REPORT

Inquiry under section 143 of the
Casino Control Act 1992 (NSW)

1 February 2021

VOLUME 2

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Paragraph 16 of Amended Terms of Reference – Suitability Review

Chapter 4.1

Corporate Governance and Corporate Culture

1 Corporate governance is the term used to describe the internal structures by which a company operates and is accountable to its stakeholders. It has been described as:[1]

> The framework of rules, relationships, systems and processes within and by which authority is exercised and controlled within corporations. It encompasses the mechanisms by which companies and those in control are held to account.

2 There are certain aspects or themes relevant to corporate governance that are of particular relevance to the issues in this Inquiry including:

(a) Ethical conduct;

(b) Risk management and oversight;

(c) Board composition, primarily, board independence and board tenure; and

(d) Remuneration and incentivisation of directors and senior executives.

3 Given its relevance to every corporate enterprise, from small incorporated businesses to ASX listed companies, corporate governance is the subject of considerable scrutiny, guidance and thought leadership by a variety of regulators, advisors and corporate commentators.

4 In recent years, the level of scrutiny into matters of corporate governance across corporate Australia has intensified consequent upon events such as the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Financial Services Royal Commission) and investigations into the conduct of specific entities, such as into the CBA by the Australian Prudential Regulation Authority (APRA).

5 Important sources of regulatory and best practice guidance are published regularly by the Australian Securities and Investments Commission (ASIC), APRA and other relevant Australian organisations, such as the Governance Institute of Australia, the Ethics Centre and the Australian Institute of Company Directors (AICD).[2] There is also a significant body of international guidance and commentary. Much has been written on the topic, for example, in the Harvard Business Review or published by the Financial Stability Board. Corporate regulators in many jurisdictions are focused on the importance of effective corporate governance practices to ensure the best outcomes for investors, customers and the public at large. It is a focus that envisages Australian companies adopting "sound corporate governance practices that support market integrity and good investor outcomes".[3]

6 In August 2018 ASIC received special funding to establish a Corporate Governance Taskforce (Taskforce) in the wake of the Financial Services Royal Commission. Its first report, "Corporate Governance Taskforce – Director and officer oversight of non-financial risk report" (Non-Financial Risk Report), provides significant insight into corporate governance and the management of risk within organisations.[4]

7 Guidance for ASX listed entities is provided by the ASX Corporate Governance Council's Principles and Recommendations (ASX Principles), which set out a "world-leading standard on corporate governance by listed entities".[5] The 3rd edition of the ASX Principles applied to entities from 1 January 2014 and was superseded by a 4th edition from 1 January 2020.[6] The 3rd edition was in force at the time many of the events described in this Report occurred, and the 4th edition sets the expectations for Crown's current and future conduct.

8 Although the ASX Principles are not mandatory and do not have the effect of law, the ASX Listing Rules require every ASX listed entity to disclose the extent to which it adheres to the ASX Principles in a Corporate Governance Statement to be made available on its website or in its Annual Report. Divergence from recommendations made in the ASX Principles must also be identified and explained in the Statement.[7]

9 The ASX Listing Rules do not require entities to abide by the ASX Principles in their entirety, accepting that different governance practices may legitimately be appropriate for different entities depending on their size, complexity and history.[8] Nonetheless, the requirement for a corporate governance statement obliges those in control of an entity to consider, acknowledge and to the extent necessary for that business, embrace appropriate corporate governance standards into their business.

10 The 3rd edition of the ASX Principles promoted eight central principles of corporate governance as:[9]

(1) Providing solid foundations for management and oversight;

(2) Structuring the Board to add value;

(3) Acting ethically and responsibly;

(4) Safeguarding integrity in corporate reporting;

(5) Making timely and balanced disclosure;

(6) Respecting the rights of security holders;

(7) Recognising and managing risk; and

(8) Remunerating fairly and responsibly.

11 Directors and senior officers of companies are ultimately responsible for setting, monitoring and maintaining a company's corporate governance standards, practices and processes. The 3rd edition of the ASX Principles explicitly links this function to a director's obligations to exercise their duties with due care and diligence in the best interests of the company.[10]

12 In 2014 the then chairman of ASIC described directors as "gate-keepers" explaining that:[11]

> Directors should ensure that their company has strong internal audit and compliance functions. A compliance function is meaningless if it is not backed up by supervision and review, and reflected in the company's culture.
>
> It is this last point, culture, that I consider is the most important.
>
> Directors should ensure that their stewardship drives the right compliance culture in their organisation.

Connection between corporate culture and corporate governance

13 "Culture" has been defined as follows:[12]

> Culture is a set of shared values and assumptions within an organization. It reflects the underlying 'mindset of an organisation', the 'unwritten rules' for how things really work. It works silently in the background to direct how an organisation and its staff think, make decisions and actually behave.

14 It has been similarly defined as "a set of shared mental assumptions that guide interpretation and action in organisations by defining appropriate behaviour for various situations", including situations not prescribed by laws and policies.[13] Culture and governance has also been said to depend upon "people applying the right standards and doing their jobs properly".[14]

15 Commentators have emphasised that corporate governance and corporate culture are inextricably linked.[15]

16 While corporate governance establishes the rules, policies and principles, culture is "what people do when no-one is watching".[16] It is therefore critical that the boundaries that are set by the corporate governance principles are understood and respected by individuals in the company.[17]

17 Risk culture should be understood to mean an organisation's collective mindset towards risk.[18] The "most spectacular governance failures" in the last two decades have been attributed to deficient risk cultures.[19] For instance APRA described the 2008 Global Financial Crisis, as follows:[20]

> This was not solely an issue of poor risk measurement, or weaknesses in internal control structures. It also reflected deficiencies in institutions' *attitudes* towards risk. In combination, a poor risk culture and weak risk management (the former often being the root cause of the latter) led to unbalanced and ill-considered risk-taking, to significant losses and, in some cases, to institutional failures.

18 The 4th edition of the ASX Principles also introduced a recommendation that an entity "articulate and disclose its values". It was explained as follows:[21]

> Values create a link between the entity's purpose (why it exists) and its strategic goals (what it hopes to do) by expressing the standards and behaviours it expects from its directors, senior executives and employees to fulfil its purpose and meet its goals (how it will do it).

19 The corporate regulators have over time made suggestions to assist corporations with some practical steps towards establishing good corporate governance. They have included:[22] effective communication; encouragement of debate and challenge; learning from past experiences; awareness and active stewardship of risk; clear escalation processes; and clear consequences for breaches of risk.

Acting ethically

20 It has been said that directors need to "navigate the complex ethical terrain that is encountered in every boardroom" being the "ultimate source of the ethical tone that flows throughout a well-governed organisation".[23] There is pressure on directors to balance the needs of shareholders, employees, customers, suppliers and the wider community. Ethical issues can arise for a Board in a variety of ways, from core matters, such as the nature of the business and business practices, to specific issues such as conflicts of interest, being independent and acting without self-interest.[24]

21 Events in recent years have exposed the ethics of corporate institutions to excoriating public scrutiny. 2019 in particular, was described as "*a year of scandals*".[25]

22 The 3rd edition of the ASX Principles described acting "ethically and responsibly", as "acting with honesty, integrity and in a manner consistent with the reasonable expectations of investors and the broader community".[26]

23 The 4th edition of the ASX Principles reformulates this principle and highlights the importance of corporate culture in the pursuit of ethical behavior. Rather than merely "acting" with integrity, entities are recommended to actively "instil a culture of acting lawfully, ethically and responsibly".[27]

24 In this regard the 3rd edition said it is the role of the Board to "lead by example" and instruct Management to create "a culture within the entity that promotes ethical and responsible behaviour".[28] The 4th edition also expands on the responsibilities of the Board, recommending that it approve the entity's statement of values, and of management to set the "tone at the top", by ensuring that employees receive training and reinforcement of those values, including through their interactions with senior executives.[29]

25 The requirement for tone to be set from the top is a theme that frequently emerges with respect to concepts of corporate governance best practice.

Risk management, risk appetite and oversight

26 Risk management is a core pillar of corporate governance. In an article published on 1 December 2019, the AICD noted the following:[30]

> Risk management encompasses the culture, processes and structures directed towards taking advantage of potential opportunities while managing potential adverse effects. The goal of risk management is to increase certainty that a decision's intended outcome will be achieved. It involves identification, evaluation and prioritisation of risks.

27 There is a critical, reciprocal relationship between the Board and Management in relation to managing risk:[31]

> The board of a listed entity is ultimately responsible for deciding the nature and extent of the risks it is prepared to take to meet its objectives.
>
> To enable the board to do this the entity must have an appropriate framework to identify and manage risk on an ongoing basis. It is the role of management to design and implement that framework and to ensure that the entity operates within the risk appetite set by the board. It is the role of the board to set the risk appetite for the entity to oversee its risk management framework and to satisfy itself that the framework is sound.

28 Consistent with the concept of setting the "tone from the top" the fundamental roles of the Board comprise: setting the entity's strategic objectives; setting the entity's risk appetite; and overseeing Management's performance, including the execution of the entity's strategic objectives.[32]

29 An entity's risk appetite is best understood as "the amount of risk it is willing to accept in pursuing its strategic objectives".[33] A Board is expected to determine what risks

(their nature, likelihood of occurrence and impact on the business) the entity is prepared to accept. The risk appetite sets the parameters for the risk management framework within which Management is expected to operate.

30 In order for Management to clearly comprehend the Board's risk appetite and its impact on the business, entities need an effective risk appetite statement which communicates the Board's risk tolerance with respect to particular risks. The risk appetite statement cannot merely express aspirations of total compliance, but must articulate the Board's expectations in specific instances of non-compliance, such as consequences for breach as well as escalation and rectification processes.[34] A successful risk appetite statement includes organisation-wide engagement in designing the risk appetite statement, risk escalation and reporting protocols and the linking of remuneration and performance processes with risk management.[35]

31 It is the role of Management, under the supervision of the Board, to design and implement the risk management framework and ensure that the entity operates within the risk appetite. Management must also provide the Board with sufficiently accurate and timely information for the Board to perform its supervisory duties.[36]

32 The Joint Australian and New Zealand Standards for Risk Management recognise that corporations must take account of the organisation's specific needs in setting their risk appetite. This obviously includes objectives, structure, projects, products and services.[37]

33 The concept of non-financial risk includes: operational risk (risk from breakdown or deficiency in an entity's internal process); compliance risk (risk of legal or regulatory consequences and associated reputational costs); and conduct risk (of inappropriate, unethical or unlawful behavior on the part of a company's Management or employees).

34 When a company operates outside the Board's stated risk appetite, the Board must exercise "active stewardship" and hold Management to account. This includes challenging Management's proposed responses and timeframes and proactively requiring senior executives to conduct root cause analysis of recurring deviations from the risk appetite. A touchstone of active stewardship involves the Board asking itself:[38]

> When we fall outside appetite, are we requiring management to do everything within their power to return the company to within appetite, or otherwise cease activities that place it outside appetite?

35 A failure to do so suggests the Board's "tacit acceptance" of operating outside risk appetite.[39]

36 In what may be seen as falling into a jargonistic trap ASIC encourages Boards to develop and employ metrics to monitor compliance risk which correspond to the risk

being measured, and in accordance with its risk appetite statement. It is suggested that these metrics should also incorporate "leading indicators" which foreshadow future breaches, rather than "lagging indicators", which measure breaches that have already occurred.[40]

Risk Committee

37 The ASX Principles recommend that organisations establish a risk committee. A Board committee dedicated to risk can "bring the transparency, focus and independent judgment" required to scrutinise the organisation's risk management framework and make recommendations to the Board regarding its adequacy.[41]

38 The Risk Committee should be equipped with sufficient size, independence, technical and industry knowledge and powers under its charter to fulfil its function. These powers include obtaining information, interviewing Management, interviewing internal and external auditors and obtaining specialist advice.[42]

39 It is imperative to enhance information flow between Management, Risk Committees, the full Board and individual directors, in order for each to perform their functions.[43]

40 It is also imperative to institute and maintain practices of taking minutes of all meetings, formally recording the subject and key decisions of informal discussions and establishing transparent processes for escalating information outside committee meetings.[44]

Role of the Board, including Board independence and Board tenure

41 Although ASIC has previously described directors as "gate-keepers" of corporate governance, Boards are increasingly expected to not only be responsible for governance but also to be a challenger of the business, of the decisions made by executives, Management and each other.[45]

42 The 3rd and 4th ASX Principles include the following:[46]

> A high performing, effective board is essential for the proper governance of a listed entity. The board needs to have an appropriate number of independent non-executive directors who can challenge management and hold them to account, and also represent the best interests of the listed entity and its security holders as a whole rather than those of individual security holders or interest groups.

43 Those ASX Principles caution that the designation of independence is "not one that should be applied lightly" to directors, as it is one that "gives great comfort to security holders" for the Board's role in safeguarding their interests. In addition to acting as a counterpoint for management, directors must also check and balance each other. Accordingly, a director should only be classified as "independent", if they are:[47]

> Free of any interest, position, association or relationship that might influence, or reasonably be perceived to influence, in a material respect, his or her capacity to bring an independent judgment to bear on issues before the board and to act in the best interests of the entity and its security holders generally.

44 Examples of situations that could jeopardise a director's independence include:[48]

(a) Current or previous executive roles with the entity or its subsidiaries within a certain timeframe;

(b) Current or previous employment, partnerships or directorships

(c) Being the entity's substantial shareholder or associated with a substantial shareholder of the entity; and

(d) Having close family ties with any person belonging to the above categories.

45 Unsurprisingly, the majority of the ASX Principles relating to structuring the Board to add value are aimed at maximising its independence, including the following:[49]

(a) Independent directors should constitute a majority of the Board;

(b) Entities should disclose the names of the independent directors;

(c) Entities should have a nomination committee chaired by an independent director, and comprised of a majority of independent directors; and

(d) The Chair of the Board should be an independent director, "and in particular, should not be the same person as the CEO of the entity".

46 A Board with a majority of independent directors diminishes the likelihood that a singular experience, skillset or perspective will dominate decision making, and skew outcomes from the best interests of shareholders and the entity as a whole.[50] This also highlights the relationship between Board independence and diversity, in terms of personal attributes and professional expertise. A pertinent observation on this topic is the following:[51]

> Boards will be far more effective in their challenger role if they offer seats to individuals with professional experiences and viewpoints that are very different from those of the executive team. Directors can learn to be more direct with management, but it's hard to fake contrarianism when everyone is of the same mind. When a board resembles the CEO in mindset and outlook, it's a recipe for a gatekeeper board, not a challenger board.

47 The independence of the Board Chair, who is responsible for leading the Board and setting its agenda, can encourage a culture of constructive debate and receptivity to diverse opinions. Separation of the roles of Chair and CEO also serves to separate the Board from Management, in order to promote scrutiny of the latter's conduct,

particularly in relation to the management of risk. The 3rd and 4th editions of the ASX Principles provided:[52]

> Good governance demands an appropriate separation between those charged with managing a listed entity and those responsible for overseeing its managers.

48 Effective discharge of Board Chair duties is a significant time commitment, which should not be compromised by other demanding roles.[53]

49 The 3rd edition of the ASX Principles also recommended establishing a separate nomination committee, similar to the separate risk committee, to "bring the transparency, focus and independent judgment needed" on decisions of directorship appointment. Entities should also undertake sufficient checks before appointing or nominating a candidate for director, and equip security holders with all material information for election, including all interests and associations that could influence, or reasonably be perceived to influence their independence.[54]

50 Another aspect of director independence is the tenure of directors on Boards. Longevity of service has been linked to the question of independence, as well as proper functioning of the Board as a whole. It has been noted that a number of jurisdictions are taking the view that a director will not be considered independent after they have served on a Board for nine years.[55]

51 This approach reflects a concern that an extended tenure may inhibit directors' abilities to discharge their duties in the best interests of the shareholders and the company as a whole. Long-serving directors may "fall into a rut, making judgments out of habit, complacency, or overconfidence".[56] The requirement of challenge and oversight of Management and executives may be diminished as a consequence.

52 It is also acknowledged that longevity of tenure may provide consistency in leadership, but that it may also prejudice innovation at a time when "innovation has never been more important to an organisation's success".[57]

53 Other jurisdictions including the United Kingdom and Singapore set limits on director tenure for listed entities.[58] However in Australia, the ASX Principles do not endorse a rigid approach to dictating director terms, although it is acknowledged that a director's independence should be more frequently evaluated after a decade of service.[59]

54 It has been suggested that entities should endeavour to have directors with varying tenure lengths and be "well served by having a mix of directors some with a longer tenure with a deep understanding of the entity and its business, and some with a shorter tenure with fresh ideas and perspective".[60]

55 This approach appears to balance the so called "expertise hypothesis" and the "entrenchment hypothesis".[61] The "expertise hypothesis" suggests that a director's

effectiveness increases with their length of service and corresponding understanding of the business. The "entrenchment hypothesis" suggests that directors becomes stagnant after a period of time. The aim should be to achieve "a healthy balance that combines experience and continuity with new capacity".[62]

Remuneration and incentivisation of directors and officers

56 In 2009 the Financial Stability Board released its Principles for Sound Compensation Practices (Compensation Principles), in response to revelations that the GFC could be traced to the remuneration practices of large financial institutions. It was noted that:[63]

> High short-term profits led to generous bonus payments to employees without adequate regard to the longer-term risks they imposed on their firms. These perverse incentives amplified the excessive risk-taking that severely threatened the global financial system and left firms with fewer resources to absorb losses as risks materialised.

57 APRA adopted the Compensation Principles through the *Prudential Practice Guide PPG 511 Remuneration*.[64]

58 Although the Compensation Principles were aimed at financial institutions, they illustrate the importance of ensuring that remuneration structures are consistent with "prudent risk taking".[65] ASIC has also announced that the next issue to be investigated by its Taskforce is executive remuneration practices, to assess whether they are "driving the right behaviours and accountabilities of executives in Australia's listed companies".[66]

59 The 3rd ASX Principles recognised the relationship between remuneration and risk management observing that remuneration for senior executives must balance attracting, retaining and motivating high quality personnel, without encouraging them to take "undue risks". Further, performance-based remuneration should be attached to specific targets, and "appropriate" to the entity's "circumstances, goals and risk appetite".[67]

60 Similarly, the 3rd ASX Principles highlighted the need to ensure that rewards and remuneration for executive directors do not conflict with their duty to exercise independent judgment in decision-making at Board level. They recommended that entities establish a separate and independent remuneration committee and disclose its structures and guidelines regarding the remuneration of executive directors, non-executive directors, and other senior executives.[68] Through transparent, formal and rigorous processes, entities should aim to achieve fair and responsible remuneration. The 4th ASX Principles proposed that, "discretion should be retained, where appropriate, to prevent performance-based remuneration rewarding conduct that is contrary to the entity's values", in addition to its risk appetite.[69]

61 Apart from ensuring that their practices do not inadvertently promote poor behaviour, companies can also deploy their remuneration structures to reinforce desired outcomes. One such method is to incorporate appropriate, non-financial targets aligned with the organisation's values into employee incentive schemes.[70]

62 To achieve good corporate governance, remuneration practices should strive to be aligned with the company's culture, values, risk appetite, strategic and financial objectives, and be complemented and fortified by other systems of recognition and reward.

Chapter 4.2

Suitability

Introduction

1 The Authority is obliged to "keep under constant review" all matters connected with casinos; the activities of casino operators; persons associated with casino operators; and persons who are in a position to exercise direct or indirect control over casino operators.[1] The Authority established this Inquiry for the purpose of the exercise of this function under the *Casino Control Act.*[2]

2 The Authority is prohibited from granting an application for a casino licence unless it considers that the applicant for the licence and each close associate is a "suitable person" to be concerned in or associated with the management and operation of a casino. In determining whether an applicant is a "suitable person" to operate a casino, the Authority is required to consider whether the applicant satisfies certain statutory criteria. Although the *Casino Control Act* does not expressly define the term, the statutory criteria describe the attributes expected of a "suitable person".

3 Those attributes include that the person: (i) is of good repute, having regard to character, honesty and integrity; (ii) is of sound and stable financial background; (iii) has access to suitable and adequate financial resources to operate the casino; (iv) has sufficient experience and business ability to operate the casino; (v) if not a natural person, has or has arranged a "satisfactory ownership, trust or corporate structure"; and (vi) does not have any business association with any person, body or association who, in the opinion of the Authority, is not of good repute, having regard to character, honesty and integrity or otherwise has undesirable or unsatisfactory financial sources. In addition to considering these attributes the Authority must also consider whether each director and officer determined by it to be associated or connected with the ownership, administration or management of the operations or business of the applicant or its close associates is a suitable person to act in that capacity.[3]

4 In July 2014 the Authority approved the Licensee as a suitable person to be concerned in or associated with the management and operation of the Barangaroo Casino.[4] At the same time it also approved Crown as a suitable person to be a close associate of

the Licensee. This Inquiry does not involve an investigation into whether the Licensee and Crown satisfy all the statutory criteria of which the Authority was satisfied when it granted the application for the Barangaroo Licence and approved Crown as a close associate of the Licensee.

Amended Terms of Reference

5 The Amended Terms of Reference define the ambit, nature and content of the tasks for inquiry and report to the Authority.

6 Part A of the Amended Terms of Reference is the "Suitability Review". It required an inquiry into the veracity of the Media Allegations that were published on and from 27 July 2019 by the Nine Network, *The Sydney Morning Herald*, *The Age* and other media outlets which included but are not limited to claims that Crown or its agents, affiliates or subsidiaries: (i) engaged in money-laundering; (ii) breached gambling laws; and (iii) partnered with Junket operators with links to drug traffickers, money launderers, human traffickers, and organised crime groups. The findings in respect of the veracity of the Media Allegations are contained in Chapters 3.2 to 3.4 of the Report.

7 In response to, or in consequence of, the findings in respect of the Media Allegations it also requires an inquiry into: (i) whether the Licensee is a suitable person to continue to give effect to the Barangaroo Licence; (ii) whether Crown is a suitable person to be a close associate of the Licensee; and (iii) any matter reasonably incidental to those matters. Finally, there is the requirement to provide a report on these matters to the Authority by 1 February 2021.

Suitable person

8 At the time of the grant of the Licence for the operation of the Barangaroo Casino to the Licensee and the approval of Crown as a close associate of the Licensee, the Authority was satisfied that each of the Licensee and Crown was a "suitable person". It can be assumed that they each satisfied the criteria identified as the indicia of suitability in the *Casino Control Act*.[5]

9 The ultimate questions in the Suitability Review under the Amended Terms of Reference are whether, as a consequence of the findings in response to the Media Allegations, each of the Licensee and Crown is a "suitable person". That is, whether the findings in respect of the Media Allegations have an impact on the good repute of the Licensee and/or Crown "having regard to character, honesty and integrity" such that they either remain suitable or are no longer suitable to be the Licensee and/or a close associate respectively.[6]

10 The determination of those questions in the context of the Amended Terms of Reference includes a consideration of whether the Licensee and Crown have or have had any business associations with any person, body or association who is not of good

repute having regard to character, honesty and integrity, or has undesirable or unsatisfactory financial sources.[7]

Good repute having regard to character, honesty and integrity

11 Previous reports to the Authority have explored the expression "good repute having regard to character, honesty and integrity". Comparisons have been made with tests of fitness and propriety to hold certain licences, and requirements to be of "good fame and character".[8]

12 Reference has also been made to judicial observations in relation to the concepts of "character" as it "provides an indication of likely future conduct" and of "reputation" as it "provides an indication of public perception as to the likely future conduct" of a person. It has also been observed that findings as to character and reputation "may be sufficient" to ground a conclusion that a person is not "fit and proper to undertake activities".[9] The analysis of the concept of character can become somewhat circular with reference to a person's "nature and good character". However, it is clear that a person of good character would possess "high standards of conduct" and act in accordance with those standards under pressure.[10]

13 Some observations by Regulators in other jurisdictions when considering a casino operator's "integrity, honesty, good character and reputation" are of assistance.

14 In 1981 the New Jersey Casino Control Commission made the following observation in relation to the assessment of "character" in the context of individuals:[11]

> We find this a most difficult task for several reasons. First, 'character' is an elusive concept which defies precise definition. Next, we can know the character of another only indirectly, but most clearly through his words and deeds. Finally, the character of a person is neither uniform nor immutable.
>
> Nevertheless, we conceive character to be the sum total of an individual's attributes, the thread of intention, good or bad, that weaves its way through the experience of a lifetime.

15 In 2018 the Massachusetts Gaming Commission observed that when assessing the suitability of a corporate casino operator, it must be remembered that "the corporate entity itself is made up of individuals and has no independent character or morality standing alone".[12] The Commission referred to the remarks in *Merrimack College v KPMG LLP* (*Merrimack College*) that:[13]

> Where the plaintiff is an organization that can only act through its employees, its moral responsibility is measured by the conduct of those who lead the organisation. Thus, where the plaintiff is a corporation … we look to the conduct of senior management – that is, the officers primarily responsible for managing the corporation, the directors, and the controlling shareholders, if any.

16 It is accepted that a company's suitability may ebb and flow with changes to the composition of the company's Board and Management, and others who influence its affairs, over time. If a company's character and integrity has been compromised by the actions of its existing controllers, then it may be possible for a company to "remove a stain from the corporate image by removing the persons responsible for the misdeeds."[14] However, this would only be possible if the company could "isolate the wrong done and the wrongdoers from the remaining corporate personnel".[15] It would be necessary to ensure that "the corporation has purged itself of the offending individuals and they are no longer in a position to dominate, manage or meaningfully influence the business operations of the corporation."[16]

17 A person is of "good repute" if they have a reputation or are known to be a good person. A person may have flaws and may make mistakes but still have a reputation or be known as a good person. They may be of "good repute" because they are honest; because they have integrity; and because their character is not adversely affected by the particular mistakes they have made.

18 In the context of this Inquiry good repute or reputation is to be judged by reference to matters including character, honesty and integrity. Although there was some debate about whether the assessment of good repute includes consideration of matters other than character, honesty and integrity, it is necessary in assessing character to take an "holistic view" of both the Licensee and Crown including the assessment of the integrity of corporate governance and risk management structures and the adherence to adopted policies and procedures.[17] This focuses squarely on whether the findings in respect of the Media Allegations have an impact on their character, honesty and integrity. Clearly, they were each regarded as persons of "good repute" and a "suitable person" at the time of the grant of the Barangaroo Licence. It is necessary to determine whether they are still suitable as a result of the findings in respect of the Media Allegations.

19 It is appropriate at this point to make some observations about the reasonable expectations of directors of a publicly listed company generally but more specifically of a company that holds a licence in New South Wales to operate a casino.

Complex Corporations

20 In the early 1990s temporally proximate to the grant of the first casino licence in this State, the Supreme Court of New South Wales made observations on the role of directors, including in the context of large and complex corporate structures.[18]

21 It was observed that many companies "are too big to be supervised and administered by a board of directors except in relation to matters of high policy" with the "true oversight of the activities of such companies" residing within the "corporate bureaucracy".[19] In what may be viewed as a rather prescient observation to some of the events that have given rise to this Inquiry the following was said:[20]

> Senior management, and in the case of mammoth corporations, even persons lower down the corporate ladder exercise substantial control over the activities of such corporations involving important decisions and much money. It is something of an anachronism to expect non-executive directors, meeting once a month, to contribute anything much more than the decisions on questions of policy and, in the case of really large corporations, only major policy.

22 However more focused guidance was provided at the appellate level which included the following: [21]

(a) Directors must take reasonable steps to place themselves in a position to guide and monitor the management of the company;

(b) Board meetings should occur as often as necessary to enable the Board to carry out its functions in the particular circumstances of the company;

(c) Directors who know, or should know of facts "which would awaken suspicion and put a prudent person on guard" are required to act with care "commensurate with the evil to be avoided"; and

(d) Directors must keep themselves informed about the activities of the corporation by a "general monitoring of corporate affairs and policies" rather than a "detailed inspection of day-to-day activities".

Crown and its directors

23 The duties referred to above need to be viewed and measured against the "particular circumstances of the company". The pivotally important circumstances of the companies the subject of the Suitability Review of this Inquiry are their roles as Licensee of the Barangaroo Casino and close associate of the Licensee respectively.[22] These are not entities simply operating in the cut and thrust of the commercially competitive corporate environment, although their success in that environment is obviously at the core of their continued viability.

24 These are companies with the overlay of responsibilities to stakeholders well beyond just their shareholders. The regulatory and contractual framework of the Barangaroo Licence imposes obligations on each of them to the NSW Government, the Authority and the broader community to ensure that the casino operations remain free from criminal influence and exploitation; to ensure that gaming in the casino is conducted honestly; and to operate the casino in a manner that contains and controls any potential harm to the public interest, individuals and families.[23] These frameworks provide a lens through which suitability may be assessed.

Context

25 The investigations of the Media Allegations the subject of the Amended Terms of Reference require analysis of events in or in relation to the operation of Crown and the wholly owned subsidiaries, Crown Melbourne Limited as Licensee of the Crown Melbourne casino, Burswood Limited, as Licensee of the Crown Perth casino, Southbank and Riverbank.

26 It should be said that the Licensee is a company that does not, as yet, have a 'track record' of operating a casino. As an entity, it has not been 'personally' involved in the circumstances that have been identified in the Amended Terms of Reference. However, it is a wholly owned subsidiary of the close associate, Crown, and its directors are directors of Crown. The conduct of these directors and of Crown and its other directors is relevant because the assessment of suitability requires consideration of those who own and control the corporation.

27 It is appropriate to emphasise that the breadth and focus of the Suitability Review is defined by the Amended Terms of Reference. This is not an assessment of an inexperienced applicant for a fresh grant of a casino licence. It is an assessment of a close associate whose subsidiaries are experienced casino operators in Melbourne and Perth previously determined to be suitable persons, whose conduct whilst holding their licences and being so associated respectively has been called into question in the Media Allegations.

28 It should be emphasised that when assessing good repute having regard to character, honesty and integrity for the purpose of determining whether a person is suitable to continue to hold a licence to operate a casino or to be a close associate of a casino operator, it is necessary to take into account the whole character and nature of the person whose repute and character is being assessed. Although an assessment must be made of the particular conduct alleged in the Media Allegations, it is necessary to take into account the breadth of the person's operations and previous determination as a suitable person.

29 A casino operator in New South Wales must ensure that its operations are free from criminal influence or exploitation. If it be found that its operations have been burdened by such criminal influence or exploitation then the operator's character and reputation can be adversely affected so that it becomes an unsuitable person to operate a casino. If that be shown to be the case, the only way to convert it into a suitable person would be, at the very least, to establish to the regulator's satisfaction a capacity to ensure that in future its operations will not be so burdened. Part of the process of determining suitability is an assessment of whether a regulator could have confidence and satisfaction that a casino operator is to be trusted; that is, whether it has such integrity so that it can be relied upon when it claims to have the capacity to repel criminal influence and exploitation.

30 A casino operator may operate a casino free from criminal influence and exploitation but at the same time have corporate governance problems such that the decision-making processes in respect of its operations may be flawed. For instance, it may not have the appropriate mechanisms for elevating risk to the appropriate entities that determine risk appetite within the corporation. Those corporate governance problems on their own may not convert a previously suitable licensee or close associate into an unsuitable person but rather require adjustment of its processes to ensure that it does not slip into unsuitability by reason of an absence of systems that appropriately defend it from the infiltration of criminal influence or exploitation. However it may be that a lack of proper processes and barriers to such infiltration might mean that the entity is unsuitable. It will all depend upon the circumstances and the nature of the problems that are identified. These observations are made to highlight the need to consider the whole character of the person when assessing suitability.

Chapter 4.3

Corporate Character

Introduction

1 Observations have been made elsewhere in the Report about the reasonable expectations of directors of a company generally but more specifically of a company that holds a licence in New South Wales to operate a casino.[1]

2 A necessary step in the Suitability Review in determining whether each of the Licensee and Crown is a "suitable person" to operate or to be associated with the operation of a casino is an understanding of the character of the corporation. This involves a recognition not only of its strengths but also of its willingness to: (i) accept the existence of its failures; (ii) to analyse the reasons for such failures; (iii) to remove the cause of its failures; and (iv) to commit to a reformation that will remove the likelihood of a repetition of such failures. Although the pivotal importance of reliable executives and senior management is recognised the character of the company can in the main be understood through the conduct, attitudes and values of those who set its course. This is the Board including the CEO.

3 It is intended in this Chapter to review the approach adopted by the Chairman, the CEO and the other directors in respect of these matters in response to the serious corporate failures exposed during the Inquiry. It is also intended to review some aspects of the evidence of two members of senior management, Mr Felstead and Mr Preston, upon whom the Crown Board placed much reliance.

Corporate failures

4 The serious corporate failures relate in the main to: (i) Crown's operations in China and the arrests of the employees in October 2016 with numerous failures to escalate indicators of real risks to the staff to the proper decision making mechanisms within the company (China Arrests); (ii) the probability of money laundering in Crown's operations both in the bank accounts of its subsidiaries, Southbank and Riverbank; and in the casino premises with hundreds of thousands of dollars brought into the casino in cooler bags and shopping bags and exchanged for chips and plaques (money

laundering); and (iii) Crown's failures to ensure that it only had commercial associations with Junket operators of good repute (Junket relationships).

5 Other matters of importance that have required review relate to the structures in place that have contributed to the corporate failures including: (i) the existence and operation of the Services Agreement; (ii) the existence and operation of the Controlling Shareholder Protocol;[2] (iii) Crown's relationship with CPH and Mr Packer; (iv) Crown's risk management structures and their resourcing; and (e) the governance and culture of the organisation.

6 Another aspect of the assessment of the directors' conduct relates to their understanding of the regulatory agreements with the NSW Government and the Authority and undertakings given to the NSW Government and the Authority at the time of the grant of the Barangaroo Licence in 2013 and 2014. It is clear that each director understood as at 2019 that Crown had given an Undertaking to the NSW Government and the Authority that it would not allow the late Mr Stanley Ho to acquire a direct, indirect or beneficial interest in Crown. Each director was aware of the importance of this Undertaking and each understood the sensitivities the NSW Government and the Authority had in this regard.

7 At the time of the Melco Transaction it is apparent that none of the directors with knowledge of the transaction prior to it being signed brought this Undertaking to mind. As discussed in Chapter 4.7 Mr Johnston and Mr Jalland did not appreciate that at the very least enquiry should have been made to ensure that the late Mr Stanley Ho did not have an interest in Melco to which CPH Crown Holdings was to transfer its shares in Crown. Amazingly, Mr Packer, as the former Chairman and director of Crown, who negotiated and secured the grant of the licence to the Barangaroo Casino did not turn his mind to the prospect that the late Mr Ho may have had an interest in Melco; or the need to ensure that some investigation was completed so that the Undertaking that had been given to the NSW Government and the Authority was honoured.

8 As it turned out the late Mr Ho's associated entity, Great Respect, had an interest in Melco and he thereby obtained an indirect interest in Crown.

9 The fact that Melco sold its shares and since April 2020 is no longer a shareholder and the fact that Mr Stanley Ho is now deceased, does not mean that it was unnecessary to explore these matters further. It is necessary in the Suitability Review to give consideration to whether in the circumstances of the discussion in Chapter 4.7, the Authority could rely upon any undertakings that may be given by Mr Johnston and Mr Jalland having regard to their failure to even think about the Undertaking to ensure that the late Mr Ho did not acquire any interest in Crown at the time of the Melco transaction.

Response to failures

10 Some of the corporate failures were the subject of the Media Allegations published in July and August 2019. Indeed some of them had been the subject of previous publications in 2014 and 2017.[3] The directors' response to the 2019 Media Allegations was a strident and powerful public denial of the existence of any of the corporate failings by way of an ASX announcement and an advertisement in the print media which is detailed elsewhere in the Report.[4]

11 However Crown has responded differently to the exposure of these serious corporate failures during the course of the Inquiry.

12 It should be recognised here as elsewhere in the Report that after the China Arrests in October 2016, Crown suspended all of its operations in Mainland China. It also carried out a review of its Junket operators in Mainland China and ceased its relationship with all Junket operators based in Mainland China.

13 In August 2020 Crown suspended all of its Junket operations and associations with its international Junket operators and in September 2020 extended that suspension to the end of June 2021. On 17 November 2020 Crown announced that it had determined that it would "permanently cease dealing with all junket operators" and would only recommence such dealings if the Junket operator "is licensed or otherwise approved or sanctioned by all gaming regulators in the States in which Crown operates".[5]

14 The bank accounts of Southbank and Riverbank were closed in December 2019. This was not at the behest of Crown or recognition of the problems within the accounts. Rather it was a position imposed by the CBA. In September 2020 Crown advised the Inquiry that it was intended the companies would be deregistered.[6]

15 On 21 October 2020 Crown announced that the Services Agreement and the Controlling Shareholder Protocol had been terminated.[7]

Analysis

16 The evidence in relation to many of the matters relied upon to contend that corporate failures had occurred was not in dispute. It should be recorded that Crown, the Licensee, and CPH did not proffer any evidence that challenged the evidence in this regard that was led by Counsel Assisting the Inquiry.

17 Matters of significance in the Suitability Review include assessing whether the directors: (i) accept that corporate failures occurred; (ii) accept that these corporate failures were serious; (iii) were able to provide an explanation as to why these serious corporate failures occurred; (iv) accept responsibility for these failures; and (v) were able to propose mechanisms to prevent similar corporate failures in the future.

The directors

18 It is intended in the following parts of this Chapter to focus on the evidence of the directors of Crown who were serving at the time of the relevant events. This will include the evidence of Mr Barton who as CEO of Crown since January 2020 now serves as a Crown director, although his involvement in some of the relevant events was when he was the Chief Financial Officer of Crown and a director of Southbank and Riverbank.

19 Although one part of the Chapter relates to two members of senior management it is more for the purpose of identifying the problems that arose for the directors from their reliance upon them.

20 The discussion elsewhere in the Report in relation to "suitability" includes reference to the concepts of "character, honesty and integrity".[8] Although the concept of integrity overlaps with the separate quality of honesty, it embraces the concept of an adherence to strong ethical principles and values.

21 A person's performance in a field of commercial endeavour which may be layered with multiple duties and obligations can be harshly judged if it is infected by dishonesty. A person's performance in a witness box in Court proceedings or in an Inquiry after taking an oath or making an affirmation to tell the truth can also be harshly judged if it is infected by dishonesty. Both situations impose heavy burdens.

22 One can easily satisfy the requirement of honesty in the witness box by telling the truth. The commercial environment is more complex. There will be circumstances where care would need to be taken to make judgments about constraints of confidentiality, obligations to superiors and/or regulators and fairness to officers and employees. That is not to say that the concept of honesty should not be at the forefront of the mind of the commercial operative in the marketplace. Rather it is to recognise that there are more obligations in play than when one is giving evidence on oath. In that instance there is just one obligation or one duty: to tell the truth.

23 All but one of the Crown directors who were on the Board at the time of the events relevant for investigation under the Amended Terms of Reference have given evidence in the Inquiry, consequent upon the taking of an oath or the making of an affirmation to comply with that obligation or duty. It is appropriate to say something about the process of making a judgment about whether evidence can be accepted as truthful, going to a person's credit, and/or reliable, going to a person's credibility. Albeit the latter is in part reliant upon the former.

24 A person's credit may be adversely affected if they fail to tell the truth. A person's credit may remain intact but because their memory, judgment or appreciation of things may be unreliable, their credibility may be questionable. A person's credibility in respect of a particular topic may also be adversely affected if they have failed to tell

the truth about a particular matter and are therefore unreliable in this regard, but their evidence in other respects may be quite credible or reliable, unaffected by the failure to be honest in respect of a particular matter. It will all depend upon the circumstances, context and content of the evidence that is given by the person as to whether their credit and or credibility remains intact. A person may be honest but their evidence may be unreliable.

25 A person can lack honesty in some respects but be found to be reliable in other aspects of their evidence that are untouched by the lack of honesty. A person who is dishonest in some respects and unreliable in others may have both their credit and credibility called into question.

26 These observations have been made because it has been suggested that the evidence of three directors, Mr Johnston, Mr Demetriou and Mr Barton should not be accepted, because their credit or honesty has been called into question during the evidence before the Inquiry. Additionally, it has been submitted that Mr Packer's integrity has been called into question, not by reason of an attack on his honesty or credit in giving evidence before the Inquiry, but because his conduct in making a very serious threat against a business colleague demonstrates a flaw in his character such as to adversely affect his integrity. These are all matters that must be dealt with in respect of these directors and former Chairman/director in addition to the matters the focus of this Chapter.

27 Prior to dealing with the evidence of the directors it is appropriate to observe that there is no doubt that each of the present directors of Crown accepted in their evidence that corporate failures of the most serious kind have been exposed in the evidence before the Inquiry. In making this observation so free of doubt it is not intended to dilute either the significance of the seriousness of the corporate failures or the ramifications of the recognition of these failures by the Crown directors.

28 However, it is one thing to accept that problems exist and serious failures have occurred when confronted with such an irresistible conclusion in a witness box. It is quite another to be alert to the prospect of the existence of a problem or serious failure, to uncover it, to confront it and/or be ready to avoid it without it having to be presented in the forum of an Inquiry such as this. It is this latter capacity that has been missing from Crown's armoury.

29 A mechanism deployed by Crown during the Inquiry when obvious and serious corporate failings have been exposed in the evidence has been to remove the operational basis for the problem or serious failure. For instance, it was after the evidence in the Public Hearings of the Inquiry dealing with Junket relationships commencing in July 2020, Crown made a decision effective in August 2020 to suspend Junket operations.[9] In September 2020 that suspension was extended to 30 June 2021. As already discussed, the significance of this decision was ratcheted up on

17 November 2020 with Crown's announcement of permanent (but somewhat conditional) cessation of all relationships with Junkets.

30 Another example of this mechanism was the identification of the problems with the operation of the Services Agreement and the Controlling Shareholder Protocol during the evidence given by Mr Johnston, Mr Barton and Mr Packer. It was after Ms Coonan concluded her evidence on 20 October 2020, Crown announced the termination of the Agreement and the Protocol on 21 October 2020.

31 Crown did not have the opportunity to take credit for the closure of the Southbank and Riverbank accounts. This was taken out of its hands by the CBA which resisted Mr Barton's advocacy and shut them down in October 2019. However, another step was announced during Mr Barton's evidence for which it would appear, Crown apparently seeks credit. It was that Crown had decided to deregister the two companies.

32 A further rather unedifying and significant step was the one hour online AML training for the Board introduced during latter parts of the Public Hearings. This was 13 months after the allegations were exposed in the print media, 10 months after Counsel Assisting opened the Public Hearings referring to the problems in the accounts and after months of what may reasonably be described as devastating evidence of the obvious indicia of money laundering within the accounts.

33 Mr Barton's evidence in his Third Statement that Southbank and Riverbank were to be deregistered was presented as a positive step to the credit of Crown. However it is not at all clear whether Crown consulted with the Authority, ASIC or AUSTRAC before it made its decision to deregister the two companies. It would obviously have been prudent for Crown to consult with those regulators to ensure that there were no impediments to deregistration including any particular regulatory action that those regulators may have been contemplating against those companies.

34 The evidence has established numerous corporate failings including: that Crown's risk management and corporate governance structures were compromised; Crown's directors were not informed of very significant matters of which they should have been informed; risks to the safety of staff working in China were not properly appreciated and/or averted; Crown was exposed to the risk, a risk that was realised, of exploitation by criminals utilising Crown's bank accounts for money laundering purposes which was not properly appreciated or prevented; and Crown entered into and/or continued in commercial relationships with Junket operators who it was not reasonable to assume were of good repute.

35 The relevant evidence of the Crown directors will now be considered. It is appropriate to deal separately with the evidence of the Chairman, Ms Coonan, and then the evidence of the CEO, Mr Barton. It is then intended to deal with the evidence of the other directors on the relevant topics excluding Mr Johnston and Mr Demetriou. It

will be necessary to deal separately with the evidence of Mr Johnston and Mr Demetriou having regard to the challenges made to their credit.

Chapter 4.3.1

The Chairman

1 The Honourable Helen Coonan has been a non-executive director of Crown since December 2011 and became Chairman of Crown in January 2020. [1] Ms Coonan also chairs Crown Resorts Foundation Limited.

2 Ms Coonan is a member and former Chair of the Corporate Responsibility Committee. She is also the Chair of the Finance Committee and was previously a member and the Chair of the Audit & Corporate Governance Committee from April 2017 to February 2020. Ms Coonan was also the Chair of the Brand Committee from its establishment in August 2019 until it ceased operations in January 2020. Since becoming Chairman of Crown in January 2020 Ms Coonan has endeavoured to attend, by standing invitation, meetings of the Risk Management Committee, the Audit & Corporate Governance Committee, and the People, Remuneration and Nomination Committee as well as the Crown Sydney Board.

3 Ms Coonan served as a Senator in the Australian Parliament from 1996 to 2011. Ms Coonan served in numerous roles including as the Deputy Leader of the Government in the Senate; Minister for Communications, Information and Technology and the Arts; and a shareholder Minister for Telstra Corporation and Australia Post. Ms Coonan also served as the Minister for Revenue and Assistant Treasurer and held portfolio oversight of the Australian Taxation Office and APRA.

4 Prior to her service in the Australian Parliament, Ms Coonan practised for approximately 25 years as a solicitor, an attorney-at-law at the New York Bar, and a barrister at the New South Wales Bar.

5 Ms Coonan is presently the Chair of: the Australian Financial Complaints Authority; the Minerals Council of Australia; the Advisory Committee of Placemaking NSW; Supervised Investments Australia Limited; and GRACosway (a subsidiary of the Clemenger Group). Ms Coonan has previously served as a non-executive director of Snowy Hydro Limited and as the Chair of HGL Limited.

6 In her role as Chairman of Crown Ms Coonan is responsible to a greater extent than any other director for the performance of the Board as a whole and each member of

it.[2] At the outset of her evidence Ms Coonan expressed the view that as a Board it was necessary to acknowledge that: (i) the Board has not always received all of the information and inputs it required; and (ii) Crown's systems, processes and structures in place in relation to risk and compliance "require further enhancement".[3]

7 However, Ms Coonan agreed that: (i) it is unsatisfactory for boards of Australian publicly listed companies to simply say they were not informed of important matters; and (ii) boards of listed companies have an obligation to constructively challenge management and ask the hard questions.[4]

China Arrests

8 The example that Ms Coonan gave in respect of the Board's lack of information and inputs was that the management of the risks of Crown's operations in China was primarily handled "on the ground" without being elevated through the appropriate risk management channels.

9 Ms Coonan was led to believe that at all times the law was being observed in China.[5] Her recollection of the conversation with Mr Johnston about the South Korean casino operators being arrested in mid-2015 was that it related to currency movements across borders and that Crown had obtained legal advice that the Crown staff did not operate in that way. Ms Coonan did not believe this topic was on the Board Agenda and it was in the nature of a "mention" by Mr Johnston. However she did ask Mr Neilson, Crown Company Secretary at the time, about the provenance of the advice that had been received because she wanted to make sure it was reputable, and hopefully likely to be correct. Ms Coonan was not informed about the general crackdown on foreign casinos luring Chinese citizens to gamble overseas. She was certainly not informed that Chinese police had interviewed a Crown employee and requested a letter confirming that employment. She agreed that this was a "serious matter" and "an undeniable red flag" and an obvious escalation of the risk to the safety of Crown staff in China.[6]

10 Ms Coonan accepted that the failure by Mr Felstead and Mr Johnston to advise the Board of the questioning of the employee in China demonstrated a failure in Crown's risk management processes and expressed the view that if the Board had been so advised "the risk appetite would be nil in those circumstances".[7] As Ms Coonan put it, it was "not worth the candle if you've got these kind of escalating risks" and gave the following evidence:[8]

> I just don't understand the – certainly, Mr Johnston knew – knew something. But Mr Felstead also, as I say, presented to the board. I don't think it relieves Mr Felstead for having brought this forward, so I do think that the final conclusion that it does demonstrate an issue with the – with the framework and its application is correct.

11 Ms Coonan gave evidence that Mr Johnston's workload was being reduced and he was no longer wearing a lot of hats. She endorsed Mr Johnston as a very, very fine diligent

and dedicated Board member, who could continue to make a good contribution "with those adjustments".[9] When Ms Coonan was pressed in relation to Mr Johnston's failure to notify his colleagues of the questioning of the Crown employee in China by the police she said "Yes. I mean, I do think that's a lapse. None of us are perfect".[10]

12 Ms Coonan agreed that it was unacceptable for staff of a listed Australian company to express fears for their safety in performing their work.[11] "Sadly" Ms Coonan was not informed of such expressions of fear and agreed that it should have been drawn to the attention of the full Board and the relevant Risk Management Committees.[12]

13 When asked whether she had any insights to offer as to how or why the failures occurred, Ms Coonan said:[13]

> Yes, I can, as a procedural matter. It wasn't escalated up through the various processes that were set in place by quite a complex and comprehensive set of risk management procedures and policies; they weren't properly applied.

14 A controversy arose in the evidence as to whether there had been a proper review by Crown of its operations in China in the immediate aftermath of the arrests and detention of the Crown employees in October 2016. It is accepted that Mr Brazil, in particular, was concerned to assess the cause of the arrests and detentions and to consider whether Crown was "culpable" in these rather tragic events.[14] Ms Coonan accepted that the Crown Board had to bear the ultimate responsibility for what she described as a "failure of execution of the risk management framework". Her evidence included the following:[15]

> Q. And to your knowledge has the board conducted any inquiry to understand how or why these failures occurred?
>
> A. That's a very good question, if I just may answer it a little more fully. After the China arrests, the board received legal advice not to pursue an inquiry at that time and that related to other proceedings, and in subsequent years there have been a lot of inquiries. I think we're getting to the stage now where there's probably about five lots of inquiries into these most unfortunate events. What I would say about it is I – I do think that there will come a point where we can have a very good look at what falls to the bottom, so to speak, where there may be gaps in all of the inquiries that have been carried out into – into these matters. There's exhaustive inquiry going on in a class action matter. There's an inquiry, no doubt that you will come to, being conducted by the VCGLR into the China matters.
>
> There's inquiries of course into – at different levels, into what to do about risk management. All of these are very important, and I do take the point that has been, I think, teased out in this Inquiry, that there may be a role to really have a good look back and make sure we haven't missed anything. There are lessons to be learned and I accept that.

15 Ms Coonan acknowledged that the risk management failures and corporate governance problems which she acknowledged in relation to the China Arrests are "serious issues" which had very serious and close to "catastrophic" consequences.[16] She thought that it was "pretty obvious" that the root cause of the failures was that "people tried to manage on the ground" and probably "missed the political and social changes in China and probably put overreliance on legal advice".[17]

16 Ms Coonan gave evidence that a review into the China Arrests was not pursued in 2017 because the Crown Board "received legal advice not to pursue an inquiry at that time" because of "other proceedings". The "other proceedings" in respect of the China Arrests was the Class Action.

17 However, the approach propounded by the Chairman in her evidence extracted above of having "a good look back" and learning from such a review is to be contrasted with the evidence of Crown's Group General Manager for Risk and Audit, Ms Anne Siegers. Ms Siegers did not suggest that she was impeded by any legal advice not to conduct a review because of "other proceedings". Rather when pressed to explain why she had not had a good look back, she gave evidence that she "really did not want to dwell on the past" and although she did not "shut it out" she did not do a "formal review".[18]

18 The contrast between the approach propounded by the Chairman and that of the Group General Manager for Risk and Audit would need to be settled by the Board. If there is to be a culture instilled in Crown that one can learn from past events by an analysis of any deficiencies that may have caused problems, then this must be a strong and firm message from the Board.

AML and Junkets

19 The examples that Ms Coonan gave in respect of systems that require "further enhancement" were the need to continue to improve Crown's anti-money laundering capability through increased training automation, resourcing and reporting; and the expansion of Crown's due diligence of Junket operators and their associates with oversight by a group separate from the operational part of the business.[19]

Southbank and Riverbank

20 Although Ms Coonan has been a Crown Board Member for the last nine years, she was not aware of the existence of Southbank and Riverbank before the Media Allegations were published in August 2019. She recalled being advised at around that time that the accounts operated by those entities were treated no differently to the other Crown bank accounts. She was subsequently advised by Mr Barton that the accounts were either closed or in the course of being closed.[20]

21 When the allegations in respect of the Southbank and Riverbank accounts were published on 5 August 2019, Ms Coonan was advised by either Mr Barton or

Mr Felstead that they were patron accounts and that they were "reported in the same way as other Crown accounts".[21] Ms Coonan was asked whether she requested that a review be conducted into what had happened in the accounts. Ms Coonan responded "Not at that time".[22] She was not advised that in 2019 the CBA had closed the accounts because of concerns about the risk of money laundering through the accounts. Nor was she advised that in 2014 ANZ had also closed the accounts due to AML concerns. Ms Coonan accepted that these were matters that should have been brought to the Board's attention and it was a "pretty significant oversight" on Mr Barton's behalf not to advise the Board of these matters.[23]

22 Ms Coonan was asked specifically about the previous investigations into the Southbank and Riverbank accounts after the Media Allegations were published on 5 August 2019. It is to be remembered that as a result of that publication the CBA had notified Crown of its concerns about the accounts and was considering closing them. Ms Coonan gave the following evidence:[24]

> Q. If you assume that, upon being notified by ANZ that the accounts would be closed due to money laundering concerns, and having a specific example of structuring drawn to his attention, Mr Barton did not direct any review to take place of the actual activity in those bank accounts, that is a quintessential example of turning a blind eye to the prospect of money laundering.
>
> A. Well, I think my former answer remains that it must have been, on his part, either not appreciating what he'd been told or some lapse on his part. I can't imagine why you wouldn't have made some inquiries. I cannot.
>
> Q. And indeed when these allegations were aired in the media on the 5th of August 2019, and notwithstanding that the CBA was wishing to close these accounts because of its concerns about money laundering, again, Mr Barton took no steps to have the actual activity in these accounts reviewed to ascertain whether there had been money laundering.
>
> A. I think that's correct, not until later on.
>
> Q. Or not until very recently, would you agree?
>
> A. Quite recently. I agree with that.
>
> Q. Yes. Within the last month or so?
>
> A. I can't – I can't be precise, but recently.
>
> Q. Yes. After Mr Barton gave money – I beg your pardon – gave evidence to this Inquiry.
>
> A. I think that would be correct.
>
> Q. Isn't the failure to direct a review of activity in the accounts in both 2014 and again in 2019 a very significant lapse of judgment on the part of Mr Barton?
>
> A. I'd have to agree with that.
>
> ...

Q. Is it a concern to you ...
A. Yes.

Q. ... that [neither] Mr Barton, as the CFO, or Mr Preston, as the AML/CTF officer, drew to the board's attention that ANZ had shut down the accounts in 2014 because of its concerns about money laundering and that CBA was in the process of shutting the accounts in 2019 because it shared the same concerns.
A. Yes, it should have been brought to the board's attention.

23 It can be seen that in this evidence Ms Coonan was at first willing to suggest that Mr Barton's failure may have been a lack of appreciation of the import of the information he had received. However Ms Coonan then moved with some justification to express the view that Mr Barton's failure to direct a review in 2014 and again in 2019 was a "significant lapse of judgment".

24 Ms Coonan gave further evidence in relation to the failure to investigate the detail of the Southbank and Riverbank accounts as follows:[25]

Q. Ms Coonan, Mr Barton gave evidence to the effect that, in hindsight, what should have occurred after it became aware that ANZ was concerned about the possibility of structuring in the Riverbank and Southbank accounts in 2014, was that Crown ought to have conducted a comprehensive examination of the transactions in the accounts. Are you aware of that evidence?
A. Yes, to those – to that effect, yes.

Q. Is it correct that, to this day, Crown has still not conducted a comprehensive examination of the actual bank accounts held by Riverbank and Southbank to ascertain the extent to which those accounts may have been used to launder money?
A. I don't think that's correct. Recently, the board directed such a review and that is ongoing. Part of the review, I think, is in – or part of the document that came back from Mr Marais, I think, is in evidence. I may be wrong about that. But I think it's in evidence. But, in any event, yes, there is a comprehensive review being undertaken as – by the AML team.

Q. And just to understand, it's only in very recent times that this comprehensive review has been directed notwithstanding that there was national media attention in early August of last year with an allegation that drug traffickers had laundered money through these accounts.
A. It's only been a recent instigation of that investigation.

25 The recent direction by the Board to which Ms Coonan referred resulted in the retention of Grant Thornton and Initialism on 15 and 16 October 2020, just a couple of days before Ms Coonan commenced her oral evidence before the Inquiry. The steps and the results of the retention of those two firms is referred to later and elsewhere in the Report.[26]

26 Ms Coonan accepted that the transactions in the accounts amounting to 53 deposits totalling $31.8 million over a period of four months at least raised a "red flag" for the prospect of money laundering and that "it's not the magnitude of the deposits but the fact that they're being made in a pattern and in a way that would raise suspicions" that was relevant.[27] Ms Coonan also accepted that the rules in relation to patron accounts of not accepting deposits from companies were not adhered to by Crown.[28]

27 Ms Coonan's evidence in respect of the large amounts of cash transactions at the Suncity desk in the casino in Crown Melbourne included the following:[29]

> Q. What we've seen are a number of examples of very large cash deposits made at the Suncity desk. We've seen AUSTRAC expressing its concern to Crown about the propriety of dealing with Mr Chau. We've seen Suncity breaching controls that were imposed by Crown. We've seen that Suncity had no reporting obligation in relation to these cash transactions. Isn't this a quintessential example of Crown Resorts turning a blind eye to the prospect of money laundering occurring at its casino?
>
> A. Well, Ms Sharp, we've already had this conversation about turning blind eyes. I don't think – it may have been ineptitude or lack of attention. I don't know that it was deliberately turning a blind eye. I do think that that's a different kind of adjectival conclusion.
>
> …
>
> Q. … Ms Coonan, you said that the turning a blind eye … was a different kind of adjectival conclusion. Do you remember saying that?
>
> A. Yes: yes.
>
> Q. You would accept, though, from what Ms Sharp has shown you that what had occurred was facilitating money laundering, wouldn't you?
>
> A. It's very difficult to agree with facilitating. I think certainly there were all sorts of signs there, I'd say, Commissioner, that ought to have alerted management to these issues and problems. As I say, I just don't know whether it was ineptitude or lack of attention to detail or not having sufficient training or not understanding what they were seeing. I just don't know that it was something that was deliberately done to turn a blind eye. I'm just making that distinction.
>
> Q. Well, let's assume that it was ineptitude. Let's assume that it was lack of attention. Those two aspects of conduct allowed the money laundering to take place, did it not?
>
> A. It would have allowed it, yes.
>
> Q. And in allowing something, that is, not intervening and stopping it, on one view of it it's not unreasonable to say that this ineptitude and lack of attention facilitated it.
>
> A. I think allowed it to happen.

Q. And I suppose if you allow something to happen time and again, and people know that they can do it, everybody loses, don't they?
A. I agree with that.

Q. The community loses because you've got money laundering in your casino; correct?
A. Yes, you don't want to have that.

Q. And Crown loses because it's seen as an inept company lacking in attention; correct?
A. On this kind of scenario, yes.

Q. And the reasonable bystander, or the bystander could reasonably conclude that this conglomerate of ineptitude, lack of attention and failing to intervene facilitated money laundering. Would you not agree with that?
A. Yes, I think it was the turning a blind eye that I didn't agree with which I think is a different degree ---

Q. Yes.
A. --- of understanding and doing it, nonetheless.

28 Ms Coonan's evidence in respect of the operation of the Southbank and Riverbank accounts included the following:[30]

Q. I understand, from your position, that you resist any suggestion that Crown turned a blind eye to it; that's correct, isn't it?
A. In the deliberate sense of that. Yes.

Q. Yes. And – but you would accept that, in the negligent sense, or in the sense of overlooking things or not willing to turn the eye to, without deliberate; is that what you're saying? Or how do I read that?
A. Yes. What I said was whether it's – I think I used the word "ineptitude" or "lack of attention to detail" or "lack of training" or whatever ---

Q. Yes.
A. --- there was that unfortunate outcome.

Q. Yes. All right. And then facilitates – so there were two – there were two allegations here: one was facilitates it; one was turned a blind eye. I think you accepted this morning, or during the course of the day, that, on one view of it, what had happened was a facilitation of money laundering. You agree with that?
A. I think it enabled it. Yes.

…

Q. And so I think that you would accept that, so far as the money laundering problems in those accounts are concerned, it is beyond explanation as to how it continued. Would you agree with that?

A. Well, it's certainly very unfortunate that it continued. As to how and why it did, we are currently investigating, as you've heard, Commissioner.

29 Ms Coonan accepted that had the Southbank and Riverbank accounts been reviewed earlier, and had the Board known the nature of the transactions exposed in the evidence, the Board could have said "We've got some problems".[31] It is most unsatisfactory and unfortunate that there was the real opportunity for the Board to have reached that position prior to the commencement of any Public Hearings if the proposal that Ms Lane made in August 2019 for a proper review of these accounts had been accepted. In addition the Board could have, and indeed as said elsewhere, should have directed that a review of the accounts take place well before Mr Barton decided to have a look at the transactions in September 2020.

30 At the Annual General Meeting in 2020 just several days after Ms Coonan completed her evidence the following exchange took place between Ms Coonan and a shareholder:[32]

Q. With the board failing to protect Crown against money laundering, how can shareholders be sure that other policies such as procurement policy and whistle-blower protections are world best practice.

A. To begin with, I don't agree that Crown has failed to protect against money laundering which is in your question. What I said in response to the Inquiry was that there may have been some suspicious matters at Crown; that doesn't prove that there was money laundering. And what I said was there may have been some inadvertence or possibly some ineptitude in management not noticing suspicious matters. That all falls very short of failing to protect Crown against money laundering.

31 Counsel Assisting submitted that this was "a somewhat curious response".[33] That submission has force having regard to Ms Coonan's evidence extracted above that money laundering had been "enabled" in the Southbank and Riverbank accounts. It is beyond doubt that there was a failure to protect Crown and the Licensee in Melbourne from being exploited by money launderers. Had Crown reviewed the accounts properly in 2014 and/or prior to their closure in 2019, steps could have been taken to protect it from such exploitation.

Junkets

32 Ms Coonan gave the following evidence in her written Statement:[34]

> I recognise that, whilst junkets are an established part of the casino industry, the casino industry's engagement with junkets gives rise to risks, particularly in the area of money laundering and potential exposure to criminal influences.
>
> The Board's focus on junket arrangements has increased in light of the information that has emerged during the course of the Inquiry, including in relation to arrangements that might exist between the junket operator and third parties for the

> financing of the junket and wider associations the junket may have. I recognise that Crown needs to continue to improve its due diligence of junkets, including those that associate with the junket operator (such as financiers).

33 Ms Coonan also gave evidence that: on 10 August 2020 the Board resolved, "subject to my approval", given on 25 August 2020, to suspend all Junket relationships pending the completion of a detailed external review; and on 10 September 2020 the Board approved a proposal put forward by Mr Barton to extend that suspension of all Junket activities until June 2021.[35]

34 Ms Coonan accepted that holding a casino licence is a privilege; that casino operators must ensure that they only have business associations with those of "good repute"; and that this has been at the forefront of her mind in discharging her responsibilities as a Crown director.[36]

35 Ms Coonan frankly agreed that having regard to the material to which she was taken in evidence, the Board's attention should have been drawn to AUSTRAC's enquiry of Crown about the appropriateness of continuing to provide designated services to Mr Chau.[37] In addition, Ms Coonan observed that once the $5.6 million was found in the Suncity Room after an internal control had been imposed of no more than $100,000 in cash being kept at the desk, the matter required "urgent attention".[38] It should be said that it appears the $5.6 million was located before or on the first day of the operation of the $100,000 direction as discussed in Chapter 3.2.

36 It is without doubt that the seriousness of these problems was recognised and appreciated by Ms Coonan in her evidence and she candidly agreed that having regard to the information provided to her during the course of her evidence, Crown would not want to have dealings with Mr Chau either in retrospect or prospect.[39] She observed that one needed to "own these processes" and "make sure they are of the highest standard".[40] Ms Coonan made similar observations in relation to the Neptune Junket representative/operator.[41]

37 In anticipation of what ultimately occurred in the decision announced on 17 November 2020, Ms Coonan identified the tension between dealing with Junkets and the financial impact of not dealing with them. She accepted that there would be some financial impact on the Company in not continuing to deal with Junkets but it would not be "very much".[42]

38 The suggestions made by Ms Coonan in the evidence that Crown needed to expand its due diligence to those associated with Junket operators and financing of Junkets was certainly justified on the evidence that had been called in the Inquiry to that date. The suggestion that any approval of Junkets should be the subject of oversight by a group separate from the operational part of the business was also a very sound proposal to be made at the time.

39 Crown's approach to Junkets changed after Ms Coonan gave her evidence when on 17 November 2020, Crown announced that it was permanently ceasing its dealings with Junkets subject to the matters already discussed.[43]

Controlling Shareholder Protocol

40 Ms Coonan reviewed the Controlling Shareholder Protocol in June 2020 because she wanted to make sure that the information was being provided in accordance with the Protocol. She asked MinterEllison to review it to ensure that it was still "fit for purpose".

41 Ms Coonan concluded that there were ad hoc emails and communications that were not in accordance with the Protocol and it needed to be a "bit tighter". She asked the Company Secretary, Ms Manos, to write to every authorised person under the Protocol and remind them of their duties and obligations under it to provide the information in the best interests of Crown. Ms Coonan also wrote to Mr Jalland in his capacity as CEO of CPH to remind him of the same thing.[44] However, Ms Coonan said it is now "a bit moot" because she had directed that no information be provided at all until "we can have another look" at the Protocol.[45]

42 The Protocol was terminated within a week of Ms Coonan completing her evidence. The discussion about it might be "moot" from one point of view. Certainly, its termination assisted in shoring up Crown's confidential information and keeping it under its own control. However, the analysis of its operation between October 2018 and October 2020 is important to an understanding of why a cultural change within Crown and the Licensee is necessary.[46]

Melco Transaction

43 Ms Coonan gave evidence that there was a "general concern" about the impact of the Melco Transaction on Crown's regulatory agreements with the Authority. There was interest in what it meant for Crown "going forward" and how the Board would be organised; whether there would be requests for seats on the Board; what that would mean for the CPH nominee directors; and what the percentages would be.[47] Importantly Ms Coonan gave the following evidence:[48]

> Q. You said you didn't know about Mr Ho, but that – I understand that you wanted to have an investigation in any event; is that right?
>
> A. Yes. We needed to know. I mean, it was in the schedule. And we had no idea – at least, I had no idea – sorry, I withdraw that. I did not know if Mr Ho Senior had any interest at all in Melco.
>
> ...

> Q. But that's something, no doubt, you would have investigated, had you been informed about the transaction before it occurred?
> A. I – I – I – I do think that that was a critically important matter.

44 The communications under the Controlling Shareholder Protocol played a significant part in the Melco transaction, the details of which are referred to in Chapter 2.8.[49]

The Advertisement

45 Ms Coonan said that the signing of the Advertisement in response to the Media Allegations was a reflection of her own judgment, and reliance on management and legal advice.[50] She understood that Mr Felstead and Mr Preston were the Senior Management tasked with the fact-checking and gathering of the information "to have a truthful account".[51]

46 Ms Coonan accepted that Ms Manos advocated caution in relation to the Advertisement, and gave the following evidence:[52]

> Caution is one element to take into account when, as a body of men and women and directors, you have a ferocious attack on the reputation and standing of a company that you're responsible for, and the allegations made were, in the view of the board, quite egregious, namely, that we deliberately got into bed with criminals, that we wilfully were engaged in money laundering, that we deliberately and knowingly broke ... it's certainly my recollection that we were accused pretty directly of deliberately being engaged in money laundering, sorry, turning a blind eye to money laundering.

47 Ms Coonan said she could not see the distinction between Crown engaging in money laundering and turning a blind eye to it. She thought it was a fairly fine distinction. What upset the directors was the allegation that they turned a blind eye to money laundering.[53]

48 At the time of the publication of the Advertisement, Ms Coonan thought the language was "proportionate to the attack" and the allegations.[54] She said that whilst there is certainly room for improvement, she did not believe there was any evidence of turning blind eyes to money laundering, and the statements about the Junket operators in respect of the 60 Minutes program were, to the best of her recollection, correct. She said she appreciated that there are interpretations that might suggest otherwise and that this was obviously a matter for the Inquiry. She did not believe that there was anything wrong with saying Crown was not charged or convicted of any offence in China and that it obtained legal and government relations advice.

49 However, Ms Coonan said that she did not think Crown's Junket due diligence processes were "robust enough". She thought they were "extensive". She also said that the money laundering processes were not "comprehensive". She said that she would "certainly soften the language, maybe change some of the descriptions" in the advertisement. In addition, on reflection she said "I would not have wanted to refer

to the former employee". She said that she thought you could tone the language down.[55] In this regard, Ms Coonan gave the following evidence:[56]

> Q. And, you see, what was done here was to, effectively, suggest that this young lady was a gold digger. You'd agree with that?
> A. Yes, it's – it's most unfortunate. And I certainly would prefer it had not have been there.
>
> Q. It would have been better to apologise to her, wouldn't it?
> A. Yes.

50 Ms Coonan suggested that in trying to put it all in context, Crown was faced with some egregious unsubstantiated allegations that had a profound impact beyond just Crown, on stakeholders, regulators, and everybody else who deals with the business, and it was "a very big blow to our reputation".[57]

Culture

51 Ms Coonan gave evidence that it is very important to her personally that Crown is a "compliant, ethical and responsible business". The importance of these matters to Ms Coonan was obvious during her evidence. Ms Coonan also gave evidence that this was a "shared objective" of all directors and that if this had not been so she would not have agreed to take on the role of Chairman.[58] Ms Coonan also observed that since taking on the role of Chairman she had worked closely with Mr Barton and other directors to implement a range of improvements and refinements to the risk, governance and compliance processes. In this regard non-executive directors have been appointed to the Boards of Crown Melbourne, the Licensee and Crown Perth to enable the Crown Board to have closer oversight of the day-to-day operations.

52 Ms Coonan also made the important point that upon her appointment as the independent Chairman, the former role of Executive Chairman was split in two with Mr Barton being appointed as the CEO. Prior to this Mr Alexander had served as both Chairman and CEO, a matter to which reference is made elsewhere in this Report. Ms Coonan emphasised that, in her view, Mr Barton has a wealth of experience and she indicated that she has collaborated closely with him on issues relating to the management of Crown.

53 The Board papers prepared by Mr Barton in August 2020 and September 2020 contained numerous proposals for improvement and enhancement of Crown's operations. One of the matters that had been identified in the 10 August 2020 Board Paper was that "the right risk and compliance culture starts with senior leadership, who set the example for the rest of the business". Ms Coonan was asked whether she agreed with that statement, and gave the following evidence:[59]

> I think that's a bit of management speak. Just trying to break it all down so that people can understand it. I think, putting it very simply, what culture is all about and,

> certainly, a culture of compliance, is having a shared set of values and expectations that a very clearly able to be conveyed, and in this, to – to employees that they know how they're expected to respond; that they're certainly encouraged to do so; and there are consequences and alignments in remuneration if they don't. I mean, that's a very simplistic version of it, but I think we have signalled – and we will be signalling in the clearest of terms – that we are all about a culture of compliance. We've talked about that. And we're investing in people with the right attitudes and the right skills and the structural changes, I think, we've made and making also convey, in the clearest possible terms, what kind of culture we want at Crown.

54 Ms Coonan made a number of observations in respect of the "shortcomings" that had been exposed during the Inquiry and was asked whether she accepted responsibility for them. Her evidence was as follows:[60]

> Well, the board is responsible for strategic direction and risk appetite … it's a complex matter, because the board can set a risk – a proper risk appetite, it can have a proper strategic direction and there can be failings in how it's implemented. So I think that's the issue here. And I do think that that can be sheeted home to, perhaps, a feeling that the culture enabled that balance of commercial achievements over compliance to – well, not exactly rule, but to guide or, certainly, to take precedence over culture in the terms – in the ways in which management brought about some of the operations of the business.

55 Ms Coonan claimed that the Board is determined to continuously improve the governance and culture of Crown. She gave the following evidence: [61]

> Q. Do you consider that Crown Resorts is presently a suitable close associate to the Crown Sydney licensee?
>
> A. Well, that's very much a matter for this Inquiry, so I respectfully understand that. I think the question is can we be? And I think that we have demonstrated very clearly that we've understood that there's a way to go to be able to demonstrate how we mean to operate this licence. I do think that we are ready and suitable and, obviously, we'll respect and listen to the recommendations of the Inquiry.
>
> …
>
> A. Yes. Thank you. I think I was referring to culture … but there are a couple of other comments I might – I might make. One is that, along with you, Commissioner, I have great regret that this Inquiry has run the course it's run. In other circumstances, I would have much preferred to have something in the – more like a statement of agreed facts or a better way of engaging on these matters than having to have had such exhaustive hearings. I said, at the time that I became chair – and I really mean, and it's on the record – that I do think that, even though it can be very difficult, sometimes you come out of these processes better than when you went into them. So I think that there's very much lessons to be learned. And I certainly want to give you the assurance that, as the leader of this company, I am ready to stay the course and ready to

> ensure that what we see as the necessary changes are implemented and adhered to if given the privilege of being able to continue.
>
> ...
>
> A. Yes. Having done this; having taken over the chair of Crown is a major undertaking, in my estimation. Running a public company of the size and complexity of Crown with huge responsibilities to the government, to the regulators, to stakeholders, to shareholders, and the broader community. So it's a very significant matter to take it on, but I'm invested in making sure that we get through this and, if given the opportunity to continue, I will make sure, in my role, as chair of Crown that, you know, we implement it and we stick to it.

Staying the course

56 Ms Coonan referred to the circumstances at the end of 2019 of the independent directors wanting change and the process of taking up the role of Chairman which she described as a difficult decision. She gave the following evidence:[62]

> Well, difficult, because I understood that there was a lot to be done to get through the inquiries, to get to the bottom of the allegations, to look at all the sorts of changes that I thought would be necessary to get this company back into a – a company more aligned with modern governance processes and practices and structures, and to take these allegations seriously and look at what we needed to do to have best practices in relation to those matters. So that was broadly it. I knew it wouldn't be an easy – an easy journey. I'd been on the board for some time. And it would have been very easy to move off, but I think I – I needed to stay the course. And I will stay the course, because I'm very invested in taking this company to where it should be.

57 Ms Coonan agreed with Mr Packer's reflection in his evidence during the Inquiry that in the future the Crown Board would be more independent.[63] Ms Coonan said that it was necessary to have a careful and considered view about succession and Board renewal and refreshment. She accepted that while CPH had its current shareholding, the relationship with the nominee directors needs to be carefully managed and calibrated. However, she expressed the view that the Board needs to go through a very fulsome exercise of looking at the right framework for independence, including longevity through to independence of thought, and ability to bring particular skills to the Board.

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

Conclusions

59 Ms Coonan has demonstrated the qualities that are necessary to have taken her into the leadership role of Crown and is exquisitely aware of the depths of the problems within the company of which she is now Chairman.

60 Ms Coonan has placed heavy reliance on the CEO, Mr Barton, as a person she regards as having a wealth of experience to assist with guidance in relation to the management of Crown over the past 12 months. At the time Mr Barton was appointed as CEO of Crown, the Nomination and Remuneration Committee considered a report from Egan Associates who provided guidance to the Committee to assist the Board in relation to its deliberations in relation to the appointment of the new CEO.[64]

61 Mr Barton had been the Chief Financial Officer of Crown for many years. He was appointed as CEO in circumstances that could reasonably be described as controversial. Since 2017, when Mr Rankin stood down as Chairman and Mr Craigie stood down as CEO, Mr Alexander had fulfilled the combined role of Chairman and CEO.

62 In fact Crown had been pursuing a plan to restructure to have separate appointments of Chairman and CEO and had either anticipated engaging or had engaged a search firm to assist it to find a candidate or candidates to be considered for the role as CEO. It is apparent that this process was stalled between March 2019 and late 2019 by reason of the aborted Wynn transaction and thereafter the Melco transaction, the Media Allegations and the establishment of the Inquiry.

63 In late 2019 the independent directors, as a group, had decided that it was time for change. If the role of the Chairman was to change then it was necessary to have an immediate appointment of a CEO separately from the Chairman's role.

64 One of the problems for Ms Coonan, and for the whole Board for that matter, was the lack of knowledge of Mr Barton's involvement in advocating for the maintenance of the regime that was in place for the Southbank and Riverbank accounts when the ANZ Bank alerted him to the probable structuring in the companies' accounts and its "AML concerns". This aspect of Mr Barton's involvement is dealt with elsewhere in this Report and in the next part of this Chapter.[65]

65 It is appropriate to observe that the Chairman's heavy reliance on Mr Barton has unfortunately been misplaced. However that misplaced reliance should not be seen as a flaw in the Chairman. This conclusion has been reached after a lengthy public Inquiry and the consideration of the whole of the evidence during the course of which it was necessary for the Chairman to rely upon the CEO of the company to assist with its operations during what can only be described as a rather scorching period.

66 Ms Coonan accepted the serious corporate failings of Crown and notwithstanding those corporate failings is willing to, as she put it, stay the course. That commitment in the circumstances of the evidence that was exposed during the course of this Inquiry is no small matter. The burden of reformation will be great.

67 The review of the Chairman's evidence demonstrates that her character, honesty and integrity has not been and could not be called into question. The Authority would be justified in accepting any commitment or undertaking given personally and/or on behalf of Crown that may be proffered by the Chairman in respect of the future operations of Crown and/or the Licensee taking into account the other matters of significance to which reference is made elsewhere in the Report.

Chapter 4.3.2

The Chief Executive Officer

1 A Chief Executive Officer's normal task is to deal with "every day matters" of the company; "to supervise the daily running of the company, to supervise the other managers and indeed, generally, be in charge of the business of the company".[1]

2 Kenneth McRae Barton is the current Chief Executive Officer (CEO) of Crown having been appointed on 24 January 2020.

Background

3 Mr Barton was appointed as the Chief Financial Officer (CFO) of Crown (then Crown Limited) in March 2010 and served in that role until his appointment as CEO.

4 Mr Barton has been a director of Crown since 24 January 2020. He has been a director of the Licensee since 17 October 2013.

5 He has also been a director of Riverbank since 12 August 2014 and a director of Southbank since 30 June 2017.[2]

6 He has been a director of Crown Melbourne, the licence holder of the Crown Melbourne Casino since 19 July 2010 and Crown Perth, the licence holder of Crown Perth Casino since 24 March 2010.

7 He is also a director of Crown Sydney Holdings (since 17 October 2013); Crown Resorts Foundation Limited (since 29 March 2017); and Burswood Limited (since 24 March 2010).[3]

8 Mr Barton was also a director of Crown Resorts Pte Ltd (the employer of the staff in Mainland China) from May 2011 to 5 July 2012. He also sits on the boards of the majority of Crown's related entities and was appointed as the CEO of Crown Digital in February 2017.

9 Mr Barton holds a Bachelor Degree in Economics (Sydney University 1985) and is an Associate of the Institute of Chartered Accountants in Australia and a Fellow of the Financial Services Institute of Australia. Prior to joining Crown, Mr Barton served in

various roles including as a Partner, Corporate Finance at Arthur Andersen from December 1985 to June 1997; as Vice President, Finance of Pioneer USA from June 1997 to August 2000; and as the Chief Financial Officer of Boral Limited from August 2000 to March 2010.

10 In his former role as CFO of Crown, Mr Barton had the responsibility for financial reporting, balance sheet and capital management, statutory audit, cash flow and liquidity management, corporate taxes and investor relations. In the period 2010 to 2017 he was part of a "relatively small head office corporate function that was mainly focused on the Group's investment strategy". This was in a period in which Crown was looking to build a global luxury brand and had acquired a series of international businesses in pursuit of that objective.[4]

Significance of roles

11 Mr Barton's roles within Crown over the last decade have been in areas that have required a deep commitment to professional, ethical and capable good governance.

12 As a director of each of the companies that holds a licence to operate a casino in New South Wales (since 2013), Victoria (since 2010) and Western Australia (since 2010), Mr Barton has been burdened with wide-ranging obligations in particular, the requirement for an overriding commitment to ensuring that the operation of each of the casinos is free from criminal influence or exploitation.[5] Pivotal to the discharge of that obligation is the necessity to have a proper understanding of the risks to which a casino is exposed and to ensure that the Licensees and those associated with their operation have implemented systems and processes that guard the casinos against the ubiquitous and very serious risk of money laundering.

13 Mr Barton is a director of Southbank and Riverbank. The operations of these two companies were associated with the operation of the casinos in both Crown Melbourne and Crown Perth. Although it was suggested during the evidence before the Inquiry that the directors' roles for these companies may have been regarded as "titular", Mr Barton's role in dealing with the financial institutions/banks over the years in respect of the operation of the bank accounts of these two companies; his evidence in relation to that role; and his understanding of the vulnerabilities of casinos requires close analysis relevant to the discharge of the obligation to guard the casinos against the above-mentioned ubiquitous risk of money laundering.

14 Mr Barton was challenged during his evidence before the Inquiry in respect of his conduct at the October 2019 Annual General Meeting. It was suggested to Mr Barton that he had intentionally misled the Crown shareholders in an answer that he provided in response to a question about information sharing with Mr Packer. Mr Barton's involvement in the process of sharing information with Mr Packer and the discharge of his obligations under the Controlling Shareholder Protocol are also matters relevant to the analysis of the discharge of his obligations. These are matters

going both to Mr Barton's credit and credibility.

15 Mr Barton was also challenged in respect of his conduct relating to the operation of Southbank and Riverbank generally and in particular the operation of its bank accounts and the analysis and/or review of those accounts over time. He was also challenged in respect of his understanding of the anti-money laundering legislative environment and the vulnerabilities of casinos to money laundering. These challenges also go to Mr Barton's credit and credibility.

16 These are very significant matters having regard in particular to the fact that Mr Barton is not only the CEO of Crown but is also a director of both the Licensee and the close associate, Crown. Any damage to either Mr Barton's credit or credibility is centrally relevant to the questions to be answered under the Amended Terms of Reference in respect of the suitability of those companies to operate a casino and be a close associate of a casino operator respectively.

Analysis

17 Mr Barton's evidence before the Inquiry consisted of seven written Statements and oral evidence given on 23 and 24 September 2020.[6]

Statements of Evidence

18 Mr Barton's first written Statement dated 14 January 2020 was in response to a request from those assisting the Inquiry dated 6 November 2019. In this Statement, Mr Barton referred to his directorships of the various Crown entities, but on this occasion no mention was made of Southbank or Riverbank. He set out details of the background and economic contribution of Crown and previous suitability reviews to which Crown had been subjected by the regulators. He also addressed questions in relation to Crown's divestment of shares in Melco during 2016 and 2017, as well as providing information relating to the Melco Transaction and the business associations between the late Mr Stanley Ho and Melco.[7]

19 Mr Barton's second written Statement dated 9 March 2020 was in response to a request from those assisting the Inquiry dated 23 January 2020.[8] In this Statement, Mr Barton provided the detail of a conversation with Mr Johnston on the evening of 30 May 2019 when Mr Johnston notified him of the Melco Transaction.

20 Mr Barton's third written Statement dated 16 September 2020 (Third Statement) provided background to his involvement with Southbank and Riverbank. He also outlined recent steps Crown had taken and was continuing to take "to improve its governance, compliance and risk management processes".[9] The evidence in relation to those improvements will be dealt with in a separate Chapter of the Report.[10]

21 Mr Barton's fourth written Statement dated 4 November 2020 (Fourth Statement) was provided after he had concluded his oral evidence in response to a request by those

assisting the Inquiry.[11] It dealt with some aspects of the communications relating to Mr Barton's appreciation of matters raised by an officer of ANZ, Mr Paul Birch, in relation to aspects of Crown's AML systems generally and whether these communications exposed serious issues and failures in Crown's systems.

22 Mr Barton was invited to take up an opportunity to clarify some of the evidence in his Fourth Statement, which he did by the provision of his Fifth Statement dated 14 November 2020.[12]

23 Mr Barton provided a Sixth Statement dated 17 November 2020 (Sixth Statement) to the Inquiry late on the evening (11.05pm) of 17 November 2020.[13] In this Sixth Statement Mr Barton set out a number of recent communications with officers of Crown and provided information and documentation some of which had been in his possession at the time that he provided his Third Statement and gave his oral evidence but which had not been disclosed to the Inquiry either in the Third Statement or during his oral evidence.

24 The evidence in the Sixth Statement related to investigations that had been conducted in respect of the Southbank and Riverbank accounts in August 2019 after the publication of the Media Allegations that money-laundering had occurred in the accounts of those companies. It also dealt with some recent investigations of the Southbank and Riverbank accounts by Grant Thornton and Initialism that are referred to elsewhere in the Report.[14]

25 As a consequence of these late disclosures by Mr Barton and as a result of further documents being provided to the Inquiry that had previously not been produced in answer to a Summons, Mr Barton provided a Seventh Statement to the Inquiry dated 23 November 2020. Mr Barton indicated that the purpose of the Seventh Statement was to set out the circumstances in which the matters relating to the investigations conducted in respect of the Southbank and Riverbank accounts in August 2019 were brought to his attention.[15] It will be necessary to deal with the contents of the Seventh Statement in detail later in this Chapter.

Controlling Shareholder Protocol

26 It is appropriate at this point to deal with some aspects of Mr Barton's involvement in the process of providing confidential information to Mr Packer pursuant to the Controlling Shareholder Protocol, between October 2018 when that Protocol came into effect and the Annual General Meeting in October 2019. During that period Mr Barton was performing his duties as the CFO of Crown and it is clear that Mr Packer depended upon Mr Barton to constantly provide him with financial information in relation to Crown's operations.

27 Mr Barton understood that previously when Mr Packer was not a director of Crown, from December 2015 to August 2017, he had been entitled to receive information by

reason of the informal information sharing arrangements between Crown and CPH which were then formalised in July 2016 in the Services Agreement between the companies. However Mr Barton understood that when Mr Packer resigned again from Crown and also resigned from CPH at the same time in March 2018, he was no longer entitled to receive Crown confidential information under that Services Agreement. He understood that it was necessary for the Controlling Shareholder Protocol to be put in place to enable the provision of that information to Mr Packer.

28 Mr Barton was obliged "to act carefully" before revealing any Crown confidential information under the Controlling Shareholder Protocol to Mr Packer and was also obliged not to disclose any such information to Mr Packer unless he had considered among all other relevant matters whether it was in the "best interest" of Crown; whether it was to Crown's detriment or someone else's benefit; and whether such disclosure was "improper".[16]

29 Notwithstanding these requirements it is clear that the requests made by Mr Packer and the provision of information to Mr Packer by Mr Barton occurred without any specific or focused consideration of the provisions of the Controlling Shareholder Protocol in which these obligations were imposed. Rather Mr Barton proceeded on the basis that he described in his evidence as "maintaining a strong and open relationship with CPH to get the benefits that we get from CPH and James' involvement in the business". Mr Barton said that this was because Mr Packer had provided opportunities to Crown "over a long period of time" that had "proven to be extremely valuable for the company" examples of which he identified as Macau and Barangaroo.[17]

30 Although Mr Barton suggested in his evidence that one of the main benefits of the Controlling Shareholder Protocol was to ensure that Crown was protected if there was a problem after the disclosure of confidential information, there was absolutely no discipline or rigour applied to the information sharing arrangements that operated under the Protocol. The arrangements were correctly described by Mr Barton as "*ad hoc*" requests for information in respect of which there was no register or proper record kept to track such requests.[18] When it was suggested to Mr Barton that it would have been a "far better thing to have a formal arrangement" in place so that the company could record that it had given consideration to whether the disclosure was in the best interests of Crown, he said it would be "a good discipline".[19]

31 Mr Barton was giving evidence as the CEO in respect of his conduct as CFO in sharing confidential information with Mr Packer during the period 2018 and 2019 and as CEO in 2020. It is of deep concern that a recognition that it would have been "a good discipline" to have some formal arrangement in place in respect of the obligations imposed by the Controlling Shareholder Protocol occurred only when asked about it in the witness box. The sense of security and comfort that Mr Barton had in providing Crown's confidential information to Mr Packer in this fashion clearly arose from his previous relationship with Mr Packer and what he saw as the successes that had been

achieved in both Macau and the securing of the Licence and pursuit of the project at Barangaroo.

32 However the directors of Crown were entitled to believe that any sensitive or confidential financial information that was to be shared with Mr Packer would be shared in accordance with the provisions of the Controlling Shareholder Protocol. It is not surprising in the light of this evidence of the lack of capacity to track the nature of each request; or the consideration given to the request; and/or the exact basis upon which decisions were made that information should be shared with Mr Packer; that the Controlling Shareholder Protocol was terminated on 21 October 2020.

33 In any event, Mr Barton agreed that from 31 October 2018 when the Controlling Shareholder Protocol was executed, he provided financial information concerning Crown to Mr Packer on "almost a daily basis".[20] The nature of some of those communications is dealt with elsewhere in the Report but for the purposes of this analysis it suffices to say that those communications continued on that almost daily basis up to, at least, the time of the Crown Annual General Meeting in October 2019.

Annual General Meeting

34 The 2019 Crown Annual General Meeting occurred on 23 October 2019.

35 A shareholder at the meeting asked a specific question relating to whether there was an arrangement for Mr Packer to receive information from Crown in a manner different from other shareholders. It was not a question directed at Mr Barton. Rather it was a question posed for the "independent directors". Notwithstanding this Mr Barton intervened. The exchange between the shareholder and Mr Barton was as follows:[21]

> Q. Okay. Now what's the protocol? I mean I'm suggesting that you're not communicating very well with your shareholders. What's the protocol with how we're communicating with Mr. Packer. He's just a shareholder. He's a big one, but he's just a shareholder. So what is -- this is one -- for the independent directors. So is he getting access to company documents? Is he getting selectively briefed? Can he ring up and ask for a briefing on the scandal? So is he -- does he get special treatment? Does he get access to information? Or is he treated like me and he's looking at the ASX Announcements for Crown's response to front page after front page of allegations?
>
> A. Perhaps, Chairman, if I could make -- thanks Stephen, thanks for the question. And I think -- if I could answer your question in the context of Crown's relationship with CPH, which is probably slightly broader than the question you asked. And you'll be aware from our accounts and disclosures that for an extended period of time, we've had an arrangement with CPH where they provide a range of services to Crown, valuable services around our management, around our strategy. In order for them to fulfill (sic) those services, we provide information to CPH, so information is provided to them to enable them to prepare those services. And that's been disclosed for many

years now in our accounts, both the existence of those arrangements as well as the amounts that are being paid under those arrangements.

36 Mr Barton accepted that his answer only dealt with the Services Agreement and did not deal with the Controlling Shareholder Protocol. He said he had not forgotten about the Controlling Shareholder Protocol at the time he gave the answer and when it was suggested to him that he deliberately misled the shareholders by failing to inform them about it, he gave the following evidence:[22]

Q. You deliberately misled the shareholders of Crown Resorts, Mr Barton, by failing to inform them about the controlling shareholder protocol when a direct question was asked.

A. I asked – I answered the question, Mr Bell, and gave it the context that it was in a broader relationship in the broader context of CPH. The question, as I interpreted it, was directed to what information does our major shareholder get, being Mr Packer. I think people would generally accept that Mr Packer and CPH are both the parties who are a major shareholder and, in answering that question, I had regard to information which I knew was in the public domain, and knew was not subject to restrictions on disclosure, unlike the controlling shareholder protocol.

Q. You deliberately misled the shareholders of Crown Resorts by failing to inform them about the controlling shareholder protocol, when a direct question was asked. That is the case, isn't it?

A. No. No, Mr Bell. The question was directed to the information-sharing, and I answered it to the best I could based on information which was not subject to confidentiality restrictions.

Q. You had been providing Mr Packer on, practically, a daily basis with confidential information of Crown which you knew, or understood, was authorised under the controlling shareholder protocol; correct?

A. That's correct.

Q. And the question that was asked of the independent directors was specifically focused on information provided to Mr Packer; correct?

A. That's correct.

Q. And you knew that Mr Packer was not entitled to information under the services agreement because he'd ceased to be a director of Crown Resorts and CPH; correct?

A. Yes, which is why I answered the question in the context of CPHs relationship.

Q. If you were concerned that the protocol was confidential, you could have truthfully said you couldn't answer the question because of confidentiality restrictions, couldn't you?

A. I could have answered it that way. I was attempting to be helpful to Mr Mayne to indicate that information was shared with CPH and – and trying to be helpful in giving him some context, the basis of the information-sharing.

Q. Knowing what you knew about the controlling shareholding protocol and the extent to which you provided Mr Packer with information under it, I suggest to you that you gave a deliberately misleading response to the shareholders.

A. I was trying to be helpful, Mr Bell, in indicating to Mr Mayne and the AGM that there were information sharing arrangements with CPH, and providing information to the extent I could, based on publicly available information.

Q. Mr Mayne – you knew that Mr Mayne wasn't asking questions about information provided to CPH. He was focusing, specifically, on information provided to Mr Packer; that's the case, isn't it?

A. That was the question he asked. Yes.

Q. And the question that he posed was for the independent directors, which you interceded to answer; correct?

A. That's correct.

Q. Do you accept that you made a serious error of judgment in the way in which you chose to answer the question?

A. No, I do not, Mr Bell.

Q. Why didn't you just tell him the truth, that you had been providing information to Mr Packer?

A. Well, there's a confidentiality restriction in the controlling shareholder protocol.

Q. But that's about the document itself, isn't it?

A. Yes, that's true.

Q. So couldn't you just say to him, in truth, "Yes, of course, I'm briefing Mr Packer on a daily basis?"

A. Yes, that would have been a more complete answer, Commissioner.

Q. Well, it would have been a true one, wouldn't it?

A. And it would have been a true answer, yes, Commissioner.

…

Q. You tell this inquiry that you chose maintaining the perceived confidentiality of the arrangements with Mr Packer over telling the shareholders the truth?

A. I gave the shareholders an indication of the existence of information-sharing regimes without being complete in answering the question in relation to Mr Packer.

…

Q. Do you say that you answered the question from the shareholder at the annual general meeting of Crown Resorts ethically and honestly?

A. It was honest, Mr Bell.

Q. Do you say it was ethical to not disclose the fact that you were providing information to Mr Packer on, practically, a daily basis under a controlling shareholder protocol in his favour?

A. Again, I tried to provide an answer to the question on the basis of publicly available information and give Mr Mayne an indication of the fact that information was shared with a major shareholder.

Q. I suggest that you fell well short of the standard of acting ethically and honestly, Mr Barton; do you agree?

A. No. I don't agree with that, Mr Bell.

37 This was an extraordinary exchange with Mr Barton. It is one thing to have given an answer in the heat of an Annual General Meeting. It is quite another to have the opportunity to reflect on it and to suggest, as Mr Barton did in this portion of his evidence, that he did not even make a serious error of judgment in the way in which he chose to answer the question.

38 However, when further pressed Mr Barton gave the following evidence:[23]

Q. Was there any sensitivity about telling Mr Mayne that you were dealing with Mr Packer?

A. No, Commissioner. That would have been an answer I could have given. And given I could – I could talk about CPH and answer the question in that context, it was open to Mr Mayne to ask a further question. But, in hindsight, I could have easily answered the question to say that Mr Packer also gets information directly.

Q. Yes. And I think it was obvious that Mr Mayne was interested not in the broader question that you chose to address, but, certainly, in the individual, for whatever reason - - -

A. Yes.

Q. --- he wanted to know whether you were briefing Mr Packer in a way that he wasn't briefed; that was his complaint, wasn't it?

A. Yes, it was.

Q. Because he was alleging you weren't communicating with the shareholders in an open way. You were only doing it on the ASX platform, and he had to search for the material. Do you recall that?

A. Yes. Yes.

Q. And so he was not advised of the reality of the obvious communications in the circumstances where, I think, if you had your time again, you would have told him the truth?

A. Yes. I would have said Mr Packer gets it as well.

39 What Mr Barton did at the Annual General Meeting resulted in the protection of Crown's regime for sharing confidential financial information with Mr Packer from the public gaze. Mr Barton suggested in his evidence that he provided information

"which was not subject to confidentiality restrictions" to the extent that he could "based on publicly available information". This was a reference to a provision of the Controlling Shareholder Protocol that required the "content" of the Protocol to be kept confidential unless disclosure were to be authorised by Crown.[24]

40 However there was nothing preventing Mr Barton, or for that matter any of the independent directors to whom the question was directed, from indicating that Mr Packer did have access to information without the necessity to descend into the provisions or the "content" of the Protocol. The confidentiality provision was not an impediment to the disclosure of the existence of an arrangement for information sharing. It was an impediment to the disclosure of the actual content of the Protocol.

41 The question posed at the Annual General Meeting related to what information Mr Packer was receiving; not what CPH was receiving. The question related to whether Mr Packer received "special briefings" or whether he, personally, and in contrast to other shareholders had "access to information" to which other shareholders did not have access. The obvious and true answer was that Mr Packer did have such access to information in contrast to other shareholders' access to Crown's information.

42 Mr Barton's description in the witness box on 23 September 2020 that he was giving an indication to the shareholders "without being complete in answering the question in relation to Mr Packer" was an extraordinary assessment of what actually happened. The description "without being complete" might be appropriate nomenclature if parts of the answer were missing. However that is not what Mr Barton did. Mr Barton chose to inform the shareholders that Crown provided information to CPH to enable it to provide services to Crown which he described as an arrangement that had been disclosed for many years.

43 In the context of the question that was asked, the reasonable observer would conclude from the answer that there was no particular or special arrangement with Mr Packer. Rather there was a long disclosed arrangement with CPH; and it was with CPH for the purposes of the provision of services by it to Crown. At the time that Mr Barton gave this answer, he knew very well that Mr Packer was not authorised to receive any information under that arrangement under the Services Agreement.

44 The fact was that Mr Packer had "access to information" to which other shareholders did not have access and was entitled to such access under the Controlling Shareholder Protocol up until the time that the Chairman suspended its operation just prior to its the cancellation on 21 October 2020.

45 The qualities of propriety, candour and co-operation are necessary attributes of a Licensee. The regulator should not be burdened with a concern that it has to check and re-check whether the Licensee is being candid and co-operative. The relationship must be such that the regulator can have trust in the accuracy and truthfulness of the

Licensee's communications with it in pursuit of the legislative objective of protecting the casino from criminal influence or exploitation.

46 Mr Barton's conduct at the Annual General Meeting in October 2019 as the CFO of Crown was quite improper. However his attempts in the witness box on 23 September 2020 to justify his conduct at the Annual General Meeting, were even more inappropriate for the CEO and director of Crown and director of the Licensee. It demonstrated a serious lack of judgment and insight into the expectation of the highest standards of propriety, candour and co-operation of a director of a company that holds a casino licence.

Southbank and Riverbank

47 It is appropriate at this juncture to analyse Mr Barton's evidence in relation to a number of issues that arise in connection with the operation of Southbank and Riverbank. Some of the evidence to which reference is made in this part of the Chapter is referred to elsewhere in the Report. However its repetition here is convenient to set the appropriate context for the analysis of Mr Barton's evidence.[25]

48 As discussed above, Mr Barton has been a director of Southbank since 30 June 2017 and Riverbank since 12 August 2014.

49 He first recalled becoming aware of Riverbank in January 2014 when Mr Travis Costin forwarded him an email that he had received from Mr Paul Birch at ANZ. The email contained a series of questions resulting from what Mr Birch described as "internal investigations identifying a series of suspicious transactions ie multiple deposits on the same day at different Perth Branches of cash amounts of under $10,000 (around $8000 to $9,000) by the same person".[26] There is no issue that what Mr Birch was referring to was structuring in the accounts - a concerning and serious indicium of money laundering.

50 Mr Birch made a number of requests of Crown to identify various matters including: the purpose and current use of the Riverbank account; the reason moneys were being paid into that account and not directly into the Burswood account; and the reason why the account was being used as a "conduit account". Mr Birch also wanted to know why a separate legal entity had been established to conduct the activity and what steps were being taken to keep track of who was actually depositing moneys into the account. Mr Birch also observed that the account appeared to be used as a "patron account" for Burswood and requested information in relation to other patron accounts utilised by Burswood. Mr Birch questioned the use of the word "Investments" in the name of the company and requested information as to what, if any, monitoring was occurring over the account, and whether any reports to any regulatory body on the activity occurring through the account had been made.

51 On 26 February 2014 Mr Barton met with Mr Birch and was advised that "ANZ had decided to close the Riverbank account".[27] On 27 February 2014 Mr Birch wrote to Mr Barton thanking him for his time the previous day and attaching a letter directed to him confirming his "verbal advice" that the Riverbank account was to be closed by 31 March 2014. Mr Birch also advised Mr Barton as follows:[28]

> Also we would be keen to meet up with the relevant people at Crown and I can arrange for the appropriate people from ANZ to come down and have a session on the operations of the account in terms of how Crown operates it (sic) accounts and what ANZ expects so we can ensure a good mutual understanding. We would [be] keen to do that asap I know my team would be available early next week if that works.

52 Mr Barton gave evidence that in light of the foreshadowed closure of the Riverbank account and the "concerns ANZ had raised" he "commissioned an external review of the AML/CTF programs at Crown Perth and Crown Melbourne to ensure that the programs were being properly implemented in relation to the international patron segment".[29] On 21 March 2014 Mr Barton commenced the process of retaining Promontory for that purpose.

53 On 27 March 2014 Mr Barton met again with Mr Birch for a "broader meeting" at which Joshua Preston, Debra Tegoni and Michael Neilson were present. Although not having a clear recollection of the detail of the discussions at that meeting, Mr Barton recalled that the presentation by Mr Preston and Ms Tegoni conveyed that Crown's AML/CTF controls were "appropriate". Mr Barton claimed that after this meeting the ANZ deferred the immediate closure of the Riverbank account.

54 On 15 April 2014 Mr Barton telephoned Mr Birch to inform him of his plan to commission Promontory to conduct the review of the programs in relation to Crown's "international VIP business". Mr Birch subsequently informed Mr Barton that he thought Promontory was an appropriate advisory firm for Crown.

55 On 29 April 2014 Mr Costin and Mr Barton attended another meeting at which Mr Birch advised that ANZ "still intended to close" the Riverbank account and it was ultimately closed in July 2014.

56 Although Mr Barton gave evidence of the three meetings that he had with Mr Birch in February, March and April 2014 in relation to the Riverbank account, there was nothing in his Third Statement in relation to the detailed transactions in the Riverbank account about which ANZ had expressed its concerns. There was no suggestion that anyone from Crown had reviewed the detail of the accounts for the purposes of understanding the true nature of the problem to which Mr Birch had alerted Crown.

