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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**

**10.02 AM, MONDAY, 7 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</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>

10:02 1 COMMISSIONER: Good morning, everyone. Now, I've got  
10:02 2 counsel on the screen but I do not have Mr Mackay on the screen  
10:02 3 so we will just --- there he is. I can see him now. Mr Mackay,  
10:02 4 can you hear me all right?

10:02 5  
10:02 6 A. Yes, I can, Commissioner --

10:02 7  
10:02 8 COMMISSIONER: Good. And I can hear you likewise. So we  
10:02 9 are ready to begin. Mr Kozminsky, please.

10:02 10  
10:02 11 MR KOZMINSKY: Thank you, Commissioner. I call Mark  
10:02 12 Mackay.

10:02 13  
10:02 14 WITNESS: I'm here.

10:02 15  
10:02 16

10:02 17 **MR MARK CAMERON MACKAY, AFFIRMED**

10:02 18  
10:02 19

10:03 20 COMMISSIONER: Thank you, Mr Mackay. Mr Kozminsky,  
10:03 21 please.

10:03 22  
10:03 23

10:03 24 **EXAMINATION-IN-CHIEF BY MR KOZMINSKY**

10:03 25  
10:03 26

10:03 27 MR KOZMINSKY: Thank you.

10:03 28 Would you please tell the Commissioner your full name?

10:03 29  
10:03 30

10:03 31 A. --- Mark Cameron Mackay.

10:03 32  
10:03 33

10:03 34 Q. Thank you.  
10:03 35 I will be asking you some questions today. And if you can't  
10:03 36 hear me, especially because of the technology, or if there is  
10:03 37 something you don't understand, let me know and we'll sort that  
10:03 38 out and I will clarify things.

10:03 39  
10:03 40

10:03 41 A. I will do.

10:03 42 Q. You've prepared a statement for the Commission?

10:03 43  
10:03 44

10:03 45 A. Yes, that's correct.

10:03 46  
10:04 47

10:04 48 Q. And you were careful when you prepared it?  
10:04 49 A. Yes, I was.

10:04 1  
10:04 2 Q. And to the best of your knowledge, its contents are true and  
10:04 3 correct?  
10:04 4  
10:04 5 A. Yes, it is. There is a few corrections I would like to  
10:04 6 make if possible, though.  
10:04 7  
10:04 8 Q. Of course. Can you tell me what those corrections are?  
10:04 9  
10:04 10 A. On paragraph 18 it reads halfway in the paragraph "over  
10:04 11 2,300 registered organisations". Could I correct that to be "2,100  
10:04 12 organisations", please.  
10:04 13  
10:04 14 Q. Sure. And then paragraph 25. I had some typos in my  
10:04 15 legislation recollection brought to my attention. So the section  
10:04 16 should read "3.2.3(1)", not "3.2.2(1)".  
10:04 17  
10:05 18 Q. Yes.  
10:05 19  
10:05 20 A. And under section "62AB(2)", it should be 62AB(4)", and I  
10:05 21 need to include "81AAB(2)", I believe, is the correct section I  
10:05 22 omitted.  
10:05 23  
10:05 24 COMMISSIONER: Can you give me the section number again.  
10:05 25  
10:05 26 A. 81AAB(2).  
10:05 27  
10:05 28 COMMISSIONER: Thank you.  
10:05 29  
10:05 30 A. Do you want me to make those to my statement as well  
10:05 31 here?  
10:05 32  
10:05 33 COMMISSIONER: Yes, please.  
10:05 34  
10:05 35 A. If I've misquoted that last section, I'm sure my counsel will  
10:05 36 assist me.  
10:05 37  
10:05 38 COMMISSIONER: Somebody will find it out.  
10:06 39  
10:06 40 MR KOZMINSKY: Are there any other corrections you would  
10:06 41 like to make?  
10:06 42  
10:06 43 A. No, that's all, thank you.  
10:06 44  
10:06 45 Q. Can I ask you one thing before I tender the statement. You  
10:06 46 said those matters were brought to your attention. Who brought  
10:06 47 them to your attention?

10:06 1  
10:06 2 A. My legal counsel. Crown's counsel.  
10:06 3  
10:06 4 Q. A Crown lawyer or a lawyer from Allens?  
10:06 5  
10:06 6 A. From --- it was with Allens and counsel assisting Crown.  
10:06 7  
10:06 8 Q. Okay. I might tender, Mr Commissioner, the statements  
10:06 9 and its exhibits.  
10:06 10  
10:06 11 COMMISSIONER: The statement of Mark Mackay dated 5 May  
10:06 12 2021 will be Exhibit 146.  
10:06 13  
14  
15 **EXHIBIT #RC0146 - STATEMENT OF MARK MACKAY**  
16 **WITH EXHIBITS DATED 5 MAY 2021**  
17  
18  
10:06 19 MR KOZMINSKY: Thank you.  
10:06 20  
10:06 21 Just before we get going, can I ask you what preparation you  
10:07 22 undertook for today?  
10:07 23  
10:07 24 A. In writing the statement or?  
10:07 25  
10:07 26 Q. After your statement was written.  
10:07 27  
10:07 28 A. Oh, I've had a couple of meetings with Allens lawyers and  
10:07 29 counsel assisting.  
10:07 30  
10:07 31 Q. I see. And has anyone told you the kinds of questions you  
10:07 32 might get today?  
10:07 33  
10:07 34 A. No, they haven't.  
10:07 35  
10:07 36 Q. Has anyone spoken to you about the sorts of answers you  
10:07 37 might give today? Not form, I'm talking about substance?  
10:07 38  
10:07 39 A. No, not at all.  
10:07 40  
10:07 41 Q. After preparing your statement, have you received any  
10:07 42 documents, cheat sheets, you know, or summaries to help you get  
10:07 43 ready for today?  
10:07 44  
10:07 45 A. Not unless it was preparation I was doing myself from  
10:08 46 emails or documents that I already had received prior to the  
10:08 47 statement.

10:08 1  
10:08 2 Q. You prepared summaries for yourself, but no one has  
10:08 3 prepared anything for you?  
10:08 4  
10:08 5 A. Correct.  
10:08 6  
10:08 7 Q. Great. Thanks.  
10:08 8  
10:08 9 I'm right that you are the Executive General Manager of Gaming  
10:08 10 Machines at Crown?  
10:08 11  
10:08 12 A. That's correct.  
10:08 13  
10:08 14 Q. I'm hoping you might be able to assist me today to better  
10:08 15 understand how EGMs operate, if you wouldn't mind. Some of  
10:08 16 the questions might be obvious to you but we need some  
10:08 17 assistance.  
10:08 18  
10:08 19 A. (Nods head).  
10:08 20  
10:08 21 Q. I'm sure I'm right about this, but I will ask you anyway.  
10:08 22 When a customer gambles on an EGM, they can either win or  
10:08 23 lose on each spin; is that right?  
10:08 24  
10:08 25 A. That's correct.  
10:08 26  
10:08 27 Q. If they lose, the credit shown on the credit meter of the  
10:08 28 EGM decrease; is that right?  
10:08 29  
10:08 30 A. Correct.  
10:08 31  
10:08 32 Q. And if they win, the credits shown on the credit meter of  
10:08 33 the EGM increase; is that right?  
10:09 34  
10:09 35 A. Once the player has taken the win on the machine, that's  
10:09 36 correct.  
10:09 37  
10:09 38 Q. Sure. Sometimes you have an option to double your luck,  
10:09 39 I think, and you can ---  
10:09 40  
10:09 41 A. Correct. You can choose to gamble that win up to  
10:09 42 a maximum of five times.  
10:09 43  
10:09 44 Q. Right, so if you take the win then the credit meter goes up?  
10:09 45  
10:09 46 A. Correct.  
10:09 47

- 10:09 1 Q. And putting to one side the options after you have a win of  
10:09 2 gambling and gambling up to five times, whether you win or lose  
10:09 3 the original spin depends on what combination of letters,  
10:09 4 numbers, symbols, representations appear on the reel, the display  
10:09 5 at the end of the spin; is that right?  
10:09 6  
10:09 7 A. That's correct.  
10:09 8  
10:09 9 Q. The customer can either use at the end of their session, or  
10:09 10 as they are going, the credits on the credit meter to gamble, or  
10:09 11 they can effectively be paid out those credits?  
10:09 12  
10:09 13 A. That's correct.  
10:09 14  
10:09 15 Q. Okay. And you agree with me that a customer gambling on  
10:10 16 an EGM can also win what are called jackpots?  
10:10 17  
10:10 18 A. Yes.  
10:10 19  
10:10 20 Q. I am going to read you out a definition of a jackpot and I  
10:10 21 want you to tell me if you agree with it; is that all right?  
10:10 22  
10:10 23 A. Yes, that's fine.  
10:10 24  
10:10 25 Q.  
10:10 26  
10:10 27 *Jackpot means the combination of letters, numbers,*  
10:10 28 *symbols or representations required to be displayed on*  
10:10 29 *the reels or video screen of a gaming machine so that the*  
10:10 30 *winnings in accordance with the prize payout scale*  
10:10 31 *displayed on the machine are payable from money which*  
10:10 32 *accumulates as contributions unmade to a special prize*  
10:10 33 *pool.*  
10:10 34  
10:10 35 I can repeat it if you like, but does that sound about right to you?  
10:10 36  
10:10 37 A. That's correct for a machine-driven jackpot, yes, that's  
10:10 38 correct.  
10:10 39  
10:10 40 Q. Okay. So you agree with me the way that jackpots on  
10:10 41 EGMs work is that part of each wager on each participating EGM  
10:11 42 is added to a pool?  
10:11 43  
10:11 44 A. Yes, that's correct.  
10:11 45  
10:11 46 Q. By participating EGM, you mean an EGM participating in  
10:11 47 a jackpot, because you could have one or many EGMs

10:11 1 participating in a jackpot?  
10:11 2  
10:11 3 A. Yes, that's correct.  
10:11 4  
10:11 5 Q. And the jackpot builds over time?  
10:11 6  
10:11 7 A. Yes.  
10:11 8  
10:11 9 Q. And the jackpot pool is paid out when, as we've discussed,  
10:11 10 certain symbols or combination of symbols or letters or numbers  
10:11 11 appear on the reels of the display?  
10:11 12  
10:11 13 A. For machine-driven jackpots, that is correct, yes.  
10:11 14  
10:11 15 Q. And that means if I, for example, put a dollar into  
10:11 16 a participating EGM, I can win the jackpot?  
10:11 17  
10:11 18 A. Yes, that's correct.  
10:11 19  
10:11 20 Q. The focus isn't on the player turnover, it is focused on what  
10:11 21 the EGMs are doing?  
10:11 22  
10:11 23 A. That's correct. [insert space and Q. to mark Counsel's next  
question] And you agree with me most  
10:11 24 implementations, the starting jackpot is more than zero to  
10:11 25 encourage players to participate, to gamble?  
10:12 26  
10:12 27 A. Yes.  
10:12 28  
10:12 29 Q. If a customer wins a jackpot, they receive credits added to  
10:12 30 the credit meter?  
10:12 31  
10:12 32 A. Up to a certain value, and then over a certain value it would  
10:12 33 have to be a hand pay.  
10:12 34  
10:12 35 Q. Oh, I see. A cheque or whatever it might be?  
10:12 36  
10:12 37 A. Yes, it wouldn't be credited to the credit meter. Correct.  
10:12 38  
10:12 39 Q. If it is added to the credit meter, it is the same story, they  
10:12 40 can be used to gamble those credits or they can be paid out as  
10:12 41 winnings?  
10:12 42  
10:12 43 A. Correct.  
10:12 44  
10:12 45 Q. So when a customer concludes their gambling session, let's  
10:12 46 assume they've won and have credits on the credit meter, to be  
10:12 47 paid out the customer collects a ticket from an EGM; is that

10:12 1 right?

10:12 2

10:12 3 A. Yes, it can be a ticket.

10:12 4

10:12 5 Q. And ---

10:12 6

10:12 7 A. Could be a hand pay from a customer service attendant.

10:12 8

10:13 9 Q. Okay. But you get --- in the ordinary course do you get  
10:13 10 a ticket and take it to the cage and get paid out your winnings  
10:13 11 there?

10:13 12

10:13 13 A. If you are receiving a ticket you can get paid out at the  
10:13 14 cage. If it is under \$2,000 in value you can redeem that ticket at  
10:13 15 a ticket redemption terminal.

10:13 16

10:13 17 Q. Got it. Thank you.

10:13 18

10:13 19 A. You could also transfer those credit wins to your EasyPay  
10:13 20 digital wallet or account on the machines?

10:13 21

10:13 22 Q. Right. I'm not familiar with the digital wallet. Is that  
10:13 23 linked to the loyalty card?

10:13 24

10:13 25 A. It is linked to your loyalty card so customers can have ---  
10:13 26 the system we use is called EasyPay. They can have an EasyPay  
10:13 27 account linked to their Crown Rewards credit which can transfer  
10:13 28 credits to and from that account to EGMs.

10:13 29

10:14 30 Q. So all the matters we've been discussed to date, they would  
10:14 31 apply to customers playing at Crown whether they were EasyPay  
10:14 32 or not; correct?

10:14 33

10:14 34 A. Correct, except for the EasyPay, you'd have to be a Crown  
10:14 35 Rewards member too.

10:14 36

10:14 37 Q. Sure. I want to now switch to loyalty programs on about  
10:14 38 EGMs at Crown, and we heard a little bit from Mr Emery about  
10:14 39 that matter. You know who Mr Emery is?

10:14 40

10:14 41 A. I do.

10:14 42

10:14 43 Q. The loyalty program, we know from Mr Emery's evidence,  
10:14 44 allows people to earn reward points based more or less on their  
10:14 45 turnover. You agree with that as a general proposition?

10:14 46

10:14 47 A. Yes, I do.



10:14 1  
10:14 2 Q. Mr Emery explained that pokie credits is a subprogram  
10:14 3 within EGMs; you agree with that?  
10:14 4  
10:14 5 A. Yes, it is.  
10:14 6  
10:14 7 Q. Can you explain, please, to the Commissioner, how pokie  
10:15 8 credits work?  
10:15 9  
10:15 10 A. So pokie credits are points earned for spend across Crown  
10:15 11 Melbourne. So retail, food and beverage, hotel and on gaming.  
10:15 12 Those pokie points or pokie credits can be redeemed for spend  
10:15 13 across the property, including on gaming machines for what we  
10:15 14 term as free play.  
10:15 15  
10:15 16 Q. Mr Emery said the program ranges from a \$5 pokie credit  
10:15 17 from 50 to 99 points earned, up to a 100 credit for 10,000 points  
10:15 18 plus earned. Does that sound about right to you?  
10:15 19  
10:15 20 A. Yes, it does.  
10:15 21  
10:15 22 Q. The pokie credits are redeemable on the customer's next  
10:15 23 visit within 14 days? That's right?  
10:15 24  
10:15 25 A. My understanding is pokie credits are redeemable  
10:15 26 whenever the customer chooses to redeem them. There is no  
10:15 27 expiry on pokie credits or Crown Rewards points.  
10:15 28  
10:16 29 Q. Mr Emery said, and I will read it to you:  
10:16 30  
10:16 31 *Pokie credit rewards are redeemable on the customer's*  
10:16 32 *next visit within 14 days.*  
10:16 33  
10:16 34 A. He may be referring to a promotion called Welcome Back  
10:16 35 where ---  
10:16 36  
10:16 37 Q. I see.  
10:16 38  
10:16 39 A. --- if the customer has achieved the trigger point for their  
10:16 40 Welcome Back reward, that has a 14-day expiry. But pokie  
10:16 41 credits and Crown Rewards points don't expire if earned on  
10:16 42 gaming play, which is what you were speaking to me about  
10:16 43 earlier, which was my understanding.  
10:16 44  
10:16 45 Q. That's very helpful. Thank you for that. That clarified  
10:16 46 some things for me.  
10:16 47

10:16 1 Going back to pokie credits generally, you agree with me, for  
10:16 2 members, win, lose or draw, they can earn pokie credits as part of  
10:16 3 the loyalty program?

10:17 4

10:17 5 A. Yes, I do.

10:17 6

10:17 7 Q. I'm right, aren't I, that they are not cashable?

10:17 8

10:17 9 A. That's correct.

10:17 10

10:17 11 Q. Do they need to be turned over, therefore, before they can  
10:17 12 be cashed out?

10:17 13

10:17 14 A. If the customer chooses to play gaming machines with their  
10:17 15 Crown Rewards points or pokie credits and they win from that  
10:17 16 play, then the winnings can be cashed out, yes. But the pokie  
10:17 17 credits would be essentially spent for the bet that they are  
10:17 18 playing. Their winnings can be cashed out but pokie credits  
10:17 19 cannot be cashed out.

10:17 20

10:17 21 Q. If I have 100 pokie credits on my EGM and I bet them all  
10:17 22 through once and I've got a thousand pokie credits, are you saying  
10:17 23 to me I can only cash out the 900, the 100? Even if I've turned it  
10:17 24 over through the machine, I still can't cash out?

10:18 25

10:18 26 A. I might be misunderstanding your question, Mr Kozminsky,  
10:18 27 but I have 100 pokie credits and play the gaming machines with  
10:18 28 100 pokie credits, I will be left with zero pokie credits on my  
10:18 29 account. Any winnings that I have achieved through the play of  
10:18 30 the gaming machines would be added to the credit meter, and  
10:18 31 then the customer could choose to take a ticket for the credit  
10:18 32 meter value. I hope I'm explaining that as best I can.

10:18 33

10:18 34 Q. I think you are and the fault is probably with me, because  
10:18 35 we're learning. But just so I understand it, I have 100 pokie  
10:18 36 credits and I gamble 10 on my first spin, if I lose, I have 90 left.

10:18 37

10:18 38 A. Correct.

10:18 39

10:18 40 Q. If I win 25 credits, I have 90 pokie credits and then I'll have  
10:18 41 25 pokie credits on my credit meter?

10:18 42

10:18 43 A. Yes, so your pokie credit meter, if you want to term it that  
10:18 44 way, your pokie credit balance decreases with each play, and  
10:19 45 your credit meter on the gaming machine is incremented with any  
10:19 46 wins or losses that you achieve with that.

10:19 47

10:19 1 Q. I understand. Thank you. You know, don't you, that this  
10:19 2 Royal Commission was announced on 22 February 2021?  
10:19 3  
10:19 4 A. Yes, I do.  
10:19 5  
10:19 6 Q. I'm right that at about 9.42 am on 26 February 2021, you  
10:19 7 prepared a spreadsheet calculating potential underpayments in  
10:19 8 gambling tax by Crown?  
10:19 9  
10:19 10 A. Potential underpayments? Can you repeat the question,  
10:19 11 please.  
10:19 12  
10:19 13 Q. At about 9.42 am on 26 February 2021, you prepared  
10:19 14 a spreadsheet calculating potential underpayments in gambling  
10:19 15 tax by Crown?  
10:20 16  
10:20 17 A. I recall the spreadsheet. I think it was in regards to those  
10:20 18 jackpot calculations, yes.  
10:20 19  
10:20 20 Q. But in answer to my question --- you know what, let's do it  
10:20 21 this way.  
10:20 22  
10:20 23 Mr Operator, could you bring up CRW.510.059.0594. Tab 13 of  
10:20 24 your bundle, Commissioner.  
10:20 25  
10:20 26 That is the spreadsheet you are referring to?  
10:20 27  
10:20 28 A. It was prepared by the commercial finance manager, Jose  
10:20 29 Machado, but yes, I do recall the spreadsheet, yes.  
10:20 30  
10:21 31 Q. I will ask the operator, I hope we can do this, to just show  
10:21 32 you the metadata. If you hit on file and info you should be able  
10:21 33 to see in the right-hand side that it was prepared at 9.42 am on 26  
10:21 34 February. Do you see that?  
10:21 35  
10:21 36 A. Yes, I do. I've seen the spreadsheet and I had made  
10:21 37 alterations to it, but the original spreadsheet was prepared by Jose  
10:21 38 Machado. I was trying to be as clear as I could be for the  
10:21 39 Commission.  
10:21 40  
10:21 41 Q. So someone else prepared it, you got it and you altered it?  
10:21 42  
10:21 43 A. I made some changes to it, yes.  
10:21 44  
10:21 45 Q. So am I right in saying that this version that we've got is  
10:21 46 a version which you last edited, according to the metadata?  
10:21 47

10:21 1 A. Yes, that's correct. Yes.  
10:21 2  
10:21 3 Q. I want you to take a moment, in fairness to you ---  
10:21 4  
10:22 5 A. Could you go back to the spreadsheet, yes, please.  
10:22 6  
10:22 7 Q. I was going to ask you, just take a moment and you let me  
10:22 8 know once you've had a look over it. I want you to look over it in  
10:22 9 fairness to you before I start asking you about it.  
10:22 10  
10:22 11 A. That's okay.  
10:22 12  
10:22 13 Q. You're ready?  
10:22 14  
10:22 15 A. Yes, I am.  
10:22 16  
10:22 17 Q. Do you accept that this spreadsheet deals with an aspect of  
10:22 18 the gaming taxes paid by Crown from the 2014 financial year to  
10:22 19 the 2019 financial year?  
10:22 20  
10:22 21 A. Yes, I do.  
10:22 22  
10:22 23 Q. Do you accept this spreadsheet shows that in calculating the  
10:22 24 amount of gamble tax payable, Crown Melbourne deducted  
10:22 25 expenses associated with Crown's loyalty program?  
10:22 26  
10:22 27 A. Yes, I do.  
10:22 28  
10:22 29 Q. Do you accept the loyalty program expenses of those  
10:22 30 identified in cells F11, F12 and F13?  
10:22 31  
10:22 32 A. Yes.  
10:22 33  
10:23 34 Q. Do you accept this spreadsheet shows the "tax impact" of  
10:23 35 Crown deducting those loyalty program expenses when  
10:23 36 calculating the gambling tax payable?  
10:23 37  
10:23 38 A. Yes, I do.  
10:23 39  
10:23 40 Q. By "tax impact", you mean the amount Crown saved by  
10:23 41 deducting those loyalty program expenses when calculating the  
10:23 42 gambling tax payable?  
10:23 43  
10:23 44 A. Yes.  
10:23 45  
10:23 46 Q. And you accept that if Crown were not entitled to deduct  
10:23 47 those loyalty program expenses, then your spreadsheet shows

10:23 1 Crown underpaid gambling taxes in those years?  
10:23 2  
10:23 3 A. Could you repeat the question? Did you say we underpaid  
10:23 4 or?  
10:23 5  
10:23 6 Q. Do you accept that if Crown was not entitled to deduct  
10:23 7 those loyalty program expenses, then your spreadsheet shows  
10:23 8 Crown underpaid gambling taxes in those years?  
10:23 9  
10:23 10 A. I accept that if we weren't allowed to deduct those that the  
10:23 11 additional tax payable would be the bottom number, the  
10:24 12 167.829 million, yes.  
10:24 13  
10:24 14 Q. To follow you up on that, your spreadsheet shows that the  
10:24 15 amount of the underpayment, assuming you weren't allowed to  
10:24 16 deduct those amounts, was for those financial years,  
10:24 17 \$167,829,413?  
10:24 18  
10:24 19 A. Yes, I do.  
10:24 20  
10:24 21 Q. And you accept that excluded F20 and F21?  
10:24 22  
10:24 23 A. Yes, it does.  
10:24 24  
10:24 25 Q. And you accept that excludes the super taxing?  
10:24 26  
10:24 27 A. Yes.  
10:24 28  
10:24 29 Q. Who asked you to prepare the spreadsheet or go over this  
10:24 30 spreadsheet?  
10:24 31  
10:24 32 A. To the best of my recollection, I think it was Xavier Walsh  
10:24 33 asked me to prepare or pull together the impact of those  
10:24 34 deductions under the loyalty program.  
10:24 35  
10:25 36 Q. When did Mr Walsh ask you to do that?  
10:25 37  
10:25 38 A. It must have been around the same time period. I can't  
10:25 39 recall exactly when I was asked to prepare that.  
10:25 40  
10:25 41 Q. Am I right that Mr Walsh asked you to prepare the  
10:25 42 spreadsheet after the Royal Commission was announced?  
10:25 43  
10:25 44 A. If that's the chain of events on the dates, then that would be  
10:25 45 after, yes --- or it may have been before but I assume that was  
10:25 46 close to the time period, so --- I just don't recall when I was asked.  
10:25 47 Sorry.

10:25 1  
10:25 2 Q. You, sitting here today, are not in a position to call if it  
10:25 3 happened between 22 February and 26 February?  
10:25 4  
10:25 5 A. I would assume it happened in that time period; if  
10:25 6 Mr Walsh asked me to prepare something, I would have done it  
10:25 7 as quickly as possible.  
10:25 8  
10:25 9 Q. Right. Thank you. Did Mr Walsh ask you to do that by  
10:25 10 phone or by email?  
10:26 11  
10:26 12 A. I can't recall, I'm sorry.  
10:26 13  
10:26 14 Q. Okay.  
10:26 15  
10:26 16 A. I would have to check my email records.  
10:26 17  
10:26 18 Q. We might make a tasklist as we go through our questions  
10:26 19 today and I will put that first on the tasklist if that's okay.  
10:26 20  
10:26 21 A. No problems.  
10:26 22  
10:26 23 Q. We'll keep a list at our end and email it through.  
10:26 24  
10:26 25 A. Appreciate it.  
10:26 26  
10:26 27 Q. Did Mr Walsh tell you why he wanted you to undertake this  
10:26 28 task?  
10:26 29  
10:26 30 A. I think it was in review of our discussions with what is  
10:26 31 deductible under the calculation for gaming tax in regards to  
10:26 32 bonus jackpots or the term bonus jackpots.  
10:26 33  
10:26 34 Q. Let me ask you if this is right: Mr Walsh asked you to  
10:26 35 prepare this spreadsheet because you understood there was a risk  
10:27 36 they were making deductions they weren't entitled to make, and  
10:27 37 they wanted to know what the potential exposure was?  
10:27 38  
10:27 39 A. I don't believe there was a view that we were making  
10:27 40 deductions that we weren't entitled to make. I think the view was  
10:27 41 that what --- if those deductions weren't to be deducted, what  
10:27 42 would be the value. But my understanding was our view is that  
10:27 43 we are entitled to make those deductions.  
10:27 44  
10:27 45 Q. Right. Going back to my question, if you were entitled to  
10:27 46 make the deductions, the spreadsheet would have been  
10:27 47 unnecessary. There must have been at least a concern from

10:27 1 Mr Walsh's part, possibly your part, that they were not  
10:27 2 deductible, otherwise you wouldn't have conducted the exercise;  
10:27 3 you agree with that?  
10:27 4  
10:27 5 A. Yes, I agree with that.  
10:27 6  
10:27 7 Q. Once you finished preparing this spreadsheet, did you  
10:27 8 provide it to Mr Walsh?  
10:27 9  
10:27 10 A. I believe I did.  
10:27 11  
10:27 12 Q. And did you provide it to Helen Coonan?  
10:28 13  
10:28 14 A. I don't believe I provided it to Helen Coonan, no.  
10:28 15  
10:28 16 Q. Did you provide it to Ms Korsanos?  
10:28 17  
10:28 18 A. I don't believe I provided it to Ms Korsanos.  
10:28 19  
10:28 20 Q. What about Sarah Halton?  
10:28 21  
10:28 22 A. I don't believe I provided it to Sarah Halton.  
10:28 23  
10:28 24 Q. Nigel Morrison?  
10:28 25  
10:28 26 A. Mr Morrison, no.  
10:28 27  
10:28 28 Q. Rowena Danziger?  
10:28 29  
10:28 30 A. No.  
10:28 31  
10:28 32 Q. You were careful, you said "I didn't provide it". Do you  
10:28 33 understand that Mr Walsh provided it to any of those people?  
10:28 34  
10:28 35 A. No, I do not.  
10:28 36  
10:28 37 Q. You don't know or --  
10:28 38  
10:28 39 A. No, I don't know.  
10:28 40  
10:28 41 Q. Did you discuss the contents of the spreadsheet with  
10:28 42 Mr Walsh?  
10:28 43  
10:28 44 A. Yes, I did.  
10:28 45  
10:28 46 Q. Did you discuss the contents of the spreadsheet with any of  
10:28 47 the directors that I've listed of Crown Melbourne and Crown

10:29 1 Resorts?  
10:29 2  
10:29 3 A. No, I don't believe I did.  
10:29 4  
10:29 5 Q. Before I come to the discussion with Mr Walsh, let me ask  
10:29 6 you this. Did you discuss the contents with Alan McGregor or  
10:29 7 provide the spreadsheet to him?  
10:29 8  
10:29 9 A. I don't recall directly but I may have.  
10:29 10  
10:29 11 Q. Okay. Would you have a personal record or calendar and  
10:29 12 things of that nature from 26 February forward? Do you have  
10:29 13 a record --- can we add that to your tasklist?  
10:29 14  
10:29 15 A. Yeah, If there is a meeting in my calendar that includes that  
10:29 16 subject and the people, I could easily provide that to the  
10:29 17 Commission.  
10:29 18  
10:29 19 Q. We'll add that to the tasklist. What about Steven  
10:29 20 Blackburn?  
10:29 21  
10:29 22 A. No, I don't believe I did.  
10:29 23  
10:29 24 Q. Okay. Anyone else working at Crown? Did you provide  
10:29 25 the spreadsheet or discuss the contents with anyone else working  
10:30 26 at Crown?  
10:30 27  
10:30 28 A. I believe the only people I discussed it --- may have  
10:30 29 discussed it with was Peter Herring and potentially Michelle  
10:30 30 Fielding.  
10:30 31  
10:30 32 Q. Peter Herring and Michelle Fielding. Can I ask you this,  
10:30 33 before we come back to the discussions, did you provide this  
10:30 34 spreadsheet or discuss the contents with any lawyers working for  
10:30 35 Crown in the Royal Commission?  
10:30 36  
10:30 37 A. No, I have not.  
10:30 38  
10:30 39 Q. What about Crown's auditors?  
10:30 40  
10:30 41 A. No, I have not.  
10:30 42  
10:30 43 Q. To the best of your knowledge, has anyone else discussed  
10:30 44 the spreadsheet or the contents with any lawyers working for  
10:30 45 Crown in the Royal Commission?  
10:30 46  
10:30 47 A. Not that I'm aware of.



10:30 1  
10:30 2 Q. Are you aware of the spreadsheet or its contents having  
10:30 3 been discussed with any of Crown's auditors?  
10:30 4  
10:30 5 A. Not that I'm aware of.  
10:30 6  
10:30 7 Q. Okay. Let's circle back to your discussions with each of  
10:30 8 Mr Walsh, Mr Herring and Ms Fielding. During those  
10:31 9 discussions, was there any talk about informing the state --- start  
10:31 10 with Mr Walsh. Was there any talk about informing the State or  
10:31 11 the regulator about this issue?  
10:31 12  
10:31 13 A. Not to my knowledge. My understanding was that the view  
10:31 14 from the company was that those are deductible items as  
10:31 15 a calculation of gaming tax.  
10:31 16  
10:31 17 Q. Okay. Are you aware the company obtained external  
10:31 18 advice about these matters? I'm not going to ask you what it is,  
10:31 19 but are you aware of that?  
10:31 20  
10:31 21 A. Some time ago I believe they did.  
10:31 22  
10:31 23 Q. And have you ever read that advice?  
10:31 24  
10:31 25 A. Yes, I have.  
10:31 26  
10:32 27 Q. Do you want to reflect on the answer you just gave me  
10:32 28 then? You said to me that the company didn't --- thought the  
10:32 29 amounts were deductible. I just want you to take a moment to  
10:32 30 reflect on that answer and tell me if you are sure about that.  
10:32 31  
10:32 32 A. I believe the company's position is that they are deductible  
10:32 33 items under the gaming tax calculation.  
10:32 34  
10:32 35 Q. Okay. We'll come back to that. Tell me about your  
10:32 36 discussion with Mr Walsh. When did that happen?  
10:32 37  
10:32 38 A. It would have been around the same time this document  
10:32 39 was produced, so in the February time period.  
10:32 40  
10:32 41 Q. Where did the discussion take place?  
10:32 42  
10:32 43 A. I assume his office.  
10:32 44  
10:32 45 Q. Did you remember sitting in his office talking about it?  
10:32 46  
10:32 47 A. I think I remember presenting him the spreadsheet but I

10:33 1 can't recall the detail of the conversation.  
10:33 2  
10:33 3 Q. You can't recall the specifics of the conversation?  
10:33 4  
10:33 5 A. I remember taking him through the document and the  
10:33 6 calculations. Other than that, I can't recall any other specifics  
10:33 7 around the conversation.  
10:33 8  
10:33 9 Q. During the course of that discussion you accept, don't you,  
10:33 10 that it was obvious to both you and Mr Walsh that if these  
10:33 11 amounts were not deductible, that was the company's potential  
10:33 12 exposure, was more than \$167 million?  
10:33 13  
10:33 14 A. Yes, I agree completely.  
10:33 15  
10:33 16 Q. And that was the purpose of doing this, it is the only logical  
10:33 17 purpose of doing this, to work out what was the exposure?  
10:33 18  
10:33 19 A. I agree. Definitely agree.  
10:33 20  
10:33 21 Q. Do you know what Mr Walsh did with that information?  
10:33 22  
10:33 23 A. No, I don't, no.  
10:33 24  
10:33 25 Q. Did you speak with Mr Herring before or after you spoke to  
10:33 26 Mr Walsh?  
10:33 27  
10:33 28 A. If I recall correctly, I think it was beforehand to ensure that  
10:34 29 I had encapsulated the right elements that were deductible under  
10:34 30 the gaming tax calculation.  
10:34 31  
10:34 32 Q. Sorry, I didn't quite follow that. What does that mean,  
10:34 33 "encapsulated the right elements"?  
10:34 34  
10:34 35 A. Each of those columns are in themselves not just --- apart  
10:34 36 from Welcome Back, they include or potentially include other  
10:34 37 amounts rolled up, so I believe the conversation I had with him  
10:34 38 was to confirm that the elements within each of those columns  
10:34 39 were accurate for the purposes of calculating gaming tax.  
10:34 40  
10:34 41 Q. So I'm clear, your discussion with Mr Herring was about  
10:34 42 the accuracy of the figures in the spreadsheet; is that right?  
10:34 43  
10:34 44 A. Yes.  
10:34 45  
10:34 46 Q. Did Mr Herring express a view to you that in his opinion  
10:34 47 the amounts were not deductible?

