity that aspires to enjoy the privilege of holding a casino licence in Victoria.

51. Indeed, that is particularly so if one is to compare the Commission's experience in this matter to the findings of the RCCOL, insofar as they concern Crown Melbourne's historical dealings with its regulators, particularly insofar as they relate to Crown Melbourne's response to the VCGLR's China Investigation; response to the sixth casino review and the disciplinary action that followed the VCGLR's junket ICS investigation.[40]

52. As the RCCOL noted specifically in respect of that last example (being a matter which culminated in the VCGLR delivering written reasons on 27 April 2021):

> *Crown Melbourne's approach to the disciplinary proceeding can be described as obstructionist, aggressive and involving submissions that had little or no evidentiary support or were inconsistent with positions taken elsewhere*.[41]

53. Crown Melbourne's approach to this matter displayed none of those qualities and, although it is not itself a matter that was the subject of a submission by Crown Melbourne, the Commission is of the view that (subject to the exception referred to later in these reasons) Crown Melbourne should receive some credit, as a mitigating factor, for its overall approach to this disciplinary proceeding and the extent to which it constitutes a marked improvement on its handling of previous instances of regulatory scrutiny.

What disciplinary action should be taken?

[40] See generally RCCOL Final Report, Vol 2, Ch 10.
[41] See RCCOL Final Report, Vol 2, Ch 10, p116, [236].

54. As has already been noted, Crown Melbourne accepts that it is appropriate for the Commission to take disciplinary action in respect of the CUP Process on the basis that the RCCOL found that it was illegal.

55. Having been the subject of several previous disciplinary actions brought by the Commission's predecessor, Crown Melbourne is very familiar with the matters that are considered for the purpose of the Commission deciding what disciplinary action should be taken. Crown Melbourne's submissions to the Commission have been prepared having regard to those matters.

56. In those circumstances, although it is not necessary to set out in detail the entirety of the matters the Commission has regard to when determining what disciplinary action should be taken, it is appropriate to note that the Commission has considered all of the circumstances that are relevant to this matter, including the:
    a. objects and functions of the CCA including the extent to which they include the need to ensure the management and operation of the Melbourne Casino remains free of criminal influence or exploitation and fostering of responsible gambling;
    b. nature, extent and seriousness of the relevant conduct, including the period over which they extended;
    c. past compliance history of the casino operator, as well as whether evidence suggests that the casino operator fosters and encourages a culture of compliance with the CCA;
    d. level of cooperation with the Commission or other authorities responsible for enforcement of the CCA;
    e. remorse, contrition and/or corrective actions taken by the casino operator to improve management of the Melbourne Casino;
    f. any other mitigating or aggravating circumstances relevant to the matter.

What the Commission would have done in other circumstances

57. This matter has come before the Commission in unique circumstances, including that:
    a. as matters presently stand, Crown Melbourne is unsuitable and as such is operating the Melbourne Casino subject to the supervision of the Special Manager;
    b. this matter is being considered at a time during which Crown Melbourne is aspiring to satisfy the Commission that it has become suitable;

c. it is not, in the specific circumstances of this matter, open to the Commission to either suspend or cancel the supervised licence by which Crown Melbourne is currently operating the Melbourne Casino, whilst Crown Melbourne is attempting to reform itself.[42]

58. However, having regard to the matters it is required to consider and the overall seriousness of the illegal conduct that is constituted by the CUP process, the Commission considers that it should expressly record as part of these reasons that, were it not for the fact that Crown Melbourne is presently being supervised by the Special Manager and is engaged in a reform program by which it aspires to achieve suitability, the Commission would have seriously considered the suspension or cancellation of Crown Melbourne's casino licence as a result of the CUP process, irrespective of its status as historical illegal conduct.

59. Put simply, nearly 3000 instances of illegal conduct, worth nearly $164,000,000, from which Crown Melbourne estimates that it derived more than $32,000,000 in revenue is diametrically opposed to the conduct the Commission expects from a suitable casino licensee.

60. The disciplinary outcomes that are available to the Commission in the specific circumstances of this case are however limited to one or a combination of:

a. issuing a letter of censure to Crown Melbourne;
b. varying the casino licence;
c. imposing a fine on Crown Melbourne.

61. The Commission will now turn to consider each of these possible outcomes and the specific submissions Crown has made in respect them.

A letter of censure and/or variation of the casino licence?

62. The Commission has decided that this is not a matter in which a letter of censure should be issued or in respect of which the casino licence should be varied.

63. In taking the view that it should not issue a letter of censure in this case, the Commission has accepted Crown Melbourne's submission that:

[42] See section 20(11) of the CCA.

