

## NOTICE OF FILING

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### Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)  
File Number: VID1274/2016  
File Title: Shonica Guy v Crown Melbourne Limited & Anor  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 23/12/2016 4:01:48 PM AEDT

A handwritten signature in blue ink that reads 'Warwick Soden'.

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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**Amended Statement of claim**

(Filed pursuant to rule 16.51 of the *Federal Court Rules 2011*)

No. VID1274 of 2016

Federal Court of Australia  
District Registry: Victoria  
Division: General

**Shonica Guy**

Applicant

**Crown Melbourne Limited (ACN 006 973 262)**

First Respondent

**Aristocrat Technologies Australia Pty Ltd (ACN 001 660 715)**

Second Respondent

**A. THE PARTIES**

1. The applicant has standing pursuant to s 232(2) of the Australian Consumer Law (**Australian Consumer Law**), set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth).
  
2. At all material times the first respondent (**Crown**):
  - (a) was incorporated pursuant to law;
  
  - (ab) was a trading corporation within the meaning of s 4 of the *Competition and Consumer Act 2010* (Cth);

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- (b) was licensed to operate a casino at Southbank in the State of Victoria (**Crown Casino**) pursuant to the *Casino Control Act 1991* (Vic);
  - (c) carried on the business of operator of the Crown Casino; and
  - (d) was licensed to operate gaming machines at the Crown Casino.
3. At all material times the second respondent (**Aristocrat**):
- (a) was incorporated pursuant to law;
  - (ab) was a trading corporation within the meaning of s 4 of the *Competition and Consumer Act 2010* (Cth);
  - (b) was approved and listed on the Roll of Manufactures, Suppliers and Testers maintained by the Victorian Commission for Gambling and Liquor Regulation pursuant to s 3.4.60(1) of the *Gambling Regulation Act 2003* (Vic); and
  - (c) carried on the business of manufacturing and supplying hardware and software for gaming machines.

**B. DOLPHIN TREASURE – OVERSIZED REEL FEATURE AND STARVED REEL FEATURE AND DISPERSED SYMBOLS IMAGE**

4. On dates presently unknown to the applicant, Aristocrat in trade or commerce manufactured and supplied electronic gaming machines (**EGMs**) known as ‘Dolphin Treasure’ (the **Dolphin Treasure EGM**):
- (a) to Crown for the purpose of the Dolphin Treasure EGMs being made available for play by members of the public at Crown Casino; and
  - (b) to other gaming venues within Australia for the purpose of the Dolphin Treasure EGMs being made available for play by members of the public at the gaming venues.
5. When in play:

- (a) the video screen of the Dolphin Treasure EGM displays an image of five animated 'reels', with each 'reel' comprised of symbols (9, 10, Jack, Queen, King, Ace, Octopus, Fish School, Starfish, Treasure Chest, Turtle, Seahorse and Sunrise), with each symbol of about even size, spinning at even pace, and coming to rest consecutively, from the left to the right of the screen, at approximately even intervals (the **Even Reel Image**); and
- (b) the Dolphin Treasure EGM plays a 'ticking' sound as each of the five reels comes to rest, which:
- (i) resembles the sound made by the spinning reels of an old-fashioned slot machine; and
  - (ii) is played for approximately the same period of time before each of the five reels comes to rest,
- (the **Spinning Reel Sound**); and
- (c) once each of the five reels displayed on the video screen of the Dolphin Treasure EGM comes to rest, a matrix of symbols five reels wide by three symbols high is visible, and on any given reel the symbols are distributed so that no two symbols of the same kind appears on any given reel, contributing to an impression of a dispersion and even distribution of the symbols on each reel (the **Dispersed Symbols Image**).

### PARTICULARS

One configuration of the Dolphin Treasure EGM is as follows:

<u>Reel 1</u>	<u>Reel 2</u>	<u>Reel 3</u>	<u>Reel 4</u>	<u>Reel 5</u>
<u>10</u>	<u>F</u>	<u>Q</u>	<u>E</u>	<u>K</u>
<u>F</u>	<u>K</u>	<u>10</u>	<u>J</u>	<u>G</u>
<u>K</u>	<u>C</u>	<u>9</u>	<u>A</u>	<u>Q</u>
<u>C</u>	<u>J</u>	<u>D</u>	<u>E</u>	<u>D</u>
<u>10</u>	<u>9</u>	<u>A</u>	<u>K</u>	<u>J</u>