10:34 1  
10:35 2 A. No, he did not.  
10:35 3  
10:35 4 Q. Okay. Did you speak to Ms Fielding before or after you  
10:35 5 spoke to Mr Herring?  
10:35 6  
10:35 7 A. I can't recall whether it was before or after, but I would  
10:35 8 have conferred with Michelle, Ms Fielding, sorry, in regards to  
10:35 9 the gaming tax calculation and the compliance --- the regulations  
10:35 10 or the points that allow us to make those deductions.  
10:35 11  
10:35 12 Q. I just want to understand that. Before or after you spoke to  
10:35 13 Mr Walsh, did you have your conversation with Ms Fielding?  
10:35 14  
10:35 15 A. I don't believe it was before I spoke to Mr Walsh.  
10:35 16  
10:35 17 Q. Did Ms Fielding express a view to you that there was  
10:35 18 serious concern about Crown's practice of making these  
10:35 19 deductions?  
10:35 20  
10:35 21 A. I don't believe she expressed serious concern around us  
10:35 22 making these deductions, no.  
10:35 23  
10:36 24 Q. Did she express concern?  
10:36 25  
10:36 26 A. I think, if I recall correctly, the ambiguity of the gaming tax  
10:36 27 calculation was her concern, but not the deductions that we were  
10:36 28 making under that calculation.  
10:36 29  
10:36 30 Q. I don't understand that, I'm sorry. Can you explain that  
10:36 31 again? Perhaps you can tell me to the best of your recollection  
10:36 32 what Ms Fielding actually said.  
10:36 33  
10:36 34 A. I'm trying to recall for the Commission.  
10:36 35  
10:36 36 Q. Take your time.  
10:36 37  
10:36 38 A. I believe the conversation I had with Ms Fielding was  
10:36 39 around the ambiguity of the definition of the gaming tax  
10:36 40 calculation. I can't recall more than that. I'm sorry. That is what  
10:36 41 I do recall from that conversation.  
10:36 42  
10:36 43 Q. That there was ambiguity, that is what you recall, about the  
10:36 44 definition?  
10:36 45  
10:37 46 A. Yes.  
10:37 47

10:37 1 Q. Are you in the habit of taking file notes when you have  
10:37 2 meetings?  
10:37 3  
10:37 4 A. In some meetings I do, not all.  
10:37 5  
10:37 6 Q. Can we add to your list, file notes of those three meetings if  
10:37 7 you have them?  
10:37 8  
10:37 9 A. I will review my documents, yes.  
10:37 10  
10:37 11 Q. Can we add to the list, email correspondence between you  
10:37 12 and those three individuals, Mr Walsh, Mr Herring and  
10:37 13 Ms Fielding for the period, say, 10 days before and after the  
10:37 14 spreadsheet was created?  
10:37 15  
10:37 16 COMMISSIONER: I've got Mr Borsky online.  
10:37 17  
10:37 18 Mr Borsky? I can't hear you. Do you want to have another go,  
10:38 19 Mr Borsky?  
10:38 20  
10:38 21 MR KOZMINSKY: I've lost Mr Borsky from my screen,  
10:38 22 Mr Commissioner.  
10:38 23  
10:38 24 COMMISSIONER: So have I. Back online now.  
10:38 25  
10:38 26 MR BORSKY: Sorry about that. Can I be heard,  
10:38 27 Commissioner?  
10:38 28  
10:38 29 COMMISSIONER: Yes, you can.  
10:38 30  
10:38 31 MR BORSKY: Thank you. Sorry for that technical glitch.  
10:38 32  
10:38 33 May I suggest that the homework, in accordance with past  
10:38 34 practice, be mine to do and not the witness's. It is plain that the  
10:38 35 tasklist has already grown beyond the reasonable length for this  
10:38 36 witness to attend to in breaks, so may I respectfully suggest that  
10:38 37 either my learned friend or those instructing him provide the list  
10:38 38 to us, and we'll ensure that the documents are produced as  
10:38 39 quickly as reasonably possible.  
10:38 40  
10:38 41 COMMISSIONER: Part of the issue, as I gather, is at the  
10:38 42 moment there is no list that is coming to life as Mr Mackay gives  
10:38 43 his evidence, and before then there was nothing on the list  
10:39 44 because I think none of the documents that Mr Kozminsky is  
10:39 45 asking about had been produced. So this is, as it were, a running  
10:39 46 list.  
10:39 47

10:39 1 MR BORSKY: I follow, and I make no complaint about that.  
10:39 2 All I'm proposing is that particularly in that circumstance, that the  
10:39 3 witness not be asked in breaks on his own to attend to production  
10:39 4 of the running list.  
10:39 5  
10:39 6 COMMISSIONER: All right. We'll see what is the easiest way  
10:39 7 to do it. Thank you, Mr Borsky.  
10:39 8  
10:39 9 You've had a 2-minute break, Mr Mackay, we can continue with  
10:39 10 your questions.  
10:39 11  
10:39 12 MR KOZMINSKY: Did either Ms Fielding or Mr Herring  
10:39 13 suggest that the matter of underpayment of tax or possible  
10:39 14 underpayment of tax be elevated to the Board?  
10:40 15  
10:40 16 A. I don't believe either of them suggested that.  
10:40 17  
10:40 18 Q. Could you bear with me for one second, sir.  
10:40 19  
10:40 20 I'm sorry about that. I want to show you a document. Another  
10:40 21 document. We'll come back to the spreadsheet.  
10:40 22  
10:40 23 CRW.0000.0002.0180. Mr Commissioner, tab 17 of your hard  
10:40 24 copy bundle.  
10:40 25  
10:40 26 Can you see that, Mr Mackay?  
10:40 27  
10:40 28 A. Yes, I can.  
10:40 29  
10:40 30 Q. That is a letter from the Commissioner to the Directors of  
10:40 31 Crown Melbourne Ltd. Can you see that?  
10:40 32  
10:40 33 A. Yes.  
10:40 34  
10:40 35 Q. Can you see the second paragraph says:  
10:40 36  
10:41 37 *It would assist the Commission if Crown Melbourne*  
10:41 38 *Limited provide the information requested in the attached*  
10:41 39 *Schedule .....*  
10:41 40  
10:41 41 You see that?  
10:41 42  
10:41 43 A. Yes, I can.  
10:41 44  
10:41 45 Q. If the operator can turn to the next page, I want to show you  
10:41 46 paragraph 1.  
10:41 47

10:41 1           *Since 1 January 2010, has Crown Melbourne engaged in*  
10:41 2           *conduct that would, or might, breach any provision of:*  
10:41 3  
10:41 4           .....  
10:41 5           ..... *the Casino (Management Agreement) Act 1993* .....

10:41 6  
10:41 7       Do you see that?  
10:41 8  
10:41 9       A. Yes, I do.  
10:41 10  
10:41 11      Q. If the operator could turn over to the next page, paragraph  
10:41 12      5:  
10:41 13  
10:41 14           *Since 1 January 2010, has Crown Melbourne engaged in*  
10:41 15           *conduct that would, or might, breach any provision of.*  
10:41 16  
10:41 17           .....  
10:41 18  
10:41 19           ..... *the Management Agreement* .....

10:41 20  
10:41 21      See that?  
10:41 22  
10:41 23      A. Yes, I do.  
10:41 24  
10:42 25      Q. Were you involved in responding to that request for  
10:42 26      information by the Commissioner?  
10:42 27  
10:42 28      A. I have been involved in responses for the Commission,  
10:42 29      including my own statement, yes.  
10:42 30  
10:42 31      Q. Sorry, my question was unclear. Those specific requests  
10:42 32      that we've just gone to, were you involved in any way in  
10:42 33      providing the responses?  
10:42 34  
10:42 35      A. No, I wasn't. Just my own statement.  
10:42 36  
10:42 37      Q. Okay. Did you know who was responsible for providing  
10:42 38      the information?  
10:42 39  
10:42 40      A. No, I don't, sorry.  
10:42 41  
10:42 42      Q. I want you to assume, because you see that those requests  
10:42 43      are "would, or might" be a breach, you see that?  
10:42 44  
10:42 45      A. Yes, I do see that, yes.  
10:42 46  
10:42 47      Q. I want you to assume the Crown did not inform the

10:42 1 Commission about the underpayment, or you might say potential  
10:43 2 underpayment of gambling taxes. Okay?  
10:43 3  
10:43 4 A. Okay.  
10:43 5  
10:43 6 Q. I want you to assume Crown didn't provide your  
10:43 7 spreadsheet --- withdraw that.  
10:43 8  
10:43 9 I want you to assume Crown did not produce any advices  
10:43 10 prepared by Crown's lawyers about the possible underpayment of  
10:43 11 gambling tax. I want you to assume that. And you know that is  
10:43 12 actually on the list; don't you?  
10:43 13  
10:43 14 A. Yes, I do.  
10:43 15  
10:43 16 Q. And you know that Xavier Walsh became a director of  
10:43 17 Crown Melbourne on 15 February 2021?  
10:43 18  
10:43 19 A. Yes.  
10:43 20  
10:43 21 Q. And so by --- so that on --- before that letter was sent on 10  
10:43 22 March, Mr Xavier Walsh was both a director of Crown  
10:43 23 Melbourne and knew that there was a potential issue about  
10:43 24 underpayment of tax?  
10:43 25  
10:43 26 A. Correct.  
10:43 27  
10:43 28 Q. And you agree that when the Commissioner issued  
10:44 29 a request for information, Crown was duty-bound to take all  
10:44 30 possible steps to provide all relevant information?  
10:44 31  
10:44 32 A. Yes, I do.  
10:44 33  
10:44 34 Q. So you agree, by not providing the advices it had received  
10:44 35 from its external lawyers about this issue, Crown failed to  
10:44 36 discharge that duty?  
10:44 37  
10:44 38 A. If they didn't provide it under the assumptions that you  
10:44 39 specified to me, then, yes, that would not be in line with that  
10:44 40 quote.  
10:44 41  
10:44 42 Q. Yes, and you agree that if that assumption is right, the  
10:44 43 advices from MinterEllison were not provided, there is no  
10:44 44 acceptable excuse or explanation for that failure; there is?  
10:44 45  
10:44 46 A. I couldn't think of one, no.  
10:44 47

10:44 1 Q. Especially given you've accepted that it is likely that the  
10:44 2 request to prepare this statement happened just after the Royal  
10:44 3 Commission was announced.  
10:44 4

10:44 5 A. The timing that you took me to would suggest that that  
10:44 6 request was after the announcement of the Royal Commission,  
10:45 7 yes.  
10:45 8

10:45 9 Q. The request from Mr Walsh of you to prepare the  
10:45 10 spreadsheet?  
10:45 11

10:45 12 A. Correct.  
10:45 13

10:45 14 Q. And you accept that it is unlikely that is a mere  
10:45 15 coincidence?  
10:45 16

10:45 17 A. I can't recall so I wouldn't want to speculate.  
10:45 18

10:45 19 Q. Perhaps it's a matter I'll need to take up with Mr Walsh.  
10:45 20 There would be no real reason nor Crown to be working out the  
10:45 21 tax saving from free car parking in 2014 other than a concern  
10:45 22 about the issue coming to light during the course of the  
10:45 23 Commission; is there?  
10:45 24

10:45 25 A. Not that I can think of.  
10:45 26

10:45 27 Q. So, going back to where we started, it is not a coincidence  
10:46 28 that after the Royal Commission was announced, Mr Walsh asked  
10:46 29 you to prepare this spreadsheet? Sitting here today, having now  
10:46 30 talked through the issue, would you agree with that?  
10:46 31

10:46 32 A. I can't recall the reasons why. I've been clear and truthful.  
10:46 33 But one could assume it was in light of it, I just can't recall, I'm  
10:46 34 sorry. I don't have the recollection of why that was asked.  
10:46 35

10:46 36 Q. Sorry I interrupted you.  
10:46 37

10:46 38 COMMISSIONER: Can I raise that with you, Mr Mackay. The  
10:46 39 conversations that you had were not so long ago. They are  
10:46 40 a couple of months ago. Correct?  
10:46 41

10:46 42 A. I understand that, Commissioner.  
10:46 43

10:46 44 COMMISSIONER: And they were about an amount of money,  
10:46 45 168, nearly \$170 million of potential underpayment. That's not  
10:46 46 the usual conversation you have with Mr Walsh or anybody else  
10:46 47 in the organisation, is it?



10:46 1  
10:46 2 A. No, it's not. But at the same time we've been working  
10:47 3 through with the VCGLR on a technical requirements document  
10:47 4 which includes the definitions of bonus jackpot --- so I just can't  
10:47 5 recall what the starting point was for the conversation,  
10:47 6 Commissioner. I'm trying to rack my brain for it, but I just can't  
10:47 7 recall what was the starting point for the conversation. I  
10:47 8 apologise. I just can't recall.  
10:47 9  
10:47 10 MR KOZMINSKY: Can I ask you this: you accept a possibility  
10:47 11 is a concern that this Commission might uncover the  
10:47 12 underpayment; you accept that is a possibility?  
10:47 13  
10:47 14 A. I can accept that, yes.  
10:47 15  
10:47 16 Q. Sitting here today, can you think of any other possibility as  
10:47 17 to why it was necessary for you to calculate the tax saving from  
10:47 18 free car parking in 2014?  
10:47 19  
10:47 20 A. No, I can't recall of anything or think of anything.  
10:47 21  
10:47 22 Q. Okay. Thank you.  
10:47 23  
10:47 24 Let's go to the spreadsheet in a bit more detail if we may.  
10:47 25 CRW.510.059.0594. Can you see that there?  
10:47 26  
10:48 27 A. Yes, I can.  
10:48 28  
10:48 29 Q. We start with the first table. For each financial year there is  
10:48 30 a figure; you see that?  
10:48 31  
10:48 32 A. Yes.  
10:48 33  
10:48 34 Q. That is the amount received from the conduct or playing of  
10:48 35 EGMs; you agree with me?  
10:48 36  
10:48 37 A. Yes.  
10:48 38  
10:48 39 Q. And net revenue, that is the total figure less --- sorry,  
10:48 40 withdraw that. The net revenue figure, that is the turnover figure  
10:48 41 less the total of all sums paid out as winnings?  
10:48 42  
10:48 43 A. Yes.  
10:48 44  
10:48 45 Q. And columns E to I are expenses associated with Crown's  
10:48 46 loyalty program?  
10:48 47

10:48 1 A. E to G.  
10:48 2  
10:48 3 Q. My apologies, H and I are the additions that flow from  
10:48 4 there. Do you agree with me?  
10:48 5  
10:48 6 A. Yes, I do, sorry.  
10:48 7  
10:48 8 Q. No, that's right. The stenographer can't pick up the  
10:49 9 nodding, that's all. I want to go through each of the loyalty  
10:49 10 program promotions that are identified in this spreadsheet at cells  
10:49 11 F11, F12, and F13.  
10:49 12  
10:49 13 A. F11, sorry, A, B and C, yes.  
10:49 14  
10:49 15 Q. F11 matches with the column "Rewards Amount", F12  
10:49 16 matches up with the amounts "Welcome Back" and F13 matches  
10:49 17 up with Matchplay and others; you agree with that?  
10:49 18  
10:49 19 A. Yes, I do.  
10:49 20  
10:49 21 Q. Great. Let's start with "Rewards Amounts", which is  
10:49 22 identified or broken down in F11. The rewards are carpark, valet,  
10:49 23 dining rewards and comp hotel; you agree with that?  
10:49 24  
10:49 25 A. Yes, I do.  
10:49 26  
10:49 27 Q. And you agree they are each awards available only to  
10:49 28 loyalty card members?  
10:49 29  
10:49 30 A. Yes, I do.  
10:49 31  
10:50 32 Q. And you agree with me that "carpark" means free car  
10:50 33 parking?  
10:50 34  
10:50 35 A. Yes, it does.  
10:50 36  
10:50 37 Q. In order to obtain free car parking, a loyalty program  
10:50 38 member must accrue a certain number of pokie points?  
10:50 39  
10:50 40 A. They must accrue a certain number of Crown Rewards  
10:50 41 points, it doesn't necessarily have to be pokie.  
10:50 42  
10:50 43 Q. Crown Rewards; you agree with me?  
10:50 44  
10:50 45 A. Yes, I do.  
10:50 46  
10:50 47 Q. Great. Do you agree with me that the amount of points --

10:50 1 let me be specific --- the amount of pokie points for a day's car  
10:50 2 parking is 25?  
10:50 3  
10:50 4 A. Sorry, you broke up a little bit, Mr Kozminsky, can you  
10:50 5 repeat the question?  
10:50 6  
10:50 7 Q. Do you agree with me that the amount of pokie points  
10:50 8 a player needs to accrue to obtain the benefit of free car parking  
10:50 9 is 25 pokie points in a day?  
10:50 10  
10:50 11 A. Yes, I do. Yes.  
10:50 12  
10:51 13 Q. And you agree the capacity to accrue pokie points turns on  
10:51 14 how long the customer is playing on the EGM?  
10:51 15  
10:51 16 A. Yes.  
10:51 17  
10:51 18 Q. So a customer, if I go to Crown and I'm a loyalty program  
10:51 19 member and I lose \$1,000. Put \$1,000 into an EGM and lose it  
10:51 20 all, I've won nothing, I still obtain free parking; do you agree with  
10:51 21 me, "yes" or "no"?  
10:51 22  
10:51 23 A. Yes.  
10:51 24  
10:51 25 Q. Thank you. Valet is the second program or promotion  
10:51 26 identified there; do you see that?  
10:51 27  
10:51 28 A. Yes, I do.  
10:51 29  
10:51 30 Q. That means free valet parking at Crown?  
10:51 31  
10:51 32 A. That's correct.  
10:51 33  
10:51 34 Q. And you agree with me that to obtain free valet parking you  
10:51 35 have to accrue a certain number of loyalty pokie points?  
10:51 36  
10:51 37 A. To achieve valet parking, you'd need to be a platinum and  
10:51 38 black tier within the Crown Rewards Program.  
10:51 39  
10:51 40 Q. But can you also accrue valet parking if you earn  
10:51 41 a thousand pokie points in a day?  
10:51 42  
10:52 43 A. No, I don't believe you can.  
10:52 44  
10:52 45 Q. Withdraw that. Can you also obtain valet parking in  
10:52 46 exchange for 1,000 pokie points if you are a black and platinum  
10:52 47 member? Do you need the 1,000 pokie points?

10:52 1  
10:52 2 A. I don't think you need the 1,000 pokie points. I think you  
10:52 3 need to have attained the black and platinum tier for valet  
10:52 4 parking.  
10:52 5  
10:52 6 Q. Okay. It's not a big point, but I will show you documents  
10:52 7 later on and we can discuss it.  
10:52 8  
10:52 9 A. Okay.  
10:52 10  
10:52 11 Q. But, again, that is a benefit of a loyalty program member?  
10:52 12  
10:52 13 A. Yes, correct.  
10:52 14  
10:52 15 Q. If they are not accruing any points --- withdraw that. If  
10:52 16 they don't require credits to obtain the benefit, it is simply  
10:52 17 a benefit of that status of membership at Crown?  
10:52 18  
10:53 19 A. Yes.  
10:53 20  
10:53 21 Q. And "comp hotel" means a hotel stay at Crown?  
10:53 22  
10:53 23 A. Complimentary hotel room nights, yes.  
10:53 24  
10:53 25 Q. Thank you. And you agree with me that again, that is  
10:53 26 something you can get as a black tier member and possibly  
10:53 27 a premium member, but also something you can obtain in  
10:53 28 exchange for pokie credits? You can exchange pokie credits for  
10:53 29 free nights in the hotel?  
10:53 30  
10:53 31 A. Oh, yes, you can pay for your hotel room stay and to your  
10:53 32 point before, sorry, Mr Kozminsky, you can use your Crown  
10:53 33 Rewards points to pay for items on the property, which would  
10:53 34 include valet and so on. If that is what you were asking me  
10:53 35 before, I agree with your statement. Sorry, I was referring  
10:53 36 directly to the ---  
10:53 37  
10:53 38 Q. You don't need to apologise.  
10:53 39  
10:53 40 A. I was referring to the rewards program.  
10:53 41  
10:53 42 Q. Lots of figures flying around.  
10:53 43  
10:54 44 Dining rewards, you can obtain dining rewards based on pokie  
10:54 45 credits; do you agree with me?  
10:54 46  
10:54 47 A. Yes, I do.

10:54 1  
10:54 2 Q. And you agree with me you get \$7.50 of dining rewards  
10:54 3 when you earn 150 pokie credits in a day?  
10:54 4  
10:54 5 A. Yes, I do.  
10:54 6  
10:54 7 Q. Listen to my question on this point carefully, please and  
10:54 8 think about it for a moment before you answer it. Internally,  
10:54 9 Crown describes the promotions we have just discussed as part of  
10:54 10 the gaming machine program; "yes" or "no"?  
10:54 11  
10:54 12 A. Yes.  
10:54 13  
10:54 14 Q. It does not describe them as a bonus jackpot internally;  
10:54 15 correct?  
10:54 16  
10:54 17 A. Correct.  
10:54 18  
10:54 19 Q. Thank you. And one more question, take a moment with it,  
10:54 20 none of these promotions have any of the elements of a jackpot  
10:54 21 which we discussed earlier. I read you out a definition. I can  
10:55 22 read it again. But you agree with me none ---  
10:55 23  
10:55 24 A. Yes.  
10:55 25  
10:55 26 Q. You agree with me?  
10:55 27  
10:55 28 A. I agree with you that they do not attribute to a game  
10:55 29 machine jackpot; correct.  
10:55 30  
10:55 31 Q. They are not one ---  
10:55 32  
10:55 33 A. They do not meet the definition of a gaming machine  
10:55 34 jackpot, to answer your question.  
10:55 35  
10:55 36 Q. And if I lose, every time I go to the casino, every penny I  
10:55 37 put in the EGM, I can still obtain those benefits as part of my  
10:55 38 loyalty program?  
10:55 39  
10:55 40 A. Yes, if you've earned the Crown Rewards points or the  
10:55 41 trigger point for those rewards, yes.  
10:55 42  
10:55 43 Q. Thank you.  
10:55 44  
10:55 45 The next column is the Welcome Back promotion; you see that?  
10:55 46  
10:55 47 A. Yes, it is.

10:55 1  
10:55 2 Q. We had a brief discussion about that earlier.  
10:55 3  
10:55 4 A. Yep.  
10:55 5  
10:55 6 Q. It is a reference to a program that provides loyalty program  
10:55 7 members with credits when they have not gambled for a period of  
10:56 8 time; is that how it works?  
10:56 9  
10:56 10 A. It is when they achieve a trigger point on their visit, and  
10:56 11 then they will be offered a Welcome Back credit for their next  
10:56 12 visit which has an expiry of 14 days.  
10:56 13  
10:56 14 Q. Again, it is only available to loyalty program members?  
10:56 15  
10:56 16 A. Yes, that's correct.  
10:56 17  
10:56 18 COMMISSIONER: What is the trigger point?  
10:56 19  
10:56 20 A. It's a certain number of Crown Rewards points,  
10:56 21 Commissioner?  
10:56 22  
10:56 23 COMMISSIONER: And the Crown Rewards points are  
10:56 24 accumulated by reference to the ---  
10:56 25  
10:56 26 A. Gaming machine play.  
10:56 27  
10:56 28 COMMISSIONER: Turnover on gambling machine play?  
10:56 29  
10:56 30 A. Yes. Yes, Commissioner.  
10:56 31  
10:56 32 COMMISSIONER: Thank you.  
10:56 33  
10:56 34 MR KOZMINSKY: The next column is Matchplay. You see  
10:56 35 that there?  
10:56 36  
10:56 37 A. Yes, I do.  
10:56 38  
10:56 39 Q. Let's work through the six promotions that fall under that.  
10:57 40 The first is a mail-out program; you see that?  
10:57 41  
10:57 42 A. The first is Matchplay.  
10:57 43  
10:57 44 Q. The second is mail-outs?  
10:57 45  
10:57 46 A. Sorry, yes, mail-outs.  
10:57 47

- 10:57 1 Q. That involves credits offered to loyalty members via mail  
10:57 2 or email promotions; is that right?  
10:57 3
- 10:57 4 A. That's correct.  
10:57 5
- 10:57 6 Q. What is the criteria upon which a loyalty member receives  
10:57 7 credit under this promotion?  
10:57 8
- 10:57 9 A. The marketing team determine the criteria for the mail-outs  
10:57 10 of each customer based on their play or visitation.  
10:57 11
- 10:57 12 Q. Right. And the credits are used --- can you used to gamble  
10:57 13 on EGMs?  
10:57 14
- 10:57 15 A. Yes, they can be used to gamble on EGMs.  
10:57 16
- 10:57 17 Q. And they can also be used in other ways or not?  
10:57 18
- 10:57 19 A. I believe so. They can be used for, if they are a Crown  
10:58 20 Rewards mail-out for Crown Rewards points, they can be used  
10:58 21 across the property for a number of different things. If they are  
10:58 22 specific to pokie credits, then it would just be for gaming  
10:58 23 machines.  
10:58 24
- 10:58 25 Q. That's what I was asking. I'm sorry I interrupted you. It is  
10:58 26 the technology, there is a lag sometimes and I thought you were  
10:58 27 done.  
10:58 28
- 10:58 29 And that is a benefit only for loyalty program members?  
10:58 30
- 10:58 31 A. Yes, it is.  
10:58 32
- 10:58 33 Q. Let's discuss Matchplay. Am I right that that program  
10:58 34 involves a loyalty program member converting Crown Rewards  
10:58 35 points for pokie credits?  
10:58 36
- 10:58 37 A. My understanding of Matchplay is the rewards points  
10:58 38 earned on the customer's play based on our calculation for their  
10:58 39 reward points.  
10:58 40
- 10:58 41 Q. Sorry, I'm not ---  
10:58 42
- 10:58 43 A. Sorry, I didn't explain that very well. Matchplay is the  
10:58 44 Crown Rewards points earned on their customer's play.  
10:58 45
- 10:59 46 Q. So it is just the accruing points based on turnover,  
10:59 47 effectively?

10:59 1  
10:59 2 A. Correct. Yes.  
10:59 3  
10:59 4 Q. Okay. And again only available to loyalty members?  
10:59 5  
10:59 6 A. Correct.  
10:59 7  
10:59 8 Q. And then there is another program called Random Riches?  
10:59 9  
10:59 10 A. Yes, there is.  
10:59 11  
10:59 12 Q. How does that work? What is the criteria for participation  
10:59 13 and how does that program work?  
10:59 14  
10:59 15 A. Again, the marketing team will determine based on their  
10:59 16 marketing programs who would be included in that program, but  
10:59 17 it is, how do I describe it ..... it is an event on the gaming  
10:59 18 machines that gives the customers random wins, random prizes,  
10:59 19 sorry.  
10:59 20  
10:59 21 Q. Sorry, I want to be clear about this. When you say "random  
11:00 22 prizes", do you mean random credits or do you mean you win  
11:00 23 a car or a watch?  
11:00 24  
11:00 25 A. No, it wouldn't be a car or a watch. It would be credits or it  
11:00 26 could be other things like hotel room nights or on property prizes  
11:00 27 but mainly to be, to my understanding in the past, has been  
11:00 28 credits.  
11:00 29  
11:00 30 Q. Thank you.  
11:00 31  
11:00 32 Then there is also the jackpot payments. As I understand it, and  
11:00 33 tell me if I'm wrong, credits obtained by loyalty program  
11:00 34 members from the Lucky Time Jackpot promotion; is that right?  
11:00 35  
11:00 36 A. Yes, that's correct.  
11:00 37  
11:00 38 Q. Can you explain to the Commissioner what the Lucky Time  
11:00 39 Jackpot promotion is?  
11:00 40  
11:00 41 A. Lucky time is an in-room jackpot run across a number of  
11:00 42 machines, for example in the Teak Room, over a set period of  
11:01 43 time as a promotion. So the Lucky Time Jackpot might run for  
11:01 44 an hour, multiple times a day, in the Teak Room.  
11:01 45  
11:01 46 Q. Just so I understand, when you say "the jackpot runs in the  
11:01 47 Teak Room", is the jackpot sum an amount of money that Crown



11:01 1 has put up that plays ---

11:01 2

11:01 3 A. Yes, so the gaming machine systems allows you to run  
11:01 4 what is commonly termed in the industry a mystery jackpot,  
11:01 5 where you can assign machines to a jackpot pool, and  
11:01 6 a percentage of the turnover on the machines will go towards that  
11:01 7 jackpot pool, and then a trigger point based on a mystery trigger  
11:01 8 value will then pay the jackpot out. It is called an in-house  
11:01 9 mystery jackpot in industry terms if that helps the Commission.

11:01 10

11:02 11 Q. That helps a lot. Because now I understand what it means.  
11:02 12 So, effectively, if we just pause for a moment, there are  
11:02 13 progressive jackpots and that is the ordinary kind of jackpot we  
11:02 14 were speaking about at the very outset, and they are linked to the  
11:02 15 turnover generally of the EGMs, whereas the mystery jackpot  
11:02 16 is --- it wouldn't be obvious to the player for what the jackpot  
11:02 17 payout is. That is the way it operates, right?

11:02 18

11:02 19 A. Yes, so there are standalone progressive jackpots that  
11:02 20 a single EGM is attached to that jackpot. Then you will have  
11:02 21 linked jackpots where a number of gaming machines are linked to  
11:02 22 a machine-driven jackpot, so they are termed machine-driven  
11:03 23 because the symbols or trigger event to win the jackpot is driven  
11:03 24 by the game. And then there will be mystery jackpots which  
11:03 25 operate the same as a jackpot or an EGM apart from the trigger  
11:03 26 being a machine-driven event, it will be another event approved  
11:03 27 as that jackpot mechanic.

11:03 28

11:03 29 Q. I understand. But so just so I understand this one issue, the  
11:03 30 money that the player can win or a loyalty program member can  
11:03 31 win from the mystery jackpot, is that money money contributed  
11:03 32 by people a portion of the wager on participating EGMs, or is it  
11:03 33 an amount of money that Crown puts up as part of its loyalty  
11:03 34 program expenses?

11:03 35

11:03 36 A. It would be --- it would be a contribution, to my  
11:03 37 knowledge, from the turnover on the gaming machine and  
11:04 38 incorporated into the return to players of that machine or group of  
11:04 39 machines. So it would come from the machine's turnover driving  
11:04 40 that jackpot pool.

11:04 41

11:04 42 Q. Are you sure about that, because players participating on  
11:04 43 EGMs who are not members, would they be making  
11:04 44 a contribution as well?

11:04 45

11:04 46 A. We have some gaming jackpots that only members  
11:04 47 contribute to.

