

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

**REPLY TO COUNSEL ASSISTING’S SUBMISSIONS ON BEHALF OF THE HON.
HELEN COONAN**

2 August 2021

PART A: INTRODUCTION

1. Ms Coonan took on the role of interim Executive Chair of Crown Resorts Limited (**Crown Resorts**) on 15 February 2021.¹ As this Commission is aware, at that time by far the easier course for her would have been to retire from Crown appointments. The Hon Patricia Bergin had praised Ms Coonan in her Report of 1 February this year (the **Bergin Report**): “Ms Coonan has demonstrated the qualities that are necessary to have taken her into the leadership role of Crown and is exquisitely aware of the depths of the problems within the company of which she is now Chairman”;² and “[t]he review of the Chairman's evidence demonstrates that her character, honesty and integrity has not been and could not be called into question.”³
2. However Ms Coonan had said she would “stay the course”,⁴ a decision she made out of a sense of duty to Crown and its many stakeholders.⁵ She was committed to seeing the reform process get underway, and to ensuring an orderly transfer of corporate governance. This Commission will appreciate that she took on the executive role at a time when Crown could fairly be described as being in a state of crisis.
3. Ms Coonan has acknowledged that the Bergin Inquiry and this Commission have disclosed serious deficiencies in the culture and conduct of Crown Melbourne Limited (**Crown Melbourne**) and Crown Resorts over the past decade.⁶ Having been a director of Crown Resorts over that period, Ms Coonan accepts (as she did in the Bergin Inquiry, and this inquiry) that she bears responsibility, some personal, some shared with the entire Board of Crown Resorts, for the failures of Crown over that time.⁷
4. As a result Ms Coonan understands that it is not in the interests of the Crown Group (**Crown**) for her to continue on any Crown board any longer than is necessary to

¹ Crown Resorts Limited ‘Senior Executive Changes’ (ASX/ Media Release, 15 February 2021), 1, available online at <<https://www.asx.com.au/asxpdf/20210215/pdf/44smz8dj4379hy.pdf>>.

² Exhibit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0381 [59].

³ Exhibit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0382 [67].

⁴ Exhibit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0381 at .0380 [56], .0382 [66].

⁵ T3861.09-22 (Helen Coonan).

⁶ T3731.37 - T3731.45 (Helen Coonan).

⁷ T3860.40 - T3861.18 (Helen Coonan).

permit an orderly transition of its governance, and to set the company on the path to reform.

5. Consistently with these convictions, Ms Coonan intends to retire from her role as interim Executive Chair of Crown Resorts, and each of her directorships of Crown companies. She has previously said she will do so before the next Annual General Meeting. The Board is currently in advanced discussions about appointing a new Chairman. Ms Coonan intends to immediately announce her retirement as soon as the Company has finalised its plans in relation to the appointment of a new leader. Crown Resorts intends to provide a further update to the market regarding the retirement of Ms Coonan and the appointment of a new Chairman on or before 31 August 2021. The high likelihood is that Ms Coonan will have retired by that time, and certainly before the next Annual General Meeting, which is due to be held in October 2021.
6. The Commission should make no adverse finding against Ms Coonan as regards her suitability to be an associate of Crown. No finding available on the evidence casts a shadow on her integrity or good character. Both have been demonstrated over decades of professional life and public service. They have been reaffirmed by the findings of the Bergin Inquiry after searching scrutiny. And they have been demonstrated by her dedication to the rehabilitation of Crown and the progress she has made in that direction since her appointment as interim Executive Chair.
7. Whatever the imperfections in the challenging process of Crown's reform, none reflects on Ms Coonan's integrity or good character. The submissions of Counsel Assisting concerning her suitability should be rejected. Further, and in any event, given the interim nature of her executive role and her intention to retire from Crown in the very near future, there is no occasion to make any findings as to Ms Coonan's suitability to be an associate of Crown Melbourne.

PART B: APPROACH TO ASSESSMENT OF SUITABILITY

8. Three basic propositions advanced by Counsel Assisting in relation to the approach to assessment of suitability in this context are accepted.⁸
9. *First*, the focus is on whether Ms Coonan is of good repute, having regard to character, honesty and integrity.⁹
10. *Secondly*, the assessment involves a predictive assessment about future conduct, which will be guided by an assessment of character and past conduct.
11. *Thirdly*, a holistic assessment is required. As was observed in the Bergin Report, 'it is necessary to take into account the whole character and nature of the person whose

⁸ Counsel Assisting Submissions (20 July 2021) p19-20 [5.13]-[5.16].

⁹ In addition to references in Counsel Assisting Submissions, see also *Casino Control Act 1991 (CCA)* s 28A(4).

repute or character is being assessed'.¹⁰ This holistic assessment must consider both positive and negative past conduct, as both aspects inform the necessary predictive assessment. Moreover, any past conduct must be understood in its full context.

12. It follows, with respect, that the submissions of Counsel Assisting in Section 5 of Chapter 16 of their submissions are misdirected. Even if they were accepted in full (and they should not be), submissions to the effect that a director of a casino “lacked rigour and curiosity” in the performance of his or her role;¹¹ or did not record dissent from a consensus position of the Board (the implicit criticism in [5.53] – [5.56], noting that the “wrong course” at [5.56] was Crown’s, not Ms Coonan’s);¹² “did not exercise due care and diligence” in an executive appointment;¹³ or failed to exercise appropriate “diligence and oversight”¹⁴ and showed a “lack of curiosity”;¹⁵ or showed “poor judgment” in joining with the Board in approving a letter from their solicitors to the Government,¹⁶ – none of these matters would go to suitability in the statutory sense.
13. Matters of that kind, if accepted (and they should not be), might go to the question that it seems is in fact being addressed in this section of Counsel Assisting’s submissions, namely, whether Ms Coonan “is the right person to shepherd in the extent of change required”.¹⁷ There are two points to be made. The *first* is that that question is not controversial. Ms Coonan’s role with Crown is an interim role, “*until an appropriate time when I can step aside*”.¹⁸ The ongoing role of shepherding Crown through its renewal and rehabilitation is not one that Ms Coonan wants, and she does not think it is in Crown’s interests that she continues to have it. Hence her intention to retire. The *second* is that those observations are quite consistent with her being a suitable person to be an associate of Crown Melbourne for the purposes of the CCA.
14. A further proposition is important. The Commissioner should approach any finding of unsuitability with the principle in *Briginshaw v Briginshaw*¹⁹ in mind. The application of that approach to fact-finding in the context of a Royal Commission was explained by Commissioner Hayne in the Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry²⁰:

The processes of a Royal Commission, and hence of the inquiry I have conducted, are radically different from those of a court conducting a trial. The Commission is an inquiry instituted by the Executive. It is not

¹⁰ Exhibit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0357 [28].

¹¹ Counsel Assisting Submissions (20 July 2021) p287 [5.29]-[5.42].

¹² Counsel Assisting Submissions (20 July 2021) p290 [5.53]-[5.56].

¹³ Counsel Assisting Submissions (20 July 2021) p291 [5.59] - [67].

¹⁴ Counsel Assisting Submissions (20 July 2021) p293 [5.68].

¹⁵ Counsel Assisting Submissions (20 July 2021) p294 [5.84].

¹⁶ Counsel Assisting Submissions (20 July 2021) p294-295 [5.85] – [91].

¹⁷ Counsel Assisting Submissions (20 July 2021) p295 [5.94]; see also [5.84].

¹⁸ T3731.30 (Helen Coonan).

¹⁹ (1938) 60 CLR 336 at 362.

²⁰ *Royal Commission into Misconduct in the Banking, Superannuation, and Financial Services Industry* (Report, February 2019) Volume 2, p 2.

bound by the rules of evidence. The notion of a burden of proof has no application. But the essential point made – that a conclusion that there might have been misconduct should not be reached lightly – is undeniably true.

