



# **Special Manager's Activity Report June 2023**

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## Executive summary

This is the third 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 undertaken by the Special Manager for the six-month reporting period from 1 January to 30 June 2023.

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

- to independently oversee Crown Melbourne's operations
- to keep a 'watchful eye' on Crown's reforms to address the significant issues and failings identified by the Finkelstein Royal Commission.<sup>1</sup>

In January 2024, the Special Manager will submit a 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 will evaluate Crown's reform efforts 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.

Given the significant community interest in the outcomes of the Finkelstein Royal Commission and Crown's efforts to return to suitability, the Special Manager publishes these 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 ongoing, and legally and commercially sensitive nature of the Special Manager's work. Necessarily, the Special Manager is restricted from making detailed public comment on how Crown is progressing on its reforms and efforts to return to suitability.

The Special Manager's work over the past six months – January to June 2023 – has 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 cultural 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
- continuing to engage with key stakeholders to gather information and insights to inform the Special Manager's work
- directly collecting and analysing information from various sources, including focus groups with casino employees, walk-throughs, live demonstrations, sample testing and data analysis
- identifying the main areas of Crown's reform work for assessment and evaluation in the final reporting period
- preparing the third confidential six-monthly interim report for the VGCCC and the Minister.

Crown has continued to progress a range of remediation activities in response to the Finkelstein Report, as set out in its Melbourne Remediation Action Plan (MRAP) and other strategies and plans.

The Special Manager will continue to oversee Crown's Melbourne casino operations and monitor and assess the effectiveness of Crown's reform program with his final report due in January 2024.

Importantly, the Melbourne casino operator is required to implement a range of longer-term reforms introduced by the Victorian Government in response to the Royal Commission to prevent gambling harm and crime at the casino. This suite of harm minimisation and crime prevention reforms includes a mandatory pre-commitment scheme, a new Responsible Gambling Code of Conduct and restrictions on the use of cash. The reforms represent world leading practice for a casino of Melbourne's size, and are required to be fully implemented by December 2025.

### **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.

# 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.<sup>2</sup> During this reporting period, the Special Manager issued four 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 five 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 objectives and functions.

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 have required Crown to:

- bolster confidentiality requirements for the provision of the Special Manager's June 2022 and December 2022 interim reports to Crown, and facilitate Crown directors' confidential access to those reports
- alter the timing of monthly MRAP status reporting as required by a previous Direction
- provide the OSM with a draft self-assessment of the status of Crown's progress towards acquitting relevant reforms in line with Appendix I of the Finkelstein Report.

The Special Manager is satisfied that Crown has substantially complied with his Directions during 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 the Special Manager's work. This power is not limited by any legal restraints imposed by confidentiality restrictions or other legally recognised privileges.<sup>3</sup>

Crown has continued to provide a large volume of information and documents to the OSM in this reporting period. Most of the information has been provided informally in response to OSM staff requests. Crown also routinely supplies the OSM with documents it requires, such as Board papers and minutes, and correspondence with other government agencies.

The Special Manager issued two formal statutory requests (Information Requests) under section 36F of the Casino Control Act during this reporting period. These included requests for:

- information related to Crown's organisational structure and teams
- information in relation to public complaints
- updates on progress implementing recommendations from previous external reviews
- information about Crown's processes for excluding customers from the casino, marketing and sponsorship arrangements, and compliance matters.

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

As in previous reporting periods, Crown has been generally responsive to the Special Manager's Information Requests. However, on occasion, and in relatively narrow circumstances, Crown has sought to limit the information provided to the OSM, such as that involving Commonwealth legislative secrecy requirements. The Special Manager has been satisfied this has not impeded the OSM's work, and that there have been 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 collects and analyses information from a range of other sources. In this reporting period, this has included:

- focus groups with frontline employees at the casino to assess their understanding and experience of the impact of Crown Melbourne's transformation program on their day-to-day work
- walk-throughs and live demonstrations to better understand Crown's systems and processes
- sample 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 Gaming team's interactions with customers.

Crown has assisted the OSM to facilitate these activities.

## 2. Stakeholder engagement

### 2.1 Engagement with Crown

The OSM continues to maintain constructive working relationships across Crown to assist in performing 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, markedly more often than in previous periods. In addition, the Board attended five out-of-session meetings on particular issues and reform initiatives. The Special Manager and one or more of the Deputy Special Managers have attended all of these meetings. The Special Manager and/or OSM representatives have also attended meetings, or engaged with the work, of relevant Crown Board and management committees.

Regular meetings are continuing between the OSM and Crown at officer level to facilitate the OSM's information gathering and assessment activities. These have extended further across the business as Crown's reform work has progressed. The dedicated office space Crown provides for the OSM within its Melbourne complex helps to facilitate ongoing engagement and information sharing between Crown and OSM staff, as the OSM progresses its detailed assessment work.

