



Special Manager's Activity Report December 2023

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Executive summary

This is the fourth activity report of the Special Manager independently overseeing the Melbourne casino operator. It has been prepared by the Office of the Special Manager (OSM) to inform the public on key activities the Special Manager undertook in the six-month reporting period from 1 July to 31 December 2023.

As the Special Manager for the Melbourne Casino Operator, Stephen O'Bryan KC has two key complementary functions. These are to:

- independently oversee Crown Melbourne's operations
- assess Crown's reforms to address the significant issues and failings identified by the 2021 Finkelstein Royal Commission.¹

Given the important community interest in the outcomes of the Finkelstein Royal Commission and Crown's efforts to return to suitability, the Special Manager has published six-monthly activity reports to provide a public update on the key activities he and the OSM have undertaken.

The content of these public reports is limited due to the legally and commercially sensitive nature of the Special Manager's work. The Special Manager is restricted from making public comment on how Crown is progressing on its reforms and efforts to return to suitability.

Over the past six months – July to December 2023 – the Special Manager focused on assessing the effectiveness of the projects and activities Crown continued to undertake in response to the findings and recommendations of the Finkelstein Royal Commission in relation to culture change, governance, risk and compliance, responsible service of gambling and preventing financial crime.

Crown's work in these areas is set out in its Melbourne Remediation Action Plan (MRAP) and other strategies and plans. During this reporting period, this work included implementing significant measures the Victorian Government mandated to prevent gambling harm and financial crime at the casino, including a new Responsible Gambling Code of Conduct (Gambling Code), mandatory carded play and pre-commitment on electronic gaming machines, and restrictions on the use of cash at the casino.

Other key activities the Special Manager undertook in this reporting period were:

- overseeing Crown's current operations and, in particular, its compliance with legal and regulatory requirements, and its broader integrity framework
- engaging with key stakeholders to gather information and insights to inform the Special Manager's work
- directly collecting and analysing information from various sources, including discussions, observations and live demonstrations with casino employees, sample testing and data analysis.

The Special Manager has submitted a confidential final report to the state regulator, the Victorian Gambling and Casino Control Commission (VGCCC), and the Minister for Casino, Gaming and Liquor Regulation. The final report sets out the OSM's assessment of the effectiveness and sustainability of Crown's reforms in response to the Finkelstein Royal Commission.

Under the relevant legislation,² within 90 days after receiving the Special Manager's final report, the VGCCC has sole discretion to determine whether it is clearly satisfied that:

- Crown has 'returned to suitability'; that is, whether it is appropriate for Crown to continue to hold the Melbourne casino licence, and
- it is in the public interest that the Melbourne casino licence continue in force.

The Special Manager will continue his general oversight of the Melbourne casino operator until his statutory term concludes at the end of June 2024. This will include continuing to attend the Melbourne Board and committee meetings, and independently monitoring how the casino operator is complying with its legal, regulatory and other obligations.

Background: Establishment of the Special Manager

In October 2021, Commissioner Ray Finkelstein AO, KC, presiding over the Royal Commission into the Casino Operator and Licence, found Crown Melbourne unsuitable to hold Victoria's casino licence.

The Royal Commission concluded Crown had engaged in 'disgraceful' conduct that was 'illegal, dishonest, unethical and exploitative'. Commissioner Finkelstein described the range of wrongdoing uncovered by the commission as 'alarming', particularly because 'it was engaged in by a regulated entity whose privilege to hold a casino licence is dependent upon it being, at all times, a person of good character, honesty and integrity'.

Despite this finding, the Royal Commission recommended Crown be permitted to continue operating the casino under stringent independent oversight conditions for two years. It determined immediate cancellation of the casino operator's licence was not in the interests of the Victorian community due to the significant risk to innocent third parties (including Crown employees and suppliers) and to the state's economy more broadly.

