
TRANSCRIPT OF PROCEEDINGS

COMMISSIONER: HON. RAY FINKELSTEIN AO QC

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

MELBOURNE, VICTORIA

11:02 AM, TUESDAY, 20 JULY 2021

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1 COMMISSIONER: Good morning, Mr Finanzio. Are you ready
2 to do the submissions?

3

4 MR FINANZIO: Yes, Commissioner.

5

6 COMMISSIONER: Please go ahead.

7

8

9 **CLOSING SUBMISSIONS BY MR FINANZIO**

10

11

12 MR FINANZIO: If it please the Commission, the hearing today
13 has been set down for Counsel Assisting to present its
14 submissions. The submissions take two forms or are in two parts.
15 A written submission, which is a document that has run to some
16 hundreds of pages of careful analysis of legal and factual issues
17 that have arisen in the course of the hearing, will be provided at
18 the completion of this hearing today.

19

20 And, of course, the oral submissions. Today I appear not to recite
21 in detail the written submissions but to provide, rather, a precis of
22 the main points arising from the hearing.

23

24 Our submissions to the Commission represent Counsel
25 Assisting's submissions on the findings which might be open on
26 the evidence which you have heard. Other persons with leave to
27 appear will consider those submissions in the coming two weeks
28 and file written submissions in response. The hearing will
29 reconvene in two weeks' time when those parties will appear and
30 have the opportunity to present argument before the Commission.
31 At the conclusion of that hearing, the Commission will adjourn to
32 consider the submissions of all the parties and all of the material
33 and commence to prepare its report.

34

35 The central feature of the Terms of Reference require this
36 Commission to inquire into and report on whether Crown
37 Melbourne is a suitable person to continue to hold the casino
38 licence under the Casino Control Act and whether it is in the
39 public interest for it to continue to hold the casino licence in
40 Victoria. According to the Terms of Reference, if the
41 Commission finds that Crown is not suitable and/or it is not in the
42 public interest for it to continue to hold the casino licence, the
43 Commission is asked to do two things.

44

45 First, to inquire into and report on what action is required for
46 Crown Melbourne to become suitable or for it to be in the public
47 interest for Crown Melbourne to continue to hold the licence.

1 Second, to make any recommendations that the Commission
2 considers appropriate arising from its inquiry. These matters
3 have been the focus of the hearings conducted before the
4 Commission since 17 May 2021.

5
6 For reasons which we outline this morning and which we set out
7 in more detail in the written submissions to be provided shortly,
8 we submit as follows. As at 1 February 2021, when the Bergin
9 Report was published, Crown Melbourne was not a suitable
10 licensee. After all of the evidence presented in these hearings, it
11 remains clear that Crown Melbourne is not presently suitable to
12 hold the casino licence.

13
14 Notwithstanding the extensive program of reform proposed by
15 Crown, there remains a proper basis for concern about the detail
16 of the plan, the capacity of Crown to implement it and time for
17 delivery of any reform agenda, leaving it open for this
18 Commission to find that the program of corporate rebirthing that
19 Crown says is underway is insufficient and so uncertain as to lead
20 this Commission to the conclusion that there is a sufficiently clear
21 pathway to suitability.

22
23 Quite apart from the question as to whether it is theoretically
24 possible for Crown to implement its proposed reforms, a central
25 concern remains. Standing at the centre of casino regulation in
26 this state and in most other jurisdictions around the world is the
27 expectation that the licensee should be someone who can create
28 and maintain the confidence and trust of the public in the
29 credibility, integrity and stability of casino operations. The
30 Bergin Inquiry, on relatively limited Terms of Reference,
31 revealed conduct on the part of Crown Melbourne which was
32 sufficient to disqualify it or (inaudible) Crown Sydney.

33
34 The true depth and breadth of misconduct has come to light. The
35 evidence reveals serious misconduct, illegal conduct and highly
36 inappropriate conduct which has been encouraged or facilitated
37 by a culture which has consistently put profit before all other
38 considerations. Now, where the misconduct of a licensee might
39 be described as less serious or at the lower end of the spectrum,
40 corporate restructuring and rebuilding of the kind proposed by
41 Crown might make it possible to say that the company, having
42 acknowledged the error of its ways, recognises what is required
43 of it and is on the path to suitability. That fact in itself can
44 sometimes render a licensee suitable.

45
46 But this is not a case of isolated or trifling indiscretions or
47 breaches, capable of easy and quick rectification. This is a case

1 where it would be open to find that the misconduct of Crown has
2 been so flagrant and so well publicised and detrimental to
3 Crown's reputation overall that no amount of restructuring can
4 restore confidence in it as a fit and proper person to hold a
5 licence.

6
7 This is a case where Crown may well stand condemned in the
8 public mind as a company unfit to hold a licence, whatever it
9 proposes in the future, and that is itself a factor worthy of careful
10 consideration. The matters underpinning a finding of
11 unsuitability involve in this case grave, systemic breaches of the
12 law and, equally importantly, sustained breaches of the trust and
13 confidence reposed in Crown to administer the casino licence.
14 On any view, Crown will remain in a state of present unsuitability
15 for some time.

16
17 Whether Crown ultimately achieves a state of suitability or is able
18 to positively assert that the public interest favours its retention of
19 the casino licence is far from guaranteed. Any decision to allow
20 Crown to remain the licensee would be akin to placing in it a trust
21 and confidence of the kind which has already been betrayed in
22 such a comprehensive way and which only came to light under
23 the eye or under the scrutiny of this Commission and the Bergin
24 Inquiry.

25
26 In all the circumstances, it is Counsel Assisting's submission that
27 it would be open for the Commission to recommend that the
28 licence be cancelled. That is not a submission made lightly. It is
29 made cognisant of the consequences that such a finding would, in
30 all likelihood, be highly disruptive to many people.

31
32 The Crown Complex has been part of the fabric of this city for
33 many years. Crown is the largest single site employer in the
34 State. It has 12,500 employees, maybe more, the vast majority of
35 whom honestly and diligently go about their work on
36 a day-to-day basis, performing at a very high standard to produce
37 exceptional leisure and recreational experiences for domestic and
38 international guests.

39
40 We want to make very clear that nothing in these submissions
41 should be interpreted as a slight on the many honest and
42 hardworking employees of Crown. No doubt these hearings and
43 the publicity and uncertainty they have generated have been very
44 distressing.

45
46 That said, it is both right and necessary that Crown Melbourne is
47 called to account for the manner in which it has operated the

11:09 1 casino licence over the recent years. Casino licensees in Victoria
11:09 2 are the holders of a privilege to make money from something
11:09 3 which is otherwise illegal and which has the capacity to cause
11:09 4 harm. There are well-recognised inherent risks in the running of
11:09 5 any casino. It is imperative that they are guarded against. The
11:09 6 legislative framework expressly identifies those risks: the risk of
11:09 7 money laundering, criminal influence and exploitation; the risk of
11:09 8 harm to people who are vulnerable to gaming addiction. These
11:09 9 are risks the legislature was prepared to take in order to secure
11:10 10 benefits for Victoria, measured in terms of tax revenue from
11:10 11 gaming and the tourism, economic development and employment
11:10 12 spinoff effects that would boost the Victorian economy.

11:10 13
11:10 14 The risks were alive in the mind of the parliamentarians who
11:10 15 considered whether to approve the casino in 1991. In 1991
11:10 16 (inaudible) the members of the legislative assembly and the
11:10 17 legislative counsel worried aloud about some of the ways in
11:10 18 which the licensing of the casino might go wrong. In the debates
11:10 19 following the second reading speech, the Shadow
11:10 20 Attorney-General, Jan Wade, observed that the establishment of
11:10 21 a casino in Victoria involved a lot more than its mere
11:10 22 development, but was instead concerned with setting and
11:10 23 collecting new taxes and ensuring that proper controls were
11:11 24 implemented, having regard to the history of casinos in other
11:11 25 parts of the world which showed how easily criminal elements
11:11 26 might infiltrate their management structures.

11:11 27
11:11 28 Mr Honeywood, member for Warrandyte, worried about the
11:11 29 problems of excessive gambling. The then Treasurer, Mr Roper,
11:11 30 referred to the decision of the Cain Government in the early
11:11 31 1980s not to proceed with the establishing of a casino and
11:11 32 expressed concern about how a large, open casino could operate
11:11 33 in a city the size of Melbourne without encouraging or allowing
11:11 34 the introduction or expansion of crime. Mr Roper stated that
11:11 35 although the proposal would have significant economic benefits
11:11 36 for the State of Victoria, a number of sensitive social issues
11:11 37 needed to be considered in relation to gambling and the impact it
11:11 38 has on some sections of the Victorian community, referring to
11:11 39 a number of reports on casinos that historically record concerns
11:11 40 about criminal activity and money laundering.

11:11 41
11:11 42 The management of those risks was ultimately entrusted by the
11:12 43 legislation to a licensee whose reputation for honesty and
11:12 44 integrity was a prerequisite, along with its financial and
11:12 45 organisational capacity to operate the casino, and at the same
11:12 46 time, the skill to navigate the risks inherent in casino operations
11:12 47 in a way which would avoid criminal influence.

11:12 1
11:12 2 Under Crown's management of the casino, the worst fears of
11:12 3 those parliamentarians in 1991 have come to pass. That outcome
11:12 4 was a direct result of mismanagement, misconduct, conduct
11:12 5 antithetical to the obligations of a licensee under the Act, conduct
11:12 6 concerning aspects of the business of the casino which strike
11:12 7 right at the core of the trust reposed in the licensee and conduct of
11:12 8 the most serious kind.
11:12 9
11:12 10 Crown now hopes it can convince the Commission and,
11:12 11 ultimately, the regulator to disregard its serious past failings and
11:13 12 give it a second chance. That will depend in large part on
11:13 13 whether or not those failings are outweighed by the proposed
11:13 14 reforms, whether the reforms go far enough and whether there
11:13 15 can be adequate confidence that they will deliver the required
11:13 16 improvement. In that context, we point out that cancellation is not
11:13 17 the only finding that is open but whatever recommendation is
11:13 18 made, the seriousness of Crown's conduct to date must be
11:13 19 a central, important and weighty factor in any finding or
11:13 20 recommendation the Commission might reach.
11:13 21
11:13 22 The starting point must be to examine the breadth and depth of
11:13 23 those past failings. The balance of these submissions seeks to do
11:13 24 that and then to address some of the aspects of the reform agenda
11:13 25 that is proposed.
11:13 26
11:14 27 It behoves me to say something about the written submissions and
11:14 28 the way we propose to approach the oral submissions before you.
11:14 29 The written submissions set out in detail Counsel Assisting's
11:14 30 submissions on the law and the evidence. Our submissions this
11:14 31 morning seek to emphasise the key aspects of those submissions.
11:14 32 The Commission's Terms of Reference require it to examine the
11:14 33 suitability of Crown Melbourne and its associates. We want to
11:14 34 make an observation at the outset that because Crown Melbourne
11:14 35 remains a wholly-owned subsidiary of Crown Resorts, sharing
11:14 36 common directors, management and systems, and because much
11:14 37 of the conduct for which Crown Melbourne is responsible
11:14 38 occurred while Crown Resorts was for all relevant purposes in
11:14 39 control, the suitability of Crown Melbourne and Crown Resorts
11:14 40 as its associate is inextricably linked. The suitability of Crown
11:15 41 Melbourne to hold the licence is the threshold question. If Crown
11:15 42 is not presently suitable, then the suitability of its associates is
11:15 43 somewhat moot.
11:15 44
11:15 45 These submissions proceed on the basis that the assessment of
11:15 46 suitability must be conducted based upon all that is presently
11:15 47 relevant to the question of suitability. It is not exclusively

11:15 1 a backward-looking exercise, nor exclusively a forward-looking
11:15 2 exercise. Evidence of current failings or deficiencies relevant to
11:15 3 suitability is, of course, relevant. Evidence of past misconduct is
11:15 4 also relevant. In relation to the evidence of both past and present
11:15 5 failings, the seriousness of the failings or the misconduct is
11:15 6 an important factor in any determination as to present suitability.
11:15 7 It is also a predictive tool to assess how Crown might behave in
11:16 8 the future.

11:16 9

11:16 10 Present acknowledgement by Crown of unsuitability, coupled
11:16 11 with genuine proposals by it to address the causes of
11:16 12 unsuitability, are also relevant to an assessment of present
11:16 13 suitability. The weight to be given to proposals for reform
11:16 14 depend upon all the circumstances, but include the relative weight
11:16 15 given to past and present conduct, the time, scope and complexity
11:16 16 required to deliver the reforms, and the level of confidence or
11:16 17 certainty that can be had that the reforms will, in a reasonable
11:16 18 time frame, result in suitability.

11:16 19

11:16 20 Quite separately, the submissions address whether or not it
11:16 21 remains in the public interest, as defined by the Act, for Crown to
11:16 22 remain the licensee. The definition of public interest is relevantly
11:16 23 concerned with the maintenance of public confidence and trust in
11:16 24 the credibility, integrity and stability of casino operations.

