
TRANSCRIPT OF PROCEEDINGS

COMMISSIONER: HON. RAY FINKELSTEIN AO QC

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

MELBOURNE, VICTORIA

09.34 AM, THURSDAY, 08 JULY 2021

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Counsel for the State of Victoria	MR PETER GRAY QC MR GLYN AYRES MS GEORGIE COLEMAN MS HELEN TIPLADY

09:34 1 COMMISSIONER: Good morning, everyone. Sit down, please.
09:35 2 Thank you.
09:35 3
09:35 4
09:35 5 **HOUSEKEEPING**
09:35 6
09:35 7
09:35 8 MR FINANZIO: I understand, Commissioner, that there is
09:35 9 a member of the photojournalistic press in the room who wants to
09:35 10 take a number of photos before we get underway.
09:35 11
09:35 12 COMMISSIONER: Did Mr Borsky arrange that?
09:35 13
09:35 14 MR FINANZIO: I couldn't possibly say. When he does that,
09:35 15 Mr Borsky wants to raise a matter with you.
09:35 16
09:35 17 COMMISSIONER: All right. Well, I assume it is okay for the
09:35 18 photographer to take photographs for about 60 seconds and that's
09:35 19 it. I don't think it is appropriate when evidence is given. Thanks,
09:35 20 Mr Finanzio.
09:35 21
09:35 22 Mr Borsky.
09:35 23
09:35 24 MR BORSKY: Commissioner, we this morning have been
09:35 25 notified by the Commission that it is proposed to continue to hear
09:35 26 evidence on Monday, rather than the previously notified plan of
09:36 27 evidence concluding tomorrow.
09:36 28
09:36 29 COMMISSIONER: Yes.
09:36 30
09:36 31 MR BORSKY: As we understand it, that most recent proposal is
09:36 32 on the basis of estimates of time that will be required for the
09:36 33 examination ---
09:36 34
09:36 35 COMMISSIONER: Ms Arzadon.
09:36 36
09:36 37 MR BORSKY: --- Ms Arzadon and also McKern from
09:36 38 McGrathNicol. We are obviously in the Commission's hands,
09:36 39 and I have spoken to my learned friends this morning and taken
09:36 40 soundings on estimates, and the aggregate estimates for those two
09:36 41 witnesses leaves me to submit with some confidence to you that
09:36 42 the evidence of both witnesses could be concluded within a day,
09:36 43 on Friday, and it does cause a number of us significant
09:36 44 embarrassment as we had made plans that we would not be here
09:37 45 on Monday.
09:37 46
09:37 47 COMMISSIONER: We organised witnesses over two days on

09:37 1 the basis that estimates given to Counsel Assisting made it clear
09:37 2 to them that we wouldn't fit both in one day and, therefore, we
09:37 3 thought that there was no alternative, but instead of having
09:37 4 a witness part-heard over the weekend, then we thought it made
09:37 5 sense. I don't want to make a point about this, but we asked for
09:37 6 Mr McGregor to come earlier to be short served so we could fit
09:37 7 everybody in without fail this week, and your solicitors said no so
09:37 8 we lost a day last week, and we are doing the best we can this
09:37 9 week. So there is a limit to how much you can complain.

09:37 10

09:37 11 MR BORSKY: Yeah, no, I wasn't meaning to complain. Just
09:37 12 that perhaps there has been cross wires or miscommunication
09:37 13 possibly from our side, but the estimates are such that two days
09:38 14 will not be required for those two witnesses. I speak not just on
09:38 15 behalf of Crown but on behalf of others with whom I've had
09:38 16 discussions this morning.

09:38 17

09:38 18 COMMISSIONER: We'll have to make some inquiries of the
09:38 19 witnesses now because we gave them those times. I assume it
09:38 20 can be fixed. We can do it like the High Court, the bell rings, and
09:38 21 you sit down even if you are mid-sentence. In other words, if the
09:38 22 parties say it is going to be take whatever the allocated time was
09:38 23 going to be ---

09:38 24

09:38 25 MR BORSKY: Yes.

09:38 26

09:38 27 COMMISSIONER: --- then that will be the allocated time, and
09:38 28 there will be no departure even if you are mid-question.

09:38 29

09:38 30 MR BORSKY: Thank you, we'd be grateful.

09:38 31

09:38 32 COMMISSIONER: Okay. I will have to get somebody to make
09:38 33 inquiries to make sure that both of them --- originally they were
09:38 34 both available for Friday. From what we understood was going
09:38 35 to happen --- we should be able to fix that. And I quite like being
09:39 36 able to tell you to be quiet. I have to apologise for the slur on you
09:39 37 for arranging the press; I now realise it was Mr Zwier, not you!
09:39 38 So I apologise.

09:39 39

09:39 40 MR BORSKY: Thanks, Commissioner.

09:39 41

09:39 42 MR FINANZIO: So long as it wasn't me!

09:39 43

09:39 44 COMMISSIONER: I didn't accuse you of misdeeds!

09:39 45

09:39 46 All right, let's get on with it.

09:39 47

09:39 1 MR FINANZIO: I call Helen Coonan. I'm not sure whether you
09:39 2 can hear us, Ms Coonan.

09:39 3
09:39 4 WITNESS: Yes, thank you, Commissioner. Good morning.

09:39 5
09:39 6 COMMISSIONER: Good morning to you. I will have you
09:39 7 sworn in first and then we will deal with the evidence.

09:39 8
09:39 9 WITNESS: Thank you.

09:39 10
09:39 11

09:39 12 **MS HELEN ANNE COONAN, AFFIRMED**

09:39 13
09:39 14

09:39 15 **EXAMINATION-IN-CHIEF BY MR FINANZIO**

09:40 16
09:40 17

09:40 18 MR FINANZIO: Ms Coonan, can you hear me well?

09:40 19
09:40 20

09:40 21 A. Yes I can, thank you, Mr Finanzio. Good morning to you
09:40 22 too.

09:40 23
09:40 24

09:40 25 Q. Good morning. Could you for the transcript please state
09:40 26 your full name?

09:40 27
09:40 28

09:40 29 A. Yes, Helen Anne Coonan.

09:40 30
09:40 31

09:40 32 Q. And your occupation.

09:40 33
09:40 34

09:40 35 A. Company director.

09:40 36
09:40 37

09:40 38 Q. Thank you. On 28 April a written statement was filed in
09:40 39 response to Request for Statement 007 on your behalf but I
09:40 40 understand that there are some corrections that you wish to make
09:41 41 to that statement; is that correct in?

09:41 42
09:41 43

09:41 44 A. Yes, please.

09:41 45
09:41 46

09:41 47 Q. I have a copy of the statement which is marked up and
09:41 48 tracked that states that the corrections applied 5 July 2021; do
09:41 49 you have that same document?

09:41 50
09:41 51

09:41 52 A. Yes, I do.

09:41 53
09:41 54

09:41 55 Q. Does that document contain all of the corrections that you
09:41 56 propose to the statement?

09:41 57

09:41 1 A. Yes, thank you. They were typographical and grammatical.
09:41 2
09:41 3 Q. Is that statement true and correct?
09:41 4
09:41 5 A. Yes, it is.
09:41 6
09:41 7 Q. Do you adopt it as your evidence?
09:41 8
09:41 9 A. Yes, I do.
09:41 10
09:41 11 MR FINANZIO: I tender that.
09:41 12
09:41 13 COMMISSIONER: Thank you. The statement of Helen Anne
09:41 14 Coonan dated 5 July 2021, I will have the updated date, will be
09:42 15 Exhibit 430.
09:42 16
09:42 17
09:42 18 **EXHIBIT #RC0430 - STATEMENT OF MS HELEN ANNE**
09:42 19 **COONAN DATED 5 JULY 2021**
09:42 20
09:42 21
09:42 22 MR FINANZIO: Ms Coonan, you joined the Board of Crown
09:42 23 Resorts as an independent, non-executive director in December
09:42 24 2011?
09:42 25
09:42 26 A. Yes.
09:42 27
09:42 28 Q. In October 2013 you became a director of the Crown
09:42 29 Resorts Foundation?
09:42 30
09:42 31 A. Yes.
09:42 32
09:42 33 Q. In January 2020 you became chairman of Crown Resorts; is
09:42 34 that so?
09:42 35
09:42 36 A. Yes.
09:42 37
09:42 38 Q. You became a member of the Board of Crown Melbourne
09:42 39 Ltd on 16 February 2021?
09:42 40
09:42 41 A. That's correct.
09:42 42
09:42 43 Q. Earlier this year you became the Executive Chair of Crown
09:42 44 Melbourne Ltd; is that right?
09:42 45
09:43 46 A. Yes, that's correct. Can I just ask, I'm just not certain of the
09:43 47 date I became the chair of the Foundation. My memory was that

09:43 1 it was a little later in 2015, but I could be wrong about that.
09:43 2
09:43 3 Q. Okay. Certainly you've been the Chair of that
09:43 4 Foundation ---
09:43 5
09:43 6 A. Yes.
09:43 7
09:43 8 Q. --- for a long time?
09:43 9
09:43 10 A. Well, since inception and the only one.
09:43 11
09:43 12 Q. Thank you. In your professional life you were a lawyer?
09:43 13
09:43 14 A. Yes.
09:43 15
09:43 16 Q. And a barrister?
09:43 17
09:43 18 A. Yes.
09:43 19
09:43 20 Q. Then you became a Senator of the Australian Parliament?
09:43 21
09:43 22 A. Yes.
09:43 23
09:43 24 Q. At the conclusion of your time in the Senate, that's when
09:43 25 you joined the board at Crown?
09:43 26
09:43 27 A. Yes, yes, that's right.
09:43 28
09:43 29 Q. I'm right in saying, aren't I, that at the time that you joined
09:43 30 the Board you had no prior experience with casinos?
09:44 31
09:44 32 A. No, I had educated myself about them but I had no direct,
09:44 33 practical experience.
09:44 34
09:44 35 Q. Had you sat on the Board of a publicly listed company
09:44 36 before?
09:44 37
09:44 38 A. Not at that time, no.
09:44 39
09:44 40 Q. How did you come to be on the board?
09:44 41
09:44 42 A. As I left the Parliament, I wished to proceed with
09:44 43 a portfolio and I was interested, of course, in joining companies.
09:44 44 Through a third party I had a conversation --- I was introduced
09:44 45 again to Mr Packer. I had known him slightly during my time as
09:44 46 a Minister in Parliament. Through a third party we had
09:44 47 a conversation about it and I expressed my interest in joining

- 09:45 1 Crown and he expressed his interest in having me join.
09:45 2
- 09:45 3 Q. When you say "he expressed his interest", Mr Packer
09:45 4 expressed his interest that you join Crown?
09:45 5
- 09:45 6 A. Yes, that's true.
09:45 7
- 09:45 8 Q. Can you explain the nature of your engagement with
09:45 9 Mr Packer before you joined the board of Crown?
09:45 10
- 09:45 11 A. Certainly. I knew Mr Packer professionally in my capacity
09:45 12 as the Minister for Communications. I dealt with Mr Packer
09:45 13 along with other media proprietors in that capacity when I was
09:45 14 undertaking some exploration into media reform. And I met
09:45 15 Mr Packer on possibly two or three occasions during the course
09:45 16 of my tenure as Communications Minister.
09:45 17
- 09:45 18 Q. And we are here talking about Mr James Packer?
09:45 19
- 09:46 20 A. Yes, and I also met Mr Kerry Packer in that connection as
09:46 21 well.
09:46 22
- 09:46 23 Q. I see. At the time you joined the Board, Crown was
09:46 24 considering the establishment of a second casino in Sydney;
09:46 25 correct?
09:46 26
- 09:46 27 A. Yes. Yes, I think it was more around 2013, yes.
09:46 28
- 09:46 29 Q. Yes, but the process began before 2013 when the approval
09:46 30 was given, the process of thinking about and developing the
09:46 31 strategy of establishing the second casino in Sydney started
09:46 32 earlier than that?
09:46 33
- 09:46 34 A. Yes, that's true.
09:46 35
- 09:46 36 Q. At around the time that you started on the Board?
09:46 37
- 09:46 38 A. Roughly about that. It may have had a genesis before my
09:46 39 time on the Board, but certainly when I joined the Board that was
09:46 40 in prospect.
09:46 41
- 09:46 42 Q. That second casino in Sydney needed land upon which to
09:47 43 establish?
09:47 44
- 09:47 45 A. Yes.
09:47 46
- 09:47 47 Q. The land upon which it was finally established, I think, was

- 09:47 1 originally designated for a different purpose, I think it was
09:47 2 a public park; that is so, isn't it?
09:47 3
- 09:47 4 A. I had no real involvement in the way in which it evolved
09:47 5 but I think it was originally intended to be a public park, I think
09:47 6 you are correct.
09:47 7
- 09:47 8 Q. And it needed a special licence under the NSW legislation,
09:47 9 didn't it? It ultimately ended up with a restricted licence; is that
09:47 10 correct?
09:47 11
- 09:47 12 A. Yes, that's correct.
09:47 13
- 09:47 14 Q. The process of getting that kind of land approval and
09:47 15 licence approval involved a lot of negotiation with Government at
09:47 16 the time; didn't it?
09:47 17
- 09:47 18 A. Yes, I imagine so. I didn't conduct any of them but I
09:47 19 imagine they would have.
09:47 20
- 09:47 21 Q. At that time the Government in NSW was a Liberal
09:48 22 government; that is true?
09:48 23
- 09:48 24 A. Yes.
09:48 25
- 09:48 26 Q. You had just left national politics in 2011 as a Liberal
09:48 27 Senator for NSW?
09:48 28
- 09:48 29 A. Yes, and the Liberal Government was in Opposition.
09:48 30
- 09:48 31 Q. I'm right, aren't I, that even though you might not have
09:48 32 conducted the negotiations in person, your appointment to the
09:48 33 Board in part gave the Board guidance and insight into the
09:48 34 workings of government that were critical to it at that time?
09:48 35
- 09:48 36 A. Well, I'd had no role in State Government, but I certainly
09:48 37 knew how the Federal Government worked.
09:48 38
- 09:48 39 Q. But you also knew people in NSW; you were a Senator for
09:48 40 NSW, correct?
09:48 41
- 09:48 42 A. Yes, I knew people in NSW, that's true.
09:48 43
- 09:48 44 Q. And you were well-connected to that environment; that's
09:48 45 true?
09:48 46
- 09:48 47 A. Yes, I would say that is correct.

09:48 1
09:49 2 Q. For the period that you sat on the Board, that Board set the
09:49 3 strategy --- that is the Crown Resorts Board --- set the strategy for
09:49 4 the whole group; didn't it?
09:49 5
09:49 6 A. Yes.
09:49 7
09:49 8 Q. And that included the establishment of Barangaroo?
09:49 9
09:49 10 A. Yes.
09:49 11
09:49 12 Q. It also included the pursuit of the Asian VIP market as
09:49 13 a strategy?
09:49 14
09:49 15 A. Yes.
09:49 16
09:49 17 Q. You weren't on the board of Crown Melbourne at that time;
09:49 18 correct?
09:49 19
09:49 20 A. Yes, I didn't join Crown Melbourne until this year.
09:49 21
09:49 22 Q. But the Crown Resorts Board had oversight of the matters
09:50 23 that Crown Melbourne were engaged in; didn't it?
09:50 24
09:50 25 A. Yes.
09:50 26
09:50 27 Q. For example, the VIP international strategy was
09:50 28 a Melbourne-based operation; correct?
09:50 29
09:50 30 A. Yes. Yes.
09:50 31
09:50 32 Q. But when big issues emerged or strategic issues emerged in
09:50 33 relation to the deployment of that strategy, that was a matter that
09:50 34 was elevated to the Crown Resorts Board?
09:50 35
09:50 36 A. Yes.
09:50 37
09:50 38 Q. You were on the Board during the period when news of the
09:50 39 China arrests broke in 2016?
09:50 40
09:50 41 A. Yes. Yes.
09:50 42
09:50 43 Q. When reports alleging Crown had relationships with junket
09:50 44 operators and others of questionable repute?
09:50 45
09:50 46 A. Yes.
09:50 47

- 09:50 1 Q. When concerns about money laundering were raised?
09:51 2
- 09:51 3 A. Yes. They were different time frames, but, yes.
09:51 4
- 09:51 5 Q. You were on the board during all of these periods?
09:51 6
- 09:51 7 A. Yes. Yes.
09:51 8
- 09:51 9 Q. When concerns were raised about the AML --- about
09:51 10 money laundering in the Southbank and Riverbank accounts?
09:51 11
- 09:51 12 A. Yes, in 2019.
09:51 13
- 09:51 14 Q. You were a party to agreeing to provide Mr Packer with
09:51 15 information under the significant shareholding protocol; weren't
09:51 16 you?
09:51 17
- 09:51 18 A. I wasn't a party. The company was.
09:51 19
- 09:51 20 Q. Yes, but you had to agree to it; didn't you?
09:51 21
- 09:51 22 A. I was on the Board when those arrangements were entered
09:51 23 into, yes, as a director. But I didn't have any personal
09:51 24 involvement in the actual agreements is what I was trying to say.
09:51 25
- 09:51 26 Q. Sorry, I apologise for the imprecision of my language. The
09:51 27 company did, but by resolution of the Board that you sat on?
09:51 28
- 09:51 29 A. Yes, yes, that's correct.
09:51 30
- 09:52 31 Q. You were a member of the Board that responded to the
09:52 32 media allegations in July 2019 by responding to the application
09:52 33 of the media release?
09:52 34
- 09:52 35 A. Yes. Yes.
09:52 36
- 09:52 37 Q. I'm right, aren't I, that the decision made by the Board at
09:52 38 that time was a resolution that was based on consensus among all
09:52 39 directors; correct?
09:52 40
- 09:52 41 A. Yes, consensus but some discussion, of course.
09:52 42
- 09:52 43 Q. But you weren't one that said don't do it?
09:52 44
- 09:52 45 A. No, we all agreed.
09:52 46
- 09:52 47 Q. You led the Board as its Chair from January 2020 through

- 09:52 1 the hearings of the Bergin Inquiry?
09:52 2
- 09:52 3 A. That's correct.
09:52 4
- 09:52 5 Q. The Board you led sought advice from lawyers and
09:52 6 provided instructions in the conduct of the Bergin Inquiry?
09:52 7
- 09:53 8 A. Yes.
09:53 9
- 09:53 10 Q. Since the hearing of the Bergin Inquiry, you have assumed
09:53 11 a significant role in attempting to lead the company through what
09:53 12 is described as the "Reform Program"; there are other terms for it
09:53 13 but that's right, isn't it?
09:53 14
- 09:53 15 A. Yes. On balance I remained on the Board to attempt to
09:53 16 rehabilitate the company, to stabilise the Board and to roll out the
09:53 17 remediation.
09:53 18
- 09:53 19 Q. You said that your role has been variously described as
09:53 20 an interim role?
09:53 21
- 09:53 22 A. Yes, that's true.
09:53 23
- 09:53 24 Q. You've assumed the responsibility of attempting to do that?
09:53 25
- 09:53 26 A. Yes, I have.
09:53 27
- 09:53 28 Q. Until it is done.
09:53 29
- 09:53 30 A. Well, until an appropriate time when I can step aside.
09:53 31
- 09:53 32 Q. You are engaged in a process of seeking to achieve some
09:53 33 substantial cultural change?
09:53 34
- 09:54 35 A. Yes, that's true.
09:54 36
- 09:54 37 Q. Because the process of the Bergin Inquiry helped you,
09:54 38 amongst others and the company generally, realise that the
09:54 39 cultural change was necessary?
09:54 40
- 09:54 41 A. Yes, it was a light shone in very dark places and it enabled
09:54 42 us to have a view about what needed to happen. I think I came
09:54 43 out of the inquiry with a very heightened and deepened
09:54 44 understanding of the problems the company had and what had to
09:54 45 happen to fix it.
09:54 46
- 09:54 47 Q. Is it right to say that without the cultural change, and with

09:54 1 the benefit of hindsight that you now have, you would not
09:54 2 describe the culture at Crown as suitable for a company who
09:54 3 might hold a casino licence?

09:54 4
09:54 5 A. Yes, I think that is a fair characterisation.

09:54 6
09:54 7 Q. And, leaving aside efforts made by the company at
09:54 8 rehabilitation, so assume nothing is done at the conclusion of the
09:55 9 Bergin Inquiry, you would agree that Crown is not suitable to
09:55 10 hold a casino licence?

09:55 11
09:55 12 A. Yes, and Commissioner Bergin did provide the company
09:55 13 with a roadmap to suitability, which certainly included cultural
09:55 14 reform.

09:55 15
09:55 16 Q. Yes. You gave an assurance, didn't you, that you would try
09:55 17 to make the company suitable again?

09:55 18
09:55 19 A. Yes, that's true.

09:55 20
09:55 21 Q. Because you recognised at the time of giving your evidence
09:55 22 that it wasn't?

09:55 23
09:55 24 A. Yes, I think that is fair. That is a fair characterisation.

09:55 25
09:55 26 Q. After the Bergin Inquiry released its report, you assumed
09:55 27 significant responsibility across the whole of the Crown Group,
09:55 28 didn't you?

09:55 29
09:55 30 A. Yes.

09:55 31
09:55 32 Q. So from, I think, the publication of the Bergin Inquiry's
09:56 33 findings, your spread across the company and involvement in all
09:56 34 of its activities increased significantly, didn't it?

09:56 35
09:56 36 A. It did, because there were only three directors, and in order
09:56 37 to be able to fulfil our statutory and other obligations, we all had
09:56 38 to be on every committee and on every board.

09:56 39
09:56 40 Q. Yes, so I just want to touch on that. From 16 February
09:56 41 2021 you were appointed as a director of 61 companies in the
09:56 42 Crown group; is that right?

09:56 43
09:56 44 A. Yes, that's true. I think it is something like that. I couldn't
09:56 45 swear to the accuracy of the number, but it is a large number.

09:56 46
09:57 47 COMMISSIONER: And probably couldn't name them all either,

09:57 1 I suppose.
09:57 2
09:57 3 A. That is certainly true, Commissioner, I couldn't.
09:57 4
09:57 5 Q. You also became a director of Crown Perth which I think
09:57 6 is ---
09:57 7
09:57 8 A. Yes, yes, I did.
09:57 9
09:57 10 Q. You became Executive Chair of Crown Melbourne?
09:57 11
09:57 12 A. No. I'm a member of Crown Melbourne. I'm a director on
09:57 13 Crown Melbourne.
09:57 14
09:57 15 Q. Pardon me. Director on Crown Melbourne?
09:57 16
09:57 17 A. Yes.
09:57 18
09:57 19 Q. And --- I think I've said that --- the same at Perth?
09:57 20
09:57 21 A. Yes.
09:57 22
09:57 23 Q. You now have two inquiries, one here and one in Perth
09:57 24 running in tandem.
09:57 25
09:57 26 A. Thank you for reminding me of that, Mr Finanzio!
09:57 27
09:57 28 Q. And as well you have the response to the Bergin Inquiry in
09:57 29 NSW still ongoing?
09:57 30
09:57 31 A. Yes, that's true.
09:57 32
09:57 33 Q. You've got quite a bit on your plate?
09:57 34
09:57 35 A. I think that's true. I couldn't deny it.
09:57 36
09:58 37 Q. You are also a director of a number of other entities; is that
09:58 38 so?
09:58 39
09:58 40 A. I've stepped back from quite a number, but I'm sure you
09:58 41 will remind me.
09:58 42
09:58 43 Q. Can I run you through them.
09:58 44
09:58 45 A. Yes, please, and I will certainly update the Commission if
09:58 46 there are any inaccuracies.
09:58 47

09:58 1 Q. Am I right that you are presently a director of Coonan
09:58 2 Consulting Services?
09:58 3
09:58 4 A. Yes.
09:58 5
09:58 6 Q. Is that simply an entity that --- what does that entity do?
09:58 7
09:58 8 A. Well, I have on a couple of consultancies attached to
09:58 9 Coonan Consulting but it's not a busy organisation at the moment,
09:58 10 as you can appreciate.
09:58 11
09:58 12 Q. What about Dabhol Pty Ltd?
09:59 13
09:59 14 A. That's a superannuation trustee company.
09:59 15
09:59 16 Q. GRACosway Pty Ltd?
09:59 17
09:59 18 A. Yes, I'm still on GRACosway.
09:59 19
09:59 20 Q. What is your role?
09:59 21
09:59 22 A. I'm the Chair of GRACosway and it involves about three
09:59 23 meetings a year.
09:59 24
09:59 25 Q. And Mangoplah Holdings?
09:59 26
09:59 27 A. That is the trustee of a family trust.
09:59 28
09:59 29 Q. You are still on the Board of the Minerals Council of
09:59 30 Australia; aren't you?
09:59 31
09:59 32 A. Yes, that's true.
09:59 33
09:59 34 Q. And you are the Chair of that Board?
09:59 35
09:59 36 A. Yes, I am.
09:59 37
09:59 38 Q. You are also on the Board of Obesity Australia?
09:59 39
09:59 40 A. No, no, I'm not. I think I resigned that some time ago,
09:59 41 about two or three years ago, anyway.
09:59 42
09:59 43 Q. You told the Bergin Inquiry at the time that these other
10:00 44 engagements had you on light duties outside Crown at that time?
10:00 45
10:00 46 A. Yes, and they are lighter now.
10:00 47

10:00 1 Q. That was, of course, before you assumed all the
10:00 2 directorships of the Crown entities?
10:00 3

10:00 4 A. Yes. Yes. And with Crown entities, it might be helpful to
10:00 5 the Commission just to clarify that we have a major project to
10:00 6 clean up all those companies, many of which are dormant, and
10:00 7 which we need to streamline.
10:00 8

10:00 9 Q. Crown, it probably sounds trite, but it is a very complex
10:00 10 organisation and has been for the whole time that you've been on
10:00 11 the Board; correct?
10:00 12

10:00 13 A. I think that's true, yes, I agree.
10:00 14

10:00 15 Q. It has a significant shareholder which, over the time that
10:00 16 you've been on the Board, exerted a lot of influence?
10:00 17

10:00 18 A. True.
10:00 19

10:00 20 Q. On the composition of the Board and on its strategic
10:00 21 direction?
10:00 22

10:00 23 A. Yes.
10:00 24

10:01 25 Q. And on its culture?
10:01 26

10:01 27 A. Yes.
10:01 28

10:01 29 Q. During your time on the Board there were a number of
10:01 30 Packer appointees on the Board; weren't there?
10:01 31

10:01 32 A. Yes.
10:01 33

10:01 34 Q. And, call them non-independent directors, even some of the
10:01 35 independent directors, that is, without close ties to Packer, had
10:01 36 ties of loyalty to him; didn't they?
10:01 37

10:01 38 A. Yes.
10:01 39

10:01 40 Q. For example, the evidence in the Bergin Inquiry pointed to
10:01 41 Mr Demetriou having such ties?
10:01 42

10:01 43 A. Yes.
10:01 44

10:01 45 Q. And Professor Horvath had a long family connection with
10:01 46 the Packers; correct?
10:01 47

10:01 1 A. He did.
10:01 2
10:01 3 Q. Casinos also operate in a complex regulatory environment,
10:01 4 don't they?
10:01 5
10:01 6 A. Yes.
10:01 7
10:01 8 Q. There is crime to be concerned about, or the influence of
10:01 9 criminal activity?
10:01 10
10:01 11 A. Yes.
10:01 12
10:01 13 Q. Money laundering ---
10:02 14
10:02 15 A. Yes.
10:02 16
10:02 17 Q. --- Responsible Service of Gaming, and major property
10:02 18 developments going on at the same time?
10:02 19
10:02 20 A. Yes.
10:02 21
10:02 22 Q. All through the time that you were on the board, Crown
10:02 23 was operating over two sites in Australia ---
10:02 24
10:02 25 A. Yes.
10:02 26
10:02 27 Q. --- and with a significant international business?
10:02 28
10:02 29 A. The main business was here, but yes, it had international
10:02 30 operations.
10:02 31
10:02 32 Q. International marketing operations to bring that trade to
10:02 33 Australia?
10:02 34
10:02 35 A. Yes, yes.
10:02 36
10:02 37 Q. And that itself was a significant part of the business?
10:02 38
10:02 39 A. Yes, it was.
10:02 40
10:02 41 Q. And it was seeking to build a third casino in Sydney?
10:02 42
10:02 43 A. Yes.
10:02 44
10:02 45 Q. So undertaking a major development project at the same
10:02 46 time?
10:02 47

10:02 1 A. Yes.
10:02 2
10:03 3 Q. In dealing with or in establishing and maintaining
10:03 4 operations internationally there is always a lot of complexity just
10:03 5 in that; isn't there?
10:03 6
10:03 7 A. Definitely.
10:03 8
10:03 9 Q. Understanding the risk of exposure to foreign laws?
10:03 10
10:03 11 A. Yes.
10:03 12
10:03 13 Q. Changes in laws, risk to staff?
10:03 14
10:03 15 A. Yes. All of those.
10:03 16
10:03 17 Q. It is really quite an involved exercise; isn't it?
10:03 18
10:03 19 A. It is.
10:03 20
10:03 21 Q. And it required a lot of attention?
10:03 22
10:03 23 A. Yes.
10:03 24
10:03 25 Q. Now, in your current role as Executive Chair, you've now
10:03 26 got down into the weeds of the organisation; haven't you?
10:03 27
10:03 28 A. Yes, I have.
10:03 29
10:03 30 Q. I think we've heard from others that the directors are doing
10:03 31 much more than directors would ordinarily do on the
10:03 32 management side of the business ---
10:03 33
10:03 34 A. Unfortunately, yes, unfortunately, that did become --- it is
10:04 35 unusual, but it did become absolutely necessary with the loss of
10:04 36 effectively the Board and senior management. The top layer of
10:04 37 senior management all departed the company, and there was
10:04 38 an urgent need for stability and guidance and direction to those
10:04 39 who stepped up into various roles.
10:04 40
10:04 41 Q. Do you agree, with the benefit of hindsight, that with the
10:04 42 benefit of hindsight do you really think that you paid enough
10:04 43 attention to what was going on in the company in the period
10:04 44 leading up to the allegations made in Bergin?
10:04 45
10:04 46 A. Look, I do honestly believe that I applied myself with
10:04 47 diligence and care. The problem for me was that information was

10:05 1 either withheld or channelled in a different direction, the way in
10:05 2 which the VIP section operated didn't always allow information
10:05 3 to flow to the Board, and inquiries that were made didn't yield red
10:05 4 flags or certainly didn't yield things that would otherwise make
10:05 5 you go and make some further and different kinds of inquiries.
10:05 6 So I definitely take responsibility for it. That is not the issue to
10:05 7 me. The problem that I still --- that still concerns me hugely is
10:05 8 that despite all that there was still not a proper flow of
10:05 9 information and effectively no real way of getting it if
10:06 10 information is withheld or misrepresented.

10:06 11

10:06 12 Q. I want to turn to asking you some questions about
10:06 13 Barangaroo. You were on, as we've already discussed, you were
10:06 14 on the board when Barangaroo was being proposed and obtained
10:06 15 approval. But the plans to set up a casino was a plan to set up
10:06 16 a casino that catered only to VIPs; wasn't it?

10:06 17

10:06 18 A. Yes.

10:06 19

10:06 20 Q. It was a restricted licence casino?

10:06 21

10:06 22 A. Yes, that's true.

10:06 23

10:06 24 Q. Which meant a focus on international VIP patrons; didn't
10:06 25 it?

10:06 26

10:06 27 A. That's true.

10:06 28

10:06 29 Q. Which was the same focus as the Melbourne casino?

10:06 30

10:06 31 A. Sorry, would you mind just repeating that, please. Sorry.

10:06 32

10:07 33 Q. I might put it slightly differently. The Melbourne casino
10:07 34 also had a focus on attracting VIP customers from overseas?

10:07 35

10:07 36 A. Yes, that was part of its business, yes.

10:07 37

10:07 38 Q. I want to draw your attention to a couple of provisions of
10:07 39 the Casino Agreement, and I wonder if they could be put up on
10:07 40 the screen. CRW.0005.001.0985. It should come up on the
10:08 41 screen in a moment.

10:08 42

10:08 43 COMMISSIONER: Maybe.

10:08 44

10:08 45 A. It is an intriguing issue that you've raised, Commissioner,
10:08 46 I think.

10:08 47

10:08 1 MR FINANZIO: Could I ask the operator to go to clause 22.1.
10:08 2
10:08 3 COMMISSIONER: I have to do it by page.
10:08 4
10:08 5 MR FINANZIO: I don't have the page number.
10:08 6
10:09 7 If I could ask you to go to sub-paragraph (r), do you see
10:09 8 paragraph (r) there?
10:09 9
10:09 10 A. I do.
10:09 11
10:09 12 Q.
10:09 13
10:09 14 *the Holding Company, if it pursues anywhere in Australia*
10:09 15 *a business similar to that of the Company, will use its best*
10:09 16 *endeavours to ensure that such business is conducted in*
10:09 17 *a manner:*
10:09 18
10:09 19 *(i) which is beneficial both to that business and the*
10:09 20 *Company and which promotes tourism, employment and*
10:09 21 *economic development generally in the state of Victoria*
10:10 22 *.....*
10:10 23
10:10 24 You see that?
10:10 25
10:10 26 A. Yes, I do, and "which is not detrimental" ---
10:10 27
10:10 28 Q. And:
10:10 29
10:10 30 *Which is not detrimental to the Company's interests*
10:10 31
10:10 32 A. Yes.
10:10 33
10:10 34 Q. Can I draw your attention at the same time to paragraph
10:10 35 (ra). You see that?
10:10 36
10:10 37 A. Yes, I do.
10:10 38
10:10 39 Q. It says:
10:10 40
10:10 41 *the Company:*
10:10 42
10:10 43 *(i) must ensure that the Holding Company Group locates*
10:10 44 *the headquarters of its gaming business in Melbourne;*
10:10 45
10:10 46 *(ii) will endeavour to maintain the Melbourne Casino as*
10:10 47 *the dominant Commission Based Player casino in*

10:10 1 *Australia*
10:10 2
10:10 3 Do you see that?
10:10 4
10:10 5 A. Yes, I do.
10:10 6
10:10 7 Q. And:
10:10 8
10:10 9 *will ensure that the Holding Company Group maintains*
10:10 10 *the Melbourne Casino as the flagship casino of the*
10:10 11 *Holding Company Group's gaming business in Australia*
10:10 12
10:10 13 Do you see that?
10:10 14
10:10 15 A. Yes.
10:10 16
10:10 17 Q. If you cast your eye over the balance of that clause, you'll
10:10 18 see that those obligations can be terminated on the giving of
10:11 19 notice?
10:11 20
10:11 21 A. Yes, I see that.
10:11 22
10:11 23 Q. Have you seen those clauses before?
10:11 24
10:11 25 A. I may have. I was looking at it last night, in fact because ---
10:11 26
10:11 27 Q. Why?
10:11 28
10:11 29 A. --- because the Commissioner had raised an interesting
10:11 30 problem, an intriguing problem, so I took myself to have a look at
10:11 31 it.
10:11 32
10:11 33 Q. I see. I take it from that that you've been keeping abreast of
10:11 34 the proceedings and watching the evidence in part of these
10:11 35 proceedings?
10:11 36
10:11 37 A. Yes, in part. I haven't seen it all, but I saw the evidence of
10:11 38 Ms Halton and Ms Korsanos, my directors --
10:11 39
10:11 40 Q. Yes.
10:11 41
10:11 42 A. --- so that is really why I've now addressed myself to it.
10:11 43
10:11 44 Q. Having looked at these and having thought about it, these
10:12 45 clauses are really about Victoria seeking to garner benefits for
10:12 46 Victoria in the context of an approval for a casino in Victoria;
10:12 47 correct?