The Royal Commission also determined Crown had the will and capacity to transform itself to again become suitable to hold the Melbourne casino operator licence, noting it had already commenced a substantial reform program. Commissioner Finkelstein concluded that a reform program delivered under the independent oversight of a Special Manager was likely to succeed and, if it did, it would be to Victoria's benefit.

Stephen O'Bryan KC was appointed the Special Manager for the Melbourne Casino Operator from 1 January 2022, pursuant to section 36B of the *Casino Control Act 1991* (Vic).

1. Special Manager's activities and exercise of powers

1.1 Structure and resources

As set out in previous activity reports, the Special Manager is supported by a small office, the OSM, comprising a mix of public sector and contracted professional services staff.

The OSM is administratively supported by the Department of Justice and Community Safety (DJCS), which provides corporate services support across IT, finance, property services, payroll and human resources.

As recommended by the Finkelstein Royal Commission, the VGCCC may require Crown to pay the reasonable costs and expenses associated with the establishment and operations of the Special Manager.³ During this reporting period, the Special Manager issued three financial statements to the VGCCC for reimbursement of costs and expenses from Crown.

1.2 Directions issued

The Special Manager has statutory power to direct the casino operator to take action or to refrain from taking action. The Special Manager issued four new Directions under section 36E of the *Casino Control Act 1991* (Vic) in this reporting period, each based on Crown's best interests having regard to the Special Manager's statutory objects and functions.⁴

Crown did not make written submissions in response to any of the Special Manager's Notices of Intention to give Directions, each of which the OSM discussed verbally with Crown before issuing.

In summary, the Directions issued by the Special Manager in this reporting period required Crown to:

- securely retain the June 2023 interim report and comply with confidentiality obligations relating to it
- continue to implement and report to the Special Manager on the status of Crown Melbourne's transformation projects and activities.

The Special Manager is satisfied that Crown satisfactorily complied with his Directions in this reporting period.

1.3 Information gathering

The Special Manager has statutory power to require the casino operator to provide any information necessary to facilitate his work. This power is not limited by any legal restraints imposed by confidentiality restrictions or other legally recognised privileges.⁵

The Special Manager issued six formal statutory requests (Information Requests) under section 36F of the Casino Control Act in this reporting period.⁶ These included requests for information and documents regarding Crown's:

- 'Your Voice' employee survey, including results for Crown Melbourne respondents
- responsible service of gambling training and resourcing
- internal audit function and management actions in response to relevant internal audits
- integrity framework.

These Information Requests were issued to address priority areas in the OSM work plan or where Crown was required to provide information notwithstanding any pre-existing duty of confidentiality, statutory prohibition or legal privilege.

As in previous reporting periods, Crown provided large quantities of information and documents to the OSM in response to the formal Information Requests. Crown also provided information and documents informally, in response to OSM staff requests. In addition, Crown continued to provide the OSM with routine documents, such as Board papers and minutes, and correspondence with government agencies.

Over the Special Manager's term, Crown has been generally responsive to the Special Manager's Information Requests and informal requests. However, on occasion, and in relatively narrow circumstances, Crown sought to limit the information provided to the OSM, such as that subject to Commonwealth legislative secrecy requirements. The Special Manager was satisfied this did not impede the OSM's work, and that there were no major delays in receiving information from Crown.

In addition to analysing information provided by Crown, meeting with Crown representatives and observing Board and management committees, the OSM directly collected and analysed information from a range of other sources. In this reporting period, this included:

- Crown employee survey results to inform analysis of progress on culture change
- discussions with a small sample of customer-facing employees and middle managers to further explore issues and themes from focus groups conducted by the OSM in the previous reporting period
- casino floor walks to observe and monitor gambling and trading activities
- walk-throughs and live demonstrations to better understand Crown's systems and processes
- data from sample transaction testing to verify whether Crown is complying with anti-money laundering/counter-terrorism financing (AML/CTF) legislative requirements
- data analysis, including trends and observations related to Crown's responsible service of gambling team's interactions with customers, to assess compliance with Crown's Gambling Code.