11:16 25

11:17 26 In all the circumstances, it is our submission that it is open for
11:17 27 this Commission to reach the conclusion that the conduct of
11:17 28 Crown, revealed both here and in the Bergin Inquiry, demonstrate
11:17 29 that Crown has betrayed the trust. The evidence supports the
11:17 30 conclusion that Crown does not at present enjoy the confidence of
11:17 31 key stakeholders.

11:17 32

11:17 33 These submissions will explore at a high level some of the key
11:17 34 matters going to suitability and public confidence. In our
11:17 35 submission, Crown Melbourne is not presently suitable, even
11:17 36 taking into account its proposed program of reform, leaving open
11:17 37 to the Commission the recommendation that the licence should be
11:17 38 cancelled. Further, it is open to the Commission to find that it is
11:17 39 no longer in the public interest for Crown to remain the licensee,
11:17 40 leaving open a separate basis upon which the Commission could
11:18 41 make that same recommendation.

11:18 42

11:18 43 The written submissions explore what the consequences of such
11:18 44 a finding might be, having regard to the current provisions of the
11:18 45 Casino Control Act. In the event that the Commission concludes
11:18 46 that Crown should be given a chance to redeem itself, it is our
11:18 47 submission that it would be unsafe to allow Crown to implement

11:18 1 its reforms unsupervised. Supervision might be effected in
11:18 2 a number of ways, either under the current provisions of the
11:18 3 Casino Control Act or through legislative amendment, depending
11:18 4 on the pathway of reasoning that ultimately the Commission
11:18 5 adopts.

11:18 6
11:18 7 Counsel Assisting, in written submissions, address the suitability
11:18 8 of individual persons who are associates of the licensee. For
11:18 9 present purposes it is relevant to mention the following: Counsel
11:18 10 Assisting submit that Ms Coonan, while she is to be commended
11:18 11 for her willingness to stay the course, on balance, the cumulative
11:19 12 effect of her involvement in the past failings of Crown and her
11:19 13 evidence in this Commission in more recent times, it is open for
11:19 14 you to find that she is not suitable to be leading the cultural
11:19 15 reform that Crown needs at this time.

11:19 16
11:19 17 Secondly, the evidence in these hearings has brought into serious
11:19 18 question the judgment and integrity of Mr Xavier Walsh in
11:19 19 a number of respects. He, along with Ms Coonan, cannot be the
11:19 20 credible face of the change required at Crown if it is to remain the
11:19 21 licensee. Counsel Assisting make no submissions as to the
11:19 22 suitability of the other directors or Mr McCann, there being no
11:19 23 basis to put forward any question about that suitability.

11:19 24
11:19 25 While Counsel Assisting have not made submissions as to the
11:20 26 suitability or otherwise of others in the management of the
11:20 27 organisation, there is a proper basis for concern that there are
11:20 28 a number of people in senior roles at Crown who have been there
11:20 29 for a long time and who might remain captive to the culture that
11:20 30 Crown is trying to reform. If Crown has the chance to implement
11:20 31 the ambitious reform program that it contemplates, this might be
11:20 32 impeded by the presence of members of the old guard and, in that
11:20 33 way, potentially delay or frustrate the implementation of the
11:20 34 reform agenda that is contemplated.

11:20 35
11:20 36 Commissioner, I now propose to go to a number of the indicators,
11:20 37 through case studies, of the conduct which has been explored in
11:20 38 this Commission, in the hearings of this Commission.

11:20 39
11:20 40 The first is what I will call the hotel transactions issue or the CUP
11:21 41 issue. Over the course of this Commission it came to light that
11:21 42 Crown had, in the period between at least 2012 and 2016,
11:21 43 developed and engaged in a practice known as the hotel
11:21 44 transactions or CUP practice, in blatant breach of section 68(2) of
11:21 45 the Casino Control Act. The hotel transactions or CUP practice
11:21 46 involve the following features: a Crown customer, usually
11:21 47 an international VIP guest accompanied by a Crown VIP host,

11:21 1 made a notional purchase with a credit or debit card on the card
11:21 2 terminal of the Crown Towers hotel. The hotel staff provided
11:21 3 an invoice or voucher to be taken by the customer to the cage on
11:21 4 the casino floor. The customer or the VIP host then provided the
11:21 5 invoice or voucher to the cage, which led the cage to credit the
11:22 6 customer's DAB account with the value of the voucher. The
11:22 7 customer was then able to obtain from the cage chips, a chips
11:22 8 purchase voucher or possibly cash.
11:22 9

11:22 10 The practice was devised and developed both in response to
11:22 11 customer requests and as a means of circumventing currency
11:22 12 restrictions in China. At the time, it was widely known within
11:22 13 Crown that Chinese Nationals could move no more than the
11:22 14 equivalent of US\$50,000 per year out of China. It was also
11:22 15 well-known within Crown's legal and compliance teams and the
11:22 16 team running the cages that the practice of providing chips as part
11:22 17 of a credit or debit card transaction was prohibited.
11:22 18

11:22 19 At least \$160 million was transacted via this process in
11:22 20 contravention of section 68 of the Casino Control Act across
11:23 21 1,679 individual transactions, although it could transpire to be
11:23 22 more. Individual transactions ranged from \$500 to \$2.8 million.
11:23 23

11:23 24 Crown accepts, as they must, that such transactions were a breach
11:23 25 of section 68 of the Casino Control Act. The practice
11:23 26 circumvented AML monitoring and reporting. It demonstrated,
11:23 27 in our submission, a severe failure by Crown to take prudent and
11:23 28 appropriate steps to prevent risks that, by this practice, Crown
11:23 29 might facilitate the laundering of proceeds of crime. The full
11:23 30 extent of the anti-money laundering consequences of the practice
11:23 31 are not yet known, but the practice itself is a typology behaviour
11:23 32 indicative of money laundering that was well-known.
11:23 33

11:23 34 The practice was formalised into written policies and staff were
11:23 35 trained in how to process such transactions. The practice
11:24 36 involved Crown staff from all levels of the organisation. Various
11:24 37 Crown officers and employees accept that the transactions or
11:24 38 aspects of them were illegal, wrong, misleading, ethically
11:24 39 concerning, dishonest and irresponsible. Some senior Crown
11:24 40 executives held reservations at the time that the practice that was
11:24 41 on foot did not pass the pub test or the smell test.
11:24 42

11:24 43 The adoption and development of the practice was facilitated by
11:24 44 an internal legal and compliance team that provided advice on the
11:24 45 risk of getting caught and the development of arguments which
11:24 46 might be raised if they were caught, rather than advice on
11:24 47 whether the practice was lawful.

11:24 1
11:24 2 Though the practice stopped in 2016, following the China arrests,
11:24 3 attempts were made to reintroduce the practice as recently as
11:25 4 2018 and 2019. Attempts were also made to roll out the practice
11:25 5 at Crown Perth. One impediment to that rollout was the prospect
11:25 6 that the West Australian regulator might telephone the Victorian
11:25 7 regulator, thereby exposing Crown Melbourne to the risk of being
11:25 8 caught.
11:25 9

11:25 10 The existence of the practice, the means by which it was
11:25 11 facilitated and the circumstances of it coming to light all shed
11:25 12 light on the question of Crown Melbourne's present suitability to
11:25 13 continue to hold the casino licence and the suitability of Crown
11:25 14 Resorts as an associate of Crown Melbourne. It was a significant
11:25 15 undertaking which was carefully considered. It required the
11:25 16 training of frontline staff to facilitate the activity and deliver the
11:25 17 service. It also required accounting treatments within the
11:25 18 business, given the nature of the transaction. It is clear that the
11:25 19 practice was known to staff at senior levels in the organisation. It
11:25 20 was never disclosed by any of them to the Commission, that is the
11:26 21 VCGLR.
11:26 22

11:26 23 It was brought to light only in 2021 because of comments made
11:26 24 by a relatively junior member of staff in the context of
11:26 25 a leadership forum. It was not the senior staff who participated
11:26 26 in, knew about or facilitated this unlawful practice who brought it
11:26 27 to light.
11:26 28

11:26 29 In light of the other evidence, it is difficult to construe the CUP
11:26 30 system as a singular incident not necessarily indicative of broader
11:26 31 issues. This episode is an example of systemic and cultural
11:26 32 problems at Crown which have been present over many years.
11:26 33 Firstly, a preparedness to conduct illegal, misleading and
11:26 34 unethical transactions; a preparedness to breach laws both
11:26 35 Victorian and those of other countries; a tendency to consider the
11:26 36 lawfulness of conduct as a matter of risk rather than compliance;
11:27 37 a tendency, whether deliberate or otherwise, to find ways of
11:27 38 circumventing AML monitoring and scrutiny; and a preparedness
11:27 39 to keep things from the regulator.
11:27 40

11:27 41 In fairness to Crown, upon this matter coming to light, the Crown
11:27 42 Resorts Board took steps to urgently investigate the allegations
11:27 43 earlier this year. On the board's instructions, an investigation was
11:27 44 conducted, led by senior counsel, culminating in the preparation
11:27 45 of a lengthy and detailed legal advice, documenting both the
11:27 46 investigation and providing an opinion as to the legality of the
11:27 47 transactions. Crown then transparently produced that advice to

11:27 1 this Commission and other regulatory bodies.
11:27 2
11:27 3 The confession should be noted in Crown's favour, but the nature
11:27 4 of the transgression and the fact that it went unreported and
11:27 5 unactioned by Crown for so long leaves it open to the
11:27 6 Commission to find that the confession itself is not enough to
11:28 7 avoid the condemnation for the action.
11:28 8
11:28 9 Commissioner, the next matter we want to take you to concerns
11:28 10 the underpayment of tax. Counsel Assisting have made extensive
11:28 11 written submissions on this issue, it having occupied
11:28 12 a considerable amount of time in the hearings. It is not proposed
11:28 13 to recount the detail of those submissions here. It is, however,
11:28 14 necessary to make a few observations given the importance of the
11:28 15 issue in the overall assessment of suitability.
11:28 16
11:28 17 There are three points: first, the impropriety of the initial
11:28 18 deduction back in 2012 and the failure to properly disclose it at
11:28 19 any time leading up to the commencement of this Commission;
11:28 20 second, Crown's failure to disclose the issue to this Commission
11:28 21 in a timely way; and, third, the true extent of Crown's tax liability.
11:28 22
11:29 23 I will begin with the question of the initial impropriety. Under
11:29 24 the Management Agreement, Crown must pay casino tax to the
11:29 25 state. The tax is calculated as a percentage of Crown's gross
11:29 26 gaming revenue, or GGR. The percentage was 22.97 per cent in
11:29 27 2009 and it increased by 1.72 per cent each year until 2014. The
11:29 28 gross gaming revenue is defined under the Management
11:29 29 Agreement, and I am paraphrasing, to mean, relevantly, all sums
11:29 30 received from the playing of games, less all sums paid out as
11:29 31 winnings.
11:29 32
11:29 33 At all relevant times, Crown treated expenses associated with
11:29 34 electronic gaming machine loyalty promotions as sums paid out
11:29 35 as winning. The expenses that were deducted fell into eight
11:30 36 categories. Category eight was called the bonus jackpots and it
11:30 37 comprised complimentary dining, hotel and parking expenses
11:30 38 given to the customer whether or not they won. The process of
11:30 39 deducting the amounts in category eight commenced in 2012.
11:30 40
11:30 41 A number of observations can be made about category eight
11:30 42 bonus jackpots. First, the 2012 scheme to claim expenses as
11:30 43 deductions from gross gaming revenue which were never truly
11:30 44 won was always an attempt to skim a little bit off the top of the
11:30 45 otherwise payable gaming tax. The contemporaneous documents
11:30 46 make this clear.
11:30 47

