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TRANSCRIPT OF PROCEEDINGS

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**COMMISSIONER: HON. RAY FINKELSTEIN AO QC**

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

**MELBOURNE, VICTORIA**

**09.37 AM, MONDAY, 21 JUNE 2021**

**Counsel Assisting the Commission  
(instructed by Corrs Chambers  
Westgarth as Solicitors Assisting the  
Commission)**

**MR ADRIAN FINANZIO SC  
MR GEOFFREY KOZMINSKY**

**Counsel for Crown Resorts Limited**

**MR MICHAEL BORSKY QC  
MS CATHERINE BUTTON QC**

**Counsel for Victorian Commission for  
Gambling and Liquor Regulation**

**MR PETER ROZEN QC  
MR JUSTIN BRERETON  
MS SARALA FITZGERALD**

**Counsel for Consolidated Press Holdings**

**MR OREN BIGOS QC  
MR NOEL HUTLEY SC  
MS KATHERINE BRAZENOR  
MR TOM O'BRIEN  
MS FIONA CAMERON**

**Counsel for the State of Victoria**

**MR PETER GRAY QC  
MR GLYN AYRES  
MS GEORGIE COLEMAN  
MS HELEN TIPLADY**

09:15 1 COMMISSIONER: Good morning, everyone. Sit down, please.  
09:37 2 Housekeeping first: two things, one to clear up some  
09:37 3 confusion and the other one to do with quasi-merits. At  
09:37 4 some stage we received a request or something like  
09:37 5 a request to make submissions about "the tax issue", and  
09:37 6 emails went around saying if you want to make  
09:38 7 submissions, do them by the end of June or something like  
09:38 8 that to one or other of the parties who have leave to  
09:38 9 appear. The answer is I don't want any submissions by  
09:38 10 the end of June on "the tax issue". Whatever anybody  
09:38 11 wants to say about that, they can say that when  
09:38 12 submissions are finally due beginning of August, I think.  
09:38 13  
09:38 14 The second thing has to do with you, Mr Borsky. This is  
09:38 15 a standard issue, not the procedural issue. In relation  
09:38 16 to the submissions that were filed whatever day it was,  
09:38 17 Thursday or Friday, on the extent of the waiver of  
09:38 18 privilege, no party, although were given permission to  
09:38 19 say anything they wanted to say, either agree or  
09:38 20 disagree, with the way that you articulated what the  
09:38 21 legal position was. Everybody said they didn't want to  
09:39 22 make submissions. Counsel Assisting don't want to make  
09:39 23 submissions. So we will proceed on the basis as  
09:39 24 articulated in your set of submissions so that the waiver  
09:39 25 will be limited in the way that you described and the  
09:39 26 merits of the legal advice won't be part of any waived  
09:39 27 privilege. That privilege will be maintained in the way  
09:39 28 we've been maintaining privileged communications in the  
09:39 29 past.  
09:39 30  
09:39 31 MR BORSKY: Thank you. So the extent of the waiver will be  
09:39 32 limited to ---  
09:39 33  
09:39 34 COMMISSIONER: Disclosure or no disclosure ---  
09:39 35  
09:39 36 MR BORSKY: --- communications as to whether Crown should  
09:39 37 have disclosed to the Royal Commission?  
09:39 38  
09:39 39 COMMISSIONER: Correct.  
09:39 40  
09:39 41 MR BORSKY: As the Commission pleases.  
09:39 42  
09:39 43 COMMISSIONER: Okay. Mr Kozminsky?  
09:39 44  
09:39 45 MR KOZMINSKY: We recall Mr Mackay.  
09:40 46  
09:40 47 COMMISSIONER: Somebody might have to go and find him.

09:40 1  
09:40 2 MR KOZMINSKY: Yes.  
09:40 3  
09:40 4  
09:40 5 **MR MARK CAMERON MACKAY, PREVIOUSLY**  
09:41 6 **AFFIRMED**  
09:41 7  
09:41 8  
09:41 9 COMMISSIONER: Mr Mackay, you were sworn in last time you  
09:41 10 were here giving evidence. There is no need to do that again.  
09:41 11  
09:41 12 A. Okay.  
09:41 13  
09:41 14  
09:41 15 **EXAMINATION-IN-CHIEF BY MR KOZMINSKY,**  
09:41 16 **CONTINUED**  
09:41 17  
09:41 18  
09:41 19 MR KOZMINSKY: Good morning, Mr Mackay.  
09:41 20  
09:41 21 A. Good morning.  
09:41 22  
09:41 23 Q. I just want to begin by tidying up a few issues from when  
09:41 24 you previously gave evidence. When you last gave evidence, do  
09:41 25 you remember we had a discussion about the requirements for  
09:41 26 gambling on an EGM in unrestricted mode? The and/or issue, do  
09:41 27 you remember that?  
09:41 28  
09:41 29 A. Yes.  
09:41 30  
09:41 31 Q. There was an inconsistency between your statement and the  
09:41 32 Ministerial Direction which I think you clarified, and we asked  
09:41 33 you to tidy that up.  
09:41 34  
09:41 35 A. Yes.  
09:41 36  
09:41 37 Q. You sent through a letter on 11 June which I think makes  
09:41 38 clear EGMs at the casino have always operated consistent with  
09:41 39 the Ministerial Direction.  
09:41 40  
09:41 41 A. That's correct.  
09:41 42  
09:41 43 Q. In fairness for you, and so the record is corrected for your  
09:41 44 benefit, I will tender that letter as part of your statement.  
09:41 45  
09:42 46 Mr Commissioner, that is CRW.512.131.0329. It's behind tab 39  
09:42 47 in your folder, I don't need to go to it in any detail but in fairness

09:42 1 to Mr Mackay I would like to tender it as part of his statement or  
09:42 2 part of the record.

09:42 3  
09:42 4 COMMISSIONER: Exhibit 200 will be letter dated 11 June  
09:42 5 2021 from Crown to the Solicitors Assisting the Commission.  
09:42 6 Thank you.

7

8

9 **EXHIBIT #RC0200 - LETTER FROM CROWN TO THE**  
10 **SOLICITORS ASSISTING THE COMMISSION DATED 11**  
11 **JUNE 2021**

12

13

09:42 14 MR KOZMINSKY: When you last gave evidence I think we  
09:42 15 also discussed jackpot payments and Lucky Time Jackpot  
09:42 16 payments; do you remember that?

09:42 17

09:42 18 A. Yes.

09:42 19

09:42 20 Q. I think you said to us that the jackpot payments included  
09:42 21 contributions made by loyalty program members from card play,  
09:42 22 so that Crown had seeded some amount but then the players were  
09:43 23 contributing; do you remember that?

09:43 24

09:43 25 A. Yes, I do.

09:43 26

09:43 27 Q. We received a letter from 16 June from Allens, who are the  
09:43 28 solicitors for Crown, and in that letter, this is what is said:

09:43 29

09:43 30 *We have been advised by Crown that all amounts in the*  
09:43 31 *columns labelled A, B, C of the spreadsheet were seeded*  
09:43 32 *by Crown Melbourne and no member contributions from*  
09:43 33 *turnover were included in the jackpot pools.*

09:43 34

09:43 35 *Do you agree with that?*

09:43 36

09:43 37 A. Yes, that's correct. My evidence was a mixture between  
09:43 38 mystery jackpots in room jackpots, and the bonus jackpot, Lucky  
09:43 39 Time Jackpots.

09:43 40

09:43 41 Q. That's all right, I'm not being critical, I just want to make  
09:43 42 sure we understand your evidence. So that will stand as your  
09:43 43 evidence, you're happy with that?

09:43 44

09:43 45 A. Yes.

09:43 46

09:43 47 Q. Thank you. When you last gave evidence, you said:

09:43 1  
09:43 2 ..... *pokie credits for points earned for spend across Crown*  
09:43 3 *Melbourne. So retail, food and beverage, hotel and on*  
09:44 4 *gaming. Those pokie points or pokie credits can be*  
09:44 5 *redeemed for spend across the property, including on*  
09:44 6 *gaming machines .....*  
09:44 7  
09:44 8 So the evidence as I understood it was all pokie credits, doesn't  
09:44 9 matter how you get them, pokie credits you can use across the  
09:44 10 property, including on EGMs; that's the evidence?  
09:44 11  
09:44 12 A. That's the evidence.  
09:44 13  
09:44 14 Q. That's correct?  
09:44 15  
09:44 16 A. It's not correct, though.  
09:44 17  
09:44 18 Q. It's not correct?  
09:44 19  
09:44 20 A. Crown Rewards can be used across the property for retail,  
09:44 21 food and beverage, and I mixed those two up, but pokie credits  
09:44 22 are specifically and can only be used on a gaming machine.  
09:44 23  
09:44 24 Q. We know that some of the pokie credits can be used other  
09:44 25 than that ---  
09:44 26  
09:44 27 A. For rewards.  
09:44 28  
09:44 29 Q. For rewards purposes.  
09:44 30  
09:44 31 A. Yes.  
09:44 32  
09:44 33 Q. Let's go back a step. This is quite important and I want to  
09:44 34 understand it.  
09:44 35  
09:44 36 A. I understand.  
09:44 37  
09:44 38 Q. Let's break it down into a few different steps slowly. When  
09:45 39 you say "across the property", does that mean at any outlet in the  
09:45 40 Crown complex?  
09:45 41  
09:45 42 A. I think some of the non-Crown outlets may not accept it,  
09:45 43 but Crown-owned would accept it.  
09:45 44  
09:45 45 Q. Just so I'm clear, all Crown-owned outlets you can use your  
09:45 46 points ---  
09:45 47

09:45 1 A. Yes.  
09:45 2  
09:45 3 Q. --- and some non-Crown-owned outlets?  
09:45 4  
09:45 5 A. I believe so, yes.  
09:45 6  
09:45 7 Q. And we know that some pokie credits can be used other  
09:45 8 than on EGMs; you agree with me?  
09:45 9  
09:45 10 A. Yes, I do.  
09:45 11  
09:45 12 Q. But I think what you are saying to me now is some pokie  
09:45 13 credits can only be used on EGMs; that is what you are saying to  
09:45 14 me?  
09:45 15  
09:45 16 A. Yes, for example, the ones that are mailed out to customers,  
09:45 17 mail-outs for pokie credits, are used on gaming machines.  
09:45 18  
09:45 19 Q. At transcript 1628, lines 19 to 20 you said the mail-out  
09:46 20 program can be used other than on EGMs.  
09:46 21  
09:46 22 A. For pokie credit mail-outs, though, I believe they can only  
09:46 23 be used on EGMs.  
09:46 24  
09:46 25 Q. Yes, but I'm saying to you on the last occasion you told us  
09:46 26 that wasn't the case.  
09:46 27  
09:46 28 A. Right. I was mistaken then.  
09:46 29  
09:46 30 Q. Are you able to tell me --- why don't you do this, because I  
09:46 31 want to get it right. I want to make sure this is right and I'm not  
09:46 32 going to give you a lot of homework today, I can assure you, but I  
09:46 33 do need to understand. I want to know which pokie credits can  
09:46 34 be used only on EGMs and which can be used on Crown outlets  
09:46 35 and some non-participating Crown outlets. Can you personally  
09:46 36 attend to that for me?  
09:46 37  
09:46 38 A. Yes, certainly.  
09:46 39  
09:46 40 Q. Thank you. Do you have your statement there?  
09:46 41  
09:46 42 A. I do.  
09:46 43  
09:46 44 Q. Could you turn to the last page of your statement, page 10,  
09:46 45 please.  
09:46 46  
09:47 47 That should be the front tab in your first volume, Commissioner.

09:47 1  
09:47 2 Mr Mackay, do you see sub-paragraphs (a) and (b)?  
09:47 3  
09:47 4 A. The RTP ranges?  
09:47 5  
09:47 6 Q. Yes. You see some of them are at 87 per cent?  
09:47 7  
09:47 8 A. Yes, I do.  
09:47 9  
09:47 10 Q. And you, as I understand it, are aware that an RTP cannot  
09:47 11 be less than 87 per cent under the relevant legislation; you are  
09:47 12 aware of that?  
09:47 13  
09:47 14 A. Yes, I am.  
09:47 15  
09:47 16 Q. You are aware that an RTP, a return to player, is  
09:47 17 a proportion of the total amount wagered played out to players  
09:47 18 after deduction of approved jackpots; yes?  
09:47 19  
09:47 20 A. (Nods head).  
09:47 21  
09:47 22 COMMISSIONER: You have to say ---  
09:47 23  
09:47 24 A. Sorry, yes.  
09:47 25  
09:47 26 Q. When the return to player is calculated, does Crown factor  
09:47 27 in any of the loyalty program expenses identified in your  
09:47 28 spreadsheet?  
09:48 29  
09:48 30 A. We factor in --- depends what reporting. I know there is  
09:48 31 reporting that includes the loyalty program as part of the return to  
09:48 32 player, but the base game variation on the EGM would be the 87  
09:48 33 plus return to player, I believe. I would have to go and confirm  
09:48 34 that for the Commission, but I'm pretty confident that the base  
09:48 35 game RTP variation is 87-plus, and then the loyalty program  
09:48 36 would be included on top of that.  
09:48 37  
09:48 38 Q. On top. What I'm trying to work out is, if Crown is  
09:48 39 deducting any expenses it shouldn't and the RTP is at 87 per cent  
09:48 40 already and that would tip it below the RTP range.  
09:48 41  
09:49 42 A. I don't believe that is the case, but I would have to confirm  
09:49 43 for the Commission.  
09:49 44  
09:49 45 Q. I will put that as item 2 on the list. I hope I haven't misled  
09:49 46 you.  
09:49 47

09:49 1 Could the operator go to CRW.512.156.2466. This is  
09:49 2 a spreadsheet, an updated spreadsheet that Crown has produced.  
09:49 3  
09:50 4 This is an updated spreadsheet, Mr Mackay, that goes back to  
09:50 5 2012 and runs through to 2021. Can you see that?  
09:50 6  
09:50 7 A. Yes, I can.  
09:50 8  
09:50 9 Q. If the operator just scrolls down slightly so that we can see  
09:50 10 the second table, thank you. Do you see in column K there is  
09:50 11 a reference to "super tax"?  
09:50 12  
09:50 13 A. Yes.  
09:50 14  
09:50 15 Q. So this spreadsheet, unlike the original one, includes super  
09:51 16 tax. And then in cell L44, the total indicative tax impact is  
09:51 17 \$272-odd million; you see that?  
09:51 18  
09:51 19 A. Yes, I do.  
09:51 20  
09:51 21 Q. Do you see, in cell F33, the rewards amount is zero?  
09:51 22  
09:51 23 A. Yes, I do.  
09:51 24  
09:51 25 Q. So I take it that means the rewards amounts which we've  
09:51 26 discussed, car park and hotel and food and beverage, that first  
09:51 27 started being a deduction in 2013, is that what I can take that  
09:51 28 spreadsheet as being the case?  
09:51 29  
09:51 30 A. That's my understanding.  
09:51 31  
09:51 32 Q. The other two columns, Welcome Back and Matchplay,  
09:51 33 have figures for 2012. Do you know how far back those  
09:51 34 deductions go?  
09:51 35  
09:51 36 A. From the start of Crown, I believe, 1997 or thereabouts.  
09:51 37  
09:52 38 Q. Were you involved in the preparation of this spreadsheet?  
09:52 39  
09:52 40 A. There were a few iterations of this spreadsheet, given my  
09:52 41 homework required me to complete a couple of sections that were  
09:52 42 separate, which I did the week preceding my evidence, and then  
09:52 43 this spreadsheet was added to, but I didn't have anything to do  
09:52 44 with producing it myself, no.  
09:52 45  
09:52 46 Q. I've got one question related to the spreadsheet but you  
09:52 47 don't need to look at it while you are answering. When we last



09:52 1 spoke, you said that the pokie credit meter effectively increases  
09:52 2 when a member uses pokie points on an EGM. You phrased it as  
09:52 3 "The pokie credits are spent on the bet".  
09:52 4  
09:52 5 A. They replace the bet, yes.  
09:52 6  
09:52 7 Q. So I'm just wondering when someone, for example, scans  
09:52 8 a pokie credit ticket into an EGM, does Crown when they are  
09:52 9 calculating gross gaming revenue treat that as a sum Crown has  
09:53 10 received?  
09:53 11  
09:53 12 A. I don't know, you would have to ask the people who  
09:53 13 calculate gross gaming revenue for the business, mate. It adds \$5  
09:53 14 to the credit meter for the customer to be able to play. How that  
09:53 15 is treated for gross gaming revenue, I'm not ---  
09:53 16  
09:53 17 Q. Who would know that?  
09:53 18  
09:53 19 A. Someone in the finance team. I would have to find out for  
09:53 20 you.  
09:53 21  
09:53 22 Q. Would Mr McGregor know?  
09:53 23  
09:53 24 A. I'm not sure, would you have to ask him.  
09:53 25  
09:53 26  
09:53 27 MR KOZMINSKY: Can I tender the spreadsheet, please,  
09:53 28 Mr Commissioner, including all of the tabs.  
09:53 29  
09:53 30 COMMISSIONER: I will describe it as updated spreadsheet,  
09:53 31 doesn't have a date on it, dealing with calculation of gross gaming  
09:53 32 revenue. I make that Exhibit 201.  
09:53 33  
09:53 34  
09:53 35 **EXHIBIT #RC0201 - UPDATED SPREADSHEET**  
09:53 36 **DEALING WITH CALCULATION OF GROSS GAMING**  
09:53 37 **REVENUE**  
09:53 38  
09:53 39  
09:53 40 MR KOZMINSKY: Mr Mackay, are you aware that Crown has  
09:54 41 to pay penalty interest on any underpayment of tax?  
09:54 42  
09:54 43  
09:54 44 A. No, I'm not.  
09:54 45  
09:54 46 Q. I will ask the next question then. Your spreadsheet and this  
09:54 47 spreadsheet here deals with gross gaming revenue; correct?

09:54 1  
09:54 2 A. Yes.  
09:54 3  
09:54 4 Q. Crown pays a separate tax on Commission-based players'  
09:54 5 gaming revenue; were you aware of that?  
09:54 6  
09:54 7 A. Repeat the question, please.  
09:54 8  
09:54 9 Q. Sure. Crown pays a separate tax on commission-based  
09:54 10 players' gaming revenue?  
09:54 11  
09:54 12 A. I'm aware we pay a different tax rate on program play, if  
09:54 13 that is what you are referring to.  
09:54 14  
09:54 15 Q. That is, thank you.  
09:54 16  
09:54 17 A. Yes.  
09:54 18  
09:54 19 Q. And so program play, in the management agreement they  
09:54 20 call it commission-based players, but I think we are talking about  
09:55 21 the same thing, it is a person who participates in a premium  
09:55 22 player arrangement or a junket; correct?  
09:55 23  
09:55 24 A. Correct.  
09:55 25  
09:55 26 Q. The definition under the management agreement is similar  
09:55 27 to gross gaming revenue, I'm paraphrasing slightly, but it's the  
09:55 28 total sums received from the conduct or playing of games by  
09:55 29 Commission-based players, less total of all sums paid out as  
09:55 30 winnings to Commission-based players. Similar sort of idea?  
09:55 31  
09:55 32 A. Yes.  
09:55 33  
09:55 34 Q. I'm wondering if Crown deducts the types of expenses in  
09:55 35 your spreadsheet when it calculates Commission-based players'  
09:55 36 gaming revenue.  
09:55 37  
09:55 38 A. Don't know.  
09:55 39  
09:55 40 Q. Who would know that?  
09:55 41  
09:55 42 A. I would say someone in the finance department.  
09:55 43  
09:55 44 COMMISSIONER: Of the numbers in the spreadsheet in the  
09:55 45 columns setting out the deductions from the purposes of  
09:56 46 calculating the gaming revenue under the headings A, B and C,  
09:56 47 how do you know they were deductible?

09:56 1  
09:56 2 A. Because I was told that we remove, we deduct them from  
09:56 3 ---  
09:56 4  
09:56 5 COMMISSIONER: I know you do. I wanted to know how you  
09:56 6 know that. I'm trying to work out how you know for this  
09:56 7 calculation and not for the other.  
09:56 8  
09:56 9 A. I haven't been involved in any other calculations for gross  
09:56 10 gaming revenue, Commissioner, so I was asked to do this in  
09:56 11 February, but I already knew before February that they were  
09:56 12 deducted from gross gaming revenue for gaming machines, for  
09:56 13 program play and table games, commission play, I don't know  
09:56 14 what's deducted and what's not.  
09:56 15  
09:56 16 COMMISSIONER: Nobody has discussed it with you?  
09:56 17  
09:56 18 A. No, Commissioner.  
09:56 19  
09:56 20 COMMISSIONER: Nobody has asked you to do the  
09:56 21 calculations --  
09:56 22  
09:56 23 A. No, Commissioner.  
09:56 24  
09:56 25 COMMISSIONER: --- similar to the calculations done here?  
09:56 26  
09:56 27 A. Never been asked to do that.  
09:56 28  
09:56 29 COMMISSIONER: All right.  
09:56 30  
09:56 31 MR KOZMINSKY: When we spoke last time, in fairness it was  
09:57 32 a bit difficult, in fairness to you, because you didn't have all the  
09:57 33 documents about the various conversations you had. But we now  
09:57 34 know from your calendar entries that your first discussion with  
09:57 35 Mr Xavier Walsh was at 9 am on 24 February 2021.  
09:57 36  
09:57 37 A. Correct.  
09:57 38  
09:57 39 Q. There is a file note of that meeting that I want to take you to.  
09:57 40  
09:57 41 Behind tab 22, Commissioner. CRW.512.135.0075.  
09:57 42  
09:57 43 We might need to orientate that, if we could, for Mr Mackay.  
09:57 44  
09:57 45 A. That was me sending it that way, apologies.  
09:57 46  
09:57 47 Q. Is that your file note?

09:57 1  
09:57 2 A. Yes, it is.  
09:57 3  
09:57 4 Q. I want to drop down to the second dot point, bonus  
09:58 5 jackpots. You can see that?  
09:58 6  
09:58 7 A. Yes, I can.  
09:58 8  
09:58 9 Q. I think it says there "latent issue"; is that right?  
09:58 10  
09:58 11 A. That's correct.  
09:58 12  
09:58 13 Q. When Mr Walsh said there was a latent issue, he meant the  
09:58 14 tax issue which at that point had been concealed?  
09:58 15  
09:58 16 A. Yes, I believe so.  
09:58 17  
09:58 18 Q. Do you remember precisely what he said about the  
09:58 19 concealment?  
09:58 20  
09:58 21 A. Yes, this is a part of my weekly catch-up meeting. He  
09:58 22 asked me to pull together a document on the bonus jackpots.  
09:58 23 I believe he had already discussed the issue at the time with  
09:58 24 Helen Coonan, and wanted me to pull together a document that  
09:58 25 would review that latent issue for tax deductible expenses against  
09:58 26 gaming revenue.  
09:58 27  
09:58 28 Q. Yes, I will go through each of the dot points, but I'm just  
09:58 29 asking you specifically, you have a note there that says "latent  
09:59 30 issue". We know that is about the concealment issue. I'm trying  
09:59 31 to ask you to remember as best you can when Mr Walsh was  
09:59 32 speaking about the latent issue, what he said about the  
09:59 33 concealment, if you can remember.  
09:59 34  
09:59 35 MR BORSKY: I object to the question. It proceeds on the  
09:59 36 premise that there was some concealment ---  
09:59 37  
09:59 38 COMMISSIONER: That was the previous question asked and  
09:59 39 answered. Check.  
09:59 40  
09:59 41 MR BORSKY: With respect, the previous question that was  
09:59 42 answered referred to the latent issue, and then at the tail end of  
09:59 43 the question when the witness was commencing his answer,  
09:59 44 included the word "concealment".  
09:59 45  
09:59 46 COMMISSIONER: He agreed there was a concealment issue.  
09:59 47

09:59 1 MR BORSKY: If the Commission pleases.  
09:59 2  
09:59 3 COMMISSIONER: Just check the transcript, see if I'm right or  
09:59 4 wrong. We can't both be right, we can't both be wrong.  
09:59 5  
09:59 6 MR KOZMINSKY: Mr Commissioner, I said "When Mr Walsh  
09:59 7 said there was a tax issue, he meant the tax issue that had been  
10:00 8 concealed".  
10:00 9  
10:00 10 COMMISSIONER: Correct.  
10:00 11  
10:00 12 MR KOZMINSKY: So, going back to my question, I'm asking  
10:00 13 you --- do you remember the words Mr Xavier Walsh used when  
10:00 14 discussing the concealment?  
10:00 15  
10:00 16 A. He never used the word "concealment". He asked me to  
10:00 17 put together a document on the jackpots we make for jackpots  
10:00 18 against gross gaming revenue.  
10:00 19  
10:00 20 COMMISSIONER: Who used the word "latent"?  
10:00 21  
10:00 22 A. Mr Walsh did.  
10:00 23  
10:00 24 MR KOZMINSKY: I'm trying to ask you if you can remember,  
10:00 25 just in respect of those two words "latent issue", not what follows  
10:00 26 afterwards, if you remember what he said?  
10:00 27  
10:00 28 A. No, I don't.  
10:00 29  
10:00 30 COMMISSIONER: When did you last look at this file note?  
10:00 31  
10:00 32 A. After my homework list was given to me on Tuesday or  
10:00 33 Wednesday following my evidence, Commissioner.  
10:01 34  
10:01 35 MR KOZMINSKY: Do you see the next sub dot point, "tax  
10:01 36 deductible expenses against gaming revenue". Is that recording  
10:01 37 what Mr Walsh said to you?  
10:01 38  
10:01 39 A. I don't recall. I was taking notes. So it might have been my  
10:01 40 notes or he might have mentioned it. I can't recall.  
10:01 41  
10:01 42 COMMISSIONER: Is that to say, apart from what we read in the  
10:01 43 notes, you cannot remember anything?  
10:01 44  
10:01 45 A. I don't remember as per my evidence previously, I don't  
10:01 46 remember the conversation in great detail. It was at the back end  
10:01 47 of my weekly catch-up, and he asked me to pull together a report

10:01 1 on bonus jackpots. That's what I remember of it. Having read  
10:01 2 this, it obviously brought back some memories of the meeting,  
10:01 3 but of the exact conversation of that meeting, Commissioner, I  
10:01 4 can't recall the exact words used.  
10:01 5  
10:01 6 COMMISSIONER: I don't think Mr Kozminsky was asking you  
10:01 7 for the exact words. He was asking you for the substance of what  
10:01 8 was said. If he wasn't, I'm asking.  
10:01 9  
10:02 10 A. Well, I don't recall the substance of it, I remember it being  
10:02 11 Xavier Walsh calling it a latent issue, I've written that down. I've  
10:02 12 put down the other notes. I can't recall whether he said them to  
10:02 13 me or they are my notes on the understanding of what bonus  
10:02 14 jackpots was.  
10:02 15  
10:02 16 MR KOZMINSKY: When you say it was at the back end of the  
10:02 17 meeting, is that the entirety of the file note of the meeting?  
10:02 18  
10:02 19 A. Yes.  
10:02 20  
10:02 21 Q. Everything other than the first dot point relates to bonus  
10:02 22 jackpots?  
10:02 23  
10:02 24 A. Yes.  
10:02 25  
10:02 26 Q. Did it take up the majority of the meeting?  
10:02 27  
10:02 28 A. No. It wouldn't have taken the majority of the meeting up.  
10:02 29  
10:02 30 Q. "VCGLR review", you see that?  
10:02 31  
10:02 32 A. Yes, I do.  
10:02 33  
10:02 34 Q. Is that a reference to the 2018 correspondence we went to  
10:02 35 with Mr Cremona?  
10:02 36  
10:02 37 A. I believe so.  
10:02 38  
10:02 39 Q. What did Mr Xavier Walsh tell you about that?  
10:02 40  
10:02 41 A. I don't think he said anything about that. They are my  
10:03 42 notes.  
10:03 43  
10:03 44 COMMISSIONER: Why did you write it down?  
10:03 45  
10:03 46 A. Because I was aware we had correspondence in regards to  
10:03 47 the technical requirements document in regards to bonus

10:03 1 jackpots.  
10:03 2  
10:03 3 MR KOZMINSKY: The next dot point says "Helen reviewing to  
10:03 4 revert to XW". Helen, I think you've already said is a reference  
10:03 5 to Helen Coonan, chairperson?  
10:03 6  
10:03 7 A. That's correct.  
10:03 8  
10:03 9 Q. And XW is Xavier Walsh?  
10:03 10  
10:03 11 A. That's correct.  
10:03 12  
10:03 13 Q. What aspects of the tax issue did Mr Walsh say Ms Coonan  
10:03 14 was reviewing?  
10:03 15  
10:03 16 A. If I recall correctly I believe he had already spoken to Helen  
10:03 17 about the bonus jackpots and the concern on them being  
10:03 18 deductions from gross gaming revenue. I can't recall much more  
10:04 19 than those comments.  
10:04 20  
10:04 21 COMMISSIONER: Can't recall very much about this  
10:04 22 conversation, right?  
10:04 23  
10:04 24 A. I can't, really, no, Commissioner, sorry.  
10:04 25  
10:04 26 MR KOZMINSKY: When you ordinarily review something, you  
10:04 27 normally do it with documents. What documents did Mr Walsh  
10:04 28 say Ms Coonan was reviewing?  
10:04 29  
10:04 30 A. I don't believe he did. I don't know what documents they  
10:04 31 were reviewing.  
10:04 32  
10:04 33 Q. Can you remember anything of substance that Mr Walsh  
10:04 34 told you about Ms Coonan's review of the tax issue?  
10:04 35  
10:04 36 A. No, I can't.  
10:04 37  
10:04 38 Q. Can I ask you this: you report to the COO in terms of the  
10:05 39 organisational structure; is that right?  
10:05 40  
10:05 41 A. Yes, I do.  
10:05 42  
10:05 43 Q. And the COO then reports into the Board?  
10:05 44  
10:05 45 A. No, I report into who is now the CEO of Crown  
10:05 46 Melbourne, who reports into the CEO of Crown Resorts, who  
10:05 47 reports into the Board.

