COMMISSIONER: THE HONOURABLE RAY FINKELSTEIN AO QC

IN THE MATTER OF A ROYAL COMMISSION INTO THE CASINO OPERATOR AND LICENCE

MELBOURNE, VICTORIA

AMENDED SUBMISSIONS ON BEHALF OF MICHELLE LOUISE FIELDING

A. Introduction

1 By letter dated 24 July 2021, the Solicitors Assisting the Commission invited Ms Michelle Louise Fielding to make submissions to the Royal Commission.

2 Therein, the Solicitors Assisting explained:

> According to the evidence before the Commission, Ms Fielding:
>
> 1. Was the Compliance Manager and Group General Manager, Regulatory and Compliance with responsibility to ensure that Crown Melbourne complied with its legal and regulatory obligations.
>
> 2. Gave advice that enabled the China Union Pay (**CUP**) process to occur.
>
> 3. Failed to advise Crown Melbourne that it should not carry out the CUP process.
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> 4. Was aware that Crown Melbourne was treating 'bonus jackpots' expenses as sums paid as winnings.
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> 5. Was aware that the 'Bonus Jackpots' were not sums paid as winnings.
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> 6. Did not advise Crown Melbourne that it should not claim 'Bonus Jackpots' as deductions.

[redacted]

3 These submissions respond to that invitation, and to other matters raised by Counsel Assisting's **Closing Submissions** dated 20 July 2021.

B. Summary of Ms Fielding's submissions

4 Ms Fielding submits that it is not open to find that any of the conduct set out in paragraph 2 above, or otherwise in the Closing Submissions, is such as to found a conclusion that she acted improperly. At all times, she has discharged her duties as an Australian lawyer, and a Crown employee, to the best of her ability; [redacted]

5 At all times relevant to the issues raised by Counsel Assisting in relation to Ms Fielding, she reported to, until March 2017, Ms Debra Tegoni, Executive General Manager, Legal and Regulatory Services at Crown, and, thereafter, to Mr Joshua Preston, Chief Legal Officer. Those individuals acted, and were regarded, as the people with the ultimate decision-making power in relation to compliance matters at Crown.[1] Without shirking her important responsibility to undertake the tasks the subject of her job description, it ought to be borne in mind that Ms Fielding, reasonably, could have expected that if Ms Tegoni or Mr Preston were dealing with an issue, both that:

(a) any relevant compliance issues would be addressed by them; and

(b) information she was provided by them could be relied upon.

6 As her evidence demonstrated, Ms Fielding has engaged in self-reflection in relation to the role she has played in some of the failings alleged against Crown. In her evidence, she was frank in her analysis that Crown's culture had been too insular[2] and that she did not "appreciate that [Crown] wasn't in the state it should have been in".[3] Any consideration of adverse findings against her must have regard to the culture and organisational structure of Crown that led to any such failures. That is, it is not possible to assess that conduct without considering the context in which it occurred.[4] It is not open to simply lay blame at Ms Fielding's feet, in circumstances where the decision-making on the relevant issues was undertaken by those higher than her in the Crown corporate structure. It is also relevant to have regard to the exercise of the legal function within Crown, and the delineation of roles between her, on the one hand, and Ms Tegoni and Mr Preston (as the case may be), on the other.

7 As an organisation, Crown has recognised that there are shortcomings if a person in a compliance role such as that held by Ms Fielding reports into the operational business.

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1 T2676.41-2677.1 (Fielding).

2 T2677.10-24 (Fielding); 2742.10-24 (Fielding).

3 T2677:10-24 (Fielding).

4 As to the importance of so doing, see *Rosenberg v Percival* (2001) 205 CLR 434 at 441-442 [16].

Indeed, that recognition has led to the fact that Ms Fielding now reports to Mr Steven Blackburn, the Chief Compliance and Financial Crime Officer.[5] As Ms Fielding identified in her evidence, the division of responsibilities between the legal and compliance departments ought also to be made clearer, so as to ensure that all communication with the regulator involves the compliance department.[6]

8 In giving that evidence, and acting in a role where she is able to put into effect her learnings, Ms Fielding wishes to be, and looks forward to being, part of the solution. She is prepared to commit to what was described as the "new way of doing business"[7] required at Crown in the future.

