



INDEPENDENT LIQUOR AND GAMING AUTHORITY OF NSW

INQUIRY UNDER SECTION 143 OF THE CASINO CONTROL ACT 1992 (NSW)

**THE HONOURABLE PA BERGIN SC
COMMISSIONER**

**PUBLIC HEARING
SYDNEY**

**WEDNESDAY, 18 NOVEMBER 2020
AT 9.58 AM**

Continued from 17.11.20

DAY 58

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MR A. BELL SC, MS N. SHARP SC, MR S. ASPINALL and MR N. CONDYLIS appear as counsel assisting the Inquiry
MR N. YOUNG QC appears with MR R. CRAIG SC and MS C. HAMILTON-JEWELL for Crown Resorts Limited and Crown Sydney Gaming Proprietary Limited
5 **MR T. O'BRIEN appears for CPH Crown Holdings Proprietary Limited**
MS N. CASE appears for Melco Resorts & Entertainment Limited
MS K. RICHARDSON SC appears for Star Entertainment Group Limited and Star Pty Ltd

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COMMISSIONER: Thank you, Mr Condylis. Yes, Mr Young.

MR YOUNG: Good morning, Commissioner.

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COMMISSIONER: Good morning, Mr Young.

MR YOUNG: Commissioner, I was about to turn to a second aspect of submissions relating to the Melco transaction - - -

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COMMISSIONER: Yes, indeed.

MR YOUNG: - - - dealing with Crown's knowledge of that transaction.

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COMMISSIONER: Yes.

MR YOUNG: Again, I can be fairly concise, I believe, in these submissions.

COMMISSIONER: Thank you.

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MR YOUNG: The relevant obligation in clause 2.4B applies only to the extent that Crown has the power to prevent a Stanley Ho associate from acquiring one of the defined classes of interest in Crown. Now, the clear and unchallenged evidence of the non-CPH appointed directors and the company secretary of Crown was that they were not informed of the sale to Melco until after the relevant sale agreements had been entered into at approximately 6 pm Sydney time on 30 May 2019.

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COMMISSIONER: Yes.

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MR YOUNG: After that moment of execution of those agreements it was only then that Mr Johnston sought to contact the independent directors and provided a copy of CPH's media release. Accordingly, the only Crown directors who had prior knowledge of that transaction were the CPH-nominated directors on the Crown board, respectively Messrs Johnston, Jalland and Poynton. None of them informed any of the other directors of what they knew of the transaction. You've already heard submissions, Commissioner, on behalf of Mr Johnston and Mr Jalland's

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position, and I'm not going to retrace those matters. The evidence is clear that they did not have such knowledge as to make any connection with clause 2.4.

5 I want to focus specifically on the position of Mr Poynton. He was a CPH nominee. He was informed of the fact of the transaction in a brief telephone call from Mr Packer at approximately 11.30 am Sydney time on 30 May 2019.

COMMISSIONER: He being elsewhere.

10 MR YOUNG: Yes, he being elsewhere.

COMMISSIONER: Yes.

15 MR YOUNG: Mr Poynton was in Perth. Mr Packer was overseas, but I'm not sure precisely where.

COMMISSIONER: I meant Mr Poynton.

20 MR YOUNG: Yes, I thought so.

COMMISSIONER: Mr Poynton was in Perth so it was 11.30 Sydney time, whatever – 9.30 Perth time, I think.

25 MR YOUNG: Yes.

COMMISSIONER: Is that right or is it the other way around? Yes, all right.

30 MR YOUNG: It's certainly two or three hours early, and assuming daylight saving had come to an end by May, it was two hours earlier. Mr Poynton was informed only by Mr Packer that Mr Packer had agreed to make a sale to Lawrence Ho, and that the sale would be announced later that day. He was provided by that statement with no information or awareness of the identity of the proposed acquirer. The only reference was to a sale to Lawrence Ho. That was accepted by counsel assisting at transcript – I'm sorry, that was the clear evidence of Mr Poynton at transcript 3359, line 35 and that lack of relevant knowledge was accepted by counsel assisting. When I say lack of relevant knowledge, it was accepted by counsel assisting that the knowledge that Mr Poynton had was not knowledge that provided any basis for any connection of any kind with clause 2.4.

40 Further, the information provided to Mr Poynton was provided confidentially in his capacity as a CPH-nominated director on the Crown board and in circumstances where he was told that the transaction would only become public later that day. That is Mr Poynton's witness statement, paragraphs 8 to 9. In those circumstances, via the avenue of Mr Poynton, we submit that Crown did not have any either actual
45 knowledge or attributed knowledge concerning the transaction that would put it into a position where it had any power to take any action or to see any connection with the operation of clause 2.4.

Now, counsel assisting accepted in closing submissions that if Crown was not aware that the sale agreement existed it must follow it did not have power to prevent the transaction from occurring and, in our submission, that is right and it's right even if a view – a different view than we submit is taken of attribution, and I will explain that comment in a moment. Secondly, I will deal briefly with attribution, that is, legal imputation of any knowledge to Crown, being the knowledge of CPH-nominated directors or Mr Packer. You have been taken already, Madam Commissioner, to the relevant authorities.

10 COMMISSIONER: Yes. Thank you.

MR YOUNG: Again, I won't traverse that. We've also covered it, or propose to cover it in our written submissions, including by reference to several additional authorities, but I won't trouble you orally with those matters.

15 COMMISSIONER: Thank you.

MR YOUNG: The key thing is that where a director receives information confidentially in the context of another relationship such as the role of nominee director appointed by a controlling shareholder, his or her duty of confidentiality to the appointor in those circumstances negatives, or in the language of Justice Young in New South Wales in one of the leading cases, subsumes any duty that he or she might have owed to company B, the company of which that person was a director. In our submission, these are the reasons why no knowledge can be attributed to Crown from any of Johnston, Jalland, Poynton or Packer. First, none of them received any information regarding the Melco transaction whilst acting with the authority of Crown, or in circumstances where they owed any kind of duty to Crown Resorts that was not overridden by a duty of confidentiality, either because of their other directorship or because of their confidential relationship with the appointor.

30 None of them, therefore, meet the first criterion that they be acting in their course of duties of Crown when they receive the information. Secondly, there was no duty imposed on any of them to communicate that knowledge to Crown. In the case of Mr Poynton, he had no relevant knowledge, effectively, to communicate that had any connection with clause 2.4. Thirdly - - -

35 COMMISSIONER: Mr Poynton came on to the board in 2017 or '18, I think, if you can just remind me.

40 MR YOUNG: I will have that checked. I – it's 2018, November.

COMMISSIONER: '18, yes.

45 MR YOUNG: Yes.

COMMISSIONER: And it looks as though, from the evidence, Mr Young, and you will correct me if I am wrong, of course, that Mr Poynton was not given an induction

process that highlighted what has been discussed as the government's sensitivities in relation to Lawrence Ho.

MR YOUNG: I believe that's right, yes.

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COMMISSIONER: And so the structure of the framework agreement and the VIP agreement and all of the things that we've seen throughout the last few months, was not really something that was alerted to Mr Poynton, as I understand the evidence, but if that's wrong someone will tell me.

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MR YOUNG: Yes, I will check it, Commissioner, but I think broadly you're correct.

COMMISSIONER: Yes.

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MR YOUNG: But I think he may have had a general understanding that there were regulatory agreements.

COMMISSIONER: Yes, of course.

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MR YOUNG: Without understanding any specifics about them.

COMMISSIONER: Yes. So when he was informed by Mr Packer – even if I were to find that when he was informed by Mr Packer, he obviously had duties to Crown, there was nothing in respect of the knowledge of 2.4 that he had. There was nothing – there was no knowledge of 2.4 specifically that I could find as I - - -

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MR YOUNG: Yes.

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COMMISSIONER: - - - understand what you're indicating to me.

MR YOUNG: Yes, Commissioner. We agree.

COMMISSIONER: Yes, thank you, Mr Young.

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MR YOUNG: May I note in the same context that counsel assisting in submissions - - -

COMMISSIONER: Yes.

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MR YOUNG: - - - at transcript 4961, lines 41 to 46 accepted that the knowledge held by Mr Poynton, based on that very brief telephone conversation, did not provide any indication of risks to Crown sufficient to give rise to a duty to communicate and on that basis his knowledge should not be attributed to Crown.

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COMMISSIONER: Yes, thank you.

MR YOUNG: It is, moreover, necessary to have knowledge to actuate any duty of communication that the director must know that the information might cause Crown harm, and that requires actual knowledge of impending harm or a risk of harm, not constructive knowledge as counsel assisting rightly said at transcript 4958, lines 41
5 to 44. And lastly, the final issue addressed by counsel assisting related solely to Mr Packer and that was the proposition that it needed to be considered whether he was a de facto director of Crown. In our submission, there is no basis to so conclude and, in the end, after raising the issue, my understanding was that counsel assisting were not pressing that contention that Mr Packer was in the position of a de facto director.
10 That is the right - - -

COMMISSIONER: I don't know that's the position.

MR YOUNG: I might overstate it, Commissioner. That's why I tried to phrase it
15 - - -

COMMISSIONER: I believe you have. I don't recall my counsel assisting indicating that that wasn't pressed. I think the submissions that were made is that he did – that there are matters that I must consider to work out whether that is the
20 position, unless you can point me in the direction of something that I've missed, Mr Young.

MR YOUNG: No, it was – perhaps I should have said that it was not – I really had in mind that my reading of the transcript indicated it was not pressed with any
25 particular vigour. Perhaps that's my impressionistic - - -

COMMISSIONER: I think it depends on the personality whether vigour is there, I suppose, but it's certainly a matter that's before the Inquiry.

30 MR YOUNG: Yes.

COMMISSIONER: And Mr Bell has not responded to Mr Hutley's submissions as yet, so I will - - -

35 MR YOUNG: Yes.

COMMISSIONER: I think that's the position.

MR YOUNG: Yes. Well, Commissioner, I will proceed to identify a list of reasons
40 why we say such a conclusion should not be drawn on the evidence.

COMMISSIONER: Yes, all right then. Yes. Thank you.

MR YOUNG: And again, I will do it succinctly.
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COMMISSIONER: Yes, thank you.

