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TRANSCRIPT OF PROCEEDINGS

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

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

**MELBOURNE, VICTORIA**

**09.34 AM, TUESDAY, 29 JUNE 2021**

**Counsel Assisting the Commission  
(instructed by Corrs Chambers  
Westgarth as Solicitors Assisting the  
Commission)**

**MS PENNY NESKOVCIN QC**

**Counsel for Crown Resorts Limited**

**MR MICHAEL BORSKY QC**

**MinterEllison (Richard Murphy)**

**MR PETER HANKS  
MR FRANCES GORDON**

09:34 1 **HEARING IN CAMERA**

09:34 2

09:34 3

09:34 4 COMMISSIONER: Good morning. Thank you.

09:34 5

09:34 6 MR BORSKY: Morning, Commissioner. If it is convenient I  
09:34 7 thought I would address you on the question of the redacted  
09:34 8 emails that you raised yesterday.

09:34 9

09:34 10 COMMISSIONER: Yes.

09:34 11

09:34 12

09:34 13 **HOUSEKEEPING**

09:34 14

09:34 15

09:34 16 MR BORSKY: Those being the emails that ---

09:35 17

09:35 18 COMMISSIONER: Kozminsky said you don't have to give me.

09:35 19

09:35 20 MR BORSKY: Yes. Yes, I've had a discussion with Junior  
09:35 21 Counsel Assisting overnight as well. The issue, if I may put it  
09:35 22 this way, is the emails themselves do not record advice to the  
09:35 23 effect that Crown breached its obligations. Rather, as Counsel  
09:35 24 Assisting anticipated in his questions of Mr Mackay, that they  
09:35 25 call for instructions and comments on draft cover letters and  
09:35 26 tables which were in production in response to RFI-002. So our  
09:35 27 submission is that the emails record legal advice that is excluded  
09:35 28 from the scope of production according to the 23 March letter  
09:35 29 that Solicitors Assisting wrote. They do arguably record legal  
09:35 30 advice and call for instructions as to the manner in which Crown  
09:35 31 should respond to RFI-002, which in our submission is not  
09:36 32 precisely the same as to advice or instructions as to the merits of  
09:36 33 the question of whether Crown had or even might have breached  
09:36 34 its obligation. So, on that basis we ---

09:36 35

09:36 36 COMMISSIONER: Isn't the subject matter necessarily whether  
09:36 37 whatever is in a draft schedule, let's say there are ten items, isn't  
09:36 38 the subject necessarily, "please check whether these are items  
09:36 39 where you have or may have contravened?"

09:36 40

09:36 41 A. Our submission is, no, that's not necessarily the subject  
09:36 42 matter, and in fact, the terms of the emails themselves don't speak  
09:36 43 in that voice. The terms ---

09:36 44

09:36 45 COMMISSIONER: Are they, "please check to see whether  
09:37 46 we've got it right?"

09:37 47

09:37 1 MR BORSKY: "Please let us know any comments" and matters  
09:37 2 of that ilk.

09:37 3

09:37 4 COMMISSIONER: You understand why ---

09:37 5

09:37 6 MR BORSKY: I do, with great respect, see the point. It is a very  
09:37 7 fine distinction, if I may put it that way. But I'm instructed that  
09:37 8 the draft, and the emails accord - I'm at liberty to say since we  
09:37 9 are in private session --

09:37 10

09:37 11 COMMISSIONER: Sure.

09:37 12

REDACTED - PRIVILEGE



09:37 20

09:37 21 Now, may I add, with respect, we of course recognise that the 23  
09:37 22 March letter is not a statute and are very much at the mercy of the  
09:38 23 Commission as to its construction and survival. So we appreciate  
09:38 24 that. But in addition to the reason I foreshadowed yesterday,  
09:38 25 which was Counsel Assisting hadn't called for the text, we make  
09:38 26 this submission too seeking to resist production in unredacted  
09:38 27 form.

09:38 28

09:38 29 COMMISSIONER: Would it be perfectly permissible for me,  
09:38 30 without knowing the contents of the emails, to infer and if we  
09:38 31 were in a criminal case, beyond a reasonable doubt, but we are  
09:38 32 not so I don't have to do that, that the emails forwarded drafts of  
09:39 33 the schedules and requested input from the client whether the  
09:39 34 schedules are effectively okay, complete or incomplete? Because  
09:39 35 I'm minded to do that.

09:39 36

09:39 37 MR BORSKY: Yes.

09:39 38

09:39 39 COMMISSIONER: And the reason why I say that is that would  
09:39 40 be quite normal practice when a firm of lawyers is acting for  
09:39 41 a client and is completing a document like the document that  
09:39 42 we're talking about, the schedule or schedules, plural, seeking  
09:39 43 instructions so that the client looks at it and says "yes", "no",  
09:39 44 "modify this", "change that", "it's insufficient", "it's too much",  
09:39 45 whatever it might be. You know what I'm getting at. I will also  
09:39 46 infer that you didn't get a response to put in the tax issue. It is as  
09:39 47 simple as that. And if that is an appropriate inference to draw,

09:40 1 that will be the subject of criticism. Not surprisingly. I'm being  
09:40 2 as frank as I can. If you think the documents might dissuade me  
09:40 3 from that course, you better give them to me otherwise that seems  
09:40 4 to me to be a logical inference to draw from the facts I know up  
09:40 5 until this point.

09:40 6

09:40 7 MR BORSKY: Yes.

09:40 8

09:40 9 COMMISSIONER: And taking into account what I assume  
09:40 10 an efficient solicitor would do when compiling such a document,  
09:40 11 ie, that all the information is in the knowledge of the client, the  
09:40 12 solicitor needs instructions to complete the information and the  
09:40 13 solicitor therefore seeks those instructions from a client. So if  
09:40 14 there is something missing, it is not the solicitor's fault, or it  
09:40 15 might be, partially, but it is the client's fault, and that's why the  
09:40 16 question was to whom did the document in draft go; one person,  
09:41 17 two people, ten people ---

09:41 18

09:41 19 MR BORSKY: And that question has been answered, even with  
09:41 20 the extensively redacted documents. That's been answered.

09:41 21

09:41 22 COMMISSIONER: Can I tell what is the subject? Does it say  
09:41 23 "here is a draft"? I haven't got the document here with me with  
09:41 24 redactions but I had a quick look at it and I couldn't even tell ---

09:41 25

09:41 26 MR BORSKY: That's correct. I have just told you something of  
09:41 27 it in private session, but you are quite right, you have, for all  
09:41 28 intents and purposes, completely redacted emails save for the  
09:41 29 recipients and the dates, and that was, as I say, put in answer to  
09:41 30 Mr Kozminsky's question: he said "All I want to know is who  
09:41 31 received them" --

09:41 32

09:41 33 COMMISSIONER: I will have to read the question and see - if  
09:41 34 he says who received the draft or comment or something like that,  
09:41 35 if that's clear, that might be enough because that's all I want to  
09:41 36 look at the documents or read the emails for. But I will have to  
09:42 37 go back to the discussion about - or the call for the documents,  
09:42 38 really, to see exactly how it was put.

09:42 39

09:42 40 MR BORSKY: Again, we appreciate that notwithstanding how it  
09:42 41 was put, you can direct us to produce what you like.

09:42 42

09:42 43 COMMISSIONER: I know.

09:42 44

09:42 45 MR BORSKY: But if you do wish to go back to the transcript,  
09:42 46 may I suggest that you look at P-2343 and P-2344 and similarly  
09:42 47 2438. It is plain in our respectful submission that Counsel

09:42 1 Assisting was anticipating that there would be redactions. His  
09:42 2 words was "cuts", and all he wanted to know was the recipients  
09:42 3 of the draft.  
09:42 4  
09:42 5 COMMISSIONER: That's the recipients of the drafts of the  
09:42 6 schedules ---  
09:42 7  
09:42 8 MR BORSKY: The cover letter and tables that had been  
09:42 9 prepared in response to the RFI-002. And prior to those calls in  
09:42 10 the preceding page or two, Counsel Assisting, correctly, with  
09:42 11 respect, anticipated in his question that the nature of that  
09:42 12 correspondence between Allens and Crown was calling for  
09:43 13 recipients at Crown to provide any comments and check for  
09:43 14 accuracy.  
09:43 15  
09:43 16 COMMISSIONER: Well, I would have inferred that.  
09:43 17  
09:43 18 MR BORSKY: And that was confirmed by Mr Maher on  
09:43 19 transcript.  
09:43 20  
09:43 21 COMMISSIONER: I will have a look at that.  
09:43 22  
09:43 23 MR BORSKY: If the Commissioner please.  
09:43 24  
09:43 25 MS NESKOVCIN: Commissioner, the next witness is  
09:43 26 Mr Richard Murphy. There are additional appearances this  
09:43 27 morning at the bar table.  
09:43 28  
09:43 29 COMMISSIONER: Good morning.  
09:43 30  
09:43 31 MR HANKS: Good morning, Commissioner. I appear with  
09:43 32 Ms Gordon. We are instructed by MinterEllison. We are here to  
09:43 33 look after Mr Murphy.  
09:43 34  
09:43 35 COMMISSIONER: He probably doesn't need any looking after.  
09:43 36  
09:43 37 MR HANKS: That's a good thing!  
09:43 38  
09:43 39 COMMISSIONER: All right.  
09:43 40  
09:43 41 MS NESKOVCIN: I call Mr Murphy.  
09:44 42  
09:44 43  
09:44 44 **MR RICHARD DOUGLAS MURPHY, AFFIRMED**  
09:44 45  
09:44 46  
09:44 47 **EXAMINATION-IN-CHIEF BY MS NESKOVCIN**

09:44 1  
09:44 2  
09:44 3 MS NESKOVCIN: Mr Murphy, would you please state your full  
09:44 4 name.  
09:44 5  
09:44 6 A. Richard Douglas Murphy.  
09:44 7  
09:44 8 Q. And your business address, please?  
09:44 9  
09:44 10 A. 447 Collins Street, Melbourne.  
09:44 11  
09:44 12 Q. You are a legal practitioner?  
09:44 13  
09:44 14 A. That's correct.  
09:44 15  
09:44 16 Q. Mr Murphy, in the Commission today it is a closed session,  
09:44 17 non-publication orders have been made.  
09:44 18  
09:44 19 Commissioner, yesterday evening we made non-publication  
09:44 20 orders. Unfortunately they weren't circulated last night. They are  
09:44 21 being circulated now. So everybody knows, it is a witness out of  
09:44 22 court order.  
09:44 23  
09:44 24 Mr Murphy, you are a partner at the law firm MinterEllison?  
09:44 25  
09:44 26 A. That's correct.  
09:44 27  
09:45 28 Q. How long have you been a partner?  
09:45 29  
09:45 30 A. Thirty-seven years tomorrow, I think.  
09:45 31  
09:45 32 Q. Happy anniversary.  
09:45 33  
09:45 34 In recent times you have provided legal services to Crown  
09:45 35 Resorts Ltd?  
09:45 36  
09:45 37 A. That's correct.  
09:45 38  
09:45 39 Q. And to Crown Melbourne Ltd?  
09:45 40  
09:45 41 A. Yes.  
09:45 42  
09:45 43 Q. I will call them collectively Crown and if I want to  
09:45 44 distinguish I will, if that's all right with you?  
09:45 45  
09:45 46 A. Yes.  
09:45 47

09:45 1 Q. Some of the matters on which you've assisted Crown in  
09:45 2 providing legal services include the VCGLR's Sixth Casino  
09:45 3 Review?  
09:45 4  
09:45 5 A. Correct.  
09:45 6  
09:45 7 Q. And you recall that the time frame for that review is 2013  
09:45 8 to 2018?  
09:45 9  
09:45 10 A. Yes.  
09:45 11  
09:45 12 Q. Each review is a five-year period?  
09:45 13  
09:45 14 A. Yes.  
09:45 15  
09:45 16 Q. You've also assisted Crown on a number of matters arising  
09:45 17 out of or following the arrest of 19 Crown staff in China in 2016?  
09:45 18  
09:45 19 A. Correct.  
09:45 20  
09:45 21 Q. That included assisting Crown in the VCGLR's  
09:45 22 investigation in relation to the China arrests?  
09:45 23  
09:46 24 A. Yes.  
09:46 25  
09:46 26 Q. You responded, or you briefed the board regularly, the CRL  
09:46 27 Board regularly in relation to the China arrests?  
09:46 28  
09:46 29 A. That's correct.  
09:46 30  
09:46 31 Q. You've assisted in providing responses or comments on  
09:46 32 draft reports that the VCGLR prepared in relation to the China  
09:46 33 arrests?  
09:46 34  
09:46 35 A. Yes.  
09:46 36  
09:46 37 Q. You've also had a role in reviewing overseas operations or  
09:46 38 offices of Crown?  
09:46 39  
09:46 40 A. Yes - well, in reviewing legal advice from overseas in  
09:46 41 connection with those operations, yes.  
09:46 42  
09:46 43 Q. Thank you.  
09:46 44  
09:46 45 MinterEllison has represented Crown in the class action in the  
09:46 46 Federal Court that commenced in December 2017?  
09:46 47

09:46 1 A. That's correct.  
09:46 2  
09:46 3 Q. I'm not sure whether you call it this, but are you the  
09:46 4 relationship partner for Crown or the contact point?  
09:46 5  
09:46 6 A. Yes.  
09:46 7  
09:46 8 Q. Does that mean that you generally have oversight of all  
09:46 9 legal matters that MinterEllison are working on for Crown?  
09:47 10  
09:47 11 A. No, that would be overstating my role. There is other  
09:47 12 partners involved in the Crown relationship. I was the principal  
09:47 13 liaison in relation to matters concerning the China arrests.  
09:47 14  
09:47 15 Q. I see. Your primary contacts or persons from whom you  
09:47 16 obtained instructions from Crown were, over the years, Debra  
09:47 17 Tegoni?  
09:47 18  
09:47 19 A. Correct.  
09:47 20  
09:47 21 Q. Mr Joshua Preston?  
09:47 22  
09:47 23 A. Yes.  
09:47 24  
09:47 25 Q. Mary Manos?  
09:47 26  
09:47 27 A. Yes.  
09:47 28  
09:47 29 Q. And Jan Williamson?  
09:47 30  
09:47 31 A. Yes, peripherally. And also Michael Neilson, who was the  
09:47 32 General Counsel of Crown Resorts in 2017.  
09:47 33  
09:47 34 Q. Thank you. From time to time, in presenting to the Board,  
09:47 35 would you also have one-on-one discussions with any of the  
09:48 36 directors?  
09:48 37  
09:48 38 A. Occasionally, yes.  
09:48 39  
09:48 40 Q. At the time you've been advising Crown over the years,  
09:48 41 you've understood, haven't you, the importance of Crown having  
09:48 42 an open, honest and cooperative relationship with the regulator?  
09:48 43  
09:48 44 A. Yes.  
09:48 45  
09:48 46 Q. You also have an understanding of the regulator's statutory  
09:48 47 functions, powers and obligations?

09:48 1  
09:48 2 A. Yes.  
09:48 3  
09:48 4 Q. And its powers in particular in relation to the section 24 and  
09:48 5 25 reviews?  
09:48 6  
09:48 7 A. Yes.  
09:48 8  
09:48 9 Q. And in relation to overseas jurisdictions and offices,  
09:48 10 although you weren't providing advice about the law in those  
09:48 11 countries, you understood, didn't you, that it was important for  
09:48 12 Crown to comply with the law in those jurisdictions?  
09:48 13  
09:48 14 A. Yes.  
09:48 15  
09:48 16 Q. Now I want to ask you questions starting in 2017, so just by  
09:49 17 way of context and to assist your memory, you might recall that  
09:49 18 the 19 Crown staff in China were arrested in October 2016?  
09:49 19  
09:49 20 A. Yes.  
09:49 21  
09:49 22 Q. And they were sentenced in June 2017?  
09:49 23  
09:49 24 A. Yes.  
09:49 25  
09:49 26 Q. Some were released in July and the rest were released in  
09:49 27 August 2017?  
09:49 28  
09:49 29 A. Yes.  
09:49 30  
09:49 31 Q. In February 2017 you attended and presented at a Board  
09:49 32 meeting of CRL; do you recall that?  
09:49 33  
09:49 34 A. Yes, I do.  
09:49 35  
09:49 36 Q. Was it your practice to prepare some speaking notes and  
09:49 37 speak to them at a meeting?  
09:49 38  
09:49 39 A. Yes, it was.  
09:49 40  
09:49 41 Q. Beforehand, you would send them to Ms Manos or  
09:49 42 Mr Preston, whoever was providing instructions to you?  
09:49 43  
09:49 44 A. That's correct. In 2017 it would have been Debra Tegoni  
09:49 45 and Michael Neilson and probably the then CEO, Rowen Craigie.  
09:49 46  
09:50 47 Q. Was that because they would actually do a presentation to

09:50 1 the Board on what they call a litigation update or a litigation  
09:50 2 report, so you would send your notes to them?  
09:50 3  
09:50 4 A. No. My principal purpose in sending them to them was to  
09:50 5 just check that what I was saying was accurate and appropriate.  
09:50 6  
09:50 7 Q. Thank you. Did you ever see minutes of the meetings after  
09:50 8 they were prepared?  
09:50 9  
09:50 10 A. Yes, usually I did.  
09:50 11  
09:50 12 Q. Because it seemed to me that some of your notes were used  
09:50 13 to prepare the minutes and I wondered if that was one of the  
09:50 14 purposes of sending the notes.  
09:50 15  
09:50 16 A. It didn't start out to be the purpose but, yes, that did happen.  
09:50 17  
09:50 18 Q. We're going to show you some documents on the screen to  
09:50 19 your right, if that's all right. There will be - as I take you to  
09:50 20 documents, Mr Murphy, if you want to spend time looking at  
09:50 21 something or scroll through the document, please say. I don't  
09:51 22 mean to limit you or hurry you in any way.  
09:51 23  
09:51 24 A. Thank you.  
09:51 25  
09:51 26 Q. Operator, could you please call up MEM.5000.0003.3272.  
09:51 27 Mr Murphy, do you identify these as the notes that you prepared  
09:51 28 and spoke to for a Crown Board meeting on 22 February 2017?  
09:51 29  
09:51 30 A. Yes.  
09:51 31  
09:51 32 Q. I want to go through the first half of the page. You note  
09:51 33 that:  
09:51 34  
09:51 35 - *We were engaged when news of the detentions first*  
09:51 36 *broke.* REDACTED - PRIVILEGE  
09:51 37 REDACTED - PRIVILEGE  
09:51 38  
09:51 39 REDACTED - PRIVILEGE  
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09:52 20  
09:52 21 Mr Murphy, did you speak to these notes at the meeting on 22  
09:53 22 February 2017?  
09:53 23  
09:53 24 A. Yes, I did.  
09:53 25  
09:53 26  
09:53 27  
09:53 28  
09:53 29  
09:53 30  
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09:53 32  
09:53 33  
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09:53 35  
09:53 36  
09:53 37  
09:53 38 Thank you.  
09:53 39  
09:53 40 A. Yes.  
09:53 41  
09:53 42 Q. At this point the class action hadn't commenced but you  
09:53 43 told the board that Maurice Blackburn had put out a media release  
09:53 44 inviting online registrations for a class action; correct?  
09:53 45  
09:53 46 A. Yes.  
09:53 47

09:53 1 Q. And documents leading up to the arrests and that might  
09:53 2 explain the circumstances that occurred already existed, that is  
09:54 3 self-evident?  
09:54 4  
09:54 5 A. I beg your pardon, sorry.  
09:54 6  
09:54 7 Q. Documents that already existed that might have explained  
09:54 8 the circumstances that existed prior to the arrests, self-evidently  
09:54 9 already existed?  
09:54 10  
09:54 11 A. Yes.  
09:54 12  
09:54 13 Q. And the regulator could use its compulsory powers to  
09:54 14 compel production of those documents?  
09:54 15  
09:54 16 A. Correct.  
09:54 17  
09:54 18 Q. And you were accustomed - you meaning MinterEllison, I  
09:54 19 beg your pardon - were accustomed at the time to providing  
09:54 20 advice and obtaining external reports from experts under the  
09:54 21 protection of legal professional privilege?  
09:54 22  
09:54 23 A. Yes.  
09:54 24  
09:54 25 Q. And you would have had in your mind that such documents  
09:54 26 would not be compellable for production in a class action?  
09:54 27  
09:54 28 A. Yes.  
09:54 29  
09:54 30 Q. Or generally to a regulator?  
09:54 31  
09:54 32 A. Generally to a regulator.  
09:54 33  
09:54 34 Q. Are there any exceptions?  
09:54 35  
09:54 36 A. Well, there is the power of broader inquiries to be able to  
09:55 37 look through privilege claims, but generally for regulators,  
09:55 38 privilege would apply.  
09:55 39  
09:55 40 Q. And at the time there were no inquiries on the horizon?  
09:55 41  
09:55 42 A. No.  
09:55 43  
09:55 44 Q. So, just looking at the second last line of the sentence  
09:55 45 where you say [REDACTED - PRIVILEGE]  
09:55 46 [REDACTED - PRIVILEGE]  
09:55 47 [REDACTED - PRIVILEGE] Presumably Crown

09:55 1 couldn't be compelled to produce any documents to any  
09:55 2 authorities in China?  
09:55 3  
09:55 4 A. Well, I wasn't sure about that.  
09:55 5  
09:55 6 Q. So you had that in your mind, did you?  
09:55 7  
09:55 8 A. Yes.  
09:55 9  
09:56 10 Q. And you understood at the time, didn't you, that  
09:56 11 an investigation into what went wrong would essentially assist  
09:56 12 Crown to understand whether there were any problems with its  
09:56 13 processes, problems with its people, that kind of thing?  
09:56 14  
09:56 15 A. Yes.  
09:56 16  
09:56 17 Q. And Crown had an interest in understanding that?  
09:56 18  
09:56 19 A. Yes.  
09:56 20  
09:56 21 Q. And so did the regulator?  
09:56 22  
09:56 23 A. Yes.  
09:56 24  
09:56 25 Q. So when you spoke to that point in your presentation to the  
09:56 26 board, obviously - not obviously, but do you recall going  
09:56 27 through the rest of your note before you took questions or were  
09:56 28 you interrupted at this point with any questions or comments from  
09:56 29 anyone on the board?  
09:56 30  
09:56 31 A. Not that I recall. I think I went through the presentation  
09:56 32 and then there were questions at the end.  
09:56 33  
09:57 34 Q. When there were questions at the end, did anybody, any of  
09:57 35 the directors or any of the executive who were attending question  
09:57 36 the advice that we've just been through about not conducting  
09:57 37 an investigation?  
09:57 38  
09:57 39 A. Yes. I recall there was some discussion around that.  
09:57 40 REDACTED - PRIVILEGE  
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09:59 20 MS NESKOVCIN: Were there any other questions that you can  
09:59 21 recall in relation to that topic?  
09:59 22  
09:59 23 A. Not in relation to that topic, no.  
09:59 24  
10:00 25 Q. Looking at the note, it said in the second dot point that your  
10:00 26 REDACTED - PRIVILEGE  
10:00 27 REDACTED - PRIVILEGE and in the next dot point:  
10:00 28  
10:00 29 REDACTED - PRIVILEGE  
10:00 30  
10:00 31  
10:00 32 Who was involved in - I'll just call it the investigation - at that  
10:00 33 point that involved speaking to various staff and doing  
10:00 34 interviews?  
10:00 35  
10:00 36 A. Primarily Debra Tegoni.  
10:00 37  
10:00 38 Q. Were you personally involved?  
10:00 39  
10:00 40 A. Yes, I was.  
10:00 41  
10:00 42 Q. Were MinterEllison taking carriage of it or were you just  
10:00 43 assisting Ms Tegoni as she conducted interviews?  
10:00 44  
10:00 45 A. I think it is fair to say we conducted them together.  
10:00 46  
10:01 47 Q. Who were you interviewing at the time?

10:01 1  
10:01 2 A. So there were a few staff who hadn't been detained who  
10:01 3 had previously been in China. So we interviewed them. We,  
10:01 4 I believe, spoke with more senior staff. So I think we probably  
10:01 5 spoke with Barry Felstead, the then Chief Executive of the  
10:01 6 operational side of the business, and we were able to meet with  
10:01 7 Michael Chen. We had to go to Tokyo to do that. I think that is  
10:02 8 the range of it.  
10:02 9  
10:02 10 Q. In the course of that investigation, were statements obtained  
10:02 11 from the individuals you spoke to?  
10:02 12  
10:02 13 A. No.  
10:02 14  
10:02 15 Q. No interview notes?  
10:02 16  
10:02 17 A. Debra and I would have made our own interview notes.  
10:02 18  
10:02 19 Q. Did you prepare a report or anything of that kind for  
10:02 20 Ms Tegoni in relation to the interviews and any material that had  
10:02 21 been covered in the review to that point?  
10:02 22  
10:02 23 A. No.  
10:02 24  
10:02 25 Q. Were you asked not to?  
10:02 26  
10:02 27 A. No, I wasn't asked not to.  
10:02 28  
10:02 29 COMMISSIONER: REDACTED - PRIVILEGE  
10:02 30 REDACTED - PRIVILEGE  
10:02 31  
10:02 32  
10:02 33  
10:02 34  
10:02 35  
10:02 36 A. Yes, it was consistent with the process on which we had  
10:02 37 embarked.  
10:02 38  
10:02 39 REDACTED - PRIVILEGE  
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10:03 42  
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10:03 46  
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10:03 1  
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10:03 5  
10:04 6 A. No.  
10:04 7  
10:04 8 Q. Did the inquiries at that point suggest to you that Crown  
10:04 9 had been promoting its casinos in China?  
10:04 10  
10:04 11 A. Well, it indicated to me that staff had been involved in  
10:04 12 dealings with actual or prospective patrons in China, but in a way  
10:04 13 that was thought to be in conformity with Chinese law.  
10:04 14  
10:04 15 Q. Thought to be by Crown or by you at the time, having  
10:04 16 formed a view about what was legal and illegal?  
10:04 17  
10:04 18 A. Both.  
10:04 19  
10:04 20 Q. Were staff at Crown handing out promotional material to  
10:04 21 prospective and actual patrons of the casino?  
10:04 22  
10:04 23 A. I don't think we knew that at that point.  
10:04 24  
10:04 25 Q. Did you later find that out?  
10:05 26  
10:05 27 A. I'm not sure there was direct evidence of that.  
10:05 28  
10:05 29 Q. There certainly was evidence of promotional material being  
10:05 30 available in China.  
10:05 31  
10:05 32 A. Yes.  
10:05 33  
10:05 34 Q. You are saying there was no evidence of it being  
10:05 35 distributed?  
10:05 36  
10:05 37 A. Yes, well, I'm not aware of direct evidence of that.  
10:05 38  
10:05 39 Q. Thank you. I want to move on a few documents.  
10:05 40  
10:05 41 COMMISSIONER: Are you going to leave this document?  
10:05 42  
10:05 43 MS NESKOVCIN: Yes.  
10:05 44  
10:05 45 COMMISSIONER: I've got a few questions.  
10:05 46  
10:05 47 I'm interested in the REDACTED - PRIVILEGE advice that you

10:05 1 gave to the Board. REDACTED - PRIVILEGE  
10:05 2 REDACTED - PRIVILEGE  
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10:07 34  
10:07 35  
10:07 36  
10:07 37  
10:07 38  
10:07 39  
10:07 40  
10:07 41 COMMISSIONER: Why didn't you record your notes of  
10:07 42 interviews? Why didn't you report to the Board on what you  
10:08 43 found out in Tokyo and wherever else you went. REDACTED - PRIVILEGE  
10:08 44 REDACTED - PRIVILEGE  
10:08 45  
10:08 46  
10:08 47 A. Well, the interviews were done, Commissioner, on the

10:08 1 express basis that they were informal, trying to get to the truth in  
10:08 2 a - or at least trying to get to ---  
10:08 3  
10:08 4 COMMISSIONER: Trying to get to the truth. I know that.  
10:08 5 That's the whole purpose.  
10:08 6  
10:08 7 A. We were trying to get to the truth of what we needed to  
10:08 8 know in order to be able to respond to the ---  
10:08 9  
10:08 10 COMMISSIONER: How many times would you conduct  
10:08 11 interviews with clients or witnesses, and either at the time or  
10:08 12 afterwards don't make a record of it?  
10:08 13  
10:08 14 A. Don't make a report on them?  
10:08 15  
10:08 16 COMMISSIONER: --- (speaking over) --- don't you?  
10:08 17  
10:08 18 A. No, I don't, Commissioner.  
10:08 19  
10:08 20 COMMISSIONER: Or somebody who is working with you?  
10:08 21 A junior solicitor, an associate or somebody like that?  
10:08 22  
10:09 23 A. We would have notes of an interview, yes, but ---  
10:09 24  
10:09 25 COMMISSIONER: --- (speaking over) ---  
10:09 26  
10:09 27 A. Yes, I have my notes of that interview. But in terms of  
10:09 28 what you would do with those and what form of reporting you do  
10:09 29 about them depends upon the context and the purpose.  
10:09 30  
10:09 31 COMMISSIONER: REDACTED - PRIVILEGE  
10:09 32 REDACTED - PRIVILEGE  
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10:09 34  
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10:09 36  
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10:09 40  
10:10 41  
10:10 42  
10:10 43  
10:10 44  
10:10 45  
10:10 46  
10:10 47 MS NESKOVCIN: Thank you. I take it, Mr Murphy, that those

10:10 1 notes that you and Ms Tegoni prepared were not produced in the  
10:10 2 ILGA Inquiry in NSW in 2019 and 2020?  
10:11 3  
10:11 4 A. I think that's correct.  
10:11 5  
10:11 6 Q. They would have been privileged?  
10:11 7  
10:11 8 A. Yes.  
10:11 9  
10:11 10 Q. Moving on to August 2017, you recall the detainees were  
10:11 11 released in July or August 2017?  
10:11 12  
10:11 13 A. Yes.  
10:11 14  
10:11 15 Q. And at that point also the VCGLR's Sixth Review was  
10:11 16 underway?  
10:11 17  
10:11 18 A. Yes.  
10:11 19  
10:11 20 Q. You considered it likely that the China arrests would be the  
10:11 21 subject matter of comment in the Sixth Review report, did you  
10:11 22 not?  
10:11 23  
10:11 24 A. Yes.  
10:11 25  
10:11 26 Q. You had started to prepare a response on behalf of the  
10:11 27 board in anticipation of any inquiries that the VCGLR might  
10:11 28 make?  
10:11 29  
10:11 30 A. Yes, I think so.  
10:11 31  
10:11 32 Q. I will show you this document. It is CRW.515.002.2482.  
10:12 33 I will show you the date at the end of this document, operator, on  
10:12 34 page 2487, please. You notice the date there, Mr Murphy?  
10:12 35  
10:12 36 A. Yes.  
10:12 37  
10:12 38 Q. That's what I had in mind as a response.  
10:12 39  
10:12 40 A. Yes.  
10:12 41  
10:12 42 Q. Going back to the first page, please, operator, it is headed,  
10:12 43 "Draft statement for regulatory purposes"?  
10:12 44  
10:12 45 A. Yes.  
10:12 46  
10:12 47 Q. I think you are aware that in August 2017, or on 31 August

10:12 1 2017, Mr Joshua Preston prepared a presentation for the VCGLR?  
10:12 2  
10:12 3 A. Yes, I think so.  
10:12 4  
10:12 5 Q. I can take you to one of your notes, but take it ---  
10:12 6  
10:12 7 A. Yes.  
10:12 8  
10:12 9 Q. --- from me that he did.  
10:12 10  
10:12 11 A. Yes.  
10:12 12  
10:12 13 Q. Thank you. Do you know if he used the document that you  
10:13 14 are looking at on the screen to assist in his preparation of the  
10:13 15 presentation?  
10:13 16  
10:13 17 A. No, I don't know.  
10:13 18  
10:13 19 Q. Do you recall assisting him prepare a PowerPoint  
10:13 20 presentation or some handouts for the VCGLR?  
10:13 21  
10:13 22 A. No, I don't, directly.  
10:13 23  
10:13 24 Q. Moving on again, the VCGLR are asking for documents  
10:13 25 throughout 2017; you recall that?  
10:13 26  
10:13 27 A. Yes.  
10:13 28  
10:13 29 Q. MinterEllison got involved with assisting and responding  
10:13 30 potentially later that year or at least by the beginning of 2018?  
10:13 31  
10:13 32 A. Yes.  
10:13 33  
10:13 34 Q. Section 26 notices were issued?  
10:13 35  
10:13 36 A. Yes.  
10:13 37  
10:13 38 Q. The class action commences in December 2017?  
10:14 39  
10:14 40 A. Yes.  
10:14 41  
10:14 42 Q. And you will recall that the VCGLR started interviewing  
10:14 43 some of the staff such as Mr Felstead and Mr O'Connor in early  
10:14 44 2018?  
10:14 45  
10:14 46 A. Yes.  
10:14 47

10:14 1 Q. You were personally present during all of those interviews,  
10:14 2 I think.  
10:14 3  
10:14 4 A. Yes, I was, other than Michael Chen in New York, yes.  
10:14 5  
10:14 6 Q. Thank you. So I will show you another document just so  
10:14 7 that we can put the context around the timing.  
10:14 8 MEM.5001.0001.4068. See the date of this document,  
10:14 9 Mr Murphy, 17 May 2018 to Mr Berriman and Mr Bryant at the  
10:14 10 VCGLR?  
10:14 11  
10:14 12 A. Yes.  
10:14 13  
10:15 14 Q. They were investigators that were involved in the  
10:15 15 interviews or that you were corresponding with in relation to the  
10:15 16 China Arrests Investigation?  
10:15 17  
10:15 18 A. Yes.  
10:15 19  
10:15 20 Q. This was after the interviews that we just spoke about?  
10:15 21  
10:15 22 A. After at least some of them.  
10:15 23  
10:15 24 Q. In this letter, what I suggest you were trying to was  
10:15 25 anticipate some of the points that the VCGLR were interested in,  
10:15 26 having regard to their lines of inquiry during the interview.  
10:15 27  
10:15 28 A. Yes.  
10:15 29  
10:15 30 Q. I want to go through some of the headings so we can get  
10:15 31 an idea of some of the themes being conveyed on behalf of  
10:15 32 Crown. If you want to stop at any point or look at anything, do  
10:15 33 let me know. But I will go through and identify headings and  
10:15 34 paragraphs.  
10:15 35  
10:15 36 The first heading, just before paragraph 5, operator, please scroll  
10:16 37 down, this section was making some points about the "relevant  
10:16 38 Chinese law", being Article 303 of the Criminal Law and  
10:16 39 Crown's understanding of that provision at the time; do you see  
10:16 40 that?  
10:16 41  
10:16 42 A. Yes.  
10:16 43  
10:16 44 Q. Then over the page the next heading, "Crown's knowledge  
10:16 45 and belief". I draw your attention to the first sentence in  
10:16 46 paragraph 7:  
10:16 47

10:16 1 *Crown understood at all times prior to the detention of*  
10:16 2 *the Crown group staff that they were operating in such*  
10:16 3 *a manner as to not infringe Article 303.*

10:16 4  
10:16 5 A. Yes.