57 However Mr Barton did give the quite extraordinary evidence in his Third Statement that as the decision to close the account "appeared to be related to issues with in-branch cash deposits", he decided that Crown Melbourne and Crown Perth patrons should be informed "not to make cash deposits of this nature".

58 Mr Barton's extraordinary evidence was that he requested Mr Costin to inform "those responsible for patron relationships that patrons should be told to stop making multiple in-branch cash deposits below the threshold". He was advised subsequently that Mr Theiler had advised Mr Costin that the relevant office managers had already been instructed to advise customers not to make "multiple deposits under $10,000".

59 On 29 September 2014 Mr Barton received the Promontory Report. It is apparent that Promontory was not made aware of any problems that had been identified by ANZ in the Riverbank account and it therefore did not deal with those problems.

60 Mr Barton was asked about the ambit of the Promontory brief and agreed that the Southbank and Riverbank accounts were not reviewed by Crown to see for itself whether structuring had taken place; and nowhere in Promontory's work did it refer to monitoring bank accounts. Mr Barton was asked whether this approach could give any comfort that structuring had not been occurring in the Riverbank accounts. He gave the following evidence:[30]

> Q. But, in view of the fact that the bank had expressly drawn your attention to structuring in bank accounts, wouldn't the appropriate response to have been to direct Promontory to consider the bank accounts?
>
> A. The – the request was to look at the AML program, broadly. It would have been better at the time to have asked them to review the underlying bank account transactions as well.
>
> Q. Well, given that you are the person who commissioned the report and given that you personally dealt with ANZ and given that you were well aware that ANZ had identified an issue of structuring in those bank accounts, why didn't you, at that time, direct Promontory to consider the bank accounts and what they revealed?
>
> A. The – the brief I gave them was to look at our AML program. I didn't specifically direct them to any aspect of the data that went into the AML program. I was looking for an overall view from them on the robustness of our AML program without referring to specific aspects of it.
>
> Q. But why didn't you refer to this specific aspect, given that a bank had pulled you up on it?
>
> A. I asked them to look at the program broadly. I didn't give them specific directions to look at the individual bank accounts.
>
> Q. Yes. I understand you didn't given them that specific direction. But what I'm trying to find out is why you didn't give that specific direction.

A. I was looking for an overall review of the program. And I didn't specifically ask them to review underlying bank statements.

Q. But wouldn't this have been an obvious instruction to give to Promontory, given that ANZ had identified structuring in the bank accounts?
A. Well, the bank account information does get incorporated into our SYCO system. And so by reviewing the monitoring program in the SYCO system, they would also be reviewing the underlying data from the bank statements.

Q. I suppose, what I'm really asking about, Mr Barton, is your judgment in these circumstances and the response that you took once ANZ made you aware that structuring appeared to be occurring in the bank accounts. Do you accept, in hindsight, that it was remiss of you to not instruct Promontory to look at what was actually happening in these bank accounts?
A. I agree, it would have been a more fulsome report if there'd looked at the underlying bank statements as well.

61 The epithet "fulsome" is hardly apt in the circumstances. It is inexplicable that Mr Barton did not brief Promontory to examine the alleged structuring in Crown's subsidiaries' accounts. The evidence extracted above demonstrates that Mr Barton failed and continued to fail to give any proper reason as to why he did not instruct Promontory about this very serious allegation that ANZ had made in respect of the Riverbank account. Later in his evidence, Mr Barton said that one of the purposes of commissioning the Promontory Report was "for me to get comfort around our AML processes", but also to give "comfort to our major transaction banking partner around our processes as well".[31] However when asked about Mr Jeans', of Initialism, presentation to the Board on 20 August 2019 in respect of "Crown's transaction monitoring program" Mr Barton gave the following evidence:[32]

Q. Now, you understand, don't you, that the transaction monitoring program is but one part of a larger AML compliance policy?
A. Yes, I agree with that.

Q. And you understood that at the time?
A. I have a greater understanding now. I had some understanding at the time.

62 Although this was five years after the Promontory Report, Mr Barton admitted that in 2019 he only had "some understanding" that Crown's transaction monitoring program is only but one part of its larger AML compliance plan. The reference in his evidence to "now" having a greater understanding is a reference to September 2020.

63 Mr Barton explained in his Third Statement that, with the benefit of hindsight, the steps taken by Crown in response to Mr Birch's/ANZ's concerns about the Riverbank account described above were "inadequate".[33] He gave evidence that there should have been a thorough review of the Riverbank account and the patron accounts controlled by Crown Perth and Crown Melbourne.[34] He also gave evidence that in preparing his Third Statement he "reviewed the nature and extent of cash deposits in

Crown's Riverbank and Southbank accounts, particularly between 2014 and 2016" and recognised that "a review of this kind should have occurred at the time" that he was dealing with ANZ in 2014.[35]

64 One of the problems for Mr Barton is that he needed "hindsight" to recognise what were obvious risks that should have been addressed urgently at various times, certainly before September 2020, to protect the casino licensees of which he was a director from the exploitation by criminals using the Riverbank account, a company of which he was also a director, to launder money through not only that account but through the casino. As will appear from the further analysis of Mr Barton's evidence, there were so many more opportunities for such a mechanism of hindsight to be deployed far earlier than when Mr Barton was about to enter the witness box at a public Inquiry in September 2020.

65 Mr Barton also gave evidence of other steps that should have been taken at the time of Crown's dealings with ANZ in 2014, including an immediate escalation to the AML compliance officers. This suggestion is rather curious having regard to the fact that the AML Compliance Officers, Mr Preston and Ms Tegoni were present at the meeting with Mr Birch at which the concern about structuring in the Riverbank account was discussed. It was at this time that Mr Barton should have been discussing these problems with the AML Compliance Officers rather than deploying hindsight in the witness box at a public Inquiry. Mr Barton was at a pivotal meeting as a most senior member of the management team of Crown and failed to implement the very steps that he now purports to propound as appropriate, which could have saved both Crown and the Licensee from the deep ignominy both have suffered by reason of these shocking failures.

66 Other steps that Mr Barton suggested in his Third Statement that should have been taken included: raising the matters with Crown's CEO at the time, Mr Craigie; raising the matter with Crown's Risk Management Committee and the Board of Crown and its subsidiaries; considering and reflecting on the use of the word "Investments" in the companies' names and giving consideration to whether that nomenclature might make it more likely that the accounts would be used for money laundering; and instructing Promontory in a more specific and detailed manner.[36] One obvious matter in relation to Promontory was to inform them that ANZ had identified structuring transactions indicative of money laundering in Riverbank's account. Apparently it did not dawn on Mr Barton at the time that when one is taking expert opinion on anti-money laundering matters, it might have been a good idea to inform the expert that ANZ had identified transactions serious enough to it that it had advised Crown that it intended to and did close its account.

67 Mr Barton's approach to the identification of the various inadequacies referred to in his Third Statement were depersonalised and presented as corporate inadequacies or failures. Apart from accepting that he failed to properly brief Promontory, which took some effort to extract, Mr Barton did not candidly accept that it was his own

inadequacies (to use his term) that contributed to the exposure of the casino to the real risks of money laundering.

68 Mr Barton also gave evidence in his Third Statement that he recognised that the instruction to advise patrons to desist from making multiple deposits under the $10,000 threshold was "inadequate" because he could "now see that it was unlikely to be an effective response to the root cause of the problem". Rather, he said, Crown should have been considering whether it ought to terminate its dealings with the particular customers who were making deposits into multiple branches on the one day under the $10,000 threshold.[37] Once again Mr Barton did not candidly recognise the deep flaw in giving such an instruction in the context of the anti-money laundering legislative environment. It is all very well to say that what he did was "inadequate" because it would not have cured the problem. It is quite another to have an appreciation of the deep flaw in going to a person who is allegedly smurfing (causing their funds to be submitted in amounts less than $10,000), advising them not to do so and without further ado permitting them to continue using the account.

69 Mr Barton's use of the expression "inadequate" was inapt. The absurdity of such a process, effectively informing individuals not to take steps which may amount to a breach of the anti-money laundering legislation in particular without reviewing the accounts, was certainly not understood at the time Mr Barton reached this decision to give such a direction and unfortunately it was not easily recognised by him either in his Third Statement or in the witness box when he gave his evidence at the Inquiry.

70 Mr Barton proffered two reasons why the "inadequacies" to which he referred in his Third Statement occurred. The first was that there was no Group-wide approach to the identification and management of risk. The second was there was a focus on statutory reporting rather than proactively addressing the conduct giving rise to the reporting obligation in the first place.[38]

71 When asked what the problems were with the Southbank and Riverbank accounts, Mr Barton identified two matters. The first was the naming of the accounts. He suggested that having an account with the word "Investments" in it had the potential to make the review or scrutiny of the account "more challenging". The second was that as the reporting entities were different to Southbank and Riverbank, it was preferable not to have the accounts in subsidiaries, but to have them in an AML reporting entity.[39] When asked whether there were any other problems with the accounts from an anti-money laundering perspective, he said:[40]

> There were transactions going through those accounts but probably not because they were specifically Riverbank and Southbank. If your question is what particular issues arise from Riverbank and Southbank, those would be the two that I would refer to.

72 Mr Barton was pressed further in respect of this answer and gave the following evidence:[41]

> Q. Isn't the biggest problem with these accounts that they may have facilitated money laundering over the years?
> A. We certainly saw, in 2014 and '15, particularly in the Riverbank accounts, there were a series of structured transactions that went through that account. And it did go through the Riverbank account but, equally, if we had been operating a Crown Perth account that could have happened in the Crown Perth account as well.
>
> Q. So I will ask my question again: isn't the biggest problem with these accounts the fact that they may have facilitated money laundering?
> A. Historically, the fact that there were structured transactions going through the account, I agree that's a problem with those particular accounts.
>
> Q. Why did you say 2015; do you not think that it continued into 2016?
> A. Commissioner, I did take a look at the transactions that went through those accounts subsequent to 2015. So I've done a review of the Riverbank and Southbank accounts and the transactions that went through those accounts. The number of – and particularly with a focus on cash deposits under $10,000, and they dropped substantially over the periods after 2015. In - - -
>
> Q. It was still occurring 2016, wasn't it?
> A. Yes, they were, Commissioner. By 2017 in Riverbank there was only $26,000.
>
> Q. Just pause. You see, you put 2015 in the answer to Ms Sharp which is why I asked you about it, and you also put it in the board paper. But it is the case that the reality is that it continued in, albeit subsiding, into 2016, didn't it?
> A. Yes, that's correct, Commissioner.
>
> ...
>
> Q. Isn't one of the biggest problems with these accounts that they may have facilitated money laundering over the years?
> A. Yes, that's definitely a problem with it, yes.

73 As can be seen from this extract of evidence, Mr Barton's penchant for giving an unresponsive answer to deflect the questioner was not effective. When Counsel Assisting repeated the question, an answer was given but appeared to be limited "historically" to the Riverbank accounts in 2014 and 2015. It was only when pressed that Mr Barton agreed that these structuring transactions continued to 2017.

74 Mr Barton also gave evidence in his Third Statement that he recognised the need to eliminate the potential for cash deposits and clearly understood the potential for structuring and money laundering in circumstances where such deposits are made at various bank accounts over which Crown has no control. He claimed that his preferred position was to remove that capacity from remote branches of the bank

accounts and focus the cash transactions to the cage where there are better controls and disciplines. He gave the following evidence:[42]

> Q. Mr Barton, when did you first realise that permitting patrons to deposit cash into Crown bank accounts created a particular vulnerability?
> A. I think I've seen in recent times that over the last six or 12 months that cash deposits is something that does create additional risks, risks that we don't need to take on. And over that time, I think I've seen that there are opportunities for us to reduce that exposure.
>
> Q. Wasn't this always a very obvious risk, Mr Barton?
> A. Cash deposits into our bank account; yes, I think that's always been a risk.
>
> Q. And you've always recognised it as one during your tenure at Crown?
> A. I would say I've got a greater recognition of it now but over time I've seen instances where that does present a risk as well.
>
> Q. It's correct, isn't it, that Crown has recently put an end to telegraphic transfers to the third parties?
> A. Subject to a very stringent approval process.
>
> Q. So in certain cases Crown will still permit telegraphic transfers to third parties?
> A. Yes. Yes, provided it's approved by the CEO of Australian Resorts.
>
> Q. When did you first become aware that telegraphic transfers to third parties presented a money laundering risk?
> A. Well, the issue of third party transfers I think was addressed by my colleagues, Mr Felstead and Mr Preston towards the end of last year.
>
> Q. So when did you first become aware of it being a risk, Mr Barton?
> A. Well, I was given information about that process improvement and at that time it was explained that there are particular risks around third-party transfers.
>
> Q. So you only became aware of the risk last year; is that right?
> A. Yes, that's right.
>
> Q. Wasn't this a fairly obvious risk, Mr Barton?
> A. The risk of transfers between bank accounts from one domestic bank to another domestic bank on the face of it doesn't present a risk as a transaction; that's a fairly normal transaction. But the risk of it going to a counterparty where we don't have the ability to do due diligence on the counterparty, that presents a risk.

75 It has to be remembered that Mr Barton has been a director of Southbank since June 2017 and Riverbank since August 2014. He was not aware that they were not reporting entities under the legislation when he became a director of those companies. He only became aware of that "more recently" when he was looking at the roles of the

subsidiary accounts and the reporting entities. He agreed that this was a significant matter because the only purpose of the two companies was to operate the bank accounts. He claimed that the operation and management of the accounts was being done through the business unit and with the financial and other teams. He claimed that they were responsible for the management and operation of the accounts.[43] He gave the following evidence:[44]

> Q. Do you accept that it reflects poorly on your own diligence as a director in relation to these companies that you weren't aware they were not reporting entities until recently?
> A. Well, as a director, I do have the – the ability to rely on expert resources within the organisation to conduct services and provide services to the entities that I'm a director of.
>
> Q. So is the answer "no"?
> A. The answer is "no".

76 Mr Barton was asked about his dealings with ANZ in 2014 and gave the following evidence:[45]

> Q. So you do agree that, in 2014, you were aware that ANZ was concerned about the prospect of money laundering in the Riverbank accounts?
> A. It was certainly concerned about that structuring – and I don't know, specifically, what they took from that – but, presumably, the structuring was, as you say, an indicator of money laundering.
>
> Q. You will agree that one of the questions that ANZ raised with you in 2014 was why patrons were able to deposit money into the Riverbank account rather than directly into a Crown operated account?
> A. I know there was a series of questions that ANZ asked. I'm not sure if that was one of the specific questions.
>
> …
>
> Q. You met with ANZ three times, in 2014, about the continuing operation of these accounts, didn't you?
> A. I met with them on at least two occasions; it's possibly three.
>
> Q. Is it correct that, during those meetings, you did discuss with ANZ the prospect of money laundering occurring through those accounts?
> A. Yes, particularly, at the March meeting, where we involved our AML team.
>
> Q. And do you agree the reason why ANZ wished to close these accounts was because concerns, it held, about money laundering?
> A. Certainly, concerns about the structuring of certain transactions. Yes.
>
> Q. Well, it was concerns about money laundering, wasn't it?

A. I'm, not sure if they specifically raised money laundering as the topic, but, certainly, they raised issues around a series of sub-threshold transactions going through the bank at the time.

Q. But isn't it natural that the only reason they would be concerned about structuring of transactions was if they had a concern about money laundering?
A. Yes. That would be an indicator that money laundering, potentially, is going on.

Q. Well, you knew at the time, didn't you, that ANZs concern was with money laundering in these accounts, didn't you?
A. As I said, they didn't raise that specifically, but given that they were looking at structuring of transactions, and that's an indicator of money laundering, I would agree money laundering would have been one of their concerns.

Q. Mr Barton, just let me confirm this: in your statement, you say that you met three times with ANZ, in 2014, about them closing these accounts – I want to be very clear – are you saying that ANZ did not directly raise with you a concern about money laundering in these accounts?
A. I don't recall if they specifically raised money laundering. They certainly raised the issue of structuring of transactions in the account.

Q. And you agree that they'd only raise structuring concerns if they were, ultimately, concerned about money laundering?
A. Yes. I agree with that.

77 Mr Barton could not recall either Mr Preston or Ms Tegoni drawing his attention to the gravity of the concern with the prospect of money laundering in these accounts. He gave the following evidence:[46]

Q. Does that say something to you about their commitment to a culture of compliance in relation to anti-money laundering?
A. I think it says something about a culture which was compliance-oriented rather than risk-oriented.

Q. … Isn't it right that at the end of the day the objective is to stop money laundering happening?
A. I agree with that.

Q. Well, how does your answer respond to that proposition?
A. Yes, I think that's an area that we need to improve, which is not just looking at complying with our obligations but being more proactive to try and prevent money laundering.

Q. And is this a realisation that you've only recently developed?
A. Certainly, it has been a focus of mine more recently.

Q. So this is only a realisation that you recently developed?

A. In relation to money – yes.

Q. Now, you would agree that ANZ did close the Riverbank account in July of 2014?
A. Yes, I agreed with that.

Q. And you will agree that you were made aware of that closure at the time?
A. Yes, I was.

Q. Do you agree that there was no review of the ANZ Riverbank accounts at that time to check for unusual transactions?
A. Certainly, I'm not aware of any review that was done at the time.

Q. Do you agree that that was an oversight?
A. Yes, I agree with that.

Q. So you agree that that was a significant oversight?
A. I agree if I had my time again and looked at that, I would have taken a different view, but I agree it's a significant oversight.

Q. And it's correct that following these account closures by ANZ, no adjustments were made to the anti-money laundering controls in the Riverbank or the Southbank accounts?
A. Not – not to my knowledge.

Q. Again, is that an oversight?
A. Yes, I agree that is.

Q. And that's a significant oversight, is it?
A. Yes, I agree it is.

78 In respect of these matters being described as an "oversight", Mr Barton gave the following evidence:[47]

Q. I suppose the word "oversight" gives the impression that something should have, in the usual course of things, happened and it did not. You'd agree with that description?
A. Yes. Yes, I agree.

Q. But what I see is there wasn't the usual course of things in much of what you have been questioned about and it was somewhat hit and miss; do you agree with that?
A. Yes, I agree, Commissioner; there needs to be a lot more work on the process of getting information into our AML team's hands.

Q. And one of the problems that faces a regulator is accepting from an applicant or a person who holds a licence their word with confidence that something will change. You understand that?
A. I absolutely agree, Commissioner.

Q. And the only way to – well one of the ways to judge that is to see what has happened over the years when things have been said to regulators and that seems to be a problem for your company, does it not, because the regulators have been assured of things and when you scratch the surface, as the team here has done, it doesn't seem as though the regulators have received an assurance with which they could be confident. Would you agree with that?

A. Yes, I agree with that, Commissioner.

Q. And that part of it is obviously troubling you very much, is it not, Mr Barton?

A. It absolutely is, Commissioner.

79 Mr Barton also gave evidence in his Third Statement that the reason a Riverbank account was opened with the CBA after ANZ had closed it was "that the VIP business wished to maintain a bank account in the name of Riverbank" to enable patrons "to keep their gambling activities confidential".[48]

80 He also gave evidence that he had "now been made aware" that in March 2019 ASB closed the account that it held in the name of Southbank. Although the closure of the account was communicated to Mr Costin directly, Mr Barton did not recall being made aware of the closure at the time.[49] It was in January 2019 that ASB had notified Southbank that it had recently conducted a review of the banking services and that it was not intending to provide banking services in the future because it was outside its "risk appetite".[50]

81 On 22 January 2019 Mr Costin wrote to Xavier Walsh, Mr Preston and others referring to the previous experience when ANZ "shut down our Southbank Investment accounts in Australia due to AML concerns (hence the switch to CBA in Australia)".[51] Mr Barton reviewed the correspondence in respect to the ASB account and expressed the view that ASB's reference to AML legislation should have led Crown to make enquiries into the use of the ASB patron account to ascertain whether there was suspicious activity and evaluate how Crown's AML controls had responded.

82 It was in his Third Statement that Mr Barton disclosed that Southbank and Riverbank "are currently in the process of being deregistered as entities" and that in the future "Crown will not accept patron deposits into bank accounts other than those held in the name of the casino licensee".[52]

83 On 31 July 2019 Mr Barton's attention was drawn to a communication from a journalist with *The Age* newspaper in which questions were raised in relation to the Southbank and Riverbank accounts. That communication contained important questions, not dissimilar to those that had been raised by Mr Birch in respect of the ANZ Riverbank account in 2014. However, Mr Barton claimed that he did not have any conversation with any person about the questions raised by the journalist and he did not receive any correspondence in relation to Crown's response, if any, to the journalist.

84 On or around 4 August 2019 Mr Barton received a memorandum prepared by Mr Preston addressed relevantly to Mr Johnston and copied to Mr Felstead, which contained important information relating to the operations and accounts of Southbank and Riverbank. Mr Barton could "not recall reading the memorandum in detail or having any discussions or taking any steps in relation to it".[53]

85 On 6 August 2019 an article was published in *The Age* entitled "Crown investment companies were used to launder drug funds, authorities believe".[54] Mr Barton read the article at the time in which the Media Allegations were made that the Southbank and Riverbank accounts had been used to launder the proceeds of crime. That article included the claim that Federal Police believed that the Southbank and Riverbank accounts "were used by criminal entities because they believed that the money they deposited into them would not be closely scrutinised". Extraordinarily Mr Barton's evidence was that he did not do anything in respect of the article because he understood that it was being handled by Mr Preston and others within Crown.[55]

86 However, on 27 August 2019 Mr Barton attended a meeting with CBA prior to which he had been advised that CBA was considering closing or had closed down one of the accounts "because of money laundering concerns". CBA was concerned that *The Age* article had raised "red flags" and that an investigation of the accounts had identified information in relation to transactions that "they could not share with Crown". CBA indicated to Mr Barton and his colleagues at the meeting that it wished to gain a better understanding of Crown's AML controls. In his oral evidence, Mr Barton agreed that at this time CBA "definitely would have had concerns about the potential for money laundering" in the Southbank and Riverbank accounts.[56] He gave the following evidence:[57]

> Q. By the time of this meeting with CBA, weren't you on high alert about the risk of money laundering occurring in the Riverbank and the Southbank accounts?
> A. Yes, that was certainly a risk. I agree.
>
> Q. Well, weren't you on high alert about that risk?
> A. Certainly the – the article and CBAs meeting with us but us on – certainly, on alert that that was a risk.
>
> Q. High alert?
> A. Should have been high alert. Yes.
>
> Q. Well, was it?
> A. Certainly, it was a significant issue. I'm not sure I would characterise it as we were on high alert.

87 Mr Barton attended another meeting with CBA on 4 October 2019 at which CBA advised that it intended to close the accounts. Mr Barton gave the following evidence in his Third Statement:[58]

> At this meeting we were told that CBA intended to close these accounts. CBA did not disclose specific reasons as to why they had decided to close the accounts. On 3 December 2019, the CBA accounts held in the name of Riverbank and Southbank were closed.

88 Even assuming for the moment that CBA did not give Mr Barton a "specific" reason why the accounts were to be closed, Mr Barton well knew that the first meeting in August 2019 was because the article in *The Age* had given CBA concerns about possible money laundering in the accounts. Rather than candidly indicating in his Third Statement that CBA's concern in this regard must have been at least a factor in its decision-making to close the accounts, Counsel Assisting had to press Mr Barton to admit that this was the case. That evidence was as follows:[59]

> Q. … Surely, you had a view about why they wished to close the accounts at that time.
> A. Yes. Yes, I-I did.
>
> Q. And that view … Was that view that they were concerned about money laundering in those accounts?
> A. I think that, certainly, would have been one of the concerns. I think also reputational risk with the media coverage as well. I think both of those were concerns.
>
> Q. But, definitely, by this time, that is, the 4th of August 2019, you knew that CBA was concerned about money laundering in these accounts?
> A. Yes. Sorry. Ms Sharp, was that 4th of October 2019?
>
> Q. Yes.
> A. Yes.

Further example

89 There is yet another example of Mr Barton's failure to address matters in an acceptable manner for a Chief Executive Officer and a director of the Licensee. This occurred in his Fourth Statement in which he addressed questions that were posed by those assisting the Inquiry in respect of one of the communications with Mr Birch of ANZ on 5 March 2015. That communication was as a result of Mr Barton sending to ANZ a copy of the Promontory Report. Mr Birch provided Mr Barton with "some commentary and Analysis" of the Promontory Report by the ANZ/AML team with a request that Mr Barton have his AML team review it and provide any "feedback".[60] The full text of this communication is extracted in Chapter 3.2.

90 Mr Birch identified a number of matters, including that: (i) it appeared that only minimum information is obtained by Crown for patrons; (ii) there was no evidence of client review or rejection/exit from adverse media, sanction or PEP related notifications where they would be deemed above Crown's risk appetite; and (iii) Crown's risk rating of customers was automatically set at "Low" unless or

until the AML/CTF officer or Cash Transaction reporting manager decided to elevate the customer risk rating, which would then not be assessed for another 2 years. In addition to these matters, Mr Birch referred to two instances where "a patron had been charged or convicted and there was no evidence of review by Crown of the client account".[61]

91 The questions posed to Mr Barton by those assisting the Inquiry included whether he accepted that Mr Birch had raised "very serious issues" and "failures" in respect of Crown's operations; and whether he understood that the "serious issues" related to the Southbank and Riverbank accounts or extended to other accounts held by Crown.

92 In his Fourth Statement dated 4 November 2020 Mr Barton gave evidence that he did not accept that Mr Birch's email outlined any "failures" by Crown. He also gave evidence that he did not accept that Mr Birch had raised "very serious issues".

93 Mr Barton was invited to provide a further Statement to explain how he could not have accepted that Mr Birch had raised "very serious issues" and identified "failures" in respect of Crown's operations in the subject email.

94 In that Fifth Statement, Mr Barton expressed gratitude for the opportunity to reflect on his response in his Fourth Statement and gave the following evidence:[62]

> I accept that several failures have occurred in relation to Crown's management of money laundering risk … Having reflected on the matter, I recognise that my response … could be seen as minimising the significance of the matters raised by Mr Birch in his email of 5 March 2015. This was certainly not my intention.
>
> …
>
> In particular, I recognise on reflection that my response should have specifically addressed the statement: "In two instances a patron had been charged or convicted and there was no evidence of review by Crown of the client account". I accept that in the terms set out in Mr Birch's email, this appears to be a failing by Crown.
>
> …
>
> I also accept that, on reflection, I should have set out in my fourth statement that my response to the matters raised in Mr Birch's email was inadequate.

95 Once again Mr Barton deploys the expression "inadequate". It is far more serious than an inadequacy. Unfortunately, as can be seen from the wider review of Mr Barton's evidence, this was not an isolated incident. The only conclusion to be drawn is that Mr Barton will not make appropriate admissions unless and until he is pressed to do so.

Reviewing the accounts

96 Mr Barton chose to give the following evidence in his Third Statement which was signed on 16 September 2020:[63]

> 53. Similarly, with the benefit of hindsight, Crown should have been more proactive in its response to the article published in The Age on 6 August 2019 concerning Southbank and Riverbank. Crown should have undertaken a comprehensive review of the Southbank and Riverbank accounts to ascertain whether and, if so, to what extent, these accounts may have been used to launder money (that is, a review of a similar kind to that which I believe should have occurred in 2014 as noted in paragraph 39(a) above).

97 The evidence in paragraph 39(a) to which Mr Barton referred in paragraph 53 extracted above was in the following terms:[64]

> 39. With the benefit of hindsight, I now consider that the steps Crown took in response to the notification from Mr Birch in January 2014 were inadequate. The response should have included the following:
>
> (a) A thorough review of the Riverbank account and other patron accounts controlled by Crown Perth and Crown Melbourne. For the purpose of preparing this statement I have reviewed the nature and extent of cash deposits in Crown's Riverbank and Southbank accounts particularly between 2014 and 2016. A review of this kind should have occurred at the time.

98 Mr Barton defined what he regarded as the "kind" of review that should have occurred at the relevant times as the one that he said he did of reviewing "the nature and extent of cash deposits" in the accounts in the period identified. He described this type of review that he did as "comprehensive" and "thorough".

99 The clear message Mr Barton intended to convey, and did convey in this part of his Third Statement, was that no review of the kind that he conducted just prior to signing his Third Statement had been conducted by Crown either in 2014 in response to ANZ's concerns or in August 2019 in response to the article in *The Age* alleging money laundering through the Southbank and Riverbank accounts.

100 However at the time that Mr Barton signed his Third Statement and gave oral evidence on 23 and 24 September 2020, he was in possession of information that was relevant to the evidence that no such review had occurred prior to the time that he performed his review.

101 It is necessary to refer to the evidence provided by Mr Barton in his Sixth Statement dated 17 November 2020 provided to the Inquiry after the conclusion of the evidence and his Seventh Statement dated 23 November 2020 provided to the Inquiry after the conclusion of the final submissions and final day of hearing on 20 November 2020.

102 It is appropriate to first deal with the contents of Mr Barton's Seventh Statement. In this statement Mr Barton disclosed that in the process of preparing to give oral evidence to the Inquiry and before he had prepared his Third Statement of 16 September 2020, he spoke with Mr Adam Sutherland in the Crown AML team on 9 September 2020 and asked him whether any review of the accounts had been undertaken in response to the Media Allegations published in August 2019. Mr Barton's evidence was that Mr Sutherland said that "while some work had been done to try and identify specific transactions the subject of the allegations in *The Age* article, the review was no broader than that".[65]

103 Shortly after this conversation Mr Barton received an email from Mr Sutherland dated 9 September 2020. Although it is extracted elsewhere in this Report it is appropriate to repeat. It was in the following terms (emphasis added):[66]

> As discussed please see the attached emails. Louise was looking into the bank statements before she left trying to identify the "drug trafficker" referred to in the Age article from early August 2018. We identified some potential hits, we looked into those at the time and could not link any adverse information or LEA interest to those customers. Some of the transfers also related to funds that were likely winnings. We also discounted some because we made some reports to AUSTRAC.
>
> What I didn't know at that point in time was that the transaction The Age was referring to was from the Riverbank (transfer to Nan HU – the subject of Veng Ann's evidence last week) and we were concentrating on the Melbourne accounts **(I believe LL did do some investigation of the Riverbank account too).**
>
> At the time I was helping Louise to try and identify the transaction or transactions in the article to see what reporting was done and the status of the customer. **Unfortunately at the time I did not put my mind to other potential issues with the accounts.** We did look at multiple Customers SYCO accounts at the time to look at TTs vs gaming activity and any relevant SMRs/LEA interest.
>
> **I don't think Louise got around to engaging a third party to conduct a review**, as I mentioned she went on leave between this period and her leaving in early October.

104 This email refers to the conversation between Mr Sutherland and Mr Barton with Mr Sutherland then attaching emails "as discussed". One of the emails that Mr Sutherland attached was Ms Louise Lane's email to Mr Preston dated 21 August 2019 that was in the following terms:[67]

> I would like to utilise the services of Grant Thornton (or another party, as you see fit) to run some analysis over the Southbank Investments and Riverbank Investments accounts. This analysis should be under Minter Ellison's direction and reportable to you as Chief Legal Officer.
>
> As I have mentioned previously, I have started this process but it is incredibly time consuming and I suspect will be easily done by a party with the right systems to enable us to run rules over the data (Crown is not there yet with Sentinel, but will be).

> This analysis will be useful in any subsequent discussions with CBA about closure of these accounts, and will point to any areas that we can improve. It may also point to areas of concern we might want to raise with CBA as our banker in respect of CBA's AML/CTF processes.
>
> In the alternative, if this is something that we want done internally, then we will need additional hands to do it.

105 Mr Barton's evidence in his Seventh Statement was that he read Mr Sutherland's email of 9 September 2020 "but not the attachments". Although Mr Barton referred to some of the other commitments that he had on 9 September 2020, including a meeting of the Crown Board and spending "a large part of the day preparing" his Third Statement and spending a number of hours preparing to present a paper to the Crown Board the following day, he gave no direct explanation as to why he would not have opened the attachments to Mr Sutherland's email. The irresistible inference from the reference to these other commitments is that Mr Barton was apparently too busy to open the attachments. That in itself is rather extraordinary having regard to the fact that he had received them for the purpose of preparing to give evidence before this Inquiry.

106 Be that as it may, Mr Barton admitted that he read Mr Sutherland's covering email of 9 September 2020 and gave the following evidence:[68]

> What I took from the email was consistent with what Mr Sutherland had told me on the telephone, in particular that the review of the accounts had been limited to trying to find specific transactions referred to in the article. I believed that Mr Sutherland's email accurately summarised what had occurred in response to the media allegations in 2019.

107 Of course Mr Sutherland made clear in his email that he was assisting Ms Lane in her investigation. He advised Mr Barton that "unfortunately" at the time he was assisting Ms Lane he did not turn his mind to "other issues" in the accounts; however he did, with Ms Lane, look at matters broader than the description Mr Barton gave of the nature of the investigation. Mr Sutherland advised Mr Barton that he and Ms Lane looked into "multiple Customers SYCO accounts" for the purpose of comparing telegraphic transfers (TTs) as against "gaming activity" and in addition any relevant suspicious matter reports or law enforcement agency interest. This broader aspect of the work that Mr Sutherland did with Ms Lane is nowhere recognised in Mr Barton's Seventh Statement. Nor was it mentioned in his Third Statement of 16 September 2020, the week after he received this email, or in his oral evidence on 23 and 24 September 2020.

108 Mr Barton gave additional evidence in his Seventh Statement that it was when he looked at the documents more closely on 16 November 2020, after Ms Manos had alerted him to the prospect that these documents had not been provided to the Inquiry, he "became aware of what had in fact occurred in response to the media allegations in August 2019". His evidence continued:[69]

> Before doing so, the only knowledge I had of any consideration being given to the engagement of a third party to conduct a review was the final line in Mr Sutherland's 9 September email which stated: "*I don't think Louise got around to engaging a third party to conduct a review, as I mentioned she went on leave between this period and her leaving in October*". I had no reason to doubt the accuracy of that information and did not do so.

109 Mr Barton's characterisation of Mr Sutherland's thoughts about whether Ms Lane did or did not do something could hardly be described as "information", the accuracy of which could not be doubted. Rather Mr Sutherland was advising Mr Barton of his thoughts on the matter; that Ms Lane may not have got around to engaging a third party, not that she had definitely not done so. The status of that review was clearly uncertain. In any event, there was further information in Mr Sutherland's email of 9 September 2020 that Mr Barton did read at the time. That was Mr Sutherland's expressed belief (rather than thought) that Ms Lane "did do some investigation of the Riverbank account too". No mention was ever made of this matter by Mr Barton in his Third Statement of 16 September 2020 or in his oral evidence on 23 and 24 September 2020.

110 That was the appropriate time at which Mr Barton should have disclosed what he knew in respect of Ms Lane's investigations. Rather than ruminating with hindsight in paragraph 53 of his Third Statement about what should have happened in August 2019, it was the appropriate juncture for him to have given evidence that the Group General Manager AML, Ms Lane, was at that very time considering retaining a third party to review the accounts in response to the Media Allegations that had been made. It was also the time to disclose the nature of the investigation that he understood had been conducted and the apparent reasons why it was not comprehensive at the time. Even if it is accepted that Mr Barton did not open the attachments to Mr Sutherland's email because he was too busy to do so and only read the content of the covering email of 9 September 2020, as far as he knew a third party could have been retained to conduct a review of the Southbank and Riverbank accounts at that time.

111 The evidence given by Mr Barton in his Sixth Statement dealing with the events that have subsequently been disclosed since documents have been found and now produced to the Inquiry in relation to what actually occurred in August 2019 are dealt with elsewhere in Chapter 3.2. It is therefore unnecessary to detail those matters in this Chapter.

112 In summary, it appears that Ms Lane did everything she could to cause Grant Thornton to be retained by MinterEllison to assist Crown to understand what had happened in the Southbank and Riverbank accounts consequent upon the Media Allegations in *The Age* article. It is apparent that MinterEllison made contact with Grant Thornton and that matters were not further pursued at that time. Even if MinterEllison gave advice that such a report would not be protected by legal professional privilege, which would have been correct advice in the circumstances, it

is apparent that Mr Preston had decided for at least one other reason not to proceed with such a review at the time.

113 One very regrettable consequence of Mr Barton's failure to disclose in his evidence before this Inquiry what he knew about the work that Mr Sutherland and Ms Lane had performed in August 2019, is that the course of the later evidence of this Inquiry, which was based in part on Mr Barton's evidence that no review had ever been conducted, would not have been diverted. Questions were asked of the Crown directors as to why it was that no one bothered to even think of looking at the bank statements; when the truth of the matter was that the Group General Manager AML did bother to look and advised her superior that either an external or internal review take place and the AML compliance officer, Mr Preston, decided not to take it any further.

114 Mr Barton's evidence that he did not open the attachments that were sent to him by Mr Sutherland when they were provided to him apparently to assist him to prepare to give evidence before the Inquiry, demonstrates a breathtaking lack of care. The consequences of this lack of care include the fact that the subsequent evidence, including the questioning of all the directors of Crown, proceeded upon a false basis and a basis which, if Mr Barton had kept abreast of the evidence before the Inquiry, he must have known or should have known was false.

115 Mr Barton also gave the following evidence in his Seventh Statement:[70]

> I did not appreciate when I read the 9 September email, or from the short conversation I had with Mr Sutherland, that there had been any review by Ms Lane beyond looking into specific transactions referred or alluded to in The Age article. This did not to my mind constitute the kind of comprehensive review that I believe should have been undertaken at the time. I conveyed this assessment to the inquiry in my third statement.

116 This evidence demonstrates that at the time Mr Barton gave his evidence in his Third Statement and in his oral evidence on 23 and 24 September 2020 he was aware that Ms Lane had conducted some form of review of the Southbank and Riverbank accounts in which, at least according to Mr Barton, Ms Lane had looked into the "specific transactions referred or alluded to in *The Age* article". Mr Barton made no mention of this review in his Third Statement or in his oral evidence. Indeed Mr Barton's attempt to characterise Ms Lane's review in this way in the circumstances of the content of Mr Sutherland's email (the parts of which Mr Barton did read) is quite inexplicable.

117 Mr Barton's evidence was that his conversation with Mr Sutherland on 9 September 2020 and the content of Mr Sutherland's email of the same date led him to conclude that the review conducted by Ms Lane did not "constitute the kind of comprehensive review" that should have been undertaken at the time. Mr Barton then went on to suggest that he "conveyed this assessment" in his Third Statement. As discussed above, Mr Barton failed to disclose in his Third Statement or in his oral evidence his

knowledge that there had been some form of review in August 2019 by Ms Lane and Mr Sutherland.

118 This is not a situation where Mr Barton failed to read Mr Sutherland's email. This explanation is that he read the email and concluded that Ms Lane's review was not a comprehensive review. The irresistible and only conclusion is that Mr Barton decided not to mention it in his Third Statement or his oral evidence because he took the view that it was not comprehensive. It is simply not possible to understand how Mr Barton could have reached that conclusion when he did not open the attachments to Mr Sutherland's email to analyse what had been done further than that which was described in the covering email. Additionally it is simply not possible to understand how he could have reached that conclusion having read the covering email from Mr Sutherland.

119 This explanation is an attempt at retrospective justification for his failure to disclose evidence that should have been disclosed at the time he gave his evidence in September 2020. It once again demonstrates a lack of judgment and insight into the seriousness of his conduct.

Junkets

120 Mr Barton gave oral evidence that he first became aware of the risks of Junkets "quite recently".[71] Over the last 12 months he has seen a lot of information, but prior to that he certainly did not have a deep understanding of the potential risks of dealing with Junkets. He claimed his awareness has occurred "over time".[72]

121 Mr Barton's approach to his evidence in relation to the risk of Junkets was in the same vein as a lot of his other evidence. Mr Barton once again resisted what was clearly an obvious conclusion to be drawn that some of the risks to the casino both in terms of Junkets and money laundering were "significant". It included the following in respect of the significant risks of Junkets generally:[73]

> Q. Do you accept that there is a significant risk that junket operators may have associations with organised crime?
> A. I'm not sure I would characterise it as a significant risk, but I agree there is a risk.
>
> Q. Well, how would you characterise that risk, please, Mr Barton?
> A. I think it's-there's always the potential for criminal elements to find their way into the casino. In the junkets in particular, given the nature of their operations and where their customers come from, is a greater risk than other parts of the operation.
> Q. Now, you recently commissioned Deloitte to do a report on junket due diligence for Crown?
> A. That's correct.

Q. You're aware, aren't you, that Deloitte characterised relationships with junket operators as potentially high-risk business relationships?
A. That sounds right.

Q. And you accept that that is in fact the case?
A. It's certainly a higher risk than other customers; I agree with that.

Q. Well, do you accept that there is a significant risk that junket operators may have associations with organised crime?
A. I don't have enough knowledge of the relationships junkets have to say that's a significant risk, but I agree it's a risk.

Q. … You've, I understand, followed the evidence of this Inquiry fairly closely?
A. Yes, I have, Ms Sharp.

Q. You have sought to absorb the learnings of the evidence of this Inquiry?
A. Yes, I have, Ms Sharp.

Q. Are you really suggesting that after hearing all that evidence, you don't accept that there is a significant risk that junket operators may have associations with organised crime?
A. I think there is definitely a risk. Whether I would characterise it as significant, I haven't done enough due diligence on my own to be able to determine that.

Q. Mr Barton, isn't the very essence of a proper risk management framework appropriately characterising the risk in the first place?
A. Yes, I agree with that.

Q. How do you characterise the risk of junket operators having associations with organised crime?
A. How do I characterise it-I'm sorry, what was the question, Ms Sharp?

Q. At what level of risk would you characterise it?
A. Yes, certainly, I think the entry point of risk with junkets starts off as high. We have to accept that they're high risk when we start the relationship.

Q. And have you known this the entire time you have worked with Crown?
A. My historical role didn't involve extensive interaction with the VIP business which is the operating unit that has the significant relationship with junkets. So in past years, it was not a part of the business I had a lot of involvement in.

…

Q. And surely you understood, given that contribution that VIP made to the overall revenue of Crown, that junkets were important in deriving that revenue?
A. Yes, I agree with that.

Q. And surely you endeavour to ascertain some understanding of how junkets operated so you understood how the revenue was derived?

A. I had some understanding of the components of the revenue in the VIP business but not a lot of understanding of the detailed operational aspects of the business.

Q. When do you say you became aware for the first time that junket operators present the kinds of risks that we have just discussed?
A. My-my interaction with the VIP business around their junket business units wasn't extensive until quite recently, Ms Sharp.

Q. Well I'm not asking about your interaction with the VIP international business, I'm asking about your understanding of the risks that junkets present. When did you reach that understanding you've just told us about?
A. Yes, I think over the last 12 months we've seen a lot of information come to us around junkets.

Q. And do I take it from that, that prior to the last 12 months you did not understand the risks that junket operators presented in terms of links with organised crime?
A. Certainly not a deep understanding of those potential risks.

Q. Do you agree that it is notorious that a number of major junket operators in Macau have links with organised crime?
A. Yes, that's certainly been suggested through various sources of information and publications; I agree with that.

Q. So you agree that that is the case?
A. I agree it's- it's -I think the word is notorious, so I think it is-it is notorious that that is the case.

Q. When did you first become aware of that?
A. Really, again, over the same time period, that these-the connections have been more heavily publicised.

122 Mr Barton's resistance to the suggestion that money laundering risks were "significant" in relation to the cash dealings in the Suncity room was as follows:[74]

Q. And do you agree that the problem with that arrangement was that Crown had very little visibility over the transactions that were occurring at the Suncity cash desk?
A. Yes, I agree with that.

Q. And that introduced a significant risk that money could be laundered in that cash desk and Crown would not detect it?
A. It certainly creates a risk of money-laundering.

123 In dealing with junkets in his Third Statement Mr Barton gave the following evidence:[75]

> Crown has in the past had relationships with junkets that are alleged to have criminal links. I recognise that Crown must improve its due diligence of junkets, including by extending its focus beyond junket operators to those associated with the junket operator. Key issues which have emerged from Crown's junket assessment processes are:
>
> (a) the scope of Crown's due diligence has historically been too narrowly focused on the operator of the junket – due diligence needs to expand to those who finance, guarantee and represent the junket;
>
> (b) Crown needs to improve its ability to recognise patterns and associations, and draw together connective threads;
>
> (c) Crown's compliance and AML teams need to have a clear role in the approved process for junkets and a right of veto over junket relationships independent from the operating business; and
>
> (d) the due diligence of junkets and the approval process needs to involve comprehensive analysis and technology including by reference to a customer's transaction history.

124 All of these matters to which Mr Barton referred in his Third Statement could have been indicated at the beginning of this Inquiry if Crown had taken these matters seriously in August 2019 when the Media Allegations were raised. However, it has taken over a year (perhaps to be fair, a little less because of the intervention of COVID-19) to reach a conclusion that should have been startlingly obvious, having regard to the history of allegations that have dogged Crown over the years.

125 However these concessions, even if late, should be applauded. These are matters that go to the core of whether a company is a suitable entity to be a Licensee and a close associate of the Licensee.

126 On 17 November 2020 there was a further development in relation to Crown's dealings with Junkets. It made announcement via an ASX/Media Release in the following terms:[76]

> **FUTURE JUNKET RELATIONSHIPS – UPDATE**
>
> **MELBOURNE: Crown Resorts Limited (ASX: CWN) (Crown)** refers to its announcement of 25 September 2020 regarding the suspension by Crown of all activity with junket operators until 30 June 2021 while a comprehensive review of its processes related to junket operators is undertaken.
>
> The Board has determined that Crown will permanently cease dealing with all junket operators, subject to consultation with gaming regulators in Victoria, Western

> Australia and New South Wales. Crown will only recommence dealing with a junket operator if that junket operator is licensed or otherwise approved or sanctioned by all gaming regulators in the States in which Crown operates. The consultation process with Crown's gaming regulators in Victoria, Western Australia and New South Wales has commenced.

127 The main concern in relation to junkets is the intrinsic intertwining with the risk of money laundering. Crown's decision that was published on 17 November 2020 is a matter of great significance as it would give the Authority some hope of Crown's commitment to reform.

Conclusion

128 The fact that Mr Barton did not raise with anyone at the time of the journalist's enquiry in July 2019 or the publication of the article on 5 August 2019 that he had been advised by the Crown staff and Mr Birch at ANZ of the structuring in the Riverbank account is totally inexplicable.

129 Mr Barton's conduct in apparently advocating for the Riverbank account to remain open without reviewing what was actually happening in the account is also totally inexplicable.

130 When Mr Barton became a director of Crown on 24 January 2020, just days after Counsel Assisting had opened the Public Hearings of this Inquiry indicating that it would be necessary to test the veracity of the claims made that money-laundering was occurring through the Southbank and Riverbank accounts, he should have caused investigations of the accounts and advised his colleagues on the Board of Crown that there had indeed been allegations of money-laundering made by ANZ in 2014 and by CBA and ASB in more recent times.

131 However Mr Barton waited until mid-September 2020 to do anything about investigating the matter further. What Crown should have done was to immediately investigate those accounts for the purposes of indicating to this Inquiry what had happened over the years. It did not do so until 15 October 2020 when it retained Grant Thornton and Initialism to review the accounts and to provide a report.

132 One of the matters to review in determining suitability of a corporation to hold a casino licence is the willingness of its directors to act with care and diligence to identify conduct that could be described as enabling the operations of a casino to be exploited by criminal influence.

133 At the time that Mr Barton gave his oral evidence on 23 and 24 September 2020, it was Crown's position that there were "inadequacies" in how it had reacted to: (i) the closure of the Southbank and Riverbank accounts by various banks over the years; and (ii) the article published on 5 and 6 August 2019 in which it was alleged that money laundering had occurred in these accounts.

134 However what emerged on 17 and 18 November 2020 in Mr Barton's Sixth Statement and his Seventh Statement of 23 November 2020 makes the position far more serious in respect of so-called "inadequate" response to the August 2019 article. Far from "historical inadequacies" in Crown's AML procedures being the cause for concern, it is clear that a proper analysis was promoted by Ms Lane and steps were taken to shut down such a proper analysis of the transactions in the accounts on two quite unjustifiable bases.

135 The first basis was that the analysis by Grant Thornton, as was planned, may not be covered by legal professional privilege. The irresistible inference is that Crown took the view that such analysis would be accessible by this Inquiry and therefore should not proceed. The second reason, albeit expressed in extraordinarily opaque terms by Mr Preston, ignored the need for a wider review as promoted by Ms Lane.

136 Crown should have been reviewing these accounts carefully to assist the Inquiry in understanding what had happened in the Southbank and Riverbank accounts over the years. However Crown took the stance that it would not conduct such an analysis and it was therefore necessary for those assisting the Inquiry to analyse the accounts in the painstaking manner that was obvious from the evidence that was called to demonstrate that structuring or "smurfing" was occurring in these accounts.

137 It was not until just before 16 September 2020 that Mr Barton analysed the accounts himself to express the conclusions in his Third Statement and his concessions in his oral evidence that: (i) the accounts were closed down by ANZ in 2014 as a result of concerns about money laundering; (ii) after those closures, Crown's AML processes were not changed; and (iii) no proper internal review of the accounts was conducted.

138 It is one thing to suggest to the Inquiry that Crown had "inadequate" responses and to claim a recognition of the need for change. It is an entirely different thing: (i) not to disclose to the Inquiry the fact that a response had occurred at the relevant time; and (ii) to seek to justify the failure to disclose it on the basis of an understanding that the response, although having occurred at the time, was not comprehensive. It is indeed far, far worse and reflects very deeply upon Mr Barton, the Licensee and Crown's character and suitability to be the Licensee or close associate, respectively.

139 Mr Barton's failure to appreciate the ramifications of the inappropriate response to ANZ's concerns in respect of the real probability of money laundering in the Riverbank account in 2014 is unfortunately indicative of his continuing presentation. This lack of appreciation continued into 2019 when he once again sought to advocate for the maintenance of such accounts with CBA.

140 Mr Barton's quite inappropriate evidence in his Fourth Statement which was only corrected after prompting by the Inquiry is demonstrative of his lack of appreciation of the seriousness of the money laundering problems that have been identified.

141 It is all very well to have a one hour online training program for the directors. It is quite another thing to have a true appreciation of the money laundering risks that beset casinos. Organised criminals are very agile and flexible and very street smart. That much is obvious from the findings of Grant Thornton and Initialism. Whatever innovation is brought in to repel them will be tested. They will attempt to manoeuvre around the barriers and if they find, as they did with Southbank and Riverbank, a soft target they will exploit it.

142 Mr Barton's failure to accurately respond to a shareholder's reasonable and pertinent question at Crown's Annual General Meeting was appalling.

143 Mr Barton's unwillingness in a regulatory setting to make obvious admissions unless pressed was most unimpressive.

144 Mr Barton has demonstrated that he is no match for what is needed at the helm of a casino Licensee or a close associate of the Licensee. His problems will not be cured by the appointment of people expert in the field who report to him.

145 The Authority would be justified in concluding that it cannot have any confidence in dealing with Mr Barton as a director of the Licensee or Crown.

Chapter 4.3.3

Michael Roy Johnston

1 Michael Roy Johnston has been the Finance Director of the CPH Group since 2004. He is also the director of numerous companies within the CPH Group and in the operating businesses in which CPH has a substantial interest. He has also served on the boards of other publicly listed companies including as an alternate director of Challenger Limited between 2006 and 2009.[1]

2 Mr Johnston has been a non-executive director of Crown since 6 July 2007. He has also served on various Crown Committees. In particular, since 2009 he has been a member of the Audit & Corporate Governance Committee; the Finance Committee and the Occupational Health & Safety Environment Committee. Since 2016 he has been a member of the Investment Committee. Since 2018 he has been a member of the Nomination and Remuneration Committee. Mr Johnston has been a member of the Risk Management Committee and the Crown Sydney Committee since 2019 and was a member of the Crown Sydney Board.

3 Mr Johnston is a former senior partner of Ernst & Young in which role he specialised in tax advisory matters. He holds a Bachelor Degree of Economics from the University of Sydney and he is an Associate of the Institute of Chartered Accountants of Australia.

4 Mr Johnston provided three written Statements of evidence to the Inquiry and gave oral evidence over three days on 25, 28 and 29 September 2020.[2]

Preliminary observations - Executive Services

5 During the period the subject of the investigation of events pursuant to the Amended Terms of Reference, Mr Johnston has had obligations relevantly as: (i) a director of Crown; (ii) a director of CPH; (iii) the sole director of CPH Crown Holdings; and (iv) a CPH Executive providing services to Crown originally informally on a *pro bono* basis and from 1 July 2016 pursuant to the Services Agreement for which CPH was remunerated.

6 Mr Packer suggested that the formalisation of the former arrangement by the execution of the Services Agreement was to stop CPH subsidising Crown.[3] Mr Johnston described the provision of the services to Crown as a CPH Executive as follows:[4]

> From time to time, I have also provided consulting services to Crown Resorts, as have some other CPH executives. Prior to July 2016, these services were provided without charge, for the benefit of Crown Resorts. In July 2016, the arrangements were formalised in a services agreement between CPH and Crown Resorts … terminable by Crown Resorts at its option, which also introduced a regime for fees to be paid to CPH for that work. Crown Resorts' entry into the Services Agreement was approved by the independent directors of Crown Resorts' Board, after receiving independent external advice as to the fees to be charged under that agreement.

7 It is appropriate to outline some aspects of the complexities of Mr Johnston's various roles while he has been serving as a director of Crown and in particular in providing services to Crown as a CPH Executive. In summary form they relate relevantly to three areas: (i) the provision of services to the VIP working group; (ii) the provision of services in relation to Crown's annual budgeting process; and (iii) the provision of services in respect of a review of Crown's Junket operations.

8 In 2013 Mr Packer "raised" with Mr Johnston "the idea" of him participating in the VIP working group which dealt with the development and operation of Crown's VIP business. It was suggested to Mr Johnston that given his "skill set" he may be able to assist the then CEO, Mr Craigie's team "with a number of issues with which the VIP business was struggling" at that time. Those issues were identified as "debtors, currency controls, pricing, and tax standardisation between jurisdictions" including an "analysis of the economics of the VIP business".[5]

9 Mr Johnston described Crown's international and interstate VIP business as "individual 'premium players' who gamble large sums of money, as well as 'junkets', comprising groups of such players".[6]

10 Mr Johnston's evidence was that the VIP working group was "not a formal committee" and had been created at the request of Mr Packer and Mr Craigie "to perform work for Crown". Mr Johnston claimed that its purpose was to "consider options and make recommendations on the topics before it".[7] He described it as follows:[8]

> I considered that decisions about whether or not to take up those recommendations were for Crown Resorts management. I was providing my time and expertise in that group for the benefit of Crown Resorts.

11 Mr Johnston said that he "occasionally provided updates to Mr Packer" in respect of "aspects of the group's work".[9] However Mr Packer was also briefed on the VIP business at the CEO meetings at which management briefed him on the state of Crown's business generally ahead of scheduled Board meetings.

12 Mr Johnston regarded the work that he did on the VIP working group as the provision of services as a CPH Executive in the informal arrangement between Crown and CPH, the precursor to the formal arrangement under the Services Agreement of 1 July 2016. He attended the meetings of the VIP working group through 2013 and 2014. However he claimed that at the end of 2014 his involvement in the group had "diminished" but he continued to have "informal conversations" with members of Crown Management about the VIP business from time to time.

13 Mr Johnston gave evidence that during the period in which he provided these services the Crown Board received "updates" which included some information about the VIP business. He said he did not regard himself "as 'leading' the group or setting its agenda but rather a resource to the group".[10]

14 However he assessed his status on the VIP working group and even if one accepts his description that he was a "resource", the problem for Mr Johnston was that he became part of Management whose performance and recommendations were to be considered by the Crown Board of which he was a director.

Review of financial information

15 Crown's VIP business was not the only area of Crown's operations in which Mr Johnston provided services as a CPH Executive. The more controversial area was his involvement in Crown's "usual budgeting processes", in particular in May 2019.[11] Although one might expect that a person with Mr Johnston's skills might have provided the services of reviewing the financial information in this process as a Crown director, Mr Johnston claimed that the services he provided to Crown in this regard were provided as a CPH Executive under the Services Agreement. Ultimately the figures Mr Johnston was reviewing in this process would be presented to the Crown Board of which he was a director.

16 Mr Johnston also had a further role at the time that he was purporting to provide services to Crown as a CPH Executive commenting upon the financial information in the usual budgeting processes. That role was as sole director of CPH Crown Holdings. At the very time that he was providing those usual budgeting services, CPH Crown Holdings was negotiating to sell 19.99 per cent of its shares in Crown to Melco.

17 After Mr Packer left the Crown Board in 2018 and Mr Johnston purported to continue to provide Services to Crown under the Services Agreement as a CPH Executive, the structures that were put in place for the sharing of information with Mr Packer under the Controlling Shareholder Protocol concurrently with Mr Johnston's provision of those Services created obligations that were important from both a corporate governance perspective generally and the accountability of the Crown directors specifically.

18 The complexity of these arrangements is discussed in more detail later in this Chapter. At this point it suffices to observe that Mr Johnston's position at the time he received the financial information with his numerous roles as Crown director, as CPH director, as CPH Executive providing Services to Crown under the Services Agreement, and as the sole director of CPH Crown Holdings (the vendor of the shares the subject of the sale to Melco) was exquisitely delicate.

Review of Junket operations

19 Mr Johnston also became involved at a managerial level participating in a group "which considered various operational issues for the VIP business" following upon the China Arrests in October 2016. This involved a review of all the Junkets with which Crown had been dealing prior to this time. The group proposed a "new operating model for future business in Asia" which was adopted by the Crown Board on 27 April 2017. Mr Johnston then served on a panel with Management at an operational level of the VIP business reviewing particular Junkets from time to time.

20 Once again Mr Johnston was purportedly providing Services as a CPH Executive the outcome of which was the subject of consideration and approval by the Crown Board of which he was a director.

21 These preliminary observations are made to put in context Mr Johnston's evidence regarding his roles described as wearing "many hats".[12] The possible dangers of such multiple roles in a corporation are manifest. However where the corporation is a close associate of a company that holds a licence to operate a casino the dangers are very significant.

22 As has been discussed elsewhere in this Report, it must be remembered that although some of the events the subject of examination are contemporary others occurred some years ago. It is to be expected that memories of more recent events will be more accurate than those of events that occurred years ago, unless of course there is some particular reason why a recollection of something may be indelibly imprinted on someone's memory.

23 Efforts to recount events that occurred some years ago and more importantly the reasons they occurred can have an element of retrospective construction. That is not a criticism but rather a statement of reality where witnesses try to explain their conduct in circumstances some years later. It is therefore important to exercise caution in making judgments about memories of older events, particularly where a person's credit, or truthfulness is challenged as is the case with Mr Johnston.

VIP working group

24 Mr Johnston had a far better opportunity than the majority of his colleagues on the Crown Board to understand what was happening "on the ground" in China. Although

the VIP working group was "not specifically or solely focused on China"[13] Mr Johnston's membership of and involvement with the group gave him that better opportunity. This was not only from the point of view of discussions at the meetings of that working group but also from his informal discussions which he had from time to time with those Crown employees involved in the VIP business including Mr Felstead, Mr O'Connor and Mr Chen.

25 Apart from the CEO, Mr Johnston was the only Crown director on that VIP working group and it is understandable that the Crown employees who were members of the group would regard it as appropriate to report matters of importance to him. There was no evidence to suggest that it was announced to those involved in the VIP working group that Mr Johnston was part of the group, not as a Crown director but as a CPH Executive providing services to Crown. Insinuating a director into such a structure had the inevitable consequence of blurring the lines of reporting, which in any event were not clearly defined before Mr Johnston's advent.

26 Mr Johnston gave evidence that at a CEO meeting in 2014 Mr Craigie advised him that Crown had for many years been taking advice about what was lawful and industry practice in China. He also advised him that Crown's staff were operating "lawfully and prudently in accordance with that advice". Mr Felstead and Mr Chen also gave Mr Johnston that same advice and further that Crown had taken advice from "reputable firms who were experienced and well connected in China".[14]

27 The presentation slides for the Crown Board meeting of 7 August 2014 included a reference to "corruption crackdown". Although there was no reference to it in the Minutes, Mr Johnston claimed that there was a discussion at the meeting of "a so called 'corruption crackdown' by the Chinese government".[15]

Challenges to credit

28 The truthfulness of some aspects of Mr Johnston's evidence was challenged. These challenges were to Mr Johnston's credit, not merely to his reliability or credibility. It is therefore necessary to deal with those aspects of his evidence in detail. Although there are different events in respect of which challenges have been made, it is necessary to review a number of areas of Mr Johnston's evidence to understand the context of the challenges that have been made. The first area of his evidence under challenge relates to the content of a conversation that he claimed occurred in March 2015.

29 Mr Johnston claimed in his third written Statement of Evidence that he had a telephone call with Messrs Felstead, O'Connor and Chen "in about March 2015" from which he became aware "that Chinese authorities might be focusing attention on marketing activities of foreign casinos in mainland China". He recalled that the discussion was around the crackdown being aimed at "casino operators aggressively targeting Chinese patrons and facilitating movement of funds out of China in

contravention of Chinese currency controls". He also recalled being advised in the telephone call that "it was rumoured that these were South Korean casino operators, who were facilitating the movement of money out of China through underground networks".[16] He gave the following further evidence in respect of that telephone call:[17]

> I asked Messrs Chen and Felstead during the call whether they were sure that Crown Group's operations in China were in accordance with the law. I asked this to test whether there had been some change in the law or in the approach by Chinese authorities to enforcement that could potentially impact the Crown Group. Messrs Felstead and Chen assured me that they were sure, and that the focus of the Chinese authorities was on some operators that were abusing China's currency transfer restrictions and who were conducting themselves very differently to the Crown Group. I understood from the discussion that advice received by Mr Chen had confirmed that position.

30 In oral evidence, Mr Johnston agreed that "in or about February or March 2015" he became aware of reports that the "Chinese authorities were cracking down on foreign casinos recruiting Chinese citizens to gamble overseas".[18] As has been discussed elsewhere, that crackdown was announced on 6 February 2015 and some employees of South Korean casino operators were arrested in June 2015.[19]

31 However Mr Johnston claimed in his oral evidence that the communication in which he became aware of the crackdown occurred on 5 March 2015, a date he gleaned from an entry in his diary recorded as "urgent call". It was suggested to Mr Johnston that rather than having been advised during that "urgent call" about the "crackdown", it was more probable that Mr Felstead, Mr O'Connor and Mr Chen had advised him on 5 March 2015 of concerns that the "climate" in China had become "quite destabilised" and that Crown's competitors had "pulled their entire teams out of China".[20]

32 As discussed elsewhere, by 5 March 2015 Mr Chen had received advice that it was prudent to limit travel of senior executives to China and that Crown might consider the option of moving some key employees from Mainland China to Hong Kong.[21] This advice that was contained in emails between Mr Chen and Crown's lawyers in China, WilmerHale, was shown to Mr Johnston at this point in his oral evidence.[22]

33 Mr Johnston said that he did not recall Mr Chen or Mr O'Connor or Mr Felstead informing him of these matters or advice in the telephone call of 5 March 2015. Indeed he denied that they informed him that a decision had been made to defer travel to China at that time "for their own personal safety".[23] His recollection was that the discussion in the "urgent call" on 5 March 2015 related to the "crackdown" which of course had been announced four weeks earlier on 6 February 2015. He gave the following evidence:[24]

> Q. You're painting a very different picture of what you were told on the 5th of March from what these emails conveyed some eight days earlier; do you agree?

A. Yes. I agree with that.

Q. And I suggest that your recollection of what you were told on the 5th of March cannot be correct.
A. I mean, I don't accept that. I-I do recall the conversation and, clearly, the conduct of the business or the conduct of those individuals would, to me, seem to indicate that my recollection is correct.

Q. That just can't be true, can it, Mr Johnston? You must have been told, at this time, that the executives had decided to defer travel to mainland China because of the risks involved in light of the crackdown?
A. No. I can't recall being told that.

Q. Some of the things that have happened over the years are, obviously, rather scorching events and can have an effect on what you remember, I know. But, you see, you're talking about Korean staff, aren't you, in this recollection that you have on the 5th of March?
A. Yes.

...

A. It is certainly possible that I put two and two together in terms of a diary entry and my recollection.

Q. Yes
A. It was sometime in that time period ---

Q. Yes.
A. --- when I had - when the issue of - of the change in approach in China first - regarding foreign casinos, first came to the fore. I can recall a conversation around that time, and I can recall being made aware of it by the executives. Now, I may have got the date slightly wrong, perhaps, if I ---

Q. Yes.
A. --- misunderstood my diary.

34 Mr Johnston ultimately, and sensibly in the circumstances, accepted that there may have been at least a misunderstanding in his mind by reason of the entry in his diary. He also ultimately accepted that it would have been very odd if Mr Felstead, Mr O'Connor and Mr Chen had not advised him of their concerns about the destabilisation in the climate in China and the concerns about travel to Mainland China at that time.[25]

35 Notwithstanding his acceptance that he may have transposed the date of the conversation about the arrests of the South Korean staff, his denial of being advised of the suspension of travel because of concerns about the environment in China was challenged and requires assessment.

36 The announcement of the "crackdown" caused Mr Johnston "some concern". However he did not inform Mr Packer of his concern as he did not see it "as being necessary to escalate it further" because advice had been taken that Crown's operations were "within the law".[26] The crackdown was an important issue in relation to the VIP International business in China and Mr Johnston accepted that it was an escalation of the risk to the safety of the staff in China.[27] There can be no doubt that if Mr Johnston had been advised that executives had suspended their travel to Mainland China for a period such advice should have caused him further concern about the safety of the staff in China.

37 Mr Johnston was specifically tasked by Mr Packer to become involved in the working group in relation to the VIP business. Mr Felstead reported matters to Mr Johnston from time to time which in the circumstances is perfectly understandable having regard to the make-up of the VIP working group.

38 Although he did not mention Mr Johnston by name, Mr Felstead gave evidence that he was "reasonably certain" that he would have discussed the advice in relation to the suspension of travel at that time with the members of the VIP working group who were "board members" of Crown. That of course included Mr Johnston.[28]

39 It is probable that by focusing on the entry in his diary on 5 March 2015 recording only an "urgent call" without the identification of any topic, Mr Johnston transposed the events of June 2015 when the South Korean casino employees were arrested into a memory of what he believed occurred in March 2015. It is also probable that by 5 March 2015 Mr Johnston would have already been well aware of the crackdown that had been announced on 6 February 2015. The entry in the diary was probably made because it was a fixture for a teleconference which linked in Mr Felstead, Mr Chen and Mr O'Connor. The only developments at around that time that could reasonably be described as requiring "urgent" attention of the VIP working group were the matters that were discussed with Mr Johnston in his evidence; the suspension of travel for executives to Mainland China for the time being; and the consideration of the option of moving the staff out of Mainland China to Hong Kong for a period.

40 It is probable that during the telephone call on 5 March 2015 Mr Felstead did inform Mr Johnston at the very least of the advice in relation to the suspension of travel for executives to Mainland China for the time being. Certainly Mr Felstead, Mr O'Connor and Mr Chen had been party to communications which referred to the "destabilised" environment in China at that particular time. It is very difficult to believe that they would not have transmitted such a message to Mr Johnston in that telephone call.

41 In the light of Mr Johnston's firm denial that he was not informed of the travel suspension, it is necessary to consider the nature of some of Mr Felstead's communications with Mr Johnston over time in relation to developments in China. For instance, on 30 June 2014 Mr Felstead forwarded Mr Johnston a copy of an email he had received from Mr Chen dated 28 June 2014 in which Mr Chen advised that there

was a "serious shakedown" about to occur in China with a "target list of top junket folks" held by the Beijing government and people were being "dragged in" to "squeal on the money movements" of certain persons. [29] Mr Felstead advised Mr Johnston that the email was "FYI only, let's hope this is just speculation". Clearly Mr Felstead was advising Mr Johnston that he did not expect any action or response from him because it was "FYI only".

42 A year later, on 20 June 2015, Mr Felstead wrote to Mr Johnston by email attaching a copy of an email from Mr Chen entitled "Arrests in China". The attached email contained an extract of a media report which recorded that the Chinese authorities had arrested 14 South Koreans "for allegedly luring Chinese gamblers" to foreign-owned casinos in South Korea. Mr Felstead advised Mr Johnston that he would "dig around and see if there is any more to this".[30]

43 On 28 June 2015 Mr Johnston was copied into an email that Mr Felstead sent to Ms Tegoni and Mr Neilson enclosing an email in which advice was given to Mr Chen in relation to the arrests of the South Koreans. That advice identified the "core issue" of the arrests of the South Koreans as being about the movement of cash in and out of China. It was suggested that the South Koreans had been contravening Chinese currency laws for some time and that it was a "relatively isolated case". However that advice also warned that "other junkets are also being monitored though as we've covered before". The advice concluded with the observation that the adviser was "convinced" it was "an isolated case though pursued in the environment we know is present which is more careful monitoring of activities and not allowing activities to become too high profile".[31]

44 Notwithstanding the content of this email Mr Johnston gave evidence that he was satisfied there was "no cause for alarm", once again relying upon the advice that he said that he had received that Crown was operating differently from the South Koreans.[32]

45 However on 10 July 2015 Mr Felstead wrote again to Mr Johnston, this time attaching a chain of emails dated 9 July 2015. Although these communications are referred to in detail elsewhere in this Report, it is appropriate to refer to some aspects of them again. The first email was between Mr Zhou, the lawyer at WilmerHale in China, and Mr Chen reporting upon a discussion with a Crown employee, "BX", who had been questioned by the police in China. That email included reference to the fact that the police had asked BX what he did, in response to which he had advised the police that he was an employee of Crown Hotel preparing visa materials and assisting Chinese tourists who were interested in going to Australia to visit the Hotel. Although the content of the email is extracted elsewhere the following significant aspect of it warrants repetition. It was in the following terms:[33]

> The police department said that somebody has reported that he organizes overseas gambling tours, and he said that he had no knowledge about it. He believes that police

> department was persuaded by his explanation because he has a good record. The police department needs a letter from Crown to confirm that he is an employee of Crown.

46 It was clear from this part of the email that not only had the employee been questioned by the police, but also an informant had advised the police that the employee was organising overseas gambling tours. A moment's reflection of this information should have alerted any reasonable reader of the email to be seriously cautious and concerned about this development in respect of the safety of the staff in China.

47 The next email in the chain was between Mr Chen and the in-house counsel for Crown in Melbourne, Ms Williamson. That email, also extracted elsewhere in this Report referred to BX being "invited" by the police "for an interview". However it included the following:[34]

> He was told by police that a tipster reported that he was organising gaming tours. BX denied it and said he worked for Crown Resorts and assisted in organising leisure trips for customers.

48 Mr Felstead's message in the covering email to Mr Johnston was: "This is what we will be up against in China at the moment ".[35]

49 In June and July 2015 Mr Felstead had written to Mr Johnston three times in three weeks in relation to what could only be described as very alarming developments in China. The topics in those three communications were: (i) the arrests of 14 South Korean casino employees; (ii) the advice that it was an isolated incident but with the rider of the environment of careful monitoring and not too high profile activities; (iii) the questioning of a Crown employee by the Chinese police; and (iv) the involvement of a "tipster" informing on the Crown employee's activities.

50 Notwithstanding these alarming developments, Mr Johnston gave the following evidence about Mr Felstead's email of 10 July 2015:[36]

> The WilmerHale email appeared to deal with an interaction between a Crown Group employee and local Chinese police. Mr Felstead in his email did not request any response or action from me, and I did not appreciate the context or import of the email at the time that I received it. I was overseas on a family holiday between 2 and 13 July 2015 and I do not recall any discussion of the email with Mr Felstead or anyone else at the time. As Mr Chen was communicating the matter to a Crown Resorts internal lawyer and also dealing with WilmerHale (who I understood from the email to be in direct communication with the employee), I assumed that it was being addressed appropriately by Crown Group's internal and external legal advisers, and that I would be informed if there was any change to the advice that had recently been provided about the Crown Group's position in light of the South Korean arrests.

51 This was the evidence that Mr Johnston gave in his third written Statement of Evidence. In his oral evidence he was asked whether when he returned from his holiday he would have read the chain of emails that Mr Felstead had sent to him. He said:[37]

> A. I probably would have read them when I was on leave, to be honest.

52 When he was tested about reading the email chain, his evidence was as follows:[38]

> Q. As a careful and diligent director of Crown Resorts you must have been interested to read this email and understand what he was referring to?
> A. Yes. I read the email, as I recall it. Yes

53 The use of the expression "as I recall it" in this answer gave the impression of some tentativeness. When he was tested further he gave the following evidence:[39]

> Q. You're not suggesting that you didn't read this email carefully, are you?
> A. Yes, I did. No, I read it - sorry, I read it quite carefully, yes.

54 Mr Johnston's intonation on the words "quite carefully" made it unclear whether he had read it "somewhat" carefully or "very" carefully.[40] However the balance of his evidence referred to below with the detailed analysis of its content suggested that it was the latter rather than the former.

55 Mr Johnston agreed he was aware that at the time of this email the employees in China were in fact organising gambling tours to Australia. However he said that there were staff carrying out other functions, and claimed that he did not know whether or not the employee had told the police the truth.[41] He gave the following evidence:[42]

> Q. You must have appreciated, when you read these things, that this was a serious issue requiring consideration by you?
> A. No.
>
> Q. Why do you say that?
> A. For a couple of reasons. The first is that I wasn't being asked to do anything by virtue of what was sent to me. The second is it seemed as though Crown's Chinese lawyers were dealing with the matter; they weren't raising any alarms. This was in the context of having, as I understood it, just very recently received advice that what Crown was doing in China was lawful, and continued to be lawful. And, also, the email had been directed to Crown's legal department in Melbourne. So that I – I thought that it was being properly attended to. I wasn't being asked for any particular action. I – I assumed that if there was a problem, Crown's legal department would elevate it, or the Chinese lawyers would have – would have told us so.
>
> Q. You understood, didn't you, that Crown's lawyers were dealing with the letter that the Chinese police had required be produced to them?

A. I would have found it inconceivable that if the Chinese lawyers were alarmed by this, that they wouldn't have stated so.

...

Q. And whether or not the lawyers were dealing with the letter that the police had required, you must have realised, coming so soon after the arrest of the South Koreans, that this was a serious issue.

A. No, I didn't.

Q. Can that be true, Mr Johnston? You were the person who had an involvement in the VIP International business at the time; correct?

A. On specific issues, yes.

Q. And you were aware that in 2015 the Chinese authorities had announced a crackdown on foreign casinos; correct?

A. Yes, correct.

Q. And you were aware that a few weeks prior to this, the Chinese authorities had arrested 14 South Korean casino employees; correct?

A. Yes. Correct.

Q. You were aware that this was in the context of a broader crackdown by the Chinese authorities against foreign casinos luring Chinese citizens to go abroad; correct?

A. No.

Q. And here you have a few weeks later one of your staff members in China being questioned by the Chinese police and accused of organising gambling tours to Australia; correct?

A. Yes.

Q. That was plainly a serious issue, was it not?

A. I am not-no. The answer is no.

Q. Did you care about the safety of the staff in China, Mr Johnston?

A. Of course, I did.

Q. Well, then, how could you have not thought that this was a serious matter that one of your staff members was being questioned by the police, accused of organising gambling tours and it resulted in the police requiring Crown Resorts to provide a letter in support of what the employee had said. How could that not be serious?

A. Because I am not - I'm certainly not an expert in doing business in China. The Chinese lawyers were not alerting us to the fact that it was a serious issue. Nor were Crown's local lawyers.

...

Q. … Mr Felstead, by the terms of his email, was plainly indicating to you that he thought this was a serious issue; correct?
A. It's not clear on the face of his email that that's what he was saying.

Q. You're not suggesting that you didn't read this email carefully, are you?
A. Yes, I did. No, I read it - sorry, I read it quite carefully, yes.

Q. Yes. Well, I suggest that with your experience of Crown Resorts, your involvement in VIP and all of the other factors of which you were aware, you must have appreciated that this was a serious issue; do you agree?
A. No, I didn't.

Q. You must have appreciated that this was potentially escalating the risk of the safety of your staff.
A. No, I didn't.

Q. Did you think it was not serious?
A. I thought that if it was serious the Chinese lawyers ---

Q. No, did you think it was not serious. Please, Mr Johnston, did you think it was not serious?
A. Yes, I didn't think it was serious, based on what I was looking at.

Q. That just can't be true, Mr Johnston, can it?
A. I believe it is.

56 It was only after Mr Johnston was given the "opportunity" to explain his position and why he would not have been concerned when he read the email at the time that he said:[43]

A. … So you know, with the benefit of hindsight, I absolutely should have seen this as more significant but at the time I didn't.

57 He also accepted that it was something that he should have shared with his colleagues on the Crown Board.[44] He gave the following further evidence:[45]

Q. But I take it from what you told the Commissioner that, looking at it now, as I'm sure you've done in preparation for giving evidence to this Inquiry, you do agree that the information contained in these emails was, in fact, indicating an escalation to the risk of the safety of the staff?
A. I think, yes. I mean, I think that, viewed with the benefit of hindsight and what's happened, you can see that this was a step in the escalation process.

Q. And are you saying that you made an error of judgment about this?
A. I think my error of judgment was perhaps relying on the advisers that I was relying on. I mean, there's no doubt that, if the Chinese lawyers had indicated

that they saw this as troubling, that I would have – I would have escalated it, but they didn't.

Q. Whatever the lawyers were doing, you knew that China was a riskier place than Australia for your staff to be, didn't you?

A. In – in terms of what we know – what we knew at that point in time – I mean, we're all wiser now, in terms of China. In terms of what we knew then, I mean, I said earlier, it's a riskier place, but is it – is it materially riskier? I'm not sure that, at that point in time, we necessarily knew how risky it was.

...

Q. And looking at it now, I think you agree that this was a clear escalation of the risk to the safety of staff; correct?

A. When looked at with the benefit of hindsight, yes.

58 Mr Johnston's evidence was that when he attended a Crown Board meeting on 12 August 2015 he advised his colleagues on the Board of the arrests of the South Korean employees. He gave the following evidence:[46]

Q. You did regard it as important enough to inform the board of Crown Resorts about it at a board meeting on 12 August 2015; is that correct?

A. Yes. I considered it important, so I did refer – I did bring it up at a board meeting, yes.

Q. And what was the substance of what you say you said?

A. I had asked the VIP executives to go and get fresh advice and – which they did and they relayed to me. So I relayed to the board both the fact that the Koreans had been arrested and the substance of the legal advice that I had understood had been taken.

Q. What was the substance of the legal advice as you understood it at the time?

A. The substance of the legal advice as it had been relayed to me was that the – what Crown was doing was still lawful; that the South Koreans could be distinguished from both Crown and the rest of the industry in terms of what they were doing. They were breaking the currency control rules that were being tightly enforced in China and they were very actively promoting gambling at their casinos.

59 Mr Johnston accepted there was no record of such a discussion in the Minutes of the Board meeting of 12 August 2015.[47] However he suggested that as it was not an item on the Agenda, the Company Secretary did not reflect it in the Minutes. He explained further that those Minutes "by their nature typically tend to be brief".[48] In fact those Crown directors who did recall having a discussion with Mr Johnston on that date about the South Korean arrests gave evidence that the communications took place, not in the formal Board Meeting or Board Room but in an informal setting either prior to the Board Meeting or in between the Board Meeting and other meetings.[49]

60 Mr Johnston said that had he appreciated the questioning of the employee by the police in China as an escalation of risk, he would have reported it to his colleagues on the Board as he did in respect of the South Korean arrests. However Mr Johnston was reporting those arrests to his colleagues on the Board not as an escalation of risk but rather to advise them that there was no cause for concern because Crown's operations could be distinguished from the South Korean operations. As Mr Johnston apprehended it at the time, the questioning of the employee by the police in China was also apparently not a matter for alarm or concern. In those circumstances it was equally reportable.

61 After Mr Johnston accepted that the questioning of the employee was clearly an escalation of risk he was examined further as follows:[50]

> Q. And it would appear, Mr Johnston that you were the only director of Crown Resorts who was informed about what you now agree was an escalation of risk; correct?
> A. That is right. Yes.
>
> Q. And - and you did nothing about it; correct?
> A. I did not inform the board. No.
>
> Q. And what do you think that says about your discharge of your duties of care and diligence as a director of Crown Resorts?
> A. I think that - I think that I still believed I was discharging my duties appropriately. I - as I said, I saw that this had gone through to the legal team in Melbourne. So if - if I had missed something, I was - I was assuming that it would be picked up by the lawyers in Melbourne.
>
> Q. And as the only director of Crown Resorts who was informed of this matter, and who did nothing about it, what do you think that says about the risk management processes of Crown Resorts at the time?
> A. I think that, again, with the benefit of hindsight, clearly, this is probably a risk that should have been picked up in the risk processes. Yes.
>
> Q. Has it occurred to you that, if you had informed your colleagues on the board about this incident, the board may have put in place mitigation strategies, such as removing the staff to Hong Kong, which could have prevented the arrests from occurring?
> A. That's possible.

62 Mr Johnston's reliance upon the absence of any alarm being conveyed by the Chinese and Australian lawyers to justify his view that the questioning of the employee by the police was not a serious issue presented more as a retrospective construction than an appreciation of things at the time of reading the email. Mr Johnston's reliance on his lack of expertise "doing business in China" to justify his view was also reconstructive analysis. A proper appreciation of this incident about three weeks after the arrests of the South Korean employees in the environment of the announced crackdown did not

need any expertise of "doing business in China". It is beyond doubt that Mr Johnston had the wherewithal to make the judgment that this involved a serious issue that should have been raised with the Crown Board.

63 Mr Johnston rejected the suggestion that (rather than forming the view that the incident was not a serious issue) he may not have appreciated the seriousness of this incident because he was on an overseas family holiday at the time.[51]

64 The review of this aspect of Mr Johnston's evidence is necessarily with retrospection and should be conducted with caution. The seriousness of the submission that Mr Johnston's evidence was untruthful also requires the assessment to be conducted in line with the *Briginshaw* principles with the requirement for clear and cogent evidence.[52]

65 The possible alternative explanations for Mr Johnston's failure to report the incident to his colleagues on the Board included: (i) that he did not read the email; (ii) that he did not read the email carefully and thus failed to appreciate the significance of the reported incident; (iii) that he read the email carefully but failed to appreciate the significance of the reported incident; (iv) that he read the email carefully and appreciated that the incident was serious but understood that it was being handled by the legal representatives and therefore did not see any necessity to report it to his colleagues; (v) that he read the email carefully and did not appreciate the seriousness of the incident because the lawyers who were handling it did not expressly suggest it was serious; and (vi) that he read the email and formed the view that the incident was not serious because he was not asked to take any action and because the lawyers did not expressly state that there was cause for any alarm.

66 There is a difference between not appreciating the seriousness of the incident, and positively regarding the incident as not serious.

67 There is also a difference between forming a view at the time of the incident that it was not serious and maintaining in evidence years later that the incident was not serious.

68 Unfortunately Mr Johnston claimed that he read the email carefully and concluded that it was not a serious issue and also maintained in his evidence that it was not a serious issue. He chose to maintain this explanation in his oral evidence until, when offered the opportunity to explain himself further, he finally proffered the suggestion that "with the benefit of hindsight" he should have seen that it was "more significant" than he did.

69 Mr Johnston's evidence was deeply reconstructed with carefully plotted explanations. His oral evidence that he read the email "quite carefully" and concluded that the incident was not a "serious issue" cannot be accepted. This incident was serious enough for two sets of lawyers, one in China and one in-house in Crown Melbourne,

to become involved in dealing with the matter. It was serious enough for Mr Felstead to report the incident to Mr Johnston.

70 It was clear from Mr Johnston's analysis that he did not appreciate the importance of the information in the email that a "tipster" had informed on the employee who was detained and questioned. Even if the police were merely embellishing their presentation, it was a significant piece of information relevant to the assessment of the level of risk to Crown employees on the ground in China.

71 The context in which the questioning of the employee occurred within just a few months after the major announcement of the crackdown on foreign casinos, the reported suspension of executive travel due to concerns for their personal safety in a destabilised environment and within just three weeks of the arrests of the South Korean casino employees was charged with uncertainties.

72 It is simply not possible to accept that if Mr Johnston had read the email carefully he would have concluded that the questioning of the employee was not a serious issue.

73 On all the evidence and with the abovementioned principles in mind it is far more probable that Mr Johnston failed to read the email sufficiently carefully enough to make a proper judgment about its contents. It is far more probable that he just missed its import. Indeed that is consistent with his third written Statement of Evidence extracted above that he did not "appreciate the context or import of the email at the time".

74 The only rational and reasonable conclusion to be reached by any diligent director who read this email carefully at the time was that this was a most serious development and a most serious issue of which the Crown Board and its risk management mechanisms should have been immediately alerted.

75 Mr Johnston's evidence that he read the email carefully at the time he received it is not accepted. His claim in this regard was not truthful. He did not read it carefully and that is why he failed to appreciate the significance of the incident. The reasons he provided for not regarding it as serious at the time are reconstructed arguments rather than matters he analysed at the time. The maintenance of his claim in his oral evidence that it was not a serious issue was most unimpressive until the rather belated acceptance and recognition that with the benefit of hindsight he should have seen the incident "as more significant at the time".

76 Mr Johnston failed his colleagues on the Board and the staff in China rather dismally. A compounding feature of this dismal failure was Mr Johnston's pugnacious attitude in the witness box in maintaining the unsustainable suggestion that this was not a serious issue. This attitude was not limited to this aspect of his evidence.

77 Mr Johnston failed to appreciate the obvious and serious developments that should have been appreciated and reported to his colleagues on the Crown Board and/or the risk management processes of Crown.

Crown's annual budgeting information

78 The review of Mr Johnston's evidence requires analysis of his conduct in reviewing Crown's confidential financial information in May 2019. Mr Johnston claimed that when he was reviewing this information, he was providing services to Crown under the Services Agreement as a CPH Executive and not as a Crown director, albeit that the finalised figures would be placed before the Crown Board for its approval. The context of this review requires an analysis of Mr Johnston's conduct in May 2019 acting in his other role as the sole director of CPH Crown Holdings, the vendor of 19.99 per cent of its Crown shares in a sale to Melco, at the same time as he was reviewing Crown's confidential financial information.

79 In this aspect of the review of Mr Johnston's evidence questions relevant to the corporate governance and risk assessment structures that were put in place under the Services Agreement and the Controlling Shareholder Protocol arose as to whether there were circumstances that would give rise to a perception of a conflict of interest and whether Mr Johnston accepted that there existed an actual or perceived conflict of interest.

80 Mr Johnston gave evidence about the proposal for and approval of the Controlling Shareholder Protocol. In particular he was asked about the Minutes of the meeting of the Nomination and Remuneration Committee at which he was present as an invitee when the Controlling Shareholder Protocol was approved. It was noted that there was no record in the Minutes of Mr Johnston declaring an interest and excusing himself. However Mr Johnston said that he would have excused himself for "a discussion like that" and said "I always do". Mr Johnston said that he was "quite sensitive to conflicts" and suggested that the Minutes were inaccurate. The Minutes, the subject of this evidence were in a draft form. However Mr Johnston was later shown the final Minutes of that meeting signed by Mr Dixon which did not record him as having left the meeting. He claimed that the Minutes were inaccurate in that respect.[53]

81 On 3 May 2019 Mr Packer had requested a financial plan from Mr Barton that he believed in. Mr Barton circulated that financial plan to Mr Johnston and others for their review prior to taking Mr Packer through it in the week commencing 20 May 2019.

82 On 21 May 2019 Mr Johnston wrote to Mr Barton, Mr Felstead, Mr Alexander and Mr Packer offering some views in respect of the draft financial plan in terms that included the following:[54]

I set out below some discussion points for our call this evening.

1. I would take out reference to the 10 year CAGR 08-18 and reference the 5 year CAGR.
2. References to issue related to the change of Government should be removed and discussion on potential for improved sentiment added.
3. I think the revenue growth assumptions for FY21 and FY22 (currently assumed at 3.6% each year) should be higher. The spend per customer in table games should be assumed to normalise again from there. Thus FY19 is only the base for FY20 not the whole plan.
4. VIP 1 Gaming machine growth should likewise be higher (currently assumed to be 8.5%) for FY 21 and beyond. What costs are assumed in Singapore and HK for this initiative (i.e. Employment costs for new sales staff).
5. For Perth (only) we should assume a more significant impact from the tap and go initiative for FY21 and beyond.

83 On 21 May 2019 the negotiations for the sale of CPH Crown Holdings' shares in Crown to Melco were well advanced. Notwithstanding that Mr Jalland as CPH Crown Holdings' agent was conducting negotiations with Mr Winkler as Melco's representative in respect of the price of the shares, Mr Johnston was the sole director of the vendor. The communication extracted above has Mr Johnston making suggestions about the Crown financial plan that, if accepted, would make the figures "more optimistic".[55]

84 Mr Johnston claimed that he was commenting upon the figures as "our normal budget process" and that he was "suggesting some points to discuss".[56] He said that he was providing "this assistance under the Services Agreement" and he was doing so as a CPH Executive.[57] Although it is patently clear from the communication on 21 May 2019 that Mr Johnston's suggestions would make the figures more "optimistic" he resisted such a suggestion in his evidence until finally he accepted the obvious. His evidence was as follows:[58]

Q. So in suggesting these changes to the financial plan, were you acting in your capacity as a director of Crown Resorts or in your capacity as a director of CPH?
A. I believe I was doing it under the services agreement so that would have been in the CPH capacity

Q. Right. So ---
A. But for Crown, if that makes sense.

Q. … You're saying that you made these suggestions in your capacity as an executive of CPH?
A. Providing services to Crown.

Q. And if you were acting in your capacity as an executive of CPH, it must have occurred to you that you should have declared CPH's interest in the financial forecast because it was in the late stages of negotiating the sale of its Crown Resorts shares or a large parcel of them.

A. I didn't believe there was a conflict because there was no change to-well, firstly, this was a downward movement from prior forecasts that was being talked about here. And secondly, I didn't think there was a conflict because all of these numbers were consistent with consensus views in the market.

Q. Well, let's just deal with that step-by-step. You firstly said that this was a downward movement in forecast, but you were suggesting changes to the forecast which would make them more optimistic, weren't you?

A. There were no changes being proposed for '19 or '20. The only changes that were being proposed in the out years and they were relatively minor in any event.

Q. Why are you having difficulty agreeing with the proposition that the changes which you were proposing would make the forecast more optimistic. That's obviously the case, isn't it?

A. More optimistic compared to what? So this was a draft ---

Q. Sorry, go on.

A. This was a draft which was far less optimistic than the prior plan.

Q. Well, you were suggesting changes to the document you had in front of you, which would make the forecasts in that document more optimistic than they were at that time. That's obviously correct, isn't it?

A. Well, as I said, I don't know that I was suggesting changes. I was putting points up for discussion, which is the normal part of the budgetary process.

Q. Mr Johnston, if your suggestions had been taken up and agreed with, it would have become more optimistic, would it not?

A. Yes

85 At the time of the communication on 21 May 2019, Mr Johnston owed obligations to Crown as a director of Crown; to CPH as a director of CPH; to CPH Crown Holdings as its sole director; and to Crown as a CPH Executive providing Services to it in respect of the financial information in the financial plan.

86 He gave the following evidence:[59]

Q. … You were very sensitive to conflicts of interest between CPH and Crown Resorts, you have told us; correct?

A. Correct.

Q. And that sensitivity extended not just to actual conflicts of interest but the perception of conflicts of interest as well, did it not?

A. Yes, I would not have wanted-sorry, the answer is yes.

Q. Yes. So in circumstances where you, in your capacity as an executive of CPH, were involved in the negotiation of a sale of CPH's Crown shares at the time, I suggest that to avoid that perception, it was necessary for you to disclose that fact to Mr Barton.

A. Well, I suppose the first point is I wasn't involved in the negotiations on the sale contract.

Q. Mr Johnston, you were a director of CPH; correct?

A. Correct.

Q. You were the sole director of CPH Crown … Holdings, the company which was in the midst of negotiations to sell shares in Crown Resort; correct?

A. Yes.

Q. You were being kept informed by Mr Jalland of the status of those negotiations; correct?

A. Yes.

Q. In those circumstances, I suggest to you that to avoid the perception of a conflict of interest, it was incumbent upon you to disclose that fact to MrBarton; do you agree?

A. Sorry, I'm - I don't think that I do agree. I don't-didn't see there being a conflict of interest given I was just commenting on this in the same way that I would comment on it in any budgetary process.

Q. So I just want to be clear on this. Firstly, you say you're very sensitive to conflicts of interest; is that right?

A. Yes.

Q. Secondly, you are telling the Commissioner, on your oath, are you, that you don't see even a potential conflict of interest in you suggesting positive amendments to financial forecasts whilst at the same time your company is involved in negotiations to sell its Crown Resorts shares?

A. Given that I was not inputting into the pricing discussions, no, I didn't.

Q. And that's a serious answer, is it, Mr Johnston?

A. Yes.

Q. Mr Johnston, if you had been sitting around the Crown board table and this document had come on to the table, it's almost impossible to believe that you wouldn't, as you did previously, stand up and say, "I've got to get out of here, I have an interest in this, at the moment. I can't tell you why. I'm negotiating to sell the shares in a company of which I am the sole director and I don't think I should see these figures at the moment". Isn't that what you do?

A. I didn't see the conflict because I wasn't inputting into the pricing discussions. They were ---

Q. That's a different question

A. Yes. No, I appreciate that, but I think it's relevant to-sorry, Commissioner.

Q. You are the sole director of the vendor; correct?
A. Yes, I am. Yes.

Q. And you know that there are advanced negotiations?
A. Yes.

Q. You know that Lawrence has spoken to James-Lawrence Ho has spoken to James Packer about it, don't you?
A. Yes, I do.

Q. All of that information is in your head at the board table.
A. Yes

Q. And on one view of it, it's quite possible that that arrangement will end up in a deal; would you agree with that?
A. Yes. It was possible

Q. So, knowing that the deal is possible, and you're about to opine on how the figures are going to look and what the figures are right now, just before the deal is done, you would be sensitive to it, wouldn't you, so that there wouldn't be a perception, surely?

A. I suppose I was looking at whether there was an actual as opposed to a perception. I didn't see there being an actual conflict.
Q. But you didn't look at the perception?
A. No, I didn't look at the perception at that point.

87 The financial information upon which Mr Johnston was commenting in the communication of 21 May 2019 extracted above, were described by him as "draft plans until the board considers them".[60]

88 Mr Johnston accepted that the reason the Controlling Shareholder Protocol was executed was to enable confidential information to flow through to Mr Packer as he was no longer a director of CPH or Crown. Mr Johnston accepted that at the time that he received the financial materials from Mr Barton in the usual budgeting processes of Crown, the negotiations with Melco were well advanced.[61] He accepted that he owed obligations to CPH Crown Holdings including to ensure that the price at which it sold its shares in Crown was a price which was in the best interests of and acceptable to CPH Crown Holdings.[62] He also accepted that as sole director, he had an obligation to ensure that the transaction that was being contemplated was generally in the best interests of CPH Crown Holdings.[63]

89 Mr Johnston gave the following further evidence:[64]

Q. And you understood … that your view of those draft forecasts would be perceived by a reasonable person being relevant to your assessment of appropriate price at which CPH Crown Holdings would accept for its shares in Crown Resorts; correct?
A. No, I don't know that I accept that.

…

Q. … Do you agree that a reasonable person would perceive a real possibility of conflict between your duties to CPH Crown Holdings and CPH, on the one hand, to your duties to Crown Resorts, on the other, in reviewing the financial forecasts in all the circumstances?
A. No.

Q. And I suggest that, before you reviewed and involved yourself in discussions relating to these forecasts, you had an obligation to disclose to Crown Resorts that CPH Crown Holdings was at an advanced stage of negotiating to sell 19.9 per cent of its Crown Resorts shares to Melco; do you agree?
A. No, I don't.

Q. And you understood that the services agreement contained a procedure to resolve conflicts of interest, didn't you?
A Yes, I do.

Q. And you understood that the procedure under the services agreement involved discussions between the managing director of Crown Resorts and the managing director of CPH or their respective Nominees to endeavour to resolve the conflict?
A. Yes.

Q. And you knew Mr Alexander was the executive chairman of Crown Resorts at the time, didn't you?
A. Yes, I did.

Q. Yes. Well, why didn't you at least have a confidential discussion with Mr Alexander, as executive chairman of Crown Resorts, to inform him of the position that you were in to see if there could be an appropriate resolution?
A. Well, because I didn't see a conflict.

Q. Even though you're very sensitive to that?
A. Yes.

90 Mr Johnston rejected the suggestion of the presence of a conflict or perception of conflict because he said he was not "inputting into the pricing discussions". Mr Johnston was being kept informed of what Mr Jalland and Mr Winkler were discussing as to price. However Mr Johnston had to decide at what price CPH Crown Holdings of which he was sole director would sell the shares.

91 The proposition that he put forward in his evidence, once again, presented as a retrospective construction rather than something that Mr Johnston thought of at the time that he was reviewing the financial information that Mr Barton had sent to him. The fact that Mr Jalland was doing the negotiations but informing Mr Johnston of them was a significant matter. He clearly acquiesced in or did not object to what was being communicated to Melco by Mr Jalland.

92 Mr Johnston's suggestion that there could be no conflict of interest or potential conflict of interest because he was not the one negotiating with Mr Winkler or "inputting" in the discussions is unsound. It was Mr Johnston's obligation to decide at what price to sell the shares. It was his obligation to ensure that the price that was proposed by Melco was a price that was in the best interests of the company of which he was the sole director.

93 Mr Johnston may have thought that he was sensitive to conflicts. However the reality demonstrates that such claim is unsustainable.

94 The probability is that Mr Johnston did not give proper consideration to his obligations to Crown at the time that he received the confidential financial information from Mr Barton in May 2019, and when he was dealing with the financial information in his communication of 21 May 2019. Had he done so it is almost impossible to believe that he would have continued to engage with his colleagues without disclosing the transaction that he was pivotally involved in with Melco to sell 19.99 per cent of CPH Crown Holdings' shares in Crown to Melco. Mr Johnston had apparently received legal advice that it was not necessary to inform Crown of the transaction, a matter referred to below and elsewhere in more detail. Even so Mr Johnston had the option of not participating in the usual budget processes at the time of the transaction.

95 Any reasonable observer of Mr Johnston as the sole director of the vendor of shares in Crown purporting at the same time to provide Services to Crown in which his suggestions about its Financial Plan would make the figures more optimistic at the very time when he is negotiating (through his agent) to sell shares in Crown, without advising Crown that he is doing so, would perceive that Mr Johnston has a real and sensible possibility of conflict of interest.

96 Even assuming that Mr Johnston was not going to inform Melco of the information (some of which in fact he did) the perception of conflict is palpable.

97 He could have and should have: (i) excluded himself from taking part in the usual budget process in May 2019 by reason of the intense negotiations at that time with Melco (which could have been achieved without disclosing the detail of the transaction to Crown); or (ii) disclosed to Crown that he needed to exclude himself from that process by reason of his interactions with Melco at that time; and/or

(iii) disclosed to Crown the fact of the proposed transaction with Melco and sought consent from Crown to provide that confidential information to Melco.

98 Without any analysis of his motivation, it is clear from the evidence that Mr Johnston might reasonably be described as a willing workhorse in Crown's operations. Apart from the pivotal roles as a director and an Executive referred to above, he was serving on six committees at the time that he gave his evidence. It is probable that when he moved from one role to the next to provide the various services, he did not give thought or enough thought to the particular confines within which he was able to provide those services and/or the duties, obligations and constraints burdening him at the time he provided those services. He had been providing these services for years and always seemed to put his hand up to do more when he thought necessary.[65]

99 The following evidence on this aspect of Mr Johnston's conduct is relevant:[66]

> Q. And you understand that some of the things that you have done with Crown, for instance, the involvement in the VIP business, the review of the junkets and then the approval of junkets, you understood that that was effectively as a contractor or employee of Crown supplied by CPH; correct?
> A. Yes.
>
> Q. Now, I wanted to ask you about the good sense of that in the circumstances which have erupted in the media allegations last year of placing you as a director of a public company down with-without being pejorative, down with the management. Do you understand that?
> A. Yes, I do. I do.
>
> Q. So isn't that an exquisitely difficult situation for the company to maintain its governance regime of keeping directors in a position to make sure that they can judge things sensibly from a risk management point of view?
> A. I always considered that I had - whilst I was wearing a number of hats, that - that the hats were never inconsistent in - in that I never had a risk appetite that was inconsistent with the one I would have had as a director. But I can certainly understand that it's probably less than a perfect scenario to be put in.
>
> Q. And you see, one of the things that was pointed out by you in your evidence when Mr Bell was asking you questions was that you didn't give consideration to the perception of a conflict. Do you remember telling me that?
> A. Yes
>
> Q. That, in itself, may have been avoided had you had less hats on; would you agree with that?
> A. Yes. Yes.

100 As discussed elsewhere, the Controlling Shareholder Protocol and the Services Agreement were terminated within a month of Mr Johnston having given his

evidence. In addition the Chairman indicated in her evidence that Mr Johnston's workload would be reduced.

101 It is probable that Mr Johnston found the suggestion that he may have had a conflict of interest at the time of his involvement in the review of Crown's confidential financial material in May 2019 whilst selling CPH Crown Holdings' shares to Melco repugnant. This may explain his rather pugnacious presentation in this part of his evidence. However as discussed earlier this is not the first time he presented in this way. The clear conclusion is that Mr Johnston should not have proceeded as he did with dealing with the usual budgeting processes at a time that he was involved in negotiating to sell CPH Crown Holdings' shares to Melco. These circumstances placed him in a position of conflict from which he should have freed himself and the corporate entities to which he owed duties by one of the mechanisms referred to above.

Junket operations

102 Another aspect of Mr Johnston's role in the Crown operations was his involvement in the review of Crown's relationships with Junket operators following upon the China arrest in October 2016. That was a review conducted with Mr Preston and Mr Felstead. Mr Johnston claimed that the work that he did in reviewing these Junket arrangements was once again as a CPH Executive providing services to Crown under the Services Agreement.[67]

103 Mr Johnston claimed that the work that he did in reviewing the Junket arrangements commenced after the China Arrests.[68] He claimed that he billed Crown for this work described as "VIP positioning".[69] He also claimed it was "quite a separate engagement" because he had never been involved in looking at how "we were doing business" in the "non-Australian components of Crown before or reviewing the probity of junkets".[70] He claimed that this work commenced in November 2016.

