INDEPENDENT LIQUOR AND GAMING AUTHORITY OF NSW

INQUIRY UNDER SECTION 143 OF THE CASINO CONTROL ACT 1992 (NSW)

THE HONOURABLE PA BERGIN SC
COMMISSIONER

PUBLIC HEARING
SYDNEY

FRIDAY, 20 NOVEMBER 2020
AT 9.57 AM

Continued from 19.11.20

DAY 60

MR A. BELL SC, MS N. SHARP SC, MR S. ASPINALL and MR N. CONDYLIS appear as counsel assisting the Inquiry
MR N. YOUNG QC appears with MR H.C. WHITWELL and MR K. LOXLEY for Crown Resorts Limited and Crown Sydney Gaming Proprietary Limited
MR T. O'BRIEN appears for CPH Crown Holdings Proprietary Limited
MS N. CASE appears for Melco Resorts & Entertainment Limited
MS K. RICHARDSON SC appears for Star Entertainment Group Limited an Star Pty Ltd

COMMISSIONER: Yes. Just before you begin, Mr Bell. Mr Young. Mr Young. Can you hear me, Mr Young? No, he can't hear me. Can you hear me now, Mr Young? Thank you. I can't hear Mr Young yet. Wait till we just get this technology correct and

MR YOUNG: I can now, Commissioner. Thank you.

COMMISSIONER: Thank you. I can't hear Mr Young yet. Wait till we just get this technology correct and we'll proceed. Right now?

MR YOUNG: Right.

COMMISSIONER: Yes, I think we can hear each other now, Mr Young.

MR YOUNG: I will try and respond. Can you hear that?

COMMISSIONER: Yes, I can. Thank you very much, Mr Young.

MR YOUNG: Thank you.

COMMISSIONER: Mr Young, we have a problem.

MR YOUNG: Yes.

COMMISSIONER: I just wanted to raise with you, so that things can happen. Your solicitors wrote to the Inquiry's solicitors last evening in relation to the documents that were sought regarding the investigation that Ms Lane undertook in August 2019 and the claim by Mr Barton that Minters had given advice in respect of not going forward with the review of the Riverbank and Southbank accounts. What the Inquiry is, of course, interested in, by reason of the disclosures made by Mr Barton, is what actually happened and so the advice that Minters gave to Crown at the time, in whatever way it was expressed, needs to be produced. I know that you've indicated that Crown does not have a record of it, but, through you, Minters needs to produce its records relating to that advice.

What has happened during the evening is that Minters has indicated that it is not producing documents that are subject to legal professional privilege by reason of being created for the dominant purpose of obtaining legal advice in connection with the Inquiry. This is a little different, this category. This category certainly has been waived by Mr Barton in any event, but whatever advice was given by Minters to Crown or Riverbank or Southbank at the time needs to be produced urgently, and I would be grateful for your assistance to indicate that to your instructors.

What has happened is that those assisting will provide a new summons to cover any advice and not limit it to legal professional privilege at the time within the description. It is very concerning, because it's clear that there was a misapprehension, to use a neutral term at the moment, a platform upon which the Inquiry was sent by reason of non-production under a summons, by reason of failure to disclose things, and however that happened, we need to get to the bottom of it and get to the bottom of it urgently so we can move on.

Putting a neutral tone on it, we can move on quickly. If it's something more serious, then you and I and those assisting need to look into it, I'm afraid. And so I'd be grateful if you could make sure that Minters produce those documents this morning before counsel assisting deals with it at 12 noon, that is, the Southbank and Riverbank.

MR YOUNG: Yes.

COMMISSIONER: Thank you, Mr Young.

MR YOUNG: Yes. Commissioner, I will most certainly do that. My understanding is that the advice referred to in paragraph 9(g), I think it was - - -

COMMISSIONER: It is.

MR YOUNG: - - - of Mr Barton's statement was waived most clearly. Any privilege in respect of that was waived. My understanding is that there is no record of that advice that Minters has located in its own records. The claim that was made does not relate to the subject matter of paragraph 9(g). I will ask them to check all of their searches and I will come back and confirm that as soon as I can, Commissioner.

COMMISSIONER: Thank you. Thank you, Mr Young. And, of course, one of the problems is the fact of it and the late disclosure – I understand the conditions – but the fact that counsel assisting was on his feet, Mr Aspinall, addressing me in November relating to the failure of Crown to look at these things. And so that was, in part, on a false premise, the Inquiry led to believe things that were not accurate, and whatever advice was given to not disclose this to the Inquiry would be covered, and it needs to be looked at from that perspective, from a professional point of view, I think, because if this Inquiry has gone off on this aspect, it is a most serious thing, and we need to get to the bottom of it urgently. Thank you, Mr Young.

MR YOUNG: Thank you.

COMMISSIONER: Yes, Mr Bell.

MR BELL: Commissioner, I turn to deal with the issue of the influence of Mr Packer.

COMMISSIONER: Yes. Thank you.

MR BELL: As I stated in my submissions-in-chief, the issue of Mr Packer's influence has both specific and general relevance to the questions to be determined by this Inquiry.

COMMISSIONER: If you could put your microphone a little closer to you, I'd be grateful. Yes. Thank you.

MR BELL: Mr Packer's influence has specific relevance to the Melco transaction, because if his influence was such that he's properly characterised as a de facto director of Crown Resorts in the period up to and including the Melco transaction, then there is a basis to attribute his knowledge of the Melco transaction to Crown Resorts. In this regard, the relevant period under consideration is the period from 31 October 2018, being the date of the controlling shareholder protocol, to 30 May 2019, being the date of the Melco transaction. But irrespective of whether Mr Packer performed the role of a de facto director of Crown Resorts in that particular period, the issue of the influence of Mr Packer and CPH has a wider and more general relevance to the suitability of the licensee and the suitability of Crown Resorts as a close associate of the licensee to be involved in the operation of the Barangaroo facility.

COMMISSIONER: Yes.

MR BELL: In relation to that wider question of suitability, the period under consideration is not limited to the period from 31 October 2018, but, rather requires consideration of the influence of CPH and Mr Packer in the entire period under review in this Inquiry, including the period of the China arrests. I wanted to make that point clear, because the heading in the statement of issues dealing with the topic of Mr Packer's influence refers only to the period from 31 October 2018. And while that period is apt to frame the issue of whether Mr Packer was a de facto director in the period up to the Melco transaction, the wider question of suitability comprehends a broader timeframe and focuses on whether Crown Resorts is sufficiently independent of its major shareholder in the whole of the period under review in this Inquiry.

Can I turn, then, to deal with the specific issue of whether Mr Packer should be characterised as a de facto director of Crown Resorts in the period after the protocol. In terms of the genesis of the controlling shareholder protocol, CPH submitted, at transcript 5214 line 6, that the protocol was developed by Crown Resorts and not by

CPH, but that is not quite correct. The initial proposal was from Mr Johnston was to amend the then services agreement under which CPH executives, including Mr Johnston, provided various services to Crown Resorts.

In his letter of 23 August 2018, which is exhibit Y7, CRL.501.050.8325, Mr Johnston said that the object of the amendment was to allow Crown Resorts to continue to provide its confidential information to Mr Packer as it has done in the past. Thereafter, Crown Resorts decided to proceed with the controlling shareholder protocol as a separate agreement rather than by variation to the services agreement. The protocol was the product of negotiation between CPH and Crown Resorts acting through their respective solicitors, and an example of those negotiations can be seen in the emails at exhibit Y9. I won't take you to it, but it's CRL.501.082.9807.

Mr Packer's evidence to the Inquiry, at transcript 3643 line 26, was that the purpose of the controlling shareholder protocol was to establish a process for him to receive Crown Resorts' confidential information directly as opposed to through the directors of Crown Resorts who were CPH nominees on the board. Mr Johnston, who initiated the arrangement, said, at transcript 3029 lines 10 to 15, that the whole reason for the protocol was to ensure that there was a mechanism for Mr Packer to continue to receive confidential information from Crown Resorts notwithstanding that he was no longer an office holder of CPH.

A proposition emerged for the first time in CPHs closing submissions, at transcript 5211 to 5215, that a purpose of the protocol was for Mr Packer to also provide advice to Crown Resorts. Crown Resorts also made a submission to this effect. Yet the protocol does not, by its express terms, indicate that its purpose is for Mr Packer to provide advice. Rather, clause 2.5 of the protocol states in general terms that there were benefits for Crown Resorts, through its close relationship with CPH, that such benefits might include, amongst other things, the provision of advice to Crown Resorts.

We submit that CPH and Crown Resorts were forced to make a submission that a purpose of the protocol was for Mr Packer to advise Crown Resorts in order to accommodate the reality of what in fact occurred, which was Mr Packer providing what we submit was not advice, but, rather, instructions and directions to Mr Alexander and a number of other officers and senior executives of Crown Resorts. Significantly, CPH said at transcript 5214, lines 20 to 25:

> *Crown Resorts was entitled to expect that Mr Packer, in providing the advice, would act in the best interests of Crown Resorts.*

And Mr Packer affirmed in his own evidence at transcript 3657 that his intention in his communications to Mr Alexander and other officers and executives was to act in the best interests of Crown Resorts. CPH also suggested at transcript 5216, line 20 the protocol required Mr Packer to act faithfully and loyally to Crown Resorts. This re-characterisation of Mr Packer's role as not just as recipient of information but rather an unconstrained adviser owing duties to act in the best interests of Crown

Resorts sounds very much like the fiduciary and statutory obligations which a director owes.

Importantly, whilst CPH sought to characterise Mr Packer's role simply as an adviser, in the leading Australian case on de facto directors – which is the decision of the Full Federal Court in Grimaldi v Chameleon NL No. 2 – the Full Court emphasised that the question of whether a person acts as a de facto director is a matter of substance over form. The fact that a person might have a title of adviser or consultant cannot distract from the reality of examining the functions in fact performed by the person and the manner in which the person participates as if he or she was an appointed member of the board of directors. The Full Federal Court in Grimaldi made this observation at paragraph 68:

> *The fact that a person has been designated a consultant, the performance of functions for a company, will not as of course mean that person cannot be found to be a director. Whether or not he or she will be a director will turn on the nature and extent of the functions to be performed, both in and beyond the consultancy and on the constraints imposed thereon. A limited and specific consultancy is unlikely on its own to be caught by the definition, not so a general and unconstrained one which permitted taking an active part in directing the affairs of the company even if not necessarily on a full-time basis.*

COMMISSIONER: That's a point made against you, I think, in respect of Mr Packer's limited communications in respect of – or communications in respect of the limited areas as opposed to the whole of the company.

MR BELL: Yes. Well, there was certainly no constraint on the advice that he was proffering and the authorities also make it clear, and I will come to this, that one can be a de facto director just as one can be a shadow director, if one is turning one's attention only to a specific part of the company's activities.

COMMISSIONER: Yes. Thank you.

MR BELL: CPH said at transcript 5210, line 28 that we had identified only six documents which were said to give rise to concerns about Mr Packer's influence, and used that as a basis to submit that there had been insufficient facts to support Mr Packer acting as a de facto director of Crown Resorts. Yet I stated in my submissions at transcript 4928 to 4931 that I was providing only some examples of the communications which Mr Packer made to support the characterisation of his role as a de facto director. Commissioner, in response to a summons seeking communications under the protocol, Crown Resorts produced 445 documents involving communications to Mr Packer up to 31 October 2018 and 67 documents involving communications by Mr Packer after that date.

All of these documents are in evidence before the Inquiry and have been tendered as exhibit AP1, although many of them are also tendered as other exhibits. Some further examples amongst 67 communications made by Mr Packer demonstrate they

were not merely considering six communications. Can I take you, Commissioner, to some of those examples.

COMMISSIONER: Yes.

MR BELL: One of them is exhibit AA166, CRL.500.009.0436. If that could be brought up, please.

COMMISSIONER: This is the 3rd of June '19 – 2nd of June '19.

MR BELL: Just a moment, please. That's right. It's immediately after the Melco transaction.

COMMISSIONER: Yes. Yes.

MR BELL: And Mr Packer says to Mr Alexander in his email on the 2nd of June:

> *Good seeing you, my friend. Ben was just speaking to Ishan who said he was in London trying to close a sale of Crown London. It might be worth –*

he says to Mr Alexander:

> *It might be worth you speaking or writing to LH –*

that's Lawrence Ho –

> *about whether Melco can add value to London. Better than a surprise anyway. You didn't cc me on the email you were going to send Lawrence, but London reinforces, in my view, that you and LH should at least have a call soon.*

Another example is exhibit AA204, CRL.568.029.7073. And Commissioner, you will see it begins with an email from Mr Packer to Mr Alexander:

> *I saw an article saying Helen Coonan and others were likely to resign at the AGM. Any truth in the article to the best of your knowledge? Warmest.*

Mr Alexander provides information in response to that. Another example is - - -

COMMISSIONER: What do I make of that?

MR BELL: Well, it's provision of information and communications between Mr Alexander and Mr Packer, and Mr Packer asking to be kept informed of what's occurring at board level. Another example in exhibit AP1 is CRL.501.050.4274. There's an email from Mr Packer to Mr Barton, 5th of December 2018:

> *Hi Ken, another bad day. When are you going to have the downside plan for me? Thanks, Ken, for working hard on all this difficult times.*

COMMISSIONER: You say that's more of a directorial act than - - -

MR BELL: Yes.

COMMISSIONER: - - - under the controlling shareholder protocol.

MR BELL: Yes, it's certainly not an advice, it's an instruction – a request for information. Another example is in exhibit AP1 is CRL.570.001.0624. Communication from Mr Packer to Mr Nisbet:

> *Hi Todd, how are things going in Sydney? I know BT reached out to you and Pam. I would like to follow up what we spoke about LA when you are ready.*

Mr Nisbet replies apologising for the delay, providing information about developments at Barangaroo. And there are a series of emails between Mr Packer and Mr Alexander in relation to the Wynn transaction. One of those in exhibit AP1 is CRL.501.041.1181. This one I'm taking you to mainly because it sets up the context for the rest of the communications. It's from Mr Alexander, 7th of April 2019:

> *Hi James, just tried to call. Just spoke to Matt.*

Now, Matt is a reference to Matt Maddox who was, as I understand it, the CEO of Wynn:

> *All good. Understand the need to clarify structure, need to ensure price certainty as much as possible. Understand the need to preserve price for a scheme meeting which could be in a year's time. Agreed the adviser's bankers should start immediately on solutions and will come back before our board meeting on same, ideally with answers we can live with.*

Then another example in exhibit AP1 is CRL.501.041.214, the following day, from Mr Packer, CRL.501.041.1214. It's an email from Mr Packer to Mr Alexander the following day.

> *Hi JA. Any news, MM –*

that's Matt Maddox of Wynn –

> *gave me a call today, which was good. A big few weeks ahead.*

Then at tab 28 – I'm sorry. Then, at CRL.568.054.8863, Mr Packer's being closely consulted and informed in relation to the progress of the Wynn transaction. It starts with Mr Packer's email to Mr Alexander on the 9th of April:

> *Hi JA. Obviously, I saw the Street Talk article and understand that probably means we have to publicly reply. Any updates where that's all up to?*

Mr Alexander responds:

> *Hi James. We have a call in 15 minutes to determine the statement we put out pre-market opening. Once that's decided, I will send to you. In the meantime –*

etcetera. And there are further communications which you will see there, Commissioner, into the transaction.

So can I turn, actually, to the Wynn transaction itself. As I understand it, at least to some extent, CPH has withdrawn its submission that the Wynn transaction demonstrated that the board of Crown Resorts was acting contrary to Mr Packer's wishes. I won't go through all of the evidence in detail, but to the extent to which that submission is not completely withdrawn, we submit that the evidence demonstrates that the board of Crown Resorts did not at any point act inconsistently with Mr Packer's wishes in relation to the Wynn transaction. On the contrary, Mr Packer's communications indicate that he was in close communication with Mr Alexander about the transaction and was closely involved, as was Mr Johnston, in the strategy in relation to the proposal. Mr Packer and Crown Resorts appointed directors were all of the same mind, that Wynn's first proposal would be rejected by Crown Resorts' board. Mr Packer's wish for the second proposal, which had been made on the 4th of April by Wynn, be accepted by Crown Resorts never had a chance to be considered by the board, because Wynn withdrew from further negotiations on the 9th of April.

COMMISSIONER: So that was the announcement, was it, on the 9th?

MR BELL: Yes. There was to have been a board meeting on the 10th of April, which Crown Resorts was going to consider the second proposal which Mr Packer had suggested to Mr Demetriou be accepted, but that meeting never – there was a meeting, but it never considered the proposal, because, by that stage, it had been withdrawn.

COMMISSIONER: Yes.

MR BELL: Despite characterising Mr Packer as an adviser to the board of Crown Resorts, when reviewing the emails which Mr Packer sent to Mr Alexander and other executives, Mr Hutley struggled to identify any of them as giving rise to the provision of advice. That's because none of the communications were, in fact, advice. In fact, Mr Hutley, at times, denied the need to characterise them in that way, noting in places:

> *I'm not saying it has to be advice.*

Which he said at transcript 5220, line 20, or:

> *I don't think it needs to be characterised.*

At transcript 5222, line 36. In relation to one of the communications, Mr Hutley said that Mr Packer was not providing advice, but rather was speaking in his capacity as a major shareholder, at transcript 5225 line 30.

COMMISSIONER: It's very hard to tell. Bit like Mr Johnston; they had a number of hats on.

MR BELL: Well, we submit that whether a person is a de facto director has to be determined on the authority of the Full Court in Grimaldi by looking at the substance of what was being – or substance of the communications which were occurring. We submit, in substance, they were instructions. The executive chairman of Crown Resorts, Mr Alexander, to the chief financial officer, Mr Barton, various other executives of Crown Resorts, such as Mr Felstead and Mr Nisbet and the contexts of Mr Packer receiving an extraordinary level of confidential information concerning the affairs of Crown Resorts. Even if he didn't receive the board packs considered by appointed directors at board meetings, Mr Packer was being informed in detail in advance of matters which were to be discussed by the board. He was also informed of the decisions made at meetings of the board by Mr Alexander, Mr Demetriou, by his nominees on the board.

COMMISSIONER: There's no suggestion that he received the board packs, is there?

MR BELL: No. CPH submitted, at transcript 5229 line 34, that there were a wide range of matters in the relevant period that the Crown Resorts board dealt with in the absence of any involvement with Mr Packer, but as I've already indicated, that doesn't determine whether Mr Packer should be characterised as a de facto director. The Full Court in Grimaldi dealt with that issue at paragraph 69, and held that the functions assumed by a de facto director may be limited in their scope just as the wishes or instructions of a shadow director need not relate to all facets of the management of the business.

COMMISSIONER: What's the difference between the two?

MR BELL: I beg your pardon?

COMMISSIONER: What's the difference between the two, as you put it, between the shadow and the de facto?

MR BELL: What Grimaldi also makes clear is there's not a completely rigid distinction. But a de facto director is someone acting in the position of a director. A shadow director is a person on whose instructions or wishes the board is accustomed to act. It's quite different, conceptually, but there is to some extent an overlap and are different matters.

COMMISSIONER: Yes. There does seem to be an overlap.

MR BELL: CPH also submitted, at transcript 5236 line 23, that Crown Resorts had an operating board meeting regularly and which was carrying out the functions of the board. But, similarly, that doesn't determine whether Mr Packer should be characterised as a de facto director with reference to the level of influence he had. And, again, Commissioner, Grimaldi assists on this point with the Full Court stating, at paragraph 74, that the fact that a company has a properly constituted and functioning board does not preclude a finding that the person in question is a de facto director.

And in that context, it's not to the point that Mr Packer wasn't exerting control and influence over Crown Resorts' appointed directors in relation to every aspect of its operations. In the authority of Grimaldi it's sufficient that, in relation to material and critical operational and strategic issues from budget forecasts to costs decisions and, indeed, possible takeover proposals, that Mr Packer had a very real level of influence. Nor does it matter that Mr Packer's views may not have been adopted by every appointed director of Crown Resorts as a matter of course without the exercise of independent discretion by those directors, and that is the test of whether a person is a shadow director. As I've indicated, and contrary to what was submitted by Crown Resorts, there are significant differences between the tests for a de facto and a shadow director.

What does matter, we submit, in assessing whether Mr Packer was a de facto director for the relevant period, is that he participated in significant matters that will ordinarily fall within the function of Crown Resorts appointed board as if he was also an appointed director. And even if Mr Packer did not finally determine those matters in his own right, by the same token, nor would any other single member of the board determine those matters having regard to the size of its membership. The fact is that Mr Packer had a voice as if he was an appointed director, and a very important voice.

COMMISSIONER: The de facto point only relates – when I say only, the de facto point relates to his knowledge in respect of the Melco transaction.

MR BELL: That's the only relevance of it, but it goes to the question of whether Crown Resorts should be – have attributed to it Mr Packer's knowledge – and I will come to that, but that's the significance of this. The wider question of the influence and control which he was wielding is a matter which we submit is relevant to an assessment of suitability.

COMMISSIONER: Yes.

MR BELL: But I'm - - -

COMMISSIONER: And the governance.

MR BELL: Yes.

COMMISSIONER: Even if he's not within the category that you describe.

MR BELL: Yes.

COMMISSIONER: Yes. Thank you.

MR BELL: Just finally on this issue, in its submissions, Crown Resorts said that there was no holding out by Crown Resorts of Mr Packer as a director. That, we submit, ignores the very important context in this case that Crown Resorts, for whatever reason, chose to hide the controlling shareholder protocol and the role which Mr Packer was playing from its own shareholders and from the market. The fact that it chose to do that doesn't diminish in any way how Mr Packer's actual role should be characterised. Commissioner, can I turn to address the suitability of Mr Packer as a close associate having regard to the emails in MFIA.

COMMISSIONER: Yes.

MR BELL: In relation to those emails we've submitted that you should recommend to the Authority that it reconsider its approval of Mr Packer as a close associate of the licensee, having regard to his conduct evidenced in and indicated by those emails. It was put by Mr Hutley at transcript 5243, line 32 that our reliance on these emails was unfair. It was on Mr Packer's application that these emails were kept confidential and not revealed in public hearings of this Inquiry, but Commissioner you have read these emails. They raise very serious issues which you will need to consider. Any reasonable person reading those emails would have grave misgivings about Mr Packer's character and integrity.

We submit that you are not in a position to accept Mr Hutley's submission at transcript 5243, line 43 that there is not, as he put it, the remotest likelihood of that conduct occurring again. That submission is apparently based on two matters. The first is what was said at transcript 5243, line 37, that these emails are the only emails which have been tendered in evidence to this Inquiry which contain threats of this nature. The fact that there are no other documents that have been tendered containing threats of this nature doesn't permit you to draw an affirmative conclusion that the conduct will not recur.

Now, the other matter on which that submission was apparently based was on what Mr Hutley later said at transcript 5380, line 40 to the effect that the conduct was the product of a medical condition which has now been contained by treatment. However, Commissioner, it remains the case that no medical evidence has been presented to the Inquiry to support a causal connection between Mr Packer's conduct evidenced by these emails and any medical condition. In the absence of that evidence, you are not in a position to draw a conclusion that the conduct was caused by any medical condition or that any alleged current treatment being received by Mr Packer would ensure that the conduct would not recur.