MR YOUNG: The first proposition is that the cases are quite clear that it's an objective inquiry. It requires a consideration of the duties performed by the person in the context of the operations and circumstances of the particular company. In this case, in our submission, there is no sound factual basis for finding that Mr Packer had relevantly acted as a de facto director of Crown in the period after November 5 2018. The grounds for that submission are these: firstly, there is no evidence that Mr Packer held himself out as a director, either to third parties or internally within Crown.

10 Secondly, there is no evidence that any person outside the company perceived that Mr Packer was a director and acting in that way in relation to decisions taken by Crown as distinct from being the representative of the controlling major shareholder, and when I say representative, the controller of the major controlling shareholder. 15 Third, as counsel assisting accepted, there is no evidence Mr Packer participated in any decision-making processes of the board, nor is there any evidence that the board were informed of or had regard to Mr Packer's views when making decisions as a board in relation to matters that were on their plate operationally or otherwise. The proposition that he acted as a de facto or shadow director was not put to any of Crown's independent directors.

20 Now, the reference I had in mind to the point being not pressed very strongly was paragraph 4934 of the transcript from counsel assisting.

COMMISSIONER: 4934. Yes, I will have that brought up. Thank you, Mr Young. 25

MR YOUNG: Yes, lines 32 to 40, Commissioner.

COMMISSIONER: I will just read that, if I may.

30 MR YOUNG: Yes.

COMMISSIONER: Yes, it's on the basis we don't submit it was put that Mr Packer was a shadow director, however, we'd submit that the evidence demonstrates that he was a de facto director in the period at least from the date of the protocol to the date 35 of the Melco transaction. Yes, thank you.

MR YOUNG: Yes. It's an odd distinction drawn is what I might observe about that, your Honour. The two terms are normally used interchangeably.

40 COMMISSIONER: Yes.

MR YOUNG: At all events that's what I had in mind when I made the submission

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45 COMMISSIONER: Yes, thank you for clarifying that, Mr Young.

MR YOUNG: Yes. Now, the matters I've just mentioned were in support of the proposition that there was no evidence that he participated in decision-making processes at all, which is an essential characteristic for a de facto director. The evidence that exists about the communications with Mr Packer under the controlling
5 shareholder protocol do not indicate that he was actually making any kind of operational decisions or final decisions of any kind. He was receiving some information and expressing some views, but that is a long way short of making actual operative decisions. So that is another point we would make. The point is, and I'm not sure what number I'm up to - - -

10 COMMISSIONER: That's all right.

MR YOUNG: - - - Mr Packer did not perform top-level managerial functions either in the period after 2018. The evidence doesn't rise higher than saying that he had an
15 obvious and legitimate interest in the performance of Crown as the representative of the controlling shareholder, and that was the sole capacity in which he received information or expressed views on the evidence. Now, it's the combination of all of those reasons, Commissioner, that founds our submission that there is no proper evidentiary basis for any finding that he was a de facto director of Crown in the
20 period after November of 2018. Can I then move to what I identified as the third aspect of our contentions - - -

COMMISSIONER: Yes.

25 MR YOUNG: - - - to the effect that there was no breach of clause 2.4. In our submission, Crown did not have any relevant power to prevent the acquisition of an indirect interest, assuming, contrary to our first submission, that the transaction delivered an indirect interest to Great Respect. So even if contrary – even if a view is taken contrary to that first submission, Crown did not have any relevant power
30 within the meaning of clause 2.4. Such a conclusion would not follow from a finding that certain knowledge of any of the CPH-nominated directors or Mr Packer should be legally imputed or attributed to Crown. That is because attribution is a legal concept.

35 It fixes a party, usually a company, with knowledge or state of mind, being the knowledge or state of mind possessed by a particular individual such as an employee or officer, usually for the purposes of imposing legal liability on the company where that legal liability in turn requires the company to have a particular kind of knowledge or state of mind. In other words, you start with a question, “Is the
40 company liable to a third party”, the liability depends upon the company having a certain knowledge or state of mind. The next question is, “Can the knowledge of employees or officers within the company be attributed to the company so as to make good that liability”. That depends on the legal rules you've been taken to, Commissioner.

45 But that, in our submission, is a different situation to the one posed by the opening words of clause 2.4B. In order to have that power within the meaning of the clause it

must be established that Crown actually had knowledge of the transaction and, further, sufficient knowledge to put it in a position where it has a power to prevent it from occurring. In other words, the premise of the requirement, the pre-condition of power, goes to the reality of the situation. Did it in reality as a matter of fact have that power. In our submission, it did not, even if – I assume all those other earlier arguments have gone against us.

There's a further point; it's this. Crown is a listed company. It is bound by the requirements of the listing rules. They are legally enforceable. It is obliged not to interfere with any share transfers. That's the effect of listing rule 8.10:

A listed entity must not in any way prevent, delay or interfere with the registration of a transfer document related to quoted securities.

Nor are there any provisions in Crown's constitution which would permit it to prevent a sale of its securities. So those matters also need to be taken into account in this – on this issue of power, in our respectful submission. Commissioner, can I go back and give you a couple of references to your question to me about Mr Poynton's induction?

COMMISSIONER: Yes, please.

MR YOUNG: At transcript 3350, lines 33 to 36 he gave evidence that he was not aware that Dr Ho held any interest in Melco.

COMMISSIONER: Yes.

MR YOUNG: Then, going more directly to your point, Commissioner, or your question, at 3351 to 3352 Mr Poynton said that he did undertake due diligence before joining the board but was not specifically aware of the VIP agreement.

COMMISSIONER: Yes. Thank you.

MR YOUNG: But there were no other questions about the induction process when he joined the board.

COMMISSIONER: Could we just go over to – he says – can we just go to the top of 3353.

MR YOUNG: Yes.

COMMISSIONER: And then 3354-5. Yes, I see, 3354 he says he didn't become aware of the details.

MR YOUNG: Yes.

COMMISSIONER: He says:

And did you become aware that there were regulatory agreements in New South Wales which in general terms contained provisions intended to prevent –

etcetera. He says:

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I don't specifically recall becoming aware of the details, but yes.

Anyway, it's matters that I will check, Mr Young. Thank you.

10 MR YOUNG: Yes, I think it's consistent with what I said, Commissioner - - -

COMMISSIONER: Yes.

MR YOUNG: - - - that his awareness was not about any specific details.

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COMMISSIONER: Thank you.

MR YOUNG: Thank you. Now, can I – I want to move to another step in submissions. I now move away from the Melco transaction itself and clause 2.4.

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COMMISSIONER: Yes.

MR YOUNG: I want to move to the submission advanced broadly to the effect that CPH had exercised such an influence over Crown that it provided some basis for a finding of unsuitability by virtue of that fact. In our submission, the evidence does not support that broad proposition. The particular matters relied upon include these things: the provision of services to Crown by CPH executives under the services agreement. Secondly, the provision of information to Mr Packer and CPH under the controlling shareholder protocol, and, thirdly, the workload of Mr Johnston as a director, including the number of committees he was a member of and his participation in the VIP working group and what I might call the panel of three that made decisions about approving junkets and reviewing junkets after 2016.

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COMMISSIONER: Yes. Thank you.

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MR YOUNG: Now, I will endeavour to deal with each of those matters, Commissioner.

COMMISSIONER: Thank you.

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MR YOUNG: I will deal, firstly, with the provision of services to Crown by CPH under the services agreement. The services agreement was brought into existence on 1 July 2016. The background to the services agreement was that from time to time CPH had permitted Crown to have access to the services of certain CPH executives to assist Crown at no charge on a series of projects. Now, most of that, based on the descriptions, was project related, be it an acquisition or a financing or a tax case or other matters. What the services agreement did was to formalise that arrangement

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for assistance from CPH to Crown to allow Crown to go on continuing to take the benefit of advice and assistance from CPH executives, but providing for rates of remuneration in respect of that work that was determined under the services agreement in accordance with independent advice.

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Ms Manos, Ms Halton, Ms Coonan, Mr Mitchell and Mr Brazil all gave evidence that CPH executives, including Mr Johnston and Mr Jalland, had provided valuable services to Crown, both before and after the services agreement, and that Crown had benefited substantially from the provision of that expertise and assistance. I can give – I won't give the references, Commissioner. They will be in our written submissions, unless you would like them.

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COMMISSIONER: No. You can deal with them in your submissions, Mr Young. That's ample.

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MR YOUNG: The services agreement contained, moreover, a number of safeguards to ensure that the interests of Crown were protected and that CPH executives would act in accordance with reasonable requests and directions from Crown, comply with all applicable laws and requirements, comply with Crown policies and procedures as notified and not act in any way which risks any breach of the company's obligations. Now, there was nothing improper or inappropriate in the concept of that services agreement. As I've explained, it was carefully considered and approved by Crown. Appropriate independent advice was obtained as to the rates of remuneration. There's no problem with any of the provisions of the services agreement, in our submission, as well. And I might add that services agreements of this kind are a feature in the landscape of corporate dealings in Australia between major shareholders and the companies in which they hold shares. There are examples identifying such things in other annual reports and corporate documents.

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The current status of the services agreement is that it was terminated on 21 October 2020. On that day, the board of Crown acceded to a request from CPH to terminate the agreement. This is referable to something I'm coming to, but on the same day and pursuant to the same request, Crown also terminated the controlling shareholder protocol on 21 October 2020. Those decisions were made at a board meeting on 21 October and an ASX announcement concerning the termination of both agreements was made on the same day. May I say this about the services agreement: as I believe I said yesterday, in hindsight Crown recognises that services were provided under the services agreement as things developed in respect of the provision of day-to-day or week-to-week managerial services to Crown by Mr Johnston.

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Now, looking back on that matter, that is different from services provided on a project-by-project basis outside the ordinary work stream of managerial activities. That included, as I mentioned, the junket approval and review process. Now, looking back on it Crown accepts that that project creep – perhaps that's the wrong word to describe it, but that use was not ideal and had some undesirable aspects as have been pointed out, because it involved Mr Johnston in performing a regular

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management role within the business. On reflection Crown accepts that that situation was one taken into account in its decision to terminate.