10:05 1  
10:05 2 Q. And then the Chairman is at the top?  
10:05 3  
10:05 4 A. Yes.  
10:05 5  
10:05 6 Q. So you are four or five steps removed from Ms Coonan in  
10:05 7 terms of the hierarchy of reporting?  
10:05 8  
10:05 9 A. Yes, that's correct.  
10:05 10  
10:05 11 Q. So, in your day-to-day role when you are doing things, you  
10:05 12 are not interacting with, on a day-to-day basis, Ms Coonan and  
10:05 13 working on the same sort of projects she is working on, are you?  
10:05 14  
10:05 15 A. No, I'm not.  
10:05 16  
10:05 17 Q. And so you dealing on an issue that Ms Coonan is working  
10:05 18 on at the same time is something that is likely to stand out in your  
10:05 19 mind because it doesn't happen regularly; do you agree with me?  
10:05 20  
10:05 21 A. I was working on this for Xavier, not Helen Coonan. He  
10:06 22 was reverting back to Helen. So it didn't --- and it doesn't stand  
10:06 23 out in my mind.  
10:06 24  
10:06 25 Q. Have you ever worked on another project in your time at  
10:06 26 Crown where both you and Ms Coonan are working on the matter  
10:06 27 at the same time, that is a preliminary step? I'm not talking about  
10:06 28 something you do that gets reported up to the board and  
10:06 29 Ms Coonan. Have you ever worked on something in parallel with  
10:06 30 Ms Coonan?  
10:06 31  
10:06 32 A. Not that comes to mind. I'm sure there is plenty I've  
10:06 33 worked on that she's across as well though.  
10:06 34  
10:06 35 Q. That you are aware of, that you were told about?  
10:06 36  
10:06 37 A. Yes.  
10:06 38  
10:06 39 Q. You can't think of any?  
10:06 40  
10:06 41 A. No.  
10:06 42  
10:06 43 Q. You understand what I'm asking you. It is extraordinary  
10:06 44 that if you are being told about this tax issue days after the  
10:06 45 Commission has been announced, knowing about the  
10:06 46 concealment, knowing about the concern, and knowing that the  
10:07 47 Chairperson is involved, it is the sort of thing in the ordinary



10:07 1 course someone would remember; do you agree with me?  
10:07 2  
10:07 3 MR BORSKY: I object to the question. Again, there is a number  
10:07 4 of premises rolled up in it, one of which is the so-called  
10:07 5 concealment issue.  
10:07 6  
10:07 7 COMMISSIONER: He changed his evidence according to your  
10:07 8 prompting. I pick up the point.  
10:07 9  
10:07 10 MR KOZMINSKY: Mr Mackay, you can't remember what you  
10:07 11 can't remember, but do you agree with me this is the sort of  
10:07 12 incident one would likely to be able to recall?  
10:07 13  
10:07 14 A. No, my evidence is I can't recall it and so I can't recall it.  
10:07 15  
10:07 16 MR KOZMINSKY: Okay. The file note then is the best record  
10:07 17 of what you can and can't remember in terms of the meeting;  
10:07 18 correct?  
10:07 19  
10:07 20 A. That's correct.  
10:07 21  
10:07 22 Q. Right, and so Mr Walsh didn't tell you that there is this  
10:07 23 latent issue about underpayment of tax that should be voluntarily  
10:08 24 and promptly disclosed to anyone; he didn't say that to you, did  
10:08 25 he?  
10:08 26  
10:08 27 A. He was reviewing the bonus jackpots latent issue with  
10:08 28 Helen in regards to the Royal Commission.  
10:08 29  
10:08 30 Q. But the answer to my question is he did not say to you at  
10:08 31 the meeting that he was considering or that Crown should  
10:08 32 voluntarily disclose the matter?  
10:08 33  
10:08 34 A. I can't recall, I'm sorry. I don't remember him saying it. I  
10:08 35 can't recall the exact words of that meeting.  
10:08 36  
10:08 37 Q. When we last spoke, you didn't tell the Commissioner about  
10:08 38 Ms Coonan's involvement, did you?  
10:08 39  
10:08 40 A. I didn't recall.  
10:08 41  
10:08 42 Q. Did anyone speak to you before you gave your evidence on  
10:08 43 the last occasion about evidence you should or shouldn't give  
10:08 44 about Ms Coonan's involvement early on in this process?  
10:08 45  
10:08 46 A. No. No one has spoke to me about this issue until it was  
10:09 47 raised with me during the Commission.

10:09 1  
10:09 2 Q. Okay.  
10:09 3  
10:09 4 Given Mr Mackay has no memory of this meeting, I will tender  
10:09 5 the file note and move on.  
10:09 6  
10:09 7 COMMISSIONER: Mr Mackay's file note of discussions with  
10:09 8 Mr Walsh 24 February 2021 will be Exhibit 202.  
10:09 9  
10  
11 **EXHIBIT #RC0202 - MR MARK MACKAY'S FILE NOTE**  
12 **OF DISCUSSIONS WITH MR XAVIER WALSH DATED**  
13 **24 FEBRUARY 2021**  
14  
15  
10:09 16 MR KOZMINSKY: Just to help you I want to step through the  
10:09 17 timeline, Mr Mackay, and I will put up your calendar so that you  
10:09 18 can see it in case that helps refresh your memory.  
10:09 19  
10:09 20 CRW.512.131.0233, tab 21, Mr Commissioner, of your bundle.  
10:09 21  
10:09 22 COMMISSIONER: Which number was it?  
10:09 23  
10:09 24 MR KOZMINSKY: 21. Let's step through the timeline now.  
10:09 25 I will take you to the entries. It is not a memory test. At 9 am, or  
10:10 26 at some time before 9 am on 24 February, based on what you've  
10:10 27 just told me, Ms Coonan and Mr Walsh spoke about the tax  
10:10 28 issue?  
10:10 29  
10:10 30 A. I believe so.  
10:10 31  
10:10 32 Q. Ms Coonan was undertaking her review, whatever that  
10:10 33 might mean, and we'll ask her about that in due course, before 9  
10:10 34 am on 24 February; yes?  
10:10 35  
10:10 36 A. Yes, sure.  
10:10 37  
10:10 38 Q. Then you met with Mr Walsh at 9 am on 24 February. We  
10:10 39 can see that there?  
10:10 40  
10:10 41 A. Yes.  
10:10 42  
10:10 43 Q. So I don't forget, I might tender the calendar entries now as  
10:10 44 we work through them.  
10:10 45  
10:10 46 COMMISSIONER: Mr Mackay's calendar entries for February  
10:10 47 2021 ---

10:10 1  
10:10 2 MR KOZMINSKY: It is an extract of ---  
10:10 3  
10:10 4 COMMISSIONER: Sorry, extracts.  
10:10 5  
10:10 6 A. Sorry, Commissioner, is this public or private?  
10:11 7  
10:11 8 COMMISSIONER: This is public.  
10:11 9  
10:11 10 A. My email address is not redacted.  
10:11 11  
10:11 12 MR KOZMINSKY: No, the documents aren't being streamed.  
10:11 13 None of the documents are being streamed because we didn't  
10:11 14 have time to redact the emails.  
10:11 15  
10:11 16 COMMISSIONER: I thought you were asking about the hearing  
10:11 17 proper.  
10:11 18  
10:11 19 A. All right.  
10:11 20  
10:11 21 COMMISSIONER: That will be Exhibit 203.  
10:11 22  
10:11 23  
10:11 24 **EXHIBIT #RC0203 - MR MARK MACKAY'S CALENDAR**  
10:11 25 **ENTRIES FOR FEBRUARY 2021**  
10:11 26  
10:11 27  
10:11 28 MR KOZMINSKY: After that meeting finished, 9.45 on the  
10:11 29 24th, do you agree with me that you spoke to Mr Herring  
10:11 30 immediately or very shortly after that meeting?  
10:11 31  
10:11 32 A. I can't recall exactly when I spoke to him, but it was after  
10:11 33 that meeting.  
10:11 34  
10:11 35 Q. Yes, it was actually, I think, and I will show you why in  
10:11 36 a second, almost immediately after the meeting. There is  
10:11 37 a bundle of documents, there is some privilege and  
10:11 38 confidentiality, too hard to redact in the time we had. The  
10:11 39 associate will handle you, Mr Borsky and the Commissioner  
10:11 40 a bundle of documents. I want you to flick through them.  
10:11 41  
10:12 42 A. Sure.  
10:12 43  
10:12 44 COMMISSIONER: Thanks.  
10:12 45  
10:12 46 MR KOZMINSKY: I haven't, just because of the volume of  
10:12 47 material that was attached, included the attachments, but it is

10:12 1 clear what the attachments are on their face. I just want you to  
10:12 2 flick through them.  
10:12 3  
10:12 4 I think the first one should be an email at 10.19 am; you see that?  
10:12 5  
10:12 6 A. Yes.  
10:12 7  
10:12 8 Q. And the second one is an email at 10.20 am?  
10:12 9  
10:12 10 A. Yes.  
10:12 11  
10:12 12 Q. And the third one, an email at 2.46 pm?  
10:12 13  
10:12 14 A. Yes.  
10:12 15  
10:12 16 Q. The last one, an email at 2.47 am?  
10:12 17  
10:12 18 A. 2.47 pm.  
10:12 19  
10:12 20 Q. Pm, my apologies.  
10:12 21  
10:12 22 A. Yep.  
10:12 23  
10:12 24 Q. Going to the first in that chain of emails, at 10.19 ---  
10:12 25  
10:12 26 A. Yes.  
10:12 27  
10:12 28 Q. --- I take it that Mr Herring didn't start emailing you out of  
10:12 29 the blue about the tax issue?  
10:12 30  
10:12 31 A. No, I spoke to him about it. That's correct.  
10:12 32  
10:12 33 Q. But in terms of placing your call, it must have happened  
10:12 34 between the meeting finishing at 9.45 am with Mr Walsh, and  
10:12 35 some time before 10.19 you must have spoken to Mr Herring?  
10:13 36  
10:13 37 A. I agree.  
10:13 38  
10:13 39 MR KOZMINSKY: Mr Commissioner, I tender those four  
10:13 40 documents with their exhibits --- sorry, with their attachments.  
10:13 41  
10:13 42 COMMISSIONER: Are they confidential, the attachments?  
10:13 43  
10:13 44 MR KOZMINSKY: I haven't had a chance, to be frank,  
10:13 45 Mr Commissioner.  
10:13 46  
10:13 47 COMMISSIONER: Why don't we just mark it at the moment as

10:13 1 Exhibit 204, email chain ending with an email from Mr Herring  
10:13 2 to Mr Mackay, 24 February 2021. I will mark it as confidential  
10:13 3 for the time being and then we will see what the attachments --- I  
10:13 4 should include in the exhibit description with attachments.

10:13 5

6

7

**EXHIBIT #RC0204 - EMAIL CHAIN WITH  
ATTACHMENTS ENDING WITH AN EMAIL FROM  
MR PETER HERRING TO MR MARK MACKAY DATED  
24 FEBRUARY 2021 (CONFIDENTIAL)**

11

12

10:13 13 MR KOZMINSKY: Sorry about that, Mr Commissioner.

10:13 14

10:13 15 So, when you spoke to Mr Herring between 9.45 am on the 24th  
10:14 16 and 10.19 am, some time there, did you discuss the fact that  
10:14 17 Ms Coonan and Mr Walsh were looking at this issue and you  
10:14 18 needed to help them?

10:14 19

10:14 20 A. I believe I asked Peter to send me through any detail he had  
10:14 21 on the bonus jackpots in regards to the breakout of each of them.

10:14 22

10:14 23 Q. Yes. But I suppose but my point is he's responded really  
10:14 24 quickly. You finished at 9.45. You walk back to your office,  
10:14 25 maybe had a cup of coffee, you call him and 15, 20 minutes later,  
10:14 26 emails are coming in. So do I take from that it is likely you told  
10:14 27 him that Ms Coonan is looking at this, Mr Walsh is looking at  
10:14 28 this, this is urgent?

10:14 29

10:14 30 A. I can't recall what I said to Peter. I would have said I've  
10:14 31 been asked to pull this together for Xavier and he would have  
10:14 32 sent me through what he had on those items which he has on the  
10:14 33 email.

10:14 34

10:14 35 COMMISSIONER: You did treat Mr Walsh's request as urgent  
10:14 36 and you acted ---

10:14 37

10:15 38 A. Yes, well, I treat most of Mr Walsh's requests as urgent, but  
10:15 39 yes, I would have treated this as urgent, yes.

10:15 40

10:15 41 MR KOZMINSKY: I think in fairness to you, you said that on  
10:15 42 the last occasion you treated it urgently or seriously.

10:15 43

10:15 44 A. I did.

10:15 45

10:15 46 Q. At around the time Mr Mackay you spoke to Mr Herring,  
10:15 47 I don't know if this is before or after and maybe you can tell me,

10:15 1 you spoke with Jose Machado?  
10:15 2  
10:15 3 A. Correct.  
10:15 4  
10:15 5 Q. I want to show you document CRW.512.153.0125.  
10:15 6  
10:15 7 It should be behind tab 25A, Commissioner.  
10:15 8  
10:15 9 If you scroll, please, to page 0128. So this is an email sent, up  
10:16 10 a bit, please, an email sent on 24 February at 12.23 pm. You see  
10:16 11 that?  
10:16 12  
10:16 13 A. Yes, I do.  
10:16 14  
10:16 15 Q. Again, this email wasn't sent to you out of the blue; you  
10:16 16 must have spoken to Mr Machado some time between 9.45 am  
10:16 17 and 12.23 pm; you agree with me?  
10:16 18  
10:16 19 A. Yes, that's correct.  
10:16 20  
10:16 21 Q. This looks like, I think, the very first cut of what becomes  
10:16 22 your spreadsheet; you agree with me?  
10:16 23  
10:16 24 A. That's correct.  
10:16 25  
10:16 26 Q. Then if we go over to page 0127 at the bottom of the page,  
10:16 27 you emailed back and you say:  
10:16 28  
10:16 29 *The numbers look ok ex Points deductions. Any way you*  
10:16 30 *can pull Welcome back out of the number?*  
10:16 31  
10:16 32 Do you see that?  
10:16 33  
10:16 34 A. Yes, I do.  
10:16 35  
10:17 36 Q. Why did you ask for the Welcome Back figures to be pulled  
10:17 37 out?  
10:17 38  
10:17 39 A. Because they relate back to the very start of Crown's loyalty  
10:17 40 program. So I knew that Welcome Back and free credits were  
10:17 41 pre-2012 as well.  
10:17 42  
10:17 43 Q. They were pre-2012, but the fact they were pre-2012  
10:17 44 doesn't appear to be a reason to pull them out. Why? I don't  
10:17 45 understand that, Mr Mackay.  
10:17 46  
10:17 47 A. Because they are accounted for separately. Which is what

10:17 1 my evidence was previously, they are a separate bucket of loyalty  
10:17 2 program.

10:17 3

10:17 4 Q. Was the reason that this was asked to be pulled out  
10:17 5 anything to do with the risks or the legal risks perceived with the  
10:18 6 various deductions?

10:18 7

10:18 8 A. Yes, I believe it was.

10:18 9

10:18 10 Q. It was because of the legal risks?

10:18 11

10:18 12 A. Yes.

10:18 13

10:18 14 Q. Do you know that on the last occasion --- grateful for the  
10:18 15 concession, but --- I asked you that expressly and you said it  
10:18 16 wasn't the case?

10:18 17

10:18 18 A. That was in my previous evidence, yes. I've had the benefit  
10:18 19 of going back through all these notes and reviewing it.

10:18 20

10:18 21 Q. And I just want to be clear about this as we go up through  
10:18 22 this email. No, actually, I will come back to that in a moment.

10:18 23

10:18 24 Can we go, Mr Operator, to 0125 and open 0125 and 0126 at the  
10:18 25 same time, is that possible? You see at the bottom of the screen,  
10:18 26 at 6.47 pm, your email with an updated table? Do you see that?

10:18 27

10:19 28 A. Yes.

10:19 29

10:19 30 Q. The reason F12 and 13 aren't in your table, your ultimate  
10:19 31 spreadsheet, or for that matter 20 and 21, is because that is the  
10:19 32 only information that is easily accessible; do you agree with me?

10:19 33

10:19 34 A. That's correct.

10:19 35

10:19 36 Q. And so you asked for the Welcome Back to be pulled out,  
10:19 37 and then separately there is also "Matchplay and others", that  
10:19 38 other column, and I take it that is also something you discussed  
10:19 39 with Mr Machado because of legal risks?

10:19 40

10:19 41 A. Correct.

10:19 42

10:19 43 Q. Thank you.

10:19 44

10:19 45 If you then go to page 0125 at the top, there is an email on 25  
10:19 46 February at 2021 at 9.10 am where Mr Machado says he is ready  
10:20 47 to discuss when you are; you see that?

10:20 1  
10:20 2 A. Yes, I do.  
10:20 3  
10:20 4 Q. Do I take it you had another discussion with him before the  
10:20 5 spreadsheet was emailed to you?  
10:20 6  
10:20 7 A. Yes.  
10:20 8  
10:20 9 Q. I apologise about this. We've been hit with a tsunami of  
10:20 10 documents over the last three days. Is there an email where that  
10:20 11 spreadsheet is sent to you? We haven't seen it yet, but in fairness  
10:20 12 we haven't been through all the documents yet.  
10:20 13  
10:20 14 A. If there was I would have sent it through unless I've missed  
10:20 15 it by mistake, but I can't recall whether it was sent to me on  
10:20 16 an email or I accessed it off the shared drive. I would have to  
10:20 17 review those emails as well. I know there have been a lot of  
10:20 18 emails sent to the Commission.  
10:20 19  
10:20 20 Q. I understand. If you knew about the legal risks with the  
10:21 21 various deductions, I take it that was something that others in the  
10:21 22 organisation must also have known at the time?  
10:21 23  
10:21 24 A. Yes.  
10:21 25  
10:21 26 Q. And that would have included, obviously enough,  
10:21 27 Mr Walsh?  
10:21 28  
10:21 29 A. Correct.  
10:21 30  
10:21 31 Q. And Mr Herring, who we've seen on the documents, was  
10:21 32 involved in this in 2012.  
10:21 33  
10:21 34 A. Correct.  
10:21 35  
10:21 36 Q. And Ms Fielding?  
10:21 37  
10:21 38 A. Correct.  
10:21 39  
10:21 40 Q. And Mr Preston who is no longer with Crown, but  
10:21 41 Mr Preston knew?  
10:21 42  
10:21 43 A. Correct.  
10:21 44  
10:21 45 Q. And Ms Coonan was reviewing it so she knew about it?  
10:21 46  
10:21 47 A. Correct.



10:21 1  
10:21 2 Q. Am I right that every Director of Crown Melbourne and  
10:21 3 Crown Resorts knew about the legal risks associated with the  
10:21 4 different deductions?  
10:21 5  
10:21 6 A. I don't know.  
10:21 7  
10:21 8 Q. Am I right that the people who you have just agreed knew  
10:21 9 about the issue knew about the issue before February 2021?  
10:22 10 Mr Herring, Ms Fielding, Mr Walsh, they knew about it before  
10:22 11 February 2021?  
10:22 12  
10:22 13 A. Correct.  
10:22 14  
10:22 15 Q. And you knew about it before February 2021?  
10:22 16  
10:22 17 A. Yes.  
10:22 18  
10:22 19 Q. Thank you.  
10:22 20  
10:22 21 If we can go back --- I will tender that email.  
10:22 22  
10:22 23 COMMISSIONER: I will describe it as an email chain ending  
10:22 24 with an email from Mr Machado to Mr Mackay, 25 February  
10:22 25 2021, 9.10 am. That will be Exhibit 205.  
10:22 26  
27  
28 **EXHIBIT #RC0205 - EMAIL CHAIN ENDING WITH AN**  
29 **EMAIL FROM MR JOSE MACHADO TO MR MARK**  
30 **MACKAY DATED 25 FEBRUARY 2021 AT 9.10 AM**  
31  
32  
10:22 33 MR KOZMINSKY: Can we go back, please, to the calendar  
10:22 34 entry, CRW.512.131.0233.  
10:22 35  
10:22 36 Tab 21, Commissioner.  
10:22 37  
10:23 38 On the first page, 25 February, 2.45 pm you see "legacy issues"  
10:23 39 meeting?  
10:23 40  
10:23 41 A. Yes, I do.  
10:23 42  
10:23 43 Q. On the next page we can see, I think, that meeting again, do  
10:23 44 you see halfway down? Meeting 2.45?  
10:23 45  
10:23 46 A. Yes. Same meeting.  
10:23 47

10:23 1 Q. Over the page we can see Mr Xavier Walsh organised it,  
10:23 2 and Mr Herring and Ms Fielding are there; do you see that?  
10:23 3  
10:23 4 A. Yes, I do.  
10:23 5  
10:23 6 Q. Just so I can place this meeting, you will also remember  
10:23 7 that on the 25th you prepared a document which I will call the  
10:23 8 bonus jackpot review; do you know which document I'm talking  
10:23 9 about, the two-page document you prepared on the 25th?  
10:23 10  
10:23 11 A. Yes, I do.  
10:23 12  
10:23 13 Q. Do you know if you prepared that document before or after  
10:23 14 this meeting?  
10:23 15  
10:23 16 A. I can't recall, I'm sorry.  
10:23 17  
10:23 18 Q. I don't think, when we last spoke, you mentioned this  
10:24 19 particular meeting.  
10:24 20  
10:24 21 A. (Nods head).  
10:24 22  
10:24 23 Q. Sitting here today, can you tell us what was discussed in  
10:24 24 this meeting?  
10:24 25  
10:24 26 A. I can't recall this meeting.  
10:24 27  
10:24 28 COMMISSIONER: Was it about the tax issue?  
10:24 29  
10:24 30 A. That's the title of it, "latent issues" but I can't recall ---  
10:24 31  
10:24 32 COMMISSIONER: You can't recall a single topic, single issue  
10:24 33 discussed by anybody?  
10:24 34  
10:24 35 A. I can't recall having that meeting, Commissioner.  
10:24 36  
10:24 37 MR KOZMINSKY: Then what happens, as best I can tell, is the  
10:24 38 following morning between 9.42 and 10.40 am you updated the  
10:24 39 spreadsheet. You have to ---  
10:24 40  
10:24 41 A. Yes, correct. Sorry, yes.  
10:24 42  
10:24 43 Q. Then you said you spoke to Mr Herring about the accuracy  
10:24 44 of the figures in the spreadsheet before you spoke to Mr Walsh.  
10:24 45 And we know from the next entry you spoke to Mr Walsh at  
10:24 46 11.30 on the 26th?  
10:24 47

- 10:24 1 A. That's correct.
- 10:24 2
- 10:24 3 Q. So between 10.40 am and 11.30 am you spoke with
- 10:25 4 Mr Herring?
- 10:25 5
- 10:25 6 A. I can't recall the exact times.
- 10:25 7
- 10:25 8 Q. But you spoke to him before the meeting and ---
- 10:25 9
- 10:25 10 A. I believe I spoke to him beforehand to verify my
- 10:25 11 understanding of the calculations I had used in the spreadsheet
- 10:25 12 and the items of it.
- 10:25 13
- 10:25 14 Q. You finished the spreadsheet at 10.40 am, the metadata tells
- 10:25 15 us, and we know you met with Mr Walsh at 11.30, so it would
- 10:25 16 have been in that time, I know you don't know when, but are you
- 10:25 17 happy with that?
- 10:25 18
- 10:25 19 A. Yes.
- 10:25 20
- 10:25 21 Q. You spoke to Mr Walsh. When we spoke last time, I think
- 10:25 22 you told us you spoke to Mr Walsh alone, but this calendar entry
- 10:25 23 says you spoke with Mr Herring and Mr Walsh; do you know
- 10:25 24 what the position is?
- 10:25 25
- 10:25 26 A. I still can't really recall that meeting. I believe it was me
- 10:25 27 delivering the spreadsheet and the Word document to Mr Walsh.
- 10:25 28 It has Peter Herring was required and in attendance. I can't recall
- 10:25 29 whether he was there or not, but I recall giving the documents to
- 10:26 30 Mr Walsh.
- 10:26 31
- 10:26 32 Q. Is it your normal practice to give documents to Mr Walsh
- 10:26 33 rather than email them to him?
- 10:26 34
- 10:26 35 A. Sometimes, yes, depending on what we are looking at.
- 10:26 36
- 10:26 37 Q. Did you think that the documents you were preparing were
- 10:26 38 particularly sensitive and it might be better not to email them?
- 10:26 39
- 10:26 40 A. Yes, they were sensitive.
- 10:26 41
- 10:26 42 Q. So it was better not to email them?
- 10:26 43
- 10:26 44 A. I don't recall that being my thought pattern but I knew they
- 10:26 45 were sensitive documents.
- 10:26 46
- 10:26 47 Q. After you spoke to Mr Walsh, and you explained to him the

10:26 1 spreadsheet, I take it that as far as you were concerned, that was  
10:26 2 the end of your involvement in the matter?

10:26 3

10:26 4 A. I've not had any further conversations on those two  
10:26 5 documents until my hearing with the Commission.

10:26 6

10:26 7 Q. Well, you had one further conversation because you spoke  
10:26 8 to Ms Fielding after you spoke to Mr Walsh; do you remember  
10:26 9 that?

10:26 10

10:26 11 A. Yes, I do, sorry.

10:26 12

10:26 13 Q. This is what I'm trying to understand when I'm piecing  
10:27 14 together this timeline. I'm trying to understand what the purpose  
10:27 15 of that meeting was. When you last spoke to me you said that it  
10:27 16 was about gaming tax calculations and the ambiguity about it.  
10:27 17 I'm just trying to understand why a busy person like you was  
10:27 18 going to have a meeting about ambiguities on gambling tax if  
10:27 19 your involvement in the matter had ended. Are you able to  
10:27 20 enlighten us?

10:27 21

10:27 22 A. I think in my evidence I said I couldn't recall exactly when I  
10:27 23 spoke to Michelle, but it was in regards to the ambiguity on that  
10:27 24 tax calculation and the deductibility of bonus jackpots. That's as  
10:27 25 much as I can recall.

10:27 26

10:27 27 Q. Who did you tell about the apparent ambiguity Ms Fielding  
10:27 28 explained to you?

10:27 29

10:27 30 A. I don't think I told anyone because it was already a known  
10:27 31 issue.

10:27 32

10:28 33 Q. On Saturday night, Mr Mackay, we got given a document  
10:28 34 which records that there was another meeting on 1 March. You  
10:28 35 didn't attend it but a large cast did about the tax issue. Do you  
10:28 36 have any knowledge about that particular meeting?

10:28 37

10:28 38 A. You would have to be a bit more specific on the meeting  
10:28 39 was, I'm sorry.

10:28 40

10:28 41 Q. 1 March, 3 pm, with Mr Walsh, Mr Riley, Mr Young,  
10:28 42 Michelle Fielding, Mr McGregor, Ms Williamson and Anne  
10:28 43 Siegers.

10:28 44

10:28 45 A. No, I don't believe I have any knowledge of that meeting.

10:28 46

10:28 47 MR KOZMINSKY: Mr Commissioner, unless you have any

10:28 1 other questions about the timeline and those events, I want to ask  
10:28 2 Mr Mackay some questions in closed sessions with parties with  
10:28 3 leave to appear staying in the room.  
10:28 4  
10:28 5 COMMISSIONER: Because? What's the need for the closed  
10:29 6 session?  
10:29 7  
10:29 8 MR KOZMINSKY: I will asking Mr Mackay questions which  
10:29 9 might be directly relevant to questions I ask other witnesses in the  
10:29 10 coming days, effectively like witnesses ---  
10:29 11  
10:29 12 COMMISSIONER: All right, I will see how long it might take to  
10:29 13 do that. Give me a second.  
10:29 14  
10:29 15 It will take a few minutes so I will take a break for 5 minutes or  
10:29 16 something like that until it is all done.  
10:29 17  
10:29 18  
10:29 19 **ADJOURNED** **[10:29A.M.]**  
20  
21  
22  
23  
24  
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10:43 1       **RESUMED** **[10:43A.M.]**  
10:43 2  
10:43 3  
10:43 4       **HEARING IN CAMERA**  
10:43 5  
10:43 6  
10:43 7       **COMMISSIONER:** Thank you. I assume it is all working. Can  
10:43 8 I just make clear, so that there is no misunderstanding about the  
10:43 9 orders that I made this morning, there is the usual order about  
10:43 10 who can be present in the proceeding and it covers all of the  
10:43 11 people who are present in the proceeding. I made  
10:43 12 a non-publication order for the evidence that is about to be given.  
10:43 13 That non-publication order will expire 4.15 tomorrow, so it is not  
10:43 14 intended to have a longer life than that. Thank you.  
10:43 15  
10:43 16       **MR KOZMINSKY:** Thank you.  
10:43 17  
10:43 18       **COMMISSIONER:** I've got a feeling that the orders get  
10:43 19 published, posted on the door, so if anybody wants to check on  
10:44 20 their way in or out, it will happen in a minute.  
10:44 21  
10:44 22       Can I ask a question before you proceed.  
10:44 23  
10:44 24       I will test your memory again. After you spoke to Mr Walsh, you  
10:44 25 spoke to Ms Fielding?  
10:44 26  
10:44 27       A. After I spoke to Mr Walsh in my weekly catch-up, I spoke  
10:44 28 to Peter Herring.  
10:44 29  
10:44 30       **COMMISSIONER:** Sorry, Peter Herring. No, no, I think you  
10:44 31 spoke to Mr Fielding[sic].  
10:44 32  
10:44 33       A. I can't recall when I spoke to Ms Fielding but I spoke to her  
10:44 34 ---  
10:44 35  
10:44 36       **COMMISSIONER:** Ms Fielding.  
10:44 37  
10:44 38       A. I spoke to her in that time period.  
10:44 39  
10:44 40       **COMMISSIONER:** --- (overspeaking) --- spoke to Mr Walsh?  
10:44 41  
10:44 42       A. I believe so.  
10:44 43  
10:44 44       **COMMISSIONER:** That's at a point of time when everybody,  
10:44 45 including Ms Fielding, Mr Walsh, Mr Herring, everybody, was  
10:44 46 aware that there was a potential problem with the tax?  
10:45 47

10:45 1 A. Well, the emails that date back to 2018 or earlier show that  
10:45 2 there has been discussions back and forth in regards to these with  
10:45 3 the VCGLR, so ---  
10:45 4  
10:45 5 COMMISSIONER: So everybody knew about it for years?  
10:45 6  
10:45 7 A. Yes.  
10:45 8  
10:45 9 COMMISSIONER: So I'm trying to work out what was the  
10:45 10 likely subject matter of your conversation with Ms Fielding after  
10:45 11 you had spoken to Mr Walsh. You say you can't remember, but  
10:45 12 this has all got to do with the one tax issue. It was all important,  
10:45 13 and in one sense pressingly urgent because you were tasked to get  
10:45 14 data and you got it, you got it straight away, you got straight on to  
10:45 15 it. It took almost no time at all to put the data together that  
10:45 16 Mr Walsh was after. I was trying to work out what Ms Fielding  
10:45 17 had to do with it at that time. You spoke to her ---  
10:45 18  
10:45 19 A. I did ---  
10:45 20  
10:45 21 COMMISSIONER: --- and it had to be about this topic.  
10:45 22  
10:45 23 A. And I think I have been clear to the Commission that it was  
10:46 24 about this topic and the ambiguity of the calculation for gross  
10:46 25 gaming revenue. I can't recall the specifics of the conversation,  
10:46 26 but I do recall me speaking to her about that calculation. Or the  
10:46 27 definition of it.  
10:46 28  
10:46 29 COMMISSIONER: Yes. Then I'm trying to work out, how  
10:46 30 come you forget everything that happened in February. It's not  
10:46 31 such a long time ago, it was a super important issue, and you  
10:46 32 seem to have lost your recollection of all conversations about it  
10:46 33 except what might be written down on a piece of paper. You get  
10:46 34 what I'm getting at?  
10:46 35  
10:46 36 A. I do, Commissioner, but I can't recall the specifics of the  
10:46 37 conversation, so I can't be ---  
10:46 38  
10:46 39 COMMISSIONER: You know I'm not asking about the specifics  
10:46 40 of the conversation. I was trying to make it clear earlier. I'm not  
10:46 41 asking you to give a verbatim recollection or account of the  
10:46 42 words spoken, I'm interested in the substance of what was  
10:46 43 discussed at these meetings?  
10:46 44  
10:46 45 A. I've given as much as I can recall.  
10:47 46  
10:47 47 COMMISSIONER: The problem is that what you say you can