Then, Commissioner, there is the very important email, exhibit AB22; it was sent within hours on the same day as the very worst of the threats in MFIA, 25 November 2015. In relation to that email, Mr Hutley put at transcript 5245, line 22 that the

email was irrational because it was subjecting Mr Packer to hugely increased financial burdens. Commissioner, it is worth reviewing the email at exhibit AB22, hearing room only, CPH.001.249.6129. Commissioner, you will see it's an email from Mr Packer to Bruce Karsh and Robert Rankin, November 25, 2015:

> *Dear Bruce, I was wondering if we could line up a time to talk. I'm in Argentina now, then Israel and back in the US December 11. This is regarding me trying to increase my stake and privatise my main company Crown with partners. This is all market sensitive and the board does not know. I'm hopeful of coming to them in a few weeks with a transaction designed to split our fully owned assets, Australian mainly but also one high-end casino in Mayfair, London we own 100 per cent of from my partly owned assets. I believe this can result in about a 30 per cent bid premium from the current price Crown is trading at, say, 60 per cent consideration in cash and 40 per cent in the new stock which would hold my shares in Melco Crown, Alon ..... etcetera. The transaction I would like to discuss with you regards the fully owned assets and I believe is well in excess of 20 internal rate of return for the investor.*
>
> *The only other person I've spoken to is Mr Y and I think their firm, Z Co, is undergoing change, so I didn't get the answer I wanted from Mr Y in size, but Z Co is firm for 400 million US. Mr Y is personally committed to come on the board of the company with me if the bid is successful. And I wanted that most as I've known and liked him a long time and want his counsel. Simplistically, in Aussie dollars I will put in 3.5 billion which will be 66.6 per cent and as I said Z Co are firm will want 400 million US so call it 550 Australian so there is about 1.1 billion Aussie left and I have come to you first because of the class you showed me when we met.*
>
> *We have a good debt package and debtor close after fees can be no higher than 3.9 billion is what Mr Y and I agreed, 5.2 equity, 3.9 debt.*

I won't read all the rest, but you will see a bit further down:

> *The capital structure I have agreed with Mr Y is conservative. There are structuring advantages as well in this deal. We can pull it off.*

Commissioner, that is, as we put, a very business-like, rational communication sent within hours of the worst of the threats, and unless Mr Hutley is intending to suggest that the privatisation deal itself was irrational because it involved some level of debt funding, that submission can simply not be correct. The debt funding was conservative, as Mr Packer himself said, and Mr Hutley's submission that this email demonstrates irrationality simply cannot be accepted. Now, we've submitted that you recommend to the Authority that it reconsider its approval of Mr Packer as a close associate. Any reasonable person who had read these emails and was aware of the facts presented to this Inquiry would regard that submission as very benign, indeed.

COMMISSIONER: I suppose in the scheme of things under the Terms of Reference, if I were to accede to your submissions it's really a report to the Authority that whilst ever Mr Packer is a close associate it will affect the suitability of the close associate.

MR BELL: That's so. It will affect the suitability of Crown Resorts.

COMMISSIONER: Yes, the close associate to the licensee.

MR BELL: Yes.

COMMISSIONER: So I'm looking at the suitability of Crown as a close associate and the licensee – that's the licensee, obviously.

MR BELL: Yes.

COMMISSIONER: And Mr Packer being a close associate of the close associate is the matter that's relevant for consideration in the report.

MR BELL: It's slightly more direct than that.

COMMISSIONER: Yes.

MR BELL: Because you're looking at the suitability of the licensee and its close associates. The issue of suitability under section 13A requires you to consider the suitability of the licensee and its close associates. Mr Packer is not merely an associate of a close associate, he has been approved as a close associate of the licensee.

COMMISSIONER: Yes, so it covers both companies.

MR BELL: Yes.

COMMISSIONER: It covers the suitability of both companies.

MR BELL: Yes.

COMMISSIONER: And as I apprehend your submission, rather than just reconsidering Mr Packer's suitability – I withdraw that – his approval as a close associate, it's really focusing on whether those two companies are suitable whilst ever Mr Packer is a close associate. Isn't that right?

MR BELL: That's precisely correct with respect, Commissioner.

COMMISSIONER: Yes, all right.

MR BELL: And having regard to the definition of close associate in the legislation, should the Authority conclude that Mr Packer is no longer a suitable close associate of the licensee, there would need to be a reduction in his financial interest in Crown Resorts at the level such as 10 per cent which would give the Authority confidence that Mr Packer was no longer able to exercise a significant influence over or with respect to the management or operation of the definition – of the business.

COMMISSIONER: Of the licensee.

MR BELL: Which is the definition of close associates.

COMMISSIONER: Yes. Yes.

MR BELL: Now, Commissioner, can I turn to the Melco transaction and respond to the submissions of CPH and the CPH directors. CPH put that the Melco transaction did not cause Crown Resorts to breach the regulatory agreements on three bases: first, on the basis that Great Respect did not obtain an indirect interest in Crown Resorts as a result of the Melco transaction within the meaning of the regulatory agreements. Secondly, on the basis that Crown Resorts was not aware of the Melco transaction before it occurred, it being common ground that Crown Resorts could not have taken any steps to prevent the transaction occurring, if it was not aware of the existence of the transaction before it occurred.

Mr Hutley put this submission both by reference to the relevant legal test and also as a matter of fact. The third basis put forward by CPH was that if Great Respect did obtain an interest and if Crown Resorts should be taken to have been aware of the Melco transaction before the share sale agreement was executed, Crown Resorts could not in fact have prevented the transaction from occurring. These submissions were generally supported by Crown Resorts on the same basis.

COMMISSIONER: Yes.

MR BELL: Now, dealing with whether or not the Melco transaction gave rise to an indirect interest in Great Respect - - -

COMMISSIONER: In Great Respect.

MR BELL: - - - can I call up exhibit AN19, INQ.110 – sorry – INQ.100.001.0386.

COMMISSIONER: Yes.

MR BELL: Yes. INQ.100.001.0386. Exhibit AN19.

COMMISSIONER: AN19. Is that N for Nancy or M for Mary?

MR BELL: N for Nancy.

COMMISSIONER: Thank you.

MR BELL: I'm sorry. I've got a different number written on the document to the one that I've got on my index. Let's try INQ.110.001.0386. My apologies.

COMMISSIONER: Yes. Thank you.

MR BELL: So this chart, Commissioner - - -

COMMISSIONER: That's AN19, is it?

MR BELL: That is AN19.

COMMISSIONER: Yes. Thank you.

MR BELL: This identifies the shareholdings in the relevant entities immediately after the execution of the share sale agreement. So far as Melco Resorts is concerned, its 19.99 per cent in Crown Resorts was a beneficial interest which arose on execution of the share sale agreement. Great Respect was the largest shareholder in Melco International, the majority owner of Melco Resorts, at the time holding 23.7 per cent of Melco International shares. CPH submitted, at transcript 5252, lines 23 to 25, that an "indirect interest", as used in the relevant clause, extends to but not beyond the circumstances where those shares are held through a structure of a group of companies which are wholly or majority owned. In other words, according to this submission, Great Respect would only have obtained an indirect interest in Crown Resorts if it owned 50 per cent or more of the shares in Melco International.

CPH arrived at that conclusion with reference to a number of authorities in the context of trade practices and taxation legislation, specifically, Trade Practices Commission v The Gillette Company and Others (No. 1); Commissioner of State Revenue v Politis; and various other authorities referred to in those cases, in particular, Australia Meat Holdings v Trade Practices Commission [1989] ATPR 50082, in which it was held that:

> *The words "acquire directly or indirectly" should be read as encompassing all forms of acquisition and may encompass a situation where assets are acquired in an indirect way, as through the interposition of a wholly owned subsidiary.*

Now, it's necessary to closely analyse these cases to understand their true import. In Australia Meat Holdings, the facts were that the relevant company didn't acquire assets directly, but, rather, by purchasing all the shares in a wholly owned subsidiary which owned the assets. It was in the context of those facts that Justice Davies held that assets were acquired indirectly through the interposition of a wholly owned subsidiary. That was all the facts required for determination. Justice Davies was not purporting to create a restrictive rule for general application in matters involving different facts. Trade Practices Commission v Gillette was an interlocutory decision

in which all that needed to be decided was that it was strongly arguable that Justice Davies' decision in Australian Meat Holdings was correct.

The Commissioner of State Revenue v Politis was a stamp duty case. There was a contract for the sale of land to individual purchasers. That contract was cancelled and a second contract was entered into to sell the land to a company owned by the individual purchasers. And the question was whether the company had acquired rights equivalent to those of the individual purchasers under the first contract. Justice Nettle, in that case, referred to Australian Meat Holdings as supporting the proposition that an indirect acquisition of shares under section 50 of the Trade Practices Act included – and I emphasise the word "included" – the acquisition of shares by a subsidiary of the acquirer. As I've said, that's all the facts required for determination in the Australian Meat Holdings case. And all that Justice Nettle decided in the stamp duty case was that parity of reasoning supported the conclusion the indirect acquisition of rights within the meaning of the Victorian Duties Act included – and again I emphasise the word "included" – the acquisition of rights by the company which were equivalent to the rights of the individual purchasers.

So when these cases are properly analysed, it can be seen that, whilst they are authority for the proposition that, for the purposes of the legislation under consideration in those cases, an indirect acquisition included a direct acquisition by a subsidiary of the acquirer. They are not authority for the proposition that an indirect acquisition only occurs if the shares are directly acquired by a subsidiary, that is, if the acquirer owns 50 per cent or more in the entity in fact purchasing the shares. Of course, that issue did not arise for consideration in any of those cases.

Now, CPH also submitted, at transcript 5252 line 25, that its suggested construction of the meaning of "indirect interest" was supported by the definition of "Stanley Ho associate" in the VIP agreement in the Crown deed, the definition which extended to, among other things, additional entities controlled by Dr Ho. However, the fact that more general language not limited to the concept of control is used for the purposes of identifying whether a Stanley Ho associate obtains an interest in Crown Resorts and is used to identify those who are Stanley Ho associates in the first place, if anything, indicates that the net is intended to be cast more widely in determining whether an indirect interest is acquired. In any event, as a matter of ordinary contractual interpretation, there's no reason to consider the definition of "Stanley Ho associate" ought to be taken into account in construing the meaning of "indirect interest" in the context of different entities in an entirely different clause of the contract.

Further, we submit that the construction of "indirect interest" in the relevant clause put by CPH and Crown Resorts doesn't sufficiently take into account the unique legislative context of the Casino Control Act as distinct from the legislation that was the focus of the decisions referred to by CPH. CPH submitted that its favoured construction of "indirect interest" was sufficient to achieve what he called the obvious purpose of the relevant clause in prohibiting Stanley Ho, or a Stanley Ho associate, being able to assert influence upon a casino in New South Wales through

entities controlled by him. It's to be recalled that the VIP agreement and the Crown deed, the regulatory agreements containing the relevant clause, do not operate in a vacuum or that, rather, were made expressly under the provisions of the Casino Control Act as section 142 regulatory agreements.

According to subsection 142(2), any regulatory agreement must contain terms that are not inconsistent with the Casino Control Act. The VIP agreement and the Crown deed, therefore, must, we submit, be construed with reference to the Casino Control Act. And we submit that a wide reading of "indirect interest" to capture the interest, an interest held by an entity through a chain of shareholdings in the interposed companies, even where the entity does not wholly own or have a majority interest in all of those interposed companies, is consistent with the objects of the Casino Control Act expressed in subsection 4A(1) as ensuring the management and operation of the casino remain free from criminal influence or exploitation; ensuring that gaming in a casino is conducted honestly; and containing and controlling the potential of a casino to cause harm to the public interest and to individuals and families.

The objects of the Casino Control Act and the regulatory agreements to which I've referred are designed to allow the authority to be invasive and exhaustive in its probing of the background of individuals about whose integrity, honesty and overall suitability the authority has significant doubt. Those, Commissioner, were the words of the former Minister for Administrative Services in New South Wales in his second reading speech introducing the Casino Control Bill 1992 New South Wales. We submit that a wide reading of "indirect interest" would enable the Authority to do precisely what was intended by the Casino Control Act, the framework and factual background giving rise to the relevant clause, that is, to have in place a system for restricting Stanley Ho and all entities in which he was interested from obtaining an interest in Crown Resorts, including through the chain of interposed companies that might compromise the aim of keeping casinos forming part of the Crown Resorts group free from criminal influence and exploitation and protecting the public from harm.

COMMISSIONER: Yes, the interesting aspect of the joint venture whilst the licence was on foot so that the Authority and others knew that Dr Ho had an interest in Melco, and Melco had a joint venture with Crown in Macau, and then the focus seems to have been on whether, in that structure, Dr Ho had the capacity to have an influence over Mr Lawrence Ho in the operations of Melco. So it was once removed from the position that the government implemented to prohibit Dr Ho obtaining any interest in casino operations in New South Wales.

MR BELL: Yes, quite.

COMMISSIONER: So whilst it was tolerated in the joint venture arrangement by reason of a review of his capacity to influence the partner in the joint venture, it was important that they reject any capacity for Dr Ho to get an interest in Crown vis-à-vis

the licence that was granted in New South Wales. I think that's the right characterisation of that.

MR BELL: That's the submission which we would make.

COMMISSIONER: Yes.

MR BELL: Now, CPH sought to further support its preferred construction of indirect interest, again limited to a situation where an entity has a shareholding through a chain of wholly owned or majority owned subsidiaries only by saying that in the absence of that restriction there would be absurd results, offering the example of a transaction being caught by the relevant clause if BHP purchased a minor holding in Crown Resorts and Stanley Ho or a Stanley Ho associate had any shareholding in BHP. Now, we accept that the assessment of whether an indirect interest ultimately arises becomes a question of degree. In the example provided by CPH, it could not be said that there would be a risk of any real influence being asserted by Stanley Ho or a Stanley Ho associate, that being the ultimate mischief which the relevant clause was directed to.

Yet the interpretation which CPH contends for lies at the other end of the extreme: an interest held by an entity in the circumstances before the current Inquiry, Great Respect, through a chain of shareholdings in a corporate group context that arises other than by sole or majority ownership by that entity of all subsidiary companies leading up to the ultimate direct shareholding, in this case, the interests in Crown Resorts held by Melco, may still provide an opportunity for influence to be exerted. Commissioner, assume that Stanley Ho owned 49 per cent of the shares in BHP, and BHP then acquired 100 per cent of the shares in Crown Resorts. On CPHs interpretation Stanley Ho would not acquire an indirect interest in Crown Resorts within the meaning of the relevant agreements because he owned less than 50 per cent of the shares in BHP. That truly would be an absurd result.

When the entity's interest in the corporate group is traced back to a 20.37 per cent shareholding, interest held by Great Respect being the largest single shareholding in Melco International, there is, we submit, clearly an opportunity for the kind of influence to be exerted which motivated the inclusion of the relevant clause in the regulatory agreements. Now, ultimately, Commissioner, you are not required to determine in this Inquiry precisely where the line is drawn in terms of a minimum interest threshold which gives rise to an indirect interest, whether it's five per cent or 10 per cent or otherwise. We simply submit for your consideration that a 20.37 interest per cent of the kind held by Great Respect in Melco International can in turn be traced through to Crown Resorts is sufficient to give rise to an indirect interest on the part of Great Respect within the meaning of the relevant clause.

Now, can I turn to the submission that Crown Resorts was not aware of the Melco transaction before it occurred. CPH secondly submitted that Crown Resorts did not have knowledge of the Melco transaction before the share sale agreement was executed and Crown Resorts supported that submission. In relation to that

submission, CPH began by arguing that the common law test for attributing knowledge in the context of common directorships, that is, attributing the knowledge obtained by a director whilst acting for company A to company B which the person is also appointed as a director depends not only on there being a duty for that person to disclose the knowledge to company B but also a duty to receive it.

Now, Commissioner, that is, indeed, the manner in which the test was formulated at the beginning of the 20th century. It's put in that manner in re Hampshire Land Co [1896] 2 Ch 743. And that form of the test was later approved the English Court of Appeal in re David Payne & Co Limited [1904] 2 Ch 608. However, in modern decisions the duty to receive has either not been referred to as a separate component of the test for common director knowledge attribution or was otherwise being cast as entirely co-extensive with the duty to disclose within. An example of the former is Belmont Finance Corporation v Williams Furniture Limited (No 2) [1981] All ER 393. Lord Justice Buckley said that:

> *Where an officer is under a duty to make disclosure to his company, his knowledge is imputed to the company.*

In ZBB Australia Limited v Allen [1991] 4 ACSR 495, Chief Justice Waddell called this framing of the test for knowledge attribution:

> *...a broader principle stated in Belmont Finance –*

and he accepted it in the case before him. Other cases, more modern cases have still referred to the duty to receive limb but I've simply deemed it to be satisfied on the same basis upon which the duty to disclose limb is satisfied, thus in Beach Petroleum NL v Johnson [1993] 43 FCR 1, Justice Von Doussa said:

> *In ordinary circumstances, if a director knows information which is important to the affairs of the company he is under a duty both to communicate that information to the company and to receive it.*

And that proposition has also been endorsed in later Australian authorities including BCI Finances Pty Ltd v Binetter (No 4) [2016] 348 ALR 227 at paragraph 312. Commissioner, in these cases, the relevant duty, whether confined to a duty to disclose or also extending to a duty to receive has simply been deemed to exist so that a director's knowledge of particular information may be attributed to company B where the director is actually aware that the information is relevant to a decision company B needs to make or may expose company B to the prospect of harm or may be important to the affairs of company B. These three alternative tests being referred to in the authorities which we outlined in our submissions-in-chief.

We therefore submit that the proposition put by CPH, that there is a separate duty to receive limb which imposes further and more onerous requirements that must be proved beyond those considered in our closing submissions-in-chief in order to

attribute the knowledge that at least Mr Johnston and Mr Packer had, should not be accepted.

COMMISSIONER: So that last category is very loose, isn't it? Compared to the others, one is a necessity, the other one is exposure to harm.

MR BELL: Yes.

COMMISSIONER: The last category is odd because it's a little nebulous.

MR BELL: Yes.

COMMISSIONER: The first two categories are understandable in corporations law.

MR BELL: Yes.

COMMISSIONER: That there's a necessity and then there's a prevention of harm, but this last category to which you referred, from where does that come?

MR BELL: I can't recall. It's referred to in our submissions-in-chief. I can't recall which case it comes from, but I accept that it would appear to involve a value judgment whereas the other two tests are more precise.

COMMISSIONER: Yes.

MR BELL: We will find that authority for you.

COMMISSIONER: Yes, thank you. And it's crafted in important to the affairs of the company. One would – obviously, if you're a director of company A you know, on one view, what's very significant to the company and its operations, but having a category just important to the affairs would be, on one view of it, quite worrying.

MR BELL: Yes, Commissioner, we submit you don't need to concern yourself with that because we submit this clearly falls into the first two categories where there was knowledge which might expose Crown Resorts to the prospect of harm.

COMMISSIONER: Yes.

MR BELL: Or knowledge of matters which were relevant to a decision which Crown Resorts had to make.

COMMISSIONER: Yes. Yes, all right.

MR BELL: Now, Crown Resorts made two separate submissions in relation to the legal test for knowledge attribution in the context of common directors. First Crown Resorts submitted at transcript 5567 that where a common director of companies A and B receives information in the course of acting for company A, the duty of

confidentiality owed to company A subsumes any duty to disclose information to company B. In other words, the logical consequence of that submission is that there can never be a duty to disclose information to company B because of the duty of confidentiality to company A.

Now, Commissioner, modern authorities unsurprisingly have expressly rejected that proposition. It was expressly rejected by the Court of Criminal Appeal in Western Australia in Fitzsimmons v R [1997] 23 ACSR 355. The second proposition put by Crown Resorts at transcript 5571 to 5572, as we understood it, was that even if knowledge of information could be attributed to Crown Resorts, as an operational matter some further test or process to establish actual knowledge must be satisfied before it could be said that the company was in breach of a contractual obligation as a result of the knowledge attributed.

We submit that that cannot be correct. If the relevant knowledge is held by a company based on the attribution rules that is actual knowledge of the corporation and that knowledge could be used to assess whether the company is in breach of an obligation. The very purposes of the cases establishing the attribution rules is to assess whether the relevant company in each case is in breach or was in breach of a statutory contractual or other obligation. Now, apart from the legal test for knowledge attribution, CPH also submitted at transcript 5258, lines 9 to 17 that there was a logical fallacy and circularity in seeking to attribute knowledge to Crown Resorts on the basis of a duty to disclose a matter to it which arose because it was exposed to a risk that would breach the regulatory agreements, and the risk of breach only arose if the knowledge was attributed.

In other words, the submission was that if the relevant clause was breached only if Crown Resorts knew about the share sale agreement then Crown Resorts only knew about the share sale agreement if it knew that the share sale agreement would breach the relevant clause, then there is a circularity. Now, we submit that that submission should not be accepted. Any circularity, as a matter of logic, could only arise if the risk of breaching the relevant clause depended solely on the attribution of Crown Resorts of the knowledge of the share sale agreement held by certain directors, yet that's only one pre-condition to a breach of the relevant clause.

The breach also depends on an indirect interest having been obtained by Great Respect, and it also depends upon Crown Resorts not taking all steps within its power to prevent that interest from arising.

COMMISSIONER: Your proposition that any circularity as a matter of logic could only arise if the risk of breaching the relevant clause depended solely on the attribution of Crown Resorts - - -

MR BELL: Yes.

COMMISSIONER: - - - I'm not so sure about that. In any event, I will have to look at it closely, but so far as the attribution is concerned, assume actual knowledge that

Crown needed to make a decision that it was necessary for Crown to have information because of a decision it had to make about the Dr Stanley Ho matter, this was pivotal to that, but it had to know that there was about to be an entrance by Dr Ho into the company via the Melco transaction. If that is attributed to Crown, so if the knowledge is there in, let's say, Mr Johnston, it's attributed to Crown, why is it circular at that stage?

MR BELL: It's not circular at that stage because there's no breach at that stage. That's only one of the matters which is relevant. One has to look at whether there is an indirect interest. One has to look at what Crown can and does in relation to that information. That's why the circularity problem, we submit, is a distraction.

COMMISSIONER: Well, I suppose in deeming the knowledge it's the nature of the knowledge that is deemed, obviously.

MR BELL: Yes.

COMMISSIONER: And the nature of the knowledge is: (1) there was a prohibition on Dr Ho coming into Crown; (2) that the transaction itself would, in fact, give him the entree into Crown; and (3) if that entree is such to be in prohibition of the clause 2.4, then, obviously, they're the three elements that would attribute knowledge to Crown if Mr Johnston knew all of those things.

MR BELL: Yes. So one examines those matters to determine whether Mr Johnston knew of the prospect of harm to Crown Resorts, to use one of the tests.

COMMISSIONER: Yes, yes.

MR BELL: That the knowledge, which is attributed to Crown, knowledge that the share sale agreement is about to be – or is about to be executed prior to that point.

COMMISSIONER: Yes, yes. And the decision it has to make under the clause, it has an obligation, whatever is within its power - - -

MR BELL: Yes.

COMMISSIONER: - - - to prevent. Yes, I understand.

MR BELL: I'll come to that third issue - - -

COMMISSIONER: Yes, of course.

MR BELL: - - - of what it could have done.

COMMISSIONER: Yes. All right.

MR BELL: But if I could go, then, to the factual questions - - -

COMMISSIONER: Yes.

MR BELL: - - - raised by CPH in relation to the knowledge of Mr Johnston and Mr Packer, in particular. In relation to Mr Johnston, CPH submitted that Mr Johnston, at best, had only constructive knowledge that the share sale agreement may be important or relevant to Crown Resorts or may expose it to the prospect of harm. We submit that that contention misconstrues the evidence of what Mr Johnston said in his evidence to the Inquiry. First, Commissioner, it's useful to review some evidence given by Mr Johnston on Friday the 25th of September 2020, transcript 2915.

COMMISSIONER: Yes. I have that.

MR BELL: So I will just read it and then I'll, perhaps, make some submissions about it.

