

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

Date of Hearing: Not applicable

Date of Decision: 26 April 2023

Date of Reasons: 26 April 2023

Appearances: Not applicable

Decision: For the reasons attached to this decision, the Victorian Gambling and Casino Control Commission (**Commission**) has decided to:

- (a) take disciplinary action in respect of Crown Melbourne Ltd.'s (**Crown Melbourne**) illegal conduct, described in these reasons as the Bank Cheque Practice and impose a fine of \$30,000,000 (\$30 million), payable on or before 30 June 2023;
- (b) give directions to Crown Melbourne to (subject to any exception that may be prescribed by legislation or agreed to by the Commission):
 - (i) prohibit both the Bank Cheque Practice and the Blank Cheque Practice at the Melbourne Casino;
 - (ii) produce to the Commission, on or before 30 May 2023, a proposed form of Internal Control Statement and Standard Operating Procedure for the purpose of the Commission considering whether to approve the policy or procedure for accepting bank cheques that Crown Melbourne has submitted commenced on 30 June 2021;

-
- (c) commence a general investigation and in respect of that investigation direct Crown Melbourne to disclose to the Commission, on or before [21 June 2023], any and all *practices* concerning the internal operations of the Melbourne Casino that have not previously been disclosed to the Commission and/or are not the subject of an Internal Control Statement and Standard Operating Procedure;
 - (d) issue a notice to Crown Melbourne to require it to pay the Commission's reasonable costs and expenses of this disciplinary action.

Signed:



Fran Thorn

Chair

Table of Contents

Introduction.....	4
Section 68 of the CCA	6
The RCCOL’s findings, Crown Melbourne’s position and the question of whether disciplinary action should be taken.....	9
The Bank Cheque Practice	9
The Blank Cheque Practice	11
Internal Control Statements and the existence of <i>practices</i> relating to the use of cheques.....	13
The concept of <i>control</i> as it relates to the Melbourne Casino	13
What disciplinary action should be taken in respect of the Bank Cheque Practice?	21
Costs	24

Introduction

1. This is the third in a series of reasons the Victorian Gambling and Casino Control Commission (**Commission**) has published, based on findings made by the 2021 Royal Commission into the Casino Operator and Licence (**RCCOL**). The circumstances and basis upon which the Commission has come to consider the two earlier matters are set out in reasons published in May and November 2022 and do not need to be restated.¹ These reasons concern findings the RCCOL made about the use of bank cheques and blank cheques at the Melbourne Casino.
2. Historically, cheques have been used at casinos as a way of minimising the use of cash and in-turn reducing the risk that crimes such as robbery and theft might occur in and around casino complexes.
3. Simultaneously however, cheques carry risks when used in a casino environment, including because, they can be used by criminals to launder money and are thereby a matter that is relevant to the statutory purpose of the *Casino Control Act 1991* (Vic) (**CCA**) of *ensuring that the management and operation of the casino remains free from criminal influence or exploitation*.²
4. As the Hon Patricia Bergin SC reported in February 2021,³ (by reference to the 2009 *Financial Action Task Force* (**FATF**)⁴ report entitled *Vulnerabilities of Casinos and Gaming Sector*):

...deposits into casino accounts by...bank cashier's cheques [i.e., bank cheques] where funds are then cashed out or moved to other accounts with minimal or no gambling activity [is] a method of money laundering. FATF considered that indicators of money laundering using casino accounts include:

- *Frequent deposits of cash cheques [and] bank cheques...into a casino account;*⁵

5. As Ms Bergin SC also said:

...In many respects, Casinos are not unlike banks. They engage in a myriad of financial transactions. They maintain customer accounts, exchange foreign currency, facilitate electronic funds transfers and act as money transmitters, maintain safety deposit boxes, act as cheque cashers and write cheques.

¹ Those reasons were published in May and November 2022. It is the Commission's expectation that anyone reading these reasons will be familiar with the content of those which have previously been published.

² See CCA section 1(a)(i).

³ Following her inquiry into the Crown Group of Companies in New South Wales.

⁴ Being a global money laundering and terrorist financing body, of which Australia is a founding member.

⁵ Bergin Report, Chapter 1.4 p47, para [13].

However unlike the customers of a bank, casino patrons have no reason to disclose to a casino their business or professional activities. There is often little observable basis for distinguishing between those patrons laundering funds in the casino and all other casino patrons.⁶

6. The Melbourne Casino is no different and as such the use of cheques must be carefully controlled in order to avoid their exploitation to launder money and to ensure that their use does not infringe the statutory purpose of ensuring that the casino remains free of criminal influence or exploitation.
7. As well as being used to launder money however, cheques at casinos can also exacerbate the risk of gambling harm, as was well demonstrated by an example that was the subject of evidence and findings by the RCCOL.
8. That example related to the experience of Mr Ahmed Hasna who, according to the RCCOL, was addicted to gambling and experiencing financial hardship⁷ when he attended the Melbourne Casino with a bank cheque,⁸ made out to him, in the amount of \$100,000.
9. Crown Melbourne exchanged Mr Hasna's bank cheque (before it had cleared) for \$100,000 worth of casino chips. Mr Hasna gambled those chips and lost them all.
10. A short time later, the bank cheque which Mr Hasna had exchanged for the chips was dishonoured and the following consequences arose:
 - a. by providing chips before the bank cheque had cleared, Crown Melbourne had, in effect, provided gambling chips on credit to a person who was both addicted to gambling and experiencing financial harm;
 - b. the chips, provided on credit, were used to incur gambling debts which might have been avoided, had the operations of the Melbourne Casino been controlled so that bank cheques were not exchanged for gambling chips, unless and until the relevant bank cheque had been honoured;
 - c. after the bank cheque was dishonoured, Crown Melbourne took steps to recover the debt that Mr Hasna had incurred through the use of chips provided on credit;

⁶ Bergin Report, Chapter 1.4 p46/47, para [9] – [10], citations omitted.