<u>F</u>	<u>D</u>	<u>Q</u>	<u>B</u>	<u>B</u>
<u>9</u>	<u>J</u>	<u>C</u>	<u>Q</u>	<u>Q</u>
<u>E</u>	<u>9</u>	<u>K</u>	<u>F</u>	<u>F</u>
<u>A</u>	<u>D</u>	<u>Q</u>	<u>9</u>	<u>10</u>
<u>F</u>	<u>J</u>	<u>E</u>	<u>K</u>	<u>C</u>
<u>Q</u>	<u>E</u>	<u>K</u>	<u>F</u>	<u>J</u>
<u>D</u>	<u>9</u>	<u>10</u>	<u>9</u>	<u>E</u>
<u>A</u>	<u>J</u>	<u>B</u>	<u>S</u>	<u>K</u>
<u>F</u>	<u>D</u>	<u>Q</u>	<u>K</u>	<u>B</u>
<u>Q</u>	<u>K</u>	<u>B</u>	<u>A</u>	<u>Q</u>
<u>G</u>	<u>C</u>	<u>A</u>	<u>B</u>	<u>C</u>
<u>J</u>	<u>J</u>	<u>Q</u>	<u>K</u>	<u>K</u>
<u>S</u>	<u>G</u>	<u>B</u>	<u>C</u>	<u>S</u>
<u>9</u>	<u>Q</u>	<u>10</u>	<u>9</u>	<u>J</u>
<u>F</u>	<u>10</u>	<u>J</u>	<u>K</u>	<u>C</u>
<u>J</u>	<u>E</u>	<u>G</u>	<u>D</u>	<u>A</u>
<u>E</u>	<u>J</u>	<u>10</u>	<u>A</u>	<u>B</u>
<u>Q</u>	<u>D</u>	<u>Q</u>	<u>C</u>	<u>9</u>
<u>D</u>	<u>9</u>	<u>S</u>	<u>10</u>	<u>D</u>
<u>J</u>	<u>F</u>	<u>10</u>	<u>G</u>	<u>J</u>
<u>B</u>	<u>A</u>	<u>Q</u>	<u>J</u>	<u>C</u>
<u>Q</u>	<u>B</u>	<u>F</u>	<u>F</u>	<u>A</u>
<u>C</u>	<u>J</u>	<u>10</u>	<u>9</u>	<u>D</u>
<u>J</u>	<u>S</u>	<u>K</u>	<u>10</u>	<u>9</u>
<u>B</u>	<u>A</u>			<u>F</u>
				<u>10</u>
				<u>E</u>
				<u>A</u>
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				<u>10</u>
				<u>F</u>
				<u>E</u>
				<u>A</u>
				<u>C</u>

where "J" is Jack, "Q" is Queen, "K" is King, "A" is Ace, "D" is Octopus, "F" is Fish School, "E" is Starfish, "G" is Treasure Chest, "B" is Turtle, "C" is Seahorse and "S" is Sunrise. Further particulars will be provided after discovery.

6. By virtue of all or any of the Even Reel Image and the Spinning Reel Sound and the Dispersed Symbols Image, a representation is conveyed to a person playing the Dolphin Treasure EGM that:

- (a) the Dolphin Treasure EGM has five reels of equal size, with each reel having the same total number of symbols (the **Equal Reel Size Representation**); and
- (b) the total number of each of the symbols in the Dolphin Treasure EGM (9, 10, Jack, Queen, King, Ace, Octopus, Fish School, Starfish, Treasure Chest, Turtle, Seahorse and Sunrise) is, respectively, as evenly distributed as is possible across the five reels of the Dolphin Treasure EGM, so that for each symbol, the chance of that symbol appearing where a particular payline intersects one of the five reels is as close as possible to equal across all reels ~~occurs the same number of times on each of the five reels~~ (the **Equal Symbol Distribution Representation**).

7. In fact:

- (a) contrary to the Equal Reel Size Representation, each of the first four reels of the Dolphin Treasure EGM (from left to right of the screen) has 30 (or approximately 30) symbols but the fifth reel has 44 (or approximately 44) symbols (the **Oversized Reel Feature**); and
- (b) contrary to the Equal Symbol Distribution Representation, apart from the Treasure Chest and the Sunrise symbols, the total of each of the symbols in the Dolphin Treasure EGM is not evenly distributed across the five reels of the Dolphin Treasure EGM and does not occur as nearly as possible the same number of times on each of the five reels (the **Starved Reel Feature**).

## PARTICULARS

One configuration of the Dolphin Treasure EGM, which applies to the EGM at Crown Casino bearing serial number 679405, is as follows:

<b>Reels of the Dolphin Treasure EGM</b>						<b><u>Total for each Symbol</u></b>
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	
<b>Symbol</b>	<b>Number of symbols per reel</b>					
<b>9</b>	2	4	1	4	2	<u>13</u>
<b>10</b>	2	1	6	2	4	<u>15</u>
<b>Jack</b>	4	7	1	2	4	<u>18</u>
<b>Queen</b>	4	1	7	1	4	<u>17</u>
<b>King</b>	1	2	4	5	3	<u>15</u>
<b>Ace</b>	2	2	2	3	4	<u>13</u>
<b>Octopus</b>	2	4	1	2	4	<u>13</u>
<b>Fish school</b>	5	2	1	3	4	<u>15</u>
<b>Starfish</b>	2	2	1	2	4	<u>11</u>
<b>Treasure Chest</b>	1	1	1	1	1	<u>5</u>
<b>Turtle</b>	2	1	3	2	4	<u>12</u>
<b>Seahorse</b>	2	2	1	2	5	<u>12</u>
<b>Sunrise</b>	1	1	1	1	1	<u>5</u>
<b>TOTAL</b>	30	30	30	30	44	

There are ten further configurations of the Dolphin Treasure EGMs at Crown Casino, particulars of which are furnished with Maurice Blackburn's letter dated 23 December 2016.

8. The Oversized Reel Feature and the Starved Reel Feature are not apparent to a person playing the Dolphin Treasure EGM.
9. The Dolphin Treasure EGM pays out credits if certain symbols appear in particular configurations when each of the five reels come to rest.