11:04 1  
11:04 2 Q. So ---  
11:04 3  
11:04 4 A. And only members can therefore win those jackpots. There  
11:04 5 are --- in the system, it will determine carded contribution of  
11:04 6 turnover to that jackpot. So it would only be the carded players  
11:04 7 contributing to the jackpot.  
11:04 8  
11:04 9 Q. Sorry, the jackpot payments are contributions made by  
11:04 10 participating EGMs only by loyalty program members?  
11:05 11  
11:05 12 A. From carded play, yes. That's my understanding.  
11:05 13  
11:05 14 Q. So I'm clear, does Crown top-up the prize pool, the jackpot  
11:05 15 amount?  
11:05 16  
11:05 17 A. I don't think we top-up --- I think the start-up value of the  
11:05 18 jackpot would be the Crown contribution.  
11:05 19  
11:05 20 Q. Are you able to work out from today, all the way back to  
11:05 21 FY14, what amounts Crown contributed to the seed amount,  
11:05 22 I think that's what you call it, the starting jackpot amount, and  
11:05 23 what amounts were contributions from members?  
11:05 24  
11:05 25 A. I can make inquiries.  
11:05 26  
11:05 27 Q. Okay, we'll add that to Mr Borsky's list of tasks.  
11:05 28  
11:05 29 Are you also able to make inquiries, and then Mr Borsky can  
11:05 30 come back to us, in that Matchplay and others figure, strip out the  
11:06 31 jackpot payments; can you do that for me?  
11:06 32  
11:06 33 A. Or can someone at Crown do that for me?  
11:06 34  
11:06 35 A. I can organise for it to be done, yes.  
11:06 36  
11:06 37 Q. Thank you. The last item is pokie credit tickets. Do you  
11:06 38 see that?  
11:06 39  
11:06 40 A. Yes, I do.  
11:06 41  
11:06 42 Q. Are they just tickets issued for redemption at EGMs? You  
11:06 43 scan the ticket and get some free pokie credits; is that how that  
11:06 44 works?  
11:06 45  
11:06 46 A. Yes, I believe they are.  
11:06 47

- 11:06 1 Q. Do you what the criteria is upon which loyalty card  
11:06 2 members obtain these pokie credit tickets?  
11:06 3
- 11:06 4 A. I think that is the signup --- on signup to Crown Rewards,  
11:06 5 customers will be issued either a table games voucher or  
11:06 6 a gaming machine voucher, and that is what the pokie credit  
11:06 7 tickets are referring to.  
11:06 8
- 11:06 9 Q. I think we need to do a bit more work on the jackpot  
11:06 10 payments, and once we get those documents we might have to  
11:07 11 have another discussion about them, so let's put them to one side.  
11:07 12
- 11:07 13 In respect of all the other promotions in your spreadsheet, tell me  
11:07 14 if you agree with the following propositions: one, they are  
11:07 15 exclusively part of Crown's loyalty rewards program?  
11:07 16
- 11:07 17 A. Yes.  
11:07 18
- 11:07 19 Q. Two, they either accrue to a player based on signup or  
11:07 20 turnover?  
11:07 21
- 11:07 22 A. True.  
11:07 23
- 11:07 24 Q. Three, a person who plays an EGM and is not a Crown  
11:07 25 loyalty program member cannot participate in those promotions?  
11:07 26
- 11:07 27 A. Correct.  
11:07 28
- 11:07 29 Q. Thank you. I want to ask you this: are there documents that  
11:07 30 explain how each of those promotions work?  
11:07 31
- 11:07 32 A. There should be, yes.  
11:07 33
- 11:07 34 Q. We'll add that to Mr Borsky's list if we can.  
11:08 35
- 11:08 36 I want to go to the second table. Can you see that there?  
11:08 37
- 11:08 38 A. Yes.  
11:08 39
- 11:08 40 Q. The second table shows the benefits to Crown of deducting  
11:08 41 the loyalty program expenses we've discussed in calculating  
11:08 42 gaming tax payable; right?  
11:08 43
- 11:08 44 A. That's correct.  
11:08 45
- 11:08 46 Q. While the figures only go to 2019, I take it you could easily  
11:08 47 prepare the figures for F20 and F21?

11:08 1  
11:08 2 A. Yes, I could get that prepared.  
11:08 3  
11:08 4 Q. Okay. We'll add that to Mr Borsky's list, please.  
11:08 5  
11:08 6 Q. The heading for the table says "Tax impact based on  
11:08 7 31.72% deduction". That is your calculation or, I think you  
11:08 8 mentioned someone prepared the original sheet, I don't know if it  
11:08 9 was your calculation or their calculation?  
11:08 10  
11:08 11 A. That was my calculation.  
11:08 12  
11:08 13 Q. That is your calculation of the percentage of gross gaming  
11:08 14 revenue payable to the State under the management agreement;  
11:09 15 right?  
11:09 16  
11:09 17 A. The tax under the management agreement, yes, correct.  
11:09 18  
11:09 19 Q. And the next part of the heading says "does not include  
11:09 20 Super Tax impact"; you see that?  
11:09 21  
11:09 22 A. Yes, I see that.  
11:09 23  
11:09 24 Q. The reference to super tax is a reference to other tax  
11:09 25 payable under the management agreement; you agree with me?  
11:09 26  
11:09 27 A. I believe so. I'm not very well versed on the super tax  
11:09 28 calculation or requirements.  
11:09 29  
11:09 30 Q. Are you aware that when Crown reaches a certain threshold  
11:09 31 of gross gaming revenue, it pays additional tax beyond ---  
11:09 32  
11:09 33 A. I'm aware of that, yes.  
11:09 34  
11:09 35 Q. And that is known to be the super tax?  
11:09 36  
11:09 37 A. Yes.  
11:09 38  
11:09 39 Q. Okay. Can you see on here today that we have a potential  
11:09 40 underpayment of \$167 million excluding super tax, and excluding  
11:10 41 F20 and F21. Sitting here today, if we were to add in F20 and  
11:10 42 F21, do you know what that total potential underpayment might  
11:10 43 be?  
11:10 44  
11:10 45 A. No, I don't. F20, obviously with the closure, would have  
11:10 46 a significant impact on the overall number, and F21 obviously  
11:10 47 with restrictions would also be an impacted number. I'm not sure

11:10 1 what the number would be.  
11:10 2  
11:10 3 Q. 200?  
11:10 4  
11:10 5 A. It could be over 200, yes.  
11:10 6  
11:10 7 Q. Then you've told me you are not well versed in the super  
11:10 8 tax so you probably can't tell me what the potential uplift is  
11:10 9 there?  
11:10 10  
11:10 11 A. No, I couldn't.  
11:10 12  
11:10 13 Q. Tell me if you agree with this proposition: gambling tax  
11:11 14 payable by the casino to the State is based on gross gaming  
11:11 15 revenue?  
11:11 16  
11:11 17 A. I believe so.  
11:11 18  
11:11 19 Q. And you know the gross gaming revenue is the total of all  
11:11 20 sums received from the conduct or playing of games, less the  
11:11 21 total of sums paid out as winnings in respect of such conduct or  
11:11 22 playing of games; correct?  
11:11 23  
11:11 24 A. Correct.  
11:11 25  
11:11 26 Q. Thank you. And so you agree with me that you have  
11:11 27 known, since at least February 2021, that Crown either was not  
11:11 28 entitled or there was a real risk Crown was not entitled to deduct  
11:11 29 some or all of the expenses identified in your spreadsheet?  
11:11 30  
11:11 31 A. Yes.  
11:11 32  
11:12 33 Q. And you agree with me that Crown adopted the practice of  
11:12 34 making these deductions to benefit its bottom line?  
11:12 35  
11:12 36 A. Yes.  
11:12 37  
11:12 38 Q. And you agree with me that when this practice first started,  
11:12 39 Crown was concerned about the likelihood of the regulator  
11:12 40 detecting what it was doing?  
11:12 41  
11:12 42 A. Was --- can you just repeat that question.  
11:12 43  
11:12 44 Q. I can. And I do want to say something in fairness to you,  
11:12 45 the practice began before you took up the role that you are  
11:12 46 currently in. But do you agree with me that when this practice  
11:12 47 first started, Crown was concerned about the likelihood of the

11:12 1 regulator detecting what it was doing?  
11:13 2  
11:13 3 A. Was concerned the regulator .....

11:13 4  
11:13 5 COMMISSIONER: It didn't want the regulator to find out that it  
11:13 6 was making these deductions is another way of asking the  
11:13 7 question. Do you know whether Crown didn't want the regulator  
11:13 8 to find out what was the character of the deductions it was  
11:13 9 making from gross --- to calculate the amount of tax it had to  
11:13 10 pay?  
11:13 11

11:13 12 A. Yes. Understand the question, and the answer is yes.  
11:13 13

11:13 14 MR KOZMINSKY: And you agree your spreadsheet shows  
11:13 15 Crown treats its loyalty program expenses as sums paid out as  
11:13 16 winnings in respect of the conduct or playing of electronic  
11:13 17 gaming machines?  
11:13 18

11:13 19 A. Yes.  
11:13 20

11:13 21 Q. You agree with me that loyalty program benefits are not  
11:13 22 winnings, they are, as you have already explained, and Mr Emery  
11:13 23 the Chief Marketing Officer has already explained, calculated and  
11:13 24 obtained based on turnover; "yes" or "no"?  
11:14 25

11:14 26 A. I agree with they are obtained by the basis of turnover. The  
11:14 27 definition of winnings, I think, is where the ambiguity is. But  
11:14 28 they are not winnings from a gaming machine event.  
11:14 29

11:14 30 Q. If two customers gamble the same sums for the same period  
11:14 31 of time on the same EGMs, they will receive the same loyalty  
11:14 32 rewards even if one loses every penny and the other wins  
11:14 33 \$100 million; "yes" or "no"?  
11:14 34

11:14 35 A. Yes, they would earn the same benefits under the loyalty  
11:14 36 program; correct.  
11:14 37

11:14 38 Q. What is happening here, "yes" or "no", is that Crown is  
11:15 39 making deductions in order to subsidise its loyalty program  
11:15 40 expenses; "yes" or "no"?  
11:15 41

11:15 42 A. Subsidise its loyalty question is the question and it is  
11:15 43 a "yes" or "no" question. I think it is difficult to answer "yes" or  
11:15 44 "no".  
11:15 45

11:15 46 Q. Yes.  
11:15 47

11:15 1 A. I'm not sure they would --- those benefits wouldn't still be  
11:15 2 available if they weren't deductible.  
11:15 3  
11:15 4 Q. Sorry, we're at cross-purposes. By deducting these  
11:15 5 expenses, which are loyalty program expenses, it is cheaper for  
11:16 6 Crown to operate its loyalty program?  
11:16 7  
11:16 8 A. Yes.  
11:16 9  
11:16 10 Q. Can you help me understand why --- withdraw that. Do  
11:16 11 you know why this spreadsheet groups rewards amount, welcome  
11:16 12 Back amount and Matchplay and others into separate columns?  
11:16 13  
11:16 14 A. Because Welcome Back is a defined number in the  
11:16 15 marketing expenses, I think. So it is easily identified. No, I can't  
11:16 16 answer exactly. I know that is how it was presented to me.  
11:16 17  
11:16 18 Q. Okay.  
11:16 19  
11:16 20 A. But Welcome Back is separate in the accounts.  
11:16 21  
11:17 22 Q. When you say it was presented to you, who was it who  
11:17 23 prepared the original draft? You told me but I have forgotten.  
11:17 24  
11:17 25 A. Jose Machado.  
11:17 26  
11:17 27 Q. How do I spell his surname. It's okay. You don't need to  
11:17 28 spell it. Can I ask you this: is he still a Crown employee?  
11:17 29  
11:17 30 A. No, he's left the business.  
11:17 31  
11:17 32 Q. Okay. What was his role at the time he prepared the  
11:17 33 spreadsheet?  
11:17 34  
11:17 35 A. I think his title was commercial finance manager.  
11:17 36  
11:17 37 Q. Who did he report to? Did he report to Mr McGregor?  
11:17 38  
11:17 39 A. No, he reported to Simon Noonan, who was the GM of  
11:17 40 gaming finance.  
11:17 41  
11:17 42 Q. Did Mr Simon Noonan report to Mr McGregor?  
11:17 43  
11:17 44 A. Yes, I believe he does, at the time.  
11:17 45  
11:17 46 Q. After Mr Walsh asked you to prepare this spreadsheet, is it  
11:17 47 that you contacted him and asked him to put together a first cut of

11:18 1 it? Is that how it worked?  
11:18 2  
11:18 3 A. I believe, if I remember correctly, I asked Jose to pull  
11:18 4 together the bonus points and bonus jackpot as you can see here  
11:18 5 now.  
11:18 6  
11:18 7 Q. Okay. And is it possible that the split in columns was  
11:18 8 based on the different legal arguments Crown might try to run to  
11:18 9 defend its position, or not?  
11:18 10  
11:18 11 A. I don't believe so.  
11:18 12  
11:18 13 Q. Okay. Thank you.  
11:18 14  
11:18 15 Mr Commissioner, I want to take the witness to some advices  
11:18 16 from MinterEllison that are privileged, and obviously enough that  
11:18 17 will happen in a closed hearing --- I withdraw that. I imagine that  
11:18 18 Crown will want that to happen in a closed hearing, but it is  
11:18 19 a question for you, I think, Mr Commissioner, and Mr Borsky as  
11:18 20 to who should remain in the hearing room while that is taking  
11:18 21 place.  
11:18 22  
11:18 23 COMMISSIONER: All right. Well, I will get Mr Borsky to  
11:19 24 come on to the line. We will wait a minute for that.  
11:19 25  
11:19 26 Mr Borsky, now we reach a point where it was going to come up  
11:19 27 sooner or later, that is, what do we do with legal opinions, not  
11:19 28 just from you, but it is a general problem which we haven't had to  
11:19 29 deal with in the past. I'm --- there are two questions --- well,  
11:19 30 there is probably a lot more and you will raise some as well, but  
11:19 31 in my mind there are two questions: one, whether the public  
11:19 32 generally should be excluded, that is we no longer have live  
11:19 33 streaming, that is one question. The second question is, of the  
11:19 34 parties who have been given leave to appear, whether some or  
11:20 35 none of them should be excluded as well. They are the two  
11:20 36 levels.  
11:20 37  
11:20 38 I think you've probably heard me say in the past that I would as  
11:20 39 much as possible protect the privilege --  
11:20 40  
11:20 41 MR BORSKY: Yes.  
11:20 42  
11:20 43 COMMISSIONER: --- so a party is not disadvantaged by the  
11:20 44 coercive process that doesn't allow you to claim privilege against  
11:20 45 production of documents, and that position hasn't changed. That  
11:20 46 is my wish. I don't know if you were here or not or whether  
11:20 47 another member of your team was present when I said that you



11:20 1 would lose --- well, this is not a definitive legal statement,  
11:20 2 a statement of my opinion, that you would lose your privilege,  
11:20 3 although the statute protects it, when you or your client provides  
11:21 4 a document to me, you would lose that privilege if I made it  
11:21 5 public.  
11:21 6  
11:21 7 MR BORSKY: Yes, as I recall, Commissioner, you made that  
11:21 8 observation to a learned friend, Mr Rozen appearing for the  
11:21 9 VCGLR a couple of weeks ago.  
11:21 10  
11:21 11 COMMISSIONER: That's right.  
11:21 12  
11:21 13 MR BORSKY: I was present for that, and with great respect we  
11:21 14 agree with your opinion, so ---  
11:21 15  
11:21 16 COMMISSIONER: The other question though, which is not so  
11:21 17 clear to me, is whether you would lose the privilege if the ---  
11:21 18 generally, publishing it to the world your privilege is gone. I  
11:21 19 don't have legal difficulty coming to that view. Publishing the  
11:21 20 document, say, to the State Government, or to Mr Rozen's client  
11:21 21 who is an emanation of the State, I think under the legislation, I'm  
11:21 22 not sure that loses you the privilege. That's really the second  
11:21 23 issue that will come up.  
11:21 24  
11:22 25 In other words, you don't have to persuade me of the first, and  
11:22 26 even if I'm wrong, I wouldn't run the risk. But I'm unclear in my  
11:22 27 own mind what would happen if the only person --- and I've also  
11:22 28 got the major shareholder has been given leave to appear as well.  
11:22 29 So I would probably think they would need to be excluded in  
11:22 30 order to protect your privilege because they are, in a sense,  
11:22 31 a member of the public --  
11:22 32  
11:22 33 MR BORSKY: (Nods head).  
11:22 34  
11:22 35 COMMISSIONER: --- I'm just not sure what the position is with  
11:22 36 the State Government, the counterparty to the agreement, and  
11:22 37 whether publication to the State is sufficient to lose the privilege,  
11:22 38 or whether it is so confined that the privilege doesn't go. I really  
11:22 39 don't know the answer. They haven't had a long time to think  
11:23 40 about it, but it is an issue in my mind.  
11:23 41  
11:23 42 MR BORSKY: Thank you. May I say this in response. We are  
11:23 43 mindful of section 32 and the protections we can potentially avail  
11:23 44 ourselves of in other places at subsequent times by reason of  
11:23 45 section 32(2). And we are, with respect, grateful for the approach  
11:23 46 that to date the Commission has adopted in seeking within the  
11:23 47 bounds of reasonableness to ensure that there is some meaning

11:23 1 given to that protection. And certainly, whilst we would agree  
11:23 2 that the question of whether publication to the State or any of the  
11:23 3 other persons granted leave to intervene and participate in this  
11:23 4 Commission might be less black and white than the question of  
11:23 5 publication to the world at large on the webstream, the position  
11:23 6 which we would urge as forcefully as I'm able, with respect, to  
11:24 7 urge upon you, is that there ought be none of those persons  
11:24 8 present when privileged advice or communications are discussed  
11:24 9 and shown on screen. I certainly don't wish to develop reasons  
11:24 10 for that because I wouldn't want to fuel any arguments which may  
11:24 11 later be put by opponents to Crown's position in a subsequent  
11:24 12 privilege fight, but we submit that they ought not be present.

11:24 13  
11:24 14 Of course, we recognise ultimately the Commission is  
11:24 15 empowered to adopt the practices it may choose, and to use the  
11:24 16 language of section 32(2), the Commission may impose  
11:24 17 requirements under the Act upon us. If we are compelled to  
11:24 18 comply with certain requirements, that may be a different matter,  
11:24 19 but my submission to you, Commissioner, on behalf of Crown, is  
11:25 20 that these communications and advices ought be kept confidential  
11:25 21 to the maximum extent possible, and that includes the State not  
11:25 22 receiving or hearing or reading them.

11:25 23  
11:25 24 COMMISSIONER: Part of the problem which will emerge also  
11:25 25 is the extent to which it might be necessary to make reference to  
11:25 26 at least some of the material in my report so that a true and fair  
11:26 27 view can be taken one way or the other of these events. I don't  
11:26 28 have the answer to that. It is wrapped up in the topic that we  
11:26 29 are ---

11:26 30  
11:26 31 MR BORSKY: Yes.

11:26 32  
11:26 33 COMMISSIONER: --- now talking about.

11:26 34  
11:26 35 MR BORSKY: That may be a matter that more deliberate and  
11:26 36 careful consideration could be given to, and we may be able to  
11:26 37 make submissions to you about that in due course to try to assist  
11:26 38 you better and find a reasonable way through this balancing ---  
11:26 39 what is in substance a balancing exercise, I understand, from the  
11:26 40 perspective of the Commission. From the perspective of Crown,  
11:26 41 it holds privilege and it wants to do and seeks, through my  
11:26 42 submissions now, to do everything it can to protect that privilege  
11:26 43 and we, with respect, oppose any publication that would be  
11:26 44 inconsistent with the maintenance of the privilege.

11:26 45  
11:26 46 COMMISSIONER: Thank you, Mr Borsky. I might hear from  
11:26 47 either Mr Gray or Mr Rozen. Probably Mr Gray has a greater

11:27 1 interest than Mr Rozen because tax is payable to the State, not to  
11:27 2 the regulator. But each of them might want to say something.  
11:27 3 I've got you both on the screen, now Mr Rozen and Mr Gray, you  
11:27 4 can raffle who goes first.

11:27 5  
11:27 6 MR GRAY: I will go first, Commissioner. We would like to  
11:27 7 take that on notice.

11:27 8  
11:27 9 COMMISSIONER: Is that an application of the seniority rule?

11:27 10  
11:27 11 MR GRAY: No, but as you have just mentioned, it is the State to  
11:27 12 whom the tax is owing, although I understand the Commission  
11:27 13 has a collection function, or may have a collection function. I am  
11:27 14 going to need to take instructions on the whole suite of issues that  
11:27 15 has been raised during Mr Kozminsky's examination of  
11:27 16 Mr Mackay, and this is one aspect of the things I want to take  
11:27 17 instructions on and reflect on very carefully before I address you.

11:28 18  
11:28 19 COMMISSIONER: Well, then there is the question of how do I  
11:28 20 proceed in the meantime? I could proceed in complete private  
11:28 21 session, excluding everybody, and then hear argument or have  
11:28 22 a discussion with you and I guess Mr Rozen as well, and resolve  
11:28 23 the issue one way or another, which will then be resolved along  
11:28 24 the lines that it will all remain confidential, excluding  
11:28 25 Government and Government agencies, or I can make it all  
11:28 26 public, or I can make it public just to the Government agencies  
11:28 27 because we've got --- and the Government because we have the  
11:28 28 technology at least to enable that to be done.

11:28 29  
11:28 30 Rather than sort of have what might be a longish break, would  
11:28 31 you, Mr Gray, be okay if I proceeded shutting everybody out  
11:29 32 from the broadcast, and then we'll sort out the problem in due  
11:29 33 course, which I hope won't be due course a long due course, but  
11:29 34 in a relatively short period of time? That sounds like not a bad  
11:29 35 holding position to adopt at this point?

11:29 36  
11:29 37 MR GRAY: Commissioner, there is nothing I can say against  
11:29 38 that course if you have in mind, as I anticipate you do, having  
11:29 39 a closed session now traversing the advice, the advice that  
11:29 40 Mr Borsky is quite sensitive about and I can understand why he  
11:29 41 is. If the closed session is really just about traversing the advice,  
11:29 42 then I don't think I'm in a position to insist the State be present for  
11:29 43 that. These issues, I might say, are fresh issues, at least to me,  
11:29 44 and I just need time to reflect on then and to take instructions on  
11:29 45 them. But I understand the force of what Mr Borsky said  
11:30 46 concerning the effect of section 32(2) of the Inquiries Act, and  
11:30 47 how one might deal with an examination that will traverse the

11:30 1 contents of the advice. I'm not insisting the State be present for  
11:30 2 that.  
11:30 3  
11:30 4 COMMISSIONER: What I might do, in any event, I will hear  
11:30 5 Mr Rozen. I will have a break for 15 minutes, let everybody  
11:30 6 think about it, come back and have a brief chat and work out how  
11:30 7 we will proceed. It will likely be on the basis, likely, not saying  
11:30 8 for sure, but likely be on the basis that I will just allow Crown in  
11:30 9 on the questioning, and will look more closely and carefully at  
11:30 10 what everybody's else position should be later on. I think maybe  
11:30 11 a 15-minute reflection so everybody can take it in and work out  
11:30 12 where we go.  
11:30 13  
11:30 14 Do you want to add anything, Mr Rozen?  
11:31 15  
11:31 16 MR ROZEN: No, Commissioner. I'm content with that course.  
11:31 17  
11:31 18 COMMISSIONER: Mr Borsky, that will be okay by you?  
11:31 19  
11:31 20 MR BORSKY: Yes, certainly. And I'm grateful to my learned  
11:31 21 friend, Mr Gray, for the position he's adopted. Like him, I should  
11:31 22 just make clear, this is a fresh issue for us too. We had, and I  
11:31 23 make no complaint about it, but just to contextualise it for the  
11:31 24 Commissioner, we had no notice that this issue was going to be  
11:31 25 raised in Mr Mackay's examination and so we are dealing with it  
11:31 26 on the run as well, which is part of why I take the position that I  
11:31 27 do --  
11:31 28  
11:31 29 COMMISSIONER: That's right.  
11:31 30  
11:31 31 MR BORSKY: --- in relation to being most conservative in  
11:31 32 maintaining our privilege claim.  
11:31 33  
11:31 34 COMMISSIONER: And at one stage, maybe it is too soon to  
11:31 35 think about it now, but you might think that for a variety of  
11:31 36 reasons you might be better off waiving the privilege than not.  
11:32 37  
11:32 38 MR BORSKY: We're mindful of those considerations, and  
11:32 39 I have no instructions to waive privilege in these advices for the  
11:32 40 reason I just stated.  
11:32 41  
11:32 42 COMMISSIONER: I'm not suggesting, all I'm saying as another  
11:32 43 thing to think about. That's all.  
11:32 44  
11:32 45 MR BORSKY: Absolutely, and as you know, Commissioner, we  
11:32 46 have taken that decision in respect of some documents already.  
11:32 47 This advice, or these advices, come to us as a surprise, so I'm in

11:32 1 no position to indicate one way or another our position in relation  
11:32 2 to these.  
11:32 3  
11:32 4 COMMISSIONER: I should make the point that it hasn't been  
11:32 5 discovered by Crown at all. To be clear, we will have a break  
11:32 6 now and come back at 11.45.  
11:32 7  
11:32 8 In the meantime, Mr Mackay, I would appreciate it if you don't  
11:33 9 speak to anybody, other than a technician who might have to set  
11:33 10 up the system or adjust the system or something like that.  
11:33 11  
11:33 12 I will adjourn now.  
11:33 13  
11:33 14 MR KOZMINSKY: Mr Commissioner, just for the benefit of  
11:33 15 Mr Gray, Mr Rozen and my master, the documents that I will  
11:33 16 take Mr Mackay to, there will not be a lot of them, and I  
11:33 17 anticipate that I will be able to do it reasonably promptly, less  
11:33 18 than half an hour, I hope. So just in terms of everyone  
11:33 19 considering their position over the next 15 minutes, I flag that for  
11:33 20 everyone's benefit.  
11:33 21  
11:33 22 COMMISSIONER: Okay. Thank you. We'll adjourn.  
11:33 23  
11:33 24  
11:33 25 **ADJOURNED** [11.33AM]  
11:50 26  
11:50 27  
11:50 28 **RESUMED** [11.50AM]  
11:51 29  
11:51 30  
11:51 31 MR KOZMINSKY: Mr Commissioner.  
11:51 32  
11:51 33 COMMISSIONER: We are waiting for Mr Mackay to come back  
11:51 34 on to the screen. Just checking, Mr Mackay, can you hear me  
11:51 35 and if you speak I'll see if I can hear you? No, there is a problem.  
11:51 36 We may have to disconnect and start again.  
11:51 37  
11:51 38 Mr Borsky, can you be the errand person and see if somebody at  
11:51 39 Crown can reconnect?  
11:52 40  
11:52 41 Have you had any further thoughts about how we should  
11:52 42 proceed? Mr Borsky?  
11:52 43  
11:52 44 MR BORSKY: I've given it further thought and taken  
11:52 45 instructions. Our position is unchanged.  
11:52 46  
11:52 47 COMMISSIONER: Okay. I think Mr Mackay --- now it's off

11:52 1 mute. Can you hear me and can you speak and say something so  
11:52 2 make sure I can hear you, Mr Mackay?  
11:52 3  
11:52 4 A. Yes, I can hear you. I dropped off audio about five minutes  
11:52 5 before the break. I wasn't sure if that was by design or if I just  
11:52 6 dropped out.  
11:52 7  
11:52 8 COMMISSIONER: I think there is an issue with the connection,  
11:53 9 maybe the broadband speed at Crown. It happens from time to  
11:53 10 time. All you missed out was chatting amongst lawyers. I  
11:53 11 wouldn't call it missing out on much.  
11:53 12  
11:53 13 A. No, I wasn't concerned. I thought you might have muted  
11:53 14 me for that fact, it was a lawyer conversation.  
11:53 15  
11:53 16 COMMISSIONER: No, not at all. It was not my intention to  
11:53 17 exclude you at all. I think it is just a system failure.  
11:53 18  
11:53 19 MR KOZMINSKY: Mr Commissioner, before we get started,  
11:53 20 could I tender a few documents that I went to before the break,  
11:53 21 just so that they are tendered. The first is the spreadsheet, which  
11:53 22 is CRW.510 --- it's up on the screen, behind tab 13 of your  
11:53 23 bundle, Mr Commissioner.  
11:53 24  
11:53 25 COMMISSIONER: Yes, I have that. I will describe that as the  
11:53 26 spreadsheet prepared by Mr Mackay, although he only updated it.  
11:53 27 I understand that in February 2021. Exhibit 147.  
11:54 28  
11:54 29 MR KOZMINSKY: Mr Commissioner, 26 February I think was  
11:54 30 the date.  
11:54 31  
11:54 32 COMMISSIONER: 26 February, yes.  
11:54 33  
11:54 34  
11:54 35 **EXHIBIT #RC0147 - SPREADSHEET PREPARED BY MR**  
11:54 36 **MARK CAMERON MACKAY DATED 26 FEBRUARY**  
11:54 37 **2021**  
11:54 38  
11:54 39  
11:54 40 MR KOZMINSKY: The second document, Mr Commissioner, is  
11:54 41 the request for information, which you signed, behind tab 17 of  
11:54 42 your bundle, CRW.0000.0002.0180. I tender that, if I may.  
11:54 43  
11:54 44 COMMISSIONER: It is a letter dated 10 March 2021 from the  
11:54 45 Commission to the Directors, Crown Melbourne. That will be  
11:54 46 Exhibit 148.  
11:54 47

11:54 1  
11:54 2 **EXHIBIT #RC0148 - LETTER FROM THE COMMISSION**  
11:54 3 **TO THE DIRECTORS, CROWN MELBOURNE DATED 10**  
11:54 4 **MARCH 2021**  
11:54 5  
11:54 6  
11:54 7 MR KOZMINSKY: In fairness to the witness, I think his  
11:54 8 evidence was he wasn't involved in the preparation of the  
11:54 9 response to that request, but in any event I will tender now the  
11:54 10 response. It's CRW.0000.0003.0013. Mr Commissioner, behind  
11:55 11 tab 18. That is a letter from Allens, the Solicitors Assisting.  
11:55 12 There were two schedules.  
11:55 13  
11:55 14 COMMISSIONER: All right. That will be Exhibit 149, letter  
11:55 15 from Allens to the Solicitors Assisting the Commission dated 24  
11:55 16 March 2021.  
11:55 17  
11:55 18  
11:55 19 **EXHIBIT #RC0149 - LETTER WITH ANNEXURES FROM**  
11:55 20 **ALLENS TO THE SOLICITORS ASSISTING THE**  
11:55 21 **COMMISSION DATED 24 MARCH 2021**  
11:55 22  
11:55 23  
11:55 24 MR KOZMINSKY: In respect to that tender ---  
11:55 25  
11:55 26 COMMISSIONER: I should make it clear, it is with the  
11:55 27 annexures.  
11:55 28  
11:55 29 MR KOZMINSKY: And for the benefit of the transcript, the  
11:55 30 relevant annexure is CRW.0000.0003.0015. As long as all the  
11:55 31 annexures to letter are part of the tender, that's fine.  
11:56 32 Mr Commissioner, I think it is a matter for you now about how  
11:56 33 we are going to proceed.  
11:56 34  
11:56 35 COMMISSIONER: It is appropriate in the first instance, as I  
11:56 36 discussed with Mr Borsky and the other counsel, that I hold these  
11:56 37 hearings wholly in private. That is, only with you,  
11:56 38 Mr Kozminsky or Counsel Assisting on the one side, Mr Mackay  
11:56 39 and Mr Borsky and those instructing him and his juniors. So  
11:56 40 I will confine it to them.  
11:56 41  
11:56 42 I suppose any of your officers, any Crown officers, I don't mind  
11:56 43 because it is your privilege and you can show the documents  
11:56 44 internally to whomever you want. But I will exclude everybody  
11:56 45 else for the time being, and we will sort out the extent to which  
11:57 46 that ruling remains in place in the next day or so. I do have some  
11:57 47 questions for Mr Mackay before we break. I regret to say that the

11:57 1 process of excluding everybody, other than those presently on the  
11:57 2 screen that I can see, is going to take about five or seven minutes,  
11:57 3 so unfortunately this will take --- it will mean another break  
11:57 4 which will make take us through to the luncheon adjournment.

11:57 5

11:57 6 If Mr Kozminsky keeps it as short as possible as he has promised  
11:57 7 he would, that would help because I don't want much of this  
11:57 8 proceeding, not only Mr Mackay's evidence, but anybody's  
11:57 9 evidence, I don't want it to be held in private. But because of the  
11:57 10 privilege issue at the moment, I will. Before we break,  
11:58 11 Mr Mackay, I want to ask you a couple of questions myself.

11:58 12

11:58 13 A. Yes, Commissioner.

11:58 14

11:58 15 COMMISSIONER: This is obviously a very important issue both  
11:58 16 for Crown and for me. It is very important for me to get a full  
11:58 17 understanding, or as much of an understanding as I can, through  
11:58 18 you and later, others, what happened in February, and it takes me  
11:58 19 really to your conversations with Mr Walsh, Ms Fielding and  
11:58 20 Mr Herring. I want to deal with each of them because I assume  
11:58 21 your conversations with each of those people was a separate  
11:58 22 conversation. Tell me if I'm wrong or right about that.

11:58 23

11:58 24 A. That's correct.

11:58 25

11:58 26 COMMISSIONER: That's what I understood from what you  
11:58 27 were saying earlier. Bearing in mind the importance of the issue,  
11:59 28 both now and obviously in February, I want you to tell me, as  
11:59 29 best as you can recall it, your conversations, starting off with  
11:59 30 Mr Walsh. He got in touch with you, maybe by telephone, maybe  
11:59 31 by email and asked you to prepare what became the exhibited  
11:59 32 spreadsheet; right?

11:59 33

11:59 34 A. Yes. If I may, Commissioner, I think some of the  
11:59 35 confusion in my memory is that this bonus jackpot discussion has  
11:59 36 occurred, to my memory, previous to February in regards to the  
11:59 37 technical requirements document that Crown and the VCGLR  
11:59 38 have been working together on, which is a document that covers  
11:59 39 all of the IT systems and controls of approvals for the regulated  
11:59 40 environment in a gaming business. It also includes the functions  
12:00 41 of bonus jackpots and how they work in a system point of view.  
12:00 42 There is that conversation in my head as well as ---

12:00 43

12:00 44 COMMISSIONER: Can I just interrupt you, Mr Mackay.

12:00 45

12:00 46 A. Sure.