⁷ Insert Ref to RCCOL Rpt, Vol 2, Ch 8, p42 para 214 – 221.

⁸ RCCOL Exhibit RC0177 (CRW.512.097.0057).

- d. according to the RCCOL, the steps Crown Melbourne took to recover the debt included Mr Hasna being told that *he could continue gambling at the casino – and maintain his [highest tier] black card privileges – on the condition that he repay his \$100,000 debt out of any future winnings.*⁹
11. Leaving to one side the inexcusable issues associated with Crown Melbourne encouraging a gambling addict, who was already experiencing financial harm, to chase his losses and repay a gambling debt *out of any future winnings*, this example serves to demonstrate why it is that the use of cheques at the Melbourne Casino must be strictly controlled, for the purpose of ensuring that their use does not increase the risk of gambling harm and thereby infringe the objects of the Commission under the CCA which include fostering responsible gambling in order to:
- a. minimise harm caused by problem gambling; and
 - b. accommodate those who gamble without harming themselves or others.¹⁰
12. In addition to the risk of money laundering and gambling harm, cheques also carry risks because of their relationship with credit. On that topic (as the example of Mr Hasna shows) the use of cheques can result in gamblers being permitted to gamble on credit.
13. Credit has long been described as *the principal source of trouble in Casinos*, including to the extent that the 1983 *Report of the Board of Inquiry into Casinos in the State of Victoria* conducted by Mr Xavier Connor QC said:

*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 unpaid debts of gamblers who live out of state. The way to eliminate problems relating to credit is simply to prohibit it.*¹¹

Section 68 of the CCA

14. One of the ways in which the risks of money laundering, gambling harm and credit arising from the use of cheques at the Melbourne Casino is regulated is through section 68 of the CCA. That is a section which, among other things:

⁹ RCCOL Rpt, Vol 2, Ch 8, p42, para 216, citations omitted.

¹⁰ See CCA s140(c)(i) and (ii).

¹¹ [16.43].

- a. contains an express definition of what constitutes a *cheque* for the purpose of the section (and thereby mandates the specific type of cheque that can be relevantly used at the Melbourne Casino);
 - b. prohibits (subject to certain exceptions) casino customers from being allowed to gamble on credit;
 - c. prescribes and thereby limits the ways in which casino customers are permitted to purchase gambling chips or have their betting account credited.¹²
15. One of the exceptions to the prohibition on gambling on credit is the limited extent to which gamblers are permitted to use cheques (as they are defined by the section, and which have been expressly made out to the operator) to purchase casino chips or have their betting account credited.¹³
16. Put simply, pursuant to that exception a gambler can (in a manner which is similar to the example of Mr Hasna that was referred to earlier in these reasons)¹⁴ be provided with chips or have their betting account credited for the face value of a cheque that meets the definition of the section and which has been made out to the operator, before that cheque has been presented and/or honoured by the bank on which it has been drawn.
17. By being provided with chips or having their betting account credited before the cheque has cleared, gamblers are, in effect, gambling on credit, at least until the cheque has cleared.
18. Having regard to the risks of money laundering and gambling harm that are synonymous with cheques as well as the risk of credit at casinos more generally, the limited definition of what constitutes a *cheque* for the purpose of section 68 is very important. That definition is in the following terms:

(1) *In this section –*

cheque means a cheque (other than a traveller's cheque) that

- a. *is drawn on an account of an authorised deposit taking institution [i.e., not a bank cheque] for a specific amount payable on demand [i.e., not a blank cheque]; and*
- b. *is dated but not post-dated.*

¹² As the relevant explanatory memorandum describes it, section 68 *provides that wagers are to be made by money or chips and that the [casino] operator or an employee may not extend credit for gaming.*

¹³ Which is the subject of subsections 68(3) and (5).

¹⁴ Although, as will be noted, in the example of Mr Hasna, he was given chips on credit in exchange for a bank cheque that was not made out to the operator and therefore was not amenable to an application of the exception contained in section 68.

19. As will be obvious from this definition, a bank cheque (such as that which was used in the example of Mr Hasna referred to earlier) is not a cheque for the purpose of section 68. That is because a bank cheque is drawn by a bank and, when it presented, the funds are taken from the bank itself as distinct from a customer's account. For this reason, a bank cheque is not a cheque that is drawn *on an account of an authorised deposit taking institution*, as is required by section 68.
20. Furthermore, a blank cheque is also not a cheque for the purpose of section 68. That is because a blank cheque is not *for a specific amount payable on demand*.
21. It is then only cheques that meet the definition in the section that are subject to the limited exception by which gamblers can use a cheque, which has not yet cleared, to obtain chips or have their betting account credited and thereby, in effect, gamble on credit.
22. Historically, the reasons why a limited exception to the prohibition on credit in these terms has existed is likely to have included:
 - a. as has already been noted, the historical role cheques have played in reducing the amount of cash present in and around the casino and thereby also reducing the risk that crimes such as theft and robbery might occur;
 - b. by being limited only to cheques that meet the definition within section 68, the risk that cheques (as defined) might be used to launder money was also diminished because, only cheques that are drawn on an account held with an authorised deposit taking institution, for an amount specified, and made out the casino operator are allowed.¹⁵ In those circumstances, it is reasonable to expect that the bank who maintains the account on which such a cheque is drawn will know its customer, be acutely aware of the type of conduct that is synonymous with money laundering and have processes in place that are designed to minimise or eliminate that risk. In being so, many of the issues that were identified by Ms Bergin SC and referred to earlier in these reasons about the distinction between transactions at banks and transactions and casinos are reduced, but only if the definition of a cheque for the purpose of the section is strictly applied.
23. Importantly however for the purpose of the reasons which follow, there is no provision in section 68 (or anywhere else in the CCA for that matter) whereby bank cheques or blank cheques are permitted to be used by a casino customer to obtain gambling chips or credit on their gambling account. It is only cheques (as defined) that are made out to the casino operator that can be used in that way and it is only cheques (as defined) that can be, in effect, used to gamble on credit, in the period before a cheque (as defined) has cleared.