#### PARTICULARS

	Number of winning symbols			
	2	3	4	5
Symbol	Prizes (credits)			
<b>9</b>	2	5	25	100
<b>10</b>	0	2	25	100
<b>Jack</b>	0	5	25	100
<b>Queen</b>	0	5	25	100
<b>King</b>	0	5	50	100
<b>Ace</b>	0	10	50	125
<b>Octopus</b>	0	10	75	250
<b>Fish school</b>	0	10	50	250
<b>Starfish</b>	0	15	100	400



<b>Treasure Chest</b>	2	5	50	400
<b>Turtle</b>	2	25	100	750
<b>Seahorse</b>	2	25	100	750
<b>Sunrise</b>	10	200	2000	9000

10. By reason of the Oversized Reel Feature of the Dolphin Treasure EGM, the probability of achieving a winning result of five matching symbols on a payline (or a combination of matching symbols and the Sunrise symbol, which operates as a 'wild' and may substitute for any symbol on a payline to form a win) is significantly less than:
- (a) would be the case if the Dolphin Treasure EGM did not have the Oversized Reel Feature; and
  - (b) that which members of the class of persons who play ~~electronic gaming machines~~ EGMs would expect based on the Equal Reel Size Representation.

### **PARTICULARS**

The most significant winning result consists of five matching Sunrise symbols. Only one such symbol appears on each reel of the Dolphin Treasure EGM. In the case of the configuration of the Dolphin Treasure EGM at Crown Casino bearing serial number 679405 (which has 30 symbol positions on each of the first four reels, and 44 on the fifth), the probability of a Sunrise symbol coming to rest on a particular payline can be expressed as a fraction where the demoninator is dictated by the number of symbol positions on that reel, so that (rounded to 4 places):

$$\underline{\text{Probability of 5 Sunrises} = 1/30 \times 1/30 \times 1/30 \times 1/30 \times 1/44 = 2.806 \times 10^{-8}}$$

Whereas, if the Dolphin Treasure EGM had five reels all of 30 symbol positions, the probability of five Sunrises coming to rest on a particular payline would be significantly greater, as follows:

$$\text{Probability of 5 Sunrises} = 1/30 \times 1/30 \times 1/30 \times 1/30 \times 1/30 = 4.115 \times 10^{-8}$$

Further particulars will be provided after discovery.

11. By reason of the Starved Reel Feature of the Dolphin Treasure EGM, the probability of achieving a winning result of five matching symbols (or a combination of matching symbols and the Sunrise symbol, which operates as a 'wild' and may substitute for any symbol on a payline to form a win) is significantly less than:
- (a) would be the case if the Dolphin Treasure EGM did not have the Starved Reel Feature; and
  - (b) that which members of the class of persons who play ~~electronic gaming machines~~ EGMs would expect based on the Equal Symbol Distribution Representation.

### **PARTICULARS**

In the case of the configuration of the Dolphin Treasure EGM at Crown Casino bearing serial number 679405, in the absence of the Starved Reel Feature, an available configuration of that EGM (**counterfactual configuration**) would be as follows:

<b><u>Reels of the Dolphin Treasure EGM</u></b>						<b><u>Total for each Symbol</u></b>
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	
<u>Symbol</u>	<u>Number of symbols per reel</u>					
<u>9</u>	<u>2</u>	<u>2</u>	<u>3</u>	<u>2</u>	<u>4</u>	<u>13</u>

<b><u>10</u></b>	<b><u>3</u></b>	<b><u>3</u></b>	<b><u>2</u></b>	<b><u>3</u></b>	<b><u>4</u></b>	<b><u>15</u></b>
<b><u>Jack</u></b>	<b><u>4</u></b>	<b><u>3</u></b>	<b><u>3</u></b>	<b><u>3</u></b>	<b><u>5</u></b>	<b><u>18</u></b>
<b><u>Queen</u></b>	<b><u>3</u></b>	<b><u>3</u></b>	<b><u>3</u></b>	<b><u>3</u></b>	<b><u>5</u></b>	<b><u>17</u></b>
<b><u>King</u></b>	<b><u>3</u></b>	<b><u>3</u></b>	<b><u>3</u></b>	<b><u>3</u></b>	<b><u>3</u></b>	<b><u>15</u></b>
<b><u>Ace</u></b>	<b><u>2</u></b>	<b><u>2</u></b>	<b><u>2</u></b>	<b><u>3</u></b>	<b><u>4</u></b>	<b><u>13</u></b>
<b><u>Octopus</u></b>	<b><u>2</u></b>	<b><u>2</u></b>	<b><u>3</u></b>	<b><u>2</u></b>	<b><u>4</u></b>	<b><u>13</u></b>
<b><u>Fish school</u></b>	<b><u>2</u></b>	<b><u>3</u></b>	<b><u>3</u></b>	<b><u>3</u></b>	<b><u>4</u></b>	<b><u>15</u></b>
<b><u>Starfish</u></b>	<b><u>2</u></b>	<b><u>2</u></b>	<b><u>2</u></b>	<b><u>2</u></b>	<b><u>3</u></b>	<b><u>11</u></b>
<b><u>Treasure Chest</u></b>	<b><u>1</u></b>	<b><u>1</u></b>	<b><u>1</u></b>	<b><u>1</u></b>	<b><u>1</u></b>	<b><u>5</u></b>
<b><u>Turtle</u></b>	<b><u>3</u></b>	<b><u>2</u></b>	<b><u>2</u></b>	<b><u>2</u></b>	<b><u>3</u></b>	<b><u>12</u></b>
<b><u>Seahorse</u></b>	<b><u>2</u></b>	<b><u>3</u></b>	<b><u>2</u></b>	<b><u>2</u></b>	<b><u>3</u></b>	<b><u>12</u></b>
<b><u>Sunrise</u></b>	<b><u>1</u></b>	<b><u>1</u></b>	<b><u>1</u></b>	<b><u>1</u></b>	<b><u>1</u></b>	<b><u>5</u></b>
<b><u>TOTAL</u></b>	<b><u>30</u></b>	<b><u>30</u></b>	<b><u>30</u></b>	<b><u>30</u></b>	<b><u>44</u></b>	