10:12 1
10:12 2 A. Yes, I think that is what it addresses, yes. What it is
10:12 3 addressed to, I should say a little more elegantly.
10:12 4
10:12 5 Q. And at the very least it requires notice to be given before
10:12 6 Crown departs from the obligations that it has contained in these
10:12 7 clauses that I've taken you to?
10:12 8
10:12 9 A. Well, it talks about terminating in ---
10:12 10
10:12 11 Q. Terminating on notice.
10:12 12
10:12 13 A. Terminating on notice but my reading of it, I mean, I may
10:12 14 be wrong because I haven't really had a chance to reflect properly
10:12 15 on this, but if you wouldn't mind please going back, Mr Finanzio,
10:12 16 to the beginning of the second ---
10:12 17
10:12 18 Q. Yes.
10:12 19
10:12 20 A. --- it seemed to me when I read it that this was really
10:13 21 directed to the possibility of casinos in other States. So, if it
10:13 22 pursues anywhere in Australia, it's not a prohibition ---
10:13 23
10:13 24 Q. No.
10:13 25
10:13 26 A. --- and there are some conditions attached to the possibility
10:13 27 that it pursues it somewhere in Australia.
10:13 28
10:13 29 Q. Yes.
10:13 30
10:13 31 A. And we are exhorted under those circumstances that it must
10:13 32 be beneficial to both that business and the company, and do all
10:13 33 the things towards promoting Victoria, which is perfectly
10:13 34 acceptable, and then it says not to be detrimental.
10:13 35
10:13 36 So, first of all, on clause (i), the view I think that the company
10:13 37 would have taken and obviously this needs to be properly thought
10:14 38 through in submissions, but as I sit here, it seems to me the way
10:14 39 in which the business has been developed, certainly with national
10:14 40 interests, the cross-promotion of other casinos is a very
10:14 41 well-known business model in casinos, and the received wisdom
10:14 42 is that patrons who like to gamble like to try them all and
10:14 43 particularly go up and down the east coast of Australia to other
10:14 44 casinos as well as Crown's one.
10:14 45
10:14 46 So, just as a broad proposition, I wouldn't see that say Crown
10:14 47 Sydney is not beneficial to Crown Melbourne. And then you

10:14 1 get ---
10:14 2
10:14 3 Q. Can I ---
10:14 4
10:14 5 A. Sorry, go ahead. I'm very sorry I interrupted.
10:14 6
10:14 7 Q. I just wonder if you are answering the Commissioner's
10:14 8 questions from yesterday rather than my ones.
10:14 9
10:14 10 A. I'm terribly sorry. Please go ahead.
10:14 11
10:14 12 Q. No, not at all. The question I was going to ask you, I'm
10:15 13 unaware of any notices being given to terminate the clauses. As I
10:15 14 understand them they are still operative.
10:15 15
10:15 16 COMMISSIONER: I think, to be fair, only subclause (ra) can be
10:15 17 terminated. The obligations in (r)(i) and (r)(ii) are not subject to
10:15 18 termination.
10:15 19
10:15 20 MR FINANZIO: Pardon me.
10:15 21
10:15 22 And (ra) remains operative?
10:15 23
10:15 24 A. Yes. Yes.
10:15 25
10:15 26 Q. The question I was going to ask you --- first of all I was
10:15 27 going to say to you that the Solicitors Assisting the Commission
10:15 28 served notices to produce seeking reports, advices and other
10:15 29 documents relevant to these obligations, including specifically in
10:15 30 respect of the establishment of the casino in Sydney. And those
10:16 31 notices produced no documents. The question that I have for you
10:16 32 is, before the Crown Sydney proposal was approved, when it was
10:16 33 being considered by the Board, did the Board actually consider
10:16 34 what the impact of establishing a VIP international based casino
10:16 35 in Sydney could be on Melbourne?
10:16 36
10:16 37 A. My recollection is, and it is a fair time ago, but my
10:16 38 recollection is that there was certainly consideration that the
10:16 39 business wouldn't be taking away from Melbourne because it is in
10:16 40 Crown's interests that Melbourne thrives. And there was some
10:16 41 consideration in the business case to the fact that the way in
10:16 42 which this restricted licence would operate would only really
10:16 43 enhance Melbourne, not in any way be detrimental to it. They
10:17 44 are broad propositions, I understand, but I can recall that the
10:17 45 impact on Melbourne was considered.
10:17 46
10:17 47 Q. And you say it ought be considered in some business case

10:17 1 which hasn't yet been produced to us?

10:17 2

10:17 3 A. I'm not sure. But I do remember that was in fact in the
10:17 4 contemplation of the board. Why would we want to --- may I say
10:17 5 rhetorically, it didn't make sense that you would in any way
10:17 6 diminish your main asset.

10:17 7

10:17 8 Q. You might diminish the revenue of the main asset without
10:17 9 affecting its overall viability; correct?

10:17 10

10:17 11 A. Yes, but my point is ---

10:17 12

10:17 13 Q. Pardon me. And if you were to diminish the revenue of the
10:17 14 main asset, that would have an impact on the tax that would be
10:17 15 payable in Victoria?

10:17 16

10:17 17 A. Yes, but it would depend on what volumes there were, of
10:18 18 course; if you drive more business, you get more tax.

10:18 19

10:18 20 Q. Can I come now to some questions about China and the
10:18 21 arrests. You said a moment ago when I was asking you about
10:18 22 your time on the Board that you really experienced significant
10:18 23 difficulty getting proper answers from management during the
10:18 24 period preceding the Bergin Inquiry, despite your diligence. Do
10:18 25 you remember giving that evidence?

10:18 26

10:18 27 A. Yes.

10:18 28

10:18 29 Q. Is it right to say that even if management wasn't giving you
10:18 30 proper answers from 2016 when the people in China were
10:19 31 arrested, at the time you recall, don't you, that in May 2019 the
10:19 32 VCGLR provided the Crown Resorts Board with a draft report in
10:19 33 relation to the China arrests incident; correct?

10:19 34

10:19 35 A. Yes, I recollect it. Yes.

10:19 36

10:19 37 Q. So even if you weren't getting that information from
10:19 38 management up to May 2019, the VCGLR interim report gave
10:19 39 you a pretty good clue that people in the company might not have
10:19 40 been keeping you adequately informed; didn't it?

10:19 41

10:19 42 A. Yes, that's correct. That's correct and we were very
10:19 43 concerned about it.

10:19 44

10:20 45 Q. And then, not long after, there were press allegations made
10:20 46 that, if you like, underpinned the concern that might have been
10:20 47 generated by the May 2019 report; correct?

10:20 1
10:20 2 A. Yes, I think it was very close. I think it was ---
10:20 3 (overspeaking) ---
10:20 4
10:20 5 Q. July.
10:20 6
10:20 7 A. Yes.
10:20 8
10:20 9 Q. And then followed shortly after the announcement of the
10:20 10 Bergin Inquiry. It was clear that people outside the organisation
10:20 11 were taking those allegations seriously; correct?
10:20 12
10:20 13 A. Yes.
10:20 14
10:20 15 Q. Still, the Crown Board maintained a defensive position,
10:20 16 didn't it?
10:20 17
10:20 18 A. Yes, it was how it was advised, but regrettably, yes.
10:20 19
10:20 20 Q. When you say "how it was advised", I suggest to you that at
10:20 21 that very point the Board had a choice: on the one hand it could
10:21 22 continue to accept the advice being given to it by management
10:21 23 and its lawyers and double down on everything that it had been
10:21 24 told up to May 2019, or, it could call for inquiries to be made of
10:21 25 an independent nature. Do you agree that was a choice open to
10:21 26 the Board at that time?
10:21 27
10:21 28 A. No, I don't, and the reason I don't ---
10:21 29
10:21 30 Q. Why?
10:21 31
10:21 32 A. --- I'm just about to say. The reason why I don't think that
10:21 33 was as binary a choice as the way in which you posed the question,
10:21 34 Mr Finanzio, is because the Board was not an independent board,
10:21 35 and it was not really open, the way in which the Board was
10:21 36 constituted, to contradict the way in which the majority of the
10:21 37 Board wished to proceed.
10:21 38
10:21 39 Q. So are you saying that you voted differently to other
10:21 40 members of the Board?
10:22 41
10:22 42 A. No, I'm not saying that at all. I'm just saying that ---
10:22 43
10:22 44 Q. Do you agree --- it is true, isn't it that the Board arrived at
10:22 45 its position by consensus? Everybody on the Board agreed that it
10:22 46 would adopt the defensive position rather than call for
10:22 47 a retrospective analysis of whether or not there had been

10:22 1 wrongdoing by the management that had been advising it up to
10:22 2 that point; that is correct, isn't it?

10:22 3

10:22 4 A. All of the Board accepted Mr Murphy's advice that it was
10:22 5 not in Crown's interest at that stage to change tack, or create more
10:22 6 reports, or to have anything like a forensic look at what had
10:22 7 happened, and all of the Board adopted that. My point was that it
10:22 8 wasn't really open to anyone, short of leaving the Board, to
10:22 9 contradict what the majority of the board wanted to do.

10:22 10

10:23 11 Q. When you say the "majority of the Board", the whole of the
10:23 12 Board, including you?

10:23 13

10:23 14 A. The whole of the Board at that time, including myself, but
10:23 15 for those reasons.

10:23 16

10:23 17 Q. And when you say you were advised to adopt a particular
10:23 18 course, you as a director know that legal advice doesn't bind you
10:23 19 to make tactical or strategic decisions or, indeed, moral decisions
10:23 20 about what the right course of action ought to be. That is
10:23 21 a matter for the directors, isn't it?

10:23 22

10:23 23 A. That's true, but the legal advice was very clear and as
10:23 24 a publicly listed company, not accepting legal advice from
10:23 25 solicitors who had been long-standing advisors to the company,
10:23 26 attended board meetings and gave advice, was a very difficult
10:23 27 thing to contemplate.

10:23 28

10:23 29 Q. Was it difficult to think, "Perhaps we should get a second
10:23 30 opinion about this advice"?

10:24 31

10:24 32 A. I think there were not other opinions about Mr Murphy's
10:24 33 advice. Nobody suggested that.

10:24 34

10:24 35 Q. Because the course that you were adopting from May 2019
10:24 36 all through 2020 involved you in actively keeping important
10:24 37 information also from the Victorian regulator; didn't it?

10:24 38

10:24 39 A. Well, it was a defensive posture, regrettably, yes.

10:24 40

10:24 41 Q. It involved you pushing back on the Victorian regulator in
10:24 42 all of the Victorian regulator's inquiries about the China arrests
10:24 43 scenario, didn't it?

10:24 44

10:24 45 A. Well, it didn't involve me pushing back. The company, and
10:24 46 through its management and advisors, took a certain course
10:24 47 which are well and truly documented in the minutes which I do

10:24 1 think now, in retrospect, was certainly the wrong course.

10:24 2

10:25 3 Q. You agree that the choice was open to the Board at that
10:25 4 time to seek alternative advice, given the nature of the course that
10:25 5 was being adopted, or was being proposed?

10:25 6

10:25 7 A. Yes, of course. You can always get second opinions,
10:25 8 always.

10:25 9

10:25 10 Q. I want to try and put ourselves in the boardroom at that
10:25 11 time, okay, when this decision was being considered.

10:25 12

10:25 13 A. Which --- sorry, which decision and which time?

10:25 14

10:25 15 Q. When the Board is considering what course to adopt ---

10:25 16

10:25 17 A. Yes, okay.

10:25 18

10:25 19 Q. --- in relation to the inquiry.

10:25 20

10:26 21 A. To which inquiry, sorry, to the VCGLR?

10:26 22

10:26 23 Q. To the Bergin Inquiry.

10:26 24

10:26 25 A. Sorry, right. I'm with you now. Yes.

10:26 26

10:26 27 Q. Let me paint the context for you.

10:26 28

10:26 29 A. No, no, I'm with you.

10:26 30

10:26 31 Q. Let's just make it abundantly clear we are on the same page.

10:26 32

10:26 33 A. All right.

10:26 34

10:26 35 Q. You have the May 2019 report from the VCGLR.

10:26 36

10:26 37 A. Yes.

10:26 38

10:26 39 Q. You have the media allegations that have been made, and
10:26 40 you have the announcement of the Bergin Inquiry, and the Board
10:26 41 has to actively decide what course it's going to adopt.

10:26 42

10:26 43 A. (Nods head).

10:26 44

10:26 45 Q. You understand, having practised as a lawyer, you
10:26 46 understand the fit and proper person test; don't you?

10:26 47

10:26 1 A. Yes, I do.

10:26 2

10:26 3 Q. I don't think I'm drawing too long a bow, but tell me if I'm
10:26 4 wrong, the fit and proper test isn't a far stretch from the kind of
10:26 5 suitability requirements that exist under the casino legislation;
10:27 6 correct?

10:27 7

10:27 8 A. I think there are certainly similarities, yes.

10:27 9

10:27 10 Q. I suggest to you, confronted with the kind of advice being
10:27 11 given to you and the kind of strategy that was being suggested
10:27 12 about dealing with the Bergin Inquiry and the matters arising
10:27 13 from the China arrests' interim report, it created a real conundrum
10:27 14 for someone who wants to hold themselves out as a fit and proper
10:27 15 person. It is a real question: do I take a legal defensive position,
10:27 16 or do I be frank with the regulators who are attempting to
10:27 17 investigate the affairs of the company? Do you agree that that is
10:27 18 a real conundrum?

10:27 19

10:27 20 A. I think it is very important that you get the right strategy,
10:27 21 and I think the strategy around the Bergin Report, sorry, the
10:27 22 Bergin Inquiry and how that developed was very much
10:28 23 challenged by me and others on the board. We became
10:28 24 increasingly concerned at the strategy that was being adopted. I
10:28 25 had ---

10:28 26

10:28 27 Q. When?

10:28 28

10:28 29 A. In the next year ---

10:28 30

10:28 31 Q. I'm asking you about the decision being made at the point
10:28 32 in time when you had the information from May 2019, the media
10:28 33 allegations and you are being asked to think about "What strategy
10:28 34 will we deploy here?" I suggest to you that at that point in time it
10:28 35 was just untenable to be relying on the internal management
10:28 36 advice that you were being given because you had enough red
10:28 37 flags outside management to suggest to you that that just wasn't
10:28 38 reliable or at least needed review; do you agree?

10:28 39

10:28 40 A. No --- well, put it this way, can I track back a bit because
10:28 41 I think we are conflating a few things here if I may say, with
10:29 42 respect.

10:29 43

10:29 44 The VCGLR draft report was considered by the Board and
10:29 45 Mr Murphy gave some advice as to how he would deal with that
10:29 46 in the sense of going back to the VCGLR. There was discussion
10:29 47 that some of the information in it wasn't correct, that it hadn't

10:29 1 really addressed the issues and that there needed to be a much
10:29 2 more fulsome engagement with the VCGLR about the draft
10:29 3 report. So that was that, and Mr Murphy went off to do that.

10:29 4
10:29 5 As to the media inquiries, that was when --- and the responses to
10:29 6 it, when I think some on the Board started to get very concerned
10:29 7 about the strategy and how that was all unfolding. And it really
10:30 8 escalated when we started thinking about the response to the
10:30 9 Bergin Report.

10:30 10

10:30 11 Q. Okay.

10:30 12

10:30 13 A. And so down to the end of 2019 and into 2020, that was
10:30 14 when there was really momentum on the part of some of the
10:30 15 directors, Ms Halton, myself, Ms Korsanos and Mr Horvath, and
10:30 16 to a certain extent with the cooperation of the nominee directors,
10:30 17 to start to look at some changes for the company, including when
10:30 18 I became the Independent Chair and Mr Horvath became the
10:30 19 Deputy Chair and so forth in early 2020. That was the point at
10:30 20 which I was able to then start to think critically about our legal
10:30 21 advice and the strategy around the Bergin Inquiry. And I still
10:31 22 hadn't heard back anything from Mr Murphy about the VCGLR
10:31 23 report.

10:31 24

10:31 25 Q. So let's go back a step and let's not conflate things.

10:31 26

10:31 27 A. Yes.

10:31 28

10:31 29 Q. In May 2019 the VCGLR interim report raised concerns in
10:31 30 your mind and in the mind of other directors that the advice you
10:31 31 were getting from management was not as forthcoming as it
10:31 32 might have been?

10:31 33

10:31 34 A. Yes, and we had an in-camera discussion about it.

10:31 35

10:31 36 Q. That concern was affirmed by the media reports that
10:31 37 occurred not that very long afterwards; correct?

10:31 38

10:31 39 A. Well, certainly there may have been some connection to it,
10:31 40 yes.

10:31 41

10:31 42 Q. And, yet immediately after the comments are published, the
10:31 43 Crown Board agreed by consensus to issue a defensive response
10:32 44 to those media allegations; correct?

10:32 45

10:32 46 A. That's correct.

10:32 47

10:32 1 Q. It does not cause an internal investigation to occur inside
10:32 2 the company as to the advice it had been receiving from
10:32 3 management; correct?
10:32 4
10:32 5 A. No, that's not correct. What we had asked, as a result of the
10:32 6 in-camera meeting at that board meeting where the VCGLR draft
10:32 7 report was provided, there was certainly collective concern about
10:32 8 some issues to do with matters that had been reported in the draft
10:32 9 report, and ---
10:32 10
10:32 11 Q. Did the board ---
10:32 12
10:32 13 A. --- and Mr ---
10:32 14
10:32 15 Q. --- pardon me.
10:32 16
10:32 17 A. And the Board then tasked the then Executive Chairman,
10:32 18 Mr Alexander, to go away and make some investigations of
10:32 19 management in relation to those particular matters and to report
10:32 20 back.
10:32 21
10:32 22 Q. It did not cause an independent investigation to occur in
10:32 23 relation to those serious allegations and the serious matters raised
10:33 24 by the China Report; correct?
10:33 25
10:33 26 A. Not an independent report, no.
10:33 27
10:33 28 Q. It got one of the non-executive directors to go away and
10:33 29 make some informal inquiries; correct?
10:33 30
10:33 31 A. Well, certainly Mr Alexander was an executive ---
10:33 32 non-executive director, but he certainly wasn't non-independent,
10:33 33 yes.
10:33 34
10:33 35 Q. From that point on, the Board adopted a defensive position
10:33 36 in relation to the Bergin Inquiry; correct?
10:33 37
10:33 38 A. I don't think we did because nobody really directed
10:33 39 ourselves to the Bergin Inquiry at that stage on the board as far as
10:33 40 I know. It was more once notices started to issue and documents
10:33 41 were called for that attention was given to the strategic direction
10:34 42 of how Crown would present --- (overspeaking) --- at that time.
10:34 43
10:34 44 Q. Do you agree with me that the Board composition did not
10:34 45 change significantly between mid-2019 and February 2020 when
10:34 46 you became the chair?
10:34 47

- 10:34 1 A. Yes, the last two additions were Ms Halton and
10:34 2 Ms Korsanos and there were no changes to my knowledge,
10:34 3 apart from Mr Alexander having stepped down in 2020 and
10:34 4 Mr Horvath having indicated he wished to go.
10:34 5
- 10:34 6 Q. Yes, but the Board in May/June 2019 was in substance the
10:34 7 same board as it was in February 2020?
10:34 8
- 10:34 9 A. Yes.
10:34 10
- 10:34 11 Q. When you were asked to become the chair of it?
10:34 12
- 10:34 13 A. Yes.
10:34 14
- 10:35 15 Q. That Board chose you to be its leader in January 2020;
10:35 16 correct?
10:35 17
- 10:35 18 A. That's correct, yes.
10:35 19
- 10:35 20 Q. Is it right that as at January 2020, the Bergin Inquiry had
10:35 21 fired up in the sense that a number of notices to produce had been
10:35 22 served on Crown?
10:35 23
- 10:35 24 A. Yes.
10:35 25
- 10:35 26 Q. And the commencement of hearings was imminent,
10:35 27 February 2020?
10:35 28
- 10:35 29 A. Yes, and then COVID struck.
10:35 30
- 10:35 31 Q. Is it right that the litigation strategy that had evolved from
10:35 32 August 2019 to 2020 --- let me start again.
10:35 33
- 10:35 34 Is it right that the litigation strategy that had evolved from August
10:36 35 2019, when the Bergin Inquiry was announced, up until the
10:36 36 commencement of the Bergin Inquiry, had evolved to be
10:36 37 a defensive litigation strategy?
10:36 38
- 10:36 39 A. I don't think during that time frame it had evolved into
10:36 40 being a defensive strategy. As of 2020 the Board became
10:36 41 obviously very focused on how the strategy was being run. So
10:36 42 I'm not quite sure whether it evolved, but the Board started to
10:36 43 think about it carefully in 2020.
10:36 44
- 10:36 45 Q. Well, let me put it to you this way --- immediately before
10:36 46 the Bergin Inquiry commenced, it is the case, isn't it, that the
10:36 47 Crown Board's position was to defend against the allegations

10:36 1 made in the press?
10:36 2
10:37 3 A. Yes, that's true.
10:37 4
10:37 5 Q. And it had done that without conducting any independent
10:37 6 internal investigation as to whether there was any truth in the
10:37 7 allegations, either in the press or in the May 2019 VCGLR report;
10:37 8 isn't that true?
10:37 9
10:37 10 A. Parts of independent reports had been commissioned, but
10:37 11 certainly not what I think you are alluding to, which is some full
10:37 12 blown investigation, no, definitely not.
10:37 13
10:37 14 Q. So I'm right, aren't I, that in January 2020, when you are
10:37 15 appointed as Chair of the Board, Crown had girded its loins for
10:37 16 a fight with the --- to defend the allegations made in the media
10:37 17 that were going to be ventilated in the Bergin Inquiry; is that
10:37 18 right?
10:37 19
10:37 20 A. On legal advice, yes.
10:37 21
10:37 22 Q. When you say "on legal advice", you made a decision, the
10:38 23 Board made a decision to defend it, didn't it?
10:38 24
10:38 25 A. The Board accepted legal advice to defend it.
10:38 26
10:38 27 Q. Yes. The Board accepted legal advice from someone who
10:38 28 had been advising it for a very long time; correct?
10:38 29
10:38 30 A. And I think ---
10:38 31
10:38 32 Q. First of all answer my question.
10:38 33
10:38 34 A. Yes.
10:38 35
10:38 36 Q. Correct?
10:38 37
10:38 38 A. Yes. Yes.
10:38 39
10:38 40 Q. And on advice from others who were advising you?
10:38 41
10:38 42 A. Yes, major, I think you could say leading QCs.
10:38 43
10:38 44 Q. And in circumstances where you had not conducted the
10:38 45 internal inquiries of an independent nature to satisfy yourself that
10:38 46 you are on strong ground.
10:38 47

- 10:38 1 A. There had been independent --- I withdraw that.
10:38 2
10:38 3 There had been inquiries in relation to some aspects of the media
10:39 4 inquiries but there wasn't a wholesale inquiry of the whole media
10:39 5 allegations' issues.
10:39 6
10:39 7 Q. You had also adopted a position of impeding the Victorian
10:39 8 regulator's inquiry into the same matters by delaying the
10:39 9 production of materials to it in response to its notices under
10:39 10 Victorian legislation; correct?
10:39 11
10:39 12 A. Well, I was not aware of that until now. I mean, until the
10:39 13 inquiry, until the VCGLR finalised the report and it was recently
10:39 14 made available.
10:39 15
10:39 16 Q. Can I suggest to you that you were appointed to chair the
10:39 17 Board at this time because the Board was coming into significant
10:39 18 litigation, and you were a person that might be seen as suited to
10:40 19 be the face of the Board at that time?
10:40 20
10:40 21 A. I'm not --- I really don't think that was the motivation at all.
10:40 22
10:40 23 Q. Do you agree that the Board chose you to be its leader at
10:40 24 that time?
10:40 25
10:40 26 A. Yes.
10:40 27
10:40 28 Q. And that the culture of the Board is reflected by its choice
10:40 29 of leader?
10:40 30
10:40 31 A. I think that is certainly usually the case, yes.
10:40 32
10:40 33 Q. It is true, isn't it, that from December 2020, all the way
10:40 34 through the Bergin Inquiry until you gave your evidence in
10:40 35 October, the litigation was incredibly hard fought by Crown; do
10:41 36 you agree?
10:41 37
10:41 38 A. I do.
10:41 39
10:41 40 Q. And in part, that reflects both the decision made by the
10:41 41 Board to defend the litigation in that way; correct?
10:41 42
10:41 43 A. Could you just repeat that again, sorry.
10:41 44
10:41 45 Q. That reflects the decision that the Board made in late
10:41 46 2019/early 2020 to conduct a defensive position?
10:41 47

10:41 1 A. Yes, I think that on legal advice that was how we were
10:41 2 advised to proceed, our posture, yes.
10:41 3
10:41 4 Q. Do you accept that --- and I will come back to this, I asked
10:41 5 you about it a moment ago --- you had a choice, at that point, to
10:42 6 conduct your response to the Bergin Inquiry differently?
10:42 7
10:42 8 A. No. Would you like to know why?
10:42 9
10:42 10 Q. I will give you the opportunity to do that in a moment.
10:42 11
10:42 12 A. Okay.
10:42 13
10:42 14 Q. At that point in time, it is true that the approach couldn't be
10:42 15 described as conciliatory.
10:42 16
10:42 17 A. True.
10:42 18
10:42 19 Q. And it couldn't be described as reflective in the sense
10:42 20 that ---
10:42 21
10:42 22 A. No, that's right.
10:42 23
10:42 24 Q. If I put this to you, now with the benefit of hindsight,
10:42 25 Crown fought tooth and nail until it became completely
10:42 26 untenable, given the revelations that the Bergin Inquiry produced.
10:43 27
10:43 28 A. The legal advisors representing Crown did, and the advice
10:43 29 was that it was very difficult to change strategy. I became
10:43 30 increasingly concerned as to how it was being conducted. I had
10:43 31 suggested to those representing Crown that there was a very good
10:43 32 case for having some statement of facts, some agreed positions
10:43 33 with the Commission which, to my mind, was sensible. I wanted
10:43 34 the directors to have independent representation. That was
10:43 35 resisted by the Board, and I was opposed on wishing to adopt
10:43 36 a different posture throughout 2020.
10:43 37
10:43 38 Q. Back in 2019, in the middle of 2019 --- first of all the legal
10:44 39 advice and strategy no doubt was produced based on the
10:44 40 instructions given to the legal advisors by Crown; correct?
10:44 41
10:44 42 A. Well, on behalf of Crown, yes.
10:44 43
10:44 44 Q. And isn't it the case that those instructions suffered from
10:44 45 the same problem that the Board suffered from, namely that it
10:44 46 wasn't confident --- namely that it was not necessarily a fulsome
10:44 47 picture of what had actually been going on; correct?

10:44 1
10:44 2 A. I think in retrospect that is correct.
10:44 3
10:44 4 Q. So if the Board in mid-2019, when all the revelations came
10:44 5 to light, had said, "Hang on a minute, maybe we should really get
10:44 6 into this and understand what is going on in our organisation",
10:44 7 neither the Board would have been misled, nor would the legal
10:44 8 advisors have advised of a strategy like the one that they did
10:44 9 advise about, because they would have had a clearer picture of
10:44 10 what was going on inside the organisation; correct?
10:44 11
10:45 12 A. I think that is fair.
10:45 13
10:45 14 Q. Doesn't responsibility for that lie with the Board because
10:45 15 the Board actually didn't ask the questions, didn't actually get into
10:45 16 the long grass in relation to the conduct of its management at
10:45 17 a time when it knew that there was real doubt about whether or
10:45 18 not its management was behaving itself?
10:45 19
10:45 20 A. I think what we have to really understand here is the time
10:45 21 frames involved. The first information as you've taken me to, of
10:45 22 this issue of withholding of information and lack of frankness on
10:45 23 the part of certain management, was in the draft report. I've told
10:45 24 you that the Board were very concerned about that. Lots of
10:45 25 questions were asked about it. The minutes, while they don't
10:45 26 record all of the conversation, they certainly allude to the fact that
10:46 27 we were concerned enough about it to have an in-camera
10:46 28 discussion about it, and to task Mr Alexander to go away and find
10:46 29 out what on earth was going on. He presumably did that, but
10:46 30 before he came back to the board --- he never really came back
10:46 31 fulsomely --- media allegations had been made soon fairly
10:46 32 afterwards. There was a report of some reliance on Mr Murphy
10:46 33 and others in management as the background to the response to
10:46 34 the media that the Board relied on --- I think that is fairly well
10:46 35 established --- so it really wasn't that the Board had knowledge of
10:46 36 these matters all through 2019 that you refer to, and what I'm
10:46 37 saying to you as my account is that I became most concerned
10:46 38 about this during the early part of 2020, not so much during the
10:47 39 COVID shutdown, because after I became Chair there was
10:47 40 a COVID shutdown, and I think the Bergin Commission got
10:47 41 underway about August, and there was very, very clear strategic
10:47 42 direction being taken there that really concerned me.
10:47 43
10:47 44 Q. Can we just be clear about a couple of things.
10:47 45
10:47 46 A. Sure.
10:47 47

- 10:47 1 Q. The catalyst for significant board renewal was --- I
10:47 2 withdraw that. I will ask you about your evidence.
10:47 3
10:47 4 You gave evidence in the Bergin Inquiry on 16 October and on
10:47 5 20 October in 2020?
10:48 6
10:48 7 A. Yes.
10:48 8
10:48 9 Q. At the time, you had been the Chair since January 2020?
10:48 10
10:48 11 A. Yes.
10:48 12
10:48 13 Q. And the Board you led had been responsible for responding
10:48 14 to the inquiry?
10:48 15
10:48 16 A. Yes.
10:48 17
10:48 18 Q. It was only when the evidence began to emerge of what had
10:48 19 gone on in August 2020 through the inquiry that you began to be
10:48 20 concerned about Crown's strategy?
10:48 21
10:48 22 A. No. I became increasingly concerned about the strategy
10:48 23 then as the evidence began to unfold, and I thought we had to be
10:48 24 taking a very different approach, but I was overruled, of course. I
10:48 25 mean, you still have to have numbers on the Board, even if you
10:48 26 are the Chair.
10:48 27
10:49 28 Q. So it was put to a vote, was it, what the strategy should be?
10:49 29
10:49 30 A. It was discussed.
10:49 31
10:49 32 Q. At the Bergin Inquiry, in your evidence you gave this
10:49 33 evidence on 20 October in the second appearance. You said:
10:49 34
10:49 35 *I have great regret that this inquiry has run the course it's*
10:49 36 *run. In other circumstances I would have much preferred*
10:49 37 *to have something more like a statement of agreed facts*
10:49 38 *or a better way of engaging these matters than having to*
10:49 39 *have had such exhaustive hearings.*
10:49 40
10:49 41 That's what you said in October. You've said something similar
10:49 42 this morning.
10:49 43
10:49 44 A. Yes.
10:49 45
10:49 46 Q. Do you recall making that statement?
10:49 47

10:49 1 A. Yes, I do.
10:49 2
10:49 3 Q. On reflection, do you agree that given the combative
10:50 4 culture of Crown at the time, that the process of attempting to
10:50 5 agree facts would simply not have been viable in the environment
10:50 6 you are talking about?
10:50 7
10:50 8 A. Well, I certainly had discussions with senior counsel. In
10:50 9 fact, two of our senior counsel, our lead senior counsel and our
10:50 10 second counsel about that, and the broad approach was that it was
10:50 11 too far down the track to be able to do too much about it, but
10:50 12 there were occasions during the evidence where, and certainly
10:50 13 during submissions, where concessions could have been
10:50 14 considered.
10:50 15
10:50 16 At one stage, I wanted, for example, just to give you an example,
10:50 17 Mr Finanzio, when submissions had been finalised, they were
10:51 18 sent to me the night before they were due, or maybe a little bit
10:51 19 before that, and I wanted to show it to an independent firm of
10:51 20 solicitors advising the Board, and I was told that the brief would
10:51 21 be returned if I pursued this course.
10:51 22
10:51 23 Q. So you blame the lawyers, do you?
10:51 24
10:51 25 A. No, I don't blame the lawyers. I'm saying that is what
10:51 26 occurred. There is no blame I'm attributing here. I'm simply
10:51 27 giving you an account ---
10:51 28
10:51 29 Q. Are you ---
10:51 30
10:51 31 A. --- of the fact that --- can I ---
10:51 32
10:51 33 COMMISSIONER: No, you go ahead and finish what you were
10:51 34 going to say, Ms Coonan.
10:51 35
10:51 36 A. Thank you, Commissioner. I wasn't trying to attribute
10:51 37 blame, that would be inappropriate on my part anyway. I'm
10:51 38 saying it wasn't quite as straightforward as it looked, perhaps is
10:51 39 the way I could put it neutrally.
10:51 40
10:52 41 Q. You, in any event, by the time you gave the evidence,
10:52 42 expressed regret at the course that the inquiry had taken?
10:52 43
10:52 44 A. Yes.
10:52 45
10:52 46 Q. And you realised, by the time that you were in the witness
10:52 47 box at the latest, that things could have been done very

10:52 1 differently?

10:52 2

10:52 3 A. I thought so.

10:52 4

10:52 5 Q. Your assumption of responsibility and your assurance to the
10:52 6 Bergin Inquiry that you would stay the course were, I suggest to
10:52 7 you, powerful reasons why Crown got a second chance.

10:52 8

10:52 9 A. I'm not sure about that, Mr Finanzio, but I'm very sincere,
10:52 10 I was sincere in giving the Commissioner that assurance, that I
10:52 11 would do what I could to stabilise the company and do what
10:52 12 needed to be done.

10:52 13

10:52 14 Q. You agree and acknowledge that part of the program of
10:53 15 reform that needed to be undertaken was one of rebuilding
10:53 16 relationships with the regulators?

10:53 17

10:53 18 A. Absolutely, I do.

10:53 19

10:53 20 Q. Rebuilding them because they have been very much
10:53 21 damaged by the revelations about Crown's conduct.

10:53 22

10:53 23 A. Yes.

10:53 24

10:53 25 Q. Because Crown's failings have damaged its reputation for
10:53 26 integrity and honesty.

10:53 27

10:53 28 A. Yes.

10:53 29

10:53 30 Q. The reputation as a company that can operate a casino in
10:53 31 a way that maintains public confidence has been damaged, hasn't
10:53 32 it?

10:53 33

10:53 34 A. Yes, I think that is a fair characterisation.

10:53 35

10:53 36 Q. And it is a very important part of your current role to
10:53 37 rebuild that reputation?

10:53 38

10:53 39 A. Yes, that's true.

10:53 40

10:53 41 Q. You attended a number of meetings with regulators in the
10:54 42 time since the Bergin Inquiry's hearings completed; didn't you?

10:54 43

10:54 44 A. Yes, both ---

10:54 45

10:54 46 Q. And they are ongoing, aren't they?

