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TRANSCRIPT OF PROCEEDINGS

TRANSCRIPT IN CONFIDENCE

O/N H-817994

FEDERAL COURT OF AUSTRALIA

VICTORIA REGISTRY

MORTIMER J

No. VID 1274 of 2016

SHONICA GUY

and

CROWN MELBOURNE LIMITED and ANOTHER

MELBOURNE

10.15 AM, TUESDAY, 19 SEPTEMBER 2017

Continued from 18.9.17

DAY 6

MR R. MERKEL QC appears with MR P. GRAY QC, MR C. TRAN and MS Z. MAUD for the applicant

MR N. HOPKINS QC appears with MS G. COLEMAN for the 1st respondent

MR P. JOPLING QC appears with MR P. WALLIS for the 2nd respondent

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HER HONOUR: Yes, Mr Young.

MR YOUNG: Ms Bauer is the next witness, your Honour.

5 HER HONOUR: All right. Can Ms Bauer be fetched from outside, please.

MR YOUNG: Your Honour, while she's coming, I'm going to show Ms Bauer a brochure that was omitted from her exhibit bundle.

10 HER HONOUR: Yes.

MR YOUNG: I tendered it during the course of my opening. It is at tab 1181.

15 HER HONOUR: Yes. And you handed up a hard copy, I think. Good morning, Ms Bauer. Please, step into the witness box.

<SONJA BAUER, SWORN

[10.16 am]

20

<EXAMINATION-IN-CHIEF BY MR YOUNG

25 HER HONOUR: Thank you, Ms Bauer?---Thank you.

Have a seat. Pour yourself a glass of water?---Thank you.

Yes, Mr Young.

30 MR YOUNG: Ms Bauer, is your full name Sonja Bauer?---Yes.

And is your business address 8 Whiteman Street, Southbank?---Yes.

35 Could I hand you a copy of your affidavit which has some corrections?---Yes.

It's behind tab 159.3 for your Honour's assistance. Ms Bauer, would you please look at two paragraphs?---Yes.

40 One is paragraph 20?---Yes.

Which has a small deletion, and the other is paragraph 34?---Yes.

Which, again, has a deletion?---Yes.

45 And you've reviewed those deletions, and with those deletions you take the view that the affidavit sets out correctly your evidence?---Yes.

Thank you. Now, I did want to show you two brochures. Could I have those handed to you, please?---Thank you.

5 Now, the first of them, the – there's a yellow and black brochure which is a copy of a brochure?---Yes.

Now, Ms Bauer, was that brochure mistakenly omitted from your exhibit SB1?---This is an older brochure of - - -

10 Yes?---That's – yes.

All right. But I'm going to show you the up-to-date version of the same brochure?---Yes.

15 Would you look at the second document I've handed to you. Now, is that the up-to-date version of the same brochure?---Yes.

That second one is at tab 1178, your Honour. Now, Ms Bauer, should those two brochures be added to your exhibit SB1?---Yes.

20 Thank you. With those changes I've taken you through is your affidavit evidence true and correct?---Yes.

Thank you.

25 HER HONOUR: Thank you, Mr Young. Yes, Mr Tran.

30 <CROSS-EXAMINATION BY MR TRAN [10.19 am]

MR TRAN: Good morning, Ms Bauer?---Good morning.

35 My name is Mr Tran. Let me know if you need me to repeat any questions or you can't hear me. Now, Ms Bauer, you set out your employment history with Crown in your affidavit?---Yes.

40 Could I ask what were your responsibilities as a gaming machines operations manager?---As a gaming machines operations manager it was my duty to be in charge of the operation at that point in time, so ensuring that there was appropriate staffing levels and that the service needs of customers were met.

And in that role did you gain some familiarity with the machines that were on Crown's floor?---Generally, yes.

45 What were your responsibilities in relation to the actual operation of the machines themselves?---The operation of the machine was, for example – is if there were new

machines placed on the casino gaming floor, to ensure that the appropriate checks have been made for them to be operational for our customers to use, as well as, generally speaking, that they were maintained and accessible to customers to use.

5 And did you observe the machines operating on the floor?---Yes.

And then from your affidavit I see you became a senior gaming machines operations manager?---Yes.

10 Can you describe for the court your responsibilities in that role?---The responsibilities in that role probably strayed more into an administrative role as much as an operational role.

15 Okay. Now, was it when you became general manager community affairs that you first had direct responsibility for Crown's responsible gaming policies in Melbourne?---Yes.

And that was in June 2008; is that right?---Yes.

20 Now, Crown is committed to promoting responsible gambling, isn't it?---Yes.

Because Crown recognises that some people don't gamble responsibly?---For some people, yes, it can be difficult, yes.

25 Now, Crown recognises for these players who don't gamble responsibly gambling can be harmful; is that right?---Yes.

And that term is a term that you use in your affidavit at paragraph 6, I believe. It's, Operator, tab 159.3, and you will see in the third line there, Ms Bauer, that you say:

30

The purpose of the centre is to ensure the game is delivered at Crown in a responsible manner in recognition of the small proportion of the community for which gambling can be a harmful activity.

35 Can you explain to the court what you mean by "harmful"?---Harmful activity would be that something that – if someone engages in that activity, that perhaps then leads to be – to have difficulty in other areas of their life, depending on how much time and money they might devote to that activity.

40 In your experience since 2008 what sorts of difficulties can flow from this harmful activity?---That can include things like spending perhaps too much time or money in terms of gambling which can also affect the relationship someone might have with family members or friends and in the pursuit of perhaps other leisure activities.

45 Now, it's Crown's official policy, isn't it, that responsible gambling is each person exercising a rational and sensible choice based on his or her individual circumstances?---Yes, that's what it states.

Yes. That's what it states at paragraph 6A, isn't it?---Yes.

5 Now, in Crown's lexicon then is a responsible gambler a person who can exercise a rational and sensible choice based on his or her individual circumstances?---I think in Crown's lexicon in terms of, you know, the ability to exercise a rational and sensible choice is based on also information that is available for them to base their information and choice on that.

10 Sure. But a person who can gamble responsibly is a person who can exercise a rational and sensible choice based on their circumstances and the information provided to them; is that right?---Yes.

15 So is a person who isn't behaving like a responsible gambler a person who isn't exercising a rational and sensible choice based on his or her individual circumstances and the information provided to them?---Yes.

And that's how Crown understands their policy to work?---Yes.

20 Now, Crown's responsible gaming message is "stay in control"; is that right?---Yes.

So, again, in Crown's lexicon a responsible gambler is a person who is in control of their gambling activities. Is that fair to say?---Yes.

25 And, likewise, the converse, a person who isn't gambling responsibly may be a person who isn't in control of their gambling activities?---Potentially, yes.

Now, a lot of thought has gone into Crown's policies, hasn't it?---Yes.

30 You choose your words very carefully in those policies, don't you?---Yes.

And those policies draw on staff experience and academic and clinical research. Is that fair to say?---As much as possible, yes.

35 Now, something that you already mentioned in your answers is that an important aspect of exercising a rational and sensible choice is having information; is that right?---Yes.

40 And you will see there if you look at your affidavit at paragraph 6C, at the end of it you say you recognise customer rights and freedom of choice?---Yes.

Now, a feature of Crown's responsible service of gaming policy is that Crown recognises player's freedom of choice; is that right?---According to our policy, yes.

45 And you agree with that policy?---Yes.

You approved of that policy?---Yes.

And, as you recognised earlier, before a player can exercise that freedom of choice rationally it's important that they have information to inform that choice?---Yes.

5 And you would agree, wouldn't you, that a player should have as much information as possible about a machine to enable him or her to decide whether to play or to continue playing?---Yes.

Full disclosure of information allows them to make a fully informed decision?---Yes.

10 And can help them to gamble responsibly?---Yes.

And can help them to stay in control of their gambling?---Yes.

15 If we could please go, operator, to page – this is going to be difficult – 1743_0101. This is an exhibit to Ms Bauer's affidavit. The last digits again were 0101. And if you could zoom in onto the second column, operator, and scroll down to the third paragraph. So you will have to scroll down and move slightly to the left, if you can.

20 MR: Second column.

MR TRAN: Sorry, first column. That is my mistake. Now, Ms Bauer, this is from the responsible gambling code of conduct brochure, isn't it?---Yes.

25 And if you look at the paragraph that begins "while the decision to gamble lies with the individual" – do you see that?---Yes.

You agree with that paragraph, right? Just have a read of it to yourself?---Yes.

30 And it's Crown's official policy that to make that choice responsibly, our customers need to be informed about our gaming products. Do you see that?---Yes.

And you would agree with that, right?---Yes.

35 And if you could just turn to the next page, 0102, operator, and if we go to the first paragraph on the left-hand column, if you just read that paragraph to yourself, Ms Bauer?---Sorry, Mr Tran, was that the first or the second paragraph?

40 Sorry. The first paragraph, "responsible gaming occurs in a regulated environment". If you just read that to yourself. Do you agree with that paragraph?---Yes.

And again, that just reinforces your earlier answers, doesn't it, that an aspect of responsible gambling is having information available to you in order to make decisions about whether to gamble?---Yes.

45 Now, if, operator, you could open up tab 753. Ms Bauer, do you recognise this document? Let me know if you need the operator to flick through it?---I do, yes.

When was the last time that you read it?---I could not be clear. Some time ago.

Some time ago?---So.

5 Is this document available at Crown's machines?---This particular brochure?

Yes?---No.

10 Is it available at the centre in Crown? Let me know if you need the operator to flick through?---I can't be sure.

You can't be sure. Is – it's one of your responsibilities, isn't it, Ms Bauer, to manage the operation of the centre, right?---Yes, ultimately.

15 But you're not sure whether this particular document is available at the centre?---The only reason I'm not sure is because it is now quite an old document, from my experience, yes.

20 It's quite an old document. Okay. Yes, I think – operator, if you will turn to the first page of this document. Sorry, the second page. Ms Bauer, you will see there that's dated May 2009. Did you see that?---Yes.

25 Now, do you know if this document is available anywhere in Crown Casino at all?---It's not available on the casino gaming floor or any of those areas, no.

Do you know how often this – do you know if this document's available online?---I believe it is available online.

30 And why do you say that?---I think in the past I have Googled the availability of this.

Do you know how often it's accessed online?---No.

Do you know if anyone who plays at Crown Casino has accessed it?---No.

35 Do you know if your liaison officers inform players about the availability of this document online?---No.

40 Are liaison officers trained to inform players about the availability of this document online?---They're trained to inform players of the availability of information that is available, so – but this is not available on the casino gaming floor, so.

45 I will just ask my question again, Ms Bauer. Do you know if liaison officers are trained to inform players about the availability of this document online?---Not this particular document, no.

Do you have any reason to believe that people who aren't gambling responsibly have looked up this guide?---I don't know.

In planning and overseeing Crown's responsible gaming services, do you plan on the basis that people who aren't gambling responsibly will go and find this sort of document for themselves?---I don't know.

5 You don't know whether when you're - - -?---They - - -

- - - planning your services, your responsible gaming services, you make any assumption about whether people who aren't gambling responsibly will find this sort of thing out for themselves?---I don't know whether they're – they do make those – whether they do try and seek out this sort of document. I don't know.

10 Do you turn your mind to whether they may or may not search for this information in crafting your responsible gambling services?---When we're thinking about responsible gaming services, we think about what is easily available to our customers at the time, and this document is not part of that on the general floor.

15 Now I will turn to what's available at the machine, Ms Bauer. You recall exhibiting a number of brochures to your affidavit?---Yes.

20 Now the purposes of these brochures is to provide players with information to allow them to make an informed decision about whether to play. Is that right?---Yes.

25 Now none of the brochures you exhibited are actually available at the machine itself. Are they?---The brochures are not available at the machine. No.

Now, you would agree – wouldn't you? That if the brochures were at the machine, they would be more readily accessible to a player actually playing the machine?---Yes.

30 And having them at the machine would therefore make it easier for players to make an informed decision about their gambling?---They have availability of information at the machine itself. So – but a brochure may or may not be accessed.

35 Sure. I will just ask my question again. Having these brochures available at the machine would make it easier for players to make an informed decision about their gaming. Wouldn't it?---If they read them, yes.

40 Now there's no reason why you couldn't put these brochures at the machine itself. Is there?---At each individual machine? No.

As in – no, there's reason why you couldn't put them at each individual machine?---Yes.

45 Now, you mentioned in answer to one of my questions that there is information available at the machines. Could you describe to the court what that information is?---The information available is the player information display. So that is PRD for short.

5 Now why is the player information display there? What's its purpose?---The purpose is to ensure that people who are accessing that particular screen can access information about the – information about how many symbols it takes to win, particular combinations that might be the top or the lowest prize information and also other information about the game itself and how it contributes.

Because understanding how the game works is an important consideration in deciding whether to play that particular game. Is that right?---Yes.

10 Now, Ms Bauer, you mentioned in your affidavit at paragraph 7 – operator, this is tab 1 5 9.3.

15 You say that the centre has a subtle, discreet front-window display, which is intended to prevent people feeling stigmatised or experiencing any embarrassment about attending?---Yes.

20 Why did Crown think that players may feel stigmatised or embarrassed?---Crown knows that there is for some people some barriers to seeking help, and we wanted to ensure that it was discreet in both senses of the word. So knowing that there is some stigma associated through both our experience as well as research that I've read.

25 When you speak about barriers – can you explain to the court a little bit more what you mean?---Sure. We do know that for some people to identify that they have problem gambling behaviours – it can be very difficult to come to that decision. And people feel – can feel quite embarrassed about that, and they do – we – in our experience and also through what we've read in research – that they feel embarrassed about seeking help. It's something that's quite difficult for people to do. So in terms of having accessibility to that – we wanted to ensure that we can lower those barriers so that people can seek assistance, if they are feeling that way.

30 So is it fair, to say that some people who don't gamble responsibly have difficulty reaching out for help?---Yes.

35 Now is that why the brochures that you exhibited to your affidavit are likewise located subtly and discreetly at the edge of the rewards tables?

MR YOUNG: Just a moment. I object to the loading of the question with adjectives of that kind.