Comparing the actual configuration of the Dolphin Treasure EGM at Crown Casino bearing serial number 679405, particularised under paragraph 7 above, with the above counterfactual configuration of that EGM in the absence of the Starved Reel Feature, the probabilities of five matching symbols coming to rest on a particular payline are significantly greater in the case of the counterfactual configuration, for all symbols save for Ace, Treasure Chest and Sunrise (which have the same probability) as follows:

<u>Symbol</u>	<u>Actual</u>	<u>Counterfactual</u>
<u>9</u>	<u>1.79574 x 10<sup>-6</sup></u>	<u>2.6936 x 10<sup>-6</sup></u>
<u>10</u>	<u>2.6936E x 10<sup>-6</sup></u>	<u>6.06061 x 10<sup>-6</sup></u>
<u>Jack</u>	<u>6.28507 x 10<sup>-6</sup></u>	<u>15.1515 x 10<sup>-6</sup></u>
<u>Queen</u>	<u>3.14254 x 10<sup>-6</sup></u>	<u>11.3636 x 10<sup>-6</sup></u>
<u>King</u>	<u>3.367 x 10<sup>-6</sup></u>	<u>6.81818 x 10<sup>-6</sup></u>
<u>Ace</u>	<u>2.6936 x 10<sup>-6</sup></u>	<u>2.6936 x 10<sup>-6</sup></u>
<u>Octopus</u>	<u>1.79574 x 10<sup>-6</sup></u>	<u>2.6936 x 10<sup>-6</sup></u>
<u>Fish School</u>	<u>3.367 x 10<sup>-6</sup></u>	<u>6.06061 x 10<sup>-6</sup></u>
<u>Starfish</u>	<u>8.97868 x 10<sup>-7</sup></u>	<u>13.468 x 10<sup>-7</sup></u>
<u>Treasure Chest</u>	<u>2.80584 x 10<sup>-8</sup></u>	<u>2.80584 x 10<sup>-8</sup></u>
<u>Turtle</u>	<u>1.3468 x 10<sup>-6</sup></u>	<u>2.0202 x 10<sup>-6</sup></u>
<u>Seahorse</u>	<u>1.12233 x 10<sup>-6</sup></u>	<u>2.0202 x 10<sup>-6</sup></u>
<u>Sunrise</u>	<u>2.80584 x 10<sup>-8</sup></u>	<u>2.80584 x 10<sup>-8</sup></u>

Equivalent particulars for the ten further configurations of the Dolphin Treasure EGMs at Crown Casino, are furnished with Maurice Blackburn's letter dated 23 December 2016.

### **C. DOLPHIN TREASURE – RETURN TO PLAYER INFORMATION**

12. The Dolphin Treasure EGMs have a button labelled “i” below the video display screen, which when pressed, causes the display of electronic game information on the video screen of the Dolphin Treasure EGM (the **Game Information**).

13. The Game Information for the Dolphin Treasure EGMs that are available for play by members of the public at Crown Casino states, the Total Theoretical Return to Player of This Game = 87.83% (the **Return to Player Information**).
14. The Return to Player Information conveys a representation to a person playing the Dolphin Treasure EGM that:
  - (a) the risk in statistical terms that the person is undertaking by playing the Dolphin Treasure EGM is that the person will only retain 87.83% of the total money he or she wagers in any one session of play; and
  - (b) the risk in statistical terms that the person is undertaking by playing the Dolphin Treasure EGM is that the person will lose 12.17% of the total money he or she wagers in the session.(the **Risk Representation**).
15. In fact, contrary to the Risk Representation:
  - (a) the Return to Player Information reflects the return to the venue operator calculated by reference to a cycle of operation of the Dolphin Treasure EGM involving all possible permutations of play, a cycle that is irrelevant to the actual time spent by any one player playing the Dolphin Treasure EGM in any one session of play;
  - (b) to the extent that the figures 87.83% and 12.17% have any relevance to an individual player, 12.17% is an indication of the most probable average loss each time the button is pressed causing the symbols on the reels of the Dolphin Treasure EGM to be redistributed;
  - (c) this means that the most probable aggregated loss after several redistributions of the symbols on the reels of the Dolphin Treasure EGM is far higher than 12.17% of the total amount wagered in the session;

- (d) by virtue of the matters alleged in paragraphs (b) and (c) above, when a person plays a session on the Dolphin Treasure EGM consisting of many redistributions of the symbols on its reels, it is most probable that he or she will lose virtually all the total amount wagered in the session.

**D. CONDUCT OF CROWN – DOLPHIN TREASURE EGM**

- 16. Crown presently makes available the Dolphin Treasure EGM, in trade or commerce, to be played by members of the public at Crown Casino (and has so made it available since a date currently unknown to the applicant).
- 17. By making the Dolphin Treasure EGM available for play at Crown Casino, Crown has made the following representations to persons playing the Dolphin Treasure EGM:
  - (a) the Equal Reel Size Representation;
  - (b) the Equal Symbol Distribution Representation; and/or
  - (c) the Risk Representation.
- 18. The Oversized Reel Feature and the Starved Reel Feature are not apparent to a person playing the Dolphin Treasure EGM at Crown Casino.
- 19. Each of the Equal Reel Size Representation, the Equal Symbol Distribution Representation and the Risk Representation were made by Crown in trade or commerce.
- 20. By virtue of the matters alleged in paragraph 7(a) and 8 above, the Equal Reel Size Representation is misleading or deceptive, or likely to mislead or deceive, players of the Dolphin Treasure EGM.
- 21. By virtue of the matters alleged in paragraph 7(b) and 8 above the Equal Symbol Distribution Representation is misleading or deceptive, or likely to mislead or deceive, players of the Dolphin Treasure EGM.

