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TRANSCRIPT OF PROCEEDINGS

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**COMMISSIONER: HON. RAY FINKELSTEIN AO QC**

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

**MELBOURNE, VICTORIA**

**09.33 AM, TUESDAY, 22 JUNE 2021**

<b>Counsel Assisting the Commission (instructed by Corrs Chambers Westgarth as Solicitors Assisting the Commission)</b>	<b>MR GEOFFREY KOZMINSKY</b>
<b>Counsel for Crown Resorts Limited</b>	<b>MR MICHAEL BORSKY QC MS CATHERINE BUTTON QC</b>
<b>Counsel for Victorian Commission for Gambling and Liquor Regulation</b>	<b>MR PETER ROZEN QC MR JUSTIN BRERETON MS SARALA FITZGERALD</b>
<b>Counsel for Consolidated Press Holdings</b>	<b>MR OREN BIGOS QC MR NOEL HUTLEY SC MS KATHERINE BRAZENOR MR TOM O'BRIEN MS FIONA CAMERON</b>
<b>Counsel for the State of Victoria</b>	<b>MR PETER GRAY QC MR GLYN AYRES MS GEORGIE COLEMAN MS HELEN TIPLADY</b>

08:43 1 COMMISSIONER: Mr Kozminsky.  
09:33 2  
09:33 3 MR KOZMINSKY: Thank you, Commissioner. Before calling  
09:33 4 the witness, a matter of concern has arisen. Overnight during the  
09:33 5 ongoing document review two documents were uncovered that  
09:34 6 are not consistent with aspects of evidence given yesterday to the  
09:34 7 Commission. I want to begin with what was said yesterday at  
09:34 8 transcript 2141, commencing at line 47.  
09:34 9  
09:34 10 COMMISSIONER: This was the evidence of?  
09:34 11  
09:34 12 MR KOZMINSKY: Mr Mackay. I asked this:  
09:34 13  
09:34 14 *Question: After you spoke to Mr Walsh, and you*  
09:34 15 *explained to Mr Walsh the spreadsheet, I take it that as*  
09:34 16 *far as you were concerned that was the end of your*  
09:34 17 *involvement with the matter.*  
09:34 18  
09:34 19 *Answer: I've not had any further conversation on those*  
09:34 20 *two documents until my hearing with the Commission.*  
09:34 21  
09:34 22 *Question: Well, you had one further conversation*  
09:34 23 *because you spoke to Ms Fielding after you spoke to*  
09:34 24 *Mr Walsh; do you remember that?*  
09:34 25  
09:35 26 *Answer: Yes, I do. Sorry."*  
09:35 27  
09:35 28 Further down Mr Mackay suggested he may have spoken to  
09:35 29 Ms Fielding before he spoke to Mr Walsh at 11.30 am on 26  
09:35 30 February 2021, he said:  
09:35 31  
09:35 32 *I think in my evidence I said I couldn't recall exactly when*  
09:35 33 *I spoke to Michelle [being Ms Fielding].*  
09:35 34  
09:35 35 As the Commissioner knows, we have recently been inundated  
09:35 36 with documents. During last night's review we came across two  
09:35 37 emails. The first was sent by Mr Machado to Mr Mackay on 4  
09:35 38 March 2021.  
09:35 39  
09:35 40 Mr Operator, that is CRW.512.153.0132.  
09:35 41  
09:35 42 COMMISSIONER: That might be the number ..... I think we're  
09:36 43 not having much luck.  
09:36 44  
09:36 45 MR KOZMINSKY: That's right. I'm told it will take a moment  
09:36 46 to come up.  
09:37 47

09:37 1 COMMISSIONER: Is it a lengthy document?  
09:37 2  
09:37 3 MR KOZMINSKY: No, it's not. It says there:  
09:37 4  
09:37 5 *As discussed, see attached.*  
09:37 6  
09:37 7 COMMISSIONER: Can I see what it is? It is from Mr Machado  
09:37 8 to Mr Mackay.  
09:37 9  
09:37 10 MR KOZMINSKY: 4 March.  
09:37 11  
09:37 12 COMMISSIONER: 4 March, I see.  
09:37 13  
09:37 14 MR KOZMINSKY: And it says:  
09:37 15  
09:37 16 *As discussed, see attached.*  
09:37 17  
09:37 18 And the email attaches another version of the spreadsheet.  
09:37 19  
09:37 20 COMMISSIONER: Is it a different version from the version  
09:37 21 that - either version that is in evidence?  
09:37 22  
09:37 23 MR KOZMINSKY: It is. Of the many versions. I tender both  
09:37 24 the email and its attachment.  
09:37 25  
09:38 26 COMMISSIONER: Email from Jose Machado to Mark Mackay,  
09:38 27 4 March 2021, will be Exhibit 220.  
09:38 28  
09:38 29  
09:38 30 **EXHIBIT #RC0220 - EMAIL WITH ATTACHMENT**  
09:38 31 **FROM MR JOSE MACHADO TO MR MARK MACKAY**  
09:38 32 **DATED 4 MARCH 2021**  
09:38 33  
09:38 34  
09:38 35 MR KOZMINSKY: The second email was date ---  
09:38 36  
09:38 37 COMMISSIONER: Sorry, together with its attachment.  
09:38 38  
09:38 39 MR KOZMINSKY: Yes.  
09:38 40  
09:38 41 The second is an email dated 20 April 2021.  
09:38 42 CRW.512.156.1826.  
09:38 43  
09:38 44 There you see, Mr Commissioner, is an email from Mr Mackay to  
09:38 45 Mr Simon Noonan. The attachment is a document that is already  
09:38 46 in evidence and includes privileged material, so if I may I will  
09:38 47 just tender this email as an open exhibit and the attachment as

09:38 1 a confidential exhibit.

09:38 2

09:39 3 COMMISSIONER: I will mark them separately so that the email  
09:39 4 from Mark Mackay to Simon Noonan of 2021 will be Exhibit  
09:39 5 221.

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**EXHIBIT #RC00221 - EMAIL FROM MR MARK  
MACKAY TO MR SIMON NOONAN DATED 20 APRIL  
2021**

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12

09:39 13 COMMISSIONER: And the attachment to the email - is it one  
09:39 14 attachment or attachments?

09:39 15

09:39 16 MR KOZMINSKY: A single attachment.

09:39 17

09:39 18 COMMISSIONER: Attachment to the email of Mackay to  
09:39 19 Noonan will be Exhibit 222 confidential.

09:39 20

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**EXHIBIT #RC0222 - ATTACHMENT TO EMAIL FROM  
MR MARK MACKAY TO MR SIMON NOONAN DATED  
20 APRIL 2021 (CONFIDENTIAL)**

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09:39 27 MR KOZMINSKY: Mr Commissioner, these emails are not  
09:39 28 consistent with aspects of the evidence given by Mr Mackay. It is  
09:39 29 regrettable that they were not explored with Mr Mackay and he  
09:39 30 was not given an opportunity to try to explain these  
09:39 31 inconsistencies. It is also regrettable because the documents  
09:39 32 discovered overnight may have refreshed Mr Mackay's memory  
09:40 33 and allowed several important lines of inquiry relevant to today's  
09:40 34 evidence to have been pursued.

09:40 35

09:40 36 Mr Mackay has been excused and it is a matter for him and for  
09:40 37 Crown if they wish to deal with the concerns raised this morning.  
09:40 38 The Solicitors Assisting are working around the clock looking at  
09:40 39 documents. If evidence is given and that evidence is later found  
09:40 40 to be inconsistent with a document uncovered on review,  
09:40 41 witnesses in the future will be recalled. If they need to be  
09:40 42 recalled after hours or on weekends, we will do so. We hope and  
09:40 43 trust that will not be necessary.

09:40 44

09:40 45 Mr Commissioner, I call Mr Nigel Morrison.

09:40 46

09:40 47 COMMISSIONER: Thank you.

09:40 1  
09:40 2  
09:40 3 **MR NIGEL BARCLAY MORRISON, SWORN**  
09:41 4  
09:41 5  
09:41 6 **EXAMINATION-IN-CHIEF BY MR KOZMINSKY**  
09:41 7  
09:41 8  
09:41 9 MR KOZMINSKY: Good morning.  
09:41 10  
09:41 11 A. Good morning.  
09:41 12  
09:41 13 Q. Would you tell the Commissioner your full name.  
09:41 14  
09:41 15 A. Nigel Barclay Morrison.  
09:41 16  
09:41 17 Q. You've prepared a statement for the Commission?  
09:41 18  
09:41 19 A. Yes, that's correct.  
09:41 20  
09:41 21 Q. You were careful when you prepared your statement?  
09:41 22  
09:41 23 A. I believe so.  
09:41 24  
09:41 25 Q. To the best of your knowledge, is the statement true and  
09:41 26 correct?  
09:41 27  
09:41 28 A. I believe so.  
09:41 29  
09:41 30 Q. Thank you.  
09:41 31  
09:41 32 Mr Commissioner, I tender the statement and its annexures.  
09:41 33  
09:41 34 COMMISSIONER: Statement of Nigel Morrison dated 25 June  
09:41 35 will be Exhibit 223, together with attachments.  
09:42 36  
37  
38 **EXHIBIT #RC0223 - STATEMENT OF MR NIGEL**  
39 **BARCLAY MORRISON WITH ATTACHMENTS DATED**  
40 **25 JUNE 2021**  
41  
42  
09:42 43 MR KOZMINSKY: Thank you.  
09:42 44  
09:42 45 Am I correct you first learnt about the underpayment of tax issue  
09:42 46 on 7 June 2021 from an article in The Australian?  
09:42 47

- 09:42 1 A. That's correct.  
09:42 2  
09:42 3 Q. Your statement says this on page 9:  
09:42 4  
09:42 5 *My understanding is that it came to light in evidence at*  
09:42 6 *the Royal Commission on Monday 7 June.*  
09:42 7  
09:42 8 Do you see that?  
09:42 9  
09:42 10 A. Yep.  
09:42 11  
09:42 12 Q. Who told you the underpayment of tax issue first came to  
09:42 13 light at the Royal Commission on 7 June 2021?  
09:42 14  
09:42 15 A. I think I learnt that from the media article that came out in  
09:43 16 The Australian.  
09:43 17  
09:43 18 Q. So I'm clear, is it your evidence that you and your fellow  
09:43 19 directors did not know about this issue until 7 June?  
09:43 20  
09:43 21 A. That's my understanding.  
09:43 22  
09:43 23 COMMISSIONER: That might be your understanding about the  
09:43 24 other directors, but is that your personal position? You did not  
09:43 25 know anything about it until 7 June?  
09:43 26  
09:43 27 A. As I've mentioned, Commissioner, in my third paragraph  
09:43 28 on that page I had a conversation in a corridor with Xavier Walsh  
09:43 29 where he had discovered a minute that was of a meeting back in  
09:43 30 2012 where he believed and indicated Crown had changed and  
09:43 31 was going to change the basis of the calculation of gaming tax to  
09:43 32 include certain deductions. He went on to say that he was  
09:43 33 concerned primarily about the culture of the organisation and that  
09:43 34 was his big concern and this minute needed to be forwarded to  
09:44 35 the Commission as part of the documents to be provided to the  
09:44 36 Commission. But he went on to say that there was a further  
09:44 37 examination of the calculation, I believe, in 2018 where the  
09:44 38 VCGLR went through the details of the calculation and were  
09:44 39 satisfied that it had been correctly calculated and hadn't raised  
09:44 40 any issue regarding the calculation.  
09:44 41  
09:44 42 And, further, as I noted in the fourth paragraph in section 25  
09:44 43 review dated 25 June 2018, the VCGLR, as it said, receives daily  
09:44 44 records of revenue and tax and audits this information for  
09:44 45 accuracy and completeness on an ongoing basis. So that was in  
09:44 46 June 2018. So while there may have been an apparent  
09:44 47 non-disclosure, I guess, of the formation of the calculation of

09:44 1 gaming tax coming out of the minute in 2012, I think the view  
09:44 2 was that it had now resolved itself and the VCGLR was satisfied  
09:45 3 with that basis of calculation.  
09:45 4  
09:45 5 COMMISSIONER: My question was: you knew nothing about it  
09:45 6 before 7 June?  
09:45 7  
09:45 8 A. Well, other than that conversation with Xavier Walsh. I  
09:45 9 didn't construe that as being underpayment of gaming tax.  
09:45 10  
09:45 11 COMMISSIONER: Okay.  
09:45 12  
09:45 13 MR KOZMINSKY: I think we will step through this a bit more  
09:45 14 carefully just so I understand more precisely. When you said it  
09:45 15 was your understanding that it first came to light in evidence on 7  
09:45 16 June, you said to me that your understanding was you and all  
09:45 17 your fellow directors first learnt about this issue on 7 June. Is  
09:45 18 that the position?  
09:45 19  
09:45 20 A. I believe that is correct, yes.  
09:45 21  
09:46 22 Q. Assume hypothetically that your fellow directors knew  
09:46 23 about this issue well before 7 June. Would it concern you if they  
09:46 24 had not disclosed that fact to you?  
09:46 25  
09:46 26 A. Yes. If they perceived it was material, a material  
09:46 27 misstatement.  
09:46 28  
09:46 29 COMMISSIONER: Material misstatement of what?  
09:46 30  
09:46 31 A. Quantum.  
09:46 32  
09:46 33 COMMISSIONER: You are talking about now whether the  
09:46 34 accounts of the group were correct?  
09:46 35  
09:46 36 A. Whether the reported 200 million or whatever it was of  
09:46 37 unpaid gaming tax, if it was of that magnitude, yes.  
09:46 38  
09:46 39 COMMISSIONER: So your concern would have been about  
09:46 40 bookkeeping, is that fair enough?  
09:46 41  
09:46 42 A. Well, no. Crown pays 2 to 300 million of tax ---  
09:46 43  
09:46 44 COMMISSIONER: 229 last year.  
09:46 45  
09:46 46 A. Year in, year out. It is not a - there might have been  
09:47 47 margins for error, some dollars here, some dollars there, and if

09:47 1 that was the case then ---

09:47 2

09:47 3 COMMISSIONER: Mr Morrison, I'm trying to work out what  
09:47 4 would have been of concern to you, and I got the impression that  
09:47 5 what you were saying is what would have been of concern is that  
09:47 6 the accounts weren't correct, ie the accounts didn't disclose  
09:47 7 a liability. Is that the only thing that you would have been ---

09:47 8

09:47 9 A. No, I would have been concerned - I would have been  
09:47 10 concerned if it was material that it was a question of culture and  
09:47 11 a question of quantum and a question of underpayment of tax.

09:47 12

09:47 13 COMMISSIONER: All right.

09:47 14

09:47 15 MR KOZMINSKY: I might circle back to this. Let's go back to  
09:47 16 your statement, Mr Operator, up the page. Your statement goes  
09:47 17 on to say:

09:47 18

09:47 19 *I understand that a spreadsheet had been prepared*  
09:47 20 *calculating gaming taxes payable if certain expenses*  
09:47 21 *claimed as deductions, were assumed to be not*  
09:48 22 *deductible.*

09:48 23

09:48 24 A. That's right.

09:48 25

09:48 26 Q. Again, is that something you learnt from The Australian  
09:48 27 article?

09:48 28

09:48 29 A. From The Australian and subsequent communication and  
09:48 30 correspondence on the matter.

09:48 31

09:48 32 Q. After 7 June?

09:48 33

09:48 34 A. After 7 June.

09:48 35

09:48 36 Q. We'll come back to after 7 June. I'm focused for the  
09:48 37 moment on before.

09:48 38

09:48 39 Before 7 June, did anyone at Crown tell you that Ms Coonan and  
09:48 40 Mr Walsh had discussed the underpayment of tax issue within 36  
09:48 41 hours of this Commission being established?

09:48 42

09:48 43 A. No.

09:48 44

09:48 45 Q. Did anyone at Crown tell you that Mr Walsh had asked  
09:48 46 Mr Mackay to prepare a spreadsheet to work out Crown's  
09:48 47 potential exposure on the underpayment of tax issue?



09:48 1  
09:48 2 A. No.  
09:48 3  
09:49 4 Q. Going back to the Commissioner's question, put to one side  
09:49 5 the accounts and other matters of that nature, are you concerned  
09:49 6 that an issue like this, known to the Chairperson and at least one  
09:49 7 other director, was not disclosed to you, "yes" or "no"?  
09:49 8  
09:49 9 A. I think that is concerning.  
09:49 10  
09:49 11 Q. Thank you.  
09:49 12  
09:49 13 Your statement goes on to say:  
09:49 14  
09:49 15 *I understand the potential underpayment of gaming taxes*  
09:49 16 *assumes that certain expenses have been incorrectly*  
09:49 17 *deducted .....*  
09:49 18  
09:49 19 You see that?  
09:49 20  
09:49 21 A. Yes.  
09:49 22  
09:49 23 Q. My understanding is the expenses include hotel rooms,  
09:49 24 parking, et cetera. Is that something you learnt from The  
09:49 25 Australian article?  
09:49 26  
09:49 27 A. I can't recall whether it was included in the Australian  
09:49 28 article, it probably was, but we learnt about it from subsequent  
09:49 29 correspondence from our lawyers on the matter.  
09:49 30  
09:49 31 Q. I will ask you a question and I don't want you to tell me the  
09:50 32 substance of any advice, okay?  
09:50 33  
09:50 34 A. Okay.  
09:50 35  
09:50 36 Q. Did anyone tell you that prior to 7 June 2021 ---  
09:50 37  
09:50 38 A. Sorry?  
09:50 39  
09:50 40 Q. Did anyone tell you that prior to June 2021, Crown had  
09:50 41 obtained external legal advice about the tax issue?  
09:50 42  
09:50 43 A. No.  
09:50 44  
09:50 45 Q. Your statement then says this:  
09:50 46  
09:50 47 *I understand that when reviewing past minutes of meeting*

09:50 1 *for disclosure to the Royal Commission ..... Mr Xavier*  
09:50 2 *Walsh came across a minute of a 2012 meeting that he*  
09:50 3 *believed indicated Crown had changed, or was going to*  
09:50 4 *change, the basis of the calculation of gaming tax to*  
09:50 5 *include concern deductions.*

09:50 6

09:51 7 You see that?

09:51 8

09:51 9 A. Yes.

09:51 10

09:51 11 Q. I take it Mr Walsh told you that and that is the basis of your  
09:51 12 understanding?

09:51 13

09:51 14 A. That's correct.

09:51 15

09:51 16 Q. Did Mr Walsh tell you that he first became aware of the  
09:51 17 potential underpayment of tax when he recently came across the  
09:51 18 minute of the 2012 meeting?

09:51 19

09:51 20 A. We discussed the minute, but concern wasn't so much about  
09:51 21 an underpayment of tax rather than a cultural issue.

09:51 22

09:51 23 COMMISSIONER: I think I will get Mr Kozminsky to ask the  
09:51 24 question again, and try and answer it.

09:51 25

09:51 26 A. Right, all right.

09:51 27

09:51 28 COMMISSIONER: Thank you.

09:51 29

09:51 30 MR KOZMINSKY: It's all right. Best to listen and have a think  
09:51 31 about it before you start answering. Did Mr Walsh tell you in  
09:51 32 that discussion that he first became aware of the potential  
09:51 33 underpayment of tax when he recently came across the minute of  
09:51 34 the 2012 meeting?

09:51 35

09:51 36 A. I don't think he did, no.

09:51 37

09:52 38 Q. Did he say things that left you with that impression?  
09:52 39 Because that's the impression one gets from reading your  
09:52 40 statement.

09:52 41

09:52 42 A. An impression that Crown had underpaid tax?

09:52 43

09:52 44 Q. No, an impression that Mr Walsh recently discovered this  
09:52 45 issue when he stumbled across the minute?

09:52 46

09:52 47 A. Yes, it was a recent discovery by Mr Walsh when he

09:52 1 stumbled across the minute.  
09:52 2  
09:52 3 Q. It was a recent discovery when he stumbled across the  
09:52 4 minute.  
09:52 5  
09:52 6 A. Yes, that's my understanding.  
09:52 7  
09:52 8 COMMISSIONER: And that is what Mr Walsh told you?  
09:52 9  
09:52 10 A. That was my understanding, we bumped in ---  
09:52 11  
09:52 12 COMMISSIONER: No, is that what Mr Walsh told you?  
09:52 13  
09:52 14 A. That he discovered this in a minute from 2012, yes.  
09:52 15  
09:52 16 COMMISSIONER: I think you used the word earlier  
09:52 17 "stumbled". He stumbled across the minute.  
09:52 18  
09:52 19 A. I don't know if stumbled is quite the right word ---  
09:52 20  
09:52 21 COMMISSIONER: That's the word you used.  
09:52 22  
09:52 23 A. Okay, well, he found it as he was going through, as I  
09:53 24 understand it, methodically to extract --- review minutes of  
09:53 25 meetings for the Royal Commission, and he found this minute.  
09:53 26  
09:53 27 MR KOZMINSKY: Yes. And so whether he used the precise  
09:53 28 words or not, I think you agreed with me the impression you were  
09:53 29 left with after speaking to Mr Walsh was that he had recently  
09:53 30 discovered this issue when he came across the minute?  
09:53 31  
09:53 32 A. That is definitely my impression.  
09:53 33  
09:53 34 Q. Thank you. When did the conversation take place, so I can  
09:53 35 place this in a timeline? It's hard, I know, without the benefit of  
09:53 36 a document. As best you can remember.  
09:53 37  
09:53 38 A. I think it took place, and I was trying to work it out, but  
09:53 39 around 19 or 22 March, because it took place in person when  
09:53 40 I was in Crown, and I was in on the 19th and 22nd.  
09:53 41  
09:54 42 Q. That's very helpful. And so Mr Walsh didn't tell you  
09:54 43 whether or not, when he said "recently came across it", did you  
09:54 44 learn from your conversation whether "recently" meant last week  
09:54 45 or two weeks or three weeks ago, or was it left at the level of  
09:54 46 generality of recent?  
09:54 47

09:54 1 A. It was a level of generality but I came away with the  
09:54 2 impression that it was probably in the last couple of weeks.  
09:54 3

09:54 4 Q. Thank you. Would you be very concerned, again at the  
09:54 5 moment hypothetically, if you came to learn that Mr Walsh had  
09:54 6 known about the issue for years?  
09:54 7

09:54 8 A. I would be.  
09:54 9

09:54 10 Q. Could the operator go to CRW.512.117.0019.  
09:54 11

09:54 12 Mr Commissioner, this is behind tab 3 of your cross-examination  
09:55 13 bundle for Mr Morrison. The document, Mr Commissioner, does  
09:55 14 have a claim for privilege across it but I am informed by my  
09:55 15 learned friend Mr Borsky that no claim is pressed.  
09:55 16

09:55 17 COMMISSIONER: That's the document we looked at yesterday?  
09:55 18

09:55 19 MR KOZMINSKY: So, I think, and tell me if you are not aware  
09:55 20 of this, the Commissioner asked for a copy of the minute referred  
09:55 21 to in your statement and this was the document produced. Are  
09:55 22 you aware of that?  
09:55 23

09:55 24 A. I'm aware that the Commissioner asked for those  
09:55 25 statements, the documents in my statement, but I haven't seen this  
09:55 26 document.  
09:55 27

09:55 28 Q. You've never seen this document?  
09:55 29

09:55 30 A. No.  
09:55 31

09:55 32 Q. I see. I had made an assumption that you had. That was  
09:55 33 my mistake. I want to take you to it if I may, just briefly, so you  
09:55 34 can see what is in the minute from 2012; that is okay?  
09:55 35

09:55 36 A. Absolutely.  
09:55 37

09:55 38 Q. If you could please begin, Mr Operator, by going to  
09:56 39 page 0025. You might need to rotate it.  
09:56 40

09:56 41 A. That would be handy.  
09:56 42

09:56 43 Q. The first bullet point, Mr Morrison says:  
09:56 44

09:56 45 *Transfer the issuance control of the Gaming Machine*  
09:56 46 *Food Program from SYCO to Dacom*  
09:56 47

09:56 1 Do you see that?  
09:56 2  
09:56 3 A. I can.  
09:56 4  
09:56 5 Q. Do you know what that means?  
09:56 6  
09:56 7 A. As I understand it, SYCO is one of the holistic casino  
09:56 8 operating systems and Dacom, from memory, relates to the  
09:56 9 machine operating system.  
09:56 10  
09:56 11 Q. What that is saying, Mr Morrison, to contextualise this for  
09:56 12 you, is the issuance of certain benefits will be done by the EGM  
09:56 13 operating system, Dacom, instead of SYCO. And then the  
09:56 14 second point says:  
09:56 15  
09:56 16 *Classify the Gaming Machines Food Program to be*  
09:56 17 *a Bonus/Jackpot as per Welcome Back .....*  
09:56 18  
09:57 19 You see that?  
09:57 20  
09:57 21 A. Yes, I can see that.  
09:57 22  
09:57 23 Q. Are you aware that Mr Mackay had given evidence that  
09:57 24 internally, Crown describes gaming machine programs as part of  
09:57 25 those benefits of the Gaming Machine Food Program, and it  
09:57 26 does not describe them as a "bonus jackpot" internally? Are you  
09:57 27 aware of that?  
09:57 28  
09:57 29 A. No.  
09:57 30  
09:57 31 Q. Are you aware, and this is Mr Mackay's evidence, that they  
09:57 32 are not referred to "bonus jackpot" internally except for the  
09:57 33 purposes of calculating the tax payable? Are you aware of that?  
09:57 34  
09:57 35 A. No. No.  
09:57 36  
09:57 37 Q. Then please turn over to page 0030. There you see finance  
09:58 38 and legal position. The legal position is not disclosed here, but  
09:58 39 this is what the finance people said:  
09:58 40  
09:58 41 *Factoring in refurbishment, economic environment,*  
09:58 42 *impacts from negative publicity and the increase in*  
09:58 43 *Gaming Machines Tax ..... we are of the opinion that the*  
09:58 44 *proposed change will not be noticed by the [regulator].*  
09:58 45  
09:58 46 Do you see that?  
09:58 47

09:58 1 A. I do.  
09:58 2  
09:58 3 Q. Did anyone tell you that was the position Crown was  
09:58 4 adopting when it introduced these changes in 2012?  
09:58 5  
09:58 6 A. Not in relation to 2012.  
09:58 7  
09:58 8 COMMISSIONER: What about in relation to the deductions?  
09:58 9  
09:58 10 A. Would you mind repeating the question.  
09:58 11  
09:58 12 Q. Sure. I'm wondering, that statement there ---  
09:58 13  
09:58 14 A. Yes.  
09:58 15  
09:58 16 Q. --- you agree with me is saying that "If we make these  
09:59 17 deductions the VCGLR is not going to notice"?  
09:59 18  
09:59 19 A. I can read that.  
09:59 20  
09:59 21 Q. Yes. And I'm asking you if anyone told you prior to 7 June  
09:59 22 2021 that that is the approach Crown was taking.  
09:59 23  
09:59 24 A. I think that was the essence of Xavier Walsh's, as I  
09:59 25 referenced in my statement, minute. And I think it subsequently  
09:59 26 came to light that it actually wasn't a minute but was a line in  
09:59 27 a presentation which I'm assuming is this presentation, and it is  
09:59 28 referring to that, and that is what Xavier was referring to me -  
09:59 29 referring about when he referred it to me in that passing corridor.  
09:59 30  
09:59 31 Q. And you agree with me that if you were a director and  
09:59 32 someone made this presentation to you, you would both be (a)  
09:59 33 very concerned and (b) reject it out of hand?  
09:59 34  
09:59 35 A. Absolutely.  
09:59 36  
10:00 37 MR KOZMINSKY: I tender that document, Mr Commissioner.  
10:00 38  
10:00 39 COMMISSIONER: Crown Melbourne Gaming Machine Food  
10:00 40 Program initiative, March 2012, Exhibit 224.  
10:00 41  
42  
43 **EXHIBIT #RC0224 - CROWN MELBOURNE GAMING**  
44 **MACHINES FOOD PROGRAM INITIATIVE DATED**  
45 **MARCH 2012**  
46  
47

