Case note – Disciplinary action – Casino operator

In the matter of an inquiry into whether there are grounds to take disciplinary action against Crown Melbourne Limited under section 20 of the *Casino Control Act 1991* (Vic) for contravention of section 121(4) of the *Casino Control Act 1991* (Vic).

**Commission:** Mr Ross Kennedy PSM, Chair

Ms Deirdre O’Donnell PSM, Deputy Chair

Ms Danielle Huntersmith, Commissioner

Mr Andrew Scott, Commissioner

**Date of decision:** 22 December 2021

**Date of reasons:** 22 December 2021

**Decision:** The Commission has determined that there are grounds for disciplinary action against Crown Melbourne Limited in accordance with section 20 of the *Casino Control Act 1991* (Vic) and has determined to:

* impose the maximum fine in the amount of $1,000,000, payable within 28 days of the date of this decision.

Note: This case note is a summarised and de-identified version of the reasons for decision dated above (removing the personal information of relevant individuals) but published in the interests of transparency.

Background

1. The statutory objectives of the Victorian Commission for Gambling and Liquor Regulation (**Commission**) include that of ensuring that the operation and management of the Melbourne Casino remains free from criminal influence or exploitation.
2. In about 2002, the Melbourne Casino operator, Crown Melbourne Limited (**Crown**), began dealing with **Mr A**, including in his capacity as a junket operator.
3. In December 2014, Mr A was convicted of gambling offences in the United States and on 5 November 2015, the Commission directed Crown in writing to cease its dealings with him.
4. On 6 November 2015, Crown asked the Commission whether it could continue its relationship with Mr A as a premium player (and merely cease dealing with him as a junket operator).
5. On 20 November 2015, the Commission denied Crown’s request and confirmed in writing that Crown must cease its relationship with Mr A entirely.
6. On 25 November 2015, Crown confirmed in writing that it would cease dealing with Mr A as both a junket operator and as a premium player, immediately.
7. Meanwhile, in late July 2015, (about six months after Mr A had been convicted) **Ms B** began arranging to conduct junket programs at the Melbourne Casino. Ms B was Mr A’s personal assistant and the junket programs she conducted were, at least in part, guaranteed by Mr A.[[1]](#footnote-2)
8. Ms B conducted her first junket program at the Melbourne Casino in October 2015, some ten months after Mr A had been convicted.
9. In January 2016 (more than one month after the Commission had directed Crown to cease dealing with Mr A), Crown continued to deal with Ms B as a junket operator, despite knowing that she was both an employee of Mr A and had previously operated under a guarantee given by him (**January Program**). The January Program included:
   * 1. granting a credit facility to Ms B in the amount of $20 million, which was guaranteed by **Mr C**, a business associate of Mr A who had also been arrested in the United States at the same time as Mr A;
     2. Mr C being listed as a player and junket agent; and
     3. payments being made by Crown, at the request of Ms B, of funds in the amount of $14,190,669 into a bank account held in the name of Mr A.
10. The January Program constituted a circumvention of the Commission’s written direction that Crown cease dealing with Mr A.
11. Furthermore, as part of the credit facility application process, Crown was provided with two different addresses for Ms B. Crown appeared to take no proactive steps to clarify this apparent inconsistency.
12. Finally, notwithstanding that it was obliged to advise the Commission of Ms B’s status as a new non-resident junket operator, before she conducted junket operations at the Melbourne Casino, Crown did not provide the requisite notice until 21 January 2016 (that is about 3 months after Ms B's first junket program had occurred and also after the January Program had been completed).

Notice to show cause

1. On 28 September 2021, the Commission issued a notice to Crown under section 20(2) of the *Casino Control Act 1991* (**CC Act**), which required Crown to show cause why disciplinary action should not be taken, based on the ground that Crown had contravened a provision of the CC Act (**Show Cause Notice**).
2. The Show Cause Notice alleged four particulars (detailed below) where Crown failed to implement various clauses of internal control statements relating to junkets and premium players in respect of Mr A and Ms B, thereby constituting a breach of section 121(4) of the CC Act.

Crown’s response

1. Pursuant to section 20(3) of the CC Act, Crown provided written submissions to the Commission on 19 October 2021, addressing the particulars that were outlined in the Show Cause Notice (**Response**). Crown did not want to be heard other than through its Response. Accordingly, the Commission proceeded to determine the matter on the papers.
2. Quite properly, in its written submissions, Crown accepts that it has contravened section 121(4) of the CC Act to the extent that it failed to comply with:
   * 1. the Commission’s direction by allowing Ms B to conduct the January Program;
     2. its obligation to ensure that it has robust processes in place for the purpose of considering the probity of Ms B; and
     3. its obligation to notify the Commission that Ms B would be conducting business as a new non-resident junket operator at the Melbourne Casino before she was allowed to conduct junket operations.
3. In accepting those matters, Crown has unequivocally conceded the facts of particulars 1 and 4 of the Show Cause Notice and that a ground for disciplinary action exists in respect of those particulars.
4. Crown’s position in respect of the matters that are the subject of particulars 2 and 3 is however more nuanced.
5. In that regard, although Crown concedes that it has also contravened section 121(4) of the CC Act to the extent that its due diligence was inadequate in respect of both Ms B and the participants in the relevant junket, Crown says that the Commission should apply the doctrines of double jeopardy, *res judicata* and issue estoppel (*“by analogy”*) to those matters and not proceed to take disciplinary action in respect of them.
6. Crown makes those submissions because, it says, Particulars 2 and 3 *“…are part of the same substratum of facts that constituted the same systemic contravention”* that was the subject of a previous decision the Commission reached on 27 April 2021 (**the April Determination**).
7. As well as that, specifically in respect of particular 3, Crown also joins issue with the extent to which, in the course of the probity checks it conducted on Ms B, it accepted two separate addresses from her in the course of purportedly establishing her identity. Crown says that accepting two addresses is not a matter that is capable of constituting an instance of non-compliance.
8. The Commission will return to these submissions later in these reasons.