10:54 47

10:54 1 A. Yes, in WA, Victoria and in NSW.
10:54 2
10:54 3 Q. I understand that you have met with the VCGLR in Victoria
10:54 4 on at least five occasions, 17 December, 10 February, 15
10:54 5 February, 23 March, 31 March, very regularly before the hearings
10:54 6 in this Royal Commission commenced?
10:54 7
10:54 8 A. Yes, that's true.
10:54 9
10:54 10 Q. Are you aware that notes and transcripts of those meetings
10:54 11 were made at the time?
10:54 12
10:54 13 A. Yes.
10:54 14
10:54 15 Q. And you, at least on the first occasion, 17 December 2020,
10:54 16 attended the VCGLR's offices with Mr Barton and Mr Walsh?
10:54 17
10:55 18 A. Yes. That was before the board changes, yes.
10:55 19
10:55 20 Q. Yes. I would like to take you to the transcript of that
10:55 21 interview. It is VCG.0001.0002.8348. It is on page 3, line 16.
10:56 22 Can you see the passage there --- it is --- it probably starts at line
10:56 23 12. Can you see it starts with "But the main point"?
10:56 24
10:56 25 A. Yes, I can see it.
10:56 26
10:56 27 Q. It says:
10:56 28
10:56 29 *But the main point is to say that you have my absolute*
10:56 30 *personal commitment to work with you to see through*
10:56 31 *what we need to do in Victoria, as indeed in any other*
10:56 32 *jurisdiction, and I did want you to know that you can pick*
10:56 33 *up the phone to me on any occasion and that I'm very*
10:56 34 *much committed, as is indeed, my board and management*
10:56 35 *to making the changes and improvements that we know*
10:56 36 *will be appropriate as you align, no doubt, with the*
10:56 37 *recommendations from New South Wales and maybe have*
10:56 38 *additional ones of your own.*
10:56 39
10:56 40 You see that?
10:56 41
10:57 42 A. Yes.
10:57 43
10:57 44 Q. Do you see, just above that, you make the observation, and
10:57 45 this is at 17 December 2020:
10:57 46
10:57 47 as far as I'm aware

10:57 1
10:57 2 A. Just wait one minute --- yes, I've got it.
10:57 3
10:57 4 Q. Line 2 or 3 in the paragraph above:
10:57 5
10:57 6 *As far as I'm aware, you have most of the documents*
10:57 7 *relating to our statements and other matters from the*
10:57 8 *inquiry*
10:57 9
10:57 10 That's the Bergin Inquiry ---
10:57 11
10:57 12 A. Yes.
10:57 13
10:57 14 Q.
10:57 15
10:57 16 *..... and we'd be very willing to provide that. We haven't*
10:57 17 *been waiting to see what happens out of the inquiry and*
10:57 18 *have a very significant remediation program that we had*
10:57 19 *got underway back early in the year and that we've*
10:57 20 *continued to implement and roll out right throughout the*
10:57 21 *COVID period.*
10:57 22
10:57 23 You see that?
10:57 24
10:57 25 A. Yes.
10:57 26
10:57 27 Q. You were there. Is it right to say that those statements that
10:58 28 you made --- first of all, let's set the context. The Bergin
10:58 29 Inquiry's hearings had completed about a month before that?
10:58 30
10:58 31 A. Yes.
10:58 32
10:58 33 Q. But there was no decision or report from Bergin at that
10:58 34 time?
10:58 35
10:58 36 A. Yes.
10:58 37
10:58 38 Q. And you were there with the Victorian regulators, seeking
10:58 39 to give them confidence of your future intention to cooperate and
10:58 40 collaborate with them?
10:58 41
10:58 42 A. Yes, that's true.
10:58 43
10:58 44 Q. And those words captured the sentiment of your evidence at
10:58 45 the Bergin Inquiry?
10:58 46
10:58 47 A. Yes, I think that's right.

10:58 1
10:58 2 Q. You then, I think the transcript reveals, introduced
10:58 3 Mr Barton who provided the VCGLR with the updates of what
10:58 4 had been done?
10:58 5
10:58 6 A. Yes.
10:58 7
10:58 8 Q. You continued to provide the VCGLR with updates about
10:59 9 the process of the reform agenda?
10:59 10
10:59 11 A. Yes.
10:59 12
10:59 13 Q. After the Bergin Report was produced, one of the meetings
10:59 14 that you attended, or that Crown attended at the VCGLR, was on
10:59 15 23 March 2021.
10:59 16
10:59 17 A. Yes, I think so.
10:59 18
10:59 19 Q. At which it made a presentation to the VCGLR, which is,
10:59 20 I will have that brought up now, VCG.0001.0002.8337.
10:59 21
11:00 22 A. Yes, this presentation I think is part of either a quarterly or
11:00 23 some regular update as I understand it. I can remember I was just
11:00 24 at the beginning of it and had to excuse myself, but I was
11:00 25 certainly there for the start of this presentation.
11:00 26
11:00 27 Q. It is right, isn't it, that this presentation was intended to
11:00 28 update the VCGLR in relation to Crown's progress on the reform
11:00 29 agenda?
11:00 30
11:00 31 A. I would think so, yes. I haven't seen inside it but I think
11:00 32 that is probably what it was doing.
11:00 33
11:00 34 Q. This is the type of thing that would be done at each of these
11:00 35 meetings with the VCGLR?
11:00 36
11:00 37 A. Yes, I think so. The idea was that insofar as there would
11:00 38 need to be alignment across jurisdictions on things that we were
11:00 39 doing ---
11:00 40
11:00 41 Q. Yes.
11:00 42
11:00 43 A. --- it was a good idea to make sure the regulators were on
11:01 44 board and understood, or told us if they weren't.
11:01 45
11:01 46 Q. You intended to give the regulators comfort that you were
11:01 47 progressing on the right path?

11:01 1
11:01 2 A. I hope that's right. Yes.
11:01 3
11:01 4 Q. You agree, before 17 December, Crown didn't have as open
11:01 5 and constructive a relationship with the VCGLR as desirable?
11:01 6
11:01 7 A. Yes, regrettably, I do.
11:01 8
11:01 9 Q. And, in particular, in relation to the way in which Crown
11:01 10 managed the VCGLR inquiries about the China arrests situation?
11:01 11
11:01 12 A. Yes.
11:01 13
11:01 14 Q. You agree that the strategy adopted by Crown meant that
11:01 15 material that should have been produced to the VCGLR under its
11:01 16 coercive powers to obtain material was not produced in a timely
11:02 17 way?
11:02 18
11:02 19 A. I think that that's connect.
11:02 20
11:02 21 Q. And only produced later, some of it in the Bergin Inquiry,
11:02 22 and some of it later still?
11:02 23
11:02 24 A. That's what the report says, yes.
11:02 25
11:02 26 Q. It's the case, isn't it, that after your meeting on 17
11:02 27 December the VCGLR --- first of all, the VCGLR's investigation
11:02 28 in relation to China arrests continued through the Bergin Inquiry,
11:02 29 didn't it? They didn't just stop. And the VCGLR subsequently
11:02 30 produced a report in relation to the China arrests issue; didn't it?
11:02 31
11:02 32 A. The latter part of your question is correct, they did produce
11:02 33 the inquiry later. What was going on in the meantime, I had no
11:03 34 visibility into, but the report details how they were handling it.
11:03 35
11:03 36 Q. Yes. And it was right that after your meeting on
11:03 37 17 December the VCGLR produced, I think it was --- I'll just find
11:03 38 it --- yes, on 22 December a statement of factual propositions
11:03 39 concerning the China arrests situation based on all of the
11:03 40 information that the VCGLR had been able to garner up to 22
11:03 41 December 2020; correct?
11:03 42
11:03 43 A. I don't know. I don't know. I haven't seen it.
11:03 44
11:03 45 Q. I see.
11:03 46
11:03 47 A. Well, I didn't see it, I should say.

11:03 1
11:03 2 Q. Can I ask the witness to be taken to VCG.0001.0002.3412.
11:03 3
11:04 4 This is the document to which I'm referring.
11:04 5
11:04 6 A. Yes.
11:04 7
11:04 8 Q. It is addressed to you.
11:04 9
11:04 10 A. Yes, it is. And Mr Demetriou.
11:04 11
11:04 12 Q. That's correct. Have you seen this document before?
11:04 13
11:04 14 A. Could you just bring it up a bit so I can see if I have
11:04 15 a recollection of it, please, thank you.
11:04 16
11:04 17 COMMISSIONER: While Ms Coonan is reading that, tell me
11:04 18 when is a good time for a break.
11:04 19
11:04 20 MR FINANZIO: Now could be a good time for a break while
11:04 21 Ms Coonan is looking at it.
11:04 22
11:04 23 COMMISSIONER: I didn't mean it like that.
11:04 24
11:04 25 A. I hope that is not a suggestion I'm reading very slowly!
11:05 26
11:05 27 MR FINANZIO: Not at all. I'm a very slow reader myself.
11:05 28
11:05 29 COMMISSIONER: We will have a 10-minute break, is that
11:05 30 okay, Ms Coonan?
11:05 31
11:05 32 A. Yes, thank you very much. Would you like me to try and
11:05 33 answer that or can we come back to it?
11:05 34
11:05 35 MR FINANZIO: We'll come back to it. I will put it to you again.
11:05 36
11:05 37 A. Thank you very much.
11:05 38
11:05 39
11:05 40 **ADJOURNED** [11.05AM]
11:22 41
11:22 42
11:22 43 **RESUMED** [11.22AM]
11:22 44
11:22 45
11:22 46 COMMISSIONER: Thank you.
11:22 47

- 11:22 1 A. Mr Finanzio, unfortunately it all went black so I'm in
11:22 2 exactly the same position. But can I say that without asking to
11:23 3 see the whole document, I just don't have any immediate
11:23 4 recollection of having seen it. I could be wrong about it, and if I
11:23 5 see it all I may have a different recollection, but I don't recall
11:23 6 having seen this, and that doesn't surprise me necessarily. It
11:23 7 probably was handled elsewhere in the legal department.
11:23 8
- 11:23 9 Q. Perhaps I can deal with it in this way: the letter to you,
11:23 10 dated 22 December 2020, concerned the VCGLR's continued
11:23 11 investigation in relation to the China arrests matter.
11:23 12
- 11:23 13 A. Yes.
11:23 14
- 11:23 15 Q. And what you've been able I suspect to see by just looking
11:23 16 at the letter itself is that the VCGLR posited to you as
11:24 17 a representative of Crown, but obviously to Crown, a series of
11:24 18 propositions, factual propositions, that it was intending to
11:24 19 proceed upon for the purposes of the inquiry. Do you recall that?
11:24 20
- 11:24 21 A. Yes, I just don't recall the document.
11:24 22
- 11:24 23 Q. That's okay. Have you read the China arrests report?
11:24 24
- 11:24 25 A. Oh, yes, yes.
11:24 26
- 11:24 27 Q. The most recent one?
11:24 28
- 11:24 29 A. Yes, the one that is a few weeks old, yes.
11:24 30
- 11:24 31 Q. A few months old, I think you mean?
11:24 32
- 11:24 33 A. Well, months, yes. Sorry, yes, you are quite right. Months.
11:24 34
- 11:24 35 Q. And you've read it closely?
11:24 36
- 11:24 37 A. Yes.
11:24 38
- 11:24 39 Q. It in substance deals with this matter but may be that your
11:24 40 recollection of the report might be better, but I wonder if the
11:25 41 controller could just scroll the document up a little. No, sorry,
11:25 42 my up is your down. I mean it to go up. Yes, to the heading,
11:25 43 keep going, "Annexure A propositions" ---
11:25 44
- 11:25 45 A. Yes.
11:25 46
- 11:25 47 Q. --- and the document runs for some 11 pages setting out

11:25 1 factual propositions on which the VCGLR intended to rely for the
11:25 2 purposes of its China arrests ---
11:25 3
11:25 4 A. Yes.
11:25 5
11:25 6 Q. --- inquiry --
11:25 7
11:25 8 A. Yes.
11:25 9
11:25 10 Q. --- inviting Crown to respond. Even if you don't recall this
11:25 11 letter, that does sound like when you were in the witness box at
11:25 12 Bergin, "Let's try and do this by an agreed statement of facts"?
11:25 13
11:26 14 A. Yes, it makes eminent sense.
11:26 15
11:26 16 Q. That comes only five days after your visit to the VCGLR
11:26 17 where you talked about the spirit of cooperation and moving
11:26 18 forward. It is reasonable to infer, isn't it, that the VCGLR were
11:26 19 approaching this in that spirit, to try and ---
11:26 20
11:26 21 A. I agree with that.
11:26 22
11:26 23 Q. --- to try and get to the bottom of its investigation in
11:26 24 relation to China with your cooperation?
11:26 25
11:26 26 A. Yes.
11:26 27
11:26 28 Q. Crown responded to this letter on 22 January 2021, in
11:26 29 answer to the proposition of facts, if you like, the factual
11:26 30 propositions which ran to 31 pages. Can I ask the operator to
11:26 31 bring that up, VCG.0001.0002.3415.
11:26 32
11:27 33 You see that document there?
11:27 34
11:27 35 A. Yes, I do.
11:27 36
11:27 37 Q. It bears your signature.
11:27 38
11:27 39 A. Yes, it does.
11:27 40
11:27 41 Q. Do you recall, I'm assuming by virtue of the fact that it
11:27 42 bears your signature that you participated in the process of
11:27 43 sending it?
11:27 44
11:27 45 A. Yes, I think that's true.
11:27 46
11:27 47 Q. And it was an important response to the VCGLR's China

11:27 1 investigations review; wasn't it?
11:27 2
11:27 3 A. Yes, I would agree with that.
11:27 4
11:27 5 Q. Particularly in the context of your meeting with the
11:27 6 VCGLR on 17 December ---
11:27 7
11:27 8 A. Yes.
11:27 9
11:27 10 Q. --- where you were effectively promising cooperation and
11:28 11 collaboration?
11:28 12
11:28 13 A. Yes, that's right.
11:28 14
11:28 15 Q. Did you read the VCGLR's response to your --- did you
11:28 16 read the VCGLR's final report and discern from it that it wasn't
11:28 17 particularly happy with your response?
11:28 18
11:28 19 A. Yes, I'm certain that's right.
11:28 20
11:28 21 Q. It wasn't happy with your response because the response
11:28 22 that is contained in this letter of 22 January is effectively the old
11:28 23 Crown at work, isn't it?
11:28 24
11:28 25 A. I think that's correct.
11:28 26
11:28 27 Q. It's the old Crown taking every point, arguing every issue,
11:28 28 not accepting basic propositions of fact that are clearly open;
11:28 29 correct?
11:28 30
11:28 31 A. I think that's right. I mean, I hadn't had a chance to refresh
11:28 32 my memory of it, but I think that would be a fair way to
11:28 33 characterise it.
11:28 34
11:28 35 Q. And that's only January this year, isn't it?
11:28 36
11:28 37 A. Yes, it is. It's the old Crown, January this year.
11:28 38
11:29 39 Q. With your name on it.
11:29 40
11:29 41 A. Yes, true.
11:29 42
11:29 43 Q. I suggest to you that one could legitimately infer that your
11:29 44 invitation to the regulator in 2020 to treat with Crown
11:29 45 collaboratively was significantly undermined by this piece of
11:29 46 work.
11:29 47

11:29 1 A. I think it has, and I have an explanation.
11:29 2
11:29 3 Q. Well, when you say "it has", I want to explore that part
11:29 4 first. It has because what it reveals is not particularly keen
11:29 5 attention to what is said to be an intention to reform; do you agree
11:29 6 with that?
11:29 7
11:29 8 A. I don't think sufficient attention was given to this
11:29 9 document, definitely. I agree with that.
11:29 10
11:30 11 Q. One could infer --- you have been talking at this stage,
11:30 12 about a reform agenda and a review since your time in the Bergin
11:30 13 Inquiry; correct?
11:30 14
11:30 15 A. Correct.
11:30 16
11:30 17 Q. And you've gone along to the VCGLR in December 2020
11:30 18 and reiterated that, correct?
11:30 19
11:30 20 A. Yes.
11:30 21
11:30 22 Q. And then in the very next breath in January 2021, the
11:30 23 company is behaving in exactly the same way; correct?
11:30 24
11:30 25 A. Well, it's behaving with the old management, yes.
11:30 26
11:30 27 Q. It suggests, doesn't it, that change of the kind that is
11:30 28 required here doesn't happen quickly?
11:30 29
11:30 30 A. Well, it certainly couldn't happen until after the Bergin
11:30 31 Inquiry, which enabled the remaining directors to get control of
11:30 32 the company and to take a different approach.
11:30 33
11:30 34 Q. When you say "it couldn't happen", why not?
11:31 35
11:31 36 A. The way boards operate and the way in which old
11:31 37 management operates are not something you can turn around
11:31 38 quickly. A change, a real change of approach wasn't possible
11:31 39 with old management and old Crown. I certainly grant you that.
11:31 40 And that is my explanation. It may not be a complete answer to
11:31 41 this but it certainly is the way in which things evolved after the
11:31 42 Bergin Inquiry but before the report was handed down. So
11:31 43 matters happened in both December and January --- I'm sure you
11:31 44 will come to it --- relating to the Show Cause Notice that are very
11:31 45 regrettable. And my explanation is that until we could really take
11:31 46 the company in a different direction, it wasn't possible to totally
11:31 47 turn around management's approach and the majority of the

11:31 1 board's approach.

11:31 2

11:31 3 Q. So are you saying to the Commission that your signature on
11:32 4 this document in January 2021 was the result of a resolution of
11:32 5 the Board to file the submission in those terms?

11:32 6

11:32 7 A. No, it was put up I think by Mr Barton and counsel. And,
11:32 8 as I understood it, it closely mirrored the --- I was told by senior
11:32 9 counsel that it closely resembled the submissions. I wasn't happy
11:32 10 with them --- that is the submissions in the Bergin Inquiry, but
11:32 11 that it wasn't possible to stop in the middle of the stream and take
11:32 12 a different approach.

11:32 13

11:32 14 Q. So, notwithstanding what you told the regulator in
11:32 15 December 2020 about a change of culture, it wasn't possible to
11:32 16 turn the ship at that point?

11:32 17

11:32 18 A. I think that is fair. And what I have told the Commission in
11:33 19 the presence of Mr Barton, who was old management, was that
11:33 20 they have my personal commitment, and by that I had in mind
11:33 21 that I would be doing what I could, going forward, to address this
11:33 22 relationship as indeed I think my actions have shown ever since
11:33 23 the Bergin Report. It's not satisfactory, I'm not defending it, I'm
11:33 24 simply explaining it.

11:33 25

11:33 26 Q. Why wasn't it possible to convince --- first of all, I want to
11:33 27 ask, did you have authority as the Chair to sign this letter without
11:33 28 it first going to the Board?

11:34 29

11:34 30 A. I believe I did. But I'm not sure whether it went to the
11:34 31 Board.

11:34 32

11:34 33 Q. Okay. So it was in your hands to decide whether or not this
11:34 34 submission or this response to the proposition of facts went to the
11:34 35 VCGLR or not?

11:34 36

11:34 37 A. Yes, with legal advice. Yes, definitely with legal advice.

11:34 38

11:34 39 Q. So you were acting only on the strength of the legal advice
11:34 40 that you couldn't change your position even though you had said
11:34 41 to Bergin that you would have preferred a different approach, in
11:34 42 front of her?

11:34 43

11:34 44 A. What happened, Mr Finanzio, and I'm not trying to avoid
11:34 45 your question at all, was that the legal advice with respect to the
11:34 46 submissions that had gone into the Bergin Report and the attitude
11:35 47 to the VCGLR China investigation, were permeated by the advice

11:35 1 and the strategic direction that had been taken by senior counsel
11:35 2 and everyone else advising the company, and I was advised that I
11:35 3 couldn't take a different approach until after the report was
11:35 4 handed down.
11:35 5
11:35 6 Q. All right. So ---
11:35 7
11:35 8 A. It would undermine all of the submissions.
11:35 9
11:35 10 Q. Yes, so am I right to say that the approach that Crown was
11:35 11 taking at this time and all the way up to the Bergin Inquiry Report
11:35 12 was that it would wait and see what the Bergin Inquiry said?
11:35 13
11:35 14 A. Well, I think that is certainly what counsel wished to have.
11:35 15 Counsel didn't wish to have their submissions dismantled by me.
11:35 16
11:35 17 Q. But you are the client, not counsel.
11:35 18
11:35 19 A. That's true. I'm not the personal client. Crown is the client,
11:35 20 and Crown has a board. Or had a board at that stage that wasn't
11:36 21 disposed to support me taking a different direction.
11:36 22
11:36 23 Q. But these were submissions that you personally were
11:36 24 uncomfortable with at Bergin; correct?
11:36 25
11:36 26 A. That's true.
11:36 27
11:36 28 Q. Why didn't you specially elevate this matter for the whole
11:36 29 board to talk about?
11:36 30
11:36 31 A. The whole board ---
11:36 32
11:36 33 Q. Why didn't you say, "Hey, I think we have a real problem
11:36 34 here, we are trying to mend the relationship with the regulator, if
11:36 35 we put this submission in it will be inflammatory. We have said
11:36 36 to Bergin that we will change our approach and strategy, we are
11:36 37 on a path to reform, this is counterproductive to that"; why didn't
11:36 38 you say something like that to the Board as a whole?
11:36 39
11:36 40 A. I believe that that was said to the Board as a whole. I
11:36 41 wasn't supported.
11:36 42
11:36 43 Q. The advice given to you by counsel, was that in writing?
11:37 44
11:37 45 A. I don't believe so. I think it was all --- counsel used to
11:37 46 attend board meetings and provide updates.
11:37 47

11:37 1 Q. When you say "counsel", who? As I understand it, first of
11:37 2 all, let's be clear, I thought you were saying to me a minute ago
11:37 3 that these were not at board meetings, this was given to you. To
11:37 4 be clear, in what circumstances was the advice given?
11:37 5
11:37 6 A. Both, both. Both personally and in updates to the board
11:37 7 and with a team of counsel.
11:37 8
11:37 9 Q. And you don't recall who?
11:37 10
11:37 11 A. I would prefer not to be alluding to a parade of people,
11:37 12 I don't think that's fair.
11:37 13
11:37 14 Q. Was any of the advice in writing?
11:37 15
11:37 16 A. I'd have to check that.
11:37 17
11:38 18 Q. The advice should be recorded in the minutes of the board?
11:38 19
11:38 20 A. No. Usually they are in-camera sessions. But it would
11:38 21 record who was there.
11:38 22
11:38 23 Q. I see. I want to take you to another matter now. The
11:38 24 VCGLR responded to a request for statement setting out where
11:38 25 this Commission asked the VCGLR to set out a number of
11:38 26 matters it had heard for the first time in the context of the Bergin
11:38 27 Inquiry. You follow my question? You follow that proposition?
11:38 28
11:38 29 A. Would you mind saying it again, please.
11:38 30
11:38 31 Q. I thought I detected that you might have lost me so I will
11:38 32 say it again.
11:38 33
11:38 34 One of the things that the Commission asked for the VCGLR to
11:38 35 do was to set out a list of matters that the VCGLR had learnt for
11:39 36 the first time as a result of the Bergin Inquiry and evidence
11:39 37 produced to it.
11:39 38
11:39 39 A. Now I've got you, yes.
11:39 40
11:39 41 Q. Can I say, Commissioner, that is tab 7,
11:39 42 VCG.9999.0002.0002. It's paragraph 5 on page 3 of that
11:39 43 document. I'm not going to spend a lot of time. It set out
11:39 44 a number of matters --- can you see that?
11:39 45
11:39 46 A. Yes, I can, yes.
11:39 47

11:40 1 Q. It set out a number of matters that came to light in the
11:40 2 course of the Bergin Inquiry that it wasn't previously aware of.
11:40 3
11:40 4 A. Yes.
11:40 5
11:40 6 Q. It lists a number of matters. You will know what they are.
11:40 7
11:40 8 A. Yes.
11:40 9
11:40 10 Q. (a) is that several banks had raised money laundering
11:40 11 concerns ---
11:40 12
11:40 13 A. Yes.
11:40 14
11:40 15 Q. --- (b) is that Crown had engaged Promontory to conduct
11:40 16 a review ---
11:40 17
11:40 18 A. Promontory, yes.
11:40 19
11:40 20 Q. --- (c), in August 2019 the General Manager Louise Lane
11:40 21 recommended a forensic review of the accounts; (d), Crown
11:40 22 received reports from Initialism and Grant Thornton in relation to
11:40 23 the suspect accounts. You see that?
11:40 24
11:40 25 A. Yes.
11:40 26
11:40 27 Q. (e), Crown implemented cash controls in the Suncity room as
11:40 28 a result of large cash transactions with Suncity in April 2018; you
11:40 29 see that?
11:40 30
11:40 31 A. Yes.
11:40 32
11:40 33 Q. (f), Crown was in possession of a list of junket operators who
11:41 34 may have been associated with the Chinatown junket Tom Zhou,
11:41 35 who was allegedly a financial backer of the Chinatown junket.
11:41 36 You see that?
11:41 37
11:41 38 A. Yes, I do.
11:41 39
11:41 40 Q. (g), Crown had engaged Berkeley in August 2020 to
11:41 41 undertake a probity test ---
11:41 42
11:41 43 A. Yes.
11:41 44
11:41 45 Q. --- and (h), matters relevant to the VCGLR's China Arrests
11:41 46 Investigation which were recounted in Mr Bryant's witness
11:41 47 statements; do you see all that?

- 11:41 1
11:41 2 A. Yes.
11:41 3
11:41 4 Q. You would say that represents the old Crown?
11:41 5
11:41 6 A. Certainly the actions did, and I do think that represents old
11:41 7 Crown, yes.
11:41 8
11:41 9 Q. The VCGLR, though, were also asked to set out a number
11:41 10 of matters which they were unaware of until evidence was given or
11:42 11 immediately prior to evidence given at this Royal Commission?
11:42 12
11:42 13 A. Yes.
11:42 14
11:42 15 Q. I just want to take you through those:
11:42 16
11:42 17 *a. Initialism and Grant Thornton's reviews of the*
11:42 18 *[Riverbank] and [Southbank] accounts were limited to*
11:42 19 *three potential scenarios rather than 9 possible*
11:42 20
11:42 21 That's one. Can you see that?
11:42 22
11:42 23 A. Oh, Yes, sorry, 6a.
11:42 24
11:42 25 Q. So --- I'm sorry if that wasn't keeping up with you or you
11:42 26 weren't keeping up. We'll start again.
11:42 27
11:42 28 A. I can see 6a.
11:42 29
11:42 30 Q. You see the chapeau of 6 there:
11:42 31
11:42 32 *The VCGLR was further unaware of the following matters*
11:42 33 *until evidence was given, or immediately prior to relevant*
11:42 34 *evidence being given at or to the Royal Commission.*
11:42 35
11:42 36 A. Yes.
11:42 37
11:42 38 Q. There is then a list of those matters.
11:42 39
11:42 40 A. Yes.
11:42 41
11:42 42 Q. Initialism and Grant Thornton's review was limited in scope
11:42 43 to three scenarios rather than the nine possible, it didn't know
11:43 44 that. It didn't know that Crown had engaged Deloitte in February
11:43 45 2021 to conduct a review of all 44 accounts and it didn't know
11:43 46 about the phasing. I will give you a moment to read that
11:43 47 paragraph; do you see that?

11:43 1
11:43 2 A. Yes.
11:43 3
11:43 4 Q. It didn't know about the provisional results of phase 2 of the
11:43 5 Deloitte review indicating that potential money laundering may
11:43 6 have occurred in Crown Perth's bank account up until 18
11:43 7 February this year. You see that?
11:43 8
11:43 9 A. Yes.
11:43 10
11:43 11 Q. It didn't know that Crown had engaged an Independent
11:43 12 Responsible Gaming Advisory Panel comprising, among others,
11:43 13 Professor Blaszczyński to conduct a review of Crown's
11:43 14 Responsible Gaming framework and strategy; do you see that?
11:43 15
11:43 16 A. Yes.
11:43 17
11:43 18 Q. Nor did it know of the report that had been produced by
11:43 19 that independent panel until it had received the evidence of
11:44 20 Ms Bauer in May this year. Hang on, just a minute --- sorry.
11:44 21
11:44 22 It didn't know that the junket agent, Simon Pan, gambled at Perth
11:44 23 up until January 2021, despite the fact that his licence to enter
11:44 24 and/or remain in the Melbourne casino was withdrawn by Crown
11:44 25 in August 2019. That's something about which you know, isn't it,
11:44 26 because you ---
11:44 27
11:44 28 A. Yes.
11:44 29
11:44 30 Q. --- asked Mr Walsh to explain that; in fact, the situation is
11:44 31 that Mr Pan who had been WOL'd or had a withdrawal of licence
11:44 32 in August 2019 had in fact entered Crown premises 29 times in
11:44 33 Perth between August 2019 and January 2021; correct?
11:44 34
11:44 35 A. Yes.
11:44 36
11:44 37 Q. That was not information that was available to the VCGLR
11:45 38 when it was conducting its junkets review, as to whether or not
11:45 39 the process of due diligence on junket operators and agents was
11:45 40 robust; correct?
11:45 41
11:45 42 A. Yes, I think those dates align.
11:45 43
11:45 44 Q. And it wasn't aware of the various breaches that had been
11:45 45 revealed on 30 March --- do you have it there?
11:45 46
11:45 47 A. Yes.

- 11:45 1
11:45 2 Q.
11:45 3
11:45 4 *certain breaches, or potential breaches by Crown. The*
11:45 5 *VCGLR was only aware of these matters when it received*
11:45 6 *a letter from the Royal Commission requesting for*
11:45 7 *information from the VCGLR about a schedule of*
11:45 8 *breaches submitted by Crown.*
11:45 9
11:45 10 Do you see that?
11:45 11
11:45 12 A. Yes.
11:45 13
11:45 14 Q. And then (g), it wasn't aware of the China Union Pay system,
11:46 15 the use of credit cards to obtain cash to play in the casino; you
11:46 16 see that?
11:46 17
11:46 18 A. Yes, I do.
11:46 19
11:46 20 Q. I'm right in saying, aren't I, that the things that the VCGLR
11:46 21 are discovering in the course of this Commission still reflect
11:46 22 aspects of the old Crown at play; correct?
11:46 23
11:46 24 A. I think that's --- yes, I agree with that.
11:46 25
11:46 26 Q. And what that means is that irrespective of the best of
11:46 27 intentions to change the culture and reform the place, that will
11:46 28 only happen slowly; correct?
11:47 29
11:47 30 A. I'm not sure I entirely agree. I think that once you --- and I
11:47 31 welcome --- can I please say that I do welcome this Commission.
11:47 32 They are very good opportunities to get to the bottom of things
11:47 33 that otherwise with a culture that isn't conducive to compliance
11:47 34 you can find out. It was behind my admonition to all of the
11:47 35 properties, that is WA and Melbourne, leave no stone unturned,
11:47 36 bring out your dead, tell me everything. It's part of how you heal.
11:47 37
11:47 38 Q. Don't you think that corporate Australia operates on the
11:47 39 basis that directors will do their job in the administration of the
11:47 40 company properly rather than requiring Commissions Royal, and
11:47 41 Inquiries, to determine what has gone wrong?
11:48 42
11:48 43 A. I agree with that if the information is properly available, if
11:48 44 all of the reporting systems and risk structures work, and the
11:48 45 systems and processes all provide certainly non-executive
11:48 46 directors with the normal tools you need to be a diligent director.
11:48 47 But bitter experience tells you that certainly with the banks, for

11:48 1 example, and other corporations, other companies, sometimes
11:48 2 there are matters that benefit from scrutiny external to the
11:48 3 company.

11:48 4
11:48 5 Q. Certainly there is a benefit from scrutiny, but surely it is the
11:48 6 case that it is the role of directors to scrutinise, challenge and
11:48 7 explore and be curious of the management. That's the board of
11:48 8 directors doing their job properly; correct?

11:48 9
11:48 10 A. Well, that's exactly what directors do and they should do
11:49 11 it properly. But what they can actually ask about, what they are
11:49 12 told and what reporting mechanisms enable them to get the
11:49 13 necessary information may well be a different matter. It is
11:49 14 a two-way street.

11:49 15
11:49 16 So it is certainly true that if you read a textbook on directors'
11:49 17 duties, you are right, but if you look at applying it to a practical
11:49 18 situation where under an old regime this wasn't happening, I defy
11:49 19 anybody to tell me how that would have been readily available to
11:49 20 even diligent directors.

11:49 21
11:49 22 Q. You blame the legal advice you were getting and the failure
11:49 23 of management to properly report to the Board; correct?

11:49 24
11:49 25 A. I would say that there is collective responsibility. I'm not
11:49 26 attributing blame. I'm trying to give an honest explanation.

11:49 27
11:49 28 Q. Okay. At the very least you agree with me that the
11:50 29 document I've just taken you to runs counter to your assertions
11:50 30 that the program of reform is well underway and will be fixed
11:50 31 soon?

11:50 32
11:50 33 A. I don't think it necessarily does.

11:50 34
11:50 35 Q. I suggest to you that a company in the position of Crown
11:50 36 will take a long time.

11:50 37
11:50 38 A. I think that we can obviously go through that, and I don't
11:50 39 downplay the fact that this is a journey, it's not a destination that
11:50 40 we are on at the moment. But the progress has been absolutely
11:50 41 enormous and I think that what is coming out of this
11:50 42 Commission, if I'm not overstating it, is that most of these matters
11:50 43 relate to past practices that are totally unacceptable. I give you
11:51 44 that, Mr Finanzio. And potentially some current issues and we
11:51 45 know that the tax issue is something we have to get to the bottom
11:51 46 of. Most of these instances, if I've followed you as you've talked
11:51 47 me through them, are past matters. And so what we've really got,

11:51 1 I think, is the culture, and what is there in the culture that doesn't
11:51 2 allow people who know these things to turn their mind to
11:51 3 bringing it to light. I think that is really where the critical inquiry
11:51 4 is. Where is that process up to.

11:51 5

11:51 6 Q. You became a director in January 2020, and when you did
11:51 7 you placed considerable reliance upon a number of people in
11:52 8 middle management; didn't you?

11:52 9

11:52 10 A. That was what Commissioner Bergin alluded to. I didn't
11:52 11 think I did. I thought that I was moving on from that and certain
11:52 12 actions I took I think support that.

11:52 13

11:52 14 Q. You did rely upon Mr Felstead and Mr Preston in the time
11:52 15 between taking the helm in January 2020 and reaching --- and the
11:52 16 time at which --- between that time and the time you got in the
11:52 17 witness box at Bergin?

11:52 18

11:52 19 A. Yes. Yes, I think that's true.

11:52 20

11:52 21 Q. Do you accept, with the benefit of reflection and time, that
11:52 22 as a director of a publicly listed company, you simply trusted
11:52 23 management too much during that period?

11:52 24

11:52 25 A. I don't believe so. I mean, these were the sorts of people
11:53 26 who were very professional in the way in which they presented,
11:53 27 they were very knowledgeable people, they had deep knowledge
11:53 28 of the company, they had been with the company for some
11:53 29 considerable time. I wouldn't like to think that I placed too much
11:53 30 acceptance in what was said. I certainly, during my time on the
11:53 31 Board, as did other more independently-minded directors, probe,
11:53 32 ask a lot of questions ---

11:53 33

11:53 34 Q. Yes.

11:53 35

11:53 36 A. --- but that's not to say that you always get to the right
11:53 37 place. And we certainly didn't.

11:53 38

11:53 39 Q. You were asking questions of a management team from
11:53 40 January 2020 which you had already received information about
11:53 41 in May 2019 that would give you reason to be concerned.