9 As further developed below, it is not right to criticise Ms Fielding for her very limited involvement in what became the CUP matter, nor is it right to criticise her for the China Arrests Investigation, from which she was excluded – which, due to its sensitivity, was kept confidential even within Crown. In both these circumstances, Ms Tegoni was involved – it was reasonable for Ms Fielding to believe that compliance issues were being dealt with appropriately. Similar considerations arise in relation to the Bonus Jackpots issue, for which Mr Preston, and not Ms Fielding, had responsibility.

10 Ms Fielding's current and former roles at Crown have not qualified her as an "associate" for the purposes of s 1.4 of the *Gambling Regulation Act 2003* (Vic). That is, Ms Fielding's roles have always been below that which would qualify her as such, including that she has never been an executive officer of Crown. Accordingly, she is not an existing "associate" of Crown.

11 In any case, Counsel Assisting, rightly, does not seek a finding that Ms Fielding is not a suitable "associate" of Crown.[8]

C. Ms Fielding's roles at Crown

12 Ms Fielding started in Crown in 1997. She left in 2005 and returned in 2008 in the role of Manager of Compliance.[9]

13 As already noted, Ms Fielding reported to Ms Tegoni until around March 2017, at which time Ms Tegoni resigned.[10]

14 From March 2017, Ms Fielding reported to Mr Joshua Preston, who, as noted above, assumed the role of Chief Legal Officer.[11]

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5 T2677.10-24 (Fielding).

6 T2677.34-2678.2 (Fielding).

7 T3952.5-31 (Arzadon).

8 Closing Submissions, COM.0500.0001.0380 at .0701 [13.49].

9 T2636.11-22 (Fielding).

10 T2638.24-44 (Fielding). cf. While the Closing Submissions indicate that Ms Tegoni resigned with effect from 1 July 2017 (COM.0500.0001.0380 at 0412), Ms Fielding commenced reporting to Mr Preston in March 2017.

11 T2638.34 - T2639.2 (Fielding).

15 On 1 January 2021, Ms Fielding assumed the role of Group Executive General Manager, Regulatory and Compliance, Crown Resorts.[12]

16 Since April 2021, Ms Fielding has reported to Mr Blackburn, Crown Resort's new Chief Compliance and Financial Crimes Officer.[13]

D. China Union Pay

17 As Ms Fielding indicated during her evidence before the Commission,[14] she does not recall any personal involvement in the China Union Pay (**CUP**) matter.

18 Her first recollection of being made aware of the issue was in March 2021, when she received an email entitled "Surveillance Log Entry Report (Log ID #1984416)", which was sent to her by email by Mr Craig Walsh, Executive Director.[15] (By reason of Crown's claim for legal professional privilege over her later communications in this regard, Ms Fielding is unable to say anything further in relation to this issue.)

19 Despite having no independent recollection of the CUP issue, Ms Fielding accepted during her evidence that she provided the advice set out in:

(a) her email to Mr Matt Sanders, Strategy Manager, VIP International, copied to Ms Tegoni dated 9 August 2012 (**August Email**);[16] and

(b) her email to various senior employees of Crown, namely Jason O'Connor, William MacKay, Andrew Cairns, Stephen Hancock, Peter Mim and Matt Sanders, and copied to Ms Tegoni, dated 11 September 2012 (**September Email**).[17]

20 Neither of these emails demonstrate she knew about what has since become known as the CUP matter, or in any way condoned the conduct the subject of it.

21 Without the relevant background, Ms Fielding was not put on alert that what was being contemplated potentially involved misconduct at any time. No inference that she was aware of the CUP process should be drawn from the fact that she provided these advices for the following reasons.

