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TRANSCRIPT OF PROCEEDINGS

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

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

**MELBOURNE, VICTORIA**

**10:01 AM, TUESDAY, 03 AUGUST 2021**

<b>Counsel for Crown Resorts Limited</b>	<b>MR MICHAEL BORSKY QC</b>
<b>Counsel for Victorian Commission for Gambling and Liquor Regulation</b>	<b>MR PETER ROZEN QC</b>
<b>Counsel for Consolidated Press Holdings</b>	<b>MR NOEL HUTLEY SC</b>
<b>Counsel for the State of Victoria</b>	<b>MR PETER GRAY QC</b>
<b>Helen Coonan</b>	<b>MR JOHN SHEAHAN QC</b>

1 COMMISSIONER: Thank you, everyone.  
10:01 2  
10:01 3 Now, order of business. Counsel seem to have arranged between  
10:01 4 themselves about who is making submissions first, which was  
10:01 5 quite different to my order of events but as always I am in  
10:01 6 counsel's hands, so Mr Gray, you have the honour of going first.  
10:01 7  
10:01 8  
10:01 9 **CLOSING SUBMISSIONS BY MR GRAY**  
10:01 10  
10:01 11  
10:01 12 MR GRAY: Thank you very much, Commissioner.  
10:01 13  
10:01 14 The State's written submissions addressed four topics, two of  
10:01 15 which make mention of the regulator. At the outset I wish to  
10:01 16 mention a contextual matter relating to the regulator,  
10:01 17 Commissioner. Outside the scope of this Royal Commission's  
10:01 18 inquiry, over the last several months, there has been a parallel  
10:01 19 review of the regulatory framework.  
10:01 20  
10:01 21 In the Government's media release on 22 February 2021  
10:01 22 announcing this Royal Commission the Government also  
10:01 23 announced that it had commissioned a review to advise on the  
10:02 24 necessary structural and governance arrangements for  
10:02 25 an independent casino regulator to occur in tandem with the  
10:02 26 Royal Commission. That review is mentioned in the Royal  
10:02 27 Commission's Letters Patent as well.  
10:02 28  
10:02 29 The State Government has this morning made an announcement  
10:02 30 via media release, which should be with the media organisations  
10:02 31 already. And in that announcement there is reference made to the  
10:02 32 report, or the recommendations of the independent reviewer,  
10:02 33 Ms Deborah Cope. She has recently presented her  
10:02 34 recommendations and the Government announced that it intends  
10:02 35 to transition the function of regulating the casino from the  
10:02 36 VCGLR to a new casino and gambling regulator with a dedicated  
10:02 37 casino regulated division over the coming months. The details of  
10:03 38 the regulatory framework and timing of its implementation are  
10:03 39 not yet determined and the transition will no doubt depend on  
10:03 40 a future Act of Parliament in any event. The two topics in the  
10:03 41 submissions relating to the regulator are the likely or arguable  
10:03 42 affect of certain provisions of the Management Agreement on  
10:03 43 implementing Counsel Assisting's suggested recommendation or  
10:03 44 suggestions at any rate that the VCGLR should take, or might  
10:03 45 take disciplinary action under section 20 of the Casino Control  
10:03 46 *Act, leading to the possibility of cancellation, suspension or*  
10:03 47 *variation of Crown's casino licence.*

10:03 1  
10:03 2 And, as you know, of course, Commissioner, Counsel Assisting's  
10:03 3 submissions in that regard are also made in combination with  
10:03 4 a suggestion about the appointment of a manager or monitor.  
10:03 5  
10:03 6 The other topic, which makes mention of the regulator, is the  
10:03 7 suggestion by Counsel Assisting that the Royal Commission  
10:03 8 consider recommending the appointment of that manager or  
10:04 9 monitor. Now, each of these topics remains very important  
10:04 10 irrespective of the announcement that has been made today of the  
10:04 11 transition to a new regulator. I will now address in a little more  
10:04 12 detail just the first of those points, the implications of certain  
10:04 13 provisions of the Management Agreement. The purpose of my  
10:04 14 doing so, Commissioner, is really to allow you to raise any issues  
10:04 15 you wish with me arising out of the State's written submissions  
10:04 16 on this topic.  
10:04 17  
10:04 18 The written submissions on this topic are quite detailed. In  
10:04 19 essence, as you know, they refer to the regulatory certainty  
10:04 20 provisions added to the Management Agreement and, therefore,  
10:04 21 to the Casino (Management Agreement) Act in 2014. And those  
10:04 22 submissions indicate or seek to demonstrate that those provisions  
10:04 23 could cause obstacles to the proposal for the VCGLR to  
10:04 24 undertake disciplinary action with the potential of leading to  
10:05 25 cancellation or variation on the grounds that it is no longer in the  
10:05 26 public interests for Crown to maintain the licence.  
10:05 27  
10:05 28 COMMISSIONER: There are really two issues that arise out of  
10:05 29 those provisions: one which seems to be contrary to  
10:05 30 well-established old-fashioned equity principles, that a person  
10:05 31 can't profit from his wrongdoing, and the way the agreement  
10:05 32 works is it allows that very thing to happen. And the second  
10:05 33 thing is whether it is appropriate to maintain a prohibition against  
10:05 34 a specific reason for cancellation, like the public interest. Each of  
10:05 35 those things have serious problems so far as any government is  
10:05 36 concerned, let alone a regulator. And what has been troubling  
10:05 37 me, maybe not very much, I should tell you, but what has been  
10:05 38 troubling me is whether if it is recommended that those two  
10:06 39 aspects of clause 22 and whatever it is should be repealed  
10:06 40 because they have statutory effect, whether that raises special  
10:06 41 considerations for a government, effectively sovereign risk type  
10:06 42 issues. My own view is that they don't, but it is a matter to  
10:06 43 consider.  
10:06 44  
10:06 45 MR GRAY: Thank you, Commissioner.  
10:06 46  
10:06 47 Interestingly there are alternative positions put in the written

10:06 1 submissions of each of Consolidated Press Holdings on the one  
10:06 2 hand referring to the last matter you raised and Crown on the  
10:06 3 other in which there are indications at pages 84 and 85 of  
10:06 4 Crown's written submissions ---

10:06 5  
10:06 6 COMMISSIONER: I know.

10:06 7  
10:06 8 MR GRAY: --- that they are willing to contemplate any  
10:06 9 appropriate amendments to that regime. Suffice it to say that the  
10:07 10 State doesn't have a particular position on those issues, it is  
10:07 11 clearly a matter that is going to have to be considered in detail  
10:07 12 once your final report is in.

10:07 13  
10:07 14 COMMISSIONER: (Nods head).

10:07 15  
10:07 16 MR GRAY: The purpose of our written submissions on those  
10:07 17 topics were to raise those potential obstacles and implore the  
10:07 18 Royal Commission to take them into account in formulating its  
10:07 19 report.

10:07 20  
10:07 21 COMMISSIONER: Assume that will happen.

10:07 22  
10:07 23 MR GRAY: Thank you very much.

10:07 24  
10:07 25 The other two issues addressed in the written submissions are the  
10:07 26 Ministerial Direction relating to Responsible Gambling codes of  
10:07 27 conduct and a brief section noting the importance of the casino  
10:07 28 operator's revenue obligations and noting that Crown has recently  
10:07 29 paid some \$61 million representing, according to Crown, short  
10:07 30 payment of certain casino taxes plus penalty interest, a significant  
10:08 31 component for penalty interest.

10:08 32  
10:08 33 Now, we on behalf of the State note that Counsel Assisting in  
10:08 34 their written submissions has suggested that much more by way  
10:08 35 of shortfall in past casino tax may be still payable.

10:08 36  
10:08 37 COMMISSIONER: (Nods head).

10:08 38  
10:08 39 MR GRAY: And the purpose of our submissions on this point  
10:08 40 was really limited to foreshadowing that the State intends to move  
10:08 41 to a resolution of this matter and no doubt the VCGLR will have  
10:08 42 a very important role to play in the interactions with Crown on  
10:08 43 these issues and to go no further than that. The State is not  
10:08 44 making a submission about whether the \$61 million that has been  
10:08 45 paid represents all that is owing.

10:08 46  
10:08 47 COMMISSIONER: It's probably not appropriate for the State to

10:08 1 do so at this stage. You may have other litigation in front of  
10:08 2 a judge about that.

10:09 3  
10:09 4 MR GRAY: That is simply a matter we acknowledge is very  
10:09 5 important and will need to be sorted out in due course once your  
10:09 6 final report is in.

10:09 7  
10:09 8 I will conclude these oral submissions with a little more detail on  
10:09 9 the other of those remaining two issues, the Responsible  
10:09 10 Gambling Code of Conduct and the Ministerial Directions on  
10:09 11 those matters. There are two Ministerial Directions as you will  
10:09 12 recall, Commissioner: one made in 2018 which is the one  
10:09 13 applicable to the casino operator and one made in 2020 which is  
10:09 14 applicable to other venues, such as hotels and clubs.

10:09 15  
10:09 16 Counsel Assisting correctly, in my respectful submission,  
10:09 17 observed that the 2020 direction applicable to hotels and clubs is  
10:09 18 more prescriptive than the 2018 direction that applies to the  
10:09 19 casino operator. At least in certain respects. That is a fair  
10:09 20 characterisation.

10:09 21  
10:09 22 COMMISSIONER: Just give me one second, Mr Gray. We've  
10:10 23 got a problem with your microphone.

10:10 24  
10:10 25 MR GRAY: Should I move to another one?

10:10 26  
10:10 27 COMMISSIONER: Give us a second and we'll try and fix it.  
10:10 28 Sorry about that, Mr Gray.

10:10 29  
10:10 30 MR GRAY: Not at all, Commissioner.

10:10 31  
10:10 32 Counsel Assisting in their written submissions have also made  
10:10 33 the submission that the direction applicable to the casino operator  
10:10 34 should be no less prescriptive than the direction that is applicable  
10:10 35 to other venues, and there is much force in that submission.  
10:10 36 However, it would not be appropriate merely to adapt the  
10:10 37 language of the 2020 direction applicable to pubs and clubs and  
10:10 38 to apply it to the casino operator.

10:10 39  
10:10 40 COMMISSIONER: Mr Gray, we will have to hold you up again.  
10:10 41 Something is actually wrong with the microphone, it might not be  
10:11 42 a positioning thing. If you just give us a second.

10:11 43  
10:11 44 MR GRAY: Shall I move to Mr Rozen's lectern?

10:11 45  
10:11 46 COMMISSIONER: Maybe we will try the microphone. Do one  
10:11 47 of those "testing, testing", that will be fun.

10:11 1  
10:11 2 MR GRAY: Should I continue now?  
10:11 3  
10:11 4 COMMISSIONER: I will just get the okay.  
10:11 5  
10:11 6 MR GRAY: Can you hear me now? Should I continue with the  
10:11 7 submission? I will continue, Commissioner.  
10:12 8  
10:12 9 COMMISSIONER: Thank you.  
10:12 10  
10:12 11 MR GRAY: I think I will just mention that contrasting the two  
10:12 12 Ministerial Directions on Responsible Gambling Code of  
10:12 13 Conduct, it is true that the 2021 is more prescriptive, but it  
10:12 14 wouldn't be appropriate merely to adapt its language and apply in  
10:12 15 its entirety.  
10:12 16  
10:12 17 COMMISSIONER: That won't work, but I think there are some  
10:12 18 provisions in the 2020 Ministerial Direction which, without too  
10:12 19 much change in language, could quite easily apply, be applied, to  
10:12 20 a casino. I don't think, I don't know about anybody else, but I  
10:12 21 wasn't thinking of a wholesale adoption of the 2020 direction but  
10:12 22 select out, I think I've got about four or five, something like that,  
10:12 23 of what I thought were the key prescriptions in the 2020 direction  
10:13 24 which ought sensibly apply to a casino.  
10:13 25  
10:13 26 MR GRAY: The State's position on that, Commissioner, and I  
10:13 27 don't seek to dispute your characterisation, it is clearly  
10:13 28 a reasonable view of things. But the State's position is that it is  
10:13 29 better to step back and review the document as a whole. There is  
10:13 30 merit in a wholesale review in light of evidence of best practice  
10:13 31 of the minimisation of gambling harm and casinos.  
10:13 32  
10:13 33 COMMISSIONER: Yes.  
10:13 34  
10:13 35 MR GRAY: It may be that in the end you are right and that the  
10:13 36 language used in some aspects of the 2020 direction will be a  
10:13 37 useful starting point at the very least, and it may end up that the  
10:13 38 Ministerial Direction to apply to casinos henceforth or once that  
10:13 39 review is done, if it occurs, will be no less prescriptive in certain  
10:13 40 respects.  
10:13 41  
10:13 42 COMMISSIONER: Do you put pre-commitment in the same  
10:13 43 category?  
10:13 44  
10:13 45 MR GRAY: Well, I hadn't addressed any submissions on the  
10:14 46 direction of pre-commitment, and I haven't come prepared with  
10:14 47 any instructions on it so it would be difficult and probably

10:14 1 perilous for me to venture into that territory. If you want me to  
10:14 2 take a question on notice about the pre-commitment direction  
10:14 3 I can.  
10:14 4  
10:14 5 COMMISSIONER: (Nods head).  
10:14 6  
10:14 7 MR GRAY: No.  
10:14 8  
10:14 9 COMMISSIONER: Won't happen in any event.  
10:14 10  
10:14 11 MR GRAY: All right.  
10:14 12  
10:14 13 Now, we've said in our written submissions not a great deal on  
10:14 14 the detail of this, but can I also assure the Commissioner that the  
10:14 15 State does regard it as an idea that has a lot of merit to conduct  
10:14 16 this wholesale review of the direction and assuming that such  
10:14 17 a review occurs the evidence and the findings in this Royal  
10:14 18 Commission are going to be of great importance to that review,  
10:14 19 including on all those topics that Counsel Assisting have  
10:14 20 addressed, and that Crown has responded to, all of those matters  
10:15 21 will have to be weighed very carefully on topics such as the  
10:15 22 adequacy and training of the staff who know about Responsible  
10:15 23 Gambling and the appropriate interactions with customers, the  
10:15 24 periods of continuous play, the functions and resourcing of the  
10:15 25 Responsible Gambling Centre ---  
10:15 26  
10:15 27 COMMISSIONER: I was thinking the resourcing question is  
10:15 28 a big issue.  
10:15 29  
10:15 30 MR GRAY: Yes, indeed. I can't take it any further than that.  
10:15 31  
10:15 32 COMMISSIONER: Just to understand that position, you would  
10:15 33 encourage me not so much to make recommendations that ought  
10:15 34 be adopted but perhaps make suggestions along the lines of ---  
10:15 35 make suggestions of issues that will be a consideration if they  
10:15 36 were appropriate to be adopted?  
10:15 37  
10:15 38 MR GRAY: I think that is right, Commissioner, and if you were  
10:15 39 to identify the sorts of considerations that should guide any future  
10:16 40 review that occurs in relation to that direction, of course the State  
10:16 41 would weigh those things with the utmost gravity and importance  
10:16 42 attached to them.  
10:16 43  
10:16 44 COMMISSIONER: Okay. Understand.  
10:16 45  
10:16 46 MR GRAY: Commissioner, unless there is anything further,  
10:16 47 that's all I wished to address orally and we rely on our written

10:16 1 submissions.

10:16 2

10:16 3 COMMISSIONER: Okay. Thank you. No, I understand the  
10:16 4 State's position very well.

10:16 5

10:16 6 MR GRAY: Thank you.

10:16 7

10:16 8 COMMISSIONER: Thank you, Mr Gray. Mr Borsky?

10:16 9

10:16 10

10:16 11 **CLOSING SUBMISSIONS BY MR BORSKY**

10:16 12

10:16 13

10:16 14 MR BORSKY: Good morning, Commissioner.

10:16 15

10:17 16 From the outset of this Commission Crown has recognised, and I  
10:17 17 stand here today, Crown has a deeper recognition, that as a result  
10:17 18 of its own failings there has been a substantial and warranted  
10:17 19 decrease in the public's confidence and trust in Crown's  
10:17 20 operations. In their evidence to you, Crown's senior leaders  
10:17 21 recognise that. The interim Executive Chairman, Ms Coonan,  
10:17 22 agreed with Counsel Assisting without hesitation that Crown's  
10:17 23 own failings have damaged its reputation as a company that can  
10:17 24 operate a casino in a way that maintains public confidence. And  
10:17 25 she agreed with Counsel Assisting without hesitation that Crown  
10:17 26 is pursuing reforms which she and the Board regard as absolutely  
10:18 27 necessary to regain the confidence of stakeholders and the public.

10:18 28

10:18 29 She is not alone in that regard on the Board. Each of the directors  
10:18 30 from whom you've received and heard evidence have reflected  
10:18 31 deeply on the failings and deficiencies that were identified in the  
10:18 32 Bergin Inquiry in NSW, and in light of the serious further failings  
10:18 33 that this Commission, your Commission, has exposed, the huge  
10:18 34 challenges still confronting Crown and how Crown must respond.

10:18 35

10:18 36 I won't waste time this morning taking you back to the evidence;  
10:18 37 you've read it and heard it, with respect, we are sure, but for the  
10:18 38 benefit of the transcript, Mr Morrison in his statement at  
10:18 39 paragraphs 17 to 19 acknowledges the substantial challenges  
10:19 40 facing Crown by reason of its own failings, the challenges  
10:19 41 according to Mr Morrison include rebuilding relationships and  
10:19 42 trust with regulators and the public, repositioning Crown's  
10:19 43 Responsible Gaming to best practice, and retaining high quality  
10:19 44 staff and maintaining morale amongst others.

10:19 45

10:19 46 Mr Carter, who did not appear to give evidence viva voce before  
10:19 47 you, but who provided a statement at paragraphs 39 to 43,



10:19 1 recognised that the reconstituted Board and senior management  
10:19 2 will need to be committed to material, cultural, organisational and  
10:19 3 operational change driven from the top down in  
10:19 4 an uncompromising way.  
10:19 5  
10:19 6 Ms Korsanos, in her statement, and from whom you heard in  
10:19 7 some detail, at paragraphs 108 to 117, recorded her analysis upon  
10:20 8 her reflections, in answer to your question, as to the corporate  
10:20 9 governance deficiencies that gave rise to the serious failings  
10:20 10 exposed in Bergin.  
10:20 11  
10:20 12 Ms Halton, from whom you also heard orally, in her statement at  
10:20 13 paragraphs 186 to 194, reflected on the risk management  
10:20 14 deficiencies that gave rise to the failings and the changes that  
10:20 15 Crown has since the Bergin Inquiry made to address them.  
10:20 16  
10:20 17 Ms Coonan orally at transcript P-3861 took responsibility for her  
10:20 18 part in the failings. She gave evidence that she ---  
10:20 19  
10:20 20 COMMISSIONER: You don't have a microphone either,  
10:21 21 Mr Borsky. Take a seat. Maybe we'll sort it. Maybe we won't.  
10:21 22  
10:21 23  
10:21 24 (Brief pause in proceedings to resolve technical issues)  
10:22 25  
10:22 26  
10:22 27 COMMISSIONER: Maybe we will take our early morning break  
10:22 28 earlier. We will take a break. Maybe 5 minutes.  
10:22 29  
10:22 30  
10:22 31 **ADJOURNED** [8:23A.M.]  
10:31 32  
10:31 33  
10:31 34 **RESUMED** [8:32A.M.]  
10:31 35  
10:31 36  
10:31 37 COMMISSIONER: Thank you. We'll have another go,  
10:31 38 Mr Borsky.  
10:31 39  
10:31 40 MR BORSKY: Thank you, Commissioner. I won't repeat any of  
10:31 41 what I said. I know you heard me, which is what counts to me.  
10:31 42 I was just making submissions in support of our proposition that  
10:31 43 Crown and its senior leaders recognise that as a result of Crown's  
10:31 44 own failings there has been a substantial and warranted decrease  
10:31 45 in the public's confidence and trust in its operations. I won't  
10:31 46 repeat the evidentiary references I've given for that.  
10:31 47

10:31 1 I was, just before you rose, Commissioner, addressing the  
10:31 2 evidence of Ms Coonan in that regard at transcript P-3861, which  
10:32 3 is not necessary to call up. There in her evidence, Ms Coonan,  
10:32 4 the interim Executive Chair, took responsibility for her part in  
10:32 5 those failings, told you that she had an even deeper appreciation  
10:32 6 of those failings, when she sat in the witness box virtually, than  
10:32 7 she had as a result of Bergin, thanks to the additional matters  
10:32 8 exposed by your Commission, and that she and the company are  
10:32 9 willing to do the hard yards and that there is no shirking the  
10:32 10 issues in relation to Crown's recognised necessary reform.

10:32 11  
10:32 12 You heard from the new CEO, Mr McCann, too. In his witness  
10:32 13 statement at paragraph 32, he said that he recognised almost  
10:32 14 immediately, upon joining Crown in June this year, that the  
10:32 15 failings of Crown that have been exposed in your Commission  
10:33 16 and in the Bergin Inquiry are serious and only able to be  
10:33 17 addressed by the combination of a cultural overhaul and material  
10:33 18 upgrading of processes, people and systems, with investment of  
10:33 19 considerable resources in compliance, financial crime, Responsible  
10:33 20 Gaming, risk appetite, risk management, training and culture.

10:33 21  
10:33 22 You also heard evidence from the members of the board and  
10:33 23 others that the board are working hard, not only to turn around  
10:33 24 the culture and reform Crown to regain the confidence of its  
10:33 25 stakeholders and the public, but also actively to try to identify,  
10:33 26 from within the ranks of the organisation, things that may be  
10:33 27 inconsistent with that turnaround that they are working toward  
10:33 28 achieving, so as to enable them and the company to deal with  
10:33 29 them.