40 HER HONOUR: Rephrase the question, Mr Tran, please.

45 MR TRAN: Ms Bauer, can you describe to the court where the brochures that you exhibited to your affidavit are located at the rewards tables?---Sure. So there a number of rewards desks, which is the loyalty program that Crown offers. And there a number of those located throughout the casino gaming floor, and on – there's a large desk space, probably larger than this, and on a side or on both sides there will be brochures displayed about the responsible gaming support centre, about the code

of conduct, about player information displays, as well as – there’s also brochure stands that are located near cashier locations, where there’s also additional information displayed, and at all the casino gaming floor entrances there’s also information which includes the responsible gambling code of conduct as well as
5 other brochures that are displayed.

Now what’s – what do the staff at the rewards table do? What’s their responsibility?---The rewards desk – the staff there are generally taken from the gaming machines department, and they are therefore trained in the responsible
10 service of gaming. What they do is – they assist customers with any queries they might have with the loyalty program that the customer may be participating in or may be thinking about participating in. They’re there to provide information about all sorts of benefits that might be associated with that, and if a customer chooses to sign up, then they will be given information relating to the rewards program. So they
15 are there to assist with that. But additionally it’s also an information centre, I suppose. So when customers have inquiries about any elements about Crown, they can also be directed to the rewards desks as well.

So in one aspect it’s a general information centre?---It can be. Yes.
20

Another one of its purposes is to answer questions or sign people up to the loyalty program?---Yes.

That second part is its main purpose. Right?---It’s titled “The rewards desks”, and we also see it and in our code describe it as information desks as well.
25

Do you agree with me that its main purpose is to answer questions and sign people up to the loyalty program?---Yes.

Do you know how many people go to the rewards desk to ask questions about responsible service of gaming?---No.
30

Would you be informed, if someone made that sort of conduct – contact to the rewards desk?---If it was related to information about responsible gaming, if they were seeking perhaps self-exclusion or those sorts of elements, yes. We would be notified.
35

Sure. So sitting here do you know how often the rewards desks have been asked those sorts of questions in the past – say – one week?---No.
40

Now, Ms Bauer, are you aware that the applicant in this case complains about the fifth reel of the dolphin treasure machine being longer than the other reels?---Yes.

Telling players that information would be consistent with Crown’s policy to promote responsible gaming by disclosing information to players. Wouldn’t it?---I think disclosing general information to players about what’s available on the PRD screens on the brochures – yes. Yes.
45

I might just ask that again, Ms Bauer. Disclosing information about the length of the reels of the dolphin treasure would be consistent with Crown's policy to disclose information to players so that they can make an informed choice. Is that fair to say?---Yes.

5

Now Crown doesn't tell players of the dolphin treasure that the fifth reel is longer than the other reels. Does it?---No.

Crown could tell players that. Couldn't it?---Yes.

10

And, Ms Bauer, can you personally tell that the fifth reel is longer by just looking at the machine?---No.

Can you personally tell that the fifth reel is longer by playing the machine?---No, but I wouldn't expect to.

15

Now, Ms Bauer, are you aware that the applicant also complains in this case about the uneven distribution or dispersement of symbols across the five reels?---Yes.

Now telling players about that uneven dispersement on the dolphin treasure would also be consistent with Crown's responsible service of gaming policy of enabling players to make rational informed decisions. Is that fair to say?---Yes.

20

And Crown doesn't tell players of the dolphin treasure that the symbols are distributed unevenly across the reels. Does it?---No. We don't talk about specific games. So – no.

25

Now, Crown could tell players that information. Couldn't they?---Technically – yes.

For example – at a minimum, you could put a little placard next to the machine. That would be one option. Wouldn't it?---It could be an option. Yes.

30

Now, Ms Bauer, can you personally tell that the symbols are dispersed unevenly across the reels by playing the dolphin treasure?---I don't recall the last time I played a dolphin treasure machine. So I expect when I play a machine that the symbols are distributed – you know – whatever they are.

35

But you wouldn't be able to tell for sure that they are dispersed unevenly by playing the machine, would you?---Probably wouldn't give it that much thought, engaging that sort of activity.

40

Sure. And, now, Ms Bauer, you're aware that the applicant in this case also complains that the Dolphin Treasure displays images or emits sounds when the player wins credits, even though those credits are less than the amount that was wagered. Are you aware of that?---Yes.

45

Now, Crown doesn't warn players of the Dolphin Treasure that this happens, does it?---No.

5 And Crown could do so, couldn't it?---Yes. Technically, yes.

And you agree that telling players that information again would be consistent with your responsible service of gaming policy of informing players so that they can make a rational and informed choice about their gaming?---It could be contained in literature, yes.

10 And that literature could be made available at the machine itself?---It could be, yes.

15 Because then that literature would be available directly to the player playing the machine?---I suppose so because the player information display is accessible at the machine I'm not sure the value of adding a brochure to the side of the machine, if the information is already available at the machine at the discretion of the player.

20 But the player information display doesn't tell the player that the fifth reel is longer than the rest, does it?---No.

And it doesn't tell them that the symbols are unevenly distributed across the reels, does it?---No.

25 And it doesn't tell them that to expect images and sounds to play, if they win on a particular bet, even though they might be a win, is less than the amount that they wagered?---I think if you're playing and you have a win on a line that you're betting on, then certainly as – if I was playing the machine, if I had a win on a line, then I would not be surprised to hear a sound to say that I had won on that line. Now, whether that's different to what I had won on the entire game, but certainly if I had

30 won on a particular line.

35 Sure. I might just ask my question again, Ms Bauer. The player information display doesn't warn players to expect those images and sounds to display whether or not they ultimately have a net win, does it?---I don't believe the player information display does, no.

40 Now, Ms Bauer, you've attended Responsible Gaming Committee meetings for some years, haven't you?---Sorry. Can you be more – the Responsible Gaming Committee meetings - - -

Sorry. I will take a step back, Ms Bauer. Crown has a Responsible Gaming Committee, doesn't it?---The Crown Resorts Responsible Gaming Committee. Is that the thing you're referring to?

45 Yes?---Yes.

And you've attended its meetings for some years?---Yes.

How often are these meetings held?---They are held several times a year, I believe, five to six times per annum.

5 Now, at these meetings it seems like the committee typically notes what it is referred to as a Crown Melbourne Responsible Gambling Report?---Yes.

I haven't seen one of these reports. Could you describe to the court what's typically found in these reports?---What's typically found in those report includes updates of what has occurred at Crown Melbourne within the Responsible Gaming Department or the Responsible Gaming Support Centre, so it might be what activities have taken place in relation to, say, Responsible Gambling Awareness Week, what attendances might have been made, or if we have engaged in a responsible gaming activity such as a campaign with the gaming machine staff where we talk about, you know, knowing responsible gaming, where we might attend briefings or musters with gaming staff and security staff. It might be information relating to joint operations we might have with the Victorian Responsible – sorry – with the Victorian Commission for Gambling and Liquor regulation, so where we might try and, you know, focus on finding people who might be breaching their self-exclusion. It might be things like attending activities related to the Victorian Responsible Gambling Foundation and those sorts of elements, so a general update of what's happening.

General update?---Yes.

25 And also at these meetings it seems that the committee typically notes what is referred to as a gaming environment scan?---Yes.

What's a gaming environment scan?---So a gaming environment scan looks at what in the period that the reporting period might is what sort of newspaper articles have come to notice that might be of interest to the committee to be aware of. It might be an abstract of some research that has come to notice that might be of interest for the committee members. It's those sort of elements. So newspaper articles that are sent both in – domestically as well as some international ones.

35 As part of this scan are there summaries of academic and clinical research as well?---The abstracts, yes.

Would there ever be full versions of the studies?---Generally focuses on abstracts.

40 And what does the committee do with the information that it learns from the committee meetings?---From my experience in being in the meetings, the committee would read the environment scan and consider it, and if they had any questions, they might then ask those questions in the meeting.

45 Does the information noted in the committee meetings inform Crown's decisions about what machines to have on its floor?---No.

Does it inform Crown's engagement with manufacturers about the possible content of machines?---No.

5 Does the information that the committee learns during the meetings inform anything that Crown does?---Yes. Generally speaking, the committee is there to monitor what is happening in that space, and if they believe that there might be something of interest for Crown Melbourne or, indeed, Crown Perth to pursue, it might recommend that.

10 In your experience, since 2008 has anything coming out of these committee meetings ever been communicated to the team responsible for purchasing machines?---No. Not in my experience, no.

15 Now, Ms Bauer, one of your personal responsibilities is to familiarise yourself with developments in the area of responsible gambling; is that right?---Yes. My – yes.

20 Now, Operator, if you could go to tab 718, please. Now, Ms Bauer, do you recognise this document? We can ask the operator to flick through it at your leisure. Let me know if we need to ask the operator to turn the page. Just let me know when you're ready whether you recognise this document?---It's not familiar to me, no.

So this is a submission by Dr Livingstone and Mrs Francis to the Gaming Machine Arrangements Review in 2015. Are you familiar with that review?---No.

25 Operator, if you could turn to page 24009. It's in the same document. And if you could zoom in on the final paragraph. So, Ms Bauer, if you could just read that paragraph to yourself and let me know when you've done that?---Yes, I've read it.

30 Now, I will just ask you again are you aware of this document?---I don't recall it.

You don't recall it. And you weren't aware – or you don't have any recollection of this review being carried out?---Not specifically. It's – there's a number of reviews that occur, so I don't have a specific recollection of this one.

35 Now, in managing Crown's responsible service of gaming policy do you make any assumption about whether players who don't gamble responsibly would find this sort of document for themselves online?---I don't know.

40 In your – well, given your experience since 2008, would you expect players who don't gamble responsibly to know of this sort of submission?---I don't know to what extent players might engage in things that are available online, so I don't know.

Do you think it's likely that they would do so?---Some may. I don't know.

45 Now, another of your responsibilities, Ms Bauer, is to ensure that Crown is complying with legislation. Is that right?---Yes.

And responsible gambling liaison officers likewise receive training about applicable legislation, don't they?---Yes.

5 Now, operator, if you would go to tab 1140, please. Now, this is an old RGLO training manual, isn't that right?---Yes.

I think this hasn't been in use since 2008?---Yes.

10 Is that right? Has it been replaced with any other written document?---Not with a training manual per se.

15 Not with a training manual. Now, this particular manual was developed based on Crown's experience in relevant academic and other research. Is that right?---To that point, yes.

Is it still a fair guide as to the training of RGLOs today?---It's a guide in terms of what some of the topics that - - -

20 Your Honour, apologies. Could this be removed from the public screen? I'm told that - - -

HER HONOUR: Is it one of the documents that's subject to the interim orders, is it?

25 MR YOUNG: Yes. To subject to an undertaking.

MR TRAN: Yes.

30 HER HONOUR: Subject to an undertaking - - -

MR YOUNG: Yes.

HER HONOUR: - - - not to an order.

35 MR YOUNG: No.

HER HONOUR: A moment. All right.

40 MR TRAN: Yes. I apologise. I forgot that this one, while not the subject of any of the interim orders sought, is still the subject of an undertaking. That undertaking was subject to any further order of the court. Given that it has been displayed online, I would seek leave only for the purposes of having to it on the screen there.

45 HER HONOUR: I think you can continue for the moment with it not being shown on the public screen, Mr Tran, and we will deal with it in due course.

MR TRAN: Now, Ms Bauer, if – is this manual still an accurate guide as to the training of RGLOs?---Not an accurate guide, no. It's something that was in play until 2008, and then beyond that, there is certainly – I recognise perhaps some of the topics that would be covered, but it's not an accurate guide to all the things that an
5 RGLO might be trained in.

Sure. Operator, if you could open up this page and the next page side by side. Now, if you can just read to yourself the legislation listed there, Ms Bauer, can you let me know what legislation you're responsible for ensuring compliance with?---The one I
10 recognise most is the Casino Control Act 1991.

Sure?---And one that's not listed because it's out of date, I suppose, but the Gambling Regulation Act, but that's not described as I would ordinarily see it there.

15 Sure. If you just have a think now either by reference to the document or - - -?---It's down there. Sorry. I beg your pardon, Mr Tran. It's in the Gambling and Regulation Act 2003.

20 Either by reference to this document or just from your own day-to-day responsibilities, can you tell the court what legislation you're responsible for ensuring compliance with?---So we have the Casino Control Act 1991 and the Gambling Regulation Act 2003.

25 Any others?---There are others, but they're sort of our main ones that we would be concerned with when dealing generally with what we do.

30 On a day-to-day basis, do you consider – do you concern yourself with ensuring compliance with Australian consumer law?---On the day-to-day basis, I don't recall having that as part of my day-to-day activities that I might do. I'm aware of Australian consumer law, but in terms of a day-to-day basis, it's a general notion, I suppose.

35 Now, what legislation are RGLOs trained to ensure compliance with?---With the Casino Control Act and, where it relates to the casino, with the Gambling Regulation Act 2003.

40 And what about the Australian consumer law?---There is some training that we do in relation to consumer law, but I don't recall specifically what that applies to right now.

And you don't specifically recall RGLOs receiving that training?---There is an online training format that is completed.

45 But you can't tell the court anything more about what the nature of that training is?---I think it's just the general consumer law, but as it pertains to what the activities might be, I think from recollection, with how we deliver – it has been a while since I've done it, sorry. I couldn't be clear and specific, no, I'm sorry.

Can't be clear. Operator, just on the lawyer screens, could you go to tab 1133. Now, this is still from that old training manual. Is that right, Ms Bauer?---It looks like the old training manual.

5 Now, if you could – operator, if you could turn to the next page. And, Ms Bauer, do you see there the second bullet point from the top? Now, if you could just read that to yourself. It's the one that starts with the word "we". If you read that to yourself and let me know whether that is still an accurate description of what RGLOs are trained in at the moment?---I think there are elements of this that would still apply,
10 but given that there is nearly 10 years old since the last time it was used, there are probably elements that you would update.

So what would you update?---I think it's true to say that we can't solve all problems. We can do all that we can to assist in our professional capacity and inform. It is –it's
15 probably still an experience that people are in different stages of wanting to be ready to engage in change, so we – we are conscious of how intrusive, I suppose, we can be to a person's life as well, so it's a really complex situation, so – and again, we don't use this training manual anymore, so you know, the language has probably moved
20 on, and you know, it's true to say that we make every effort to provide them with appropriate material and contact details and motivate a change for the better. And, you know it is still something where a person – you know, we need to be respectful, so I know it says respect, but generally we need to be respectful, and we're very, very mindful that in our interaction, we are clear and informative, but we certainly
25 wouldn't want to cause any further issues or harm.