¹⁵ This will also aid in the traceability of cheques as the bank account will clearly identify the movement of funds.

24. Once these matters are properly understood, it becomes clear that it would be wrong to consider the cheque practices identified by the RCCOL as unimportant or merely technical matters.
25. On the contrary, the risks of money laundering and gambling harm were a large part of the reason why the RCCOL made recommendations for sweeping reforms such as the need for there to be carded and cashless gambling at the Melbourne Casino. Cheques must be strictly controlled for the same reasons as the RCCOL made those recommendations. They must also be strictly controlled because of their relationship with gambling on credit which is, as Mr Connor QC said, *almost routinely...the principal source of trouble with casinos*.

The RCCOL's findings, Crown Melbourne's position and the question of whether disciplinary action should be taken

26. The specific findings of the RCCOL that are the subject of these reasons concern what the RCCOL described as the Bank Cheque Practice and the Blank Cheque Practice
27. Both of these practices involved patrons of the Melbourne Casino being provided with gambling chips (and/or a customer's gambling account being credited) through the use of cheques which failed to meet the definition of a cheque for the purpose of section 68 and, in the case of the Bank Cheque Practice, cheques that were not made out to the operator.

The Bank Cheque Practice

28. The Bank Cheque Practice involved gamblers, colloquially, signing bank cheques that had been made out to themselves, over to Crown Melbourne through a process of *indorsing* the back of the bank cheque with their signature and membership number.
29. Following this *indorsement* patrons were provided with casino chips (and/or their casino account was credited) before the signed-over bank cheque had cleared or was honoured by the bank on whom it was drawn.
30. The Bank Cheque Practice is, in effect, the same practice that resulted in Mr Hasna being given \$100,000 worth of casino chips on credit. It is also a practice that Crown Melbourne has advised the Commission:
 - a. may have been ongoing from when the Melbourne Casino commenced operations in the 1990s;¹⁶

¹⁶ In its response to a question from the Commission concerning the relevant temporal period, Crown Melbourne advised in its submissions dated 29 September 2022 (at page 4 and 5) that although it *retains data regarding bank cheques from as far back as 8 July 1994...being the first day of casino operations...the physical copy of the cheque is required for this exercise as the data recorded...does not distinguish between a bank cheque which*

b. involved, (based on its extrapolation of incomplete records that do not commence until 2013), 2,900 bank cheques being either signed over to Crown Melbourne or exchanged for chips before the cheque had cleared, to the value of about \$500 million in the period between September 2013 and May 2021.

31. Although Crown Melbourne has not provided details of the revenue it likely derived from the Bank Cheque Practice and, on the basis of the information available to the Commission, the Commission is satisfied that it would be difficult to say with precision, the Commission considers that the following provides a useful (albeit conservative) guide to the likely quantum of the revenue Crown Melbourne derived from its illegal conduct constituted by the Bank Cheque Practice:

- a. if about \$500 million worth of bank cheques were subject to the practice between 2013 and 2021, that is, on average, about \$62.5 million worth of bank cheques per year;
- b. if an average of \$62.5 million worth of bank cheques was the subject of the Bank Cheque Practice between 1994 (when the Melbourne Casino opened) and 2021 (when Crown Melbourne says the Bank Cheque Practice ceased) there is likely to have been more than (nominally, and not adjusted by reference to the time-value of money) about \$1.5 billion worth of bank cheques that were subject to the practice;
- c. if:
 - i. 2 percent of that amount was gambled and lost, then Crown Melbourne would have made \$30 million; or
 - ii. 5 percent of that amount was gambled and lost, then Crown Melbourne would have made \$75 million.

from the illegal conduct constituted by the Bank Cheque Practice.¹⁷

32. Although these figures are based on the very uncertain estimates that were referred to in Crown Melbourne's submissions, they provide some (albeit uncertain) sense of the scale of the extent to which the Bank Cheque Practice is likely to have resulted in criminal infiltration by money launderers, the infliction of gambling harm and the provision of what would have otherwise been unauthorised credit.

either named or was endorsed in favour of Crown Melbourne. As such, only those bank cheques available for inspection were able to be included within the remit of the [24 September 2013 to 17 May 2021] investigation.

¹⁷ It should be recognised, however, that if Crown correctly applied the law and rejected bank cheques (that is, required the patron to provide it with personal cheques or some other form of payment), some patrons would have still proceeded to deposit funds in substitution of bank cheque. That means that the revenue Crown derived because of the contravention may not have been as high. However, the number of patrons in this category cannot be determined.

33. Crown Melbourne accepts¹⁸ the RCCOL's findings that the Bank Cheque Practice breached section 68 of the CCA. It also accepts that the Commission is entitled to proceed on the basis that grounds for disciplinary action exist under section 20(1)(dc) of the CCA accordingly.
34. Crown Melbourne also says however that its Bank Cheque Practice ceased in June 2021 (that is about a month after Mr Hasna gave evidence to the RCCOL about the matters that are referred to in the introduction to these reasons) when it implemented a policy to no longer accept bank cheques that were indorsed in the manner described by the RCCOL.¹⁹
35. Having regard to these matters, and the reasons which follow, the Commission has decided that it is appropriate that disciplinary action, in the form of a fine, should be imposed in respect of the Bank Cheque Practice.
36. Furthermore, the Commission has also decided that, in addition to disciplinary action, the nature of the Bank Cheque Practice makes it appropriate for a statutory direction to be given pursuant to section 23 of the CCA which expressly prohibits (subject to any exceptions arising from legislation or which the Commission is satisfied are appropriate) future instances of the Bank Cheque Practice and to otherwise ensure that the use of cheques at the Melbourne Casino is, in the future, appropriately controlled.