I cannot form a conclusion about what has happened or what has been done or not done without my being persuaded of the relevant fact. And as Dixon J pointed out in 1938, ‘[t]he seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal’.

PART C: SUITABILITY OF THE HON HELEN COONAN

C.1 Aspects of Ms Coonan’s character, honesty and integrity that are omitted from Counsel Assisting’s submissions

15. Consistently with the uncontroversial principles set out above, Ms Coonan’s character should be assessed in light of her contributions to the community throughout her adult life.
16. Ms Coonan’s distinguished legal career, and her substantial contributions to Federal politics, are outlined in Counsel Assisting’s submissions.
17. In addition to these roles, Ms Coonan has had important roles in not-for profit institutions. These included serving as the Chair of the Board of Governors of the Law Foundation of NSW (the premier access to justice research body in Australia, the previous chairs of which have included the Hon Gordon Samuels AC CVO QC, the Hon GE Fitzgerald AO QC, and the Hon Paul Stein AM QC),²¹ Chair of the Conservation Council of the Opera House Trust,²² and the inaugural chair of the Australian Financial Complaints Authority.²³
18. In her interim role as the Executive Chair of Crown Resorts, Ms Coonan did much to begin the necessary process of changing Crown from the corporation that it had been.

Board renewal

19. As at the time of its 2020 Annual Report, Crown Resorts had eleven directors.²⁴ By mid February 2021, however, when Ms Coonan took on the role of Executive Chair

²¹ Biography for COONAN, the Hon. Helen Lloyd, *Parliament of Australia* (accessed 30 July 2021) <<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22handbook/allmps/2m6%22;querytype=&rec=0>> .

²² Sydney Opera House, *Annual Report – Financial Year 2016-2017* (Report) 105, <<https://www.sydneyoperahouse.com/content/dam/pdfs/annual-reports/SOH-annual-report-2016-2017.pdf>> .

²³ The ACFA Board, *Australian Financial Complaints Authority* (accessed 30 July 2021), <<https://www.afca.org.au/about-afca/independence/the-afca-board>> .

²⁴ Exhibit RC0434 Statement of Antonia Korsanos, 27 April 2021, CRW.998.001.0104 at .0105.

on an interim basis,²⁵ the company had only six directors,²⁶ one of whom (John Horvath) had given notice in late 2020 of his intention to resign,²⁷ and two of whom (Harold Mitchell and John Poynton) resigned shortly after her appointment.²⁸

20. Ms Coonan – together with Ms Halton and Ms Korsanos – led the Board renewal strategy after this time. The Bergin Report noted that:²⁹

Ms Coonan has commenced conversations with some directors relating to an “orderly process” for them to leave the Board and to appoint more independent directors. Ms Coonan said that she is reasonably ready to start a recruitment process and has given a great deal of thought to what else might be needed around recruitment and the framework around on-boarding and training of directors.

21. The recruitment and interviewing of prospective directors have been no small tasks, given the number of vacancies to be filled and the challenges that a Crown directorship currently presents. Thus far, the process has resulted in the appointment of Nigel Morrison to the Board of Crown Resorts, and the resolution to appoint Bruce Carter and Steve McCann to the Board of Crown Resorts (subject to regulatory approval/clearance). The Board of Crown Melbourne has also changed, with Ken Barton and John Horvath both resigning between February and April 2021, and Ms Coonan, Ms Korsanos, Mr Morrison, and Mr Walsh all being appointed as directors on that board between February 2021 and April 2021.
22. The reforms led by Ms Coonan following the Bergin Inquiry would not have been possible without wholesale change to the Boards, which was achieved in large part due to Ms Coonan’s leadership and encouragement.

Executive team renewal

23. Ms Coonan has been integral to the recruitment and appointment of new senior executives and other managers who are not beholden to Consolidated Press Holdings Pty Ltd (CPH), and who will drive positive changes after she has left.
24. One example is Steve Blackburn, who was appointed as Crown Resorts’ Chief Compliance and Financial Crime officer on 24 February 2021.³⁰ Counsel Assisting has placed reliance on the opinions of Mr Blackburn regarding Crown’s present state

²⁵ Crown Resorts Limited ‘Senior Executive Changes’ (ASX/ Media Release, 15 February 2021), 1, available online at <<https://www.asx.com.au/asxpdf/20210215/pdf/44smz8dj4379hy.pdf>>.

²⁶ Exhibit RC0434 Statement of Antonia Korsanos, 27 April 2021, CRW.998.001.0104 at 0105.

²⁷ Crown Resorts Limited ‘Retirement of Directors’ (ASX/ Media Release, 22 October 2020), 1, available online at <<https://www.asx.com.au/asxpdf/20201022/pdf/44nz7mdrq903vy.pdf>>.

²⁸ Crown Resorts Limited ‘Resignation of Director - Harold Mitchell’ (ASX/ Media Release, 22 February 2021), 1, available online at <<https://www.asx.com.au/asxpdf/20210222/pdf/44sxcg3290gmh4n.pdf>>; Crown Resorts Limited ‘Resignation of Director – John Poynton’ (ASX/ Media Release, 1 March 2021), 1, available online at <<https://www.asx.com.au/asxpdf/20210301/pdf/44t6n5cg8lnlh3.pdf>>.

²⁹ Exhibit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0380 [58].

³⁰ Counsel Assisting Submissions (20 July 2021) p 27.

of preparedness,³¹ indicating his expertise and credibility. The work he has done thus far developing the Financial Crime and Compliance Change Program is endorsed by Counsel Assisting as “impressive in its scope and ambition,”³² and this Program has been reviewed by McGrathNicol and deemed comprehensive and appropriately prioritised.³³ Mr Blackburn has a direct reporting line to the Board,³⁴ meaning that directors are now much more likely to be kept abreast of matters that raise money-laundering concerns than they were previously.

25. Ms Coonan’s commitment to change is also evident in the decision to appropriately resource Mr Blackburn’s team.³⁵ He gave evidence that he did not receive any push-back in relation to his ‘budget ask’ to double the size of the new Compliance and Financial Crime department.³⁶ The Independent Financial Crime & Compliance department now comprises 56 people, with an approved plan to increase the department to 111 people.³⁷ One of those people is Nick Stokes, a person with very significant experience in AML and financial crime,³⁸ who was appointed as the Group Manager for AML at Crown on 19 November 2019,³⁹ and who also has a direct reporting line to the Crown Resorts Board, as well as to Mr Blackburn.⁴⁰
26. As part of her ongoing efforts to ensure Crown’s rehabilitation is supported by high quality executives, Ms Coonan also had direct involvement in interviewing Mr Nick Weeks.⁴¹ Mr Weeks was appointed on 11 March 2021 to the position of Executive General Manager for Transformation and Regulatory Response, Crown Resorts.⁴² Mr Weeks and Tony Weston, who was himself appointed to the role of Chief People and Culture Officer on 7 June 2021, are key executives responsible for implementing Crown’s cultural uplift program in cooperation with Ms Whitaker of Deloitte (who is acknowledged by Ms Arzadon to be a specialist in cultural reform).⁴³
27. Similarly, Ms Coonan was involved in conversations with Mr McCann prior to him accepting the role of Managing Director and CEO of Crown Resorts on 1 June 2021 (although he is still awaiting approval to act in a licensed capacity).⁴⁴ Mr McCann

³¹ Counsel Assisting Submissions (20 July 2021) p 294 [5.83].

³² Counsel Assisting Submissions (20 July 2021) p 182 [4.26].

³³ Exhibit RC0465 McGrathNicol Forensic Review AML/CTF Report Part 1, 5 July 2021, MGN.0001.0001.0001 at .0012.