Now – sorry, I didn't meant to cut you off, Ms Bauer. Is there anything more you wanted to say in answer to that question?---No, no. That's all right.

Now, employees are told not to attempt to counsel any customers but to refer them to
30 an RGLO instead. Is that right?---Yes.

Now, in your affidavit, you say that approximately 20 persons formally participate in counselling services at the centre – that's at paragraph 29?---Yes. With the
35 responsible gaming psychologists, yes.

So those 20 persons are the amount of people who formally participated with one of the psychologists there?---Yes.

Do you know how many people contacted an RGLO in the calendar year 2016?---In
40 the calendar year 2016, specifically contacting directly an RGLO, no, I don't, no.

Now, in accordance with the Code, all interactions will be recorded in the register; is that right?---Yes.

45 And responsible – the responsible gaming coordinator is responsible for recording all interactions with an RGLO on the contact register; is that right?---The responsible

gaming liaison officer will record the interactions and sometimes the coordinator will record interactions just on checking things.

5 So all interactions that an RGLO has in relation to responsible gaming with a customer should be recorded somewhere; is that right?---Yes, in the register.

Now, do you know how many interactions occurred in the past week?---In the past week it was probably – I would generally think monthly, which is why I'm hesitating.

10 Okay. Monthly. Sure, sure?---So monthly, we could record anywhere between 600 and 800, roughly speaking, interactions.

15 And what's – what sorts of interactions are those? I'm not looking for specific details but, I guess, the range. Would it be, even a 15-second interaction would be recorded?---If it's a – one of our staff saying – like – greeting someone they may have had an interaction with at some point – that would probably not be recorded, because it's just a general greeting. But if someone who has either had a conversation with one of our staff members on the casino gaming floor or in the
20 responsible-gaming support centre – then that would be recorded. Yes.

And do you follow up with these individuals?---Depending on the nature of the conversation, we may.

25 But there's no formal policy on that. Is there. That's left to the discretion of the IGLOs?---It's – it is up to the discretion – in terms of what happened in that conversation. Yes.

30 Now what qualifications do IGLOs have?---They are not required to have any formal qualifications.

Okay. How many IGLOs do you currently employ?---We employ seven IGLOs.

35 Do you know what their backgrounds are – in terms of educational qualifications?---I know some of them. Yes.

40 And what are those?---There's a formal qualification gained overseas with one of them. He's a surgeon. Another one is a qualified librarian. Another one has a generalist qualification in – I think – was – it's a bachelor of arts. There is someone who has a certificate 3 in security. There is someone who has no qualifications. What they generally have in common is that they've had experience on the casino gaming floor.

45 Now, Ms Bauer, in your affidavit you refer to the 13 observable signs. Do you remember that?---Yes.

5 This at paragraph 14 of your affidavit. Now do you know how long Crown has been using these 13 observable signs?---We've been using the ones that we have quoted here for at least a couple of years, as quoted in the responsible gambling code of conduct. But generally speaking – we've used elements for – of those signs for longer than that.

And you say that this is drawn from the experience of centre staff and research papers. You see that at paragraph 13?---Yes.

10 So Crown regarded those particular studies you identified there as providing a sound basis upon which to base the observable signs?---We observed what the studies were talking about and could see – you know. Some of that resonated with our experience as well as – obviously – something that was found in academia to be something to be very aware of.

15 And so Crown recognised that those three studies, the ones you've referred to there, provide a sound basis upon which to base the observable signs?---Yes.

20 If I could turn to the first one. It's tab 26.1. Now in fairness, Ms Bauer – this is a document conveying the views of various experts. Is that right?---Yes.

It's fair to say that the experts didn't reach a consensus view. Did they?---From recollection – there was some diverse views. Yes.

25 Operator, if you could go to page – I will just refer to the last two digits. Page 18. And so this is from a paper by Professor Mark Dickerson and Dr John Haw.

30 You will see there, Ms Bauer, a heading under “impaired control experienced by regular players”. Do you see that?---Yes. Yes.

Is a degree of impairment of control something which the centre has experienced in dealing with players who don't gamble responsibly?---In the sense of what I understand to be – yes. There may be some control issues. Yes.

35 And what do you mean by “control issues”?---Well, the people finding it difficult, to limit their time and money when gambling. So - - -

And – sorry. Continue. And control issues in stopping play?---Potentially – yes.

40 Because I think you said before that at least some of the elements observed in these studies resonated with the Crown centre's experience?---Yes. Yes.

45 If you could then please, operator, go to page 24. Now this is from the same document, paper by Professor Robert if you go below “what are problem gambling behaviours”, the top.

If you read that to yourself, Ms Bauer, and let me know when you've done that?---If you could move – if the operator could move it up a bit to – is this what - - -

Sorry. Operator, if you could move it up a little bit. Thanks.

5

THE WITNESS: Sorry, Mr Tran. Are you referring to - - -

MR TRAN: Sorry. Sorry. I was just referring, Ms Bauer, to the text below the heading “What are problem gambling behaviours”?---Right. I beg your pardon.

10 Sorry. I thought you meant the – yes. That's fine. Thank you.

The first heading. Sorry. Let me know when you've read that paragraph?---I've read thank you.

15 Now again does that resonate with the centre's experience dealing with at least some players who don't gamble responsibly?---Some elements. Yes.

Which elements are those?---I think the – in terms of – it's stated as recouping their losses. I think today's terms are probably more like “chasing your losses”.

20

Sure?---I think there's the perceptions around gambling and luck that are affected.

Those don't resonate, or they do resonate?---No, no. They do – in terms of – yes.

25 There might be some perceptions of – around luck that could be – you know – potentially erroneous and – you know – the potential around control over affecting an outcome over a machine. Those sorts of things. And I think sometimes – yes. People could still confuse – they might be able to influence or have some skill over a machine. Those sorts of things that – and that understanding around the independence of each game as well. So – yes.

30

Now, operator, if you could go to document 26.2.

This is the second document referred to in your affidavit, Ms Bauer. So this is a report prepared for Gambling Research Australia identifying problem gamblers and gambling venues?---Yes.

35

Are you familiar with this document?---Yes.

So, operator, if you could go to page 68. Again I will just refer to the final two digits. And zoom in on the top paragraph.

40

And so, Ms Bauer, you will see the second and third lines. The vast majority of problem gamblers either do not seek help or are reluctant to seek help until their circumstances reach a point where they have no other choice. Does that resonate with the centre's experience with players who don't gamble responsibly?---It can. Yes. Yes.

45

And if you turn to page 75, operator. Sorry. Page 75, operator. Paragraph 6, which is the second full paragraph. Thank you.

5 Now you will see there, Ms Bauer, that the second sentence says, given that at least 70 per cent of problem gambling is consistently been found to be attributable to gaming machines, it is logical, for this type of gambling to be a principal focus of the investigation. Do you see that there?---Yes, I do.

10 In your role and since 2008 have you become aware of research about the prevalence of problem gambling or irresponsible gambling and EGMs in particular?---Yes. I'm aware of research that focusses on the fact that EGM play can be more problematic for a larger population. Yes.

15 And is that sort of information communicated to other areas of Crown Casino outside of the responsible-gaming unit?---I think when – for example – there are discussions with management or through some of the meetings that you've told – that you mentioned earlier – so for example – a study that might refer to that – that might be raised. Yes. But specifically do I send an email to people saying it's – this is the case? No, I don't.

20 In your experience, is it the case that players who don't gamble responsibly tend to be those who play on EGMs?---Look, I know that that – that's the experience of the research and that, you know, some of the people that we see might have that experience themselves, and I can only go by what I know through the research in terms of what the higher percentage might be. So the most recent study that the Victorian Responsible Gambling Foundation completed talked about that, yes, there is a higher rate of problem gaming behaviours in people who play machines.

30 Now, you said that you're familiar with these studies?---Yes.

35 Do you regard them as reliable?---I think generally studies we need to take note of them. Quite often studies will end with "further research is required", so I'm very familiar with that. So I think there's as reliable as can be when you take into account methodologies and limitations and all those sorts of elements. So it tends to be, you know, that they're the aspects that we deal with, yes.

40 Yes. And just focusing on the centre's experience, is that consistent with what the research says there? Maybe not 70 per cent, but a high proportion of problem gambling or irresponsible gambling is found to be attributable to gaming machines?---I suppose we don't deal with – we don't ascribe irresponsible gambling or problem gambling to people. We're not in a position to make those assessments, so we talk about people experiencing difficulties with their gambling. We do have a percentage of people that will nominate that they tend to play machines more than they might play table games.

45 Yes?---So we do experience people who have difficulties with gambling and gaming machines, as we do have experience with people who have difficulty with maybe

gambling on table games. So I'm not sure. Yes, we do have that experience may be an answer to your question.

5 Do you know what proportion have a particular problem with EGMs?---I know what proportion might be perhaps identifying as people who – well, who are self-excluding from a particular product, so people don't always talk about the product that they're engaging with with us. Sometimes we know that, sometimes we don't.

10 And with self-exclusion what proportion are self-exclusions from EGMs?---There would be a greater proportion of people who self-exclude from table games because we are the only entity that operates table games.

15 That makes sense. Now, if you could go to page 202, Operator, still in this document. If you go to the second paragraph in particular. Thank you. Now, Ms Bauer, you will see at the end of the second line it says the CPGI was used in the study. Do you see that?---Mmm.

Are you familiar with the CPGI?---Generally, yes.

20 And you're aware that it ascribes certain people into a category of problem gamblers, moderate risk gamblers, low risk, none?---Yes.

And a problem gambler, at least according to this - - -?---Excuse me. Sorry.

25 Do you need a glass of water?---No, no. I've got plenty of water. Thank you.

And you're aware, Ms Bauer, that under the CPGI a problem gambler – this is – for the CPGI is someone who scores eight plus?---Yes.

30 And the moderate gambler is three to seven?---I don't recall the specifics of it. I don't administer this test myself. So - - -

35 Now, does Crown have a particular view on the CPGI? Sorry. I should be a bit more specific. Do liaison officers get any training at all about the CPGI?---No. They're not trained to use it. They're aware of it, but not trained to use it.

So in their training they're at least made aware of it?---Yes.

40 And what are they told about it?---To be honest, I don't recall specifically, but that there are – it's in the context of that there are a number of instruments that might be used to ascertain whether someone is, you know, a problem gambler per se; however, that they must be treated with caution because, generally, they're only applied in terms of someone that is trained to do so and is usually a psychologist or someone like that. So we're very, very careful that we don't confuse our training
45 with people, you know, thinking that our responsible gaming liaison officers are counsellors, which they're not.

Now, a player who isn't gambling responsibly, can they have any correlation with the CPGI categories?---I don't have them in front of me, so - - -

5 Well, a problem gambler who scores more than eight on the CPGI index, would you expect that person to be of interest to your centre?---We don't administer those tests.

I understand?---So we wouldn't be able to recognise if someone has a particular – a CPGI or PGSI, which is the – you know, that's another part of it. So it's not administered for people that come in, so we don't rely on that in terms of that
10 interaction, no.

Sure. You don't rely upon it. I understand that. But do you have any view on whether someone who scores as a problem gambler, using the CPGI, would be someone that the centre would be interested in?
15

MR YOUNG: Your Honour, I do object. It's going too far, having regard to what the witness has said about her knowledge and experience of the screening device. To put a question as broadly as that – the witness has made it clear she's not qualified to answer detailed questions about the application of this screen.
20

HER HONOUR: Yes. I think that's a fair objection, Mr Tran.

MR TRAN: Yes, that's fair.

25 If I could then go, please, to tab 26.3. So this is the third document that you refer to in your affidavit, Ms Bauer, in relation to the observable signs. Do you see that?---Yes.

Now, Operator, if you could go to page 394 of that document,, and if you could go to
30 the second paragraph.

MR YOUNG: Just a moment. From the heading, this doesn't seem to be the document to which the witness referred in her witness statement. It has got a different author.
35

HER HONOUR: All right.

MR YOUNG: I will just check that. Apologies, your Honour.

40 HER HONOUR: Well, we will just check that.

MR YOUNG: It may. I just don't know.

MR TRAN: I believe it is – it has the same discovery number and the same authors.
45

MR YOUNG: All right. Different order. Sorry.

MR TRAN: Now, Ms Bauer, just looking at page 0394, the second paragraph, you will see there the – if you just read to yourself the first two sentences?---Is this the one commencing “problem gambling”?

5 Yes, that’s right. Have you read those to yourself?---Yes.

Now, Ms Bauer, in your official capacity were you aware that the Productivity Commission issued a report on gambling in 2010?---Yes.

10 And were you aware of the general findings that it made about the prevalence of gambling on EGMs?---Yes.

15 What did you do with that information in your official capacity?---We – well, what I did is I read the Productivity Commission report and, in fact, was also involved in elements of that through presenting some information to the commission as well in Canberra. So very mindful of this information, and from that there was a lot of debate, but, personally, at that time it was more about informing and seeing where then it went further and how it may or may not instruct us in how we deliver the services and programs that we deliver. So it forms part of that general knowledge.

20 Now, Ms Bauer, you said that you yourself presented to the Productivity Commission?---Yes.

25 Can you describe to her Honour what it is that you told the Productivity Commission about?---Sure. So we were requested through one of the peak bodies, the – at the time it was called the Australasian Casino Association, and a number of members from that presented to the commission, and the commission-specific request was around our engagement with problem gambling health services and how, in general, casinos found that interaction with the problem gambling health services gamblers help, so specifically that was what was entailed in that.

35 MR TRAN: Now, did the Productivity Commission estimate that a high proportion of gambling revenues from EGMs came from problem gamers?---Yes, I recall that there was an estimation made, yes.

Is that Crown’s experience as well?---In terms of the correlation and those sorts of things, I couldn’t say.

40 It’s not part of your responsibilities to know that sort of information?---No. I don’t know.

45 Is there anyone at Crown who might know about that?---Well, I think in the Productivity Commission they made some calculations around what might – what revenue might be derived from people who play EGMs who might be problem gamblers, and I think that information was taken from a number of studies which incorporated I think elements from New South Wales and from Victoria and from Queensland and those sorts of things, so I think it was an estimation that from

memory was anywhere between 30-something and up to 60-something, and that was sort of a mid-point that was found, but in terms of is that an experience or can that be ascribed to what we think it is, I think there has generally speaking always been a bit of a question mark over that. It's difficult to sort of prove it back to anything, so yes.