Legislation and the Commission’s task

System of internal controls

1. Section 121 of the CC Act provides that the casino operator must not conduct operations in the casino unless the Commission has approved in writing a system of internal controls for the casino. Section 121(4) of the CC Act states:

*The casino operator must ensure that the system approved for the time being under this section for the casino is implemented.*

1. Until 24 December 2015, Version 4 of the Junket and Premium Player Programs (Including Introduction of Players) dated 13 December 2011 (**2011 Junket ICS**) applied to Crown.
2. The 2011 Junket ICS was replaced by the "Internal Control Statement, Junket and Premium Player Programs (Including VIP Telephone Betting and the Introduction of Players)" Version 10.0 dated 24 December 2015 (**2015 Junket ICS**).
3. The 2011 Junket ICS included similar terms to clauses 2.4.1 and 2.5.2 of the 2015 Junket ICS, which required Crown to:
   * 1. notify new non-resident junket operators, under clause 2.7; and
     2. cease its relationship with a registered junket operator (or agent) or a person introducing players if formally requested to do so by the Commission, under clause 2.6.
4. The 2011 Junket ICS and the 2015 Junket ICS are, when both are applicable, collectively referred to below as the Junket ICS.
5. The 2015 Junket ICS introduced a new clause 2.5.1. In the 2015 Junket ICS that relevantly included clauses that:

In respect of the Internal Control Statement, the Minimum Standards and Controls are:

*2.4.1 Crown will provide the VCGLR with notification of all new non - resident Junket Operators.*

*...*

*2.5.1 Crown will ensure that it has robust processes in place to consider the ongoing probity of its registered Junket Operators, Junket Players & Premium Players.*

*2.5.2 Crown will cease its relationship with a registered Junket Operator (or agent) or a person introducing players if formally requested to do so by the VCGLR.*

The Commission’s disciplinary action power

1. Section 20 of the CC Act sets out the power of the Commission to take disciplinary action against a casino operator, including the grounds for disciplinary action against a casino operator. Relevantly, section 20(1)(b) provides a ground for disciplinary action in circumstances where:

*the casino operator, a person in charge of the casino, an agent of the casino operator or a casino employee has contravened a provision of this Act or the Gambling Regulation Act 2003 or a condition of the licence.*

1. The Commission must serve a notice in writing on a casino operator affording it an opportunity to show cause within 14 days why disciplinary action should not be taken. The casino operator, within the period allowed by the notice, may arrange with the Commission for the making of submissions as to why disciplinary action should not be taken. The Commission must consider any submissions so made.
2. After considering Crown's submission and/or on completion of any hearing conducted, the Commission will determine whether a ground for disciplinary action is established and, if so, determine whether or not to take disciplinary action. Under section 20 of the CC Act "disciplinary action" means one (or a combination) of cancellation or suspension of the casino licence, the issuing of a letter of censure, the variation of the terms of the casino licence or the imposition of a fine not exceeding $1,000,000.

Conduct of an inquiry

1. Section 34 of the *Victorian Commission for Gambling and Liquor Regulation Act* 2011 (**VCGLR Act**) provides that, subject to that Act, gambling legislation or liquor legislation, the Commission may conduct an inquiry in any manner it considers appropriate.
2. During the conduct of an inquiry, section 25(3) of the VCGLR Act provides that the Commission is not bound by the rules of evidence, however must comply with the rules of natural justice.

Reasons for decision

Particular 1

1. It was alleged that:

Crown Melbourne Limited being the holder of a casino operator's licence, at Crown Casino in the State of Victoria did fail as the casino operator to ensure that the system approved for the time being under section 121(4) was implemented by failing to cease its relationship with Mr A following a formal request to cease its relationship with Mr A under clause 2.6 of the 2011 Junket ICS in November 2015.

1. Crown concedes that Particular 1 is made out but says it made a financial loss from the January Program.
2. The Commission finds that, on the evidence available, Particular 1 is established.

Particular 2

1. It was alleged that:

Crown Melbourne Limited being the holder of a casino operator's licence, at Crown Casino in the State of Victoria did fail as the casino operator to ensure that the system approved for the time being under section 121(4) was implemented in accordance with clause 2.5.1 of the 2015 Junket ICS by permitting junket operator Ms B to operate a junket program at Crown Casino between 9 January 2016 and 11 January 2016.