10:47 1 recall is zero. You can recall a subject but not the content of any  
10:47 2 conversation.  
10:47 3  
10:47 4 A. I can't recall the one meeting, and I've given as much  
10:47 5 memory as I have on the other two meetings, Commissioner, but I  
10:47 6 can't recall the one meeting on, I think it was the Thursday called  
10:47 7 "latent issues", but the other two meetings I've given as much as  
10:47 8 I can recall from those meetings, I'm sorry.  
10:47 9  
10:47 10 MR KOZMINSKY: Mr Operator, can you please open  
10:47 11 COM.0003.0004.0008.  
10:47 12  
10:47 13 Tab 35A, Mr Commissioner.  
10:47 14  
10:47 15 Can you see that?  
10:47 16  
10:47 17 A. Yes.  
10:47 18  
10:47 19 Q. Top right-hand corner says "RFS-Crown-011"; you see  
10:48 20 that?  
10:48 21  
10:48 22 A. Yes, I can.  
10:48 23  
10:48 24 Q. In lawyer-speak, RFS means "request for statement".  
10:48 25  
10:48 26 A. Okay.  
10:48 27  
10:48 28 Q. This is dated, you can see there 8 April 2021?  
10:48 29  
10:48 30 A. Yes.  
10:48 31  
10:48 32 Q. This is a Request For Statement that you responded to  
10:48 33 along with Ms Bauer and Mr Emery who each addressed different  
10:48 34 topics. Do you remember that?  
10:48 35  
10:48 36 A. Yes, I do.  
10:48 37  
10:48 38 Q. If you go to page 3, the various topics you are being asked  
10:48 39 to be addressed by the Commissioner are set out. If you scroll  
10:48 40 down, you will see where it starts. I take it you are familiar with  
10:48 41 this document because you prepared a statement in response to it?  
10:48 42  
10:48 43 A. Yes.  
10:48 44  
10:48 45 Q. I'm happy for you to take your time to go through it, but  
10:48 46 just tell me if you agree with this: the Request For Statement --- if  
10:48 47 you scroll up, Mr Operator, we can see the heading as well ---



10:48 1 relates to Responsible Service of Gaming. The topics in it relate  
10:48 2 to the Responsible Service of Gaming?  
10:48 3  
10:48 4 A. Yes.  
10:48 5  
10:48 6 Q. You agree with me that no paragraphs in this request for  
10:48 7 statement relate to the tax issue we've been discussing?  
10:48 8  
10:49 9 A. Correct.  
10:49 10  
10:49 11 Q. And I think you agreed with me a moment ago that you,  
10:49 12 Ms Bauer and Mr Emery prepared statements to cover off the  
10:49 13 topics; correct?  
10:49 14  
10:49 15 A. Correct.  
10:49 16  
10:49 17 Q. Don't tell me who said what, but answer this question for  
10:49 18 me: who from Allens was involved in how the topics were split  
10:49 19 between you, Mr Emery and Ms Bauer? I don't want to know  
10:49 20 what they said, I just want to know the name of the people.  
10:49 21  
10:49 22 A. I don't know who was involved in the splitting of the  
23 subjects. I had a meeting with Andrew Maher from Allens, and  
24 there was someone else from Allens, I can't recall their name, in  
25 regards to myself or Tim Barnett answering some of the statement  
26 that weren't covered by Nick Emery in the marketing space.  
27  
28 Q. Okay. If you go ---  
29  
30 COMMISSIONER: Just give me one second. I think something  
31 is awry.  
32  
33 (Pause due to technical issues)  
34  
35 COMMISSIONER: We're good to go. Thanks. Sorry about  
36 that.  
37  
38 MR KOZMINSKY: In the split up you ended up dealing with  
39 paragraphs 6, 7(b) and 8 of this Request For Statement; do you  
40 remember that? I can take you to it. It's in your statement in  
41 paragraph 2. We'll just have a look. 6, 7(b) and 8.  
42  
43 A. Correct.  
44  
45 Q. Thanks. Which were also about the Responsible Service of  
46 Gambling?  
47

1 A. Correct. And marketing.  
2  
3 Q. Paragraph 3 of your statement says, and I'm paraphrasing,  
4 but "For the purposes of responding to this statement, I will be  
5 answering with knowledge from material I have read." Can you  
6 see that?  
7  
8 A. Yes, I can.  
9  
10:52 10 Q. Okay. You agree that on 11 May of this year, the  
10:52 11 Commissioner issued a notice asking you to produce that material  
10:52 12 that you had read?  
10:52 13  
10:52 14 A. Yes.  
10:52 15  
10:52 16 Q. The Commissioner's records show that your spreadsheet ---  
10:52 17 and you know what I mean when I say "bonus jackpot review"?  
10:52 18  
10:52 19 A. Yes.  
10:52 20  
10:52 21 Q. --- and your bonus jackpot review document, those two  
10:52 22 documents were produced in response to the request. Are you  
10:52 23 aware of that?  
10:52 24  
10:52 25 A. Yes, I am.  
10:52 26  
10:52 27 Q. That means you obviously enough agree with me that you  
10:52 28 read those documents when you were preparing your statement?  
10:52 29  
10:52 30 A. No, I didn't read those documents while preparing my  
10:52 31 statement, those were inadvertently sent across as part of my  
10:53 32 document that I used to prepare my statement. I had not referred  
10:53 33 to them for my statement.  
10:53 34  
10:53 35 Q. Can we please just go to Notice to Produce 94.  
10:53 36  
10:53 37 Tab 36, Mr Commissioner.  
10:53 38  
10:53 39 CRW.0000.0001.0371.  
10:53 40  
10:53 41 COMMISSIONER: Tab number?  
10:53 42  
10:53 43 MR KOZMINSKY: 36.  
10:53 44  
10:53 45 This is a notice that is asking you to produce the material you've  
10:54 46 read. Scroll down to paragraph 2. Sorry, page 3, paragraph 2.  
10:54 47 Read paragraph 2 to yourself, please. Have you read that?

10:54 1  
10:54 2 A. Yes.  
10:54 3  
10:54 4 Q. Only you could know what material you have read in  
10:54 5 preparing your statement which the Commissioner asked you  
10:54 6 prepare, not your lawyers; you agree?  
10:54 7  
10:54 8 A. I agree.  
10:54 9  
10:54 10 Q. You obviously enough have been and are conscious of the  
10:54 11 fact when the Commission asks you to do something in this  
10:54 12 Commission, you need to be careful and to be diligent about it?  
10:54 13  
10:54 14 A. Yes.  
10:54 15  
10:54 16 Q. You say the material was inadvertently included in  
10:55 17 response to the notice. Put to one side how such a mistake might  
10:55 18 occur, it could only have been the case that the documents were  
10:55 19 inadvertently included because at the time you were looking at  
10:55 20 them. Maybe not to prepare your statement, but because you  
10:55 21 were looking at them for some purpose. It's not like two random  
10:55 22 documents out of the blue were inadvertently included, do you  
10:55 23 agree with me?  
10:55 24  
10:55 25 A. No, I did not look at them to prepare my statement and I  
10:55 26 had no recollection of sending them across as part of the  
10:55 27 documents that I used to prepare my statement. I only became  
10:55 28 aware of that after I had given evidence.  
10:55 29  
10:55 30 Q. I want you to listen to my question carefully. I will accept  
10:55 31 for the moment your evidence that you did not read them for the  
10:55 32 purpose of preparing your statement, okay? But I am putting  
10:55 33 something slightly different to you: during that period when you  
10:56 34 were preparing your statement, you must have been looking at the  
10:56 35 documents, because if you were not it would be an extraordinary  
10:56 36 coincidence that they were inadvertently produced. Do you  
10:56 37 understand what I am saying to you?  
10:56 38  
10:56 39 A. I do, and therefore it must be an extraordinary coincidence,  
10:56 40 because I did not look at those documents after I gave them to  
10:56 41 Xavier Walsh after 26 February.  
10:56 42  
10:56 43 Q. Let me ask you this. Who provided you with this notice?  
10:56 44  
10:56 45 A. The notice would have been Jan Williamson from Crown.  
10:56 46  
10:56 47 Q. I don't want to know what was said, but did Ms Williamson

10:56 1 explain to you what this notice meant and required of you?  
10:56 2  
10:56 3 A. Yes.  
10:56 4  
10:57 5 Q. And after that, remembering you've agreed with me that  
10:57 6 only you could have known what material you looked at when  
10:57 7 you prepared your statement, you must have personally attended  
10:57 8 to collecting the documents; you agree with me?  
10:57 9  
10:57 10 A. I agree with you.  
10:57 11  
10:57 12 Q. When you went to collect the documents, did you have  
10:57 13 a folder where you had printed out the documents in hard copy or  
10:57 14 an electronic folder of documents you were working on?  
10:57 15  
10:57 16 A. I had an electronic folder on the shared drive, and I also had  
10:57 17 a printed-out folder of all the documents that I was looking at for  
10:57 18 preparation of my statement.  
10:57 19  
10:57 20 Q. So I take it then you took the hard copy folder, and you  
10:57 21 printed out what was in the electronic folder, and you gave it to  
10:57 22 someone?  
10:57 23  
10:57 24 A. I gave the electronic folder ---  
10:57 25  
10:57 26 Q. Yes.  
10:57 27  
10:57 28 A. --- and the other documents to our legal team to send across  
10:57 29 to Allens, yes.  
10:57 30  
10:58 31 Q. So I'm trying to understand how it is that those two  
10:58 32 documents found their way into either of those folders.  
10:58 33  
10:58 34 A. I don't know. I can't explain that. I was only aware of it  
10:58 35 after I had given evidence.  
10:58 36  
10:58 37 Q. Do you accept this proposition, possible, because we know  
10:58 38 that your memory is not great, from the evidence you've given, do  
10:58 39 you accept it is possible that after you were allocated some topics  
10:58 40 to respond to, you looked at those documents?  
10:58 41  
10:58 42 A. I don't believe so. I don't recall looking at those documents  
10:58 43 after I had given them to Xavier Walsh.  
10:58 44  
10:58 45 Q. I understand that. But you didn't recall the chairperson of  
10:58 46 the company you work for was dealing with a latent issue about  
10:59 47 underpayment of tax when you last gave evidence either. So your

10:59 1 memory is not great and that's at the moment not a criticism, but  
10:59 2 I'm asking you something quite specific. Do you accept it is  
10:59 3 a possibility, "yes" or "no"?

10:59 4  
10:59 5 A. No, I don't recall looking at it.

10:59 6  
10:59 7 Q. Do you accept it's possible --- let me ask you this: you  
10:59 8 knew, when you were asked to prepare a statement, you needed to  
10:59 9 be honest and you tried to be honest with the Commissioner?

10:59 10  
10:59 11 A. Yes.

10:59 12  
10:59 13 Q. And you knew you needed to assist the Commissioner  
10:59 14 when you prepared your statement and you tried to do so?

11:00 15  
11:00 16 A. Yes.

11:00 17  
11:00 18 Q. And you knew that the tax issue was an important issue, I  
11:00 19 take it, when you were prepared it in April and May, you hadn't  
11:00 20 forgotten about what occurred in February? You knew it was  
11:00 21 an important issue for the company?

11:00 22  
11:00 23 A. It was important when I prepared it in February. The  
11:00 24 importance of that didn't change, but I did not look at those  
11:00 25 documents in the preparation of my statement.

11:00 26  
11:00 27 Q. I'm not asking you that yet. I'm asking you whether or not  
11:00 28 at the time you prepared the statement you still remembered about  
11:00 29 the tax issue, you still remembered it was an important issue for  
11:00 30 the company and the Commission.

11:00 31  
11:00 32 A. It doesn't go away, but I wasn't referring to it or thinking  
11:00 33 about it while I was preparing my statement in response to ---

11:00 34  
11:00 35 Q. I am only going to ask once more. It is a "yes" or "no"  
11:00 36 answer. At the time you prepared your statement, did you still  
11:00 37 remember that the tax issue was an important issue for the  
11:01 38 company in the Commission?

11:01 39  
11:01 40 A. Yes.

11:01 41  
11:01 42 Q. Thank you. And do you think it is possible, at some stage,  
11:01 43 while you were preparing your statement, do you think it is  
11:01 44 possible that it occurred to you that either you or the company  
11:01 45 might need to disclose that issue to the Commission? Do you  
11:01 46 think that is a possibility?

11:01 47

- 11:01 1 A. Yes, it could be a possibility.  
11:01 2  
11:01 3 Q. And, accepting it could be a possibility, do you accept it is  
11:01 4 possible that the reason these documents made the way into your  
11:01 5 folder, electronic or hard copy, was because recognising it was  
11:01 6 a possibility, recognising you needed to be honest, recognising  
11:01 7 you wanted to assist the Commissioner, you looked at them to  
11:01 8 consider that issue?  
11:02 9  
11:02 10 A. I did not look at them post the meetings I had in February,  
11:02 11 until they were presented to me in evidence at the Commission.  
11:02 12  
11:02 13 Q. The documents, the spreadsheet and the bonus jackpot  
11:02 14 review, were they in your electronic or hard copy folder?  
11:02 15  
11:02 16 A. My electronic folder.  
11:02 17  
11:02 18 Q. Who else has a password to your computer other than you?  
11:02 19  
11:02 20 A. Well, no one, but IT would have access.  
11:02 21  
11:02 22 Q. Putting to one side the inherent probability of IT having put  
11:02 23 your documents into your electronic folder, do you accept you  
11:02 24 were the only one who could have done so?  
11:02 25  
11:02 26 A. Yes, I accept that I put them into the folder and they were  
11:02 27 inadvertently sent across as documents that I used to prepare my  
11:02 28 statement. I said that earlier.  
11:02 29  
11:02 30 Q. Was every document in your electronic folder other than  
11:02 31 those two documents material you read when preparing your  
11:02 32 statement?  
11:02 33  
11:02 34 A. Repeat the question.  
11:02 35  
11:02 36 Q. Was every document in that electronic folder, other than the  
11:03 37 spreadsheet and the bonus jackpot review, documents you looked  
11:03 38 at when preparing your statement?  
11:03 39  
11:03 40 A. Yes.  
11:03 41  
11:03 42 Q. Okay. So there are only two documents in that folder that  
11:03 43 have got there and we don't know how; is that the position?  
11:03 44  
11:03 45 A. I think I've been clear and said I must have sent them. So  
11:03 46 I've put them there. But I didn't look at them while preparing my  
11:03 47 statement and I was surprised, and confused, when the fact came

11:03 1 that I had sent them across as part of my preparation. I wasn't  
11:03 2 aware that I had done that.  
11:04 3

11:04 4 Q. Mr Mackay, I think I will in closing submissions suggest to  
11:04 5 the Commissioner that that evidence shouldn't be accepted, and  
11:04 6 that you did look at those documents in preparing your statement.  
11:04 7 And if there is anything else you want to say to the  
11:04 8 Commissioner, now is your opportunity.  
11:04 9

11:04 10 A. I think I've been clear. I didn't look at them and they  
11:04 11 weren't used in preparation of my statement, and the  
11:04 12 Commissioner, I'm sure, will make his own determination on that.  
11:04 13

11:04 14 Q. I understand. But if there is anything else you want to add,  
11:04 15 now is your opportunity to put that to him.  
11:04 16

11:04 17 A. I don't have anything further to add, Commissioner.  
11:04 18

11:04 19 Q. Okay. When you handed over these documents, which  
11:04 20 included the spreadsheet and the bonus jackpot review, you  
11:05 21 handed them over, you said, to someone in your legal team?  
11:05 22

11:05 23 A. I sent the electronic file link on the shared drive to Rob  
11:05 24 Meade and Jan Williamson.  
11:05 25

11:05 26 Q. And what happened when either Rob Meade or Jan  
11:05 27 Williamson called you to say, "What is this spreadsheet, what is  
11:05 28 this bonus jackpot review?" What was the conversation?  
11:05 29

11:05 30 A. They didn't call me to say that.  
11:05 31

11:05 32 Q. Normally before lawyers hand over documents to  
11:05 33 a Commission, they review them. In this Commission, your  
11:05 34 lawyers are reviewing documents for privilege and confidentiality  
11:05 35 before they come across. People don't just hand over documents.  
11:05 36 Did no one speak to you about those documents at all?  
11:05 37

11:05 38 A. No one has spoke to me about those documents at all.  
11:06 39

11:06 40 Q. When you last gave evidence you agreed with this, and this  
11:06 41 is a direct quote: gross gaming revenue is the total of all sums  
11:06 42 received from the conduct or playing of games less a total  
11:06 43 amount --- less a total of sums paid out as winnings in respect of  
11:06 44 the conduct of playing the games.  
11:06 45

11:06 46 I don't know if you remember that, but you are familiar with the  
11:06 47 concept; you are happy with that?

11:06 1  
11:06 2 A. Yes.  
11:06 3  
11:06 4 Q. This is the evidence you gave on the last occasion, you said  
11:06 5 that there was some ambiguity to the definition of winnings; that  
11:06 6 was your understanding?  
11:06 7  
11:06 8 A. Yes, that's my understanding.  
11:06 9  
11:06 10 Q. I want to discuss that with you a bit further. I want to show  
11:06 11 you a legal advice, but because there are other people in the room  
11:06 12 and there is going to be a non-publication order lifted, I am going  
11:06 13 to hand you, Mr Borsky and the Commissioner a copy of the  
11:07 14 advice.  
11:07 15  
11:07 16 I want you to start off by going to the last page of that advice. It  
11:07 17 is dated 19 September 2014.  
11:07 18  
11:07 19 A. Yes, I do.  
11:07 20  
11:07 21 Q. December, my apologies. And do you see that it is signed  
11:07 22 by two members of counsel, do you see their names there? On  
11:07 23 the right-hand side.  
11:07 24  
11:07 25 A. Yes, I do.  
11:07 26  
11:07 27 Q. Are you familiar with the first person whose name appears  
11:07 28 there as being a very well known ---  
11:07 29  
11:07 30 A. No, I'm not.  
11:07 31  
11:07 32 Q. I want you to read paragraph 1 to yourself. Have you read  
11:08 33 that?  
11:08 34  
11:08 35 A. Yes.  
11:08 36  
11:08 37 Q. And then I want you to turn to paragraph 11 and read the  
11:08 38 chapeau, the first 11 words.  
11:08 39  
11:08 40 A. Which one would you like me to read?  
11:08 41  
11:08 42 Q. Paragraph 11, the chapeau, the introductory words there;  
11:08 43 you see that?  
11:08 44  
11:08 45 A. Yes.  
11:08 46  
11:08 47 Q. Then I want you to turn over to paragraph 11(d) and read



11:08 1 those words.  
11:08 2  
11:08 3 A. Yes.  
11:08 4  
11:08 5 Q. Then I want you to read paragraph 24 to yourself, please.  
11:09 6 Tell me when you are done, please.  
11:09 7  
11:09 8 A. Yep.  
11:09 9  
11:09 10 Q. In fairness to you, I think this advice was prepared before  
11:09 11 you joined Crown, but I want to ask you this: I take it you were  
11:10 12 not aware of this advice when you last gave your evidence?  
11:10 13  
11:10 14 A. It's the first time I've seen this document.  
11:10 15  
11:10 16 Q. I take it that Ms Fielding didn't tell you about the advice?  
11:10 17  
11:10 18 A. I don't believe so.  
11:10 19  
11:10 20 Q. And Mr Walsh didn't tell you about the advice?  
11:10 21  
11:10 22 A. Don't believe so.  
11:10 23  
11:10 24 Q. Mr Herring didn't tell you about the advice?  
11:10 25  
11:10 26 A. I don't believe so.  
11:10 27  
11:10 28 Q. No one from Crown told you about the advice?  
11:10 29  
11:10 30 A. I don't believe so.  
11:10 31  
11:10 32 MR KOZMINSKY: I tender that as a confidential exhibit,  
11:10 33 please.  
11:10 34  
11:10 35 COMMISSIONER: I think I will describe it as neutrally as I can  
11:10 36 without naming the authors. Joint memorandum of advice  
11:10 37 regarding casino tax by senior/junior counsel given 19 December  
11:10 38 2014, Exhibit 205. I can't do better than that, I don't think.  
11:11 39  
11:11 40 MR BORSKY: Confidential exhibit.  
11:11 41  
11:11 42 COMMISSIONER: Yes.  
11:11 43  
11:11 44 MR BORSKY: Just for the record, I know with respect the  
11:11 45 Commission understands this, but for the record, this is outside  
11:11 46 the scope of our waiver. We maintain privilege claimed in  
11:11 47 respect of the ---

11:11 1  
11:11 2 COMMISSIONER: I don't doubt that. I don't mean that. I mean  
11:11 3 I accept that.  
11:11 4  
11:11 5 MR BORSKY: Understood.  
11:11 6  
11:11 7 COMMISSIONER: That's actually Exhibit 206. Sorry.  
8  
9  
10 **EXHIBIT #RCPH0206 - JOINT MEMORANDUM OF**  
11 **ADVICE REGARDING CASINO TAX BY**  
12 **SENIOR/JUNIOR COUNSEL GIVEN 19 DECEMBER 2014**  
13 **(CONFIDENTIAL)**  
14  
15  
11:11 16 MR KOZMINSKY: Mr Mackay, do you accept it is possible that  
11:11 17 you reviewed the spreadsheet and you reviewed the bonus jackpot  
11:11 18 review before preparing your statement and that a conscious  
11:11 19 decision by you or others was made not to disclose it to the  
11:12 20 Commission?  
11:12 21  
11:12 22 A. Repeat the question, sorry.  
11:12 23  
11:12 24 Q. Do you accept it is possible that you reviewed the  
11:12 25 spreadsheet, and you reviewed the bonus jackpot review at some  
11:12 26 stage before or after you wrote your statement, but before you  
11:12 27 gave your evidence, and a decision was made not to disclose it to  
11:12 28 the Commission?  
11:12 29  
11:12 30 A. No.  
11:12 31  
11:12 32 MR KOZMINSKY: Mr Commissioner, unless you have any  
11:12 33 questions, they are the questions I have.  
11:12 34  
11:12 35 COMMISSIONER: No.  
11:12 36  
11:12 37 Mr Gray and Mr Rozen?  
11:12 38  
11:12 39 MR ROZEN: Nothing from us.  
11:12 40  
11:12 41 COMMISSIONER: Mr Gray?  
11:12 42  
11:12 43 MR GRAY: Nothing on behalf of the State, thank you,  
11:12 44 Commissioner.  
11:12 45  
11:12 46 COMMISSIONER: Okay.  
11:12 47

11:12 1 Mr Borsky?

11:12 2

11:12 3

11:13 4 **RE-EXAMINATION BY MR BORSKY**

11:13 5

11:13 6

11:13 7 MR BORSKY: Mr Mackay, in your evidence this morning you  
11:13 8 told the Commission that Mr Walsh asked you on 24 February to  
11:13 9 put a document together on the jackpot tax issue; you recall that?

11:13 10

11:13 11 A. Yes.

11:13 12

11:13 13 Q. You gave evidence that Mr Walsh never used the word  
11:13 14 "concealment"; do you recall that?

11:13 15

11:13 16 A. Yes, I do.

11:13 17

11:13 18 Q. Did Mr Walsh ever ask you to conceal the jackpots tax  
11:13 19 issue from this Royal Commission?

11:13 20

11:13 21 A. Never.

11:13 22

11:13 23 Q. Even using some word other than the word "concealment"?  
11:13 24 Did Mr Walsh ever make a request of you to the effect the issue  
11:13 25 ought be concealed from this Royal Commission?

11:13 26

11:13 27 A. No, he did not.

11:13 28

11:13 29 Q. Did anyone else make a request for you?

11:13 30

11:13 31 A. No, they did not.

11:13 32

11:13 33 Q. Did anyone else at Crown say or suggest to you that they  
11:13 34 intend to conceit the jackpots tax issue from the Commission?

11:13 35

11:13 36 A. No.

11:13 37

11:14 38 MR BORSKY: As the Commission pleases.

11:14 39

11:14 40 COMMISSIONER: Thank you. Can I excuse Mr Mackay now?

11:14 41

11:14 42 MR KOZMINSKY: Yes. He doesn't need to come back.

11:14 43

11:14 44 COMMISSIONER: Mr Mackay, you are excused from further  
11:14 45 attendance. Thank you very much. Some of those documents  
11:14 46 you might have to leave here.

11:14 47

11:14 1 A. Not take home homework?  
11:14 2  
11:14 3 COMMISSIONER: You do have two pieces of homework to do.  
11:14 4  
11:14 5 A. I keep my statement.  
11:14 6  
11:14 7 COMMISSIONER: But apart from the homework, that's it for  
11:14 8 you.  
11:14 9  
11:14 10  
11:14 11 **THE WITNESS WITHDREW**  
11:14 12  
11:14 13  
11:14 14 MR KOZMINSKY: There are two pieces of homework.  
11:14 15 Solicitors Assisting will send a note to Allens and that will be  
11:14 16 attended to promptly, no doubt.  
11:14 17  
11:14 18 COMMISSIONER: Okay. Now we are going to swap counsel,  
11:14 19 I think.  
11:14 20  
11:14 21 MR KOZMINSKY: Yes, we are.  
11:14 22  
11:14 23 COMMISSIONER: Take a 5-minute break.  
11:14 24  
11:14 25 MR BORSKY: Sorry, Commissioner, before you rise. We were  
11:15 26 informed that Ms Bauer will be required from 11.30. It may be  
11:15 27 that she is able to be here in 5 minutes but I'm not certain of that.  
11:15 28  
11:15 29 COMMISSIONER: I will come back at 11.30.  
11:15 30  
11:15 31  
11:15 32 MR BORSKY: Yes, please.  
11:15 33  
11:15 34 COMMISSIONER: Thank you for pointing that out.  
11:15 35  
11:15 36  
11:15 37 **HEARING IN CAMERA ENDED**  
11:15 38  
11:15 39  
11:15 40 **ADJOURNED** [11:15A.M.]  
11:34 41  
42  
43  
44  
45  
46  
47

11:34 1       **RESUMED** **[11:34A.M.]**  
11:34 2  
11:34 3  
11:34 4       MR FINANZIO: Commissioner, we are resuming with the  
11:34 5       evidence of Ms Bauer.  
11:34 6  
11:34 7  
11:34 8       **MS SONJA MARIA BAUER, PREVIOUSLY AFFIRMED**  
11:34 9  
11:34 10  
11:34 11       **EXAMINATION-IN-CHIEF BY MR FINANZIO,**  
11:34 12       **CONTINUED**  
11:34 13  
11:34 14  
11:34 15       MR FINANZIO: Ms Bauer, I want to start by just taking you  
11:34 16       back to the Play Periods Policy which we were talking about on  
11:34 17       the last occasion. I wanted to pull up the document --- in your  
11:34 18       folder, Commissioner, that's tab 1 --- and for the operator, it's  
11:34 19       CRW.510.052.5934. I will do a very quick historical survey of  
11:35 20       these policies. That is version 1.2. You see that?  
11:35 21  
11:35 22       A. Yes.  
11:35 23  
11:35 24       Q. That is the version that was enforced from February 2018?  
11:35 25  
11:35 26       A. That's right.  
11:35 27  
11:35 28       Q. The version that was in place when the VCGLR published  
11:35 29       the Sixth Review in June 2018?  
11:35 30  
11:35 31       A. Yes.  
11:35 32  
11:35 33       Q. It was one approved by you?  
11:35 34  
11:35 35       A. Yes.  
11:35 36  
11:35 37       Q. All right, now just go to that policy in the --- do you have a  
11:35 38       copy of it --- first paragraph. I just want to draw your attention to  
11:35 39       the words of the Policy Statement:  
11:35 40  
11:36 41               *Customers who have confirmed continuous ratings for a*  
11:36 42               *24 hour period will not be allowed to remain on the*  
11:36 43               *gaming floor and will be directed to take a 24 hour break.*  
11:36 44  
11:36 45       That was the policy at the time? See that?  
11:36 46  
11:36 47       A. Yes.

11:36 1  
11:36 2 Q. I just want to draw your attention, note the words there:  
11:36 3 "Confirmed, continuous ratings", so I just want you to note those  
11:36 4 for the moment. I will come back to them in a moment.  
11:36 5  
11:36 6 Operator, if you could just go down a little bit to paragraph 3.  
11:36 7 Just there is fine. Just go back up a little bit.  
11:36 8  
11:36 9 You see the word "procedures" at the top of the page?  
11:36 10  
11:36 11 A. Yes.  
11:36 12  
11:36 13 Q. It is true that they are the procedures by which the policy  
11:36 14 statement is implemented?  
11:36 15  
11:36 16 A. Yes, that's right. Yes.  
11:36 17  
11:36 18 Q. I just want to draw your attention to paragraph 3 there,  
11:36 19 where it says:  
11:36 20  
11:36 21 *If a customer has continuous ratings for 24 hours or more*  
11:36 22 *without a substantial break, RGLO is to attend.*  
11:37 23 *Surveillance is to be contacted for coverage before*  
11:37 24 *approaching the customer.*  
11:37 25  
11:37 26 A. Yes.  
11:37 27  
11:37 28 Q. Again, noting the words "continuous ratings for 24 hours";  
11:37 29 you see that?  
11:37 30  
11:37 31 A. Yes.  
11:37 32  
11:37 33 Q. Okay, can we go now to the next document, which is in  
11:37 34 your tab, Commissioner, I think it is still at Tab 1, it is version  
11:37 35 1.3, which is the December version.  
11:37 36  
11:37 37 Operator, it is CRW.510.052.5936.  
11:37 38  
11:37 39 So you see that bears the date reviewed "December 2018"?  
11:37 40  
11:37 41 A. Yes.  
11:37 42  
11:37 43 Q. Version 1.3.  
11:37 44  
11:37 45 A. (Nods head).  
11:37 46  
11:38 47 Q. Approved by Sonja Bauer; see that?

11:38 1

11:38 2 A. Yes.

11:38 3

11:38 4 Q. If we go to the policy statement at the top, version 1.3 says:

11:38 5

11:38 6 *Customers who have confirmed continuous ratings for*  
11:38 7 *a 24-hour period without appropriate breaks will not be*  
11:38 8 *allowed to remain on the gaming floor and will be*  
11:38 9 *directed to take a 24-hour break.*

11:38 10

11:38 11 A. Yes.