Throughout the Special Manager's term, Crown has assisted the OSM to facilitate these activities, including by providing a dedicated office space for the OSM in its Melbourne complex to support ongoing engagement and information sharing between Crown and OSM staff.

2. Stakeholder engagement

2.1 Engagement with Crown

During this reporting period, the OSM continued to maintain constructive working relationships across Crown to assist with the performance of the Special Manager's functions and activities, including at the Board and senior leadership levels.

The Crown Melbourne Board met six times in this reporting period and held more than 10 additional ad hoc meetings on particular issues and reform initiatives. The Special Manager and one or more of the Deputy Special Managers attended all Board meetings, and ad hoc meetings as relevant. The Special Manager and/or OSM representatives also attended meetings, or engaged with the work, of relevant Crown Board and management committees.

Regular meetings continued to be held between the OSM and Crown at officer level to facilitate the OSM's information gathering and assessment activities. The Special Manager and OSM staff also attended a range of Crown internal forums, including leadership briefings, launches, employee town hall briefings and employee musters, to observe the nature of communications with, and queries from, employees.

In July 2023, the Special Manager sent Crown employees a message via the Crown CEO advising them of the publication of the June 2023 activity report. The message invited employees who wished to raise any matters about Crown's conduct to contact the OSM confidentially via an enquiry inbox accessible on the OSM website.

The OSM also continued to engage as appropriate with employee representative groups, meeting in this reporting period with the United Workers Union Director, Casinos, Clubs and Gaming, to discuss issues of relevance to Crown Melbourne and its staff.

2.2 Engagement with the VGCCC

The Special Manager continued to liaise regularly with the VGCCC Chair. The OSM also provided a high-level confidential briefing to the VGCCC Commissioners, CEO and senior executives in relation to the June 2023 interim report and the OSM's final work plan.

Close liaison continued between the OSM and VGCCC at officer level to facilitate information sharing as appropriate, including in relation to relevant public complaints received via the OSM's enquiry inbox.

2.3 Engagement with other stakeholders

The OSM maintained its important engagement with a range of government and community stakeholders who participated in the Finkelstein Royal Commission, or otherwise have significant interest in its findings and recommendations.

Key activities included liaison with Victorian Government agencies and interstate casino regulators, monitors and law enforcement agencies, and engagement with academics, community representatives and non-government organisations.

The OSM continued to update these stakeholders about its activities, and gathered information and insights to inform its oversight and assessment of Crown's current operations and reform work.

2.3.1 Casino regulators and monitors

The OSM continued to engage with the gambling and casino regulators in the other Australian jurisdictions in which Crown operates. The Special Manager met with the New South Wales Independent Casino Commission and continued engagement with the independent monitors for Crown in Sydney (Kroll) and Perth (led by Mr Paul Steel APM). The OSM chairs a regular monthly meeting of the three independent Crown monitors to share information and assessment approaches. Additional meetings occur at officer level with both monitors as relevant.

The Special Manager also met with:

- the Special Manager responsible for overseeing the operation of The Star casinos in New South Wales and Queensland, to share information on respective remits and functions
- the United Kingdom Gambling Commission, to gain insights on regulation of casinos in the UK.

2.3.2 Other regulators and law enforcement agencies

The OSM continued its engagement with key regulators and law enforcement agencies in relation to financial and other crime risks, and governance and compliance issues, including AUSTRAC, Victoria Police, the Australian Federal Police, the Australian Criminal Intelligence Commission, the Australian Securities and Investments Commission and the Australian Taxation Office. The meetings focused on potential areas of mutual interest and opportunities to share information.

2.3.3 Community, industry and non-government sector

The OSM continued to engage with key community and non-government organisations, particularly in relation to gambling harm minimisation. This included regular engagement with and feedback from the Alliance for Gambling Reform, academic experts and peak bodies.

The OSM also connected with selected financial services sector and gambling industry representatives in this period, in relation to financial crime prevention and gambling harm minimisation.