12:00 47



12:00 1 COMMISSIONER: You should assume that you will be asked  
12:00 2 questions about that aspect, but at the moment I'm really only --- I  
12:00 3 assume Mr Walsh did not ask for the spreadsheet in order to  
12:00 4 discuss with you or deal with the technical issues you are  
12:00 5 referring to?

12:00 6  
12:00 7 A. As I said to the Commission earlier, I can't recall whether it  
12:00 8 was linked to the Royal Commission request for documentation,  
12:00 9 or whether it was for another purpose. The omission of 2020 and  
12:00 10 2021 --- if it was for the Royal Commission, I would have  
12:00 11 assumed we would include those years for the spreadsheet. So I  
12:01 12 really am struggling to recall any more than being asked for the  
12:01 13 spreadsheet. And I was surprised at the February timing, but that  
12:01 14 is what the metadata on the spreadsheet said, so .....

12:01 15  
12:01 16 COMMISSIONER: It makes it quite clear when the document  
12:01 17 came into existence.

12:01 18  
12:01 19 A. Correct, and that's why I ---

12:01 20  
12:01 21 COMMISSIONER: And my question is not so much when you  
12:01 22 prepared it because I know that, but rather, what did Walsh say to  
12:01 23 you? It wasn't just "Could you prepare a spreadsheet that sets out  
12:01 24 this information for me as is recorded"; it must have been more  
12:01 25 than that, no?

12:01 26  
12:01 27 A. It must have been, and it would have been in regards to the  
12:01 28 tax implication of the bonus jackpot deductions that Crown  
12:01 29 makes. I cannot recall the exact conversation, Commissioner, I'm  
12:01 30 sorry.

12:01 31  
12:01 32 COMMISSIONER: And the issue of the tax implications was not  
12:02 33 a new issue to you?

12:02 34  
12:02 35 A. No, it was not.

12:02 36  
12:02 37 COMMISSIONER: No, because it had been considered from  
12:02 38 time to time internally by Crown?

12:02 39  
12:02 40 A. Yes, that's correct.

12:02 41  
12:02 42 COMMISSIONER: And the last time it was considered was  
12:02 43 some years ago?

12:02 44  
12:02 45 A. The last time --- you mean by myself or by other parties at  
12:02 46 Crown?

12:02 47

12:02 1 COMMISSIONER: Either by yourself or other parties to your  
12:02 2 knowledge. I don't want you to tell me what you don't ---  
12:02 3  
12:02 4 A. The last time I recall having the discussion, other than in  
12:02 5 February when I was asked for that document, was in regards to  
12:02 6 the technical requirement document that I spoke of. That is the  
12:02 7 last time. But I've been aware of the bonus jackpot and gaming  
12:02 8 tax calculations since I joined Crown in July 2017.  
12:02 9  
12:02 10 COMMISSIONER: Okay. But when Walsh asked you to  
12:02 11 prepare the spreadsheet, did you ask him "Why do you want it?"  
12:03 12  
12:03 13 A. I do recall it being in regards to the tax implications of the  
12:03 14 deductions for bonus jackpots.  
12:03 15  
12:03 16 COMMISSIONER: Did you have a discussion about what those  
12:03 17 implications were?  
12:03 18  
12:03 19 A. Apart from the overall number of what the tax implication  
12:03 20 would be, no, I don't believe we had a discussion.  
12:03 21  
12:03 22 COMMISSIONER: It was a bad question on my account. I  
12:03 23 meant at the time that he asked you to prepare or provide him  
12:03 24 with information, not afterwards.  
12:03 25  
12:03 26 A. No, I believe --- if I recall correctly I was asked to pull  
12:03 27 together the tax implications on the bonus jackpot calculations.  
12:03 28  
12:03 29 COMMISSIONER: You keep on referring to it as a bonus  
12:03 30 jackpot but quite a bit of the data has nothing to do with the  
12:03 31 jackpot. Why do you keep on referring to it as a jackpot?  
12:03 32  
12:03 33 A. Sorry, Commissioner, that's how it is referred to at Crown  
12:04 34 as.  
12:04 35  
12:04 36 COMMISSIONER: So car parking and valley is a jackpot? Your  
12:04 37 internal documents describe them as a jackpot? That is unlikely,  
12:04 38 isn't it, Mr Mackay?  
12:04 39  
12:04 40 A. No, Commissioner, that is how it is referred to and has  
12:04 41 been referred to since I joined Crown in July 2017 in regards to  
12:04 42 this particular aspect of the gaming tax calculation.  
12:04 43  
12:04 44 COMMISSIONER: I see. For gaming tax purposes it is called  
12:04 45 a jackpot?  
12:04 46  
12:04 47 A. That is how it is referred to whenever it is spoken to me at

12:04 1 Crown, Commissioner.  
12:04 2  
12:04 3 COMMISSIONER: I thought you said for gaming tax purposes it  
12:04 4 is referred to as a jackpot. Does that mask what it really is?  
12:04 5  
12:04 6 A. No, I think that is in reference to --- well, that's what it has  
12:04 7 always been called. I can't explain it other than saying --- when  
12:04 8 someone says to me "the bonus jackpot calculation for tax", I  
12:05 9 know that is referring to the elements of the loyalty program that  
12:05 10 are earned on gaming machines that are applied as a tax  
12:05 11 deduction.  
12:05 12  
12:05 13 COMMISSIONER: I see. After you prepared the spreadsheet,  
12:05 14 you had another conversation or conversations with Walsh?  
12:05 15  
12:05 16 A. I think if I recall correctly, I would have --- I'm trying to  
12:05 17 recall, I would have given him the document and explained to  
12:05 18 him what the calculations were. They are pretty self-explanatory.  
12:05 19  
12:05 20 COMMISSIONER: Did you discuss the implications for Crown  
12:05 21 of your calculations?  
12:05 22  
12:05 23 A. No, because that was already well known as an implication  
12:05 24 if they weren't tax deductible.  
12:05 25  
12:05 26 COMMISSIONER: All right.  
12:05 27  
12:05 28 What about your discussions with Mr Fielding. How did they  
12:05 29 come about?  
12:05 30  
12:05 31 A. I believe I was ensuring, and again I can't recall if that was  
12:05 32 in February or not, Commissioner, but I have had discussions  
12:06 33 with Michelle on the bonus jackpot calculations, and it was in  
12:06 34 regards to --- from a compliance point of view, the calculation of  
12:06 35 gaming tax.  
12:06 36  
12:06 37 COMMISSIONER: Did you tell Ms Fielding that somebody at  
12:06 38 Crown should inform the Government or should inform the  
12:06 39 regulator that there was a potential underpayment of gaming tax  
12:06 40 of some \$200 million or so?  
12:06 41  
12:06 42 A. No, I did not.  
12:06 43  
12:06 44 COMMISSIONER: Why not?  
12:06 45  
12:06 46 A. Because my understanding was that the company's position  
12:06 47 was they were deductible items, so it never occurred to me to

12:06 1 raise it as a concern if the company's view was that they were tax  
12:06 2 deductible.  
12:06 3  
12:06 4 COMMISSIONER: You were asked the question to show the  
12:06 5 impact of the claimed deductions just in case the company's  
12:07 6 position was wrong.  
12:07 7  
12:07 8 A. Correct.  
12:07 9  
12:07 10 COMMISSIONER: All right. The discussions with Ms Fielding  
12:07 11 were after you prepared the spreadsheet?  
12:07 12  
12:07 13 A. If I recall correctly, but, as I said, I really can't recall  
12:07 14 whether it was before or after or during or in the process of  
12:07 15 pulling together that information, Commissioner.  
12:07 16  
12:07 17 COMMISSIONER: It's a very serious conversation, a discussion  
12:07 18 about the potential liability of a couple of hundred millions of  
12:07 19 dollars of your company. I don't appreciate how it can slip your  
12:07 20 mind so easily. It is not an ancient conversation. It is  
12:07 21 a conversation that happened in recent times.  
12:07 22  
12:07 23 A. I understand, Commissioner. As I said, I can't recall  
12:07 24 whether it was in February or earlier that I had discussed this with  
12:07 25 Michelle Fielding. I know I had and clearly gave that document  
12:08 26 to Mr Walsh in February and had a discussion about it, but  
12:08 27 whether the discussion with Ms Fielding and Mr Herring was  
12:08 28 earlier to that, I'm sorry, I cannot recall the date or timing of that  
12:08 29 conversation.  
12:08 30  
12:08 31 COMMISSIONER: Is there any incident that occurred that  
12:08 32 would have been the trigger for a conversation with either  
12:08 33 Ms Fielding or Mr Herring before you prepared the spreadsheet?  
12:08 34 Anything?  
12:08 35  
12:08 36 A. It was in review of the technical requirements document  
12:08 37 with the VCGLR that that conversation came up.  
12:08 38  
12:08 39 COMMISSIONER: Can you tell me as best you can precisely  
12:08 40 what was said? You've given me the topic. Tell me as best you  
12:08 41 can what was actually said?  
12:08 42  
12:08 43 A. It was a conversation around the inclusion of the bonus  
12:09 44 jackpot system --- the mechanisms for which, going to the  
12:09 45 technical requirements documents that impact the bonus jackpots  
12:09 46 and, therefore, they would be included in the TRD from  
12:09 47 a regulatory ongoing point of view. They were never included in

12:09 1 the TRD prior to --- the technical requirements document had not  
12:09 2 been updated for some years, so I understand the VCGLR were  
12:09 3 looking to have a very comprehensive technical requirements  
12:09 4 document which would include these elements and the discussion  
12:09 5 was around the tax calculation and how they are managed in the  
12:09 6 system.

12:09 7  
12:09 8 COMMISSIONER: Who raised the discussion, you or one of the  
12:09 9 other two?

12:09 10  
12:09 11 A. I'd suggest it was raised by either Peter and Michelle as  
12:09 12 they were working directly on the technical requirements  
12:09 13 document with the VCGLR.

12:10 14  
12:10 15 COMMISSIONER: And you can't recall what was said?

12:10 16  
12:10 17 A. Not specifically, Commissioner, no.

12:10 18  
12:10 19 COMMISSIONER: What about generally?

12:10 20  
12:10 21 A. I think I've --- that's kind of what I explained. It was in  
12:10 22 regards to how the system is controlled and/or approved and what  
12:10 23 elements of the system need to be in the technical requirements  
12:10 24 documents for that element of what is termed bonus jackpots.

12:10 25  
12:10 26 COMMISSIONER: Okay. We'll have a break and lock out  
12:10 27 everybody.

12:10 28  
12:10 29 MR KOZMINSKY: Before we have a break, can I ask a question  
12:10 30 following up that exchange.

12:10 31  
12:10 32 COMMISSIONER: Sure.

12:10 33  
12:10 34 MR KOZMINSKY: I think, Mr Mackay, I think you told the  
12:10 35 Commissioner you referred to the items as bonus jackpots  
12:10 36 internally. I want to read you your evidence from this morning. I  
12:10 37 said this:

12:10 38  
12:10 39 *Internally Crown describes the promotions we have just*  
12:10 40 *discussed as part of the gaming machine program; "yes"*  
12:10 41 *or "no"?*

12:10 42  
12:10 43 *Answer: Yes.*

12:10 44  
12:10 45 *Question: It does not describe them as bonus jackpots*  
12:11 46 *internally; correct?*

12:11 47

12:11 1           *Answer: Correct.*  
12:11 2  
12:11 3       The evidence you gave me this morning and the evidence you just  
12:11 4       gave the Commissioner now both cannot be correct, can they?  
12:11 5  
12:11 6       A. The evidence I gave to the Commissioner was in terms of  
12:11 7       the gaming tax calculation and the inclusion of the items as bonus  
12:11 8       jackpots. They are referred to in the company, or Crown, as part  
12:11 9       of the gaming machines program as part of loyalty programs, and  
12:11 10      so they are one and the same, but with different meanings for  
12:11 11      different calculations or different areas of the business.  
12:11 12  
12:11 13      MR KOZMINSKY: I just want to be clear about this. They are  
12:11 14      not referred to as bonus jackpots internally except for the  
12:11 15      purposes of calculating gross gaming revenue; correct?  
12:11 16  
12:11 17      A. That is correct to my understanding.  
12:11 18  
12:11 19      Q. Yes. And that is because Crown thinks if we put the word  
12:11 20      "jackpot" into the name, we can try to argue that it is  
12:12 21      a deduction?  
12:12 22  
12:12 23      A. I don't believe that's the view of the business, but my  
12:12 24      understanding is that it's been a calculation since --- including  
12:12 25      Welcome Back and other things, since the casino opened in 1995.  
12:12 26      But I don't believe Crown's view is that if they put the word  
12:12 27      "jackpot" in there, you can make it a deduction.  
12:12 28  
12:12 29      Q. Did you say that is how Crown has been describing the  
12:12 30      matter for gross gaming revenue regulation since 1995? Is that  
12:12 31      your evidence?  
12:12 32  
12:12 33      A. No, sorry. From my understanding, ever since those items  
12:12 34      have been included in the deduction for gaming tax, that is how  
12:12 35      they have been referred to --- and that may have been back from  
12:12 36      the start, I don't know.  
12:12 37  
12:12 38      MR KOZMINSKY: I think someone has come onscreen,  
12:12 39      Mr Commissioner. Yes.  
12:12 40  
12:12 41      So once Crown started deducting them, they changed the name to  
12:13 42      include the word "jackpot" but prior to that time, it did not  
12:13 43      include the word "jackpot"?  
12:13 44  
12:13 45      A. I don't know, Mr Kozminsky, I wasn't here when that was  
12:13 46      occurring.  
12:13 47

12:13 1 MR KOZMINSKY: Okay, we'll take a break and go to the  
12:13 2 advices and see what they reveal, Mr Commissioner.  
12:13 3  
12:13 4 COMMISSIONER: Mr Rozen, did you want to say something  
12:13 5 before we close down?  
12:13 6  
12:13 7 MR ROZEN: Yes, a simple logical question, Mr Commissioner.  
12:13 8 How will we know when we are permitted back on?  
12:13 9  
12:13 10 COMMISSIONER: We will make sure everybody gets an email  
12:13 11 or a text message.  
12:13 12  
12:13 13 MR ROZEN: Grateful. Thank you.  
12:13 14  
12:13 15 COMMISSIONER: We'll communicate with you one way or  
12:13 16 another. I will leave it to somebody else to work out how.  
12:13 17  
12:13 18 MR ROZEN: One further question, if I could, do we leave the  
12:13 19 hearing room or will we be excluded by the operator or both?  
12:13 20  
12:13 21 COMMISSIONER: I have to take instructions on that.  
12:14 22  
12:14 23 MR ROZEN: Right.  
12:14 24  
12:14 25 COMMISSIONER: I'm told you get put in a waiting room but  
12:14 26 because it is now 12.15, I would think that we'll have the private  
12:14 27 session and then break for lunch, so if everybody is back at 1.45?  
12:14 28 We will let you know if 1.45 is ambitious, otherwise, why don't  
12:14 29 you just leave and come back to the waiting room, or I'm not sure  
12:14 30 where you come back to, at 1.45.  
12:14 31  
12:14 32 MR ROZEN: Very grateful.  
12:14 33  
12:14 34 COMMISSIONER: Does that make sense?  
12:14 35  
12:14 36 MR ROZEN: It does, indeed, thank you.  
12:14 37  
12:14 38 COMMISSIONER: All right. We will break until the system is  
12:14 39 set to go. Thank you.  
12:14 40  
12:14 41  
12:14 42 **ADJOURNED** [12.14PM]  
12:23 43  
12:23 44  
12:23 45 **RESUMED** [12.23PM]  
12:23 46  
12:23 47

12:23 1     **HEARING IN CAMERA**  
12:23 2  
12:23 3  
12:23 4     **COMMISSIONER:** For the record, I have made non-publication  
12:23 5 orders. They will be put on the website but the order is actually  
12:23 6 made, so you are fully protected for the time being, Mr Borsky.  
12:23 7  
12:23 8     **MR BORSKY:** Thank you, Commissioner. May we confirm that  
12:23 9 the 35 participants in the Zoom hearing are confined exclusively  
12:23 10 to the Commission, its Counsel, Solicitors and staff, and Crown  
12:23 11 and Crown's representatives?  
12:23 12  
12:23 13     **COMMISSIONER:** Correct, yes. Everybody else has been  
12:24 14 excluded. Mr Kozminsky?  
12:24 15  
12:24 16     **MR KOZMINSKY:** Thank you, Commissioner.  
12:24 17  
12:24 18     Mr Mackay, I noticed that were you reading something during the  
12:24 19 break. What were you reading?  
12:24 20  
12:24 21     A. My statement.  
12:24 22  
12:24 23     Q. Thank you.  
12:24 24  
12:24 25     Mr Operator, please go to MEM.5001.0003.1774. Mr Mackay,  
12:24 26 that is an email in which Josh Preston --- do you know who  
12:24 27 Mr Preston is and the role he used to hold at Crown?  
12:24 28  
12:24 29     A. Yes, do.  
12:24 30  
12:24 31     Q. To Glen Ward. Do you know who he is?  
12:25 32  
12:25 33     A. No, I don't. I can tell he's from MinterEllison.  
12:25 34  
12:25 35     Q. He's a partner at MinterEllison. On 17 October Mr Preston  
12:25 36 sent an email to Mr Ward asking for advice about the issues  
12:25 37 we've been discussing. If you drop down to the fourth and fifth  
12:25 38 bullet points there, "in 2012 a concept"; do you see that?  
12:25 39  
12:25 40     A. Yes.  
12:25 41  
12:25 42     Q. Read those two dot points, the fourth and fifth ones, to  
12:25 43 yourself. You see that?  
12:25 44  
12:25 45     A. Yes.  
12:25 46  
12:25 47     Q. Are the matters set out there something that you've known?



12:26 1  
12:26 2 A. Yes, I've known that these were bonus jackpot inclusions in  
12:26 3 the thing, and I also have known that the VCGLR was not made  
12:26 4 aware of --- specifically of that change, I don't believe.  
12:26 5  
12:26 6 Q. Yes. And you are aware it was deemed a bonus jackpot by  
12:26 7 Crown, not by anyone else? Do you see that in the fourth bullet  
12:26 8 point?  
12:26 9  
12:26 10 A. Yes, I do, yes.  
12:26 11  
12:26 12 Q. You are aware, and we'll come to it in a moment if you are  
12:26 13 not, that what was considered by VCGLR in respect of the  
12:26 14 Welcome Back bonus had nothing to do whether it was deducted  
12:26 15 for the purposes of calculating of gaming tax. Correct?  
12:26 16  
12:26 17 A. Sorry, can you repeat that, you broke up a little bit.  
12:26 18  
12:26 19 Q. Of course. You are aware that what was considered by the  
12:26 20 VCGLR, this is the fifth bullet point, the Welcome Back bonus,  
12:26 21 when it was considered by the VCGLR, that was not  
12:26 22 a consideration relating to deductibility of those expenses; are  
12:27 23 you aware of that?  
12:27 24  
12:27 25 A. I wasn't aware of that, no.  
12:27 26  
12:27 27 Q. Okay.  
12:27 28  
12:27 29 Mr Commissioner, can I just tender that document confidentially  
12:27 30 for the time being?  
12:27 31  
12:27 32 COMMISSIONER: I will describe it as a confidential  
12:27 33 memorandum from MinterEllison to Joshua Preston, 19 ---  
12:27 34  
12:27 35 MR KOZMINSKY: It is a document from Mr Preston to  
12:27 36 Mr Ward. It is a request for advice.  
12:27 37  
12:27 38 COMMISSIONER: No, I've got --- sorry, I've got the wrong  
12:27 39 document.  
12:27 40  
12:27 41 MR KOZMINSKY: Tab 2 of your ---  
12:27 42  
12:27 43 COMMISSIONER: Sorry about that. I've now got it. I will still  
12:27 44 describe it as a confidential email from Joshua Preston to Glen  
12:28 45 Ward, 17 October 2018, Exhibit 150.  
12:28 46  
12:28 47

12:28 1 **EXHIBIT #RCPH0150 - EMAIL FROM MR JOSHUA**  
12:28 2 **PRESTON TO MR GLEN WARD DATED 17 OCTOBER**  
12:28 3 **2018 (CONFIDENTIAL)**

12:28 4

12:28 5

12:28 6 MR KOZMINSKY: Thank you.

12:28 7

12:28 8 Mr Mackay, I'm right, aren't I, the advice was sought after the  
12:28 9 VCGLR started asking some questions about this issue?

12:28 10

12:28 11 A. I'm not 100 per cent sure on that, Mr Kozminsky. I can't  
12:28 12 recall being in a conversation that said that "We're getting legal  
12:28 13 advice because VCGLR are asking questions."

12:28 14

12:28 15 Q. Okay. I will ask you a different question. Was the VCGLR  
12:28 16 asking questions about the bonus jackpot deductions prior,  
12:28 17 a couple of months before --- in June 2018, was the VCGLR  
12:29 18 asking those questions?

12:29 19

12:29 20 A. I can't recall the date. I can recall some correspondence  
12:29 21 between Jason Cremona maybe, and Crown in regards to bonus  
12:29 22 jackpots. I couldn't confirm the date for you, Mr Kozminsky.

12:29 23

12:29 24 Q. That's right. And that's what prompted getting the advice.  
12:29 25 So the regulator ---

12:29 26

12:29 27 A. You could assume so, yes.

12:29 28

12:29 29 Q. I'm asking you not to assume, I'm asking if that is the case.  
12:29 30 You are head of EGM, it is an EGM promotion, regarding to  
12:29 31 EGM deductibility, and you are on the email correspondence  
12:29 32 with the VCGLR.

12:29 33

12:29 34 A. I can remember the correspondence with Jason Cremona  
12:29 35 from the VCGLR on the bonus jackpots, and I think Peter  
12:29 36 Herring was the main responding to that. Legal advice may have  
12:29 37 been sought following that, yes.

12:29 38

12:29 39 Q. Yes, it was sought following that, and it was sought  
12:30 40 because the regulator was digging around?

12:30 41

12:30 42 A. Yes.

12:30 43

12:30 44 Q. I will tender, we don't have to go to that email  
12:30 45 correspondence, behind tab 1 for the Commissioner, it  
12:30 46 MEM.5001.0003.0842.

12:30 47

12:30 1 Mr Mackay, that is just the email we are discussing, I'm not going  
12:30 2 to go to it, I'm just going to tender it.

12:30 3

12:30 4 COMMISSIONER: I will mark the email chain ending in the  
12:30 5 email from Peter Herring to Michelle Fielding, 6 June 2018, as  
12:30 6 Exhibit 151.

12:30 7

8

9

**EXHIBIT #RCPH0151 - EMAIL CHAIN ENDING IN  
EMAIL FROM MR PETER HERRING TO MS MICHELLE  
FIELDING 6 JUNE 2018 (CONFIDENTIAL)**

12

13

12:30 14 MR KOZMINSKY: Thank you.

12:30 15

12:30 16 COMMISSIONER: If you give me a second, Mr Borsky wants to  
12:30 17 say something.

12:30 18

12:30 19 MR BORSKY: Yes, I couldn't hear clearly my friend's recitation  
12:30 20 of the doc ID, so we are not able --- these are documents  
12:30 21 produced by Minters, I don't have them. Can I ask you to repeat  
12:31 22 that document ID so we can follow along at least?

12:31 23

12:31 24 MR KOZMINSKY: Of course, Mr Borsky.

12:31 25 MEM.5001.0003.0842.

12:31 26

12:31 27 MR BORSKY: Thanks.

12:31 28

12:31 29 MR KOZMINSKY: After the email that is on the screen was  
12:31 30 sent, what happened, Mr Mackay, was that Mr Preston then sent  
12:31 31 Mr Ward a number of emails to allow him to consider the issue  
12:31 32 and provide advice. The first is MEM.5001.0003.0850.

12:31 33

12:31 34 Mr Commissioner, behind tab 3 of your bundle.

12:31 35

12:31 36 Now, just pausing for a moment, you knew, Mr Mackay --- you  
12:32 37 don't need to read the email. I won't take you to the text of it, at  
12:32 38 least at the moment. You knew, Mr Mackay, didn't you, that we  
12:32 39 discussed the VCGLR is digging around, so Crown goes off to  
12:32 40 seek legal advice. Are you across the detail of what information  
12:32 41 Mr Preston is providing to MinterEllison in order to obtain the  
12:32 42 advice or not?

12:32 43

12:32 44 A. Sorry, you will have to be a bit clearer, Mr Kozminsky. So  
12:32 45 in regards to the information that Joshua Preston has sent --- on  
12:32 46 this document or in general?

12:32 47

12:32 1 Q. We've discussed the VCGLR's digging around. Crown  
12:32 2 goes and get some advice. You know about that. You've told me  
12:32 3 that. Now I'm asking you, when Crown goes off to get the  
12:32 4 advice, are you across the detail of what information Crown is  
12:32 5 providing MinterEllison to allow them to provide the advice?  
12:33 6  
12:33 7 A. Oh, I definitely had seen some of the information that was  
12:33 8 being forwarded on.  
12:33 9  
12:33 10 Q. Yes. And that is because a person involved in this process  
12:33 11 was Peter Herring?  
12:33 12  
12:33 13 A. That's correct.  
12:33 14  
12:33 15 Q. And Peter Herring works under you?  
12:33 16  
12:33 17 A. No, Peter Herring reports to Xavier Walsh.  
12:33 18  
12:33 19 Q. Is he at the same level as you, is he?  
12:33 20  
12:33 21 A. Yes, he is.  
12:33 22  
12:33 23 Q. My apologies.  
12:33 24  
12:33 25 Mr Commissioner, I will tender that email and its attachment, if I  
12:33 26 may.  
12:33 27  
12:33 28 COMMISSIONER: Email from Joshua Preston to Glen Ward, 18  
12:33 29 October 2018 with attachment, Exhibit 152.  
12:33 30  
12:33 31  
12:33 32 **EXHIBIT #RC0152 - EMAIL WITH ATTACHMENT**  
12:33 33 **FROM MR JOSHUA PRESTON TO MR GLEN WARD**  
12:33 34 **DATED 18 OCTOBER 2018**  
12:33 35  
12:33 36  
12:33 37 MR KOZMINSKY: I will not bring up the attachment each time  
12:33 38 because some of the documents have several attachments and  
12:33 39 (inaudible). Unless I am going to take the witness to a specific  
12:33 40 part of the attachment, Mr Commissioner, I'm not proposing to  
12:34 41 bring it up.  
12:34 42  
12:34 43 Then, later that day, Mr Preston sent more material to Mr Ward --  
12:34 44 behind tab 4 of your bundle, Mr Commissioner. It's  
12:34 45 MEM.5001.0003.0830.  
12:34 46  
12:34 47 Mr Mackay, I don't need you to read out the email, but I do need

12:34 1 you to go to one of the attachments to help me understand it. It is  
12:34 2 the attachment MEM.5001.0003.0833. This is an attachment to  
12:34 3 the email we just saw, Mr Mackay.

12:34 4  
12:34 5 Can you see in the top right-hand side corner if the operator goes  
12:34 6 up, it says "Form currently receive". Someone has written that by  
12:34 7 hand?

12:34 8  
12:34 9 A. I do.

12:34 10  
12:35 11 Q. Do you know whose handwriting that is?

12:35 12  
12:35 13 A. No, I don't, sorry.

12:35 14  
12:35 15 Q. I understand that to mean, tell me if I'm right or wrong, that  
12:35 16 this is the form currently provided --- well, provided as at  
12:35 17 October 2018, to the VCGLR in terms of Crown's calculation of  
12:35 18 gross gaming revenue; is that right?

12:35 19  
12:35 20 A. That's my understanding, yes.

12:35 21  
12:35 22 Q. Just if you take a moment, the operator can scroll up and  
12:35 23 down if you ask him or her to, I don't know who it is, I want you  
12:35 24 to have a look at the document and tell me if that is still the  
12:35 25 current form in which that information is provided to the  
12:35 26 VCGLR.

12:35 27  
12:35 28 A. I believe so.

12:35 29  
12:35 30 Q. If I was working at the VCGLR and I received this  
12:35 31 document, it would be impossible for me to know that Crown had  
12:35 32 deducted car parking?

12:36 33  
12:36 34 A. Yes.

12:36 35  
12:36 36 Q. Is that right?

12:36 37  
12:36 38 A. On that form, yes.

12:36 39  
12:36 40 Q. It would be impossible for me to know that Crown had  
12:36 41 deducted valet parking; correct?

12:36 42  
12:36 43 A. Yes, correct.

12:36 44  
12:36 45 Q. And it would be impossible for me to know that Crown had  
12:36 46 deducted complimentary hotel stays?

12:36 47

12:36 1 A. Correct.  
12:36 2  
12:36 3 Q. It would really be --- sorry and --- it would really be very  
12:36 4 difficult without Crown making a full and proper disclosure for  
12:36 5 the VCGLR to understand what was being deducted; you agree  
12:36 6 with me?  
12:36 7  
12:36 8 A. I would agree with you and I don't know the inner workings  
12:36 9 of the VCGLR and their knowledge of the deductions, but from  
12:36 10 that form it would be difficult to ascertain what the deductions  
12:36 11 were, yes.  
12:36 12  
12:36 13 MR KOZMINSKY: Mr Commissioner, I will tender the email  
12:36 14 and all the attachments even though I haven't been to all the  
12:36 15 attachments, if I may?  
12:37 16  
12:37 17 COMMISSIONER: That will be Exhibit 153, email from Joshua  
12:37 18 Preston to Glen Ward 18 October 2018 with the attachment.  
12:37 19  
20  
21 **EXHIBIT #RCPH0153 - EMAIL WITH ATTACHMENTS**  
22 **FROM MR JOSHUA PRESTON TO MR GLEN WARD**  
23 **DATED 18 OCTOBER 2018 (CONFIDENTIAL)**  
24  
25  
12:37 26 MR KOZMINSKY: Thank you.  
12:37 27  
12:37 28 COMMISSIONER: Mr Borsky?  
12:37 29  
12:37 30 MR BORSKY: And these, if I may enquire, are all being  
12:37 31 tendered as confidential exhibits at this stage?  
12:37 32  
12:37 33 COMMISSIONER: Yes, they are.  
12:37 34  
12:37 35 MR BORSKY: Thank you.  
12:37 36  
12:37 37 MR KOZMINSKY: My apologies.  
12:37 38  
12:37 39 COMMISSIONER: I should preface each one, I think, by  
12:37 40 describing it as "confidential" as I did the first one. Thank you,  
12:37 41 Mr Borsky, I will fix that up.  
12:37 42  
12:37 43 MR KOZMINSKY: The fault is mine. I apologise. I ought to  
12:37 44 have made that clear.  
12:37 45  
12:37 46 The next document, Mr Operator, if you bring up  
12:37 47 MEM.5001.0003.1732.

12:37 1  
12:37 2 Mr Mackay, this is an email from Mr Preston to Mr Ward the  
12:38 3 following day, 19 October; you see that?  
12:38 4  
12:38 5 A. Yes, I do.  
12:38 6  
12:38 7 Q. I just want to take you to one document and it has to do  
12:38 8 with the Welcome Back promotion which we discussed earlier  
12:38 9 on. You remember?  
12:38 10  
12:38 11 A. Yes, we do.  
12:38 12  
12:38 13 Q. The approval of the VCGLR was very narrow and didn't  
12:38 14 have to deal with deductibility; do you remember that?  
12:38 15  
12:38 16 A. I do.  
12:38 17  
12:38 18 Q. I apologise for turning away like this. I apologise, it is  
12:38 19 rude.  
12:38 20  
12:38 21 Operator, it is MEM.5001.0003.1749.  
12:38 22  
12:38 23 Mr Commissioner, that is in the same tab, behind the last blue  
12:38 24 sheet.  
12:38 25  
12:38 26 Do you see there, Mr Mackay, that is a letter from the VCGR,  
12:39 27 which is the predecessor to the VCGLR?  
12:39 28  
12:39 29 A. Yes, I do.  
12:39 30  
12:39 31 Q. It is addressed to the EGM of Gaming Marketing &  
12:39 32 Strategy; do you see that?  
12:39 33  
12:39 34 A. Yes, I do.  
12:39 35  
12:39 36 Q. The letter refers to Crown's request to seek approval for  
12:39 37 a change to the Welcome Back jackpot configuration; you see  
12:39 38 that?  
12:39 39  
12:39 40 A. Yes, I do.  
12:39 41  
12:39 42 Q. Effectively, the approval sought is the manner in which the  
12:39 43 electronic gaming machine operates to provide the loyalty bonus,  
12:39 44 that is the Welcome Back jackpot bonus, changing the  
12:39 45 configuration of the equipment itself; correct?  
12:39 46  
12:39 47 A. Correct.