…Crown Melbourne has already been publicly censured in the strongest possible terms for the CUP process by means of the (widely publicised) Report of the RCCOL, and Crown Melbourne has already publicly accepted the contraventions of the CCA and other failings arising from the CUP process.[43]

64. Crown Melbourne will also be further censured for its illegal conduct through the publication of these reasons.

65. In deciding that it should not vary the casino licence in these disciplinary proceedings, the Commission has also accepted Crown Melbourne's submissions, which are to the effect that a variation to the casino licence would be inappropriate because:

    a. licence variations are a protective forward-looking outcome which is not suited to the conduct being considered here which is historical;
    b. Crown Melbourne's operations are currently being supervised by the Special Manager;
    c. *Crown Melbourne will lose its [current] licence in less than two years unless the Commission determines otherwise.*

66. As set out above, the Commission accepts Crown Melbourne's submissions on these matters and has decided not to issue a letter of censure or vary the casino licence accordingly.

What fine is appropriate and/or reasonable?

67. The Commission has decided that this is a case in which the imposition of a penalty is warranted.

68. Crown Melbourne accepts that a fine is an appropriate form of disciplinary action in this case.[44] Crown Melbourne has not however addressed the Commission on whether it should proceed to issue separate fines in respect of each of the more than 2,700 instances of illegal conduct that are relevant in this case or whether a single one-off fine would be most appropriate.

69. Instead, Crown Melbourne's submissions have proceeded on the assumption that the Commission would simply impose a single fine for the entirety of the illegal conduct constituted by the CUP process.

[43] Crown Melbourne's submissions on disciplinary action, [18].
[44] Crown Melbourne's submissions on disciplinary action, [22].

70. In proceeding on that assumption, Crown Melbourne says that a fine *at the lower end of the range is appropriate,* having regard to the matters of mitigation that have been referred to earlier in these reasons. Crown Melbourne also says that the Commission must impose a fine that is reasonable and does not go beyond what Crown Melbourne calls *just punishment.*

71. Crown Melbourne says that in assessing what might constitute *just punishment* the Commission should consider *the maximum [fine] that was in place at the time the underlying conduct occurred* and, in that context, the extent to which the maximum fine that can now be imposed by the Commission for the purpose of this matter (namely $100,000,000) is 100 times greater than it was at the time of the underlying conduct.

72. In making that submission Crown Melbourne has not addressed the extent to which the:
    a. RCCOL found that the penalties prescribed by the CCA were, at the time of this illegal conduct, *absurdly low;*[45]
    b. intention of parliament in increasing the available fine for a matter such as this is made clear in the relevant explanatory memorandum which, among other things, notes that:

        The increase in the maximum fine follows recommendations of the [RCCOL] and the independent policy review which found that penalties under the [CCA] are wholly inadequate and not proportionate to the risks and harm associated with casino operations. The increased maximum fine will apply to new disciplinary action, even if the grounds for the disciplinary action have already occurred before this amendment commences…[46]

73. Rather, Crown Melbourne submits that:

    It must be said that imposing a fine towards the upper end of the available range where that available range is exponentially greater than what it was at the time of the underlying conduct, and thus where the possibility of a penalty of such magnitude being imposed could not reasonably have been conceived of at that time, extends beyond just punishment.

[45] RCCOL Final Report Vol 3, Ch 16, p16, [63].
[46] *Casino and Gambling Legislation Amendment Bill 2021,* Explanatory Memorandum, 26 October 2021, pp3-4, clause 8.

74. Although the Commission accepts that any fine it decides to impose must be reasonable, it rejects Crown Melbourne's submissions that in order to be reasonable any fine would need to be a single fine encompassing all of the impugned conduct *at the lower end of the range* and assessed by reference to the quantum of any fine that might have been available at the time of the illegal conduct. The Commission has taken that view for the following reasons.

75. First, as was noted by the RCCOL, the penalties that applied at the time of the conduct were absurdly low.

76. Secondly, the parliamentary intention that the new maximum should be considered unrestrained by reference to the maximum penalty that existed at the time Crown Melbourne's illegal conduct is clear from the content of the relevant explanatory memorandum, extracted above.

77. Thirdly, the single authority that Crown Melbourne purports to rely upon for the purpose of its submission on the relevance of the penalties that existed at the time of the illegal conduct does not support its argument.

78. In that regard, Crown Melbourne refers to an *obiter dicta* statement by Wilson J in the case of *University of Wollongong v Metwally* (1984) 158 CLR 447 [at 472] (**Metwally**) and in particular a specific sentence from that judgment which is in the following terms:

> *Retrospective legislation which has the effect of subjecting to penalty actions which at the time of their commission were not so subject will often be abhorrent to those who are concerned to maintain a just society governed by the rule of law*.