Were you aware, whilst you were a director of PBL, that prior to the establishment of the joint venture between PBL and Melco International, a Melco International subsidiary, Melco Leisure and Entertainment had entered into a joint venture with Great Respect for the establishment of the City of Dreams project in Macau

I was aware there were arrangements without necessarily being completely on top of the nature of them, but I was aware there were some arrangements to that effect, yes.

So you were aware that an entity associated with Dr Stanley Ho was bringing in his interest in the City of Dreams joint venture to Melco International so that it could be part of the assets of the Melco PBL joint venture.

I understood that there was … some arrangements to that effect, yes.

Were you aware, whilst you were a director of PBL, that the consideration paid to Great Respect for its interest in the City of Dreams project was convertible notes issued by Melco International –

involving –

having a large margin?

I can't recall that, to be honest.

Were you aware that Great Respect ultimately converted convertible notes in Melco International into an approximately 20 per cent shareholding in Melco?

Yes.

So he was aware, prior to the joint venture, that Great Respect was itself a party to a separate joint venture involving the City of Dreams project. Immediately after giving that evidence at line 11, he was asked if he, therefore, knew that an entity associated with Dr Stanley Ho was bringing his interest to Melco International so it could be part of the assets of the Melco Crown joint venture. And the only entity that could possibly have been contemplated in that exchange, we submit, was Great Respect. And Mr Johnston also agreed in this passage of evidence that he knew Great Respect had obtained a 20 per cent interest in Melco International as a result of the conversion of the notes.

Now, Mr Johnston also initially gave clear evidence on this day that he knew that Melco International held its shareholding in Melco Resorts via its subsidiary, Melco Leisure and Entertainment. Can I take you to transcript 2924. It's quite clear here, line 27:

> *You into you that Melco International held its shareholding in Melco Resorts via its subsidiary, Melco Leisure and Entertainment Group Limited.*
>
> *Yes.*

No doubt about it. Now, Mr Johnston was taken back to these issues in his evidence the following day, Monday, the 28th of September. Can I take you to transcript 3051. Starting at line 45:

> *You knew that Crown Resorts had entered into regulatory agreements with the New South Wales Independent Liquor and Gaming Authority containing provisions intended to prevent entities associated with Dr Stanley Ho from taking an interest in Crown Resorts?*
>
> *Yes. Sorry, knew there was a sensitivity to Stanley Ho having an involvement with Crown Resorts, yes.*
>
> *You know that wasn't my question don't you, Mr Johnston. I will ask it again. You knew that Crown Resorts had entered into regulatory agreements with the New South Wales Independent Liquor and Gaming Authority containing provisions intending to prevent entities associated with Dr Stanley Ho taking an interest in Crown Resorts; correct?*
>
> *Yes.*
>
> *And at this time Melco Resorts was well known to you, wasn't it?*
>
> *Yes. Melco Resorts as an entity in, yes.*
>
> *You knew that Melco International held its shareholding in Melco Resorts via its subsidiary Melco Leisure and Entertainment Group Limited; correct?*

I knew that Melco International had a substantial shareholding, yes.

You knew that Melco Resorts was a subsidiary of Melco International at this time?

No, I'm not sure I did, no.

You did know, though, that Melco International held its shareholding via its subsidiary, Melco Leisure and Entertainment Group; do you agree with that proposition or disagree with it as the case may be?

That's the listed company you're talking about?

Both Melco International and Melco Resorts were listed, weren't they?

Yes.

And you knew that Melco International held its shareholding in Melco Resorts via its subsidiary, Melco Leisure and Entertainment Group; correct?

No, I'm not sure that I had that specific knowledge.

Which was contrary to what he had said the previous day:

On Friday at transcript page 2924, line 26, I asked you this question, "You knew that Melco International held its shareholding in Melco Resorts via its subsidiary, Melco Leisure and Entertainment Group Limited?" and you said yes. Do you stand by the evidence that you gave to this Inquiry on Friday?

I think I might have misunderstood your question. I assumed that you were talking about the listed entity being Melco Resorts, so I apologise for that.

There was nothing ambiguous or confusing about the question, Mr Johnston. The question was that, "You knew that Melco International held its shareholding in Melco Resorts via its subsidiary, Melco Leisure and Entertainment Group Limited?" and you said yes. And you said yes, I suggest, because that was a truthful answer.

I think there are a lot of entities with the Melco's – with the Melco name in them, so I apologise.

I suggest the answer you gave on Friday was a truthful answer and you're trying to depart from it now because you perceive it as unhelpful to the position you would like to propound; do you agree?

No.

You knew in the past that Dr Stanley Ho had an interest in Melco International, didn't you?

No, I'm not sure that I did know that.

You knew in the past that Dr Stanley Ho had been the chairman of Melco International, didn't you?

Yes, I did originally.

And you knew –

I've dropped down to line 42:

You knew that an entity associated with Dr Stanley Ho bought his interest in the City of Dreams joint venture to Melco International so it could be part of a Melco PBL joint venture, didn't you?

Yes.

And you knew that Great Respect had converted convertible notes in Melco International into an approximately 20 per cent shareholding in Melco International?

Yes.

Based on what we saw last week?

Yes.

You knew that Great Respect was the Stanley Ho interest which had brought his interest in the City of Dreams joint venture, didn't you?

COMMISSIONER: What page are you reading from?

MR BELL: Sorry, 3054. There was an objection. And, then, again, at line 22:

You knew, in the context of the –

Melco International and Crown Resorts –

joint venture … that Great Respect was the Stanley Ho entity that had brought his interest in the City of Dreams joint venture to Melco International?

No, I'm not sure that I knew that.

You hadn't reviewed, by May 2019, any documents as to the timing of the Crown Resorts joint venture to indicate that Great Respect no longer had an interest in Melco International, did you?

No, no. I wasn't aware of that – sorry, no. The answer is no.

And you hadn't reviewed any documents since the time of the Crown Resorts Melco joint venture to indicate that Stanley Ho or any entity associated with him no longer had an interest in Melco International?

Answer:

No.

So, first, Mr Johnston sought to recant from the clear admission that he'd made that he knew that Melco International held its shareholding in Melco Resorts about via its subsidiary Melco Leisure. Secondly, when asked directly whether he knew that Great Respect was the Stanley Ho entity via which Dr Ho brought his interest in the City of Dreams joint venture to the Melco Crown joint venture, he said:

No, I'm not sure I knew that.

Certainly not an unequivocal denial. It must be read in light of Mr Johnston's evidence on the previous Friday, which I've taken you to, which strongly supports a finding Mr Johnston was aware that Great Respect was the entity associated with Dr Stanley Ho by which Dr Ho brought his interest in the Melco Crown joint venture. Now, we've made a submission that, in light of the totality of Mr Johnston's evidence, you should treat it with caution – and I wouldn't say any more about issues of credit – however, even if you found that Mr Johnston was not aware that Great Respect was the Stanley Ho entity that brought his interest in the City of Dreams to the Melco Crown joint venture, the fact remains Mr Johnston admitted that he knew an entity which was associated with Stanley Ho had an interest in the Melco Crown joint venture. Mr Johnston also agreed that, by May 2019, he hadn't reviewed any documents which indicated that that interest no longer existed.

So we submit, as we did in our closing submissions-in-chief, that Mr Johnston must, therefore, be taken to have had actual knowledge that Stanley Ho had some connection to Melco Resorts during the period of the joint venture and, by his own admission, he didn't know that that connection had ceased at the time the joint venture came to an end. We submit there's ample ground for you to conclude Mr Johnston had actual knowledge of the risk of Melco Resorts obtaining an interest in Crown Resorts under the share sale agreement might give rise to an association with Stanley Ho of the kind prohibited by the relevant clause, a clause that Mr Johnston admitted he had a general understanding of.

Now, in relation to Mr Packer, CPH submitted, at transcript 5261, that on the day of the Melco transaction, Mr Packer was not aware of any regulatory risk and that he

had forgotten about Great Respect's shares in Melco International. We submit that those submissions should be rejected and they are inconsistent with Mr Packer's evidence, and can I take you to it - - -

COMMISSIONER: Yes.

MR BELL: - - - starting at transcript 3669.

COMMISSIONER: 36?

MR BELL: 3669.

COMMISSIONER: Thank you.

MR BELL: I will start from line 42:

And you knew at this time that Crown Resorts had entered into –

Sorry, "at this time" in this context means the 30th of May 2019, the date of the Melco transaction:

...you knew at this time that Crown Resorts had entered into agreements with the regulator in New South Wales intended to prevent Stanley Ho or anybody associated with him from having in interest in Crown Resorts, didn't you?

And then turning to page 3670:

I had forgotten that, Mr Bell. I regarded Melco Resorts as Laurence's company, not Stanley's.

I didn't ask you that. I'm asking at the moment about regulatory agreements. Would it be a fairer way of putting it that you just didn't think about any regulatory agreements that Crown had with the New South Wales regulator at the time of this transaction?

I believed – I believed that that would have been found in the legal preparation for the transaction.

Let's just go back a few steps. You told the Commissioner earlier today that you were aware, in 2013 and 2014, that there were regulatory agreements that Crown Resorts had with the New South Wales regulator intended, in general terms, to prevent Stanley Ho or a Stanley Ho entity to take an interest in Crown Resorts. You remember giving that evidence?

Yes, I do.

Is it the case that, when you were proceeding to exchange contracts with Melco, you just didn't give that matter any thought at all?

I left it to my legal team and I gave it no thought.

Right, and you - - -

I had forgotten it –

he added.

Well, you say you forgotten it, but isn't the truth you didn't think about it at all?

No, because Melco Resorts had been passed by regulators to be an associate of Crown in Australia on multiple occasions … multiple jurisdictions and in Las Vegas and in Pennsylvania. Mr Ho was – Dr Ho was in a very sickened state, and I regarded Melco Resorts, as Lawrence's company, to his great credit.

With respect, Mr Packer, that's not an answer to my question. My question is: you knew at this time that Crown Resorts had entered into important agreements with the New South Wales regulator intended to prevent Stanley Ho or anyone associated with him from having any interest in Crown Resorts; that's the case, isn't it?

I had forgotten, Mr Bell.

Turning to page 3671:

Well, these were important agreements that you understood conferred rights on Crown Resorts and imposed liabilities on it; correct? You told us that today.

Yes … Yes, Mr Bell.

And isn't the truth of the matter that you just didn't give any thought at all to those regulatory agreements when you pressed the go button on the transaction with Lawrence Ho?

I thought that the legal work that the CPH team and Garry Besson were preparing would cover all eventualities.

And to answer my question, you didn't turn your mind at this time to the fact that there were regulatory agreements Crown had with the New South Wales regulator intended to prevent Stanley Ho or a Stanley Ho entity from taking an interest in Crown Resorts. That's the case, isn't it?

That's correct, Mr Bell.

And you knew at this time that Great Respect, the discretionary trust with which Dr Ho was associated had converted convertible notes into an approximately 20 per cent shareholding in Melco International, didn't you?

No.

Well, you told us in evidence this morning, transcript page 3634, line 40, that it was clear to you at the time of the 2006 annual report by Melco Resorts that Great Respect was a company controlled by a discretionary trust, the beneficiaries of which included Dr Stanley Ho. Do you remember giving that evidence this morning?

I remember giving that evidence this morning, Mr Bell.

And do you remember, transcript page 3635, line 20, giving this evidence this morning, that you knew during the period when you were co-chairman of Melco Resorts that ultimately Great Respect converted convertible notes into an approximately 20 per cent shareholding in Melco International and you said yes. Do you remember giving that evidence this morning?

When he took me –

I think that should be - - -

COMMISSIONER: When you took me – is the correction.

MR BELL: Yes. If I could go then to page 3672:

So when it came time to press the go button on the transaction with Lawrence Ho these were things that you knew; correct?

No, I had forgotten, Mr Bell. It isn't the truth of the matter and I assumed they would have been picked up. That's the truth of the matter, Mr Bell.

I have no doubt, Mr Packer, that you are relying on legal advice and I'm not suggesting otherwise, but what I'm asking about is your state of mind. The truth of the matter is that you didn't give a moment's thought to the fact that Stanley Ho had an interest via Great Respect in Melco International at the time of this transaction, did you?

I can't recall.

COMMISSIONER: Well, it's obvious you didn't think about it, it seems, Mr Packer, otherwise would you have done something about it, wouldn't you?

I believe so, Madam Commissioner.

So in answer to – in terms of Mr Bell's question, it's more probably that you just didn't turn your mind to the prohibition against allowing Dr Ho to acquire an interest in Crown at the time. Is that correct?

I'm not sure if that's correct versus forgetting. They had to be one in the same thing.

Yes, but if you forgot it, you might remember it, you see, at a particular time. It's more probable in the situation, isn't it, that what Mr Bell says is correct; you didn't turn your mind to the prohibition.

No, I didn't.

So you would not find, as CPH would have it, that Mr Packer had forgotten about all the matters which gave rise to risk of harm to Crown Resorts. The truth of the matter was he didn't turn his mind to it. And we submit you would find on the basis of the evidence that Mr Packer knew at the time of the Melco transaction that Crown Resorts had entered into agreements with the regulator in New South Wales intended to prevent Stanley Ho or any entity associated with him from having any interest in Crown Resorts, that you would find at the time of the Melco transaction Mr Packer knew that Great Respect was a company controlled by a discretionary trust, the beneficiaries of which included Dr Stanley Ho, and you would find that at the time of the Melco transaction Mr Packer knew that Great Respect had a 20 per cent shareholding in Melco International.

We submit you would find that at the time of the transaction, Mr Packer had not forgotten about those matters, but rather he simply failed to turn his mind to them. And if you accept the submission that Mr Packer was a de facto director of Crown Resorts at the time, there is ample basis to attribute his knowledge to Crown Resorts. Now, could I turn to the final issue which is CPHs submission that Crown Resorts didn't fail to take all steps within its power. CPH - - -

COMMISSIONER: Was it a submission that they didn't take the steps or that they couldn't take them?

MR BELL: The submission was that they – that the relevant clause ought to be read so that it imposed an obligation on Crown Resorts only to take steps within its power that would definitely have stopped the Melco transaction. That was the submission at 5261. On the basis of that construction, CPH further submitted that the transaction didn't give rise to a breach of the relevant clause because the steps that Crown Resorts could have taken in seeking to persuade CPH, CPH, Crown and Melco Resorts either not to proceed or to effect a share divestiture so Great Respect no longer had an interest, or ceasing to provide further information under the protocol were only steps that might have stopped the transaction. We submit that you would not accept CPHs construction of the relevant clause to mean it only involved steps which would definitely have stopped the Melco transaction because at the time a

person takes an action it can never be known in any context with absolute certainty whether the action will produce the effect which is intended.

COMMISSIONER: Well, it has to take the steps within its power to stop.

MR BELL: Yes. Yes.

COMMISSIONER: So you're looking at the steps that's within its power to stop. If they turn out not to stop it that's another matter.

MR BELL: Quite. You don't determine the question by looking ex post facto as to whether they would in fact have stopped the transaction. If the construction of the relevant clause favoured by CPH were to apply, the obligation would never arise. It could never be certain that any action Crown Resorts might take would absolutely prevent a transaction. We submit that the better construction that it required Crown Resorts, upon becoming aware of the share sale agreement via the attribution to it of knowledge held by at least Mr Johnston and Mr Packer take all steps within its power that might stop the transaction from proceeding. And accordingly, we therefore submit that in failing to take the steps within its power to which we've adverted Crown Resorts breached the relevant clause. So could I turn to the wider question of suitability that the Melco transaction gives rise to.

COMMISSIONER: Yes.

MR BELL: The first question which is relevant here is Mr Johnston's conflict of interest in relation to the Crown Resorts draft financial plan.

COMMISSIONER: Just before you leave that last point because it's lingering on my mind, I'm sorry.

MR BELL: Yes.

COMMISSIONER: When you say that I should read into it the steps that are within its power that might stop, if I take the view that it's to be read as stop, that is, if it has power to stop it, I mean one can stop a transaction with various steps. One might be to persuade the person, others might be to take court action, various aspects of it, but there would have been at least some steps that Crown could have taken to stop it. The first one would have been by persuasion. It may have been unsuccessful. The second one may have been by seeking injunctive relief which may also have been unsuccessful. But the point I think that was made against you was that there was no power to stop this, I think, by CPH, that you have to actually look at what the transaction was, and because it was between CPH Crown Holdings and Melco, what power did Crown have per se, being a corporation that had no power to intervene in a share sale transaction, and I think reference was made to the rules and constitution that it should and could not have intervened.

MR BELL: That of course would render the clause absolutely nugatory because Crown Resorts was not a party to the transaction by definition. There are no steps which it could definitely have taken to prevent it from occurring. One therefore has to look at the clause by reference to what steps it could take, and one could never know, because it wasn't a part of the transaction, if any of those would ultimately be successful. The fact is that none of them were taken - - -

COMMISSIONER: Because they didn't – they weren't made aware of it.

MR BELL: Well, we submit that the attribution rules mean that it was aware via the agency of the individuals to which I've referred, and no steps were taken. It wasn't a party to the transaction, therefore there was nothing it could do which would definitely have stopped the transaction. There were certainly steps which it could have taken that might have achieved that outcome.

COMMISSIONER: Let's assume I attribute the knowledge via actual knowledge from someone. The only person – put attribution aside for a moment. The only person was a director of CPH and a director of Crown who certainly wasn't going to take any steps to stop it. So it's not that director's conduct alone; I would have to look at the attributed knowledge of the whole board which seems a little artificial because in working out in a regulatory regime whether there's been a breach of a regulatory clause, it's for the purposes of looking at suitability and the reality was the only people who actually knew – put attribution aside – were those directors who were CPH directors.

MR BELL: And the irony is, of course, they were exquisitely in the position to prevent the transaction from occurring, so if one were to take it at a practical level rather than legal, Mr Johnston was the one person in the universe who could have prevented this transaction from occurring, at least for a period of time.

COMMISSIONER: Yes, and certainly with the legal advisers there is the overlay of the legal advice coming in and that's relevant to your suitability question. If there be a breach because they didn't take a step that might have prevented it then it has to be looked at in all those circumstances of what was going on at the time, obviously.

MR BELL: Of course. I mean, the consequence and how – what you make of it - - -

COMMISSIONER: Yes.

MR BELL: - - - is another matter, and you observed in argument that the clause was spent, which is true, but - - -

COMMISSIONER: The breach was spent.

MR BELL: The breach was spent, but from the point of view of Crown Resorts and CPH that's a fortuitous outcome. It's spent because Melco Resorts took action - - -

COMMISSIONER: Yes.

MR BELL: - - - subsequently to remove itself from the share register, so it's spent. But that isn't necessarily the way to look at the matter in terms of the question of suitability.

COMMISSIONER: I understand. I mean, if it is fortuitous in terms of assessment of suitability because Melco decided to depart - - -

MR BELL: Yes.

COMMISSIONER: - - - and therefore there's no continuation of a presence of Dr Ho.

MR BELL: Yes.

COMMISSIONER: And of course, Dr Ho is now deceased, but the suitability question is the things that you've taken me to, the failure to look at this at the time, to entertain it without looking and all of those aspects of the matter, I understand?

MR BELL: Yes, and I will address them in a little more detail, but that's – one might think perhaps that's a more important question than whether a spent breach itself bears on suitability.

COMMISSIONER: Quite.

MR BELL: But the conduct of the individuals in this transaction has a very important bearing, we submit, on suitability, and I will come to that.

COMMISSIONER: I would have thought so.

MR BELL: Commissioner, do you want to take a short adjournment, or shall I press on?

COMMISSIONER: Yes, I will take 10 minutes. Thank you. We'll adjourn.

ADJOURNED **[11.32 am]**

RESUMED **[11.46 am]**

COMMISSIONER: Yes. Thank you. Yes, Mr Bell.

MR BELL: Commissioner you asked me which were the authorities that - - -

COMMISSIONER: Yes, that third category.

MR BELL: Yes, the attribution test involving whether the information was important to the affairs of company B.

COMMISSIONER: Yes.

MR BELL: My note indicates that this was the test used in two cases, in Beach Petroleum, page 569 - - -

COMMISSIONER: 569.

MR BELL: - - - and in BCI Finances v Binetter at paragraph 312.

COMMISSIONER: Paragraph 312?

MR BELL: Yes.

COMMISSIONER: Thank you.

MR BELL: Could I turn to the question of Mr Johnston's conflict of interest in relation to the financial ..... at transcript 5274, lines 28 to 47 - - -

COMMISSIONER: In relation to the financial what?

MR BELL: Financial plan, the - - -

COMMISSIONER: Thank you.

MR BELL: The plans that he - - -

COMMISSIONER: Yes, thank you.

MR BELL: - - - saw in late May 2019.

COMMISSIONER: Yes, yes.

MR BELL: CPH submitted that Mr Packer's request for forward financial forecasts on 3 May 2019 at exhibit AA109 was merely a continuation of earlier requests for a financial plan first made on 12 February 2019 to make the submission that Mr Packer's primary request for the financial plan was made long before the Melco transaction was even contemplated. We submit that that submission is factually incorrect, and it should be rejected. Could I first ask you to look at exhibit AA93, CRL.501.059.7562.

COMMISSIONER: Yes.

MR BELL: So this was the request made by Mr Packer on the 12th of February 2019.

COMMISSIONER: Yes.

MR BELL:

> *Can you please prepare/show me the latest financial plan that goes out to FY22. Make it conservative as I'm getting angry with always missing our plans. I'm around till Thursday mid-morning.*

COMMISSIONER: Yes.

MR BELL: He was clearly expecting that plan within a matter of days. The next relevant document is exhibit AB32, CRL.501.032.9065.

COMMISSIONER: I had a recollection of Mr Packer asking for something similar in December.

MR BELL: Yes.

COMMISSIONER: '18.

MR BELL: On a number of occasions he was asking for financial plans. We submit they're discrete requests. It's not – hardly likely that Mr Packer would ask for a plan in February and still be waiting for it in May, bearing in mind Mr Barton's evidence that Mr Packer's requests were always very time-critical, but could I ask you to look at the next document in the sequence which was referred to by CPH, exhibit AB32, CRL.501.032.9065. This is a –

COMMISSIONER: I remember it.

MR BELL: Yes. Yes. Of course, you remember that, but you see at the bottom - - -

COMMISSIONER: This is from Mr Barton and Mr Johnston.

MR BELL: Yes. Yes. So it was said that this was part of the same process. You will see Mr Barton says at about point 7:

> *We're in the process of preparing a forecast F22 on the basis of the new F19 forecasts.*

He says two paragraphs down:

> *Happy to take you through F19 when it suits you and will be sending through the F20/F22 plan by the end of next week.*

That's back in February.

COMMISSIONER: Yes, so Mr Johnston told me that it was just the usual budgeting process.

MR BELL: The budget process, but he also acknowledged that Mr Packer had specifically requested a particular plan.

COMMISSIONER: Separate from - - -

MR BELL: Separate from the budget process, but CPHs point, as we understood it, was that Mr Packer's request for a plan was actually made back at February and it predated the Melco transaction. In our submission for your consideration, these were separate requests which were met at or about the time they were made, that the request made in the email of 3 May 2019 was a separate request, and if I could just take you to that email to make good that point. That's exhibit AA109, CRL.501.008.6079.

COMMISSIONER: It seems that Mr Barton was producing various plans, but Mr Packer was suggesting they couldn't be believed in.

MR BELL: Yes, he seems to have been expressing increasing displeasure at the plans.

COMMISSIONER: Indeed. Yes.

MR BELL: But this plainly, we would submit, is a fresh request for a plan which was made on 3rd of May 2019, some four days after conversation between Mr Ho and Mr Packer which initiated the Melco transaction. That's really only the point we make, that - - -

COMMISSIONER: Yes, all right.