5 By the submissions I've just made we mean no criticism of Mr Johnston. He was asked to become involved in the junket approval process by the then CEO, Mr Craigie. In good faith he took up that task. That evidence is in Mr Johnston's oral evidence at transcript 3158, lines 31 to 47. And he performed that function with diligence and care. However, the extent of his involvement in that managerial task was not appreciated or understood by all members of the board and ought to have been – if it were to occur, the board ought to have been given an opportunity of considering whether Mr Johnston should be performing those ordinary managerial tasks given that he was a non-executive director of Crown. So we accept that, Commissioner. In relation - - -

15 COMMISSIONER: I think the category of work that he was doing – or the categories of work spread across a number of things. When he told me that he did the budgeting work, now, that would be an expectation that – that wasn't a project, that was – there is an issue as to whether he was acting as a Crown director or an executive at the time and - - -

20 MR YOUNG: Yes.

COMMISSIONER: I don't need to burden you with that, but it just seems that he was trying to do so many things in so many areas at the same time and it may be, once again, that there's this blurring that has been recognised and certainly, as you've put it, it was – when you say “project specific”, then the moving into the more managerial roles or not is something that needs to be decided in due course.

30 MR YOUNG: Yes. Commissioner, in relation to budgets - - -

COMMISSIONER: Yes.

MR YOUNG: - - - Mr Johnston had quite exceptional financial skills.

35 COMMISSIONER: Yes, so I'm told.

MR YOUNG: And his background provided that. That's the effect of all of the evidence.

40 COMMISSIONER: Yes.

MR YOUNG: He was a member of the audit committee considering the financial position of the company.

45 COMMISSIONER: Right.

MR YOUNG: Given his special expertise and his membership of the audit committee, his involvement in being consulted and providing advice about budgets is understandable, in our submission.

5 COMMISSIONER: Yes, it's just the role that he was in, that's what I was commenting upon.

MR YOUNG: Yes, I understand that, Commissioner, but - - -

10 COMMISSIONER: Yes.

MR YOUNG: - - - the – and I did want to make some observations about his role in relation to the VIP working group. I've already made some submissions about that.

15 COMMISSIONER: Yes.

MR YOUNG: That group, on the evidence, was an it was not a decision-making group. Mr Johnston was asked to supply assistance to the working group on particular issues that drew on his financial expertise. And that is what he did, and his
20 evidence about the particular areas where he lent assistance was not challenged or criticised. What is clear is – on the evidence is that the working group was not a decision-making group. It was not a pipeline or a separate line of reporting through to CPH or Mr Packer. Such a conclusion is not open, in our respectful submission, on the evidence. Mr Felstead rejected propositions to that effect explicitly at
25 transcript 1226, lines 9 to 38.

He also rejected any suggestion that his loyalties were to Mr Packer and the CPH group or that he did not follow the usual reporting lines to Mr Craigie, and that is notwithstanding that on occasions he did refer or provide information to Mr Johnston
30 about matters. So Mr Johnston's role in that working group was to offer advice to Mr Felstead and Mr O'Connor and other members of senior management in the VIP division. Mr O'Connor's evidence, unchallenged and uncriticised, was to that effect. He said that because of Mr Johnston's financial and analytical skills Mr Johnston provided a sounding board and counsel on issues affecting the VIP international
35 business. That is at transcript 1989, lines 37 to 42.

Mr Craigie's evidence was that the role he asked Mr Johnston to carry out was to offer advice to Mr Felstead and Mr O'Connor and that Mr Johnston did not have a management oversight role in connection with that working group. That's Mr
40 Craigie at transcript 1460 to 1461. And each of Mr Johnston and Mr Packer rejected the proposition that they involved themselves in setting the strategy for the VIP international business.

The working group, insofar as it engaged in any wider expression of views,
45 expressed those views to those attending Crown CEO meetings. That's Mr Johnston's statement of 15 September at paragraph 15. And that was in the context of Mr Felstead and Mr O'Connor providing updates to the CEO meeting on issues in

the VIP international business. And there's nothing inappropriate in that course of action or flow of information.

5 So whilst Mr Johnston was involved in that group, that is to be seen, in our respectful submission, as an advisory group where he provided a sounding board and an ability to access his special skills in the interests of Crown. Now can I come, Commissioner, to the controlling shareholder protocol - - -

10 COMMISSIONER: Yes.

MR YOUNG: - - - which is dated 31 October 2018. As I said, it has been terminated.

15 COMMISSIONER: Yes.

MR YOUNG: Again at the request of CPH, acceded to by Crown.

20 COMMISSIONER: That was consequent upon a discussion between Mr Johnston and Ms Coonan, I gather?

MR YOUNG: A letter in fact.

25 COMMISSIONER: The letter refers to a discussion between Mr Johnston and Ms Coonan that morning.

MR YOUNG: It does, yes. As I understand it there's – just to make sure we're referring to the same letter, there's a 21 October letter from Mr Johnston to Ms Coonan.

30 COMMISSIONER: Yes, in the first paragraph.

MR YOUNG: I think that's right. I don't have a mental image of it right now.

35 COMMISSIONER: I do, Mr Young.

MR YOUNG: I will check it, Commissioner.

COMMISSIONER: That's what it says.

40 MR YOUNG: Yes. Thank you.

COMMISSIONER: That's all right.

45 MR YOUNG: I'm not doubting what you said, Commissioner. I - - -

COMMISSIONER: That's all right, Mr Young. I'm just indicating there must have been some discussion between the chairman of Crown and Mr Johnston.

MR YOUNG: Yes. Except - - -

COMMISSIONER: I don't know what was said yet. Yes. Thank you.

5 MR YOUNG: Commissioner, you are familiar, I know, from submissions and evidence, that the background to the protocol was that CPH initially requested an amendment to the services agreement.

COMMISSIONER: Yes.

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MR YOUNG: But Crown considered that it was preferable to have a stand-alone controlling shareholder protocol, which was considered by its nomination and remuneration committee and recommended to the board and then approved by the board on 31 October.

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COMMISSIONER: Yes.

MR YOUNG: That protocol provided for confidential information to be shared with – shared by Crown with CPH and Mr Packer where it was in Crown's interests to do so. It also provided for advice to flow back from Mr Packer to Crown. The controlling elements of the protocol required that that situation occur where it was judged to be in the best interests of Crown and not to be in any way detrimental to Crown. Such protocols are not unusual for ASX listed entities. And they have been used by large listed entities, including ones with a market capitalisation more than \$2 billion. One can find examples in annual reports and in things like scheme documents and the like. We will give you some examples, Commissioner.

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There is one shortcoming in the way in which the protocol operated that we do recognise and can I point out what that is. Looking backwards on what occurred, the sharing of confidential information was not recorded in any kind of register and not formally documented other than by the particular emails in question passing from senior management to Mr Packer. Now, in hindsight that does fall short of best practice, because such an absence of a register or records of that kind is not desirable. Those matters, though, are of no ongoing significance in this respect, because the termination means that flows of information of that kind will not occur in the future.

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COMMISSIONER: When you say they're of no significance, in analysing this aspect of the transactions one of the problems that's identified is the fact that these things did happen throughout a two year period with little recognition of the need for it up to, really – let's just say 2019 for the moment. And so that has some significance, notwithstanding the termination, because it's to do with judgment of the operatives within the company to recognise the need for care and not to be true to the agreement. And so that is a matter that you may want to comment upon, Mr Young, but it is in my mind.

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MR YOUNG: Yes. Commissioner, I've accepted that this was a shortcoming.

COMMISSIONER: Yes.

MR YOUNG: But it was in the nature of a gap in the processes contemplated. There's no evidence of any contravention of the essential requirements of the
5 protocol or of the provision of information irregularly out of line with the intention or the requirements and safeguards of the protocol. This is an issue that can be seen readily in hindsight. At the board level, the board put in place and approved an appropriate set of provisions and safeguards to ensure that information was only conveyed in very appropriate circumstances.

10 COMMISSIONER: Right.

MR YOUNG: So our very recognition that I've just provided about these retrospective assessments of things that could have been done better about both the
15 protocol and the services agreement show, in our respectful submission, that Crown is realistic. It takes a responsible and appropriate attitude to these matters and you can have confidence that that's the approach it will adopt in future. The mere existence of some shortcoming of the kind I've identified looking back in hindsight, in our respectful submission, does not have ongoing significance in terms of
20 assessing the suitability of the company.

Now, what – the position is this. Going forward, the relationship between Crown and its major shareholder will be the stock standard relationship between a company and its major shareholder, that is, the company – or the major shareholder, holding a
25 very substantial percentage of the shares, will be in a position to have appointees on the board as its nominees. The source of information to the major shareholder will flow through the board via those appointees. And the only influence that the major shareholder will be in a position to exercise will, appropriately, be at board level, through the participation of its nominee directors in the workings of the board. That
30 is the stock standard approach that you can see in the case of very many companies listed on the Australian Stock Exchange.

Further, you've heard evidence from each of Crown's directors. In particular you've heard from the Crown group of independent non-executive directors. It's clear from
35 their evidence that they are very conscious of their important role as independent directors. They are cognisant of their duties as independent directors, including particularly their duty to act in the best interests of all shareholders. They have acted in that fashion in an exemplary way, in our submission. We invite you, Commissioner, to have a wide review of the minutes, not just on the topics that are
40 being considered here, but other matters. What you will see is a diligent and independent board operating with care and diligence to carefully consider a whole range of matters.

The fact that several independent directors knew Mr Packer prior to their
45 appointment or had an historic connection to the Packer family or were approached by Mr Packer to join the board does not gainsay what I've just said about their

approach responsibly to the performance of their duties and their role as independent directors.

5 The two most recent independent directors appointed to the board, Ms Korsanos and Ms Halton, both appointed in May 2018, had no prior relationship with Mr Packer or the Packer family, and Mr Packer did not instigate their appointments. Further, the chairman, Ms Coonan, has given evidence that Crown has embarked on a process of board renewal. That is underway. Mr Alexander has retired with effect from 22
10 October. Professor Horvath has announced his retirement. And the chairman has commenced discussions regarding succession planning and board renewal. And she said that she had plans to commence a recruitment process for new independent directors. That is entirely the right course in the circumstances of the company. And that again shows a commitment by the board to doing the right thing in relation to the future operations of this company.

15 And in relation to Mr Johnston's role in terms of what committees and workload he has, Mr Johnston will step back, or is stepping back from every committee other than the audit committee where his skills are appropriately deployed.

20 COMMISSIONER: Do I have evidence of that or is that something that's recent?

MR YOUNG: It's something that's recent and you will be provided with it, Commissioner.

25 COMMISSIONER: Yes. All right, Mr Young. You see – anyway, you proceed.

MR YOUNG: Well, Commissioner - - -

30 COMMISSIONER: You proceed, Mr Young.

MR YOUNG: Yes, I was going to give you a reference to Ms Coonan's evidence.