The Blank Cheque Practice

37. According to the RCCOL, the Blank Cheque Practice involved patrons of Crown Melbourne providing a signed cheque, drawn on that customer's bank account and made payable to Crown Melbourne, but on which no amount had been written (that is, what is colloquially known as a blank cheque).
38. Such blank cheques are not cheques within the meaning of section 68 because, as has already been noted, that section defines a cheque as being one that is not only drawn on an account of an authorised deposit-taking institution but furthermore is *for a specific amount payable on demand*.
39. A customer who provided a blank cheque in this way was, according to the RCCOL, permitted to gamble without needing to purchase chips or otherwise credit their gambling account in order to do so. That is to, effectively, gamble on credit.

¹⁸ Noting that over time, Crown Melbourne's position in respect of both the Bank Cheque Practice and the Blank Cheque Practice has changed from its closing submissions to the RCCOL and also its first submission to the Commission in this matter which it subsequently withdrew.

¹⁹ Albeit with certain exceptions preserved for a small number of favoured gamblers and with additional levels of approval required.

40. When the patron had finished their gambling session, any debts they had incurred were consolidated, and the previously blank cheque was finalised by the amount of the gambling debt the patron had incurred being written on the relevant cheque.
41. In its closing submissions to the RCCOL, Crown Melbourne accepted that the Blank Cheque Practice had occurred but submitted that it was limited only to its international customers and therefore was permitted by an exception contained in section 68(8) of the CCA which provides that the *casino operator may provide chips on credit to a person who is not ordinarily resident in Australia*.
42. Now however, Crown Melbourne says that, after it received a notice from the Commission seeking additional details relevant to the question of whether disciplinary action should be taken in respect of the Blank Cheque Practice, it conducted an internal investigation and did not find any examples²⁰ of it having in fact occurred at Crown Melbourne.²¹
43. Nevertheless, it also says that it *accepts [the RCCOL's] finding in relation to the Blank Cheque Practice*, which includes the findings that, *on the evidence, it seems likely that the blank cheque practice was in breach of section 68(2)* and that the Commission is entitled to rely on it for the purposes of taking disciplinary action.
44. Crown Melbourne also accepts that the Blank Cheque Practice (if it occurred) would *be a breach of Crown [Melbourne's] existing policies and procedures and [is] unacceptable*.
45. Notwithstanding these matters however, the Commission has formed the view that a combination of the:
 - a. equivocal nature of the relevant RCCOL finding (expressed as it was as a finding that *it seems likely* that the Blank Cheque Practice breached section 68(2));
 - b. outcome of the Commission's own careful and detailed consideration of the evidence upon which those findings were made;
 - c. outcome of Crown Melbourne's investigation into the Blank Cheque Practice;

together justify a regulatory outcome other than the taking of disciplinary action in respect of the Blank Cheque Practice.

46. In that regard, rather than take disciplinary action in respect of the Blank Cheque Practice, the Commission has decided that it is appropriate to expand the scope of the direction it has decided to issue in respect of the

²⁰ Although the Commission notes that actual examples would be unlikely to have been identified in circumstances where the blank cheque practice described by the RCCOL involved Crown Melbourne's customers finalising the relevant blank cheques as follows: *At the end of a gambling session, the patron's debts are 'consolidated' and the amount due to Crown Melbourne is written on the cheque*. See RCCOL Final Report Vol 2, Ch 15, p196, para [19].

²¹ Either in respect of local or international patrons.

Bank Cheque Practice to also include consideration of the Blank Cheque Practice. Furthermore, the Commission has also decided to issue a direction which will require the identification of any other *practices* relating to the internal operations of the Melbourne Casino so that they might then be properly considered for the purpose of inclusion in the Internal Control Statements by which those operations are regulated.

47. In the reasons which follow, the Commission will next explain why it has taken the view that a statutory direction which encompasses the Bank Cheque Practice, and the Blank Cheque Practice is necessary. It will also explain why it has decided to commence a general investigation which will involve the identification of any other *practices* that form part of the internal operations of the Melbourne Casino that are not presently addressed in the Internal Control Statements referred to later in these reasons.
48. After that, the Commission will then address the nature of the fine it has decided to impose in respect of the Bank Cheque Practice before, finally, addressing the issue of costs.

Internal Control Statements and the existence of *practices* relating to the use of cheques

49. The submissions Crown Melbourne has made in this matter include an acknowledgment²² that the Bank Cheque Practice and Blank Cheque Practice requires it to reconsider its internal policies and *reach out to [the Commission's] officers to discuss* changes to the Internal Control Statements by which the operations of the Melbourne Casino are conducted.
50. This acknowledgement is appropriate, particularly insofar as it identifies that changes to the Internal Control Statements are necessary.
51. In the Commission's view, quite apart from the issue of non-compliance with section 68 of the CCA, the issue of Internal Control Statements is of considerable importance to the outcome of this matter, and it is appropriate for the Commission to explain why.

The concept of *control* as it relates to the Melbourne Casino

52. The regulatory regime that applies to the Melbourne Casino exists to *supervise* and *control*²³ the operations of the Melbourne Casino.

²² At least in the covering letter to those submissions.

²³ See section 1 of the CCA which expressly provides that the CCA is for the purpose of not only establishing a system of licensing and supervision but also to establish a system of control.