11:38 12

11:38 13 Q. And then:

11:38 14

11:38 15 *Customers with significant continuous ratings without*  
11:38 16 *appropriate breaks under 24 hours will be reminded to*  
11:38 17 *take substantial regular breaks.*

11:38 18

11:38 19 A. Yes.

11:38 20

11:38 21 Q. That second paragraph is the policy shift that was  
11:38 22 introduced in the December 2018, version 1.3 of the Play Periods  
11:38 23 Policy; isn't it?

11:38 24

11:38 25 A. If I compare it with the version 1.2, it appears to be the  
11:38 26 case, there is a policy shift, yes.

11:38 27

11:39 28 Q. Actually, I'm wrong about that. It comes later, the policy  
11:39 29 shift. I think the language is the same in both. Can I just ask you  
11:39 30 to note the language there "continuous ratings without  
11:39 31 appropriate breaks"; do you see that?

11:39 32

11:39 33 A. Yes, I do.

11:39 34

11:39 35 Q. If I draw your attention to paragraph 2, it's not the policy  
11:39 36 that changes, the procedure in version 1.3. In version 1.3 at  
11:39 37 paragraph 2, the RGLO "will check all ratings of 12 hours or  
11:39 38 greater"; do you see that?

11:39 39

11:39 40 A. Yes, I do.

11:39 41

11:39 42 Q. And:

11:39 43

11:39 44 *Gaming staff or a RGLO will interact with customers at*  
11:39 45 *the 12, 16 and 20 hour mark to encourage customers to*  
11:39 46 *take a break .....*

11:39 47

11:39 1 A. I see that, yes.  
11:39 2  
11:39 3 Q. Right, now the current policy is --- again, Tab 2 for you,  
11:40 4 Commissioner, and it is VCG.0001.0002.8046. That's version  
11:40 5 1.7.  
11:40 6  
11:40 7 A. I see that.  
11:40 8  
11:40 9 Q. Between 1.3 and 1.7, there were some iterative changes to  
11:40 10 the policies, weren't there?  
11:40 11  
11:40 12 A. Yes, and from my understanding between 1.2 and 1.7, there  
11:40 13 were also technological changes.  
11:40 14  
11:40 15 Q. Yes.  
11:40 16  
11:40 17 A. Yeah.  
11:40 18  
11:40 19 Q. I want to draw your attention to the policy statement again:  
11:40 20  
11:40 21 *Crown Loyalty Program Members (Members) who have*  
11:41 22 *confirmed continuous ratings for a 18-hour period*  
11:41 23 *without appropriate breaks will not be permitted to*  
11:41 24 *remain on the gaming floor and will be directed to take*  
11:41 25 *a 24-hour break.*  
11:41 26  
11:41 27 So there is a shift in the temporal period that someone can stay on  
11:41 28 the gaming floor; correct?  
11:41 29  
11:41 30 A. Yes, that's right.  
11:41 31  
11:41 32 Q. But note again the language "confirmed continuous  
11:41 33 ratings"; do you see that?  
11:41 34  
11:41 35 A. Yes, I do.  
11:41 36  
11:41 37 Q. And then, that same language is used, but with different  
11:41 38 temporal references in the second paragraph?  
11:41 39  
11:41 40 A. Yes.  
11:41 41  
11:41 42 Q. Then if I go to the policy statement, pardon me, the  
11:41 43 procedures component of the policy, the RGA will check ratings  
11:41 44 of 12 hours or greater?  
11:41 45  
11:41 46 A. Yes.  
11:41 47



11:41 1 Q. And gaming staff will interact or observe as appropriate  
11:42 2 with customers at the 12, 15 and 17-hour mark; you see that?

11:42 3

11:42 4 A. Yes.

11:42 5

11:42 6 Q. In each --- just before I come off that --- Commissioner,  
11:42 7 some of those documents have already been tendered, but I  
11:42 8 haven't tendered version 1.2 of the Play Periods Policy. So I  
11:42 9 propose ---

11:42 10

11:42 11 COMMISSIONER: That will be marked Exhibit 207. That will  
11:42 12 be the Responsible Gaming Policy Procedure, version 1.2. It  
11:42 13 should say "Issue date: August 2015".

11:43 14

15

16

**EXHIBIT #RC0207 - RESPONSIBLE GAMING POLICY  
PROCEDURE VERSION 1.2 (ISSUE DATE: AUGUST  
2015)**

17

18

19

20

11:43 21 COMMISSIONER: Can I ask a question about that? If I go to  
11:43 22 version 1.7, we were just looking at ---

11:43 23

11:43 24

A. Yes.

11:43 25

11:43 26

COMMISSIONER: --- that is a policy statement that applies to

11:43 27

loyalty program members ---

11:43 28

11:43 29

A. Yes.

11:43 30

11:43 31

COMMISSIONER: --- whereas the previous policies applied to  
customers. Does that mean that customers can go there for as  
long as they wanted, and wouldn't be stroked or touched, and you  
are now only worried about the loyalty program members?

11:43 32

11:43 33

11:43 34

11:43 35

A. It possibly could read that way, Mr Commissioner, but ---

11:43 36

11:43 37

COMMISSIONER: I do read it that way at the moment ---

11:43 38

11:43 39

A. Right.

11:43 40

11:43 41

COMMISSIONER: --- unless you tell me there is some different  
way of reading it.

11:43 42

11:43 43

11:43 44

A. I'm not sure --- I think it was just to be more definitive  
about the fact that we can measure member participation as  
opposed to non-member participation.

11:43 45

11:43 46

11:43 47

11:43 1  
11:43 2 COMMISSIONER: You can measure it by the machine usage  
11:43 3 because you have got the data?  
11:44 4  
11:44 5 A. If they're using --- if a member is using their cards on  
11:44 6 a machine or a table game ---  
11:44 7  
11:44 8 COMMISSIONER: A customer does not have a card, a customer  
11:44 9 might have cash.  
11:44 10  
11:44 11 A. That's right. So some customers do not have a card or cash,  
11:44 12 so ---  
11:44 13  
11:44 14 COMMISSIONER: I get that. I get that you can more easily  
11:44 15 measure, but if I'm an employee that is carrying out this policy,  
11:44 16 then I would ignore customers and only worry about loyalty card  
11:44 17 members?  
11:44 18  
11:44 19 A. It reads that way, Mr Commissioner. I don't think the intent  
11:44 20 was that way.  
11:44 21  
11:44 22 COMMISSIONER: At the moment I'm just worried about the  
11:44 23 words.  
11:44 24  
11:44 25 A. Sure. I understand.  
11:44 26  
11:44 27 MR FINANZIO: We might come back to the intent in a minute  
11:44 28 but, I just wanted to ask you some questions about the similarities  
11:44 29 between the documents.  
11:44 30  
11:44 31 In each document the term "ratings" is used, and indeed, the  
11:44 32 phrase "continuous ratings" is used as the basis of the policy;  
11:45 33 right?  
11:45 34  
11:45 35 A. As a component of the policy, yes.  
11:45 36  
11:45 37 Q. Yeah?  
11:45 38  
11:45 39 A. As a measure tool, yes.  
11:45 40  
11:45 41 Q. As a measuring tool. What does it measure?  
11:45 42  
11:45 43 A. So it measures --- if a member is using their card, it  
11:45 44 measures their time on that particular product as best as possible.  
11:45 45  
11:45 46 Q. So let's unpack that a little bit and with a bit more precision.  
11:45 47 When you say a "product" what, do you mean?

11:45 1  
11:45 2 A. So I mean a gambling device that is capable of reading  
11:45 3 ratings as described here in this policy. If a member is using their  
11:45 4 card, then that play is recorded.  
11:45 5  
11:45 6 Q. I only get ratings for gaming; correct?  
11:45 7  
11:45 8 A. For gaming rating, yes, but you can also --- if you are  
11:45 9 a loyalty program member, then you will get loyalty program  
11:45 10 points for other activities within the casino complex.  
11:45 11  
11:45 12 Q. But this policy is concerned with measuring gaming rating?  
11:45 13  
11:46 14 A. Gaming rating, that's right, yes.  
11:46 15  
11:46 16 Q. So this policy is not concerned with --- I don't get a rating,  
11:46 17 do I, for using the car park?  
11:46 18  
11:46 19 A. No, I don't --- I'm not sure.  
11:46 20  
11:46 21 Q. Well, insofar as you understand this policy and this policy  
11:46 22 is within your area of knowledge ---  
11:46 23  
11:46 24 A. (Nods head).  
11:46 25  
11:46 26 Q. --- we are concerned here with continuous ratings earned or  
11:46 27 calculated or measured, "measured" is probably the best word,  
11:46 28 measured for a gaming activity; correct?  
11:46 29  
11:46 30 A. Yes. Yes.  
11:46 31  
11:46 32 Q. And only carded players get a rating?  
11:46 33  
11:46 34 A. Yes.  
11:46 35  
11:46 36 Q. And you only get ratings, I suppose, to the Commissioner's  
11:46 37 point a minute ago, when they are gambling?  
11:46 38  
11:46 39 A. Yes.  
11:46 40  
11:46 41 Q. On the card?  
11:46 42  
11:46 43 A. Yes.  
11:46 44  
11:47 45 Q. Now just go to 1.7, version 1.7. I do want to pick up here  
11:47 46 the Commissioner's point. This policy is entitled "Play Periods";  
11:47 47 correct?

11:47 1  
11:47 2 A. Yes.  
11:47 3  
11:47 4 Q. Play Periods is the technology that is used, isn't it, to --- it's  
11:47 5 the real-time data analytics tool?  
11:47 6  
11:47 7 A. It's a real-time tool that can measure activity on a gambling  
11:47 8 product. It's not measuring data analytics per se.  
11:47 9  
11:47 10 Q. Let me ask the question a different way. The tool by which  
11:47 11 Crown measures real-time play is called Play Periods?  
11:47 12  
11:47 13 A. Yes.  
11:47 14  
11:47 15 Q. And the policy is called Play Periods?  
11:47 16  
11:47 17 A. Yes.  
11:47 18  
11:47 19 Q. The policy applies to Crown Loyalty Program Members  
11:48 20 because they have a card that enables the Play Periods technology  
11:48 21 to measure their work --- their gambling?  
11:48 22  
11:48 23 A. Yes.  
11:48 24  
11:48 25 Q. Can you point me to a policy that deals with Play Periods  
11:48 26 for uncarded play? A policy like this?  
11:48 27  
11:48 28 A. I don't think I can, Mr Finanzio.  
11:48 29  
11:48 30 Q. So the only written guidance that staff have in terms of  
11:48 31 a policy statement like this, is for carded play; correct?  
11:48 32  
11:48 33 A. Yes.  
11:48 34  
11:48 35 Q. I just want to hover over this policy a little bit further.  
11:48 36  
11:48 37 Could the operator bring up the procedure component, please.  
11:48 38  
11:49 39 I just want to focus our attention on paragraph 2:  
11:49 40  
11:49 41 *The RGA will check ratings of 12 hours or greater.*  
11:49 42  
11:49 43 A. I see that, yes.  
11:49 44  
11:49 45 Q. That is 12 hours of continuous play or greater; correct?  
11:49 46  
11:49 47 A. That means that it is 12 hours from the first card-in, to the

11:49 1 read at 12 hours.  
11:49 2  
11:49 3 Q. Yeah, that is with the card out?  
11:49 4  
11:49 5 A. It could be in and out in that period. So it might be  
11:49 6 an initial period of card-in, and then it may not again come up for  
11:49 7 a number of hours, but then it measures both the time on site and  
11:49 8 the time on device.  
11:49 9  
11:49 10 Q. Yes. But the policy's concerned with significant continuous  
11:50 11 ratings without appropriate breaks; isn't it?  
11:50 12  
11:50 13 A. Yes. So maybe when it says the "ratings of 12 hours or  
11:50 14 greater" perhaps what I'm seeing there is not that  
11:50 15 acknowledgement of the 12 hours of time on site and time on  
11:50 16 device.  
11:50 17  
11:50 18 Q. See ---  
11:50 19  
11:50 20 COMMISSIONER: I don't understand what you are saying. The  
11:50 21 policy deals with continuous ratings.  
11:50 22  
11:50 23 A. (Nods head).  
11:50 24  
11:50 25 COMMISSIONER: It is looking at who is playing continuous  
11:50 26 for whatever the set period is that you are meant to look at it.  
11:50 27 And the 12 hours or greater must, just as a matter of language ---  
11:50 28  
11:50 29 A. (Nods head).  
11:50 30  
11:50 31 COMMISSIONER: --- must relate to the period of continuous  
11:50 32 play. Not the period that you show up, put the card in, have  
11:50 33 a half-hour game, take the card out, put your card an hour later to  
11:51 34 have another half hour game, and add up the total period of 12  
11:51 35 hours. That has nothing to do with this policy, right?  
11:51 36  
11:51 37 A. So Mr Commissioner, this policy does perhaps not express  
11:51 38 this in the most elucidating way.  
11:51 39  
11:51 40 COMMISSIONER: It expresses it quite unambiguously and  
11:51 41 clearly ---  
11:51 42  
11:51 43 A. Yes.  
11:51 44  
11:51 45 COMMISSIONER: --- I understand the word "continuous" to be  
11:51 46 without interruption.  
11:51 47

11:51 1 A. Yes.  
11:51 2  
3 COMMISSIONER: You understand about the word  
4 "continuous" ---  
5  
6 A. I do, yes, Mr Commissioner.  
7  
11:51 8 COMMISSIONER: --- there is nothing ambiguous about this, is  
11:51 9 there?  
11:51 10  
11:51 11 A. Right, no, I agree, but I suppose the written component  
11:51 12 perhaps isn't expressed as appropriately as it should be,  
11:51 13 Commissioner, and I .....

11:51 14  
11:51 15 COMMISSIONER: If you wanted to have a go at rewriting it,  
11:51 16 have a go at rewriting it, what would it say --- what's your  
11:51 17 preference now?  
11:51 18  
11:51 19 A. If I was rewriting it, well I would mention as to any time  
11:51 20 period between --- in the 12-hour period of play that did not have  
11:51 21 those substantial breaks. So it is not about continuously playing  
11:52 22 for 12 hours, it's more about not having appropriate breaks within  
11:52 23 a 12-hour period --- and I can see that that is not expressed  
11:52 24 distinctly enough in this policy.  
11:52 25  
11:52 26 COMMISSIONER: It says the exact opposite to that.  
11:52 27  
11:52 28 A. Yes.  
11:52 29  
11:52 30 COMMISSIONER: And what's an appropriate break in  
11:52 31 a 12-hour period of play? Five breaks every --- for 20 minutes  
11:52 32 each, or what?  
11:52 33  
11:52 34 A. Mr Commissioner, that has been something that is difficult  
11:52 35 to ascertain in terms of ---  
11:52 36  
11:52 37 COMMISSIONER: No. If you were rewriting it in the way you  
11:52 38 intended it to be written in December 2020 ---  
11:52 39  
11:52 40 A. Yes.  
11:52 41  
11:52 42 COMMISSIONER: --- what did you intend to write?  
11:52 43  
11:52 44 A. So the intention would be that within a 12-hour period, that  
11:52 45 there would be some breaks for what we might call "substantial",  
11:52 46 so one or two hours, that would allow for perhaps a meal break  
11:52 47 or, you know, a general break, so ---

11:52 1  
11:52 2 COMMISSIONER: But how would you rewrite it? Would you  
11:52 3 delete the word "continuous" and have some other word? "A  
11:53 4 little bit continuous", maybe not continuous at all? I don't know  
11:53 5 what you are saying.  
11:53 6  
11:53 7 A. Mr Commissioner, at this point, I probably don't know  
11:53 8 exactly how I would write that --- (overspeaking) --- yes, I  
11:53 9 understand.  
11:53 10  
11:53 11 COMMISSIONER: Fair enough.  
11:53 12  
11:53 13 MR FINANZIO: Can I come back to Play Periods --- or the Play  
11:53 14 Period technology. If I put my card in and play, the Play Periods  
11:53 15 technology will record how long I've played for until I take the  
11:53 16 card out, won't it?  
11:53 17  
11:53 18 A. Yes.  
11:53 19  
11:53 20 Q. And if I stick my card in, if I walk to another machine,  
11:53 21 maybe taking me two minutes, I put my card in, it will tell me ---  
11:53 22 it will tell you, or Crown, the Play Periods technology will record  
11:53 23 how long that player played on that machine, and then when I  
11:53 24 take the card out again, it will just go on and on; is that right?  
11:53 25  
11:53 26 A. That's right, yes.  
11:53 27  
11:53 28 Q. And so the Play Periods technology can tell, can inform  
11:54 29 you, about whether a player has played continuously or not  
11:54 30 without a substantial break; can't it?  
11:54 31  
11:54 32 A. Yes, it can, technically, yes.  
11:54 33  
11:54 34 Q. And because it can, the policy is framed to require  
11:54 35 confirmation of continuous play at certain temporal points along  
11:54 36 the journey; correct?  
11:54 37  
11:54 38 A. Are you referring to ---  
11:54 39  
11:54 40 Q. 1.7.  
11:54 41  
11:54 42 A. The policy.  
11:54 43  
11:54 44 Q. The Crown Loyalty Program members who have confirmed  
11:54 45 continuous ratings for an 18-hour period without appropriate  
11:54 46 breaks will not be permitted to retain --- remain, pardon me.  
11:54 47

11:54 1 A. And I'm putting together the continuous with the --- without  
11:54 2 appropriate breaks.  
11:54 3  
11:54 4 Q. Yes.  
11:54 5  
11:54 6 A. Yes.  
11:54 7  
11:54 8 Q. The Play Periods technology can tell you whether someone  
11:55 9 has played continuously for 18 hours; correct?  
11:55 10  
11:55 11 A. Without a break?  
11:55 12  
11:55 13 Q. Yes.  
11:55 14  
11:55 15 A. I believe so, yes.  
11:55 16  
11:55 17 Q. Yes. And what this policy is directed to is obtaining  
11:55 18 confirmation about that "continuous play"; correct?  
11:55 19  
11:55 20 A. Yes, I --- Mr Finanzio --- (overspeaking) ---  
11:55 21  
11:55 22 Q. Is the premise ---  
11:55 23  
11:55 24 A. --- yes, I'm hesitating only in relation to the language and  
11:55 25 continuous, and I suppose with that that --- (overspeaking) ---  
11:55 26  
11:55 27 Q. Let's look at the document, shall we? "Who have  
11:55 28 confirmed continuous ratings". The policy is directed to people  
11:55 29 who are loyalty program members who have confirmed  
11:55 30 continuous ratings, leave aside the number of hours, that's  
11:55 31 correct, right?  
11:55 32  
11:55 33 A. Without appropriate breaks, yes.  
11:55 34  
11:55 35 Q. Sure.  
11:55 36  
11:55 37 A. Yes.  
11:55 38  
11:55 39 Q. And the Play Periods technology can confirm for Crown  
11:55 40 whether someone has played continuously for the relevant  
11:56 41 period?  
11:56 42  
11:56 43 A. Yes, it can.  
11:56 44  
11:56 45 Q. That is the principal means by which carded players are  
11:56 46 able to be identified and be confirmed as playing for a continuous  
11:56 47 period, right?



11:56 1  
11:56 2 A. Yes.  
11:56 3  
11:56 4 Q. Carded players stand in contradistinction to uncarded  
11:56 5 players because it is very difficult to confirm whether an  
11:56 6 uncarded player has played continuously for any period?  
11:56 7  
11:56 8 A. That's right.  
11:56 9  
11:56 10 Q. I want to ask you some questions again about the register.  
11:56 11  
11:56 12 The register records the action of an RGA; doesn't it?  
11:56 13  
11:56 14 A. Yes.  
11:56 15  
11:56 16 Q. The RGA during the course of the night might receive  
11:57 17 many Splunk alerts?  
11:57 18  
11:57 19 A. Yes.  
11:57 20  
11:57 21 Q. But the RGA will not record in the register every Splunk  
11:57 22 alert received; the RGA will only record what the RGA does in  
11:57 23 relation to a Splunk alert; correct?  
11:57 24  
11:57 25 A. The RGA or another person that does something in reaction  
11:57 26 to that, yes.  
11:57 27  
11:57 28 Q. I'm talking in relation to Play Periods, but I will accept that  
11:57 29 qualification. Where the register records the actions with the  
11:57 30 designation "PP", that means an action in relation to Play Periods;  
11:57 31 correct?  
11:57 32  
11:57 33 A. From my recollection, yes. So ---  
11:57 34  
11:57 35 Q. When you say "from my recollection", is this something  
11:57 36 you have first hand personal knowledge of?  
11:57 37  
11:57 38 A. I have knowledge of it through reading some of the daily  
11:57 39 operations reports so my recollection is that any preface "PP"  
11:58 40 relates to Play Periods.  
11:58 41  
11:58 42 Q. And you've only understood that from reading the daily  
11:58 43 reports? I don't understand when you say "from my recollection".  
11:58 44 Is it systematically the case in the division of work that you  
11:58 45 supervise that RGAs designate in the register "PP" when they are  
11:58 46 dealing with a Play Periods issue?  
11:58 47

11:58 1 A. That is my recollection of when they are putting something  
11:58 2 in the register in relation to Play Periods that comes through via  
11:58 3 the Splunk alerts, that it is designated as PP, yes, that's my  
11:58 4 recollection.  
11:58 5  
11:58 6 Q. And PP is a reference, isn't it, to the Play Periods Policy?  
11:58 7  
11:58 8 A. Yeah, to Play Periods as delineated in the policy, yes.  
11:58 9  
11:59 10 Q. I want to take you to a document that was tendered on the  
11:59 11 last occasion, Commissioner. It is behind tab 5. Can I exercise  
11:59 12 some caution here.  
11:59 13  
11:59 14 COMMISSIONER: Are there names here?  
11:59 15  
11:59 16 MR FINANZIO: There are names here and my recollection is  
11:59 17 there was a version of this document that was blanked out.  
11:59 18  
11:59 19 MR BORSKY: I re-examined on it.  
11:59 20  
11:59 21 MR FINANZIO: Yes, just bear with me for one moment.  
11:59 22  
11:59 23 COMMISSIONER: On my copy there is names and  
11:59 24 photographs.  
12:00 25  
12:00 26 MR FINANZIO: CRW.510.060.7862, please check whether it is  
12:00 27 redacted or not before you flash it up on the screen.  
12:00 28  
12:00 29 COMMISSIONER: It's redacted.  
12:00 30  
12:00 31 MR FINANZIO: Great. Just to the front page, that's enough. I  
12:00 32 want to make some observations about the front page and the  
12:00 33 content.  
12:00 34  
12:00 35 This is the daily operations report for 27 January 2021; you see  
12:00 36 that?  
12:00 37  
12:00 38 A. Yes.  
12:00 39  
12:00 40 Q. The first entry isn't designated with the PP. There is person  
12:00 41 registration details; see that?  
12:00 42  
12:01 43 A. Sir, if I may, I know it is a redacted version but there is still  
12:01 44 identifying measures here in terms of entry points where there are  
12:01 45 licence numbers of employees.  
12:01 46  
12:01 47 Q. Bear with me for a second. That's being screened in this

12:01 1 room.  
12:01 2  
12:01 3 A. Okay, terrific, thank you.  
12:01 4  
12:01 5 Q. Thank you for that. I've made those mistakes in this room  
12:01 6 before and it is good to catch yourself before you make a mistake.  
12:01 7  
12:01 8 Can I take you to the first line in it. Can you see the first entry?  
12:01 9  
12:01 10 A. I do.  
12:01 11  
12:01 12 Q. Okay, so that's the first entry for the day 27 January 2021.  
12:01 13 There is no reference there or in the commentary for the next one  
12:01 14 about PP, is there? The first entry is:  
12:01 15  
12:01 16 *Checked Splunk and Webex throughout the shift.*  
12:01 17  
12:02 18 That is a record of what the RGA did generally during the shift,  
12:02 19 correct?  
12:02 20  
12:02 21 A. Yes, it's a note that they checked Splunk, which would be  
12:02 22 the dashboard and Webex, which is the communication in  
12:02 23 relation to notifications about Splunk.  
12:02 24  
12:02 25 Q. Thank you.  
12:02 26  
12:02 27 A. Yes.  
12:02 28  
12:02 29 Q. And the same for the next one:  
12:02 30  
12:02 31 *Canvassed gaming floor. Liaised with patrons .....*  
12:02 32  
12:02 33 You see that?  
12:02 34  
12:02 35 A. I do.  
12:02 36  
12:02 37 Q. It is right, isn't it, that PP --- the next one, "PP15 VIP", that  
12:02 38 is the RGA entering what activity they are doing by reference to  
12:02 39 the Play Periods Policy, "PP15"?  
12:02 40  
12:02 41 A. So PP15 would have been the alert and it related to that  
12:02 42 particular location.  
12:02 43  
12:02 44 Q. Let's go back a step. "PP15 VIP Tables" records, does it  
12:03 45 not, the reason for the action which is taken here?  
12:03 46  
12:03 47 A. Yes, so the alert "PP15" means that an alert came up for 15

12:03 1 hours, it was located VIP, and the product was tables.  
12:03 2  
12:03 3 Q. Okay. And it appears, doesn't it, in each instance in the  
12:03 4 comments section, doesn't it? If you look down ---  
12:03 5  
12:03 6 A. Oh, I see here there is a comment, yes.  
12:03 7  
12:03 8 Q. No, go to the top of the table. See it says "Comments"?  
12:03 9  
12:03 10 A. Yes.  
12:03 11  
12:03 12 Q. In each instance, I wonder operator if you could shrink the  
12:03 13 size of the page so the witness can see the page as a whole.  
12:03 14  
12:03 15 A. Yes, it's fine, I see it.  
12:03 16  
12:03 17 Q. Just in the one underneath "PP15", it says:  
12:03 18  
12:04 19 *Issued by: CP*  
12:04 20  
12:04 21 *Nature of Service: Self-exclusion*  
12:04 22  
12:04 23 And then it explains the actions that were taken; you see that?  
12:04 24  
12:04 25 A. Yes.  
12:04 26  
12:04 27 Q. I want to ask you a bit about Splunk and how it works. I  
12:04 28 wonder if the witness could be taken to a document, CRW.510 ---  
12:05 29 I might do it this way before we go to the document.  
12:05 30  
12:05 31 Splunk can send, can't it, whatever alerts it is programmed to  
12:05 32 send?  
12:05 33  
12:05 34 A. That's my understanding, yes.  
12:05 35  
12:05 36 Q. It could send an alert about time physically on the premises;  
12:05 37 correct?  
12:05 38  
12:05 39 A. Yes, and the reason I'm thinking about this is going back to  
12:05 40 the carded element of being able to record these activities, yes.  
12:05 41  
12:05 42 Q. Yes, so let's assume for now, to avoid any confusion for  
12:05 43 you, that we are talking only about carded activity.  
12:05 44  
12:05 45 A. Sure.  
12:05 46  
12:05 47 Q. If a person comes in, I think Mr Borsky mentioned on the

12:05 1 last occasion they might enter the car park and enter the premises  
12:05 2 in some way and swipe their card, the systems that Crown has can  
12:05 3 record wherever the card is used; correct?

12:05 4

12:05 5 A. Yes.

12:05 6

12:06 7 Q. And so in that way it can record when someone is  
12:06 8 physically on the site?

12:06 9

12:06 10 A. Yes.

12:06 11

12:06 12 Q. But it can also record, as we've already discussed, how long  
12:06 13 a player has played a particular machine within a certain period?

12:06 14

12:06 15 A. Yes.

12:06 16

12:06 17 Q. So it can do both things, can't it?

12:06 18

12:06 19 COMMISSIONER: Well, up to a point, I think.

12:06 20

12:06 21 Can I ask you this question, Ms Bauer.

12:06 22

12:06 23 A. Yes.

12:06 24

12:06 25 COMMISSIONER: If I'm a carded member, I have a loyalty  
12:06 26 card, it's not like when I get off the tram I don't punch my way  
12:06 27 out, do I? You know when I come in, when I first make use of  
12:06 28 some electronic facility ---

12:06 29

12:06 30 A. Mm-hmm.

12:06 31

12:06 32 COMMISSIONER: --- so the car park, coffee, or a gaming  
12:06 33 machine or whatever. So when I first enter the place and make  
12:06 34 some use of my card, the technology will record that.

12:06 35

12:07 36 A. Yes.

12:07 37

12:07 38 COMMISSIONER: I don't have to check out. I can come there,  
12:07 39 have a cup of coffee and leave, and you will never know whether  
12:07 40 I was there for five minutes or five hours or five days?

12:07 41

12:07 42 A. Yes, if you are not using your card, that's correct,  
12:07 43 Mr Commissioner. Yes.

12:07 44

12:07 45 COMMISSIONER: Okay. So it cannot tell you, I heard some  
12:07 46 funny evidence that it can tell me how long I've been there, but it  
12:07 47 can't do that?