104 CPH rendered Invoices to Crown for Mr Johnston's work in "VIP Positioning" for the following hours: November 2016 *4* hours; December 2016 *6* hours; January 2017 *2* hours; February 2017 *5* hours; March 2017 *6* hours; April 2017 *3* hours; May 2017 *2* hours; June 2017 *2* hours; July 2017 *4* hours; August 2017 *8* hours; September 2017 *9* hours; October 2017 *8* hours; November 2017 *6* hours; December 2017 *6* hours; January 2018 *1* hour; February 2018 *10* hours; March 2018 *18* hours; April 2018 *28* hours; May 2018 *10* hours; June 2018 *12* hours; July 2018 *0* hours; August 2018 *18* hours; September 2018 *9* hours; October 2018 *12* hours; November 2018 *11* hours; December 2018 *15* hours; January 2019 *8* hours; February 2019 *3* hours; March 2019 *5* hours; April 2019 *5* hours; May 2019 *2* hours; June 2019 *3* hours.[71] Although the invoices were provided up to June 2020 CPH did not make any further claims for VIP Positioning Services by Mr Johnston after June 2019. Indeed after June 2019 the fees charged by CPH under the Services Agreement reduced markedly.

105 It is clear from the hours for which CPH billed Crown for Mr Johnston's services that he continued to provide Services under the Services Agreement at a Managerial level for over two years in respect of the work that he described as "VIP positioning". Obviously there were some months where he provided more Services than others and it is not clear what those services were because the invoices are not particularised.

106 This analysis also calls into question whether it was appropriate for Mr Johnston to describe himself as a "non-executive director" of Crown. This was not the subject of discussion with Mr Johnston but it is obvious that he was providing numerous categories of services to Crown in a managerial sense although as a CPH Executive under the Services Agreement.

107 Mr Johnston did not report upon these services directly to the Crown Board. However he claimed he would have "had discussions with board members" as "it went through the risk management committee".[72]

108 Mr Johnston said that from November 2016, at Mr Craigie's request, he participated in a group which included Mr Craigie, Mr Neilson, Mr Felstead and Ms Tegoni and others from time to time. The work of this group included discussions and reaching agreements in relation to the "processes for the on boarding and continued dealing with junkets". The group then reviewed all of the Junkets with which Crown had been dealing by reference to those processes that had been agreed. The credit team processed due diligence checks on information compiled by the sales team. If the credit team was satisfied with that information it presented "the output with a recommendation" to the group for its consideration to decide whether to accept or continue to deal with the Junket.[73]

109 By August 2017 Mr Craigie, Mr Neilson, and Ms Tegoni had left the group and a process had been developed for dealing with new Junket operators. That process included the establishment of a panel of Mr Felstead, Mr Preston and Mr Johnston who were the final decision makers in respect of whether Crown should deal with a particular Junket.[74]

110 Mr Johnston accepted that there is a risk of infiltration of organised crime into casinos.[75] He also accepted that if a casino operator does not have the appropriate systems in place, the casino is vulnerable to money laundering.[76]

111 Mr Johnston said that the due diligence process on Junkets prior to the China arrests and the review was a "less rigorous process" to the one that evolved thereafter.[77] He said that the fact that Junkets operated in Queensland, which he regarded as "a regulated environment for junkets", gave him some comfort in addition to the other things that Crown did. He accepted that it was the Crown Board's obligation to set the decision making in respect of deciding on the nature of the test to be applied in dealing with Junket operators. He said that the Board had to decide whether it is

"worth it" to continue to deal with them at all and that this was to be "part of the consideration" that is to be undertaken "over the next number of months".[78]

112 At the time that Mr Johnston gave this evidence in September 2020, the Crown Board had suspended its Junket relationships pending consideration and review of all Junket arrangements. Of course that changed on 17 November 2020 when the announcement was made by Crown that it had decided to cease dealing with Junkets subject to the conditions that have already been discussed.[79]

113 Mr Johnston said that he was not sure that when reviewing the Junkets after the China arrests with the application of a "stricter lens" that it was concluded that the Junkets that Crown had dealt with previously were of "ill repute".[80] However he accepted that the decision was made that Crown would no longer deal with approximately 100 Junket operators with whom it had been dealing prior to the China arrests.[81]

114 As referred to above, after the review was completed, further changes were made and Mr Johnston, Mr Felstead and Mr Preston formed a committee to make the final decision regarding approval of Junkets. The process involved escalating the information to that committee where "material new information came to light that may have a bearing on the propriety of the junket operator". However, there were only approximately five occasions between 2017 and 2019 when existing relationships with Junkets were escalated to the committee for its decision.[82]

115 Mr Johnston accepted that on 8 June 2017 AUSTRAC had written to Crown and referred to Alvin Chau having "a substantial criminal history".[83] He also accepted that AUSTRAC had requested documentation "evidencing Crown's consideration of the appropriateness of continuing to provide designated services to Mr Chau".[84] Mr Johnston agreed that this communication was appropriately described as "material new information" that was not escalated to him in June 2017.[85] He agreed that this was a "serious oversight".[86] When asked whether it showed a lack of robustness in the review process of existing Junket operator relationships, Mr Johnston said that it "seems to be a flaw in the process".[87]

116 Mr Johnston also accepted that Deloitte had recently referred to the committee on which he was serving with Mr Preston and Mr Felstead, and identified the absence of documentation recording its reasons for the review of Junkets as an area requiring improvement.[88] He gave the following evidence:[89]

> Q. … Do you agree that prior to the media allegations in July 2019, Crown Resorts' due diligence procedures for junkets were not robust?
>
> A. No. I think there is certainly some improvements that could be made to the process as we've agreed, but I don't think that goes to whether they were robust given the information that we were using as a gateway for our junket operators.

Q. I'm just wondering how it is that you give that answer in light of your agreement as a member of the board of directors to suspend relationships with all junket operators pending review of those relationships?

A. ... that decision is – is, from my perspective, is based on a couple of things. One is looking at that business as a matter of principle, firstly. Secondly, I think that based on the findings of – or sorry, the observations of this Inquiry and the external advice that we've received, it is opportune to properly assess our ongoing practices in that respect. So I think that processes can always be improved or continuously improved and we're certainly seeking to do that.

And I think that, you know, as I acknowledged yesterday, this is a part of the business where it is very difficult to get complete information. We have required criminal history checks in order to do business with anyone from 2016, so I think that that affords a degree of robustness to the process. But I certainly will agree with you that we can make it more robust.

117 Mr Johnston was then taken to evidence in which Mr Barton accepted that the due diligence that had been carried out on some of the Junket operators either did not identify all necessary information or sufficiently and accurately analyse the assessment of the risk.[90] When pressed as to whether he agreed with the observation, Mr Johnston agreed.[91]

118 Mr Johnston agreed that it was the Board's responsibility to set guidance on the type of Junket operators with which Crown ought to deal and to identify areas of significant risk and ensure arrangements were in place to adequately manage the risks.[92]

119 In this area Mr Johnston once again found himself with numerous roles. He gave the following evidence:[93]

Q. Do you agree that in the past the board of Crown Resorts has failed to ensure that appropriate arrangements were in place to adequately manage the risks associated with junkets?

A. No, not necessarily. I think that the board made it clear that we did not want to deal with individuals that had a criminal connection or were, you know, obviously with criminals. The system may have broken down but I don't think that's because the board didn't set the parameters in the correct space.

Q. So one of the problems that has arisen for you is that, first of all, who asked you to go into the process by which you would be part of the approval of junkets? Who was at the task you to do that?

A. That was Rowen Craigie, I believe, originally when I joined this group.

Q. So the three steps are Mr Packer asked you to become involved in the VIP business in 2013; correct?

A. Yes, that was a different involvement, but-yes. Yes.

Q. Yes, I understand the nature of it. Then Mr Craigie asked you to become involved in the review of junket relationships after the China arrests; correct?

A. That's right.

Q. And then Mr Craigie asked you again, then, to form part of the group that would approve the junket arrangements for the future after your review; is that right?
A. Sorry. No, on that third step-sorry.

Q. Yes
A. So the first two, yes. The third step, I think-the-the broader group that Mr Craigie was a part of and had formed post the China arrests started the process and then, of course, people left, including Mr Craigie. And those that were left continued on in-in that role. So I'm not sure that it was a separate decision. I think it continued, if that makes sense.

Q. So, as part of the review, the corpus of the group that was there for the review stayed on - -
A. Yes

Q. --- to then become the approvers; is that right?
A. That's right, yes.

Q. And, as I apprehend what you told me, you were doing all of this as a CPH executive providing services to Crown under the services agreement?
A. That's right.

Q. And so when it came to the board behaving in the usual way, you were then sitting on the board that was reviewing the work that you'd done as a service provider?
A. Yes

Q. And - - -
A. Well, sorry, I think the risk committee reviewed the work that we'd done as a service provider at first-a service provider at first instance. I'm sorry. Yes

Q. So it was the two instances, both at the risk committee level and then at the board, but, then, now you're on the risk committee; is that right?
A. Yes, but only quite recently. Yes.

Q. But do you see that there could be some difficulty with all the hats that you're wearing and trying to [work out] which role you're behaving in at the particular time?
A. Yes.

Q. How do you cure that?
A. Well, it's proposed that I step off this - well, we've suspended the business, but it is not proposed that I have that involvement on a go-forward basis.

Q. Do you mean in relation to junkets?

A. That's right.

Q. What about the risk committee?
A. Well, I think, if I'm off the junkets review committee, I think that potential for conflict has gone.

120 By this stage of his evidence Mr Johnston seemed more comfortable in identifying the potential for conflict. However it is clear that no one considered the efficacy or appropriateness of having a Crown director involved in these processes that were obviously sensitive and controversial. This was exquisitely a matter for Management to work within the confines of the risk appetite that should have been set by the Crown Board and the Board of the Licensee that was forming the relationships with these Junket operators.

Concluding observations – Executive Services

121 The analysis of Mr Johnston's involvement in the three areas of Crown's operations in which he provided services as a CPH Executive: (i) the VIP working group; (ii) Crown's usual budgeting process; and (iii) the review of Junket operations; demonstrates beyond doubt the real dangers of taking on these multiple concurrent roles. The concurrency of these multiple roles exposed Mr Johnston to the real and probable potential of being riddled with conflicts. There was no appropriate mechanism or regime in place for Mr Johnston to reflect and identify the particular duties and obligations that were owed to the various entities that he served. That is not to say that Mr Johnston was motivated by anything other than achieving what was best for either CPH and/or Crown. It appears that there was no delineation of that aim. Whatever was apparently good for CPH appeared to be good for Crown and vice versa. This approach probably came from the earlier years of the development of the company up until the end of 2015 when Mr Packer was the Chairman of the Crown Board and the Chairman of CPH.

122 However well motivated Mr Johnston may have been, the sad reality for Crown under the regime of the provision of Executive Services under the Services Agreement was the compromise of its corporate governance and risk management processes.

Other evidence

123 There are three other aspects of Mr Johnston's evidence that warrant analysis. The first is his involvement in the Melco Transaction including his obligations as a Crown director and his understanding of Crown's obligations to the NSW Government and the Authority not to permit the late Mr Stanley Ho acquiring any interest in Crown.

124 The second is his knowledge and/or understanding of the operation of the Southbank and Riverbank companies and bank accounts. The third is his evidence in relation to

the Message from the Board in the ASX Announcement/ Advertisement in response to the Media Allegations that were published in July 2019.

The Melco Transaction

125 Although the detail of much that follows in this analysis of Mr Johnston's evidence is discussed earlier in Chapters 2.9 and 4.7, its repetition here is to assist in providing the context for the conclusions reached in respect of the challenges to Mr Johnston's evidence before the Inquiry.

126 Mr Johnston's numerous roles and the interaction between the Controlling Shareholder Protocol and the Services Agreement have already been discussed. However there is another observation that should be made that exposes the absurdity of the arrangements that were in place at the time that CPH Crown Holdings was selling its Crown shares to Melco. It relates in particular to the provision of the confidential financial information that was reviewed by Mr Packer and Mr Johnston in May 2019 some of which was provided to Melco.

127 Mr Packer received the information under the Controlling Shareholder Protocol. Mr Johnston received the information as a CPH Executive under the Services Agreement with an obligation to provide Services to Crown in respect of the information that he received. Both agreements had constraints on publication.

128 Mr Johnston was not entitled to speak to Mr Packer about the information that he received under the Services Agreement because by this time Mr Packer had ceased to be a director of CPH. If he was going to speak to Mr Packer about information he received purportedly under the Services Agreement for the purposes of Mr Johnston providing Services to Crown there were constraints upon the ambit of that conversation and the requirement to obtain from Mr Packer certain undertakings.

129 The only permissible way Mr Johnston could have spoken with Mr Packer about the financial information he received from Mr Barton was for Mr Johnston to move from his role as a CPH Executive to his other role as Crown director and speak with Mr Packer on the basis that such communications were covered by the Controlling Shareholder Protocol.

130 These observations are made not only for the purposes of exposing the absurdity of the arrangement but also to highlight the fact that Mr Johnston had numerous obligations to various entities that required him to give serious consideration as to how he was going to manage those obligations.

131 At the time of the Melco Transaction, Crown had an obligation to take steps within its power to ensure that the late Mr Stanley Ho did not acquire any beneficial interest in Crown. Accordingly, it was necessary for Crown to ensure that any transaction by which it was possible for the late Mr Stanley Ho or his prescribed Associates to acquire

any interest in Crown was carefully reviewed so that it was in a position to ensure that it complied with its obligation to the NSW Government and the Authority.

132 As a director of Crown, Mr Johnston was burdened with assisting Crown in this compliance. It was incumbent upon Mr Johnston as a Crown director to assess whether the transaction with Melco involved a threat of non-compliance with the obligation that had been imposed on Crown by the NSW Government and the Authority in respect of the prohibition relating to the late Mr Ho and his Associates.

133 On 29 May 2019 CPH wrote to Melco referring to the "proposed transaction" under which Melco would acquire 19.99 per cent of the shares in Crown held by CPH and its related bodies corporate.[94] That letter referred to matters under two headings. The first was "Confidential Information". The second was "Benefit of Document". It was signed by Mr Jalland as the Chief Executive Officer for and on behalf of Consolidated Group Holdings Pty Limited and Mr Johnston as Finance Director.

134 Under the first heading, the letter recorded that before the terms of the proposed transaction "are agreed", CPH intended to provide Melco with "certain confidential information in relation to Crown". It also recorded that CPH would do so once Melco acknowledged and agreed that:

(a) the Confidential Information is secret, confidential and valuable to either CPH or Crown or each of their respective related bodies corporate;

(b) the Confidential Information must be kept confidential and may not be provided to a third party, other than to directors, employees and advisers of Melco (Authorised Persons):

i) strictly on a need to know basis for the purposes of the Proposed Transaction; and

ii) only after:

A. the name and title of the Authorised Person has been disclosed to CPH; and

B. a written undertaking to keep the information confidential on substantially the same terms as set out in this document, executed by the Authorised Person, has been delivered to Melco and, if required, CPH; and

(c) The above will apply until the information ceases to be confidential and regardless of whether or not the Proposed Transaction proceeds.

135 It is apparent that the officers of Melco signed this letter and acknowledged and agreed with the matters within the letter.[95]

136 The letter also recorded the following:

> **2. BENEFIT OF DOCUMENT**
>
> You also acknowledge that:
>
> (a) CPH holds the benefit of this document on its own behalf and on trust for Crown and each of Crown's related bodies corporate (together, Crown Group) in so far as the Confidential Information is the information of Crown or any member of the Crown Group, and may enforce this document on behalf of the members of the Crown Group;
>
> (b) Crown and each other member of the Crown Group are entitled to the benefit of the provisions of this document to the same extent as if they had been a party to this document, and may enforce this document in the same manner as CPH, to the extent Confidential Information is the information of Crown or another member of the Crown Group; and
>
> (c) any breach or threatened breach of the confidentiality restrictions outlined in section 1 may cause irreparable harm to CPH and members of the Crown Group, for which damages alone may not be an adequate remedy.

137 At the time that the letter was written to Melco on 29 May 2019 Messrs Jalland and Johnston had formed the view that they would not inform any of their co-directors at Crown or any Senior Management at Crown that the transaction was occurring. Mr Johnston contended that such a decision was based on a concern that there may be a "leak", referring back to an apparent leak that had occurred in respect of the Wynn transaction the previous month.

138 In 2017 Crown and Melco parted company when Crown sold down its final shares in the joint venture that was operating casinos in Macau and elsewhere. Notwithstanding the fact that Melco and Crown had parted company, the prohibition on Crown allowing the late Mr Ho or his prescribed Associates to acquire interest in it was still binding. It was not suggested that the provisions of the VIP Agreement were only applicable to Crown's operations in foreign jurisdictions. It was accepted by Crown that it had an obligation to the NSW Government and the Authority, to the extent that it was within its power to do so, to prevent the late Mr Ho or his prescribed Associates from acquiring any interest in Crown.

139 Mr Johnston gave evidence in relation to the disclosure letter referred to above that was provided to Melco at the time of the Share Sale Agreement which required Melco to acknowledge that CPH held the benefit of the document "on its own behalf and on

trust for Crown and each of Crown's related bodies corporate" insofar as the information that was provided to Melco was confidential information of Crown. It also required Melco to acknowledge that Crown and each of its related bodies corporate could "enforce" the document on behalf of the members of the Crown Group. This acknowledgement was in the context of a further acknowledgement that any breach or threatened breach could cause "irreparable harm" to Crown for which damages may not be an adequate remedy.[96] Mr Johnston gave the following evidence:[97]

Q. Under this arrangement, you declared CPH as the trustee of a trust for which Crown Resorts and its related bodies corporate were beneficiaries; is that correct?

A. That appears to be what it's saying, but I'm not a lawyer so I'm – this was obviously a document that was drafted by CPHs lawyers to deal with the requirements of the services agreement regarding disclosing information.

Q. But you signed it, didn't you?

A. Yes.

Q. You're a highly experienced tax accountant, aren't you?

A. Yes.

Q. And you've had dealings with trusts and trustees on many occasions and in many different contexts in your experience, haven't you?

A. Yes.

Q. And you understand that a trustee has serious legal responsibilities to act in the best interests of the beneficiaries of a trust, don't you?

A. Yes.

Q. And you understood from a risk perspective, that a breach of this undertaking by Melco Resorts could cause irreparable harm to Crown Resorts, didn't you?

A. The undertaking to keep things confidential? Yes.

Q. And Crown Resorts is a publicly listed company in Australia. Did you inform Crown Resorts that you declared CPH as its trustee in relation to the promises in this arrangement?

A. No. My advice was – didn't – didn't suggest that I needed to do that.

...

Q. ... Do you say that you presume[d] to enter into an arrangement with Melco Resorts in which CPH became a trustee of a trust for Crown Resorts under an arrangement which you acknowledged exposed Crown Resorts to the risk of irreparable harm if it was breached without first informing Crown Resorts of that fact?

A. As I understood it, the purpose of this document was to comply with the requirements in the services agreement and these were the requirements. So

if – I can't comment on whether your characterisation of what this is providing for is the correct legal characterisation.

Q. Well, let me just see. You see, what Mr Bell is asking you is, did you tell Crown that you had told Melco that you, as CPH's representative, or that CPH had an arrangement with Crown in which it, CPH, acted as a trustee in relation to the information?
A. No, I didn't.

...

Q. And is it your evidence that it didn't occur to you that Crown Resorts would need to know that it was incurring risks under this arrangement with Melco Resorts which were exposing it to the possibility of irreparable harm?
A. No. We – as I said, we – I was taking advice on the appropriate protocol to follow. This was the result of that advice and the advice didn't – didn't – didn't tell me that I had to disclose this to Crown.

140 Mr Johnston accepted that he knew that Crown had entered into regulatory agreements with the Authority containing provisions intended to prevent entities associated with the late Mr Stanley Ho from taking an interest in Crown.[98] However as he had done before Mr Johnston referred to his knowledge of a "sensitivity" to the late Mr Stanley Ho having an involvement in Crown.[99] When Mr Johnston qualified his answer in this way, he was further examined as follows:[100]

Q. You know that wasn't my question, don't you, Mr Johnston. I will ask it again. You knew that Crown Resorts had entered into regulatory agreements with the New South Wales Independent Liquor and Gaming Authority containing provisions intended to prevent entities associated with Dr Stanley Ho taking an interest in Crown Resorts; correct?
A. Yes.

Q. And at this time Melco Resorts was well known to you, wasn't it?
A. Yes. Melco Resorts as an entity, yes.

Q. You knew that Melco International held its shareholding in Melco Resorts via its subsidiary Melco Leisure and Entertainment Group Limited; correct?
A. I knew that Melco International had a substantial shareholding, yes.

Q. You knew that Melco Resorts was a subsidiary of Melco International at the time, didn't you?
A. No, I'm not sure that I did, no.

Q. You did, though, know that Melco International held its shareholding via its subsidiary Melco Leisure and Entertainment Group; do you agree with that proposition or disagree with it as the case may be?
A. That is the listed company you're talking about.

Q. Both Melco International and Melco Resorts were listed, weren't they?
A. Yes.

Q. And you knew that Melco International held its shareholding in Melco Resorts via its subsidiary, Melco Leisure and Entertainment Group; correct?
A. No, I'm not sure that I had that specific knowledge.

141 Although Mr Johnston's evidence in this regard is referred to in detail in Chapter 4.7, it is also extracted here to assist with an understanding of the context of this analysis. Mr Johnston was taken back to his previous evidence in which he had agreed that he knew that Melco International held its shareholding in Melco Resorts via its subsidiary Melco Leisure.[101] He claimed that he must have "misunderstood" the question and assumed that the question was referring to the listed entity being Melco Resorts, and said "so I apologise for that".[102] He was further examined as follows:[103]

Q. I suggest that the answer that you gave on Friday was a truthful answer and you're trying to depart from it now because you perceive it unhelpful to the position that you would like to propound; do you agree?
A. No.

Q. You knew that in the past Dr Stanley Ho had an interest in Melco International, didn't you?
A. No, I'm not sure that I did know that.

Q. You knew in the past that Dr Stanley Ho had been the chairman of Melco International, didn't you?
A. Yes, I did, originally, yes.

...

Q. ... You knew that an entity associated with Dr Stanley Ho brought his interest in the City of Dreams joint venture to Melco International so that it could be a part of the Melco PBL joint venture, didn't you?
A. Yes.

Q. And you knew that Great Respect had converted convertible notes in Melco International into an approximately 20 per cent shareholding in Melco International?
A. Yes, based on what we saw last week, yes.

...

Q. ... You did know in the context of the Melco International Crown Resorts joint venture that Great Respect was the Stanley Ho entity that brought his interest in the City of Dreams joint venture to Melco International ---
A. No, I'm not sure that I knew that.

Q. You hadn't reviewed by May 2019 any documents as to the timing of the Crown Resorts Melco joint venture to indicate that Great Respect no longer had an interest in Melco International, did you?
A. No, no. I wasn't aware that – sorry, no. The answer is no.

Q. And you hadn't reviewed any documents since the time of the Crown Resorts Melco joint venture to indicate that Stanley Ho or any entity associated with him no longer had an interest in Melco International, had you?
A. No.

142 Mr Johnston had a penchant for inserting into his answers the expression "sensitivity" relating to the late Mr Stanley Ho. He was asked again:[104]

Q. You were aware that the New South Wales Government and the [A]uthority, ILGA, were deeply concerned about Dr Stanley Ho having indirect or direct interest in the public company Crown Holdings – Crown Resorts; you were aware of that, weren't you?
A. Yes. I was aware there was sensitivity to that, yes.

Q. No, no. I asked you, you understood that the government of this State was concerned that Dr Stanley Ho did not get a foothold or get an indirect or direct interest in the public company that a close associate of the casino that it was authorising; you understood that, did you not?
A. Yes. Yes, I did. Yes.

Q. And so, at the time, that is, the time that Mr Bell is asking you about, in May of 2019, you knew that that was a deep concern of the Government of New South Wales and the authority, didn't you?
A. Yes.

143 It was suggested to Mr Johnston that in those circumstances he had an obligation to inform Crown of the proposed transaction with Melco so that it could check for itself whether the transaction would put Crown in breach of its regulatory agreements with the Authority. Mr Johnston did not agree with that and said "I had no understanding that Stanley Ho had an involvement with the transaction".[105] He then gave the following evidence:[106]

Q. But you didn't check, you told me.
A. I had no reason to believe that he would be.

Q. But if you didn't check – you see, this is the problem, isn't it, Mr Johnston, with the layer upon layer of your obligations, which is not free from complexity, but at this time, you didn't check and, therefore, you couldn't know, could you?
A. Well, I mean, the party that we were dealing with was Melco Resorts. I wasn't aware that ---

Q. Yes.

A. I – I was not aware that Stanley Ho, or any entities associated with him, had an interest in Melco Resorts.

Q. But you knew, over the years, that that was a particularly interesting question for all regulators to see if Stanley had a role in Melco. You knew that, didn't you?

A. Yes.

Q. And you hadn't known, since 2017, when the Melco parted company with Crown, what had happened vis-à-vis Stanley and Melco; you agree with that?

A. Yes, I agree with that, yes.

Q. So, you see, what I'm saying to you is, if you didn't check, you couldn't know, could you?

A. Well – but, I suppose, we took advice on what – what approvals, if anything, was required in order for this transaction to be – to be consummated. And the advice was that there were – there were no approvals required and that we didn't have to disclose it to – to Crown Resorts. I mean, at the end of the day ---

Q. But that's a different – that's a different question, at the end of the day, as you say. But all I'm suggesting to you is, with the sensitivity to which you've referred so often, you couldn't know whether Stanley, Dr Stanley Ho – the late Dr Stanley Ho now – had an interest in Melco unless you or someone on your behalf checked it out. Would you agree with that?

A. Positive – absolutely no. No.

Q. And if you have a State Government putting in a contract a prohibition such as this, as was described by Mr Neilson to you, wouldn't it have been a very good idea to check whether Stanley did have an interest in Melco, even as a director of CPH?

A. Well, I mean, we had dealt with Melco for many years, as part of the joint venture, and there was no suggestion that Stanley did have an interest in – in Melco Resorts or involvement in Melco Resorts, based on our knowledge from that time. So there was – and Melco Resorts had been approved as a joint venture partner with Crown or – sorry. Melco – Melco Investments had been approved as a joint venture partner and Melco Resorts, of course, had been approved by a range of regulators, including the ILGA, at the time that we entered into – or we were granted the licence. So there was – there was nothing that was putting me on notice that there were issues there; quite the opposite, I'd ---

Q. But that was – that was all in the past, Mr Johnston; that was all up to 2017. You see, you had no knowledge of what had happened in the 24 months between Melco and Crown parting company at the end of the joint venture and the sale to Melco in June'19; correct?

A. Correct.

Q. And so, for abundant caution and for the sake of Crown's obligations to this Government of New South Wales, or to the Government of New South Wales, wouldn't it have been a good idea to have it checked out?
A. As I said, we took the advices that we did at the time.

Q. Are you saying it wasn't a good idea to have it checked out?
A. No, I'm not saying that. I'm not saying that. We took – we thought – we thought we took the right advices at the time. I think, with the benefit of hindsight, I think that, perhaps, we should have looked more deeply. Yes.

144 Mr Johnston agreed that if it had been analysed and CPH had found that the late Mr Stanley Ho had an indirect interest in Melco, CPH could have indicated to Melco that it would proceed with the transaction so long as the late Mr Stanley Ho's interest was removed.[107]

145 Mr Johnston did not give proper consideration to Crown's obligations to the NSW Government and the Authority under the various regulatory agreements at the time that he caused CPH Crown Holdings to enter into the Share Sale Agreement with Melco. As has been discussed earlier, Mr Johnston had so many obligations at this time including to Crown as a director of Crown, to CPH as a director of CPH to Crown as an Executive providing Services under the Services Agreement and to CPH Crown Holdings as its sole director. It is true that CPH had retained lawyers to act for it and to ensure that any regulatory steps that were required were taken. This had an impact on Mr Johnston's consideration of his obligations as a Crown director and his numerous other roles.

146 In this Suitability Review it is necessary only to observe that the numerous roles with which Mr Johnston was burdened at the time of the Melco Transaction prevented him from fulfilling his obligations to protect Crown appropriately.

147 However it is appropriate to observe that had Mr Johnston not been a director of Crown there was no legal requirement for CPH Crown Holdings to advise either Crown or the Authority that it intended to sell its shares to Melco other than if it was understood or apprehended that by doing so Melco would become a close associate of the Licensee such that it required the Authority's approval. This of course was a burning question at the time of the transaction and it was strongly argued that Melco did not become a close associate and did not require approval from the Authority, in particular in respect of the transfer of the first tranche of shares in Crown. The pragmatic approach adopted by Melco in August 2019 to allow for a practical solution was to make an application for approval whilst maintaining its entitlement to argue that it was not necessary.

148 The lack of clarity surrounding the position of whether and at what point Melco may have become a "close associate" has caused consideration to be given to the possible mechanisms to provide certainty in this very significant area of Regulation. They are discussed in Chapters 5.1 and 5.2.

Southbank and Riverbank

149 Mr Johnston became aware of the Southbank and Riverbank bank accounts during the course of a CEO meeting in 2014. He understood that their purpose was to afford VIP customers "a degree of confidentiality in their dealings".[108] It was explained to Mr Johnston that these accounts fell within Crown's "normal AML processes". Mr Johnston claimed that in those circumstances he was comfortable that these arrangements would not give rise to money laundering concerns.[109] He was not made aware of the lack of requirement for Southbank or Riverbank to make any reports to AUSTRAC.[110]

150 After the journalist's email requesting details in relation to the accounts and the suggestion that alleged money laundering in these accounts would be raised in the print media, Mr Johnston asked Mr Preston to provide him with a memorandum in relation to the operation of the accounts. That memorandum dated 4 August 2019 discussed elsewhere reported that those bank accounts were covered by Crown's normal AML processes.[111].

151 One of the reasons Mr Johnston asked for a memorandum from Mr Preston was so that he could be satisfied that the accounts were subject to normal reporting processes to AUSTRAC.[112] Mr Johnston certainly did not look at the bank statements himself and he understood that nobody had looked at them at the time of the memorandum. However he agreed that had the statements been reviewed Crown could have identified that it had problems. He also accepted that the bank statements should have been looked into to help him as a director to know how to respond to the allegations. He accepted that this process had broken down and he was not given that information.[113]

152 Mr Johnston asked Mr Preston for assurances about whether Crown had complied with its reporting obligations in respect of the money laundering allegations. However he accepted that he did not ask for an assurance about whether there had "in fact, been any money laundering" in the Southbank and Riverbank accounts.[114] He gave the following evidence in respect of this matter:[115]

> Q. Doesn't that rather underscore Mr Barton's observation that Crown's culture was focused on reporting rather than the prevention of money laundering?
>
> A. I think that in my mind at least the fact that these accounts were subject to the ordinary reporting obligations and, therefore, were not any more susceptible to money laundering than any other account, led me to the view that – that that was a prohibitive aspect. But I – you know, with the benefit of hindsight, I can see the point that you're making.

153 Mr Johnston was not informed at the time he sought the assurance from Mr Preston in August 2019 that ANZ had shut the accounts in 2014 and that the New Zealand bank, ASB, had also shut the accounts because of money laundering concerns.[116] Mr

Johnston finally referred to the failure to inform him of this as "an oversight".[117] He was asked:[118]

> Q. Based on the discussions that you have had as a director of Crown Resorts since the Inquiry has commenced, do you agree that there was a lack of AML compliance culture at Crown Resorts?
>
> A. I think that where we had got to is that whilst there was a compliance culture, there may not have been a proactive culture as you've been referring to before in terms of going the next step. So that's certainly been the concerns that – at the board that – that things have not been appropriately elevated where they have been – where there have been issues.

154 The problems that were identified in the later evidence were far more serious than presented at the time that Mr Johnston gave his evidence. The analysis by Grant Thornton and Initialism was not initiated until after Mr Johnston completed his evidence. It was also the case that at the time Mr Johnston gave his evidence it had not been disclosed that Ms Lane had conducted an analysis of the bank statements in August 2019.

155 In any event, it is clear that not enough focus was placed by the Crown Board on the need to ensure a proper analysis was conducted of the Southbank and Riverbank accounts and bank statements. It is all very well to have a report that the usual AML reporting obligations applied to these accounts. However when the article was published it was incumbent upon the Licensee and the Crown Board to have a proper analysis conducted of the two accounts. As has been recognised elsewhere, Mr Barton should have informed the Board of his previous experience with the ANZ bank closing the accounts because of the money laundering concerns. The Board should have also been informed that at the very time the allegations were extant in August 2019 the CBA was also closing the accounts.

156 Hundreds of millions of dollars were transacted through these two accounts and Mr Johnston was one of the few directors who was aware of the existence of the companies and of the reason for the accounts. Mr Johnston's experience and expertise would have enabled him to make the judgments that have been made in respect of the operation of these accounts at the time the allegations were made. It is a most unfortunate outcome that this did not happen.

ASX Announcement/Advertisement

157 Mr Johnston said that his initial reaction to the *60 Minutes* program was that of "shock and disbelief" both as to the content and the manner of the publications. His immediate reaction was that the content was "wrong, unfair and unbalanced in several ways". Mr Johnston's impression was that there was an intention to continue "a rolling stream of such publications over an unspecified period of time". In these

circumstances he was very concerned about the commercial and reputational harm that Crown and its stakeholders may suffer.[119]

158 The process of the preparation of the Advertisement has been referred to elsewhere. Mr Johnston said that he expected that if Crown Management or Mr Murphy of MinterEllison identified any content in the proposed Advertisement which could not be verified it would be removed from the draft. Mr Johnston also referred to the fact that Ms Halton in particular had emphasised the need for Crown Management to verify the correctness of the statements that the Board intended to publish. He understood that at the time of publication members of Crown Management as well as Mr Murphy were satisfied that the statements in the Advertisement were correct. In those circumstances Mr Johnston was satisfied at the time that he approved its publication that the content was correct.

159 Mr Johnston gave the following oral evidence in respect of the Advertisement:[120]

> Q. Now, would you accept that when we look at the board papers of 10 August this year, and September of this year, there has been a distinct change in the tone of the board of directors in that period?
>
> A. I think that this message was released in response to a number of very strong allegations, such as knowingly dealing with criminals, knowingly abetting or facilitating money laundering, knowingly breaking the law, etcetera. And I'm not sure that the board would agree with those today any more than we did at the time that we released this advertisement. In terms of accepting that there needs to be some work on the systems around which junket operators we do business with or whether we do business with them, and the AML systems, I think that there is an acceptance by the board that we can do better.

160 Mr Johnston did not recall whether Ms Manos had advised the Board to be cautious about publishing a full page advertisement.[121]

161 Mr Johnston gave evidence that it only occurred to him at the time he was giving evidence that asking Mr Felstead and Mr Preston to prepare a report in respect of the allegations may have created a "conflict" because they were the individuals in charge of the relevant areas of Crown's business that were the subject of the allegations both in respect of AML breaches and Junkets.[122]

162 Mr Johnston was sensitive to the problem in respect of stakeholders losing faith in the organisation. He claimed that the Advertisement was in response to statements that accused Crown and therefore the Board of knowingly dealing with criminals and breaking laws which he felt could not go unchallenged.[123] He thought it was necessary to immediately respond to accusations that were going to the very heart of the integrity of the organisation.[124]

163 However Mr Johnston accepted that it "would appear" that Crown had dealt with Junkets that were connected to criminal elements; that the Southbank and Riverbank

accounts had evidence of structuring within them; and that the joint AML program had yet to be rolled out across Melbourne and Perth.[125] Mr Johnston accepted that, prior to the China Arrests, it appeared that the VIP business had "too aggressive a risk appetite". He accepted that there was a need to recalibrate the component of how Crown does business with Junkets.[126]

Conclusion

164 The sad conclusion is that Crown's corporate governance problems and risk management problems were exacerbated by Mr Johnston's multiple and concurrent roles at the Management level of Crown's operations. There is no doubt that the lines of reporting were blurred; risks were not properly identified; identified risks were not properly notified; conflicts or potential conflicts were not recognised; and the corporate needs of Crown were not given precedence over the corporate needs or desires of CPH.

165 It is obvious that many in Crown and CPH have relied upon the services that Mr Johnston has provided over the years whilst he has been a Crown director. That includes Mr Packer, Mr Alexander and Ms Coonan. However the problems identified in the analysis of Mr Johnston's evidence establish that he should not have been involved in any managerial role with Crown nor on any Board Committees particularly relating to corporate governance or risk management.

166 The multiple burdens on Mr Johnston have been eased with the present Chairman recognising the necessity for such a reduction in responsibilities. That is only one step that is necessary in reconstructing Crown. However it is a necessary step and so far as Mr Johnston is concerned should only be seen as the first step.

167 Mr Johnston has served as a director on the Crown Board for over 13 years. It would be appropriate for him to conclude his tour of duty as soon as possible to enable the Authority to be comfortable in due course that Crown will be a suitable person to be a close associate of the Licensee.

Chapter 4.3.4

Andrew Demetriou

1 Andrew Demetriou has been a non-executive director of Crown since January 2015. He has also been a member of the Crown Risk Management Committee since October 2017; the Crown Audit & Corporate Governance Committee from January 2018 to June 2018; the Chair of the People Remuneration and Nomination Committee from October 2019 to February 2020; and the Responsible Gambling Committee since February 2020.[1]

2 Mr Demetriou has been the Chairman of Crown Melbourne since 30 January 2020.[2]

3 Mr Demetriou was the CEO of the Australian Football League (AFL) from 2003 until June 2014. He has also served as a non-executive Chairman of the Baxter Group and as Chairman of the Australian Multicultural Advisory Committee. He also completed a two year term on the Australian Referendum Council for Indigenous recognition in the Constitution.[3]

4 Mr Demetriou holds a Bachelor of Arts degree and a Diploma of Education. After teaching for a couple of years at Trinity Grammar in Melbourne and later at RMIT in distance learning he went into private enterprise in a dental importing business which became a dental manufacturing business that purchased the parent company out of Italy. He was Managing Director of that company for many years until around 1998. He then became Chief Executive Officer of the AFL Players' Association.[4]

5 In 2000 he became the General Manager of the Football Operations at the AFL. In 2003 he took up his position as CEO of the AFL.[5]

6 He also served as Chairman of the public companies Baxter and Capitol Health Limited and is Chairman of the Board of Management of Cox Architecture.[6] He serves on the Advisory Board of Bastion, a sports marketing group. During the period 2015 to 2018 he served as Chairman of the Advisory Board for Acquire Learning and as a director and Chairman of Purebaby.[7]

7 Mr Demetriou met the late Mr Kerry Packer while he was CEO of the AFL during some negotiations for broadcasting rights with PBL. He was subsequently introduced to

James Packer and "had several dealings with him over the years".[8] In 2012 he was approached by James Packer to explore whether he was interested in joining the Crown Board. He could not do so at the time because of his role at the AFL. However when that role concluded in about 2014 Mr Packer then approached him again and he joined the Crown Board in January 2015.[9]

Southbank and Riverbank

8 Mr Demetriou gave evidence that he had not heard of either Southbank or Riverbank at the time of the Media Allegations in July and August 2019 and, to his knowledge, he had not been involved in any decisions regarding those companies, although he was made aware that the bank accounts held by those companies have been closed.[10]

9 Mr Demetriou has not had any formal training in casino regulation. He had never undertaken any money laundering training prior to joining the Crown Board and has only recently completed the Crown online AML training which he agreed was not extensive.[11] He claimed that there is no doubt that the Board has recognised "particularly in the past couple of years", and also since Ms Siegers' appointment, that it has anti-money laundering obligations to go above and beyond the reporting requirements.[12]

10 Mr Demetriou accepted that although the Southbank and Riverbank accounts were the subject of the Media Allegations in August 2019, he had not looked at the bank statements. The Board had asked Management to come back to it with a response to all the Media Allegations in respect of the accounts. Mr Demetriou explained that he did not review the accounts and that he was not an accountant. He claimed that reviewing the accounts himself would not have been as effective as asking the people responsible, the "expert advisers" who are dealing with the bank to report back to the Board.[13]

11 It did not occur to him that the people who were supposed to be dealing with the issue in management and reporting back to the Board were the ones who were not doing their jobs properly in respect of the accounts. He emphasised that "the allegations were just allegations" and emphasised that MinterEllison was supporting management preparing the response to the allegations.[14]

12 Mr Demetriou was taken through the bank accounts to specific examples of structuring, and gave the following evidence:[15]

> Q. It wouldn't take any expertise in money laundering to see that there was a problem with these sorts of transactions, would there? It's pretty obvious.
>
> A. Well, they should have been picked up, Mr Aspinall.
>
> Q. Yes. And so when you asked management whether there was any truth to these allegations that money laundering was occurring through these

accounts, do you see what they told you wasn't correct? You can see that straight from the statement, can't you?

A. Well, they may have been mistaken, Mr Aspinall.

Q. Yes.

A. But your proposition – your proposition is right.

Q. And going back to the proposition that I was trying to make before, wasn't asking management whether there were any problems in these accounts problematic?

A. Well, I don't – I don't accept that proposition.

Q. I suppose you have to start somewhere, Mr Demetriou. But in terms of the allegations that were made, to be advised that the AML policy applies to them is one thing, but, forensically, looking at what actually happened is terribly important from the board's point of view, isn't it?

A. Absolutely, Madam Commissioner.

Q. And the report that we've seen that you received as a board member, did not indicate any of this sort of conduct was occurring. I understand that and you recall that, I presume?

A. Yes, I do, Madam Commissioner.

Q. But if it had been alerted to you, or you'd been alerted to it, you could have indicated publicly that the company did have some problems, couldn't you?

A. Yes, Madam Commissioner.

Q. Rather than going through the process of this, at times, scorching questioning for some – not for you, of course – and you could have avoided that; do you agree?

A. Much more preferable to have avoided it, Madam Commissioner.

Q. I would have thought so, Mr Demetriou. But it is a significant matter that a public company who has a licence to run a casino in this State would need to look at this more closely to indicate to the regulator rather than this Inquiry that it is experiencing or has experienced problems with its accounts. Would you agree with that?

A. Yes, Madam Commissioner.

Q. Rather than having it drawn out in this public domain like this; would you agree with that?

A. Yes, Madam Commissioner. Absolutely.

13 Mr Demetriou had armed himself in the witness box with a Crown internal report that had recently been provided to him in respect of an analysis of the two bank accounts.[16] He embarked on a most unimpressive mission to suggest that the problems in the two accounts were possibly *de minimus* claiming that there were but 102 problematic transactions out of 34,000 "where it appears that structuring or aggregation of those amounts had taken place". He then claimed it was "around about 0.3 per cent of all

the transactions" but conceding it was "0.3% to many" as "you want 100% accuracy in these matters. Absolutely".[17]

14 Notwithstanding these numbers, as he understood them, Mr Demetriou accepted that these transactions should have reached the RMC.[18] Once the document that Mr Demetriou had in the witness box with him was produced to the Inquiry, it became clear that this was a report limited to the aggregation problem that has been referred to elsewhere, rather than generally relating to the structuring in the accounts.

15 Mr Demetriou was taken through the structuring entries in Southbank's bank statements, both in respect of cash deposits at various places around the suburbs, and QuickCash deposits. He gave the following evidence:[19]

> Q. But having looked at this account, do you see that it's not a minor problem. It's endemic through this account, isn't it?
> A. It appears that way, Mr Aspinall.
>
> ...
>
> Q. The making of multiple cash transactions under $10,000 on the same day at different branches of the Commonwealth Bank.
>
> Q. Yes. You agree with that Mr Demetriou.
> A. Yes, I do Madam Commissioner.
>
> Q. And you would agree that that may well be a very large red flag for structuring in anti-money laundering parlance; do you agree with that?
> A. Yes, I do, Madam Commissioner.

16 Mr Demetriou said that he was not aware of the process of depositing cash into a QuickCash machine anonymously.[20] When taken through the account in respect of such a transaction, he gave the following evidence:[21]

> Q. And having looked at all that, do you agree that the problem within, at least, the Southbank account is more serious than you represented yesterday to the Inquiry?
> A. It appears that way, Mr Aspinall.

17 Mr Demetriou was not aware that as recently as late 2019 Crown was still persisting in trying to open up new bank accounts for the two companies.[22]

18 Mr Demetriou claimed that the bank accounts were closed because it had been demonstrated "that there appears to have been some transactions that have occurred, and at this stage it appears to be some 600 cash transactions that appear to be a process of aggregation and structuring that we should not be party to". When pressed he accepted that there was a concern that the accounts had "money laundering happening through them".[23]

19 He rejected the suggestion that Crown had turned a blind eye to money laundering, but accepted that if a bystander observes accounts continuing to have within them what is obvious structuring and nothing is done about it, it is a reasonable proposition for them to say that Crown was perhaps "not taking this seriously".[24]

Crown Melbourne

20 Mr Demetriou described the role of Crown Melbourne as:[25]

> To make sure we adhere to the licence requirements in Melbourne, to at all times uphold the regulatory requirements of that licence, to work closely with our stakeholders and in particular the VCGLR on our licensing requirements, and to work with other stakeholders which include the obviously very significant stakeholder of the Victorian Government.

21 He said that there was a component of ambassadorial work as the Chair of Crown Melbourne and gave the following evidence:[26]

> I'm a Melbournian and I had a prominent role as a public figure in Melbourne for a number of years, that I had established relationships with – with governments – State governments, both – of either side of the political persuasion, and had established a network of people who are quite prominent in Melbourne. So yes, I would agree that it's ambassadorial in part.

22 Mr Demetriou accepted that it is a very important part of Crown Melbourne's Board obligations to ensure that Crown Melbourne complies with the conditions of its Licence.[27]

Junkets

23 When he joined the Crown Board, Mr Demetriou was not really familiar with the nature of Junkets, but understands now that it is a representative or someone who takes the risk on bringing clients to Crown Melbourne, normally large clients, who in some cases have a dedicated room. He also suggested that they would normally be dealing in very large amounts of money.[28] He was not specifically aware that in addition to a Junket operator, there might be people called Junket agents. He had a broad notion about financial arrangements for the giving of credit to Junkets. However he said that he had learnt more throughout the Inquiry, so he now has a broader understanding. He gave the following evidence:[29]

> Q. And so sitting now as the Chair of the Board of Crown Melbourne, the licensee, what do you see as the risks that junkets pose?
>
> A. Well, I think the risks are attached to making sure that when you do your due diligence on junket operators, that you delve deeper and more comprehensively and more extensively into their backgrounds and put the onus back on the junket operators to prove to Crown that they are reputable, that the issues around any litigation they may have, any probity issues. I think

> from our perspective, we've suspended junket operators until the end of 2021, of the financial year 2021 – June 2021 and during that time between now and then we propose to do a thorough review of how we deal with junket operators, if in fact, we are to deal with junket operators going forward.

24 Mr Demetriou suggested that in the future, subject to Board decision, the process of making decisions on Junket operators will include a "channel to the risk management committee that would then be in turn a channel to the Board, for ultimately the Board to approve" rather than a single person.[30]

25 Mr Demetriou was taken through specific examples of individuals with whom Crown had commercial Junket relationships. Although he highlighted the fact that a number of the matters to which reference was made were "allegations", he concluded that, on balance, Crown should "probably not" be dealing with specific individuals. He referred to the complexity of the test to be applied in making a decision whether to deal with the specific individual. However he highlighted the fact that the burden should be on the applicant to prove to Crown that they are of good repute.[31]

26 Mr Demetriou had claimed that these problems with Junkets were all in the past. It was suggested to him that this was erroneous and demonstrated by the very fact that Crown was still dealing with certain of the individuals as late as October 2019. He resisted this suggestion by claiming that he was not the person in the "decision-making role" on the Junket operator. However he gave the following evidence:[32]

> Q. I think the point that counsel assisting is making is your proposition that the problems were in the past, and to bring you to the present, that is, since the Inquiry has been announced, if you've seen the evidence, there have been problems exposed since August, September 2019 with which the company has not yet dealt. Do you understand that?
>
> A. I accept, Madam Commissioner, that there may have been issues that have been exposed in the past few months. And I'm sure, going forward, that there will be other issues that crop up from time to time. But it's how you respond to those. And I expect that we will respond in accordance with meeting our – our obligations under any licence arrangement.
>
> …
>
> Q. I will just say it once again: do you accept that it's not all in the past, that it is more contemporary than that, the problems we see here?
>
> A. I accept that there are issues that are contemporary, and issues from time to time will continue to crop up.

27 Mr Demetriou said that he was not concerned that he did not have particular familiarity with the Junket operators, notwithstanding that he is Chair of the Melbourne Licensee. He said that he had familiarity with Junket operators to the extent that he understands: (i) why they exist; (ii) how they operate; and (iii) whether they are accepted in other jurisdictions. He said he understood the allegations that

surround Junket operators and he believed he had sufficient knowledge about Junket operators to make an informed decision. He accepted that if a casino deals with people of bad repute or nefarious backgrounds, the licence will be put at risk.[33]

28 Mr Demetriou emphasised that Crown is conducting a "thorough review" in respect of their Junket operators, and he said he reserved his position as Chairman of the Board of Crown Melbourne until he discussed it with his fellow Board members.[34] He suggested it would make it a lot easier for Crown if it was the Regulator who made the decision about them.[35]

Culture

29 Mr Demetriou was taken through the communications in which it was clear that Crown had been dealing with individuals who were involved with what was referred to as the "underground network".[36] He accepted that the content of the communication was very concerning and that there was no excuse or justification for dealing with such individuals. He accepted that such information was not given to the Risk Management Committee and that there was a problem of information which is known to people lower down in the organisation, not making the Risk Management Committee aware of it. He claimed that there was a risk framework in place, and that it just had deficiencies.[37]

30 He did not accept the proposition that the Risk Management Committee should be more proactive to find out what is happening. He claimed that the Risk Management Committee is very inquisitive. They have spoken to Mr Preston, Mr Stokes, Mr Neil Jeans from Initialism and Ms Manos. He suggested that one can overanalyse things, but under the management of the Committee by Ms Halton as Chair, it is constantly reviewing what is done and is constantly prepared to recommend to the Board an increase in resources, external third parties to conduct reviews, and to do what can be done to improve the risk framework.[38]

31 He accepted that there was a risk escalation problem, but it was not a failure in process, rather it was a failure in "culture". He said that if the information flow is not forthcoming, it makes it very, very challenging for a Board to operate. He also gave the following evidence:[39]

> Q. And so I suppose, when you are discussing this with Mr Aspinall from the point of view of the layer upon layer in the organisation such as yours, and how you actually ensure that this information is (1) appreciated and (2) elevated, it is not an easy task, is it?
>
> A. No, it's challenging. But again, as I said earlier, Madam Commissioner, it speaks to the culture of the organisation and to shift culture takes time and you have to have everyone buying into the same culture, the same culture, the same values proposition that you need to operate under.

32 He said that if you do not have "your culture right, then there are lots of consequences that occur as a direct impact of not having the proper culture practices in place".[40]

33 It was at this stage, when asked about his observation that he thought it would take a long time to fix the culture, that Mr Demetriou then made a couple of rather lengthy observations. His evidence was as follows:[41]

> A. No. I said that to shift culture is not easy. It takes time. I think – I think Crown, fundamentally, has a very, very good culture. In the experience that I've seen and with the staff that we've got, and the 18 and a half thousand of them, and what we're building in Sydney, we have very good cultural practices in place. But, as it turns out, for whatever reason, in the matter that we're – are before this Inquiry, the culture of compliance, which is a consequence of having a good culture, which is what you weave into your organisation, which is to be a valuable asset of your organisation, the culture, didn't – it didn't act in the way it should have. We were deficient in that area.
>
> Q. What does that mean?
> A. Well, the culture of an organisation, fundamentally, Madam Commissioner, is the behaviours and the values, the beliefs, the symbols that people accept. And they, essentially, accept them without even thinking about them. And for whatever reason, as part of that culture, it's a non-negotiable that you deal with proper communication, proper transparency. You deal – you – you act ethically. You live and breathe the values of the organisation. And, in the area of information flow that went to approval of junket operators, the defects in – in the AML process, that information should have been forthcoming. And if, for whatever reason – and I think, on balance, the people are very decent people. In my experience, they're been great and, certainly loyal workers to Crown, they didn't provide that information up the chain to the board, which they should have.

34 When Mr Demetriou was asked how one fixes the problem, he gave evidence that Crown had undertaken "through our new management and our new chair" to review the culture of the organisation and to see where Crown is deficient and to make sure that the deficiencies are eradicated.[42] He suggested that the fundamental principle was a "values-based organisation" which crosses any border.[43]

35 When asked what steps Crown had taken to address the deficiency in the culture of compliance, Mr Demetriou referred to six matters. The first was the search for a Head of Compliance and Crimes. The second was resourcing the compliance area and having a compliance officer in each State. The third was the appointment of Mr Stokes to be a person who sits above the Compliance Officers. The fourth was a more digital approach to monitor the AML program. The fifth was the "rolling out" of a joint AML program at around the end of October 2020 which would be operational in Sydney. The sixth was the appointment of Nick Kaldas to "form better relationships with law enforcement operators".[44]

36 When it was suggested to Mr Demetriou that this did not seem to go to the culture of compliance as the problem was exposed in the communications relating to the "underground network", he focused on the appointment of the new Head of Compliance and Crimes and suggested it would be a "significant appointment" with direct reporting lines to the Board through the Risk Committee.[45] When asked about the time it would take to shift the culture, Mr Demetriou said:[46]

> A. I can't give you a time on it, Mr Aspinall. It should take however long it takes until you get it right. And culture is one of those things that you're constantly – constantly reviewing; you're doing staff surveys; you're doing external reviews. You're constantly reviewing your culture.
>
> Q. But what confidence could the regulator in New South Wales have that it's appropriate to open the casino at Barangaroo in circumstances where you've just said to me there are deficiencies in the culture of compliance and you don't know how long they will take to fix?
> A. No. I've identified there were deficiencies in the culture of compliance that you're looking at through this Inquiry. But I can assure you we are in an infinitely better place today than we were last year and we were five years ago and we were six years ago.
>
> Q. But, as I understand it, you haven't even done the review yet?
> A. That's a review of the culture.
>
> Q. Yes.
> A. But, as I said earlier, we're doing other – we've done a review of our AML. We've done a review of junket operations. We are not operating in China any more, in international jurisdictions. We've got a – Anne Siegers has got a risk framework and a risk matrix now, which is documented, which the board adheres to. We've got a much – we are appointing people in roles; a head of VIP, a head of compliance, a head of internal audit. We are well underway. I'm very confident that we should be able to operate a casino licence out of Sydney; very confident in our capacity to do that.
>
> Q. Yes. But until you've done the review, how do you know if any of those things you have done are appropriate to fix the problem?
> A. Well, it's 2020 at the moment, Mr Aspinall, and the matters which are before the Commission, which are very important matters, I might add, are matters that occurred several years ago. And I'm not diminishing their importance at all, but we haven't sat on our hands and knees. We are addressing those issues, and have addressed them, and we'll constantly do our best to have a culture of excellence in the organisation.

37 Mr Demetriou then claimed that Crown takes its obligations very seriously and that they should always endeavour to lead the way.[47]

China Arrests

38 Mr Demetriou claimed that the Board packs did not give him any information on what Crown was doing in China.[48] He did not have "specifically" an understanding that there were employees on the ground in China. He knew that there were people in Australia who were travelling extensively and that there was an office in Hong Kong, and said that he would not be "surprised if there were employees based in China".[49]

39 He did not have any understanding of the legal framework in China.[50]

40 He did not spend much time thinking about the operations in China and assumed that Chinese gamblers were travelling to Perth and Melbourne "to enjoy the facilities that Crown has to offer".[51] He was "shocked" when the China Arrests occurred, firstly because he did not know that the Company had employees in China; and he did not know that they were attempting to promote gambling to Chinese Nationals.[52]

41 He gave an explanation as to how he became aware of the Korean employees' arrests in China. He remembered sitting in the Chairman's office at Crown in Melbourne prior to a Board meeting and he remembered Mr Johnston mentioning it to him and whoever else was in the room. The conversation was along the lines of "Has anyone seen the arrests, recently, of the South Koreans over gambling in China". He said it was a pretty quick conversation, and he did not say anything about the effect it may have on Crown. He believed he would have said something like "That's interesting". He did not ask anyone whether those arrests might have an impact upon Crown. He said that was because he did not think it was an important issue and there were a number of things going on at the time. He said it was not because he purposely ignored it. Rather it would have been that there were many other things with which he was dealing at the time.[53]

42 Mr Rankin was the Chairman, but he was not in the office at the time.[54] Mr Rankin was stationed abroad, so he was "a very hard man to catch" and not "very easy to find".[55] He remembered that Ms Danziger was in the Chairman's office at the time that Mr Johnston spoke about the Korean Arrests but did not have a recollection of anyone else being present at the time of the discussion.[56]

43 He recalled Mr Brazil raising the need for a review of what had happened in China. He did not recall any "push back", but remembered that Mr Brazil was "very forceful". He also remembered every Board member expressing concern about the arrests and about the welfare of the staff.[57]

44 He said that in the wake of the China Arrests, it "absolutely occurred to him" that there was so much that he had not known about what was happening in China. Over time, he started to ask himself questions as to how this could have happened. He said that there was absolutely no doubt that ongoing issues, including the questioning of one of Crown's employees in China, and the South Korean Arrests should have been

escalated to the Board. He did not accept that there might have been some failure by the Board to be inquisitive enough to ask about what was happening.[58]

45 He believed that the problem was that the Board was not getting enough information to pique its interest into asking questions, and that the problem was a failure of management to escalate the matters to the Risk Management Committee, and through to the Board.[59]

46 When Mr Demetriou was asked how to avoid this happening again, he suggested that Crown has already taken significant steps "in the last few years", particularly with the appointment of Ms Siegers. He said that there is a lot of time spent on the "risk matrix" and the "risk appetite" in the area of money laundering and Junkets. He claimed that Crown has gone to extensive lengths to put much better measures in place, better reporting lines, a new General Manager of AML and then Head of Compliance and Crimes. He also referred to the direct reporting line to the Board through the Risk Management Committee. However he said that this person had not yet been recruited.

47 He accepted that the "past is a great starting point" from which to learn from mistakes to come to grips with what went wrong.[60] He accepted that there were some aspects where "we have proven to be deficient, particularly in the areas that this Inquiry has looked at". However he was quick to qualify that this did not say that Crown did not run a "very fine business in other areas" – a wonderful hotel business and excellent security and surveillance, and an entertainment complex, and that a lot of people derived enjoyment from attending Crown Resorts. He said "we are constantly reviewing our practices in all areas".[61]

48 Mr Demetriou would not accept the proposition put to him that something was wrong with their constant reviewing process. However he accepted that it has been established that there are some deficiencies in the areas of China Arrests, Junkets and money laundering.[62]

49 Until the Inquiry commenced, Mr Demetriou was not aware that Crown was dealing with a lot of Junkets that were based in Macau. He did not have what he described as a "very deep understanding" of what the regulatory and oversight checks were for Macau Junkets. He assumed that they would have been through similar processes that had occurred in Australia and elsewhere.[63]

50 Mr Demetriou rejected the proposition that Crown partnered with Junkets as propounded in the *60 Minutes* program.[64] He accepted that if a Junket operator enters into a revenue sharing arrangement with Crown, it is in a business arrangement.[65] He also accepted that he was not across the detail of the arrangements that had been entered into by Crown Melbourne with its Junket operators.[66] He accepted that the

word "partner" in the context of Crown entering into revenue sharing arrangements may be a word that could reasonably be used, but it would not be a word that he would use to describe the arrangement.[67] He gave the following evidence:[68]

> Q. And, in fact, it's a word that you rejected when you wrote your advertisement, isn't it?
> A. Yes, it is, Madam Commissioner.
>
> Q. But if, at the time you, had understood what you understand today, you would then understand that the journalist might reasonably describe it as a partnership arrangement; correct?
> A. Yes, Madam Commissioner.

51 He said that he accepted now that the processes for checking on Junkets "had deficiencies"; but he did not resile from the use of the word "robust" in the Advertisement because, at the time, he believed they were robust. However he accepted as at the date he gave his evidence, 12 October 2020, that they had deficiencies.[69]

52 He said that he would certainly sign this Advertisement again, but he might use a different set of words. In hindsight "robust" would be changed as it has been shown that there were deficiencies, but he suspected that "going forward" Crown would have a very robust process.[70]

53 He would leave the reference to the deceitful campaign against Crown in the Advertisement. In this regard, he referred to the jet that was not owned by Crown; the claim that Crown "partnered" with criminals; the allegations of turning a blind eye; and circumventing visa processing. He said that he found these things to be abhorrent and deceitful.[71]

54 He accepted the reference to Suncity being on the stock exchange was an error. He gave the following evidence:[72]

> Q. Yes. I know that, but – but in terms of Suncity itself, you've looked at the Berkeley report now and you accepted, I thought, that they shouldn't have been dealing with them?
> A. I've said, on balance, going forward, one wonders whether we should be dealing with them into the future.

55 However, that is not actually what Mr Demetriou said in his earlier evidence. In that earlier evidence, he said "on balance, I'd probably say that we shouldn't be dealing" with the particular Junket operator under discussion, Alvin Chau and Suncity.[73] He referred to the fact that Suncity has been approved by regulators and that other casinos deal with them, but conceded that "going forward" the Junkets are suspended and all of these various matters will be taken into account by the Board when it makes a "better informed decision".[74]

Independent directors

56 Mr Demetriou was asked what he understood was the role of an "independent director".[75] He said it means "free of any interest, position or affiliation or relationship with – which might materially influence or be perceived to materially influence" his "judgment and capacity to act". He then gave the following evidence:[76]

> Q. Are you reading that, are you?
> A. Well, I know it. I've recited it verbatim because I did so when I became an independent director.
>
> Q. What document have you got in front of you?
> A. My own document.
>
> Q. When did you prepare that?
> A. Well, gosh, probably weeks ago.
>
> Q. Now, you prepared it by yourself, did you?
> A. Yes, I did.
>
> Q. You had no assistance with preparing it?
> A. None whatsoever.
>
> Q. Do you think it's normal for a witness to give evidence bringing notes into the witness box that they can read from without disclosing it to the examiner?
> A. Well, they are disclosed. They're in our – in our charter of our board, what an independent director is.
>
> …
>
> Q. Do you think it's appropriate for a witness to bring notes into a witness box without disclosing it to the examiner?
> A. Well, I – I haven't thought about it, Mr Aspinall.

57 Mr Demetriou said that he did not ask his solicitors whether this was permitted to have his notes with him and that he did it of his own volition. He was asked whether he had any other notes and described them as "maybe half a dozen pages" and one with "a few lines on a page".[77] He gave the following evidence:[78]

> Q. Have you been looking at any other notes during the course of giving your evidence today?
> A. Things that you've drawn my attention to?
>
> Q. Yes, but other than the documents that I've shown you or asked you to look at, have you looked at any other notes?
> A. I've got before me some minutes of board meetings, the note I recited before about the two bank accounts.

58 The documents were then produced after Senior Counsel for Crown consulted with Mr Demetriou and were marked for identification.[79] When those documents were marked for identification, Mr Demetriou then said:[80]

> Mr Aspinall, Madam Commissioner, may I just take the opportunity to apologise; I meant not to show any disrespect to the Commission. I was unaware that I wasn't permitted to have the document and I meant no malice by it, so I apologise.

59 Mr Demetriou admitted that he was reading from the document when he gave his evidence about the independence of a director.[81]

60 Mr Demetriou accepted that when one is an independent director it is very important to deal even-handedly with all shareholders, and not to be seen to be favouring or dealing with one shareholder in a way that one would not deal with another shareholder.[82]

61 He understood that the Controlling Shareholder Protocol enabled Mr Packer to receive information, as he was no longer on the Board from 2018. He said he had always regarded Mr Packer as "somewhat of a visionary".[83]

62 Mr Demetriou sent an email to Mr Packer on 11 December 2018 in terms that included the following:[84]

> As agreed, I promised you that I would give you feedback post the Board Meeting about some of my observations, together with explanations from Management after today's Board Meeting.
>
> …
>
> Now I know these are issues we expect to be dealt with as a normal part of business. But they do take time, resources, costs, and focus of Management. I suggested that we would become the most compliant, regulated business in Australia, but we [are] at risk of being like the Australian Cricket team. Timid, reactionary. Not bold or aggressive.
>
> We exist to win. I asked Management and the Board to come back in the New Year and turn our minds to strategies to grow revenue. We need to support Management with advice, but also with the investment required to back the strategies required to grow.
>
> Yes we will cut, but we also need to grow.
>
> I have great faith that we have the right people on the Board to help navigate this process. More importantly, I believe we have the right team with John, Todd, Barry and Ken to lead the charge.
>
> All are capable, but they have been dealing with several issues concurrently. We need their focus on revenue generation and growth.
>
> I am confident we can get close to our targets.

> These are just my thoughts
>
> James, I will continue to support you, and Crown. I believe in this Business and I believe in the people.
>
> We have much to do and we will get there.
>
> Feel free to call whenever you wish.

63 Mr Demetriou was asked how he thought reporting to Mr Packer on what happened at a Board meeting was going to help in terms of corporate culture. He said he believed he was operating under the Controlling Shareholder Protocol. He said he knew he had to be careful about the information he provided to Mr Packer; and that whatever advice came back from Mr Packer would be to the benefit of all the shareholders as a whole.[85] He believed it was a way to keep Mr Packer and his advice continuing to be forthcoming for his benefit as well as from the perspective of his mental health.[86] Mr Demetriou accepted that the provisions of clause 2.3 of the Controlling Shareholder Protocol were not complied with "formally" and that things would need to change by way of documenting any communications under the Controlling Shareholder Protocol.[87]

64 Mr Demetriou sent another email to Mr Packer on 4 April 2019 asking after his welfare and reminding him that if there was anything that he needed, he should not hesitate to "reach out".[88] Mr Packer responded on 5 April 2019 advising Mr Demetriou that Mr Jalland was travelling to Melbourne the following week to express "our views" in respect of the Wynn offer. Mr Packer expressed the view that he had "run or watched over Crown for 20 years" and he believed that "we should sell". He asked Mr Demetriou to let him know his "thoughts" and to make sure that he spoke to Mr Jalland when he arrived in Melbourne.[89] Mr Demetriou responded on 5 April 2019 in terms that included the following:[90]

> I have absolute confidence that the Board will consider all before it and make the right call.
>
> I look forward to discussing the next chapter with you after Guy's presentation. As previously said, I remain committed to serving the best interests of Crown, and most importantly, you.

65 Mr Demetriou gave the following evidence in respect of this communication:[91]

> Q. Then you said:
>
> > *As previously said, I remain committed to serving the best interests of Crown and, most importantly, you.*
>
> A. Yes, Mr Aspinall.
>
> Q. Mr Demetriou, how can such a statement be consistent with you claiming to be an independent director of Crown?

A. I think it's absolutely consistent. I say:

> *I remain committed to serving the best interests of Crown and, most importantly, you.*

But I don't say "and, more importantly, you".

Q. You say "most importantly", don't you? "Most importantly".
A. Yes, but it wasn't in – it wasn't in deference to the best interests of Crown. Crown has always been my first priority to serve the interests of all shareholders.

Q. So you were misleading Mr Packer, were you?
A. No. The – I stand by the choice of words. I – I happy to serve the best interests of Crown and Mr Packer, but I'm absolutely committed – still am – to serving the best interests of Crown, first and foremost.

Q. Then why did you say "most importantly" you were committed to serving the interests of Mr Packer?
A. No particular reason, Mr Aspinall. I wouldn't read too much into it. I still stand by that I would remain committed to serving the best interests of Crown. I suspect if I hadn't have used the first words, "best interests of Crown", I think – and only "importantly to you", I understand your proposition. But I repeat, I remain committed to serving the best interests of Crown.

Q. But if I did read something into it, that you did mean that, would you agree that there would be, to a reasonable bystander, a question about whether you were truly independent?
A. I think there may be, Madam Commissioner.

2019 AGM

66 Mr Demetriou gave evidence about what occurred at the Annual General Meeting in 2019 when Mr Barton gave the answer in respect of the question that was asked as to whether Mr Packer had access to special briefings. He gave the following evidence:[92]

Q. And do you accept that the answer which Mr Barton gave to the question was not the whole truth?
A. Well, he should have said that we've got a controlling shareholder protocol in place.

Q. And if he'd said that, the answer would have been that we do give Mr Packer special treatment and he is able to contact us and get briefings, and so forth; correct?
A. Yes, it would have been. Correct.

Q. Why, as an independent director, did you sit by and allow Mr Barton to give that answer without correcting it?
A. Look, before any of the independent directors, including myself, had a chance to speak, Mr Barton had intervened and was giving the answer. In hindsight,

> one of the independent directors, including myself, should have corrected him and – and said that there's a controlling shareholder protocol in place. It would have answered Mr Mayne's question. I'm not – I'm not sure why I didn't. But I accept that Mr Barton should have mentioned the controlling shareholder protocol.

67 Mr Demetriou's evidence that he was not sure why he did not correct Mr Barton would cause doubts about placing any reliance upon him to do so in the future.

Notes

68 Mr Demetriou was taken through the notes that he produced after it became clear that he was reading from notes during his evidence. He gave evidence that he got the definition of culture from the Internet, but said that it was a definition to which he subscribed.[93]

69 It was suggested to Mr Demetriou that he was reading from his notes when he was asked about the question of culture. He denied this on five occasions.[94] He rejected the suggestion that he had put the notes in front of him to read because he wanted to be able to refer to them and be reminded to "drop them into" his evidence at spots he thought would enhance his standing as someone who had a knowledge of corporate governance.[95]

70 When it was suggested to him that one conclusion that might be drawn from his use of the notes was that he was trying to be accurate in giving his evidence, he said "that would be correct, if I did read them". He did not accept the proposition that he was reading them or the more anodyne conclusion that he was trying to be accurate.[96] He said he fully understood the obligation, but was not advised that he could not bring notes into the witness box.[97]

71 Mr Demetriou was then shown the video capturing his evidence on the previous day, and denied that it depicted him reading from his notes.[98] He said that he did see himself look down and that he suspected "I would have looked down for a lot of the day".[99] When the video was played to him again he persisted with his denial that he was reading his notes, and said that he was "looking at what was before me which was basically the desk".[100]

72 One of the documents that was produced after it was discovered that he was reading from notes during the course of his evidence included the following:[101]

> **CULTURE**
>
> - A culture is a way of life of a group of people - the behaviours, the beliefs, values

and symbols that they accept, essentially without thinking about them.

CULTURE OF COMPLIANCE

Means weaving compliance into the fabric of your organisation - making compliance part of core values and standards of your business. An essential part of business Mission. Your company's culture should be a valued asset, something you are proud of.

EDUCATION, TRANSPARENCY, COMMUNICATION, AWARENESS, EFFECTIVE TECHNOLOGY, INCIDENT REPORTING

73 It is appropriate to extract again Mr Demetriou's evidence that was given in respect of culture. It was as follows:[102]

A. No. I said that to shift culture is not easy. It takes time. I think – I think Crown, fundamentally, has a very, very good culture. In the experience that I've seen and with the staff that we've got, and the 18 and a half thousand of them, and what we're building in Sydney, we have very good cultural practices in place. But, as it turns out, for whatever reason, in the matter that we're – are before this Inquiry, the culture of compliance, which is a consequence of having a good culture, which is what you weave into your organisation, which is to be a valuable asset of your organisation, the culture, didn't – it didn't act in the way it should have. We were deficient in that area.

Q. What does that mean?

A. Well, the culture of an organisation, fundamentally, Madam Commissioner, is the **behaviours and the values, the beliefs, the symbols that people accept**. And they, **essentially, accept them without even thinking about them.** And for whatever reason, as part of that culture, it's a non-negotiable that you deal with proper communication, proper transparency. You deal – you – you act ethically. You live and breathe the values of the organisation. And, in the area of information flow that went to approval of junket operators, the defects in – in the AML process, that information should have been forthcoming. And if, for whatever reason – and I think, on balance, the people are very decent people. In my experience, they're been great and, certainly loyal workers to Crown, they didn't provide that information up the chain to the board, which they should have.

74 The extracted video of Mr Demetriou's evidence demonstrates beyond any doubt that the words that are in bold in the second answer extracted above were given in evidence at a time that he was clearly looking at the document and clearly reading from the document.[103]

75 This was a most unedifying performance by Mr Demetriou. It is inexplicable why Mr Demetriou did not accept the proposition that was put to him that a finding could be made, rather neutrally, that he was trying to assist by being accurate. But he persisted with his version of events that clearly cannot be accepted. Unfortunately it reflects

very badly on his judgment first of all to take notes into the witness box (albeit in a virtual setting); then to read from them; but more importantly to deny that he was reading from them.

76 It is difficult to understand what might reasonably be made of this quite bizarre performance. Sadly the balance of Mr Demetriou's evidence is affected by it. The Authority would be justified in lacking confidence in placing reliance upon Mr Demetriou in the future.

Chapter 4.3.5

Other Crown Directors

1 In this part of the Chapter it is intended to refer more briefly to the other current directors of Crown: Ms Halton, Professor Horvath, Mr Jalland, Ms Korsanos, Mr Mitchell and Mr Poynton. No disrespect is intended by this comparative brevity. Rather it is because there were no real challenges to the credit or credibility of these directors and it is therefore unnecessary to analyse the evidence in the same detail as was necessary in respect of Messrs Barton, Johnston and Demetriou.

2 It should be noted that there was a challenge to some aspects of Ms Halton's evidence. However on a proper analysis of the evidence detailed below, such a challenge is not a basis for any adverse finding in respect of Ms Halton's credit or integrity. In those circumstances Ms Halton's evidence will be included in this Chapter.

3 Although the directors to whom reference is made in this Chapter are current directors as at the date of submission of this Report to the Authority it may be that some directors may retire from the Board in the Chairman's proposed renewal process to which reference was made in her evidence. Separately from that process, it should be noted that Professor Horvath indicated at the 2020 Crown Annual General Meeting that he will be retiring from the Board.

4 It is appropriate to observe that, in the main, each of these current directors recognised that deficiencies had been exposed in the evidence of the Inquiry and that remediation and/or reformation was necessary. Those deficiencies involved in each of the areas the subject of the Media Allegations of money laundering, associations with Junket operators and the circumstances surrounding the China Arrests, are recognised by these directors as having been partly caused by corporate governance and risk management deficiencies and in some instances by a problem with corporate culture. This latter expression includes the concept of focusing on the legislative compliance of reporting to the financial regulator without focusing on the need to rectify the problem that gave rise to the need to report in the first place.

5 It is important not to fall into the trap of what the Chairman described in her evidence as "management speak".[1] Apart from the requirements of balance and fairness and the application of appropriate principles that have been referred to earlier in other

parts of this Chapter, it is also necessary to apply common sense to the analysis of the corporate character to which these observations relate.

6 Common sense dictates that if you were to apply the same intrusive powers to any other public company as were applied to Crown in this Inquiry, some deficiencies in structural, risk or corporate governance processes may be exposed. However it must be remembered that this was a special process because it focused upon a public company with a special attribute - that of being associated with a casino operator in New South Wales. It is this special attribute that exposed Crown to what has been described elsewhere as the "scorching" process of this Inquiry.

7 If a company takes the commercial decision to enter the casino industry, particularly in New South Wales, there is a greater burden imposed on it. Directors of companies that hold a casino licence in New South Wales or are close associates of a casino licensee must be cognisant of the objects of the *Casino Control Act* and understand that the casino's operations will be a clear target for money launderers. Directors of such companies must be willing to pursue education so that they have an understanding of the processes utilised by money launderers, their agility and flexibility to change course in response to barriers imposed by casino operators and their ingenuity to find new ways for laundering ill-gotten funds.

8 It is not usual for every director of a publicly listed company to be examined in public in the manner that has occurred in this Inquiry. Notwithstanding the unusual nature of the process, and notwithstanding the obvious distress of some as deep fissures in the fabric of the organisation were exposed, it is appropriate to observe that each of the directors the subject of this part of the Chapter have given their evidence honestly and in their own way have attempted to assist the Inquiry in its investigations of the matters in the Amended Terms of Reference.

9 There is much negative comment in respect of Crown's performance in some parts of the Report. However there is also a recognition in other parts of the Report to Crown's achievements and the positive contributions to commercial life and the community generally that it has made over the years. These positive contributions are significant and must be taken into account in the overall assessments to be made in response to the tasks in the Amended Terms of Reference.

10 The more recently appointed independent directors, Ms Halton and Ms Korsanos, together form a core of the changing character of the company upon which the Authority would be justified in relying for honest, open and fair dealing in the future. This is particularly important in the case of Ms Halton who is the Chair of the Licensee of the Barangaroo Casino.

11 The remaining vestiges of the serious imbalance caused by the influence of CPH over Crown's operations with some of its directors (also serving as Crown directors) descending into the lower tiers of Crown's management, still need to be jettisoned

notwithstanding the termination of the Controlling Shareholder Protocol and the Services Agreement. The health of the new relationship to be forged with the CPH nominee directors will be pivotal to Crown's future success as a close associate of the Licensee. The commitment and contribution of the more recently appointed CPH nominee directors, Mr Jalland and Mr Poynton (although Mr Poynton has been a director of Crown Perth/Burswood for many years) will be integral to that success.

12 It is appropriate now to refer to the evidence of each of the other Crown directors.

Sarah Jane Halton

13 Sarah Jane Halton has been a non-executive director of Crown since May 2018.

14 Ms Halton is the Chair of the Licensee of the Barangaroo Casino.

15 She is the current Chair of the Crown Risk Management Committee and a member of the Audit & Corporate Governance Committee. She was also a member of the Brand Committee from August 2019 to January 2020.

16 Ms Halton's previous roles were in the public service, including as Secretary of the Australian Department of Finance; Secretary of the Australian Department of Health; and Executive Co-ordinator (Deputy Secretary) of the Department of the Prime Minister and Cabinet.

17 Ms Halton is currently a director of the ANZ Banking Group Limited; the Chair of the Council on the Ageing Australia; and the Coalition of Epidemic Preparedness Innovations. Ms Halton is also a director of Clayton Utz; a member of the Executive Board of the Institute of Health Metrics and Evaluation at the University of Washington; an Adjunct Professor of the University of Sydney and the University of Canberra; and Council Member of the Australian Strategic Policy Institute.

18 Ms Halton has been a "regulator for a fair proportion" of her career and observed rather presciently that: (i) regulators like to be kept informed about what is going on; and (ii) regulators' confidence in the regulated comes not only from systems and processes, but also from individuals.[2]

19 Ms Halton also made a number of other important observations: (i) the risk management function requires boards to constructively challenge and ask questions of management; (ii) the board has to ensure that management is held to account for risk failures; (iii) the board has an important role in setting the tone and influencing and overseeing the culture of the company; and (iv) it is necessary to establish a strong risk culture that recognises that risk management is the responsibility of all staff.[3]

20 These observations may be a basis for the Authority to have some hope that the Licensee will have a rigorous and appropriate risk structure. The translation of that

hope into confidence will of course require more than such offerings, as welcome as they may be.

21 Ms Halton's efforts to extract from management an accurate report to the Board to enable it to respond to the Media Allegations were firm and appropriate. The fact that the report was wanting is no surprise having regard to the evidence that has been exposed in relation to the roles played by Mr Felstead and Mr Preston in failing to provide the Crown Board with proper and accurate information and indeed in other instances failing to provide the Board with any relevant information when such information should have been provided to it.

22 Ms Halton had no knowledge of the operation of Southbank and Riverbank. The Board's vision into these two accounts with the hundreds of millions of dollars moving through them to the casino accounts that were riddled with the indicia of money laundering was deflected by the misleading and inaccurate report from Mr Preston that assured the Board that they were covered by the usual AML processes.

23 Ms Halton joined the Board almost two years after the China Arrests and the year after the employees had been released from prison. Ms Halton agreed that it would have been far better for Crown to have conducted a proper review closer to the time of the arrests to have an opportunity to have understood the reasons for the rather tragic outcomes.

24 Ms Halton recognised the incipient influence of criminal elements in Junket organisations and the dangers of commercial relationships with Junket operators with alleged links to organised crime. She accepted that Crown must only have commercial relationships with people of good repute.

25 Ms Halton believed in early July 2019 that Crown did have a robust procedure for vetting Junkets. At the time of the Advertisement, she believed such a claim was correct. However, at the time of giving her evidence she accepted that the processes "could have been improved".[4] She claimed that she was let down by Mr Preston and Mr Felstead because a number of the assurances and facts presented by them have proven not to be reliable. Understandably Ms Halton said that she did not maintain confidence in Mr Felstead or Mr Preston.

26 Although recognising that the publications of the Media Allegations created a crisis for Crown, Ms Halton said that with the benefit of hindsight, she would have chosen a different mechanism for communication, rather than the Advertisement.[5]

27 It is appropriate to deal with the challenges that were made to Ms Halton's evidence.

28 Ms Halton was questioned about some of the circumstances leading up to the China Arrests in the context of the Board approving the Advertisement in July 2019 in which it claimed that Crown had relied upon certain legal advice. Ms Halton was asked a number of questions relating to whether she had been informed prior to authorising

the Advertisement that Crown management had not sought confirmation from Crown's internal lawyers about the soundness of the opinions that were being expressed in the advices of the external lawyers in respect of the operations in China.[6]

29 Ms Halton indicated that she did not follow the question and asked for clarification. It is clear that there was a misunderstanding because Ms Halton thought that the question related to the external advice regarding the Advertisement.[7]

30 After further clarification Ms Halton gave evidence that she was not aware that Crown management had not sought confirmation from Crown's internal lawyers about the soundness of the factual assumptions being made by the external lawyers. Ms Halton emphasised that at the time of 'signing off' on the Advertisement she had asked many times for an assurance that its contents had both "factual and legal clearance"[8].

31 After further questioning in relation to the management of the legal advices at the time and the reliance upon the VIP International executives and Ms Halton agreeing that the "situation" was "not adequate", she gave the following evidence:[9]

> Q. Now, were you aware prior to approving the announcement by the Crown Resorts board that the allegations made in the media in relation to the China arrests included allegations that Crown Resorts had failed to heed warning signs from the Chinese government and thereby put its staff at risk?
>
> A. No, I was not aware of that.

32 This evidence was given by Ms Halton on 14 October 2020. On 15 October 2020 Ms Halton was asked further questions about the Advertisement. She was taken through the transcript of the *60 Minutes* program that was published in July 2019 with particular reference to the arrests of the South Korean casino employees and the statement that this was a "big rap on the knuckles from the Chinese Government".[10] Ms Halton then gave the following evidence:[11]

> Q. So you understood when you watched this program and read that article that the media was alleging that Crown Resorts had failed to heed warning signs from the Chinese government, thereby putting staff at risk; correct?
>
> A. I understood that, Mr Bell.

33 Ms Halton was then asked questions about a confidential VCGLR Report that was reviewed by the Crown Board in June 2019 and was taken in particular to a reference relating to the questioning of the staff member by the Chinese police in July 2015.[12] When reminded of the evidence that she had given on 14 October 2020 that is extracted above, Ms Halton gave the following evidence:[13]

> Q. To put it as neutrally as possible, the evidence you gave to this Commission yesterday was incorrect, wasn't it.
>
> A Well, possibly, I was confused about the question, Mr Bell. As we've discussed, I was aware, in the broad, in relation to the – the - there were - "detention" is not the right word - the interview, I think, is what we discussed.

> But in terms of a specific warning to the company, which is what I understood you to ask me - but perhaps I've misunderstood you.

34 Ms Halton was then read the two questions and the two answers that she had given and was asked to explain which one was either truthful or correct. Ms Halton asked for further clarification and the questions were read again. Ms Halton's further evidence was as follows:[14]

> Q. So I'm giving you an opportunity, now, do you wish to correct the evidence that you gave to the Commissioner yesterday?
>
> A. So I was - to be explicit, Mr Bell, the language you've used is in relation to warnings from the Chinese Government. I didn't apprehend, in terms of what I had understood from the media articles, that there was a specific warning from the Chinese Government to Crown. Now, maybe I misread - and that is plausible - but I understood that there were general movements, but, in terms of specific warnings, from the Chinese Government - and as I said, maybe this is my misunderstanding - but, that, I did not understand in terms of specific warnings.

35 Ms Halton was also challenged in respect of evidence in which she claimed that she "did not know" but "had become aware" of the allegation that Crown had instructed its staff to falsely claim that they were really not working in China but working elsewhere. Ms Halton said that she thought that she had become aware of it "really, in the course of this Inquiry".[15] When Ms Horton was taken to the transcript of the *60 Minutes* program, she gave the following evidence:[16]

> Q. You understood when you watched this program and read the article I took you to, that one of the allegations being made by the media was that Crown had instructed its staff to falsely claim that they were not really working in China but were working elsewhere, didn't you?
>
> A. That was the claim, yes, Mr Bell.

36 It was suggested to Ms Halton that rather than becoming aware of the allegation during the course of the Inquiry, she had become aware of it at the time she read the article and watched the *60 Minutes* program. Ms Halton gave evidence that she "should have remembered it" but made a very fair point that there were "thousands of pages of material" and that her memory was "inaccurate" in respect of when she became aware of the allegation. Ms Halton accepted that the position was that when she had been reminded of the article and the detail of the program she accepted that she was aware of the allegation at the time she read the article.[17]

37 There was also an exchange with Ms Halton and a challenge in respect of her evidence relating to her expectation of the information that was to be provided to Mr Packer under the Controlling Shareholder Protocol.[18] There is no doubt that Ms Halton expected that information would be provided to Mr Packer in accordance with the Controlling Shareholder Protocol. The difference that arose was really whether he was being provided with that information "on a regular basis". It was that aspect of

the question with which it is clear Ms Halton was having some difficulty. Ms Halton did not appreciate that Mr Packer would be receiving such information on a "regular basis". Rather she would have expected it to be provided to him intermittently and not very frequently.[19]

38 In all of this, the features of giving evidence remotely, the vast amount of documentary material, and the speed with which Ms Halton was taken to and questioned about those documents, must all be taken into account in assessing the challenges to her evidence.

39 It was certainly the case that Ms Halton and Counsel Assisting were at odds on more than one occasion. It is also the case that Ms Halton was a touch argumentative. However the clear impression was that she was doing her best to give truthful evidence in difficult circumstances, but failing to adhere to the process of simply answering the question. Ms Halton had a somewhat unfortunate penchant for anticipating questions and providing information that was not quite responsive to the question posed. Her self-assessment in the witness box of speaking too much and thus irritating people was quite disarming.[20]

40 Without intending to convey a criticism but rather the probable reality, Ms Halton presented as a person who is most comfortable when being and feeling in control of the agenda. However the environment of the witness box does not usually provide such comfort. Notwithstanding the rather combative episodes of her evidence, there can be no doubt that Ms Halton was a truthful witness. Albeit that Ms Halton may have felt rather negative about her experience in the witness box, she certainly left it with her integrity intact.

John Stephen Horvath

41 Professor John Stephen Horvath has been a director of Crown since September 2010 when he was approached to join the Board to become the inaugural Chair of the newly formed Responsible Gaming Committee. He was appointed Deputy Chair of Crown in January 2020.

42 Professor Horvath is a director of Crown Melbourne and has been so since 27 September 2010. He is also a director of Crown Resorts Foundation Limited.

43 Professor Horvath is the Chair of the Responsible Gaming Committee; a member of the Occupational Health & Safety Committee since September 2010 and Chair since December 2017; a member of the Corporate and Social Responsibility Committee since July 2013; a member of the People, Remuneration and Nomination Committee since May 2014; and a member of the Brand Committee between August 2019 and January 2020 when it ceased to operate.

44 Professor Horvath is also a member of the Crown Melbourne Compliance Committee since 2010 and the Chair of that Committee since 2017. He has also been a member of the Crown Melbourne Audit Committee since 2017.

45 In addition to these roles with Crown, Professor Horvath is the Global Strategic Medical Advisor to the CEO of Ramsay Healthcare Limited. He is the Group Chief Medical Officer of Ramsay Healthcare and is a director of the Ramsay Hospital Medical Research Institute and the Gallipoli Medical Research Foundation.

46 Professor Horvath was the President of the New South Wales Medical Board from 1989 to 1999. He was the Australian Government Chief Medical Officer from 2003 to 2009. Between 2009 and 2015 Professor Horvath held the part time role of Principal Medical Consultant to the Commonwealth Department of Health. He is the Honorary Professor of Medicine at the School of Medicine at the University of Sydney and was Senior Adviser to the Dean of the School of Medicine until 2014.[21]

47 Professor Horvath was never made aware that Crown staff in China were expressing fears for their safety. He agreed that this is a matter that should have been drawn to the attention of his Occupational Health & Safety Committee. He also gave evidence that the fact that Crown staff were fearing for their safety was "unacceptable". He also agreed that it should have been brought to the attention of the Risk Management Committee and indeed the full Crown Board.[22]

48 Professor Horvath was not made aware that the Chinese authorities had announced a crackdown on foreign casinos luring Chinese citizens to gamble overseas in February 2015.[23] He recalled the circumstances of a discussion with Mr Johnston mentioning the arrests of the Korean employees and that they were carrying currency across borders which Crown staff did not engage in. He was not made aware that Robert Rankin had suggested that the Company be on "high alert" for the risk of similar regulatory action against Crown employees in China.[24]

49 Professor Horvath accepted that it was a failure in the risk management processes of Crown that the Board was not made aware of the Chinese authorities' announcement in respect of the crackdown on foreign casinos. He accepted that it should have gone to the Risk Management Committee and then appropriately evaluated and brought to the attention of the full Board.[25] Professor Horvath suggested:[26]

> My supposition, in hindsight, was that senior executives responsible for that area chose not to elevate that information on the basis that they thought they could manage it within the realms of their own responsibility.
>
> ...
>
> Whether they ignored them [the risk management processes] or misunderstood them or had an error of judgment, I would prefer to say a significant error of judgment. I

> don't think there was – I don't believe there was an active decision to ignore. I think it's a different motivation: ignoring versus an error of judgment.

50 Professor Horvath accepted and agreed that in hindsight, it suggested a flaw in the business culture of Crown in relation to the engagement with risk management issues because this was not one or two individuals, but the entire senior management of the VIP International business unit.[27]

51 Professor Horvath accepted that the proposal to mislead the authorities about where the Chinese staff were working by the provision of work permits was inconsistent with Crown's fundamental principles of how it should operate.[28] He agreed that the approach illustrated a problem with risk mitigation strategies being dealt with on the ground, rather than through the proper risk management processes.[29] Professor Horvath suggested that in hindsight, the risk management processes should have been separate from the income generating part of the business to properly manage the risk and act accordingly. He suggested there was an "inherent tension and conflict" in those arrangements.[30] He emphasised that these were problems within the VIP activities, rather than in respect of the rest of the business where he believed that culture was "very apparent and real".[31]

52 Professor Horvath was not aware of the questioning of the employees in China, nor in respect of the requirement for a letter from Crown.[32] He observed that this was a matter that needed to be reported to the whole Board. He accepted there was an "obvious breakdown in communication", and that information should have got to the Risk Management Committee and then the Board.[33]

53 Professor Horvath gave some evidence in relation to the failure by Mr Johnston and by Mr Felstead to notify the Crown Board and/or the Risk Committee of the questioning of the Crown employee by the Chinese police. He gave the following evidence:[34]

> Q. But to be fair to Mr Felstead, for a moment, Mr Felstead did pass it up the line to Mr Johnston. You understand that?
> A. Yes.
>
> Q. And there it met a full stop. So, in the light of that, you have it at board level. Assume for the moment that he's wearing the hat as a Crown director. Mr Felstead gives the information to Mr Johnston, and nothing is done. So how do you characterise that failure to let you know, as his co-director, that this had happened?
> A. It's a structural failure.
>
> Q. A structure in the board or a structure in the company, totally?
> A. Well, in both.

54 Professor Horvath accepted that the answer given by Mr Barton at the Annual General Meeting in October 2019 in relation to the information that was being provided to Mr

Packer was incomplete. He said he had no recollection of the interchange between Mr Mayne and Mr Barton, and he could not explain why he or any of the other independent directors did not answer the question.[35]

55 On the topic of Board renewal Professor Horvath gave the following evidence:[36]

> I think that there needs to be a board renewal. This has been on the – on the forefront of the chairman's mind, that it needs some refreshing. The question of the number of CPH directors is clearly a matter of some discussion. And some new and outside directors will need to slowly replace some of the existing directors. I think it's healthy for the organisation.

56 On the topic of Junkets Professor Horvath said that in hindsight, he believed that he should have paid more attention to the special significance of the vulnerability in relation to Junkets, but that he did not have sufficient visibility of the Junket operations.[37] He took comfort in the reports that he received on the Compliance Committee about Crown's reporting to AUSTRAC and the fact that there had been no "compliance issues raised". He said that after the China Arrests, Crown reviewed a number of practices, and he had an in depth briefing from Ms Lane on the proposed joint AML program, and other enhancements. He believed that these were "major steps" in which he had taken a very clear interest with the recruitment of Promontory. He understands that their approach will be "root and branch" and he has familiarised himself with what is planned.[38]

57 Professor Horvath became aware of the serious issues around Junkets with the unfolding of the evidence at the Inquiry. It became clear to him that the Board did not have visibility of the operational aspects of the Junkets. As the Inquiry evolved, serious concerns had been raised which he acknowledged around how Crown manages Junket operations.[39] Similarly, the breakdown in processes around money laundering came out during testimony in the Inquiry as various people gave different aspects of evidence. This was cumulative and led him to understand there were deficiencies in Crown's processes.[40]

58 On the topic of money laundering, Professor Horvath agreed that there were "gaps" which the Board has acknowledged and that this was the reason the Board is undertaking a very complex root and branch review of how Crown manages threats of money laundering. He said that it was very obvious from the current work that there are steps from the product through to people and through to practices that are being reviewed.[41]

59 However he would not accept that Crown "turned a blind eye" to money laundering in the Southbank and Riverbank accounts suggesting rather that there was "clearly a failure of systems and a failure to appropriately do the due diligence". He rejected the concept of turning a blind eye which would imply an active action on the part of Crown. He also rejected a proposition that Crown just did not care if there had been money laundering in the accounts. His experience was that "we do care" and that

Crown takes its obligations very seriously. He accepted that "clearly, our processes were not sufficient to deal with those issues at the time", but that Crown was taking steps to remedy that situation. He said that there was a difference between omission and commission.[42]

60 Professor Horvath accepted that a recalibration of the way Crown operates is necessary and removing compliance and risk and monitoring functions from the operational aspects of the business.[43]

61 He agreed that there has been a very distinct change in Crown's tone since the Media Release of 31 July 2019. There has been a progressive change in management with an independent Chair of the Board. The Chair of Risk, Ms Halton, has certainly taken a very strong view of these matters and a number of reports have assisted the Board in highlighting the way forward with some enhancements being undertaken. Professor Horvath made the very pertinent observation, "perhaps, our ears are a bit sharper".[44]

Guy Jalland

62 Guy Jalland has worked in the CPH Group from October 1998. He was appointed as a director of CPH on 26 September 2014 and CEO of CPH in January 2017.

63 Prior to the establishment of Crown in 2007, Mr Jalland was the Group General Counsel and Company Secretary of PBL, having been appointed to those roles in November 2004 and August 2005 respectively.

64 On 16 April 2018 Mr Jalland was appointed as a non-executive director of Crown.

65 Prior to his appointment as a director of Crown in 2018, Mr Jalland regularly attended Crown Board meetings as an invitee. This practice originally commenced in about 2011 because Mr Jalland had been assisting Crown on projects and he understood that the purpose of his attendance was to give any updates on the projects if requested to so by members of the Board.

66 Mr Jalland was of course instrumental in the Melco transaction in June 2019. Mr Packer asked him to carry out the negotiations with Melco, which he did as the agent of CPH Crown Holdings. He resisted any suggestion of knowing or having any concern that the late Mr Ho had any connection with Melco at the time of the transaction. He thought it so very unlikely because Melco had been approved on so many occasions by regulators in respect of its prior relationship with Crown.

67 Mr Jalland claimed quite unabashedly that at the time of the Melco transaction he was thinking only of the benefits which he perceived the transaction would bring to CPH Crown Holdings and ultimately to Mr Packer.[45] However he accepted that at the time of the transaction he owed directors' duties to Crown and knew that Crown had regulatory agreements which prohibited the late Mr Ho or his associates from acquiring any interest in Crown.[46] He maintained that there was absolutely "no risk"

in his mind that the late Mr Ho was involved in the transaction or had an interest in Melco. However he did not check whether that was the case but rather relied upon his assumption that it was not the case. He did not believe that he had an obligation to notify Crown of the proposed transaction with Melco and he did not even pause for a moment to consider whether execution of the Share Sale Agreement should be deferred until Crown had the opportunity to consider its own position.[47]

68 Mr Jalland gave his evidence in a very matter-of-fact fashion. He conceded matters appropriately and where he maintained a firm view about things he resisted making any concessions. To his credit he gave the following evidence in respect of a possible conflict at the time of the Melco transaction:[48]

> Q. The duty to Crown was always there, wasn't it, to look after it?
> A. That's correct.
>
> Q. I understood from what you tell me that you believed you weren't putting it in jeopardy?
> A. That's correct.
>
> Q. But in the circumstances weighing up those two things at a time when you had an obligation to a company that had a burden to tell the government what it was up to in respect of Dr Ho, as you recall it, it could be perceived that you were in a position of conflict, would you not agree?
> A. Commissioner, I understand the point. I don't agree because Dr Ho had nothing to do with this transaction.
>
> Q. That's the view that you took, but from the point of view of those who were observing what was happening with the burden that was on you to look after Crown with its obligations to government, as burdensome as that was, and your obligation to CPH to get the deal done, do you not accept that it could be perceived as a presence of conflict?
> A. I – I accept that it could be perceived that way, yes.

69 Mr Jalland believed that when the Crown confidential information was provided to Melco under cover of the letter referred to elsewhere in the Report, he was permitted to do so under the Services Agreement so long as undertakings were obtained from the recipient, Melco, that it would keep such information confidential.[49]

70 Mr Jalland is a qualified lawyer. However in the particular circumstances of the Melco transaction, CPH retained external lawyers to assist it in the process. Although Mr Jalland may have believed that he and Mr Johnston were entitled to provide Crown's confidential information to Melco under the Services Agreement, there is a most respectable argument to the contrary. It is unnecessary to traverse this territory in this analysis because it is dealt with elsewhere in the Report.

71 Mr Jalland was examined in relation to Mr Chen's suggestion that work permits could be obtained in other countries so that staff could inform the Chinese authorities that they were working overseas and were only on business travel to China. Mr Jalland

agreed that if the plan were implemented it could only be construed as an attempt to deceive the Chinese authorities in relation to the work status of the China-based staff.[50] He gave the following evidence:[51]

> Q. And do you agree that this proposal was inconsistent with Crown Resorts core principle that all of its business affairs be conducted ethically and with strict observance of the highest standards of integrity?
> A. I agree in principle, Mr Bell. My hesitation is I don't know if it went past being a proposal being actually implemented because if it was actually implemented, I think it's much more serious than, if you like, a stupid idea.
>
> Q. All right. But my question was focusing on the proposal and whether the proposal was inconsistent with acting ethically and with integrity?
> A. Yes, but more with respect to the author of – or the person who came up with it, rather than corporately.
>
> Q. Yes. So the extent to which it might reflect an ethical failure will depend upon the number of VIP international executives and who had joined in the proposal; would that be a fair way of putting it?
> A. Or if it was implemented.
>
> ...
>
> Q. When you said it was stupid, I presume you meant it was stupid from a number of perspectives, including the prospect that their staff would be put at further risk for lying; do you agree with that?
> A. Yes, Commissioner, I agree with that.
>
> Q. And why did you use the word "stupid"?
> A. I think to propose this as an idea is ridiculous.

72 This evidence is an exquisite example of Mr Jalland's strong character. It is also indicative of his common sense.

73 Although he was not asked about it in his oral evidence, it was Mr Jalland who suggested that the Advertisement should retain reference to the former employee's claim for compensation. Mr Jalland's written evidence was that as the former employee was the "primary source" of the Media Allegation that Crown had knowingly breached the law in China, the former employee's unsuccessful claim for compensation should have been disclosed by the media because it demonstrated a conflict of interest.

74 Ms Halton's evidence was that the debate at the Board level was between herself, not wanting to include it in the Advertisement, and Mr Jalland whose wishes to include it were ultimately preferred. That information was published in the Advertisement with the additional claim that the former employee lacked objectivity. That debate was between two clearly powerful personalities. It is a great shame that Mr Jalland's view prevailed. It is hoped that in the future his powerful personality and clear capacity

will not prevent him from accommodating his Board's colleagues' sensible suggestions as was Ms Halton's approach in respect of whether to include the reference to the former employee in the Advertisement. As has been said elsewhere, this was a most unsatisfactory inclusion in the Advertisement and was appropriately described as a "blot" on the Board's judgment.

75 Mr Jalland made a number of sound points in relation to judgments that need to be made about whether Crown deals with particular Junket operators. However his concern about Crown having to "disqualify someone" seemed to need some adjustment. The burden should not have been on Crown but rather on the applicant seeking to do business with Crown. That burden should have been on the applicant to provide clear and cogent evidence to Crown that it was a person of good repute. In addition to Mr Jalland, a number of directors also referred to the burdens or the complexities of making decisions about individuals who have had numerous allegations made against them in public. Those allegations have ranged from being members of triads, organised crime gangs and/or being associated with money launderers and drug traffickers. The fact that public allegations are made and are repeated for years notwithstanding a lack of criminal convictions is a matter that may be appropriately taken into account in making a judgment as to whether someone is of "good repute" for the purposes of dealing with the casino licensee. It is a matter for the licensee to allow people to deal with them. No reasons have to be given for not dealing with Junket operators. It is a commercial choice. However it is a commercial choice in the context of an obligation to ensure that there are appropriate protections against the infiltration of organised crime and the casino.

76 In any event, the announcement on 17 November 2020 that Crown had decided not to deal with Junkets subject to the conditions referred to elsewhere, indicated a strong approach by the Board.

77 Mr Jalland was clearly an honest witness. It is anticipated that Mr Jalland will find that his role on the Crown Board will be different in the future now that the Controlling Shareholder Protocol and the Services Agreement have been terminated. It is to be expected that the new operating environment in the absence of those two agreements will be far healthier.

Antonia Korsanos

78 Antonia Korsanos has been a director of Crown since 23 May 2018. Since 19 February 2020 she has been the Chair of the Crown Audit & Corporate Governance Committee. She is also a member of the Responsible Gaming Committee; the Finance Committee and the Risk Management Committee.

79 Ms Korsanos has been a director of Crown Melbourne since 5 September 2018 and a Chair of the Crown Melbourne Audit Committee since 5 September 2018.