10:00 1 MR KOZMINSKY: If we can go back to your statement,  
10:00 2 Mr Morrison. CRW.998.001.0447.  
10:00 3  
10:00 4 COMMISSIONER: I think Mr Morrison is working from a hard  
10:00 5 copy of his statement.  
10:00 6  
10:00 7 MR KOZMINSKY: I just want to make sure everyone in the  
10:00 8 room has a copy and can follow. Your statement goes on to say  
10:01 9 this on page 9:  
10:01 10  
10:01 11 *I understood that Mr Walsh had forwarded this minute to*  
10:01 12 *Allens for inclusion in documents to be provided to the*  
10:01 13 *Royal Commission .....*  
10:01 14  
10:01 15 See that?  
10:01 16  
10:01 17 A. I do.  
10:01 18  
10:01 19 Q. I take it your understanding is based on that discussion you  
10:01 20 had with Mr Walsh in March?  
10:01 21  
10:01 22 A. No. That discussion - that comment there is based more  
10:01 23 on an email I received, as other directors did, from Mr Andrew  
10:01 24 Maher, I think on about 7 or 8 June, where they were, where  
10:01 25 Andrew was very apologetic to Crown, acknowledging that they  
10:01 26 had received the, I presume, that minute, from Mr Walsh, and had  
10:01 27 agreed to review it to determine whether or not it needed to be  
10:01 28 provided to the Commission, and for one reason or another they  
10:02 29 failed to do that and it wasn't included. And I'm sure, as you are  
10:02 30 aware, there was a range of communications between Allens and  
10:02 31 the Commission about that process.  
10:02 32  
10:02 33 Q. I just want to go back to your statement.  
10:02 34  
10:02 35 A. Yes.  
10:02 36  
10:02 37 Q. What it says is, "for documents to be provided". What it doesn't  
10:02 38 say is for "for documents to be reviewed to decide if they should be  
10:02 39 provided"; you see that?  
10:02 40  
10:02 41 A. Okay.  
42  
43 Q. See that?  
44  
45 A.  
46  
10:02 47 *I understood that Mr Walsh had forwarded this minute to*

10:02 1           *Allens for inclusion in documents to be provided to the*  
10:02 2           *Royal Commission .....*  
10:02 3  
10:02 4       Yes, that was my generic understanding of the matter, I didn't  
10:02 5       appreciate the nuance that Allens were going to review it for  
10:02 6       determination whether ---  
10:02 7  
10:02 8       COMMISSIONER: It's not a question of nuance, it's a question  
10:02 9       of what you were told.  
10:02 10  
10:02 11      A. Okay.  
10:02 12  
10:02 13      COMMISSIONER: Forget about the nuance.  
10:02 14  
10:02 15      A. Okay. That came out of my understanding from the 8 June  
10:03 16      email. But I did understand at the time that Xavier was to  
10:03 17      forward that document to Allens.  
10:03 18  
10:03 19      COMMISSIONER: To be provided to the Commission?  
10:03 20  
10:03 21      A. To be provided to the Commission.  
10:03 22  
10:03 23      MR KOZMINSKY: Yes. Not to be reviewed. To be provided,  
10:03 24      because ---  
10:03 25  
10:03 26      A. To be provided to the Commission, yes.  
10:03 27  
10:03 28      Q. Because it includes things like, "we're going to do this and  
10:03 29      the regulator won't notice" and that is the sort of thing you would  
10:03 30      have to disclose to a Royal Commission?  
10:03 31  
10:03 32      A. Absolutely.  
10:03 33  
10:03 34      Q. Yes, thank you.  
10:03 35  
10:03 36      A. And I think Xavier was certainly ---  
10:03 37  
10:03 38      COMMISSIONER: Just wait till you get a question and then  
10:03 39      answer. I know directors like to make speeches.  
10:03 40  
10:03 41      A. This is my first directorship, your Honour.  
10:03 42  
10:03 43      COMMISSIONER: Well, let it be your last speech.  
10:04 44  
10:04 45      MR KOZMINSKY: When you had your conversation in  
10:04 46      March - I withdraw that.  
10:04 47



10:04 1 In March when you spoke to Mr Walsh, you were left with the  
10:04 2 impression, based on what he had told you, that the minute he  
10:04 3 had found would be provided to Allens to be provided to the  
10:04 4 Commission?  
10:04 5  
10:04 6 A. Yes, that's correct.  
10:04 7  
10:04 8 Q. Now, the next document I want to show you is  
10:04 9 CRW.0001.0001.1162. Withdraw that. I withdraw that. My  
10:04 10 apologies. CRW.512.117.0035. It's not privileged. I've checked  
10:05 11 with Mr Borsky this morning. It is marked as privilege, there is  
10:05 12 no privilege claimed.  
10:05 13  
10:05 14 COMMISSIONER: It says it was marked only for closed  
10:05 15 hearings, so let's just check that.  
10:05 16  
10:05 17 MR KOZMINSKY: I think the position is - I've handed up  
10:05 18 a copy to Mr Borsky this morning. It was privileged, but in light  
10:05 19 of the recent waiver, it is no longer privileged and I think  
10:05 20 Mr Borsky will stand up and agree with me.  
10:05 21  
10:05 22 MR BORSKY: That's correct, Commissioner. It is within the  
10:05 23 narrow scope of our waiver of privilege as confirmed yesterday.  
10:05 24  
10:05 25 COMMISSIONER: Thank you. I think it will create a hiccup in  
10:05 26 the recovery of the document.  
10:05 27  
10:05 28 MR KOZMINSKY: What I can do, if Madam Associate could take  
10:05 29 a copy of that and provide it to the witness, while it is coming up  
10:06 30 onscreen - is it easier for you to read it on screen or hard copy,  
10:06 31 Mr Morrison?  
10:06 32  
10:06 33 A. Screen is fine.  
10:06 34  
10:06 35 Q. I just want you to take your time, read it, we will wait while  
10:06 36 you do it, and just let me know once you finish reading it.  
10:06 37  
10:06 38 A. Yep. Yep. Yes.  
10:06 39  
10:09 40 Q. This is a note that, we're told by Allens the solicitors, was  
10:09 41 prepared and provided by Mr Walsh to Allens along with that  
10:09 42 minute for production.  
10:09 43  
10:09 44 A. Right.  
10:09 45  
10:09 46 Q. That's the cover note effectively under which it was  
10:09 47 forwarded. You refer to it in your statement.

10:09 1  
10:09 2 A. Right.  
10:09 3  
10:09 4 Q. You say:  
10:09 5  
10:09 6 *I understand that Mr Walsh had forwarded the minute to*  
10:09 7 *Allens for inclusion in documents to be provided .....*  
10:09 8  
10:09 9 We asked for that document and that's the document. With me?  
10:09 10  
10:09 11 A. Right. Okay, yes, I think so.  
10:09 12  
10:09 13 Q. Given what you have learnt about the underpayment of tax  
10:09 14 issue up until today, do you agree with me, "yes" or "no", this  
10:09 15 note is not a fair summary of the underpayment of tax issue?  
10:10 16  
10:10 17 A. So, I'm struggling to see why it is not a fair summary.  
10:10 18  
10:10 19 Q. That's fair enough. Let's go through it together.  
10:10 20  
10:10 21 A. Yes.  
10:10 22  
10:10 23 Q. It does not disclose - and what I'm taking you to are  
10:10 24 transcript references and evidence that we've heard - it does not  
10:10 25 disclose that Crown sought legal advice on the issue in 2018  
10:10 26 because the regulator was "digging around". It doesn't disclose  
10:10 27 that, does it?  
10:10 28  
10:10 29 A. It doesn't seem to, no.  
10:10 30  
10:10 31 Q. It does not disclose that Ms Coonan and Mr Walsh  
10:10 32 discussed the underpayment of tax issue within 36 hours of this  
10:10 33 Commission being established?  
10:10 34  
10:10 35 A. No, it doesn't.  
10:10 36  
10:10 37 Q. It doesn't disclose that following the discussion between Mr  
10:10 38 Walsh and Ms Coonan, Mr Walsh asked Mr Mackay to prepare  
10:10 39 a spreadsheet about the issue?  
10:10 40  
10:10 41 A. No, I didn't read that.  
10:10 42  
10:10 43 Q. It does not disclose purpose of the spreadsheet was to work  
10:10 44 out Crown's potential exposure?  
10:10 45  
10:10 46 A. I don't think so.  
10:10 47

10:10 1 Q. It does not disclose potential exposure according to the  
10:11 2 spreadsheet in existence at the time was 167 million excluding  
10:11 3 supertax?  
10:11 4  
10:11 5 A. No, it doesn't say that.  
10:11 6  
10:11 7 Q. And that is so, notwithstanding Mr Walsh and Mr Mackay  
10:11 8 had, only weeks before this document was prepared, discussed  
10:11 9 the potential quantum of the underpayment of tax being nearly  
10:11 10 \$170 million?  
10:11 11  
10:11 12 A. It doesn't say that.  
10:11 13  
10:11 14 Q. It does not disclose that Crown does not make the  
10:11 15 deductions identified in the spreadsheet in respect of table  
10:11 16 games?  
10:11 17  
10:11 18 A. I think it was primarily around jackpots for machines,  
10:11 19 wasn't it?  
10:11 20  
10:11 21 Q. Yes. It does not make the same deductions, so free car park  
10:11 22 for a table player, not deducted? It doesn't say that in the briefing  
10:11 23 note, does it?  
10:11 24  
10:11 25 A. No, I didn't read that.  
10:11 26  
10:11 27 Q. No. And it doesn't disclose the fact that Crown only  
10:11 28 describes the rewards amounts as "bonus jackpots" for purposes  
10:11 29 of calculating gross gaming revenue?  
10:11 30  
10:11 31 A. Sorry, that's getting a little detailed. Can we refer to a  
10:11 32 paragraph?  
10:12 33  
10:12 34 COMMISSIONER: Ask it slowly.  
10:12 35  
10:12 36 MR KOZMINSKY: It does not disclose the fact that Crown only  
10:12 37 describes the rewards amounts as "bonus jackpots" for the  
10:12 38 purpose of calculating the gambling tax?  
10:12 39  
10:12 40 A. I think that is correct.  
10:12 41  
10:12 42 Q. And it does not disclose it internally, Crown describes  
10:12 43 those benefits as part of the gaming machine program?  
10:12 44  
10:12 45 COMMISSIONER: I'm not sure Mr Morrison is following the  
10:12 46 last two questions.  
10:12 47

10:12 1 A. No, I'm struggling.  
10:12 2  
10:12 3 MR KOZMINSKY: Mr Morrison, put the last two questions to  
10:12 4 one side.  
10:12 5  
10:12 6 A. Right.  
10:12 7  
10:12 8 Q. You agree with me, in light of the other matters we've just  
10:12 9 been to, this note does not fairly represent the underpayment of  
10:12 10 tax issue as understood by Crown in March of this year?  
10:12 11  
10:12 12 A. In March of this year? Well, given those other things  
10:12 13 you've brought to my attention, then it would seem not.  
10:12 14  
10:12 15 Q. Thank you. Sitting here today, can you think of why - I  
10:13 16 withdraw the question.  
10:13 17  
10:13 18 If we go back to your statement, please, and back to page 9. You  
10:13 19 see just above paragraph 21, "Upon learning":  
10:13 20  
10:13 21 *Upon learning of the potential underpayment on Monday*  
10:13 22 *7 June ..... I understand that the Board of Crown has since*  
10:13 23 *instructed ABL to perform a review of the matter and to*  
10:13 24 *retain Counsel to advise the Board if in fact this is*  
10:13 25 *an underpayment .....*  
10:13 26  
10:13 27 You see that?  
10:13 28  
10:13 29 A. Yes.  
10:13 30  
10:13 31 Q. I want to break that down. I think you told me already your  
10:13 32 understanding is that your fellow directors learnt about this issue  
10:14 33 on 7 June.  
10:14 34  
10:14 35 A. That's my understanding.  
10:14 36  
10:14 37 Q. I just want to know if you have had a conversation with any  
10:14 38 of your directors about this issue other than Mr Walsh.  
10:14 39  
10:14 40 A. Mr Walsh wasn't a director. There is obviously some  
10:14 41 discussion. We were in a board meeting when the article broke  
10:14 42 and we were reading that article, and we were all very alarmed by  
10:14 43 it and I think subsequent ---  
10:14 44  
10:14 45 COMMISSIONER: Who was at the board meeting?  
10:14 46  
10:14 47 A. All the directors.

10:14 1  
10:14 2 MR KOZMINSKY: When you say all the directors, Ms Halton,  
10:14 3 Ms Korsanos, Danziger, you and ---  
10:15 4  
5 A. Not Danziger.  
6  
7 Q. Not Danziger. Ms Coonan and yourself?  
8  
9 A. Yes, and Bruce Carter was there as an observer, not being  
10 licensed.  
11  
12 Q. You said everyone was concerned; I take it that based on  
13 discussions ---  
14  
10:15 15 A. We were shocked by the magnitude.  
10:15 16  
10:15 17 Q. And - by the magnitude, but what about the actual  
10:15 18 underlying fact that there had been potential underpayment of tax  
10:15 19 concealed from the regulator had it known ---  
10:15 20  
10:15 21 A. That obviously was concerning the magnitude was  
10:15 22 unbelievable.  
10:15 23  
10:15 24 Q. Did Ms Coonan say anything that left you with the  
10:15 25 impression she only found out about the issue on 7 June?  
10:15 26  
10:15 27 A. No, I don't think so.  
10:15 28  
10:15 29 COMMISSIONER: One minute ago you said everybody was  
10:15 30 shocked ---  
10:15 31  
10:15 32 A. Well, I think they were.  
10:15 33  
10:15 34 COMMISSIONER: --- and "everybody" was four directors. Do  
10:15 35 you mean, when you say everybody was shocked, three were  
10:15 36 shocked and one wasn't? You have to be very careful when you  
10:15 37 say things here.  
10:15 38  
10:15 39 A. I was shocked, well ---  
10:15 40  
10:15 41 COMMISSIONER: Your word, not mine.  
10:15 42  
10:15 43 A. Yes, well, not everybody expressed shock.  
10:15 44  
10:15 45 COMMISSIONER: When you said everybody was shocked, you  
10:16 46 mean some were shocked and some weren't? Do you want to  
10:16 47 divide it up and tell me who was shocked and who wasn't?

10:16 1  
10:16 2 A. I think I was shocked, I think Bruce Carter was shocked,  
10:16 3 Toni was shocked. I think Jane Halton was shocked. I must  
10:16 4 admit I thought Helen Coonan was - yeah, she obviously was  
10:16 5 aware of the matter ---  
10:16 6  
10:16 7 COMMISSIONER: You know that now.  
10:16 8  
10:16 9 A. I know that now, I didn't then ---  
10:16 10  
10:16 11 COMMISSIONER: She didn't say that then.  
10:16 12  
10:16 13 A. No, she didn't say that then.  
10:16 14  
10:16 15 COMMISSIONER: "Don't worry, directors, I know about this,  
10:16 16 I'm all over it"?  
10:16 17  
10:16 18 A. No.  
10:16 19  
10:16 20 MR KOZMINSKY: Put to one side precisely what was said, I  
10:16 21 want to be clear about this: you left that meeting with the  
10:16 22 impression that all your fellow directors were shocked about what  
10:16 23 was said in evidence on 7 June; "yes" or "no"?  
10:16 24  
10:17 25 A. I think that is correct.  
10:17 26  
10:17 27 Q. Mr Morrison, as a responsible and prudent director, you  
10:17 28 immediately took steps to investigate the underpayment of tax  
10:17 29 issue when you learnt about it?  
10:17 30  
10:17 31 A. When I learnt about it on 7 June I think we briefed Arnold  
10:17 32 Bloch Leibler, and we briefed --- --  
10:17 33  
10:17 34 Q. I don't want you to tell me something you shouldn't tell me.  
10:17 35  
10:17 36 A. --- yes.  
10:17 37  
10:17 38 Q. My question was you took steps straight away?  
10:17 39  
10:17 40 A. We took steps straight away.  
10:17 41  
10:17 42 Q. That is because, having been alerted to a very serious issue,  
10:17 43 you recognised the need for action?  
10:17 44  
10:17 45 A. Yes.  
10:17 46  
10:17 47 Q. And you agree that anything less would have been totally

10:17 1 inappropriate?

10:17 2

10:17 3 A. Yes, we needed to understand the quantum and we needed  
10:18 4 to understand what had actually transpired and was or was it not  
10:18 5 an underpayment of gaming tax and all the nuances that  
10:18 6 surrounded it. It is a very complicated matter.

10:18 7

10:18 8 Q. It's not just the tax, it is the fact that it was hidden from the  
10:18 9 regulator, that is the real issue.

10:18 10

10:18 11 A. Culture. They are both real issues.

10:18 12

10:18 13 Q. And the culture piece has been something that  
10:18 14 Commissioner Bergin has spoken about --

10:18 15

10:18 16 A. Absolutely.

10:18 17

10:18 18 Q. --- and it's been in evidence here. That is also a real issue?

10:18 19

10:18 20 A. Absolutely.

10:18 21

10:18 22 Q. Thank you. You agree with me that had the regulator not  
10:18 23 been made aware of the matter during the public examination of  
10:18 24 Mr Mackay, you, as a reasonable and prudent director, would  
10:18 25 have caused Crown to raise the matter with the regulator?

10:18 26

10:18 27 COMMISSIONER: Ask it again.

10:18 28

10:18 29 MR KOZMINSKY: You are a prudent and responsible director.  
10:18 30 If the regulator had not been made aware of the matter because  
10:18 31 Mr Mackay's evidence was in public, you would have caused  
10:19 32 Crown to raise the matter with the regulator?

10:19 33

10:19 34 A. I believe so. So we had a framework that was open and  
10:19 35 honest going forward. And to be clear about this, my  
10:19 36 understanding was that the methodology had been raised with the  
10:19 37 regulator in 2018, and so much so that in its -if I can answer  
10:19 38 the question - in its section 25 report in June 2018, the regulator  
10:19 39 made the point that it had reviewed the calculation of gaming tax,  
10:19 40 and it not only got daily figures, it also audited the calculation of  
10:19 41 gaming tax for completeness and accuracy, and it was satisfied  
10:19 42 that that had been done. Now, you can't audit gaming tax figures  
10:19 43 unless you have the full detail of the calculations and the  
10:19 44 methodology by which they are calculated. So, knowing that, I  
10:19 45 felt somewhat comforted that there shouldn't be any significant  
10:19 46 misstatement of gaming tax, and that the VCGLR was apprised of  
10:20 47 the gaming tax methodology that Crown was employing.

10:20 1  
10:20 2 Q. I understand. What I'm asking you is something - I think  
10:20 3 you answered my question, in fairness, before you then went on.  
10:20 4 Assume the regulator hadn't been aware until Mr Mackay's open  
10:20 5 evidence, it is a "yes" or "no" proposition, you are a prudent  
10:20 6 director, you are a responsible director, if you had found out  
10:20 7 about it because you want an honest and transparent relationship  
10:20 8 with the regulator, you would have caused Crown to tell them?  
10:20 9  
10:20 10 A. Absolutely, if it was incorrect.  
10:20 11  
10:20 12 Q. Sure. And you agree with me that had the State not been  
10:20 13 made aware of the matter during Mr Mackay's public  
10:20 14 examination, you also would have caused Crown to tell the State  
10:20 15 about the matter?  
10:20 16  
10:20 17 A. Well, if telling the VCGLR is not telling the State ---  
10:20 18  
10:20 19 Q. You regard them as one in the statement?  
10:20 20  
10:20 21 A. I would have thought so.  
10:20 22  
10:20 23 Q. Okay. Am I right that following Mr Mackay's evidence,  
10:21 24 Crown sought and received fresh advice about the underpayment  
10:21 25 of tax issue? Don't tell me what was said, but tell me if that is  
10:21 26 what occurred.  
10:21 27  
10:21 28 A. Yes.  
10:21 29  
10:21 30 Q. And you received the advice? Again, don't tell me what  
10:21 31 was said.  
10:21 32  
10:21 33 A. I believe so.  
10:21 34  
10:21 35 Q. You haven't read it? "Yes" or "no"?  
10:21 36  
10:21 37 A. I believe there are two sets of advice. One is a PowerPoint  
10:21 38 summary of the advice and the other is the advice. I've read the  
10:21 39 PowerPoint summary of advice.  
10:21 40  
10:21 41 Q. I want you to assume this: assume the advice hadn't come.  
10:21 42 Sitting here today on 22 June, it hadn't come. I'm right, aren't I,  
10:21 43 that as a prudent and responsible director you would have taken  
10:21 44 steps to make sure Arnold Bloch Leibler was followed up?  
10:21 45  
10:22 46 A. Arnold Bloch Leibler was followed up in relation to what?  
10:22 47



10:22 1 Q. "Where is our advice, we want our advice." Assume you  
10:22 2 hadn't had the advice and it was 22 June.  
10:22 3  
10:22 4 A. It sounds reasonable.  
10:22 5  
10:22 6 Q. You wouldn't have just let an issue like this slide, would  
10:22 7 you? Context of a Royal Commission?  
10:22 8  
10:22 9 A. I was waiting for advice from Arnold Bloch in relation to  
10:22 10 this matter, no.  
10:22 11  
10:22 12 Q. We discussed issues in terms of quantum and culture?  
10:22 13  
10:22 14 A. Well, I'm not so sure. It is certainly serious in terms of  
10:22 15 culture, but I think the quantum ---  
10:22 16  
10:22 17 Q. I withdraw that.  
10:22 18  
10:22 19 A. That you referred to is different to our understanding.  
10:22 20  
10:22 21 Q. I understand. Before you had gotten the advice. In other  
10:22 22 words, while you were waiting for the advice, in your mind it was  
10:22 23 a serious issue because of culture and potential quantum?  
10:22 24  
10:22 25 A. Potential quantum, but I never believed the figures that  
10:22 26 were floated around out there.  
10:22 27  
10:23 28 Q. Okay. And you wouldn't have let it slide until you got the  
10:23 29 advice ---  
10:23 30  
10:23 31 A. Absolutely. And I don't think we did.  
10:23 32  
10:23 33 Q. I am going to ask you some hypothetical questions about  
10:23 34 a hypothetical company and directors.  
10:23 35  
10:23 36 I want you to assume directors of a company know the company  
10:23 37 is underpaying its taxes, and the directors take no steps to rectify  
10:23 38 the position. In that hypothetical example, should the directors  
10:23 39 remain on the board, "yes" or "no"?  
10:23 40  
10:23 41 A. If those directors knew the company is underpaying its  
10:23 42 taxes and that is correct and solid, then I think it is hard to argue  
10:23 43 that's the case.  
10:23 44  
10:23 45 Q. They shouldn't be on the board?  
10:23 46  
10:23 47 A. Hard - I mean, you give people a fair right of opportunity

10:23 1 to answer why they came to their conclusions, but other than that,  
10:24 2 prima facie I think you would think that is a difficult situation to  
10:24 3 sustain.  
10:24 4

10:24 5 Q. In that hypothetical example, would you be prepared to sit  
10:24 6 on a board with such directors?  
10:24 7

10:24 8 A. I would want to question them thoroughly about it and if  
10:24 9 I was not satisfied, then the answer probably is, no, I wouldn't.  
10:24 10

10:24 11 Q. We'll do another hypothetical. Assume directors of  
10:24 12 a company know there is a real risk the company is underpaying  
10:24 13 its taxes and fail to do anything about it. Okay? In that  
10:24 14 hypothetical example, should those directors remain on the  
10:24 15 board?  
10:24 16

10:24 17 A. No.  
10:24 18

10:24 19 Q. In that hypothetical example, would you be prepared to sit  
10:24 20 on a board with such directors?  
10:24 21

10:24 22 A. No.  
10:24 23

10:24 24 Q. Assume a company is concealing tax deductions from  
10:24 25 a regulator. Assume the directors of the company know about the  
10:24 26 concealment. In that hypothetical example, should the directors  
10:25 27 remain on the board?  
10:25 28

10:25 29 A. Can you repeat the question.  
10:25 30

10:25 31 Q. Sure. Assume a company is concealing tax deductions  
10:25 32 from a regulator. Assume the directors of the company know  
10:25 33 about the concealment. In that hypothetical example, should  
10:25 34 those directors remain on the board?  
10:25 35

10:25 36 A. No.  
10:25 37

10:25 38 Q. In that hypothetical example, would you be prepared to sit  
10:25 39 on a board with such directors?  
10:25 40

10:25 41 A. No.  
10:25 42

10:25 43 Q. What about, in that hypothetical example, if it was senior  
10:25 44 management who knew? Should they stay at the company?  
10:25 45

10:25 46 A. I would struggle to support that.  
10:25 47

10:25 1 Q. What about if senior management knew there was a real  
10:25 2 risk of underpayment of tax? In that hypothetical example, those  
10:25 3 senior managers shouldn't stay at the company?  
10:25 4  
10:25 5 A. What do you mean? Can you repeat all that? A real risk?  
10:25 6 What do you mean a real risk?  
10:25 7  
10:25 8 Q. Senior management know there is a real risk the company  
10:25 9 is underpaying tax ---  
10:25 10  
10:25 11 A. What do you mean by "real risk", though? Did it underpay  
10:26 12 it or did it not underpay it?  
10:26 13  
10:26 14 Q. They get advice that says, "there is a real risk you are  
10:26 15 underpaying tax", and they do nothing about it and carry on.  
10:26 16 Should those senior managers stay at the company "yes" or "no"?  
10:26 17  
10:26 18 A. I think that is a bit harder to adjudicate on in that  
10:26 19 circumstance.  
10:26 20  
10:26 21 COMMISSIONER: Assume the advice comes from a lawyer,  
10:26 22 and the lawyer looks at it and says, "there is a real risk you are  
10:26 23 not paying the correct rate of tax", and they do nothing about it  
10:26 24 - let me put it this way. Assume your lawyer tells you, in  
10:26 25 respect of the company of which you are a director, that there is  
10:26 26 a real risk your company is not paying the appropriate amount of  
10:26 27 tax that it should. Should something be done about it?  
10:26 28  
10:26 29 A. Absolutely. It should be thoroughly investigated and if  
10:26 30 there is a real risk, is it actuality or can the risk be ---  
10:26 31  
10:26 32 COMMISSIONER: And what about if management does nothing  
10:26 33 about it?  
10:26 34  
10:26 35 A. Well, it should do something about it.  
10:26 36  
10:26 37 COMMISSIONER: What happens if it doesn't?  
10:26 38  
10:26 39 A. It needs to be addressed.  
10:26 40  
10:26 41 MR KOZMINSKY: Should they go?  
10:26 42  
10:26 43 COMMISSIONER: How do you address it?  
10:26 44  
10:27 45 A. You would probably change it.  
10:27 46  
10:27 47 MR KOZMINSKY: Thank you.

10:27 1  
10:27 2 Given you are a prudent and responsible director, I assume that  
10:27 3 since 7 June 2021, you have taken steps to inform yourself about  
10:27 4 the underpayment of tax matter?  
10:27 5  
10:27 6 A. Since when?  
10:27 7  
10:27 8 Q. Since 7 June 2021.  
10:27 9  
10:27 10 A. 7 June 2021.  
10:27 11  
10:27 12 Q. You have taken steps to inform yourself and learn about the  
10:27 13 underpayment of tax matter?  
10:27 14  
10:27 15 A. I have tried to. There is a lot of things happening in  
10:27 16 Crown's world and this is one issue we are trying to keep abreast  
10:27 17 of.  
10:27 18  
10:27 19 Q. When you say you have tried to ---  
10:27 20  
10:27 21 A. I haven't read the 60-page QC's report from Mr ---  
10:27 22  
10:27 23 Q. Be careful. I don't think Mr Borsky wants you to tell us.  
10:27 24  
10:27 25 A. Right, sorry. There are some things I have and haven't  
10:27 26 read. I'm reasonably apprised of the situation in terms of  
10:27 27 quantum. And the background.  
10:27 28  
10:27 29 Q. I'm not asking you if you have read everything, but you've  
10:27 30 taken steps.  
10:27 31  
10:27 32 A. I have taken significant interest in the matter.  
10:27 33  
10:28 34 Q. Based on what you have learnt, do you know on how many  
10:28 35 occasions Crown raised the underpayment of tax issue with  
10:28 36 Allens before 7 June 2021?  
10:28 37  
10:28 38 A. No.  
10:28 39  
10:28 40 Q. Do you know, other than Mr Walsh, the reference to what  
10:28 41 Mr Walsh did, which is send the briefing note with the minute for  
10:28 42 production, do you know of any other times Crown raised the  
10:28 43 underpayment of tax issue with Allens?  
10:28 44  
10:28 45 A. I don't believe - no, I don't.  
10:28 46  
10:28 47 Q. Thank you.

10:28 1  
10:28 2 I'm told that I didn't tender the briefing note, which is behind tab  
10:28 3 4 of your cross-examination bundle, Mr Commissioner.  
10:28 4 CRW.512.117.0035. Could that please be tendered?  
10:29 5  
10:29 6 COMMISSIONER: It is an undated briefing note, isn't it?  
10:29 7  
10:29 8 MR KOZMINSKY: Mr Walsh provided the document behind  
10:29 9 tab 3 of the cross-examination bundle.  
10:29 10  
10:29 11 COMMISSIONER: I will refer to it as a briefing note headed  
10:29 12 "Timeline review", undated, Exhibit 225.  
10:29 13  
14  
15 **EXHIBIT #RC0225 - BRIEFING NOTE HEADED**  
16 **"TIMELINE REVIEW" (UNDATED)**  
17  
18  
10:29 19 MR KOZMINSKY: Mr Commissioner, unless there is anything  
10:29 20 further that you would like to ask, I have no further questions.  
10:29 21  
10:29 22  
10:29 23 **QUESTIONS BY THE COMMISSIONER**  
10:29 24  
10:29 25  
10:29 26 COMMISSIONER: I have some but quite unrelated to what you  
10:29 27 have been discussing.  
10:29 28  
10:29 29 I'm not sure whether you are the right person to ask these  
10:29 30 questions, though, Mr Morrison. I was taken by your  
10:29 31 professional qualifications, one of which was you are a Fellow of  
10:29 32 the Institute of Directors. I thought I might just ask you some  
10:29 33 questions about directorships.  
10:29 34  
10:29 35 A. Right.  
10:29 36  
10:29 37 COMMISSIONER: But I was a bit taken aback by the fact you  
10:29 38 said this was your first directorship. I will have a go anyhow.  
10:29 39  
10:30 40 A. Go. Please.  
10:30 41  
10:30 42 COMMISSIONER: I am very interested ---  
10:30 43  
10:30 44 A. I was managing director ---  
10:30 45  
10:30 46 COMMISSIONER: That's fine then. I'm interested in two topics  
10:30 47 and I just want to get your views about them.