53. This combination of supervision and control is necessary because casinos are high risk environments which are, among other things, susceptible to criminal penetration and are known to inflict harm on their customers. In the context of cheques, it is, as has already been noted, the risk that cheques will be used to launder money, the extent to which they might exacerbate gambling harm and their relationship to the prohibition on credit that is of particular relevance.
54. The 1983 report prepared by Mr Connor QC referred to the extent that it identified that *credit is routinely the source of trouble with casinos* also described the risk that a Victorian Casino would be penetrated by criminals as being analogous to a *constant wearing down process, like water pressing against a dike, ready to flow through any opening that occurs.*²⁴
55. In identifying that risk, Mr Connor QC made clear that the only way that the risk of criminal penetration could be managed was through an unprecedented level of regulatory control being exerted over casino operations. He said:
- To those unfamiliar with casinos the degree of control which has been found necessary may seem at first to be somewhat far-fetched. Once the dangerous and volatile nature of casino gambling is understood, however, the absolute necessity for competent ongoing strict, even draconian, control becomes clear...Control may be ineffective because it is corrupt, it may also be ineffective because it is incompetent, albeit honest.*
56. Both the example of Mr Hasna referred to earlier and the matters referred to in the reasons the Commission published in November 2022, concerning Crown Melbourne's responsible service of gambling obligations, demonstrate that regulatory control of the Melbourne Casino is also necessary to minimise the harm it can inflict on the community.
57. Accordingly, as a regulatory regime that is based on *the absolute necessity for competent ongoing strict, even draconian, control*, the controls that are placed on the operator of the Melbourne Casino are not just limited to provisions such as section 68 and the multitude of other statutory provisions which are designed to control certain aspects of the casino's operations.
58. Rather, in addition to provisions such as section 68, there is a further layer of control that is imposed by the regulatory regime. That layer is created by Part 9 of the CCA and deals with what is described as *Casino Internal Controls*. Among the sections which appear in Part 9 is section 121, which relevantly provides that:

²⁴ *Board of Inquiry into Casinos in the State of Victoria* (29 April 1983). Also see Bergin Inquiry Report, p31. Similar views were also expressed during the parliamentary debates at the relevant time – See for example, Hansard, Thursday 6 June 1991, *Casino Control Bill*, Victorian Upper House, Hon J.V.C Guest, p2311.

(1) [Crown Melbourne] must not conduct operations in the casino unless the Commission has approved in writing a system of internal controls and administrative and accounting procedures for the casino.

...

[and]

(4) [Crown Melbourne] must ensure that the system approved for the time being under this section for the casino is implemented.

59. In being framed in this way, section 121 aims to impose the necessary *ongoing strict, even draconian control* over the internal operations²⁵ of the Melbourne Casino by establishing a multifaceted regime which involves the following:

- a. casino operations can only be conducted at the Melbourne Casino if the process by which those operations occur is first approved by the casino regulator. In this way, consistent with its status as merely a licenced operator (rather than an owner and operator in the true sense) the entity that is licenced to operate the Melbourne Casino does not have the freedom to conduct casino operations in any way that it sees fit;
- b. once approved, the operator must only conduct the operations of the casino in the form of the approval, that is to say, its operations are only to be conducted by implementing the approved system;
- c. in the event that the casino operator does not operate the Melbourne Casino in the manner that has been pre-emptively approved, the operator is susceptible to being sanctioned. An example of this occurred in April 2021, when the then VCGLR acted, based on Crown Melbourne's failure to comply with an approved Internal Control Statement, in respect of its former junket operations and imposed what was, at the time, the maximum fine available.

60. In this case however, it is the first part of the obligation that is created by section 121 that is of particular relevance. That is the obligation that, unless Crown Melbourne (as operator) has told the casino regulator how it intends to conduct operations within the casino and the regulator has given the necessary approval, in writing, Crown Melbourne *must not conduct operations in the casino*.

²⁵ Noting that the concept of *operations* in relation to the casino is a matter that is expansively defined in section 3 of the CCA as meaning – the conduct of gaming and approved betting competitions in the casino; the management and supervision of the conduct of gaming and approved betting competitions in the casino; money counting in, and in relation to, the casino; accounting procedures in, and in relation to, the casino; the use of storage areas in the casino; other matters affecting or arising out of activities in the casino.

61. It was having regard to a regulatory regime that is structured in this way that in October 2021, Dr Ian Freckelton AO KC published report which described the Internal Control Statements as *the fundamental tool for gambling regulation*²⁶ and also said that: *There is a need for the [Internal Control Statements] that are currently in force to provide for a greater degree of specificity so as to facilitate effective regulation.*²⁷
62. The Commission agrees.
63. For its part, Crown Melbourne does not seek to assert that the Bank Cheque Practice or the Blank Cheque Practice (if it occurred) are matters about which Crown Melbourne sought and obtained the necessary approval before conducting casino operations in this way. Rather, Crown Melbourne's submissions proceed on the basis that these were indeed (as the RCCOL labelled them) *practices*.
64. In the Commission's view however the description of these matters merely as *practices* does not convey the true seriousness of the matter.
65. In reality, the Bank Cheque Practice and Blank Cheque Practice²⁸ are, similar to the CUP Process that as the subject of reasons the Commission published in May 2022, examples of internal casino operations which were relevantly uncontrolled. Furthermore, in being so, they undermined the regulatory regime by being conducted without the level of control the regulator is required to exert over the internal operations of the Melbourne Casino.
66. In its submissions, Crown Melbourne has not addressed the question of why it conducted operations in the Melbourne Casino, at least through processes involving bank cheques, without first obtaining the necessary approval of the regulator.
67. Crown Melbourne's failure to address this issue is a matter of significant concern to the Commission for at least the following four reasons:
68. *First*, the terms of sections 121 of the CCA are clear. Operations must not be conducted without approval and the operator is liable to pay a penalty if it does not ensure that the approved system is implemented. *Operations* at the casino is also a matter that is expressly and expansively defined in section 3.
69. Furthermore, lest there be a suggestion that the broad terms in which section 121 and the definition of *operations* in section 3 are drafted would be insufficient to require approval in respect of the Bank Cheque Practice and the Blank Cheque Practice (if it occurred), section 122 of the CCA puts the matter beyond doubt.

²⁶ Page 4, paragraph [8].

²⁷ Page 4, paragraph [10].

²⁸ If it in fact occurred.