22. By virtue of the matters alleged in paragraph 15 above, the Risk Representation is misleading or deceptive, or likely to mislead or deceive, players of the Dolphin Treasure EGM.
23. In the premises:
- (a) the Equal Reel Size Representation was made by Crown in breach of s 18 of the Australian Consumer Law, further or alternatively s 52 of the *Trade Practices Act 1974* (Cth) (applicable under item 6 of Schedule 7 to the *Trade Practices Amendment (Australian Consumer Law) Act (No 2) 2010*) (the **TPA**);
  - (b) the Equal Symbol Distribution Representation was made by Crown in breach of s 18 of the Australian Consumer Law, further or alternatively s 52 of the TPA; and
  - (c) the Risk Representation was made by Crown in breach of s 18 of the Australian Consumer Law, further or alternatively s 52 of the TPA.
24. Further or in the alternative, by making the Dolphin Treasure EGM available for play at Crown Casino knowing of, or otherwise by reason of, the matters alleged in paragraphs 5, 6(a), 7(a), 8 to 10, 16, 17(a), 18 and 19 above, Crown has engaged in conduct in trade or commerce that is misleading or deceptive, or likely to mislead or deceive, in contravention of s 18 of the Australian Consumer Law, further or alternatively s 52 of the TPA.

### **PARTICULARS**

Crown's knowledge of the matters alleged in paragraphs 5, 6(a), 8, 9, 16, 17(a), 18 and 19 is to be inferred from the fact that it operates the Crown Casino at which the Dolphin Treasure EGMs are made available for play by members of the public.

Since 21 May 2014, Crown's knowledge of the matters alleged in paragraph 7(a) is to be inferred from the availability in the public domain of an article by Kevin Harrigan, Vance MacLaren, Dan Brown, Mike J. Dixon and Charles Livingstone entitled 'Games of chance or masters of illusion: multiline slots design may promote cognitive distortions'.

published in *International Gambling Studies* on 21 May 2014. A copy of the article is in the possession of the solicitors for the Applicant and may be inspected by appointment.

Further, if Crown is (or has been) in possession of the probability accounting records relating to the game sets programmed into the Dolphin Treasure EGMs that are, or have been, available for play at Crown Casino, Crown has knowledge of the matters alleged in paragraph 7(a).

Further, Crown has knowledge of the matters alleged in paragraphs 5, 6(a), 7(a), 8, 10, 17(a) and 18 by reason of its receipt of the letter of demand dated 5 September 2016 and the service of the statement of claim. A copy of the letter of demand is in the possession of the Applicant's solicitors and may be inspected by prior appointment.

Further particulars may be provided following discovery.

25. Further or in the alternative, by making the Dolphin Treasure EGM available for play at Crown Casino knowing of, or otherwise by reason of, the matters alleged in paragraphs 5, 6(b), 7(b), 8 to 10, 16, 17(b), 18 and 19 above, Crown has engaged in conduct in trade or commerce that is misleading or deceptive, or likely to mislead or deceive, in contravention of s 18 of the Australian Consumer Law, further or alternatively s 52 of the TPA.

### **PARTICULARS**

Crown's knowledge of the matters alleged in paragraphs 5, 6(b), 8, 9, 16, 17(b), 18 and 19 is to be inferred from the fact that it operates the Crown Casino at which the Dolphin Treasure EGMs are made available for play by members of the public.

Since 21 May 2014, Crown's knowledge of the matters alleged in paragraph 7(b) is to be inferred from the availability in the public domain of an article by Kevin Harrigan, Vance MacLaren, Dan Brown, Mike J. Dixon and Charles Livingstone entitled 'Games of chance or masters of illusion: multiline slots design may promote cognitive distortions', published in *International Gambling Studies* on 21 May 2014. A copy of the article is in the possession of the solicitors for the Applicant and may be inspected by appointment.



Further, if Crown is (or has been) in possession of the probability accounting records relating to the game sets programmed into the Dolphin Treasure EGMs that are, or have been, available for play at Crown Casino, Crown has knowledge of the matters alleged in paragraph 7(b).

Further, Crown has knowledge of the matters alleged in paragraphs 5, 6(b), 7(b), 8, 10, 17(b) and 18 by reason of its receipt of the letter of demand dated 5 September 2016 and the service of the statement of claim. A copy of the letter of demand is in the possession of the Applicant's solicitors and may be inspected by prior appointment.

Further particulars may be provided following discovery.

26. Further or in the alternative, by making the Dolphin Treasure EGM available for play at Crown Casino knowing of, or otherwise by reason of, the matters alleged in paragraphs 12 to 15, 16, 17(c), 18 and 19 above, Crown has engaged in conduct in trade or commerce that is misleading or deceptive, or likely to mislead or deceive, in contravention of s 18 of the Australian Consumer Law, further or alternatively, s 52 of the TPA.

### **PARTICULARS**

Crown's knowledge of the matters alleged in paragraphs 12 to 15, 16, 17(c), 18 and 19 is to be inferred from the fact that it operates the Crown Casino at which the Dolphin Treasure EGMs are made available for play by members of the public.

Further, Crown has knowledge of the matters alleged in paragraphs 12 to 15 and 17(c) by reason of its receipt of a letter of demand dated 18 October 2016 and service of the statement of claim. A copy of the letter of demand is in the possession of the solicitors for the Applicant and may be inspected by prior appointment.