MR BELL: About it. Now, could I - - -

COMMISSIONER: Just pardon me for a minute. Yes. So when he says to Mr Barton whether he's got one that he believes in yet, it's clear that from the third sentence there had been some discussions between the men, including Mr Alexander - - -

MR BELL: Yes.

COMMISSIONER: - - - about the figures that had been previously sent across.

MR BELL: Yes.

COMMISSIONER: Yes, I understand.

MR BELL: And you would observe, Commissioner, that he's asking for these plans for certain assumptions to be made about no more buybacks, want to see peak debt
- - -

COMMISSIONER: Yes.

MR BELL: It's plainly a new request for information.

COMMISSIONER: Yes, I see that.

MR BELL: Now, in relation to the question of whether Mr Johnston had a conflict of interest working on the plans at the same time as he was involved in the negotiation of the sale of Crown Resorts shares to Melco, the authorities establish the fiduciary duties owed by a person to a company of which he or she is a director include an obligation not to place himself or herself in the position of conflict, and for that purpose the relevant conflict arises where there is a real or substantial possibility of conflict between the director's duty to the company and either the director's own personal interests or the director's duties to another person.

The test for whether there is a real or substantial possibility of a conflict is objective to be determined from the standpoint of an objective observer with knowledge of the material facts and circumstances. These principles were recently reaffirmed in the New South Wales Court of Appeal in Australian Careers Institute Pty Ltd v Australian Institute of Fitness Pty Ltd [2016] 340 ALR 580 at paragraph 3, and that decision was later endorsed by the New South Wales Court Of Appeal again in Gunasegaram v Blue Visions Management Pty Ltd [2018] 129 ACSR 265, paragraphs 149 to 151. In terms of the material facts and circumstances, CPH submitted that Mr Johnston was, as Mr Hutley put it at transcript 5385, line 25, in effect sidelined from the Melco transaction.

At transcript 5386, line 25 Mr Hutley submitted that the numbers being reviewed by Mr Johnston played no part in the determination of the price to be paid by Melco Resorts for CPH Crown shares in Crown Resorts. We submit that you would reject those. First, Mr Johnston gave evidence at transcript 3015, line 20 that he was being kept informed by Mr Jalland of the status of the negotiations with Melco Resorts at all times. Secondly, more importantly, it was Mr Johnston and Mr Johnston alone who determined to enter into the share transaction at a price of $13 a share. Can I take you, please, to the transcript at page 3048.

COMMISSIONER: Yes.

MR BELL: I will start at line 27.

COMMISSIONER: Yes.

MR BELL: Now, according to these – this is the – I'm dealing with the minutes of the meeting on the 30th of May, a meeting held by Mr Johnston to determine that CPH Crown should enter into the share sale .....

Now, according to these minutes, there was an evaluation of the transaction which must in fact have been an evaluation by you alone; is that correct?

I discussed it with Mr Jalland who was present at the meeting.

But it was an evaluation which led to a determination by you alone as the sole director of CPH Crown Holdings; correct?

That's right.

The minutes record that you determined that the share price agreement would benefit CPH Crown Holdings?

Yes.

So you assessed it was in the best interests of CPH Crown Holdings to agree to a price of $13 a share.

That's right.

Going to page 3049:

And I assume in forming that view, you took into account all the financial information concerning Crown Resorts that was available to you.

No I took account of the other options that we looked at with respect to the sale of the shares.

But the determination of the price was a determination for you alone as the director of CPH Crown Holdings.

A determination of whether I should accept the price, yes.

Yes, he said.

I take it that in determining whether or not to accept the price, as a careful and diligent director you took into account all the financial information of Crown Resorts that was available to you at the time.

Well, there are a number of reasons underpinning the decision to sell 19.99 per cent and given that the commercial desire was to sell 19.99 per cent of Crown for the reasons that we had, my consideration was whether that was the appropriate manner to realise the shareholding - - -

I intervened. I said:

> *I'm asking you a more specific question than that, Mr Johnston.*
>
> *Yes.*
>
> *I'm asking you about your consideration concerning the price that you would accept. The question is this: I assume, that as a careful and diligent director of CPH Crown Holdings in determining that price you took into account all of the information, all of the financial information concerning Crown Resorts that was available to you. That must be right, isn't it?*
>
> *Well, I think, as I said, the consideration was based upon what options were available to realise that asset.*

You intervened:

> *No, Mr Johnston. I'm going to ask Mr Bell to ask you once again if you wouldn't mind.*

Continuing:

> *You've told us that you and you alone had to determine that the price of $13 was in the best interests of CPH Crown Holdings. My precise question to you is this: in determining that that was an appropriate price to accept, I take it as a careful and diligent director, that you took into account all the financial information –*

I've moved to page 3050.

COMMISSIONER: Yes, next page, please.

MR BELL:

> *You took into account all the financial information concerning Crown Resorts that was available to you; correct?*
>
> *Yes. That would have been one of – one of the factors I took into account.*

So eventually, Mr Johnston accepted that he took into account all the financial information that was available to him which necessarily included the financial information contained in the financial plans which he had been reviewing over the previous two weeks. Now, in terms of the material facts and circumstances which an objective observer would consider, CPH also submitted at transcript 5384, line 15 that the financial plans of Crown Resorts which Mr Johnston was reviewing could have no influence upon the counterparty. CPH also submitted at transcript 5380, lines 35 to 40 there was no risk of the information that Mr Johnston was reviewing

ever coming to the attention of the counterparty before the price was set. Those submissions should also be rejected. Indeed, Mr Johnston's evidence was that the information in the financial plans which he had received from Barton was relevant to the estimations of financial performance which he and Mr Jalland subsequently provided to Melco Resorts. And can I take you to that transcript, please, Commissioner, transcript 3021 line 24:

So leaving to one side the debate we're having about whether or not it was price-sensitive, is it your evidence to this Inquiry that, prior to the sale of Crown Resorts shares to Melco Resorts, you provided confidential information regarding Crown Resorts to Melco Resorts?

Yes. Mr Jalland and I did.

Yes. And was that financial information that you provided?

It was guidance. It wasn't detailed financial information.

But could I just be precise – could I have some precision about what the guidance was that you provided to Melco Resorts prior to this deal being consummated?

Yes. So we indicated that, for FY19, the financial performance contemplated by management was, I think, from memory, about two per cent of broker consensus and, for FY20, it was – I forget the exact number, but it was, again, less than five per cent. It was a relatively small variance.

And was that information that was included financial plans that you had received from Mr Barton shortly after the 21st May 2019?

Yes. Well –

and then turning to 3022:

Sorry. It was based on it. I'm sorry.

Please finish your answer.

Sorry. It … was relevant to giving those estimations. Yes.

So Mr Barton used the information in the financial plans - - -

COMMISSIONER: Mr Johnston?

MR BELL: I'm sorry. My apologies.

COMMISSIONER: That's all right.

MR BELL: Mr Johnston used the information in the financial plans, which he and Mr Barton had been considering, as the basis for confidential information of Crown Resorts, which he then communicated to Melco Resorts prior to the transaction. And we submit that an objective observer with knowledge of all the material facts and circumstances would conclude that there was a real or substantial possibility of conflict between Mr Johnston's duty to Crown Resorts and his duties to CPH Crown at the time that he was reviewing the financial plans.

Now, could I go to the wider questions of suitability which we submit you would take into consideration arising from the Melco transaction. It was put by CPH, at transcript 5265, lines 30 to 40, that any breach could not go to the suitability of Mr Johnston or CPH, because they surrounded themselves with lawyers at the relevant time and any breach was innocent and technical. We submit that misses the point on a number of levels. The question isn't the suitability of Mr Johnston or CPH. The question is the suitability of Crown Resorts as a close associate of the licensee having regard to the impact CPH and its officers had upon it. What we submit is significant for your consideration is that CPH and its nominee directors on the board of Crown Resorts did not pause for a moment to consider the interests of Crown Resorts in relation to the Melco transaction.

Take Mr Jalland by way of example. It was put by CPH, at transcript 5274 line 10, that Mr Jalland could not seriously have been expected to read the detail of annual reports to discover information such as Great Respect's interest in Melco International. Now, of course, it wasn't just the detail of annual reports which Mr Jalland said he didn't need to read. Mr Jalland also didn't read a press release by Melco International which was sent to him prior to exchange of the share sale agreement by his own lawyers, which clearly stated that the largest shareholder in Melco International was Great Respect which owned approximately 20.36 per cent of the issues shares, and that Great Respect was a company controlled by a discretionary family trust, the beneficiaries of which included Mr Ho and his immediate family members. I won't take you to the documents, but the documents are exhibits AB52, AB53. You'll find Mr Jalland's evidence at transcript 3271 to 3280.

More fundamentally, Mr Jalland didn't consider the interests of Crown Resorts at all. I will take you to the transcript of his evidence, transcript 3262. I will start at line 5:

> *Mr Bell, it was my belief that I had held for some considerable period of time that Dr Stanley Ho had no interest in Melco International and Melco Resorts.*
>
> *I understand that, but you knew that the provisions in the regulatory agreements reflected a deep concern held by the New South Wales Government to prevent Stanley Ho or entities associated with him taking a foothold in casinos in this State; correct?*
>
> *I was aware of that, yes.*

And you hadn't checked to see whether Stanley Ho or entities associated with him did have an interest; correct?

I didn't check.

And knowing that this was a matter of concern to the New South Wales Independent Liquor and Gaming Authority, did it occur to you at this time that you had an obligation to the director of Crown Resorts to inform it of this proposal before it occurred so that it could consider its own position and take its own legal and commercial advice on the propriety of the transaction?

No, I don't believe I had an obligation to notify Crown.

And you did understand that Crown Resorts had not had an opportunity to consider its own position to take its own legal and commercial advice on the propriety of the transaction; correct?

That's correct.

And do you say that you, notwithstanding that the only entity in relation to this transaction to which you owed directors' duties was Crown Resorts, you didn't pause even for a moment to consider whether execution of the agreement should be deferred until Crown Resorts had the opportunity to consider its own position?

No, I didn't. I didn't believe that was the case.

In fact, at the time of this transaction, you were thinking only of the benefits which you perceived the transaction would bring to CPH Crown Holdings and, ultimately, to Mr Packer. Is that a fair way of putting it?

That's correct.

The approach of the CPH nominees, thinking only of the benefits of the Melco transaction to CPH and Mr Packer, is to be contrasted with the concerns of the independent directors of Crown Resorts, who, within one day of being informed of the Melco transaction, appreciated that the conduct of CPH had exposed Crown Resorts to the risk of breaching its important regulatory agreements with the Authority. Indeed, Ms Coonan's evidence, at transcript 4453 line 42 to transcript 4454 line 22, was that the day after the Melco transaction, she sent an email to Mr Dixon discussing convening earlier meetings of the independent directors. As Ms Coonan put it, at transcript 4454, she thought it would have been appropriate for CPH to have told the Crown Resorts board before the transaction, which would have then permitted Crown Resorts to consider its own position under the important regulatory agreements with the Authority.

Can I take you to Ms Coonan's evidence at transcript 4455. Starting at line 27 – and this is evidence exchanged between you and Ms Coonan. You said:

You said you didn't know about Mr Ho but that I understand you wanted to have an investigation in any event; is that right?

Yes. We needed to know. I mean, it was in the schedule. And we had no idea – at least, I had no idea – sorry, I withdraw that. I didn't know if Mr Ho Senior had any interest at all in Melco.

I understand. Thank you. Yes.

Then I asked this question:

But that's something, no doubt, you would have investigated had you been informed about the transaction before it occurred?

I do think that was a critically important matter.

And can I also take you, Commissioner, to Mr Dixon's evidence about this matter at transcript 4666. I will start at the top of the page:

And do you see that, in the first bullet point, Ms Manos informed Mr Alexander the independent director - - -

COMMISSIONER: Just pardon me. What page is it?

MR BELL: I'm sorry. 4666. My apologies.

COMMISSIONER: 4666?

MR BELL: 4666. Yes. My apologies.

COMMISSIONER: Thank you. Yes.

MR BELL: Just starting at the top of the page:

And do you see that, in the first bullet point, Ms Manos informed Mr Alexander that, "Independent directors wanted to meet separately from CPH to understand potential ramifications of the transaction." Had you raised any issues or concerns with Ms Manos?

I expect I would have, probably, as a result of that. I'm not 100 per cent sure it all came from me, but I – or from me, but I would have thought so.

Was one of the issues that you were concerned about at this time the fact that the CPH nominees on the board of Crown Resorts hadn't informed you or the other independent directors about the proposed sale before it occurred?

Look, I'm not sure, in the sense that I think it would have been probably best had they told us all. I don't know if they tried to tell us or if they couldn't get through. I'm hard to get sometimes. But I think they have a right to sell the shares, but given everything that – the relationship … you know, the company, the CPH people, we should have been told.

You were, of course, aware at the time that Crown Resorts had important regulatory agreements with the New South Wales regulator?

Yes, I was.

And I take it that you were aware at the time that, in general terms, those agreements required Crown to do its best to prevent Stanley Ho or a Stanley Ho associate taking an interest in Crown Resorts?

Look, I can't remember the exact detail of whether I remember that particular one with Stanley Ho.

But I take it that, if you had been informed before the sale, by the CPH nominees on the board, you would have taken steps to ensure that that didn't put Crown Resorts in breach of its regulatory agreements with the New South Wales regulator.

Well, I think all of the independent board members felt the same way. Yes.

And it went on:

…this is a sale that, by any means, raised issues and it was best to get those issues up and running straight away.

Turning to 4667:

And I take it that, if you had been informed in advance, you would have taken whatever steps you thought were properly available to Crown Resorts to ensure that there was no breach of those agreements.

If I'd been informed, I would have done a range of things. Right now, I don't know every one of them, but, obviously, at the time, yes, we would have.

Now, the approach of CPH and its nominees on the Crown board to Melco transaction was considering only CPHs interests without considering any detriment, or even the possibility of detriment, that might result for Crown Resorts is an

illustration, we submit, just as the China arrests is an illustration, that the adverse impact of CPH in the ultimate suitability of Crown Resorts and the licensee.

Could I turn to the wider question of independence. We submit that the wider question of suitability that the China arrests and Melco transaction illustrate is a question of whether Crown Resorts is sufficiently independent of the influence - - -

COMMISSIONER: Would you start that again for me? Sorry.

MR BELL: Yes. We submit that the wider question of suitability, which the China arrests and Melco transaction illustrate, is the question of Crown Resorts is sufficiently independent of the influence of its major shareholder. Bearing in mind the evidence of Mr Packer and Ms Coonan, in particular, that Crown Resorts needed to be more independent in future. In that context, I turn to rely to the submissions of Crown Resorts in relation to the issue of independence and its relevance to current suitability.

Crown Resorts submitted, at transcript 5579 to 5580, and again at transcript 5683, that the position going forward is, in the words – to use the words of its counsel, is that:

> *The relationship between Crown Resorts and its major shareholder will be the stock standard relationship between a company and its major shareholder. It will have appointees on the board and those nominees will be the source of information to the major shareholder. The only influence that the major shareholder will have –*

so it was submitted –

> *will be at board level through the participation of its nominee directors.*

You were informed by counsel for Crown Resorts that Mr Johnston will be stepping back from his involvement so that he remained only on the audit committee. You're being asked to trust Crown Resorts at its word to act as a model public company in future in light of all of the evidence which has been provided to this Inquiry, including the significant evidence which has been provided only this week.

It is instructive to compare what Crown Resorts asserts will occur in the future with the position of Crown Resorts at the commencement of hearings of this Inquiry in January this year. At that time Mr Alexander, who was undoubtedly a proxy for Mr Packer, the executive chairman of Crown Resorts, Melco Resorts was a 10 per cent shareholder with an agreement to acquire a further 10 per cent; the services agreement was in place, which gave a licence to Mr Johnston to be involved extensively in the management of Crown Resorts in addition to his role as a director. Mr Johnston was, in fact, extensively involved in management. In addition to his management role, he was a member of six committees of the board.

The controlling shareholder protocol was in place which, purportedly, only provided confidential information to Mr Packer, but, in fact, served as a means for him to convey instructions to an inner sanctum of board members and senior executives. The existence of that protocol was concealed by Crown Resorts from its own shareholders in the market. No register was kept by Crown Resorts of information provided to Mr Packer under the protocol or the reasons for providing that information. All those factors have changed over the course of this Inquiry, some as recently as this week, when Crown Resorts informed the Inquiry on Wednesday that Mr Johnston would be paring back his committee membership. It's in that context that you have to evaluate Crown Resorts' submission that it should be taken on trust to act as a model public company in future.

We submit that there would need, at the very least, to be an approving period in which Crown Resorts demonstrates to the satisfaction of the Authority that it is in fact a model public company which it says it will be in the future. That does not address the issue of the adverse impact of the influence of CPH, which we submit has been demonstrated in evidence to this Inquiry. In our closing submissions-in-chief, in part 6, paragraphs 57 to 63, we submitted that there was wisdom in the imposition of shareholding caps subject to the approval of the Authority. We pointed out that was a long-term measure and minds might differ as to its utility or appropriateness. We suggested that this course might not be necessary if enforceable undertakings were given by CPH, first, to limit its voting power; secondly, to limit the number of its nominees on the board; and, thirdly, an undertaking which is more apt to be given by Crown Resorts than by CPH that neither the licensee nor Crown Resorts may enter into any agreement or arrangement under which CPH or associates are to be provided with confidential or material non-public information regarding the licensee of Crown Resorts.

In relation to the first two proposals, limitations on voting power and on nominee directors, CPH has not given any indication of engaging with those proposals. Crown Resorts, in its submissions, has pointed out difficulties which it would have in unilaterally enforcing those matters, and that is why we frame trees proposals in terms of undertakings by CPH. In these circumstances, we submit that you should give further consideration to recommending the imposition of shareholding caps. There are various mechanisms which might achieve that outcome. One might be for the licence to be suspended until such time as shareholding caps have been implemented. Another mechanism might involve legislation. These are matters which require further reflection.

In terms of the third proposal, Crown Resorts submitted, at transcript 5684 lines 36 to 45, that, as the services agreement and controlling shareholder protocol have been terminated, there's no need for undertakings to be given because, it said, it doesn't address a live issue. We submit that that is a matter of concern. Crown Resorts has publicly stated that, in future, communications of information to its major shareholder will only be via its nominee directors. In its considered position, as identified in submissions by its counsel, it has declined to give an undertaking to that effect.

We submit that the public interest requires a demonstration by Crown Resorts of enduring change. Its failure to give an undertaking to do what it says it will do in relation to the communication of confidential or material non-public information to CPH is, in our submission, an indication of ongoing unsuitability. Commissioner, those are my submissions.

COMMISSIONER: Yes, Mr Young, I'm just looking at the transcript to which – thank you, Mr Bell. I was just looking at the transcript – I've lost Mr Young. There he is. I'm just looking at the – could you bring it back, please. I was just looking at the transcript at 5684 to which Mr Bell was taking me. You have said that it's unnecessary because the CPH – I withdraw that – the controlling shareholder protocol has now been terminated, and I think I understand from Mr Bell's submission that Crown is not in a position to offer an undertaking that it would not enter into such a sharing arrangement with CPH, and is that the position, that Crown is not willing to provide an undertaking that it will not enter into a similar type of arrangement with CPH or Mr Packer in the period that's coming up?

MR YOUNG: No, not quite, Commissioner. Our submission was that such a prohibition was not necessary or required in regard to - - -

COMMISSIONER: I understand that. Yes, I understand that.

MR YOUNG: If you, Commissioner, thought notwithstanding that submission that an undertaking from us was required, we would give the undertaking.

COMMISSIONER: Thank you, Mr Young. I now understand that - - -

MR YOUNG: I never refused to give an undertaking.

COMMISSIONER: No, it wasn't – you did not refuse, it was just that it was – the position was said to be unnecessary. I wanted to clarify with you that if I took the view that having regard to the circumstances, I could be satisfied that Crown would be willing to provide such an undertaking.

MR YOUNG: Yes. May I say, Commissioner, that we made that submission about the lack of necessity having regard to the very careful consideration that the board had given to these arrangements.

COMMISSIONER: Yes. No, I understand that.

MR YOUNG: Reviewing them carefully in the middle of the year and then making the decision to terminate.

COMMISSIONER: Yes. No, I just wanted to be clear that if there were to be an undertaking that was appropriate then Crown would be willing to provide it not to enter into such an arrangement with CPH to share confidential information.

MR YOUNG: Yes.

COMMISSIONER: Yes. Thank you, Mr Young. Yes, thank you, Mr Bell. Now it's time then to move to Mr Aspinall's submissions. Mr Young, I indicated to you that it would be helpful if documents were produced. I don't think any documents have been produced as yet, but let me just invite Mr Aspinall to make submissions.

MR ASPINALL: Yes. Thank you, Commissioner. I might say at the outset that I will be as brief as possible. But for the new information I would have been probably finished by lunch, but because of the new information I will tarry a bit longer. I should also say that because of the way in which the information has come in relatively late, I wouldn't be as familiar as I otherwise would with the documents that have come in and so I apologise in advance.

COMMISSIONER: That's all right.

MR ASPINALL: But I will need to take you through them and examine what they mean going forward. But I might begin by returning to where I started in terms of the questions that you were asked in terms of the Terms of Reference.

COMMISSIONER: Yes.

MR ASPINALL: You remember the question – the chapeau question, I might call it, is in paragraph 15(a) of the Terms of Reference which was that Crown Limited or its agents, affiliates or subsidiaries had engaged in money laundering, and you will recall, Commissioner, that within the opening submissions that allegation was split into two parts which were in respect of inside Australian casinos and then, secondly, in respect of Riverbank and Southbank. Now, in respect of the allegation that money laundering had more probably than not occurred within Crown's Australian casinos, you will recall, Commissioner, that there were a few examples that I gave. They were the Roy Moo example, the Veng Anh example and the money in the backpack behind the curtain in the Suncity Room which I submitted were indicative of money laundering.

Those are all set out in detail in the written submissions that we've provided and I took you through them, Commissioner, and they were not responded to by Crown and, in my submission, there could be really no response to them. The issue that was taken was in respect of whether or not more probably than not satisfied that the transactions at the Suncity desk constituted money laundering, and Mr Craig made submissions on that. So I would submit in respect of the chapeau question that money laundering did occur in the Australian casinos, the answer would be yes. The only point of contention seems to be whether or not you would be satisfied it occurred in relation to the video footage we saw in relation to the cooler bag and the shopping bag and the CCTV stills.

Now, Mr Craig submitted, and this is from his submissions:

My critical submission is that no-one should and cannot determine on the evidence before the Inquiry that the Suncity cash desk transactions more probably than not included transactions that involved money laundering.

We say that to get bogged down in the question of whether or not money laundering occurred is to miss the fundamental point and so on. And then you, Commissioner, noted that had it was a question within the Terms of Reference later. But Mr Craig's submission continued:

Putting to one side the standard of proof that would attend such an exercise, the evidentiary criterion applied to the legal test does not allow for such a conclusion to be reached, therefore there is, we say respectfully, no explanation put forward in the submission of counsel assisting as to the basis upon which such a finding can be made. The proposition being put forward is effectively a conclusion speculated based on watching the footage. Money laundering is defined in the AML Act –

and so on and the relevant Criminal Code –

Each of those offences are serious offences. Counsel assisting does not proffer an explanation, we say respectfully, as to how it satisfies the burden of establishing the transactions were more probably than not money laundering.

Now, could I - - -

COMMISSIONER: What page is that at?

MR ASPINALL: Transcript page 5608.

COMMISSIONER: Thank you.