35 COMMISSIONER: Yes, Ms Coonan, in fact, told me that there would be a change, but so far as the fact that he's only going to be on the audit committee, I think that's something that I feel is new, is it?

MR YOUNG: Yes. Yes, it is.

40 COMMISSIONER: Yes, all right. I'm not quite sure how I get this evidence. Are you going to proffer it or how is it going to happen, Mr Young?

MR YOUNG: Yes, as soon as we're in a position to do so you will have it, Commissioner. You will understand, Commissioner, that the company - - -

45 COMMISSIONER: Things are fluid, Mr Young, I understand.

MR YOUNG: Yes. Yes. I don't need to say more than that.

COMMISSIONER: Please proceed.

MR YOUNG: But that's rightly and properly so is all I would add, that the company is doing things.

5

COMMISSIONER: Yes. Yes.

MR YOUNG: Ms Coonan's evidence is at transcript 4448, lines 17 to 32.

10 COMMISSIONER: Thank you. Yes.

MR YOUNG: Now, unless I can answer any questions in this context of the Melco transaction and what I've addressed about the CPH relationship for you at the moment, Commissioner, that was what I intended to submit orally on this section.

15

COMMISSIONER: Yes. Yes, thank you. That deals with the fifth matter that you dealt with. Thank you very much.

MR YOUNG: Thank you.

20

COMMISSIONER: I think the anti-money laundering issue and that's to be dealt with by someone else, as I understand it.

MR YOUNG: Yes, Mr Robert Craig of senior counsel will deal with that and I can see his image in one of the thumbnails.

25

COMMISSIONER: Yes, before we go – is Ms Orr making any submissions on any of these matters?

30 MR YOUNG: No. No, Commissioner.

COMMISSIONER: I see. I see. So the anti-money laundering issue to which I will move shortly, Mr Young, are you going to be present during that? I don't want to intrude - - -

35

MR YOUNG: Yes, I will – I will remain, Commissioner.

COMMISSIONER: Yes. Yes, thank you.

40 MR YOUNG: But I will mute my video.

COMMISSIONER: Yes. Thank you, Mr Young.

MR YOUNG: But I can be reached - - -

45

COMMISSIONER: Thank you, Mr Young.

MR YOUNG: - - - or I can hear things.

COMMISSIONER: Thank you very much. Yes, thank you for those submissions, Mr Young. Now, Mr Craig.

5

MR CRAIG: Good morning, Commissioner.

COMMISSIONER: Good morning, Mr Craig.

10 MR CRAIG: As Mr Young indicated, I appear today to make oral submissions on behalf of Crown in relation to AML, and I do so - - -

COMMISSIONER: Yes.

15 MR CRAIG: - - - with the assistance of Ms Hamilton-Jewell. Can you hear me properly, Commissioner?

COMMISSIONER: I can hear you. It would be helpful if I had a – just pardon me. We’re just going to enhance your audio, Mr Craig. Just pardon me for a moment.
20 Yes, thank you, Mr Craig. Please proceed.

MR CRAIG: Thank you, Commissioner. At the outset, can I say that it is recognised and acknowledged that evidence before the Inquiry has identified mistakes and shortcomings in the execution of Crown’s AML framework. With the
25 benefit of considered reflection it is evident that those mistakes and shortcomings arose predominantly because Crown’s primary focus in responding to AML risks was to seek to comply with the obligations under the AML/CTF Act to have an AML program for each reporting entity, to have a process for conducting customer due diligence, and to make a variety of statutory reports to AUSTRAC, including in
30 respect of matters that were considered suspicious.

To discharge these obligations Crown had in place and enforced many controls directed to the detection of transactions of interest and the reporting of those transactions to AUSTRAC. We’re conscious of your past indications to the effect
35 that it will be assumed that Crown is a good reporter under the legislation and Crown certainly endeavours to ensure that reports are made where necessary and when required.

COMMISSIONER: Perhaps I should clarify that. You have inserted the word
40 “good”. What I said was I would assume that whenever the suspicious transaction had to be reported it was reported, simply because of the constraints that have been imposed on this Inquiry in respect of aspects of the AUSTRAC legislation and I think that’s about it, Mr Craig.

45 MR CRAIG: Thank you, Commissioner. I understand that.

COMMISSIONER: Thank you.

MR CRAIG: In saying the things that I just have, I recognise, and Mr Barton himself said to you, Commissioner, through his written evidence at paragraph 63 of his third statement:

5 *Reporting transactions alone is not enough. Crown recognises additional steps*
 are required to deter and disrupt potential money laundering activities. Crown
 recognises and submits that the strength of an AML framework in deterring and
10 *disrupting money laundering must be holistically assessed and must evolve to*
 meet new or emerging risks. An AML framework must not only actively report
 suspicious behaviour, it must seek to deter and disrupt typologies visible in its
 operations.

COMMISSIONER: Let me just deal with the proposition to see if I can get us on
15 track here, Mr Craig. I did previously ask Ms Hamilton-Jewell – and Mr Young was
kind enough to respond, as to whether I would find that more probably than not
money laundering had occurred through the two accounts. Mr Young cautioned me
against such a finding. Is that still the position?

MR CRAIG: Can I jump straight to that issue, Commissioner, if that would assist.
20

COMMISSIONER: I would just like you to answer my question.

MR CRAIG: Certainly. Can I identify for the Commissioner that evidence was
25 provided yesterday evening by way of statements from Mr Barton and Mr Stokes,
and - - -

COMMISSIONER: Could you please just tell me – Mr Craig, Mr Young cautioned
me against a finding that more probably than not – I should not find more probably
30 than not that money laundering had occurred in those two accounts.

MR CRAIG: Yes.

COMMISSIONER: Is that caution still in place or is it more probable than not that
35 money laundering did take place? Yes or no?

MR CRAIG: Can I – the answer is yes, but with this explanation.

COMMISSIONER: All right.

40 MR CRAIG: Can I give - - -

COMMISSIONER: Just before you get to the explanation, please, Mr Craig, it has
been a long night. Your statement to which you referred was sent across to those
45 instructing the counsel assisting at 11 pm last night. Is that correct?

MR CRAIG: That's consistent with my understanding, yes, Commissioner.

COMMISSIONER: And that indication was the first time, as I apprehend what you're going to tell me, that the finding that I had been concerned about, that more probably than not money laundering had occurred in these accounts, was now accepted by Crown. Is that the position?

5

MR CRAIG: Commissioner, might I give the explanation to connect the two – the question and the evidence?

COMMISSIONER: Not yet. Not yet. Not yet. You will get every opportunity.
10 You're going to have a full day.

MR CRAIG: Thank you, Commissioner.

COMMISSIONER: Now, is it the position?
15

MR CRAIG: Yes, that is the position.

COMMISSIONER: All right. Now, to be told at 11 pm that that is the position is one thing, but I'm not quite sure what is intended about the deployment of the document that in fact notified the solicitors assisting the Inquiry of this new information, so what I'm going to do is to take a short adjournment and I'm going to ask you to reflect on what you should do with the documents that were sent across last evening and I'll resume in 10 minutes.
20

25

ADJOURNED [11.03 am]

RESUMED [11.13 am]
30

COMMISSIONER: Yes, thank you, Mr Condylis. Yes, Mr Craig.

MR CRAIG: Thank you, Commissioner. Commissioner, the new evidence addresses three matters. First it provides an update on the investigation into the accounts of Southbank and Riverbank promised in amongst other places in Mr Barton's fourth statement at paragraph 13. It is late because it reflects the conclusion of investigations by two organisations, Grant Thornton and Initialism.
35

40 The second issue the evidence addresses is that one of the matters you, Commissioner, have urged upon Crown is to identify real things to ensure suitability. And those real things have been worked upon, developed and put into practice. And they are the subject of the evidence and matters on which I will seek to address you.

45 The third matter which the evidence addresses is to clarify, lest the evidence in its current state would lead you into an incomplete place or a misleading place, is to

update the position with respect to the investigations that did occur in respect of the bank statements of Southbank and Riverbank last year.

5 In answer to your question regarding money laundering, Commissioner, the answer to that question has been the subject of careful reflection following the reports produced by way of Mr Barton's sixth statement. The qualification that Mr Young provided remains, but I need to say the following matters. Having regard to the findings in the Initialism report, Crown accepts that there were funds deposited into the Riverbank and Southbank accounts that Initialism has found to be indicative of
10 cuckoo smurfing. So it is indicative of a form of money laundering.

Cuckoo smurfing is a sophisticated money laundering typology whereby innocent parties make and receive legitimate payments that illicit funds are inserted into the process of making those legitimate payments. Crown accepts that an inference can
15 be drawn that at some point in time deposits into the Riverbank and Southbank accounts were more probably than not part of cuckoo smurfing activity. That is an acknowledgment that arises directly from the work done by Initialism and Grant Thornton.

20 The evidence does not allow, though, to that standard or, more importantly, beyond reasonable doubt the identification of any particular instances or transactions in which money laundering occurred. We also need to be conscious in this analysis of the limitations attending Initialism's review documented on page 5. But we do make the acknowledgment I've just stated, Commissioner, based on the Initialism and
25 Grant Thornton documents. If it's convenient - - -

COMMISSIONER: I adjourned so that you could consider what you wanted to do about the deployment of these statements that were sent across during the – last
30 night. What do you want to do about them?

MR CRAIG: I seek to tender them, because they are important - - -

COMMISSIONER: I see.

35 MR CRAIG: - - - in my respectful submission - - -

COMMISSIONER: All right.

40 MR CRAIG: - - - in a number of ways to the demonstration of ongoing suitability of the licensee and Crown Resorts as an associate.

COMMISSIONER: I see. All right. Well, let me just see if I've got a full copy of them.

45 MR CRAIG: Can I identify the material for you, Commissioner? Would that assist?

COMMISSIONER: I think it would be a good idea.

MR CRAIG: Yes.

5 COMMISSIONER: Yes, Mr Craig.

MR CRAIG: Commissioner, the material consists of a sixth statement of Mr Barton.

10 COMMISSIONER: Yes.

MR CRAIG: Together with a series of annexures totalling I think 17 annexures.

15 COMMISSIONER: Just pardon me for a minute. Yes. I've got – just pardon me. Yes. I have now a copy of Mr Barton of 17 November 2020.