80 Ms Korsanos is qualified as a Chartered Accountant. She commenced her professional career with Coopers & Lybrand where she worked to for about six years and then worked in numerous senior commercial financial roles in multi-national corporations in Australia. Before joining the Crown Board, Ms Korsanos was the Chief Financial Officer of Aristocrat Leisure Limited. She held that role for 11 years from July 2009.

81 As CFO of Aristocrat, Ms Korsanos had the opportunity to take on more responsibilities than a CFO usually has, including management more broadly, and some of the corporate functions and operational functions. She had responsibility in areas such as strategy, mergers and acquisitions, IR, corporate, supply chain, IT and then for a period, HR and Aristocrat's Japanese business while it was still part of the Group.

82 Since leaving Aristocrat in March 2018 Ms Korsanos has built a portfolio of responsibilities which include non-executive director roles of which Crown is one. She has been appointed to Webjet, Treasury Wines, and has recently taken a position on a US Board, Scientific Games. She previously served on the Ardent Leisure Board between July 2018 and 30 June 2020 from which she resigned because it was in conflict with her directorship on another Board.[52]

83 Ms Korsanos' evidence included the following:[53]

> I can comment on the risk management framework and how it works today, and risk really needs engagement across the organisation. It doesn't sit just with the – it doesn't sit with your risk manager. Your risk manager is just ensuring there is appropriate engagement at a line manager level where operations are being discussed, therefore risks are being brought to people's attention. That then escalates up to an executive level, then to the committee and then to the board. And that's the framework I understand we're working to today.
>
> It is – people can stop information flow but the more engagement you have and the more discussion you have at an operational level, it is – the idea is to make it discoverable. I feel that the management structure today – the risk management framework today seeks to ensure that that occurs. I'm not sure what was there before.

84 Ms Korsanos agreed with the proposition that in the past the Crown Board had not been inquisitive enough about what was happening with the organisation. However she expressed the opinion that there is a "fair bit of enquiry" from the Board today, and there is a "more robust risk management framework"; whereas in the past the gaps had been in the structure and in skills and capabilities".[54]

85 Ms Korsanos expressed the view that in industries like casinos, compliance is a "higher priority" and one would not compromise on compliance for profit. She regards gaming as a "very unique" industry.[55]

86 Ms Korsanos agreed that Crown must accept that the problems that have been identified during the Inquiry are very serious and there is the necessity for a very serious fix. This requires a simple translation to all levels of employees to give them a clear indication of what is expected of them. In particular, when there is an obvious danger for Crown that risk must be elevated.[56] Ms Korsanos said that for this to be achieved the communication must cascade down with a training side and a communication side. Performance against their KPIs should include compliance measures. It should also include the ability to represent the culture of the business and the culture that the Board wants to promote in the business. She believes it is training, communication, and making it real through forcing discussions in performance evaluations.[57]

87 Ms Korsanos provided some insights into four areas that Crown should deal with in the "very serious fix". Those areas were AML; Junkets; governance and structure; and culture.[58]

88 Ms Korsanos made the point that in respect of AML there needed to be more proactivity at the "front-end". Crown has retained Promontory to assist it with looking at identifying vulnerabilities and the due diligence around customers; reporting; and analysis. Ms Korsanos observed that Crown needed to be positioned to continuously improve. She also identified the need to separate compliance from operational functions; with the requirements for separate decision-making, separate review and separate reporting to the Board with no alignment or connectivity with the operations.

89 In relation to Junkets, Ms Korsanos referred to Deloitte's assessment and the fact that the Board needs to reassess whether it is to deal with Junkets in the future. She recognised that the Board needs to set the parameters. She believed that the issues in the past were where the decisions were made, and where the bar was set. She accepted that the Board needs to get good clarity and alignment to the regulations on where the bar has to be and where the burden of proof lies.[59] Although to some extent overtaken by the announcement on 17 November 2020 in relation to Crown's cessation of any dealings with Junket operators, these observations were very sound.

90 In respect of corporate governance, Ms Korsanos said that the matters she referred to in respect of the AML and Junket operations were relevant, but she also identified the need to separate risk from internal audit and the reporting process into the Risk Committee and the Audit Committee respectively.

91 In respect of culture, Ms Korsanos said that there was a need to bring in a more strategic HR leadership that takes it to a level above the function of HR and really focuses on culture. She said:[60]

> We can put a cultural message out there, but we need to make sure that we're helping everybody in the business understand how they contribute to that and how their roles contribute to that and then we need to measure people by that.

92 The evidence established that Crown adjusted its policy to enable it to categorise Ms Korsanos' appointment as an "independent" director. But for that change, Ms Korsanos would probably not have been able to be appointed as an "independent" director of Crown because of her previous appointment at Aristocrat which had a commercial relationship with Crown. The pragmatism with which Ms Korsanos dealt with the suggestion that there may have been a doubt as to whether she had been appointed as an independent director was impressive. She indicated that she would have been quite happy to be appointed as a non-independent director until she was able to qualify under the previous policy that was in place prior to her appointment.

93 Ms Korsanos has industry experience, common sense and capacity. Her evidence was honest, clear, direct and helpful. She is an asset to the Crown Board and it may well be that given the time for appropriate reflection, and of course availability, she would also be an asset on the Board of the Licensee.

Harold Charles Mitchell

94 Harold Charles Mitchell was appointed as a non-executive director of Crown on 10 February 2011.

95 He is currently the Chair of the People, Remuneration and Nomination Committee and the Corporate and Social Responsibility Committee, both of which positions he has held since March 2020, having previously served on those committees as a member from 2010 and 2013 respectively. He is also a director of Crown Resorts Foundation Limited.

96 Mr Mitchell had a long career in media and communications. In 1976 he established Mitchell & Partners which grew to become the largest media buying agency in Australia. In 2010 AEGIS Media acquired Mitchell & Partners and Mr Mitchell served as Executive Chairman of that company until August 2013.

97 Mr Mitchell has served on several other boards, including as current Chairman of the Florey Institute of Neuroscience and Mental Health and the Australia-Indonesia Centre. He has previously served as Chairman of Free TV Australia, the Melbourne Symphony Orchestra and the Victorian Premier's Jobs and Investment Panel.

98 Mr Mitchell agreed that it was necessary to go back and look carefully at what had occurred in respect of the China Arrests so that Crown could learn from what had happened. He said it was "shocking" to find out that people employed by Crown in China at the time had been arrested. He gave the following evidence:[61]

A. I think over the whole period of time, very little, I would have to say. I think it might have been useful for all of us when Mr O'Connor – Mr O'Connor had asked a similar sort of question, because he seemed – he'd had, so sadly, time to think about it, sitting in a prison cell, eight other people, what was it about. And he said – he said, "Perhaps us as Australians, westerners generally looking at Chinese law, don't look at it the same way that the Chinese look at Chinese law". And that's the best that I can put it at. I was impressed when he said that. I was impressed when said that. It's a sad moment for us all, Mr Aspinall and Commissioner.

Q. But it's not so much the Chinese Law; it's the structure of the company and you being kept in the dark, is it not?

A. Yes. Yes, absolutely. Absolutely.

99 Mr Mitchell's evidence on the topic of Junkets included the following rather dramatic observation: [62]

> I think for some time I've heard the word, and I hope I never hear it again, but I've heard it and, of course, I'm aware of what it is.

100 Mr Mitchell claimed that he had become more aware of Junkets particularly over the last year. He watched the ABC Four Corners program *High Rollers, High Risk* in 2014 and accepted that the program made some fairly concerning allegations about Junkets, particularly Macau Junkets. He recalled that the ABC program mentioned that Junkets were thought to have links to organised crime and Triads. However, he said he would not have put a lot of weight on it because at the time he believed that Crown was acting appropriately, lawfully and carefully and, as he said, "so, I left it at that" and "life went on".[63] However Mr Mitchell accepted that when such claims are repeated over the years, they do require analysis.[64]

101 Mr Mitchell was aware in August 2019 that the Fairfax press had made allegations that money laundering had occurred through the Southbank and Riverbank accounts.[65] He was taken through the structuring examples in the Southbank bank statements and agreed "absolutely" that one does not need to be an expert in money laundering to see that something is wrong in these bank statements. He could not explain why there had not been any proper analysis of the bank statements until the Inquiry had raised it. He could not remember the issue ever being raised at Board level until recently. However he understood that "all of the executives" would have been looking into it.[66]

102 Mr Mitchell gave the following evidence:[67]

Q. Mr Mitchell, one of the questions that would come to mind would be for a director to say, "Has anyone looked at the bank accounts?"

A. Yes, yes.

Q. And having done the exercise with Mr Aspinall, if that question had been asked and followed through at the very time when the article was published, the board could have been advised or could have seen what was happening; do you agree with that?
A. Yes, I do, yes.

Q. And so it is the curiosity of the directors to be engaged to look at these things that is necessary, isn't it?
A. Yes, it is. Yes, it is, I agree.

103 Mr Mitchell accepted that the directors had not been inquisitive enough to challenge management as to what was happening in the organisation, particularly in relation to the work in China. He said that in the "modern board" there should be more questioning, more committees and more strength.[68]

104 Mr Mitchell is a long serving director of Crown and the longevity of his directorship was discussed with him in his evidence. He said he believes it is appropriate that people can stay "quite a period of time". When asked whether ten years may "be too long", he said that he had been thinking of that "earlier today". He believed that the Board should continue to get "younger people", a balance of gender and a "complementation of all of the skills". He would be reluctant to just write a rule that says if you have been on a board for a long time, you are no longer independent. However, he would "not mind" a capped period of service on a board for, say 8 years. However he made the important point that there are very successful companies who have long serving directors on their Boards.

105 Mr Mitchell said he was very alive "at the moment" of the need to have succession planning and that "trying to hang on to the end is probably wrong".[69]

106 Mr Mitchell claimed that he had an "aversion to debt" which appears to have arisen from an experience that he described in his autobiography of being "$32 million in debt".[70] The debt apparently arose in the early 1990s as a result of Mr Mitchell signing four personal guarantees in respect of the business in northern New South Wales known as "the Big Banana" in which he had invested and of which he was a minority shareholder. Mr Mitchell accepted that he was facing bankruptcy or insolvency at that time.

107 Mr Mitchell claimed that the other shareholders had "disappeared" and as he put it, he was "left alone". It was at this time that the late Mr Kerry Packer contacted him and said "Harold, I hear you've got some problems, son. Can I help"?[71] Mr Packer invited Mr Mitchell to meet with him which he did. He gave the following evidence:[72]

> I explained the problems that I had been in. He kept shaking his head. Kerry loved a disaster - a disaster. He [said to me repeatedly], "Why would you have signed personal guarantees?", but I did. And I did and I was facing up to it. He offered me the loan of $1 .9 million. I still recall it. It's just an incredible moment because no strings attached. Kerry was just like that. No one was to know, and it wasn't until after he died that

anyone knew. I think that was the case. I paid it back of course. It took me a long time, but I got there with all of it.

108 Mr Mitchell agreed that he could never forget the late Mr Packer's kindness and accepted that it was "a bit life-changing" and as he put it in his autobiography "the kick-start I needed".[73]

109 Mr Mitchell gave evidence that although he would not see the late Mr Packer more than "maybe" once a year, they were "good friends". This was a friendship that grew out of their involvement in the late 1970s in the "very extreme circumstances" of the World Series Cricket competition promoted by the late Mr Packer who took on what Mr Mitchell described as the "big boys" at a time when Mr Mitchell provided "about a quarter of all ads in the cricket".[74]

110 One article that was written about Mr Mitchell in the industry publication "Mumbrella", referred to a section of his autobiography in which he pointed out that Mr James Packer had invested in his business Emitch, a digital agency that Mr Mitchell had launched in 1999 which became the vehicle for floating Mitchell and Partners on the ASX. That article suggested that Mr Mitchell "clearly feels he owes" the Packer family.[75] He gave the following evidence in relation to this claim:[76]

> Q. And did you feel like you owed a favour to the Packer family?
> A. No. No. No, we didn't. In our business we didn't-you didn't operate that way. That isn't the way it works. I represented 4000 clients and I wouldn't have had that many clients if we didn't act entirely on behalf of the clients. It was the biggest company in Australia in the media business, 20 per cent of all the advertisers. I worked for the clients, but I accept Mumbrella would have found a good story in what all of this was all about. I don't quite remember reading at the time, but I might have skimmed it, as we say.

111 That same article included the claim that the author "wouldn't be surprised if bailing out Harold's Big Banana adventure may turn out to be the best $1.9million the Packers ever spent". Mr Mitchell gave the following evidence in relation to this aspect of the article:[77]

> Q. Do you see that?
> A. Well, that's highly objectionable, I'd have to say, and wrong in every way. I'm not sure where he was headed with it because as I understand it, this was about Channel 10, in which both young Mr Packer and young Mr Murdoch were shareholders and ultimately didn't do too well in it, and I didn't help them too much in it either.
>
> Q. Well, I'm raising it with you because it seems that this person, at least, perceives that there is some influence in a material respect ---
> A. Yes, he said that.
>
> Q. --- that might mean you can't bring independent judgment to bear.

A. Yes, I accept he's saying that, and I also say that that's not true. It's not true, Mr Aspinall, not at all.

Q. Do you think he is being unreasonable?
A. He was – yes - well, no, he was looking for a good story. It is a good story; I just read it again. It's like a murder novel.

112 It is appropriate to say something about a recent matter affecting Mr Mitchell.

113 On 4 November 2020 declarations were made in the Federal Court of Australia pursuant to section 1317E(1) of the *Corporations Act* that Mr Mitchell contravened section 180(1) of the Act in that, in his capacity as a director of Tennis Australia Limited (TA), he failed to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would have exercised if they were a director of a corporation in TA's circumstances and occupied the same office as and had the same responsibilities within TA as Mr Mitchell.

114 The detail of the contraventions relate to Mr Mitchell forwarding to Mr Bruce McWilliam certain documents which disclosed TA's internal deliberations and gave rise to reasonably foreseeable harm to TA; disclosing information of internal deliberations of TA which gave rise to reasonably foreseeable harm to TA; and informing Mr McWilliam to take steps which was not appropriate for Mr Mitchell to have done and gave rise to reasonably foreseeable harm to TA.

115 For those contraventions, Mr Mitchell was ordered to pay a pecuniary penalty to the Commonwealth of Australia in the amount of $90,000.[78]

116 The conduct in question occurred in 2013 and the Court made clear that: (i) Mr Mitchell was always intending to act in the best interests of TA; and (ii) that he did not intend to cause any harm to the company. If the Court had been persuaded that the matters were not serious, it could have exercised its discretion not to make such declarations or impose a fine. The fact that the Court saw fit to make the declarations and impose the penalty are matters of significance.

117 Depending upon the particular circumstances, declarations of this kind can call into question a person's integrity. The explanatory comments made by the trial judge that, notwithstanding the seriousness of the matters, Mr Mitchell did not intend to harm the company and in fact intended to help it, may tend to temper the seriousness of the declarations and fine. They may also tend to suggest that Mr Mitchell's conduct was caused by rather serious lapses in judgment rather than compromised integrity.

118 There is no statutory prohibition in the *Casino Control Act* that a director who has suffered declarations of breaches of civil penalty provisions of the *Corporations Act* may not be regarded as a suitable person to be a director of a close associate of a casino licensee. Such a prohibition may be regarded as unnecessary because it may present as obvious that such individuals should not become close associates of a

casino licensee. However it must all depend upon the circumstances of the case and whether the declarations impact on the person's status such that suitability is compromised.

119 When he was asked about his conduct in respect of that matter Mr Mitchell gave the following evidence:[79]

> Q. And what I wanted to ask you is, having regard to that finding, whether you've considered whether it's appropriate for you to remain on the board of Crown?
> A. Yes. I should remain on the board of Crown, because, I think – I think the claim, which was overwhelmingly lost by ASIC was that I shouldn't be a director, and they ultimately withdrew that and it was left that I could be a director of any company.
>
> ...
>
> Q. But in respect of the three findings [breaches of director's duties], Mr Aspinall is asking you whether you have given consideration as to whether you should remain on the board of the publicly listed company, Crown, having regard to those findings?
> A. Yes. And the answer is I have given consideration ---
>
> Q. Yes.
> A. --- and determined that I should stay on the board of Crown.
>
> Q. I see. Notwithstanding those findings that you had breached?
> A. No, they were minor, Commissioner, I believe, and because of the other's overwhelming failure. And I'll wait to see where the further matter of that goes when the matter is completed.

120 It should be noted that this evidence was given prior to the publication of the declarations or the imposition of the fine.

121 It is not known at the time of submission of the Report whether any appellate steps have been taken in respect of the declarations and penalty. If not, it is presumed that Mr Mitchell will further reflect on the need to refresh the Crown Board and take steps to expedite that process.

John Hartley Poynton

122 John Hartley Poynton was appointed as a non-executive director of Crown on 20 November 2018 as a nominee of CPH.

123 Mr Poynton has been a director of Burswood Limited since September 2004 and the Chairman since January 2020.

124 He was appointed a member of the Crown Occupational Health & Safety Committee on 18 February 2020.

125 In addition to his roles at Crown, Mr Poynton is a director of the Future Fund Board of Guardians (Australia's Sovereign Wealth Fund); the Chair of Strike Energy Limited and Poynton Stavrianou Pty Limited; and the Deputy Chair of Sapien Cyber Limited. He has previously served as Chairman, Deputy Chairman and non-executive director of a number of ASX listed companies, Federal Government boards and education institutions including the Export Finance and Insurance Corporation, the Payments System Board of the Reserve Bank of Australia and the Business School at the University of Western Australia.[80]

126 Mr Poynton was the only Crown director, other than those holding dual appointments with CPH, who knew of the Melco transaction prior to its completion on the evening of 30 May 2019. It was at about 9.30am Perth time on 30 May, that Mr Poynton had a telephone conversation with Mr Packer in which Mr Packer informed him that he had agreed to make a sale of 19 per cent of Crown shares to Mr Ho over two tranches at a price of $13 a share.[81]

127 Mr Poynton was not sure if Mr Packer mentioned Melco, but rather he thought that Mr Packer mentioned Lawrence Ho. He did not recall whether he assumed at the time that would mean Melco. Mr Packer informed Mr Poynton that the sale would be announced later that morning, but he could not recall Mr Packer telling him anything else. He did not understand the status of the documentation, but referred to the fact that Mr Packer had said that he had agreed to sell the shares. Mr Poynton had no understanding one way or the other about whether the contracts had been exchanged. He did not inform any other director or employee of Crown about his conversation with Mr Packer.[82]

128 Mr Poynton did not recall Mr Packer asking him to keep the conversation "secret". He accepted that he knew at the time there were regulatory agreements intended to prevent Mr Ho's father from having any interest in Crown and gave the following evidence:[83]

> Q. So did it occur to you at the time that the information which Mr Packer had given you might have an effect on Crown Resorts' obligations under its regulatory agreements?
>
> A. The association between Stanley Ho and Lawrence Ho was that of father and son, as I understood it. I was not aware of any other financial fiduciary association with him at all.
>
> ...
>
> Q. The question I asked you, Mr Poynton, was whether it occurred to you at the time that this sale to Mr Ho might have an impact on Crown Resorts' obligations under its regulatory agreements in New South Wales.
>
> A. Not specifically.
>
> Q. What do you mean by "not specifically"?

A. Well, because it was a purported – it was a sale that Mr Packer was telling me he'd agreed. I wasn't aware of the status of the negotiations, the ultimate acquirer entity or, indeed, any association between that entity and Mr Ho. Mr Packer was telling me, as a representative, in a sense, on the board of Crown of CPH, and it had no insight into who else he was going to tell or when. So I did not believe, at that point, that it would have specific ramifications to the agreements regarding Mr Stanley Ho.

Q. Well, you've twice now used the word "specific", and I'm trying to explore the thought processes that you went through at this time. Did it occur to you, or did it not occur to you, that this sale to Lawrence Ho might have an impact on Crown's regulatory agreements in New South Wales?

A. No.

Q. So it didn't occur to you, did it, that Crown Resorts might need the opportunity to consider whether this sale did have an impact on its regulatory agreements in New South Wales?

A: Not at the time. Subsequently.

Q. Yes. So looking back on it now, do you agree, as a director of Crown Resorts, it would have been a good idea to inform your colleagues on the board of Crown Resorts about this transaction when you were informed about it by Mr Packer?

A. No.

Q. Why do you say that?

A. I didn't believe it was my responsibility to talk about a matter that Mr Packer was advising me about, because I'd assumed that he was going to tell other people in a timely manner. And, as I said, I had no insight into the understanding the agreement, the status of the documentation or anything. So, as far as I was concerned, it was an agreement, but I had no insight as to whether it was a delivered agreement or not or, indeed, whether the chair of the company was going to take up the matters to which you're referring with Mr Packer.

Q. No, but you knew that Mr Packer didn't owe directors' duties to Crown Resorts at the time; correct?

A. Yes.

Q. And you didn't owe directors duties to CPH at the time, did you?

A. No.

Q. You only owed directors duties to Crown Resorts in relation to this transaction; correct?

A. Correct.

Q. So I'm asking you whether, looking back on it now, you would accept that it would have been a good idea to inform your colleagues on the board about

this transaction which Mr Packer informed you about, given your directors duties.

A. Mr – no, what I'm trying to say is that I had a verbal conversation with Mr Packer, where he indicated he'd entered into an agreement. I had no status as to the – the nature of that agreement as it related to signed documents. And, in my view, it was an incomplete transaction in the sense that I didn't think that it was my responsibility, given that he had two other executives on the board of CPH, to be the one to go about informing other directors.

Q. Wasn't it the fact that it was an incomplete transaction which should have led to you considering whether this transaction might have an impact on Crown Resorts under its regulatory agreements, given the relationship between Lawrence Ho and Stanley Ho?

A. Well, as I said, I'm not aware of any – any specific relationship with Mr Ho – or the two Mr Hos – that would have given rise to there being a specific concern, and I'm still not sure about that. As I said, I took a view that there were other people involved with CPH who had a much more close, direct link with Mr Packer, who, I would have thought, would have been the ones charged with informing the rest of the board, because they would know more about the transaction than I did.

129 Mr Poynton agreed that he had not ever researched for himself the relationship between the late Mr Stanley Ho and his son, Lawrence Ho, but rather he had received information anecdotally, and in briefings he had received over time. He said that he understood the concerns and the sensitivities about the late Mr Stanley Ho. He had an understanding from what he had read over time that Mr Lawrence Ho was "at pains to point out" that he did not have fiduciary links and beneficial ownership links with his father.[84]

130 Mr Poynton recalled that after his conversation with Mr Packer, he attempted to telephone Mr Alexander, but that he was in transit on an aircraft. He did not recall whether Mr Alexander returned his telephone call, but there was "general information sharing" between other Board members later in the day.[85]

131 Mr Poynton's evidence in relation to his position after receiving the call from Mr Packer is understandable and should not be the subject of any criticism. It is indicative of the way things were operating at the time.

132 Mr Poynton was certainly not kept informed of Crown's operations in China. This is notwithstanding the fact that Mr Felstead was on the board of Crown Perth with Mr Poynton for some years. However that is not surprising having regard to the discussion elsewhere in the Report which establishes that the VIP International business unit was effectively a law unto itself and did not keep other parts of the business informed of any of its developments in the usual way that would be expected.

133 At no stage was Mr Poynton informed that the staff in China were fearful.[86] He was not aware that Chinese authorities had announced a crackdown on foreign casinos in February 2015. He agreed that the failure to ensure that the escalation in risk was drawn to the attention of the risk management committee and the full Board demonstrated a failure in risk management processes in Crown.[87] He also agreed that the proposal of obtaining work visas from other countries so that staff could suggest to the Chinese authorities they were working elsewhere and simply travelling to China was inconsistent with Crown's fundamental principle that its business affairs should be conducted ethically and with integrity.[88]

134 Mr Poynton accepted that the questioning of the employee by the Chinese police after the arrests of the South Korean casino operators was an "obvious escalation in the risk to the safety of the staff in China".[89] He also agreed that the Board as a whole needed to be aware of the questioning of the staff and the provision of the letter by Crown in respect of the staff member so that it could consider whether the strategy in China remained within its risk appetite and whether any mitigation strategies were appropriate.[90]

135 At the time that he became a director of Crown, Mr Poynton was aware that Crown Perth had its own AML/CTF compliance program. He was one of the directors who approved the introduction of the program. That process involved a paper being provided to the Board on more than one occasion, outlining the AML/CTF program with recommendations by management to adopt it, which were accepted.[91]

136 Mr Poynton was not aware of Southbank or Riverbank at the time of the Media Allegations in July 2019. To his knowledge he has not been involved in any decision regarding those companies.

137 One of the greater failures of management of Crown and in particular Mr Preston was the failure to assist the directors of Crown to understand what was really happening in the Southbank and Riverbank accounts. There is little doubt that had Mr Poynton been provided with the information that was reviewed by Ms Lane in August 2019 together with proper information after an appropriate review of the accounts, he would have appreciated in an instant that the company had serious money laundering problems. However he was deprived of that opportunity by Mr Preston's failure to proceed with the analysis at the time when it should have been completed in August 2019, at the very latest.

138 Mr Poynton agreed that there is a significant potential risk of money laundering through casinos, particularly through Junket operations.[92] He also agreed that Junkets present the opportunity for the introduction of tainted funds at various entry points including the Junket participants.[93] He gave the following evidence:[94]

> Q. Now, in view of these risks which we have just identified, as a director of both Crown Perth and Crown Resorts, do you agree that it is important that casino

operators ensure they only have business associations with persons of good repute?

A. I would say that it's important they don't have associations with people who are known criminals, as distinct from people of high repute. That's – that's a different bar, I would suggest. I understand the point you're making that it's important for casinos not to deal with criminal elements.

Q. Well, do you understand that one of the license – well, one of the criteria for obtaining a licence of Crown Sydney was to demonstrate to the regulator that the licensee only had business associations with those of good repute.

A. Of those of good repute?

Q. Yes.

...

A. No. I wasn't aware of that specific requirement, but I understand why it would exist.

Q. And do you understand that the requirement of good repute goes a little beyond known – what you describe it as – criminal associations?

A. Yes.

Q. Known criminal activity.

A. Known criminal activity. Yes, I would accept that. It's a fairly subjective term, though, one would say.

139 Mr Poynton gave some evidence in respect of the Advertisement that was published in response to the Media Allegations in July 2019. It is clear that he relied upon Management to provide appropriate assistance to the Board at that time so that Crown's response was at least accurate. He gave the following evidence:[95]

Q. Did it occur to you at the time that the very people who were conducting the investigation including Mr Felstead, were the people who were, in fact, responsible for the matters alleged in the media?

A. It didn't – it didn't, specifically, occur to me. It's clear now. But, again, you know, one was relying upon people who'd been longstanding executives in the organisation and one's fellow directors who'd been on the board for a substantial period.

Q. Do you feel, now, that you were let down by management in the preparation of that investigation paper?

A. It – it – yes. I suppose, yes, I was let down in a sense that some of the strong assertions or refutations made were not completely accurate.

140 Mr Poynton was entitled to feel that he had been "let down" in many more ways than this one.

141 The future operations of Crown whilst it recovers from the problems that have been exposed in this Inquiry will, at least for a time, require directors to have far more reservation in respect of the amount of trust they can place in the Management of the company. The burden on the directors during the process of putting in place people and systems that they can ultimately trust will in that sense be far greater than in the past.

Chapter 4.3.6

Former Crown Directors

1 The former directors of Crown who served on the Board during the relevant period are, apart from Mr Packer, Mr Alexander, Mr Brazil, Ms Danziger, Mr Dixon and Mr Rankin. Although Mr Alexander remained as a director of Crown for a period of 12 months after his resignation as Chairman and CEO of Crown in January 2020, at the time of submission of this Report to the Authority Mr Alexander's term as a director had concluded.

2 Except for Mr Alexander, it is intended to analyse the evidence of the former directors in relatively less detail than the present directors of Crown. Mr Alexander's position is different because of his dual role as Chairman and CEO of Crown between 2017 and 2020, his long service as a director of PBL and Crown and also his lengthy and close relationship with the Packer family.

John Henry Alexander

3 John Henry Alexander was a director of Crown from 6 July 2007 to October 2020. In the period 1 February 2017 to 24 January 2020 he was the Executive Chairman as well as the Chief Executive Officer of Crown. He was a director of the Licensee between 22 March 2017 and 24 January 2020.

4 Mr Alexander was the Editor and then the Editor-in-Chief of *The Sydney Morning Herald* between 1987 and 1998 as well as the Editor-in-Chief of *The Australian Financial Review* between 1992 and 1994.

5 From 2002 and 2004 he was the CEO of the Group Media Division of PBL comprising ACP magazines and the Nine Network.

6 Between 2004 and 2007 he was the CEO and Managing Director of PBL. Crown Melbourne and Crown Perth (then Burswood) were among the businesses owned by PBL during that period.

7 Between 2007 and 2012 he was Executive Chairman of Consolidated Media Holdings Pty Limited (CMH) from which position he resigned when CMH was acquired by News Corporation.

8 Mr Alexander was appointed as a director of Crown shortly after its registration as a company with ASIC in May 2007. It was registered in contemplation of a proposed scheme of arrangement and demerger by PBL. Upon the completion of the scheme, Crown acquired the gaming business of PBL including Crown Melbourne and Crown Perth, and demerged the media assets through CMH. Mr Alexander continued in his role as Executive Deputy Chairman of Crown after the sale of CMH to News Corporation in 2012.[1]

Southbank and Riverbank

9 In February 2017, when Mr Alexander became Executive Chairman of Crown he signed consents to become a director of approximately sixty subsidiaries of Crown, including Southbank and Riverbank.

10 Mr Alexander read the article on 5 August 2019 in which he was named as a director of Southbank and Riverbank with allegations that the accounts had been used to launder suspected proceeds of crime.[2] When he first read the article, the names of the companies "did not register" with him.[3] However, shortly after reading the article he spoke with Mr Preston who informed him that the accounts held by those companies were "long standing accounts used by Crown and they were mostly used by VIP players to provide "front money" in advance of playing at Crown Melbourne or Crown Perth" and were "subject to the same AML processes as any other account controlled by Crown".[4]

11 In a written Statement to the Inquiry dated 14 September 2020 Mr Alexander gave the following evidence:[5]

> In December 2019, the Southbank and Riverbank accounts were closed. I was not involved in the decision to close these accounts. I recall hearing about the closure of the accounts after the event when Mr Preston informed me that the CBA had withdrawn their "support" of the accounts. I cannot recall precisely when this conversation took place.

12 Mr Alexander was aware that there was a "withdrawal of support" by the ANZ Bank in 2014 but only became aware of the reason for that withdrawal in about August 2020.[6] He was not made aware that the CBA was considering shutting down the accounts in 2019 because of money laundering concerns. Nor did he know that Mr Barton had met with the CBA in August 2019 about these concerns.[7]

13 In trying to explain how these failures could have occurred Mr Alexander suggested that Mr Preston, Mr Barton and Mr Felstead had been in their roles "or inside the company for a long time and perhaps making adjustments as life changes and as

regulatory regimes became much more rigorous and fulsome" they may have become "desensitised" to the regulatory requirements.[8]

14 Mr Alexander gave evidence that he "obviously" felt "let down by senior management".[9] He offered the suggestion that at the time when the allegations about the Southbank and Riverbank accounts were published on 5 August 2019, there might have been a degree of "allegation fatigue". However he accepted that before attending the CBA in August 2019 to advocate for the accounts to remain open in the face of the allegations, as Mr Barton did, "you would want to be very confident about everything that was happening in the accounts".[10] That was of course not possible because Mr Barton had not reviewed the bank statements at that time and did not do so until September 2020.

15 As CEO, Mr Alexander assumed that Crown was meeting its anti-money laundering obligations.[11] He has never received any training in anti-money laundering but accepted that in hindsight it would have been useful for him to familiarise himself with the anti-money laundering obligations in Australia.[12]

16 Mr Alexander did not appreciate the limited nature of Mr Jeans'/Initialism's review of Crown's AML program in August 2020 when he announced that Crown had received a "gold star". Rather, he was more interested in Mr Jeans' conclusions about how Crown and its AML programs were working and how robust they were, and where Crown sat in terms of their competence and relevance.[13]

China Arrests

17 Mr Alexander did not recall being aware of any risk to the Crown staff in China before the arrests in October 2016. However he did not have any oversight of the business in China other than that which was reported to the Board. He had no recollection of being informed that Crown had obtained any advice about its operations in China or being informed that there was a risk to Crown operating in China.[14]

18 After he became Executive Chairman in February 2017, he prioritised securing the release from prison of the Crown staff as quickly as possible and "in consultation with other members of senior management and the Board, to restructure Crown's VIP business". On 27 April 2017 the Board resolved to close overseas offices other than in Hong Kong where a dedicated Compliance Officer was appointed.[15]

19 In the period up to October 2016, Mr Alexander understood there was a group of senior people, including Mr Johnston, who gave guidance and advice to the executives in the VIP International business unit and the VIP Working Group.[16] He did not have any role in the VIP Working Group. Nor did he have any oversight of the VIP International business in China or read any legal advices in relation to Crown activities in China.[17] He believed in the period up to October 2016 that Crown had made a conscious decision not to open offices in Mainland China because at the time

it was "perceived to be a less vulnerable presence" not to have such an office.[18] It was his understanding up to October 2016 that Crown did not have any offices in China and that the staff in China were working from their homes.[19] In a broad sense members of the senior management group, in particular Mr Craigie, were giving Mr Alexander assurances that Crown was operating legally in China.[20]

20 Mr Alexander suggested that Mr Rankin had not provided the Board with "particularly clear information" about what he knew about the arrests of the staff in China in October 2016. He went to a briefing with Crown's lawyers in Melbourne to find out what had actually happened and was given various levels of assurance that Crown was operating within the law.[21]

21 Mr Alexander was never informed at any time up to October 2016 that the staff in China were expressing fears for their safety.[22] He accepted that this fact was a matter which of itself should have been drawn to the attention of the Crown Board at the time and the failure to do so demonstrated a failure in the risk management processes of Crown at the time. Mr Alexander was not able to offer any comment on how the failure in the risk management processes could have occurred.[23]

22 Mr Alexander agreed that the crackdown announced on 6 February 2015 was an obvious escalation of risk to the safety of the staff in China, especially having regard to the view of VIP International that there was a potential for arbitrary action and inconsistent enforcement of the law by Chinese authorities.[24] He also agreed that the failure to ensure that this crackdown was drawn to the attention of the Risk Management Committee and the full Crown Board demonstrated a failure in the risk processes of Crown management at the time.[25] Once again, he could not explain how this occurred and said that it was "clearly just a failure of information to flow upwards".[26]

23 The first time Mr Alexander heard of the suggestion that applications should be made for work permits from Hong Kong and Singapore for the China staff to allow them to say that they worked out of an overseas location and on business travel to China was as he sat in the witness box.[27] He agreed that such a proposal was inconsistent with the fundamental principle of Crown that all of its business affairs be conducted ethically and with strict observance of the highest standards of integrity.[28]

24 He was not made aware that in February 2015 a response of the VIP International unit was to suspend executive travel into China for a period of time.[29] Nor was he made aware of the suggestion to get rid of the logos off the tails of the Crown planes.[30]

25 He was made aware of the South Korean casino employees' arrest in China in June 2015.[31] However he was not aware that Mr Rankin had said in an email that Crown Resorts needed to be on "high alert" for the risk of a similar regulatory action against Crown employees in China.[32]

26 He was not aware that any Crown employees had been questioned by the Chinese police about whether they were organising gambling tours, and in particular that one had denied the allegation. He was not aware of the requirement for Crown to provide a letter to the Chinese police after the questioning of the employee. He agreed that such an event a few weeks after the arrest of the South Korean employees could be interpreted as an obvious escalation and a risk to the safety of the staff in China.

27 He agreed that the failure by Mr Johnston to inform the rest of the Board about the questioning of the member of the staff in Wuhan was a failure in the risk management processes of Crown at the time.[33]

28 Mr Alexander agreed that these failures suggest a corporate governance problem in that material information which the Board needed to know was not being shared by one member of the Board with the rest of the Board.[34]

Junkets

29 Mr Alexander gave the following evidence in relation to Junkets:[35]

> Q. But in assessing the robustness or otherwise of the vetting process, surely it would be important to understand who, in fact, had the final say?
> A. As I said I assumed, that was Mr Felstead.
>
> Q. So you took comfort in the fact that the person responsible for drumming up business in the VIP international team was also the person who had the final say on the vetting of the junket operators?
> A. Obviously that's a tension that did not exist forcefully enough in the business, yes.
>
> Q. Well, once you turned your mind to that tension, you would agree, would you not, that there is a considerable tension there?
> A. Yes, I think it's a healthy tension. I don't think that – there is no point in getting business which is bad for the business, period.
>
> Q. Well, I suggest that you had no proper basis, as at 31 July 2019, for making the assertion to the ASX and to the media at large that Crown's vetting procedures for junkets were robust. Do you agree or disagree?
> A. As I said, I drew comfort from the range of things we did to check the veracity that the – suitability of various junket operators.
>
> Q. Knowing what you know now, Mr Alexander, would you make that same assertion again?
> A. Probably not.

30 At the time of the Media Allegations in July 2019 Mr Alexander understood that the Board was making decisions, probably a false sense of comfort, that the processes for vetting Junkets were robust. He agreed that things had changed since mid-2019, and this was why the relationships with Junkets had been suspended in August 2020. He

gave the following evidence in respect of the assessment of whether a company should be doing business with particular Junkets in respect of whom allegations had been made:[36]

> Q. But isn't the way forward for the board of a company like yours just to lead the way? It doesn't matter what other people do, surely. If you know someone is connected to triads, really, it's a simple matter. It's obviously a costly matter. But you just don't deal with them; isn't that right?
> A. I would agree with that, yes. If you know – the key word is "know", do you know. And there's – I think it's about allegations being proven.
>
> Q. This business of knowing, you see, life is full of uncertainties. We all know that. And one of the problems that has been around for years is this business of saying, well, they're only allegations therefore I won't stop doing business with them because your competitors might not stop doing business with them and they will steal a march on you. But one of the real things about having a licence from a government like this is that you're expected to lead the way, and in leading the way you set the parameters for the rest of them. And it's about time that happened, isn't it, Mr Alexander?
> A. Yes, I accept that.

31 After Mr Alexander was referred to the Wealth-X Report and the Berkeley Research Group Report in respect of Suncity and Mr Chau, he gave the following evidence:[37]

> Q. Mr Alexander, having reviewed these materials, as well as the Wealth-X report I took you to earlier, can you have any comfort at all that Mr Chau is a person of good repute?
> A. Based on this, no.
>
> Q. Are you in a position to tell us whether this is the kind of person Crown Resorts ought have as a junket operator?
> A. Well, I would be unwilling to predict in advance what the new guidelines would be, but I would imagine somebody with this background would find it very difficult to pass those guidelines, whatever they were.

32 Mr Alexander accepted that the process of vetting junkets was "not as robust as at it should have been" and gave the following evidence:[38]

> Q. Do you agree that the culture of risk and compliance at Crown Resorts has fallen short?
> A. Yes.
>
> Q. And do you accept any responsibility for that?
> A. Yes, I do.

Relationship with Mr Packer

33 Mr Alexander has always expected Crown to act in accordance with the fundamental principle that all of its business affairs should be conducted legally, ethically, with

strict observance of the highest standards of integrity and professionalism.[39] He agreed that the Board of a listed entity is ultimately responsible for deciding the nature and extent of the risks it is prepared to take to meet its objectives, and that it is the role of the Board to set the risk appetite for the entity to oversee its risk management framework and to satisfy itself that the framework is sound.[40]

34 Mr Alexander worked full-time as an executive of Crown from 2007 until 2017. He was also employed with CPH between 2014 and 2017. He said that in "a broad sense" this involved him more deeply in the domestic business of Crown. He kept Mr Packer informed and worked alongside Mr Johnston who focused on the VIP International business, whilst he focused on the domestic business. He also worked very closely with the CEO of Australian Resorts, Mr Felstead. It was essentially a full-time role as was his position as Executive Deputy Chairman of Crown.[41]

35 Mr Alexander accepted that his first loyalty over the years has been to Mr Packer.[42]

36 He agreed that Mr Packer attended the Crown Board meeting on 16 December 2015, but had to leave the meeting to attend another commitment. He agreed that there was nothing in the Minutes in which Mr Packer indicated an intention to resign from the Board. However he agreed that on 21 December 2015 Mr Packer resigned from the Board and neither Mr Packer nor Mr Rankin informed Mr Alexander that Mr Packer was intending to resign from the Board. He gave the following evidence:[43]

Q. Did you ask Mr Packer why he was departing?
A. After he resigned?

Q. Yes.
A. Anytime?

Q. Yes.
A. I think – let me reflect.

Q. The question is, did you ask him?
A. I can't recall, Commissioner.

Q. That's on reflection, is it?
A. Yes.

Q. So you had no – absolutely no idea why the chairman – why the director had gone?
A. I think he was keen to hand over the responsibilities of being chairman to somebody else. And I think he saw in Mr Rankin somebody who was going to, perhaps, at that time, embark upon some value-adding, restructuring moves for the company.

Q. I see. Mr Rankin had been the chairman for about four months by then, since August, and I'm just interested to know you, as, obviously a, it appears, an ally or close personal friend of Mr Packer, he didn't tell you why he was leaving.

A. I genuinely can't recall.

37 The Media Release of 21 December 2015 referred to Mr Packer as having a "very active involvement in Crown in his new role". Mr Alexander believed it was described as being a "President of International Strategy" or a title like that.[44] This role was to drive new opportunities for the Company globally. However such an arrangement was never put into effect.[45]

38 On 10 January 2017 it was announced that Mr Rankin would be stepping down as Chairman of Crown and Mr Alexander would be appointed as Executive Chairman effective from 1 February 2017. It was also announced that Mr Packer was appointed as a director of Crown following receipt of a nomination from CPH and subject to any regulatory approvals.

39 Mr Alexander understood that the reason Mr Rankin stepped down as Chairman at the time was that "the major shareholder thought a change needed to be made". Mr Packer had expressed his disappointment in Mr Rankin and blamed him for the China arrests. [46]

40 Mr Craigie negotiated a departure with Mr Alexander because the China Arrests had happened on his watch, and he had been with the Company for many years.[47]

41 Mr Alexander understood that in March 2018 Mr Packer resigned as a director from the Board of Crown for health reasons.[48] He also understood that the principal purpose of the Controlling Shareholder Protocol was for Crown to provide its confidential information to Mr Packer in circumstances where he had left the Boards of Crown and CPH, and was therefore not entitled to receive information under the provisions of the Services Agreement.[49]

42 Mr Alexander communicated with Mr Packer on a regular basis by telephone and by email. Some of those communications are detailed elsewhere in the Report. It is clear that Mr Alexander had been a close ally of the Packer family for many years. He had worked with the late Mr Kerry Packer and the closeness of that relationship continued with Mr James Packer.

43 Mr Alexander communicated with Mr Packer throughout the whole of the period that he was on the Crown Board and in particular after Mr Packer resigned in March 2018. There is no basis upon which it could be assumed that Mr Alexander gave any thought to the requirements of clause 2.3 of the Controlling Shareholder Protocol when communicating confidential information to Mr Packer. That included the provision of information that disclosed the result of what had occurred during In Camera discussions at a Crown Board meeting. It would appear that Mr Alexander gave no thought to the propriety of such a process or whether it was in the interests of Crown that the result of confidential discussions with independent directors should be communicated to Mr Packer.

44 An example of this type of communication occurred after the Crown Board meeting on 12 June 2019. This was in the context of the Crown directors having recently been informed about the Melco transaction. Mr Packer simply wrote to Mr Alexander by email asking "Any news?".[50] Mr Alexander in an obviously unconstrained fashion responded to Mr Packer in terms that included the following:[51]

> No. My friend, just finished a 4 hour Crown Resorts board meeting, all good. Formalised amongst other things the process to find a new CEO.....independent directors have calmed down since your share sale, good in camera session at the end and nothing negative about Melco. Main immediate task, which is in the hands of our outside lawyers and management, is to get the commentary from the VCGLR draft report into China - Crown and board in and committees in clear - but some gratuitous commentary about Barry and Michael Chen, removed. We have until the end of the month to do so, and there is no certainty about whether the final report, or just a summary, will be released at all the Minister. But we have to assume so. On a flight to Sydney right now, at Seven all day tomorrow for 3 board meetings. I'm then going to take a week's break, in Capri, with Alice before the new financial year starts. The independents want the fin plan resisted, which we will do; upwards, of course. I will keep you posted of anything significant, as always
>
> Warmest ja

45 Mr Alexander said that Mr Packer was always very strong in his views, but that they rarely led to direct action as a result.[52] After reviewing some other email communications with Mr Packer he gave the following evidence:[53]

> Q. He was asking you to review the forecasts and ensure that they were correct?
> A. Yes. Yes.
>
> Q. And that was an instruction to you was it not?
> A. In a broad sense, yes.
>
> …
>
> Q. And Mr Packer was providing some instructions to you in his emails; is that a fair way of putting it?
> A. Indirectly, yes.

46 However, Mr Alexander said he did not believe that Mr Packer was "keeping a fairly close control of the management of Crown Resorts at this time".[54] As discussed below this was either a lack of understanding of the reality or a lack of candour.

Melco transaction

47 On 30 May 2019 Mr Alexander was travelling between 9.00am to 11.25pm on a Qantas flight from Melbourne to Los Angeles to meet with James Packer on 31 May 2019, followed by a meeting of partners and shareholders in Nobu in New York on 3 June 2019.

48 Shortly after landing in Los Angeles on 30 May 2019 at around 11.25pm AEST, Mr Alexander turned on his Blackberry phone and noticed that he had received a number of missed telephone calls, voicemails and emails. He read an email that Mr Johnston had sent to him about 8.13pm AEST on 30 May in respect of the Melco Share Sale Agreement. After reading that email, he also read press releases on his web browser on his phone.

49 Mr Alexander gave evidence that before these communications he was not aware of any proposal or plan for CPH or any related company to sell any of its shares in Crown to Melco.[55]

50 Mr Alexander claimed in his written Statement to the Inquiry that although he had received a voicemail from Mr Johnston asking him to return his call, he did not do so that evening because of the "time difference".[56] Although there was a controversy about whether the conversation took place that evening or the following evening, it is probable that Mr Alexander spoke with Mr Johnston soon after landing in Los Angeles. Mr Johnston sent a text message to Mr Jalland at about that time reporting that "JA didn't sound surprised but didn't sound happy".[57] Mr Alexander gave evidence that he "was surprised but not shocked". He was "not especially" unhappy and it was "Mr Packer's call what he did with his stock".[58]

51 Mr Alexander met with Mr Packer on 1 June 2019 10.30am Los Angeles time. Mr Alexander's written evidence in relation to that meeting is as follows:[59]

> That meeting lasted approximately 60 minutes, and we discussed a number of matters. During our meeting Mr Packer and I briefly discussed the transaction, and Mr Packer spoke briefly to the rationale for CPH deciding to sell part of its shares in Crown. Broadly, I understood from this conversation that CPH had wanted to diversify its assets and to pursue other investments alongside its remaining investment in Crown.

52 In oral evidence Mr Alexander said that he asked Mr Packer why he decided to sell and in particular why he decided to sell to Mr Ho in response to which Mr Packer said: "I just basically don't want to have all my eggs in the one basket. I know Lawrence. I've known Lawrence for a long time and I believe he can help us with our VIP business".[60] Mr Alexander gave the following evidence:[61]

> Q. And so when you land in California and you are told of this transaction by Mr Johnston or whoever told you, you told me that you weren't shocked, but a bit surprised, is that what you said?
>
> A. Exactly. And by that I meant the fact that Mr Packer decided to sell down did not surprise me. He has historically not been an emotional investor; he's not emotionally tied to any of his assets and I think that's a great strength. So the fact that he made a decision to do something like that, particularly in the wake of the failed Wynn approach because he had indicated, I think, that if the price was right, he would potentially be a seller, but only if the price was right.

And so when he took an alternative course, I wasn't shocked. I was just surprised by the timing of it.

Q. And surprised by the timing or the fact that no one told you?
A. No, no, I wasn't surprised at the fact that nobody told me. I was relieved nobody told me. The fact is it would have put us in a very interesting situation, I think, with the CSP and I think that we probably – if we'd known about the transaction, we would have – I would have recommended we cease all information to protect Crown, ahead of any transaction that was imminent or otherwise. But, no, I was – I wasn't annoyed or upset that I didn't know about the transaction.

Q. When you say you were relieved, I can understand why you were relieved; you didn't have all those burdens that you've just described, correct?
A. Correct, yes. And it would have ---

Q. And so – I'm sorry?
A. I said it would have put Crown in a very interesting disclosure situation as well.

Q. Well, when you say you would have ceased all information, you would have cut off the Controlling Shareholder Protocol flow, would you not?
A. I think so, yes; that's what I was suggesting.

Q. And I won't go into the reasons for that in detail but that's an obvious step that you would have taken rather urgently; correct?
A. Yes, it is, to protect Crown and CPH.

...

Q. But these directors had obligations to Crown, as did you, to ensure that they checked things prior to dealing with companies so that you could honour your obligations to the government, isn't that right?
A. For CPH in terms of the acquisition, yes.

Q. Or Crown directors.
A. Yes, it's an interesting question.

Q. What is the answer?
A. I am not – I'm not entirely sure. I'm not entirely sure.

Q. And being not entirely sure puts the layer upon layer of complexity of this, doesn't it?
A. There are some complexities, yes.

53 Mr Alexander said that he did not believe that the ramifications or the inadvertent ramifications had been appreciated at that the time that he arrived in Los Angeles.[62]

54 Mr Alexander accepted that Crown had an obligation to ensure that the late Mr Stanley Ho did not acquire a direct or indirect interest in Crown. He also accepted

that it was incredibly important to honour that undertaking to Government.[63] Had Crown known in advance that the transaction was going to take place it would want to have known that the late Mr Stanley Ho was not going to have any direct or indirect acquisition into Crown at the time.[64]

Conclusion

55 Mr Alexander was in the most powerful positions in Crown during the period 1 February 2017 to January 2020 as Chairman of the Board and CEO. Although he inherited the disastrous aftermath of the China arrests and had to work through the process after Mr Packer resigned from the Board in March 2018 due to ill health, Mr Alexander's stewardship led Crown to disastrous consequences. This included processes that exposed its directors to conflicts of interest and remote management by Mr Packer and a failure to protect Crown's casino licensees from the infiltration of criminal elements through, at the very least, its lack of robust Junket approval processes and a lack of proper oversight and monitoring of risks to money laundering in its subsidiaries' bank accounts.

56 Mr Alexander's perception of his relationship with Mr Packer was either blind to the reality or lacking in candour. It is probable that it was the former circumstance that was on display in the witness box. Mr Alexander was fulfilling two roles and it is apparent that he could not or would not see the reality of being managed remotely by Mr Packer. As one current director of Crown observed in January 2020, although it would be hard to think of "anyone more loyal" to Mr Packer than Mr Alexander, "running a high profile public company" was not his "strong suit".[65] It is probable that the relationship between Mr Alexander and the Packer family operated in the same fashion over all the years of their friendships. Whatever the late Mr Kerry Packer and then Mr James Packer wanted was what was done. Any assumption that it was all for the best proved to be unjustified.

Benjamin Alexander Brazil

57 Benjamin Alexander Brazil was a director of Crown from 2009 until 2017. He described himself as an "investor" and holds degrees in both law and commerce, although he has never practised as a lawyer.

58 Mr Brazil commenced employment with Macquarie Bank in early 1994 and left in March 2000. He worked for CPH for about one year and then established an entrepreneurial start-up known as Utility One that ran for two years. He returned to work at Macquarie in 2003 staying until 2007 when he left to establish a joint venture with CPH with ambitions to establish an investment firm, known as Park Street Partners. That investment firm fell victim to the financial crisis, and by January 2009 Mr Brazil returned to Macquarie where he remained until he resigned at the end of

June 2019. Mr Brazil was based in London between 2006 and 2008. Otherwise he spent his time largely in Sydney, with a brief period in New York.[66]

59 It was probably in the first half of 2009 that Mr Brazil offered his services to Mr Packer to become a Board member of Crown. The appointment was affirmed later that year. Mr Brazil joined the Board of Crown with the hope that he could assist Crown in doing the things that it does.[67]

60 Mr Brazil worked full time at Macquarie during the period of his Crown directorship.

61 He served on the Audit & Corporate Governance Committee and the Finance Committee.[68] The Audit & Corporate Governance Committee approved the Annual Corporate Governance Statement that went to the Board. It was otherwise charged with assisting the Board in relation to corporate governance generally. Mr Brazil claimed that although the Charter for that Committee referred to a review of the "practices" of Crown, its primary function was to go through the Corporate Governance Statement.[69] Mr Brazil also referred to the important function of "taking a bunch of the burden" so that the full Board was assisted by the work of the Committee. Part of the core function of the Committee was to look at the external audit and ensure that the processes from the Company's point of view were appropriate.[70]

Southbank and Riverbank

62 Whilst Mr Brazil was on the Audit & Corporate Governance Committee and the Board, he was not aware of the existence of Southbank and Riverbank.[71] However he expected that entities like Southbank or Riverbank would have their financial positions, P&L and so on incorporated up into the consolidated financial accounts of Crown.[72]

Risk appetite

63 Mr Brazil expressed the view that the whole Board is responsible for considering and being conscious of risk. He was not sure that the Audit & Corporate Governance Committee had a particular role in that regard other than within the scope of the audit and corporate governance matters.

64 During his time as a director of Crown from 2009 to 2017 the Board did not set a risk appetite. It was not his role as the Chair of the Audit & Corporate Governance Committee to do that.[73] There was not a conscious decision not to set a risk appetite, it just seems to have escaped peoples' notice.[74]

China Arrests

65 Mr Brazil did not recall knowing when Crown's operations in China commenced. He did not recall approving or examining what was going to happen in China. He thought

it was actually in December 2012, as a result of a request by him, that the VIP International business unit had given a presentation to the Board about the operations in China in which there was a depiction of some staff members in China. The reason Mr Brazil asked for a presentation was because there was a note in one of the documents in the VIP International reporting cycle that there was a risk of not achieving profit targets.[75]

66 Prior to the arrests in China, Mr Brazil had very limited knowledge of what was occurring in China and he would not have known whether there were staff operating in China at that time.[76]

67 Mr Brazil was shocked when the employees were detained. He did not recall receiving any information about the South Korean casino employees being arrested in China. It never came to his attention that the Chairman, Mr Rankin, had informed Mr Craigie that the organisation should be on high alert in relation to similar action in respect of Crown staff.[77] He was not aware that there was a Chinese Government crackdown on foreign casinos luring Chinese Nationals to gamble at foreign casinos. He probably knew of the crackdown on corruption, but not the specific crackdown on foreign casinos.[78] He was not aware that one of the Crown employees had been questioned by the police in China. Nor was he aware that Crown was operating an unregistered office in China.

68 Mr Brazil recounted what happened at a Crown Board meeting after the employees had been arrested in China, in October 2016. His evidence included the following:[79]

> I asked whether we had worked out whether we are culpable here. I was asked by Mr Rankin, who was the Chairman what I meant by "culpable". I responded that it was a pretty specific word. Discussion ensued. There was – I'd obviously asked the question, "Are we getting to the bottom of this?" A discussion ensued about whether it was in, if you like, good taste to be going through and interrogating the past practices, past conduct, of the employees who were, at that point, paying a very high price themselves.
>
> I, of course, was not asking, at that point, about the limited subset of people who'd been detained. I was asking about potential culpability of a much broader set of people. I was, indeed, asked by a Board member whether I, in asking that question, was, you know, "Surely you don't mean the Board?" And I responded that, at this early stage, it was – the idea was that you treated all those things as one and the same until you knew better. I asked whether everyone's emails were being gone through, because that was standard operating procedure in a situation like this.
>
> It became clear that, no, no emails were being gone through. And, obviously, by this point, it was also clear that, no, we had not established – we had not worked out whether we are culpable here. The discussion went on for a little while until the point at which the Chairman committed that there will be a post-mortem. He repeated there has to be a post-mortem. And I was happy to take that commitment. There was no

disagreement with that commitment as something which had, appropriately, put on the agenda and prioritised a post-mortem.

69 Mr Brazil thought that it was very important that the Board got to the bottom of what had happened and work out whether "some of us had caused this tragic event". He experienced some "push back" as to whether this was really the right thing to do in the situation. He was focusing on how on earth there were people in prison in China, and there was no explanation on the surface. However he was fairly confident that there would be an explanation beneath the surface.[80]

70 Mr Brazil said that notwithstanding questions from other directors about whether it was appropriate to go through emails at the time after the China Arrests, he was insistent that the Board must do exactly that. He said that the job was to "stand up and be counted".[81]

71 He said that he was metaphorically thumping the table at the Board meeting and regarded it as the only way he could discharge his duties as a director and that he had no fear in doing so.[82]

72 Over the following months Mr Brazil pushed for updates on the status of the "post-mortem" and was advised that the law firm, MinterEllison had been hired to conduct it.[83]

73 By 2017 Mr Brazil had been on the Board for 7 years and felt that he had made a creditable contribution in terms of time. Although the China Arrests had happened he believed that he needed to follow through on resigning from the Board and he spoke to Mr Packer and to Mr Alexander and put the wheels in motion for his departure from the Board.[84]

Association with Mr Packer

74 It is clear that Mr Brazil was considered by Mr Packer to be a "good friend" and it is apparent that their association was the catalyst for Mr Brazil to join the Crown Board.[85]

75 Mr Brazil was taken through a series of emails in which he appeared to be assisting Mr Packer.[86] He resisted any suggestion that he might lack independence and referred to examples of speaking stridently against and opposing proposals for which CPH had some enthusiasm. He gave evidence that there was nothing that would skew him to act in the interests of anyone except Crown.[87] It is obvious that Mr Brazil's self-perception was accurate and justified.

76 When Mr Packer left the Board in December 2015 no-one, including Mr Packer, suggested that he was unwell.[88]

Junkets

77 Mr Brazil appreciated that the VIP business was conducted in part through Junkets. However he would not have known about any specific Junkets, nor their names, but he was aware of the concept of a Junket and that Junkets are an exposure point to infiltration by criminal elements. He did not believe that he watched the ABC Four Corners program, *High Rollers – High Risk?* in 2014.[89] He understood that management was doing what was expected of them and taking the necessary steps to ensure that there would not be criminal infiltration through Junkets. Mr Brazil observed that this was the sort of thing that management was capable of, or could be reasonably regarded as being capable of, because it is an operational level matter.[90]

Services Agreement

78 Mr Brazil explained that under the Services Agreement, Crown was able to obtain the benefit of the expertise of the CPH executives on a "part time basis" which services could probably not be replicated on the open market except on a "full time basis".[91] He accepted that where a director was providing such executive services under the Services Agreement, there may be "some scenarios" where a conflict may arise; but he felt that they could be managed.[92] Although he was a member of the Board that approved the Services Agreement, he certainly did not have an understanding that CPH could use the confidential information that it received in providing its services under the Agreement for its own purposes.[93]

79 He gave the following evidence:[94]

> Q. I don't understand why it's necessary for directors of a public company to become part of management, which this is, obviously, particularly where there's a licence involved and the recognised danger of infiltration from criminal elements.
>
> A. Yes.
>
> Q. And I would like to understand why you think that that's not a reasonable proposition?
>
> A. I think it's not totally uncommon for board members to do what might be described as deep dives, for example. I think – I suspect that, in this case, what's occurred is something beyond that which is healthy. And so I think what you're describing is a scenario where someone turns into something approximating de facto management and, in that scenario, I agree with you.

Conclusion

80 Although Mr Brazil is no longer a director of Crown, his evidence was relevant to the events under investigation in particular in respect of the Media Allegations. It is

obvious that Mr Brazil was committed at all times to acting in the best interests of Crown.

81 However Crown's ineffectual corporate governance, in particular the failure to set risk appetite of the company with disastrous consequences in China in 2016, is the responsibility of all directors who served at the time, including Mr Brazil.

Rowena Danziger

82 Rowena Danziger was non-executive director of Crown from 2007 to 2017 and a member of the Risk Management Committee of the Crown Board for the whole of that period. Ms Danziger was also the Chair of the Crown Occupational Health and Safety Committee during 2015 and 2016 and a member of the Crown Melbourne Audit Committee until 2017.

83 At the time that she gave her evidence Ms Danziger remained as a director of Crown Melbourne and a director of the Crown Resorts Foundation.

84 By 2015 Ms Danziger had known Mr Felstead for approximately eight years. After he became the CEO of Australian Resorts in 2013, he had a standing invitation to attend Crown Board meetings and she accepted that by virtue of the length of time that she had known Mr Felstead, she had a level of trust in him. [95]

85 By 2015 Ms Danziger had no understanding of the legality of the business activities being conducted by Crown staff living and working in China, nor did she see any legal advices in respect of that matter. Ms Danziger had no knowledge of an announcement by the Chinese authorities in February 2015 that China was going to crack down on foreign casinos recruiting Chinese citizens to gamble in other countries.[96] She did not recall Mr Felstead advising her in February 2015 that he was deferring further travel to China for a while because of the risks involved by reason of the crackdown.

86 Ms Danziger was aware in June 2015 that a number of employees of South Korean casinos had been arrested by Chinese police for gambling offences, but she was not sure of the reasons for those arrests. She recollected that Mr Johnston spoke about the South Korean Arrests in a context that was "an informal discussion"; she thought between other meetings and that Mr Johnston had said that these arrests had occurred and the advice was that it had "no relevance to what we were doing in China", and she said "that's about it".[97]

87 Ms Danziger was not aware of the questioning of Crown's staff by Chinese authorities. However, she accepted that these events should have been drawn to her attention as a member of the Crown Risk Management Committee and as a member of the Crown Board. [98]

88 Ms Danziger referred to the new risk program developed by Ms Siegers and said that she was "very happy before" with what Crown did about anti-money laundering and

AUSTRAC, but she thought that the new risk parameters that Ms Siegers had developed have put Crown in a very good place and were being carried out very "conscientiously". She said that she felt that the errors or gaps that had been there, that Crown did not realise were there, had been addressed. She had no idea about the Southbank and Riverbank bank accounts and had only been informed of the matters in the last couple of days before her evidence on 24 August 2020.[99]

Conclusion

89 Ms Danziger gave evidence well before the balance of the directors and well before the exposure of many of the problems that beset Crown. To be fair to Ms Danziger, these problems were not discussed with her during her evidence and in those circumstances she did not have the opportunity to address them in detail.

90 However, the ineffectual nature and functioning of the Crown risk and governance structures is the responsibility of all directors who served at the time of these failures.

Geoffrey James Dixon

91 Geoffrey James Dixon was a non-executive director of Crown from 2007 to 2019. He was the Chairman of the Crown Risk Management Committee. During that period. He was also Chair of the Crown Sydney Committee from August 2018 until he retired from the Crown Board in October/November 2019.

92 He was the Managing Director and CEO of Qantas Airways from 2000 to 2008. He was Chairman of Tourism Australia from 2008 to 2014. He was Chairman of the Garvan Medical Research Foundation from 2008 to 2018.

93 Mr Dixon has served on a number of public companies and not-for-profit boards, including Leighton Holdings, Adslot Limited, the Business Council of Australia and the Museum of Contemporary Art Australia.

China Arrests

94 Mr Dixon was aware of the restrictions on money leaving China from various newspaper reports and matters that were discussed at the Board level. He formed the view that the corruption crackdown by the Chinese Government might deter Chinese VIPs from visiting Macau and that this would be "good for the business" of the Australian casinos, including Crown, because Chinese VIP patrons were likely to redirect their patronage to jurisdictions like Australia.[100]

95 Mr Dixon was not aware of any reports of an announcement to the effect that foreign casinos were to be targeted as part of the Chinese Government crackdown. He was aware of the arrests of the employees of the South Korean casino operators but was advised that Crown's operations in China were quite different to those of the South Koreans.[101]

96 Mr Dixon emphasised that as the Chairman of the Risk Management Committee he was informed on several occasions that Crown had obtained legal advice to the effect that its operations in China were legal. He believed that there was some risk in operating in China because of the opaque nature of the society and the relationship between business and Government being different from the position in the West. However, he thought it was a manageable level of risk. He was never of the view that the activities of Crown or its subsidiaries were putting the employees at a level of risk over and above that which always exists in China. He was never of the view that there was any material risk that the employees of Crown or its subsidiaries would be detained. He was aware that risk had to be managed at an operational level and based on the reports he received, he was confident that management had adopted appropriate operating procedures and that they would escalate risks as appropriate, including to the Board, if necessary.[102]

97 Mr Dixon knew from the work he had done in the tourism industry that Australia was seen by the Chinese as a very attractive destination. He expected that Australia and Crown would benefit from the volume of Chinese Nationals coming to Australia, not just from Chinese VIP patrons, but from other Chinese patrons as well.[103]

98 He knew from briefings at the Board meetings that the Chinese market was an area of focus for Crown and that the investment in the Barangaroo Casino was driven in part by the expectation that it would generate a return via the Chinese VIP patrons, and other Chinese patrons as well. He expected that the Chinese market, including the VIP market, would continue to be a growing part of Crown's business.[104]

99 Mr Dixon knew that Crown had staff working in Mainland China.[105] He was aware from the information received from senior executives that everything they were doing in China was within the legal confines of Chinese law. He understood that Crown employees were in China to publicise the fact that Crown had two very good entertainment complexes in Australia, but he was not aware that the staff in China were assisting in arranging credit limits for Chinese citizens for use when gambling at Crown Melbourne and Crown Perth.[106] He understood that Crown helped the gamblers with visa arrangements in cooperating with the Immigration Department.

100 Mr Dixon knew that Crown could not conduct an office and he was also advised by the executive management that Crown was operating in China legally. He understood that Crown had made a conscious decision not to establish offices in China and he also understood that Crown did not have any offices in China.[107]

101 Mr Dixon had "no idea" that Crown was conducting an office in Guangzhou,[108] and he was not aware that the office was subject to random checks by authorities or that it posed many risks.[109] As a Board member and as the Chairman of the Risk Management Committee, he was never informed of the existence of the office. He accepted that the office and its operation, was contrary to the fundamental principle of Crown conducting its affairs ethically, and in accordance with the highest

standards of integrity.[110] He also accepted that this should have been brought to the Risk Management Committee and it is "inexplicable" why it was not brought to its attention.[111]

102 Mr Dixon remembered a time when the executives of VIP International decided to defer travel to China for a while and people saying that they would "take it a bit easier".[112] He thought that there should have been a higher alert than there was on the situation.[113]

103 Mr Dixon accepted that it was very important that any escalation of risk to the safety of the staff in China be reported to the Risk Management Committee.[114] He accepted that staff should not have been placed in a position of expressing fears for their safety in carrying out their work.[115] He also accepted that such expressions of fears should have been brought to the attention of the Risk Management Committee at the time.[116] He accepted that the failure to bring this to the attention of the risk management processes revealed a failure of the executive management at that time to pass it on to the Board. He could not give any explanations or insights as to how this failure in risk management processes occurred. He said he could not understand why they would not want to "share it at any rate". He said "it's certainly a big surprise".[117]

104 Mr Dixon could not offer an explanation as to why such a failure to notify the Board occurred.[118]

105 Mr Dixon thought that the whole issue of management of the risk on the ground in China had been a failure.[119] He accepted that the lines of reporting risks were compromised, in that the Committee and/or the Board was not informed of the staff members being questioned by the police in China.[120] In addition, he was not aware that Mr Rankin had indicated that the Company should be on "high alert".[121] He believed it was a breakdown in the process.[122] He could not offer any explanation or insight as to how or why such a breakdown had occurred and accepted that it was a corporate governance problem.[123]

Other matters

106 Mr Dixon read the VCGLR Report in May 2019. It was of particular concern to him as a member of the Board and as Chairman of the Risk Management Committee. The content indicated that a lot of the information that the Board and the Risk Management Committee needed to know, or should have known, was not relayed to them.[124] He asked that Mr Felstead be requested to report on it.[125]

107 Mr Dixon accepted that the failure to identify in the Advertisement the concerns which were held at the time about the governance and risk management failures in relation to Crown's operations in China was "a failure on our part". He believed that it was not necessary to include the section criticising the former employee and it was done "pretty quickly".[126]

108 Mr Dixon was not informed that Mr Packer had made any threats to a businessman in the context of a proposal to privatise Crown in November 2015. Mr Rankin did not inform him of that matter and as far as he was aware, the Board was not informed at any time that Mr Packer had made threats of this kind.[127]

109 Mr Dixon believed that it would probably have been best if the nominee directors had informed the Crown Board of the Melco Transaction. He accepted their right to sell shares, but expressed the view that given everything and the relationship between the Crown and CPH, "we should have been told". He was aware of the important regulatory agreements with the New South Wales Regulator but he could not remember the exact detail of the agreements or the prohibition in respect of the late Mr Stanley Ho.[128] If he had been informed of the transaction before it happened, a range of things could have occurred.[129]

110 Mr Dixon observed that the tension between short-term and long-term incentives is always a problem, the management of which is quite difficult. He discussed whether it may have been something to do with the incentives that prevented Mr Felstead from escalating bad news but thought that Mr Felstead was probably making value judgments based on his long experience, whereas he should have been making critical judgments. [130]

111 Mr Dixon discussed the process of Board appointment and Board succession planning and gave the following evidence:[131]

> A. And I'll say way, because there is a – a view in Australia that gets a lot of currency that CEOs shouldn't be around – so, I'm talking CEOs, now, for about five – more than five years. Some of the most successful ones have been around for a long, long time, and I think it's particular cases. And most of the people on the Crown board, yes, I think have been there a while, but their experience is invaluable in a lot of ways. Not just, I mean, in casinos, but I mean experience or their life experience.
>
> Q. You made the point about CEOs being only around for five years. Do I apprehend that you're suggesting that that's a modern approach to things which may not be of advantage?
>
> A. I – look, I think it depends obviously on the individual, Commissioner. But I – I don't think there shouldn't be – there should be any arbitrary thing: well, you've been on the board – if you're running a company for five to six years, you know, you somehow got too close to the issue, or something like that. My successor at Qantas, as a matter of fact, I think, is now close to being 11 years, and does an outstanding job.

112 Mr Dixon observed that the size of the "gene pool" for directors is because the difficulty of, as he put it, "to break into the board regime in Australia". This is usually by invitation, rather than by application. However, Mr Dixon suggested that such a problem is "becoming in the past" and "perhaps it is time that a lot more people are given the opportunity to be appointed to boards".[132]

113 Mr Dixon did not accept that it was of "particular concern" that the Risk Committee was only required to meet twice a year.[133] He rejected the proposition that the Risk Committee was too inactive or not inquisitive enough as an explanation of why there were problems with the VIP business. However, he said that Mr Felstead attended every Board meeting; he felt "quite strongly" that the Board "were asking questions", and that the answers were "not good enough".[134] He emphasised the importance of appointing a CEO who is trustworthy and has the integrity and knowledge to do their job.[135] When pressed in respect of his evidence that Mr Felstead did not inform him of the risks that he should have informed him of, he said:[136]

> A. Look, I – I agree totally with that and I've said that, and this particular one has broken down, but I – I don't think because one thing has broken down or one particular case has broken down that it's necessary to change the whole structure of business in Australia or wherever it is.
>
> Q. Mr Dixon, I appreciate you indicating candidly that you couldn't offer any explanation or give any insights as to how the failure occurred. I understand that. But one of the things, to be fair to Mr Felstead, is that it appears throughout the time that Mr James Packer was the chairman of the board and had an interest in Macau and the operations of the VIP in Macau, Mr Felstead and Mr Packer were communicating what seems to be quite constantly. You understand that?
> A. I do now.
>
> Q. And I presume that you may not have been aware of that. Is that right?
> A. I wasn't aware of it.
>
> Q. And so on the one hand you have a senior executive for management, such as Mr Felstead, who has got access to the Chairman of the Board, and there are numerous emails going back and forth in respect of the numbers and how things are travelling, and you have, on one view of it, a reporting line to the Chairman. Do you understand that?
> A. I do now, yes.

114 Mr Dixon indicated that he now understood that Mr Johnston was attending the VIP working group meetings and ultimately said that he did not think it was all on Mr Felstead's head. However he maintained the view that a lot of these things could have been elevated to the Board and to the Committees by Mr Felstead, and he found it hard why he did not want to share it with the Committees or Board as they could have helped "and added value".[137] Mr Dixon did not believe that he had ever communicated with Mr Packer or Mr Johnston on any issue like this on the Board.[138]

115 Mr Dixon believed that Junkets are "a part of casino business operations around the world" and he felt that it was "quite okay" for Crown to deal with them. He said it was obvious it would be "contingent on them being of good repute" and that dealing with anything to do with money and bringing people in obviously had some risks attached.[139] He felt that they were a legitimate part of doing business and that one had

"no right" to assume that everybody tied up with them had connections to criminal elements. He suggested that with the heavy regulation, the Junkets that Crown was dealing with would have been known to or scrutinised by the various regulatory authorities, because it's a "partnership".[140]

116 Mr Dixon conceded that some of the Media Allegations, at least in respect of the Junkets that Crown was dealing with, were correct.[141] He gave the following evidence:[142]

> Q. Yes, but wouldn't you, in the face of these allegations – it seems obvious that you should have recorded or made sure that the allegations were false, shouldn't you?
>
> A. I'm not even sure, as I told you, whether I saw the program. And I really do not necessarily believe that something that comes from the ABC or in other television stations or on newspapers in Australia or in other countries immediately should ring alarm bells. The media's reputation and accuracy is not that good. I'm not saying it's bad. They play a very important role, but - - -

117 Mr Dixon observed that on numerous occasions, indeed on many occasions, the Board and/or the Risk Management Committee received assurances from the senior executives "that in no way were we in any way helping to push money laundering, that our – operations were absolutely clean".[143] Mr Dixon referred to the "very big grey area" between allegations proven and not proven, and the responsibility to make sure that you are reasonably confident that the allegations are not true.[144]

118 Mr Dixon accepted that some of the information before the Inquiry suggested that money laundering had probably occurred in the Southbank account.[145] However this was not brought to his attention and accepted it was something about which he should be concerned, and it should have been brought to his attention. The Risk Management Committee was not informed and was obviously not given all the information that should have been given to it to make a decision.[146]

119 Mr Dixon agreed that the information now available in respect of Crown's relationships with Junkets and the claims of money laundering through the Southbank and Riverbank accounts suggested that it was "becoming clearer that it was a systemic problem". He believed that the Risk Management Committee and the Board were not getting enough information and that people were making "value judgments". However, he accepted that the consequences were so grave in China that it did call for a "blow torch" to be applied at the time.[147]

120 Mr Dixon accepted that the Advertisement used "strong language", but justified it on the basis that he had been advised by people who had an "intimate knowledge" of these things, and with the help of outside lawyers. However, he accepted that with a little bit more time to consider it, and hindsight being a wonderful thing, he probably would not have made the Advertisement so strong. He did support it at the time, but he knew that some people had misgivings about it.[148]

121 He also agreed that it would have been better if they had not gone down the path of criticising Ms Jiang, although at the time he did not argue against it.[149]

122 Mr Dixon was very supportive of having the benefit of Mr Packer's experience and vision when the Controlling Shareholder Protocol was developed.[150] He claimed that he never tried to keep the Controlling Shareholder Protocol secret but agreed that Mr Barton probably should have answered on both accounts in respect to the Services Agreement and the Controlling Shareholder Protocol at the Crown AGM in 2019. He agreed that if he knew that Mr Packer, Mr Johnston and Mr Jalland were thinking of transacting with Melco at the time that the Protocol was in place, he would have wanted to suspend it during that transaction.[151] However he was prevented from doing so because he was not informed of the transaction.[152]

123 Mr Dixon agreed that the claim in Damon Kitney's *Price of Fortune* biography of Mr Packer[153] that he had said that it was important to remember that Crown, "came out of the Packer family" was accurate. He gave the following evidence:[154]

> ... I think I've said that there quite strongly, that visionaries, people who start these places, people who stay with these places, drive them for a long, long time, should never be subjected to, you know, not being listened to properly and knowing what's going on. It's – to me it's an overall benefit to all the shareholders. It could be different to – in some companies, but I never saw it there. I suppose my only disappointment in all – most of this is they didn't tell us they were going to sell to Melco.

Conclusion

124 The obvious surprise and lack of knowledge in such a long serving former of Crown director and Chairman of the Risk Management Committee of the deep problems in risk and governance within the organisation is demonstrative of the serious systemic failures that have been exposed in Crown in the last six months.

125 The directors were lulled into a false sense of security that their organisation was both compliant and respectable and suitable as a close associate of a casino licensee. There is no doubt that if Mr Dixon had been made aware that there was a real likelihood of money laundering through the Southbank and Riverbank accounts he would have at the very least sought advice as to how to handle the problem. Much the same can be said in respect of the exposure of the obvious links to criminal elements in the Junket operations with which Crown partnered.

126 It is inexplicable that as Chair of the Crown Risk Management Committee, Mr Dixon had no inkling of the escalating risks in China, the obvious indicia of money laundering in the accounts from which funds were swept into Crown's casinos and the associations that Crown had with Junket operators who were not of good repute. As was said above the ineffectual nature and functioning of Crown's risk and governance structure was the responsibility of all directors, including Mr Dixon.

Robert Rankin

127 Robert Rankin was Chairman of Crown between August 2015 and January 2017. He resigned as a director of Crown during 2017.

128 The elusive Mr Rankin's reign as Chairman was clearly lacklustre. Although Mr Packer understood that Mr Rankin was a "specialist" in matters relating to operations in China, he was sadly disappointed to find that Mr Rankin did not have such skills or if he had them did not apply them to Crown's operations in China.

129 It should be said that Mr Rankin has not responded to these criticisms. That is not because he has not been afforded the opportunity but rather has declined it.

130 As has been said elsewhere, it is probable that Mr Rankin discussed the disgraceful and shameful threat that Mr Packer made to the businessman in late 2015. He was copied on the various emails that were exchanged between Mr Packer and the businessman. However, as a Chairman of a public company he should have done more than have a discussion with Mr Packer. He should have advised his colleagues on the Board of the serious problem that beset them with their former Chairman and then director making such a disgraceful threat. He did not do so. It is quite inexplicable that he did not do so and reflects very badly on his character.

131 On 21 October 2020 Counsel Assisting referred to the prospect that the above-mentioned finding might be made and also to the prospect of a recommendation being made to the Authority that it consider referring Mr Rankin to ASIC for relevant investigation.[155]

132 There has been discussion in relation to the ambit of the Amended Terms of Reference. It is noted that the Authority has only sought recommendations in respect of matters in paragraphs 17 of the Amended Terms of Reference. The other aspects of the Inquiry relate to the answering of the questions posed in paragraph 16 of the Amended Terms of Reference and matters "incidental" thereto.

133 On balance it is not considered that such a recommendation is a matter "incidental" to the answering of questions posed in paragraph 16 of the Amended Terms of Reference.

134 Irrespective of any recommendation arising under the Amended Terms of Reference, the Authority is of course able to exercise its own powers of referral to any agency it deems appropriate "in the exercise of functions" under the legislation. This power is the subject of discussion in Chapter 5.2.

Chapter 4.3.7

Senior Management

1 Over the years in which the events relevant to the Amended Terms of Reference occurred, a number of people have been employed in various Senior Management roles in Crown. However in assessing the corporate character of Crown and the Licensee for the purpose of reviewing their suitability, the two individuals whose conduct has been pivotal to the identification of so many problems are Joshua Preston and Barry Felstead. It is their conduct that is the focus of this Chapter.

2 However it should be noted that announcements were made recently that both Mr Felstead and Mr Preston are no longer employed by Crown.[1] In those circumstances the analysis is not as detailed as it otherwise would have been.

Barry Felstead

3 At the time he gave his evidence on 17 August 2020, Barry Felstead was the Chief Executive Officer, Crown Australian Resorts.[2] Mr Felstead has worked in the Casino industry since 1987. He worked at Conrad Jupiters, as it was then known, between 1987 and 1994. He worked at Crown Melbourne from 1994 to 2005 commencing as an Assistant Cage Manager and subsequently working in a number of different roles. In 2005 he commenced working for Burswood Nominees Limited trading as Crown Perth and became CEO of Crown Perth in March 2007.[3]

4 In March 2013, while he was still CEO of Crown Perth, Mr Felstead took over responsibility for Crown's VIP International business. He was appointed CEO Australian Resorts in August 2013 and maintained responsibility for Crown's VIP International business.

5 Mr Felstead was appointed a director of Crown Melbourne in November 2013. He had a standing invitation to attend the Crown Board meetings and received all the Board papers in respect of those meetings.[4] He attended the majority of the Crown Board meetings and regularly reported to the Crown Board on all aspects of the business for which he was responsible.[5]

6 It is clear that Crown structured its personnel appointments to foster and grow its business relationships with its valued VIP customers. Mr Felstead described the Crown VIP customers as looking to meet "someone of seniority, someone who would have a senior title" and understood that his role as CEO Australian Resorts was seen by the "top VIP customers as someone they may like to meet". This was also the case for Mr Ratnam with his title as Special Assistant to the Chairman. Mr Felstead observed that "in the world of VIPs all our customers would have loved to meet Mr Packer" but that just "wasn't practical".[6] Accordingly the VIP customers would settle for the next best thing of meeting the CEO of Crown's Australian Resorts or the "Special Assistant" to Mr Packer.

7 Clearly Mr Felstead understood the importance of Mr Packer's presence, either personally or through his senior representatives, to the continued success of Crown's VIP International business. It is also clear that Mr Felstead regarded himself as somewhat of an envoy for Mr Packer. Although it should be said that such a perception may not have been shared by Mr Packer.

8 Mr Felstead also understood that in May 2014 the Crown Board intended to increase the contribution of the VIP International business to the profitability of the corporation.[7] A key objective was to capitalise on the strong regional growth of the VIP market and regain some of the share of the Asian VIP market.[8]

9 However in February 2015 Mr Felstead and other senior executives considered that it was too risky for them to travel to China in light of a crackdown on foreign casinos. He claimed that it was also important to keep a "low-key approach in relation to China" and in accordance with advice that had been received from WilmerHale it was "deemed wise not to have senior executives doing road shows at that particular time".[9] Mr Felstead gave the following evidence:[10]

> Q. But it was also because of the risk that you might be arrested and detained; correct?
>
> A. I don't think it was at the risk of being … arrested and detained. I think it was more a matter, from my perspective, in reading this is that it was a prudent approach to be a bit more low key at the moment and not do a large road show.
>
> Q. The risk which you were adverting to was the risk of drawing attention to yourselves from the Chinese authorities; correct?
>
> A. Yes, I – you could characterise it as that. That wasn't probably the primary one, but that was certainly one of their considerations.
>
> Q. Having regard to the previously announced crackdown on foreign casinos; correct?
>
> A. Yes, there is definitely a relationship with that.
>
> Q. So if it was too risky for you to travel to China for a while, you must have realised that the staff were based in China were facing an increased risk.

A. Yes, that would have the case. That would have been the case.

Q. Yes. And in those circumstances, I suggest that you should have raised that risk with the board of Crown Resorts via its risk management committee.

A. Yes, I would accept that – I would accept that, Mr Bell and I think just to clarify that again, I think I acknowledged that position yesterday when the first announcement came out, that was something I should have done. We were managing risk on the ground and in hindsight I should have put that on the register and raised that. I completely accept that.

Q. Can you see that it was now a matter for the board of Crown Resorts via its risk management committee to decide whether the strategy in China remained within the company's risk appetite in light of the crackdown?

A. I can see it was certainly a matter that would have for the risk committee, whether the board were involved in that. I was of the view we were managing it adequately on the ground through our processes there and that was – that was my view at the time, Mr Bell.

Q. And can you see now that by failing to inform the board of Crown Resorts via its risk management committee of the crackdown you deprived the board of the opportunity to make an informed decision about its risk appetite?

A. I would suggest that there were people on the board who knew about the crackdown, not just myself, and I would suggest that, as I have said before, I should have had this on the register. I don't disagree with that. I didn't. I managed it on the ground, and that's how I – that's how I approached that at that particular time, Mr Bell.

Q. Can you see that by failing to inform the board of Crown Resorts via its risk management committee of the crackdown on foreign casinos you deprived the board of the opportunity to make an informed decision about its risk appetite?

A. No, I probably – I probably wouldn't – I wouldn't go that far, Mr Bell. I think we ---

Q. As I said?

A. Well, because as I said, Mr Bell, my view was we were managing the risk on the ground. We were getting advices in what we could and couldn't do in relation to China and that process continued and then it was strengthened further on by the hiring of a government advice bureau – organisation who helped us as well. But I do accept that this should have been a risk that was on the register. I don't disagree with that, Mr Bell. From a formality perspective I think that was adequate.

Q. Just put the register to one side for the moment, Mr Felstead. Am I right that you were a director of Crown Melbourne?

A. That is correct, Commissioner, yes.

Q. And you were a director of Crown Melbourne at the time of this document to which Mr Bell has taken you; is that right?

A. Yes, that is correct, Commissioner.

Q. And you said a little earlier that there were people on the board that were aware of the crackdown. Do you remember giving me that evidence?
A Yes, I do, Commissioner.

Q. Were you referring to your co-directors on the board of Crown Melbourne when you gave me that evidence?
A. That – I was referring to, I believe, Mr Craigie would have been aware of this through receiving the clippings. I believe that Mr Johnston would have been aware of this, but having said that Mr Johnston was not on the Crown Melbourne board, and this was fairly common knowledge, Commissioner, so I would imagine ---

Q. I understand.
A. --- that there would have been others ---

10 Mr Felstead claimed rather inexplicably that he did not discuss the crackdown with any other directors of Crown Melbourne.[11] He claimed that Mr Ratnam was not involved in "heavy decision-making", but was kept informed of events that were going on in China. Mr Felstead appeared at pains to suggest that Mr Ratnam was not a "key decision-maker" and disagreed that one of Mr Ratnam's primary roles was to keep Mr Packer informed. He conceded that Mr Ratnam may have had discussions with Mr Packer, but claimed that it was himself "who kept Mr Packer informed in relation to the VIP business" although "others may have as well".[12]

11 Mr Felstead learnt of the arrests of the employees of the South Korean casinos in June 2015. He received the email from Mr Rankin on 24 June 2015 in which Mr Rankin suggested that Crown should be on "high alert" for the possible arrest of its staff in China.[13] He gave the following evidence:[14]

Q. And do you say that you were on high alert at this time to deal with the possibility that the staff in China could be arrested?
A. I think we were on high alert not so much for the staff getting arrested, Mr Bell, we were on high alert in relation to how we run the business in China. We have been for quite some time.

Q. But you agreed that Mr Rankin was saying that the company should be on high alert for regulatory action which was the risk of arrest; correct?
A. Yes, I do.

Q. Yes. And do you say that you were on high alert at this time to deal with the possibility of the risk of arrest of staff in China?
A. I wouldn't - I would not say specifically in relation to the arrest of the staff in China, but were on high alert for any adverse action that would occur in China.

Q. Mr Felstead, you had an email from a man who was about to become the chairman of Crown Resorts, didn't you?
A. Yes, we did. Yes, I did, sorry.

Q. Asking you effectively to be on high alert relating to the risk of arrest in China, did you not?
A. Yes, I did.

Q. Was it not contemplated by you that the risk should be at the forefront of your thinking about your staff on the ground in China?
A. Well, yes it was, Commissioner. I – with respect, I didn't think I said otherwise. That was certainly what I was referring to, so I apologise if that came across differently, but no, that's absolutely ---

Q. It did.
A. --- of concern for me. I do apologise. That wasn't my intent.

Q. I see. So it was at the forefront of your thinking that you had to protect your employees on the ground in China from arrest.
A. Yes, that was certainly one of the things we looked at. Absolutely.

Q. Was it at the forefront of your thinking that that was what you had to do?
A. Yes, it would have been at the forefront of my thinking, as – along with other things but it was certainly an important factor. I won't downplay that.

Q. I'm only asking you about that particular matter, not the other things. Was it at the forefront of your thinking?
A. This was at the forefront of my thinking, Commissioner.

...

Q. And I take it that it didn't occur to you at this time that it was necessary for you to report this high alert for the risk of arrest to the risk management committee of Crown Resorts?
A. No, I – this was – I did report this to other individuals, so other people were aware of it. No, I did not think to report it to the risk management committee.

Q. Is it the case that you recall attending a Crown Resorts board meeting shortly after the Korean arrests when Mr Michael Johnston told the board about the Korean arrests?
A. Yes, I do.

Q. And is it the case that you had discussed the Korean arrests with Mr Johnston and briefed him on this situation?
A. That is correct.

Q. And you had done so at a CPH VIP group meeting?
A. My recollection that would have been a phone call, but I think – I would – I would imagine it would have got a run at the CPH meeting, but that would be my recollection that it would have been a phone call.

Q. What is your recollection of the substance of what Mr Johnston told the board of Crown Resorts about the Korean arrests and the situation in China?

A. My broad recollection of that, Mr Bell, would have been that Mr Johnston would have advised of the actual arrest of the Korean operatives in China and he would have explained the circumstances that we were made aware of around those arrests, and that would have been the thrust of Mr Johnston's conversation with the board. There may have been questions coming from the board. I can't recall.

12 Mr Felstead agreed that by 10 July 2015 he had become aware that there were two Crown employees who had been questioned by the Chinese police and Mr O'Connor had advised him that the second employee had been accused of organising gambling operations. He was also advised that the employee had informed the police that he worked for a hotel resort company and helped with visas and travel arrangements and that the Chinese police had asked him for a letter verifying his employment.[15]

13 Mr Felstead accepted that in the space of only a few weeks the South Korean casino employees had been arrested; Mr Rankin had indicated that the company should be on high alert for similar Chinese regulatory action; and a second Crown employee had been questioned by the police.[16] He gave the following evidence:[17]

Q. I suggest that this was an obvious escalation of the risk of the China staff being arrested and detained, coming so soon after the arrest of the Korean staff.

A. Yes.

Q. Is that correct?

A. Yes, you could draw that conclusion. I probably took a slightly different view, based on what I knew, but you could certainly draw that conclusion. I could see why you would.

Q. And are you saying that it didn't occur to you that having two staff questioned by the police and the police asking for one of them to provide a letter confirming that he worked for Crown Resorts, coming only a matter of weeks after two – the staff of two Korean casinos had been arrested, was an obvious escalation of the risk?

A. If I could be permitted to give a bit of clarity around that, that may be useful, if that's all right with you, Mr Bell.

Q. Of course.

A. Yes. The first arrest, I wasn't aware of at the time. I was aware of that when Mr O'Connor told me about the second person. So I was not aware of that. My understanding of the first particular arrest of our staff was in relation to a customer, in particular. This particular arrest I was aware of. The Koreans – my understanding of the Koreans, based on advice received, was that was a very, very different issue, because they were allegedly - I need to say the word "allegedly" – doing things which were against – against current guidelines of operating in China.

Q. Can I just be clear about this. What you did know was this: first, that in June, the employees of two Korean casinos had been arrested in China; correct?

A. Yes, I did.

Q. Second, you had been told by Mr Rankin to be on high alert for similar regulatory action in relation to your employees; correct?

A. Yes, I was.

Q. Third, you were now aware that two of your employees had been questioned by the Chinese police; correct?

A. That is correct.

Q. And you knew that one of them was being questioned about his activities as an employee of Crown Resorts; correct?

A. Yes, I was.

Q. And you knew that the Chinese police had requested that employee to provide a letter confirming that he worked for Crown Resorts; correct?

A. Yes, I did.

Q. And are you telling the Commissioner that it did not occur to you that this was an obvious escalation of risk for the staff in China?

A. I'm telling the Commissioner that, on the evidence I had and the information I had at hand, I thought it was a risk. I thought it was – the risk was being dealt with individually and they were separate circumstances, not connected.

Q. And it didn't occur to you that it was an obvious escalation of the risk to the staff in China? Is that your evidence?

A. My evidence is, because I was of the view that these were not specifically related to the same incident, it was not a – an obvious escalation of risk.

Q. And do you say that, even with all that had happened in the previous few weeks, culminating with these two staff being questioned, it still didn't occur to you that it was necessary to ensure that the risk of arrest to the staff in China was notified to the board of Crown Resorts via its risk management committee?

A. In hindsight, I should have done that. This was escalated, this particular issue, through to the company secretary and to Mr Johnston. So there was an escalation process. I should have reported it to the risk committee – in hindsight.

Q. Well, are you telling the Commissioner that you reported these events and the risk which they entailed to the company secretary of Crown Resorts?

A. Not – not through me, Mr Bell. That was done through our legal department.

Q. But to your knowledge the legal department of Crown Resorts informed the company secretary of Crown Resorts that two employees of Crown Resorts in China had been arrested and that one of them had been asked by the Chinese police to provide a letter confirming that he was employed by Crown Resorts; is that right?

A. My understanding, Mr Bell, is that the incident occurring in relation to the last arrest with this particular gentleman, that was handled by our legal department in Crown Melbourne. So not Crown Resorts, in Crown Melbourne. And that was forwarded by our senior legal counsel in Melbourne on to that particular person's – the head of legal and then on to the company secretary. That's my understanding of that.

14 Mr Felstead described this process as having the incident "escalated through" to Mr Neilson.[18]

15 Mr Felstead claimed that he was escalating the matter when he forwarded the relevant information about the questioning of the Crown employee in July 2015 to Mr Johnston. He claimed he was advising Mr Johnston of this matter because of his involvement in the VIP International business. Although he claimed he was informing Mr Johnston in his role as a Crown director he did not do so "specifically so that it would go through to the Board".[19]

16 He claimed that he did not inform the Crown Risk Management Committee of the incident.[20] Nor, it appears did he inform the Crown Melbourne Audit Committee. He did not inform Mr Craigie, to whom he reported at the time, that the two staff had been questioned and claimed it was "a failing on [his] behalf".[21]

17 When Mr Felstead forwarded the information to Mr Johnston about the second employee being questioned he did so with the message: "This is what we will be up against in China at the moment".[22] He gave the following evidence in relation to this communication:[23]

Q. And you were identifying to Mr Johnston, weren't you, the risk in China as shown by the questioning by the police of the employee in Wuhan and the police requirement for a letter proving that he was an employee of Crown Resorts; correct?

A. Yes, I was identifying to Mr Johnston the difficulties of doing business in China.

Q. Yes. And what was the substance of your discussions with Mr Johnston about this issue after you sent him the email?

A. I don't recall the specific conversation, but typically I would have got a phone call from Mr Johnston. That's how we would operate. And I would have discussed what occurred. That's to the best of my recollection.

Q. That's actually not a recollection at all, is it; it's just saying what you believe your usual practice would have been. Is that right?

A. Yes, I think you could say that. I mean, I guess it was a recollection to the best of my ability. Typically, that would be the behaviour I would exhibit but I can't guarantee I did it.

Q. Do you have any specific recollection of the discussion you had with Mr Johnston after you had sent him this email?

A. I don't have a recollection of the specific conversation.

Q. What about generally?
A. Apologies, Commissioner, that's what I was referring to. Typically, this sort of note I would send to Mr Johnston and I would have a conversation with him. I would say what occurred and we may have a conversation about that further. That's the – as I said to the best of my recollection, but I can't specifically recall what the conversation occurred – what was in the conversation.

Q. Wouldn't you have told him that you were very worried about the staff?
A. That would have been a very normal thing for me to say.

Q. Well, it may be normal, Mr Felstead, but please, Mr Bell is asking you about your best recollection of what you said to a director of Crown Resorts Limited. Just see if you can reflect and see if you can recall generally, not word for word, what it is that you said to Mr Johnston when he telephoned you.
A. And my response to that, Commissioner, would be I would have – I believe I would have discussed the incident with Mr Johnston as per what was in the email and I told him we had – we were dealing with the issue through our lawyers in China and through our lawyers in Melbourne, and this was some of the things we had to be careful of in China in doing business. That would – to the best of my recollection that's how the conversation would have gone.

18 Mr Felstead also sent the information to Mr Ratnam with a note that he and Mr Ratnam should discuss it "over lunch".[24] His recollection was that he would have discussed the issue with Mr Ratnam and informed him of what had happened.[25] He gave the following further evidence:[26]

Q. And I suggest that it appears you were providing more information to the CPH VIP working group about the VIP international business than you were providing to the CEO group; do you agree?
A. Yes, on certain occasions, that may be correct.

Q. And did you see your loyalties, in respect of the VIP international business, as being primarily owed to Mr Packer and the CPH group, rather than to the board of Crown Resorts Limited?
A. No. My focus has, in terms of reporting, in terms of VIP and every business unit, has always been to Mr Craigie. There were instances where I should have told him things, I completely accept that, but I was under no illusion that Mr Craigie was my boss at all times.

19 Mr Felstead was asked about the communication that Mr Chen had with the sales staff telling them to "avoid any overt sales and marketing activity".[27] He gave the following evidence in respect of this communication:[28]

Q. And you were comfortable, at this time, with the sales staff in China conducting their sales and marketing activity covertly?
A. My understanding of the Chinese staff, they would have been operating in accordance with Mr Chen's guidelines about being – keeping low key.

...

Q. My question is were you comfortable at the time with the sales staff in China conducting their sales and marketing activity covertly?
A. Well, if – yes. I accept, if you like to use the "covertly", I accept that.

Q. And that was something you were comfortable with at the time, was it?
A. I was comfortable with our team in China operating in a low-key manner. If you want to use the word "covertly" – the opposite of overt is covert – I accept that. That would ---

Q. You would agree that would be a fair way of describing it, would you?
A. Not by me, Mr Bell.

Q. Well, if the staff were being told not to conduct any overt sales and marketing activity, it meant that they were being to conduct – were being asked to conduct those activities covertly; correct?
A. I accept the point you're are making, Mr Bell.

Q. And you were comfortable, were you, with this instruction from Mr Chen to the staff?
A. I was comfortable with our staff operating in a low-key manner.

Q. Were you comfortable with this instruction by Mr Chen to the staff in the email which he sent to you?
A. I was comfortable with our staff operating in a low-key manner.

Q. Were you comfortable with this instruction by Mr Chen to the staff in the email which he sent to you?
A. I was comfortable with the content of this email that Mr Chen sent to the staff.

Q. Were you comfortable with the instruction that he was giving to the staff in this email which he sent to you?
A. I think I just said I was, yes.

20 Mr Felstead suggested that he was at fault for not informing: (i) his immediate superior, Mr Craigie; (ii) the Risk Management Committee, either of Crown or Crown Melbourne; and (iii) the Board of Crown of the risks that were identified with him in his evidence.

21 Mr Felstead appeared to explain his inadequate reaction to this obviously serious escalation of risk on the basis that he was managing it "on the ground". It is very odd that Mr Felstead did not inform Mr Craigie of matters that should clearly have been the subject of report to him.

22 Mr Felstead kept Mr Johnston informed of what was happening on the ground in China, including: (i) the South Korean Arrests; (ii) the questioning of the Crown employee by the police in China; and (iii) the Chinese police request for a letter from Crown confirming the employee's employment. Mr Felstead was not able to give a

proper explanation as to why he did not inform the Chief Executive Officer of Crown, his immediate boss, Mr Craigie, of these developments in China. This is particularly so having regard to Mr Rankin's email that the company should be on "high alert" in the circumstances.

23 The probability is that Mr Felstead preferred to communicate with Mr Johnston and when he thought it appropriate, Mr Packer. Mr Felstead had over the many years of his service, forged relationships at a director level and was able to have immediate access to directors rather than through the appropriate reporting line to and through his immediate superior, Mr Craigie. It also has to be remembered that during this period Mr Felstead was a co-director on the Crown Melbourne Board with Mr Craigie. That fact makes it even more inexplicable that he did not discuss these matters with Mr Craigie at any stage.

24 It appears from the written communications between Mr Felstead and Mr Packer that the focus was on providing Mr Packer with "numbers" rather than anecdotal events at an operational level. In any event, as has been said elsewhere the insertion of Mr Johnston, a Crown director and CPH director, into the management structure of the operational VIP International business unit, blurred the reporting lines and compromised the risk management processes.

25 It is not as though Mr Felstead was unaware of the risk management structures of Crown and Crown Melbourne. As a director of Crown Melbourne and as the CEO of Crown's Australian Resorts and as an invitee to all of the Crown Board meetings he was in the perfect position to inform the directors of Crown of the escalating risks in China. Mr Felstead's suggestion that the questioning of the employee in China in mid-2015 by the Chinese police was "escalated" by him sending the email to Mr Johnston demonstrates the lax processes that were in place at the time. His suggestion that he was sending the information to Mr Johnston as a Crown director but not so that would go through to the Board was just as inexplicable as his failure to discuss the crackdown with his co-directors in Crown Melbourne or at a Crown Board meeting at which he would have been expected to report such a thing.

26 Mr Felstead operated the VIP International business as though it was a separate business from the rest of the company sadly with tragic consequences.

27 The recent announcement that Mr Felstead is no longer employed by Crown is understandable in the circumstances.

Joshua Preston

28 Joshua Preston has been employed by Crown for the past 14 years, commencing as the General Manager, Legal and Compliance with Crown Perth in September 2006. He became the Executive General Manager, Legal Services at Crown Perth in January 2007 and his responsibilities expanded to include responsible gaming, risk and audit

and security and surveillance.[29] In November 2007 he was appointed as Crown Perth's designated AML/CTF Compliance Officer.[30]

29 From 1 March 2017 Mr Preston served as the Chief Legal Officer, Australian Resorts, which once again expanded his responsibilities to include Crown Melbourne in addition to Crown Perth. These responsibilities included legal, risk and audit, regulatory compliance, responsible gaming, AML/CTF and security and surveillance.[31]

30 Mr Preston was appointed as Crown Melbourne's designated AML/CTF Compliance officer in May 2017.[32] Mr Preston was also the company co-secretary at Crown Melbourne, Crown Perth and the Licensee.[33] He was a Company Secretary of Riverbank from 12 August 2014 and of Southbank from 30 June 2017.[34]

31 As the Chief Legal Officer Australian Resorts, Mr Preston reported directly to Mr Felstead.[35] He attended Crown Board meetings by invitation if there was a specific matter on which he was asked to report.[36]

32 Mr Preston claimed that he had reviewed the risk and compliance frameworks within Crown for the purpose of harmonising and centralising the structure, providing a more detailed risk register at Crown Melbourne and improving information sharing and coordination between the various departments within the corporations.[37] He also claimed that he had overseen the implementation of these processes, including the appointment of a Group General Manager, Risk and Audit; a Group General Manager, AML; and a Group General Manager, Regulatory and Compliance. He was part of the commissioning team for bringing Crown Sydney into operation, with a specific focus on the implementation of regulatory and compliance frameworks.[38]

33 Without dwelling on the detail, it became clear during Mr Preston's evidence that his understanding and knowledge of some of Crown's Junket arrangements was wanting. This was of some concern because Mr Preston, with Mr Felstead and Mr Johnston were the decision-makers in respect of Crown's future dealings with Junket operators. He incorrectly asserted that Crown ceased dealing with all the Chinatown Junkets in 2016 having to correct this later in his evidence.[39] He identified only four Junket operators relevant to the Chinatown Junket when the fact was there were five.[40] He conceded that his failure to identify the Hot Pot Junket in available links in Crown's records was a "massive oversight".[41]

34 Although Mr Preston gave evidence that Mr Tom Zhou, referred to in the media as "Mr Chinatown", had never been a Junket operator or Junket representative at Crown, he well knew that Mr Zhou was the financier of the Chinatown Junkets.[42] When tested as to why he did not disclose the connection between Mr Zhou in this regard he gave the extraordinary explanation that he did not think it was "pertinent".[43]

35 Mr Preston also gave evidence about the Southbank and Riverbank accounts. His initial evidence was that those accounts were subject to Crown's ordinary transaction monitoring processes.[44] He claimed that the Crown Melbourne AML team reviewed the bank accounts related to Crown Melbourne, including Southbank, and that the Crown Perth team reviewed the bank accounts related to Crown Perth, which includes Riverbank.[45] Following additional investigations at the request of the Inquiry, [46] Mr Preston conceded that the Crown Melbourne AML team and the Crown Perth AML team reviewed the entries in the SYCO system made by the cage and credit control teams, rather than the actual bank statements.[47]

36 Mr Preston gave evidence that the cage and credit control teams had, on numerous occasions, aggregated the value of multiple deposits made by the same patron when entering data in SYCO. He claimed they had "inadvertently" compromised the AML teams' ability to review the telegraphic transfers for AML purposes.[48] However Mr Preston gave this evidence without consulting with or speaking to the cage staff.