MR ASPINALL: At lines 17 to 46.

COMMISSIONER: Thank you.

MR ASPINALL: Now, there are two potential answers to that question, Commissioner. The first is that when ILGA is asking you to tell it whether or not the agents or affiliates engaged in money laundering, it's asking at a level of generality which the regulator is interested in terms of going to the question of suitability. So whether or not it needs to be proved to the criminal standard, I say would not be a relevant consideration because effectively ILGA wants to know at a civil standard with the Briginshaw caveat whether or not this is something it should be worried about. But even if we do look at the criminal standard, I set out at page 56 of the written submissions section 400.9 of the Criminal Code of the Commonwealth. That's in division 400, and that is:

A person commits an offence if –

and these are the elements –

...the person deals with money or other property –

and we clearly saw that happening at the Suncity desk –

...it is reasonable to suspect that the money or property is proceeds of crime.

And so it's not the fact that I would need, or any prosecutor would need to prove they were in fact proceeds of crime; merely, the question is whether or not it's reasonable to suspect they're proceeds of crime and, thirdly, that the money – the dealing – the value of money is over $100,000 or more. And then there's another offence for less than $100,000. So the question is whether it's reasonable to suspect that what we saw there when the money was being handed over in exchange for chips was – it was reasonable to suspect the money was the proceeds of crime.

Now, in my submission, it is because – and I had hoped that I had made myself clear as we looked through the footage, but the fact is that what we saw was a person bringing hundreds of thousands of dollars in cash in a shopping bag into a casino in the middle of the night wrapped in elastic bands, wrapped in cellophane and handed over in wads. In my submission, you wouldn't really need to see more than that to be able to reasonably suspect that that is proceeds of crime. It bespeaks of someone trying to exchange ill-gotten cash and place it in terms of money laundering – it is the placement of the illicit cash into the first stage of money laundering being placement is what we are seeing there.

And so, in my submission, for Mr Craig to say that money laundering is not made out because I can't prove that is proceeds of crime misses the point. All that's needed even to make it out even at a criminal standard in the Code is that it's reasonably able to be suspected. So in that sense I would submit that not only the other examples I referred to are made out but also you could be comfortably satisfied, even to the Briginshaw standard, that what you witnessed in those CCTV stills and the footage – Wilkie footage was in fact money laundering, the first stage of it being placement.

That, in effect, Commissioner, answers the first part of the – that, in effect, answers the first part of allegation 4 which is that money was laundered in Australian casinos. The second part of the allegation was that Crown failed to enforce internal controls in respect of money laundering or anti-money laundering, and there were no submissions made on that whatsoever. In my submission, that was appropriate given there was really nothing more that could be said in regards to that. Mr Craig took the pure point that we could not be satisfied that money laundering more probably than not was seen in the Suncity desk but did not answer the question in respect of the internal controls.

That becomes important later, Commissioner, because one of the things that Mr Young and Mr Craig submit makes them now suitable is a variety of internal control

or changes have been made which will make Crown suitable going forward from a question of robustness with regard to resistance to ..... but the problem which remains is that we saw on many occasions that despite internal controls being put into place they simply weren't enforced. So the policies are all very well, but what a regulator would need to see is a commitment and evidence that they are going to be enforced. It's a cultural issue, we would submit, and there was no attempt to deal with that by Mr Craig, and it's a very big problem, in my submission, for the giving of confidence that the vehicle which we have, Crown Sydney Gaming, is going to be able to withstand the storm it is about to be launched into, the very vulnerable environment, an environment which we know targets casinos for the purposes of money laundering.

We saw that over and over again and we have seen that's what's happened in Melbourne and Southbank and Riverbank accounts. So it's self-evident that the regulator would want to be sure that the vehicle that's about to be put into that maelstrom is sufficiently strong to resist. Moving then to Southbank and Riverbank, Commissioner, at page 5584, and on the 18th of November, Commissioner you asked this question:

> *And the indication – and that indication was the first time, as I apprehend it, that you're going to tell me that the finding that I had been concerned about, that more probably than not money laundering had occurred in those accounts was now accepted by Crown. Is that the position?*

Mr Craig said:

> *Commissioner, if I might give an explanation to connect the two.*

And you said:

> *Not yet. Not yet. Not yet. You will get every opportunity.*

And Mr Craig said:

> *Thank you, Commissioner.*
>
> *Now, is that the position?*
>
> *MR CRAIG: Yes, that is the position.*

And that came at page 5584 of the transcript, Commissioner, when this issue of whether or not money laundering had occurred within those accounts was raised by the Fairfax press on the 5th of August 2019. This Inquiry had been announced on the 8th of August 2019. The Terms of Reference had been put into public circulation the following month, and it was obvious the question of whether or not money laundering had occurred within those accounts was always going to need to be explored and investigated. Now, Commissioner, in my submission, if it hadn't been

determined before the 31st of July when I took Mr Preston to those accounts and put to him that they were riddled with money laundering, then it should have been from that point on. Nevertheless, the concession that money laundering took place in those accounts was resisted by Crown month after month after month until the 18th of November when that concession was finally made.

Now, in my submission, Commissioner, that says more than the fact that money laundering actually occurred in those accounts. What it says is that this company is unable to govern itself because it cannot see the obviousness of money laundering when it is put before it and it will not concede and cooperate with a regulator to agree to that proposition when it is plain as a pikestaff that money laundering had occurred in those accounts. That, again, in my submission, Commissioner, goes to the unsuitability of the culture of this company, Crown Resorts and close associates of the Sydney licensee, to be entrusted to hold the privileged position of a licensee within an environment where it is going to be exposed to risks of money laundering and where it is vulnerable to that.

Again, in respect of the concession that was made that money laundering had occurred through those accounts more probably than not there was no attempt made by Mr Craig or anyone at Crown to address the issues which I had raised in respect of why they were permitted to continue year after year and why information was given to banks and why information received from banks was not taken seriously. That point became particularly acute in respect of the email from Mr Birch which pointed, I submitted, to serious issues within the accounts – the operation of the accounts and the culture – the anti-money laundering culture at Crown.

As you will recall, Commissioner, Mr Barton, so a party to that email, had been invited to reply and did not. No evidence of any reply to that, and then Mr Barton in his fifth statement said that he didn't consider the issues raised to have been serious. I submitted in that point that that was a big problem because it was highly concerning that the person who is now the CEO could not see the seriousness of the issues which Mr Birch was raising with Crown.

COMMISSIONER: I think that was his fourth statement.

MR ASPINALL: Fourth statement. In the following statement, after an invitation from you, Commissioner, Mr Barton changed his position to now say that he accepted that they were serious. Now, we can accept that that is so, and I accept Mr Barton's change of position, but the question – the larger question is what does it say about an organisation that the CEO of the organisation needs to be led by the nose to a conclusion which is perfectly plain from the beginning. It is all very well that this Inquiry has been able to shed light on these things, and in the light of irresistible conclusions that Mr Barton will eventually agree to them, but you need, in my submission, in this dangerous position of a casino, to have a management which is alert to the problems which arise which is able to detect and act upon warnings which are given to it and does not need to be shown point blank the obvious and be forced to agree with them.

So it is commendable, ultimately, that Mr Barton now sees that the issues raised by Mr Birch were serious. That fact does not change the problem of how the regulator going forward could have any confidence that when faced with future problems, which will no doubt arise, Mr Barton will be able to detect and act appropriately in response to them, nor the organisation itself, because over and over again we have seen examples where it has not. Now - - -

COMMISSIONER: Yes.

MR ASPINALL: I'm asked to tender some documents which are the documents which came in late on the evening of the 17th of November, Commissioner. And they are in a proposed exhibit list AT, and they are numbered AT1 to AT35. They include, I understand, Commissioner, additional documents which were received late last night.

COMMISSIONER: Yes, I will mark those exhibit AT1 to AT35.

EXHIBIT #AT1 TO AT35 DOCUMENTS

COMMISSIONER: And there are some additional AO documents, I gather.

MR ASPINALL: Yes.

COMMISSIONER: I will mark those AO92 through to AO112.

EXHIBIT #AO92 TO AO112 DOCUMENTS

COMMISSIONER: Yes, Mr Aspinall.

MR ASPINALL: Thank you. Now, this is - - -

MR YOUNG: Commissioner, excuse me, Commissioner.

COMMISSIONER: Yes, of course.

MR YOUNG: Could they be marked as confidential for the moment?

COMMISSIONER: Yes. Yes.

MR YOUNG: Those exhibits. I would be grateful if somebody could send me a list of them too, please.

COMMISSIONER: Yes, yes. That will be done immediately, I hope. Has it not been done already?

MR ASPINALL: I'm not sure, Commissioner, but - - -

COMMISSIONER: I believe your solicitors may have a copy of it, Mr Young, if they can send it to you immediately, I would be grateful. But my solicitors – or the solicitors instructing my counsel assisting will send them across.

MR YOUNG: Thank you very much.

COMMISSIONER: Yes, Mr Aspinall.

MR ASPINALL: I should preface this part by saying, Commissioner, that consistent with the submissions that I made in chief, the premise upon which I had proceeded was that with respect to Southbank and Riverbank, that following the publication of the newspaper article on the 5th of August 2019, no-one at Crown had taken the time to examine the bank statements themselves and recognise the problems that were contained in them. That may have been a misapprehension, as it turns out. From the evidence that's emerged in the last few days, that appears to be the case.

But the entire line of questioning with respect to what had occurred and why it had occurred in respect to Southbank and Riverbank was that the fact that these accounts should be reviewed to find out what was going on in them had occurred to nobody and that that was somehow inadvertent, or a lack of confidence that they would be able to interpret what they said because people said that they weren't experts in money laundering. Now, in general terms what appears to emerge from the evidence that I've just tendered is that that was not the case at all.

What appears to have occurred, and I will take you to the emails in due course, is that the publication of the newspaper article prompted an almost immediate response from Ms Lane, the AML general manager at Crown at the time. Ms Lane requested and received within approximately five hours electronic copies of the bank statements and she proceeded to review them. The evidence is that she laid them out on the floor of her office and looked at them carefully, but she concluded that they needed further review and that she was not the best person for forensic purposes to do that because they were a lot of work and ..... the evidence then suggests that she spoke to Mr Jeans of Initialism, that Mr Jeans put her in contact with a person at Grant Thornton in respect of a forensic review being carried out and that was on the 21st of August 2019.

The evidence then suggests – and I say "suggests" because it's presented to the Commission in a curious form; it is presented to the Commission by way of a hearsay statement of Mr Barton referring to a conversation or information obtained from Mr Preston which is then ambiguous in terms of what actually occurred, but we've sought further information on that. Now, in terms of what prima facie that

indicates is that despite Ms Lane's recommendation that Grant Thornton would do an external review of the accounts, advice of some description was obtained from MinterEllison that the advice – any review would not be privileged and so a decision was made not to review the accounts.

Now, how exactly in terms of the chain of logic that worked or what the terms of that advice were, is not clear because it's given in hearsay form by Mr Barton. This morning, Commissioner, you asked Mr Young to obtain from MinterEllison any document which threw light upon that question and while you have been hearing from Mr Bell those assisting have heard back that there is no document which responds to that request in respect of the 2019 matter. Mr Preston, according to Mr Barton, said that he sought and received advice from MinterEllison on that issue, but if that is correct there appears to be no documentation of it.

Assuming it is correct, and the statement of Mr Barton was, as I understand, served by MinterEllison, it's very strange that solicitors would serve a statement containing information which they knew to be false, but I say no more about that. The evidence – hearsay evidence of Mr Barton is that that advice was obtained and that Mr Preston made a decision not to proceed with the view. Now, just stopping there, Commissioner, throughout this Inquiry and in the newspaper article itself ,a live question has been whether or not Crown turned a blind eye to money laundering. And the explanation which I had taken from the evidence that has emerged at the Inquiry was that there was no blind eye because Crown had simply not looked at the bank accounts through inadvertence or a failure of care to do so.

The new evidence, unsatisfactory as it is, Commissioner, and untested, suggests something much more concerning, and that is that someone within Crown, namely Ms Lane, looked at these accounts within days of the newspaper article and recommended that they be reviewed by an external expert, but that that recommendation was quashed, not acted upon. Now, that, in my submission, is perhaps worse than turning a blind eye; it's to turn open eyes to a problem and then to turn your eyes away from the problem, afraid of what you might find if you carry out the investigation.

There was an interchange between yourself and I in my opening submissions-in-chief as to whether Crown cared about money laundering. I had said that the problem was either that they didn't care or were ignorant of the problem, but if ,on the evidence that's emerged, they didn't want to – Ms Lane had told them that there was a problem that needed to be reviewed and they purposely decided not to. It's extremely concerning, and Mr Young makes the point that the matters that we review in Southbank and Riverbank are, to an extent, historical; they go back to 2013 and they end in 2018 or '17. This turning away from the problem occurred in August last year, within the tenure of this Inquiry.

COMMISSIONER: Well, I think it's in the face of the Inquiry.

MR ASPINALL: In the face of the Inquiry. And the Inquiry was allowed to proceed – the questioning and the submissions were allowed to proceed upon the premise that nobody had turned their mind to whether or not these accounts needed to be looked at. Directors were asked why weren't these accounts looked at? Ms Manos was asked why didn't you look at these accounts, and she said, "I couldn't get them. I wouldn't get down on my hands and knees and look at dusty bank statements". Well, the emails show that they could be obtained electronically within hours and that Ms Lane had looked at them.

It's an extraordinary thing that if, in effect, MinterEllison had been asked upon this very question and advised that they would not be privileged, as Mr Preston's evidence or Mr Barton's evidence suggests, that the Inquiry was allowed to proceed upon this premise that that was the position is astonishing, in my submission. It's very deeply concerning. I have mentioned already the problems with this evidence. It's presented in a very peculiar form – and I don't want to go beyond its limitations – but if what it suggests is correct, then, there is a very serious problem with had has occurred here.

COMMISSIONER: I think the documents that you have tendered are of that ilk. But it has to be remembered that Mr Barton has – this is the statement that was served during the night on the 17th of November. Concurrently, as I understand it, MinterEllison advised those instructing you that these documents should have been produced in February when the Commission served – or the Inquiry served a summons on Crown to produce the documents that are presently the subject of exhibit AT31 to 35. So there was a step that was missed. The documents were not produced. But I do understand your submission that there was knowledge within Crown, and if Mr Barton is to be accepted, knowledge within Minters that the Inquiry, in its questioning of all the directors – or nearly all the directors – and, certainly, the company secretary, on a premise that was, in fact, false, and obviously known to be false to Mr Preston – and of course, Ms Lane had left the organisation – there were no emails pointing to this that had been produced to the Inquiry and, therefore, I do understand your deep concern.

As to what can be done at this very moment, I am not sure, because the process has to continue with Minters providing to the Inquiry documents to assist to work out what happened. If it is merely an oversight – and one would hope beyond hope that it is – that's one thing. If it is, in fact, something that was more than an oversight, then that will need to be investigated. But you are correct – putting that to one side for the moment – to assess the situation that someone within Crown knew very well that they had to look at this; that was Ms Lane in her role as AML general manager. And she took the sensible step to say, "We're not automated. We need to have assistance. Let's get Grant Thornton," and then it was quashed. The fact that it was quashed is a fact. The nature of that quashing is necessary to review. But your submission in relation to the seriousness of this is understood, particularly in respect of the current suitability of Crown as a close associate and of those directors that are particularly the directors of the licensee and, of course, of Crown.

Now, I think probably the most convenient course is to ask you to continue with your submissions in reply and then to hear from Ms Sharp in her submissions in reply and, as planned to, if documents are not produced during the luncheon adjournment, then I will have to review the situation later in the afternoon, I think, Mr Aspinall.

MR ASPINALL: Yes. Commissioner, it does seem problematic for me to proceed in circumstances where the evidence is so unclear and presented in a form which I find difficult to follow. One instance of that, which it may assist Mr Young - - -

COMMISSIONER: Yes.

MR ASPINALL: - - - to understand - - -

COMMISSIONER: Yes.

MR ASPINALL: - - - is that - - -

COMMISSIONER: Mr Young, do you have those documents now?

MR YOUNG: I have – I have some documents, Commissioner. I can't - - -

COMMISSIONER: All right then.

MR YOUNG: I can't be confident I have all documents.

COMMISSIONER: I can understand your position. Yes. Mr Aspinall, if you would be kind enough to identify them with the CRL number so Mr Young can hopefully - - -

MR ASPINALL: I will, and I will show them on the private link, if that's possible.

COMMISSIONER: That's helpful.

MR ASPINALL: The first is CRL.741.001.0532.

COMMISSIONER: 741 or 747?

MR ASPINALL: 741 on my version.

COMMISSIONER: I don't have that.

MR ASPINALL: It's on the screen.

COMMISSIONER: Yes. All right then. Thank you.

MR ASPINALL: It is the email that I was referring to, where Ms Lane writes to Mr Preston on the 21st of August:

I would like to utilise the services of Grant Thornton or another party, as you see fit, to run some analysis over the Southbank and Riverbank Investments accounts –

and so on:

This analysis should be under MinterEllison's direction and reportable to you as chief - - -

COMMISSIONER:

This analysis will be useful in any subsequent discussions with CBA.

MR ASPINALL: Yes. And then she says:

As I mentioned previously, I had started this process, but it is incredibly time-consuming –

just to interpose, that's something that I'm sure the solicitors assisting can affirm –

but I suspect will be easily done by a party with the right systems to enable us to run rules over the data.

COMMISSIONER: Yes.

MR ASPINALL:

Crown is not there yet with Sentinel, but will be.

Now, that was the original email from Ms Lane to Mr Preston.

COMMISSIONER: That's on the 21st of August.

MR ASPINALL: Correct. I would now like to show - - -

COMMISSIONER: Just pardon me for a minute, please.

MR ASPINALL: Yes.

COMMISSIONER: Just pardon me for a moment.

MR ASPINALL: Yes, of course.

COMMISSIONER: So the bottom of that email is an email from the partner at Grant Thornton Consulting to Mr Jeans and Ms Lane in relation to forensic support.

MR ASPINALL: Yes.

COMMISSIONER: And so what has happened is Mr Jeans has introduced Ms Lane and Ms Shamai from – pardon me – Grant Thornton - - -

MR ASPINALL: Yes.

COMMISSIONER: - - - and it's suggested that Grant Thornton would set up a time to discuss the matter with Ms Lane to see whether Grant Thornton could be of assistance.

MR ASPINALL: Yes.

COMMISSIONER: And then that's at 1.11 am on the 21st of August, it seems.

MR ASPINALL: Yes.

COMMISSIONER: And then there's an email on the 21st of August, that you've just shown me, which is at 10.30. Now, that looks as though – that's 10.30 am, isn't it?

MR ASPINALL: Yes.

COMMISSIONER: It's during the morning. And that goes to Mr Preston, copying him the email from Grant Thornton; correct?

MR ASPINALL: Correct.

COMMISSIONER: And so if Mr Preston does not agree with Ms Lane's proposal that Grant Thornton be retained to assist in the review, then Ms Lane suggests if Mr Preston wants the matter dealt with internally, then Ms Lane, or whoever is going to do it, would need what she refers to as "additional hands".

MR ASPINALL: Correct.

COMMISSIONER: Yes. All right. Thank you. Is that an exhibit?

MR ASPINALL: Yes, that was just exhibited as AT35.

COMMISSIONER: AT35. Thank you. Yes.

MR ASPINALL: My point of problem in respect of that email is that there's another version of it, which is CRL.747.001.0112. Now, before we leave that, operator – Commissioner, if you could take a note of the time of that email, 10.30 and 52 seconds.

COMMISSIONER: This is an email that was annexed to or part of Mr Barton's sixth statement.

MR ASPINALL: Yes.

COMMISSIONER: Thank you. And that was produced by Mr Barton.

MR ASPINALL: Yes.

COMMISSIONER: Thank you.

MR ASPINALL: And that was the 17th of November.

COMMISSIONER: Thank you.

MR ASPINALL: So going to the new number now, operator. You can see – you've had them both put up on the same screen.

COMMISSIONER: Yes.

MR ASPINALL: You can see that the time of these two emails is precisely the same.

COMMISSIONER: Yes.

MR ASPINALL: You will see that the heading of them is precisely the same.

COMMISSIONER: So this document on the right was produced by MinterEllison.

MR ASPINALL: Yes, last night.

COMMISSIONER: Yes, I see.

MR ASPINALL: But one thing that's different, in terms of the header, is that the one on the right has an attachment, which is an image 001.jpeg.

COMMISSIONER: Yes.

MR ASPINALL: But it also has lines through it. And you can see that the email on the right has some lines. Presumably, they are where the message was. And then you see at the bottom Ms Shamai's email address and her name. Now, Commissioner, that email was provided last night as part of a – what I might call a – it's not really a chain of emails, but it's a stack of emails. If I could show you CRL.747.001 - - -

COMMISSIONER: Just pardon me. The one that's on the screen is exhibit what? It needs to be traced through very carefully.

MR ASPINALL: I'm sorry. The one on the right is exhibit AT35.

COMMISSIONER: AT35.

MR ASPINALL: And the one on the left is exhibit AT12.

COMMISSIONER: I think that's the other way around.

MR ASPINALL: Yes.

COMMISSIONER: The one on the right is exhibit AT12; that's the one which is blank.

MR ASPINALL: I'm told that that's wrong; that what is correct is that the left is 12 and the right is 35.

COMMISSIONER: I see.

MR ASPINALL: I misled you before.

COMMISSIONER: That's all right. So the one on the left is AT12 and the one on the right is 35.

MR ASPINALL: Correct.

COMMISSIONER: Yes. Thank you.

MR ASPINALL: Now, if I could take you to CRL.747.001.0021.

COMMISSIONER: Yes. That's up on the screen.

MR ASPINALL: I'll just get you the exhibit number.

COMMISSIONER: Yes. Thank you.

MR ASPINALL: It's AT32.

COMMISSIONER: Thank you.

MR ASPINALL: You see there that that's an email from Mr Sutherland, Crown Melbourne, to Mr Barton.

COMMISSIONER: That's the COO.

MR ASPINALL: Correct.

COMMISSIONER: Mr Sutherland is the present COO, is he?

MR ASPINALL: Yes, as I understand it.

COMMISSIONER: Right.

MR ASPINALL: Mr Young will correct me if I'm wrong, but I understood that that's what we were told yesterday by Mr Craig.

COMMISSIONER: Yes.

MR ASPINALL: And it is to Mr Barton on the 9th of September this year, and it has attachments, one of which is the email which I just showed you ending 0021, which is exhibit AT35. You see that there in the line "attachments", Commissioner.

COMMISSIONER: No.

MR ASPINALL: Well, in the line "attachments" there are two: one is "Subject to legal privilege".

COMMISSIONER: Yes.

MR ASPINALL: And the other is "Forensic support message".

COMMISSIONER: Yes, but it has a different KB number.

MR ASPINALL: Yes. That's the question.

COMMISSIONER: What's the question?

MR ASPINALL: The attached document that we received is AT35, which has the blank sections, but this, the email that we have received last night is actually an attachment to yet a further email, which is CRL.747.001.0020. If I could bring that up, that is AT31. So before we leave this email that we're looking at on the right, Commissioner, you can see that that's one's called "Bank account investigation" and then it has a number ending 30207.

COMMISSIONER: Just before that's taken down, the one on the right is exhibit AT32, as I understand it.

MR ASPINALL: Yes.

COMMISSIONER: Correct?

MR ASPINALL: Yes.

COMMISSIONER: And the one on the left is exhibit AT - - -

MR ASPINALL: 35.

COMMISSIONER: Now, if you look at the attachment, you will see:

FW forensic support MSG 48.64 KB.

MR ASPINALL: Yes.