³⁴ T3036.11 (Steve Blackburn).

³⁵ On 24 May 2021 the Board approved a plan presented by Mr Blackburn which recommended an increase in the Full Time Equivalent in the team from 56 to 111, with interim resources provided by PwC: Exhibit RC0418 Crown Resorts Remediation Plan (Mark Up), 30 June 2021 CRW.512.196.0053 at .0063 and .0088 to .0089

³⁶ T3011:21-31 (Steve Blackburn).

³⁷ Exhibit RC0418 Crown Resorts Remediation Plan (Mark Up), 30 June 2021 CRW.512.196.0053 at .0063 and .0088 to .0089.

³⁸ T357.22- T358.47 (Nick Stokes).

³⁹ T356.36-38; T357.17-18 (Nick Stokes).

⁴⁰ T356.43-45 (Nick Stokes).

⁴¹ T3387.45- T3388.3 (Nick Weeks).

⁴² Counsel Assisting Submissions (20 July 2021) p 371.

⁴³ T3970.27-29 (Elizabeth Arzadon).

⁴⁴ T3450.7-9 (Stephen McCann).

gave evidence that she made the demands of the role very clear to him in these discussions:⁴⁵

Given that it was a discussion around my potential employment as CEO of Crown, the discussion was around my experience, around my interest in the role. There was a lot of discussion around the transformation that Crown needed to undertake. Helen Coonan, in my very first meeting, suggested that I read the Bergin Report in full and made a number of other observations around the cultural journey that we needed to embark upon and the other directors similarly.

28. Ms Coonan also played a role in the Board's decision to make important structural changes to Crown's risk management framework prior to the overhaul of the Board in February 2021. She was involved in the Board resolution to separate the Risk and Internal Audit functions in August 2020,⁴⁶ and to create a permanent role for a Chief Risk Officer (currently filled by Anne Siegers who was appointed to that role in December 2020).⁴⁷ The Chief Risk Officer has a direct reporting line both to the CEO and to the Risk Management Committee of Crown Resorts (an innovation intended to address a key historical problem for the company, namely the failure of risk issues to be appropriately elevated to Board level).⁴⁸
29. The separation between risk and audit has also necessitated the appointment of a Group General Manager – Internal Audit. Ms Jessica Ottner commenced in that role on 10 May 2021. She has a functional reporting line to the CFO and a direct reporting line to the Audit and Corporate Governance Committee.
30. Most recently, on 21 June 2021 Ms Betty Ivanoff was appointed to the role of Group General Counsel (pending regulatory approval).⁴⁹ Ms Ivanoff has significant experience and has an unblemished reputation.⁵⁰
31. To ensure the benefits of this renewed executive team are realised, and that all executives are appropriately focused on issues relating to culture and risk management, Ms Coonan has established a weekly Executive Team meeting which includes CEOs from each Crown property, Steve Blackburn (Group Chief Compliance and Financial Crime Officer), Anne Siegers (Chief Risk Officer), and Tony Weston (Chief People and Culture Officer).⁵¹

⁴⁵ T3450.46- T3451.1 (Stephen McCann).

⁴⁶ Exhibit RC0437 Statement of Helen Coonan, 28 April 2021, p 16 at [40] CRW.998.001.0526 at .0541.

⁴⁷ Ibid.

⁴⁸ Exhibit RC0437 Statement of Helen Coonan, 28 April 2021, p 18 at [42] CRW.998.001.0526 at .0542.

⁴⁹ Counsel Assisting Submissions (20 July 2021) p372; Fielding T2677.38-40; Exhibit RC0416h Crown Resorts Limited – Remediation Plan (as at 27 May 2021) CRW.512.110.0008 at .0012.

⁵⁰ Exhibit RC0416h Crown Resorts Limited – Remediation Plan (as at 27 May 2021) CRW.512.110.0008 at .0013.

⁵¹ Exhibit RC0437 CRW.998.001.0526 at .0547 Statement of Helen Coonan, 28 April 2021, p 22 at [82(g)].

32. Mr Weeks described his assessment of the impact of these changes, significantly wrought by Ms Coonan, in giving confidence that Crown will stay the course on culture reform. He said:⁵²

[M]y own assessment is there is a range of factors that could give the Commission that comfort, one of which is the quality of people that have come into the organisation. My assessment of those people has been that they are particularly strong. I have spent a lot of time with Steven Blackburn over the short period of time I've been there, and I'm particularly impressed with his strength of leadership. My early insights into Steve McCann have been very positive, as someone with a long corporate track record who won't compromise his reputation in a role like this. So I think the people that have come into it, the systems and structure that have been built and then the piece of work that we are focused very much on now is the culture. And so I'm confident that the company will move the culture to one in which the type of conduct that has been observed in the company historically won't be acceptable in the company.

33. The work performed by Ms Coonan to renew and improve the executive team has been substantial. One indicator of the amount of work involved in this and other improvements is the fact that between February 2021 and 15 June 2021, the Crown Resorts Board itself met twenty-four times,⁵³ and its sub-committees on numerous occasions.

Cultural Uplift Program

34. Ms Coonan has also been integral to rolling out the cultural uplift program at Crown, which has at its heart the concept of setting tone from the top, ensuring that employees understand that if they 'see something' they should 'say something', and ensuring that employees feel empowered to do so. In aid of this, Ms Coonan has endeavoured to ensure she has much more direct interaction with management and staff than was the case with the former CEO.⁵⁴
35. Mr McCann also gave evidence about efforts by Ms Coonan and himself to engage with employees on the topic of the need for cultural change. He described the weekly emails that Ms Coonan's sends to employees:⁵⁵

And that is usually – or that is talking about culture, basically. It is talking about – giving a broad update, but talking about culture.

36. Ms Whitaker also commented on these emails in her evidence, stating that "this new open communication has been received well within the organisation."⁵⁶

⁵² T3433.38 - 3434.6 (Nick Weeks).

⁵³ Refer to minutes of Board meetings as produced to the Commission.

⁵⁴ T1945.26-32 (Victoria Whitaker).

⁵⁵ T3500.21-24 (Stephen McCann).

⁵⁶ T1945.31-32 (Victoria Whitaker).

37. Mr Walsh told the Commission that he has seen some positive developments flowing from initiatives seeking to engage employees in cultural issues, including via the weekly emails.⁵⁷ He said he had observed employees exhibiting greater willingness to report incidents (as demonstrated by an increase in reports of historical incidents of harassment).⁵⁸
38. Mr Walsh also told the Commission that Ms Coonan had been promulgating a change of culture and had been “very strident” about that.⁵⁹ He described that in the lead up to his 23 February 2021 phone conversation with Ms Coonan, “[she] had been speaking at length about ensuring that we had a change of culture, and that items that had not been dealt with, or that anyone had any residual discomfort with should be raised”.⁶⁰ Mr Walsh said that Ms Coonan’s expression was “bring out your dead”⁶¹ – an expression that was quite obviously intended to indicate that any concerns about culture or compliance should be aired, no matter how historical or apparently non-pertinent. Ms Coonan explained as much in evidence before the Commission: “It was behind my admonition to all of the properties, that is WA and Melbourne, leave no stone unturned, bring out your dead, tell me everything.”⁶²

Relationship with Regulators

39. Ms Korsanos confirmed in evidence that Ms Coonan has taken carriage of all the interactions with regulators.⁶³ She said Ms Coonan’s efforts have been ‘very much focused on the reform agenda and ensuring that there is consistency in communications’.⁶⁴ She attested that “The message is consistent at a Crown Melbourne level and a Crown Resorts level and they are – I think it is clear”.⁶⁵
40. Mr Weeks noted that when he entered the company in March 2021, he was told – and he also understood from reading relevant documents – that the relationship with the Victorian regulator had historically been poor.⁶⁶ He observed, however, that he had only seen positive attitudes expressed towards the VCGLR since starting at Crown:

What I am very comfortable commenting on is what I’ve observed over the four months that I have been at the company, in my interactions with Mr Walsh and Ms Coonan and others at the company, and that is one in which they are – they and the company, is determined to improve those relationships.⁶⁷

⁵⁷ T3348.28-36 (Xavier Walsh).
⁵⁸ T3348.28-36 (Xavier Walsh).
⁵⁹ T3217.8 (Xavier Walsh).
⁶⁰ T3215.41-3215.45 (Xavier Walsh).
⁶¹ T3218.7 (Xavier Walsh).
⁶² T3773.34-36 (Helen Coonan).
⁶³ T3671.2-4 (Antonia Korsanos).
⁶⁴ T3671.5-6 (Antonia Korsanos).
⁶⁵ T3671.15-18 (Antonia Korsanos).
⁶⁶ T3392.40-41 (Nick Weeks).
⁶⁷ T3426.15-20 (Nick Weeks).