The Special Manager and OSM staff have also attended a range of Crown internal forums, including leadership briefings, employee town hall briefings and team musters, to observe the nature of communications with, and queries from, employees. In January 2023, the Special Manager sent Crown employees a message via the Crown CEO advising them of the publication of the December 2022 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.

### 2.2 Engagement with the VGCCC

During this reporting period, the Special Manager has continued to liaise regularly with the VGCCC Chair. The OSM also provided a high-level briefing to the VGCCC Commissioners, CEO and senior executives in relation to the December 2022 interim report and the OSM's work plan.

To facilitate information sharing, close liaison is continuing at officer level. This includes the continued use of a referral protocol between the OSM and VGCCC for public complaints received via the OSM's enquiry inbox.

### 2.3 Engagement with other stakeholders

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

Key activities include ongoing 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 has continued to update these stakeholders about its activities, and to gather information and insights to inform its oversight and assessment of Crown's current operations and reform work.

### **2.3.1 Interstate casino regulators and monitors**

The OSM continues to engage with the gambling and casino regulators in the other Australian jurisdictions in which Crown operates. In this reporting period, the Special Manager met with the New South Wales Independent Casino Commission and the Western Australian Department of Premier and Cabinet (ahead of the February 2023 appointment of the independent chair of the Gaming and Wagering Commission, the Western Australian regulator). The OSM has also continued to liaise with Liquor & Gaming NSW in relation to its cashless gaming trials.

The Special Manager meets regularly with the independent monitors for Crown in Sydney (Kroll) and Perth (led by Mr Paul Steel APM). The OSM also chairs a regular monthly meeting of the three independent Crown monitors to share information and assessment approaches. Additional meetings have occurred at officer level with both monitors as relevant.

### **2.3.2 Other regulators and law enforcement agencies**

The OSM continues to engage 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. Meetings focus on potential areas of mutual interest and opportunities to share information.

### **2.3.3 Community, industry and non-government sector**

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

The OSM also connected with relevant industry and business groups in this period, in relation to financial crime prevention and gambling harm minimisation.

### **2.3.4 Victorian Government departments and agencies**

The OSM is monitoring 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 (VRGF).

In this reporting period, the OSM broadened its engagement across the Victorian public sector to include other departments and agencies that have portfolio interests in matters relevant to Crown's reform, including meeting with the Victorian Multicultural Commission.



### **2.3.5 Public enquiries**

As previously reported, in June 2022 the OSM established a public enquiry inbox, accessible via its website. Four public enquiries were received and responded to by the OSM during 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 office's 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 provides important insights into the progress of Crown's reforms.

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

### 3.1 Corporate governance and board independence

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'.<sup>4</sup> Crown's stakeholders must have confidence that its corporate governance mechanisms will effectively uphold higher standards of integrity, compliance and oversight of risk.

As highlighted in previous activity reports, there have been significant changes to Crown's ownership, Board and senior management over the past year. The Crown Melbourne Board meets regularly and constitutes a majority of directors independent of executive management, Crown Resorts and Blackstone Inc. This is consistent with recommendation 29 of the Finkelstein Report, which recommended the Casino Control Act be amended to impose an obligation that a casino operator has a majority of its board as independent directors, including independent of any ultimate or intermediate holding company.<sup>5</sup> The Board is chaired by an independent, non-executive director, Mr Ian Silk.

The Special Manager and/or OSM officers with delegated authority regularly attend meetings of the Crown Melbourne Board, as well as various Board committee and management committee meetings. The OSM has focused on assessing the effectiveness of the Board and management committees, given the important role they play in setting the right 'tone from the top' and leading good governance and decision making.

### 3.2 Compliance with legislative and regulatory obligations

Crown's compliance obligations stem from a diverse range of sources, including legislation, regulations, Ministerial Directions, agreements, internal policies and approved gaming rules. These external and internal 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.

The OSM has 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.

During this reporting period, the OSM has continued to monitor 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 is monitoring how Crown is working to improve the way it identifies, assesses and reports potential and actual compliance breaches, and to engage in more open, transparent and productive relationships with its regulators. This includes Crown's implementation of new systems, processes and policies aimed at ensuring compliance incidents are identified, managed and dealt with effectively.

During the Special Manager's term, Crown has been subject to several substantive disciplinary proceedings arising from its alleged non-compliance with legislative and regulatory obligations. The VGCCC, which operates independently of the Special Manager, conducted each of the proceedings that were completed during this reporting period, provided substantive reasoning for its decisions and imposed significant fines. At the time of preparing this report, certain disciplinary proceedings conducted by AUSTRAC and the VGCCC are continuing.

The OSM is continuing to monitor Crown's involvement in disciplinary, litigation and other regulatory proceedings as well as the continued improvements in its compliance strategies, systems and processes.