5

I think you answered to me that it's not really in your responsibilities to know that sort of information about the number of - - -?---Well, in – in terms of – in relation to the productivity and the estimation of problem gamblers that might be EGM players and all those sorts of things, I don't know.

10

Now, operator, if you go to tab 395.1.28. Do you recognise this document, Ms Bauer?---Yes, I do.

15 What is it?---It is a – an update from one of our peak bodies, which is the Australasian Gaming Council, which periodically updates members on a precis of research.

Is it one of your responsibilities to review these updates?---I receive those, yes.

20 Do you read them?---Yes, I do.

Are these the sorts of things that are discussed in that gaming environment scan at the committee meetings?---Yes, they are.

25 Do you - - -?---Well – I beg your pardon.

Of course?---Sorry, can I just specify that they are included as part of the environment scan, and on occasion they may or may not be discussed. I couldn't be certain which ones.

30

Now – thanks. Do you recall the specific document itself?---I do, yes.

And do you recall the Schottler study into the impact of structural characteristics of electronic gaming machines?---As it's written here, yes.

35

Have you ever read the full report by Schottler Consulting?---Not the entire report. It's, I think, several hundred pages long, and quite often it's difficult to understand all the aspects of that – I don't understand all of it; I'm not a psychologist, nor am I an expert in other areas. Generally speaking, though, taking onboard what might be able to be useful for the responsible gaming support centre, so.

40

So you were reading the Schottler report to see if it had any insights for the responsible gaming - - -

45 No. She didn't say she was

THE WITNESS: As I would generally any research I read, is there anything of use.

MR TRAN: If I could just clarify this. Did you read the full report or just the extract? As in the extract in this - - -?---I don't recall reading the full report. I may have read elements of it.

5 Okay?---But I've read this, yes.

Now, did you distribute this more generally to anyone outside the responsible service of gaming employees at Crown Casino?---This went to – 2015 – I believe this probably went to the board committee, and as members, it may have gone to other
10 managers, but I personally didn't distribute it, no.

And you personally don't know if it did get distributed - - -?---I don't know, no.

Your Honour, I need to go very, very briefly – I expect it will probably only take me
15 five minutes – to two confidential documents. I will be asking about the details of one of them in particular, and for that reason I would ask, consistently what has gone before, to close the court. I think it should only take me about five minutes, but I will be going to the details of one document in particular.

20 HER HONOUR: All right. Do you need – can you ask about the other document in open court?

MR TRAN: No. I don't think I could ask about that one either, because that is also
25 the subject of a confidentiality claim, and in any event, the questions that I ask about that will probably be linked a little bit to the other document.

HER HONOUR: Are these documents that are covered by the orders that I've made or not?

30 MR TRAN: I believe so.

HER HONOUR: Or are these documents - - -

MR TRAN: They were on the list that Mr Young addressed your Honour about for
35 suppression orders.

HER HONOUR: They are or they are not?

MR TRAN: They are.
40

HER HONOUR: So they are covered by the interim orders. Is that right?

MR TRAN: Yes. So I think they are both covered, your Honour, by the interim
45 suppression orders, and also they were indicated as documents over which Crown would make a claim of confidentiality as well.

5 HER HONOUR: Very well. Well, ladies and gentlemen, those of you who came in court yesterday have heard this. The hearing will now be closed, and a sign to that effect will be placed on the door, so if you're not either part of the legal representatives or part of the parties, please leave the courtroom now. Until further order, all persons – I order that all persons other than the parties and their legal representatives are to leave the court.

10 <THE WITNESS WITHDREW

[11.29 am]

CONTINUED IN TRANSCRIPT-IN-CONFIDENCE

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[11.29 am]

5

<CROSS-EXAMINATION BY MR TRAN

10 MR TRAN: Operator, if you could go to tab 1124. Sorry. It's an Excel document. Apologies.

HER HONOUR: Just before you start, Mr Tran, so this is the only part of the cross-examination you need the court closed for.

15

MR TRAN: Yes.

HER HONOUR: All right. Thank you.

20 MR TRAN: Now, Ms Bauer, have you seen this document before?---No, I have not.

You will see at the top it says it's a summary report obtained from players' use of Crown rewards card in conjunction with the 38 Dolphin Treasure EGMs for the 12 month period ending 16 November 2016. Do you see that?---Right. Yes, I do.

25

YES. In your role do you find out information that is recorded by Crown in respect of loyalty card members?---Not this type of information, no, but I have access – well, we have access to the loyalty program information as it pertains to individuals.

30 So in your role you have access to information about how often loyalty card players use particular machines. If they do use them, you do use their card; is that right?---It will record information. It doesn't say this is a Dolphin Treasure machine or anything like that.

35 So the information that you have access to doesn't tell you what particular machine that they're using?---No.

What do you access the loyalty card information for in your role?---The staff might access information as to – if we're having a discussion with someone about any of their play activities and those sorts of things, we might look at their activity, and, you know, frequency and those sorts of things of access, but in terms of this, no, I've not seen that.

45 Okay. Recognising that you haven't seen this before – so just let me know if you can't answer this – do you know what EGM stroke means? It's one of the columns, column E?---I do recollect the term from when I was working more specifically in gaming machines.

And what do you recollect?---Actually, I'm sorry, I can't remember particularly stroke. So I'm familiar with the term, but I can't remember what it means. I'm sorry.

5 Okay. Now, Operator, if you go to tab 1058 and scroll probably to the next page, I think, and if you could zoom in on the – thank you. Now, Ms Bauer, do you recall conducting a pilot program in about 2015 about the use of loyalty card information to identify players who aren't gambling responsibly?---A trial, yes.

10 And Crown didn't go ahead with that trial or didn't – after conducting the pilot, didn't go ahead and use the loyalty card program on a consistent basis?---After the trial, no, we did not.

15 And why is that?---We found that, based on the results of the trial, we were seeking the effectiveness of using player data as a means to potentially identify people who might be experiencing difficulties with their gambling, and we found that at that point in time that may not be a terribly reliable indicator but would seek to look at this further down the track.

20 And do you remember why you determined that it wasn't a reliable indicator?---I think if you scroll through the document into the last paragraph, the conclusion.

25 If you could turn the page, Operator, I think, and turn the page?---So going on to the objective of the trial, an indication of the effectiveness of using player data, and we've found that through using that data and then extracting players that we may need to approach which we then approached, and then we found that there was such a small percentage of people that actually indicated at some level of, you know, may be experiencing some difficulty was quite small compared with the volume of work and those sorts of elements that went into it, but certainly we are, you know,
30 cognizant of the fact that those elements were some years ago now and things change over time. So we're interested in pursuing that further.

35 And is it the case if you read that last paragraph that you do use player data in conjunction with the observable signs when interacting with customers?---As required, yes.

And, as you explained in one of your previous answers, you might use player data once they've interacted with the IGLO?---Yes.

40 To inform your interactions?---Yes.

45 But the player data that you have access to doesn't tell you what particular machine they use?---The player data will tell us the machine number, but it doesn't tell us what type of machine it is, as in what's the game name.

But when you have that number, do your liaison officers than find out – or are they trained to find out what particular machine it is?---What type of game, like, the game name.

5 Yes?---No.

Your Honour, I don't have any other questions.

10 HER HONOUR: Thank you. Thank you, Mr Tran. Mr Young, is there any re-examination for which we should keep the court closed?

MR YOUNG: There is, but no. Your Honour can open the court, and I have only a few questions.

15 HER HONOUR: All right. Thank you. I order the court to be reopened. Thank you.

20 <THE WITNESS WITHDREW

[11.36 am]

CONTINUED IN PUBLIC HEARING

CONTINUED FROM TRANSCRIPT-IN-CONFIDENCE

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[11.36 am]

5

<RE-EXAMINATION BY MR YOUNG

10 HER HONOUR: Yes, Mr Young.

MR YOUNG: Can the operator bring up tab 753, which is the 2009 brochure that Ms Bauer was asked about. Now, Ms Brochure – Ms Bauer, now, you were asked some questions about this brochure?---Yes.

15

Are you able to say whether that document is available in print at the current time?---I'm not sure. I believe there are some copies available, however, I have not seen the brochure which I remember being in an A5 size, not a DL size, which is sort of more easily accessible, so I'm not sure.

20

Yes. You will see at page 28451 that the authors are identified as being the Victorian Department of Justice 2009?---Yes.

And originally created by Gamblers Help Southern?---Yes.

25

Does Gamblers Help Southern continue to exist?---Yes, it does.

Yes. Right. Now, the Victorian government supplies Crown with a number of brochures - - -?---Yes.

30

- - - for display on the casino floor. At any point of time has this particular brochure at tab 753 been supplied by the Victorian government to Crown?---No.

No?---No.

35

Thank you. Next, you were asked some questions about the Crown resort's responsible gaming committee?---Yes.

Just want to ask you a few questions about meetings of that committee. Firstly, is it a committee of the parent company of Crown Melbourne which operates the casino?---Yes, it is.

40

And does that committee receive reports from other subsidiaries such as Crown Perth?---Yes.

45

Now, one last matter. You were asked some questions about the availability of information at the machines?---Yes.

Do the machines possess some way in which the user, the customer using the machine, can contact a responsible gambling officer?---Yes. Each machine has a sticker on the machine which is – says if gambling is a problem for you, and there’s two telephone numbers that a user could contact. One is the Responsible Gaming Support Centre, and the other is gamblers help. They are the free call numbers. But
 5 also there’s a QR code so that if a user has a smart phone that is enabled to read a QR code, they could access that, and then would be linked to the Crown Melbourne Responsible Gaming Support Centre page where then further information is available about the services that are available.

10 Yes. In addition, is there some way that the user of the machine can press a button and get somebody to come to the machine for assistance?---Yes, there is. So in the – on the button, it can call an attendant for assistant. So yes.

15 Thank you. Nothing further, your Honour.

HER HONOUR: Thank you, Mr Young. The court’s grateful for your evidence, Ms Bauer. It’s concluded. You’re excused, and you may leave the witness box, and the hearing room if you choose. Thank you.

20

<THE WITNESS WITHDREW

[11.40 am]

25 MR YOUNG: That’s our last witness, your Honour.

HER HONOUR: Thank you, Mr Young. Now, what are we doing about documents for your case?

30 MR YOUNG: Documents for our case.

HER HONOUR: Yes. Are they - - -

35 MR YOUNG: We haven’t completed the tender list, I’m afraid, your Honour, so we will try and – we may need to check the list overnight, but in terms of closing our case finally in a way that includes the documentary tenders, I think the best we can do is to circulate a list of documents we propose to tender at the end of today to our learned friends, then proceed with the tender tomorrow and deal with any objections then, if there are any.

40

HER HONOUR: All right. All right. Thank you. Mr Jopling.

MR JOPLING: Your Honour, we call Mr Pai.

45 HER HONOUR: Can Mr Pai be called, please.

MR JOPLING: His affidavit - - -

HER HONOUR: Oh. Here he is.

<SUDHIR NAGAPPA PAI, AFFIRMED

[11.42 am]

5

<EXAMINATION-IN-CHIEF BY MR JOPLING

10 HER HONOUR: Thank you, Mr Pai. Have a seat. Pour yourself a clean glass of water. We might just get rid of the other one?---Thank you. Thank you, your Honour.

Thank you. Yes.

15

MR JOPLING: Now, you're going to have to speak up?---Yes.

And that microphone in front of you doesn't broadcast your voice. Could you state your full name, please?---Sure. Sudhir Nagappa Pai.

20

Thank you. Do I need to spell that for the transcript?

HER HONOUR: Well, we've got it on - - -

25 MR JOPLING: Thank you. S-u - I got a thumbs up, your Honour. S-u-d-h-i-r N-a-g-a-p-p-a and Pai, P-a-i. Thank you.

Is your business address 85 Epping Road, North Ryde in New South Wales?---That's correct, your Honour.

30

I wonder if we could show you a copy of your affidavit. Your Honour, this appears at court book 159.4. It has been uploaded following your Honour's ruling in relation to admission certain parts of the evidence.

35 HER HONOUR: Yes.

MR JOPLING: But there's one change the witness wishes to make.

40 I wonder if you could turn to paragraph 56 of your affidavit. Is there a change that you wish to make to the second sentence that begins with the words "I am aware of games with reel strips"?---Yes, your Honour.

45 And could you tell her Honour and my learned friends what that change is that you wish to make?---Yes. In the original affidavit, I mentioned that I'm aware of games with reel strips length of around 3000 symbols, which I would like to correct that to more than 1000 symbols.

HER HONOUR: Thank you.

MR JOPLING: Now, your Honour, does – do you require him to write that in on
5 the document, or would your Honour be content if we put another version of it up on
the system after lunch?

HER HONOUR: So long as we end up with a correct version of the affidavit, I
think that's fine.

10 MR JOPLING: Thank you, your Honour.

HER HONOUR: Thank you.

MR JOPLING: With that amendment made, are the contents of your affidavit true
15 and correct?---Yes, your Honour.

I tender that, your Honour. Thank you.

HER HONOUR: Thank you, Mr Jopling. Yes, Ms Maud.
20

<CROSS-EXAMINATION BY MS MAUD

[11.44 am]

25 MS MAUD: Thank you, your Honour.

Hello, Mr Pai. Now, you say in your affidavit that your role is international product
compliance manager. Is that right?---Yes, that's correct.

30 Yes. And you're responsible for obtaining approval for Aristocrat products from the
relevant regulators?---Yes.

Are there any other aspects to your role?---Yes. Apart from that, I am also required
35 to discuss with the regulators during the initial development cycle of the games, so
we present the concept brief to the regulator, and we discuss that, and once the
regulator is happy with the concept, then we let the game designers and studio know
that the game is okay to progress further.

There's other evidence that we've received in this case that Aristocrat is divided into
40 four divisions, design and development, legal and compliance, sales and marketing
and supply chain. Is that your understanding of divisions of the company?---Can you
please repeat the question?

45 Sure. Design and development division?---Yes.

And a legal and compliance division?---Yes.