MR CRAIG: Yes.

20 COMMISSIONER: Just pardon me. Yes.

MR CRAIG: And can I identify for you the matters addressed in this statement. In paragraph - - -

25 COMMISSIONER: Just pardon me for a minute. The annexures, Mr Craig, consist of some correspondence between Louise Lane and others in August 2019. And then there is a Grant Thornton report. You're tendering that, as well, are you?

30 MR CRAIG: Yes. So tendering the Grant Thornton report CRL.743.001.0003,. And that's a Grant Thornton - - -

COMMISSIONER:

MR CRAIG: Sorry, Commissioner. That's a Grant Thornton report into Southbank.

35 COMMISSIONER: Yes.

MR CRAIG: And then the next document, CRL.741.001.0536, is a Grant Thornton report into Riverbank.

40 COMMISSIONER: Yes. I have that as well now. Just pardon me. Yes. And then there is the 16 November 2020. That's a report of Initialism.

MR CRAIG: Yes.

45 COMMISSIONER: Is that right?

MR CRAIG: Yes - - -

COMMISSIONER: Are you tendering that, as well?

MR CRAIG: I am. And can I assist you, Commissioner, by identifying that a large part of what I've just said to you orally is derived from page 5 of that report.

5

COMMISSIONER: Yes. Just pardon me for a moment. So on – I see on page 84 of that report up to 113/14 there are the schedules identifying a number of the things that have been identified in the evidence. Is that right?

10 MR CRAIG: Yes. And, Commissioner, you will see the qualifying language and state of the conclusions reached by Initialism at the start of 84.

COMMISSIONER: Qualifying language?

15 MR CRAIG: Inconclusive on its own.

COMMISSIONER: Yes.

MR CRAIG: Alignment to indicia. And so - - -

20

COMMISSIONER: What are you saying, Mr Craig? Look, really, it's either indicative of money laundering or it isn't.

MR CRAIG: What I'm saying, Commissioner, is that an inference can be drawn from this report that at some point in time deposits into those accounts were more probably than not part of cuckoo smurfing activity, a form of money laundering, and what can't be done, based on this analysis, is an identification of whether any particular instance or transaction is or is not money laundering, and, as I said, one needs to be careful, of course, of the standard of proof that one is applying here, as well.

30

In the Star review, obviously, Mr McLelland was concerned to avoid having to make a finding beyond reasonable doubt. We say you, Commissioner, respectfully, should be cautious about embarking on an analysis of whether or not a criminal offence has occurred here. And there is incomplete evidence to allow that to occur. But what we respectfully accept and acknowledge is that, as I've said, the documented instances here allow an inference to be drawn that there has been cuckoo smurfing activity in these accounts.

40 COMMISSIONER: I'm well aware of the confines within which the Inquiry is operating. I'm trying to work out if your client is suitable. And what has happened over the last 12 months is that the counsel assisting have trawled through bank accounts with every single witness that has been called. And if this had happened, what happened last night at 11 pm, that wouldn't have been necessary. That's the fact, I think. And that's relevant to working out – that is relevant to working out the answer that ILGA has asked me to address. Yes. Now, you want to tender this statement, do you?

45

MR CRAIG: Yes. Commissioner, might I respond very briefly. That is - - -

COMMISSIONER: If you must.

5 MR CRAIG: That is acknowledged and recognised. Mr Barton, in his third and fourth statements, candidly said to the inquiry that this should have happened earlier, that Crown should have done it, and that it would be done. We regret that it has been done and produced last night, but we do seek to tender it as being the product of that review which we accept should have occurred earlier.

10 COMMISSIONER: Well, the general manager of AML of Crown, to her credit, in August 2019 advised Crown that it should happen then, and one of the reasons given for not doing it was because it might not be covered by legal privilege. I just – it is incredible, Mr.

15 MR CRAIG: Yes, Commissioner.

COMMISSIONER: And one of the problems that we face is that this is happening, as it is, in the middle of the night, and I have said to Mr Young I understand that things are fluid, but there was no notice of any of this. Initialism has been obviously retained for some time and when these proceedings opened on Monday morning, the 20 16th of November, there's been no indication of any of this coming, and it just seems to me to be rather unsatisfactory that in this environment we are speaking of whether I apply a standard of proof when the reality is that this material should have been 25 produced last year or at the beginning in February when the material was summonsed.

Now, the statement of Mr Barton is something that you wish to tender, you wish leave to re-open the evidence to tender, I understand; is that right?

30 MR CRAIG: Yes, Commissioner.

COMMISSIONER: And you also wish to tender something else of Mr Stokes; is that right? A statement of Mr Stokes.

35 MR CRAIG: That's correct, Commissioner, and that statement identifies the current state of the AML framework and policies.

40 COMMISSIONER: Yes.

MR CRAIG: And the current state of - - -

COMMISSIONER: And the recruitment of the staff.

45 MR CRAIG: Yes.

COMMISSIONER: Yes, all right. Now, what I will do is I will note that you have tendered them. I haven't had the opportunity to read the whole of Mr Jeans' report and I haven't had the opportunity to read the whole of Grant Thornton's report, although I am aware of some of their contents. I will come back to the marking of those exhibits in due course. Is there any other evidence on the topic that you're addressing me on this morning that you need leave to tender?

MR CRAIG: No, Commissioner.

COMMISSIONER: All right. So I will mark Mr Barton's statement as MFIC.

MFI #C STATEMENT OF KENNETH BARTON

15

COMMISSIONER: And Mr Stokes' statement as MFID.

MFI #D STATEMENT OF NICHOLAS STOKES

20

COMMISSIONER: And I will return to them when I've had an opportunity to fully digest their contents. Yes, Mr Craig.

MR CRAIG: Thank you, Commissioner. Commissioner, as Mr Barton said to you himself through his written evidence in paragraph 63 of his third statement, Crown acknowledges that reporting transactions alone is not enough and that further steps are required to disrupt and deter potential money laundering activities. Crown recognises that reporting must be a part of the framework and must be taken together with acts of disruption and deterrence. Crown recognises this and has made the significant and necessary adjustments, including the adoption of a new joint AML/CTF program.

As Mr Barton identified in his fourth statement, Crown is implementing the new AML/CTF program across its properties, including Crown Sydney. As you know, Commissioner, the joint program was first approved by the boards of Crown Melbourne and Burswood in September 2019. Since that approval was granted, further improvements to the joint program have been identified by Crown Resorts group general manager of AML, Mr Stokes, who was appointed in November 2019 through his work in conjunction with Initialism. Upon commencement of his position with Crown, a key task allocated to Mr Stokes was a detailed review of the joint AML program that had been approved for Crown Melbourne and Crown Perth.

Improvements were identified by Mr Stokes and in conjunction those improvements were implemented into the joint program. At the June 2020 risk management committee meeting of Crown Resorts, an AML presentation was provided by Mr Stokes. It's exhibit X11, CRL.642.001.0054 which set out that Crown was in the

process of implementing an enhanced AML/CTF framework, including a review and amendment to the program and the policies and procedures in support of that program, transitioning from a manual to an automated transaction monitoring and related systems, resourcing and adding to the expertise in the AML function,
5 increasing the use of technology as part of transaction monitoring and improved analytic capability, requiring all cash gaming transactions to occur at the cage, changing the approach to third party transfers and eliminating cash deposits into bank accounts.

10 A number of these improvements and enhancements have been incorporated into the updated and revised joint program documents comprising the joint program part A which is exhibit 79, the joint program part B which is exhibit 80, and the AML and CTF financing policy and procedures, the AML policies, exhibit AO81. Following a review of those documents, on the 30th of October 2020, exhibit AO82,
15 CRL.728.001.0192 Initialism provided a letter to Crown which stated, among other things:

*We have worked with Crown and its legal representatives to develop a part A AML/CTF program and the supporting policy and procedures and based on
20 our work we are of the opinion that the revised documented part A, as drafted, complies with the relevant AML/CTF rules and is appropriately designed to identify, manage and mitigate money laundering and terrorist financing risks faced by the reporting entities that are part of the Crown DBG, being the business group comprising Crown Melbourne, Burswood and Crown Sydney.*

25 There have been other significant enhancements to Crown's AML/CTF framework over recent works following consultation with external experts, including Initialism, and by reflecting on the evidence in this Inquiry. Crown has sought to identify money laundering and terrorist financing risk in its operations and put in place
30 policies which aim to eliminate that risk. Each of the processes and policies Crown has put in place over recent weeks has been to address a particular risk. Relevantly, Crown has implemented a cash deposits policy which, among other things, will ensure that large cash buy-ins which physically occur in the casino will be refused when they are considered to present a risk of being linked to money laundering or
35 nefarious activity.

The specific limits are obviously confidential given the risks of exploitation, but I will take you to the content in a moment. These instructions set an upper limit for cash deposits that will be accepted at the casino and set out the requirements that
40 must be met before other amounts of cash will be accepted. Commissioner, if you take up Mr Barton's sixth statement you will see the 18th annexure – sorry, it's the second last annexure – and, as I said, obviously confidential given the risk of exploitation – is CRL.742.001.0014, and the content of the restriction starts in the second half of the executive office memorandum.

45 COMMISSIONER: Yes - - -

MR CRAIG: If you have the paragraph please be advised that.

COMMISSIONER: I see. Yes.

5 MR CRAIG: Yes, please be advised that. And can I invite you, Commissioner, just to read that and then over the page.

COMMISSIONER: So who is the CFO of Australian Resorts, subparagraph (b) - - -

10 MR CRAIG:

COMMISSIONER: I'm sorry?

15 MR CRAIG: Sorry, Commissioner. Could you repeat your question?

COMMISSIONER: Who is the CFO of Australian Resorts referred to in subparagraph (b) of subparagraph (b)?

20 MR CRAIG: I think it's Mr McGregor but I will have that checked.

COMMISSIONER: Yes. Thank you.

MR CRAIG: Yes. No, it's been confirmed. Thank you, Commissioner.

25 COMMISSIONER: Mr McGregor?

MR CRAIG: Yes.

30 COMMISSIONER: And the COO of that entity or of that group?

MR CRAIG: Again, I think it's Mr Walsh, but I will stand to be corrected.

35 COMMISSIONER: And the next two people are Mr Stokes; is that right? In subparagraph (b)?

MR CRAIG: Yes.