2.3.4 Victorian Government departments and agencies

The OSM continued to monitor policy developments and the implementation of significant legislative reforms in response to the Finkelstein Royal Commission through regular liaison with senior staff from the DJCS, the VGCCC and the Victorian Responsible Gambling Foundation.

2.3.5 Public enquiries

As previously reported, in June 2022 the OSM established a public enquiry inbox, accessible via its website. Three public enquiries were received and responded to by the OSM in this reporting period. The OSM appreciates the VGCCC's and Liquor Control Victoria's advice and support in responding to such matters.

3. General oversight of Crown's current operations

The Special Manager's general oversight role complements his monitoring and assessment of Crown's reforms and efforts to return to suitability. Overseeing the way that Crown operates, makes decisions and complies with its legal, regulatory and other obligations has provided the OSM with important insights into the progress of Crown's reforms.

This section provides a summary of the key activities the Special Manager undertook in his general oversight role in this reporting period.

3.1 Corporate governance and board independence

Good corporate governance requires corporations to uphold certain standards. This includes having mechanisms in place to ensure compliance with legal and regulatory obligations, and sound oversight of risk. The Finkelstein Report found that Crown had 'inadequate corporate governance processes and failed to appropriately respond to known risks or, otherwise, properly investigate those risks'.⁷

As highlighted in previous activity reports, Crown has undergone significant changes to its ownership, Board and senior management during the Special Manager's term. The Crown Melbourne Board now meets regularly and has a majority of directors independent of executive management, Crown Resorts and Blackstone Inc., consistent with a recommendation of the Finkelstein Royal Commission.⁸

On 14 December 2023, new regulations commenced, requiring Crown Melbourne to appoint senior executives in prescribed categories.⁹ These executives are required to report to and take direction only from an officer or director of Crown Melbourne, rather than an officer or director of any holding company. The Victorian Government introduced this legislative requirement in response to a recommendation of the Finkelstein Royal Commission¹⁰ to help ensure the independence of Crown Melbourne's senior management from centralised decision making by its holding company.

The effectiveness of the Board is critical in leading good governance and decision making. To assist in assessing the Board's operation, the Special Manager and/or OSM officers with delegated authority regularly attend meetings of the Crown Melbourne Board and its committees, as described above.

3.2 Compliance with legislative and regulatory obligations

Crown's compliance obligations stem from a diverse range of internal and external sources, including legislation, regulations, Ministerial Directions, agreements, internal policies and approved gaming rules. These sources form a complex array of obligations with which Crown is required to comply in order to conduct its operations lawfully and free of maladministration or improper conduct.

During this reporting period, the OSM continued to monitor Crown's compliance with its legislative and regulatory obligations by closely tracking Crown's identification, escalation, management, reporting and remediation of potential and actual compliance incidents and breaches. As in previous reporting periods, the OSM assessed Crown's compliance with:

- taxation obligations, including in relation to casino tax
- Casino Agreement obligations, including via Crown's ongoing engagement with the VGCCC
- specified 'controlled contracts' obligations
- privacy law in implementing facial recognition technology.

The Special Manager continued to monitor Crown's involvement in disciplinary, litigation and other regulatory proceedings, as well as the implementation of projects and initiatives to improve its compliance strategies, systems and processes.

During the Special Manager's term, Crown has been subject to several substantive disciplinary proceedings and penalties arising from its previous non-compliance with legislative and regulatory obligations. In this reporting period, no new disciplinary proceedings commenced, and two outstanding disciplinary matters were completed:

- AUSTRAC and Crown reached a Federal Court-approved settlement in relation to proceedings concerning Crown's AML/CTF Program. Crown agreed to pay a penalty of \$450 million in instalments.
- Following its disciplinary action against Crown for the China Union Pay process,¹¹ the VGCCC completed an investigation into a related matter involving 'paid out transactions', with no additional penalties imposed.

