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Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA

Registrar

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Form NCF1

CONCISE STATEMENT

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: NEW SOUTH WALES
DIVISION: COMMERCIAL AND CORPORATIONS **NO NSD OF 2022**

CHIEF EXECUTIVE OFFICER OF THE AUSTRALIAN TRANSACTION REPORTS AND ANALYSIS CENTRE
Applicant

SKYCITY ADELAIDE PTY LTD
ABN: 72 082 362 061
Respondent

A. IMPORTANT FACTS GIVING RISE TO THE CLAIM

The money laundering risks of casinos

1. SkyCity Adelaide Pty Ltd (**SCA**) provides designated services that are regulated by the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (the **Act**). At all times, SkyCity Entertainment Group Limited (**SCEG)** was the parent company of SCA. The designated services provided by SCA involve higher money laundering and terrorism financing (**ML/TF**) risks:

   a. SCA provides more than just gambling services to customers. It provides financial services that facilitate the movement of money into and out of the casino environment, including across international borders. These financial services are high value and high volume.

   b. Cash is used extensively for gambling services at the casino. Cash can also be transferred into and out of the casino. The ownership of cash is less transparent than the ownership of other forms of money, and is therefore particularly vulnerable to ML/TF.

   c. SCA moves money quickly by facilitating high volume, high frequency and high value transactions almost 24 hours a day, 7 days a week, including across international borders.

   d. The designated services provided to casino customers involve long and complex transactional value chains including receipt of funds, account management, gambling activities and outward disbursement of funds. These transactional chains also involve different channels and jurisdictions.

   e. Within these complex transaction chains, money used for gambling activities can be moved through further layers involving:

      i. different and highly transferrable casino value instruments such as chips and tickets;

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   ii. multiple games, including electronic games that are not face-to-face; and
   iii. gaming accounts.

f. Adding to the risk of layering through complex transaction chains, SCA facilitated the transfer of money:
   i. between gaming accounts held by different customers;
   ii. to and from third parties via gaming accounts by way of remittance through SCA and SCEG bank accounts; and
   iii. from third parties by way of remittance from gaming accounts at a SCEG casino to gaming accounts at SCA (the **SkyCity New Zealand channel**).

g. SCA provided designated services to higher risk customers, including to international customers through high risk junket channels and individual commission programs.

h. International VIP customers often relied on credit or loans provided by SCA, as a means of accessing funds on arrival at the casino. Loans enabled funds held in foreign jurisdictions (by customers or third parties) to be used in Australia without the need for a cross-border transfer. Loans could be repaid by third parties.

i. Casinos are exposed to significant money laundering vulnerabilities and ML/TF typologies, including structuring, smurfing, cuckoo smurfing, offsetting, even-betting, quick/high turnover and cashing out with minimal betting. Gaming accounts can also be used to store illicit money outside the banking system.

2. In the absence of appropriate risk-based controls, these combined risks made SCA vulnerable to criminal exploitation. This is because money could be moved into and out of the casino, and within the casino, in ways that lacked transparency as to the source and ownership of funds.

AML/CTF Programs

3. To manage these ML/TF risks, SCA was required by s 81 of the Act to adopt and maintain an Anti-Money Laundering and Counter-Terrorism Financing Program (**Program**). To meet the obligations under the Act, a reporting entity can adopt and maintain a **Standard Program**: s 84 of the Act.

Part A Programs

4. Part A of a Program must have the primary purpose of identifying, mitigating and managing the ML/TF risks reasonably faced by reporting entities with respect to designated services. Part A Programs must also meet the requirements set out in the *Anti-Money Laundering and Counter-Terrorism Financing Rules 2007* (Cth) (the **Rules**): s 84(2) of the Act (see paragraph 12 below).

5. Part A Programs are the framework through which Boards and senior management assess their ML/TF risks and determine their ML/TF risk appetite. They are the framework through which Boards and senior management determine the risk-based controls they will apply to mitigate and manage the ML/TF risks they choose to accept.