12:39 1  
 12:39 2 Q. If you look at the last paragraph:  
 12:39 3  
 12:39 4 *You should be aware that any approval of equipment*  
 12:39 5 *under section 26 or section 64 is, as section 62 states, 'for*  
 12:40 6 *the purpose of determining whether the equipment is*  
 12:40 7 *suitable to be approved for use in a casino'. Accordingly,*  
 12:40 8 *such approval cannot be taken to extend beyond that*  
 12:40 9 *stated purpose.*  
 12:40 10  
 12:40 11 Do you see that?  
 12:40 12  
 12:40 13 A. Yes, I do.  
 12:40 14  
 12:40 15 Q. You agree with me it is plain as a pikestaff that this is not  
 12:40 16 approval by the regulator to deduct the Welcome Back jackpot?  
 12:40 17  
 12:40 18 A. Yes, I agree, that is an approval for the running of the  
 12:40 19 Welcome Back bonus jackpot, yes.  
 12:40 20  
 12:40 21 MR KOZMINSKY: Mr Commissioner, I will tender the email  
 12:40 22 and all the attachments as confidential exhibits.  
 12:40 23  
 12:40 24 COMMISSIONER: That is the email from Joshua Preston to  
 12:40 25 Glen Ward, 19 October 2018, confidential, Exhibit 154.  
 12:40 26  
 27  
 28 **EXHIBIT #RCPH0154 - EMAIL WITH ATTACHMENTS**  
 29 **FROM MR JOSHUA PRESTON TO MR GLEN WARD**  
 30 **DATED 19 OCTOBER 2018 (CONFIDENTIAL)**  
 31  
 32  
 12:40 33 MR KOZMINSKY: Mr Operator, the next document, if I may, is  
 12:40 34 MEM.5001.0003.1264.  
 12:40 35  
 12:41 36 Do you see that email, Mr Mackay?  
 12:41 37  
 12:41 38 A. Yes.  
 12:41 39  
 12:41 40 MR KOZMINSKY: Just so there is a complete record,  
 12:41 41 Mr Commissioner, I will tender that. I won't take the witness to  
 12:41 42 it. I think it needs to be in for the record.  
 12:41 43  
 12:41 44 COMMISSIONER: That is an email chain. An email chain  
 12:41 45 ending with an email from Michelle Fielding to Glen Ward, 24  
 12:41 46 October 2018, Exhibit 155 confidential, with the attachment I  
 12:41 47 should say. Sorry, Exhibit 155.



12:41 1

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3

**EXHIBIT #RCPH0155 - EMAIL CHAIN WITH  
ATTACHMENTS ENDING WITH AN EMAIL FROM MS  
MICHELLE FIELDING TO MR GLEN WARD, 24  
OCTOBER 2018 (CONFIDENTIAL)**

6

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12:42 11

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12:43 45

12:43 46

12:43 47

MR KOZMINSKY: What then happened after that, all that information was provided to Mr Ward, was on 25 October, Mr Mackay, he provided his advice. I will show you the email and the advice, MEM.5000.0002.9492. You can take a moment to read it. It is quite short.

A. Yes.

MR KOZMINSKY: Mr Commissioner, it's behind tab 7 for you. The next --- if the operator can bring up the attachment ending with 9493. I am going to take you to a few parts of this advice. If you can start with paragraph 5:

*In or around 2012, Crown Melbourne instituted changes to the way it implemented and classified its Gaming Machine Food Program, with the effect that Gaming Machine Food Program costs (including specified food, hotel and car parking benefits) were, from that point on, classified as a Bonus Jackpot and a deduction for the purposes of the Gross Gaming revenue calculation.*

You see that?

A. Yes, I do.

Q. They are the discussions we discussed in one of the columns, I think it was column A, with complimentary carpark, valet, comp hotels, those things; correct?

A. Correct.

Q. Thank you. And then if you can skip over to paragraph 22, it says:

*Documents issued at the time of the introduction of these changes to the Gaming Machine Food Program speak of, among other things, the benefit to the bottom line of including these as Bonus Jackpots, and the likelihood of the VCGLR detecting this change in treatment.*

- 12:43 1  
12:44 2 I think you would agree that was the case?  
12:44 3  
12:44 4 A. Yes, that's correct.  
12:44 5  
12:44 6 Q. I want to take you to paragraph 26 over the page:  
12:44 7  
12:44 8 *On a strict interpretation of Gross Gaming Revenue, to*  
12:44 9 *institute a deductible, the amounts must be 'won' by the*  
12:44 10 *punter or otherwise paid out as winnings. On its terms,*  
12:44 11 *this definition would not seem to capture credits earned*  
12:44 12 *simply by repeat play, which is what the Gaming Machine*  
12:44 13 *Food Program involves.*  
12:44 14  
12:44 15 I want to pause there for a moment. Without (audio distorted)  
12:44 16 reading it, Mr Mackay, you would agree with me that that is  
12:44 17 something, possible construction of this issue, that Crown has  
12:44 18 been aware of internally since at least late 2018?  
12:44 19  
12:44 20 A. Yes, I agree.  
12:44 21  
12:44 22 Q. The next paragraph says:  
12:44 23  
12:44 24 *The concept of loyalty credits accruing based on level of*  
12:44 25 *play does not lodge likely fit within the concept of*  
12:44 26 *a jackpot, either as that term is commonly understood, or*  
12:45 27 *as it is defined in the CCA .....*  
12:45 28  
12:45 29 You see that?  
12:45 30  
12:45 31 A. You break out at the end but I can see the document and  
12:45 32 paragraph 27.  
12:45 33  
12:45 34 Q. Yes. You agree with the content and understood that to be  
12:45 35 the case since late 2018?  
12:45 36  
12:45 37 A. Yes, it doesn't fit into the concept of a game-driven jackpot,  
12:45 38 correct.  
12:45 39  
12:45 40 Q. Or what "jackpot" commonly means?  
12:45 41  
12:45 42 A. Correct, yes.  
12:45 43  
12:45 44 Q. It's not just you who knew about these things, is it,  
12:45 45 Mr Mackay; it is also the directors of Crown?  
12:45 46  
12:45 47 A. If they are made aware of that documentation, then yes,

12:45 1 they would be aware of that.  
12:45 2  
12:45 3 Q. I'm asking you if, to your knowledge, the directors of  
12:45 4 Crown were aware --- the company ---  
12:45 5  
12:45 6 A. Sorry, the answer is, yes, I am aware that they are aware of  
12:46 7 that document. Yes.  
12:46 8  
12:46 9 Q. And they have been aware of that document since late  
12:46 10 2018?  
12:46 11  
12:46 12 A. Yes, I believe so.  
12:46 13  
12:46 14 Q. And Alan McGregor has been aware of this issue since late  
12:46 15 2018?  
12:46 16  
12:46 17 A. I believe so.  
12:46 18  
12:46 19 Q. Has Steve Blackburn been told about this?  
12:46 20  
12:46 21 A. I haven't told Steve about this but I'm not sure if anyone  
12:46 22 else has disclosed that to Steve Blackburn, Mr Kozminsky.  
12:46 23  
12:46 24 MR KOZMINSKY: Mr Commissioner, I will tender the email, if  
12:46 25 I may, and the advice in the attachment, which is the draft advice  
12:46 26 from MinterEllison.  
12:46 27  
12:46 28 COMMISSIONER: Email from Glen Ward to Joshua Preston 25  
12:46 29 October 2018, confidential Exhibit 156 together with the  
12:47 30 attachment.  
12:47 31  
12:47 32  
12:47 33 **EXHIBIT #RCPH0156 - EMAIL WITH ATTACHMENT**  
12:47 34 **FROM MR GLEN WARD TO MR JOSHUA PRESTON**  
12:47 35 **DATED 25 OCTOBER 2018 (CONFIDENTIAL)**  
12:47 36  
12:47 37  
12:47 38 MR KOZMINSKY: Now, what happens next in the story is that  
12:47 39 on 2 November 2018 --- I will show you the email in fairness to  
12:47 40 you.  
12:47 41  
12:47 42 MEM.5001.0001.6689, behind tab 8 of your bundle, Mr  
12:47 43 Commissioner.  
12:47 44  
12:47 45 There you see Mr Preston emails Mr Ward. You see that?  
12:47 46  
12:47 47 A. Yes, I do.

12:47 1  
12:47 2 Q. He says:  
12:47 3  
12:47 4 *Please find attached the draft advices with some*  
12:47 5 *comments/changes in tracked form .....*  
12:47 6  
12:47 7 You see that?  
12:47 8  
12:48 9 A. Yes, I do.  
12:48 10  
12:48 11 Q. The amendment is largely from Mr Herring and  
12:48 12 Ms Fielding; you see that?  
12:48 13  
12:48 14 A. Yes, I do.  
12:48 15  
12:48 16 Q. Mr Preston says he's added in comments?  
12:48 17  
12:48 18 A. Yes.  
12:48 19  
12:48 20 Q. Did you have any involvement in the comments that went  
12:48 21 back to Minters?  
12:48 22  
12:48 23 A. I believe I would have had some involvement, yes.  
12:48 24  
12:48 25 Q. You were involved in the process the whole way through as  
12:48 26 head of EGMs; weren't you?  
12:48 27  
12:48 28 A. Yes, I was.  
12:48 29  
12:48 30 Q. If we can go to the attachment which ends 6690, I want to  
12:48 31 draw your attention to paragraph 5. There, someone has added  
12:48 32 the reference to "Bonus Jackpot" into the name; you see that?  
12:49 33  
12:49 34 A. Yes, I do, sorry. Yes, I can see that.  
12:49 35  
12:49 36 Q. Operator, scroll down. Just have a look, there is a lot of  
12:49 37 mark-ups and comments. I want you to scroll down slowly and  
12:49 38 look at what is proposed by Crown, when it goes back to their  
12:49 39 solicitors. You can go to the next page. I want the witness to get  
12:49 40 a feel for the level of comments and mark-ups on the next page.  
12:49 41  
12:50 42 A. I can see there is a number of mark-ups if you are waiting  
12:50 43 for me to confirm.  
12:50 44  
12:50 45 Q. In the ordinary course --- you can take that off the screen,  
12:50 46 Mr Operator --- in the ordinary course, based on your experience,  
12:50 47 is it common for Crown to heavily amend advices it gets from its

12:50 1 solicitors?  
12:50 2  
12:50 3 A. I would say if there was inaccuracies then they would, but  
12:50 4 was that not going back to the solicitors that prepared it?  
12:50 5  
12:50 6 Q. Yes, it was. I'm asking if in the ordinary course, when  
12:50 7 Crown receives draft advice, is it usual practice, based on your  
12:50 8 experience, to mark-up a document this way?  
12:50 9  
12:50 10 A. As I said, only if there were inaccuracies or further  
12:50 11 information required.  
12:50 12  
12:51 13 Q. I took you to the original draft advice and I don't want to  
12:51 14 overstate the position. It wasn't absolute. Minters thought of  
12:51 15 potential arguments that Crown might be able to run, but the gist  
12:51 16 of the advice was not positive, and I want to ask you this: having  
12:51 17 seen the advice and the level of mark-ups, is it an example of  
12:51 18 Crown placing pressure on external legal advisors to achieve  
12:51 19 an advice that is consistent with the commercial side of the  
12:51 20 business?  
12:51 21  
12:51 22 A. I don't think --- to my experience and knowledge, I don't  
12:51 23 think Crown places pressure on external legal advisors to change  
12:51 24 their legal view of something, no.  
12:51 25  
12:51 26 Q. What about internally? Does that ever happen?  
12:51 27  
12:51 28 A. Not to my knowledge. I take the advice of our internal  
12:51 29 counsel very seriously.  
12:51 30  
12:52 31 Q. Okay. So if, for example, Michelle Fielding was recently  
12:52 32 interviewed and expressed that position, it would come as  
12:52 33 a surprise to you?  
12:52 34  
12:52 35 A. To me, personally, my dealings with Michelle, if she has  
12:52 36 a view on something that needs my consideration, we have  
12:52 37 a good discussion on it, and if there is a requirement for  
12:52 38 something to change because of a compliance review or feeling,  
12:52 39 then, yes, I would take that advice seriously. That's not to my  
12:52 40 experience. I haven't seen that.  
12:52 41  
12:52 42 Q. Okay. I think --- I don't know if I have tendered that, but  
12:52 43 I will tender the email from Joshua Preston to Mr Ward behind  
12:52 44 tab 8 and the attachment.  
12:52 45  
12:52 46 COMMISSIONER: That email from Joshua Preston to Glen  
12:52 47 Ward, 2 November 2018, Confidential Exhibit 157.

12:53 1  
12:53 2  
12:53 3 **EXHIBIT #RCPH0157 - EMAIL WITH ATTACHMENT**  
12:53 4 **FROM MR JOSHUA PRESTON TO MR GLEN WARD**  
12:53 5 **DATED 2 NOVEMBER 2018 (CONFIDENTIAL)**  
12:53 6  
12:53 7  
12:53 8 MR KOZMINSKY: I'm conscious of the time and I want to, Mr  
12:53 9 Commissioner, finish before lunch so that when we come back,  
12:53 10 we can come back in open session. We have had a few breaks.  
12:53 11 I will only be about another --- I won't be more than 10 or 15  
12:53 12 minutes at the very most.  
12:53 13  
12:53 14 COMMISSIONER: All right. We'll continue through.  
12:53 15  
12:53 16 MR KOZMINSKY: Thank you. Then tab 9 of your hard copy  
12:53 17 bundle, MEM.5000.0001.5438.  
12:53 18  
12:53 19 What happens next you will see, Mr Mackay, this is no doubt ---  
12:53 20 is this refreshing your memory when you read through this?  
12:53 21  
12:53 22 A. Yes, it is.  
12:53 23  
12:53 24 Q. Thanks. There is another note that comes through from  
12:53 25 Mr Ward, and what Mr Ward does is he attaches in mark-up and  
12:54 26 clean final advice; do you see that?  
12:54 27  
12:54 28 A. Yes, I do.  
12:54 29  
12:54 30 Q. I won't take you to it, but in fairness to Mr Ward, I should  
12:54 31 say, he largely rejects Crown's proposed changes.  
12:54 32  
12:54 33 I will tender, Mr Commissioner, the email and its attachments.  
12:54 34  
12:54 35 COMMISSIONER: Email from Glen Ward to Joshua Preston, 14  
12:54 36 November 2018. It will be Confidential Exhibit 158.  
12:54 37  
12:54 38  
12:54 39 **EXHIBIT #RC0158 - EMAIL FROM MR GLEN WARD TO**  
12:54 40 **MR JOSHUA PRESTON DATED 14 NOVEMBER 2018**  
12:54 41 **(CONFIDENTIAL)**  
12:54 42  
12:54 43  
12:54 44 MR KOZMINSKY: Tell me if you want me to go to it, but do  
12:54 45 you remember we read paragraph 26 and 27 of the first advice, I  
12:54 46 had you read those out to yourself and you agreed you knew  
12:54 47 them; do you remember that?

12:54 1  
12:54 2 A. I do remember it, yes.  
12:54 3  
12:55 4 Q. I can take you to them, but they've remained unchanged in  
12:55 5 the final advice, okay?  
12:55 6  
12:55 7 A. Yes.  
12:55 8  
12:55 9 Q. You can assume. So where we are, in November 2018, the  
12:55 10 advice is not absolute. I won't overstate the position, but it's not  
12:55 11 great from Crown's perspective. There is real risk; do you agree  
12:55 12 with me?  
12:55 13  
12:55 14 A. Yes, I do.  
12:55 15  
12:55 16 Q. What then happens is --- Mr Commissioner, go to tab 10.  
12:55 17 MEM.5001.0003.9394. What happens here, and you can read it  
12:55 18 to yourself, you agree with me that Ms Fielding is talking to  
12:55 19 Mr Ward talking about draft technical requirements that might  
12:55 20 change; do you see that?  
12:55 21  
12:55 22 A. Yes, I do.  
12:55 23  
12:56 24 Q. You had a discussion with the Commissioner before we  
12:56 25 went into private session. You see the draft?  
12:56 26  
12:56 27 A. 9 July 2019. Yes, okay.  
12:56 28  
12:56 29 Q. That would be about the time that those discussions were  
12:56 30 taking place; correct? When you received the new technical  
12:56 31 requirements?  
12:56 32  
12:56 33 A. Yes, correct.  
12:56 34  
12:56 35 Q. I know that it is very difficult, sitting in the witness box, to  
12:56 36 try and remember dates and events, but placing it now, those  
12:56 37 things happened all the way back in 2019, and your spreadsheet is  
12:56 38 2021; do you accept that?  
12:56 39  
12:56 40 A. I accept that.  
12:56 41  
12:56 42 Q. So your discussions in 2021, let us be perfectly clear about  
12:56 43 it, are not about this issue; they are about the exposure if these  
12:56 44 things are not deductible; correct?  
12:56 45  
12:56 46 A. Yes, that's correct, but I think that was the evidence I also  
12:56 47 gave.

12:56 1  
12:56 2 Q. No, I'm clarifying because I think there might have been a  
12:57 3 bit of confusion when you started discussing the issue with the  
12:57 4 Commissioner. I think you said in your mind there was some  
12:57 5 confusion about when this issue arose, the technical requirements  
12:57 6 document, and I just wanted to clarify it had nothing to do with  
12:57 7 your spreadsheet, it ---  
12:57 8  
12:57 9 A. Correct, but can I clarify for the Commission and make  
12:57 10 sure it is clear in the transcript that I was referring to  
12:57 11 conversations I'd had with Michelle Fielding and Peter Herring,  
12:57 12 and not in regards to my understanding of that spreadsheet in  
12:57 13 2021.  
12:57 14  
12:57 15 Q. I apologise. If that's the case, the fault is mine. In any  
12:57 16 event, it is clarified now. Thank you.  
12:57 17  
12:57 18 What happens here is Michelle Fielding writes to Mr Ward and  
12:57 19 says, "Look, there is a new draft technical requirements, does it  
12:57 20 change your advice?" But that's effectively what she is asking.  
12:57 21  
12:57 22 If you scroll down, Mr Operator, so the witness can see the last  
12:57 23 paragraphs of the letter.  
12:57 24  
12:57 25 Do you agree with that characterisation?  
12:57 26  
12:57 27 A. Yes, I do.  
12:57 28  
12:57 29 MR KOZMINSKY: Then I will tender that document,  
12:57 30 Mr Commissioner.  
12:58 31  
12:58 32 COMMISSIONER: Letter dated 9 July 2019 from Crown to  
12:58 33 Glen Ward, MinterEllison, confidential Exhibit 159.  
12:58 34  
12:58 35  
12:58 36 **EXHIBIT #RCPH0159 - LETTER DATED 9 JULY 2019**  
12:58 37 **FROM CROWN TO MR GLEN WARD OF**  
12:58 38 **MINTERELLISON (CONFIDENTIAL)**  
12:58 39  
12:58 40  
12:58 41 MR KOZMINSKY: Do you think that is an example of pressure  
12:58 42 being placed on external lawyers to give you an opinion that  
12:58 43 might be more favourable?  
12:58 44  
12:58 45 A. I think it is more information. Again, I don't think it is  
12:58 46 pressure, Mr Kozminsky, but Mr Ward may be able to give you  
12:58 47 a view of the pressure he felt was exerted on him by Crown.



12:58 1  
12:58 2 Q. I accept that.  
12:58 3  
12:58 4 If we can then go to tab 11, Mr Commissioner, of your bundle  
12:58 5 MEM.5002.0009.2582.  
12:58 6  
12:59 7 This is the advice that you (inaudible - audio interference). You  
12:59 8 see paragraph 2 records that Mr Ward is instructed that:  
12:59 9  
12:59 10 *In July 2019, Crown was provided with a draft of new*  
12:59 11 *Technical Requirements document .....*  
12:59 12  
12:59 13 Which he was asked to consider. I want to clarify, the draft  
12:59 14 requirements have never been adopted, have they?  
12:59 15  
12:59 16 A. The draft technical requirements document?  
12:59 17  
12:59 18 Q. Yes.  
12:59 19  
12:59 20 A. No, it has been adopted. It hasn't got an agreed  
12:59 21 implementation date because some of the changes coming out of  
12:59 22 the technical requirement document requires Crown to make  
12:59 23 some changes to our IT systems which obviously take time, so  
12:59 24 the date at which the TRD becomes effective I think is still to be  
13:00 25 agreed, but the TRD, to my knowledge, the new technical  
13:00 26 requirements document, is active.  
13:00 27  
13:00 28 Q. Let me ask the question a different way. To the extent this  
13:00 29 new technical requirements document might have made  
13:00 30 a difference, it can't have changed the position yet because it is  
13:00 31 not yet effective? Might have made a difference. I'm talking  
13:00 32 about deductibility of these expenses. Do you agree with me?  
13:00 33  
13:00 34 A. Can you ask the question again. I'm sorry, it was ---  
13:00 35  
13:00 36 Q. That's right. Ms Fielding is writing and asking Mr Ward to  
13:00 37 give her some advice because there are new technical  
13:00 38 requirements.  
13:00 39  
13:00 40 A. Sorry, at this point in time, the TRD was not effective, if  
13:00 41 that is what you are asking.  
13:00 42  
13:00 43 Q. Whatever Mr Ward's advice might have been, it is relying  
13:00 44 on some new technical document, whatever his advice might  
13:00 45 have been, it can't be relevant because those technical  
13:00 46 requirements are not effective, they are not in operation yet, you  
13:01 47 agree with me?

13:01 1  
13:01 2 A. Agree.  
13:01 3  
13:01 4 Q. Thank you. Now, if you go to paragraph 11. I should ask  
13:01 5 you, did you see this advice at the time?  
13:01 6  
13:01 7 A. Sorry, you broke up, Mr Kozminsky.  
13:01 8  
13:01 9 Q. Did you see this advice at the time?  
13:01 10  
13:01 11 A. I believe I did, yes.  
13:01 12  
13:01 13 Q. Go to paragraph 11:  
13:01 14  
13:01 15 *Ultimately, the question of whether deductions made in*  
13:01 16 *respect of the gaming machine bonus jackpot program*  
13:01 17 *meet the statutory definition of sums 'paid out as*  
13:01 18 *winnings' is a question of statutory construction and not*  
13:01 19 *to be resolved by reference to other documents.*  
13:01 20  
13:01 21 You see that?  
13:01 22  
13:01 23 A. Yes, I do.  
13:01 24  
13:01 25 Q. When you read that statement, you understood that to mean  
13:01 26 Mr Ward is saying that this doesn't really change things; that is  
13:01 27 what you understood it to mean?  
13:01 28  
13:01 29 A. I understood it to mean that it was a question of statutory  
13:02 30 construction, and that the documents didn't make a difference to  
13:02 31 that calculation of gaming deductions. That's the way I read it.  
13:02 32  
13:02 33 Q. Mr Ward's advice --- put to one side whether it is right or  
13:02 34 wrong, you don't need to read the whole document, I'm just  
13:02 35 asking about that paragraph.  
13:02 36  
13:02 37 A. I'm re-reading number 11, Mr Kozminsky, so I have it clear  
13:02 38 in my head.  
13:02 39  
13:02 40 Q. Take your time.  
13:02 41  
13:02 42 A. Okay.  
13:02 43  
13:02 44 Q. Irrespective of whether Mr Ward is right or wrong, what he  
13:02 45 is saying to you and Directors is that this technical requirements  
13:02 46 document will not really resolve the issue?  
13:02 47

13:02 1 A. Correct.  
13:02 2  
13:02 3 Q. And again, it is not just you aware of all this stuff ---  
13:02 4 withdraw that, that was inarticulate.  
13:02 5  
13:02 6 It's not just you aware of this legal advice, it is also the Directors  
13:02 7 and also Mr McGregor; correct?  
13:02 8  
13:03 9 A. To my knowledge, yes.  
13:03 10  
13:03 11 MR KOZMINSKY: I want to tender that document, if I might,  
13:03 12 Mr Commissioner, as a confidential exhibit.  
13:03 13  
13:03 14 COMMISSIONER: Memorandum from MinterEllison to Joshua  
13:03 15 Preston dated 18 November 2019, Exhibit 160, confidential.  
13:03 16  
13:03 17  
13:03 18 **EXHIBIT #RCPH0160 - MEMORANDUM FROM**  
13:03 19 **MINTERELLISON TO MR JOSHUA PRESTON DATED 18**  
13:03 20 **NOVEMBER 2019 (CONFIDENTIAL)**  
13:03 21  
13:03 22  
13:03 23 MR KOZMINSKY: Thank you. Can I ask the operator to go to  
13:03 24 CRW.510.059.0592. Tab 12, Mr Commissioner.  
13:03 25  
13:04 26 Mr Mackay, do you recognise this document?  
13:04 27  
13:04 28 A. Yes, I do.  
13:04 29  
13:04 30 Q. Did you prepare it?  
13:04 31  
13:04 32 A. Could you scroll down a little bit more?  
13:04 33  
13:04 34 Q. You can direct the operator.  
13:04 35  
13:04 36 A. If you could keep scrolling down, operator, please.  
13:04 37  
13:05 38 Yes, I believe I had involvement in producing that document.  
13:05 39  
13:05 40 Q. Over the page there are extracts from the advices that we  
13:05 41 have seen. You can go back. We don't need to look at those  
13:05 42 again. First page, Mr Operator.  
13:05 43  
13:05 44 I want to ask you a few questions. You say you had involvement  
13:05 45 in preparing this document. Who prepared it?  
13:05 46  
13:05 47 A. I think Peter Herring had some involvement in it and I

13:05 1 finalised the document.  
13:05 2  
13:05 3 Q. What is interesting is I don't know, are you familiar with  
13:05 4 a system called Ringtail, Mr Mackay?  
13:05 5  
13:05 6 A. Called what, Mr Kozminsky?  
13:05 7  
13:05 8 Q. Ringtail.  
13:05 9  
13:05 10 A. No, I'm not.  
13:05 11  
13:05 12 Q. In litigation and also in this Commission what happens  
13:05 13 when there is a large volume of documents, they are uploaded on  
13:06 14 to a system called Ringtail which records all sorts of information  
13:06 15 on the document. The Ringtail system tells us that this document  
13:06 16 was prepared on 25 February 2021, that is to say the day before  
13:06 17 your spreadsheet.  
13:06 18  
13:06 19 A. Okay.  
13:06 20  
13:06 21 Q. Does that sound right to you?  
13:06 22  
13:06 23 A. Yes, yup.  
13:06 24  
13:06 25 Q. If I was trying to place the call from Mr Xavier Walsh, it  
13:06 26 would be right to say it probably happened 24th, 25th, something  
13:06 27 like that, this document got produced and we ended up with your  
13:06 28 spreadsheet? Would that be the right chain of events?  
13:06 29  
13:06 30 A. Yes, it could be. Yes, it would be.  
13:06 31  
13:06 32 Q. Okay, great.  
13:06 33  
13:06 34 I tender that document, if I might.  
13:06 35  
13:06 36 COMMISSIONER: Document described as "Bonus Jackpots  
13:06 37 Review", Confidential Exhibit 161.  
13:06 38  
13:06 39  
13:06 40 **EXHIBIT #RC0161 - BONUS JACKPOTS REVIEW**  
13:06 41 **(CONFIDENTIAL)**  
13:06 42  
13:06 43  
13:06 44 MR KOZMINSKY: I just want to ask you one more question  
13:06 45 before we go back into an open hearing. I've taken you to the  
13:07 46 request for information from the Commissioner. In light of the  
13:07 47 fact that all the directors to the best of your knowledge, and

13:07 1 Mr McGregor and senior management like you and Mr Herring,  
 13:07 2 were all across advice telling you there was a real risk about at  
 13:07 3 least part of your deductions, it is inexcusable that that wasn't  
 13:07 4 raised in response to the Commissioner's request for information;  
 13:07 5 isn't it?

13:07 6  
 13:07 7 A. If it wasn't raised as part of that request for information  
 13:07 8 from the Commissioner, then, yes, it would be.

13:07 9  
 13:07 10 MR KOZMINSKY: Mr Commissioner, that is all for the closed  
 13:07 11 session. Perhaps we might adjourn until 2 o'clock, if I could ask  
 13:07 12 for that indulgence?

13:07 13  
 13:07 14 COMMISSIONER: Right. I'm happy with that. In the meantime  
 13:07 15 we'll have to give the other parties notice that we are going to  
 13:08 16 resume at 2.00.

13:08 17  
 13:08 18 The one thing that I might try and do if it is possible --- although  
 13:08 19 someone will no doubt tell me it's not possible --- is,  
 13:08 20 Mr Kozminsky, as Mr Mackay pointed out a couple of times,  
 13:08 21 your voice is breaking up as it comes through, even when you are  
 13:08 22 facing and quite close to I guess your screen. Now, it's not only  
 13:08 23 Mr Mackay that had difficulty picking up your voice from time to  
 13:08 24 time; I must say I had exactly the same difficulty as Mr Mackay  
 13:08 25 did at exactly the same time as Mr Mackay did, so I might try and  
 13:08 26 work out whether there is some way we can repair that. The  
 13:08 27 answer might be nothing can be done about it, but it has  
 13:08 28 happened on a few occasions, you have to try and fix it both for  
 13:08 29 the witness and for me.

13:08 30  
 13:08 31 Otherwise we'll adjourn till 2.

13:08 32  
 13:08 33 MR KOZMINSKY: Thank you, Commissioner.

13:08 34  
 13:08 35

13:08 36 **HEARING IN CAMERA ENDED**

13:08 37  
 13:08 38

13:08 39 **ADJOURNED** [1.08PM].

13:08 40  
 13:34 41

13:34 42 **RESUMED** [2.01PM]

14:01 43  
 14:01 44

14:01 45 COMMISSIONER: Mr Borsky, if you turn off --- sorry, if you  
 14:01 46 unmute yourself, I want to raise something with you.

14:01 47

14:01 1 MR BORSKY: Yes, Commissioner.  
14:01 2  
14:01 3 COMMISSIONER: On the question we were discussing about  
14:01 4 waiver of privilege ---  
14:01 5  
14:01 6 MR BORSKY: Yes.  
14:01 7  
14:01 8 COMMISSIONER: --- it might be worth having a look at  
14:01 9 Cantor v Audi Australia Pty Limited [2016] FCA 1391 at  
14:01 10 paragraph 136 and following, actually. That is not directly our  
14:01 11 situation, nothing to do with a Commission or a Commission  
14:01 12 proceeding or our legislation, but the discussion there would  
14:02 13 seem to suggest that at least if the information --- privileged  
14:02 14 information became available to the State and the regulator, it is  
14:02 15 unlikely to be a loss of privilege. Now I'm not saying that is the  
14:02 16 only case, I'm not suggesting that it is the only relevant case, but  
14:02 17 it's worth looking at because it might mean that if I do decide to  
14:02 18 release it, at least to the State and to the regulator, you might not  
14:02 19 be at risk, at least not from a privilege context.  
14:02 20  
14:02 21 MR BORSKY: Thank you, Commissioner. We will certainly  
14:02 22 look at that and other relevant authorities.  
14:02 23  
14:02 24 COMMISSIONER: Okay, thank you.  
14:02 25  
14:02 26 Now, Mr Kozminsky.  
14:02 27  
14:02 28 MR KOZMINSKY: Thank you.  
14:02 29  
14:02 30 Mr Mackay ---  
14:02 31  
14:02 32 COMMISSIONER: Actually, I have a question I've been  
14:02 33 meaning to ask Mr Mackay that has nothing to do with what  
14:03 34 we've been discussing all morning, which might give Mr Mackay  
14:03 35 a breather as well, although the luncheon break should have done  
14:03 36 that.  
14:03 37  
14:03 38 Mr Mackay, I want to know about restricted and unrestricted  
14:03 39 gaming machines.  
14:03 40  
14:03 41 A. Yes, Commissioner.  
14:03 42  
14:03 43  
14:03 44 COMMISSIONER: I know from the licence that Crown has ---  
14:03 45 Crown Melbourne that is --- has, it has a number of unrestricted  
14:03 46 gaming machines. And I've seen the Ministerial Direction which  
14:03 47 indicates where those machines are allowed to be placed.

14:03 1  
14:03 2 A. Yes.  
14:03 3  
14:03 4 COMMISSIONER: And it is in a variety of areas on the various  
14:03 5 floors of the casino. But it doesn't tell me, and the ministerial  
14:03 6 permission is indifferent to, precisely where they are located,  
14:04 7 provided they are located in the designated areas in the map  
14:04 8 which is attached to the Ministerial Direction.  
14:04 9  
14:04 10 Can you tell me in terms of percentage, rather than exact  
14:04 11 numbers, where they are located, like how many in the Mahogany  
14:04 12 Room, how many in the Teak Room, how many in the main  
14:04 13 gaming --- or on the main gaming floor, that kind of information?  
14:04 14  
14:04 15 A. Certainly, Commissioner. So definitely the majority of  
14:04 16 unrestricted gaming machines are located within the Riverside  
14:04 17 Room, the Teak premium gaming room and the Mahogany  
14:04 18 Room. And when I say "majority", it is over 700 of the 1,000  
14:04 19 unrestricted machines. We recently increased the number of  
14:04 20 machines in the Mahogany Room so I don't have the precise  
14:04 21 number on me, but it would be somewhere, I think, in the vicinity  
14:04 22 of 220 unrestricted machines on the main gaming floor out of the  
14:05 23 2,600 ---  
14:05 24  
14:05 25 COMMISSIONER: Thousand, yes.  
14:05 26  
14:05 27 A. Out of the thousand, yes.  
14:05 28  
14:05 29 COMMISSIONER: Okay, thank you. That's all I wanted to  
14:05 30 know for the time being, Mr Kozminsky.  
14:05 31  
14:05 32 MR KOZMINSKY: And just for the benefit of the transcript, so  
14:05 33 there is no confusion, the Commissioner said the "Ministerial  
14:05 34 Direction", but you know he was referring to the notice from the  
14:05 35 regulator.  
14:05 36  
14:05 37 COMMISSIONER: Yes, I'm sorry.  
14:05 38  
14:05 39 MR KOZMINSKY: Mr Mackay, your spreadsheet only deals  
14:05 40 with electronic gaming machine promotions; that's right, isn't it?  
14:05 41  
14:05 42 A. Yes, that's correct.  
14:05 43  
14:05 44 Q. And if I'm a table game player at the casino, I'm also  
14:05 45 eligible for free carpark?  
14:05 46  
14:05 47 A. Yes, Mr Kozminsky.