41. He commented that although the Bergin Report conveys a strong theme of a combative posture by Crown, “I haven’t detected that at all, I’ve detected the opposite of that.”⁶⁸ He told the Commission that he has seen “a clear direction to management to cooperate, be as open as possible with these Commissions of Inquiries and our regulators”,⁶⁹ and he said he witnessed “quite a caring approach from Crown and its board and senior management to employees across the group”.⁷⁰
42. Mr Weeks also described the improvements in the relationship between Crown and its NSW regulator, as led by Ms Coonan. He told the Commission:⁷¹

For example, the relationship with the regulator in NSW was very poor at the conclusion of the Bergin inquiry and the report. But I have been working closely with that regulator now and the Executive Chairman, and that relationship has improved dramatically to the point where it is quite a collaborative one. Still work to do, but quite collaborative. So that type of interaction that I’ve witnessed gives me a high level of confidence about the bona fides of the Board and the company to improve its relationships with regulators, and in addition to some of what you described as low hanging fruit in terms of provision of information and meetings, I’ve seen what I would describe as really material improvements in relationships, particularly up here in NSW.

43. As against that evidence, Counsel Assisting point, most significantly, to the tax issue to suggest that Ms Coonan is not suitable. It is convenient to turn to that issue immediately.

C.2 The bonus jackpots / tax issue

44. At the heart of Counsel Assisting’s submissions in support of a possible finding that Ms Coonan is not a suitable associate is the ‘evidence regarding her involvement in the underpayment of gaming tax matter’. Counsel Assisting submit that it raises issues of appropriate “diligence and oversight”⁷², “lack of curiosity”⁷³ and “judgment”.⁷⁴
45. When the totality of the evidence is examined, and the probabilities of the situation are considered, it is apparent that Ms Coonan’s evidence in relation to the tax issue is both honest (no contrary suggestion is made) and reliable, and that no adverse finding should be made in relation to Ms Coonan.
46. In order to put the evidence in relation to Ms Coonan in its proper context, it is necessary to observe how Mr Walsh presented the issue to each of the directors of Crown Resorts and to Mr Maher of Allens.

⁶⁸ T3433.11-12 (Nick Weeks).

⁶⁹ T3433.14-16 (Nick Weeks).

⁷⁰ T3433.20-21 (Nick Weeks).

⁷¹ T3426.33-45 (Nick Weeks).

⁷² Counsel Assisting Submissions (20 July 2021) p292 [5.68].

⁷³ Counsel Assisting Submissions (20 July 2021) p295 [5.84].

⁷⁴ Counsel Assisting Submissions (20 July 2021) p295 [5.84-[5.91].

47. On 23 February, Mr Walsh revealed what he described as a ‘legacy issue’ to Ms Coonan. Ms Coonan’s evidence was that:
- (a) The ‘legacy matter’ was ‘a culture issue’ related to the payment of tax;⁷⁵
 - (b) The issue was ‘cured or fixed’ in 2018, when the VCGLR had ‘gone right through it’;⁷⁶
 - (c) It was a ‘transparency’ issue.⁷⁷
48. On 4 March, Mr Walsh revealed the tax issue to Ms Halton. Ms Halton’s unchallenged evidence is that he gave her the impression that, relevantly to the present issue:
- (a) There was something that reflects badly on culture that happened in 2012;⁷⁸
 - (b) The issue was disclosed and ‘fixed up’ in 2018;⁷⁹
 - (c) His concern was about how ‘it presented culture’.⁸⁰
49. On 9 March, Mr Walsh revealed the tax issue to Ms Korsanos. Ms Korsanos’ unchallenged evidence is that he gave her the impression that, relevantly to the present issue:
- (a) There was a cultural issue in relation to transparency of a change in the calculation of tax in 2012;⁸¹
 - (b) The issue had been subsequently cured;⁸²
 - (c) There was a culture and lack of transparency issue.⁸³
50. In a conversation in March, Mr Walsh presented the issue in a very similar way to Mr Morrison:⁸⁴
- (a) There was a change in the calculation of gaming tax;
 - (b) The issue was examined by the VCGLR in 2018, which resulted in it being shown to be correctly calculated;
 - (c) It resulted in a concern about culture.
51. It can thus be seen that Mr Walsh presented the issue to each director in an almost identical way: it related to the payment of tax, it had been cured in 2018, but it cast an unfortunate light on ‘culture’ in 2012. It was a ‘legacy issue’; something long since resolved but of residual concern for what it said of historical culture.

⁷⁵ T3804.16 (Helen Coonan).

⁷⁶ T3805.16-17 and 3803.10-14 (Helen Coonan).

⁷⁷ T3803.6.(Helen Coonan).

⁷⁸ T3608.15-17 and T3608.29-33 (Sarah Jane Halton).

⁷⁹ T3608.17-19 and T3608.35-37 (Sarah Jane Halton).

⁸⁰ T3609.31 (Sarah Jane Halton).

⁸¹ T3695.40-45 (Antonia Korsanos).

⁸² T3696.4-10 (Antonia Korsanos).

⁸³ T3696.28-30 (Antonia Korsanos).

⁸⁴ T2244.27- 47 and T2245.1-3 (Nigel Morrison).

52. Counsel Assisting's submissions are that Mr Walsh also 'appears to have downplayed the issue' in disclosing it to Allens on 18 March 2021.⁸⁵ Mr Maher acknowledged in evidence that Mr Walsh never told him that he had discussed the matter with Ms Coonan, and certainly never indicated that Ms Coonan was 'undertaking a review of the issue'.⁸⁶
53. In light of the evidence about how Mr Walsh presented the tax issue to various people, the following propositions should be accepted.
54. *First*, there is no force to Counsel Assisting's submission that it is unlikely that Mr Walsh informed Ms Coonan that the issue was 'fixed', because he knew that was not the case.⁸⁷ Counsel Assisting overlook the evidence that Mr Walsh conveyed to each other director that the issue was fixed. The probabilities are that he conveyed the same message to Ms Coonan, just as she said he did. Were the matter in doubt, Mr Walsh's use of the description 'Legacy Issue' in his agenda⁸⁸ – language that suggests a historical matter, not a matter of *ongoing* significance – demonstrates his intention to present the matter to Ms Coonan as a historical one which had been 'fixed'. This Commission should find that Ms Coonan's evidence is entirely reliable in describing how Mr Walsh presented the tax issue to her in the 23 February phone conversation.
55. *Secondly*, the way in which the matter was presented explains any failure to follow up or further question Mr Walsh about the issue. Presented as it was, the issue was not of outstanding importance. Counsel Assisting rely on this reasoning in relation to Allens.⁸⁹ More importantly, there is no suggestion in Counsel Assisting's submissions that any of the other directors were wrong to abstain from making further inquiry of Mr Walsh after he presented the issue to them. That does not reflect adversely on those directors. Their response or lack of it simply reflects an understandable response to the issue given the way in which Mr Walsh presented it. The same applies to Ms Coonan.
56. *Thirdly*, and ironically, Ms Coonan was entitled to feel that the fact that a 'legacy issue' that apparently bore only on culture in 2012, and which the VCGLR had already had 'a thorough look at' in 2018,⁹⁰ was again being raised with her by the new CEO of Crown Melbourne was confirmation that her 'bring out your dead' message was being heard. After all, the inclusion of a 'legacy issue' which had been thoroughly examined by the VCGLR three years earlier and was concerning only for what a presentation showed of Crown's culture in 2012, could reasonably have been seen as a sign that *any* issues would be brought to her and the Board, just as she had requested. Indeed, as Ms Coonan recalls it, Mr Walsh presented this as an example of compliance with her request to 'tell me everything'.⁹¹ Considered in this way, Counsel Assisting's

⁸⁵ Counsel Assisting Submissions (20 July 2021) p102 [1.138], p 104 [1142], [1145], [1146].