Part B Programs

6. Part B of a Program must set out the applicable customer identification procedures (**ACIPs**) for the purposes of the application of Part 2 of the Act to customers. Part B Programs must also meet the requirements of the Rules: s 84(3) of the Act (see paragraph 43 below).

7. Part B Programs set out the procedures through which a reporting entity collects and verifies information to enable it to know its customers (**KYC information**). ACIPs enable a reporting entity to verify the identity of its customers and to understand and assess the ML/TF risks they pose with respect to the provision of designated services.

The contraventions of s 81 of the Act - the failures to adopt and maintain a Program

8. From 7 December 2016, SCA purported to adopt and maintain a Standard Part A and Part B Program (the **Part A and Part B Programs**). At no time did SCA's Part A and Part B Programs meet the requirements of the Act and Rules, contrary to s 84 of the Act.

9. A reporting entity contravenes s 81 of the Act on each occasion that it provides a designated service where it does not have a Part A and Part B Program in place that meets the requirements of s 84 of the Act.

10. SCA has accordingly provided designated services in contravention of s 81 of the Act on and from 7 December 2016. These contraventions are too numerous to quantify and are ongoing.

11. SCA's non-compliance with ss 81 and 84 of the Act was long-standing, systemic and reflective of inadequate oversight by the SCEG Board or SCA Board and senior management. This non-compliance exposed SCA to the risk of being exploited by organised crime.

The Part A Program failures

12. In order to have the primary purpose of identifying, mitigating and managing the ML/TF risks reasonably faced by providing designated services (s 84(2)(a) of the Act) and to meet the requirements of the Rules (ss 84(2)(c) of the Act), SCA's Part A Program was required to:

    a. include a risk methodology that was capable of appropriately identifying and assessing the ML/TF risks of the designated services they provided;

    b. be aligned to the ML/TF risks they reasonably faced with respect to the provision of designated services, as assessed through the risk methodology;

    c. include or establish an appropriate approval and oversight framework;

    d. include appropriate risk-based systems and controls, capable of mitigating and managing the ML/TF risks with respect to all designated services, consistent with ML/TF risk appetite;

    e. include a risk-based transaction monitoring program to monitor the transactions of customers and to identify suspicious matters for the purposes of s 41 of the Act;

    f. include a risk-based enhanced customer due diligence (**ECDD**) program that applies to customers that pose higher ML/TF risks; and

    g. include appropriate systems and controls designed to ensure that reports required under Part 3 of the Act are given to AUSTRAC, namely suspicious matter reports (**SMRs**), threshold transaction reports (**TTRs**), and international funds transfer instructions (**IFTIs**).

13. From 7 December 2016, SCA failed to adopt and maintain a Part A Program that met each of the requirements in paragraph 12 for the following reasons.

ML/TF risk methodology

14. The Part A Programs did not include or incorporate an appropriate methodology:

    a. to appropriately assess the inherent ML/TF risks of the designated services provided: rr 8.1.3 and 8.1.4 of the Rules;

b. to measure the likelihood and impact of ML/TF risks with respect to designated services;

c. that covered all relevant risks and associated risk attributes reasonably faced by SCA with respect to designated services;

d. that had regard to the nature, size and complexity of the SCA business, including with respect to the ML/TF risks of complex transaction chains involving designated services;

e. that had appropriate regard to the risk factors of customer, channel and jurisdiction in assessing the ML/TF risks posed by each designated service: rrr 8.1.4(1), (2), (3) and (4) of the Rules; and

f. to assess the residual ML/TF risks of designated services, once risk-based controls had been applied: rr 8.1.3 and 8.1.4 of the Rules.

15. From June 2022, SCA started to develop a ML/TF risk methodology, but it is yet to be fully articulated and reflected in Standards included or incorporated by the Part A Program.