Further particulars may be provided following discovery.

**DA. UNCONSCIONABLE CONDUCT OF CROWN**

26A Crown provides a variety of gambling activities, including electronic gaming machines, to members of the public at Crown Casino (the **Services**).

26B Crown made, and continues to make, the Dolphin Treasure EGM available for play at Crown Casino when the Dolphin Treasure EGM had or has (as the case may be) the following features:

(a) the Oversized Reel Feature;

(b) the Starved Reel Feature;

(c) the Return to Player Information;

(d) sounds and visual stimuli which are displayed whenever sufficient symbols align in a manner that results in the player receiving a return; and

(e) losses appear as wins, in that the machine displays the same sounds and visual stimuli whenever sufficient symbols align to result in the player receiving a return, whether or not the amount won exceeds the amount wagered on that particular play (**Losses Appear as Wins**),

(the term "**Impugned Conduct**" is used to refer to the conduct pleaded at paragraph 26B).

26C The Impugned Conduct was conduct engaged in by Crown in trade or commerce within the meaning of ss 20 and 21 of the *Australian Consumer Law*.

26D The Impugned Conduct was in connection with the supply or possible supply of the Services.

26E A very substantial number of players of EGMs, including the Dolphin Treasure EGM, at Crown Casino are vulnerable to becoming habituated and/or addicted to playing EGMs, including the Dolphin Treasure EGM (**Vulnerable Players**).

**Particulars**

There is a body of scientific literature on the motivations of players of EGMs to the effect that they play to escape, cognitively and physically, from, or otherwise cope with, some of the negative aspects of their lives. In its 2010 inquiry report into gambling, the Productivity Commission found that “The risks of problem gambling are low for people who only play lotteries and scratchies, but rise steeply with the frequency of gambling on table games, wagering and, especially, gaming machines”.

Vulnerable Players are those who would fall within 3-7 on the Problem Gambling Severity Index (meaning “Moderate level of problems leading to some negative consequences”) or 8+ on the Problem Gambling Severity Index (meaning “Problem gambling with negative consequences and a possible loss of control”). According to the Productivity Commission in its 2010 inquiry report into gambling, “The risks of problem gambling increase significantly with the frequency of playing EGMs. The Commission estimates that among those who play weekly or more on gaming machines, around 15 per cent are problem gamblers with an additional 15 per cent at ‘moderate risk’”. According to the Productivity Commission the persons described as problem gamblers (15% of those playing EGMs regularly) contribute 42% of the moneys expended on EGMs and the persons described as moderate risk gamblers (ie 15% of those playing EGMs regularly) contribute 20% of the moneys expended on EGMs.

Further particulars may be provided following discovery and expert evidence.

26F Vulnerable Players have a special disability or disadvantage vis-à-vis Crown.

**Particulars**

The ability of Vulnerable Players to make a judgment as to their best interests at the time of playing the Dolphin Treasure EGM was seriously diminished by the following circumstances:

- (a) Their lack of appreciation of the Oversized Reel Feature and the Starved Reel Feature as set out in paragraphs 8 and 18 above.
- (b) Their vulnerability to habituation or addiction as set out in paragraph 26E above.
- (c) The neurological, psychological and physiological effects of the design of EGMs including the Dolphin Treasure EGM, which have a habituating and/or addictive effect on Vulnerable Players through both operant conditioning and classical conditioning. Further particulars will be provided following discovery and the filing of expert evidence.

26G Crown knew or ought to have known of Vulnerable Players' special disability or disadvantage.

**Particulars**

Crown's knowledge is to be inferred from:

- (a) the fact it operates Crown Casino at which Dolphin Treasure EGMs are made available for play by members of the public, and for that purpose monitor the takings and use of Dolphin Treasure EGMs.
- (b) Articles on the neurological, psychological and physiological effects of EGMs are available in the public domain.

Further particulars may be provided following discovery.

26H By engaging in the Impugned Conduct, Crown took advantage of Vulnerable Players' special disability or disadvantage.

#### **Particulars**

The Impugned Conduct has the effect of habituating and/or addicting Vulnerable Players to play the Dolphin Treasure EGM.

26I By reason of the matters set out in paragraphs 26A, 26B, 26F, 26G and 26H, Crown, in trade or commerce, engaged in conduct that is unconscionable within the meaning of the unwritten law within the meaning of s 20 of the *Australian Consumer Law*.

26J Further or alternatively, by reason of the matters set out in 26F, 26G and 26H, the Impugned Conduct was unconscionable in all the circumstances.

#### **Particulars**

The unconscionability of the Impugned Conduct arose from circumstances including the following:

- (a) Taking advantage of the special disability or disadvantage of Vulnerable Players as set out in paragraphs 26F and 26H above.
- (b) The knowledge of Crown as set out in section 26G above.
- (c) The Oversized Reel Feature, the Starved Reel Feature and Losses Appear as Wins are unfair tactics that are not apparent to Vulnerable Players.
- (d) The Oversized Reel Feature and the Starved Reel Feature were not disclosed to Vulnerable Players by Crown.
- (e) The Return to Player Information conveyed a misleading or deceptive representation to Vulnerable Players.

26K By reason of the matters set out in paragraphs 26A, 26B, 26C, 26D and 26J, Crown, in trade or commerce, in connection with the supply or possibly supply of services to members of the public in Crown Casino, engaged in conduct that was, in all the

circumstances, unconscionable within the meaning of s 21 of the *Australian Consumer Law*.

26L Further or alternatively, by engaging in the Impugned Conduct, Crown engaged in a system of conduct or pattern of behaviour constituting unconscionable conduct in breach of s 21 of the *Australian Consumer Law*.