10:16 6  
10:16 7 Q. The next heading, "The detention, arrest, charging and  
10:16 8 conviction of Crown group staff", the point there was that the  
10:16 9 detentions occurred "out of the blue"; do you see that?

10:16 10  
10:16 11 A. Yes.

10:16 12  
10:16 13 Q. The next heading towards the end of the page, please,  
10:16 14 operator, "February 2015 'crackdown'"; that related to a media  
10:17 15 report by the Ministry of Public Security regarding what was  
10:17 16 generally called the "crackdown". If we could pass over to the  
10:17 17 next page on paragraph 18, Crown was making the point,  
10:17 18 mentioned in the first sentence that:

10:17 19  
10:17 20 *..... none of Michael Chen's superiors in the reporting line*  
10:17 21 *specifically recalled mention of foreign casinos in the*  
10:17 22 *context of the media reporting of the crackdown.*

10:17 23  
10:17 24 A. Yes.

10:17 25  
10:17 26 Q. One of the themes that keeps coming up was what was the  
10:17 27 February crackdown about and what was Crown's understanding  
10:17 28 of the media updates or announcements about the crackdown.

10:17 29  
10:17 30 The next theme is the "detention of South Korean casino staff in  
10:17 31 June 2015". Do you see that?

10:17 32  
10:17 33 A. Yes.

10:17 34  
10:18 35 Q. The next heading, "Police interview of Benny Xiong in July  
10:18 36 2015"; a few points made about that.

10:18 37  
10:18 38 Next, at the bottom of the page, "risk management"; paragraph  
10:18 39 29:

10:18 40  
10:18 41 *The Crown Group has a well-established risk*  
10:18 42 *management framework and processes.*

10:18 43  
10:18 44 Do you see that?

10:18 45  
10:18 46 A. Yes.

10:18 47

10:18 1 Q. Risk management became a point of interest throughout the  
10:18 2 VCGLR's investigation?  
10:18 3  
10:18 4 A. Yes, in conjunction with the Sixth Review.  
10:18 5  
10:18 6 Q. Yes, and you understood their interest in risk management  
10:18 7 as relevant to a suitability criteria?  
10:18 8  
10:18 9 A. Yes.  
10:18 10  
10:18 11 Q. That was because one of the suitability issues under section  
10:18 12 9 of the Casino Control Act is effectively whether there are  
10:18 13 proper processes in place within the organisation?  
10:18 14  
10:18 15 A. Yes.  
10:18 16  
10:18 17 Q. Operator, could we please go to the next page, the middle  
10:19 18 of the page, please, "Hindsight". One of the matters that Crown  
10:19 19 was trying to urge on the VCGLR is caution about hindsight  
10:19 20 bias?  
10:19 21  
10:19 22 A. Yes.  
10:19 23  
10:19 24 Q. We'll be coming back to this document later but I wanted  
10:19 25 you to bear in mind some of those themes in the document  
10:19 26 because I will be coming to some of those in the context of other  
10:19 27 documents as well.  
10:19 28  
10:19 29 This is May 2018 and the VCGLR was due to complete its Sixth  
10:19 30 Review report around end of June 2018; do you recall that?  
10:19 31  
10:19 32 A. Yes.  
10:19 33  
10:19 34 Q. I'm not sure whether at this stage you had seen a draft of the  
10:19 35 Sixth Review report.  
10:19 36  
10:19 37 A. I'm not sure either.  
10:19 38  
10:19 39 Q. I can't assist you with that, but what I wanted to ask, or see  
10:20 40 if you agree with, is that what Crown's objective was at this point  
10:20 41 was to try to get the VCGLR to say nothing about the China  
10:20 42 arrests in the Sixth Review report; do you agree with that?  
10:20 43  
10:20 44 A. Yes, that did become the objective, yes.  
10:20 45  
10:20 46 Q. At what point did you think it became the objective?  
10:20 47

10:20 1 A. Well, probably around this June period, I think.  
10:20 2  
10:20 3 Q. And that was, I suggest to you, partly because first of all it  
10:20 4 would be prejudicial to Crown?  
10:20 5  
10:20 6 A. Yes.  
10:20 7  
10:20 8 Q. Secondly, what Crown was trying to urge on the VCGLR  
10:20 9 was that there was an element of unfairness in doing so after  
10:20 10 having not completed a thorough investigation?  
10:20 11  
10:20 12 A. Yes.  
10:20 13  
10:20 14 Q. I think your --- the term that was used in some of your  
10:20 15 letters was that it was a "summary procedure"?  
10:21 16  
10:21 17 A. Did I say that?  
10:21 18  
10:21 19 Q. I will take you to it in a minute.  
10:21 20  
10:21 21 A. Okay, yes, the process hadn't been completed until it was  
10:21 22 completed ---  
10:21 23  
10:21 24 Q. That's what you meant. I don't think you meant we were  
10:21 25 going straight to summary judgment.  
10:21 26  
10:21 27 A. Yes.  
10:21 28  
10:21 29 Q. It was really the process. You were concerned about  
10:21 30 procedural fairness ---  
10:21 31  
10:21 32 A. Yes.  
10:21 33  
10:21 34 Q. --- and the thoroughness of the investigation.  
10:21 35  
10:21 36 A. Yes.  
10:21 37  
10:21 38 Q. And certainly at this point Crown was continuing to  
10:21 39 produce documents to the VCGLR?  
10:21 40  
10:21 41 A. That's correct.  
10:21 42  
10:21 43 Q. And I think you made the point that not all people had been  
10:21 44 investigated?  
10:21 45  
10:21 46 A. Yes, I'm not sure whether they had at this point because  
10:21 47 I see there was reference to Michael Chen's interview. So

10:21 1 I believe that was the last of the interviews.  
10:21 2  
10:21 3 Q. What then occurred, and I will show you a letter from the  
10:21 4 VCGLR, MEM.5001.0001.4035. It seemed that the VCGLR  
10:22 5 were somewhat persuaded by that submission, and they edited the  
10:22 6 Sixth Review report to make reference to the investigation but not  
10:22 7 deal with it in detail, and then they prepared a summary report  
10:22 8 dealing with the China Arrests Investigation. So if we look at the  
10:22 9 letter that you are shown on the screen, it is a letter of 8  
10:22 10 June from the VCGLR to Mr John Alexander, Chair of Crown  
10:22 11 Melbourne Ltd at the time. You will see in the first paragraph the  
10:22 12 reference to the draft Sixth Casino Review Report?  
10:22 13  
10:22 14 A. Yes.  
10:22 15  
10:22 16 Q. The second paragraph says:  
10:22 17  
10:22 18 *That draft omitted opinions and findings relating to the*  
10:22 19 *detention of 19 Crown staff in China in October 2016.*  
10:22 20 *That matter has been the subject of a separate*  
10:22 21 *investigation by VCGLR Compliance Division staff,*  
10:23 22 *a draft report of which has now been received by the*  
10:23 23 *Commission (Compliance Division China Report).*  
10:23 24  
10:23 25 Then just jumping a paragraph, they are asking for a response to  
10:23 26 the material by the close of business, Friday, 15 June 2018. Do  
10:23 27 you see that?  
10:23 28  
10:23 29 A. Yes.  
10:23 30  
10:23 31 Q. So the comments about the investigation in the Sixth  
10:23 32 Review Report have been removed, a separate summary report  
10:23 33 has been prepared and provided to Crown Melbourne for  
10:23 34 comment?  
10:23 35  
10:23 36 A. Yes.  
10:23 37  
10:23 38 Q. You agree with that?  
10:23 39  
10:23 40 A. Yes.  
10:23 41  
10:23 42 Q. Were you asked to have a look at it?  
10:23 43  
10:23 44 A. Yes.  
10:23 45  
10:23 46 Q. Operator, please call up MEM.5001.0001.4033.  
10:23 47

10:24 1 This is an email from Mr Preston to Mr Felstead. You will see  
10:24 2 that you were copied in, Mr Murphy?

10:24 3

10:24 4 A. Yes.

10:24 5

10:24 6 Q. It is 8 June 2018. Mr Preston says:

10:24 7

10:24 8 *Evening John, Barry, Mike and Karl,*

10:24 9

10:24 10 *I have this afternoon received an electronic copy of:*

10:24 11

10:24 12 *1. a letter from Catherine Myers .....*

10:24 13

10:24 14 *2. the draft of the VCGLR Compliance Division China*  
10:24 15 *Report; and*

10:24 16

10:24 17 *3. relevant extracts from the section 25 Review Report*  
10:24 18 *related to the China Report.*

10:24 19

10:24 20 That seems the material that is provided; do you agree?

10:24 21

10:24 22 A. Yes.

10:24 23

10:24 24 Q. And it says:

10:24 25

10:24 26

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10:25 47 Q. I was actually trying to identify whether it is an expression

10:25 1 that Mr Preston tends to use because it is an expression we've  
10:25 2 seen from time to time. You don't use that expression but you do  
10:25 3 agree you were suggesting that you needed to respond to aspects  
10:25 4 of the report?

10:25 5  
10:25 6 A. Yes.

10:25 7  
10:26 8 Q. It says:

10:26 9  
10:26 10 *Also attached are copies of the submissions that*  
10:26 11 *we/Minters prepared and lodged with the VCGLR which*  
10:26 12 *provided commentary from Crown's perspective in*  
10:26 13 *anticipation of the VCGLR reaches views along the lines*  
10:26 14 *of those contained in the extract. A copy of the VCGLR's*  
10:26 15 *response to our first submission is also attached.*

10:26 16  
10:26 17 Do you recall having any discussions with Mr Felstead,  
10:26 18 Mr Alexander, Mr Johnson or Mr Bitar, or any other directors of  
10:26 19 Crown Melbourne or Crown Resorts, in relation to the draft  
10:26 20 China Report or the section 25 report extracts at this time,  
10:26 21 Mr Murphy?

10:26 22  
10:26 23 A. So the draft China Report was tabled at a Board meeting,  
10:26 24 and I attended the Board meeting at which the draft report was  
10:26 25 discussed.

10:26 26  
10:26 27 Q. All right. We'll come to that in just a moment. Prior to that  
10:26 28 Board meeting you don't recall any discussions with any of the  
10:27 29 individuals that I just mentioned?

10:27 30  
10:27 31 A. Sorry, who were the individuals again?

10:27 32  
10:27 33 Q. The people on the email? Excluding Mr Preston.

10:27 34  
10:27 35 A. I don't recall specifically.

10:27 36  
10:27 37 Q. Do you see in the next paragraph it says:

10:27 38 REDACTED - PRIVILEGE

10:27 39  
10:27 40  
10:27 41  
10:27 42  
10:27 43  
10:27 44  
10:27 45  
10:27 46  
10:27 47

10:27 1  
10:27 2 This issue, Mr Murphy, of "escalating risk" was a theme that the  
10:28 3 VCGLR pursued from this point on and, indeed, in the interviews  
10:28 4 in 2018; correct?  
10:28 5  
10:28 6 A. Correct.  
10:28 7  
10:28 8 Q. It was based on facts which I say evidence the escalating  
10:28 9 risk such as the ones mentioned there?  
10:28 10  
10:28 11 A. Correct.  
10:28 12  
10:28 13 Q. An issue they were also pursuing was also Crown's  
10:28 14 knowledge of those risks?  
10:28 15  
10:28 16 A. Yes.  
10:28 17  
10:28 18 Q. In particular, the knowledge of senior people such as  
10:28 19 Mr Chen, Mr Felstead and senior executives?  
10:28 20  
10:28 21 A. Yes.  
10:28 22  
10:28 23 Q. And it was a point that Crown resisted all the way along?  
10:28 24  
10:28 25 A. Yes.  
10:28 26  
10:28 27 Q. We'll go to the June meeting now, that you just mentioned.  
10:28 28 I will show you a note of a presentation you gave to the meeting.  
10:29 29 MEM.5000.0001.3375. These redactions are for different  
10:29 30 categories of claim. I think the green is for privilege. There is  
10:29 31 mention there of the class action. I didn't want to ask you any  
10:29 32 questions about that.  
10:29 33  
10:29 34 Operator, could we go to the next page.  
10:29 35  
10:29 36 This is the section where you presented on the VCGLR  
10:29 37 investigation. Before we go through it, Mr Murphy, can you  
10:29 38 recall whether the directors were actually provided with the draft  
10:29 39 reports from the VCGLR and Minter's draft submissions in  
10:30 40 response?  
10:30 41  
10:30 42 A. I believe they had the draft VCGLR report. I'm not sure if  
10:30 43 they had our submissions. I think they did, but I'm not sure if that  
10:30 44 was in the papers.  
10:30 45  
10:30 46 Q. I see.  
10:30 47

10:30 1 A. I didn't tend to see the board papers in advance.  
10:30 2  
10:30 3 Q. I see. All right. I'm sorry, I can't assist. I will have to go  
10:30 4 back and check and see what material was in the pack.  
10:30 5  
10:30 6 A. I definitely recall them having the report, because the report  
10:30 7 was debated.  
10:30 8  
10:30 9 Q. Thank you. We'll come to what the debate was about. We  
10:30 10 will just go through your presentation. I assume, or could you  
10:30 11 clarify that you again spoke to your notes and then there was  
10:30 12 a discussion at the end?  
10:30 13  
10:30 14 A. Correct.  
10:30 15  
10:30 16 Q. Thank you. Looking at your note, the first dot point  
10:30 17 mentions the interview with Mr Chen; do you see that?  
10:30 18  
10:31 19 A. Yes.  
10:31 20  
10:31 21 Q. The second dot point [REDACTED - PRIVILEGE]  
10:31 22 [REDACTED - PRIVILEGE] that the questioning by the VCGLR investigator further  
10:31 23 indicated he was forming adverse views about Crown generally;  
10:31 24 you see that?  
10:31 25  
10:31 26 A. Yes.  
10:31 27  
10:31 28 Q. And Mr Chen in particular not being sufficiently attuned  
10:31 29 into what the investigator described as "escalating risk".  
10:31 30  
10:31 31 The next dot point was:  
10:31 32 [REDACTED - PRIVILEGE]  
10:31 33 [REDACTED - PRIVILEGE]  
10:31 34 [REDACTED - PRIVILEGE]  
10:31 35 [REDACTED - PRIVILEGE]  
10:31 36 That's the letter I took you to.  
10:31 37  
10:31 38 A. Yes.  
10:31 39  
10:31 40 Q. That then drew a response from his boss, the director of  
10:31 41 compliance, dated 28 May, which debated some of the points in  
10:31 42 the letter. I haven't taken you to that, Mr Murphy. This is setting  
10:31 43 out a chronology.  
10:31 44  
10:31 45 "We replied in two letters"; you see that?  
10:31 46  
10:31 47 A. Yes.

10:31 1  
 10:31 2 Q.  
 10:31 3  
 10:31 4 *Our letter on the substantive matters was dated 6 June .....*  
 10:31 5  
 10:32 6 I did take you to that. And then it says:  
 10:32 7  
 10:32 8 *..... the very same date as a draft report that was sent by*  
 10:32 9 *the VCGLR under cover of a letter to John Alexander*  
 10:32 10 *dated 8 June 2018.*  
 10:32 11  
 10:32 12 Perhaps there is a mistake in those dates, but in any event. Then:  
 10:32 13  
 10:32 14 *The report [which I think is the VCGLR report] is styled*  
 10:32 15 *as a 'Crown China investigation summary report' and it is*  
 10:32 16 *stated in the covering letter to have been prepared by the*  
 10:32 17 *VCGLR Compliance Division staff. A copy is in your*  
 10:32 18 *papers.*  
 10:32 19  
 10:32 20 So that confirms the report was there.  
 10:32 21  
 10:32 22 *The letter also enclosed draft text to go into the executive*  
 10:32 23 *summary of the draft Sixth Review Report.* REDACTED - PRIVILEGE  
 10:32 24 REDACTED - PRIVILEGE  
 10:32 25 REDACTED - PRIVILEGE  
 10:32 26  
 10:32 27 Then you say:  
 10:32 28  
 10:33 29 *In ongoing discussions with the VCGLR, it was made very*  
 10:33 30 *clear that the Crown took exception to the draft executive*  
 10:33 31 *summary text in various respects but particularly in*  
 10:33 32 *relation to the China investigation. That led to another*  
 10:33 33 *version of the text being supplied by the VCGLR under*  
 10:33 34 *cover of a letter dated 15 June 2018. That version is in*  
 10:33 35 *your papers.* REDACTED - PRIVILEGE  
 10:33 36 REDACTED - PRIVILEGE  
 10:33 37 REDACTED - PRIVILEGE  
 10:33 38 REDACTED - PRIVILEGE  
 10:33 39 REDACTED - PRIVILEGE  
 10:33 40  
 10:33 41 And then you mention:  
 10:33 42  
 10:33 43 *A letter was sent yesterday to the VCGLR, under*  
 10:33 44 *John Alexander's signature, objecting in the strongest*  
 10:33 45 *possible terms to the Review Report containing any*  
 10:33 46 *commentary on the China investigation on the basis that it*  
 10:33 47 *is incomplete and Crown has not been afforded an ample*

10:33 1 *opportunity to respond in detail to the draft summary*  
 10:33 2 *report of the VCGLR staff. A copy of that letter is in your*  
 10:34 3 *papers.*  
 10:34 4  
 10:34 5 Does that suggest that in fact the response has already been sent?  
 10:34 6  
 10:34 7 A. Yes, it does.  
 10:34 8  
 10:34 9 Q. Yes, actually, and going back I will look at that letter, they  
 10:34 10 did ask for a response by 15 June. So that would suggest, would  
 10:34 11 it not, that at least the response - the Board might not have seen  
 10:34 12 your draft response but they saw the final response?  
 10:34 13  
 10:34 14 A. Yes, that seems to be so.  
 10:34 15  
 10:34 16 Q. We can check that in the board packs. So just going over  
 10:34 17 the page:  
 10:34 18  
 10:34 19 *A detailed response to the staff report is under*  
 10:34 20 *preparation.* REDACTED - PRIVILEGE  
 10:34 21 REDACTED - PRIVILEGE  
 10:34 22  
 10:34 23  
 10:34 24  
 10:35 25  
 10:35 26  
 10:35 27  
 10:35 28  
 10:35 29  
 10:35 30  
 10:35 31  
 10:35 32  
 10:35 33  
 10:35 34  
 10:35 35 At this point, Mr Murphy, REDACTED - PRIVILEGE  
 10:35 36 REDACTED - PRIVILEGE  
 10:35 37 REDACTED - PRIVILEGE  
 10:35 38 REDACTED - PRIVILEGE Was there a feeling  
 10:35 39 that the investigation would continue?  
 10:35 40  
 10:35 41 A. No. I think the expectation was that the investigation was  
 10:35 42 going to wrap up and it was a question of what was going to be  
 10:35 43 the product of that wrapping up.  
 10:35 44  
 10:36 45 Q. I see. REDACTED - PRIVILEGE  
 10:36 46 REDACTED - PRIVILEGE  
 10:36 47

10:36 1 A. The latter.

10:36 2

10:36 3 Q. I see. And insofar as REDACTED - PRIVILEGE

10:36 4 REDACTED - PRIVILEGE

10:36 5

10:36 6

10:36 7

10:36 8 A. Yes.

10:36 9

10:36 10 Q. That's what Crown wanted at the time?

10:36 11

10:36 12 A. Yes.

10:36 13

10:36 14 Q. And then it says:

10:36 15

10:36 16 REDACTED - PRIVILEGE

10:36 17

10:36 18

10:36 19

10:36 20

10:36 21 A. Yes.

10:36 22

10:36 23

10:36 24

10:36 25

10:36 26

10:37 27

10:37 28 COMMISSIONER: Looks like you picked up the expression  
10:37 29 after all!

10:37 30

10:37 31 A. Yes, it does.

10:37 32

10:37 33 MS NESKOVCIN: So I assume once you've read through your  
10:37 34 notes, there were some questions, you said that there was  
10:37 35 a debate. What was the debate about?

10:37 36

10:37 37 A. I shouldn't have said "debate", I think there was some  
10:37 38 discussion of the report and the tone of the report, and the  
10:37 39 seriousness of the subject matter that was of concern to the  
10:37 40 directors.

10:37 41

10:37 42 Q. Was the expectation at this time that there would just be  
10:37 43 a wrap up of the work that had been done at that point, or was  
10:37 44 there also an apprehension that the investigation would continue?

10:38 45

10:38 46 A. I - well - I think the expectation was that the  
10:38 47 investigation was in its closing stages, just what those closing

10:38 1 stages might involve was, I think, unclear and, indeed, to what  
10:38 2 extent this draft report that had been done at staff level within the  
10:38 3 VCGLR, to what extent that would be adopted at the formal  
10:38 4 Commissioner level within the VCGLR.

10:38 5

10:38 6 Q. I see. And do you recall what your instructions were after  
10:38 7 this meeting or around that time? Was it to pursue the objectives  
10:39 8 you had mentioned?

10:39 9

10:39 10 A. In general terms, yes. I think at that stage the ball was in  
10:39 11 the VCGLR's court as to what its next step was going to be.

10:39 12

10:39 13 Q. I see.

10:39 14

10:39 15 A. So I think we were just awaiting its next steps.

10:39 16

10:39 17 Q. So if the Board felt that they were in the VCGLR's hands,  
10:39 18 or the ball was in their court, was there any discussion at the  
10:39 19 board meeting or with any of the directors or senior executives  
10:39 20 around this time about trying to get the VCGLR to stop its  
10:39 21 investigation?

10:39 22

10:39 23 A. Not that I was aware of, no.

10:39 24

10:39 25 Q. I just want to take you to the response to the summary  
10:40 26 report again to note some of the themes if I might.

10:40 27

10:40 28 Operator, could you please call up VCG.0001.0001.8194. This is  
10:40 29 actually just a pack of documents. I want to go to page \_0005.

10:40 30

10:40 31 This seems to be Crown's response to the compliance division  
10:40 32 staff report in relation to the China investigation; do you see that  
10:40 33 in the first sentence, Mr Murphy?

10:40 34

10:40 35 A. Yes.

10:40 36

10:40 37 Q. If we could go over to the next page, please, operator. You  
10:41 38 see under the heading "Scope and process", paragraph 4 the  
10:41 39 report purports to be a summary?

10:41 40

10:41 41 A. Yes.

10:41 42

10:41 43 Q. And Crown accepts that this is appropriate to:

10:41 44

10:41 45 *..... explain the basis for the recommendation to the*  
10:41 46 *VCGLR that the China episode does not affect Crown's*  
10:41 47 *suitability to hold its licence, and naturally Crown*

10:41 1 *supports that recommendation.*  
10:41 2  
10:41 3 In the next paragraph, I will give you an opportunity to read the  
10:41 4 scope and that's the where you make the point about procedural  
10:41 5 fairness.  
10:41 6  
10:41 7 A. Yes.  
10:41 8  
10:41 9 Q. And in the next paragraph, operator, paragraph 6, Crown is  
10:41 10 urging the VCGLR to bear in mind the Federal Court action.  
10:42 11 You see the final sentence:  
10:42 12  
10:42 13 *The discipline of this process should not be undermined*  
10:42 14 *by a 'summary' regulatory process by the VCGLR.*  
10:42 15  
10:42 16 A. Yes.  
10:42 17  
10:42 18 Q. The next heading, "Marketing by other casinos in China",  
10:42 19 can you look at paragraph 10, please. This point is emphasising  
10:42 20 Crown's understanding of the relevant Chinese law at the time?  
10:42 21  
10:42 22 A. Yes.  
10:42 23  
10:42 24 Q. By the relevant Chinese law you are specifically focusing  
10:42 25 there, aren't you, on Article 303?  
10:42 26  
10:42 27 A. Yes.  
10:42 28  
10:42 29 Q. Over the page, heading before paragraph 12, "Corporate  
10:42 30 Governance Risk Management Approach", that being one of the  
10:42 31 themes that was relevant to the VCGLR and you were responding  
10:42 32 to that; correct?  
10:42 33  
10:43 34 A. Yes.  
10:43 35  
10:43 36 Q. Over the page, please, operator. Scrolling down. The  
10:43 37 heading "Chinese law" referenced to Article 303. Next page,  
10:43 38 please, operator.  
10:43 39  
10:43 40 Q. You see the heading "Change of environment in China  
10:43 41 regarding gambling on 2015"?  
10:43 42  
10:43 43 A. Yes.  
10:43 44  
10:43 45 Q. Can I draw your attention to paragraph 34, please.  
10:43 46  
10:43 47 A. Yes.

10:43 1  
10:43 2 Q. Again this is responding to the theme that was of interest to  
10:43 3 the regulator of the increased or escalated risk environment,  
10:44 4 knowledge of the crackdown and awareness of Crown staff  
10:44 5 considering that they were at risk as a result of the crackdown?  
10:44 6  
10:44 7 A. Yes, by reference to an internal Crown document. I'm not  
10:44 8 exactly sure what that document was.  
10:44 9  
10:44 10 Q. I can't assist you, I'm sorry. The point is to emphasise those  
10:44 11 themes ---  
10:44 12  
10:44 13 A. Yes.  
10:44 14  
10:44 15 Q. --- to which Crown was responding.  
10:44 16  
10:44 17 A. Yes.  
10:44 18  
10:44 19 Q. Could we go to \_0011, please, operator.  
10:44 20  
10:44 21 You see there a response in paragraph 55:  
10:44 22  
10:44 23 *Crown disputes that this questioning 'was clearly*  
10:44 24 *an escalating risk factor regarding Crown's approach in*  
10:44 25 *China'.*  
10:44 26  
10:44 27 That was the interview with Mr Xiong in 2015.  
10:44 28  
10:45 29 A. Yes.  
10:45 30  
10:45 31 Q. And could we go to \_0013, please, operator. Paragraph  
10:45 32 76, again responding to the various incidents constituting a risk to  
10:45 33 enforcement action and it not being accurately assessed, escalated  
10:45 34 or mitigated. See that?  
10:45 35  
10:45 36 A. Sorry, paragraph 76?  
10:45 37  
10:45 38 Q. Yes, you are responding to the point about escalating risk  
10:45 39 not being mitigated, and you make the point about hindsight, or  
10:45 40 Crown makes the point about hindsight.  
10:45 41  
10:45 42 A. Yes.  
10:45 43  
10:45 44 Q. The meeting is on 20 June. This letter is dated 26 June.  
10:46 45 The VCGLR hand down their Sixth Review report on 2 July  
10:46 46 2018.  
10:46 47

10:46 1 A. Right.  
10:46 2  
10:46 3 Q. I take it that you read and you are familiar with the Sixth  
10:46 4 Review Report?  
10:46 5  
10:46 6 A. Yes.  
10:46 7  
10:46 8 Q. At this point you said that the Board felt that they were -  
10:46 9 the ball was in the VCGLR's court about the investigation and we  
10:46 10 see that by August 2018 the VCGLR are requesting further  
10:46 11 documents?  
10:46 12  
10:46 13 A. Yes.  
10:46 14  
10:46 15 Q. You can assume that for me for the moment, thank you.  
10:46 16  
10:46 17 A. Yes.  
10:46 18  
10:46 19 Q. On 21 September MinterEllison wrote to the regulator in  
10:46 20 relation to the ongoing investigation.  
10:46 21  
10:46 22 Operator, could you please call up VCG.0001.0002.3351.  
10:46 23  
10:47 24 Do you see this letter of 21 September 2018 to Mr Berriman of  
10:47 25 the VCGLR?  
10:47 26  
10:47 27 A. Yes.  
10:47 28  
10:47 29 Q. Under the first heading, "Further evidence and submissions",  
10:47 30 the letter says:  
10:47 31  
10:47 32 *Crown's primary submission is that the whole episode of*  
10:47 33 *the detention and conviction of Crown Group staff does*  
10:47 34 *not warrant any regulatory action.*  
10:47 35  
10:47 36 Then you summarise the main points of the testimony witnesses;  
10:47 37 do you see that?  
10:47 38  
10:47 39 A. Yes.  
10:47 40  
10:47 41 Q. And again the themes about warnings, understanding of  
10:47 42 Crown staff operating within - or not in breach of Article 303  
10:47 43 and other points.  
10:47 44  
10:47 45 A. Yes.  
10:47 46  
10:47 47 Q. Operator, could we go to the next page. You see under

10:48 1 paragraph 7, Mr Murphy, the letter says:

10:48 2

10:48 3 *In the circumstances, Crown respectfully submits that it is*  
10:48 4 *appropriate in all the circumstance for the VCGLR to*  
10:48 5 *close its investigation on the basis that no disciplinary or*  
10:48 6 *other action is warranted.*

10:48 7

10:48 8 A. Yes.

10:48 9

10:48 10 Q. So I take it it was Crown's instructions to you to write to the  
10:48 11 VCGLR and suggest that it close its investigation?

10:48 12

10:48 13 A. Yes.

10:48 14

10:48 15 Q. From whom did you obtain those instructions?

10:48 16

10:48 17 A. Well, my instructions in relation to the final form of this  
10:48 18 letter would have been from Joshua Preston.

10:48 19

10:48 20 Q. To your knowledge, was the Board aware that these were  
10:48 21 your instructions at this point in time?

10:48 22

10:48 23 A. No, I'm not sure.

10:48 24

10:48 25 Q. Did you regard the VCGLR as being in a position to close  
10:48 26 its investigation at this time?

10:49 27

10:49 28 A. Me personally?

10:49 29

10:49 30 Q. Yes.

10:49 31

10:49 32 A. Yes.

10:49 33

10:49 34 Q. We just saw a letter a moment ago about the investigation  
10:49 35 being at a point which you called "a summary process", where  
10:49 36 effectively the submission that was being made is that not enough  
10:49 37 information had been obtained and the investigation hadn't been  
10:49 38 thorough enough; you agree with that?

10:49 39

10:49 40 A. I was making the submission that if regulatory  
10:49 41 consequences were going to be visited on Crown then not  
10:49 42 sufficient (inaudible) had been done. But that the VCGLR could  
conclude on

10:49 43 the basis of their investigations to date, and the evidence that they  
10:49 44 have - had, that it didn't go to suitability and that disciplinary  
10:50 45 action wasn't warranted and, therefore, the investigation could be  
10:50 46 closed.

10:50 47

10:50 1 Q. I see. But at this point Crown is still producing documents  
10:50 2 to the VCGLR; correct?  
10:50 3  
10:50 4 A. Only incidentally arising out of the massive discovery  
10:50 5 process that was going on in the class action.  
10:50 6  
10:50 7 Q. And the process for producing documents continued into  
10:50 8 early 2019?  
10:50 9  
10:50 10 A. That's correct.  
10:50 11  
10:50 12 Q. And that was consistent with what was occurring with  
10:50 13 discovery in the class action?  
10:50 14  
10:50 15 A. That's right.  
10:50 16  
10:50 17 Q. And so from the point of view of actually finding out what  
10:50 18 it needed to know, it wasn't in a position to know at that point? It  
10:50 19 didn't have all the facts, it didn't have all the documents?  
10:50 20  
10:50 21 A. Well, no, it didn't have all of the documents that it  
10:50 22 ultimately ended up receiving, that's correct.  
10:50 23  
10:50 24 Q. And another point that Crown was making was that in order  
10:50 25 to fully understand what had gone on, the VCGLR ought to  
10:51 26 obtain expert evidence?  
10:51 27  
10:51 28 A. Yes, the point we were making was if the VCGLR was  
10:51 29 proposing to visit regulatory consequences on Crown it would be  
10:51 30 appropriate for it to understand what the Chinese law actually did  
10:51 31 say and how it was reasonably interpreted at the time.  
10:51 32  
10:51 33 Q. I think I understand. The angle that you were approaching  
10:51 34 it from, or you and Mr Preston in these letters was, there is no  
10:51 35 basis for disciplinary action and if you wanted - if you were  
10:51 36 considering or contemplating disciplinary action, they are all the  
10:51 37 things that you would need to do which you haven't done?  
10:51 38  
10:51 39 A. Correct.  
10:51 40  
10:51 41 Q. But what I'm interested in is whether it was ever - and  
10:51 42 I will come to this in the future as well, whether it was ever up to  
10:51 43 that point part of Crown's thinking [REDACTED - PRIVILEGE] to assist  
10:52 44 the regulator to do whatever it needed to do to find out exactly  
10:52 45 what had happened?  
10:52 46  
10:52 47 A. Well, the regulator was conducting its investigation as it

10:52 1 wished to, to find out what it wanted to find out.

10:52 2

10:52 3

10:52 4

10:52 5

10:52 6

10:52 7

10:52 8

10:52 9

10:52 10 MR BORSKY: I'm sorry to interrupt my learned friend and the  
10:52 11 witness, but just observing the transcript, it seems that there was  
10:52 12 a bit of a glitch a minute or so ago, and quite some of the  
10:53 13 substance of evidence given by Mr Murphy wasn't recorded. At  
10:53 14 least on the live transcript.

10:53 15 COMMISSIONER: Let me just check.