### 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 underpins an organisational culture of operating lawfully and with integrity. It 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.

In this reporting period, the OSM has focused on reviewing Crown's:

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

Crown has commenced strengthening its anti-bribery and corruption framework and is expected to complete a comprehensive bribery and corruption risk assessment in the next reporting period. The OSM will assess this work and monitor whether Crown establishes appropriate governance and resourcing to effectively drive anti-bribery and corruption prevention work across the organisation.

Over the last six months, the OSM has observed the implementation of, and improvements in, important aspects of Crown's broader integrity framework, including its Code of Conduct and whistleblower regime.

Crown's revised Code of Conduct now incorporates observations and suggestions made by the OSM in late 2022. Crown has improved, and will continue to develop, policies to support and complement the Code of Conduct, including in relation to conflicts of interest, political donations, and gifts, tips and gratuities. Crown has also rolled out a mandatory e-learning module and provided communications to all employees and contractors as part of an internal campaign to promote the revised Code of Conduct.

Crown has improved its whistleblower management policy and processes. This includes enhanced governance and oversight of whistleblower disclosures and the appointment of a Whistleblower Protection Officer. Crown has launched a well-structured 'Speak Up' internal communications campaign, which aims to provide guidance to all employees on reporting channels and whistleblower protections to help address barriers to 'speaking up' and raising concerns.

In this reporting period, the OSM commenced assessment of Crown's public complaints handling processes. 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'.<sup>6</sup> Crown's current approach to public complaints management (including the way complaints are recorded, assessed and responded to) presents an opportunity for considerable improvement. In response to the OSM's feedback, Crown will complete an audit in the next reporting period to identify ways its public complaints handling policies, systems and practices can be improved.

## 4. Monitoring and assessing Crown's transformation

The Special Manager continues to focus on assessing the effectiveness of Crown's implementation of the reforms set out in Appendix I of the Finkelstein Report, and its broader transformation in the following areas:

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

Crown has 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.

Due to the ongoing, and 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.

Throughout the remainder of 2023, the Special Manager will continue to independently monitor and assess Crown's efforts to return to suitability, including whether its reform program is well-governed, appropriately prioritised and properly resourced.

Importantly, the Melbourne casino operator is required to implement a range of longer-term reforms to prevent gambling-related harm and financial crime at the casino, which have been introduced by the Victorian Government in response to the Finkelstein Royal Commission.

These reforms include requiring customers to use casino-issued cards, verify their identity to gamble and participate in a mandatory pre-commitment scheme, which must be in place for all electronic gaming machines by the end of 2023; restricting the use of cash; and extending the requirement for customers to use casino-issued cards and verify their identity to gamble for all other games at the casino by December 2025.

The casino operator is also required to update its Responsible Gambling Code of Conduct to provide further protections to minimise gambling-related harm. The new Code, which must be implemented by late September 2023, sets limits on the length of time a person may gamble at the casino, with the operator required to enforce 15-minute breaks if a person has been gambling for three continuous hours.

Anyone who has gambled for 12 hours in any 24-hour period will be required to take a break of 24 hours, with no person permitted to gamble for more than 36 hours in a single week.

This significant suite of harm minimisation and crime prevention reforms represents world leading practice for a casino of Melbourne's size, and is required to be fully implemented by the end of 2025.

## Conclusion

The Special Manager's third six-month period of operation – 1 January to 30 June 2023 – has 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 cultural 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
- continuing to engage with key stakeholders to gather information and insights to inform the Special Manager's work
- directly collecting and analysing information from various sources, including focus groups with casino employees, walk-throughs, live demonstrations, sample testing and data analysis
- identifying the main areas of Crown's reform work for assessment and evaluation in the final reporting period
- preparing the third confidential six-monthly interim report for the VGCCC and the Minister.

The Special Manager will continue to oversee Crown Melbourne's casino operations and monitor and assess Crown's implementation of its reform program, with a final report to be submitted to the VGCCC and the Minister in January 2024.

The Special Manager's interim and final reports will play a key role in informing the VGCCC's important decision as to whether Crown has returned to suitability to hold the Melbourne casino operator licence.

## Endnotes

- <sup>1</sup> Royal Commission into the Casino Operator and Licence, *The Report – Volume 1*, October 2021, p. 4.
- <sup>2</sup> *Casino Control Act 1991* (Vic), s 36N.
- <sup>3</sup> *Casino Control Act 1991* (Vic), ss 36F(5), (7).
- <sup>4</sup> Royal Commission into the Casino Operator and Licence, *The Report – Volume 1*, October 2021, p. 99.
- <sup>5</sup> Royal Commission into the Casino Operator and Licence, *The Report – Volume 1*, October 2021, p. 16.
- <sup>6</sup> Australian Securities and Investments Commission, *Regulatory Guide 271, Internal Dispute Resolution*, 2 September 2021, p. 37.

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