COMMISSIONER: And then the last person after Mr Stokes is whom?

40 MR CRAIG: I don't know. I will need to get instructions on that, Commissioner.

COMMISSIONER: Yes, all right. And so I've read those subparagraphs, Mr Craig.

45 MR CRAIG: It's Ms Siegers. It's Ms Siegers.

COMMISSIONER: I see. I see. Yes, I've read those subparagraphs. Thank you.

MR CRAIG: Thank you. The second policy which we would seek to take you, Commissioner, to is a critical risk customer policy which seeks to exit the business relationship with a customer by default if the customer's due diligence shows the customer should be rated as a critical risk. I should take you to two documents in
5 dealing with this policy. The first is exhibit AO81.

COMMISSIONER: Yes. If you give me the number, I would be grateful, we can put it up.

10 MR CRAIG: Thank you, Commissioner. It's CRL.728.001.0054. It's obviously confidential in that the matters I'm going to take you to identify how various customers are graded between levels of risk, Commissioner.

COMMISSIONER: Yes, just bring it up on the confidential feed, thank you.
15

MR CRAIG: Commissioner, you should see at section 3 starting on page 10 a heading stating Risk Assessment Customer Risk.

COMMISSIONER: Yes, I have that.
20

MR CRAIG: And in the risk assessment section four risk levels are created: standard risk in clause 3.1.1; moderate risk clause 3.1.2; high risk 3.1.3; and then critical risk, 3.1.4. Before turning to critical risk can I just identify one feature of how a customer is moved from standard risk to high risk and draw your attention to
25 3.1.1(b) or 3.1.3(e).

COMMISSIONER: Yes.

MR CRAIG: So you will see that action or event leads to an escalation. Can I then
30 take you to critical risk, 3.1.4, and you will see there in the words under the four subparagraphs that:

The default position is that a critical risk customer will be exited unless there is a clear rationale for retaining the customer.
35

So the default position is that a critical risk customer is to be exited. Can I then take you to the critical risk customer escalation policy which is exhibited to Mr Stokes' statement, MFID?

40 COMMISSIONER: That one that you've taken me to is not finalised; is that right?

MR CRAIG: Yes, these are the AML policies that have been incorporated into the new joint program and adopted.

45 COMMISSIONER: I see. So the document that has "draft" written on it is now no longer draft but final, is it?

MR CRAIG: Correct.

COMMISSIONER: And where do I find that in the final document, Mr Craig?

5 MR CRAIG: Can I take instructions on that and come back to that, Commissioner?

COMMISSIONER: Yes, of course. Just before you proceed, I just want to get a feel for where you're taking me. You're dealing with, I think, presently the AML structures and policies that are presently in place, but I wanted to – Mr Young
10 outlined where he was going with his submissions, can you just give me an outline where you're going with your submissions?

MR CRAIG: Yes. What I seek to do is to identify, by reference to the recognition of the shortcomings of the past, the actions that have been taken since that time and
15 the practical measures now in place why it is that the licensee and Crown Resorts are suitable - - -

COMMISSIONER: I see.

20 MR CRAIG: - - - for the purposes of your Inquiry, Commissioner. And so what I propose to do is to deal with this in four stages.

COMMISSIONER: Yes.

25 MR CRAIG: This introductory stage by introducing what we have done, the real things that you called for in your exchange with Ms Hamilton-Jewell, then I will deal with Suncity and in part in doing that identify how it is that these policies and processes intersect with the learning from the circumstances that arose in relation to the cash desk transactions.

30 COMMISSIONER: Yes.

MR CRAIG: I will deal with Southbank and Riverbank, although our exchange earlier has presaged in part what I was going to say about that, but I will address as
35 well the policies and procedures that are now in place to address the issues that emerged in those accounts. And finally, I will seek to draw it all together in addressing you on remediation and rectification. I should say - - -

COMMISSIONER: One of the matters that I would be grateful if you could deal with, as I've now appreciated that things have been happening within Crown and vis-à-vis its legal advisers in the last 12 months that are of very serious concern, so I do think that you will have to address that, Mr Craig. That's in particular in relation to paragraph 9 where the matter that I've referred to already that MinterEllison advised Crown not to do the review and the observations apparently made by Mr Barton in
45 subparagraph (ii) of subparagraph (g) that there was a view that – have you got it there?

MR CRAIG: I do. I need to alert you to one matter, Commissioner.

COMMISSIONER: Yes.

5 MR CRAIG: The chapeau to paragraph 9 identifies that insofar as these matters are concerned, Mr Barton had no knowledge of these matters, and he has acquired it through recent days in seeking to endeavour to explain what it is that has happened. So the information - - -

10 COMMISSIONER: I did read that. I did read that. So if I can go back to what I was saying; subparagraph (ii) of paragraph 9(g) says that there was a view formed that it was necessary – that it was not necessary to conduct the review and then it says certain things under that. Now, that is very serious, and I don't know who formed the view. It's opaque. It's not really an indication of whether it was a view
15 formed by Mr Preston or MinterEllison, and to be left in a state when this is such a significant issue for your client is unsatisfactory. So somebody had better work out who formed the view that it was not necessary to do this, and the reasons given, it seems, that it was that the article in the newspaper had not identified anything that could be specifically identified as matching the allegation. Now, see, Mr Barton to
20 be has put this in his statement which is untested. I've read it now and it's very concerning. So I'm just not sure how you're going to deal with this, Mr Craig, but it does need some addressing.

25 Crown should provide copies of all the legal advice that has been produced in accordance with the opinion expressed in paragraph 9(g). And Mr Sullivan will send across a summons shortly, and all the relevant documents relating to these decisions. This is in the face of an Inquiry. So the seriousness of it cannot be understated, I think, Mr Craig. In the meantime, you please proceed with your introduction, but please take on notice what I've just said. It is a most serious development. Yes, Mr
30 Craig.

MR CRAIG: Thank you, Commissioner. I was taking you to the critical risk customer escalation policy, Commissioner, which is exhibited to Mr Stokes' affidavit
35

COMMISSIONER: Yes, I have that.

MR CRAIG: Thank you. And you will see in paragraph 2.2 there's a link back to clause 3.1.4 of the AML procedures that I took you to, and requires in clause 2.3 a
40 recommendation to be formed.

COMMISSIONER: Yes.

MR CRAIG: And the content of the recommendation must address the matters in
45 clause 2.4.

COMMISSIONER: Yes.

MR CRAIG: And then the consequences of that recommendation process in 2.5 and 2.6. In addition to the cash deposits policy and the critical risk customer escalation policy when taken in conjunction with the AML policies and procedures, there is, in addition, the implementation of corporate directions seeking to prevent particular transactions, including cash deposits by patrons in Crown's accounts, third party transfers to and from patron accounts and the receipt of payments from money remitters.

Crown no longer permits third party transfers or the use of money remitters unless expressly approved. This policy, effectively, contains a veto, or provides a veto in the hands of the AML/CTF compliance officer before approval can be given. Can I take you to the third party transfer and money remitters policy. Again, that's exhibited to Mr Stokes' affidavit.

COMMISSIONER: Yes.

MR CRAIG: Commissioner, you will see there what I've said to you - - -

COMMISSIONER: Just pause.

MR CRAIG: My apologies, Commissioner.

COMMISSIONER: What am I looking at? What's the number?

MR CRAIG: CRL.742.001.0101.

COMMISSIONER: Yes. I have that now.

MR CRAIG: Thank you, Commissioner. Commissioner, you will see the objective of the policy in clause 1.1.

COMMISSIONER: Yes.

MR CRAIG: The default position, as I've articulated to you, is set out in clause 2.1. And the procedure for getting that approval is set out in clause 3. There is detail that needs to be gathered and provided to the AML team. That's set out in clause 3.2.

COMMISSIONER: Yes.

MR CRAIG: And a requirement for a third party transfer recommendation to be made. And that third party transfer recommendation that's in clause 3.3 is made by the AML team.

COMMISSIONER: Yes.

MR CRAIG: And where the AML team recommends that the transfer not occur, then it must not occur. In other cases - - -

COMMISSIONER: This policy – I’m sorry. This policy statement was prepared and it was approved by Mr Stokes on Monday, I understand, or was that approved previously?

5 MR CRAIG: No. It has been in development but was approved on Monday as it records. And, as I said, it is a response to matters identified in this inquiry and reflections that have been undertaken.

COMMISSIONER: So has the board received it yet?

10

MR CRAIG: I will need to take instructions on that, Commissioner.

COMMISSIONER: So there’s no – you see, what I’m looking at at the present time is Mr Stokes’ work where he has put together this document as a policy statement. But it is, as I understand it, a statement that hasn’t been approved or adopted by the organisation as yet. He will proffer it to the board, I presume?

15

MR CRAIG: I will need to get instructions on the status of that, Commissioner. Might I return to that?

20

COMMISSIONER: Yes, of course. I think in his statement, if we have a look at the – if you look at paragraph 30, that seems to be the relevant statement, Mr Craig, where he has recently approved it, but it doesn’t - - -

25

MR CRAIG: Yes.

COMMISSIONER: - - - say what he’s – what happens to – I withdraw that.

MR CRAIG: Commissioner, I think - - -

30

COMMISSIONER: That’s not right, I think.

MR CRAIG: Yes. No. The policy I was taking you to is the one referred to at 28 and 29.

35

COMMISSIONER: 28. Yes. Quite right. And so he says that – well, he doesn’t say.

MR CRAIG: Yes. So might I return to that, Commissioner.

40

COMMISSIONER: I understand that things are very fluid, but – and I can see the hard work that Mr Stokes is putting in, but, as I apprehend it, this is all – when I say all, this is a process that the board would have to review and be satisfied with to adopt for the anti-money laundering regime that it wants to implement across the country, including this policy statement, I presume, Mr Craig. Would that be right?

45

MR CRAIG: Commissioner, can I give you a compendious answer later. I think part of the answer - - -

COMMISSIONER: Of course.

5

MR CRAIG: Yes.

COMMISSIONER: Yes. All right. Thank you, Mr Craig. Yes.

10 MR CRAIG: The next set of documents I wanted to identify for you, Commissioner, are the bank monitoring rules. Both manual and automated rules have been developed, the manual rule – and the manual rule is set out in Mr Stokes’ statement – sorry – it’s at CRL.742.001.0009.