10:30 1  
10:30 2 The first is you know that the ASX listing, not requirement, but  
10:30 3 the ASX has recommendations on good governance, and one of  
10:30 4 the recommendations, among a whole lot - some are  
10:30 5 motherhood statements and some of them are quite helpful  
10:30 6 statements - is that a board of a listed company should have  
10:30 7 independent directors.  
10:30 8  
10:30 9 A. Yes.  
10:30 10  
10:30 11 COMMISSIONER: I'm interested in what your view is of the  
10:30 12 appropriateness or otherwise of independent directors.  
10:30 13  
10:30 14 A. I think it is absolutely appropriate and fundamental to  
10:30 15 proper governance of any company.  
10:30 16  
10:30 17 COMMISSIONER: Can you explain a bit why?  
10:30 18  
10:30 19 A. Well, I think because - I think the independent directors  
10:31 20 need to make sure they are free to exercise their judgment, and  
10:31 21 their best judgment, and not be constrained with any loyalties or  
10:31 22 any other matters that might influence their judgment which  
10:31 23 aren't appropriate to thinking about the matter as a whole,  
10:31 24 objectively, and in the interests of all stakeholders and all  
10:31 25 shareholders.  
10:31 26  
10:31 27 COMMISSIONER: That, I take it, is a reasonable approach. It is  
10:31 28 the ASX approach.  
10:31 29  
10:31 30 A. Right.  
10:31 31  
10:31 32 COMMISSIONER: I've seen some studies, however, done by  
10:31 33 I think people at Melbourne University. I'm not sure how robust  
10:31 34 the studies are, and a study is a study ---  
10:31 35  
10:31 36 A. I'm sure they are very robust.  
10:31 37  
10:31 38 COMMISSIONER: Yeah, I know, but some of the studies have  
10:31 39 looked at ASX listed companies to see whether the performance  
10:31 40 of ASX listed companies is better when they have independent  
10:31 41 directors compared with those which don't. And the study  
10:32 42 suggests that the listed companies with independent directors  
10:32 43 don't perform any better. Have you got a view about why that  
10:32 44 might be so? Assuming the study is a reasonably undertaken bit  
10:32 45 of research?  
10:32 46  
10:32 47 A. I suppose it depends on how you measure performance.

10:32 1

10:32 2 COMMISSIONER: Yes.

10:32 3

10:32 4 A. If it is purely financial, which I assume in that case it would  
10:32 5 be, that could well be correct. It may not be measuring risk  
10:32 6 profiles, it may not be having regard to the elements of risk, it  
10:32 7 may not be having regard to the long-term sustainability of social  
10:32 8 licence and things like that, but it may purely be a calculation  
10:32 9 based on profit.

10:32 10

10:32 11 COMMISSIONER: And other matters should be taken into  
10:32 12 account?

10:32 13

10:32 14 A. Other matters should be taken into account. Ideally you  
10:32 15 will hear for a long time, and you need to be mindful of all those  
10:33 16 things of facts of performance going into the future and not  
10:33 17 measuring over a shorter period of time when everything is  
10:33 18 relative. Sometimes a dominant shareholder who has drive and  
10:33 19 ambition and works 24/7 for the business can be good for the  
10:33 20 business and drive it and attract a certain quality of management  
10:33 21 that are so driven. At other times, there can be - you get, with  
10:33 22 a group of non-executive directors, you get diversity in  
10:33 23 decision-making. You get male, female, race, different biases  
10:33 24 and different perspectives, and you get a more full and rounder  
10:33 25 evaluation of risk and return issues, which may well lead to  
10:33 26 a better return. It depends from time to time, so I can understand  
10:33 27 why there would be no clear definitive result in which performs  
10:33 28 better financially.

10:34 29

10:34 30 COMMISSIONER: I've also looked around the world, not  
10:34 31 everywhere, but a reasonable survey of what goes on around the  
10:34 32 world to see what kind of recommendations bodies like the ASX  
10:34 33 and company director associations and so on ---

10:34 34

10:34 35 A. Yes.

10:34 36

10:34 37 COMMISSIONER: --- suggest for independent directors and  
10:34 38 there seems to be no universal view. I'm talking about the  
10:34 39 number of independent directors. Some say there should be  
10:34 40 a majority, some say there should be a third, some say there  
10:34 41 should be sufficient to be able to influence the outcome of a vote,  
10:34 42 and some don't put any numbers on it at all, just assume that if  
10:34 43 you've got a couple of independent directors, they are likely to  
10:34 44 raise matters that would otherwise not be raised and considered  
10:34 45 by a non-independent board.

10:34 46

10:34 47 Do you have a view about - its arbitrary, but I'm interested in

10:34 1 your view about whether, for example, it is good to have  
10:34 2 a majority of the board as independent? Or some other number.

10:34 3

10:35 4 A. I agree with that, personally. I will speak about SkyCity  
10:35 5 a little bit. When I was a managing director for eight years, there  
10:35 6 was no dominant shareholder, no major shareholder, all  
10:35 7 institutional shareholders, and the board was made up of  
10:35 8 non-executive directors. 100 per cent non-executive directors.  
10:35 9 And I thought that gave a really good demarcation between  
10:35 10 management and the board such that management was in charge  
10:35 11 of strategy, it was great for the management team to exercise its  
10:35 12 view about things, it could come up with its own strategy,  
10:35 13 formulate its own strategy, present it to the board, have the board  
10:35 14 critique it, get some good independent advice in relation to that  
10:35 15 strategy, and we'd come out with a stronger plan at the end of the  
10:35 16 day. I thought that worked really, really well, without having any  
10:35 17 executive directors on the board other than I guess myself being  
10:35 18 the managing director.

10:36 19

10:36 20 COMMISSIONER: It's interesting you raise that, because my  
10:36 21 next related topic was going to be independent and independent  
10:36 22 non-exec directors. Do you have a view about whether a board  
10:36 23 should always have, or is better off if it does have executive  
10:36 24 directors? And this is a layman's - partially layman's view,  
10:36 25 having not been on the board of a company, I've assumed that if  
10:36 26 you are an executive director, you are more likely to be on top of  
10:36 27 what is going on and what the team is doing and having better  
10:36 28 general oversight because of direct knowledge, compared with  
10:36 29 non-executives who come to company meetings once a month or  
10:36 30 once every two months, or however they are held. Do you have  
10:36 31 a view about that?

10:36 32

10:36 33 A. Well, my experience has been that the view seems to be  
10:37 34 that executive directors should be less than more. The managing  
10:37 35 director is appropriate, occasionally you see the CFO ---

10:37 36

10:37 37 COMMISSIONER: CFO?

10:37 38

10:37 39 A. CFO as a finance director occasionally. So you might have  
10:37 40 one or two, but I think the view is that is where it is capped at.  
10:37 41 My experience and dealings with other than non-executive  
10:37 42 directors has been they would rather contain that to probably just  
10:37 43 the managing director. So there is really only one executive  
10:37 44 director. I think ---

10:37 45

10:37 46 COMMISSIONER: Is that enough? If you have a big  
10:37 47 organisation? Say a big mining company or a bank or something



10:37 1 like that.

10:37 2

10:37 3 A. I guess it comes down to governance and how you manage  
10:37 4 it, and what you regard the role of the board is versus the role of  
10:37 5 management. Providing you devote enough time to the meetings  
10:37 6 and you have the right agenda, and as directors you ask insightful  
10:37 7 questions and you probe, I can't see why - and you've got honest  
10:37 8 executives reporting to you at the board who are preparing timely  
10:37 9 board papers with the right content, and being open and honest  
10:38 10 and bringing bad news to you early and not concealing it, and you  
10:38 11 have confidence in that structure, I don't see why you need  
10:38 12 executive directors on a board.

10:38 13

10:38 14 COMMISSIONER: That's interesting. My instinct was the exact  
10:38 15 opposite, but not born of knowledge or anything like that.

10:38 16

10:38 17 A. Yeah.

10:38 18

10:38 19 COMMISSIONER: It depends on whether you like a hands-on  
10:38 20 approach or you want something a bit more objective.

10:38 21

10:38 22 A. Well, I do like a hands-on approach. That is one of the  
10:38 23 things why really I haven't taken on any directorships since I  
10:38 24 retired effectively five years ago, because I do like to be hands-on  
10:38 25 and that is always a challenge for non-executive directors.

10:38 26

10:38 27 COMMISSIONER: My last subset of questions in this area is  
10:38 28 looking at the position of a wholly-owned subsidiary but which is  
10:38 29 a substantial operating entity. I've got a group of companies, I've  
10:38 30 got head office and three or four or five operating subsidiaries.  
10:39 31 The question that arises in my mind is this: if the interests of each  
10:39 32 operating subsidiary might not coincide with the interests of  
10:39 33 another operating subsidiary, and also if the interests of each  
10:39 34 operating subsidiary might not be the same as the interests of  
10:39 35 head office, a parent company, would it be helpful to resolve any  
10:39 36 potential conflicts of interest, I don't mean in a legal sense, I  
10:39 37 mean in a business commercial sense ---

10:39 38

10:39 39 A. Yes.

10:39 40

10:39 41 COMMISSIONER: --- by not having overlapping boards,  
10:39 42 ie having different people, maybe not fully different people but  
10:39 43 having different people on the boards of each operating  
10:39 44 subsidiary so it looks after itself properly?

10:39 45

10:39 46 A. Look, to be honest with you ---

10:40 47

10:40 1 COMMISSIONER: A good start when you are giving evidence!  
10:40 2  
10:40 3 A. Yes, no! I appreciate that. And my sense of it is, you are  
10:40 4 better off having them come through to a centralised structure at  
10:40 5 the top.  
10:40 6  
10:40 7 COMMISSIONER: That is efficient.  
10:40 8  
10:40 9 A. It's not only efficient, I think you get a better quality of  
10:40 10 resolution by doing that. You have to have a management  
10:40 11 structure in place that deals with the nuances and the differences  
10:40 12 from one State to another or one company to another, but I think  
10:40 13 you want to run your group, your whole company based on  
10:40 14 certain values, behaviours, principles, et cetera, and those things  
10:40 15 need to apply across the group. There will be certain elements  
10:40 16 that are different, you know, if I take your example and try and  
10:40 17 apply it to this situation, there will be different things in the way  
10:40 18 Crown Sydney operates to Crown Melbourne, in the way to  
10:40 19 Crown Perth. Nevertheless, why can't you have an overarching  
10:41 20 human resource culture limb that sets the core principles about  
10:41 21 how that business will be managed or an overarching compliance  
10:41 22 limb? A lot of things are state-based legislation, which would  
10:41 23 cause those things to be different, but a lot of them are  
10:41 24 federal-based legislation which would cause them to be the same.  
10:41 25 I am a supporter of consolidating it. It is efficient. It reduces  
10:41 26 duplication, but it also gives a better quality of answer. It allows  
10:41 27 you to invest in better quality people to oversee the totality of that  
10:41 28 and make sure it is correctly structured for those state and  
10:41 29 regional differences. So I do think that is possible. And you  
10:41 30 need a small, tight group to really drive culture, I believe.  
10:41 31  
10:41 32 COMMISSIONER: I understand all of that. But let's take it  
10:41 33 away from the theoretical and look at the group that we are  
10:41 34 dealing with here.  
10:41 35  
10:42 36 A. Yeah.  
10:42 37  
10:42 38 COMMISSIONER: Under Victorian legislation, and under the  
10:42 39 agreements ---  
10:42 40  
10:42 41 A. Yeah.  
10:42 42  
10:42 43 COMMISSIONER: --- that Melbourne casino has entered into  
10:42 44 with the State of Victoria ---  
10:42 45  
10:42 46 A. Yep.  
10:42 47

10:42 1 COMMISSIONER: --- it has an obligation to act in the best  
10:42 2 interests of Victoria.  
10:42 3  
10:42 4 A. Victoria, that's right.  
10:42 5  
10:42 6 COMMISSIONER: It does not have an obligation to act in the  
10:42 7 best interests of NSW, nor does it have an obligation to care  
10:42 8 about Perth. And if it means sacrificing interests of Perth and  
10:42 9 NSW, if that is what has to be done to promote the interests of  
10:42 10 Victoria, that is what the Victorian operation - sorry, what is  
10:42 11 what the Victorian licensee is required to do. I'm trying to work  
10:42 12 out how you would reconcile that with an efficient head office  
10:42 13 operation, and my impression, to be quite frank about it, is you  
10:42 14 can't. That is, if you have an obligation by statute or regulation or  
10:43 15 by some other imposed arrangement, like contract, with  
10:43 16 a government to look after the interests of this state, that will  
10:43 17 necessarily conflict with businesses conducted elsewhere. Don't  
10:43 18 you need a separate, independent management looking after the  
10:43 19 operation in this state?  
10:43 20  
10:43 21 A. You do, but in certain things I don't see why it couldn't  
10:43 22 report through to ---  
10:43 23  
10:43 24 COMMISSIONER: I'm talking about important  
10:43 25 decision-making. How the Victorian operation is run to ensure  
10:43 26 that it is run in the best interests of this State, which is what is  
10:43 27 required.  
10:43 28  
10:43 29 A. Yes, no, I understand that, and I recall that legislation from  
10:43 30 my first stint at Crown between 1993 and 2000, and when it  
10:43 31 became a go as a sole entity, it was only Crown Melbourne back  
10:43 32 then. I still think there are - you know, you do have to do that.  
10:43 33 It depends what those things are. Crown has to have, as I  
10:43 34 understand it from its management - recollection of its  
10:44 35 management agreement, it has to be the number one casino in  
10:44 36 driving international revenue, commission-based revenue. The  
10:44 37 number one in that. It was that for many years and it probably  
10:44 38 still is that. And Perth isn't going to change that.  
10:44 39  
10:44 40 COMMISSIONER: Head office operations in Sydney might  
10:44 41 change that. If they have the same board, then aren't you in  
10:44 42 trouble, apart from potentially being in breach of contract?  
10:44 43  
10:44 44 A. Well, I don't think Sydney would overtake Melbourne, to  
10:44 45 be honest with you. I think ---  
10:44 46  
10:44 47 COMMISSIONER: It's not a question of overtaking, it might

10:44 1 take substantial business.  
10:44 2  
10:44 3 A. Well ---  
10:44 4  
10:44 5 COMMISSIONER: That's what it is designed to do, isn't it?  
10:44 6  
10:44 7 A. Well, or from Star. Take business from Star.  
10:44 8  
10:44 9 COMMISSIONER: You get my problem about ---  
10:44 10 (speaking over) ---  
10:44 11  
10:44 12 A. Yeah, no, I can see that, and it is a potential conflict and it  
10:44 13 is challenging, and it has always been that way for the last 10  
10:44 14 years. Since Crown bought Perth in many ways.  
10:45 15  
10:45 16 COMMISSIONER: That might have been a mistake on behalf of  
10:45 17 Victorians, we'll deal with that. But it is still an obligation and  
10:45 18 has to be dealt with.  
10:45 19  
10:45 20 A. Yeah.  
10:45 21  
10:45 22 COMMISSIONER: I'm trying to work out how best you think it  
10:45 23 might be best dealt with. It will be an important question that has  
10:45 24 to be resolved one way or another. You can assume that.  
10:45 25  
10:45 26 A. Yeah, well, I'm a director of Crown Melbourne as well as  
10:45 27 Crown Resorts.  
10:45 28  
10:45 29 COMMISSIONER: That's why I'm asking you. And I'm trying  
10:45 30 to work out how you could possibly manage the two positions  
10:45 31 when - these issues when they arise when you are not talking  
10:45 32 about culture, governance or accounting principles, but business  
10:45 33 decisions, straight business decisions where one decision will  
10:45 34 impact well one side and badly the other side. I don't know how  
10:45 35 you are going to do it. And I get you don't know how you are  
10:45 36 going to do it either.  
10:45 37  
10:45 38 A. It would be challenging, but I think in this case, to your  
10:46 39 point, you would have, I guess, to divide directors up to look after  
10:46 40 key interests, and I think I'm a proud and passionate Melburnian,  
10:46 41 and I would want to make sure Melbourne come first.  
10:46 42  
10:46 43 COMMISSIONER: As a director of the company you might  
10:46 44 have an obligation to ensure that happens, whether you like it or  
10:46 45 not.  
10:46 46  
10:46 47 A. Yes. No, it is challenging.

10:46 1  
10:46 2 COMMISSIONER: I'm trying to work out - I'm sorry for  
10:46 3 speaking over you, but I'm trying to work out how that ever is  
10:46 4 going to be managed.  
10:46 5  
10:46 6 A. Well, I think, as I'm saying, if - you've got to manage the  
10:46 7 regulatory and the legislative constraints around your licence and  
10:46 8 you have to make sure you do what you - you have to comply  
10:46 9 with all those things and if it says do that, you've got to do that in  
10:46 10 terms of Melbourne.  
10:46 11  
10:46 12 COMMISSIONER: Obviously right, but I wonder whether the  
10:46 13 only way you could even begin to do it, which is going to be  
10:47 14 a hard exercise in any event, is not delegate all decision-making  
10:47 15 to head office, that is have different people looking after - at  
10:47 16 least some different people sitting in Melbourne whose focus is  
10:47 17 Melbourne, whose focus is not Perth or Sydney ---  
10:47 18  
10:47 19 A. No.  
10:47 20  
10:47 21 COMMISSIONER: --- or anywhere else in the world.  
10:47 22  
10:47 23 A. Okay. I think that is correct and I think that does happen.  
10:47 24 As I understand it, Xavier Walsh is a director of Crown  
10:47 25 Melbourne. He's not a director of Crown Sydney, he's not on the  
10:47 26 Crown Resorts Board and he's not on Crown Perth. So there is  
10:47 27 one person who is there.  
10:47 28  
10:47 29 COMMISSIONER: I was thinking more of a majority.  
10:47 30  
10:47 31 A. Yes, and I don't disagree with you. And maybe that is the  
10:47 32 formulation going forward. I think what we need to do is make  
10:47 33 sure we don't have too much duplication and repetition of issues  
10:47 34 through the structure, because that is clearly inefficient.  
10:47 35  
10:47 36 COMMISSIONER: Well, it is inefficient in a theoretical sense  
10:47 37 but just assume the evidence that I have is that aspects of the  
10:48 38 business operation Australia-wide are managed through head  
10:48 39 office, but there is not adequate oversight of the operating  
10:48 40 subsidiaries. The policy and the planning and all the rest of it  
10:48 41 might be perfect, but if head office doesn't actually know what is  
10:48 42 going on, where is the advantage?  
10:48 43  
10:48 44 A. Well, it obviously does have to know what is going on to  
10:48 45 some extent. I think there are certain things that are overarching  
10:48 46 and overreaching, like culture, like values, like visions for the  
10:48 47 group, which do go across all subsidiaries, if you like.

10:48 1  
10:48 2 COMMISSIONER: Operating functions might be different.  
10:48 3  
10:48 4 A. The operating functions might be different.  
10:48 5  
10:48 6 COMMISSIONER: I understand. Yes. It might be hard to  
10:48 7 define the two.  
10:48 8  
10:48 9 A. It might be.  
10:48 10  
10:48 11 COMMISSIONER: And they are quite connected on a daily  
10:48 12 basis.  
10:48 13  
10:48 14 A. Yes.  
10:48 15  
10:48 16 COMMISSIONER: But on an operational level you wouldn't see  
10:49 17 anything wrong with Melbourne being responsible for  
10:49 18 Melbourne's operations, and not being overseen by head office?  
10:49 19  
10:49 20 A. In terms of culture and value, I would. Because I think  
10:49 21 Crown Resorts wants to have a culture, it wants to have a set of  
10:49 22 values, and we should set those through the organisation but,  
10:49 23 look, I don't disagree at the end of the day with what you said.  
10:49 24 And I think, when I look back at SkyCity, it worked that way  
10:49 25 there. We had Darwin, we had Adelaide, and we had Auckland  
10:49 26 and Christchurch and Queensland.  
10:49 27  
10:49 28 COMMISSIONER: How was it organised?  
10:49 29  
10:49 30 A. Well, again, we had independent directors on the board,  
10:49 31 one group board meeting ---  
10:49 32  
10:49 33 COMMISSIONER: Yes.  
10:49 34  
10:49 35 A. --- then there was, if you like, a general counsel who looked  
10:49 36 over all the companies and a group general manager of human  
10:50 37 resources that looked over all the companies but each of the  
10:50 38 properties had their own general manager, and each of those  
10:50 39 properties, depending on the size, had their own legal team,  
10:50 40 finance team, regulatory relationship team, et cetera. So in SA  
10:50 41 you had a general manager and legal team and those people, and  
10:50 42 they ran that business and worked closely with the South  
10:50 43 Australian regulator and the South Australian ministers and the  
10:50 44 Government. And from time to time, to use your words, people  
10:50 45 from head office would come over from Auckland, and we would  
10:50 46 go and meet with those people as well, and basically the Adelaide  
10:50 47 management team ran the business and made the day-to-day

10:50 1 decisions and we would help where we could.  
10:50 2  
10:50 3 COMMISSIONER: Okay. Thanks very much.  
10:50 4  
10:50 5 MR KOZMINSKY: Mr Commissioner, Mr Borsky has bought  
10:50 6 something to my attention. I think when I examined Mr Morrison  
10:51 7 I referred to the briefing paper and said that Mr Walsh had  
10:51 8 prepared and forwarded it to Allens. If you go to the document  
10:51 9 behind tab 1 of the cross-examination bundle, this is  
10:51 10 CRW.0000.0001.1162 and you turn to page 3, you will see at  
10:51 11 paragraph 2 your notice called for the document by which  
10:51 12 Mr Walsh forwarded the minute, but it doesn't say, Mr Borsky is  
10:51 13 quite right, that the minute was prepared by Mr Walsh.  
10:51 14  
10:51 15 COMMISSIONER: Just forwarded.  
10:51 16  
10:51 17 MR KOZMINSKY: Just forwarded by Mr Walsh. So I might  
10:51 18 tender that so the record is complete and accurate, and also the  
10:51 19 document behind tab 2, CRW.0000.0003.1097, which is the letter  
10:51 20 in response. So that ties everything together, Mr Commissioner,  
10:52 21 and I will just tender those.  
10:52 22  
10:52 23 COMMISSIONER: Notice to Produce NTP-183, that is  
10:52 24 a sufficient description of it, will be Exhibit 226. Letter from  
10:52 25 Allens to Solicitors Assisting dated 27 June 2021 will be Exhibit  
10:52 26 227.  
10:52 27  
28  
29 **EXHIBIT #RC0226 - NOTICE TO PRODUCE NTP-183**  
30  
31  
32 **EXHIBIT #RC0227 - LETTER FROM ALLENS TO**  
33 **SOLICITORS ASSISTING DATED 27 JUNE 2021**  
34  
35  
10:52 36 MR KOZMINSKY: Thank you. I'm not sure if the other parties  
10:52 37 have anything.  
10:52 38  
10:52 39 MR ROZEN: I have some brief questions for Mr Morrison, I'm  
10:52 40 happy to go now or fit in wherever.  
10:52 41  
10:52 42 COMMISSIONER: You may as well, you're standing up, do it  
10:52 43 now.  
10:52 44  
10:52 45  
10:52 46 **CROSS-EXAMINATION BY MR ROZEN**  
10:52 47

10:52 1  
10:52 2 MR ROZEN: Mr Morrison, my name is Mr Rozen and I  
10:52 3 represent the VCGLR. You were asked some questions by  
10:53 4 Counsel Assisting earlier about the food program initiative, the  
10:53 5 document that was produced that included the references to the  
10:53 6 VCGLR not noticing the tax change; do you recall that?  
10:53 7  
10:53 8 A. Yes.  
10:53 9  
10:53 10 Q. I think it is Exhibit 224. I don't need it on the screen, but if  
10:53 11 it helps you.  
10:53 12  
10:53 13 A. No, no, it's fine.  
10:53 14  
10:53 15 Q. You were asked by Counsel Assisting to comment on the  
10:53 16 reference in the document about the VCGLR not noticing the  
10:53 17 change and you expressed some concerns about that. Why is  
10:53 18 that? What does seeing that in a document within Crown tell you  
10:53 19 that raises concerns for you?  
10:53 20  
10:53 21 A. Well, it concerned me that it clearly wasn't an open and  
10:53 22 honest relationship with the VCGLR that these matters - they  
10:54 23 were happy to proceed on this basis without making sure that the  
10:54 24 VCGLR was content with the calculation at the time.  
10:54 25  
10:54 26 Q. Does it tell you something about the culture within the  
10:54 27 organisation, at least at that time?  
10:54 28  
10:54 29 A. Well, I think it probably does at that time.  
10:54 30  
10:54 31 Q. What does it tell you?  
10:54 32  
10:54 33 A. It tells you that they had an attitude if they didn't think it  
10:54 34 was overly important and they could get away with it, they did.  
10:54 35  
10:54 36 Q. In your statement you identify a number of challenges for  
10:54 37 the future, paragraph 18 I think it is. Perhaps if that could be  
10:54 38 brought up on the screen, please. The first dot point is,  
10:55 39 "rebuilding relationships and trust with regulators and  
10:55 40 governments"; do you see that?  
10:55 41  
10:55 42 A. I do.  
10:55 43  
10:55 44 Q. Does that suggest at some time in the past there was  
10:55 45 a relationship of trust with my client, the VCGLR and its  
10:55 46 predecessors? Is that what you are saying there?  
10:55 47



10:55 1 A. I'm sure you are aware, I was the Chief Operating Officer  
10:55 2 of Crown Melbourne when it was a single purpose company up to  
10:55 3 2000. My sense of it was we had a pretty good relationship and  
10:55 4 an open relationship with the ministers. It was the VCGA back  
10:55 5 then, I believe.

10:55 6

10:55 7 Q. Yes.

10:55 8

10:55 9 A. And I think we tried to have a good and open relationship  
10:55 10 at that point. And in my career, whether it has been with SA or  
10:56 11 New Zealand or the NT, I've always tried to have an open and  
10:56 12 honest relationship with regulators and ministers that I've dealt  
10:56 13 with. And I think Crown did back then. I can't comment after  
10:56 14 that time, but I assume Crown had, you know, when you read the  
10:56 15 section 25 reports it looks like there is always room for  
10:56 16 improvement and Crown can no doubt improve in a number of  
10:56 17 areas, but it seemed that there was a reasonable relationship. But  
10:56 18 back when I was there, my thoughts were it would have been  
10:56 19 a good relationship with the VCGA back then.

10:56 20

10:56 21 Q. So, back in your time as CEO, you think it was a pretty  
10:56 22 good relationship?

10:56 23

10:56 24 A. I think it was a good relationship.

10:56 25

10:56 26 Q. The evidence suggests that in 2012, at least, things had  
10:56 27 gone wrong. Is that how we are to understand the evidence about  
10:57 28 the evidence you've given about the minute in 2012?

10:57 29

10:57 30 A. Well, I think in 2012, going back to your former question,  
10:57 31 there was an attitude that probably wasn't as open and honest and  
10:57 32 consultative about those things as perhaps it would have been  
10:57 33 previously.

10:57 34

10:57 35 Q. Have you had cause to reflect on what might have  
10:57 36 precipitated that apparent change?

10:57 37

10:57 38 A. No.

10:57 39

10:57 40 Q. Has there been any discussion with your fellow board  
10:57 41 members since you've become a director on that subject?

10:57 42

10:57 43 A. Going back to 2012?

10:57 44

10:57 45 Q. No, the broader question of the relationship with the  
10:57 46 regulator in Victoria.

10:57 47

10:57 1 A. I think there is definitely a recognition we need to improve  
10:57 2 our relationship with the regulator in Victoria, and I think it is  
10:57 3 frustrating that we aren't. As I've come onboard in recent times, I  
10:57 4 would be very keen to help improve that relationship with the  
10:57 5 regulator. I think obviously while the Royal Commission is  
10:58 6 going, it is very difficult and the regulator probably doesn't want  
10:58 7 to talk to us and be open with us at this particular time, but I  
10:58 8 would hope once we are through this, we will have a very open  
10:58 9 and constructive relationship with the VCGLR going forward.