A sales and marketing division?---Yes.

And a supply chain division?---Yes.

5 Yes. And is your role within the legal and compliance division?---Actually I am part of the compliance division, but my main role is with the product compliance, so I don't deal with the legal aspect of the compliance.

I see. But you're within that general division, legal and compliance?---Yes.

10 Yes. And who do you report to?---I report to a global compliance-manager, and her name is Ms Tracey Elkerton.

15 Now if Mr Pai could – please – be shown a copy of his affidavit, which is 1 5 9.4. Yes.

And you do have a hard copy there. That's what you're looking at?---Yes.

20 Yes. Okay. Can you have a look at paragraph 44, please. Page 7. Just read that paragraph to yourself?---Yes. In Victoria - - -

Sorry. You don't have to read it aloud. Just read it to yourself?---Okay. Yes.

25 Yes. Now there's evidence in the case that the dolphin treasure electronic gaming machine was first released in about 1997. And at that time you weren't employed by Aristocrat?---No.

No?---Not even with the BMM.

30 Yes. That's right. And you started with the BMM in 1999?---That's correct.

Yes. So you're not in a position to say what the practice of the Victorian regulator was in 1997 or about that time in relation to the approval of new games. That right?---Yes.

35 Then after you commenced with the BMM, which is an accredited testing facility – is that right?---That's correct.

40 Yes. You did in fact make recommendations into – in relation to – at least – two versions of the dolphin treasure game?---Yes.

Yes. And if Mr Pai could – please – be shown annexure 10 to his affidavit, which is court book tab 1 4 3.

45 You might have to look at the screen for this one. It won't be in your hard copy. Yes. You see your name at the bottom of that page?---That's correct.

Yes. And so this document – perhaps if you could flick through the document so the witness can see it.

You recall that document?---Yes.

5

Yes?---I do.

It's a recommendation for approval of a particular version of the dolphin treasure game for operation at Crown Casino?---That's correct.

10

Yes. And it's dated 2009. Can you – can we go back to the first page, please.

You see the text there.

15

The following is our recommendation for approval of the Aristocrat gen 7 emulated game Dolphin Treasure Cash Express.

Can you tell the court, please, what an emulated game is?---Yes. Initially the game was done on a mark 6 platform, and when that game was taken over to the new generation of machines – that is gen 7 – the game was emulated from mark 6, and those binaries were used in the form that could be used on gen 7 platform.

20

I see. So this approval relates to a version of the Dolphin Treasure when that game has already been approved at some earlier time?---Yes.

25

Yes. And if you can please turn to the second page. And you see under the heading “Dolphin Treasure Cash Express”?---Yes.

30

The emulated game Dolphin Treasure Cash Express is 20 lines, 200 credits, standard five-reel spinning game.

?---Yes.

What do you mean by “standard five-reel spinning game”?---The games where we have five reels which spin randomly as per the random number drawn after the player has accepted to play the game by pressing the play button. So it just rotates the five reels.

35

Yes. And what do you mean by “standard”?---Because all the games that have been done are mostly with three rows and five reels. So the standard to say that it's a – five reels that are normally used in the games. So that's a standard terminology for the games that are spinning-reel games.

40

It's a standard type of game. Is that right?---Yes.

45

All right. If you – if the witness could now be show the document at tab 145.

And you see this document is dated 2010?---Yes.

And it's a recommendation for approval of a further version of the dolphin treasure game?---Yes.

5

And also a document that has been issued by you?---Yes. That's correct.

Yes. So that approval – recommendation – pardon me – is also in relation to a new version of a game that had already been approved at that time?---That's correct.

10

Yes. And you've annexed to your affidavit the recommendation letters that have been issued by the relevant accredited testing facility for each of the versions of the dolphin treasure game that is now available at Crown Casino. That right?---Yes. The – these are the two different versions of the game. The first version was a progressive game. That's why it had a description, "cash express". And this is a nonprogressive game. The first version that we discussed had 200 credits, which was 20 lines or 25 lines game, whereas this one is 90/200. So that is nine lines or 20 lines or 25 lines game.

15

20

Yes. But they're all versions of a game that had already been approved?---That's correct.

Is that right? Yes. So in relation to – at least – the two recommendations that you issued, can you recall whether the Victorian regulator attended BMM in order to view the game?

25

MR JOPLING: Your Honour, I'm not certain how this is relevant to the case put against us.

30

HER HONOUR: I will allow it.

THE WITNESS: These games – as I said in my affidavit, Victorian regulator would come to ATF – facility to view the game, if the game was completely new and it had new features.

35

MS MAUD: Yes?---But because this game was developed or it was already approved in the field, at that time regulator did not come to the ATF – facility, because it was a known game.

40

Yes. Thank you. Now in paragraph 40 of your affidavit you say that, while many of the requirements in the national standard and the Victorian appendix are purely objective, others involve elements of judgment?---Yes.

45

And you then refer by way of example to 3.9.57 of the national standard and 3.9.57(a) of the national standard. And I take it, those are examples of provisions that – you say – involve elements of judgment. Is that right?---That's

Now, could Mr Pai please be shown the document at tab 139. Pardon me, your Honour. I've just been told that this is – this document is subject to the suppression order. Pardon me, I had overlooked that. So we will have to come back to it at the end.

5

HER HONOUR: All right.

MS MAUD: Well, I'm told it's okay if I ask some questions about if it's not shown on the screen. So if – I'm content to proceed in that way.

10

HER HONOUR: All right. Thank you, Ms Maud. We will do that. As much as you can do in open court is what I would prefer.

MS MAUD: Yes. Yes, certainly, your Honour.

15

HER HONOUR: Thank you.

MS MAUD: Now, this is the internal checklist that Aristocrat uses - - -?---Yes.

20

- - - for the purpose of assessing compliance with the relevant standards?---Yes. This checklist is used as a part of the functional testing that is done at the Aristocrat before it goes to the ATF for the testing.

Thank you, Mr Pai. Now, do you agree with me that there's not an item in this checklist that requires consideration of whether the game is fair to players?---This doesn't have any reference as – directly to players of the game or the same, but usually the process requires that the game is tested by the ATF before it is recommended to the regulators. So I'm pretty sure that that requirement is there as part of the ATF testing.

25

Yes, but I'm just asking you about the internal checking that Aristocrat does before it submits the document. And you've, I think, agreed with me that that's not one of the items that is checked as part of this procedure?---Yes.

30

Yes. And, similarly, it's not part of the checklist to consider whether the game is being designed to give the player a false expectation of better odds by falsely representing any occurrence or event. Is that right?---Yes, I would say so.

And also not a part of this checklist to consider whether the display of the game outcome is misleading or deceptive to a player?---Yes, this checklist are the guidelines for the tester because each game is different when it is designed. So these are just the guidelines brought to the tester, and with their experience they're expected to look at certain deviations from the games that are already approved.

35

Thank you. Now, you give some evidence in your affidavit about the player information displays that, at least in Victoria, are required to be included on an electronic gaming machine?---Yes.

Yes. And you say in paragraph 39 that the player information display screen is mandated by the Victorian Appendix. Do you see that paragraph? And you refer to V9.15 and V9.16?---Yes.

5 And perhaps if the operator could bring up tab 134 and page 21, please. And can you just also show the next page, please. Do you see the black box on the screen there?---Yes.

10 That's a screen that is similar to that which is shown for electronic gaming machines in Victoria?---That's correct.

Yes. And you will see the text that reads "Total theoretical return to player of this game equals XX per cent"?---Yes.

15 Now, do you accept that it's not actually a requirement that the return to players of the game be displayed in that format?---That is the example given by the regulator and we follow the same information that is required as per this example given there.

20 Yes, but if you have a look at V9.15 - - -?---Yes.

- - - capital A sets out what is electronic game information. Do you see that?---Yes, I do.

25 Yes. And then small A says the return to players of that game?---Yes.

Yes. And then in – further down the page B:

Gaming machine must generate and display electronic game information.

30 Do you see that?---Yes.

35 Yes. So do you accept that it would be open to Aristocrat to have a player information display screen that displayed the return to players of that game but not necessarily in the text that is given in the black box?---In this – we're talking about the appendix, the example that the regulator has given, we usually follow the same format because then we get less queries from the ATF. So we try to make sure that all the information shown as an example is provided to the player.

40 Now, Mr Pai, do you accept that there is nothing that would prevent Aristocrat from including more information in relation to the return to players of the particular game in this player information screen?---Can you please repeat the question?

45 Yes, sure. Do you accept that it would be open to Aristocrat to include more information about the return to players of a particular game in the PID screen for that game?---Usually we try and restrict the information, whatever is minimal required as per the appendix because then it becomes a bit difficult to include how much

information that can be added. So these are the minimum requirements stipulated by the regulator and we provide the information as requested by the regulator.

Yes. So you provide the minimum information that is - - -?---Yes.

5

- - - given in the example by the regulator, but you accept that it would be open to Aristocrat to include more information about the return to players of the game?---Well, but how much more information can there be included? So this – we take this as a sort of a guideline provided by the regulator and include whatever is requested by the regulator. That way one might say we can have 10 winning combinations for it, but then there wouldn't be enough space to provide that. And it's not the requirement as per the appendix. So we provide whatever is, your Honour, as an example as per that.

15 Now, in paragraph 56 of your affidavit you say that there's no requirement in the national standard or the Victorian appendix that the reel strips of a game should be of any particular length, or that each reel should be of the same length?---Yes, that's correct.

20 Yes. Do you accept that there's nothing to prevent Aristocrat from disclosing on its electronic gaming machine the reel length of each reel in its game?---Actually in this particular instance I would say there is no requirement in the standard to disclose or provide that information to anybody about the length of the reel strips. And that that's what I've stated in my affidavit as well.

25

Yes, but – I appreciate that it's not a requirement to disclose that information?---Yes.

But if Aristocrat chose to, it could. Do you accept that? Pardon me, your Honour. I'm going to withdraw that question and rephrase it?---Yes.

30

It's not a direct requirement to display that information?---Yes.

A specific requirement, but do you accept that it would be open to Aristocrat to choose to display that information?---Yes. In this case I would say that – usually the game designers will provide the information that is required by the regulation. We don't provide any additional information because then it becomes sort of – the usual interpretation when it goes to the ATF or the regulator, mostly the ATF, because they could say that this is not required as per the standard or the appendix, so why are we showing that information. So that's the reason. Whatever is required by the standard, that's – that's the information we provide on the game artwork and documentation.

40

Yes. But just because the accredited testing facility might query why you're providing that information, that's not something that would prevent you from providing the information, is it?---Our intent is to get the game tested and approved without much of concerns or comments on the game design. So whatever is required as part of the standard, that's all we provide in the game information.

45

All right. Now, in paragraph 58 of your affidavit you say:

There is also no requirement in the National Standard or the Victorian Appendix that symbols be evenly distributed across the reels of a game.

5

And that's your understanding of the National Standard. Is that right?---That's correct.

10 Yes. And of the Victorian Appendix. But, again, do you accept that if Aristocrat chose to display information about the way each symbol is distributed across each of the five reels in a game there's nothing that would prevent it from disclosing that information on a machine?---Yes, as I said before, we are providing the information about the game as required by the standard. Some of these things are intellectual property of the manufacturers and we don't want some of the game design aspects to
15 be available to the competitors. So - - -

20 Okay. Mr Pai, are you aware that in Victoria there's a requirement that the Victorian Commissioner for Gambling and Liquor Regulation consult with EGM manufacturers before making or amending a standard. Are you aware of that requirement?---Yes.

25 Yes. Are you involved in consultations with the Victorian regulator about proposed amendments to either the National Standard or the Victorian Appendix?---Usually what happens is the regulators, when they want to make any changes, they send a document to all the manufacturers for their comments. And then we request the comments from various departments in – within Aristocrat to go through the proposed changes and comment on those things and we just provide the comments directly to the regulator or through Gaming Technology Association which is the association of all the manufacturers. So we discuss that in the technical community
30 but we don't directly represent on those committees for changing the requirements.

35 So just to clarify, is it your evidence that the GTA might consult on behalf of manufacturers with the Victorian Commission for Gambling and Liquor Regulation?---Yes. So GTA will provide the comments received from the members of the association and they will provide a consolidated response to the regulator and it's up to the regulator what to accept and what to change in the standards.

40 Okay. Thank you. Now, if Mr Pai could please be shown tab 1035 of the court book. You see it's an email from Nadine Grinblat at the Australasian Gaming Council to an undisclosed distribution list. Have you seen this email before?---I don't remember seeing this email before.

45 No. Are you aware whether Aristocrat is a member of the Australasian Gaming Council?---I'm not sure.

You're not sure. You see the reference in the second paragraph to "research completed by Schottler Consulting"?---Yes.

Does that ring any bells with you?---No. I was not involved with this.

No?---No.

5 All right. Have you seen a copy of the study that's referred to in the email – Impact of Structural Characteristics of Electronic Gaming Machines?---No, I haven't.

No. If Mr Pai could now be shown tab 1041. Just looking at the first page, do you recognise this document?---No. I haven't seen this.

10

No. You don't think you've seen that before?---No.

And could Mr Pai now be shown tab 1020. Do you recognise that document?---I haven't seen this document either.

15

No. I won't take you to any more but there are a number of documents of which these are just examples which report research findings in relation to gambling problems and electronic gaming machines often, in particular, which Aristocrat has discovered in this proceeding which means that it had those documents in its possession. Are they documents of a kind that you see in your role?---I really don't see that – at least since I joined Aristocrat in 2013 I haven't seen this document myself.

20

Okay. Are you able to say who, within Aristocrat, it might be - - -

25

MR JOPLING: Well, your Honour, that's pure speculation. He hasn't seen these documents before.

MS MAUD: Well, he might know.

30

HER HONOUR: Well, it may not be, Mr Jopling. I will allow the question.

MS MAUD: Yes. I'm just asking you, Mr Pai, if you know whether there's anybody within Aristocrat whose position it is to monitor and maintain a record of these documents – documents of this kind?---It may have been sent to a higher management but I'm not aware of this document.

35

Okay. Would your Honour just excuse me for a moment. Now, Mr Pai, through your work for BMM and also as part of your position at Aristocrat you are quite familiar with the inner workings of electronic gaming machines, in particular, spinning wheel games like the Dolphin Treasure?---Yes.

