

**SUBMISSIONS IN RESPONSE TO
CLOSING SUBMISSIONS OF COUNSEL ASSISTING THE COMMISSION
KENNETH MCRAE BARTON**

Letter to the VCGLR

1. Initialism¹ and Grant Thornton² were engaged on behalf of Crown by its then solicitors, Minter Ellison in October 2020 to analyse the Crown Perth operated bank account in the name of Riverbank Investments Pty Ltd (**Riverbank**) and the Crown Melbourne operated bank account in the name of Southbank Investments Pty Ltd (**Southbank**) for indications of money laundering.
2. In October 2020, Allens was engaged to assist Crown with its response to a notice from AUSTRAC and matters relating to anti-money laundering (**AML**) more generally. Minter Ellison and Allens were working together in relation to matters related to AML arising out of the Bergin Inquiry including instructing Grant Thornton to analyse Crown's bank accounts to determine potential indicators of money laundering.³
3. The reports prepared by Initialism and Grant Thornton were provided by Crown to the VCGLR under cover of a letter dated 20 November 2020.⁴
4. The process by which the letter from Crown to the VCGLR was drafted is apparent from the enclosed email correspondence, which may be summarised as follows:
 - (a) At 6:04 pm on 18 November 2020, the VCGLR served a s 26 Notice on Crown requiring production of the Initialism and Grant Thornton reports.⁵
 - (b) At 9:26 am on 20 November 2020, Mr Barton forwarded the s 26 Notice to Peter Haig of Allens, who responded at 9:41 am, saying that Allens would be preparing a covering letter to accompany the reports.⁶
 - (c) At 11:26 am on 20 November 2020, Michelle Fielding forwarded a short draft covering letter to Allens that she had already prepared.⁷

¹ Statement of Neil George Jeans: INI.0000.0005.0004 paras 35 and 36.

² Statement of Katherine Shamaï: GTA.0000.0005.0001 para 3 exhibit RC#00344; GTA.0001.0001.1010.

³ P-653:44 – P-654:6.

⁴ VCG.0001.002.2001 exhibit #RC0047.

⁵ CRW.565.007.8149; CRW.565.007.8150.

⁶ CRW.512.248.0001.

⁷ CRW.565.007.8066; CRW.565.007.8069.

- (d) At 2:58 pm on 20 November 2020, Mr Haig responded with a revised draft covering letter to which he had added the sentence quoted in paragraph 2.56 of the submissions of counsel assisting.⁸
 - (e) At 4:30 pm on 20 November 2020, Ms Fielding made minor changes to the letter but the relevant paragraph was unchanged.⁹
 - (f) At 6:43 pm on 20 November 2020, the final letter was sent to the VCGLR, under Mr Barton's signature, containing the relevant paragraph.¹⁰
5. As the email history shows, the sentence in the letter that is extracted in paragraph 2.56 on page 165 of the submissions of counsel assisting did not appear in the draft letter prepared by Crown, but rather was inserted into the letter by Mr Haig of Allens.
6. For the reasons set out in paragraphs 1 and 2 above, Crown's solicitors were best placed to know the status of the engagement of the consultants.
7. The evidence of the process by which the letter to the VCGLR was drafted referred to in paragraph 4 above and the evidence summarised below show that both Mr Jeans of Initialism and Mr Haig of Allens believed that Grant Thornton had been engaged to review the Crown Melbourne and Burswood Nominees accounts before 9 December 2020. Specifically:
- (a) Mr Jeans' oral evidence was that it was always Crown's intention to investigate the Crown Melbourne and Burswood Nominees accounts, but the Riverbank and Southbank accounts were prioritised because of their relevance to the Bergin Inquiry.¹¹
 - (b) On the same date as the letter from Crown to the VCGLR, namely 20 November 2020, Mr Jeans sent an email containing his "to do list" to Claude Marais of Crown, Richard Murphy of Minter Ellison and others, which included the entry: "*Burswood Nominees and Crown Melbourne Bank Accounts: Replicate GT Analysis and Initialism Review for each account*".¹²
 - (c) Grant Thornton was supporting Initialism with data analysis in Initialism's review of bank accounts.¹³

⁸ CRW.565.001.4857; CRW.565.001.4860.

⁹ CRW.565.007.8016; CRW.565.007.8021.

¹⁰ CRW.520.023.6198; CRW.520.023.6200.