10:58 10

10:58 11 Q. I will take you up on the question of the regulator not  
10:58 12 wanting to talk to you whilst the Royal Commission is on. You  
10:58 13 would be aware that Ms Coonan has met several times with the  
10:58 14 VCGLR's CEO and Chairperson this year? Are you aware of  
10:58 15 that?

10:58 16

10:58 17 A. Met in person?

10:58 18

10:58 19 Q. Yes.

10:58 20

10:58 21 A. I'm probably aware - if you asked me, I would have said  
10:58 22 she had met once, but .....

10:58 23

10:58 24 Q. You've not met with the CEO or the Chairperson of the  
10:58 25 VCGLR?

10:58 26

10:58 27 A. No. No.

10:58 28

10:58 29 Q. Why is that, Mr Morrison? Have you tried to?

10:58 30

10:58 31 A. Have I tried to?

10:58 32

10:58 33 Q. Yes.

10:58 34

10:58 35 A. Well, I'm a non-executive director. I'm finding my way in  
10:58 36 the organisation and I haven't picked up the phone to do that, but  
10:59 37 in terms of when I have made comments to that effect, I've been  
10:59 38 advised it's not appropriate at this time.

10:59 39

10:59 40 Q. Advised by? We'll leave that. It doesn't matter.

10:59 41

10:59 42 Thank you, Mr Borsky.

10:59 43

10:59 44 You have already told us that from your perspective and  
10:59 45 experience, honesty is an important feature of a relationship  
10:59 46 between an organisation like Crown and the regulator; is that  
10:59 47 right?

10:59 1  
10:59 2 A. Yes.  
10:59 3  
10:59 4 Q. What are the other features from your perspective of  
10:59 5 a healthy and desirable relationship between Crown and say the  
10:59 6 VCGLR? Let's keep it specific. What are the other features you  
10:59 7 would like to see?  
10:59 8  
10:59 9 A. Well, openness.  
10:59 10  
10:59 11 Q. Yes.  
10:59 12  
10:59 13 A. I think. You've touched on honesty. Having both  
11:00 14 parties, I believe, have a healthy respect for the other party. That  
11:00 15 both parties are dealing with people of integrity. And I would  
11:00 16 also say there would need to be regular meetings, regular  
11:00 17 dialogue, formalised meetings. There is always something to  
11:00 18 discuss, I would expect, and I would have thought it would be  
11:00 19 very appropriate, and I don't know whether this happens or has  
11:00 20 happened, but to have at least a monthly meeting and dialogue  
11:00 21 around issues that are relevant to both parties. Both parties wish  
11:00 22 to raise.  
11:00 23  
11:00 24 Q. Prompt provision of documents and information when they  
11:00 25 are sought?  
11:00 26  
11:00 27 A. Absolutely.  
11:00 28  
11:00 29 Q. That is desirable?  
11:00 30  
11:00 31 A. Yes.  
11:00 32  
11:00 33 Q. I think you were in the witness box when Counsel Assisting  
11:00 34 Mr Kozminsky raised a matter earlier this morning. I'm not sure  
11:00 35 how much attention you were paying, Mr Morrison, but there was  
11:00 36 a complaint about the impact of the late provision of documents,  
11:00 37 or large numbers of documents being provided to the Royal  
11:01 38 Commission, and the impact on the ability of proper questioning  
11:01 39 of witnesses; do you recall that was being raised?  
11:01 40  
11:01 41 A. I do recall that. I assure you it has put equal stress on  
11:01 42 Crown.  
11:01 43  
11:01 44 Q. No doubt that is the case, and as we've heard several times  
11:01 45 you are all working very hard. My question is a related one  
11:01 46 though. Are you aware that the VCGLR has raised similar  
11:01 47 concerns about the impact of tardiness in the provision of

11:01 1 documents in the course of its investigations of Crown? Is that  
11:01 2 a matter that's been drawn to your attention?  
11:01 3  
11:01 4 A. In relation to section 25 reviews or?  
11:01 5  
11:01 6 Q. Specifically in relation to the China Arrests Investigation.  
11:01 7  
11:01 8 A. Right. I don't recall that being brought to my attention.  
11:01 9  
11:01 10 Q. Have you read the VCGLR's China Arrests Investigation or  
11:01 11 a summary of it?  
11:01 12  
11:01 13 A. I have not read a great deal of it, to be honest.  
11:01 14  
11:02 15 Q. Would it concern you if, in the course of that investigation,  
11:02 16 the VCGLR expresses in the report concerns along these lines,  
11:02 17 that the provision of documents, late, by Crown in response to  
11:02 18 notices, has impeded its ability to investigate thoroughly?  
11:02 19  
11:02 20 A. Yes.  
11:02 21  
11:02 22 Q. Finally, Mr Morrison, if I can just ask you some questions  
11:02 23 about the conversation you had with Mr Walsh on the tax  
11:02 24 question. Just so that I can understand it. The evidence you gave  
11:02 25 earlier, did I understand you to say that you had had  
11:02 26 a conversation in a hallway with Mr Walsh about this topic?  
11:02 27  
11:02 28 A. I believe I was leaving the Crown corporate offices, and  
11:02 29 Xavier and I bumped into each other in a hallway.  
11:02 30  
11:02 31 Q. Are you able to help us with when this conversation was?  
11:02 32  
11:02 33 A. As I said to Mr Kozminsky, it was probably 19 or 22  
11:03 34 March.  
11:03 35  
11:03 36 Q. And not to the minute, are you able to tell us approximately  
11:03 37 how long the conversation was?  
11:03 38  
11:03 39 A. It would have been - my recollection was it was less than  
11:03 40 a minute, it might have been 30 seconds.  
11:03 41  
11:03 42 Q. Perhaps I misunderstood, but I thought your evidence  
11:03 43 earlier was that during that conversation Mr Walsh had told you,  
11:03 44 and I haven't got the precise words here, so excuse me, but that  
11:03 45 the VCGLR had been through the calculations in relation to the  
11:03 46 deductions.  
11:03 47

11:03 1 A. In 2018, I believe.  
11:03 2  
11:03 3 Q. Yes. Is your evidence that Mr Walsh told you that during  
11:03 4 this brief conversation?  
11:03 5  
11:03 6 A. Yes.  
11:03 7  
11:03 8 Q. It is?  
11:03 9  
11:03 10 A. Yes.  
11:04 11  
11:04 12 Q. Are they the words he used, that the VCGLR had been  
11:04 13 through the calculations?  
11:04 14  
11:04 15 A. It was something to the effect that the VCGLR had asked  
11:04 16 for the calculation of gaming tax and been provided with it, and I  
11:04 17 understood that to be in detail, and that they had had that  
11:04 18 calculation, and hadn't raised any issue on it subsequently after  
11:04 19 receiving that in 2018.  
11:04 20  
11:04 21 Q. Was there also some discussion by him of the section 25  
11:04 22 review references to tax?  
11:04 23  
11:04 24 A. Section 25?  
11:04 25  
11:04 26 Q. Yes.  
11:04 27  
11:04 28 A. No.  
11:04 29  
11:04 30 Q. Not at that time?  
11:04 31  
11:04 32 A. No.  
11:04 33  
11:04 34 Q. You learnt of that separately?  
11:04 35  
11:04 36 A. Yes.  
11:04 37  
11:04 38 Q. Did Mr Walsh tell you during that conversation about the  
11:04 39 2012 minute?  
11:04 40  
11:04 41 A. Yes.  
11:04 42  
11:04 43 Q. I don't suppose you made a note of that discussion, did you,  
11:04 44 Mr Morrison?  
11:04 45  
11:04 46 A. No, I didn't. As I say, it was a passing corridor  
11:05 47 conversation.

11:05 1  
11:05 2 Q. Yes.  
11:05 3  
11:05 4 A. No, I didn't make a note.  
11:05 5  
11:05 6 MR ROZEN: They are the matters, thank you, Commissioner.  
11:05 7  
11:05 8 COMMISSIONER: Mr Gray?  
11:05 9  
11:05 10 MR GRAY: No, thank you, Commissioner.  
11:05 11  
11:05 12  
11:05 13 **RE-EXAMINATION BY MR BORSKY**  
11:05 14  
11:05 15  
11:05 16 MR BORSKY: Mr Morrison, in answering Counsel Assisting's  
11:05 17 questions, you gave evidence that the quantum of the potential  
11:05 18 under payment of the gaming tax issue that Counsel Assisting had  
11:05 19 referred to is different to your understanding of the quantum. Do  
11:05 20 you recall that?  
11:05 21  
11:05 22 A. Yes, I do.  
11:05 23  
11:05 24 Q. You were partially cut off in completing that answer.  
11:05 25 Would you tell the Commissioner, please, what your present  
11:05 26 understanding is of the quantum of the potentially incorrect  
11:05 27 deductions from Crown's gaming tax?  
11:06 28  
11:06 29 MR KOZMINSKY: I just want to be clear. Mr Morrison said he  
11:06 30 has read a summary of the advice which he has recently received,  
11:06 31 and if he answers the question, it is open to me to get up and  
11:06 32 make submission about waiver of privilege on the underlying  
11:06 33 issue, which presently is not waived.  
11:06 34  
11:06 35 COMMISSIONER: Yes.  
11:06 36  
11:06 37 MR BORSKY: No. I can approach it in a different way in  
11:06 38 stages.  
11:06 39  
11:06 40 COMMISSIONER: You can, but you run the risk. So have a go.  
11:06 41 Have a go.  
11:06 42  
11:06 43 MR BORSKY: I heard the Commissioner.  
11:06 44  
11:06 45 Mr Morrison, I don't want you to refer to any legal advice you  
11:06 46 may or may not have received, not the substance of it and not the  
11:06 47 fact of it. I'm not asking you anything about legal advice. Do

11:07 1 you understand?  
11:07 2  
11:07 3 COMMISSIONER: Are you going to ask him a question --- if  
11:07 4 you ask him the question, the answer to which must necessarily  
11:07 5 come from legal advice, I would treat that as a waiver. You can  
11:07 6 dress it up whichever way you like, but if his only source of  
11:07 7 information is legal advice and he is giving the legal advice, he's  
11:07 8 just not saying "I'm not telling you where it is from."  
11:07 9  
11:07 10 MR BORSKY: Okay. May I put it this way.  
11:07 11  
11:07 12 Have you had any discussion with any person within Crown, not  
11:07 13 a lawyer, which informs your understanding of the quantum of  
11:07 14 the potential underpayment of gaming tax issue?  
11:07 15  
11:07 16 COMMISSIONER: You can ask it this way: has anybody within  
11:07 17 Crown done any calculations on the potential underpayment of  
11:07 18 income tax, and has that person told you what their calculations  
11:07 19 disclose?  
11:07 20  
11:08 21 A. Not of income tax, but gaming tax, yes.  
11:08 22  
11:08 23 COMMISSIONER: I'm sorry, yes. I'm corrected.  
11:08 24  
11:08 25 A. I understand.  
11:08 26  
11:08 27 COMMISSIONER: Okay, now answer the question.  
11:08 28  
11:08 29 A. Yes.  
11:08 30  
11:08 31 COMMISSIONER: And you can say who did the calculation.  
11:08 32  
11:08 33 A. The Chief Financial Officer Mr Alan McGregor, and  
11:08 34 I believe the order of magnitude that he calculated or he advised  
11:08 35 me of was 8 million in total from 2013 to today's date.  
11:08 36  
11:08 37 COMMISSIONER: And he also told you that that was up for  
11:08 38 grabs?  
11:08 39  
11:08 40 A. No, he didn't tell me it was up for grabs and I'm not sure  
11:08 41 what that means to be honest.  
11:08 42  
11:08 43 COMMISSIONER: That's fair enough. It's not a debate I need to  
11:08 44 have with you.  
11:08 45  
11:08 46 MR BORSKY: As the Commissioner pleases.  
11:08 47

11:08 1 So, informed by Mr McGregor, and the calculation which you've  
11:08 2 said in answer to the Commissioner's question Mr McGregor  
11:09 3 performed, your understanding of the quantum of the potential  
11:09 4 underpayment of gaming tax issue is \$8 million, not the far larger  
11:09 5 quanta of 167 million or 200 million or 272 million; that is  
11:09 6 correct?

11:09 7  
11:09 8 A. That's correct.

11:09 9  
11:09 10 COMMISSIONER: And you also know there are differences of  
11:09 11 opinion?

11:09 12  
11:09 13 A. I'm sure there are differences of opinion, yes.

11:09 14  
11:09 15 COMMISSIONER: Good. Fine.

11:09 16  
11:09 17 MR BORSKY: As the Commissioner pleases. Nothing further  
11:09 18 in re-examination.

11:09 19  
11:09 20

11:09 21 **FURTHER QUESTIONS BY THE COMMISSIONER**

11:09 22  
11:09 23

11:09 24 COMMISSIONER: Not yet. I've got a question as well, not  
11:09 25 about tax. I'm intrigued with the discussion we had earlier.  
11:09 26 When we were talking about independent directors and your  
11:09 27 explanation for why important or beneficial for any organisation  
11:10 28 to have independent directors on the board, one of the things you  
11:10 29 mentioned as a reason for having independent directors was when  
11:10 30 there was a dominant shareholder. Do you want to explain that  
11:10 31 a bit? By "dominant shareholder" I take it you mean some person,  
11:10 32 organisation probably other than an institutional shareholder,  
11:10 33 although that might differ nowadays as well.

11:10 34  
11:10 35 A. Yes, it might be nowadays ---

11:10 36  
11:10 37 COMMISSIONER: Who has a significant stake in the company?

11:10 38  
11:10 39 A. That's right.

11:10 40  
11:10 41 COMMISSIONER: And who can influence the decision.

11:10 42  
11:10 43 A. That's right.

11:10 44  
11:10 45 COMMISSIONER: Influence the decision-making by having  
11:10 46 appointees on the board?

11:10 47



11:10 1 A. Potentially or ---  
11:10 2  
11:10 3 COMMISSIONER: Or because of their size?  
11:10 4  
11:10 5 A. Or by their size or by their dominant personality, perhaps.  
11:10 6  
11:10 7 COMMISSIONER: You don't have to have a dominant  
11:10 8 personality, if you have enough shares, then you have a voice.  
11:10 9  
11:10 10 A. Yes, absolutely.  
11:10 11  
11:10 12 COMMISSIONER: And that is a bad thing.  
11:10 13  
11:10 14 A. It can be a bad thing, it can be a good thing.  
11:10 15  
11:10 16 COMMISSIONER: Generally speaking it can be a bad thing?  
11:10 17  
11:11 18 A. Potentially it can be a very bad thing.  
11:11 19  
11:11 20 COMMISSIONER: Thanks. I wanted to clear that up too.  
11:11 21  
11:11 22 A. Yep.  
11:11 23  
11:11 24 COMMISSIONER: Mr Kozminsky.  
11:11 25  
11:11 26  
11:11 27 **FURTHER EXAMINATION BY MR KOZMINSKY**  
11:11 28  
11:11 29  
11:11 30 MR KOZMINSKY: Do you remember you gave some evidence  
11:11 31 about the PowerPoint summary that you read?  
11:11 32  
11:11 33 A. Yes.  
11:11 34  
11:11 35 Q. Was Mr McGregor's calculation in that PowerPoint  
11:11 36 summary?  
11:11 37  
11:11 38 A. I don't know. I don't think that came from Mr McGregor.  
11:11 39  
11:11 40 Q. I want you to check PowerPoint summary and I want you to  
11:11 41 tell me if Mr McGregor's summary is in it.  
11:11 42  
11:11 43 MR BORSKY: I object.  
11:11 44  
11:11 45 MR KOZMINSKY: Why?  
11:11 46  
11:11 47 COMMISSIONER: Why?

11:11 1  
11:11 2 MR BORSKY: The PowerPoint summary, the evidence is, came  
11:11 3 from Arnold Bloch Liebler. The question calls for the disclosure  
11:11 4 of the contents of advice that isn't considered, and ruled, is not  
11:11 5 part of our waiver. It is legal professional privilege, and we press  
11:11 6 the claim.  
11:11 7  
11:11 8 COMMISSIONER: I thought it was the other way. I thought the  
11:11 9 document went to the lawyers, not from the lawyers.  
11:11 10  
11:11 11 MR BORSKY: No, it is a PowerPoint presentation from Arnold  
11:12 12 Bloch Leibler. I object to the question.  
11:12 13  
11:12 14 COMMISSIONER: Well, you can object to the question in  
11:12 15 public. You can't object to the question. Which is different.  
11:12 16  
11:12 17 MR KOZMINSKY: At the moment, all I'm asking for is for the  
11:12 18 witness to tell the Commission in writing whether or not  
11:12 19 Mr McGregor's calculations are referred to in the PowerPoint  
11:12 20 presentation he read, and if they are, then I will have a think  
11:12 21 about where to next. That's all I'm asking ---  
11:12 22  
11:12 23 MR BORSKY: Taking the Commissioner's point, with respect, if  
11:12 24 we maintain the claim for privilege, section 32(2), of course,  
11:12 25 enables you to override it ---  
11:12 26  
11:12 27 COMMISSIONER: I wasn't going to override it. I meant if the  
11:12 28 issue was going to be pursued, it would be pursued in private to  
11:12 29 maintain the privilege. That's all. Not that it won't be pursued.  
11:12 30  
11:12 31 MR BORSKY: Understand.  
11:12 32  
11:12 33 COMMISSIONER: Okay. Sorry, I forgot you sitting in the  
11:12 34 back!  
11:12 35  
11:12 36 DR BIGOS: I just have a question arising out of one of the  
11:12 37 questions, or the exchange you just had with the witness. Just  
11:12 38 a couple of questions to ask if that's okay.  
11:13 39  
11:13 40 COMMISSIONER: You don't mind, do you?  
11:13 41  
11:13 42 A. I'm enjoying it! It's not lunchtime yet.  
43  
44  
45 **CROSS-EXAMINATION BY DR BIGOS**  
46  
47

11:13 1 DR BIGOS: You were asked questions about a dominant  
11:13 2 shareholder, and I think you said it could be a good or bad thing.  
11:13 3 Is the risk that it might be a bad thing tempered by having  
11:13 4 non-executive directors such as yourself?  
11:13 5  
11:13 6 A. It can be. As I said to the Commissioner, sometimes you  
11:13 7 have dominant shareholders, significant shareholders that have  
11:13 8 dominant personalities, it depends, you know, as long as those  
11:13 9 non-executive directors are people of backbone and character and  
11:13 10 integrity and prepared to walk away, if they disagree with the way  
11:13 11 things are being done, then that does temper it.  
11:13 12  
11:13 13 DR BIGOS: Thank you.  
11:14 14  
11:14 15 COMMISSIONER: Mr Gray, do you want to ask any questions  
11:14 16 or not?  
11:14 17  
11:14 18 MR GRAY: No, Commissioner.  
11:14 19  
11:14 20 MR KOZMINSKY: We might adjourn now unless you have any  
11:14 21 further questions --  
11:14 22  
11:14 23 COMMISSIONER: Can Mr Morrison go home now?  
11:14 24  
11:14 25 MR KOZMINSKY: He can go home.  
11:14 26  
11:14 27  
11:14 28 **THE WITNESS WITHDREW**  
11:14 29  
11:14 30  
11:14 31 MR KOZMINSKY: And can I ask we adjourn until quarter to?  
11:14 32 Before we commence in closed hearing.  
11:14 33  
11:14 34 COMMISSIONER: We can do that as long as we sit till 1 or 1.15  
11:14 35 then.  
11:14 36  
11:14 37 MR KOZMINSKY: Yes, and then again after lunch.  
11:14 38  
11:14 39 COMMISSIONER: If we come back at 11.45 and sit to 1.15, and  
11:14 40 break till 2. No dissenting voice? Mr Rozen is about to  
11:14 41 complain.  
11:14 42  
11:14 43 MR ROZEN: No, on the contrary, I'm just trying to get  
11:14 44 a clarification, because I'm not sure we've received it, about  
11:14 45 whether we are permitted to be here for the next ---  
11:14 46  
11:14 47 COMMISSIONER: I forgot about that.

11:14 1  
11:14 2 MR ROZEN: --- or what the arrangement is.  
11:15 3  
11:15 4 COMMISSIONER: I will raise that with Mr Borsky, if you don't  
11:15 5 mind, and we'll work it out.  
11:15 6  
11:15 7 MR ROZEN: Please.  
11:15 8  
11:15 9 COMMISSIONER: Mr Gray?  
11:15 10  
11:15 11 MR GRAY: We too would be very interested in knowing  
11:15 12 whether we should be present for the examination of Mr Maher --  
11:15 13  
11:15 14 COMMISSIONER: Yes.  
11:15 15  
11:15 16 MR GRAY: --- and we don't wish to be exposed to any material  
11:15 17 that is legally professionally privileged.  
11:15 18  
11:15 19 COMMISSIONER: So far I haven't published the name of the  
11:15 20 witness. You have. We'll delete it for the time being from the -  
11:15 21 I don't know how to do it, but somebody can do it.  
11:15 22  
11:15 23 MR GRAY: Tomorrow we understand there are further  
11:15 24 witnesses to be called in private session. We don't know who  
11:15 25 they are. If we could be told at least something about the topic in  
11:15 26 question, the State can consider its position as to whether it  
11:15 27 wishes to apply to be present.  
11:15 28  
11:15 29 COMMISSIONER: I will do both.  
11:15 30  
11:15 31 MR GRAY: Thank you.  
11:15 32  
11:16 33 COMMISSIONER: Mr Borsky, one reason for the next witness's  
11:16 34 evidence to be, as it were, in-camera, is because it is likely, if not  
11:16 35 inevitable, that questions that will be covered by legal privilege  
11:16 36 will arise. I wanted to avoid a stop/start because it might be  
11:16 37 difficult to divide it up and have a proportion of the evidence on  
11:16 38 non-privileged topics and a portion on privileged topics. It is  
11:16 39 likely to arise in running so that we have five minutes of  
11:16 40 questions and then break until the system operates so we can  
11:17 41 exclude everybody, and that will last for 10 minutes and so on. I  
11:17 42 necessarily want to avoid that --  
11:17 43  
11:17 44 MR BORSKY: Yes.  
11:17 45  
11:17 46 COMMISSIONER: --- for the witness and for you and  
11:17 47 Counsel Assisting, but I wanted to raise this with you and see

11:17 1 whether you agree or disagree.  
11:17 2  
11:17 3 My present intention - which is always good for takeover cases,  
11:17 4 isn't it - you don't have to say what you are going to do  
11:17 5 tomorrow, but my present intention is to proceed on that basis,  
11:17 6 that is take the evidence without anybody present, and then when  
11:18 7 the evidence is done, go over the transcript or somebody will go  
11:18 8 over the transcript, delete bits that are the subject of privilege,  
11:18 9 and you will be able, of course, to have an input in that and then  
11:18 10 make the transcript available publicly. Is there any reason why I  
11:18 11 shouldn't proceed on that basis? You can think about it, but at  
11:18 12 the moment I can't see any reason why I shouldn't and I don't  
11:18 13 know why I would proceed on any other basis.  
11:18 14  
11:18 15 MR BORSKY: No. We don't seek to be heard against that. Just  
11:18 16 for clarification, of course we've conceded a narrow waiver of  
11:18 17 privilege and you have accepted that.  
11:18 18  
11:18 19 COMMISSIONER: When we go through the transcript, for the  
11:18 20 purposes of working out what is to be made public and what is  
11:18 21 not to be made public, I will proceed on the basis that there has  
11:19 22 been partial waiver, but only partial waiver.  
11:19 23  
11:19 24 MR BORSKY: Yes. And so anything not within the scope of  
11:19 25 that conceded and accepted partial waiver ---  
11:19 26  
11:19 27 COMMISSIONER: Yes.  
11:19 28  
11:19 29 MR BORSKY: --- insofar as it touches on privileged information  
11:19 30 will be redacted?  
11:19 31  
11:19 32 COMMISSIONER: The answer is yes, but I should say the  
11:19 33 answer to that, I think at the moment, not only for the evidence  
11:19 34 this afternoon but for all privileged material, is yes for the time  
11:19 35 being. In due course it may be necessary to publish large  
11:19 36 medium or small portions of what would otherwise be privileged  
11:19 37 material. If it comes to that, I will let anybody who has a claim to  
11:19 38 privilege know and they can speak against it, but some parts of  
11:19 39 the report that I'm obliged to prepare and give to the Governor  
11:19 40 will not make sense, I fear, unless privileged material is  
11:20 41 disclosed. If parts of the report are not going to make sense  
11:20 42 without the disclosure of privileged material, I intend to publish  
11:20 43 a report that makes sense, if you understand where I'm getting at.  
11:20 44  
11:20 45 MR BORSKY: I do.  
11:20 46  
11:20 47 COMMISSIONER: All I can't say is I don't know now what that

11:20 1 is and how far the disclosure might have to be made, but if  
11:20 2 disclosure has to be made for there to be a comprehensive and  
11:20 3 comprehensible report, disclosure will be made regardless. In  
11:20 4 other words, I will take away the privilege.  
11:20 5  
11:20 6 MR BORSKY: Well, I've understood we will have  
11:20 7 an opportunity to be heard before any such step --  
11:20 8  
11:20 9 COMMISSIONER: I just said that.  
11:20 10  
11:20 11 MR BORSKY: --- and of course if the Commission requires  
11:20 12 information to be published, then that requirement may have  
11:20 13 continuing significance for our purposes under section 32(2).  
11:20 14  
11:20 15 COMMISSIONER: It might.  
11:20 16  
11:20 17 MR BORSKY: It might. That is an argument for another day.  
11:20 18  
11:20 19 COMMISSIONER: It won't be an argument with me in any  
11:21 20 event.  
11:21 21  
11:21 22 MR BORSKY: But for present purposes we seek to do  
11:21 23 everything possible to protect our privilege insofar as it has not  
11:21 24 been waived and we're grateful for the Commission  
11:21 25 accommodating that in the way that you've proposed.  
11:21 26  
11:21 27 COMMISSIONER: All right. I'm not sure I should talk to you or  
11:21 28 Mr Zwier about tomorrow's witnesses. They come from ---  
11:21 29  
11:21 30 MR BORSKY: I will let you finish the question.  
11:21 31  
11:21 32 COMMISSIONER: They are your employees.  
11:21 33  
11:21 34 MR BORSKY: They are.  
11:21 35  
11:21 36 COMMISSIONER: And the plan was, as we've done in the past  
11:21 37 with other employees, and I haven't actually thought about it  
11:21 38 really, I'm doing this on the run, but I will give it a go, my current  
11:22 39 thinking ---  
11:22 40  
11:22 41 MR BORSKY: Short of intention. I get it.  
11:22 42  
11:22 43 COMMISSIONER: --- it's much less than intention - is to do  
11:22 44 the same thing that we did with other employees. That is, have  
11:22 45 them give their evidence, I don't know whether they should give  
11:22 46 evidence anonymously so we have Employee 1, 2 and - I'm told  
11:22 47 we are going to do that, how we did it last time.

11:22 1  
11:22 2 MR BORSKY: That is how we did it last time.  
11:22 3  
11:22 4 COMMISSIONER: Yes, we might do that, but again, go over the  
11:22 5 evidence once the transcript is to hand, and we will remove  
11:22 6 identifying information, who they are and job description, and  
11:22 7 anything else that might identify who they are, and then publish  
11:22 8 the transcripts.  
11:22 9  
11:22 10 MR BORSKY: Understand.  
11:22 11  
11:22 12 COMMISSIONER: I have to think a little bit more about that.  
11:22 13  
11:22 14 MR BORSKY: Okay.  
11:22 15  
11:22 16 COMMISSIONER: There is no harm in me mentioning the  
11:22 17 subject matter of evidence.  
11:23 18  
11:23 19 MR BORSKY: Not at all. We would be assisted.  
11:23 20  
11:23 21 COMMISSIONER: This is really for Mr Gray and Mr Rozen  
11:23 22 who are at least temporarily going to be excluded from what is  
11:23 23 happening, but so they know what it is about.  
11:23 24  
11:23 25 At the moment the Commission has information that between  
11:23 26 I think 2012 and 2016 Crown embarked on a, I'm going to be as  
11:23 27 neutral as I can, a plan, Sir Anthony Mason's meaning of the  
11:23 28 word "plan", by which overseas high roller gamblers could  
11:23 29 transfer money from overseas through a Hong Kong credit  
11:24 30 account to the Crown Hotel, avoiding any banking system and  
11:24 31 effectively cashing in their credit card at the hotel for amounts  
11:24 32 I think, but I don't know, it depends on what the evidence will tell  
11:24 33 me, but at the moment I think for amounts up to \$500,000. That  
11:24 34 is the topic that will be explored with employees of Crown on  
11:24 35 Wednesday's hearings. I can't remember how many witnesses  
11:24 36 there are, but there is a number of them. So that is the topic.  
11:24 37 And you should assume, at least as far as I know, and unless  
11:24 38 somebody asks a question that I'm not aware of, that the sole  
11:25 39 topic is the use of a credit card in breach of the Casino Control  
11:25 40 Act, and maybe in breach of other legislation, and potentially  
11:25 41 criminal conduct, for at least what presently is known to be a set  
11:25 42 period. And I think the amount of money involved, according to  
11:25 43 some assessments, over that period is \$160 million taken through  
11:25 44 credit cards rather than through the banking facilities, which are  
11:25 45 ordinarily employed by people who want to transfer funds into  
11:25 46 Crown.  
11:25 47 So that is the sole scope of the evidence for Wednesday. As I

11:25 1 say, once the evidence is in we will redact identifying  
11:25 2 information because they are just ordinary members of staff,  
11:25 3 I think, all of them. I will check that. And I don't want it to  
11:25 4 become known who they are because at the moment I don't see  
11:26 5 any good reason why who they are and their job description and  
11:26 6 so on and personal details should be made public. The purpose  
11:26 7 for the closed hearings is to protect their anonymity. They should  
11:26 8 remain anonymous.