10:33 30 Ms Halton gave evidence to that effect at transcript 3639,  
10:34 31 Ms Coonan 3838, and Mr Weeks, though not a member of the  
10:34 32 board, giving evidence about his observations of them at 3391.

10:34 33  
10:34 34 From the outset of this Royal Commission, Crown has adopted  
10:34 35 a different approach to it as compared to the one it adopted in the  
10:34 36 Bergin Inquiry. You wrote to directors of Crown, Commissioner,  
10:34 37 on 10 March, asking whether Crown accepted that it was open to  
10:34 38 Commissioner Bergin to make the principal findings that she  
10:34 39 made, and to conclude that Crown was not suitable.

10:34 40  
10:34 41 Crown, in its response seven days later, accepted that it was open  
10:34 42 to Commissioner Bergin to find based on the evidence and  
10:34 43 material before her that Crown was not suitable. And, in its  
10:35 44 response, Crown accepted the essence of Commissioner Bergin's  
10:35 45 three principal findings in support of that conclusion of  
10:35 46 unsuitability as to the facilitation of money laundering, Crown  
10:35 47 putting its staff at risk of arrest in China and Crown entering into

10:35 1 relationships with junket operators allegedly linked to organised  
10:35 2 crime.

10:35 3  
10:35 4 That, we respectfully submit, stands in contrast to the position  
10:35 5 Crown adopted for much of Bergin. Crown has learnt a lesson.  
10:35 6 Counsel Assisting you have acknowledged that Crown, during  
10:35 7 this Royal Commission, has shown what Counsel Assisting  
10:35 8 describe in their written submissions as repentance. Crown has  
10:35 9 cooperated with this Commission. The Commissioner himself,  
10:36 10 with respect graciously, acknowledged the cooperation and effort  
10:36 11 and hard work by all who have participated in this Commission.  
10:36 12 That was at transcript 3998. Some examples, and I won't dwell  
10:36 13 on or labour them of Crown's cooperation in this Commission,  
10:36 14 include working cooperatively with the Commission and its  
10:36 15 appointed expert, McGrathNicol, cooperating with their requests,  
10:36 16 including by procuring the necessary exemptions from  
10:36 17 AUSTRAC, hosting them on Crown's site, making staff available  
10:36 18 to McGrathNicol for interviews, focus groups, surveys and  
10:36 19 questionnaires.

10:36 20  
10:36 21 The Commission noted, prior to McGrathNicol commencing their  
10:36 22 work, that that work would require cooperation and timely  
10:36 23 assistance from Crown. McGrathNicol, in their report, observed  
10:36 24 that they did in fact experience full cooperation and timely  
10:37 25 assistance from Crown in relation to the work for the  
10:37 26 Commission.

10:37 27  
10:37 28 More generally, on instructions from Crown, there has been close  
10:37 29 cooperation between solicitors and counsel for Crown and your  
10:37 30 solicitors and Counsel Assisting. The work of this Commission  
10:37 31 has revealed further misconduct and failings by Crown beyond  
10:37 32 that found in the Bergin Inquiry which Crown accepts. Four bear  
10:37 33 mention at this stage; first, the underpayment of tax by Crown.  
10:37 34 That underpayment arose from an admittedly completely  
10:37 35 unacceptable decision by Crown to start claiming deductions for  
10:38 36 bonus jackpots in circumstances where Crown knew that there  
10:38 37 was at least doubt as to the deductibility, and Crown did not  
10:38 38 notify the regulator that it was including bonus jackpots in the  
10:38 39 deductions, and Crown expected, or at least hoped, that the  
10:38 40 regulator would not notice. As I say, that was completely  
10:38 41 unacceptable, as Crown hastens to admit.

10:38 42  
10:38 43 Second, the China UnionPay or hotel transactions practice. That,  
10:38 44 as you know, was the approved and documented practice by  
10:38 45 which Crown, in breach of section 68(2) of the Casino Control  
10:38 46 *Act, received payments from international guests staying at*  
10:38 47 Crown hotels using a credit or debit card and then made those

10:38 1 funds available to those guests on the casino floor. The practice  
10:39 2 was unethical, illegal under Victorian law, and may have  
10:39 3 involved Crown dealing in the proceeds of crime, specifically  
10:39 4 Chinese currency controls.  
10:39 5

10:39 6 Third, deficiencies in aspects of Crown's approach to the  
10:39 7 Responsible Service of Gaming. We deal with that important  
10:39 8 topic in considerable detail from paragraphs F1 to F209 in our  
10:39 9 written submissions. To mention orally just a couple of examples  
10:39 10 of the deficiencies, if I may, Crown accepts that patrons have  
10:39 11 been allowed to play, that is gamble, for periods longer than they  
10:39 12 should responsibly have been allowed. The previous policy set  
10:39 13 a maximum period of play of 18 hours, which Crown accepts was  
10:39 14 inappropriately long. And the Commission has also heard  
10:40 15 evidence that at least some of Crown's staff still do not  
10:40 16 understand their obligations in relation to Responsible Gaming,  
10:40 17 which is obviously unacceptable, must be addressed and will be  
10:40 18 addressed by Crown. We deal with that topic at paragraphs F.105  
10:40 19 to F.114.  
10:40 20

10:40 21 Fourth and finally, at this point by way of summary, Crown  
10:40 22 accepts its failings, in some instances engaging and dealing  
10:40 23 appropriately with the VCGLR, its regulator, particularly its  
10:40 24 dealings in relation to junkets, both in the context of the Sixth  
10:40 25 Review and Recommendation 17 about which much ink has been  
10:40 26 spilled, and the more recent disciplinary or show cause  
10:40 27 proceeding. Crown also accepts that it was too defensive in  
10:40 28 response to the VCGLR's China investigation.  
10:40 29

10:40 30 I will return to the detail of some of those topics later this  
10:41 31 morning, but what I wish to emphasise at this point is that all of  
10:41 32 those failings are accepted by Crown with humility and  
10:41 33 contrition. Crown recognises that it has failed to live up to the  
10:41 34 standards rightly expected of it by law and by the Victorian  
10:41 35 community as the privileged holder of the licence to operate  
10:41 36 a casino in this State.  
10:41 37

10:41 38 I am instructed on behalf of Crown, with respect, through this  
10:41 39 Commission, to apologise to the community for those failings.  
10:41 40

10:41 41 Now, to matters of context, which you may consider relevant in  
10:41 42 weighing the consequences of those and other failings.  
10:41 43

10:41 44 We submit that it remains the case that Crown's misconduct and  
10:41 45 failings arose in large part from initiatives conceived or and  
10:41 46 pursued in an old culture, that the new leadership of Crown has  
10:42 47 been working hard and is committed to continuing to work hard

10:42 1 to reform. Take China UnionPay, or hotel transactions practice  
10:42 2 as an example. The practice, as the Commission knows, ceased  
10:42 3 in 2016. It is true that there was pressure from some quarters in  
10:42 4 the business, particularly the commercial side within the VIP  
10:42 5 international business, in 2018 or 2019 to reinstate the practice.  
10:42 6 But, the fact is, the practice was not re-introduced and not  
10:42 7 re-introduced as a result of the unequivocal direction from Crown  
10:42 8 Resorts's then most senior in-house lawyer. Ms Williamson gave  
10:42 9 evidence before you about those matters at transcript 3179 to  
10:42 10 3182. Ms Williamson in her evidence mentioned Mr Ratnam as  
10:43 11 the executive who, to the best of her recollection, might have  
10:43 12 been the one who made that request of her for the practice to be  
10:43 13 re-introduced. That was at transcript 3181 line 47 to 3182 line  
10:43 14 17.

10:43 15  
10:43 16 As you know, Commissioner, Mr Ratnam has since left Crown.  
10:43 17 He worked in the VIP international business and was very closely  
10:43 18 associated with Mr James Packer. Commissioner Bergin had  
10:43 19 something to say about that at paragraph 22 in chapter 2.8 of her  
10:43 20 report.

10:43 21  
10:43 22 We submit that what this illegal and unacceptable past practice of  
10:43 23 China UnionPay, or hotel transactions, shows the Commission  
10:43 24 about the current leadership and culture of Crown is in fact  
10:43 25 positive. As soon as it came to the attention of the current  
10:44 26 leadership of Crown as a result of a whistleblower report in  
10:44 27 March 2021, the issue was promptly disclosed to this  
10:44 28 Commission, and independent counsel were promptly appointed  
10:44 29 to conduct an urgent investigation. The report of the independent  
10:44 30 investigating counsel was provided to the Commission and to the  
10:44 31 VCGLR and other regulators, with Crown waiving all claims for  
10:44 32 legal professional privilege in relation to the report and the  
10:44 33 historical practice more broadly.

10:44 34  
10:44 35 Counsel Assisting acknowledge that this reflects well on the  
10:44 36 current Board and that it shows Crown's willingness to expose  
10:44 37 itself to outside scrutiny and a greater acceptance of the need for  
10:44 38 transparency and a more open approach to its regulators.

10:44 39  
10:44 40 Now I return to the issue of underpayment of tax. Again, the  
10:45 41 admittedly completely unacceptable decision to start claiming  
10:45 42 deductions for bonus jackpots surreptitiously, and in  
10:45 43 circumstances where there was known to be doubt as to the  
10:45 44 deductibility, was made in 2012. There was disclosure to the  
10:45 45 regulator in mid-2018 so that aspect of the misconduct, being the  
10:45 46 surreptitiousness or concealment, we submit, was at least  
10:45 47 ameliorated over three years ago. We address the detail of that

10:45 1 matter at paragraphs G22 to G30 and G101 to G105 of our  
10:45 2 written submissions.

10:45 3  
10:45 4 Counsel Assisting in their submissions recognise that disclosure  
10:45 5 and they recognise that the VCGLR should have done more with  
10:46 6 the information disclosed by Crown in mid-2018. Counsel  
10:46 7 Assisting also submit that the disclosure in 2018 by Crown was in  
10:46 8 one respect misleading because it failed to disclose that some  
10:46 9 patrons were already entitled to receive some of the benefits that  
10:46 10 they received from the promotions. We submit that you should  
10:46 11 not find that there was any intention to mislead the regulator on  
10:46 12 that point, and it could only be an intentional misleading that  
10:46 13 could bear relevance to the question of suitability.

10:46 14  
10:46 15 An intention to mislead on that point was not put to any one of  
10:46 16 the many Crown witnesses who were examined in relation to this  
10:46 17 important topic, and there is no document or other evidence  
10:46 18 suggesting that any officer of Crown sought to conceal that fact  
10:47 19 from the VCGLR or even appreciated its relevance. Nor is there  
10:47 20 any evidence on the VCGLR side in their documents supporting  
10:47 21 the proposition that the VCGLR would have considered it  
10:47 22 relevant.

10:47 23  
10:47 24 That said, Crown accepts that it was in any event completely  
10:47 25 unacceptable for it to continue to treat bonus jackpots as  
10:47 26 deductions as it did until this Commission brought the  
10:47 27 misconduct to light.

10:47 28  
10:47 29 Crown accepts that it was not the responsibility of the VCGLR,  
10:47 30 its regulator, to help Crown get its affairs in order. It was  
10:47 31 Crown's responsibility to set things right. As you know, the old  
10:47 32 leadership of Crown under the then CEO and Managing Director  
10:47 33 of Crown Resorts and Executive Director of Crown Melbourne,  
10:47 34 planned to resolve the issue of bonus jackpots tax, together with  
10:47 35 other then extant tax issues, in a comprehensive agreement with  
10:48 36 the State. We've addressed the evidence on that matter at  
10:48 37 paragraphs G37 to G41. He and other Executive Directors who  
10:48 38 had knowledge of this issue have left Crown.

10:48 39  
10:48 40 The current leadership, by contrast, have adopted a different  
10:48 41 approach. They have, we submit, set things right. At the very  
10:48 42 first meeting after Mr Walsh became CEO of Crown Melbourne  
10:48 43 and Ms Coonan became Executive Chairman of Crown Resorts,  
10:48 44 Mr Walsh raised aspects of the issue with Ms Coonan and she  
10:48 45 directed that it be disclosed to Crown's lawyers with a view to it  
10:48 46 being disclosed to this Commission. Mr Walsh's focus in the  
10:48 47 discussion was on aspects of the issue that he understood and

10:48 1 perceived as going to Crown's culture, that is the failure to be  
10:48 2 candid with the VCGLR in 2012. The tax liability aspect appears  
10:49 3 from the evidence not to have been front of mind for Mr Walsh.  
10:49 4 We address that at paragraphs G42 to G46 and G112. Since the  
10:49 5 full extent of the issue has become clear, that is the cultural  
10:49 6 dimension and the substantive tax liability aspect, and I repeat, it  
10:49 7 has become clear with respect thanks to the work of this  
10:49 8 Commission, since then the board, the Executive Chair and the  
10:49 9 new CEO have waived privilege and shared all legal advices  
10:49 10 relevant to this issue.

10:49 11  
10:49 12 As you know, Crown had advice quantifying the extent of the  
10:49 13 underpayment at two different levels, and Crown under its new  
10:49 14 leadership undertook to the regulator and to the State that Crown  
10:49 15 would make the payment at the higher of those two levels. That  
10:50 16 payment has been made with penalty interest on 27 July. The  
10:50 17 payment was \$61.5 million, 37.4 million of which was for the  
10:50 18 unpaid tax and penalty interest of 24.1 million.

10:50 19  
10:50 20 Counsel Assisting in their submissions refer to the still  
10:50 21 undetermined question of Matchplay and whether there might be  
10:50 22 further tax unpaid and owing by Crown in relation to Matchplay.  
10:50 23 Crown has, in light of those submissions from Counsel Assisting,  
10:50 24 obtained further advices from two silks, two members of Her  
10:50 25 Majesty's Counsel, again both of whom confirm that in their  
10:50 26 opinion there is no further outstanding gaming tax payable by  
10:50 27 Crown in relation to Matchplay. We address that and our  
10:51 28 submissions on the question of Matchplay at G79 to G93. But,  
10:51 29 we submit, and I apprehend that there may be at least some  
10:51 30 common ground on this point ---

10:51 31  
10:51 32 COMMISSIONER: This is not the tax court.

10:51 33  
10:51 34 MR BORSKY: This is not the tax court.

10:51 35  
10:51 36 We have, with respect to the Commission and our friends  
10:51 37 Counsel Assisting, have engaged with the subject and addressed  
10:51 38 it fulsomely, but we agree it is not an issue you need or ought  
10:51 39 determine.

10:51 40  
10:51 41 COMMISSIONER: Another way of putting it is I'm not capable  
10:51 42 of determining it.

10:51 43  
10:51 44 MR BORSKY: I wouldn't put it that way, but yes.

10:51 45  
10:51 46 COMMISSIONER: I don't mean not working out what the legal  
10:51 47 position is, but rather whatever I say about it might not be

10:51 1 relevant, which is ---

10:51 2

10:51 3 MR BORSKY: Might not --- sorry, I spoke over you.

10:51 4

10:51 5 COMMISSIONER: What I was going to say was don't assume I

10:52 6 agree with the second lot of counsel's advice. They still seem to

10:52 7 me not to have grasped the real issue that has to be looked at.

10:52 8

10:52 9 MR BORSKY: If I may move to another example of why we say

10:52 10 that many of the elements of misconduct and failings arose from

10:52 11 issues pursued in the old culture at Crown. I want to address

10:52 12 again the important subject of AML, anti-money laundering. The

10:52 13 failings in anti-money laundering are, in our submission, largely

10:52 14 historic. Crown has acknowledged, indeed it acknowledged

10:52 15 immediately in the letter to you of 17 March, that its AML

10:52 16 controls were inadequate, and that between 2013 and 2019

10:53 17 Crown facilitated or enabled third parties to engage in apparent

10:53 18 money laundering, despite concerns having been raised by

10:53 19 Crown's bankers. So that is acknowledged. But in its present

10:53 20 state, Crown now has an appropriate, compliant and adequately

10:53 21 resourced AML program in place, albeit it is still at an early stage

10:53 22 of maturity but it is appropriate, compliant and adequately

10:53 23 resourced. Mr Blackburn gave you that evidence at transcript

10:53 24 3079 line 44 to 3080 line 9. And, as you know, there is still

10:53 25 a reform program underway under Mr Blackburn's leadership that

10:53 26 is on track to deliver an advanced state of AML maturity by the

10:53 27 end of next year.

10:54 28

10:54 29 Commissioner Bergin recognised that the suitability of

10:54 30 a company can ebb and flow with changes to the composition of

10:54 31 its board, senior management and others who influence its affairs.

10:54 32 And Ms Arzadon, who gave evidence before you, recognised that

10:54 33 even senior people who have made mistakes under an old and

10:54 34 deficient culture can change and embrace a new culture. And she

10:54 35 recognised that that can be a very powerful way to drive cultural

10:54 36 change through the broader organisation, transcript 3977.

10:54 37

10:55 38 You heard evidence from a number of Crown witnesses that

10:55 39 Crown is firmly and genuinely committed to staying the course

10:55 40 on reform. Mr Weeks was asked by Senior Counsel for the

10:55 41 VCGLR, Mr Rozen, why the Commission should have have any

10:55 42 confidence that Crown will stay the course on cultural reform

10:55 43 rather than just going back to its old ways after this Commission

10:55 44 and perhaps other inquiries have concluded, and Mr Weeks at

10:55 45 transcript 3433 to 3434 explained his views in some details as to

10:55 46 why there were a range of factors that could give you comfort,

10:55 47 one of them being the quality of the people that have recently



10:55 1 come into the organisation, the other being the systems and  
10:55 2 structures that have been built, and the piece of work that Crown  
10:55 3 is still focused on and recognises still has work to do, and that is  
10:55 4 reformation of its culture.

10:55 5

10:56 6 For those reasons Mr Weeks expressed confidence that the  
10:56 7 company will move the culture to one in which the type of  
10:56 8 conduct that has been observed and exposed in the inquiries will  
10:56 9 be unacceptable and not repeated in the company.

10:56 10

10:56 11 Ms Korsanos at transcript 3708 to 3709 addressed the same  
10:56 12 question, how and why should you have confidence that Crown  
10:56 13 will not revert to its old ways after the glare of this and perhaps  
10:56 14 other inquiries subsides.

10:56 15

10:56 16 Ms Halton too, at transcript 3645 to 3646, gave evidence on that  
10:56 17 question. Each of them spoke of the quality of people who had  
10:56 18 been recently recruited and their observations of the depth of  
10:57 19 commitment at board level and at all levels below within Crown  
10:57 20 to the reformation.

10:57 21

10:57 22 So, the difficult task confronting this Commission is, we  
10:57 23 respectfully submit, to strike a balance in your report between  
10:57 24 rightly condemning the past failings while still focusing on the  
10:57 25 present state and, indeed, the likely future. We lawyers are  
10:57 26 generally most comfortable analysing the past. That's the nature  
10:57 27 of court cases and investigations. But this Commission is  
10:57 28 charged with reporting on forward-looking questions of public  
10:58 29 policy. Principally, whether Crown is suitable and whether it is  
10:58 30 in the public interest for Crown to continue to hold the casino  
10:58 31 licence and, if not, what actions will be required for Crown to  
10:58 32 become a suitable person or for it to be in the public interest for  
10:58 33 Crown to continue to hold the licence.

10:58 34

10:58 35 And, unlike in some judicial processes, the focus of this  
10:58 36 Commission's important work is not a punitive one, or even one  
10:58 37 concerned with deterrence, it is a policy question concerned with  
10:58 38 the public interest. Counsel Assisting submit that public interest  
10:58 39 is limited only to public trust and confidence in the operation of  
10:58 40 casinos. We submit that it does include that important  
10:58 41 consideration, indeed the statute requires regard to be had to that  
10:59 42 when considering the public interest, but the statute does not say  
10:59 43 that that is the only matter to which regard may be had in  
10:59 44 considering the public interest.

10:59 45

10:59 46 As the Commissioner, with respect, knows well from other  
10:59 47 contexts, the public interest is a very broad and multifaceted

10:59 1 concept, even in the judicial context in which you do not  
10:59 2 presently sit. A fortiori, we submit in the present context of the  
10:59 3 Royal Commission, charged with answering questions of public  
10:59 4 policy of great significance to the people of this State, the notion  
10:59 5 of public interest is broader than that which Counsel Assisting  
10:59 6 submit. We've addressed that subject in more details in  
10:59 7 paragraphs B25 to B33 of our written submissions. For example,  
10:59 8 the Terms of Reference require you to have regard to financial  
10:59 9 impacts on the state and also to the most practical, effective and  
11:00 10 efficient way to address the matters arising out of your inquiry.  
11:00 11 They are related to but distinct from and broader than the  
11:00 12 conception of public interest urged upon you by our friends,  
11:00 13 Counsel Assisting.

11:00 14  
11:00 15 So, without envying your task, the two considerations Crown  
11:00 16 submits as the solution to the problem with which you are  
11:00 17 confronted are as follows: first, we submit --- our first alternative,  
11:00 18 we submit, is that Crown is suitable to continue to hold the casino  
11:00 19 licence, but because Crown's suitability is contingent, it accepts,  
11:00 20 contingent on the reforms being implemented, it is appropriate for  
11:01 21 an independent monitor or supervisor to be appointed to  
11:01 22 supervise Crown. This is not the course commended to you by  
11:01 23 Counsel Assisting, but aspects of their submissions, as we read  
11:01 24 them, do lend some support to that approach. For example,  
11:01 25 Counsel Assisting submit that while determination of the question  
11:01 26 of suitability will of course involve an examination of past  
11:01 27 conduct, the Commission is engaged in a predictive and holistic  
11:01 28 assessment about how Crown Melbourne will conduct itself in  
11:01 29 the future. They also submit that recent changes in the  
11:01 30 composition of Crown's board and its association with others who  
11:01 31 have influenced its affairs and conduct over time are relevant to  
11:01 32 the assessment of suitability, and they also submit that features of  
11:01 33 Crown's reform program are appropriate, albeit only part of the  
11:02 34 transformation that will be ongoing through the process of  
11:02 35 implementation.