In early December 2023, Crown notified the OSM of allegations suggesting the Crown Resorts CEO (who is also a Director of Crown Melbourne) had inappropriately intervened to overturn exclusions security personnel had issued to customers for breaches of casino entrance requirements. The OSM has monitored Crown's investigation into this matter as part of the Special Manager's independent oversight of Crown's Melbourne casino. The VGCCC has also initiated its own investigation into this matter. The investigations are ongoing at the time of preparation of this report.

3.3 Integrity framework

The Finkelstein Royal Commission identified repeated examples of failings in Crown's integrity framework, including a lack of employee confidence that they could and should speak up to raise concerns, as well as poor 'tone from the top'.

A strong integrity framework brings together the policies, systems and practices required to foster integrity and prevent misconduct. It must be underpinned by clear communication, and ongoing education and training to support employees in acting consistently with the organisation's values and ethical standards.

The OSM's assessment of Crown's integrity framework provides a critical mechanism to evaluate whether Crown is instilling and continuously reinforcing a culture of acting lawfully, ethically and responsibly across the organisation as part of its reforms.

As in the last reporting period, the OSM focused in this reporting period on reviewing Crown's:

- anti-bribery and corruption framework
- Code of Conduct
- whistleblower regime
- public complaints handling processes.

Crown continued to develop these important elements of its integrity framework, including by rolling out training and communications to its employees to raise awareness of bribery and corruption risks, and of declaration requirements regarding conflicts of interest and gifts, tips and gratuities.

Crown also continued to strengthen its whistleblower management policy and processes and to promote 'speak up' channels to its employees. In response to feedback from the OSM, Crown improved the external accessibility of its whistleblower policy on its website.¹² This is important because people in addition to current employees, directors and contractors – including former Crown team members, spouses and relatives, suppliers and other associates – may be eligible whistleblowers and afforded protections under the *Corporations Act 2001* (Cth).

In the previous reporting period, the OSM identified an opportunity for Crown to significantly improve its public complaints handling processes, including how it records, assesses and responds to complaints. Better practice guidance suggests that 'firms should encourage complaints and make it easy for people to voice their concerns with systems that are accessible and easy to use'.¹³ Organisations should communicate widely about how and where complaints may be made (including online and in hard copy) and facilitate complaints from vulnerable people and groups.

In this reporting period, Crown undertook an internal audit into its management of public complaints in response to the OSM's concerns. The OSM monitored the scope and outcome of this audit, and has noted Crown's acceptance of the need for reforms to improve the consistency and effectiveness of its complaints handling processes and of associated communications, reporting and employee training.

4. Monitoring and assessing Crown's transformation

In this reporting period, the Special Manager continued to focus on assessing the effectiveness of Crown's implementation of the reforms set out in Appendix I of the Finkelstein Report, and the progress of its broader transformation, in the following areas:

- culture change
- responsible service of gambling to prevent and minimise gambling harm
- financial crime, in particular AML/CTF
- governance, risk and compliance
- integrity frameworks.

Crown continued to progress a range of remediation activities in these areas in response to the Finkelstein Report, as set out in its MRAP and in a range of other strategies and plans. The Special Manager independently monitored and assessed Crown's reform efforts, including whether its reform program is well-governed, appropriately prioritised and properly resourced.

Due to the legally and commercially sensitive nature of this work, the Special Manager is unable to publicly comment on how Crown is progressing on its reforms and efforts to return to suitability. The Special Manager's evaluation of Crown's reform efforts has been submitted in a confidential final report to the VGCCC and the Minister.

As noted in the previous activity report, the Victorian Government has mandated a range of significant reforms to prevent gambling harm and financial crime at the Melbourne casino. Crown has progressed implementation of these reforms as required by the government and the regulator as outlined below.

In response to a Ministerial Direction, the Melbourne casino operator implemented a new Gambling Code to provide stronger protections to minimise gambling harm. The Gambling Code, which commenced in late September 2023, sets limits on the length of time a person may gamble at the casino, with the operator now required to enforce 15-minute breaks if a person has been gambling for three cumulative hours. Additionally, anyone who has gambled for 12 hours in any 24-hour period is required to take a break of 24 hours, and they can only gamble for a total of 36 hours in a single week.¹⁴ The Gambling Code also provides guidance for Crown's employees on how to monitor for observable signs of gambling harm, detailing how and when they should interact with a customer.