37 Mr Preston's evidence in this regard amounted to a claim that the AML team were impeded in their work by cage staff entering data in the computer system inappropriately. In any event it is clear that Crown were on notice that there were suspicious transactions in these two accounts and the only thing that was done about them was a report to AUSTRAC by Mr Howell. If the so-called "AML team" had bothered to look at the SYCO entries, there were some entries that identified the numerous deposits below the reporting threshold on the one day in respect of the same patron. However Mr Preston chose to blame the cage staff for inadvertently compromising the team's capacity to perform its function. This was a most unimpressive attempt to deflect attention away from the clear responsibility of the AML staff's obligations to review these bank accounts.

38 When the Nine/Fairfax journalists asked a number of questions about the Southbank and Riverbank accounts, Mr Preston prepared a Memorandum dated 4 August 2019 addressed to Mr Johnston and Mr Andy Carr (Senior Vice President, Business Development), which was copied to Mr Felstead. Mr Preston suggested that the Southbank and Riverbank accounts were dealt with in a similar fashion to all of Crown's other accounts in accordance with its AML policy. This was also incorrect.

39 Mr Preston's evidence was provided to the Inquiry in July, August and September 2020. This was prior to Crown notifying the Inquiry that the assumption that had been made that there had been no review of the two bank accounts after the Media Allegations was incorrect. It was in November 2020 after the conclusion of the evidence that Crown notified the Inquiry, through a written Statement of Mr Barton, that Mr Preston had been advised by Ms Lane, the Group General Manager AML, that a further review of the accounts was necessary either with the use of an external adviser (suggested to be Grant Thornton) or an internal review with the allocation of additional resources. Mr Preston made no mention of this advice or analysis that had

been carried out by Ms Lane at the time that he gave his evidence in July and August 2020.

40 After the conclusion of the Public Hearings and in a written statement provided to the Inquiry, Mr Preston gave evidence that one of the reasons that he decided not to proceed with the review suggested by Ms Lane was that he had received advice (either directly or indirectly) from MinterEllison that such a review would not be protected by legal professional privilege. The communications with MinterEllison in this regard were at a time after the announcement of this Inquiry. On the assumption that MinterEllison did give such advice, it was obviously correct advice.

41 Notwithstanding that there had been the most serious allegations of money laundering made against Crown in the operation of these two accounts, Mr Preston saw fit to take it upon himself without notifying the Risk Management Committee or the Crown Board, to reject the suggestion of the Group General Manager AML to conduct a review of these two accounts. Nor did Mr Preston review those bank statements to test the allegations for himself. It is inexplicable that when it came to answering the Summons in February 2020 to produce documents in relation to Southbank and Riverbank Mr Preston would apparently not have been cognisant of the fact that but five months prior to the time the Summons was served, Ms Lane had been advocating for a wider review of the operations of the two bank accounts.

42 But for Ms Manos acting in accordance with her obligations as a practising lawyer in November 2020 and notifying Mr Barton and presumably MinterEllison that she was concerned that documents may not have been produced to the Inquiry in response to the relevant Summons, the fact of this review and the proposal for a wider review may have remained undisclosed.

43 Mr Preston's conduct in respect not only of this matter but also in the lack of care in providing accurate evidence to the Inquiry was most unimpressive indeed.

44 Mr Preston received no specialist training before taking on the role as the designated AML/CTF Compliance Officer for both Crown Melbourne and Crown Perth. However he claimed that he had a "level of expertise" in the AML/CTF framework "particularly in the casino industry" and a "working knowledge" of the relevant legislation and rules.[49]

45 Mr Preston showed a distinct lack of commitment to guarding against AML risks and a distinct lack of curiosity in failing to cause the Southbank and Riverbank accounts to be reviewed to search for evidence of money laundering despite being aware that ASB closed the accounts in 2017 due to money laundering concerns and that CBA wished to close the accounts for the same reasons.[50] Mr Preston accepted that as the AML Compliance Officer and as part of his commitment to engendering a culture of compliance, he ought to have notified AUSTRAC of the closure of the Southbank and Riverbank accounts and the reason for their closure.[51]

46 Mr Preston's evidence about the closure of the Southbank account by the ANZ bank was quite extraordinary. He was referred to an email from Mr Costin to Mr Xavier Walsh in which Mr Costin recorded that the ANZ bank had already shut down the account "due to AML concerns". When he was asked whether that reflected his understanding, Mr Preston said that it was "an indication based on what Mr Costin is saying pertaining to ANZ".[52] Mr Preston was one of the people who attended upon the ANZ bank with Mr Barton in 2014 at the very time that the ANZ bank was expressing concerns about money laundering in the ANZ accounts. His resort to suggesting that what he was agreeing with was an indication that Mr Costin was referring to rather than his own assessment of what was really happening with the bank and the accounts was also most unimpressive.

47 When it was suggested to him that it must have been a "great concern" to him as the AML Compliance Officer he said it was "certainly of interest, absolutely".[53] When he was pressed further that it indicated that the banks were gun shy of the account because it represented a money laundering risk he said it was "potentially" the case but did not accept that Crown's procedures were "completely inadequate to stop money laundering through its accounts". He claimed that ANZ bank "had a concern with our account" and gave the following evidence:[54]

> Q. Do you agree with him?
> A. I agree that, based on what Mr Costin is saying, that ANZ expressed concerns pertaining to AML concerns over the account, yes.
>
> Q. No, but do you agree that Mr Costin - you see, Mr Costin is saying, as Mr Aspinall described it, you've got real problems because no one wants you. You agree with that?
> A. Yes, there is an indication there that there's a number of banks that won't go anywhere near patron accounts, as far as I've just read it so ---
>
> Q. Yes, I can read that for myself. I would like you to attend to, please, Mr Preston, do you agree or not agree that this account was effectively an untouchable one so far as the banks were concerned?
> A. As far as the banks, it would appear so.
>
> ...
>
> Q. Let's just see if we can get through this. You are being asked do you remember - effectively, do you remember whether they closed the accounts because of concerns about money laundering. Do you remember that or not?
> A. I - my apologies, Commissioner, I just-I just can't recall without looking back at the document. They were obviously being closed and I can't recall the specific reason, but it would not surprise me if that was one of the reasons.

48 Mr Preston initially claimed that he did not know the reason why CBA wished to close the Southbank and Riverbank accounts in 2019.[55] However in August 2019 when Ms Lane wrote to Mr Preston in respect of the review that she had conducted, she

specifically referred to the fact that the CBA were concerned about the accounts having regard to the publication of the newspaper articles on 5 and 6 August 2019 alleging money laundering in the accounts. He made no disclosure of this in his evidence until Ms Manos' intervention in November 2020 made it impossible to avoid such disclosure.

49 On 4 October 2019, Mr Preston was one of a number of people Mr Costin emailed to advise of the closure of the accounts. That email was in terms that included the following:[56]

> Ken and I had a meeting with the Commonwealth Bank this morning in which they formally gave us notice that they are going to close the Southbank Investments and Riverbank Investments accounts we currently hold with them. A formal letter will follow which we have been informed will provide us with 60 days to make alternate arrangements and communicate with patrons that these accounts are no longer available for use.
>
> We are working with our relationship banks to attempt to open new patron accounts in addition to those currently held with ANZ, however at this stage I can't provide a definitive timeline of when additional accounts may be opened. In the interim, patrons will need to be directed to the patron accounts held with ANZ for future transactions.

50 Mr Preston's reticence in candidly admitting that the cause of the closure of the accounts was because the banks were concerned they were vulnerable to money laundering and indeed more probably than not had evidence of money laundering within them was also most unimpressive. The article that had been published in August 2019 alleged that criminal gangs felt comfortable in using the accounts because they were of the opinion that the accounts were not being closely scrutinised. If that did not raise alarm bells enough to look at the accounts, as it did not with Mr Preston, it is quite clear that his resistance to the suggestion made to him that Crown's anti-money laundering procedures were "completely inadequate to stop money laundering" through these accounts was totally unjustified.

51 Mr Preston was the person who could have acted appropriately in August 2019 when these allegations were made. What he did was to mislead the Crown Board into believing that the accounts were covered by the AML policy and that there was no basis for concern in respect of the accounts. To do so without even looking at the accounts himself demonstrates a lack of care and diligence of breathtaking proportions.

52 It is no wonder that the directors who were asked indicated that they had been let down by or had lost confidence in Mr Preston.[57]

53 The recent announcement that Mr Preston is no longer employed by Crown is understandable in the circumstances.

Chapter 4.4

Crown's Reformation

1 Crown has taken a number of steps to adjust its operations in response to the shortcomings and problems that have been identified during the Public Hearings of the Inquiry.

Critical steps

2 The most significant steps in response to those matters have been the following:

- The decisions in August 2020 and September 2020 to suspend all dealings with Junket operators until 30 June 2021;[1]
- The decision and announcement on 17 November 2020 to permanently cease dealing with Junket operators, subject to any regulatory licensing or approval arrangements that may be put in place in the future;[2]
- The termination of the Controlling Shareholder Protocol on 21 October 2020;[3]
- The termination of the Services Agreement on 21 October 2020;[4] and
- The proposal/decision to deregister Southbank and Riverbank.[5]

3 The problems with Crown's relationships with Junket operators with links to organised crime groups were said to be removed by the decision on 17 November 2020 to permanently cease dealing with Junket operators subject to the identified conditions.

4 The problem of money laundering through the Southbank and Riverbank has been resolved because the CBA closed those accounts in October 2019 and Crown has now decided to deregister those companies.[6]

5 The termination of the Services Agreement and the Controlling Shareholder Protocol will assist in avoiding some of the wider problems identified with Crown's failures in corporate governance and risk management similar to those identified in its China operations and in the Melco transaction.

6 The problems with corporate culture that have been recognised and accepted by a number of the Crown directors have far more significant consequences and needs for reform.

7 These were the critical steps in response to the matters identified for investigation in the Media Allegations referred to in paragraph 15 of the Amended Terms of Reference. However Crown has taken other steps to persuade the Authority that the Licensee is a suitable person to give effect to the Barangaroo Casino Licence and that Crown is a suitable person to be a close associate of the Licensee.

Other steps

8 Those steps were communicated to the Authority in Crown's presentation dated 9 November 2020. This was at a time when Crown was seeking to persuade the Authority to permit it to have a limited and supervised commencement of casino operations at the Barangaroo Casino on 21 December 2020. The Authority did not accede to Crown's proposal. Notwithstanding the Authority's rejection in this regard it is appropriate to refer to the matters that Crown contends it has addressed and are relevant to the answers to the questions in paragraphs 16(a) to 16(c) of the Amended Terms of Reference.

Anti-Money Laundering

9 In addition to the decision to deregister Southbank and Riverbank, Crown has made the decision and notified patrons that deposits will only be accepted by the Licensee and that all patron bank accounts will be in the Licensee's operating name.[7]

10 Crown is developing and implementing a joint AML/CTF program described as including a process to "exit" critical risk customers unless there is a "clear rationale" for retaining the customer and such retention is approved by the Persons of Interest (POI) Committee or by Senior Management.

11 The expression "exit" is taken to mean that Crown will stop dealing with the particular customer. It is not at all clear what is intended to be conveyed by the expression "critical risk customers" and no doubt that will have to be developed by the Crown Board. There is also no detail of what Crown proposed to the Authority as the "clear rationale" for retaining the particular "critical risk customer". The fact that Crown would consider retaining such a person is in itself of concern. In the context of anti-money laundering, it would be hoped that Crown would not entertain any prospect of dealing with such a customer irrespective of whether a particular committee might propose some rationale for dealing with such a person.

12 Crown has issued directions that all cash deposits on its premises must take place through the cage and all patron cash deposits into Crown's bank accounts are

prohibited.[8] These directions are clearly consequent upon a recognition of the most serious problems that were identified in the Southbank and Riverbank accounts.

13 Crown has also issued directions to the cage that aggregation is prohibited; and third-party transfers are prohibited unless approved in "exceptional circumstances" with prior written approval of the COO and the Group General Manager AML.[9] It is not clear what, if any, criteria have been developed to assist the COO and the Group General Manager AML to make a decision as to whether a circumstance is "exceptional" or otherwise. This direction is also clearly consequent upon a recognition of the most serious problems that were identified in the Southbank and Riverbank accounts.

14 Crown has informed its domestic and international customers who had made cash deposits since early 2019 that it has introduced prohibitions on cash deposits and third-party transfers.[10]

15 Crown is developing the "customised and automated transaction monitoring system and data analytics and reporting tool, Sentinel" and highlighted the "dashboard monitoring for enhanced transparency" currently operational at Crown Perth.[11] The commissioning of this system has obviously caused Crown some problems. As long ago as August 2019 Ms Lane, then the Group General Manager AML, was complaining about the need for manual assessment of bank accounts and the like and indicating the need for external assistance because Sentinel was "not there yet".[12]

16 The introduction of the automated system will hopefully enhance Crown's capacity to oversee and review the relevant transactions and provide an efficient data collection process in respect of the transaction history of individual customers. It is understood that Crown is also implementing a case management system to properly document and process incidents involving the potential for money laundering. This process has been developed to identify and report incidents through the newly created Unusual Activity Reports (UARs).[13]

17 Crown has also increased the resources of the AML team including the creation of a "Group" AML function and the appointment of a Group General Manager-AML. It would appear that this is a restructure or reinstatement of a structure that was in place at least in 2019 when Ms Lane held such a title. It appears that the role is now defined as "group Senior Manager AML-Customer Investigations".[14] In any event it appears that the level of resourcing dedicated to anti-money laundering needs to be at least further increased from the current position.

18 Crown referred the Authority to Initialism's review of its transaction monitoring program. This was in fact concluded in August 2019 and was the subject of Mr Jeans' report to the Crown Board and his evidence to the Inquiry.[15]

19 Crown engaged Promontory to conduct an AML/CTF Assessment in September 2020 to determine whether there are "gaps" in Crown's AML systems that make Crown potentially vulnerable to AML/CTF risks, and to advise on how to improve Crown's AML systems in terms of resourcing, engaging external expertise, and technology.[16] It is understood that this review is currently under way.

20 Promontory advised that to meet Crown's requirements the following capabilities were "essential":[17]

- Deep regulatory expertise in AML/CTF and intimate understanding of regulatory objectives;
- Extensive experience working with the gaming industry and familiarity with casino operations, products, services and most importantly the risks; and
- Astute knowledge in AML process optimisation and transformational technology/data analytics to identify areas for both tactical and strategic enhancement.

21 The Authority would hope that Crown will take this advice very seriously having regard to Crown's totally inadequate "astute knowledge" of AML/CTF matters that was exposed during the Public Hearings.

22 Crown also proposes to adopt a joint AML/CTF Program across all of its operations in New South Wales, Victoria and Western Australia. The joint program was endorsed by the Board of Crown Melbourne, Crown Perth and Crown Sydney and the Crown Board on 2 November 2020.[18] The status of the implementation is not certain at the time of reporting to the Authority.

23 Much emphasis has been placed by Crown upon the establishment of the new Compliance and Financial Crimes Department and the search for a suitable leader of that department.[19] That emphasis is understandable having regard to the most serious problems that have been exposed with Crown's approach to the clear signs of money laundering in the Southbank and Riverbank accounts over at least a 5 to 6 year period.

24 The search for the leader of that department has now concluded with the announcement of the appointment of Mr Steven Blackburn as the Chief Compliance and Financial Crimes Officer. Mr Blackburn moves to Crown from his position as Chief Financial Crime Risk Officer and Group Money Laundering Reporting Officer at the National Australia Bank. It was announced that Mr Blackburn is to commence his duties on 1 March 2021.[20]

25 Crown has emphasised that this department will be independent of the business units to be created with direct reporting lines to the Crown Board. The new roles within the department are: Head of Compliance and Financial Crimes; Head of Culture and Human Resources; Head of Internal Audit; and Head of VIP Operations.

26 Crown advised the Authority that the existing roles that Mr Felstead and Mr Preston held of CEO Australian Resorts and Chief Legal Officer Australian Resorts respectively had been "removed".[21] Those removals are understandable in the circumstances.

Relationship with CPH

27 Crown emphasised to the Authority in its presentation of 9 November 2020 that it had terminated the Controlling Shareholder Protocol and the Services Agreement and that it would be giving consideration to further changes in its relationship with CPH consequent upon matters arising from the Inquiry. This will require a great deal of work and monitoring.

Junkets

28 At its presentation to the Authority on 9 November 2020 Crown highlighted the suspension of relationships with Junket operators pending a review of such relationships by the Crown Board prior to 30 June 2021. That was of course a week before it made its public announcement that it had decided to permanently cease all relationships with Junket operators subject to the conditions referred to elsewhere. Crown also relied upon other positive steps such as its appointment of: Mr Kaldas to develop relationships and information protocols with law enforcement agencies; Deloitte to undertake a review of the Junket approval processes; and Berkeley Research Group to undertake a detailed due diligence of certain of Crown's Junket operators.[22]

29 Although Crown has made its announcement to permanently cease its Junket relationships it is possible that this position may be adjusted in the future. Accordingly the steps that it relied upon in its presentation to the Authority remain relevant.

30 Crown has continued to develop internal management documents consequent upon the Deloitte review including plans to expand the POI Committee as a group-wide committee covering Crown Perth, Crown Melbourne and the Barangaroo Casino. It is also apparent that a Patron Decision Assessment Tool is being developed to manage, quantify and record the risk rating of persons of interest.

31 Crown has resolved to adopt the recommendations made to it by Deloitte and a work plan in that regard has been endorsed by the Crown Board on 10 September 2020. It is proposed that the Risk Management Committee is the most appropriate forum for oversight of any Junket due diligence and POI assessment.[23] This process of course depends upon Crown's decision as to whether it will deal with Junket operators in the future.

Management of Risk

32 Crown has implemented a number of steps to improve the clearly deficient management of risk within its operations. There has been an appointment of a Group General Manager—Risk and Audit and an expansion of the Risk Team by the addition of two Risk Managers and an additional Risk Analyst.[24] Crown identified the need for the articulation of risk appetite and the approval of a Risk Management Strategy by the Crown Board. It is apparent that this is something that had not yet occurred but was recognised as a necessity for the future.

33 Other steps identified included: a review and ongoing refreshment of Crown's Risk Registers and an enhancement to the risk framework, focusing on consistency, communication and escalation processes. One of the real problems identified during the Public Hearings was the deep immersion of Crown staff into "management speak".[25] If Crown is to improve its communication then it will be necessary to shed the use of the impenetrable charts and use of quantum metrics. Healthier doses of plain speaking are warranted.

34 In addition to these matters Crown relied upon: the increased frequency of the Risk Management Committee meetings from 2 to 6 per annum; the enhanced governance framework including ensuring that the Executive Risk and Compliance Committee meetings coincide with the Risk Management Committee meetings; the establishment of monthly meetings of Compliance Officers; the implementation of a standardised Enterprise Risk Management system to collate risk information and facilitate reporting across the Group; the embedding of a Risk Manager into the business; and enhanced Risk Reporting to Executive Management and the Crown Board by expanding and increasing the consistency of information flow and escalating relevant risk related matters.[26]

Governance Reform

35 Crown has indicated that it wishes to reform its structure to a "full group model". It was suggested that this Model would collapse "all subsidiary boards and committees to be replaced by one listed company board and one set of listed company committees." The "mandates of all group committees would be publicly available through the publication of committee charters resulting in greater governance transparency." It is intended that this structure will allow for direct reporting from these central committees to the Crown Board.[27]

36 In September 2020 Crown engaged the law firm Herbert Smith Freehills to advise on the merits of this proposed reform which may require regulatory approval in the various States in which Crown operates.[28]

Board Renewal

37 Crown has embarked upon and is continuing a process of Board renewal. The appointment of Ms Coonan as Chairman in January 2020, the retirement of Mr Alexander as a director effective 22 October 2020 and the announcement by Professor Horvath in October 2020 of his intention to retire from the Board are said to be indicative of this process.

38 Ms Coonan has commenced discussions regarding succession planning and Board renewal and intends to commence the recruitment process for new independent directors.[29]

39 With effect from 1 January 2021 Mr Felstead resigned as a director of all Australian subsidiaries of Crown including Crown Melbourne and Crown Perth. At the same time, Mr Preston resigned as Secretary of all Australian subsidiaries of Crown including Crown Melbourne, Crown Perth and the Licensee.

40 Crown has made an announcement that it is proposed that, subject to regulatory approvals, Mr Xavier Walsh the current Chief Operating Officer of Crown Melbourne, be appointed as a director of Crown Melbourne, and Mr Lonnie Bossie, the current Chief Operating Officer of Crown Perth be appointed as a director of Crown Perth.

Conclusion

41 As the Chairman observed in her evidence, it would have been far more preferable for Crown to have proceeded in this Inquiry with agreed Statements of Facts rather than having to endure the scorching process through which it went. However Crown has taken positive steps in recognition and clear admission of the deep-seated problems that have been exposed during the Public Hearings of the Inquiry.

42 These positive steps were necessary and should have been implemented prior to the establishment of this Inquiry. Late though they are the Authority should see them as welcome developments.

Chapter 4.5

Suitability of the Licensee and Crown

1 The questions in paragraph 16 the Amended Terms of Reference in relation to whether the Licensee and/or Crown are "suitable" persons are posed in the context of the Media Allegations. The relevant questions to be addressed "in response to" the Media Allegations are: (i) whether the Licensee is a suitable person to continue to give effect to the Barangaroo Restricted Gaming Licence; and; (ii) whether Crown is a suitable person to be a close associate of the Licensee.

2 As discussed elsewhere, it is appropriate to approach the question of suitability of the Licensee and Crown together. The Licensee is presently dependent on Crown for its operational viability. The present directors of the Licensee are also directors of Crown and the corporate character of Crown is intertwined with the corporate character of the Licensee.

3 Notwithstanding that it is now more than six years since the Barangaroo Licence was granted, the Licensee does not yet have any experience in managing or operating a casino. It is Crown through its other subsidiary licensees that has the experience in managing and operating casinos. Although under its Licence it was envisaged that the Licensee would be entitled to commence operations from 15 November 2019 it was not possible for it to do so because the construction of the integrated resort at Barangaroo was not completed until December 2020. The commencement of operations was further delayed on 18 November 2020 by the Authority's rejection of Crown's proposal to commence limited gaming operations on 21 December 2020.

4 The approach to be adopted in assessing suitability is discussed earlier in Chapter 4.2. It must be emphasised that the indicia of suitability set by the legislature in the *Casino Control Act* the subject of that earlier discussion are intrinsically intertwined with the objects of the Act. Ultimately the Authority must be confident that the corporate character of the Licensee and Crown, as a close associate of the Licensee, will enable

them to ensure that the management and operation of the Barangaroo Casino will remain free from criminal influence and exploitation.[1]

5 As has also been discussed, the corporate character of Crown and the Licensee is dependent upon the character of those who lead them - their directors. The Authority has to be confident that it can place trust in each of the directors of Crown and the Licensee to engage with the Authority openly, honestly and co-operatively. It must be confident that the directors will bring appropriate rigour and care to the management and operation of the Barangaroo Casino in protecting it from the risk of criminal influence and exploitation.

Nature of Review

6 It is important to emphasise again that the investigations of the Inquiry and the determination of the questions as to suitability are confined to the matters raised in the Amended Terms of Reference.

7 The assessment of suitability is focused on the outcome of the three areas of the inquiry required under paragraphs 15 and 16 of the Amended Terms of Reference identified as Money Laundering, China Arrests and Junkets. There are of course numerous matters incidental to the investigations of those areas which have been addressed in the previous Chapters of the Report. The inquiries required by those paragraphs of the Amended Terms of Reference have resulted in findings of the veracity of the claims made in the Media Allegations identified in Chapters 3.2, 3.3 and 3.4 of the Report.

8 The assessment of the suitability of the Licensee and Crown is "in response to" those findings, reviewing the corporate character of both the Licensee and Crown holistically and taking into account the steps that Crown has taken to address the conduct and causes that contributed to the serious deficiencies in its operations that justified those findings.

The stark realities

9 The stark realities that flow from the findings of the veracity of the Media Allegations may be shortly stated as: (i) in the period 2014 to 2019 Crown facilitated money laundering through the Southbank and Riverbank accounts unchecked and unchanged in the face of warnings from its bankers; (ii) in the period 2014 to 2016 Crown disregarded the welfare of its China-based staff putting them at risk of detention by pursuing an aggressive sales policy and failing to escalate risks through the appropriate corporate risk management structures; and (iii) in the period 2012 to

2020 Crown entered into and/or continued commercial relationships with Junket operators who had links to Triads and other organised crime groups.

10 Although Crown did not accept that some of the findings would be justified, its position is that notwithstanding these findings both Crown and the Licensee are presently "suitable" persons within the meaning of that expression in the *Casino Control Act.*

11 It is convenient to repeat the findings here together with a summary of Crown's response to assist with an understanding of the context of this suitability assessment.

Money Laundering Facts

12 The facts established in respect of the Media Allegations in relation to money laundering relevant to the assessment of suitability are that: (i) the bank accounts of Crown's subsidiaries, Southbank and Riverbank, have been used to launder money; (ii) Crown's conduct enabled and facilitated such money laundering through the Southbank and Riverbank accounts; (iii) that facilitation continued from at least 2014 for years until the accounts were closed in October 2019 notwithstanding Crown being alerted by a number of banks to the real prospect of money laundering in the accounts; and (iv) money had been laundered through the Suncity VIP Room at Crown Melbourne and conditions were not imposed until 2018 to prevent very large cash transactions outside Crown's control from occurring in the Suncity Room (Money Laundering Facts).[2]

13 Crown contends that the Authority can be satisfied that there will be no further problems of the kind that were exposed in the bank accounts of its subsidiaries, Southbank and Riverbank, emphasising that those accounts have been closed and it is intended to deregister the companies. It also emphasises that Suncity's exclusive use of the VIP Room in Crown Melbourne ceased in August 2019 and its position on Junkets referred to below makes it clear that there is no prospect of any similar problems occurring.

14 There is no issue that the accounts have been closed. The question of whether similar problems will be prevented by such closure and indeed by other matters proposed by Crown as outlined in Chapter 4.4 is discussed later in this Chapter.

China Arrests Facts

15 The facts established in respect of the Media Allegations in relation to the China Arrests relevant to the assessment of suitability are that: (i) Crown exposed its staff to the risk of detention in China; (ii) Crown disregarded the welfare of its employees as they were offered huge bonuses to lure Chinese high rollers to gamble at Crown's Australian casinos; (iii) even as it became likely Chinese police were closing in, Crown directed its China-based sales staff to keep promoting gambling but to do so "under

the radar"; and (iv) Crown's operations in China cast doubt over its corporate governance practices (China Arrests Facts).[3]

16 Crown contends that the Authority can be satisfied that there will be no future problems similar to those that occurred in China, emphasising that it has ceased all operations in China and that it has adjusted and bolstered its risk management structures and corporate governance structures that were causative of and/or contributed to the China Arrests. It also relies upon the termination of the Services Agreement and the Controlling Shareholder Protocol in support of this contention.

17 Obviously, as recognised elsewhere in the Report, Crown terminated its operations in Mainland China soon after the China arrests. It will be necessary to discuss the aspects of the changes that Crown has put in place and proposed in respect of its risk management structures and corporate governance structures which are referred to in Chapter 4.4 of the Report. The operation and termination of Services Agreement and the Controlling Shareholder Protocol are discussed in Chapter 2.8.

Junket Facts

18 The facts established in respect of the Media Allegations in relation to Junkets relevant to the assessment of suitability are that: (i) Crown formed commercial relationships with Junket operators who have links to Triads and organised crime groups; and (ii) Crown maintained some of those relationships after becoming aware of persistent public allegations of such connections in national and international media investigative reports and its own due diligence reports (Junket Facts).[4]

19 Crown claims that the Authority can be satisfied that there will be no further problems with its relationships with Junket operators having regard to the announcement it made on 17 November 2020 that it will no longer deal with Junkets unless they are licensed and/or approved by all Regulators in the jurisdictions in which Crown operates.

20 It must be recognised that Crown has made a very significant decision in respect of its approach to Junkets. Clearly, to state the obvious, there can be no similar problems whilst it does not have any relationships with any Junket operators. However it will be necessary to discuss this aspect of Crown's operations and the complexity of some of the considerations in relation to dealing with Junket operators and indeed the regulation of Junkets both later in this Chapter and in Chapter 5.2.

In response to the stark realities

21 Any applicant for a casino licence with the attributes of Crown's stark realities of facilitating money laundering, exposing staff to the risk of detention in a foreign jurisdiction and pursuing commercial relationships with individuals with

connections to Triads and organised crime groups would not be confident of a positive outcome.

22 It is obvious that such attributes would render an applicant quite unsuitable to hold a casino licence in New South Wales.

23 These facts and the stark realities expressed so baldly may also suggest that it is obvious that the Licensee is not suitable to continue to give effect to the Barangaroo Licence and that Crown is not suitable to be a close associate of the Licensee.

24 Expressed so baldly they may also present as an irresistible death knell for the Crown Board's continued existence as it is presently constituted. The composition of Boards of public companies is of course a matter attended to by corporate processes in the commercial marketplace. However where a public company holds a casino licence, or is closely associated with the holder of a casino licence, a Regulator is entitled to form a view about the suitability of the company, including the composition of its Board. This is not a controversial matter and has been recognised by Crown with the Chairman identifying politely and perhaps euphemistically, the need for Board "renewal", a matter referred to in the previous Chapter.

25 It is appropriate to observe that the questions posed for report to the Authority, "in response to" these stark realities and facts address only suitability to hold a casino licence and suitability to be closely associated with a licence holder. The ultimate decision of whether a licence might be cancelled, suspended or made conditional is exquisitely a matter for the expertise of the Authority assisted, it is hoped, by the answers to the questions posed in the Amended Terms of Reference and the broader exposure of the matters within this Report.

26 It is also appropriate to observe that there are complexities to some of the underlying features of the baldly stated facts and stark realities that require exploration before answers should be given to the questions posed in paragraphs 16(a) and 16(b) of the Amended Terms of Reference.

Consideration

27 It is appropriate to consider the questions posed as to whether the Licensee and Crown are suitable persons "in response to" these three main strands of Facts: Money Laundering, China Arrests and Junkets as identified or understood from paragraphs 15(a), (b) and (c) of the Amended Terms of Reference respectively.

Money Laundering

28 A most startling claim in the Media Allegations published on 5 August 2019 was that Australia's peak policing agency, the Australian Federal Police, held a belief not only that criminal entities had laundered money through the Southbank and Riverbank accounts, a belief shown to have been justified, but also that the Southbank and

Riverbank accounts were used by those criminal entities "because they believed that the money they deposited into them would not be closely scrutinised". Certainly the accounts were not scrutinised closely enough and the continued use of the accounts over the years suggests that the AFP's belief in this regard was also justified.

29 It is not unreasonable to expect that in the face of such a startling claim Crown should have conducted a thorough review of the Southbank and Riverbank bank statements.

30 It has been shown beyond any doubt, that it takes no expertise beyond the basic understanding of the indicia of money laundering described elsewhere in the Report, to identify rampant structuring, a core indicium, through the Southbank and Riverbank accounts, the proceeds of which were then swept into the Melbourne and Perth Casino accounts.

31 The manner in which Crown has dealt with the allegations in respect of the Southbank and Riverbank accounts demonstrates not only a failure to understand the anti-money laundering landscape and legislative requirements but also a total lack of commitment to turning inwards and rectifying the obvious problems that were identified on 5 and 6 August 2019 in the article published in *The Age* and *The Sydney Morning Herald*.

32 There is detailed consideration in Chapter 3.2 and Chapter 4.3.2 of Crown's response to its bankers' concerns in respect of money laundering in Southbank and Riverbank accounts between 2014 and the date of publication of the Media Allegations in August 2019.

33 The analysis in those Chapters exposes, amongst other things, Mr Barton's highly unsatisfactory dealings with the banks over the years in relation to their concerns about money laundering in the Southbank and Riverbank accounts; his subsequent requirement for the inappropriate direction to be given to patrons; and his failure to review the bank statements, or cause them to be reviewed, either in August 2019 when the allegations were made or in the face of the investigation of the allegations in this Inquiry as heralded on 21 January 2020 in the opening of the Public Hearings of this Inquiry.

34 It is also necessary to consider Crown's response to the Media Allegations between the date of publication in August 2019 and late November 2020 when after months and months of resistance, it was finally conceded on Crown's behalf in closing submissions that money laundering was probably occurring in those accounts.

35 Mr Barton's belated identification of the problem of failing to do more than simply report suspicious matters to AUSTRAC was clearly a direct consequence of the questions posed during the early Public Hearings of the Inquiry. The irony that it should be Mr Barton who suggested such a thing should not be missed. As discussed in Chapters 3.2 and 4.3.2. Mr Barton was one of the people who could have protected

Crown from these devastating findings of fact if he had acted properly when the ANZ bank notified him of the problems in 2014.

36 Mr Barton effectively pleaded ignorance of the anti-money laundering landscape until apparently making himself more aware of it in 2019/2020. Such a plea is also devastating for Crown. What Mr Barton should have done in 2014, as he finally recognised six years later, was to conduct a proper review of the Southbank and Riverbank bank statements and protect Crown and the casino licensees from the exploitation by organised criminal groups.

37 Mr Preston could have done the same. He went along with Mr Barton to one of the meetings with the ANZ bank and apparently propounded the positive attributes of Crown's AML program. Mr Preston was ineffectual as an AML Compliance Officer and was positively dangerous to Crown in failing to review the bank statements between 2014 and 2019 and providing the Crown Board in August 2019 with information that did not include and was not based on a review of the bank statements. He provided information to the Crown directors from which, on one view, they were entitled to assume that there was nothing untoward within the accounts when the fact of the matter was he had not looked at the bank statements.

38 In addition to this, Mr Preston did not inform the Crown Board that the Group General Manager AML, Ms Lane, had conducted a review or a partial review of the bank statements in August 2019 and had suggested that it was necessary for either an external review of the bank statements to be conducted by Grant Thornton or more resources needed to be made available to conduct an internal review of the bank statements. He took it upon himself, apparently with the advice of MinterEllison that such a review would not be protected by legal professional privilege, to decide that such a review should not occur.

39 Mr Barton became aware that Ms Lane had conducted a partial review or investigation of the bank statements in August 2019 before he prepared his Third Statement of Evidence on 16 September 2020 and before he gave oral evidence on 23 and 24 September 2020. He made no mention of Ms Lane's work choosing to opine that it was unacceptable that a detailed review had not occurred and that the review that he conducted of the bank statements before he gave his evidence was the exemplar of what should have occurred. At this time of course, Mr Barton made no concession that there was the probability of money laundering through the accounts.

40 Numerous directors and officers of Crown were questioned on the basis that there had been no inspection of the bank statements after the publication of the Media Allegations. Ms Lane's work should have been disclosed to the Inquiry in response to a Summons that was served returnable in February 2020. There was a failure to produce these documents until after the conclusion of the Public Hearings supposedly based on some terms that were used to search Crown's documents electronically. This claim has not been tested in any further hearings due to the

intense work of the Inquiry to ensure the Report is submitted to the Authority by the required date.

41 In any event, Mr Preston knew that the work had been done by Ms Lane and the proposal for the external review by Grant Thornton had been made. MinterEllison knew that the proposal had been made and indeed had communicated with Grant Thornton in relation to the prospect of carrying out such a review. Mr Barton knew that Ms Lane had looked at bank statements in August 2019 and implied that he did not know of the proposal for the Grant Thornton review because he did not have time to open the attachment to the relevant email that was sent to him in September 2020.

42 As appalling as all this is, and without a proper investigation into the events between August 2019 and February 2020 when Crown failed to respond appropriately to the Summons, it should be observed that if Crown had acceded to its Group General Manager AML's proposal and Grant Thornton had been retained in August 2019, the outcome for Crown may have been quite different. The concession that was finally made in late November 2020 in respect of money laundering in the Southbank and Riverbank accounts was based in part on Grant Thornton's November 2020 report. Had that report been available to Crown in August 2019 and appropriate concessions had been made at that time, Crown's path to redemption may have been available. These are sadly all matters of conjecture caused by the highly unsatisfactory events referred to above.

43 Whether one describes it as structuring or smurfing or cuckoo smurfing, the stark reality for Crown is that it failed to ensure that the operation of its casinos were protected from criminal exploitation.

44 Once criminal elements infiltrate financial operations such as a casino, which clearly happened with the Southbank and Riverbank accounts, they are obviously astute to the weaknesses of the organisation that has been targeted. This was the very thing that was reported in August 2019 by the journalists who reported the AFP's beliefs. Crown propounded for months in this Inquiry, that there should be no finding that more probably than not money laundering had occurred through these accounts. It only conceded the prospect on the late evening of the 57th day of 60 days of hearings in Mr Barton's Sixth Statement. It conceded the probability of money laundering "with an explanation" on the 58th day of those 60 days, finally conceding the probability on 26 November 2020 in its final written submissions.[5]

45 These are not historical deficiencies. They are very clear and present problems. It is impossible to comprehend how Crown could not see the significance of the Media Allegations in relation to these two accounts and deal with them if not in August 2019 then certainly after they were articulated on 21 January 2020 when the Public Hearings commenced. Even accepting that there was a Board restructure announced on 24 January 2020 with the change of Chairman and CEO, and that the directors may have had numerous matters to which to attend, the work of the Board should have

included an analysis of the money laundering Media Allegations that had caused the Authority to establish an Inquiry with Royal Commission powers which called into question the suitability of both Crown and the Licensee.

46 It was and is very difficult to understand why in the period August 2019 to October 2020, when Grant Thornton was finally retained, none of the Crown directors had at the very least required an assurance that someone had sighted the Southbank and Riverbank bank statements and analysed them to test whether the AFP's beliefs were justified. Irrespective of what Ms Lane did and was prevented from doing, it remains inexplicable that the directors' first port of call was not ensuring a close analysis of the bank statements. Time and time again the exploration in the Public Hearings of why this did not happen resulted in a lack of any proper explanation. This was not an historical problem. This was occurring only weeks ago.

47 The reason for this corporate attitudinal problem is perhaps partly exposed in the evidence given by Ms Manos, Crown's Company Secretary and General Counsel and the present Company Secretary of the Licensee. Ms Manos' obligations to Crown in these significant roles entitled the directors to rely upon her for guidance on matters of legal and corporate significance. Ms Manos' evidence in the Public Hearings on 23 September 2020 related in part to her role as Company Secretary of Southbank and Riverbank and included the following:[6]

> Q. In retrospect, with the benefit of hindsight, do you consider that there was anything, as company secretary, more that you should have done in respect of these allegations?
> A. Well, I couldn't go and look at the bank accounts myself.
>
> Q. Was there a reason why you couldn't do that?
> A. Well, access to them.
>
> Q. Pardon?
> A. I have no access to any bank accounts, Mr Aspinall.
>
> Q. Wouldn't the company secretary of those companies have access to its bank accounts?
> A. I – I - it wouldn't have been in my contemplation then or even now to get down on my hands and knees and look through printed bank statements. I don't think that that is something that you would expect of the company secretary. If - if you're asking whether more questions might have been asked, possibly more questions could have been asked. But I - I don't think I would be going through boxes of dusty bank statements.
>
> Q. Why not?
> A. I don't have the - the expertise to be able to analyse them in any way. I'm – I'm - that's not my - my area.

Q. I see.
A. What would I be looking for?

Q. Well, surely somebody should have said, "For goodness sake let's get hold of these accounts. The corporation's reputation is being sullied in the press on a daily basis. Let's see if the accounts have anything suspicious in them". Surely that must have been a question that was raised or should be raised in your mind today?
A. I accept that.

Q. So when you said to me a little while ago that you wouldn't get down on your hands and knees and look into the dusty bank accounts, this is the very thing that should have happened surely?
A. Well, I said I could have asked more questions with the benefit of hindsight but Mr Aspinall was asking me whether I would personally be looking at the bank accounts and I said that I don't think that I would in a circumstance.

Q. But as a lawyer, as a strategist, surely for the company's sake, when you have an allegation that you have allowed laundering of money through this corporation and you've got the accounts, you've got the chairman of the company as a director, you've got yourself as the company secretary, wouldn't you say "show me where this has or hasn't happened" it's a simple thing, isn't it, Ms Manos?
A. With the benefit of hindsight, it absolutely makes sense to have asked that question.

Q. And what worries me is that there is the need for this process to bring you to the point that you've just agreed with. You see, I don't understand how this couldn't have been the first step taken by this company, to look at the transactions in the very accounts that were the subject of what appears to be quite an appalling allegation. Do you know how that happened, why someone didn't look at the accounts?
A. I'm not sure, Commissioner.

48 It was Ms Manos' apparently private reflections nearly two months later that ultimately exposed the deficiencies in Crown's compliance with the relevant Summons and its failure to inform the Inquiry of Ms Lane's proposals for a review and its rejection by Mr Preston in August/September 2019.

49 The significance of the present attitudinal problem was further exposed in the evidence of the former Chairman/CEO, Mr Alexander, who sought to support Ms Manos' position suggesting that the role of Company Secretary of Southbank and Riverbank was merely "titular" and that these were "inactive" companies notwithstanding that in 2019 more than $500 million flowed through them into the casino accounts. [7]

50 The volume of cash that was transacted through these accounts required vigilance and close scrutiny to protect the casino operations from the infiltration by criminal elements and from criminal exploitation.

51 Far from being historical matters, these are opinions proffered and evidence given in a Public Inquiry in late 2020 in respect of allegations that had been made in August 2019. The combination of a Company Secretary taking the view in September 2020 that it was not appropriate for her to call for the bank statements and go through them for herself, clearly because she regarded it as beneath her role and because she would not know what to look for, and a former Chairman/CEO then current Crown director suggesting by way of explanation that the role of the Company Secretary of these two companies was merely "titular" in the face of such serious money laundering allegations, combined with Mr Barton's conduct outlined in Chapters 3.2 and 4.3.2 have disastrous consequences for Crown.

52 Amongst other things, it exposes the present and very deep corporate cultural problems within Crown in particular in its failure to react urgently and comprehensively to public allegations of money laundering through its subsidiaries connected to the operation of its casinos.

53 It may present as ironic that two such apparently irrelevant, allegedly inactive subsidiary companies populated by individuals with merely titular roles could have such devastating consequences for their parent.

54 A very significant deficiency in the corporate character of Crown and the Licensee is the obvious lack of understanding and knowledge of the AML/CTF landscape and legislation. Every single Crown director should have been versed in an understanding at the very least of: the methods by which money launderers can infiltrate and exploit the operations of the casino; the forensic steps that need to be taken to reject and repel such infiltration and exploitation; the checks and balances that need to be introduced to monitor the effectiveness of the mechanisms for rejection or repulsion; and the developing trends and uses of technology both nationally and internationally to detect the methods utilised by money launderers.

55 It was not until the dénouement of the Public Hearings that Crown apparently formulated an idea that it would be a good idea to give some instruction to the Crown directors on the AML/CTF legislation and landscape. This apparently came in the form of a one-hour online training unit. Irrespective of the merit of its content Mr Mitchell was correct to treat this step at this time after such devastating evidence had been disclosed in the Inquiry with disdain as he boasted of finishing it in half an hour with a 100 per cent result suggesting that it may take the more tardy an hour to complete. Unfortunately this is consistent with the irresistible conclusion that the problem is not historical. It is contemporary and until the corporate character of the organisation changes so as to act in accordance with an understanding that a casino

is under constant threat and vulnerable to organised criminals it will not satisfy the Authority that it can be trusted in this area.

56 Any person who is at the helm of a licensee of a casino in New South Wales and those leading corporate close associates of a licensee, need to have a deep understanding of the anti-money laundering landscape and legislation and strive vigorously to be ahead of the agile and flexible steps to be taken by money launderers. It is beyond doubt that this is a significant challenge which requires constant vigilance. It is not good enough to leave it to some department within the organisations from which the leaders of the company never hear. There must be "astute knowledge" at Board level.[8] If companies choose to enter the fray and operate a casino, or operate as close associates of a company that operates a casino, they must have a corporate character that fits within this description.

57 The Licensee does not presently have such a character. The same conclusion applies to Crown as a close associate of the Licensee.

58 The steps that Crown has taken to remedy the money laundering problems are referred to in Chapter 4.4 of the Report.

59 One step that has been taken is the "removal" of Mr Preston's role and his resignation. As discussed, this step is certainly understandable in the circumstances. However it was not implemented until January 2021.

60 Another very important step is the appointment of Mr Blackburn as the Chief Compliance and Financial Crimes Officer. Great hope has been expressed for Crown's better future under his leadership in this area. However Mr Blackburn is not to commence his duties until 1 March 2021.

61 It is anticipated that the "rollout" of the joint AML/CTF program will be monitored closely by the relevant Regulators to ensure that it is fit for purpose. The other recent steps including the directions that have been issued to the patrons about cash deposits and the manner in which cash will be controlled within the confines of the casinos and in Crown's accounts will no doubt be seen by the Authority as welcome developments. The implementation of that regime will need to be closely monitored by the relevant Regulators.

62 There are other plans and proposed developments that are reasonably described as work in progress. That includes the implementation and use of Sentinel; the review of the efficacy of the newly established Unusual Activity Reports; and Crown's work with Promontory.

63 The urgent work of Grant Thornton and Initialism in the intense environment of the Inquiry at the direction of Minter Ellison is not the ideal environment for Crown to receive advice on its operations. In any event their work in November 2020 was limited and confined by the instructions given to them by MinterEllison. There was

no wide-ranging proper forensic full audit of the accounts nor were those firms asked to review any other Crown accounts that operated during the same period. This is of course a serious problem.

64 Crown's concession in relation to the probable money laundering through the Southbank and Riverbank accounts was made after all the evidence had concluded and was therefore not the subject of any discussion with any of the Crown directors.

65 None of this detracts from the irresistible conclusions that by reason of the Money Laundering Facts and the matters referred to above, the Licensee is not presently a suitable person to continue to give effect to the Barangaroo Casino Licence and the irresistible conclusion that Crown is not presently a suitable person to be a close associate of the Licensee.

66 On these facts alone, the answer to the question in paragraph 16(a) of the Amended Terms of Reference whether the Licensee is a suitable person to continue to give effect to the Barangaroo restricted gaming license is "No".

67 On these facts alone, the answer to the question in paragraph 16(b) whether Crown Resorts is a suitable person to be a close associate of the Licensee is "No".

68 Notwithstanding that the answers to the two questions posed in paragraphs 16(a) and 16(b) must be in the negative by reason of the findings in response to the matter raised in paragraph 15(a) of the Amended Terms of Reference, it is appropriate to provide a report to the Authority in respect of the other matters in paragraphs 15(b) and 15(c) of the Amended Terms of Reference in response to which the questions in paragraphs 16(a) and 16(b) also relate.

China Arrests Facts

69 The investigations of the Media Allegations in respect of the China Arrests commenced from the premise that Crown's employees had pleaded guilty to breaching the laws of China and had been convicted and imprisoned. The investigations focused on the events that led to those arrests including an analysis of Crown's processes and systems that led to the failures to identify escalating risks so as to protect its staff from the tragic outcomes that occurred.

70 The China Arrests Facts that have been established after reviewing the Media Allegations to which this analysis is responding are referred to earlier in this Chapter. The consequences of those findings include: (i) the realisation of the risk of detention and imprisonment of Crown's staff by reason of the numerous failures to identify, escalate and/or avoid risks; (ii) the serious compromise of Crown's risk management systems and corporate governance; and (iii) the development of a flawed corporate culture.

71 The aggressive sales policy adopted by the VIP International business unit in Crown's

operations in China, as discussed in Chapter 3.3, skewed the considerations that were necessary to ensure the safety of Crown's employees in China. That aggressive policy favoured the pursuit of profit over the welfare of Crown's employees and failed to protect them from the risk of detention for questioning and ultimately imprisonment. The very telling communication in February 2015 between Mr O'Connor and his colleague at Crown Aspinalls in London is indicative of the problem. It was in the following terms:[9]

> Our challenge will be convincing our masters that they need to temper their expectations, but with the development plans ahead, talk of conservative expectations won't be well received.

72 It is clear that the failure to prudently assess and escalate developments in China was a core failure which led to the China arrests. However it was by no means the only significant failure. A number of corporate and cultural failures within Crown gave rise to a situation where the risks to the China based staff were not adequately assessed, managed and escalated. These failures included ineffectual and underutilised risk management and compliance structures, mismanagement of the legal advice, blurred lines of reporting and lack of effective governance of the VIP International unit.

73 Crown made a number of significant concessions in its final submissions to the Inquiry.

74 It conceded that there was a "series of failures to prudently assess, and escalate, important developments in the operating environment in China to the board-level risk committees and the wider board".[10] It conceded that the management of external advice received by the VIP International executives was inadequate.[11] It conceded that there were "serious misjudgements that developments in China could be adequately managed 'on the ground'".[12] It accepted that this "led to significant mistakes being made, including the Board being denied control of the risk appetite of the company in relation to China".[13]

75 Crown also accepted that the failure to escalate the "important developments in the operating environment in China" to the risk management structures and the Board resulted in "important decisions about how to proceed" in response to those developments being excluded from the Crown Board.[14] The effect of this was that a small group of Senior Management 'set' Crown's risk appetite in relation to operations within Mainland China.[15]

76 During 2015, VIP International senior executives were aware of a series of the significant developments and escalation of risks described in detail in Chapter 3.3. Crown accepted that those matters "ought to have been exposed to wider consideration and assessment through Crown's risk-management structures and procedures".[16] It also accepted that such failures were "unacceptable".[17]

77 While it was not in issue that it was the Crown Board's obligation to set the risk appetite in China, it failed in its fundamental responsibility to set, monitor and communicate that risk appetite.[18] To the extent that the Board communicated a risk appetite informally, it was excessive and inappropriate for a casino licensee. The Board, by its demands upon the VIP International business, and the basis on which it provided incentives encouraged Management to take inappropriate risks in the pursuit of success in this strategically important business.

78 There were deficiencies in various documents designed to capture risks; for example, the Corporate Risk Profiles that formed part of the formal structure did not properly or in sufficient detail identify the real nature of the risks associated with the VIP International business or the risks relating to breach of gaming laws and regulatory change.

79 While the VIP International business had adopted measures "on the ground" in response to various escalating factors in 2015, the controls which were in fact deployed were not documented in the risk management controls and therefore were incapable of being monitored and reviewed as to whether they remained appropriate. The VIP International team had historically taken on a higher risk appetite than the rest of Crown's business and it was accepted in evidence that the risk appetite was too aggressive leading up to the China Arrests.[19]

80 It took Crown until August 2020 to record in its Board paper that "Crown's international VIP team has historically run on an aggressive sales culture with a higher risk appetite than the rest of the business".[20] In his oral evidence in the Inquiry in October 2020 Mr Packer agreed with this observation accepting "some" responsibility for that culture.[21]

81 One matter of significance of which the Crown Board was seized from the confidential draft report received by it in June 2019 was the VCGLR's criticism of Mr Felstead's conduct. Although the Crown Board recognised the serious concerns raised by the VCGLR in respect of Mr Felstead's conduct in relation to the China Arrests and requested the then Chairman, Mr Alexander, to obtain an explanation from him, it failed to follow through with this request.

82 It should be recognised that in mid-2019 the Crown Board was dealing with numerous and significant matters affecting Crown's corporate reputation some of which are highlighted in Chapter 3.1. However, this was a most serious matter raised by the Victorian Regulator. Instead of pursuing and obtaining the explanation from Mr Felstead, the Crown Board permitted Mr Felstead to prepare a report, in conjunction with Mr Preston and Mr Murphy, the Partner at MinterEllison instructed in the Class Action in the Federal Court, requiring it to place implicit trust in Mr Felstead to report accurately to them on the very matters in respect of which the VCGLR had been critical of him. It is totally inexplicable how the Chairman at the time, Mr Alexander,

who had been asked to obtain an explanation from Mr Felstead could have permitted this to occur.

83 Although there are matters that can reasonably be described as "historical" in relation to the Media Allegations relating to Crown's operations in China, the conduct of the Crown Board in dealing with the problems identified by the VCGLR is contemporary. It is apparent that the explanation from Mr Felstead was never provided. This was not an event four years ago in the midst of the complexity of commercial operations in China. This was a problem that was identified just weeks before the announcement of this Inquiry.

84 Another relevant matter is the failure by the Crown Board to require an investigation to be conducted of the causes of the China Arrests. Although it has been necessary for Crown to analyse aspects of what occurred in China in the litigious setting for the purpose of defending itself in the Class Action in the Federal Court of Australia, it has failed to conduct any rigorous or systemic corporate analysis of the multiple failures which led to the China Arrests. This is so despite Ms Halton's evidence as current Chair of the Risk Management Committee, that such an analysis would have utility.[22] It is understood from the Chairman's evidence referred to earlier in the Report that Crown received advice not to conduct such a review whilst the Class Action is extant.

85 It is accepted that the reason such an investigation did not occur was because Crown received legal advice that this should not happen whilst the Class Action was extant. However, whilst ever there was no proper corporate analysis (as opposed to an analysis in the litigious setting) of the problems that caused 19 of its employees to be arrested in a foreign jurisdiction, Crown could not propound with any confidence that it had established appropriate risk structures to address the deficiencies that resulted in the China Arrests.

86 The main explanation that has been proffered for the horrendous and tragic outcome of Crown's China operations is that Senior Management felt that they were handling things properly "on the ground". That of course is a euphemism for failing to notify the appropriate risk mechanisms of the company of the serious and escalating risks to its staff in China. Rather than an explanation, it is just a statement of the operational approach that was adopted. It does of course reflect Mr Felstead's rather glib acceptance of responsibility for failing to bring the significant escalating risks to the notice of the Risk Management Committee and the Crown Board.[23]

87 Another 'explanation' that was proffered during the Public Hearings of the Inquiry was that VIP International Senior Management did not appreciate the intricacies of the Chinese legal/business system and looked at it through "Western eyes".[24] This explanation seems to make matters worse rather than better. The thought that a corporation of Crown's ilk could pursue an aggressive strategy to lure Chinese gamblers to its casinos in Australia whilst not doing everything to understand the intricacies of the Chinese system and the niceties of cultural reciprocity, particularly

in an environment in which a powerful crackdown had been announced, beggars belief.

88 In any event such an 'explanation' could not be accepted as reflecting the reality. The probabilities are that the members of Crown's VIP International Senior Management, in particular Mr Felstead, and the then Chairman, Mr Rankin, and Mr Packer regarded themselves as experienced and even expert in matters Chinese, not only because Crown had been operating in China for some years but also because of its success in the Crown/Melco joint venture in Macau.

89 Crown's complacency in respect of the identified serious risks was indicative of a very confident culture that had developed within the VIP International business unit. The profits from the operations in China had given it some buoyancy, albeit that it was diminishing prior to the China Arrests. This confidence that bred the dangerous complacency, prevented a proper analysis of the events that occurred throughout 2015 which, had it occurred, would more probably than not have led to cessation of the presence of Crown staff in China and/or the cessation of the strategy that had been adopted at the time.

90 A number of factors impacted on Crown's ability to change its course away from that which was set by these disastrous combinations. One very important factor was the ubiquitous and powerful influence of CPH, Mr Johnston and Mr Packer.

91 The blurred reporting lines that resulted from the insinuation of Mr Johnston into the Management of the VIP International group contributed to the failure to escalate the developing risks in China to the appropriate mechanisms within the Crown organisation. As discussed earlier in the Report this resulted in the VIP International unit operating as a separate business having its own culture, or lack thereof, and driving profit to the detriment of its staff. The development of the structure with the blurred reporting lines and the development of its own culture resulted in it getting away from Crown Board control and indeed getting out of control.

92 One explanation for why Mr Felstead failed so dismally to protect Crown as he should have, is that Crown's corporate governance and risk management structures had been compromised by these blurred reporting lines. It is clear that Mr Felstead thought that his communiqués with Mr Johnston and Mr Packer were enough to fulfil his obligations. Although Mr Felstead informed Mr Johnston of the questioning of the employee by the Chinese police, he did not inform Mr Packer of this development or indeed of any other adverse developments in China in this regard. Mr Packer did not receive the "bad news" from Mr Felstead. It is also clear that Mr Felstead jealously guarded his capacity to communicate with Mr Packer in his roles as Chairman, director and former Chairman, to the point where he simply failed to inform his immediate superior Mr Craigie of matters that should have been brought to his notice. This did not present as an intentional white-anting of Mr Craigie. However, his conduct had that result. Mr Felstead sailed on blithely as the CEO of Australian

Resorts sending glib emails to Mr Johnston and others and failing to report to the Crown Board and/or the Risk Management Committee the serious escalating risks in China.

93 Mr Johnston's dismal performance was also causative of the Board's ignorance. He lulled some of his colleagues into a sense of inappropriate comfort by an informal chat about the arrests of the South Korean casino employees assuring them there was no need to be concerned because Crown's operations were distinguishable and lawful. Mr Johnston's very serious failures are discussed in detail in Chapter 4.3.3.

94 Mr Felstead and Mr Johnston had the capacity to alert the Crown Board and the Crown Risk Management Committee that its staff in China had been questioned by the police in an environment that was becoming more and more hostile to foreign casinos luring gamblers to overseas casinos. Both of them had the capacity to put in place steps to protect Crown and its subsidiary's employees from the devastating ramifications of the China Arrests.

95 The suggestion that Senior Management which in this instance should include Mr Johnston, felt they were managing things "on the ground" is not really a true reflection of what was occurring. There was a line of reporting of sorts albeit dysfunctional and compromised. It went from Mr Felstead to Mr Johnston, Mr Packer and sometimes to Mr Ratnam. It went around Mr Craigie and avoided the Risk Management Committee and the Crown Board. Far from being on the ground, it was simply a separate operation with a life of its own. It was one over which the Crown Board was ultimately prevented from knowing anything about, other than of course the profitability of the VIP International business unit.

96 It is true that Crown has proposed changes to its risk management structures and retained external advisers to assist it to improve its corporate culture. One matter of some significance was the evidence in relation to the setting of risk appetite. As discussed in Chapter 4.4, there is the necessity to jettison the overuse of "management speak". Some of the proposed mechanisms for defining Crown Board's appetite for its tolerance for risk events are impenetrable. When this was discussed in evidence with the Chair of the Risk Management Committee, Ms Halton, it became clear that the document entitled "Crown Resorts Risk Management Strategy" which included the section "Risk Appetite Statements and Reporting Tolerances" approved by the Board in June 2020 was in need of amendment. Instead of the plain language of "amendment" the expression that was used was that it needed to be "disaggregated".[25] Unfortunately this evidence may dash any hopes that overuse of management speak will be jettisoned.

97 The fact that the Crown Board had not at the date of the conclusion of the Public Hearings of this Inquiry on 20 November 2020, proffered evidence that it had attended to these problems is a real and deep impediment to the proper management and proposed cultural changes of the organisation.

98 A review of the changes that Crown has proposed as outlined in Chapter 4.4 clearly establishes much of it is also a work in progress. That is not to say that such steps should not be seen by the Authority as welcome developments. However it is clear that the deep fissures which developed in the organisation as exposed in the evidence in relation to China Arrests have not as yet been closed.

99 It is recognised that Mr Felstead's role has been "removed" and that he has left the organisation. As discussed elsewhere, this is understandable in all the circumstances. However this was not implemented until January 2021.

100 The matters discussed above in relation to the problems identified as a consequence of the China Arrests taken together with Crown's commitment to change, albeit not yet implemented, on their own, may not have resulted in a negative answer to the questions in paragraphs 16(a) and 16(b) of the Amended Terms of Reference. However when combined with the matters outlined in respect of the Money Laundering Facts the justification for negative answers is even more profound.

Junket Facts

101 The Junket Fact that Crown has partnered with Junket operators with links to organised crime is of course, baldly stated, a devastating fact for any casino licensee. It means that criminal organisations can boldly continue their operations secure in the knowledge that they are secreted into an otherwise respected commercial organisation operating in the relevant jurisdiction.

102 As the former Head of the Hong Kong Police Intelligence Bureau, Mr Vickers, observed in the *60 Minutes* program, confirmed by his evidence in the Inquiry, "you will never eliminate all Triad involvement in Junkets, it's just not possible". However Mr Vickers emphasised that to protect a casino from the influence of organised crime it does require, as he put it "one four-letter word WILL". That of course is only a starting point.

103 Crown's operations in relation to Junket operators is discussed in detail in Chapter 3.4 including where it held or had access to information consistent with the claims made in the Media Allegations that some of those Junket operators had links to organised crime.

104 As has been discussed during the Public Hearings these allegations have dogged Crown for years with previous broadcasts in 2014 and 2017 by both the ABC and the Nine Network.

105 Some Crown officers and indeed some Crown directors have suggested that it is inappropriate to act on mere allegations. Crown rightly emphasised that when one of the earlier broadcasts made a claim of links between Junket operators and organised crime, the Authority itself investigated the allegations but could not verify them.[26] The

purpose of that emphasis was to support the contention that there were real difficulties faced by Crown or any casino operator in making a proper assessment in a commercial marketplace where it seems that all operators are dealing with the same Junket operators.

106 There has been no detailed investigation in this Inquiry of the relationships between the Junket operators named in the Media Allegations and other casinos throughout the Australian jurisdiction. However the fact that some of these Junket operators have contracts with those other casinos in the jurisdiction is not in issue.

107 It is obvious that organised criminals do not respect jurisdictional or corporate boundaries. One can imagine the delight of an organised criminal group that gains entrée not only to one casino operator in the jurisdiction but to all of them. As the Junket operators gain a foothold in each jurisdiction it gives false comfort to a casino operator looking to see whether a particular Junket operator has relationships with any other casinos as a justification to proceed with such a relationship. There is a tendency to believe that if they are operating in another jurisdiction the Junket operator is probably respectable. Unfortunately it is clear that the Australian jurisdiction has fallen victim to this ruse of respectability of these Junket operators.

108 The problems that have been identified during the Public Hearings in this regard identify the real problem for casino operators across the whole of the nation. As will be seen from Part 5 of the Report, the Authority would well understand the different mechanisms and systems that are in place throughout the nation and indeed internationally and the different approaches that are adopted by different Regulators in different jurisdictions. This fragmentation can only be an added delight to the organised criminal. This is exacerbated by the secrecy provisions, necessary as they apparently are, in the AML/CTF legislation.

109 There is also the added burden on the casino operator by reason of the recent shift in 2017 in New South Wales and earlier in Victoria to what has been referred to as the "risk based" regulatory regime to move risk from the Regulator to the regulated. Junket operators are not approved or licensed in New South Wales. There are processes under the Internal Control Manuals but that imposes an obligation on the casino operator to carry out appropriate due diligence to ensure that any Junket operator is of good repute.

110 Crown has debated both internally during the period 2012 to 2020 and publicly before the Inquiry the question of whether a person who has allegations made against them of links to a Triad or an organised crime group but does not have any criminal convictions is a person who is not of good repute. This is made more difficult in the murky world of organised crime, which promotes its relationships through the "front" of men or women in respect of whom there are no such allegations.

111 It is accepted that Crown struggled with this question, but as discussed in Chapter 3.4, the Crown Board failed to set the appropriate risk appetite and/or give guidance to the relevant decision-makers as to the approach that should be adopted to its relationships with Junket operators.

112 It is clear that the informal risk appetite that Crown adopted through its VIP International unit in China of pushing profits above and beyond the consideration for the welfare and safety of the staff was not dissimilar to the informal risk appetite that was introduced in relation to its consideration of its continuation with the Suncity Junket. Its push for profit skewed its consideration of the necessity to comply with the object of the *Casino Control Act* of protecting the casino from criminal exploitation. The assessment of the Suncity Junket that was conducted in 2018 referred to in Chapter 3.4 is demonstrative of this position. The relevant aspects of that assessment are repeated here for context:[27]

> Given the size and scope of the Suncity junket operator's operations, Crown Melbourne has assessed the due diligence materials available to it and has determined that it is appropriate to continue to do business with the ultimate beneficial owner, CCW.
>
> Following a World Check result in June 2017 identifying CCW as a Foreign Politically Exposed Person (due to his position as a member of a political advisory body), CCW's customer risk assessment was increased in accordance with the Crown Melbourne AML/CTF Program to 'high'.
>
> Moreover, Crown Melbourne is aware of negative press on CCW, including his potential links to Triads (as noted in ECDD conducted on him) however notes that this commentary remains media speculation and that, to date, CCW has not been charged with an offence and has received his annual police clearance in Macau pursuant to the requirements of his DICJ (junket operator) license in that jurisdiction.

113 This assessment is predicated on the "size and scope" of Suncity's operations. It would appear from this approach that it was that size and scope, including its value to Crown, that caused Crown to decide to continue the relationship notwithstanding the information relating to the persistent claims of which it was aware that Mr Chau had links to Triads. As discussed elsewhere, a number of Crown directors accepted in their evidence that in light of the information that was available to it Crown should not have been dealing with Mr Chau.

114 Relationships with international Junket operators have been pursued with vigour by casino operators throughout Australia and internationally. They are, or at least were, an accepted part of the operational landscape of a casino.

115 Much time and cost has been expended over the years both nationally and internationally on the analysis of the relationship between the casino operators and Junket operators, on reports about their risks, and on considerations of whether to license or register them in a regulatory setting.

116 During 2016 and 2017, AUSTRAC undertook a Casino Junkets Campaign to develop a more detailed understanding of how Junkets operated in Australia the results of which were reported in an *Information Report – Casino Junkets Campaign* dated 14 July 2017 (the 2017 Report).

117 This is the subject of discussion in Part 5 of the Report. However it is appropriate in this analysis to mention that AUSTRAC's findings included that: (i) while there was a broad understanding and compliance with AML/CTF Act requirements in relation to Junkets, compliance by casinos appeared to be more with the letter than with the spirit of the law;[28] (ii) casinos treated the Junket operator as the customer and also assumed that the Junket operator was the beneficial owner of the funds and "combined these two technicalities to absolve themselves of conducting robust due diligence in relation to the source of the funds presented to them";[29] (iii) casinos appeared to underestimate the money laundering risks involved in the provision of Junkets services;[30] and (iv) the key AML/CTF risk associated with Junkets was the obscurity of the beneficial ownership/source of funds.[31]

118 The 2017 Report identified opportunities for risk mitigation including exploring legislative changes for additional AML/CTF regulation of Junkets, improved information sharing between AUSTRAC and casino regulators and greater collaboration between AUSTRAC and casino operators.[32]

119 Ironically, notwithstanding this last mentioned opportunity of greater collaboration with casino operators, the 2017 Report was not provided to them. Indeed, it was only after the Senate intervened that an un-redacted version of the 2017 Report was made public.

120 After the conclusion of the Public Hearings of the Inquiry and without sharing any of the information within it with this Inquiry prior to its publication AUSTRAC published a report entitled *Junket Tour Operations in Australia* (the 2020 Report) on 11 December 2020. This was far more comprehensive than the 2017 Report in which the risk associated with Junket operations was recorded as "high". The 2020 Report recorded that "some junket tour operations have been exploited, and in some instances infiltrated, by serious and transnational criminal entities, including by individuals reported to be engaged in activities that could possibly be regarded as foreign interference."[33]

121 It should be said that the present CEO of AUSTRAC has distanced the organisation and herself from the 2017 Report suggesting inferentially and in some instances explicitly that its conclusions could not presently be relied upon as accurate.[34]

122 These Reports are mentioned in this analysis to demonstrate that even the peak intelligence-gathering agency in the AML/CTF area in Australia has had difficulties in its analysis and understanding of the operation of Junkets.

123 The dilemma for the casino operator in refusing to deal with the particular Junket operator because of allegations of links to organised crime, as opposed to certainty or real probability, is that their competitors will steal a march on them. If there is no clear regulatory prohibition that is preventing a relationship, shareholders may well expect the continuation of business and the prevention of others obtaining a competitive edge.

124 The fact is that numerous casino operators around Australia were dealing with Mr Chau and the Suncity Junket including relevantly in New South Wales, The Star. It is apparent that no casino Regulator in any Australian jurisdiction required or suggested the cessation of such a relationship. That is of course until the Authority raised the questions in its Terms of Reference in August 2019. It has been contended by Crown that in these circumstances, it would be inappropriate to find that Crown and/or the Licensee are not suitable when Crown was only doing what every other casino operator in the Australian jurisdiction was doing.

125 Crown referred to this as "industry practice". It is more accurately just a group of casino operators wishing to deal with lucrative Junket operators who probably have links to organised crime which cannot be proved beyond reasonable doubt.

126 However where the object of the *Casino Control Act* is to prevent any criminal exploitation or criminal influence, casino operators must not apply such stringent standards. This is particularly so where the operations of money launderers and organised criminal groups are sophisticated, agile, flexible and cunning. Casino operators, at least in New South Wales should have as their first aim to ensure the protection of the casino from criminal influence. It is simple.

127 Be that as it may it is appropriate to take into account what other casino operators have been doing and the regulatory approach that has been adopted in this area. In New South Wales the Authority has no present obligation to license or approve or register any Junket operator. The burden of "policing" such a relationship is upon the casino operator.

128 Crown's decision announced on 17 November 2020 to terminate its Junket operations is powerful. It gives it the capacity to put forward a proposition that the problem has been removed at least for the time being because it is not dealing with Junket operators that may have these links. At the same time it leaves the door open to the tantalising prospect that it will only deal with Junket operators that are licensed or approved by regulators in the jurisdictions in which it operates. However it does not speak of any circumstance where such a regulatory regime is not in place. In any event it was more probably than not the only rational step that Crown could take in the circumstances of the evidence that had unfolded during the Inquiry.

129 However the focus of this analysis is to assess the suitability of the Licensee and Crown in response to the Junket Facts. Had Crown had the "WILL" earlier than during

the scorching time of this Inquiry, it could have reached the conclusion it did in August 2020 to suspend its operations whilst it formulated an appropriate risk appetite and guidance for the decision-makers in relation to commencing or continuing relationships with Junket operators; or it could have taken its powerful step of 17 November 2020.

130 The question to be answered is whether its failure to cut off its relationships with these Junket operators with links to organised crime sooner than it did makes it and the Licensee presently unsuitable considered alone or with other Facts exposed during the course of the Public Hearings.

131 This has been and remains a murky area. It is a shocking finding and Crown's response to terminate its relationships with Junket operators is appropriate. But for that termination it may well have been that such findings may have either alone or in conjunction with the findings in respect of Money Laundering and China Arrests required a negative answer to the questions.

132 The fact is that the negative answers are required for the reasons already stated.

Other matters

133 It would be understood that the serious problems identified in the analysis in Chapters 2.9, 4.3 and 4.7 relating to the Melco transaction are matters to be considered separately for the purpose of attending to the questions in paragraph 16(d) to (f) of the Amended Terms of Reference. The identified failings of Mr Johnston, Mr Jalland and Mr Packer to give close attention to the Undertaking that was given by Crown to the NSW Government and the Authority are detailed in those Chapters. As can be seen from the above analysis these particular failings have not been taken into account in the conclusions reached for the purpose of answering the questions in paragraphs 16(a) and 16(b) of the Amended Terms of Reference. However they are matters that the Authority would be entitled to take into account in its future dealings with Crown, in particular in circumstances where Undertakings might be given in the future.

134 There were also claims made in the media at the time of the publication of the Media Allegations that Crown had helped bring criminals through Australia's borders in ways that raised serious national security concerns. It was alleged that Crown staff had lobbied federal government officials, including Australian consulate officials in China, to expedite visas for members of Junkets and shopped around for the consulate officials perceived to have the most ineffective vetting processes for visa applicants.[35]

135 These were not matters identified in paragraph 15 of the Amended Terms of Reference and there was no direction for inquiry and report upon them to the Authority. In fact the Federal Government referred the allegations to the Australian

Commission for Law Enforcement Integrity (ACLEI). In August 2020 ACLEI published a Report on matters associated with these allegations and concluded that there was nothing untoward in Crown's arrangement with the relevant Department. [36] In any event, those arrangements ceased in October 2016.

Generally

136 The scorching light of this Inquiry has exposed a number of problems that would have otherwise remained unearthed and unresolved. Mr Packer's observations of the distressing nature of the unfolding evidence in this Inquiry both for himself and for the members of the Crown Board is understood and appreciated. However where a public company has the status of being a close associate of a casino operator in this State the expectations of its corporate character are very high indeed. There is little doubt that members of the Crown Board were lulled into a false sense of comfort not only by reason of the financial fortunes and successes of the Company over the years but also by the deep problems with management not translating and transmitting the real problems that beset it.

137 There is no doubt that the lines of reporting were blurred; risks were not properly identified; identified risks were not properly notified; conflicts or potential conflicts were not recognised; and the corporate needs of Crown were not given precedence over the corporate needs or desires of CPH.

138 There is no doubt that Crown has been scrambling to keep pace with the exposure of the problems during the Public Hearings and match them with proposed remedies. The proposed remedies should have been identified by Crown without the necessity for an Inquiry such as this.

Answers to Questions

139 The answer to the question in paragraph 16(a) of the Amended Terms of Reference whether the Licensee is a suitable person to continue to give effect to the Barangaroo restricted gaming license is "No".

140 The answer to the question in paragraph 16(b) whether Crown Resorts is a suitable person to be a close associate of the Licensee is "No".

Chapter 4.6

Conversion to Suitability

1 Paragraph 16(c) of the Amended Terms of Reference has been triggered because the questions in paragraphs 16(a) and 16(b) have been answered "No". It is therefore necessary to answer the question as to what, if any changes would be required to render the Licensee and Crown suitable.

2 The rather delicate observation should be made that this is exquisitely a matter for the expertise of the Authority.

3 However it is understood that the purpose of the question is to obtain an answer that may assist the Authority in its deliberations in relation to the future approach to be adopted with Crown and the Licensee. Obviously any suggestions are made within the confines of the matters in the Amended Terms of Reference. There are obviously many aspects of Crown's operations and dealings with the Authority of which the Inquiry is unaware and any suggestions made in answer to the question will obviously be understood in the light of these limitations.

4 The suggestions that are made arise from the problems identified in the Inquiry and are to be understood as matters that at the very least should be implemented for Crown or the Licensee to ultimately prove to the Authority that they are suitable persons. It should not be thought that the completion of any one of these steps would result in such conversion. That is a matter that needs to be holistically determined by the Authority at an appropriate juncture.

5 One of the difficulties for Crown was its unjustified belief in itself and its unwillingness to entertain the prospect that there was any force in any of the Media Allegations. This was described in some of the Public Hearings as corporate "arrogance". The Chairman rejected that epithet. However it is an apt description of some of the public responses to the Media Allegations and the lack of proper attention to the needs of the Company in light of them, at least until the restructuring of the Board in January 2020 and to some extent thereafter.

6 There is no doubt that some of the evidence in which the very serious problems were exposed came as a great surprise to the Crown directors. There is also no doubt that

some, but certainly not others, had their confidence dented by this exposure. As has been discussed elsewhere, there is a big difference between acceptance of the existence of problems that beset Crown when confronted with them in a process such as this and having the culture and open-mindedness to detect the problems for oneself and remedy them. At the conclusion of the Public Hearings Crown still suffered from the absence of the ability in this latter regard. In any process of conversion to suitability Crown will have to work much harder on this aspect of its existence.

7 However it must be recognised that Crown has now accepted that the problems that have been identified exist and that they require urgent attention and rectification. It must also be recognised that Crown has been working very hard to convert itself into a person that the Authority would regard as "suitable" to be a close associate of the Licensee. Hand-in-hand with this are Crown's efforts to do exactly the same for the Licensee as the licence holder.

The core problems

8 The Authority would understand that many of the problems that rendered the Licensee and Crown as unsuitable, stem from poor corporate governance, deficient risk management structures and processes and a poor corporate culture, in the areas the subject of the Amended Terms of Reference.

9 Crown recognises that there is a need for cultural change. However this must come from within Crown rather than from some proposal to the Authority in this process. It may be that the consequences of some of the suggestions made in answer to the question posed, if adopted, might at least initiate a feeling that it is possible to achieve a fresh start.

Anti-money laundering

10 The third parties retained to assist Crown in October and November 2020, Grant Thornton and Initialism, reviewed the Southbank and Riverbank bank statements for the purpose of identifying typologies and/or indicia of money laundering within the accounts. As discussed earlier it took Crown almost 14 months from the date of the publication of the relevant Media Allegations to get to the point of retaining third parties to assist with this analysis. It simply did not or perhaps could not accept the prospect of what was quite obvious from looking at the bank statements.

11 A very worrying feature of Crown's conduct was its failure to attend to this earlier. The causes are obviously multiple and include the very ill-advised approach adopted when Ms Lane's suggestion to retain them in August 2019 was rejected clearly because it was thought that this Inquiry would have access to any report that was obtained. In any event it should cause deep concern to the Authority that the investigation was only commenced in earnest in October 2020. That deep concern would justify a close

and tight rein being applied to the monitoring of any processes to be put in place should the Licensee or Crown be permitted to operate in the jurisdiction.

12 As discussed in Chapter 4.5, the ambit of the work of Grant Thornton and Initialism was constrained by the instructions given to them by MinterEllison.

13 The Authority should also be aware that the reports that were provided to the Inquiry two days before the close of the Public Hearings were merely annexed to yet another statement by Mr Barton and were not the subject of separate evidence by the authors of those reports. There has been no forensic testing in any forum in this Inquiry of the process by which the ambit of the instructions that were given was decided; the detail of the process that was adopted; the nature of the access to documents and/or individuals for the purpose of the analysis; and/or the conclusions that were reached in those reports.

14 As the Authority would be aware from Chapter 3.2 in particular, Initialism concluded that some of the transactions were appropriately categorised as cuckoo smurfing. The soundness of that conclusion and whether it was smurfing or cuckoo smurfing has not been tested. The true nature of the money laundering activity in these accounts for such a long period needs to be fully analysed and understood to satisfy the Authority of the nature and extent of the infiltration by the organised crime groups. That is necessary to understand and analyse the prospect of any further infiltration into Crown's other accounts.

15 The mysterious nature of the organised criminal groups and in particular the agility of money launderers has been discussed elsewhere in the Report. The building of strong barriers against such infiltration must occur with certification to the satisfaction of the Authority. However the construction and certification of such barriers can only occur concurrently with a process that will satisfy the Authority that all of Crown's accounts are clean, that is, not infected or infiltrated by these groups that made their way into the accounts of Crown's subsidiaries Southbank and Riverbank.

Full and wide-ranging forensic audit

16 The Authority could have no confidence that either the Licensee or Crown could be rendered suitable without a full and wide-ranging forensic audit of all of their accounts to ensure that the criminal elements that infiltrated Southbank and Riverbank have not infiltrated any other accounts. Obviously such an audit must be in the context of a need for compliance with the provisions of the *Casino Control Act* apart from any need to comply with general auditing requirements and/or principles. Any audit must be on the premise that the main aim is to ensure that the casino operations are free from criminal influence and exploitation.

17 If the Authority receives that certification and is satisfied that Crown's accounts are 'clean' then the proposals that Crown has put forward, discussed in Chapter 4.4, would no doubt be considered by the Authority.

18 A great deal will also depend upon the proposals that will be put forward by the newly appointed Mr Blackburn who commences duties on 1 March 2021. It is likely that until Mr Blackburn can liaise with the Authority through the Crown Board to indicate the proposals that he advises must be implemented, the Authority would not be satisfied of the conversion to suitability of either the Licensee or Crown.

Remote manoeuvring

19 It is clear that the influence of Mr Packer and his capacity to remotely manoeuvre aspects of Crown's operations notwithstanding his absence from the Crown Board both through his own direct communications and by insinuating Mr Johnston in managerial positions to assist him, although obviously well-intentioned, had rather disastrous consequences for the Company. These are discussed in detail elsewhere in particular in Chapters 2.8 and 4.3.

20 Mr Packer emphasised that the number of CPH nominee directors on the Crown Board was always less than CPH's entitlement. This was to suggest the existence of a healthy corporate environment where independent directors could guide the Company. Notwithstanding that outward presentation it is obvious that the real power was exercised by Mr Packer both by reason of his personality and also the somewhat supine attitude adopted by Crown's operatives. The adverse effects of this combination, discussed in detail earlier, permeated Crown's operations in China, its choices of Junket operators, the complexities of the Melco Share Sale Agreement and the total blackout of information relating to Southbank and Riverbank.

21 This capacity to influence Crown's operations was facilitated in part by the provisions of the Services Agreement and the Controlling Shareholder Protocol. As discussed, both the Agreement and the Protocol were terminated on 21 October 2020. It is imperative that this remote manoeuvring must cease for the health of the corporation. Accordingly, the Authority would need to be assured and be confident that there are no further arrangements that would facilitate a return to what was clearly a dysfunctional environment. As this goes to the heart of Crown's suitability, its corporate character, the Authority will need establish a mechanism with Crown so that it may be satisfied that a return to the old ways or the development of new ways with similar characteristics does not occur. One mechanism for consideration would be the imposition of a condition on the Licensee and Crown that any plan or proposed plan to enter into any commercial arrangement with CPH and/or Mr Packer either generally or for sharing of confidential information must be notified to and approved by the Authority prior to such entry. The additional matter of the capping of shareholding in casino operators in New South Wales and their close associates is discussed in Chapter 5.2.

Board structure

22 The conversion to suitability will require a restructure of the Crown Board and the Board of the Licensee. As discussed in Chapters 4.4 and 4.5, the Chairman is pursuing "renewal" of the Board, although it is uncertain what this means in a practical sense. No doubt the Chairman will discuss this matter with the Authority.

23 Some observers may expect the Authority to require the purging of the whole Crown Board before it would be in a position to regard Crown as a "suitable" person under the *Casino Control Act*. However such an approach would be inappropriate if there is an available realistic alternative to accommodate due regard to the commercial imperative of the viability of a public company whilst achieving such conversion.

24 It is suggested that in the circumstances of the findings against Mr Barton, Mr Johnston and Mr Demetriou, the Authority would be justified in entertaining very serious doubts that Crown could be converted into a suitable person under the *Casino Control Act* whilst they remain as directors; or that the Licensee could be converted into a suitable person under the *Casino Control Act* whilst Mr Barton remains as a director.

25 It is not clear that any appeal has been or may be lodged by Mr Mitchell against the civil penalty declaration and/or the imposition of the pecuniary penalty he suffered recently in the Federal Court of Australia. Whilst it is the case that Mr Mitchell is not the subject of a banning order, the position of a company that operates a casino or is a close associate of that company, are to be regarded as special cases under a separate statutory regime. It is suggested that to ensure their suitability, their directors should be free from any civil penalty declaration or consequent pecuniary penalty. It will be necessary for the Authority to discuss this matter with the Chairman of Crown.

26 In making an assessment of the changes that may be needed to convert the Licensee and Crown to "suitable" persons the Authority may, in the circumstances revisit the question of the suitability of the approved individual close associates. In exercising that function under the legislation it is a matter for the Authority to also consider whether it is appropriate to provide any information to other agencies under section 17 of the *Gaming and Liquor Administration Act* 2007 (NSW). This aspect of the legislation is the subject of discussion in Chapter 5.2.

Enforceable undertakings

27 One of the mechanisms that could be used to create a structure as a basis to work towards conversion to suitability is for Crown to provide the Authority with a detailed written remediation action plan and undertakings in respect of matters including governance, independent review, accountability and any other relevant matters that the Authority may require of it.

28 It would be appropriate to ensure that such an action plan and undertaking is in the form of an enforceable undertaking either in an agreement under section 142 of the *Casino Control Act* or some other suitable mechanism. It may need to be in the form of an agreement so that any monitoring, auditing and reporting provisions give the Authority some confidence of the conversion program. However if Mr Jalland and/or Mr Johnston remain as directors it will be necessary to have some additional protections from them because of their failures to have regard to the Undertaking that was previously given by Crown in respect of the late Mr Stanley Ho as discussed in Chapter 4.7.

29 Another mechanism that may be used by the Authority is the consensual imposition of conditions on the Licence. The Authority would understand that subject to legislative amendment such an approach would presently have to be achieved only consensually or by some disciplinary process. In any event the wisdom of amending the Licence consensually would obviously be appreciated by Crown and may well give it a better opportunity for cultural change. This will also provide an opportunity for reflection on a range of matters obviously not within the Amended Terms of Reference.

Compliance audit

30 In addition to the full forensic audit of the accounts of the Licensee and Crown, it is suggested that the Authority could only reach a point of satisfaction that the Licensee and Crown are suitable persons under the *Casino Control Act* if there is in place a process for wide-ranging inspection by an independent agent retained by the Authority to monitor the implementation of the remedial plan at Crown's cost.

Junkets

31 The Authority understands that Crown has announced that it is not going to deal with any Junket operators unless they are licensed or regulated by the Authority. Should it be the case that no such regulatory regime is put in place, the Authority would need to be satisfied that Crown continues to adhere to the announcement made on 17 November 2020. This could be an aspect of any enforceable undertaking that may be entered into between the Authority and Crown.

32 The matters discussed in Part 5 of the Report will of course require consultation with the casino operators and the above-mentioned suggestion would need to be adjusted depending upon the approach that the Authority may take to the recommendations made in Part 5 of the Report.

Continuing education

33 In the circumstances of the devastating outcomes for Crown in this Inquiry, it is suggested that the Authority introduces a requirement for all directors of any licensee

of a casino in this jurisdiction to provide certification of the completion of appropriate AML/CTF education, supplemented annually.

34 It is also appropriate that directors of a casino licensee should provide certification to the Authority of completion of the appropriate courses provided by the Australian Institute of Company Directors. Having regard to the problems exposed in this Inquiry, it would be important to consult with an appropriate institution, such as the Ethics Centre, to ascertain the nature of the relevant courses that are available in particular in relation to conflicts of interest.

35 All of this may appear a little burdensome. However it is obviously necessary before any cultural change and conversion to suitability will occur.

Relationship with the Authority

36 The process of the Inquiry with the requirement for Public Hearings is not one that easily garners a co-operative spirit. However the Chairman was cognisant of the need for co-operation, obvious from her expression of regret referred to earlier in the Report. The Authority should regard this aspect of Ms Coonan's evidence as an indication that there is the real prospect that Crown will recalibrate its relationship with the Authority as one that is respectful and co-operative.

Conclusion

37 If Crown is to survive this turmoil and convert itself into a company that can be regarded as a suitable person and achieve the same for the Licensee, there is little doubt that it could achieve a fresh start and emerge a very much stronger and better organisation.

Chapter 4.7

A Question of Breach

Amended Terms of Reference

1 The Amended Terms of Reference require inquiry into and report upon whether by reason of the Share Sale Agreement pursuant to which CPH Crown Holdings agreed to transfer 19.99 per cent of its Crown shares to Melco and/or by reason of the subsequent transfer of shares to Melco's nominee, KittyHawk, the Licensee was in breach of the Licence and/or the Licensee and/or Crown were in breach of any other regulatory agreements.[1]

2 As discussed elsewhere in the Report, Melco no longer has any interest in Crown after it divested itself of all its Crown shares by 29 April 2020. Notwithstanding this, the Authority has maintained its request for inquiry into and report upon whether there were any relevant breaches of the regulatory agreements by reason of the Share Sale Agreement.

Some limitations

3 The Authority is clearly concerned from a regulatory perspective to know whether Crown can be relied upon to respect and comply with the promises made to it and the NSW Government. However the questions posed are expressed in terms of whether Crown was in breach of contract.

4 The question of whether a breach of contract has occurred is, for good reasons, usually dealt with in a litigious environment with all the protections of Court rules and processes culminating in judicial determination with the consequent protections of an appellate regime. One of the good reasons is that parties to contracts will have multiple interests and rights and the outcome of any particular case may affect numerous other circumstances, other contracts and possibly other parties. Another good reason is that significant rights will flow from findings of a breach of contract including possible damages and/or possible claims for injunctive relief. It is also appropriate to emphasise that these contractual rights are determined in the curial environment controlled by the third arm of government, the judiciary, as opposed to

the inquisitorial environment of the executive arm of government in the work of a regulatory agency process of an Inquiry where parties are exposed to the intrusive use of Royal Commission powers.

5 In a curial environment the parties to a claim for breach of contract and the Court will have the benefit of carefully drafted pleadings identifying the claims and sometimes the counterclaims and the particularised bases for those competing claims. The outcome of the dispute is determined within the confines of the pleaded cases.

6 Depending upon the nature of the dispute between the litigating parties in a curial environment, the issues for determination may involve: the construction or determination of the meaning of the particular contract; the facts relevant to the alleged breach of any provision of the contract; whether in the circumstances in which it occurred the particular conduct amounted to a breach of the relevant provision of the contract; if a breach is found to have occurred, whether any damage was occasioned; whether there were contractual or other obligations to take steps to mitigate any damage that may have been occasioned; and if damage is occasioned, the quantum of damages that one party, or more, is obliged to pay the other party or parties.

7 The litigating parties address the issues in prepared statements of evidence or affidavits which must comply with the rules of evidence. That evidence remains within the confines of the pleaded cases. The parties are well acquainted with the issues and the competing claims before they enter the witness box. The oral evidence is also governed by the rules of evidence with the overlay of protections of privilege both in respect of legal professional privilege and privilege against self-incrimination.

8 In the inquisitorial environment there are no pleadings particularising the basis for claims beyond the usual breadth of the Terms of Reference. Depending upon the particular Inquiry, the rules of evidence do not necessarily apply and the protections of privilege are not available. The evidence is not confined to the particular questions relating to whether a breach of contract has occurred but may range widely over many areas covering other questions raised and issues relevant to the Terms of Reference.

9 At the outset of this Inquiry the Terms of Reference included the questions of whether the Share Sale Agreement and the consequent transfer of shares amounted to breaches of the Licence "or any other regulatory agreement". Those questions remained unchanged in the Amended Terms of Reference. The 'particulars' were exposed as hearings proceeded and witnesses were examined. The intricate questions of knowledge and to whom such knowledge could be attributed in respect of the transaction also developed as the hearings proceeded. The witnesses dealt with these questions as they were responding to questions dealing with other numerous and

varied issues across the wide range of matters investigated under the Amended Terms of Reference.

10 It is understood that the Authority's direction "to inquire into and report upon" the questions of "breach" of regulatory agreements in this inquisitorial environment is based on the Authority's obvious concern to know whether it can have confidence that a regulated entity will comply with its contractual obligations to the regulator and, if relevant, to the State. That is clearly the import of the questions posed in paragraphs 16 (d) to (f) of the Amended Terms of Reference.

11 Notwithstanding the obvious limitations on dealing with such questions of breach of contract in this inquisitorial environment it is appropriate and necessary to address them with these observations in mind.

Some background

12 In 2014, when the Barangaroo Licence was granted, numerous regulatory agreements were entered into by Crown, the Licensee, CPH and others with the NSW Government and the Authority. There is no issue that one of the deep concerns of the NSW Government and the Authority at that time was to ensure that the late Mr Stanley Ho did not acquire any interest in Crown. It is also not in issue that the parties intended that the suite of agreements into which they entered would contain an Undertaking by Crown that "to the extent to which it was within its power to do so" it would ensure that it prevented the late Mr Stanley Ho and numerous prescribed Stanley Ho Associates from obtaining any interest in Crown.[2]

13 It is uncontroversial that the Undertaking was required and agreed to because, notwithstanding that he had apparently never suffered a criminal conviction, concerns had arisen consequent upon reports that the late Mr Stanley Ho was associated with organised criminal associations and/or triads and may have been excluded from holding unrestricted casino licenses in other international jurisdictions.

14 At the time that the parties entered into their regulatory agreements in 2014 it was well known to the NSW Government and to the Authority that Crown was in a joint-venture with Melco in Macau and that the late Mr Ho had an interest in Melco via Great Respect, one of the prescribed Stanley Ho Associates. It is also uncontroversial that there had been probity investigations of Crown and Melco based on that understanding. These were investigations in part into the nature and extent of the late Mr Ho's relationship with and/or influence over his son, Mr Lawrence Ho, and Melco, Crown's joint venture partner in Macau. Those investigations concluded that notwithstanding such interest and association, the late Mr Ho did not have a controlling influence over Melco and/or his son such to prevent the grant of the Licence to the Licensee and the approval of Crown as a close associate of the Licensee. However the NSW Government and the Authority intended to ensure that

notwithstanding the late Mr Stanley Ho's then association with Melco as the joint-venture partner of Crown in Macau, neither he nor any of his prescribed associated entities, acquired any interest in Crown, as a close associate of the licensed casino operator in New South Wales.

15 Crown and the Licensee were approved by the NSW Government and the Authority in this context.

The Undertaking

16 The Undertaking that was given by Crown in the regulatory agreements, relevantly in both the VIP Agreement and the Crown Deed, was in the following relevant terms:[3]

> **2.4 Prevention of associations with Stanley Ho**
>
> To the extent to which it is within its power to do so, Crown will ensure that it prevents:
>
> (a) any new business activities or transactions of a material nature between Stanley Huang Sun Ho or a Stanley Ho Associate and Crown, any of Crown's officers, directors or employees or any Crown Subsidiary;
>
> (b) Stanley Huang Sun Ho or a Stanley Ho Associate from acquiring any direct, indirect or beneficial interest in:
>
> (i) Crown
> (ii) a Subsidiary of Crown
> (iii) Melco Crown; or
> (iv) a Subsidiary of Melco Crown.
>
> (c) Stanley Huang Sun Ho from:
>
> (i) holding a Relevant Position in Crown, a Subsidiary of Crown, Melco Crown or a Subsidiary of Melco Crown; or
> (ii) exercising a Relevant Power over the business or affairs of either Crown, a Subsidiary of Crown, Melco Crown or a Subsidiary of Melco Crown.

17 One of the prescribed Stanley Ho Associates in the relevant Schedules to those Agreements was Great Respect.[4]

18 Crown also undertook to implement a Compliance Program to monitor compliance with the Undertaking in which it agreed to make contact with and obtain quarterly reports from Crown, its subsidiaries, Melco, Melco Crown and its subsidiaries. That Compliance Program was fairly burdensome and required searches to be made of the various entities to ascertain numerous matters including: (i) whether the late Mr Ho or any prescribed Associate had been paid by Crown or any Crown wholly owned business; (ii) whether the late Mr Ho or any prescribed Associate had either become

a security holder of Melco Crown or Melco or increased any security holdings in either of those entities; and (iii) whether the late Mr Ho held any position or exercised any power referred to in the Undertaking.

19 Crown was required to provide the results of these searches to the Crown Gaming Compliance Committee on a quarterly basis; to report in writing to the Crown Risk Management Committee in relation to that Compliance Program on a bi-annual basis; and to report to the Crown Board following each meeting of the Risk Management Committee by the presentation of the draft minutes of the Risk Management Committee to the Crown Board.[5]

20 Crown's obligations pursuant to the Undertaking also included the provision of a report to the Authority within 60 days of the end of each calendar year certifying compliance with the Undertaking and the Compliance Program. Crown was also separately obliged to inform the Authority of any non-compliance with the Undertaking promptly upon becoming aware of that non-compliance.

The Status of the Undertaking

21 After Crown terminated the joint-venture with Melco in mid-2017, it approached the departmental arm of the Authority, L&G NSW (the Department), with a proposal that the Undertaking be removed from the relevant regulatory agreements. Crown also proposed that it be excused from continuing with its quarterly searches and reporting obligations under the Compliance Program in respect of the Undertaking.

22 Negotiations about these proposals ensued. The Department agreed in early 2018 to permit Crown to be excused from its quarterly searches/reporting obligations. However the negotiations in respect of the proposal to remove the Undertaking continued until this Inquiry was announced. No final agreement was reached albeit that, so far as the Department was concerned, it agreed "in principle" with the proposal, subject to approval by the Authority and Ministerial Consent.

23 The proposal was not submitted to the Authority for the relevant approval nor to the Minister for Ministerial Consent.

24 The Undertaking is located in a Schedule to the Agreement and Deed entitled "Crown Undertakings about Gaming Operations in Foreign Jurisdictions". No submissions or contentions have been made that this title has any limitation upon the operation of the Undertaking. Indeed it is not in issue that the Undertaking was in force at the time of the Share Sale Agreement. Accordingly at the time of the negotiation and execution of the Share Sale Agreement in May 2019 Crown was obliged to the extent to which it was within its power to do so, to ensure that the late Mr Stanley Ho or any prescribed Associate did not acquire any interest in Crown.

25 However, it was contended by Crown and the CPH parties that the Department's "in principle" agreement is relevant to the assessment of the Government's approach and concern about the late Mr Stanley Ho at that time. It was accepted that the Government was deeply concerned about it in 2013, but contended that the Department's willingness to remove the Undertaking from the regulatory agreements is an indication that the Government's concern in this regard had lessened or been diluted.

26 This contention is not persuasive. The Department and Crown were still in negotiations at the time the Share Sale Agreement was executed and well understood that the Undertaking was in force. What one might glean from an "in principle" agreement by Departmental functionaries at a point preliminary to approval by the Authority and ultimately Ministerial Consent is of no assistance to an understanding of the regulatory and/or political mindset. In June/July 2019 Crown had also sought unsuccessfully to protect some detail of the Undertaking from publication by the NSW Parliament. Indeed when the Inquiry was announced, Crown suggested to the Department that it may wish to revisit its willingness for Crown to be excused from aspects of its Compliance Program in respect of the Undertaking. Far from the Government softening its approach to preventing the late Mr Stanley Ho from acquiring any interest in Crown, Crown clearly remained obliged and understood it remained so obliged to ensure, at least to the extent to which it was within its power to do so, that it prevented it.

The Licensee

27 There has been no suggestion that the Licensee could be in breach of the License or indeed any other regulatory agreement. The answer to the question of whether it was in breach is therefore in the negative.

28 Accordingly it is necessary to address the questions posed by the Authority in the Amended Terms of Reference for inquiry and report only in relation to whether Crown was in breach of the regulatory agreements.

Share Sale Agreement

29 Notwithstanding Melco having departed the scene, the Authority is understandably concerned to know whether Crown respected and complied with the Undertaking that it gave in the regulatory agreements and by which it was bound at the time of the Share Sale Agreement.

30 As discussed elsewhere in the Report, the Share Sale Agreement was between a subsidiary of CPH, CPH Crown Holdings, as the vendor and Melco, as the purchaser. Two Crown directors, Mr Johnston and Mr Jalland, were deeply involved in the Share Sale Agreement. Mr Johnston was the sole director of the vendor. Mr Jalland was, at Mr Packer's request, the agent of the vendor who negotiated with Melco in relation to

the sale price of the shares. Obviously Mr Packer, as a director of the ultimate holding company of CPH, was deeply involved, albeit at a higher level of agreeing with Mr Lawrence Ho that the sale would take place, the price at which it would take place and the structure of the transaction in two equal tranches of shares and payments some months apart.

The interest

31 There is no issue that at the time of the Share Sale Agreement, Great Respect had an interest in Melco through a chain of shareholdings. At the time of the execution of the Share Sale Agreement Melco obtained a beneficial interest in 19.99 per cent of the shares in Crown. Melco Leisure owned 54.9 per cent of the shares in Melco. Melco International owned 100 per cent of the shares in Melco Leisure. Great Respect owned 20.44 per cent of the shares in Melco International. Subsequently Melco's nominee, KittyHawk, obtained a legal interest in 9.9 per cent of the shares in Crown when the first tranche of shares was transferred to it in June 2019. As discussed elsewhere, the second tranche was never transferred because Melco and CPH Crown Holdings entered into the Deed of Termination in February 2020.

32 There is also no issue that the late Mr Ho had an interest in Great Respect. There was debate about the extent of that interest and the manner in which it was obtained. It is unnecessary to go into that in detail other than to say that such an interest, although not free from complexity, was discoverable in public documents.

33 There was debate as to whether Great Respect's interest amounted to an "indirect interest" in Crown. The CPH Parties contended that such expression "extends to, but not beyond the circumstances where the shares are held through a structure or group of companies which are wholly or majority owned".[6]

34 There was also debate as to whether the manner in which Great Respect achieved its interest in Melco and subsequently in Crown was a process that could be regarded as it having "acquired" an interest rather than merely "obtaining" such an interest.

35 The CPH Parties supported their contentions with a series of cases and helpful detailed submissions.[7] In response there was further debate as to whether the particular cases were of assistance in determining the nature of the interest in these particular circumstances.

36 Without descending into the detail of the well-known authorities governing contractual construction, it is accepted that it is necessary to construe the terms of the regulatory agreements in the relevant commercial and regulatory context.[8]

37 This was a rather extraordinary commercial and regulatory context. It was a first-time process under the Unsolicited Proposal regime for the establishment of an additional casino in New South Wales, albeit that it was referred to as a "restricted gaming

facility", where there had previously been exclusivity for the single operator. It required not only a complex suite of regulatory agreements but the enactment of legislation to achieve its establishment.

38 It was a process that was agreed in circumstances where the Government, the Authority and Crown knew of the existence of a risk, the presence of the late Mr Stanley Ho through a prescribed Associate in the structure of Crown's joint venture partner Melco, that but for the Undertaking might otherwise have precluded Crown from obtaining the Licence. It was a most important Undertaking that was not to fit merely within the usual regulatory structure of the *Casino Control Act* definition of close associate. It was a wide and heavy burden that was placed on Crown.