10:53 17

10:53 18 MR BORSKY: It was just particularly Mr Murphy's explanation  
10:53 19 of why in his view he regarded the VCGLR in a position to close  
10:53 20 its investigation on the basis it didn't go to suitability ---

10:53 21

10:53 22 COMMISSIONER: I think the operator said it will all come out  
10:53 23 in the final transcript.

10:53 24

10:53 25 MR BORSKY: In the final transcript. Thank you.

10:53 26

10:53 27 MS NESKOVCIN: Thank you, Mr Murphy. I will come back to  
10:53 28 that in a moment, if I might.

10:53 29

10:53 30 COMMISSIONER: We will have a break for a minute --

10:53 31

10:53 32 MS NESKOVCIN: Certainly.

10:53 33

10:53 34 COMMISSIONER: --- for about 10 or 15 minutes, but before we  
10:53 35 do, I have a couple of questions of my own.

10:53 36

10:53 37 A. Yes, Commissioner.

10:54 38

10:54 39 COMMISSIONER: By the time of the events we are looking at  
10:54 40 now, you had completed all your interviews with the Chinese  
10:54 41 staff or those you get to speak with?

10:54 42

10:54 43 A. Yes. Interviews, I think, were still happening purposes of  
10:54 44 evidence in the class action.

10:54 45

10:54 46 COMMISSIONER: With the Chinese staff?

10:54 47

10:54 1 A. I'm not sure --- sorry, not the former ---  
10:54 2  
10:54 3 COMMISSIONER: I mean the arrested staff.  
10:54 4  
10:54 5 A. The detained staff, no.  
10:54 6  
10:54 7 COMMISSIONER: And had you entered into arrangements with  
10:54 8 them, paying compensation and getting them to sign settlement  
10:54 9 agreements by this time?  
10:54 10  
10:54 11 A. Crown had, yes.  
10:54 12  
10:54 13 COMMISSIONER: I meant Crown, not you, of course.  
10:54 14  
10:54 15 A. Yes.  
10:54 16  
10:54 17 COMMISSIONER: But you were involved in drafting the  
10:54 18 settlement agreements?  
10:54 19  
10:54 20 A. Had some input into the drafting, yes.  
10:54 21  
10:54 22 COMMISSIONER: Which contained confidentiality clauses?  
10:54 23  
10:54 24 A. Yes.  
10:54 25  
10:55 26 COMMISSIONER: And who were the staff meant to keep their  
10:55 27 story confidential from? They were arrested, spent time in prison  
10:55 28 and weren't allowed to tell anybody about it. Who didn't you, or  
10:55 29 who didn't Crown want to find out what the story was from their  
10:55 30 former employees? Do you know that?  
10:55 31  
10:55 32 A. No, I don't know that --  
10:55 33  
10:55 34 COMMISSIONER: Can you guess?  
10:55 35  
10:55 36 A. --- Commissioner, they were standard provisions in ---  
10:55 37  
10:55 38 COMMISSIONER: In what?  
10:55 39  
10:55 40 A. --- in the form of separation deed that was used.  
10:55 41  
10:55 42 COMMISSIONER: I assume there is a standard arrangement  
10:55 43 that is entered into with arrested employees, imprisoned  
10:55 44 employees. Accepting that - I doubt it, but just accepting it to be  
10:55 45 true for a minute, at any stage did you tell the regulator that you  
10:56 46 would cooperate with the regulator and enable them to interview  
10:56 47 the staff, the arrested staff, so they could get a complete picture of

10:56 1 what was happening? Did you volunteer it?  
10:56 2  
10:56 3 A. I'm not aware of that being volunteered, Commissioner, no.  
10:56 4  
10:56 5 COMMISSIONER: Did you tell Crown they should volunteer  
10:56 6 that information, or the availability of that information to the  
10:56 7 regulator? Ie, did you say to Crown "this is what you should do"?  
10:56 8  
10:56 9 A. No, I didn't, Commissioner.  
10:56 10  
10:56 11 COMMISSIONER: Why not?  
10:56 12  
10:56 13 A. There wasn't a context in which I was asked for that advice.  
10:56 14  
10:56 15 COMMISSIONER: I'm not suggesting you were asked for the advice.  
10:56 16 You were their lawyers. You had been their main lawyer for  
10:56 17 years. And in the cooperation that you spoke about a minute ago,  
10:56 18 why wouldn't you tell your client that, "it is your responsibility, or  
10:57 19 your duty, or you should, as a licensed casino operator, inform the  
10:57 20 regulator of everything - all information in your possession at  
10:57 21 this time"? Why didn't you tell your client to do that?  
10:57 22  
10:57 23 A. That wasn't my advice.  
10:57 24  
10:57 25 COMMISSIONER: My question is why didn't you advise that?  
10:57 26  
10:57 27 A. That's not what I personally considered to be in the  
10:57 28 company's interests.  
10:57 29  
10:57 30 COMMISSIONER: Do you consider it to be the company's  
10:57 31 obligation to be forthright in its dealings with the regulator?  
10:57 32  
10:57 33 A. Yes.  
10:57 34  
10:57 35 COMMISSIONER: And being forthright would be informing the  
10:57 36 regulator everything relevant so that the regulator could carry out  
10:57 37 its functions, in this case an investigation, as fully and efficiently  
10:57 38 as is possible? But it's not in your client's interest to help?  
10:58 39  
10:58 40 A. It is certainly in our client's interests to cooperate with  
10:58 41 a regulatory investigation.  
10:58 42  
10:58 43 COMMISSIONER: If it is not in this client's interests to  
10:58 44 cooperate really fully, then you wouldn't advise it to be as  
10:58 45 cooperative as it otherwise might be?  
10:58 46  
10:58 47 A. I wouldn't say that would be my advice.

10:58 1  
10:58 2 COMMISSIONER: Back to my question, why didn't you tell  
10:58 3 them, for example, "I have lots of interviews with the Chinese  
10:58 4 staff, I can tell you exactly what they said, here are my solicitor's  
10:58 5 notes"? Why didn't you tell them that?  
10:58 6  
10:58 7 A. I didn't have that, Commissioner. We were at no stage able  
10:58 8 to interview the detained staff.  
10:58 9  
10:58 10 COMMISSIONER: I thought you interviewed them --- oh, you  
10:58 11 interviewed some of the people operating in China.  
10:58 12  
10:58 13 A. Correct, yes.  
10:58 14  
10:58 15 COMMISSIONER: And did you offer that information to the  
10:58 16 regulator?  
10:59 17  
10:59 18 A. No.  
10:59 19  
10:59 20 COMMISSIONER: Why not?  
10:59 21  
10:59 22 A. Because the regulator itself wanted to and did interview  
10:59 23 Mr Chen and asked him all they wanted to ask him about the  
10:59 24 matters of interest to them.  
10:59 25  
10:59 26 COMMISSIONER: You had information that you gathered on  
10:59 27 behalf of Crown relating directly to the incidents that the  
10:59 28 regulator was investigating. Why did you not offer that - sorry,  
10:59 29 you don't have to offer anything, why didn't you tell your client to  
10:59 30 offer whatever information it had to the regulator?  
10:59 31  
10:59 32 A. Well, my thinking, Commissioner, was that it was  
10:59 33 appropriate for Crown to ---  
10:59 34  
10:59 35 COMMISSIONER: Push back?  
10:59 36  
10:59 37 A. --- no, well, I would say cooperate fully in relation to the  
10:59 38 regulator's inquiry. The regulator would determine what was of  
11:00 39 interest to it, and what it wanted to know about, and how ---  
11:00 40  
11:00 41 COMMISSIONER: You know it doesn't work like that. The  
11:00 42 regulator doesn't know what it doesn't know, and at this stage you  
11:00 43 knew a lot more than the regulator. I'm trying to work out why  
11:00 44 you didn't, or why Crown didn't offer full cooperation with the  
11:00 45 regulator, including telling the regulator what it didn't know.  
11:00 46  
11:00 47 A. I'm - I'm ---

11:00 1  
11:00 2 COMMISSIONER: It is not consistent with pushing back, I  
11:00 3 understand that perfectly well. And it is probably inconsistent  
11:00 4 with the client's interests in the immediate, or what was  
11:00 5 immediately happening, but it might be in its long-term interests  
11:00 6 to actually cooperate with the regulator, fully, openly and  
11:00 7 honestly. Would you agree with that as a proposition?  
11:00 8  
11:00 9 A. Yes, I would, Commissioner.  
11:00 10  
11:00 11 COMMISSIONER: Including making available information  
11:00 12 which might be contrary to interest.  
11:00 13  
11:00 14 A. Well, potentially, but that would need to be thought about  
11:01 15 carefully.  
11:01 16  
11:01 17 COMMISSIONER: I see, you have to think very carefully if you  
11:01 18 are going to be honest with the regulator.  
11:01 19  
11:01 20 It is dangerous territory, Mr Murphy, I know that, but I'm trying  
11:01 21 to get to the grips of really what sort of institution you were  
11:01 22 dealing with back then: an institution that was interested in  
11:01 23 REDACTED - PRIVILEGE with the  
11:01 24 regulator conducting its statutory obligations and conducting  
11:01 25 inquiry into events that happened which were very serious and  
11:01 26 had very serious consequences to a whole lot of people. I don't  
11:01 27 understand why - well - I withdraw that.  
11:01 28  
11:01 29 Is it fair to say that the Crown Board, or the people who you were  
11:01 30 dealing with at Crown would answer when they had to cooperate  
11:02 31 in that sense, ie, meet their legal obligations under Notices to  
11:02 32 Produce and Notices to Attend for examinations and so on, but not  
11:02 33 volunteer anything more than that? Is that the mindset of the  
11:02 34 company you were dealing with?  
11:02 35  
11:02 36 A. No, I couldn't say that, Commissioner.  
11:02 37  
11:02 38 COMMISSIONER: What evidence is there to show the  
11:02 39 opposite?  
11:02 40  
11:02 41 A. In relation to the China investigation?  
11:02 42  
11:02 43 COMMISSIONER: That's one set of, there were lots.  
11:02 44  
11:02 45 A. Matters which I'm probably not fully across, Commissioner.  
11:02 46  
11:02 47 COMMISSIONER: That may not turn out to be so, Mr Murphy.

11:02 1  
11:02 2 We'll take a break for 15 minutes. I will adjourn.  
11:02 3  
11:02 4  
11:02 5 **ADJOURNED** [11.02 AM]  
11:18 6  
11:18 7  
11:18 8 **RESUMED** [11:18A.M.]  
11:18 9  
11:18 10  
11:18 11 MS NESKOVCIN: Thank you, Mr Murphy. I want to deal next  
11:18 12 with a presentation you gave to the CRL board in  
11:18 13 December 2018.  
11:18 14  
11:18 15 Operator, could you please call up MEM.5000.0002.2978. If we  
11:19 16 just focus on the end of the page, headed "VCGLR investigation"  
11:19 17 and note what is there, Mr Murphy.  
11:19 18  
11:19 19 A. Yes.  
11:19 20  
11:19 21 Q. Over the page, please, operator. It seems like you are  
11:19 22 giving the board an update on progress. See the first dot point  
11:19 23 says:  
11:19 24  
11:19 25 *- We responded by the VCGLR's deadline of last*  
11:19 26 *Wednesday, 5 December.*  
11:19 27  
11:19 28 *- We were invited to comment on the note of the VCGLR's*  
11:19 29 *discussion with the Asian casino executive and we did,*  
11:19 30 *pointing out [what is set out there] .....*  
11:19 31  
11:19 32 Operator, can you go to the end of the page.  
11:19 33  
11:19 34 You see the last dot point, instead of arrow points? You mention  
11:20 35 that the response to the VCGLR's letter also stressed the matters  
11:20 36 set out in those arrow points?  
11:20 37  
11:20 38 A. "Our response also stressed"?  
11:20 39  
11:20 40 Q. Yes.  
11:20 41  
11:20 42 And over the page, please, operator.  
11:20 43  
11:20 44 Make a note, please, Mr Murphy, of the other arrow points on  
11:20 45 that page.  
11:20 46  
11:20 47 A. Yes.

11:20 1  
11:20 2 Q. If we move to the end of the note, please, operator, you see  
11:20 3 the last dot point:  
11:20 4 [REDACTED - PRIVILEGE]  
11:20 5 [REDACTED - PRIVILEGE]  
11:20 6 [REDACTED - PRIVILEGE]  
11:20 7 [REDACTED - PRIVILEGE]  
11:20 8 [REDACTED - PRIVILEGE]  
11:20 9 [REDACTED - PRIVILEGE]  
11:20 10 [REDACTED - PRIVILEGE]  
11:20 11 [REDACTED - PRIVILEGE]  
11:21 12 You see that?  
11:21 13  
11:21 14 A. Yes.  
11:21 15  
11:21 16 Q. At this point, Mr Murphy, it seems from your note that you  
11:21 17 are telling the board about all the points you are raising in  
11:21 18 response to the VCGLR's investigation. Had you also told the  
11:21 19 board anything about what you were uncovering in preparing the  
11:21 20 defence and the class action which was adverse to Crown's  
11:21 21 interests?  
11:21 22  
11:21 23 A. Yes. We were reporting also on where the class action was  
11:21 24 at and anything that was of significance emerging from that.  
11:21 25  
11:21 26 Q. Can we just go back to the first page of the document,  
11:21 27 please, operator.  
11:21 28  
11:21 29 I'm interested to hear what you say, Mr Murphy, because if we go  
11:21 30 to the top of the page, the reports in relation to the class action  
11:21 31 appear largely to be [REDACTED - PRIVILEGE]  
11:21 32 [REDACTED - PRIVILEGE]  
11:22 33 [REDACTED - PRIVILEGE]  
11:22 34 [REDACTED - PRIVILEGE]  
11:22 35 [REDACTED - PRIVILEGE]  
11:22 36 A. Well, I mean, these dot points are what I spoke to. [REDACTED - PRIVILEGE]  
11:22 37 [REDACTED - PRIVILEGE]  
11:22 38 [REDACTED - PRIVILEGE]  
11:22 39 [REDACTED - PRIVILEGE]  
11:22 40 [REDACTED - PRIVILEGE]  
11:22 41 Q. I see. We'll come back to some more detail about some of  
11:22 42 the advice that was given in relation to the class action and  
11:23 43 whether or not that was disclosed to the Board. Obviously it was  
11:23 44 disclosed to Crown. I'm trying to get a sense of the extent to  
11:23 45 which that was conveyed to the Board. But just dealing with this  
11:23 46 meeting, December 2018, can you recall any discussion about or  
11:23 47 any report that you gave to the Board about the other side of the

11:23 1 ledger? The VCGLR has put forward its investigation summary  
11:23 2 at that point, you have told the Board about things you have said  
11:23 3 in response to contradict the VCGLR, but were you telling the  
11:23 4 Board that there is something in this point, or there is something  
11:23 5 in that point? Did they see both sides?

11:24 6

11:24 7 A. Well, I mean, the notes accurately record what the content  
11:24 8 of my presentation was. There were, at each of these Board  
11:24 9 meetings after my presentation, some discussion about the  
11:24 10 matters. I think you are asking me were we advised the Board,  
11:24 11 you know, in some detail about the liability issues, and the  
11:24 12 answer is no. These were high level presentations to the Board to  
11:25 13 give them the general picture of what was going on and where  
11:25 14 things were at.

11:25 15

11:25 16 Q. Thank you. I'm going to move forward now to the middle  
11:25 17 of June 2019 but you, just by way of context, you will recall that  
11:25 18 in March 2019 MinterEllison gave the insurers in respect of the  
11:25 19 class action a detailed memorandum of advice on prospects; do  
11:25 20 you recall that?

11:25 21

11:25 22 A. Yes.

11:25 23

11:25 24 Q. That is just by way of context.

11:25 25

11:25 26 A. Yes.

11:25 27

11:25 28 Q. We will come back to that a bit later, but relevantly, the  
11:25 29 investigatory work that you were doing in preparing the defence  
11:25 30 is well-developed; you would agree with that? You have spoken  
11:25 31 to people, you have been looking at documents?

11:25 32

11:25 33 A. Yes. I mean, I wasn't involved in the day-to-day  
11:25 34 preparation for the class action. I wasn't doing the detailed work  
11:26 35 but, you know, I was generally across what was going on.

11:26 36

11:26 37 Q. That advice in March 2019, which we'll come to, were you  
11:26 38 one of the partners that signed off on that advice or was that  
11:26 39 someone else?

11:26 40

11:26 41 A. No, that would have been another partner.

11:26 42

11:26 43 Q. June 2019, you will recall that the regulator had continued  
11:26 44 its investigation, requesting documents, it was complaining about  
11:26 45 some delays in production. You'd made the point that documents  
11:26 46 were being produced in conjunction with the timetable for  
11:26 47 discovery in the class action and that that was voluminous.

11:26 1  
 11:26 2 We've seen REDACTED - PRIVILEGE  
 11:27 3 REDACTED - PRIVILEGE  
 11:27 4 REDACTED - PRIVILEGE  
 11:27 5 REDACTED - PRIVILEGE  
 11:27 6 REDACTED - PRIVILEGE  
 11:27 7 REDACTED - PRIVILEGE  
 11:27 8 REDACTED - PRIVILEGE  
 11:27 9 A. The only bit I would cavil with is the way you were using  
 11:27 10 REDACTED - PRIVILEGE  
 11:27 11 REDACTED - PRIVILEGE  
 11:27 12 REDACTED - PRIVILEGE  
 11:27 13 REDACTED - PRIVILEGE  
 11:27 14 REDACTED - PRIVILEGE  
 11:27 15 REDACTED - PRIVILEGE  
 11:27 16 REDACTED - PRIVILEGE  
 11:27 17 REDACTED - PRIVILEGE  
 11:27 18 REDACTED - PRIVILEGE  
 11:27 19 REDACTED - PRIVILEGE  
 11:28 20 Q. I see. Thank you.  
 11:28 21  
 11:28 22 Operator, could we please go to MEM.5000.0003.4052.  
 23  
 24 This is your presentation notes for the Board meeting on 12 June  
 25 2019.  
 26  
 27 A. Yes.  
 28  
 29 Q. Could we go to the second dot point. Crown had received  
 30 two letters from the VCGLR, one raising further questions and  
 31 the second enclosing its draft report.  
 32  
 11:28 33 So by this stage Crown had received the VCGLR draft report in  
 11:28 34 relation to the China Arrests Investigation. You will recall,  
 11:28 35 Mr Murphy, that that report made a number of criticisms and  
 11:28 36 raised a number of concerns regarding the outcome of the  
 11:28 37 regulator's investigation?  
 11:28 38  
 11:28 39 A. Yes.  
 11:28 40  
 11:28 41 Q. They included things like what the regulator regarded as  
 11:29 42 warning signs leading up to the detentions; correct?  
 11:29 43  
 11:29 44 A. Yes, what the compliance division staff who had  
 11:29 45 investigated ---  
 11:29 46  
 11:29 47 Q. Regarding warning signs?

- 11:29 1  
11:29 2 A. Yes.  
11:29 3  
11:29 4 Q. It raised concerns about a failure to appreciate those  
11:29 5 warning signs?  
11:29 6  
11:29 7 A. Yes.  
11:29 8  
11:29 9 Q. It raised concerns about a failure to escalate the risk to  
11:29 10 senior management?  
11:29 11  
11:29 12 A. Yes.  
11:29 13  
11:29 14 Q. And to the board of CRL?  
11:29 15  
11:29 16 A. Yes.  
11:29 17  
11:29 18 Q. And it raised concerns about how the matters were  
11:29 19 managed and other risk management issues?  
11:29 20  
11:29 21 A. Yes.  
11:29 22  
11:29 23 Q. It was a 100-page report, went into quite a bit of detail?  
11:29 24  
11:29 25 A. Was it 100 pages? I thought it was 80-something pages,  
11:29 26 something of that order, yes.  
11:29 27  
11:29 28 Q. I might have been counting the index.  
11:29 29  
11:29 30 A. Yes, it was extensive.  
11:29 31  
11:29 32 Q. You would agree that on a first read of the - or any read of  
11:29 33 the report, it is concerning?  
11:29 34  
11:30 35 A. Yes.  
11:30 36  
11:30 37 Q. If you look at the fourth dot point on this note you say:  
11:30 38  
11:30 39 *In relation to the second letter and the draft report, which*  
11:30 40 *I understand has been circulated to the directors .....*  
11:30 41  
11:30 42 The directors, to your knowledge, had this draft report prior to the  
11:30 43 meeting?  
11:30 44  
11:30 45 A. Yes.  
11:30 46  
11:30 47 Q. And did you get a sense from discussions and questions

11:30 1 that occurred at the meeting that the directors had read the report?  
11:30 2  
11:30 3 A. Yes.  
11:30 4  
11:30 5 Q. Can you assume from me that Ms Coonan, Ms Halton and  
11:30 6 Ms Korsanos were present during this meeting?  
11:30 7  
11:30 8 A. Yes, all right.  
11:30 9  
11:30 10 Q. Do you have a recollection of that?  
11:30 11  
11:30 12 A. I'm not sure about Ms Korsanos, but I remember  
11:30 13 Ms Coonan being there. And I remember Geoff Dixon being  
11:30 14 there, he was the one who was most vocal.  
11:30 15  
11:30 16 Q. We will get to that in a moment, but I've checked the  
11:30 17 minutes and just assume that that was the case, please.  
11:30 18  
11:30 19 A. Okay.  
11:30 20  
11:31 21 Q. After your presentation - I assume you went through the  
11:31 22 points in this note again? Would you like to go through them?  
11:31 23  
11:31 24 A. So I did my presentation to the Board in accordance with  
11:31 25 the notes, and then there was a general discussion after that.  
11:31 26  
11:31 27 Q. I want to ask you about what was discussed.  
11:31 28  
11:31 29 A. Yes.  
11:31 30  
11:31 31 Q. Who said what in relation to the draft report? What can  
11:31 32 you recall?  
11:31 33  
11:31 34 A. So - well, my strongest recollection is of Mr Dixon saying  
11:31 35 that the report was of significant concern to him as the Chair of  
11:31 36 the Risk Committee, and that if the Commission itself was  
11:32 37 ultimately to be making conclusions that were in line with what  
11:32 38 the draft report said then that would be a major concern for the  
11:32 39 company and would reflect very poorly on the company.  
11:32 40  
11:32 41 Q. Anything else?  
11:32 42  
11:32 43 A. I remember Ms Coonan contributed to the discussion as  
11:32 44 well, and I think she echoed similar concerns. It is likely  
11:33 45 Mr Mitchell did as well.  
11:33 46  
11:33 47 COMMISSIONER: What was said about fixing the position

11:33 1 rather than avoiding a bad report?  
11:33 2  
11:33 3 A. I'm not sure I recall that specifically, Commissioner.  
11:33 4 I think Mr Dixon made a comment along the lines of "these  
11:33 5 matters will need to be considered by the Risk Management  
11:33 6 Committee for future learnings".  
11:34 7  
11:34 8 COMMISSIONER: (Inaudible) from a bad final report?  
11:34 9  
11:34 10 A. No, that wasn't. That was on the basis of reading this  
11:34 11 lengthy report about the subject matter.  
11:34 12  
11:34 13 COMMISSIONER: Did you ever find out what, if anything, they  
11:34 14 did?  
11:34 15  
11:34 16 A. What, if anything .....?  
11:34 17  
11:34 18 COMMISSIONER: The company did?  
11:34 19  
11:34 20 A. In terms of risk management processes?  
11:34 21  
11:34 22 COMMISSIONER: Yes.  
11:34 23  
11:34 24 A. I think it was around about this time that Ms Siegers was  
11:34 25 recruited. I might not be right about the date but I think it was  
11:34 26 around about this time. And there was a recognition that the risk  
11:34 27 management function needed to be upgraded and hence  
11:34 28 Ms Siegers was appointed, and that she embarked upon a process  
11:34 29 of significantly upgrading the risk framework and processes.  
11:35 30  
11:35 31 MS NESKOVCIN: Was anything said that made you realise that  
11:35 32 the directors recognised that some of the report raised suitability  
11:35 33 issues?  
11:35 34  
11:35 35 A. The word "suitability" I don't think was used during the  
11:35 36 course of the discussion, at least not that I recall.  
11:35 37  
11:35 38 Q. So you don't recall up to this point either any concern being  
11:35 39 raised by any members of the board as to whether or not there  
11:35 40 were issues being uncovered by the regulator that were relevant  
11:35 41 to suitability?  
11:35 42  
11:35 43 A. I think by this stage, can you remind me, we were talking  
11:36 44 about December ---  
11:36 45  
11:36 46 Q. June 2019?  
11:36 47

11:36 1 A. Ah, this is back in June. So even in June it was evident,  
11:36 2 and I think I had said so in my presentation that <sup>REDACTED - PRIVILEGE</sup>  
11:36 3 <sup>REDACTED - PRIVILEGE</sup>  
11:36 4   
11:36 5  
11:36 6  
11:36 7  
11:36 8 Q. I see. But it might have been the case that the regulator  
11:36 9 hadn't then identified suitability issues. As you say, this was  
11:36 10 an internal report, or a report by the compliance division, which  
11:36 11 would be provided to the Commission. That was your  
11:36 12 understanding of the process?  
11:36 13  
11:36 14 A. Yes.  
11:36 15  
11:36 16 Q. What the Commission did with it was a matter for the  
11:37 17 Commission?  
11:37 18  
11:37 19 A. Correct.  
11:37 20  
11:37 21 Q. So it was open to the Commission on the basis of the report  
11:37 22 to consider that there were suitability issues, and I want to know,  
11:37 23 did the board recognise that?  
11:37 24  
11:37 25 A. I don't recall any discussion about that aspect.  
11:37 26  
11:37 27 Q. You mentioned that Mr Dixon identified that the report  
11:37 28 raised significant concerns. But did anybody present at this  
11:37 29 meeting say to you, or in your presence, "There are real issues  
11:37 30 here, I think we need to get to the bottom of this. I think we need  
11:37 31 to work with the regulator to try to understand what went on"?  
11:37 32 Was that ever a discussion that occurred up to this point?  
11:37 33  
11:37 34 A. No. I don't remember a discussion along those lines. I  
11:37 35 mean, we obviously had, by this stage, into 2018, we had more  
11:37 36 evidence than we'd had before that. More documents had been  
11:38 37 found. The issues in the class action had been analysed in more  
11:38 38 depth, more detailed statements were being prepared. I'm not  
11:38 39 sure what the state of preparation was precisely around 2018, so  
11:38 40 the whole process by which at least the legal team acquired  
11:38 41 knowledge about the background was ongoing.  
11:38 42  
11:38 43 Q. But it was fairly advanced by this point, June 2019, I want  
11:38 44 to suggest to you?  
11:38 45  
11:38 46 A. Yes, I think so, although I'm not sure about the timetable  
11:38 47 for evidence in the class action and when the statements and

11:38 1 evidence were prepared then.  
11:38 2  
11:38 3 Q. But you said that "we" were doing all those things. That's  
11:38 4 my point, that is Crown doing those things, not in conjunction  
11:39 5 with the regulator. And when I say "working cooperatively", I  
11:39 6 don't mean not being obstructive, I mean, as the Commissioner  
11:39 7 suggested prior to the break, assisting them with what you knew,  
11:39 8 what Crown knew had gone on. Was that ever part of the  
11:39 9 discussion with the board after your presentations or at any other  
11:39 10 time?  
11:39 11  
11:39 12 A. Not in that way, no.  
11:39 13  
11:39 14 Q. You weren't ever instructed to be obstructive; correct?  
11:39 15  
11:39 16 A. No.  
11:39 17  
11:39 18 Q. And you were complying ---  
11:39 19  
11:39 20 COMMISSIONER: You were instructed to push back? It's the  
11:39 21 nicer way of saying "be obstructive".  
11:39 22  
11:39 23 A. No, I wouldn't accept that, Commissioner. We were  
11:39 24 pushing back in argument and we were making submissions  
11:39 25 about how the VCGLR should regard the events, and what  
11:39 26 consequences should flow from the facts and their investigation.  
11:40 27 So pushing back in that sense, not pushing back in terms of being  
11:40 28 obstructionist about the provision of documents or evidence or  
11:40 29 responses to notices. It was in the making of submissions.  
11:40 30  
11:40 31 MS NESKOVCIN: And is your view that Crown was complying  
11:40 32 with its obligations in relation to the regulator?  
11:40 33  
11:40 34 A. Yes.  
11:40 35  
11:40 36 Q. But, as the Commissioner said before the break, the  
11:40 37 regulator didn't know what it didn't know.  
11:40 38  
11:40 39 A. Nor did we.  
11:40 40  
11:40 41 Q. But you knew more than the regulator?  
11:40 42  
11:40 43 A. Did we? I'm not sure we did.  
11:40 44  
11:40 45 Q. We'll come to that ---  
11:40 46  
11:40 47 A. In terms of the key facts.

11:40 1  
11:41 2 Q. We'll come to that.  
11:41 3  
11:41 4 A. Okay.  
11:41 5  
11:41 6 Q. It may be that it's not at this time, I'm not suggesting you  
11:41 7 are wrong about that, but as we step through it, there will be  
11:41 8 a point in time, I suggest to you, where Crown did know more  
11:41 9 than the regulator, and I will be coming back to ask you whether  
11:41 10 at that point somebody said to you or in your presence, "we  
11:41 11 should be working collaboratively with the VCGLR so that we  
11:41 12 can get to the bottom of this and they can know, we can all know  
11:41 13 what went on".  
11:41 14  
11:41 15 A. Understand.  
11:41 16  
11:41 17 Q. We'll come to that.  
11:41 18  
11:41 19 Moving on with the chronology, this is June 2019. Can we go  
11:41 20 back to your note at the bottom of this page, please, operator.  
11:41 21 The last two dot points:  
11:41 22  
11:41 23 REDACTED - PRIVILEGE  
11:41 24  
11:42 25  
11:42 26  
11:42 27  
11:42 28  
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11:42 34  
11:42 35  
11:42 36  
11:42 37 So that was a recommendation that was made to the Board at that  
11:42 38 time?  
11:42 39  
11:42 40 A. Yes.  
11:42 41  
11:42 42 Q. When it says "the VCGLR", was that assuming REDACTED - PRIVILEGE  
11:42 43 REDACTED - PRIVILEGE  
11:42 44  
11:42 45  
11:42 46  
11:42 47

11:42 1 Q. REDACTED - PRIVILEGE  
 11:42 2 REDACTED - PRIVILEGE  
 11:42 3  
 11:42 4  
 11:42 5  
 11:42 6 Q. And instead provide a much shorter executive summary  
 11:42 7 which I think Crown was hoping to settle with the Commission?  
 11:43 8  
 11:43 9 A. Was hoping to probably see as a draft and have some  
 11:43 10 comment on it before it was finalised, yes.  
 11:43 11  
 11:43 12 COMMISSIONER: What is the purpose of REDACTED - PRIVILEGE  
 11:43 13 REDACTED - PRIVILEGE  
 11:43 14  
 11:43 15  
 11:43 16  
 11:43 17  
 11:43 18  
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 11:43 22  
 11:43 23  
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 11:43 26  
 11:43 27  
 11:43 28 A. REDACTED - PRIVILEGE The  
 11:43 29 report contained a lot of commentary on the facts and a number of  
 11:43 30 opinions expressed by the staff about the facts. Opinions which  
 11:43 31 Crown disputed. So Crown's interests would not be served by  
 11:44 32 having a report going to the Minister that expressed a number of  
 11:44 33 damaging opinions.  
 11:44 34  
 11:44 35 COMMISSIONER: Which may or may not be correct.  
 11:44 36  
 11:44 37 A. Which may or may not be correct.  
 11:44 38  
 11:44 39 COMMISSIONER: It might serve the interests of the State of  
 11:44 40 Victoria for the Government to know what its regulator viewed of  
 11:44 41 certain conduct?  
 11:44 42  
 11:44 43 A. Yes, but that's different, Commissioner, from ---  
 11:44 44  
 11:44 45 COMMISSIONER: The interests of Crown. I understand that.  
 11:44 46 Potentially in complete conflict.  
 11:44 47

11:44 1 A. I beg your pardon, sorry, Commissioner?  
11:44 2  
11:44 3 COMMISSIONER: The interests of Crown and the interests of  
11:44 4 the State of Victoria might be in conflict.  
11:44 5  
11:44 6 A. Yes, they might be.  
11:44 7  
11:44 8 MS NESKOVCIN: Mr Murphy, I wanted to ask you whether  
11:44 9 anyone queried whether that was appropriate or the right  
11:44 10 approach.  
11:44 11  
11:44 12 A. At the Board meeting, do you mean?  
11:44 13  
11:44 14 Q. Yes.  
11:44 15  
11:44 16 A. No.  
11:44 17  
11:44 18 Q. I just want to show you the minutes of this meeting, which  
11:45 19 you may or may not have seen. They are CRL.503.001.0005.  
11:45 20 Please go to page 0010.  
11:45 21  
11:45 22 COMMISSIONER: I get emails like that from Mr Borsky!  
11:45 23  
11:45 24 MS NESKOVCIN: Do you see under the "China matter update",  
11:45 25 Mr Murphy? Have you seen these minutes recently?  
11:45 26  
11:45 27 A. Yes, I think I have.  
11:45 28  
11:45 29 Q. Wonderful. Unless you want to look at anything on that  
11:45 30 page, I want to go to the next page, 0011.  
11:45 31  
11:45 32 A. Yes.  
11:45 33  
11:45 34 Q. After the dot points the report notes:  
11:45 35  
11:46 36  REDACTED - PRIVILEGE  
11:46 37  
11:46 38  
11:46 39  
11:46 40  
11:46 41  
11:46 42  
11:46 43  
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11:46 46  
11:46 47

11:46 1  
11:46 2 Was there a discussion in your presence [REDACTED - PRIVILEGE]  
11:46 3 [REDACTED - PRIVILEGE]  
11:46 4  
11:46 5 A. There must have been because the minute records it but I  
11:46 6 don't recall that.  
11:46 7  
11:46 8 Q. Did you give any advice [REDACTED - PRIVILEGE]  
11:46 9 [REDACTED - PRIVILEGE]  
11:46 10 [REDACTED - PRIVILEGE]  
11:46 11 [REDACTED - PRIVILEGE]  
11:46 12 [REDACTED - PRIVILEGE]  
11:46 13 [REDACTED - PRIVILEGE]  
11:46 14 [REDACTED - PRIVILEGE]  
11:46 15 [REDACTED - PRIVILEGE]  
11:46 16 [REDACTED - PRIVILEGE]  
11:46 17 [REDACTED - PRIVILEGE]  
11:46 18 [REDACTED - PRIVILEGE]  
11:46 19 [REDACTED - PRIVILEGE]  
11:47 20 [REDACTED - PRIVILEGE]  
11:47 21 [REDACTED - PRIVILEGE]  
11:47 22 [REDACTED - PRIVILEGE]  
11:47 23 [REDACTED - PRIVILEGE]  
11:47 24 Q. Procedural fairness?  
11:47 25  
11:47 26 A. I would have to go to imaginative counsel to assist me to  
11:47 27 work that out.  
11:47 28  
11:47 29 Q. Do you recall having an open but off-the-record discussion  
11:47 30 with the regulator and Mr Preston after this board meeting?  
11:47 31  
11:47 32 A. I recall we did have discussions with the senior staff at the  
11:48 33 regulator on a few occasions. I'm not sure that I specifically  
11:48 34 recall the meeting after - immediately after this.  
11:48 35  
11:48 36 Q. The context is you have a final report from the staff, it is  
11:48 37 going to the minister, you are questioning what the status of the  
11:48 38 report is, and I think you and Mr Preston decide you might go and  
11:48 39 have a meeting with the regulator to talk to them about that?  
11:48 40  
11:48 41 A. Yes. And it was the draft report, it wasn't a major final  
11:48 42 report, it was this draft report at compliance staff level.  
11:48 43  
11:48 44 Q. And your objective is to try to not get that report before the  
11:48 45 Minister?  
11:48 46  
11:48 47 A. Well, yes, I suppose, generally speaking the objective was

11:48 1 to mitigate the damage that could be done. So ---

11:48 2

11:49 3 Q. If it went before the Minister or became public?