11:02 36  
11:02 37 Counsel Assisting argue that the statute demands suitability rather  
11:02 38 than a transition to suitability. But there is, in our respectful  
11:02 39 submission, logical coherence and legal support for the  
11:02 40 proposition that a person may be presently suitable on the basis of  
11:02 41 extant promises to do things in the future. There is an analogy  
11:02 42 here to be drawn with a new applicant for the licence. The  
11:02 43 VCGLR would need to be satisfied of the then current suitability  
11:02 44 of a new applicant, but that would not require the applicant to  
11:02 45 have in place already all of what it promises to have in order  
11:02 46 suitably to operate the casino.  
11:02 47

11:02 1 There are textual indicators in the statute of a legislative  
11:03 2 contemplation of that kind of forward-looking approach. For  
11:03 3 example, in section 9(2)(c) there is a condition that an applicant  
11:03 4 for the new licence has or has arranged a satisfactory ownership  
11:03 5 structure. In 9(2)(d), that the applicant has or is able to obtain  
11:03 6 financial resources that are adequate, and the services of persons  
11:03 7 who have sufficient experience in the management and operation  
11:03 8 of a casino.

11:03 9

11:03 10 COMMISSIONER: It couldn't really be otherwise in respect of  
11:03 11 an operation which hasn't commenced.

11:03 12

11:03 13 MR BORSKY: Quite.

11:03 14

11:03 15 COMMISSIONER: It's really not an analog, is it?

11:03 16

11:03 17 MR BORSKY: Well, the notion, the meaning of suitability, we  
11:03 18 submit, must draw its content from the indicia in the statute, and  
11:04 19 one of the important sources for that is section 9. So whilst I  
11:04 20 don't pretend it is a perfect analog, it is a relevant indicator in the  
11:04 21 statute we submit in support of our proposition that a person may  
11:04 22 presently be suitable on the basis of extant promises to do  
11:04 23 something in the future.

11:04 24

11:04 25 But while we do submit that there is a proper evidentiary and  
11:04 26 legal basis upon which the Commission could find Crown  
11:04 27 suitable, Crown does appreciate the significance of its failings  
11:04 28 and Crown accepts that it is open for this Commission to  
11:04 29 conclude on the evidence that Crown Melbourne is not  
11:04 30 a presently suitable person to hold the casino licence.

11:04 31

11:04 32 We have responded comprehensively in writing to the  
11:04 33 submissions of Counsel Assisting. Like our friends, Counsel  
11:05 34 Assisting the Commission, our written submissions run to more  
11:05 35 than 350 pages. Our submissions accept a number of the  
11:05 36 criticisms ---

11:05 37

11:05 38 COMMISSIONER: I thought at one stage I was going ---

11:05 39

11:05 40 MR BORSKY: Yes, you did.

11:05 41

11:05 42 COMMISSIONER: --- to impose 100 ---

11:05 43

11:05 44 MR BORSKY: That's correct. You did at one stage. Our  
11:05 45 submissions comply with the extant directions.

11:05 46

11:05 47 COMMISSIONER: I realise I made a mistake now.

11:05 1  
11:05 2 MR BORSKY: Our submissions accept a number of the  
11:05 3 submissions made of Crown by Counsel Assisting. Other  
11:05 4 criticisms are not accepted, though we hope that the Commission  
11:05 5 will not detect any air of combativeness or defensiveness in the  
11:05 6 position that Crown has adopted.  
11:05 7  
11:05 8 Crown advances submissions as to why the criticisms made in  
11:05 9 a particular area, dealt with in a chapter of our submissions, for  
11:06 10 example, Responsible Gaming, do not of themselves warrant  
11:06 11 a finding of unsuitability, but Crown's current leadership  
11:06 12 recognises that when viewed in aggregate and holistically, the  
11:06 13 failings in Crown that have been revealed and which Crown  
11:06 14 accepts are significant, and they do render Crown's suitability  
11:06 15 fairly in question.  
11:06 16  
11:06 17 Accordingly, Crown advances a second alternative submission  
11:06 18 for the Commission's consideration. That second alternative is  
11:06 19 that Crown is not presently suitable, but that upon implementation  
11:06 20 of its reform program, supplemented by further initiatives arising  
11:06 21 out of the recommendations of this Commission, Crown will  
11:06 22 return to being a suitable person. Again, from the perspective of  
11:06 23 the VCGLR and the State, and, indeed, the Victorian public, this  
11:07 24 would importantly be safeguarded by the appointment of  
11:07 25 an independent monitor or supervisor with all the functions and  
11:07 26 powers necessary to scrutinise and supervisor Crown along the  
11:07 27 way towards implementation of all of the reforms.  
11:07 28  
11:07 29 Our second alternative, which we raise for the Commission's  
11:07 30 consideration, is in essence the first of the two alternatives  
11:07 31 advanced in submissions by Counsel Assisting at paragraphs  
11:07 32 19.1.21(a) and 2.1.21(a). Crown accepts, as Counsel Assisting  
11:07 33 have submitted, that the monitor should have extensive powers to  
11:07 34 scrutinise the reform process, examine Crown's affairs, including  
11:07 35 by compulsorily obtaining access to documents and staff and to  
11:07 36 appoint experts to assist in the task of supervision.  
11:07 37  
11:08 38 And Crown accepts, again as Counsel Assisting have submitted,  
11:08 39 that the costs of the monitoring or supervision should be borne by  
11:08 40 Crown. Crown would also accept, with respect, the suggestion  
11:08 41 by Counsel Assisting that if the Commission were amenable to  
11:08 42 recommending this course, then the real test of suitability would  
11:08 43 be the next review by the regulator, presently scheduled for 2023.  
11:08 44 The concerns about the regulator's ability in the past adequately to  
11:08 45 undertake a suitability review to which reference has been made  
11:08 46 in others' submissions would, in our submission, be ameliorated  
11:08 47 by the appointment of the independent monitor or supervisor who

11:08 1 would have extraordinary powers and would report progressively  
11:08 2 to the State via its regulator.

11:08 3  
11:09 4 For our part, we would not be certain that legislative amendment  
11:09 5 would be necessary to implement this office of monitor or  
11:09 6 supervisor, contrary to the position expressed in writing by  
11:09 7 Counsel Assisting. We say that for these reasons: under the  
11:09 8 existing legislative regime, conditions of the casino licence can  
11:09 9 be amended under section 16 of the Casino Control Act and the  
11:09 10 regulator can give Crown a written direction relating to the  
11:09 11 conduct, supervision or control of operations in the casino. And  
11:09 12 of course it is a criminal offence for Crown not to comply with  
11:09 13 that direction under section 23 of the Act. And the regulator,  
11:09 14 under the existing legislative regime, can require the production  
11:09 15 of documents to an authorised person and require a person to  
11:09 16 attend before an authorised person for examination. That  
11:10 17 authorised person, in our submission, could be the monitor or the  
11:10 18 supervisor. I won't take time tracing you, Commissioner, through  
11:10 19 the labyrinth statutory definitions but one need have regard to  
11:10 20 an authorised person in section 3 of the Casino Control Act and  
11:10 21 then the provisions of other acts to which that refers in the  
11:10 22 Gambling Regulation Act and the VCGLR Act, that seems to us,  
11:10 23 with respect, to be an open construction.

11:10 24  
11:10 25 But, in any event, Crown would not oppose Counsel Assisting's  
11:10 26 proposal that legislative amendment be made in order to give  
11:10 27 effect to what might be the Commissioner's preferred conception  
11:10 28 of the office and the necessary functions or powers of a monitor  
11:10 29 or supervisor.

11:10 30  
11:10 31 COMMISSIONER: How does the public interest deal with this  
11:10 32 proposition, if I aggregate the conduct that came up in the Bergin  
11:11 33 Inquiry, plus the conduct that's been identified here, and without  
11:11 34 putting too fine a point on it, it is pretty serious misconduct, both  
11:11 35 option one and option two are sort of risk-free options or options  
11:11 36 where there is no real consequence of wrongdoing. Pay unpaid  
11:11 37 taxes, pay a few costs, but you don't actually suffer any  
11:11 38 consequence, that is, you can commit wrong for a decade of  
11:11 39 various kinds and come along and say, "We've fixed it so don't  
11:11 40 worry about it."

11:11 41  
11:11 42 If I'm looking at the public interest, if I was a car thief and went  
11:12 43 to the criminal court and said, "I won't steal a car again, take my  
11:12 44 word for it, now just let me go", it's really not how the system  
11:12 45 works, is it? Not only is it how the system works, it is not what  
11:12 46 the public expects.

11:12 47

11:12 1 MR BORSKY: We don't submit to you that the misconduct was  
11:12 2 not serious and we don't submit "Don't worry about it, I've fixed  
11:12 3 it", we don't even submit that it is all fixed yet. We do also point  
11:12 4 to the fact that there have been consequences. There have been  
11:12 5 consequences to a number of previous senior leaders of Crown,  
11:12 6 there have been consequences to shareholders and there have  
11:12 7 been other consequences. And that is as it should be in our  
11:13 8 respectful submission. But, we do submit that your task is not  
11:13 9 a punitive or even a deterrent one. Your task is, with great  
11:13 10 respect, to find the best solution in the public interest looking  
11:13 11 forward. So, given where we are, given where the State of  
11:13 12 Victoria and Crown are today, what is the best solution.

11:13 13  
11:13 14 COMMISSIONER: The choice might be --- that is a fair enough  
11:13 15 way of putting it, but the choice may be between you running the  
11:13 16 casino and somebody else running the casino.

11:13 17  
11:13 18 MR BORSKY: Yes. Yes. And what I'm proposing to do is  
11:13 19 address you now on the reasons why, in our respectful  
11:13 20 submission, you ought not recommend what we would term  
11:14 21 a more extreme option than either of our two alternatives.

11:14 22  
11:14 23 COMMISSIONER: (Nods head).

11:14 24  
11:14 25 MR BORSKY: The first reason is that we submit the State of  
11:14 26 Victoria has available to it in Crown today a company with  
11:14 27 considerable expertise and resources to operate a casino. And  
11:14 28 a company with an iron-clad commitment to reforming itself to  
11:14 29 the very highest standards. Unsatisfactorily from one important  
11:14 30 perspective, to which you have adverted, but potentially usefully  
11:14 31 from the perspective of the State of Victoria looking forwards.  
11:14 32 That commitment has been forged in the flames of multiple  
11:14 33 public inquiries and binding undertakings given by Crown. No  
11:15 34 new applicant would undertake to be under the scrutiny of  
11:15 35 a supervisor or a monitor as Crown does before you. There is, as  
11:15 36 has been observed in evidence to this Commission, plainly  
11:15 37 a burning platform within Crown for the reforms. Ms Arzadon  
11:15 38 explained to us by having a burning platform, by which she meant  
11:15 39 the clear understanding that cultural change is necessary for a  
11:15 40 corporation's survival is a key scenario in which cultural  
11:15 41 transformation has a better chance of success. You heard  
11:15 42 evidence from Ms Korsanos, and Mr McCann and Mr Blackburn  
11:15 43 that there is undoubtedly such a burning platform within Crown.

11:15 44  
11:15 45 When Mr Blackburn gave that evidence at transcript 2962 and  
11:15 46 2963, that the culture he had come into reflected --- sorry, I will  
11:16 47 start that again. That the culture he had come into did not reflect

11:16 1 the culture that he had seen evidenced through the past activity  
11:16 2 about which he had heard and read, he said the culture that he had  
11:16 3 joined is "one where compliance and financial crime and risk  
11:16 4 management are prioritised by Crown, and that is my experience  
11:16 5 since coming to Crown", he said.

11:16 6  
11:16 7 *My professional life in financial crime and compliance*  
11:16 8 *has been about fighting that fight at the board level, at the*  
11:16 9 *senior executive level where you are confronted usually*  
11:16 10 *with the risk/value proposition. I've confronted no*  
11:16 11 *resistance at Crown which is quite an interesting place to*  
11:16 12 *be as a compliance officer and a financial crime officer*  
11:16 13 *but to not only face no resistance, but also to face many*  
11:16 14 *business partners who are actually coming to me with*  
11:16 15 *solutions.*

11:16 16  
11:17 17 He said.

11:17 18  
11:17 19 Now, Commissioner, when he gave that evidence, you challenged  
11:17 20 him on it, noting that it was not voluntary behaviour, because  
11:17 21 Crown is fighting for its life with government regulators, you  
11:17 22 observed. And Mr Blackburn took your point, as I do with great  
11:17 23 respect. But Mr Blackburn's evidence was that the culture he has  
11:17 24 come into struck him as being pleasingly characterised not only  
11:17 25 by that genuine commitment but by what he described as genuine  
11:17 26 effort and altruism in that regard and he expressed confidence  
11:17 27 there would be no reversion to old ways, transcript 2964. Again,  
11:17 28 our first reason being the State of Victoria has available to it in  
11:17 29 Crown a company with considerable expertise and resources to  
11:17 30 operate a casino with an iron-clad commitment to reforming itself  
11:17 31 to the very highest standards, safeguarded by the monitor or  
11:17 32 supervisor which Crown accepts on any view would be  
11:18 33 appropriate.

11:18 34  
11:18 35 The second reason we advance is that Crown has already made in  
11:18 36 our submission, significant progress towards reform of the  
11:18 37 highest standards, particularly in AML. We've addressed that  
11:18 38 particular subject at paragraphs D35 to D42. Counsel Assisting  
11:18 39 and the Commissioner's appointed expert, McGrathNicol,  
11:18 40 recognise that Crown's program of AFL --- I withdraw that, AML  
11:18 41 reforms is impressive --- I really shouldn't have made that slip  
11:18 42 given that Carlton beat St Kilda on the weekend, Commissioner.

11:18 43  
11:18 44 COMMISSIONER: (Nods head).

11:18 45  
11:18 46 MR BORSKY: Thank you for not responding.

11:18 47

11:18 1 They recognised that Crown's program of AML reforms is  
11:18 2 "impressive in its scope and ambition and properly targeted and  
11:18 3 prioritised". And Counsel Assisting and McGrathNicol  
11:19 4 recognised that Crown's employees in the first line of defence are  
11:19 5 willing, able and ready to uphold the rules and Crown employees  
11:19 6 generally have a real concern to get this right.  
11:19 7  
11:19 8 I've submitted already that Crown's AML reform program will  
11:19 9 deliver an aggregate advanced state of AML maturity by the end  
11:19 10 of next year. That reform program, as you've heard, involves the  
11:19 11 recruitment of more than 50 new specialised  
11:19 12 Financial Crime & Compliance employees.  
11:19 13  
11:19 14 Mr Blackburn's evidence, which we submit the Commission  
11:19 15 should accept, is that the program, that is the AML program, is  
11:19 16 already past the foundational level, which means that Crown does  
11:19 17 now have an appropriate, compliant and adequately resourced  
11:20 18 AML program in place. If I may have called up CRW.512 ---  
11:20 19  
11:20 20 COMMISSIONER: I don't think that is going to work.  
11:20 21  
11:20 22 MR BORSKY: Okay, I'm sorry. I will give you the reference.  
11:20 23 The critical slide in Mr Blackburn's  
11:20 24 Financial Crime & Compliance apprehension to the board about  
11:20 25 which you heard evidence is CRW.512.081.1750 is the  
11:20 26 document, and the critical slide we would ask you to go back and  
11:20 27 have another look at, please, Commissioner, is at page 1753.  
11:20 28  
11:20 29 On that slide, which was a chart tracking the progression and  
11:20 30 maturity of AML programs, Crown was placed, as compared to  
11:20 31 its peers and other institutions, like small and large financial  
11:21 32 institutions. And Mr Blackburn's assessment, as a recognised  
11:21 33 expert, we would submit, in the field, with substantial experience  
11:21 34 in the financial services sector, is that Crown's AML program is  
11:21 35 past foundational and ahead of other entities, including casinos  
11:21 36 and even small banks. It is not yet at the level of the major banks.  
11:21 37  
11:21 38 COMMISSIONER: I remember him saying that. I also  
11:21 39 remember Ms Siegers saying that comparison with banks was  
11:21 40 hopeless.  
11:21 41  
11:21 42 MR BORSKY: I don't remember that precise word ---  
11:21 43  
11:21 44 COMMISSIONER: Not in her evidence, in the correspondence  
11:21 45 post.  
11:21 46  
11:21 47 MR BORSKY: I think the Commissioner might be referring to



11:21 1 a memo Ms Siegers wrote to the Risk Committee in relation to  
11:21 2 the Deans advisory risk report? Ms Halton ---  
11:21 3  
11:21 4 COMMISSIONER: He knows about the banking industry and  
11:21 5 knows nothing about casinos. Something along --- to that effect.  
11:22 6  
11:22 7 MR BORSKY: Are you putting to me, Commissioner, that  
11:22 8 Ms Siegers suggested that Mr Deans knows something about the  
11:22 9 banking industry and nothing about casinos?  
11:22 10  
11:22 11 COMMISSIONER: No. She was criticising views coming from  
11:22 12 AML work at banks. She said it's not comparable, something like  
11:22 13 that.  
11:22 14  
11:22 15 MR BORSKY: I see.  
11:22 16  
11:22 17 COMMISSIONER: Now.  
11:22 18  
11:22 19 MR BORSKY: In response, if I may, we would submit this:  
11:22 20 Ms Halton explained in her evidence to you that that's not ---  
11:22 21 knowing Ms Siegers as Ms Halton does, and knowing that  
11:22 22 Ms Siegers's first language is not English, Ms Halton did not  
11:22 23 interpret the comments in the same way that the Commissioner  
11:22 24 might have --  
11:22 25  
11:22 26 COMMISSIONER: Correct.  
11:22 27  
11:22 28 MR BORSKY: --- and, in any event, the Risk Committee, as the  
11:22 29 memorandum demonstrates and as our submissions develop, the  
11:22 30 Risk Committee takes onboard the Deans report and we would  
11:23 31 submit more fundamentally for present purposes that  
11:23 32 Mr Blackburn is unquestionably, as we understand, a man with  
11:23 33 relevant and substantial expertise in this field.  
11:23 34  
11:23 35 COMMISSIONER: (Nods head).  
11:23 36  
11:23 37 MR BORSKY: Most of his experience, indeed all of it recent is  
11:23 38 in financial services. But he has, as that presentation reveals, he  
11:23 39 has looked at casinos worldwide. That presentation, I will get the  
11:23 40 particular slide reference, but that presentation makes clear that  
11:23 41 Mr Blackburn has in preparing that for the board looked at  
11:23 42 casinos elsewhere. So you can, with respect, proceed on the basis  
11:23 43 of Mr Blackburn's assessment of Crown's maturity, Crown's  
11:23 44 AML maturity, and it is, as I say, past foundational, ahead of  
11:23 45 other casinos and small banks but not yet at the level of the large  
11:24 46 banks.  
11:24 47

11:24 1 So to return to the question you raised and the submission I'm  
11:24 2 trying to develop, which is why you ought not recommend  
11:24 3 cancellation to enable some other applicant to come along to take  
11:24 4 over the licence, there is no evidence before you to suggest that  
11:24 5 another casino operator would be better or even as good as  
11:24 6 Crown is in this important area, AML. And Crown is, as you  
11:24 7 know, committed to and has invested considerable resources in  
11:24 8 becoming even better by the end of next year. That reference to  
11:24 9 international casinos in Mr Blackburn's presentation is at 1776, if  
11:24 10 the Commission pleases.

11:24 11  
11:24 12 More broadly, Commissioner, we submit that cancellation or  
11:25 13 suspension of Crown's licence would not be in the public interest,  
11:25 14 and it would not be the most practical, effective and efficient  
11:25 15 course for you to recommend. The terms of reference, as I have  
11:25 16 mentioned, require you to have regard to those considerations and  
11:25 17 to have regard to the financial impacts on the State of your  
11:25 18 recommendations.

11:25 19  
11:25 20 Cancellation, or even suspension of Crown's licence, would have  
11:25 21 the very real potential to trigger events of default that would put  
11:25 22 in jeopardy the significant public benefits that Crown would  
11:25 23 otherwise continue to provide this State. To be clear, the  
11:26 24 cancellation of its licence or even something less permanent than  
11:26 25 that, provided it was for a certain duration, would be an event of  
11:26 26 default under Crown's financing agreements. I'm being a little  
11:26 27 careful in my reference to something less permanent for a certain  
11:26 28 duration for reasons the Commissioner recalls and understands.  
11:26 29 But the Commissioner needs to appreciate, in our respectful  
11:26 30 submission, and take into account the position being in an event  
11:26 31 of default, unless Crown were able to procure waivers from its  
11:26 32 financiers, Crown would likely be in a position of having very  
11:27 33 substantial debt obligations becoming immediately due and  
11:27 34 payable. I won't be any more specific than that in open session.  
11:27 35 We have tendered confidentially the full suite of financing  
11:27 36 agreements. We can provide, if it might assist, the Commission  
11:27 37 further information either in answer to specific questions or more  
11:27 38 broadly, but we would respectfully seek the opportunity to do that  
11:27 39 privately rather than publicly for reasons which have previously  
11:27 40 been canvassed in close session.