⁸⁶ T2302.30-T2303.2 (Andrew Maher).

⁸⁷ Counsel Assisting Submissions (20 July 2021) p293 [5.77].

⁸⁸ Exhibit RC0358 Memorandum regarding Crown Melbourne Weekly Catch Up Agenda, 23 February 2021, CRW.512.135.0073 at .0074.

⁸⁹ Counsel Assisting p 104 [1145].

⁹⁰ T3803.11-12 (Helen Coonan).

⁹¹ T3803.8(Helen Coonan).

submission that scepticism was warranted, indeed was required of Ms Coonan in the circumstances,⁹² has the matter backwards. It would have taken an extraordinarily sceptical person to assume that the new CEO of Crown Melbourne, whilst professing to have brought forward a historical cultural issue from 2012 in order to reveal all, needed to be interrogated on the veracity of his revelations. On the basis of what Ms Coonan was told, there was nothing requiring her active consideration independent of Mr Walsh's review with the lawyers.

57. *Fourthly*, Ms Coonan's evidence that she told Mr Walsh to get the material together and provide it to the lawyers⁹³ was corroborated by Mr Walsh⁹⁴ and inherently probable. Mr Walsh gave evidence that Ms Coonan had trumpeted to all concerned a policy of candid disclosure of Crown's past wrongs.⁹⁵ It was entirely consistent with that message to suggest that the relevant material be provided to Crown's lawyers. That she did indeed direct this be done is consistent with Mr Walsh's actions over the ensuing weeks. The day after the meeting, he asked for material from Mr Mackay.⁹⁶ When he spoke to Nigel Morrison about the issue in the corridor, he conveyed that the document he had discovered would be provided to the lawyers to provide to this Commission.⁹⁷ Sometime after 10 March 2021, he organised a meeting with the Allens partner Mr Maher to discuss the issue.⁹⁸ That meeting took place on 18 March 2021.⁹⁹ There, he suggested to Mr Maher that the documents may need to be disclosed to this Commission.¹⁰⁰ The following day, the documents, presumably gathered following the 23 February telephone conversation with Ms Coonan, were provided to Allens.¹⁰¹ That history leaves little room for doubt that Ms Coonan was accurately recalling the meeting, when she said she had told Mr Walsh to get the material together and 'pack it all up and send it to the lawyers for disclosure to the Commission'.¹⁰²
58. *Fifthly*, the context should be recalled. Crown was a corporation in crisis, with many urgent priorities. That much is obvious, but is further demonstrated by an examination of the agenda of the telephone meeting between Ms Coonan and Mr Walsh. It was entirely explicable that an issue that had no apparent enduring significance other than what it said about Crown's culture in 2012 would be sent off for legal advice and not returned to again.¹⁰³ That approach was an appropriate response to what Ms Coonan was told, when that is evaluated in its proper context. It is part of the duties of an

⁹² Counsel Assisting Submissions (20 July 2021) p 295 [5.83].

⁹³ T3805.27-3806.7 (Helen Coonan).

⁹⁴ T3221.1-3222.18 (Xavier Walsh).

⁹⁵ T3348.28-3348.36 and T3217.15 (Xavier Walsh).

⁹⁶ T1610.29-34 (Mark Mackay); T3218.3-10 (Xavier Walsh).

⁹⁷ T2244.35, T2255.1-6 (Nigel Morrison).

⁹⁸ T2302. 7 (Andrew Maher).

⁹⁹ T2300.36 (Andrew Maher).

¹⁰⁰ T2297.9 (Andrew Maher).

¹⁰¹ T2329.33-35 (Andrew Maher).

¹⁰² T3805.32-33 (Helen Coonan).

¹⁰³ Cf the pejorative submission in Counsel Assisting Submissions (20 July 2021) p294 [5.84].

executive chair, particularly in such circumstances, to prioritise, based on the information available to them. It is no indication of ‘poor judgment’.¹⁰⁴

59. *Sixthly*, Ms Coonan’s other conduct at Crown at the time, and indeed her entire career in the profession and public service, are not consistent with her failing to respond to an issue if it had been presented to her as one which called for serious and immediate attention on her part. As noted above, following her appointment as Executive Chair, Ms Coonan emphasised repeatedly and in every available forum that staff at Crown should bring to light any past misconduct. She sought to make such an approach the hallmark of her stewardship of Crown. All this supports her evidence as to what she was told (a brief mention of a ‘legacy issue’), and it corroborates the propriety of her conduct in the circumstances.
60. *Seventhly*, and by contrast, as noted above, Counsel Assisting submits that Mr Walsh was not completely frank and open with *anyone* to whom he communicated about this matter, whether internally in Crown or externally to its solicitors.¹⁰⁵ In those circumstances his evidence provides an unsatisfactory basis upon which to criticise Ms Coonan.
61. *Eighthly*, the fact that Mr Walsh wrote on his copy of the agenda, in respect of the ‘Legacy Issue’, ‘Helen to consider’ is entirely equivocal and does nothing to undermine either Ms Coonan’s account or the propriety of her conduct.¹⁰⁶
62. The evidence on this note was left in an unsatisfactory state. Counsel Assisting submit that Mr Walsh’s note is a basis for finding, despite Ms Coonan’s denial, that she said to Mr Walsh that she would consider the matter. First, Mr Walsh did not in fact give that evidence. He was not asked to give his account of the conversation. He did agree that Ms Coonan was “going to consider the matter”. But no basis for that belief in anything *said* by Ms Coonan (as opposed to his own assumption or inference) was established. It must be kept in mind that basic facts about the note were not established. It was not established whether the note was made in advance, to guide discussion, contemporaneously with the discussion, or afterwards. Mr Walsh could not even say what the note signified: “I don’t know what I was thinking when I wrote ‘Helen to consider’”.¹⁰⁷ Nor is it clear what Mr Walsh thought Ms Coonan was to “consider”.
63. Mr Walsh’s volunteered summary of his exchange with Ms Coonan entirely supports her account:

Q. You weren't sure what she was going to say to that legacy issue, were you, when you raised it with her?

¹⁰⁴ Cf Counsel Assisting Submissions (20 July 2021) p294 [5.84].

¹⁰⁵ Counsel Assisting Submissions (20 July 2021) p 282 [4.36].

¹⁰⁶ Exhibit RC0358 Memorandum regarding Crown Melbourne Weekly Catch Up Agenda, 23 February 2021, CRW.512.135.0073 at .0074.

¹⁰⁷ T3221.12-13 (Xavier Walsh).