12:07 1  
12:07 2 A. Mr Commissioner ---  
12:07 3  
12:07 4 COMMISSIONER: Between uses?  
12:07 5  
12:07 6 A. Yes, and not being an expert in all areas of Splunk or any of  
12:07 7 the systems, but I do understand that with some system it  
12:07 8 relies --- some of the system, it does rely on an exit of the card to  
12:07 9 record certain things as opposed to just an entry of the card.  
12:07 10 Those sorts of things.  
12:07 11  
12:07 12 COMMISSIONER: If I play a poker machine, it will record how  
12:07 13 long I've been playing that particular machine?  
12:07 14  
12:07 15 A. Yes.  
12:07 16  
12:07 17 COMMISSIONER: But it will never tell me how long I've been  
12:07 18 on the premises?  
12:07 19  
12:08 20 A. No. That's right.  
12:08 21  
12:08 22 MR FINANZIO: Just taking the Commissioner's example,  
12:08 23 someone comes in and swipes the card but doesn't swipe out, they  
12:08 24 could be on the premises for a long period of time; correct?  
12:08 25  
12:08 26 A. Yes. I mean a swipe out is, I think Mr Commissioner's  
12:08 27 point is there is no swipe out.  
12:08 28  
12:08 29 Q. That's right. So the person who swipes in and has no other  
12:08 30 activity, carded activity on the site, could be present on the land;  
12:08 31 correct?  
12:08 32  
12:08 33 A. Yes.  
12:08 34  
12:08 35 Q. But also they could have gone to the football?  
12:08 36  
12:08 37 A. That's right.  
12:08 38  
12:08 39 Q. Splunk could send you an alert 12 hours after the first  
12:09 40 swipe in; correct? Saying 12 hours ago Adrian Finanzio swiped  
12:09 41 his card in to the premises; correct?  
12:09 42  
12:09 43 A. I don't believe, and again it's not something I've had a close  
12:09 44 look at in the last couple of months, but I don't believe the alert  
12:09 45 would come. If you've swiped in and by "swipe in" I imagine,  
12:09 46 I'm not quite sure what you are talking about, swiping in ---  
12:09 47

12:09 1 Q. I've used my card in some way other than gaming. I've  
12:09 2 used my Crown loyalty card in some way other than gaming to  
12:09 3 indicate the first record of me being present on the land.  
12:09 4

12:09 5 A. As I understand it, the first record Splunk records is the  
12:09 6 first record of you playing a gaming product.  
12:09 7

12:09 8 Q. Okay. And Play Periods and Splunk work together to  
12:10 9 identify where someone has played continuously; correct?  
12:10 10

12:10 11 A. Yes. It would --- so Splunk is recording --- so Splunk is  
12:10 12 a processing system, if you like. There are other systems that  
12:10 13 actually record the play, and Splunk will look at those systems to  
12:10 14 take that --- and again I'm not an expert on this, but this is my  
12:10 15 understanding in order to understand how we operate this  
12:10 16 process.  
12:10 17

12:10 18 Q. Splunk is a software product that captures, indexes and  
12:10 19 correlates real-time data in searchable form from which reports,  
12:11 20 alerts, dashboards and visualisations can be generated?  
12:11 21

12:11 22 A. And my understanding that was as part of the---  
12:11 23 (overspeaking) ---  
12:11 24

12:11 25 Q. First of all, is that your understanding of what Splunk does?  
12:11 26

12:11 27 A. Yes. Yes. Yes.  
12:11 28

12:11 29 Q. Splunk could record a swipe-in, a first use of the Crown  
12:11 30 loyalty card, couldn't it?  
12:11 31

12:11 32 A. In a form other than ---  
12:11 33

12:11 34 Q. Yeah.  
12:11 35

12:11 36 A. I believe so, but I cannot be sure. I --- I --- I'm not sure.  
12:11 37

12:11 38 Q. Your evidence to the Commission is that the first record is  
12:11 39 the use of a card in a gaming activity, on a gaming device?  
12:11 40

12:11 41 A. Yes.  
12:12 42

12:12 43 Q. You've agreed with me already that a combination of Play  
12:12 44 Periods and Splunk makes it possible for Splunk to generate  
12:12 45 alerts when continuous play, according to the relevant time period  
12:12 46 occurs?  
12:12 47

12:12 1 A. Is my understanding, but, again, I caution that I'm not an  
12:12 2 expert in Splunk. This is my understanding. I really caution on  
12:12 3 that.  
12:12 4  
12:12 5 COMMISSIONER: But you do know what it is intended to do?  
12:12 6  
12:12 7 A. Yes.  
12:12 8  
12:12 9 COMMISSIONER: And it is intended to record the time of  
12:12 10 continuous play?  
12:12 11  
12:12 12 A. Time of continuous play, that's right, yes.  
12:12 13  
12:12 14 MR FINANZIO: Not only that, it is intended to give a tool to  
12:12 15 give effect to the Play Periods Policy that I've just taken you to at  
12:12 16 1.7.  
12:12 17  
12:13 18 A. Yes.  
12:13 19  
12:13 20 Q. So when an RGA in administering --- just bear with me for  
12:13 21 one minute, Commissioner. Some alerts to RGAs, going back to  
12:13 22 the register, some alerts to RGAs that confirm continuous play of  
12:13 23 12 hours aren't able to be actioned by the RGA. I think we  
12:14 24 discussed this the last time, they might be too busy; correct?  
12:14 25  
12:14 26 A. I have a recollection of discussing this and this would then  
12:14 27 depend on what the alert says, what time periods, and whether it  
12:14 28 is an RGA or a gaming person that may or may not observe or  
12:14 29 respond.  
12:14 30  
12:14 31 Q. Put it this way: where an alert is given under the Play  
12:14 32 Periods Policy but no action has taken by the RGA, it won't find  
12:14 33 its way into the register?  
12:14 34  
12:14 35 A. If no action is taken by an RGA or another person, yes.  
12:14 36  
12:14 37 Q. Indeed, the RGA will not get alerts. The alerts that are  
12:15 38 given to the RGA for the RGA to take action are alerts that fall  
12:15 39 within the scope of the policy, which is continuous play, isn't it?  
12:15 40  
12:15 41 A. I know the policy says continuous play, but I think the  
12:15 42 policy, then the next sentence goes on to say "without substantial  
12:15 43 breaks".  
12:15 44  
12:15 45 COMMISSIONER: How does the technology, how does the  
12:15 46 computer make a decision about what is a break or not? Does it  
12:15 47 have a program that says 5 minutes break, ignore, 30 minutes



12:15 1 break, taking account or is the reality something different. Is the  
12:15 2 reality that the computer or Splunk is set so that at 12, 16 and 20  
12:15 3 hours of continuous play, an alert goes to an RGA?

12:15 4

12:15 5 A. So, Mr Commissioner, it is the former. So the Splunk  
12:16 6 technology is set to identify whether there has been a break or not  
12:16 7 in that play. I don't have ---

12:16 8

12:16 9 COMMISSIONER: I know it is set, if there is no break, it  
12:16 10 records it. What input into the program tells the technology to  
12:16 11 ignore particular gaps in play? Does it ignore a 5-minute gap,  
12:16 12 a 20-minute gap, a 30-minute gap, a one-hour gap or what? Or  
12:16 13 are we making this up as we go?

12:16 14

12:16 15 A. No, and I cannot be precise, Mr Commissioner, that the ---

12:16 16

12:16 17 COMMISSIONER: Your policy, you have to be precise.

12:16 18

12:16 19 A. Yes, and my apologies I don't have the precise input into  
12:16 20 the Splunk technology. However, it records any player that does  
12:16 21 not have a substantial break, and from my recollection that is  
12:16 22 somewhere between if there is not a substantial break with some  
12:17 23 form of contiguous or continuous or even break play between 8  
12:17 24 and 12 hours in that 12-hour period, so breaks need to be taken to  
12:17 25 ensure that someone has taken ---

12:17 26

12:17 27 COMMISSIONER: I know you are saying that. I want to be  
12:17 28 clear. For the purposes of Splunk sending a message or an alert  
12:17 29 to an RGA, that there has been, say, 12 hours of continuous play  
12:17 30 to conform with your policy, what periods of time of non-play ---  
12:17 31 5 minutes, 7 minutes, 10 minutes --- doesn't prevent the Splunk  
12:17 32 system sending out a message of continuous play?

12:17 33

12:17 34 A. I understand, Mr Commissioner, and I don't have those  
12:17 35 exact time periods.

12:17 36

12:17 37 COMMISSIONER: Can I assume that there is no such input into  
12:17 38 the Splunk system? That is, it records 12 hours of continuous  
12:17 39 play, and if there is any interruption, that's the end, it starts again?  
12:18 40 The timing starts again after an interruption?

12:18 41

12:18 42 A. No, Mr Commissioner, there are inputs into the system to  
12:18 43 ensure that there are breaks and then that will flag in the system.  
12:18 44 I just don't know the exact time periods. As I said, I understand it  
12:18 45 to be between 8 and 10 of that sort of playtime, but I don't have it  
12:18 46 in front of me at the moment.

12:18 47

12:18 1 COMMISSIONER: 8 to 10 of what?  
12:18 2  
12:18 3 A. Hours. So not having continuous play for 8 or 10 hours,  
12:18 4 but within a 12-hour period of not having between 2 to 4 hours'  
12:18 5 break within that 12-hour period. So it is not continuous play of  
12:18 6 12 hours.  
12:18 7  
12:18 8 COMMISSIONER: What qualifies for not continuous play or 12  
12:18 9 hours?  
12:18 10  
12:18 11 A. I don't have ---  
12:18 12  
12:18 13 COMMISSIONER: How long do I have to play in a 12-hour  
12:19 14 period for it to be treated as continuous?  
12:19 15  
12:19 16 A. I understand it to be 8 or 12 hours. I don't have it in front  
12:19 17 of me, Mr Commissioner.  
12:19 18  
12:19 19 COMMISSIONER: Who will tell me that information?  
12:19 20  
12:19 21 A. I can find out that information, Mr Commissioner.  
12:19 22  
12:19 23 COMMISSIONER: Right.  
12:19 24  
12:19 25 MR FINANZIO: You are familiar with the Sixth Review?  
12:19 26  
12:19 27 A. Yes, I am.  
12:19 28  
12:19 29 Q. They made a number of recommendations, 20 in total.  
12:19 30 After the recommendations of the Sixth Review, Crown started  
12:19 31 addressing the implementation of those?  
12:19 32  
12:19 33 A. That's right.  
12:19 34  
12:19 35 Q. The timing for completion of each of those vary depending  
12:19 36 on how much work needed to be done, didn't they?  
12:19 37  
12:19 38 A. The timing was predicated on the recommendation timing,  
12:19 39 as well as how much work needed, I assume.  
12:19 40  
12:19 41 Q. Crown responded in an iterative way to all of the  
12:20 42 recommendations, when things were ready and they matched up  
12:20 43 with timing in the Sixth Review, it would make a submission,  
12:20 44 wouldn't it, to the VCGLR about that recommendation?  
12:20 45  
12:20 46 A. Yes.  
12:20 47

12:20 1 Q. And the VCGLR would then consider the report and reach  
12:20 2 a conclusion about whether the recommendation had been  
12:20 3 reached?

12:20 4  
12:20 5 A. That's right.

12:20 6  
12:20 7 Q. Insofar as the recommendations were concerned with RSG  
12:20 8 matters, you were involved in preparing the Crown response;  
12:20 9 weren't you?

12:20 10  
12:20 11 A. I was involved, yes.

12:20 12  
12:20 13 Q. You attended many meetings with Mr Cremona of the  
12:20 14 VCGLR?

12:20 15  
12:20 16 A. Various meetings with various persons from the VCGLR,  
12:20 17 yes, including Mr Cremona, but not chiefly Mr Cremona in some  
12:20 18 instances.

12:20 19  
12:20 20 Q. Where there was an RSG submission you, given your  
12:20 21 position, considered the Crown response; correct?

12:20 22  
12:20 23 A. Yes, I considered it along with others, yes.

12:20 24  
12:20 25 Q. And you assisted in drafting the response?

12:20 26  
12:20 27 A. Yes, I did.

12:20 28  
12:20 29 Q. Often the response would go out under the hand of Barry  
12:21 30 Felstead, but you would be involved in preparing the response?

12:21 31  
12:21 32 A. Yes.

12:21 33  
12:21 34 Q. I want to take you now to the document I was referring to  
12:21 35 before. It is CRW.510.029.3248. This was the Crown response  
12:21 36 to the Sixth Review Recommendations 7 and 8 dated 30  
12:21 37 December 2019; do you see that?

12:21 38  
12:21 39 A. Yes.

12:21 40  
12:21 41 Q. Now, I want to draw your attention to  
12:21 42 Recommendation 8 --

12:21 43  
12:21 44 A. Yes.

12:21 45  
12:21 46 Q. --- where:

12:21 47

12:21 1 The VCGLR recommends that Crown proceed with  
12:22 2 *development and implementation of comprehensive data*  
12:22 3 *analytics tools for all patrons, to proactively identify for*  
12:22 4 *intervention patrons at risk of harm for gambling. These*  
12:22 5 *tools would utilise both historical data ..... and real-time*  
12:22 6 *monitoring of play periods. Crown Melbourne should*  
12:22 7 *look to models in other jurisdictions, and consult with*  
12:22 8 *external data analytics experts, with a view to*  
12:22 9 *implementing world-class, proactive approaches with*  
12:22 10 *real-time (or near-real time) operational effectiveness.*  
12:22 11  
12:22 12 You see that?  
12:22 13  
12:22 14 A. Yes, I do.  
12:22 15  
12:22 16 Q. For carded play:  
12:22 17  
12:22 18 ..... (that is, player activity which can be systematically  
12:22 19 *tracked), Crown Melbourne will have in operation*  
12:22 20 *a comprehensive real-time player data analytics tool by 1*  
12:22 21 *January 2020 .....*  
12:22 22  
12:22 23 You see that?  
12:22 24  
12:22 25 A. Yes, I do.  
12:22 26  
12:22 27 Q. The Crown response to that is contained in this document,  
12:22 28 30 December 2019?  
12:22 29  
12:22 30 A. Yes.  
12:22 31  
12:23 32 MR FINANZIO: I want to tender that document.  
12:23 33  
12:23 34 COMMISSIONER: Letter, 30 December 2019, from Crown to  
12:23 35 VCGLR regarding Recommendations 7 and 8, Exhibit 208.  
12:23 36  
12:23 37  
12:23 38 **EXHIBIT #RC0208 - LETTER FROM CROWN TO**  
12:23 39 **VCGLR REGARDING RECOMMENDATIONS 7 AND 8**  
12:23 40 **DATED 30 DECEMBER 2019**  
12:23 41  
12:23 42  
12:23 43 MR FINANZIO: I should confirm, you made a contribution to  
12:23 44 the preparation of this submission; correct?  
12:23 45  
12:23 46 A. Yes, I do.  
12:23 47

12:23 1 Q. I want to take you to page 6 in relation to Play Periods  
 12:23 2 monitoring. I take you to the first paragraph which sets out the  
 12:24 3 position:

12:24 4  
 12:24 5 *Crown's real time monitoring, 'Play Periods', is*  
 12:24 6 *a program that identifies continuous ratings without*  
 12:24 7 *appropriate breaks during a 24 hour period. Members,*  
 12:24 8 *using their loyalty cards and identified via Play Periods,*  
 12:24 9 *are approached where possible by Responsible Gaming*  
 12:24 10 *Advisors (RGAs) or gaming staff and reminded to take*  
 12:24 11 *regular breaks. This program has been in place at Crown*  
 12:24 12 *for a number of years, and was reviewed and significantly*  
 12:24 13 *enhanced in 2018/2019.*

12:24 14  
 12:24 15 There is an acknowledgement there in that passage that it won't  
 12:24 16 always be possible to approach; correct?

12:24 17  
 12:24 18 A. Yes.

12:24 19  
 12:24 20 Q. The next passage describes the history of the situation, and  
 12:25 21 I do want to bring this to the Commission's attention.

12:25 22  
 12:25 23 *..... (prior to 2018), the method of identifying Play Periods*  
 12:25 24 *was through SYCO (the loyalty program data collection*  
 12:25 25 *system), in the form of automatically generated reports*  
 12:25 26 *every four hours. These reports identified members who*  
 12:25 27 *had over 12-hours of cumulative gaming activity but*  
 12:25 28 *failed to take into account time on-site (..... the report*  
 12:25 29 *would not capture a member with 11-hours of cumulative*  
 12:25 30 *gaming activity over (for example) a 20-hour period).*

12:25 31  
 12:25 32 That was one of the inadequacies, if you like, or imprecisions that  
 12:25 33 the earlier system suffered from?

12:25 34  
 12:25 35 A. Yes.

12:25 36  
 12:25 37 Q. Next:

12:25 38  
 12:25 39 *In June 2018, following a review to identify more*  
 12:26 40 *accurate technology to improve the functionality of Play*  
 12:26 41 *Period monitoring, a program called 'Splunk' was*  
 12:26 42 *identified as a viable option for reporting real-time Play*  
 12:26 43 *Periods.*

12:26 44  
 12:26 45 And then there is the quote I brought you to earlier.

12:26 46  
 12:26 47 A. Yes.

12:26 1  
12:26 2 Q. Which is:  
12:26 3  
12:26 4 *After initial discussions regarding the Splunk product and*  
12:26 5 *a period of analysis, verification and testing was*  
12:26 6 *conducted. A trial dashboard was then developed as*  
12:26 7 *a method of identifying members who had been on-site for*  
12:26 8 *more than 12 hours without a substantial break .....*  
12:26 9  
12:26 10 Pausing there. That means being on site for more than 12 hours'  
12:26 11 gaming; correct?  
12:26 12  
12:26 13 A. Yes, without a substantial break.  
12:26 14  
12:26 15 Q. From gaming?  
12:26 16  
12:26 17 A. Yes.  
12:26 18  
12:26 19 Q.  
12:26 20  
12:26 21 *..... based on their loyalty card use. Operationally, the*  
12:26 22 *trial dashboard was cross-referenced against SYCO*  
12:26 23 *reports.*  
12:26 24  
12:26 25 To ensure it was working?  
12:27 26  
12:27 27 A. Yes.  
12:27 28  
12:27 29 Q.  
12:27 30  
12:27 31 *The trial was valuable in identifying the most appropriate*  
12:27 32 *parameters to provide meaningful real-time data outputs,*  
12:27 33 *which could assist the Responsible Gaming Team in*  
12:27 34 *appropriately identifying members who had played for*  
12:27 35 *extended time periods. Harm minimisation action were*  
12:27 36 *then to follow .....*  
12:27 37  
12:27 38 A. Sorry, Mr Finanzio, it didn't go over.  
12:27 39  
12:27 40 Q. Could the operator go to the next major:  
12:27 41  
12:27 42 *..... members who had played for extended time periods.*  
12:27 43  
12:27 44 Do you see that?  
12:27 45  
12:27 46 A. Yes.  
12:27 47

12:27 1 Q. Just pausing there for a moment. Under the old system,  
12:27 2 before the Sixth Review was completed, someone could be on  
12:27 3 site for 20 hours but you would not capture 11 hours of  
12:27 4 cumulative play?

12:27 5  
12:27 6 A. Yes.

12:27 7

12:28 8 Q. I want to test that a bit. Under the old system, you could  
12:28 9 tell how long someone had been on site; correct? Using the  
12:28 10 SYCO system?

12:28 11

12:28 12 A. So you would --- the SYCO --- the old system relied on the  
12:28 13 reporting which was, as to your point was, he could have been on  
12:28 14 site for quite some time when we were recording cumulative or  
12:28 15 contiguous play, as opposed to continuous play.

12:28 16

12:28 17 Q. Perhaps I will put it more simply: you couldn't tell under  
12:28 18 the old system whether all of the gaming had occurred  
12:28 19 continuously or not?

12:28 20

12:28 21 A. The way it recorded, and I apologise, I'm casting my  
12:28 22 memory back as to how it was recorded in the 4-hour blocks, but  
12:29 23 from my memory, again hence moving to a different system, it  
12:29 24 wasn't as accurate as we would like it to have been to be  
12:29 25 intervening or interacting or observing as appropriate.

12:29 26

12:29 27 COMMISSIONER: I don't read your letter as saying that at all,  
12:29 28 and again it might be a question of choice of words but if I go to  
12:29 29 page 6 under the heading "Technology", I read that as you telling  
12:29 30 the regulator that you could do one thing and not another. You  
12:29 31 could, or the technology, could identify continuous play but you  
12:29 32 couldn't identify how long the person had been on site. So you  
12:29 33 knew if a person played a poker machine for 10 hours, but you  
12:29 34 didn't know whether he was on site for 20 or 40 hours. But  
12:29 35 continuous play was capable of being identified. And recorded.  
12:29 36 And was.

12:30 37

12:30 38 A. So it was --- yes, so it does say here the activity but failed  
12:30 39 to take into account the time on site. Again ---

12:30 40

12:30 41 COMMISSIONER: That's not quite what this sentence says or  
12:30 42 the paragraph. It says "it could identify those who had over 12  
12:30 43 hours cumulative" gaming --- oh, cumulative.

12:30 44

12:30 45 MR FINANZIO: Cumulative gaming activity.

12:30 46

12:30 47 COMMISSIONER: Okay, rather than continuous.

12:30 1  
12:30 2 MR FINANZIO: That's right.  
12:30 3  
12:30 4 A. Yes.  
12:30 5  
12:30 6 Q. So the problem under the old system was that over the  
12:30 7 relevant period, Ms Bauer, the problem under the old system was  
12:30 8 someone might have gamed for two hours, had a three-hour  
12:30 9 break, gamed for another two hours, had another two-hour break,  
12:30 10 cumulatively the system would say that person has gambled for  
12:30 11 four hours ---  
12:30 12  
12:30 13 A. Yes.  
12:30 14  
12:30 15 Q. --- but you wouldn't know whether it was continuous  
12:30 16 gambling under the old system?  
12:30 17  
12:30 18 A. That's right.  
12:30 19  
12:30 20 Q. And the problem that the Splunk system was intended to  
12:30 21 resolve was to help Crown understand whether people were  
12:31 22 gaming continuously?  
12:31 23  
12:31 24 A. And to ascertain time on site, yes.  
12:31 25  
12:31 26 Q. When you say "time on site", the policy is directed to  
12:31 27 continuous gaming on site, not going to the movies on site?  
12:31 28  
12:31 29 A. Yes, without substantial breaks.  
12:31 30  
12:31 31 Q. Without substantial breaks.  
12:31 32  
12:31 33 A. Yes.  
12:31 34  
12:31 35 Q. You might have been on the site for four hours but only  
12:31 36 gamed for one hour. Splunk helps you know whether you gamed  
12:31 37 for that one hour continuously or with a break?  
12:31 38  
12:31 39 A. Yes.  
12:31 40  
12:31 41 Q. And that is a very helpful tool to you in applying the  
12:31 42 policy?  
12:31 43  
12:31 44 A. Yes.  
12:31 45  
12:31 46 Q. Because the policy is directed to continuous gambling?  
12:31 47



- 12:31 1 A. Yes, as it reads, yes.  
12:31 2  
12:31 3 Q. I will help you answer the Commissioner's earlier question.  
12:31 4 At page 7 of the document, we go on to what happened.  
12:31 5  
12:32 6 In December 2018 [six months after the review] Crown  
12:32 7 *implemented the Responsible Gaming Splunk Dashboard*  
12:32 8 *v1.0 as the primary method for real-time monitoring of*  
12:32 9 *Play Periods and the existing 4-hourly SYCO reports*  
12:32 10 *ceased.*  
12:32 11  
12:32 12 Out with the old and in with the new because the new had proved  
12:32 13 itself to be better; correct?  
12:32 14  
12:32 15 A. Yes.  
12:32 16  
12:32 17 Q.  
12:32 18  
12:32 19 By mid-2019, mobile Splunk alerts were implemented by  
12:32 20 *Crown's IT Department, through the development of*  
12:32 21 *'Webex Teams', which provided notification to RGAs'*  
12:32 22 *phones from the Splunk dashboard.*  
12:32 23  
12:32 24 Basically the system made it real-time in that Splunk could send  
12:32 25 a mobile alert to the RGAs; correct?  
12:32 26  
12:32 27 A. That's right, as programmed.  
12:32 28  
12:32 29 Q. As programmed.  
12:32 30  
12:32 31 A. (Nods head).  
12:32 32  
12:32 33 Q. So the alerts would go depending on what the inputs were  
12:33 34 as to when the alert should be given?  
12:33 35  
12:33 36 A. That's right.  
12:33 37  
12:33 38 Q. You've then got a timeline in the letter, and then at the  
12:33 39 bottom:  
12:33 40  
12:33 41 *The above mentioned improvement in technology has*  
12:33 42 *meant that the policy to intervene with a member has*  
12:33 43 *evolved, such that the more accurate Play Period*  
12:33 44 *reporting will result in a member being approached in the*  
12:33 45 *lead up to 12 hours on site (where the member's longest*  
12:33 46 *continuous break from gaming has been less than two*  
12:33 47 *hours).*

12:33 1  
 12:33 2 A. I see that, yes.  
 12:33 3  
 12:33 4 Q. You see that?  
 12:33 5  
 12:33 6 A. (Nods head).  
 12:33 7  
 12:33 8 Q. Let's be clear. Where it says "12 hours on site", what is  
 12:33 9 really the position here is that if we get --- if we are approaching  
 12:33 10 12 hours and there has been no 2-hour break in that play period  
 12:34 11 then no alert --- then that's when the alert would be given?  
 12:34 12  
 12:34 13 A. Yes.  
 12:34 14  
 12:34 15 Q. So, to the Commissioner's questions before, about what is  
 12:34 16 a break and how long is a break, it ignores breaks of 5 minutes;  
 12:34 17 correct?  
 12:34 18  
 12:34 19 A. I can't be sure, Mr Finanzio.  
 12:34 20  
 12:34 21 Q. That's what the words say. It ignores breaks of 5 minutes,  
 12:34 22 indeed, it ignores breaks of 15 minutes, it ignores breaks of  
 12:34 23 everything up to two hours; is that correct?  
 12:34 24  
 12:34 25 A. I --- I --- I cannot be sure, Mr Finanzio, about the  
 12:34 26 calculations. I know that is what it says, but ---  
 12:34 27  
 12:34 28 Q. Let's turn the page. Here is where you explain to the  
 12:34 29 VCGLR, in terms, how the Play Periods and the Splunk  
 12:34 30 technology is set. You explain here what the inputs are,  
 12:35 31 specifically the policies applied as follows:  
 12:35 32  
 12:35 33 *The real time monitoring Play Periods program captures*  
 12:35 34 *and alerts the Responsible Gaming team based on various*  
 12:35 35 *parameters, for example:*  
 12:35 36  
 12:35 37 *- A member in the lead up to the 12-hour mark (where the*  
 12:35 38 *member's longest continuous break was less than two*  
 12:35 39 *hours):*  
 12:35 40  
 12:35 41 *- A member in the lead up to the 14-hour mark (where the*  
 12:35 42 *member's longest continuous break was less than three*  
 12:35 43 *hours);*  
 12:35 44  
 12:35 45 *The Responsible Gaming team then seek to undertake*  
 12:35 46 *interactions with relevant members (either personally or*  
 12:35 47 *through gaming staff).*

12:35 1  
12:35 2 *Further alerts are received and acted upon at a minimum*  
12:35 3 *at the 12 and 20 hour marks.*  
12:35 4  
12:35 5 A. Yes.  
12:35 6  
12:35 7 Q. I suggest to you that what you described to the VCGLR in  
12:35 8 December 2019 is consistent with the way that the policy directs  
12:36 9 the RGA staff to go about their task.  
12:36 10  
12:36 11 A. As I see it here, yes.  
12:36 12  
12:36 13 Q. And, for the avoidance of all doubt, I want to take you to  
12:36 14 another document --- your tab 4, Commissioner --- the VCGLR  
12:36 15 you understand takes the --- I will go back a step.  
12:36 16  
12:36 17 A general process is in responding to recommendations from the  
12:36 18 VCGLR is that you put in a submission, the VCGLR considers it  
12:36 19 and then does a report and a recommendation about it; correct?  
12:36 20  
12:36 21 A. My understanding is that, and again from what I have  
12:37 22 understood to be, is it goes to the Commission and at some point  
12:37 23 Crown is notified whether the information has been accepted or  
12:37 24 whether further information is sought by the Commission.  
12:37 25  
12:37 26 Q. Operator, can you go to VCG.001.001.0088.  
12:37 27  
12:37 28 That is a document which records the recommendation made by  
12:37 29 the director, Alex Fitzpatrick, on 16 July 2020 in relation to  
12:38 30 Recommendations 7, 8 and 9 of the Sixth Review. See that?  
12:38 31  
12:38 32 A. I see the heading, yes.  
12:38 33  
12:38 34 Q. If I take you to page 4 of that document, and to paragraphs  
12:38 35 29 through to 31, can I ask you to read through paragraphs 29 to  
12:38 36 31.  
12:38 37  
12:38 38 While the witness is reading, I will tender that document,  
12:38 39 Commissioner.  
12:38 40  
12:39 41 A. I've read it, Mr Finanzio.  
12:39 42  
12:39 43 Q. Thank you.  
12:39 44  
12:39 45 COMMISSIONER: Before you go on, I will identify the exhibit.  
12:39 46 It is a report prepared by the VCGLR regarding the  
12:39 47 Recommendations 7, 8, 9 of the Sixth Casino Review dated 16

12:39 1 July 2020, Exhibit 209.

12:39 2

3

4

**EXHIBIT #RC0209 - REPORT PREPARED BY VCGLR  
REGARDING RECOMMENDATIONS 7, 8, 9 OF THE  
SIXTH CASINO REVIEW DATED 16 JULY 2020**

6

7

8

12:39 9 MR FINANZIO: Insofar as that document records the officers of  
12:39 10 the VCGLR's understanding of the submissions made by Crown,  
12:39 11 they accord with what was in the submission made by Crown;  
12:39 12 correct?

12:39 13

12:39 14 A. Yes.

12:39 15

12:39 16 Q. They didn't get anything wrong?

12:39 17

12:39 18 A. No. It looks to be a copy from what was in the submission,  
12:40 19 yes.

12:40 20

12:40 21 MR FINANZIO: Commissioner, I'm about to go to another  
12:40 22 topic. I know you have been rising at 12.45.

12:40 23

12:40 24 COMMISSIONER: I'll come back at 1.30.

12:40 25

12:40 26

12:40 27 **ADJOURNED**

**[12:40P.M.]**

13:32 28

13:32 29

13:32 30 **RESUMED**

**[1:32P.M.]**

13:32 31

13:32 32

13:32 33 COMMISSIONER: Thank you.

13:32 34

13:32 35 Before we continue, Mr Finanzio, I just want to raise something  
13:32 36 with Mr Borsky. I'm just a middleman passing requests down the  
13:32 37 line.

13:32 38

13:32 39 MR BORSKY: I sympathise with you, Commissioner.

13:32 40

13:32 41 COMMISSIONER: I know. Can I get you to have a look at this  
13:32 42 document. (Handed.)