11:49 4

11:49 5 A. Yes, that's right.

11:49 6

11:49 7 Q. Operator, could you call up MEM.5000.0003.3688?

11:49 8

11:49 9 Do you recognise this note, Mr Murphy, as a note that you  
11:49 10 prepared in conjunction with Mr Preston to speak to at a meeting  
11:49 11 with the regulator on 19 June 2019?

11:49 12

11:49 13 A. Yes, looks to be.

11:49 14

11:49 15 Q. Other persons present at the meeting were Amy Rudolph,  
11:49 16 Scott May and Karpaagam Shanmugam from the regulator, sorry  
11:49 17 if I've mispronounced that.

11:49 18

11:49 19 A. Is that right? I don't recall that, but if there is a note of that  
11:49 20 I accept that.

11:49 21

11:49 22 Q. Please accept that from me. Do you want an opportunity to  
11:50 23 just go through this note in your own time. I was going to ask  
11:50 24 you about some questions at the end and whether or not you  
11:50 25 spoke to this note.

11:50 26

11:50 27 A. Yes, so I think this was a note principally prepared by  
11:50 28 Joshua Preston, I think, probably with some input from me.  
11:50 29 I don't think it was done in a similar way to my board  
11:50 30 presentations. My board presentations are - very closely  
11:50 31 followed my notes, whereas I think this was a note sketching out  
11:50 32 how we were planning the meeting to go. But the meetings that  
11:50 33 we had with the regulator were generally quite discursive. So I'm  
11:51 34 not sure it unfolded as these notes anticipated.

11:51 35

11:51 36 Q. I see. So one point - or what one aspect of the note does  
11:51 37 is provide a bit of a script or some points to make about the report  
11:51 38 itself questioning the approach, the conclusions, those sorts of  
11:51 39 things. If we go to the last page of the note, please, operator, you  
11:51 40 see after the dotted line the note says:

11:51 41

11:51 42

11:51 43

11:51 44

11:52 45

11:52 46

11:52 47

REDACTED - PRIVILEGE



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 11:54 46  
 11:54 47

REDACTED - PRIVILEGE

REDACTED - PRIVILEGE

Do you see that?

A. Yes.

Q. Did you prepare this note or did Mr Preston?

A. It was probably a combination.

Q.

REDACTED - PRIVILEGE

REDACTED - PRIVILEGE

COMMISSIONER: Was this REDACTED - PRIVILEGE

REDACTED - PRIVILEGE to stop the regulator from doing what it might want to do to ensure it did what you wanted it to do?

A. No, I don't think that is a fair characterisation.

11:54 1 COMMISSIONER: They are not [REDACTED - ]  
11:54 2  
11:54 3 A. No, they weren't [REDACTED - ]  
11:54 4  
11:54 5 COMMISSIONER: [REDACTED - PRIVILEGE]  
11:55 6 [REDACTED - PRIVILEGE]  
11:55 7  
11:55 8 A. Well ---  
11:55 9  
11:55 10 COMMISSIONER: [REDACTED - PRIVILEGE]  
11:55 11  
11:55 12 A. Well, Commissioner, I don't think the conversation  
11:55 13 unfolded in this way. These are our ---  
11:55 14  
11:55 15 COMMISSIONER: This is a plan?  
11:55 16  
11:55 17 A. [REDACTED - PRIVILEGE]  
11:55 18 [REDACTED - PRIVILEGE] I don't believe it did go down the line  
11:55 19 whereby any of these points had to be made.  
11:55 20  
11:55 21 MS NESKOVCIN: It didn't get to that point, but you can see that  
11:55 22 it's a concern that this Commission is exploring, as to how it  
11:55 23 would come to be that Crown would have this attitude and  
11:55 24 relationship with the regulator. Did anybody, apart from  
11:55 25 Mr Preston, know that going into the meeting the intention was, if  
11:56 26 it got to the point, [REDACTED - PRIVILEGE]  
11:56 27 [REDACTED - PRIVILEGE]  
11:56 28  
11:56 29 A. Not that I'm aware.  
11:56 30  
11:56 31 COMMISSIONER: Had you had any discussions with  
11:56 32 Michael Chen to see whether he would be prepared to be a front  
11:56 33 man to [REDACTED - PRIVILEGE] so you  
11:56 34 could achieve your objectives? [REDACTED - PRIVILEGE]  
11:56 35 [REDACTED - PRIVILEGE]  
11:56 36  
11:56 37 A. No. No. Michael Chen certainly did have his own legal  
11:56 38 representation and was very keen to preserve his reputation and  
11:56 39 his capacity to country to work in the industry.  
11:56 40  
11:56 41 COMMISSIONER: [REDACTED - PRIVILEGE]  
11:56 42 [REDACTED - PRIVILEGE] if there was a publication of a report to the  
11:57 43 Minister?  
11:57 44  
11:57 45 A. I don't think he said that specifically.  
11:57 46  
11:57 47 COMMISSIONER: So part of the plan, sorry, [REDACTED - PRIVILEGE]

11:57 1 REDACTED - PRIVILEGE  
11:57 2  
11:57 3  
11:57 4  
11:57 5 A. No, that wasn't the thinking.  
11:57 6  
11:57 7 COMMISSIONER: Okay.  
11:57 8  
11:57 9 MS NESKOVCIN: At this point in time, is it fair to say that the  
11:57 10 relationship between the regulator and Crown was at an all time  
11:57 11 low?  
11:57 12  
11:57 13 A. Sorry?  
11:57 14  
11:57 15 Q. At this point in time when you and Mr Preston were  
11:57 16 planning to have a discussion with the regulator along these lines,  
11:57 17 was it fair to say that the relationship between the regulator and  
11:57 18 Crown was at an all-time low?  
11:57 19  
11:57 20 A. I don't believe so, no. The meeting was convivial. I should  
11:58 21 say the meetings were convivial. I'm not sure that I'm particularly  
11:58 22 recalling this specific meeting because there were several but they  
11:58 23 were all convivial.  
11:58 24  
11:58 25 Q. I'm just interested to understand that because we look at  
11:58 26 things on a piece of paper and don't know the tone.  
11:58 27  
11:58 28 A. Yes.  
11:58 29  
11:58 30 Q. You were there.  
11:58 31  
11:58 32 A. Yes.  
11:58 33  
11:58 34 Q. And I'm interested in your insights into what the  
11:58 35 relationship was like, whether it was hostile.  
11:58 36  
11:58 37 A. No.  
11:58 38  
11:58 39 Q. In notes that I've seen Crown is describing correspondence  
11:58 40 or the report from the regulator as vitriolic, and that gives a sense  
11:58 41 that there is some animosity between the two, but nothing that  
11:58 42 you observed?  
11:58 43  
11:58 44 A. Nothing that I observed.  
11:58 45  
11:59 46 Q. But it is fair to say - have you seen the final report that  
11:59 47 was handed down by, or handed to the Minister by the

11:59 1 Commission in February this year?  
11:59 2  
11:59 3 A. Yes.  
11:59 4  
11:59 5 Q. You certainly get a sense from that report of frustration and  
11:59 6 disappointment in terms of how the regulator feels it was dealt  
11:59 7 with during the process?  
11:59 8  
11:59 9 A. Yes.  
11:59 10  
11:59 11 Q. It points to issues of delays, what it perceives to be delays,  
11:59 12 it describes the correspondence as belligerent?  
11:59 13  
11:59 14 A. Yes, it does.  
11:59 15  
11:59 16 Q. I assume that you would take issue with that?  
11:59 17  
11:59 18 A. Yes, I would.  
11:59 19  
11:59 20 Q. But what would be your reflections on what might have  
11:59 21 contributed to its impression?  
12:00 22  
12:00 23 A. So I think there was - I think the particular frustration at  
12:00 24 the VCGLR compliance staff level was the fact that some  
12:00 25 documents took considerable time to emerge and only emerged as  
12:00 26 a result of the discovery process in the class action. They made  
12:00 27 the decision to interview the staff, sorry, interview all the people  
12:00 28 they wanted to interview at a reasonably early stage, and probably  
12:00 29 felt in retrospect that if they had waited until they had more  
12:00 30 documents, then there might have been more matters that they  
12:00 31 could have put to those witnesses. So I think that is probably  
12:01 32 what fed into their feelings about the way the investigation  
12:01 33 progressed. But certainly all our dealings with them were  
12:01 34 positive and cordial. In fact, I would say good humoured.  
12:01 35  
12:01 36 COMMISSIONER: Apart from the good humour, isn't it fair to  
12:01 37 say, just reading the report, that one of the key things that upset  
12:01 38 the regulator was lack of candour? That is, you wouldn't -  
12:01 39 Crown wouldn't make admissions to the regulator, but, when  
12:01 40 confronted with harder evidence and a tougher environment,  
12:01 41 made admissions to the Bergin Inquiry. In other words, they  
12:01 42 thought you - not you, but Crown was double dealing?  
12:02 43 (Inaudible).  
12:02 44  
12:02 45 A. Yes, and to my mind, Commissioner, that is not a fair  
12:02 46 criticism because it was not put to Crown to make admissions in  
12:02 47 relation to matters until such time as it was. And when it was,

12:02 1 those concessions were made in appropriate form.  
12:02 2  
12:02 3 COMMISSIONER: Not to the regulator? Made to Bergin and  
12:02 4 then the regulator after the game was up.  
12:02 5  
12:02 6 A. But there was no request from the regulator prior to that to  
12:02 7 make concessions about particular matters.  
12:02 8  
12:02 9 COMMISSIONER: This goes back to the earlier discussion we  
12:02 10 had about whether a regulated entity like Crown, which has -  
12:02 11 which gives its life to being appropriately - gives its life to  
12:03 12 conducting itself appropriately, maybe should have been a bit  
12:03 13 more forthcoming rather than the "push back" approach or rather  
12:03 14 than "I'll answer the question if you ask it, but if you don't ask it, I  
12:03 15 tell you nothing".  
12:03 16  
12:03 17 A. Commissioner, I don't think that latter description is a fair  
12:03 18 description of the way Crown was responding to the VCGLR's  
12:03 19 inquiry. I think the criticisms about essentially not having full  
12:03 20 candour related to answers that were given by witnesses in their  
12:03 21 interviews, which later, when confronted with other evidence,  
12:03 22 transpired to be ---  
12:03 23  
12:03 24 COMMISSIONER: False.  
12:03 25  
12:04 26 A. Well, transpired to be not correct. In other words, people  
12:04 27 had thought they had an understanding previously about certain  
12:04 28 events when they were subsequently shown an email that said  
12:04 29 actually you were shown this article at the time, they say, "okay,  
12:04 30 all right if I was shown that article at the time, then I must have  
12:04 31 known about it, but if you ask me beforehand without the benefit  
12:04 32 of that email, I give an honest answer to say no I don't." So that  
12:04 33 is my understanding of the answers given in witness interviews  
12:04 34 that the VCGLR criticises.  
12:04 35  
12:04 36 MS NESKOVCIN: I'm sorry to traverse similar matters but what  
12:04 37 I was about to put to you was I asked you what you'd attributed  
12:04 38 some of the comments to in the final report, and you mentioned  
12:05 39 a couple of things. What you didn't mention was the point that  
12:05 40 the Commissioner made, which was the regulator was  
12:05 41 disappointed that information was not produced to it which came  
12:05 42 out in the Bergin Inquiry which subsequently informed its  
12:05 43 analysis and conclusions. You recognise that as a grievance that  
12:05 44 the VCGLR raised in the final report?  
12:05 45  
12:05 46 A. Do they? I'm not sure - I'm not sure about that and I'm  
12:05 47 not sure what they are actually saying is the evidence that

12:05 1 emerged that they didn't otherwise have.  
12:05 2  
12:05 3 Q. Emails in 2013 from Michael Chen talking about risks and  
12:05 4 fear of safety.  
12:05 5  
12:05 6 A. Right. Did the VCGLR not have those?  
12:05 7  
12:05 8 Q. Well, we can go - we would - we don't have the time  
12:06 9 today to go through that. The report will evidence what they say  
12:06 10 they had and didn't have. I just want to explore with you,  
12:06 11 Mr Murphy, the evidence you just gave about your perception of  
12:06 12 their grievance, and I was suggesting to you that another aspect of  
12:06 13 their grievance was the fact that information came to light in the  
12:06 14 Bergin Inquiry which hadn't come to light earlier. Please assume  
12:06 15 that is the case ---  
12:06 16  
12:06 17 A. Okay.  
12:06 18  
12:06 19 Q. --- in relation to some things --  
12:06 20  
12:06 21 A. Yes.  
12:06 22  
12:06 23 Q. --- but the point really is, they didn't know what they didn't  
12:06 24 know, and what I've been trying to explore with you today is  
12:06 25 whether or not Crown at any point said, "shouldn't we be telling  
12:06 26 the regulator in Victoria everything that we know?"  
12:06 27  
12:06 28 A. Well, I believe everything we know about the evidence that  
12:07 29 is relevant to the VCGLR inquiry, so as we acquired --- as we  
12:07 30 uncovered other documents through the discovery process in the  
12:07 31 class action, to the extent that they seemed to bear upon or were  
12:07 32 within the categories of documents that the VCGLR had  
12:07 33 requested, then they were produced.  
12:07 34  
12:07 35 Q. Produced?  
12:07 36  
12:07 37 A. Yes.  
12:07 38  
12:07 39 Q. But there was other information, wasn't there, that you were  
12:07 40 getting from speaking --- you, Minters and Crown were getting  
12:07 41 from speaking with individuals that would have been relevant to the  
12:07 42 VCGLR's investigation; do you agree with that?  
12:07 43  
12:07 44 A. No, I don't think so.  
12:07 45  
12:07 46 Q. I will take you to a couple of things and see if you agree  
12:07 47 that would have been relevant. And the second point that I

12:07 1 wanted to make was that - I've just forgotten it.  
12:08 2  
12:08 3 COMMISSIONER: I will ask, probably a different point though.  
12:08 4  
12:08 5 The very strong impression I get from you, Mr Murphy, is that  
12:08 6 Crown's attitude was this, "if we are required by some notice or  
12:08 7 some legal obligation to provide information we will do that to  
12:08 8 the extent that we can, but we will volunteer nothing." And you  
12:08 9 understand the difference between the two?  
12:08 10  
12:08 11 A. Yes, I do. I can't say that I was privy to a discussion in  
12:08 12 those terms, Commissioner.  
12:08 13  
12:08 14 COMMISSIONER: But what I describe is what happened  
12:08 15 throughout this whole inquiry. "If we have to provide it, we will.  
12:08 16 We will volunteer zero."  
12:08 17  
12:08 18 A. No, I don't think that's fair, Commissioner. Most of -  
12:09 19 well, in fact, all of the VCGLR's production notices had expired  
12:09 20 by the time we were still volunteering production of documents.  
12:09 21  
12:09 22 COMMISSIONER: If you hadn't complied with them, then you  
12:09 23 would be in breach, and you can't say, "we'll find the documents"  
12:09 24 two days afterwards. Probably the better legal view is that if you  
12:09 25 don't comply with the notice and then you suddenly come up with  
12:09 26 a document which existed at the time the notice was served on  
12:09 27 you, you had to comply with it. You can't just say "time has  
12:09 28 passed, bad luck."  
12:09 29  
12:09 30 A. Well, far be it for me to debate that with you,  
12:09 31 Commissioner. I ---  
12:09 32  
12:09 33 COMMISSIONER: So the voluntary aspect of what they did was  
12:09 34 comply - provide documents covered by a notice but the notice  
12:09 35 had potentially expired because - and didn't cover the  
12:09 36 documents because they weren't found in time, but they were all  
12:09 37 documents that existed at the time of the service of the notice?  
12:10 38  
12:10 39 A. Well, existed but not - but hadn't been retrieved, if you  
12:10 40 like.  
12:10 41  
12:10 42 COMMISSIONER: I guess that.  
12:10 43  
12:10 44 A. Yes.  
12:10 45  
12:10 46 MS NESKOVCIN: I remembered my second point. It was kind  
12:10 47 of related.

12:10 1  
12:10 2 Mr Murphy, Crown is cooperating throughout this process --  
12:10 3  
12:10 4 A. Yes.  
12:10 5  
12:10 6 Q. --- but it is only answering the narrow questions that the  
12:10 7 VCGLR is asking; do you agree with that?  
12:10 8  
12:10 9 A. It is responding to the questions it's being asked by the  
12:10 10 VCGLR, yes.  
12:10 11  
12:10 12 Q. And that is going to be my point. Instead of just answering  
12:10 13 the narrow questions, there was more information that could have  
12:10 14 been relevant that Crown was not disclosing; do you agree with  
12:10 15 that?  
12:10 16  
12:10 17 A. As a general proposition, no.  
12:10 18  
12:10 19 Q. Okay, I will explore that a little.  
12:10 20  
12:10 21 A. I will need to be taken to particular information.  
12:10 22  
12:11 23 Q. And this is just to understand and to contrast what the  
12:11 24 VCGLR knew and was told, and what Crown knew. For the  
12:11 25 purposes of exploring again, what were your instructions about  
12:11 26 information providing and assisting the regulator? I want to go  
12:11 27 back to remind you what was said in May - I will remind you  
12:11 28 about what was said to the regulator in June 2018. Could we  
12:11 29 please call up VCG.0001.0001.8194. This is in response to the  
12:11 30 draft summary report in relation to the China arrests. It is around  
12:11 31 the time - operator, it is page \_0005.  
12:11 32  
12:11 33 It is June 2018, at the time of the Sixth Review, matters in  
12:12 34 relation to the China investigations have been taken out and  
12:12 35 included in the summary report. Over the page is some  
12:12 36 comments on the report, and I want to take you to paragraph 10,  
12:12 37 please, at the bottom of this page. You see there what Crown is  
12:12 38 trying to emphasise about Crown's understanding of the relevant  
12:12 39 Chinese law at the time was Crown's understanding of Article  
12:12 40 303.  
12:12 41  
12:12 42 A. Yes.  
12:12 43  
12:12 44 Q. And that's only what Crown ever addressed, is what it  
12:12 45 understood Article 303 required or prohibited because that was  
12:12 46 what the detainees were charged under; correct?  
12:12 47

12:12 1 A. Yes, that was the context.  
12:12 2  
12:12 3 Q. REDACTED - PRIVILEGE  
12:13 4 REDACTED - PRIVILEGE  
12:13 5 REDACTED - PRIVILEGE  
12:13 6 REDACTED - PRIVILEGE do you recall that?  
12:13 7  
12:13 8 A. No.  
12:13 9  
12:13 10 Q. I will take you to some documents and see if you can recall  
12:13 11 this.  
12:13 12 REDACTED - PRIVILEGE  
12:13 13 REDACTED - PRIVILEGE  
12:13 14 REDACTED - PRIVILEGE  
12:13 15 REDACTED - PRIVILEGE  
12:13 16 REDACTED - PRIVILEGE  
12:13 17 REDACTED - PRIVILEGE And I suggest to you that would have been  
12:13 18 important information for the regulator to have, not just  
12:13 19 an understanding of Crown's understanding of Article 303; do  
12:13 20 you agree with that?  
12:14 21  
12:14 22 A. I don't know. You would need to take me to the details. I  
12:14 23 mean certainly the context here was that - was all about why the  
12:14 24 Crown staff had been detained and what they had been doing and  
12:14 25 staff or other contractors for other casinos hadn't been doing.  
12:14 26 And this piece of evidence that the VCGLR had obtained was  
12:14 27 indicating that at least as far as this casino was concerned it  
12:14 28 regarded - it hadn't interpreted the law and its requirements any  
12:14 29 differently than Crown. So that was the context in which this  
12:14 30 point was being made.  
12:14 31  
12:15 32 Q. I accept that. I want to take you to the documents that I just  
12:15 33 mentioned, to go back to my point, whether or not that would  
12:15 34 have been of assistance to the Commission.  
12:15 35  
12:15 36 A. Yes.  
12:15 37  
12:15 38 Q. Operator please call up MEM.5000.0002.7805.  
12:15 39 Mr Murphy, this is an advice given to the insurers in the Crown  
12:15 40 class action on 2 March 2019. Did you see or settle this advice at  
12:15 41 the time?  
12:15 42  
12:15 43 A. I didn't settle it. I might have seen it but I didn't settle it.  
12:15 44  
12:15 45 Q. Thank you. Can I please ask the operator to go to  
12:15 46 page 7808.  
12:15 47

12:15 1 You see at paragraph (c) it says:

12:15 2

12:15 3

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12:16 15

12:16 16

12:16 17

12:16 18

12:16 19 Do you see that?

12:16 20

12:16 21 A. Yes.

12:16 22

12:16 23 Q. Information that had come to light during the preparation of  
12:16 24 the defence which as far as I can see at this stage was not  
12:16 25 provided to the regulator. Do you agree with that or you are not  
12:16 26 in a position to comment?

12:16 27

12:16 28 A. I'm not sure what document that is or whether that is  
12:16 29 amongst the documents that the regulator had and whether the  
12:17 30 understanding that those particular staff had is correct or not.  
12:17 31 I don't know. And whether the understanding of the distinction  
12:17 32 that is being referred to there has any proper basis or not. I don't  
12:17 33 know.

12:17 34

12:17 35 COMMISSIONER: You don't have any reason to doubt what is  
12:17 36 written there?

12:17 37

12:17 38 A. I had heard a fair bit about China law to that point,  
12:17 39 Commissioner. So I had a lot of reason to doubt things or  
12:17 40 definite propositions made about China law.

12:17 41

12:17 42 COMMISSIONER: This is a letter or a document that goes to  
12:17 43 the insurers, and I assume that the firm would strive to be as  
12:18 44 accurate as possible in telling the underwriters what the litigation  
12:18 45 is about and what the risks are and so on.

12:18 46

12:18 47 A. Yes.

12:18 1  
12:18 2 COMMISSIONER: These people aren't making this thing up.  
12:18 3  
12:18 4 A. I'm not suggesting they are, Commissioner.  
12:18 5  
12:18 6 COMMISSIONER: I didn't mean it in that sense. I mean in  
12:18 7 a sense they are trying to be as accurate and correct as is possible,  
12:18 8 having regard to the then state of knowledge?  
12:18 9  
12:18 10 A. Yes.  
12:18 11  
12:18 12 MS NESKOVCIN: But you agree that Crown has a duty of  
12:18 13 utmost good faith and candour with its insurer?  
12:18 14  
12:18 15 A. Does the utmost good faith obligation extend to the  
12:18 16 handling of claims? I'm not sure. It certainly does in relation to  
12:18 17 the disclosure stage in insurance. Whether it does in handling  
12:18 18 claims I think is a matter of debate. There is no doubt  
12:18 19 a pre-eminent decision by his Honour about that, but in any event  
12:19 20 certainly I accept that there is an obligation to be accurate and  
12:19 21 fulsome in the advice to the insurers.  
12:19 22  
12:19 23 Q. Thank you. That is really my point. I asked you at the start  
12:19 24 whether you accepted that Crown had an obligation to be open -  
12:19 25 sorry, that's not how I put it. I think I asked you if you agreed  
12:19 26 whether it was important for Crown to have an open, honest and  
12:19 27 constructive relationship with the regulator ---  
12:19 28  
12:19 29 A. Yes.  
12:19 30  
12:19 31 Q. --- so I didn't say "obligation" ---  
12:19 32  
12:19 33 A. Yes.  
12:19 34  
12:19 35 Q. They should, I suggest to you, be operating in effectively  
12:19 36 the same way with the regulator as they are with the insurer.  
12:19 37  
12:20 38 A. I'm not sure that I would go that far. Yeah, the regulator is  
12:20 39 making inquiries which could potentially lead to visiting very  
12:20 40 significant consequences on the company. The insurers are  
12:20 41 getting advice about what their risks are in relation to litigation  
12:20 42 and what they should do about them.  
12:20 43  
12:20 44 Q. When you are advising the insurer, you would want to tell  
12:20 45 them the worst-case scenario and make sure they are aware of all  
12:20 46 the facts?  
12:20 47

12:20 1 A. Yes, you want to appropriately describe to the insurers the  
12:20 2 financial risk to them in connection with the litigation.  
12:20 3  
12:20 4 Q. Can we go back to another point that has been a theme  
12:20 5 through the correspondence with the regulator of escalating risk  
12:21 6 and knowledge of detention. Operator, please go back to tab 20.  
12:21 7 Sorry, VCG.0001.001.8194 at \_0006. We were just on  
12:21 8 paragraph 10, Mr Murphy. I now want to go to page \_0009.  
12:21 9 You recall earlier this morning I drew your attention to  
12:21 10 paragraphs 32 to 34 ---  
12:21 11  
12:21 12 A. Yes.  
12:21 13  
12:21 14 Q. --- concerning Crown's position on what the VCGLR  
12:21 15 perceived as an escalating risk environment and knowledge of or  
12:21 16 an awareness of the crackdown, those matters?  
12:21 17  
12:21 18 A. Yes.  
12:21 19  
12:21 20 Q. And it is fair to say Crown was resisting the suggestion that  
12:22 21 there were escalating risk factors that it knew about and should  
12:22 22 have acted upon?  
12:22 23  
12:22 24 A. Yes.  
12:22 25  
12:22 26 Q. Could we please now go back to the advice that we were  
12:22 27 just on a moment ago, MEM.5000.0002.7805, and back to  
12:22 28 page 7808. You see in paragraph (d), which is under paragraph  
12:22 29 (c) that we were just on that MinterEllison are noting that:  
12:22 30  
12:22 31 REDACTED - PRIVILEGE  
12:22 32  
12:22 33  
12:22 34  
12:22 35  
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12:23 47

12:23 1 Do you accept there is a distinction between what Crown had told  
12:23 2 the insurers in that paragraph and what it was saying or  
12:23 3 conveying to the regulator at that time about [REDACTED - PRIVILEGE]  
12:23 4 [REDACTED - PRIVILEGE]  
12:23 5 [REDACTED - PRIVILEGE]  
12:23 6 A. So I would accept that this document is pointing out matters  
12:24 7 that suggest knowledge that certain Crown employees might have  
12:24 8 had at relevant times.  
12:24 9  
12:24 10 COMMISSIONER: I'm not sure why you use the word "might".  
12:24 11 The opening words are [REDACTED - PRIVILEGE]  
12:24 12 [REDACTED - PRIVILEGE]  
12:24 13 [REDACTED - PRIVILEGE]  
12:24 14 A. Yes, I accept that, Commissioner. Yes. So in the context  
12:24 15 of this advice to the insurers at this time, reference is being made  
12:24 16 [REDACTED - PRIVILEGE] evidently for the purpose of assisting in  
12:24 17 putting in context the risk that the insurers potentially face in this  
12:24 18 litigation. I don't - to my mind they don't fly in the face of  
12:25 19 making submissions to the regulator about how it should  
12:25 20 characterise those past events.  
12:25 21  
12:25 22 Q. All right. Can we go to another document, please,  
12:25 23 MEM.5002.0010.3001. This is an advice from counsel in the  
12:25 24 class action in June 2020. Do you recall seeing this advice at the  
12:25 25 time?  
12:25 26  
12:25 27 A. Yes.  
12:25 28  
12:25 29 Q. Operator, unfortunately I don't have a page number but I  
12:25 30 want to go to paragraph 185.  
12:25 31  
12:26 32 You see there another reference in this opinion to [REDACTED]  
12:26 33 [REDACTED - PRIVILEGE] Mr Murphy; do you see that?  
12:26 34  
12:26 35 A. Yes, I do.  
12:26 36  
12:26 37 Q. Then a second sentence says that [REDACTED - PRIVILEGE]  
12:26 38 [REDACTED - PRIVILEGE]  
12:26 39 [REDACTED - PRIVILEGE]  
12:26 40 [REDACTED - PRIVILEGE]  
12:26 41 [REDACTED - PRIVILEGE] You see that?  
12:26 42  
12:26 43 A. Yes.  
12:26 44  
12:26 45 Q. I want to take you to paragraph 186, just give you  
12:26 46 a moment to look at that and I will take you to the last sentence  
12:26 47 about what the discovered documents suggest.

12:26 1  
12:27 2 A. Yes.  
12:27 3  
12:27 4 Q. REDACTED - PRIVILEGE  
12:27 5 REDACTED - PRIVILEGE Can we go to  
12:27 6 the next page, please, operator. I will ask you to note some of  
12:27 7 these documents that have been identified in the discovery.  
12:27 8  
12:27 9 A. Paragraphs (c) and (d)?  
12:27 10  
12:27 11 Q. Yes, please. The point being that what this memo is doing  
12:27 12 is REDACTED - PRIVILEGE  
12:28 13 REDACTED - PRIVILEGE  
12:28 14  
12:28 15  
12:28 16 A. Yes.  
12:28 17  
12:28 18 Q. You see that?  
12:28 19  
12:28 20 A. Yes.  
12:28 21  
12:28 22 Q. Operator, could we go to paragraph 195.  
12:28 23  
12:28 24 REDACTED - PRIVILEGE Can I ask  
12:28 25 you to have a look at the last sentence in paragraph 195.  
12:28 26  
12:28 27 A. Yes.  
12:28 28  
12:28 29 Q. And have a look at sub-paragraph (a), please. And note  
12:29 30 paragraph (b).  
12:29 31  
12:29 32 A. I've read (a) and (b). Did you refer to (c)?  
12:29 33  
12:29 34 Q. No, not necessary. I will take you to another memo from  
12:29 35 counsel in September 2020. It is MEM.5004.0001.0002. This is  
12:29 36 advice that counsel in the class action gave after Mr Felstead  
12:29 37 gave evidence; do you recall seeing this?  
12:29 38  
12:29 39 A. Yes.  
12:29 40  
12:29 41 Q. And over the page, please, operator, you see in the last  
12:29 42 sentence in paragraph 5:  
12:29 43  
12:30 44 REDACTED - PRIVILEGE  
12:30 45  
12:30 46  
12:30 47

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12:32 47

REDACTED - PRIVILEGE



I ask you to note those matters, Mr Murphy.

A. Yes.

Q. Now, I want to fast-forward a couple of months. We can come back to this if you need to see any of the detail. You will recall December 2020 the hearings in the ILGA Inquiry had come to an end, and VCGLR sent Crown a letter on 22 December saying that, "we want you to agree with a number of propositions that were put by Counsel Assisting in the ILGA Inquiry, bearing in mind what Crown had said in its submissions." Do you recall that?

A. Yes, I do.

Q. We will go to that letter. It's VCG.0001.0002.3412.

Commissioner, I keep forgetting to tender documents.

COMMISSIONER: We'll do it at the end.

MS NESKOVCIN: Yes, we'll prepare a list and show our learned friends and have it tendered administratively.

This is the letter, Mr Murphy, on 22 December. It is addressed to Ms Coonan and Mr Demetriou. You saw this at the time?