22 First, as to the August Email:

(a) There is nothing in its contents which indicates that the conduct the subject of the email was even to be conducted at the hotel, let alone that the hotel would produce false invoices as part of the process. In her evidence, Ms Fielding stated she understood the August Email to be her advice about

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12 T2626.33-37 (Fielding).

13 T2639.33-41 (Fielding).

14 T2684:23-24 (Fielding); T2687:31-32 (Fielding); T2691:16-32 (Fielding).

15 CRW.520.018.9522 and CRW.520.018.9523. ~~[*The DocID for this document is to be provided.*]~~

16 Exhibit RC0263 Email chain between Matt Sanders and Jason O'Connor et al, 9 August 2012: CWN.514.063.0229; T2683.30- 42 (Fielding).

17 Exhibit RC0264 Email chain between Michelle Fielding and Jason O'Connor et al, 11 September 2012, CWN.514.063.5838; T2689.41-46 (Fielding).

the casino being permitted to provide credit under an exemption.[18] And, as to that, as the Commission is aware, such provision is permitted if, relevantly, the chips are provided on credit to a person who is not ordinarily resident in Australia for use while participating in a premium player arrangement or a junket.[19]

(b) It was put to Ms Fielding that by saying "[w]e would argue in reply (if the matter arises)", she meant "if we get caught".[20] Ms Fielding accepted this construction.[21] But to adopt such phraseology, especially in an email intended to simplify what is a complex legislative regime, is not inappropriate. [redacted] As Ms Fielding frankly conceded during her evidence, the culture at Crown Resorts has, in the past, been too insular and it avoided proactive engagement with the regulator. The email, written as it was in August 2012, reflected that culture, namely of not pre-emptively raising matters as a possible issue.[22] Accordingly, the need for an argument in reply would only arise if the matter was raised by the regulator. The balance of Ms Fielding's email was concerned with whether Crown Resorts' conduct would be legal and compliant with its legal obligations,[23] and the argument she put forward was one she genuinely believed could properly be made. Understood in its context, and noting that it was not related to the CUP issue, the August Email was merely a statement of Ms Fielding's legal opinion on an issue, given in good faith and to the best of her ability.

(c) To the extent that the August Email is relied upon to support the closing submissions of Counsel Assisting that there was an "extraordinary appetite for breaking the law",[24] Ms Fielding contends that this is not so. She accepts that Crown Resorts had a significant appetite for risk - a culture which work has been undertaken to change - and she gave advice in relation to those risks, but she does not believe, and did not give advice in relation to, intentionally breaking the law.

(d) While she has no distinct recollection of Ms Tegoni requesting her to provide the advice, it is to be noted that on the basis that Ms Tegoni is copied, that the email has the subject line "Confidential and Legally Privileged" and that she reported to Ms Tegoni at the time,[25] it is apparent that the email was in response to a request made of Ms Tegoni. It is not said that those instructions

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18 T2686.7-14 (Fielding).

19 *Casino Control Act* 1991 (Vic), s 68(8).

20 T2688.26-31 (Fielding).

21 T2688.33 (Fielding).

22 T2677.10-24; T2742.10-24 (Fielding).

23 cf. Closing Submissions, COM.0500.0001.0380 at .0520, [1.7].

24 Closing Submissions, COM.0500.0001.0380 at .0522, [2.6].

25 T2688.13-16 (Fielding).

were in any way directed to enabling a breach – let alone an intentional one – of the law.

23 Second, as to the September Email:

(a) The September Email deals with the requirement of access to certain cash facilities being at least 50 metres from any entrance to the casino. Ms Fielding was not copied to the preceding email in the chain, from Mr Sanders, which provides the (important) context to this request relating it to the CUP matter.

(b) Ms Fielding, and her direct report, Mr Sean Counihan, were involved in ensuring that Crown complied with the requirements of s 81AA of the *Casino Control Act* when that provision came into effect on 1 July 2012. This included taking physical measurements to various ATMs in the Crown complex.[26] The request for Ms Fielding to confirm compliance with s 81AA in the September Email was therefore not surprising and, without further context, would not have been a cause for concern.