13:32 43

13:32 44 That is a document in respect of which Allens has claimed  
13:32 45 privilege. A cursory or a close examination would suggest error,  
13:32 46 but can you just confirm, one way or another, whether there is  
13:33 47 anything about that document which looks like minutes of

13:33 1 a meeting, internal meeting, whether it could possibly be  
13:33 2 privileged, and let me know? You don't have to do it now but  
13:33 3 sometime during the course of the afternoon would be good.  
13:33 4 Thanks. You can pass it back to me and I will pass it on as well.  
13:33 5  
13:33 6 Okay.  
13:33 7  
13:33 8 Thank you, Mr Finanzio.  
13:33 9  
13:33 10 MR FINANZIO: Thank you, Commissioner. I would like to  
13:33 11 take the witness back to the letter to the VCGLR dated  
13:33 12 30 December. I will give the operator the reference,  
13:33 13 CRW.510.029.3255. That's page 8 of the letter. It should come  
13:33 14 up on the screen in a moment. It's the page which describes the  
13:33 15 periods, which gives a number of examples. Do you see that  
13:34 16 there?  
13:34 17  
13:34 18 A. I do.  
13:34 19  
13:34 20 Q. Just taking the first dot point:  
13:34 21  
13:34 22 A member in the lead up to the 12-hour mark (where the  
13:34 23 *member's longest continuous break was less than two*  
13:34 24 *hours) .....*  
13:34 25  
13:34 26 You see that?  
13:34 27  
13:34 28 A. Yes.  
13:34 29  
13:34 30 Q. So a player might take a break of 15 minutes or 20 minutes  
13:34 31 or even 2 hours in the 12-hour period; is that correct?  
13:34 32  
13:34 33 A. Yes.  
13:34 34  
13:34 35 Q. And an alert would still be given?  
13:34 36  
13:34 37 A. So as described to you, it is where the member's longest  
13:34 38 continuous break was less than two hours. So it is within that  
13:34 39 period --- a break in that period that ensures that at least two  
13:35 40 hours were taken in the 12-hour period.  
13:35 41  
13:35 42 Q. And the break has to be continuously for two hours?  
13:35 43  
13:35 44 A. Longest continuous break was less than two hours, so if it  
13:35 45 was more than two hours then the structure would change.  
13:35 46  
13:35 47 Q. Okay. So, if I did it this way, just by way of example, if I

13:35 1 gambled for 6 hours and then took a 2-hour and 1 minute break,  
13:35 2 and I then gambled for another 4 hours --- get the maths right ---  
13:35 3 then I wouldn't necessarily get an alert?  
13:35 4  
13:35 5 A. No, that would possibly be picked up in the 14-hour mark.  
13:35 6  
13:35 7 Q. Right, but it wouldn't be picked up until I gambled further  
13:35 8 to the 14-hour mark?  
13:35 9  
13:35 10 A. (Nods head).  
13:35 11  
13:35 12 Q. If I gambled for 6 hours and took a combination of breaks  
13:35 13 totalling a lesser amount than 2 hours, I might get an alert then; is  
13:36 14 that right? The question wasn't particularly clear --  
13:36 15  
13:36 16 A. Yeah ---  
13:36 17  
13:36 18 Q. --- let me go back a step. If I took a break for less than 2  
13:36 19 hours in the 12-hour period, I would get an alert?  
13:36 20  
13:36 21 A. If it was less than that, yes.  
13:36 22  
13:36 23 Q. Under that approach in the first dot point, I could gamble,  
13:36 24 couldn't I, for 10 hours straight, 10 hours continuously, at least,  
13:36 25 and still not get an alert?  
13:36 26  
13:36 27 A. That's my understanding, an alert from a technology  
13:36 28 perspective, yes. There may be other alerts as to what other signs  
13:37 29 you may be displaying.  
13:37 30  
13:37 31 Q. And a very real observable sign of a gambler is gambling  
13:37 32 for continuous extensive periods?  
13:37 33  
13:37 34 A. It can be one of the signs, yes.  
13:37 35  
13:37 36 Q. I want to draw your attention back to the policy which  
13:37 37 presently applies, which in all relevant respects is the same as the  
13:37 38 policy which applied at the date of this letter.  
13:37 39  
13:37 40 So that is, Commissioner, tab --- that's the one.  
13:37 41  
13:37 42 COMMISSIONER: Tab 2. I got it.  
13:37 43  
13:37 44 MR FINANZIO: That's right. It's right, isn't it, that in no  
13:37 45 iteration of the policies that have been authorised by you or  
13:38 46 Mr Overman is there any reference to the period of continuous  
13:38 47 breaks?

13:38 1  
13:38 2 A. Just having seen what has been presented, not having had  
13:38 3 a look at this very recently, I understand that to be the case.  
13:38 4  
13:38 5 Q. Well, the words would bear it out. The words --- scroll  
13:38 6 through the document, if you wouldn't mind. I would like the  
13:38 7 answer to the question.  
13:38 8  
13:38 9 Nowhere in any of Crown's policies is there a reference to the  
13:38 10 period of breaks being 2 hours or 3 hours or whatever they might  
13:38 11 be?  
13:39 12  
13:39 13 A. No. The only reference to breaks is if the policy, if the  
13:39 14 member reaches the mark of now 18 hours and previously 24  
13:39 15 hours of what that break might need to be.  
13:39 16  
13:39 17 Q. Yes. So just go to paragraph 2 there. In fact what the  
13:39 18 policy requires the RGA to do is to check ratings of 12 hours or  
13:39 19 greater, doesn't it?  
13:39 20  
13:39 21 A. Yes.  
13:39 22  
13:39 23 Q. The policy is inconsistent, isn't it, with what you told the  
13:39 24 VCGLR? The RGA only goes --- the RGA checks ratings at 12  
13:39 25 hours or greater. That's 12 hours of continuous play, isn't it?  
13:39 26  
13:39 27 A. That's 12 hours as recorded under not having had  
13:40 28 significant play within that 12-hour period. Significant breaks, I  
13:40 29 beg your pardon, in that 12-hour period.  
13:40 30  
13:40 31 Q. But it doesn't record that the breaks could be as great as 2  
13:40 32 hours does it?  
13:40 33  
13:40 34 A. No, it does not.  
13:40 35  
13:40 36 Q. I want to just draw your attention to the letter again, so if  
13:40 37 we could just go back to that and onto the same page, if we could.  
13:40 38 You told the VCGLR in this letter that:  
13:40 39  
13:40 40 *Further alerts are received and acted upon at a minimum*  
13:40 41 *at the 12 and 20 hour mark.*  
13:40 42  
13:40 43 Where does it say that in the policy that Crown has in the  
13:41 44 administration of the Play Periods?  
13:41 45  
13:41 46 A. It does not say it in those words, no, Mr Finanzio.  
13:41 47

13:41 1 Q. In fact, the way the policy reads, the first trigger for the  
13:41 2 RGA to take any action is at 12 hours or greater; correct?  
13:41 3  
13:41 4 A. Yes.  
13:41 5  
13:41 6 Q. Last time we were all together you gave some evidence in  
13:41 7 answer to some questions that my learned friend asked, and I  
13:41 8 want to take you to that evidence. If we could bring up transcript  
13:41 9 P1439, which I think, Commissioner, is in your bundle at tab 16,  
13:42 10 17, or 18, from recollection.  
13:42 11  
13:42 12 COMMISSIONER: There is a transcript on each of those. Give  
13:42 13 me the page number again?  
13:42 14  
13:42 15 MR FINANZIO: 1439.  
13:42 16  
13:42 17 COMMISSIONER: Thanks. COM.000.9990.1761.  
13:43 18  
13:43 19 MR FINANZIO: Thank you, Commissioner. Sorry, there has  
13:43 20 been a bit of a ---  
13:43 21  
13:43 22 COMMISSIONER: That is transcript page 1439.  
13:43 23  
13:43 24 MR FINANZIO: Thank you.  
13:43 25  
13:43 26 Do we have that?  
13:43 27  
13:43 28 A. Not yet, no.  
13:43 29  
13:43 30 COMMISSIONER: COM.0004.9990.1761.  
13:44 31  
13:44 32 MR FINANZIO: Thank you.  
13:44 33  
13:44 34 I take you to line 18. Mr Borsky was asking you some questions  
13:44 35 about a document, the daily operation reports, which for present  
13:44 36 purposes are not important. He asked you a question at line 24:  
13:44 37  
13:44 38 *Question: If you assume in this example that the RGA*  
13:44 39 *was also informed that there had only been 10 minutes of*  
13:44 40 *play, even though 17 hours on site, would you expect the*  
13:44 41 *RGA nevertheless to go and make an observation or not?*  
13:45 42  
13:45 43 See that?  
13:45 44  
13:45 45 A. I do.  
13:45 46  
13:45 47 Q. So the premise of the question is 10 minutes of play but 17



13:45 1 hours on 17.  
13:45 2  
13:45 3 A. Mm-hmm.  
13:45 4  
13:45 5 Q. You say:  
13:45 6  
13:45 7 *Answer: We would like to see an observation, just in case*  
13:45 8 *there had been no use of the card in that time.*  
13:45 9  
13:45 10 Let's just pause there for a minute. 10 minutes of play in  
13:45 11 a 17-hour period is not 10 minutes of continuous ratings, is it?  
13:45 12  
13:45 13 A. No.  
13:45 14  
13:45 15 Q. So that answer that you gave was completely wrong?  
13:45 16  
13:45 17 A. In this --- I see that there, yes.  
13:45 18  
13:45 19 Q. And then you said:  
13:45 20  
13:45 21 *Answer: We would like to see an observation, just in case*  
13:45 22 *there had been no use of the card in that time.*  
13:45 23  
13:45 24 You are talking about uncarded play, aren't you?  
13:45 25  
13:45 26 A. Yes, I am.  
13:45 27  
13:45 28 Q. I won't find any reference to your desire to see  
13:45 29 an observation in the Play Periods Policy, will I?  
13:46 30  
13:46 31 A. From my recollection, no, Mr Finanzio.  
13:46 32  
13:46 33 Q. The answer is just "no", isn't it? The Play Periods doesn't  
13:46 34 use --- doesn't apply to uncarded play; correct?  
13:46 35  
13:46 36 A. From my recollection, yes, no.  
13:46 37  
13:46 38 Q. You've given answers about how the Play Period is meant  
13:46 39 to work ---  
13:46 40  
13:46 41 COMMISSIONER: Can I go back a little bit. If you look at the  
13:46 42 previous page, ends in 1760, where I was trying to work out what  
13:46 43 PP, Play Period 17 or PP24 means. And your answer, just have  
13:46 44 a look at it from line 10, you say that the alert comes on from  
13:47 45 time on site, but that's not correct, is it? It does not come on time  
13:47 46 on site, it comes on at 12 hours' continuous play provided there is  
13:47 47 no 2-hour break in the 12 hours' continuous play or 17 hours or

13:47 1 20 hours. It's really the alert has nothing to do at all with time on  
13:47 2 site, does it?  
13:47 3  
13:47 4 A. It records from time on site, Mr Commissioner.  
13:47 5  
13:47 6 COMMISSIONER: No, the alert. The alert has nothing to do  
13:47 7 with time on site. The alert is only concerned with continuous  
13:47 8 play for a specific period.  
13:47 9  
13:47 10 A. Mr Commissioner, yes, it is inclusive of that book end of  
13:47 11 time on site as well.  
13:47 12  
13:47 13 COMMISSIONER: When somebody gets a PP alert, just to be  
13:47 14 clear about this, when an RGA gets a PP alert, the RGA is being  
13:48 15 told in the PP alert, or whatever the Webex message is, time of  
13:48 16 continuous play?  
13:48 17  
13:48 18 A. It's within the first card-in to that time when it is  
13:48 19 recorded ---  
13:48 20  
13:48 21 COMMISSIONER: I don't care --- (overspeaking) ---  
13:48 22  
13:48 23 A. --- time?  
13:48 24  
13:48 25 COMMISSIONER: Yes, I get that. It is when a person is at the  
13:48 26 casino rather than at Luna Park? So the person is at the casino  
13:48 27 and the alert tells the Responsible Gaming Officer the time of  
13:48 28 continuous play, not the time on site?  
13:48 29  
13:48 30 A. That they are at the casino, yes. They are using ---  
13:48 31  
13:48 32 COMMISSIONER: No, don't muck with my question.  
13:48 33  
13:48 34 A. Sorry, i'm misunderstanding you ---  
13:48 35  
13:48 36 COMMISSIONER: My question is, the alert is time of --- the  
13:48 37 RGA is being told, time of continuous play. So if the RGA gets  
13:49 38 an alert that says 12, 15 or 20 hours, the RGA is being told  
13:49 39 continuous play is 12 hours, or 15 hours or 20 hours?  
13:49 40  
13:49 41 A. Yes, without that break, yes.  
13:49 42  
13:49 43 COMMISSIONER: I accept, without that break. Thank you.  
13:49 44  
13:49 45 A. Yes.  
13:49 46  
13:49 47 MR FINANZIO: You've given some evidence about how you

13:49 1 think the policy applies, but a good measure of how the policy  
13:49 2 applies is what your staff do in application of the policy, isn't it?

13:49 3

13:49 4 A. Yes.

13:49 5

13:49 6 Q. Well, now I would like to take you to the evidence of  
13:49 7 Employee No. 7. That is transcript reference commencing  
13:49 8 page P-1059, which is COM.0004.0013.0097. That's the front  
13:50 9 page, 1059.

13:50 10

13:50 11 COMMISSIONER: It ends at 1053. That's it. Yes.

13:50 12

13:50 13 MR FINANZIO: I want to take you through this carefully. I  
13:50 14 want to say something to you at the end of it. We'll go through  
13:50 15 each question starting at line 34:

13:50 16

13:51 17 Question: So some players play carded?

13:51 18

13:51 19 Answer: Yes.

13:51 20

13:51 21 Question: And some play uncarded?

13:51 22

13:51 23 Answer: Yes.

13:51 24

13:51 25 Question: If a player is playing carded, you receive alerts  
13:51 26 when they have been gambling for certain periods of time,  
13:51 27 right?

28

29 Answer: Yes.

30

31 Question: Those times I think kick in at 12 hours, so 12  
32 hours is the first alert?

33

13:51 34 Answer: Yes.

13:51 35

13:51 36 Question: The next alert is 15 hours?

13:51 37

13:51 38 Answer: Yes.

13:51 39

13:51 40 Question: Seventeen hours after that?

13:51 41

13:51 42 Answer: Yes.

13:51 43

13:51 44 Question: Eighteen hours?

13:51 45

13:51 46 Answer: Yes.

13:51 47

13:51 1 You see the answers each time?  
13:51 2  
13:51 3 A. Yes.  
13:51 4  
13:51 5 Q. Line 17:  
13:51 6  
13:51 7 Question: Do you now receive alerts after 18 hours, at 20  
13:51 8 *and 24, and whatnot?*  
13:51 9  
13:51 10 *Answer: Yes.*  
13:51 11  
13:51 12 *Question: When does it stop? What number does it stop*  
13:51 13 *at?*  
13:51 14  
13:51 15 *Answer: I believe at 24 hours.*  
13:51 16  
13:51 17 *Question: Just to help us, is that system called Splunk,*  
13:51 18 *the system through which you get your SMSs?*  
13:51 19  
13:52 20 The evidence, you can see there, is that it comes in on the work  
13:52 21 phone.  
13:52 22  
13:52 23 A. Mm-hmm.  
13:52 24  
13:52 25 Q. Line 39:  
13:52 26  
13:52 27 Question: So we are clear, when you get your alert, does  
13:52 28 *it include a patron name?*  
13:52 29  
13:52 30 *Answer: Yes.*  
13:52 31  
13:52 32 *Question: And a photo or not a photo?*  
13:52 33  
13:52 34 *Answer: No photo.*  
13:52 35  
13:52 36 *Question: Does it include duration of play?*  
13:52 37  
13:52 38 *Answer: Yes.*  
13:52 39  
13:52 40 *Question: Does it tell you the location?*  
13:52 41  
13:52 42 *Answer: Yes.*  
13:52 43  
13:52 44 *Question: Does it tell you anything else?*  
13:52 45  
13:52 46 *Answer: The patron's Crown Rewards number.*  
13:52 47

13:52 1 Just pause there for a moment. If someone had put their card in at  
13:52 2 minute 1 and taken it out, and an alert came up 12 minutes later,  
13:52 3 there being no play in the intervening 12-hour period, are you  
13:52 4 saying that an RGA would go out at the 12-hour mark and look  
13:52 5 for a person who played for 1 minute at the beginning of the  
13:52 6 12-hour period where there was no photo or no other way of  
13:53 7 identifying them?

13:53 8  
13:53 9 A. No. No, I'm not.

13:53 10  
13:53 11 Q. Okay. What about if they'd played for 8 hours but not had  
13:53 12 a two-hour break? Would they go and look for them then?

13:53 13  
13:53 14 A. It would only come up at the 12-hour mark to say they  
13:53 15 hadn't had a break.

13:53 16  
13:53 17 Q. So it comes up at the 12-hour mark and sends them to the  
13:53 18 location?

13:53 19  
13:53 20 A. (Nods head).

13:53 21  
13:53 22 Q. Going to line 20:

13:53 23  
13:53 24 Question: At the end of each of your shifts, you write  
13:53 25 *down all of interactions in your daily operating report?*

13:53 26  
13:53 27 Answer: *That would be done throughout the shift.*

13:53 28  
13:54 29 .....

13:54 30  
13:54 31 Question: *I understand. An interaction that goes into the*  
13:54 32 *daily operating report can include you speaking to*  
13:54 33 *someone?*

13:54 34  
13:54 35 Answer: *Yes.*

13:54 36  
13:54 37 Question: *But it can also include you if you were*  
13:54 38 *standing and observing someone gambling, you would put*  
13:54 39 *that in even though you hadn't spoken to them?*

13:54 40  
13:54 41 You see that?

13:54 42  
13:54 43 A. I do.

13:54 44  
13:54 45 Q. Then we will leave it there. Can I suggest to you that the  
13:54 46 evidence of that RGA stands completely consistent with the way  
13:54 47 the policy is written?

13:54 1  
13:54 2 A. In a sense of?  
13:54 3  
13:54 4 Q. That the first alert, that they act when they receive the  
13:54 5 12-hour alert.  
13:54 6  
13:54 7 A. Yes, when they receive the alert, yes. Yep.  
13:54 8  
13:54 9 Q. When they receive an alert of 12 hours of continuous  
13:55 10 ratings?  
13:55 11  
13:55 12 A. For the Play Periods Policy, yes. (Nods head).  
13:55 13  
13:55 14 Q. So let me take you now to the transcript of the other  
13:55 15 exchange that you had with my learned friend on the last  
13:55 16 occasion, and that is transcript reference 1439 to 1440.  
13:55 17 COM.0004.990.1647. Page 1439. I want to start at 1439 at the  
13:56 18 bottom of the page. Can I start at line 36, Mr Borsky says:  
13:56 19  
13:56 20 *Mr Borsky: And if I may, Ms Bauer, you said "time on*  
13:56 21 *site" a number of times, but that is not precise either, is*  
13:57 22 *it?*  
13:57 23  
13:57 24 *Answer: (Nods head).*  
13:57 25  
13:57 26 *Question: It is time from the first card-in to the latest*  
13:57 27 *card-in; is that correct?*  
13:57 28  
13:57 29 *Answer: Yes, you are right. It is the parlance we use.*  
13:57 30 *They could be anywhere, they may be on site or they may*  
13:57 31 *be elsewhere, yes.*  
13:57 32  
13:57 33 *Question: Yes, I know that is your parlance, but for the*  
13:57 34 *Commission's benefit and for the purpose of your*  
13:57 35 *evidence being clear, tell me if this is correct, "PP17"*  
13:57 36 *does not necessarily mean 17 hours of continuous play;*  
13:57 37 *correct?*  
13:57 38  
13:57 39 *Answer: That's right, yes.*  
13:57 40  
13:57 41 *Question: It does not even necessarily mean 17 hours*  
13:57 42 *onsite; correct?*  
13:57 43  
13:57 44 *Answer: That's right.*  
13:57 45  
13:57 46 *Question: It means at a certain point in time there was*  
13:57 47 *carded play, and 17 hours later, or more, there is more*

13:57 1 *carded play; correct?*

13:57 2

13:57 3 *Answer: That's right.*

13:57 4

13:57 5 *Question: And in that scenario, regardless of how much*  
13:58 6 *play there was in fact in the period, you expect your RGAs*  
13:58 7 *to go and make an observation?*

13:58 8

13:58 9 *Answer: That's right.*

13:58 10

13:58 11 Can I suggest to you, on the basis of your evidence given today,  
13:58 12 that your answers to those questions are totally wrong.

13:58 13

13:58 14 A. I think this was responsive to the PP17 alert coming up  
13:58 15 which would come up in the circumstances as described earlier.  
13:58 16 So I think it is confusing, yes.

13:58 17

13:58 18 Q. Can we agree that an RGA will not go and tend to someone  
13:58 19 who has not been playing continuously for 17 hours?

13:58 20

13:58 21 A. If the alert comes up, the RGA may go, a gaming person  
13:58 22 may go, or it may, depending on what the information is  
13:58 23 available.

13:58 24

13:58 25 Q. I will ask my question again. The Play Periods Policy is  
13:59 26 concerned with continuous play, is it not?

13:59 27

13:59 28 A. Without appropriate breaks, yes.

13:59 29

13:59 30 Q. Pardon me. Without appropriate breaks. Those breaks are  
13:59 31 not defined in the Play Period Policy itself; correct?

13:59 32

13:59 33 A. Yes.

13:59 34

13:59 35 Q. It's not concerned with time on site, just hanging around,  
13:59 36 stick my card in at the beginning of the 17 hours and then do  
13:59 37 nothing for 17 hours and then put the card in again. It is not  
13:59 38 concerned with that, is it?

13:59 39

13:59 40 A. Mr Finanzio, it is complex in terms of time on site and time  
13:59 41 on device, and I think --- but to your question, if I may ask you to  
13:59 42 repeat it, please.

13:59 43

13:59 44 Q. Let me put it this way: Crown now has a system that can  
13:59 45 tell with some precision how long a player has actually played;  
13:59 46 correct?

13:59 47

- 13:59 1 A. Yes.
- 13:59 2
- 13:59 3 Q. Crown has made a decision which it has recorded in its
- 13:59 4 written policy about when the RGAs will interact with the player,
- 14:00 5 based on what that system, what the technical system tells them;
- 14:00 6 correct?
- 14:00 7
- 14:00 8 A. Yes.
- 14:00 9
- 14:00 10 Q. An RGA will not go to interact with a player unless the
- 14:00 11 alert tells them that they have played continuously for the
- 14:00 12 specified period?
- 14:00 13
- 14:00 14 A. Without a continuous break, yes.
- 14:00 15
- 14:00 16 Q. Right. The RGA will not go and visit or attempt to interact
- 14:00 17 with a customer where there has been no play within the specified
- 14:00 18 period other than one interaction at the beginning and one
- 14:00 19 interaction at the end, correct?
- 14:00 20
- 14:00 21 A. Unless being responsive to other observable signs, no.
- 14:00 22
- 14:00 23 Q. Right. And that is the scenario dealt with by how you treat
- 14:00 24 uncarded play?
- 14:00 25
- 14:00 26 A. At this point, yes.
- 14:00 27
- 14:00 28 Q. The evidence I've just taken you to, that you gave on the
- 14:00 29 last occasion, you would agree with me is inconsistent with the
- 14:00 30 policy that you, that Crown has approved; correct?
- 14:00 31
- 14:01 32 A. Yes. (Nods head).
- 14:01 33
- 14:01 34 Q. You would agree that it is inconsistent with what the RGAs
- 14:01 35 actually do, based on the evidence of Employee 7?
- 14:01 36
- 14:01 37 A. Yes.
- 14:01 38
- 14:01 39 Q. It is inconsistent with what Crown told the VCGLR in
- 14:01 40 relation to Recommendation 8(a) that I took you to a little while
- 14:01 41 ago?
- 14:01 42
- 14:01 43 A. With respect to that, Mr Finanzio, the timings have
- 14:01 44 changed, so there is some differences in that ---
- 45
- 46 Q. Apart from the differences in timing, there is no difference
- 47 in the methodology, that's correct, isn't it?



1  
2  
14:01 3 A. Yes.  
14:01 4  
14:01 5 Q. It is also inconsistent with you, with, I suggest to you, basic  
14:01 6 common sense, why would you have RGAs running around the  
14:01 7 place looking for people who haven't gambled continuously based  
14:02 8 on the way your policy is drafted?  
14:02 9  
14:02 10 A. I agree the drafting is confusing.  
14:02 11  
14:02 12 Q. Yes, well, the drafting actually tells your employees what to  
14:02 13 do, doesn't it?  
14:02 14  
14:02 15 A. Yes.  
14:02 16  
14:02 17 Q. So if you want the employees to do what you intend them to  
14:02 18 do, you have to be very careful about how you articulate their  
14:02 19 task?  
14:02 20  
14:02 21 A. Yes.  
14:02 22  
14:02 23 Q. And you also have to monitor what they do.  
14:02 24  
14:02 25 A. Yes.  
14:02 26  
14:02 27 Q. To ensure that the written word is being given effect to in  
14:02 28 the way you intend?  
14:02 29  
14:02 30 A. Yes.  
14:02 31  
14:02 32 Q. It is right, isn't it, that you really don't know what they do?  
14:02 33  
14:02 34 A. In respect of this particular element there does seem to be  
14:02 35 some confusion but I would have to agree with you, yes.  
14:02 36  
14:02 37 Q. The confusion is yours?  
14:02 38  
14:02 39 A. Yes.  
14:02 40  
14:03 41 Q. I want to move on now.  
14:03 42  
14:03 43 COMMISSIONER: Before you do that, the discussion about  
14:03 44 time on site, and the notion of time on site on the last occasion we  
14:03 45 were hearing your evidence came up because there was reference  
14:03 46 to the record sheet that showed that messages went to RGAs at  
14:03 47 certain periods. That was the genesis of the discussion.

14:03 1  
14:03 2 A. Right.  
14:03 3  
14:03 4 COMMISSIONER: You will remember that. And you were  
14:04 5 shown a series of entries which showed a message going to an  
14:04 6 RGA, or at least the response of the RGA, PP12, PP15, PP17,  
14:04 7 and so on, they were various records made by the RGA in the  
14:04 8 record sheet explaining what they had done.  
14:04 9  
14:04 10 A. Yes.  
14:04 11  
14:04 12 Q. The questions really were to suggest that --- or the nature of  
14:04 13 the questions sought to suggest that having RGAs going out after  
14:04 14 12, 15 or 17 hours was allowing people to gamble for far too  
14:04 15 long? That is what was being suggested?  
14:04 16  
14:04 17 A. Right. Yes.  
14:04 18  
14:04 19 COMMISSIONER: Is it fair to say that you sought to deflect that  
14:04 20 by saying it's not 15 hours or 17 hours of continuous gambling ---  
14:04 21 I think we looked at one that had 24 hours of continuous  
14:05 22 gambling --- you sought to deflect the impact of that by saying it  
14:05 23 is not periods of continuous gambling, it is time on site.  
14:05 24  
14:05 25 A. I may have said --- I may have tried to deflect that, yes,  
14:05 26 Mr Commissioner, I was hoping to be clear on that. It is  
14:05 27 a combination of both time playing but it is also breaks, yes.  
14:05 28  
14:05 29 COMMISSIONER: But the truth is, the reality is, that the  
14:05 30 message that goes to the RGA through the Splunk system via the  
14:05 31 Webex phone, goes to the RGAs' phone, is recording or telling  
14:05 32 the RGA "Time of continuous gambling (less appropriate  
14:05 33 breaks)".  
14:05 34  
14:05 35 A. Yes, I suppose.  
14:05 36  
14:05 37 COMMISSIONER: Rather than time on site? No? Your answer  
14:05 38 is no to that?  
14:05 39  
14:05 40 A. Yes, Mr Commissioner.  
14:06 41  
14:06 42 MR FINANZIO: Last time I asked you some questions about the  
14:06 43 Crown Board's proposed enhancements in relation to RSG  
14:06 44 matters. Do you recall that?  
14:06 45  
14:06 46 A. I do.  
14:06 47

14:06 1 Q. It arose from a letter that was sent to the Commission on,  
14:06 2 I think, 24 May just before commencement of the hearings in  
14:06 3 relation to RSG, do you recall that?  
14:06 4  
14:06 5 A. Yes.  
14:06 6  
14:06 7 Q. I asked you a series of questions about your involvement in  
14:06 8 that process. And no criticism of you, they were questions  
14:06 9 without notice to you, but you couldn't recall the detail of your  
14:06 10 involvement, the detail of your involvement in particular.  
14:06 11  
14:06 12 A. In relation to the submission, the final submission to the  
14:06 13 board? I'm trying to recall. I haven't read my transcript.  
14:06 14  
14:06 15 Q. Let's not bother with that. I am going to take you to it.  
14:06 16 Your evidence in this matter was prepared on --- your evidence,  
14:07 17 the statement of evidence that you prepared was dated 5 May  
14:07 18 2021.  
14:07 19  
14:07 20 A. Right.  
14:07 21  
14:07 22 Q. Correct?  
14:07 23  
14:07 24 A. Yes.  
14:07 25  
14:07 26 Q. On 24 March this Commission conducted an initial public  
14:07 27 hearing; did you know that?  
14:07 28  
14:07 29 A. The ---  
14:07 30  
14:07 31 Q. The first hearing.  
14:07 32  
14:07 33 A. That first hour or so? Yes.  
14:07 34  
14:07 35 Q. I want to take you --- and at that hearing it was made clear  
14:07 36 that the Commission would be considering Crown's response to  
14:07 37 Responsible Gaming matters.  
14:07 38  
14:07 39 A. I recall, yes.  
14:07 40  
14:07 41 Q. I take you to CRW.510.073.3931.  
14:07 42  
14:08 43 Your tab 6, Commissioner.  
14:08 44  
14:08 45 That's an email from you on 24 March at about 12.49 where what  
14:08 46 you are doing in that email, I'm happy for you to just read through  
14:08 47 it. Can you see that there?

14:08 1  
14:08 2 A. I can.  
14:08 3  
14:08 4 Q. Advise the operator if you need it moved up.  
14:08 5  
14:08 6 A. I see it. I remember it.  
14:08 7  
14:08 8 Q. On that day --- pardon me, you tell me when you are  
14:08 9 finished looking at it.  
14:08 10  
14:08 11 A. (Nods head).  
14:08 12  
14:08 13 Q. On that day you were communicating with Mr Blackburn  
14:08 14 about the anticipated budget elements for the RG component of  
14:08 15 the business; correct?  
14:08 16  
14:08 17 A. That's right.  
14:08 18  
14:08 19 Q. You are there talking about \$150,000 for the upkeep of  
14:09 20 Play Periods, and \$350,000 for other items.  
14:09 21  
14:09 22 It is right, isn't it, that up to that point there had been no  
14:09 23 discussions about Responsible Service of Gaming enhancements  
14:09 24 that you were involved in responding to this Commission; is that  
14:09 25 so?  
14:09 26  
14:09 27 A. This email pertains purely to the budget requirements, yes.  
14:09 28  
14:09 29 Q. Yes, but before 24 March you had no discussions with  
14:09 30 Mr Blackburn or any other members of the board, or any other  
14:09 31 members of senior management concerning Responsible Service  
14:09 32 of Gaming enhancements that appeared in the 24 May letter?  
14:09 33  
14:09 34 A. There had been discussions at the Responsible Gaming  
14:09 35 Committee --- Board Committee, so the Crown Resorts  
14:09 36 Responsible Gaming Committee, in relation to the work that had  
14:09 37 been completed in response to the Responsible Gaming Advisory  
14:10 38 Panel review, recommendations and those sorts of things. So ---  
14:10 39 and this one purely relates to what budget requirements we had to  
14:10 40 be able to implement some of the elements we would like to,  
14:10 41 which have since changed as well.  
14:10 42  
14:10 43 Q. Let's go to CRW.510 --- I will tender that email,  
14:10 44 Commissioner.  
14:10 45  
14:10 46 COMMISSIONER: Email from Ms Bauer to Steve Blackburn,  
14:10 47 24 March 2021, Exhibit 210.