11:53 42

11:54 43 A. Well, it hadn't been definitive. It hadn't been finalised,
11:54 44 Mr Finanzio, and between 2020 and the Bergin Report we were
11:54 45 locked down for most of it. There wasn't too much interaction on
11:54 46 any of the business matters that otherwise you would rely on for
11:54 47 Mr Felstead and Mr Preston and they were busy engaged in

11:54 1 getting ready for their evidence. And I think they were the very
11:54 2 earliest witnesses, or some of them anyway in the Bergin Inquiry.
11:54 3
11:54 4 Q. You said at the Bergin Inquiry, and I'm quoting you here,
11:54 5 happy to take you to the transcript but you said these words, that
11:54 6 "Boards are allowed to ask management for information and rely
11:54 7 upon it".
11:54 8
11:54 9 A. I think that's a broad proposition, yes, that's right.
11:54 10
11:54 11 Q. But it's only partially true, isn't it? You are not meant to be
11:55 12 passive; you are meant to be inquisitive, you are meant to test the
11:55 13 management and hold it to account, aren't you?
11:55 14
11:55 15 A. Yes, of course.
11:55 16
11:55 17 Q. The relationship between Board and management should be
11:55 18 an uncomfortable one, shouldn't it?
11:55 19
11:55 20 A. And it is.
11:55 21
11:55 22 Q. The management --- it is now, but it wasn't always, was it?
11:55 23
11:55 24 A. I think it was --- I think the Board posture was probably not
11:55 25 so challenging largely because information coming to the Board,
11:55 26 Mr Finanzio, was asymmetrical. Some things were known to
11:55 27 some members and not others and reporting mechanisms
11:55 28 eschewed certain Board members.
11:56 29
11:56 30 Q. At Bergin you said, and perhaps we will take you to the
11:56 31 transcript here, it is transcript reference CRW.0002.0019.0126.
11:56 32 And it's at 0225.
11:57 33
11:57 34 COMMISSIONER: Page of the transcript?
11:57 35
11:57 36 MR FINANZIO: Sorry, 0225.
11:57 37
11:57 38 A. Mr Finanzio, everything is highlighted here.
11:57 39
11:57 40 Q. I don't know why that is so. I'm taking you to line 35.
11:57 41
11:58 42 A. Okay, got it.
11:58 43
11:58 44 Q. There is a passage in there that says:
11:58 45
11:58 46 *I said, at the time that I became chair --- and I really*
11:58 47 *mean, and it's on the record --- that I do think that, even*

11:58 1 *though it can be very difficult, sometimes you come out of*
11:58 2 *these processes better than when you went into them. So*
11:58 3 *I think that there's very much lessons to be learned. And I*
11:58 4 *certainly want to give you the assurance that, as the*
11:58 5 *leader of this company, I am ready to stay the course and*
11:58 6 *ready to ensure that what we see as the necessary*
11:58 7 *changes are implemented and adhered to if given the*
11:58 8 *privilege of being able to continue.*

11:58 9

11:58 10 A. Yes.

11:58 11

11:58 12 Q. I just want to focus your attention on the first part of that
11:58 13 statement, or that answer, which is that "Sometimes you come
11:58 14 out of these processes better than you went into them". It is
11:58 15 a sentiment expressed recently in correspondence to both the
11:59 16 CEO --- it is a sentiment expressed recently in a letter sent by the
11:59 17 solicitors representing the non-executive directors of the Crown
11:59 18 Melbourne board; isn't it? Can I take you to that document. I
11:59 19 don't have the document number for that. It was tendered the
11:59 20 other day. It is the letter of 2 July, the Arnold Bloch Leibler
11:59 21 letter.

11:59 22

11:59 23 MR BORSKY: This is the letter, Commissioner, that you've
12:00 24 made a non-publication order, or I should say indicated that you
12:00 25 would make a non-publication order in respect of, and there are
12:00 26 certain redactions in paragraphs 31 to 34. May I just respectfully
12:00 27 request that before it is put on the livestream, care is taken to
12:00 28 ensure it is the redacted version?

12:00 29

12:00 30 COMMISSIONER: Do you need the whole letter or
12:00 31 a paragraph?

12:00 32

12:00 33 MR FINANZIO: Just one paragraph, and it is not one of the
12:00 34 paragraphs in the redaction.

12:00 35

12:00 36 MR BORSKY: Very well.

12:00 37

12:00 38 MR FINANZIO: It is CRW.002.019.0126. Sorry, cancel that.
12:00 39 CRW.512.212.0001_R. You have to scroll down to paragraph
12:01 40 27.

41

42 COMMISSIONER: It's the attachment, isn't it?

43

44 MR FINANZIO: It's the attachment to the email.

45

12:01 46 This is a letter from the solicitors acting for the non-executive
12:01 47 directors of Crown Melbourne to the Minister for Consumer

12:01 1 Affairs Gaming and Liquor Regulation dated 2 July 2021.

12:01 2

12:01 3 A. I believe that is correct, yes.

12:01 4

12:01 5 Q. Paragraph 27 of that letter says:

12:01 6

12:01 7 *The board also accepts that the Commission is playing*
12:01 8 *a key role in shedding light on prior failures of culture,*
12:01 9 *systems and people and thereby helping the board to*
12:01 10 *establish a new and better culture and improved*
12:01 11 *practices, policies and procedures to ensure these prior*
12:02 12 *failings cannot reoccur.*

12:02 13

12:02 14 A. Yes.

12:02 15

12:02 16 Q. I suppose we could say we are glad to be of help to Crown.
12:02 17 I'd be saying that sarcastically. It is right, isn't it, that it's not the
12:02 18 role of Royal Commissions to, generally speaking, engage in
12:02 19 costly public hearings to help poorly-run companies to help sort
12:02 20 out their problem? That's right, isn't it?

12:02 21

12:02 22 A. Well, I'm sure that is correct, but history tells you that
12:02 23 occasionally there are instances where these processes happen
12:02 24 and they are useful. I think it is much better, in my respectful
12:02 25 opinion, to have approach to a Commission which is open to it
12:02 26 rather than resisting it. I mean, that would have been perhaps
12:03 27 an older attitude in this company. I'm taking a different
12:03 28 approach.

12:03 29

12:03 30 Q. We're really here, aren't we, to investigate what you've been
12:03 31 doing? That's correct, isn't it?

12:03 32

12:03 33 A. Well, the Terms of Reference speak for themselves,
12:03 34 Mr Finanzio.

12:03 35

12:03 36 Q. Okay. You said this about Mr Barton at the Bergin Inquiry,
12:03 37 "Look, I've been disappointed in some of the judgments made by
12:03 38 Mr Barton that I've become aware of in the course of the
12:03 39 hearing"; do you remember saying something like that in the
12:03 40 Bergin Inquiry?

12:03 41

12:03 42 A. Yes, I do.

12:03 43

12:03 44 Q. Then you said, "However I think Mr Barton has shown
12:03 45 a keen awareness of need for change. He worked diligently with
12:04 46 me and with the board to outline what needs to change and
12:04 47 I think he is the best person to be able to drive those together with

12:04 1 the board's supervision."
12:04 2
12:04 3 That was your evidence to Bergin, wasn't it?
12:04 4
12:04 5 A. That's true.
12:04 6
12:04 7 Q. Your evidence in relation to him was forgiving?
12:04 8
12:04 9 A. Yes, I think that was my intention. I mean everybody ---
12:04 10 sorry, I won't add.
12:04 11
12:04 12 Q. He was someone upon whom you had depended
12:04 13 extensively during the period that you were Chair while the
12:04 14 Bergin Inquiry was going on?
12:04 15
12:04 16 A. That what was the Commissioner said in her report. I don't
12:04 17 think it was quite that extensive, but I certainly wouldn't have
12:04 18 said that if I thought that Mr Barton wasn't capable of
12:04 19 redemption.
12:04 20
12:04 21 Q. But he was your CEO.
12:04 22
12:04 23 A. Yes, he was. Yes, he was.
12:04 24
12:04 25 Q. And there is no more important relationship in a board than
12:05 26 a relationship between the Chair and the CEO, is there?
12:05 27
12:05 28 A. Well, it is certainly one of the most, if not the most.
12:05 29
12:05 30 Q. And you worked very closely with him during that period?
12:05 31
12:05 32 A. Of course.
12:05 33
12:05 34 Q. And you relied upon him extensively during that period?
12:05 35
12:05 36 A. Well, in the conventional sense of management and
12:05 37 non-executive chair, yes.
12:05 38
12:05 39 Q. Even after the hearings concluded, you continued to depend
12:05 40 upon him?
12:05 41
12:05 42 A. Yes. I did --- yes, I did.
12:05 43
12:05 44 Q. Well, let's just give an example. At the very important
12:05 45 meeting that you went to with the VCGLR on 17 December you
12:05 46 took two people with you, Mr Barton and Mr Walsh.
12:05 47

12:05 1 A. Yes.
12:05 2
12:05 3 Q. Correct?
12:05 4
12:05 5 A. Yes.
12:05 6
12:05 7 Q. You were continuing to depend upon him in the
12:06 8 commencement of the reform process; correct?
12:06 9
12:06 10 A. Yes. They were the people who had been dealing with the
12:06 11 Commission and my intention was to --- I had never met the
12:06 12 Commission before. I had never been on the Crown Melbourne
12:06 13 Board. Ken and Xavier were the people who normally would
12:06 14 deal with them, as well as others of course on other matters.
12:06 15
12:06 16 Q. And you put him front and centre --- let me ask you this
12:06 17 first. You watched the evidence of the Bergin Inquiry; correct?
12:06 18
12:06 19 A. Yes, I did. Yes, I did.
12:06 20
12:06 21 Q. You watched the performance of Mr Barton in the context
12:06 22 of the Bergin Inquiry; correct?
12:06 23
12:06 24 A. Yes.
12:06 25
12:06 26 Q. And it was clear to you by the time that you gave evidence
12:06 27 in the Bergin Inquiry that Mr Barton would come under some ---
12:06 28 would be the subject of some criticism; correct?
12:06 29
12:06 30 A. Yes, I think that is correct.
12:06 31
12:06 32 Q. And not ill-founded criticism, but proper criticism?
12:07 33
12:07 34 A. I would agree with that.
12:07 35
12:07 36 Q. And, notwithstanding that, you regarded his position as
12:07 37 CEO as redeemable; correct?
12:07 38
12:07 39 A. Well, it may have been. It turned out not to be, but it may
12:07 40 have been.
12:07 41
12:07 42 Q. Well, when you say it turned out not to be, you are talking
12:07 43 about the outcome of the Bergin Inquiry and the Bergin Inquiry's
12:07 44 report was critical of Mr Barton; correct?
12:07 45
12:07 46 A. It certainly was.
12:07 47

12:07 1 Q. I'm asking you about your judgment, a judgment you
12:07 2 made ---
12:07 3
12:07 4 A. All right.
12:07 5
12:07 6 Q. --- having heard the same evidence that the Bergin Inquiry
12:07 7 heard, you came to a different view than would ultimately be the
12:07 8 case in the Bergin Report; correct?
12:07 9
12:07 10 A. Yes, and --- you finish, sorry.
12:07 11
12:07 12 Q. If you bear with me for a second.
12:07 13
12:07 14 A. Yes, of course.
12:07 15
12:07 16 Q. Notwithstanding having seen the evidence, and
12:08 17 notwithstanding knowing the possibility that Mr Barton would
12:08 18 come under justified criticism, you continued to rely upon him as
12:08 19 a co-representative of the company in critical meetings; that's
12:08 20 correct, isn't it?
12:08 21
12:08 22 A. I certainly took him to critical meetings, but I called
12:08 23 a Board meeting and asked Mr Barton to stand aside after the
12:08 24 Bergin Inquiry, and I wasn't supported.
12:08 25
12:08 26 Q. When did you ask that to happen?
12:08 27
12:08 28 A. It was after the conclusion of the Bergin Inquiry, and it was
12:08 29 when I was having a disagreement with the Board about getting
12:08 30 some independent advice from Arnold Bloch Leibler, and it was
12:08 31 in the context of that advice and other advice that I sought to have
12:09 32 Mr Barton stand aside pending the response to the Bergin
12:09 33 Inquiry. The Board did not support me in that. Ms Halton did,
12:09 34 I think, and Mr Horvath, but no one else.
12:09 35
12:09 36 Q. So you knew in your own mind, following the hearings but
12:09 37 before the outcome of the Bergin Inquiry, that he couldn't stay?
12:09 38
12:09 39 A. Well, I had some reservations.
12:09 40
12:09 41 A. I mean, I would work with whoever I have to work with, I
12:09 42 mean ---
12:09 43
12:09 44 Q. Aren't you under ---
12:09 45
12:09 46 A. Can I ---
12:09 47

12:09 1 COMMISSIONER: Let Ms Coonan finish.
12:09 2
12:09 3 MR FINANZIO: Sorry.
12:09 4
12:09 5 COMMISSIONER: Please go ahead, Ms Coonan.
12:09 6
12:09 7 A. Thank you. The situation was that after the Bergin Inquiry,
12:09 8 I formed the view that there were some issues to do with
12:09 9 Mr Barton, but I did think that it would be very difficult for him
12:10 10 to survive an inquiry, and I did raise with the Board the fact that
12:10 11 it would be my preference for Mr Barton to stand aside. He
12:10 12 wasn't prepared to do that. The rest of the Board, apart from the
12:10 13 people I have mentioned, were not prepared to support him being
12:10 14 stood aside, and so we went on. I had to deal with Mr Barton as
12:10 15 best I could. And he certainly had, in all fairness to him, he had
12:10 16 directed himself throughout 2020, and the very difficult period of
12:10 17 the COVID shutdown and looking after staff and all of those
12:10 18 things, he had very much directed himself to the sorts of
12:10 19 operational changes we could make all through 2020, and that's
12:10 20 evidenced from about October --- sorry, from about August on.
12:10 21 He wasn't all bad. It's just that I thought for Crown to move on, it
12:11 22 would be necessary to separate from Mr Barton at some stage;
12:11 23 my attempt to do that didn't work, and ---
12:11 24
12:11 25 Q. Sorry, when do you say your attempt occurred?
12:11 26
12:11 27 A. I think it was basically --- it was after the conclusion of the
12:11 28 evidence. Certainly the legal advice was that wouldn't be a very
12:11 29 sensible thing to do for the overall strategy which was built
12:11 30 around Mr Barton rolling out reforms. So it was certainly after
12:11 31 the evidence had been concluded. It may well have been after the
12:11 32 final submissions had been made, and it was certainly after I got
12:11 33 independent advice for the directors, at least for me at that stage,
12:12 34 that later became --- which was resisted by the rest of the Board.
12:12 35
12:12 36 Q. So is it the case then that it was the legal advice that you
12:12 37 couldn't get rid of Mr Barton before the findings of the Bergin
12:12 38 Report came out because it would be conceding something that
12:12 39 was contrary to the submissions made in Bergin on behalf of
12:12 40 Crown, notwithstanding that you knew it was the best outcome
12:12 41 for the company? Is that right?
12:12 42
12:12 43 A. I think that is part of it, but I do think that the old Board
12:12 44 were absolutely convinced that they would be found suitable.
12:12 45
12:12 46 Q. And you weren't?
12:12 47

12:12 1 A. Well, I've certainly --- I mean, I've been around the block
12:12 2 a few times, Mr Finanzio, in these kind of matters, and I thought
12:12 3 there was a real risk.

12:12 4
12:12 5 Q. On 23 March --- we went to this document before, at tab 8,
12:12 6 Commissioner, VCG.0001.0002.8337. This is the presentation
12:13 7 that was made to the VCGLR in March. I just want to draw your
12:13 8 attention to page 11. Crown, you see there:

12:13 9

12:13 10 *Reform Agenda*
12:13 11 *Changes in Corporate Governance*

12:13 12

12:13 13 A. Yes.

12:13 14

12:13 15 Q. What it depicts is the current directors and then, well, not
12:13 16 quite current, I think Professor Horvath has since departed, but
12:13 17 then the recent departures; do you see that list of recent
12:13 18 departures there?

12:13 19

12:13 20 A. Yes, and Mr Morrison was subject to regulatory approval
12:13 21 that I think he got in early April of this year.

12:13 22

12:13 23 Q. Not that long after this, I think you are right. This is in
12:14 24 your presentation to VCGLR which informs it about the reform
12:14 25 agenda?

12:14 26

12:14 27 A. Yes.

12:14 28

12:14 29 Q. I'm right, aren't I, that this sheet --- by this sheet, Crown is
12:14 30 making the point that these departures are an important part of
12:14 31 the renewal process?

12:14 32

12:14 33 A. Yes, they are a part of it, yes.

12:14 34

12:14 35 Q. They are called --- they are recent departures, that is, some
12:14 36 of the departures occurred before the hearings had concluded in
12:14 37 Bergin. I think Mr Felstead had departed by then ---

12:14 38

12:14 39 A. Yes.

12:14 40

12:14 41 Q. --- maybe Mr Preston as well ---

12:14 42

12:14 43 A. Yes.

12:14 44

12:14 45 Q. --- but others departed after the findings of the Bergin
12:14 46 Inquiry were made known?

12:14 47

12:14 1 A. Yes, in the first couple of weeks after.
12:14 2
12:14 3 Q. Yes.
12:14 4
12:14 5 A. At different stages.
12:15 6
12:15 7 Q. Mr Barton, as you've said, didn't depart before the Bergin
12:15 8 Inquiry was completed.
12:15 9
12:15 10 A. No, he didn't.
12:15 11
12:15 12 Q. It was thought that he might escape criticism of the Bergin
12:15 13 Inquiry; is that right?
12:15 14
12:15 15 A. I don't know what he thought.
12:15 16
12:15 17 Q. When certainly the company made an announcement on his
12:15 18 departure, which was to this affect, wasn't it, "Mr Barton steps
12:15 19 down as CEO as Managing Director on the Crown Board with
12:15 20 immediate effect but will continue to assist with the transition to
12:15 21 new leadership in coming weeks to ensure a smooth handover";
12:15 22 do you recall that statement being made by the company?
12:16 23
12:16 24 A. Yes.
12:16 25
12:16 26 Q. It wasn't a truthful statement, was it?
12:16 27
12:16 28 A. I believe it was. He certainly did continue with some
12:16 29 matters, yes.
12:16 30
12:16 31 Q. He continued ---
12:16 32
12:16 33 A. Largely ---
12:16 34
12:16 35 Q. --- didn't he, under a consultancy agreement which had him
12:16 36 paid in the order of --- I think it is \$1.2 million over the course of
12:16 37 a year?
12:16 38
12:16 39 A. Yes.
12:16 40
12:16 41 Q. Not for a few weeks.
12:16 42
12:16 43 A. No, no, no but --- yes, his consultancy runs that way, yes.
12:16 44
12:16 45 Q. So what happened was --- pardon me, it was \$1.5 million,
12:16 46 not \$1.2.
12:16 47

12:16 1 A. I don't have it in front of me, but I will take that from you.
12:16 2 It's about that.
12:16 3
12:16 4 Q. And to be paid in six equal instalments, that's correct, isn't
12:17 5 it?
12:17 6
12:17 7 A. Yes.
12:17 8
12:17 9 Q. I want to show you an email ---
12:17 10
12:17 11 COMMISSIONER: What is the date of the consultancy
12:17 12 agreement?
12:17 13
12:17 14 MR FINANZIO: The consultancy agreement is dated
12:17 15 18 February 2021. I might just show you the agreement,
12:17 16 CRW.512.049.0192.
12:17 17
12:17 18 The agreement is between Crown and Popo Fibib. It is dated
12:18 19 February. You signed the counterpart?
12:18 20
12:18 21 A. I think so. If you can just go to ---
12:18 22
12:18 23 Q. It's the back of the document that shows the relevant
12:18 24 schedules.
12:18 25
12:18 26 A. I expect I would have, yes.
12:18 27
12:18 28 Q. Just go up or down two pages. There you go.
12:18 29
12:18 30 A. Yes. True.
12:18 31
12:18 32 Q. The fee --
12:18 33
12:18 34 A. Me and Toni Korsanos, yes.
12:18 35
12:18 36 Q. And the fee is in schedule 1. Slide down one page. The fee
12:18 37 is there --
12:18 38
12:18 39 A. Yes.
12:18 40
12:18 41 Q. --- and the next page is a description of the services.
12:18 42
12:18 43 A. Yes.
12:18 44
12:19 45 Q. I want to show you two other documents,
12:19 46 CRW.525.002.9425. Slide to the bottom. That is a chain of
12:19 47 emails. The first email is 11 February and it attaches the media

12:19 1 release to the ASX; do you see that? At the bottom?

12:19 2

12:19 3 A. Yes. Yes.

12:19 4

12:19 5 Q. The email is to you from Tanya Baini?

12:19 6

12:19 7 A. Yes.

12:19 8

12:19 9 Q. And says:

12:19 10

12:19 11 *Helen*

12:19 12

12:19 13 *David has drafted a statement for your consideration*
12:19 14 *which makes it clear that you would move to Executive*
12:19 15 *Chairman on an interim basis and Ken has been removed*
12:20 16 *from the position of CEO and removed from the Board.*
12:20 17 *We say that Ken will assist with transition to new*
12:20 18 *leadership in coming weeks.*

12:20 19

12:20 20 *Please let me know if you have any comments*

12:20 21

12:20 22 You see that?

12:20 23

12:20 24 A. Yes.

12:20 25

12:20 26 Q. And then David Luff says to you in the email above it:

12:20 27

12:20 28 *The comms strategy is that we get the benefit of the*
12:20 29 *announced departure (in line with ILGA's stated*
12:20 30 *demand) but we have the safety net of him being on hand*
12:20 31 *if we need specific information from recent corporate*
12:20 32 *history/workstream/decisions*

12:20 33

12:20 34 You see that?

12:20 35

12:20 36 A. Yes, that was the thinking.

12:20 37

12:20 38 Q. If I take you to the next document which is

12:20 39 CRW.525.001.3612.

12:20 40

12:20 41 A. I don't have that, sorry.

12:20 42

12:20 43 Q. It is coming up now. That is an email from Ian Smith to
12:21 44 you and the other three directors; do you see that?

12:21 45

12:21 46 A. Yes.

12:21 47

- 12:21 1 Q. It says:
 12:21 2
 12:21 3 *I know it has been a huge week for you all, but it is ending*
 12:21 4 *better than it started.*
 12:21 5
 12:21 6 *It has been, and will continue to be most difficult for*
 12:21 7 *Helen as she is the public face of Crown for now.*
 12:21 8
 12:21 9 *Having spoken with each of you this week, I just wanted*
 12:21 10 *to reiterate the following as I understand there is still*
 12:21 11 *a chance it may not be concluded tonight.*
 12:21 12
 12:21 13 *1. Ken has to go tonight or the press will move on to the*
 12:21 14 *Chair and the Board a bit and start saying it's "weak";*
 12:21 15
 12:21 16 *2. Ken can't present the results, and I think there will be*
 12:21 17 *some flex provided to those that do by media and*
 12:21 18 *investors;*
 12:21 19
 12:21 20 *3. Ratings agencies will be ok*
 12:21 21
 12:21 22 *4. Any hint of Ken staying will come back on you all ---*
 12:21 23 *he's pushing for his millions while staff no longer get*
 12:22 24 *jobkeeper;*
 12:22 25
 12:22 26 *5. We have a broader team --- internal, advisors and*
 12:22 27 *board --- that can take this forward give the relationships*
 12:22 28 *with our key stakeholders (regulators and govts) are good*
 12:22 29 *there. Chair should call each on Monday too.*
 12:22 30
 12:22 31 You see that?
 12:22 32
 12:22 33 A. Yes.
 12:22 34
 12:22 35 Q. These were musings concerning the strategy to deal with
 12:22 36 Mr Barton in relation to the findings of the Bergin Inquiry,
 12:22 37 weren't they?
 12:22 38
 12:22 39 A. I think they were the musings of Mr Smith about
 12:22 40 perceptions in the media.
 12:22 41
 12:22 42 Q. Well, can I suggest this to you: the real strategy was to
 12:22 43 make it look like you were cleaning house, wasn't it?
 12:22 44
 12:22 45 A. Well, that was in fact what was happening. It wasn't
 12:22 46 a strategy. It was in fact what was occurring.
 12:22 47

12:22 1 Q. But you were keeping Mr Barton on hand to assist you for
12:22 2 a period for some months at some considerable expense; correct?

12:22 3

12:22 4 A. Well, you have to do that, Mr Finanzio. You've got to be
12:23 5 able to refer to somebody who knows information that otherwise
12:23 6 might not be available. And one of the things that Mr Barton was
12:23 7 able to do, and one of his critical roles that isn't mentioned
12:23 8 anywhere, is in relation to the financing, Crown's financiers, the
12:23 9 rating agencies and others, where he had played a very key role
12:23 10 for a long time, he was the former CFO, and --- so there are a lot
12:23 11 of moving parts in moving on a CEO, and this is a way in which
12:23 12 we thought it was appropriate, as we had done with other
12:23 13 departing executives, or some in the past, such as Mr Craigie in
12:23 14 the past, that you need to be able to refer to these people,
12:23 15 particularly with the amount of litigation and other inquiries that
12:24 16 go on. It is a fairly standard way of parting company, but being
12:24 17 able to retain their cooperation as opposed to their hostility.

12:24 18

12:24 19 COMMISSIONER: Can I just correct one thing.

12:24 20

12:24 21 A. Yes.

12:24 22

12:24 23 COMMISSIONER: I thought that the consultancy agreement
12:24 24 was for six months, not 12 months.

12:24 25

12:24 26 MR FINANZIO: Six months, correct.

12:24 27

12:24 28 COMMISSIONER: If that is right, then Mr Barton is getting
12:24 29 \$250,000 a month ---

12:24 30

12:24 31 MR FINANZIO: That's correct.

12:24 32

12:24 33 COMMISSIONER: --- for being on standby.

12:24 34

12:24 35 MR FINANZIO: Correct. I may have misstated that, did I?

12:24 36

12:24 37 COMMISSIONER: I think you said 12 months.

12:24 38

12:24 39 MR FINANZIO: Sorry. Can I just be clear, though, you never
12:24 40 told the market --- you told the market and the public that he was
12:24 41 staying on for weeks; correct?

12:24 42

12:24 43 A. Yes, that he would be available.

12:24 44

12:24 45 Q. For weeks, not months; correct?

12:24 46

12:24 47 A. Yes.

12:24 1
12:24 2 Q. And you never told the market how much he was being
12:25 3 paid; correct?
12:25 4
12:25 5 A. No, I think that is disclosed in the annual reports.
12:25 6
12:25 7 Q. You represented in March 2021 to the VCGLR that he had
12:25 8 departed, but in truth he was continuing to advise you about
12:25 9 critical matters; correct?
12:25 10
12:25 11 A. He was available to advise.
12:25 12
12:25 13 Q. You were acting, I suggest to you, in accordance with the
12:25 14 comms strategy which was described, which was to take the
12:25 15 advantage of announcing his departure, but at the same time take
12:25 16 the same advantage of secretly obtaining his advice and
12:25 17 assistance in relation to critical matters. That's true, isn't it?
12:25 18
12:25 19 A. It's not secret. It is available. I mean, it is here, and ---
12:25 20
12:25 21 Q. Well --- sorry to cut ---
12:25 22
12:25 23 COMMISSIONER: Don't interrupt.
12:25 24
12:25 25 Sorry, you continue, Ms Coonan.
12:25 26
12:25 27 A. Thank you, Commissioner. I was just saying that it is
12:26 28 a fairly standard way of separating from key people in
12:26 29 organisations, that they are available for unresolved matters
12:26 30 where they may be needed. Otherwise you end up with just
12:26 31 another lot of litigation to deal with because people feel
12:26 32 aggrieved about leaving, don't always agree to go voluntarily, and
12:26 33 litigation with departed executives is about the last problem that
12:26 34 Crown would want at the moment.
12:26 35
12:26 36 Q. Couldn't you have said to the market in your announcement
12:26 37 that "Mr Barton will stay on until we find a replacement", which
12:26 38 is really in substance what you were doing?
12:26 39
12:26 40 A. You could have said that. Our ---
12:26 41
12:26 42 Q. And ---
12:26 43
12:26 44 A. May I just finish, please. Our disclosure advisors, who
12:26 45 were a totally different lot of lawyers, didn't advise that.
12:27 46
12:27 47 COMMISSIONER: Would it be fair to say, just reading

12:27 1 Ian Smith's note, Ian Smith is from Adelaide, yes?

12:27 2

12:27 3 A. Yes.

12:27 4

12:27 5 COMMISSIONER: I just wanted to check which Ian Smith it
12:27 6 was.

12:27 7

12:27 8 A. Yes. He runs an organisation called Bespoke, and he has
12:27 9 a team of people who do corporate affairs advising. And this
12:27 10 note to me, as I've said to Mr Finanzio, was I think his musings
12:27 11 about perceptions in the media, as Mr Barton hadn't been
12:27 12 prepared to go voluntarily without some negotiation.

12:27 13

12:27 14 COMMISSIONER: That was okay --

12:27 15

12:27 16 A. Yes.

12:27 17

12:27 18 COMMISSIONER: --- I was just going to ask you about the
12:27 19 fourth item on the email, the paragraph numbered 4 on the email.

12:27 20

12:27 21 A. Yes.

12:27 22

12:27 23 COMMISSIONER: It looks like to me, at least from Ian Smith's
12:27 24 perspective, Barton was saying he wouldn't go unless you pay
12:28 25 him a vast sum of money, and this was effectively a payout to
12:28 26 him. Or you had to pay him something to get rid of him.

12:28 27

12:28 28 A. I can see that is how it might read, but I think what he was
12:28 29 really alluding to was the fact that media would think that Ken
12:28 30 was being very greedy, and unless we concluded this pretty
12:28 31 quickly, that would be the conclusion that he was holding out.
12:28 32 And he wasn't actually holding out for millions. He was holding
12:28 33 out in respect of other matters.

12:28 34

12:28 35 COMMISSIONER: Fair enough. Although, to be fair about it,
12:28 36 1.5 million for six months is a fair bit of money.

12:28 37

12:28 38 A. It is a lot of money, Commissioner, I agree with that, but
12:28 39 it's not at all unusual. Certainly in my experience in Crown, it is
12:28 40 not unusual as to how people separate. And as I just referenced,
12:28 41 Mr Rowan Craigie, who was the previous CEO who had been
12:29 42 moved on, had a similar kind of arrangement. He was largely
12:29 43 retained in connection with the class actions.

12:29 44

12:29 45 COMMISSIONER: Yes, understand.

12:29 46

12:29 47 A. So that's the context for it.

12:29 1
12:29 2 COMMISSIONER: Thank you.
12:29 3
12:29 4 MR FINANZIO: When you say --- the true position of the nature
12:29 5 of his engagement and the extent of it only came to light on the
12:29 6 production of the documents in this Commission, didn't it?
12:29 7
12:29 8 A. I'm not sure.
12:29 9
12:29 10 Q. Certainly it wasn't in any public statement by Crown?
12:29 11
12:29 12 A. It wasn't in a media release, but my recollection is it's not
12:29 13 secret. It may have been said in some other interview or context.
12:29 14
12:29 15 Q. And the fact of his involvement in these matters wasn't
12:29 16 disclosed to the regulator when you were trying to convince the
12:29 17 regulator that key people who had been criticised in the Bergin
12:30 18 Inquiry had left?
12:30 19
12:30 20 A. No, they were departures from the formal part of the Board.
12:30 21
12:30 22 Q. I see. I want to move to another topic now.
12:30 23
12:30 24 You would agree --- (siren goes off) ---
12:30 25
12:30 26 MR BORSKY: They are coming for you, Mr Finanzio.
12:30 27
12:30 28 A. I think it is in Sydney!
12:30 29
12:30 30 COMMISSIONER: Everybody is panicking here, Ms Coonan.
12:30 31
12:30 32 A. You will understand if I run out.
12:30 33
12:30 34 MR FINANZIO: It is true, isn't it, that Crown had maintained
12:31 35 a line or a position with the regulator for many years that it was
12:31 36 a world leader in Responsible Gaming practices?
12:31 37
12:31 38 A. Yes.
12:31 39
12:31 40 Q. And, indeed, statements to that effect have been included,
12:31 41 are included and have been included for many years in Crown's
12:31 42 Responsible Gaming Code of Conduct?
12:31 43
12:31 44 A. Yes.
12:31 45
12:31 46 Q. Correct?
12:31 47

12:31 1 A. Yes, I think that is correct.
12:31 2
12:31 3 Q. It is only as recently as June this year that that statement
12:31 4 has been removed from the Code of Conduct; correct?
12:31 5
12:31 6 A. I'm not sure about dates, but I think the general proposition
12:31 7 you are putting is correct.
12:31 8
12:31 9 Q. It took this Royal Commission to obtain the
12:31 10 acknowledgement from the head of RSG that it is no longer
12:32 11 a world leader; didn't it?
12:32 12
12:32 13 A. I don't know when she may have said it in other contexts,
12:32 14 but she has certainly said it in her evidence before this
12:32 15 Commission.
12:32 16
12:32 17 Q. And, in truth, as a result of your directed inquiry, Crown is
12:32 18 a long way from being a world leader in RSG, isn't it; at the
12:32 19 moment?
12:32 20
12:32 21 A. I think there is certainly room for improvement.
12:32 22
12:32 23 Q. Before this Royal Commission there was no hint that
12:32 24 Crown would be revisiting its Responsible Service of Gaming;
12:32 25 was there?
12:32 26
12:32 27 A. I'm just not sure. May I put it in context so I'm not
12:32 28 misleading you. The VCGLR had had a fairly laser-like look at
12:32 29 Responsible Gaming and while I wasn't on Crown Melbourne, I
12:33 30 followed, of course, the VCGLR recommendations, and my
12:33 31 understanding was that they had all been implemented apart from
12:33 32 one or two that related to technology. Then, I was certainly
12:33 33 aware that there was an advisory group of experts who had done
12:33 34 a report and made recommendations which had all been accepted
12:33 35 and in the course of being implemented.
12:33 36
12:33 37 Then --- I can't remember the dates, I think the Commission was
12:33 38 called and I at some stage at least had a conversation with
12:33 39 Mr Blackburn about moving Responsible Gaming from
12:33 40 a compliance line of reporting into his line, because he and I both
12:34 41 agreed it was important. So I think that context is correct. And I
12:34 42 knew he was working on a suite of improvements. So I think that
12:34 43 is the context and I think the Commission was called before that.
12:34 44 So it is a long-winded way of saying yes, I'm sorry about that, but
12:34 45 I'm working through in my own head because I was never on the
12:34 46 Responsible Gaming Committee until after the changes in
12:34 47 February. The Board changes.