11:27 41  
11:27 42 We wish to emphasise that very real risk. And we wish, with the  
11:27 43 greatest of respect, to remind the Commission that a very broad  
11:27 44 range of stakeholders have an interest in Crown's continuing  
11:28 45 viability and success. That includes Crown's staff, the Victorian  
11:28 46 tourism industry, and industry more broadly, and of course the  
11:28 47 State itself. I just develop some submissions briefly in relation to

11:28 1 each of those important stakeholders.

11:28 2

11:28 3 More than 20,000 people work across Crown's resorts. Over  
11:28 4 11,600 of those work in Melbourne. The vast majority of them  
11:28 5 were of course not complicit in the misconduct evidenced in this  
11:28 6 Commission. Thousands of them, for example, work in food and  
11:28 7 beverage.

11:28 8

11:28 9 COMMISSIONER: You should assume that I take the basic  
11:29 10 view that as the annual report that I've looked at demonstrate, that  
11:29 11 Crown Melbourne is a profitable concern, which is to say, and if I  
11:29 12 segment out the hotel and other businesses and just look at the  
11:29 13 casino business, it is a very profitable business. Maybe on the  
11:29 14 decline a little bit, but very profitable. If it is a profitable  
11:29 15 business, the way industry works is somebody will always step in  
11:29 16 so that I don't treat 12,000 employees at risk. They might change  
11:29 17 their employer, but they are not at risk of losing their jobs. It  
11:29 18 would be different if it was a failing company in a financial sense,  
11:29 19 that is if it was like a legacy business like other things have been  
11:29 20 described as legacies. If it was like that then you and any other  
11:30 21 operator would face a downward trend. But if it is a viable  
11:30 22 business and a profitable business, there is always someone there  
11:30 23 to step in and take over a profitable business. So I don't treat the  
11:30 24 employees at risk, I don't treat third-party contractors at risk.  
11:30 25 There might be some dislocation, but I don't really see them at  
11:30 26 risk, except at the margins. By which I mean that I understand  
11:30 27 that if a hedge fund was to buy a business and operate, I know  
11:30 28 what they will do. They will cut costs to the extent they can and  
11:30 29 get away with it. So some people might go. But when we have  
11:30 30 a profitable operating business, there will be an operator there out  
11:30 31 in the world, a suitable one.

11:30 32

11:31 33 MR BORSKY: Commissioner, we would not assume, and we  
11:31 34 respectfully urge you not to assume that in the event of a default  
11:31 35 by Crown, which would likely give rise to the consequences to  
11:31 36 which I've adverted, the many thousands of Crown staff would  
11:31 37 transition seamlessly to some new licensee or, indeed, to other  
11:31 38 employment.

11:31 39

11:31 40 COMMISSIONER: Yes.

11:31 41

11:31 42 MR BORSKY: We do not make that assumption and we urge  
11:31 43 you not to make that assumption. There would, on any view, be  
11:31 44 enormous disruption and possibly financial hardship for so many  
11:31 45 at a time when so many are already living through great  
11:32 46 uncertainty and hardship as a result of the pandemic. There is no  
11:32 47 evidentiary foundation upon which you could safely assume that

11:32 1 a replacement operator would seamlessly take on the full work  
11:32 2 force without disruption or prejudice.  
11:32 3  
11:32 4 COMMISSIONER: I said there would be some disruption, but I  
11:32 5 don't need a business person to tell me that if there is a profitable  
11:32 6 business there is a buyer. I know that.  
11:32 7  
11:32 8 MR BORSKY: And I don't cavil with the position of Crown  
11:32 9 being a profitable business, but there are earnings and liquidity  
11:33 10 and there are the consequences or risks to which I've adverted  
11:33 11 which bear careful consideration.  
11:33 12  
11:33 13 COMMISSIONER: It's not complex-free.  
11:33 14  
11:33 15 MR BORSKY: It is certainly not without complexity. We put it  
11:33 16 considerably higher than that, as I have sought to explain.  
11:33 17  
11:33 18 Now, if we be wrong, and if in fact it might be possible  
11:33 19 seamlessly to line up some replacement which would magically  
11:33 20 guarantee all the employees continue in their employment without  
11:33 21 disruption or without prejudice, say, then that might prompt one  
11:33 22 to question the utility of the exercise of stripping the licence from  
11:33 23 one corporation which employs thousands of people and handing  
11:33 24 it to another which it to employ the same thousands of people.  
11:34 25 That is not for one moment to suggest that there should not be  
11:34 26 and should not seen to be consequences for misconduct. I hope  
11:34 27 I've made plain that Crown's position is there have been and there  
11:34 28 ought have been. The leadership has to take responsibility, and  
11:34 29 by and large they have. Many of them have already departed and  
11:34 30 some more are still to go. Shareholders too must, and no doubt  
11:34 31 will, take pain. There have been penalties imposed. There might  
11:34 32 be more. No doubt the recommendations of this Commission in  
11:34 33 terms of conditions on the licence and perhaps other sanctions  
11:34 34 will erode shareholder equity at least. And that may be a matter  
11:34 35 about which the Commission has little sympathy. But we do  
11:35 36 respectfully ask the Commission to bear in mind that over 46,000  
11:35 37 of Crown's shareholders are in fact small shareholders, what  
11:35 38 some might describe as mum and dad shareholders. There are  
11:35 39 more than 46,000 shareholders in Crown who hold 5,000 shares  
11:35 40 or fewer. So cancellation of Crown's licence, if it be  
11:35 41 recommended and effected, would impose great financial losses  
11:35 42 not only in shareholders in Crown who are well resourced and  
11:35 43 well known, but also on tens of thousands of small shareholders  
11:35 44 and, indeed, superannuation funds.  
11:35 45  
11:35 46 There would also be a significant impact on the Victorian tourism  
11:35 47 industry and industry more broadly, and in that regard we submit

11:35 1 that it is particularly important at this time during the pandemic  
11:36 2 where tourism and other economic activity is already so  
11:36 3 hampered, especially in the big urban centres like Melbourne, that  
11:36 4 great care should be exercised before recommending anything  
11:36 5 that might adversely affect Melbourne and Victoria's ability to  
11:36 6 advance its tourism industry and industry more generally.

11:36 7  
11:36 8 And of course then there is the State itself. The State itself is  
11:36 9 a recipient of taxes and other payments from Crown. Since 2014  
11:36 10 Crown has paid the State at least \$1.4 billion through general  
11:36 11 player casino taxes, commission-based player taxes and the  
11:36 12 community benefit levy and Crown has also paid, and would  
11:36 13 under the current statutory arrangements, continue to pay  
11:36 14 substantial additional amounts to the state, including \$250 million  
11:37 15 due in July 2033.

11:37 16  
11:37 17 As I've developed, we submit that the Commission should take  
11:37 18 a wider view of the public interest than that urged upon you by  
11:37 19 Counsel Assisting.

11:37 20  
11:37 21 But even on Counsel Assisting's, with respect, narrower  
11:37 22 perception, Counsel Assisting warn you that cancellation of the  
11:37 23 licence would be "highly disruptive". It seems to be common  
11:37 24 ground between us and our learned friends that unless any  
11:37 25 cancellation were deferred and structured so as to permit Crown  
11:37 26 to continue to hold the licenses, significant harm would be caused  
11:37 27 to many people, including those who had no involvement in  
11:37 28 Crown's past misconduct.

11:37 29  
11:37 30 We submit that deferring any cancellation that you might be  
11:37 31 inclined to recommend would not be a solution to the problems of  
11:37 32 cancellation. The successful execution of Crown's reformation  
11:38 33 requires Crown to attract and retain the right people to lead the  
11:38 34 significant program, and to keep staff motivated and focused on  
11:38 35 that critical work.

11:38 36  
11:38 37 As a matter of commercial reality, that will be made far more  
11:38 38 difficult in a scenario of deferred cancellation with only a right  
11:38 39 for Crown to reapply. Nor, in our respectful submission, would  
11:38 40 separation of the operation of the casino or gaming area from the  
11:38 41 operation of the balance of what is presently an integrated resort,  
11:38 42 being a practical, effective or efficient solution. We are not  
11:38 43 aware, and by "we" I mean those instructing me who have  
11:39 44 considerable expertise and experience in the field, are not aware  
11:39 45 of international examples, certainly there is no evidence before  
11:39 46 the Commission of examples of the gaming component of  
11:39 47 an integrated resort like Crown Melbourne being operated by

11:39 1 a different operator to the operator of the balance of the  
11:39 2 hospitality and entertainment component.  
11:39 3  
11:39 4 COMMISSIONER: There is one example in the United States of  
11:39 5 a disposition by the regulator, or through the regulator, of  
11:39 6 a casino and associated hotels.  
11:39 7  
11:39 8 MR BORSKY: Disposition of the casino and associated hotels.  
11:39 9  
11:39 10 COMMISSIONER: Not separate from. Together with.  
11:39 11  
11:39 12 MR BORSKY: Thank you, and that's the point I'm seeking to  
11:39 13 make.  
11:39 14  
11:39 15 COMMISSIONER: I understand.  
11:39 16  
11:39 17 MR BORSKY: Crown is an integrated resort, there are good  
11:39 18 reasons for Crown being an integrated resort, those reasons have  
11:39 19 inured to the great benefit of the State of Victoria for many years,  
11:40 20 we developed that in writing and I will give you some examples  
11:40 21 --  
11:40 22  
11:40 23 COMMISSIONER: I haven't quite got to the bottom of this yet,  
11:40 24 only because I'm really bad with certificates of title and Crown  
11:40 25 allotments and so on, but you know you have give the lease away,  
11:40 26 you have to sublease if directed?  
11:40 27  
11:40 28 MR BORSKY: (Nods head).  
11:40 29  
11:40 30 COMMISSIONER: I haven't quite worked out the physical area  
11:40 31 of the area that you have to sublease if directed, through  
11:40 32 commercial rent. My current impression is the hotels, not the  
11:40 33 ones across the road, but the ones that from the river to whatever  
11:40 34 the name of the road is at the back, that is all land you have to  
11:40 35 give up, ie, including the hotel. So that you might be compelled,  
11:40 36 under your current arrangements with the Government, to give up  
11:40 37 not only the casino but the hotel or at least the main hotel, not the  
11:40 38 other ones across the road. But I'm still trying to look at the titles  
11:40 39 to work that out.  
11:40 40  
11:40 41 MR BORSKY: I'm not sure about that.  
11:40 42  
11:40 43 COMMISSIONER: But I think you are at risk. The way it looks  
11:41 44 like, you are on Crown land, except for the other hotels which are  
11:41 45 freehold, or Torrens. Your Torrens land, the rest of it is Crown  
11:41 46 land, and the lease is over the whole of the Crown land because  
11:41 47 you are not allowed to own that, and the sublease that you have to

11:41 1 give away is over all of the Crown land. So the point that you are  
11:41 2 making may be right, but likely wrong.

11:41 3

11:41 4 MR BORSKY: Well ---

11:41 5

11:41 6 COMMISSIONER: A title search will fix all that up soon, in my  
11:41 7 mind.

11:41 8

11:41 9 MR BORSKY: I'm not sure a title search will suffice to fix that  
11:41 10 up in your mind, with respect, because the definition of the  
11:41 11 "casino" for the purposes of the Act, at least the current Act ---

11:41 12

11:41 13 COMMISSIONER: No, no, I'm not talking about that, I'm  
11:41 14 talking about the obligation to sublease the area you have leased.  
11:41 15 I don't care about the casino because the obligation to sublease  
11:41 16 doesn't say casino and defines it by reference to land titles. There  
11:41 17 is Crown allotments, certificates of title and so on.

11:42 18

11:42 19 MR BORSKY: There are, as I've submitted no examples  
11:42 20 anywhere in the world of an integrated resort being unintegrated,  
11:42 21 and I use that word deliberately.

11:42 22

11:42 23 COMMISSIONER: Although, if the leased area doesn't include  
11:42 24 the hotel, the main hotel, Crown Towers, if it doesn't include that,  
11:42 25 whoever operates Crown Towers would necessarily keep the  
11:42 26 connection with the casino even if only for maximising profits.

11:42 27

11:42 28 MR BORSKY: Yes, but --- yes, there would be a connection. Of  
11:42 29 course any operator of the gaming area of the casino would ---

11:42 30

11:42 31 COMMISSIONER: Both ways.

11:42 32

11:42 33 MR BORSKY: There would be a connection both ways, but if I  
11:42 34 may just explain the way it presently operates for the benefit of  
11:42 35 Crown and the State, the Commission might find it relevant.  
11:43 36 Crown, as you would expect, has been able to achieve synergies  
11:43 37 and other efficiencies by running the integrated resort.

11:43 38

11:43 39 COMMISSIONER: I get that.

11:43 40

11:43 41 MR BORSKY: And that is because the economics of  
11:43 42 integration ---

11:43 43

11:43 44 COMMISSIONER: I understand that. Staff and cost-efficient  
11:43 45 with crossover staff that go from one to the other.

11:43 46

11:43 47 MR BORSKY: More than that.

11:43 1  
11:43 2 COMMISSIONER: It will be more expensive.  
11:43 3  
11:43 4 MR BORSKY: More than that, with respect. It will be that, but  
11:43 5 there is more than that.  
11:43 6  
11:43 7 What it has permitted Crown to develop is higher quality  
11:43 8 entertainment and hospitality facilities with incentives to support  
11:43 9 the facility and indeed the promotion of Melbourne as  
11:43 10 a destination. It is not a simple cost efficiency point.  
11:43 11  
11:43 12 COMMISSIONER: No, no, fair enough.  
11:43 13  
11:43 14 MR BORSKY: And, as the Commission would know, we've  
11:43 15 detailed this in writing, Crown does a lot of work with  
11:44 16 government and industry to support bids for conventions and the  
11:44 17 like and major events in Melbourne that at least before COVID  
11:44 18 contributed \$1.2 billion to the Victorian economy every year.  
11:44 19 Crown provides about 10 per cent of all of Melbourne's hotel  
11:44 20 rooms. So that plays a critical role in the supply of  
11:44 21 accommodation for visitors during major events and throughout  
11:44 22 the year. And Crown over a number of years has been  
11:44 23 an international acclaimed integrated resort and Australia's best  
11:44 24 luxury hotel. It's not just about the efficiency or the cost and,  
11:44 25 therefore, the quality of the offering. It is more. The gaming  
11:44 26 side, or the casino side of the integrated business and, therefore,  
11:44 27 the State benefits most from this integration. It benefits most  
11:45 28 because there are effectively cross-subsidies from the resort or  
11:45 29 hotel. So the gaming business is the hotel's biggest customer at  
11:45 30 what you might expect are good rates, and that maximises the  
11:45 31 revenue and earnings of the gaming business which of course  
11:45 32 benefits the State of Victoria in its collection of gaming taxes.  
11:45 33  
11:45 34 The Commission should, for those and other reasons, not assume  
11:45 35 that gaming and non-gaming operations can efficiently or even  
11:45 36 practically be separated. The result, in our submission, of  
11:45 37 a disintegration of integrated resort would be an inferior offering  
11:45 38 for customers, employees and other stakeholders and  
11:45 39 a diminished substantially diminished offering to tourism and to  
11:45 40 the State of Victoria. So we submit that the more practical,  
11:46 41 effective and efficient course is for Crown to continue to operate  
11:46 42 as an integrated resort under licence upon whatever conditionings  
11:46 43 this Commission may consider appropriate to recommend,  
11:46 44 including at a minimum that Crown be under the supervision of  
11:46 45 an independent monitor or supervisor while it works to complete  
11:46 46 its program of reforms and the further initiatives arising out of the  
11:46 47 work of this Commission.



11:46 1  
 11:46 2 It is not, in our respectful submission, in the public interest to  
 11:46 3 visit on Crown's work force, the State or other stakeholders the  
 11:46 4 consequences of a recommendation which would see Crown  
 11:46 5 Melbourne stripped of its licence and broken up when the path to  
 11:46 6 suitable is clear, is embarked upon and where there can be  
 11:47 7 absolute assurance that there will be no deviation from that path  
 11:47 8 by virtue of the safeguards of an independent monitor or  
 11:47 9 supervisor which Crown accepts ought be appointed in any event.

11:47 10  
 11:47 11 I was proposing then to move to a slightly different topic and that  
 11:47 12 was Crown's answers to the Commission's questions sent by let  
 11:47 13 are. Did the Commission plan to take a morning break?

11:47 14  
 11:47 15 COMMISSIONER: We will take a morning break. I just want to  
 11:47 16 say something to Mr Gray in case I forget.

11:47 17  
 11:47 18 You asked earlier, I was meant to ask you before, but I forgot so  
 11:47 19 I'm doing it now so I don't forget later. You asked whether I  
 11:48 20 wanted to hear submissions from the State about  
 11:48 21 pre-commitment. The answer is "yes". I would like to hear  
 11:48 22 anything at all, in writing, about mandatory pre-commitment.

11:48 23  
 11:48 24 MR GRAY: Thank you, Commissioner.

11:48 25  
 11:48 26 COMMISSIONER: We'll adjourn for 10 minutes.

11:48 27  
 11:48 28  
 11:48 29 **ADJOURNED** **[9:49A.M.]**

12:06 30  
 12:06 31  
 12:06 32 **RESUMED** **[10:07A.M.]**

12:06 33  
 12:06 34 COMMISSIONER: Mr Borsky?

12:06 35  
 12:06 36 MR BORSKY: As the Commissioner pleases.

12:06 37  
 12:06 38 If it is convenient, I was going to turn to your Solicitors  
 12:06 39 Assisting's letter with the four questions. I've addressed our  
 12:06 40 answers to those four questions in detail in writing at paragraph  
 12:06 41 C152 with various paragraphs running to four pages. Let me  
 12:06 42 summarise our position as to the questions.

12:06 43  
 12:06 44 First, on the questions on whether the restriction on holding or  
 12:06 45 having a relevant interest in more than 5 per cent of the shares in  
 12:06 46 Crown Melbourne should be extended to a restriction on shares in  
 12:06 47 the holding company Crown Resorts, we submit that there is no

12:07 1 reason not to impose a restriction on a person holding or having  
12:07 2 a relevant interest in shares in Crown Resorts. We submit that at  
12:07 3 the level at which that restriction ought appropriately be set, if  
12:07 4 one is to be set, would be 5 per cent. And we submit that there  
12:07 5 ought be a carveout or exception for consent from the regulator or  
12:07 6 the minister.

12:07 7  
12:07 8 COMMISSIONER: Under the current regime, at least to the  
12:07 9 extent that it was capable of operating, that was what the  
12:07 10 intention was --

12:07 11  
12:07 12 MR BORSKY: Yes.

12:07 13  
12:07 14 COMMISSIONER: --- I think if you track it back down to Xavier  
12:07 15 Connor's report, which is where the 35 per cent came from, he  
12:07 16 suggested that as well.

12:07 17  
12:07 18 MR BORSKY: Thank you. Pardon me one moment,  
12:07 19 Commissioner. Sorry, I misspoke, I'm helpfully corrected. We  
12:08 20 submit that the level of the restriction ought be set at 10 per cent.  
12:08 21 I'm told I might have said something different.

12:08 22  
12:08 23 COMMISSIONER: You did, you said 5 per cent.

12:08 24  
12:08 25 MR BORSKY: I apologise. Thank you.

12:08 26  
12:08 27 COMMISSIONER: Which is the percentage suggested in the  
12:08 28 Bergin Report. Can I tell you what my hesitation about that  
12:08 29 would be?

12:08 30  
12:08 31 MR BORSKY: Of course.