11:30 1 Second, leaving aside whether the deductions were permissible,
11:30 2 deliberately concealing the deductions from the regulator showed
11:30 3 a tangible consciousness by those involved that what they were
11:31 4 doing was wrong.
11:31 5
11:31 6 Third, the manner in which the program was gradually expanded,
11:31 7 and I say "gradually" so as to avoid detection, was yet another
11:31 8 example of conduct which was totally inappropriate. Some
11:31 9 people involved in the implementation of the original deception at
11:31 10 inception are still present in the organisation today.
11:31 11
11:31 12 Fourth, in June 2018, Crown made carefully honest disclosures to
11:31 13 the regulator. Too careful. Crown did not make the kind of full
11:31 14 and frank disclosure that is required of a suitable licensee. It was
11:31 15 honest about what was being done, up to a point. It did not make
11:31 16 explicitly clear that the deductions were in relation to benefits that
11:31 17 loyalty members were already entitled to by reason of their
11:31 18 loyalty status. In some instances, Crown was treating as a win
11:32 19 the value of a benefit to which a member was entitled even before
11:32 20 gambling commenced.
11:32 21
11:32 22 In the course of these hearings, Mr Xavier Walsh said the matter
11:32 23 was uncertain in his mind. In its dealings with the VCGLR in
11:32 24 June 2018, Crown did not shine a light on any perceived
11:32 25 uncertainty. In truth, there wasn't really uncertainty. It was
11:32 26 known at the time that the deductions for category eight when
11:32 27 first commenced, that the activity was probably unlawful. Any
11:32 28 uncertainty was put beyond doubt in October 2018. In its
11:32 29 conduct with the VCGLR, Crown was concerned to be able to say
11:32 30 that it did not lie to the regulator, but Crown was happy that the
11:33 31 regulator did not pick up on what was hiding in plain sight.
11:33 32
11:33 33 Fifth, in October 2018, advice was sought to see if there was any
11:33 34 legal argument which might be mounted to support the practice.
11:33 35 The advice clearly enough said that the practice was not lawful.
11:33 36 No disclosure was made by Crown at that time.
11:33 37
11:33 38 Sixth, in 2019, further advice was obtained. In September 2020
11:33 39 and March 2021, meetings were held to discuss this issue, among
11:33 40 other tax issues. Anyone who ever read the advice from October
11:33 41 2018 immediately knew that what was going on was probably
11:33 42 unlawful and that the only reason the matter had not come to
11:33 43 a head yet was that the VCGLR hadn't cottoned on. Anyone who
11:33 44 read the advice in late 2019 knew beyond doubt that what was
11:34 45 going on was unlawful. Anyone at the meetings in September
11:34 46 2020 and March 2021 knew that there was, at the very least,
11:34 47 a real risk that Crown was cheating on its taxes. None of that

11:34 1 conduct is demonstrative of good character, honesty or integrity.
11:34 2
11:34 3 A good number of the people who were aware of this issue are
11:34 4 still at Crown in important management positions. None of them
11:34 5 made or attempted to make full disclosure to the regulator or this
11:34 6 Commission. Crown did not come clean on the issue until after
11:34 7 the evidence of Mr Mackay before this Commission on 7 June.
11:34 8 Crown now concedes that the deduction for category eight should
11:34 9 never have been made and has agreed to repay in the order of
11:34 10 \$50 million, comprising the sum of the category eight
11:35 11 underpayment, plus penalty interest.
11:35 12
11:35 13 We want to now come to the disclosure question. On 10 March
11:35 14 2021, this Commission made a request of Crown to disclose any
11:35 15 breach or potential breach of the Casino Control Act, the
11:35 16 Management Agreement or the licence. By making that request,
11:35 17 the Commission was itself inviting Crown to "bring out its dead",
11:35 18 testing its resolve to confess its sins of the past.
11:35 19
11:35 20 The bonus jackpot deductions were clearly a breach or, at the
11:35 21 very least, a potential breach of the Management Agreement and
11:35 22 should have been disclosed. The story of how they came not to
11:35 23 be disclosed is yet another poor reflection on Crown's suitability.
11:35 24 As is explained in the written submissions, many people are to
11:35 25 blame for the nondisclosure, but the failure of two senior officers
11:35 26 of the company, in particular, should be noted.
11:35 27
11:35 28 On 23 February 2021, the day after the Royal Commission was
11:36 29 announced, Mr Xavier Walsh raised his concern about the bonus
11:36 30 jackpot tax deduction with Ms Coonan in a telephone
11:36 31 conversation. It was a meeting between them.
11:36 32
11:36 33 As at 23 February 2021, Mr Walsh was fully across the bonus
11:36 34 jackpot tax issue. He knew of the documents and correspondence
11:36 35 from 2012 which record that Crown was trying to conceal the
11:36 36 deductions from the regulator. He was aware of the earlier legal
11:36 37 advices. He attended the September 2020 meeting and he was of
11:36 38 the view that there was a real risk that Crown had underpaid its
11:36 39 taxes. He also thought at the time that the quantum of the
11:36 40 underpayment was probably in the order of about \$40 million and
11:36 41 he knew that if the matter was revealed in the context of the
11:36 42 Royal Commission, announced only the day before, it would be
11:36 43 bad.
11:36 44
11:37 45 He raised the matter with Ms Coonan, among other issues, in
11:37 46 their meeting. Ms Coonan's evidence and Mr Walsh's evidence
11:37 47 differ slightly as to what was said in the course of that meeting.

11:37 1 Ms Coonan took no notes of the meeting despite it being
11:37 2 a meeting between her, as chair, and her CEO; their first meeting.

11:37 3

11:37 4 On 21 June 2021, some months after the meeting, she said that in
11:37 5 that meeting in February she had directed Mr Walsh to get
11:37 6 together the documents and to give them to the lawyers for
11:37 7 disclosure. Mr Walsh, on the other hand, did take
11:37 8 a contemporaneous note, which was to the effect that Ms Coonan
11:37 9 was to consider the issue and that he was to consider how to
11:37 10 communicate the matter. Mr Walsh's actions following the
11:37 11 meeting are consistent with what he noted as his action items on
11:37 12 his contemporaneous note.

11:37 13

11:38 14 Ms Coonan said Mr Walsh must have been mistaken about the
11:38 15 suggestion that she would consider the matter because in her
11:38 16 mind there was nothing for her to consider. Mr Walsh had told
11:38 17 her that the problem was fixed. Ms Coonan, in her evidence,
11:38 18 listed the matters which Mr Walsh told her about the bonus
11:38 19 jackpot issue. She said that he told her there was a legacy matter
11:38 20 related to the deductions or calculations of the jackpot tax; that
11:38 21 the program had been approved by the VCGLR but not the
11:38 22 change made in 2012; that there was a memorandum involving
11:38 23 senior people at Crown in which it was suggested that the
11:38 24 VCGLR not be informed as they probably would not notice; that
11:38 25 he was worried about it as a transparency issue and something
11:38 26 was likely to come out in the Commission; and, finally, that the
11:39 27 problem had been cured or fixed and in 2018 the regulator had
11:39 28 a thorough look at it and it was now fine and the technical
11:39 29 documents now reflected this.

11:39 30

11:39 31 It is more likely, in our submission, that Mr Walsh's note
11:39 32 accurately reflects the true position. Mr Walsh and Ms Coonan
11:39 33 agree that Ms Coonan never followed up. Why that did not
11:39 34 happen and why Mr Walsh did not vigorously pursue the matter
11:39 35 further himself have not yet been adequately explained. The lack
11:39 36 of adequate explanation gives rise to concerns about Ms Coonan's
11:39 37 and Mr Walsh's respective suitability and the extent to which it
11:39 38 can be said that Crown is well on the way to cultural reform.

11:39 39

11:39 40 In the case of Ms Coonan, accepting her evidence about the
11:39 41 interaction with Mr Walsh on the phone at its highest, her
11:40 42 evidence about the amount of detail provided by Mr Walsh on the
11:40 43 tax issue suggests that any diligent director would have asked
11:40 44 more questions, attempting to get to the bottom of the matter;
11:40 45 how much was involved, is it still going on, you say it's fixed
11:40 46 why, has any advice been obtained to that effect? Any single one
11:40 47 of those questions would have unearthed a fact that revealed the

11:40 1 matter should be addressed and disclosed to the Commission
11:40 2 immediately.
11:40 3
11:40 4 In the conversation between Ms Coonan and Mr Walsh, based on
11:40 5 her evidence alone of what she was told, Ms Coonan, in our
11:40 6 submission, showed a stunning lack of curiosity. We say
11:40 7 stunning because since May 2019 she had every reason to be
11:40 8 sceptical of the senior management of Crown. As at February
11:41 9 2021, with much of the old regime having only recently departed
11:41 10 the organisation, she did not have any reason to believe that the
11:41 11 significant cultural change had already occurred. She had a basis,
11:41 12 in our submission, to have a healthy scepticism of Mr Walsh as
11:41 13 the CEO, he having been effectively Mr Felstead's deputy and
11:41 14 appointed by Mr Barton and deeply embedded in the business of
11:41 15 Crown during the period of scandals already unearthed.
11:41 16
11:41 17 This meeting on 23 February 2021, was Ms Coonan's first
11:41 18 meeting in the role as executive chair with a CEO with whom she
11:41 19 had not worked closely. Ms Coonan's lack of curiosity translates
11:41 20 to, and is consistent with, the kind of attitude and approach which
11:41 21 has beset Crown during the period of her tenure on the board.
11:41 22
11:41 23 Mr Walsh's handling of the matter warrants comment for
11:41 24 different reasons. Mr Walsh knew about the underpayment and
11:42 25 concealment as early as 2018. He partially disclosed the
11:42 26 existence of the issues to other directors, downplayed the
11:42 27 significance of the issue to Crown's lawyers and never followed
11:42 28 up the matter in any meaningful way.
11:42 29
11:42 30 In some ways, the best measure of the conduct of both
11:42 31 Ms Coonan and Mr Walsh here is to examine what should have
11:42 32 happened in a place where the culture is healthy and where
11:42 33 everyone is performing their functions in an open and transparent
11:42 34 way.
11:42 35
11:42 36 Mr Walsh would have made full and frank disclosure to the chair
11:42 37 as soon as he was aware of the issue and in a position to do
11:42 38 something about it, not on 23 February, the day after the Royal
11:42 39 Commission was announced, but sooner. As CEO, he should
11:42 40 have sought legal advice immediately, based on full and frank
11:42 41 instructions if he had, at that time, any residual doubt about the
11:42 42 issue. Mr Walsh should have prepared a paper with a view to
11:43 43 discharging his obligations to the board of Crown Resorts and his
11:43 44 fellow directors on the board of Crown Melbourne, bringing them
11:43 45 up to speed on the issue immediately.
11:43 46
11:43 47 Ms Coonan, on the other hand, upon receiving even the limited

11:43 1 news from her newly minted CEO, should have interrogated him
11:43 2 more extensively, rather than to simply accept, on her version of
11:43 3 events, his assurance at face value that the matter was fixed.
11:43 4
11:43 5 Their mutual failings underscore the culture still at play at Crown.
11:43 6 They also underscore, in our submission, their personal
11:43 7 unsuitability as associates in the roles that they each hold at
11:43 8 present.
11:43 9
11:43 10 The last matter we want to address on the question of tax is the
11:43 11 quantum of the underpayment. Closer examination of Crown's
11:43 12 tax calculations reveal that there is a real argument as to whether
11:43 13 or not it is entitled to make a deduction in relation to other
11:44 14 expenses, not just the category eight expenses but other expenses
11:44 15 deducted. The tax underpayment in relation to category eight was
11:44 16 not disclosed to the Commission, it was uncovered by Counsel
11:44 17 Assisting. After it was uncovered, the quantum of the
11:44 18 underpayment was the subject of conflicting evidence and advice.
11:44 19
11:44 20 The position is now as follows: Crown appears to have conceded
11:44 21 that they are liable for the bonus jackpots deductions, which is
11:44 22 approximately \$50 million, inclusive of penalty interest. It is also
11:44 23 conceded that Crown has over-deducted aspects of the jackpots
11:44 24 payments. The quantum is not the subject of any agreement and
11:44 25 will require further analysis. Finally, Counsel Assisting submit
11:44 26 that Crown is likely to be liable for the Matchplay deductions that
11:44 27 have been made. If that is correct then the total liability, inclusive
11:44 28 of penalty interest, would be closer to \$480 million, rather than
11:45 29 the \$50 million which is now the subject of a concession.
11:45 30
11:45 31 The written case deals with these matters in detail and no doubt
11:45 32 they will be a matter of comment by Crown in due course.
11:45 33
11:45 34 If it please the Commission, we want to now go on to the next
11:45 35 topic that was considered in the course of evidence before the
11:45 36 Commission and that is the Responsible Service of Gaming. One
11:45 37 of the most important aspects of the casino operations is its
11:45 38 delivery of Responsible Service of Gaming. The Commissioner
11:45 39 and Counsel Assisting made clear on the first day of the hearings
11:45 40 that the RSG, or Responsible Service of Gaming, would be
11:45 41 a focus of the inquiry into the suitability of Crown.
11:45 42
11:45 43 The rationale for this was straightforward. The findings of the
11:45 44 Bergin Inquiry demonstrated how poorly Crown was governed
11:46 45 and managed, looking through the lens principally at money
11:46 46 laundering and criminal influence and the care of its staff. That
11:46 47 raised the question whether the same or similar problems might

11:46 1 be evident in other aspects of its operations, in particular those
11:46 2 parts of its operations which were concerned with the welfare of
11:46 3 its most vulnerable customers.

11:46 4
11:46 5 On 24 May this year, the Crown Resorts Board approved
11:46 6 a package of what it called RSG enhancements for submission to
11:46 7 this Commission. The letter containing them arrived a few days
11:46 8 before the commencement of the evidence in relation to
11:46 9 Responsible Service of Gaming and the cross-examination of
11:46 10 Ms Bauer.

11:46 11
11:46 12 Both the content of the proposed enhancements and the process
11:47 13 by which they were arrived at speak to the current state of
11:47 14 Crown's suitability to be the licensee. (inaudible) Enhancements
11:47 15 were a knee-jerk reaction to the realisation that the RSG issues
11:47 16 would be raised in this Commission. Almost all of the
11:47 17 enhancements were developed in six days between 18 May 2021
11:47 18 and 24 May 2021. The urgency was driven by Crown's intention
11:47 19 to have something positive to say in its statements to the
11:47 20 Commission.