39 It is clear that the intention of the parties was that the late Mr Stanley Ho and the prescribed Stanley Ho Associates were to be excluded from all types and all levels of interests, that is "any" interest, in Crown, whether it be direct, indirect or even beneficial. Crown was obliged and undertook to be so obliged to ensure, to the extent to which it was within its power to do so, that the late Mr Stanley Ho and the prescribed Stanley Ho Associates did not acquire "any" such interest.

40 This language makes it clear that the parties did not intend that at the time of any particular transaction of which Crown had notice, there would have to be an assessment of whether the late Mr Ho or a prescribed Associate held a particular percentage of shares in the proposed purchaser of the Crown shares. It also makes clear that the parties did not intend that there would have to be an assessment of whether the late Mr Ho or a prescribed Associate might be able to exert relevant influence or power to trigger Crown's obligation to the extent to which it was within its power to do so, to prevent them from acquiring "any" interest in Crown.

41 The Compliance Program provisions of the Agreement/Deed imposed on Crown the burden of checking not only the share registers and depositary receipts to check whether the late Mr Stanley Ho or any prescribed Associates had obtained "any" interest, but also whether he or his Associates had been paid any monies and/or whether he had, personally, moved into a position of relevant financial interest or power. This latter provision did not limit the obligation to exclude him from obtaining "any" interest. It was an additional layer of checking that had to be made because it was clearly so important that all fronts through which the late Mr Ho may gain entry into Crown were protected.

42 The breadth and burden of these provisions make it clear that the parties did not intend that it was necessary for Crown to determine the nature of the process by which the late Mr Stanley Ho might obtain any interest in Crown before it was obliged to do what was within its power to ensure that it prevented him from obtaining any interest. The plain meaning of the word "acquire" includes to "obtain" any interest in Crown.[9] The contention that the process by which Great Respect obtained its interest in Crown did not amount to an acquisition is not persuasive.

43 The hopes of the NSW Government and the Authority that the late Mr Stanley Ho or any of the Stanley Ho Associates would not acquire any interest in those closely associated with the entity approved to operate a casino in New South Wales were dashed.

44 On 30 May 2019 a Stanley Ho Associate, Great Respect, acquired an indirect interest in Crown and held that interest until 29 April 2020.

Knowledge

45 Obviously it was necessary for Crown to have known of the Share Sale Agreement before it was completed to be in a position to do anything within its power to prevent an acquisition of any interest in Crown by the late Mr Stanley Ho or the prescribed Associates.

46 Each of Mr Johnston and Mr Jalland was aware that the Government and the Authority were very concerned to ensure that the late Mr Stanley Ho did not acquire any interest in Crown. Each of them was aware that the regulatory agreements governing Crown obliged it to ensure that the late Mr Stanley Ho did not acquire any such interest. Mr Johnston was aware that such a prohibition extended to any prescribed Associates albeit that it is probable that he was not aware of the identity of those Associates that had been prescribed in the Undertaking.

47 Each of Mr Jalland and Mr Johnston, as Crown directors, were at all times obliged to assist Crown to comply with the Undertaking to ensure that the late Mr Stanley Ho or any prescribed Associate did not acquire any interest in Crown including at the time of the negotiation and execution of the Share Sale Agreement.

48 Neither Mr Johnston nor Mr Jalland turned his mind to the Undertaking at the time of the transaction. CPH retained lawyers to assist it and the vendor with the transaction and it is beyond doubt that CPH, the vendor and their directors and Mr Packer, Mr Jalland and Mr Johnston were advised by those lawyers that no regulatory approval was necessary in respect of the Share Sale Agreement. Mr Johnston also claimed that the lawyers advised them that CPH, the vendor and the directors did not have to inform Crown of the Share Sale negotiations and/or the Share Sale Agreement.

49 Each of them claimed to have had no concern at the time of the negotiations or the execution of the Share Sale Agreement that the late Mr Stanley Ho would in any way be involved in the transaction or be acquiring any interest in Crown. Neither Mr Johnston nor Mr Jalland turned his mind to the prospect of even checking whether that was the case. It is clear that the lawyers did not advise them that they should check whether any interest in Crown might be acquired by the late Mr Stanley Ho or a prescribed Associate by reason of the transaction.

50 The only other Crown director who was aware of the transaction before it was completed was Mr Poynton. Mr Poynton is a CPH nominee director and it appears that it was for that reason Mr Packer telephoned him on the morning of 30 May 2019 to inform him of the existence of the transaction. Mr Poynton was not even sure whether Mr Packer referred to Melco. He thought that Mr Packer may have referred to Mr Lawrence Ho when he advised him that he had decided to sell CPH's shares in Crown at that time.

51 Mr Poynton did not know the nature of the transaction, the price of the shares, the structure of the transaction or the actual parties to the transaction. Certainly Mr Poynton did not have any concerns that the late Mr Stanley Ho would have any interest or involvement in the proposed transaction about which Mr Packer informed him.

52 After the telephone call from Mr Packer, Mr Poynton attempted to call Mr Alexander to discuss the matter. However Mr Alexander was on an aircraft travelling to Los Angeles at the time and he did not get through to him.

53 It is not in issue that none of the other Crown directors were made aware of the Share Sale Agreement until the evening of 30 May 2019 when contacted by Mr Johnston either by telephone and/or by email to inform them of the execution of the Agreement.

54 Accordingly, the only Crown directors with knowledge of the detail of the transaction prior to its completion were Mr Jalland and Mr Johnston.

55 As the hearings developed and concluded and final submissions were made the question of whether Mr Jalland's and Mr Johnston's knowledge of the transaction could be attributed to Crown arose. That is because unless Crown is deemed to have had that knowledge, it could not have breached the Undertaking as a result of the execution of the Share Sale Agreement.

56 The general proposition which emerges from the authorities in Australia and the United Kingdom is that knowledge obtained by a director in the course of acting for company A cannot be attributed to company B unless the director is under a duty to disclose that knowledge to company B.[10] Circumstances where that duty arises include where the information may expose company B to the "prospect of harm" or be otherwise important to the affairs of company B.[11]

57 Knowledge would be attributed to Crown if Mr Johnston or Mr Jalland had a duty to disclose it to Crown.

58 That duty would have arisen if either Mr Johnston or Mr Jalland had knowledge that the Share Sale Agreement may have exposed Crown to the prospect of harm.

59 The relevant knowledge would have been that through or by the Share Sale Agreement between CPH Crown Holdings and Melco there was a risk that the late Stanley Ho or a Stanley Ho Associate may acquire an interest in Crown.

60 The relevant prospect of harm was that if the risk was realised it may have put Crown in breach of its Undertaking with the consequence of putting the Licence at risk.

61 On the one hand a person can know of facts by various means of observation and involvement in events at a particular time. On the other hand, there are circumstances from which one ought to know facts by taking reasonable care. The former is appropriately referred to as actual knowledge. The latter is referred to as constructive knowledge.

62 It is not certain that actual knowledge, rather than constructive knowledge, of the relevant facts in the person involved with company A is a pre-requisite to an attribution of such knowledge to company B. It may be that in a curial setting in different circumstances such stringency is not applied. However the approach that has been adopted in this inquisitorial environment is that actual rather than constructive knowledge is a pre-requisite to any relevant attribution of knowledge to Crown.

63 Therefore there is no issue that the knowledge of the risk of Stanley Ho or a prescribed Associate acquiring an interest in Crown and the prospect of harm to Crown had to be actual knowledge rather than constructive knowledge.

Context

64 At the time of the Share Sale Agreement negotiations and execution Mr Johnston was acting relevantly as a director of Crown; a director of CPH; the sole director of CPH Crown Holdings; and was providing the "usual budgeting" Services to Crown as a CPH Executive. Mr Jalland was acting relevantly as a director of CPH and a director of Crown.

65 However Mr Johnston and Mr Jalland became aware of the Share Sale Agreement in the course of acting as directors of CPH and additionally for Mr Johnston while acting as the sole director of CPH Crown Holdings, as distinct from acquiring that knowledge while acting as directors of Crown.

66 It is appropriate to review their evidence relevant to this topic.

Mr Johnston

67 Mr Johnston was asked questions about the late Mr Ho's connection with Melco International in the joint venture with PBL in about 2005 which later became a joint

venture between Melco International and Crown. Mr Johnston gave the following evidence:[12]

Q. Were you aware, whilst you were a director of PBL, that prior to the establishment of the joint-venture between PBL and Melco International, a Melco International subsidiary, Melco Leisure and Entertainment, had entered into a joint venture with Great Respect for the establishment of the City of Dreams project in Macau?

A. I was aware that there were arrangements without necessarily being completely on top of the nature of them, but I was aware that there were some arrangements to that effect, yes.

Q. So you were aware that an entity associated with Dr Stanley Ho was bringing in his interest in the City of Dreams joint-venture to Melco International so it could be part of the assets of the Melco PBL joint-venture.

A. I understood that there was, yes, some arrangements to that effect, yes. Yes.

Q. And were you aware, whilst you were a director of PBL, that the consideration paid to Great Respect for its interest in the City of Dreams project was convertible notes issued by Melco International having a large margin?

A. I can't recall that, to be honest.

Q. Were you aware that Great Respect ultimately converted convertible notes in Melco International into an approximately 20 per cent shareholding in Melco?

A. Yes.

…

Q. And you were aware, were you, that the material terms of the joint venture agreements in relation to the joint venture were publicly exhibited in Melco resorts annual returns to NASDAQ?

A. Yes.

…

Q. … The top of the page where it, just under the heading Name, it identifies the major shareholders of Crown, operator. You see that identifies, as one of the major shareholders, Melco Leisure as the owner of 33.55 per cent of the shares in Melco Resorts at the time?

A. Yes

Q. You knew that Melco International held its shareholding in Melco Resorts via its subsidiary Melco Leisure and Entertainment Group Limited?

A. Yes.

Q. And if we could now turn to note 3, operator, and if you could zoom on that. Note 3 identifies that Mr Lawrence Ho held shares directly in Melco

International and also via the companies there identified, Lasting Legends, Better Joy Overseas, Mighty Dragon Investments and The L3G Capital?

A. Yes.

Q. You see that?

A. I do.

Q. And you were aware at the time - at the time of this report - that Mr Lawrence Ho held a significant shareholding in Melco International in his own name and in the name of those entities?

A. I was not familiar with his ownership structure but I was aware that he held a substantial interest.

Q. Yes. And you see that Note 3 goes on to say that apart from those companies:

… *Which are owned by persons or trusts affiliated with Mr Ho. Mr Ho also has interest in Great Respect Limited, a company controlled by a discretionary family trust, the beneficiaries of which include Mr Ho and his immediate family members.*

A. Yes, I see that.

Q. You knew by this time that Great Respect had a significant shareholding in Melco International?

A. Sorry. By which time?

Q. By the time of this report; 2013?

A. No, I didn't. That wasn't something I had focused on.

Q. You weren't aware of that at all, at 2013?

A. No

Q. But you'd already been aware that there was a significant shareholding in Great Respect?

A. Sorry. In Great Respect or by Great Respect?

Q. I withdraw that. I withdraw that. Now, whether or not you read these words at the time, the specific entities, you did know, prior to the 30th May 2019 that an entity or entities associated with Dr Stanley Ho had an interest in Melco International; correct?

A. I'm not sure that I did, no.

68 Mr Johnston was asked further questions on these topics on the second day of his evidence and in particular that portion of his evidence extracted above which is underlined in which he agreed that he knew that Melco International held its shareholding in Melco Resorts via its subsidiary Melco Leisure and Entertainment Group. He gave the following evidence:[13]

Q. You knew that Melco International held its shareholding in Melco Resorts via its subsidiary Melco Leisure and Entertainment Group Limited; correct?

A. I knew that Melco International had a substantial shareholding, yes.

Q. You knew that Melco Resorts was a subsidiary of Melco International at the time, didn't you?
A. No, I'm not sure that I did, no.

Q. You did, though, know that Melco International held its shareholding via its subsidiary Melco Leisure and Entertainment group; do you agree with that proposition or disagree with it as the case may be?
A. That is the listed company you're talking about?

Q. Both Melco International and Melco Resorts were listed, weren't they?
A. Yes.

Q. And you knew that Melco International held its shareholding in Melco Resorts via its subsidiary, Melco Leisure and Entertainment Group; correct?
A. No, I'm not sure that I had that specific knowledge.

69 This underlined portion of Mr Johnston's evidence was clearly inconsistent with the underlined portion of the evidence that he had given the previous day. It was a mixture of an immediate and straightforward denial, "No", coupled then with the suggestion that there was a lack of certainty, "I'm not sure", that he had a particular category of,"specific", knowledge. Counsel Assisting pursued this inconsistency as follows:[14]

Q. On Friday transcript page 2924, line 26, I asked you this question:

You knew that Melco International held its shareholding in Melco Resorts via its subsidiary Melco Leisure and Entertainment Group Limited –

and you said yes. Do you stand by the evidence that you gave to this Inquiry on Friday?
A. I think I might have misunderstood your question. I assumed that you were talking about the listed entity being Melco Resorts, so I apologise for that.

70 That explanation was very curious. Mr Johnston's assumption that he thought Counsel Assisting was talking about the listed entity Melco Resorts could not explain the inconsistency. There was no misunderstanding. The question was indeed directed to Melco Resorts. It was directed to how Melco International held its shareholding in Melco Resorts. It was suggested that it did so via Melco Leisure and Entertainment Group. To suggest that his mistake was because he thought the question related to Melco Resorts and that was the reason for the inconsistency makes no sense. In any event Counsel Assisting persisted as follows:[15]

Q. There was nothing ambiguous or confusing about the question, Mr Johnston. The question was that you knew that Melco International held its shareholding in Melco Resorts via its subsidiary, Melco Leisure and

Entertainment Group Limited, and you said yes. And you said yes, I suggest, because that was the truthful answer?

A. I think there are a lot of entities with Melco's - with the Melco name in them, so I apologise.

Q. I suggest that the answer you gave on Friday was a truthful answer and you're trying to depart from it now because you perceive it is unhelpful to the position that you would like to propound; do you agree?

A. No.

Q. You knew that in the past Dr Stanley Ho had an interest in Melco International, didn't you?

A. No, I'm not sure that I did know that.

Q. You knew in the past that Dr Stanley Ho had been the chairman of Melco International didn't you?

A. Yes, I did, originally, yes.

…

Q. Yes. You knew that an entity associated with Dr Stanley Ho brought his interest in the City of Dreams joint venture to Melco International so that it could be a part of the Melco PBL joint venture, didn't you?

A. Yes.

Q. And you knew that Great Respect had converted convertible notes in Melco International into an approximately 20 per cent shareholding in Melco International?

A. Yes, based on what we saw last week, yes.

…

Q. … You did know in the context of the Melco International Crown Resorts joint venture that Great Respect was the Stanley Ho entity that brought his interest in the City of Dreams joint venture to Melco International.

A. No, I'm not sure that I knew that.

Q. You hadn't reviewed by May 2019 any documents as to the timing of the Crown Resorts Melco joint venture to indicate that Great Respect no longer had an interest in Melco International, had you?

A. No, no. I wasn't aware that – sorry, no. The answer is no.

Q. And you hadn't reviewed any documents since the time of the Crown Resorts Melco joint venture to indicate that Stanley Ho or any entity associated with him no longer had an interest in Melco International, had you?

A. No.

71 Mr Johnston was asked about the Schedule to the regulatory agreements into which

Crown and CPH had entered at the time the Licence was granted to the Licensee. That Schedule listed the Stanley Ho Associates in respect of which Crown had given the Undertaking to ensure that it prevented them from acquiring an interest in Crown. Mr Johnston was asked about the Schedule and gave the following evidence:[16]

Q. If you look at schedule 3, at page ending in .3009, you see that it identifies the entities and individuals who were deemed to be associates of Stanley Ho.
A. Yes

Q. And those entities included Great Respect Limited; do you see that?
A. Yes, I do.

Q. Now, you were aware at the time, weren't you, that Dr Stanley Ho was a well-known and colourful identity in the casino industry?
A. Yes

Q. And these are quite extraordinary provisions, aren't they, which have the purpose of preventing a named individual and his associates from taking an interest in a group of companies which own casinos?
A. I'm not sure whether you can categorise them as extraordinary, but they had that effect. Yes.

Q. Yes. And they're not the sort of provisions which you would easily or quickly forget, are they?
A. If - if I had read them. No.

Q. But you reviewed this agreement carefully at the time, didn't you?
A. No, I didn't.

Q. Is that a considered answer, Mr Johnston?
A. Yes, it is.

72 At this point in his evidence Mr Johnston was taken to the Minutes of a Crown Board meeting at which the Board approved entry into the particular agreement. Those Minutes recorded that having "carefully considered" the draft of the relevant agreement the "directors concluded" that it was "acceptable to the company and that it was in the best interests of the company" to enter into it.[17]

73 Mr Johnston at first did not suggest that the Minutes were inaccurate but rather that what had been reviewed by the Board was a paper that had been prepared by Mr Neilson, rather than the actual agreement itself. He then suggested that the Minutes were inaccurate as they suggested that the agreement itself had been "carefully considered".[18] However he finally suggested that the Minutes were not "untruthful" and gave his own interpretation of them. His evidence was as follows:[19]

Q. So when you received these draft minutes with the next Board papers, did you raise with Mr Neilson the fact that the minutes were inaccurate?

A. Well, given what I knew, I didn't see the minutes as being inaccurate in that I considered Mr Neilson had brought the relevant matters to the board's attention.

Q. That just can't be true, can it, Mr Johnston? You've joined in with your colleagues on a resolution in minutes which state that you have carefully reviewed the provisions of the deed; that's correct, isn't it?
A. Not the provisions, the terms.

Q. Right; the terms. Well, whether or not you can recall it at this moment, the probability is that these minutes are recording the truth; is it not?
A. I would have remembered if I had methodically gone through an agreement of that sort.

Q. So do you tell the Commissioner, now, sitting here in 2020, do you say these minutes are untruthful?
A. No, I don't. I'm not suggesting that they're are untruthful. I think that the minutes - you're expecting that the minutes are being interpreted in a way that you're suggesting. I'm saying that they can equally be interpreted in the way that I'm saying, which is that Mr Neilson took us through the key terms of the agreements and, considering the key terms, the board approved entry into the contracts.

Q. Now, even if that were true, just have a look again at what Mr Neilson told you the key terms were. Exhibit AA6, CRL.512.001.1993. Your attention was specifically drawn by Mr Neilson to the fact that this agreement with the New South Wales regulator contained covenants requiring Crown to report periodically to ILGA regarding ownership interests and commercial deals with Stanley Ho and his associates; correct?
A. Yes.

Q. And whether or not you absorbed the detail of the Crown Group Consents and Approvals Deed, you were aware at the time that it contained provisions intended to prevent entities associated with Dr Stanley Ho from taking an interest in Crown Resorts; correct?
A. Stanley Ho or his associates. Yes.

74 In any event it is clear from the evidence that Mr Johnston agreed that he was aware that there was a prohibition on the late Mr Stanley Ho and his associates acquiring any interest in Crown.

75 Mr Johnston's emphasis in his last answer in the evidence extracted above was consistent with his claim that he was not alerted to a need to check anything to do with "Stanley Ho or his associates" because the transaction in which his company, CPH Crown Holdings, was involved was with Melco.

76 Mr Johnston also gave the following evidence:[20]

Q. You were aware that the New South Wales Government and the authority, ILGA, were deeply concerned about Dr Stanley Ho having any indirect or direct interest in the public company Crown Holdings - Crown Resorts; you were aware of that, weren't you?

A. Yes. I was aware there was a sensitivity to that, yes.

Q. No, no. I asked you, you understood that the government of this State was concerned that Dr Stanley Ho did not get a foothold or get an indirect or direct interest in the public company that was a close associate of the casino that it was authorising; you understood that, did you not?

A. Yes. Yes, I did. Yes.

Q. And so, at the time, that is, the time that Mr Bell is asking you about, in May of 2019, you knew that that was a deep concern of the Government of New South Wales and the authority, didn't you?

A. Yes.

…

Q. I suggest, in those circumstances, Mr Johnston, that you had an obligation to inform Crown Resorts of this proposed transaction so that it could check for itself whether the transaction would put Crown Resorts in breach of its regulatory agreements with the Independent Liquor and Gaming Authority?

A. No. I don't agree with that. I had no understanding that Stanley Ho had an involvement with the transaction.

Q. But you didn't check, you told me.

A. I had no reason to believe that he would be.

Q. But if you didn't check - you see, this is the problem, isn't it, Mr Johnston, with the layer upon layer of your obligations, which is not free from complexity, but, at this time, you didn't check and, therefore, you couldn't know could you?

A. Well, I mean, the party that we were dealing with was Melco Resorts. I wasn't aware that ---

Q. Yes.

A. I - I was not aware that Stanley Ho, or any entities associated with him, had an interest in Melco Resorts.

Q. But you knew, over the years, that that was a particularly interesting question for all regulators to see if Stanley had a role in Melco. You knew that, didn't you?

A. Yes.

Q. And you hadn't known, since 2017, when Melco parted company with Crown, what had happened vis-à-vis Stanley and Melco; you agree with that?

A. Yes. I agree with that, yes.

Q. So, you see, what I'm saying to you is, if you didn't check, you couldn't know, could you?

A. Well - but, I suppose, we took advice on what - what approvals, if anything, was required in order for this transaction to be - to be consummated. And the advice was that there were - there were no approvals required and that we didn't have to disclose it to - to Crown Resorts. I mean, at the end of the day - - -

Q. But that's a different question - that's a different question, at the end of the day, as you say. But all I'm suggesting to you is, with the sensitivity to which you've referred so often, you couldn't know whether or not Stanley, Dr Stanley Ho - the late Dr Stanley Ho now - had an interest in Melco unless you or someone on your behalf checked it out. Would you agree with that?

A. Positive - absolutely, no. No.

Q. And if you have a State Government putting in a contract a prohibition such as this, as described by Mr Neilsen to you, wouldn't it have been a very good idea to check whether Stanley did have an interest in Melco, even as a director of CPH?

A. Well, I mean, we had dealt with Melco for many years, as part of the joint-venture, and there was no suggestion that Stanley did have any interest in - in Melco Resorts or involvement in Melco Resorts, based on your knowledge from that time. So there was - and Melco Resorts had been approved as a joint venture partner with Crown or - sorry. Melco - Melco Investments had been approved as a joint venture partner and Melco Resorts, of course, had been approved by a range of regulators, including the ILGA, at the time that we entered into - or we were granted the licence. So there was - there was nothing that was putting me on notice that there were issues there; quite the opposite, I'd - - -

Q. But that was - that was all in the past, Mr Johnston; that was all up to 2017. You see, you had no knowledge of what happened in the 24 months between Melco and Crown parting company at the end of the joint venture and the sale to Melco in June '19; correct?

A. Correct.

Q. And so for abundant caution and for the sake of Crown's obligations to this Government of New South Wales, wouldn't it have been a good idea to have it checked out?

A. As I said, we took the advices that we did at the time.

Q. Are you saying it wasn't a good idea to have it checked out?

A. No, I'm not saying that. I'm not saying that. We took - we thought - we thought we took the right advices at the time. I think, with the benefit of hindsight, I think that, perhaps, we should have looked more deeply. Yes. Given - - -

Q. And, of course, it wasn't - it wouldn't have been a difficult thing to fix, on one view of it. You could have said, "well, we can't deal with Stanley," Crown, that is. "We can go ahead with the transaction so long as you get out the interest of Stanley." It was straightforward stuff, wasn't it Mr Johnston? It would have been.

A. It could have been. And we approached it a different way. When - when we discovered that there might have been an issue, we - we went back to Melco and we amended the agreement.

Q. Yes. Well, you say that, but that doesn't seem to be the position. But one of the problems that you face is that you didn't check at the time, but had you checked and had you seen the indirect interest to which Mr Bell has taken the Inquiry, you could have made it a condition on Melco to say, "we'll complete the transaction so long as the Stanley interest is removed from the company with whom we are transacting". That would have been a straightforward request; would it not?

A. Yes. Yes.

77 Counsel Assisting contended that it can be inferred that at the time the Share Sale Agreement was being negotiated Mr Johnston had actual knowledge of the risk that an entity associated with Stanley Ho, whether Great Respect or otherwise, had an interest in Melco International and therefore Melco. It was also contended that although Mr Johnston did not positively know that interest continued at a point two years following the cessation of the Melco-Crown joint venture, equally he did not positively know the interest had ceased. It was submitted that the risk the interest continued was therefore directly within Mr Johnston's actual knowledge.

78 In the underlined evidence extracted above at paragraph 70 Mr Johnston accepted that he knew "originally" that the late Mr Ho had been the Chairman of Melco International; and that an entity associated with him brought his interest in the City of Dreams joint-venture to Melco International so that it could be part of the Melco PBL joint-venture some years ago. However when asked whether he knew that Great Respect was the Stanley Ho entity that brought his interest in the City of Dreams to the joint-venture he once again deployed the mixture of an immediate and straightforward denial, "No", this time coupled with the suggestion of a focused lack of certainty, "I'm not sure that I knew that".[21]

79 Counsel Assisting submitted that it would have to be established that Mr Johnston had actual knowledge that there was at least a risk that entities associated with the late Mr Ho may have had an interest in Melco International and/or Melco Resorts at the time of the negotiations and Melco Transaction in May 2019 such that the Undertaking may be engaged.

80 The CPH parties contended that Mr Johnston's knowledge could only be constructive. It was submitted that it is not enough that there be a theoretical possibility of the engagement of the Undertaking. Rather what is required is actual knowledge of an actual risk facing Crown. It was submitted that the evidence does not demonstrate such actual knowledge. The CPH parties also contended that Mr Johnston simply did not know that the proposed Share Sale Agreement would expose Crown to a potential breach of its regulatory agreements.[22]

81 As unsatisfactory as it is that a Crown director would not have made himself aware of the identity of the Stanley Ho Associates listed in the Schedule to the regulatory agreement which was the subject of the Undertaking, it is probable that Mr Johnston did not know, although he ought to have known, that Great Respect was listed in that Schedule. His evidence that he did not read the Schedule containing the list of Stanley Ho Associates is accepted. As he would have it, which is accepted, he did not know the names of the particular entities on that list. However he knew there was a list and that they were entities associated with the late Mr Stanley Ho in respect of whom or which Crown had an obligation to ensure they did not acquire any interest in Crown.

82 Mr Johnston knew that the late Mr Stanley Ho had been the Chairman of Melco International. Mr Johnston's initial evidence that he knew that Melco International held its shareholding in Melco Resorts via its subsidiary Melco Leisure and Entertainment Group Limited is accepted. Mr Johnston's later evidence to the contrary and his explanation in respect of that contrary evidence is not accepted.

83 Mr Johnston's evidence that he knew that there were some arrangements to the effect that an entity associated with the late Mr Stanley Ho was bringing his interest in the City of Dreams joint-venture to the Melco International PBL joint-venture is obviously unchallenged. His evidence that he was not sure that he knew that the vehicle was Great Respect does not detract from his knowledge that he knew that the late Mr Stanley Ho had brought an interest into the Melco International PBL joint-venture.

84 The transaction that Mr Johnston as the sole director of CPH Crown Holdings was effecting was one that he knew would give Melco an interest in Crown. If the late Mr Stanley Ho or any of the prescribed Stanley Ho Associates had an interest in Melco then there was a real risk that Crown may be in breach of the Undertaking if it did not do that which was within its power to do to ensure they did not acquire that interest.

85 The result of all of this is that Mr Johnston did not know what the position was in 2019. He knew there had been an association between the late Mr Stanley Ho and Melco International in the PBL joint-venture and did not check if that association persisted. He did not check for a number of reasons. First he believed that Melco was an acceptable entity with which to contract in the environment of casino regulation because Melco had been approved by numerous regulators over the years. Secondly he was lulled into a sense of comfort by the lawyers retained by CPH who advised that no regulatory approvals were required. Thirdly he was advised by the lawyers that he

did not have to disclose the negotiations or the proposed execution of the Share Sale Agreement to Crown.

86 The lawyers did not advise CPH, the vendor or the CPH directors that checks should be made to ensure that the late Mr Stanley Ho or any of the prescribed Stanley Ho Associates did not have any interest in Melco. It is apparent that the lawyers did not turn their minds, or perhaps were not instructed appropriately, to give advice that it was very important to Crown's operations that it be advised of the transaction so that if there be any interest associated with the late Mr Stanley Ho it could comply with the Undertaking.

87 It is not as though Crown's interests were not given some consideration at the time of the transaction. Clearly, the CPH letter to Melco on 29 May 2019, extracted earlier in the Report, in which Mr Jalland and Mr Johnston, as CPH directors, referred to the protection of Crown's confidential information, demonstrates that consideration was given to protecting Crown's position in some respects but not in respect of the obligation contained in the Undertaking which specifically identified Melco. This is probably because in the consideration of protecting Crown's position in respect of the confidential information provided to Melco, the focus was on also protecting CPH. It appears that no thought was given to the obligations of the two CPH nominee Crown directors involved in the Share Sale Agreement with concurrent obligations to assist Crown with complying with its Undertaking.

88 However, although the lawyers advised Mr Johnston that he did not have to disclose the negotiations and proposed execution of the Share Sale Agreement to Crown they did not advise him that he was prohibited from doing so or that he should not do so. One of the reasons proffered by Mr Johnston for secrecy was the fear of a "leak" as allegedly occurred in the Wynn transaction with the prospect of the transaction going off.

89 It is obvious that one's state of knowledge at a particular time can be changed by subsequent events. It is clear that in 2005 Mr Johnston had knowledge that the late Mr Stanley Ho had previously been associated with Melco and in particular in the joint-venture between Melco International and PBL. It is also clear that at the time of the negotiations for and execution of the Share Sale Agreement Mr Johnston was aware, at least in general terms, of Crown's obligations pursuant to the Undertaking.

90 Notwithstanding some very unsatisfactory aspects of Mr Johnston's evidence, his evidence that in May 2019 he had "no understanding" and "no reason to believe" that the late Mr Stanley Ho had any involvement with Melco is accepted. That is not to say that he was justified in that state of understanding. In all the circumstances, he should have known that there was a risk that the late Mr Stanley Ho or a prescribed Stanley Ho Associate may have had an interest in Melco. He should have also known that such a risk put Crown at risk of non-compliance with its Undertaking.

91 It is appropriate to observe that the focus of this analysis is in respect of the state of Mr Johnston's knowledge rather than whether his conduct was appropriately careful. However it appears that he did not give any or enough thought to his role as a Crown director and his obligation to assist it with compliance with the Undertaking. There was no impediment to him advising Crown of the plan in a manner that would protect against a "leak". It was not suggested to Mr Johnston that he withheld the information on any other basis such as to ensure that Crown did not delay the completion of the transaction. As discussed the only concern expressed by Mr Johnston was fear of a similar outcome to the Wynn approach, which of course was a differently structured transaction proposed directly to Crown. He could at the very least have advised Mr Alexander on a confidential basis to enable Crown to consider the position and engage with CPH in what might well have been a constructive outcome for all.

92 It is probable that Mr Johnston had constructive knowledge of the relevant facts. In this inquisitorial context that knowledge is not attributable to Crown. Therefore Crown could not be in breach of the Undertaking by reason of Mr Johnston's constructive knowledge.

Mr Jalland

93 Mr Jalland admitted that prior to the negotiations with Melco and the execution of the Share Sale Agreement, he was aware of the existence of the VIP Agreement and the Crown Deed and that, in general terms, they contained provisions intended to prevent entities associated with the late Mr Ho from acquiring an interest in Crown.[23]

94 However, Mr Jalland maintained that he was not aware that Great Respect, or any other entity associated with Stanley Ho, either had an interest in Melco International or brought the interest concerning the City of Dreams casino into the joint-venture between Melco International and Crown.[24]

95 Mr Jalland admitted that he had read parts of the Melco Chairman's address in various Annual Reports during the time of the joint-venture between Melco International and Crown.[25] However, he denied reading material in those Annual Reports indicating that Great Respect had an interest in Melco International and that Great Respect was controlled by a trust the beneficiaries of which included Mr Lawrence Ho and the late Mr Ho.[26] Mr Jalland also denied reviewing draft media releases on 30 May 2019 – issued before the Share Sale Agreement was executed – from Melco International indicating that Great Respect was the holder of over 20 per cent of the shares in Melco International and was controlled by a discretionary family trust the beneficiaries of which included Lawrence Ho and his immediate family members.[27]

96 Mr Jalland said that he was aware that Mr Lawrence Ho, Melco and Melco International had been subject to probity checks by the Authority, as well as gambling regulators in Victoria, Queensland, Western Australia, Pennsylvania and Nevada, on two previous occasions before the Share Sale Agreement was executed, and that those

probity checks examined, among other things, a possible connection between those entities and the late Mr Stanley Ho as part of their approval of casino licensing operations. However, Mr Jalland maintained that, because the relevant gambling authorities granted regulatory approval, he believed there could not have been a connection with the late Mr Stanley Ho. He gave the following evidence: [28]

> I was aware at the time that Mr Lawrence Ho, Melco Resorts and Melco International had been subject to probity checks by ILGA on … two occasions. We're talking about in 2016, by Queensland, by Victoria, by Western Australia, by Pennsylvania and by Nevada, and none of those regulators had any objection to Mr Lawrence Ho, Melco Resorts or Melco International. And I believed those entities were his … His father had nothing to do with it. I couldn't conceive … regulators would … have not objected if they had formed a view Dr Stanley Ho was involved.

97 It was not submitted by Counsel Assisting that there was any reason to doubt the veracity of Mr Jalland's answers.

98 It was accepted by Counsel Assisting that Mr Jalland's knowledge was only constructive knowledge at best and therefore could not be attributed to Crown.

Mr Packer

99 There were also competing contentions that Mr Packer's knowledge was relevant notwithstanding that he was not a Crown director at the time. These contentions were accompanied by competing submissions as to whether Mr Packer could be appropriately categorised in May 2019 at the Share Sale Agreement as a de facto director of Crown.

100 Mr Packer accepted that he knew of the deep concern of the NSW Government and the Authority to ensure that the late Mr Stanley Ho and the prescribed Stanley Ho Associates did not acquire an interest in Crown as a close associate of the authorised Licensee. Mr Packer also accepted that he knew that regulatory agreements governing both Crown and the Licensee contained provisions intended to prevent such an acquisition.

101 Mr Packer accepted that in about 2006 "before the joint venture with PBL" and "during the period" of the joint-venture in Macau both through PBL and Crown while he was Co-Chairman, he knew that Great Respect, was a discretionary trust with which the late Mr Stanley Ho was associated and which had converted convertible notes into an approximately 20 per cent shareholding in Melco International.[29]

102 Mr Packer gave evidence that since 2016 he had "suffered from significant health issues" and continued to take "prescribed strong medication". He expressed the belief that "this has impaired my ability to recall past events including in relation to the period I was a director of Crown".[30]

103 Mr Packer claimed that at the time of the negotiations and execution of the Share Sale Agreement he had "forgotten" the provisions of the regulatory agreements aimed at ensuring that the late Mr Stanley Ho or any prescribed Stanley Ho Associate acquired an interest in Crown. When asked whether the truth of the matter was that he had not forgotten that but just "didn't think about it at all", he gave the following evidence:[31]

> No, because Melco Resorts had been passed by regulators to be an associate of Crown in Australia on multiple occasions, in multiple jurisdictions, and in Las Vegas and in Pennsylvania. Mr Ho was - Dr Ho was in a very sickened state, and I regarded Melco Resorts, and do regard Melco Resorts, as Lawrence's company, to his great credit.

104 When pressed with the suggestion that he did not give any thought to the regulatory agreements at the time of the transaction, Mr Packer claimed that he thought that the lawyers would "cover all eventualities".[32] He finally accepted that at the time of the transaction he did not turn his mind to the fact that there were regulatory agreements in place intended to prevent the late Mr Stanley Ho or a prescribed Stanley Ho entity from acquiring an interest in Crown.

105 The combined circumstances of Mr Packer's medical condition since 2016, his indication in evidence referred to elsewhere in the Report that he has suffered from a bipolar disorder since that time and his evidence that he has been taking strong prescribed medication for the last four years, inject some complexities into the determination of the question of whether he forgot the presence of the Undertaking in the regulatory agreements or did not turn his mind to consider it.

106 In either instance the Authority would be entitled to find it a deeply flawed attribute of a close associate of a Licensee. This is particularly so when that close associate, Mr Packer, had been personally involved in securing the Barangaroo Casino Licence, one *quid pro quo* of which was to ensure that Crown, of which he was then the Chairman, undertook to do everything reasonably within its power to ensure that the late Stanley Ho or his prescribed Associates did not acquire any interest in Crown. Whether he forgot the Undertaking or did not turn his mind to it may in itself present as a proper basis for the Authority to review his status as a close associate. Even more so when combined with what was accepted by Mr Packer to be the "shameful" and "disgraceful" incident referred to in Chapter 2.8 of the Report.

107 These conclusions have been reached cognisant of Mr Packer's present medical condition which of course is not an impediment to a worthwhile and productive working life. However where solemn Undertakings are given to the NSW Government and the Authority in respect of casino operations in which all involved must ensure that those operations "remain free from criminal influence and exploitation", forgetfulness or failing to turn one's mind to one of the very mechanisms in place to achieve that object must surely be intolerable.

108 Whether Mr Packer forgot what he had known about the late Mr Stanley Ho's previous involvement in and association with the joint-venture in Macau; and whether he forgot about the regulatory agreements designed to ensure that the late Mr Stanley Ho or the prescribed Stanley Ho Associates did not acquire an interest in Crown; or whether he simply did not turn his mind to these matters at the time, leaving it all to the lawyers; there were matters including Mr Packer's knowledge that the late Mr Stanley Ho had previously been involved with the Melco-Crown joint venture that should have led him at the very least to checking, or causing checks to be made, whether the late Mr Stanley Ho had any interest in the party, Melco, with which CPH Crown Holdings was contracting to sell its shares in Crown.

109 Irrespective of the debate as to whether at the time of the transaction with Melco in May 2019 he forgot it or did not turn his mind to it, the irresistible conclusion is that Mr Packer knew that Crown had an obligation to honour its Undertaking given to the NSW Government and the Authority that to the extent that it was within its power to do so it would prevent the late Mr Stanley Ho and/or the prescribed Associates from acquiring any interest in Crown.

110 Mr Packer also knew that in the past the late Mr Stanley Ho had some connection to the company that Mr Packer regarded as "Lawrence's company". It is accepted that at the time of the transaction with Melco in May 2019 Mr Packer did not know whether the late Mr Stanley Ho had any connection to Melco. It is also accepted that at the time he understood that the late Mr Stanley Ho was very frail and unwell and he did not turn his mind to whether he had any connection to Melco.

111 Mr Packer did not check whether this was the case and it is accepted that he relied on his lawyers to advise whether there needed to be any particular checks or regulatory approvals before the transaction could be completed.

112 Mr Packer should have known that if the late Mr Stanley Ho had the interest in Melco through Great Respect, a matter that could have been ascertained by checking, and would acquire an interest in Crown by reason of the Share Sale Agreement, Crown may be at risk of being in breach of its Undertaking if it did not do that which was within its power to prevent the acquisition by the late Mr Stanley Ho's prescribed Associate, Great Respect.

113 Although it is not free from complexity, it is concluded that Mr Packer's knowledge was constructive rather than actual knowledge. In those circumstances it is not attributable to Crown.

114 In those circumstances, it is not necessary to consider the question of whether Mr Packer could be appropriately categorised at the time of the transaction as a de facto director of Crown. Certainly the topic of Mr Packer's influence has been discussed in detail elsewhere in the Report but it is not in the context of whether he could be appropriately described as a de facto director. Rather that analysis relates to

the consequence of his influence on Crown's corporate governance and risk management processes.

Further observations

115 Even if Mr Johnston had actual knowledge which could have been attributed to Crown, it would only have been in breach of the Undertaking if it failed to do what was within its power to prevent the transaction.

116 A starting point would have been for the Crown directors to be alert to the prospect that checks needed to be made as to whether the late Mr Stanley Ho or any Stanley Ho Associate had any interest in Melco for the purpose of identifying whether any prohibited interest in Crown would be acquired if the transaction were to be completed.

117 In a curial setting this question would be explored in detail to establish what, if anything, may have been done by the Crown Board. The evidence before the Inquiry, albeit riddled with hearsay, is that when the Crown Board met on 12 June 2019 after all the Crown directors had been made aware of the transaction and apparently had a robust In Camera session there was, as Mr Alexander reported to Mr Packer, "nothing negative about Melco".[33]

118 Some evidence was given during the hearings which suggests that there would have been concern to review the whole of the transaction to ensure that Crown was compliant with its obligations to the regulator. That evidence of course was not challenged. However it is necessary to assess what that evidence means. It means that as a regulated entity keen on ensuring compliance and retention of a casino licence everything that was necessary to be done would have been done. Crown had more capacity within its operations to identify the late Mr Stanley Ho as an acquisition risk, in particular after its negotiations with the Department to remove the Undertaking from the regulatory agreements.

119 The steps that might have been taken by Crown had the balance of the Crown Board actually known of the transaction could have included: an investigation similar to that carried out by the Inquiry to identify the presence of Great Respect's interest in Melco; discussions with CPH and CPH Crown Holdings to attempt to adjust the transaction to remove that interest; and discussions with the Authority to understand whether, notwithstanding its willingness to approve Crown as a close associate of the Licensee whilst it was in a joint-venture with Melco, whether approval may be given to Melco as a close associate of the Licensee having regard to its interest in Crown.

120 However as discussed in other parts of this Report, Crown was about to be besieged by the media and then by the announcement of this Inquiry.

121 The question of whether, even if the transaction had been disclosed to Crown, it might have been in breach of the Undertaking is not free from complexity. In any event having regard to the conclusions referred to in this Chapter that is an academic debate which is unnecessary.

Was there a Breach?

122 With emphasis on and in the context of the limitations and constraints referred to in this Chapter the questions posed in paragraphs 16(d) to (f) of the Amended Terms of Reference are answered in the negative.

Matters arising

123 The consideration of the questions posed in the Amended Terms of Reference on this topic has exposed the real need for a better structure in the regulatory environment for the identification of "close associates".

124 Whether at the time of the execution of the Share Sale Agreement in May 2019 or at the time of the transfer of the shares, Melco was required to obtain approval as a "close associate" remained uncertain. Ultimately as discussed elsewhere in the Report, Melco took a pragmatic approach after the transaction was completed to seek approval as a close associate to obviate the need for debate, notwithstanding that it claimed that it was not a close associate at the time that it made the application.

125 If there had been in place at the time of the Melco transaction a statutory provision that defined any shareholder with, for instance a 10 per cent interest, in an immediate, intermediate or ultimate holding company of the Licensee as a "close associate", it would have included Melco. It would have also obviated the need for analysing whether it had relevant power, position or financial interest in, or whether it could exercise significant influence over, the Licensee. These concepts in the regulated environment with the significant statutory object of repelling criminal influence in the operations of a casino create uncertainty.

126 The proposed amendments to the *Casino Control Act* in this regard are discussed in Part 5 of this Report.

127 Another matter that arises out of the consideration of the evidence relating to this aspect of the Amended Terms of Reference is the total lack of alertness of the CPH nominee directors, Mr Jalland and Mr Johnston, to the Undertaking that was given to the NSW Government and the Authority. The reason the Undertaking was sought and was given was the recognition of the real risk of criminal infiltration into the Licensee by some indirect route. That was obvious from the use of the expression "any" interest and it should have been something of which the Crown directors in particular those serving on CPH had at the forefront of their thinking whenever a transaction with a third party gaining a shareholding in the close associate to the Licensee occurred.

This lack of alertness to Crown's needs is unfortunately consistent with what has been observed in the other areas of Crown's operations. It must change.

128 The Authority may have some comfort from the present attempts that are being made by Crown to effect that change. However much more needs to be done.

PART 5

Paragraph 17 of Amended Terms of Reference – Regulatory Framework

Chapter 5.1

Regulatory Practice

1 Paragraph 17 of the Amended Terms of Reference commences from the uncontroversial premise that casinos are presently operating in an environment of growing complexity of both extant and emerging risks. It is in this context that the Authority has directed an inquiry and report upon: (i) the efficacy of the objects of the *Casino Control Act*; and (ii) the Authority's ability to respond to that "changing operating environment".

2 Although the Amended Terms of Reference include the expression "gaming and casinos" it is of course understood that the Authority intended the focus of this aspect of the inquiry into the Regulatory Framework and Settings to be limited to gaming in casinos.

3 The Authority requested that such inquiry and report take into account domestic and international best practice in respect of the framework of casino regulation. In this regard there has been wide consultation with casino regulators in Australia and internationally. It has included a review of the history of the structure of the casino regulator in New South Wales. It has also included a review of the operational frameworks of other casino regulators in Australia and some international casino regulators. The results of this aspect of the inquiry are recorded as Appendices to the Report.[1]

4 It also included contributions from Australian and international experts, all of whom gave evidence in the Public Hearings of the Inquiry in the week commencing 24 February 2020.

5 It is appropriate to formally reiterate the expressions of gratitude to those experts and regulators for their contributions and assistance to the Inquiry particularly whilst accommodating the confines of the Health Orders and other arrangements imposed in consequence of the COVID-19 pandemic and the differing international time zones.

6 This assistance has contributed to a better understanding of the regulatory practices that have been adopted throughout Australia and internationally for the purpose of proffering of the proposals for the better regulation of casinos in New South Wales.

7 Although there was no examination by Crown of any of the Australian and international experts who gave evidence in the Public Hearings in February 2020 Crown submitted written statements from four lawyers practising in "gaming" in international jurisdictions in December 2020 after the conclusion of all Public Hearings. It also submitted two written statements, one in late November 2020 and the other in December 2020 from a former State and Federal bureaucrat with experience in some regulatory environments including as Deputy Secretary of the NSW Department with, as he put it, "responsibility" for the Authority. These opinions have of course been taken into account.

Some history to regulatory practice in NSW

8 As is well known to the Authority and as outlined in the Appendices the structure of the casino regulator in New South Wales has changed markedly from that which was suggested by the late Sir Laurence Street in the early 1990s. The structure has moved from an independent, powerful, standalone regulator responsible for a singular focus on casinos to a bifurcated structure with responsibilities sprinkled through a Government Department whose personnel have loyalties and responsibilities to others. Its powers originally impenetrable from perceived influence by Government Departments are now exercised by officers of the Government Department under direction of Departmental Secretaries who must respond to Ministerial directions.

9 This point was reached in 2016. These were the changes that caused an eruption and the consequential departure of the then Chair of the Authority, Mr Sidoti. Obviously efficacy of casino regulatory practice is very much dependent upon the nature of the structure and statutory power in support of that structure. It is clear that in 2016 the then Chair saw the erosion of that power as a core reason requiring his departure.

10 However from 2016 to the present time, there have been further significant changes to that regulatory landscape.

Risk-based Casino Regulation

11 In February 2016 Mr Peter Cohen of the Agenda Group provided a Report to the Authority entitled *Casino Modernisation Review*. Mr Cohen had been involved in regulation of casinos in Victoria with the VCGLR (and its predecessor) which by this time had moved to what is described as a "risk-based" method of regulation.

12 Mr Cohen recommended that a risk-based, co-regulatory model of casino regulation be adopted in New South Wales.[2]

13 The subsequent acceptance by the NSW Government of many of Mr Cohen's recommendations signalled a change in the regulatory philosophy underpinning the *Casino Control Act*, with a shift away from a more "prescriptive" approach to regulation to a more "risk-based" model of regulation.[3]

14 Mr Cohen reported that the existing regulatory scheme in New South Wales was based on a 1990s approach to casino regulation, which led to "unnecessary regulatory interference which constrains innovation and competition (for international and interstate players) whilst costing the State more to regulate than necessary".[4] He contrasted the highly prescriptive approach of the Singapore regulator with Victoria's more risk-based approach. He reported as follows:[5]

> While the day-to-day activities of the gaming regulator seem to be prescribed by the legislative instruments which establish them and identify their scope of work, it is apparent that the methodological approach of regulators can differ. For example, the Singapore Casino Control Act is heavily modelled on the Victorian Casino Control Act, to the extent that the link to the Victorian legislation is referred to in the Singapore scheme. However, the approach taken to regulating casinos in Victoria and Singapore varies significantly.
>
> The most obvious difference is the highly prescriptive approach taken by the Singapore Casino Regulatory Authority compared with Victoria's more risk-based approach. A specific example which clearly shows the difference is in the approach to junket regulation.
>
> Singapore's *Casino Control Act 2006* provides for a stringent regime of control over junket operations, which the legislation describes as "casino marketing arrangements" with junket organisers termed International Marketing Agents (IMA).
>
> …
>
> Victoria does not regulate junket operators directly. Victoria's casino legislation addresses junkets and in 1999 Victoria introduced regulations which provided for a degree of oversight of junket operations by the gaming regulator, but those regulations were impliedly revoked on 1 July 2004 when the *Casino Control Act 1991* was amended.

15 Mr Cohen analysed the regulatory environment as "pieces of the puzzle". He posed questions as to whether strict or "light touch" regulation was appropriate; whether casino operators were capable of complying with or willing to comply with regulatory schemes; and why licenced operators comply with regulations. He then analysed the role of the regulator.[6]

16 Mr Cohen considered two analytical frameworks of regulation. The first framework was the "Braithwaite Pyramid". At the apex of the pyramid is prescriptive regulation with mandatory penalties. The next layer down is prescriptive regulation with discretionary penalties. The next layer down is co-regulation and at the base of the pyramid is self-regulation.

17 The second framework considered by Mr Cohen was what was referred to as "VADE, in which the four different levels of regulation were described as "Voluntary", "Assisted", "Directed" and "Enforced".[7]

18 Mr Cohen considered that casino operators would be motivated to comply with regulation because they would want to protect their corporate reputations and their entitlement to the valuable licence to operate a casino. There is of course a big difference between motivation and actuality. However on the premise of such motivation to comply with regulation Mr Cohen then turned to the theoretical frameworks and concluded that casino operators would appropriately fit within the "Voluntary" category of the VADE framework and in the "co-regulation" level of the Braithwaite Pyramid.[8]

19 Mr Cohen suggested that the key outcome of the so-called "modernisation" of the regulatory model would be the transfer of risk from the Government sector to the casino operator. This modern regime requires the co-operation of the regulated parties who are provided with greater freedom to operate the casinos on the understanding that there is a greater risk that disciplinary action may be taken by the regulator for delinquency.[9] In this regard, Mr Cohen suggested that the casino operators had to understand that this "light hand of regulation" could lead to higher penalties than in a more prescriptive environment.[10]

20 Mr Cohen reported that:[11]

> Whereas the older style of regulation sees the regulator intervening up front and thereby preventing some regulatory errors from occurring, the modern, risk-based model leaves it to the operators to work out for themselves how to comply. In essence, 20 years after introducing a casino regulatory scheme to New South Wales, the training wheels will be removed and the operators will take on the responsibility of not falling.

21 This model places considerable regulatory trust in the casino licensee. It is based on a rather naïve belief that it would be inconceivable for the casino licensee to act improperly in the face of ongoing risks because it may damage its corporate reputation or its capacity to continue holding its licence. It is on the basis of this belief that it was said the regulator is justified in shifting a large part of the regulatory responsibility to the casino operator.

Critique of Risk-based Theory of Casino Regulation

22 Professor I. Nelson Rose gave evidence in the Public Hearing on 25 February 2019. He is Professor Emeritus at Whittier College in California at which he taught gaming law. He commenced his writing on gaming law before graduating from Harvard Law School in 1979. He is the co-editor-in-chief of the *Gaming Law Review* and the author of the widely-used US text *Gaming Law: Cases and Materials*. He has delivered lectures and courses on the subject as a visiting professor at both the University of Macau and Melbourne University.[12]

23 Professor Rose reviewed the *Casino Modernisation Review* and suggested that a major flaw was to treat the casino industry like any other industry when it clearly is not; and

misapprehending that the purpose of the regulatory legislation was to make casinos profitable.[13] He suggested that the Braithwaite Pyramid works well in a society where shaming is important but not in a "morally suspect industry" that was once "illegal".[14]

24 Professor Rose expressed the very firm view that self-regulation does not work for the casino industry as there is just too much cash involved and there is too much opportunity for things to go wrong. He was far more sceptical about the extent that regulators should trust casino operators to share in the regulation. However he warned that over-regulation is not the answer and gave the following evidence (adjusted for context):[15]

> It's kind of the current fad for regulators to say they're a risk-based regulator. I believe it started with areas where there was actual danger to life and limb. But now most regulation is called risk-based. And the good news is that it does require analysing what the regulation will do in terms of its potential to eliminate risk, whatever risks are out there; usually risk to the public. There's a nice article from July 8th, 2019, from the Regulatory Review which is entitled What Does Risk-based Regulation Mean and basically it doesn't mean much of anything. It means regulators must really analyse what the regulation is supposed to do.
>
> But it doesn't help you make policy decisions and the author says even with perfect knowledge of what the risks are and what the costs are, it's still up to the regulator and the legislature to decide, okay, of the various alternatives which do we want to do. You know, do we want to spend endless amounts of money to prevent a small risk or, well, if the small risk is – there's a small chance of an atomic bomb going off in the city, you probably want to spend the money. So the risk-based regulation is kind of a nice way of saying analyse it, try to figure out what the odds are of the risk occurring, what the damage will be, what it will cost, and then that will help you make a decision based on policy.

25 Professor Rose suggested that the discussion in the *Casino Modernisation Review* proceeded from the false premise that regulation was not needed because problems had not been uncovered. He proffered the suggestion that the absence of problems may well mean that the regulation was working.[16] Of course there is the alternative that there were problems but the legislation and the structure of the Regulator was not structured appropriately to uncover them. This latter observation is pertinent to the problems that have been exposed in this Inquiry.

26 The present approach to casino regulation on the basis proposed by Mr Cohen and implemented in part, is an approach which requires adjustment in light of the developments exposed in the Public Hearings of the Inquiry and also having regard to regulatory practices in other jurisdictions. These are matters dealt with in Chapter 5.2.

27 Two areas that require consideration as a result of the exposure of serious problems during the Public Hearings are the areas of the operation of Junkets and the

management of money laundering risks in casinos. It is convenient to now deal with these two areas.

Approaches to Junket Regulation

28 The various approaches to the regulation of Junkets that have been adopted in Australia and internationally may be summarised as follows:

(a) The co-regulation approach (Western Australia, Victoria and New South Wales): in which the regulator and the casino operator regulate the steps the operator takes with respect to Junkets by the regulator approving an Internal Control Manual (ICM);

(b) Junket agreement approval approach (Queensland): in which the regulator approves the junket agreement between the casino operator and the junket operator or representative;

(c) Junket registration approach (Nevada): in which the regulator maintains a register of Junket operators and performs a suitability review of the Junket operator if the casino operator proposes to provide it with a share of actual earnings; and

(d) Junket licensing approach (Singapore): in which the regulator licenses all International Market Agents within the jurisdiction.

Co-regulation of Junkets

29 The regulation of Junkets in Western Australia, Victoria and New South Wales is the "co-regulation model" in which the regulator aims to ensure particular standards of behaviour by working with the casino operator licensee in approving an ICM drafted by the licensee prescribing how a licensee should conduct itself in its dealings and relationships with Junket operators.

30 The ICMs include more general principles, and allow the licensee to determine its own specific methods of addressing risks associated with Junkets in its Standard Operating Procedures. Although the Standard Operating Procedures are viewed by the Regulators it is understood that they are not approved by the Regulators. Mr Cohen endorsed this approach as a preferable approach on the premise and anticipation that the licensee would act appropriately when setting its own procedure for dealing with Junkets.

31 The ICMs that have been provided to the Inquiry would certainly not respond appropriately to the problems that have been identified during the course of the Public Hearings of the Inquiry.

32 It is clear that the legislative structure that was put in place in the 1990s anticipated even then that the method by which the regulator and the regulated entity would proceed was by way of an ICM. The fact that there is an ICM does not equate with a soft touch of regulation. An ICM can and should be appropriately prescriptive to meet the risk that is faced by the casino operator. It appears that over time the ICM's have become less prescriptive to the detriment of efficacious regulation. Junket operators and money launderers would of course advocate for less prescriptive ICM's, which is a good reason not to adopt or tolerate that approach.

Junket Agreement Approval

33 A "junket agreement" is defined in the *Casino Control Act* 1982 (Qld) as an agreement under which the promoter arranges for a group of persons to visit the casino to participate in gaming, and the casino operator pays the promoter a commission based on the number of patrons who gambled or the revenue derived from those patrons.[17] A casino operator cannot enter into a Junket agreement without the Minister's approval, which is a function delegated to the regulator.[18]

34 Any Junket agreement is closely regulated under Part 6 of the *Casino Control Regulations* 1999 (Qld). It must be in writing, and a copy is to be given to the regulator, along with copies of the passports of the Junket participants.[19] The casino operator is also obliged to provide written notices to the regulator about the Junket promoter and any representatives of the promoter.[20] The purpose of these requirements is to provide the regulator with enough information about the Junket promoter and any representatives for a determination on the suitability of the promoter or its representative for "future junket agreements".[21]

35 The regulator approves the form of agreement lodged with it in respect of the casino operator's proposed commercial relationship with the junket promoter. However inconsistently with the understanding of some witnesses before the Inquiry the Queensland regulator does not "license" any Junket promoters or operators.

Registration of Junket Operators

36 In 1972 the Nevada Gaming Commission adopted Regulation 25 to control the conduct of Junket operators, known in Nevada as "independent agents". There was a major revision of Regulation 25 in the early 1990s, and a further relevant amendment in 2018-2019.[22]

37 Regulation 25 includes the following provision:

> **25.020 Registration.**
>
> 1. An independent agent who:

> (a) Has authority from a licensee to authorize customer incentives with a cumulative value exceeding $10,000 in a calendar year;
>
> (b) Receives compensation from a licensee for his or her services as an independent agent; or
>
> (c) Approves or grants the extension of gaming credit on behalf of a licensee or collects a debt evidenced by a credit instrument,
>
> shall register with the Board and shall have a written agreement with the licensee evidencing such authority or compensation.

38 The "licensee" referred to in this part of the Regulation is the casino operator.[23] The independent agent has to make an application for registration and pay a fee of $2,000 directly to the Commission or through the casino. An applicant has to complete a number of forms providing personal information that will allow the Regulator to conduct a due diligence review. It may also be necessary to supply fingerprint cards to enable basic criminal checks through the different criminal databases. The applicant must also sign an authorisation to release information to enable the Regulator to liaise with various third parties.[24] The registration of an independent agent expires after five years unless it is extended.

39 The only entity that is licensed in Nevada is the casino operator. The executives of the casino operator must go through a process of review for suitability but are not licensed individually.

40 The burden of proving suitability is always on the applicant who must provide "clear and convincing evidence" of good character and repute.[25]

41 Regulation 25 also includes the following provision:

> **25.025 Independent agent compensation.**
>
> A licensee shall not compensate an independent agent based on the actual earnings or profits from any gambling game played by a patron or patrons unless the independent agent has been found suitable by the Commission to act as an independent agent. A licensee may compensate an independent agent based on theoretical earning potential.

42 The suitability approval process for an independent agent in Nevada is similar to the approval process for a casino operator's licence. There has never been such an application. That may say something about the independent agents' willingness to submit themselves to scrutiny. In any event, in those circumstances the independent agents are only compensated based on a theoretical earning potential.[26] The term "theoretical earning potential" is defined in Regulation 25 as the average bet of a patron multiplied in accordance with a mathematical formula which rewards an

independent agent who brings a player who plays for a long time, plays quickly and bets a large amount.[27]

43 The reason for this formula is that Nevada made a decision that people who had not gone through the licensing process would never be able to share in casino revenue.[28] The independent agent should never be involved in the purchase of chips, distribution of dead chips, or the provision of credit.[29] They are regarded more as "premier service providers" or "an executive travel agent".[30]

44 The contractual relationship in Nevada casinos is always between the player and the casino. The internal control procedures are very rigid in respect of this relationship.

45 Indeed it has been suggested that Regulation 25 has been relatively effective in removing organised crime from the Junket/independent agent industry in Nevada.[31]

46 The casino operator has to file a cash transaction report for anything over $10,000 or more with the Financial Crimes Enforcement Network which is part of the United States Treasury that oversees anti-money laundering.[32] The casino operator has to work with the Gaming Control Board with regard to the surveillance of VIP areas so that the Board can maintain control over the entire casino, including the VIP areas.[33]

47 If a Junket enterprise engages in money laundering, the provisions of the Act and the agreements between the casino and the independent agent make the casino responsible for the conduct of the independent agent.[34] Therefore, there is a "huge incentive" for the casino operator to keep a close eye on the operations of the independent agent.[35]

48 There are 200 licensed casinos in Nevada and approximately 300 independent agents.[36] The major casino companies are required to have compliance plans, compliance committees and compliance officers. The regulators will rely upon the casino to do the necessary due diligence on people like vendors and consultants and lenders.[37] The reports from the compliance officers to the compliance committees are filed with the Regulator which conducts audits of the reports and verifies that the casino is using adequate compliance methodologies.

Licensing of Junket Operators

49 International market agents, the equivalent of Junket operators in this jurisdiction, cannot operate in Singapore without a licence granted by the Casino Regulatory Authority (CRA).

50 An "international market agreement" is "a contract or other arrangement between a casino operator and a licensed international market agent that relates to the conduct of a casino marketing arrangement by that international market agent".[38]

51 An "international market licensee" is "the holder of an international market agent licence or international market agent representative licence".[39]

52 A person is prohibited from organising, promoting or conducting a casino marketing agreement unless they are licensed by the CRA as an international market agent or representative.[40] Casino operators are obliged to prevent any unlicensed person from organising, promoting or conducting a casino marketing agreement within its casino premises.[41]

53 All applications for an international market agent licence are made to the CRA, which are to be accompanied by:[42]

(a) The appropriate application fee;

(b) Certain corporate or individual information;

(c) Evidence that the casino operator intends to enter into an international marketing agreement with the applicant;

(d) Endorsement of the applicant by the casino operator including a suitability review and due diligence report from the casino operator; and

(e) Any other documents the CRA may require.

54 All applications for an international market agent representative licence are made to the CRA, which are to be accompanied by:[43]

(a) The appropriate application fee;

(b) Certain corporate or individual information of the applicant; and

(c) Any other documents the CRA may require.

55 The CRA performs a suitability investigation of the applicant and any associate of the applicant and is required to consider, among other things, whether there is any information that the applicant or any associate is not of good repute having regard to "character, honesty and integrity".[44]

56 The applicant is required to fund the suitability investigation by payment of an upfront fee estimated by the CRA for the review.[45] At the conclusion of the investigation, the CRA will certify the actual costs of the investigation and either refund any surplus or request payment of any shortfall.

57 The period of the licence will be determined by the CRA. However, the term cannot be longer than 3 years.[46] The licence may be subject to any conditions the CRA may wish to impose.[47]

58 The casino operator is required to monitor the suitability of the agent or representative, and may withdraw its endorsement at any time. If the endorsement is withdrawn, the relevant licence will lapse.[48]

59 An international marketing agent has ongoing duties including:[49]

(a) Notifying the CRA whenever a representative ceases employment;

(b) Providing information and records relevant to any representative as requested by the CRA;

(c) Notifying the CRA of any changes to its own circumstances;

(d) Ensuring credit is not given to its players other than in accordance with the casino control legislation; and

(e) Keeping records of all international marketing agreements and any credit given to any player.

60 The CRA may at any time require an international marketing agent to appoint a special auditor to investigate the agent's affairs and report to the CRA.[50]

61 Every international marketing agent and representative is required to wear identification while on the premises of the casino.[51]

62 A licensed international marketing agent or representative is prohibited from sharing any commission from any casino with any unlicensed international marketing agent or representative. However a referral fee may be paid to such a person or entity.[52]

63 Income (including casino chips) derived in Singapore by a licensed international marketing agent or representative is taxable.[53]

64 The CRA monitors all licensed international marketing agents and representatives, and any associates (including any person who is likely to become an associate).[54] The CRA may engage in regular suitability investigations, and take disciplinary action against a licensed international marketing agent or representative where appropriate.

65 A casino operator must not engage with any licensed international marketing agent or representative until a compliant international marketing agreement is in place. The casino operator must give an 'arrival report' to the CRA not less than an hour before the commencement of a casino marketing arrangement in its casino. The CRA may give a casino operator directions to provide it with information relating to any licensed international marketing agent or representative.[55]

66 The casino operator may also face disciplinary action if it contravenes any of its relevant duties.[56]

67 Singapore has not licensed any Macau-based Junket under the current licensing regime, and presently there are only two licensed international marketing agents operating in Singapore. The strictness of the Singapore approach is linked to the Singaporean Government's intention to maintain the clean and safe image of Singaporean tourism and commerce, and also prevent the economy from becoming too dependent on gambling revenue. It was in this context that the introduction of the current licensing regime changed the nomenclature from "junkets" to "international marketing agreements" so as to distance Singapore from the Macau casino Junket industry.[57]

Management of money laundering risks

68 The casino operator is required to report certain transactions concurrently to both the anti-money laundering Regulator and the CRA. Regulation 3 of *Casino Control (Prevention of Money Laundering and Terrorism Financing) Regulations* 2009 (Singapore AML/CTF Regulations) provides relevantly as follows:

> **Duty to file cash transaction report**
>
> (1) A casino operator shall, before the end of the applicable reporting period, file with a Suspicious Transaction Reporting Officer a cash transaction report of the following in accordance with paragraph (2):
>
> (a) every cash transaction with a patron involving either cash in or cash out of $10,000 or more in a single transaction;
>
> (b) multiple cash transactions which the casino operator knows are entered into by or on behalf of a patron, the aggregate of which is either cash in or cash out of $10,000 or more in any gaming day.
>
> (2) A cash transaction report shall:
>
> (a) be in the form provided by the Suspicious Transaction Reporting Office established within the Commercial Affairs Department of the Singapore Police Force; and
>
> (b) contain full and accurate information relating to the significant cash transaction being reported as specified in the form.
>
> (3) Any casino operator filing a cash transaction report shall, at the time the report is filed or immediately thereafter, submit a copy of the report to the Authority.

69 It appears that the CRA is considering reducing the dollar value threshold for cash transaction reports and has reportedly asked casino operators to voluntarily lower the threshold to $5,000 in advance of that change.[58]

70 The Suspicious Transaction Reporting Office is part of the Singapore Police Force within the Financial Intelligence Unit partly akin to the role performed by AUSTRAC in Australia.[59]

71 The licensed casino operator is required to provide the same report to the CRA "at the time the report is filed" with the Suspicious Transaction Reporting Officer "or immediately thereafter".

72 The Singapore AML/CTF Regulations also impose requirements on casino operators aimed at preventing money laundering in the casinos with specific audit obligations for the AML/CTF prevention program and reporting framework.[60]

73 Importantly, the CRA may take disciplinary action for any breach by the licensee of any of the regulations connecting the AML/CTF obligations directly to the casino operator's retention of its casino licence.[61]

British Columbia

74 Another most interesting development in casino regulatory practice in recent times comes from British Columbia in Canada. The structure of the Regulator in British Columbia is outlined in Appendix 3 to the Report.

75 During the Public Hearings of the Inquiry reference was made to Dr Peter German QC and his work in the field of anti-money laundering regulation. Dr German's work in 2017 and 2018 for the Government of British Columbia included the provision of a report entitled *Dirty Money* following his independent review of money laundering in Lower Mainland Casinos in British Columbia.[62] Dr German's recommendations included the following:[63]

> Service Providers must complete a Source of Funds Declaration for cash deposits or monetary instruments of $10,000 or more. At a minimum, the declaration must outline a customer's identification and provide the source of their funds, including the financial institution and account from which the cash or instrument was sourced. After two consecutive transactions, cash can only be accepted from the customer once it has been determined that it is not of a suspicious or illegal nature.

76 In 2018 the relevant Regulator in British Columbia imposed a requirement relevantly on casino operators that all cash, bank drafts and certified cheques of $10,000 or more in one or more transactions within a 24 hour period be supported by a Source of Funds Declaration. This also included the provision of a receipt from the same day of the transaction showing the financial institution, branch number and account number.

77 The Declaration must come directly from the patron, who is required to sign a relevant form. The cage staff member is required to certify receipt of the form directly from the patron. If the patron refuses to provide the Declaration and relevant

information, then the transaction must be refused by the cage staff member and the relevant Regulator must be notified.[64]

78 This introduction of the requirement for this Declaration resulted in a dramatic reduction in suspicious transaction reports from $50 million to $2 million in the period March 2018 to July-August 2020. It also resulted in the reduction in large cash transactions in the same period from $260 million in a quarter to $31 million. It also resulted in the reduction of large transaction reports from 9,000 to approximately 2,000.

79 The Regulator in British Columbia recognised the agility and flexibility of money launderers in finding other ways to launder money in the face of the introduction and implementation of the Declaration of the Source of Funds. However the introduction of this Declaration has at least interrupted the money laundering operations for a period.

Conclusion

80 These considerations of the different practices and approaches to casino regulation that are presently deployed in other jurisdictions have assisted in the formulation of the proposals that are discussed in the following Chapter.

Chapter 5.2

The Independent Regulator

1 There are two areas in respect of which it is necessary to report to the Authority pursuant to paragraph 17 of the Amended Terms of Reference. The first is the efficacy of the objects of the *Casino Control Act*. The second is the identification of recommendations to enhance the Authority's future capability to respond to an environment of growing complexity of both extant and emerging risks for gaming and casinos.

Extant and emerging risks

2 Many of the extant risks for casino operators have been identified during the Public Hearings relating to the investigations of matters in paragraphs 15 and 16 of the Amended Terms of Reference.

3 At the risk of repetition it is important to remember that the casino industry is not the same as any other industry. A company that holds a casino licence in New South Wales is in a special category. The directors and officers of a company that holds a casino licence in New South Wales have the obligation to ensure that the management and operation of the casino are free from criminal influence and exploitation.

4 In what may be seen as a silver lining to the shocking cloud of the COVID-19 pandemic, the New South Wales Crime Commission reported in October 2020 that: (i) several established money laundering networks ceased activities during the early part of 2020; (ii) the cessation of trading by casino operators and the termination of Junket tours had curtailed the opportunity of laundering illegal profits through casinos; and (iii) the opportunity for money launderers to engage in cuckoo smurfing, the depositing of money using unwitting third-party individuals and their bank account or identification details, has dramatically reduced as incoming international transfers declined.[1]

5 The Crime Commission reported that this has resulted in the stockpiling of large amounts of cash with examples of two caches of a combined amount of approximately $7 million being seized. It predicted that this activity is likely to continue until normal business transactions resume. The Crime Commission warned of the emerging

problem of the difficulty of distinguishing illegal funds or proceeds of crime from legitimate investment in Australia.

6 It is clear from the consultations with law enforcement agencies that the development of sophisticated artificial intelligence and its possible use in national and international transactions will also present challenges to casino regulators. These developments with reliance upon complex algorithms have seen the burgeoning of advisory and investigative firms who specialise in cyberspace providing cybersecurity services. The casino regulator must have the capacity to analyse, understand and respond to these developments in circumstances where the rapidity of the changes in their usage may leave even the most experienced well behind the perpetrators.

7 Thirty years of recommendations and reports to the Authority about the advantages of inter-agency information sharing have not broken down the barriers or jettisoned the ever-present attribute of turf protection. Some of the secrecy provisions of the legislation in particular in the AML/CTF landscape have entrenched this attribute even more deeply. As discussed during the Public Hearings, there is no optimism that information sharing between government agencies will improve in the near future. An exquisite example of the problem was exposed in the recent New South Wales *Inquiry into the Ruby Princess* where Commonwealth agencies propounded the view that they were not amenable to compulsion by a State Inquiry and did not assist. This Inquiry was confronted with the same argument from AUSTRAC advising on more than one occasion that it was not amenable to any compulsory process. However it assisted the Inquiry with the provision of some material but resisted the production of the un-redacted 2017 Junket Report, which the Inquiry was only able to obtain after the Senate required production to it in late 2020.

8 There is a difference between the gratefully received assistance to an Inquiry with Royal Commission powers and information sharing in the workplace of each of the Commonwealth and State agencies on a daily basis. It is understood that some Memoranda of Understandings are deployed to assist in the process but it is obvious that the process lacks speed and efficacy. The purpose of the recitation of these facts is to highlight the reality which it is feared will not change easily or rapidly. Accordingly it is very important that a casino regulator has the resources and the power to garner its own intelligence and formulate its own relationships without dependency upon some government department or agency.

9 Other risks, some extant and some emerging, were highlighted in the AUSTRAC Report published on 11 December 2020 referred to in Chapter 4.5. That Report recorded that "some junket tour operations have been exploited, and in some instances infiltrated, by serious and transnational criminal entities, including by individuals reported to be engaged in activities that could possibly be regarded as foreign interference."[2] The Report also noted that a number of Junket operators and

Junket representatives had been identified as having criminal or foreign political associations.[3]

10 The AUSTRAC Report identified the misuse of offsetting as a particular money laundering threat. Offsetting enables the movement of value internationally without use of the formal banking system and can be used to avoid AML/CTF reporting requirements.[4] It also reported that there was a significant level of transactions on Junket accounts by persons identified by the casino as not related to the Junket and that Junket accounts had been used for purposes other than Junket activity.[5]

11 There are other emerging risks including the greater mobility of the organised criminal and money launderer across different jurisdictions in which there are different regulatory structures and settings. These individuals can move through these different jurisdictions adjusting their *modus operandi* to suit the different structures and settings and secreting themselves into the casino operations electronically, with traceability available only to the most vigilant and sophisticated casino operator and Regulator.

12 As can be seen from the regulatory structures outlined in the Appendices to this Report there is no unified model for casino regulation across the nation. Without wishing to invite debate or spark a constitutional crisis, it is appropriate to observe that whilst ever these differences exist with the consequence of fragmentation, the organised criminals and the money launderers have the advantage. It would be appropriate for the Authority to consult with its counterparts in each of the States and Territories to advocate either with them or alone if necessary, for a unified model of casino regulation throughout the nation to afford greater protection for casino operators to the disadvantage of the organised criminals and money launderers.

13 It is obvious that while there is a lack of capacity to identify the real source of large volumes of cash or track that cash through casinos, there is the ever present concern that the money comes from illegitimate sources and is being laundered. Professor Rose's sad indictment of the casino industry in this regard may be justified until there is the community or political will to change it. The recent introduction of the Declaration of Source of Funds in British Columbia is demonstrative of such political will.

14 There is also a recent development in this regard in New South Wales with a proposal for the introduction of a "gambling card" that would enable the tracking of cash through a casino.[6] The proposal has been the subject of some public debate and is not free from controversy. However, it appears that the very significant utility of the card to assist the problem gambler could not be in issue. It is also obvious that it would be a powerful mechanism to assist in combatting money-laundering. As discussed in the Public Hearings, this is a matter for Government.[7] However should it be introduced there will be an impact on the Authority which will require the resources and powers

of the kind referred to later in this Chapter to respond to that different operational landscape.

15 Obviously casinos are free to introduce their own mechanisms of a similar kind for their own patrons. This is a matter that would be appropriate for discussion between the Authority and the casinos to assist with the achievement of the statutory object of ensuring that the casino operations are free from criminal influence and exploitation.

Context

16 The very serious problems that have been exposed in Crown's operations relate to its operations in other jurisdictions. As discussed elsewhere, Crown is not operating a casino in New South Wales albeit that the Licensee currently holds a Licence to do so. The only operational casino in New South Wales is The Star, which of course the Inquiry was not required to investigate under the Amended Terms of Reference. However, The Star and its predecessor have been operating in this jurisdiction for approximately 30 years whilst the changes to the regulatory settings and framework referred to in the previous Chapter have been implemented.

17 The Inquiry has had the benefit of a detailed written submission from The Star. As it is the only casino operator in New South Wales that has been subjected to regulation by the Authority during the relevant period its perspective is very helpful.

18 On 9 December 2020 Crown provided a short written submission on the topic of the efficacy of the objects of the *Casino Control Act* and recommendations to enhance the Authority's ability to respond to extant and emerging risks. As to the first matter, Crown submitted that the primary objects of the *Casino Control Act* are effective and consistent with domestic and international best practice and adopting a more prescriptive approach would be unlikely to serve any useful purpose. As to the second matter, Crown contended that the *Casino Control Act* provides the Authority with sufficient statutory powers and there is no obvious lacunae of those powers, if supplemented, that would enhance the Authority's ability to respond to extant and emerging risks for gaming and casinos.

19 Crown also addressed the topics of Junkets, VIP players and anti-money laundering to which reference will be made later in this Chapter.

Objects of the *Casino Control Act*

20 The first area upon which the Authority seeks a report in relation to the Regulatory Framework and Settings of casino regulation is the efficacy of the primary objects of the *Casino Control Act* in the environment of growing complexity and the emerging and extant risks referred to earlier.

21 Crown's submission that the objects of the *Casino Control Act* are effective and consistent with domestic and international best practice has force. However the

evidence has disclosed a significant need for greater focus by casino operators and casino regulators on a particular type of criminal exploitation, namely, money laundering. The sophistication and corporatisation of money launderers combined with the evidence of the years of money laundering through the Southbank and Riverbank accounts and the more modern methods available to money launderers require a specific focus and recognition in the legislative structure governing the operation of casinos.

22 The introduction of obligations in respect of prevention of money laundering under the New South Wales legislation governing casinos concurrently with obligations under the Commonwealth legislation will not only assist casino operators to build a better resistance to such activity but it should enhance the capacity to better regulate the casino industry.

23 **It is recommended** that section 4A of the *Casino Control Act* be amended to include an additional object of: Ensuring that all licenced casinos prevent any money laundering activities within their casino operations.

Enhancing regulatory capability

24 The second relevant area for report in accordance with paragraph 17 of the Amended Terms of Reference is the identification of recommendations to enhance the Authority's regulatory capability in the changing operating environment.

25 The first matter to be addressed in relation to the enhancement of regulatory capability is the present structure of the Authority and the proposals for reform to ensure that it is a leader in this field.

26 The domestic and international practice referred to in paragraph 17(d) of the Amended Terms of Reference has been discussed in Chapter 5.1 and Appendices 1 to 3 of the Report. This includes the relevant history to the establishment of the Authority in New South Wales and the comparison of the nature of the powers when the Casino Control Authority was first established in 1992 with the powers and structure of the Authority in 2021.

27 The structure and powers of a Regulator are pivotal to its effectiveness. Clearly if a Regulator may be seen to be amenable to manipulation by government or political intrusion, its reputation will be compromised. It is imperative to ensure not only that it is independent but also that it is perceived to be independent to enable the Regulator to garner the respect necessary for its effectiveness. These are essential protections that must be in place for a Regulator that is on the one hand required to achieve the object of ensuring casino operations are free from criminal exploitation whilst on the other hand regulating entities that bring enormous revenue into government coffers each year. Although the pandemic has had a material impact on

this last mentioned aspect of casino operations, this analysis is provided on the premise that there can be some optimism of a return to similar prosperity in the not-too-distant future.

28 This discussion is necessary in light of the diminution of these protections over the years since 1992 and the obvious existing and emerging risks with which the Authority will have to deal. It is necessary notwithstanding that the present members of the Board of the Authority are clearly of the highest calibre and integrity. Without wishing to intrude inappropriately it is observed that any restructure that finds favour with the Government would no doubt benefit from the retention of the extraordinary wealth of experience and capacity of these individuals.

29 The history of the Authority outlined in Appendix 1 records that it was in 2012 that the word "Independent" was introduced into its title. This was not seen to be necessary prior to this time because the Authority was a standalone obviously independent entity.

30 The first steps that led to the recognition of the need for the use of such nomenclature of independence occurred in 2007 when there was an association established between the Authority and a NSW Government department with departmental staff performing functions of the Authority under a Memorandum of Understanding. It was from this time that the dilution of at least the perception of independence commenced.

31 The Authority is currently constituted by part-time members of a Board who are expected to provide services across a spectrum of operations in gaming and liquor licensing in pubs and clubs as well as casino regulation, the workload of which clearly requires a full-time focus. Those part-time members of the Board are dependent upon government agency employees who are not employed by the Authority directly and obviously have loyalties and responsibilities to others. Those employees are in the main sprinkled throughout the relevant Department providing regulatory assistance to other regulators and agencies whilst concurrently serving the needs of the Authority.

32 The Star submission refers understandably to the confusion that has been caused in the bifurcation of responsibilities and duties between the Board of the Authority and the departmental officers and structure within which many of the Authority's functions are performed. Such confusion is of course intolerable in a Regulator. The real prospect of the perception of a compromised independence exists because of the departmental hold on the Authority. This is starkly evidenced by the language deployed in one of Crown's witness statements provided to the Inquiry late in 2020. Mr Newson who was the Deputy Secretary of the relevant Department between September 2016 and July 2019 gave evidence of the Department's "responsibility" for the Authority.

33 It is probable that this bifurcated structure has consistently been endorsed as an efficient and cost-effective process for Government. However it does not enable an efficient, thorough and appropriate regulatory response to the various serious risks that have been identified during this Inquiry. Although there are other regulators within the Australian jurisdiction that have a similar bifurcated structure, it lags very far behind best practice for the sophisticated and effective regulatory regime necessary to meet these threats. If one takes into account just the recent reports of the NSW Crime Commission and AUSTRAC, these threats are present and real. If one overlays these with the findings from this Inquiry it is imperative that the Authority's structure must change urgently.

34 **It is recommended** that the Independent Casino Commission (ICC) be established by separate legislation as an independent, dedicated, stand-alone, specialist casino regulator with the necessary framework to meet the extant and emerging risks for gaming and casinos.

35 **It is recommended** that the ICC have the powers of a standing Royal Commission comprised of Members who are suitably qualified to meet the complexities of casino regulation in the modern environment.

36 The nomenclature "ICC" is used with no disrespect to either the Authority or the Government on the understanding that this is obviously a matter for Government. However it is proposed in the light of the evidence before the Inquiry to convey the essential attributes for a casino regulator in the present environment: impenetrable (Independent), specialist (Casino) and powerful (Commission).

Impenetrable

37 The ICC must be independent from Government and all political influence and the perception thereof in exercising its powers and in its structure and funding. It must be able to make decisions that are always guided by the objects of the *Casino Control Act* which might include decisions that are politically unpopular but essential for the protection of casinos from criminal infiltration.

38 It is suggested that some Members of the ICC serve on a full-time basis. This would ensure that those Members are in constant and full-time engagement with the business of casino regulation, making it less likely for any key issues, trends or developments to be overlooked. The ICC Members (both part-time and full-time) should be adequately remunerated reflecting the seriousness of the work the ICC performs in regulating very well-resourced casinos that are at risk of exploitation by

even better resourced money launderers. One Member of the ICC should be a suitably qualified person to authorise any compulsory processes of the ICC and the endorsement of the use of its intrusive powers.

39 It is suggested that there should be restrictions on former officers of any casino licensee being appointed to the ICC so as to avoid issues, actual or perceived, with regulatory capture. It is also suggested that term limits on ICC appointments be considered, again to ensure appropriate refreshment and avoidance of regulatory capture risks.

40 The ICC must also employ its own staff, and have the ability to terminate their employment when it is proper and necessary to do so.

41 **It is recommended** that the *Casino Control Act* be amended to make clear that any decision about a casino licence and any disciplinary action that may be taken against a licensee is solely that of the ICC, and that any term of a regulatory agreement that has been entered into by the Government or the Authority is of no effect to the extent that it purports to fetter any power of the ICC arising under the *Casino Control Act*.

42 A pivotal mechanism to secure the ICC's independence from Government is its proper funding and resources.

43 International best practice suggests that the taxpayer should not be burdened inappropriately for the regulation of casinos and that it is the casinos that should fund casino regulation. A mechanism already exists for this to occur in New South Wales in the casino supervisory levy. It is presently difficult to ascertain how the casino supervisory levy is allocated or used.[8] This may be due to the Authority not currently employing its own staff and relying upon staff from the Department to discharge its functions, which makes it difficult to determine the real cost of casino regulation in New South Wales.

44 The ICC should have the power to fix the supervisory levy and if thought necessary to do so in consultation with the Auditor-General. Annual audit of the accounts and expenditure of the ICC by the Auditor General would be an appropriate safeguard and provide transparency of its financial operations.

45 **It is recommended** that the *Casino Control Act* be amended to ensure that the casino supervisory levy is paid to the ICC or recognised in the budget of the ICC.

Specialist

46 The ICC must be a specialist casino regulator. It should not be distracted by obligations pertaining to matters outside the regulated casinos in New South Wales

and should focus only on the objects of the *Casino Control Act*. Having regard to what has been observed in respect of the inefficiencies in the present bifurcated structure it would be counter-productive to burden the ICC with the general regulation of clubs, pubs, non-casino gaming and liquor licensing problems.

47 The present structure of the Singapore regulator may be regarded as a suitable precedent to assist in the preparation of the relevant legislation and the proposal for the structure of the ICC. The Massachusetts model is also proffered as a helpful precedent. Both structures are referred to in Appendix 3.

48 The CRA's core responsibility in Singapore is the administration of the Singapore Casino Control Act and other associated Casino Control Regulations. While it is acknowledged that the Singapore Government has announced plans for a broader gaming regulator, it is suggested that the circumstances of the real and present risks that have been identified in this jurisdiction necessitate that the casino regulator in New South Wales, at least for the foreseeable future, be solely focused on casino regulation.

49 It is suggested that the ICC Members should have expertise and experience in at least: (i) gaming; (ii) law and law enforcement; (iii) AML/CTF law and practice; (iv) auditing and finance; (v) information technology; and (vi) cybersecurity and digital currencies.

50 It is suggested that the ICC staff should be specialists in casino regulation mirroring the areas above with suggested competencies in: (i) licensing; (ii) AML/CTF; (iii) compliance and audit; (iv) casino surveillance and investigation; and (v) policy and reform. It is suggested that the ICC staff should include investigators and analysts, with full-time physical and/or electronic access to each regulated casino.

Powerful

51 The ICC must have the powers to properly regulate casinos in New South Wales and, importantly, to uncover relevant information about all aspects of the casinos and licensees it regulates. This is why it is critical it have the status as a standing commission of inquiry and have the powers under the *Royal Commissions Act* 1923 (NSW).

52 Appropriate safeguards will need to be implemented around the ICC's Royal Commission status. The breadth of such powers would be curtailed by the objects of the *Casino Control Act* and the statutory recognition that the power may only be exercised within the ICC's proper jurisdiction.

53 It is suggested that there should be a provision that any Summons for the production of information or documents, or for the attendance for any examination, must be signed by an "effective officer" with specialist legal qualifications. This will need to

be an ICC Member who satisfies that definition, and therefore capable of authorising a Summons issued by the ICC under its standing Royal Commission powers.

54 It is also suggested that the Investigations and Enforcement Bureau within the Massachusetts Gaming Commission may be a suitable structure on which to model a powerful Investigations Division within the ICC.

Additional attributes

55 The ICC must be accountable in respect of its operations and decisions.

56 It may be considered appropriate for a Joint Committee within the NSW Parliament to monitor and review the ICC's exercise of its powers, as is the case with the Independent Commission Against Corruption.[9]

57 It will be important that the ICC publishes its own separate Annual Report. The recent trend of including the Authority's Annual Report as an annexure to a larger Departmental Annual Report is unsatisfactory for all the reasons outlined above.[10] The Annual Report of the CRA in Singapore may present as a useful precedent.

58 Although the following suggestions may present as more matters of *minutiae,* they are proffered as a result of the investigations and consultations that have occurred during the Inquiry.

59 It is suggested that the ICC should have its own website from which a visitor may glean information about its structure, key personnel, Annual Reports, funding, disciplinary decisions, and any other relevant information to understand the casino regulator's business. Thought may be given to the establishment of an educational branch within the ICC the proceedings of which could be published on the website.

60 Consideration might also be given to publishing and regularly updating "Business Plan" and "Strategy" documents, to address issues that are regarded as pressing and important for casino regulation in New South Wales and the method by which certain issues will be handled and regulated. A similar practice exists in the UK where the Gambling Commission publishes a "Business Plan" annually and a "Strategy" document once every three years. This practice ensures that the Regulator is actively considering the risks and issues facing the casino industry, and causes thought to be given as to how those risks and issues will be dealt with by the Regulator.

61 It is suggested that the ICC's practice and governance should also be the subject of internal review. In the UK, there is an office of the "Senior Independent Director", whose role is to review the governance of the Gambling Commission under the UK Corporate Governance Code. Consideration might be given to the establishment of a similar office to ensure the highest standards of governance are maintained within the ICC.

62 Obviously many other aspects of the detail of the structure that may be appropriate for the regulatory environment will need discussion and thought in an appropriate process if so endorsed by Government.

Other Matters

63 There are other matters that have been identified during the Inquiry that form part of the assessment referred to in paragraph 17(b) of the Amended Terms of Reference. They arise from the identification of possible gaps in the regulatory capability to deal with the extant and emerging threats in casino regulation.

Anti-money laundering

64 The very serious problems of the infiltration of Crown's subsidiaries' accounts by organised criminals should send a shiver down the spine not only of any casino regulator but also the community generally. The fact that it went on for so many years in the operations of an otherwise commercially respected publicly listed company whilst it was engaging with the peak body responsible for AML/CTF enforcement demonstrates beyond any doubt the need for the establishment of a well-resourced and very powerful casino regulator in New South Wales.

65 It is apparent that during the whole of the period while this money laundering activity was occurring, Crown was from time to time notifying AUSTRAC of some suspicious transactions. As discussed earlier in this Report the Inquiry has not had the benefit of the detail of those reports because AUSTRAC would not provide an exemption to Crown to provide them to the Inquiry. This refusal seems to have been motivated by the prohibitions in what is known as the "tipping off" offence provisions in section 123 of the AML/CTF Act. How anyone could be tipped off six years later, if a report of some group of transactions in the Riverbank account is notified to this Inquiry may present as quite far-fetched. It is all the more reason for the lack of optimism that effective and co-operative information sharing is imminent. In any event the pragmatic approach was adopted and it was presumed that Crown complied with all of its obligations to report to AUSTRAC over the period.

66 Notwithstanding that presumption the accounts were infiltrated and used for years by organised criminals. It appears that the casino regulator in Victoria would not have known of any of those communications with AUSTRAC.

67 This is a highly unsatisfactory situation. The suspicious money laundering activity that is occurring in the casino is not known to the casino Regulator but is known to the casino and AUSTRAC. AUSTRAC does not inform the casino Regulator and prohibits the casino operator from telling anyone. The casino regulator is thus kept in the dark. Any suggestion that the AUSTRAC database might be accessed from time to time pursuant to some Memorandum of Understanding is not to the point. The casino Regulator should be made aware immediately of the casino operators'

concerns that the achievement of one of the objects of the *Casino Control Act* may be at risk.

68 The change in structure of the casino regulator alone will not achieve the necessary efficacious casino regulation in this regard.

69 A significant problem identified during the Inquiry has been Crown's practice to test the integrity of aspects of Crown's casino operations against compliance with the AML/CTF Act. Time and again when questions were asked about possible money laundering activity in the Southbank and Riverbank accounts Crown resorted to a high level response that its AML/CTF policy had been judged effective by its retained expert. This high level response was not matched by appropriate and detailed investigation of the underlying operational activity.

70 This approach had very serious consequences for Crown because it prevented the underlying transactions that were causing the problems from being identified and remediated. It has been referred to during the Public Hearings as a failure to look inwards. Even so there has to be confidence that when an inward looking investigation takes place it is focusing appropriately on the purpose of the exercise.

71 Ensuring that a Regulator is impenetrable, specialist and powerful will not achieve efficacious regulation unless mechanisms are in place within the casino operations, the subject of regulation, to properly respond to the statutory objects, and importantly the object of ensuring that the casino is free from criminal exploitation.

72 Crown's mindset in respect of compliance must change. Much more is needed than simply reporting transactions to AUSTRAC. The casino operators in New South Wales have an obligation to the community to ensure that their operations are free from criminal exploitation and money laundering. The one way street of reporting to the Commonwealth AML/CTF regulator will not achieve that. It is imperative that proper reporting of activity relevant to the casino operator's responsibilities to the New South Wales casino Regulator and the community occurs within the operational jurisdiction of the State.

73 A proportionate response to the extant and emerging risks is the implementation of Compliance Audits by independent auditors approved by the ICC at the cost of the casino operator. It will be necessary for the Compliance Auditors to report annually to the ICC certifying compliance with the relevant statutory obligations of the casino operators. However it will also be imperative that Compliance Auditors have capacity to inspect the operations of the casino operator throughout the year for the purpose of reaching the relevant satisfaction of compliance. Should the Compliance Auditor become aware of activity within the casino operations that may put the achievement of the objects of the *Casino Control Act* at risk the notification must be given immediately to the casino operator concurrently with notification to the ICC. This will

provide a higher level of protection for the community against the extant and emerging risks.

74 **It is recommended** that the *Casino Control Act* be amended to make provision for each casino operator to be required to engage an independent and appropriately qualified Compliance Auditor approved by the ICC, to report annually to the ICC on the casino operator's compliance with its obligations under all regulatory statutes both Commonwealth and State in particular the *Casino Control Act*, the Casino Control Regulation and the terms of its licence.

75 **It is recommended** that the *Casino Control Act* be amended to make provision in respect of the Compliance Auditor's obligations in line with the following:

If the Compliance Auditor, in the course of the performance of the compliance auditor's duties, forms the belief that:

(a) activity within the casino operations may put the achievement of any of the objects of the *Casino Control Act* at risk; or

(b) a contravention of the *Casino Control Act* or the regulations or of any other Commonwealth or New South Wales Act regulating the casino operations has occurred or may occur;

the Compliance Auditor must immediately provide written notice of that belief concurrently to the casino operator and to the ICC.

76 There is also a mechanism available in respect of the reporting of suspicious transactions found in the Singapore regulatory structure and legislation. In particular the provisions of concurrency of reporting referred to in Chapter 5.1.

77 **It is recommended** that consideration be given to an amendment to the *Casino Control Act* to include a provision similar to Singapore legislation for the concurrent reporting by the casino operator of suspicious transactions to AUSTRAC and the ICC.

78 Such a proposal may require an amendment to the AML/CTF Act which of course would be the subject of discussions between the NSW Government and the Federal Government. Should this prove to be constitutionally or politically difficult, then the

provisions of the *Casino Control Act* might impose a separate and independent obligation for the casino licensee to inform the casino regulator of any concerns that it may have about the general propriety of its casino patrons within the casino.

79 **It is recommended** that the Authority consider amendment to casino operators' licences to impose an obligation to monitor patron accounts and perform heightened customer due diligence, the breach of which provisions will be regarded as a breach of the Licence and give rise to possible disciplinary action.

80 **It is recommended** that the *Casino Control Act* be amended to impose on casino licensees an obligation that they require a Declaration of Source of Funds for any cash over the amount as determined by the ICC modelled on the reform introduced in British Columbia discussed in Chapter 5.1.

81 The ICC will need appropriate resources and systems to analyse and understand the financial information that will be provided to it by the Compliance Auditors and the casino operators and to take any necessary action. This means that AML/CTF experts and financial analysts will need to be employed within the ICC to assist with its operations including: (i) reviewing transaction reports provided by casino licensees; (ii) reviewing information provided by other agencies; (iii) understanding, auditing and/or approving AML/CTF programs adopted by casinos under licence conditions or otherwise; (iv) ensuring that licensees are complying with obligations under the *Casino Control Act*; and (v) taking any necessary disciplinary action.

Junkets

82 The national and international practices relating to Junket operators have been discussed elsewhere in the Report.

83 Crown submitted that a "new regime" for the regulation of Junkets needs to be implemented and that the Authority should establish a licensing regime similar to that adopted in Nevada and Massachusetts. Crown submitted that such a regime should provide: (i) for appropriate suitability probity assessment by the Authority of Junket operators; (ii) the availability of a publicly accessible register of approved Junket operators; (iii) the approval and licensing of Junket operators by the Authority without any further due diligence requirements on the casino operator; and (iv) a prohibition on casino operators and their related bodies corporate from providing credit to Junket operators, with the rider that credit could be provided to VIP players introduced by approved Junket operators.

84 The Star submitted that if a casino regulator in New South Wales is to play a greater role in the approval of Junkets, such responsibility would have to be supported by adequate resourcing and appropriately skilled regulatory personnel. It emphasised the need for an operating environment where information is shared across levels of government and between regulatory and law enforcement agencies, a matter that was discussed earlier without a great deal of optimism.

85 The evidence in the Inquiry was focused on international Junket operators and it appears that there is little use of this mechanism in the domestic market. However the same problems of a lack of transparency and source of funds arise.

86 The problems with Junket operators' connections to organised crime groups have been discussed earlier in the Report. Over the years, neither the Regulators nor the casino operators have been comfortable in making decisions about approving and/or dealing with Junket operators the subject of the Media Allegations. The manner in which the organised crime groups operate ensures that any connection with Junket operators that might be able to be seen is gossamer thin.

87 The extant and developing threats of the infiltration of organised crime into casinos is such that the Authority and the Government would be justified in prohibiting the operation of Junkets in New South Wales casinos. This is really the only way that the Authority, the Government, the casino operators and the community can be sure that such infiltration does not occur through these mechanisms.

88 **It is recommended** that the *Casino Control Act* be amended to prohibit casino operators in New South Wales from dealing with Junket operators.

89 If this recommendation does not find favour then it is suggested that the model of regulation in Singapore discussed in Chapter 5.1 be considered.

Suitability assessment

90 When considering an application for a casino licence under the *Casino Control Act* the Authority is required to have regard to the statutory indicia of suitability discussed in Chapter 4.2 of the Report. There is presently no express statutory onus on the applicant.

91 Chapter 23K of Massachusetts General Laws provides helpful guidance. Section 13 provides that an applicant for a gaming licence is required to "establish its individual qualifications for licensure to the commission by clear and convincing evidence".

92 **It is recommended** that the *Casino Control Act* be amended to impose on any applicant for a casino licence an express requirement to prove that it is a suitable person by providing to the ICC "clear and convincing evidence" of that suitability. This should apply to all suitability assessments under the *Casino Control Act*, including in the context of retaining a casino licence or in any five yearly review or for approval as a close associate.

Close Associate

93 The evidence in this Inquiry has revealed that the current legislative concept of "close associate" is overly technical and not fit for purpose. The casino Regulator in New South Wales should have an unfettered ability to investigate the suitability of any associate of the Licensee, or applicant for a licence.

94 As is the case with Crown and the Licensee, a licensee may be merely a company incorporated for the purpose of holding the casino licence within a single jurisdiction. As is the case with Crown, there is often a broader company group structure in place, with core operations being directed by the parent or associate company. The casino regulator needs to be able to investigate all companies within the corporate group. The influence exercised by any parent or subsidiary or associated company, or any flaws in the systems of the parent or subsidiary or associated company are relevant to the assessment of the suitability of the licensee.

95 The term "close associate" is defined in section 3(1) of the *Casino Control Act* to mean a close associate within the meaning of the *Gaming and Liquor Administration Act* 2007 (NSW). Section 5 of the Act provides relevantly as follows:

> (1) For the purposes of the gaming and liquor legislation, a person is a "**close associate**" of an applicant for, or the holder of, a gaming or liquor licence if the person-
>
> (a) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in his or her own right or on behalf of any other person), in the business of the applicant or licensee that is or will be carried on under the authority of the licence, and by virtue of that interest or power is or will be able (in the opinion of the Authority) to exercise a significant influence over or with respect to the management or operation of that business, or
>
> (b) holds or will hold any relevant position, whether in his or her own right or on behalf of any other person, in the business of the applicant or licensee that is or will be carried on under the authority of the licence.

(2) In this section:

"**relevant financial interest**", in relation to a business, means:

(a) any share in the capital of the business, or

(b) any entitlement to receive any income derived from the business, or to receive any other financial benefit or financial advantage from the carrying on of the business, whether the entitlement arises at law or in equity or otherwise, or

(c) any entitlement to receive any rent, profit or other income in connection with the use or occupation of premises on which the business of the club is or is to be carried on (such as, for example, an entitlement of the owner of the premises of a registered club to receive rent as lessor of the premises).

"**relevant position**" means:

(a) the position of director, manager or secretary, or

(b) any other position, however designated, if it is an executive position.

"**relevant power**" means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others:

(a) to participate in any directorial, managerial or executive decision, or

(b) to elect or appoint any person to any relevant position.

96 It can be seen that there are three alternative ways, or "tests", by which a person can be considered a "close associate" of a casino licensee for the purpose of the *Casino Control Act*.

97 The tests of "relevant financial interest" and "relevant power" descend into a level of technicality and complexity that is unnecessary. Each may require, as a first step, ascertaining if the person is "entitled" or has an "entitlement". These terms are not defined, which has given rise to a question about whether or not they refer to entitlements capable of enforcement by legal means. They then each require, as a second step, ascertaining if the person is, or will be, able to exercise a "significant influence" over or with respect to the management or operation of the casino licensee's business. The term "significant influence" is not defined and remains a nebulous concept.

98 An entity or individual that a Regulator wishes to investigate may resist the investigation on the basis that the entity or individual does not exercise a particular level of "influence". This of course was the experience in August 2019 with Melco making that very submission.

99 It is necessary to remove this current impediment to efficacious regulation.

100 **It is recommended** that the definition of "close associate" under the *Casino Control Act* be repealed and replaced to mean:

(a) any company within the corporate group of which the licensee or proposed licensee (Licensee) is a member;

(b) any person that holds an interest of 10 per cent or more in the Licensee or in any holding company of the Licensee ("holding company" as defined in the *Corporations Act* 2001 (Cth) so as to capture all intermediate holding companies);

(c) any director or officer (within the meaning of those terms as defined in the Corporations Act) of the Licensee, of any holding company, or of any person that holds an interest of 10 per cent or more in the Licensee or any holding company; and

(d) any individual or company certified by the Authority as being a "close associate".

101 As discussed in Chapter 5.1, applicants in some jurisdictions for approval as casino licensees or close associates of applicants for a casino licence or existing casino licensees, are required to make payment of fees to the Regulator prior to the investigation and determination of their suitability. It is suggested that in the circumstances such a practice should be adopted in New South Wales.

102 **It is recommended** that the *Casino Control Act* be amended to include a provision that the cost of the investigation and determination of the suitability of any close associate of any applicant for a casino licence or any existing casino licensee be paid to the ICC in advance of the investigation and determination in the amount assessed by the ICC. Such amendment should include a provision for repayment of any over-estimate or payment of any shortfall against the estimate made by the ICC before the publication of the ICC's determination.

103 It would also be appropriate to give consideration to the implementation of this mechanism for all applications to the ICC for any regulatory approvals.