12:34 1
12:34 2 Q. Let me help you a little.
12:34 3
12:34 4 A. Sorry to be long-winded.
12:34 5
12:34 6 Q. That's okay. Let me help you with the context. You were
12:34 7 making reference a minute to go to the VCGLR's
12:34 8 recommendations.
12:34 9
12:34 10 A. Yes.
12:34 11
12:34 12 Q. They were recommendations that arose in the Sixth
12:34 13 Review; that's what you are talking about?
12:34 14
12:34 15 A. Yes, that's right. Yes.
12:34 16
12:35 17 Q. There had been no indication from Crown until after this
12:35 18 Royal Commission had started that it would be doing income
12:35 19 than the recommendations in the Sixth Review; correct?
12:35 20
12:35 21 A. I'm just not sure about that. As I say, my line of sight into
12:35 22 exactly what happened with the RSG was not as acute until I
12:35 23 moved on to the RSG Committee this year.
12:35 24
12:35 25 Q. The advisory panel was reported in August 2020?
12:35 26
12:35 27 A. I think they reported in August 2020, because I remember
12:35 28 Mr Horvath was the Chair of the Committee and having
12:35 29 a conversation with him about it.
12:35 30
12:35 31 Q. The regulator had no knowledge of the existence of that
12:35 32 report?
12:35 33
12:35 34 A. I'm not sure.
12:35 35
12:35 36 Q. The regulator --- I took you to it before, the regulator said
12:35 37 the report wasn't provided to it until ---
12:36 38
12:36 39 A. Sorry, yes, you are quite right.
12:36 40
12:36 41 Q. Crown had not signalled externally that any changes to
12:36 42 RSG beyond the recommendations of the Sixth Review were
12:36 43 proposed until this Commission commenced; that is correct?
12:36 44
12:36 45 A. That's correct, externally, yes. I'm sorry, I misheard
12:36 46 external.
12:36 47

- 12:36 1 Q. The panel that had been appointed did not examine the
12:36 2 question of how long people play on EGMs; did it?
12:36 3
- 12:36 4 A. I don't think so. I would have to go back to it to check, but
12:36 5 I don't have any recollection of them doing that.
12:36 6
- 12:36 7 Q. Just before the week commencing 17 May --- pardon me,
12:36 8 just before the week commencing the RSG tranche of evidence in
12:36 9 this Royal Commission, Crown conceded that the current Play
12:36 10 Periods Policy involved gamblers on machines in particular,
12:37 11 carded players, were gambling for too long. You recall that, don't
12:37 12 you?
12:37 13
- 12:37 14 A. Yes, I do, and I agree with it.
12:37 15
- 12:37 16 Q. Crown now proposes to reduce those hours from its current
12:37 17 Play Periods Policy, doesn't it?
12:37 18
- 12:37 19 A. Yes.
12:37 20
- 12:37 21 Q. The proposed change is itself unsupported by any of the
12:37 22 literature which Crown refers to in its own Code of Conduct?
12:37 23
- 12:37 24 A. I've heard that.
12:37 25
- 12:37 26 Q. The only reason that any move on play periods arose was as
12:37 27 a result of this Royal Commission; correct?
12:37 28
- 12:37 29 A. I think it certainly pointed up the fact that there were things
12:37 30 that needed to be done, and that might have been able to be
12:37 31 brought forward. Yes, definitely.
12:37 32
- 12:37 33 Q. Isn't it the case that when the Commissioner and I on the
12:38 34 initial public hearing mentioned that RSG would be a focus, you
12:38 35 were immediately concerned that might be a blind spot that
12:38 36 Crown had not looked at for a considerable period?
12:38 37
- 12:38 38 A. Absolutely. I wanted to make sure that we had a good look
12:38 39 at what we had done, I wanted to know where there were gaps,
12:38 40 and I did want to do that, absolutely.
12:38 41
- 12:38 42 Q. And that started in March this year; correct?
12:38 43
- 12:38 44 A. With Mr Blackburn, yes.
12:38 45
- 12:38 46 Q. Now, it is true, isn't it also, that it is only as a result of this
12:38 47 Royal Commission that we know that facial recognition

12:38 1 technology could have been deployed in Crown as long ago as
12:38 2 2014?
12:38 3
12:38 4 A. I apologise. I didn't follow that piece of evidence, but if
12:39 5 you tell me that --- I don't disagree with it, I just don't recall
12:39 6 having absorbed that piece of information.
12:39 7
12:39 8 Q. It was suggested by the head of security that it be done
12:39 9 many years ago before it was actually deployed at Crown. You
12:39 10 just don't know that?
12:39 11
12:39 12 A. I don't. I'm sorry.
12:39 13
12:39 14 Q. Mr Walsh.
12:39 15
12:39 16 A. I'm sorry, I don't know.
12:39 17
12:39 18 Q. It is only as a result of this Royal Commission that we
12:39 19 know that in the opinion of people on the ground, the RSG
12:39 20 function has been understaffed for years; correct?
12:39 21
12:39 22 A. I don't know whether --- when you say "only", I don't know
12:39 23 that I can agree with "only". I mean, RSG is a matter that
12:39 24 continually evolves. It is never something, in my view, that you
12:39 25 can set and forget. And I certainly think that you need to be
12:39 26 trying to look at where you can do better across the whole field,
12:40 27 including any kind of technology. So if you are telling me that
12:40 28 that was available, well, I'm not disputing it, I just didn't know
12:40 29 that.
12:40 30
12:40 31 Q. It wasn't something that the Crown Resorts Board had
12:40 32 a close eye on; is that correct in?
12:40 33
12:40 34 A. Well, certainly the Crown Resorts Board got the minutes of
12:40 35 the meeting of the RSG Committee that had been shared by
12:40 36 Professor Horvath since inception. And it has certainly come into
12:40 37 very close scrutiny now because it is part of the Board meeting.
12:40 38
12:40 39 Q. Do you agree that any increases in staff that are now
12:40 40 proposed by the Crown enhancements that were revealed in this
12:40 41 Commission have never been the subject of proper review of
12:41 42 what is actually required to perform the RSG function?
12:41 43
12:41 44 A. Well, Mr Blackburn has put forward these enhancements as
12:41 45 part of a much bigger uplift for RSG. So I'm not really sure I can
12:41 46 answer that question "yes" or "no".
12:41 47

- 12:41 1 Q. You agree that you instigated, in late March,
12:41 2 an examination of the RSG function at Crown?
12:41 3
12:41 4 A. Yes.
12:41 5
12:41 6 Q. By sending emails to Professor Horvath ---
12:41 7
12:41 8 A. Yes.
12:41 9
12:41 10 Q. --- and to other people?
12:41 11
12:41 12 A. Absolutely, I did.
12:41 13
12:41 14 Q. And that was because you could see that RSG would
12:41 15 become a focus of this inquiry?
12:41 16
12:41 17 A. Partly that, and partly that I wanted to get a much more
12:41 18 granular view of it.
12:41 19
12:41 20 Q. You didn't want to get a more granular view of it at any
12:41 21 time before that?
12:41 22
12:42 23 A. I wanted to, because I had come on the Committee,
12:42 24 Mr Finanzio, which was just this year.
12:42 25
12:42 26 Q. I see. And you agree that it had been a blind spot for the
12:42 27 Board that you had been on for 10 years?
12:42 28
12:42 29 A. I don't know that I would agree it is a blind spot. It needs
12:42 30 some attention, I certainly agree with that.
12:42 31
12:42 32 Q. It was at your instigation that a response from
12:42 33 Mr Blackburn was produced?
12:42 34
12:42 35 A. Yes.
12:42 36
12:42 37 Q. He wasn't employed initially to head up RSG?
12:42 38
12:42 39 A. No, that's true.
12:42 40
12:42 41 Q. He had no prior experience in the field?
12:42 42
12:42 43 A. No, but he's an extremely bright man with great technical
12:42 44 capability also.
12:42 45
12:42 46 Q. Within a month, the Crown Board had passed a set of what
12:42 47 it called improvements or enhancements to RSG?

12:42 1
12:42 2 A. That is true.
12:42 3
12:42 4 Q. I'm right in characterising that, aren't I, as a knee-jerk
12:42 5 reaction to your concern that RSG might wrong-foot Crown's
12:43 6 narrative that it is on the road to reform?
12:43 7
12:43 8 A. I don't agree with that proposition. I think they were very
12:43 9 sensible things that ought to have been done that were available
12:43 10 coming out of the expert report, and ways that we could enhance
12:43 11 immediately. It is not the whole story, but I don't think they
12:43 12 should have been held back for any reason.
12:43 13
12:43 14 Q. The enhancement ---
12:43 15
12:43 16 A. I think they were sensible enhancements.
12:43 17
12:43 18 Q. The enhancements are by no means a comprehensive
12:43 19 response to RSG matters; are they?
12:43 20
12:43 21 A. No, I'm not saying that.
12:43 22
12:43 23 Q. The current state of RSG demonstrates that problems
12:43 24 within the organisation are much deeper than were explored by
12:43 25 the Bergin Inquiry; correct?
12:43 26
12:43 27 A. I don't think the Bergin Inquiry, with respect, looked at
12:43 28 Responsible Gaming.
12:43 29
12:43 30 Q. No, that is precisely my point. The Bergin Inquiry was
12:44 31 concerned with money laundering and criminal influence and the
12:44 32 China arrests, and it didn't scrutinise these matters at all; correct?
12:44 33
12:44 34 A. It didn't scrutinise Responsible Gaming.
12:44 35
12:44 36 Q. Coming under scrutiny, it has become clear that this is yet
12:44 37 another part of the Crown entities that needs considerable work;
12:44 38 do you agree with that?
12:44 39
12:44 40 A. I don't know what "considerable work" you are alluding to.
12:44 41 What I'm saying is that I think it needs some further attention,
12:44 42 and that is what we've been tasked to do.
12:44 43
12:44 44 Q. What I mean by "considerable work" is that the culture of
12:44 45 the organisation is reflected in the paucity of the approach to
12:44 46 responsible gambling, Responsible Service of Gambling that the
12:44 47 current RSG function demonstrates. Do you agree with that?

12:44 1
12:44 2 A. Would you mind just saying that again?
12:44 3
12:44 4 Q. I'm not sure I could remember it all. Do you agree that the
12:45 5 current state of RSG is reflective of deeper problems within the
12:45 6 Crown structure, within the Crown entities?
12:45 7
12:45 8 A. No. I think it is a part of the business operations, it is part
12:45 9 of our social licence to operate. It is a very important part of our
12:45 10 licence that I think needs some further enhancement and
12:45 11 attention.
12:45 12
12:45 13 MR FINANZIO: All right, thank you, Commissioner. That's
12:45 14 probably a good time.
12:45 15
12:45 16 COMMISSIONER: Ms Coonan, we will have a 45-minute break
12:45 17 if that is okay.
12:45 18
12:45 19 A. Yes, thank you, Commissioner.
12:45 20
12:45 21 COMMISSIONER: Mr Borsky, I will find out over lunch about
12:45 22 the witness availability tomorrow unless somebody already
12:45 23 knows, but if I divide up the day into two witnesses and half the
12:46 24 time for the witnesses to be led and then ask questions, the
12:46 25 witnesses will be led by Counsel Assisting, and asked questions
12:46 26 by others, and adopting the equity maxim of equality, that would
12:46 27 give you 1 hour and 15 minutes each. Would you find out or
12:46 28 whether the people that want to ask the witnesses questions can
12:46 29 fit them into one hour and 15 minutes?
12:46 30
12:46 31 MR BORSKY: One hour and 15 minutes each? Did you mean
12:46 32 each witness or ---
12:46 33
12:46 34 COMMISSIONER: Yes, each witness. So if we do 1 hour and
12:46 35 15 minutes leading the witness, 1 hour and 15 minutes with any
12:46 36 other parties with leave to appear asking questions, that way I can
12:46 37 do two witnesses in a day. Equalise the time as between ---
12:47 38 parties who have leave to appear can divide up the hour and 15
12:47 39 minutes in whichever way you want, I don't care. That gives you
12:47 40 2.5 hours per witness, and lunch breaks and coffee breaks and so
12:47 41 on, we'll do it in a day. I'm just interested to know, before I
12:47 42 reorganise tomorrow and not Monday, whether that is workable.
12:47 43
12:47 44 MR BORSKY: I understand. I did not understand that was the
12:47 45 approach the Commission was proposing to adopt this morning
12:47 46 when I said we were confident we could finish within a day, for
12:47 47 two reasons.

12:47 1
12:47 2 COMMISSIONER: I'm working out a day. Unless you want to
12:47 3 start at 7 am and finish at midnight or something like that.
12:47 4
12:47 5 MR BORSKY: No, I was rather thinking somewhere in between
12:47 6 the two poles you were putting to me. I don't mean to quibble,
12:47 7 but I had misunderstood --- I had not understood from the service
12:48 8 of reports that it would be necessary or even proposed to lead the
12:48 9 witnesses in-chief through their evidence.
12:48 10
12:48 11 COMMISSIONER: I haven't spoken to Counsel Assisting ---
12:48 12
12:48 13 MR BORSKY: I have, but I don't want to burden anyone ---
12:48 14
12:48 15 COMMISSIONER: You will know more than me.
12:48 16
12:48 17 MR BORSKY: I'm sure that's not true. To be candid, I think
12:48 18 an hour and 15 collectively for everybody in the room save for
12:48 19 Counsel Assisting will be inadequate. I think that will be inadequate
12:48 20 on the basis of the estimates.
12:48 21
12:48 22 COMMISSIONER: Can you find out?
12:48 23
12:48 24 MR BORSKY: I can find out.
12:48 25
12:48 26 COMMISSIONER: Give me a second.
12:48 27
12:48 28 MR BORSKY: I don't want to quibble with you, Commissioner,
12:48 29 over these matters. That will be inadequate on my understanding
12:49 30 of people's estimates, but on my understanding of the estimates, if
12:49 31 you were to divide the day roughly having the McGrathNicol
12:49 32 witness in the morning --- and I use that term loosely, that may be
12:49 33 a late lunch break because I apprehend that the cross-examination
12:49 34 of the McGrathNicol witness may be slightly more protracted
12:49 35 than that of Ms Arzadon, if you took a slightly later break and it
12:49 36 may be necessary for us to sit a little late tomorrow to conclude
12:49 37 Ms Arzadon, but on the basis that Counsel Assisting would
12:49 38 principally be relying on the reports as we've received them,
12:49 39 rather than going back from a blank page ---
12:49 40
12:49 41 COMMISSIONER: I see.
12:49 42
12:49 43 MR BORSKY: --- on that basis we had confidently predicted
12:49 44 that the other parties, other than Counsel Assisting, would fit
12:49 45 within half a day comfortably. It's up to you to decide.
12:49 46
12:49 47 COMMISSIONER: I will work it out with Counsel Assisting. I

12:49 1 don't know what their plans are with those witnesses, I don't
12:49 2 know whether they will want to lead them in-chief for a while or
12:49 3 not, I have to sort that ---
12:49 4
12:50 5 MR BORSKY: Perhaps for a short while was our expectation.
12:50 6
12:50 7 COMMISSIONER: Okay.
12:50 8
12:50 9 MR BORSKY: You let us know after lunch ---
12:50 10
12:50 11 COMMISSIONER: I will. I will talk with them about it and see
12:50 12 how it's going to work.
12:50 13
12:50 14 MR BORSKY: Thank you.
12:50 15
12:50 16 COMMISSIONER: Thank you. 1.30.
12:50 17
12:50 18
12:50 19 **ADJOURNED** [12.50PM]
13:24 20
13:34 21
13:34 22 **RESUMED** [1.34PM]
13:34 23
13:34 24
13:34 25 COMMISSIONER: Thank you, everyone. Are we sorted out for
13:34 26 tomorrow?
13:34 27
13:34 28 MR FINANZIO: I had, until 2 seconds ago I received a text
13:34 29 message from Junior Counsel Assisting asking me to hold on
13:34 30 a minute. So I might come back to it in the afternoon break.
13:34 31
13:34 32 COMMISSIONER: All right.
13:34 33
13:34 34 MR FINANZIO: I still think it is going to be fine. I think the
13:35 35 arrangements I've discussed with my learned friend are going to
13:35 36 be fine, but I would --- when Ms O'Sullivan tells me to wait for
13:35 37 a moment, I wait.
13:35 38
13:35 39 COMMISSIONER: You wait.
13:35 40
13:35 41 MR FINANZIO: I wait.
13:35 42
13:35 43 COMMISSIONER: Okay.
13:35 44
13:35 45 MR FINANZIO: Ms Coonan, Mark Mackay gave evidence on
13:35 46 two occasions in the Commission; you are aware of that, aren't
13:35 47 you?

13:35 1
13:35 2 A. Yes.
13:35 3
13:35 4 Q. His evidence was that he had prepared calculations at the
13:35 5 directions of Mr Xavier Walsh?
13:35 6
13:35 7 A. Yes.
13:35 8
13:35 9 Q. You are aware of that?
13:35 10
13:35 11 A. Yes.
13:35 12
13:35 13 Q. And that he understood that the purpose of those
13:35 14 calculations was to identify a possible underpayment of tax; you
13:35 15 are aware of that?
13:35 16
13:35 17 A. Yes.
13:35 18
13:35 19 Q. He did that across a number of categories he understood to
13:35 20 be applicable, and that as a result the possible underpayment was
13:36 21 in the order of \$167 million. Did you hear that evidence being
13:36 22 given?
13:36 23
13:36 24 A. I didn't hear it being given, but I became aware of it.
13:36 25
13:36 26 Q. On 5 July Mr Xavier Walsh gave evidence about these
13:36 27 matters, and he informed the Commission that he thought that the
13:36 28 possible underpayment of tax was in the order of \$40 million, not
13:36 29 \$167 million, and that Mr Mackay might have been mistaken in
13:36 30 the way that he'd gone about the task. Do you understand that to
13:36 31 be so?
13:36 32
13:36 33 A. Do you mean what, his evidence or the fact?
13:36 34
13:36 35 Q. No, just the fact that he gave the evidence that it was in the
13:36 36 order of \$40 million.
13:36 37
13:36 38 A. Yes. Yes. Yes. I hasten to say I don't know the fact.
13:36 39
13:36 40 Q. And that he gave evidence, that is Mr Xavier Walsh, that he
13:36 41 personally believed that it was possible that Crown had cheated
13:36 42 on its taxes? You understand that to be so?
13:36 43
13:37 44 A. Yes, I understand that.
13:37 45
13:37 46 Q. On 23 February 2021 you were informed by Mr Walsh of
13:37 47 what he called in the note the "legacy issue"?

13:37 1
13:37 2 A. Yes. Yes.
13:37 3
13:37 4 Q. You knew, when he informed you of that, that it was
13:37 5 potentially a serious matter?
13:37 6
13:37 7 A. Could have been, but the conversation indicated it wasn't,
13:37 8 according to him.
13:37 9
13:37 10 Q. Well, did you think it was a serious matter or not?
13:37 11
13:37 12 A. Not as a result of the conversation. It was a very short
13:37 13 conversation over the telephone which I can recount to you if you
13:37 14 wish, but I certainly didn't form the view that it was potentially
13:37 15 a serious problem.
13:37 16
13:37 17 Q. Well, according to statements that you made to the press on
13:37 18 21 and 22 June, you said that the first you heard of it was on 23
13:38 19 February; correct?
13:38 20
13:38 21 A. True. Yes, the topic. Yes.
13:38 22
13:38 23 Q. That you directed him to get together the information and
13:38 24 to give it to the lawyers for disclosure to the Commission?
13:38 25
13:38 26 A. About what he told me, yes.
13:38 27
13:38 28 Q. I suggest to you that first of all, Mr Walsh didn't tell you
13:38 29 about the amount of the potential underpayment in that
13:38 30 conversation, did he?
13:38 31
13:38 32 A. He didn't mention an underpayment at all, let alone the
13:38 33 amount.
13:38 34
13:38 35 Q. Did you ask him any detail about this legacy issue?
13:38 36
13:38 37 A. He told me about it and I think there was a very brief
13:38 38 conversation about it. I will recount what he told me if you wish.
13:39 39
13:39 40 Q. Please let's hear what you say he told you.
13:39 41
13:39 42 A. He said to me that in the interests of transparency, there
13:39 43 was a legacy matter he wanted to bring to my attention relating to
13:39 44 a matter back in 2012. It related the deductions or calculations of
13:39 45 the jackpot tax. There had been, I think it was in this order,
13:39 46 I think he said that the program had been approved by the
13:39 47 VCGLR --- the program had been approved but not the change

13:39 1 that had been made in 2012. I'm just trying to get it exactly right.
13:39 2 And he said that there was a memorandum or an email and
13:39 3 a presentation that had involved senior people at Crown, in which
13:39 4 it was suggested that --- at least which had indicated that the
13:40 5 VCGLR had not been informed and they probably wouldn't
13:40 6 notice. And he was worried about it as a transparency issue and
13:40 7 something would be likely to come out in the Commission, and
13:40 8 he reminded me I'd said to him to tell me everything.

13:40 9

13:40 10 Then I said is, well, it a problem and he said, no, it has been
13:40 11 cured or fixed. The VCGLR had a thorough look at it, I think he
13:40 12 said in 2018, and they'd had a thorough look at it, I'm just trying
13:40 13 to remember the exact words he said, a thorough look at it, and it
13:40 14 was now fine, so there was no problem, and that the technical
13:40 15 documents now reflected this; that it had now been approved and
13:40 16 the technical documents reflected it. Or very close words to that
13:41 17 effect.

13:41 18

13:41 19 Q. That told you quite a bit about it?

13:41 20

13:41 21 A. Well, it told me the topic, yes.

13:41 22

13:41 23 Q. Did you make a file note of your discussion with him?

13:41 24

13:41 25 A. No, it was a phone conversation and I didn't.

13:41 26

13:41 27 Q. Well, when you say that it was a phone conversation,
13:41 28 Mr Walsh's evidence was that it was his first opportunity to meet
13:41 29 with you in the role executive director.

13:41 30

13:41 31 A. Yes, it may have been correct but it was a phone
13:41 32 conversation.

13:41 33

13:41 34 Q. Yes, but it was also a formal conversation about which
13:41 35 there was an agenda ---

13:41 36

13:41 37 A. Yes.

13:41 38

13:41 39 Q. --- and a number of other matters were discussed; correct?

13:41 40

13:41 41 A. That's true.

13:41 42

13:41 43 Q. Can I ask you, what questions did you ask Mr Walsh about
13:41 44 the detail of the matters that you have just told us about?

13:42 45

13:42 46 A. Very little, because he said ---

13:42 47

13:42 1 Q. Go on.
13:42 2
13:42 3 A. Very little.
13:42 4
13:42 5 Q. Okay, so when he said to you, "In the interests of
13:42 6 transparency there is something I need to ask you about" ---
13:42 7
13:42 8 A. Yes.
13:42 9
13:42 10 Q. --- didn't that make you think, "Whoa, what are we dealing
13:42 11 with here", having regard to the history of Crown and the
13:42 12 transparency issues that have existed in the past?
13:42 13
13:42 14 A. I wanted to know what it was, and he said it was
13:42 15 a memorandum or an email and a presentation which he thought
13:42 16 was a bad look. So he raised it as a culture issue. He said it's
13:42 17 a bad culture.
13:42 18
13:42 19 Q. When he said that it might show that it was a bad look,
13:42 20 didn't you want to understand exactly why it was a bad look?
13:42 21
13:42 22 A. No, because he said it had all been cleared with the
13:42 23 VCGLR in 2018.
13:42 24
13:42 25 Q. And you were just happy to take his word for it at that
13:42 26 point?
13:42 27
13:43 28 A. No --- Mr Finanzio, I didn't because he said it had been
13:43 29 fixed, not that it hadn't been fixed.
13:43 30
13:43 31 COMMISSIONER: Can I ask a question or two about it?
13:43 32 I understand it is a legacy issue and I understand it has been
13:43 33 fixed, but what was the subject matter that was a potential
13:43 34 problem, from his point of view?
13:43 35
13:43 36 A. Yes, he said it was the fact that this email disclosed
13:43 37 an interaction or a failure to interact with the VCGLR and
13:43 38 a motive ascribed to it, which was that the VCGLR would not
13:43 39 notice. That's what was bothering him. That's what I understood
13:43 40 to be the issue.
13:43 41
13:43 42 COMMISSIONER: But that doesn't have a subject. That's just to
13:44 43 say there was an interchange about something, and I'm trying to
13:44 44 work out whether he gave you to understand that the something
13:44 45 was ---
13:44 46
13:44 47 A. He says ---

13:44 1
13:44 2 COMMISSIONER: You said it had something to do with
13:44 3 a deduction?
13:44 4
13:44 5 A. Yes, he said at the beginning it related to either a deduction
13:44 6 or a change in the program that had been approved by the
13:44 7 VCGLR for casino jackpot ---
13:44 8
13:44 9 COMMISSIONER: It was a jackpot, yes.
13:44 10
13:44 11 A. Yes, that was the topic. But he then said that what
13:44 12 bothered him was there was this presentation and an email
13:44 13 hanging around from 2012 which could indicate that there had
13:44 14 been some failure to be transparent or forthcoming about this
13:44 15 change that may not be noticed. He then said it had been
13:44 16 thoroughly reviewed in 2018, the VCGLR had gone right through
13:44 17 it, and he said the words either "cured" or "fixed", and then he
13:45 18 said, "and the technical documents now reflect it."
13:45 19
13:45 20 COMMISSIONER: Then I don't see what the problem is. If
13:45 21 there was a problem in 2012 and it was fixed with full disclosure
13:45 22 in 2017 or 2018 or whenever it was, then there is no problem any
13:45 23 more. In other words, whatever the problem was, it has gone
13:45 24 away. Therefore, I don't know what's to investigate, whether it
13:45 25 was fixed, half properly fixed?
13:45 26
13:45 27 A. Well I thought --- well, my view about it, what I took from
13:45 28 that would this would inevitably --- probably would come out and
13:45 29 should come out, the past issue that he was worried about, that is
13:45 30 the email and the presentation and the senior people involved and
13:45 31 that was what I was alluding to when I said that I think it should
13:45 32 get reviewed, pack it all up and send it to the lawyers for
13:45 33 disclosure to the Commission.
13:45 34
13:46 35 COMMISSIONER: Okay.
13:46 36
13:46 37 MR FINANZIO: You don't dispute that it was the first time you
13:46 38 had heard of this? That's what you ---
13:46 39
13:46 40 A. No, I don't. It was. It was.
13:46 41
13:46 42 Q. And that you did direct him to get the information together
13:46 43 to give to the lawyers?
13:46 44
13:46 45 A. Yes.
13:46 46
13:46 47 Q. To give to the lawyers for the consideration of what?

13:46 1
13:46 2 A. Whether or not this email and presentation should be
13:46 3 disclosed in some way. I mean, I wasn't making a judgment
13:46 4 about it, Mr Finanzio, I was sending it to Crown's lawyers in the
13:46 5 context of a Royal Commission that had been called the day
13:46 6 before, or a few days before, and I didn't want this to come out in
13:46 7 some subterranean way, I wanted it to be looked at.
13:46 8
13:46 9 Q. I see. So it was ---
13:46 10
13:46 11 A. And then to be ---
13:46 12
13:46 13 Q. He told ---
13:46 14
13:46 15 COMMISSIONER: Don't interrupt.
13:46 16
13:46 17 Sorry, continue, Ms Coonan.
13:46 18
13:46 19 A. And then it just wasn't front of mind after that, I wasn't
13:46 20 walking around with something that I didn't think was an issue.
13:47 21 At least the kind of issue that transpired that we now have on our
13:47 22 hands.
13:47 23
13:47 24 MR FINANZIO: You understood enough to know that it
13:47 25 concerned tax?
13:47 26
13:47 27 A. Yes.
13:47 28
13:47 29 Q. In your conversation with Mr ---
13:47 30
13:47 31 A. Yes.
13:47 32
13:47 33 Q. --- Walsh?
13:47 34
13:47 35 A. The topic was tax, yes.
13:47 36
13:47 37 Q. And you understood enough to know that it might look like
13:47 38 it hadn't been disclosed to the regulator?
13:47 39
13:47 40 A. In 2012, yes.
13:47 41
13:47 42 Q. That gave you a concern that there might have been some
13:47 43 concealment of the question, of the issue?
13:47 44
13:47 45 A. In 2012, yes.
13:47 46
13:47 47 Q. When you were talking about it with Mr Walsh?

13:47 1
13:47 2 A. Yes, yes. I mean, we didn't actually discuss it that way, but
13:47 3 that was in the back of my mind, that there was something in
13:48 4 2012, that had been fixed in 2018, but I thought it was
13:48 5 appropriate to get it reviewed.
13:48 6
13:48 7 Q. You didn't ask about what amounts might have been
13:48 8 involved?
13:48 9
13:48 10 A. No.
13:48 11
13:48 12 Q. You didn't ask him in that conversation about what advice
13:48 13 Crown had received in relation to the matter?
13:48 14
13:48 15 A. No.
13:48 16
13:48 17 Q. It was clear in your discussion that he knew about the
13:48 18 matter in some detail; correct?
13:48 19
13:48 20 A. No. No. He told me what he told me. I don't know what
13:48 21 else he knew.
13:48 22
13:48 23 Q. But you didn't probe him?
13:48 24
13:48 25 A. No, I didn't.
13:48 26
13:48 27 Q. You now know that he knew quite a lot about the detail of
13:48 28 it, don't you?
13:48 29
13:48 30 A. Well, I'm not sure what "quite a lot" is, I know he had some
13:48 31 knowledge of matters in 2018.
13:48 32
13:48 33 Q. I see.
13:48 34
13:48 35 A. That he didn't tell me about.
13:48 36
13:48 37 Q. Yes, but if you had asked him about the detail, he would
13:49 38 have been in a position to explain it to you, wouldn't he?
13:49 39
13:49 40 A. If I'd asked, certainly he would have explained what he
13:49 41 knew. But I don't know what he knew at that time.
13:49 42
13:49 43 Q. In any event --- sorry.
13:49 44
13:49 45 A. I was keen for our lawyers to take a look at it, but that was
13:49 46 really the extent of it, Mr Finanzio.
13:49 47

13:49 1 Q. You still thought it was serious enough to give the direction
13:49 2 that you gave?
13:49 3

13:49 4 A. Absolutely. I mean, we are in the middle of a Royal
13:49 5 Commission, so nasty emails I think should come before the
13:49 6 Commission.
13:49 7

13:49 8 Q. On 26 February, so only --- the very next day, Mr Walsh
13:49 9 went and spoke to Mr Mackay to obtain calculations in relation to
13:49 10 the underpayment of tax. And on 26 February Mr Walsh
13:49 11 received a spreadsheet which told him what the potential
13:49 12 exposure was. I'm taking it correctly that he never informed you
13:50 13 of the result of that work?
13:50 14

13:50 15 A. No, he didn't.
13:50 16

13:50 17 Q. But of course I'm right also in saying that you never
13:50 18 followed him up about this matter afterwards; is that correct?
13:50 19

13:50 20 A. No. He told me it was fixed.
13:50 21

13:50 22 Q. I see. Your statement to the press came on 21 June 2021.
13:50 23

13:50 24 A. Yes.
13:50 25

13:50 26 Q. Many months after the conversation that took place;
13:50 27 correct?
13:50 28

13:50 29 A. Yes, and it was a direct response to evidence that had been
13:50 30 given about the topic. Far more detail than I had.
13:50 31

13:50 32 Q. So the truth is that it came only after the matter had been
13:50 33 revealed in all its glory in this Royal Commission; correct?
13:50 34

13:51 35 A. I don't know about glory, but certainly when it was
13:51 36 revealed.
13:51 37

13:51 38 Q. Thank you. You've said already that you didn't take
13:51 39 a contemporaneous note of the conversation on 23 February.
13:51 40

13:51 41 A. That's true.
13:51 42

13:51 43 Q. Mr Walsh did. He said, in his note to himself, "Helen to
13:51 44 consider". And then --- have you seen the note?
45

46 A. Yes, I have.
47

1 Q. That implies, doesn't it, as a result of your conversation
2 with him, you were going to come back to him after you
3 considered the position?
4

5 A. I don't know what he meant but there was never any
6 arrangement that I would come back. The extent of my
7 interactions on this was to direct him to send it for advice and
8 disclosure.
9

10 Q. And when he ---
11

12 A. I did say --- sorry, Mr Finanzio. I did say it should be
13 reviewed.
14

15 Q. When he met with Mr Mackay, Mr Mackay took a note of
16 his instructions from Mr Walsh, on the very next day, of what he
17 understood his instructions were, and Mr Mackay's note of
18 what Mr Walsh told him was "Helen to consider".
19

20 A. I understand that, but I had nothing to consider. Nothing
21 was given to me, ever brought back to me. I known, I don't know
22 what Mr Walsh meant by that note. I did say it should be reviewed,
23 and my direction to him was pretty clear.
24

25 Q. All right. When you told him to send it to the lawyers, did
26 he say whether or not lawyers had already looked at it?
27

28 A. No, he didn't. I was referring to the Commission. Sorry,
29 may I just finish.
30

31 Q. Sure.
32

33 A. I was referring to the lawyers for the Commission, and we
34 had a conversation that I was in the final stages of appointing
35 Allens, which I did the following day.
36

37 Q. I see. So here we have a situation where the new CEO,
38 relatively new CEO, is coming to you the day after the Royal
39 Commission is announced; right?
40

41 A. Yes.
42

43 Q. And the Royal Commission has been announced in Victoria
44 because of all the things that happened in Bergin; correct?
45

46 A. I imagine so. I don't want to speculate on that.
47

1 Q. In that context, where transparency and openness were
2 a key issue that emerged, and all the things that Crown had been
3 involved in over the course of the previous at least 12 months;
4 correct?

5
6 A. Yes.

7
8 Q. And he is saying to you that there is an issue about tax and
9 your understanding of the possible concealment of that issue from
10 the regulator, and he is saying it to you, he is bringing it to your
11 attention directly, and you don't think it is appropriate to ask him
12 any more questions about the detail of that issue, on 23 February;
13 is that your evidence?

14
15 A. No, it isn't. Could we unpack that a bit, please, it was
16 a very long question, so if I could just take it in bits.

17
18 He did never ever raise with me a problem about tax. He raised
19 with me a legacy issue about how the jackpot tax had been
20 calculated in 2020, and his concern that there was lurking around
21 a memorandum and presentation which indicated that it could
22 have been something that the VCGLR would not notice.

23
24 He then said that there is no problem because it has now been
25 fixed or cured, I don't know which word he used. The VCGLR
26 have now gone through it and thoroughly reviewed it, and it is
27 not a problem, or words to that effect. He didn't say it was
28 a problem. He said it is not a problem.

29
30 Q. So ---

31
32 A. In 2018 it was fixed. And the technical --- to be fair to him,
33 he then said the technical documents now reflect it.

34
35 So what he was putting to me was, something happened back in
36 2012 that didn't reflect too well in terms of the culture, that was
37 how he was worried about it. He then said that the --- in effect,
38 what he was saying was the tax issues, that it is no longer
39 a problem, but the culture issue was a worry to him, and I
40 understand that he's raised it with others, and I directed him in the
41 way that the evidence has been given.

42
43 Q. Still, with that explanation, why didn't you ask him to, for
44 example, prepare a detailed report about the matter?

45
46 A. Because he said it was no longer a problem and it had been
47 fixed.

1
2 Q. So are you in the habit, still, in February 2021, of just
3 taking at face value what management tells you?
4

5 A. If somebody tells me, in a senior role such as this for the
6 purposes of a position, that it had been fixed, what I think was
7 critical at this stage was that it be sent off for review, and we'll
8 see. I mean, I'm not a technical tax expert, Mr Finanzio. I didn't
9 ignore it. I directed that it be sent in the way in which I've said.
10

11 Q. But I suggest to you for exactly that reason, that you are not
12 a technical tax expert, at least advice ought to have been
13 obtained.
14

15 A. That's what I asked for.
16

17 Q. No ---
18

19 A. That's --- excuse me, Mr Finanzio, the sequence ---
20

21 COMMISSIONER: Don't interrupt.
22

23 A. The sequence was that he was directed to do that following
24 a conversation, because I didn't want anything not to be
25 disclosed. That was the most important thing to me, coming out
26 of that conversation, is I didn't want anything not to be disclosed.
27 He alluded to some issue that could be legal, even though he said
28 it is fixed. I directed him to get advice about it.
29

30 Q. So if you directed him to get advice about it, why didn't you
31 follow him up about whether or not the advice had been
32 obtained?
33

34 A. It simply wasn't front of mind when he said it was fixed and
35 it had gone for advice. I can't do everything, Mr Finanzio. I
36 can't, day by day, follow every direction to every person in the
37 business. It --- to my way of thinking, and with great respect,
38 I think I took the right action.
39

40 Q. To be fair, Ms Coonan, I'm not asking you to follow up on
41 every action of every person in the company. The CEO was
42 coming to you the day after a Royal Commission has been
43 announced to disclose to you a matter that he was deeply
44 concerned about. You told him to go and get advice and you
45 didn't follow him up. Wasn't that the case?
46

47 A. Don't lawyers normally come back to you with advice?

1
2 Q. So now it's the lawyers' fault, is it?
3
4 A. I do not do that. I'm not blaming people. I'm giving you
5 an explanation, that I think I did give the right direction to
6 Mr Walsh, which was not to accept anything but to get it
7 checked.
8
9 Q. But ---
10
11 A. But then --- may I just finish, please. But then, but then it
12 was not front of mind because the primary message to me was
13 that it wasn't a problem. So with it not being a problem, it was
14 through more abundant caution that I directed him to act the way
15 he did. Not because I thought there was an immediate or even
16 extant problem.
17
18 Q. What I'm really asking you about is your judgment in
19 accepting from him, as you say he did say, that it wasn't
20 a problem, at face value.
21
22 A. Well, I don't agree with you.
23
24 Q. You think that was an appropriate judgment to make in the
25 circumstances in which you were told that information?
26
27 A. Yes, I do, with the safeguard that it was going off anyway
28 to lawyers.
29
30 Q. So we can agree, I suppose ---
31
32 COMMISSIONER: Hang on, I think the screen is frozen.
33
34 MR FINANZIO: Oh, it's frozen. We'll see if we can do
35 something about it.
36
37 Can you still hear, Ms Coonan?
38
39 MR FINANZIO: She's gone.
40
41 COMMISSIONER: No, it's gone.
42
43 MR FINANZIO: Are you back, Ms Coonan, can you hear me?
44 We can't hear you at all. You are on mute.
45
46 COMMISSIONER: No, we can't hear. Is it possible for --- if you
47 can hear me, Ms Coonan, you are on mute. Is there some way

1 you can unmute? Give it a go now.