(c) Ms Fielding gave evidence that she does not recall reading the preceding emails.[27] Without the context in the preceding email chain, Ms Fielding's advice in the September Email does not support an inference that she knew about, and was advising in relation to implementing, the CUP matter.

24 Ms Fielding explained in evidence that there could be significant pressure from the commercial department, in terms that they could be argumentative or "push back" in relation to advice.[28] That did not mean, and cannot be interpreted as meaning, that she changed her advice or otherwise neglected her duties as a legal practitioner. It simply reflects that her internal client, as with most clients, had commercial imperatives that it sought to pursue, and wished to challenge obstacles in the way of those imperatives.

25 It was put to Ms Fielding that when Ms Tegoni told her, in 2016 or 2017, to "stay clear of China Union Pay" that this should have "put [her] antenna up and --- make [her] inquisitive about what the issue is about".[29] Ms Fielding was unable to recall what she had done in response.[30] Of course, by the time of this conversation, the CUP practice had ceased. Nevertheless, with the benefit of hindsight, Ms Fielding accepts that she ought to have done more to challenge Ms Tegoni. She placed too much reliance on the structure within Crown which gave Ms Tegoni the ultimate decision-making power in relation to compliance matters. It ought be emphasised that this would not occur now given the structural and cultural changes which have taken, and are continuing to

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26 See, for example, an email from Sean Counihan to Richard Peoples, copying Ms Fielding and Tracey Stevenson dated 29 March 2011: CRW.512.258.0006; Email from Sean Counihan to Richard Peoples copying Tracey Stevenson dated 6 December 2011: CRW.512.258.0005; Email from Ms Fielding to Keith Nichols (copying others) dated 2 February 2012: CRW.512.258.0001; Email from Ms Fielding to Neil Spencer and John Cavanagh, copying Sean Counihan dated 20 April 2012: CRW.512.258.0003. ~~[*The DocIDs for these documents are to be provided.*]~~

27 T2690.29-34 (Fielding).

28 T2697.21--2698.13 (Fielding).

29 T2692.27-46 (Fielding).

30 T2692.39 (Fielding).

take, place, an outcome of which is that challenging such behaviour is encouraged, rather than discouraged.

26 In her evidence, Ms Fielding also acknowledged that she has not yet made inquiries in relation to the outcome of the CUP investigation.[31] She explained that she would do so. But the fact that Ms Fielding had not sought to be involved in the CUP investigation is understandable and appropriate. As she said in her evidence, she was conscious of the fact that she could be seen to have been involved in the CUP process, and so it was important that she not seek, or be seen to seek, to interfere with the investigation.[32] It is reasonable for Ms Fielding to have taken the position that she should let the investigation run its course before becoming involved. Of course, she looks forward to learning from it as part of her future work.

27 Despite her limited involvement, Ms Fielding accepts that the fact that the CUP issue arose shows that there was a failing in Crown Resort's compliance framework, and her role includes ensuring the robustness of that framework. It is a matter which steps are being taken to avoid occurring again, as explained in more detail in Crown's submissions.

E. "Bonus Jackpots"

28 Ms Fielding accepts that the conduct in relation to the Bonus Jackpots matter reflects poorly on Crown's culture. To the extent that Ms Fielding was involved in this process, she would not have acted in the way she did if presented with the issue now.

29 That said, the relevant facts do not support a finding that she was not forthright in her evidence to the Commission.[33]

30 Counsel Assisting submitted that Ms Fielding's evidence that she considered the legal advice received from Minter Ellison in November 2018 (**2018 Minter Ellison Advice**)[34] to be "vague" and that "they weren't favourable, but [she] didn't think they were definitive either" is untenable.[35] This criticism of Ms Fielding should be rejected for the following reasons.

(a) First, at that time, she genuinely held the view that the Bonus Jackpots were permitted deductions.

(i) In her discussions with Mr Herring, he had explained that the VCGLR had provided an approval for the EMS which covered the range of the Bonus Jackpots.[36]

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31 T2694.46-2695.3 (Fielding).