11:26 9

11:26 10 Is that a sufficient description for what is happening on  
11:26 11 Wednesday, Mr Gray?

11:26 12

11:26 13 MR GRAY: For my part, yes, thank you very much,  
11:26 14 Commissioner. I will take instructions, and in the event the State  
11:26 15 wishes to make an application to try to persuade you against your  
11:26 16 current view that the State should be excluded, I will be in touch  
11:26 17 either through the Solicitors Assisting ---

11:26 18

11:26 19 COMMISSIONER: It will be helpful if I know by close of  
11:26 20 business? Maybe by this evening.

11:26 21

11:26 22 MR GRAY: Yes.

11:26 23

11:26 24 COMMISSIONER: So we can sort it out beforehand.

11:26 25

11:26 26 MR GRAY: Yes, thank you.

11:26 27

11:26 28 COMMISSIONER: Mr Rozen, same position for you?

11:26 29

11:26 30 MR ROZEN: I'm a step ahead of Mr Gray. Very rare, but on this  
11:27 31 occasion that is the case. I have instructions we would like to be  
11:27 32 here for that evidence. I can't presently see a difference between  
11:27 33 the situation on Wednesday and the situation when we were  
11:27 34 allowed to be here for the Responsible Gaming and other  
11:27 35 employees.

11:27 36

11:27 37 COMMISSIONER: That's probably fair enough, and you will be  
11:27 38 subject to a non-publication order, so neither of you will be able  
11:27 39 to disclose personal information.

11:27 40

11:27 41 MR ROZEN: We understand that.

11:27 42

11:27 43 DR BIGOS: Commissioner, I think I will probably get  
11:27 44 instructions to make a similar application.

11:27 45

11:27 46 COMMISSIONER: Okay. That is your present belief.

11:27 47



11:27 1 MR HUTLEY: Of course we'll be here, Commissioner.  
11:28 2  
11:28 3 COMMISSIONER: I suppose as long as non-publication orders  
11:28 4 are in place and personal identification or any details that will  
11:28 5 identify the persons giving evidence are not disclosed then that is  
11:28 6 a sufficient protection for the persons concerned, isn't it?  
11:28 7  
11:28 8 MR BORSKY: Yes. I can't and don't seek to point to a reason  
11:28 9 why the parties granted leave to appear to participate in this  
11:28 10 Commission couldn't be present. We do seek to protect the  
11:28 11 confidentiality for reasons that are understood, and for the same  
11:28 12 reasons we did on the previous occasion because, with respect,  
11:28 13 they are relatively junior employees.  
11:28 14  
11:28 15 COMMISSIONER: Okay.  
11:28 16  
11:28 17 MR BORSKY: On the issue of disclosure, if I may, for the  
11:28 18 benefit of Mr Gray and Mr Rozen and others, you should just  
11:28 19 note that this issue was voluntarily disclosed by Crown and has  
11:28 20 been promptly investigated, and so far as we are aware, as of at  
11:29 21 least last night, there is no suggestion from Counsel Assisting or  
11:29 22 anyone on behalf of the Commission, that there is any question of  
11:29 23 disclosure in relation to this issue. Quite the contrary as we  
11:29 24 understand it.  
11:29 25  
11:29 26 COMMISSIONER: Closing submissions aren't until 2 August.  
11:29 27  
11:29 28 MR BORSKY: (Nods head). I note the time. We had proposed  
11:29 29 to be back here in a little under 15 minutes. Would it be  
11:29 30 convenient if you adjourned until midday?  
11:29 31  
11:29 32 COMMISSIONER: Is that all right?  
11:29 33  
11:29 34 MR KOZMINSKY: I support that submission wholeheartedly.  
11:29 35  
11:29 36 COMMISSIONER: I'll adjourn until 12 o'clock.  
11:29 37  
11:29 38  
11:29 39 **ADJOURNED** **[11.29AM]**  
11:58 40  
41  
42  
43  
44  
45  
46  
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12:05 1       **RESUMED** **[12.05PM]**  
12:05 2  
12:05 3  
12:06 4       **HEARING IN CAMERA**  
12:06 5  
12:06 6  
12:06 7       COMMISSIONER: Thank you.  
12:06 8  
12:06 9       MR BORSKY: I'm informed that we are in closed confidential  
12:06 10       session with the stream accessible only to Crown employees and  
12:06 11       directors and lawyers. May I respectfully require whether  
12:06 12       a non-publication order will be made and, if so, what the terms of  
12:06 13       it might be? So we don't inadvertently contravene it.  
12:06 14  
12:06 15       COMMISSIONER: It is in the process of being amended to  
12:06 16       accommodate Mr Zwier and his clients. One was made but it has  
12:06 17       been overtaken by events, so the latest version will probably be  
12:06 18       done over the lunch break.  
12:06 19  
12:06 20       MR BORSKY: Mr Maher is here. We call him.  
12:07 21  
12:07 22       COMMISSIONER: Yes.  
12:07 23  
12:07 24  
12:07 25       **MR ANDREW MAHER, SWORN**  
12:07 26  
12:07 27  
12:07 28       **EXAMINATION-IN-CHIEF BY MR BORSKY**  
12:07 29  
12:07 30  
12:07 31       MR BORSKY: You are a partner at Allens?  
12:07 32  
12:07 33       A. I am.  
12:07 34  
12:07 35       Q. Allens are solicitors for Crown in this Royal Commission?  
12:07 36  
12:07 37       A. That's correct.  
12:07 38  
12:07 39       Q. Did you attend a meeting at Crown with Xavier Walsh and  
12:07 40       others on 18 March this year?  
12:07 41  
12:07 42       A. Yes, I did.  
12:07 43  
12:07 44       Q. At that meeting, was the bonus/jackpot tax issue raised for  
12:07 45       discussion?  
12:07 46  
12:07 47       A. Yes, it was.

12:07 1  
12:07 2 Q. By whom was it raised?  
12:07 3  
12:07 4 A. Mr Walsh.  
12:07 5  
12:08 6 Q. What, if any views, did Mr Walsh express as to whether  
12:08 7 that issue should be disclosed to this Royal Commission?  
12:08 8  
12:08 9 A. Mr Walsh expressed the view to me that this issue may  
12:08 10 need to be disclosed to the Commission and sought Allens'  
12:08 11 advice in relation to that.  
12:08 12  
12:08 13 Q. Did you request any further instructions or documents for  
12:08 14 the purpose of providing that advice?  
12:08 15  
12:08 16 A. I did. Based on the briefing that was provided to me at the  
12:08 17 time, I didn't feel I was in a position to provide the advice that  
12:08 18 was sought from me, and as a result of that I asked for some  
12:08 19 documents so that we could consider and provide that advice  
12:08 20 subsequently.  
12:08 21  
12:08 22 Q. Was Allens then provided with documents?  
12:09 23  
12:09 24 A. Shortly thereafter, yes.  
12:09 25  
12:09 26 Q. When you say "shortly thereafter", are you able to be more  
12:09 27 precise about that?  
12:09 28  
12:09 29 A. I believe it was within a day or so after the meeting. The  
12:09 30 documents had to be copied for provision to Allens, and the  
12:09 31 folder was given to a colleague of mine.  
12:09 32  
12:09 33 Q. Did you, back in March or April or May of this year,  
12:09 34 review the folder of documents or provide advice to Crown as to  
12:09 35 whether the issue should be disclosed to the Royal Commission?  
12:09 36  
12:09 37 A. I did not.  
12:09 38  
12:09 39 Q. Why not?  
12:09 40  
12:09 41 A. Mr Borsky, at the time that this material was provided, I  
12:10 42 and others were attending to many significant competing tasks  
12:10 43 associated with responding to this Commission's inquiries, and I  
12:10 44 overlooked it, I'm sorry to say.  
12:10 45  
12:10 46 Q. Did Mr Walsh or anybody else at Crown instruct you, or  
12:10 47 even suggest to you, that the issue should not be disclosed to the

12:10 1 Royal Commission?  
12:10 2  
12:10 3 A. Not at all.  
12:10 4  
12:10 5 Q. Have you subsequently reviewed the folder of documents?  
12:10 6  
12:10 7 A. I have since 7 June.  
12:10 8  
12:10 9 Q. If you had reviewed the folder of documents back in March  
12:10 10 or April, what would your advice to Crown have been?  
12:10 11  
12:10 12 A. I would have advised the company to include the matter in  
12:11 13 a response to RFI-2.  
12:11 14  
12:11 15 MR BORSKY: Can I try, Commissioner, to have the 7 June  
12:11 16 letter brought up on the system. I have a code, we'll  
12:11 17 see how I do. CRW.000.003.0893.  
12:11 18  
12:11 19 Mr Kozminsky assures me it is there somewhere.  
12:11 20  
12:11 21 COMMISSIONER: Can you do it again?  
12:11 22  
12:11 23 MR BORSKY: CRW.0000.003.0893.  
12:11 24  
12:11 25  
12:12 26 MR KOZMINSKY: CRW.0000.0003.0893.  
12:12 27  
12:12 28 COMMISSIONER: This is cooperation between the  
12:12 29 Commission and Crown.  
12:12 30  
12:12 31 MR BORSKY: As promised from the outset! Thank you very  
12:12 32 much.  
12:12 33  
12:12 34 Some personal information has been redacted but could we  
12:12 35 please, operator, just scroll through the letter just to give  
12:12 36 Mr Maher an opportunity to look at it again.  
12:12 37  
12:12 38 You recognised this, Mr Maher, as a letter from Allens to  
12:12 39 Solicitors Assisting this Royal Commission dated 7 June 2021?  
12:12 40  
12:12 41 A. I do.  
12:12 42  
12:12 43 Q. Did you write this letter?  
12:12 44  
12:12 45 A. I did.  
12:12 46  
12:12 47 Q. Are its contents true?

12:12 1  
12:13 2 A. Yes, they are. There is a statement in the letter that I think  
12:13 3 when read in context is true, but when taken out of context it may  
12:13 4 mislead. The sentence is:  
12:13 5  
12:13 6 *Unfortunately, the matter was then not disclosed to the*  
12:13 7 *Commission.*  
12:13 8  
12:13 9 For the avoidance of doubt, that statement was meant to mean  
12:13 10 that unfortunately the matter was then not disclosed to the  
12:13 11 Commission in response to RFI-002.  
12:13 12  
12:13 13 Q. The evidence you just gave was directed, was it not, to the  
12:13 14 first sentence in the last paragraph at the foot of page 1?  
12:13 15  
12:13 16 A. That is so.  
12:13 17  
12:13 18 Q. Other than in relation to that sentence, which is to be read  
12:13 19 in the way you've just clarified, are the contents of the 7 June  
12:14 20 2021 letter to Solicitors Assisting true?  
12:14 21  
12:14 22 A. Yes, they are.  
12:14 23  
12:14 24 MR BORSKY: If the Commission pleases, I seek to tender the  
12:14 25 letter.  
12:14 26  
12:14 27 COMMISSIONER: Okay. I thought it might have been  
12:14 28 tendered.  
12:14 29  
12:14 30 MR BORSKY: I may be wrong. Perhaps I'm being unduly  
12:14 31 cautious.  
12:14 32  
12:14 33 MR KOZMINSKY: It hasn't been.  
12:14 34  
12:14 35 COMMISSIONER: No.  
12:14 36  
12:14 37 MR BORSKY: We seek to tender the letter only, not the file note  
12:14 38 which, as you know, has redactions and other things for privilege.  
12:14 39  
12:14 40 COMMISSIONER: There is no redactions in the letter other than  
12:14 41 personal information.  
12:14 42  
12:14 43 MR BORSKY: Correct. And I seek to tender the letter on  
12:14 44 an open basis.  
12:14 45  
12:14 46 COMMISSIONER: Okay. Dealing with that first, that is a letter  
12:14 47 of 7 June 2021 from Allens to the Solicitors Assisting the

12:14 1 Commission, I think it is Exhibit 228.

12:15 2

3

4

**EXHIBIT #RCPH0228 - LETTER FROM ALLENS TO  
SOLICITORS ASSISTING THE COMMISSION DATED 7  
JUNE 2021**

7

8

12:15 9 MR BORSKY: As the Commission pleases.

12:15 10

12:15 11 COMMISSIONER: Thank you.

12:15 12

12:15 13

12:15 14 **CROSS-EXAMINATION BY MR KOZMINSKY**

12:15 15

12:15 16

12:15 17 MR KOZMINSKY: Good afternoon.

12:15 18

12:15 19 A. Good afternoon.

12:15 20

12:15 21

Confidential

12:15 22

12:15 23

12:15 24

12:15 25

12:15 26

12:15 27

12:15 28

12:15 29

12:15 30

12:15 31 Q. I wanted to clarify something: the letter says the meeting  
12:15 32 took place on 18 March and the file note says the meeting took  
12:16 33 place on 19 March. You are nodding your head so you are alive  
12:16 34 to it. What's the position?

12:16 35

12:16 36 A. Yes, it was 18 March and the reference in the file note to 19  
12:16 37 March was mistaken.

12:16 38

12:16 39 Q. At 4 pm or you don't remember?

12:16 40

12:16 41 A. Yes, it was 4 pm.

12:16 42

12:16 43 Q. Thank you. Do you recall the duration of the meeting?

12:16 44

12:16 45 A. It was about an hour.

12:16 46

12:16 47 Q. Based on the file note, which I can bring up for you if that

12:16 1 is easier, CRW.0000.0003.0895. If you look at the attendees,  
12:16 2 I think I'm right that it is clearly Mr Xavier Walsh, Alan  
12:16 3 McGregor, Jan Williamson and Rob Meade from Crown and  
12:16 4 "Peter [?]", is that Peter Herring?

12:16 5  
12:16 6 A. That's correct.

12:16 7  
12:16 8 Q. Thank you. Then you and two of your colleagues at  
12:16 9 Allens?

12:16 10  
12:16 11 A. That's correct.

12:16 12  
12:16 13 Q. Thank you. You don't need to go to it, you can take my  
12:17 14 word for it, but I can take you there if you need, in the file note  
12:17 15 there is a reference to a "AMck". Who is that?

12:17 16  
12:17 17 A. I believe it is Alan McGregor.

12:17 18  
12:17 19 Q. I see, thank you.

12:17 20  
12:17 21 A. I don't know for sure because it is not a usual abbreviation I  
12:17 22 would use, but by deduction I think it is Alan McGregor ---

12:17 23  
12:17 24 Q. There was no one else at the meeting, I suppose, is what I'm  
12:17 25 asking you.

12:17 26  
12:17 27 A. No, that is so. Certainly not with a --- it wouldn't have  
12:17 28 been Matthew McCarthy.

12:17 29  
12:17 30 Q. No, I didn't think so. Did anyone at the meeting have  
12:17 31 a laptop or computer with them?

12:17 32  
12:17 33 A. I believe Mr Yiannakou whose file note this is.

12:17 34  
12:17 35 Q. Fantastic.

12:17 36  
12:17 37 A. There may have been someone --- I can't remember if  
12:17 38 anyone else had a laptop, but certainly this file note was taken ---

12:18 39  
12:18 40 Q. Understand. That is what I was getting at. Who organised  
12:18 41 the meeting, Mr Maher?

12:18 42  
12:18 43 A. The meeting invitation was sent by Xavier Walsh. Or his  
12:18 44 assistant.

12:18 45  
12:18 46 Q. Thank you. Do you recall when the meeting was  
12:18 47 organised?

12:18 1  
12:18 2 A. It would have been within - I don't remember. My ---  
12:18 3  
12:18 4 Q. Let me ask you another way that might make it easier. Was  
12:18 5 it after 10 March?  
12:18 6  
12:18 7 A. Yes, indeed.  
12:18 8  
12:18 9 Q. After the request?  
12:18 10  
12:18 11 A. Yes, indeed.  
12:18 12  
12:18 13 Q. And that was the purpose of the meeting, to respond?  
12:18 14  
12:18 15 A. Yes, indeed.  
12:18 16  
12:18 17 Q. Do you know when the file note was prepared by ---  
12:18 18  
12:18 19 A. Well, I think it was taken ---  
12:18 20  
12:18 21 Q. Contemporaneously?  
12:18 22  
12:18 23 A. --- contemporaneously.  
12:18 24  
12:18 25 Q. Thank you. I just want to work through the file note and  
12:18 26 ask you some questions.  
12:18 27  
12:18 28 A. Yes.  
12:18 29  
12:18 30 Q. I understand that it is a while ago and not a memory test,  
12:19 31 just to the extent you can recall and hopefully the file note will  
12:19 32 prompt things for you. If you look down the page I think it is the  
12:19 33 sixth paragraph from the bottom, Mr Walsh is recorded as saying:  
12:19 34  
12:19 35 *things I'm worried about being explored.*  
12:19 36  
12:19 37 Do you see that?  
12:19 38  
12:19 39 A. Yes, I see that.  
12:19 40  
12:19 41 Q. When Mr Walsh told you that, did he disclose to you that  
12:19 42 he had been discussing the matter with Ms Coonan?  
12:19 43  
12:19 44 A. No, he did not.  
12:19 45  
12:19 46 Q. Did he tell you that Ms Coonan was undertaking a review  
12:19 47 of the issue?



12:19 1  
12:19 2 A. No.  
12:19 3  
12:19 4 Q. Prior to 7 June 2021 ---  
12:19 5  
12:19 6 A. Yes.  
12:19 7  
12:19 8 Q. --- did you have any discussions with Ms Coonan about the  
12:19 9 - I will call it the tax issue so it is neutral - tax issue?  
12:19 10  
12:19 11 A. No, I did not.  
12:19 12  
12:19 13 Q. Did you have any discussions with anyone from ABL who I  
12:20 14 understand represent Ms Coonan about the tax issue?  
12:20 15  
12:20 16 A. No, I did not.  
12:20 17  
12:20 18 Q. If you look at the last paragraph on that first page, I think  
12:20 19 this is still recording what Mr Walsh is instructing you. Do  
12:20 20 you ---  
12:20 21  
12:20 22 A. Yes.  
12:20 23  
12:20 24 Q. You see the last paragraph talks about, "VCGLR won't  
12:20 25 notice"? Do you see that?  
12:20 26  
12:20 27 A. Yes.  
12:20 28  
12:20 29 Q. I can take you to the document.  
12:20 30  
12:20 31 A. No, no, I see that reference.  
12:20 32  
12:20 33 Q. Yes. And just so I'm clear, was Mr Walsh instructing you  
12:20 34 there that something was concealed, or was he instructing you  
12:20 35 there that that was the impression from a document?  
12:20 36  
12:20 37 A. My understanding at the time was that he was referring to  
12:20 38 impressions formed from documents created in or about 2012.  
12:20 39  
12:20 40 Q. Yes. So I'm clear, did Mr Walsh say to you that the tax  
12:21 41 issue, I will call it that, had been concealed or did he say, "if you  
12:21 42 read these documents you might get that impression but it's not in  
12:21 43 fact the case"? That's what I'm trying to understand?  
12:21 44  
12:21 45 A. No, certainly the impression I formed was that between  
12:21 46 2012 and 2018, this issue had not been disclosed to the VCGLR.  
12:21 47 There was some reference to audits but certainly my impression

12:21 1 from what was disclosed to me in the meeting was that this issue  
12:21 2 had not been disclosed between 2012 and 2018.  
12:21 3  
12:21 4 COMMISSIONER: Mr Maher, I don't want to interrupt, but in  
12:21 5 my mind, and maybe in yours, maybe not, there is a difference  
12:21 6 between not disclosing and concealing. The question was about  
12:21 7 concealing, not not disclosing. Did Walsh tell you that this had  
12:22 8 been concealed, or gave you the impression it was being  
12:22 9 concealed from the regulator, as distinct from the regulator not  
12:22 10 being given some information or not being disclosed? You  
12:22 11 understand the difference?  
12:22 12  
12:22 13 A. I understand the difference, Commissioner, but I'm trying to  
12:22 14 recall how it was described to me --  
12:22 15  
12:22 16 COMMISSIONER: Sure.  
12:22 17  
12:22 18 A. --- and by disclosure, sir, do you mean as opposed to  
12:22 19 concealment that this is a question of advertence or inadvertence?  
12:22 20 Is that ---  
12:22 21  
12:22 22 COMMISSIONER: I don't care about advertence or  
12:22 23 inadvertence, although ---  
12:22 24  
12:23 25 A. There is an element of intention to concealment.  
12:23 26  
12:23 27 COMMISSIONER: Yes. It's a bit like the old law school exam  
12:23 28 question when you have a crack in the wall and you put  
12:23 29 wallpaper on it to hide it, in which case you say caveat emptor  
12:23 30 does not apply because it is deliberate, whereas you don't have to  
12:23 31 tell anybody there is a crack in the wall as part of your legal  
12:23 32 obligations, is it that kind of difference? It is a law school  
12:23 33 difference.  
12:23 34  
12:23 35 A. I understand. I did not form an impression based on what  
12:23 36 was described to me at the meeting as to the extent to which this  
12:23 37 was an act of concealment or inadvertent non-disclosure.  
12:23 38  
12:23 39 COMMISSIONER: It was open?  
12:23 40  
12:23 41 A. It was an open question, sir.  
12:23 42  
12:23 43 Q. Do you see, "gives impression we won't inform VCGLR"?  
12:23 44  
12:23 45 A. Yes.  
12:23 46  
12:23 47 Q. What Mr Walsh is saying is these documents give that

12:23 1 impression, but he's not saying to you a conscious decision was  
12:24 2 made not to disclose the matter to the VCGLR; do you agree with  
12:24 3 me?  
12:24 4  
12:24 5 A. Yes, I agree with you.  
12:24 6  
12:24 7 Q. Thank you.  
12:24 8  
12:24 9 A. It may well be - sorry, I'd be speculating.  
12:24 10  
12:24 11 Q. I understand. I take it you know who Mr Glen Ward is?  
12:24 12  
12:24 13 A. I know of him.  
12:24 14  
12:24 15 Q. You know he's a partner at MinterEllison?  
12:24 16  
12:24 17 A. I do know that.  
12:24 18  
12:24 19 Q. He has previously advised Crown on matters.  
12:24 20  
12:24 21 A. I understand that to be so.  
12:24 22  
12:24 23 Q. If you go to page 2, the seventh line, the file note records  
12:24 24 that Mr Ward is advising Crown that they were on unstable  
12:24 25 ground; do you see that?  
12:24 26  
12:24 27 A. Yes, I see that.  
12:24 28  
12:24 29 Q. Put to one side if he's right or wrong, is what was told to  
12:25 30 you at the meeting by Mr Walsh that Crown had received legal  
12:25 31 advice that they were on unstable ground only because they didn't  
12:25 32 obtain approval from the regulator? Is that the extent of what  
12:25 33 was said to you?  
12:25 34  
12:25 35 A. It wasn't, Mr Kozminsky, it wasn't clear at the time, which  
12:25 36 is why I didn't feel comfortable in providing the advice around  
12:25 37 disclosure at that time. And so I requested documents so that we  
12:25 38 could have a look at it.  
12:25 39  
12:25 40 Q. I understand. But what I'm asking you is what Mr Walsh  
12:25 41 was saying to you. Was he saying to you that Mr Ward said we  
12:25 42 were on unstable ground because we didn't get approval, that is  
12:25 43 what is recorded there, so I assume he said that?  
12:25 44  
12:25 45 A. My primary impression formed at the time that this was  
12:25 46 primarily an issue of approval, or lack thereof between the period  
12:26 47 2012 to 2018.

12:26 1  
12:26 2 Q. So Mr Walsh didn't say to you, for example, as is recorded  
12:26 3 in the advice, that on the merits there were not, for example,  
12:26 4 these deductions were winnings?  
12:26 5  
12:26 6 A. That was also mentioned, Mr Kozminsky, during the  
12:26 7 meeting, but certainly most of the discussion related to the  
12:26 8 question of approval or lack thereof during that period.  
12:26 9  
12:26 10 Q. I understand. When you say it was "mentioned", do you  
12:26 11 mean mentioned in passing as an issue to be considered?  
12:26 12  
12:26 13 A. Yes.  
12:26 14  
12:26 15 Q. I understand. But the thrust of Mr Ward's advice, as  
12:26 16 Mr Walsh recorded it, was the approval issue?  
12:26 17  
12:26 18 A. That was the impression I formed from what was discussed,  
12:26 19 yes.  
12:26 20  
12:26 21 Q. Thank you. So I'm clear, at this meeting - obviously you  
12:26 22 are there and the most senior person at Allens and running the  
12:26 23 show ---  
12:26 24  
12:26 25 A. Yes.  
12:26 26  
12:26 27 Q. --- and Mr Walsh is a director. Was it predominantly the  
12:27 28 two of you discussing? Did you have the lion's share of the  
12:27 29 discussion?  
12:27 30  
12:27 31 A. From the Allens perspective that is so. But there were  
12:27 32 participants, as the file note records from others at Crown.  
12:27 33  
12:27 34 Q. Yes. It was Mr Walsh who gave you the impression about  
12:27 35 the advice from Mr Ward?  
12:27 36  
12:27 37 A. Yes.  
12:27 38  
12:27 39 Q. If you look at line 8 I think you observed, with respect,  
12:27 40 quite properly, that I think this is what you observed, tell me if  
12:27 41 I'm right or wrong, that these bonuses were calculated on the  
12:27 42 amounts spent; do you see that?  
12:27 43  
12:27 44 A. Yes, I see that.  
12:27 45  
12:27 46 Q. Do I take that to mean you are saying they are calculated on  
12:27 47 the amount spent, not winnings, and that is a concern you are

12:27 1 raising with Mr Walsh?  
12:27 2  
12:27 3 A. I was just trying to understand the issue, Mr Kozminsky.  
12:27 4  
12:28 5 Q. I see. So when you said "amounts spent", you were talking  
12:28 6 about turnover?  
12:28 7  
12:28 8 A. Yes.  
12:28 9  
12:28 10 Q. I understand. And were you raising - you said to me you  
12:28 11 were trying to understand, were you raising a concern with  
12:28 12 Mr Walsh or was it just ---  
12:28 13  
12:28 14 A. Just a question. Yeah ..... (Nods head).  
12:28 15  
12:28 16 Q. Do you see there is a heading on the page, I'm looking at  
12:28 17 your screen a bit further down, for "June 4 2018"?  
12:28 18  
12:28 19 A. Yes, I see that.  
12:28 20  
12:28 21 Q. So the first sentence I think we've covered:  
12:28 22  
12:28 23 *The issue that made it difficult --- needed approval and*  
12:28 24 *didn't [get] it.*  
12:28 25  
12:28 26 And that was the thrust of Mr Ward's advice and what was  
12:28 27 discussed. The next point is:  
12:28 28  
12:29 29 *Approved by system change but questionable.*  
30  
31 Do you see that?  
32  
33 A. Yes, I see that.  
34  
12:29 35 Q. Is that a reference to certain jackpot configurations being  
12:29 36 approved by the regulator like Welcome Back?  
12:29 37  
12:29 38 A. Yes, I don't recall any specific programs being referenced  
12:29 39 during that discussion, but my general recollection is that there  
12:29 40 were programs that had previously been the subject of approval  
12:29 41 by the VCGLR.  
12:29 42  
12:29 43 Q. Yes. And were you told at that meeting that the approval  
12:29 44 was quite narrow in scope and did not extend to making these  
12:29 45 deductions or were you not told that?  
12:29 46  
12:29 47 A. Yes, my understanding was that was referenced in

12:29 1     contradistinction to ---  
12:29 2  
12:29 3     Q. So you were told there were no approvals for deductions at  
12:29 4     the meeting, only approvals ---  
12:29 5  
12:29 6     A. For these particular deductions?  
12:29 7  
12:29 8     Q. Yes.  
12:29 9  
12:29 10    A. Yes, I was told that.  
12:29 11  
12:29 12    Q. Thank you. A bit further down in that paragraph, line 2 ---  
12:30 13  
12:30 14    A. Sorry, I'm struggling to find it.  
12:30 15  
12:30 16    Q. See the heading?  
12:30 17  
12:30 18    A. Yes, I see that.  
12:30 19  
12:30 20    Q. The second line in the paragraph, the last two words?  
12:30 21  
12:30 22    A. I don't know, Mr Kozminsky.  
12:30 23  
12:30 24    Q. I think that makes two of us. I don't know either.  
12:30 25  
12:30 26    COMMISSIONER: Might have been "that was amended"?  
12:30 27  
12:30 28    A. That would be my best guess, Commissioner.  
12:30 29  
12:30 30    MR KOZMINSKY: Oh!  
12:30 31  
12:30 32    A. There looks to be an inadvertent space between the "A" and  
12:30 33    "S", and then an interesting spelling of "amended". That is my  
12:31 34    best guess.  
12:31 35  
12:31 36    Q. You see it is talking there about a technical requirements  
12:31 37    document. That is very helpful. Were you being told then by  
12:31 38    Mr Walsh that the regulator had approved the technical  
12:31 39    requirements document?  
12:31 40  
12:31 41    A. That's my general recollection.  
12:31 42  
12:31 43    Q. And that permitted what they were doing? And covers  
12:31 44    what we are doing now, does that accord with your recollection?  
12:31 45  
12:31 46    A. Generally so.  
12:31 47

12:31 1 Q. I take it you weren't told that notwithstanding that it has  
12:31 2 been adopted, it hadn't been implemented? You weren't told that  
12:31 3 at the meeting?