70. In that regard, section 122 specifically identifies that the system approved under section 121 must include (but not be limited to) details of the procedures (or, in the words of the RCCOL *practices*) that are relevant to:
- a. cashing of cheques, redemption of chips and recording of all transactions pertaining to casino operations;²⁹
 - b. cashing of cheques and recording transactions by cheque;³⁰
 - c. establishment and use of deposit accounts.³¹
71. The Bank Cheque Practice and the Blank Cheque Practice (if it occurred) include aspects which are relevant to some, if not all, of these components of the internal operations of the Melbourne Casino which the legislature has expressly required must be included in the content of the system that is approved by the Commission.
72. *Secondly*, even if one were to take a narrow view of the provisions themselves (perhaps based on an argument that bank cheques and blank cheques do not meet the definition of a *cheque* in section 68), the introductory chapter to the current suite of Internal Control Statements makes clear that Crown Melbourne and the Commission's predecessors have approached the preparation of Internal Control Statements on the basis that the intention of sections 121 and 122 is that the Internal Control Statements would identify the *procedures [which] comprise the day-to-day operational procedures used at Crown*.³²
73. Having expressed the parameters of the Internal Control Statements in this way, it is clear they should have addressed the aspects of Crown Melbourne's operational procedures insofar as they concern the Bank Cheque Practice and Blank Cheque Practice (if it occurred), regardless of the fact that neither a bank cheque nor a blank cheque meets the definition of a cheque in section 68.
74. *Thirdly*, since at least mid-2020 (that is more than a year before the RCCOL made its findings) the Commission and before it the VCGLR, have been working with Crown Melbourne to review and amend the Internal Control Statements that are currently in force. At no time during that process did Crown Melbourne identify the Bank Cheque Practice³³ as being part of the *day-to-day operational procedures used at Crown* or any reason why the existence of this practice should not form part of the Internal Control Statements that apply to the Melbourne Casino.

²⁹ Section 122(1)(e).

³⁰ Section 122(1)(p).

³¹ Section 122(1)(q).

³² See for example *Introductory Chapter System of Internal Controls*, Version 5.0, VCGLR Approved 19 February 2020, clauses 2.2 and 3.2.

³³ Or the possibility of the Blank Cheque Practice, at least in the period after it was identified by the RCCOL.

75. In the Commission's view Crown Melbourne should have raised at least the Bank Cheque Practice³⁴ in the course of the work that has been ongoing since mid-2020. Instead, it was only after the Commission issued a formal notice and it had become clear that regulatory action was likely that Crown Melbourne finally (in the course of submissions for the purpose of disciplinary action) submitted that changes to the Internal Control Statements, by reference to the *practices* that were identified by the RCCOL, would be necessary.
76. In the Commission's view the changes to the Internal Control Statements that Crown Melbourne has acknowledged in the course of its submissions in this matter are changes that could and should have been made well before the Commission came to consider this disciplinary action. In the Commission's view, Crown Melbourne's failure to acknowledge these matters prior to its supplementary submission in this matter is a further example of Crown Melbourne not accepting appropriate regulatory intervention³⁵ unless and until that intervention has become inevitable. In the Commission's view, this is a further example of the same type of belligerence that was synonymous with "old Crown" and described by the former VCGLR in the China Report it published in February 2021, that the RCCOL described in the report it published in October 2021 and the disciplinary action reasons that the Commission itself published in November 2022. It is belligerence that was not reversed until late December 2022 when the new and current leaders of Crown Melbourne withdrew the initial submissions it had made in respect of this matter and in the course of doing so, finally acknowledged that changes to the Internal Control Statements were necessary.
77. *Fourthly*, in the context of that very late acknowledgement of the need for change, the failure to identify and seek approval for at least the Bank Cheque Practice³⁶ is made worse when one considers the nature of the process that the Commission and its predecessor regulators have undertaken in the interests of seeking to ensure the effectiveness of sections 121 and 122 of the CCA.
78. That formal process has historically involved Crown Melbourne, in effect, advising the Commission's predecessors of how it intends to conduct its internal operations by providing proposed draft Internal Control Statements, supported by proposed draft standard operating procedures (**SOPs**).
79. The Commission and its predecessors have then engaged in an iterative process of liaison with Crown Melbourne so as to ensure not only that the internal operations of the Melbourne Casino are accurately described in the Internal Control Statements and SOPs, but also to ensure that the level of control that is applied to those operations is adequate.

³⁴ Noting that Crown Melbourne's position is that the Blank Cheque Practice did not occur.

³⁵ Particularly having regard to the nature of the process by which internal control statements are developed and agreed with Crown Melbourne.

³⁶ Noting that Crown Melbourne's position is that the Blank Cheque Practice did not occur.

80. It is in this way that the Commission's predecessors not only placed the obligation on Crown Melbourne to identify its operations but also sought to ensure that the Internal Control Statements (and the SOPs) contain the details of how Crown Melbourne has informed the casino regulator that it intends to go about operating the Melbourne Casino.
81. Having engaged in such a process, at the very least, the Internal Control Statements and SOPs which deal specifically with both Cheque Cashing Facilities and Cage Operations should have identified the Bank Cheque Practice so that it could be properly controlled, in accordance with the intention of the regime by which the Melbourne Casino is licensed to operate.
82. Had the *practices* identified by the RCCOL been advised to the Commission and its predecessors, consideration could have been given to important questions such as those arising from the fact that bank cheques do not meet the definition of a *cheque* for the purpose of section 68 and the inevitable regulatory risks that might arise from that fact, insofar as they concern money laundering, gambling harm and the prohibition on credit. Furthermore, consideration might have also been given to the types of issues that might have been identified by reference to the recent American Gaming Association *Best Practice for Anti-Money laundering Compliance 2019-2020* such as:
- a. are bank cheques a well-recognised entry point for the proceeds of crime (and thereby a matter that is directly relevant to the statutory purpose of the CCA of *ensuring that the operation of the Melbourne casino remains free from criminal influence or exploitation*)?³⁷
 - b. in circumstances where the answer to that question is so obviously yes, should Crown Melbourne's practices in respect of bank cheques (and blank cheques if they occurred) be prohibited as the only means of ensuring that they are not used by criminals as a mechanism for laundering the proceeds of their crimes?
 - c. if, on balance, the risks associated with the Bank Cheque Practice³⁸ are capable of being managed, then:
 - i. what departments or employees within the Melbourne Casino are best placed to detect the entry of criminal proceeds by these mechanisms?
 - ii. what are the characteristics of transactions using bank cheques and blank cheques that are likely to involve the use of these mechanisms for the entry of criminal proceeds into the casino?