14:10 1  
2  
3 **EXHIBIT #RC0210 - EMAIL FROM MS SONJA BAUER**  
4 **TO MR STEVE BLACKBURN DATED 24 MARCH 2021**  
5  
6  
14:10 7 MR FINANZIO: Tab 7, CRW.510.073.3979. That's an email  
14:11 8 chain. We'll start at the end. If you could scroll down. That is  
14:11 9 an email chain commencing 27 March 2021; do you see that?  
14:11 10  
14:11 11 A. Mm-hmm.  
14:11 12  
14:11 13 Q. You are cc'd on it. Or included on it later. Can I get you to  
14:11 14 slide down further to the next page. That is an email from Helen  
14:11 15 Coonan to Professor Horvath. What was Professor Horvath's role  
14:11 16 at that time?  
14:11 17  
14:11 18 A. In relation to my interactions with him, he was the chair of  
14:11 19 the Crown Resorts Responsible Gaming Committee.  
14:11 20  
14:11 21 Q. Can you see that the email says:  
14:11 22  
14:11 23 *[Could] you arrange for CR to have a comprehensive*  
14:11 24 *briefing on all of our initiatives/status/of RG across our*  
14:12 25 *Properties please including a report to the Board from the*  
14:12 26 *heads of each property.*  
14:12 27  
14:12 28 *It would be good to hear also from our advisory people*  
14:12 29 *on this.*  
14:12 30  
14:12 31 *I met the head of Sydney last week .....*  
14:12 32  
14:12 33 Then you get an email on 27 March, could we scroll up, where  
14:12 34 Professor Horvath asks you to arrange:  
14:12 35  
14:12 36 *..... ASAP a chronological report including our meetings*  
14:12 37 *with Costello and Anna Bardsely.*  
14:12 38  
14:12 39 *This needs to be quite comprehensive as it looks to be*  
14:12 40 *a major focus of the commission how we have responded*  
14:12 41 *to reviews.*  
14:12 42  
14:12 43 Do you see that?  
14:12 44  
14:12 45 A. I do.  
14:12 46  
14:12 47 Q. And:

14:12 1  
14:12 2 *We also need to focus on how we deal with harmed*  
14:12 3 *gamblers and what steps we take to protect them.*  
14:12 4  
14:12 5 *Can you and I have a first draft by Easter then aim to*  
14:12 6 *brief the board at no later than 14/4 and put Alex on*  
14:13 7 *notice. Sorry very short time frame.*  
14:13 8  
14:13 9 You say in the response:  
14:13 10  
14:13 11 *I will get onto this and brief Luke, Melanie and Rowan.*  
14:13 12  
14:13 13 Luke is a reference to Luke Overman, the head of Responsible  
14:13 14 Gaming in Melbourne?  
14:13 15  
14:13 16 A. (Nods head).  
14:13 17  
14:13 18 Q. Melanie, I think is Perth?  
14:13 19  
14:13 20 A. Yes.  
14:13 21  
14:13 22 Q. And Rowan is Sydney?  
14:13 23  
14:13 24 A. Yes.  
14:13 25  
14:13 26 Q.  
14:13 27  
14:13 28 *Will get the first draft to you by Easter and will be in*  
14:13 29 *touch if we require assistance;*  
14:13 30  
14:13 31 Can I take you to the next document ---  
14:13 32  
14:13 33 COMMISSIONER: Can we ---  
14:13 34  
14:13 35 MR FINANZIO: Sorry, tender that.  
14:13 36  
14:13 37 COMMISSIONER: Email chain ending in an email from  
14:13 38 Ms Bauer to John Horvath, 27 March 2021. I guess it's Exhibit  
14:13 39 211.  
14:13 40  
14:13 41  
14:13 42 **EXHIBIT #RC0211 - EMAIL CHAIN ENDING IN**  
14:13 43 **AN EMAIL FROM MS SONJA BAUER TO PROFESSOR**  
14:13 44 **JOHN HORVATH DATED 27 MARCH 2021**  
14:13 45  
14:13 46  
14:13 47 MR FINANZIO: Next email, tab 8, Commissioner,

14:13 1 CRW.510.073.3981. Again, that is an email chain. Can we go to  
14:14 2 the bottom.

14:14 3

14:14 4 The bottom email is an email from Ms Korsanos to Helen  
14:14 5 Coonan:

14:14 6

14:14 7 Subject: A 'harm-production factory': Crown Casino  
14:14 8 *faces scrutiny over problem gambling*".

14:14 9

14:14 10 And then the next email is on 28 March 2021, John Horvath:

14:14 11

14:14 12 *Hi*

14:14 13

14:14 14 *Helen would like us to address these issues also please.*

14:14 15

14:14 16 And then your reply to him:

14:14 17

14:14 18 *Thank you John, will do.*

14:14 19

14:14 20 I think what is attached is an article from the Guardian  
14:14 21 Newspaper. Is that your recollection?

14:14 22

14:15 23 A. Yes, it is.

14:15 24

14:15 25 Q. So it is right that on or about 28 March, you received some  
14:15 26 invitations to get into the question of Responsible Gambling  
14:15 27 directly from Board members; correct?

14:15 28

14:15 29 A. I was being asked to provide information, yes.

14:15 30

14:15 31 Q. And information directly in response to newspaper articles  
14:15 32 about this Commission, and Crown's response to problem  
14:15 33 gambling?

14:15 34

14:15 35 A. Yes, to that Guardian article and, from my recollection,  
14:15 36 chronology of Crown's response to gambling or responsible and  
14:15 37 problem gambling.

14:15 38

14:15 39 Q. Can I take you now to the next one.

14:15 40

14:15 41 COMMISSIONER: Before you do that, I will mark the email  
14:15 42 chain ending with an email from Ms Bauer to John Horvath 28  
14:15 43 March 2021 as Exhibit 212.

14:15 44

45

46 **EXHIBIT #RC0212 - EMAIL CHAIN ENDING WITH AN**  
47 **EMAIL FROM MS SONJA BAUER TO PROFESSOR**

1       **JOHN HORVATH DATED 28 MARCH 2021**

2

3

14:16 4       MR FINANZIO: Commissioner, are you --- tab 9 of your folder,  
14:16 5       Commissioner. CRW.510.073.3982.

14:16 6

14:17 7       Before I go on, Commissioner, it's been brought to my attention  
14:17 8       that it might be appropriate to take a short break now.

14:17 9

14:17 10       COMMISSIONER: Okay. 10 minutes.

14:17 11

14:17 12       MR FINANZIO: Thank you.

14:17 13

14:17 14

14:17 15       **ADJOURNED** [2:17P.M.]

14:27 16

14:27 17

14:27 18       **RESUMED** [2:27P.M.]

14:27 19

14:27 20

14:27 21       COMMISSIONER: Thank you. Are you passing messages  
14:27 22       back?

14:27 23

14:27 24       MR BORSKY: Commissioner, in respect of document  
14:27 25       CRW.512.117.0019, which you had handed to me just after  
14:27 26       lunch, I'm instructed to confirm that in light of the confirmation  
14:27 27       of the position as to the scope of Crown's limited waiver of  
14:27 28       privilege, no claim for privilege is pressed over this document.

14:27 29

14:27 30       COMMISSIONER: Good.

14:27 31

14:27 32       MR BORSKY: Which I now hand back.

14:27 33

14:27 34       COMMISSIONER: Thank you very much. I will pass that  
14:27 35       information on.

14:27 36

14:27 37       For the record, I would say, regardless of what issue waiver did  
14:28 38       or didn't go, I don't regard a word in that document as privileged  
14:28 39       on any view.

14:28 40

14:28 41       MR BORSKY: Well, then I should respond, if I may. There is  
14:28 42       reference in that document to legal advice, not the substance of it,  
14:28 43       but reference to it --

14:28 44

14:28 45       COMMISSIONER: Correct.

14:28 46

14:28 47       MR BORSKY: --- and, and that document or a copy of it was



14:28 1 provided, as you know, to Allens for the purposes of Allens  
14:28 2 providing legal advice.  
14:28 3  
14:28 4 COMMISSIONER: I know that.  
14:28 5  
14:28 6 MR BORSKY: And so we may have something to say about  
14:28 7 whether a copy brought into existence for the purpose of  
14:28 8 providing legal professional advice is itself privileged, and we  
14:28 9 don't need to have that debate, but I don't want it suggested, with  
14:28 10 great respect, that it was a frivolous or unmeritorious claim, these  
14:28 11 things --- within the confines of great pressures on all sides in this  
14:28 12 process, people are doing their conscientious best.  
14:29 13  
14:29 14 COMMISSIONER: I'd never complained about that, all I wanted  
14:29 15 to know was whether it was privileged or not ---  
14:29 16  
14:29 17 MR BORSKY: And it's not.  
14:29 18  
14:29 19 COMMISSIONER: --- and my view was that it was plainly not  
14:29 20 privileged, I just wanted to confirm that, and it is confirmed.  
14:29 21  
14:29 22 MR BORSKY: I have nothing further to say.  
14:29 23  
14:29 24 COMMISSIONER: Thank you, Mr Borsky.  
14:29 25  
14:29 26 Mr Finanzio.  
14:29 27  
14:29 28 MR FINANZIO: Going back to the subject we were talking  
14:29 29 about before, to be clear, remember before 24 March, the first  
14:29 30 email I took you to, you were involved in examination of  
14:29 31 RSG-related matters; that's true, isn't it?  
14:29 32  
14:29 33 A. Examination for the purposes of the Royal Commission?  
14:29 34  
14:29 35 Q. Firstly, for the purposes of fulfilling your task and your  
14:29 36 job --  
14:29 37  
14:29 38 A. Yes.  
14:29 39  
14:29 40 Q. --- you had already had the report from the independent  
14:29 41 panel that had been appointed to Crown; correct?  
14:29 42  
14:29 43 A. Yes.  
14:29 44  
14:29 45 Q. And you were generally occupied by looking at  
14:29 46 RSG-related matters; is that so?  
14:29 47

14:29 1 A. And anticipating the requirements of the Royal  
14:29 2 Commission, yes.  
14:29 3

14:30 4 Q. When you say "anticipating the requirements of the Royal  
14:30 5 Commission", this Royal Commission?  
14:30 6

14:30 7 A. Yes, well, there is two Royal Commissions, one in Perth  
14:30 8 and one in Melbourne, and just generally being occupied with  
14:30 9 what the Royal Commissions may point to, yes.  
14:30 10

14:30 11 Q. So you would be able to point us to work that you did  
14:30 12 before 24 March in anticipation of this Royal Commission, will  
14:30 13 you?  
14:30 14

14:30 15 A. Not to my recollection but, generally, it has been  
14:30 16 announced there is a Royal Commission, so, yes.  
14:30 17

14:30 18 Q. Am I right in saying that your work in preparation for the  
14:30 19 requirements of this Royal Commission began for the first time  
14:30 20 after 24 March? When you received directions from Professor  
14:30 21 Horvath?  
14:30 22

14:30 23 A. Yes. Yes.  
14:30 24

14:30 25 Q. We were at the point in the chronology of tab 9,  
14:31 26 CRW.510.073.3982. There, you receive another email --- again  
14:31 27 it's a chain, so go to the bottom, please. First email in the chain,  
14:31 28 I will say it for now. That is an email from Helen Coonan to  
14:31 29 Ms Korsanos, Ms Halton, Professor Horvath, Mr Morrison,  
14:31 30 which says:  
14:31 31  
14:31 32

14:31 33 Subject: Victorian royal commission into Crown Casino  
14:31 34 *seeks public submissions on problem gambling crime*  
14:31 35  
14:31 36 *Here is a list of complaints/criticisms we need to look at*  
14:31 37 *and have regard to to discuss .....*  
14:31 38

14:32 39 Then there seems to be a link to an article with The Australian?  
14:32 40

14:32 41 A. I see that, yes.  
14:32 42

14:32 43 Q. We go to the next one to Professor Horvath, which is 29  
14:32 44 March, so later that day, in fact, not that long after, half an hour  
14:32 45 later, to you and to Xavier Walsh, cc'ing all of the others:  
14:32 46  
14:32 47 Can we ensure we know what complaints we have had

14:32 1           *and how we manage them. May need a compendium.*  
14:32 2  
14:32 3           *Also we all need a historical and current list of what*  
14:32 4           *promotional activities we typically undertake.*  
14:32 5  
14:32 6           *Need to be in the pack.*  
14:32 7  
14:32 8           *Thanks*  
14:32 9  
14:32 10          And you say in your email back to him:  
14:32 11  
14:32 12           *Thank you. John, will follow up.*  
14:32 13  
14:32 14          A. I see that.  
14:33 15  
14:33 16          COMMISSIONER: An email chain ending with an email ending  
14:33 17          from Ms Bauer to Professor Horvath and Mr Walsh dated 29  
14:33 18          March 2021, Exhibit 213.  
14:33 19  
20  
21          **EXHIBIT #RC0213 - EMAIL CHAIN ENDING WITH**  
22          **AN EMAIL ENDING FROM MS SONJA BAUER TO**  
23          **PROFESSOR JOHN HORVATH AND MR XAVIER**  
24          **WALSH DATED 29 MARCH 2021**  
25  
26  
14:33 27          MR FINANZIO: Next tab in your bundle, tab 10, Commissioner,  
14:33 28          CRW.510.073.3978.  
14:33 29  
14:34 30          This is an email from you to Mr Blackburn.  
14:34 31  
14:34 32          A. Yes.  
14:34 33  
14:34 34          Q. It follows on, it appears, from a conversation you had  
14:34 35          earlier, where you say that you've attached the recent missives  
14:34 36          from the directors and responses, Toni --- I'm assuming that is  
14:34 37          Ms Korsanos ---  
14:34 38  
14:34 39          A. Yes.  
14:34 40  
14:34 41          Q.  
14:34 42  
14:34 43                 ..... also called me to check in.  
14:34 44  
14:34 45                 *John called me today requesting information about:*  
14:34 46  
14:34 47                 - *Uncarded play monitoring and use of FRT*

14:34 1  
14:34 2           - *For Prof Alex B .....*  
3  
4     That is Blaszczyński, is that right?  
5  
6     A. Yes.  
7  
8     Q.  
9  
10           ..... to submit his and the Panel's current knowledge into  
11           *uncarded play monitoring and Alex mentioned he could*  
12           *incorporate the FRT request above into the response.*  
13  
14           - *Whether we should establish a Customer Advisory*  
15           *Group.*  
16  
14:34 17     These are all things, am I right in saying, that you were reporting  
14:34 18     to Mr Blackburn concerning work that you were doing in  
14:34 19     preparation for the Royal Commission?  
14:34 20  
14:34 21     A. This was information that had been requested by Professor  
14:35 22     John Horvath, and I was updating Mr Blackburn on what the  
14:35 23     request had been from the Board members.  
14:35 24  
14:35 25     Q. Yes. When it says there:  
14:35 26  
14:35 27           As discussed - docs for Allen's and Director contact.  
14:35 28  
14:35 29     Who is Allan there?  
14:35 30  
14:35 31     A. So which --- it's docs for Allens and director contact. So  
14:35 32     I was attaching the recent information that I had received from  
14:35 33     directors in responses for his information, so he had recently  
14:35 34     became my line manager and I was updating him on other contact  
14:35 35     I had had from Board members, including the conversation I had  
14:35 36     with Professor John Horvath.  
14:35 37  
14:35 38     Q. Thank you. The request for information had come from  
14:35 39     directors for the purpose of preparing a response to the news  
14:36 40     about the Royal Commission and the fact the Royal Commission  
14:36 41     would be looking into Responsible Gaming, that was your  
14:36 42     understanding at the time?  
14:36 43  
14:36 44     A. I assumed at the time that would be the case, yes. I can't  
14:36 45     speak for the directors, but that's what I assumed.  
14:36 46  
14:36 47     Q. Mr Blackburn is your supervisor, is that right?

14:36 1  
14:36 2 A. He is, yes.  
14:36 3  
14:36 4 Q. But he's not experienced in the Responsible Service of  
14:36 5 Gaming is he?  
14:36 6  
14:36 7 A. Not in his previous iteration, but he is coming on board  
14:36 8 with it with information provided, yes.  
14:36 9  
14:36 10 Q. He's not an expert in Responsible Gaming like you are; he's  
14:36 11 relying on you, isn't he?  
14:36 12  
14:36 13 A. He is not an expert, to my mind, yes.  
14:36 14  
14:36 15 Q. And he is relying on you?  
14:36 16  
14:36 17 A. Yes.  
14:36 18  
14:36 19 MR FINANZIO: I tender that.  
14:36 20  
14:36 21 COMMISSIONER: Exhibit 214, email from Ms Bauer to Steve  
14:36 22 Blackburn, 30 March 2021.  
14:37 23  
24  
25 **EXHIBIT #RC0214 - EMAIL FROM MS SONJA BAUER**  
26 **TO MR STEVE BLACKBURN DATED 30 MARCH 2021**  
27  
28  
14:37 29 MR FINANZIO: The next email is longer, CRW.510.073.3986 if  
14:37 30 we go to the bottom of the email, we will work backwards.  
14:37 31  
14:37 32 COMMISSIONER: On the first page or earlier page? The  
14:37 33 bottom is the bottom of the first page or third page.  
14:37 34  
14:37 35 MR FINANZIO: I'm talking about it as an email chain so want to  
14:37 36 go to the end of the chain and then work backwards.  
14:37 37  
14:37 38 It is an email from Natasha Stipanov?  
14:38 39  
14:38 40 A. Yes.  
14:38 41  
14:38 42 Q. What is her role at Crown?  
14:38 43  
14:38 44 A. General manager, corporate affairs, from memory.  
45  
46 Q. She received, it's the case, isn't it, a media request from The  
47 Australian which is set out there.

1  
2 A. I see that, yes.  
3  
14:38 4 Q. That is the first email on 30 March. That email gets passed  
14:38 5 on to others in the chain which ultimately come to you. Can we  
14:38 6 go to the top of the email now. You are cc'd --- you get sent an  
14:38 7 email by Helen Coonan on 30 March 2021 where you are  
14:38 8 specifically called out:  
9  
10 Sonja.  
11  
12 *Please provide detailed responses to these queries in the*  
13 *Board pack*  
14:39 14  
14:39 15 Your understanding is you are being asked to turn your mind to  
14:39 16 the queries made by The Australian, and to include those in the  
14:39 17 Board pack materials that would come to the Board later?  
14:39 18  
14:39 19 A. Yes.  
14:39 20  
14:39 21 Q. And you say at the top of that email:  
14:39 22  
14:39 23 *Thank you Helen, will do.*  
14:39 24  
14:39 25 A. Yes.  
14:39 26  
14:39 27 COMMISSIONER: Email chain ending with an email from  
14:39 28 Ms Bauer to Helen Coonan and others, 30 March 2021, Exhibit  
14:39 29 215.  
14:39 30  
31  
32 **EXHIBIT #RC0215 - EMAIL CHAIN ENDING WITH**  
33 **AN EMAIL FROM MS SONJA BAUER TO MS HELEN**  
34 **COONAN AND OTHERS DATED 30 MARCH 2021**  
35  
36  
14:39 37 MR FINANZIO: You will recall earlier that I drew your  
14:39 38 attention to your email to Melanie Faulks, Luke Overman and  
14:39 39 Rowan Cameron?  
14:39 40  
14:39 41 A. Mm-hmm.  
14:39 42  
14:39 43 Q. You were asking them to prepare a response, weren't you,  
14:39 44 to Responsible Gaming improvements that might be made on the  
14:39 45 premises across the --- entities across the different sites --  
14:39 46 enterprise-wide I think is the term that is used?  
14:39 47

14:40 1 A. Yes.  
14:40 2  
14:40 3 Q. They provided to you a report, didn't they?  
14:40 4  
14:40 5 A. Yes. From my recollection, yes.  
14:40 6  
14:40 7 Q. They provided you a report first on 20 April, and then  
14:40 8 a further iteration of the report in similar terms on 28 April?  
14:40 9  
14:40 10 A. I don't have it in front of me, Mr Finanzio. But I take your  
14:40 11 word.  
14:40 12  
14:40 13 Q. The next document is CRW.510.073.0848. Can you see  
14:41 14 that?  
14:41 15  
14:41 16 A. Yes, I think that is a different document than may have  
14:41 17 been requested in that previous chain of emails.  
14:41 18  
14:41 19 Q. Yes.  
14:41 20  
14:41 21 A. Yes.  
14:41 22  
14:41 23 Q. But it is nonetheless a document that was forwarded to you  
14:41 24 on 28 April ---  
14:41 25  
14:41 26 A. Yes.  
14:41 27  
14:41 28 Q. --- by the people who report to you; that is so?  
14:41 29  
14:41 30 A. Yes, that's right.  
14:41 31  
14:41 32 Q. It sets out the purpose and says:  
14:41 33  
14:41 34 *This paper has been prepared at the request of the Crown*  
14:41 35 *Resorts Responsible Gaming Board Sub-committee ..... on*  
14:41 36 *14 April 2021; the purpose of the paper is to provide the*  
14:41 37 *Committee with the considered recommendations of the*  
14:41 38 *Responsible Gaming General Managers .....*  
14:41 39  
14:41 40 So they are the people that sit beneath you?  
14:41 41  
14:41 42 A. Yes, that's right.  
14:41 43  
14:41 44 Q.  
14:41 45  
14:41 46 ..... in consultation with ..... Professor Alex Blaszczynski.  
14:41 47 *These resourcing and remuneration requirements are*

14:42 1 *deemed vital by the RGGMs for the Responsible Gaming*  
14:42 2 *Department if we are to achieve world's best practice in*  
14:42 3 *Responsible Gaming.*

14:42 4  
14:42 5 You see that?

14:42 6  
14:42 7 A. Yes, I do.

14:42 8  
14:42 9 Q. The paper is separated into three sections, organisational  
14:42 10 chart, resourcing and remuneration. Can I take you to the next  
14:42 11 page, it's in landscape. You've got it, look at that. It describes  
14:42 12 the existing organisational chart and the organisational structure  
14:42 13 proposed. I want to take you to some observations that your  
14:42 14 RGGMs made about resourcing which are on page 4 of the  
14:42 15 document. Top of the page, it says there:

14:42 16  
14:42 17 *Crown Resorts is committed to providing programs and*  
14:42 18 *initiatives to minimise harm and problem gambling*  
14:42 19 *behaviours through the provision of timely and effective*  
14:42 20 *assistance for customers who seek help. This commitment*  
14:43 21 *extends to ensuring the Responsible Gaming Centres are*  
14:43 22 *fully and appropriately staffed with specialist team*  
14:43 23 *members and subject matter experts who are available to*  
14:43 24 *provide support and assistance to customers 24 hours*  
14:43 25 *a day, seven days per week. To meet this commitment it is*  
14:43 26 *strongly recommended that RGA staffing levels be*  
14:43 27 *increased across all three properties.*

14:43 28  
14:43 29 You see that?

14:43 30  
14:43 31 A. I see that, yes.

14:43 32  
14:43 33 Q.

14:43 34  
14:43 35 An increase in advisors will address two critical key  
14:43 36 objectives:

14:43 37  
14:43 38 *- 24/7 Coverage --- Providing sufficient staffing levels to*  
14:43 39 *ensure our 24/7 RG Centres are substantially resourced*  
14:43 40 *at all times to provide optimum service delivery at each*  
14:43 41 *property. Previously, operations and service delivery*  
14:43 42 *have been severely diminished and sometimes even*  
14:43 43 *suspended when staffing levels have been insufficient due*  
14:43 44 *to personal leave, sick leave and resignation of staff.*  
14:43 45 *Such deficits directly impact Crown's ability to*  
14:44 46 *substantiate its commitment to provide timely support and*  
14:44 47 *expert assistance to our customers seeking such. This*



14:44 1 *also has a negative impact on our staff's health and*  
 14:44 2 *wellbeing and decreased job satisfaction when operating*  
 14:44 3 *under these conditions.*

14:44 4  
 14:44 5 Then it makes a comment about Perth which I won't take you to.  
 14:44 6 It deals with resourcing:

14:44 7  
 14:44 8 *Ensuring greater staffing levels will allow Advisors to be*  
 14:44 9 *available and present to immediately respond to and*  
 14:44 10 *meaningfully engage with customers or family members*  
 14:44 11 *requesting assistance and/or support, promptly attend to*  
 14:44 12 *responsible gaming incidents and face-to-face interaction*  
 14:44 13 *with staff reporting incidents or behaviours of concern.*  
 14:44 14 *This increase will permit the advisors significantly*  
 14:44 15 *greater time on the floor with a heightened*  
 14:44 16 *'ambassadorial presence' whilst proactively monitoring*  
 14:45 17 *and observing customer behaviour and interaction with*  
 14:45 18 *customers and staff.*

14:45 19  
 14:45 20 *Having a significantly greater floor presence reinforces*  
 14:45 21 *our commitment to responsible gaming and harm*  
 14:45 22 *minimisation practices whilst instilling a positive and*  
 14:45 23 *proactive culture by normalising frequent interactions by*  
 14:45 24 *advisors and embedding responsible gaming practices in*  
 14:45 25 *day-to-day operations for all staff and our customers.*

14:45 26  
 14:45 27 I suggest to you that that observation by your RGGMs  
 14:45 28 underscores the exact deficiency that was raised with you in  
 14:45 29 questions the last time; that at present, there is just simply  
 14:45 30 insufficient resources to apply the policies that you have in place.

14:45 31  
 14:45 32 A. This was prepared following the request by the Crown  
 14:46 33 Resorts Responsible Gaming Committee as to improvements that  
 14:46 34 may be achieved.

14:46 35  
 14:46 36 Q. I know why it was prepared, but I'm asking you whether or  
 14:46 37 not you agree that the observations of your RGGMs is  
 14:46 38 an indictment on the current level of service that the RGAs are  
 14:46 39 able to provide. And it is, isn't it?

14:46 40  
 14:46 41 A. My understanding from particularly the first paragraph  
 14:46 42 around staffing, et cetera, is actually something that has played  
 14:46 43 out not so much in the Melbourne property, and that because  
 14:46 44 Melbourne has actually more staff than any of the other  
 14:46 45 properties, so I would just like to reflect that.

14:46 46  
 14:46 47 However, with the information provided by the Responsible

14:46 1 Gaming General Managers, certainly it reads as though these are  
14:46 2 the necessary elements that would provide significant  
14:47 3 improvement to the operation.

14:47 4

14:47 5 Q. Let's go down and have a look. There is a table at the  
14:47 6 bottom of the page. Melbourne, existing, 12. Proposed increase,  
14:47 7 4, to a total of 16.

14:47 8

14:47 9 A. Yes.

14:47 10

14:47 11 Q. Do you know how the increases were calculated?

14:47 12

14:47 13 A. The increases from conversations with the general  
14:47 14 managers was basically to ensure that we had --- there were  
14:47 15 a couple of occasions on each property where there were staffing  
14:47 16 issues where perhaps there was sick leave, annual leave and  
14:47 17 short-term leave so that couldn't adequately be covered, so to  
14:47 18 ensure that we had adequate coverage of at least two people per  
14:47 19 shift in those properties ---

14:47 20

14:47 21 Q. Okay.

14:47 22

14:47 23 A. --- that is predominantly how that was calculated in answer  
14:47 24 to your question, Mr Finanzio.

14:47 25

14:47 26 Q. So it was not calculated by any quantitative metrics about  
14:47 27 what the actual need is to service the populations that walk  
14:47 28 through the casino?

14:47 29

14:48 30 A. The only conversation I had in relation to that was ---

14:48 31

14:48 32 Q. Answer my question: do you know whether it was  
14:48 33 calculated by any quantitative analysis of the actual need to  
14:48 34 service the people in the casino?

14:48 35

14:48 36 A. I don't know.

14:48 37

14:48 38 Q. It's also, over the page at 7 is also a recommendation to  
14:48 39 introduce a new position, the responsible gaming 2IC at  
14:48 40 Melbourne, one where one presently doesn't exist; correct?

14:48 41

14:48 42 A. Yes.

14:48 43

14:48 44 Q. And also proposed to increase staff by a new administration  
14:48 45 officer, one where one presently doesn't exist?

14:48 46

14:48 47 A. Sorry, are we still talking about Melbourne, Mr Finanzio, or

14:48 1 ---  
14:48 2  
14:48 3 Q. Yes, we are.  
14:48 4  
14:49 5 A. So an additional admin officer, yes.  
14:49 6  
14:49 7 Q. The idea underpinning those two additional staff members  
14:49 8 is that the work that is contemplated for the new 2IC and the new  
14:49 9 administrative officer, or new administration officer, presently  
14:49 10 needs to be done by the RGAs?  
14:49 11  
14:49 12 A. I'm not sure how specifically that is contemplated in this  
14:49 13 paper. I don't recall, Mr Finanzio.  
14:49 14  
14:49 15 Q. Do you remember on the last occasion the Commissioner  
14:49 16 asked you about the number of people that might go through the  
14:49 17 casino in a day? Do you remember that exchange?  
14:49 18  
14:49 19 A. I do.  
14:49 20  
14:49 21 Q. You started with 20 million and divided by 365, quick  
14:49 22 arithmetic, and came up with a number of about 63,000 a day.  
14:49 23 Do you remember that?  
14:49 24  
14:49 25 A. I remember.  
14:49 26  
14:49 27 Q. Do you remember he asked you whether or not fulfilling  
14:50 28 the obligations that the RGAs have was just impossible at those  
14:50 29 kind of numbers, and you agreed with him; do you remember  
14:50 30 that?  
14:50 31  
14:50 32 A. I remember the exchange, yes.  
14:50 33  
14:50 34 Q. Do you remember that you agreed with him that it was  
14:50 35 impossible?  
14:50 36  
14:50 37 A. I --- I --- I take it that's the case.  
14:50 38  
14:50 39 Q. If you don't remember, I can take you to the transcript.  
14:50 40  
14:50 41 A. No, no, I take it. If you raise it, it must be so.  
14:50 42  
14:50 43 Q. Later, Mr Borsky produced numbers which suggested that  
14:50 44 only 13,000 went through the casino rather than 63,000 on a daily  
14:50 45 basis. You did some calculation and produced a document which  
14:50 46 showed that. But that doesn't change your answer, does it?  
14:50 47

14:50 1 A. I believe at some point during, and I don't recall whether  
14:50 2 specifically at that point, so again taking that into consideration,  
14:51 3 that --- the type of model that is employed at Crown Resorts relies  
14:51 4 on the training of all staff and in particular training for gaming,  
14:51 5 et cetera, staff to refer customers, because not all gaming --- like  
14:51 6 a dealer, for example, can't have a meaningful interaction with  
14:51 7 a customer sitting at a table. So the referral model takes care of  
14:51 8 those elements, so the referral model exists which refers to the  
14:51 9 RGAs on site, so, yes, I think I've made ---

14:51 10

14:51 11 Q. The short point is, here, though, isn't it, that whether it is  
14:51 12 13,000 going through the place in a day or 63,000 people going  
14:51 13 through the place in a day, it is simply not possible to achieve the  
14:51 14 policy outcomes that you talk about in the Play Periods Policy, is  
14:51 15 it?

14:51 16

14:51 17 A. If --- well, the Play Periods Policy, as we discuss, relates  
14:51 18 predominantly to carded play, so that is a different set of  
14:51 19 circumstances, but other --

14:51 20

14:51 21 Q. It is even worse in relation to uncarded play, isn't it?  
14:51 22 Because you don't know where the people are or how long they  
14:52 23 have been gambling?

14:52 24

14:52 25 A. If we are not relying on the other observable signs.

14:52 26

14:52 27 Q. Relying on observable signs only in relation to uncarded  
14:52 28 players, you need people on the ground to see them who know  
14:52 29 what they are doing, correct?

14:52 30

14:52 31 A. Who are trained to effect those, yes.