12:08 32  
12:08 33 COMMISSIONER: Like you said, quite accurately, the shares in  
12:08 34 Crown Resorts are quite disbursed. A 10 per cent shareholding  
12:08 35 could probably control a company meeting, unless all the proxy  
12:08 36 gatherers got around and got everybody to show up. There is  
12:08 37 plenty of boards, there is plenty of listed companies where  
12:08 38 somebody picks up 10 per cent, they are invited on the board  
12:08 39 straight away. In other words, it is regarded, and the Companies  
12:08 40 *Act says you have to give notice with 5 per cent in any event, for*  
12:09 41 *those who listen to it. So 10 per cent in a listed company with*  
12:09 42 *a dispersed shareholding is a powerful, if not influential interest.*  
12:09 43 *That's why I'm a bit hesitant. And I don't think the Bergin Report*  
12:09 44 *discussed, at least I don't remember it, discussing the potential*  
12:09 45 *problems of --- not so much the problems but the effect that*  
12:09 46 *a 10 per cent shareholder can have in most listed companies. Not*  
12:09 47 *all, but ---*

12:09 1  
12:09 2 MR BORSKY: Well, no, her focus was a different one, as you  
12:09 3 recall. Her focus was a much larger shareholder than that and  
12:09 4 I will come back to that a bit later in reply, if I may.  
12:09 5  
12:09 6 COMMISSIONER: Anyhow, that is my concern.  
12:09 7  
12:09 8 MR BORSKY: Yes.  
12:09 9  
12:09 10 COMMISSIONER: That there should be a restriction, it seems to  
12:09 11 be inevitably correct, because that was the intention ---  
12:09 12  
12:09 13 MR BORSKY: And flow through, we don't oppose as a matter  
12:09 14 of principle. But we do, and I apologise for misstating it  
12:10 15 originally.  
12:10 16  
12:10 17 COMMISSIONER: That's okay.  
12:10 18  
12:10 19 MR BORSKY: We do submit to you that 10 per cent is the  
12:10 20 appropriate level. There are two reasons for that. The first is that  
12:10 21 that would put Crown on equal footing with interstate  
12:10 22 competitors. So the position in NSW and Queensland is  
12:10 23 10 per cent is the cap. And that's significant as the Commissioner  
12:10 24 would appreciate in terms of promoting the interests of Victoria,  
12:10 25 allowing Crown, assuming it is entitled to continue to operate  
12:10 26 Melbourne as the flagship casino, that from a capital structure  
12:10 27 and management and other broader perspectives it is not  
12:10 28 disadvantaged as compared to interstate competitors.  
12:10 29  
12:10 30 The second reason we submit 5 per cent is too low, because it  
12:10 31 would require arm's length institutional investors who have for  
12:10 32 quite some time held between 5 per cent and 10 per cent  
12:11 33 perpetual ---  
12:11 34  
12:11 35 COMMISSIONER: Depends on whether it is prospective or  
12:11 36 retrospective.  
12:11 37  
12:11 38 MR BORSKY: Well, quite.  
12:11 39  
12:11 40 COMMISSIONER: Don't worry about --  
12:11 41  
12:11 42 MR BORSKY: Transitional provision?  
12:11 43  
12:11 44 COMMISSIONER: There might be.  
12:11 45  
12:11 46 MR BORSKY: There might need to be. And whilst we would  
12:11 47 respectfully take your point that 10 per cent holding particularly

12:11 1 with a shareholder composition base such as Crown's could  
12:11 2 enable influence to be exerted ---  
12:11 3  
12:11 4 COMMISSIONER: Not influence, they control a meeting. You  
12:11 5 have 10 per cent of the shares, you will control a meeting unless  
12:11 6 there is a build-up, resistance, which has got together.  
12:11 7  
12:11 8 MR BORSKY: Whilst that may be so, we would respectfully  
12:11 9 submit that there is no basis to assume that any major shareholder  
12:11 10 would necessarily exert a deleterious influence on a company like  
12:11 11 Crown. So, true it is, as Bergin found, and we accept, others will  
12:11 12 have different views, we accept that CPH was not the sole, but  
12:12 13 a substantial part of the reason why Crown went wrong. We  
12:12 14 accept that. But that's not to suggest that an arm's length  
12:12 15 institutional investor with say 9.9 per cent would, or even might,  
12:12 16 lead Crown astray. It's not even suggested that the perpetual  
12:12 17 Blackstone who hold between 5 per cent or 10 per cent had  
12:12 18 anything to do with our misconduct.  
12:12 19  
12:12 20 COMMISSIONER: That might be true, but this is looking to the  
12:12 21 future and asking where is a potential area of risk, and do you do  
12:12 22 anything today about mitigating the risk.  
12:12 23  
12:12 24 MR BORSKY: I understand.  
12:12 25  
12:12 26 May I turn to the second question then which I think I can be  
12:13 27 briefer on. That is in relation to CPH and whether --- you've  
12:13 28 asked whether any restriction should apply to CPH as from  
12:13 29 September 2024 when the question says they are undertaking to  
12:13 30 ILGA expires. Our submission is that any restriction on  
12:13 31 shareholdings should apply to all shareholders but that  
12:13 32 transitional provisions might need to be thought through.  
12:13 33  
12:13 34 Then, if I may go to the fourth question next and I will return to  
12:13 35 the third.  
12:13 36  
12:13 37 The third question is, should the Act be amended to require that  
12:13 38 some directors of a casino licensee be independent of any holding  
12:13 39 company? Our answer is "yes".  
12:13 40  
12:14 41 Then your third question is a more complex one, if we may say  
12:14 42 with respect, or at least our position in answer to it is. That's the  
12:14 43 question about possible repeal of the compensation provisions in  
12:14 44 clauses 24A(2), (3) and (4) of the Casino Management  
12:14 45 Agreement. In our submission those provisions need to be  
12:14 46 looked at in two parts. So the first provision is 24A(2)(i) and that  
12:14 47 is about the ---

12:14 1  
12:14 2 COMMISSIONER: That's the cancellation one.  
12:14 3  
12:14 4 MR BORSKY: Yes. And Crown accepts that it should not be  
12:14 5 entitled to compensation if its licence were to be cancelled due to  
12:14 6 disciplinary action. Whether that be on grounds of Crown's  
12:14 7 unsuitability or that it is not in the public interest that Crown  
12:14 8 continue to hold the licence. So Crown accepts that it shouldn't  
12:15 9 be entitled to compensation for the consequences of what has  
12:15 10 been described as its wrongdoing.  
12:15 11  
12:15 12 24A --- there is a nuance on that which we develop in writing,  
12:15 13 which is, looking forward into the future as we do hopefully, if  
12:15 14 Crown were to be the licensee in many years, perfectly suitable,  
12:15 15 no misconduct, but as a matter of public policy the Government  
12:15 16 of the day decides that it is not in the public interest for  
12:15 17 Melbourne to have a casino and for that reason cancels the  
12:15 18 licence, it would not necessarily follow that Crown ought be  
12:15 19 deprived of its compensation under 24A(2) in that, we hope,  
12:15 20 not-too-hypothetical scenario. So there may be some need for  
12:15 21 refinement and nuance in the process of legislative drafting.  
12:16 22  
12:16 23 COMMISSIONER: Yes, I get it.  
12:16 24  
12:16 25 MR BORSKY: That's our position. We don't seek to profit from  
12:16 26 our wrongdoing. 24A(3) and 24A(4) are different in our  
12:16 27 respectful submission. They are the provisions that provide for  
12:16 28 Crown to be compensated capped at \$200 million.  
12:16 29  
12:16 30 COMMISSIONER: \$200 million plus CPI.  
12:16 31  
12:16 32 MR BORSKY: Indexing from 2015. That's right. And Crown  
12:16 33 accepts that those provisions should not apply in a way that  
12:16 34 creates a significant disincentive for the State to take measures to  
12:16 35 give effect to the recommendations by your submission.  
12:16 36  
12:16 37 With great respect, we see the point and accept it as a matter of  
12:16 38 principle. But the provisions do reflect, as an even cursory view  
12:17 39 of the Explanatory Memorandum reveals, they do reflect just one  
12:17 40 part of what was a suite of commercial arrangements negotiated  
12:17 41 between the State and Crown which was agreed in 2014, and  
12:17 42 included agreements by Crown over time to make substantial  
12:17 43 additional payments to the State of at least, depending on Crown's  
12:17 44 future performance, at least half a billion dollars additional to  
12:17 45 what Crown was otherwise at that time in 2014 obliged to make.  
12:17 46  
12:17 47 In return for an extension of Crown's licence from 2033 to 2050,

12:17 1 and the ability to install additional gaming product, and the  
12:17 2 insertion of these compensation provisions, Crown promised to  
12:17 3 make a series of payments, so 250 million upon the amendments  
12:18 4 entering into law, and \$250 million in 2033 and depending on  
12:18 5 financial performance, additional payments in between of up to  
12:18 6 \$200 million. Plus there was a guaranteed \$35 million in gaming  
12:18 7 taxes in relation to the new gaming product that the State  
12:18 8 authorised to be introduced. So, having regard to that context,  
12:18 9 and there's been advertence already this morning to the potential  
12:18 10 considerations of sovereign risk, Crown would respectfully  
12:18 11 submit that the appropriate course for the provisions to be  
12:18 12 amended, not repealed wholesale, but amended to ensure they do  
12:18 13 not apply to dis-incentivise the state to give affect to your  
12:18 14 recommendations, for example, in relation to Responsible  
12:19 15 Gaming ---

12:19 16  
12:19 17 COMMISSIONER: Which funnily enough, most of the  
12:19 18 annexure 1 actions ---

12:19 19  
12:19 20 MR BORSKY: Trigger events, yes?

12:19 21  
12:19 22 COMMISSIONER: --- are pretty much all to do with problem  
12:19 23 gambling.

12:19 24  
12:19 25 MR BORSKY: Yes, that's why I cite the example. And so the  
12:19 26 point we make, as delicately as I'm able, is this is part of the  
12:19 27 legislative context, authorised, incentivised and indeed mandated  
12:19 28 by the State, that is a consideration to which we advert in  
12:19 29 detailed submissions in Responsible Gaming, where we accept  
12:19 30 failings and we accept that those failings bear upon our  
12:19 31 suitability, but we respectfully ask the Commissioner to bear in  
12:19 32 mind that context, that that context must be borne in mind, when  
12:19 33 assessing the suitability of a licensee under an extant statutory  
12:19 34 regime, acknowledging, indeed embracing, that community  
12:20 35 standards do and have rightly changed since 2014. But to apply  
12:20 36 the community standards of today in relation to Responsible  
12:20 37 Gaming and judge Crown unsuitable for its compliance with the  
12:20 38 incentives and requirements of the Government of the day back  
12:20 39 then may need to be tempered and thought through.

12:20 40  
12:20 41 COMMISSIONER: (Nods head).

12:20 42  
12:20 43 MR BORSKY: That is a summary of our answers to the four  
12:20 44 questions. As I say, the Commissioner has the full detail in  
12:20 45 writing.

12:20 46  
12:20 47 Could I then just turn briefly to summarise Crown's position in

12:21 1 response to the submissions made by Counsel Assisting as to the  
12:21 2 suitability of existing associates. I'm conscious that each --- I will  
12:21 3 start again. There are only two existing associates in respect of  
12:21 4 whom Counsel Assisting submits its open to you to make  
12:21 5 a finding of unsuitability. The others, according to Counsel  
12:21 6 Assisting's submissions, it's not open to you to find them  
12:21 7 unsuitable. Now, I'm conscious that each of those two persons is  
12:21 8 separately represented. One will be making oral submissions  
12:21 9 before you and both have put in written submissions. So I won't  
12:21 10 dwell on the topic. But Crown accepts that as current leaders of  
12:21 11 Crown, and we've addressed it in writing, their conduct has some  
12:21 12 relevance to your assessment of Crown's suitability. So may I  
12:21 13 just in summary explain our submissions in relation to each.  
12:22 14 First, Ms Coonan. The principles in our submission are quite  
12:22 15 clear: the matters to be determined in assessing suitability of  
12:22 16 an associate really concern whether the person is of good repute,  
12:22 17 having character to character, honesty and integrity. And our  
12:22 18 submission is that even if Counsel Assisting's characterisation of  
12:22 19 the evidence in relation to Ms Coonan were accepted, which for  
12:22 20 reasons we develop in writing in paragraph C12 to C22 and in  
12:22 21 our annexure C1, they ought not be, but even if they were to be  
12:22 22 accepted, no conduct by Ms Coonan has been identified by  
12:22 23 Counsel Assisting that reflects adversely on her character,  
12:22 24 honesty or integrity. In other words, even taking them at their  
12:23 25 highest, the criticisms of Ms Coonan by Counsel Assisting do not  
12:23 26 rise high enough to warrant a finding that she's unsuitable to be  
12:23 27 an associate of a casino licensee.  
12:23 28  
12:23 29 The different, subtly different, submission that Counsel Assisting  
12:23 30 advanced in relation to Ms Coonan next is she may not be "the  
12:23 31 right person to shepherd in the extent of change required" at  
12:23 32 Crown. Now, in relation to that Crown draws to the  
12:23 33 Commission's attention that Ms Coonan, in any event, consistent  
12:23 34 with her evidence before you in this Commission that she was  
12:23 35 looking to perform an orderly handover, will announce her  
12:24 36 retirement as interim executive chair and from all Crown boards  
12:24 37 as soon as Crown has appointed a new leader. And from Crown's  
12:24 38 perspective, Crown's expectation is that that new leader will be  
12:24 39 appointed by 31 August this year.  
12:24 40  
12:24 41 Mr Walsh too will be leaving Crown this month. He will be  
12:24 42 leaving Crown on terms that he and Crown are presently  
12:24 43 discussing but he will be leaving Crown in August 2021. So the  
12:24 44 Commission need and ought not in, our respectful submission,  
12:24 45 make any finding that Mr Walsh is not suitable to be an associate  
12:24 46 of Crown as licensee to operate the casino. The Terms of  
12:24 47 Reference direct you to enquire into and report on whether there

12:24 1 are any "existing associates of Crown Melbourne" who are not  
12:25 2 suitable. And when you hand your report to the governor,  
12:25 3 Mr Walsh will not be an existing associate. In any event, we  
12:25 4 submit that the areas in which Mr Walsh has been criticised  
12:25 5 reflect errors of judgment not any lack of integrity or character.  
12:25 6 And we submit that a holistic assessment of Mr Walsh's  
12:25 7 suitability must pay regard to all of the evidence, including the  
12:25 8 relevant matters in Mr Walsh's favour. For example, any  
12:25 9 suggestion that Mr Walsh was trying to hide or conceal the bonus  
12:25 10 jackpots issue from being disclosed to this Commission cannot be  
12:25 11 accepted. Mr Walsh called a meeting with Allens, solicitors for  
12:25 12 Crown in March, specifically for the purpose of bringing it to  
12:25 13 their attention with a view to it being disclosed to the  
12:26 14 Commission. At the meeting he provided details of the issue, as  
12:26 15 he understood them. He then followed up with a folder of  
12:26 16 materials, including the presentation which evidences the  
12:26 17 admittedly unacceptable fact that Crown began claiming the  
12:26 18 deductions surreptitiously in the hope that the VCGLR would not  
12:26 19 notice and he then followed up via Crown's in-house lawyers  
12:26 20 several times.

12:26 21  
12:26 22 We address the evidence to Mr Walsh and his suitability also in  
12:26 23 writing in annexure C2 and in relation to the bonus jackpots' issue  
12:26 24 more specifically in paragraphs G110 to G128. We do  
12:26 25 acknowledge that Mr Walsh should have raised the potential  
12:26 26 underpayment of tax with Ms Coonan and the other directors  
12:26 27 squarely and promptly. But we submit that the Commissioner  
12:26 28 should treat that as an error of judgment, not of integrity. The  
12:26 29 better view of the evidence, which we have analysed in detail, is  
12:27 30 that Mr Walsh did not downplay the issue. At least certainly not  
12:27 31 intentionally with a view to there not being disclosure to this  
12:27 32 Commission that. Would be a very serious allegation or finding  
12:27 33 which in our submission would be almost impossible to reconcile  
12:27 34 logically with the lengths to which he in fact went to draw it to  
12:27 35 the attention of Allens with a view to it being disclosed to this  
12:27 36 Commission.

12:27 37  
12:27 38 In one of the directions to us it was indicated that the  
12:27 39 Commissioner expected us to reply this morning to the written  
12:27 40 submissions of our friends served last night.

12:27 41  
12:27 42 COMMISSIONER: I'm still reading them.

12:27 43  
12:27 44 MR BORSKY: Did the Commission say "I'm still reading  
12:27 45 them"?

12:27 46  
12:27 47 COMMISSIONER: I'm still reading them.



1  
12:27 2 MR BORSKY: Well, I've read them and, more importantly,  
12:27 3 those ably assisting me have read them. I am in a position to  
12:28 4 reply. I don't think it appropriate to take up a lot or perhaps even  
12:28 5 much time doing so orally now. I'm in your hands. There are  
12:28 6 a few short points, particularly in answer to CPH, which I would  
12:28 7 seek to make. I don't know if it's convenient to do it now or at the  
12:28 8 end after you've heard from Mr Hutley.  
12:28 9  
12:28 10 COMMISSIONER: It is probably convenient to hear Mr Hutley  
12:28 11 first, isn't it?  
12:28 12  
12:28 13 MR BORSKY: As the Commission pleases.  
12:28 14  
12:28 15 COMMISSIONER: It's going to take a few minutes to link in the  
12:28 16 interstate counsel. We can have a vote on it. Can we have  
12:28 17 an early short lunch and then come back, I think, rather than go  
12:28 18 out and come back ---  
12:29 19  
12:29 20 MR BORSKY: Thank you.  
12:29 21  
12:29 22 COMMISSIONER: --- while the technicians work and I might  
12:29 23 say something inelegant again. 45 minutes. Come back at 1.15.  
12:29 24  
12:29 25  
13:15 26 **ADJOURNED** [12:30PM]  
13:15 27  
13:15 28  
13:15 29 **RESUMED** [1:16PM]  
13:15 30  
13:15 31  
13:15 32 COMMISSIONER: Thank you. We will do Mr Hutley next.  
13:15 33  
13:16 34 Mr Hutley, can you hear me?  
13:16 35  
13:16 36 MR HUTLEY: Thank you, Commissioner. I can.  
13:16 37  
13:16 38 COMMISSIONER: Good. It is your turn to speak.  
13:16 39  
13:16 40  
13:16 41 **CLOSING SUBMISSIONS BY MR HUTLEY**  
13:16 42  
13:16 43  
13:16 44 MR HUTLEY: Thank you.  
13:16 45  
13:16 46 As you are aware, Commissioner, we have been given limited  
13:16 47 entitlement to address orally, limited to in effect submissions in

13:16 1 relation to matters arising out of the submissions of Crown  
13:16 2 Resorts, VCGLR, the State of Victoria and Ms Coonan.  
13:16 3  
13:16 4 As you've observed, we received those materials at about the same  
13:16 5 time you did and we have worked long, or others particularly  
13:16 6 have worked long into the night and perhaps, I, early in the  
13:16 7 morning, to seek to address them. Now, that means the focus of  
13:16 8 them will be relatively limited. They will not address anything in  
13:17 9 Crown - Counsel Assisting's written submissions, or for example  
13:17 10 your four questions which we have addressed in writing.  
13:17 11 Although, should you consider it appropriate, I might make some  
13:17 12 submissions about the choice which was adverted to, either  
13:17 13 Crown continuing to operate or some unidentified third party or  
13:17 14 parties which took up a little of the submissions this morning, but  
13:17 15 in that regard I'm wholly of course in your hands.  
13:17 16  
13:17 17 With that exception, the themes we propose to address are themes  
13:17 18 which have come up in those interested parties' submissions.  
13:17 19  
13:18 20 Firstly, it is, although it has to an extent been watered down by  
13:18 21 my learned friend Mr Borsky's submissions orally, that the issue  
13:18 22 as to identifying, as it were, the source of cultural problems and our  
13:18 23 submission that the Commission would avoid what we  
13:18 24 would describe as simplistic attributions of sole or substantial  
13:18 25 responsibility for those problems to particular individuals in  
13:18 26 circumstances where firstly the full extent of the problems haven't  
13:18 27 been identified, secondly, until a root cause analysis takes place,  
13:18 28 one can't assume there is a consistent source of problems across the  
13:18 29 organisation.  
13:18 30  
13:18 31 Secondly, we say the Commissioner would exercise a degree of caution  
13:19 32 of taking out of context, or for that matter extrapolating particular  
13:19 33 pieces of evidence from the NSW Inquiry or, to some extent, as  
13:19 34 relied upon by those parties to whom we address, particular  
13:19 35 phrases drawn from the Bergin Report, cannot be  
13:19 36 decontextualised.  
13:19 37  
13:19 38 Thirdly, that the Commission, whatever concerns may have  
13:19 39 existed about the relationship between CPH and Crown in prior  
13:19 40 times, owing to the removal of various agreements, the two  
13:19 41 agreements which existed between CPH and Crown, and the  
13:19 42 various undertakings which have been proffered to ILGA and  
13:20 43 which have been reiterated to the VCGLR, that any concern about  
13:20 44 the influence of my client in relation to Crown would have  
13:20 45 evaporated.  
13:20 46  
13:20 47 Now, there are many aspects of the --- turning to the submissions

13:20 1 of Crown Resorts, there are many aspects of their submissions  
13:20 2 with which we agree. Firstly, for example, the identification of  
13:20 3 the numerous failings within Crown Resorts, and we say nothing  
13:20 4 about those. The fact that Crown Resorts is undertaking drastic  
13:20 5 transformation, which is ongoing and we say has produced  
13:20 6 tangible alterations in areas of concern. Now, we accept that that  
13:21 7 task is large, but we would urge you to find, consistent with what  
13:21 8 Crown has said, that meaningful progress has been made, and you  
13:21 9 could have a very high degree of confidence that it will be lasting  
13:21 10 and successful. And that of course, if that finding is made, feeds  
13:21 11 directly into the choice which you adverted to in debate with my  
13:21 12 learned friend as to whether Crown runs it or perhaps some other.  
13:21 13 In our respectful submission if you come to the conclusion that  
13:21 14 you can have a degree, a satisfactory degree of confidence that  
13:21 15 Crown has reformed in a way which renders it either suitable or  
13:22 16 imminently suitable, to conclude that Crown should be, as it  
13:22 17 were, stripped of its assets and those be put up to some  
13:22 18 innominate collection of potential corporations to bid for it, in our  
13:22 19 respectful submission would not be in the public interest and  
13:22 20 would be to punish Crown, which is not the role of this inquiry.

13:22 21  
13:22 22 Punishment is not a feature of the public interest with which one  
13:22 23 is concerned here. One is concerned with the future of, as it  
13:22 24 were, casino operation in this State, in Victoria. In our respectful  
13:22 25 submission, it is easy because of one's legitimate concern about  
13:23 26 what has transpired, to convert that into a perceived need for  
13:23 27 removal, which in our respectful submission, unless one was  
13:23 28 satisfied that Crown is irredeemable, would not be to advance the  
13:23 29 public interest but to punish. And that, in our respectful  
13:23 30 submission, would not be a proper exercise for or to advance the  
13:23 31 public interest.

13:23 32  
13:23 33 Now, the next point is we agree with Crown that the public  
13:23 34 interest is for Crown to continue operating for the reasons  
13:24 35 advanced by Crown, and I won't say any more about it, but of  
13:24 36 course we also accept that Crown's acceptance of the  
13:24 37 appropriateness of an independent monitor is wholly to be  
13:24 38 commended and should take place.