#### **E. FUTURE CONDUCT OF CROWN**

27. Unless restrained, Crown will: ~~continue to make available for play by members of the public:~~

(a) continue to make the Dolphin Treasure EGM available for play by members of the public; and

(b) make available for play, or continue to make available for play, by members of the public other EGMs which by virtue of:

(i) displaying images substantially the same as the Even Reel Image and playing sounds substantially the same as the Spinning Reel Sound, would convey to a person playing the other EGMs:

(A) a representation substantially the same as or to the effect of the Equal Reel Size Representation; and

(B) a representation substantially the same as or to the effect of the Equal Symbol Distribution Representation;

(ii) displaying the Return to Player Information when the “I” button is pressed, would convey to a person playing the other EGMs a representation substantially the same as or to the effect of the Risk Representation, and would:

- (iii) have reels configured so as to be substantially the same as or to the effect of the Oversized Reel Feature;
- (iv) have distribution of symbols across the reels that would be substantially the same as or to the effect of the Starved Reel Feature;
- (v) involve a probability of loss from a session greatly in excess of that represented,

and the matters alleged in subparagraphs (b)(iii), (iv) and (v) would not be apparent to a person playing the other EGMs.

27A Unless restrained, Crown will continue to engage in the Impugned Conduct with the knowledge of:

(a) Vulnerable Players' special disability or disadvantage; and

(b) the effect of the Impugned Conduct on Vulnerable Players,

which Crown will acquire by reason of or in the course of this litigation.

#### **F. CONDUCT OF ARISTOCRAT – DOLPHIN TREASURE EGM**

28. By virtue of the matters alleged in paragraphs 4 to 15, and 20 to 22 above, the supply by Aristocrat of the Dolphin Treasure EGMs to Crown and/or the other gaming venue operators is conduct in trade or commerce that is likely to mislead or deceive in contravention of s 18 of the Australian Consumer Law, further or alternatively s 52 of the TPA.

29. Further or in the alternative, at the time of supplying the Dolphin Treasure EGMs to Crown, Aristocrat knew:

- (a) that when in play, the Dolphin Treasure EGMs displayed the Even Reel Image and made the Spinning Reel Sound;

- (b) that when the “i” button was pressed, the Return to Player Information was displayed;
- (c) that the Dolphin Treasure EGMs incorporated the Oversized Reel Feature, the Starved Reel Feature and involved a probability of loss from a session of play greatly in excess of that represented;
- (d) that Crown would make the Dolphin Treasure EGMs available for play by members of the public at Crown Casino and would thereby make the Equal Reel Size Representation, the Equal Symbol Distribution Representation and the Risk Representation to members of the public playing the Dolphin Treasure EGM;
- (e) the Oversized Reel Feature and the Starved Reel Feature were not apparent to a person playing the Dolphin Treasure EGM;
- (f) that by virtue of the Oversized Reel Feature of the Dolphin Treasure EGMs, the Equal Reel Size Representation would be misleading or deceptive or likely to mislead or deceive;
- (g) that by virtue of the Starved Reel Feature of the Dolphin Treasure EGMs, the Equal Symbol Distribution Representation would be misleading or deceptive or likely to mislead or deceive; and
- (h) that by virtue of play of the Dolphin Treasure EGM involving a probability of loss from a session greatly in excess of that represented, the Risk Representation would be misleading or deceptive or likely to mislead or deceive.

### **PARTICULARS**

Aristocrat’s knowledge of the pleaded facts is to be inferred from its role as manufacturer of the Dolphin Treasure EGM.



Further, Aristocrat has knowledge of the pleaded facts by reason of its receipt of the letters of demand dated 5 September 2016 and 18 October 2016 and the service upon it of the statement of claim. Copies of the letters of demand are in the possession of the Applicant's solicitors and may be inspected by prior appointment.

Further particulars may be provided following discovery.

30. In the premises alleged in paragraph 29, Aristocrat:
- (a) aided, abetted, counselled or procured; and/or
  - (b) has been, directly or indirectly, knowingly concerned in, or party to,
- the contraventions of s 18 of the Australian Consumer Law and/or s 52 of the TPA by Crown alleged in paragraphs 23 to 26 above.

30A Further or in the alternative, at the time of supplying the Dolphin Treasure EGMs to Crown, Aristocrat:

- (a) knew the matters alleged in paragraph 29 above; and
- (b) also knew:
  - (i) that Vulnerable Players have the vulnerability alleged at paragraph 26E above; and
  - (ii) that a feature of the Dolphin Treasure EGM is Losses Appear as Wins.

### **PARTICULARS**

Aristocrat's knowledge of the pleaded facts is to be inferred from its role as manufacturer of the Dolphin Treasure EGM.

Further, articles on the vulnerability of Vulnerable Players are available in the public domain.

Further particulars may be provided following discovery.

30B In the premises alleged in paragraph 30A, Aristocrat:

(a) aided, abetted, counselled or procured; and/or

(b) has been, directly or indirectly, knowingly concerned in, or party to,

the contraventions of ss 20 and/or 21 of the Australian Consumer Law alleged in paragraphs 26I, 26K and 26L above.

**FA. UNCONSCIONABLE CONDUCT OF ARISTOCRAT**

30C At all material times, Aristocrat has manufactured and continues to manufacture the Dolphin Treasure EGM for the purpose of enabling, inter alia, casinos and other licensed gambling entities, including Crown Casino, to provide the Dolphin Treasure EGM for gambling by members of the public, when the Dolphin Treasure EGM has the following features:

(a) the Oversized Reel Feature;

(b) the Starved Reel Feature;

(c) the Return to Player Information;

(d) sounds and visual stimuli are displayed whenever sufficient symbols align to result in the player receiving a return; and

(e) Losses Appear as Wins (**Aristocrat's Impugned Conduct**).