11:47 21
11:47 22 The person who proposed the enhancements, Mr Blackburn, had
11:47 23 no experience, training or expertise in RSG. That is not a slight
11:47 24 on him. He is a highly qualified person in other respects. It is,
11:47 25 though, an indictment on Crown that the best person for the job to
11:48 26 do this exercise was someone with no experience in it at all.
11:48 27 Mr Blackburn only started working at Crown on 24 February
11:48 28 2021, two days after the Commission was announced. He was
11:48 29 hired for his expertise in financial crime, not to assist in
11:48 30 developing and monitoring Responsible Service of Gaming at
11:48 31 Crown. Each of the proposals are things that, at a minimum,
11:48 32 Crown should already be doing or should already have been
11:48 33 doing. As Mr Blackburn put it, they are common sense changes,
11:48 34 many of them intended to undo practices which have been known
11:48 35 for many years to be inappropriate.

11:48 36
11:48 37 As a measure of Crown's current conduct, it is important to reflect
11:48 38 on what the VCGLR said of Crown in the Sixth Review. The
11:48 39 VCGLR observed back in 2018 that where there has been change
11:49 40 in Crown's responsible gaming practices or responsible gambling
11:49 41 practices, this has largely been driven by regulatory and other
11:49 42 external pressures. The development of enhancements on the fly
11:49 43 to respond to this Commission demonstrates the position
11:49 44 identified by the VCGLR remains true even today.

11:49 45
11:49 46 Given the evidence, it is open for the Commission to be
11:49 47 concerned about Crown's commitment to, and execution of, its

11:49 1 RSG obligations. Much of the Code of Conduct is written in
 11:49 2 fluffy language. It is a document written by Crown in order to
 11:49 3 comply with the requirements of the Ministerial Direction, which
 11:49 4 itself leaves much room for poetic licence.

11:49 5
 11:49 6 One aspect of the code, though, is sufficiently clear. The code
 11:50 7 identifies 13 observable signs of possible gambling harm. It says
 11:50 8 about those observable signs:

11:50 9
 11:50 10 as part of delivering exceptional customer service, our
 11:50 11 *staff are encouraged to engage with customers.*
 11:50 12 *A customer displaying observable signs that may be*
 11:50 13 *related to potential gambling behaviours or unacceptable*
 11:50 14 *behaviour will be approached by a staff member who will*
 11:50 15 *offer assistance and referrals to special support as*
 11:50 16 *required.*

11:50 17
 11:50 18 The Code of Conduct, which is a key feature of Crown's delivery
 11:50 19 of the Responsible Service of Gaming, presupposes that staff are
 11:50 20 well enough trained to recognise observable signs. The evidence
 11:50 21 of Crown staff themselves before this Commission suggests that
 11:50 22 the training is minimal and ineffective.

11:50 23
 11:51 24 One of the observable signs is expressed as "often plays for long
 11:51 25 periods without a substantial break". This is a potential sign of
 11:51 26 gambling harm in its own right. The code does not expressly
 11:51 27 define the terms "often", "long periods" or "substantial break",
 11:51 28 but the code expressly refers to academic papers which say that
 11:51 29 gambling for longer than three hours is itself a sign of potential
 11:51 30 gambling harm.

11:51 31
 11:51 32 It would appear logical, if the code is informed by academic work
 11:51 33 which identifies the potential for harm, that the proper
 11:51 34 implementation of the code would reflect that academic work,
 11:51 35 such that breaks might be delivered in line with that work.

11:51 36 Instead, Crown has in place, and has had for many years,
 11:51 37 a system which is expressed in a written policy for the instruction
 11:51 38 of all of its staff. That policy is intended to guide staff in the way
 11:52 39 in which it responds to this issue.

11:52 40
 11:52 41 The policy, in its design and practical application, permitted
 11:52 42 customers to play for as long as 18 hours. Further, the policy did
 11:52 43 not require any form of observation or interaction with
 11:52 44 a customer until there had been 12 hours of continuous gambling.
 11:52 45 The policy did not require what the code demanded, that the staff
 11:52 46 approach a person who had been gambling for a long period of
 11:52 47 time and then offer assistance. No aspect of the policy was

11:52 1 supported by any research or academic writing, least of all the
11:52 2 academic writing that was expressly contained in the code itself.
11:52 3

11:52 4 On its face, the policy applied only to gamblers who were playing
11:53 5 with a card, but the evidence is that these hours of play are
11:53 6 applied to both carded and uncarded players. The difference is
11:53 7 that carded players are connected to a system which will provide
11:53 8 an electronic alert to the Responsible Gaming Advisor when that
11:53 9 player has reached 12 hours of continuous play. Uncarded
11:53 10 players are identified by observation alone. The RGA has to see
11:53 11 or the staff members have to recognise that the player has been
11:53 12 there for 12 hours or more. For uncarded players the chance of
11:53 13 any interaction is low, very low. In all likelihood, they could go
11:53 14 on playing unnoticed for hours and hours on end.
11:53 15

11:53 16 There are only three Responsible Gaming Advisors on duty at any
11:54 17 one time at present. Until late 2018, there was only one on duty.
11:54 18 The job description of the RGA makes clear that there is just no
11:54 19 real prospect that the RGAs can get to the people who might need
11:54 20 assistance.
11:54 21

11:54 22 The policy and the number of RGAs on the floor meant Crown
11:54 23 was necessarily and continually in breach of its own code, section
11:54 24 69 of the Casino Control Act and the relevant licence condition.
11:54 25 Crown has never known when customers have gambled for
11:54 26 periods longer than three to six hours. The first time a customer
11:54 27 might be observed was only after 12 hours of continuous play and
11:54 28 even at that point, a customer was not necessarily spoken to or
11:54 29 offered assistance, as required by the code, unless he or she was
11:54 30 displaying some other observable sign.
11:54 31

11:54 32 There was at all times, in our submission, a systemic failure in
11:55 33 Crown's approach, placing it in continuous breach of its code.
11:55 34 The Act makes clear that that is a sufficient basis for disciplinary
11:55 35 action by itself.
11:55 36

11:55 37 In May this year, as part of the hastily prepared Responsible
11:55 38 Service of Gaming enhancements that were proffered by the
11:55 39 board, a new 12-hour play period was proposed with interaction
11:55 40 or observation arising at the 8 and 10-hour mark, rather than what
11:55 41 had previously been the 12-hour mark. Compliance with that
11:55 42 policy would still leave Crown in breach of its code and would
11:55 43 still be unsupported by any of the academic material contained in
11:55 44 the code.
11:55 45

11:55 46 Concerningly, the Responsible Service of Gaming team which
11:55 47 provided information to Mr Blackburn in the period of the

11:56 1 preparation of these enhancements, told Mr Blackburn that
11:56 2 a 12-hour play period was reasonable. On the available evidence,
11:56 3 it would be open for the Commission to conclude that Crown's
11:56 4 various failures to implement the code are serious and persistent.
11:56 5
11:56 6 The evidence also suggests that Crown has had within its power
11:56 7 for some time the ability to improve on the delivery of
11:56 8 Responsible Gaming. It has the technology and it has the money.
11:56 9 But putting all that to one side, to permit uninterrupted gambling
11:56 10 for 12 hours on end, notwithstanding the research, reflects poorly
11:56 11 on Crown and its character as the licensee, in any event.
11:56 12
11:56 13 The written submissions set out in detail other RSG matters
11:56 14 which we invite the Commission to consider, and detail the
11:57 15 approach taken by Crown in relation to those matters. The
11:57 16 written submissions traverse conduct which discourages
11:57 17 self-exclusion. We submit in the course of those submissions that
11:57 18 there is no effective action by Crown to encourage
11:57 19 pre-commitment by gamblers or to encourage gamblers to stick to
11:57 20 their preset limits.
11:57 21
11:57 22 We address the marketing practices of Crown that are, and have
11:57 23 been over a long period of time, totally at odds with the
11:57 24 Responsible Service of Gaming and we address the reticence to
11:57 25 develop data analytical capacity so it could quantitatively assess
11:57 26 the effectiveness of its RSG programs. In other words, it is one
11:57 27 thing to say the RSG programs are in place; it is another to
11:57 28 introspectively examine quantitatively whether those RSG
11:58 29 programs are effective.
11:58 30
11:58 31 We also comment in the written submissions about Crown's
11:58 32 participation in research in relation to problem gambling. These
11:58 33 RSG failings have had a significant impact on the community, in
11:58 34 our submission. The evidence revealed that gambling at the
11:58 35 casino has resulted in financial hardship, criminal activity, forced
11:58 36 prostitution and in some cases even suicide. Together, they
11:58 37 underscore, along with the legislative requirement to actually do
11:58 38 this properly, the importance of the issue.
11:58 39
11:58 40 In addition, the evidence establishes a number of serious breaches
11:58 41 of section 68. These are set out at length in the written
11:58 42 submissions. The breaches are serious because they are obvious
11:58 43 violations of the provisions concerned to ensure, at least in part,
11:58 44 that vulnerable gamblers are not provided access to credit in any
11:59 45 form and that they also establish that the practices are
11:59 46 longstanding and well-established.
11:59 47

11:59 1 In our submission, it is open for the Commission to find that
11:59 2 Crown Melbourne has: continually failed to implement its code, in
11:59 3 contravention of section 69; continually contravened section 68
11:59 4 and contravened section 28 of the Casino Agreement in
11:59 5 approving the RSG enhancements without regard to the best
11:59 6 operating practices (inaudible) the six days it took to come up
11:59 7 with the enhancements. The manner in which the contraventions
11:59 8 have arisen and the manner in which Crown Melbourne has
11:59 9 approached its RSG obligations leave open for this Commission
11:59 10 to find that Crown Melbourne is not a suitable person to hold the
11:59 11 licence and it is not in the public interest for it to do so.

12:00 12

12:00 13 We would like to now move, Commissioner, to the money
12:00 14 laundering part of the submission or Crown's response to money
12:00 15 laundering. I might move through that section and then if it is
12:00 16 okay, I might take a short break.

12:00 17

12:00 18 At the outset, three observations can be made in relation to money
12:00 19 laundering. The first is that Crown has failed woefully to
12:00 20 adequately address key risks of money laundering at the casino.
12:00 21 At present, that is right now, Crown is not at a level of readiness
12:00 22 to combat money laundering at a level which is to be expected of
12:00 23 the operator of a casino as sophisticated as Crown. It is,
12:00 24 according to its own evidence, at only an early stage of maturity.

12:00 25

12:01 26 Crown is proposing an ambitious and impressive reform program
12:01 27 to uplift its ability to counter money laundering and other
12:01 28 financial crime at the casino. On the most favourable estimates,
12:01 29 the reform program will not be completed before the end of 2022,
12:01 30 but there remains considerable risk that the work will take much
12:01 31 longer. These are all factors, in summary, which weigh heavily
12:01 32 against suitability.

12:01 33

12:01 34 We want to establish a framework or a background against which
12:01 35 we make these submissions. For the entire time that Crown
12:01 36 Melbourne has been running the Melbourne casino, anti-money
12:01 37 laundering legislation in one form or another extending to the
12:01 38 provision of gambling services has been in existence. Leaving
12:02 39 that to one side, curtailing, impeding or limiting the risk of money
12:02 40 laundering at the casino should have been one of the highest, if
12:02 41 not the highest, priorities of the casino operator. A foundation
12:02 42 stone of the approval of a casino in Victoria is the
12:02 43 acknowledgement of the risk that casinos will come under the
12:02 44 influence of, or be exploited by, criminals and organised crime.
12:02 45 Popular culture, let alone actual historical examples, make it plain
12:02 46 to even a novice in gambling that casinos are a perfect vehicle
12:02 47 through which money made from criminal activity can be

12:02 1 laundered. It is so obvious a risk that it needs really no
12:02 2 explanation. Use of a casino, where there are large volumes of
12:02 3 cash, for money laundering purposes is the principal way a casino
12:03 4 can be exploited by organised crime. Logically enough, if
12:03 5 a casino begins to chase the revenue that comes from these
12:03 6 activities by adopting facilitative practices or refusing to adopt
12:03 7 preventative measures, it runs the risk of coming under the
12:03 8 influence of that criminal activity. Even if that influence is not
12:03 9 overt, the subtle influence of organised crime is the most
12:03 10 insidious and, arguably, the most dangerous.

12:03 11
12:03 12 For all these reasons, Crown should have been on its guard from
12:03 13 the outset. The legislative framework required/demanded of it
12:03 14 careful consideration of the risk and the adoption of practices
12:03 15 designed to mitigate that risk by adopting practices which prevent
12:03 16 patrons from disguising either their identity or the real source of
12:03 17 money, and by creating in the casino, right at the ground level,
12:04 18 an expectation that laundering of money at the casino would not
12:04 19 be easy. The obligation on the casino is not to eliminate money
12:04 20 laundering, rather to detect it, deter it and disrupt it, to make the
12:04 21 casino a less hospitable place for criminal influence to take root.