³⁷ See CCA s1.

³⁸ And the possibility of the Blank Cheque Practice.

- iii. if those characteristics can be identified with sufficient certainty, can measures be designed and implemented that are capable of appropriately managing or mitigating this risk?
 - iv. how can the Commission satisfy itself that these measures are or will be effective?
- 83. Specific consideration might have also been given to the responsible service of gambling issues associated with the Bank Cheque Practice and the Blank Cheque Practice and the extent to which these are matters that are expressly identified as being relevant to the objects of the Commission insofar as they concern the CCA. Among others, this might have included considering the risk that the dishonouring of cheques, regardless of whether they met the definition of section 68, might exacerbate gambling harm (such as in the example of Mr Hasna referred to earlier in these reasons).
- 84. Rather than being given the opportunity to consider these important questions however, the Internal Control Statements and SOPs are bereft of any reference to the Bank Cheque Practice or the Blank Cheque Practice. The regulatory regime and most importantly the very high degree of control that Mr Connor QC found was necessary in order for a licence to be granted to operate a casino in Victoria has thereby been compromised.
- 85. The regulatory regime is not designed to allow Crown Melbourne to unilaterally apply processes to the internal operations of the Melbourne Casino, including insofar as they concern the handling of cheques, unless those processes have been advised to and approved by the regulator.
- 86. *Practices* concerning the internal operations of the Melbourne Casino that are not the subject of Internal Control Statements should not exist, particularly those that carry with them significant risks of money laundering, the exacerbation of gambling harm and which infringe the prohibition on giving credit.
- 87. Although Crown Melbourne's acceptance of a breach of section 68 in this matter has made it unnecessary for it to form a concluded view on the issue, had this matter been contested, the Commission would have also considered the extent to which the Bank Cheque Practice (at least) may have also constituted illegal conduct as a breach of section 121 of the CCA.
- 88. A statutory direction or directions which identifies any other *practices* that are not the subject of Internal Control Statements or SOPs is a necessary and appropriate part of the Commission's regulatory response to this matter and the Commission will issue a statutory direction pursuant to section 23 of the CCA directed at those matters accordingly.
- 89. Having regard to its previous and ongoing experience in dealing with Crown Melbourne in respect of statutory directions, the Commission will adopt the same approach as it did to the statutory direction that is referred to in the reasons it published in November 2022 and, as an initial step to giving such direction or directions, invite Crown Melbourne to propose an appropriate form.

What disciplinary action should be taken in respect of the Bank Cheque Practice?

90. As has already been noted, Crown Melbourne accepts that disciplinary action can be taken, based on a breach of section 68 of the CCA.³⁹
91. When it comes to taking disciplinary action, the options available to the Commission (in the specific circumstances of this matter⁴⁰) are those of a letter of censure (which has in the past been used by the Commission's predecessor to direct Crown Melbourne to cease certain conduct),⁴¹ varying the terms of the casino licence or a fine. Crown Melbourne says that the Commission should consider a letter of censure and that a variation to the terms of the casino licence would not be appropriate. It also says that it is open to impose a fine but that any fine should have regard to the *cumulative impact of the three fines the Commission has issued to date arising from other RCCOL findings*.
92. As the Commission has already made clear, a statutory direction which is predicated on the need for Internal Control Statements to in fact identify the manner in which operations are conducted at the Melbourne Casino is necessary. A broad direction which achieves that objective is also preferable to disciplinary action in the form of a letter of censure which would necessarily be more limited in its scope.
93. In addition to that direction however, the Commission is also of the view that disciplinary action in the form of a fine is necessary in respect of Crown Melbourne's illegal conduct constituted by the Bank Cheque Finding.
94. In assessing the quantum of that fine, the Commission notes that Crown Melbourne's submissions on that topic are fundamentally different to those that were made for the purpose of the disciplinary action that was addressed in the Commission's November 2022 reasons.
95. As those reasons describe, Crown Melbourne previously submitted that there should be a departure from the approach that the Commission and its predecessors had historically taken to determining the outcome of disciplinary proceedings. In doing so, Crown Melbourne submitted, by reference to the recent decision of the High Court in *Australian Building and Construction Commissioner v Pattinson*⁴² (**Pattinson**), that the quantum of the fines imposed by the Commission should be that which is necessary in order to achieve deterrence.

³⁹ See in particular submissions dated 22 December 2022 at p 11, para 44.

⁴⁰ Being disciplinary proceedings based on the findings of the RCCOL under section 20(1)(c) of the CCA.

⁴¹ An example being the direction in the form of a letter of censure to cease junket operations that was imposed in April 2021.

⁴² [2022] HCA 13.

96. In this matter, Crown Melbourne has not addressed the issue of deterrence. Nor has it addressed the statements in Part 6 of the Commission's November 2022 reasons about the need for Crown Melbourne to provide clarification about the precise nature of the approach it says the Commission should take to determining the quantum of any disciplinary action fine. Submissions on that topic were not forthcoming, even though the Commission was clear in its November 2022 reasons that it:

*will...expect Crown Melbourne to revisit and consider further its submissions in respect of the application of Pattinson if similar submissions [i.e., those addressing the issue of the quantum of a disciplinary action fine] are necessary in the course of future disciplinary action.*⁴³

97. By including this detail in its November 2022 reasons, the Commission had hoped to assist Crown Melbourne to understand the parameters of what the Commission reasonably required in order to undertake its regulatory functions in this specific circumstance.