30D Aristocrat's Impugned Conduct was conduct engaged in by Aristocrat in trade or commerce within the meaning of ss 20 and 21 of the *Australian Consumer Law*.

30E Aristocrat's Impugned Conduct was in connection with:

(a) the supply or possible supply of the gaming services to members of the public at casinos, including Crown Casino;

- (b) further or alternatively, the supply or possible supply of goods to casinos, including Crown Casino.

30F Vulnerable Players have a special disability or disadvantage vis-à-vis Aristocrat.

**Particulars**

The Applicant refers to and repeats the particulars to paragraph 26F above.

30G Aristocrat knew or ought to have known of Vulnerable Players' special disability or disadvantage.

**Particulars**

Aristocrat's knowledge is to be inferred from:

- (a) its position as the manufacturer of the Dolphin Treasure EGM.
- (b) articles on the neurological, psychological and physiological effects of EGMs are available in the public domain.

Further particulars may be provided following discovery.

30H By engaging in Aristocrat's Impugned Conduct, Aristocrat took advantage of Vulnerable Players' special disability or disadvantage.

**Particulars**

Aristocrat's Impugned Conduct has the effect of habituating and/or addicting Vulnerable Players to play the Dolphin Treasure EGM.

30I By reason of the matters set out in paragraphs 30C, 30D, 30F, 30G and 30H, Aristocrat, in trade or commerce, engaged in conduct that is unconscionable within the meaning of the unwritten law within the meaning of s 20 of the *Australian Consumer Law*.

30J Further or alternatively, by reason of the matters set out in 30F, 30G and 30H, Aristocrat's Impugned Conduct was unconscionable in all the circumstances.

### **Particulars**

The unconscionability of Aristocrat's Impugned Conduct arose from circumstances including the following:

- (a) The special disability or disadvantage of Vulnerable Players as set out in paragraph 30F above.
- (b) The knowledge of Aristocrat as set out in section 30G above.
- (c) The Oversized Reel Feature, the Starved Reel Feature and Losses Appear as Wins are unfair tactics that are not apparent to Vulnerable Players.
- (d) The Oversized Reel Feature and the Starved Reel Feature were not disclosed to Vulnerable Players by Aristocrat.
- (e) The Return to Player Information conveyed a misleading or deceptive representation to Vulnerable Players.

30K By reason of the matters set out in paragraphs 30C, 30D, 30E and 30J, Aristocrat, in trade or commerce, in connection with the supply or possibly supply of goods to Crown and/or services to members of the public in Crown Casino, engaged in conduct that was, in all the circumstances, unconscionable within the meaning of s 21 of the *Australian Consumer Law*.

30L Further or alternatively, by engaging in Aristocrat's Impugned Conduct, Aristocrat engaged in a system of conduct or pattern of behaviour constituting unconscionable conduct in breach of s 21 of the *Australian Consumer Law*.

### **G. FUTURE SUPPLY BY ARISTOCRAT**

31. Unless restrained, Aristocrat will ~~continue to supply to Crown and other gaming venues in Australia:~~

- (a) continue to supply to Crown the Dolphin Treasure EGM for gambling by members of the public; and
- (b) supply, or continue to supply, to other gaming venues in Australia the Dolphin Treasure EGM for gambling by members of the public; and
- (c) supply, or continue to supply, to Crown or other gaming venues in Australia other electronic gaming machines (EGMs) for gambling by members of the public which by virtue of:
  - (i) displaying images substantially the same as the Even Reel Image and playing sounds substantially the same as the Spinning Reel Sound, would convey to a person playing the other EGMs:
    - (A) a representation substantially the same as or to the effect of the Equal Reel Size Representation; and
    - (B) a representation substantially the same as or to the effect of the Equal Symbol Distribution Representation;
  - (ii) displaying the Player Return Information when the “1” button is pressed, would convey to a person playing the other EGMs a representation substantially the same as or to the effect of the Risk Representation, and would:
    - (iii) have reels configured so as to be substantially the same as the Oversized Reel Feature;
    - (iv) have distribution of symbols across the reels that would be substantially the same as the Starved Reel Feature;
    - (v) involve a probability of loss from a session greatly in excess of that represented,

and the matters alleged in subparagraphs (b)(iii), (iv) and (v) would not be apparent to a person playing the other EGMs.

31A Unless restrained, Aristocrat will continue to engage in Aristocrat's Impugned Conduct with the knowledge of:

(a) Vulnerable Players' special disability or disadvantage; and

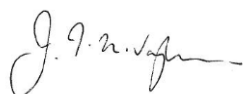
(b) the effect of the Impugned Conduct on Vulnerable Players,

which Aristocrat will acquire by reason of or in the course of this litigation.

**H. RELIEF**

32. The applicant claims the relief set out in the originating application.

Date: ~~26 October~~ 23 December 2016



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Signed by Jacob Varghese

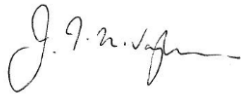
Lawyer for the Applicant

This pleading was amended by Ronald Merkel, Peter Gray, Zoe Maud and Christopher Tran.

**Certificate of lawyer**

I Jacob Varghese certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: ~~26 October~~ 23 December 2016



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Signed by Jacob Varghese  
Lawyer for the Applicant