12:04 22
12:04 23 Notwithstanding those obvious risks and the fact that Crown has
12:04 24 been in existence for many years, Crown is presently at only
12:04 25 an early stage of maturity in its ability to manage the risk of
12:04 26 money laundering at its casinos. Up until recently, Crown has not
12:04 27 prioritised its money laundering obligations at all. That is
12:04 28 notwithstanding that Crown has been the subject of money
12:04 29 laundering allegations for a number of years. Crown became
12:04 30 a place where its banks were actively used for the purpose of
12:04 31 laundering money and where enormous volumes of cash, likely
12:04 32 carried by money mules serving criminal interests, could be
12:05 33 walked in off the street in translucent plastic bags and placed into
12:05 34 circulation through the casino.

12:05 35
12:05 36 Neither in its management of its accounts, nor in its efforts on the
12:05 37 gaming floor, was Crown effective in minimising the risk of
12:05 38 money laundering. In truth, its approach facilitated the use of the
12:05 39 casino for that purpose.

12:05 40
12:05 41 Allegations of this kind had been made in the press for many
12:05 42 years. Until the Bergin Inquiry, those allegations were largely
12:05 43 ignored or rejected by Crown. It took the position that it was
12:05 44 complying with the formal requirements of the AML/CTF
12:05 45 legislation by reporting suspicious transactions and, beyond that,
12:05 46 money laundering and criminal activity was the purview of other
12:05 47 external agencies. It was not until the scrutiny of the Bergin

12:05 1 Inquiry that a light was shone on Crown's approach to money
12:05 2 laundering and how utterly inadequate its systems were.
12:05 3
12:05 4 One of the key findings of the Bergin Inquiry and an important
12:06 5 context to this Commission's inquiries is that Crown facilitated
12:06 6 and enabled money laundering at its Melbourne and Perth
12:06 7 Casinos through its Southbank and Riverbank accounts. The
12:06 8 Bergin Inquiry revealed that Crown's money laundering problems
12:06 9 encompassed both the enabling of money laundering and the
12:06 10 existence of practices which resulted in the failure to detect it.
12:06 11 The Bergin Inquiry also found that there was a practice of
12:06 12 aggregating individual transactions in Crown's internal systems
12:06 13 which compromised Crown's AML team's capacity to identify
12:06 14 examples of structuring occurring in the Southbank and
12:06 15 Riverbank accounts.
12:06 16
12:06 17 In part, this Commission's inquiries into money laundering takes
12:06 18 up where the Bergin Inquiry left off. Two days before the
12:06 19 completion of the hearings of the Bergin Inquiry, Crown tendered
12:07 20 two reports prepared by Grant Thornton and Initialism. Those
12:07 21 reports revealed likely money laundering on Crown's Southbank
12:07 22 and Riverbank accounts. In her report, the Honourable Patricia
12:07 23 Bergin said something of the Grant Thornton and Initialism
12:07 24 reports. She said:
12:07 25
12:07 26 *The authority should also be aware that the reports were*
12:07 27 *provided to the inquiry two days before the close of public*
12:07 28 *hearings and were merely annexed to yet another*
12:07 29 *statement by Mr Barton and were not the subject of*
12:07 30 *separate evidence by the authors of those (inaudible)*
12:07 31 *process by which the ambit of the instructions that were*
12:07 32 *given was decided, the detail of the process that was*
12:07 33 *adopted, the nature of the access to documents and/or*
12:08 34 *individuals for the purpose of the analysis and/or the*
12:08 35 *conclusions that were reached in these reports.*
12:08 36
12:08 37 That is what the Bergin Inquiry said in the report about those
12:08 38 reports, provided two days before with no forensic analysis or
12:08 39 opportunity to test them in any way.
12:08 40
12:08 41 This Commission provided the opportunity to undertake the
12:08 42 forensic analysis contemplated by the Bergin Report. The Bergin
12:08 43 Report recounts the various red flags raised from 2014 onwards,
12:08 44 concerning indications of money laundering through those
12:08 45 accounts to which Crown was alerted but ignored.
12:08 46
12:08 47 What the Bergin Inquiry did not know, because the Grant

12:08 1 Thornton and Initialism reports into Southbank and Riverbank
12:08 2 were tendered so late, was that: first, the analysis conducted by
12:08 3 Grant Thornton and Initialism into the Southbank and Riverbank
12:09 4 accounts was curbed by the limited instructions given to the
12:09 5 consultants; and, second, at the time that Crown instructed Grant
12:09 6 Thornton and Initialism to conduct an investigation into
12:09 7 Southbank and Riverbank, Crown had grounds to suspect that
12:09 8 money laundering on its accounts went beyond Southbank and
12:09 9 Riverbank.

12:09 10
12:09 11 At the time Grant Thornton and Initialism were engaged, Crown
12:09 12 was already aware of suspicious activity in its Southbank and
12:09 13 Riverbank accounts and equivalent activity in at least the Crown
12:09 14 Melbourne bank account. Rather than commission Grant
12:09 15 Thornton and Initialism to conduct a wholesale review at that
12:09 16 time, it instead engaged these two consultants to examine only the
12:09 17 Southbank and Riverbank accounts on the questionable premise
12:09 18 that the Bergin Inquiry would not have been interested in
12:09 19 knowing whether indications of money laundering were more
12:09 20 widespread.

12:09 21
12:09 22 Other limitations, the details of which are set out in our written
12:10 23 submissions, were placed on the Grant Thornton and Initialism
12:10 24 investigations by Crown. This pattern of selective instruction by
12:10 25 Crown of its experts to narrow the scope of the inquiry,
12:10 26 characterised by Crown's approach to its AML problems from the
12:10 27 outset, along with a reluctance to undertake any root cause
12:10 28 analysis of the nature of the problems, despite encouragement
12:10 29 from external advisors and agencies such as AUSTRAC, is
12:10 30 telling.

12:10 31
12:10 32 In any event, the Grant Thornton and Initialism reports revealed
12:10 33 likely structuring, smurfing and cuckoo smurfing on the
12:10 34 Southbank and Riverbank accounts. A number of observations
12:10 35 can be made about all of that. First, it reflects poorly on Crown
12:10 36 that transactions indicative of structuring, smurfing and cuckoo
12:10 37 smurfing, each not new money laundering techniques, were
12:10 38 facilitated and allowed to go undetected on Crown's Southbank
12:11 39 and Riverbank accounts for so long.

12:11 40
12:11 41 Second, by instructing Grant Thornton and Initialism to
12:11 42 investigate only the Southbank and Riverbank accounts in
12:11 43 a context where Crown intended to provide the reports to the
12:11 44 Bergin Inquiry, and had reason to suspect that money laundering
12:11 45 problems extended beyond those accounts, Crown was trying to
12:11 46 hide or minimise the true extent of the problem.
12:11 47

12:11 1 Third, Crown did not prioritise any investigation into the
12:11 2 allegations of money laundering at any time and really only acted
12:11 3 when it became untenable in the context of the Bergin Inquiry not
12:11 4 to do so. Crown's investigation into money laundering at that
12:11 5 point in time was not a proper, appropriate or sensible response to
12:11 6 the problems it already suspected it had, but was instead
12:11 7 an attempt to see if it could get away with doing less.

12:11 8

12:11 9 The most important piece of evidence or analysis as to the extent
12:11 10 of money laundering on Crown's bank accounts is yet to be
12:12 11 completed. That analysis, when it becomes available, will
12:12 12 comprise the results of forensic investigation by Deloitte into
12:12 13 Crown's patron accounts.

12:12 14

12:12 15 In February 2021, in response to specific suggestions made in the
12:12 16 Bergin Report as part of a broader pathway to render Crown
12:12 17 Sydney suitable, Crown engaged Deloitte to conduct a forensic
12:12 18 review of Crown's bank accounts to ensure that the criminal
12:12 19 elements that Commissioner Bergin found had infiltrated the
12:12 20 Southbank and Riverbank accounts had not infiltrated any other
12:12 21 accounts. This work was originally to be completed by 25 June.
12:12 22 The completion date was then extended to mid to late August and
12:12 23 the most recent information is it is now not due to be completed
12:12 24 until September 2021. As such, its results will not be available in
12:13 25 time to be considered and included in this Commission's report.
12:13 26 It is expected that this forensic review will reveal whether there
12:13 27 are indications of money laundering on a range of Crown patron
12:13 28 accounts, which are effectively a Crown bank where patrons can
12:13 29 deposit money.

12:13 30

12:13 31 Ms Dobbin of Deloitte agreed that if Crown had started its work
12:13 32 in November 2020, the results would likely have been available
12:13 33 to this Commission. She also agreed that there was no
12:13 34 impediment to Crown engaging Deloitte to perform this task
12:13 35 earlier and that Crown could have done a similar review at any
12:13 36 point in time since they opened the casino. Pending completion
12:13 37 of the Deloitte forensic review, it is difficult to reach any
12:13 38 concluded view that indications of money laundering evident on
12:14 39 Crown's Southbank and Riverbank accounts extended beyond
12:14 40 those bank accounts.

12:14 41

12:14 42 The McGrathNicol forensic review has identified preliminary
12:14 43 indications of both structuring and parking on Crown's DAB
12:14 44 accounts. Whilst those transactions may transpire to be legitimate,
12:14 45 they are worthy of further investigation. This channel of potential
12:14 46 money laundering is not being considered by the Deloitte work
12:14 47 which is presently underway.

12:14 1
12:14 2 We now want to address the Commission on Crown's current
12:14 3 state of readiness in relation to money laundering. The
12:14 4 Commission heard from a number of different witnesses as to
12:14 5 Crown's state of preparedness to counter money laundering. In
12:14 6 our submission, the preponderance of that evidence is that Crown
12:14 7 has significant, current vulnerabilities to financial crime and only
12:14 8 a basic or preliminary state of preparedness to counter money
12:15 9 laundering and financial crime generally.
12:15 10
12:15 11 Mr Blackburn, the person brought in to Crown to address
12:15 12 Crown's current deficiencies, assesses Crown at a foundational
12:15 13 level or early stages of maturity in respect to the management of
12:15 14 financial crime risk. McGrathNicol, the expert appointed by this
12:15 15 Commission, has told (inaudible).
12:15 16
12:15 17 We do not descend here into the detail of that evidence in oral
12:15 18 submissions or in the written submission because to do so might
12:15 19 reveal Crown's present vulnerabilities to money laundering. It is
12:15 20 sufficient to say that a casino of Crown's size and length of tenure
12:15 21 is in a sorry state of preparedness for one of the most important
12:16 22 risks that it confronts. It is self-evident that Crown has left itself
12:16 23 wide open to exploitation by money launderers in the past and
12:16 24 that it will take some time to rectify that situation.
12:16 25
12:16 26 On the question of time to complete, no doubt the skill, ability
12:16 27 and experience of Mr Blackburn is an excellent first step to bring
12:16 28 Crown up to speed. Mr Blackburn has prepared an impressive
12:16 29 and ambitious financial crime compliance reform program for
12:16 30 Crown, which has been endorsed by the board. On any view, it is
12:16 31 comprehensive and appropriately prioritised.
12:16 32
12:16 33 It will, however, take considerable time to implement.
12:16 34 Mr Blackburn has not forecast how long he thinks it will take to
12:16 35 deliver the money laundering reforms. He has set an aspirational
12:16 36 date of 31 December 2022 to deliver the target maturity state,
12:17 37 with several outcomes delivered prior to that date. Other
12:17 38 documents reveal some target dates stretching to 2023, where the
12:17 39 reforms require technology or systems changes. In respect of
12:17 40 reforms requiring technology, McGrathNicol observed that the
12:17 41 financial crime projects involved are at a very preliminary stage
12:17 42 and are not yet scoped or costed.
12:17 43
12:17 44 Finally, McGrathNicol consider there is a considerable risk
12:17 45 associated with Crown achieving an advanced stage of maturity
12:17 46 in the proposed time frame because of the ambitious nature of the
12:17 47 target and the dependencies and risks. McGrathNicol assessed

12:17 1 the critical risks as being three-fold. Firstly, funding. Will
 12:17 2 adequate resources be thrown at the problems with sufficient
 12:17 3 consistency to ensure targets are met? Secondly, technology.
 12:18 4 There are several other IT reforms required at the same time at
 12:18 5 Crown. Working with technology and ensuring that everything
 12:18 6 syncs at the right time is not always straightforward. Thirdly, and
 12:18 7 perhaps most critically, McGrathNicol identify people. Having the
 12:18 8 right people to implement the strategy will be no small
 12:18 9 contributor to timely success. Any change of key personnel is
 12:18 10 a significant risk in timely delivery.

12:18 11
 12:18 12 All of these things will be occurring in a period where the whole
 12:18 13 organisation, that is the whole of Crown, requires uplift and
 12:18 14 significant cultural change. I should say that fact accentuates the
 12:18 15 risk of delay and accentuates the risk of not being able to achieve
 12:18 16 the result.