Further reforms have been introduced to restrict the use of cash at the casino and require customers to use casino-issued cards, verify their identity to gamble, and participate in a mandatory pre-commitment scheme (YourPlay) for electronic gaming machines.

From mid-December 2023, customers are no longer able to gamble on electronic gaming machines at the casino without using their casino-issued card, and without setting their own binding time and money limits through YourPlay. The requirement for customers to use casino-issued cards and verify their identity to gamble will be extended to cover all other games at the casino by December 2025.

As previously noted by the Victorian Government, these legislated reforms represent leading international practice in gambling harm minimisation and crime prevention for a casino of Melbourne's size and nature.

Conclusion

The Special Manager's fourth six-month period of operation – 1 July to 31 December 2023 – focused on:

- assessing the effectiveness of the projects and activities Crown is undertaking in response to the findings and recommendations of the Finkelstein Royal Commission in relation to culture change, governance, risk management and compliance, responsible service of gambling and preventing financial crime
- overseeing Crown's current operations and, in particular, its compliance with legal and regulatory requirements, and its broader integrity framework
- engaging with key stakeholders to gather information and insights to inform the Special Manager's work
- directly collecting and analysing information from various sources, including discussions, observations and live demonstrations with casino employees, sample testing and data analysis.

The Special Manager has submitted a confidential final report to the VGCCC and the Minister evaluating the progress of Crown's reform efforts. This final report, along with the Special Manager's previous interim reports, has been provided to assist the VGCCC in making its decision on whether Crown has returned to suitability; that is, whether it is appropriate for Crown to continue to hold the Melbourne casino licence.

The Special Manager will continue his general oversight of the Melbourne casino operator until his statutory term concludes at the end of June 2024. This will include continuing to attend the Melbourne Board and committee meetings, and independently monitoring how the casino operator is complying with its legal, regulatory and other obligations.

Endnotes

- ¹ Royal Commission into the Casino Operator and Licence, *The Report – Volume 1*, October 2021, p. 4.
- ² *Casino and Gambling Legislation Amendment Act 2021* (Vic).
- ³ *Casino Control Act 1991* (Vic), s 36N.
- ⁴ Since the beginning of his term in January 2022, the Special Manager has issued a total of 29 formal Directions to Crown.
- ⁵ *Casino Control Act 1991* (Vic), ss 36F(5), (7).
- ⁶ Since the beginning of his term in January 2022, the Special Manager has issued a total of 24 formal Information Requests to Crown.
- ⁷ Royal Commission into the Casino Operator and Licence, *The Report – Volume 1*, October 2021, p. 99.
- ⁸ Royal Commission into the Casino Operator and Licence, *The Report – Volume 1*, October 2021, p. 16, recommendation 29.
- ⁹ *Casino Control Regulations 2023* (Vic), reg 6.
- ¹⁰ Royal Commission into the Casino Operator and Licence, *The Report – Volume 1*, October 2021, p. 16, recommendation 30.
- ¹¹ Victorian Gambling and Casino Control Commission, *Decision and Reasons for Decision in the matter of disciplinary action against Crown Melbourne Ltd pursuant to section 20(1)(dc) of the Casino Control Act 1991*, 27 May 2022, pp. 25–7.
- ¹² Crown's whistleblower policy can be found at www.crownmelbourne.com.au/general/policies/whistleblower-policy.
- ¹³ Australian Securities and Investments Commission, Regulatory Guide 271, Internal Dispute Resolution, 2 September 2021, p. 37.
- ¹⁴ Exemptions to the breaks in play policies include poker tournaments and international guests who have joined an International Premium Player Program and are detailed in the Crown PlaySafe Code of Conduct – Version 10, printed December 2023, p. 19.

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