1. As has already been noted, Crown concedes that Particular 2 is made out.
2. However, Crown submits that whilst it has contravened section 121(4) of the CC Act to the extent that its due diligence was inadequate, the Commission should apply the doctrines of double jeopardy, *res judicata* and issue estoppel (*“by analogy”*) to those matters and not proceed to take disciplinary action in respect of them.
3. Crown says those doctrines should be applied because Particulars 2 and 3 *“…are part of the same substratum of facts that constituted the same systemic contravention”* that was the subject of the April Determination.
4. Crown says that the substratum of facts upon which it relies are that:
   * 1. the contraventions that are the subject of Particular 2 (and 3) involve contraventions of clause 2.5.1 of the 2015 Junket ICS;
     2. those contraventions of clause 2.5.1 of the Junket ICS occurred at a time that formed part of the same temporal period as was considered by the Commission in the course of arriving at its April Determination;
     3. clause 2.5.1 of the 2015 Junket ICS requires Crown to have robust processes in place, and section 121 of the CC Act requires Crown to implement those processes – processes and their implementation are inherently systemic matters and the proper construction of clause 2.5.1 and section 121 is that each example of failure is but one example of the same contravention;
     4. the failures particularised in the April Determination and in Particular 2 (and 3) evidence the same underlying deficiency – that is, Crown failed to undertake sufficient enquiries and, further, failed to consider adequately the information it did have in its assessment of probity of the junket operators, junket players and premium players; and
     5. more specifically, there are similarities between Particular 1 of the April Determination and Particular 2 in that Crown failed to obtain information about and consider the relationship between associated individuals (being Messrs D and E in the April Determination, and Ms B and Messrs A and C for the purpose of Particular 2 in this matter).
5. There are several difficulties with Crown’s submissions insofar as they concern the purported application of the doctrines of double jeopardy, *res judicata* and issue estoppel. Each of these submissions are detailed and analysed below. In summary, those difficulties are that:
   * 1. Particulars 2 and 3 are not, in fact, part of the same factual substratum as was the subject of the April Determination;
     2. Crown’s submissions are based on a mischaracterisation of the process which gave rise to the April Determination;
     3. Crown’s submissions are based on an artificial and unstainable approach to what Crown says is the *“proper”* construction of its regulatory obligations;
     4. the secondary interpretive guidance that Crown relies upon contradicts its submissions in that it expressly identifies the extent to which the concept of double jeopardy is not applicable to an administrative decision-making process such as this one and is silent in respect of the application of the doctrines of *res judicata* and issue estoppel;
     5. the authorities that Crown has identified do not support the propositions for which Crown contends.
6. Accordingly, for the reasons that follow, the Commission rejects Crown’s submissions in respect of the application of the doctrines it has identified and in doing so notes that the matters referred to in the sub-paragraphs immediately above each provide a separate and distinct basis upon which the Commission must reject those submissions.

***Same Substratum of facts?***

1. Although it is correct that Particular 2 (and 3) of this matter has a passing similarity to the April Determination to the extent that it requires the Commission to consider clause 2.5.1 of the Junket ICS and there is also a small degree of temporal overlap, there are also several significant differences between the conduct that was the subject of the April Determination and the matters that are the subject of these reasons. Those differences include that:
   * 1. Mr A, Ms B and Mr C had nothing to do with the specific junket operations that were the subject of the April Determination and were not the subject of that determination;
     2. there is no link between the persons and entities who were the subject of the April Determination and those that are the subject of this matter;
     3. the April Determination did not consider the specific junket operation or program (numbered 248883) that is the subject of the Commission’s consideration of this matter;
     4. the April Determination required consideration of specific concerns that were raised by the Commission in respect of other specific junket operations. Those specific matters had nothing to do with the facts of this matter, including to the extent that this matter has not required the Commission to consider matters that were the subject of the April Determination, such as:
        1. whether Crown’s probity obligations apply to junket agents and not just junket operators and players (being a matter that was relevant to the Commission’s consideration of Particular 1 of the April Determination);
        2. whether secondary information about a criminal conviction and a failure to establish a direct line of communication with a particular junket operator was sufficient to discharge Crown’s obligations in respect of that specific junket operator (being the matter that was the subject of Particular 2 of the April Determination);
        3. the appropriateness of what Crown styled the *“evaluative judgments”* it undertook in deciding to reinstate the licence of a junket player who had misled Crown about his identity so that he could gamble at the Melbourne Casino at or about the same time as he was the subject of United Nations sanctions (being the matter that was the subject of particular 3 of the April Determination);
        4. the extent to which it was appropriate for Crown to continue to do business with a particular junket operator in the context of specific evidence about that junket operator’s links to organised crime, their status as a “politically exposed person”, a proliferation of cash transactions at the Melbourne Casino involving that junket operator and that particular junket operator’s failure to comply with additional, specific, controls that Crown itself sought to impose in respect of that operator (being the matters that were the subject of Particular 4 of the April Determination).
2. Having regard to the significant differences which exist between the issues that now fall to be considered by the Commission and those that were the subject of the April Determination, the Commission rejects Crown’s submission that this matter is based on the same factual substratum as was considered in the April Determination.