Alignment to current ML/TF risks

16. Once a reporting entity identifies the ML/TF risks it reasonably faces, and carries out an assessment of those risks in accordance with an appropriate ML/TF risk methodology, the reporting entity must align its Part A program to those risks as assessed. In aligning a Part A program to the ML/TF risks reasonably faced, a reporting entity must have regard to the nature, size and complexity of its business, and the ML/TF risks related to their designated services, customers, channels and the foreign jurisdictions with which they deal.

17. At no time were SCA's Part A Programs aligned to an appropriate assessment of the ML/TF risks it reasonably faced with respect to the provision of designated services. SCA purported to conduct ML/TF risk assessments but they were fundamentally deficient, did not cover all designated services and did not include key ML/TF risks reasonably faced: rr 8.1.5(3) and (4) of the Rules. Whilst, from June 2022, SCA has started to assess the ML/TF risks with respect to designated services, this process is not complete and controls in the Part A Program are yet to be aligned to an appropriate ML/TF risk assessment.

18. Casinos operate in dynamic ML/TF risk environments. At no time did SCA's Part A Programs include appropriate risk-based systems and controls to identify significant changes in ML/TF risks and to recognise such changes for the purposes of the Part A and Part B Programs. At no time did the Part A Programs include appropriate risk-based systems and controls to identify, mitigate and manage ML/TF risks arising from new designated services, channels or technologies, prior to their introduction: rr 8.1.5(5) of the Rules.

Approval and oversight

19. Prior to October 2021, the SCEG Board and senior management were responsible for the approval and oversight of the Part A Program. From 28 October 2021, the SCA Board assumed this responsibility.

20. A reporting entity the nature, size and complexity of SCA, having regard to the ML/TF risks it reasonably faces, cannot adopt and maintain a Part A Program that has the primary purpose of identifying, mitigating and managing ML/TF risks reasonably faced with respect to the provision of designated services in the absence of a framework in the Part A program that is designed to:

a. determine and set the reporting entity's ML/TF risk appetite;

b. set controls to ensure designated services are provided to customers consistent with that ML/TF risk appetite;

c. appropriately monitor management's performance against an appropriate ML/TF risk management framework, including the reporting entity's risk appetite;

d. ensure the Board receives and reviews management reports about new and emerging sources of ML/TF risk and about the measures management are taking to deal with those risks; and

e. establish appropriate ML/TF risk management capability frameworks, including with respect to roles and accountabilities, operational procedures, reporting lines, escalation procedures, assurance and review, and information management.

See ss 81, 84(2)(a) and 84(2)(c) of the Act, rr 8.1.3, 8.1.5(4), and Part 8.4 of the Rules.

21. Each of these features were fundamentally absent from SCA's Part A Programs from 7 December 2016. As a result, the SCEG/SCA Boards and senior management had no basis to be satisfied that the Part A Programs were operating as intended and that they had the primary purpose of identifying, mitigating and managing the ML/TF risks reasonably faced by the provision of designated services.

22. In the face of known and serious ML/TF risks, the SCEG Board or SCA Board and senior management failed to set the ML/TF risk appetite through the Part A Programs. They failed to adopt and maintain controls to ensure that designated services were provided within an appropriate ML/TF risk appetite. They failed to adopt controls to mitigate and manage the full range of ML/TF risks across all designated services - both gambling and financial.

23. The SCEG Board or SCA Board and senior management failed to establish appropriate AML/CTF capabilities and failed to invest in appropriate automated solutions. As a result, the Part A Programs were not capable, by design, of operating as intended.

24. In the absence of an appropriate framework for ML/TF risk oversight, SCA provided designated services through high risk channels and to high risk customers without appropriate risk-based controls.

25. These failures in oversight resulted in serious and systemic non-compliance with the Act over many years. These failures allowed high risk customers to move money in non-transparent ways with minimal due diligence on ML/TF risks. These failures exposed SCA to the risk of being exploited by organised crime.