13:24 39  
13:24 40 Now, again in relation to this predicated choice, could I make one  
13:24 41 further submission. You have received our submissions that  
13:24 42 there is no need for shareholder caps because the real question is  
13:24 43 influence on management, not shareholding. We say our  
13:24 44 undertakings and the other controls which are available to the  
13:24 45 VCGLR with respect to involvement in the management and  
13:25 46 becoming a close associate does not dictate that there be  
13:25 47 a shareholder cap and there is, in our respectful submission, no

13:25 1 need for it. But, should one be imposed --- we made submissions  
13:25 2 that it should be no lesser than 20 per cent and I don't develop  
13:25 3 that, we've made our submissions, but to go back to the choice,  
13:25 4 one has to have regard, if one sets up an auction, that if one also  
13:25 5 imposes low shareholder caps, one may in effect foreclose the  
13:25 6 practicality of any real auction, and that has to be taken into  
13:25 7 account. And were, for example, a current competitor of Crown,  
13:26 8 even though its shareholder cap may be, at the moment,  
13:26 9 depending upon the view you took preclude it, one would have to  
13:26 10 take into account that auction, were it to take place, would  
13:26 11 produce large concerns for the ACCC. Almost inevitably, which  
13:26 12 would have to be addressed. And before one moved to the other  
13:26 13 auction, one has to conceive of what that marketplace could look  
13:26 14 like. And it is in our respectful submission by no means clear,  
13:26 15 and a very significant risk that should that course be taken, there  
13:26 16 would not be an appropriate scope for a proper investigation and  
13:26 17 auction of the interests.

13:27 18

13:27 19 So, again, we submit, if you come to the conclusion that Crown is  
13:27 20 redeemable, if I could use that as a shorthand, the public interest  
13:27 21 in our respectful submission would dictate that that course be  
13:27 22 followed and not some other course.

13:27 23

13:27 24 Now, can I then turn to, and I will do it by reference to the  
13:27 25 chapter and sub-heading numbers in the submissions, and this is  
13:27 26 dealing with A17 in the Crown Resorts'.

13:27 27

13:27 28 There, it would appear that there are a number of submissions  
13:27 29 which suggest that such deficiencies, as Crown Resorts and  
13:27 30 Crown has exhibited, are due to the influence of my client.

13:27 31

13:28 32 Now, Mr Borsky orally submitted that my client's influence was  
13:28 33 not the sole but a substantial part of the problem. Now that departs  
13:28 34 from we, to a degree the submissions as we read them in A17,  
13:28 35 and it is a commendable departure. There is a danger that one falls  
13:28 36 into the trap that Ms Arzadon cautioned against, namely, without  
13:28 37 an appropriate root cause analysis, of succumbing to simplistic  
13:28 38 attributions of all problems or a limited sub-set of causes. The  
13:29 39 issues which you have identified, and those which were identified  
13:29 40 in the Bergin Report, are disparate and across a large organisation  
13:29 41 with many thousands of employees. How that came about needs  
13:29 42 to be identified and appropriate steps are being taken by Crown to  
13:29 43 identify them. For that, as Ms Arzadon pointed out, would  
13:29 44 itself assist in effect crafting targeted responses to the problems.  
13:29 45 And you should be satisfied that they have taken, that is Crown  
13:29 46 Resorts, has taken a responsible approach to it, and is  
13:29 47 addressing it. And it is unnecessary for you, and in our respectful

13:29 1 submission, undesirable because of the lack of information, for  
13:29 2 you to seek to, as it were, undertake a bespoke root cause  
13:30 3 analysis. That's all we wish to say on A17.  
13:30 4  
13:30 5 At C26, submissions are made by Crown to the effect that CPH  
13:30 6 directors exercised influence over former Crown Board. Now,  
13:30 7 that is not what the NSW Inquiry found. Now, the NSW Inquiry  
13:30 8 made various findings as to the failings of Crown's board as  
13:30 9 a whole. At a footnote - at footnote 122 of the Crown submissions,  
13:30 10 reference is made to what they describe as a serious imbalance,  
13:30 11 referring to my client's position, and take that from the Bergin  
13:30 12 Inquiry report volume 2, chapter 4.3.5 at paragraph 11. It is  
13:31 13 important that you go to the entirety of that quote, and I won't read it  
13:31 14 out here because it will take unnecessary time but the important  
13:31 15 point is the imbalance which was there identified has been  
13:31 16 removed. It was not said to be caused merely by either my  
13:31 17 client's shareholding or even having nominee directors.  
13:31 18  
13:31 19 Secondly, Crown here has extrapolated from the statement at  
13:31 20 paragraph 11 at C26 of their submissions to cover the removal  
13:31 21 of all CPH directors. Now, of course, that ignores that  
13:31 22 Ms Bergin's report said that Mr Jalland and Mr Poynton were  
13:32 23 integral to the ongoing development of Crown and its reform to  
13:32 24 suitability. So far from, as it were, a wholesale criticism of the  
13:32 25 position of Crown nominees, Ms Bergin was of the view that two  
13:32 26 such nominees were important for the reform of Crown. Again,  
13:32 27 one has to read with all the criticisms of Ms Bergin's report, has  
13:32 28 to read it with precision and it is important that there not be  
13:32 29 a simplistic analysis of fault. I think that is sufficient for present  
13:33 30 purposes.  
13:33 31  
13:33 32 Can I now turn to C27 of the Crown Resorts submissions. Some  
13:33 33 submissions here are made in relation to the findings about  
13:33 34 blurred reporting lines in the NSW Inquiry. Now, our position is,  
13:33 35 as you will see from the submissions made in response to the  
13:33 36 counsel assisting's submissions is we do not accept that Mr Johnston  
13:33 37 was involved "in the management of the VIP international group". In  
13:33 38 fact, Crown's position before the NSW Inquiry, which you will see  
13:34 39 from exhibit RC0001.dddd and the doc ID is  
13:34 40 VCG.0001.0002.6436 at pinpoint 0018, paragraph 65(f), is that  
13:34 41 Crown's submissions were that, for example, the decision-making  
13:34 42 in relation to China cannot be seen as a product of undue CPH  
13:34 43 influence. So Crown's position at the Bergin Inquiry is that they  
13:34 44 were not influenced by my client and in our respectful submission  
13:34 45 that was correct.  
13:35 46  
13:35 47 Now, we have set out in our written submissions at annexure A39

13:35 1 to 40 our submissions in the Commission about this question of  
13:35 2 Mr Johnston's role in the VIP working group and I won't repeat  
13:35 3 them. Now, a submission is made in one of the inquiries ---  
13:35 4 NSW Inquiry report that it is, and I quote "clear that Mr Felstead  
13:35 5 thought that his communiques with Mr Johnston and Mr Packer were  
13:35 6 enough to fulfil his obligations". As we've submitted both to the  
13:35 7 Bergin Inquiry and we submit here, Mr Felstead's express  
13:35 8 evidence was to the contrary where he acknowledged his  
13:35 9 obligation to report to Mr Craigie and did not agree other  
13:35 10 communications were a substitute for the reporting. And that's in  
13:36 11 his evidence at transcript 1227.19 to 1227.26 of the ILGA  
13:36 12 Inquiry, and that has been sent to the Commission this morning.  
13:36 13

13:36 14 This is not to submit in any way that we are not acknowledging  
13:36 15 that the Bergin Inquiry identified serious deficiencies in Crown.  
13:36 16 What we are submitting is we did not, and we were not ever asked  
13:36 17 here, to accept all of the findings made in the Bergin Inquiry,  
13:36 18 these might be described as subsidiary findings, and we make that  
13:36 19 point.  
13:36 20

13:36 21 We now turn to C28 of the Crown Resorts submissions. CPH  
13:36 22 agrees that the removal of senior management previously  
13:36 23 responsible for Crown Resorts, such as Mr Alexander, is  
13:37 24 significant. CPH does not accept the intimation that  
13:37 25 Mr Alexander's loyalty to Mr Packer interfered with the performance of  
13:37 26 his duties to Crown Resorts, and we address that in annexure A,  
13:37 27 paragraphs 15 and 32 of our written submissions.  
13:37 28

13:37 29 Now could I turn to C29 of the Crown Resorts submissions.  
13:37 30 Crown there submits that it was only once CPH's "influence" was  
13:37 31 effectively removed "from the Board and Crown's affairs  
13:37 32 generally" and Ms Coonan, Ms Halton and Ms Korsanos were  
13:37 33 able to take control of the company and "chart a different course".  
13:37 34 We submit, with respect, this borders on revisionist history. Each  
13:37 35 of those individuals were directors on the Crown Board before  
13:38 36 the Bergin Royal Commission. None of them ever withdrew  
13:38 37 from the Board on the basis that they felt that they couldn't fulfil  
13:38 38 their directorial duty. These submissions have to be treated with  
13:38 39 the same form of healthy scepticism that Ms Arzadon observed in  
13:38 40 relation to root cause analyses. That is not in any one way to  
13:38 41 impugn any of those individuals. Each of them are obviously  
13:38 42 directors of -- worthy of esteem and worthy of confidence going  
13:38 43 forward. But this crisis is a crisis which impacts upon people in  
13:38 44 the short-term. But you can have complete confidence in them  
13:39 45 that they will seek to meet their requirements. But that's not to  
13:39 46 say they were oppressed whilst the former Board was in place.  
13:39 47

13:39 1 It is noteworthy that Ms Bergin did not find that the Board  
13:39 2 was improperly influenced. Quite a number of the positive  
13:39 3 reforms relied upon by Crown at C82 to C88 and C90 took place over  
13:39 4 a period from 2017, at a time where by hypothesis CPH nominees  
13:39 5 were on the board.

13:39 6  
13:39 7 Can I now turn to C102. This is an example --- this is  
13:40 8 an instance, and we refer to it because it is an instance of perhaps  
13:40 9 what I've called this tendency towards revisionism. That  
13:40 10 paragraph discusses an incident said to be indicative of "old  
13:40 11 Crown" where a draft FTI report, and Mr Commissioner, you will  
13:40 12 remember reference to those, discussing deficiencies in junket  
13:40 13 vetting processes was not made available to any member of the  
13:40 14 board, including any member of the Brand Committee on which  
13:40 15 Mr Johnston sat. That of course tends to suggest that the  
13:40 16 problems of old Crown do not fall either solely or predominantly  
13:40 17 to the CPH parties' feet.

13:40 18  
13:40 19 In E42 Crown Resorts seeks to deploy the "blurred reporting lines  
13:41 20 concept" from the Bergin Report to explain the approach taken to  
13:41 21 the draft FTI report, expanding the notion well beyond how it  
13:41 22 was deployed before the Bergin Inquiry, but also in a context  
13:41 23 separate to Mr Johnston who was, along with every other board  
13:41 24 member, not provided with the report. There is no basis to  
13:41 25 attribute that reporting failure to CPH.

13:41 26  
13:41 27 I now go on to H41(b). It is said that there is evidence that the  
13:41 28 CUP process was a CPH initiative. CPH rejects the contention.  
13:41 29 It is not supported by the evidence for reasons which we've  
13:41 30 outlined at annexure A, paragraphs 25 to 27 of CPH parties'  
13:41 31 submissions. And there are a number of further points.

13:41 32  
13:42 33 You recall the filenote of Arnold Bloch Leibler, of its discussions  
13:42 34 with Mr Theiler, which is stated in Crown's footnotes which  
13:42 35 records him as saying at paragraph 10, and can I read this, I don't take  
13:42 36 you to the report because I can't bring up documents:

13:42 37  
13:42 38 *CPH did not encourage the Crown team to do things or to*  
13:42 39 *do things in a way that the Crown team was*  
13:42 40 *uncomfortable with, or to implement payment methods*  
13:42 41 *that stretched Crown's risk appetite.*

13:42 42  
13:42 43 That is a finding.

13:42 44  
13:42 45 In addition, an investigation commissioned by the board  
13:42 46 as recorded in a memorandum from Mr Archibald QC did  
13:42 47 not reach the conclusion that the CUP process was a CPH initiative.

13:42 1  
13:42 2  
13:42 3 That document you have at CRW.900.002.0001.  
13:42 4  
13:43 5 Crown Resorts, in its footnote 1598, says that the finding that  
13:43 6 CUP was a CPH initiative is also supported by a record of a VIP  
13:43 7 review workshop held on 9 April 2013 which evidences CPH  
13:43 8 representatives Messrs Johnston, Arbib, Bennett and Kady being  
13:43 9 present when the following item was discussed.  
13:43 10  
13:43 11 Unfortunately this document, can I give you the exhibit number  
13:43 12 and I will just refer to the reference. It is exhibit RC#0268ZZ,  
13:43 13 and the pin number is CWN.514.071.3304 at 3305.  
13:43 14  
13:44 15 The footnote, the entry has this, which says "foreign currency,  
13:44 16 look into whether there is an opportunity for customers to use  
13:44 17 China UnionPay to access dollars". And then the people who are  
13:44 18 to deal with it are BF and JO. That's Barry Felstead and Jason  
13:44 19 O'Connor.  
13:44 20  
13:44 21 Now, you can't rely on it, in our respectful submission, for four  
13:44 22 reasons. Firstly, it is unclear whether why CPH parties being  
13:44 23 present when this workstream is discussed means it is a CPH  
13:44 24 idea. There is no correlation between the two points. It is also,  
13:44 25 as you will notice, 9 April 2013 and you know that the China  
13:44 26 UnionPay was initiated fully a year beforehand.  
13:44 27  
13:45 28 Secondly, the very document identifies Mr Felstead and  
13:45 29 Mr O'Connor as being responsible for the workstream.  
13:45 30  
13:45 31 Thirdly, Mr Theiler also specifically noted in his interview with  
13:45 32 ABL that nothing came to the enquiry being considered by the  
13:45 33 VIP working group. That was also noted in the memorandum of  
13:45 34 Mr Archibald and Mr Carr.  
13:45 35  
13:45 36 Fourthly, the evidence that this relatively benign concept was  
13:45 37 raised at the meeting falls far short of proving that at CPH's  
13:45 38 initiative the hotel engaged in issuing false  
13:45 39 invoices. Obviously that matter was not put to either Mr Johnston  
13:45 40 or Mr Kady.  
13:45 41  
13:45 42 Now, in our respectful submission, there is no basis for finding  
13:46 43 that the China UnionPay process was a CPH initiative. Now,  
13:46 44 an oblique reference was made by my learned friend Mr Borsky  
13:46 45 to Mr Packer, by reference to Mr Ratnam who, and I quote  
13:46 46 "might" have suggested that the CUP system be reinstated. Now,  
13:46 47 what findings one could make from such a submission, with



13:46 1 respect, escapes us. There couldn't even be a finding against  
13:46 2 Mr Ratnam, certainly couldn't be a finding involving Mr Packer  
13:46 3 by reference to a submission that he had a working relationship  
13:46 4 with Mr Ratnam. That should be simply set aside.

13:46 5

13:47 6 That's all we wish to say directly in relation to the Crown written  
13:47 7 submissions and oral submissions so far as they are contrary to  
13:47 8 the position we take.

13:47 9

13:47 10 Can I now turn to the VCGLR submissions. Again I will use the  
13:47 11 paragraph numbering for ease. At paragraph 5 the VCGLR  
13:47 12 suggests that it should not have to undertake disciplinary action if  
13:47 13 the Commission recommends the casino licence should be  
13:47 14 cancelled.

13:47 15

13:47 16 The legislative regime has been established to ensure that before  
13:47 17 that serious step is taken, the process in section 20 of the *Casino*  
13:47 18 *Control Act* is followed. That is the legislative scheme which has  
13:47 19 operated since the enactment of the Act, which is based on --  
13:47 20 based upon which participants in the industry have conducted  
13:48 21 themselves. And includes importantly, with respect, a right of  
13:48 22 judicial review under section 155(3) of the Act.

13:48 23

13:48 24 One of the great advantages of Royal Commissions, and one of  
13:48 25 their limitations, is that they are free, practically, subject to  
13:48 26 natural justice considerations, from review because they do not  
13:48 27 affect legal interests.

13:48 28

13:48 29 Now, VCGLR's submission that that step be removed puts your  
13:48 30 recommendations in a wholly different legal category than is their  
13:48 31 natural position as being the extremely valuable and important  
13:48 32 recommendations of a Royal Commission. Of course the  
13:49 33 VCGLR can conduct its investigation by reference to any  
13:49 34 recommendations this Commission makes and of course inform  
13:49 35 itself, as it thinks fit, including no doubt anything that falls from  
13:49 36 you. But, we submit, that should not be sidestepped.

13:49 37

13:49 38 For one, firstly, Crown Resorts on any view is continuing upon  
13:49 39 a determined and passionately pursued road of reform. By the  
13:49 40 time the Commission delivers its report, more progress will have  
13:49 41 been made which will need to be taken into account and by the  
13:50 42 time of any decision-making taking place, further reform will  
13:50 43 have taken which will need to be taken into account. Crown  
13:50 44 should not be deprived of its entitlement to have its rights dealt  
13:50 45 with according to the rule of law. And you would not accede to  
13:50 46 that submission of the VCGLR.

13:50 47

13:50 1 Can I turn next to paragraph 47(c) of the VCGLR's submissions.  
13:50 2 Ms Bergin did not find that Mr Johnston had access to price  
13:50 3 sensitive information about Crown Resorts at the time of the  
13:50 4 share sale agreement with Melco. Rather she merely recited the  
13:50 5 statement of Mr Barton whereby he indicated that that  
13:50 6 information was price-sensitive, and that Mr Johnston contested  
13:51 7 that proposition. That's page 191 at paragraphs 50 to 51 of her  
13:51 8 report. They are the paragraphs which deal with this issue, they  
13:51 9 are not cited in VCGLR's submissions.

13:51 10  
13:51 11 The paragraph cited by VCGLR from Ms Bergin's report,  
13:51 12 page 190, paragraphs 43 to 45, make no reference to  
13:51 13 price-sensitive information at all. Rather, they describe that  
13:51 14 Mr Johnston didn't disclose the proposed transaction to Mr Barton.

13:51 15  
13:51 16 I then turn to paragraph 161 of the VCGLR submissions. It is  
13:51 17 noted that the VCGLR accepts that shareholding simply offers  
13:51 18 a potential to influence, and that the key consideration is  
13:51 19 influence not shareholding. However, the sentence referring to  
13:52 20 CPH as a large shareholder that "has exerted its power"  
13:52 21 intimates that the power emanates from the shareholding per se,  
13:52 22 which is incorrect. There is no evidence that CPH in general meeting  
13:52 23 has ever exercised its shareholding to influence the management of  
13:52 24 Crown Resorts. Rather, that influence was brought about by  
13:52 25 having a role on the board, in management, and having access  
13:52 26 to information. That relationship, and with it any influence, is at  
13:52 27 an end. There is nothing to suggest that it is existing, there is  
13:52 28 nothing to suggest it will ever exist again and therefore be able to  
13:52 29 exert influence, or its voting power, in a manner that is  
13:53 30 unacceptable, which is the only way in which it can assert or  
13:53 31 exert any influence in light of there no longer being any nominee  
13:53 32 directors of Crown on the Board, the relevant agreements being  
13:53 33 terminated and the undertakings being given.

13:53 34  
13:53 35 I now turn to 162 of the VCGLR's submissions. I don't know if  
13:53 36 you've had an opportunity to read these.

13:53 37  
13:53 38 COMMISSIONER: Briefly I have, yes.

13:53 39  
13:53 40 MR HUTLEY: Now, this is the issue of power and whether there  
13:53 41 exists a power under section 28A subsection 4A to require  
13:53 42 undertakings.

13:53 43  
13:53 44 That power depends upon the finding that CPH are associates in  
13:54 45 the way you understand. It does not appear that Counsel  
13:54 46 Assisting is asserting that CPH is an associate or any officers or  
13:54 47 shareholder in CPH are associates. It does not appear that Crown

13:54 1 is asserting it. VCGLR's submissions do not make any  
13:54 2 submission as to why one would find such an association for the  
13:54 3 reason we submit that there is simply no longer -- no evidence of  
13:54 4 such an association. VCGLR submissions make it sound like  
13:54 5 compulsion to give undertakings will be required. In fact, on 26  
13:54 6 July CPH voluntarily offered undertakings to the VCGLR  
13:55 7 equivalent to those agreed with ILGA in March 2021. The  
13:55 8 VCGLR's response was to assert on 28 July, a power to require  
13:55 9 undertakings pursuant to section 28A(4A), apparently on the basis  
13:55 10 of a report about which it had not previously written to CPH and  
13:55 11 where CPH was not interviewed nor invited to make submissions.  
13:55 12 Even in its submissions to this Commission, which discuss the  
13:55 13 final China Report of the VCGLR at length, no reference is made  
13:55 14 to what findings relate specifically to CPH, or how they form the  
13:55 15 foundation of an opinion which is required for the exercise of the  
13:55 16 power under 28A subsection (4A).

13:55 17  
13:56 18 Of course, Crown voluntarily offers the undertakings, and no  
13:56 19 submission is made as to why, in form, they are insufficient. If binding  
13:56 20 undertakings are required and my client has indicated a perfect  
13:56 21 preparedness to give them, they can be given in the form of  
13:56 22 a binding agreement under section 142 of the Casino Control Act  
13:56 23 and we offer, and have offered, to do that very thing. We've  
13:56 24 given a binding undertaking of course in NSW and we've offered  
13:56 25 to do what we can in Victoria.

13:56 26  
13:56 27 Now, the VCGLR makes no submissions about shareholding cap  
13:57 28 and does not support a shareholding cap. That is 163.