***Crown’s mischaracterisation of the process that gave rise to the April Determination***

1. As will be apparent from the consideration of the facts immediately above, for the purpose of the April Determination, Crown was called upon to show cause in respect of four specific matters each of which arose from separate individual junket and/or premium player relationships it had curated and maintained.
2. In the course of responding to those specific matters, Crown chose not to confine itself to arguments that were based on the particulars that were set out in the show cause notices to which it responded in the course of the Commission arriving at the April Determination.
3. Rather, throughout the process which resulted in the April Determination, Crown took what the Commission noted at the time was the internally contradictory approach of simultaneously submitting that:
   * 1. the Commission was obliged to confine its consideration to the specific issues that were the subject of the show cause notices; and
     2. (even though it had made the submission about the extent to which the Commission was obliged to confine its consideration) the matters that were the subject of the show cause notices that preceded the April Determination were not indicative of a systemic failure. In furtherance of that submission Crown also made several submissions that were directed towards the systems and processes that Crown had historically applied for the purpose of considering matters of probity.
4. The Commission specifically addressed the internal contradiction that arose from the approach Crown took to responding to the show cause notices in the reasons it gave for arriving at the April Determination and in doing so, among other things, noted that:

*…in a way that is somewhat contradictory to the analysis that Crown itself has invited by submitting that the four instances referred to in the show cause notices do not constitute evidence of a systemic failure, Crown has also been anxious to ensure that the Commission restricts itself to considering this matter in a way that does not stray beyond the matters that have specifically been referred to in the show cause notices.[[2]](#footnote-3)*

*In seeking to balance that contradictory position, the Commission notes that it has restricted itself accordingly, except to the extent that Crown’s own submissions have themselves required the Commission to address more general or overarching issues, including that of whether the four matters referred to in the show cause notices do in fact constitute evidence of a systemic failure.[[3]](#footnote-4)*

1. Furthermore, the Commission also noted that:

*…in respect of the overarching matters put by Crown, there is the submission that the four specific examples referred to in the show cause notices are not indicative of a systemic failure.*

*On that point, the Commission notes that Crown again provided no evidence to the Commission in support of that submission. It did not, for example, seek to establish that its processes were, in the overall sense, robust by reference to other instances where Crown had appropriately considered and dealt with matters of probity, pursuant to its obligations under the Junket ICS. In the absence of such evidence, Crown’s submissions in respect of whether the four matters referred to in the show cause notices do not demonstrate a systemic failure is nothing more than a further example of a bald assertion, unsupported by evidence.[[4]](#footnote-5)*

1. In these circumstances, the Commission considers Crown’s submissions in this matter to be based on a mischaracterisation of the process that gave rise to the April Determination.
2. Viewed objectively, that process involved:
   * 1. Crown responding to a specific set of concerns;
     2. Crown responding to those matters in a way which sought to introduce arguments which included those based on “systemic matters”;
     3. in advancing those arguments, producing no evidence which could have allowed the Commission to assess Crown’s systems in an overall sense;
     4. the Commission rejecting Crown’s submissions about systemic issues because there was no evidence to support them.
3. The April Determination was not a process that involved the type of systemic consideration for which Crown contends and as such the Commission rejects Crown’s submissions about the application of the doctrines of double jeopardy, *res judicata* and issue estoppel on that basis.

***The “proper” construction***

1. Crown submits that:

*cl 2.5.1 of the Junket ICS requires Crown to have robust processes in place, and s121 of the Act requires Crown to implement those processes – Crown contends that processes and their implementation are inherently systemic matters and, therefore, the proper construction of cl 2.5.1 and s121 is that each example of failure is but one example of the same contravention.*

1. The Commission disagrees.
2. The Junket ICS exists for purposes which include ensuring that the Melbourne Casino remains free of criminal influence or exploitation.
3. As such, clause 2.5.1 of the junket ICS applies (or applied) to the multitude of junket operators, junket players and premium players with whom Crown has established business relationships over time.
4. Not only are each of those relationships unique but so too is the specific nature of the threat of criminal influence or exploitation that might arise from Crown’s relationship with any one particular junket operator, junket player or premium player.
5. As such, the question of whether Crown has in fact *“ensured that it has robust processes in place to consider the ongoing probity of its registered junket operators, junket players and premium players”* is a matter that necessarily requires specific consideration of both the features of each particular relationship and also the risks that might arise from that relationship.
6. It is not, as Crown would have it, simply a matter that requires consideration of a generic or *“one size fits all”* system.
7. For example, in the context of the specific consideration that should have been given to the probity of Ms B before she was permitted to conduct the January Program (being the matter that is the specific subject of Particular 2), there were several unique issues that should have been considered by Crown, including:
   * 1. Ms B’s status as Mr A’s employee and/or personal assistant;
     2. Mr A’s conviction for gambling offences in the United States;
     3. the Commission’s direction which required Crown to cease dealing with Mr A;
     4. Crown’s assurance that it would act on the direction;
     5. the extent to which the January Program may have involved payments being made to Mr A (noting that ultimately Crown paid approximately $14million into a bank account held in the name of Mr A shortly after the conclusion of the January Program);
     6. Crown’s failure to advise the Commission that Ms B was a new non-resident junket operator before she commenced conducting junket operations at the Melbourne Casino, including the January Program.
8. In the context of these matters, the Commission considers that a robust process would have (at least) caused Crown to:
   * 1. contact Mr A directly and advise him that Crown had been directed to cease dealing with him;
     2. specifically consider whether Mr A (as a person who had been convicted of gambling crimes and was the subject of the direction) had any indirect interactions with the Melbourne Casino (such as via his employee Ms B) and if so the nature of those interactions;
     3. in the event that Mr A did have such indirect interactions, whether those interactions were a conduit through which:
        1. Mr A was in effect accessing the Melbourne Casino;
        2. others whose probity was in issue (such as Mr C) were also accessing the Melbourne Casino;
        3. a “money trail” could be traced back to Mr A.
9. It was Crown’s failure to implement steps to identify, consider and address matters such as these that constitute the basis upon which the Commission considers that Crown failed to comply with its statutory obligation to implement a robust process to consider the probity of Ms B before she was permitted to conduct the January Program.
10. These are all features that are unique to the question of whether Crown implemented a robust process in permitting Ms B to conduct the January program. They are also matters that are wholly irrelevant to any consideration that might be given to the question of whether Crown implemented *“robust”* processes in respect of the myriad other junket operators, junket players and premium players to whom clause 2.5.1 of the Junket ICS applies.
11. The Commission rejects Crown’s submission on what it says is the *“proper”* construction of clause 2.5.1 of the Junket ICS accordingly.