14:05 1  
14:05 2 Q. And I might get free hotels and I might be eligible for free  
14:05 3 valet parking?  
14:05 4  
14:05 5 A. All of the same program benefits, yes.  
14:05 6  
14:05 7 Q. And does Crown make the same sort of deductions in  
14:05 8 respect of table game play?  
14:05 9  
14:05 10 A. No, they don't.  
14:05 11  
14:06 12 Q. Okay, just going back to the Commissioner's questions  
14:06 13 about restricted and unrestricted machines, when I use that  
14:06 14 terminology you obviously know what it means?  
14:06 15  
14:06 16 A. Yes, Mr Kozminsky.  
14:06 17  
14:06 18 Q. At paragraph 27 of your statement --- you can go to it if you  
14:06 19 have it there --- you say that:  
14:06 20  
14:06 21 *In order for a patron to access unrestricted mode on a*  
14:06 22 *gaming machine, the patron must have a playing card .....*  
14:06 23 *and [must] have a time and/or spend limit activated on*  
14:06 24 *their playing card through the YourPlay system and the*  
14:06 25 *patron has not exceeded the time limit or spend limit for*  
14:06 26 *that gaming day.*  
14:06 27  
14:06 28 Do you see that?  
14:06 29  
14:06 30 A. Yes, I do.  
14:06 31  
14:06 32 Q. And do you agree with me that that is not consistent with  
14:06 33 the requirements under the relevant Ministerial Direction?  
14:07 34  
14:07 35 A. No, I believe that is the requirement for unrestricted  
14:07 36 machines.  
14:07 37  
14:07 38 Q. Okay. Mr Operator, please go to COM.0013.0001.0030.  
14:07 39  
14:07 40 Mr Commissioner, behind tab 1, second volume of your folder.  
14:07 41  
14:07 42 You see the front cover there is from the Victoria Government  
14:07 43 Gazette, 29 October 2015; do you see that?  
14:07 44  
14:07 45 A. Yes, I do.  
14:07 46  
14:07 47 Q. If the operator could please go to page 2312 in the top



14:07 1 left-hand corner. It might take a long time to get there, I  
14:07 2 apologise. It's quite a long document.  
14:07 3  
14:07 4 COMMISSIONER: Not the right page.  
14:07 5  
14:08 6 MR KOZMINSKY: 2312 in the top left-hand corner,  
14:08 7 Mr Operator. That's 2-7 ..... fantastic.  
14:08 8  
14:08 9 This is a relevant Ministerial Direction, Mr Mackay. I draw your  
14:08 10 attention to sub-paragraph (b)(ii)(A). You see that? You have to  
14:08 11 scroll down I think a little bit, thank you.  
14:08 12  
14:08 13 Do you see (ii)(A) --- "the pre-commitment system is  
14:08 14 communicating", do you see that?  
14:08 15  
14:08 16 A. Yes.  
14:08 17  
14:08 18 Q. It says:  
14:08 19  
14:08 20 *..... may only operate in unrestricted mode if the*  
14:08 21 *pre-commitment system is communicating with the*  
14:08 22 *gaming machine and in order to access that unrestricted*  
14:08 23 *mode a person is required to use their player card, and*  
14:09 24 *has set a time limit and a net loss limit on their playing of*  
14:09 25 *gaming machines on that player card and has not*  
14:09 26 *exceeded either their time limit or their net loss limit.*  
14:09 27  
14:09 28 So this Ministerial Direction requires a player to have set both  
14:09 29 a time and money limit; you agree with that?  
14:09 30  
14:09 31 A. Yes, I do.  
14:09 32  
14:09 33 Q. And your evidence is that at Crown, to access  
14:09 34 an unrestricted EGM, a player has to set one or the other but not  
14:09 35 necessarily both; do you agree with me?  
14:09 36  
14:09 37 A. That's what my statement reads, yes, but it is both. Sorry, I  
14:09 38 apologise.  
14:09 39  
14:09 40 Q. So your statement is incorrect?  
14:09 41  
14:09 42 A. The "and/or" is incorrect. I apologise, I hadn't picked that  
14:09 43 up. It is the same as the Ministerial Direction.  
14:09 44  
14:09 45 Q. Okay. Are you certain about that or would you like the  
14:09 46 opportunity to check and come back to the Commission ---  
14:09 47

14:09 1 A. I can double-check but, yes. I believe the system is  
14:09 2 operating in line with the Ministerial Direction. I will  
14:10 3 double-check.  
14:10 4  
14:10 5 Q. And I will leave that, if I could please, with you and your  
14:10 6 department, not Mr Borsky --  
14:10 7  
14:10 8 A. Yes.  
14:10 9  
14:10 10 Q. --- if you can come back to us by the end of the week. And I  
14:10 11 would like, when you are doing that, if you could confirm how  
14:10 12 customers have been able to access EGMs in unrestricted mode  
14:10 13 of the casino since the introduction of YourPlay, which I think  
14:10 14 from memory is 1 December 2015 or 2016. You will have the  
14:10 15 date. But from that time until today, if you could check that and  
14:10 16 come back to us in writing by the end of the week?  
14:10 17  
14:10 18 A. I will do. No worries.  
14:10 19  
14:10 20 Q. Thank you. Just to make this a bit quicker, I want to show  
14:10 21 you a statement of a gentleman by the name of Mr Shane Peter  
14:10 22 Lucas. Do you know who he is, Mr Mackay?  
14:10 23  
14:10 24 A. Yes, I do.  
14:10 25  
14:10 26 Q. Mr Operator, it is VRGF.0002.0001.0017.  
14:10 27  
14:10 28 Tab 2, Mr Commissioner, of your folder.  
14:10 29  
14:10 30 And if you could please go to page 0041, Mr Operator, in the top  
14:11 31 right-hand corner.  
14:11 32  
14:11 33 You see that table there, Mr Mackay?  
14:11 34  
14:11 35 A. I do. If they could --- yes, thank you.  
14:11 36  
14:11 37 Q. Just take a moment to have a look at it.  
14:11 38  
14:11 39 A. Yes.  
14:11 40  
14:11 41 Q. Do you agree with me that the information in that table is  
14:11 42 accurate?  
14:11 43  
14:11 44 A. Yes, I do.  
14:11 45  
14:11 46 Q. Just so we're clear, the maximum bet per spin on an EGM  
14:11 47 everywhere in Victoria, other than the casino, is \$5? That's the

- 14:12 1 last row?  
14:12 2  
14:12 3 A. Yes.  
14:12 4  
14:12 5 Q. At the casino it's \$10 if the machine is in restricted mode?  
14:12 6  
14:12 7 A. Correct.  
14:12 8  
14:12 9 Q. And there is no maximum bet per spin with machines in  
14:12 10 unrestricted mode?  
14:12 11  
14:12 12 A. That's correct.  
14:12 13  
14:12 14 Q. And only the casino operates unrestricted EGMs ---  
14:12 15 withdraw that. Sorry. EGMs operating in unrestricted mode is  
14:12 16 something that only happens at the casino, no other venue has  
14:12 17 that functionality?  
14:12 18  
14:12 19 A. Yes.  
14:12 20  
14:12 21 Q. Okay. And machines operating in unrestricted mode, you  
14:12 22 can pay out in cash. So if someone were to win \$10,000, they get  
14:12 23 cash in hand on the gaming floor, as distinct from being paid out  
14:12 24 in cheque?  
14:12 25  
14:12 26 A. Yes, they can take their ticket to the cage to be paid out in  
14:12 27 cash, yes, correct.  
14:12 28  
14:12 29 Q. And you agree with me that Crown Melbourne has 2,628  
14:12 30 electronic gaming machines on the premises?  
14:13 31  
14:13 32 A. Yes, I do.  
14:13 33  
14:13 34 Q. And you agree that 1,000 of them operate --- can operate in  
14:13 35 unrestricted mode if the YourPlay requirements are satisfied?  
14:13 36  
14:13 37 A. Yes, that's correct.  
14:13 38  
14:13 39 Q. And do you agree with me that there is a strong link  
14:13 40 between electronic gaming machines and gambling harm?  
14:13 41  
14:13 42 A. Yes.  
14:13 43  
14:13 44 Q. And that's because of a few things --- the rapid speed of  
14:13 45 play relative to other forms of gambling?  
14:13 46  
14:13 47 A. That is one of the items referenced in research, yes.

14:13 1  
14:13 2 Q. And a lack of natural breaks?  
14:13 3  
14:13 4 A. Yes.  
14:13 5  
14:13 6 Q. And product characteristics such as near-misses and losses  
14:13 7 disguised as wins?  
14:13 8  
14:13 9 A. Yes.  
14:13 10  
14:13 11 Q. And house edge on an EGM, I think, under the legislation  
14:13 12 is 13 per cent, which is much greater than most other gambling  
14:13 13 products at the casino?  
14:13 14  
14:13 15 A. Up to 13 per cent, yes. That's correct.  
14:13 16  
14:13 17 Q. Are any of the EGMs operating at a lower house edge?  
14:14 18 I think if you look at your statement at paragraph 27 (audio  
14:14 19 distorted) ---  
14:14 20  
14:14 21 A. I think (a), (b) and (c) of my statement explains the range of  
14:14 22 machines operating both in restricted and unrestricted between  
14:14 23 87 per cent and 93.93 for unrestricted, and 87 and 93.50 for  
14:14 24 restricted machines.  
14:14 25  
14:14 26 Q. Yes. Sorry, my apologies.  
14:14 27  
14:14 28 The Victorian Responsible Gambling Foundation recently  
14:14 29 recommended in 2019 that congratulatory and other sounds  
14:14 30 accompanying a loss disguised as a win should be abolished. Are  
14:14 31 you aware of that?  
14:14 32  
14:14 33 A. Yes, I am.  
14:14 34  
14:14 35 Q. Do you support that recommendation?  
14:14 36  
14:14 37 A. Yes, we do.  
14:14 38  
14:14 39 Q. When does Crown plan to implement that  
14:14 40 recommendation?  
14:14 41  
14:14 42 A. To my understanding, there was a discussion with the  
14:15 43 VCGLR to have the Victorian Appendix in the National  
14:15 44 Standards updated to include that exact requirement --- that  
14:15 45 gaming machines produced for Victorian markets would not have  
14:15 46 losses disguised as wins, or congratulatory sounds accompanied  
14:15 47 with a win lower than the stake. I could have my dates wrong,

14:15 1 and I'm happy to review them, but to my understanding that was  
14:15 2 in early 2019 or --- may have been early 2020, sorry --- and it  
14:15 3 hasn't been updated, the Victorian Appendix. I think the latest  
14:15 4 version is 2017 maybe, or 2016.

14:15 5

14:15 6 Q. Thank you. Just to break this down, I think the relevant  
14:15 7 report from the VCGLR --- withdraw that. The relevant report  
14:15 8 from the Foundation is dated June 2019, so any discussions were  
14:16 9 likely to be early 2020, not 2019; you agree with that?

14:16 10

14:16 11 A. (Inaudible).

14:16 12

14:16 13 Q. And just so I'm clear, were the discussions in respect of  
14:16 14 new EGMs to be produced or current EGMs, or both?

14:16 15

14:16 16 A. New EGMs to be produced, to alter --- the gaming machine  
14:16 17 manufacturers would have to go back and redo the currently  
14:16 18 approved gaming machines on the floor that have that feature.  
14:16 19 It's not something Crown could alter on a gaming machine itself.

14:16 20

14:16 21 Q. I understand. Thank you for clarifying that. And the  
14:16 22 hold-up in the change being formalised lies --- where is the  
14:16 23 hold-up? Is it your end, is it the VCGLR end, someone within  
14:16 24 the State's operations; where is the hold-up?

14:16 25

14:16 26 A. I don't believe it is with Crown. The last correspondence  
14:17 27 I can remember, I think we agreed that we would support that  
14:17 28 change with the VCGLR.

14:17 29

14:17 30 Q. Great. I might ask Mr Borsky to put that on his tasklist and  
14:17 31 we will just get that correspondence if we might. Thank you.

14:17 32

14:17 33 You agree with me that EGM customers at Crown face a greater  
14:17 34 risk of harm than EGM customers at other gaming venues in  
14:17 35 Victoria?

14:17 36

14:17 37 A. I would agree --- I think all customers face harm at any  
14:17 38 venue by the research that I've read. That harm may be  
14:17 39 exacerbated at Crown because of the number of machines. So,  
14:17 40 yeah, I would agree there is potentially higher risk at Crown.

14:17 41

14:17 42 Q. Yes, it's not just the number of machines, but thank you for  
14:17 43 the fair concession, it is also the fact that you have some  
14:17 44 machines with no maximum bet limit and twice the bet limit on  
14:17 45 restricted machines?

14:18 46

14:18 47 A. Yes.

- 14:18 1  
14:18 2 Q. In his statement to the Commission, Mr Lucas, and this is at  
14:18 3 paragraph 85.1, which is on page 0039 in the top right-hand  
14:18 4 corner, said Crown could minimise harm if it aligns "the  
14:18 5 management of EGMs with the regulatory restrictions placed on  
14:18 6 other Victorian venues". Do you see that?  
14:18 7  
14:18 8 A. I do.  
14:18 9  
14:18 10 Q. 85. Do you agree with that observation?  
14:18 11  
14:18 12 A. It would reduce the harm caused by gambling at the casino  
14:18 13 if we were to do that, yes.  
14:18 14  
14:18 15 Q. Is that something you would support as the head of EGMs?  
14:18 16  
14:18 17 A. I think the other compounding factors of it is the  
14:18 18 competitive environment that we exist in in regards to other  
14:19 19 casinos and jurisdictions across Australia and internationally in  
14:19 20 some instances for our customers. So I think there would have to  
14:19 21 be consideration given to the VIP customers who travel to Crown  
14:19 22 for a tourism visit and how that could impact having those  
14:19 23 restrictions as compared to other casinos, but in the main gaming  
14:19 24 floor and main areas of the casino that the local Victorian  
14:19 25 population visit, it would be a benefit to reduce harm for  
14:19 26 customers.  
14:19 27  
14:19 28 Q. Thank you. I don't think you quite got to answering my  
14:19 29 question, which is, and I'll ask it slightly differently so it is a bit  
14:19 30 easier to answer: would you support that change in respect of  
14:19 31 Victorian customers of the casino?  
14:19 32  
14:19 33 A. Again, I think --- I'd support it from a harm minimisation  
14:20 34 point of view. I think there would also need to be a review of the  
14:20 35 impact that has on the business from local VIP customers as well  
14:20 36 as interstate or domestic --- international customers.  
14:20 37  
14:20 38 Q. So I'll ask it a slightly different way. I think what you are  
14:20 39 saying is you would support it for local customers who might not  
14:20 40 be gold, platinum and black tier members, but you wouldn't  
14:20 41 support it in respect of, say, gold, platinum and black; is that the  
14:20 42 position?  
14:20 43  
14:20 44 A. Yes, I think there would have to be consideration given to  
14:20 45 that.  
14:20 46  
14:20 47 Q. But in respect of non-gold, black and platinum tier

14:20 1 members, so Victorians who are at lower memberships or not  
14:20 2 members, you would support what's at 85.1?  
14:21 3  
14:21 4 A. It would still potentially have an impact on the business,  
14:21 5 that would need to be understood. But I would support the  
14:21 6 review of it and, therefore, the outcome could be that we reduce  
14:21 7 the bet limit to \$5 on the main floor. I have to categorise it by  
14:21 8 saying you would have to review the overall review of it --- if I'm  
14:21 9 looking at it just purely in terms of 85 without any other factors,  
14:21 10 then yes, it would reduce the harm potentially caused by gaming  
14:21 11 machines at the casino.  
14:21 12  
14:21 13 Q. Right. So it is a trade-off between profits and the welfare  
14:21 14 of Victorians?  
14:21 15  
14:21 16 A. It's always, I think, a balance between setting the right  
14:21 17 limits for all customers, and there are customers that don't have  
14:21 18 a problem with their --- or experience harm from their gambling,  
14:21 19 and so that balance always needs to be taken into account.  
14:21 20  
14:21 21 Q. You agree with me that if the directors were to support your  
14:22 22 position, which was to review the situation, ultimately what they  
14:22 23 would be doing would be balancing the welfare of Victorians  
14:22 24 against the profits of Crown?  
14:22 25  
14:22 26 A. With all the other measures in place for the prevention of  
14:22 27 gambling harm --- yeah, they would have to make that decision as  
14:22 28 an overall business decision.  
14:22 29  
14:22 30 Q. I understand there is a lot of factors but fundamentally that  
14:22 31 is the balancing act; "yes" or "no"?  
14:22 32  
14:22 33 A. Yes.  
14:22 34  
14:22 35 Q. In terms of the regulatory restrictions that apply to gaming  
14:22 36 machines and other gaming venues, there is a specific aspect I  
14:22 37 want to discuss with you that is not touched in Mr Lucas's  
14:22 38 statement.  
14:22 39  
14:22 40 If the operator could bring up COM.0013.0001.0233.  
14:22 41  
14:23 42 Commissioner, behind tab 4 of your bundle.  
14:23 43  
14:23 44 This is another Ministerial Direction. And this Ministerial  
14:23 45 Direction relates to the Gambling Code of Conduct that every  
14:23 46 venue in the State must have other than the casino; okay?  
14:23 47

14:23 1 A. Yes.

14:23 2

14:23 3 Q. Mr Operator, if you turn to page 2, under the heading "Part

14:23 4 2: contents of a code". I want to read this out to you:

14:23 5

14:24 6 *A venue operator has a duty to take all reasonable steps*

14:24 7 *to prevent and minimise harm from the operation of*

14:24 8 *gaming machines in the approved venue .....*

14:24 9

14:24 10 Pausing there. You've agreed with me that EGM customers at

14:24 11 Crown face greater risk of harm than other gambling venues in

14:24 12 Victoria. You agree with that?

14:24 13

14:24 14 A. I agreed that that is the research, yes.

14:24 15

14:24 16 Q. It's not just the research, with respect. It is plain as

14:24 17 a pikestaff that if you have 1,000 EGMs where there are no

14:24 18 maximum bet limits, and maximum bet limit at every other EGM

14:24 19 at the casino is twice that of any other EGM in the State, the risk

14:24 20 of harm is greater; do you agree with that?

14:24 21

14:24 22 A. Agree with that.

14:24 23

14:25 24 Q. Okay. And this duty to take all reasonable steps to prevent

14:25 25 and minimise harm from the operating of gaming machines

14:25 26 applies to every gaming venue in Victoria other than Crown

14:25 27 Casino; are you aware of that?

14:25 28

14:25 29 A. I'm not --- I'm aware that this is in regard to venue

14:25 30 operators, but there is also one in regards to the casino, but ---

14:25 31

14:25 32 Q. There is, and I want you to assume for present purposes that

14:25 33 that duty is not found in the Ministerial Direction that relates to

14:25 34 the casino. Okay? Assume that.

14:25 35

14:25 36 Sitting here today, can you think of any logical reason why the

14:25 37 same duty should not be imposed on the casino?

14:25 38

14:25 39 A. No.

14:25 40

14:26 41 Q. Thank you.

14:26 42

14:26 43 That can be taken down, Mr Operator.

14:26 44

14:26 45 Solicitors Assisting the Royal Commission emailed Allens earlier

14:26 46 this morning with a document which I think you might have

14:26 47 a printout of?



14:26 1  
14:26 2 A. I do.  
14:26 3  
14:26 4 Q. You don't need to go to it yet. Have you read that  
14:26 5 document?  
14:26 6  
14:26 7 A. I've briefly read it, yes.  
14:26 8  
14:26 9 Q. Do you agree with me that customers gambling at the  
14:26 10 casino have, in the past, used picks and other devices to hold  
14:26 11 down play buttons on EGMs?  
14:26 12  
14:26 13 A. If I heard it correctly, you broke up a bit again,  
14:26 14 Mr Kozminsky, but you asked if customers in the past have  
14:26 15 played gaming machines with the use of --- I think you said picks?  
14:26 16  
14:26 17 Q. Picks and other devices to depress the play button.  
14:26 18  
14:26 19 A. Yes, they have.  
14:26 20  
14:27 21 Q. Do you agree that that sometimes still occurs?  
14:27 22  
14:27 23 A. Yes, I do.  
14:27 24  
14:27 25 Q. Thank you. We heard this evidence consistent with that. I  
14:27 26 asked this question on 3 May 2021, transcript 87, lines 18 to 27.  
14:27 27 I asked a current black cardholder this:  
14:27 28  
14:27 29 *Question: ..... At the casino, do you see people using chips*  
14:27 30 *or bank cards, or whatever it might be to hold down the*  
14:27 31 *button on an EGM?*  
14:27 32  
14:27 33 *Answer: Yeah, you can get a pick with Crown on it.*  
14:27 34  
14:27 35 *Question: Is that something that happens commonly,*  
14:27 36 *occasionally, rarely?*  
14:27 37  
14:27 38 *Answer: People probably do it 75 per cent of the time.*  
14:27 39  
14:27 40 Do you agree with that observation?  
14:27 41  
14:27 42 A. Seventy-five per cent of the time, no, I probably wouldn't  
14:27 43 agree with that observation.  
14:27 44  
14:27 45 Q. Well, I will ask you the question. That is something that  
14:27 46 happens commonly, occasionally or rarely, in your view?  
14:27 47

- 14:27 1 A. I think across the tiers it is probably more common in the  
14:28 2 higher level tiers, as in black, and less common in the lower tiers  
14:28 3 gold and below. Platinum and black, and gold and below would  
14:28 4 be less common.  
14:28 5
- 14:28 6 Q. And gold --- withdraw that. And black and platinum  
14:28 7 customers make up about 52 per cent of turnover from loyalty  
14:28 8 program members of the casino from gambling; that is right, isn't  
14:28 9 it?  
14:28 10
- 14:28 11 A. I don't have the numbers on me, but they are the larger  
14:28 12 proportion, yes.  
14:28 13
- 14:28 14 Q. Mr Emery said the split was 6 per cent member tier,  
14:28 15 11 per cent silver, 22 per cent gold, 36 platinum, 26 black tier.  
14:28 16 Are you happy to accept what Mr Emery says as being correct on  
14:28 17 that point?  
14:28 18
- 14:28 19 A. I am happy to accept that, Mr Kozminsky.  
14:28 20
- 14:28 21 Q. Great. And that issue, that is to say the issue of the use of  
14:28 22 picks, has been known to Crown for some time?  
14:29 23
- 14:29 24 A. Yes.  
14:29 25
- 14:29 26 Q. What policies have you as the head of EGMs at Crown  
14:29 27 implemented to ensure it doesn't occur?  
14:29 28
- 14:29 29 A. I think we, if I remember correctly with the dates in  
14:29 30 February 2018, we ceased the issuing of Crown picks,  
14:29 31 Crown-branded picks to customers, and I think later that same  
14:29 32 calendar year there was a direction memo from myself to stop, or  
14:29 33 if we see customers playing with a Crown pick, to remove it from  
14:29 34 the session and to discourage them from playing with a pick.  
14:29 35
- 14:29 36 Q. When did you say you issued that direction?  
14:29 37
- 14:30 38 A. If I got my dates wrong, I apologise, but I believe it was  
14:30 39 later in calendar year 2018.  
14:30 40
- 14:30 41 Q. Okay. Notwithstanding that direction, the practice persists,  
14:30 42 on your evidence and the evidence of people who gamble in the  
14:30 43 Mahogany Room. What steps did you take post that time to try to  
14:30 44 prevent the practice?  
14:30 45
- 14:30 46 A. Customers are discouraged from playing with items other  
14:30 47 than a Crown pick inserted into the gaming machine, or any other

- 14:30 1 similar guitar pick-type thing. The customers still play with  
14:30 2 a paper clip or a bank card or other things, but they are  
14:30 3 discouraged from playing that way. They are not necessarily  
14:30 4 stopped from playing that way if they are not using a Crown pick.  
14:30 5
- 14:30 6 Q. Oh, I see. As long as it's not an item branded with Crown's  
14:30 7 logo, customers can do it?  
14:30 8
- 14:30 9 A. We would discourage them from doing it, but they are and  
14:30 10 do do it, yes.  
14:30 11
- 14:31 12 Q. When you say you discourage them from doing it, is that  
14:31 13 documented somewhere in a policy, or is it part of training?  
14:31 14 Where would I see that document?  
14:31 15
- 14:31 16 A. I don't think it was part of a document or policy. It was  
14:31 17 communicated to the teams that operate in the VIP areas. I think  
14:31 18 the policy or memo, if it's not a policy, but the memo specifically  
14:31 19 said to reclaim the Crown pick and discourage the customers  
14:31 20 from playing a gaming machine that way, but I have to again  
14:31 21 review that document.  
14:31 22
- 14:31 23 Q. I will put the memo on Mr Borsky's tasklist and ask you  
14:31 24 this question: the reason Crown was concerned about it being ---  
14:31 25 about Crown-branded picks being used is because of the  
14:31 26 perception that might cause? If there was a photo of someone  
14:32 27 holding down a play button with a Crown-branded pick; do you  
14:32 28 agree with that?  
14:32 29
- 14:32 30 A. I think it was a direction from the VCGLR, but yes, what  
14:32 31 we wouldn't want, and don't want, Crown picks or  
14:32 32 a Crown-designed implement to hold the buttons down, yes.  
14:32 33
- 14:32 34 Q. One might take that to mean the concern of the casino is  
14:32 35 more about image than the welfare of the customers; you agree  
14:32 36 someone might take that practice to be construed in that way?  
14:32 37
- 14:32 38 A. Someone could, yes.  
14:32 39
- 14:32 40 Q. You agree that if someone did, that would be a proper  
14:32 41 characterisation of what is going on?  
14:32 42
- 14:32 43 A. No.  
14:32 44
- 14:32 45 Q. Do you agree that customers gambling at the casino have in  
14:32 46 the past played on more than one EGM at a time?  
14:32 47

14:33 1 A. Yes.

14:33 2

14:33 3 Q. And you agree it still happens?

14:33 4

14:33 5 A. Yes.

14:33 6

14:33 7 Q. We heard this evidence on 3 May 2021, transcript 87,  
14:33 8 starting at line 40. I asked this question. This is evidence of  
14:33 9 a black member who gambles at the Mahogany Room:

14:33 10

14:33 11 *Mr Kozminsky: Do you ever see, for example, has*  
14:33 12 *someone got a pick in one machine and playing that, and*  
14:33 13 *playing another two or three machines?*

14:33 14

14:33 15 .....

14:33 16

14:33 17 *Answer: Yes.*

14:33 18

14:33 19 .....

14:33 20

14:33 21 *Question: Does that mean, based on your experience*  
14:33 22 *going to Crown, that it is fair to say people working at*  
14:33 23 *Crown would see it?*

14:33 24

14:33 25 *Answer: Yes, they would.*

14:33 26

14:33 27 Do you agree with that?

14:33 28

14:33 29 A. Sorry, Mr Kozminsky, you broke up again halfway through  
14:33 30 that.

14:33 31

14:33 32 Q. I will read it again:

14:33 33

14:33 34 *Mr Kozminsky: Do you see, for example, has someone*  
14:33 35 *got a pick in one machine and they are playing that and*  
14:33 36 *they are playing another two or three machines?*

14:33 37

14:33 38 .....

14:33 39

14:34 40 *Answer: Yes.*

14:34 41

14:34 42 .....

14:34 43

14:34 44 *Question: Does this mean, based on your experience*  
14:34 45 *going to Crown, that it is fair to say people working at*  
14:34 46 *Crown would see it?*

14:34 47

14:34 1           *Answer: Yes, they would.*  
14:34 2  
14:34 3       And I'm asking if you agree with that evidence.  
14:34 4  
14:34 5       A. Yes, the team would have seen customers playing multiple  
14:34 6       machines, yes.  
14:34 7  
14:34 8       Q. What policies or procedures have you as the head of EGMs  
14:34 9       at Crown put in place to prevent that practice?  
14:34 10  
14:34 11      A. We removed or --- not removed. Apologies. I will  
14:34 12      rephrase that.  
14:34 13  
14:34 14      We issued a direction to the main gaming floor Riverside team to  
14:34 15      ensure that if they see anyone playing multiple machines, to ask  
14:34 16      the customer to stop playing multiple machines. In the Teak and  
14:35 17      Mahogany Rooms customers --- some of our customers have  
14:35 18      access to an ancillary card and therefore some choose to play  
14:35 19      multiple machines at the same time. That still is an allowed  
14:35 20      practice in those premium rooms.  
14:35 21  
14:35 22      Q. I see. The directive to the main gaming floor on the  
14:35 23      Riverside Room, when was that directive given?  
14:35 24  
14:35 25      A. It was recently with the pending update of the casino rules,  
14:35 26      so I'm going to say probably January or February this year.  
14:35 27  
14:35 28      Q. And that is so, notwithstanding the issue was raised as  
14:35 29      a concern in April 2017[sic] based on the document I've asked  
14:36 30      you to have printed and put in front of you?  
14:36 31  
14:36 32      A. April 2018 is the document I have in front of me.  
14:36 33  
14:36 34      COMMISSIONER: Hold on a second, Mr Kozminsky.  
14:36 35  
14:36 36      Mr Borsky. I can't hear you. You must be switched off.  
14:36 37  
14:36 38      MR BORSKY: Commissioner, I was just going to raise the same  
14:36 39      query that the witness has raised as to the date of the document.  
14:36 40  
14:36 41      COMMISSIONER: Yes, okay.  
14:36 42  
14:36 43      MR KOZMINSKY: My apologies.  
14:36 44  
14:36 45      Between the time of that issue being raised in April 2018 and  
14:36 46      January or February this year, no steps were taken to abolish the  
14:36 47      practice of people playing on multiple machines at the same

14:36 1 time?  
14:36 2  
14:36 3 A. Apart from --- no, no, I don't believe so.  
14:36 4  
14:37 5 Q. Do you agree with me that people using picks to depress  
14:37 6 the play button, or any device, is likely to --- withdraw that.  
14:37 7  
14:37 8 Do you agree with me that customers using picks or other devices  
14:37 9 to depress the play button is not consistent with your  
14:37 10 understanding of the Responsible Service of Gaming?  
14:37 11  
14:37 12 A. No, I believe the other signs that go with problem  
14:37 13 gambling --- I don't --- no, I don't believe it is against the  
14:37 14 Responsible Gambling practices.  
14:37 15  
14:37 16 Q. I want to be careful to make sure I understand your answer.  
14:37 17 If you are saying to me you don't think it is a breach of any  
14:37 18 specific prohibition, that's one thing, which is what I think you  
14:38 19 said at the end of your answer. I'm asking you a slightly different  
14:38 20 question.  
14:38 21  
14:38 22 A. Sorry.  
14:38 23  
14:38 24 Q. I'm asking not --- if you think it is consistent generally with  
14:38 25 the notions, the idea, of minimising harm and fostering  
14:38 26 Responsible Gambling.  
14:38 27  
14:38 28 A. I think it comes down to the individual circumstances of the  
14:38 29 player when it comes to that choice on how they want to play  
14:38 30 gaming machines. But on the main gaming floor and other areas  
14:38 31 where we don't have as high a level of observation or team  
14:38 32 members, then I think it is wise it is not allowed on the main  
14:38 33 gaming floor, yes.  
14:38 34  
14:38 35 Q. Do you think that allowing people to gamble on more than  
14:38 36 one EGM at the same time is consistent with an environment that  
14:39 37 minimises harm from gambling and fosters Responsible  
14:39 38 Gambling?  
14:39 39  
14:39 40 A. Again, I think it comes down to the customer's choice on  
14:39 41 how they are playing, if there are any other signs or concerns  
14:39 42 around their gambling behaviour, not just the individual sign of  
14:39 43 playing multiple machines.  
14:39 44  
14:39 45 Q. The signs of other gambling behaviour which you  
14:39 46 mentioned in the last two answers, do you ---  
14:39 47

14:39 1 A. If someone's personal circumstances in their wealth  
14:39 2 potentially, and that's the way they enjoy playing a gaming  
14:40 3 machine whilst doing it responsibly, I can't see that as fostering  
14:40 4 a concern from a problem gambling or harm minimisation. But  
14:40 5 other signs that could indicate that person is not in control of their  
14:40 6 gambling, then yes, that wouldn't be a good situation, and it  
14:40 7 should be intervened with.  
14:40 8

14:40 9 Q. Let's break that down. I agree with you that if someone is  
14:40 10 extraordinarily wealthy, they might be able to gamble on more  
14:40 11 than one EGM at a time, they might enjoy it, they might get  
14:40 12 a thrill out of it and it might not cause any damage. I think that is  
14:40 13 what you are putting to me; is that right?  
14:40 14

14:40 15 A. That's correct.  
14:40 16

14:40 17 Q. What inquiries are made by Crown Casino about the  
14:40 18 financial position of its customers?  
14:40 19

14:40 20 A. Up until recently, very little.  
14:40 21

14:40 22 Q. So if you don't know what their financial circumstances are,  
14:41 23 do you agree with me that if one were to prioritise the welfare of  
14:41 24 Victorians, you wouldn't have a practice that allowed people to  
14:41 25 have picks or other devices that depressed the play button, and  
14:41 26 you wouldn't allow multiple play on multiple EGMs at once?  
14:41 27

14:41 28 A. Yes.  
14:41 29

14:41 30 Q. You also spoke in your answer about other signs. By  
14:41 31 "other signs", are you referring to observable signs?  
14:41 32

14:41 33 A. Yes, I am.  
14:41 34

14:41 35 Q. I want you to assume for present purposes --- withdraw  
14:41 36 that.  
14:41 37

14:41 38 I want you to assume for present purposes that it is open to this  
14:41 39 Commission to find that there are inadequate staffing levels who  
14:41 40 properly observe for observable signs. I want you to make that  
14:42 41 assumption.  
14:42 42

14:42 43 COMMISSIONER: Before you answer the question, I think I've  
14:42 44 got Mr Borsky on the line who wants to say something.  
14:42 45

14:42 46 MR BORSKY: Just to say that I couldn't hear most of the  
14:42 47 question. I suggest the question be asked whether he could hear

14:42 1 before he answers.  
14:42 2  
14:42 3 COMMISSIONER: Fair enough. There is problems with the  
14:42 4 microphone or the system.  
14:42 5  
14:42 6 Mr Kozminsky, can you do it again.  
14:42 7  
14:42 8 MR KOZMINSKY: I apologise to all.  
14:42 9  
14:42 10 We were discussing observable signs. That was the second part  
14:42 11 of your response; do you remember that?  
14:42 12  
14:42 13 A. Yes.  
14:42 14  
14:42 15 Q. And they have to be observed by staff members. That is  
14:42 16 what an observable sign is; do you agree with me?  
14:42 17  
14:42 18 A. Correct.  
14:42 19  
14:42 20 Q. I want you to make an assumption. I want you to assume  
14:42 21 this Commission has heard evidence that might support finding  
14:42 22 that there is simply inadequate staff to properly monitor for  
14:42 23 observable signs. Okay?  
14:42 24  
14:43 25 A. Okay.  
14:43 26  
14:43 27 Q. If that assumption were right, you agree with me that it  
14:43 28 would be inconsistent with an environment that fosters  
14:43 29 Responsible Gambling (audio distorted) discourage players from  
14:43 30 using devices to depress the play button, and to gamble on more  
14:43 31 than one EGM at a time?  
14:43 32  
14:43 33 A. Yes, I would.  
14:43 34  
14:43 35 Q. Thank you. I would like to go to the Red Carpet Program  
14:43 36 now, if I could. You've given some evidence about that. I think  
14:43 37 it is paragraph 18 if you want to have a look at it.  
14:43 38  
14:43 39 A. I have that.  
14:43 40  
14:43 41 Q. You agree with me that the program is open to community  
14:43 42 groups; that is your evidence?  
14:43 43  
14:43 44 A. Yes, that's correct.  
14:43 45  
14:43 46 Q. Do you agree with me that the program targets senior  
14:43 47 citizens?