40

Yes. Are you aware that one of the complaints in this case is that the Dolphin Treasure gives the impression that it has equal-sized reels but that it actually has an oversized fifth reel?---I don't know the details of why that impression is created because the games are originally designed as per the requirements in the standard and one of them is the minimum RTP requirement – minimum return to player – and then

45

the probability of winning a particular – or any advertise prize should be within one in seven million plays - - -

5 Yes?--- - - - that is, when the game is configured with the minimum available line configuration or reel configuration and other requirements are like – it used to be the requirements about the standard deviation of the game so the standard deviation of the game should be less than 15 and if it's more than 15 then the regulators would ask the simulation from the ATFs.

10 Yes. I will just ask you just to consider my question, though, which is are you aware that one of the allegations in this case - - -?---Yes.

15 - - - is that the Dolphin Treasure gives the impression that it has equal-sized reels, so reels of the same length, when, in fact, its fifth reel is larger than the other four. Are you aware that's part of this case?---I have heard about that, but I would not agree with the – that statement.

I beg your pardon?---I do not agree with that statement of giving the impression - - -

20 You don't agree with it?---Yes.

Yes. No. I see?---Giving the impression of - - -

25 I'm not asking whether you agree with that. I'm just asking whether you're aware that's one of the allegations?---Yes.

Yes. Now, would that give rise, in your view, to occasions when it's more likely that there will be four sunrises without the fifth reel when they all come to rest?---Yes.

30 And do you agree that that could be said to add to the likelihood that a player will think they've had a near miss?---I do not think so.

35 MR JOPLING: Your Honour, I don't think that – with the greatest of respect, I don't think that's part of the case that's pleaded against us.

HER HONOUR: I will allow it. I'm not sure that it's appropriate to confine the cross-examination that closely, Mr Jopling.

40 MS MAUD: Would you like me to repeat the question?---Yes, please.

Do you agree that it - - -

45 MR JOPLING: Well, I take it your Honour will let us make submissions about that when it comes to - - -

HER HONOUR: Well, we will see what the submission is made against you first and how this evidence is deployed, if at all.

MS MAUD: So just in relation to this issue with the fifth reel being of a longer length, do you accept that that could be said to add to the likelihood that a player will think they have had a near miss?---I do not think so.

5 You don't think so. Wouldn't contribute to the player thinking they've just missed out on getting five of a kind?---No. Actually, that's part of the game design. So there will be certain outcomes during the game where player will only have three symbols, and four symbol also is one of the outcomes, and they will be – the probability associated with any outcome that is available on the game. Just by
10 having four higher paying symbols doesn't give you the impression that it was a near miss situation. It is a design of the game, I would say.

And, Mr Pai, again, I'm just asking you about your awareness of the issues in this case. Are you aware that another allegation is that the Dolphin Treasure gives the
15 impression that each kind of symbol is evenly distributed over the reels, but that actually the symbols are unevenly distributed. Are you aware that's an allegation in the case?---Yes, I am.

Yes. Now, Mr Pai, I suggest that that gives rise to the likelihood of the player
20 feeling they have more often had a near miss. Do you accept that the uneven distribution of symbols has that effect?---No, I do not, no.

No further questions, your Honour.

25 HER HONOUR: Thank you, Ms Maud.

MR JOPLING: No re-examination, your Honour.

HER HONOUR: Thank you, Mr Jopling.

30 MR JOPLING: Mr Ross - - -

HER HONOUR: Well, hang on. I will just excuse this witness first.

35 Mr Pai, the court is grateful for your evidence. You're excused, and you may leave the witness box, and you may leave the courtroom. Thank you?---Thank you. Thank you, your Honour. Do I leave these documents here?

40 You can just give them back to one of Aristocrat's lawyers or leave them in the witness box. Just leave them there, Mr Pai. That's fine?---Yes. Okay. Thank you.

<THE WITNESS WITHDREW

[12.24 pm]

45 MR JOPLING: Your Honour, Mr Ross is outside court, and I think someone is getting him now.

HER HONOUR: Someone is getting him, did you say?

MR JOPLING: Yes.

5 HER HONOUR: Thank you.

MR JOPLING: And his affidavit is at court book 159.5, your Honour, again, with the corrections made, the part of your Honour's ruling.

10 HER HONOUR: I'm sorry. I missed the tab number, Mr Jopling.

MR JOPLING: Sorry. 159.5.

15 HER HONOUR: Thank you. Maybe he has gone for a cup of coffee. Good afternoon, Mr Ross. Please, come forward into the witness box.

<TREVOR MARTIN ROSS, SWORN

[12.26 pm]

20

<EXAMINATION-IN-CHIEF BY MR JOPLING

25 HER HONOUR: Thank you, Mr Ross. Have a seat. Pour yourself a glass of water?---Thank you.

Yes, Mr Jopling.

30 MR JOPLING: Is your full name Trevor Martin Ross?---Yes, it is.

And do you reside at unit 4/11 Sabre Drive in Port Melbourne?---That's where I work, yes.

35 Your work address, sorry. I wonder if you could be shown a copy of your affidavit. Is your affidavit of 4 August 2017?---Yes.

And are the contents of that affidavit true and correct?---Yes, they are.

I tender that, your Honour.

40

HER HONOUR: Yes. Thank you, Mr Jopling. Mr Gray.

<CROSS-EXAMINATION BY MR GRAY

[12.27 pm]

45

MR GRAY: Thank you, your Honour.

Mr Ross, you've been involved for some 19 years with the supply of EGMs by Aristocrat?---That's right.

5 And over that time have you gained a familiarity with how EGMs work?---Yes.

Do the limits of your knowledge extend into how the software works?---No.

All right. You have fortnightly meetings on average with Crown?---On average, yes.

10 And you have other informal contacts with Crown even more frequently?---That's correct.

15 Several times a week. Now, with respect to any of those contacts – I will just ask you some questions about the general topics that are discussed. In any of those contexts do you discuss underperforming EGMs that have been supplied by Aristocrat to Crown?---Yes.

And do you discuss EGMs that are performing well?---Yes.

20 And in terms of performance is that limited to the concept of turnover per machine?---Turnover per machine, yes, and turnover compared to the area.

Are there any other metrics by which performance is considered in those discussions?---That's the main one.

25 Well - - -?---That is the one.

That is the one. The main one or the one?---That is the metric.

30 All right. Do you also discuss market segments, and what I mean by that is in amongst the playing public are there segments for playing EGMs?---At Crown specifically there would be the different areas of the floor that different players would go to.

35 And do you segment the market in any other way other than areas of the floor?---No.

Because Aristocrat's direct customer might be venue operators such as Crown, correct?---Correct.

40 But Aristocrat is supplying machines to venue operators such as Crown, knowing that the machines are going to be played by the public, correct?---Correct.

And Aristocrat knows at all times, and intends, that the machines that are supplied will be made available to ultimately consumers in the form of the public?---Correct.

45 The customer, at the end of the day, yes. Crown's customer.

Crown's customer, at the end of the day, is the consumer of the playing experience supplied by Aristocrat; is that correct?---That's right.

5 Now, go back to those discussions, the ones I mentioned before. Are there in the course of those discussions suggestions discussed for variations on existing electronic gaming machines to be made by Aristocrat?---In what way?

10 I will withdraw the question, and I will ask it again. In the course of those discussions does Crown on occasion make suggestions about the need for variations to particular kinds of electronic gaming machines?---Can you elaborate on the word "variations"?

Sure. Conversions or upgrades?---Conversions or upgrades, yes.

15 Yes. And is that sometimes because Crown considers there to be an underperformance?---It could be for underperformance or just for the sake of refreshing the floor, putting new product on the floor.

20 Now, does Crown ever make suggestions in the course of these discussions for entirely new kinds of products to be supplied by Aristocrat as opposed to conversions or upgrades?---Not specifically, no.

25 But generally they do do?---No. Generally we show them some concepts of some games that are coming to market elsewhere, and they will have a look at those games and decide whether they would like to purchase those games.

30 So you – the process is, you come up with the ideas – when I say you, I mean Aristocrat. Then you take those concepts to Crown. You discuss them, see if they're worth developing for Crown. And you take the process further in that way. Is that right?---Yes.

Now, what division are you in within Aristocrat?---Sales.

35 Sales. And is that part of sales and marketing?---Sales and marketing, yes.

40 And in the course of considering any such suggestions, that is the ones we just discussed where you might be discussing new concepts with Crown or, indeed, Crown might have suggested the need for upgrades or conversions, do you then relay that information to – I believe it's called the design and development division of Aristocrat?---Back to product marketing. So they would talk to those people.

45 I see. So within your division there's product marketing, as a work group within your division. Is that right?---So it would be between us and the game developers and the marketing team.

And then the information is conveyed to the designers and developers of games. Is that right?---I don't know where it goes to from there but that's -- you would hope it would get there, yes.

5 Yes. Okay. And can I just ask you, going back to these discussions, you've mentioned elsewhere in your affidavit at paragraph 14, please feel free to have a look at it, the time on floor model, one and two models under which Aristocrat licenses the 38 Dolphin Treasure machines to Crown. And, indeed, in paragraph 4 you might be speaking of electronic gaming machines generally. Can you just tell the court is
10 that the -- is that dual licensing method the general way in which Aristocrat supplies electronic gaming machines to Crown?---Those two methods are the way we supply the gaming products to Crown, yes.

15 They cover all ways in which all electronic gaming machines are supplied by Aristocrat to Crown, do they?---Correct.

20 Thank you. And with regard to the 38 Dolphin Treasures that are the subject of this proceeding, it's the case, isn't it, that the vast majority of them are licensed under the Time on Floor method?---I haven't seen the list, but if I go back to the list - - -

25 Okay. I will come back to that. And with respect to the Time on Floor method, how does it come about that an electronic gaming machine game is provided to Crown on the Time on Floor method as opposed to the outright purchase method? Who decides?---The type of game it is, so the sort of game family it falls under, so the characteristics about that product. Typically they're linked games or multi games. A game that might have a few games for the player to choose from. Those two categories of games fall under the Time on Floor model.

30 And who decides whether it will be the Time on Floor method or the outright purchase method with respect to a particular kind of game?---Well, the game will have certain characteristics that you can point out and say, well, this game falls under that model or it's under that pricing model.

35 Right. But is it Aristocrat or Crown who decides which of the two methods of licensing will be adopted for a particular kind of game?---Under our agreement, we've got those characteristics of the game defined. So if it falls under -- meets those definitions, it's a Time on Floor game.

40 I see. Thank you. Now, with Time on Floor Aristocrat only gets paid for as long as, what, Crown decides to retain that game on the floor?---Correct, yes.

45 And what are the inputs, as you understand it from your discussions, into how Crown decides whether to retain a machine on the floor?---A game could be popular. It might have a unique attribute about it that they decide to keep it on the floor.

Okay. And is it at least occasionally based on the performance metric that you referred to before, that is turnover per machine?---I think that would be one of the

drivers, but I don't think it is the main one. Some of the reports we get identify the number of games which are not performing to the average, the time on floor. So that's – if that was the case, you would think – if that was the major driver, then they wouldn't be on the floor.

5

Based on your discussions, and just doing the best you can for the court, in general, does it go something like this, that there may be machines based on those monthly reports that you've referred to in your affidavit whereby turnover per machine is below the average for the area, but Crown won't necessarily remove that machine right away. It might monitor the situation. Is that right?---I would say that would be right.

10

But if after some reasonable period the under-performance continues and is consistent, it's likely that Crown will raise with you the need to remove that machine from the floor, and if it's a time on – is that right?---Yes, that would be one of their criteria.

15

Yes. And if it's a Time on Floor machine, at that point Aristocrat will cease to earn any licence fees?---That's right.

20

So it follows, doesn't it, that Aristocrat has an obvious business incentive in its machines having a high turnover per machine on floor of Crown Casino?---There are games there that have been there for a long time that don't meet the turnover requirements that Crown have got on the floor. So, yes, it's their prerogative as to which games they keep for what reason.

25

My question is about Aristocrat's incentives. My suggestion is that Aristocrat has an obvious business incentive in the turnover per machine of the machines that it has provided to Crown, or supplied to Crown having a higher turnover per machine?---No, there's – it's about having a number of machines on the floor, not what their turnover is.

30

And what I suggest to you is, specifically acute with respect to the Time on Floor licence machines because Aristocrat will cease to earn revenue or will be at risk of ceasing to earn revenue if there's consistent under-performance against the average on the metric of turnover per machine. Do you agree with that, Mr Ross?---No, it's – they're renting the game, and for what reason they're renting it for is their prerogative. As I said before, their parked on the floor there, but if it doesn't perform to average that they're paying a fee for. It's - - -

40

Well, are you telling the court that Aristocrat is indifferent to the revenue, total revenue per machine performance of the machines it supplies to Crown?---That – that would make it – as a pure metric, that's a good reason to suggest to Crown they should maintain those machines on the floor, but it's not the only metric.

45

Yes, but I've just asked you, is Aristocrat indifferent to the total turnover per machine of the machines it supplies to Crown?---We're conscious of it. We need to

be conscious of it because that's the hurdle they get a discount on. And it marks our – where we are in relation to our competitors on the floor there at Crown.

5 So we've established, have we, that Aristocrat is not indifferent to the turnover per machine of the machines it supplies to Crown. Is that what you're saying to the court?---I think you're right there, yes.

Okay. So you're not indifferent?---We're concerned about it, yes. It's a measure of performance.

10 Okay. Well, you're concerned about it. And doesn't it follow that you have an incentive that the machines you supply to Crown perform well on the metric of turnover per machine?---Yes, that's right.

15 All right. Operator, please bring up court book 1190. Mr Ross, have you seen this letter before?---No.

All right. Did you – I won't to ask about any legal advice or anything of that kind, but were you involved in identifying which machines the subject of this proceeding, there are 38 of them, were on the Time on Floor basis and which were not?---Yes.

Yes. And just – okay. Just looking at this list, do you see there's, to begin with, the Generation 7 Player's Choice Premium 200?---Yes.

25 And there's five machines listed by serial number, and then there's TOF. Does that mean all of those five machines are licensed on the Time on Floor basis?---That's right.

Yes. And so on for the next two cells – or three cells. Then there's a small number of machines, I think it's three, that are described as continual. So they're not Time on Floor basis?---That's right.