***The secondary interpretive guidance that Crown relies upon contradicts its submissions***

1. In support of its submission, that the doctrine of double jeopardy should be applied to preclude the Commission from taking disciplinary action in respect of Particular 2 (and 3), Crown has referred to the 2003 Australian Law Reform Commission Paper entitled *Principled Regulation: Federal Civil and Administrative Penalties in Australia,[[5]](#footnote-6)* (**ALRC Paper**) which, Crown notes, *“identified rationales for the rule against double jeopardy in Australian jurisprudence”.[[6]](#footnote-7)*
2. The ALRC Paper relates to the potential unfairness of both criminal and civil/administrative sanctions being applied for the same conduct. Nevertheless, the Commission has considered the ALRC Paper carefully and notes that, among other things, it specifically refers to the extent that:[[7]](#footnote-8)

*…the double jeopardy protections under…the Crimes Act and the common law only relate to criminal offences, and not to administrative penalties. Given the constitutional constraint on non-judicial officers imposing penalties, it is not surprising that administrative penalties have rarely been considered as punishment for the purposes of double jeopardy in Australia.[[8]](#footnote-9) When parties to litigation have raised the issue, it has been quickly dismissed[[9]](#footnote-10)or the ‘protective and managerial purpose of the legislation’ has been held to exclude the operation of the protection.[[10]](#footnote-11)*

1. In this case, the protective nature of the task that the Commission is engaged in is obvious, particularly to the extent that it is a function which exists (at least in large part) for the protective purpose of seeking to ensure that the Melbourne Casino remains free of criminal influence or exploitation.
2. Furthermore, Crown did not address the point that this proceeding is not a criminal proceeding, nor is it a process by which a judicial officer is being called upon to impose a penalty, and therefore how the ALRC Paper is relevant or applicable in this matter.
3. In circumstances where the Commission is obliged to act in accordance with the law, Crown’s submissions do not identify how Crown says the Commission could ignore this statement of legal principle and apply the doctrine of double jeopardy in the specific context of this case.
4. Similarly, Crown’s submissions also do not identify how it is said that the doctrines of *res judicata* and/or issue estoppel could be applied *“by analogy.”* The ALRC report does not support Crown’s submission in that regard.
5. As such, even if the application of the doctrines Crown has identified had been open on the facts (which the Commission has already found they are not) the Commission would have rejected the application of those doctrines, having regard to the specific nature of the Commission’s task in this matter.

***The authorities Crown has identified do not support its submissions***

1. In addition to the secondary interpretive guidance constituted by the ALRC Report, Crown’s written submissions also reproduce a selection of the authorities that are referred to in the citations to the ALRC Report.[[11]](#footnote-12)
2. The Commission has considered those authorities carefully and has formed the view that they provide no assistance in its consideration of this matter for at least the following reasons:
   * 1. all arise in circumstances which bear little resemblance to this case and where Crown has not explained their relevance in the course of its submissions. Indeed, to take but one example, Crown seeks to rely upon the High Court’s decision in *R v Hoar.[[12]](#footnote-13)* That is a case from the criminal jurisdiction concerning the question of whether simultaneous charges under fisheries legislation together with conspiracy charges to commit those same offences constituted an instance of double jeopardy. Crown does not explain how it says those issues are in any way relevant to the application of the doctrine of double jeopardy in the context of this particular case;
     2. none address the issue of the application of the doctrine of double jeopardy in the context of a process of administrative decision making where a regulator is primarily concerned with protective considerations such as, in this case, the objective of ensuring that the Melbourne Casino remains free of criminal influence or exploitation;
     3. none contradict the statement of legal principle that is made in the ALRC report about the extent to which the doctrine of double jeopardy does not apply to matters of administrative decision making, such as this one;
     4. as has already been noted, no authorities have been provided in support of the proposition that the doctrines of *res judicata* and issue estoppel are capable of being applied in this matter, either directly or, as Crown urges, *“by analogy”*.
3. Overall, the reproduction of the generic authorities that are referred to in the citations to the ALRC Report and the absence of relevant authorities which genuinely support the arguments Crown has sought to advance has amounted to an unnecessary distraction in the Commission’s consideration of this matter.
4. The Commission finds that Particular 2 is established.