13:57 29  
13:57 30 Can I now turn to 178 of the VCGLR. This is a reference to the  
13:57 31 VCGLR's China Report and it was not an investigation of CPH as  
13:57 32 an associate. No CPH officer was interviewed for it, no  
13:57 33 submissions from CPH were sought in respect of it before it was  
13:57 34 finalised, nor was it provided to CPH by VCGLR after it was  
13:57 35 finalised. It has been tendered before this Commission, but there  
13:57 36 has been none, and we don't suggest in any way it is necessary to  
13:58 37 be, any exploration about aspects of the report so far as they  
13:58 38 referred to CPH or CPH persons. The first communication of any  
13:58 39 kind by the VCGLR to CPH concerning the report was on 28  
13:58 40 July, which I've just referred to, and when it was asserted that that  
13:58 41 report supported the exercise of the 28A(4A) powers. And I've  
13:58 42 made our submissions in relation to that.

13:58 43  
13:58 44 But the important point is CPH's position is simply that we've not  
13:58 45 been given an opportunity to comment upon the report, one.  
13:58 46 Two, it doesn't form the basis for a conclusion we're an associate.  
13:58 47 Three, without a basis for finding that we are an associate,

13:58 1 28A(4A) simply has no work to do. And it is suggested, and this  
13:59 2 is at paragraph 180, that this approach is "redolent of the attitude  
13:59 3 that has characterised Crown's approach towards VCGLR and has  
13:59 4 been subject to criticism in the Counsel Assisting's submissions".  
13:59 5

13:59 6 In our respectful submission, the fact that CPH observes to  
13:59 7 a regulator that it does not accept that it has power, and without  
13:59 8 the identification of the basis of a power from that regulator, it is  
13:59 9 hardly redolent of anything other than a respect for the rule of law  
13:59 10 on our part. Of course, if there was a basis and that was a basis  
13:59 11 which was established, the power exists, there would be a basis  
13:59 12 for engagement. But to in effect criticise my client for seeking  
14:00 13 that the VCGLR exercise its powers according to law must never  
14:00 14 be suggested to be anything other than an appropriate and  
14:00 15 respectful approach to an administrative body to ensure that it  
14:00 16 does not exceed its legal powers. As yet we have had no indication  
14:00 17 from VCGLR on the basis upon which it appears to assume that it can  
14:00 18 exercise that power. That has not been forthcoming in their  
14:00 19 submissions, and in our respectful submission there is no basis,  
14:00 20 and there is no possible basis of criticism of my client for making  
14:00 21 observations to that effect.  
14:01 22

14:01 23 I now turn to the State of Victoria's submissions. I refer here to  
14:01 24 their submissions at paragraphs 15 and 33. The State accepts that  
14:01 25 for the carveout of the compensation regime to be available prior  
14:01 26 to any extension, variation or cancellation of the licence, the  
14:01 27 VCGLR must comply with the procedural requirements in section  
14:01 28 20. I've made our submissions as to why they should undertake  
14:01 29 those requirements. And that is consistent with our submission  
14:01 30 that that is consistent with the rule of law. But of course the  
14:01 31 submission of the State provides a further reason why Crown  
14:01 32 should have the proper opportunity to put its position as to why  
14:01 33 its licence should not be suspended, varied, cancelled via the  
14:01 34 section 20 process in light of findings and recommendations of  
14:02 35 this Commission.  
14:02 36

14:02 37 Now, the proposal by both the State at paragraph 33 of their  
14:02 38 submissions and VCGLR at 25 to 30, that section 20 be removed  
14:02 39 and this process skipped, we submit would undermine the basis  
14:02 40 on which the regulatory certainty provisions, which are  
14:02 41 summarised at paragraph 9 of the State's submissions, were  
14:02 42 agreed. And the same point can be made of Crown Resorts'  
14:02 43 submissions at C152(2)(c)(i). You will have seen, in our  
14:02 44 submissions, the reference to issues of sovereign risk of  
14:02 45 contracting with Victoria, and operate and the effect upon those,  
14:02 46 we won't go any further, they are at paragraphs 164 to 170. But  
14:03 47 a central proposition which needs to be dealt with is whether the

14:03 1 steps here proposed in effect fundamentally are at odds with  
14:03 2 a concept of the rule of law in relation to a threat to remove  
14:03 3 a valuable entitlement. And I don't think I need say any further.  
14:03 4 But that is a fundamental question of due process and rule of law.

14:03 5  
14:03 6 I then turn to paragraphs 9 to 33 of the State's submissions.  
14:03 7 CPH agrees with the State's analysis of the compensation  
14:03 8 provisions. It may be available to Crown Resorts unless the  
14:03 9 proper disciplinary process is followed. Note, and in our  
14:03 10 respectful submission, this is not a question of benefitting from  
14:04 11 one's wrongs. All this provides is that should Crown Resorts'  
14:04 12 licence be removed because of pure public policy change, that's  
14:04 13 sub-paragraph (e), then compensation will result. All of the other  
14:04 14 review processes, which are review processes consistent with in  
14:04 15 effect the matters into which you are enquiring and are matters of  
14:04 16 concern can be brought to bear in an analysis which following  
14:04 17 section 20 would --- could serve to operate upon the availability  
14:04 18 of compensation. And we submit there is nothing that need to go  
14:04 19 beyond that.

14:05 20  
14:05 21 Lastly, can I say, one small observation in relation to the  
14:05 22 submissions made on behalf of Ms Coonan. At paragraphs 84 to  
14:05 23 94 and 97, Ms Coonan's submissions indicate that she did not  
14:05 24 have "control" of the board which prior to February 2021 was  
14:05 25 "dominated by old Crown" as to strategy for the Bergin Inquiry or  
14:05 26 the response to the draft China Report.

14:05 27  
14:05 28 Now, with respect to Ms Coonan, characterising events of that  
14:05 29 variety on an ex post facto basis has to be approached with  
14:05 30 a degree of scepticism and reflection of the submissions made on  
14:05 31 behalf of Crown Resorts that Crown has changed its position in  
14:06 32 relation to how it approaches this inquiry, as opposed to the  
14:06 33 Bergin Inquiry. Changed. Not the Board has in part changed or  
14:06 34 members of the Board have --- those who didn't dissent, the  
14:06 35 position of Crown generally.

14:06 36  
14:06 37 Those are all the submissions we wish to make.

14:06 38  
14:06 39 COMMISSIONER: Thank you very much, Mr Hutley. Thank  
14:06 40 you.

14:06 41  
14:06 42 Mr Sheahan. Good afternoon. I can see and I hope hear you.

14:06 43  
14:06 44  
14:06 45 **CLOSING SUBMISSIONS BY MR SHEAHAN**  
14:06 46  
14:06 47

14:06 1 MR SHEAHAN: I hope so too, Commissioner. On behalf of  
14:06 2 Ms Coonan I wish to make submissions on just two topics,  
14:06 3 consistent with (inaudible). First are some corporate governance  
14:06 4 questions prompted by the submissions of CPH, and the second  
14:06 5 are two aspects of a tax issue.  
14:07 6  
14:07 7 On the question of corporate governance, one of the most  
14:07 8 invaluable recent studies of corporate governance in Australia is  
14:07 9 the prudential review of CBA performed by APRA in 2018 in  
14:07 10 light of the bank's AML issues. You will recall, Commissioner,  
14:07 11 that led to what was the largest civil penalty ever imposed in  
14:07 12 Australian history, \$700 million. The importance in the  
14:07 13 prudential review found there were signal failures in CBA's  
14:07 14 corporate governance, and that included inadequate oversight and  
14:07 15 challenge by the board and its committees, in particular in  
14:07 16 relation to the non-financial risks, and weakness in how issues,  
14:07 17 incidents and risks were identified and escalated through the  
14:07 18 institution, and a lack of urgency and the subsequent management  
14:08 19 and resolution. Those may have a familiar ring in this matter.  
14:08 20  
14:08 21 Commissioner, that was a board enormously successful,  
14:08 22 comprising of boards who were highly qualified and apart from  
14:08 23 the CEO completely independent. There was no question of any  
14:08 24 dominant shareholding or influence. In comparison to CBA and  
14:08 25 with the benefit of all that we now know, Commissioner, you  
14:08 26 might think that Crown was a corporate governance crisis waiting  
14:08 27 to happen. Was it inevitable? But the odds were that in due  
14:08 28 course the governing structures, the corporate governing  
14:08 29 structures, driven by the shareholder structures that drove them,  
14:08 30 that underlay them, would have eventually come to make the  
14:09 31 (inaudible) and discipline required to sustain good corporate  
14:09 32 governance unable to be achieved.  
14:09 33  
14:09 34 That's the --- my point in mentioning the example of CBA is  
14:09 35 twofold. The first is to put some of CPH's submissions in the  
14:09 36 proper context. When they say in their written submissions at  
14:09 37 page 53, paragraph 10, it is simply not the case that CPH nominee  
14:09 38 directors stood in the way of each and every decision that would  
14:09 39 have prompted reformation within Crown. Taken literally, it  
14:09 40 would all be correct, but that misses the point, good corporate  
14:09 41 governance is hard, it requires constant vigilance, it is inanimate  
14:09 42 and complacency, comfort and (inaudible) loyalty. Similarly  
14:09 43 when CPH submits that it is "incorrect to simplistically attribute  
14:10 44 past failures (inaudible) to CPH", that might be correct but again  
14:10 45 it misses the point. The point is that the governance structures of  
14:10 46 Crown, driven by their ownership structures with a good  
14:10 47 corporate governance was unlikely to develop or to be

14:10 1 consistently sustained despite the best efforts of independent  
14:10 2 directors.

14:10 3  
14:10 4 A corollary of that is that the Commission should not hesitate to  
14:10 5 accept Ms Coonan's evidence, which are consistent with the  
14:10 6 findings of the Bergin Report that until broad renewal is achieved  
14:10 7 at Crown, real progress on governance reform couldn't occur.  
14:10 8 That's the position that is also affirmed by Ms Korsanos and  
14:10 9 Ms Halton.

14:10 10  
14:10 11 In that regard, there are three other points to be made, which are  
14:11 12 in a sense central to the position of Ms Coonan. The first is that  
14:11 13 she recognised, and has always recognised, that the role of  
14:11 14 leading Crown through the renewal process is best completed by  
14:11 15 someone who has not been a part of the old governance structure  
14:11 16 for a substantial period.

14:11 17  
14:11 18 The second point is that it was nevertheless important, we would  
14:11 19 submit, vital, really, for Ms Coonan to do as she told the Bergin  
14:11 20 Inquiry she would do, that is to stay the course. She would have  
14:11 21 preferred to have retired. It would have been much easier for her  
14:11 22 to do so, particularly off the back of the Bergin Commission  
14:11 23 report which dealt with her so positively. But in truth, it was vital  
14:12 24 for Crown, and for its stakeholders, and in the public interest, for  
14:12 25 Ms Coonan to stay on to bring about, first, Board renewal,  
14:12 26 second, senior executive renewal and, third, to commence the  
14:12 27 process of reform at Crown.

14:12 28  
14:12 29 It is fair to say, Commissioner, that a great deal has been achieved  
14:12 30 under her leadership, despite some (inaudible) first steps in  
14:12 31 relation to dealings with the VCGLR.

14:12 32  
14:12 33 The third point is that, and I think this follows from the first, and  
14:12 34 that is that Ms Coonan intended to retire from her positions at  
14:12 35 Crown when succession plans were put in place. And she had  
14:12 36 hoped to be able to do that before the next Crown AGM, which is  
14:12 37 in October. Now, her hope it seems is almost certain to be  
14:13 38 achieved. You have heard Crown submissions which would  
14:13 39 indicate that it expects to appoint a new Chair by the end of this  
14:13 40 month. And that has a corollary for what findings this  
14:13 41 Commission should or should not make in relation to questions of  
14:13 42 suitability as Mr Borsky pointed out.

14:13 43  
14:13 44 The second topic which we address and arises from the  
14:13 45 regulator's submissions is an observation, no more than that, that  
14:13 46 it is critical, this is in paragraph 10(d)(iii), it is critical of Crown's  
14:13 47 handling of the underpayment of tax issue, and it suggests that

14:13 1 Ms Coonan failed to appreciate the importance of the matter.  
14:13 2  
14:13 3 Now, the observation seems to be premised on a notion that  
14:13 4 Ms Coonan knew about an underpayment of tax issue prior to  
14:13 5 June this year. There is simply no evidence to support that  
14:14 6 premise. None. The only point of interest that emerged in the  
14:14 7 evidence on this topic was an inference that might be drawn from  
14:14 8 some documents that Ms Coonan had said something to  
14:14 9 Mr Walsh to the effect that she would consider something,  
14:14 10 presumably consider the historic cultural issue that had been  
14:14 11 drawn to her attention. And, we emphasise, not an underpayment  
14:14 12 of tax issue, which he had not mentioned to her. Now, we deal  
14:14 13 with this in a little length in writing, but Mr Walsh's evidence,  
14:14 14 properly read, was not that she had said she would consider  
14:14 15 something. Here, we were simply to note that Mr Walsh in his  
14:15 16 written submissions to the Commission, adopts Crown's  
14:15 17 submissions on the subject, and that appears in paragraph 43 of  
14:15 18 his submissions and Crown's submissions on this topic, the same  
14:15 19 effect as Ms Coonan's (inaudible) there is no conflict between her  
14:15 20 position and Mr Walsh's position about what he said to her and  
14:15 21 she said to him on the occasion of this telephone conversation in  
14:15 22 February.  
14:15 23  
14:15 24 Finally, as regards Crown's response to the underpayment issue,  
14:15 25 the second aspect of what (inaudible) observes, the fact is once  
14:15 26 the board became aware of the underpayment issue in June, it  
14:15 27 responded to it quickly, properly and effectively. The evidence  
14:16 28 summarised in our submission, and it was adverted to by our  
14:16 29 learned friend Mr Borsky this morning. (Inaudible)  
14:16 30 Commissioner, you will recall that Crown immediately sought  
14:16 31 advice from its regulator tax advisors Ernst & Young,  
14:16 32 Mr Robinson QC. Then, before they had advised, briefed  
14:16 33 an independent team via counsel to get fresh advice on the same  
14:16 34 subject. And then, having got the two advices, elected to pay to  
14:16 35 the Government the higher amount of the two opinions, together  
14:16 36 with penalties without a demand.  
14:16 37  
14:16 38 Now, Ms Coonan understands that a sceptical assessment of all  
14:16 39 this would be that it is the sort of response that you expect in the  
14:17 40 glare of a Royal Commission. But with Crown, we know how it  
14:17 41 used to respond in the glare of a Public Commission of Inquiry,  
14:17 42 how it used to respond was that it dug in. Under Ms Coonan's  
14:17 43 leadership and since the retirement of what is called the oldco,  
14:17 44 Crown's behaviour has been and continues to be markedly  
14:17 45 different. That is a state of affairs for which Ms Coonan has  
14:17 46 worked tirelessly. Those are our submissions, sir.  
14:17 47



14:17 1 COMMISSIONER: Thank you very much, Mr Sheahan. Thank  
14:17 2 you.

14:17 3  
14:17 4 Now, Mr Rozen?

14:17 5

14:17 6

14:17 7 **CLOSING SUBMISSIONS BY MR ROZEN**

14:17 8

14:17 9

14:17 10 MR ROZEN: As the Commission pleases.

14:17 11

14:17 12 Commissioner, yesterday, along with other parties, the VCGLR  
14:18 13 filed detailed written submissions responding to the submissions  
14:18 14 of Counsel Assisting. Those submissions were made on the basis  
14:18 15 of the then current legislative framework, or continues to be the  
14:18 16 current legislative framework and assumes the VCGLR would  
14:18 17 implement the recommendations of this Royal Commission.

14:18 18

14:18 19 The VCGLR acknowledges, based on the announcement this  
14:18 20 morning to which Mr Gray made reference at the commencement  
14:18 21 of his submissions, that there will be changes to that legislative  
14:18 22 framework and that a new gambling regulator will be established.

14:18 23

14:18 24 The Commissioner may recall Mr Gray advising this Commission  
14:18 25 that those changes would occur over the coming months and the  
14:18 26 timing is not yet determined. In those circumstances, whilst the  
14:18 27 future in relation to my client is a little bit uncertain, it would  
14:18 28 appear that it will continue to perform its regulatory role in  
14:19 29 respect of Crown and the Casino Control Act for the foreseeable  
14:19 30 weeks and perhaps months, including importantly the aftermath  
14:19 31 of your report being provided to the governor.

14:19 32

14:19 33 It is in that context that we make these oral submissions. We  
14:19 34 propose to emphasise a few aspects of our written submissions  
14:19 35 but before doing that, I'm instructed, Commissioner, to express  
14:19 36 the VCGLR's gratitude for the enormous amount of work done by  
14:19 37 this Commission, by Counsel Assisting and by Solicitors  
14:19 38 Assisting to date. It is apparent that the evidence uncovered in  
14:19 39 this Royal Commission and the final report will be of great  
14:19 40 assistance to the VCGLR and any successor regulator in their  
14:19 41 vital role of casino regulation.

14:19 42

14:19 43 The VCGLR has sought to cooperate with this Commission until  
14:19 44 now and it will assist the Commission in future if it will be of  
14:19 45 assistance for relevant correspondence to be provided to the  
14:20 46 Commission for the remainder of its life.

14:20 47

14:20 1 Commissioner, by its Terms of Reference, this Commission is  
14:20 2 required to make an assessment of Crown Melbourne's suitability  
14:20 3 to continue to hold Victoria's only casino licence. The  
14:20 4 Commissioner is also required to determine if it is in the public  
14:20 5 interest for Crown Melbourne to continue to hold that licence. If  
14:20 6 the Commission concludes that Crown Melbourne is not suitable,  
14:20 7 or that it is not in the public interest for it to hold the Victorian  
14:20 8 casino licence, it is required to report on what action, if any,  
14:20 9 would be required to make it suitable, or for it to be in the public  
14:20 10 interest for Crown Melbourne to hold the licence. The Terms of  
14:20 11 Reference require inquiry and report into the same questions  
14:20 12 concerning Crown Resorts and any other existing associates of  
14:20 13 Crown Melbourne.

14:20 14  
14:20 15 Commissioner, these assessments are normally entrusted to the  
14:20 16 VCGLR under the Casino Control Act as is well understood. The  
14:20 17 VCGLR is required to assess Crown's suitability at intervals not  
14:21 18 exceeding five years under section 25. And, with respect, your  
14:21 19 observation earlier in response to Mr Borsky's submissions that  
14:21 20 the role this Commission has is more analogous to that function  
14:21 21 than the function under section 9 is with respect the correct one.

14:21 22  
14:21 23 The last assessment that was made under section 25 was in 2018  
14:21 24 and covered the period 1 July 2013 to 30 June 2018. The next  
14:21 25 review must be completed by June 2023. In addition, the  
14:21 26 VCGLR has powers to suspend or cancel a casino licence under  
14:21 27 the disciplinary action process in section 20 of the Act. And,  
14:21 28 finally, the suitability of associates of the licensee is monitored by  
14:21 29 the VCGLR under section 28A.

14:21 30  
14:21 31 The VCGLR notes the submissions by Counsel Assisting that it is  
14:21 32 open to this Commission to conclude that Crown Melbourne is  
14:22 33 not suitable and that it is no longer in the public interest for it to  
14:22 34 hold the casino licence. The VCGLR makes no submissions in  
14:22 35 reply about these matters and wishes to briefly to explain why  
14:22 36 that is the case. It is for three reasons. The first reason is that as  
14:22 37 this Royal Commission has been established to answer the very  
14:22 38 questions that the VCGLR would ordinarily be required to  
14:22 39 answer, the VCGLR considers that it is not appropriate for it to  
14:22 40 express its view. The Government has made a clear decision it  
14:22 41 wants to be advised by this Royal Commission, equipped as it is,  
14:22 42 by the extensive powers conferred by the Inquiries Act. These  
14:22 43 are powers which exceed those of the VCGLR in a number of  
14:22 44 important respects. And the Commission has significantly greater  
14:22 45 resources than the VCGLR. The second reason is related to the  
14:22 46 first. It is likely that the VCGLR, or its successor casino  
14:22 47 regulator, will be called upon to consider the suitability of the

14:23 1 licensee and its associates when this Commission concludes. In  
14:23 2 the absence of legislative amendment, whatever  
14:23 3 recommendations this Commission makes regarding suitability,  
14:23 4 can be implemented only by the VCGLR. It would be unwise  
14:23 5 and inappropriate for the VCGLR to express a view now in  
14:23 6 circumstances where it could later be argued that it had prejudged  
14:23 7 any such questions. Equally, it would be unwise for the VCGLR  
14:23 8 to bind the hands of any successor regulator.

14:23 9  
14:23 10 And, finally, at a practical level, the VCGLR has been privy to  
14:23 11 most but not all of the evidence that has been adduced in this  
14:23 12 inquiry. Some of the evidence of course has been the subject of  
14:23 13 non-publication orders. For those reasons the VCGLR does not  
14:23 14 make any submissions on whether Crown Melbourne is presently  
14:23 15 suitable or whether it is no longer in the public interest for Crown  
14:23 16 Melbourne to hold the casino licence.

14:24 17  
14:24 18 If I could turn to the future, which is principally what we wish to  
14:24 19 address the Commissioner about. Commissioner, having  
14:24 20 concluded resoundingly that Crown is not suitable to hold the  
14:24 21 casino licence and that it is not in the public interest for it to do  
14:24 22 so, Counsel Assisting suggest you have two options: firstly,  
14:24 23 recommending the licence be cancelled or alternatively making  
14:24 24 a recommendation facilitating the path back to suitability.