12:31 4  
12:31 5 A. I can't recall, sorry.

12:31 6  
12:31 7 Q. You accept though that it is not recorded there?

12:31 8  
12:31 9 A. I accept that.

12:31 10  
12:31 11 Q. Thanks. And then you see it says:

12:31 12  
12:31 13 *We advised them in 2018.*

12:31 14  
12:31 15 I think that is a reference to email correspondence with Jason  
12:32 16 Cremona in the middle of 2018?

12:32 17  
12:32 18 A. Yes.

12:32 19  
12:32 20 Q. In the next sentence:

12:32 21  
12:32 22 *But as to 2012 --- Crown's gone out of its way to cheat*  
12:32 23 *tax --- what do you think? Awkward conversation.*

12:32 24  
12:32 25 A. Yes.

12:32 26  
12:32 27 Q. Who says, "Crown has gone out of its way to cheat tax"?

12:32 28  
12:32 29 A. My recollection is that is how Mr Walsh was describing the  
12:32 30 impression that could be formed from what occurred.

12:32 31  
12:32 32 Q. And when you say - I see. Because Mr Walsh hadn't  
12:32 33 made clear to you - let me take a step back. Assume for  
12:32 34 a moment there is sufficient evidence to find that in 2012  
12:32 35 a decision was made, a conscious decision ---

12:32 36  
12:32 37 A. Yes.

12:32 38  
12:32 39 Q. --- to conceal the matter from the regulator.

12:32 40  
12:32 41 A. Yes.

12:32 42  
12:32 43 Q. That wasn't disclosed to you at the meeting. I think we've  
12:32 44 discussed that; correct?

12:32 45  
12:32 46 A. Not that I can recall, no.

12:32 47

12:33 1 Q. Yes. So what Mr Walsh is saying to you here is that, "there  
12:33 2 is these documents that give that impression and that might give  
12:33 3 rise to this idea that we've cheated on our tax", that is what he is  
12:33 4 saying?

12:33 5  
12:33 6 A. That is so.

12:33 7  
12:33 8 Q. And the reference to "awkward conversation"?

12:33 9

12:33 10 A. I can't specifically recall what that was referring to in the  
12:33 11 note.

12:33 12

12:33 13 Q. And then if you go to the bottom of that page, you say:

12:33 14

12:33 15 *where they ask actual and potential misconduct --- if legal*  
12:33 16 *advice received, and said not needed, this might fall into*  
12:33 17 *potential category.*

12:33 18

12:33 19 You see that?

12:33 20

12:33 21 A. Yes, I see that.

12:33 22

12:33 23 Q. Am I right that again, with respect, quite properly what you  
12:33 24 are saying here is that even if there was legal advice which said  
12:33 25 that Crown was not in breach, you might still disclose it?

12:33 26

12:33 27 A. What I was seeking - sorry, to answer your question, no I  
12:34 28 don't believe that to be so. I think what I was saying was that -  
12:34 29 I was grappling with my understanding of the requirements in  
12:34 30 RFI-002 and how it extended to conduct that not only did but  
12:34 31 might breach certain laws or provoke disciplinary reaction and  
12:34 32 the like and ---

12:34 33

12:34 34 Q. Sorry, my apologies. Finish.

12:34 35

12:34 36 A. So what I was contemplating there at the time was that if  
12:34 37 there was an issue that certain conduct was not clearly either  
12:34 38 compliant or in breach, that that would satisfy the definition of  
12:34 39 "possible".

12:34 40

12:34 41 Q. Yes.

12:34 42

12:34 43 A. If there was advice that the company had received that was  
12:35 44 beyond doubt that there was no non-compliance, I wouldn't have  
12:35 45 categorised that as part of the request contained in RFI-002.

12:35 46

12:35 47 Q. I understand that answer. Thank you for clarifying.



12:35 1  
12:35 2 Put to one side the example of advice that is absolute, which we  
12:35 3 both know doesn't happen that often, when you say "if legal  
12:35 4 advice received and said not needed", in other words, if you get  
12:35 5 legal advice that says you are probably okay, or, you know, on  
12:35 6 balance you are okay, this might fall into potential category.  
12:35 7 What you are saying is, as you explained to me, that if you are  
12:35 8 getting advice that there is a possibility you are in breach, even if  
12:35 9 it's not more likely than not, you would disclose it?  
12:35 10  
12:35 11 A. Yes, that was the view I formed at the time.  
12:35 12  
12:35 13 Q. And so pausing there, it must be so, I think, but you will  
12:35 14 tell me if I'm wrong, that you were not left with the impression  
12:35 15 from what you had been told at that meeting that Crown had  
12:36 16 received advice falling within that category. In other words,  
12:36 17 possibly or greater? Because otherwise everything that follows  
12:36 18 would be unnecessary.  
12:36 19  
12:36 20 A. No, I think there was a reference to the Glen Ward  
12:36 21 advice ---  
12:36 22  
12:36 23 Q. That's what I'm trying to understand.  
12:36 24  
12:36 25 A. --- and previously there was reference - earlier in the note  
12:36 26 there was reference to the internal 2012 advice. So, having said  
12:36 27 that, could you please repeat the question.  
12:36 28  
12:36 29 Q. I'm trying to understand if that is the view you've adopted,  
12:36 30 which we both agree is proper ---  
12:36 31  
12:36 32 A. Yes.  
12:36 33  
12:36 34 Q. --- the only explanation at that point in the meeting for not  
12:36 35 thinking, "I've got to disclose" - well, not you personally, Crown  
12:36 36 has to disclose, is if based on what you are being told ---  
12:36 37  
12:36 38 A. Yes.  
12:36 39  
12:36 40 Q. --- Crown hasn't received legal advice of that nature.  
12:36 41  
12:37 42 A. I didn't understand that to be so.  
12:37 43  
12:37 44 Q. We've agreed that if - you are advising Crown here.  
12:37 45  
12:37 46 A. Yeah.  
12:37 47

- 12:37 1 Q. If they've received advice that there is a possibility ---  
12:37 2  
12:37 3 A. Yes.  
12:37 4  
12:37 5 Q. --- you would disclose?  
12:37 6  
12:37 7 A. Yes, I would.  
12:37 8  
12:37 9 Q. So if you had been told at the meeting, in clear terms, "we  
12:37 10 have received advice that there is possibility or something  
12:37 11 greater" ---  
12:37 12  
12:37 13 A. Yes.  
12:37 14  
12:37 15 Q. --- then you ---  
12:37 16  
12:37 17 A. Yes.  
12:37 18  
12:37 19 Q. --- would have said that you have to disclose it to the  
12:37 20 Commissioner?  
12:37 21  
12:37 22 A. Yes, that's right.  
12:37 23  
12:37 24 Q. Which must mean that wasn't put to you in clear terms?  
12:37 25  
12:37 26 A. Not in clear terms, and I should say, Mr Kozminsky, that I  
12:37 27 had no insight into the relevant legal regime that related to this  
12:37 28 particular issue. And so - which, as I said before, really  
12:37 29 prompted me to seek further information so that I could consider  
12:37 30 and advise on it. But ---  
12:38 31  
12:38 32 Q. But the answer to my question is "yes"?  
12:38 33  
12:38 34 A. Yes.  
12:38 35  
12:38 36 Q. You've been nothing but honest and forthright to date and  
12:38 37 I'm grateful for that, but perhaps not slipping into submission  
12:38 38 mode because Mr Borsky is here and others, it is clear that if  
12:38 39 something was put to you about the advice Crown had received in  
12:38 40 clear terms because of what is there, you would have said, make  
12:38 41 a disclosure, and you would have made the disclosure?  
12:38 42  
12:38 43 A. Yes.  
12:38 44  
12:38 45 Q. If you turn over the page. Please bear with me for  
12:39 46 a moment, Mr Maher. Look at the top of page 3. You see:  
12:39 47

12:39 1 *If you had legal advice that said all clear. Regulator*  
12:39 2 *implying ok. Legal advice ok. May need TRDs and*  
12:39 3 *Minters advice to include in second response.*  
12:39 4  
12:39 5 A. Yes.  
12:39 6  
12:39 7 Q. When you say, "second response" - sorry, I should take  
12:39 8 a step back. That is recording what you said, do you remember  
12:39 9 saying something like that at the meeting?  
12:39 10  
12:40 11 A. I do. I would be surprised if I used the word, "second  
12:40 12 response" but my best recollection would be as a reference to  
12:40 13 RFI-002.  
12:40 14  
12:40 15 Q. Oh, I see, so the reference to "second response" is to second  
12:40 16 notice, not a---  
12:40 17  
12:40 18 A. Yes.  
12:40 19  
12:40 20 Q. So we should read "second response" as "second notice"?  
12:40 21  
12:40 22 A. I believe that is so.  
12:40 23  
12:40 24 Q. You see a few lines down it says:  
12:40 25  
12:40 26 *..... started in late 2012, or 2013. Advice was 2018. So*  
12:40 27 *question is 5 years of vcglr audits.*  
12:40 28  
12:40 29 A. Yes.  
12:40 30  
12:40 31 Q. Can you tell the Commissioner what is being said there?  
12:40 32  
12:40 33 A. I believe at the time when this was described to me that  
12:41 34 there was at least a possibility that the VCGLR may have been  
12:41 35 aware of this practice through audit processes.  
12:41 36  
12:41 37 Q. I see. Between 2012 and 2018?  
12:41 38  
12:41 39 A. Yes.  
12:41 40  
12:41 41 COMMISSIONER: I'm not sure how that squares up with  
12:41 42 information not being provided to the VCGLR. If it wasn't  
12:41 43 provided to them or not disclosed to use ---  
12:41 44  
12:41 45 A. Yes, I understand, Commissioner, that in this context there  
12:41 46 is a distinction between what happened - between Crown  
12:41 47 approaching the VCGLR and saying, "this is how we calculate

12:41 1 the gross gaming revenue informed by these particular bonus  
12:41 2 jackpots", and Crown preparing its accounts and making those  
12:42 3 accounts available for audit for the VCGLR.  
12:42 4  
12:42 5 COMMISSIONER: I see. That is to say that sometime after  
12:42 6 2012 or that first memo, which may have given rise to the  
12:42 7 possibility that there was non-disclosure, after that somehow you  
12:42 8 were being told that information had been disclosed to the  
12:42 9 VCGLR about how the calculations should be undertaken?  
12:42 10  
12:42 11 A. Sorry, yes. My impression at the time was that the VCGLR  
12:42 12 through its audit processes might have identified this issue.  
12:42 13  
12:42 14 COMMISSIONER: As opposed to or in distinction from actually  
12:42 15 being pointed out to them?  
12:42 16  
12:42 17 A. That's right, through an approval ---  
12:42 18  
12:42 19 COMMISSIONER: They might have worked it out themselves?  
12:42 20  
12:42 21 A. Through an approval process where Crown specifically  
12:42 22 identifies this practice, that was the impression that I formed at  
12:43 23 the time.  
12:43 24  
12:43 25 COMMISSIONER: Yes.  
12:43 26  
12:43 27 MR KOZMINSKY: I can take you to the document if you would  
12:43 28 like, but when I examined Mr Mackay, I took him to a schedule  
12:43 29 and I asked him about the schedule, and I said to him, "looking  
12:43 30 at that schedule, you wouldn't be able to tell that deductions were  
12:43 31 being made?" Mr Mackay agreed with me.  
12:43 32  
12:43 33 A. (Nods head).  
12:43 34  
12:43 35 Q. I don't know if you have read his transcript of 7 June.  
12:43 36  
12:43 37 A. I have.  
12:43 38  
12:43 39 Q. Are you familiar with that?  
12:43 40  
12:43 41 A. Yes, I have some recollection.  
12:43 42  
12:43 43 Q. And Mr Xavier Walsh didn't tell you about those matters,  
12:43 44 did he?  
12:43 45  
12:43 46 A. I don't recall he told me that, no.  
12:43 47

- 12:43 1 Q. Thank you.
- 12:43 2
- 12:43 3 COMMISSIONER: He left you with the impression that the  
12:43 4 opposite was the case?
- 12:43 5
- 12:43 6 A. May have been the case. It wasn't clear, sir.
- 12:43 7
- 12:43 8 COMMISSIONER: Well, he was looking into the mind of the  
12:43 9 VCGLR, but he assumed that the VCGLR - if it left you with  
12:43 10 the impression ---
- 12:43 11
- 12:43 12 A. That it was possible.
- 12:43 13
- 12:43 14 COMMISSIONER: --- that it was possible because the VCGLR  
12:43 15 in fact had the information, it could have worked it out for itself?
- 12:44 16
- 12:44 17 A. That it was possible that the VCGLR could have identified  
12:44 18 it.
- 12:44 19
- 12:44 20 MR KOZMINSKY: Mr Maher, the next entry, I call it that:  
12:44 21
- 12:44 22 *..... this notice to the VCGLR could well cover what is in*  
12:44 23 *the email --- prompt the commission to analyse it, which*  
12:44 24 *could exercise the Commission's mind, and say why was*  
12:44 25 *this not provided.*
- 12:44 26
- 12:44 27 See that?
- 12:44 28
- 12:44 29 A. Yes, I see that.
- 12:44 30
- 12:44 31 Q. Are you able to just tell us what you - I will start again.  
12:44 32 Do you recall saying something along those lines?
- 12:44 33
- 12:44 34 A. Yes, I do.
- 12:44 35
- 12:44 36 Q. Can you tell us the gist of what you were saying?  
12:44 37
- 12:44 38 A. The gist of what I was saying was that if this matter  
12:44 39 comprised actual or potential - actually or possible breaches of  
12:44 40 the law, through the VCGLR's Response to Notice to Produce  
12:45 41 that the Commission may well have this information, and so it  
12:45 42 could be a matter of scrutiny by the Commission through this  
12:45 43 process.
- 12:45 44
- 12:45 45 Q. Sorry, I didn't catch the end?
- 12:45 46
- 12:45 47 A. Could be a matter of scrutiny by this Commission through

12:45 1 that process.  
12:45 2  
12:45 3 Q. Then on the third page, it is on the screen, do you see  
12:45 4 "\$40mil issue"?  
12:45 5  
12:45 6 COMMISSIONER: The notice to the VCGLR is a Notice to  
12:45 7 Produce?  
12:45 8  
12:45 9 A. I understand that to be so.  
12:45 10  
12:45 11 COMMISSIONER: Yes, so what you were saying here is that the  
12:45 12 Commission might get this information, come what may, whether  
12:45 13 it is disclosed or not by Crown --  
12:45 14  
12:45 15 A. Yes, that's right.  
12:45 16  
12:45 17 COMMISSIONER: --- and that's your risk, if you don't disclose it  
12:45 18 here, the Commission will get it and effectively you will be in  
12:45 19 terrible trouble?  
12:45 20  
12:45 21 A. That's right. Again, as I said before, at the time I wasn't in  
12:46 22 a position to form a view about whether or not this was actual or  
12:46 23 possible misconduct because I wasn't familiar with the legal  
12:46 24 regime or the regulatory regime, and certainly not all that familiar  
12:46 25 with the facts and needed more information.  
12:46 26  
12:46 27 MR KOZMINSKY: Thank you. Mr Walsh told you he thought  
12:46 28 the issue was about \$40 million; do you see that?  
12:46 29  
12:46 30 A. Yes, I recall that.  
12:46 31  
12:46 32 Q. There again, it is recorded:  
12:46 33  
12:46 34 *Gives the impression didn't raise as we didn't want*  
12:46 35 *a response.*  
12:46 36  
12:46 37 That is a reference to giving the impression, as distinct from we,  
12:46 38 Crown, conceal the matter from the regulator? Is that right?  
12:46 39  
12:46 40 A. That's so.  
12:46 41  
12:46 42 Q. Thank you. The ninth paragraph from the bottom, which  
12:46 43 might be hard if you don't have the document in front of you, says,  
12:47 44 "yes potentially produce ....."  
12:47 45  
12:47 46 A. Yes.  
12:47 47

- 12:47 1 Q. Do you see that?  
12:47 2  
12:47 3 *..... yes potentially produce --- commission has said to*  
12:47 4 *discover the past --- then look to the future.*  
12:47 5  
12:47 6 A. Yes.  
12:47 7  
12:47 8 Q. There you are advising based on what you know what you  
12:47 9 have been told you should potentially produce?  
12:47 10  
12:47 11 A. Yes.  
12:47 12  
12:47 13 Q. You formed that view based on everything that you've been  
12:47 14 told by the Crown representatives in the meeting?  
12:47 15  
12:47 16 A. Yes, but the word "potentially" was a reflection of the fact  
12:47 17 that I needed to better understand the issue before I provided  
12:47 18 advice.  
12:47 19  
12:47 20 Q. I understand that. But what you understood about the issue  
12:47 21 was entirely based on what you were being told by Crown  
12:47 22 representatives at that stage? That was the first you had learnt of  
12:47 23 it?  
12:47 24  
12:47 25 A. That is so.  
12:47 26  
12:47 27 Q. Thank you. In light of your instructions at the meeting, you  
12:48 28 did not suggest to anyone that non-disclosure was how the matter  
12:48 29 should proceed?  
12:48 30  
12:48 31 A. No, sir.  
12:48 32  
12:48 33 Q. No. Please don't call me "sir".  
12:48 34  
12:48 35 Can I ask this: at this point you know the quantum is potentially  
12:48 36 \$40 million?  
12:48 37  
12:48 38 A. That's correct.  
12:48 39  
12:48 40 Q. And you know that Mr Ward's advice is they are on  
12:48 41 unstable ground?  
12:48 42  
12:48 43 A. That's correct.  
12:48 44  
12:48 45 Q. Did it occur to you at that point that was enough for  
12:48 46 disclosure or not?  
12:48 47

12:48 1 A. As I said before, Mr Kozminsky, I simply didn't know  
12:48 2 enough about the legal and regulatory regime to be able to  
12:48 3 express any view that I thought was reliable. I thought that the  
12:48 4 company was raising something with me that required careful  
12:48 5 consideration, and I needed to give that matter consideration  
12:49 6 before I provided a view.  
12:49 7

12:49 8 Q. I see. In the letter of the 7th, I think it says that Mr Walsh  
12:49 9 asked for an advice. Is the position that Mr Walsh asked for  
12:49 10 advice or you said it was necessarily to provide the advice?  
12:49 11

12:49 12 A. Well, certainly during the meeting it was clear to me that he  
12:49 13 was wanting to know what we think about the disclosure point,  
12:49 14 and my response to that was that we needed to reflect on it  
12:49 15 following receipt of further information.  
12:49 16

12:49 17 Q. Who at Allens was responsible for preparing - let me ask  
12:49 18 you one other thing first. My apologies, just give me a moment.  
12:49 19

12:49 20 Mr Morrison gave evidence this morning; you are aware?  
12:49 21

12:50 22 A. I am aware.  
12:50 23

12:50 24 Q. His evidence was to the effect that, I'm paraphrasing but  
12:50 25 I think I'm right, Mr Walsh told him there would be a disclosure  
12:50 26 of documents to the Commission about this issue. I'm just  
12:50 27 wondering if that is - so I'm clear, that is not consistent with  
12:50 28 what Mr Walsh told you at the meeting you had with him? "We  
12:50 29 need to disclose these documents"?

12:50 30

12:50 31 A. Yes, my recollection was that, "these may need to be  
12:50 32 disclosed, we are interested in your thoughts, having regard to the  
12:50 33 nature of RFI-002".  
12:50 34

12:50 35 Q. Who at Allens was responsible for preparing a first cut of  
12:50 36 the advice?  
12:50 37

12:50 38 A. Well, as a partner of Allens I'm responsible for it.  
12:50 39

12:50 40 Q. I understand that, but did you allocate the task to someone?  
12:50 41

12:50 42 A. Yes, there are a number of people working on the response  
12:51 43 to RFI-002.  
12:51 44

12:51 45 Q. No, did you allocate preparing an advice on the tax issue to  
12:51 46 someone?  
12:51 47



12:51 1 A. There was someone who, in my team who received the  
12:51 2 folder of documents and, I had understood, would be reviewing  
12:51 3 them.  
12:51 4

12:51 5 Q. I will come back to that briefly. I understand.  
12:51 6

12:51 7 I just want to finish up on the meeting before we carry on. I'm  
12:51 8 right that prior to 10 March 2021, no one from Crown spoke to  
12:51 9 you about voluntarily disclosing this issue to the Commission?  
12:51 10

12:51 11 A. No.  
12:51 12

12:51 13 Q. So I'm correct? I think I asked the negative. You agree  
12:51 14 with me?  
12:51 15

12:51 16 A. I agree with you.  
12:51 17

12:51 18 Q. At the meeting, no one from Crown told you Minter's  
12:52 19 advice that was sought was sought because, and this is a quote  
12:52 20 from Mr Mackay's evidence, "the regulator was digging around"?  
12:52 21 No one told you that?  
12:52 22

12:52 23 A. No.  
12:52 24

12:52 25 Q. Am I correct you only found out about that matter when  
12:52 26 Mr Mackay gave evidence?  
12:52 27

12:52 28 A. Sorry, can you repeat the question?  
12:52 29

12:52 30 Q. I'm correct you only found out about that matter, the advice  
12:52 31 was sought because the regulator was digging around, when  
12:52 32 Mr Mackay gave his evidence on 7 June?  
12:52 33

12:52 34 A. I had no prior recollection of that matter. And I can't recall  
12:52 35 specifically reading that part of the transcript.  
12:52 36

12:52 37 Q. And I think I might have asked you, but I can't recall so I  
12:52 38 apologise if I have, at the meeting, no one from Crown told you  
12:52 39 Ms Coonan and Mr Walsh had been discussing the underpayment  
12:53 40 issue for some time?  
12:53 41

12:53 42 A. It wasn't mentioned.  
12:53 43

12:53 44 Q. You only learnt about Ms Coonan's involvement when  
12:53 45 Mr Walsh gave evidence yesterday? Oh, sorry, withdraw that.  
12:53 46 Mr Mackay - that was an NPO. Forget my question. I will  
12:53 47 withdraw that.

12:53 1  
12:53 2 At the meeting, no one from Crown told you that Mr Walsh, after  
12:53 3 speaking to Ms Coonan, instructed Mr Mackay to prepare  
12:53 4 a spreadsheet?  
12:53 5  
12:53 6 A. No, sir - no, Mr Kozminsky.  
12:53 7  
12:53 8 Q. And no one at the meeting told you the purpose of the  
12:53 9 spreadsheet was to work out Crown's potential exposure?  
12:53 10  
12:53 11 A. No, Mr Kozminsky.  
12:53 12  
12:53 13 Q. And you only found out about that matter, the spreadsheet  
12:53 14 and potential exposure, when Mr Mackay gave his evidence on 7  
12:53 15 June?  
12:53 16  
12:53 17 A. Yes, I believe that's right.  
12:53 18  
12:54 19 Q. Did you have a discussion about this issue between 18 or  
12:54 20 19 March and 7 June with anyone?  
12:54 21  
12:54 22 A. No, I didn't.  
12:54 23  
12:54 24 Q. Just reflecting upon what wasn't disclosed, and there is  
12:54 25 more, you agree with me that if you had known about these  
12:54 26 matters, the advice was sought because a regulator was digging  
12:54 27 around, Ms Coonan was involved, there was a spreadsheet, the  
12:54 28 exposure, if you'd known about those matters, do you think it  
12:54 29 would have influenced you in terms of how you proceeded with  
12:54 30 Crown and whether or not you might have advised them to just  
12:54 31 make the disclosure?  
12:54 32  
12:54 33 A. If I knew about - if I had have ---  
12:54 34  
12:54 35 Q. Known those matters?  
12:54 36  
12:54 37 A. Done those things, as I should have done, I would have  
12:54 38 advised the company.  
12:54 39  
12:54 40 Q. No, I'm asking you a slightly different thing. If Mr Walsh  
12:54 41 had sat in a meeting with you ---  
12:54 42  
12:54 43 A. Yes.  
12:54 44  
12:54 45 Q. --- and I will put it neutrally, if Mr Walsh had sat in the  
12:54 46 meeting with you and told you those things, you would have left  
12:55 47 that meeting and it would have been the first thing you put in the

12:55 1 letter of disclosure?  
 12:55 2  
 12:55 3 A. That's possible, Mr Kozminsky. Confidential  
 12:55 4 Confidential  
 12:55 5  
 12:55 6  
 12:55 7  
 12:55 8 Confidential  
 12:55 9 And  
 12:55 10 so I say that simply because I would have given advice that it  
 12:56 11 ought to be disclosed, whether it was in the first or second  
 12:56 12 tranche of response to RFI-002 ---  
 12:56 13  
 12:56 14 Q. You would have given advice to disclose the matter if those  
 12:56 15 things had been raised with you at the meeting?  
 12:56 16  
 12:56 17 A. Yes.  
 12:56 18  
 12:56 19 Q. I want to show you, we are in closed session, so I think I  
 12:56 20 can show you substantive legal advices.  
 12:56 21  
 12:56 22 Mr Operator, MEM.5001.0002.8014.  
 12:56 23  
 12:56 24 MR BORSKY: While that is being called up, in response to my  
 12:56 25 learned friend's inaudible question, I'm not rising with any point  
 12:56 26 to put on the record that we maintain privilege beyond the scope  
 12:56 27 of the conceded waiver because ---  
 12:56 28  
 12:56 29 COMMISSIONER: I said we'll deal with all claimed privilege  
 12:57 30 issues at the time of working out what redactions should be made  
 12:57 31 from the transcript.  
 12:57 32  
 12:57 33 MR BORSKY: Thank you.  
 12:57 34  
 12:57 35 COMMISSIONER: Your position is fully protected so far as that  
 12:57 36 is concerned.  
 12:57 37  
 12:57 38 MR BORSKY: Thank you.  
 12:57 39  
 12:57 40 MR KOZMINSKY: If you go to the last page, Mr Operator.  
 12:57 41  
 12:57 42 Mr Maher, you will see some advice prepared by senior and  
 12:57 43 junior counsel --  
 12:57 44  
 12:57 45 A. Yes, I see that.  
 12:57 46  
 12:57 47 Q. --- at the very bottom. I take it you are aware who the

12:57 1 senior counsel is?  
12:57 2  
12:57 3 A. Yes, I am.  
12:57 4  
12:57 5 Q. If you go up to paragraph 1, you see there where they were  
12:57 6 asked to provide Crown advice about whether Premium Player  
12:57 7 Commissions are "winnings". Do you see that?  
12:57 8  
12:57 9 A. I see that.  
12:57 10  
12:57 11 Q. If you go to paragraph 11, what happens is that term  
12:58 12 "Premium Player Commission" is broken down and at paragraph  
12:58 13 11(d) it's recorded that "Complimentary Allowances" are  
12:58 14 provided and they relate to food and beverage, in-house rooms or  
12:58 15 accommodation, and airfare. Put to one side airfare. So similar  
12:58 16 costs for deductions, the subject of the tax issue. Then at  
12:58 17 paragraph 24 advice is provided, in I think I'm right to say, but  
12:58 18 we don't need to have a debate about it, unqualified terms. If you  
12:58 19 just read it to yourself, starting with, "Complimentary Allowances  
12:58 20 are not 'winnings'." Do you see that?  
12:58 21  
12:58 22 A. Paragraph 24, did you say?  
12:58 23  
12:58 24 Q. Yes, read it to yourself.  
12:58 25  
12:58 26 A. I've read that.  
12:58 27  
12:58 28 Q. Obviously enough, if Mr Walsh had come along to the  
12:59 29 meeting and said that there is an issue we want to know about,  
12:59 30 and here is also an advice from those people, in particular that  
12:59 31 senior counsel, that would have greatly affected your position  
12:59 32 about whether or not disclosure was necessary?  
12:59 33  
12:59 34 A. Yes, it would have.  
12:59 35  
12:59 36 Q. You would have disclosed the matter. My apologies, you  
12:59 37 would have advised?  
12:59 38  
12:59 39 A. I would have advised.  
12:59 40  
12:59 41 COMMISSIONER: Have you ever got from Crown this advice?  
12:59 42  
12:59 43 A. I've seen this advice in the last few days.  
12:59 44  
12:59 45 COMMISSIONER: I see.  
12:59 46  
12:59 47 MR KOZMINSKY: I tendered it recently, I think that is why