14:52 32

14:52 33 Q. With 13,000 people going through the casino, and with  
14:52 34 only three RGAs at any one point in time, it is impossible to  
14:52 35 properly deliver Responsible Service of Gaming, isn't it?

14:52 36

14:52 37 A. I recall that I mentioned the training elements of all staff  
14:52 38 having the Responsible Service of Gaming training. So that  
14:52 39 contributes to the framework.

14:52 40

14:52 41 COMMISSIONER: I think part of the problem with that might  
14:52 42 be, Ms Bauer, that I've heard a lot of people from the floor who  
14:52 43 have undergone the training, some remember a bit of it, some  
14:52 44 remember a bit more, but hardly any of them actually do anything  
14:52 45 by way of implementing the policy.

14:52 46

14:52 47 A. I see.

14:52 1  
14:52 2 COMMISSIONER: In other words, it is the function of the  
14:53 3 RGAs, because that's their job, and the function of the drink staff  
14:53 4 and the other staff, they have other jobs to do, and although they  
14:53 5 might be trained in Responsible Gambling and looking for signs,  
14:53 6 the fact of life is they have plenty of other things to do to satisfy  
14:53 7 their principal tasks of their employment. So it leaves you in a bit  
14:53 8 of a bind, doesn't it?  
14:53 9  
14:53 10 A. Yes, Mr Commissioner. And I suppose it's that referral  
14:53 11 model so that they can continue to go on with those jobs. So  
14:53 12 referring it on to their manager ---  
14:53 13  
14:53 14 COMMISSIONER: Sure.  
14:53 15  
14:53 16 A. --- or to an RGA, will ensure that they can then, you know,  
14:53 17 take an easy action, from their perspective.  
14:53 18  
14:53 19 COMMISSIONER: If they do it and if they have time to do it.  
14:53 20  
14:53 21 A. Yes.  
14:53 22  
14:53 23 COMMISSIONER: Can I raise another issue with you before  
14:53 24 you go on. I wonder whether one problem is looking at it from  
14:53 25 the perspective of your position and where you sit. I wonder  
14:54 26 whether, doing your job, if you were just worrying about Crown  
14:54 27 Melbourne and not worried about Sydney or Perth or anywhere  
14:54 28 else, where the focus on centralising these kinds of functions  
14:54 29 doesn't work very well, you would be better off sitting at  
14:54 30 Melbourne, at the casino in Melbourne, oversight of that casino  
14:54 31 and forgetting everything else, to make sure that things are  
14:54 32 running properly at the Melbourne casino, if I'm looking at it  
14:54 33 from a Melbourne perspective, and I don't care what happens  
14:54 34 anywhere else. It just strikes me that your job is doubly hard, if  
14:54 35 not impossible, because you are looking after Responsible  
14:54 36 Gambling across the board rather than concentrating on what  
14:54 37 Victoria might be interested in, which is what is going on in  
14:54 38 Victoria, and indifferent. I don't use the word "indifferent" in  
14:55 39 a nasty sense, but you know what I'm looking at.  
14:55 40  
14:55 41 A. Thank you, Mr Commissioner. That's why Crown has  
14:55 42 a model of having General managers at each property that look  
14:55 43 after Responsible Gaming. What we do try to get to, Mr  
14:55 44 Commissioner, when we talk to Mr Finanzio's point earlier  
14:55 45 around having an enterprise solution is, is that we would like to  
14:55 46 have a standard across the property and employ that, which is  
14:55 47 where that group element comes. I take your point,

14:55 1 Mr Commissioner, yes.  
14:55 2  
14:55 3 COMMISSIONER: I understand the theory of it. But I just  
14:55 4 wonder whether having general managers on the floor, if I ask  
14:55 5 you this question, they report to you in this document because it is  
14:55 6 a requested --- you requested information, they said that staffing  
14:55 7 levels have been insufficient. On how many occasions did your  
14:55 8 Melbourne managers report to you in writing saying that staffing  
14:55 9 levels were insufficient in Melbourne? I want to know in writing.  
14:56 10 How many times did they say "we do not have the staff to do  
14:56 11 what we need to do"?  
14:56 12  
14:56 13 A. I would --- I do not recall, Mr Commissioner. In terms of  
14:56 14 the recent history of closure and we were closed for nine months  
14:56 15 in Melbourne, for example, and the way that the casino reopened  
14:56 16 actually ---  
14:56 17  
14:56 18 COMMISSIONER: I'm talking about before ---  
14:56 19  
14:56 20 A. Before that ---  
14:56 21  
14:56 22 COMMISSIONER: Before COVID, probably never?  
14:56 23  
14:56 24 A. I don't recall. Yes.  
14:56 25  
14:56 26 COMMISSIONER: No. Is that a good example of why  
14:56 27 centralised government doesn't work, or at least it is not working  
14:56 28 here?  
14:56 29  
14:56 30 A. In this context of reporting in writing, it doesn't appear to  
14:56 31 work, but, yep.  
14:57 32  
14:57 33 MR FINANZIO: Picking up on that, did you actually ask the  
14:57 34 RGA staff before this whether or not they feel under-resourced?  
14:57 35  
14:57 36 A. I did not personally, no.  
14:57 37  
14:57 38 Q. Page 7 of this document has the heading "Remuneration".  
14:57 39 On the next page there is a passage:  
14:57 40  
14:57 41 *Scrutiny of the RG Department remuneration identifies*  
14:57 42 *there is an alarming disparity compared to gaming*  
14:57 43 *department positions which we contend carry a lesser*  
14:57 44 *level of responsibility and job complexity compared to*  
14:57 45 *equivalent RG roles. The role of RG staff requires not*  
14:58 46 *only strong customer focus and service but a much*  
14:58 47 *broader skill set involving crisis management, tactical*

14:58 1 *negotiation and emergency response. It is not inaccurate*  
 14:58 2 *to think of an RGA as "Area Manager and Medic*  
 14:58 3 *combined". We contend that Crown needs to ascribe*  
 14:58 4 *comparable remuneration for RG and gaming if it truly*  
 14:58 5 *wants to reflect a substantial commitment to RG and to*  
 14:58 6 *once again establish Crown properties as world leaders*  
 14:58 7 *in responsible gaming. This will facilitate the attraction*  
 14:58 8 *and retention of high-quality staff with the skills .....*

14:58 9

14:58 10 To go on and do the very difficult job.

14:58 11

14:58 12 A. I see this, yes.

14:58 13

14:58 14 Q. That kind of observation from your RGGMs does reflect  
 14:58 15 an under-resourcing and lower --- well, it reflects a lower priority  
 14:58 16 in the business to staff dealing with Responsible Service of  
 14:59 17 Gaming; correct?

14:59 18

14:59 19 A. In my experience it's been difficult to do any of the ordinary  
 14:59 20 remuneration reviews, internal and external, with Responsible  
 14:59 21 Gaming roles as a matter of course. It is always difficult.  
 14:59 22 However, since this document was presented and refined for  
 14:59 23 a final presentation to the Board, these changes have actually  
 14:59 24 taken effect.

14:59 25

14:59 26 Q. So RGAs are now getting paid more?

14:59 27

14:59 28 A. Yes.

14:59 29

14:59 30 Q. There is finally an acknowledgement that it is an important  
 14:59 31 role that needs to be properly remunerated?

14:59 32

14:59 33 A. This was at the request to submit to the Board some of  
 14:59 34 those improvements, and this is what I asked the general  
 14:59 35 managers to put a document together, and this is their take on the  
 15:00 36 situation which was then subsequently presented to me via email.

15:00 37

15:00 38 Q. Bear with me for one moment. It's not one of the ---  
 15:00 39 increased remuneration for RGA staff is not one of the proposed  
 15:00 40 enhancements identified by Crown in its letter to this  
 15:00 41 Commission on 26 May. That is just simply an internal  
 15:00 42 improvement, is it?

15:00 43

15:00 44 A. I don't have that letter in front of me, Mr Finanzio. I think  
 15:00 45 there is a general review that was put together. I don't know  
 15:00 46 where it sits in the letter to the Commission. I'm sorry.

15:00 47

- 15:00 1 Q. All right. In any event, you've supervised the Responsible  
15:01 2 Service of Gaming area for many, many years.  
15:01 3
- 15:01 4 A. Yes.  
15:01 5
- 15:01 6 Q. And in all of that period it is right to say, isn't it, that the  
15:01 7 Gaming staff, as opposed to the Responsible Service of Gaming  
15:01 8 staff, were remunerated in a way that did not reflect --- sorry, the  
15:01 9 Responsible Service of Gaming staff were remunerated in a way  
15:01 10 which did not reflect the level of skill required for the tasks that  
15:01 11 they perform?  
15:01 12
- 15:01 13 A. There had been a number of reviews done in my time.  
15:01 14 When I say a number, I can recall one, if not two, in terms of the  
15:01 15 position description versus remuneration, and then most recently  
15:01 16 one last year, late last year, and then another one with this  
15:01 17 element here. So there had been reviews, reviews have been  
15:01 18 completed on the position descriptions, and there is an approach  
15:01 19 that is employed by the human resources team, that is, they use  
15:02 20 the particular metrics. So there has been reviews ---  
15:02 21
- 15:02 22 Q. Let me put it this way. See the paragraph that starts  
15:02 23 "Scrutiny" there, and the complaint or the reference to the need to  
15:02 24 properly remunerate; do you agree with that?  
15:02 25
- 15:02 26 A. I agree that there is a disparity compared with the gaming  
15:02 27 departments and it has always been the case, yes.  
15:02 28
- 15:02 29 Q. Do you agree that there shouldn't be such a disparity?  
15:02 30
- 15:02 31 A. I agree that it is positive to have moved to lesser disparity.  
15:02 32 Short answer, yes.  
15:02 33
- 15:02 34 Q. We're looking for the short answer.  
15:02 35
- 15:02 36 A. Sorry, yes.  
15:02 37
- 15:02 38 Q. If you can give a short answer. You agree that there  
15:02 39 shouldn't be that disparity?  
15:02 40
- 15:02 41 A. Yes.  
15:02 42
- 15:02 43 Q. In fact you agree that the Responsible Service of Gaming  
15:02 44 staff, like the RGAs, should be paid more to reflect the  
15:02 45 importance of the role that they undertake?  
15:02 46
- 15:02 47 A. Yes.



15:02 1  
15:02 2 Q. Is that a realisation that you've just come to?  
15:03 3  
15:03 4 A. No. No, this has been something, as I said, we've had  
15:03 5 reviews along the way.  
15:03 6  
15:03 7 Q. Is it the case in the reviews along the way you've always  
15:03 8 thought that the RGAs should be paid more but the business  
15:03 9 didn't do it?  
15:03 10  
15:03 11 A. Short answer, yes.  
15:03 12  
15:03 13 Q. And that reflects the business's priorities being gaming, not  
15:03 14 Responsible Service of Gaming?  
15:03 15  
15:03 16 A. That is a conclusion that could be drawn.  
15:03 17  
15:03 18 Q. I'm asking you if you draw that conclusion from your own  
15:03 19 knowledge of the organisation.  
15:03 20  
15:03 21 A. So my knowledge is that when you are looking to increase  
15:03 22 remuneration, is that there is a process that must be followed.  
15:03 23 However, in recent times I see that that process can also be  
15:03 24 different, so I agree right now the RG department is remunerated  
15:04 25 commensurately with the gaming department in terms of outputs.  
15:04 26  
15:04 27 Q. That is just not in any way responsive to the question I  
15:04 28 asked you. I am going to ask you again.  
15:04 29  
15:04 30 A. Sure.  
15:04 31  
15:04 32 Q. Did you have the view, over the time that you've been there,  
15:04 33 that the RGAs were not remunerated in an appropriate way  
15:04 34 because Crown prioritised gaming staff more than RGA?  
15:04 35  
15:04 36 A. I had the view that RG staff were not remunerated to the  
15:04 37 best possible ability. As to whether Crown had that view, I can't  
15:04 38 make that comment.  
15:04 39  
15:04 40 MR FINANZIO: Last couple of documents in this bundle. I will  
15:04 41 tender that document, Commissioner.  
15:04 42  
15:05 43 CRW.512.124.0063.  
15:05 44  
15:05 45 COMMISSIONER: Before we go to that, I will mark the  
15:05 46 document we were just looking at, Responsible Gaming  
15:05 47 Department Resourcing and Remuneration Review 20 April

15:05 1 2021, Exhibit 216.

15:05 2

3

4

**EXHIBIT #RC0216 - RESPONSIBLE GAMING  
DEPARTMENT RESOURCING AND REMUNERATION  
REVIEW DATED 20 APRIL 2021**

6

7

8

15:05 9 MR FINANZIO: The next email up on the screen is an email  
15:05 10 from Rowan Cameron to you dated 19 May, which says:

15:05 11

15:05 12 *Please find attached the urgently requested, hastily*  
15:05 13 *compiled but well-considered document that sets out all*  
15:06 14 *the areas for improvement in the gaming side of the*  
15:06 15 *Crown business in the quest to achieve best practice.*

15:06 16

15:06 17 That's 19 May; right?

15:06 18

15:06 19 A. (Nods head).

15:06 20

15:06 21 MR FINANZIO: I will tender that.

15:06 22

15:06 23 COMMISSIONER: Exhibit 217, email from Rowan Cameron to  
15:06 24 Ms Sonja Bauer, 19 May 2021.

15:06 25

26

27

**EXHIBIT #RC0217 - EMAIL FROM MR ROWAN  
CAMERON TO MS SONJA BAUER DATED 19 MAY 2021**

28

29

30

15:06 31 MR FINANZIO: The next document is CRW.512.124.0021.  
15:06 32 Did I say that too quickly?

15:06 33

15:07 34 That is an email chain, if we go to the bottom there, the first email  
15:07 35 at the bottom is an email on 19 May 2021:

15:07 36

15:07 37 *As requested .....*

15:07 38

15:07 39 See that there, that is an email from you to Steve Blackburn?

40

41

A. Mm-hmm.

42

43

Q.

44

15:07 45 *As requested, a high level summary of proposals as*  
15:07 46 *discussed.*

15:07 47

15:07 1 *I have advised the three Australian Resorts CEOs of the*  
15:07 2 *content and they are comfortable with the approach.*  
15:07 3  
15:07 4 *Lonnie has advised that he has a meeting with the*  
15:07 5 *Regulator next Tuesday, and it would be useful to have*  
15:07 6 *some feedback in relation to the Loyalty Program*  
15:07 7 *Review/Research component if any is available by then.*  
15:07 8  
15:07 9 *Let me know .....*  
15:07 10  
15:07 11 That is you forwarding on a document that contains the high-level  
15:08 12 summary of proposals which are the enhancements, correct?  
15:08 13  
15:08 14 A. I believe so. I don't see the bottom of it, but yes.  
15:08 15  
15:08 16 Q. Slide it up.  
15:08 17  
15:08 18 I think you also forward the same thing on to Mr Emery?  
15:08 19  
15:08 20 A. Yes, this one is to Mr Emery.  
15:08 21  
15:08 22 Q. Yes. Now, the document that is referred to is the next  
15:08 23 document.  
15:08 24  
15:08 25 COMMISSIONER: Hold on. Exhibit 218 will be email chain  
15:08 26 ending with an email from Ms Bauer to Mr Emery 20 May 2021.  
15:08 27  
28  
29 **EXHIBIT #RC0218 - EMAIL CHAIN ENDING WITH**  
30 **AN EMAIL FROM MS SONJA BAUER TO MR NICOLAS**  
31 **EMERY DATED 20 MAY 2021**  
32  
33  
15:08 34 MR FINANZIO: The next document is CRW.512.124.0064,  
15:09 35 which is the Crown Responsible Gaming Best Practice  
15:09 36 Recommendations May 2021. Just go to the end of that  
15:09 37 document, please. The authors of that document are your  
15:09 38 RGGMs?  
15:09 39  
15:09 40 A. That's right.  
15:09 41  
15:09 42 Q. The document contains in 10 paragraphs recommendations  
15:09 43 made for the purpose described, which was to bring Crown back  
15:09 44 to being world's best practice; do you recall? Is that so?  
15:09 45  
15:09 46 A. I recall that, yes.  
15:09 47

15:09 1 Q. Are you able to say whether all of the recommendations  
15:09 2 made by your RGGMs found their way into the enhancements  
15:10 3 proffered by the board on 26 May?

15:10 4  
15:10 5 A. Without seeing them in front of me, my recollection of the  
15:10 6 document is that it was a combination of proposals as well as  
15:10 7 existing points that we were working on already, so for example,  
15:10 8 things like the register upgrades and those sort of things. So not  
15:10 9 all of them would have been put into the document for the Board  
15:10 10 because they had been addressed, for example, in capex  
15:10 11 requirements and those sorts of things.

15:10 12  
15:10 13 Q. In any event, this is the document prepared by your  
15:10 14 RGGMs which reflected what you thought, because you endorsed  
15:10 15 it and passed it up the chain, were the recommendations that  
15:10 16 should be adopted; is that so?

15:10 17  
15:10 18 A. That was their recommendations, yes.

15:10 19  
15:10 20 COMMISSIONER: Exhibit 219, Responsible Gaming Best  
15:11 21 Practice Recommendations May 2021.

15:11 22  
23  
24  
25  
26  
27

**EXHIBIT #RC0219 - RESPONSIBLE GAMING BEST  
PRACTICE RECOMMENDATIONS - MAY 2021**

15:11 28 MR FINANZIO: Can I just be clear, when you say that was "the"  
15:11 29 recommendations, they were prepared by your RGGMs ---

15:11 30  
15:11 31 A. Yes.

15:11 32  
15:11 33 Q. --- but you endorsed them. They were also your  
15:11 34 recommendations, weren't they? They weren't just the  
15:11 35 recommendations?

15:11 36  
15:11 37 A. I don't recall the pathway from this, I will be honest there  
15:11 38 was a lot going on at that point in time in terms of that.

15:11 39  
15:11 40 COMMISSIONER: After you received the document, Ms Bauer,  
15:11 41 after you received the recommendations from your general  
15:11 42 managers, obviously you looked at it. Was there anything in  
15:11 43 there with which you disagreed?

15:11 44  
15:11 45 A. I would need to look at the document.

15:11 46  
15:11 47 COMMISSIONER: Have a quick look.

15:11 1  
15:11 2 A. But from my recollection, is that it had lots of elements that  
15:11 3 we were already addressing.  
15:11 4  
15:11 5 COMMISSIONER: I didn't ask that. I asked, was there anything  
15:12 6 there with which you disagreed? If there were elements that you  
15:12 7 were addressing, you might have agreed with some of them, I  
15:12 8 don't mind that, but I'm interested to know, is there anything here  
15:12 9 that you did not like or agree with?  
15:12 10  
15:12 11 A. My recollection is, no, there isn't. We tend to be very open  
15:12 12 with our discussions around what we ought to be doing in the  
15:12 13 future.  
15:12 14  
15:12 15 COMMISSIONER: Does that mean before the recommendations  
15:12 16 were reduced to writing by your general managers and delivered  
15:12 17 to you, you had discussions with them and there was consensus  
15:12 18 about what best practices should be recommended?  
15:12 19  
15:12 20 A. I don't --- I can't answer that from recollection,  
15:12 21 Mr Commissioner, but I'm talking about general conversations  
15:12 22 about where we are in terms of RG in each property and where  
15:12 23 we would like to take it. So for this document, I cannot be sure.  
15:12 24  
15:12 25 COMMISSIONER: All right, fair enough. I got the impression  
15:12 26 from an answer you gave a moment ago that some of these  
15:12 27 recommendations did not go to the Board.  
15:13 28  
15:13 29 A. I --- from my recollection is they may not have, but I can't  
15:13 30 be sure without seeing them, Mr Commissioner.  
15:13 31  
15:13 32 COMMISSIONER: We might check that. But were you  
15:13 33 involved in the process of selecting --- assuming some of them  
15:13 34 didn't go to the Board, were you involved in the process of  
15:13 35 selecting which should not be put before the Board?  
15:13 36  
15:13 37 A. I was involved in putting together documentation. As to  
15:13 38 your specific query, what should not go to the Board, I don't  
15:13 39 recall any, what should not go to the Board, so, no. I'm not quite  
15:13 40 sure how to answer that, Mr Commissioner.  
15:13 41  
15:13 42 COMMISSIONER: Well, I don't mean to be confusing, but if  
15:13 43 I've got a list of recommendations, there is ten, and if eight only,  
15:13 44 we'll check, if only eight went to the Board, somebody decided  
15:13 45 that two should be omitted. I'm trying to work out, if that  
15:14 46 happened, whether you were part of the decision-making process  
15:14 47 or somebody else.

15:14 1  
15:14 2 A. I could, quite possibly, depending on whether they were  
15:14 3 already in train, for example, I noticed the last one which I saw  
15:14 4 which was already ---  
15:14 5  
15:14 6 COMMISSIONER: Forget about the ones already in train. I'm  
15:14 7 trying to work out whether, if not every one of the ten  
15:14 8 recommendations was placed --- the way I think is like this. If  
15:14 9 there were ten recommendations and ten didn't go to the Board,  
15:14 10 somebody chose which of the ten should go to the Board.  
15:14 11  
15:14 12 A. And again I cannot be sure about my part in this. It first  
15:14 13 came to me, it's very well I may have reviewed those and then  
15:14 14 made decisions around what might go to the board or not  
15:14 15 depending what was already in train or not considered  
15:14 16 appropriate. That's the best I can answer, Mr Commissioner.  
15:14 17  
15:14 18 COMMISSIONER: Have a quick look at the list. Tell me which  
15:14 19 ones you think are not appropriate for the Board.  
15:15 20  
15:15 21 A. So the first one is something that we had been discussing,  
15:15 22 so the Play Periods has gone to the board.  
15:15 23  
15:15 24 COMMISSIONER: I didn't ask that. I wanted to know which  
15:15 25 one you think is inappropriate for the Board.  
15:15 26  
15:15 27 A. Sorry ---  
15:15 28  
15:15 29 MR BORSKY: I'm sorry to interrupt you, Commissioner, but so  
15:15 30 far Ms Bauer has only been shown the first one and why she's  
15:15 31 only answered the first one. She hasn't seen the entirety of the  
15:15 32 document. It's been a very theoretical.  
15:15 33  
15:15 34 COMMISSIONER: No, good, just have a quick look at the three  
15:15 35 pages. We'll get the operator let you go through it slowly.  
15:15 36  
15:15 37 Look at the whole document. Go to page 2.  
15:15 38  
15:16 39 A. At a high level, these recommendations which found  
15:16 40 themselves being expressed in recommendations to the Board,  
15:16 41 or ---  
15:16 42  
15:16 43 COMMISSIONER: At the moment which ones I'm asking which  
15:16 44 you don't agree with.  
15:16 45  
15:16 46 A. Cashless gaming, we've had conversations about the loyalty  
15:16 47 programs. That went to the Board as well.

15:16 1  
15:16 2 I agree with turnover-based commission, bonus rewards for hosts,  
15:16 3 I believe that has not been the case for some time.  
15:16 4  
15:16 5 The removal of stipulated nominated time periods for  
15:16 6 self-excluding customers, the only reason I would hesitate on that  
15:16 7 is that is a very --- and that is Recommendation 10 of the Sixth  
15:16 8 Review, so we would need to be cautious about making any  
15:17 9 changes to recommendations and the subsequent implementation  
15:17 10 about any changes to the time periods for self-excluding  
15:17 11 customers.  
15:17 12  
15:17 13 7, the welfare, withdrawal of licence, that's a refinement of  
15:17 14 a current process, so around having a revocation process, I agree  
15:17 15 with that.  
15:17 16  
15:17 17 The entry registration, by default through COVID that is almost  
15:17 18 happening through the registration of COVID. So I think these  
15:17 19 are interlinked with if you had a mandatory carded play element,  
15:17 20 that it would be linked and certainly the integrated IT solution, I  
15:17 21 agree with that. And a national gambling exclusion register, yes.  
15:17 22  
15:17 23 COMMISSIONER: Okay. Thanks.  
15:17 24  
15:17 25 A. Agree with all of those.  
15:17 26  
15:17 27 MR FINANZIO: Last topic.  
15:17 28  
15:18 29 In the course of your research and review of materials and  
15:18 30 knowledge of the RGA function, you've no doubt looked at  
15:18 31 various RG models around the world?  
15:18 32  
15:18 33 A. Yes.  
15:18 34  
15:18 35 Q. The Responsible Gaming Centre was one of the first of its  
15:18 36 kind, wasn't it? At Crown?  
15:18 37  
15:18 38 A. We say it was a world first at Melbourne, yes.  
15:18 39  
15:18 40 Q. Not everyone has one, has a Responsible Gaming Centre  
15:18 41 now, does it? Not every casino has a Responsible Gaming  
15:18 42 Centre?  
15:18 43  
15:18 44 A. Not in the same manner as Crown, but often very similar.  
15:18 45  
15:18 46 Q. That model was picked up --- the Responsible Gaming  
15:18 47 Centre --- are you familiar --- withdraw that.

- 15:18 1  
15:18 2 Are you familiar with the Canadian approach which employs or  
15:19 3 deploys Responsible Gaming Centres in their casinos?  
15:19 4  
15:19 5 A. Do you mean the Game Sense model?  
15:19 6  
15:19 7 Q. Yes.  
15:19 8  
15:19 9 A. I'm familiar with that. It is in a couple of the jurisdictions  
15:19 10 in Canada and has been deployed in North America as well.  
15:19 11  
15:19 12 Q. It is a feature, isn't it, I might have the name wrong, but it is  
15:19 13 a feature, isn't it, that the Responsible Gaming function is not  
15:19 14 actually performed by the casino operator itself but outsourced to  
15:19 15 an independent third party?  
15:19 16  
15:19 17 A. So, what I know, Mr Finanzio, for example, in Ontario they  
15:19 18 operate Responsible Gaming Centres which are not operated by  
15:19 19 casinos, they are operated by --- well, the State being the owner  
15:19 20 --- ultimately the licence holder of casinos. When I refer to Game  
15:19 21 Sense, I'm aware of a program that was developed by the British  
15:19 22 Lottery Cooperation in --- British Columbia Lottery Cooperation,  
15:20 23 so it is called Game Sense, and there are hubs on casino gaming  
15:20 24 floors. And in my experience, those hubs on the casino gaming  
15:20 25 floors in Canada and latterly adopted in a couple of other casino  
15:20 26 chains in the USA, they are information centres, and they --- I  
15:20 27 don't have knowledge entirely of every single jurisdiction but my  
15:20 28 awareness is that in the most part they are run by casino staff.  
15:20 29 However, it depends on the jurisdiction. It depends on the  
15:20 30 particular legislation in each jurisdiction where they operate,  
15:20 31 whether it is something that is so conducted there.  
15:20 32  
15:20 33 Q. I'm asking what you know about Responsible Gaming  
15:20 34 Centres like the one you have being operated by independent  
15:20 35 third parties, so not by the casino operator. Are you familiar with  
15:20 36 those models?  
15:20 37  
15:20 38 A. Only for Canada.  
15:20 39  
15:20 40 Q. Right. And can I ask you whether or not such an approach  
15:21 41 has ever been considered by Crown?  
15:21 42  
15:21 43 A. The Canadian model is run by what might be possibly in  
15:21 44 Victoria to be considered the Victorian Responsible Gambling  
15:21 45 Foundation equivalent. So, no, Crown had not considered that.  
15:21 46  
15:21 47 Q. Is the reason that Crown hasn't considered it because it can't



15:21 1 identify a body who could be the independent third party? Let me  
15:21 2 withdraw that and ask the question a different way.

15:21 3

15:21 4 A. Yeah.

15:21 5

15:21 6 Q. Have your inquiries about third party provision of  
15:21 7 Responsible Gaming services led you to have a view about  
15:21 8 whether or not a third party operating that kind of service is  
15:22 9 an appropriate way to deal with Responsible Service of Gaming?  
15:22 10 Or you just haven't looked at it close enough?

15:22 11

15:22 12 A. No, I've looked at it close enough over a number of years,  
15:22 13 Mr Finanzio. For example, there is such a variety of approaches  
15:22 14 in different jurisdictions. It is really difficult. I know you are  
15:22 15 after a "yes" or "no" answer.

15:22 16

15:22 17 Q. Not now. I was before, but I don't mind now.

15:22 18

15:22 19 A. So, from this perspective, for example, when we were  
15:22 20 implementing the third-party exclusion system and had been  
15:22 21 looking at it prior to the requirement for Recommendation 11 of  
15:22 22 the Sixth Review, that is potentially one of the elements that  
15:22 23 might best be served by a third-party operator to be truly  
15:22 24 independent.

15:22 25

15:22 26 I'm aware that in other jurisdictions like Singapore, the  
15:22 27 self-exclusion and the third-party exclusion program is run  
15:22 28 entirely by the State. I'm also aware that you can spend 24 hours  
15:22 29 on the gaming floor in Singapore because you paid your entry fee,  
15:23 30 and there you are. So, from that perspective, each model would  
15:23 31 sit differently in each jurisdiction. I've certainly turned my mind  
15:23 32 to whether what Crown does in the Responsible Service of  
15:23 33 Gaming, however, we are currently operating in an environment  
15:23 34 where this is how Crown approaches the framework for  
15:23 35 Responsible Gaming, and whilst there are elements which I think  
15:23 36 would be very much appropriately externally resourced, others  
15:23 37 have a very much a cultural element to ensure that, you know,  
15:23 38 whether it is taken up to the extent where we'd like it to is that,  
15:23 39 you know, it is something that Crown is delivering. So I have  
15:23 40 very much turned my mind to it and currently we are making  
15:23 41 continuous reviews and improvements to what we do.

15:23 42

15:23 43 MR FINANZIO: Thank you.

15:23 44

15:23 45 Thank you, Commissioner.

15:24 46

15:24 47 COMMISSIONER: Thank you.

15:24 1  
15:24 2 MR ROZEN: Nothing.  
15:24 3  
15:24 4 COMMISSIONER: Mr Gray?  
15:24 5  
15:24 6 MR GRAY: Nothing.  
15:24 7  
15:24 8 COMMISSIONER: Mr Borsky?  
15:24 9  
15:24 10 MR BORSKY: No, thank you, Commissioner.  
15:24 11  
15:24 12 COMMISSIONER: Ms Bauer, thank you very much. You are  
15:24 13 excused from further attendance.  
15:24 14  
15:24 15 A. Thank you, Mr Commissioner.  
15:24 16  
15:24 17  
15:24 18 **THE WITNESS WITHDREW**  
15:24 19  
15:24 20  
15:24 21 COMMISSIONER: Adjourned until tomorrow at 9.30.  
15:24 22  
15:24 23  
15:24 24 **HEARING ADJOURNED AT 3.24 PM UNTIL TUESDAY,**  
15:50 25 **22 JUNE 2021 AT 9.30 AM**

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| EXHIBIT #RC0204 - EMAIL CHAIN WITH ATTACHMENTS<br>ENDING WITH AN EMAIL FROM MR PETER HERRING TO MR<br>MARK MACKAY DATED 24 FEBRUARY 2021 (CONFIDENTIAL) | P-2135 |
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