98. However, having made submissions which did not address the matters raised in the November 2022 reasons, the Commission's position in determining the quantum of the fine that should be imposed has been made more difficult. It has (just as it was for the purpose of the November 2022 reasons) been necessary for the Commission to consider the question of the fine both through the lens of *Pattinson* and by reference to the historical approach Crown Melbourne, the Commission and its predecessors have taken to considering the outcome of disciplinary action fines.

99. In the circumstances, the Commission confirms that it has considered the quantum of the fine it has decided to impose on both bases (the details of those bases being described in the November 2022 reasons and do not require restatement here).

100. Having done so, in the Commission's view:

- a. the longstanding and systemic nature of the conduct;
- b. the fact that it was kept from the Internal Control Statements, notwithstanding the processes which were adopted for the purpose of developing those Internal Control Statements;
- c. the fact that Crown Melbourne only accepted that changes to the Internal Control Statements would be necessary once it had become clear that disciplinary action was likely and it had withdrawn its initial response to this matter;

⁴³ See paragraph 713.

- d. the fact that the relevant conduct likely resulted in Crown Melbourne deriving significant revenue as demonstrated by the calculation referred to earlier;
- e. the fact that it is conduct that caused harm (as the example of Mr Hasna clearly demonstrates), infringed the prohibition on credit⁴⁴ and increased the risk that cheques might be used to launder money at the Melbourne Casino, all of which are matters that infringed express objects and purposes of the regulatory regime by which the Melbourne Casino is controlled;
- f. Crown Melbourne's recidivism, particularly having regard to the matters relevant to what is known as the CUP Process (which was the subject of reasons published in May 2022), this is not the first occasion that the Commission has been required to take disciplinary action in respect of casino operations that have been conducted in secret and kept from the regulator;⁴⁵

are all matters that would in the usual course of events justify the imposition of a fine for the Bank Cheque Practice which is at the upper end of the available range.

101. Conversely however, there are several matters which militate against the imposition of a significant fine including to the extent that they reduce the need for both general and specific deterrence. Those matters are:
- a. the approach Crown Melbourne ultimately took to this matter, including the extent to which it ultimately made appropriate concessions and correctly withdrew its initial attempt to re-litigate the findings of the RCCOL;
 - b. unlike its response to previous disciplinary actions, Crown Melbourne has generally not sought to rely on submissions that were either unsupported or contradicted by the evidence;
 - c. Crown Melbourne's acknowledgment (although made very late) that changes to the Internal Control Statements and its relevant policies and procedures are necessary, the changes it has made to its policies from 30 June 2021;⁴⁶

⁴⁴ This is in circumstances where no exception to that prohibition applied.

⁴⁵ Although it is acknowledged that Crown Melbourne's practice in relation to use of cheques may not have exhibited the same level of calculated concealment as the CUP process, for example, there is currently no evidence of Crown pre-emptively obtaining and relying on incorrect internal legal advice to the effect that the conduct was not in breach of section 68 of the CCA.

⁴⁶ Noting that from 30 June 2021 Crown Melbourne implemented a policy in relation to the acceptance of bank cheques, whereby it no longer accepts cheques that are indorsed to it, and only accepts cheques made payable to Crown, and that since that policy Crown has not accepted any bank cheques from patrons in exchange for funds to be used for gaming.

- d. the unreserved apology Crown Melbourne has given to the Commission (albeit made very late);
 - e. Crown Melbourne's submission that it intends to work collaboratively with the Commission's officers in respect of the changes to the Internal Control Statements which it acknowledges are necessary.
102. In the circumstances, the Commission has decided that rather than a fine at the upper end of the available range that a fine at the lower-end of the mid-range fine is appropriate. It has decided to impose the fine that is described in the decision to which these reasons are attached accordingly.
103. In arriving at that fine, the Commission does not consider the cumulative impact of earlier fines to be a matter on which it is open to the Commission to place significant weight. It is a matter about which Crown Melbourne did not provide evidence and as such is a matter about which the Commission was unable to make its own assessment. The Commission has been clear on several previous occasions that an evidentiary basis for submissions is necessary for reasons which include the extent to which, historically, Crown Melbourne has made submissions that are either unsupported and/or contradicted by the evidence.
104. As for time to pay, Crown Melbourne has requested that it be granted until 30 June 2023 to pay any fine imposed. In the Commission's view, it is appropriate for it to grant time to pay in those terms.

Costs

105. The final issue is that of costs.
106. On that topic, Crown Melbourne accepts that it is liable to pay the Commission's reasonable costs of the disciplinary action it has decided to take. Furthermore, Crown Melbourne has also submitted that:
- ...even if the Commission determines that disciplinary action is not required, Crown should pay the Commission's reasonable costs incurred as a result of Crown seeking the opportunity to withdraw its previous response to the Notice [the Commission issued for the purpose of this matter], and to submit a revised supplementary response.*
107. In the Commission's view, Crown Melbourne's submission in these terms is appropriate. Considerable time, effort and expense was incurred in dealing with Crown Melbourne's initial response to this matter, considering its subsequent request to withdraw that response and then ultimately considering the basis upon which Crown Melbourne sought to proceed. These are costs (and delays) that might have been avoided had the submissions upon which Crown Melbourne ultimately sought to rely have been made at the outset.

108. The Commission recognises that Crown Melbourne has adopted this approach to the costs of this matter and has thereby avoided what might otherwise have been an additional demand on the Commission's regulatory resources.
109. The Commission will instruct its officers to prepare a notice which requires Crown Melbourne to pay the Commission's reasonable costs of the disciplinary action it has decided to take in respect of the Bank Cheque Finding and also, having regard to Crown Melbourne's submission above, the costs associated with the regulatory action it has otherwise decided to take in respect of the Blank Cheque Finding, including those costs which were incurred in considering Crown Melbourne's initial response to this matter.