A. Yes, I did.

Q. You assisted Crown in preparing a response?

A. Yes, I did.

Q. I am going to take you to some of the particular matters that the Commission raised, and then I will take you to Crown's response, but before I do that, the response was submitted to the

12:32 1 VCGLR on 22 January 2021.  
12:32 2  
12:32 3 A. Yes.  
12:32 4  
12:32 5 Q. Assume that to be the case. And it was signed off by  
12:32 6 Ms Coonan. Do you recall that?  
12:32 7  
12:32 8 A. Yes.  
12:32 9  
12:32 10 Q. Did you have any dealings with Ms Coonan in relation to  
12:32 11 finalisation of that letter?  
12:32 12  
12:32 13 A. No.  
12:32 14  
12:32 15 Q. Who did you obtain instructions from in relation to that  
12:32 16 letter?  
12:32 17  
12:32 18 A. I personally didn't obtain instructions from anybody. It was  
12:32 19 drafted by our counsel team off the back of extensive exposure to  
12:33 20 the issues in the ILGA Inquiry and the class action. So I don't  
12:33 21 recall there actually being a requirement for instructions on  
12:33 22 factual matters.  
12:33 23  
12:33 24 Q. What about the content? Did you obtain instructions from  
12:33 25 Ms Coonan or somebody else?  
12:33 26  
12:33 27 A. I didn't personally, no. So the process was that various  
12:33 28 drafts were exchanged. They may in fact at that stage have been  
12:33 29 passing between counsel and Ms Coonan, or if they were passing  
12:33 30 through us, it wasn't specifically me.  
12:33 31  
12:33 32 Q. Right. But you had some involvement in the process so  
12:34 33 you saw a draft or a final draft, or at least the final document?  
12:34 34  
12:34 35 A. Yes, I did see it, yes.  
12:34 36  
12:34 37 Q. Can I ask the operator to please go to page \_0005? This is  
12:34 38 a proposition that the VCGLR is asking Crown to accept. Do you  
12:34 39 want me to go back a page so that you can see that?  
12:34 40  
12:34 41 A. No, that's okay. I understand the context, yes.  
12:34 42  
12:34 43 Q. If you could scroll down the page, please, operator, to  
12:34 44 paragraph 7b and the VCGLR says:  
12:34 45  
12:34 46 *even if the position articulated at paragraph 65(c) of*  
12:34 47 *Crown's Submissions (namely that Crown rejects that*

12:35 1 *management appreciated that there was a material risk*  
 12:35 2 *that staff would be 'arrested and convicted for gambling*  
 12:35 3 *crimes' ..... were accepted, it was nevertheless understood*  
 12:35 4 *by Crown management that:*

12:35 5  
 12:35 6 .....  
 12:35 7

12:35 8 *b. the risk that Crown staff might be detained existed,*  
 12:35 9 *regardless of any legal interpretation which might have*  
 12:35 10 *been made or was available in respect of 'gambling*  
 12:35 11 *crimes'.*

12:35 12  
 12:35 13 In response to that, operator, could we have that on the left-hand  
 12:35 14 side of the screen and call up VCG.0001.0002.3415. There are  
 12:36 15 two paragraph 7s, I'm struggling to find the right one. Could you  
 12:36 16 go to \_0013.

12:36 17  
 12:36 18 Crown's response to 7b was as set out in b on the screen in the  
 12:36 19 right-hand side, Mr Murphy.

12:36 20  
 12:36 21 *As to the proposition that Crown understood there was*  
 12:36 22 *a risk that Crown staff might be detained existed, Crown*  
 12:36 23 *management understood that a risk that Crown staff*  
 12:36 24 *might be detained existed in the sense that the detention*  
 12:36 25 *was something conceivably possible, as it is in any*  
 12:36 26 *jurisdiction. However, Crown management, while aware*  
 12:36 27 *that questioning of staff was possible, particularly in*  
 12:37 28 *relation to the activities of their customers, never*  
 12:37 29 *understood that staff were at material risk of being*  
 12:37 30 *subject to detention in respect of Crown's activities .....*

12:37 31  
 12:37 32 Do you see that?

12:37 33  
 12:37 34 A. Yes, I do.

12:37 35  
 12:37 36 Q. Do you see that there is a tension between what the  
 12:37 37 regulator is being told in response to proposition 7b and what the  
 12:37 38 insurer is being told in the advices from Minters and from Crown  
 12:37 39 that I've taken you to?

12:37 40  
 12:37 41 A. No, I don't.

12:37 42  
 12:37 43 Q. Are you focusing on the reference to "material risk"?

12:37 44  
 12:37 45 A. Yes, I am.

12:37 46  
 12:37 47 Q. This is the point, Mr Murphy, Crown are focusing only on

12:37 1 what the regulator is putting to them instead of being transparent  
12:37 2 about what it understood and what its staff understood about the  
12:37 3 risks; do you accept that?  
12:37 4  
12:38 5 A. No, I don't accept that.  
12:38 6  
12:38 7 COMMISSIONER: I'm more interested to know what is the  
12:38 8 difference between "clearly suggest risk of arrest" and "material  
12:38 9 risk of arrest". There might be a difference, but it is not evident  
12:38 10 to me, when something "clearly suggests an event happening", to  
12:38 11 what extent is that different from there is a "material risk" of that  
12:38 12 event happening?  
12:38 13  
12:38 14 A. I don't think, Commissioner, that anybody was saying that  
12:38 15 there was evidence that clearly suggested that Crown staff were  
12:38 16 going to get detained. And nor do I think there was evidence ---  
12:38 17  
12:38 18 COMMISSIONER: So this is a bit like the difference between  
12:38 19 the balance of probabilities and beyond a reasonable doubt?  
12:38 20  
12:38 21 A. Well ---  
12:38 22  
12:38 23 COMMISSIONER: That kind of thing?  
12:38 24  
12:38 25 A. Well, I think it is important in this context, Commissioner.  
12:39 26 Did Crown - did Crown management people think that there  
12:39 27 was a material risk, a real risk, not a fanciful risk, but a material  
12:39 28 risk ---  
12:39 29  
12:39 30 COMMISSIONER: (Inaudible) I don't know who regards the  
12:39 31 risk as material. If somebody is writing to me saying, "if you  
12:39 32 don't see me again, pay my wages to my wife or my kids" or  
12:39 33 something like that, something serious is going on. You can play  
12:39 34 with words, but there is a point where you can't do that anymore.  
12:39 35  
12:39 36 A. I accept that, Commissioner. But Michael Chen is  
12:39 37 a colourful fellow who expresses himself in all sorts of different  
12:39 38 ways in different contexts. Did the senior Crown staff think there  
12:39 39 was a material risk of detentions in the country was the question.  
12:40 40  
12:40 41 COMMISSIONER: Crown executives were warned not to go to  
12:40 42 China. "Do not go"?  
12:40 43  
12:40 44 A. They were warned at one point.  
12:40 45  
12:40 46 COMMISSIONER: Not to go to China?  
12:40 47

12:40 1 A. At one point whilst things settle down, yes. But they  
 12:40 2 certainly weren't warned not to go in 2016, and the most senior  
 12:40 3 executives were going there in 2016.  
 12:40 4  
 12:40 5 COMMISSIONER: --- (speaking over) ---  
 12:40 6  
 12:40 7 A. One of them did get arrested, which - a risk that he  
 12:40 8 personally would not have run if he had thought was a material  
 12:40 9 risk of that occurring.  
 12:40 10  
 12:40 11 MS NESKOVCIN: Certainly what had become  
 12:40 12 REDACTED - PRIVILEGE  
 12:40 13 REDACTED - PRIVILEGE  
 12:41 14 REDACTED - PRIVILEGE There  
 12:41 15 were also matters being raised about recognition of the risks,  
 12:41 16 failure to escalate the risks, all relevant to Crown's risk  
 12:41 17 management framework and, therefore, suitability. Agree with  
 12:41 18 that?  
 12:41 19  
 12:41 20 A. Agree that those propositions were being put, yes.  
 12:41 21  
 12:41 22 Q. But that was not put forward by Crown to the regulator in  
 12:41 23 the course of the China Arrests Investigation?  
 12:41 24  
 12:41 25 A. No. We were making submissions, when I say "we",  
 12:41 26 Crown was making submissions to the regulator about how those  
 12:42 27 events should be characterised and to what extent, if any,  
 12:42 28 regulatory consequences should be visited on Crown as a result of  
 12:42 29 what happened. And it doesn't seem to me that the proposition  
 12:42 30 here, while obviously being carefully expressed because it is in  
 12:42 31 the context of consideration of regulatory consequences, is a fair  
 12:42 32 and reasonable characterisation of what is known to Crown, at  
 12:42 33 this point - and written earlier this year.  
 12:42 34  
 12:42 35 Q. In the course of the VCGLR's investigation, Crown had  
 12:42 36 maintained that it had a strong risk management framework?  
 12:42 37  
 12:42 38 A. Yes, that's correct.  
 12:42 39  
 12:42 40 Q. It said, "well-established risk management framework and  
 12:43 41 processes"?  
 12:43 42  
 12:43 43 A. Yes, that's correct.  
 12:43 44  
 12:43 45 Q. And it was resisting the notion, until very late in the piece,  
 12:43 46 that there was any failure on the part of its risk management  
 12:43 47 framework?

12:43 1  
12:43 2 A. Yes, it was arguing that the framework was sound, but  
12:43 3 information hadn't been elevated in the way the framework  
12:43 4 contemplated.  
12:43 5  
12:43 6 Q. But that concession only came in this document in January  
12:43 7 2021; correct?  
12:43 8  
12:43 9 A. I don't know whether there was another context in which it  
12:43 10 was made.  
12:43 11  
12:43 12 Q. To the Victorian regulator?  
12:43 13  
12:43 14 A. No, I'm not aware of a request to make a concession along  
12:43 15 those lines.  
12:43 16  
12:43 17 Q. But Crown knew the regulator had an issue with the risk  
12:44 18 management frameworks; correct?  
12:44 19  
12:44 20 A. Yes. Yes.  
12:44 21  
12:44 22 Q. And Crown's position was - it was a well-established  
12:44 23 framework?  
12:44 24  
12:44 25 A. Yes.  
12:44 26  
12:44 27 Q. It later conceded that the framework hadn't been activated,  
12:44 28 the risks hadn't been elevated; correct?  
12:44 29  
12:44 30 A. Yes, it conceded that things hadn't been done in accordance  
12:44 31 with the framework, yes.  
12:44 32  
12:44 33 Q. And at no stage prior to January 2021 did Crown volunteer  
12:44 34 that information to prevent the regulator having to worry itself  
12:44 35 about the framework, whether it was deficient, why it hadn't been  
12:44 36 activated; correct?  
12:44 37  
12:44 38 A. Yes, there wasn't - I don't think there was another context  
12:44 39 in which the regulator asked Crown something in which that  
12:44 40 would have been a relevant concession to make.  
12:44 41  
12:44 42 Q. So when I suggested to you that this was the first time this  
12:44 43 concession had been made, you said, Mr Murphy, that it was the  
12:45 44 first time it was sought ---  
12:45 45  
12:45 46 A. Yes.  
12:45 47

12:45 1 Q. --- I accept that, but my point is, it is information that could  
12:45 2 have been volunteered to save a lot of work on the part of the  
12:45 3 regulator. Was that something that Crown had some  
12:45 4 understanding of or appreciation of?

12:45 5  
12:45 6 A. No, I don't think so.

12:45 7  
12:45 8 Q. Again, it was only responding to the regulator's requests as  
12:45 9 and when required?

12:45 10  
12:45 11 A. Yes.

12:45 12  
12:45 13 Q. Now, have you read the VCGLR's decision in respect of the  
12:45 14 disciplinary action that was handed down in about April of this  
12:45 15 year?

12:45 16  
12:45 17 A. No.

12:45 18  
12:45 19 Q. I'm not sure if it's been published, but it certainly has been  
12:45 20 tendered in this Commission. I want to take you to a paragraph  
12:46 21 or two. VCG.0001.0002.6984. If we could please go to page  
12:46 22 \_0067 and paragraph 265. Just by way of context, Mr Murphy,  
12:46 23 but I'm not sure you were personally involved, but I think  
12:46 24 MinterEllison was. You recall the show cause notice issued in  
12:46 25 October 2020 in relation to four junket operators?

12:46 26  
12:46 27 A. Yes.

12:46 28  
12:46 29 Q. And a number of submissions were made in late 2020 ---

12:46 30  
12:46 31 A. Yes.

12:46 32  
12:46 33 Q. --- and then there was a hearing on 22 January 2021?

12:46 34  
12:46 35 A. Yes, I'm aware of that.

12:46 36  
12:46 37 Q. At paragraph 265 the Commission notes:

12:46 38  
12:47 39 *They are however matters that the Commission considers*  
12:47 40 *it appropriate to formerly record as part of these*  
12:47 41 *confidential reasons, particularly having regard to the*  
12:47 42 *nature of the regulatory relationship that the Commission*  
12:47 43 *considers ought to exist between Crown and the*  
12:47 44 *Commission.*

12:47 45  
12:47 46 *The first of these matters is that on 17 December 2020 the*  
12:47 47 *current chair of Crown's parent company, Crown Resorts*

12:47 1 *Ltd, Ms Helen Coonan, and others met with the*  
 12:47 2 *Commission and gave a presentation. During that*  
 12:47 3 *presentation, Ms Coonan expressed the desire of herself,*  
 12:47 4 *Crown and Crown Resorts Ltd to work collaboratively*  
 12:47 5 *with the Commission. Among other things, Ms Coonan*  
 12:47 6 *said:*

12:47 7  
 12:47 8 *"I think it is absolutely critical that we have lines of*  
 12:47 9 *communication open and that as we negotiate what I*  
 12:47 10 *would call perhaps some of our shortcomings we're able*  
 12:47 11 *to work through them together so that we do get a good*  
 12:47 12 *outcome."*

12:47 13

12:47 14 And could we scroll down further, please, operator, 270:

12:47 15

12:48 16 *The Commission considers it highly regrettable that, so*  
 12:48 17 *soon after being given a presentation which included*  
 12:48 18 *these specific statements from Ms Coonan and Mr Walsh,*  
 12:48 19 *at the hearing before the Commission on 21 January 2021*  
 12:48 20 *..... Crown would take an approach that was so clearly at*  
 12:48 21 *odds with the matters that had been expressed at the*  
 12:48 22 *meeting on 17 December .....*

12:48 23

12:48 24 Did you know about the meeting on 17 December, Mr Murphy?

12:48 25

12:48 26 A. No.

12:48 27

12:48 28 Q. So I take it you didn't know that Ms Coonan said those  
 12:48 29 things that are recorded in that decision?

12:48 30

12:48 31 A. No.

12:48 32

12:48 33 Q. So I take it you weren't in a position to dissuade her from  
 12:48 34 signing off on a letter in the terms that she did on 22 January  
 12:48 35 2021 in response to the VCGLR's request to accept a number of  
 12:48 36 propositions?

12:48 37

12:48 38 A. No.

12:48 39

12:48 40 MS NESKOVCIN: Commissioner, is that a convenient time?

12:49 41

12:49 42 COMMISSIONER: Yes, we will break until 1.30. Everybody  
 12:49 43 okay with 1.30? Okay, adjourned till then.

12:49 44

12:49 45

12:49 46 **ADJOURNED**

**[12:49P.M.]**

12:51 47

12:51 1  
13:37 2 **RESUMED** [1.34 PM]  
13:37 3  
4  
5 COMMISSIONER: Thank you.  
6  
7  
8 MS NESKOVCIN: Thank you, Mr Murphy, I just wanted to  
9 finish off on a few questions arising from matters we were  
10 discussing before the break and then we will move onto another  
11 topic.  
12  
13 To your knowledge, were the directors ever told the substance of  
14 the advice that was being given to insurers? About prospects?  
15  
16 A. Do you mean were the detailed memoranda of advice given  
17 to the directors?  
18  
19 Q. Well, let's start with that. Were the detailed memoranda of  
20 advice given to the directors?  
21  
22 A. Not to my knowledge.  
23  
24 Q. Were the directors told of the substance of the advice on  
25 prospects, for example, strong prospects, less than 50 per cent,  
26 anything of that kind?  
27  
28 A. Yes, I - yes, I believe so.  
29  
30 REDACTED - PRIVILEGE  
31  
32  
33  
34  
35  
36  
37  
38 Q. Were the directors aware of that?  
39  
40 MR BORSKY: Sorry, could I ask that my learned friend be  
41 a little more specific in her question ---  
42  
43 COMMISSIONER: Timing?  
44  
45 MR BORSKY: --- no, referring to the directors, at least directors  
46 of which entity, but preferably in my submission, which director.  
47

1 COMMISSIONER: Well, it's the Board or an individual. We  
2 can deal with that, yes.

3  
4 MS NESKOVCIN: Sorry, Mr Murphy, would you assume I'm  
5 asking about Crown Resorts Ltd in the first instance. Were the  
6 directors of Crown Resorts Ltd given the advice to insurers?

7  
8 A. Not to my knowledge.

9  
10 Q. Were the directors of Crown Resorts Ltd told the substance  
11 of the advice along the lines of

12 REDACTED - PRIVILEGE

13  
14 A. Well, at the board meetings that I attended, we - excuse me  
15 - gave an update on things to do with the class action in the  
16 lead-up to the mediation, and I think afterwards in subsequent  
17 board meetings we did comment on the prospects. Progressively,  
18 that was done by another partner who was accompanying me to  
19 those Board meetings, but ---

20  
21 Q. I see.

22  
23 A. --- so, yes, I think in a general sense we gave an update on  
24 where liability sat.

25  
26 Q. And the Board was given a recommendation in regards to  
27 settlement, for example?

28  
29 A. Well, that would have been done in the context of getting  
30 instructions for the mediation and the interest of insurers.

31  
32 Q. I see. But the information that was conveyed to the  
33 directors was that - of Crown Resorts Ltd - was that

34 REDACTED - PRIVILEGE

35 REDACTED - PRIVILEGE

36

37

38

39

40

41

42 Q. I see. Now, on the other side, the directors of Crown  
43 Melbourne Ltd, do you have any knowledge of whether they were  
44 given the advice to insurers or memoranda of advice from  
45 counsel or MinterEllison?

46

47 A. No, not that I'm aware.

- 1  
2 Q. Did you ever do a presentation to the directors of Crown  
3 Melbourne Ltd?  
4  
5 A. No.  
6  
7 Q. Did any of the directors of Crown Resorts Ltd raise with  
8 you or in your presence a tension between resisting what was  
9 being said by the VCGLR on the one hand and the assessment of  
10 prospects in the class action?  
11  
12 A. No.  
13  
14 Q. Thank you, Mr Murphy.  
15  
16 I want to discuss with you the advice that was given, or that you  
17 might have been involved in, concerning Crown's operations  
18 overseas, starting back in late 2016, early 2017. It was the case,  
19 wasn't it, that after the China arrests Crown wanted to review its  
20 overseas operations to mitigate the risk of detention in other  
21 locations?  
22  
23 A. Yes.  
24  
25 Q. And you were involved in providing advice and assistance  
26 in relation to that?  
27  
28 A. Yes, I was.  
29  
30 Q. It was described as a major workstream in which you  
31 worked with other people at Crown. Who were the other people  
32 at Crown?  
33  
34 A. Well, again, initially it would have been Debra Tegoni and  
35 Michael Neilson, and perhaps on that limb, Jan Williamson.  
36  
37 Q. Was that as far back as 2016, 2017?  
38  
39 A. Yes. I think it started in 2017.  
40  
41 Q. You presented to the Board on 22 February 2017 in relation  
42 to the China arrests?  
43  
44 A. Yes.  
45  
46 Q. But there was also mention of this workstream in your  
47 notes. So we'll go back to that to refresh, please.

1  
2 Operator, it is MEM.5000.0003.3272. Page 3273, at the end of  
3 the page.  
4  
5 Do you see that, Mr Murphy?  
6  
13:38 7 A. Yes.  
13:38 8  
13:38 9 Q. The last dot point?  
13:38 10  
13:38 11 A. Yes.  
13:38 12  
13:38 13 Q. You identified the major workstream. Did you mean to  
13:38 14 REDACTED - PRIVILEGE  
13:38 15  
13:38 16  
13:38 17  
13:38 18 A. Yes.  
13:38 19  
13:38 20 Q. Do you recall whether, in addition to obtaining legal advice,  
13:38 21 Crown also obtained strategic risk advice in relation to  
13:38 22 operating ---  
13:38 23  
13:38 24 A. Yes.  
13:38 25  
13:38 26 Q. For whom did it obtain advice at this time? Can we start  
13:38 27 with the legal advice? Because I think you mentioned this  
13:38 28 morning you weren't personally providing advice in relation to  
13:38 29 overseas jurisdictions. That advice had been obtained from local  
13:39 30 lawyers?  
13:39 31  
13:39 32 A. That's correct, yes.  
13:39 33  
13:39 34 Q. In relation to Singapore, from whom to your knowledge did  
13:39 35 Crown obtain legal advice?  
13:39 36  
13:39 37 A. I think it was Allen & Gledhill in Singapore.  
13:39 38  
13:39 39 Q. And what about Hong Kong?  
13:39 40  
13:39 41 A. I think our Hong Kong office advised on Hong Kong law.  
13:39 42  
13:39 43 Q. Was that Malcolm Chin?  
13:39 44  
13:39 45 A. Yes, that's right.  
13:39 46  
13:39 47 Q. Did you obtain any other advice from Hong Kong from any

13:39 1 other lawyers?  
13:39 2  
13:39 3 A. I don't recall. I think perhaps they had advice historically  
13:39 4 from other lawyers there. Might have been Deakins or a firm  
13:39 5 associated with Deakins.  
13:39 6  
13:39 7 Q. What about in Malaysia?  
13:39 8  
13:39 9 A. I'm afraid my recollection of the Malaysian law firm names  
13:39 10 is not good.  
13:39 11  
13:39 12 Q. No-one can criticise you there!  
13:39 13  
13:40 14 A. And I'm afraid that is going to be the case for the other  
13:40 15 jurisdictions as well. They are not Western names.  
13:40 16  
13:40 17 Q. --- (speaking over) - advice strategic risk, do you  
13:40 18 remember from whom?  
13:40 19  
13:40 20 A. Yes, there was a consultancy Hakluyt, and then  
13:40 21 subsequently FTI.  
13:40 22  
13:40 23 Q. I see. Thank you.  
13:40 24  
13:40 25 Do you recall the jurisdictions in which Crown had overseas  
13:40 26 offices?  
13:40 27  
13:40 28 A. Yes. This list is here.  
13:40 29  
13:40 30 Q. Yes. But I will also show you this document if I might,  
13:40 31 CRL.636.001.0630. The list you were just looking at doesn't  
13:41 32 include New Zealand. Do you see that?  
13:41 33  
13:41 34 A. Yes.  
13:41 35  
13:41 36 Q. And I want to show you this document.  
13:41 37 CRL.636.001.0630. Do you see that is from Ms Tegoni to you?  
13:41 38  
13:41 39 A. Yes.  
13:41 40  
13:41 41 Q. International offices summary.  
13:41 42  
13:41 43 Operator, I want to go to the next page. I'm not sure if it is  
13:41 44 a separate attachment. CRL.636.001.0631. Is that not coming  
13:41 45 up?  
13:41 46  
13:41 47 Mr Murphy, I will read out some offices and see if you agree with

13:42 1 me. In China there were representatives only?  
13:42 2  
13:42 3 A. Yes.  
13:42 4  
13:42 5 Q. In Hong Kong there was a representative office?  
13:42 6  
13:42 7 A. Yes.  
13:42 8  
13:42 9 Q. In Macau there was a representative office?  
13:42 10  
13:42 11 A. Yes.  
13:42 12  
13:42 13 Q. In Malaysia, there were two representative offices? One in  
13:42 14 Kuala Lumpur and the other in East Malaysia?  
13:42 15  
13:42 16 A. So I don't have knowledge of those so I accept if the  
13:42 17 document records those that they had them.  
13:42 18  
13:42 19 Q. There was a representative office in New Zealand; did you  
13:42 20 know that at the time?  
13:42 21  
13:42 22 A. If it is on the list I was given, yes.  
13:42 23  
13:42 24 Q. We will come to the advice that you gave, it doesn't include  
13:42 25 any advice in relation to New Zealand and wasn't an office  
13:42 26 mentioned on the list that we were just looking at in your notes  
13:42 27 for the 22 February meeting. Were you asked to give any advice  
13:43 28 in relation to New Zealand?  
13:43 29  
13:43 30 A. No, I don't think so. I think we were asked about Asian  
13:43 31 offices and New Zealand was not considered as part of Asia.  
13:43 32  
13:43 33 Q. In February 2017 it appears that you were instructed or you  
13:43 34 assisted in preparing some documents REDACTED - PRIVILEGE  
13:43 35 REDACTED - PRIVILEGE  
13:43 36  
13:43 37 A. Yes.  
13:43 38  
13:43 39 Q. Operator, could you please call up MEM.5000.0003.2976.  
13:43 40 This is an email you sent to Ms Tegoni on 14 February 2017.  
13:43 41  
13:44 42 A. Yes.  
13:44 43  
13:44 44 Q. Have you seen the description of the email, it's called "Risk  
13:44 45 matrix - operational activities offshore"; you see that?  
13:44 46  
13:44 47 A. Yes.

13:44 1  
13:44 2 Q. It says:  
13:44 3  
13:44 4 *Dear Deb and Michael - further version attached as*  
13:44 5 *discussed today.*  
13:44 6  
13:44 7 Operator, can we go to the attachment which is  
13:44 8 MEM.5000.0003.2977.  
13:45 9  
13:45 10 COMMISSIONER: Not there?  
13:47 11  
13:47 12 MS NESKOVICIN: According to your email this was a further  
13:47 13 version of a document. Is this a document that you prepared or is  
13:47 14 it a document on which you provided feedback and amendments  
13:47 15 or comments?  
13:47 16  
13:47 17 A. Yes, I believe so.  
13:47 18  
13:47 19 Q. Sorry, which is it? Did you prepare it?  
13:47 20  
13:47 21 A. No, I would have had some input and assisted in settling it,  
13:48 22 I think.  
13:48 23  
13:48 24 Q. Was this intended to REDACTED - PRIVILEGE  
13:48 25 REDACTED - PRIVILEGE  
13:48 26  
13:48 27 A. I'm not sure specifically with this document. I think it was  
13:48 28 a summary that was prepared for the purposes of REDACTED - PRIVILEGE  
13:48 29 REDACTED - PRIVILEGE  
13:48 30  
13:48 31 Q. So there may be changes between this and what was  
13:48 32 ultimately adopted?  
13:48 33  
13:48 34 A. Yes, I think so, I think this was a preparatory document, it  
13:48 35 is not REDACTED - PRIVILEGE  
13:48 36  
13:49 37 Q. I see. You see under the heading, REDACTED - PRIVILEGE  
13:49 38 REDACTED - PRIVILEGE  
13:49 39  
13:49 40  
13:49 41  
13:49 42  
13:49 43  
13:49 44  
13:49 45  
13:49 46  
13:49 47

13:49 1 You see that?

13:49 2

13:49 3 A. Yes.

13:49 4

13:49 5 Q. Certainly after the China arrest there was a prohibition that  
13:49 6 was meant to apply to all overseas staff about contacting PRC,  
13:49 7 meaning People's Republic of China ---

13:49 8

13:49 9 A. Yes.

13:49 10

13:49 11 Q. Nationals or citizens?

13:49 12

13:49 13 A. Yes.

13:49 14

13:49 15 Q. Under the regional office in Hong Kong you see where it  
13:49 16 says:

13:49 17 REDACTED - PRIVILEGE

13:49 18

13:49 19

13:49 20

13:49 21

13:49 22

13:50 23

13:50 24

13:50 25

13:50 26

13:50 27

13:50 28

13:50 29

13:50 30 Do you see that?

13:50 31

13:50 32 A. Yes.

13:50 33

13:50 34 Q. REDACTED - PRIVILEGE

13:50 35 REDACTED - PRIVILEGE

13:50 36

13:50 37

13:50 38

13:50 39

13:50 40 A. Yes.

13:50 41

13:50 42 Q. Do you agree that once the amended operating protocol was  
13:50 43 adopted, that was regarded as a permissible activity by Crown  
13:50 44 staff in Hong Kong?

13:50 45

13:50 46 A. REDACTED - PRIVILEGE

13:51 47 REDACTED - PRIVILEGE

13:51 1

13:51 2 Q. And if we pass over the next line to the third line:

13:51 3

13:51 4 REDACTED - PRIVILEGE

13:51 5

13:51 6

13:51 7

13:51 8

13:51 9

13:51 10

13:51 11

13:51 12

13:51 13

13:51 14 You see that?

13:51 15

13:51 16 A. Yes.

13:51 17

13:51 18 REDACTED - PRIVILEGE

13:51 19

13:51 20

13:51 21

13:51 22

13:51 23 Q. But otherwise, did you understand that once the amended  
13:51 24 operating model was adopted, staff based in Hong Kong could  
13:51 25 meet with non-PRC customers to cover the matters that we just  
13:51 26 discussed as gaming-related matters?

13:51 27

13:51 28 A. Yes.

13:51 29

13:51 30 Q. Could they also hand out promotional material to anyone in  
13:52 31 Hong Kong provided they were non-PRC customers?

13:52 32

13:52 33 A. I'm not sure. Did we deal separately with that subject matter?

13:52 34

13:52 35 Q. No, we might come to it and I will give you some  
13:52 36 examples. It's not, as far as I can see, in this document. But it  
13:52 37 might be in another document.

13:52 38

13:52 39 A. Yes.

13:52 40

13:52 41 Q. We'll come back to that. Can we go over the page, please,  
13:52 42 operator.

13:52 43 REDACTED - PRIVILEGE

13:52 44

13:52 45

13:52 46

13:52 47

13:52 1 Do you understand that became part of the permitted activity and  
13:53 2 the new operating model was adopted?  
13:53 3  
13:53 4 A. No, I'm not sure.  
13:53 5  
13:53 6 Q. But you understand that what this is saying at this time,  
13:53 7 first, [REDACTED - PRIVILEGE]  
13:53 8  
13:53 9 A. Yes.  
13:53 10  
13:53 11 Q. That was an expression that was used in China, wasn't it?  
13:53 12  
13:53 13 A. Yes.  
13:53 14  
13:53 15 Q. What was your understanding of what Crown meant by  
13:53 16 [REDACTED - PRIVILEGE]  
13:53 17  
13:53 18 A. A public gathering, newspaper advertising, big promotional  
13:53 19 events.  
13:53 20  
13:53 21 Q. I see.  
13:53 22  
13:53 23 A. Things of that character.  
13:53 24  
13:53 25 COMMISSIONER: Anything that was visible?  
13:53 26  
13:53 27 A. Yes. Yes.  
13:53 28  
13:53 29 MS NESKOVCIN: And that's why I asked you about  
13:53 30 promotional material. It might be a private matter to hand  
13:53 31 someone an invitation or a brochure?  
13:53 32  
13:53 33 A. Yeah, I wouldn't necessarily describe that as overt, but  
13:53 34 yeah, more in the nature of promotional events and the like,  
13:53 35 which some foreign casinos did do.  
13:53 36  
13:54 37 Q. And was that regarded - once the new operating model  
13:54 38 was adopted, was that regarded as a permitted activity in Hong  
13:54 39 Kong, by Hong Kong staff, to your knowledge?  
13:54 40  
13:54 41 A. To hand out gaming collateral?  
13:54 42  
13:54 43 Q. Yes, a gaming promotional brochure or an invitation to ---  
13:54 44 (speaking over) ---  
13:54 45  
13:54 46 A. I'm not sure. I would need to look at the detail of the  
13:54 47 protocol.

13:54 1  
13:54 2 Q. Certainly. And just going back a step, in terms of meetings  
13:54 3 with non-PRC customers to have gaming-related discussions, did  
13:54 4 you understand that that was something that was occurring in  
13:54 5 Hong Kong after the new operating model was adopted?  
13:54 6  
13:54 7 A. Yes.  
13:54 8  
13:54 9 Q. Let me try my luck on another document now. That was  
13:54 10 February 2017. So there was an entry there for Singapore and  
13:55 11 Malaysia which was inconsistent with what was ultimately  
13:55 12 adopted so I didn't take you to that. I will just let you know what  
13:55 13 I perceived to be inconsistent. In this document that we were just  
13:55 14 discussing, it talked about staff being based in Singapore and  
13:55 15 Malaysia. And you understand that that was not the model that  
13:55 16 was adopted?  
13:55 17  
13:55 18 A. Ultimately that's right, yes.  
13:55 19  
13:55 20 Q. So I didn't take you to that.  
13:55 21  
13:55 22 A. Yes.  
13:55 23  
13:55 24 Q. That was February 2017. Do you recall providing some  
13:55 25 advice in early March 2017 in relation to the various overseas  
13:55 26 jurisdictions?  
13:55 27  
13:55 28 A. Not specifically. You would need to take me to it.  
13:55 29  
13:55 30 Q. To be fair, it's probably not your advice, it is a summary of  
13:55 31 other people's advice.  
13:55 32  
13:55 33 Operator, could we please go to MEM.5000.0003.2263.  
13:55 34  
13:57 35 So, Mr Murphy, do you recall giving this advice in early March  
13:57 36 2017? I'm calling it an advice, but let's just call it a document?  
13:57 37  
13:57 38 A. Not specifically, but I will accept that it is probably around  
13:57 39 that period.  
13:57 40  
13:57 41 Q. Please do. I don't think it has got a date on it but the  
13:57 42 attachment - it was forwarded under a cover email of 3 March  
13:58 43 2017.  
13:58 44  
13:58 45 A. Yes.  
13:58 46  
13:58 47 Q. This is headed "Draft - Proposed operating model for the

13:58 1 VIP business". And you understood the VIP business to broadly  
13:58 2 be premium players?

13:58 3

13:58 4 A. Yes. There were local premium players as well, but the  
13:58 5 VIP business was offshore premium players.

13:58 6

13:58 7 Q. I see. Thank you.

13:58 8

13:58 9 If you just have a look at the notes under, REDACTED - PRIVILEGE

13:58 10 REDACTED - PRIV I didn't want to ask you any questions about that.

13:58 11 really. It seems that what REDACTED - PRIVILEGE

13:58 12 REDACTED - PRIVILEGE

13:58 13

13:58 14

13:58 15 REDACTED - PRIV

13:58 16

13:58 17

13:58 18 Q. So what I wanted to do was go to the heading, REDACTED - PRIVILEGE

13:59 19 REDACTED - PRIVILEGE operator, if we could scroll down

13:59 20 the document. It says:

13:59 21

13:59 22

13:59 23

13:59 24

13:59 25

13:59 26 We will come to that.

13:59 27

13:59 28

13:59 29

13:59 30

13:59 31 We will come to that as well.

13:59 32

13:59 33 You made a couple of other recommendations. I will just give  
13:59 34 you a moment to familiarise yourself with those.

13:59 35

13:59 36 A. Yes.