COMMISSIONER: On the left-hand side, the image that's attached is 5.78 KB, which is what I was referring to.

MR ASPINALL: Yes. So I understand that's the size of the image rather than the size of the message. And this may assist - - -

COMMISSIONER: Mr Young.

MR ASPINALL: - - - Mr Young to work out what has actually been received.

COMMISSIONER: So in the right-hand one, this is a Mr Sutherland to Mr Barton in September this year. This is before he gives his evidence.

MR ASPINALL: Yes.

COMMISSIONER: His oral evidence, I mean.

MR ASPINALL: Yes.

COMMISSIONER:

> *We identified some potential hits. We looked at those at the time and couldn't link any adverse information. Some of the transfers also related to –*

etcetera, and AUSTRAC –

> *Unfortunately, at the time I did not put my mind to other potential issues with the accounts. We did look at multiple customers' SYCO accounts at the time to look at TTs versus gaming activity and any relevant SMRs.*

So Mr Sutherland is explaining to Mr Barton in September this year that there was an investigation - - -

MR ASPINALL: Yes.

COMMISSIONER: - - - in respect of something, although it's not clear, and you were going to take me to - - -

MR ASPINALL: Well, perhaps I'll do it this way, Commissioner, before we leave this email. You see that there is another attachment other than forensic support and that is subject to a legal professional privilege message.

COMMISSIONER: Yes.

MR ASPINALL: If I could bring that up now.

COMMISSIONER: Yes.

MR ASPINALL: That is CRL.747.001.0023, and I will chance my arm at getting ..... AT34. And this is an email on - - -

COMMISSIONER: From 7 August.

MR ASPINALL: Yes, which clearly went to Mr Barton because there's no problem with this email having its content removed.

COMMISSIONER: Sorry?

MR ASPINALL: Well, this – if we look at – this is one of the emails which Mr Sutherland forwarded to Mr Barton, and in fact the attachment is another email from Ms Lane to Mr Preston.

COMMISSIONER: Yes, so this document is the attachment to the earlier email of the 9th of September - - -

MR ASPINALL: Correct.

COMMISSIONER: - - - from Mr Sutherland to Mr Barton.

MR ASPINALL: Yes.

COMMISSIONER: Yes, thank you.

MR ASPINALL: And it shows – it actually attaches all the Riverbank and Southbank statements as it appears – see the attachments to that. And it also says what Ms Lane has been doing, but this is the 7th of August, so this is a couple of days after the newspaper article comes out.

COMMISSIONER: Yes.

MR ASPINALL: So Mr Barton must have seen, in my submission, that Ms Lane was looking at those accounts at that point and that she's written to Mr Sutherland and to Mr Preston.

COMMISSIONER: Yes.

MR ASPINALL: Then going back to one step up the ladder - - -

COMMISSIONER: Is that just a one-page document?

MR ASPINALL: No, that's got two pages.

COMMISSIONER: Yes, if I could have a look at the second page.

MR ASPINALL: Yes, of course.

COMMISSIONER: So that's identifying various things in the period '17. Yes.

MR ASPINALL: Yes. You can see in the email at the bottom of that page that Ms Lane is trying to answer the questions posed by the newspaper article.

COMMISSIONER: Yes.

MR ASPINALL: And she's also got the bank statements by that time because she's forwarding them to Mr Preston.

COMMISSIONER: Yes. And the earlier email to which you took me, that referred to an earlier period or was it only 2017 that she was looking at?

MR ASPINALL: The earlier email which in its full form - - -

COMMISSIONER: That's exhibit AT12.

MR ASPINALL: Yes. It just says:

> *I'd like to utilise the services of Grant Thornton to run some analysis over the Southbank and Riverbank Investments accounts.*

It doesn't say any time period.

COMMISSIONER: She received the accounts for 2013 - - -

MR ASPINALL: Yes.

COMMISSIONER: - - - through to 2017.

MR ASPINALL: Well, I haven't analysed those accounts.

COMMISSIONER: That's from your exhibit, Mr Aspinall.

MR ASPINALL: I see.

COMMISSIONER: It shows that the accounts that were sent across to – or the accounts that were sent across to Ms Lane in – I think it's the earlier exhibit, but certainly it shows the years that Ms Lane was looking at date from 2013 through to – up to 2019 from the looks of - - -

MR ASPINALL: Yes, I see that, Commissioner.

COMMISSIONER: So Ms Lane is reviewing all the years, but in particular she's addressing these allegations, I see. Yes.

MR ASPINALL: Well, in this particular email she's forwarded particular statements, 51 and so on.

COMMISSIONER: Yes, I see.

MR ASPINALL: Which relate to the investigation she's done in the bottom of the page.

COMMISSIONER: Yes, I see.

MR ASPINALL: And so now to step up the ladder, Commissioner, we saw that those emails were sent to Mr Barton by Mr Sutherland, but then in the form we received these emails that email itself had been attached to another email which is CRL.747.001.0020.

COMMISSIONER: Yes.

MR ASPINALL: Which is exhibit AT31.

COMMISSIONER: Yes.

MR ASPINALL: And so that email is from Mr Sutherland now to Ms Manos on the 9th of November, and it attaches the email we were just looking at which itself attaches other emails between Mr Preston and Ms Lane.

COMMISSIONER: So that's the possible link to Ms Manos speaking to Mr Barton.

MR ASPINALL: Correct.

COMMISSIONER: Because that's the 9th of November and it is apparent that on the 10th she speaks to Mr Barton.

MR ASPINALL: Yes.

COMMISSIONER: And it says:

As discussed, please see the attached. Gus –

it should be - - -

MR ASPINALL: Dug, I think. "Dug this up for Ken in September".

COMMISSIONER: Yes. So that was dug up for Mr Barton in September and that refers back to the 9th of September email, presumably.

MR ASPINALL: Yes. Now, the question that is unresolved from all of that is that on its face what we have been provided with by MinterEllison is an email attached to an email attached to an email, and the critical email in which Ms Manos recommends Grant Thornton or review of the - - -

COMMISSIONER: Ms Lane.

MR ASPINALL: I'm sorry, Ms Lane recommends external or internal review of the accounts is the one entitled Forensic Support. But the version that we were provided with last night, when you dig down to that particular email, is the blank email that I showed you originally. The question is, and perhaps Mr Young could assist with this, whether the actual email which was sent to Mr Barton by Mr Sutherland on the 9th of September included the blank version of the message or, in fact, the longer filled-out version of the message, because it is important, in my submission, to know whether or not Mr Barton had been informed on the 9th of September that Ms Lane had made that recommendation. If he was provided only with the blank version of that email, then that is something that the Inquiry would need to know.

COMMISSIONER: Well, an ancillary question is how on earth did the blank version – when was it created, who created it, what was done with it, because for the Inquiry on production last evening from Minters, the blank version was given to us, albeit that Mr Barton had given us the full version.

MR ASPINALL: Yes.

COMMISSIONER: So Mr Barton had in his statement the full version. Have you finished with the analysis of the emails at the moment?

MR ASPINALL: The emails, yes.

COMMISSIONER: Yes.

MR ASPINALL: I would like to come back to the statement just briefly when we return.

COMMISSIONER: Yes, all right. All right then. Well, I'm going to take the luncheon adjournment and I will resume at 10 past two, and if there's anything that you can assist with in due course, Mr Young, I would be most grateful. I will adjourn until then.

ADJOURNED **[1.13 pm]**

RESUMED **[2.08 pm]**

COMMISSIONER: Thank you. Yes, Mr Young, have you been able to obtain any instructions about any further documents that might be produced?

MR YOUNG: I haven't – I have not, Commissioner, but I can say this, that the advice is not recorded in any document.

COMMISSIONER: No. Yes. Well, it's obvious that somebody in Crown decided not to proceed with this. That's one thing. Let's assume it was a discussion and it wasn't recorded. No criticism in the circumstances at this stage, of course, but let's assume it wasn't recorded but it was part of the consideration. I do need to get to the bottom of it because of the way in which the Inquiry has effectively gone off on this tangent, and so I've received a copy of a letter from your solicitors that was written today telling me – or telling those assisting me that legal professional privilege is claimed in relation to any legal advice in connection with the engagement of Grant Thornton in respect of the new reports that form the basis of Mr Barton's statement.

I think if you could transmit to MinterEllison my deep – very deep concern that I do need to get to the bottom of this and it may be that someone from Minters might have to just put something on. In any event – yes.

MR YOUNG: Yes. I was going to add, Commissioner, only this: my instructions are that the company wishes to ensure that there is no problem and that any problem is addressed by the provision of appropriate further information. I'm not in a position at this moment myself to provide information.

COMMISSIONER: I understand that. It goes to the suitability question which is why the company would be so concerned, I'm sure. And I need to see what happened in the light of Ms Lane's clearly competent and sensible suggestions, and why it wasn't brought to light until just recently. So I won't say any more, Mr Young; I will ask Mr Aspinall to proceed.

MR YOUNG: Yes. Thank you.

COMMISSIONER: Yes, thank you, Mr Aspinall.

MR ASPINALL: Thank you, Commissioner. Just in respect of the curiosity of what occurred, I would like to just refer you, if I may, to AT1 which is the sixth statement of Mr Barton. If that could be brought up, that is CRL.744.001.0001.

COMMISSIONER: Yes. Yes.

MR ASPINALL: If we could turn to the next page, 0002, if the top of that page could be enlarged, please, operator.

COMMISSIONER: Paragraph 5, is it?

MR ASPINALL: Yes. Commissioner, Mr Barton – and this is from the 17th of November, the day that we were served at 11 pm the documents, and the original emails which I showed you, including the forensic services email where Ms Lane recommended the – Mr Barton at this time was saying the response in relation to allegations in the media article I am informed by Ms Manos and so on of what happened. Curiously – and Mr Barton hasn't been examined on this, of course – he makes no mention of the fact that – of what we saw in the email to him from Mr Sutherland on the 9th of September which is AT32 where the tone of this paragraph is that this information has come to him via Ms Manos rather than as the email obtained last night had come to him before this on the 9th of September. That's not explained anywhere at the moment as to why that was not disclosed. The other - - -

COMMISSIONER: One of the problems is that as you forensically went along asking questions totally inconsistent with what was known off the documents, no correction was made. Now, that's the problem.

MR ASPINALL: Yes.

COMMISSIONER: And we can't get to the bottom of it today.

MR ASPINALL: No. I just want to, in fairness, take you also to paragraph 8 which is two pages further on.

COMMISSIONER: Yes.

MR ASPINALL: Where Mr Barton said:

> *I had no knowledge of these communications or matters to which they relate at the time –*

and that may have been true –

> *I have now spoken to Ms Lane and she has informed me –*

but there's no mention that – of the email which he received on the 9th of September which attached that information.

COMMISSIONER: Yes, that's true.

MR ASPINALL: I would also like to invite your attention, Commissioner, to Mr Barton's third statement which is CRL.697.001.0033 which – I'll just get you the exhibit number.

COMMISSIONER: That's exhibit CB1, I think, is it?

MR ASPINALL: Quicker than the solicitor, Commissioner. If I could invite your attention to - - -

COMMISSIONER: That was a long time ago, Mr Aspinall.

MR ASPINALL: If I could invite your attention to paragraph 53, Commissioner, at 0041.

COMMISSIONER: Yes.

MR ASPINALL: And if I may say, Commissioner, this paragraph is the – is really the wrap-up for the history which Mr Barton gave as to what was happening in Southbank and Riverbank in the previous paragraphs, but it says - - -

COMMISSIONER: Which paragraph?

MR ASPINALL: 53, the bottom of that page, if it could be blown up, please, operator, and over on to the next page. Mr Barton – if you were to go back and read at your leisure the preceding paragraphs, Commissioner – sets out all the things that actually happened and then concludes with this:

> *Similarly, with the benefit of hindsight Crown should have been more proactive in its response to the article concerning Southbank and Riverbank. Crown should have undertaken a comprehensive review of Southbank and Riverbank to ascertain whether and if so to what extent these accounts may have been used to launder money. That is the kind of thing ..... similar kind to that which I believe should have occurred in 2014 as noted in paragraph 39(a) above.*

Now, if you go back to paragraph 39(a), Commissioner, that's at 0038.

COMMISSIONER: Yes.

MR ASPINALL: Mr Barton again says:

> *With the benefit of hindsight, I now consider the steps Crown took in response to the notification of Mr Birch were inadequate.*

This is the spreadsheet and so on in relation to money laundering:

> *The response should have included a thorough review of the Riverbank account and other patron accounts controlled by Crown Perth and Crown Melbourne. For the purpose of preparing this statement, I have reviewed the nature and extent of the cash deposits particularly between 2014 and 2016. A review of this kind should have occurred at the time.*

And so, Commissioner, the whole flavour of this statement is that there was an unconscious or - - -

COMMISSIONER: Inadequate.

MR ASPINALL: Yes.

COMMISSIONER: If that's the word.

MR ASPINALL: Response, which with the benefit of hindsight he has now accepted was wrong. There was no disclosure that ,in fact, Ms Lane had recommended the very thing which he now accepts should have been done and that within the organisation had been brought to a halt for some reason. And the problem with that, as you alluded to, Commissioner, is that the Inquiry proceeded on that basis and it changed so many things. That email which we saw regarding forensic support should have been produced in respect of the summons which was issued in February. Had it been, Ms Lane could have been called to give evidence; Mr Preston could have explained what had happened. None of the directors would have needed to be asked why the statements weren't looked at. And the question of why on earth this very sensible step, which Mr Barton now says should have been done, didn't occur.

It is a conception which arose because of a failure to produce under a summons and a perception that, in my submission, was perpetuated by statements like this which gave the impression of merely careless or inadequate consideration being given to the question at the time until it was brought to the attention by the Inquiry, Commissioner. Now, on that issue of the summons, could I raise one further point.

COMMISSIONER: Yes.

MR ASPINALL: The forensic services email, if I could invite your attention to it, is at AT12.

COMMISSIONER: Yes.

MR ASPINALL: If that could be brought up, it's CRL.741.001.0532.

COMMISSIONER: Yes.

MR ASPINALL: And I would invite your attention to the first paragraph which is:

> *I would like to utilise the services of Grant Thornton to run some analysis over the Southbank Investments and Riverbank Investments accounts.*

Now, the summons which was issued in February - - -

COMMISSIONER: Was it issued in February or January?

MR ASPINALL: February 2020 sought documents which, it is accepted, would have included this document. On the 18th of November, MinterEllison wrote to those assisting the Inquiry, and if I could bring that up on the screen, please, operator, it's – it hasn't been Ringtailed yet, Commissioner.

COMMISSIONER: Yes, thank you.

MR ASPINALL: I will propose to tender it. It refers in that list – if you could enlarge the top half of the page, please, operator. It refers to the summons that I was speaking of in February 2020 and refers to the documents which are listed underneath which include AT12. And it then goes about conceding in the paragraph – if you could go to the bottom of the page, please, operator – conceding that they appear to be responsive to category 4. In my submission, there's no appearance about it, they clearly are. In any event, the remainder of the letter attempts to identify why they were not produced. And if we go to the next page, please, there is a lot of discussion about Boolean strings and why things were not included, but the gist of the argument or the submission appears to be that because of the way in which the search was conducted with Southbank and Riverbank combined with Investments brought up too many documents and so exclusions happened.

But in my submission, there is no explanation for why a document which said:

I would like to look into the "Riverbank investment accounts" –

was not picked up and produced in February. And in my submission – I mean, I have spent some time trying to understand the argument put forward in this email, but - - -

COMMISSIONER: In the letter.

MR ASPINALL: Yes, in this letter, but it's a very serious concern, Commissioner, that a summons which seeks documents – and this was a critical document, as I've submitted, to the course of the Inquiry, which includes the very words "Riverbank Investments accounts" was not able to be found by Crown or by its lawyers. Now, that is unfortunate for the Inquiry, but it goes beyond that because it shows a problem with regulating Crown. A regulator of a casino licensee needs to be confident that when it asks for information from the regulated entity, that what it gets in response is correct and it gets it promptly. If you cannot be confident that when you ask Crown questions you get a full answer, how can you possibly regulate them; you cannot know what is happening.

And in this case, because of the exclusion of that important document, the whole Inquiry has been diverted, time has been wasted. And going forward, unless a proper explanation is provided as to how this occurred and why it occurred, that ILGA could have no confidence that when it makes requests of Crown for information that it will be receiving a full answer.

COMMISSIONER: I think the deeper concern is the fact that the suggestion, for whatever reason these documents were not produced, which in itself is important, obviously, but the fact that the sensible and professionally appropriate step that Ms Lane suggested was in fact shut down, and that is of serious concern.

MR ASPINALL: But there's more, in my submission, Commissioner. Mr Preston was clearly involved in this decision and he was clearly at some stage aware of the email from Ms Lane to him regarding this and what had happened. Mr Preston must have been aware that this was an issue before the Inquiry as to what had happened in terms of why the accounts hadn't been looked at. If not, when he was examined in July as further directors and other witnesses gave evidence and were questioned, and yet it was not until the 17th of November that those emails to him were ever produced. So despite the Boolean search it's inexplicable why Mr Preston didn't raise the fact that they hadn't been produced to the Inquiry and ensure they did it.

And more than that, Commissioner, we saw AT32 which was the forwarding of the emails from Mr Sutherland to Mr Barton on the 9th of September. Surely Mr Barton at that point knew that this was an issue that we were interested in, and why weren't they produced at that time in September? It's highly concerning, Commissioner. It's – there is at the moment no answer to it. I don't know what the answer is. But in any event, at least at this stage, the submission has to be that it's unsatisfactory for a licensee to be unable to produce promptly and responsively information requested by the regulator or an inquiry appointed by it. Just returning to AT1, if I could briefly, Commissioner.

COMMISSIONER: Yes.

MR ASPINALL: That is - - -

COMMISSIONER: The sixth statement.

MR ASPINALL: - - - the sixth statement.

COMMISSIONER: Yes.

MR ASPINALL: We looked earlier at paragraph 5, which is on the second page, operator.

COMMISSIONER: Yes.

MR ASPINALL: It was:

> *I am informed by Ms Manos that, on the 10th of November 2020, she caused a review to be undertaken.*

But – I don't have that yet.

COMMISSIONER: I have it.

MR ASPINALL: But the email where Mr Sutherland forwards the email that he had sent to Mr Barton, saying that he dug it up for Ken - - -

COMMISSIONER: Yes.

MR ASPINALL: - - - was the 9th of September.

COMMISSIONER: Yes.

MR ASPINALL: The day before. And there's been no explanation what prompted that to occur.

COMMISSIONER: Correct.

MR ASPINALL: We're simply in the dark as to why that occurred.

COMMISSIONER: Yes.

MR ASPINALL: Someone at some stage realised that there were things – Ms Manos must have realised that there were things that occurred that weren't known to the Inquiry and sought to find them. But why? Again, it's unexplained.

COMMISSIONER: It's bad enough to not have adequate investigations. When you have a question mark hanging over a company that it shut down a proper investigation, it's worse.

MR ASPINALL: Yes.

COMMISSIONER: Now, those are all the submissions that I wanted to make in respect of the new material, Commissioner.

COMMISSIONER: Thank you.

MR ASPINALL: And I only need to very briefly deal with the rest.

COMMISSIONER: Yes. Thank you.

MR ASPINALL: I raised in submissions-in-chief the very concerning issues which arose with respect to the arrangement with the City of Dreams whereby cashing chips were associated.

COMMISSIONER: Yes.

MR ASPINALL: The attempts to open a cash receiving account in Macau, and the fact that Mr Barton gave evidence that there was some indication that the problems with regard to aggregation that existed in Southbank and Riverbank had spilled over into the accounts of the casino themselves. Sorry. None of those issues were addressed in - - -

COMMISSIONER: No, they haven't been.

MR ASPINALL: - - - Mr Craig's submissions.

COMMISSIONER: No.

MR ASPINALL: And they go, again, to the heart of the culture. You can put in a new policy regarding the acceptance of cash, but if, behind the scenes, persons within the entity are setting up arrangements with foreign casinos whereby cash can be received in jurisdictions with AML problems, what good is the policy? To be satisfied that this vehicle is going to be robust, it needs to – what happened with City of Dreams and the other accounts needs to be examined. The flaws, the vulnerabilities, need to be exposed and remedied, and somebody with expertise needs to say that it's now fit to withstand the environment it's going to be placed into. To simply leave those issues unaddressed in their submissions is, in my submission, to continue the don't-look-back approach, which, in a submission which contained an admission that money laundering had occurred more probably than not through those accounts is, in my submission, just astonishing.

That brings me to the final submission, Commissioner, which returns me to what I said at the beginning of my submissions-in-chief, which is that money laundering is, despite its clean-sounding name, quite a heinous crime. It's one that international nations, including Australia, have turned their face against. It facilitates horrible crimes: drug trafficking, human trafficking, endangered species trafficking, and so on. The money which we see pass across the counter at the Suncity desk is in all probabilities the fruits of human misery.

For Crown to come and admit, at the eleventh hour, that was probably money laundering and yet still have no appreciation of the gravity of that admission and to make no apology or say anything to the Inquiry about that, bespeaks, yet again, of a culture of denial, a culture which cannot self-reflect upon what is going wrong in this organisation, and a culture which doesn't understand the depth of the problems that they have. The fact that they come to you, Commissioner, with certain new protocols and say that when Sentinel is brought online and a few more people are hired that will solve all their problems, Commissioner, that's more a symptom of the cultural problem than a solution to it. In my submission, Crown is deeply unsuitable, from a money laundering perspective, to hold the licence and it may be that in future it can be made such that it will be, but it's certainly not at present. Those are my submissions.

COMMISSIONER: Thank you, Mr Aspinall. Yes, Ms Sharp.

MS SHARP: This afternoon, I will address you on the following topics: firstly, I will make some submissions about the meaning of "suitability" and, in particular, "good repute", which respond to things said to you by Mr Hutley SC and Mr Young SC; secondly, I will - - -

COMMISSIONER: Mr Young QC.

MS SHARP: I beg your pardon. QC. Secondly, I will make some submissions about suitability in the particular context of the restricted gaming licence; thirdly, I will make some submissions in relation to principles of candour and insight; fourthly, I will respond to some submissions made about junkets and the due diligence of Crown in relation to junkets; fifthly, I will say something about Mr Packer's role in the VIP international business; sixthly, I will make a submission on the platform junket strategy; seventhly, I will make a submission about the manner in which Mr Young QC has characterised the submissions of counsel assisting and explain why that is not correct; eighthly, I will make some submissions about risk management failings and the asserted risk management reforms; and finally, I will make some concluding observations about what the newly proposed reforms mean for present suitability.

COMMISSIONER: Thank you.

MS SHARP: Before I go to my submissions, can I tender three documents, Commissioner.

COMMISSIONER: Yes.

MS SHARP: They are exhibit AO113, exhibit AO114 and exhibit AO115.

COMMISSIONER: Yes. I will mark those documents accordingly AO 113 to 115. Thank you.

EXHIBIT #AO113 TO AO115 DOCUMENTS AO113 TO AO115

COMMISSIONER: Yes. Please proceed.

MS SHARP: I will go, firstly, to the question of suitability, Commissioner. Crown and the CPH interests have both incorrectly sought to read down the test of suitability called for under the New South Wales Casino Control Act. Suitability, for present purposes is at least as wide as those factors specified in section 13A(2) of the Casino Control Act. In particular, Commissioner, both Crown and the CPH parties have sought to read down the meaning of the words "good repute". They submit that that expression is exhaustively defined by the words in section 13A(2)(g) that follow the expression "good repute". On this basis, they contend that "good repute" is limited to character, honesty and integrity and that reputation does not factor into the matter.