79. The Commission has carefully considered Metwally.

80. It was a constitutional case, in a racial discrimination context, that concerned a legislative amendment that was designed to retrospectively cure an inconsistency between Commonwealth and State laws. It did not concern the type of disciplinary action (even by analogy) that falls to be considered here. The Commission considers it to be of little assistance.

81. Furthermore, Crown Melbourne's purported invocation of a single sentence from the judgment of Wilson J, in isolation, is apt to mislead when one considers not only the case in its entirety but also the entirety of the paragraph in which the sentence Crown Melbourne refers to appears:

> *Retrospective legislation which has the effect of subjecting to penalty actions which at the time of their commission were not so subject will often be abhorrent to those who are concerned to maintain a just society governed by the rule of law. But the argument for invalidity of the law cannot derive support from the alleged injustice of its operation. The argument must stand or fall on the question of legislative power to make the retrospective law in question and then, given such power, on the operation of s 109 if any in relation to that law and the State Act. In any event, it is to be observed that the circumstances exposed by the present case were exceptional. In terms, the conduct for which the University has been found responsible was proscribed by the State law, as to which at all material times no finding of invalidity had been made. It was to all intents and purposes fully operative. In these circumstances it can scarcely be said that the University may be the unwitting victim of a retrospective law. Of course, the University's appeal on all issues other than invalidity is yet to be heard.*

82. Having regard to this paragraph in its entirety, Wilson J was, with respect, not making the type of statement of legal principle for which Crown contends.

83. On the contrary, there is not in this case (and there could not be) any question about the power of the legislature to make the laws by which this disciplinary action has come to be determined, including to the extent that the Commission has been called upon to decide what fine should be imposed.

84. As Powers J put it in *R v Kidman* (1915) 20 CLR 425 (being a case which considered the ability of parliaments within the then the British Empire to retrospectively impose penalties):

> *Every…Sovereign Parliament in the British Empire (including all Australian State Parliaments) has…the power to pass ex post facto laws.*

85. Indeed, Crown Melbourne has accepted as much to the extent that it has accepted that the Commission is entitled to proceed on the basis of the *ex post facto* laws which empower the Commission to take disciplinary action on the basis of the RCCOL's findings of illegality and that the Commission is empowered to impose a fine, based on those findings, to a maximum of

$100,000,000. This is particularly the case given that both the new grounds for disciplinary action and the increased maximum penalty were implemented in the same legislation.

86. Having accepted those matters and produced submissions that are predicated on that acceptance, it is incongruous that Crown Melbourne should then ignore the relevant explanatory memorandum and, in effect, contrarily submit that the reasonableness of the quantum of any fine should be assessed through the lens of the legislative regime that existed at the time of the illegal conduct, rather than at the time that this matter has fallen for determination for the Commission.

87. The Commission rejects Crown Melbourne's submission that in order to constitute *just punishment* it should impose a single one off fine at the lower end of the range.

88. The Commission also considers that this aspect of Crown Melbourne's submission was an unnecessary distraction.

89. In that way, it was also a submission that was similar to those that were identified by the Commission's predecessor as being unsupported by either fact or law in the course of disciplinary action taken in April and December 2021 and in respect of which Crown Melbourne was rebuked by the RCCOL, to the extent that it also found that during April 2021 disciplinary action Crown Melbourne made submissions which had little or no evidentiary support.[47]

90. The Commission considers that it is regrettable that these particular submissions about quantum were made, in the manner in which they were when, as the Commission has already noted, Crown Melbourne's response to this disciplinary action was otherwise much improved.

91. Fourthly however, even if it were the case that *Metwally* stood for the proposition for which Crown Melbourne contends, it could not be said that the fine that the Commission has now decided to impose (namely $80 million) is unreasonable in all of the circumstances of this particular case such that it extends beyond what Crown Melbourne calls *just punishment.*

92. In that regard, in considering the approach it should take to the calculation of the appropriate fine in this matter, the Commission considered that it had two options.

[47] See RCCOL Final Report, Vol 2, Ch 10, p116, [236].

93. Option 1 was to consider each of the 2,769 times (to the value of $163,892,289) that Crown Melbourne breached section 68 of the CCA separately and in doing so proceed to impose a fine in respect of each of those separate breaches, whilst also proceeding to impose separate fines for the consequent breach or breaches of section 124.