Thank you. And so on for the rest of the table. Operator, could you please go to the next page. Yes, and there are a further – yes, and so on for the – and that's the way to interpret this table, isn't it?---Yes.

Yes. Thank you. So there aren't very many machines that are licensed on a continual or outright purchase basis amongst those 38, and it's – the table speaks for itself in that regard?---Yes.

40 Your Honour, is that a convenient time?

HER HONOUR: Yes. Very well, we will adjourn till 2.15. Thank you.

45

ADJOURNED

[12.42 pm]

RESUMED

[2.15 pm]

5 HER HONOUR: Yes, Mr Gray.

MR GRAY: Thank you, your Honour.

Mr Ross, before lunch, in one of your answers you explained to her Honour that Aristocrat understands that the users of the machine are the public. Do you
10 remember that answer you gave?---Yes.

Yes. Now, just want to ask you some questions flowing from that. Aristocrat accepts, doesn't it, that gambling is an activity that poses a serious risk to members of the public who engage in it – for example, a risk that they might lose a lot of
15 money?---We're aware of responsible gambling, yes.

Thank you. Now, on that question of responsible gambling, can I just ask you some questions about the company's policies on responsible gambling. Is it accepted by the company that it must facilitate the making of informed choices by players on the
20 electronic gaming machines?---I wouldn't know.

You wouldn't know whether the company accepts that it should facilitate the making of informed choices?--- sell the games to and other companies.

25 Well, a minute ago in an answer to a question I posed, you referred to Aristocrat being aware of the need for responsible gambling. I can't remember the exact expression you used, but you referred to responsible gambling?---Yes.

30 And is that a body of policies within Aristocrat?---We're certainly aware of responsible gambling, yes.

All right. So what's your understanding of responsible gambling?---My understanding is that we provide products that meet all the requirements, all the legislation requirements that are in each of the jurisdictions we operate in.
35

And is it an element of responsible gambling that Aristocrat undertakes or thinks that it should do – I will withdraw that. Is it an element of these policies on responsible gambling that Aristocrat should have regard to the existence of people who are problem gamblers?---I don't know the answer.
40

So this body of policies or this principle of responsible gambling that you say the company is aware of – you're only aware of it in a very general sense, are you? You don't have any direct knowledge of it?---In regard to the products I supply to
45

You – you are aware of how it applies to the products you supply to Crown?---The products that we supply to Crown comply with all the legal requirements.

All right. Well, can I just ask you about those products specifically. Amongst those products, there are Dolphin Treasure EGMs, correct?---Correct.

5 And have you ever turned your mind to whether the information that is provided by those machines meets the requirement of providing sufficient information to gamblers to allow them to make a proper and fully informed choice about whether to gamble on those machines?---My personal opinion would be that there's probably too much information there.

10 So you have turned your mind to that issue?---Well, we've got, in Victoria, PID screens, player information displays, and probably the information on there is too much information. It's probably confusing.

15 All right. Now, an example of what's on the PID screen is a reference to a theoretical RTP. Are you aware of that on the PID screen?---Yes.

20 And I suggest to you that that information is effectively of no use to a player in relation to any particular session that they play on a Dolphin Treasure EGM. What do you say to that?---Well, the RTP is the theoretical return to player over the life of the machine over a long time.

25 And that – the presence of that information could mislead a person playing on the machine into expecting that in a particular session they might receive – or they have a reasonable expectation of receiving something like the percentage that appears on the screen. Do you agree with that?---I couldn't answer how a independent individual would take that information.

30 And with respect to the Dolphin Treasure, are you aware of the allegation that's made in this proceeding that it presents an appearance that there are five reels of equal length but that in fact the software provides for the fifth reel to be larger than the other four?---Through this case.

35 Yes. Did you have any knowledge of that before this case?---No, only in that I wouldn't have thought of them as reels at all.

Right. So before this case had you ever seen the Dolphin Treasure being played in action or played it yourself?---Yes.

40 Yes. And are you saying that you didn't turn your mind to the length of the reels?---It's – in my opinion, I wouldn't have thought them – of them as reels, no.

45 Right. Now, knowing what you do now that the fifth reel is larger, do you accept in relation to the products you supply to Crown that in order to provide sufficient information for gamblers to make an informed choice as to whether to play the Dolphin Treasure, Crown should provide information that the fifth reel is larger than the other four?

MR JOPLING: Well, your Honour, how can he answer on behalf of Crown?

HER HONOUR: Well, he's – I'm not sure it was phrased in relation to Crown.

5 MR JOPLING: It was framed in relation to Crown, as I heard the question, your Honour.

MR GRAY: All right. I will reframe the question. In relation to the products that you supply to Crown - - -

10

HER HONOUR: Or that Aristocrat supplies.

MR GRAY: Yes, I'm sorry. I will withdraw the question and start again. So, Mr Ross, in relation to the products that Aristocrat supplies to Crown, do you accept that
15 in order to provide sufficient information for gamblers to make a fully informed choice as to whether to play the Dolphin Treasure, Aristocrat should be informing consumers that the fifth reel is later than the other four?---No.

20 And are you aware of the allegation that's made in the proceeding that the Dolphin Treasure presents an impression that the particular symbols in the game are evenly distributed over the five reels but that, in fact, having regard to the software, those symbols are not evenly distributed – each particular kind of symbol is not evenly distributed over the five reels?---Through this court case, yes, to the first part.

25 Yes?---Yes.

And you only became aware of that through this court case, did you?---Through the odds of knowing what a five of a kind win was, they would have to be uneven.

30 Well, I'm asking you about, for example, a particular symbol. And I'm asking you about the feature of the game by which some reels are loaded up with a large number of that particular symbol but another reel might only have one of those symbols on it?---I'm only aware of that through this court case.

35 All right. And in order to meet that objective or principle of facilitating informed choice by gamblers on the Dolphin Treasure machine, do you accept that Aristocrat should inform consumers that there are unevenly distributed symbols on the game?---No, because I think that information is on the player information display screen.

40

All right. Now, could I just ask you about not necessarily the discussions that you had with Crown, but more generally about any initiatives that take place, to your knowledge, within Aristocrat around this topic of responsible gambling that you mentioned. Firstly, are you aware – is there any dedicated area within Aristocrat
45 which generates initiatives in respect of responsible gambling?---I don't know. I'm in a branch office so – with the five people in the office – five sales people. So I'm not aware of what's happening at head office.

So is the answer no?---The answer is no. I'm not aware.

All right. You mentioned in your affidavit at paragraph 23 that you don't discuss responsible gambling initiatives with Crown?---Correct.

5

I beg your pardon, responsible gaming initiatives with Crown. Do you discuss responsible gaming initiatives within Aristocrat internally?---No.

All right. Are you aware that Aristocrat has in times past – I'm talking about times up to and probably including the commencement of the litigation, that Aristocrat has acquired possession of quite a range of academic articles concerning issues in problem gambling?---No.

10

No. Have you ever heard anything within Aristocrat about that sort of academic material being collated and stored anywhere in Aristocrat?---No.

15

Have you ever received, in your 19 years at Aristocrat, information distributed to you in your sales or – sales role. Is that right, Mr Ross, is it a - - ?---Sales

Is it a marketing role as well?---No, just sales.

20

All right. So you don't know anything about marketing initiatives by Aristocrat?---No.

All right. So I will start the question again. Do you recall in your 19 years at Aristocrat in any of the roles you've had, including your current sales role as a business development manager, receiving information disseminated within the company about problem gambling issues or responsible gambling issues?---No.

25

No. Can I just mention some concepts just in case they trigger any memories. The issue of distortions in thinking processes or cognitive distortions in problem gamblers?---No.

30

A belief in near misses?---No.

35

The effect of losses disguised as wins?---No.

Okay. Now, Aristocrat runs its business by attempting to earn profits through revenues from placing licensed electronic gambling machines in gambling venues; correct?---That's right.

40

And with respect to the answers that you gave before lunch about the Time on Floor method of licensing, Aristocrat also gains profits through revenues from games that are licensed in that manner remaining for as long as possible on the floors of licensed venues; correct?---Correct.

45

Does Aristocrat also earn revenues through related commercialisation of its gaming machines over the internet?---Yes.

5 Yes. And the Dolphin Treasure is one such machine that is commercialised over the internet; correct?---Yes.

And the success of Aristocrat's games in Aristocrat's commercial objectives in terms of – I withdraw the question. The success of Aristocrat's games in the terms of Aristocrat's own commercial objectives depends on those games being able to
10 generate revenue from those activities; correct?

MR JOPLING: Your Honour, I object. I'm not certain how this question is relevant.

15 HER HONOUR: I will allow it for – I will allow it.

MR GRAY: I will just ask the question again, Mr Ross?---Yes.

20 The success of Aristocrat's games defined in terms of Aristocrat's own commercial objectives depends on the revenue that those games generate by reference to those activities you just mentioned, correct?---Yes. Yes.

I spoke over you. Thank you. And because of that Aristocrat's goals include encouraging players to play more often on its machines or games; is that right?---We
25 provide the gaming machines to operators.

And Aristocrat's commercial goals include encouraging players to play more often on its machines rather than less often?---We provide the machines, so we don't encourage the players directly, so that marketing is done by other people.
30

Okay. But Aristocrat has a marketing arm, correct?---Yes.

And, although its direct customers are venues, the ultimate consumer is the public, as you've mentioned, correct?---Yes.
35

And doesn't it follow that Aristocrat's marketing goals must include encouraging players to play more often rather than less often on its games?

40 MR JOPLING: Well, your Honour, he said he's not involved in marketing, so, with the greatest of respect, I'm not – he said he's a salesman. I'm not certain how he can give any evidence on this topic.

HER HONOUR: Mr Gray.

45 MR GRAY: I will leave it there, your Honour. We don't have a witness we can ask about that, presumably. We will have to make whatever we will in final submissions.

HER HONOUR: Well, it's a matter for you if you don't want to press it.

MR GRAY: Well, given that – well, I will just ask Mr Ross this.

5 Mr Ross, you haven't been directly involved in marketing?---That's right.

And I think you answered a question earlier to the effect that you didn't know about marketing in Aristocrat, but in the course of all those years in Aristocrat have you acquired some indirect knowledge about the way Aristocrat approaches its marketing operations?
10

MR JOPLING: Well, your Honour, again, with the greatest of respect, how can this be helpful to your Honour, indirect knowledge?

15 HER HONOUR: Well, I don't know. It might have to go a bit further before I know whether it's helpful or not, Mr Jopling.

MR JOPLING: Well, but, your Honour, asking about indirect knowledge means it's not direct knowledge, so, therefore, it's – I just repeat how can that be helpful. It's not the direct knowledge of this witness.
20

HER HONOUR: I will allow the question. We will see how we go. Yes, Mr Gray.

MR GRAY: So the current question, Mr Ross, is in the course of those 19 years have you acquired indirect knowledge about Aristocrat approaches its marketing operations?---Insofar as the marketing materials that I get from the company to assist me in the sales to customers like Crown, yes.
25

Thank you. And is it your understanding, based on that knowledge, indirect though it may be, that Aristocrat acquires market research to assist those marketing efforts?---I'm not aware of market research that we do.
30

Okay. So I will go back to my original question. I'm not sure if you ever really got an opportunity to answer. What I suggested to you was that Aristocrat's goals include encouraging more rather than less play on its games. Do you agree with that? Thank you. Have you already answered that in the affirmative? I'm sorry. Have you already answered that question?---I can't recall.
35

HER HONOUR: That's an entirely understandable answer, Mr Gray.
40

MR GRAY: Yes. Can I just ask you the question again. Is it one of Aristocrat's goals to encourage more rather than less play on its machines and games?---Certainly we measure by popularity of our games, yes.

45 Thank you. And is it also one of Aristocrat's goals to encourage players to play for longer rather than shorter sessions on its machines?---Not directly, no.

5 Not directly because your direct customers are venue operators, but in terms of consumers being the ultimate – the ultimate consumer being the public, is it one of Aristocrat’s goals to encourage those members of the public to play for longer rather than shorter sessions on its machines?---At the expense of playing on someone else’s machine, yes.

Yes. Are you aware of the expression “avid gambler”? Is that an expression used within Aristocrat, to your knowledge?---no.

10 All right. Is it the case that Aristocrat believes that much of its revenue is derived from the activities of a relatively small segment of very active gamblers?---I wouldn’t know.

15 To your knowledge, is Aristocrat aware of findings of the Productivity Commission in 2010 – I will withdraw the question and start again. To your knowledge, is Aristocrat aware of findings of the Productivity Commission in 2010 to the effect that 41 per cent of spending on electronic gaming machines is accounted for by problem gamblers?---I don’t know.

20 All right. About five or 10 minutes ago, I was asking about topics which had arisen in academic research just to see if they jogged any recollections. I’m just going to mention another one of those topics to see if you have any recollection of being furnished with any communication internally within Aristocrat about it. It’s the topic of in connection with losses disguised as wins the topic of conditioning by reference to sights and sounds that are equivalent to real wins?---No.

25 No. And I think it follows from an earlier answer – I will just ask for the sake of completeness. In your 19 years at Aristocrat have you been furnished with the outcomes of any focus group or other kinds of market research about the effectiveness of various features on electronic gaming machines?---I have been involved with a couple that were at Crown Casino where they have put a product on display and asked players about them. In terms of the veracity of those reports, they were very superficial.

35 All right. So with respect to those reports, were they focus groups about customer reactions to features of electronic gaming machines?---They had some Aristocrat product on display and allowed the players to play them and asked them some very broad questions about those products.

40 And when was this?---Maybe two, three years ago.

Not aware of any such document in the discovery, your Honour. Could I just ask who conducted the research? Was that Crown or Aristocrat?---Crown.

45 Crown. What was the purpose for which the market research was conducted?---Probably along the lines of some various different types of games,

more cartoonish sort of product, I suppose, themed games, just to see what their opinion was of theme games versus other product.

5 Right. And is that the only instance, to your knowledge – well, I will withdraw that.
Is that the only instance over the last 19 years you can recall where you were provided with the outcomes of any market research in relation to Aristocrat's products?---Yes.

10 No further questions, your Honour.

HER HONOUR: Thank you, Mr Gray. Mr Jopling.

MR JOPLING: No re-examination, your Honour.