32 T2695.2-3 (Fielding).

33 cf. Closing Submissions, COM.0500.0001.0380 at .0699, [14.43].

34 Exhibit RC0158, Annexure a, Confidential memorandum, 14 November 2018: MEM.5000.0001.5440.

35 Closing Submissions, COM.0500.0001.0380 at 320 [13.39].

36 T2708;24-31 (Fielding).

(ii) She was aware that a similar concept, in relation to allowing a deduction for a turnover based reward, had been approved in relation to the "Welcome Back" Jackpots.[37]

(iii) In her email of 5 June 2018 to Mr Cremona, she had set out a complete breakdown of the components of the Bonus Jackpots and invited him to reach out with any further queries or concerns.[38] Mr Cremona did not do so.

(b) Second, the 2018 Minter Ellison Advice does not provide a concluded view as to whether or not the deductions were permitted. Rather, it sets out arguments for and against[39] with no statement as to which should be preferred.

(c) Third, the issue is clearly complex and open to different interpretations. Crown Resorts and its directors sought advice from Minter Ellison in 2018[40] and 2019,[41] from Mr Mark Robertson QC in June 2021[42] and from Mr Archibald QC and Ms Dixon in July 2021.[43] These various advices have highlighted different issues and, for those which have expressed a clear view, come to differing conclusions.

31 In those circumstances, it is understandable that Ms Fielding may have formed the view that the 2018 Minter Ellison Advice did not definitively decide the issue as against Crown. The fact that Crown then went on to seek further advice in 2019 confirms, rather than contradicts, her position.

32 Further, the submission by Counsel Assisting that the proposed amendments and comments provided in relation to the 2018 Minter Ellison Advice show "Crown was pushing back and seeking to persuade Mr Ward to change his advice" should not be accepted.[44] Rather, they are consistent with Ms Fielding's evidence that she was not trying to influence Minter Ellison to come to a different conclusion, unless that conclusion was based on the additional information provided.[45] Indeed, the comment included by Ms Fielding in relation to paragraph 26 of that advice, reflecting that she did not "necessarily agree" with the advice, and her reason for so doing, is consistent with raising issues for Minter Ellison's consideration, rather than influencing the outcome improperly. As matters transpired, Minter Ellison did not change its advice.

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37 T2718.27-34 (Fielding).

38 Exhibit RC0373, Email chain between Michelle Fielding and Barry Felstead et al, 5 June 2018, tendered 5 July 2021: CRW.512.147.1181.

39 See, for examples, paragraphs 26 and 28.

40 Exhibit RC0158, Annexure a, Confidential memorandum, 14 November 2018: MEM.5000.0001.5440.

41 Exhibit RC0767, Memorandum regarding Gaming Machines Food Program Initiative – GGR Treatment, 18 November 2019, tendered 13 July 2021: CRW.512.135.0028.

42 Exhibit RC0889, ABL Crown Resorts Casino Gaming Tax – Opinion of Mark Robertson QC, 21 June 2021, tendered 13 July 2021: CRW.900.008.1377.

43 Exhibit RC0422, Memorandum from Christopher Archibald QC and Anna Dixon to ABL, 5 July 2021, tendered 6 July 2021: CRW.512.202.0005.

44 Closing Submissions, COM.0500.0001.0380 at .0470 [1.59].

45 T2712:31-37 (Fielding).

There is nothing improper in Ms Fielding recording her views, and testing them with Crown's legal advisers.

33 Ms Fielding accepts that prior to June 2018, Crown was not as forthright in its disclosure to the VCGLR in relation to the Bonus Jackpots as it should have been. However, in her email of 5 June 2018, she believed that she was comprehensively responding to Mr Cremona's query seeking clarity about his understanding of the Bonus Jackpots.[46] Insofar as she does not refer to earlier discussions, that does not found a conclusion that Ms Fielding withheld any relevant information or misled or deceived the VCGLR.[47] Ms Fielding was not involved in those discussions and her response to the VCGLR attempted to address, in good faith, the queries raised by Mr Cremona.