26. From November 2022, the Part A Program has started to incorporate a framework for the management and oversight by SCA of the ML/TF risks reasonably faced with respect to the provision of designated services. However, controls in the Part A Program are yet to be aligned with an appropriate ML/TF risk assessment. Standards to operationalise and maintain the Part A Program are yet to be developed or approved. The SCA Board is not yet in a position to set its ML/TF risk appetite or to monitor SCA's performance against that risk appetite. Whilst ML/TF risk management capability frameworks are in the process of being developed, the uplift is ongoing. Consequently, the Part A Program does not yet enable the SCA Board and senior management to be satisfied that the Part A Program has the primary purpose of identifying, mitigating and managing ML/TF risks reasonably faced.

Risk-based systems and controls applying to all designated services to manage risk within appetite

27. Once a reporting entity identifies and assesses its inherent ML/TF risks and the Board sets its ML/TF risk appetite, the reporting entity must ensure that its Part A program includes appropriate risk-based systems and controls to mitigate and manage residual risks within that appetite.

28. These systems and controls must be aligned with, and proportionate to, the ML/TF risks reasonably faced by the reporting entity with respect to designated services.

29. In the absence of appropriate ML/TF risk assessments, SCA's Part A Programs were incapable by design of including appropriate risk-based systems and controls to mitigate and manage the ML/TF risks.

30. Among other failures, the Part A Programs did not include appropriate risk-based systems and controls to appropriately identify, mitigate and manage the ML/TF risks with respect to:

    a. gaming accounts;

    b. loans and loan repayments - including to higher risk junket operators and international VIP customers;

    c. designated remittance services - including cross-border remittance and remittance through higher risk channels such as the SCA and SCEG customer accounts and the SkyCity New Zealand channel;

    d. the exchange of money for casino value instruments such as chips and tickets (and vice-versa);

    e. table games and electronic gaming machines, including through EZYPlay guest cards;

    f. foreign currency exchange;

    g. designated services involving cash;

    h. designated services involving third parties;

    i. designated services provided through junket channels; and

    j. designated services provided through individual commission programs.

31. The Part A Programs had few preventative controls designed to enable SCA to mitigate and manage its ML/TF risks in respect of these designated services. The Part A controls were predominantly detective and included reliance on staff observation. The Part A controls were predominantly focussed on gambling services. Higher risk financial services, that permitted money to be moved into and out of the casinos, including across international borders, were not subject to appropriate risk-based controls. The Part A Programs did not include appropriate risk-based controls to manage channel risks, including risks associated with remittance and EZYPlay cards. EZYPlay cards were not issued in the name of a customer and facilitated transactions where the source of funds could not be known.

Transaction monitoring programs

32. SCA failed to include an appropriate risk-based transaction monitoring program in its Part A Programs to monitor the transactions of its customers and to identify suspicious matters, as required by Chapter 15 and r 8.1.3 of the Rules and s 84(2)(c) of the Act as follows:

    a. As SCA failed to appropriately identify and assess the ML/TF risks of its designated services, transaction monitoring was not aligned with and proportionate to the ML/TF risks of its business.

    b. The transaction monitoring programs were not capable by design of detecting well known ML/TF typologies and vulnerabilities.

    c. The transaction monitoring programs did not include or incorporate appropriate risk-based procedures to identify transactional activity that would require the risk ratings of certain customers to be elevated.

d. The transaction monitoring programs were largely manual, relying on review of manual reports and staff observation, with inadequate guidance or criteria. At no time did the transaction monitoring programs include or incorporate appropriate risk-based automated monitoring. This also meant that SCA was unable to monitor the movement of money through complex and layered transaction chains, including through higher risk remittance channels.

e. Manual transaction monitoring was not aligned to the nature, size and complexity of SCA's business, having regard to the ML/TF risks it reasonably faced.

f. The transaction monitoring programs did not include appropriate risk-based systems and controls that were capable of monitoring all of the designated services provided by SCA under tables 1 and 3, s 6 of the Act, as listed in paragraph 30.

g. The transaction monitoring programs did not include appropriate risk-based systems and controls to monitor the transactions of customers who received designated services through junket channels.

h. The transaction monitoring programs did not include appropriate assurance processes.