15 COMMISSIONER: Yes, I have that. Thank you.

MR CRAIG: And the rules have been developed to ensure that the AML team is reviewing the raw bank account data of the accounts on a weekly basis for money laundering typologies, misdescribed deposits or third party transfers with a requirement for further action in relation to those funds. There are also automated
20 - - -

COMMISSIONER: This is manual, is it?

25 MR CRAIG: Yes. And - - -

COMMISSIONER: That will occur concurrently with the sentinel regime, will it?

MR CRAIG: Yes. Mr Steaks has dealt with the sentinel regime in his statement,
30 Commissioner. If I can take you to paragraph - - -

COMMISSIONER: 21 to 24. I’ve read that.

MR CRAIG: Yes. And so at 27 you will see that the manual review is being
35 expressed as being subject to the final design testing and full implementation of the automatic system. You will see - - -

COMMISSIONER: Do you have an understanding of when the Sentinel will be operative totally across the group or not yet?

40

MR CRAIG: I will need to get instructions on that, Commissioner.

COMMISSIONER: All right. Yes, all right. Yes, Mr Craig.

45 MR CRAIG: Excuse me, Commissioner. I’m just making a note to make sure I do get those instructions.

COMMISSIONER: Yes. Thank you.

5 MR CRAIG: As you know, a new organisational structure has also been approved for AML which will ensure that AML has a clear voice at board level and, in our submission, these documents, policies and actions are demonstrative of Crown's recognition that it has an important role to play beyond reporting that is not only detecting but proactively deterring the risk of money laundering in its operations. Can I now turn to the part A program and highlight some features of that. That's exhibit AO79.

10 COMMISSIONER: Just the number, if you wouldn't mind, so it can be brought up. Thank you.

15 MR CRAIG: Certainly. Excuse me, Commissioner.

COMMISSIONER: That's all right.

MR CRAIG: CRL.728.001.0001.

20 COMMISSIONER: Yes.

MR CRAIG: The first thing to observe about this document is it is subject to the approval and oversight of the Crown Resorts board and Crown senior management. Clause 3 sets out - - -

25 COMMISSIONER: Just pause there. I presume, therefore, it's a confidential document at this stage, is it?

30 MR CRAIG: Yes.

COMMISSIONER: Yes, that should only be brought up on the confidential screen. Thank you. Yes, Mr Craig.

35 MR CRAIG: Clause 3 sets out the schedule of designated services. And clause 7 is important for present purposes, Commissioner. It sets out the governance and oversight process. Clause 7.1 deals with board and senior management oversight. You will see in clause 7.1A reference to a requirement for a quarterly report. In clause 7.1B a monthly report to Crown senior management.

40 COMMISSIONER: Yes.

MR CRAIG: On the same topics.

45 COMMISSIONER: Yes.

MR CRAIG: At clause 7.1C relevant updates in relation to each of the matters in sub (i) through to (iv). 7.1D clear pathway of escalation, and 7.1E attendance at

board meetings. Clause 7.2 identifies that each reporting entity board is to have oversight of implementation and compliance with the program.

COMMISSIONER: Yes.

5

MR CRAIG: And clause 7.3 expressly states that the board and senior management of each Crown entity are responsible for leading and driving a positive culture of AML/CTF compliance across the respective Crown entity concerned.

10 COMMISSIONER: Just pardon me for a moment, please, Mr Craig. If we go back to 7.1, please, operator. So the part A program, as it fits with the bank statement monitoring document and the policy statement of third party transfers, etcetera, how does that fit together, Mr Craig?

15 MR CRAIG: So you will see, Commissioner, that the manual – to take the manual rule, for example, if you go to that, that’s CRL.742.0001.0009.

COMMISSIONER: Yes, I have that.

20 MR CRAIG: That’s made pursuant to clause 6.23 of the procedures document.

COMMISSIONER: Yes.

MR CRAIG: Which is AO81, so if you go to AO - - -

25

COMMISSIONER: Just bring that up.

MR CRAIG: Yes, AO81 is CRL.728.001.0054. You will see clause 6.2.3.

30 COMMISSIONER: Just pardon me. It will be brought up. Yes. Just pardon me for a minute. 6.2.3, please. 6.2.3. Thank you. So you see, what – in paragraph 1 of the bank statement monitoring that you took me to, 742.001.0009, if you look at paragraph 1.1, should that be AML procedures or not?

35 MR CRAIG: It should be, yes.

COMMISSIONER: All right. I will read it as that. And so what this seems to do, if you combine it with 6.2.3, is that it goes where it’s suggested it should go in that clause, but if you go back to the other document that we were dealing with a moment ago about the quarterly report, if you could bring that back up, please.

40

MR CRAIG: Yes, AO79, I think.

45 COMMISSIONER: Yes, if we just go to the clause which was 7.1. 7.1. Thank you. And you will see there in 7.1A and following – that’s all to do with programming rather than the actual – where do I find - - -

MR CRAIG: So the link between – so the policy - - -

COMMISSIONER: 1.1 to 1.3 in 7.1.

5 MR CRAIG: Yes. So – apologies, Commissioner. Commissioner, so the AML policy forms part of the part A program.

COMMISSIONER: Yes.

10 MR CRAIG: So what you will see at AO81 in clause 1.2 is that the policy forms part of the part A program. Clause 1.1, second paragraph. So - - -

COMMISSIONER: So which document are you taking me to? The identification with a number?

15

MR CRAIG: AO81, CRL.728.001.0054.

COMMISSIONER: 0054, please, operator. Yes, and clause?

20 MR CRAIG: You will see clause 1.1.

COMMISSIONER: Just pardon me for a minute and it will be brought up. Yes. So this document – the quarterly report identifies various things, but there's reference to possible things happening, but I'm not quite sure why it's not just referred to as
25 concerns about money laundering, so - - -

MR CRAIG: Well - - -

30 COMMISSIONER: Is there anything about that?

MR CRAIG: So the quarterly report is being provided by the AML compliance officer on the adequacy of the part A program and - - -

35 COMMISSIONER: Yes.

MR CRAIG: And we know by reference to the AML/CTF Act that the adequacy of the part A program is dependent in part on how it addresses and mitigates the existence and risk of money laundering. And so - - -

40 COMMISSIONER: Yes, but if they form a view consistently with the manual document that we were looking at that there's a problem in the bank statement – let's say the problems that have been identified during the course of the Inquiry.

45 MR CRAIG: Yes.

COMMISSIONER: If someone such as Ms Lane forms the view that there's a problem, as she identified, where in this document do I see that that person can tell the board about it?

5 MR CRAIG: Yes, I understand - - -

COMMISSIONER: Perhaps you would like to take that on notice, and you can come back to me.

10 MR CRAIG: Thank you, Commissioner. I will take that on notice.

COMMISSIONER: And that's one of the problems that has been identified in the evidence that – and this is exactly what happened when Ms Lane, it looks like, formed the view that there was a problem. It stopped for various reasons, and we
15 will discuss that elsewhere, but what I would like to see is how one can be satisfied that if an officer who is an operative in this field says look, we've got a real problem here, there's no capacity for someone to intervene and stop that person reporting to the board, and that's what I would like to see in clear and unambiguous terms, yes.

20 MR CRAIG: Thank you, Commissioner.

COMMISSIONER: Thank you, Mr Craig. Yes, I'm sorry.

MR CRAIG: Excuse me, Commissioner. Commissioner, can I then take you to
25 clause 7.6 - - -

COMMISSIONER: Yes.

MR CRAIG: And you will see there the formation of an AML/CTF committee.
30

COMMISSIONER: If you just give us – yes, I see. Yes.

MR CRAIG: And that has a representative of each business unit from each Crown
35 entity. Can I then take you to clause 10.

COMMISSIONER: Yes, please. 10, thank you. Is there a prospect within any of these documents of external certification of training of the Crown officers?

MR CRAIG: So training is dealt with at 10.1, but there isn't an external
40 certification. Can I take you through clause 10.

COMMISSIONER: I've read clause 10, but just tell me, why wouldn't that be a good idea, to have some – there are various organisations, but I'm not sure that it's all that costly either, Mr Craig, but if you have certification at a level of – across the
45 board in money laundering – anti-money laundering regimes, there are capacities for these people to come into your organisation and to certify that your employees and officers are certified as trained in the field. Mr Stokes was telling me about his

certification. He's so experienced he doesn't need to do any more, I would think, other than continuing education, but isn't it important to get some capacity to know that each of your relevant employees is certified?

5 MR CRAIG: Yes, I don't seek to speak against that proposition, Commissioner.

COMMISSIONER: Yes, all right. Yes, all right. And I see that the training program is proposed there in 10.2 and also for the directors.

10 MR CRAIG: Yes, and you will see in respect of new directors, 10.3, Commissioner.

COMMISSIONER: Yes, I see. So it's a bit of a different organisation to the ordinary organisation because of the vulnerabilities of the business of a casino and therefore it probably would be a good idea to have certification, I would think.

15

MR CRAIG: Again, I don't seek to speak against that, Commissioner.

COMMISSIONER: Yes, all right.

20 MR CRAIG: Commissioner, can I take you then to clause 11, and 11.2 deals with risk assessment of proposed designated services.

COMMISSIONER: Yes.

25 MR CRAIG: So this, obviously, addressing if a new game, service or procedure is contemplated, a specific process for seeking approval from the AML team.

COMMISSIONER: Yes.

30 MR CRAIG: And clause 11.3, in the event that it is proposed that there is a need to outsource a function to a third party, that part A program will apply to that outsourced function.

35 COMMISSIONER: So these EGMs are all being developed as we speak, I would think, in this new technological age. Are these all to do with electronic gaming machines, are they?

40 MR CRAIG: Well, I don't think I would necessarily confine it in that way, Commissioner. They're policies intended to be capable of applying to any contemplated new game service or procedure.

45 COMMISSIONER: So I was told, Mr Craig, that one of the things that's within your client and within any casino is the capacity to mine the data. You're in a particular position – or your client is in the particular position at the moment where the sentinel system is being put in place for this aspect of its business, but there must be enormous capacity within the casinos themselves to know exactly what's going on by tracing through the data, one would think. I've raised this before, but there's

nothing so far that the casino has brought forward to indicate to me, either confidentially or otherwise, that this is the case. But I would have thought that if you have a system of technology within the casino that identifies all the things that have been looked at, for instance, in 11.1, you would be, from the point of view of the
5 AML team, be able to tell not only the organisation, but, if there were a problem identified, the regulator could be also on notice fairly promptly, I would have thought.