34 As Ms Fielding frankly conceded in evidence, she did not bring the 2018 Minter Ellison Advice to the attention of the VCGLR as "that was the culture at the time, it wasn't something that was done."[48] However, it ought be borne in mind that Ms Fielding genuinely held the view that the Bonus Jackpots were legitimate deductions and her decision not to raise the matter was not one which she considered, at the time, to involve concealing a breach of the law. Her failure to speak against Crown's treatment of Bonus Jackpots or to persuade others to discuss the matter with the VCGLR[49] ought to be understood in the context of her view that the deductions were permitted.

35 Counsel Assisting submit that Ms Fielding's evidence in relation to a discussion she had with Mr Walsh about the Bonus Jackpots issue should not be accepted.[50] Her evidence ought be accepted.

(a) First, while in evidence Ms Fielding was unable to recall when the discussion occurred, Ms Fielding did specify that she recalled speaking with Mr Walsh prior to the Royal Commission being called (which occurred on 22 February 2021), and then again, in close proximity, afterwards to say that it would appear disingenuous to raise then.[51]

(b) Second, Mr Walsh prepared a file note on 23 February 2021[52] which records a discussion with Ms Coonan in which he did raise the Bonus Jackpots issue.

(c) Third, it is clear from Mr Walsh's file note, and his evidence, that disclosure of the Bonus Jackpots issue was something he was actively considering

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46 Exhibit RC0373 Email chain between Michelle Fielding and Barry Felstead et al, 5 June 2018, tendered 5 July 2021: CRW.512.147.1181.

47 Being those matters set out in Closing Submissions, pp 84-85, s 1.16-1.22.

48 T2721.10-24 (Fielding); Closing Submissions COM.0500.0001.0380 at .0470, [1.64].

49 Closing Submissions COM.0500.0001.0380 at .0699, [14.42].

50 Closing Submissions COM.0500.0001.0380 at .0473, [1.84].

51 T2733.9-30 (Fielding).

52 Exhibit RC0358 Memorandum regarding Crown Melbourne Weekly Catch Up Agenda, 23 February 2021, tendered 5 July 2021: CRW.512.135.0073.

around the time that the Royal Commission was called and Ms Fielding's evidence is consistent with that being so.

36 Counsel Assisting have suggested that an inference that "Ms Fielding was not as forthright in her answers to the Commission as she should have been" can be made from the fact that Ms Fielding:

(a) could not recall specifics about meetings or emails in September 2020 and 2021 that were raised with her;

(b) did not proffer evidence about her recollection of or involvement in discussions about the Bonus Jackpots issue; and

(c) confined her evidence to the matters that were specifically raised with her.[53]

37 This criticism is unfounded. It is not surprising that a person may not recall details of meetings or emails from months ago. It is also not surprising that Ms Fielding's evidence consists of her answers to the questions which were put to her, to the best of her recollection. Counsel Assisting have not specified which matters they expected Ms Fielding to have proactively raised. No inference should be drawn in the circumstances.

F. Response to Closing Submissions

F.1 Sixth Casino Review and Recommendation 17

38 Ms Fielding was the point of contact at Crown for the VCGLR in relation to implementation of the recommendations from the Sixth Casino Review, including Recommendation 17.[54] The actual implementation of Recommendation 17 itself was managed by Mr Preston and Ms Louise Lane.[55]

39 On this basis, while she was generally the person interacting with the VCGLR on this matter, she relied upon information and status updates provided to her by Mr Preston to inform those discussions.[56] Clearly, Ms Fielding acknowledges that accurate information should have been provided to the VCGLR and it is unacceptable if it was not. Ms Fielding reasonably believed that the information being provided to her by her superior, a competent and qualified lawyer acting as Crown's Chief Legal Officer, would be factually accurate. She had no reason to believe that it was not, and no reason to insist that she be involved in discussions which she understood were being conducted by her superior.