33. Transaction monitoring standards under the November 2022 Part A Program are yet to be developed and adopted.

Enhanced customer due diligence programs

34. SCA's Part A Programs did not include appropriate systems, controls and procedures to apply appropriate risk-based ECDD to customers who were:

a. determined to be high ML/TF risk;

b. foreign politically exposed persons (**PEPs**); or

c. the subject of a suspicion that had arisen for the purposes of s 41 of the Act.

(the **ECDD triggers**).

35. This was because:

a. The ECDD Programs did not include appropriate systems, controls and procedures to identify customers who were required under the Part A Program to be categorised high or significant risk, or who presented high risks, and to escalate them for ECDD as and when appropriate on a risk basis.

b. The Part A Programs were not capable of consistently identifying customers who were foreign PEPs.

c. Prior to September 2019, there were no written procedures to ensure that the ECDD Programs were applied when a suspicion arose for the purposes of s 41 of the Act.

d. The ECDD Programs relied upon the transaction monitoring programs to identify customers engaging in unusual or suspicious transactions, but the transaction monitoring programs were inadequate.

e. The ECDD Programs did not include or incorporate appropriate procedures or guidance on the suite of risk-based ECDD measures to apply in response to specific ECDD triggers. Nor was there guidance on the criteria against which customers would be reviewed.

f. The ECDD Programs did not include appropriate systems and controls to obtain, verify, analyse and record source of wealth and source of funds information with respect to customers.

g. The ECDD Programs were not supported by appropriate record keeping, including because SCA did not keep adequate records of ECDD completed on a customer, and there were no appropriate systems and processes requiring all relevant or potentially adverse information for SCA's customers to be escalated and recorded as part of the consideration of SCA's customer's ML/TF risk profile.

h. The ECDD Programs did not include appropriate systems and controls in relation to obtaining senior management approval for continuing business relationships with customers, or whether a transaction or transactions should be processed, having regard to the ML/TF risks reasonably faced.

   i. The ECDD Programs did not appropriately set out the ML/TF risk appetite that was acceptable with respect to customers.

   ii. There was no appropriate and consistent guidance for management in making such decisions.

36. ECDD standards under the November 2022 Part A Program are yet to be developed and adopted

Failure to have appropriate systems and controls to ensure SMR, TTR and IFTI reporting

37. SCA's Part A Programs did not include appropriate systems and controls designed to ensure compliance with its obligation to report SMRs, TTRs and IFTIs to AUSTRAC under ss 41, 43 and 45 of Part 3 of the Act, as required by r 8.9.1(2) of the Rules and s 84(2)(c) of the Act.

38. The systems and controls in SCA's Part A Programs for Part 3 reporting were deficient because:

a. The policies and guidance on identifying and assessing unusual or potentially suspicious matters were inadequate.

b. SCA did not have appropriate policies or procedures to ensure that it identified and reported suspicious transactions conducted by SCA customers through the SCEG customer accounts channel.

c. Escalation processes for unusual or suspicious activity were inadequate.

d. There were inadequate assurance processes regarding SMR obligations.

e. IFTI reporting at SCA was manual and not subject to appropriate assurance or oversight.

f. TTRs relating to activity on junket programs were likely to be reported under the junket operator's name rather than under the name of the junket player who conducted the transaction.

39. Standards under the November 2022 Part A Program to ensure compliance with SCA's Part 3 reporting obligations are yet to be developed and adopted. In particular, until standards for transaction monitoring are adopted, SCA is not in a position to ensure that it has systems and controls in its Part A Program that are designed to ensure compliance with SMR reporting obligations.