94. Had the Commission taken this approach it would have almost certainly resulted in a total fine that is much greater than that which has ultimately been imposed, as the following example (for the sake of addressing Crown Melbourne's argument) demonstrates:
    a. apply an average fine of $500,000 for each breach of section 68;
    b. multiply that average fine by the 2,769 separate breaches;
    c. impose a further 5 instances of a fine of $500,000 for each year that Crown's financial statements were compromised by the CUP process;

    such a process had the potential to result in the Commission imposing a fine on Crown Melbourne of approximately $1.4 billion.

95. The Commission has decided not to take such an approach because of:
    a. the obvious financial burden it would place on Crown Melbourne;
    b. the threat such a total fine might pose to Crown Melbourne's ongoing viability and the consequential threat it might also pose to:
        i. the current reform program;
        ii. the legislative objectives of the CCA, which include the promotion of tourism, employment, and economic development generally in Victoria through the continued operation of the Melbourne Casino;
        iii. the extent to which the parliament has expressly precluded the Commission from suspending or cancelling Crown Melbourne's casino licence on the basis of disciplinary action arising from the RCCOL.
    c. the additional regulatory burden that would be placed on the Commission in deciding on the quantum of the fine that should be imposed in respect of each of the more than 2,700 individual instances of illegal conduct.

96. Instead, the Commission has decided that it should adopt what is, in effect, option 2 and impose a single one-off fine in respect of the entirety of the conduct that is the subject of this disciplinary proceeding.

97. The Commission has also decided, having regard to both the matters of aggravation and mitigation set out earlier in these reasons that a fine at the upper end of the range is appropriate and constitutes *just punishment*, particularly having regard to:

    a. the extent of the illegal conduct by reference to the number of breaches, the value of those breaches and the revenue derived (approximately $33 million) and furthermore the extent to which a fine at the lower end of the available range would itself be unreasonable or to borrow a phrase from the criminal law be *manifestly inadequate.*

    b. the Commission's view, that this is a very serious of matter and one where, if the circumstances were different, the Commission may well have suspended or cancelled Crown Melbourne's licence to operate the Melbourne Casino;

    c. the unreasonableness that may arise if the Commission were to impose penalties for each individual instance of Crown Melbourne's illegal conduct and the extent to which a single fine, in the context of this particular disciplinary action, is the most appropriate mechanism for the purpose of bringing this matter to a close in not only an efficient manner but also in a manner which is reasonable.

98. The Commission has also decided that a single fine at the upper end of the range is appropriate in circumstances where Crown Melbourne does not submit (and the information that is publicly available in respect of Crown Melbourne's overall financial position does not suggest) that Crown Melbourne would be incapable of paying a fine in that range.

99. The Commission has decided to impose a fine of $80,000,000 ($80 million) accordingly. Had it not been for Crown Melbourne's overall cooperation in this matter the fine imposed would have been higher.

Deterrence and the quantum of the fine imposed

100. Before leaving the issue of the quantum of the fine, something needs to be said about the issue of deterrence.

101. On this matter, Crown Melbourne submitted that because the CUP process was historical that *in turn reduces the need for disciplinary action to have a deterrent effect.*[48]

102. Although the Commission accepts that, on the material presently before it, the CUP process was historical, it does not agree that the issue of deterrence is significantly affected by the historical nature of the conduct, in the specific circumstances of this case.

103. Illegal conduct is almost always historical whenever a court or tribunal is called upon to consider what action should be taken in respect of it.

104. Furthermore, in the Commission's view, the issue of deterrence needs be viewed through the lens of the specific circumstances that apply to a casino licensee and in particular the privilege that Crown Melbourne abused when it engaged in the illegal conduct that is constituted by the CUP process.

105. In that regard, as the RCCOL and the Commission's predecessor the VCGLR have been at pains to point out to Crown Melbourne, it is a privilege to operate the Melbourne Casino, for reasons which include the extent to which it entitles the licence holder to derive a commercial return from conduct (that is operating a casino) that is otherwise illegal.

106. For five years between 2012 and 2016 Crown Melbourne abused that privilege by using the business of the Melbourne Casino and the hotels associated with it as a platform or mechanism to engage in illegal conduct that specifically contravened provisions of the very act of parliament that is designed to control the operations of the casino, so that it is not, among other things, infiltrated by criminal elements.

107. The fine in this case must deter Crown Melbourne (and/or any other future casino licensees) from abusing the privilege that is the casino licence in the future.

108. The need to ensure deterrence is not, with respect to Crown Melbourne, substantially affected by the extent to which the illegal conduct that was constituted by the CUP process is now said to have been historic.

[48] Crown Melbourne's submissions on disciplinary action, [8].

Resolving an apparent contradiction

109. Although not relevant to the outcome of this matter and not an issue that the Commission has considered for the purpose of determining the fine that it has decided to impose, there is a further matter that the Commission considers should be formally recorded as part of these reasons. That matter is detailed in the following paragraphs.