13:59 37

13:59 38 Q. If we scroll down the page, please, operator, in relation to

13:59 39 REDACTED - PRIVILEGE

13:59 40 REDACTED - PRIVILEGE

The note reports:

13:59 41

13:59 42

13:59 43

14:00 44

14:00 45

14:00 46

14:00 47

14:00 1 [REDACTED - PRIVILEGE]  
14:00 2 [REDACTED - PRIVILEGE]  
14:00 3 We will come to that.  
14:00 4 [REDACTED - PRIVILEGE]  
14:00 5 [REDACTED - PRIVILEGE]  
14:00 6 [REDACTED - PRIVILEGE]  
14:00 7 [REDACTED - PRIVILEGE]  
14:00 8 Q. And that's ultimately what Crown did?  
14:00 9 [REDACTED - PRIVILEGE]  
14:00 10 A. Yes, I believe so.  
14:00 11 [REDACTED - PRIVILEGE]  
14:00 12 Q. [REDACTED - PRIVILEGE]  
14:00 13 [REDACTED - PRIVILEGE]  
14:00 14 [REDACTED - PRIVILEGE]  
14:00 15 [REDACTED - PRIVILEGE]  
14:00 16 A. Yes.  
14:00 17 [REDACTED - PRIVILEGE]  
14:00 18 Q. We will come to that. [REDACTED - PRIVILEGE]  
14:00 19 [REDACTED - PRIVILEGE]  
14:00 20 [REDACTED - PRIVILEGE]  
14:00 21 [REDACTED - PRIVILEGE]  
14:00 22 [REDACTED - PRIVILEGE]  
14:00 23 A. Yes, I do.  
14:00 24 [REDACTED - PRIVILEGE]  
14:00 25 Q. Going to the schedules then, Schedule 1 was VIP staff in  
14:01 26 Australia. So I don't want to focus on that. Schedule 2, as the  
14:01 27 note just said, was about Hong Kong.  
14:01 28 [REDACTED - PRIVILEGE]  
14:01 29 Operator, that is 2266. So what it says here is:  
14:01 30 [REDACTED - PRIVILEGE]  
14:01 31 [REDACTED - PRIVILEGE]  
14:01 32 [REDACTED - PRIVILEGE]  
14:01 33 [REDACTED - PRIVILEGE]  
14:01 34 [REDACTED - PRIVILEGE]  
14:01 35 [REDACTED - PRIVILEGE]  
14:01 36 [REDACTED - PRIVILEGE]  
14:01 37 Do you see that?  
14:01 38 [REDACTED - PRIVILEGE]  
14:01 39 A. Yes.  
14:01 40 [REDACTED - PRIVILEGE]  
14:01 41 Q. That I think is a topic that comes up from time to time  
14:01 42 under the heading of [REDACTED - PRIVILEGE]  
14:01 43 [REDACTED - PRIVILEGE]  
14:01 44 A. Yes.  
14:01 45 [REDACTED - PRIVILEGE]  
14:01 46 Q. It was an ongoing concern for Crown?  
14:01 47 [REDACTED - PRIVILEGE]

14:01 1 A. Yes.  
14:01 2  
14:01 3 Q. It was something on which they were interested in  
14:01 4 obtaining strategic advice and intelligence, if I could put it that  
14:01 5 way, from time to time?  
14:02 6  
14:02 7 A. I wouldn't say specifically on that subject. It was part of  
14:02 8 considering what were the risks associated with operating in other  
14:02 9 jurisdictions ---  
14:02 10  
14:02 11 Q. I see.  
14:02 12  
14:02 13 A. --- and whether there was a REDACTED - PRIVILEGE  
14:02 14 REDACTED - PRIVILEGE  
14:02 15  
14:02 16 Q. And that was a concern to Crown because it had some staff  
14:02 17 members in the Hong Kong office who were Chinese nationals,  
14:02 18 or passport holders?  
14:02 19  
14:02 20 A. Yes.  
14:02 21  
14:02 22 Q. Do you recall how many?  
14:02 23  
14:02 24 A. I could give an order of magnitude, that's all.  
14:02 25  
14:02 26 Q. What would that be?  
14:02 27  
14:02 28 A. Five or six, or something of that order.  
14:02 29  
14:02 30 Q. Significant? One is significant, I would suggest.  
14:02 31  
14:02 32 A. Significant number of staff?  
14:02 33  
14:02 34 Q. Well, significant number of staff who would be REDACTED - PRIVILEGE  
14:03 35 REDACTED - PRIVILEGE  
14:03 36  
14:03 37  
14:03 38 A. Well, REDACTED - PRIVILEGE  
14:03 39 REDACTED - PRIVILEGE  
14:03 40  
14:03 41  
14:03 42 Q. I see. Thank you.  
14:03 43  
14:03 44 Under "legal system and relevant law", it is noted:  
14:03 45 REDACTED - PRIVILEGE  
14:03 46  
14:03 47

14:03 1 [REDACTED - PRIVILEGE]  
14:03 2 [REDACTED - PRIVILEGE]  
14:03 3 [REDACTED - PRIVILEGE]  
14:03 4 [REDACTED - PRIVILEGE]  
14:03 5 [REDACTED - PRIVILEGE]  
14:03 6 [REDACTED - PRIVILEGE]  
14:03 7 [REDACTED - PRIVILEGE]  
14:03 8 That's advice that you'd had from another law firm, is that correct,  
14:03 9 Mr Murphy?  
14:03 10  
14:03 11 A. I'm not sure whether at this stage I was summarising advice  
14:03 12 that Crown had previously obtained, or whether that was advice  
14:04 13 that our Hong Kong office had provided. I think the latter,  
14:04 14 actually.  
14:04 15  
14:04 16 Q. I will take you to a document to see if that assists. The next  
14:04 17 sentence says:  
14:04 18 [REDACTED - PRIVILEGE]  
14:04 19 [REDACTED - PRIVILEGE]  
14:04 20 [REDACTED - PRIVILEGE]  
14:04 21 I will let you finish reading that paragraph to yourself.  
14:04 22  
14:04 23 A. Yes.  
14:04 24  
14:04 25 Q. And then it says:  
14:04 26 [REDACTED - PRIVILEGE]  
14:04 27 [REDACTED - PRIVILEGE]  
14:04 28 [REDACTED - PRIVILEGE]  
14:04 29 [REDACTED - PRIVILEGE]  
14:04 30 [REDACTED - PRIVILEGE]  
14:04 31 [REDACTED - PRIVILEGE]  
14:04 32 You see that?  
14:04 33  
14:04 34 A. Yes.  
14:04 35  
14:04 36 Q. Sorry, I think - the approach or the advice was along the  
14:04 37 lines of [REDACTED - PRIVILEGE]  
14:04 38 [REDACTED - PRIVILEGE]  
14:04 39 A. Yes.  
14:04 40  
14:04 41 Q. And then you say, [REDACTED - PRIVILEGE]  
14:04 42 [REDACTED - PRIVILEGE]  
14:05 43 [REDACTED - PRIVILEGE]  
14:05 44 [REDACTED - PRIVILEGE]  
14:05 45 A. Yes.  
14:05 46  
14:05 47 Q. If we could just pass over the page, operator, to the do's and

14:05 1 don'ts, and could we focus on the don'ts, please, operator. If you  
14:05 2 could just familiarise yourself with those, Mr Murphy. REDACTED - PRIVILEGE

14:05 3 REDACTED - PRIVILEGE

14:05 4

14:05 5 A. Yes.

14:05 6

14:05 7 REDACTED - PRIVILEGE

14:05 8

14:05 9

14:05 10

14:05 11

14:05 12

14:05 13 Q. I think you answered this before, as you understood it, that  
14:05 14 occurred in the future?

14:05 15

14:05 16 A. Yes.

14:05 17

14:05 18 Q. Now, over the page, please, operator, this is the summary in  
14:05 19 other jurisdictions.

14:05 20

14:05 21 I will get you to note what is said in the second sentence REDACTED

14:06 22 REDACTED - PRIVILEGE Do you see that, REDACTED - PRIVILEGE

14:06 23 REDACTED - PRIVILEGE

14:06 24 REDACTED - PRIVILEGE

14:06 25

14:06 26 A. Yes.

14:06 27

14:06 28 Q. And if we look at REDACTED - PRIVILEGE And I just ask you to note the  
14:06 29 advice in the third paragraph on the third column:

14:06 30

14:06 31 REDACTED - PRIVILEGE

14:06 32 REDACTED - PRIVILEGE

14:06 33 REDACTED - PRIVILEGE

14:06 34

14:06 35 A. Yes.

14:06 36

14:06 37 Q. Someone has advised REDACTED there. If we pass to  
14:06 38 REDACTED - PRIVILEGE The second paragraph in the third column:

14:06 39

14:06 40 REDACTED - PRIVILEGE

14:06 41 REDACTED - PRIVILEGE

14:07 42

14:07 43 A. Yes.

14:07 44

14:07 45 Q. I'm highlighting REDACTED - PRIVILEGE because I am  
14:07 46 going to come back to those countries. We can come back to it  
14:07 47 later, REDACTED - PRIVILEGE

14:07 1 [REDACTED - PRIVILEGE] [REDACTED - PRIVILEGE]

14:07 2 [REDACTED - PRIVILEGE] That was

14:07 3 the advice at the time?

14:07 4

14:07 5 A. Yes.

14:07 6

14:07 7 Q. And 2270, please, operator.

14:07 8

14:07 9 [REDACTED - PRIVILEGE]

14:07 10 [REDACTED - PRIVILEGE] That

14:07 11 is what it is intended to mean?

14:07 12

14:07 13 A. Yes.

14:07 14

14:07 15 Q. So Crown wasn't going to have any other offices but people

14:07 16 from Australia or Hong Kong might visit those countries?

14:07 17

14:07 18 A. Yes.

14:07 19

14:07 20 Q. Can I ask you to focus on the don'ts at the bottom of the

14:08 21 page, again, [REDACTED - PRIVILEGE]

14:08 22 [REDACTED - PRIVILEGE]

14:08 23

14:08 24 A. Yes.

14:08 25

14:08 26 Q. Can I just draw your attention to the fourth dot point under

14:08 27 the "don't" column. [REDACTED - PRIVILEGE]

14:08 28

14:08 29 A. Yes.

14:08 30

14:08 31 Q. [REDACTED - PRIVILEGE]

14:08 32 [REDACTED - PRIVILEGE]

14:08 33 [REDACTED - PRIVILEGE]

14:08 34 [REDACTED - PRIVILEGE]

14:08 35 [REDACTED - PRIVILEGE]

14:08 36

14:08 37 Q. I want to show you advice from your colleagues in Hong

14:08 38 Kong in relation to the law in Hong Kong.

14:08 39

14:08 40 Operator, CRW.008.019.8108.

14:08 41

14:09 42 So this is an email that you forwarded to Ms Tegoni and

14:09 43 Ms Williamson. Sorry, I mispronounced Mr Chin's surname,

14:09 44 Malcolm Chin sent you responses embedded in the document in

14:09 45 red font?

14:09 46

14:09 47 A. Yes.

14:09 1  
14:09 2 Q. Operator, could we go down to 8109.  
14:09 3  
14:09 4 Mr Murphy, you asked questions and Mr Chin has directed his  
14:09 5 responses in red font; do you see that?  
14:09 6  
14:09 7 A. Yes.  
14:09 8  
14:09 9 Q. Can I direct you to a third of the way down:  
14:09 10  
14:09 11 REDACTED - PRIVILEGE  
14:09 12  
14:09 13  
14:09 14  
14:09 15  
14:10 16  
14:10 17  
14:10 18  
14:10 19  
14:10 20  
14:10 21  
14:10 22  
14:10 23  
14:10 24  
14:10 25  
14:10 26  
14:10 27  
14:10 28  
14:10 29  
14:10 30  
14:10 31  
14:10 32  
14:10 33  
14:10 34  
14:10 35  
14:10 36  
14:10 37  
14:10 38  
14:10 39  
14:10 40  
14:10 41  
14:11 42  
14:11 43  
14:11 44  
14:11 45  
14:11 46  
14:11 47

14:11 1  
14:11 2 Do you see that?

14:11 3

14:11 4 A. Yes.

14:11 5

14:11 6 Q. And he says:

14:11 7

14:11 8

14:11 9

14:11 10

14:11 11

14:11 12

14:11 13

14:11 14

14:11 15

14:11 16

14:11 17

14:11 18

14:11 19

14:11 20

14:11 21

14:11 22

14:11 23

14:11 24

14:11 25

14:11 26

14:11 27

14:11 28 A. Yes.

14:11 29

14:11 30 Q. This is March 2017. Do you recall presenting to the Board  
14:12 31 in April 2017 in relation to the revised operating model for  
14:12 32 overseas?

14:12 33

14:12 34 A. Yes.

14:12 35

14:12 36 Q. You presented a paper and ultimately the Board had  
14:12 37 a discussion about the new operating model?

14:12 38

14:12 39 A. Yes.

14:12 40

14:12 41 Q. I'm just going to show you a document that records the  
14:12 42 outcome of the meeting just so that we are all on the same  
14:12 43 page about what was accepted in April 2017, if that's all right.

14:12 44

14:13 45 Operator, please call up CRL.506.007.5589. Page 5597.

14:13 46

14:13 47 I don't know what happens there, but it is like magic?

14:13 1  
14:13 2 These are the minutes or the pack for December 2018 but it is  
14:14 3 setting out a history of what had occurred in relation to the VIP  
14:14 4 business in Australia and the note records that:  
14:14 5  
14:14 6 *At its meeting on 27 April 2017, the Board noted that*  
14:14 7 *after consultation with individual members of the Risk*  
14:14 8 *Management Committee, management had implemented*  
14:14 9 *a restructure of the VIP business model for operations in*  
14:14 10 *Asia which, amongst other elements, involved:*  
14:14 11  
14:14 12 *- the establishment of a regional hub in Hong Kong;*  
14:14 13  
14:14 14 *- the closure of other Asian offices and the relocation of*  
14:14 15 *staff to Hong Kong;*  
14:14 16  
14:14 17 *- the development of detailed operating protocols,*  
14:14 18 *including periodic review of those protocols, and*  
14:14 19 *appropriate training; and*  
14:14 20  
14:14 21 *- the appointment of a dedicated Compliance Officer in*  
14:14 22 *Hong Kong.*  
14:14 23  
14:14 24 That was consistent with your understanding of what occurred in  
14:14 25 April 2017, Mr Murphy?  
14:14 26  
14:14 27 A. Yes.  
14:14 28  
14:14 29 Q. You see the third dot point about the development of  
14:14 30 operating protocols. Did you assist in developing any detailed  
14:15 31 operating protocols?  
14:15 32  
14:15 33 A. Yes.  
14:15 34  
14:15 35 Q. Can I show you this document to see if it is one you were  
14:15 36 involved in, please. CRW.510.050.0420. You see this is dated  
14:15 37 12 April 2017?  
14:15 38  
14:15 39 A. Yes.  
14:15 40  
14:15 41 Q. We'll pass through it slowly.  
14:15 42  
14:15 43 The next page, please, operator.  
14:15 44  
14:15 45 It is just a contents page. Do you see that?  
14:15 46  
14:15 47 A. Yes.

14:15 1  
14:15 2 Q. The next page, please, operator. The overview page. Can  
14:15 3 we go to 0424, please, operator.  
14:15 4  
14:16 5 *Main points to remember:*  
14:16 6  
14:16 7 - *Travel on the PRC ..... is prohibited.*  
14:16 8 - *outbound sales, marketing activities or initiating contact*  
14:16 9 *with PRC customers is prohibited.*  
14:16 10  
14:16 11 And so on.  
14:16 12  
14:16 13 A. Yes.  
14:16 14  
14:16 15 Q. Now, I want to take you to permissible activities for the  
14:16 16 various locations in Asia. Operator, could we go to 0426 of that  
14:16 17 document. These are:  
14:16 18  
14:16 19 *Outbound sales contact with customers and potential*  
14:16 20 *customers except any PRC Customers can occur in*  
14:16 21 *accordance with the following timetable.*  
14:16 22  
14:16 23 Australia gets a tick on everything. Ignore the UK, please,  
14:16 24 Mr Murphy. For Hong Kong, as I read that document, everything  
14:16 25 there is permitted except for travel arrangements; do you see that?  
14:16 26  
14:17 27 A. Yes.  
14:17 28  
14:17 29 Q. And then for any other location in Asia, the only things that  
14:17 30 are permitted are outbound calls in relation to Crown facilities  
14:17 31 and events being non-gaming and travel preferences; is that  
14:17 32 correct?  
14:17 33  
14:17 34 A. Yes.  
14:17 35  
14:17 36 Q. Can we go to the next screen, please, operator.  
14:17 37  
14:17 38 This is outbound marketing contact. You will see again that  
14:17 39 everything there is permitted in Hong Kong, but when we look at  
14:17 40 other locations in Asia, the only thing that is permitted is  
14:17 41 non-gaming marketing; do you see that?  
14:17 42  
14:17 43 A. Yes.  
14:17 44  
14:17 45 Q. The next page, please, operator, is on inbound calls. The  
14:18 46 same points apply in relation to inbound as to outbound, in Hong  
14:18 47 Kong everything is okay except travel?

14:18 1  
14:18 2 A. Yes. And in any other location in Asia, only non-gaming  
14:18 3 inbound calls and travel preferences was allowed?  
14:18 4  
14:18 5 A. Yes.  
14:18 6  
14:18 7 Q. This is about inbound calls with junket operators. Won't  
14:18 8 worry about that. Go to the next one, please, operator.  
14:18 9  
14:18 10 These are prohibited activities, so these all concern - apply to  
14:18 11 PRC customers, everything was prohibited.  
14:18 12  
14:18 13 Then the next page again, please, operator, this is about visits to  
14:19 14 other countries. I will give you a moment to have a look at that.  
14:19 15  
14:19 16 A. Yes.  
14:19 17  
14:19 18 Q. Over the page again, please, operator.  
14:19 19  
14:19 20 The prohibited activities in relation to all of those matters on  
14:19 21 visits to relevant Asian countries; do you see that?  
14:19 22  
14:19 23 A. Yes.  
14:19 24  
14:19 25 Q. I'm not going to take you through the rest of the slides  
14:19 26 because they relate to other matters, like gifts, privacy,  
14:19 27 travel-approved devices, debt collection, that sort of thing.  
14:19 28  
14:19 29 A. Yes.  
14:19 30  
14:19 31 Q. So the slides or the notes I've just taken you to you will  
14:19 32 recall deal with outbound sales and inbound sales and said  
14:20 33 nothing about meetings?  
14:20 34  
14:20 35 A. Yes.  
14:20 36  
14:20 37 Q. In this document?  
14:20 38  
14:20 39 A. Yes.  
14:20 40  
14:20 41 Q. But in the document I took you to - the risk matrix table in  
14:20 42 February 2017 had some discussion about meetings, and you  
14:20 43 agree with me that meetings, one-on-one meetings by staff in  
14:20 44 Hong Kong with non-PRC customers was not prohibited?  
14:20 45  
14:20 46 A. In Hong Kong?  
14:20 47

14:20 1 Q. Yes.  
14:20 2  
14:20 3 A. Yes.  
14:20 4  
14:20 5 Q. And did occur?  
14:20 6  
14:20 7 A. Yes, correct.  
14:20 8  
14:20 9 Q. Including in relation to gaming elements, is that right?  
14:20 10  
14:20 11 A. Yes.  
14:20 12  
14:20 13 Q. Now I want to ask about a document, Mr Murphy, that you  
14:20 14 won't have seen and you didn't prepare, but I want to see if it is  
14:20 15 based on advice that you've given, as best as you can recall.  
14:20 16  
14:21 17 Operator, can you please call up CRW.512.045.0028.  
14:21 18  
14:21 19 This is a document that Ms Williamson prepared in January 2021.  
14:21 20 REDACTED - PRIVILEGE  
14:21 21  
14:21 22  
14:21 23 A. No.  
14:21 24  
14:21 25 Q. Were you aware that Crown obtained some advice or  
14:21 26 assistance from Herbert Smith Freehills earlier this year REDACTED  
14:21 27 REDACTED - PRIVILEGE  
14:21 28  
14:21 29 MR BORSKY: Sorry to interrupt my learned friend again but I'm  
14:21 30 instructed, as will be unsurprising, there is a claim for privilege in  
14:21 31 respect of this document, and it is a document, as my learned  
14:21 32 friend adverted to, Mr Murphy hasn't seen before. So we do seek,  
14:22 33 within the confines of our ability, to maintain the privilege and  
14:22 34 confidentiality. Of course it is a matter for the Commissioner  
14:22 35 whether that's to be overridden by showing the document and its  
14:22 36 contents to Mr Murphy, but we formally resist that.  
14:22 37  
14:22 38 MS NESKOVCIN: Can I make some submissions about that,  
14:22 39 Commissioner?  
14:22 40  
14:22 41 I want to explore with Mr Murphy whether aspects of this  
14:22 42 document reflect advice that he's given because it is directly  
14:22 43 contrary to the advice that he gave in March 2017 in relation to  
14:22 44 Hong Kong. And, based on answers that Mr Murphy has given,  
14:22 45 if Crown was undertaking or carrying out activities in Hong Kong  
14:22 46 along the lines of what Mr Murphy has indicated in his evidence,  
14:22 47 according to his instructions, namely meetings in small groups on

14:22 1 gaming-related matters, it would suggest that Crown was  
14:23 2 operating contrary to its own legal advice according to this  
14:23 3 document prepared by Ms Williamson.  
14:23 4  
14:23 5 Now, they are matters that go to suitability and we wish to  
14:23 6 explore that in the Commission through Mr Murphy and  
14:23 7 ultimately through other Crown witnesses.  
14:23 8  
14:23 9 COMMISSIONER: You might be able to do that at least in part  
14:23 10 by asking him questions, without Mr Murphy actually reading the  
14:23 11 document.  
14:23 12  
14:23 13 MS NESKOVCIN: I certainly could, but I think it would be  
14:23 14 more convenient and expeditious to show the document, but I'm  
14:23 15 happy to read it to Mr Murphy and ---  
14:23 16  
14:23 17 COMMISSIONER: That would be the same. Is this  
14:23 18 an internal ---  
14:23 19  
14:23 20 MS NESKOVCIN: As you can see this document is a document  
14:23 21 from Ms Williamson to Kyle Wombolt who is a solicitor or  
14:24 22 partner at Freehills in Hong Kong and is being asked to give  
14:24 23 advice <sup>REDACTED - PRIVILEGE</sup> and that is in  
14:24 24 a different document. But in this document Ms Williamson  
14:24 25 says ---  
14:24 26  
14:24 27 COMMISSIONER: Just show me the paragraph.  
14:24 28  
14:24 29 MS NESKOVCIN: I'll just read the first sentence, please,  
14:24 30 Commissioner, and note what Ms Williamson says about "I attach  
14:24 31 summaries I prepared".  
14:25 32  
14:25 33 COMMISSIONER: So I follow it, is the question going to be  
14:25 34 whether the advice to which Williamson refers - or one of the  
14:25 35 advices, because it is in plural - to which Williamson refers  
14:25 36 includes advice from Mr Murphy.  
14:25 37  
14:25 38 MS NESKOVCIN: Or advice he's seen previously. Mr Murphy  
14:25 39 also said that ---  
14:25 40  
14:25 41 COMMISSIONER: It might be different.  
14:25 42  
14:25 43 MS NESKOVCIN: It might be, but what we are trying to  
14:25 44 establish is insofar as this document or the attachments to the  
14:25 45 document reflect advice that Crown had obtained ---  
14:25 46  
14:25 47 COMMISSIONER: From?

14:25 1  
14:25 2 MS NESKOVCIN: --- not from Mr Murphy but from other  
14:25 3 sources, was it overtaken by advice that Mr Murphy got? Were  
14:25 4 they forum shopping or advice shopping?  
14:25 5  
14:26 6 COMMISSIONER: You could legitimately ask Mr Murphy  
14:26 7 whether he agrees with certain propositions without worrying  
14:26 8 about the source. "Do you agree that in Macau you are allowed  
14:26 9 to do X?"  
14:26 10  
14:26 11 MS NESKOVCIN: Yes.  
14:26 12  
14:26 13 COMMISSIONER: Do it that way.  
14:26 14  
14:26 15 MS NESKOVCIN: All right.  
14:26 16  
14:26 17 COMMISSIONER: Long hand.  
14:26 18  
14:26 19 MR BORSKY: This document needs to be removed from the  
14:26 20 screen visible to Mr Murphy, please.  
14:26 21  
14:26 22 COMMISSIONER: I don't think he can see it.  
14:26 23  
14:26 24 A. I haven't read it.  
14:26 25  
14:26 26 COMMISSIONER: Good.  
14:26 27  
14:26 28 MR BORSKY: That will satisfy me, thank you.  
14:26 29  
14:26 30 COMMISSIONER: Okay.  
14:26 31  
14:27 32 While you are working on that, I assume, Mr Borsky, that there is  
14:27 33 no possibility that Mr Murphy was one of the - Mr Murphy's  
14:27 34 advice or his firm's advice is not one of the advices that  
14:27 35 Williamson relies on to prepare her document?  
14:27 36  
14:27 37 MR BORSKY: That's my ---  
14:27 38  
14:27 39 COMMISSIONER: It's not a question of understanding. If the  
14:27 40 position is it has nothing to do with MinterEllison, then your  
14:27 41 privilege claim is okay. If it has something to do with  
14:27 42 MinterEllison or Mr Murphy, if it is his advice, he's privy to the  
14:27 43 communication and can look at it.  
14:27 44  
14:27 45 MR BORSKY: I accept what you put to me and I will check  
14:27 46 again. Yes.  
14:27 47

14:27 1 COMMISSIONER: All right. I want to be absolutely clear that  
14:27 2 the source of the advice is not Mr Murphy or his firm.  
14:27 3  
14:27 4 MR BORSKY: Yes, I understand.  
14:27 5  
14:27 6 COMMISSIONER: Okay.  
14:28 7  
14:28 8 MS NESKOVCIN: I just want to deal with Hong Kong to start  
14:28 9 with, please, Mr Murphy. As at the time that you advised Crown  
14:28 10 in March 2017, was it your understanding, based on advice that  
14:28 11 you had been given by local lawyers that REDACTED - PRIVILEGE  
14:28 12 REDACTED - PRIVILEGE  
14:28 13 REDACTED - PRIVILEGE  
14:28 14 REDACTED - PRIVILEGE  
14:28 15 REDACTED - PRIVILEGE  
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14:29 28  
14:29 29 Q. Did you understand there to be a distinction, or at least  
14:29 30 a distinction made internally at Crown between above-the-line  
14:29 31 advertising and below-the-line promotion?  
14:29 32  
14:29 33 A. No. I don't understand that distinction.  
14:29 34  
14:30 35 Q. Did you understand - I note your answer. Did you  
14:30 36 understand above-the-line advertising or marketing to be  
14:30 37 advertising or marketing directed to the general public?  
14:30 38  
14:30 39 A. I didn't know it was described that way, but ---  
14:30 40  
14:30 41 Q. Don't agree just because it sounds reasonable ---  
14:30 42  
14:30 43 A. Sure.  
14:30 44  
14:30 45 Q. --- I'm asking you specifically about how Crown  
14:30 46 understood or used the term "above-the-line advertising" or  
14:30 47 marketing and whether you understood they used it to refer to

14:30 1 marketing directed to the general public.

14:30 2

14:30 3 A. No, I don't know.

14:30 4

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14:31 14 A. You might need to take me back to the summary of the  
14:31 15 advice that we went through in 2017 but my understanding at all  
14:31 16 times is as was summarised in that document.

14:31 17

14:31 18 Q. I'm going ---

14:31 19

14:31 20 A. Does that document deal with what is being referred to as

14:31 21 REDACTED - PRIVILEGE

14:31 22

14:31 23 Q. No, so I'm going to get the document shown on your screen  
14:31 24 so you can refer to it while I ask you these questions.

14:31 25

14:31 26 Again, operator, MEM.5000.003.2263. It was one that was  
14:32 27 emailed to you, operator. It is at page 2266. So this is in relation  
14:32 28 to Hong Kong. As I read it, there is nothing about REDACTED - PRIVILEGE  
14:32 29 REDACTED - PRIVILEGE, it is all about gambling, gambling  
14:32 30 activities, what is expressly outlawed and so on. Do you see that?

14:32 31

14:32 32 A. Yes.

14:32 33

14:32 34 Q. I will move on to REDACTED - PRIVILEGE

14:32 35 REDACTED - PRIVILEGE to be a term that Crown  
14:32 36 used internally?

14:32 37

14:32 38 A. No.

14:32 39

14:32 40 Q. Did you understand that Crown used the term

14:33 41 REDACTED - PRIVILEGE

14:33 42

14:33 43

14:33 44 A. No.

14:33 45

14:33 46 Q. Did you understand, based on the advice you'd received in  
14:33 47 relation to the law in Hong Kong in March 2017, REDACTED - PRIVILEGE

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14:33 10  
14:33 11  
14:33 12  
14:33 13  
14:33 14  
14:34 15 Q. If I could just ask the operator to move to the next page of  
14:34 16 this document, I want to ask you some questions about Malaysia.  
14:34 17 The next document again, please, operator. Could we scroll  
14:34 18 down to the section on Malaysia.  
14:34 19  
14:34 20 You note there that in March 2017, Mr Murphy, based on advice  
14:35 21 you received from local lawyers, you summarised in this  
14:35 22 document that REDACTED - PRIVILEGE  
14:35 23 REDACTED - PRIVILEGE; do you see that?  
14:35 24  
14:35 25 A. Yes.  
14:35 26  
14:35 27 Q. And bearing in mind that this is a summary ---  
14:35 28  
14:35 29 A. Yes.  
14:35 30  
14:35 31 Q. --- and there may be other documents that sit behind it ---  
14:35 32  
14:35 33 A. Yes.  
14:35 34  
14:35 35 Q. --- based on the advice you had received in March 2017  
14:35 36 from local lawyers in Malaysia. REDACTED - PRIVILEGE  
14:35 37 REDACTED - PRIVILEGE  
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14:36 46  
14:36 47

14:36 1  
14:36 2 Q. I know you said you didn't have an understanding about  
14:36 3 above the line or below the line, I didn't qualify that in relation to  
14:36 4 any particular country. In relation to Malaysia, did you  
14:36 5 understand above-the-line advertising or marketing to have any  
14:36 6 particular meaning or to be a term used by Crown internally?  
14:36 7  
14:36 8 A. No.  
14:36 9  
14:36 10 Q. In Malaysia, did you understand it to be illegal to conduct  
14:37 11 above-the-line advertising directed to promoting gambling of  
14:37 12 foreign casinos?  
14:37 13  
14:37 14 A. So, if by "above the line" you mean sort of large-scale  
14:37 15 promotion to the public, then I understood that to be illegal.  
14:37 16  
14:37 17 Q. Yes. Thank you.  
14:37 18  
14:37 19 COMMISSIONER: "Above the line", I've got no idea what it  
14:37 20 means, but it might mean, when contrasted with "below the line",  
14:37 21 one open and the other clandestine.  
14:37 22  
14:37 23 MS NESKOVCIN: No, Commissioner, no.  
14:37 24  
14:37 25 COMMISSIONER: Okay, forget it.  
14:37 26  
14:37 27 MS NESKOVCIN: We will at one point go to that, but I won't  
14:37 28 explain that in front of Mr Murphy.  
14:37 29  
14:37 30 COMMISSIONER: I'm butting out, don't listen to me.  
14:37 31  
14:37 32 I did have one question on privilege. It is an interesting  
14:37 33 question - it might have been overtaken by events. I remember  
14:37 34 reading in Wigmore a long time ago, I haven't had a need to read  
14:38 35 that Wigmore for a very long time, there was a debate about  
14:38 36 whether advice from foreign lawyers was protected by privilege.  
14:38 37 I know there are cases that have looked at it, is there  
14:38 38 an authoritative answer to that as opposed to musings by judges?  
14:38 39  
14:38 40 MR BORSKY: The short answer is it is privileged,  
14:38 41 notwithstanding that the advice is from foreign lawyers, but we  
14:38 42 can assist you in more detail at an appropriate time if you would  
14:38 43 like.  
14:38 44  
14:38 45 COMMISSIONER: Just interesting.  
14:38 46  
14:38 47 MR BORSKY: Okay. While I'm on my feet, if I may, we are

14:38 1 having urgent inquiries made to get to the absolute bottom of  
14:38 2 your question, Commissioner, but I am instructed to confirm at  
14:38 3 least this much: none of the advices to which reference was made  
14:38 4 in that email were MinterEllison's advices.

14:38 5  
14:38 6 COMMISSIONER: (Nods head).

14:38 7  
14:38 8 MR BORSKY: And for completeness, because I'm conscious  
14:38 9 that we are inconveniently but not deliberately prolonging my  
14:38 10 friend's cross-examination, we did raise this in correspondence  
14:39 11 with Solicitors Assisting yesterday, and we were told by  
14:39 12 Solicitors Assisting that arrangements would be put in place so  
14:39 13 that MinterEllison do not have access to the documents. So I  
14:39 14 apologise for the inconvenience, but it's not our fault.

14:39 15  
14:39 16 MS NESKOVCIN: No inconvenience, and Mr Borsky is right,  
14:39 17 we agreed that the documents wouldn't go to Mr Murphy. I  
14:39 18 thought I would try and show them to him because I thought I had  
14:39 19 established some groundwork to do that and we were in a closed  
14:39 20 session, but I'm able to continue. Thank you.

14:39 21  
14:39 22 COMMISSIONER: Yes.