The junket and commission program channels

40. At all times prior to 12 April 2021, SCA provided high value designated services (both gambling and financial) through junket channels and through individual commission programs. Designated

services provided through these channels involved complex value chains including credit, remittance, gaming accounts and gambling. Junkets involved the movement of large amounts of money across borders and through multiple bank accounts, including by third parties and remitters. Money could be remitted across international borders in an offsetting process that bypassed the traditional banking system. The source and ownership of the funds of parties conducting transactions thought junket programs was often obscured. A number of junket operators and representatives were reportedly connected to organised crime.

41. The systemic deficiencies in SCA's Part A Programs were reflected in the poor ML/TF risk management of junkets and individual commission programs.

42. SCA did not carry out an appropriate ML/TF risk assessment of the higher ML/TF risks of providing designated services through the junket channel. Board and senior management oversight with respect to junkets was deficient. No ML/TF risk appetite was set with respect to designated services facilitated through junkets. SCA permitted junket operators to facilitate the distribution of winnings to junket players and third parties. Junket operators also facilitated transactions through non-transparent SCA and SCEG bank accounts. At no time did the Part A Programs include appropriate risk-based controls to identify, mitigate and manage the ML/TF risks of designated services provided through junket channels.

The Part B Program failures

43. Part 2 of the Act, as relevantly modified by Chapter 10 and r 14.4 of the Rules (made under s 39 of the Act), required SCA to identify its customers in accordance with the ACIPs it established in Part B of its Programs. Chapter 4 of the Rules, made under s 84(3)(b) of the Act, set out the relevant requirements for Part B Programs.

44. The Part B Program did not include appropriate risk-based systems and controls that were designed to enable SCA to be reasonably satisfied, where the customer was an individual, that the customer was the individual they claimed to be: r 4.2.2 of the Rules.

45. SCA applied the same 'safe harbour' ACIP to all customers, regardless of ML/TF risk.

46. Contrary to the requirements of Chapter 4 of the Rules, at no time did the Part B Program:

    a. include appropriate risk-based systems and controls to consistently identify customers who were not low risk at the time the ACIP was being carried out: rr 4.2.2 and 4.1.3 of the Rules;

    b. appropriately consider the ML/TF risk posed by customer types, including customers receiving designated services through junkets and individual commission program customers: rr 4.2.2, 4.1.3(1) and 4.1.3(2) of the Rules;

    c. adequately consider the ML/TF risk posed by a customer's sources of wealth and funds: rr 4.2.2 and 4.1.3(2) of the Rules;

    d. consider the ML/TF risk posed by the nature and purpose of the business relationship with its customers, including as appropriate, the collection of information relevant to that consideration - particularly with respect to junket operators, representatives and players and individual commission program players: rr 4.2.2 and 4.1.3(3) of the Rules;

    e. consider the ML/TF risk posed by the types of designated services SCA provided, together with the methods or channels by which designated services were delivered: rr 4.2.2 and 4.1.3(5) and (7) of the Rules;

    f. consider the ML/TF risk posed by the ML/TF risk factor of jurisdiction: rr 4.2.2 and 4.1.3 (7) of the Rules;

g. include appropriate risk-based systems and controls for SCA to determine whether additional KYC information would be collected about a customer and/or verified: rr 4.2.2, 4.2.5 and 4.2.8 of the Rules;

h. include ACIPs to be applied to all customers who SCA was required to identify for the purposes of Part 2 of the Act - including customers who were not subject to exemptions or customers seeking table 1, s 6 of the Act financial services: s 84(3)(a) of the Act; see also ss 32 and 39 of the Act, and Chapter 10 and r 14.4 of the Rules;

i. include an appropriate procedure to collect information and documents about an agent of a customer (who was an individual) and did not include appropriate risk-based systems and controls to determine whether to verify (and to what extent) the identity of the agent: Part 4.11 of the Rules; and

j. comply with the requirements of r 4.13.3 of the Rules with respect to PEPs.