2

3 ADMINISTRATOR: Can you hear us now?

4

5 COMMISSIONER: Yes, okay, it is working.

6

7 MR FINANZIO: Can you hear me now?

8

9 A. Yes, I can, except you've changed position, Mr Finanzio.

10 You are now on the right-hand side of the Commissioner instead
11 of the left-hand side of the Commissioner.

12

13 MR FINANZIO: I don't know how that has happened. I don't
14 profess to --- oops, I've lost you again. I think it is determined by
15 what order you come on the screen in. Can you still hear us?

16

17 A. Yes, I can although --- yes.

18

19 Q. Okay. Thank you. Can I just be clear, I don't intend to
20 interrupt you, it is the delay and ---

21

22 A. Yes, I understand that.

23

24 Q. --- we're all struggling. All right.

25

26 So, based on what you've said, on 7 June --- well, put it this
27 way --- on 7 June a number of people did not know about this tax
28 issue when Mr Mackay gave that evidence in the Commission.
29 Mr Zwier didn't know. He's your lawyer.

30

14:03 31 A. I don't know what Mr --- I don't think he did. I certainly
14:03 32 never instructed him to do anything with it until later that day
14:03 33 when I instructed him to get urgent advice.

14:03 34

14:03 35 Q. And the other directors didn't know?

14:03 36

14:03 37 A. I don't know what they knew. They gave evidence about
14:03 38 conversations with Mr Walsh.

14:03 39

14:03 40 Q. You didn't share with them that conversation you had with
14:03 41 him at all?

14:03 42

14:03 43 A. No, because it's not a problem. You don't call a board
14:03 44 meeting about something you are told is not an issue. We
14:03 45 practically had daily meetings. If it had been an issue, I would
14:03 46 have not only told them but I would have had Mr Zwier in much
14:03 47 earlier.

14:03 1
14:04 2 Q. Can we conclude this way then, I suppose. As far as you
14:04 3 were concerned after that conversation with Mr Walsh on 23
14:04 4 February, you regarded it as the end of the matter?
14:04 5
14:04 6 A. No, I didn't. I directed him to send it to Crown's lawyers,
14:04 7 the lawyers, we appointed them the next day, for advice and
14:04 8 disclosure.
14:04 9
14:04 10 Q. But you never followed it up in any way?
14:04 11
14:04 12 A. No, it wasn't front of mind, and I didn't.
14:04 13
14:04 14 Q. You never followed it up with him ---
14:04 15
14:04 16 A. No.
14:04 17
14:04 18 Q. --- and --- and you never followed it up with Allens when
14:05 19 Allens prepared the schedules in response to RFS-002?
14:05 20
14:05 21 A. Absolutely. It slipped --- simply slipped my mind. It was
14:05 22 not an issue that was front of mind, unfortunately. It wasn't.
14:05 23
14:05 24 Q. Would you agree with me that it would have been better if
14:05 25 you had been more inquisitive in your discussions with
14:05 26 Mr Walsh?
14:05 27
14:05 28 A. That is a reflection that, you know, with hindsight you can
14:05 29 always look at different ways of dealing with something, but
14:05 30 there was nothing on the face of it not to accept Mr Walsh, but
14:05 31 for more abundant caution, I didn't just accept that, I sent it where
14:05 32 I thought it should go.
14:05 33
14:05 34 Q. You could have tried to understand it in more detail.
14:05 35
14:05 36 A. Well, I could have, but why wouldn't I send this to lawyers?
14:06 37 I mean, there are just thousands and thousands of documents and
14:06 38 issues, as you well know. This one didn't stand out in any
14:06 39 particular way and I thought it was handled appropriately.
14:06 40
14:06 41 Q. If you had brought more people into the circle of
14:06 42 knowledge at a higher level, it would have made it less likely that
14:06 43 the thing would have been forgotten, wouldn't it?
14:06 44
14:06 45 A. I don't know what that means, I'm sorry.
14:06 46
14:06 47 Q. Well, if you had told other directors of your conversation

14:06 1 with Mr Walsh and taken it just one more step further, it would
14:06 2 have provided others with the opportunity to know about the
14:06 3 issue; correct?
14:06 4
14:06 5 A. But they did. Jane Halton knew about it on 4 March and
14:06 6 Toni Korsanos on, I think, about 9 March, and I don't know when
14:06 7 Mr Morrison found out about it because I heard evidence that he
14:06 8 was in a meeting with Ms Korsanos but he put himself in
14:06 9 a corridor. I don't know that, but everybody knew about the fact
14:07 10 that Xavier had this cultural misgiving, if I can put it that way ---
14:07 11
14:07 12 Q. So ---
14:07 13
14:07 14 A. --- about the documents.
14:07 15
14:07 16 Q. So your evidence is everybody knew Xavier had cultural
14:07 17 misgivings but nobody did anything about it?
14:07 18
14:07 19 A. Well, I did. I sent it off to the lawyers for possible
14:07 20 disclosure if it were warranted. I don't know what the others did.
14:07 21
14:07 22 Q. When you say for "possible" disclosure, your statement to
14:07 23 the press was you directed Xavier ---
14:07 24
14:07 25 A. I did.
14:07 26
14:07 27 Q. --- to get the documents together and give it to the lawyers?
14:07 28
14:07 29 A. Yes, that's right.
14:07 30
14:07 31 Q. For disclosure to the Commission, for advice.
14:07 32
14:07 33 A. Yes. For advice.
14:07 34
14:07 35 Q. Pardon me, for advice.
14:07 36
14:07 37 A. I mean it is possible that on advice they might not have
14:07 38 thought it warranted, I don't know. But it wasn't front of mind
14:07 39 but I do think it must be understood that I didn't just discard it; I
14:08 40 did, I think, deal with it appropriately.
14:08 41
14:08 42 Q. All right. Mr Walsh was previously the COO of Crown
14:08 43 Melbourne, wasn't he?
14:08 44
14:08 45 A. Yes, he was.
14:08 46
14:08 47 Q. And then the CEO of Crown Melbourne from 9 December

14:08 1 2020, I think it was?

14:08 2

14:08 3 A. Yes, I think that is probably right. Yes, I think that is
14:08 4 probably right. It was part of a restructure when Mr Felstead
14:08 5 separated from the company, or at least his role was made
14:08 6 redundant because he was the CEO of Resorts. And when
14:08 7 Mr Preston was separated as well, and as a result of those
14:08 8 separations three of the senior people in Crown were promoted to
14:08 9 CEO of Melbourne, Perth and Sydney respectively. That's how it
14:09 10 happened.

14:09 11

14:09 12 Q. Were you aware that for the whole period that Mr Walsh
14:09 13 was CEO[sic] he reported to Mr Felstead?

14:09 14

14:09 15 A. He wasn't CEO, I don't think ---

14:09 16

14:09 17 Q. COO, I said.

14:09 18

14:09 19 A. Sorry, yes. Yes.

14:09 20

14:09 21 Q. You were aware that as COO he reported directly to
14:09 22 Mr Felstead?

14:09 23

14:09 24 A. Well, that was the structure when there was a CEO of
14:09 25 Resorts.

14:09 26

14:09 27 Q. And you were aware that Mr Felstead did not live in
14:09 28 Melbourne?

14:09 29

14:09 30 A. I thought he did at one stage. He seemed to be there all the
14:09 31 time anyway.

14:09 32

14:09 33 Q. So you didn't know where he lived?

14:09 34

14:09 35 A. Well, he lived technically I think in Perth or somewhere in
14:09 36 NSW but he certainly was present in Melbourne for just about
14:09 37 every occasion I was there.

14:09 38

14:09 39 Q. Barry Felstead did not have the title of COO --- CEO for
14:09 40 Crown Melbourne, did he?

14:09 41

14:09 42 A. No.

14:09 43

14:10 44 Q. He was the CEO of Australian Resorts?

14:10 45

14:10 46 A. That's true. That's correct.

14:10 47

14:10 1 Q. Did you ever inquire as to whether Mr Felstead living in
14:10 2 Perth operating as the CEO of Crown Melbourne might have
14:10 3 been a breach of the Management Agreement --

14:10 4

14:10 5 A. No.

14:10 6

14:10 7 Q. --- did that ever cross your mind?

14:10 8

14:10 9 A. No, I never turned my mind to that.

14:10 10

14:10 11 Q. When Xavier Walsh was appointed as a director of the
14:10 12 board of Crown Melbourne on 15 February 2021 --

14:10 13

14:10 14 A. Yes.

14:10 15

14:10 16 Q. --- he was appointed because you needed to make up the
14:10 17 numbers?

14:10 18

14:10 19 A. Yes, we didn't have enough people. Quite true.

14:10 20

14:10 21 Q. The governance arrangements require a minimum of five
14:10 22 directors; correct?

14:10 23

14:10 24 A. That's right.

14:10 25

14:10 26 Q. And for a period there was only three?

14:11 27

14:11 28 A. For a short period, yes, we tried to cure it quickly.

14:11 29

14:11 30 Q. One of those directors was Ms Danziger?

14:11 31

14:11 32 A. Yes.

14:11 33

14:11 34 Q. Ms Danziger has expressed her intention to retire from
14:11 35 board work for at least the last two years; that's correct, isn't it?

14:11 36

14:11 37 A. I think that's probably correct, yes. I wouldn't know the
14:11 38 period, but it is time for Ms Danziger to go as soon as we are in
14:11 39 a position to make some more appointments. As you can
14:11 40 appreciate, and I do think, if you can forgive me for just
14:11 41 a moment, getting people on and off casino boards is really
14:11 42 a complex business because even after you recruit someone and
14:11 43 they are prepared to do the job, they still have to pass quite
14:11 44 an extensive probity. So Mr Carter is currently going through
14:11 45 probity, and he will be in a position to take up board and
14:11 46 committee duties as soon as he receives probity.

14:11 47

14:12 1 Q. Can I suggest to you that it is even more --- it is an even
14:12 2 more difficult task if the casino concerned is beset by scandal and
14:12 3 inquiries of this kind?

14:12 4
14:12 5 A. That's absolutely true. It is very difficult to attract calibre
14:12 6 people until you can settle things down a bit.

14:12 7
14:12 8 Q. Do you regret appointing Mr Walsh to the Board?

14:12 9
14:12 10 A. As I sit here, no, but I can anticipate what your next
14:12 11 question will be and I would really like to be able to ---

14:12 12
14:12 13 Q. Please don't.

14:12 14
14:12 15 A. --- give you --- okay, I won't.

14:12 16
14:12 17 Q. He was never really independent in the sense that he had
14:13 18 been involved in the company and its operations for many years;
14:13 19 correct?

14:13 20
14:13 21 A. Correct.

14:13 22
14:13 23 Q. He had been in the organisation during the period of most
14:13 24 controversy, right?

14:13 25
14:13 26 A. Yes, I think that is right, but he certainly didn't appear to be
14:13 27 implicated in any of it.

14:13 28
14:13 29 Q. Well, did you read the Bergin Report carefully?

14:13 30
14:13 31 A. I think I did.

14:13 32
14:13 33 Q. Were you aware that Mr Walsh's failure to escalate the
14:13 34 indication given by one of Crown's bankers, that there were
14:13 35 concerns about money laundering, to the Risk Committee was
14:13 36 a matter of concern to Bergin? Did you read that?

14:13 37
14:13 38 A. Yes, I think I recall that. I think I recall that.

14:13 39
14:13 40 Q. Did you raise that matter with ---

14:13 41
14:13 42 A. Could you take me to it, please? I just would like to refresh
14:13 43 my memory.

14:13 44
14:14 45 Q. Sure. It's COM.0005.0001.0001 at 0231.

14:14 46
14:14 47 There we are.

14:14 1
14:14 2 A. Paragraph 80.
14:14 3
14:14 4 Q. Correct.
14:14 5
14:14 6 A. Okay, if you just excuse me one moment and I will read it.
14:15 7 Yes, I remember the evidence he gave also in this Inquiry.
14:15 8
14:15 9 Q. Yes. Can I ask you this --- was this a matter you raised
14:15 10 with Mr Walsh before he was appointed to the Board of Crown
14:15 11 Melbourne?
14:15 12
14:15 13 A. No, I didn't.
14:15 14
14:15 15 Q. You didn't seek to obtain any kind of explanation about this
14:15 16 at all?
14:15 17
14:15 18 A. Well, not personally. I'm not sure whether or not there
14:15 19 were issues before the Board. This was a Board restructure under
14:15 20 Mr Barton, Mr Barton's purview. I don't recall personally raising
14:15 21 this.
14:15 22
14:15 23 Q. Pardon me, it was a Board restructure under Mr Barton's
14:15 24 purview. Mr Barton was the CEO of Crown Resorts, correct?
14:15 25
14:15 26 A. Yes.
14:15 27
14:15 28 Q. And he was the CEO answering to you at the time?
14:15 29
14:15 30 A. Yes, I was the Chair at the time ---
14:15 31
14:15 32 Q. It can't be, I'm sorry to interrupt you, but it can't be
14:16 33 Mr Barton's responsibility, can it, to make appointments to the
14:16 34 subsidiary board without your knowledge and affirmation?
14:16 35
14:16 36 A. I'm not saying that it is. I'm just saying it was brought
14:16 37 forward under Mr Barton's restructures, and ---
14:16 38
14:16 39 Q. Excuse me for a moment, I'm not entirely sure that can be
14:16 40 correct, Mr Walsh ---
14:16 41
14:16 42 A. Well, I'm not sure --- are you talking about --- I thought you
14:16 43 were talking about Mr Walsh being appointed under the
14:16 44 restructure of all the boards to elevate people in the organisation
14:16 45 to CEO; is that what we are talking about or are we are talking
14:16 46 about his appointment to Melbourne?
14:16 47

14:16 1 Q. I'm talking about his appointment to the Melbourne board.
14:16 2
14:16 3 A. Thank you. We're at cross purposes. I'm very --- I
14:16 4 apologise.
14:16 5
14:16 6 Q. You can take the document down now. You've had a good
14:16 7 read of that there, Ms Coonan?
14:16 8
14:17 9 A. Yes.
14:17 10
14:17 11 Q. You can take the document down.
14:17 12
14:17 13 It might assist us to --- I'm talking about Mr Walsh's appointment
14:17 14 to the Crown Melbourne board.
14:17 15
14:17 16 A. Yes.
14:17 17
14:17 18 Q. And that had nothing to do with Mr Barton because
14:17 19 Mr Walsh was appointed on 15 February 2021 as Mr Barton was
14:17 20 on the way out.
14:17 21
14:17 22 A. Yes, we were at cross purposes, I'm sorry, on --- the
14:17 23 particular roles and the times, I'm sorry about that.
14:17 24
14:17 25 Q. So I will come back to my question: did you consider
14:17 26 raising this matter, that is the matter that I've taken you to in the
14:17 27 Bergin Report, with Mr Walsh when you were thinking about
14:17 28 appointing him to the Board?
14:17 29
14:17 30 A. Of Melbourne?
14:17 31
14:17 32 Q. Of Melbourne.
14:17 33
14:17 34 A. No. It was --- no, I didn't. It was a Board decision and
14:17 35 I don't think that was raised by anybody.
14:17 36
14:17 37 Q. Was there any kind of process that the Board went through
14:17 38 in considering whether or not Mr Walsh would be appointed to
14:18 39 the Board?
14:18 40
14:18 41 A. No. There wasn't, as I said earlier in my evidence and
14:18 42 which you quite rightly alluded to, there wasn't a lot of choice as
14:18 43 to people who would be able to take this position at the time of
14:18 44 this appointment.
14:18 45
14:18 46 Q. How did you comfort yourself that he was attuned to the
14:18 47 cultural reforms that you say are necessary?

14:18 1
14:18 2 A. I had taken him through the remediation program, he was
14:18 3 well across that.
14:18 4
14:18 5 Q. So you did --- for the purpose of his appointment to the
14:18 6 Board?
14:18 7
14:18 8 A. I don't know that I could actually say that, but on another
14:18 9 occasion, I think so. I couldn't say that it was in connection with
14:18 10 his appointment, but in connection with him being CEO of
14:18 11 Melbourne, I have.
14:18 12
14:19 13 Q. What ---
14:19 14
14:19 15 A. Sorry to split hairs.
14:19 16
14:19 17 Q. That's okay. What inquiries did you make of his
14:19 18 performance at Melbourne over the period that he had been
14:19 19 COO?
14:19 20
14:19 21 A. Generally Mr Walsh is an employee of long standing with
14:19 22 vast expertise in gaming, and well-regarded by all of the people
14:19 23 that he works with and I made some individual inquiries of some
14:19 24 people he works with and I have never found any reason to
14:19 25 question his capacities and abilities from what I've had to do with
14:19 26 him. I didn't have much to do with him until this year, to be
14:19 27 perfectly honest.
14:19 28
14:19 29 Q. Mr Walsh was on the ground in Melbourne since 2013;
14:19 30 right?
14:19 31
14:19 32 A. That's what he said, yes, and I've no reason to disregard it.
14:19 33 But I didn't really know him, and had very little to do with him
14:20 34 until this year.
14:20 35
14:20 36 Q. And it is apparent that you didn't make very many inquiries
14:20 37 about his capacities for the role as Board member before he was
14:20 38 appointed; is that right?
14:20 39
14:20 40 A. Well, that's true for the reason that I've said, but I had no
14:20 41 doubt that he would be capable of being a board member.
14:20 42
14:20 43 Q. He was functioning from 2013, through to the time that he
14:20 44 became CEO, as effectively Acting CEO when Barry Felstead
14:20 45 wasn't around; did you know that?
14:20 46
14:20 47 A. Yes, I think --- yes.

14:20 1
14:20 2 Q. He was influential in the company's activities generally; did
14:20 3 you know that?
14:20 4
14:20 5 A. I think he still is.
14:20 6
14:20 7 Q. You weren't concerned that there might be a risk that he
14:20 8 was too close to the goings-on that had raised so much concern at
14:21 9 Crown Melbourne that were the subject of the Bergin Inquiry?
14:21 10
14:21 11 A. No, I didn't think that.
14:21 12
14:21 13 Q. But you didn't make any inquiries at all?
14:21 14
14:21 15 A. Well, he presented in a very open way to me, in the
14:21 16 dealings I've had with him so far, apart from the issue that we've
14:21 17 talked about. I haven't any reason to doubt that he is a person of
14:21 18 integrity and capacity.
14:21 19
14:21 20 Q. You think differently now?
14:21 21
14:21 22 A. Sorry.
14:21 23
14:21 24 Q. Do you feel differently now?
14:21 25
14:21 26 A. No, but I think there are issues that we have to work
14:21 27 through.
14:21 28
14:21 29 Q. You knew about the VCGLR Show Cause Notice in
14:22 30 relation to the Junkets ICS didn't you?
14:22 31
14:22 32 A. I don't know when I knew, but I was aware the process was
14:22 33 in train.
14:22 34
14:22 35 Q. It was a process that you understood was ongoing at the
14:22 36 time that you visited the VCGLR in December 2020?
14:22 37
14:22 38 A. I don't know that I knew then, but I know that it preceded
14:22 39 the visit.
14:22 40
14:22 41 Q. You knew enough to know that it was a very serious
14:22 42 matter?
14:22 43
14:22 44 A. Certainly it is serious.
14:22 45
14:22 46 Q. You also knew, didn't you, that --- well, you may not have
14:22 47 known, but it was Crown's first chance, since Bergin, to try the

- 14:22 1 new approach of making a new impression.
14:22 2
14:22 3 A. Well, I didn't know that. I wasn't on the board of Crown
14:22 4 Melbourne and compliance was handled out of Crown
14:22 5 Melbourne.
14:22 6
14:22 7 Q. Did you know that there would be a hearing?
14:22 8
14:23 9 A. I knew there would be a hearing, yes, I don't know that I
14:23 10 knew when it was.
14:23 11
14:23 12 Q. Did you know that Mr Walsh was appearing at the hearing?
14:23 13
14:23 14 A. No, and in fact I asked him later why he appeared on when
14:23 15 I asked him what was going on in the way in which it had been
14:23 16 conducted.
14:23 17
14:23 18 Q. So you disapproved of that, the way he conducted the
14:23 19 hearing?
14:23 20
14:23 21 A. Well, he was asked at the last minute to appear. He told me
14:23 22 that he was very uncomfortable with what he had to present, that
14:23 23 the submissions had been put in some time before and pretty
14:23 24 much at the last minute, I don't know if it was the day before,
14:23 25 Ken Barton contacted him and said he had to appear.
14:23 26
14:23 27 Q. He turned up at the hearing conducted by the VCGLR to
14:23 28 argue that the junkets process, the process for due diligence in
14:24 29 relation to junkets was robust.
14:24 30
14:24 31 A. Yes, that's why ---
14:24 32
14:24 33 Q. Did you know that?
14:24 34
14:24 35 A. I think that's why he was uncomfortable.
14:24 36
14:24 37 Q. In doing so, he effectively contradicted the evidence that
14:24 38 you gave at the Bergin Inquiry where you conceded that it wasn't
14:24 39 robust?
14:24 40
14:24 41 A. He did. But if I can just say one thing --- I did tackle him
14:24 42 about this because it was contrary, I agree with you, and the
14:24 43 explanation he gave is that we were represented by counsel,
14:24 44 submissions already existed, he was thrown in at the last minute
14:24 45 and he felt uncomfortable.
14:24 46
14:24 47 Q. Just following the lawyers' advice again?

- 14:24 1
14:24 2 A. I don't know about that, but that's what he told me, that the
14:24 3 submissions had been written by counsel, and he did the best
14:24 4 according to what he had to deal with. I had a degree of
14:25 5 sympathy for him.
14:25 6
- 14:25 7 Q. On 1 July this year, two letters were sent. I'm moving
14:25 8 topics now, Ms Coonan.
14:25 9
- 14:25 10 A. Yes.
14:25 11
- 14:25 12 Q. On 1 July this year two letters were sent, one to the
14:25 13 Secretary of the Department of Treasury and Finance and another
14:25 14 to the CEO of the VCGLR. You are aware of those letters?
14:25 15
- 14:25 16 A. I'm aware of the letters.
14:25 17
- 14:25 18 Q. Those letters were sent by the new CEO Mr McCann?
14:25 19
- 14:25 20 A. That's true.
14:25 21
- 14:25 22 Q. He hasn't been in the job for very long?
14:25 23
- 14:25 24 A. No, he hasn't.
14:25 25
- 14:25 26 Q. These were very important pieces of correspondence
14:25 27 communicating with both the CEO of the regulator and the
14:25 28 Department of Treasury and Finance?
14:25 29
- 14:25 30 A. Well, I do think it is important to reach out in the way in
14:25 31 which the letter alludes. I do think we have to get this sorted out,
14:26 32 and the intention was from the Board that we indicate
14:26 33 a preparedness to do so.
14:26 34
- 14:26 35 Q. Yes, so the answer to my question was, yes, they were
14:26 36 important pieces of correspondence?
14:26 37
- 14:26 38 A. For those reasons, yes.
14:26 39
- 14:26 40 Q. Am I right they were responding to the allegation that there
14:26 41 had been a potential underpayment of tax, weren't they?
14:26 42
- 14:26 43 A. Yes.
14:26 44
- 14:26 45 Q. That was concealed from the regulator?
14:26 46
- 14:26 47 A. I don't know about concealed. That is obviously for some

- 14:26 1 conclusion to be --- I mean, I still think that we need to get to the
14:26 2 bottom of whether something is inadvertent or concealed or what
14:26 3 its status is, but it could be a possible conclusion, and if it is, it is
14:26 4 very concerning.
14:26 5
- 14:26 6 Q. I want to pick you up on that last observation. It is very
14:26 7 important to get to the bottom of it, but it hasn't become
14:27 8 important to get to the bottom of it until all of the facts were
14:27 9 revealed in the Royal Commission; correct?
14:27 10
- 14:27 11 A. That's true. That's when it was known, at least to people
14:27 12 running the company at the top level.
14:27 13
- 14:27 14 Q. Can I ask you this: it is right, isn't it, that you were
14:27 15 consulted about this correspondence, this wasn't just Mr McCann
14:27 16 going off on a frolic of his own?
14:27 17
- 14:27 18 A. Yes, the Board agreed that the letters should go. Not the
14:27 19 letters, but that Mr McCann should write setting out Crown's
14:27 20 concern and offer to get to the bottom of it, and offering to pay
14:27 21 some money, so that was approved by the Board --
14:27 22
- 14:27 23 Q. Are you saying ---
14:27 24
- 14:27 25 A. No, I'm not saying the letters were approved, but
14:27 26 Mr McCann was certainly doing that with the Board's approval.
14:27 27
- 14:28 28 Q. So are you saying that the terms of the letter, or letters,
14:28 29 were entirely within Mr McCann's authority? The Board didn't
14:28 30 see these letters before they went out?
14:28 31
- 14:28 32 A. No, I don't believe so.
14:28 33
- 14:28 34 Q. You don't believe so or, no --- it's only a few days ago, 1
14:28 35 July.
14:28 36
- 14:28 37 A. I don't remember --- well, from my perspective, I don't
14:28 38 remember having seen drafts.
14:28 39
- 14:28 40 Q. Can you assume then that Mr McCann, who had been in the
14:28 41 role for only a very short time was left the complete authority to
14:28 42 draft the company's position dealing with the CEO and the
14:28 43 Department of Treasury and Finance without any supervision
14:28 44 from the Board?
14:28 45
- 14:28 46 A. Well, he did receive supervision from the board in
14:28 47 authorising him to contact them and to offer Crown's cooperation.

14:28 1
14:29 2 Q. So you don't accept any ownership of the language used in
14:29 3 the letters? That's all Mr McCann's work?
14:29 4
14:29 5 A. Well, I certainly didn't have any input into it if that's what
14:29 6 you mean, Mr Finanzio.
14:29 7
14:29 8 Q. Have you read the letters?
14:29 9
14:29 10 A. Yes.
14:29 11
14:29 12 Q. Do you agree ---
14:29 13
14:29 14 A. Yes, we were sent the letters.
14:29 15
14:29 16 Q. The purpose ---
14:29 17
14:29 18 A. And also --- I was just going to say that there was
14:29 19 a different process with the other letter that you took me to
14:29 20 earlier, the letter to the Minister.
14:29 21
14:29 22 Q. I will come to that one in a moment.
14:29 23
14:29 24 A. That went through several drafts.
14:29 25
14:29 26 Q. I will come to that one in a moment. The purpose of these
14:29 27 letters, that is the letter 1 July, was really to downplay the
14:29 28 significance of the issue; wasn't it?
14:29 29
14:29 30 A. I don't think so.
14:29 31
14:30 32 Q. By saying, "It is not as much as the press have said, we're
14:30 33 working on it as a matter of urgency, Crown will pay its estimate
14:30 34 of the underpayment of tax." Wasn't that really what the letters
14:30 35 were for?
14:30 36
14:30 37 A. No, I don't think there was any attempt to downplay it.
14:30 38 Why would there be? We have to pay whatever the right amount
14:30 39 is.
14:30 40
14:30 41 Q. There is an invitation in the letter to discuss the matters,
14:30 42 isn't there?
14:30 43
14:30 44 A. Yes.
14:30 45
14:30 46 Q. Outside the glare of the spotlight?
14:30 47

14:30 1 A. Well, I can't remember that, but if it is in it, you can tell me
14:30 2 that.
14:30 3
14:30 4 Q. No, no, what I'm suggesting to you, that the purpose of the
14:30 5 letter is to invite a negotiation about how much the tax might be.
14:30 6
14:30 7 A. Absolutely, yes.
14:30 8
14:30 9 Q. So Crown might have an opportunity to persuade the others
14:30 10 who are the recipients of these letters how to calculate the tax?
14:30 11
14:30 12 A. Well, I assume that as a publicly-listed company you
14:31 13 should pay the correct amount of tax. This is a very complex
14:31 14 matter and obviously opinions differ. So of course you would
14:31 15 want to engage in a discussion at least as to what the correct
14:31 16 amount should be and whatever it is, that's what we'll pay.
14:31 17
14:31 18 Q. It was the second time that you sought to have a discussion
14:31 19 with the regulator about the tax, wasn't it?
14:31 20
14:31 21 A. I'm sorry?
14:31 22
14:31 23 Q. Well, let me take you to tab 1 in the folder.
14:32 24 VCG.0001.0004.9205. You attended a meeting at the offices of
14:32 25 the VCGLR on 23 June 2021; didn't you?
14:32 26
14:32 27 A. Yes. Yes.
14:32 28
14:32 29 Q. The purpose of that meeting was to provide an update. But
14:32 30 at the commencement of the meeting you wanted to start the
14:32 31 meeting by commenting on the tax headlines that had been in the
14:32 32 --- the headlines in the newspapers, in the media, that had been
14:32 33 made that day and the day before; you recall that?
14:32 34
14:33 35 A. Yes. Yes.
14:33 36
14:33 37 Q. And you wanted to make clear that what the articles were
14:33 38 implying was not correct?
14:33 39
14:33 40 A. Yes. The articles were implying that I knew not only about
14:33 41 the issue, but I knew about some quantum and some
14:33 42 concealment. That was what I was trying to address.
14:33 43
14:33 44 Q. Can I suggest to you --- thank you, operator. One way to
14:33 45 handle this --- I withdraw that.
14:33 46
14:33 47 Isn't by the time you went to visit --- pardon me, by the time the

- 14:33 1 letter was sent on 1 July it was the case, wasn't it, that you had
14:33 2 more understanding of what the issues were?
14:34 3
14:34 4 A. Yes, but I hadn't followed it in granular detail.
14:34 5
14:34 6 Q. Had you called for the advices that had been provided to
14:34 7 Crown in 2012?
14:34 8
14:34 9 A. No, I hadn't seen advices from 2012.
14:34 10
14:34 11 Q. Had you called for the advices from 2018?
14:34 12
14:34 13 A. I had seen advices from MinterEllison in 2018.
14:34 14
14:34 15 Q. Did you see the advices from 2019?
14:34 16
14:34 17 A. I'm not sure.
14:34 18
14:34 19 Q. By 23 June this year, had you called for a paper from the
14:34 20 CEO asking him to set out in granular detail what the issues
14:34 21 were?
14:34 22
14:34 23 A. Not yet. We are just into this, Mr Finanzio ---
14:34 24
14:34 25 Q. Sorry, I was asking you about 23 June.
14:34 26
14:35 27 A. 23rd --- no, I don't think at that stage --- I don't recall
14:35 28 having done that at that stage.
14:35 29
14:35 30 Q. I suggest to you that what has really happened here is that
14:35 31 about eight years ago, some people in the company at the
14:35 32 management level decided that what they were going to try and
14:35 33 do was conceal the way in which the gaming revenue tax was
14:35 34 calculated for Crown's advantage. You now understand that to be
14:35 35 so?
14:35 36
14:35 37 A. I think that is a possible conclusion, yes.
14:35 38
14:35 39 Q. And that they succeeded entirely right up until 2018: that is,
14:35 40 no one was on to them at all about that?
14:35 41
14:35 42 A. I don't know, but I want to know. I don't know just what
14:36 43 the sequence was, yet.
14:36 44
14:36 45 Q. So you are still not informed about the detail of all of that?
14:36 46
14:36 47 A. Well, I've got some details, but I just think we've got to

14:36 1 understand thoroughly who knew what, when. Experience tells
14:36 2 you that it is difficult to, particularly when things are done
14:36 3 quickly, which some of these advices were done quickly, I just
14:36 4 don't want to give absolute assurances that I know everything.
14:36 5 But I think I have a pretty good account.

14:36 6
14:36 7 Q. In 2018 the regulator asked questions about the calculation
14:36 8 of the tax. You are aware of that, aren't you?

14:36 9
14:36 10 A. Yes, now I am.

14:36 11
14:36 12 Q. Are you aware that those answers were answered carefully,
14:37 13 but that the regulator didn't pick up the way in which the tax was
14:37 14 calculated?

14:37 15
14:37 16 A. That would seem to be correct.

14:37 17
14:37 18 Q. That is something you now know?

14:37 19
14:37 20 A. Yes.

14:37 21
14:37 22 Q. When did you come to that knowledge?

14:37 23
14:37 24 A. I think in the course of instructing Arnold Bloch Leibler to
14:37 25 get some independent advice, and also I had some conversations
14:37 26 with Ernst & Young, who are the company's tax lawyers. So
14:37 27 that's when I started to get a better understanding.

14:37 28
14:37 29 Q. In the context of where Crown now finds itself, the real
14:37 30 issue here, isn't it, disclosure of this matter fulsomely, as quickly
14:37 31 as possible; do you agree?

14:37 32
14:37 33 A. I think that's fair.

14:37 34
14:37 35 Q. Crown has had over the journey, over the period of time, at
14:37 36 least from 2018, plenty of opportunity to bring to the attention of
14:38 37 the regulator the way in which this tax was calculated clearly;
14:38 38 correct?

14:38 39
14:38 40 A. Yes.

14:38 41
14:38 42 Q. And it hasn't done that?

14:38 43
14:38 44 A. No, it hasn't.

14:38 45
14:38 46 Q. Agree?

14:38 47

14:38 1 A. Yes, I do.
14:38 2
14:38 3 Q. And it had an opportunity to do that at least from --- it had
14:38 4 an opportunity to do that to bring that to the attention from
14:38 5 September last year? I withdraw that and put it this way.
14:38 6
14:38 7 If you had asked for questions and you'd come to a more granular
14:38 8 understanding than you had on 23 February, this issue would
14:38 9 have been disclosed properly, wouldn't it?
14:38 10
14:38 11 A. Sorry, you are talking about last year? I'm really confused
14:38 12 as to the time you are talking about.
14:38 13
14:38 14 Q. I withdrew that.
14:38 15
14:38 16 A. Sorry. Okay. Go again. Sorry.
14:38 17
14:39 18 Q. A simple way of dealing with this would be to get to the
14:39 19 bottom of this a lot sooner than Crown has?
14:39 20
14:39 21 A. That would have been preferable, yes.
14:39 22
14:39 23 Q. And I suggest to you that the delays in getting to the bottom
14:39 24 of it are reflective still of the cultural hangover that Crown is
14:39 25 suffering under; do you agree with that?
14:39 26
14:39 27 A. In a generic sense I think it is possible that the way in
14:39 28 which it was disclosed indicates that there wasn't a fulsome
14:39 29 disclosure.
14:39 30
14:39 31 Q. It is another example of the old Crown on display, isn't it?
14:39 32
14:39 33 A. Well, it is interesting you should say that, because I think it
14:39 34 is a hybrid, if I can put it that way, Mr Finanzio. Clearly
14:40 35 Mr Walsh was troubled by it, and he was troubled by a number of
14:40 36 matters, but the point about it is that he obviously wanted to
14:40 37 unburden himself about this, and he did it to four people and he
14:40 38 did it to the lawyers. He didn't do it fulsomely. So I don't know
14:40 39 why that happened. I want to go and ask him about it. I certainly
14:40 40 do.
14:40 41
14:40 42 Q. Of all the people that he unburdened himself to, he
14:40 43 unburdened himself most to you and you didn't do anything about
14:40 44 it.
14:40 45
14:40 46 A. I don't think he did unburden himself most to me. He
14:40 47 unburdened himself most to Allens and those who were present.

14:40 1 There were a number of people who were present when he spoke
14:40 2 to them. So I think that is the most fulsome unburdening that
14:40 3 I can find.