Particular 3

1. It was alleged that:

Crown Melbourne Limited being the holder of a casino operator's licence, at Crown Casino in the State of Victoria did fail as the casino operator to ensure that the system approved for the time being under section 121(4) was implemented in accordance with clause 2.5.1 of the 2015 Junket ICS, by failing to ensure the probity of junket operator Ms B in accepting two different addresses from her on 9 January 2016.

1. In its Response, Crown disputed that Particular 3 is made out. Specifically, Crown submitted that:
   * 1. it had previously completed its applicable customer identification procedures in respect of Ms B, and had obtained various identification documents in July 2015;
     2. Ms B's credit application, and Mr C's guarantee and indemnity (where the alternative address was provided), did not require Crown to reassess Ms B's identification by performing a fresh identification verification; and
     3. the provision of an additional or alternative address on a credit application does not require further probity checks, noting that having an additional address listed is not inherently concerning, and may have reflected something such as Ms B’s business address.
2. Further, Crown also submitted (as per Particular 2) that, if the Commission were to find Particular 3 made out, then this is also conduct that falls within the same “substratum of facts” as the April Determination and therefore should also be the subject of an application of the doctrines of double jeopardy, *res judicata* and issue estoppel *“by analogy”*.
3. Although, the Commission rejects Crown’s submission about the application of those doctrines for the same reasons as have been identified in respect of Particular 2, the Commission considers that, in the specific circumstances of this case, Crown’s other submissions in respect of Particular 3 should be accepted.
4. In that regard, the evidence before the Commission indicates that Crown did in fact undertake appropriate steps to establish the identity of Ms B as the person with whom it was conducting business.
5. Having done so, the fact that two separate addresses were identified by her during the course of the ongoing business relationship that then ensued did not in and of itself constitute an instance of Crown failing to implement its obligations under clause 2.5.1, insofar as they concerned Ms B.
6. Furthermore, other than to the extent to which Ms B was the employee of a person the Commission had directed Crown to cease dealing (Mr A), the evidence identifies no other factors in respect of her which might have, in other circumstances, required Crown to clarify the existence of two separate addresses, in order to comply with its obligations under clause 2.5.1.
7. Whilst a different conclusion might have been reached in other circumstances, having regard to issues such as the:
   * 1. risk profile of the individual involved;
     2. nature and extent of other inconsistent information;
     3. specific purpose for which separate addresses were provided;
     4. nature and history of the relationship between the individual and Crown;

these are not matters that were applicable in the specific context of Ms B.

1. As such, the Commission accepts that in the specific circumstances of Particular 3, Crown did not breach clause 2.5.1 by failing to take further steps to clarify the existence of two separate addresses of Ms B at the relevant time.
2. The Commission finds that Particular 3 is not established.

Particular 4

1. It was alleged that:

Crown Melbourne Limited being the holder of a casino operator's licence, at Crown Casino in the State of Victoria did fail as the casino operator to ensure that the system approved for the time being under section 121(4) was implemented by failing to notify the Commission of a new non- resident junket operator, Ms B before commencement of her junket program in October 2015, in accordance with clause 2.7 of the 2011 Junket ICS.

1. Crown has conceded that Particular 4 is made out to the extent that the responsible employee failed to notify the Commission as required. The Commission also finds that Crown failed to notify the Commission in accordance with its obligation to do so.
2. The Commission finds that Particular 4 is established.

Disciplinary action to be taken

1. As the Commission has found that Particulars 1, 2 and 4 of the Show Cause Notice are made out, it is necessary for it to now turn to consider the issue of what, if any, disciplinary action should be taken based on those findings.
2. The forms of disciplinary action that the Commission may take include:
   * 1. taking no further action;
     2. issuing a letter of censure;
     3. varying the terms of the casino licence;
     4. imposing a fine not exceeding $1 million; and/or
     5. cancelling or suspending the casino licence.
3. Sections 140 and 141 of the CC Act set out the Commission’s objects and functions. These objects include that of ensuring that the management and operation of the Melbourne Casino remains free from criminal influence or exploitation.
4. In carrying out its disciplinary functions, the Commission considers all the circumstances of a particular case in determining the appropriate disciplinary action. The following matters will be relevant to assessing the appropriate disciplinary action in a particular case:
   * 1. the objects of the CC Act, including the need to ensure that the management and operation of casinos remains free from criminal influence or exploitation;[[13]](#footnote-14)
     2. the nature, extent and seriousness of identified grounds, including the period over which they extended;[[14]](#footnote-15)
     3. the 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 CC Act;[[15]](#footnote-16)
     4. the level of cooperation with the Commission or other authorities responsible for enforcement under the CC Act;[[16]](#footnote-17)
     5. remorse, contrition and/or corrective actions taken by the casino operator to improve management of the premises;[[17]](#footnote-18) and
     6. any other mitigating or exacerbating circumstances relevant to the matter.