14:43 1  
14:43 2 Sorry, can I pause there for a moment.  
14:43 3  
14:43 4 There is something that I've not done, Mr Commissioner. The  
14:44 5 document printed in front of Mr Mackay, which is privileged,  
14:44 6 which is behind tab 4 of your folder, I would like to tender as  
14:44 7 an exhibit. I haven't done that.  
14:44 8  
14:44 9 Mr Operator, please do not bring this up on screen. It is  
14:44 10 MEM.5001.0004.5575.  
14:44 11  
14:44 12 COMMISSIONER: Give me the tab number again, please.  
14:44 13  
14:44 14 MR KOZMINSKY: Tab 4, Mr Commissioner.  
14:44 15  
14:44 16 COMMISSIONER: Is that the briefing paper document?  
14:44 17  
14:44 18 MR KOZMINSKY: (Nods head). It is, Mr Commissioner.  
14:44 19  
14:45 20 COMMISSIONER: I will refer to this as a briefing paper by  
14:45 21 MinterEllison dated 27 April 2018, Exhibit 162, confidential.  
14:45 22  
23  
24 **EXHIBIT #RCPH0162 - BRIEFING PAPER BY**  
25 **MINTERELLISON DATED 27 APRIL 2018**  
26 **(CONFIDENTIAL)**  
27  
28  
14:45 29 MR KOZMINSKY: I went to two Government Gazettes that I  
14:45 30 didn't tender. The first was behind tab 14, Mr Commissioner, of  
14:45 31 your hard copy, and COM.0013.0001.0233, if I could tender that.  
14:45 32  
14:45 33 COMMISSIONER: The Ministerial Direction published on 21  
14:45 34 February 2020, Exhibit 163.  
14:45 35  
36  
37 **EXHIBIT #RC0163 - MINISTERIAL DIRECTION**  
38 **PUBLISHED ON 21 FEBRUARY 2020**  
39  
40  
14:45 41 MR KOZMINSKY: Then the document behind tab 1 of your  
14:45 42 bundle, which is COM.0013.0001.0030, if I could tender that.  
14:46 43  
14:46 44 COMMISSIONER: Ministerial Direction under the Gambling  
14:46 45 Regulations Act 2003 published on 29 October 2015 will be  
14:46 46 Exhibit 164.  
14:46 47

1

2

**EXHIBIT #RC0164 - MINISTERIAL DIRECTION UNDER  
THE GAMBLING REGULATIONS ACT 2003 PUBLISHED  
ON 29 OCTOBER 2015**

3

4

5

6

14:46 7

MR KOZMINSKY: Thank you, sir.

14:46 8

14:46 9

We were discussing the Red Carpet Program.

14:46 10

14:46 11

A. Yes.

14:46 12

14:46 13

Q. I asked you whether or not you agree the program targets senior citizens.

14:46 14

14:46 15

14:46 16

A. Oh, the program promotes itself to registered organisations. It doesn't target seniors but the majority of the organisations that participated in the Red Carpet Program were older, elderly people, senior citizens.

14:46 17

14:47 18

14:47 19

14:47 20

Q. So we can agree the majority of participants are senior citizens?

14:47 21

14:47 22

14:47 23

A. Yes.

14:47 24

14:47 25

Q. And you say that the program --- withdraw that.

14:47 26

14:47 27

You say that community groups receive a rebate for travel; is that right?

14:47 28

14:47 29

14:47 30

A. Yes, that's correct.

14:47 31

14:47 32

Q. If I can just show you, please, some terms and conditions. COM.00016.0001.0001. Tab 10, Mr Commissioner, of your hard copy bundle.

14:47 33

14:47 34

14:47 35

14:47 36

Do you see there the terms and conditions?

14:47 37

14:47 38

A. I can see the front page, yes.

14:47 39

14:47 40

Q. If you go to the next page, and the operator might have to zoom in for you, but about halfway there is a heading "Rebates" and there is a clause 21 and clause 22. Can you see "rebates" just there?

14:48 41

14:48 42

14:48 43

14:48 44

14:48 45

A. Yes, I do.

14:48 46

14:48 47

- 14:48 1 Q. It says:  
14:48 2  
14:48 3 *A four-hour minimum stay applies to qualify for rebates*  
14:48 4 *..... A six-hour minimum stay is required when the*  
14:48 5 *Program is combined with other non-Crown venue events.*  
14:48 6  
14:48 7 You see that?  
14:48 8  
14:48 9 A. Yes, I do.  
14:48 10  
14:48 11 Q. I'm right, aren't I, that the time limits are there because the  
14:48 12 idea is you have the senior citizens come in and gamble and there  
14:48 13 is a rebate if they spend enough time at the casino gambling?  
14:48 14  
14:48 15 A. Two parts to your question. The first part was I believe that  
14:49 16 the six and four-hour time periods were to have the bus groups  
14:49 17 stay on property. The rebate wasn't in regards to their spend or  
14:49 18 otherwise. That was in response to a number of the organisations  
14:49 19 saying --- telling us that bus costs were becoming excessive for  
14:49 20 their organisation. So my understanding, when this program first  
14:49 21 started many years ago, was that the rebate was to assist with the  
14:49 22 cost of the bus hire for the group.  
14:49 23  
14:49 24 Q. I understand that. So Crown provides a rebate, but the  
14:49 25 costs of the bus is the same whether the people are at the casino  
14:49 26 for 30 minutes or one hour. Either way the bus is driving them to  
14:49 27 the casino and back to where they were picked up; agree with  
14:49 28 me?  
14:49 29  
14:49 30 A. My understanding was the bus companies will wait at the  
14:50 31 casino, which is where the cost is. They don't go and do other  
14:50 32 trips. But, yes, sorry, to your question, is the cost the same for  
14:50 33 coming and going, yes, I agree.  
14:50 34  
14:50 35 Q. I don't understand. You will have to explain to me again.  
14:50 36  
14:50 37 A. I misheard your question, Mr Kozminsky. The answer to  
14:50 38 your question is, yes, the cost of the bus is the same to and from.  
14:50 39 The wait period was, to my understanding, one --- for us, was to  
14:50 40 keep the group on property as I answered before.  
14:50 41  
14:50 42 Q. Yes, to gamble.  
14:50 43  
14:50 44 A. To spend time on property and that may include gambling,  
14:50 45 yes.  
14:50 46  
14:50 47 MR KOZMINSKY: Mr Commissioner, I will tender the terms

14:50 1 and conditions, if I may?

14:50 2

14:50 3 A. Can I add that has now been changed and was changed in

14:50 4 April 2018? That they are very old terms and conditions that you

14:50 5 are showing?

14:50 6

14:50 7 Q. Are they?

14:50 8

14:51 9 A. Yes.

14:51 10

14:51 11 Q. Are you able to provide us an updated terms and conditions

14:51 12 as another piece of homework?

14:51 13

14:51 14 A. Yes, I can.

14:51 15

14:51 16 COMMISSIONER: I will mark this as an exhibit, in any event.

14:51 17 165 will be Red Carpet Terms and Conditions.

18

19

20

21 **EXHIBIT #RC0165 - RED CARPET TERMS AND**

22 **CONDITIONS**

23

24

14:51 25 COMMISSIONER: But, Mr Mackay, can you briefly, if you are

14:51 26 able, tell me the difference or the main differences between the

14:51 27 terms and conditions of this now-outdated brochure and what

14:51 28 might be the current position, at least up until a month ago.

14:51 29

14:51 30 A. The main difference was there is no requirement --- April

14:51 31 2018 it was that they were changed, not a month ago. Sorry,

14:51 32 Commissioner.

14:51 33

14:51 34 COMMISSIONER: I meant it was current until a month ago as I

14:51 35 understand the program might be discontinued.

14:51 36

14:51 37 A. Sorry, yes.

14:51 38

14:51 39 COMMISSIONER: I was referring to that.

14:51 40

14:51 41 A. The program was discontinued but the terms and conditions

14:51 42 were updated in April 2018 and no longer required a minimum

14:51 43 stay on property and there was also some other small changes.

14:52 44 I believe at the time the T&Cs had not been updated on the Red

14:52 45 Carpet Program for some years so obviously there were a few

14:52 46 other legal changes. But the majority of the operational changes

14:52 47 was the removal of the time period. I believe there was a change

14:52 1 in the rebates and the cost of the food and beverage package.  
14:52 2 They are the major changes.  
14:52 3  
14:52 4 COMMISSIONER: Is one --- sorry, you go.  
14:52 5  
14:52 6 MR KOZMINSKY: No, Mr Commissioner.  
14:52 7  
14:52 8 COMMISSIONER: I was going to ask, are the elderly folk who  
14:52 9 come along to the casino under the Red Carpet Program given  
14:52 10 vouchers so they can go gamble?  
14:52 11  
14:52 12 A. They are not given vouchers as part of the Red Carpet  
14:52 13 Program. If a customer who is a participate in the Red Carpet  
14:52 14 Program and has not been a Crown Rewards member and signs  
14:52 15 up on the day, then they would receive on signup to Crown  
14:53 16 Rewards in the past a gaming voucher. But if they were already  
14:53 17 a member and participating in the Red Carpet Program, they  
14:53 18 would not be given a gaming voucher.  
14:53 19  
14:53 20 COMMISSIONER: Okay, thank you.  
14:53 21  
14:53 22 MR KOZMINSKY: Under the current terms, are you able to give  
14:53 23 us an indication of the rebates and dollar value of any other  
14:53 24 benefits provided by Crown to the community groups?  
14:53 25  
14:53 26 A. I'm sorry, I missed the first section of it.  
14:53 27  
14:53 28 Q. Are you able to give us a dollar value of the rebates as at  
14:53 29 last month, since the terms changed? What is the dollar value of  
14:53 30 the rebates Crown provides?  
14:53 31  
14:53 32 A. I'm not sure I've been clear. The conditions changed in  
14:53 33 April 2018, not last month.  
14:53 34  
14:53 35 Q. No, no, I understand that.  
14:53 36  
14:53 37 A. The program ceased operating with COVID closure so ....  
14:53 38  
14:53 39 Q. From April 2018 or whenever it was that the terms and  
14:53 40 conditions changed, from that time, what is the quantum of the  
14:53 41 rebate, just so we ---  
14:53 42  
14:54 43 A. I can give you the details of that, yes.  
14:54 44  
14:54 45 Q. You don't know it off the top of your head?  
14:54 46  
14:54 47 A. Oh, off the top of my head, now you are testing my

14:54 1 memory. In fact I think it was one of the documents that was  
14:54 2 tendered to me by the Commission to review. You may have the  
14:54 3 latest Red Carpet Program, I believe.

14:54 4

14:54 5 Q. I've got a program, but I'm not sure I know precisely  
14:54 6 what the ---

14:54 7

14:54 8 A. Anyway, I think it is 50, 100, and 150, and the own  
14:54 9 transport rebate is 50. But I'm going off memory so I could be  
14:54 10 mistaken.

14:54 11

14:54 12 Q. Okay. Do you agree that participants are encouraged to  
14:54 13 sign up to the loyalty program?

14:54 14

14:54 15 A. Yes, it is definitely available on arrival and is at the Red  
14:54 16 Carpet Program desk, yes.

14:55 17

14:55 18 Q. But the idea is Crown staff encourage participants to sign  
14:55 19 up?

14:55 20

14:55 21 A. I've not --- I don't think they personally encourage them,  
14:55 22 but they do let them know there is a program to sign up. The  
14:55 23 rewards --- the Red Carpet brochure talks about the rewards and  
14:55 24 the benefits of it, so you could use the word "encourage", yes. I  
14:55 25 agree.

14:55 26

14:55 27 Q. Thank you for that fair concession. I will now go to that  
14:55 28 program, CRW (audio distorted) ---

14:55 29

14:55 30 COMMISSIONER: It's a bit hard to hear, Mr Kozminsky.

14:55 31

14:55 32 MR KOZMINSKY: Tab 8. I'm bringing it up because the  
14:55 33 witness has referred to it in giving his answer, he quite rightly  
14:55 34 referred to the fact that the loyalty programs are referred to in it,  
14:55 35 and I just want to tender the document.

14:55 36

14:55 37 A. I think if you scroll down, the rebates will be on that  
14:56 38 document, Mr Kozminsky, for your benefit.

14:56 39

14:56 40 Q. Fantastic. Have another look at it and see if we can find  
14:56 41 that.

14:56 42

14:56 43 Mr Commissioner, can I tender that?

14:56 44

14:56 45 COMMISSIONER: That will be Updated Red Carpet Program.  
14:56 46 Exhibit 166.

14:56 47

14:56 1  
14:56 2 **EXHIBIT #RC0166 - UPDATED RED CARPET PROGRAM**  
14:56 3  
14:56 4  
14:56 5 MR KOZMINSKY: Are you aware of an academic by the name  
14:56 6 of Professor Hancock having conducted some research into the  
14:56 7 Red Carpet Program?  
14:56 8  
14:56 9 A. I only became aware of that with the exhibits to the Royal  
14:56 10 Commission.  
14:56 11  
14:56 12 Q. Okay. She has filed a submission and in her submission  
14:56 13 she talks about earlier research that was done. And Ms Bauer,  
14:57 14 when she gave evidence, said that Crown was aware of that  
14:57 15 evidence. I want to show you what that research found.  
14:57 16  
14:57 17 Mr Commissioner, it is behind tab 9 of your bundle.  
14:57 18  
14:57 19 Operator, it is COM.0016.0001.0003. If you go to page 4 in the  
14:57 20 bottom right-hand corner.  
14:57 21  
14:57 22 Do you see that?  
14:57 23  
14:57 24 A. I can see it on the screen.  
14:57 25  
14:57 26 Q. Yes. So in 2010, a pilot survey of 204 participants on six  
14:57 27 Crown bus packages from northern suburbs social clubs was  
14:57 28 performed and this is the finding of the research. I will just take  
14:58 29 you through it.  
14:58 30  
14:58 31 As I say, Ms Bauer said she was aware of this, at transcript 1379:  
14:58 32  
14:58 33 *42.9% of participants spent more than they had planned*  
14:58 34 *.....*  
14:58 35  
14:58 36 You see that?  
14:58 37  
14:58 38 A. Yes, I can.  
14:58 39  
14:58 40 Q. And:  
14:58 41  
14:58 42 *23.7% of participants planned to return to the casino to*  
14:58 43 *win back [their] money .....*  
14:58 44  
14:58 45 Do you see that?  
14:58 46  
14:58 47 A. I do.

14:58 1  
14:58 2 Q. And do you know that that is an unrealistic remark about  
14:58 3 gaming and therefore an observable sign?  
14:58 4  
14:58 5 A. I think you said it is an unrealistic thought around gaming  
14:58 6 and an observable sign but you broke up. So you might want to  
14:58 7 repeat that.  
14:58 8  
14:58 9 Q. An unrealistic remark about gaming and therefore  
14:58 10 an observable sign?  
14:58 11  
14:58 12 A. Yes, I do.  
14:58 13  
14:58 14 Q.  
14:58 15  
14:58 16 *All groups spent more than they expected or planned to*  
14:58 17 *spend.....*  
14:58 18  
14:58 19 Do you see that?  
14:58 20  
14:58 21 A. Yes, I do.  
14:58 22  
14:58 23 Q.  
14:58 24  
14:58 25 *Upon arrival, participants were signed up to the Crown*  
14:59 26 *Signature Club and Crown staff typically filled in the*  
14:59 27 *form, signed participants up to ongoing marketing .....*  
14:59 28  
14:59 29 You see that?  
14:59 30  
14:59 31 A. Yes, I do.  
14:59 32  
14:59 33 Q. Crown Signature Club is the former name of the current  
14:59 34 Crown Rewards Program?  
14:59 35  
14:59 36 A. Yes, it was the former name, yes.  
14:59 37  
14:59 38 Q. The last dot point is consistent with the evidence you've  
14:59 39 given. I need not take you to that. Do you see that?  
14:59 40  
14:59 41 A. Yes, I do.  
14:59 42  
14:59 43 MR KOZMINSKY: Mr Commissioner, can I tender that  
14:59 44 submission by Professor Hancock.  
14:59 45  
14:59 46 COMMISSIONER: That will be Exhibit 167. Submission by  
14:59 47 Professor Hancock. It might not be dated.



14:59 1  
14:59 2 MR KOZMINSKY: It is dated 28 May.  
15:00 3  
15:00 4 COMMISSIONER: Oh, 28 May. It is the submission dated 28  
15:00 5 May 2022.  
15:00 6  
15:00 7 MR KOZMINSKY: 2021, Mr Commissioner.  
15:00 8  
15:00 9  
10 **EXHIBIT #RC0167 - SUBMISSION BY PROFESSOR**  
11 **HANCOCK DATED 28 MAY 2021**  
12  
13  
15:00 14 MR KOZMINSKY: Mr Mackay, did Crown ever consider that  
15:00 15 research in marketing and conducting the Red Carpet Program?  
15:00 16  
15:00 17 A. Not to my knowledge. I didn't have any knowledge of that  
15:00 18 research until this document.  
15:00 19  
15:00 20 Q. Who would have been in charge of the Red Carpet Program  
15:00 21 between 2010 and last month when it was said to be abolished?  
15:00 22  
15:00 23 A. So the Red Carpet Program has always been in the Gaming  
15:00 24 Machine department's gambit, and so from July 2017 it was  
15:00 25 myself. Prior to that it was the previous EGM of gaming  
15:01 26 machines of Crown, to my understanding.  
15:01 27  
15:01 28 Q. Right, meaning when you started you weren't made aware  
15:01 29 of the research or anything of that nature?  
15:01 30  
15:01 31 A. I've not been made aware of any research in regards the  
15:01 32 Red Carpet program until I read that document as part of the  
15:01 33 Royal Commission.  
15:01 34  
15:01 35 Q. Sure. Let me ask you something. I'm right, aren't I, that is  
15:01 36 in the gaming machine's gambit, to use your words, because the  
15:01 37 idea is to have senior citizens gamble on gaming machines?  
15:01 38 That's the idea behind the program?  
15:01 39  
15:01 40 A. I think it sits within the Gaming Machine department for  
15:01 41 a number of reasons, one being that the customers who are  
15:01 42 attending on the Red Carpet Program would have a propensity to  
15:01 43 be gaming machine customers. The other two reasons are the  
15:01 44 team that run the Red Carpet Program have always been in the  
15:01 45 gaming department, so I think by natural occurrence it sits within  
15:02 46 that team. But the product that the customers play when they are  
15:02 47 here would mainly be gaming machines.

15:02 1  
15:02 2 Q. Yes, so the demographics, senior citizens likely to play  
15:02 3 gaming machines; that is the point?  
15:02 4  
15:02 5 A. Yes.  
15:02 6  
15:02 7 Q. Thank you. I want to show you a file note taken by the  
15:02 8 regulator as part of its review into Crown.  
15:02 9  
15:02 10 Mr Commissioner, for your benefit, behind tab 11. Document ID  
15:02 11 VCG.0001.0001.1857.  
15:02 12  
15:02 13 Can you see the date of the file note is 28 November 2017?  
15:02 14  
15:02 15 A. Yes, I can.  
15:02 16  
15:02 17 Q. It is a meeting with the Ethnic Community Council of  
15:02 18 Victoria; you see that?  
15:02 19  
15:03 20 A. Yes, I do.  
15:03 21  
15:03 22 Q. The date of the meeting was 8 November 2017?  
15:03 23  
15:03 24 A. Yes.  
15:03 25  
15:03 26 Q. I won't read you out all the attendees, but the first  
15:03 27 paragraph are attendees working at a variety of different ethnic  
15:03 28 community organisations; can you see that?  
15:03 29  
15:03 30 A. Yes, I can.  
15:03 31  
15:03 32 Q. In the second paragraph are the members of the regulator  
15:03 33 who attended the meeting?  
15:03 34  
15:03 35 A. Yes.  
15:03 36  
15:03 37 Q. I want to take to you page 10 which commences at the  
15:03 38 bottom of page 2. During this meeting, concerns were raised  
15:03 39 with the regulator about practices at the casino. Do you see there  
15:03 40 it says Ms Dundon, who I can tell you is the gambling prevention  
15:03 41 project coordinator at ECCV:  
15:03 42  
15:04 43 *..... said that people were encouraged to go on bus trips to*  
15:04 44 *the casino.*  
15:04 45  
15:04 46 Do you see that?  
15:04 47

15:04 1 A. Yes, I do that.  
15:04 2  
15:04 3 Q. And I think it is Mr Gabby Ocampo, who is the community  
15:04 4 educator, Australian Filipino Community Services, for your  
15:04 5 benefit, spoke about people being taken on bus trips to "morning  
15:04 6 melodies" --- music programs primarily aimed at older persons at  
15:04 7 the casino and hotels where there were gaming machines. Do  
15:04 8 you see that?  
15:04 9  
15:04 10 A. Yes, I do.  
15:04 11  
15:04 12 Q. Are you familiar with the Morning Melodies program?  
15:04 13  
15:04 14 A. Yes.  
15:04 15  
15:04 16 Q. Is that a similar thing to the Red Carpet program where  
15:04 17 there is a bus taking senior citizens into the casino for some  
15:04 18 activity, in the hope that they will then gamble on EGMs?  
15:04 19  
15:04 20 A. That is part of the Red Carpet program. When participants  
15:04 21 arrive or they have booked for that day, they are --- there is  
15:04 22 an hour's long or an hour and 20 minute show with singing and  
15:05 23 dancing for the participants of the Red Carpet that have booked  
15:05 24 on that day.  
15:05 25  
15:05 26 Q. Right. So there is a free music performance and a bus, and  
15:05 27 the idea is that Crown not being a charity, the senior citizens will  
15:05 28 gamble on the EGMs, that is the idea?  
15:05 29  
15:05 30 A. There is a music show and then obviously the buffet lunch  
15:05 31 included on the day out and then whatever spending or play they  
15:05 32 would like to do on the property is up to them. But, yes, that is  
15:05 33 the idea of the Red Carpet Program.  
15:05 34  
15:05 35 Q. And the music melody program, the idea is to get --- I will  
15:05 36 read you what is recorded in the file notes:  
15:05 37  
15:05 38 *The purpose of the program is to get people to the casino*  
15:05 39 *and that people may overspend .....*  
15:05 40  
15:05 41 And it gives an example of people not having sufficient money to  
15:06 42 buy their medications. You see that at the end of paragraph 10?  
15:06 43 You will have to go over the page, Mr Operator.  
15:06 44  
15:06 45 Do you see that, at the end of paragraph 10?  
15:06 46  
15:06 47 *..... many of these people overspend and then do not have*

- 15:06 1           *enough money to buy their medication.*
- 15:06 2
- 15:06 3     A.
- 15:06 4
- 15:06 5           *..... a reason to get dressed up and have a 'flutter'. ....*
- 15:06 6
- 15:06 7     Oh, the next one, Yes, I do see that, yes.
- 15:06 8
- 15:06 9     Q. And the sentence you read just before that is people, being
- 15:06 10    senior citizens, see it as:
- 15:06 11
- 15:06 12           *..... a reason to get dressed up and have a 'flutter' which*
- 15:06 13           *gets out of hand.*
- 15:06 14
- 15:06 15    Do you see that?
- 15:06 16
- 15:06 17    A. Yes.
- 15:06 18
- 15:06 19    Q. Do you agree with me that it is these details we are seeing
- 15:06 20    in this file note are a real concern about any program that buses
- 15:07 21    senior citizens to the casino in the hope that they will gamble?
- 15:07 22
- 15:07 23    A. I think there is a concern, there was a view that we were
- 15:07 24    getting people to come to the casino regardless of their age and
- 15:07 25    spend beyond their means, but for a day out, which to my
- 15:07 26    understanding and the feedback we've had from organisations
- 15:07 27    that utilise the service and their participants, the majority of them
- 15:07 28    have had a good day out. But I recognise it could be an issue for
- 15:07 29    some people if they have concerns around their gambling or it
- 15:07 30    creates a gambling harm situation for a customer. The majority
- 15:07 31    of feedback from those organisation is they enjoyed it as a day
- 15:07 32    out for their organisation.
- 15:07 33
- 15:07 34    Q. Do you get feedback like feedback in paragraph 10 of this
- 15:08 35    file note?
- 15:08 36
- 15:08 37    A. I've not seen any feedback like that, no.
- 15:08 38
- 15:08 39    Q. "Yes" or "no", if you can: you agree with me that those
- 15:08 40    designing this program, was their aim to have senior citizens
- 15:08 41    come into the casino and lose more than the cost of running the
- 15:08 42    program?
- 15:08 43
- 15:08 44    A. Yes, I do not believe it was being run as a loss-making
- 15:08 45    episode; correct.
- 15:08 46
- 15:08 47    Q. And you agree ---

15:08 1  
15:08 2 A. It may not have been from that individual trip. It may have  
15:08 3 also been seen as an acquisition of Crown Rewards loyalty  
15:08 4 memberships. But it would have been being run not to make a  
15:08 5 loss, to answer your question, Mr Kozminsky.  
15:08 6  
15:08 7 Q. And you agree with me that as a general proposition, senior  
15:09 8 citizens who are members of community organisations are likely  
15:09 9 to be vulnerable, lower income, as a general rule, patrons, as  
15:09 10 compared to other people who might visit the casino?  
15:09 11  
15:09 12 A. Yes, the spend per participant was a lot lower than other  
15:09 13 customers.  
15:09 14  
15:09 15 Q. You agree with me they are likely, therefore, to be more  
15:09 16 vulnerable and they are likely to have a less financially secure  
15:09 17 position than many of your other customers?  
15:09 18  
15:09 19 A. I don't think I can make that call, Mr Kozminsky. The  
15:09 20 participants are from all walks of life. They may be self-funded  
15:09 21 retirees or pensioners. I'm not sure I can make that call by  
15:10 22 looking purely at the Red Carpet Program.  
15:10 23  
15:10 24 Q. Right. You've told me their spend was lower. And you  
15:10 25 know they are members of community organisations and are  
15:10 26 senior citizens. I'm not asking you on a person-by-person basis,  
15:10 27 I'm asking you as a cohort, statistically, whether you've done it or  
15:10 28 not, every bone in your body would tell you that I was right about  
15:10 29 that proposition I put to you?  
15:10 30  
15:10 31 A. Yes.  
15:10 32  
15:10 33 Q. Thank you.  
15:10 34  
15:10 35 I tender that file note.  
15:10 36  
15:10 37 COMMISSIONER: All right. That is a file note, 8 November  
15:10 38 2017, prepared by the VCGLR. That will be Exhibit 168.  
15:11 39  
15:11 40  
15:11 41 **EXHIBIT #RC0168 - FILE NOTE PREPARED BY VCGLR**  
15:11 42 **DATED 8 NOVEMBER 2017**  
15:11 43  
15:11 44  
15:11 45 COMMISSIONER: Mr Kozminsky, Mr Mackay, I want to break  
15:11 46 for five minutes to see whether we can have another go at fixing  
15:11 47 the quality of the sound that is coming from Mr Kozminsky

15:11 1 because, again, both Mr Mackay and I have got some difficulty  
15:11 2 with the sound.

15:11 3

15:11 4 I'm told it's possible it might be fixed so we are going to give it  
15:11 5 a go.

15:11 6

15:11 7 I will adjourn for about five minutes or so.

15:11 8

15:11 9

15:12 10 **ADJOURNED** [3.12PM]

15:24 11

15:24 12

15:24 13 **RESUMED** [3.24PM]

15:24 14

15:24 15

15:24 16 COMMISSIONER: I think it has proved impossible to make any  
15:24 17 appropriate adjustments. It's been impossible to make any  
15:25 18 appropriate adjustments to the speaker. It may be that something  
15:25 19 that --- I'll wait. Can you hear me Mr Mackay? You are on mute.  
15:26 20 I won't be able to hear you just yet.

15:26 21

15:26 22 A. I can hear you now, Mr Commissioner.

15:26 23

15:26 24 COMMISSIONER: Okay, thank you. I was going to say that it  
15:26 25 might not be fixable. We haven't been able to fix it over the last  
15:26 26 five-minute break. We will try again when we knock off for the  
15:26 27 afternoon. But you both might want to think about whether two  
15:26 28 extra people, Mr Kozminsky and Mr Borsky --- I think we'll finish  
15:26 29 with Mr Mackay today but for the next witness, whether you  
15:26 30 want to still proceed the way we are going, and it is hard to hear,  
15:26 31 with lots of interruptions or whether both --- and only ---  
15:26 32 Mr Borsky, Mr Kozminsky come into the hearing room because  
15:26 33 it will work from here. I know that you, Mr Borsky, said if one  
15:27 34 comes, both comes, but the witness won't be here. So I don't  
15:27 35 know if that makes any difference to the approach you take. But  
15:27 36 if it is not going to work, I would rather make sure the witness  
15:27 37 hears what is going on and we all hear what is going on. That's  
15:27 38 not a bad start. If it means having two barristers in the room, we  
15:27 39 are exempt. I have to check that. I know that courts are exempt  
15:27 40 and there are still court hearings taking place and counsel  
15:27 41 appearing in the Supreme Court for sure. I'm not sure about the  
15:27 42 Federal Court. I'm not sure whether we are exactly the same as  
15:27 43 a court, but if they have an exemption I think we probably fit  
15:27 44 within the same category. I will have to have a look at that.  
15:27 45 Maybe we can have a chat about that or solicitors can have a chat  
15:27 46 about that after we finish the hearing. Because it is unsatisfactory  
15:27 47 and unfair to the witness as well, who misses lots of questions,

15:28 1 the fault of technology which at the moment we can't fix.  
15:28 2  
15:28 3 We'll defer that for the minute but see where we go later on in the  
15:28 4 day. It's just if we decide to have counsel here we have to make  
15:28 5 some adjustments to the hearing room for cameras and  
15:28 6 microphones and things. I don't think it is a major adjustment,  
15:28 7 but we can do that overnight easily enough so it is ready for the  
15:28 8 morning. I can't do any better than that this afternoon.  
15:28 9  
15:28 10 Mr Kozminsky? Again, Mr Mackay, if the sound doesn't come  
15:28 11 through properly, yell out. I will pick it up in any event because  
15:28 12 I have the same problem that you have, but nevertheless if you  
15:28 13 can't hear anything, just say so.  
15:28 14  
15:28 15 A. I will do.  
15:28 16  
15:28 17 COMMISSIONER: Thanks.  
15:28 18  
15:28 19 Mr Kozminsky.  
15:28 20  
15:28 21 MR KOZMINSKY: Thank you, Commissioner.  
15:28 22  
15:29 23 Mr Mackay, you are aware that on 24 May 2021 Crown Resorts  
15:29 24 resolved to abolish the Red Carpet Program?  
15:29 25  
15:29 26 A. Yes, I am.  
15:29 27  
15:29 28 Q. Thank you. That was part of a broader series of changes to  
15:29 29 what Crown described as enhancing its Responsible Service of  
15:29 30 Gaming practices; you agree with that?  
15:29 31  
15:29 32 A. Yes, I would.  
15:29 33  
15:29 34 Q. The Board thought that in order to ensure the Responsible  
15:29 35 Service of Gaming was enhanced, it was necessary to abolish the  
15:29 36 Red Carpet Program; you agree with that?  
15:29 37  
15:29 38 A. I agree with that.  
15:29 39  
15:29 40 Q. That is because the Red Carpet Program is inconsistent  
15:30 41 with the Responsible Service of Gaming?  
15:30 42  
15:30 43 A. My understanding was because of concerns raised during  
15:30 44 the Royal Commission exhibits and processes that the Red Carpet  
15:30 45 Program was ceased. It had already ceased due to COVID-19  
15:30 46 and therefore was ceased as part of the overall RG measures.  
15:30 47

15:30 1 Q. Yes. I accept that it was in response to this Royal  
15:30 2 Commission because there is no mention of it in your statement.