12:18 17
 12:18 18 Pending the implementation of Crown's anti-money laundering
 12:19 19 reforms, it is open for the Commission to find that Crown
 12:19 20 Melbourne is not a suitable person to continue to hold the licence.

12:19 21
 12:19 22 COMMISSIONER: Is this a convenient time to take a short
 12:19 23 break?

12:19 24
 12:19 25 MR FINANZIO: It is a convenient time, thank you,
 12:19 26 Commissioner. Yes.

12:19 27
 12:19 28 COMMISSIONER: We will take a short break for a little while.

12:19 29
 12:19 30 MR FINANZIO: Thank you.

12:19 31
 12:19 32

12:29 33 **ADJOURNED** **[12.21 PM]**

12:29 34
 12:29 35

12:38 36 **RESUMED** **[12:38P.M.]**

12:38 37
 12:38 38

12:38 39 COMMISSIONER: Thank you, Mr Finanzio.

12:38 40
 12:38 41

12:38 42 MR FINANZIO: Thank you, Commissioner.

12:38 43
 12:38 44

12:38 45 We will now move on to the next topic, which concerns the
 12:38 46 relationship between Crown and its regulator. An important
 12:38 47 aspect of the suitability of the casino licensee is the attitude it
 12:38 48 takes to those obliged by law to look into their affairs.

12:38 1 Over the course of its relationship with the VCGLR, there have
12:38 2 no doubt been many polite and appropriate exchanges between
12:38 3 Crown, on the one hand, and the VCGLR, on the other. This
12:38 4 kind of exchange can be expected when the subject matter is
12:39 5 inconsequential to either party. It is in instances where things
12:39 6 really matter that the true character, honesty and integrity of the
12:39 7 licensee is on display. The combative way in which Crown
12:39 8 conducted the Bergin Inquiry is one yardstick by which to
12:39 9 measure its approach.

12:39 10
12:39 11 Counsel Assisting were interested to explore closer to home the
12:39 12 nature of the engagement with the Victorian regulator. Five
12:39 13 relevant examples, spanning the period 2012 right up to the
12:39 14 present, stand out for particular consideration, some of which we
12:39 15 have already addressed.

12:39 16
12:39 17 The first is the CUP process, which was devised and carefully
12:39 18 kept from the regulator.

12:39 19
12:39 20 Second, the bonus jackpot underpayment, both because of the
12:39 21 way that it was devised to be concealed from the regulator and
12:39 22 because of the manner in which Crown engaged with the
12:40 23 regulator to create the veneer of transparent disclosure, without
12:40 24 openly and fulsomely raising the matter for proper resolution by
12:40 25 the regulator. Instead, it continued to seek legal advice, all the
12:40 26 while making the deductions it had good reason to believe were
12:40 27 not permitted, right up until June 2021.

12:40 28
12:40 29 Third, Crown's handling of the VCGLR's investigation of the
12:40 30 China arrests.

12:40 31
12:40 32 Fourth, Crown's response to the VCGLR's attempt to introduce
12:40 33 an additional layer of control in the probity assessment of junket
12:40 34 players, which was explored in this Commission, known as
12:40 35 Recommendation 17 of the Sixth Review.

12:40 36
12:40 37 Fifth, and finally, the VCGLR's investigation into the robustness
12:40 38 or otherwise of Crown's junket probity under the ICS, or internal
12:40 39 control system.

12:40 40
12:41 41 The first two examples have already been addressed. The
12:41 42 remaining three warrant some observations. I will start with
12:41 43 Recommendation 17. Recommendation 17 was one of the
12:41 44 recommendations of the Sixth Review. It arose in an AML
12:41 45 context where the VCGLR, in the context of that review, had
12:41 46 noticed a gap in the probity requirements of the ICS. Crown
12:41 47 agreed with the recommendation without objection or

12:41 1 qualification. It is true the recommendation was inelegantly
12:41 2 drafted. It was not a statute or a deed, but from the context
12:41 3 contained within the Sixth Review itself, its intention was plain
12:41 4 enough.

12:41 5
12:41 6 So, having not made objection to the recommendation on the way
12:41 7 through, once the VCGLR had declared Crown to be suitable in
12:41 8 the context of the Sixth Review, Crown, for the first time, began
12:42 9 arguing about the scope and intent of the recommendation. The
12:42 10 argument went on for almost a year. The evidence establishes
12:42 11 that Crown delayed and frustrated a proper examination of the
12:42 12 substantive issue.

12:42 13
12:42 14 It clearly misled the VCGLR. It told the VCGLR on at least two
12:42 15 occasions that it had been in contact with AUSTRAC for the
12:42 16 purposes of obtaining its views on the recommendation when that
12:42 17 plainly was not the case. It delayed in obtaining the external
12:42 18 expert opinion required to facilitate the review until the very last
12:42 19 moment. Then, in the end, that external review can be described
12:42 20 as superficial at best.

12:42 21
12:42 22 It then furnished upon the VCGLR what it regarded as strict,
12:42 23 technical compliance with the requirements of the
12:42 24 recommendation without genuinely or properly addressing itself
12:42 25 to the substantive questions raised by the recommendation. The
12:42 26 recommendation and the underlying rationale for it concerned
12:42 27 an important gap in Crown's AML processes. The VCGLR had
12:43 28 identified this issue even before official publications of
12:43 29 AUSTRAC confirmed that it was an issue a year later. The
12:43 30 VCGLR, of its own accord and at its own expense, was forced to
12:43 31 undertake the substantive work that it had asked Crown to
12:43 32 undertake and then implement the necessary changes by
12:43 33 exercising its power, which Crown later accepted. The effect was
12:43 34 to delay a significant and important improvement in the junket
12:43 35 probity suite of controls specifically concerned with money
12:43 36 laundering; an area where the evidence now clearly establishes
12:43 37 Crown needed all the help it could get.

12:43 38
12:43 39 We will move now to China arrests as the second case study. The
12:43 40 VCGLR started its investigation into the arrests of Crown
12:43 41 employees long before the Bergin Inquiry was commenced and
12:44 42 long before newspaper articles appeared in the Fairfax press in
12:44 43 mid-2019. The VCGLR investigation began at around the same
12:44 44 time as the Sixth Review commenced in July 2017, nearly a year
12:44 45 after the arrests. The written submissions chronicle the arduous
12:44 46 process. We set out in the written submissions a considerable
12:44 47 amount of detail of the exchanges that arise from the evidence.

12:44 1
12:44 2 We say here, though, that the VCGLR received presentations on
12:44 3 the arrests from Crown which were misleading, that the VCGLR,
12:44 4 using its powers of compulsion, issued notices for the production
12:44 5 of documents which were either not responded to, partially
12:44 6 responded to or responded to late or delayed.
12:44 7
12:44 8 During the course of the Bergin Inquiry, the VCGLR discovered
12:44 9 that Crown had documents which should have been produced to
12:44 10 it months before but which had been withheld by Crown. This
12:44 11 Commission has heard in evidence some of the explanations for
12:45 12 that course. In our submission, none of them are satisfactory.
12:45 13
12:45 14 In her evidence to the Bergin Inquiry on 20 October 2020,
12:45 15 Ms Coonan signalled a potential turning point for Crown. She
12:45 16 said:
12:45 17
12:45 18 *I have great regret that this inquiry has run the course it's*
12:45 19 *run. In other circumstances I would much preferred to*
12:45 20 *have something in the more of like a statement of agreed*
12:45 21 *facts or a better way of engaging on these matters than*
12:45 22 *having to have had such exhaustive hearings.*
12:45 23
12:45 24 On 17 December 2020, Ms Coonan met with representatives of
12:45 25 the VCGLR. In that meeting Ms Coonan offered her "absolute
12:45 26 personal commitment", together with that of the board and
12:45 27 management, to work through Crown's reform program in
12:45 28 collaboration and cooperation with the VCGLR. The first test of
12:45 29 that commitment was to come soon after.
12:45 30
12:46 31 On 22 December, five days after the meeting, the VCGLR wrote,
12:46 32 asking Crown to respond to a statement of factual propositions,
12:46 33 based on information it had obtained as a result of its continued
12:46 34 investigation of the China arrests as at that date. The factual
12:46 35 propositions posited by the VCGLR were, in effect, the VCGLR's
12:46 36 attempt to reach agreement on a statement of facts with Crown,
12:46 37 similar to that suggested by Ms Coonan at the conclusion of her
12:46 38 evidence to the Bergin Inquiry.
12:46 39
12:46 40 On 22 January 2021, Crown sent a response to the VCGLR
12:46 41 bearing Ms Coonan's signature, adopting the same defensive
12:46 42 approach it had in the past. Ms Coonan conceded the letter was,
12:46 43 effectively, old Crown at work and agreed with the proposition
12:46 44 that it's the old Crown, taking every point, arguing every issue,
12:46 45 not accepting basic propositions of fact that are clearly open.
12:47 46 Whatever the reason for the choice Crown made, the decision to
12:47 47 adopt the approach represented another display of poor judgment

12:47 1 and one which reflects poorly on Crown's character.
12:47 2
12:47 3 The final case study involves the VCGLR's investigations into
12:47 4 Crown's junket probity ICS. On 21 January 2021, the CEO of
12:47 5 Crown Melbourne, Mr Xavier Walsh, appeared before the
12:47 6 VCGLR to make submissions in relation to a Show Cause Notice
12:47 7 which alleged that Crown had breached its junket's ICS by not
12:47 8 having in place a robust due diligence process. Mr Walsh
12:47 9 submitted that the due diligence process was robust. He did so in
12:48 10 the face of overwhelming evidence to the contrary, much of
12:48 11 which was within Mr Walsh's direct knowledge. The submission
12:48 12 was made approximately one month after Ms Coonan's visit to
12:48 13 the VCGLR, promising cooperation and collaboration, which
12:48 14 Mr Walsh also attended. Mr Walsh now accepts that it was
12:48 15 wrong to make that submission. It was another example of what
12:48 16 Crown describes as the old Crown.
12:48 17
12:48 18 Understandably, in its reasons, the VCGLR expressed its concern
12:48 19 that the matter had been handled in this way, particularly given
12:48 20 the assurances it had received from Ms Coonan only a month
12:48 21 before the hearing. To his credit, Mr Walsh accepted
12:48 22 responsibility for this poor call. Ms Coonan, on the other hand,
12:48 23 deflected, lamenting that this was the advice at the time.
12:48 24
12:48 25 All these examples share some common characteristics. First, the
12:48 26 propensity of Crown to take any point, however weak or
12:49 27 untenable, forcing the regulator into a position where it must
12:49 28 engage on everything in order to move forward with
12:49 29 an investigation or probe and address every single point, however
12:49 30 ridiculously made.
12:49 31
12:49 32 Second, the willingness to accept or not challenge advice as
12:49 33 a cloak or excuse for what were, on any objective view, poor
12:49 34 decisions, errors of judgment or, worse, failings of character.
12:49 35
12:49 36 The Casino Control Act expects of a licensee that it will not
12:49 37 behave like the accused in a criminal trial, standing behind the
12:49 38 onus of proof and taking every point to avoid conviction. The
12:49 39 whole purpose of the suitability test of character, honesty and
12:49 40 integrity is that it is expected that the onus will shift to the
12:49 41 licensee, who will behave like a fit and proper person, to own up
12:49 42 to misdeeds, to proactively seek to address matters of concern.
12:49 43
12:50 44 A licensee of good repute does not make the untenable argument
12:50 45 but instead concedes ground. A licensee of good repute does not
12:50 46 resist requests reasonably made or changes sought to be
12:50 47 introduced for good reason. They appreciate the reasonableness

12:50 1 of the request or the necessity for change, even if the request or
12:50 2 the change causes them inconvenience. Behaviour of this kind is
12:50 3 credited with a reputation for honesty and integrity.
12:50 4

12:50 5 Over the last two years, including recently, the very opposite
12:50 6 behaviour has been on display. It is true that some people who
12:50 7 occupied important roles have moved on or have been moved on,
12:50 8 but it remains the case that people in the organisation who
12:50 9 participated in that behaviour and who were actively part of the
12:51 10 culture remain. It also remains the case that examples of that
12:51 11 behaviour, what Crown presently wishes to describe as the old
12:51 12 Crown, has been on display in quite recent times.
12:51 13

12:51 14 Cultural change is hard to achieve quickly. It is harder to achieve
12:51 15 when people who were part of the old culture remain. Those
12:51 16 people will always find it hard to be open and transparent about
12:51 17 the past because often they will have had a hand in activities
12:51 18 which would now be admonished.
12:51 19

12:51 20 Crown will always find it hard to understand the old culture and
12:51 21 past behaviour when Crown has not asked the question: why did
12:51 22 people find it hard to speak up? It is one thing to say, as
12:51 23 Ms Coonan did, "bring out your dead", but it is a hard thing to do.
12:51 24 It requires a fearlessness of the consequences that might itself
12:52 25 need a huge cultural change. Certainly Crown is not there yet and
12:52 26 the evidence is that it could take a long time to achieve.
12:52 27