40 Ms Fielding was at all times conscious of the importance of implementing the recommendations from the Sixth Casino Review and appropriately engaging with the VCGLR in relation to them. However, she was undermined in her ability to do this by the Crown structure then in existence. For example, Ms Fielding sent various drafts

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53 Exhibit RC0358 Memorandum regarding Crown Melbourne Weekly Catch Up Agenda, 23 February 2021, tendered 5 July 2021: CRW.512.135.0073.

54 T2651.39-47 (Fielding).

55 T2651.39-47 (Fielding).

56 T2654:12-13 (Fielding); T2655:1-5 (Fielding); T2657:21-29 (Fielding); T2662:28-30 (Fielding).

to Mr Preston to respond to the VCGLR in relation to the implementation of the recommendations, but received no responses.[57]

(a) First, on 9 November 2018, Mr Cremona sent Ms Fielding a letter referring to their meeting on 31 October 2018, noting that "the Commission will not consider redefinition or amendment of any of the recommendations detailed in the report." On 17 December 2018, Ms Fielding sent Mr Preston a draft response to Mr Cremona's letter of 9 November 2018.[58] In her covering email, Ms Fielding noted she was "not 100% comfortable that the approach is right, but other issues will arise if we don't raise our concerns". Ms Fielding's draft response explains the context for Crown's queries at the meeting, and also states that:

> Crown emphasized during the meeting (and in subsequent discussions) that regardless of the matters which required greater clarity, no amendments or revocations to the Recommendations could now be made. It was and remains Crown's view, that the Recommendations as published should now be worked through in their published form.

Ms Fielding did not receive any response from Mr Preston and her draft response was never sent.

(b) Second, on 22 February 2019, Mr Harris emailed Ms Fielding setting out the VCGLR's views in relation to the review of the relevant ICSs.[59] On 26 February 2019, Ms Fielding sent Mr Preston a draft email in response to Mr Harris which stated:

> Thanks for your email. As always, Crown will of course cooperate with AUSTRAC and we have no concerns in releasing (on a confidential basis) any relevant ICSs to AUSTRAC as part of the Recommendation 17 process. Further, I anticipate that Josh will follow up with AUSTRAC as to the conversations had between AUSTRAC and the VCGLR, to further the Recommendation's progress.
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> Crown anticipates that the required robust review will determine the appropriate direction and outcome of the Recommendation.[60]

Ms Fielding did not receive any response from Mr Preston and her draft response was never sent.

(c) On 13 March 2019, Ms Fielding and Mr Preston attended a meeting with the VCGLR in relation to Recommendation 17. At the meeting, Mr Preston focused on the AML Programme – consistent with her evidence, Mr Preston

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57 Email from Ms Fielding to Mr Preston dated 17 December 2018: CRW.510.026.6606, CRW.510.026.6608 and CRW.510.026.6609; Email from Ms Fielding to Mr Preston dated 26 February 2019: CRW.510.029.8106. ~~[*The DocIDs for these documents are to be provided.*]~~ See also, T2662.2-6 (Fielding).

58 Email from Ms Fielding to Mr Preston dated 17 December 2018: CRW.510.026.6606, CRW.510.026.6608 and CRW.510.026.6609. ~~[*The DocID for this document is to be provided.*]~~

59 Exhibit RC0009 Annexure t, Email from Rowan Harris to Michelle Fielding and Jason Cremona, 22 February 2019: VCG.0001.0002.3513.

60 Email from Ms Fielding to Mr Preston dated 26 February 2019: CRW.510.029.8106. ~~[*The DocID for this document is to be provided.*]~~

had become fixated with this issue.[61] Ms Fielding told Mr Preston that "he had to address the ICSs", and he agreed.[62]

41 As to the phone call to Mr Cremona in relation to a letter he had sent to Mr Preston the previous day, Ms Fielding forthrightly conceded that her call to Mr Cremona on 24 May 2019 was not appropriate and was not something she would do again, whether or not it was requested of her.[63] That evidence demonstrates Ms Fielding's insight.