**Aggravating factors**

1. There are a number of aggravating factors set out below. Most notable, the circumstances in relation to particular 1, which are considered to constitute a most serious example of a failure by a casino operator to comply with its obligations.
2. The Commission made it clear to Crown in its written direction in November 2015 that it was to cease dealing with Mr A because he had been convicted of gambling offences in the United States. It should have been obvious to Crown that such a direction was designed to ensure that the Melbourne Casino remained free of criminal influence or exploitation.
3. Furthermore, to the extent that there might have been any uncertainty about that, the effect of the direction was confirmed when the Commission declined in writing to agree to Crown’s proposal that it be allowed to continue to conduct business with Mr A as a premium player and only apply the direction insofar as it concerned his junket operations.
4. When, again acting consistently with the objective of ensuring that the operation of the Melbourne Casino remain free of criminal influence, the Commission declined that proposal, Crown specifically assured the Commission that it would indeed cease its dealings with Mr A.
5. Contrary to the Commission’s written direction and Crown’s written assurance that it would cease all dealings with Mr A, Crown continued to deal with Mr A’s personal assistant (Ms B) who had herself become a junket operator at Crown Melbourne shortly after Mr A’s conviction for gambling offences.
6. In doing so, Crown must have (at the very least) known that it was likely that Mr A, through Ms B, to continue to have exposure to the Melbourne Casino.
7. In these circumstances, predictably, as the “money trail” shows, approximately $14million was transferred to an account in the name of Mr A shortly after Ms B conducted the January Program.
8. Furthermore, the seriousness of these matters is made more acute by the fact, not only did Crown allow this situation to arise, it also failed to comply with its express obligation to inform the Commission that Ms B would be conducting junket operations at the Melbourne Casino.
9. The express obligation to inform the Commission of new non-resident junket operators is (or was) as an important mechanism by which the Commission could maintain a degree of oversight in respect of those who are (or were) conducting junket operations in the Melbourne Casino.
10. Taken together, the combination of these matters exhibits all the hallmarks of either deliberate disobedience or wilful blindness.
11. It is also conduct that has had the effect of directly frustrating the Commission in its objective of ensuring that the Melbourne Casino remains free of criminal influence or exploitation.
12. Furthermore, this is conduct that can only be attributed to Crown itself. It was:
    * 1. Crown which was given the direction in respect of Mr A;
      2. Crown which gave the Commission the assurance that it would not deal with Mr A;
      3. Crown which continued to deal with Mr A’s employee Ms B;
      4. Crown which did not ask Ms B whether she was acting on Mr A’s behalf;
      5. Crown which transferred about $14million to an account in the name of Mr A at the conclusion of the January Program; and
      6. Crown which failed to notify the Commission that Ms B was a new junket operator.
13. There is no evidence that Crown’s probity efforts were in any way hampered by Ms B. They simply were not applied.
14. In the Commission’s view, these are aggravating factors that place this matter into the most serious category of non-compliance.
15. Furthermore, on a more general level, this is the fifth occasion on which the Commission or its predecessor has been required to take disciplinary action on the specific issue of Crown’s compliance with its obligations in respect of junket operations, internal control statements and/or the Junket ICS. This includes the April Determination by the Commission, in which it imposed the maximum fine of $1 million and issued Crown with a letter of censure which, among other things, required Crown to report to the Commission on its progress in implementing various reform programs that were described to the Commission in the course of the process which gave rise to the April Determination.

**Mitigating factors**

1. Conversely with the matters of aggravation, the Commission accepts that there are also factors to be taken into account as mitigating factors.
2. Furthermore, there are a number of factors contained in Crown’s submissions on penalty that the Commission accepts.
3. In particular, the Commission accepts that Crown has:
   * 1. cooperated with the Commission during its investigation into these matters, including by making concessions and voluntarily disclosing certain relevant matters to the Commission. To this extent, the Commission notes an improved approach by Crown beyond that which was experienced in the course of the April Determination.
     2. implemented a number of improvements to relevant processes, systems and frameworks which now evidence an improved culture of compliance. These improvements arose out of various inquiries into its overall conduct (in particular in relation to its junket programs). Of note, Crown referred to its formal cessation of dealing with junket operators as and from November 2020, with no intention to apply to recommence junket operations at the Melbourne casino in the future.
     3. demonstrated a reasonable level of contrition and remorse that these failures occurred, evidenced not only by its concessions and cooperation in this process, but also with reference to the steps taken to assure the Commission that similar failures will not occur in the future.