15 HER HONOUR: Mr Ross, the court is grateful for your evidence. You are excused. You may leave the witness box, and you may leave the hearing room. Thank you?---Thank you.

20 **<THE WITNESS WITHDREW** **[2.39 pm]**

25 MR JOPLING: Your Honour, that completes our evidence. We are in the same position as Mr Young. We're working on the tender list. Mr Wallis isn't here.

HER HONOUR: All right.

MR JOPLING: And we hope to have that at the end of the day to circulate.

30 HER HONOUR: All right. Can we just have a general discussion about the tender list because I'm not sure where we're up to with the applicants. Is the applicant's tender list now agreed?

35 MR GRAY: Your Honour, I'm getting signs of concurrence from my friends to my right. Can I inform your Honour that a properly referenced list of the documents that the application tendered through the list furnished to your Honour last week has now been provided to the court. That was done yesterday. And when I say "properly referenced", your Honour might recall my saying that some of the documents we hadn't yet found the court book tab numbers for them.

40 HER HONOUR: Yes.

45 MR GRAY: But that has now been done, and a document which includes the tab numbers of the documents that were already in the list has now been furnished to the court. I believe that was done by my instructors yesterday.

HER HONOUR: All right. So there should be – so there's a document filed that indicates on behalf of the application and by reference to tab numbers all of the documents on which the application relies.

5 MR GRAY: Your Honour, can I just mention the proviso I think I mentioned when I addressed your Honour and tendered those documents through the list, and that is that we have not identified documents that form – well, exhibits that our friends are educating.

10 HER HONOUR: Two affidavits read by the respondents.

MR GRAY: That's so, your Honour.

HER HONOUR: Yes.

15

MR GRAY: If your Honour wishes us to do that for convenience - - -

HER HONOUR: No, no. Well, that has been read, and those exhibits are in evidence.

20

MR GRAY: Obviously, we haven't referred to pleadings and so forth.

HER HONOUR: No, no. I'm only interested in evidence at the moment.

25 MR GRAY: It's a tender list. The final thing I should say is it has come to my attention recently that although we made it clear that we're relying on our expert reports, and your Honour has those, it may be the case that not every tab number constituting those reports was specifically referred to at the time of – the time we closed our case, but it should be taken as read that all of the constituent documents
30 that a particular expert furnished in support of the relevant report form part of our reliance on that report, and could we - - -

HER HONOUR: I don't know what that means, Mr Gray.

35 MR GRAY: What it means, your Honour, is that - - -

HER HONOUR: I mean, the expert has a report.

MR GRAY: Yes.

40

HER HONOUR: The report either has appendices, or it doesn't.

MR GRAY: Yes. Well - - -

45 HER HONOUR: And then we have the documents that the applicant is tendering. I think those are the only two categories, relevantly.

MR GRAY: Yes. Well, your Honour, it may be that when we address on this – and I haven't gone through the transcript – we might have said the report at tab number such and such, but it's actually the case that there are other tabs that constitute the body of material constituting the report. So can we correspond with our friends
5 about exactly which tab numbers constitute each report, and if there's an issue, we will raise it with your Honour as soon as we can.

HER HONOUR: Well, at the moment, the court book has, for example, tab 164 report of Dr Deighton, tab 165, supplementary report of Dr Deighton. What's wrong
10 with that?

MR GRAY: So it's – it – yes. It's all such reports from Dr Deighton. We might not have specifically mentioned each tab number.

15 HER HONOUR: And then there are immediately under that:

Part D: Journal and academic articles referred to expert/witnesses.

That starts on my version of the court book at 168. And I'm assuming that if there
20 are any of those that are in your – that you propose to tender, they're in your tender list, aren't they?

MR GRAY: Your Honour, I'm told that the concern in question is about Associate Professor Harrigan's report. There's – if your Honour has the court book index,
25 there's the report from Professor Harrigan at tab 161 or – sorry.

HER HONOUR: That's the supplementary report.

MR GRAY: That's the supplementary, is it? And – I'm sorry. 160, 161 and 162
30 constitute actual reports.

HER HONOUR: Yes.

MR GRAY: Then there's a series of tabs which we might not have specifically
35 mentioned from 162.1.1 through to 162.3.6 - - -

HER HONOUR: Yes.

MR GRAY: - - - which all constitute part of the report.
40

HER HONOUR: Part of which report?

MR GRAY: Professor Harrigan's further supplementary report of 27 August. So,
45 your Honour, can we – that's – I just needed to give that proviso. We're going to raise any instance – that may be the only instance where this problem arises. We're going to raise that with our friends and make sure there are no issues. If there is an

issue, we will bring it to your Honour's attention. It's just in answer to your Honour's question, that's – your Honour's question was - - -

5 HER HONOUR: All right. So when is your tender list going to be finalised? Mr Jopling has told me his client's one is going to be finalised this afternoon. Mr Joung told me his client's one is going to be finalised tomorrow morning. When is your client's one going to be finalised?

10 MR GRAY: Well, we will work on it straightaway, and at the same time as the discussion about our friend's tender list occurs, we will raise these slight wrinkles and make sure that everything is regularised.

15 HER HONOUR: All right. Well, I know that we're starting the experts tomorrow at 10.15, but it would be very helpful if all the tender issues had been resolved by then so that we had a complete court book. It seems to me that might be important to occur before the experts give their evidence as well - - -

MR GRAY: Yes. Indeed, your Honour.

20 HER HONOUR: - - - so that everybody – there's a certain record for the court and for the experts.

25 MR GRAY: Yes. Now, in – two final things that I'm not asking your Honour to deal with now. There's obviously the outstanding issue about the suppression orders, and we will prepare for that, and after the experts have given their evidence, we will be in a position to address on that, if that's of assistance to your Honour.

HER HONOUR: This is in terms of ongoing orders to replace the two sets of interim orders. Is that right?

30 MR GRAY: That's so, your Honour. Yes.

HER HONOUR: So the making of those orders is opposed on an ongoing basis in whole, or in part.

35 MR GRAY: It's going to be partially opposed.

HER HONOUR: Yes. All right.

40 MR GRAY: There will be some documents in respect of which there's no opposition, and we need to finalise our thoughts and prepare our submissions for the assistance of the court on those issues. There's also a lurking issue about - - -

45 HER HONOUR: Well, actually, before we go any further - - -

MR GRAY: Yes.

HER HONOUR: - - - I should ask because the assumption is inherent in that Mr Jopling and Mr Hopkins that the respondents will each press for substantive orders under - - -

5 MR HOPKINS: Yes, your Honour.

HER HONOUR: Is that right?

MR HOPKINS: Yes, your Honour.

10

HER HONOUR: Yes. All right. Thank you.

MR GRAY: Can I just tell the court that there's another lurking issue which we need to give proper consideration to about the potential for parliamentary privilege issues to arise over certain limited tenders that we understand our friends for Aristocrat to be proposing. We are not prepared to address your Honour on that at present, and it's really, in the main, a matter for our friends to avoid any entanglement with parliamentary privilege, but can I just put it on the agenda.

15
20 HER HONOUR: Well, somebody better draw it to my attention if it's an issue.

MR GRAY: Yes, indeed.

HER HONOUR: And that will need to be dealt with. Can I also just come back to the documents over which the two sets of interim confidentiality – interim suppression orders are made. Certainly, in terms of the ones that the witnesses were taken to, it was only a very small proportion of them that the witnesses were taken to. I know some of them – a couple of them were exhibits to respondent witnesses' affidavits, but if they don't need to be tendered, then they also don't need a suppression order over them.

25
30

So I do want the parties to be clear that they are necessary documents to be admitted into evidence bearing in mind what I've tried to make clear all along, and that is that I only want to be reading documents that the parties tell me are necessary to each of their cases, and I expect that to be made clear in the submissions, how they're necessary and how much of them are necessary. So can I ask the respondents' both counsel to consider whether there are any documents in those lists that may not end up in the tender bundles and, therefore, don't need to be the subject of the orders.

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MR HOPKINS: Yes.

HER HONOUR: But at a time convenient - - -

MR HOPKINS: I think we just need to have a conversation with Mr Gray and understand what he's doing, and we can work from there. But we will do that outside court, your Honour.

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HER HONOUR: Yes, of course.

MR HOPKINS: Can I just mention one other matter, unless – if your Honour has finished with your housekeeping.

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HER HONOUR: No, I haven't finished with my housekeeping but you go – you go ahead, Mr Hopkins.

MR HOPKINS: Well, there's only one which was the way the experts are going to be dealt with.

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HER HONOUR: Well, that was my – on my list. Good. Away you go.

MR HOPKINS: Can I put forward a suggestion which I believe is at least generally understood to be an – the way the parties accept it should proceed, subject to your Honour's views, and that's this. That the experts will sit – and I remember your Honour telling us at the last directions hearing that you need to sort of re-arrange the court a little bit.

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HER HONOUR: Yes. There's going to be, I think – it's – preparations are under way.

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MR HOPKINS: Excellent.

HER HONOUR: And there are going to be four seats.

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MR HOPKINS: Yes.

HER HONOUR: This is for the concurrent part. Of course, there may well be, I'm expecting, individual cross-examination.

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MR HOPKINS: I will come to that, your Honour.

HER HONOUR: So - - -

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MR HOPKINS: But certainly four seats and a table, if they have documents they need or whatever. But the experts will sit at a table for four. And in order of – they will be numbered off, one, two, three, four; one and two being Messrs Yücel and Deighton, the applicants; and three and four. And then they will be asked to address individually the questions – question 1, for instance, and they will each give their – give you a statement on question 1 out of the nine. And then there will be an exchange of – an opportunity for an exchange of views amongst the experts on question 1. And then they will move to question 2 and so on, and work through those nine questions. And then at the end of that, with your Honour obviously asking questions as you go, we assume you will just involve yourself in that process as you see fit in terms of questions you want clarification on, and then - - -

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HER HONOUR: Well, how do counsel envisage that will work in terms of questions that counsel might want the witnesses to elaborate on concurrently?

5 MR HOPKINS: Well, that come – yes.

HER HONOUR: Have we got sort of an order in which we're all going to pepper these people with questions?

10 MR HOPKINS: No. Then what we thought was that the cross-examination will be reserved to the end because it will just get too unwieldy if we do – nine bits of separate cross-examination.

15 HER HONOUR: I wasn't talking about cross-examination. I was really talking about elucidating matters in-chief, so to speak.

MR HOPKINS: Yes. Well, I think the ideal that has been discussed, and certainly I've spoken about it very recently with Mr Jopling, was that counsel wouldn't interfere in that first process.

20 HER HONOUR: All right.

MR HOPKINS: You might - - -

25 HER HONOUR: So I will - - -

MR HOPKINS: You might interfere in the sense of asking questions.

30 HER HONOUR: All right. The parties are happy for me to walk the four of them through the nine questions and ask such questions as I see fit, and that will constitute the concurrent part.

MR HOPKINS: Yes.

35 HER HONOUR: And then we will go into cross-examination.

40 MR HOPKINS: And there will be cross-examination. And the cross-examination would proceed as, I understand it, that Mr Merkel will go first, Mr Young will go second and Mr Jopling will go third. And I expect that the two experts for the applicant will be dealt with together, and the two experts for Aristocrat will be dealt with together. But that's perhaps something for discussion and - - -

HER HONOUR: Yes. You may want to have a further discussion about how that might pan out.

45 MR HOPKINS: Well, you can do it both – I've seen it done both ways, your Honour.

HER HONOUR: Yes.

5 MR HOPKINS: But perhaps that something we can discuss further. But, in any event, cross-examination at the end. And that was how I think we understood it would proceed.

HER HONOUR: All right. And then is it contemplated there will be an opportunity for re-examination of the parties' own experts?

10 MR HOPKINS: Well, that's not something that I think was discussed but that's certainly something we can talk about after court. At least we've got the first few stages worked out.

15 HER HONOUR: Yes. All right. And I think we've allowed two days, haven't we, for this?

MR HOPKINS: A day and a half, I think, your Honour.

20 HER HONOUR: A day and a half is it? No, I think it's two – well, I've got two, Wednesday, Thursday, on this.

25 MR MERKEL: Your Honour, we had a brief chat just before the court resumed this afternoon and I think the intent amongst the parties is that we use the whole of tomorrow and half of Thursday, and then on Thursday afternoon resolve all the evidentiary matters which would leave Friday and Monday free for preparation for closing submissions. And we would follow the order that I think had been planned for closing submissions starting on - - -

30 HER HONOUR: On Tuesday.

MR MERKEL: - - - on Tuesday. So the plan was to finish by Thursday lunchtime, your Honour.

35 HER HONOUR: All right. And are the parties working towards handing up written closing submissions as well? Is that the plan?

40 MR HOPKINS: That was our plan, and we were going to – that was the other thing I was going to raise with your Honour, given where my set of submissions got to, which is straight back. But I assume your Honour will be content to receive written submissions, closing submissions.

45 HER HONOUR: I will grant the parties leave to file written submissions as closing submissions. But can I say what would be helpful is if they can identify, in whatever way you each see fit, the findings of fact that you say the court should make on the evidence as a reasonably discrete part of the submissions so that I'm across what the competing submissions are about the findings of fact that the parties say the court should make. Otherwise, I'm content to leave it to you all.

MR HOPKINS: That's understood, your Honour.

5 HER HONOUR: And I won't place a word limit on them. I'm girding my loins for them to be quite large. So that's as it needs to be, I think. All right. Now, in terms of the actual physical set up, if we can have it ready by about 9 o'clock tomorrow morning – I'm just concerned that you all have a chance to look at the physical set up before we start and be comfortable that it's appropriate.

10 MR HOPKINS: Yes.

HER HONOUR: So we will do our best to have it set up early enough for it to be moved around if it needs to be.

15 MR HOPKINS: Perhaps if your associate could simply send an email to our instructors when it's ready and we can - - -

HER HONOUR: When it's ready.

20 MR HOPKINS: - - - and we can pop up and make sure we all think it will work.

HER HONOUR: All right.

MR HOPKINS: If that's convenient.

25 HER HONOUR: That's good. Anything else that anyone needs to raise? No? All right. We will adjourn till 10.15 tomorrow. Thank you.

30 **MATTER ADJOURNED at 2.57 pm UNTIL
WEDNESDAY, 20 SEPTEMBER 2017**

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