14:39 23  
14:39 24 MS NESKOVCIN: Finally in relation to Malaysia, REDACTED - PRIVILEGE

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14:41 1 A. Yes.  
14:41 2  
14:41 3 Q. Then if we go forward to page 5596 you see at the bottom  
14:41 4 of the page, "General Update and VIP Operating Model"?  
14:41 5  
14:41 6 A. Yes.  
14:41 7  
14:41 8 Q. And in page 5597 we had earlier discussed the dot point  
14:42 9 mentioning the meeting on 27 April 2017.  
14:42 10  
14:42 11 A. Yes.  
14:42 12  
14:42 13 Q. Scrolling down further, please, operator. At the top of the  
14:42 14 page it says:  
14:42 15  
14:42 16 *The detailed operating protocols contemplate that staff*  
14:42 17 *based in Hong Kong ..... may visit other Asian centres .....*  
14:42 18  
14:42 19 You see that?  
14:42 20  
14:42 21 A. Yes.  
14:42 22  
14:42 23 Q. The next dot point, I will allow you to read that to yourself,  
14:42 24 please, Mr Murphy.  
14:42 25  
14:42 26 A. Yes.  
14:42 27  
14:42 28 Q. And then the next dot point:  
14:42 29  
14:43 30 *Recently, in an effort to better understand local*  
14:43 31 *enforcement risks in key centres, the company engaged*  
14:43 32 *MinterEllison to assist in ascertaining the local, political,*  
14:43 33 *legal and cultural environment affecting the enforcement*  
14:43 34 *of gaming-related laws in specified Asian countries and*  
14:43 35 *MinterEllison engaged Hakluyt, an international strategic*  
14:43 36 *intelligence and advisory firm, to provide input.*  
14:43 37  
14:43 38 You mentioned earlier strategic advice was sought from Hakluyt.  
14:43 39 According to your instructions, why was it necessary to obtain  
14:43 40 strategic intelligence and strategic advice from Hakluyt if what  
14:43 41 Crown was doing was legal in other countries?  
14:43 42  
14:43 43 A. So the application of foreign laws involves the assessment  
14:44 44 of what the law actually says, how it might be interpreted, and  
14:44 45 how it might be enforced and what are the politics around  
14:44 46 enforcement. And, in countries where the law is not clearly  
14:44 47 expressed, how it is going to be interpreted in terms of what it

14:44 1 means in relation to day-to-day activities, such as the activities  
14:44 2 that were broken down in that summary, is often unclear, and  
14:44 3 different views could potentially be taken about it. So you need  
14:44 4 to understand whether there is an environment in which particular  
14:44 5 views in relation to the enforcement of the law might be taken.

14:44 6

14:44 7 COMMISSIONER: Can I ask, is that a - leaving aside the  
14:44 8 political aspect, which I get, that is a problem that you not  
14:45 9 infrequently confront with code countries rather than common  
14:45 10 law countries, where there is a set of precedents and you go and  
14:45 11 read a lot of books which will tell you how a particular statute  
14:45 12 and law is understood and to be applied, but you don't get that in  
14:45 13 code countries?

14:45 14

14:45 15 A. Yes, that's correct, Commissioner.

14:45 16

14:45 17 MS NESKOVCIN: Was it a particular problem because there  
14:45 18 was a perception that advertising an integrated resort might be  
14:45 19 considered to be advertising the gaming aspect of the resort and  
14:45 20 therefore be caught by prohibitions against promoting of gambling  
14:45 21 in jurisdictions like Malaysia and Singapore?

14:45 22

14:45 23 A. Yes. So there is the question of where is the line going to  
14:45 24 be drawn between promoting hotel facilities and entertainment  
14:45 25 facilities and the experience of being at an integrated resort and to  
14:46 26 what extent is it going to be interpreted as straying into gambling  
14:46 27 or gaming activity.

14:46 28

14:46 29 Q. Operator, can we scroll down this page so that the end can  
14:46 30 be seen, thank you.

14:46 31

14:46 32 You see after the dot point, Mr Murphy, it says:

14:46 33

14:46 34

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14:46 37

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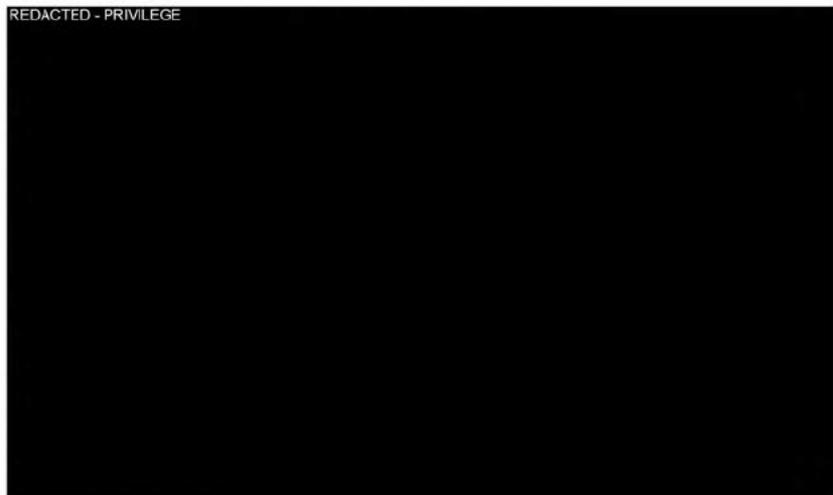
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14:46 1  
14:46 2 Do you see that?

14:46 3  
14:46 4 A. Yes.

14:46 5  
14:46 6 Q. You will recall that in March 2017 your advice REDACTED - P

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14:47 16 Q. And then the next dot point:

14:47 17

14:47 18

14:47 19

14:47 20

14:47 21

14:47 22

14:47 23 You see that?

14:47 24

14:47 25 A. Yes.

14:47 26

14:47 27

14:47 28

14:47 29

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14:48 45 A. Enforcement risk.

14:48 46

14:48 47 Q. And why was that?

14:48 1  
14:48 2 A. Because the advice had been that the advice from Hakluyt,  
14:48 3 I think it was, had been that it was potentially particularly  
14:48 4 offensive for Muslim people to be associated with anything to do  
14:48 5 with gambling.  
14:48 6  
14:48 7 Q. And just to be clear, so that was not directed to the legality  
14:48 8 of the conduct, it was directed to it giving rise to enforcement  
14:48 9 risk?  
14:48 10  
14:48 11 A. Yes, that's right.  
14:48 12  
14:48 13 COMMISSIONER: Can I ask, the local staff, that is Crown staff,  
14:48 14 going to do things in Singapore, what kind of non-gaming  
14:49 15 conduct - they weren't go to the export/import business. What  
14:49 16 were they doing there if it was not gaming related?  
14:49 17  
14:49 18 A. Entertainment.  
14:49 19  
14:49 20 COMMISSIONER: What kind?  
14:49 21  
14:49 22 A. So going out to lunches and dinners and ---  
14:49 23  
14:49 24 COMMISSIONER: With local people?  
14:49 25  
14:49 26 A. Yes, with the patrons. So if it was a substantial Crown  
14:49 27 customer ---  
14:49 28  
14:49 29 COMMISSIONER: I see. I get it.  
14:49 30  
14:49 31 A. Just maintaining ---  
14:49 32  
14:49 33 COMMISSIONER: So if they are wooing a customer, but don't  
14:49 34 say what you are wooing him for?  
14:49 35  
14:49 36 A. Well, it's maintaining contact with a good customer, and  
14:49 37 potentially building a relationship with a new customer.  
14:49 38  
14:49 39 COMMISSIONER: And you call that non-gaming related?  
14:49 40  
14:49 41 A. Yes.  
14:49 42  
14:49 43 COMMISSIONER: How is it non-gaming related?  
14:49 44  
14:49 45 A. Well, you are not talking about gaming, you are talking  
14:49 46 about coming to Australia and coming to Melbourne, it is  
14:49 47 a wonderful city and ---

14:49 1  
14:49 2 COMMISSIONER: That's not what they are really talking  
14:49 3 about?  
14:49 4  
14:49 5 A. Well, to my instructions they were.  
14:50 6  
14:50 7 COMMISSIONER: I get the instructions, but that's not the real  
14:50 8 world. In the real world if you go over there and schmooze with  
14:50 9 a rich patron who you want to take over and gamble, you have to  
14:50 10 take him to the local equivalent of Flower Drum, have a nice  
14:50 11 drink and hope he comes back? Really?  
14:50 12  
14:50 13 A. Well, that's my understanding of the ---  
14:50 14  
14:50 15 COMMISSIONER: They are your instructions?  
14:50 16  
14:50 17 A. I mean I haven't been told anything to the contrary,  
14:50 18 Commissioner.  
14:50 19  
14:50 20 COMMISSIONER: They are not likely to tell you to the contrary  
14:50 21 because they want good advice from you so they are saying, "we  
14:50 22 will not say anything about gambling, won't pass our lips, we will  
14:50 23 just be really, really nice to these super rich patrons" for what  
14:50 24 purpose, other than coming back to Melbourne or Perth or  
14:50 25 wherever. It seems artificial to me.  
14:50 26  
14:51 27 A. Well, there are cultural factors that play into this as well,  
14:51 28 Commissioner.  
14:51 29  
14:51 30 COMMISSIONER: Sure. You have to be nice to your  
14:51 31 patrons ---  
14:51 32  
14:51 33 A. Yes.  
14:51 34  
14:51 35 COMMISSIONER: --- otherwise they are not going to come  
14:51 36 back. You don't need to be from different cultures to know that.  
14:51 37 Everybody knows that. I'm trying to work out - they are not  
14:51 38 running some other business there, they are not selling sweets,  
14:51 39 they are not selling ice-cream or going into an export business,  
14:51 40 they are there as employees of a casino. I don't know why - I  
14:51 41 guess you can treat that as low-risk in the sense that nobody  
14:51 42 knows what they are doing, it is not overt, because if they were  
14:51 43 really unrelated to gambling, there would be no risk, not a low  
14:51 44 risk. In other words, somebody will see through it all, that's what  
14:51 45 I'm getting at.  
14:51 46  
14:51 47 A. Well, Commissioner, there may well still be a risk of

14:51 1 people's conduct being characterised in a way that it wasn't or ---  
14:52 2  
14:52 3 COMMISSIONER: Then anybody who goes to a country runs  
14:52 4 that kind of risk.  
14:52 5  
14:52 6 A. Yes, that is so.  
14:52 7  
14:52 8 COMMISSIONER: We're talking about people who have no  
14:52 9 other activity in mind other than dealing with rich patrons or  
14:52 10 customers of the business, and they want to keep that custom  
14:52 11 going?  
14:52 12  
14:52 13 A. Yes. They want to maintain that customer relationship and  
14:52 14 build it to the extent they can.  
14:52 15  
14:52 16 COMMISSIONER: You wouldn't have great difficulty getting  
14:52 17 an Australian statute to be construed, you might be at risk even if  
14:52 18 not a Singaporean one or a Malaysian one.  
14:52 19  
14:52 20 A. And, Commissioner, to my understanding, it is a very  
14:52 21 competitive industry, and that many other foreign casinos are  
14:52 22 competing in that way and seeking to steal Crown's customers  
14:52 23 and ---  
14:52 24  
14:52 25 COMMISSIONER: Once upon a time Australian businesses  
14:53 26 used to use that as an excuse for graft. We passed legislation at  
14:53 27 Commonwealth level saying that is not an excuse. You cannot  
14:53 28 bribe a foreign official just because every other firm that you are  
14:53 29 competing with bribes foreign officials to do business --  
14:53 30  
14:53 31 A. Sure.  
14:53 32  
14:53 33 COMMISSIONER: --- and some Australian firms walked away  
14:53 34 from the Asian market because of the Australian legislation. The  
14:53 35 fact that everybody else does it ---  
14:53 36  
14:53 37 A. I'm not suggesting they are doing anything improper in  
14:53 38 doing that, Commissioner, I'm just saying it is a competitive  
14:53 39 market ---  
14:53 40  
14:53 41 COMMISSIONER: And they are all doing it.  
14:53 42  
14:53 43 A. --- in which they are all entertaining their patrons and  
14:53 44 showing respect to them, which is valued in some cultures --  
14:53 45  
14:53 46 COMMISSIONER: Sure it is.  
14:53 47

14:53 1 A. --- in order to be able to compete, therefore, Crown  
14:53 2 considered it to be ---  
14:53 3  
14:53 4 COMMISSIONER: That is 100 per cent right. I agree. In order  
14:53 5 to compete for their custom.  
14:53 6  
14:53 7 A. Yes.  
14:53 8  
14:53 9 COMMISSIONER: Gambling related. They are not competing  
14:54 10 for anything else.  
14:54 11  
14:54 12 A. Well, they also competing for hotels. They have other hotel  
14:54 13 staff that do international marketing and they are only out there  
14:54 14 marketing hotels.  
14:54 15  
14:54 16 COMMISSIONER: Okay. I'm going to ask a question about  
14:54 17 timing and we want to have a break. Have you got a rough idea,  
14:54 18 and then I will ask Mr Murphy what his plans for the evening  
14:54 19 are?  
14:54 20  
14:54 21 MS NESKOVCIN: It's not going to come to that. I think I  
14:54 22 should finish by 4-ish but then there - maybe 4.15 and then if  
14:54 23 there are questions from my learned friends that means we might  
14:54 24 go beyond that.  
14:54 25  
14:54 26 COMMISSIONER: Yes. Or me.  
14:54 27  
14:54 28 MS NESKOVCIN: Or you.  
14:54 29  
14:54 30 COMMISSIONER: Are you okay if we sit on a bit beyond 4?  
14:54 31  
14:54 32 A. Yes, I am, Commissioner.  
14:54 33  
14:54 34 COMMISSIONER: Good. If you get it over and done with  
14:55 35 today, it is easier. Break for 10 minutes.  
14:55 36  
14:55 37  
14:55 38 **ADJOURNED** [2:55P.M.]  
15:07 39  
15:07 40  
15:07 41 **RESUMED** [3:07P.M.]  
15:07 42  
15:07 43  
15:07 44 COMMISSIONER: Thank you. Just out of interest, decisions  
15:07 45 going both ways in Federal Court saying unnecessary to decide.  
15:07 46 Roger Gyles in 2004, *Kennedy v Wallace*, said privilege does not  
15:07 47 apply. Went to the Full Court and the Full Court said they will

15:07 1 worry about it another day. There are other single instance  
15:08 2 decisions in Australia and England that say it does apply. They  
15:08 3 are all quite recent cases, nothing old, so - I thought it was still  
15:08 4 up for grabs, that's why I said, is there an authoritative decision.  
15:08 5 I think the answer is "no", in the Court of Appeal decision. I  
15:08 6 haven't looked at this for so many years. I have no idea what the  
15:08 7 circuits in the US have been saying about this, if anything. It is  
15:08 8 just interesting because ---  
15:08 9  
15:08 10 MR BORSKY: It is interesting.  
15:08 11  
15:08 12 COMMISSIONER: Very. Maybe more interesting than lots of  
15:08 13 other things that have happened so far.  
15:08 14  
15:08 15 MR BORSKY: No comment!  
15:08 16  
15:08 17 COMMISSIONER: It's worth a look, though, because it's not  
15:08 18 an insignificant point at least for the topic we are discussing at the  
15:08 19 moment.  
15:08 20  
15:08 21 MS NESKOVCIN: Mr Murphy, just before the break we were  
15:08 22 talking about the - we were looking at the meeting pack for  
15:09 23 December 2018 and the proposal to revisit the VIP operating  
15:09 24 model so far as Singapore and Malaysia was concerned.  
15:09 25  
15:09 26 A. Yes.  
15:09 27  
15:09 28 Q. I want to now take you to the Risk Management Committee  
15:09 29 pack in February 2019 which contains an advice you prepared for  
15:09 30 Mr Preston in relation to Malaysia. It is CRL.506.006.5619.  
15:09 31  
15:09 32 Operator, if we could please go to 0890. Perhaps what I was on,  
15:10 33 operator, were the minutes of the meeting, not the pack, so could  
15:10 34 we please go to CRW.507.004.0879, at 8090.  
15:10 35  
15:10 36 Mr Murphy, this is a memorandum that Mr Felstead prepared to  
15:10 37 the Board of Directors of Crown Resorts on 7 February 2019 in  
15:10 38 relation to the VIP operating model for Malaysia and Singapore;  
15:10 39 do you see that?  
15:10 40  
15:10 41 A. Yes.  
15:10 42  
15:10 43 Q. You assisted Mr Felstead in the preparation of this  
15:10 44 memorandum, did you not?  
15:10 45  
15:10 46 A. Yes.  
15:10 47

15:10 1 Q. Also included in this packet at 0896 is an advice or a letter  
15:11 2 you sent to Mr Preston on 6 February 2019. This is in relation to  
15:11 3 Malaysia and Hakluyt's advice or the information that it had  
15:11 4 provided you at that time in relation to Malaysia.

15:11 5  
15:11 6 A. Yes.

15:11 7  
15:11 8 Q. And I just want to look at - I take it, I haven't seen the  
15:11 9 original letter from Hakluyt, but if we scroll down the page a bit,  
15:11 10 operator, you see in your letter where you are extracting  
15:11 11 summaries from Hakluyt's advice that there are some references  
15:11 12 in bold and then some ellipsis, was the bold your emphasis or  
15:11 13 Hakluyt's emphasis?

15:11 14  
15:11 15 A. Hakluyt's.

15:11 16  
15:11 17 Q. I see. I just wanted to actually focus on the sections in bold  
15:11 18 because they are convenient telegraphing of some of the points.  
15:12 19 Here on this page they identified that little has changed since the  
15:12 20 election. Do you see that?

15:12 21  
15:12 22 A. Yes.

15:12 23  
15:12 24 Q. They've bolded the reference to the Government appears  
15:12 25 disinclined to make significant reforms.

15:12 26  
15:12 27 Over the page, please, operator.

15:12 28  
15:12 29 The next sentence in bold:

15:12 30  
15:12 31 *The politics surrounding gambling, however, remain*  
15:12 32 *sensitive .....*

15:12 33  
15:12 34 And the next sentence involves:

15:12 35  
15:12 36 *.... and issues of Muslim morality could yet become*  
15:12 37 *a catalyst for punitive action.*

15:12 38  
15:12 39 Next:

15:12 40  
15:12 41 *While specific moves to regulate foreign operators are*  
15:12 42 *unlikely ..... it is advisable to abide by the 'unwritten rules'*  
15:12 43 *around casino promotion."*

15:12 44  
15:12 45 Keep scrolling down and it says:

15:12 46  
15:12 47 *Hakluyt's commentary around the matters is as follows .....*

15:12 1  
15:13 2 And then they continue to make more remarks over the page in  
15:13 3 bold and the rest, I didn't want to focus on any of those, I just  
15:13 4 wanted to now pass to 0902, please, operator.  
15:13 5  
15:13 6 This is still part of your letter after going through Hakluyt's  
15:13 7 conclusions. You see scrolling down, operator, please, under the  
15:13 8 heading "Malaysian law advice" ---  
15:13 9  
15:13 10 A. Yes.  
15:13 11  
15:13 12 Q. --- is this advice that you had obtained from a law firm in  
15:13 13 Malaysia?  
15:13 14  
15:13 15 A. The reference to, "Crown has previously obtained advice  
15:13 16 from local lawyers", I believe that was advice that Crown  
15:13 17 obtained before my involvement, and then paragraph 6, "We  
15:13 18 recently sought updated advice" so I was involved in that.  
15:13 19  
15:13 20 Q. I see. Thank you.  
15:13 21  
15:14 22 In between point 5 and 6, which is Crown's previous advice and  
15:14 23 your recently updated advice, had the laws changed to your  
15:14 24 knowledge?  
15:14 25  
15:14 26 A. No, not to my knowledge.  
15:14 27  
15:14 28 Q. So in paragraph 6 it says:  
15:14 29  
15:14 30 REDACTED - PRIVILEGE  
15:14 31  
15:14 32  
15:14 33  
15:14 34  
15:14 35  
15:14 36  
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15:14 40  
15:14 41  
15:14 42  
15:14 43  
15:14 44  
15:14 45  
15:14 46  
15:14 47

15:15 1 Can I just pause there for a moment, please, Mr Murphy. The  
15:15 2 previous advice that you had given in March 2017 was that

15:15 3 REDACTED - PRIVILEGE

15:15 4

15:15 5

15:15 6

15:15 7 Q. And the law hadn't changed; correct?

15:15 8

15:15 9 A. Correct.

15:15 10 REDACTED - PRIVILEGE

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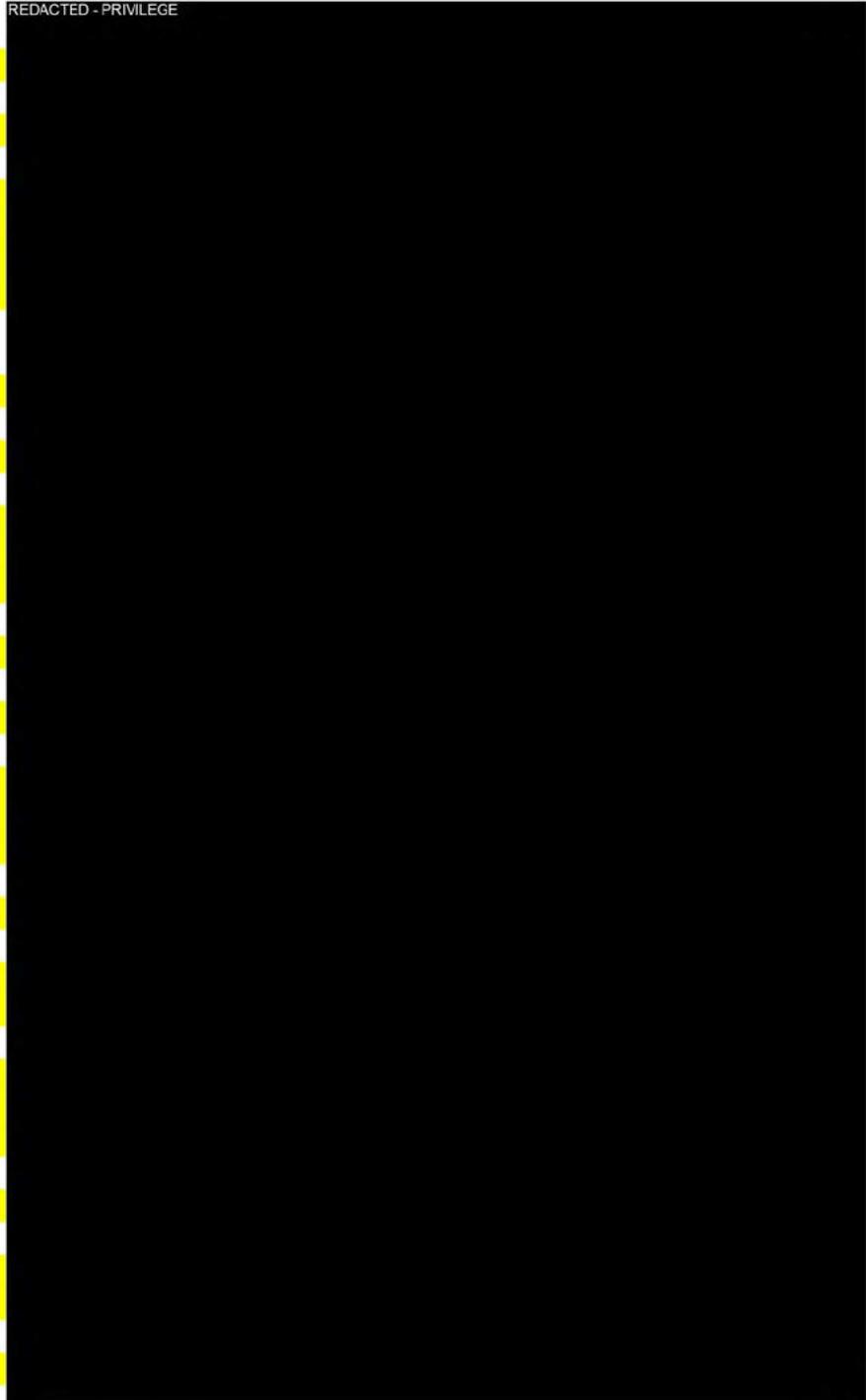
15:16 45

15:16 46

15:16 47

15:16 1  
15:16 2 You see that?  
15:16 3  
15:16 4 A. Yes.  
15:16 5  
15:16 6  
15:16 7  
15:16 8  
15:16 9  
15:16 10  
15:16 11  
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15:18 46  
15:18 47

REDACTED - PRIVILEGE



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REDACTED - PRIVILEGE

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correct?

A. Yes.

Q. One of the matters highlighted in Hakluyt's advice was the need to obey the unwritten rules?

A. Yes.

Q. How does one know what the unwritten rules are?

A. That was a comment by Hakluyt. All Crown could do obviously is just devise protocols about how people are going to conduct themselves. I think that is what he's referring to as the unwritten rules.

Q. Alternatively, Crown could decide that it's not going to entertain anything in Malaysia because it is a potential breach?

A. Because it is a risk that is beyond its tolerance, yes.

Q. So you were just presenting the options for Crown to make its own decision on that?

A. Yes.

REDACTED - PRIVILEGE

1 [REDACTED - PRIVILEGE]  
2 [REDACTED - PRIVILEGE]  
3 [REDACTED - PRIVILEGE]  
4 [REDACTED - PRIVILEGE]  
5 [REDACTED - PRIVILEGE]  
6 [REDACTED - PRIVILEGE]  
7 [REDACTED - PRIVILEGE]  
8 [REDACTED - PRIVILEGE]  
15:20 9 [REDACTED - PRIVILEGE]  
15:20 10 [REDACTED - PRIVILEGE]  
15:20 11 [REDACTED - PRIVILEGE]  
15:20 12 [REDACTED - PRIVILEGE]  
15:20 13 [REDACTED - PRIVILEGE]  
15:20 14 A. If ---  
15:20 15 [REDACTED - PRIVILEGE]  
15:20 16 [REDACTED - PRIVILEGE]  
15:20 17 [REDACTED - PRIVILEGE]  
15:20 18 [REDACTED - PRIVILEGE]  
15:20 19 [REDACTED - PRIVILEGE]  
15:20 20 [REDACTED - PRIVILEGE]  
15:20 21 [REDACTED - PRIVILEGE]  
15:21 22 [REDACTED - PRIVILEGE]  
15:21 23 [REDACTED - PRIVILEGE]  
15:21 24 [REDACTED - PRIVILEGE]  
15:21 25 [REDACTED - PRIVILEGE] [REDACTED - PRIVILEGE]  
15:21 26 [REDACTED - PRIVILEGE] That is exactly what I was putting to  
15:21 27 you before the break. That is, in reality, these people are  
15:21 28 soliciting custom for casinos in Australia. That is the reality.  
15:21 29 You can dress it up whichever way you like, and you recognise  
15:21 30 that yourself. When I read it I thought you should have said "yes"  
15:21 31 to me because we were making common cause.  
15:21 32  
15:21 33 A. I'm quoting language from Hakluyt, Commissioner.  
15:21 34  
15:21 35 COMMISSIONER: Well, I agree with Hakluyt. Anyhow. [REDACTED - F  
15:21 36 [REDACTED - PRIVILEGE]  
15:21 37 [REDACTED - PRIVILEGE]  
15:21 38 [REDACTED - PRIVILEGE]  
15:21 39 A. Again I don't think that is a fair characterisation,  
15:22 40 Commissioner. [REDACTED - PRIVILEGE]  
15:22 41 [REDACTED - PRIVILEGE]  
15:22 42 [REDACTED - PRIVILEGE]  
15:22 43 [REDACTED - PRIVILEGE]  
15:22 44 [REDACTED - PRIVILEGE]  
15:22 45 [REDACTED - PRIVILEGE]  
15:22 46 [REDACTED - PRIVILEGE]  
15:22 47 [REDACTED - PRIVILEGE]

15:22 1  
15:22 2 COMMISSIONER: That has nothing to do with not being in  
15:22 3 breach. That is saying the law will not be enforced against you.  
15:22 4 You will not be prosecuted, or there is a low risk that you will be  
15:22 5 prosecuted if you keep a low profile. That's not saying you are  
15:22 6 not breaking the law. That is saying your chances of being  
15:22 7 prosecuted are slight. That's what enforcement of the law means.  
15:22 8  
15:22 9 A. So, yes, Commissioner. Against the background that  
15:22 10 Crown staff in China were not breaching local law in the way we  
15:22 11 would interpret that law --- (speaking over) ---  
15:22 12  
15:22 13 COMMISSIONER: --- is interpreted ---  
15:22 14  
15:23 15 A. Yes.  
15:23 16  
15:23 17 COMMISSIONER: But they don't apply our principles of  
15:23 18 statutory construction.  
15:23 19  
15:23 20 A. Yes. So the law can be interpreted in those jurisdictions to  
15:23 21 mean whatever the Government of the day potentially wants it to  
15:23 22 be. That ---  
15:23 23  
15:23 24 COMMISSIONER: Or the courts. Not so much the  
15:23 25 Government. I know that in China you have the Procuratorate and  
15:23 26 they sit around with the judges and make sure they behave  
15:23 27 themselves, but I am sure that that is not true --- I know it is not  
15:23 28 true in Indonesia, I've got no knowledge about other countries,  
15:23 29 but I understand there is political interference in the legal system,  
15:23 30 or potentially so, but here you are giving advice about not only  
15:23 31 what might be artificially politically-motivated application of the  
15:23 32 law, but you are talking about how the law, properly understood,  
15:23 33 properly might work against you.  
15:23 34  
15:23 35 A. That's not what I was intending to convey, Commissioner.  
15:24 36 It is against the background of the experience in China where the  
15:24 37 law was enforced in a way that wasn't predicted, and so the  
15:24 38 emphasis was around not only understanding what the local law  
15:24 39 says with all its uncertainties, but how is it likely to be applied.  
15:24 40  
15:24 41 COMMISSIONER: Can you make this thing go back to the  
15:24 42 page where I have the word "reality"?  
15:24 43  
15:24 44 MS NESKOVCIN: I think it was the previous page.  
15:24 45  
15:24 46 COMMISSIONER: Yes, I think so. Yes, 6(d).  
15:24 47

15:24 1 MS NESKOVCIN: Yes, thank you.

15:24 2

15:24 3 COMMISSIONER.

15:24 4

15:24 5 REDACTED - PRIVILEGE

15:24 6

15:24 7

15:24 8

15:24 9 That is exactly what I put to you earlier. REDACTED - PRIVILEGE

15:24 10 REDACTED - PRIVILEGE

15:25 11

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15:26 43

15:26 44 MS NESKOVCIN: Mr Murphy, do you agree in expressing it in

15:26 45 the way that it is expressed in 6(d), they are then saying REDACTED -

15:26 46 REDACTED - PRIVILEGE

15:26 47 What Crown, in deciding to go ahead with this conduct was really

15:26 1 doing, [REDACTED - PRIVILEGE]

15:26 2 [REDACTED - PRIVILEGE]

15:26 3 [REDACTED - PRIVILEGE]

15:26 4 [REDACTED - PRIVILEGE]

15:26 5 [REDACTED - PRIVILEGE]

15:26 6 [REDACTED - PRIVILEGE]

15:26 7 Q. They can say all they like, you have to have non-gaming

15:27 8 related discussions and meet in low groups and follow all the

15:27 9 protocols that we set for you, but if at the end of the day what

15:27 10 their conduct is interpreted to mean is [REDACTED - PRIVILEGE]

15:27 11 [REDACTED - PRIVILEGE]

15:27 12 [REDACTED - PRIVILEGE]

15:27 13 [REDACTED - PRIVILEGE]

15:27 14 [REDACTED - PRIVILEGE]

15:27 15 [REDACTED - PRIVILEGE]

15:27 16 Q. You gave some separate advice in relation to Singapore.

15:27 17 We'll go to that now. It is MEM.5000.0002.3561. Again

15:27 18 Hakluyt have given strategic advice in relation to Singapore and

15:27 19 in a similar way your letter extracts parts of theirs contains bold

15:28 20 highlighting. I assume the bold highlighting was in the original?

15:28 21

15:28 22 A. Yes.

15:28 23

15:28 24 Q. If we go over the page, down that page, please, operator,

15:28 25 the first bolded extract is that, "Singapore has traditionally been

15:28 26 averse to gambling"; you see that?

15:28 27

15:28 28 A. Yes.

15:28 29

15:28 30 Q. Over the page, please, operator, just directing you to the

15:28 31 parts that are highlighted again.