¹¹ P-737:31-35; INI:0001.0001.2464 exhibit #RC0052; P-740:37-47.

¹² INI 0001.0001.2424: exhibit #RC0065.

¹³ P701:16-19 and 38-44.

- (d) The primary engagement was with Initialism.¹⁴ Mr Jeans introduced Ms Shamai to Crown,¹⁵ and, on occasion, Minter Ellison relied on Mr Jeans to communicate with Ms Shamai.¹⁶
8. Ms Shamai's evidence was that:
- (a) She attended a briefing meeting with Minter Ellison and Initialism a few days before Grant Thornton was engaged, at which she became aware that the Southbank and Riverbank accounts were a high priority for review, and that the Crown Melbourne and Burswood Nominees accounts were to be reviewed at a later point.¹⁷
 - (b) Mr Jeans contacted her on 8 December 2020 to ask about the progress of her analysis of the Burswood Nominees and Crown Melbourne bank accounts;¹⁸
 - (c) That conversation took her by surprise because she had not yet received the necessary documents;¹⁹
 - (d) As a consequence, she emailed Claude Marais on 9 December 2020²⁰ and Nick Stokes of Crown on 11 December 2020²¹ to clarify the situation;
 - (e) On 11 December 2020, Claude Marais uploaded the Crown Melbourne and Burswood Nominees account statements into Collaborate for access by Ms Shamai;²²
 - (f) At about that time, Ms Shamai received an oral instruction from Mr Peter Haig of Allens to conduct the analysis of the Burswood Nominees and Crown Melbourne bank accounts.²³
9. Mr Barton is not aware of the source of the misunderstanding apparently shared by Mr Jeans and Mr Haig.
10. However, in all the above circumstances, Mr Barton was entitled to rely on the information inserted into the letter by Mr Haig.
11. Contrary to paragraphs 2.55 and 2.58 of the submissions of counsel assisting, there is no basis for a finding that Mr Barton was deliberately untruthful to the VCGLR.

¹⁴ Exhibit #RC0066.

¹⁵ Exhibit #RC0064.

¹⁶ See eg exhibit #RC0063.

¹⁷ P-636:36-40.

¹⁸ P-638:16-24

¹⁹ P-638:28-42

²⁰ P638:44-47; exhibit #RC0048.

²¹ P-639:2-6; exhibit #RC0046.

²² P-643:6-10; exhibit #RC0048.

²³ P-641:23-39.

Statement to the Bergin Inquiry

12. Paragraph 16 of Mr Barton's Sixth Statement to the Bergin Inquiry referred to Grant Thornton in the following terms:

Whereas Crown's internal review focused on the number of instances of potential structuring where aggregation occurred, Grant Thornton was instructed to identify a full set of potentially structured transactions, whether aggregated or not.

13. Mr Barton's statement used the expression "full set of potentially structured transactions" to distinguish the work that Grant Thornton and Initialism were engaged to do from the internal inquiries undertaken by Crown (Claude Marais).²⁴
14. Those internal inquiries were limited to transactions aggregated in a single cage transaction when data was entered into Crown's SYCO system.
15. In contrast, Grant Thornton was asked to form its own view as to what constituted potentially structured transactions (whether aggregated or not)²⁵ and to define and agree parameters for identifying potential "structuring" with Initialism.²⁶
16. The intention when Minter Ellison engaged Initialism and Grant Thornton was for "all instances and amounts of 'structuring'" to be identified.²⁷
17. Mr Jeans and Mr Stokes settled on three typologies, based on identifying key issues.²⁸
18. Mr Barton was not involved in the selection of parameters.
19. The terms of this part of Mr Barton's statement were settled as between Minter Ellison and Ms Shamai.²⁹

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²⁴ GTA.0001.0001.1012 exhibit #RC0042, paragraph 4; GTA.0001.0001.7254 exhibit #RC0043.

²⁵ GTA.0001.0001.1010; GTA.0001.0001.2702; GTA.0000.0005.0001 paras 6 and 8.

²⁶ GTA.0001.0001.7030 exhibit #RC0035, phase 2. P-621:3-4.

²⁷ GTO.0001.0001.1010 exhibit #RC0041.

²⁸ P-763:15-19; INI.0002.0001.0901 exhibit #RC0068.

²⁹ GTA.0001.0001.2696 exhibit #RC0056.