110. In the course of considering the CUP process, the Commission identified that there was an apparent contradiction between the RCCOL's findings that the CUP process had ceased in 2016 and its apparently contradictory finding that:

> *It should be noted that the process of using credit cards or debit cards at Crown Towers in return for cash continues. Invoices from Crown Towers from 2017 to 2021 show that customers used the card facilities to access cash of up to $5,000. The invoices also include false room numbers for those not staying at Crown Towers Hotel.*

111. In the circumstances, the Commission considered it appropriate to require Crown Melbourne to compulsorily produce information which might allow the Commission to reconcile this apparent contradiction.

112. Having done so, the Commission notes that it is satisfied, on the basis of the information currently before it, that the illegal conduct constituted by the CUP process (as it was described by the RCCOL and accepted by Crown Melbourne) ceased in 2016.

113. However, it is also clear that other, alternative, mechanisms by which cards were used to access cash at the Melbourne Casino persisted after that.

114. Crown Melbourne has conducted an internal investigation into these matters and refers to them as the "Paid Out Transactions".

115. The Commission has considered the information that Crown Melbourne has provided in respect of the "Paid Out Transactions" carefully and has decided that, in all of the circumstances, it will task its investigators to undertake the Commission's own investigation of the use of cards within Crown Melbourne and its associated hotels in the period after 2016.

116. This investigation will be for the purpose of allowing the Commission to form its own view about whether further breaches of section 68 might have occurred in the period after 2016 (even if those breaches are not, strictly speaking, part of the CUP process as it has been framed for the purpose of this decision).

117. The Commission has formed the view that a separate investigation into the period after 2016 is appropriate primarily because:

    a. the Commission's investigators have not themselves interviewed the Crown Melbourne staff members who are relevant to the "Paid Out Transactions";
    b. to the extent that Crown Melbourne staff were interviewed for the purpose of its internal investigation:
        i. no front-line staff were, at the time of Crown Melbourne's internal investigation, available to be interviewed; and
        ii. the Commission does not know precisely what Crown Melbourne's staff were asked, nor what answers they gave;
    c. to the extent that the answers provided by Crown Melbourne staff members are known, some of those answers are of concern to the Commission, particularly to the extent that on the information currently available at least one of the employees noted the extent to which the descriptions of the relevant transactions were *impenetrable* to third parties, and this might create difficulties for someone reviewing or auditing the relevant transactions;
    d. notwithstanding that the Commission's predecessor, the VCGLR, went to great lengths in April 2021 to identify its expectation that in order to properly conduct probity inquiries Crown Melbourne must speak directly with its customers, there is no evidence that Crown Melbourne's internal investigation into the "Paid Out Transactions" included such conversations;
    e. the quality of the transaction description data that was reviewed in the course of Crown Melbourne's internal investigation was described as "low;"
    f. Crown Melbourne confirmed in the course of responding to an exercise of compulsory powers by the Commission in the course of this matter that its review of gaming data to better inform its characterisation of certain transactions is ongoing and is not expected to be completed until August 2022.

118. As a result of these matters, the Commission has formed the view that it is premature to conclude (as Crown Melbourne has purported to do in response to an exercise of compulsory powers by the Commission) that these matters:

> *…do not appear to give rise to any contravention of section 68(2) of the CCA [and] [o]n that basis Crown did not (and does not) consider that the conduct that gave rise to the specific finding [about the use of cards at Crown Towers in return for cash continuing] constitutes a significant breach or likely breach for the purpose of section 27 of the CCA.*

119. The Commission will instruct its investigators to focus particularly on the type of "Paid Out Transactions" that Crown Melbourne refers to as the "Cash Paid Out" transactions.

120. The Commission expects that Crown Melbourne will work collaboratively with it in respect of its investigation of these matters.

Costs

121. In the course of exercising its compulsory powers for the purpose of this matter the Commission formally advised Crown Melbourne that it was considering whether disciplinary action should be taken and that, if it decided to take such action, the Commission may also require Crown Melbourne to pay the Commission its reasonable costs.

122. The Commission has decided that Crown Melbourne should pay the Commission's costs of this disciplinary action.

123. The Commission will direct its staff prepare a notice in accordance with section 20A of the CCA for the purpose of requiring Crown Melbourne to pay the Commission's costs accordingly.

The preceding 123 paragraphs are a true copy of the Reasons for Decision of Fran Thorn (Chair), Deirdre O'Donnell (Deputy Chair), Danielle Huntersmith (Commissioner) and Andrew Scott (Commissioner).