Major change

104 Section 35(2) of the Casino Control Act incorporates as conditions of the licence obligations for a casino operator to, among other things:

(c) ensure that a "major change" in the operator's state of affairs which is within the operator's power to prevent does not occur without the prior approval in writing of the Authority; and

(d) notify the Authority in writing of the likelihood of any such major change which is not within the operator's power to prevent occurring as soon as practicable after becoming aware of the likelihood of the change.

105 A "major change" is defined in section 35(1) of the *Casino Control Act* to mean any change in the state of affairs existing in relation to a casino licensee which results in a person becoming a "close associate" of the licensee, as well as any other change prescribed by the Casino Control Regulation, which is dealt with under Schedule 1.

106 A further matter requiring attention is where an individual or an entity acquires an indirect interest in a licensee through, for example, a holding company as was seen in the Melco transaction. It is proposed that a further amendment is necessary to remedy this problem.

107 **It is recommended** that Item 4 of Schedule 1 of the *Casino Control Act* be amended to ensure that any transaction involving the sale or purchase of an interest in an existing licensee or any holding company of a licensee which results in a person holding an interest of 10 per cent or more in a licensee or holding company of the licensee is treated as a "major change" event.

Shareholding Limits

108 The evidence in relation to the influence of CPH and Mr Packer in the operations of Crown has been analysed earlier in the Report. There has also been reference to Crown's application through its subsidiary for approval by the Authority to increase its voting power in Echo above 10 per cent. That was necessary because of the regulatory agreements in place in respect of The Star and its holding company relevant to The Star's Constitution.

109 It is suggested that the proportionate and appropriate response to the evidence in this Inquiry is the introduction of legislative change to ensure that no person is able to acquire, hold or transfer an interest of 10 per cent or more in a Licensee of a casino in New South Wales or a holding company without the prior approval of the Authority consistently with the current approach to the regulation of interests in The Star.

110 **It is recommended** that the *Casino Control Act* be amended to provide that a person may not acquire, hold or transfer an interest of 10 per cent or more in a Licensee of a casino in New South Wales or any holding company of a Licensee without the prior approval of the ICC.

111 **It is recommended** that an amendment be made to section 34 of the *Casino Control Act* to permit the regulator to apply to the Court for an injunction to restrain "any person" in respect of a breach of the above recommended provision or to obtain appropriate orders in connection with an interest acquired, held or transferred in breach of the provision.

112 Transitional provisions would be required in order to provide CPH with a reasonable period of time to obtain approval from the Authority to either sell down some or all of its existing interest in Crown or to obtain fresh prospective approval to retain that interest.

113 Should the above Recommendations be adopted, it would be important to consider whether a general review of the governing legislation relating to the regulation of casinos in New South Wales be conducted. There have been numerous amendments over the last thirty years to a legislative scheme which deals not only with the regulation of casinos but also gaming in other venues and liquor licensing administration.

114 It is suggested that the findings of this Inquiry warrant a wide-ranging review of the legislation to ensure clarity and certainty in relation to the powers that will be given to any new independent specialist casino regulator.

115 **It is recommended** that the "gaming and liquor legislation", as defined in section 4 of the *Gaming and Liquor Administration Act* 2007 (NSW) be reviewed for the purpose of considering amendments to ensure clarity and certainty in relation to the powers to be given to the new independent specialist casino regulator and consequential enactment of amendments to relevant legislation.

116 As referred to earlier in Chapters 4.3.6 and 4.6 the Authority has power in exercising its functions under the "gaming and liquor legislation", which is defined to include the *Casino Control Act* and the *Gaming and Liquor Administration Act* 2007 (NSW) to provide information to other agencies.[11]

117 There may be an argument, notwithstanding section 17(1) of the *Gaming and Liquor Administration Act* 2007 (NSW), that by reason of its absence from section 17(7) of that Act and from the list of prescribed persons in the Regulations, the provision of information to ASIC is not authorised at all or unless the provision of such information is certified under section 17(2) to be in the public interest.

118 It is obvious that the licensed casino operators in New South Wales and their close associates include publicly listed companies, the directors of which are governed in part by ASIC. For abundant clarity it would be appropriate in any legislative review to consider an express provision to include ASIC as one of the relevant agencies to which

the ICC may refer information. It would also be appropriate to consider the inclusion of any other relevant agency not already expressly included.

119 **It is recommended** that in any legislative review and/or consideration of legislative powers for the ICC, it would be appropriate to consider an express provision to include ASIC as one of the relevant agencies to which the ICC may refer information. It would also be appropriate to consider the inclusion of any other relevant agency not already expressly included in the legislation.

Appendices

Appendix 1

History of New South Wales Casino Regulator

1 The regulation of casinos in New South Wales is shared between the Independent Liquor and Gaming Authority (the Authority) and the Department of Customer Service (DCS). This current structure of casino regulation is the product of a history of constant reform and restructuring of government departments. The present bifurcated approach is a stark contrast to the independent specialist regulatory agency that was established in 1992 with its own staff and divisional structure.

1986 - 1992: The first attempt at a regulatory structure in NSW

2 The first attempt at a regulatory framework for casinos in New South Wales was under the *Darling Harbour Casino Act* 1986. No casino ever eventuated under that Act prior to its repeal in 1992 for political reasons.

3 However the structure envisaged was that gaming operations at the casino would be regulated by a Division of the NSW Treasury Department named the Casino Control Division. The Director and staff of that Division were to be members of the public service and were not subject to any special arrangement to exclude them from the direction or influence of government. Whilst the day to day regulation of the proposed casino was to be the responsibility of the Director of the Casino Control Division, the Secretary of the Treasury could also exercise the functions of the Director. Casino inspectors were to be directly appointed by the Minister.

4 The structure had no safeguards or mechanisms to secure independence and left the regulation of the casino entirely within the realm of the public service. The structure was also the first attempt to resolve the issue of whether liquor licensing within the casino should be dealt with by the casino regulator or a separate regulator.

1992 - 2001: The Casino Control Authority and the Director of Casino Surveillance

5 The next proposed regulatory structure took a very different approach. Following intensive review and collaboration, the *Casino Control Act* 1992, established an independent Casino Control Authority and a separate statutory office of the Director of Casino Surveillance.

6 The Casino Control Authority had 5 members, including a full time Chief Executive responsible for managing and controlling the affairs of the Authority. The Act gave the Authority specific functions, which subject to minor amendment, remain in section 140 of the Act.

7 The Casino Control Authority had the power to employ and dismiss its own staff, engage consultants and to fix their wages and other conditions. The staff were subject to the control and direction of the Chief Executive. Within its first year of operation the Authority had engaged 18 staff and 10 consultants.

8 In accordance with the terms of the *Casino Control Act,* all person involved in the administration of the Act were required to be of the highest integrity and accordingly all staff and consultants were required to undergo a rigorous probity review.

9 The Director of Casino Surveillance was a separate statutory officer and not subject to the direction or control of the Casino Control Authority, although the Casino Control Authority was required to report on the efficiency and effectiveness of the Director. The responsibilities of the Director included the appointment and supervision of casino inspectors. The role of the Director and the casino inspectors was to supervise and inspect the operations of the casino and the conduct of gaming within it to ensure that the casino was complying with the Act and any directions from the Casino Control Authority. The Director was also responsible for ordering the exclusion of persons from the casino and the prosecution of any offences under the Act. For administrative purposes both the Director and casino inspectors were attached to the Department of Gaming and Racing.

10 This independent structure was said at the time to be "best practice" based upon the New Jersey model. The bifurcation of the roles between the Casino Control Authority and the Director of Casino Surveillance was consistent with what Sir Laurence Street had said was a model of "people watching people watching people"[1] as a safeguard against failure of the structure, however this bifurcated model did not last. In 2000, Mr McClellan QC, found that the processes in place to enable undesirable patrons to be excluded had not been working adequately as the Director of Casino Surveillance had not exercised his powers in this regard notwithstanding observations by his staff of undesirable activity including loan sharking, money laundering and prostitution. Mr McClellan QC recommended that the functions of the Director of Casino Surveillance of the Inspectorate be integrated into the Casino Control Authority. This recommendation was adopted by amendments made to the Act in 2001.

2001 – 2007: The Casino Control Authority

11 In 2006 the ability of the Authority to directly employ its own staff was abolished and henceforth the staff were drawn from a newly created Division of the government service named the Casino Control Authority Division. The Chief Executive of the Authority was the head of this division and retained the ability to exercise employer functions.

2007 – 2012: The Casino Liquor and Gaming Control Authority and Communities NSW

12 In 2007, a suite of reforms abolished the Casino Control Authority and created a new Casino, Liquor and Gaming Control Authority (CLGCA).[2] This flowed on from a recommendation made by Independent Pricing and Regulatory Tribunal (IPART) in June 1998 that a combined independent gaming and liquor commission be created to address a perceived fragmentation and inconsistency between the regulation of the casino and other segments of the gaming industry.[3] In the Second Reading Speech, The Hon Penelope Sharpe, then the Parliamentary Secretary Assisting the Minister for Energy and the Minister for Mineral Resources, said on behalf of the Government that the reforms were designed to bring previously separate administrative regulatory systems under the one piece of legislation, thereby enhancing efficiency, reducing red tape and costs and ensuring consistency.

13 The powers and functions which had previously been with the Liquor Administration Board and the Liquor Licensing Court were transferred to the new Authority, which retained a part-time Board and a full-time Chief Executive, and whilst it retained some independence, it was now associated with a Department known as Communities NSW within which there was an Office of Liquor, Gaming and Racing. It was from this office that the staff performing the functions of the Authority were drawn under a Memorandum of Understanding between the Authority and Communities NSW. On 4 April 2011, the Office of Liquor Gaming and Racing was transferred from Communities NSW to the newly created Department of Trade and Investment, Regional Infrastructure and Services.[4]

2012 – 2014: Independent Liquor and Gaming Authority and NSW Trade & Investment

14 From 2012, the Casino, Liquor and Gaming Control Authority was renamed the Independent Liquor and Gaming Authority but by this time issues had arisen around who controlled the staff with which the Authority was being provided by the Office of Liquor Gaming and Racing and these staff reported to the Executive Director of the Officer of Liquor Gaming and Racing rather than to the Authority itself. In an attempt to resolve this issue a Memorandum of Understanding was entered into in February 2013 in an attempt to assuage the Authority's concern that it should be in a position to

exercise management control over the resources made available to it to assist the discharge of its statutory responsibilities.

2014: Independent Liquor and Gaming Authority and Staff Agency

15 On 24 February 2014 the Authority Staff Agency was established by way of an Administrative Order under the *Government Sector Employment Act* 2013 (NSW). The Staff Agency assumed responsibility for the employees employed by NSW Trade & Investment. The Staff Agency's sole objective was to provide personnel services to the Authority. The Staff Agency was a reporting entity but controlled by the Authority.[5]

16 On 1 July 2014 the Government transferred the Authority from within the purview of NSW Trade & Investment to the Department of Justice. The Authority's then Chairman welcomed that decision, believing that the Authority was a "regulatory body, not an industry promotion body" and therefore was a "better fit" within the "Justice Cluster, where regulation by judicial and quasi-judicial bodies is a core part of the work".[6]

2015 - 2019: Independent Liquor and Gaming Authority and Liquor & Gaming NSW

17 On 30 October 2015 the Authority's Staff Agency was abolished and all staff were reassigned to "Liquor & Gaming NSW" (L&GNSW) within the Department of Justice. L&GNSW commenced operation on 1 February 2016 as the successor to the OLGR. The Authority's Board was retained as an independent statutory decision maker. However, deprived of any employees and staff of its own, the Authority's administrative roles that were previously performed by its Staff Agency were transferred to the staff of L&GNSW, in what was described as a reform to create "a new, fit-for-purpose regulator with improved governance, transparency and processes".[7] The work of the Authority was "refocused" upon "high-risk licence applications" covering new bottle shops or nightclubs, and low-risk matters were delegated to L&GNSW.

18 L&GNSW was located within the Department of Justice under a Deputy Secretary for Liquor, Gaming and Emergency Management. L&GNSW had various "units" or "streams" beneath it, including Licensing, Compliance, Stakeholder Engagement, Policy and Legislation, Office of Racing, Policy Implementation and Improvement, Integrity and Risk, and Organisational Governance.[8]

19 An important reform was the abolition of the role of the Authority's Chief Executive, which up until 30 October 2015 was a full-time position. That reform had the effect of leaving the Authority's Board, which was still part-time, dependent on the executive staff of L&GNSW in the administration of all key aspects of liquor and gaming legislation.

20 The financial year ending 30 June 2015 was the last year in which the Authority published its own Annual Report.[9] ILGA's Annual Report has since been included as an Appendix to the Annual Report of the relevant Department.[10]

21 As part of the machinery of government changes in 2015, inspectors were removed from the single casino and ceased being specialist inspectors.[11]

22 On 1 April 2017 the Authority and L&GNSW were transferred to the Industry Cluster under the Administrative Arrangements (Administrative Changes – Public Service Agencies) Order 2017, with L&GNSW becoming part of the Department of Industry.[12]

23 From 5 July 2018 the relevant L&GNSW departmental officers assisting the Authority included the Deputy Secretary, the Executive Directors for Regulatory Operations and Regulatory Policy & Strategy, and the Directors for the Office of Racing and Office of Responsible Gambling.[13] A Reviews and Secretariat Unit also assisted the Authority in its communications and liaisons with L&GNSW and stakeholders.

24 In 2018, consequent upon the enactment of the *Liquor Amendment (Reviews) Act* 2017 (NSW), revenue sources which to that point would accrue directly to ILGA were reallocated to the Department.[14] ILGA's budget was thereafter subject to the purview of the Department.

2019 - Present: Independent Liquor and Gaming Authority and Better Regulation Division

25 On 1 July 2019 further machinery of government changes led to the creation of the DCS, which replaced the Department of Finance, Services and Innovation.[15] As part of those changes, L&GNSW and the Authority were transferred from the Industry Cluster to the Customer Service Cluster, with the previous staff of L&GNSW being transferred to the DCS.

The current structure and powers of the Authority

26 The current regulation of casinos in New South Wales is achieved through a bifurcated model whereby the Authority and the Better Regulation Division (BRD) of the DCS share in the role of regulating the two current casino licensees.

27 The Authority is constituted by a part-time board of 8 members[16] that meets monthly.[17] It is principally responsible for the regulation of liquor and gaming, and more relevantly casinos in New South Wales. However the BRD provides the staff and administrative support to enable the Authority to discharge its functions.

28 Similar to its predecessor bodies, the Authority's objects remain to maintain and administer systems for the licensing, supervision and control of casinos for the purpose of:[18]

(a) ensuring that the management and operation of the casino remains free from criminal influence or exploitation;

(b) ensuring that gaming in the casino is conducted honestly; and

(c) controlling the potential of a casino to cause harm to the public interest, and to individuals and families.

29 The Authority has the functions necessary to enable it to achieve its purpose under the *Casino Control Act*[19] which include:[20]

(a) inviting expressions of interest, at the direction of the Minister, for the establishment and operation of casinos;

(b) considering and determining applications for other licences under the Act;

(c) keeping under constant review all matters connected with casinos and the activities of casino operators and their associates;

(d) advising the Minister on matters relating to the administration of the Act;

(e) approving the games to be played in a casino and the rules under which such games are played;

(f) approving gaming equipment for use in a casino; and

(g) approving the operating times of a casino.

30 The Authority has the power to grant or decline a casino licence,[21] and impose any licensing conditions it thinks fit.[22] It also performs reviews of casino licence holders to assess any holder's ongoing suitability to retain the licence.[23] It may give a direction to a casino operator relating to the conduct, supervision or control of the casino.[24]

31 With the approval of the Minister, the Authority has the power to conduct negotiations and enter into agreements in connection with the establishment and operation of a casino.[25] In exercising its functions, it has the power to hold inquiries in either public or private session.[26]

32 Despite the Authority's powers with respect to casino operations, the GALA and the *Casino Control Act* provide for express ministerial oversight. In particular, the Minister may, after consulting with the Authority, give directions as to how it may exercise any of its functions under the *Casino Control Act*.[27] Such directions may only be given if the Minister is of the opinion that the direction is necessary to protect the

integrity or apparent integrity of casino gaming or is otherwise in the public interest.[28] Further, such directions cannot relate to the determination of any casino licence application or any of the Authority's functions pertaining to disciplinary action against a casino operator or licensee.[29]

33 The Minister also has the power to provide further directions to the Authority regarding the location, size, style, development, or any other prescribed matter concerning the establishment of a casino,[30] which the Authority is bound to follow.[31]

34 The Minister may also give directions to the Authority in relation to the granting of a restricted gaming licence.[32] This includes directions with respect to terms and conditions of the licence and the boundaries of the facility. However, this power does not extend to the Authority's exercise of its functions in relation to the assessment of any applicant's suitability for a restricted gaming licence.[33]

35 The Authority is permitted to arrange for the use of the services of any staff or facilities of a public service agency.[34] It is also permitted to delegate most of its functions[35] to public service employees,[36] and in fact, has delegated most of its functions to officers of the BRD.[37]

The current structure of the BRD

36 From 1 July 2019 the DCS has been responsible for the administration of the *Casino Control Act*.[38]

37 On 15 April 2020 the Chairperson of the Authority executed a Delegations Manual pursuant to which particular statutory functions under the *Casino Control Act* and *Casino Control Regulations* were delegated to certain officers within the BRD.[39] Those officers also receive delegations from other Government entities within the BRD.[40]

38 The DCS sits within the Customer Service Cluster,[41] which consists of the following associated agencies:[42]

(a) Office of the NSW Building Commissioner;

(b) State Insurance Regulatory Authority;

(c) Workers Compensation Commission;

(d) Workers Compensation Independent Review Office;

(e) The Authority;

(f) Independent Pricing and Regulatory Tribunal;

(g) Information and Privacy Commission; and

(h) Greyhound Welfare & Integrity Commission.

39 There are four Deputy Secretaries within the DCS:[43]

(a) Deputy Secretary of Digital NSW;

(b) Deputy Secretary of Customer, Delivery and Transformation;

(c) Deputy Secretary of Revenue NSW; and

(d) Deputy Secretary of the BRD.

40 The structure of the DCS also includes a Chief Executive Officer for Service NSW and a Chief Operating Officer for Corporate Services.[44] The relevant Minister responsible for the administration of legislation governing casino regulation is currently the Honourable Victor Dominello MP, Minister for Customer Service.[45]

41 The BRD consists of numerous entities and offices including SafeWork and Fair Trading. It is apparent that the Government's rationale for grouping so many different regulatory bodies within the BRD was to "create some efficiencies and increasing effectiveness and quality".[46] The apparent aim is that the quality of regulation may improve because the individuals responsible for the regulation gain insights from different industries and sectors, and therefore become better at their roles and may achieve expertise in particular functions.[47] However, there is a danger that the relevant employees' specialist knowledge and expertise of any one area may be compromised.[48]

42 A number of people in different areas of the BRD report to the Deputy Secretary. This includes 5 Executive Directors:[49]

(a) Executive Director for Policy and Strategy;

(b) Executive Director for Community Engagement;

(c) Executive Director for Licensing & Funds;

(d) Executive Director for Compliance & Dispute Resolution; and

(e) Executive Director for Investigations & Enforcement.

43 These 5 Executive Directors are "specialists in a regulatory function as opposed to specialists in a particular piece of legislation",[50] and are dependent on other individuals with greater industry or sector specialisation to assist them.[51] Those Executive Directors may therefore be better at one particular regulatory function, for example, licensing across various sectors, but would not be experts in any one sector. The regulatory process can be organised either by way of "function" or by way of "particular industry".[52] The approach currently adopted in NSW is the "functional"

approach, which may lead to an enhancement in regulatory expertise rather than industry expertise.

44 The abolition of the position of the Chief Executive Officer of the Authority was part of the machinery of government changes that took place in 2015. The functions once performed by the Chief Executive Officer have "now been made a bit more diffuse throughout the division as to who does what".[53]

45 The functions of the BRD are divided into "streams" below each Executive Director within the division, who is assisted by various Directors and Managers.

46 The Policy & Strategy stream includes a Director for Liquor & Gaming Policy & Legislation, who is "responsible for all the legislation that relates to liquor and gaming".[54] That Director and the supporting Managers are responsible for drafting legislation and engaging in stakeholder consultation in respect of any relevant legislative changes.[55] That stream includes a specific Manager for Casinos who is solely focused on casino policy and legislation.[56]

47 In the Community Engagement stream, there is no officer solely dedicated to liquor and gaming,[57] and any stakeholder engagement would be performed "at a higher level".[58]

48 The Licensing and Funds stream includes a Director of Liquor & Gaming,[59] who investigates and determines licences for employees of casinos.[60]

49 The Compliance & Dispute Resolution stream includes a Director role for Liquor & Gaming.[61] There is also a Manager of Compliance, Casino, Gaming & Wagering. This role would have a "team of inspectors" who would attend the casino but also attend other clubs and gaming venues.[62]

50 The Manager of Compliance, Assurance & Integrity, who is responsible for all audit, assurance and probity work connected with the casino, would perform that work "generically" for casinos, clubs and other gaming venues,[63] including oversight of the operation of up to 94,000 gaming machines in New South Wales.[64]

51 As part of the machinery of government changes in 2015, inspectors were removed from the single casino and ceased being specialist inspectors.[65] These inspectors might now be more generalist, although some might still only be deployed to the casino. There are currently around 55 inspectors.[66]

52 The Investigations and Enforcement stream does not include any Director role dedicated to Liquor & Gaming.[67] A specific Manager role for Regulatory Intervention may have carriage of investigations into liquor and gaming matters.[68]

53 The BRD has just over 1,700 staff.[69] The size of the BRD is a reflection on the scope of the industries it regulates. The staff of the BRD is spread across the Sydney CBD office

and the Parramatta office,[70] with 500 to 600 staff located at Parramatta. The Sydney CBD office has about 50 staff. Gosford, Wollongong and Newcastle also have substantial offices. There are about 25 other regional offices. Liquor & Gaming staff are primarily based at the Parramatta office.

54 Changes were being made within the BRD to cater for the entry of the new Barangaroo casino operator into the New South Wales market.[71] One particular impetus for change was the need to make licence decisions in respect of staff members of the new operator. In that regard, additional employees had been assigned to the Licensing & Funds stream to meet the increase in employee licence applications.

55 Staff are being redeployed to areas such as the "licensing" stream. There is also a recruitment process to appoint more inspectors. However, the COVID-19 environment may have further complicated the process given that the pandemic had caused some licensees to cease operating due to restrictions.[72]

Appendix 2

Casino Regulators - Other Australian Jurisdictions

1 The licensed casino operators in Australia are:

(a) The Star Entertainment Group Limited, which operates The Star Sydney in New South Wales and The Star Gold Coast and Treasury Brisbane in Queensland;

(b) SkyCity Entertainment Group Limited, which operates SkyCity Adelaide Casino in Adelaide, South Australia;

(c) Delaware North Companies Australia Pty Ltd, which operates Mindil Beach Casino Resort in the Northern Territory;

(d) Ford Dynasty Pty Ltd, which operates the Lasseters Hotel and Casino in Alice Springs in the Northern Territory;

(e) Federal Group which owns and operates the Wrest Point Hotel Casino located in Hobart and the Country Club located in Launceston in Tasmania;

(f) Crown Resorts Limited which, through various subsidiaries, operates Crown Melbourne in Victoria, Crown Perth in Western Australia, and Crown Sydney in New South Wales;

(g) Aquis Entertainment Ltd, which, through Aquis Canberra Holdings (Aus) Pty Ltd, owns Casino Canberra Limited, which operates Casino Canberra in the Australian Capital Territory.

2 Each Australian jurisdiction has its own regulator with its own structure, design and powers. Some regulators are more powerful than others, and in some jurisdictions, the key decision-making powers with respect to the granting of casino licences are exercised by the relevant Minister and not the regulator.

3 All gaming regulators within Australia, except for the regulator in Victoria, do not have their own staff and instead are dependent upon a government department for staffing and resourcing.

4 The following overview of each regulator is current at the date of this Report and based on publicly accessible documents on each of their Websites.

Queensland – Office of Liquor and Gaming Regulation

5 The key governing legislation is the *Casino Control Act* 1982 (Qld) (Qld Act). The regulator in Queensland is the Office of Liquor and Gaming Regulation (OLGR), which sits within the Department of Justice and Attorney-General.

6 The Commissioner for Liquor and Gaming heads the OLGR.[1]

7 All powers and functions with respect to casino regulation and control under the Qld Act are exercised by the Minister or the Governor. The Governor, on the recommendation of the Minister, grants casino licences;[2] the Minister has the power to give directions to casino operators;[3] and the Governor has the power to make regulations.[4]

8 The Minister may delegate his or her powers under the Qld Act to the 'chief executive' or an appropriately qualified inspector or officer of the Department.[5]

9 The OLGR is led by an Executive Director.[6] The Executive Director is responsible for managing the gaming and liquor regulatory licensing and compliance regimes. The Executive Director is also responsible for the administration of the Community Benefit Fund.

10 The OLGR has three divisions:[7] the Licensing Division; the Compliance Division; and the Organisational Services Division.

11 The Licensing Division is responsible for:[8]

(a) Licensing of persons and organisations under the various gaming, liquor and wine acts;

(b) Applications to licence conditions, variations to hours of trading, alterations to the number of gaming machines in clubs/hotels and other ancillary approvals;

(c) Assessment and approval of game rules, operator control systems and gambling equipment; and

(d) Probity investigations into the suitability of major participants in the gaming industry.

12 The Compliance Division is responsible for:[9]

(a) Compliance and technical audits of liquor and gaming operators;

(b) Inspections under the various liquor and gaming acts;

(c) Complaints, investigations and enforcement actions;

(d) Risk assessment of liquor licence applications; and

(e) Supporting safe night precinct boards to form and become fully operational.

13 The Organisational Services Division is responsible for:[10]

(a) Financial and information management services;

(b) Media, marketing and strategic communications;

(c) Information solutions;

(d) Asset management;

(e) Administrative services;

(f) The Gambling Community Benefit Fund;

(g) Business systems support; and

(h) Business intelligence capability.

14 There is also an Office of Regulatory Policy, which is responsible for:[11]

(a) Indigenous policy; and

(b) Development and management of liquor and gambling harm minimisation.

15 The OLGR has a Service Charter which makes it responsible for:[12]

(a) Regulating liquor and gaming industries;

(b) Maintaining integrity and probity in the gambling industry;

(c) Distributing funds through a number of community benefit programs.

Victoria – Victorian Commission for Gambling and Liquor Regulation

16 The key governing legislation is the *Casino Control Act* 1991 (Vic) (Vic Act) and the *Gambling Regulation Act* 2003 (Vic). The regulator in Victoria is the Victorian Commission for Gambling and Liquor Regulation (VCGLR) established under s 6(1) of the *Victorian Commission for Gambling and Liquor Regulation Act* 2011 (Vic) (2011 Act).

VCGLR's objects, functions and powers

17 The objects of the VCGLR are to maintain and administer systems for the licensing, supervision and control of casinos, for the purpose of:[13]

(a) Ensuring that the management and operation of casinos remains free from criminal influence or exploitation;

(b) Ensuring that gaming and betting in casinos is conducted honestly; and

(c) Fostering responsible gambling in casinos in order to minimise harm to the community.

18 The legislated functions of the VCGLR include:[14]

(a) Performing the regulatory, investigative and disciplinary functions conferred on the Commission under the Vic Act and other liquor and gaming legislation;

(b) Undertaking licensing, approval, authorisation and registration activities under liquor and gaming legislation;

(c) Promoting and monitoring compliance with gambling and liquor legislation;

(d) Detecting and responding to contraventions of gambling legislation and liquor legislation;

(e) Advising the Minister in relation to the VCGLR's functions under gambling legislation, liquor legislation and the *Racing Act* 1958 (Vic);

(f) Advising the Minister on the operation of gambling and liquor legislation;

(g) Ensuring Government policy in relation to gambling and liquor is implemented;

(h) Informing and educating the public about the VCGLR's regulatory practices and requirements.

19 The VCGLR's functions under the Vic Act include overseeing the operation and regulation of casinos; considering any system of controls and administrative and accounting procedures; advising the Minister concerning policy in relation to supervision and inspection of casinos.[15]

20 It determines all casino licence applications.[16] It may give directions to the casino operator regarding the conduct, supervision or control of operations at the casino,[17] and may conduct an inquiry for the purposes of performing its functions or duties under the relevant legislation.[18]

VCGLR's structure

21 The VCGLR is constituted by a Chairperson,[19] one or more Deputy Chairpersons,[20] and as many additional Commissioners as the Minister considers necessary.[21] It currently has six Commissioners.[22]

22 The VCGLR has a Chief Executive Officer[23] to whom five divisions report: the Compliance Division; the Corporate Services Division; the Information Communication Technology (ICT) Division; the Legal Services Division; and the Licensing Division.

23 The Commissioners are accountable for decisions made under the Vic Act and other liquor and gaming legislation and are the equivalent of directors of a public sector board responsible for strategy, governance and risk management.[24]

24 The Chairperson convenes and presides at the VCGLR's meetings, and contributes to the decisions made at those meetings through a casting vote on any matter where there is an equal vote, as well as casting a deliberative vote.[25]

25 The Chief Executive is responsible for the overall management of the VCGLR as an organisation and ensuring that the strategic priorities and business goals are met.[26] The Chief Executive also participates, along with the Chairperson and other Commissioners, in the decision making of the VCGLR.

The divisions within the VCGLR

26 The Compliance Division:[27]

(a) Conducts inspections and compliance activities;

(b) Conducts complex investigations;

(c) Ensures the gambling and liquor industries remain free from criminal influence;

(d) Ensures the integrity and reliability of systems; and

(e) Assists its regulated entities to comply through education.

27 There are over 40 Compliance Inspectors monitoring licensed premises throughout Victoria around the clock.[28] This includes compliance with liquor and gaming regulations.

28 The activities of the Legal Services Division include providing advice on, among other matters:[29]

(a) The VCGLR's powers under gaming and liquor legislation;

(b) Licence management;

(c) Administrative law (such as privacy, freedom of information and subordinate legislation);

(d) Commercial contract arrangements;

(e) Court procedure;

(f) Prosecutions;

(g) Assistance with investigation work;

(h) Criminal and civil litigation strategy;

(i) Advocacy, both internal and external;

(j) Appearing as counsel assisting for internal liquor review matters, disciplinary actions and applications for premises approvals and gaming machine increases;

(k) Managing corporate governance;

(l) Statutory compliance; and

(m) Leading public policy negotiations and engagements with internal and external stakeholders.

29 The Licensing Division's functions include:[30]

(a) Assessing and determining applications by individuals, businesses, clubs and community organisations for licences and permits to conduct gaming;

(b) Managing the allocation of gaming machine entitlements to venue operators;

(c) Responding to all gambling and liquor enquiries from the public and industry; and

(d) Monitoring the financial activities and probity of approved participants in the gaming industry to ensure compliance with gaming regulations and ongoing suitability to hold a licence, permit or approval.

30 The Corporate Services Division provides support services to the VCGLR such as budgeting, financial management and workforce planning.[31]

31 The ICT Division maintains the VCGLR's business applications and supporting infrastructure.[32]

VCGLR staff

32 Employees of the public service may perform the functions of the VCGLR and the VCGLR may delegate any powers or functions to public service employees.[33]

Prosecutions by the VCGLR

33 The VCGLR has a prosecution policy which discloses the approach it takes with respect to prosecutorial decisions.[34] The VCGLR is independent in the sense that it "exercises its prosecutorial function independently through delegation of Commission powers".[35] The Director of Compliance, who holds delegated power to institute proceedings under the policy, may initiate prosecutions after consulting with the Legal Services Division.[36]

Information sharing with Victoria Police

34 A joint enforcement strategy also exists between the VCGLR and the Victorian Police.[37] The strategy includes an acknowledgment that the VCGLR and Victoria Police will ensure that information and intelligence is shared between the agencies.[38]

Tasmania – Liquor and Gaming Commission

35 The key governing legislation in Tasmania is the *Gaming Control Act* 1993 (Tas) (Tas Act). The regulator is the Liquor and Gaming Commission (TLGC) established by s 123(1) of the Tas Act.

TLGC's functions, powers and ministerial oversight

36 The TLGC's functions include:[39]

(a) Regulating and controlling gaming and wagering to ensure they are free from criminal influence;

(b) Investigating matters relating to gaming and other forms of wagering;

(c) Investigating matters relating to the control of gaming and other forms of wagering;

(d) Liaising with authorities or persons responsible for the regulation and control of the conduct of gaming or other forms of wagering; and

(e) Reviewing and determining complaints relating to the conduct of gaming or other forms of wagering.

37 The TLGC has the power to do all things necessary or convenient to be done in connection with its functions under the Tas Act.[40]

38 The Minister may give the TLGC any direction considered necessary, which the TLGC is bound to follow.[41] However, the Minister may not give a direction to the TLGC that prevents it from, among other things, granting or refusing to grant a casino licence.[42]

South Australia – Liquor and Gambling Commissioner

39 The South Australian legislation for the regulation of casinos was amended in December 2020. Consequential organisational changes with the regulator may follow in due course.

40 The key governing legislation is the *Casino Act* 1997 (SA) (SA Act). The regulator in South Australia is the Liquor and Gambling Commissioner (SLGC) partly governed by the *Gambling Administration Act* 2019 (SA) (2019 Act).

41 Historically, the Consumer and Business Services Commissioner (CBSC) has performed the role of the SLGC.[43] The SLGC has historically been part of Consumer and Business Services (CBS), which is a division of the Attorney-General's Department.

SLGC's functions and powers

42 The SLGC's functions include:[44]

(a) Developing strategies for reducing the risk of problem gambling;

(b) Making recommendations to the Minister on matters relating to operations under a Gambling Act;

(c) Performing other functions assigned to the SLGC under a Gambling Act.

43 The SLGC may hold an inquiry for the purpose of carrying out the SLGC's functions.[45] The SLGC may also summons the attendance of witnesses and the production of documents.[46]

44 The Governor has the power to grant a casino licence and, further, the Governor is not bound to follow the SLGC's recommendation.[47]

WESTERN AUSTRALIA – Gaming and Wagering Commission

45 The key governing legislation is the *Casino Control Act* 1984 (WA) (WA Act). The regulator in Western Australia is the Gaming and Wagering Commission (GWC). The GWC is established under s 4 of the *Gaming and Wagering Commission Act* 1987 (WA) (1987 Act) and is responsible for administering the WA Act.[48]

GWC's objects, duties, powers and ministerial oversight

46 The GWC's objectives include:[49]

(a) Approving or withholding approvals of licences under the WA Act;

(b) Taking steps to minimise harm to the community caused by gambling; and

(c) Disseminating information relevant to gambling and its effect on the community.

47 The GWC's duties include:[50]

(a) Administering the laws relating to gaming and betting;

(b) Reviewing the conduct, extent and character of gambling operations and the provision, use and location of gaming and wagering facilities;

(c) Formulating and implementing policies for the scrutiny, control and regulation of gaming and betting, taking into consideration the requirements and interests of the community as a whole;

(d) Issuing permits, certificates and employee licences; and

(e) Providing advice to the Minister on any matter relating to gaming and betting.

48 The GWC regulates and controls casino operations and carries out the administration of the 1987 Act.[51]

49 The GWC has a duty to cause licences, permits, approvals, authorisations and certificates to be issued in relation to casinos.[52] It has the power to grant or issue and amend or revoke licenses relating to casinos under the WA Act.[53]

50 The GWC may give directions to a casino licensee with respect to the system of internal controls and administrative and accounting procedures that apply to the gaming operations of the licensee.[54]

51 The GWC is subject to ministerial oversight and is required to act on the directions of the Minister.[55] If a direction of the Minister conflicts with the advice of the GWC to the Minister, then the GWC is permitted to make that advice to the Minister known to the public.[56] The Minister is not bound to act on the advice of the GWC.[57] The Minister has the power to direct the GWC to call an inquiry.[58]

52 Proceedings for offences under the WA Act may be instituted by a member of the Police Force, the Chief Casino Officer or by a person authorised by the Minister or the GWC.[59]

GWC's structure

53 The composition of the GWC includes:[60]

(a) The Chief Executive Officer of the Department of Local Government, Sport and Cultural Industries, who is an ex officio chairperson of the Commission; and

(b) Between five and seven members appointed by the Minister.

54 Each member is appointed for a maximum of three years, but is eligible for reappointment after that period.[61]

55 A Chief Casino Officer and "such government inspectors and other officers" are to be appointed as part of the GWC's staff for casinos.[62] Powers of the GWC may be delegated to the Chief Casino Officer or a government inspector.[63]

AUSTRALIAN CAPITAL TERRITORY – Gambling and Racing Commission

56 The key governing legislation is the *Casino Control Act* 2006 (ACT) (2006 Act), the *Casino Control Regulation 2006* (ACT), and the *Gambling and Racing Control (Code of Practice) Regulation* 2002 (ACT). The regulator in the ACT is the ACT Gambling and Racing Commission (GRC). The GRC is established under s 5 of the *Gambling and Racing Control Act* 1999 (ACT) (1999 Act).

GRC's functions and powers

57 The functions of the GRC include administering the gaming laws, and controlling, supervising and regulating gaming in the ACT.[64] The Minister has the power to direct the GRC by way of guidelines or written directions.[65]

58 The GRC is required to exercise its functions in a way that best promotes the public interest and particularly promotes consumer protection, minimises the possibility of criminal or unethical activity, and reduces the risks of gambling harm to the community.[66] When exercising its functions, the GRC must engage in community consultation.[67]

59 The GRC must inquire into any matter referred to it by the Minister.[68] It may also inquire into any matter it considers appropriate.[69] Such an inquiry must be held in public unless the GRC for good reason decides otherwise.[70]

60 The Minister may invite applications for a licence to operate a casino.[71] On such an application, the Minister may grant or refuse the licence.[72] In making that decision, the Minister must consider any recommendation made by the GRC or a casino advisory panel about the transaction.[73] A casino licence may be subject to conditions imposed by the Minister.[74]

The GRC's structure

61 The GRC is governed by a Board.[75] The Board has five members, one of whom is required to have experience or qualifications related to the provision of counselling services for problem gambling.[76] The Chief Executive Officer is also a member of the Board.

62 The Board has four non-executive members: the Chairperson, Deputy Chairperson and two ordinary members.[77] Non-executive members' appointments are approved by the Attorney-General as the responsible Minister. The term of appointment for GRC members is three years, with eligibility for reappointment upon the expiry of that term. The GRC may delegate its functions to a public servant.[78] It may employ staff and engage contractors.[79]

63 The Board and the Chief Executive Officer are supported by four divisions:[80]

(a) GRC Secretariat;

(b) Licensing and Registrations;

(c) Policy, Research and Implementation; and

(d) Regulatory Solutions & Compliance.

64 The GRC has two committees:[81]

(a) The Internal Audit and Risk Committee – which oversees the governance risk, compliance and internal control environments and provides assurances as to their effectiveness; and

(b) The GRC Advisory Committee – which provides recommendations to support the GRC in undertaking its legislative functions.

65 The Internal Audit and Risk Committee is a Sub-Committee of the GRC's Board made up of members of the GRC.[82]

66 The GRC Advisory Committee is made up of seven members, one of whom is the Executive Branch Manager of the Projects, Governance and Support Branch, Access Canberra. The remaining members are drawn from the gambling and racing industry, support services sector for those experiencing gambling harm, and the health sector.[83]

Northern Territory – Racing Commission

67 The key governing legislation is the *Gaming Control Act* 1993 (NT) (NT Act). The regulator in the Northern Territory is the NT Racing Commission (RC) established under s 6 of the *Racing and Betting Act* 1983 (NT) (1983 Act).

68 The functions of the RC include investigating and making recommendations to the Minister as it thinks fit regarding matters relevant to the 1983 Act, granting licences in accordance with the 1983 Act, and prosecuting persons for offences under the 1983 Act.[84] The RC's powers include doing all things necessary or convenient to be done in connection with its functions under the 1983 Act.[85]

69 The RC is subject to the direction of the Minister and is required to comply with a direction of the Minister.[86]

70 The Minister has the power to grant a casino licence in the Northern Territory.[87]

71 The RC is comprised of between four to five members.[88] Members' tenure cannot exceed three years, but they may be re-appointed.[89]

72 The RC may delegate to a member or an employee any of its powers and functions under the 1983 Act.[90]

73 The RC is supported by Licensing NT by investigating complaints, monitoring compliance with licence conditions of sports bookmakers and betting exchange operators, and providing administrative support during and after meetings.[91]

Appendix 3

International Casino Regulators

Introduction

1 This appendix considers the structure and powers of the following casino and gaming regulators from international jurisdictions:

(a) Massachusetts, United States of America – Massachusetts Gaming Commission;

(b) Nevada, United States of America – Nevada Gaming Control Board and the Nevada Gaming Commission;

(c) British Columbia, Canada – Gaming Policy and Enforcement Branch;

(d) Singapore – Casino Regulatory Authority;

(e) United Kingdom – Gambling Commission; and

(f) New Zealand – Gambling Commission.

Massachusetts

2 There are three casinos in Massachusetts: Encore Boston Harbor located in Everett; Plainridge Park Casino located in Plainville; and the MGM Springfield located in Springfield.

3 The regulator is the Massachusetts Gaming Commission (MGC). Chapter 23K of the General Laws of Massachusetts established the MGC and relates to the regulation of gaming generally.

MGC's objects, powers and functions

4 The paramount policy objective of Chapter 23K is maintaining public confidence in the integrity of the gaming licensing process and in the strict oversight of all gaming establishments through a rigorous regulatory scheme.[1]

5 Other objectives include establishing the financial stability and integrity of gaming licensees as well as the integrity of their sources of financing, and the imposition of a continuing duty on licensees to maintain their integrity and financial stability.[2]

6 The MGC must ensure that gaming licences are granted to suitable persons.[3] The MGC's powers include:[4]

(a) Determining applications for gaming licences;

(b) Requiring persons who have a business association of any kind with a gaming licensee or applicant to be qualified for licensure;[5]

(c) Monitoring the conduct of licensees and other persons having a material involvement, directly or indirectly, with the licensee to ensure such operations are not conducted in an unsuitable manner;[6]

(d) Having a presence through MGC inspectors and agents at all times in gaming establishments for various purposes identified in General Laws;[7]

(e) Restricting, suspending or revoking licences;[8] and

(f) Referring cases for criminal prosecution to the appropriate federal, state or local authorities.

7 The applicants for gaming licences are in either Category 1 or Category 2, which designates the minimum amount of capital investment to be made by the applicants. Applicants are required to establish their qualifications for licensure "by clear and convincing evidence".[9]

8 Anyone with a "financial interest" in a gaming establishment or anyone with a financial interest in the business of a gaming licensee or applicant for a licence, or who is a "close associate" of a gaming licensee must meet the criteria under the General Laws and provide any other information to the MGC that it may require.

9 Chapter 23K also governs the process of determination of applications for gaming licences.[10]

10 There are regulations in relation to the provision of credit by a gaming licensee to a patron of a gaming establishment.[11] There is also a prohibition on the provision of any complimentary services.[12]

MCG's structure

11 The MCG consists of five full-time Commissioners who are responsible for overseeing and implementing the expanded gaming law.[13] One Commissioner is appointed by the Governor; another Commissioner is appointed by the Attorney-General and must have experience in criminal investigation and law enforcement; one is appointed by

the Treasurer and Receiver-General and must have corporate finance experience; and two are appointed by majority vote of the Governor, Attorney-General and Treasurer and Receiver-General, with one person to have experience in law and policy issues and the other to have regulatory experience in the gaming industry.[14]

12 Each Commissioner has a five-year tenure and may be reappointed, but cannot be a Commissioner for more than 10 years.[15]

13 The MGC has an executive which is comprised of: the Executive Director; the Investigations and Enforcements Bureau (IEB); the Division of Licensing; the Division of Racing; the Office of the Ombudsman; and the Office of Communications and Outreach.

14 *Executive.* The Executive consists of the Executive Director, a General Counsel, a Director of Communications, a Director of Workforce, Supplier and Diversity Development, a Director of Racing, and a Director of Research and Responsible Gaming.[16]

15 *IEB.* The IEB is the primary enforcement agency for regulatory matters under Chapter 23K.[17] The IEB is under the supervision and control of the Deputy Director of Investigations and Enforcement.[18] The IEB is obliged to notify the Division of Gaming Enforcement in the Department of the Attorney General of criminal violations by a gaming licensee.

16 The IEB consists of:[19]

(a) The Investigations Division (which includes Massachusetts State Police, staff and a team of civilian financial investigators);

(b) The Gaming Agents Division (which includes civilian agents charged with providing regulatory oversight and on-site monitoring of licensed gaming establishments); and

(c) The Legal arm (consisting of a Chief Enforcement Counsel and Senior Enforcement Counsel).

17 The IEB Director also oversees the Division of Licensing, which administers the licensing and registration functions on behalf of the MGC for employees of and vendors to the gaming establishments.

18 The IEB and the Division of Licensing are required to co-operate on the regulatory and criminal enforcement of Chapter 23K and are able to determine whether to proceed with civil or criminal sanctions, or both, against a gaming licensee. In this regard, the IEB is able to obtain and provide pertinent information regarding applicants or licensees from or to law enforcement entities and gaming authorities and other agencies.[20]

19 When an applicant submits an application for a gaming licence, the MGC instructs the IEB to commence an investigation into the suitability of the applicant.[21]

20 *Division of Licensing.* This Division issues different types of licences to gaming employees, gaming vendors, and non-gaming vendors.[22] These licences allow companies and individuals to do business with and within the gaming industry. After the initial licensing gaming licences such as those given to casinos and slot parlors must be renewed every three years. The MGC determines the length of employee licence which must be periodically renewed. The Division of Licensing is responsible for the administration of the licensing functions of the MGC.

21 *Division of Racing.* This Division is responsible for regulating the horse racing industry and prescribing relevant rules, regulations and conditions.[23]

22 *Office of Ombudsman.* This Office is responsible for educating communities regarding the Gaming Act and licensing process, forming and staffing a Gaming Policy Advisory Commission, and informing the MGC about the community's interaction with gaming and gambling.[24]

23 *Office of Communications and Outreach.* This Office is responsible for developing an online resource in the form of the MGC's website designed to give the community access to information regarding the gaming industry.[25]

Funding of the MGC

24 The MGC is funded through an annual fee per slot machine (which is US$600.00 per slot) and by additional fees from licensees and applicants. The MGC is not funded with tax-payer monies or State appropriations.[26]

Nevada

25 Casino regulation in Nevada is controlled and implemented by the Nevada Gaming Control Board (Control Board) and the Nevada Gaming Commission (Commission). The key governing legislation is Chapter 463 of Nevada Revised Statutes (NRS 463).

26 The Control Board is the operational entity with day-to-day control and management of casino regulation. The Commission deals with higher level decisions such as making the final determination on licensing decisions.

The Control Board

27 The primary purpose of the Control Board is:[27]

(a) Protecting the stability of the gaming industry through investigations, licensing, and enforcement of laws and regulations;

(b) Ensuring the collection of gaming taxes and fees; and

(c) Maintaining public confidence in gaming.

28 The Control Board implements policy enforcing State laws and regulations governing gaming.[28]

29 The Control Board consists of three full-time members appointed by the Governor for four-year terms, with one member acting as Chair, and is responsible for regulating all aspects of Nevada's gaming industry.[29]

30 At the top of Nevada's gaming regulation organisational structure sits the Governor.[30] Beneath the Governor sit the NG Control Board, the NG Commission and the Gaming Policy Committee.

31 There are six divisions reportable to the Control Board:[31] Administration; Audit; Enforcement; Investigations; Tax & Licence; and Technology.

32 The Control Board has 400 full-time budgeted positions, and maintains offices throughout Nevada.[32]

33 *Administration Division.* This Division has 29 professional staff and 15 clerical staff.[33] It supports the operating divisions within the Control Board and includes Economic and Legal Research Sections.

34 *Audit Division.* This Division has 84 professional staff and 6 clerical staff.[34] The Audit Division is primarily responsible for auditing Group I casinos in Nevada.[35] The Division employs various methods of gathering audit evidence, including covert or surprise observations of casino procedures which are routinely conducted on an interim basis throughout the audit period. Interviews with casino staff are performed periodically to ensure casinos are complying with documented internal accounting controls.

35 *Enforcement Division.* This Division has approximately 90 certified officers and 30 clerical staff.[36] It operates 24 hours a day, seven days a week. Its primary responsibilities are to conduct criminal and regulatory investigations and to investigate disputes between patrons and licensees.

36 The Enforcement Division is also responsible for processing and conducting background investigations and registering all gaming employees who work in the State of Nevada. The Division is responsible for interviewing witnesses and complainants, interrogating suspects, conducting covert surveillance operations, and obtaining information from confidential informants and other cooperating individuals.

37 *Investigations Division.* This Division has 70 professional staff and 9 clerical staff.[37] It investigates all individuals and companies seeking a gaming licence in Nevada. The Investigations Division also registers and investigates individuals who bring patrons to Nevada casinos through Junkets.[38] There is also a Corporate Securities Section within the Division which monitors activities of registered publicly traded corporations and their subsidiaries.[39]

38 *Tax & Licence Division.* This Division has 21 professional staff and 5 clerical staff.[40] There are three sections in the division: Collections, Compliance and Licensing. The Collections Section is responsible for all deposits and distributes gaming taxes, fees and penalties. The Compliance Section reviews Group II Casinos in Nevada and conducts reviews on all manufacturers, distributors, slot route operators and mobile gaming operations. The Licensing Section issues all gaming licences approved by the Commission.

39 *Technology Division.* This Division has 14 engineers, 4 IT auditors, 6 technicians, and 2 clerical staff.[41] The Technology Division is the primary point of contact for the Control Board for new gaming innovation to be introduced into Nevada. The fundamental role of the Technology Division is the review of all technology used directly in the conduct of gaming by Nevada licensees.

The Commission

40 The Commission consists of five members appointed by the Governor for four-year terms, with one member acting as the Chairperson. The members serve on a part-time basis.[42] Members are prohibited from being members of any political conventions or parties.[43]

41 The primary responsibilities of the Commission include acting on the recommendations of the Control Board in licensing matters and ruling on work permit appeal cases.[44] The Commission is the final authority on licensing matters, and has the power to approve, restrict, limit, deny, revoke, suspend or impose conditions upon any gaming licence.

42 The Commission is also responsible for adopting regulations to implement and enforce State laws governing gaming.

43 It acts in a quasi-judicial capacity to determine whether a licensee has breached any laws and whether any sanctions should be imposed. This function is contrasted with the NG Control Board, which acts in a prosecutorial capacity before the NG Commission.

Gaming Policy Committee

44 There is also a Gaming Policy Committee which makes non-binding recommendations to the Commission and the Control Board. It consists of a Chairperson and 11 members.[45]

British Columbia

45 There are currently 19 casinos in operation in British Columbia. The casino and gaming regulator in British Columbia is the Gaming Policy and Enforcement Branch (GPEB). The key governing legislation is the *Gaming Control Act* 2002 (BC) (BC Act). The GPEB is "continued" under s 22(1) of the BC Act.

46 The GPEB has regulatory oversight and control over all gaming in British Columbia. This includes the responsibility for the overall integrity of gaming and horse racing. The British Columbia Government does not have any involvement in the decisions concerning companies and individuals in the gaming industry, except where such approvals are required under the BC Act. The Government's involvement is to provide "broad policy" directions to the GPEB to ensure social and economic priorities are achieved.

47 The British Columbia Lottery Corporation (BCLC) is responsible for the conduct and management of all commercial gaming in British Columbia. The BCLC manages all contracts and relationships with gaming facility service providers and lottery retailers.

The General Manager of the GPEB

48 The General Manager is the head of the GPEB and, under the direction of the Minister, is responsible for the enforcement of the BC Act.[46] The General Manager is appointed under the Public Service Act.[47]

49 The Minister may issue directives to the General Manager on matters of "general policy".[48] The General Manager is required to comply with such directives[49] and is also required to:[50]

(a) Advise the Minister on broad policy, standards and regulatory issues; and

(b) Under the Minister's direction, develop and maintain the Government's gaming policy.

50 The General Manager must furnish an Annual Report to the Minister on the operations of the GPEB and the Minister must place that report before the Legislative Assembly.[51] The Minister may direct the General Manager to report on specific matters.[52]

The GPEB's structure

51 Officers and other employees who are required to carry out the responsibilities of the GPEB may be appointed under the *Public Service Act* and the General Manager may determine their duties.[53]

52 The GPEB has six divisions:[54] the Compliance Division; the Enforcement Division; the Licensing, Registration and Certification Division; the Community Supports Division; the Strategic Policy and Projects Division; and the Operations Division.

53 *Compliance Division.* This Division is responsible for ensuring regulatory compliance with the BC Act.[55] It conducts inspections and audits of gambling activities in British Columbia.

54 *Enforcement Division.* This Division was created in 2018 and includes Investigations and Intelligence Units.[56] The investigators respond to instances of any conduct and incidents threatening the integrity of the gaming industry. Four investigators within the division, along with the General Manager, work as part of the Joint Illegal Gaming Investigations Team's two operational units. This team was formed to investigate organised crime's involvement in illegal gambling and proceeds of crime entering into gambling facilities in British Columbia.

55 *Licensing, Registration and Certification Division.* This Division is responsible for the registration and certification of the gambling industry and for licensing charitable gambling events.[57] It is responsible for ensuring the integrity of companies and individuals who apply for and obtain gaming licences.

56 *Community Supports Division.* This Division supports the integrity of gambling in British Columbia through the provision of responsible gambling programs.[58]

57 *Strategic Policy and Projects Division.* The BC Act requires the GPEB to advise the Minister on broad gambling policy, standards and regulatory issues, and to follow any directions given by the Minister.[59] This Division is designed to meet current and future policy needs by anticipating industry changes and address those changes.

58 *Operations Division.* This Division provides financial, administrative, risk management, information technology services, human resource and records management services.[60]

Singapore

59 There are two casinos in Singapore, Marina Bay Sands (MBS) and Resorts World at Sentosa (RWS).[61]

60 The regulator of casinos in Singapore is the Casino Regulatory Authority (CRA), which was established in 2008 with a mission to:

(a) Ensure that the management and operation of a casino is carried out by persons who are suitable, and remains free from criminal influence or exploitation;

(b) Ensure that gaming in a casino is conducted honestly; and

(c) Contain and control the potential of a casino to cause harm to minors, vulnerable persons and society at large.[62]

61 The key governing legislation is the *Casino Control Act (Chapter 33A)* enacted by Act 10 of 2006 (Singapore Act). The Singapore Act establishes the CRA under s 5. The CRA is a statutory board.[63] The Singapore Government has announced plans for the establishment of a broader gaming regulator.

CRA's objects, functions and powers

62 The Singapore Act provides that the objects of the CRA are to maintain and administer systems for the licensing, supervision and control of casinos for the following purposes:[64]

(a) Ensuring that the management and operation of a casino is carried out by suitable persons and remains free from criminal influence or exploitation;

(b) Ensuring that gaming in a casino is conducted honestly; and

(c) Containing and controlling the potential of a casino to cause harm to minors, vulnerable persons and society generally.

63 The functions and duties of the CRA include:[65]

(a) Licensing and regulating the operation of casinos;

(b) Approving any system of controls and administrative and accounting procedures of a casino;

(c) Advising the Minister concerning policy in relation to supervision and inspection of casinos; and

(d) Do all things it is authorised to do under the Singapore Act.

64 The CRA is also empowered to perform such other functions as are conferred on it by the CCA or any other written law. It may also undertake such other functions and duties as the Minister may assign to it from time to time.[66]

65 The CRA determines all applications for a casino licence.[67] It may take disciplinary action against any casino operator.[68] It may give a direction to a casino operator regarding the conduct, supervision or control of casino operations.[69] The CRA may investigate a casino at any time the CRA thinks it desirable to do so.[70]

CRA's structure

66 The CRA consists of a Chairman and between four and 16 members, as determined by the Minister.[71] There must be a Chief Executive.[72]

67 The Board currently consists of fifteen members (not including the Chairman).[73] The Board provides strategic guidance to the management of the CRA.

68 The Board is supported by seven committees: (1) Executive Committee; (2) Audit and Risk Committee; (3) Budget Review Committee; (4) Disciplinary Committee; (5) Human Resource and Remuneration Committee; (6) Legal and Regulatory Committee; and (7) Technology Advisory Committee.

69 There is a Chief Executive and a Group Director (Operations).[74] There are nine divisions within the CRA: (1) Gaming Technology Division; (2) Inspection & Compliance Division; (3) Investigations Division; (4) Licensing Division; (5) Legal Division; (6) Policy & Communications Division; (7) Infocomm Technology Division; (8) Corporate Development Division; and (9) Human Resource Division.

70 Each Division is headed by a Director. These Directors together constitute the senior management team of the CRA.[75]

Inspectors

71 Inspectors are appointed under the Singapore Act to inspect, monitor and examine the activities within a casino.[76] The powers of the inspectors include the seizure of any record or thing within the casino and stopping any game conducted in a casino.[77] The inspectors may also by written notice require the holder of a licence or various employees of the casino operator to attend before the inspector to answer any questions or to provide information with respect to any regulated activity.[78]

CRA's Funding

72 The CRA's main source of revenue is the licence fee paid by the two casino operators. With the CRA having renewed the two casino licences in 2019, the applicable licence fee for both of Singapore's operators is $24 million per annum.[79] Those licence fees are paid directly to the CRA's bank account.[80] In the 2020 financial year, the CRA's disclosed gross income was $48,887,514, which included income derived from licence fees ($47,863,014), application fees ($849,000) and fines ($175,700).[81]

73 In lieu of paying income tax, the CRA is also required to pay a statutory contribution.[82] In 2020, the CRA's surplus before payment of the statutory contribution was $9,273,131.[83] The statutory contribution was based on 17 per cent of the surplus figure and calculated at $1,576,432 for the financial year. The CRA's balance as at 31 March 2020 was $36,001,000 in its capital account[84] and $37,310,369 as an accumulated surplus, leaving a total of $73,311,369 in net assets.[85]

United Kingdom

74 The Gambling Commission (GC) was established under the *Gambling Act* 2005 (UK) (UK Act). The GC is the regulator of casinos in the UK established under s 20(1) of the UK Act.

GC's objects, functions and powers

75 The GC's main purpose is "to safeguard consumers and the wider public by ensuring that gambling is fair and safe".[86] The GC achieves this by "placing consumers at the heart of regulation and maintaining the integrity of the gambling industry".[87]

76 The GC has an obligation to advise the Secretary of State about the:[88]

(a) Incidence of gambling;

(b) Manner in which gambling is carried on;

(c) Effects of gambling; and

(d) Regulation of gambling.

77 The GC has a duty to promote the following licensing objectives:[89]

(a) Preventing gambling from being a source of crime or disorder;

(b) Ensuring that gambling is conducted fairly and openly; and

(c) Protecting children and vulnerable persons from being exploited by gambling.

78 The GC has a business plan the objectives of which are to:[90]

(a) Protect the interests of consumers;

(b) Prevent harm to consumers and the public;

(c) Raise standards in the gambling market;

(d) Optimise returns to good causes from lotteries; and

(e) Improve the way the GC regulates.

79 This plan is prepared annually and the GC is required to prepare a statement that sets out the principles to be applied when the GC exercises its functions.[91]

80 The GC may investigate whether any offences have been committed under the UK Act and may institute criminal proceedings in respect of any offences.[92]

81 The GC may provide any information received by it in the exercise of its functions to other agencies and offices, including various law enforcement and regulatory agencies and Ministerial Offices.[93]

82 The GC has the power to grant or reject a casino licence.[94] It may impose conditions on the licence.[95] It may renew, suspend or revoke a licence, or impose penalties on operators.[96]

GC's structure

83 The GC has 355 employees, mostly based in its office in central Birmingham, including around 40 home-based colleagues working across England, Scotland and Wales, and a further 20 people based in London working on the 4th National Lottery Licence Competition.[97]

84 There is a Board of Commissioners appointed by the Department for Digital, Culture, Media and Sport.[98] It sets the overall strategic direction of the GC. There are currently nine members of the Board.[99]

85 There are also four Committees within the structure.[100] They are the National Lottery Committee; National Lottery Competition Committee; the Remuneration Committee; and the Audit and Risk Committee.

86 There is also a Regulatory Panel which reports to the Board. The Regulatory Panel hears and determines the final result of appeals brought by licence holders from regulatory decisions.[101]

87 There is a Chief Executive, six Executive Directors and 12 Directors.[102]

88 There is also a Senior Independent Director whose role it is appraise the Board to ensure that it is acting properly in accordance with the highest levels of governance.[103]

New Zealand

89 New Zealand has six casinos. SkyCity Entertainment Group is the dominant operator in New Zealand, operating four of those six casinos; one in Auckland, one in Hamilton, and two in Queenstown.[104]

90 The casino regulator in New Zealand is the Gambling Commission (GC). The GC is an independent statutory decision-making body with respect to casino licence applications. The Department of Internal Affairs is responsible for operating and equipment standards, game rules and compliance.[105]

91 The GC is an independent statutory agency established under s 220 of the *Gambling Act* 2003 (NZ) (NZ Act).

92 The GC has the functions of:[106]

(a) Making all casino licensing decisions;

(b) Granting operators' licences;

(c) Renewal of venue licences;

(d) Casino venue agreements;

(e) Mortgages, charges and encumbrances; and

(f) Approval of associated persons in relation to above applications.

93 The GC hears casino licensing applications, and appeals on licensing and enforcement decisions made by the Secretary of Internal Affairs (Secretary) in relation to gaming machines and other non-casino gambling activities.[107] The GC has the powers of a Commission of Inquiry.[108]

94 The Secretary's functions include:[109]

(a) Setting minimum operating standards;

(b) Setting minimum standards for gambling equipment;

(c) Approving associated persons;

(d) Reviewing associated persons;

(e) Setting game rules;

(f) Requesting that the GC specify, vary or revoke licence conditions;

(g) Inspecting and auditing casinos; and

(h) Seeking an order from the GC for the suspension or cancellation of casino licence.

95 The GC has no power to acquire, hold or alienate property, or to employ staff.[110] The NZ Act requires the Department to service the GC. Accordingly, the GC relies on the

Department's staff. The GC is also required to make decisions independently of the Minister and the Secretary, and to have a stand-alone office. The GC is funded by the Department but is functionally independent.

96 The Governor-General may, on the recommendation of the Minister, appoint up to five Gambling Commissioners.[111] One Commissioner may be made Chief Gambling Commissioner.[112] A Commissioner's tenure is up three years, and may be followed by re-appointment.[113]

97 The GC currently has a Chief Gambling Commission and three other Gambling Commissioners.[114]

98 The Secretary must arrange for the administrative services necessary for the GC to perform its functions.[115] Staff allocated to the GC perform administrative services for the GC which must be separated, physically and operationally, from other staff responsible for policy, licensing, and compliance concerning gambling.[116]

99 If the GC requires a service from the Secretary that is not prescribed by the NZ Act, the Chief Gambling Commissioner must report the requirement to the Minister.[117] Information held by the GC is to be treated as information of the Department.[118] The GC must provide an Annual Report to the Minister.[119]

Appendix 4

"Setting the Record Straight"

ADVERTISEMENT

A MESSAGE FROM THE CROWN RESORTS BOARD OF DIRECTORS

CROWN RESORTS

Setting the record straight in the face of a deceitful campaign against Crown

The '60 Minutes' programme on Sunday night and related articles in the Fairfax Press have unfairly attempted to damage Crown's reputation.

As a Board, we are extremely concerned for our staff, shareholders and other stakeholders, as much of this unbalanced and sensationalised reporting is based on unsubstantiated allegations, exaggerations, unsupported connections and outright falsehoods.

Crown operates in one of the most highly regulated industries in Australia and takes its responsibility to comply with its obligations very seriously.

There are numerous examples of poor or misleading journalism which include:

(a) it was wrongly inferred that the Chinese President's cousin was found on Crown's private jet by Australian law enforcement authorities, when in fact the jet was not owned or chartered by Crown;

(b) CCTV video footage from 2012 was aired, showing a person alleged to be receiving a plastic bag of cash at a vegetable market, but there was no mention of the fact that the individual was excluded from the casino by Crown acting on its own volition more than six years ago;

(c) extensive references in the '60 Minutes' programme to alleged criminal connections of an organisation said to be called 'the Company'. Crown has had no dealings or knowledge of any organisation of that name or description;

(d) there was no sense conveyed in either the '60 Minutes' programme or in subsequent media reporting that junkets are an established and accepted part of the operations of international casinos; and

(e) no reference was made to the facts that:

(i) the parent of the SunCity junket is a large company listed on the Hong Kong Stock Exchange, which operates globally; and

(ii) Crown does not now deal with any of the other junket operators or players mentioned in the programme, apart from one local player, and none of the international players mentioned have gambled at Crown venues for at least three years.

Junket operators

Much was sought to be made in the programme of the conduct of 'Crown's junket operators'. In fact the junkets are not Crown's. They are independent operators who arrange for their customers to visit many casinos globally. Crown deals with junkets and their customers in essentially the same way as other international casinos.

Macau-based junkets are required to be licensed there and are subject to regulatory oversight and probity checks. There are also other casino regulators in Australia and overseas which review junket operators and their dealings with licensed casinos.

Crown itself has a robust process for vetting junket operators, including a combination of probity, integrity and police checks, and Crown undertakes regular reviews of these operators in the light of new or additional information.

Anti-money laundering

The programme also made various allegations of money laundering, implying that Crown facilitates it, or turns a 'blind eye' to it. In fact Crown has a comprehensive anti-money laundering and counter-terrorism financing program which is subject to ongoing regulatory supervision by AUSTRAC. Crown takes its regulatory obligations very seriously, and works closely with all of its regulatory agencies, including state and federal law enforcement bodies. Crown provides a range of information in a proactive manner in accordance with its regulatory obligations, including the reporting of all transactions over $10,000 and the reporting of suspect transactions of any value.

As Nine/Fairfax would be aware, Crown is bound by non-disclosure provisions in legislation relating to anti-money laundering and counter-terrorism financing, and by privacy considerations. Crown is therefore constrained in responding to many of the unfounded allegations made in the media reports relating to various individuals/organisations, or in disclosing details of matters it has reported to AUSTRAC or to other investigative/enforcement authorities.

Crown welcomes the opportunity to provide such information as may assist the Australian Commission for Law Enforcement Integrity in its investigation and encourages any person who, or organisation which, has cogent evidence that any junket operator or affiliate (or anyone else) has engaged in unlawful or improper conduct, to present that evidence to the relevant authority.

Detentions in China in 2016

The programme also rehashed some of the content of an earlier 'Four Corners' programme in relation to the detention of Crown group staff in China in 2016.

The foundation of the criticism of Crown in the programme is that Crown knew that the conduct of its staff constituted an offence in China and that it deliberately flouted the law.

This is wrong. Crown was not charged with or convicted of any offence in China.

The relevant prohibition under Chinese law is contained in Article 303 which concerns arranging 'gambling parties'. At all times Crown understood that its staff were operating in a manner which did not breach that provision.

Also, at all relevant times, Crown obtained legal and government relations advice from reputable, independent specialists. The fact that staff were nevertheless detained and convicted is not an indication that the advice was wrong or disregarded, but an illustration of the challenges involved in anticipating how foreign laws can be interpreted and enforced.

The '60 Minutes' programme featured a former junior employee and several purported experts. Whether they were paid for the '60 Minutes' appearance was not disclosed. Also, the objectivity of the former employee is open to question on the basis that she made an unsuccessful demand for compensation from Crown of over 50 times her final annual salary.

Visa processing

The last set of allegations concern visa processing. Crown has not sought to circumvent visa requirements or compromise any process of identification or verification for immigration purposes.

Crown is a highly reputable Australian and global tourism operator

Crown is one of Australia's largest and most recognisable entertainment/tourism operators, with over 18,000 people working at its Australian resorts, and it makes a major contribution to the Australian economy. Moreover, Crown recognises its responsibility to the community and with the Packer Family Foundation is donating $200 million to Australia's charitable, arts and medical sectors.

As an ASX listed company and a Board we are always striving to ensure we have the highest levels of governance and a commitment to the highest standards. It is deeply disappointing that the media involved in these inflammatory stories have not upheld the same principles.

A message from the Crown Resorts Board of Directors

John Alexander
Guy Jalland
Michael Johnston
Hon Helen Coonan
Andrew Demetriou
Geoff Dixon
Jane Halton
Prof. John Horvath
Antonia Korsanos
Harold Mitchell
John Poynton

Appendix 5

Instrument of Appointment Dated 14 August 2019

Independent Liquor & Gaming Authority

A statutory board established under the Gaming and Liquor Administration Act 2007

Document 4
14 August 2019

Instrument of appointment to preside at an inquiry under section 143 of the *Casino Control Act 1992* (NSW)

To: **The Honourable Patricia Bergin SC**

Background

1. The Independent Liquor and Gaming Authority (the **Authority**) has functions under the gaming and liquor legislation identified in section 4 of the *Gaming and Liquor Administration Act 2007* (NSW) (**Gaming Act**). In July 2014, the Authority granted a casino licence relating to the Barangaroo restricted gaming facility to Crown Sydney Gaming Pty Limited (**Licensee**). The Licensee is a wholly owned subsidiary of Crown Resorts Limited (**Crown Resorts**).

2. The Authority is required to have regard to the primary objects of the *Casino Control Act 1992* (NSW) (***Casino Control Act***) in exercising its functions (section 4A(2) of the *Casino Control Act*). Those primary objects of the *Casino Control Act* are identified in section 4A(1). They are:

   (a) ensuring that the management and operation of a casino remain free from criminal influence or exploitation;

   (b) ensuring that gaming in a casino is conducted honestly; and

   (c) containing and controlling the potential of a casino to cause harm to the public interest and to individuals and families.

3. The Authority has such functions as are necessary or convenient to enable it to achieve its objects under the *Casino Control Act* (section 141(1)). Without limiting its functions, the Authority has the specific function to keep under constant review all matters connected with casinos and the activities of casino operators, persons associated with casino operators, and persons who are in a position to exercise

Level 6, 323 Castlereagh Street Sydney NSW 2000
[t] +61 2 9995 0827 [e] ilga.secretariat@liquorandgaming.nsw.gov.au
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direct or indirect control over the casino operators or persons associated with casino operators (section 141(2)(c)) of the *Casino Control Act*.

4. Pursuant to section 143 of the *Casino Control Act*, for the purpose of the exercise of its functions under that Act, the Authority may arrange the holding of inquiries in public or in private presided over by a person appointed by the Authority.

Appointment

5. Pursuant to section 143 of the *Casino Control Act* you are hereby appointed by the Authority to preside over an inquiry into the following matters.

Part A - Melco Changes

6. In or about late May 2019:

   (a) Melco Resorts & Entertainment Limited (**Melco**) entered into a Share Sale Agreement (**SSA**) with CPH Crown Holdings Pty Ltd (**CPH**) to acquire approximately 19.99% of the shares in Crown Resorts;

   (b) CPH, in accordance with the terms of the SSA, disposed of approximately 9.99% of the shares in Crown Resorts to Melco or its nominee, MCO (KittyHawk) Investments Limited (**KittyHawk**), a company registered in the Cayman Islands;

   (c) Melco announced its proposal to increase its shareholding in Crown Resorts;

   (d) Melco announced its proposal to seek representation on the board of Crown Resorts by any combination of Mr Lawrence Ho, Mr Geoff Davis, Ms Stephanie Cheung, Mr Akiko Takahashi, Mr Evan Winkler, and Mr Clarence Chung; and

   (e) Melco announced its proposal that it and Mr Lawrence Ho, Mr Geoff Davis, Ms Stephanie Cheung, Mr Akiko Takahashi, Mr Evan Winkler, and Mr Clarence Chung become close associates of the Licensee.

These events or proposed events are the "**Melco Changes**".

Level 6, 323 Castlereagh Street Sydney NSW 2000
[t] +61 2 9995 0827 [e] ilga.secretariat@liquorandgaming.nsw.gov.au
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7. Section 35 of the *Casino Control Act*, inter alia, requires the Authority to inquire into the suitability of persons becoming close associates of the Licensee. You are requested to inquire into and report upon:

   (a) the identity of any person who has or will become a close associate of the Licensee and the date upon which such person or persons has or will become a close associate of the Licensee as a result of the Melco Changes;

   (b) whether such person or persons:

      (i) are of good repute, having regard to character, honesty and integrity;

      (ii) have any business association with any person, body or association who is not of good repute, having regard to character, honesty, integrity, or has undesirable or unsatisfactory financial sources; and

      (iii) are otherwise not suitable to be associated with the Licensee; and

   (c) any matter reasonably incidental to these matters.

Part B – Suitability Review

8. On and from 27 July 2019, the Nine Network, the Sydney Morning Herald, The Age and other media outlets have broadcast or published material which raised various allegations into the conduct of Crown Resorts and its alleged associates and business partners and raised questions as to whether the Licensee remains a suitable person to hold a restricted gaming license for the purposes of the *Casino Control Act* (**Allegations**).

9. The Allegations include, but are not limited to, allegations that Crown Resorts or its agents, affiliates or subsidiaries:

   (a) engaged in money-laundering;

   (b) breached gambling laws; and

   (c) partnered with junket operators with links to drug traffickers, money launderers, human traffickers, and organised crime groups.

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[t] +61 2 9995 0827 [e] ilga.secretariat@liquorandgaming.nsw.gov.au
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14 August 2019

10. You are requested, in response to the Allegations, to inquire into and report upon (**Suitability Review**):

(a) whether the Licensee is a suitable person to continue to give effect to the Barangaroo restricted gaming licence;

(b) whether Crown Resorts is a suitable person to be a close associate of the Licensee;

(c) in the event that the answer to either (a) or (b) above is no, what, if any, changes would be required to render those persons suitable;

(d) whether or not the disposal of shares held by CPH in Crown Resorts to Melco or KittyHawk, on or around 6 June 2019, constituted a breach of the Barangaroo restricted gaming licence or any other regulatory agreement;

(e) whether or not the agreement by CPH to dispose of a second tranche of shares in Crown Resorts to Melco or KittyHawk on or before 30 September 2019 constitutes a breach of the Barangaroo restricted gaming licence or any other regulatory agreement;

(f) whether the transfer of the shares in Crown Resorts referred to in (d) and (e) above, constitutes or will constitute, a breach of the Barangaroo restricted gaming licence or any other regulatory agreement; and

(g) any matter reasonably incidental to these matters.

Part C – Regulatory Framework and Settings

11. You are requested to:

(a) inquire into and report upon the efficacy of the primary objects under the Casino Control Act in an environment of growing complexity of both extant and emerging risks for gaming and casinos;

(b) undertake a forward-looking assessment of the Authority's ability to respond to an environment of growing complexity of both extant and emerging risks for gaming and casinos;

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[t] +61 2 9995 0827 [e] ilga.secretariat@liquorandgaming.nsw.gov.au
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(c) identify recommendations in order to enhance the Authority's future capability, having regard to the changing operating environment; and

(d) in so inquiring and reporting in respect of paragraphs 9(a) to 9(c), take into account domestic and international best practice with respect to gaming operation and regulatory frameworks.

Powers

12. You have the powers, authorities, protections and immunities conferred on a commissioner by Division 1 of Part 2 of the *Royal Commissions Act 1923* (NSW).

13. You have the powers and authorities conferred on a commissioner by Division 2 of Part 2 of the *Royal Commissions Act 1923* (NSW) (except for sections 17(4) and (5)).

14. You are directed to hold the hearings in public unless you are satisfied that is convenient to conduct hearings in private.

15. You may be required to inquire into any other matter which the Authority requests in writing from time to time during the term of the inquiry.

Report

16. You are requested to report to the Authority in writing in relation to the matters for inquiry as soon as reasonably practicable.

Mr Philip Crawford
Chairperson of the Committee and
Delegate of the Independent Liquor and Gaming Authority

Date: 14 August 2019

Level 6, 323 Castlereagh Street Sydney NSW 2000
[t] +61 2 9995 0827 [e] ilga.secretariat@liquorandgaming.nsw.gov.au
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Appendix 6

Advertisement Published On Inquiry Website On 4 December 2019 And National Print Media On 5 December 2019

NEW SOUTH WALES

CASINO INQUIRY

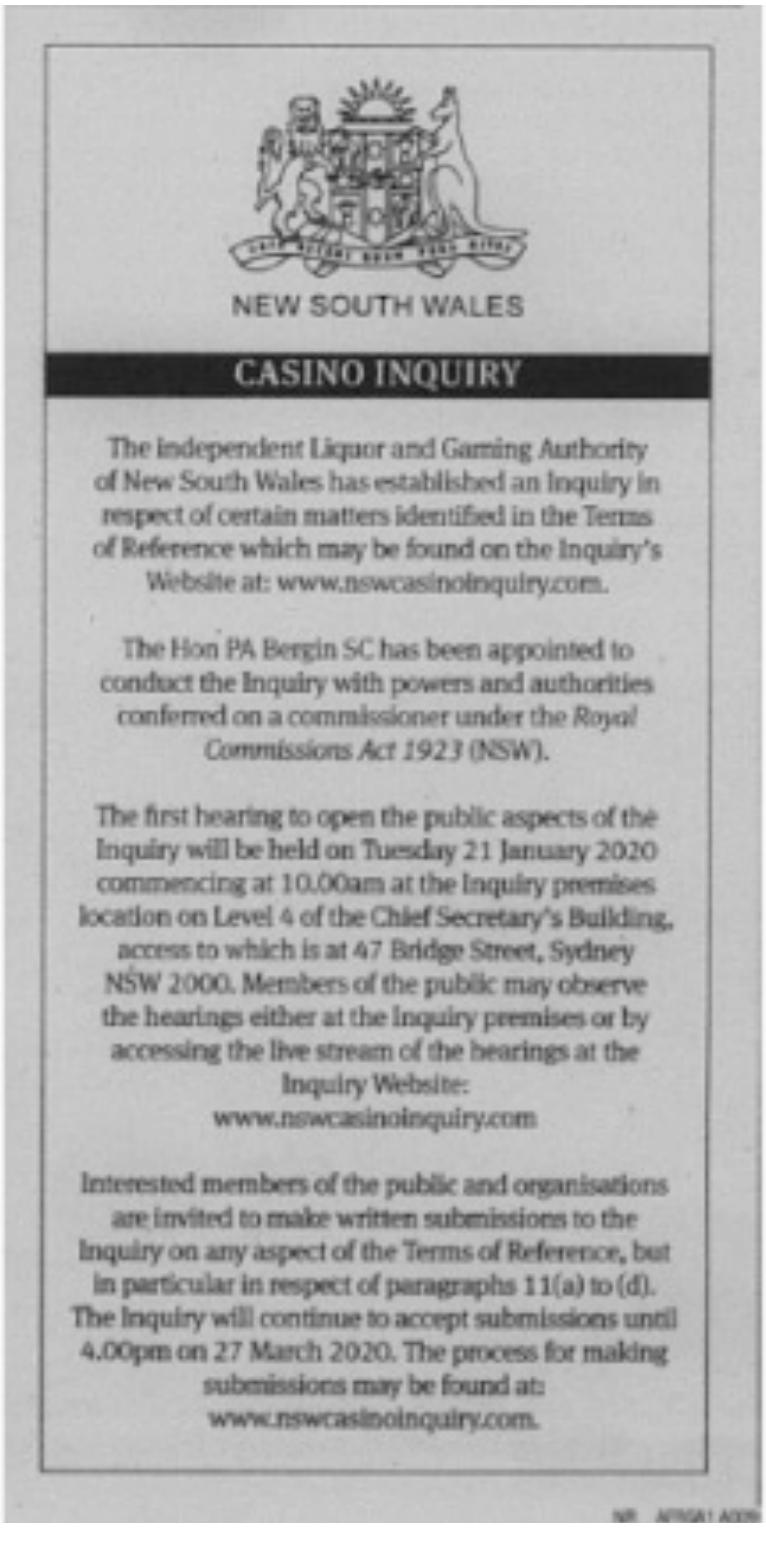
The independent Liquor and Gaming Authority of New South Wales has established an Inquiry in respect of certain matters identified in the Terms of Reference which may be found on the Inquiry's Website at: www.nswcasinoinquiry.com.

The Hon PA Bergin SC has been appointed to conduct the Inquiry with powers and authorities conferred on a commissioner under the *Royal Commissions Act 1923* (NSW).

The first hearing to open the public aspects of the Inquiry will be held on Tuesday 21 January 2020 commencing at 10.00am at the Inquiry premises location on Level 4 of the Chief Secretary's Building, access to which is at 47 Bridge Street, Sydney NSW 2000. Members of the public may observe the hearings either at the Inquiry premises or by accessing the live stream of the hearings at the Inquiry Website: www.nswcasinoinquiry.com

Interested members of the public and organisations are invited to make written submissions to the Inquiry on any aspect of the Terms of Reference, but in particular in respect of paragraphs 11(a) to (d). The Inquiry will continue to accept submissions until 4.00pm on 27 March 2020. The process for making submissions may be found at: www.nswcasinoinquiry.com.

The Australian Financial Review, 5 December 2019



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The Sydney Morning Herald, 5 December 2019

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The Australian, 5 December 2019

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Appendix 7

ILGA Announcement Regarding Deferral 3 April 2020

Independent Liquor & Gaming Authority

A statutory board established under the Gaming and Liquor Administration Act 2007

Friday, 3 April 2020

Inquiry arrangements in light of the current COVID-19 Epidemic

The Independent Liquor & Gaming Authority has decided that most of the work of the Casino Inquiry will be deferred in the current context of the COVID-19 epidemic, until it is considered safe and practicable for all public aspects of the work to resume.

This decision follows careful consideration of the current COVID-19 situation, Commonwealth and State Government advice and restrictions.

The Inquiry and its public hearings will resume promptly as soon as circumstances allow. Any updates regarding this and future timings will be announced publicly once determined.

Notification of this has been made to all entities authorised to appear at the Inquiry.

For any media enquiries, please contact ilga.secretariat@liquorandgaming.nsw.gov.au

4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150 | GPO Box 7060, Sydney NSW 2001
ilga.secretariat@liquorandgaming.nsw.gov.au | liquorandgaming.nsw.gov.au/independent-liquor-and-gaming-authority

Appendix 8

ILGA Announcement regarding resumption 23 June 2020

NSW GOVERNMENT | Independent Liquor & Gaming Authority

A statutory board established under the Gaming and Liquor Administration Act 2007

Tuesday, 23 June 2020

Resumption of NSW Casino Inquiry

The Independent Liquor & Gaming Authority has decided that all work of the Casino Inquiry will resume immediately.

Most of the Inquiry's work was deferred in April 2020 in light of the COVID-19 health and safety guidelines.

After carefully considering the current COVID-19 situation, and Commonwealth and NSW Government advice and restrictions, the Authority considers it safe and practicable to resume the Inquiry's work.

Following changes in the ownership of shares in Crown Resorts by Melco Resorts, the Inquiry's Terms of Reference have been updated. They will also shortly be posted on the Inquiry's website at http://nswcasinoinquiry.com/

All entities authorised to appear at the Inquiry have been informed of this.

Timetables for public hearings will be published on the Inquiry's website in due course.

For any media enquiries, please contact ilga.secretariat@liquorandgaming.nsw.gov.au

4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150 | GPO Box 7060, Sydney NSW 2001
ilga.secretariat@liquorandgaming.nsw.gov.au | liquorandgaming.nsw.gov.au/independent-liquor-and-gaming-authority

Appendix 9

Amended Terms of Reference 23 June 2020

Independent Liquor & Gaming Authority

NSW GOVERNMENT

A statutory board established under the Gaming and Liquor Administration Act 2007

Privileged, Private and Confidential – Not for publication

The Hon P A Bergin
Commissioner
Inquiry under the *Casino Control Act 1992* (NSW)

By email: p.bergin@nswcasinoinquiry.com

Dear Commissioner

Inquiry under s 143 of the *Casino Control Act 1992*

I refer to my letter dated 3 April 2020.

In that letter I directed, as an interim procedure, on the terms set out in that letter, pursuant to section 143(5) of the *Casino Control Act 1992*, that the work of the Inquiry be deferred until further Direction (the **Deferral Direction**).

The Authority now considers that it is safe and practicable for the work of the Inquiry to re-commence.

Accordingly, pursuant to section 143(5) of the *Casino Control Act 1992* and in supersession of the Deferral Direction, the Authority directs that from 23 June 2020 the work of the Inquiry is to resume.

As you are aware, in the period since the deferral letter, Melco Resorts & Entertainment Limited disposed of its shareholding in Crown Resorts.

The Authority has, in the circumstances, amended the Terms of Reference [Instrument of Appointment] to reflect that change and earlier changes since the Terms of Reference were first issued. I attach amended Terms of Reference [Instrument of Appointment] and I would be grateful if you could accept them.

If you wish to discuss the contents of this letter or any other matter regarding the Inquiry, please do not hesitate to telephone Murray Smith, Chair of the Authority's Inquiry Committee, on 0408 224 973.

Yours faithfully

Philip Crawford
Chairperson
for and on behalf of the **Independent Liquor & Gaming Authority**

23 June 2020

4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150 | GPO Box 7060, Sydney NSW 2001
liga.secretariat@liquorandgaming.nsw.gov.au | liquorandgaming.nsw.gov.au/independent-liquor-and-gaming-authority

Instrument of appointment to preside at an inquiry under section 143 of the *Casino Control Act 1992* (NSW)

To: **The Honourable Patricia Bergin SC**

Background

1. The Independent Liquor and Gaming Authority (the **Authority**) has functions under the gaming and liquor legislation identified in section 4 of the *Gaming and Liquor Administration Act 2007* (NSW) (***Gaming Act***). In July 2014, the Authority granted a casino licence relating to the Barangaroo restricted gaming facility to Crown Sydney Gaming Pty Limited (**Licensee**). The Licensee is a wholly owned subsidiary of Crown Resorts Limited (**Crown Resorts**).

2. The Authority is required to have regard to the primary objects of the *Casino Control Act 1992* (NSW) (***Casino Control Act***) in exercising its functions (section 4A(2) of the *Casino Control Act*). Those primary objects of the *Casino Control Act* are identified in section 4A(1). They are:

   (a) ensuring that the management and operation of a casino remain free from criminal influence or exploitation;

   (b) ensuring that gaming in a casino is conducted honestly; and

   (c) containing and controlling the potential of a casino to cause harm to the public interest and to individuals and families.

3. The Authority has such functions as are necessary or convenient to enable it to achieve its objects under the *Casino Control Act* (section 141(1)). Without limiting its functions, the Authority has the specific function to keep under constant review all matters connected with casinos and the activities of casino operators, persons associated with casino operators, and persons who are in a position to exercise direct or indirect control over the casino operators or persons associated with casino operators (section 141(2)(c) of the *Casino Control Act*).

4. Pursuant to section 143 of the *Casino Control Act*, for the purpose of the exercise of its functions under that Act, the Authority may arrange the holding of inquiries in public or in private presided over by a person appointed by the Authority.

5. On 14 August 2019 the Authority issued an Instrument of Appointment to the Honourable Patricia Bergin SC (the **Commissioner**) to preside at an inquiry under section 143 of the *Casino Control Act* into the matters referred to in the Instrument of Appointment.

6. In or about late May or early June 2019:

   (a) Melco Resorts & Entertainment Limited (**Melco**) entered into a Share Sale Agreement (**SSA**) with CPH Crown Holdings Pty Ltd (**CPH**) to acquire approximately 19.99% of the shares in Crown Resorts;

   (b) CPH, in accordance with the terms of the SSA, disposed of approximately 9.99% of the shares in Crown Resorts to Melco's nominee, MCO (KittyHawk) Investments Limited (**KittyHawk**), a company registered in the Cayman Islands;

   (c) Melco announced its proposal to increase its shareholding in Crown Resorts;

   (d) Melco announced its proposal to seek representation on the board of Crown Resorts by any combination of Mr Lawrence Ho, Mr Geoff Davis, Ms Stephanie Cheung, Ms Akiko Takahashi, Mr Evan Winkler, and Mr Clarence Chung; and

   (e) Melco announced its proposal that it and Mr Lawrence Ho, Mr Geoff Davis, Ms Stephanie Cheung, Ms Akiko Takahashi, Mr Evan Winkler, and Mr Clarence Chung become close associates of the Licensee.

7. On or about 28 August 2019 Melco entered into a deed with CPH to amend the SSA which made the sale of the remaining 9.99% of the shares in Crown Resorts (**Second Tranche**) subject to conditions that:

   (f) there was no finding or recommendation by the Authority or by the Commissioner which would, or which could reasonably be expected to, restrict completion of the sale of the Second Tranche occurring and the Authority not otherwise objecting to completion; and

   (g) Melco received written notice from each of the Authority, the Victorian Commission for Gambling and Liquor Regulation and the Western Australian Gaming and Wagering Commission that Melco was a suitable person to be

associated with the management of a casino, each such notification either being unconditional or on conditions acceptable to Melco acting reasonably.

8. On or about 5 September 2019 Melco notified the Authority that Melco was only seeking representation on the board of Crown Resorts by Mr Evan Winkler and Mr Geoff Davis.

9. On or about 6 February 2020 Melco:

   (a) entered into an agreement with CPH Crown which terminated its obligation to purchase the Second Tranche;

   (b) announced that it did not currently intend to increase its existing shareholding in Crown Resorts; and

   (c) announced that it did not intend to seek representation on the board of Crown Resorts.

10. On 3 April 2020, as an interim procedure, the Authority decided and directed the Commissioner pursuant to s143(5) of the Casino Control Act that most of the work of the inquiry established by the event referred to in paragraph 5 be deferred until further direction.

11. On 29 April 2020 it was announced on the Australian Stock Exchange that "an entity owned by funds managed or advised by The Blackstone Group Inc. and its affiliates" had purchased shares representing 9.99% shareholding of the issued capital in Crown Resorts, from Melco. On 1 May 2020 it was announced on the Australian Stock Exchange that Kittyhawk and other group companies named in the announcement including Melco ceased to have a relevant interest, or voting power, in Crown Resorts.

12. On 23 June 2020, the Authority decided and directed that from 23 June 2020 the work of the inquiry established by the event referred to in paragraph 5 resume.

Amendment

13. Pursuant to section 143 of the *Casino Control Act* the Authority directs that the matters into which the Commissioner is to inquire and report upon are amended as follows.

Part A Suitability Review

14. On and from 27 July 2019, the Nine Network, the Sydney Morning Herald, The Age and other media outlets have broadcast or published material which raised various allegations into the conduct of Crown Resorts and its alleged associates and business partners and raised questions as to whether the Licensee remains a suitable person to hold a restricted gaming license for the purposes of the *Casino Control Act* (**Allegations**).

15. The Allegations include, but are not limited to, allegations that Crown Resorts or its agents, affiliates or subsidiaries:

    (a) engaged in money-laundering;

    (b) breached gambling laws; and

    (c) partnered with junket operators with links to drug traffickers, money launderers, human traffickers, and organised crime groups.

16. In response to the Allegations, the Commissioner is to inquire into and report upon (**Suitability Review**):

    (a) whether the Licensee is a suitable person to continue to give effect to the Barangaroo restricted gaming licence;

    (b) whether Crown Resorts is a suitable person to be a close associate of the Licensee;

    (c) in the event that the answer to either (a) or (b) above is no, what, if any, changes would be required to render those persons suitable;

    (d) whether or not the disposal of shares held by CPH in Crown Resorts to Melco or KittyHawk, on or around 6 June 2019, constituted a breach of the Barangaroo restricted gaming licence or any other regulatory agreement;

    (e) whether or not the agreement by CPH to dispose of a second tranche of shares in Crown Resorts to Melco or KittyHawk on or before 30 September 2019 constituted a breach of the Barangaroo restricted gaming licence or any other regulatory agreement;

(f) whether the transfer of the shares in Crown Resorts referred to in (d) above, constituted a breach of the Barangaroo restricted gaming licence or any other regulatory agreement; and

(g) any matter reasonably incidental to these matters.

Part B - Regulatory Framework and Settings

17. The Commissioner is to:

(a) inquire into and report upon the efficacy of the primary objects of the *Casino Control Act* in an environment of growing complexity of both extant and emerging risks for gaming and casinos;

(b) undertake a forward-looking assessment of the Authority's ability to respond to an environment of growing complexity of both extant and emerging risks for gaming and casinos;

(c) identify recommendations in order to enhance the Authority's future capability, having regard to the changing operating environment; and

(d) in so inquiring and reporting in respect of paragraphs 17(a) to 17(c), take into account domestic and international best practice with respect to gaming operation and regulatory frameworks.

Powers

18. The Commissioner has the powers, authorities, protections and immunities conferred on a commissioner by Division 1 of Part 2 of the *Royal Commissions Act 1923* (NSW).

19. The Commissioner has the powers and authorities conferred on a commissioner by Division 2 of Part 2 of the *Royal Commissions Act 1923* (NSW) (except for sections 17(4) and (5)).

20. The Commissioner is directed to hold the hearings in public unless the Commissioner is satisfied that is convenient to conduct hearings in private.

21. The Commissioner may be required to inquire into any other matter which the Authority requests in writing from time to time during the term of the inquiry.

Report

22. The Commissioner is to report to the Authority in writing in relation to the matters for inquiry by 1 February 2021.

Appendix 10

Entities With Authorisation To Appear

Entity/Witness	Counsel	Solicitors
Counsel assisting the Inquiry	Mr A. Bell SC Ms N. Sharp SC Mr S. Aspinall Mr N. Condylis	Norton Rose Fulbright Australia
CPH Crown Holdings Pty Ltd	Mr N. Hutley SC Ms R. Higgins SC Ms A.Richards Mr D. Barnett Mr N. Bender Mr A. D'Arville Mr T. O'Brien Mr C. Mitchell	Ashurst
Crown Resorts Limited and Crown Sydney Gaming Proprietary Limited	Mr N. Young QC Mr N. Hopkins QC Ms R. Orr QC Mr R. Craig SC Mr P. Herzfeld SC Mr K. Loxley Ms F. Shand Mr E. Batrouney Ms C. Hamilton-Jewell Mr H.C. Whitwell	MinterEllison
Melco Resorts & Entertainment Limited	Mr S. Finch SC Mr J. Stoljar SC Ms N. Case Ms Z. Hillman	Clayton Utz
Star Entertainment Group Limited and Star Pty Ltd	Ms K. Richardson SC	King & Wood Mallesons
Mr Craigie	Mr N. Hopkins QC	
Mr Ben Brazil	Mr N. Owens SC	Gilbert & Tobin
Mr Barry Felstead	Ms J. Shepard	
Mr Veng Anh	Mr O. Cain	
Ms Whitaker	Mr R. Harris	Gilbert & Tobin
Mr Mitchell	Dr M. Collins QC Ms Foley	

Appendix 11

List Of Witnesses At Public Hearings Of The Inquiry

Witness	Date appeared
John Alexander	1 October 2020
	2 October 2020
Veng Anh	4 September 2020
Skye Arnott	3 August 2020
	6 August 2020
Ken Barton	23 September 2020
	24 September 2020
Benjamin Brazil	8 October 2020
Paul Bromberg	24 February 2020
David Brown	4 September 2020
Anthony Cabot	25 February 2020
Aubrey Chapman	27 February 2020
Peter Cohen	5 August 2020
Helen Anne Coonan	16 October 2020
	20 October 2020
Rowen Craigie	20 August 2020
	21 August 2020
Rowena Danziger	24 August 2020
Andrew Demetriou	12 October 2020
	13 October 2020
Geoffrey James Dixon	21 October 2020
Barry Felstead	17 August 2020
	18 August 2020
	19 August 2020
Jane Halton	14 October 2020
	15 October 2020
Gregory Hawkins	4 August 2020
John Horvath	13 October 2020
	14 October 2020
Scott Howell	4 September 2020
Guy Jalland	29 September 2020
	30 September 2020
Neil Jeans	11 September 2020
Michael Roy Johnston	25 September 2020
	28 September 2020
	29 September 2020
Nick Kaldas	15 September 2020
Antonia Korsanos	13 October 2020
Ishan Kunaratnam	20 August 2020
John Langdale	26 February 2020
Jessica Lin	26 February 2020
Mary Manos	23 September 2020
Harold Mitchell	9 October 2020
Michael Neilson	10 September 2020

Witness	Date appeared
Jason O'Connor	2 September 2020
	3 September 2020
James Packer	6 October 2020
	7 October 2020
	8 October 2020
John Hartley Poynton	1 October 2020
Joshua Preston	27 July 2020
	30 July 2020
	31 July 2020
	3 August 2020
	31 August 2020
	1 September 2020
	2 September 2020
Nelson Rose	25 February 2020
Christopher Sidoti	4 August 2020
Anne Siegers	11 September 2020
	14 September 2020
	15 September 2020
Nick Stokes	4 September 2020
Drew Stuart	17 August 2020
Debra Tegoni	9 September 2020
	10 September 2020
Steve Vickers	31 August 2020
Rose Webb	23 October 2020
Victoria Whitaker	15 September 2020
Jan Williamson	9 September 2020

Appendix 12

Liaison With Regulators

State and Territory
Australian Capital Territory Gambling and Racing Commission, Access Canberra
New South Wales Department of Customer Service, Better Regulation Division
New South Wales Independent Commission Against Corruption
New South Wales Police Force
Northern Territory Department of the Attorney-General and Justice
Northern Territory Department of Trade, Business and Innovation
Queensland Department of Justice and Attorney-General
Queensland Office of Liquor and Gaming Regulation
South Australian Consumer and Business Services
Tasmanian Liquor and Gaming Commission
Victorian Commission for Gambling and Liquor Regulation
Victorian Independent Broad-based Anti-corruption Commission
Victoria Police
Western Australian Department of Local Government, Sport and Cultural Industries
Federal
Australian Border Force (ABF)
Australian Commission for Law Enforcement Integrity (ACLEI)
Australian Competition and Consumer Commission (ACCC)
Australian Criminal Intelligence Commission (ACIC)
Australian Federal Police (AFP)
Australian Securities Investments Commission (ASIC)
Australian Taxation Office (ATO)
Australian Transaction Reports and Analysis Centre (AUSTRAC)
Foreign Investment Review Board (FIRB)
International
Alberta Gaming and Liquor Commission
Alcohol and Gaming Commission of Ontario
Gambling Authority (Service de Controle des Jeux) [Monaco]
Gaming Policy and Enforcement Branch of the Ministry of Attorney General (British Columbia

Gaming Regulators European Forum (GREF) [European Union]

Hong Kong Jockey Club

INTERPOL

Liquor and Gaming Authority of Manitoba

Macau Gaming Inspection and Coordination Bureau

Massachusetts Gaming Commission

Ministry of Land – Japan.

Nevada Gaming Control Board and Gaming Commission

New Jersey Division of Gaming Enforcement

New Jersey Gaming Control Commission

New Zealand Department of Internal Affairs

New Zealand Gambling Commission

Philippine Amusement and Gaming Corporation (PAGCOR)

Saskatchewan Liquor and Gaming Authority

Singapore Casino Regulatory Authority

UK Gambling Commission

Appendix 13

Key Statistics

Number of Summonses issued by the Inquiry: 187
Documents produced to the Inquiry in answer to Summonses or Inquiry database: approximately 81,000

Number of wholly private hearings (excluding private sessions of public hearings): 6
Submissions received (excluding parties with leave to appear): 34

60 public hearing days:

- Opening day (1).
- Witnesses (47).
- Oral submissions (12).

Appendix 14

Staff of the Inquiry assisting the Commissioner

Counsel Assisting

Adam Bell SC
Naomi Sharp SC
Scott Aspinall
Nicholas Condylis

Solicitors Assisting

Scott Atkins
Michael Sullivan
Supported by a team of Norton Rose Fulbright Australia solicitors, support staff and personal assistant to the Commissioner

Premises of the Inquiry
Level 4
Chief Secretary's Building
47 Bridge Street
Sydney NSW 2000

Endnotes

Endnotes

PART 1 Background

1.1 Introduction

[1] Ex AA183.
[2] Victorian Commission for Gambling and Liquor Regulation (VCGLR); Gaming and Wagering Commission of Western Australia.
[3] Ex A143.
[4] Ex AC15.
[5] Ex AA144.
[6] Paragraph 16, Terms of Reference.
[7] Ex AA238.
[8] *Attorney General for New South Wales v Melco Resorts & Entertainment Limited* [2020] NSWCA 40.
[9] [2020] HCASL 129.
[10] *Royal Commissions Act* 1923 (NSW), s 17.
[11] Independent Liquor and Gaming Authority, Inquiry Arrangements in light of current COVID-19 epidemic 3 April 2020, published at <https://www.liquorandgaming.nsw.gov.au/news-and-media/inquiry-arrangements-in-light-of-the-current-covid-19-epidemic >.
[12] Ex ZZ14.
[13] Ex AA253.
[14] Amended Terms of Reference, par 22.
[15] Ex Y1.
[16] Ex AT19.
[17] Ex ZZ183.

1.2 The Casino Market and the VIP Segment

[1] Ex A162.
[2] Tr 70; Tr 156.
[3] Tr 134; Tr 155.
[4] Tr 62.
[5] Tr 62; Tr 66.
[6] Ex A23.
[7] Tr 70; Tr 156; Tr 855.
[8] Tr 70; Tr 157; Tr 158.
[9] Ex A32; Ex F41; Tr 156.
[10] Ex A27.
[11] Ex A37.
[12] Ex A16.
[13] Ex A16.
[14] Ex M257.
[15] Tr 64 to Tr 65.
[16] Ex A41; Tr 841.
[17] Tr 79.
[18] Ex A17.
[19] Ex A41; Tr 65; Tr 841.
[20] Tr 67; Tr 145.
[21] Tr 65.
[22] Tr 66.
[23] Tr 839.
[24] Ex F78; Tr 840.
[25] Tr 840.
[26] Ex M109.