15:28 32

15:28 33 *..... but there is an acknowledgement of the economic*

15:28 34 *benefits of casinos.*

15:28 35

15:28 36 Scrolling down, please, operator, there is "general loosening of

15:28 37 regulations, and down again:

15:28 38

15:28 39 *Little concern about China arrests ..... but government is*

15:28 40 *sensitive to criminal links to gambling.*

15:28 41

15:28 42 Over the page:

15:28 43

15:28 44 *High roller and VIP marketing attracts less attention .....*

15:28 45 *but the authorities are vigilant on junket operators .....*

15:29 46 *Marketing foreign casinos is tolerated, albeit with caveats*

15:29 47 *.....*

15:29 1  
15:29 2 Over the page, a mention there about:  
15:29 3  
15:29 4 *Sky City's and The Star's activities seen to be at the*  
15:29 5 *healthier end of the spectrum.*  
15:29 6  
15:29 7 Scrolling down, please:  
15:29 8  
15:29 9 *Re-entering the Singapore market appears entirely*  
15:29 10 *possible .....*  
15:29 11  
15:29 12 Can I draw your attention to the last paragraph on that page:  
15:29 13  
15:29 14 *Were you to re-establish a marketing presence in*  
15:29 15 *Singapore, its purpose should be to promote your*  
15:29 16 *Australian IRs.*  
15:29 17  
15:29 18 Next page, please, operator. I want to go down to paragraph 3.  
15:29 19 There is a reference to an "exclusion list". Going down a bit  
15:29 20 further, operator, please. I meant paragraph number 3:  
15:29 21  
15:30 22 *We sought further information from Hakluyt in relation to*  
15:30 23 *the so called 'third party exclusion list'.*  
15:30 24  
15:30 25 And just by way of background, Hakluyt said you shouldn't  
15:30 26 market to anyone on the exclusion list?  
15:30 27  
15:30 28 A. Yes.  
15:30 29  
15:30 30 Q. Which is to be kept confidential?  
15:30 31  
15:30 32 A. Yes.  
15:30 33  
15:30 34 Q. So one is not to know who might be on the exclusion list;  
15:30 35 correct?  
15:30 36  
15:30 37 A. Yes.  
15:30 38  
15:30 39 Q. Down at paragraph 8 are you there referring to previous  
15:30 40 advices that had been obtained in Singapore?  
15:30 41  
15:30 42 A. Yes.  
15:30 43  
15:30 44 REDACTED - PRIVILEGE  
15:30 45  
15:30 46  
15:30 47

	REDACTED - PRIVILEGE
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15:30	3
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15:30	6
15:31	7
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15:32	47

15:32 1 [REDACTED - PRIVILEGE]  
15:32 2 [REDACTED - PRIVILEGE]  
15:32 3 [REDACTED - PRIVILEGE]  
15:32 4 [REDACTED - PRIVILEGE]  
15:32 5 [REDACTED - PRIVILEGE]  
15:32 6 [REDACTED - PRIVILEGE]  
15:32 7 [REDACTED - PRIVILEGE]  
15:32 8 [REDACTED - PRIVILEGE]  
15:32 9 [REDACTED - PRIVILEGE]  
15:32 10 [REDACTED - PRIVILEGE]  
15:32 11 [REDACTED - PRIVILEGE]  
15:32 12 [REDACTED - PRIVILEGE]  
15:32 13 [REDACTED - PRIVILEGE]  
15:32 14 [REDACTED - PRIVILEGE]  
15:32 15 [REDACTED - PRIVILEGE]  
15:32 16 [REDACTED - PRIVILEGE]  
15:32 17 [REDACTED - PRIVILEGE]  
15:32 18 [REDACTED - PRIVILEGE]  
15:32 19 [REDACTED - PRIVILEGE]  
15:32 20 [REDACTED - PRIVILEGE]  
15:32 21 [REDACTED - PRIVILEGE]  
15:32 22 [REDACTED - PRIVILEGE]  
15:32 23 [REDACTED - PRIVILEGE]  
15:33 24 [REDACTED - PRIVILEGE]  
15:33 25 [REDACTED - PRIVILEGE]  
15:33 26 [REDACTED - PRIVILEGE]  
15:33 27 [REDACTED - PRIVILEGE]  
15:33 28 Q. Again you are just pointing out the risks for Crown to make  
15:33 29 its own decision?  
15:33 30  
15:33 31 A. Yes, that's right.  
15:33 32  
15:33 33 Q. Do you recall having any involvement in updating or  
15:33 34 reviewing any operation protocols for Singapore or Malaysia at  
15:33 35 around this time? I've got documents that suggest that you at  
15:33 36 least received them.  
15:33 37  
15:33 38 A. Yes.  
15:33 39  
15:33 40 Q. I will show you the documents if you like.  
15:33 41  
15:33 42 COMMISSIONER: Before you do that, with the letter on the  
15:33 43 screen at the moment, can you explain paragraph 12 and what the  
15:33 44 relevance of that is?  
15:33 45  
15:33 46 A. [REDACTED - PRIVILEGE]  
15:34 47 [REDACTED - PRIVILEGE]

15:34 1 REDACTED - PRIVILEGE  
15:34 2  
15:34 3  
15:34 4  
15:34 5 COMMISSIONER: Singapore is a vastly different jurisdiction  
15:34 6 than China, it is quite a sophisticated legal system, staffed by  
15:34 7 sophisticated judges who apply, up and down, standard common  
15:34 8 law principles plus other principles as well.  
15:34 9  
15:34 10 A. Yes.  
15:34 11  
15:34 12 COMMISSIONER: So we're not dealing with an idiosyncratic  
15:34 13 judge influenced by the Procuratorate or the government of the day or  
15:34 14 the province --  
15:34 15  
15:34 16 A. Yes.  
15:34 17  
15:34 18 COMMISSIONER: --- so, in that context. REDACTED - PRIVILEGE  
15:34 19 REDACTED - PRIVILEGE  
15:34 20  
15:35 21  
15:35 22  
15:35 23  
15:35 24  
15:35 25  
15:35 26  
15:35 27 MS NESKOVCIN: Operator, can we go to MEM.5001  
15:35 28 .0003.2698. This is a draft operating protocol provided for  
15:35 29 Malaysia provided by Mr Preston on 15 April 2019 asking you to  
15:35 30 review and let him have any thoughts or suggestions. Do you  
15:35 31 recall seeing this at the time, Mr Murphy?  
15:35 32  
15:35 33 A. I don't specifically recall but I accept I did.  
15:35 34  
15:36 35 Q. I will allow you to have a quick look at the first few  
15:36 36 paragraphs. I wanted to take you to another page.  
15:36 37  
15:36 38 A. Yes.  
15:36 39  
15:36 40 Q. What this document is, it is different to the other documents  
15:36 41 which we saw which were operating protocols. This is really the  
15:36 42 Crown operating model risk assessment, and as we will see on the  
15:36 43 next page, it identifies risks and then controls to mitigate risk. Is  
15:36 44 that your understanding of what its purpose was?  
15:36 45  
15:36 46 A. It looks to be the case.  
15:36 47

15:36 1 Q. If we go to the next page, please, operator, and you see the  
15:36 2 heading in the box there, although it's the shaded first row in the  
15:36 3 box "risk". "Existing controls in place for Hong Kong based staff  
15:36 4 who travel into country" and "additional controls proposed".  
15:36 5

15:37 6 A. Yes.  
15:37 7

15:37 8 Q. So I take that to mean that the second column under the  
15:37 9 heading "existing controls" is a reference to controls that were in  
15:37 10 place prior to including Malaysia as part of the operating VIP  
15:37 11 business in Singapore, sorry, in Malaysia and the additional  
15:37 12 controls of what is going to be introduced once Crown has staff  
15:37 13 based in Malaysia; is that correct?  
15:37 14

15:37 15 A. It looks like it, yes. I don't (inaudible) I have contributed to this  
15:37 16 document. It looks like it is one of the internal risk framework  
15:37 17 documents.  
15:37 18

15:37 19 Q. Could we go to the next page, please, operator. At  
15:37 20 paragraph 3 it says:  
15:37 21

15:38 22 *Breach of local expectations, cultural beliefs and*  
15:38 23 *'unwritten rules'.*  
15:38 24

15:38 25 In the additional controls proposed, there is to be:  
15:38 26

15:38 27 *No proactive engagement to take place with ethnic*  
15:38 28 *Malays.*  
15:38 29

15:38 30 Do you see that?  
15:38 31

15:38 32 A. Yes.  
15:38 33

15:38 34 Q. Over the page, please, operator.  
15:38 35

15:38 36 I just give you a moment to read the next few dot points in that  
15:38 37 section.  
15:38 38

15:38 39 A. Sorry, starting with?  
15:38 40

15:38 41 Q. The second column, these are the additional protocols to be  
15:38 42 adopted. Employees in country should record details, et cetera.  
15:38 43

15:38 44 A. Thank you. Yes.  
15:38 45

15:38 46 Q. So, again, in relation to the last dot point there is really no  
15:39 47 way of knowing what the unwritten rules are because they are

15:39 1       unwritten; correct? Self-evidently?  
15:39 2  
15:39 3       A. I'm not sure what that particular reference is, but, yes,  
15:39 4       unwritten laws aren't written.  
15:39 5  
15:39 6       Q. But the other point, Mr Murphy, is did you know if Crown  
15:39 7       ever had a protocol or some other process for staff in Malaysia to  
15:39 8       identify an ethnic Malay or a person who was faith-based to  
15:39 9       whom they shouldn't be marketing?  
15:39 10  
15:39 11       A. No, I don't know whether they developed a protocol about  
15:39 12       that.  
15:39 13  
15:39 14       REDACTED - PRIVILEGE  
15:39 15       REDACTED - PRIVILEGE       Do you  
15:39 16       know if Crown ever prepared such a protocol?  
15:39 17  
15:40 18       A. No, I don't know.  
15:40 19  
15:40 20       COMMISSIONER: Were the people who were going to work in  
15:40 21       this jurisdiction, Malaysia, going to do anything different from  
15:40 22       those operating in Singapore and Indonesia and so on?  
15:40 23  
15:40 24       A. So, under the operating protocol, Commissioner, staff were  
15:40 25       based in Hong Kong, so they would visit Malaysia or Singapore  
15:40 26       to entertain patrons and then return to Hong Kong.  
15:40 27  
15:40 28       COMMISSIONER: I see. So they wouldn't stay there?  
15:40 29  
15:40 30       A. No.  
15:40 31  
15:40 32       COMMISSIONER: Their home base would be Hong Kong?  
15:40 33  
15:40 34       A. That's right. So they were based in Hong Kong.  
15:40 35       A proposal then did come forward to use local staff, so staff  
15:40 36       based in Malaysia and staff based in Singapore, and I think we  
15:40 37       are potentially getting to consideration of that at a later stage.  
15:41 38  
15:41 39       COMMISSIONER: I see. Okay. And then just looking at the  
15:41 40       page on the screen, second last dot point:  
15:41 41  
15:41 42               *Discussions with potential patrons will be targeted to*  
15:41 43               *wealthy individuals only .....*  
15:41 44  
15:41 45       That seems to me to be describing the reality, that these are  
15:41 46       discussions with potential patrons to turn them into real patrons?  
15:41 47

15:41 1 A. Yes.  
15:41 2  
15:41 3 MS NESKOVCIN: Was it also directed to a point raised in  
15:41 4 Hakluyt's advice that the governments were more concerned in  
15:41 5 an enforcement sense where gambling is directed to people to  
15:41 6 whom it might harm?  
15:41 7  
15:41 8 A. Yes, I think that was said.  
15:42 9  
15:42 10 Q. I will just show you the Singapore protocol,  
15:42 11 MEM.5001.0002.5451. This was sent to you on 21 February  
15:42 12 2019 by Mr Preston and - I take it this was a Crown document  
15:42 13 and you were simply asked to provide comments, you didn't draft  
15:42 14 it?  
15:42 15  
15:42 16 A. Yes, that's correct.  
15:42 17  
15:42 18 Q. The VIP operating model in Asia that you were asked to  
15:42 19 assist with was only for Asia, at the outset I asked you about New  
15:42 20 Zealand, you mentioned that that wasn't part of the engagement  
15:42 21 role back in 2017.  
15:42 22  
15:42 23 A. Yes.  
15:42 24  
15:42 25 Q. Moving to early 2021, were you asked, you, MinterEllison,  
15:42 26 asked to provide any advice in relation to Crown's operations in  
15:43 27 New Zealand?  
15:43 28  
15:43 29 A. No.  
15:43 30  
15:43 31 Q. Have you ever turned your mind to the legal regime in New  
15:43 32 Zealand?  
15:43 33  
15:43 34 A. I might have, but it would be going back seven, eight years  
15:43 35 or more, I think.  
15:43 36  
15:43 37 Q. Are you aware that - just a moment.  
15:43 38  
15:43 39 A. Actually I'm not even sure I've done that for Crown,  
15:43 40 actually. So I think for Crown, no.  
15:43 41  
15:43 42 Q. Thank you. I want to show you this document, it's  
15:43 43 CRW.008.031.5047. You mentioned earlier that in later times  
15:43 44 Crown engaged FTI Consulting to provide some strategic advice  
15:44 45 or analysis?  
15:44 46  
15:44 47 A. Yes.

15:44 1  
15:44 2 Q. If you just scroll down the page, please, operator, you see  
15:44 3 that the email chain starts with an email from Maryanna  
15:44 4 Vasilareas on 6 May 2020, do you see that, the subject matter is  
15:44 5 the ---  
15:44 6  
15:44 7 A. Yes.  
8  
9 Q. --- April monitoring report?  
10  
11 A. Yes.  
12  
15:44 13 Q. If we go over the page so the Commissioner can get a sense  
15:44 14 of what the monitoring report - this is a report from FTI  
15:44 15 Consulting in relation to Singapore, Malaysia and Macau;  
15:44 16 correct?  
15:44 17  
15:44 18 A. Yes.  
15:44 19  
15:44 20 Q. For April 2020?  
15:44 21  
15:44 22 A. Yes.  
15:44 23  
15:44 24 Q. What were they doing? Were they just providing  
15:45 25 information from media reports and government announcements  
15:45 26 that related to gambling and foreign casinos?  
15:45 27  
15:45 28 A. Yes, essentially.  
15:45 29  
15:45 30 Q. What was the purpose of that, Mr Murphy?  
15:45 31  
15:45 32 A. To keep abreast of what was happening in those  
15:45 33 jurisdictions in relation to the regulation of gaming and how that  
15:45 34 might affect Crown's international business.  
15:45 35  
15:45 36 Q. I asked you this before, so the answer might be the same,  
15:45 37 why was this necessary if Crown was engaging in conduct that  
15:45 38 was legal in each of those countries?  
15:45 39  
15:45 40 A. In order to keep abreast of the political environment and  
15:45 41 how that might feed into the way the laws were interpreted and  
15:45 42 enforced.  
15:45 43  
15:45 44 Q. Operator, could we go back to page 5047. You said in that  
15:46 45 email:  
15:46 46  
15:46 47 

15:46 1 [REDACTED - PRIVILEGE]  
15:46 2 [REDACTED - PRIVILEGE]  
15:46 3 [REDACTED - PRIVILEGE]  
15:46 4 [REDACTED - PRIVILEGE]  
15:46 5 [REDACTED - PRIVILEGE]  
15:46 6 What did you mean by that?  
15:46 7 [REDACTED - PRIVILEGE]  
15:46 8 [REDACTED - PRIVILEGE]  
15:46 9 [REDACTED - PRIVILEGE]  
15:46 10 [REDACTED - PRIVILEGE]  
15:46 11 Q. Was the expression [REDACTED - PRIVILEGE] an expression you  
15:46 12 were used to hearing from people within Crown?  
15:46 13  
15:46 14 A. I suspect it was an expression that I used rather than anyone  
15:46 15 at Crown.  
15:46 16  
15:46 17 Q. Thank you.  
15:46 18  
15:47 19 COMMISSIONER: At any stage did you say to your client that,  
15:47 20 "what you are doing in these jurisdictions either is, or may well  
15:47 21 be illegal, and you are an organisation where probity and  
15:47 22 reputation and proper behaviour is of utmost importance, just  
15:47 23 don't do it"?  
15:47 24  
15:47 25 A. No, I didn't, Commissioner.  
15:47 26  
15:47 27 COMMISSIONER: Why not?  
15:47 28  
15:47 29 A. Because my understanding of what they were doing in  
15:47 30 those jurisdictions was in accordance with local law ---  
15:47 31  
15:47 32 COMMISSIONER: Your understanding was it was potentially  
15:47 33 illegal. And why didn't you say, "you can't afford to run the risk  
15:47 34 because these are wayward nations with wayward rules and we  
15:47 35 don't know what is going to happen. And an organisation like  
15:47 36 you, a licensed casino, should not run any risk at all, just don't do  
15:47 37 it". And if you had have said that, they wouldn't do it. Or, well  
15:48 38 I don't know, it looks like they probably would have ignored it,  
15:48 39 but why not just tell them, "don't do it"?  
15:48 40  
15:48 41 A. Commissioner, I didn't see that to be my role as the external  
15:48 42 lawyer. My role was to help them appreciate what the laws  
15:48 43 were ---  
15:48 44  
15:48 45 COMMISSIONER: And how to make sure they skate the line  
15:48 46 between getting caught and not getting caught.  
15:48 47

15:48 1 A. How to duly mitigate the risk of the law being enforced  
15:48 2 against them in an overseas jurisdiction.  
15:48 3  
15:48 4 COMMISSIONER: This is a special kind of client. It has special  
15:48 5 responsibilities. The legislation under which it operates requires  
15:48 6 it to be super perfect. Why not just tell them "do not do this,  
15:48 7 an organisation like you cannot do this"?  
15:48 8  
15:48 9 A. Again, Commissioner, I didn't see it to be my role to be  
15:49 10 telling them what they should or shouldn't be doing. My role was  
15:49 11 to assist them to understand what the risks were, and for them to  
15:49 12 make risk/reward decisions in accordance with their risk  
15:49 13 tolerance. Their two primary competitors in Australia were  
15:49 14 engaging in the same activities in the same jurisdictions, so it  
15:49 15 wasn't as if we understood it to be an activity in which  
15:49 16 an Australian casino should not be engaging.  
15:49 17  
15:49 18 MS NESKOVCIN: I will move to another topic, Mr Murphy. I  
15:49 19 only have a few more documents. You are aware, aren't you, that  
15:49 20 in 2020 the Board of Crown Resorts Limited made a decision to  
15:50 21 cease operations with junkets?  
15:50 22  
15:50 23 A. Yes.  
15:50 24  
15:50 25 REDACTED - PRIVILEGE  
15:50 26  
15:50 27  
15:50 28  
15:50 29  
15:50 30 A. Yes.  
15:50 31  
15:50 32 Q. Can you call up CRW.510.001.1298. I will give you  
15:50 33 a moment to familiarise yourself with that document.  
15:50 34  
15:50 35 A. Yes.  
15:50 36  
15:50 37 Q. What were your instructions in relation to this matter?  
15:51 38  
15:51 39 REDACTED - PRIVILEGE  
15:51 40  
15:51 41  
15:51 42  
15:51 43  
15:51 44  
15:51 45 Q. Are you familiar with this document, Mr Murphy, or are  
15:51 46 you just aware of its existence?  
15:51 47

15:52 1 A. No, it was copied to me at the time it was sent.  
15:52 2  
15:52 3 Q. Do you agree with me that it merely seems to be a summary  
15:52 4 of all of Crown's internal documents in relation to the individuals  
15:52 5 who are the subject of the memorandum?  
15:52 6  
15:52 7 A. Yes, all of the documents that had come to us in the course  
15:52 8 of the ILGA Inquiry.  
15:52 9  
15:52 10 Q. It doesn't actually contain any analysis or recommendations  
15:52 11 in relation to those people, it just brings all the documents  
15:52 12 together; do you agree?  
15:52 13  
15:52 14 A. Yeah, that's probably fair.  
15:52 15  
15:52 16 Q. I will take you to page 1300 as an example. This is in  
15:52 17 relation to paragraph number 3, for example.  
15:52 18  
15:52 19 A. Yes.  
15:52 20  
15:52 21 Q. That is Mr Chau. Scroll through that, please, operator. Let  
15:53 22 us know when you are ready to go with the next page. Too late.  
15:53 23  
15:53 24 A. Yes. I get the gist of it. It is summarising information in  
15:53 25 relation to Mr Chau, yes.  
15:53 26  
15:53 27 Q. So it didn't actually add any further analysis or  
15:53 28 recommendations. It is not a criticism, I just wondered what the  
15:53 29 purpose of it was.  
15:53 30  
15:53 31 A. I think it was to collect a whole lot of information in  
15:53 32 disparate source documents into a single framework.  
15:53 33  
15:53 34 Q. I see. If we go back to the cover page, please, operator. 1.2  
15:54 35 says:  
15:54 36 REDACTED - PRIVILEGE  
15:54 37  
15:54 38  
15:54 39  
15:54 40  
15:54 41  
15:54 42  
15:54 43  
15:54 44  
15:54 45  
15:54 46  
15:54 47 Q. If we scroll down again to paragraph 2.2, this is for context.

15:54 1 2.1 refers to the announcement I mentioned in November 2020  
 15:54 2 regarding junket operators. 2.2 says:

15:54 3 REDACTED - PRIVILEGE

15:55 4

15:55 5

15:55 6

15:55 7

15:55 8

15:55 9 Do you see that?

15:55 10

15:55 11 A. Yes.

15:55 12

15:55 13 REDACTED - PRIVILEGE

15:55 14

15:55 15

15:55 16

15:55 17

15:55 18 A. Yes.

15:55 19

15:55 20 Q. Has MinterEllison or did MinterEllison at the time provide  
 15:55 21 any legal advice to Crown in relation to this document?

15:55 22

15:55 23 A. In relation to this document? This is our document, so, yes,  
 15:55 24 we prepared this.

15:55 25

15:55 26 COMMISSIONER: The issues covered by the document?

15:55 27

15:55 28 MS NESKOVCIN: I will be more specific, Mr Murphy. This is  
 15:56 29 a document you created. It is a summary, as far as I can tell, or  
 15:56 30 a collation of all of the information available to Crown on the  
 15:56 31 individuals known to it ---

15:56 32

15:56 33 A. Yes.

15:56 34

15:56 35 Q. --- putting it all in one place.

15:56 36

15:56 37 A. Yes.

15:56 38

15:56 39 Q. The subject matter is Persons of Interest. Has  
 15:56 40 MinterEllison provided Crown with any legal advice in relation to  
 15:56 41 Crown dealing with Persons of Interest noted in this  
 15:56 42 memorandum?

15:56 43

15:56 44 A. Yes, I believe the author of this note attended a meeting  
 15:56 45 with Crown people, I think the people to whom this note is  
 15:56 46 addressed, REDACTED - PRIVILEGE

15:56 47 REDACTED - PRIV

15:56 1  
15:57 2 Q. And when do you believe that occurred?  
15:57 3  
15:57 4 A. Around the time ---  
15:57 5  
15:57 6 COMMISSIONER: Just go back to the top of the page.  
15:57 7  
15:57 8 A. What date was this?  
15:57 9  
15:57 10 MS NESKOVCIN: This is 30 December 2020. New Year's Eve.  
15:57 11  
15:57 12 A. Yes, I believe it would have been sometime in January.  
15:57 13  
15:57 14 Q. I will show you this document, MEM.5002.0012.1890.  
15:57 15 The person you mentioned, is that Mr Meade?  
15:57 16  
15:57 17 A. Yes.  
15:57 18  
15:57 19 Q. This is another document from Mr Meade on 19 January  
15:57 20 2021 regarding Persons of Interest committee referrals?  
15:57 21  
15:57 22 A. Yes.  
15:57 23  
15:57 24 Q. You understand POI to be a reference to Persons of  
15:58 25 Interest. Have you seen this document before?  
15:58 26  
15:58 27 A. Copied to it.  
15:58 28  
15:58 29 Q. Yes. Are you familiar with it?  
15:58 30  
15:58 31 A. Recently.  
15:58 32  
15:58 33 Q. Do you know what the purpose of this document was?  
15:58 34  
15:58 35 A. It appears to be an update of that December version of the  
15:58 36 summary of the information that we had in connection with these  
15:58 37 various people.  
15:58 38  
15:58 39 Q. To your knowledge, was it the case that Crown was  
15:58 40 contemplating dealing with the individuals in this document as  
15:58 41 a player or patron?  
15:59 42  
15:59 43 A. My understanding is the Persons of Interest Committee, or  
15:59 44 a group styled like that, were meeting to determine whether  
15:59 45 Crown should continue to deal in any capacity with a range of  
15:59 46 individuals, and these are some of those individuals. So this was  
15:59 47 collecting together information we had in connection we had with

15:59 1 those individuals.  
15:59 2  
15:59 3 Q. When you say "we" had?  
15:59 4  
15:59 5 A. We, MinterEllison, as a result of being involved in the  
15:59 6 ILGA Inquiry and receiving all the material for that.  
15:59 7  
15:59 8 Q. I see. Was it a comprehensive review of all persons who  
15:59 9 were junket operators who they were considering dealing with, or  
15:59 10 just the people that had arisen through the ILGA Inquiry?  
16:00 11  
16:00 12 A. Yes, the people about whom we had reasonable amount of  
16:00 13 information from the ILGA Inquiry.  
16:00 14  
16:00 15 Q. Four of the individuals named in this document were the  
16:00 16 persons who were the subject of Show Cause Notices from the  
16:00 17 VCGLR that resulted in disciplinary action.  
16:00 18  
16:00 19 A. Yes.  
16:00 20  
16:00 21 Q. Are you aware of that?  
16:00 22  
16:00 23 A. Yes.  
16:00 24  
16:00 25 Q. This is dated 19 January 2021. You see that?  
16:00 26  
16:00 27 A. Yes.  
16:00 28  
16:00 29 Q. Two days later, on 21 January 2021, Crown conceded that  
16:00 30 each of those individuals were persons with whom Crown should  
16:00 31 not deal, were you aware of that?  
16:00 32  
16:00 33 A. Are you referring to the VCGLR hearing?  
16:00 34  
16:00 35 Q. Yes. You weren't there I don't think.  
16:00 36  
16:00 37 A. No.  
16:00 38  
16:00 39 Q. You weren't aware that Crown had said that?  
16:00 40  
16:00 41 A. No, I'm not aware of the detail of the concessions that were  
16:01 42 made on that day.  
16:01 43  
16:01 44 Q. I was wondering whether you could assist us to understand  
16:01 45 why those four individuals continue to be the subject of  
16:01 46 consideration in this memorandum when Crown had told the  
16:01 47 regulator two days later that it had accepted it should not deal

16:01 1 with them?  
 16:01 2  
 16:01 3 REDACTED - PRIVILEGE  
 16:01 4  
 16:01 5 REDACTED - PRIVILEGE I think I might be right in  
 16:01 6 saying this finalised form of the note was finalised in order to be  
 16:01 7 tabled at the POI Committee meeting, and whether that occurred  
 16:01 8 on this date or a date close to the 21st, I'm not sure. And my  
 16:02 9 understanding is that the POI Committee resolved on that day not  
 16:02 10 to deal with any of these people in any capacity. But how that  
 16:02 11 inter-relates with concessions made in the regulatory, disciplinary  
 16:02 12 process by the VCGLR, I'm not sure.  
 16:02 13  
 16:02 14 Q. Thank you, I wasn't aware of that matter you just mentioned  
 16:02 15 regarding the POI Committee and I will make inquiries to check  
 16:02 16 the records.  
 16:02 17  
 16:02 18 The next and last document I want to take you to, Mr Murphy, is  
 16:02 19 CWN.569.002.8537. This is an email that Ms Tegoni sent to you  
 16:03 20 and Mr Preston on 4 May 2017, attaching an article from the  
 16:03 21 Australian newspaper. It is headed "CUP" which I want you to  
 16:03 22 assume means "China UnionPay". You are familiar with the  
 16:03 23 China UnionPay card?  
 16:03 24  
 16:03 25 A. Yes, I am.  
 16:03 26  
 16:03 27 Q. Ms Tegoni says in the email:  
 16:03 28  
 16:03 29 *Hi Josh,*  
 16:03 30  
 16:03 31 *I refer to our conversation this morning regarding Cage*  
 16:03 32 *Purchase transactions for international patrons staying at*  
 16:03 33 *the hotel using CUP cards.*  
 16:03 34  
 16:03 35 *As you know, the decision was immediately made to cease*  
 16:03 36 *making available this option as soon as our staff were*  
 16:03 37 *detained in China.*  
 16:03 38  
 16:03 39 *In the new VIP operating model, I understand that the*  
 16:03 40 *question of reintroducing the use of CUP cards has been*  
 16:03 41 *raised. My personal view is that, unless we can get*  
 16:03 42 *intelligence that this is not sensitive such that it would not*  
 16:04 43 *pose further risk or issues to our staff who remain in*  
 16:04 44 *detention in China, we should not reintroduce the*  
 16:04 45 *acceptance of CUP cards. This is of course could be*  
 16:04 46 *reconsidered once the detained staff are released .....*  
 16:04 47

16:04 1 I will let you finish reading that paragraph.

16:04 2

16:04 3 A. Yes.

16:04 4

16:04 5 Q. It says:

16:04 6

16:04 7 *I just spoke with KB .....*

16:04 8

16:04 9 I assume that is Ken Barton.

16:04 10

16:04 11

16:04 12

16:04 13

16:04 14

16:04 15

16:04 16

16:04 17

16:04 18

16:04 19

16:04 20

16:04 21

16:04 22

16:04 23

16:04 24 My question, Mr Murphy, was: did you or Minters provide any  
16:04 25 subsequent advice to Crown on using the CUP card?

16:04 26

16:04 27 A. No.

16:04 28

16:04 29 Q. Any other credit card instead of the CUP card for the  
16:05 30 purposes identified in the first paragraph of this email?

16:05 31

16:05 32 A. No.

16:05 33

16:05 34 Q. One other matter. You recall FTI was engaged in about  
16:05 35 August 2019 to conduct a review of the junket due diligence  
16:05 36 process at Crown?

16:05 37

16:05 38 A. Yes.

16:05 39

16:05 40 Q. And they were engaged through MinterEllison?

16:05 41

16:05 42 A. Yes.

16:05 43

16:05 44 Q. And they eventually provided a report?

16:05 45

16:05 46 A. Yes.

16:05 47

16:05 1 Q. Did MinterEllison provide any advice to Crown arising out  
16:05 2 of any of the matters identified in that report?

16:05 3

16:06 4 A. Yes. I believe we did an advice to Crown on that report.

16:06 5

16:06 6 Q. What was the subject matter of the advice? The report was  
16:06 7 about the junket due diligence process. I will just go back a step.  
16:06 8 You recall the allegations that have been made in the media in  
16:06 9 June and August 2019. At the end of July 2019, Crown issued  
16:06 10 a media release, one of the comments made in the media release  
16:06 11 was to the effect that Crown has a robust junket process or ---

16:06 12

16:06 13 A. Yes.

16:06 14

16:06 15 Q. --- something to that effect?

16:06 16

16:06 17 A. Yes.

16:06 18

16:06 19 Q. The next step in the sequence seems to be that Crown's  
16:06 20 through MinterEllison engaged FTI to do a report into whether or  
16:06 21 not the junket due diligence process is defensible. FTI produced  
16:07 22 that report. You mentioned that MinterEllison provided some  
16:07 23 advice to Crown on that report. Can you recall the nature of the  
16:07 24 advice and the effect of it?

16:07 25

16:07 26 A. The nature of the advice was this is what FTI says about the  
16:07 27 processes and the databases that are available to do searches on  
16:07 28 international patrons and junket operators. My recollection is that  
16:07 29 that was perhaps the thrust of the exercise, to just ascertain what  
16:07 30 due diligence resources are available to be able, to compare those  
16:08 31 with the resources that Crown was using.

16:08 32

16:08 33 Q. Was there any advice given to Crown about what it should  
16:08 34 do with the FTI report, as in make it public, provide it to the  
16:08 35 regulator?

16:08 36

16:08 37 A. No. It was done as an exercise under privilege to ascertain  
16:08 38 what these due diligence resources might be in order to then ---  
16:08 39 for Crown to then consider what it might do about its due  
16:08 40 diligence processes.

16:08 41

16:08 42 Q. Did you discuss the report or your advice with anyone at  
16:08 43 Crown?

16:08 44

16:08 45 A. Yes. I would have with my instructor.

16:08 46

16:08 47 Q. Mr Preston?

16:08 1  
16:08 2 A. Yes.  
16:08 3  
16:08 4 Q. Anyone else?  
16:09 5  
16:09 6 A. I don't believe so, no.  
16:09 7  
16:09 8 Q. To your knowledge, did you ever present that to the Board  
16:09 9 of Crown Resorts Ltd or the Board of Crown Melbourne Ltd?  
16:09 10  
16:09 11 A. No.  
16:09 12  
16:09 13 Q. Or any Committee of either of those Boards?  
16:09 14  
16:09 15 A. No.  
16:09 16  
16:09 17 MS NESKOVCIN: Commissioner, they are the questions I have  
16:09 18 for Mr Murphy.  
16:09 19  
16:09 20  
16:09 21 **QUESTIONS BY THE COMMISSIONER**  
16:09 22  
16:09 23  
16:09 24 COMMISSIONER: Yes, thank you.  
16:09 25  
16:09 26 Can I change topics.  
16:09 27  
16:09 28 A. Yes, Commissioner.  
16:09 29  
16:09 30 COMMISSIONER: I've heard a lot about a potential  
16:09 31 underpayment of tax by Crown. I've seen some documents about  
16:09 32 that and your name doesn't appear on any of them. So that might  
16:09 33 be a bit of good luck. Do you know anything about it, or did you  
16:09 34 know anything about it when the issue was raised with  
16:09 35 MinterEllison a couple of years ago?  
16:09 36  
16:09 37 A. No, I wasn't involved, Commissioner.  
16:09 38  
16:09 39 COMMISSIONER: At all?  
16:09 40  
16:09 41 A. I mean, I did see some documents in relation to it at the  
16:10 42 time, but I wasn't involved in the consideration of it.  
16:10 43  
16:10 44 COMMISSIONER: Nor with any in-house lawyers or Crown  
16:10 45 representatives about the topics?  
16:10 46  
16:10 47 A. No, not that I recall, Commissioner, and certainly not at

16:10 1 any ---  
16:10 2  
16:10 3 COMMISSIONER: Serious level?  
16:10 4  
16:10 5 A. In - serious level, yes.  
16:10 6  
16:10 7 COMMISSIONER: Okay, thanks.  
16:10 8  
16:10 9 Mr Hanks, do you want to ask any questions?  
16:10 10  
16:10 11 MR HANKS: Commissioner, no, thank you.  
16:10 12  
16:10 13 COMMISSIONER: Thank you, Mr Hanks.  
16:10 14  
16:10 15 MR BORSKY: I have no questions either, Commissioner.  
16:10 16  
16:10 17 COMMISSIONER: Okay.  
16:10 18  
16:10 19 MS NESKOVCIN: Commissioner, if Mr Murphy could be  
16:10 20 excused?  
16:10 21  
16:10 22 COMMISSIONER: Yes, you are free to go. Thank you.  
16:10 23  
16:10 24 A. Thank you, Commissioner.  
16:10 25  
16:10 26  
16:10 27 **THE WITNESS WITHDREW**  
16:10 28  
16:10 29  
16:10 30 MS NESKOVCIN: There are no further witnesses today --  
16:10 31  
16:10 32 COMMISSIONER: Good.  
16:10 33  
16:11 34 MS NESKOVCIN: --- nor are there any witnesses tomorrow, if  
16:11 35 the proceedings could be adjourned to 9.30 am on Thursday.  
16:11 36  
16:11 37 COMMISSIONER: Okay, I will adjourn until then.  
16:11 38  
16:11 39  
16:11 40 **HEARING ADJOURNED AT 4.11 PM UNTIL THURSDAY,**  
16:16 41 **1 JULY 2021 AT 9.30 AM**

**Index of Witness Events**

HEARING IN CAMERA	P-2755
HOUSEKEEPING	P-2755
MR RICHARD DOUGLAS MURPHY, AFFIRMED	P-2758
EXAMINATION-IN-CHIEF BY MS NESKOVGIN	P-2758
QUESTIONS BY THE COMMISSIONER	P-2897
THE WITNESS WITHDREW	P-2898

**Index of Exhibits and MFIs**