Ongoing customer due diligence failures - 124 contraventions of s 36 of the Act

47. SCA failed to carry out appropriate due diligence on 124 customers, with a view to identifying, mitigating and managing ML/TF risks, contrary to s 36 of the Act.

The 59 customers posing high ML/TF risks – 59 contraventions

48. On and from 7 December 2016, SCA provided designated services to 59 customers, in respect of whom high ML/TF risks were indicated. With respect to the 59 customers:

a. many were junket operators, junket representatives or junket players;

b. some of the junket operators, junket representatives or junket players returned to the casino on individual commission programs after SCA banned junket operations;

c. some were foreign PEPs, or a person that SCA otherwise determined to be high risk;

d. many were connected to other SCA customers including customers who posed higher ML/TF risks and players who SCA considered had acted suspiciously;

e. many remitted large amounts of money into, out of, and within the casino environment, including to or from other SCA customers in circumstances where SCA was not aware of, or did not understand, the connection between those customers;

f. many engaged in transfers of large values via the SCEG Customer account channel or the SCA Customer account channel, which were high risk channels;

g. many engaged in large financial transactions with unknown domestic or international third parties, including remittance services;

h. many engaged in transactions indicative of known ML/TF typologies and vulnerabilities including structuring, offsetting, smurfing, cashing-in large value chips with no evidence of play, and quick turnover of funds;

i. many engaged in large cash transactions and transacted with cash that appeared suspicious including in plastic bags, garbage bags, cash bundled together with rubber bands or irregular straps, cash that was dirty and cash that appeared to have been buried;

j. many engaged in large and unusual transactions and patterns of transactions, which had no apparent economic or visible lawful purpose;

k. SCA received numerous law enforcement requests with respect to some customers, some of which related to money laundering investigations and some of which related to conduct that had occurred at SCA;

l. SCA submitted numerous SMRs which reported repeated unusual or suspicious activity;

m. SCA was aware that some of the customers had been charged or arrested in connection with offences, including dealing with the proceeds of crime and money laundering; and

n. SCA was aware of information suggesting that some customers were connected to organised crime or that their source of funds or source of wealth may otherwise not be legitimate.

49. Despite these ML/TF risks, SCA continued to provide designated services to these customers, without carrying out appropriate risk-based ongoing due diligence, including enhanced customer due diligence. From 7 December 2016, these customers were either:

a. not appropriately escalated to senior management in response to emerging ML/TF risks to determine whether an ongoing business relationship was within ML/TF risk appetite; or

b. if senior management did consider the ongoing business relationship, appropriate regard was not had to the ML/TF risks posed by the customers and by the provision of designated services to them.

50. On and from 7 December 2016, designated services provided to these customers involved a turnover[1] by these customers in excess of $4 billion and losses by these customers (or SCA wins) of about $74 million.

The 65 customers who deposited into a SCEG Customer account

51. From 7 December 2016, 65 customers of SCA remitted money through the SCEG Customer account channel. This channel permitted money to be moved into and out of Australia in circumstances where SCA had minimal to no visibility over source of funds. Money could be remitted across international borders in an offsetting process via the SCEG Customer account channel that bypassed the traditional banking system and involved higher ML/TF risks. SCA facilitated transactions totalling over $44.9 million (in AUD, comprising AUD and foreign currencies) via the SCEG customer account channel for these 65 customers.

52. At no time did SCA apply appropriate risk-based transaction monitoring to transactions conducted through this channel. Nor did the Part A Programs include appropriate risk-based systems and controls to understand the source of funds. For these reasons, SCA failed to monitor each of the 65 customers with a view to identifying, mitigating and managing the ML/TF risks it reasonably faced in relation to the provision of designated services.