In particular, Commissioner, Mr Hutley of Senior Counsel said, at page 5195 to 5196 of the transcript, the following – and this is line 47:

> *So the point is that section 13A(2)(a) uses a composite phrase. The question of good repute is to only be judged by reference to characteristics, in fact, of the*

persons and that will have significance in relation to issues raised in relation to junkets.

Indeed, the significance is clear, Commissioner, because if that is the correct interpretation, it would follow that it is not relevant to consider the repute, the reputation of junket operators. Now, we say that cannot be right. A similar submission – or the very same submission – is made by Mr Young of Queen's Counsel and I will refer you, Commissioner, to transcript 5410 at lines 44 to 45.

The words that appear in section 13A(2)(g) after the expression "good repute" are not words of limitation. They are words of extension. Reputation does matter and it is relevant. Section 13A(2)(g) does not tell us that, in assessing good repute, we may only have regard to character, integrity and honesty. Commissioner, the correct approach is to ascribe the expression "good repute" ordinary meaning, that is, reputation, or the way in which one is regarded. Added to that ordinary meaning are considerations of character, integrity and honesty.

And can I provide an example or an analogy, and this is when one comes to look at illustrative definitions in statutes as opposed to exhaustive definitions in statutes. And can I provide to you, Commissioner, three – well, in the first case, there are three. I understand my learned friends have been notified of these cases. I will hand them all up at once. The first case is Sherritt Gordon Mines Limited v Federal Commissioner of Taxation [1979] VR 342 at 353. And if I could take you, please, Commissioner, to 353.

COMMISSIONER: Of 1977?

MS SHARP: Yes, 1977.

COMMISSIONER: Yes, Victorian reports. Yes. Thank you.

MS SHARP: In the judgment of Justice McInerney. And if I could direct you down to point 35 on the page, you will see it stated:

t becomes then necessary to determine whether the statutory definition - - -

COMMISSIONER: I'm sorry, Ms Sharp. Page?

MS SHARP: Page 353.

COMMISSIONER: Thank you. Just pardon me. Yes, I have it, "It becomes necessary", yes.

MS SHARP: And if I could take your attention to point 35.

COMMISSIONER: Yes.

MS SHARP:

> *It becomes then necessary to determine whether the statutory definition contained in section 6(1) is applicable to these payments.*

And then Justice McInerney observes that the section says:

> *…"allowable deduction" means –*

and what he says that the word means in a statutory definition is:

> *…in which case the definition is conclusive and exhaustive. In other cases the definitions are inclusive …"business" includes any profession, trade, employment –*

and so on. And then Justice McInerney says:

> *In such case, the definition adds the meanings given to the definition clause to the natural meaning of the word.*

And we say by way of analogy that's what's happening in this provision. When the relevant statutory provision states "good repute having regard to" the three matters, it should be read as an inclusive definition. So the ordinary meaning of good repute, including character, integrity and honesty. It should certainly not be read as changing the ordinary meaning of the expression "good repute", which clearly involves a notion of reputation.

Can I take you to a further case on this point, Commissioner, which is Real Estate and Business Supervisory Board v LJW, which is a 2011 decision of the Western Australian Supreme Court Court of Appeal at 35. And here the lead judgment is given by Justice Newnes. Could I take you, Commissioner, to paragraph 28 of that judgment. And what you'll see in the second sentence is stated:

> *The expression "good character and repute" itself involves two discrete elements.*

So this case, clearly enough, establishes that character means something different to repute. It's explained that:

> *"character"… ordinarily refers to a person's moral qualities as opposed to the estimation in which, fairly or unfairly, the person is held by others, that is, their repute.*

And then there are a long list of authorities to make good that proposition. And that's what we urge upon you here, Commissioner. We say that is entirely consistent with the way in which Justices Toohey and Gaudron approached the question of fitness and propriety in the case of Australian Broadcasting Tribunal v Bond. I won't

take you to that case. I've handed it up to you. It's (1990) 170 CLR 321 at page 380, where their Honours say that:

> *Character provides an indication of likely future conduct and reputation provides an indication of public perception as to likely future conduct.*

Now, both of those matters are relevant here, we say. And before I move on, may I lastly refer to Chief Justice Mason's observations in Bond that:

> *Concepts of reputation, fitness and propriety should not be narrowly construed.*

COMMISSIONER: It's interesting in that judgment of the West Australian Court of Appeal, the analysis is the dichotomy or the difference between good character:

> *While "good character" does not have a precise meaning, it … refers to a person's moral qualities –*

and then it says:

> *…as opposed to the estimation … of a person that is held by others, their repute.*

And so in looking at good repute, you have to – or looking at good repute, you have to look at that which is held by others taking into account their character - - -

MS SHARP: Yes.

COMMISSIONER: - - - which is what the Act seems to say.

MS SHARP: That is so, Commissioner.

COMMISSIONER: Yes.

MS SHARP: That is so. The next point I wish to address you on was in relation to a submission that Mr Young of Queen's Counsel made about assessing suitability in the particular context of the restricted gaming facility licence. And if I could take you to what Mr Young said at page 5411 of the transcript at line 16 to 24, Mr Young submitted:

> *Suitability must be directed to what the licensee is suitable for, that is to say operating under the casino licence. Now, in that regard it's necessary to understand the very specialised nature of the operations that will occur under the restricted gaming licence. These operations will be very different from operations conducted at a casino of the kind operated by The Star in Sydney, or … operated by Crown Melbourne and Crown Perth.*

We respectfully disagree with that submission, Commissioner. We say that the restricted gaming facility licence exposes the public to the same risks as other casinos so far as the risks of criminal infiltration are concerned, and raise the same integrity concerns, and this is for two reasons: firstly, on Crown Sydney's own paradigm, this is where risks of criminal infiltration will be at their highest because of the volume of money that is being dealt with and because, at least, until very recently, it was proposed that junket operators would perform a role here. And in the event that the conditions in the media release of earlier this week are satisfied, that is, regulators play a role in licensing junkets, may see junkets - - -

COMMISSIONER: Return.

MS SHARP: Return.

COMMISSIONER: Yes.

MS SHARP: Or enter. So that's the first thing. But secondly, it is open to question how restricted this gaming facility is. It is accepted, of course, that there are no poker machines, however, Commissioner, we would suggest that you would take into account the minimum bets for baccarat of $30, of $25 for roulette and $20 for blackjack are really remarkably low minimum bets for a putative high rollers' facility. We would also draw your attention to how extensive the restrictions are on who may attend this facility. Now, it's certainly said that a member of the general public can't just walk in, that this is a facility that is restricted to members and their guests.

But when one drills down into the suggested terms for the membership and guest policy it becomes clear that there aren't too many hoops to jump through in order to become a member or a guest at this facility. If I could just go to the actual licence itself to make good this proposition; could I call up INQ.080.140.0023. That's exhibit A143.

COMMISSIONER: Thank you.

MS SHARP: And then could I take you, please, to pinpoint 0026. What you will see under the heading 6 is Membership, and here is the restriction, Commissioner at 6.1:

> *The licensee must ensure that the facility is open only to VIP members, VIP members' guests and the licensee's guests and not open to the general public.*

Then we have some prescription about what the membership policies must contain and then what the guest policies must contain. For example, in relation at 6.2 to the membership policy, this relates to the VIP membership and it must incorporate the principles that have been agreed by – I will call them the Crown entities – and the state of New South Wales. And in addition, where the applicants for membership ordinarily reside in New South Wales, a requirement is that the New South Wales

person either be a member of a VIP gaming facility somewhere else or be subject to a 24-hour cooling off period. Now, that's really not a terrifically substantial eligibility restriction, Commissioner.

I won't take you to the other documents now to make good that submission, but I will read them on to the transcript. The next document you would have regard to in terms of the membership and guest policy – and these are the agreements that exist between Crown and the various government actors – are first of all, the 7 July 2014 amended and re-stated framework agreement which is INQ.080.070.0698. That's exhibit F30. I won't go to it, but the relevant provisions are clause 5.2(i) and annexure G. So we say that that suitability for the purpose of the restricted gaming licence is to be assessed in the same way that suitability would be assessed for the other casino licence available under the New South Wales Casino Control Act.

Let me move to my third point which I will deal with very briefly, and that's to raise some questions of general principle in relation to candour and insight. It's our submission, Commissioner, that given that this Inquiry is concerned to undertake a suitability review, the principles relating to disciplinary hearings and inquiries are apposite. One important principle in such a context is the obligation of candour owed by the subject of the review. That is the person who enjoys the privilege of the licence or potential grant of the licence. Numerous authorities support the principle that there is an obligation of candour in the context of disciplinary proceedings. I will refer to just this one, Council of the New South Wales Bar Association v Power [2008] 71 NSWLR 451, and the relevant principle is articulated at page 467.

In a case such as this, Commissioner, we say it is also an important part of a suitability assessment for you to consider the degree of insight that the person under review, or the people under review have demonstrated during the course of the Inquiry. Now, many cases could be cited in support of this proposition, I will cite two: New South Wales Bar Association v Evatt [1968] 117 CLR 177 at page 184, and also Law Society of New South Wales v Walsh. This is a medium neutral citation: [1997] NSWCA 185. So it's our submission, Commissioner, that one of the matters of which Crown Resorts and the licensee must persuade you is that they have sufficient insight into what has happened and what went wrong. It is that insight, Commissioner, which will assist in giving you confidence that such conduct will not be repeated in the future.

Can I turn now to address some of the submissions made in relation to junkets and in particular the submissions of Mr Herzfeld. It does seem that the parties agree that the standard that junket operators must satisfy is one that is drawn from, in the New South Wales context, section 13A of the New South Wales Casino Control Act, and that the concern is with the question of whether the junket operator is of good repute. There is a parallel provision in the Victorian legislation that has always been of the same content. It does appear that there is a contest over what good repute means, and I've already addressed you on that, however, we do notice that Mr Herzfeld had nothing to say about what I might describe as questions of onus that arise when it comes to assessing a question of whether a junket operator is of good repute.

And we say this is where the problem has emerged because never, and still not, has Crown Resorts given consideration as to how this standard applies. We say it is not a matter for a casino licensee to deal with whomever it wishes to provided that there is no proof that the operator is a criminal or has criminal links, rather the onus, if I can call it an onus, moves entirely the other way, and it is this: unless the casino operator can be satisfied that the person with whom it proposes to do business is of good repute then it ought not deal with that person. And we say that flows from the terms of section 13 in the New South Wales Casino Control Act, from the parallel terms in the Victorian Casino Control Act and is informed by the stated objects, at least in New South Wales, in section 4A, about ensuring that the casino operations and management remain free from criminal infiltration.

So that has still not been grappled with by Crown Resorts and we say that that shows that a problem continues. Accepting that a decision was very recently taken not at this moment to deal with junkets, but noting that in terms of that recent announcement it's not a situation of "never ever will I deal with junkets again"; it could well be that Crown Resorts does deal with junkets again in the event that regulators adopt some kind of licensing regime with respect to them. So that's the first point we make. The next point is that Mr - - -

COMMISSIONER: Can I just go back to your candour and insight - - -

MS SHARP: Yes.

COMMISSIONER: - - - and combining it with this, because as you would understand, in many hearings you might have an applicant or a respondent in a disciplinary setting who resists any finding on the basis that they've done nothing wrong. In this instance, I have two companies who have heard the evidence and each time there is a disclosure of what might be seen as a clear problem for the company, it excises it. For instance, junkets stopped, controlling shareholder protocol stopped, services agreement stopped. So they're just three small examples, but they're very big examples. So when you say insight, and you said what you said about insight, the things that have been identified, at least in those three examples, are instances that I could find that there is insight: once identified, they stopped it. Can't I find that?

MS SHARP: Well, to some degree, yes. However, to some degree no, because, in a sense, it's stopping the problem but it's not necessarily reflecting and understanding of what gave rise to the problem in the first place. For example, if somebody had a problem with an illegal drug addiction it would be one thing if access was cut off to the source of the illegal drugs. Now, that would stop the problem, but it wouldn't necessarily mean that the user had gained insight into what the problem was in the first place. That's a somewhat rough analogy, I accept, but insight goes also – it is part and parcel of character, but there needs to be a genuine acceptance that something has gone wrong and a taking of responsibility for that to – and that is what will give you the assurance that conduct of that nature is not to be – or will not be repeated in the future.

COMMISSIONER: Yes, I'm sorry to distract you. You were in junkets and I just wanted to go back to that.

MS SHARP: I will go back to junkets and to deal with the submission my learned friend made about assessing what Crown did in the context of contemporary regulatory practice and industry standards, and I will start with industry standards, if I can.

COMMISSIONER: That was – he did, if I may suggest, amend it to industry practice as opposed to standard.

MS SHARP: Yes. Yes, you're quite right, with respect, Commissioner. Now, the submission was that Crown conducts its junket due diligence and its decision-making around junkets consistently with industry practice. One of the problems with respect to this submission is there's just not a lot of evidence in support of it. The evidence, it seems, boiled down to the proposition that the Star deals with many of the same junket operators that Crown deals with. Now, you heard from Ms Richardson of senior counsel yesterday about whether in fact there is evidence of that at all, and I can leave that to one side for the moment.

COMMISSIONER: I can assume that Star deals with Alvin Chau because I've got evidence of that, and Mr Hawkins and Ms Arnott – well, there was evidence about the removal of their room – a change in location of the room. So Suncity, at least as at August 2019, was a junket operator in some form or other at Star City. I think I can assume that.

MS SHARP: Yes. Yes, I – yes, with respect, Commissioner. But can I make these points about the industry practice.

COMMISSIONER: At Star, I'm sorry, not Star City.

MS SHARP: Yes, these points about industry practice. First of all, this is not a suitability inquiry into the Star.

COMMISSIONER: Yes, quite right.

MS SHARP: This is a suitability inquiry into Crown. Secondly, there was evidence about the due diligence processes that the Star currently undertakes in respect of its junket operators, and it is, with respect, open for you to find that they are more comprehensive than those processes that have been followed by Crown if for no other reason than the fact that the Star has also given attention to the junket representatives and performs the same degree of due diligence on them, and junket financiers, sometimes known as guarantors. But a more difficult problem facing Crown, with respect, is that nothing was put to Mr Hawkins or Ms Arnott about any shortcomings in their processes, and it was, of course, open to do that, but no questions were asked of them.

In relation to industry standards, it was never really made clear whether we were merely concerned with Australian industry practices or whether we were concerned with more – a wider reach, say, a global industry practice that had emerged. But if we are interested in a global approach, then you would also take into account the evidence that the Singapore regulator, for example, has to date not licensed any junkets from Macau. That evidence comes from the oral evidence of Mr Bromberg at page 95 at lines 11 to 14, and from Professor Nelson Rose at page 173 lines 23, to 25. It's also been widely reported that in Hong Kong, Commissioner, the Hong Kong Jockey Club has banned Suncity. Now, there are various media articles in evidence that go to that point. They are exhibits O64, A220 and T35.

That's what we wanted to say about industry practice, but we also wanted to say something about contemporary regulatory practice. The proposition appeared to be put that the regulators had not pulled up Crown or the Star for the junkets with which they dealt. Now, that, firstly, ignores the allocation of responsibilities between the regulator and those under regulation. It is for the licensee to conduct due diligence, not for the regulator to do that. We've seen that shift, 2004 in Victoria, 2009 in New South Wales, and now this new system in Queensland, but it is the regulated's responsibility to conduct that due diligence, and that was what Crown wanted to do, and we wanted to remind you, Commissioner, of that evidence.

It's a confidential part of the document, but I would simply refer to the amended and re-stated framework agreement of 7 July 2014 at annexure H and what is said about junkets there. It's INQ.080.070.0001. I don't wish to bring it up, but I would refer you, Commissioner, to pinpoint 0115. I will take you to an open document, Commissioner, which is exhibit BD1. If I could call up CRL.575.001.1872.

COMMISSIONER: So that previous document that you were referring to - - -

MS SHARP: Yes.

COMMISSIONER: - - - that was in exhibit H, was it? No. No.

MS SHARP: It was annexure H; we'll deal with the point I wish to make, if you look at the heading Junkets.

COMMISSIONER: The exhibit number?

MS SHARP: The exhibit number is BA39.

COMMISSIONER: This is this one.

MS SHARP: And the exhibit number for this one is BD1.

COMMISSIONER: I see. Thank you. Thank you.

MS SHARP: Now, this is a submission that Crown Resorts made in relation to the Casino Modernisation Review. Interestingly, you will see that it's written to Mr Paul Newson who has now given an expert report of sorts. Now, this is the response of Crown Resorts to what it would like to see come out of the casino modernisation project. Could I take you, please, to pinpoint 1873, and you will see there's a heading Terms of Reference, and if I can take you to paragraph C, it says:

> *At paragraph 3 of the letter seeks comment on best practices and procedures ensuring high standards of probity and integrity –*

and then it said that:

> *The framework agreement also contemplated that a review be commenced under which junket operators are regulated in a manner which is as efficient as possible having regard to the aim of Crown to achieve its business plan.*

So Crown wanted to be responsible for the approval process for junkets. That's the point we wish to make there. Mr Herzfeld placed some reliance on a 2015 - - -

COMMISSIONER: Just pardon me for a minute.

MS SHARP: Yes.

COMMISSIONER: Looking at this, isn't this just referring to – while Crown acknowledges that high standards are of course very important, it's saying – it's emphasising the efficiencies. Is there something in this letter that suggests that it wanted to take on responsibility for the junket choice?

MS SHARP: Yes, I should have gone a little bit further, sorry, Commissioner.

COMMISSIONER: That's all right.

MS SHARP: If I can go to pinpoint 1874.

COMMISSIONER: Yes.

MS SHARP: Then if you have regard to the heading 2, The Most Cost-Effective Way to Regulate Casinos.

COMMISSIONER: Yes.

MS SHARP: It's there stated that:

> *Crown advocates a modern risk-based approach which the interstate experience has shown can result in significant cost savings for the regulator and operator rather than a prescriptive model of regulation.*

And then over the page:

> *Crown submits that a risk-based model centred on a set of internal control statements that established the broad minimum standards and controls required to ensure the integrity in the operation.*

And then a little further along:

> *Crown sees no regulatory need for more prescriptive operating procedures.*

COMMISSIONER: Yes, I see.

MS SHARP: And then a little further down:

> *Regulators unnecessarily involved in the day-to-day operations of casinos and their processes potentially assume a level of liability in operational matters.*

COMMISSIONER: Yes. Thank you.

MS SHARP: Now – sorry, just to complete that, at pinpoint 1878, if I can take your attention, please, to 3.1.3.

COMMISSIONER: Yes.

MS SHARP: Junkets and inducements:

> *Crown proposes that the regulation of junkets should be an operational matter, properly dealt with by approved internal controls rather than prescriptive and inflexible legislation.*

COMMISSIONER: Yes, thank you, Ms Sharp.

MS SHARP: Now, the other matter upon which Mr Herzfeld of senior counsel placed some reliance was a report of the Agenda Group in 2015 called Review of Junket Processes in New South Wales.

COMMISSIONER: Yes.

MS SHARP: That was exhibit F41 and I will call that up. It's INQ.080.050.0447. Now, this was the report that the New South Wales regulator commissioned following the Four Corners High Rollers – High Risk? broadcast in September 2014, and if we understood the submission of Mr Herzfeld of senior counsel correctly, the proposition is put that the regulator didn't pull up Star for dealing with some of the junkets the subject of that media report even following the commissioning of this review, and so that must help supply an understanding of what is reasonable practice or what was reasonable practice at that time.

COMMISSIONER: Yes.

MS SHARP: We submit that this document, this report, is a deeply flawed one, Commissioner. It is not a document that can give comfort that things were all well and good insofar as junket operations were concerned because it proceeds upon a number of erroneous premises, and there are three of them. If I could just point to them, just to take you, firstly, to .0452. The first proposition right at the top there, it stated:

> *The integrity issues, if they ever existed at all, are external to the operations of casinos.*

And then there's reference that:

> *In New Jersey it was believed that the regulation of gaming integrity should extend beyond the boundaries of the casino.*

And one of the assumptions that underlines this is if there is no integrity concern within what is happening within the four walls of the casino, it is not a matter with which we need be concerned. Thus, if a junket did have links with organised crime, but nothing happened in the casino, that is not a concern for the regulator. And we say that is a deeply flawed premise, Commissioner. Secondly, further down this page, on the fourth last line you will see:

> *Junket promoters are characterised as essentially glorified travel agents.*

That is a complete mischaracterisation of the risk that junket operators present, and I won't go through the evidence in any detail, but that proposition was accepted by just about everyone. That is, that it was a mischaracterisation to say that junket operators in Australia were glorified travel agents. And that, of course, is because of the role they play in providing credit and enforcing debt. The third erroneous premise which informs this report is that at .0455 where, if I can take you to the paragraph commencing, "Furthermore" under the dot points, Commissioner, you will see it stated:

> *By removing from the regulator the responsibility to approve junket promoters and requiring instead that the casino operator undertake due diligence of them before entering into arrangements, the scheme transfers any integrity risk from the government via the regulator to the casino operator.*

So the idea of transferring risk over to the operator is another thing we say misunderstands what the proper role of regulation is and what the proper responsibilities of a regulator are. So there are those three erroneous assumptions that underlie this report, but there are also some specific mistakes, though, Commissioner, and one of them – and I won't take you to it, but one of them at .0460 was the proposition that Macau junkets are very different to junkets that operate in Australia because Macau junkets control the VIP rooms and control the cage.

It's our submission that what in practical effect happened in the Suncity Room in Crown Melbourne was that Suncity controlled the cage. It was called the cash desk, it was called the security cupboard. Whatever it was, cash was exchanged for chips and that was done by Suncity, not by Crown Resorts, and that is a little move of the Macau junket operator model into Crown Melbourne. Secondly, Mr Cohen noted in this report at pinpoint 0460 that in Macau the criminal records of people are expunged after 10 years, so he himself observed that a criminal records check might not necessarily bring up the whole criminal history.

Thirdly, and this is just a more minor point, at pinpoint 0460 over to the next page, he talked about what was described as the watch example and says it was not an indicium of money laundering. Of course, Professor Nelson Rose was quite adamant in evidence that that was a well-known money laundering ruse in Macau, and he said that at pages 168 and 169 of the transcript. So unfortunately, the investigation that ILGA did commission in late 2014/2015 is not one that really stands up to scrutiny or could give any comfort about the integrity of the junket operators.

COMMISSIONER: One of the things that Mr Herzfeld relied upon, though, is that Mr Sidoti gave evidence about the investigation, and it can be seen from this report, Mr Cohen's report, that the investigation was commenced by reason of the High Rollers – High Risk? allegations, but what I recall of the report was that he found that the High Rollers – High Risk? allegations were irrelevant because the junkets here were different from the junkets there. So it wasn't a cogent analysis of connections between any of the players who were linked in the program; it was rather this is irrelevant because the junkets there are different to the junkets here. Is that the report that I'm thinking of?

MS SHARP: That is one reason for it, yes, because Mr Cohen proceeded on the basis that the Macau junket model is quite different to the junket – or what he saw as the more benign junket model in Australia. Of course, he didn't make reference to the fact that they were exactly the same junkets that were going into - - -

COMMISSIONER: Yes.

MS SHARP: It was Suncity and the Neptune Group who were the relevant subjects of the 2014 media allegations and they were junkets based in Macau, which by 2014 were also operating in Australia. But it's also informed by what I've identified as the first erroneous premise which was if nothing bad happened in the four walls of the casino there was nothing for the regulator to be concerned with. So that is the erroneous premise because it suggests that the regulator ought not be concerned with the good repute or otherwise of the business associates of the casino operator.