**Course of conduct and totality**

1. In addition to matters in mitigation, Crown has also made technical legal submissions on penalty.
2. Those submissions are that:
   * 1. the course of conduct principle should be applied[[18]](#footnote-19) because Particular 2 (and 3) alleged contraventions of clause 2.5.1 of the 2015 Junket ICS and (Crown says) there is an interrelationship between the April Determination and Particular 2 (and 3); and
     2. the totality principle[[19]](#footnote-20) should also be applied because of the interrelationship between the April Determination and the Particulars set out in the Show Cause Notice; the $1 million fine imposed as part of the April Determination and other penalties imposed in respect of prior relevant breaches, including breaches of clause 2.7 of the Junkets ICS.
3. Crown puts these submissions effectively by reference to the same matters as are said to justify the application of the doctrines of double jeopardy, *res judicata* and issue estoppel.
4. As noted above, the Commission rejects Crown’s submissions with respect to the application of those doctrines.
5. This is not a matter that is based on the same substratum of facts as those that were considered in the course of the April Determination and Crown’s submissions otherwise seek to mischaracterise both the process that resulted in the April Determination and the *“proper”* construction of the relevant obligation.
6. Furthermore, this matter is unique to the extent that it is the first occasion on which the Commission has been called upon to consider a circumstance where Crown has failed to comply with an express direction to cease dealing with a person who has been convicted of gambling-related offences.
7. The Commission rejects Crown’s submissions on issues of course of conduct and totality and has decided to proceed to consider the issue of the appropriate disciplinary action to be taken accordingly.

**Appropriate disciplinary action to be** **taken**

1. In the Commission’s view, the matters that are the subject of these reasons are sufficiently serious to justify disciplinary action which goes beyond the imposition of a fine and/or the letters of censure that the Commission has previously imposed.
2. Accordingly, in weighing all of the above factors, the Commission has given serious consideration to suspending Crown’s licence to operate the Melbourne Casino. The Commission would have also taken steps to require Crown to cease all junket operations, had it not already done so, voluntarily, prior to the Commission arriving at the April Determination.
3. As noted above, the Commission considers that the direct disobedience and/or wilful blindness constituted by Crown allowing Mr A’s employee (Ms B) to conduct the January Program, after it had been directed to cease its business relationship with Mr A, to be most serious.
4. However, as the Commission has already noted, there also certain matters of mitigation in this case.
5. Consequently, the Commission has decided not to suspend the casino licence and instead proceed to impose a fine. That fine must however reflect the relative seriousness of this matter, including the extent to which Crown’s conduct undoubtedly inhibited the Commission in achieving its objectives of ensuring that the Melbourne Casino remained free of criminal influence.
6. In light of all the material before the Commission, and with significant weight placed on the seriousness of Crown’s conduct in failing to comply with an express direction of the Commission and the effect that failure had on inhibiting the Commission in its objective of ensuring that the management and operation of the Melbourne Casino remains free from criminal influence or exploitation, it has been determined that the maximum fine available to the Commission in the amount of $1,000,000 be imposed on Crown.

1. Under a Guarantee and Indemnity executed on 30 September 2015. [↑](#footnote-ref-2)
2. Citing in particular a submission that had been made to that effect by Counsel for Crown, Mr Loxley, at the hearing that was conducted in the course of the Commission arriving at the April Determination on 21 January 2021 at T13/18 and following. [↑](#footnote-ref-3)
3. Confidential Reasons for Decision at [44], [45]. [↑](#footnote-ref-4)
4. Confidential Reasons for Decision at [81], [82]. [↑](#footnote-ref-5)
5. Report No 95, March 2003. [↑](#footnote-ref-6)
6. Crown’s written submissions at [27]. [↑](#footnote-ref-7)
7. At paragraph 11.109 [↑](#footnote-ref-8)
8. Citing *Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs* (1992) 176 CLR 1. [↑](#footnote-ref-9)
9. Citing *White v Minister for Immigration and Multicultural Affairs* [1999] FCA 1433 and noting that in that case, the issue was briefly dealt with and that no reasons were given for stating that double jeopardy had no application in the circumstances relied upon. [↑](#footnote-ref-10)
10. Citing, by way of an example, *Evans v Strachan* (1999) 167 ALR 159. [↑](#footnote-ref-11)
11. *R v Hoar* (1981) 148 CLR 32; *ASIC v Hosken* (1999) 153 FLR 372; *Cachia v Isaacs* [1985] 3 NSWLR 366; *Pearce v The Queen* (1988 194 CLR 610. [↑](#footnote-ref-12)
12. (1981) 148 CLR 32. [↑](#footnote-ref-13)
13. CC Act s 1(a)(i). [↑](#footnote-ref-14)
14. *Buzzo Holdings Pty Ltd and Anor v Loison* [2007] VSC 31 [33]-[34]; *Hodgkin v Planet Platinum Ltd (Occupational and Business Regulation)* [2011] VCAT 725 [328]. [↑](#footnote-ref-15)
15. *Parr v K Marketing Pty Ltd* *(Occupational and Business Regulation)* [2010] VCAT 1108 [24]. [↑](#footnote-ref-16)
16. *Starera PL v Melbourne CC* [2000] VCAT 213 [114]. [↑](#footnote-ref-17)
17. Ross v Planet Platinum Ltd *(Occupational and Business Regulation)* [2012] VCAT 11670 [134]. [↑](#footnote-ref-18)
18. The principle is that, where there is a sufficient interrelationship in the legal and factual elements of the acts or omissions that constitute contravening conduct, the acts or omissions ought to be penalised as a single course of conduct. [↑](#footnote-ref-19)
19. Under this principle, the entirety of the underlying contravening conduct is considered to determine whether the total or aggregate penalty is just and appropriate: *Mill v The Queen* (1988) 166 CLR 59, 62–63. [↑](#footnote-ref-20)