B. THE RELIEF SOUGHT FROM THE COURT

53. The Applicant seeks the following relief from the Court:

a. declaratory relief under s 21 of the *Federal Court of Australia Act 1976* (Cth);

b. orders for civil pecuniary penalties under s 175 of the Act; and

c. costs.

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1 In the casino context, turnover means the total amount wagered including any re-invested winnings.

C. THE PRIMARY LEGAL GROUNDS FOR THE RELIEF SOUGHT

54. SCA contravened s 81 of the Act on an innumerable number of occasions on and from 7 December 2016.

55. SCA contravened s 36 of the Act on 124 occasions in the period on and from 7 December 2016.

56. Each contravention attracts a maximum civil penalty between $18 million and $22.2 million.

D. THE ALLEGED HARM SUFFERED

57. SCA operates in an industry known, internationally and within Australia, to pose high ML/TF risks. The SCEG/SCA Boards and senior management failed to adopt and maintain Part A and Part B Programs to control those ML/TF risks appropriately. SCA accordingly facilitated the provision of designated services in the millions of dollars in the absence of appropriate ML/TF controls.

58. SCA facilitated the movement of money into and out of the casino environment by way of designated remittance services. By facilitating this movement of money without appropriate AML/CTF controls, SCA exposed their banking partners and other financial institutions, both in Australia and internationally, to ML/TF risks. This in turn has exposed the Australian financial system to systemic ML/TF risks. It is likely that many ML/TF risks were realised and that SCA was at risk of being exploited by organised crime.

59. In the absence of appropriate ML/TF risk oversight, SCA permitted customers to move money through high ML/TF risk channels in ways that involved ML/TF risks and obscured source of funds. Appropriate controls were not in place to enable SCA to understand the sources of money moving through these high risk channels, or whether there was a risk that money was illicit. These business practices and risk management failures exposed SCA to the risk of money laundering.

60. For example, SCA permitted the transfer of money to and from SCA gaming accounts via offshore SCEG bank accounts. These funds could be deposited by, or remitted to, third parties, including corporate third-party entities, via non-face-to-face channels. A junket operator could disburse funds transferred through the SCEG Customer account channel to third parties, including junket players. Funds could be deposited in cash and money could be remitted across international borders without the physical movement of funds into or out of Australia. These features, among others, reduced the transparency of the transactions, created distance between the ultimate source of funds and the designated services provided by SCA and created opportunities for layering transactions across multiple accounts and currencies.

61. On and from 7 December 2016, SCA provided designated services to 59 high risk customers, without carrying out appropriate risk-based due diligence. During this period, buy-ins made by these customers was in excess of $464 million, turnover by these customers was in excess of $4 billion and losses by these customers (or SCA wins) was about $74 million. SCA chose to continue business relationships with these high risk customers, including high value customers with reported links to organised crime.

62. The non-transparent movement of money and deficiencies in KYC records inhibit the ability of law enforcement and AUSTRAC to trace money to its source. This inhibits law enforcement investigations, prosecutions and the recovery of proceeds of crime. Where money can be moved quickly and across borders, it can be even more difficult to trace and recover. These issues were compounded by SCA's failures to adopt appropriate systems and controls to ensure that it fully and accurately reported SMRs, TTRs and IFTIs. SCA's conduct has undermined the objectives of the Act.

63. The ML/TF risk management failures occurred in circumstances where SCA was operating a highly profitable business. Between January 2017 and December 2020, SCA made over $23 million in revenue from junkets. By failing to comply with the Act and Rules, SCA avoided expending funds that should have been invested in compliance including on automated solutions, staffing and the development of AML/CTF controls.

CERTIFICATE OF LAWYER

I, Sonja Marsic, certify to the Court that, in relation to the concise statement 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: 7 December 2022

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for and on behalf of the Australian Government Solicitor
Lawyer for the Applicant