COMMISSIONER: But the point that Mr Herzfeld made about Mr Sidoti's evidence is the one that I was addressing, really, because that was reliant upon Mr Cohen. Now, Mr Sidoti said that they could not come to a conclusion about them, about the allegations, and of course Mr Herzfeld rightly latches on to that and says if it was too difficult for the regulator, what do you think – how would the casino

operator ever get to anywhere if the regulator can't, but what I'm saying is that the reason Mr Sidoti, who was in the chair at the time, and Mr Cohen do not make the connection is because Mr Cohen took the view that they were irrelevant - - -

MS SHARP: Yes.

COMMISSIONER: Yes, all right.

MS SHARP: Yes.

COMMISSIONER: Yes, thank you.

MS SHARP: Indeed. Now, the next submission we make is responsive to the submission of Mr Hutley of senior counsel that Mr Packer did not play a role in setting the VIP strategy, and that's what Mr Hutley said at page 5365 of the transcript. We say that the evidence supports the conclusion that Mr Packer did play a role in setting the VIP strategy so we join issue in this respect, Commissioner, and we rely on our submissions, but we do say that he was a driving force for a heavier reliance on junkets, that he was at the time insufficiently concerned with questions of their propriety or good repute, and that this is why he set a dubious tone from the top. And that was because, Commissioner, he was not signalling to others in the organisation that propriety ought be a priority when it came to dealing with these junkets.

Can I then move to make a submission about the platform junket strategy. In this regard Mr Young of Queen's counsel said that the platform junket strategy was recommended by Mr Craigie and went to the board and was decided by the board, and he said that at page 5476 at line 44. He made the submission to support a submission that it cannot be found that the VIP working group set the VIP strategy. The evidence that Mr Young relied upon was said to come from Mr Craigie's evidence at page 1494. It does not support the proposition for which Mr Young contended. Instead the evidence of a number of the directors was they did not even know of the existence of the platform junket strategy, so it can hardly be the case that they approved that strategy at the board level.

May I turn now to the way in which Mr Young of Queen's counsel has characterised counsel assisting's submissions. Could I go to the transcript at page 5408, and if I could take you, Commissioner, to line 12.

COMMISSIONER: Yes.

MS SHARP: You will see that Mr Young said that:

> *Counsel assisting have made submissions on the question of suitability in a piecemeal fashion that pays no regard to any of the conscientious and considered steps that Crown has taken to address and eliminate the shortcomings.*

And then it's suggested that:

> *Counsel assisting had not embarked on the second aspect of the exercise.*

And then it's stated that:

> *The approach adopted by counsel assisting influenced by the framing of the Terms of Reference has been to analyse suitability vis-à-vis each topic of media allegations in a discrete and isolated way, and they have made submissions as to findings of suitability based on that narrow historical snapshot.*

Now, with respect, that characterisation of our submissions is quite wrong. It was made plain in both the oral and the written submissions that particular failings could be addressed: the China arrests, the Melco transaction, the influence of CPH on the direction the company took, junkets and AML. Specific shortcomings and problems were addressed. Where remediation had been proposed, that had been dealt with. If I could remind you, Commissioner, for example, of the remediation that had been proposed with respect to junkets which was the appointment of Mr Kaldas, a head of financial crime, the Deloitte review; all of this was covered in our submissions, but most importantly what was identified was that the failings which we see spread across the areas were produced by deeper failings.

And the very last part of our submission was to identify these deeper failings which we have identified as flaws in the risk management, the governance and the culture of Crown Resorts. So far from the suggestion that counsel assisting have approached this in a piecemeal way without regard to the remediation that has been implemented or proposed, that has all been taken into the mix to look comprehensively at the question of present suitability. We did wish to respond in particular to what Mr Young has said about risk management, and I will come to that now. Mr Young of Queen's counsel said at page 5414, in relation to the China arrests, that – and this is at line 26:

> *Crown accepts that its risk management structures were not engaged in relation to oversight of its business operations and that non-engagement of the established processes led to significant mistakes being made.*

So here he identifies it as simply failing to engage risk management structures. Then at page 5419 at lines 29 to 40, Mr Young said that:

> *The events in China occurred more than four years ago. They revealed serious failings by senior management to engage risk management processes as I have indicated and accepted, but all operations in China ceased. Further, the failings that occurred led to significant reforms and remedial steps.*

And then at page 5420, at line 26 to line 29, Mr Young said:

There is no dispute, as we follow the submissions by counsel assisting, but that there were strong risk management processes available to be engaged but they were not engaged by senior managers.

Now, that was said in the context of the China arrests. To be clear, counsel assisting do not submit that there were strong risk management processes in place. On the contrary, we have submitted that there were a range of failings, and that Mr Young has very much misapprehended our submissions. We did not submit that the risk management process – that the only failing was it was not engaged by senior management. That we have very clearly submitted that had there was one director who was aware of all of the escalating risks relating to the China arrests and that one director did not engage the risk management process, and that one director was, of course, Mr Johnston.

COMMISSIONER: And the chairman, Mr Rankin.

MS SHARP: Yes. Yes, Commissioner, thank you. We certainly do not agree that there were strong risk management processes in place at that time or that there can be any confidence that there are now. The risk management failings included a failure to escalate risk, the board and its risk management committee failing to inquire about obvious risks and thus not providing active stewardship, and problems with risk culture. In short, the China arrests cannot be blamed merely on a few senior managers failing to properly escalate risks. But it is broader than this, Commissioner, because the same risk management failings we see in China arrests were evident with junkets and with AML. And I wanted to turn to that matter now.

COMMISSIONER: I think with junkets, it's not free from complexity. Junkets were – they were not the subject of rigorous debate between regulator and regulated, and once they introduced – I withdraw that – once this new risk – not so new, but once the risk shift occurred there was the problem of identification of the connections. I don't see any evidence of regulators being concerned. I see the regulator AUSTRAC was concerned, but then I've now seen, thank you, the unredacted report of AUSTRAC in mid-2017, and so I don't believe that that was given to casino operators, though. Is that right?

MS SHARP: That's our understanding, that it was disseminated to 21 different law enforcement agencies and casino regulators and that's all we understand happened at that time.

COMMISSIONER: So the regulators were given, I suppose, in one view, comfort by AUSTRAC that the casino operators were operating within appropriate confines dealing with junkets.

MS SHARP: I'm not so sure I would agree with that, with respect.

COMMISSIONER: Yes.

MS SHARP: I think that the – or I submit that the AUSTRAC document identified some very serious risks with junket operators, and certainly highlighted the lack of visibility that - - -

COMMISSIONER: I see.

MS SHARP: - - - all parties had over many aspects of junket operations, and what seems to remain a mystery is why more was not done at that time, if I may say, Commissioner. But the point I wanted to make with respect to failures of the risk management process at Crown in relation to junkets is that just as escalating risks in relation to China were not identified and found their way into any of the risk management documents, so it was with junkets. This Inquiry has summonsed all risk management committee meetings of both Crown Resorts and Crown Melbourne where junkets were managed since the beginning of 2014, and on only one instance up to this year were junkets identified as a risk, and even then they were not identified as a risk because of any concern about organised crime or money laundering.

And we say what that demonstrates once again is that the people on the ground were not escalating the risk and by the very same token the people on the board and the risk management committee were not providing the active stewardship by going and asking questions about why risks weren't notified there. We submit it is remarkable, Commissioner, that there is no reference in the risk management committee meetings, in the minutes, to the allegations made in the Four Corners program in September of 2014, or the Four Corners program in March of 2017, where risks were literally be telegraphed all over Australia, but, yet, they did not come to the attention of the risk management committee at Crown Resorts.

We do wish to acknowledge that there have been improvements to the risk management framework at Crown Resorts, and these have been covered in evidence, but we would remind you, Commissioner, that in, December 2017, Ms Anne Siegers commenced as the group manager for risk and audit. In June 2019, a further version of the risk management committee charter was approved; that's exhibit A210. Now, from that time, Commissioner, the risk management committee was to meet at least four times a year, rather than two times a year. In August 2018, Crown adopted a new risk management policy, and that's in evidence at exhibit BM13. And in June 2019, the board approved a new risk management strategy, which is exhibit BM14. In June 2020, Crown revised that strategy and amended it. So there's the June 2020 risk management strategy, which is exhibit W32. Amendments include having a new statement on risk culture. However the submission we make, Commissioner, is important work remains to be done.

One matter that had still not been clarified by the time of the announcement a few days ago in relation to junkets was what the board's risk appetite was with respect to junkets. But it does appear more work needs to be done with articulating risk appetite more generally. And, there, could I take you to the risk management strategy and then take you to Ms Halton's evidence about that strategy.

COMMISSIONER: Yes.

MS SHARP: So the 2020 risk management strategy, which is exhibit W32 is at CRL – and I'll bring this up on the confidential link.

COMMISSIONER: Thank you.

MS SHARP: CRL.668.001.0019.

COMMISSIONER: Thank you.

MS SHARP: Could I take you, please, Commissioner, to .0031. You'll see under the heading – and I will be rather circumspect in the way I describe it. You will see there's a Risk Appetite heading and what is supposed to be achieved in describing risk appetite. And then could I take you to pinpoint 0032.

COMMISSIONER: Yes.

MS SHARP: And you will see, at 7.1, there are seven categories – seven risk categories outlined. Now - - -

COMMISSIONER: Yes. I had a debate with Ms Korsanos about this.

MS SHARP: Yes. Yes, you did, Commissioner. And I asked similar questions of Ms Halton.

COMMISSIONER: Yes.

MS SHARP: And that's precisely what I wish to make a submission to you on, Commissioner, is work remains to be done to make these statements plain and accessible, and that was acknowledged by Ms Halton. And if I could just take you to what she said. If I can bring up the transcript at page 4353.

COMMISSIONER: Yes.

MS SHARP: And I emphasise her evidence, because, of course, she's the chair of the risk management committee as well as the chair of the licensee at the moment.

COMMISSIONER: Yes, indeed.

MS SHARP: But if you – if we start at line 35. And what Ms Halton does is identify where the risks of junkets fit in here. And the simple point is that it would not be very clear to the ordinary reader as to how the risk of junkets and the risk appetite with respect to junkets is articulated. And at page 4353, Ms Halton said, at line 20, that she's asked for the document to be amended and then at page 4355 at line 41, Commissioner, you said:

It is clear as a bell that you need a rewrite on this, isn't it?

And Ms Halton said:

Yes.

So work remains to be done. I might also remind you, Commissioner, of a particular document, which we say shows a certain impenetrable in understanding risk. If I can call up CRL.668.001.0050. I will call that up on the confidential link. This is, with respect, not a – it's supposed to be a diagrammatic representation of how risk appetite is managed within the risk management framework, but, with respect, it leaves some room for improvement, as you would have heard in Ms Siegers' evidence, Commissioner.

So it's not that counsel assisting do not acknowledge that work has been done. We do. But we make the important point that more remains to be done. And this brings me to my last point, Commissioner. And, unfortunately, I have to invoke the terminology of "the journey": the journey has just begun here, Commissioner. It really wasn't until around March/April this year that Crown started to show any recognition at all that there were some problems in its processes the subject of this Inquiry. And it really wasn't until the board papers in August/September of this year that we saw a very distinct change in Crown Resorts' tone and acknowledgements were being made by that time, but they're still happening; they've still been happening in the last few days. Commissioner, of course, the very important acknowledgment now that it's more probable than not that money laundering did occur in the Riverbank and Southbank accounts. So while we may be seeing a company in transition, there is still a state of some flux. And one can see that when one has regard to annexure – I think it's annexure 19 to Mr Barton's sixth statement, which has been marked MFI - - -

COMMISSIONER: It's exhibit CB1, I believe.

MS SHARP: I'm grateful. Could I take you to exhibit CB1.

COMMISSIONER: It's probably been remarked. I apologise. It's AT1 now. CB1 is the earlier statement, I think.

MS SHARP: Thank you. This is – it was once MFI3.

COMMISSIONER: MFIC, it's now AT1.

MS SHARP: Thank you, Commissioner.

COMMISSIONER: CB1 is his earlier statement. Yes. Thank you.

MS SHARP: Now, this is – again, it's a confidential document. It's CRL.743.001.0021. And if I can go to pinpoint – I'm afraid I can't read it. It's page 41.

COMMISSIONER: Of?

MS SHARP: It's page 41 of the exhibit, which I'm told is, in fact, exhibit A - - -

COMMISSIONER: AT.

MS SHARP: AT19.

COMMISSIONER: 19. All right. Yes.

MS SHARP: Now, if I can go to page 40 of that document. I can't read the pinpoint, I'm sorry.

COMMISSIONER: And what number is it? 14?

MS SHARP: Page 41.

COMMISSIONER: 41. Yes. We dealt with this. Mr Young, because the Crown Resorts logo is over the top of them - - -

MS SHARP: Yes, yes, that's right. So - - -

COMMISSIONER: Yes. So if we go to page 41, at the bottom – just pardon me and I will get it. I see. Yes.

MS SHARP: So the point is there have been attempts to deal with issues that have been identified and there has been acknowledgment of certain failings, but a lot of this remains in the proposal stage rather than in the implemented stage - - -

COMMISSIONER: Yes.

MS SHARP: - - - Commissioner, and that's, as we say, a lot remains in flux at this moment. The last point that we submit that your Honour needs – I beg your pardon, Commissioner, you need to take into account is the question of which voice is the real voice of Crown Resorts, and this became quite apparent during closing submissions. With the evidence of the chair, for example, we heard from Ms Coonan that it seemed that money was laundered at the casino, however - - -

COMMISSIONER: Well, Ms Coonan said it was enabled.

MS SHARP: Enabled, yes. Thank you. But there was a certain resiling from that position at the subsequent AGM. It was then submitted by Mr Young that you could not be satisfied, on the balance of probabilities, that money laundering had occurred,

but two days ago, it was conceded that it did, at least, in the Riverbank and the Southbank accounts.

But there are a number of other examples where there seem to be many different voices saying many different things. And I will just run through a few of them. The proposition that Crown had robust procedures in place for due diligence. Now, Mr Herzfeld of Senior Counsel made the submission that, while there were shortcomings in the due diligence process, it, nevertheless, was robust. Now, that submission is quite different from the concessions that were made in evidence by a number of witnesses and, just to remind you, Commissioner, Mr Alexander said, at page 3548, that the due diligence process was not as robust as it should have been. Ms Coonan would not describe the process as robust, she said, at page 4498, but she said it was extensive. Mr Packer at page 3697, Mr Demetriou at page 3980, Professor Horvath at page 4179, and Ms Halton at page 4324 said the process was not robust.

Numerous directors gave us numerous views about whether knowing what they knew, based on a due diligence report of Mr Chau, it would be appropriate to deal with him. The balance of the evidence was, no, it would not be appropriate to deal with him, but that is not what Mr Herzfeld submitted in submissions before you. Almost all directors submitted to you that, given their time again, they would not have published the ASX media release of 31 July 2019 in the terms they did. And yet Mr Young put the submission the day before yesterday that it was a reasonable and proportionate response in the circumstances. So we are - - -

COMMISSIONER: At the time.

MS SHARP: At the time. At the time. So there is a question that remains for you, Commissioner, about who speaks the voice of Crown. It does not always appear to be a united voice, and that is another matter that it will be relevant for you to consider when it comes to making an assessment of present suitability. Those are our submissions.

COMMISSIONER: Thank you, Ms Sharp. Ms Richardson.

MS RICHARDSON: Yes, Commissioner.

COMMISSIONER: I hope not to have to deal with any dispute between yourself and Mr Herzfeld. Do I have to deal with any dispute?

MS RICHARDSON: Well, I had hoped not, your Honour, but we only received the bundle of documents at about 1.30 today and - - -

COMMISSIONER: I see.

MS RICHARDSON: - - - we received a – I did speak to Mr Herzfeld last night and this morning. And we only received the documents at 1.30 today. And we received a two-page factual submission, which I did ask for, in effect, to say, in addition to the

bundle of documents, we would need to see a submission saying, in effect, how they're to be deployed, because - - -

COMMISSIONER: Yes.

MS RICHARDSON: - - - we had understood Mr Neil – Mr Young, from yesterday, that he was, in effect, contending to you, Commissioner, that the documents would be deployed an a narrower basis than Mr Herzfeld had foreshadowed - - -

COMMISSIONER: Yes, yes.

MS RICHARDSON: So, for example, Ms Sharp of counsel assisting, noted this afternoon that Mr Herzfeld had suggested that a key way the material was going to be put was – and this is at T5521 at line 33 – was, in effect, that the due diligence processes at Crown with respect to junkets and the decisions they made, were – had not been shown to be substantively different to an industry practice which was then said that it was going to be made good by reference to Star. So there was a very broad factual submission that, in effect, from internal Crown documents that the Inquiry could draw some type of conclusion about Crown's due diligence processes and whether they were consistent with the due diligence processes of others. So, on any view, in our submission, that is objectionable because there has been no inquiry here, nor could there be, into the nature of due diligence processes done by Star with respect to certain people.

I do note that, in the two-page submission we were provided at lunchtime today, that submission is not put. It's not put in the broader way of asking the Inquiry to draw a comparison between due diligence processes by Crown and whether they were substantively similar to what other players have done. So it's narrower than what Mr Herzfeld indicated on Tuesday, but it is broader than what we had apprehended it would be – the documents would be deployed for in the sense of we had understood that the narrow purpose was, in effect, to show a state of knowledge at Crown, that Crown had internal documents referring to various people, and so Crown, when it was considering certain people, was operating on a particular basis. So it's put more broadly than that. So I apologise, your Honour, given that we got them before we had – I had to reappear at 2 pm, I just have not - - -

COMMISSIONER: That's all right. That's all right.

MS RICHARDSON: - - - received any instructions about how we develop with this, and I apologise for that.

COMMISSIONER: No, not at all. As I apprehend it, there is no objection to me receiving documents that show Crown's state of mind at the time it was dealing with its junket considerations, irrespective of whether the things that it was considering were true or not. So that would obviate the need to look at whether Star had anything further than looking at Crown's knowledge that it believed at the time that you, Star, were dealing with those junkets, and I think that's all I need to do. So that

the documents that would be tendered would be tendered to show that Crown believed that these junkets that it was dealing with were operating at Star. Do you have any objection to that, Ms Richardson?

MS RICHARDSON: Your Honour, in the short time, I have not even been able to obtain that instruction, but I apprehend that there would not be an objection to that.

COMMISSIONER: Yes.

MS RICHARDSON: But I don't yet have those instructions.

COMMISSIONER: That's all right. That's all right.

MS RICHARDSON: It's a matter, of course, for Crown to make good a proposition that if there's a reference to Star in its documents, that someone relied on it or put any weight on it, but that's really a matter for Crown about which we have no comment.

COMMISSIONER: Yes.

MS RICHARDSON: It's a matter for them. It's the broader purpose - - -

COMMISSIONER: Well, I think – I'm sorry. What I think I should do is to assume, as at 5521 between lines 13 and 20, the things that Mr Herzfeld said will be received on the basis that that was Crown's understanding at the time when it was dealing with its own junkets, full stop. And if that's objectionable to your clients after you have capacity to take instructions, would you let me know in a document, Ms Richardson? Could you do that?

MS RICHARDSON: Yes, your Honour.

COMMISSIONER: Thank you very much. Now, Mr Young, if I may just come back to the problem that's been unearthed during the course of this week, I think we've reached the point now that perhaps a statement from certain people would be helpful for provision to the Inquiry. Did you have any suggestion to make, Mr Young?

MR YOUNG: Not beyond what you've just remarked upon, Commissioner. We will provide the statement – one or more statements to assist the Inquiry on the matters you've raised.

COMMISSIONER: Yes.

MR YOUNG: That, we think, is the best way of proceeding. And we will try and address all of the questions that you've – you or counsel assisting have raised - - -

COMMISSIONER: Yes.

MR YOUNG: - - - during the course of today by providing that evidence.

COMMISSIONER: What I would want to ensure, if it were to happen here, pursuant to a summons, the person giving the statement would be covered by the protections of the Royal Commissions Act, Mr Young, and I anticipate – let's assume that that may be necessary. I'm comfortable in providing a summons for the statement to be produced so that the protections are available.

MR YOUNG: Well, thank you, Commissioner. If we need - - -

COMMISSIONER: But I want to look to the truth of what happened.

MR YOUNG: Yes, yes. I understand that.

COMMISSIONER: Yes.

MR YOUNG: So we understand why you've made that point and we'll take that on board too. Commissioner, can I - - -

COMMISSIONER: Yes. And if that could be produced next week, that would be very helpful.

MR YOUNG: Yes, we will. We will address that. Can I just go back to Ms Richardson's point.

COMMISSIONER: Yes.

MR YOUNG: And I'm sorry to just mention this.

COMMISSIONER: That's all right.

MR YOUNG: I made it clear on the transcript, at page 5691 to 5692 - - -

COMMISSIONER: Yes.

MR YOUNG: - - - that there were three points to be made. We relied upon the evidence in our records concerning who played at The Star and what junkets operated at the Star on two grounds. The first was that it was relevant to – it was relevant evidence of industry standard being applied at the time. We put that in circumstances where the contention advanced by counsel assisting was that Crown should have been abiding by a standard under which any set of media allegations about links with organised crime was a sufficient basis for Crown to terminate dealings with a relevant person or entity, and that we were to be criticised for not having done so, and that that circumstance would connect to a finding of unsuitability; that was the first ground. The second ground was that we said, in any event, the evidence was receivable because it established our state of mind actuating the way in which we approached things.

So there were always two grounds. We do not contend for any comparison between the detail of due diligence processes, as you observed a short while ago, Madam Commissioner, nor do we seek any adverse findings against The Star, but we do seek to make use of the material in the two ways I've just mentioned, and they are the two ways identified in the paper that Mr Herzfeld provided to Ms Richardson. Now, I don't expect you, Madam Commissioner, to do anything about what I've just said. I just wanted to make that clear on the record, if I may.

COMMISSIONER: Yes. Yes. Thank you, Mr Young. Thank you.

MR YOUNG: Thank you.

COMMISSIONER: All right. Well, that is, if I may say, at the end of the 60th day, the completion of the public hearings subject to, of course, Mr Young, should we need to get anywhere into that other topic by way of public hearing. But at the end of the 60th day, I would like to recognise the assistance of counsel and those assisting me, in particular, but also counsel who have been with me for the last 60-odd days from time to time and solicitors who have been present and have been in every way trying to assist the processes of the Inquiry for which I am most grateful. I want to thank the people who have provided public submissions and those that have assisted the Inquiry in its investigative steps otherwise.

I should also recognise that, when my counsel assisting opened the proceedings in public on the 21st of January 2020, we were in a very different world. Since then, the processes of life have changed let alone what's happened in the Inquiry. With the intervention of the pandemic and the health orders that have been made, both in this state and other states, in particular, in Victoria, COVID has placed restraints on many of us and many of the witnesses and counsel and solicitors to provide services in an environment that has been extraordinarily difficult and, as I've said throughout, I have taken that into account and will continue to do so in reporting to government.

I also wish to recognise that there have been attempts to assist in many ways. For instance, people who have been beyond the seas, who have not been amenable to the processes of this Commission although it has Royal Commission powers, who did not have to assist this Commission compulsorily, but did so by way of assistance to us and did so at inconvenience to themselves. To all of the witness who is assisted the Inquiry in that way, then they should also be recognised.

It is now a matter for me to retreat and to write the report and deliver it to government, as I say, without there being, hopefully, no further public hearings needed. But if there need be, those that assist me will make contact with those that are necessary to recall if it's necessary in due course. And that then concludes the public hearings of this Inquiry. Once again, Ms Sharp, thank you very much for your assistance. And I will now adjourn.

MATTER ADJOURNED at 3.09 pm ACCORDINGLY

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