A. I wasn't, but I was confident, based on the discussions and communication she previously had was, look, "Now is the time, that anyone who has any concerns on any matter, please raise them", and I was confident she would take it in the manner which she did, which was **thank me for raising it, and please look into it.** [emphasis added]¹⁰⁸

64. When further pressed on whether Helen was in fact required to 'review' anything after the meeting, Mr Walsh responded in the following way:¹⁰⁹

Q. So you assumed this important issue was left with you alone?

A. She had instructed me to raise it at the appropriate time with the lawyers, which I did.

65. Matters were not assisted by Mr Walsh being questioned on the basis that his note was somehow inconsistent with Ms Coonan's statement that she had (as Mr Walsh accepted) asked him to get the information together and give it to the lawyers for disclosure to the Commission.¹¹⁰ There was no such inconsistency.

66. Counsel Assisting also rely on a conversation between Mr Walsh and Mr Mackay on 24 February. However Mr Mackay's account of the conversation was that Mr Walsh said he was "reviewing the bonus jackpots latent issue with Helen in regards to the Royal Commission".¹¹¹ That is different from Ms Coonan independently considering it. And understanding "with Helen" in the less self-aggrandising sense of "for Helen" causes any difference even of nuance to disappear.

67. More fundamentally, none of the other evidence bearing upon the brief discussion of the 'Legacy Issue' suggests that Ms Coonan was left with anything of substance to consider at that time. Mr Walsh himself could not point to any particular outcome he was expecting from Ms Coonan's 'considerations': "[s]he definitely told me to pull the information together. She was, you know, concerned regarding the matter to, establish a position, *and that was left to me.*"¹¹²

68. In truth, divining what to make of the notation 'Helen to consider' involves speculation that provides no sound basis for fact finding, and, *a fortiori*, no basis for rejecting Ms Coonan's testimony. The absence of any subsequent communication between Ms Coonan and Mr Walsh on this issue is consistent with nothing having been left for Ms Coonan to consider or otherwise follow-up. Indeed, taken as a whole the evidence supports Ms Coonan's recollection of the matter

69. Even if, contrary to these submissions, the Commission finds that something was said to the effect that Ms Coonan would consider the matter raised by Mr Walsh, the fact that she did not revert to him about it is of no significance. It is clear she asked him to get material together and send it to the lawyers. The obvious inference is that if

¹⁰⁸ T3225.13-.20 (Xavier Walsh).

¹⁰⁹ T3274:30-34 (Xavier Walsh).

¹¹⁰ T3220.33-3221.20 (Xavier Walsh).

¹¹¹ T2131.22-28 (Mackay).

¹¹² T3221.6-11 (Xavier Walsh) (emphasis added).

there was anything of concern the lawyers would raise it and it would come to her attention. What had actually been presented to her by Mr Walsh didn't suggest any material risk of that occurring. And of course, there were many other things, much more urgent, requiring her attention.

70. On the other hand, the conversation indicated that Ms Coonan had every reason to believe that her 'bring out your dead' message was hitting home, resulting in a 'Legacy Issue' from 2012 that had been fully revealed to the VCGLR in 2018 being brought to her attention, and sent off to Crown's lawyers to be dealt with appropriately. In the circumstances there was no occasion for her, or any of the other directors, further to interrogate Mr Walsh about the matter or to be sceptical about his information.
71. The actions taken by the Board following the possible current underpayment of tax revealed on 7 June are entirely consistent with this analysis.
72. That day, Ms Coonan instructed ABL to get urgent advice regarding the issue.¹¹³ Shortly thereafter Mark Robertson QC was briefed to advise Crown on the legality of the deductions, as informed by a factual investigation to be conducted by EY.¹¹⁴
73. The Board, taking an appropriately cautious approach befitting the seriousness of the issue, determined that it would be prudent to also seek two independent opinions. To that end, the Board instructed ABL to obtain further independent advice from other Senior Counsel (Chris Archibald QC, Chris Carr SC and Anna Dixon). Those instructions were provided to counsel on 16 June 2021.¹¹⁵
74. A little over a week after first instructing Robertson QC, the Board received advice from him that deemed the vast majority of deductions to have been appropriate, with only approximately \$8 million in inappropriate deductions (plus penalty interest and supertax).¹¹⁶
75. On 5 July, advice was provided by Archibald QC and Dixon.¹¹⁷ It concluded that all the bonus jackpot deductions were inappropriate, resulting in a tax debt of approximately \$30 million (plus penalty interest and supertax).
76. Following the receipt of these advices, and some supplementary advice, on 27 July the Crown Resorts Board resolved to pay the State approximate \$61 million, being the amount Archibald QC and Dixon held to have been underpaid, plus supertax and penalty interest.¹¹⁸

¹¹³ T3813.26-33 (Helen Coonan).

¹¹⁴ Exhibit RC0796 Annexure C, Crown Melbourne Brief to Advise (CRW.512.156.0546).

¹¹⁵ CRW.900.006.1758 Email from Shaun Cartoon to Christopher Carr SC, Christopher Archibald QC and Anna Dixon dated 16 June 2021.

¹¹⁶ Exhibit RC0889 ABL Crown Resorts Casino Gaming Tax – Opinion of Mark Robertson QC, 21 - CRW.900.008.1377.

¹¹⁷ Exhibit RC0422 Annexure A, Memorandum from Chris Archibald QC and Anna Dixon to Crown Resorts, 5 June 2021 - CRW.512.202.0005.

¹¹⁸ Crown Resorts Limited 'Victorian Casino Tax- Update' (ASX/ Media Release, 27 July 2021), 1.

77. Discussions between the State and the Board are expected to continue in relation to whether any further amount of tax is owed. The Board has obtained advice from both Robertson QC, and Archibald QC and Dixon regarding the Matchplay issue.¹¹⁹ The opinions respectively expressed have held that Crown Resorts was not required to pay tax on pokie bets that were placed using loyalty points (a matter conceded to be ‘not free from doubt’ by Counsel Assisting).
78. The Board’s decisions – promptly to review the matter, to seek two sets of independent advice, to take a conservative approach to the amount owed, proactively repay it, and to cooperate to resolve any remaining issue as to the correctness of Crown’s calculation of the underpayment – speak well of Crown’s current board, and of Ms Coonan.
79. On no view does this episode provide any basis for criticising Ms Coonan’s judgment or level of curiosity.
80. It does not remotely provide any basis for criticism of her character or integrity.

C.3 The ABL Letter

81. Counsel Assisting submit that the decision to send the ABL letter ‘shows poor judgment and is the antithesis of the cultural reform that [Crown] needs to move forward’.¹²⁰ That submission should be rejected.
82. *First*, it is necessary to consider whose letter it was. The author was Leon Zwier, a partner in Arnold Bloch Leibler. He was not writing as Crown’s lawyer. Crown was not his client. Nor was he writing as Ms Coonan’s lawyer. He was writing on behalf of *all the members* of the Board of Crown Resorts.
83. *Secondly*, the burden of the letter is to outline for the Minister Crown’s understanding of its present position, and, more importantly, some significant risks that Crown would face in the event of cancellation of its licence, and the ramifications for Crown stakeholders if those risks were to materialise. It could not be assumed that the Minister was aware of these matters. In addition, the letter does not disguise the state of affairs at Crown. It expressly refers to the Bergin Report’s findings and quotes its statement that “Ms Coonan accepted the serious corporate failings of Crown” and the finding that “the burden of reformation will be great”. Against that background the letter sought an opportunity for the Chair to discuss the affairs of Crown with the Minister and others in the government.
84. *Thirdly*, the context of the letter is important. The risk of default under Crown’s credit arrangements was highlighted in the letter. Such a default might arise if the

¹¹⁹ See CRW.512.252.0012 and CRW.512.252.0031, both produced to the Royal Commission on 2 August 2021.