14:40 4
14:40 5 Q. On 1 July Arnold Bloch Leibler sent a letter to the Minister
14:41 6 for Gaming; that's right, isn't it?

14:41 7
14:41 8 A. Yes, I think that's right.

14:41 9
14:41 10 Q. Can I ask for that letter to be brought up, please.
14:41 11 CRW.512.212.001_R. That is the covering email.

14:41 12
14:41 13 A. Yes.

14:41 14
14:41 15 Q. I invite the operator to go to the first page of the letter.

14:41 16
14:42 17 The letter sets out instructions from the directors of Crown
14:42 18 Resorts and the non-executive directors of Crown Melbourne;
14:42 19 doesn't it?

14:42 20
14:42 21 A. Yes.

14:42 22
14:42 23 Q. So that is everyone except Xavier Walsh; is that right?

14:42 24
14:42 25 A. Yes.

14:42 26
14:42 27 Q. Did the Board --- I think you said a minute ago the Board
14:42 28 did authorise this letter to be sent to the Minister; is that right?

14:42 29
14:42 30 A. Yes.

14:42 31
14:42 32 Q. It went through a number of drafts?

14:42 33
14:42 34 A. It certainly was edited in the sense of discussed with each
14:42 35 Board member in a board meeting.

14:42 36
14:42 37 Q. And you reviewed the terms of it?

14:42 38
14:42 39 A. Yes.

14:42 40
14:42 41 Q. And you agreed it should be sent in those terms?

14:42 42
14:42 43 A. Yes.

14:42 44
14:42 45 Q. I want to take you to the terms of it, and in particular to the
14:42 46 executive summary. The purpose of this letter, can you see that?

14:42 47

14:43 1 A. Yes, I can see it.

14:43 2

14:43 3 Q. It says:

14:43 4

14:43 5 *The purpose of this letter is to formally seek a meeting*
14:43 6 *with you [being the Minister for Consumer Affairs*
14:43 7 *Gaming and Liquor] to formally seek a meeting with you*
14:43 8 *and the other members of your government to discuss the*
14:43 9 *affairs of Crown on a commercial in confidence basis.*

10

11 A. Yes.

12

13

14 Q.

15

14:43 16 *Crown has undergone a material reform program which*
14:43 17 *is continuing and a board refresh. Further reform will be*
14:43 18 *required, taking particular note of matters that have*
14:43 19 *arisen in the Victorian Royal Commission. Crown's new*
14:43 20 *CEO is leading further management change. Additional*
14:43 21 *directors will also be appointed to the board. The Chair*
14:43 22 *[that's you] wishes to discuss with you further steps*
14:43 23 *Crown may be willing to take to establish a better and*
14:43 24 *more productive working relationship with the State and*
14:44 25 *provide the State with additional safeguards similar to*
14:44 26 *those Crown Resorts has provided in NSW. Finally, we*
14:44 27 *also wish to discuss the counterfactuals that may arise*
14:44 28 *after the Victorian Commissioner delivers his*
14:44 29 *recommendations to your government.*

14:44 30

14:44 31 Can I suggest to you, by this letter you were intending to meet
14:44 32 with the Government before the findings of the Royal
14:44 33 Commission are reached, is that right?

14:44 34

14:44 35 A. I'm not sure about that.

14:44 36

14:44 37 Q. Aren't you really saying ---

14:44 38

14:44 39 A. May I just have a moment, please. I don't think that puts
14:45 40 a time frame on it, Mr Finanzio. I mean, put it this way, Crown
14:45 41 has an obligation to deal with all of its stakeholders, including the
14:45 42 Government, and this is in no way intended to be had in any way
14:45 43 disrespectful to the Commission, but there are matters outside
14:45 44 what the Commission is looking at that are particularly relevant,
14:45 45 and they have been redacted matters so I won't go into them,
14:45 46 relating to the future of this company that are matters between
14:45 47 Crown and the Government in my respectful submission. I don't

14:45 1 know that we are doing it today, but at some point it will be
14:45 2 necessary to sit down with the Government and to understand
14:45 3 what the Government's view about the findings are, about how
14:46 4 they might be implemented, and what further assurance we can
14:46 5 provide both the regulator and the Government that we've done in
14:46 6 NSW, that there won't be any backsliding at all from what we
14:46 7 said we'd do. So that is the basic intent of what the letter was
14:46 8 about.

14:46 9

14:46 10 Q. I see. Can I take you to paragraph 42.

14:46 11

14:46 12 COMMISSIONER: Is this part of the redacted page?

14:46 13

14:46 14 MR BORSKY: No, it isn't, Commissioner, 42 is not part of the
14:46 15 redacted page.

14:46 16

14:46 17 COMMISSIONER: I know, whether it is on the same page, I
14:46 18 know it is a different number ---

14:46 19

14:46 20 MR BORSKY: It is not on the same page, Commissioner.

14:46 21

14:46 22 COMMISSIONER: Okay, thanks.

14:46 23

14:46 24 MR FINANZIO: Just bear with me for one minute.

14:46 25

14:46 26 Can I take you to paragraph 42, please.

14:46 27

14:46 28 A. Yes.

14:46 29

14:46 30 Q. It says:

14:46 31

14:46 32 *The Crown Chair and I [that is your lawyer] seek to meet*
14:46 33 *with you urgently to discuss these issues and a proposal*
14:46 34 *to put in place additional safeguards to further assure the*
14:47 35 *State that Crown is different from Old Crown.*

36

37 A. Yes.

38

39 Q.

40

14:47 41 *The proposal we would like to discuss includes the*
14:47 42 *appointment of a State Monitor to report to the State or*
14:47 43 *VCGLR similarly to the way the NSW Monitor reports to*
14:47 44 *the ILGA.*

14:47 45

14:47 46 A. Yes.

14:47 47

14:47 1 Q. The letter does suggest a time frame, doesn't it?
14:47 2
14:47 3 A. Well, I meant --- I don't know, I have been in Government
14:47 4 and what is urgent to Government is not necessarily urgent to
14:47 5 somebody who seeks a meeting, Mr Finanzio. I don't know.
14:47 6
14:47 7 Q. I see.
14:47 8
14:47 9 A. I mean they never meet, but it certainly doesn't suggest to
14:47 10 me that we are expecting that this will happen on Monday.
14:47 11
14:47 12 Q. Yes. Can I take you to paragraph 35.
14:47 13
14:47 14 MR BORSKY: That is on the page, and so may I respectfully ask
14:47 15 that it be checked whether the redactions are applied to the
14:47 16 version that is about to be brought up on the stream.
14:48 17
14:48 18 COMMISSIONER: You should be careful how you are handling
14:48 19 the documents.
14:48 20
14:48 21 MR FINANZIO: I was just informed about that. Everyone is
14:48 22 watching. Paragraph 35.
14:48 23
14:48 24 COMMISSIONER: We are good to go.
14:48 25
14:48 26 MR FINANZIO: I think we are good to go. Paragraph 35 has
14:48 27 a heading which is redacted in the version that is up on the
14:48 28 screen. Is the heading intended to be redacted?
14:48 29
14:48 30 MR BORSKY: Yes.
14:48 31
14:48 32 MR FINANZIO: Okay. What's been advanced there is the
14:49 33 consequences for Crown and all its stakeholders and the impact
14:49 34 that will occur if Crown is --- I withdraw that.
14:49 35
14:49 36 Can I take you to paragraph 36, which is the next page.
14:49 37
14:49 38 COMMISSIONER: That's not the redacted ---
14:49 39
14:49 40 MR FINANZIO: Those passages are not redacted.
14:49 41
14:49 42 COMMISSIONER: Thanks.
14:49 43
14:49 44 MR FINANZIO: See those paragraphs, 36, 37 and 38?
14:49 45
14:49 46 A. Yes.
14:49 47

14:49 1 Q. And then paragraph 40.
14:49 2
14:49 3 A. Yes.
14:49 4
14:50 5 Q. There is a submission that it is not in the public interest for
14:50 6 Crown to fail; you see that?
14:50 7
14:50 8 A. Yes. Yes, I do.
14:50 9
14:50 10 Q. For all the reasons that are advanced. Can I suggest to you
14:50 11 that what this is a submission to Government about matters that
14:50 12 are squarely within the purview of this Royal Commission.
14:50 13
14:50 14 A. Well, if they are, Mr Finanzio, it certainly wasn't intended
14:50 15 to be. It was very much a matter of looking at external
14:50 16 stakeholders and people who are impacted.
14:50 17
14:50 18 COMMISSIONER: I'm not sure that that can ever be right,
14:50 19 Ms Coonan. I'm happy to debate the point about the contents of
14:50 20 the letter, but it seems to have one stated rather than unstated
14:50 21 purpose, which is to avoid a particular finding that the
14:50 22 Commission might make which would have the consequences
14:50 23 that you set out in the letter. I mean, it seems on its face, plain,
14:50 24 old, ordinary English language meaning, to mean, make sure that
14:51 25 the Commission doesn't make a particular finding. Precisely how
14:51 26 Government goes about that, I don't know. It would be politically
14:51 27 dangerous. But that's what this letter is about, in simple English.
14:51 28
14:51 29 A. Yes, Commissioner, what --- just to slightly distinguish
14:51 30 your point, if I may. This isn't about in any way pre-empting or
14:51 31 trying to interfere with any of your decisions or any of the
14:51 32 decisions of this Commission ---
14:51 33
14:51 34 COMMISSIONER: No, no, I get that ---
14:51 35
14:51 36 A. But --- but --- but ---
14:51 37
14:51 38 COMMISSIONER: Go on, go.
14:51 39
14:51 40 A. But the consequence, I think what we were trying to do is
14:51 41 have the Government aware of the fact that if and when you make
14:51 42 a decision, that has this effect it is a huge problem for the
14:52 43 Government too. So I think what we were trying to do is look at the
14:52 44 sorts of things that we might be able to respond with. That was
14:52 45 all. It wasn't in any way --- well, certainly not to interfere, but it
14:52 46 is entirely a matter for you as to how you decide, absolutely, but
14:52 47 ---

14:52 1
14:52 2 COMMISSIONER: No, no I get that. I understand that. I
14:52 3 wouldn't ever read it as an attempt to interfere with what I might
14:52 4 do --
14:52 5
14:52 6 A. Yes.
14:52 7
14:52 8 COMMISSIONER: --- and not only that, it is probably contempt
14:52 9 of court if you try and do that --
14:52 10
14:52 11 A. I'm not trying to do that, Commissioner.
14:52 12
14:52 13 COMMISSIONER: --- no, no, I know you are not, but on a plain
14:52 14 reading --- I mean, the way you could achieve the objective of
14:52 15 this letter and guarantee what you didn't want happen wouldn't
14:52 16 happen, is to stop the Commission altogether. That's the only
14:52 17 way you can achieve what this letter is about. That's what it
14:53 18 effectively says.
14:53 19
14:53 20 A. I don't respectfully agree with that because, for example, if
14:53 21 there would be the finding that is contemplated here, and I will be
14:53 22 very careful about how ---
14:53 23
14:53 24 COMMISSIONER: You have to, one way or another, say it.
14:53 25
14:53 26 A. --- how I couch all this, there are quite catastrophic
14:53 27 circumstances and implications that have implications for the
14:53 28 Government, and presumably they may be able to do something
14:53 29 about it. I don't know, but I think it was really for more abundant
14:53 30 caution wishing the Government to be alert to the fact that there
14:53 31 could be these sorts of things in prospect.
14:53 32
14:53 33 COMMISSIONER: Okay. I'm not sure how the letter can be
14:53 34 read in any other way other than the way I suggested it, but
14:53 35 maybe I'm not so good at reading letters.
14:53 36
14:53 37 A. Well, put it this way, we're not turning up to ask the
14:53 38 Government to stop the Commission, assuming they ever saw us,
14:54 39 and that wouldn't happen. But, Commissioner, you are a very
14:54 40 experienced person, and it wouldn't have escaped you that these
14:54 41 sorts of events don't happen in silos, so that there are
14:54 42 consequences from a process such as this ---
14:54 43
14:54 44 COMMISSIONER: Everybody gets that.
14:54 45
14:54 46 A. Yes, and a responsible attitude to it is to try and pre-empt
14:54 47 where it might happen and what might do. I mean, that is, in

14:54 1 a way --- I hope you accept that that was the intent, that we were
14:54 2 trying to look after the broader interests of the company but not in
14:54 3 any way to curtail or seek to circumvent anything in the
14:54 4 Commission.

14:54 5
14:54 6 COMMISSIONER: Okay.

14:54 7
14:54 8 MR FINANZIO: Going back to paragraph 40 you talk about, in
14:54 9 that letter, the public interest in Crown failing.

14:54 10
14:54 11 A. Yes, for the reasons set out.

14:54 12
14:54 13 Q. You are aware, aren't you, here, that "public interest" in this
14:55 14 casino context has a particular meaning?

14:55 15
14:55 16 A. Yes, but there is a broader interest as well --

14:55 17
14:55 18 Q. Yes.

14:55 19
14:55 20 A. --- I don't think we were trying to confine it in any way.

14:55 21
14:55 22 Q. No, but can I put this to you: one of the things that the Act
14:55 23 asks us to look at is public in the context of maintenance of
14:55 24 public confidence and trust in the credibility, integrity and
14:55 25 stability of casino operations; you are familiar with that phrase?

14:55 26
14:55 27 A. Yes, that's what the Act says.

14:55 28
14:55 29 Q. In this letter are you saying that even if Crown has lost the
14:55 30 confidence of the public and the trust of the public in that
14:55 31 context, it should still be allowed to stay on?

14:55 32
14:55 33 A. Well, that's a hypothetical of course, but there are other
14:55 34 consequences in addition to the way in which you've put the
14:56 35 concept in the Act. There is a broader public interest is what I'm
14:56 36 really seeking to say.

14:56 37
14:56 38 Q. Yes ---

14:56 39
14:56 40 A. That is in no way to curtail --- sorry, go ahead.

14:56 41
14:56 42 Q. This Commission was to look into exactly the matters that
14:56 43 were raised in the letter, wasn't it?

14:56 44
14:56 45 A. Which ones?

14:56 46
14:56 47 Q. The consequences of suitability or unsuitability being

14:56 1 found.
14:56 2
14:56 3 A. Yes, I think --- sorry, can I just make sure I understand your
14:56 4 question. I think I've described why the letter was sent, and I've
14:56 5 described, independently, in effect of what the Commission is
14:56 6 looking at, the broader issues that Crown will have to deal with
14:57 7 with the Government anyway. So I can't put it any more clearly,
14:57 8 I don't think, Mr Finanzio. I wasn't trying to limit myself just ---
14:57 9 sorry, the Board and the directors and Mr Zwier, I don't think,
14:57 10 were trying to limit ourselves to the definition only in the Act.
14:57 11
14:57 12 MR FINANZIO: Commissioner, I wonder if that might be
14:57 13 a convenient time to take a short break.
14:57 14
14:57 15 COMMISSIONER: Oh, okay. We'll take a break for 10 minutes.
14:57 16
14:57 17 MR FINANZIO: Thank you.
14:57 18
14:57 19
14:57 20 **ADJOURNED** [2.57PM]
15:12 21
15:12 22
15:12 23 **RESUMED** [3.12PM]
15:12 24
15:12 25
15:12 26 MR FINANZIO: Thank you, Ms Coonan. I only have a couple
15:12 27 more questions for you.
15:12 28
15:12 29 A. Thank you, Mr Finanzio.
15:12 30
15:12 31 Q. You have given evidence, as have many others from
15:12 32 Crown, about the reform agenda which is being pursued by
15:12 33 Crown at the moment.
15:12 34
15:12 35 A. Yes.
15:12 36
15:12 37 Q. We are really talking, aren't we, about a reform agenda that
15:12 38 you regard and the Board regards as absolutely necessary in order
15:13 39 to regain the confidence of stakeholders and the public, do you
15:13 40 agree?
15:13 41
15:13 42 A. Yes, I do.
15:13 43
15:13 44 Q. It will involve, as events in this Commission have revealed,
15:13 45 a considerable amount of work to achieve it, won't it?
15:13 46
15:13 47 A. Yes.

15:13 1

15:13 2 Q. And it will take time?

15:13 3

15:13 4 A. Some aspects will take time, some are achieved now, and
15:13 5 some are in prospect.

15:13 6

15:13 7 Q. How long do you think it will take?

15:13 8

15:13 9 A. Which aspect, Mr Finanzio? There are many. Without
15:13 10 putting too fine a point on it, but there are many parts of the
15:13 11 remediation and reform program.

15:13 12

15:13 13 Q. How long do you think it will take before you can honestly
15:13 14 put your hand on your heart and say Crown is suitable and has
15:13 15 regained the faith and confidence of the community to continue
15:14 16 to run as the casino operator?

15:14 17

15:14 18 A. My answer is that I think the reform program that has been
15:14 19 put in place, and that is tracking on time, that the critical
15:14 20 elements ought to be in place in that Remediation Plan by around
15:14 21 October. That's not to say that issues coming out of this
15:14 22 Commission need to be either considered separately or added on
15:14 23 or re-assessed.

15:14 24

15:14 25 Q. So what will be ready by October?

15:14 26

15:14 27 A. The whole of the reform program.

15:14 28

15:14 29 Q. So can we say RSG alterations or anything that comes out
15:14 30 of this Commission will take further work; is that right?

15:14 31

15:14 32 A. It will take further work. But just because something is
15:14 33 happening, or being rolled out, doesn't necessarily mean that you
15:15 34 are completely unsuitable. You can have --- for example, you
15:15 35 could have undertakings, enforceable undertakings, that you give
15:15 36 to the regulator that it will be achieved and there won't be any
15:15 37 backsliding, and that was reference in the letter that we've just
15:15 38 finished dealing with about an independent monitor. That was
15:15 39 a tripartite agreement between Crown, the NSW regulator, and
15:15 40 an advisory firm, to keep track of all the regulatory undertakings
15:15 41 and the progress of things that have to be done, such as
15:15 42 Responsible Gaming, to give the regulator and Crown for that
15:15 43 matter, extra assurance that nothing is falling between the cracks.
15:15 44 That was how it was designed, and I think it is a very important
15:16 45 component of me being able to say to you that while something
15:16 46 may not have been totally completed, it will be, and there will be
15:16 47 accountability for it independently of Crown.

15:16 1
15:16 2 Q. You agree Crown could not be left to its own devices to
15:16 3 implement that reform agenda without close scrutiny, don't you?

15:16 4
15:16 5 A. Well, I certainly agree there should be close scrutiny with
15:16 6 an independent monitor, this was something that I arrived at in
15:16 7 consultation with the NSW regulator, and I'm embracing it.

15:16 8
15:16 9 MR FINANZIO: Thank you, Commissioner.

15:16 10
15:16 11

15:16 12 **QUESTIONS BY THE COMMISSIONER**

15:16 13
15:16 14

15:16 15 COMMISSIONER: Thank you. Me, first, thank you. I'm just
15:16 16 debating with the other counsel who goes first around here --- and
15:16 17 seniority often helps.

15:16 18
15:16 19 I've got three topics that I want to cover with you. The first goes
15:17 20 back to the Barangaroo development, and you mentioned,
15:17 21 Ms Coonan, that there was a business case prepared for that ---
15:17 22 and even if you hadn't said it, it would have been obvious there
15:17 23 must have been a business case, otherwise there was nothing for
15:17 24 a Board to consider. Is it a business case that went to any of the
15:17 25 financiers or bankers that bankrolled the project?

15:17 26
15:17 27 A. I apologise, Commissioner, it would be something I have to
15:17 28 take on notice.

15:17 29
15:17 30 COMMISSIONER: Fair enough. Would it be the typical kind of
15:17 31 business case that deals with capital expenditure, expected
15:17 32 revenue, ongoing expenses and that kind of thing, just to show, to
15:17 33 get --- to arrive at a net present value for the development if it
15:17 34 was to go ahead?

15:17 35
15:17 36 A. I would anticipate so.

15:17 37
15:18 38 Q. Do you recall ever seeing the document itself?

15:18 39
15:18 40 A. There may have been a presentation or development update
15:18 41 or presentation in the board papers, but I just can't give you
15:18 42 a clear answer on it. But I will certainly take it away and have
15:18 43 a look if that's what you wish.

15:18 44
15:18 45 COMMISSIONER: Yes, I do. I think if it was a board
15:18 46 presentation, that is really not enough for my purposes.

15:18 47

15:18 1 A. I understand ---
15:18 2
15:18 3 COMMISSIONER: --- I mean the actual business case itself.
15:18 4
15:18 5 A. I understand what you mean.
15:18 6
15:18 7 COMMISSIONER: I assume that unless something
15:18 8 extraordinary happened, there must be such a document.
15:18 9
15:18 10 A. I would think so. I don't have a clear recollection of having
15:18 11 seen anything like that, but as with my earlier evidence, I
15:18 12 remember a discussion about it.
15:18 13
15:18 14 COMMISSIONER: Yes.
15:18 15
15:18 16 A. At the Board.
15:18 17
15:18 18 COMMISSIONER: It was that that really triggered my mind. If
15:18 19 there was a discussion about it, I assume it must have existed in
15:19 20 some hard copy ---
15:19 21
15:19 22 A. Yes.
15:19 23
15:19 24 COMMISSIONER: --- or maybe not, but if I could get a hard
15:19 25 copy form, that would help.
15:19 26
15:19 27 A. I will have a go at finding something that might meet that
15:19 28 description.
15:19 29
15:19 30 COMMISSIONER: Okay, thank you very much.
15:19 31
15:19 32 I actually had three topics more. I said three altogether, but I
15:19 33 meant four. My second topic is sort of related. It is
15:19 34 a Management Agreement issue, and you picked up the
15:19 35 conversation I had with one of your co-directors yesterday about
15:19 36 corporate structure. I've been thinking overnight about what was
15:19 37 said about the advantages and the practicalities of having
15:19 38 a centralised system of government inside a corporate group, and
15:19 39 I understand the practicalities and the sense of doing that. But I
15:20 40 take it wouldn't be too difficult if you split out some functions, I
15:20 41 haven't got my copy of the agreement with me, but the
15:20 42 Management Agreement requires certain heads of departments all
15:20 43 living in Victoria and it leaves out a whole lot of other general
15:20 44 areas of government, I mean corporate government, out of the
15:20 45 discussion by not mentioning them.
15:20 46
15:20 47 I wonder whether you see any practical difficulty confronting the

15:20 1 situation where some parts of governance are not delegated out to
15:20 2 a parent company, the holding company, and must be retained by
15:20 3 the Melbourne company and others farmed out and dealt with by
15:20 4 delegation or oversight from the parent company, however the
15:20 5 parent company sees fit. I take it you could relatively easily do
15:21 6 that?

15:21 7

15:21 8 A. I'm not sure, but it is something that I can certainly take on
15:21 9 notice and have a think about and look at how that might yield to
15:21 10 the sorts of proposition that you are putting, Commissioner. I
15:21 11 mean, it is an intriguing thing you've raised and I must say, just
15:21 12 sitting here, I don't really feel that I'm across it sufficiently to be
15:21 13 able to have a sensible conversation with you about it. But we
15:21 14 will go away and have a good look at the matters you raise.

15:21 15

15:21 16 COMMISSIONER: That would be very, very helpful to me.
15:21 17 And I think you've got until 2 or 3 August to work it out.

15:21 18

15:21 19 A. That's an eternity, Commissioner.

15:21 20

15:21 21 COMMISSIONER: It's a day --- it's the day when your counsel
15:21 22 are going to make submissions --

15:21 23

15:21 24 A. Yes.

15:21 25

15:21 26 COMMISSIONER: --- and I don't really need the answer before
15:21 27 then, but I need some help with that ---

15:21 28

15:22 29 A. Yes.

15:22 30

15:22 31 COMMISSIONER: --- to --- to see how it can work out.

15:22 32

15:22 33 A. We will give very careful thought to see how we can deal
15:22 34 with that in submissions.

15:22 35

15:22 36 COMMISSIONER: Bearing in mind your contractual
15:22 37 obligations.

15:22 38

15:22 39 A. Yes, I've got it.

15:22 40

15:22 41 COMMISSIONER: You know what that is.

15:22 42

15:22 43 The third thing is coming back to the 1 July letters. I heard from
15:22 44 Mr McCann, according to his evidence, that Crown will pay
15:22 45 whatever it is obliged to pay, and he said he was going to pay the
15:22 46 larger of the disputed amounts.

15:22 47

15:22 1 A. Yes.
15:22 2
15:22 3 COMMISSIONER: My best guess is that you will never do that
15:22 4 voluntarily, but I'm not sure what the larger of the two amounts
15:22 5 that he is referring to --- the way that --- you've got two opinions
15:22 6 so far on one part of the dispute, which is the deduction of the
15:23 7 hotel, car parking and food and beverage.
15:23 8
15:23 9 The first opinion said you could deduct some and not the others.
15:23 10 The second opinion says you can't deduct any. Am I right in
15:23 11 assuming that at the moment the Crown position is the second
15:23 12 opinion, which would leave you owing about \$37.5 million plus
15:23 13 interest, that's about \$7 million?
15:23 14
15:23 15 A. Yes.
15:23 16
15:23 17 COMMISSIONER: Okay.
15:23 18
15:23 19 A. I can say that those that I instruct suggested that we should
15:23 20 get a tax expert and perhaps --- I don't mean any disrespect to the
15:23 21 second counsel, but perhaps somebody not as steeped in tax who
15:23 22 might take a more conservative view or whatever it was, and
15:23 23 that's the amount that we will pay.
15:23 24
15:24 25 COMMISSIONER: The other way of looking at it is this really
15:24 26 has nothing to do with income experts and tax; this is a one-off
15:24 27 tax dictated by one sentence in one Act of Parliament, or
15:24 28 agreement adopted by an Act of Parliament, and there are a few
15:24 29 simple words, and your second expert got at least that part of it
15:24 30 right --
15:24 31
15:24 32 A. Yes.
15:24 33
15:24 34 COMMISSIONER: --- which is me giving you some free legal
15:24 35 advice which you don't need.
15:24 36
15:24 37 A. Which I appreciate though, nonetheless, Commissioner.
15:24 38
15:24 39 COMMISSIONER: And the other larger amount is the subject of
15:24 40 some extensive debate.
15:24 41
15:24 42 A. Yes, of course.
15:24 43
15:24 44 COMMISSIONER: I get that. That's not unusual in the area in
15:24 45 which we all work.
15:24 46
15:24 47 A. Yes.

15:24 1
15:24 2 COMMISSIONER: The last topic --- and the reason I asked you
15:24 3 that is if at least part of the tax issue is not going to be an issue,
15:24 4 then Counsel Assisting don't have to worry about it, and they will
15:25 5 only concentrate on the outstanding question when they make
15:25 6 submissions. That makes life easier for everybody.
15:25 7
15:25 8 A. Yes, I understand.
15:25 9
15:25 10 COMMISSIONER: The last issue is the most complicated. It is
15:25 11 a difficult issue, and I really need to ask you about this.
15:25 12
15:25 13 There is a not-insignificant difference between the evidence that
15:25 14 Xavier Walsh gave, and the evidence that you've given, the other
15:25 15 two directors have given ---
15:25 16
15:25 17 A. Yes.
15:25 18
15:25 19 COMMISSIONER: --- it is going to be a troublesome thing to
15:25 20 sort out. I want to ask you this question: I didn't ask the other
15:25 21 two, but I want to ask you this question. We are talking about
15:25 22 conversations that happened in February. They were
15:25 23 conversations that were no doubt happening or happened ---
15:26 24 singular, one conversation --- in very difficult circumstances for
15:26 25 the company and every senior person inside the organisation.
15:26 26
15:26 27 I want to ask you this: is it possible that your recollection is not
15:26 28 perfect of the conversation, having regard to just what the world
15:26 29 was like there? And the reason, I will be quite frank about it, is
15:26 30 at least I have two contemporaneous file notes of part of the
15:26 31 conversation. Now, one is by a person who has had the
15:26 32 conversation, the other is by a person to whom the conversation
15:26 33 was relayed. You know what lawyers are like and ex-judges,
15:26 34 they like contemporaneous file notes because they know, as
15:26 35 everybody knows, that memories aren't as good as even the
15:26 36 people who recount their memory think they are. And so what
15:27 37 many decision-makers do, when they are confronted with
15:27 38 evidence which doesn't coincide, they say "I've got a piece of
15:27 39 paper, I don't care what the witnesses say, the piece of paper tells
15:27 40 me what happened."
15:27 41
15:27 42 A. Yes.
15:27 43
15:27 44 COMMISSIONER: This is such an important point, both for you
15:27 45 and Mr Walsh, and what I might say about it, that I just want to
15:27 46 make sure that you aren't possibly mistaken just because of what
15:27 47 was happening at the time. The world was in turmoil, I get that.

15:27 1
15:27 2 A. Yes, and I --- I have thought about this very carefully and I
15:27 3 take onboard exactly what you've said, and I've thought about it
15:27 4 extremely carefully. I mean obviously it's always possible, when
15:27 5 you are recollecting something, that it is not precise. But coming
15:28 6 to the file note, the note that Mr Walsh made about me reviewing
15:28 7 it is a non sequitur. There was nothing to review, he never gave
15:28 8 me anything to review. Admittedly I never asked for anything to
15:28 9 review, and the review, what I was referring to, or consider, was
15:28 10 going off to Allens who I appointed the next day. So if I had
15:28 11 been sent anything or he had come back to me with anything, it
15:28 12 might have lined up but I just don't think that is right.

15:28 13
15:28 14 Now, I don't know what was in his mind when he said that note
15:28 15 "review", because there is just nothing to suggest that there was
15:28 16 any substance to that. I do recall "review" in the sense of going
15:29 17 to the lawyers, I certainly recall that.

15:29 18
15:29 19 COMMISSIONER: Thanks. I don't have any other questions.
15:29 20 Mr Rozen is going to go first, which is our usual practice.

15:29 21
15:29 22

15:29 23 **CROSS-EXAMINATION BY MR ROZEN**

15:29 24
15:29 25

15:29 26 MR ROZEN: Thank you, Commissioner.

15:29 27

15:29 28 Good afternoon, Ms Coonan. My name is Peter Rozen and I
15:29 29 appear for the VCGLR.

15:29 30

15:29 31 A. Good afternoon.

15:29 32

15:29 33 Q. Good afternoon. Can I take you back to some evidence you
15:29 34 gave earlier today in response to questions from Counsel
15:29 35 Assisting. Mr Finanzio asked you if, in reflection, you
15:29 36 considered that you were --- and I'm paraphrasing --- adequately
15:29 37 fulfilling your duties as a director and oversighting the activities
15:29 38 of Crown. And in your response to that, you raised a matter
15:29 39 which you've raised a few times today, and that is the difficulties
15:29 40 you face because of the lack of information flowing up to the
15:29 41 Board. Do you recall saying that earlier?

15:29 42

15:29 43 A. Yes. Historically, yes.

15:29 44

15:30 45 Q. That's right. You also said that inquiries that were made
15:30 46 didn't yield red flags. Do you recall saying that?

15:30 47

15:30 1 A. Yes, apart from one occasion.
15:30 2
15:30 3 Q. Well, I wonder if that's what I'm about to ask you about,
15:30 4 this is the ---
15:30 5
15:30 6 A. I think it will be.
15:30 7
15:30 8 Q. --- yes, in the context of the China arrests, the information
15:30 9 about the arrest of the South Korean marketing employee. Is that
15:30 10 what you anticipate I was going to ask you about?
15:30 11
15:30 12 A. Yes. Yes.
15:30 13
15:30 14 Q. You told us that you read the final report by the VCGLR of
15:30 15 the China arrests incident, and you would have seen in that that
15:30 16 one of the findings made by the VCGLR in the final report is that
15:30 17 there were four identified risk matters, or events which preceded
15:30 18 the arrest of the Crown employees: do you recall that?
15:31 19
15:31 20 A. Yes, I do.
15:31 21
15:31 22 Q. I will try and do this without taking you to the document. If
15:31 23 you need it in front of me, I'm more than happy to take you to it.
15:31 24
15:31 25 A. I don't think so. I know the four escalation points, I only
15:31 26 have one of them and I'm very happy to deal with it.
15:31 27
15:31 28 Q. Indeed. The escalation points, just in summary, were that
15:31 29 there was a press conference in February 2015 by Chinese
15:31 30 authorities which referred to a crackdown on foreign casinos
15:31 31 seeking Chinese gamblers. During 2015, arrests of other foreign
15:31 32 casino marketing staff, that's what we've just been talking about,
15:31 33 the South Korean staff. Thirdly, the questioning of two Crown
15:31 34 employees and the request for a letter confirming who one of
15:31 35 them was employed by, and finally a Chinese news program.
15:31 36
15:31 37 Just for a bit of context, you were asked about the draft report
15:31 38 that was provided, prepared by the VCGLR in May 2019; you
15:31 39 recall answering the question?
15:32 40
15:32 41 A. Yes, I do.
15:32 42
15:32 43 Q. Those four issues were identified in that draft report were
15:32 44 they not?
15:32 45
15:32 46 A. I think they were, yes.
15:32 47

15:32 1 Q. What the subsequent investigations by the VCGLR focused
15:32 2 on, in relation to other matters, was who knew about them and
15:32 3 when they knew about them and what they should have done with
15:32 4 that information; do you agree broadly with that?

15:32 5
15:32 6 A. Yes.

15:32 7
15:32 8 Q. Then in the final report, which was published earlier this
15:32 9 year and provided to Crown during the course of this Royal
15:32 10 Commission, there is an analysis of who within Crown,
15:32 11 particularly which directors, knew about each of those events
15:32 12 shortly after they occurred. And in relation to the event that you
15:32 13 have identified, that is the arrest of the foreign casino marketing
15:32 14 staff in June 2015, which was all 16 months before the Crown
15:33 15 employees were arrested; wasn't it?

15:33 16
15:33 17 A. I think that's right.

15:33 18
15:33 19 Q. That there were a number of directors and former directors,
15:33 20 including yourself, who were aware of that, and that was your
15:33 21 evidence at the Bergin Inquiry, wasn't it, that Mr Johnson told
15:33 22 you about that?

15:33 23
15:33 24 A. Well, he mentioned it, yes. Not in a board meeting, but on
15:33 25 a day in which the Board was meeting, he mentioned it, yes.

15:33 26
15:33 27 Q. To you and a number of other directors?

15:33 28
15:33 29 A. I don't know whether there were --- I can't remember who
15:33 30 was actually there.

15:33 31
15:33 32 Q. The findings of the report were that Mr Demetriou was
15:33 33 there, Ms Danziger was there, Professor Horvath was there and
15:33 34 you were there. Do you accept that was the evidence of the
15:33 35 Bergin Inquiry?

15:34 36
15:34 37 A. Yes, I do accept it. It may have been separate
15:34 38 conversations, I'm not sure.

15:34 39
15:34 40 Q. The VCGLR report concluded that each of the people
15:34 41 failed to ensure that that matter was elevated into the risk
15:34 42 management structures or boards of either Crown Melbourne or
15:34 43 Crown Resorts. And you accept that that is a correct finding?

15:34 44
15:34 45 A. Yes.

15:34 46
15:34 47 Q. Without going to each of the other events and who it was

15:34 1 that knew about them, and there is no suggestion you knew about
15:34 2 them, but there were directors, lawyers within Crown who were
15:34 3 aware of them, and in each case it was the fact that they weren't
15:34 4 elevated through the risk management structures as they ought to
15:34 5 have been; do you accept that?

15:34 6

15:34 7 A. Yes, I do.

15:34 8

15:34 9 Q. If one looks at the totality of that, I suggest to you that if
15:35 10 any one of the people who knew about one or more of those
15:35 11 events had raised them through those structures, particularly at
15:35 12 board level, then it is conceivable that the memories of others
15:35 13 may have been triggered and someone might have joined the
15:35 14 dots; do you accept that?