14:24 25  
14:24 26 In our submission there is at least one further option that is not  
14:24 27 examined in detail by Counsel Assisting. The licence could be  
14:24 28 suspended, possibly in combination with the appointment of  
14:24 29 a manager by the VCGLR pursuant to section 22 of the *Casino  
14:24 30 Control Act. The appointment of a manager under that provision*  
14:24 31 is of course quite a different matter for the appointment of  
14:24 32 a monitor to which I will return in a moment. Under section  
14:24 33 22(6) of the *Casino Control Act*, any such manager is deemed to  
14:25 34 be the holder of the licence, assumes full control and  
14:25 35 responsibility for the business of the casino operator in respect of  
14:25 36 the casino and, importantly, may employ such staff as may be  
14:25 37 required to operate the casino. Further, under the Act, the  
14:25 38 VCGLR has the power to determine what proportion of the net  
14:25 39 earnings of the casino while it is under control of such a manager  
14:25 40 are paid to consolidated revenue and what proportion are paid to  
14:25 41 Crown. That is under subsection 8.

14:25 42  
14:25 43 Turning to the two options identified in Counsel Assisting's  
14:25 44 submissions, starting with cancellation or potentially suspension  
14:25 45 of the licence. As we've already noted, in the absence of  
14:25 46 legislative amendment, a recommendation by this Commission  
14:25 47 that the licence be cancelled or suspended could only be

14:25 1 implemented by the VCGLR taking disciplinary action under  
14:26 2 section 20. Such action may only be commenced under one or  
14:26 3 more of the statutory grounds identified in subsection one. There  
14:26 4 is potentially a question about whether a finding by this  
14:26 5 Commission without more would be a sufficient basis for action  
14:26 6 under section 20. Even assuming that the answer to that is, "yes",  
14:26 7 that there would be sufficient basis for action, any section 20  
14:26 8 disciplinary process would be inefficient, would duplicate the  
14:26 9 process of this Commission to date, and would be likely to be  
14:26 10 lengthy and costly. The VCGLR would have to examine the  
14:26 11 evidence of suitability afresh and necessarily would consider  
14:26 12 different or more limited evidence. Such an inquiry by the  
14:26 13 VCGLR would have to present on a different evidentiary basis  
14:26 14 given the VCGLR has not been able to access all of the evidence  
14:26 15 before this Commission.

14:26 16  
14:26 17 Further, as the evidence before this Commission reveals, the  
14:27 18 suitability landscape is constantly changing. New directors and  
14:27 19 senior officers are being appointed by Crown and will also be  
14:27 20 appointed in the future. New policies, procedures and systems  
14:27 21 are being implemented.

14:27 22  
14:27 23 Finally, the section 20 disciplinary process would occur in  
14:27 24 circumstances where the VCGLR currently has more limited  
14:27 25 powers than either this Royal Commission or a Standing Royal  
14:27 26 Commission.

14:27 27  
14:27 28 In light of these considerations, the VCGLR submits that the  
14:27 29 public interest is not served by it having to engage in a further  
14:27 30 lengthy and costly legal process to give effect to a finding of this  
14:27 31 Commission that the licensee is unsuitable, or that it is not in the  
14:27 32 public interest for Crown Melbourne to hold the licence and,  
14:27 33 therefore, the licence should be cancelled.

14:27 34  
14:27 35 The VCGLR notes the State's intention to legislate to enable the  
14:27 36 VCGLR to give effect to the findings of this Royal Commission.  
14:28 37 The Premier, when announcing the Royal Commission in  
14:28 38 February of this year, also announced the Government's intention  
14:28 39 to give the VCGLR whatever powers are necessary to give effect  
14:28 40 to the findings of this Royal Commission. The Terms of  
14:28 41 Reference also state that the Royal Commission is to inquire into  
14:28 42 and report on whether it considers changes to the relevant  
14:28 43 Victorian legislation are necessary for the State to address the  
14:28 44 findings and implement the recommendations of this Royal  
14:28 45 Commission.

14:28 46  
14:28 47 Finally, under paragraph 12 of its Terms of Reference, this

14:28 1 Commission is to have regard "to the most practical, effective and  
14:28 2 efficient way to address its recommendations". Having regard to  
14:28 3 these matters, if this Commission recommends that Crown's  
14:28 4 licence should be cancelled, it would be preferable for it also to  
14:28 5 recommend that there be legislative change to give effect to that  
14:28 6 recommendation without the need for the VCGLR to take further  
14:28 7 disciplinary action under the Casino Control Act.

14:29 8

14:29 9 Turning then to the second option identified by Counsel  
14:29 10 Assisting, a pathway back to suitability.

14:29 11

14:29 12 If the Commission concludes that Crown Melbourne is capable of  
14:29 13 returning to suitability, Counsel Assisting's submissions note that  
14:29 14 the task of reform will be complicated and difficult and will  
14:29 15 require nothing short of complete holistic bottom-up and  
14:29 16 top-down reform. Beyond that, the submissions of Counsel  
14:29 17 Assisting provide limited assistance on what, if anything, is  
14:29 18 required for Crown to return to suitability.

14:29 19

14:29 20 The VCGLR does agree with Counsel Assisting's submissions  
14:29 21 that Crown should not any reform process unsupervised. Further,  
14:29 22 as Counsel Assisting correctly observe, the next test of whether  
14:29 23 Crown is suitable will be the VCGLR's Seventh Casino Review  
14:30 24 which must be completed by June 2023. Counsel Assisting  
14:30 25 expressed concerns about the thoroughness of such a review  
14:30 26 process given the limited powers of the VCGLR under the current  
14:30 27 empowering legislation when compared to those of this Royal  
14:30 28 Commission. The VCGLR shares those concerns. It submits that  
14:30 29 this Commission should recommend that the VCGLR, or its  
14:30 30 successor regulator, be given the appropriate powers akin to those  
14:30 31 of a Standing Royal Commission to carry out the vital work of  
14:30 32 overseeing Crown's operations, including the conduct of the  
14:30 33 seventh review. Enhanced regulatory powers, such as the express  
14:30 34 statutory abrogation of legal professional privilege for the  
14:30 35 purpose of VCGLR investigations, and having stronger penalties  
14:30 36 available to the casino regulator, would each significantly  
14:30 37 strengthen Victoria's system of casino supervision. Significant  
14:30 38 improvements would be achieved through enhanced powers for  
14:31 39 the VCGLR and in our written submissions we've detailed  
14:31 40 a number of areas that we submit ought to be considered by this  
14:31 41 Commission. If I can just identify a couple of those presently.

14:31 42

14:31 43 Firstly, a power to ensure that Crown cannot deploy its common  
14:31 44 law right to legal professional privilege as a tool to avoid  
14:31 45 producing information the VCGLR needs to properly regulate  
14:31 46 Crown as exemplified by the China investigation. Secondly,  
14:31 47 powers that ensured Crown could not deploy Commonwealth

14:31 1 secrecy provisions that exist in anti-money laundering and  
14:31 2 counter-terrorism financing legislation as a tool to avoid  
14:31 3 producing the information the VCGLR needs to properly regulate  
14:31 4 Crown. And, finally, powers to ensure the VCGLR can provide  
14:31 5 the rigorous oversight necessary to manage the risks inherent in  
14:31 6 the operation of a casino. The benefits of these enhancements  
14:32 7 include increasing the VCGLR's speed of investigations by  
14:32 8 enabling it to find critical documents and information sooner and  
14:32 9 improving the regulator's ability to get to the bottom of issues  
14:32 10 faster. It is clearly not in the public interest for it to take in  
14:32 11 excess of three years for an investigation such as that which was  
14:32 12 conducted into the China arrests by the VCGLR. The  
14:32 13 circumstances are of course set out in detail in Counsel  
14:32 14 Assisting's submissions.

14:32 15  
14:32 16 The need for such increased powers is highlighted by the  
14:32 17 evidence before you about Crown's conduct in its dealings with  
14:32 18 the VCGLR. That conduct has ranged from the casually  
14:32 19 recalcitrant to the overtly belligerent and threatening. It has been  
14:32 20 the antithesis of the conduct that could reasonably be expected of  
14:32 21 the holder of Victoria's only casino licence, a position of  
14:32 22 particular privilege under the law. That conduct has included (a)  
14:33 23 Crown's failure to cooperate with the VCGLR's China  
14:33 24 investigation by firstly giving a misleading presentation to the  
14:33 25 VCGLR in August 2017. Secondly, the general approach to  
14:33 26 document production, including hiding behind claims of legal  
14:33 27 professional privilege.

14:33 28  
14:33 29 In relation to the question of document production in the China  
14:33 30 investigation, I wish briefly to respond to a submission that is  
14:33 31 made on behalf of Crown in its written submissions and it is at  
14:33 32 paragraph I37 on page 298 for Mr Borsky's benefit. It is in the  
14:33 33 context of a criticism that is made of Crown in Counsel  
14:33 34 Assisting's submissions about being more forthcoming in  
14:33 35 document production with the Bergin Inquiry than was the case  
14:33 36 with the VCGLR. The response consists of two submissions, the  
14:34 37 first of which is, and I will quote, it's quite brief:

14:34 38  
14:34 39 *Well before the Bergin Inquiry was even announced,*  
14:34 40 *Crown offered to provide all documents discovered in the*  
14:34 41 *class action to the VCGLR .....*

14:34 42  
14:34 43 *For reasons unknown to Crown, that offer was not taken*  
14:34 44 *up by the VCGLR .....*

14:34 45  
14:34 46 Implicit in that submission is that Crown tried to be cooperative  
14:34 47 and helpful to the VCGLR but those offers were shunned and

14:34 1 Crown was not given any explanation or reason for why that was  
14:34 2 the case. In fact, there was a written response to the offer and  
14:34 3 I will give you the reference for that. It is VCG.0001.0002.3365.  
14:34 4 It is exhibit RC#0001.wwwww. In the letter Mr Orkel(?) of the  
14:35 5 VCGLR explained to Mr Murphy why the offer was not taken up.  
14:35 6 And, quite simply, it would have meant the VCGLR would have  
14:35 7 to trawl through all of the discovered documents to find  
14:35 8 documents that were relevant to its investigation. You may  
14:35 9 conclude in those circumstances that Crown's offer far from being  
14:35 10 helpful was merely a tactic. You may also conclude that the  
14:35 11 submission that Crown have made to you today that it received no  
14:35 12 response does not reflect well on Crown. It might even be said to  
14:35 13 be a bit of what quaintly has been referred to in evidence as "old  
14:35 14 Crown".

14:35 15  
14:35 16 Finally, in relation to the China investigation, we note the  
14:35 17 evidence of Crown's failure to make the same concessions to the  
14:35 18 VCGLR that it made to the Bergin Inquiry. The second example  
14:36 19 which is detailed in Counsel Assisting's submissions concerning  
14:36 20 Crown's response to the VCGLR, concerns the implementation of  
14:36 21 Recommendation 17. I won't go through that. We deal with ---  
14:36 22 that is dealt with in detail in Counsel Assisting's submissions.  
14:36 23 Crown submits in its written submissions that its response to  
14:36 24 Recommendation 17 was conceived --- that it was inappropriate  
14:36 25 but submits it wasn't typical of the response it made to the  
14:36 26 recommendations it made in the Sixth Review.

14:36 27  
14:36 28 In our written submissions we refer to evidence of its response to  
14:36 29 other recommendations which suggests, in our submission, that  
14:36 30 the problems associated with the Recommendation 17 response  
14:36 31 were not isolated.

14:36 32  
14:36 33 The fourth example concerns Crown's failure to cooperate with  
14:36 34 the VCGLR's disciplinary action. We note the concessions made  
14:36 35 by both Crown and Mr Walsh in his written submissions about  
14:37 36 that matter. And of course what was particularly concerning was  
14:37 37 that the response came so soon after the commitments that were  
14:37 38 made by Ms Coonan to the VCGLR in December 2020.

14:37 39  
14:37 40 And, finally, we refer to Crown's concealment of its  
14:37 41 underpayment of tax described in Counsel Assisting's  
14:37 42 submissions as the improper introduction and concealment of  
14:37 43 deductions in 2011 and 2012.

14:37 44  
14:37 45 Turning to the question of the monitor, which has been referred to  
14:37 46 in both Counsel Assisting's submissions and the submissions of  
14:37 47 the State and other parties today. We note Counsel Assisting's

14:37 1 submissions that there should be a statutory monitor with  
14:37 2 extensive powers to scrutinise the reform process. The VCGLR  
14:37 3 does not oppose the concept of a statutory or independent monitor  
14:37 4 but considers it important to clearly establish the powers and role  
14:38 5 of such a monitor and how it would report to the regulator. The  
14:38 6 VCGLR considers that it would be appropriate for a monitor to  
14:38 7 have extensive powers but also report to the VCGLR, or any  
14:38 8 successor regulator, on Crown's achievement of its reform  
14:38 9 process to inform the regulator in its assessment of Crown's  
14:38 10 suitability. This would ensure that the monitor fulfil its role of  
14:38 11 monitoring and the VCGLR can is then enabled to fulfil its role to  
14:38 12 assess suitability. Such reporting by the monitor to the regulator  
14:38 13 would also ensure that information and intelligence about the  
14:38 14 casino operator is appropriately captured and retained for the  
14:38 15 future when a monitor may no longer be required, on the  
14:38 16 assumption that the monitor might be a temporary appointment.  
14:38 17 And, as Crown appears to accept, the legislation should require  
14:38 18 Crown to pay for such a monitor.

14:38 19  
14:38 20 There is an existing legislative mechanism that might be able to  
14:38 21 be enhanced for the appointment of a monitor. Under section  
14:39 22 29(3) of the VCGLR Act, the VCGLR can nominate a person to  
14:39 23 assist or advise it in the performance of its functions under the  
14:39 24 Casino Control Act. Using this section the VCGLR could engage  
14:39 25 various experts, such as its own independent expert to undertake  
14:39 26 a forensic review of Crown's anti-money laundering reform  
14:39 27 agenda, and others to monitor Crown's implementation of other  
14:39 28 reforms. This section could be expanded so that such a person or  
14:39 29 persons would be equipped with the necessary and appropriate  
14:39 30 authority and powers and obliged to share information with and  
14:39 31 remain answerable to and report to the regulator. The legislation  
14:39 32 should also clearly enable the VCGLR to be fully compensated  
14:39 33 by Crown for any costs associated with engagement of experts.

14:39 34  
14:39 35 In our written submissions the VCGLR makes suggestions about  
14:39 36 other legislative amendments to require Crown to inform the  
14:39 37 regulator about breaches and potential breaches of its statutory  
14:40 38 obligations. These changes are modelled on the obligations of  
14:40 39 Australian financial services licensees under the Corporations  
14:40 40 *Act 2001, Commonwealth. The benefit of such legislative*  
14:40 41 *amendment would be twofold: firstly it would clearly set out the*  
14:40 42 *regulator's expectations of openness and transparency on the part*  
14:40 43 *of Crown, and in addition, such annual declarations, when*  
14:40 44 *addressed honestly and seriously, may help encourage the*  
14:40 45 *necessary cultural changes that are needed at Crown.*

14:40 46  
14:40 47 If the Commissioner considers that Crown Melbourne is not



14:40 1 a suitable person, and the Commissioner reports on what actions,  
14:40 2 if any, would be required for Crown Melbourne to become  
14:40 3 a suitable person, the VCGLR would welcome any observations  
14:40 4 the Commission has as to the areas for reform and any  
14:40 5 approaches that can most effectively identify areas for reform  
14:40 6 and, secondly, the methods for the VCGLR, or any successor  
14:41 7 regulator, to most effectively evaluate Crown's actions and reform  
14:41 8 outcomes, including identifying any key priorities and timelines.  
14:41 9

14:41 10 The final matter to which I should make brief reference is to  
14:41 11 respond to a submission that was made by Mr Hutley on behalf of  
14:41 12 CPH. If I've correctly understood the submission, it was that  
14:41 13 CPH had offered a binding agreement to the VCGLR under  
14:41 14 section 142 of the Casino Control Act. I'm instructed that no  
14:41 15 such offer has been made.  
14:41 16

14:41 17 Unless there are any questions that the Commission has, they are  
14:41 18 the submissions that I would make.  
14:41 19

14:41 20 COMMISSIONER: No questions. Thank you, Mr Rozen.  
14:41 21

14:41 22 MR ROZEN: Thank you.  
14:41 23

14:41 24 COMMISSIONER: Did you want to say something?  
14:41 25

14:41 26 MR BORSKY: I don't seek to be heard in reply to any of my  
14:41 27 learned friends but with your leave, Commissioner, we would  
14:42 28 seek the opportunity to put in something very, very short in  
14:42 29 writing addressing hopefully of assistance to you in relation to the  
14:42 30 question of title searches ---  
14:42 31

14:42 32 COMMISSIONER: I was actually going to ask you to do that.  
14:42 33

14:42 34 MR BORSKY: Thank you.  
14:42 35

14:42 36 COMMISSIONER: It's being done as well at this end.  
14:42 37

14:42 38 MR BORSKY: No doubt.  
14:42 39

14:42 40 COMMISSIONER: But it would be nice to make sure that we  
14:42 41 have common ground on what --- at the moment, what I said  
14:42 42 earlier, I'm pretty sure that both the casino and the hotel and the  
14:42 43 shops and everything between the river and the street, whatever  
14:42 44 the street is called (inaudible) that's it, is Crown land.  
14:42 45

14:42 46 MR BORSKY: By which you mean the "Crown" in right of the  
14:42 47 State of Victoria.

14:42 1  
14:42 2 COMMISSIONER: Yes, the Crown in right of the State of  
14:43 3 Victoria.  
14:43 4  
14:43 5 MR BORSKY: We are very clear on the distinction!  
14:43 6  
14:43 7 COMMISSIONER: Yes, okay, why don't we just say  
14:43 8 government land. Not only that, under the lease at the expiry of  
14:43 9 the term, however it comes to an end, all the real estate vests in  
14:43 10 the Crown and, therefore, at the moment I'm working on the basis  
14:43 11 that a sublease, which you are required to give if demanded,  
14:43 12 covers the whole of the Crown Casino Complex, apart from the  
14:43 13 car park and a couple of hotels on the other side of the street.  
14:43 14  
14:43 15 MR BORSKY: I ---  
14:43 16  
14:43 17 COMMISSIONER: Check it out because I might be wrong.  
14:43 18  
14:43 19 MR BORSKY: I understand the point as it was put to me this  
14:43 20 morning with great respect.  
14:43 21  
14:43 22 COMMISSIONER: Yes.  
14:43 23  
14:43 24 MR BORSKY: We would like an opportunity to assist the  
14:43 25 Commission in writing on that issue broadly.  
14:43 26  
14:43 27 COMMISSIONER: Sure.  
14:43 28  
14:43 29 MR BORSKY: Of course we will do it promptly and within  
14:43 30 whatever page limit you deem appropriate.  
14:43 31  
14:43 32 COMMISSIONER: It is just a question of identifying the land.  
14:43 33 So somebody has to go to the titles office ---  
14:44 34  
14:44 35 MR BORSKY: We would seek to be heard in writing a little  
14:44 36 more broadly than that.  
14:44 37  
14:44 38 COMMISSIONER: On what?  
14:44 39  
14:44 40 MR BORSKY: On the contractual and statutory framework as  
14:44 41 well, which as I understand it gives rise to the point you put to me  
14:44 42 this morning.  
14:44 43  
14:44 44 COMMISSIONER: About your compelability to grant  
14:44 45 a sublease.  
14:44 46  
14:44 47 MR BORSKY: For example.

14:44 1  
14:44 2 COMMISSIONER: And the circumstances in which --- you can  
14:44 3 make submissions about it, but it is a question of reading  
14:44 4 a contract or a statute.  
14:44 5  
14:44 6 MR BORSKY: Indeed.  
14:44 7  
14:44 8 COMMISSIONER: You can point me to the sections that I  
14:44 9 might have missed.  
14:44 10  
14:44 11 MR BORSKY: Does the Commission which to impose  
14:44 12 a page limit or time limit?  
14:44 13  
14:44 14 COMMISSIONER: I could care. End of the week would be  
14:44 15 good.  
14:44 16  
14:44 17 MR BORSKY: I don't remember what day it is but .....

14:44 18  
14:44 19 COMMISSIONER: Nobody does.  
14:44 20  
14:44 21 MR BORSKY: There is much common ground in this process,  
14:44 22 Commissioner. On the assumption that it is Tuesday, would next  
14:44 23 Monday be acceptable.  
14:44 24  
14:44 25 COMMISSIONER: Yes.  
14:44 26  
14:44 27 MR BORSKY: As the Commission pleases.  
14:44 28  
14:44 29 COMMISSIONER: Before you sit down.  
14:44 30  
14:44 31 MR BORSKY: Yes.  
14:44 32  
14:44 33 COMMISSIONER: One thing they should do is ask you on  
14:45 34 behalf of my team to express to your former colleague and now  
14:45 35 no longer a colleague, congratulations and I'm sure she's much  
14:45 36 relieved to be somewhere else than here.  
14:45 37  
14:45 38 MR BORSKY: I won't comment on that but we certainly echo  
14:45 39 and will respectfully convey your sentiment. Thank you.  
14:45 40  
14:45 41 COMMISSIONER: Thank you. All right, Mr Finanzia, did you  
14:45 42 want to ---  
14:45 43  
14:45 44 MR FINANZIO: I have nothing to say.  
14:45 45  
14:45 46 COMMISSIONER: Okay. Once upon a time I would have said  
14:45 47 "I reserve my decision" and after a fashion you will get it. Thank

14:45 1 you again all very much for all of your hard work. It has been at  
14:45 2 least interesting. Thank you all.

3

4

5 **HEARING CONCLUDED AT 12.46 PM**

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