12:52 28 One of the questions this Commission is asked to address is
12:52 29 whether Crown is suitable. But, if not, what actions, if any,
12:52 30 would be required to make it suitable. As we have said, past
12:52 31 conduct is clearly relevant to suitability. It is clearly open to find
12:52 32 that there is more than sufficient past conduct upon which to
12:52 33 make a finding of unsuitability. Past conduct is also relevant to
12:52 34 suitability as a predictive tool to how Crown will behave in the
12:52 35 future.
12:52 36

12:52 37 Also relevant to the question of suitability is the present
12:52 38 intentions of the licensee to seek to rectify the features
12:52 39 contributing to unsuitability. An acknowledgement of existing
12:52 40 unsuitability by a licensee, coupled with cogent plans to fix the
12:53 41 identified problems contributing to suitability, might support
12:53 42 a finding that in overall terms, notwithstanding past poor conduct,
12:53 43 the licensee is suitable.
12:53 44

12:53 45 But it is not a case of simply proposing reforms. The promise of
12:53 46 reform will not be an answer in every case. Much will depend on
12:53 47 the nature and gravity of the conduct which gives rise to

12:53 1 unsuitability in the first place. If the conduct is serious, no
12:53 2 amount of promised restructuring will cure unsuitability. Also
12:53 3 relevant is the nature and scope of necessary reform or
12:53 4 restructuring required. Axiomatically, the extent of reform
12:53 5 required will often signal the extent of the problem.
12:53 6
12:53 7 Crown has maintained since almost the end of the hearings of the
12:54 8 Bergin Inquiry that it is on the path to reform. In this
12:54 9 Commission it produced an extensive list of the matters which are
12:54 10 the focus of its reform program. The Bergin Inquiry found, in
12:54 11 summary, that the conduct of Crown as a whole had rendered it
12:54 12 unsuitable to be the licensee in Sydney. The conduct pointed to
12:54 13 the need for significant changes in culture, governance and risk
12:54 14 management. The Bergin Report observed that the task was
12:54 15 significant but that it might be possible with the right people and
12:54 16 the necessary commitment to change.
12:54 17
12:54 18 With respect, the scope of the Bergin Inquiry was confined to
12:54 19 examine, by its terms of reference, discrete aspects of possible
12:54 20 misconduct. What this inquiry has brought to light is
12:54 21 an understanding that the problems of culture and risk run much
12:54 22 deeper, through more levels of the organisation than the Bergin
12:55 23 Inquiry could ever have anticipated.
12:55 24
12:55 25 This Commission has not had the time to explore every corner of
12:55 26 Crown, but in the time it has had available to it, everywhere it has
12:55 27 looked it has unearthed behaviour that is deeply troubling and
12:55 28 obviously engrained. Taking the examples of tax and RSG as
12:55 29 two examples, it would be open for this Commission to find that
12:55 30 there remains in place at Crown a culture of ignoring its legal and
12:55 31 social responsibilities until it is clear they are about to come
12:55 32 under scrutiny and then to do as much as is required and not more
12:55 33 to neutralise the issue.
12:55 34
12:55 35 This kind of behaviour has been on display in many of its
12:55 36 dealings with the VCGLR over recent years. It is an attitude
12:55 37 which characterised Crown's approach to its AML preparedness,
12:55 38 junkets due diligence and other key aspects of its operations.
12:56 39 Crown might now realise it will no longer be able to get away
12:56 40 with this kind of approach. It may have realised that at some
12:56 41 point toward the end of the Bergin Inquiry. Crown now accepts
12:56 42 that it needs to change. It accepts that it has, at least for the time
12:56 43 being, lost the confidence and trust of key stakeholders.
12:56 44
12:56 45 The current directors universally accept that the reform path is the
12:56 46 only way in which that trust and confidence can be restored. But
12:56 47 the change required is so enormous and complex and subject to

12:56 1 so many variables that it would be open for the Commission to be
12:56 2 sceptical about whether it is even achievable and, even if it is,
12:56 3 what form it might take in the end result.

12:56 4
12:56 5 One thing is for certain, the task is considerably larger now than
12:56 6 was thought to be the case when the Bergin Inquiry produced its
12:56 7 report. At that time, the Bergin Inquiry had very limited
12:56 8 information about the extent of money laundering in the
12:56 9 Southbank and Riverbank accounts, let alone the risk of exposure
12:56 10 to money laundering across the enterprise. This has only come to
12:57 11 light in this hearing and since the Bergin Report was published.
12:57 12 The work required is intensive, resource intensive, personnel
12:57 13 dependent and, depending on the most favourable view, might
12:57 14 take two years, assuming nothing goes wrong along the way.

12:57 15
12:57 16 In addition to the AML improvements required, the reform
12:57 17 program has been the subject of evidence in these hearings. On
12:57 18 one view, the evidence could be said to establish that it is
12:57 19 possible for Crown Melbourne to take steps to reform itself.
12:57 20 Taking the evidence, however, as a whole, it establishes that
12:57 21 reform is necessary across the whole organisation and in areas
12:57 22 left largely untouched by the Bergin Inquiry.

12:57 23
12:57 24 There is considerable uncertainty about the detail and scope of
12:58 25 any reform agenda and, in particular, what the corporate structure
12:58 26 of a reformed Crown Melbourne would be. There is considerable
12:58 27 uncertainty about the length of time required to achieve
12:58 28 a reformed Crown, being a Crown Melbourne which could be
12:58 29 described as suitable to hold the licence.

12:58 30
12:58 31 It is important to point out that much of the uncertainty arises
12:58 32 from the actions and failings of Crown itself. In addition to its
12:58 33 many failings, Crown has been reluctant, to date, to embark upon
12:58 34 thorough, retrospective or root cause analysis. Crown has been
12:58 35 hampered in delivering the reform it needs by the delay in getting
12:58 36 rid of old management and directors, and securing new directors.
12:58 37 The current directors are spread thin across the business and are
12:58 38 involved much more in management issues than is ordinarily
12:58 39 desirable for directors. There is difficulty and delay in securing
12:58 40 the right people for key roles, particularly while the company is
12:59 41 under the scrutiny of inquiries probing into its affairs. That is not
12:59 42 a situation which will end soon. There remains the West
12:59 43 Australian Royal Commission. But whatever else might flow
12:59 44 from these inquiries, ongoing close scrutiny of present and past
12:59 45 conduct should be expected, with the potential for further
12:59 46 revelations of poor conduct. Where an organisation is operating
12:59 47 under the yoke of a poor culture for more than 10 years,

12:59 1 behaviours become engrained at different levels. This has been
12:59 2 on display in these hearings. The kind of cultural change
12:59 3 necessary at Crown is enormous. It will be forced to occur under
12:59 4 the close scrutiny of regulators and the public. It could not be any
12:59 5 other way, to be frank. Being realistic, it might happen quickly,
12:59 6 but that is optimistic given the size of the problems. It could take
12:59 7 years and, in all probability, it will. On balance, it would be open
13:00 8 for you to find that the program of reform advanced by Crown is
13:00 9 insufficient to render it presently suitable or to outweigh the
13:00 10 gravity of the conduct which points to unsuitability.

13:00 11
13:00 12 Quite separately from the suitability grounds, there is the public
13:00 13 interest ground. I want to draw the Commission's attention to the
13:00 14 definition of public interest, which makes clear that, in this
13:00 15 context, public interest means the maintenance of public
13:00 16 confidence and trust in the credibility, integrity and suitability of
13:00 17 casino operations.

13:00 18
13:00 19 The evidence of current directors and senior management of
13:00 20 Crown goes a long way toward establishing that Crown has lost
13:00 21 the confidence, at least for the time being, of key stakeholders by
13:00 22 its sustained misconduct and, although it aims to win back that
13:00 23 confidence over time, Crown faces a very significant task in
13:01 24 doing so. It is open for the Commission to find on the strength of
13:01 25 those concessions alone that, at the very least, Crown does not
13:01 26 presently enjoy the trust and confidence of the public.

13:01 27
13:01 28 This Commission heard evidence from people in senior positions
13:01 29 at Crown that the company does sincerely intend to win back that
13:01 30 public confidence and is prepared to make the necessary efforts to
13:01 31 achieve that end. I want to be clear that there is no reason to
13:01 32 doubt the sincerity of those remarks. But the weight to be given
13:01 33 to those genuine intentions must be balanced against the gravity
13:01 34 of the misconduct which has led to the loss of trust and
13:01 35 confidence in the first place, and the realistic prospects that trust
13:01 36 and confidence in this particular licensee is capable of being
13:01 37 restored.

13:01 38
13:01 39 The misconduct which has given rise to the loss of confidence
13:01 40 and trust is at the most serious end of the spectrum. Crown's
13:02 41 misconduct, including: systemic and repeated failings as
13:02 42 an AML/CTF reporting entity; a provider of Responsible
13:02 43 Gaming; a casino that guards against organised crime influences
13:02 44 at the casino; a taxpayer; an employer who failed to prioritise
13:02 45 employee safety; and a regulated entity who was more concerned
13:02 46 with the risk of getting caught than with compliance, are all factors
13:02 47 which point very heavily in the direction that public confidence

13:02 1 and trust will be incredibly hard to regain. The misconduct or
13:02 2 poor conduct has occurred over a long period of time and signs of
13:02 3 it are still present.

13:02 4
13:02 5 All of these matters weigh heavily in favour of a finding that the
13:02 6 public interest would be better served by not having this licensee.
13:02 7 Weighing against this conclusion is the current, genuinely held
13:03 8 aspiration to reform. But that aspiration has its challenges: the
13:03 9 extent of rehabilitation required; the uncertain time it would take;
13:03 10 and the uncertainty of the outcome. On balance, it would be open
13:03 11 for the Commission to find it is not in the public interest for
13:03 12 Crown to retain the licence.

13:03 13
13:03 14 If the Commission finds that Crown is not suitable and/or it is not
13:03 15 in the public interest for it to continue to hold the licence, the
13:03 16 Commission is asked to do two things. I mentioned these at the
13:03 17 outset of these submissions. First, to inquire into and report on
13:03 18 what action, if any, would be required for Crown to become
13:03 19 suitable or for it to be in the public interest for Crown to continue
13:03 20 to hold the licence, and then to make any recommendations that
13:03 21 the Commission considers arising from its inquiry.

13:03 22
13:03 23 For the reasons already advanced, we submit, having regard to all
13:03 24 the evidence, it is open to find that Crown is not suitable and,
13:04 25 further, it is not in the public interest that Crown Melbourne
13:04 26 continue to hold the casino licence in Victoria.

13:04 27
13:04 28 It is appropriate to examine the consequences that such a finding
13:04 29 would produce under the Casino Control Act. The nature and
13:04 30 extent of the evidence and activities which underpin the findings
13:04 31 that Crown is not presently suitable to be a licensee and/or it is
13:04 32 not in the public interest for it to continue to hold the license in
13:04 33 Victoria would enliven under the Casino Control Act the
13:04 34 VCGLR's powers to commence disciplinary action as defined by
13:04 35 section 20(1) of the Act.

13:04 36
13:04 37 The term disciplinary action is defined to include: cancellation or
13:04 38 suspension of a licence; the issuing of a letter of censure; the
13:04 39 variation of the terms of the casino licence; or the imposition of
13:04 40 a fine not exceeding a million dollars.

13:04 41
13:04 42 The Casino Control Act does not contemplate that an entity in
13:05 43 Crown's current state, with the litany of serious failings which
13:05 44 have been discovered in two inquiries, could be granted a licence.
13:05 45 Crown is not, however, an applicant for a licence, it is instead the
13:05 46 incumbent licensee.

13:05 47

13:05 1 The Casino Control Act does contemplate that the licensee may
13:05 2 stray from the standards set by the Act, in terms of suitability and
13:05 3 public interest, and that it may even breach the Act or casino
13:05 4 licence from time to time without putting the licence at risk.
13:05 5 Infractions, indiscretions and breaches of a licence by the licensee
13:05 6 are addressed by the lesser consequences of censure, fine or even
13:05 7 suspension. The Casino Control Act contemplates, though, that
13:05 8 there is a point beyond which the failings are so grave that
13:05 9 cancellation of the casino licence is the only appropriate course.

13:05 10
13:05 11 It is open on all of the evidence for those regulating Crown
13:06 12 Melbourne's affairs to doubt whether they could ever trust Crown
13:06 13 Melbourne again. The Casino Control Act demands that
13:06 14 a licensee is suitable, rather than one in transition to or on
13:06 15 a journey to suitability. The Casino Control Act contemplates
13:06 16 that the casino licence is reposed in a person who is capable of
13:06 17 maintaining the trust and confidence of the community and the
13:06 18 credibility, integrity and stability of those operations. Crown is
13:06 19 neither of those things at present and, based upon the past and
13:06 20 recent past, that is so.