12:59 1 Mr Maher might have seen it, but not before that.  
12:59 2  
12:59 3 No one has brought it to your attention?  
12:59 4  
12:59 5 A. Mr Kozminsky, I've seen it in the last few days. I can't  
12:59 6 explain how, but not because of your tender or ---  
12:59 7  
12:59 8 Q. But not before that?  
12:59 9  
12:59 10 A. No.  
12:59 11  
13:00 12 Q. Could we go briefly to Mr Mackay's spreadsheet,  
13:00 13 CRW.510.059.0594.  
13:00 14  
13:00 15 At tab 27 of your first folder, Mr Commissioner, if you need the  
13:00 16 spreadsheet open.  
13:00 17  
13:00 18 Thanks. I take it you are broadly familiar with the spreadsheet,  
13:00 19 Mr Maher?  
13:00 20  
13:00 21 A. Broadly, yes.  
13:00 22  
13:00 23 Q. If we go down to the second table, do you see "Tax Impact  
13:01 24 of Rewards Amounts", there are about, give or take, \$4 million  
13:01 25 a year, sometimes a bit less, sometimes a bit more, but about \$4  
13:01 26 million a year?  
13:01 27  
13:01 28 A. I see that.  
13:01 29  
13:01 30 Q. And Mr Walsh told you that the issue was worth about  
13:01 31 \$40 million a year and that it started in about 2012?  
13:01 32  
13:01 33 A. Yes.  
13:01 34  
13:01 35 Q. And so that is how his rough and ready calculation of about  
13:01 36 a \$40 million issue relates to the rewards amounts; do you agree  
13:01 37 with me?  
13:01 38  
13:01 39 A. That wasn't apparent to me at the time, but ---  
13:01 40  
13:01 41 Q. No, I accept that, but sitting here today you recognise that  
13:01 42 is what he was talking to you about?  
13:01 43  
13:01 44 A. I believe so, yes.  
13:01 45  
13:01 46 Q. And that is all apparent, I won't take you back to the file  
13:01 47 note, but he expressly talks about car park, dining and hotel

13:01 1 accommodation. Which are, if you scroll back, you can see "A.  
13:02 2 Bonus Jackpots - Carpark, Dining and Hotels", that is what he  
13:02 3 was talking about when he was with you at the meeting; you  
13:02 4 accept that?  
13:02 5  
13:02 6 A. Yes.  
13:02 7  
13:02 8 Q. At the meeting, no one from Crown told you about the  
13:02 9 deductions recorded in the next two columns, so "Welcome  
13:02 10 Back" and "Matchplay", did they?  
13:02 11  
13:02 12 A. No.  
13:02 13  
13:02 14 Q. You now know that is so, notwithstanding Mr Walsh and  
13:02 15 Mr Mackay had, only weeks earlier, discussed the potential  
13:02 16 quantum of the underpayment, which was nearly \$170 million;  
13:02 17 you know that now?  
13:02 18  
13:02 19 A. Could you please repeat the question?  
13:02 20  
13:02 21 Q. Sure. You now know, that only two weeks earlier, or three  
13:02 22 weeks earlier, before your meeting, Mr Mackay and Mr Walsh  
13:02 23 met and discussed this spreadsheet?  
13:02 24  
13:02 25 A. Yes, I know that.  
13:02 26  
13:02 27 Q. As Mr Mackay fairly conceded, the purpose of the  
13:02 28 spreadsheet was to calculate Crown's potential exposure on the  
13:02 29 underpayment of taxes; you know that now?  
13:02 30  
13:02 31 A. I know about the concession?  
13:02 32  
13:02 33 Q. Yes.  
13:02 34  
13:02 35 A. Yes.  
13:02 36  
13:02 37 Q. And so, notwithstanding they sat there a few weeks before  
13:02 38 they met with you and talked about a \$170 million issue, they  
13:03 39 only disclosed to you at the meeting column A, they didn't  
13:03 40 disclose columns B and C to you?  
13:03 41  
13:03 42 A. The columns weren't disclosed to me at the meeting.  
13:03 43  
13:03 44 Q. No ---  
13:03 45  
13:03 46 COMMISSIONER: I think the question really means the subject  
13:03 47 matter of those columns rather than being shown the spreadsheet.

13:03 1  
13:03 2 A. It was described to me as potentially a \$40 million issue  
13:03 3 and that the subject matter were bonus jackpots comprising hotel,  
13:03 4 dining and car parking.  
13:03 5  
13:03 6 MR KOZMINSKY: But none of the other issues in the  
13:03 7 spreadsheet were disclosed whatsoever?  
13:03 8  
13:03 9 A. No, I don't recall.  
13:03 10  
13:03 11 Q. And you agree with me if all those other matters were  
13:03 12 disclosed and then the potential quantum jumped up significantly,  
13:03 13 that would have influenced your view on potential disclosure?  
13:03 14  
13:03 15 A. Again, I just, without having properly understood the legal  
13:03 16 and regulatory regime, I really just didn't know whether this was  
13:03 17 a real issue or a perceived issue and so I needed to consider it,  
13:04 18 digest it and come back to them.  
13:04 19  
13:04 20 Q. I understand that. We've been through a whole lot of things  
13:04 21 that weren't disclosed, and along the way you have quite properly  
13:04 22 and fairly said to me that if I had known that I would have told  
13:04 23 them to disclose. This is just something else to add to the list.  
13:04 24 That is what I am saying to you; do you agree with me?  
13:04 25  
13:04 26 A. I would have - Mr Kozminsky, I would have been very  
13:04 27 loathe, as is my practice, to provide advice based on  
13:04 28 an incomplete assessment of the facts relevant to the issue on  
13:04 29 which my advice was sought. I would have needed to reflect on  
13:04 30 this and the greater the quantum of the issue, the more I would  
13:04 31 need to reflect.  
13:04 32  
13:04 33 Q. That's right.  
13:04 34  
13:04 35 COMMISSIONER: Would it also be correct to say in exactly the  
13:04 36 same vein, although you would need to reflect on it carefully on  
13:05 37 the information you had, the more accurate information you were  
13:05 38 given, would enable you to give more accurate advice?  
13:05 39  
13:05 40 A. Yes.  
13:05 41  
13:05 42 COMMISSIONER: In other words, if you get a half-baked story,  
13:05 43 you will give half-baked advice?  
13:05 44  
13:05 45 A. I would like to think that I wouldn't give half-baked advice  
13:05 46 .....  
13:05 47

13:05 1 COMMISSIONER: Either way! I shouldn't have said it quite  
13:05 2 like that, but you know what I'm getting at?  
13:05 3  
13:05 4 A. I know what you mean, Commissioner, but this was not the  
13:05 5 occasion for me to provide advice on the spot. It was clearly  
13:05 6 an important issue ---  
13:05 7  
13:05 8 COMMISSIONER: It might have been the occasion for you to  
13:05 9 be given full information, so that you could provide reasoned,  
13:05 10 thought out, advice?  
13:05 11  
13:05 12 A. Yes. I haven't formed a view even to this day about the  
13:05 13 adequacy of the information that I was given.  
13:05 14  
13:05 15 COMMISSIONER: I might.  
13:05 16  
13:05 17 A. I understand.  
13:06 18  
13:06 19 MR KOZMINSKY: I want to go to one other thing that wasn't  
13:06 20 disclosed - two other things that weren't disclosed to you.  
13:06 21  
13:06 22 The next thing that wasn't disclosed to you, I take it, is that no  
13:06 23 one at the meeting from Crown told you that the casino does not  
13:06 24 make the deductions that were flagged with you at the meeting in  
13:06 25 respect of table games, only EGMs. That was not disclosed to  
13:06 26 you at the meeting; was it?  
13:06 27  
13:06 28 A. I pause, Mr Kozminsky, because I'm wondering whether  
13:06 29 there was a reference to table games in my own file note of the  
13:06 30 meeting. I can't ---  
13:06 31  
13:06 32 Q. I'm happy, because we will go over lunch, to have a look at  
13:06 33 it and come back and let us know.  
13:06 34  
13:06 35 A. Thank you, sir.  
13:06 36  
13:06 37 Q. You accept you weren't told that, that was another matter  
13:07 38 that would have been relevant in your considerations?  
13:07 39  
13:07 40 A. Yes, if it was relevant to this issue.  
13:07 41  
13:07 42 Q. When Mr Mackay gave his evidence, he said this,  
13:07 43 transcript, 1626:  
13:07 44  
13:07 45 *Internally, Crown describes the promotions we have just*  
13:07 46 *discussed as part of a gaming machine program; "yes" or*  
13:07 47 *"no"?*



13:07 1  
13:07 2 *Answer: Yes.*  
13:07 3  
13:07 4 *Question: It does not describe them as bonus jackpots*  
13:07 5 *internally; correct?*  
13:07 6  
13:07 7 *Answer: Yes.*  
13:07 8  
13:07 9 And then at 1651 I said:  
13:07 10  
13:07 11 *I just want to be clear about this. They are not referred to*  
13:07 12 *as jackpot internally except for the purposes of*  
13:07 13 *calculating gaming revenue; correct?*  
13:07 14  
13:07 15 *Answer: That is correct to my understanding.*  
13:07 16  
13:07 17 I take it you only became aware of those matters when  
13:07 18 Mr Mackay gave his evidence?  
13:07 19  
13:07 20 A. Yes. It certainly wasn't my impression before then,  
13:07 21 including during this meeting, that this was a term only used for  
13:08 22 the purposes of calculating gross gaming revenue.  
13:08 23  
13:08 24 Q. Or that Crown had decided to relabel these expenses as  
13:08 25 bonus jackpots when they made the decision they would start  
13:08 26 deducting them? That wasn't disclosed to you?  
13:08 27  
13:08 28 A. No.  
13:08 29  
13:08 30 Q. So, reflecting back, you just told the Commissioner  
13:08 31 a moment ago that you haven't reflected upon the adequacy of  
13:08 32 what you were or - the adequacy of what was disclosed to you,  
13:08 33 but we now know you weren't told about the regulator digging  
13:08 34 around and that's why you got the advice; you weren't told about  
13:08 35 Ms Coonan's involvement, you weren't told about the spreadsheet  
13:08 36 prepared weeks earlier; you weren't told about its quantum; you  
13:08 37 weren't told about senior counsel's advice; you weren't told about  
13:08 38 the matters in column B and C of the spreadsheet,  
13:09 39 notwithstanding they were calculated weeks earlier to work out  
13:09 40 Crown's potential exposure on the tax issue; no one at the  
13:09 41 meeting told you, I take it, the \$40 million excluded super tax,  
13:09 42 I'm right to say that aren't I?  
13:09 43  
13:09 44 A. You are right.  
13:09 45  
13:09 46 Q. I am right. Well, we'll come back to table games. You are  
13:09 47 not sure about that. And you also weren't told that the expenses

13:09 1 were relabelled bonus jackpots when Crown decided that they  
13:09 2 would start deducting these matters; none of that was told to you?

13:09 3

13:09 4 A. I don't recall it being discussed, no.

13:09 5

13:09 6 Q. And assume for a moment the Commissioner finds on the  
13:09 7 contemporaneous documents and evidence that Crown made  
13:09 8 a decision, an intentional decision to conceal the matter from the  
13:09 9 regulator in 2012. Assume that. That certainly was not disclosed  
13:09 10 to you at the meeting was it?

13:09 11

13:09 12 A. No.

13:09 13

13:10 14 MR KOZMINSKY: Mr Commissioner, I noticed the time. I'm  
13:10 15 moving to a new topic. The witness might want to have lunch  
13:10 16 and I want to look at the file note so perhaps ---

13:10 17

13:10 18 COMMISSIONER: The only question in my mind, subject to  
13:10 19 what Mr Maher says about this and I will consult with him in  
13:10 20 a minute, whether it is worth finishing Mr Maher? I don't mean  
13:10 21 in the finishing - I mean finishing his evidence, sense, I'm doing  
13:10 22 really badly with you ---

13:10 23

13:10 24 A. It's not the first time I've contemplated finishing, Mr  
13:10 25 Commissioner.

13:10 26

13:10 27 COMMISSIONER: Or do we need a break?

13:10 28

13:10 29 MR KOZMINSKY: I won't finish in five or ten minutes. I have  
13:10 30 a little bit more to go. We will definitely finish today.

13:10 31

13:10 32 COMMISSIONER: All right. I will adjourn until 2.00. Thanks.

13:10 33

13:10 34

13:10 35 **ADJOURNED** **[1.10PM]**

14:04 36

14:04 37

14:04 38 **RESUMED[2.04PM]**

14:04 39

14:04 40

14:04 41 MR KOZMINSKY: Mr Maher, seeing your file note just now, it  
14:04 42 doesn't refer to table games or that issue which we discussed  
14:05 43 before lunch; you recall?

14:05 44

14:05 45 A. I do recall.

14:05 46

14:05 47 Q. Are you happy if we proceed on the basis that at the

14:05 1 meeting, no one from Crown told you that the casino does not  
14:05 2 make the deductions identified in the spreadsheet ---  
14:05 3  
14:05 4 A. I don't have any recollection of it.  
14:05 5  
14:05 6 Q. I might, Mr Commissioner, tender, if I could, the file note  
14:05 7 in two forms, redacted and unredacted. So we'll tender the  
14:05 8 unredacted one confidentially. That is that document on the  
14:05 9 screen, CRW.0000.0003.0895.  
14:05 10  
14:05 11 COMMISSIONER: File note of meeting between representatives  
14:05 12 of Crown and Allens 19 March 2021 will be Exhibit 229, and the  
14:06 13 redacted version the next number, marked confidential. Sorry,  
14:06 14 this one is confidential and the redacted version is second.  
14:06 15  
14:06 16 MR KOZMINSKY: Thank you.  
14:06 17  
14:06 18 COMMISSIONER: Okay.  
14:06 19  
20  
21 **EXHIBIT #RCPH0229 - UNREDACTED FILE NOTE OF**  
22 **MEETING BETWEEN REPRESENTATIVES OF CROWN**  
23 **AND ALLENS DATED 19 MARCH 2021**  
24 **(CONFIDENTIAL)**  
25  
26  
27 **EXHIBIT #RCPH0230 - REDACTED FILE NOTE OF**  
28 **MEETING BETWEEN REPRESENTATIVES OF CROWN**  
29 **AND ALLENS DATED 19 MARCH 2021**  
30  
31  
14:06 32 MR KOZMINSKY: Following the meeting, you said to  
14:06 33 Mr Borsky, a day or so later you received a bundle of documents?  
14:06 34  
14:06 35 A. That's so.  
14:06 36  
14:06 37 Q. Were you the first person at Allens to take possession -  
14:06 38 your secretary, but then it came to you; is that what happened?  
14:06 39  
14:06 40 A. No. Excuse me, it didn't. I believe it was received by one  
14:06 41 of my colleagues.  
14:06 42  
14:06 43 Q. I think we'll end up redacting the transcript, but maybe we  
14:06 44 can use names so I can follow the story. Who was it that received  
14:06 45 it?  
14:06 46  
14:07 47 A. I believe it was **Confidential**.

14:07 1  
14:07 2 Q. I see.  
14:07 3  
14:07 4 COMMISSIONER: Do you know who sent it to you? Was it  
14:07 5 sent electronically, by mail, hand delivered?  
14:07 6  
14:07 7 A. It was either collected or delivered, because it was a hard  
14:07 8 copy folder. The reason why we couldn't take it away with us  
14:07 9 because it appeared there was only one copy that needed to be  
14:07 10 copied at Crown before it could be provided to us, and during the  
14:07 11 meeting Mr Walsh said that his secretary would create a copy for  
14:07 12 us.  
14:07 13  
14:07 14 MR KOZMINSKY: Was it Confidential who was tasked with  
14:07 15 reviewing the folder?  
14:07 16  
14:07 17 A. Yes.  
14:07 18  
14:07 19 Q. You hesitated, but Co was the one who ---  
14:07 20  
14:07 21 A. There were a team of people working on it, on RFI-002  
14:07 22 response, and I didn't specifically say which person within the  
14:08 23 team should be reviewing it.  
14:08 24  
14:08 25 Q. I see. So it went to Confidential and either Co or someone  
14:08 26 under Conf was tasked with reviewing the folder?  
14:08 27  
14:08 28 A. Yes.  
14:08 29  
14:08 30 Q. But you weren't involved in giving the instructions as to Conf  
14:08 31 Confidential who might have reviewed the folder?  
14:08 32  
14:08 33 A. No.  
14:08 34  
14:08 35 Q. I'm right about this, aren't I, before lunch we spoke about  
14:08 36 what wasn't disclosed to you at the meeting; do you remember  
14:08 37 that?  
14:08 38  
14:08 39 A. Yes, I do.  
14:08 40  
14:08 41 Q. If there has been full and frank disclosure by Mr Walsh, the  
14:08 42 contents of the folder would have been more thoroughly  
14:08 43 reviewed; that's right, isn't it?  
14:08 44  
14:08 45 A. No. It was important that the folder would be thoroughly  
14:08 46 reviewed in the ordinary course.  
14:08 47

14:08 1 Q. I accept that, but, as you said to Mr Borsky, this happened  
14:08 2 because working on the Commission, and you have lots of  
14:08 3 competing priorities, and you have 24 hours in a day, and you  
14:09 4 prioritise them. That's what happens.  
14:09 5  
14:09 6 A. Sorry, who did I say that to?  
14:09 7  
14:09 8 Q. You said to Mr Borsky there were competing priorities.  
14:09 9  
14:09 10 A. I said there were competing priorities and that this was  
14:09 11 missed, unfortunately.  
14:09 12  
14:09 13 Q. But if it had been the key priority for you, it wouldn't have  
14:09 14 been missed, that's what I'm putting to you.  
14:09 15  
14:09 16 A. If it had been the key priority for me it wouldn't have been  
14:09 17 missed, that is so.  
14:09 18  
14:09 19 Q. So where it ended up in the pecking order of your priorities  
14:09 20 turns on what was said to you at the meeting; do you agree with  
14:09 21 me?  
14:09 22  
14:09 23 A. I don't think so, no.  
14:09 24  
14:09 25 COMMISSIONER: I think the way that - what Mr Kozminsky  
14:09 26 is after is just assume. It wasn't the case, but just assume you had  
14:09 27 been told by your client that, "we have a seriously large  
14:10 28 underpayment of tax issue, we withheld relevant information  
14:10 29 from the regulator or the Government, and this problem goes  
14:10 30 back very many years". And when you are looking at what you  
14:10 31 have to disclose, I think Mr Kozminsky is putting to you, if the  
14:10 32 gravity of the situation had have been painted differently, then in  
14:10 33 your prioritising you would have said that this is a really big deal  
14:10 34 and we have to look at it very carefully and maybe even very  
14:10 35 quickly?  
14:10 36  
14:10 37 A. Yes, Commissioner, if it was described differently we may  
14:10 38 have given it more priority.  
14:10 39  
14:10 40 COMMISSIONER: You were asked to disclose actual and  
14:10 41 potential wrongdoing.  
14:10 42  
14:10 43 A. Yes, that's correct.  
14:10 44  
14:10 45 COMMISSIONER: And you disclosed 16-year-olds on the  
14:10 46 gaming room floor and broken coffee cups ---  
14:10 47



14:11 1 A. Yes.

14:11 2

14:11 3 COMMISSIONER: --- lots of the disclosure was trivial in the  
14:11 4 extreme.

14:11 5

14:11 6 A. Yes.

14:11 7

14:11 8 COMMISSIONER: All that Mr Kozminsky is getting at is if you  
14:11 9 look at the hierarchy or the problems that were the subject of  
14:11 10 disclosure, if this had have been described to you in a way that it  
14:11 11 could have been, you would have dealt with it much differently  
14:11 12 than a 16-year-old drinking or entering the casino when they  
14:11 13 weren't allowed to, that kind of thing?

14:11 14

14:11 15 Confidential

14:11 16

14:11 17

14:11 18

14:11 19

14:12 20

14:12 21

14:12 22

14:12 23 Confidential

But it is possible, Commissioner,  
14:12 24 that if we had been given more information or different  
14:12 25 information, and I was clearer on its import, both from  
14:12 26 a compliance perspective and otherwise, it may well have been  
14:12 27 prioritised differently.

14:12 28

14:12 29 COMMISSIONER: I think it is really getting to the question,  
14:12 30 depending on how the issue was described to you, some things  
14:12 31 might be so important you simply can't forget them, you wouldn't  
14:12 32 forget them.

14:12 33

14:12 34 A. That's possible, Commissioner.

14:12 35

14:12 36 COMMISSIONER: Possible? Anything is possible. That is  
14:12 37 likely, isn't it?

14:12 38

14:12 39 A. I say that, Commissioner, because at the time I felt like  
14:13 40 both we and Crown, or certainly those with whom I was working  
14:13 41 at Crown were dealing with very many important issues that  
14:13 42 needed to be dealt with to satisfy the Commission's inquiries, so  
14:13 43 our prioritisation was a real challenge.

14:13 44

14:13 45 COMMISSIONER: Okay.

14:13 46

14:13 47 MR KOZMINSKY: I'm sorry, but we'll have to do this slowly. I

14:13 1 want you to assume that at the meeting Mr Walsh said to you that  
14:13 2 he got advice in 2018 from Minters because the regulator was  
14:13 3 digging around. Assume he said that. And assume he said to you,  
14:13 4 "Ms Coonan has looked at the issue as soon as the Commission  
14:13 5 was announced". And assume he said to you that Ms Coonan  
14:13 6 told Mr Walsh about the issue. And assume ---

14:13 7

14:13 8 A. Can - I will wait till you finish.

14:13 9

14:13 10 Q. You can - I will ---

14:13 11

14:13 12 A. Yeah, so it was clear to me that this was an important issue  
14:14 13 to Mr Walsh. I'm not sure that - certainly in my own perception  
14:14 14 that if some mention was made of it being important to  
14:14 15 Ms Coonan, that that would have materially altered or impacted  
14:14 16 on my ---

14:14 17

14:14 18 Q. Mr Maher, it's not just Ms Coonan, it is a combination of  
14:14 19 things, concealing the matter from the regulator, Ms Coonan  
14:14 20 being involved, a spreadsheet being involved weeks earlier that  
14:14 21 calculates a sum of \$170 million, which Mr Mackay and  
14:14 22 Mr Walsh said was the potential under the exposure on tax, the  
14:14 23 advice that I've taken you to ---

14:14 24

14:14 25 A. Yes.

14:14 26

14:14 27 Q. --- not disclosing the matters in columns B and C, not  
14:14 28 disclosing the fact that it excluded supertax, not disclosing the  
14:14 29 fact that it doesn't include table games deductions, not disclosing  
14:14 30 the fact that they only call it a bonus jackpot when they decided  
14:14 31 to claim the deductions and only did it for the purpose of agreed  
14:15 32 gaming revenue and otherwise internally did not refer to it as  
14:15 33 a bonus jackpot.

14:15 34

14:15 35 MR BORSKY: Mr Commissioner, if that is a question, it is  
14:15 36 a very long one.

14:15 37

14:15 38 COMMISSIONER: He's asked to make a lot of assumptions.

14:15 39

14:15 40 MR BORSKY: Are they assumptions?

14:15 41

14:15 42 COMMISSIONER: Yes, that was the premise of the question  
14:15 43 and he hasn't asked the question yet.

14:15 44

14:15 45 MR KOZMINSKY: And each assumption has already been  
14:15 46 asked at length and discussed.

14:15 47

14:15 1 Assume all of that was said, which would have been full and  
14:15 2 frank disclosure, I'm putting to you that it is simply impossible,  
14:15 3 impossible, that it would not have been disclosed to the  
14:15 4 Commission. It is a simple "yes" or "no" answer?  
14:15 5  
14:15 6 A. Yes.  
14:15 7  
14:15 8 Q. You are agreeing with me when you say "yes"?  
14:15 9  
14:15 10 A. Yes, it's likely that I ---  
14:15 11  
14:15 12 Q. Not "likely". It is impossible it would not have been  
14:15 13 disclosed? That is the only outcome?  
14:15 14  
14:15 15 A. I don't think it is impossible.  
14:15 16  
14:15 17 Q. You think it is possible you could have forgotten that if you  
14:15 18 were told all those matters?  
14:16 19  
14:16 20 A. It was an important matter ---  
14:16 21  
14:16 22 Q. Mr Maher ---  
14:16 23  
14:16 24 A. --- and we overlooked it.  
14:16 25  
14:16 26 Q. Yes, I understand.  
14:16 27  
14:16 28 A. And so if it was an even more important matter, it is still  
14:16 29 possible, I regret to say that we may have overlooked it.  
14:16 30  
14:16 31 COMMISSIONER: But extremely unlikely.  
14:16 32  
14:16 33 A. Unlikely, Commissioner.  
14:16 34  
14:16 35 MR KOZMINSKY: The Commissioner's question was  
14:16 36 "extremely unlikely".  
14:16 37  
14:16 38 A. Unlikely.  
14:16 39  
14:16 40 MR KOZMINSKY: You don't think it is extremely unlikely?  
14:16 41  
14:16 42 A. (Nods head).  
14:16 43  
14:16 44 Q. Mr Maher, I'm not meaning to be difficult and I understand  
14:16 45 you are in a difficult position, but it is - this is an important  
14:16 46 issue and what I am putting to you is, it is just inherently  
14:16 47 improbable that you and your colleagues in the meeting all would



14:16 1 have forgotten this matter and not disclosed it if there was full  
14:17 2 disclosure. I mean, that just must simply be right.  
14:17 3  
14:17 4 A. It's improbable.  
14:17 5  
14:17 6 Q. Improbable that it would not have been disclosed you are  
14:17 7 agreeing with me?  
14:17 8  
14:17 9 A. Before 7 June, that's so.  
14:17 10  
14:17 11 Q. We reconstructed the folder, as it were, and I think we have  
14:17 12 a copy, Madam Associate, to give to the witness, and I think  
14:17 13 Mr Borsky has one.  
14:17 14  
14:17 15 MR BORSKY: Yes.  
14:17 16  
14:17 17 MR KOZMINSKY: Can you just flick through it, Mr Maher, and  
14:17 18 this might be testing your memory, I just want to make sure that it  
14:17 19 is a proper reconstruction of the folder.  
14:17 20  
14:18 21 A. Yes, it looks to be, Mr Kozminsky.  
14:18 22  
14:18 23 Q. Thank you.  
14:18 24  
14:18 25 First, Mr Commissioner, I want to do two things: I want to tender  
14:18 26 the folder as a confidential exhibit. I think it is volume 3.  
14:18 27  
14:18 28 COMMISSIONER: I've got it.  
14:18 29  
14:18 30 MR KOZMINSKY: I want to tender the entirety of the document  
14:18 31 as a confidential exhibit. I separately want to tender, and  
14:18 32 Mr Borsky might want an opportunity to look at all of the tabs in  
14:18 33 it, other than tabs 1, 5 and 6 as non-confidential open tenders.  
14:18 34 I think none of those documents contain anything that is  
14:18 35 privileged and are standalone documents.  
14:18 36  
14:18 37 COMMISSIONER: I will let Mr Borsky have a - at some stage  
14:18 38 we'll deal with the tender. You work out which is to be public  
14:19 39 and which is not.  
14:19 40  
14:19 41 MR BORSKY: Thank you.  
14:19 42  
14:19 43 MR KOZMINSKY: Can they be provisionally tendered, in case I  
14:19 44 forget, and Mr Borsky can come back and ---  
14:19 45  
14:19 46 COMMISSIONER: I will tender for identification, which is  
14:19 47 a good way of doing it. I will describe it at the moment as the

14:19 1 bundle of documents produced by Crown to Allens.

14:19 2

14:19 3 MR KOZMINSKY: That's the confidential, and the open might

14:19 4 be another bundle --

14:19 5

14:19 6 COMMISSIONER: Yes.

14:19 7

14:19 8 MR KOZMINSKY: --- but excluding tabs 1, 5 and 6.

14:19 9

14:19 10 COMMISSIONER: At the moment it will be given the exhibit

14:19 11 number 231, and we'll work out which part of the bundle and

14:19 12 which is not.

14:19 13

14

15 **EXHIBIT #RCPH0231 (MARKED FOR**

16 **IDENTIFICATION) - BUNDLE OF DOCUMENTS**

17 **PRODUCED BY CROWN TO ALLENS**

18

19

14:19 20 MR KOZMINSKY: Thank you.