15:30 3

15:30 4 A. Correct.

15:30 5

15:30 6 Q. There is no mention of it in your statement because it  
15:30 7 wasn't on the cards when you wrote your statement?

15:30 8

15:30 9 A. That's correct.

15:30 10

15:30 11 Q. So it was a response to the Commission. We agree on that.  
15:30 12 But the response was a step taken to improve or, in Crown  
15:30 13 language, enhance the Responsible Service of Gaming?

15:30 14

15:30 15 A. Yes.

15:30 16

15:30 17 Q. That must mean, mustn't it, that the conduct of the program  
15:30 18 was inconsistent with the Responsible Service of Gaming?

15:31 19

15:31 20 A. Yes.

15:31 21

15:31 22 Q. Crown's Responsible Gaming Register is a very important  
15:31 23 document, isn't it, Mr Mackay?

15:31 24

15:31 25 A. Yes, it is.

15:31 26

15:31 27 Q. Do you agree with me that you first became aware of the  
15:31 28 document during the course of preparing your evidence?

15:31 29

15:31 30 A. Which, sorry, repeat the question, which document did I  
15:31 31 become aware of?

15:31 32

15:31 33 Q. The Responsible Gaming Register.

15:31 34

15:31 35 A. No, I don't.

15:31 36

15:31 37 Q. Do you agree that you first learnt the functions of the  
15:31 38 register during the preparation of your evidence?

15:31 39

15:31 40 A. I agree that I first learnt that we were using the surveillance  
15:31 41 system known as SEER to be the Crown Melbourne Responsible  
15:31 42 Gambling Register, but I was aware of its existence and how it  
15:32 43 was used for the property.

15:32 44

15:32 45 Q. In preparing your evidence you had conversations with  
15:32 46 Sonja Bauer about the Responsible Gaming Register; is that  
15:32 47 right?



15:32 1  
15:32 2 A. Yes.  
15:32 3  
15:32 4 Q. And how it operated and its functions; that's right?  
15:32 5  
15:32 6 A. To ensure I had a full knowledge of it, yes.  
15:32 7  
15:32 8 Q. Because prior to preparing your evidence you did not have  
15:32 9 a full knowledge of the register, its functions and purpose;  
15:32 10 correct?  
15:32 11  
15:32 12 A. In my role I did not have a complete and thorough  
15:32 13 understanding of the Responsible Gambling Register and how it  
15:32 14 worked, no.  
15:32 15  
15:32 16 Q. If the operator could please bring up CRW.510.059.1231.  
15:32 17  
15:33 18 Tab 12, Commissioner.  
15:33 19  
15:33 20 The email has been redacted so email addresses and phone  
15:33 21 numbers aren't disclosed. You can see that?  
15:33 22  
15:33 23 A. Yes, I can.  
15:33 24  
15:33 25 Q. If you scroll down to the middle email from Sonja Bauer to  
15:33 26 you, there is:  
15:33 27  
15:33 28 *Hi Mark,*  
15:33 29  
15:33 30 *FYI, this will be useful for you in relation to the functions*  
15:33 31 *of the Responsible Gambling Register.*  
15:33 32  
15:33 33 You see that?  
15:33 34  
15:33 35 A. Yes, I do.  
15:33 36  
15:33 37 Q. That wasn't sent out of the blue, was it?  
15:33 38  
15:33 39 A. No, it wasn't.  
15:33 40  
15:33 41 Q. It followed discussions that you had with Ms Bauer where  
15:33 42 it was apparent that it was necessary for you to brush up on this  
15:33 43 part of the business?  
15:33 44  
15:33 45 A. My recollection of this email was following a request to  
15:33 46 review the upgrading of gold and platinum tier members where  
15:34 47 the team --- the upgrade list that comes back through for

15:34 1 upgrading people into loyalty tier, and that as part of that process  
15:34 2 they review comments that are in the casino management system  
15:34 3 from a behavioural and/or Responsible Gambling concern before  
15:34 4 they upgrade a customer. When reviewing that process, it was  
15:34 5 apparent that the team were using the casino management system  
15:34 6 for comments. We still include some Responsible Gambling  
15:34 7 observations or concerns but it would not include all of them, and  
15:34 8 the Responsible Gambling Register is a more thorough and full  
15:34 9 detailed register of all those interactions.  
15:34 10  
15:34 11 So, through the review of that process, we identified that the team  
15:34 12 needed to have access to the Responsible Gambling Register,  
15:34 13 which at the time they did not. Which is when I found out that it  
15:35 14 was utilising the SEER system, that is the security and  
15:35 15 surveillance system utilised, and had to get access to the Gaming  
15:35 16 team to complete that process.  
15:35 17  
15:35 18 That is my recollection of how and why this conversation and  
15:35 19 then the functions of the Responsible Gambling Register were  
15:35 20 sent to me by Sonja.  
15:35 21  
15:35 22 Q. When you said that the team doesn't have access to the  
15:35 23 register, do you I take that to mean that the Gaming Machine  
15:35 24 team doesn't have access to the Responsible Gaming Register?  
15:35 25  
15:35 26 A. No. So they don't directly input into the Responsible  
15:35 27 Gambling Register. That is done by the Responsible Gambling  
15:35 28 team and the RGAs, to my knowledge.  
15:35 29  
15:35 30 Q. I understand who inputs. That wasn't my question. My  
15:35 31 question was, does the Gaming Machine team have access to?  
15:35 32 Not input, access to the register?  
15:35 33  
15:35 34 A. To my knowledge, until recently, they did not have access  
15:35 35 to the Responsible Gambling Register.  
15:35 36  
15:35 37 Q. To your knowledge, do any teams other than the  
15:35 38 Responsible Gambling team have access to the Responsible  
15:36 39 Gambling Register?  
15:36 40  
15:36 41 A. I believe potentially security surveillance may have access,  
15:36 42 but I'm not 100 per cent confident.  
15:36 43  
15:36 44 Q. To the best of your knowledge, no one in gaming,  
15:36 45 electronic gaming machines, table games, no one in gaming has  
15:36 46 access to it?  
15:36 47

- 15:36 1 A. That was my understanding, correct.
- 15:36 2
- 15:36 3 Q. And it remains your understanding?
- 15:36 4
- 15:36 5 A. No, as I said, we've corrected that so that the gaming teams
- 15:36 6 will be able to have read access to the Responsible Gambling
- 15:36 7 Register when making decisions on upgrading a gold or platinum
- 15:36 8 tier member into the next tier level, if there is any behavioural or
- 15:36 9 RG concerns prior to upgrading them.
- 15:36 10
- 15:36 11 Q. When did that change take place?
- 15:36 12
- 15:36 13 A. The review took place around 15 or 16 April, following
- 15:37 14 an email and a review of the process from Xavier Walsh. And
- 15:37 15 then I would say some time after that, maybe a couple of weeks
- 15:37 16 following that review and access requirements being granted to
- 15:37 17 SEER, that that has been corrected. So I would say late April if I
- 15:37 18 could. I don't know exactly.
- 15:37 19
- 15:37 20 Q. And is it the same position now for Table Game team, they
- 15:37 21 also have access to the register?
- 15:37 22
- 15:37 23 A. When --- for conducting upgrade purposes, yes, I believe
- 15:37 24 so.
- 15:37 25
- 15:37 26 Q. So there will be some email from Mr Walsh setting all this
- 15:37 27 out somewhere?
- 15:37 28
- 15:37 29 A. There was an email from Xavier after a request from one of
- 15:37 30 the directors to review controls for Responsible Gambling
- 15:38 31 controls for upgrading Crown reward tiers and a response from
- 15:38 32 Mark Kelly, who is our Group General Manager of loyalty,
- 15:38 33 outlining the process, which is where I picked up the gap in the
- 15:38 34 process. And then I believe there is an email from Luke
- 15:38 35 Overman concerning that the Gaming teams will now have --- or
- 15:38 36 that they were working through access to the SEER system for
- 15:38 37 Gaming team members.
- 15:38 38
- 15:38 39 Q. I will put on the homework task that correspondence if I
- 15:38 40 could, but I want to ask another question.
- 15:38 41
- 15:38 42 You said one Director requested of Mr Walsh that these steps be
- 15:38 43 taken. Who was the director that made that request?
- 15:38 44
- 15:38 45 A. I said I believe the director made --- asked if there was, or
- 15:38 46 what were the RG controls in the upgrade process. If my memory
- 15:38 47 serves me right, it was Jane Halton but the email correspondence

15:39 1 will confirm that, Mr Kozminsky, because it is in the email.  
15:39 2  
15:39 3 Q. Okay, we'll get the email. Do I take it then, at least  
15:39 4 Ms Halton and Mr Walsh who are both directors weren't aware of  
15:39 5 who did and did not have access to the Responsible Gaming  
15:39 6 Register as at late April of this year?  
15:39 7  
15:39 8 A. No. The specific question from Ms Halton and Mr Walsh  
15:39 9 was in regard to what RG controls we had in place when  
15:39 10 upgrading tiers, or customers in tiers. Their knowledge of the  
15:39 11 Responsible Gambling Register, with all due respect,  
15:39 12 Mr Kozminsky, you would need to ask them.  
15:39 13  
15:39 14 Q. Okay, so to the best of your knowledge, as at late April this  
15:39 15 year, Ms Halton and Mr Walsh were not aware of the  
15:39 16 Responsible Gambling controls in place for upgrading members  
15:39 17 through tiers?  
15:39 18  
15:39 19 A. I don't know whether they were aware of what was in place.  
15:39 20 They were asking to check what was in place. I don't know what  
15:39 21 their knowledge of it was --  
15:39 22  
15:40 23 Q. Right.  
15:40 24  
15:40 25 A. --- prior to that question. They may have been wanting to  
15:40 26 confirm their knowledge of it, I'm not sure.  
15:40 27  
15:40 28 Q. But they may have? They may have been wanting to  
15:40 29 confirm, but you accept that if they knew what the position was,  
15:40 30 it is unlikely that they would have made the request? The request  
15:40 31 was likely because they didn't know what the position was and  
15:40 32 they wanted to check because what was going on in this  
15:40 33 Commission?  
15:40 34  
15:40 35 A. I don't know, Mr Kozminsky. You'd have to ask them.  
15:40 36  
15:40 37 Q. Okay.  
15:40 38  
15:40 39 Mr Commissioner, can I tender that email and its attachment?  
15:40 40  
15:40 41 COMMISSIONER: Email from Mark Mackay to Mr Emery?  
15:40 42  
15:40 43 MR KOZMINSKY: That is the last email in the chain. That will  
15:40 44 be sufficient for the purposes of identifying it.  
15:40 45  
15:40 46 COMMISSIONER: Okay, email chain ending with the email  
15:41 47 from Mark Mackay to Nicolas Emery, 26 April 2021, Exhibit

15:41 1 169.  
15:41 2  
15:41 3  
15:41 4 **EXHIBIT #RC0169 - EMAIL CHAIN DATED 26 APRIL**  
15:41 5 **2021 ENDING WITH THE EMAIL FROM MR MARK**  
15:41 6 **MACKAY TO MR NICOLAS EMERY.**  
15:41 7  
15:41 8  
15:41 9 MR KOZMINSKY: Mr Operator, we can take that down off the  
15:41 10 screen.  
15:41 11  
15:41 12 Mr Mackay, when was the last time you had Responsible Service  
15:41 13 of Gaming training?  
15:41 14  
15:41 15 A. I believe it was July 2020 during the lockdown period.  
15:41 16  
15:41 17 Q. And before that, was it when you were onboarded?  
15:41 18  
15:41 19 A. No, I also did the special focus training, and the additional  
15:41 20 focus training in the years preceding that, and I also did the  
15:41 21 induction training as well.  
15:41 22  
15:41 23 Q. Was each of those about an hour?  
15:41 24  
15:41 25 A. Yes, around an hour.  
15:41 26  
15:41 27 Q. So would I be right, about four hours of training from go to  
15:42 28 whoa on the Responsible Service of Gaming?  
15:42 29  
15:42 30 A. Around there. I think there was a refresher in there. Every  
15:42 31 two years we do a refresher. It might be every four to five hours.  
15:42 32  
15:42 33 Q. Thanks.  
15:42 34  
15:42 35 When was the last time you read the Code of Conduct?  
15:42 36  
15:42 37 A. I read the Code of Conduct last time before this  
15:42 38 Commission, obviously, when we were redoing the --- not  
15:42 39 redoing, the additional focus training approvals with the VCGLR  
15:42 40 for the Responsible Gambling.  
15:42 41  
15:42 42 Q. When was that?  
15:42 43  
15:42 44 A. I think it was early '20.  
15:42 45  
15:42 46 Q. Early '20.  
15:42 47

15:43 1 A. I would have to review. It is when we had --- I should  
15:43 2 know off the top of my head but I can't remember.  
15:43 3  
15:43 4 Q. It's alright. I'll be able to find the date. You've given me  
15:43 5 the event.  
15:43 6  
15:43 7 A. Sorry, it's been ---  
15:43 8  
15:43 9 Q. You don't have to apologise. We've received a document,  
15:43 10 which I'm not going to put up onscreen but I am going to tender,  
15:43 11 which is a list of every employee at Crown Melbourne, Crown  
15:43 12 Perth and Crown Sydney (audio distorted) if they are currently  
15:43 13 employed.  
15:43 14  
15:43 15 Mr Operator, please do not put this on screen, but for the benefit  
15:43 16 of the other parties it is DTT.008.0003.1552.  
15:43 17  
15:43 18 On that document we have managed to identify a range of  
15:43 19 different type of hosts. I would like to name each type of host  
15:43 20 we've identified and for you to tell me about their role and how  
15:44 21 they differ from one to the other. Is that all right?  
15:44 22  
15:44 23 A. I will do my best.  
15:44 24  
15:44 25 Q. There is what is called a gaming machine host. What is  
15:44 26 that type of host?  
15:44 27  
15:44 28 A. I'd probably be better with the name of the person. The  
15:44 29 gaming host and gaming machine host doesn't give me --- we  
15:44 30 have executive service hosts, service hosts, domestic hosts.  
15:44 31  
15:44 32 Q. Let me run through what I've got.  
15:44 33  
15:44 34 A. I don't recall a gaming machine host role. It may be an old  
15:44 35 role, Mr Kozminsky.  
15:44 36  
15:44 37 Q. Well, these are the ones on my list and we'll work through  
15:44 38 them. Are you familiar with the premium service host?  
15:44 39  
15:44 40 A. Yes, I am.  
15:44 41  
15:44 42 Q. The Mahogany executive host I know about, I don't know  
15:44 43 need to ask you about that. The VIP domestic host?  
15:44 44  
15:44 45 A. Yes.  
15:44 46  
15:44 47 Q. The VIP executive host?

15:45 1  
15:45 2 A. Yes.  
15:45 3  
15:45 4 Q. The VIP service host GM?  
15:45 5  
15:45 6 A. Yes.  
15:45 7  
15:45 8 Q. The executive host, international business operations?  
15:45 9  
15:45 10 A. I'm not too familiar with that. That might be  
15:45 11 an international table games role.  
15:45 12  
15:45 13 Q. VIP international host service executive. Are you familiar  
15:45 14 with that role?  
15:45 15  
15:45 16 A. Just give me the name again?  
15:45 17  
15:45 18 Q. International host service executive.  
15:45 19  
15:45 20 A. No, again, that may be an international table games role.  
15:45 21  
15:45 22 Q. Let's just run through the five you are familiar with, or the  
15:45 23 four, because I don't need the Mahogany one.  
15:45 24  
15:45 25 A premium service host, what do they do?  
15:45 26  
15:45 27 A. Their job is to host customers on the main gaming floor  
15:45 28 that are either current members or customers who are recognised  
15:45 29 for their gaming spend at a level that is applicable to a gold or  
15:46 30 platinum level and host those customers. To also offer them the  
15:46 31 Crown Rewards membership if they so desire, et cetera.  
15:46 32  
15:46 33 Q. So am I right that their role is effectively to scout the  
15:46 34 gaming floor for people who are betting big enough to move up  
15:46 35 the tiers or gamble in a premium room and develop a relationship  
15:46 36 and foster that happening; is that the idea?  
15:46 37  
15:46 38 A. Yes.  
15:46 39  
15:46 40 Q. Then there is a VIP domestic host. Can you tell me what  
15:46 41 their role is?  
15:46 42  
15:46 43 A. The domestic host roles are meet and greet the domestic  
15:46 44 customers when they come down on a gaming program or  
15:46 45 extended program. They also assist with the organisation of  
15:46 46 flights or ground transfers, hotel accommodation, dinner  
15:46 47 bookings, and anything else the domestic customer requires on

15:46 1 their trip.  
15:46 2  
15:46 3 Q. By "domestic customer", you mean an Australian customer  
15:47 4 but not a Victorian?  
15:47 5  
15:47 6 A. In most cases --- there are also Victorian regional  
15:47 7 customers that may be on a standard program but they would be  
15:47 8 looked after by the service host, not necessarily domestic hosts.  
15:47 9  
15:47 10 Q. And the VIP executive hosts, what do they do?  
15:47 11  
15:47 12 A. VIP executive host look after the black tier customers, so  
15:47 13 they would have 100 to maybe 150 black tier customers in their  
15:47 14 portfolio, and they perform a very similar role to the domestic  
15:47 15 hosts in regards to hotel accommodation, dinner bookings,  
15:47 16 dinners, calling customers in regards to promotions, events,  
15:47 17 ticketing, et cetera.  
15:47 18  
15:47 19 Q. How do they differ from the Mahogany executive hosts,  
15:47 20 then, because my understanding is that Mahogany executive hosts  
15:47 21 have 50 or so black and 150 or so platinum members?  
15:47 22  
15:47 23 A. Sorry, the difference is one is a table games business unit  
15:48 24 and one is the gaming machines business unit, Mr Kozminsky,  
15:48 25 sorry, I should have confirmed that while I explained.  
15:48 26  
15:48 27 Q. Not at all, I understand. So they are effectively the same  
15:48 28 thing working in the Mahogany Room, but the VIP executive host  
15:48 29 is for EGMs?  
15:48 30  
15:48 31 A. Correct.  
15:48 32  
15:48 33 Q. Right. And the VIP service host GM, what is that role?  
15:48 34  
15:48 35 A. So that role is very similar to the executive host role but  
15:48 36 they look after platinum tier members and they have a larger  
15:48 37 portfolio of customers, 350 to 450 to memory. But the functions  
15:48 38 they serve are very similar. But platinum tier members have less  
15:48 39 demands on their time so they have a larger group of customers.  
15:48 40  
15:48 41 Q. I understand that. Table games do it in one host and EGMs  
15:48 42 do it across two hosts for black and ---  
15:48 43  
15:48 44 A. Slightly different. I think the numbers of the team are very  
15:48 45 similar, but we have a mixture of black tier and platinum where  
15:49 46 platinum have a mix of customers across their host.  
15:49 47



15:49 1 Q. Got it. Can you tell me what the total number of black tier  
15:49 2 members is, ballpark?  
15:49 3  
15:49 4 A. Currently I think it is around the 750 to 800 number of ---  
15:49 5 in total.  
15:49 6  
15:49 7 Q. And platinum, ballpark?  
15:49 8  
15:49 9 A. I've got the number in my head, but whether it is combined  
15:49 10 or not, I think there is around 7,000 platinum members across  
15:49 11 table members and gaming machines.  
15:49 12  
15:49 13 Q. And the 750 to 800 was across table and EGMs as well for  
15:49 14 black?  
15:49 15  
15:49 16 A. Yes, I believe so.  
15:49 17  
15:49 18 Q. Those numbers, have they been relatively consistent over  
15:49 19 the last, say, 5 or 10 years?  
15:49 20  
15:49 21 A. My first reaction is yes, but I can't recall seeing an increase  
15:50 22 or decrease in tier numbers. I think, if I'm not mistaken, and I  
15:50 23 could be, and happy to be corrected by others, but I think gold  
15:50 24 and platinum have seen some growth, but black has stayed  
15:50 25 relatively flat over --- as in the number of customers over the  
15:50 26 years.  
15:50 27  
15:50 28 Q. Okay. And am I right that all black, platinum, gold, silver,  
15:50 29 et cetera, they are tiers that only apply for local Victorian  
15:50 30 customers ; is that right?  
15:50 31  
15:50 32 A. No, you could also be a domestic customer from another  
15:50 33 state and be a part of the Crown Rewards Program and have  
15:50 34 achieved a higher tier level.  
15:50 35  
15:50 36 Q. I see. Do interstate members have any sort of separate  
15:50 37 membership program or tier status or do they use the same ones  
15:50 38 as the local customers?  
15:50 39  
15:50 40 A. Some domestic customers who will enter into a gaming  
15:51 41 program in the past have been referred to the VIP customers for  
15:51 42 the designation in the system. But as of the opening of Crown's  
15:51 43 or potential future opening of Crown Sydney, all customers were  
15:51 44 merged and aligned across all properties so that they are now ---  
15:51 45 effectively have a Crown Rewards tier. Sorry for the long answer  
15:51 46 and complex, I want to get it correct for the Commission.  
15:51 47

15:51 1 Q. It's all right. Now everyone in Australia will either be  
15:51 2 black, platinum, et cetera?  
15:51 3  
15:51 4 A. Yes, that is my understanding.  
15:51 5  
15:51 6 Q. The numbers you gave me, 750 to 800 and 7,000, they are  
15:51 7 just for Crown Melbourne?  
15:51 8  
15:51 9 A. Yes, they are.  
15:51 10  
15:51 11 Q. International players, do they have an altogether different  
15:51 12 membership tier structure?  
15:51 13  
15:51 14 A. International gaming machines, no. I'm not confident on  
15:52 15 the international rebate table games space, unfortunately.  
15:52 16  
15:52 17 Q. Okay.  
15:52 18  
15:52 19 A. I don't have that knowledge. Sorry.  
15:52 20  
15:52 21 Q. That's all right. I want to ask you a few more points to  
15:52 22 clarify and then we'll be done. Paragraph 9 of your statement, it  
15:52 23 talks about black tier incentives. Table games I think. Can you  
15:52 24 see that?  
15:52 25  
15:52 26 A. Yes, I can.  
15:52 27  
15:52 28 Q. It says that that program is about to come to an end in  
15:52 29 February this year and a new Black Tier Rewards Plus program is  
15:52 30 going to be introduced. Few questions: why did the black tier  
15:52 31 incentive program end?  
15:52 32  
15:52 33 A. I can't recall a specific reason why it ended. I do know that  
15:52 34 they've got a proposed new incentive that hasn't been  
15:53 35 implemented or approved. It may have been because there was  
15:53 36 only four active patrons or those patrons were no longer --- it says  
15:53 37 "active". I'm not sure, Mr Kozminsky. I would have to make  
15:53 38 inquiries for the Commission.  
15:53 39  
15:53 40 Q. It says it looks like the program will be replaced by the  
15:53 41 Black Tier Rewards Plus Program. Can you tell us the difference  
15:53 42 between the two programs?  
15:53 43  
15:53 44 A. I don't have a good understanding of that one. I was  
15:53 45 answering this, as I said in my start, on behalf of my colleague  
15:53 46 Tim Barnett, but I can get the detail for the Commission to make  
15:53 47 sure that that is clear.

15:53 1  
15:53 2 Q. That would be great. I want to ask you this: have you been  
15:53 3 following the evidence given in this Commission as we've been  
15:53 4 going?  
15:53 5  
15:53 6 A. I've watched some, not all.  
15:53 7  
15:53 8 Q. You know we've heard all sorts of stories about harm  
15:54 9 suffered by people who gamble at the casino? You are aware of  
15:54 10 that?  
15:54 11  
15:54 12 A. Yes, I am.  
15:54 13  
15:54 14 Q. We've had evidence from Coroner's Court about people  
15:54 15 who have taken their lives and left notes about it being because  
15:54 16 they have gambled at Crown. I can take you to it, but I don't  
15:54 17 think it is necessary, and we've heard people about turning to  
15:54 18 crime to fund gambling debts from the casino, and people falling  
15:54 19 to sleep at the casino and gambling for days on end.  
15:54 20  
15:54 21 I want to ask you this: do you accept that Crown could have, over  
15:54 22 the years, done more to foster Responsible Gambling and harm  
15:54 23 minimisation?  
15:54 24  
15:54 25 A. Yes.  
15:54 26  
15:54 27 MR KOZMINSKY: Mr Commissioner, unless you have any  
15:54 28 questions, I have nothing further for Mr Mackay.  
15:54 29  
15:54 30 COMMISSIONER: No, I don't have any questions. Let me do  
15:55 31 a runaround of the others who might be on the line.  
15:55 32  
15:55 33 Mr Rozen and Mr Gray, first. Or either.  
15:55 34  
15:55 35 MR ROZEN: Looks like it might be me first this time,  
15:55 36 Commissioner. I have no questions for Mr Mackay. Thank you.  
15:55 37  
15:55 38 COMMISSIONER: Thank you, Mr Rozen.  
15:55 39  
15:55 40 Mr Gray?  
15:55 41  
15:55 42 MR GRAY: Nor I, thank you, Commissioner.  
15:55 43  
15:55 44 COMMISSIONER: Thank you.  
15:55 45  
15:55 46 Mr Borsky, anything you want to clear up?  
15:55 47

15:55 1 MR BORSKY: Not at this stage, though with your leave, in light  
15:55 2 of what's been put to this witness about what is said to have been  
15:55 3 a lack of disclosure to the VCGLR around the claiming of  
15:55 4 deductions within gaming revenue, we might do a careful search  
15:56 5 and if any documents relevant to that issue emerge, we will seek  
15:56 6 your leave to tender them subsequently. But I'm not able to do  
15:56 7 that immediately this afternoon.

15:56 8

15:56 9 COMMISSIONER: That's fair enough. Would the easiest thing  
15:56 10 for me to do is just adjourn Mr Mackay over, and if you want to  
15:56 11 recall him to take him through documents, you can bring him  
15:56 12 back? Or I can excuse him now. I don't mind.

15:56 13

15:56 14 MR BORSKY: Look, it is a matter for you, Commissioner. It  
15:56 15 may not be necessary to recall Mr Mackay. He may or may not  
15:56 16 be party to any of these documents in any event.

15:56 17

15:56 18 COMMISSIONER: All right.

15:56 19

15:56 20 MR BORSKY: From discussions with my learned friend ---

15:56 21

15:56 22 COMMISSIONER: I will excuse Mr Mackay. Once somebody  
15:57 23 goes and hunts out the documents you are after, if you think you  
15:57 24 need Mr Mackay to come back and supplement his evidence to  
15:57 25 explain some of documents, you should feel free to do that --

15:57 26

15:57 27 MR BORSKY: Thank you.

15:57 28

15:57 29 COMMISSIONER: --- he can be excused in the meantime.

30

31

32 **THE WITNESS WITHDREW**

33

34

15:57 35 MR BORSKY: Thank you. I'm grateful for that indication, and  
15:57 36 to be transparent with you, Commissioner, from discussions I've  
15:57 37 had with my learned friend Mr Finanzio in recent days, at least  
15:57 38 from Counsel Assisting's perspective, there is no difficulty with  
15:57 39 us writing to the Commission and seeking to tender some  
15:57 40 documents on issues that arise from time to time, rather than  
15:57 41 having every document tendered through a witness. So that is the  
15:57 42 basis upon which we are proceeding.

15:57 43

15:57 44 COMMISSIONER: I think everybody should proceed on the  
15:57 45 basis that there are a series of documents or a number of  
15:57 46 documents that have been tendered and you don't need a witness  
15:57 47 to identify them because they all pretty much speak for

15:57 1 themselves.  
15:58 2  
15:58 3 MR BORSKY: Many do and some won't, so I'm grateful for that  
15:58 4 indication that if we do need Mr Mackay to expand or comment  
15:58 5 on his evidence in light of any of the documents, we will make  
15:58 6 a note that we seek to do that.  
15:58 7  
15:58 8 COMMISSIONER: All right.  
15:58 9  
15:58 10 MR KOZMINSKY: Mr Commissioner, just one thing, I went to  
15:58 11 a document which is I asked not to be put up on the screen, but I  
15:58 12 didn't tender it. Can I tender confidential exhibit, DPP ---  
15:58 13 because it contains the numbers of all Crown employees. It is  
15:58 14 a spreadsheet. DTT.008.0003.1552. It's not in your bundle.  
15:58 15  
15:58 16 COMMISSIONER: Okay. That will become Exhibit 170.  
17  
18  
19  
20 **EXHIBIT #RCPH0170 - TYPES OF HOSTS AT CROWN**  
21 **CASINO**  
22  
23  
15:58 24 COMMISSIONER: Because I had difficulty hearing you, it tells  
15:58 25 me that we're still going to have to work on making sure you can  
15:59 26 be heard.  
15:59 27  
15:59 28 I will get in touch with at least you, Mr Borsky. You should  
15:59 29 think about whether if Mr Kozminsky comes into the room, the  
15:59 30 witness will still be online, or the next witness will be online for  
15:59 31 the rest of the week. We are going to operate on this basis.  
15:59 32  
15:59 33 You can get your solicitors to let the Commission's solicitors  
15:59 34 know or you can talk to Counsel Assisting and tell them whether  
15:59 35 you want to be physically present if they are. As I say, I don't  
15:59 36 mind. It's up to you. You might feel safer not doing it --- I mean  
15:59 37 from a COVID point of view!  
15:59 38  
15:59 39 MR BORSKY: I understood. I understood. I understood.  
15:59 40 (Laughs). For what it is worth, Commissioner, our understanding  
15:59 41 is the same as yours: there are at least some trials proceeding in  
16:00 42 the Supreme Court of this state at present and the Chief Health  
16:00 43 Officer's directions do, as you alluded to, refer to "Court,  
16:00 44 Tribunal or Commission". So, far be it from me to give legal  
16:00 45 advice to the Commission, but there is, as we understand it, the  
16:00 46 same potential for a Commission as for a court.  
16:00 47

16:00 1 COMMISSIONER: On that basis, if I don't get an assurance that  
16:00 2 we can get the sound properly rectified for tomorrow morning,  
16:00 3 I will ask both of you to come into the courtroom, or the hearing  
16:00 4 room as I call it, if you want to.  
16:00 5

16:00 6 MR BORSKY: And the Crown witnesses, at least, as you've seen  
16:01 7 Commissioner, are physically at Crown. So there is that having  
16:01 8 taken advice and thought about the matter in light of the COVID  
16:01 9 directions, they are already not in their homes. So if it would be  
16:01 10 even more efficient and audible for the witness to be  
16:01 11 an additional person in the room, then I'm sure we could  
16:01 12 accommodate that if that is what you deemed appropriate or  
16:01 13 necessary in the circumstances.  
16:01 14

16:01 15 COMMISSIONER: I will think about that. My preference is the  
16:01 16 less people in the room the better. Not that I don't want to have  
16:01 17 the witness here. My preference is to have everybody here --  
16:01 18

16:01 19 MR BORSKY: Understood.  
16:01 20

16:01 21 COMMISSIONER: --- I just don't want to overcrowd the room.  
16:01 22 It is a large room and I don't want to put any witness in harm's  
16:01 23 way at all. They are there in their own room by themselves, and  
16:01 24 at the moment I think I feel more comfortable that they are  
16:01 25 looked after so nothing untoward can occur. But, as the  
16:02 26 Americans say, I will take that under advisement.  
16:02 27

16:02 28 MR BORSKY: As the Commission pleases.  
16:02 29

16:02 30 COMMISSIONER: I've always wanted to use that expression!  
16:02 31

16:02 32 MR BORSKY: We'll have discussion with our friends and wait  
16:02 33 to hear the guidance from the Commission as to the most  
16:02 34 appropriate way to proceed for tomorrow.  
16:02 35

16:02 36 COMMISSIONER: Okay. We will adjourn until 10.00 am  
16:02 37 tomorrow morning.  
16:02 38  
39  
40 **HEARING ADJOURNED AT 4.02 PM UNTIL TUESDAY, 8**  
41 **JUNE 2021 AT 10.00 AM**

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