13:06 21
13:06 22 If the Commission is not satisfied that Crown is capable of
13:06 23 reform or sufficiently certain of the outcome of the reform agenda
13:06 24 at this time, then it must follow that the Commission could
13:06 25 recommend cancellation of the licence.

13:06 26
13:06 27 The Commission is required to consider the consequences of any
13:06 28 recommendations. The written submissions traverse the
13:07 29 consequences of cancellation, including the potential disruption
13:07 30 this may cause and ways in which that disruption may be
13:07 31 mitigated. Counsel Assisting are very mindful of those
13:07 32 consequences. While some level of disruption is regrettably
13:07 33 inevitable, the manner and timing of cancellation could influence
13:07 34 the extent of disruption, and we explore these matters in the
13:07 35 written submissions.

13:07 36
13:07 37 There are mechanisms within the Casino Control Act itself which
13:07 38 are intended to smooth out the bumps in situations like these,
13:07 39 though it is fair to say those mechanisms in the legislation are not
13:07 40 perfect and have never really been tested. Of course, this
13:07 41 Commission is asked to consider the possibility of reforms and
13:07 42 the mechanisms by which an unsuitable licensee might be
13:07 43 removed, and the effectiveness of the existing provisions in the
13:07 44 legislation may well be an area that attracts your attention.

13:07 45
13:07 46 If, on the other hand, the Commission takes the view that it is
13:08 47 open instead and preferable to find that Crown should have the

13:08 1 opportunity to implement its reform, one thing that is absolutely
13:08 2 clear is that the current state of the evidence does not support
13:08 3 a finding that Crown be left to its own devices to implement the
13:08 4 reform program. If the Commission takes the view that it is open
13:08 5 and preferable to find that Crown should have the opportunity to
13:08 6 implement its reforms, it would be open for the Commission to
13:08 7 find that either a period of suspension and supervision under the
13:08 8 current provisions of the Casino Control Act would be open, that
13:08 9 is a combination of sections 20 and 22, or, alternatively the
13:08 10 Commission might consider the appointment of a monitor, or
13:08 11 making recommendations about the appointment of a monitor in
13:08 12 a manner similar to that contemplated in NSW. Though it is
13:08 13 likely, depending upon the substantive findings made by the
13:09 14 Commission in due course, this could also require legislative
13:09 15 amendment to create the powers of a monitor.

13:09 16
13:09 17 The Terms of Reference require the Commission to consider the
13:09 18 suitability of the associates of Crown Melbourne. Their
13:09 19 suitability is particularly important if the Commission chooses to
13:09 20 provide Crown, or chooses to recommend that Crown be
13:09 21 provided with, the opportunity to implement its reform program
13:09 22 and strive for suitability. The written submissions set out in
13:09 23 detail observations made about each of the associates. I touch
13:09 24 upon a few of those matters as I approach the conclusion of these
13:09 25 submissions.

13:09 26
13:09 27 The Terms of Reference, as I have said, require the Commission
13:09 28 to inquire and report on the suitability of existing associates.
13:09 29 Existing associates include directors and senior executives of
13:09 30 Crown. It might also include CPH, and Counsel Assisting,
13:10 31 therefore, makes the follow observations in relation to CPH.

13:10 32
13:10 33 The Bergin Inquiry found that poor corporate governance
13:10 34 contributed to the issues which affected Crown. A significant
13:10 35 factor contributing to that conclusion was Mr Packer's and CPH's
13:10 36 influence on significant aspects of the governance of Crown,
13:10 37 comprising Crown's structure and operations. The Bergin Inquiry
13:10 38 recommendations in relation to governance focused on
13:10 39 minimising the influence of Mr Packer and CPH. It considered
13:10 40 that mechanisms were required to prevent a return to
13:10 41 a dysfunctional environment. In particular, it recommended that
13:10 42 no person be allowed to hold a shareholding of more than
13:10 43 10 per cent in a licensed casino operator without prior regulatory
13:11 44 approval and that it be a licence condition that any plan to share
13:11 45 confidential information with CPH and/or Mr Packer be subject
13:11 46 to regulatory approval.
13:11 47

13:11 1 The Bergin Inquiry also recommended the restructuring of the
13:11 2 board and jettisoning the remaining vestiges of the serious
13:11 3 imbalance caused by the influence of CPH over Crown's
13:11 4 operations, with some of its directors descending into the lower
13:11 5 tiers of Crown's management.

13:11 6
13:11 7 In evidence to this Commission, Ms Coonan agreed that as
13:11 8 a significant shareholder, CPH and Mr Packer exerted a lot of
13:11 9 influence on the Crown Board, the strategic direction of Crown,
13:11 10 as well as Crown's culture. As part of Crown's cultural reform to
13:11 11 reset from the top down, Ms Halton gave evidence to the effect
13:11 12 that Crown had been looking to appoint high-quality executives
13:11 13 who were not beholden to CPH or Mr Packer. Crown has since
13:12 14 removed all CPH nominee directors. The confidential
13:12 15 information sharing agreement and other service agreements with
13:12 16 CPH have been terminated. CPH has agreed with the NSW
13:12 17 authority that it will not use its shareholding to influence the
13:12 18 composition of the board until 2024. No such undertaking, as far
13:12 19 as we are aware, has been given to the VCGLR and the
13:12 20 undertakings given to the NSW authority are not enforceable by
13:12 21 the VCGLR.

13:12 22
13:12 23 At present, the evidence appears to be that the CPH shareholding
13:12 24 is not exercising influence. That is appropriate, as far as it goes.
13:12 25 The real issue, though, is to ensure that it does not happen again,
13:12 26 whether by CPH or really any other shareholder or interest. The
13:12 27 events of the recent past demonstrate that where a majority
13:12 28 shareholder is in a position to exert influence over the board and
13:13 29 senior executives, it can have terrible consequences for a casino
13:13 30 licensee. The situation that arose for Crown Melbourne under
13:13 31 Mr Packer's influence needs to be addressed so that it is not
13:13 32 repeated in the future, whether or not Crown Melbourne retains
13:13 33 the licence.

13:13 34
13:13 35 History is sometimes a good guide and very rarely is it ever the
13:13 36 case that a good idea is truly new. In 1983, Xavier Connor was
13:13 37 alive to the problems associated with the influence brought to
13:13 38 bear on a licensee by significant shareholders. Mr Connor
13:13 39 observed:

13:13 40
13:13 41 *There should be no power to transfer a licence which*
13:13 42 *should be personal to the holder. It is essential that the*
13:13 43 *licensing body be given ample opportunity to investigate*
13:13 44 *proposed changes either to the corporate structure of*
13:13 45 *a company which holds a licence or in a group of*
13:13 46 *companies of which it is part. The essential objective, the*
13:14 47 *essential object of all such investigations is to expose the*

13:14 1 *seat of effective control, which may often be hidden and*
 13:14 2 *then regulated. So too should there be a power to*
 13:14 3 *investigate any proposed sales of shares which would*
 13:14 4 *bring about a change in the corporate structure. Any*
 13:14 5 *person or corporation with a 5 per cent shareholding*
 13:14 6 *should be automatically subject to an investigation by the*
 13:14 7 *licensing body. A shareholding of that size and in some*
 13:14 8 *cases, even smaller may be significantly sufficient, in*
 13:14 9 *combination with other shareholdings, to effect vital*
 13:14 10 *changes in the personnel and policy.*

13:14 11
 13:14 12 Now, properly regulating the entity with effective control of the
 13:14 13 licensee is not without its complexity. One complication that
 13:14 14 arises in this case is that Crown Melbourne is a wholly owned
 13:15 15 subsidiary of Crown Resorts and the influence that was or may be
 13:15 16 exerted on Crown Melbourne arose or may arise from
 13:15 17 a significant shareholder's interest in Crown Resorts. The
 13:15 18 influence of a majority shareholder could be addressed by
 13:15 19 a requirement that a shareholder's interest in Crown Melbourne,
 13:15 20 whether a direct interest or indirect, not exceed 5 per cent without
 13:15 21 scrutiny by and permission of the regulator. In our submission,
 13:15 22 such an outcome would be wholly consistent with the
 13:15 23 observations made by Xavier Connor in 1983.

13:15 24
 13:15 25 Next, Counsel Assisting make the following observations about
 13:15 26 the current executive chair of Crown Resorts and the CEO of
 13:15 27 Crown Melbourne. We move now to Ms Coonan. As executive
 13:15 28 chair of Crown Resorts and director of Crown Melbourne,
 13:16 29 Ms Coonan is an associate of Crown Melbourne within the
 13:16 30 meaning of section 4 of the Casino Control Act. Ms Coonan is to
 13:16 31 be commended for her commitment to Crown in taking on the
 13:16 32 interim executive chair position. Undoubtedly, Crown needs to
 13:16 33 embark upon a program of change in an attempt to address the
 13:16 34 systemic organisational failings, many of which occurred while
 13:16 35 she was on the board.

13:16 36
 13:16 37 Ms Coonan's commitment to stay the course and try to lead the
 13:16 38 process of reform, however, does not by itself qualify her as
 13:16 39 a suitable associate of Crown Melbourne. This personal
 13:16 40 commitment to seek to achieve the necessary change, and do the
 13:16 41 right thing does not outweigh the fact that Ms Coonan's track
 13:16 42 record as a director of Crown Resorts and then as its chair makes
 13:16 43 clear that her inaction in the past clearly contributed to the current
 13:16 44 problems.

13:16 45
 13:17 46 Her actions since her evidence in the Bergin Inquiry in dealing
 13:17 47 with important issues of reform give little confidence that she is

13:17 1 the right person to shepherd in the extent of change required. If
13:17 2 Crown is to retain its licence, it would be open to the
13:17 3 Commissioner to make a finding that Ms Coonan is not a suitable
13:17 4 associate of Crown Melbourne.

13:17 5

13:17 6 As the CEO and a member of the Crown Melbourne Board,
13:17 7 Mr Xavier Walsh is an associate of Crown Melbourne within the
13:17 8 meaning of section 4 of the Casino Control Act. The written case
13:17 9 that we have prepared sets out in detail the submissions made in
13:17 10 relation to the suitability of Mr Walsh to continue in that role. If
13:17 11 Crown is to continue as the licensee, it concedes that it has
13:17 12 a significant task ahead to effect its reform agenda. To do so will
13:17 13 require extensive work and extraordinarily effective leadership.

13:17 14

13:18 15 Mr Walsh was not selected for his role as CEO or appointed to
13:18 16 the board because of his special skill or aptitude in leading such
13:18 17 an ambitious reform program. He was handpicked by Mr Barton
13:18 18 to fill a gap created by Mr Felstead's departure. Up to that point
13:18 19 in time, Mr Walsh was a senior executive in an organisation that
13:18 20 was beset by a range of structural and cultural problems. He was
13:18 21 Mr Felstead's second in charge. He was also heavily involved in
13:18 22 the underpayment of tax issue, which is the most troubling
13:18 23 example of cultural problems endemic at Crown.

13:18 24

13:18 25 Mr Walsh did not distinguish himself at the time or since as
13:18 26 a person able to recognise or willing to address or escalate issues
13:18 27 of importance or lead change. In the time since he has been
13:18 28 thrust into positions of greater authority, he has, with respect, not
13:18 29 risen to the occasion in a way which would give any confidence
13:18 30 that he has the necessary qualities to be a suitable associate of
13:19 31 Crown Melbourne at this time.

13:19 32

13:19 33 If it please the Commission, they are the submissions we seek to
13:19 34 make orally. Our lengthy written submissions will be furnished
13:19 35 later this afternoon.

13:19 36

13:19 37 Before completing these oral submissions, it would be remiss of
13:19 38 me if I did not pause to express the gratitude of Counsel Assisting
13:19 39 to all those people who have worked incredibly hard behind the
13:19 40 scenes in recent months and, in particular, in the last week. I
13:19 41 want to say on behalf of the counsel team that I would especially
13:19 42 like to thank Oliver Way, who has managed the production of
13:19 43 these hearings, all manner of logistical hurdles, not least of which
13:19 44 two COVID lockdowns, and the operators and transcript people
13:19 45 who have worked diligently to make the hearings in this matter
13:20 46 work seamlessly in all conditions and, of course, Solicitors
13:20 47 Assisting, the team at Corrs, who have worked tirelessly,

13:20 1 marshalling endless tranches of documents and, in particular, the
13:20 2 junior lawyers in that firm who shame us all by their work ethic,
13:20 3 legal acumen and dedication to the task. If it please the
13:20 4 Commission.

13:20 5
13:20 6 COMMISSIONER: Thank you, very much, Mr Finanzio.

13:20 7
13:20 8 We will adjourn for two weeks to hear the submissions from
13:20 9 Crown and perhaps briefly some of the other parties who have
13:20 10 been given leave to appear in these proceedings. Until then,
13:20 11 I will stand down.

13:20 12
13:20 13 MR FINANZIO: As the Commission pleases.

14

15

16 **HEARING ADJOURNED AT 1.20 PM TO A DATE TO BE**
17 **FIXED**

Index of Witness Events

CLOSING SUBMISSIONS BY MR FINANZIO

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