¹²⁰ Counsel Assisting Submissions (20 July 2021) p295 [5.91].

Government announced a response to the Commission's report. The government could not be assumed to be conscious of such considerations, or all their ramifications.

85. Once attention is paid to the authorship, content and context of the letter it is apparent that there is no basis whatsoever for criticising Ms Coonan or any of the other directors of Crown for authorising it. On the contrary. The directors' statutory duty was diligently to exercise their powers as directors to protect the company and its many stakeholders. Pre-emptively bringing critical matters to the attention of the government is a performance of that duty. They simply could not count on having time to do so once events had occurred and the matter was the subject of headlines.
86. In that context the letter was neither inappropriate, nor evidence of "poor judgment". It was simply necessary.
87. One thing is clear. The sending of the letter could in no sense be seen as an attempt to undermine this Commission.

C.4 Failure to ensure Ms Coonan's cooperative approach to regulators was carried over into VCGLR dealings in December 2020 to February 2021

88. The next criticism raised in Counsel Assisting's submissions relates to the decision by the Board of Crown Resort in January 2021 to maintain in proceedings before the VCGLR, the defensive stance taken by Crown in the Bergin Inquiry.¹²¹ The Board's decision, it is suggested, contrasted with the regret that Ms Coonan expressed in her evidence to the Bergin Inquiry at the combative course Crown had taken in that inquiry.¹²²
89. So much might be accepted. However, it would be wrong to conclude that these decisions by the Board warrant any criticism of Ms Coonan.
90. Each of the three witnesses before this Commission who were members of the Board at that time gave evidence that the Board was at that time still controlled by the now-retired directors.
91. When Ms Halton described the written response to the VCGLR's 'show cause' notice, she referred to the inability of the current directors of Crown Resorts to 'change the tone' emanating from the company at that time. She said:¹²³

Your observation that the written response was not consistent with openness and transparency, and remember, as I understand it, that occurred in January. That was again before we had managed to put ourselves in a position where we could confidently, and without any ambiguity, change

¹²¹ Counsel Assisting Submissions (20 July 2021) p290-291 [5.49]-[5.56].

¹²² Exhibit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0379 [55].

¹²³ T3637.9-15 (Sarah Jane Halton).

the tone. So I would say to you – and I have to say, the tone of the correspondence, I think, is deeply regrettable.

92. To the same effect, Ms Korsanos gave evidence that the current directors were not able to make significant change until after January. She explained:¹²⁴

I think there is a reason that this is all happening – this all happened well before, not well before, but before there was what I would have referenced as significant change at both a board and a management level in the business where I think at that point in time where we saw that significant change we've been able to better represent who we want to be and how we want to engage with the VCGLR.

....

I think the point of the change, let's say controllable change, was after we saw a significant change in the board and executive. In January, that wasn't there.

93. Ms Coonan gave similar evidence. She explained that she viewed the letter sent by Crown to the VCGLR in January 2021 as 'very regrettable',¹²⁵ indicating that it closely resembled submissions made in the Bergin Inquiry that she wasn't happy with.¹²⁶ However, just like Ms Korsanos and Ms Halton, Ms Coonan explained that these actions were taken in the context of a strategic decision that was pushed by the majority of the old board and old management, and supported by legal advice.¹²⁷ She stated that change of the kind that was required on this issue 'certainly couldn't happen until after the Bergin Inquiry, which enabled the remaining directors to get control of the company and to take a different approach'.¹²⁸ She confirmed that Counsel's advice was that the submission had to be consistent with the submission to the Bergin Inquiry. That submission reflected the "strategic direction that had been taken by Senior Counsel and everyone else advising the company, and I was advised that I couldn't take a different approach until after the report was handed down... It would undermine all the submissions".¹²⁹ She was not supported by the Board, still dominated by "old Crown" directors, in suggesting a different direction be taken.¹³⁰
94. It is not clear what it is suggested Ms Coonan should have done differently. Certainly nothing specific was put to her in that regard save a floated suggestion that the Board might have sought a second opinion.¹³¹ Being practical, no new lawyer could hope to second guess the judgment of a team, led by Senior Counsel, which had been involved

¹²⁴ T3713.21- 27 and T3713.38 (Antonia Korsanos).

¹²⁵ T3766.44-45 (Helen Coonan).

¹²⁶ T3767.7-12 (Helen Coonan).

¹²⁷ T3766.45- T3767. 1 and T3767.14-24 and T3767.37 (Helen Coonan).

¹²⁸ T3766.30-32 (Helen Coonan). Refer also to T 3432.8-14 (Nick Weeks).

¹²⁹ T3768.1-8 (Helen Coonan).

¹³⁰ T3767.39-3768.41 (Helen Coonan).

¹³¹ T3745.45-3746.8 (Helen Coonan).

throughout the Bergin Inquiry, even making the unlikely assumption that the Board would have approved seeking such advice.

95. It is significant that, despite the conduct of the January hearing before the VCGLR, Crown had otherwise taken on a quite different internal approach to its engagement with the regulators in each of New South Wales, Victoria and Western Australia.¹³²
96. Of more particular relevance to the issue of Ms Coonan's suitability, the evidence shows that since she was able to take direct and personal responsibility for the relationship with the NSW Regulator ILGA after the Bergin Report was published, that relationship had changed entirely, it being 'night and day' by comparison to its earlier instantiation.¹³³ Consistent with that, under Ms Coonan as interim Executive Chair, internal directions to management within Crown have emphasised openness and cooperation with regulators.¹³⁴ Such evidence speaks well of Ms Coonan's suitability.

C.5 Response to China arrests, May 2019

97. It is convenient to turn next to Counsel Assisting's criticism of the Crown Resorts Board's approach from the time that it received the VCGLR's Draft China Report in May 2019.¹³⁵ Counsel Assisting criticise the Board's failure 'to demand that inquiries be commenced and that management be called upon to explain themselves'.¹³⁶ This pays insufficient regard to Ms Coonan's evidence that the Board was very concerned about this issue,¹³⁷ the involvement of external lawyers in considering this particular issue on behalf of Crown, and Ms Coonan's observation that it is no small thing for a public company to depart from the legal advice of solicitors who have a detailed understanding of the business.¹³⁸ Perhaps more significantly, Counsel Assisting attribute this failure of the Board to Ms Coonan because it would be 'expected that [Ms Coonan's] voice in a debate could not be easily silenced, even against a strong majority' and that '[h]er life experience distinguishes her as a natural leader'.¹³⁹ That description of Ms Coonan characteristics is of course accurate. But it remains that a Board is a collective decision-making body, in which individuals – having put their views – must abide by the decision of the Board. Ms Coonan made that very point in her evidence to this Commission on this topic.¹⁴⁰ As has already been observed above at [90]-[93], neither Ms Coonan, Ms Halton nor Ms Korsanos were not able to change the approach of the Board until the Bergin Report was delivered. Ms Coonan's adherence to the Board's approach until then demonstrates only the laudable discipline instilled by her long involvement in collective decision-making bodies.

¹³² T3427.23-47 (Nick Weeks).

¹³³ T3432.37 – 3433.16 (Nick Weeks).

¹³⁴ T3432.37 – 3433.16 (Nick Weeks).

¹³⁵ Counsel Assisting Submissions (20 July 2021) p288 [5.29]

¹³⁶ Counsel Assisting Submissions (20 July 2021) p288 [5.34].

¹³⁷ T3743.42 (Helen Coonan).

¹³⁸ T3745.23-27 (Helen Coonan).

¹³⁹ Counsel Assisting Submissions (20 July 2021) p287 [5.24].

¹⁴⁰ T3745.8 (Helen Coonan).