15:35 15

15:35 16 A. I think so. I mean, technically it should have gone through
15:35 17 Crown Melbourne's risk structures --

15:35 18

15:35 19 Q. Yes.

15:35 20

15:35 21 A. --- and otherwise to the group structure. It raises a very
15:35 22 interesting question as to --- that goes back to the Commissioner's
15:35 23 conundrum about how you actually deal with the functions of
15:35 24 Melbourne and a Group Board. But certainly nothing of that
15:35 25 nature came to the Group Board apart from what we've discussed.
15:35 26 And that was, I think, a great failing because it would have given
15:35 27 us all an opportunity to be able to take the actions that have been
15:36 28 detailed very clearly in subsequent reports.

15:36 29

15:36 30 Q. Indeed. And it might --- and of course it is speculating, but
15:36 31 it might have resulted in action being taken which, for example,
15:36 32 got Crown employees out of China before they were arrested?

15:36 33

15:36 34 A. That's quite right. You wouldn't have left them there if you
15:36 35 joined the dots, that's for sure. You would not have. You would
15:36 36 have taken them out of harm's way. I'm sorry, I just said you
15:36 37 would get them out of harm's way.

15:36 38

15:36 39 Q. Yes, thank you, Ms Coonan. And so, without asking you to
15:36 40 speculate on why no one else raised a concern, why didn't you
15:36 41 escalate what you knew through the appropriate risk management
15:36 42 structures?

15:36 43

15:36 44 A. It is a fair question. The Korean arrest, that was mentioned
15:36 45 to me by Michael Johnston, I hadn't otherwise had any
15:36 46 knowledge about it. He told me that there had been some legal
15:37 47 advice obtained in relation to whether that had any impact or

15:37 1 consequences for Crown staff, and the legal advice had been that
15:37 2 what the Koreans were doing were running the currency across
15:37 3 the borders, and not --- and that Crown's actions were
15:37 4 distinguishable, and distinguished, and he also said that there had
15:37 5 been legal advice.

15:37 6
15:37 7 At the end of that conversation I asked the company secretary,
15:37 8 Mr Neilson at the time, about the provenance of the advice
15:37 9 because I was interested to know who had provided the advice.
15:37 10 The firm that provided the advice was WilmerHale. At that stage
15:37 11 I was still admitted to practice in America, so I knew
15:37 12 WilmerHale, and I also knew that they had a presence in Asia and
15:38 13 that they had some Asian expertise. I didn't ask to see the advice
15:38 14 because I'm not an expert in Chinese law and I don't think I'd be
15:38 15 much the wiser. And if that was the advice, I was prepared to
15:38 16 agree with that. If I had any other flags I think it would have
15:38 17 helped me reach a different conclusion. That was how I dealt
15:38 18 with the Korean arrests.

15:38 19
15:38 20 Q. I understand all of that. Do you see any parallels between
15:38 21 the situation I've just described to you, of different people having
15:38 22 small pieces of information, but no one actually following
15:38 23 through and asked questions such as, "Can I see the advice?" or
15:38 24 "Are you sure that the situation of the South Koreans is
15:38 25 distinguishable from ours?" Do you see any similarities between
15:39 26 that and what has recently happened, what you were asked about
15:39 27 today, where you had the informal conversation with Mr Walsh
15:39 28 about tax but you didn't follow up with any further questions, and
15:39 29 others have had conversations and heard information about the
15:39 30 tax matter, but you haven't collectively come together to share
15:39 31 information and knowledge and make appropriate managerial
15:39 32 decisions? Can you see any parallels between the situations?

15:39 33
15:39 34 A. Look, I think it is a very fair question, Mr Rozen. And with
15:39 35 respect to the Chinese matters, I totally agree with you that the
15:39 36 asymmetrical information that was flowing through the company
15:39 37 was an attributable cause to those particular events. Just recently,
15:39 38 I do think there is a distinction, and I do think that if somebody
15:40 39 says something is cured, I just don't really see why you should
15:40 40 say, "Well, it's not really, is it" and second-guess it when we just
15:40 41 had this huge upheaval. There were enough problems that
15:40 42 weren't solved, hadn't been fixed; we were all running flat-out
15:40 43 and trying to just get the company off the rocks after the Bergin
15:40 44 Report. It simply --- I don't think it occurred to any of us to chase
15:40 45 down something we're told was a cultural problem.

15:40 46
15:40 47 Q. I understand. And I won't explore that further. We've all

15:40 1 heard your evidence about that. Can I ask you a different
15:40 2 question about the China Arrests Report. You've read it. We've
15:40 3 heard from a number of other senior officers recently employed,
15:40 4 Mr McCann, Mr Blackburn, Mr Morrison had read it. You will
15:40 5 have noticed in it that in addition to the substantive investigation
15:41 6 report which forensically goes through who knew what and when
15:41 7 and so on, there were also some concerns raised about Crown's
15:41 8 attitude to the investigation. You recall reading that?

15:41 9

15:41 10 A. Yes. Yes.

15:41 11

15:41 12 Q. And in particular, delay in responding to notices and
15:41 13 a suggestion that a presentation that had been made by a Crown
15:41 14 internal lawyer was less than fulsome with the true facts and
15:41 15 some other concerns. Evidence before the Royal Commission is
15:41 16 that some people one might have expected to have read the report
15:41 17 haven't, and I'm referring in particular to Ms Siegers who is the
15:41 18 Chief Risk Officer. She told us, I think, that she had skimmed the
15:41 19 report. Ms Fielding who is in charge of compliance hadn't read
15:42 20 it.

15:42 21

15:42 22 Does it surprise you that those officers, albeit very busy with lots
15:42 23 to do --- but presumably you're in that boat as well --- they hadn't
15:42 24 managed to find the time to read this report when they gave
15:42 25 evidence in a Royal Commission?

15:42 26

15:42 27 A. I think it is regrettable. I can't give you an explanation why
15:42 28 something of that significance wasn't read from cover to cover,
15:42 29 but I think you have put your finger on it in all fairness. You are
15:42 30 being very fair, I must say. We are drowning in producing paper
15:42 31 and doing things, and those particular officers I know have been
15:42 32 practically asleep on their desks working day and night, so I
15:42 33 wouldn't want to be critical of them but I would have preferred if
15:42 34 they had.

15:42 35

15:42 36 Q. Yes, I understand that, and I'm not raising it to raise a cheap
15:42 37 point. It goes to a broader question, that is, how can Crown as
15:43 38 an organisation learn from an experience like this and absorb the
15:43 39 very, I would suggest, very valuable information in
15:43 40 an investigation report like this to inform future conduct if key
15:43 41 officers are not in a position to brief people like you, directors,
15:43 42 incoming senior management like Mr Blackburn and Mr McCann
15:43 43 --- if the more junior officers, even though they are senior within
15:43 44 the organisation, aren't across the detail of this in providing the
15:43 45 briefings, how does the organisation learn and ensure that in
15:43 46 future there is not a repetition of this sort of conduct?

15:43 47

15:43 1 A. I think the answer to that, if I may say so, is that the
15:43 2 company is in transition. These are important matters and
15:43 3 important lessons to be learned that will be got through the risk
15:43 4 and compliance functions. Just at the moment obviously we have
15:44 5 a lot on. I mean, without gilding the lily, we have the Bergin
15:44 6 Inquiry to finish up, we have the WA Commission, we have
15:44 7 a class action and a number of other things. I won't labour the
15:44 8 point. All I can say is that I will intend that it be got to, and I do
15:44 9 think and I do respect these reports. I do think that there is
15:44 10 lessons to be learnt.

15:44 11
15:44 12 Q. Is it possible that not all the staff respect them though?
15:44 13 That's where I'm going.

15:44 14
15:44 15 A. I think so, I think it is a matter of sheer burden of work, and
15:44 16 the fact that there has been a lot of change-out and, you know,
15:44 17 trying to get people into management positions. When you think
15:44 18 that we've lost six executives who have separated from the
15:44 19 business and a lot of other people too, internally, we have to try
15:45 20 and keep people focused and motivated, and I think that that
15:45 21 would be my explanation. But I'm glad you've brought it to my
15:45 22 attention.

15:45 23
15:45 24 Q. It's been a long day, especially for you. I will give you
15:45 25 another opportunity to answer that question, because I'm not sure
15:45 26 you answered it in a way that perhaps you ---

15:45 27
15:45 28 A. I'm sorry about that.

15:45 29
15:45 30 Q. I will be specific. Ms Siegers, Ms Fielding, haven't read the
15:45 31 report, not a position to brief senior officers and directors. Is it
15:45 32 possible that the reason they haven't made it a priority to read the
15:45 33 report is that they don't value the opinion of the regulator?

15:45 34
15:45 35 A. I would not think so, Mr Rozen. I think they would, and
15:45 36 I'm sure that it is in our processes to be dealt with. I think our
15:45 37 next Risk Committee meeting is coming up pretty soon and I
15:45 38 know I attended my first compliance meeting of Crown
15:45 39 Melbourne, I'm on that Committee, and I would expect that that
15:46 40 be brought forward on that occasion when we next meet.

15:46 41
15:46 42 Q. You were asked some questions earlier about responding to
15:46 43 a letter from the VCGLR in relation to the China investigation,
15:46 44 which was trying to take you up on your proposal when you gave
15:46 45 evidence in the Bergin Inquiry to see if the matter could be
15:46 46 wrapped up on the basis of some agreed findings; do you recall
15:46 47 that?

15:46 1

15:46 2 A. I do.

15:46 3

15:46 4 Q. And, as I understood it, your evidence, and I won't go
15:46 5 through it in detail, as I understand your evidence, you weren't
15:46 6 overly comfortable with the response to the letter. That is, you
15:46 7 weren't overly comfortable with the letter, I think it was dated 22
15:46 8 January of this year, that responded to that letter. You had
15:46 9 difficulty with other Board members. Do you recall giving that
15:46 10 evidence earlier today?

15:46 11

15:46 12 A. Yes, it very closely mirrored the submissions in the Bergin
15:46 13 Report.

15:46 14

15:46 15 Q. Yes. And if I understood your evidence correctly, you had
15:47 16 a similar dilemma, or Mr Walsh did anyway, in relation to
15:47 17 responding to the Show Cause Notice disciplinary action.

15:47 18

15:47 19 A. I had nothing to do with that at all, but Mr Walsh told me
15:47 20 about the circumstances under which he made the presentation he
15:47 21 did.

15:47 22

15:47 23 Q. Yep. And you are aware, aren't you, from the ultimate
15:47 24 findings made by the VCGLR in that matter that they were
15:47 25 concerned, to put it mildly, about the discrepancy between the
15:47 26 approach taken by Mr Walsh and other representatives of Crown
15:47 27 relative to the undertakings that you had given in December?

15:47 28

15:47 29 A. I think that is right. I've now had several more meetings
15:47 30 with them that are all transcribed and I think you would
15:47 31 characterise as cordial and forthright.

15:47 32

15:47 33 Q. Is that an example of the interests of Crown Resorts and
15:48 34 Crown Sydney being put above the interests of Crown
15:48 35 Melbourne? That is that ---

15:48 36

15:48 37 A. Sorry ---

15:48 38

15:48 39 Q. Sorry, I will complete that. That is, that the responses to
15:48 40 the particular regulatory actions being taken by the VCGLR were
15:48 41 responses that were influenced by the Bergin Inquiry concerned
15:48 42 with Crown Resorts and Crown Sydney?

15:48 43

15:48 44 A. I understand what you mean now. The Bergin Inquiry was
15:48 45 concerned with the operations of Crown in the jurisdictions of
15:48 46 Victoria and to a lesser extent with WA, for example ---

15:48 47

- 15:48 1 Q. I know that.
15:48 2
- 15:48 3 A. --- the Riverbank account. Not Sydney. So there wasn't
15:48 4 any prioritisation of Sydney.
15:48 5
- 15:48 6 Q. Perhaps I haven't made myself clear. The submissions that
15:49 7 were made to the enforcement action by the VCGLR were
15:49 8 influenced by the conduct of --- Crown's conduct in relation to
15:49 9 the Bergin Inquiry --
15:49 10
- 15:49 11 A. Yes.
15:49 12
- 15:49 13 Q. --- that's what you told us earlier?
15:49 14
- 15:49 15 A. Yes. Sorry, I misunderstood you.
15:49 16
- 15:49 17 Q. Yes, and I suggest to you that that is an example of Crown
15:49 18 Melbourne's interests, which are to have a good relationship with
15:49 19 the VCGLR, are being subsumed in the broader interests of the
15:49 20 group. You understand the question?
15:49 21
- 15:49 22 A. Yes, I do, except the group is running in effect, particularly
15:49 23 with Crown Melbourne, running this Commission, running the
15:49 24 Commission in WA, and ran the Commission in Sydney. There
15:49 25 are a lot --- as the Commissioner alluded to, there are a lot of
15:50 26 functions that are centralised functions. I don't think it prioritises
15:50 27 or that it in any way diminishes Melbourne's role, but that is
15:50 28 a debate we've got to have, obviously, or a discussion we have to
15:50 29 have.
15:50 30
- 15:50 31 Q. Indeed. Do you think, in hindsight, which is of course
15:50 32 a wonderful thing, Ms Coonan, it might have been better for you
15:50 33 to have waited to see the Bergin Report findings before you made
15:50 34 the commitments to the VCGLR about more openness and
15:50 35 transparency in the relationship?
15:50 36
- 15:50 37 A. Yes, I think that's right although, in effect the other matters
15:50 38 have sort of got subsumed, you know, in the response to Bergin
15:50 39 as you quite rightly said. I must say that from my own personal
15:51 40 perspective I didn't think it was too early to reach out to the
15:51 41 VCGLR and I sincerely regret that those other matters overtook
15:51 42 some of the goodwill that I think was engendered in that meeting,
15:51 43 and which I certainly and earnestly hope and intend to continue.
15:51 44
- 15:51 45 Q. Finally, Ms Coonan, the ABL letter of 2 July, why wasn't
15:51 46 a copy sent to the VCGLR? It is the licensing authority after all,
15:51 47 not the Minister.

15:51 1
15:51 2 A. To be perfectly honest, I didn't realise it hadn't been. I
15:51 3 didn't dispatch the letter. I apologise it hadn't been sent. Of
15:51 4 course it is relevant.
15:51 5
15:51 6 Q. Had you instructed that it be sent to the VCGLR?
15:51 7
15:51 8 A. I honestly hadn't turned my mind to it. I hadn't sent that.
15:51 9
15:52 10 MR ROZEN: I have no further questions, thank you.
15:52 11
15:52 12 COMMISSIONER: Yes, thank you.
15:52 13
15:52 14
15:52 15 **CROSS-EXAMINATION BY DR BIGOS**
15:52 16
15:52 17
15:52 18 DR BIGOS: My name is Mr Oren Bigos. I'm counsel for CPH. I
15:52 19 only have a few questions for you.
15:52 20
15:52 21 A. Yes, Mr Bigos. I can't see you, but I can hear you very
15:52 22 clearly.
15:52 23
15:52 24 Q. As long as you can hear me, thank you.
15:52 25
15:52 26 You were appointed as an independent non-executive director
15:52 27 around 10 years ago?
15:52 28
15:52 29 A. Yes, that's true.
15:52 30
15:52 31 Q. During your time as a director, was culture a topic that was
15:52 32 discussed at Board level?
15:52 33
15:52 34 A. Yes.
15:52 35
15:52 36 Q. Did you discuss culture with the various CEOs during the
15:52 37 time of your directorships?
15:52 38
15:52 39 A. Some aspects of it, yes.
15:52 40
15:52 41 Q. And you agree that culture is a topic that has been
15:52 42 important to Crown as a company throughout your time as
15:52 43 a director?
15:52 44
15:52 45 A. Yes, I think that is correct. Culture is always important to
15:52 46 a company.
15:52 47

15:52 1 Q. You agree that the board of directors of a company is
15:53 2 important to the culture of the company?
15:53 3
15:53 4 A. Yes.
15:53 5
15:53 6 Q. And you agree that the CEO of the company is important to
15:53 7 the culture of the company?
15:53 8
15:53 9 A. Yes.
15:53 10
15:53 11 Q. You agree that the CEO's reporting of issues to the
15:53 12 directors is important to the culture of the company?
15:53 13
15:53 14 A. Yes, I mean, it all fits together.
15:53 15
15:53 16 Q. And you agree that each of these things that I've mentioned
15:53 17 to you that you've agreed with were important to the culture of
15:53 18 Crown during the time of your directorship?
15:53 19
15:53 20 A. Yes, I think so.
15:53 21
15:53 22 Q. You agree that there might be cultural problems in
15:53 23 particular areas of the company?
15:53 24
15:53 25 A. Yes, and in other parts of the company I think the culture is
15:53 26 one of --- really is very healthy.
15:53 27
15:53 28 Q. For example, one area in which cultural problems have
15:53 29 been identified during this Royal Commission is the China
15:53 30 UnionPay payments, the CUP issue; is that right?
15:53 31
15:53 32 A. Yes.
15:53 33
15:53 34 Q. Did you know about the CUP process before it came up in
15:53 35 this Royal Commission?
15:53 36
15:53 37 A. No. I don't think so.
15:53 38
15:54 39 Q. Did the CEO of Crown Resorts or Crown Melbourne ever
15:54 40 report to you about the CUP process?
15:54 41
15:54 42 A. I don't believe so. What I --- I don't believe so but what has
15:54 43 come up is this process going on in the hotels. No, I didn't have
15:54 44 any idea of that.
15:54 45
15:54 46 DR BIGOS: Thank you.
15:54 47

15:54 1 MR GRAY: I have no questions on behalf of the State, thank
15:54 2 you, Commissioner.

15:54 3

15:54 4 COMMISSIONER: Thank you, Mr Gray.

15:54 5

15:54 6

15:54 7 **RE-EXAMINATION BY MR BORSKY**

15:54 8

15:54 9

15:54 10 MR BORSKY: Ms Coonan, you can hear me?

15:54 11

15:54 12 A. Yes, thank you. I can, Mr Borsky.

15:54 13

15:54 14 Q. Counsel Assisting suggested to you earlier today,
15:54 15 Ms Coonan, that before this Royal Commission there was no hint
15:54 16 that Crown would be revisiting its response to the Responsible
15:54 17 Service of Gaming; do you remember that being suggested to
15:55 18 you?

15:55 19

15:55 20 A. Yes.

15:55 21

15:55 22 Q. And you mentioned in answer to that suggestion Crown's
15:55 23 implementation of the VCGLR's Sixth Review recommendations,
15:55 24 the majority of which concerned Responsible Gaming?

15:55 25

15:55 26 A. Yes, 11 recommendations, if I recall.

15:55 27

15:55 28 Q. Yes. And you also mentioned an advisory panel of experts
15:55 29 in Responsible Gaming, which panel prepared a report for Crown
15:55 30 in, I think you said about August 2020?

15:55 31

15:55 32 A. Yes, and I think some 17 recommendations.

15:55 33

15:55 34 Q. Those recommendations too have been accepted, and at
15:55 35 least largely implemented, as you understand it?

15:55 36

15:55 37 A. Yes, that's correct. There may be some that is still in the
15:55 38 course of being implemented.

15:55 39

15:55 40 Q. Could the operator please bring up CRW.526.007.7005?

15:56 41

15:56 42 Has that appeared on a screen for you, Ms Coonan?

15:56 43

15:56 44 A. Yes.

15:56 45

15:56 46 Q. Do you recognise that as the report of the Advisory Panel
15:56 47 on Responsible Gaming dated August 2020 to which you referred

- 15:56 1 in your evidence earlier today?
- 15:56 2
- 15:56 3 A. Yes, that's correct. I've got the page.
- 15:56 4
- 15:56 5 Q. Just the cover page, yes.
- 15:56 6
- 15:56 7 A. Yes.
- 15:56 8
- 15:56 9 Q. Which indicates that the panel comprised
- 15:56 10 Professor Blaszczyński, Professor Delfabrro and
- 15:56 11 Professor Nower?
- 15:56 12
- 15:56 13 A. That's correct.
- 15:56 14
- 15:56 15 Q. Could the operator please go to the next page of the
- 15:56 16 document where the Terms of Reference are recorded by the
- 15:56 17 authors of the report.
- 15:56 18
- 15:57 19 You see, Ms Coonan, from the third line on that page that the
- 15:57 20 members of the panel were commissioned by Crown to review
- 15:57 21 Crown's then current Responsible Gaming practices, policies and
- 15:57 22 procedures; do you see that in the third line?
- 15:57 23
- 15:57 24 A. Yes, I do.
- 15:57 25
- 15:57 26 Q. And to identify Crown's then existing strengths and
- 15:57 27 importantly the identification of Crown's then gaps or weaknesses
- 15:57 28 that required attention in relation to Responsible Gaming?
- 15:57 29
- 15:57 30 A. Yes.
- 15:57 31
- 15:57 32 Q. And then the authors record that Crown had requested the
- 15:57 33 panel to consider the recommendations of the VCGLR in the
- 15:57 34 Sixth Review and to build upon and extend Crown's Responsible
- 15:57 35 Gambling framework to achieve best practice benchmark
- 15:57 36 standards; you see that?
- 15:57 37
- 15:57 38 A. Yes, evidence-based best practice benchmark standards.
- 15:57 39
- 15:58 40 Q. Yes, thank you. And that request by Crown of the panel,
- 15:58 41 and Crown's Commissioning of the panel, was in January 2020;
- 15:58 42 correct?
- 15:58 43
- 15:58 44 A. I think that's correct. That would have been done through
- 15:58 45 the committee.
- 15:58 46
- 15:58 47 Q. Thank you. Then if you go to the fourth last line in that

15:58 1 paragraph you see the sentence commencing "The objectives of
15:58 2 Crown"?

15:58 3

15:58 4 A. Yes.

15:58 5

15:58 6 Q. The objectives of Crown were, in 2020, to establish
15:58 7 a Responsible Gambling framework to position Crown as a leader
15:58 8 in the delivery of effective Responsible Gambling Services?

15:58 9

15:58 10 A. Yes.

15:58 11

15:58 12 Q. And to integrate a culture of Responsible Gambling that
15:58 13 was embedded in all aspects of its processes, strategy initiatives
15:58 14 and operational decisions?

15:58 15

15:58 16 A. Yes.

15:58 17

15:58 18 Q. Did that accurately reflect Crown's objectives in relation to
15:58 19 Responsible Gaming as you understood them in 2020?

15:59 20

15:59 21 A. Yes.

15:59 22

15:59 23 Q. Could the operator then please go to ---

15:59 24

15:59 25 COMMISSIONER: Before you leave that page, can I ask
15:59 26 a question about the page.

15:59 27

15:59 28 If we go back to line 3 to which your attention was drawn, it says
15:59 29 that this panel had three functions, to review practices, policies
15:59 30 and procedures. I've read the report and they seem to have left
15:59 31 out practices, and dealt with policies and procedures, ie, it was
15:59 32 a review of paperwork. Do you know why they didn't review the
15:59 33 practices as well?

15:59 34

15:59 35 A. No, I think I heard some evidence from Ms Bauer or
15:59 36 someone that they came to the casino and spoke to people and did
15:59 37 things ---

15:59 38

15:59 39 COMMISSIONER: Yes, they certainly did that, but they don't
15:59 40 outline the practices on the floor and they don't investigate how
16:00 41 things work on a day-to-day or week-to-week or month-to-month,
16:00 42 or anything like that. I just wondered if you could cast some light
16:00 43 on why they left that out.

16:00 44

16:00 45 A. I can't, but I think this is very much --- the whole exercise,
16:00 46 as I say, is an evolving one. I mean, this is never a set-and-forget
16:00 47 exercise, and it's not going to be left without us properly

16:00 1 identifying the practices.
16:00 2
16:00 3 COMMISSIONER: I understand that. But they don't seem to say
16:00 4 that this is part of their job, that they were going to come back,
16:00 5 that it's interim and they are going to come back and do a bit
16:00 6 more.
16:00 7
16:00 8 A. Yes. Professor Blaszczyński appeared at the first
16:00 9 committee meeting I was present at in April, I think. He seemed
16:00 10 to be very au fait with the practices because we were asking him
16:01 11 how we can do better and what we can do, but you are quite right,
16:01 12 the report doesn't nail it.
16:01 13
16:01 14 COMMISSIONER: No. Can I ask you precisely what the
16:01 15 relationship is between Crown and Blaszczyński and the other
16:01 16 two professors? Are they full-time retainees?
16:01 17
16:01 18 A. I just can't tell you what the terms of their consultancies
16:01 19 are. I don't think they would be full-time.
16:01 20
16:01 21 COMMISSIONER: Yeah, I don't mean --- that's a very confusing
16:01 22 expression. I don't mean they are anything like full-time
16:01 23 employees or anything like that, but I've assumed from some
16:01 24 evidence that has been given that they are on a permanent tenure,
16:01 25 if you like, because they may have to do something once a more
16:02 26 or once a week or whatever it may be.
16:02 27
16:02 28 A. I think they are full-time professionals who obviously do
16:02 29 other things and turn their attention to matters that Crown
16:02 30 requests of them, and are retained for that purpose.
16:02 31
16:02 32 COMMISSIONER: They have a quasi full-time retainer from
16:02 33 Crown?
16:02 34
16:02 35 A. I think that's right. I would expect that I could ring up
16:02 36 Professor Blaszczyński and go and talk to him about anything I
16:02 37 want to, and get him to do some work. That's the kind of
16:02 38 relationship I understand we have.
16:02 39
16:02 40 COMMISSIONER: Do they get a set retainer fee or is it per job?
16:02 41
16:02 42 A. I'm not sure about that. It could be. It could be. The
16:02 43 structure of these things can sometimes, Commissioner, be
16:02 44 a retainer and then some payment for a particular job.
16:02 45
16:02 46 COMMISSIONER: I get it. Okay. Thanks.
16:02 47

- 16:02 1 MR BORSKY: Ms Coonan, as you understand it, these experts
16:03 2 were retained and are retained by Crown to provide advice to
16:03 3 Crown as to any gaps or weaknesses in Crown's policies,
16:03 4 practices or procedures that may be identified for the objective of
16:03 5 Crown improving its Responsible Gambling practices and
16:03 6 policies and procedures so as to achieve best practice?
16:03 7
- 16:03 8 A. That's where we are aiming for.
16:03 9
- 16:03 10 Q. And that's what Crown asks the experts to advise upon?
16:03 11
- 16:03 12 A. Yes.
16:03 13
- 16:03 14 Q. Crown does not seek, and has not in the past sought to, in
16:03 15 any way, limit the experts' access to information or the experts'
16:03 16 visibility over Crown's practices on the ground in any way as you
16:03 17 understand it?
16:03 18
- 16:03 19 A. Absolutely not.
16:03 20
- 16:03 21 Q. If I may then change topics, Commissioner.
16:03 22
- 16:03 23 Ms Coonan, you accept, don't you, that there have been a number
16:04 24 of serious and, indeed, unacceptable failings in Crown's conduct
16:04 25 and culture over a period of years?
16:04 26
- 16:04 27 A. I do.
16:04 28
- 16:04 29 Q. And you were one of the directors of Crown during that
16:04 30 period?
16:04 31
- 16:04 32 A. Yes.
16:04 33
- 16:04 34 Q. You gave Commissioner Bergin an assurance, or
16:04 35 a commitment, to stay the course and try to rehabilitate or reform
16:04 36 Crown and its culture.
16:04 37
- 16:04 38 A. Yes, I did.
16:04 39
- 16:04 40 Q. Earlier today, in answer to one of Counsel Assisting's
16:04 41 questions, you referred to the notion of collective responsibility;
16:04 42 do you recall that?
16:04 43
- 16:04 44 A. I do.
16:04 45
- 16:04 46 Q. Even appreciating the difficulties that you and some of the
16:04 47 other directors faced in the past because of some old Crown

16:05 1 management and the CPH influence, do you personally take some
16:05 2 responsibility or accountability as a director of Crown for
16:05 3 Crown's past failings?

16:05 4
16:05 5 A. Oh, yes. I mean, you must be responsible. It's what you
16:05 6 were responsible for and how it happened, I think, that is the
16:05 7 critical inquiry. But I certainly take responsibility as, indeed, the
16:05 8 whole Board did. I mean, the majority have gone. I was just
16:05 9 going to say that I could have gone too, but I had to make
16:05 10 a judgment on balance, as I had been Chair of the company
16:05 11 through 2020, and had an opportunity to get on the way through
16:05 12 to the Bergin Inquiry, and certainly after it, and through it, a new
16:06 13 appreciation of the problems. And, on balance, I thought that I
16:06 14 had a duty to do what I could to fix it, in the interests not only of
16:06 15 Crown, but its 18,000 employees, shareholders and stakeholders.
16:06 16 I did feel a responsibility, and I was very fearful that the company
16:06 17 would just implode if the three of us, the three directors who were
16:06 18 able to step up and take responsibility, didn't do so.

16:06 19
16:06 20 So the easiest thing in the world for me, Mr Borsky, would have
16:06 21 been to pack up and go. Far harder to stay and try to put in
16:06 22 place --- work diligently to fix the issues.

16:06 23
16:06 24 Q. And you don't consider that the issues are all fixed yet?

16:06 25
16:06 26 A. I haven't said that. What I've said is that I do think that the
16:07 27 substantive problems that were identified in the Bergin Report
16:07 28 have either been attended to or are in the course of being attended
16:07 29 to. I have fully recognised that there may be some additional
16:07 30 matters coming out of this Commission that need to either be
16:07 31 overlaid on what's been achieved in the reforms so far or dealt
16:07 32 with separately, bearing in mind there are separate jurisdictions.
16:07 33 But I think that the very big corporate problems that couldn't get
16:07 34 fixed until after Bergin, such as the governance changes,
16:07 35 swapping out the Board, changing a level of senior management,
16:07 36 getting in good new people who can take the company forward,
16:08 37 none of that could happen until February this year.

16:08 38
16:08 39 All of that is done, and in prospect, and I think this Commission
16:08 40 has had an opportunity to perform an assessment of the sincerity,
16:08 41 capability and energy of those new people, that should give the
16:08 42 Commission some comfort that we are very much on the right
16:08 43 track and very willing to do what we need to do to take --- to do
16:08 44 the hard yards here. There is no shirking what has to be done.

16:08 45
16:08 46 There will be some longer term issues, obviously; it would be just
16:08 47 foolhardy to suggest you can achieve everything in a couple of

16:08 1 months. We have achieved an enormous amount. I do think we
16:08 2 have the other Bergin matters well and truly in prospect, with
16:08 3 an independent assurance function put in place to make sure that
16:08 4 we don't resile from any of it, and that it actually happens.

16:09 5
16:09 6 Q. Finally, Ms Coonan, in your witness statement, the
16:09 7 marked-up version of which is dated 5 July, at paragraph 30(q) at
16:09 8 the foot of page 12, you noted that your intention was that
16:09 9 following the reforms, there should be an orderly handover from
16:09 10 you in your role as interim Executive Chair of Crown ---

16:09 11
16:09 12 A. Yes.

16:09 13
16:09 14 Q. --- as part of an orderly succession. Does that remain your
16:09 15 intention having at least in part, I would respectfully suggest,
16:09 16 honoured your commitments to Commissioner Bergin to date?

16:09 17
16:09 18 A. Yes. It certainly is my intention. I have only ever put
16:10 19 myself forward as an interim basis to stabilise the company and
16:10 20 get it into a position where it is on the road to suitability in NSW.
16:10 21 I would certainly like to see it as suitable according to the Bergin
16:10 22 roadmap, and I certainly want to see more --- I want to see the
16:10 23 Board repopulated because it is struggling to be able to perform
16:10 24 all the functions of a large publicly-listed company with so few of
16:10 25 us. That will involve identifying a new Chair.

16:10 26
16:10 27 It is certainly my intention that subject to all of the things that
16:10 28 happen here, and what may be required of me out of this
16:10 29 Commission --- I wouldn't want to leave the company or any of
16:10 30 those with an interest in it in the lurch --- I would very much like
16:10 31 to be in a position where I might be able to achieve all of this by
16:11 32 the AGM in October of this year. It may not be able to be done
16:11 33 that way, but I certainly --- that would be my preference, but
16:11 34 I have to act in the interests of the company. If my commitment
16:11 35 to the ongoing reforms is required, I will respectfully do that too.
16:11 36 It is very difficult for Commissioners looking for comfort about
16:11 37 how affairs of companies are conducted, and I'm simply saying at
16:11 38 an appropriate time I would very much like to hand over.

16:11 39
16:11 40 MR BORSKY: Thank you, Ms Coonan. Thank you,
16:11 41 Commissioner.

16:11 42
16:11 43 COMMISSIONER: Thank you, Ms Coonan. It has been very
16:11 44 helpful, and you are free to go about whatever else you want to
16:11 45 do today.

16:11 46
16:11 47 A. Thank you, Commissioner. I think I need the proverbial,

16:12 1 a stiff one of those.
16:12 2
16:12 3 COMMISSIONER: Yes. I have a roomful of people who need
16:12 4 that.
16:12 5
16:12 6 A. Thank you very much. I appreciate it.
16:12 7
16:12 8
16:12 9 **THE WITNESS WITHDREW**
16:12 10
16:12 11
16:12 12 **HOUSEKEEPING**
16:12 13
16:12 14
16:12 15 COMMISSIONER: Now, have we got plans for tomorrow
16:12 16 worked out?
16:12 17
16:12 18 MR FINANZIO: Yes, we do. I can confirm --- just bear with me
16:12 19 while I get out the note.
16:12 20
16:12 21 COMMISSIONER: First, are we doing two witnesses tomorrow?
16:12 22
16:12 23 MR FINANZIO: Yes, we are, and we are going to do it
16:12 24 according to a timetable which will allocate different parties time
16:12 25 according to what has been agreed.
16:12 26
16:12 27 I think the first witness will be McGrathNicol, Robyn McKern,
16:12 28 and the second witness will be Ms Arzadon.
16:12 29
16:12 30 COMMISSIONER: There was a problem earlier about when
16:12 31 Ms Arzadon could be here.
16:12 32
16:12 33 MR FINANZIO: Ms Arzadon is available at 1, so that means we
16:12 34 will be able to accommodate the witnesses in the ---
16:12 35
16:13 36 COMMISSIONER: I thought earlier she wasn't going to be able
16:13 37 to come here at 1.
16:13 38
16:13 39 MR FINANZIO: Earlier she was, and that was the reason I was
16:13 40 told not to speak by someone remotely, but I'm now told that now
16:13 41 works.
16:13 42
16:13 43 The running sheet has been based upon the estimates given by
16:13 44 counsel who wish to question the witnesses. I know what that
16:13 45 running sheet says.
16:13 46
16:13 47 COMMISSIONER: I want it.

16:13 1
16:13 2 MR FINANZIO: I can't find the email right now ---
16:13 3
16:13 4 COMMISSIONER: By the end of the day I am going to have it
16:13 5 ---
16:13 6
16:13 7 MR FINANZIO: You will have the email by the end of the day.
16:13 8
16:13 9 COMMISSIONER: --- because there is going to be no departure,
16:13 10 not one second, beyond the allocated time for everybody.
16:13 11
16:13 12 MR FINANZIO: It bothers me less than others because
16:13 13 tomorrow I won't be here. But I'm told the way that the timetable
16:13 14 is structured is that everybody gets the time that they wanted, and
16:13 15 the hearing will start at 9.30 and finish at 4 --
16:14 16
16:14 17 COMMISSIONER: Okay.
16:14 18
16:14 19 MR FINANZIO: --- which is appropriate, civilised, on a Friday.
16:14 20
16:14 21 COMMISSIONER: Yes, okay. Right, then we will adjourn to
16:14 22 9.30 tomorrow.
16:14 23
16:14 24
16:14 25 **HEARING ADJOURNED AT 4.14 PM UNTIL FRIDAY, 9**
16:30 26 **JULY 2021 AT 9.30 AM**

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