[27] Tr 68.
[28] Tr 68.
[29] Ex A234.
[30] Tr 63.
[31] Tr 857.
[32] Ex A74.
[33] Ex F78; Tr 840.
[34] Tr 461; Tr 840.
[35] Ex A35; Ex C2.
[36] Ex A18.
[37] Ex A13.
[38] Tr 63.
[39] Tr 77; Tr 1638.
[40] Ex A16; Ex A18.
[41] Ex A16.
[42] Ex C1; Tr 80.
[43] Tr 80.
[44] Ex C1.
[45] Tr 127.
[46] Tr 126.
[47] Tr 81; Tr 123; Tr 163.
[48] Tr 133.
[49] Ex A16; Ex A17; Ex F41.
[50] Ex A35; Tr 163.
[51] Tr 70.
[52] Ex A16; Tr 71; Tr 161.
[53] Ex A27; Tr 161; Tr 1638.
[54] Tr 74.
[55] Tr 65.
[56] Ex A163.
[57] Ex A16; Tr 63.
[58] Ex A16.
[59] Ex F78.
[60] Ex T14; Ex ZZ30.
[61] Tr 3703.
[62] Tr 3703 to Tr 3704.
[63] Ex AF45.
[64] Ex T14.
[65] Ex A136.
[66] Ex T14; Tr 858; Tr 3706.
[67] Tr 1648.
[68] Tr 70-71.
[69] Ex A16; Tr 71.
[70] Tr 71.
[71] Tr 72; Tr 254.
[72] Tr 72.
[73] Ex A18.
[74] Ex A257.
[75] Tr 1648.
[76] Ex A17.
[77] Tr 73.
[78] Ex A17; Ex A257.
[79] Ex A174.
[80] Tr 73 to Tr 74.
[81] Ex A16.
[82] Notwithstanding the references to capitalist South Korea in this Report, it is recognised that the country is correctly titled as the Republic of Korea.
[83] Tr 74.
[84] Ex M169.
[85] Tr 158.
[86] Ex A176.

[87] Tr 73; Tr 158; Tr 160 to Tr 161; Tr 843; Tr 3701.
[88] Tr 843.
[89] Tr 842.
[90] Tr 161.
[91] Tr 842.
[92] Tr 450.
[93] Ex A163; Tr 75; Tr 857; Tr 1655.
[94] Ex A163.
[95] Ex A16; Ex A35.
[96] Tr 75.
[97] Ex A16.
[98] Ex A16.
[99] Ex C10; Ex C21.
[100] Ex M109.
[101] Ex M224.
[102] Ex A195.
[103] Ex M224; Ex AC29A.
[104] Ex AC29A.
[105] Ex AC29A.
[106] Ex A197.
[107] Ex ZZ189.
[108] Tr 3736.
[109] Tr 3700 to Tr 3701.
[110] Tr 3701.
[111] Tr 3702.
[112] Tr 3707.
[113] Ex A136; Tr 3708-Tr 3709.
[114] Tr 3709-3711.
[115] Tr 3710.
[116] Ex M224.
[117] Ex M120.
[118] Ex M169.
[119] Ex M257.
[120] Ex BF89.
[121] Ex M109; Ex M169; Ex BJ53.
[122] Ex M338.
[123] Ex O4.
[124] Tr 450.
[125] Ex F78; Tr 451.
[126] Tr 790.
[127] Tr 788-789.
[128] Tr 453.
[129] Ex M65.
[130] Ex BA82; Ex BJ86.
[131] Ex K2.
[132] Tr 825; Tr 827.
[133] Tr 887.
[134] Tr 891-892.
[135] Ex K2.
[136] Tr 825; Tr 892.
[137] Tr 892-893.

1.3 Regulation of Casinos in New South Wales

[1] Ex A42.
[2] Ex ZZ156.
[3] Ex ZZ184.
[4] The Hon Francis Xavier Connor QC (1917-2005); Justice of the Supreme Court of the ACT (1972-1977); Justice of the Federal Court of Australia (1977-1982); President of the Australian Law Reform Commission (1985-1987).
[5] Ex A43; Ex ZZ154.

[6] Ex A43.
[7] Ex A43. In concluding the report, Mr Connor QC noted that he had found the inquiry "as demanding a task as anything I have done during 23 years at the Bar and 10 years on the Bench".
[8] Ex A43.
[9] Ex A43.
[10] Ex ZZ154.
[11] Ex ZZ185.
[12] Ex A44.
[13] Ex A44.
[14] Ex A44.
[15] Ex A44.
[16] Ex A44.
[17] Ex A44.
[18] Ex A44; Tr 119-120.
[19] Ex A44.
[20] See further Ex A75.
[21] *Casino Control Amendment Act* 2009, Sch 1, [14].
[22] *Casino Control Amendment Act* 2009, Sch 1, [15].
[23] The amendment was made by the *Casino Control Amendment Act* 2001 (NSW), Sch 2, [1].
[24] *Miscellaneous Acts (Casino, Liquor and Gaming) Amendment Act* 2007, Sch 1.
[25] Ex A118; *Gaming and Liquor Administration Act* 2007, s 6 (as amended by the *Clubs, Liquor and Gaming Machines Legislation Amendment Act* 2011).
[26] *Gaming and Liquor Administration Act* 2007, s 9(1).
[27] *Public Sector Employment Legislation Amendment Act* 2006.
[28] *Miscellaneous Acts (Casino, Liquor and Gaming) Amendment Act* 2007, Sch 1, cl. 27.
[29] *Casino Control Act* 1992 (as enacted), s 138.
[30] *Gaming and Liquor Administration Amendment Act* 2015, Sch. 1.
[31] *Administrative Arrangements (Administrative Changes – Public Service Agencies) Order* 2019 (NSW), clauses 6, 9 and 31.
[32] Ex A72; Tr 4748-4749.
[33] *Casino Control Act* 1992 (as enacted), ss 7, 9 and 10.
[34] *Casino Control Act*, s. 5A, as added by the *Gaming and Liquor Administration Amendment Act* 2015 Sch 1.
[35] Ex A166; Tr 914; Tr 921; Tr 922.
[36] *Liquor Amendment (Reviews) Act* 2017 (NSW), Sch 2.
[37] Tr 926; *Gaming and Liquor Administration Amendment Act* 2015, Sch 2(1).
[38] Ex A166.
[39] *Casino Control Amendment Act* 2009 (NSW), s 31(1).
[40] Section 31(3) of *Casino Control Act* introduced 21 March 2018 by the *Casino Control Amendment Act* 2018 (No 8).
[41] Ex A88.
[42] *Casino Control Act* 1992 (as enacted), ss 43 and 44.
[43] *Casino Control Act* 1992 (as enacted), s 52(2).
[44] *Casino Control Act* 1992 (as enacted), s 52(3)(c). Section 52(3)(c) was repealed on 18 May 2010 by the *Casino Control Amendment Act* 2010, No 16.
[45] *Casino Control Act* 1992 (as enacted), s 37.
[46] Ex A43.
[47] For example, *Casino Control Regulation* 2001 (NSW), cl. 10 ($330,000); *Casino Control Amendment (Exempt Contracts) Regulation* 2004 (NSW), cl. 10 ($550,000); *Casino Control Regulation* 2009 (NSW), cl. 9 ($625,000).
[48] By 2003, it was $330,000 or more for general goods and services.
[49] Casino Control Amendment Regulation 2018, Sch 1, [13].
[50] Ex F41; Tr 1033-1034.
[51] Part 5: Chapter 5.1.
[52] Tr 4744; Tr 4787-4788.
[53] Ex A264.
[54] Ex F30.
[55] Ex A74.
[56] Ex A74.
[57] Ex A74.
[58] Ex A74.
[59] Ex A74.
[60] Ex A74. See also recommendation 35.

[61] Ex A74. See also recommendation 39.
[62] Ex A74.
[63] Ex A74. See also recommendation 99.
[64] Ex A74: See also recommendation 118.
[65] Ex A74.
[66] Ex A74.
[67] Ex A74.
[68] Ex A74.
[69] Ex A74.
[70] Ex A74.
[71] Ex A77.
[72] Ex A77.
[73] Ex A77.
[74] Ex A77.
[75] Ex A77.
[76] Ex ZZ187.
[77] Ex ZZ187.
[78] Ex ZZ187.
[79] *Casino Control Amendment Act* 2018 (NSW).
[80] Tr 4789.

1.4 Anti-Money Laundering Regulation in Casinos

[1] Ex AO 49.
[2] Tr 249.
[3] Ex AO45.
[4] Ex AO44.
[5] Ex A99.
[6] Criminal Code (Cth); Crimes Act 1900 (NSW), ss 193A-193G; Crimes Act 1958 (Vic), ss 193-195A; The Criminal Code (WA), s 562-563B, etc.
[7] Anti-money Laundering and Counter-Terrorism Financing Act 2006 (Cth). The Authority is AUSTRAC.
[8] Proceeds of Crime Act 2002 (Cth); Confiscation Act 1997 (Vic); Criminal Proceeds Confiscation Act 2002 (Vic).
[9] Tr 290-291.
[10] Ex A95.
[11] Ex A56.
[12] Ex A56.
[13] Ex A56.
[14] Ex A56.
[15] Ex A56.
[16] Ex A56.
[17] Cash Transactions Reports Act 1988 (Cth).
[18] Cash Transactions Reports Act 1988 (Cth), s 35(1).
[19] Cash Transactions Reports Act 1988 (Cth), ss 3(1), 7.
[20] Cash Transaction Reports Amendment Act 1991 (Cth), s 5.
[21] Cash Transaction Reports Amendment Act 1991 (Cth), s 11.
[22] By insertion of a new s 17B into the principal Act.
[23] Ex AO51.
[24] Ex AO55.
[25] Ex ZZ206.
[26] AML/CTF Act, s 6(2).
[27] AML/CTF Act, s 6(3).
[28] AML/CTF Act, s 6(4).
[29] AML/CTF Act, s 6(4).
[30] AML/CTF Act, s 6(4).
[31] AML/CTF Act, s 5.
[32] AML/CTF Act, s 6(4).
[33] AML/CTF Act, s 27.
[34] AML/CTF Act, s 41.
[35] AML/CTF Act, s 43.
[36] AML/CTF Act, ss 45, 46.

[37] AML/CTF Act, s 47.
[38] AML/CTF Act, s 81.
[39] AML/CTF Act, s 82.
[40] AML/CTF Act, s 84(1).
[41] AML/CTF Act, s 85(1).
[42] AML/CTF Act, s 5.
[43] AML/CTF Act, s 84(1) (standard) and s 85(1) (joint).
[44] AML/CTF Act, s 84(2)(a) (standard) and s 85(2) (joint).
[45] Ex A246.
[46] AML/CTF Rules, Chapter 8, Part 8.2 (standard) and Chapter 9, Part 9.2 (joint).
[47] AML/CTF Rules, Chapter 8, Part 8.3 (standard) and Chapter 9, Part 9.3 (joint).
[48] AML/CTF Rules, Chapter 8, Part 8.4 (standard) and Chapter 9, Part 9.4 (joint).
[49] AML/CTF Rules, Chapter 8, Part 8.5 (standard) and Chapter 9, Part 9.5 (joint).
[50] AML/CTF Rules, Part 8.6 (standard) and Chapter 9, Part 9.6 (joint).
[51] AML/CTF Rules, r 8.1.4 (standard) and r 9.1.4 (joint).
[52] Tr 2459; AML/CTF Rules, Part 8.6 (standard) and Chapter 9, Part 9.6 (joint).
[53] AML/CTF Rules, r 8.7.1 (standard) and r 9.7.1 (joint).
[54] AML/CTF Act, s 84(3) (standard) and s 85(3) (joint).
[55] AML/CTF Act, ss 27 to 39.
[56] AML/CTF Rules, r 4.12.
[57] AML/CTF Rules, r 4.13.
[58] AML/CTF Rules, r 4.2.3.
[59] AML/CTF Rules, r 4.1.2.
[60] Tr 350.
[61] Tr 337.
[62] AML/CTF Act, s 39(4).
[63] AML/CTF Act, s 35(2)(a).
[64] AML/CTF Act, s 35(2)(b).
[65] AML/CTF Act, s 35C(2)(a).
[66] AML/CTF Act, s 35C(2)(c).
[67] AML/CTF Rules, r 4.2.3.
[68] AML/CTF Rules, r 4.2.5.
[69] Under rr 4.1.3 to 4.1.5.
[70] AML/CTF Rules, r 4.2.7.
[71] AML/CTF Rules, r 4.2.11(1), required by rr 4.2.3 and 4.2.4.
[72] AML/CTF Rules, r 4.2.11(2).
[73] AML/CTF Rules, r 4.2.11(3).
[74] AML/CTF Rules, r 4.3.3.
[75] AML/CTF Rules, r 4.3.3(1).
[76] AML/CTF Rules, r 4.3.3(2).
[77]AML/CTF Rules, r 4.3.3(3).
[78] AML/CTF Rules, r 10.1.3 to 10.1.7.
[79] AML/CTF Rules, r 10.1.4.
[80] AML/CTF Rules, r 10.1.5.
[81] AML / CTF Rules, r 10.1.6.
[82] AML/CTF Rules, r 10.1.6.
[83] AML/CTF Rules, r 10.1.4 to 10.1.5; Explanatory Statement Chapter 10 of the AML/CTF Rules, Gambling Sector (10 April 2007).
[84] Explanatory Statement, Chapter 10 of the AML/CTF Rules, Gambling Sector (10 April 2007); AML/CTF Act, s 6, Table 3, Items 11, 14.
[85] AML/CTF Rules, r 10.1.8; AML/CTF Act 2 6(4), Item 1, 2, 4, 6.
[86] AML/CTF Rules, r 10.1.7.
[87] AML/CTF Rules, r 15.8.
[88] Tr 320.
[89] AML/CTF Rules, r 15.9.
[90] AML/CTF Act, 36(1)(a).
[91] AML/CTF Rules, rr 15.1 to 15.3.
[92] AML/CTF Act, s 36.
[93] AML/CTF Rules, r 15.10.
[94] AML/CTF Rules, r 15.4.
[95] AML/CTF Rules, r 15.5.

[96] AML/CTF Rules, r 15.6.
[97] AML/CTF Rules, r 15.7.
[98] Tr 320.
[99] Tr 2474.
[100] Ex G5.
[101] Tr 328.
[102] AML/CTF Act, ss 84(2)(a), 85(2)(a); AML/CTF Rules, rr 8.1.2, 9.1.2.
[103] AML/CTF Rules, r 8.1.4 (standard) and r 9.1.4 (joint).
[104] See for example, AML/CTF Act, ss 41(2) and 41(4), 43(2) and 43(4).
[105] AML/CTF Act, s 82.
[106] See for example, AML/CTF Act, ss 36(1)(a).
[107] Ex A104.
[108] Section 400.1(1) (definition of 'proceeds of crime') of the Criminal Code.
[109] Section 400.1(1) (definition of 'instrument of crime') of the Criminal Code.
[110] See Criminal Code, ss s400.3 to 400.8.
[111] See Criminal Code, ss 400.3(2)(c),400.4(2)(c), 400.5(2)(c), 400.6(2)(c), 400.7(2)(c) and 400.8(2)(c).
[112] See Criminal Code, ss 400.3(3)(c),400.4(3)(c), 400.5(3)(c), 400.6(3)(c), 400.7(3)(c) and 400.8(3)(c).
[113] See Criminal Code, ss 5.4(1) and 5.4(2).
[114] Section 5.4(3) of the Criminal Code.
[115] Section 5.3 of the Criminal Code.
[116] Crimes Act 1900 (NSW), s193C; Crimes Act 1958 (Vic), ss 194-195; Western Australia Criminal Code (WA), ss 563A-563B.
[117] AML/CTF Act, s 51.
[118] Ex A56.
[119] Ex A56.
[120] Ex A56.
[121] Ex A95.
[122] Tr 236.
[123] Tr 354.
[124] Ex A95.

1.5 Vulnerability of Junkets to Organised Crime

[1] Ex A16; Ex A226; Ex T14.
[2] Ex A16.
[3] Tr 1644; Tr 1646.
[4] Ex A37.
[5] Ex A37; Tr 172.
[6] Tr 78.
[7] Ex C5.
[8] Tr 84.
[9] Ex A40.
[10] Tr 1638.
[11] Ex A90; Ex AO112.
[12] Ex A56.
[13] Ex A90.
[14] Ex A246.
[15] Ex A91.
[16] Tr 1639.
[17] Ex A163.
[18] Ex C3.
[19] Ex C3; Ex E1; Ex F53.
[20] Tr 262.
[21] Ex A90.
[22] Ex A90.
[23] Ex A240.
[24] Tr 169; Tr 1648.
[25] Tr 79. See also Tr 85.
[26] Tr 1650.
[27] Tr 185.
[28] Ex AF55.

[29] Ex A23; Ex A31; Ex A38; Ex A163.
[30] Ex T28.
[31] Tr 464; Tr 467; Tr 482; Tr 965; Tr 1653.
[32] Tr 879.
[33] Tr 89.
[34] Ex A40.
[35] Ex A163.
[36] Tr 1652 to Tr 1653.
[37] Ex K2; Ex BA95.
[38] Ex BA95.
[39] Tr 61.
[40] Tr 1647.
[41] Tr 462; Tr 1635; Tr 1893.

1.6 Regulation of Junkets

[1] Ex A42.
[2] Ex A42.
[3] Ex A43.
[4] Ex A44.
[5] Ex A44.
[6] *Casino Control Amendment Act* 2010, Sch 1, [24].
[7] This automatic repeal was pursuant to s 10(2) of the *Subordinate Legislation Act 1989* (NSW).
[8] Ex F22.
[9] Ex F22.
[10] Ex F22.
[11] Ex F22.
[12] Ex F22.
[13] Ex F22.
[14] Ex A144.
[15] Ex A144.
[16] Ex A144.
[17] Ex A144.
[18] Ex A144.
[19] Ex K6; Ex K7; Ex K8.
[20] Ex K8.
[21] Ex K8.
[22] Tr 936.
[23] Tr 936.
[24] Ex F41.
[25] Ex F41.
[26] Ex F41.
[27] Ex F41.
[28] Ex F41.
[29] Tr 937, Mr Sidoti's evidence was that this expression was a "throwaway line" and "not taken seriously as the totality of the situation". See also Ex F41.
[30] Ex F41.
[31] Ex F41.
[32] Tr 9; Tr 144; Tr 164; Tr 486-487; Tr 822; Tr 867; Tr 937.
[33] Ex F41.
[34] Ex F41.
[35] Ex F41.
[36] Ex F41.
[37] Ex F41.
[38] Ex F41.
[39] Ex F41.
[40] Ex F41.
[41] Ex F41.
[42] Ex F41.
[43] Ex F41.
[44] Ex F41.

[45] Ex F41.
[46] Ex F41.
[47] Ex F41.
[48] Clause 2 and item [2] of Sch.1 to the Casino Control Amendment (Miscellaneous) Regulation 2018 (NSW).
[49] Ex DA21.
[50] Ex DA21.
[51] Ex DA21.
[52] Ex DA21.
[53] Ex DA21.
[54] Ex DA21.
[55] Ex DA21.

1.7 Casino Licence in NSW to 2013

[1] Ex AO102; *Casino Control Amendment (Barangaroo Restricted Gaming Facility) Act* 2013, Sch 1, [10]-[11].
[2] *Darling Casino Ltd v NSW Casino Control Authority* (1997) 191 CLR 602 at 614.
[3] Ex AO106.
[4] Ex A45; *Darling Casino Ltd v NSW Casino Control Authority* (1997) 191 CLR 602 at 614.
[5] *Darling Casino Ltd v NSW Casino Control Authority* (1997) 191 CLR 602 at 614-615.
[6] *Darling Casino Ltd v NSW Casino Control Authority* (1997) 191 CLR 602 at 615. See also Ex A46.
[7] Ex A46.
[8] Ex A62 - allowing more than one casino licence, or if the government allowed another licensed casino to open at any new location, the government was liable to pay compensation (including compensation for loss of profits) to the casino operator as a result of such an occurrence.
[9] *Darling Casino Ltd v NSW Casino Control Authority* (1997) 191 CLR 602.
[10] Ex A46.
[11] Ex A46.
[12] *Hinkley v Star City Pty Ltd & Anor* [2011] NSWCA 29 at [37].
[13] Ex A46.
[14] Ex ZZ190.
[15] *Casino Control Amendment Act 2009* (NSW), Sch 1, [4].
[16] Ex A46.
[17] Ex A46.
[18] Ex A47.
[19] Ex A47.
[20] Ex A47.
[21] Tr 844.
[22] Ex A47.
[23] Ex A47.
[24] Ex A47.
[25] Ex A47.
[26] Ex A47.
[27] Ex A48.
[28] Ex A48.
[29] Ex A50.
[30] Ex AF46.
[31] Ex AF46.
[32] Ex AF46.
[33] Ex A51.
[34] Ex A50.
[35] Ex AF46.
[36] Ex ZZ190.
[37] Ex A62.
[38] Ex A75.
[39] Ex A62.
[40] Ex ZZ2.
[41] Ex ZZ153.
[42] Ex A62.
[43] Ex A62.
[44] Ex ZZ155.
[45] Ex ZZ155.

[46] Ex ZZ155; Ex A75.
[47] Ex A75.
[48] Ex ZZ168.
[49] Ex A63.
[50] Ex Y16. See also Ex A63.
[51] Ex A68.
[52] Ex AO108.
[53] Ex A75.
[54] Ex A75.
[55] Ex A75.
[56] Ex A75.
[57] Ex A75.
[58] Ex A75.
[59] Ex A75.
[60] Ex A75.
[61] Ex K2.
[62] Ex A197.
[63] Ex ZZ147; Ex ZZ148; Ex ZZ151; Ex ZZ189; Ex ZZ191.
[64] Ex A197.
[65] Ex ZZ150.
[66] Ex ZZ150.

1.8 Restricted Gaming Licence at Barangaroo

[1] Ex ZZ192.
[2] Ex AO107.
[3] Ex AO99.
[4] Ex ZZ192; Ex AO109.
[5] Ex AO110.
[6] Ex AN2; Ex AO101.
[7] Ex AO101.
[8] Ex A136.
[9] Ex A64.
[10] Ex F35.
[11] Ex A139.
[12] Ex A136.
[13] Ex A136.
[14] Ex A136.
[15] Ex A136.
[16] Tr 3701.
[17] Tr 3710.
[18] *Casino Control Amendment (Barangaroo Restricted Gaming Facility) Act 2013* (NSW).
[19] *Casino Control Amendment (Barangaroo Restricted Gaming Facility) Act 2013* (NSW) Sch 1, [18].
[20] *Casino Control Amendment (Barangaroo Restricted Gaming Facility) Act 2013* (NSW) Sch 1, [31].
[21] Ex AO105.
[22] Ex ZZ168.
[23] Ex A63.
[24] Ex B2.
[25] Increased on 20 December 2012 to 50.01%. Ex M48; Ex ZZ193.
[26] Ex M18.
[27] Ex AA9.
[28] Ex A66.
[29] Ex A67.
[30] Ex Y17.
[31] Ex A143.
[32] Chapter 2.5.
[33] Ex AO100.
[34] Tr 461; Tr 840; Tr 852.

PART 2 The Operational Landscape

2.1 Crown and the Licensee

[1] Ex ZZ9.
[2] Ex T6.
[3] Ex ZZ42; Tr 1465.
[4] Ex AO70.
[5] Ex ZZ198.
[6] Ex CM1.
[7] Ex AA254.
[8] Ex AA252.
[9] Ex Z13.
[10] At this time the VCGLR was the Victorian Casino Control Authority.
[11] *Casino (Management Agreement) Act 1993 (Vic)* s 6(1).
[12] *Casino (Management Agreement) Act 1993; Casino Control Act 1991 (Vic)*.
[13] Ex ZZ207.
[14] *Casino (Burswood Island) Agreement Act 1985 (WA)*.
[15] Ex ZZ47.
[16] *Casino Control Act 1984 (WA)*, s 26.
[17] Ex ZZ47. Now Burswood Nominees Ltd.

2.2 Crown's Achievements

[1] Ex ZZ56.
[2] Ex M105; ExM224; Ex M276; AA183; Ex AC14; Ex AC15; Ex AC17.
[3] Ex ZZ57; Ex ZZ58; Ex ZZ59; Ex ZZ60.
[4] Ibid at 2.
[5] Ibid.
[6] Ibid at 1.
[7] Ex ZZ65.
[8] Ex AA227.
[9] Ibid at 2.
[10] Ex ZZ72.
[11] Ex AC17.
[12] Ex ZZ199.

2.3 Melco Resorts & Entertainment Limited

[1] Ex ZZ17.
[2] Ex AB1.
[3] Ex AB3.
[4] Ex AB3.
[5] Ex AB3.
[6] Ex AB4.
[7] Ex ZZ18.
[8] Ex ZZ19.
[9] Ex ZZ19.
[10] Ex AB3.
[11] Ex ZZ20.
[12] Ex AB3.
[13] Ex AB3.
[14] Ex AB3; Ex AB5.
[15] Ex AB3.
[16] Ex AB3.
[17] Ex ZZ21; Ex ZZ22.
[18] Ex ZZ23.

2.4 Crown/Melco Relationships

[1] Ex ZZ25.
[2] Ex AB55.
[3] Ex ZZ26.
[4] Ex AB55.

2.5 Contractual Framework for Barangaroo Casino

[1] Ex Y16.
[2] Ex BA14.
[3] Ex AA49.
[4] Chapter 1.8.
[5] Ex Z3.
[6] Ex Z13.
[7] Ex Z11.
[8] Ex Z4.
[9] Ex Z6.
[10] Ex Z7.
[11] Ex Z8.
[12] Ex Z9.
[13] Ex ZZ12.
[14] Ex ZZ11.
[15] Ex ZZ10.
[16] Ex Z12.
[17] Ex Z5.
[18] Ex Y1; Ex AA6.
[19] Ex AA8.
[20] Ex AA6.
[21] Ex AA6.
[22] Ex AA8.
[23] Tr 2920; Tr 2922; Tr 3224.
[24] Tr 2922-2923.
[25] Tr 2923; Tr 3224.
[26] Ex AA15.
[27] Ex AA16.
[28] Tr 2927; Tr 3226.
[29] Ex AA22.
[30] Ex AA23.
[31] Tr 3235.
[32] Ex AA89; Ex AA94; Tr 2999-3000; Tr 3247-3248.

2.6 Crown Corporate Structures

[1] Ex P5; Ex M342; Ex M350.
[2] Ex M67; Ex M274; Ex M351.
[3] Ex M2.
[4] Ex M3.
[5] Ex AA255.
[6] Ex M105.
[7] Ex M224.
[8] Ex A154.
[9] Ex M224; Tr 3625-3626.
[10] Ex AB23.
[11] Tr 3602; Tr 3609; Tr 3612; Tr 3619.
[12] Ex AB24.
[13] Ex M315.
[14] Ex P27.
[15] Ex AB25.
[16] Ex AB27.

[17] Ex P27.
[18] Ex P27.
[19] Ex M224.
[20] Ex P27; Ex Y1.
[21] Ex M224.
[22] Ex A195.
[23] Ex AC14.
[24] Ex AC15.
[25] Ex A195.
[26] Ex O5.
[27] Ex AA236.
[28] Ex ZZ196.
[29] Ex ZZ197.

2.7 Crown Risk Management Structure

[1] Ex M1; Ex O69; Tr 1079.
[2] Ex M1.
[3] Tr 1079-1080.
[4] Tr 1100.
[5] Ex AG50.
[6] Tr 1102.
[7] Ex O69; Tr 1074-1075.
[8] Ex AG50.
[9] Tr 1079.
[10] Tr 1100-1101.
[11] Ex O69.
[12] See for example M99; M100.
[13] Ex M99.
[14] Ex M99.
[15] Tr 1077.
[16] Tr 1076.
[17] Ex M98; Tr 1076.
[18] Tr 1077.
[19] Ex M35; Tr 1076-1077.
[20] Tr 1077; Tr 1081.
[21] Tr 1077; Tr 1078; Tr 1081; Tr 1101.
[22] Ex AG50.
[23] Ex O69.
[24] Ex M276.
[25] Ex M67; Ex M270.
[26] Ex O69; Tr 1081-1082.
[27] Tr 1081.
[28] Ex O69.
[29] Tr 1102.
[30] Tr 1096-1097; Tr 4693.
[31] Tr 1102.
[32] Tr 2479; Tr 2480.
[33] Tr 2479; Tr 2480; Tr 2481.
[34] Tr 2490; Tr 2493.
[35] Ex A91.
[36] Ex W37.
[37] Ex BM13.
[38] Ex W38.
[39] Ex A91.
[40] Ex W38.
[41] Ex W38.
[42] Ex FG14.
[43] Ibid.
[44] Ex BM14.
[45] Ex A210.

[46] Ex FG23.
[47] Ex W32.
[48] Ex W32.
[49] Ex W35.

2.8 Sharing Information with CPH and James Packer

[1] See Chapter 2.2.
[2] Amended Terms of Reference, par 16(g).
[3] Ex S16.
[4] Tr 3698.
[5] Tr 3599.
[6] Tr 3747.
[7] Tr 3747.
[8] Tr 1462.
[9] Tr 3619-3620.
[10] Tr 3620.
[11] Tr 3200.
[12] Tr 3746.
[13] Tr 1447-1448; Tr 1983; Tr 2933; Tr 3433.
[14] Tr 2901.
[15] Tr 3429.
[16] Tr 3472.
[17] Tr 4018.
[18] Ex AA99.
[19] Tr 3895-3897.
[20] Tr 3470.
[21] Tr 3469.
[22] Tr 1433.
[23] Ex M109.
[24] Tr 3589.
[25] Tr 3573; Tr 3711.
[26] Ex M58.
[27] Tr 4151.
[28] Tr 3712.
[29] Tr 3712-3713.
[30] Tr 2938.
[31] Ex ZZ54.
[32] Ex AA50.
[33] Tr 3600.
[34] Ex AA223.
[35] Tr 3577.
[36] Tr 3578.
[37] Tr 3578.
[38] Tr 3584; Tr 3587.
[39] Tr 3584.
[40] Tr 3585-3586.
[41] Ex ZZ200; Ex ZZ201.
[42] Ex AB23.
[43] Ex AB23.
[44] Tr 3586-3587.
[45] Tr 2982; Tr 3455.
[46] Tr 3456.
[47] Tr 3625.
[48] Ex AA30.
[49] Ex O44.
[50] Ex O44.
[51] Ex O44.
[52] Ex O44.
[53] Ex O44.
[54] Ex O44.

[55] Ex AA223.
[56] Ex AB24.
[57] Tr 3465.
[58] Tr 3465.
[59] Ex AB24.
[60] Ex ZZ55.
[61] Ex AB25.
[62] Tr 2989.
[63] Ex AB27.
[64] Ex AF51.
[65] Ex AF51.
[66] Ex AA223.
[67] Ex Y7.
[68] Ex Y8.
[69] Ex AB38.
[70] Ex ZZ208.
[71] Ex ZZ209.
[72] Ex Y6.
[73] Ex Y5.
[74] Ex Y5.
[75] Ex Y5.
[76] Ex Y5.
[77] Ex Y5.
[78] Ex Y5.
[79] Ex Y5.
[80] Ex Y5.
[81] Ex AA74;Tr 3651-3652; Tr 3647.
[82] Ex AA64; Ex AA65; Ex AA87; Tr 2999.
[83] Ex M169; Ex AA69; Ex AA73; Ex AA84; Ex AA90; Tr 1448–1449; Tr 3644.
[84] Ex AA79; Tr 3645.
[85] Ex AB28; Tr 4024.
[86] Ex AB34; Tr 3629; Tr 3744.
[87] Ex AA71.
[88] Tr 3649.
[89] Tr 3466-3467.
[90] Ex AA72.
[91] Ex AA72.
[92] Tr 3649.
[93] Tr 3649.
[94] Tr 3662.
[95] Ex AA74.
[96] Ex AA74.
[97] Ex AA74.
[98] Tr 3652.
[99] Ex AA78.
[100] Ex AH16.
[101] Ex AH16.
[102] Ex AH16.
[103] Ex AA88.
[104] Ex AP1.
[105] Ex AA90.
[106] Ex AA90.
[107] Ex AA90.
[108] Ex AA91.
[109] Ex AA93.
[110] Tr 3653.
[111] Ex AP1.
[112] Ex AB30.
[113] Ex AB32.
[114] Ex AB32.
[115] Ex AB32.

[116] Tr 3654.
[117] Submissions of the CPH Parties, 23 November 2020, Chapter 2 at [85(b)].
[118] Submissions of the CPH Parties, 23 November 2020, Chapter 2 at [71].
[119] Ex AP1.
[120] Ex AN21.
[121] Ex AN22.
[122] Ex AA99.
[123] Ex AA99.
[124] Ex AA99.
[125] Ex AP1.
[126] Ex AP1.
[127] Ex AA101.
[128] Ex ZZ210.
[129] Ex AA103.
[130] Ex AP1.
[131] Chapter 2.9.
[132] Ex AA109.
[133] Ex AA109.
[134] Ex AP1.
[135] Ex AB33.
[136] Ex AA180.

2.9 Melco Share Transaction May 2019

[1] Ex AC15.
[2] Ex AN21.
[3] Ex FA58.
[4] Ex FA59.
[5] Ex FA59.
[6] Ex AN22.
[7] Ex ZZ37.
[8] Ex AN26.
[9] Ex ZZ38.
[10] Ex ZZ39.
[11] Ex AA102.
[12] Tr 3473-3474.
[13] Ex AA223.
[14] Ex AA106.
[15] Ex AA223.
[16] Ex AA223.
[17] Ex AA109.
[18] Ex AA109.
[19] Ex AN6.
[20] Ex AA223.
[21] Ex AA223.
[22] Ex AA223.
[23] Ex AA223.
[24] Ex AA223.
[25] Ex AA116.
[26] Ex AA223.
[27] Ex AA223.
[28] Ex AN7.
[29] Ex AA223.
[30] Ex AB33.
[31] Tr 3011; Tr 3014.
[32] Tr 2886.
[33] Tr 3020-3021.
[34] Tr 2888.
[35] Tr 3011–3013; Tr 3026.
[36] Tr 3016; Tr 3028.
[37] Tr 3015.

[38] Ex AB44.
[39] Tr 2888.
[40] Tr 3017.
[41] Ex AB36; Tr 3035-3036.
[42] Ex AA223; Ex AA124.
[43] Ex AA223.
[44] Ex AB41.
[45] Ex AB41.
[46] Ex AB40.
[47] Ex AB40.
[48] Tr 3021–3022.
[49] Tr 3183-3189.
[50] Ex AA142.
[51] Tr 3048.
[52] Tr 3048-3050.
[53] Tr 3059.
[54] Ex AA129.
[55] Ex AA251.
[56] Ex AA243.
[57] Ex AA246.
[58] Ex AA242.
[59] Ex AA240.
[60] Ex AA244.
[61] Ex AA241.
[62] Ex AA247.
[63] Tr 4665.
[64] Ex AA245.
[65] Ex AA245.
[66] Tr 3364.
[67] Ex AA249.
[68] Tr 3057.
[69] Ex CJ3.

PART 3 Paragraph 15 of Amended Terms of Reference/The Media Allegations

3.1 Troubling Developments

[1] Crown had retained Deloitte as a consequence of the 2018 VCGLR Sixth Review recommendations in respect of the need for improvements in certain areas of its operations.
[2] Ex AA185.
[3] Tr 2381; Crown had also retained Mr Jeans as a consequence of the 2018 VCGLR Sixth Review recommendations.
[4] Ex CH26.
[5] Ex CA4.
[6] Ex BB28.
[7] Ex G3; Ex AB60.
[8] Ex CH6.
[9] Ex U31; Ex U32.
[10] Ex CC5; Tr 394; Tr 3981.
[11] Ex CC5.
[12] Ex CC5.
[13] Tr 2712.
[14] Ex CB13.
[15] Ex CB13
[16] Ex BA79.
[17] Ex CJ36.

3.2 Money Laundering

[1] Ex F65.
[2] Ex F87.
[3] Ex F87.
[4] Ex BC43; Ex BC42.
[5] Tr 595.
[6] Tr 596.
[7] Ex BA79; Tr 597-600.
[8] Ex BA79; Tr 597-600.
[9] Ex BA64.
[10] Tr 2150.
[11] Tr 1725.
[12] Ex BM29.
[13] Ex BA33.
[14] Ex BA33.
[15] Ex BA33.
[16] Ex BB1.
[17] Ex BB1.
[18] Ex BM3.
[19] Ex BA25.
[20] Ex BA25.
[21] Ex BA26.
[22] Ex BA26.
[23] Ex BA26.
[24] Ex CB1.
[25] Ex BA30.
[26] Ex BA30.
[27] Ex BA498.
[28] Ex BB3.
[29] Ex CB1.
[30] Ex CB1.
[31] Ex CB1.
[32] Ex CB1.
[33] Ex CB11.
[34] Ex CB11.
[35] Ex BG2.
[36] Ex CB1.
[37] Ex CB1.
[38] Ex CB12.
[39] Ex AO1.
[40] Ex AO1.
[41] Ex AO78.
[42] Ex CB1.
[43] Ex BA53; Tr 2239.
[44] Ex W2.
[45] Ex BA62.
[46] Ex BA63.
[47] Ex BA62.
[48] Ex AO10.
[49] Ex CA1; Ex CE1; Ex CG1; Ex CK1.
[50] Ex BA79.
[51] Ex AO9.
[52] Ex BA67.
[53] Ex BA67.
[54] Ex BA72.
[55] Ex BA71.
[56] Ex CB22.
[57] Ex CB22.
[58] Ex CB1.
[59] Ex BG3.

[60] Ex BG3.
[61] Ex BA69.
[62] Ex BK20.
[63] Ex CB15.
[64] Ex CB1.
[65] Ex CB1.
[66] Ex CB1.
[67] Ex CB13.
[68] Ex ZZ135.
[69] Ex CB14; Ex BA79.
[70] Ex ZZ129.
[71] Ex ZZ128.
[72] Ex AT1; Ex ZZ130.
[73] Ex ZZ130.
[74] Ex ZZ131.
[75] Ex AT12.
[76] Ex AT12.
[77] Ex ZZ135.
[78] Ex ZZ132.
[79] Ex ZZ133.
[80] Ex ZZ134.
[81] Ex ZZ134.
[82] Ex ZZ135.
[83] Ex ZZ136.
[84] Ex ZZ137.
[85] Ex ZZ138.
[86] Ex ZZ130.
[87] Tr 597.
[88] Ex BM29.
[89] Tr 3986-3987.
[90] Ex AJ50.
[91] Submissions of Crown dated 26 November 2020, [573].
[92] Ex ZZ139.
[93] Ex ZZ140.
[94] Ex ZZ128.
[95] Ex ZZ141.
[96] Tr 2727.
[97] Tr 2728.
[98] Tr 2793.
[99] Ex ZZ142.
[100] Ex ZZ142.
[101] Ex AT31; Ex AT32; Ex ZZ142.
[102] Ex ZZ142.
[103] Tr 5583 and, later Submissions of Crown dated 26 November 2020, [555].
[104] Ex AT17.
[105] Ex AT17.
[106] Ex AT17.
[107] Ex A15.
[108] Ex ZZ127.
[109] Ex ZZ127.
[110] Ex AO64.
[111] Ex AO64.
[112] Ex AO64.
[113] Ex AT17.
[114] Ex BC43.
[115] Ex BC42.
[116] Ex AT17.
[117] Ex AT17.
[118] Tr 4618-4619.
[119] *Oxford Dictionary of Phrase and Fable*: 'Nelson'.
[120] Ex A227; Ex K11; Ex T25.

[121] Ex F93.
[122] Ex BE93.
[123] Ex BE98.
[124] Ex J2.
[125] Ex BJ166.
[126] Ex BJ160.
[127] Ex BJ160.
[128] Ex BJ160.
[129] Ex BJ160.
[130] Ex BJ160.
[131] Ex BJ160.
[132] Ex BJ160.
[133] Ex BE89.
[134] Ex BE72.
[135] Ex BJ160.
[136] Ex BE89.
[137] Ex BE72.
[138] Ex BE72.
[139] Ex BE72.

3.3 China Arrests

[1] Ex O61.
[2] Ex ZZ7.
[3] Tr 1103.
[4] Ex AL23.
[5] Tr 3928.
[6] Tr 1100.
[7] Tr 1103.
[8] Ex AL23.
[9] Ex R3.
[10] Ex R34.
[11] Ex R34.
[12] Tr 3702.
[13] Ex O67.
[14] Tr 3718-3720.
[15] Ex M146; Tr 1921–1922.
[16] Ex AA16; Ex M48.
[17] Tr 1106; Tr 1334.
[18] Tr 3709-3711.
[19] Tr 1453.
[20] Ex R34; Tr 1981; Tr 1990; Tr 2005.
[21] Ex R34; Tr 1990.
[22] Ex M33.
[23] Ex R3.
[24] Chapter 4.3.3.
[25] Tr 1118.
[26] Tr 1397; Tr 1400; Tr 1403; Tr 1118; Tr 1119; Tr 1459.
[27] Ex R3.
[28] Ex BL18.
[29] Ex R3.
[30] Tr 1453–1454.
[31] Tr 1446.
[32] Tr 2933.
[33] Tr 1449-1450.
[34] Tr 1447.
[35] Tr 1447.
[36] Ex AA21.
[37] Tr 1121; Tr 2935.
[38] Tr 2045–2046; Tr 2934; Tr 3094.
[39] Tr 1462.

[40] Tr 1153.
[41] Tr 1227.
[42] Tr 1988; Tr 2938.
[43] Tr 3588-3590.
[44] Tr 3613.
[45] Ex M169; Ex R5; Tr 1202; Tr 1455.
[46] Ex M78.
[47] Ex M32.
[48] Ex M32.
[49] Ex M39.
[50] Ex M75.
[51] Ex R6.
[52] Ex M169.
[53] Ex M169.
[54] Ex M169.
[55] Ex M259.
[56] Ex M48.
[57] Ex M44; Ex M45.
[58] Ex M46.
[59] Ex M62.
[60] Ex M258.
[61] Ex M58.
[62] Ex R34.
[63] Ex M58.
[64] Ex ZZ6.
[65] Ex AG1.
[66] Ex M88.
[67] Ex R34.
[68] Ex ZZ8.
[69] Tr 1465.
[70] Ex P24.
[71] Ex M354; Tr 1465.
[72] Ex R34.
[73] Tr 1413–1415; Tr 1463-1464; Tr 1994; Tr 2940-2941.
[74] Ex AS2; Tr 1406.
[75] Ex AS2.
[76] Ex M42.
[77] Tr 1115–1116; Tr 2940.
[78] Ex R3.
[79] Ex M109.
[80] Tr 1466–1467.
[81] Tr 1466; Tr 1991; Tr 2191; Tr 2293–Tr 2294.
[82] Tr 1466.
[83] Tr 1995.
[84] Tr 1997–1998.
[85] Tr 2004.
[86] Tr 4241; Tr 4391; Tr 4642.
[87] Tr 1473.
[88] Tr 1473; Tr 2947–2948; Tr 3282; Tr 3367; Tr 3437–3438; Tr 3593; Tr 4122; Tr 4241; Tr 4391–4393; Tr 4642.
[89] Ex O71.
[90] Ex O70; Ex O71.
[91] Ex O70; Ex O71.
[92] Ex O70; Ex O71.
[93] Tr 5444–5448.
[94] Tr 5442; Tr 5448.
[95] Tr 1159; Tr 1476–1477; Tr 2058.
[96] Tr 1476-1477.
[97] Tr 1155–1156.
[98] Tr 2058.
[99] Tr 2060.

[100] Tr 2208; Tr 2272; Tr 2948.
[101] Tr 1603; Tr 2208; Tr 2273.
[102] Tr 1603; Tr 2208; Tr 2273; Tr 2275-2276; Tr 2948.
[103] Tr 1469-1470; Tr 2949.
[104] Ex A222; Ex O68; Ex AA221; Tr 2939.
[105] Ex M14.
[106] Ex M15.
[107] Ex M15.
[108] Ex M16.
[109] Ex M22; Ex M27.
[110] Ex M27.
[111] Ex P4; Ex R29.
[112] Ex M309.
[113] Ex M309; Ex M34.
[114] Ex M137.
[115] Ex M141.
[116] Ex M143.
[117] Ex M143.
[118] Ex M195.
[119] Ex M195.
[120] Ex M195.
[121] Ex M234.
[122] Ex M234.
[123] Ex M234.
[124] Ex M234.
[125] Ex M234.
[126] Ex M28.
[127] Ex M29.
[128] Ex M30; Ex M31.
[129] Ex M31.
[130] Ex M31.
[131] Ex ZZ51.
[132] Ex M49.
[133] Ex M40.
[134] Ex M49.
[135] Ex M52.
[136] Ex M54.
[137] Ex M47.
[138] Ex M47.
[139] Ex M69.
[140] Ex M70.
[141] Ex M71.
[142] Ex P7.
[143] Ibid.
[144] Ex P7.
[145] Ex M97.
[146] Ex M76.
[147] Ex M95.
[148] Ex M95.
[149] Ex M101; Ex M102.
[150] Tr 1149-1151.
[151] Tr 1494
[152] Ex M109; Ex M113; Ex M220; Ex M258; Ex M277; Ex M278.
[153] A pseudonym.
[154] Ex M104.
[155] Ex M109
[156] Ex M110.
[157] Ex M110.
[158] Ex M113.
[159] Ex M114.
[160] Ex M132.

[161] Ex M120.
[162] Ex M119.
[163] Ex M120.
[164] Ex P9.
[165] Ex M121; Ex M122; Ex M125.
[166] Ex M122; Ex M124; Ex A222.
[167] Ex M125.
[168] Ex M126.
[169] Ex M129; Ex M132.
[170] Ex ZZ52.
[171] For instance, Ex O10-O16; Ex O18-O22; Ex AB8-AB14.
[172] Ex M130.
[173] Tr 1168–1169.
[174] Ex M130.
[175] Ex M135.
[176] Ex ZZ53.
[177] Ex M136.
[178] Ex M136.
[179] Tr 2014.
[180] Ex M140.
[181] Ex M139.
[182] Ex R31.
[183] Ex M141.
[184] Ex M142.
[185] Ex O23; Ex P10; Tr 1194-1195.
[186] Ex M144.
[187] Ex M144.
[188] Tr 1427-1428.
[189] Tr 1425-1426.
[190] Ex M148.
[191] Ex M151.
[192] Ex M154.
[193] Ex M154.
[194] Ex M154.
[195] Ex M156; Tr 1191.
[196] Ex M157.
[197] Ex CJ1.
[198] Tr 2960.
[199] Tr 2963.
[200] Ex M158; Ex M166.
[201] Ex M168; Ex AS3.
[202] Ex M167.
[203] Ex M168.
[204] Ex AB15.
[205] Ex AB16.
[206] Ex AB16.
[207] Ex M169; Ex R6; Ex R8.
[208] Tr 1203–1204; Tr 1455.
[209] Ex BF87.
[210] Ex M170.
[211] Ex M175; Ex M176; Ex M177; Ex M178.
[212] Ex M176.
[213] Ex M193; Ex M194.
[214] For instance, Ex AB18-AB20.
[215] Ex M189.
[216] Ex M191.
[217] Ex M192.
[218] Ex M190.
[219] Ex AB17.
[220] Ex M197.
[221] Ex M198.

[222] Ex R11.
[223] Tr 1497.
[224] Tr 3621.
[225] Tr 3755–3756.
[226] Ex M188.
[227] Ex M196.
[228] Ex M202.
[229] Ex P13.
[230] Ex M202.
[231] Tr 1213.
[232] Ex R15.
[233] Ex M28.
[234] Ex R15.
[235] Ex R15.
[236] Ex R15.
[237] Tr 2295-2297.
[238] Ex R37.
[239] Tr 2308–2309.
[240] Ex R17.
[241] Ex R17.
[242] Ex O27; Ex R33.
[243] Tr 2222–2223; Tr 2227.
[244] Ex R33.
[245] Tr 2355–2356.
[246] Tr 2359.
[247] Ex R17; Ex O27; Ex P24.
[248] Ex R18; Ex O31; Ex O32.
[249] Ex R18.
[250] Ex O36.
[251] Ex O35; Ex O36.
[252] Ex O36.
[253] Ex R16; Tr 2031; Tr 2221-2222.
[254] Tr 2031.
[255] Ex N23; Ex N28.
[256] Ex O28.
[257] Ex R17.
[258] Ex R16.
[259] Ex R16.
[260] Tr 1225.
[261] Tr 1498-1499; Tr 1605; Tr 3297; Tr 3381–3382; Tr 3453–3454; Tr 3613; Tr 3801; Tr 3841; Tr 3935; Tr 4136-4137; Tr 4261–4262; Tr 4399; Tr 4415-4416; Tr 4657–4658.
[262] Tr 1425; Tr 1429–1430.
[263] Ex AB21; Tr 2957; Tr 2967; Tr 2972.
[264] Tr 1215; Tr 1219-1220.
[265] Tr 3613.
[266] Ex O33.
[267] Ex O33(A).
[268] Tr 2011.
[269] Ex M215; Tr 1223.
[270] Tr 1983.
[271] Ex M220.
[272] Ex P15.
[273] Ex AA221; Tr 2965–2966.
[274] Ex M226; Ex M233.
[275] Ex M235.
[276] Ex M230.
[277] Ex M229.
[278] Ex M235.
[279] Ex M239.
[280] Ex M239.
[281] Ex M239.

[282] Ex M239.
[283] Ex M239.
[284] Ex M240; Ex M241.
[285] Ex P17.
[286] Ex M253; Ex M254.
[287] Tr 1236-1238.
[288] Tr 1506-1507.
[289] Ex M256.
[290] Ex M257; Tr 1972-1973.
[291] Ex M258.
[292] Ex M261.
[293] Ex O43.
[294] Ex M265.
[295] Ex M266.
[296] Ex M277.
[297] Ex M278.
[298] Ex R34.
[299] Ex M135; Ex M141.
[300] Ex M239.
[301] Ex F63.

3.4 Junkets and Organised Crime

[1] Ex F63.
[2] *Casino Control Act*, s 13A(2)(g).
[3] Chapter 4.2 Suitability.
[4] Ex BA95; Ex BA96; Ex BM29; Ex ZZ134; Ex ZZ135.
[5] Chapters 4.4 and 5.1
[6] Tr 4436.
[7] Ex BJ53; Tr 3697.
[8] Tr 3734.
[9] JA Simpson and ESC Weiner (eds) (*Compact Oxford Dictionary of English*, Oxford University Press, 2nd ed, 1992).
[10] Ex A226; Ex F68; Ex O53; Ex AB60.
[11] Ex A226.
[12] Ex A226.
[13] Ex A91.
[14] Ex ZZ223.
[15] Ex BC12; Tr 713; Tr 1945; Tr 1948; Tr 1853-1854; Tr 1857; Submissions of Crown parties dated 26 November 2020, [357].
[16] Ex BJ121; Tr 761.
[17] Ex A218; Ex G3; Ex AB60.
[18] Ex F13; Ex T17.
[19] Tr 1309.
[20] Tr 3718- 3719.
[21] Ex AF14; Ex AF15; Ex AF16; Ex AF17; Ex AF27; Ex AF29.
[22] Tr 3736.
[23] Ex BA101; Ex J3.
[24] Ex BA101; Ex BJ109.
[25] Ex BJ129-132.
[26] Ex BJ129; Ex BJ130.
[27] Ex BJ132; Tr 762.
[28] Ex BJ129.
[29] Ex BA101; Tr 764-765.
[30] Tr 3154; Tr 3503-3504; Tr 4199; Tr 4529.
[31] Ex BH4; Tr 770.
[32] Ex BA101; Tr 771.
[33] Ex BH6.
[34] Ex AC28.
[35] Ex BA101.
[36] Ex A144; Ex T11; Ex BA101.

[37] Ex BA101; Lin Cheuk Chiu, Nicholas Niglio, Chi Hung Wang and Yan To Chan.
[38] Ex AC12; Ex BJ107.
[39] Submissions of Crown parties dated 26 November 2020, [397]-[402].
[40] Ex T42; Ex T53.
[41] Ex F63.
[42] Ex BB19; Tr 2092.
[43] Ex BB19.
[44] Ex BB19.
[45] Ex AA198; Ex BB19.
[46] Ex BB19.
[47] Ex T42; Ex T47; Ex T53.
[48] Ex T55.
[49] Tr 1788.
[50] Ex T18.
[51] Ex BA101.
[52] Ex BA85.
[53] Ex BJ147.
[54] Tr 3719-3720.
[55] Ex BJ29.
[56] Ex BJ164.
[57] Ex BJ136.
[58] Ex BJ43; Ex BA101.
[59] Ex BJ43.
[60] Ex J3.
[61] Ex AC28.
[62] Ex J3.
[63] Ex AO3; Ex BA101; Ex BF47; Ex BJ164; Tr 1846-1847; Tr 3140.
[64] Amended Terms of Reference, par 16(g).
[65] Tr 1905; Submissions of Crown parties dated 26 November 2020, [288].
[66] Ex BL2; Tr 1905.
[67] Ex BJ127; Ex BK12; Ex BA6.
[68] Tr 1685.
[69] Tr 1908.
[70] Tr 1905; Tr 1906.
[71] Tr 1904.
[72] Tr 1907.
[73] Tr 1907.
[74] Tr 4211-4212.
[75] Ex BB19.
[76] Tr 3124; Tr 468.
[77] Tr 469.
[78] Ex BJ164; Tr 468.
[79] Tr 1777.
[80] Ex CJ1; Submissions of Crown parties dated 26 November 2020, [291].
[81] Ex BJ164.
[82] Ex BJ164.
[83] Ex BJ164.
[84] Ex BA95.
[85] Tr 469.
[86] Ex BA95.
[87] Ex BA95.
[88] Ex W67.
[89] Tr 476; Tr 3151; Tr 3153.
[90] Ex AO29.
[91] Submissions of Crown parties dated 26 November 2020, [298].
[92] Tr 479; Tr 3547.
[93] Submissions of Crown parties dated 26 November 2020, [304].
[94] Submissions of Crown parties dated 26 November 2020, [304].
[95] Submissions of Crown parties dated 26 November 2020, [273].
[96] Submissions of Crown parties dated 26 November 2020, [308].
[97] Tr 3979.

[98] Tr 3154; Tr 3156; Tr 3561; Tr 3697; Tr 4179; Tr 4191; Tr 4491.
[99] Tr 3155; Tr 4178.
[100] Tr 3548.
[101] Tr 4498.
[102] Ex CB4.
[103] Ex BM9.
[104] Tr 3530.

PART 4 Paragraph 16 Of Amended Terms of Reference – Suitability Review

4.1 Corporate Governance and Corporate Culture

[1] Ex O5; Ex AG51; see also Ex ZZ74.
[2] Ex O5; Ex P22; Ex AG51; Ex ZZ75; Ex ZZ76: Ex ZZ77; Ex ZZ78; Ex ZZ79; Ex ZZ80; Ex ZZ81; Ex ZZ82.
[3] Ex ZZ84.
[4] Ex AG51.
[5] Ex P22.
[6] Ex O5; Ex P22.
[7] Ex O5; Ex P22; Ex ZZ85.
[8] Ex O5; Ex P22.
[9] Ex O5.
[10] Ex O5.
[11] Ex ZZ89.
[12] Ex ZZ90.
[13] Ex ZZ80.
[14] Ex ZZ91.
[15] Ex ZZ80; Ex ZZ92.
[16] Ex ZZ93; Ex ZZ107.
[17] Ex ZZ81.
[18] Other definitions of "risk culture" include: Ex ZZ80, "*the shared values and behaviours of individuals regarding the management of risk*"; Ex ZZ94, "*the norms of behaviour for individuals and groups that shape the ability to identify, understand, openly discuss, escalate and act on an institution's current and future challenges and risks*".
[19] Ex ZZ92.
[20] Ex ZZ95.
[21] Ex P22.
[22] Ex ZZ94; Ex ZZ95; Ex ZZ75.
[23] Ex ZZ79.
[24] Ex ZZ79.
[25] Ex ZZ79.
[26] Ex O5.
[27] Ex P22.
[28] Ex O5.
[29] Ex P22.
[30] Ex ZZ100.
[31] Ex O5.
[32] Ex O5; Ex P22.
[33] Ex AG51.
[34] Ex AG51.
[35] Ex ZZ101.
[36] Ex O5; Ex P22.
[37] Ex S1.
[38] Ex AG51.
[39] Ex AG51.
[40] Ex AG51.
[41] Ex O5.
[42] Ex O5.
[43] Ex AG51; Ex ZZ103.
[44] Ex AG51.

[45] Ex ZZ86.
[46] Ex O5; Ex P22.
[47] Ex O5.
[48] Ex O5; Ex P22.
[49] Ex O5; Ex P22.
[50] Ex O5; Ex P22.
[51] Ex ZZ86.
[52] Ex O5; Ex P22.
[53] Ex O5; Ex P22.
[54] Ex O5; Ex P22.
[55] Ex ZZ105.
[56] Ex ZZ87.
[57] Ex ZZ88.
[58] Ex ZZ105.
[59] Ex O5; Ex P22.
[60] Ex O5; Ex P22.
[61] Ex ZZ88.
[62] Ex ZZ106.
[63] Ex ZZ76.
[64] Ex ZZ111.
[65] Ex ZZ76.
[66] Ex ZZ108.
[67] Ex O5.
[68] Ex O5.
[69] Ex P22.
[70] Ex ZZ81.

4.2 Suitability

[1] *Casino Control Act*, s 141(2)(c).
[2] Chapter 1.1, Introduction; Terms of Reference and Amended terms of Reference.
[3] *Casino Control Act*, s 13A.
[4] Chapter 2.5.
[5] *Casino Control Act*, s 13A.
[6] *Casino Control Act*, ss 13A(1), 13A(2)(a).
[7] *Casino Control Act*, ss 13A(1), 13A(2)(g).
[8] Ex A75.
[9] *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, 348.
[10] *Prothonotory of the Supreme Court of New South Wales v Da Rocha* [2013] NSWCA 151, [21].
[11] *In Re Bally's Casino Application* 10 NJAR 356 (1981), 393, (*Re Bally's*).
[12] The decision can be viewed at http://massgaming.com/wp-content/uploads/MGCDecisionandOrder4.30.19.pdf (Matter of Wynn MA LLC).
[13] *Merrimack College v KPMG LLP* 480 Mass 614 (2018), 628.
[14] *Re Bally's*, 403.
[15] *Re Bally's*, 403.
[16] *Trap Rock Industries Inc v Sagner* 133 NJ Super 99 (1975), 108.
[17] *Matter of Wynn MA LLC*.
[18] *AWA Ltd v Daniels t/as Deloitte Haskins & Sells* (1992) 7 ACSR 759. *Daniels t/as Deloitte Haskins & Sells v AWA Ltd* (1995) 37 NSWLR 438.
[19] *AWA Ltd v Daniels t/as Deloitte Haskins & Sells* (1992) 7 ACSR 759, 832-833.
[20] *AWA Ltd v Daniels t/as Deloitte Haskins & Sells* (1992) 7 ACSR 759, 832.
[21] *Daniels t/as Deloitte Haskins & Sells v AWA Ltd* (1995) 37 NSWLR 438: *Australian Securities and Investments Commission v Healey* (2011) 196 FCR 291.
[22] Terms of Reference [15], [16].
[23] *Casino Control Act*, s 4A.

4.3 Corporate Character

[1] Chapter 4.2, Suitability.
[2] Chapter 2.8, Information Sharing.

[3] Ex A144; Ex A177.
[4] See Part 3.
[5] Ex AS9.
[6] Ex CB1.
[7] Ex AR34.
[8] Part A, Chapter 1, Suitability.
[9] Ex AE17.

4.3.1 The Chairman

[1] Ex CD1, Ms Coonan's description.
[2] *AWA Ltd v Daniels t/as Deloitte Haskins & Sells* (1992) 7 ACSR 759 at 867; (1995) 37 NSWLR 438; *ASIC v Rich* (2003) 44 ACSR 341.
[3] Ex CD1.
[4] Tr 4384.
[5] Tr 4397.
[6] Tr 4399; Tr 4417.
[7] Tr 4420-4421.
[8] Tr 4421.
[9] Tr 4447-4448.
[10] Tr 4448.
[11] Tr 4406.
[12] Tr 4406.
[13] Tr 4411.
[14] Tr 3779.
[15] Tr 4397.
[16] Tr 4423.
[17] Tr 4423.
[18] Tr 2507.
[19] Ex CD1.
[20] Ex CD1.
[21] Tr 4540.
[22] Tr 4540.
[23] Tr 4540.
[24] Tr 4541-4542.
[25] Tr 4578.
[26] Chapter 3.4.
[27] Tr 4585-4586.
[28] Tr 4587.
[29] Tr 4537-4539.
[30] Tr 4618-4619; Tr 4622.
[31] Tr 4623.
[32] Ex ZZ213; Tr 5183-5184.
[33] Tr 5184.
[34] Ex CD1.
[35] Ex CD1.
[36] Tr 4469.
[37] Tr 4529.
[38] Tr 4536-4537.
[39] Tr 4564.
[40] Tr 4564.
[41] Tr 4566.
[42] Tr 4561.
[43] Chapter 3.4.
[44] Tr 4452.
[45] Tr 4452.
[46] Chapter 2.8.
[47] Tr 4455.
[48] Tr 4455.
[49] Chapter 2.9

[50] Tr 4487.
[51] Tr 4488.
[52] Tr 4486.
[53] Tr 4487.
[54] Tr 4490.
[55] Tr 4491.
[56] Tr 4619-4620.
[57] Tr 4491.
[58] Ex CD1.
[59] Tr 4602.
[60] Tr 4603.
[61] Ex CD1; Tr 4603-4604.
[62] Tr 4522.
[63] Tr 4456.
[64] Ex AH24, chaired by Mr Demetriou with Prof Horvath, Mr Johnston and Mr Mitchell as members and Ms Manos as secretary on 22 January 2020.
[65] Chapter 3.2.

4.3.2 The Chief Executive Officer

[1] *Entwells Pty Ltd v National and Gen Insurance Co Ltd* (1991) 6 WAR 68; 5 ACSR 424 at 427.
[2] Ex CB1.
[3] Ex CB1.
[4] Ex CB1.
[5] *Casino Control Act*, s 4A; Vic Act, s 1.
[6] Ex AA227; AA248; Ex CB1; Ex AO76; Ex AO91; Ex AT1; Ex ZZ139.
[7] Ex CB2.
[8] Ex CB3.
[9] Ex CB1.
[10] Chapter 4.4, Crown's Reformation.
[11] Ex AO76.
[12] Ex AO91.
[13] Ex AT1.
[14] Chapter 3.2.
[15] Ex ZZ139.
[16] Ex O50.
[17] Tr 2882.
[18] Tr 2893.
[19] Tr 2893.
[20] Tr 2740.
[21] Ex AA218; Tr 3486-3487.
[22] Tr 2747-2749.
[23] Tr 2750-2751.
[24] Ex O50.
[25] Chapter 3.2.
[26] Ex CB7.
[27] Ex CB1.
[28] Ex CB8.
[29] Ex CB1.
[30] Tr 2818-2820.
[31] Tr 2821.
[32] Tr 2832.
[33] Ex CB1.
[34] Ex CB1.
[35] Ex CB1.
[36] Ex CB1.
[37] Ex CB1.
[38] Ex CB1.
[39] Tr 2766.
[40] Tr 2767.
[41] Tr 2767.

[42] Tr 2762-2763.
[43] Tr 2768.
[44] Tr 2769.
[45] Tr 2771-2773.
[46] Tr 2775.
[47] Tr 2807.
[48] Ex CB1.
[49] Ex CB1.
[50] Ex CB21.
[51] Ex CB22.
[52] Ex CB1.
[53] Ex CB1.
[54] Ex F65.
[55] Ex CB1.
[56] Tr 2782.
[57] Tr 2783.
[58] Ex CB1.
[59] Tr 2783-2784.
[60] Ex AO73.
[61] Ex AO73.
[62] Ex AO91.
[63] Ex CB1.
[64] Ex CB1.
[65] Ex ZZ139.
[66] Ex ZZ140.
[67] Ex ZZ141.
[68] Ex ZZ139.
[69] Ex ZZ139.
[70] Ex ZZ139.
[71] Tr 2754.
[72] Tr 2751-2752.
[73] Tr 2752-2755.
[74] Tr 2759.
[75] Ex CB1.
[76] Ex AS9.

4.3.3 Michael Roy Johnston

[1] Ex CJ1.
[2] Ex CJ1; Ex CJ2; Ex CJ3.
[3] Tr 3745.
[4] Ex CJ1.
[5] Ex CJ1.
[6] Ex CJ1.
[7] Ex CJ1.
[8] Ex CJ1.
[9] Ex CJ1.
[10] Ex CJ1.
[11] Tr 3026-3027.
[12] Tr 2995; Tr 3072; Tr 3160; Tr 3199-3200.
[13] Ex CJ1.
[14] Ex CJ1.
[15] Ex CJ1; Ex CJ46; Ex CJ47.
[16] Ex CJ1.
[17] Ex CJ1.
[18] Tr 2957.
[19] Chapter 3.3.
[20] Tr 2960-2961.
[21] Chapter 3.3; Tr 2960-2961.
[22] Tr 2960-2961.
[23] Tr 2961.

[24] Tr 2961-2962.
[25] Tr 2963.
[26] Tr 2963.
[27] Tr 2963.
[28] Tr 1201-1202; Ex O23.
[29] Ex CJ1; Ex CJ48.
[30] Ex CJ1; Ex CJ49.
[31] Ex CJ1; Ex CJ50.
[32] Ex CJ1.
[33] Ex CJ1; CJ51.
[34] Ex CJ1; CJ51.
[35] Ex CJ1; CJ51.
[36] Ex CJ1.
[37] Tr 2968.
[38] Tr 2969.
[39] Tr 2974.
[40] Video recording 25/09/2020 at 4.15.10 - 4.15.25.
[41] Tr 2970.
[42] Tr 2972-2975.
[43] Tr 2976.
[44] Tr 2976.
[45] Tr 2977.
[46] Tr 2965.
[47] Tr 2966-2967.
[48] Tr 2967.
[49] Tr 1604; Tr 3833; Tr 4131; Tr 4398.
[50] Tr 2979-2980.
[51] Tr 2976.
[52] *Briginshaw v Briginshaw* (1938) 60 CLR 336; *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 CLR 445.
[53] Tr 3190-3191.
[54] Ex AB33.
[55] Tr 3014.
[56] Tr 3010.
[57] Tr 3012.
[58] Tr 3013-3014.
[59] Tr 3014-3017.
[60] Tr 3030.
[61] Tr 3027-3030.
[62] Tr 3029.
[63] Tr 3029-3030.
[64] Tr 3029-3030.
[65] Ex AA220; Ex AA233.
[66] Tr 3198-3199.
[67] Tr 3135-3136.
[68] Tr 3136.
[69] Tr 3137.
[70] Tr 3137.
[71] Ex AD.
[72] Tr 3138.
[73] Ex CJ1.
[74] Ex CJ1.
[75] Tr 3073.
[76] Tr 3073.
[77] Tr 3141.
[78] Tr 3144.
[79] Chapter 3.4.
[80] Tr 3150.
[81] Tr 3124.
[82] Tr 3151-3152.
[83] Tr 3153-3154.

[84] Tr 3154.
[85] Tr 3154.
[86] Tr 3154.
[87] Tr 3154.
[88] Tr 3155.
[89] Tr 3155-3156.
[90] Tr 3156.
[91] Tr 3157.
[92] Tr 3158.
[93] Tr 3158-3160.
[94] Ex AB41.
[95] Ex AB39.
[96] Ex AB39.
[97] Tr 3040-3042.
[98] Tr 3051-3052.
[99] Tr 3052.
[100] Tr 3052.
[101] Tr 3052-3053.
[102] Tr 3053.
[103] Tr 3053-3054.
[104] Tr 3056.
[105] Tr 3056.
[106] Tr 3057-3058.
[107] Tr 3058.
[108] Tr 3165.
[109] Tr 3166.
[110] Tr 3169.
[111] Chapter 3.2.
[112] Tr 3172.
[113] Tr 3174.
[114] Tr 3175.
[115] Tr 3175.
[116] Tr 3175.
[117] Tr 3176.
[118] Tr 3176.
[119] Ex CJ1.
[120] Tr 3177.
[121] Tr 3178.
[122] Tr 3179.
[123] Tr 3180.
[124] Tr 3180-3182.
[125] Tr 3181.
[126] Tr 3182.

4.3.4 Andrew Demetriou

[1] Ex CE1.
[2] Ibid.
[3] Ex CE1.
[4] Tr 3919.
[5] Ibid.
[6] Ibid.
[7] Ibid.
[8] Ibid.
[9] Tr 3920.
[10] Ex CE1.
[11] Tr 3922.
[12] Tr 3923.
[13] Tr 3962.
[14] Ibid.
[15] Tr 3965.

[16] Ex AJ50.
[17] Tr 3966.
[18] Tr 3968.
[19] Tr 4050-4051.
[20] Tr 4053.
[21] Tr 4053.
[22] Tr 3968.
[23] Tr 3973.
[24] Tr 3972.
[25] Tr 3926-3927.
[26] Tr 3927-3928.
[27] Tr 3928.
[28] Tr 3929.
[29] Tr 3929-3930.
[30] Tr 3931.
[31] Tr 3943-3944.
[32] Tr 3957-3958.
[33] Tr 3960.
[34] Tr 3961.
[35] Ibid.
[36] Tr 3946.
[37] Tr 3947-3948.
[38] Tr 3948-3949.
[39] Tr 3950.
[40] Tr 3952.
[41] Tr 3952.
[42] Tr 3953.
[43] Tr 3953.
[44] Tr 3954-3955.
[45] Tr 3955.
[46] Tr 3955-3956.
[47] Tr 3958.
[48] Tr 3925.
[49] Tr 3926.
[50] Tr 3926.
[51] Tr 3932.
[52] Tr 3932-3933.
[53] Tr 3933-3934.
[54] Tr 3934.
[55] Tr 3934.
[56] Tr 3955-3936.
[57] Tr 3937.
[58] Tr 3937-3938.
[59] Tr 3938.
[60] Tr 3939.
[61] Tr 3940.
[62] Tr 3940
[63] Tr 3978.
[64] Tr 4044.
[65] Tr 4045.
[66] Tr 4045.
[67] Tr 4045.
[68] Tr 4045.
[69] Tr 3979.
[70] Tr 3980.
[71] Tr 3981.
[72] Tr 3981-3982.
[73] Tr 3952.
[74] Tr 3982.
[75] Tr 3983.
[76] Tr 3983-3984.

[77] Tr 3984.
[78] Tr 3985.
[79] MFI DA to MFI DD (later ExAJ49 to AJ52).
[80] Tr 3988.
[81] Tr 3988.
[82] Tr 3990.
[83] Tr 4018.
[84] Ex AH16; Tr 4022.
[85] Tr 4024-4025.
[86] Tr 4025.
[87] Tr 4026-4028.
[88] Ex AA99.
[89] Ibid.
[90] Ibid.
[91] Tr 4058.
[92] Tr 4067.
[93] Tr 4034.
[94] Tr 4035; Tr 4036-4038.
[95] Tr 4039.
[96] Tr 4040-4041.
[97] Tr 4041.
[98] Tr 4059.
[99] Tr 4059.
[100] Tr 4060.
[101] Ex AJ49.
[102] Tr 3952-3953.
[103] Ex AXD1.

4.3.5 Other Crown Directors

[1] Tr 4602.
[2] Tr 4237.
[3] Tr 4225.
[4] Tr 4324.
[5] Tr 4315.
[6] Tr 4247-4249.
[7] Tr 4247.
[8] Tr 4248.
[9] Tr 4249.
[10] Tr 4278.
[11] Tr 4279.
[12] Tr 4280.
[13] Tr 4285.
[14] Tr 4288.
[15] Tr 4258-4259.
[16] Tr 4289.
[17] Tr 4290-4291.
[18] Tr 4296-4297.
[19] Tr 4298.
[20] Tr 4330.
[21] Ex CG1.
[22] Tr 4130.
[23] Tr 4131.
[24] Tr 4131-4132.
[25] Tr 4133.
[26] Tr 4134.
[27] Tr 4134.
[28] Tr 4135.
[29] Tr 4135.
[30] Tr 4136.
[31] Tr 4136.

[32] Tr 4137.
[33] Tr 4138.
[34] Tr 4138-4139.
[35] Tr 4151-4152.
[36] Tr 4152.
[37] Tr 4169.
[38] Tr 4169.
[39] Tr 4197.
[40] Tr 4198.
[41] Tr 4195.
[42] Tr 4206.
[43] Tr 4210.
[44] Tr 4196.
[45] Tr 3262.
[46] Tr 3261.
[47] Tr 3262.
[48] Tr 3266-3267.
[49] Tr 3259.
[50] Tr 3296.
[51] Tr 3296.
[52] Tr 4079.
[53] Tr 4087.
[54] Tr 4089.
[55] Tr 4092.
[56] Tr 4093.
[57] Tr 4094.
[58] Tr 4101.
[59] Tr 4102.
[60] Tr 4103.
[61] Tr 3845-3846.
[62] Tr 3846.
[63] Tr 3847.
[64] Tr 3848.
[65] Tr 3868.
[66] Tr 3869-3870.
[67] Tr 3870.
[68] Tr 3876-3877.
[69] Tr 3879-3881.
[70] Tr 3895.
[71] Tr 3896.
[72] Tr 3897.
[73] Tr 3897.
[74] Tr 3897-3898.
[75] Tr 3898.
[76] Tr 3899.
[77] Tr 3900.
[78] *Australian Securities & Investments Commission v Mitchell (No 3)* [2020] FCA 1604.
[79] Tr 3901-3902.
[80] Ex CN1.
[81] Tr 3357.
[82] Tr 3358-3359.
[83] Tr 3359-3361.
[84] Tr 3361-3362.
[85] Tr 3364.
[86] Tr 3378.
[87] Tr 3379.
[88] Tr 3381.
[89] Tr 3382.
[90] Tr 3382.
[91] Tr 3390.
[92] Tr 3397.

[93] Tr 3397.
[94] Tr 3397-3398.
[95] Tr 3418.

4.3.6 Former Crown Directors

[1] Ex CA1.
[2] Ex F65.
[3] Ex CA1.
[4] Ex CA1.
[5] Ex CA1.
[6] Tr 3511.
[7] Tr 3513.
[8] Tr 3516.
[9] Tr 3527.
[10] Tr 3530.
[11] Tr 3496.
[12] Tr 3496.
[13] Tr 3499.
[14] Ex CA1.
[15] Ex CA1.
[16] Tr 3433.
[17] Tr 3435.
[18] Tr 3435.
[19] Tr 3436.
[20] Tr 3440.
[21] Tr 3440 -3441.
[22] Tr 3447.
[23] Tr 3448.
[24] Tr 3448-3449.
[25] Tr 3450.
[26] Tr 3451.
[27] Tr 3451.
[28] Tr 3452.
[29] Tr 3452.
[30] Tr 3452.
[31] Tr 3452.
[32] Tr 3453.
[33] Tr 3454-3455.
[34] Tr 3455.
[35] Tr 3547-3548.
[36] Tr 3549.
[37] Tr 3553.
[38] Tr 3561.
[39] Tr 3430.
[40] Tr 3431.
[41] Tr 3463-3464.
[42] Tr 3429.
[43] Tr 3456.
[44] Tr 3457.
[45] Tr 3457.
[46] Tr 3465
[47] Tr 3465.
[48] Tr 3459; Ex AB27.
[49] Tr 3460.
[50] Ex AA180.
[51] Ex AA180.
[52] Tr 3466.
[53] Tr 3367; Tr 3471.
[54] Tr 3471.
[55] Ex AA251.

[56] Ex AA251.
[57] Tr 3478.
[58] Tr 3478.
[59] Ex AA251.
[60] Tr 3479.
[61] Tr 3520-3523.
[62] Tr 3523.
[63] Tr 3519.
[64] Tr 3520.
[65] Ex AA229.
[66] Tr 3759-3760.
[67] Tr 3782.
[68] Tr 3765-3766.
[69] Tr 3768-3770.
[70] Tr 3773.
[71] Tr 3774.
[72] Tr 3775.
[73] Tr 3778.
[74] Tr 3778-3779.
[75] Tr 3799.
[76] Tr 3799.
[77] Tr 3800.
[78] Tr 3801.
[79] Tr 3779.
[80] Tr 3780.
[81] Tr 3809.
[82] Tr 3809.
[83] Tr 3780.
[84] Tr 3782.
[85] Tr 3782.
[86] Tr 3783-3788.
[87] Tr 3793.
[88] Tr 3794.
[89] Tr 3802.
[90] Tr 3803.
[91] Tr 3813.
[92] Tr 3814.
[93] Tr 3813-3814.
[94] Tr 3815.
[95] Tr 1602.
[96] Tr 1603.
[97] Tr 1604.
[98] Tr 1606.
[99] Tr 1609.
[100] Ex AA222.
[101] Ex AA222.
[102] Ex AA222.
[103] Ex AA222.
[104] Ex AA222.
[105] Tr 4637.
[106] Tr 4638.
[107] Tr 4640.
[108] Tr 4641.
[109] Tr 4642.
[110] Tr 4642.
[111] Tr 4642.
[112] Tr 4645-4646.
[113] Tr 4646.
[114] Tr 4650.
[115] Tr 4650.
[116] Tr 4650.

[117] Tr 4651.
[118] Tr 4654-4655.
[119] Tr 4656.
[120] Tr 4657-4658.
[121] Tr 4657-4658.
[122] Tr 4658.
[123] Tr 4659.
[124] Tr 4660.
[125] Tr 4660.
[126] Tr 4662.
[127] Tr 4663-4664.
[128] Tr 4666.
[129] Tr 4667.
[130] Tr 4685.
[131] Tr 4689.
[132] Tr 4690-4691.
[133] Tr 4692.
[134] Tr 4693.
[135] Tr 4694.
[136] Tr 4694.
[137] Tr 4694-4695.
[138] Tr 4696.
[139] Tr 4699.
[140] Tr 4699.
[141] Tr 4704.
[142] Tr 4704.
[143] Tr 4705.
[144] Tr 4705.
[145] Tr 4707-4709.
[146] Tr 4710-4711.
[147] Tr 4711.
[148] Tr 4712-4713.
[149] Tr 4713.
[150] Tr 4716-4717.
[151] Tr 4720.
[152] Tr 4721.
[153] Page 278.
[154] Tr 4722.
[155] Tr 4725-4726.

4.3.7 Senior Management

[1] Ex AB58; Ex ZZ197.
[2] Tr 1095.
[3] Tr 1095-1096.
[4] Tr 1102.
[5] Tr 1097.
[6] Tr 1118.
[7] Tr 1108.
[8] Tr 1105-1107.
[9] Tr 1195.
[10] Tr 1195-1197.
[11] Tr 1197.
[12] Tr 1200.
[13] Ex M197; Tr 1209-1210.
[14] Tr 1211-1213.
[15] Tr 1215.
[16] Tr 1218.
[17] Tr 1219-1220.
[18] Tr 1221.
[19] Ibid.

[20] Ibid.
[21] Tr 1222.
[22] Ex R16; Tr 1224.
[23] Tr 1224-1225.
[24] Ex R16.
[25] Tr 1225.
[26] Tr 1227.
[27] Ex M229; Tr 1233.
[28] Tr 1233-1234.
[29] Tr 367-368.
[30] Ex BA95.
[31] Ibid.
[32] Ibid.
[33] Tr 369.
[34] Ex AO70; Ex AO71.
[35] Tr 424.
[36] Tr 425.
[37] Ex BA95.
[38] Ibid.
[39] Tr 1788.
[40] Submissions of Crown dated 26 November 2020, [407].
[41] Ex BA76; Tr 708.
[42] Tr 797.
[43] Tr 1780.
[44] Tr 592.
[45] Ibid.
[46] Ex V10; Ex ZZ178.
[47] Tr 1725-1726.
[48] Ex BM29; Tr 1725-1729.
[49] Tr 374.
[50] Tr 648; Tr 1744.
[51] Tr 1747.
[52] Tr 681.
[53] Ibid.
[54] Tr 682-683.
[55] Tr 682-683; Tr 1745-1746.
[56] Ex BM7.
[57] Tr 3418; Tr 3527; Tr 4099; Tr 4325; Tr 4601.

4.4 Crown's Reformation

[1] Ex CB1.
[2] Ex AS9.
[3] Ex AR34.
[4] Ex AR34.
[5] Ex CB1.
[6] Ex CB1.
[7] Ex AT19.
[8] Ibid.
[9] Ibid.
[10] Ibid.
[11] Ibid.
[12] Ex ZZ141.
[13] Ex CB1.
[14] Ex AT19.
[15] Ex BJ72.
[16] Ex CB27.
[17] Ibid.
[18] Submissions of Crown parties dated 26 November 2020, Annexure C.
[19] Ex AT19.
[20] Ex ZZ188.

[21] Ex AT19.
[22] Ibid.
[23] Ex AB58.
[24] Ex AT19.
[25] Tr 4602.
[26] Ex AT19.
[27] Ex AO97.
[28] Ex A098.
[29] Tr 4457.

4.5 Suitability of the Licensee and Crown

[1] *Casino Control Act*, s 4A.
[2] Chapter 3.2.
[3] Chapter 3.3.
[4] Chapter 3.4.
[5] Tr 5583; Submissions of Crown Resorts Limited and Crown Sydney Gaming Pty Ltd dated 26 November 2020, [555].
[6] Tr 2727-2728.
[7] Tr 3530-3531.
[8] Chapter 4.4, par 20.
[9] Ex M136.
[10] Submissions of Crown Resorts Limited and Crown Sydney Gaming Pty Ltd dated 26 November 2020, [68].
[11] Submissions of Crown Resorts Limited and Crown Sydney Gaming Pty Ltd dated 26 November 2020, [75].
[12] Submissions of Crown Resorts Limited and Crown Sydney Gaming Pty Ltd dated 26 November 2020, [68].
[13] Tr 5414; Closing submissions of Crown Resorts Limited and Crown Sydney Gaming Pty Ltd dated 26 November 2020, [52].
[14] Submissions of Crown Resorts Limited and Crown Sydney Gaming Pty Ltd dated 26 November 2020, [68-69].
[15] Tr 5415.
[16] Submissions of Crown Resorts Limited and Crown Sydney Gaming Pty Ltd dated 26 November 2020, [73].
[17] Submissions of Crown Resorts Limited and Crown Sydney Gaming Pty Ltd dated 26 November 2020, [74].
[18] Submissions of Crown Resorts Limited and Crown Sydney Gaming Pty Ltd dated 26 November 2020, [69].
[19] Tr 3182.
[20] Ex CD4.
[21] Tr 3742.
[22] Tr 4292-4293.
[23] Tr 1195-1196; Tr 1220.
[24] Tr 2060; Tr 3845; Tr 4431.
[25] Tr 4361-4362.
[26] Tr 935-936.
[27] Ex BH6.
[28] Ex AO112.
[29] Ibid.
[30] Ibid.
[31] Ibid.
[32] Ibid.
[33] Ex ZZ204.
[34] Senate Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, 20 October 2020, pp 96-97 (Ms Nicole Rose PSM).
[35]Ex T47; Ex T50.
[36] Ex AC21.

4.7 A Question of Breach

[1] Amended Terms of Reference, pp 16(d)-(f).
[2] Ex Z1; Ex Z12.
[3] Ex Z1; Ex Z12.
[4] Ex Z1; Ex Z12.
[5] Ex Z1; Ex Z12.

[6] Tr 5252.
[7] Submissions of the CPH parties dated 23 November 2020, [82]-[101].
[8] *Korda v Australian Executor Trustees (SA) Ltd* (2015) 255 CLR 62, 69; *Agricultural and Rural Finance Pty Ltd v Gardiner* (2008) 251 ALR 322, 331.
[9] JA Simpton and ESC Weiner (eds) (*Compact Oxford Dictionary of English*, Oxford University Press, 2nd ed, 1992).
[10] *Australian Corporation Law Principles and Practice* (Lexis Advance looseleaf service) at [3.2A.0090] (chapter authored by The Hon Justice A Black); William Bowstead, Francis Reynolds and Peter Watts (eds), *Bowstead and Reynolds on Agency* (20th ed, 2014) at [8-207] to [8-214]; *Re Fenwick, Stobart & Co Ltd* [1902] 1 Ch 507 at 511; *Belmont Finance Corporation v Williams Furniture Ltd & Ors (No 2)* [1980] 1 All ER 393 (*Belmont Finance*) at 404; *LMI Australasia Pty Ltd v Baulderstone Hornibrook Pty Ltd* [2001] NSWSC 886 (*LMI*) at [84]; *ZBB (Australia) Ltd v Allen* (1991) 4 ACSR 495 (*ZBB*) at 506-507; *Harkness v Commonwealth Bank of Australia* (1993) 32 NSWLR 543 (*Harkness*) at 555F; *Beach Petroleum NL v Johnson* (1993) 43 FCR 1 (*Beach Petroleum*) at 24-26; *BCI Finances Pty Ltd (in liq) v Binetter (No 4)* (2016) 348 ALR 227 (*BCI Finances*) at [312].
[11] *LMI* at [84]; *Beach Petroleum* at [25]; *BCI Finances* at [312].
[12] Tr 2915; Tr 2924-2925.
[13] Tr 3052-3053.
[14] Tr 3052-3053.
[15] Tr 3053.
[16] Tr 2920-2921.
[17] Ex AA8; Tr 2921.
[18] Tr 2922.
[19] Tr 2922-2923.
[20] Tr 3056-3058.
[21] Tr 3054.
[22] Submissions of the CPH Parties dated 23 November 2020, [116]-[119].
[23] Tr 3224; Tr 3235.
[24] Tr 3218; Tr 3219.
[25] Tr 3240.
[26] Tr 3240.
[27] Tr 3263-3264; Tr 3274.
[28] Tr 3243.
[29] Tr 3634; Tr 3671.
[30] Ex CM1.
[31] Tr 3670.
[32] Tr 3671.
[33] Ex AA180.

PART 5 Paragraph 17 of Amended Terms of Reference – Regulatory Framework and Settings

5.1 Regulatory Practice

[1] Appendices 1-3.
[2] Ex A74.
[3] Tr 4745.
[4] Ex A74.
[5] Ex A74.
[6] Ex A74.
[7] Ex A74.
[8] Ex A74.
[9] Ex A74.
[10] Ex A74.
[11] Ex A74.
[12] Tr 150-152
[13] Tr 175-176.
[14] Tr 177.
[15] Tr 177 - 179.
[16] Tr 179-180.
[17] Qld Act, s 85A.

[18] Qld Act, s 84(2), (3).
[19] Qld Regulations, regs 31, 33, 34.
[20] Qld Regulations, regs 36-39.
[21] Qld Act, regs 37, 38.
[22] Tr 120.
[23] Tr 122.
[24] Tr 123.
[25] Tr 139.
[26] Tr 125.
[27] Tr 126.
[28] Tr 126; Qld Regulations, reg 25.010.
[29] Tr 127.
[30] Tr 126.
[31] Tr 129.
[32] Tr 132.
[33] Tr 133.
[34] Tr 141.
[35] Tr 142.
[36] Tr 144.
[37] Tr 147.
[38] Singapore Marketing Regulations, reg 2.
[39] Singapore Marketing Regulations, reg 2.
[40] Singapore Marketing Regulations, reg 4.
[41] Singapore Marketing Regulations, reg 6.
[42] Singapore Marketing Regulations, reg 7.
[43] Singapore Marketing Regulations, reg 8.
[44] Singapore Marketing Regulations, regs 13, 14.
[45] Singapore Marketing Regulations, reg 12.
[46] Singapore Marketing Regulations, regs 17, 18.
[47] Singapore Marketing Regulations, reg 15.
[48] Singapore Marketing Regulations, reg 19.
[49] Singapore Marketing Regulations, regs 24-30.
[50] Singapore Marketing Regulations, reg 31.
[51] Singapore Marketing Regulations, reg 32.
[52] Singapore Marketing Regulations, reg 33.
[53] https://www.iras.gov.sg/IRASHome/Other-Taxes/Casino-Tax/.
See under "Income Tax Treatment for International Market Agents and Representatives".
[54] Singapore Marketing Regulations, regs 35-37.
[55] Singapore Marketing Regulations, regs 46-48.
[56] Singapore Marketing Regulations, reg 53.
[57] Ex ZB27.
[58] Bloomberg.com/new/articles/2020-06-07/Singapore-considers-tightening-casino-rules-for-Customers.
[59] See Singapore Police Force website: https://www.police.gov.sg/Advisories/Crime/Commercial-Crimes/Suspicious-Transaction-Reporting-Office.
[60] See, eg, Singapore AML/CTF Regulations, reg 20.
[61] Singapore AML/CTF Regulations, reg 21.
[62] Ex B3
[63] Ex B3
[64] Ex B3.

5.2 The Independent Regulator

[1] Annual Report 2019-2020, p 23.
[2] Ex ZZ220, p 4.
[3] Ex ZZ220, p 4.
[4] Ex ZZ220, p 16.
[5] Ex ZZ220, p 27.
[6] Ex ZZ222.
[7] Tr 4818.
[8] Tr 4760.

[9] *Independent Commission Against Corruption Act* 1988 (NSW), Part 7.
[10] Tr 4746; Tr 4760.
[11] *Gaming and Liquor Administration Act* 2007 (NSW), ss 3, 17.

PART 5 Appendices

Appendix 1: History of New South Wales Casino Regulator

[1] Ex A44.
[2] *Miscellaneous Acts (Casino, Liquor and Gaming) Amendment Act* 2007 (NSW), ss 24-26.
[3] Ex ZZ202.
[4] *Public Sector Employment and Management (Departments) Order* 2011 (NSW), clauses 4 and 23.
[5] Ex A68, p 253.
[6] Ex A66.
[7] Ex A68.
[8] Ex A68.
[9] Ex A66.
[10] Ex A68; Ex A72; Ex A80; Ex A87.
[11] Tr 4778.
[12] Ex A72; Ex A73.
[13] Ex A80.
[14] *Liquor Amendments Reviews Act* 2017 (NSW), Sch 2.1, ss 2-7; Sch 2.2, ss 3, 4; Sch 2.3; Sch 2.4.
[15] Tr 4761.
[16] Ex RM4.
[17] Ex RM4.
[18] *Casino Control Act*, s 140.
[19] *Casino Control Act*, s 141(1).
[20] *Casino Control Act*, s 141(2).
[21] *Casino Control Act*, s 18(1).
[22] *Casino Control Act*, s 18(2); Ex A87.
[23] *Casino Control Act*, s 31(1).
[24] *Casino Control Act*, s 29(1).
[25] *Casino Control Act*, s 142(1).
[26] *Casino Control Act*, s 143(1).
[27] *Casino Control Act*, s 5(1).
[28] *Casino Control Act*, 5(1).
[29] *Casino Control Act*, 5(2).
[30] *Casino Control Act*, s 7(1).
[31] *Casino Control Act*, s 7(5).
[32] *Casino Control Act*, s 5A(1).
[33] *Casino Control Act*, s 5A(4).
[34] GALA, s 9(3)(b).
[35] Save for ss 18, 19, 22, 23, 28 and 59 of the *Casino Control Act* (see GALA, s 13(2)).
[36] GALA, s 13(1).
[37] Ex AM4.
[38] Tr 4740.
[39] Ex AM4.
[40] Tr 4784.
[41] Ex AM3.
[42] Ex AM3.
[43] Ex AM3.
[44] Ex AM3.
[45] Ex AM3.
[46] Tr 4763.
[47] Tr 4763.
[48] Tr 4766-4767.
[49] Ex AM1.
[50] Tr 4768.
[51] Tr 4769.

[52] Tr 4770.
[53] Tr 4769.
[54] Tr 4772
[55] Tr 4772.
[56] Tr 4772.
[57] Ex AM1.
[58] Tr 4773.
[59] Ex AM1.
[60] Tr 4775.
[61] Ex AM1.
[62] Tr 4776.
[63] Tr 4776-4777.
[64] Tr 4777.
[65] Tr 4778.
[66] Tr 4778.
[67] Ex AM1.
[68] Tr 4779.
[69] Tr 4766.
[70] Tr 4780-4781.
[71] Tr 4787.
[72] Tr 4787.

Appendix 2: Casino Regulators – Other Australian Jurisdictions

[1] Ex RM7.
[2] Qld Act, s 18(1).
[3] Qld Act, s 86(1).
[4] Qld Act, s 127(1).
[5] Qld Act, s 15(1).
[6] Ex RM8.
[7] Ex RM8.
[8] Ex RM8.
[9] Ex RM8.
[10] Ex RM8.
[11] Ex RM8
[12] Ex ZZ205.
[13] Vic Act, s 140.
[14] 2011 Act, s 9(1).
[15] Vic Act, s 141.
[16] Vic Act, s 13(1).
[17] Vic Act, s 23(1).
[18] 2011 Act, s 33(1).
[19] 2011 Act, s 13(1).
[20] 2011 Act, s 14(1).
[21] 2011 Act, ss 11(1), 15(1).
[22] Ex RM13. Current Commissioners include: Ross Kennedy (Chairperson), Helen Versey (Deputy Chairperson), Deirdre O'Donnell (Deputy Chairperson), Des Powell (Sessional Commissioner), Danielle Huntersmith (Commissioner), and Andrew Scott (Commissioner).
[23] The Chief Executive Officer is currently Catherine Myers.
[24] Ex RM13.
[25] Ex RM13.
[26] Ex RM13.
[27] Ex RM13.
[28] Ex RM13; Ex ZZ214.
[29] Ex RM13.
[30] Ex RM13.
[31] Ex RM13.
[32] Ex RM13.
[33] 2011 Act, s 29(1); s 30(2).
[34] Ex RM14.
[35] Ex RM14.

[36] Ex RM14.
[37] Ex RM15.
[38] Ex RM15.
[39] Tas Act, s 125.
[40] Tas Act, s 126.
[41] Tas Act, s 127(1), (2).
[42] Tas Act, s 127(4).
[43] Ex RM20.
[44] 2019 Act, s 6(1).
[45] 2019 Act, s 7(1).
[46] 2019 Act, s 12(1).
[47] SA Act, s 5(1), s 26.
[48] Ex RM26.
[49] Ex RM26.
[50] Ex RM27.
[51] 1987 Act, s 6(1).
[52] 1987 Act, s 7(1)(e)(iii).
[53] 1987 Act, s 8(2)(d)(iii).
[54] WA Act, s 24(1).
[55] 1987 Act, s 6(2).
[56] 1987 Act, s 6(2).
[57] 1987 Act, s 6(3).
[58] WA Act, s 21A(5).
[59] WA Act, s 36(1).
[60] Ex RM26; Ex RM27; 1987 Act, s 12(1). As at 1 January 2018, the GWC was composed of: Duncan Ord OAM (Chairperson), Barry Sargeant PSM, Andrew Duckworth, Professor Colleen Hayward AM, Katie Hodson-Thomas, Robert Bovell, Carmelina Fiorentino, and Jodie Hede. See also GWC website.
[61] 1987 Act, s 12(6).
[62] WA Act, s 9(1).
[63] WA Act, s 11(1)(b). See also 1987 Act, s 16(1)(b).
[64] 1999 Act, s 6(1).
[65] 1999 Act, s 6(3).
[66] 1999 Act, s 7.
[67] 1999 Act, s 8.
[68] 1999 Act, s 40(1).
[69] 1999 Act, s 40(2).
[70] 1999 Act, s 42.
[71] 2006 Act, s 21(1).
[72] 2006 Act, s 21(2).
[73] 2006 Act, s 21(4).
[74] 2006 Act, s 22.
[75] 1999 Act, s 11.
[76] 1999 Act, 12(1). The GRC is currently composed of: Paul Baxter (Chairperson), Alice Tay (Deputy Chairperson), Carmel Franklin (problem gambling counselling expert), Carl Buik, David Snowden (Chief Executive).
[77] Ex RM33.
[78] 1999 Act, s 10.
[79] 1999 Act, s 14(1), s 15.
[80] Ex RM3; RM32.
[81] Ex RM33.
[82] Ex RM33.
[83] Ex RM33.
[84] 1983 Act, s 17.
[85] 1983 Act, s 18.
[86] 1983 Act, s 19.
[87] NT Act, s 18(1).
[88] 1983 Act, s 7(1). The RC is currently composed by the following persons: Alastair Shields (Chairperson), Allan McGill, Amy Corcoran, Cindy Bravos, and James Pratt.
[89] 1983 Act, s 10(1).
[90] 1983 Act, s 16B(1).
[91] Ex RM36.

Appendix 3: International Casino Regulators

[1] Chapter 23K, s 1(1).
[2] Chapter 23K, s 1(2)-(3).
[3] Chapter 23K, s 4(9).
[4] Chapter 23K, s 4(13).
[5] Chapter 23K, s 4(11).
[6] Chapter 23K, s 4(16).
[7] Chapter 23K, s 4(20).
[8] Chapter 23K, s 4 (27).
[9] Chapter 23K, s 8 to 13; s 13(a).
[10] Chapter 23K, s 18.
[11] Chapter 23K, s 27.
[12] Chapter 23K, s 28.
[13] MCG website: https://massgaming.com/the-commission/.
[14] Chapter 23K, s 3(a).
[15] Chapter 23K, s 3(c).
[16] MGC website: https://massgaming.com/the-commission/inside-mgc/executive-staff/.
[17] Chapter 23K, s 6(a).
[18] Chapter 23K, s 6(a).
[19] MGC Annual Report 2019, p11.
[20] Chapter 23K, s 6(d) and (e).
[21] Chapter 23K, s 12(a).
[22] MGC website: https://massgaming.com/the-commission/inside-mgc/division-of-licensing/.
[23] MGC website: https://massgaming.com/the-commission/inside-mgc/division-of-racing/.
[24] MGC website: https://massgaming.com/the-commission/inside-mgc/office-ombudsman/.
[25] MGC website: https://massgaming.com/the-commission/inside-mgc/office-communications-outreach/.
[26] MGC website: https://massgaming.com/the-commission/budget/.
[27] NG Control Board / NG Commission Report, July 2020, p6.
[28] NG Control Board / NG Commission Report, July 2020, p6.
[29] NG Control Board / NG Commission Report, July 2020, p6. See also NRS 463.030.
[30] NG Control Board / NG Commission Report, July 2020, p9.
[31] NG Control Board / NG Commission Report, July 2020, pp7, 9.
[32] NG Control Board / NG Commission Report, July 2020, p7.
[33] NG Control Board / NG Commission Report, July 2020, p10.
[34] NG Control Board / NG Commission Report, July 2020, p13.
[35] The definition of a Group I casino is based upon a gross gaming revenue threshold adjusted annually in accordance with the consumer price index.
[36] NG Control Board / NG Commission Report, July 2020, p16.
[37] NG Control Board / NG Commission Report, July 2020, p18.
[38] NG Control Board / NG Commission Report, July 2020, p19.
[39] NG Control Board / NG Commission Report, July 2020, p19.
[40] NG Control Board / NG Commission Report, July 2020, p21.
[41] NG Control Board / NG Commission Report, July 2020, p23.
[42] NG Control Board / NG Commission Report, July 2020, p7. See also NRS 463.022.
[43] NRS 463.025, s 2.
[44] NG Control Board / NG Commission Report, July 2020, p7.
[45] NRS 463.021, s 1.
[46] BC Act, s 27(1).
[47] BC Act, s 24(1).
[48] BC Act, s 26(1).
[49] BC Act, s 26(2).
[50] BC Act, s 27(2).
[51] BC Act, s 29(1).
[52] BC Act, s 29(2).
[53] BC Act, s 25(1).
[54] GPEB Annual Report 2018-19, p5.
[55] GPEB Annual Report 2018-19, p5.
[56] GPEB Annual Report 2018-19, p5.
[57] GPEB Annual Report 2018-19, p6.
[58] GPEB Annual Report 2018-19, p6.

[59] GPEB Annual Report 2018-19, p7.
[60] GPEB Annual Report 2018-19, p7.
[61] CRA Annual Report 2018-2019, pp 2, 18.
[62] Annual Report 2018/2019, Cover Page.
[63] CRA Annual Report 2018-2019, p35.
[64] Singapore Act, s 8.
[65] Singapore Act, s 9(d).
[66] Singapore Act, ss 9(1)(e), (2).
[67] Singapore Act, s 49(1).
[68] Singapore Act, s 54(4).
[69] Singapore Act, s 57(1).
[70] Singapore Act, s 58(1).
[71] Singapore Act, s 7(1).
[72] Singapore Act, s 13(1).
[73] CRA website: https://www.cra.gov.sg/about-us/board-members.
[74] CRA website: https://www.cra.gov.sg/about-us/organisation-structure.
[75] CRA Annual Report 2018-2019, p12.
[76] Singapore Act, s 14.
[77] Singapore Act, s 15(1)(c)-(d).
[78] Singapore Act, s 15(1)(e).
[79] Casino Control (Casino Licence and Fees) Regulations 2009, The Schedule "Fees".
[80] Casino Control (Casino Licence and Fees) Regulations 2009, reg 13.
[81] CRA Annual Report 2019-20, p56.
[82] CRA Annual Report 2019-20, p58.
[83] CRA Annual Report 2019-20, p58.
[84] CRA Annual Report 2019-20, p49.
[85] CRA Annual Report 2019-20, pp33-35.
[86] GC Annual Report 2018-19, p6.
[87] GC Annual Report 2018-19, p6.
[88] UK Act, s 26(1).
[89] UK Act, s 1.
[90] GC Business Plan 2020-2021; GC Business Plan 2019-2020.
[91] UK Act, s 23(1).
[92] UK Act, s 28(1).
[93] UK Act, s 30(1), Schedule 6.
[94] UK Act, s 74(1).
[95] UK Act, s 75(1).
[96] UK Act, ss 112, 118, 119, 121.
[97] GC Annual Report 2018-19, p6.
[98] GC website: https://www.gamblingcommission.gov.uk/about/Corporate-governance-and-business-plan/Board-of-commissioners.aspx.
[99] GC website: https://www.gamblingcommission.gov.uk/about/Corporate-governance-and-business-plan/Board-of-commissioners.aspx.
[100] GC website: https://www.gamblingcommission.gov.uk/about/Corporate-governance-and-business-plan/Organisational-structure.aspx.
[101] GC Annual Report 2018-19, p47.
[102] GC website: https://www.gamblingcommission.gov.uk/about/Corporate-governance-and-business-plan/Organisational-structure.aspx.
[103] GC Annual Report 2018-19, p47.
[104] GC Annual Report 2018-19, p3.
[105] GC Annual Report 2018-19, p3.
[106] '*Gambling Fact Sheet #28*', Department of Internal Affairs, p2.
[107] GC website: http://www.gamblingcommission.govt.nz/#:~:text=The%20Commission%20hears%20casino%20licensing,of%20a%20Commission%20of%20Inquiry.
[108] NZ Act, s 225.
[109] '*Gambling Fact Sheet #28*', Department of Internal Affairs, p2.
[110] GC Annual Report 2018-19, p6.
[111] NZ Act, s 221(1).
[112] NZ Act, s 221(2).
[113] NZ Act, s 221(3).

[114] GC Annual Report 2018-19, p3.
[115] NZ Act, s 228(1).
[116] NZ Act, s 228(2).
[117] NZ Act, s 228(3).
[118] NZ Act, s 228(6).
[119] NZ Act, s 229(1).