C.6 Mr Walsh's appointment

98. Counsel assisting submits that Ms Coonan did not exercise due care and diligence in appointing Xavier Walsh.¹⁴¹
99. Mr Walsh was appointed as the CEO of Crown Melbourne on 9 December 2020, as part of the package of reforms initiated by Ken Barton,¹⁴² and well prior to the Bergin Report being handed down on 1 February 2021. Counsel Assisting do not criticise that appointment.
100. Mr Walsh was appointed to the Crown Melbourne Board on 15 February 2021. That appointment was, of course, made by the Crown Melbourne Board,¹⁴³ of which Ms Coonan was not a member, she herself being appointed to that Board the following day.¹⁴⁴ Whilst Ms Coonan does not shrink from responsibility for the appointment of Mr Walsh to the Crown Melbourne Board, it would be wrong to treat his appointment as falling wholly at Ms Coonan's feet.
101. Counsel Assisting suggest that, in the appointment of Mr Walsh, Ms Coonan was driven by little more than 'availability',¹⁴⁵ and did not properly consider the countervailing material. That criticism is unfair.
102. Mr Walsh was an acknowledged expert in the core business of Crown Melbourne.¹⁴⁶ He was the Chief Executive Officer of Crown Melbourne. He had appeared receptive to Ms Coonan when she took him through the remediation program.¹⁴⁷ When she tackled him on his approach to appearing before the VCGLR in January 2021, he had explained that 'he was very uncomfortable with what he had to present' but had felt constrained to follow the earlier-filed submissions.¹⁴⁸ Mr Walsh's evidence to this Commission is entirely consistent with him having conveyed that to Ms Coonan.¹⁴⁹ Such a response suggested an individual who was appropriately attuned to the need to change Crown. On the basis of her personal dealings with Mr Walsh up to the time of his appointment, there was nothing to suggest that Mr Walsh was unsuitable.
103. Whilst 'availability' was not the only criterion, it was a material issue for Crown. Crown Melbourne had a pressing need for two additional directors to comply with its

¹⁴¹ Counsel Assisting Submissions (20 July 2021) p291 [5.59].

¹⁴² T3203.2-10 (Xavier Walsh).

¹⁴³ Crown Melbourne Written Resolution – Director and Secretary Changed dated 13 February 2021 CRW.508.002.5181; T3820.34 (Helen Coonan).

¹⁴⁴ T3725.38-41 (Helen Coonan).

¹⁴⁵ Counsel Assisting Submissions (20 July 2021) p 291 [5.66].

¹⁴⁶ T3821.21-22 (Helen Coonan).

¹⁴⁷ T3820.46 – 3821.11 (Helen Coonan).

¹⁴⁸ T3823.22 (Helen Coonan).

¹⁴⁹ Mr Walsh said that he was contacted on the Monday he returned from leave and asked to appear at the hearing on the Thursday (T3299.43-46), that he wasn't responsible for putting the submissions in (T3299.21-23), and that the submissions had already been put in and that he followed the position put (T3333.27-29).

governance requirements,¹⁵⁰ and the circumstances of Crown Melbourne presented an obvious impediment to the recruitment of directors. The CEO being an ostensibly suitable subject-matter expert, it made sense to appoint him to the Board.

104. That leaves a criticism founded on a passage in the Bergin Report that implicitly criticises employees including Mr Walsh for failing to escalate a particular matter to, eg, Crown’s Risk Management Committee.¹⁵¹ In the context of a report that directed its concluding Chapters to forceful and explicit criticism of individuals within Crown who were involved in wrongdoing, Ms Coonan is hardly to be condemned for failing to appreciate an isolated and relatively obscure reference to Mr Walsh, a reference which was also apparently missed by each Crown Melbourne Board member who approved the appointment. Counsel Assisting abstains from criticising them.

PART D. SHOULD FINDINGS BE MADE?

105. The Commissioner will appreciate the importance of the general principle that adverse findings should not be made as to a person’s conduct, credit and more especially *character*, unless it is necessary to make such findings.
106. That principle is engaged here as regards Ms Coonan. Her continuing role in Crown was always an interim one. Her evidence in this Commission was that “on balance” she had agreed to remain “on the Board on the Board to attempt to rehabilitate the company, to stabilise the Board and to roll out the remediation”.¹⁵² This was only to be “until an appropriate time when I can step aside”.¹⁵³
107. Counsel Assisting appears to accept, rightly, that it was to her credit that Ms Coonan agreed to “stay the course” and take on the Executive Chairman position.¹⁵⁴ As did the Bergin Inquiry.¹⁵⁵ It reflected a selfless commitment to the welfare of Crown and its many stakeholders, despite her preference to step down.
108. However, consistently with her evidence, the interim period is shortly to come to an end. In those circumstances any question as to whether she is a “suitable person” within the meaning of s 9 of the *Casino Control Act 1991 (Vic)* is moot, and there is no occasion for this Commission to address it. No relevant function of the executive government would be affected by a finding either way. As Counsel Assisting submits, the inquiry into character in the context of suitability is forward looking: “suitability” requires “a predictive judgment about how the individual would conduct themselves

¹⁵⁰ T3817.16 – 3817.28 (Helen Coonan).

¹⁵¹ Counsel Assisting Submissions (20 July 2021) p291 [5.60](ii); Exhibit RC0970 Bergin Inquiry Report Volume 1, 1 February 2021, p219 [80]-[81]; Exhibit RC0445 Bergin Inquiry Report Volume 1, 1 February 2021 COM.0005.0001.0001.0231 [80]-[81].

¹⁵² T3731.15-17 (Helen Coonan).

¹⁵³ T3371.30 (Helen Coonan).

¹⁵⁴ Counsel Assisting Submissions (20 July 2021) p 295 [5.93].

¹⁵⁵ Exhibit RC0970 Bergin Inquiry Report Volume 2, 1 February 2021, COM.0005.0001.0334 at .0382 [66]-[67].

in the future, which in turn was determined by an investigation into the individual's character".¹⁵⁶ If a person will no longer be an Associate for any material period then there is nothing to predict and therefore no basis for an inquiry into their character.

109. The Commission may also consider that on their proper interpretation the relevant Terms of Reference are only concerned with persons who it is apprehended will or may be 'existing associates' at the time of making findings. Paragraph 10 of the Terms of Reference appoints this Commission to inquire into and report on certain matters. Changes in governance and the catch-all in paragraph K aside, each matter requires this Commission to report on the contemporary state of affairs, or what would be required to alter that state of affairs in future. What the Terms of Reference call for is an examination of the extant state of affairs existing at the time of the findings being made. Paragraph I tends to confirm this. It requires that, if any existing associates are found not to be a Suitable Associates, that the Commission identify 'what action (if any) would be required for those persons to become Suitable Associates of Crown Melbourne.' It should not be accepted that the Terms of Reference requires such otiose reporting on a person who has ceased to be an associate of Crown Melbourne.

PART E CONCLUSION

110. A dispassionate assessment of all the evidence supports a finding that Ms Coonan is suitable to be an associate of Crown. Her good character, honesty and integrity have been demonstrated throughout her career, and most recently in her role as Executive Chair of Crown Resorts. She has dedicated herself to the reformation of the company, achieving a remarkable degree of positive change in a relatively short period. The work, of course, is incomplete. And, given that perfection is not allowed us, there will have been errors. But nothing revealed in this Commission or the Bergin Inquiry impeaches her honesty, integrity or good character. However given that, consistently with the interim nature of her role, Ms Coonan's time as an officer of Crown will shortly come to an end, the issue of her suitability does not fall for consideration. No findings need be made on the issue.

John Sheahan QC

Chris Carr SC

Anna Dixon

Leon Zwier

Arnold Bloch Leibler

¹⁵⁶ Counsel Assisting Submissions at p 19 [5.8], quoting *Re Bally's Casino Application* (1981) 10 NJAR 356.