14:19 21

14:19 22 COMMISSIONER: You don't have to do it now, Mr Borsky, at

14:19 23 some stage later on.

14:19 24

14:19 25 MR KOZMINSKY: Mr Maher, in terms of the things we've

14:20 26 discussed on a few occasions that are not disclosed, you can take

14:20 27 your time with it, but the issues that we have just run through,

14:20 28 a number of occasions, the spreadsheet, Ms Coonan, the VCGLR

14:20 29 digging around, the advice of Senior Counsel, columns B and C

14:20 30 and table games, et cetera, those matters, save for one, which

14:20 31 I will come to, are not disclosed to you - are not disclosed in the

14:20 32 documents in that folder; do you agree with me?

14:20 33

14:20 34 A. Sorry to trouble you, Mr Kozminsky. Could you go

14:20 35 through each one?

14:20 36

14:20 37 Q. Sure. I will tell you the one that I think is. I think there is

14:20 38 a reference to one of the documents in relation to calling it

14:20 39 a bonus jackpot --

14:20 40

14:20 41 A. Yes.

14:20 42

14:20 43 Q. --- although it is not a complete disclosure of the issue and

14:20 44 there is a document, I think, that talks about the VCGLR not

14:20 45 noticing it.

14:20 46

14:20 47 A. Yes.

14:20 1  
14:20 2 Q. So put those to one side, because I'm happy they are there.  
14:20 3 I don't think there is any reference in there to the Minters advice  
14:21 4 being obtained because the regulator was digging around.  
14:21 5  
14:21 6 A. No, there is Minters advice in here but ---  
14:21 7  
14:21 8 Q. There is not. And there is not the advice of Senior Counsel  
14:21 9 that I took you to?  
14:21 10  
14:21 11 A. No, that's not in here.  
14:21 12  
14:21 13 Q. Yes, and the spreadsheet is not in there?  
14:21 14  
14:21 15 A. No, that's correct.  
14:21 16  
14:21 17 Q. No. And there is reference, I think, in the Minter's advice  
14:21 18 about the Welcome Back promotion but otherwise there is no  
14:21 19 discussion of the other loyalty program expenses in the  
14:21 20 spreadsheet?  
14:21 21  
14:21 22 A. Which spreadsheet are you referring to?  
14:21 23  
14:21 24 Q. Mr Mackay's spreadsheet. So do you recall it had  
14:21 25 various ---  
14:21 26  
14:21 27 A. Yes.  
14:21 28  
14:21 29 Q. --- and none of those are in there, save for - columns B  
14:21 30 and C I'm talking about - save for a mention in the Welcome  
14:21 31 Back in the Minters advice?  
14:21 32  
14:21 33 A. In the spreadsheet that's in here?  
14:21 34  
14:21 35 Q. Sorry.  
14:21 36  
14:21 37 A. Sorry, there is mention ---  
14:21 38  
14:21 39 Q. There is not a mention of the deductions of all the other  
14:22 40 expenses other than Welcome Back? MatchPlay ---  
14:22 41  
14:22 42 A. Not that I can see, no.  
14:22 43  
14:22 44 Q. Yes. And there is no mention of the fact that the expenses  
14:22 45 are not deducted in respect of table games?  
14:22 46  
14:22 47 A. Not that I can see, no.

14:22 1  
14:22 2 Q. Thank you. You can put that to one side, Mr Maher.  
14:22 3  
14:22 4 A. Yes.  
14:22 5  
14:22 6 Q. I think you've answered this, and I apologise if you have,  
14:22 7 but from when Allens was first retained through to 18 or 19  
14:22 8 March, this issue was not raised, the tax issue was not raised with  
14:22 9 you by anyone at Crown, was it?  
14:22 10  
14:22 11 A. For disclosure as part of RFI-002?  
14:22 12  
14:22 13 Q. Wasn't disclosed to you. No one came along and said, "we  
14:23 14 have this real issue about tax"?  
14:23 15  
14:23 16 A. I recall having I brief conversation with Chris Riley before  
14:23 17 RFI-002 I think came in where he flagged some matters that he  
14:23 18 suggested we talk to various people about within the  
14:23 19 organisation. And in that discussion he mentioned something  
14:23 20 about a tax issue that we'd need to speak to Xavier Walsh about.  
14:23 21  
14:23 22 Q. When was that discussion?  
14:23 23  
14:23 24 A. Very soon after I started working on ---  
14:23 25  
14:23 26 Q. When was that?  
14:23 27  
14:24 28 A. Early March, I think.  
14:24 29  
14:24 30 Q. Give me a moment, please.  
14:24 31  
14:24 32 COMMISSIONER: Was it that conversation that caused you to  
14:24 33 have a meeting with Mr Walsh and others?  
14:24 34  
14:24 35 A. I don't believe so, Commissioner. We were around the  
14:24 36 time - after receiving RFI-002 we were having various  
14:24 37 discussions with people within the organisation to get a sense of  
14:24 38 what information may need to be disclosed in response to  
14:24 39 RFI-002 and the discussion that took place on the 18th was part  
14:24 40 of that. Now I can't recall specifically whether --- who prompted  
14:24 41 it. Certainly the invitation was sent by Mr Walsh from memory,  
14:25 42 or his secretary.  
14:25 43  
14:25 44 MR KOZMINSKY: I think you gave evidence that it was -  
14:25 45 Mr Walsh sent the invitation in respect of responding to the  
14:25 46 Request for Information.  
14:25 47

14:25 1 A. Yes. It may have been his secretary who sent the  
14:25 2 information - the invitation.  
14:25 3  
14:25 4 Q. And this meeting where this tax issue was raised briefly,  
14:25 5 fleetingly ---  
14:25 6  
14:25 7 A. Yes.  
14:25 8  
14:25 9 Q. --- details, how would you describe the interaction?  
14:25 10  
14:25 11 A. It was just ---  
14:25 12  
14:25 13 Q. Throwaway line, is that what we are talking about?  
14:25 14  
14:25 15 A. Yes, there was a discussion about - we were trying to  
14:25 16 scope who we needed to speak to about certain things, and in  
14:25 17 respect of Mr Walsh, he said, "there is a bonus jackpot tax issue  
14:25 18 that you will need to speak to Mr Walsh about."  
14:25 19  
14:25 20 Q. Which would have left you with no idea about what it was,  
14:26 21 other than there was an issue?  
14:26 22  
14:26 23 A. No, it was just an issue that needed to be addressed during  
14:26 24 a meeting with Mr Walsh.  
14:26 25  
14:26 26 Q. When was that conversation?  
14:26 27  
14:26 28 A. It was, as I said, it was I think in early March.  
14:26 29  
14:26 30 Q. So, in answer to my question, that was the only occasion  
14:26 31 where this issue was raised between your retainer and the  
14:26 32 meeting on the 18th or 19th?  
14:26 33  
14:26 34 A. Yes.  
14:26 35  
14:26 36 Q. And then between the 18th or the 19th and the time  
14:26 37 Mr Mackay gave his evidence ---  
14:26 38  
14:26 39 A. Yes.  
14:26 40  
14:26 41 Q. --- did anyone at Crown raise this issue with you again?  
14:26 42  
14:26 43 A. No, there was no discussion about it with me.  
14:26 44  
14:26 45 Q. With anyone at Allens?  
14:26 46  
14:26 47 A. Not that I'm aware of. And certainly no one in my team.

14:26 1  
14:26 2 Q. I see. You are obviously aware that on 10 March the  
14:27 3 Commissioner issued the request for statement about potential  
14:27 4 breaches?  
14:27 5  
14:27 6 A. Request for information.  
14:27 7  
14:27 8 Q. Request for information about potential breaches?  
14:27 9  
14:27 10 A. Yes.  
14:27 11  
14:27 12 Q. On 22 March Allens sent a letter to the Commission. I will  
14:27 13 bring it up for you, CRW.0000.0003.1037.  
14:27 14  
14:27 15 Mr Commissioner, I think it is behind tab 33 of your first volume.  
14:27 16 No, your second volume. My apologies.  
14:27 17  
14:27 18 If you scroll down the bottom, please, Mr Operator, of that letter,  
14:27 19 you will see it is signed by you and others?  
14:27 20  
14:27 21 A. Yes, I see that.  
14:27 22  
14:28 23 Q. The letter was sent a few days after the meeting we've  
14:28 24 discussed?  
14:28 25  
14:28 26 A. Yes.  
14:28 27  
14:28 28 Q. Am I right that the way, and I'm only asking you now about  
14:28 29 disclose in respect of tax issue, that the way this letter was  
14:28 30 prepared is someone in your team did a first cut, is that how it  
14:28 31 works?  
14:28 32  
14:28 33 A. Yes, yes.  
14:28 34  
14:28 35 Q. And then it feeds up to you?  
14:28 36  
14:28 37 A. Yes.  
14:28 38  
14:28 39 Q. Once you are happy with it, Ms Thompson and  
14:28 40 Mr McCarthy look at it, or does it go to Crown? Does everyone  
14:28 41 look at it or a junior and you?  
14:28 42  
14:28 43 A. It depends, Mr Kozminsky, on the circumstances.  
14:28 44  
14:28 45 Q. This letter? Do you have a recollection?  
14:28 46  
14:28 47 A. I can't recall, sorry.

14:28 1  
14:28 2 Q. But in the ordinary course, if you don't remember for this  
14:28 3 letter, would it be you who would send it to someone at Crown  
14:28 4 for instructions?  
14:28 5  
14:28 6 A. Not necessarily me.  
14:28 7  
14:28 8 Q. Who - you or Ms Thompson or Mr McCarthy?  
14:28 9  
14:29 10 A. Yes, it could be. Sometimes a letter, once it is signed, will  
14:29 11 be actually physically emailed by another - a senior associate or  
14:29 12 the team.  
14:29 13  
14:29 14 Q. And you are copied in on the email?  
14:29 15  
14:29 16 A. Yes.  
14:29 17  
14:29 18 Q. Who is it - in the ordinary course when you send a letter  
14:29 19 for instructions, you say that, "can you please confirm everything  
14:29 20 in here is accurate", those sort of things, that's the way you at  
14:29 21 Allens would normally seek instructions from the client?  
14:29 22  
14:29 23 A. "Please let us know if you are content for us to send the  
14:29 24 letter or let us know if you have any comments, questions."  
14:29 25  
14:29 26 Q. You would ask if it was accurate presumably in the  
14:29 27 ordinary course?  
14:29 28  
14:29 29 A. No, not using those words specifically because I think it is  
14:29 30 implicit in the ---  
14:29 31  
14:29 32 Q. That is the substance of what is being asked?  
14:29 33  
14:29 34 A. That is so.  
14:29 35  
14:29 36 Q. Thank you. Who did this letter, or if you don't remember  
14:29 37 this letter, who normally do you send letters to at Crown for  
14:29 38 instructions?  
14:29 39  
14:29 40 A. Our primary instructors are the internal legal team.  
14:29 41  
14:29 42 Q. Yes. That's Jan Williamson?  
14:29 43  
14:29 44 A. Yes.  
14:29 45  
14:30 46 Q. And Rob Meade?  
14:30 47

14:30 1 A. Yes, that is so.  
14:30 2  
14:30 3 Q. I see. And do you recall if either of them asked for any  
14:30 4 changes to be made to this letter?  
14:30 5  
14:30 6 A. I don't recall.  
14:30 7  
14:30 8 MR KOZMINSKY: I tender the letter, please,  
14:30 9 Mr Commissioner.  
14:30 10  
14:30 11 COMMISSIONER: Letter 22 March 2021 from Allens to  
14:30 12 Solicitors Assisting the Commission, Exhibit 243.  
14:30 13  
14 14  
15 **EXHIBIT #RCPH0243 - LETTER FROM ALLENS TO**  
16 **SOLICITORS ASSISTING THE COMMISSION DATED 22**  
17 **MARCH 2021**  
18  
19  
14:30 20 MR KOZMINSKY: The next disclosure on this matter came on  
14:30 21 24 March. I will show you the letter. It is CRW.0000.0003.0013.  
14:30 22  
14:30 23 Mr Commissioner, behind tab 34.  
14:30 24  
14:30 25 Now, this is the first substantive response; you recall that?  
14:30 26  
14:31 27 A. I do recall that.  
14:31 28  
14:31 29 Q. In fairness to you, Mr Maher, you didn't sign the letter.  
14:31 30 I don't know if you are aware of that.  
14:31 31  
14:31 32 A. I recall that my signature doesn't appear on it.  
14:31 33  
14:31 34 Q. Can you tell us why? You weren't around at the time, is  
14:31 35 that what it was?  
14:31 36  
14:31 37 A. Possibly. I regret to say that at this time, when we were  
14:31 38 sending - I don't recall the time at which this letter that was  
14:31 39 sent, but those of us who were responsible for signing off on  
14:31 40 these things - some of us had difficulty working out how to  
14:31 41 apply electronic signatures.  
14:31 42  
14:31 43 Q. I understand. We've all been there. Now, the same  
14:31 44 situation here - sorry, I will take a step back. You recall this  
14:31 45 letter included schedules setting out breaches?  
14:31 46  
14:31 47 A. I do.



14:31 1  
14:31 2 Q. And I'm right that someone in your team will have prepared  
14:31 3 a first cut of the letter and the schedules?  
14:31 4  
14:32 5 A. Yes, that's right.  
14:32 6  
14:32 7 Q. And then this was quite an important disclose so I trust  
14:32 8 a few people looked at it within your team ---  
14:32 9  
14:32 10 A. Yes.  
14:32 11  
14:32 12 Q. --- you, Ms Thompson and possibly Mr McCarthy as well?  
14:32 13  
14:32 14 A. Yes. I certainly looked at it and, yes, I imagine a number of  
14:32 15 people looked at it.  
14:32 16  
14:32 17 Q. When you say - you mean the letter and the schedule?  
14:32 18  
14:32 19 A. Yes.  
14:32 20  
14:32 21 Q. The same situation happened here, you sent the letter and  
14:32 22 the schedule out, maybe separately or maybe together, to  
14:32 23 Ms Williamson and Mr Meade and asked them to confirm they  
14:32 24 were happy for it to be sent in the sense you previously had  
14:32 25 discussed?  
14:32 26  
14:32 27 A. Yes, and others may have received it within the  
14:32 28 organisation.  
14:32 29  
14:32 30 Q. Within Crown?  
14:32 31  
14:32 32 A. Yes.  
14:32 33  
14:32 34 Q. Who else would have received the letter within Crown?  
14:33 35  
14:33 36 A. I think Mr Walsh.  
14:33 37  
14:33 38 Q. Thank you.  
14:33 39  
14:33 40 A. And I recall specifically others at the time. I'm sorry.  
14:33 41  
14:33 42 Q. I have a habit of giving people homework, as it were, in the  
14:33 43 witness box, for which I apologise.  
14:33 44  
14:33 45 A. Yes.  
14:33 46  
14:33 47 Q. Do you think you might be able to, just when you get back

- 14:33 1 to the office, send us a copy of the email?  
14:33 2  
14:33 3 A. The email to?  
14:33 4  
14:33 5 Q. Well, where you sought ---  
14:33 6  
14:33 7 A. The email seeking instructions?  
14:33 8  
14:33 9 Q. Yeah. You can cut out - I really just want to see who it  
14:34 10 was sent to, Mr Walsh but who else. If you could send that  
14:34 11 through, that will be great.  
14:34 12  
14:34 13 A. I will do that.  
14:34 14  
14:34 15 Q. Your evidence was you thought Mr Walsh, Ms Williamson  
14:34 16 and Mr Meade, at least. Thank you.  
14:34 17  
14:34 18 A. And it may well not have been in the same email. There  
14:34 19 may have been ---  
14:34 20  
14:34 21 Q. Oh, I see.  
14:34 22  
14:34 23 A. --- separate emails.  
14:34 24  
14:34 25 Q. May I expand your homework, please, then?  
14:34 26  
14:34 27 A. Yes.  
14:34 28  
14:34 29 Q. If you scroll down in the letter at the bottom of the page, it  
14:34 30 says:  
14:34 31  
14:34 32 *Crown has taken a broad view of conduct that would, or*  
14:34 33 *might, constitute a breach .....*  
14:34 34  
14:34 35 You see that?  
14:34 36  
14:34 37 A. Yes, I see that.  
14:34 38  
14:34 39 Q. That would include the paragraphs in the request for  
14:34 40 information that picked up the (Management Agreement) Act, to  
14:34 41 be precise, the Casino (Management Agreement) Act?  
14:35 42  
14:35 43 A. Yes.  
14:35 44  
14:35 45 Q. Which, in turn, had it been disclosed, would pick up the tax  
14:35 46 issue. If there was an underpayment, this would have been  
14:35 47 a breach of the Act, you agree?

14:35 1  
14:35 2 A. Yes, and this is the first tranche of the RFI to respond, yes.  
14:35 3  
14:35 4 Q. Yes, I accept that.  
14:35 5  
14:35 6 I want to show you, please, if I could, the schedule which for  
14:35 7 Mr Commissioner is behind tab 34. The document ID, I believe,  
14:35 8 is CRW.0000.0003.0015. I just want to scroll down, if I could, to  
14:35 9 row 12. I just want you to have a read of what is in the third  
14:36 10 column, you see that?  
14:36 11  
14:36 12 A. I see that. Yes, I see that. Sorry.  
14:36 13  
14:36 14 Q. Please don't apologise. You see it says Crown overstated  
14:36 15 its jackpot winnings, and that meant that it overstated deductions  
14:36 16 to the gross gaming revenue?  
14:36 17  
14:36 18 A. Yes, I see that.  
14:36 19  
14:36 20 Q. When you were reviewing this, it must have been the case  
14:36 21 that you had forgotten about the issue raised on the 19th because  
14:36 22 otherwise it would have prompted you. So when you read it it  
14:36 23 didn't prompt you about that issue?  
14:37 24  
14:37 25 A. Unfortunately it didn't, Mr Kozminsky.  
14:37 26  
14:37 27 Q. I'm not being critical. But you accept, don't you, that, again  
14:37 28 going back to the Commissioner's point, if there had been full and  
14:37 29 frank disclosure, it would have prompted you? I will frame it  
14:37 30 easier so it is easier for you: inherently likely?  
14:37 31  
14:37 32 A. Yes. So inherently likely to have?  
14:37 33  
14:37 34 Q. Or either would have prompted you if you had forgotten, or  
14:37 35 you would not have forgotten?  
14:37 36  
14:37 37 A. But not necessarily to include in this tranche.  
14:37 38  
14:37 39 Q. Put to one side which tranche.  
14:37 40  
14:37 41 A. Yes.  
14:37 42  
14:37 43 Q. If there was full and frank disclosure, it's inherently  
14:37 44 improbable you would have remembered, you said, given that ---  
14:37 45  
14:37 46 A. Yeah.  
14:37 47

- 14:37 1 Q. --- and I'm now saying to you, and had you forgotten  
14:37 2 somehow when you were preparing the schedule, if somehow you  
14:37 3 had forgotten, you would have been prompted; do you agree with  
14:37 4 me?  
14:37 5  
14:37 6 A. I agree with you.  
14:37 7  
14:37 8 Q. Thank you. And I want you to assume this: assume for  
14:38 9 a moment the people at Crown to whom you sent this for  
14:38 10 instructions, at least some of them, I know three of the names, at  
14:38 11 least some of them, knew what the true position was. I want you  
14:38 12 to make that assumption, okay?  
14:38 13  
14:38 14 A. Yes.  
14:38 15  
14:38 16 Q. Did anyone from Crown write back to you or with  
14:38 17 comments on the schedule, and in particular say to you, "what  
14:38 18 about the tax issue we raised on 18 or 19 March"?  
14:38 19  
14:38 20 A. No, not that I - no.  
14:38 21  
14:38 22 Q. I take it you got instructions?  
14:38 23  
14:38 24 A. Yes, for this tranche, yes.  
14:38 25  
14:38 26 COMMISSIONER: Were there any comments made on the draft  
14:39 27 that you had provided to your client that required the schedule to  
14:39 28 be changed?  
14:39 29  
14:39 30 A. Yes, Commissioner, there were a number of changes to the  
14:39 31 drafts ---  
14:39 32  
14:39 33 COMMISSIONER: Based on feedback from your client?  
14:39 34  
14:39 35 A. Yes, because this was - this was a significant task in  
14:39 36 which we had to locate information from a range of sources and  
14:39 37 we weren't entirely certain, as we were preparing it, whether we  
14:39 38 had encapsulated what the record showed accurately, so people  
14:39 39 were providing input as we were finalising it.  
14:39 40  
14:39 41 MR KOZMINSKY: I won't go there, that's all right.  
14:39 42  
14:39 43 You said there were several changes made to the schedule ---  
14:40 44  
14:40 45 A. I recall that there were a number of changes made.  
14:40 46  
14:40 47 Q. And I take it, when you say "changes", it's not just

14:40 1 formatting changes, commas and full stops ---  
14:40 2  
14:40 3 A. No.  
14:40 4  
14:40 5 Q. --- matters of substance?  
14:40 6  
14:40 7 A. Yes.  
14:40 8  
14:40 9 Q. So your impression was people at Crown were looking  
14:40 10 carefully at the document because it was an important document,  
14:40 11 in giving you the facts?  
14:40 12  
14:40 13 A. Yes, I understand people were looking at it carefully.  
14:40 14  
14:40 15 Q. At Crown?  
14:40 16  
14:40 17 A. Yes.  
14:40 18  
14:40 19 MR KOZMINSKY: I tender, Mr Commissioner, the letter and  
14:40 20 that schedule - is it already tendered? I'm being told by the  
14:40 21 associate it is already tendered. We save ourselves a tender.  
14:40 22  
14:40 23 The next piece of correspondence is CRW.0000.0002.0097.  
14:40 24  
14:40 25 Behind tab 35 of your bundle, Mr Commissioner.  
14:40 26  
14:41 27 And this, subject to the hotel issue which I think was disclosed,  
14:41 28 this was the last substantive disclosure in respect of RFI-002  
14:41 29 before 7 June, do you agree with me?  
14:41 30  
14:41 31 A. That's correct.  
14:41 32  
14:41 33 Q. If you scroll down the bottom, please, Mr Operator, of the  
14:41 34 letter.  
14:41 35  
14:41 36 You will see that you've signed the letter. Well, you won't, but  
14:41 37 you did sign the letter.  
14:41 38  
14:41 39 A. Yes.  
14:41 40  
14:41 41 Q. Is it the same process here where someone in your team  
14:41 42 prepared a first cut of the letter and the schedules; is that what  
14:41 43 happened?  
14:41 44  
14:41 45 A. That's correct. A number of people.  
14:41 46  
14:41 47 Q. And you settled them ---

14:41 1  
14:41 2 A. Yes.  
14:41 3  
14:41 4 Q. --- and either you or someone sent them for instructions?  
14:41 5  
14:41 6 A. Yes. A number of people settled them and someone in the  
14:41 7 team sent it for instructions.  
14:41 8  
14:42 9 Q. Was one of the people to whom it was sent for instructions  
14:42 10 Jan Williamson?  
14:42 11  
14:42 12 A. Yes.  
14:42 13  
14:42 14 Q. Was Mr Walsh also sent this document?  
14:42 15  
14:42 16 A. I believe so.  
14:42 17  
14:42 18 Q. Can I just ask for confirmation as to who this was sent to  
14:42 19 for instructions, the same as we did previously?  
14:42 20  
14:42 21 A. I will add it to my homework, yes, thank you.  
14:42 22  
14:42 23 Q. It is not for me to be giving homework up the chain, but  
14:42 24 we'll call it that for ease. Okay.  
14:42 25  
14:42 26 I think I don't need to go to anything there, but I do want to tender  
14:42 27 both the letter and the schedule, if it is not already tendered,  
14:42 28 Madam Associate. I'm told it's not.  
14:42 29  
14:42 30 COMMISSIONER: Letter of 21 April 2021 from Allens to the  
14:42 31 Solicitors Assisting the Commission together with the attached  
14:43 32 schedule will be Exhibit 244.  
14:43 33  
14:43 34  
14:43 35 **EXHIBIT #RC0244 --- LETTER WITH ATTACHED**  
14:43 36 **SCHEDULE FROM ALLENS TO SOLICITORS**  
14:43 37 **ASSISTING THE ROYAL COMMISSION DATED 21**  
14:43 38 **APRIL 2021**  
14:43 39  
14:43 40  
14:43 41 MR KOZMINSKY: Just before I go to the next topic, was it also  
14:43 42 the case with this schedule that Crown made several comments?  
14:43 43  
14:43 44 A. My general recollection is yes.  
14:43 45  
14:43 46 Q. Yes, and in the same way I asked previously, not formatting  
14:43 47 issues but matters of substance?

14:43 1  
14:43 2 A. Yes, my general recollection is that there were substantive  
14:43 3 comments made.  
14:43 4  
14:43 5 Q. Showing you again that people at Crown were looking at it  
14:43 6 carefully?  
14:43 7  
14:43 8 A. That some people at Crown were looking at it carefully.  
14:43 9  
14:43 10 Q. Thank you. By this stage, 21 April, it had been about five  
14:43 11 weeks since the meeting on 18 or 19 March?  
14:43 12  
14:43 13 A. Yes.  
14:43 14  
14:43 15 Q. During that five-week period, how many times did  
14:43 16 Mr Walsh or someone else at Crown follow up with Allens about  
14:43 17 the status of the advice?  
14:43 18  
14:43 19 A. I don't believe it was followed up during that time.  
14:43 20  
14:44 21 Q. Prior to 7 June 2021, did Mr Walsh or anyone at Crown  
14:44 22 follow up with Allens about the status of the advice?  
14:44 23  
14:44 24 A. Not that I recall.  
14:44 25  
14:44 26 Q. I hope we don't need to go back to the file note, but tell me  
14:44 27 if you need to see it, there is mention in there about MinterEllison  
14:44 28 obtaining a notice to produce documents to the Commission; do  
14:44 29 you remember that?  
14:44 30  
14:44 31 A. Yes.  
14:44 32  
14:44 33 Q. I take it you were aware of that because - I don't want to  
14:44 34 know what the conversation was, but you on behalf of your client  
14:44 35 were liaising with MinterEllison about privilege and  
14:44 36 confidentiality claims and things of that nature?  
14:44 37  
14:45 38 A. I think at that stage we might have been informed that it  
14:45 39 had received a notice.  
14:45 40  
14:45 41 Confidential  
14:45 42  
14:45 43  
14:45 44  
14:45 45  
14:45 46  
14:45 47

14:45 1 Confidential

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14:46 36 MR KOZMINSKY: Mr Commissioner, unless you have any  
14:46 37 further questions for Mr Maher, I have nothing further to ask him.

14:46 38

14:46 39 COMMISSIONER: Thanks, Mr Kozminsky.

14:46 40

14:46 41 Do you want to ask any questions?

14:46 42

14:46 43 MR BORSKY: No, thank you, Commissioner.

14:47 44

14:47 45 COMMISSIONER: Mr Maher, I think you are free to go. I just  
14:47 46 want to say one thing. With my question, rubbish in, rubbish out,  
14:47 47 I didn't mean to be disrespectful in any sense. I take it --



14:47 1  
14:47 2 A. It wasn't taken that way.  
14:47 3  
14:47 4 COMMISSIONER: --- you took it with a sense of humour.  
14:47 5  
14:47 6 A. Thank you, sir.  
14:47 7  
14:47 8 COMMISSIONER: I think the legislation doesn't permit me to  
14:47 9 redact that from the transcript, though.  
14:47 10  
14:47 11 A. I'm comfortable, Commissioner.  
14:47 12  
14:47 13 COMMISSIONER: All right.  
14  
15  
16 **THE WITNESS WITHDREW**  
17  
18  
14:47 19 MR KOZMINSKY: I think we are done today.  
14:47 20  
14:47 21 COMMISSIONER: Will you get back to me or counsel at some  
14:47 22 stage about the documents in the folder so we can finalise that --  
14:47 23  
14:47 24 MR BORSKY: Yes, of course.  
14:47 25  
14:47 26 COMMISSIONER: --- and work out which are confidential and  
14:47 27 which aren't?  
14:47 28  
14:47 29 MR KOZMINSKY: And also the emails I asked of Mr Maher,  
14:47 30 I have no issue ---  
14:47 31  
14:47 32 MR BORSKY: Yes, with those instructing me or - we'll look  
14:47 33 into that. Thank you. We'll attend to that promptly.  
14:47 34  
14:48 35 That's all for today. Dr Button will be here tomorrow and  
14:48 36 Thursday, if necessary, for the employee witnesses.  
14:48 37  
14:48 38 COMMISSIONER: All right. We'll adjourn until 9.30 tomorrow  
14:48 39 morning. Thank you very much.  
14:48 40  
41  
42 **ADJOURNED AT 2.48 PM UNTIL WEDNESDAY, 23 JUNE**  
43 **2021 AT 9.30AM**

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