42 Ms Fielding's evidence was that she felt uncomfortable calling the regulator using such a strong tone and referring to an escalation to the Minister, and did so at the request of Mr Preston and Mr Reilly. Mr Reilly was in her office throughout the call prompting her comments.[64] While Ms Fielding does not contend that this excuses her lack of judgment in making the call in an aggressive tone and making the statement that Mr Preston said he was going to call the Minister, it does show that Ms Fielding's actions were uncharacteristic. In Mr Cremona's own evidence, he stated that Ms Fielding's tone was unexpected, based on his previous experiences with her.[65] The call, and corresponding lack of judgment, was out of character for Ms Fielding. That being so, it should not be used to support any adverse inference against her.

43 Indeed, Ms Fielding has acknowledged, in relation to this issue, and generally, that Crown has not been as frank and forthright as it ought to have been in its past dealings with the VCGLR.[66] She further observed that her dealings with Mr Cremona and his manager, Ms Fitzpatrick, "have been much more positive and open over recent times".[67] This reflects a genuine willingness, and ability, to move away from Crown's previous culture of not engaging with the VCGLR as it ought.

F.2 China Arrests Investigation and the Final China Report

44 Ms Fielding received the initial requests in relation to the China Arrests Investigation.[68] However, she did not have any carriage or involvement in the matter.[69]

45 This was a matter of significant sensitivity and the legal department managed it from when the employees had first been detained in China and throughout the China Arrests Investigation.[70] On this basis, Ms Fielding did not have access to relevant documents sought by the VCGLR and was not able to assist in providing responses to the requests.[71] It is clear that the way in which Crown responded to these requests has caused significant concern. In light of Crown's restructure such that there is now an

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61 T2660.17-35 (Fielding).

62 T2662.2-6 (Fielding).

63 T2665.15-21 (Fielding); T2666.41-47 (Fielding).

64 T2665.35-36 (Fielding); T2666.9-11 (Fielding).

65 T178.35-43 (Cremona).

66 T2668.1-17 (Fielding).

67 T2667:38-43 (Fielding).

68 T2641.29-34 (Fielding).

69 T2643.12-13 (Fielding).

70 T2643:8-13 (Fielding); T2646:15-17 (Fielding).

71 T2646:15-17 (Fielding).

independent compliance team and a genuine desire to appropriately engage with the regulator, these mistakes will not be repeated.

46 Counsel Assisting submit that the fact that Ms Fielding has not reviewed the Final China Report is "inconsistent with an organisation interested in reflecting on the past in order to perform better in the future". There is no such inconsistency. During Ms Fielding's evidence she said that she had read parts of the report, but had not read the whole document.[72] In the time since giving her evidence, Ms Fielding has read the whole document. Self-evidently, Ms Fielding, in her role as Crown's compliance manager, had, in the four weeks between the release of the Final China Report and her giving evidence, many competing priorities to manage, all of which were significant. This is not an excuse, but it does explain why prioritisation of the most pressing issues was required. Ms Fielding did not deny that the report was significant,[73] however she knew that the matters it identified were being dealt with by other senior personnel at Crown.[74] It is therefore understandable if she did not consider that a comprehensive review was the most time-sensitive matter with which she was tasked.

G. Conclusion

47 In the above circumstances, no adverse inferences ought be made against Ms Fielding. While there were shortcomings, which have been frankly conceded by her, the matters are not such as to found a conclusion that she acted improperly.

48 Rather than there being reason to doubt that "Crown can achieve the required reform while … Ms Fielding occup[ies a] senior position… in … Compliance", the frank concessions made by her, and the insight offered, together with the alterations of the organisational structure in which she operates are such that no finding as to her future role should be made. Ms Fielding looks forward to being a part of the solution to the issues facing Crown.

Dated: 2 August 2021.

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72 T2647.12-16 (Fielding).

73 T2647.18-21 (Fielding).

74 T2647:39-43 (Fielding).