10 MR CRAIG: Yes, Commissioner. And I think to do your question justice I need to get some instructions on the limitations that exist in relation to data.

COMMISSIONER: All right.

15 MR CRAIG: Because I think embedded in the question is that predicate.

COMMISSIONER: Yes. All right. Yes. Thank you.

20 MR CRAIG: Can I then take you to clause 11.4. And this links into the risk ratings I've already addressed you on and the critical customer escalation policy which I've taken you to.

COMMISSIONER: Yes.

25 MR CRAIG: And identifies that the risk rating will change if information arises that requires a change to the risk rating. Clause 12 deals with ongoing customer due diligence.

COMMISSIONER: Clause 12, please. Yes.

30 MR CRAIG: And identifies the three components in the ongoing customer due diligence process. And you will see those there in clause 12.1, Commissioner.

COMMISSIONER: Yes.

35 MR CRAIG: And you will see that in the second paragraph of 12.2.1, the AML/CTF compliance officer receives a monthly report of all customers identified as high risk and a process of review for customers who have been rated high risk in clause 12.2.2.

40 COMMISSIONER: Is there a requirement in any of this for a declaration of source of funds by the customer?

MR CRAIG: There is. Can I locate it and - - -

45 COMMISSIONER: Yes.

MR CRAIG: - - - give you the pinpoint, Commissioner?

COMMISSIONER: Yes. I mean, 12.2.2 refers to the source of funds, 12.2.2 subparagraph (b).

MR CRAIG: Yes.

5

COMMISSIONER: And so I presume that there would be some form of requirement mandatory on the customers to declare that source.

MR CRAIG: Yes. I will give you the specific reference in relation to source of funds shortly, Commissioner.

10

COMMISSIONER: Yes. Thank you.

MR CRAIG: Can I, with that overview of the policies and program, Commissioner, turn now to the Suncity cash desk transaction?

15

COMMISSIONER: Yes. Just before you do, am I right in assuming that all of this has not yet been before the board?

MR CRAIG: No. That's not quite right. Can I be specific at least about this. As I understand it, and I will have this double-checked, the joint programs have been before the board.

20

COMMISSIONER: So the board has approved what?

25

MR CRAIG: AO 79 and AO 80, 81.

COMMISSIONER: Just bring that up. AO 79, which is the - - -

MR CRAIG: Joint program.

30

COMMISSIONER: And 81, which is the?

MR CRAIG: Policies.

35

COMMISSIONER: Which policy?

MR CRAIG: The AML policies.

COMMISSIONER: Just let me – bring it up, please. If you could give me the – just give me the numbers, so I can just be clear what has been approved by the board of Crown. That's in Mr Stokes' statement, is it?

40

MR CRAIG: Can I – yes. I will – so it's only part A, of course, Commissioner, that needs to be approved by the board.

45

COMMISSIONER: By the board?

MR CRAIG: Yes.

COMMISSIONER: But hasn't the board looked at all this?

5 MR CRAIG: Yes. They've endorsed all of – part B and the policies. So - - -

COMMISSIONER: All right. Where do I find that evidence? Just show me the evidence

10 MR CRAIG: I will need to get a pinpoint reference for you to the evidence of that, Commissioner, but I am instructed the board has approved part A and endorsed the others.

COMMISSIONER: What's the others?

15

MR CRAIG: Thank you, Commissioner. The program part B.

COMMISSIONER: Yes.

20 MR CRAIG: And the AML policies at AO 81.

COMMISSIONER: And if you can take me to that evidence in due course. So the other material, other than those documents, have not gone to the board and have not been approved by the board.

25

MR CRAIG: The documents referred to in Mr Stokes' statements have not yet ,as I understand it, but I will confirm that. And the significant - - -

COMMISSIONER: All right.

30

MR CRAIG: policy referred to in Mr Barton's sixth statement.

COMMISSIONER: Which statement is that?

35 MR CRAIG: That's MFIC.

COMMISSIONER: No. But which hasn't gone before the board that's relevant in Mr Barton's statement?

40 MR CRAIG: That is the cash – significant cash items policy. And that is - - -

COMMISSIONER: Well, that's an email. That's a memorandum from - - -

MR CRAIG: That is - - -

45

COMMISSIONER: - - - Mr Barton to various people. You're saying that that's going to go before the board.

MR CRAIG: I will get instructions on that, but it is, obviously, a significant cash direction that has been given by Mr Barton and together with – so, to clarify for you, Commissioner, the part A of the joint program has gone before the board. And you will see that in the fourth Barton statement at paragraph - - -

5

COMMISSIONER: When did it go? Just tell me when it went, please.

MR CRAIG: 2 November 2020.

10 COMMISSIONER: Which one?

MR CRAIG: 2 November 2020.

COMMISSIONER: I see. That was the part A.

15

MR CRAIG: Yes.

COMMISSIONER: And that was approved by the board on that day, was it?

20 MR CRAIG: Yes. Yes, it was.

COMMISSIONER: Thank you. Yes?

MR CRAIG: And I'm instructed, but I can't give you an evidence pinpoint at the
25 moment, that the balance of the part B program - - -

COMMISSIONER: Yes.

MR CRAIG: - - - and the AML policies have been endorsed by the board.

30

COMMISSIONER: And when was that?

MR CRAIG: I need to get that for you, Commissioner.

35 COMMISSIONER: All right. Thank you. Yes. You were going to move to Suncity, I think.

MR CRAIG: Yes. Can I start by saying, Commissioner, it is not in dispute by
40 Crown that the Suncity cash desk transactions were transactions that required further investigation by the AML team to determine whether or not they were suspicious. Those additional investigations could have included obtaining information about patrons' gaming activity while at Crown on that occasion, a search of their past gaming activities to determine whether their buy-in was unusual, and if the buy-in was followed by rated play. Crown also recognises that it should not have permitted
45 a cash desk to be operated in the Suncity Room at Crown Melbourne.

However, we do submit that there are several features of the matters as they stand now which militate towards a conclusion that the Suncity cash desk transactions should not and do not constitute a basis for concluding that the licensee and Crown Resorts are not presently suitable for the purposes of the restricted gaming licence.
5 Specifically, as I've identified, Crown has issued the executive office memorandum which places limits on cash deposits and that's referred to in the Barton sixth statement, MFIC, and I've identified for you the confidential limits and criteria that are in that memorandum.

10 With the exception of buy-in facilities or buy-in booths which are operated by Crown staff, if cash is to be exchanged for chips within the casino it can only be done within the cage which is obviously a supervised and regulated environment. There is also a necessary intersection with the AML program and the revised processes for customer risk ratings, and the escalation of critical risk customers policy informs the
15 assessment of whether there's a rationale to retain the customer and if a customer is escalated to critical risk, the AML team, as I've already indicated to you, Commissioner, must prepare a written recommendation.

20 Can I also say it's important in this context to observe the nature of Crown Sydney's intended operation. As you know, Commissioner, on the 9th of November 2020 Crown provided a detailed paper to the Authority regarding the proposed limited opening of Crown Sydney. That is now exhibited to the sixth Barton statement. It's CRL.743.001.0021.

25 COMMISSIONER: Well, no, you call it that, but – what's the proposition?

MR CRAIG: The proposition is this: Crown has proposed that the restricted opening would involve initially opening one of the four levels of gaming, being the Crystal Room on level 2, imposing a total patron count initially well below the
30 capacity of the room with a progressive increase facilitated over a defined period, managing attendance on an invitation-only basis - - -

COMMISSIONER: Just before you leave the Crystal Room, the AML policy that's still being developed would apply to the Crystal Room, will it?
35

MR CRAIG: Yes.

COMMISSIONER: So when will that be finalised?

40 MR CRAIG: Sorry, Commissioner, which AML policy? The - - -

COMMISSIONER: The ones that are annexed to Mr Stokes' statement - - -

MR CRAIG: Yes, I will need to - - -
45

COMMISSIONER: - - - that he produced on Monday.

MR CRAIG: Yes, I will need to get instructions on – in answering your question around board approval in relation to those.

COMMISSIONER: I see.

5

MR CRAIG: An important feature of the proposed limited opening of the restricted gaming facility is that the Authority's inspectors would be able to supervise gaming operations in the Crystal Room. Because the gaming operations would be confined, this will enable a thorough review and audit of the licensee's operating processes in real time and under restricted operating conditions. Crown has proposed to the Authority that it would not transition to the next phase of opening its restricted gaming facility without the approval of the Authority. Can I then turn, having addressed the context of where things stand now, Commissioner, to the proposition as to whether or not you should determine that the Suncity cash desk transactions more probably than not constituted money laundering.

My critical submission is that one should not and cannot determine on the evidence before the Inquiry that the Suncity cash desk transactions more probably than not included transactions that involved money laundering. We say that to get bogged down in the question of whether or not money laundering occurred is to miss the fundamental point. The fundamental point is that significant cash transactions give rise to a serious risk of money laundering and they must be deterred. Those are the matters to which Crown's policies and proposals which I have outlined are directed. If, Commissioner, it's nonetheless determined that such findings should be pursued, we say the following as to why such a finding cannot be made in respect of the Suncity cash desk transactions.

Putting to one side the standard of proof that would attend such an exercise, the evidentiary criterion applied to the legal test does not allow such a conclusion to be reached. There is, we say respectfully, no explanation put forward in the submission of counsel assisting as to the basis upon which such a finding can be made. The proposition being put forward is effectively a conclusion speculated based on watching the footage. Money laundering is defined in the AML/CTF Act as conduct that amounts to an offence against division 400 of the Criminal Code or State, Territory and foreign jurisdiction equivalents. Each of those offences are serious offences. Counsel assisting does not proffer an explanation, we say respectfully, as to how it satisfies the burden of establishing that the transactions were more probably than not money laundering.

Having regard to the elements of money laundering offences in the Criminal Code, undertaking that analysis and arriving at that finding would require the evidence to establish that the money observed in the transaction is the proceeds of crime or an instrument of an offence. There is no evidence before the Inquiry that would satisfy that element, nor is there any evidence before the Inquiry as to the requisite mental state of the person with the money. Proof of the physical element and the fault element, of course, need to be established.

There is no evidence before the Inquiry as to the source of the funds and no proper basis to find that the funds are the proceeds of crime, nor is there evidence before the Inquiry as to the ultimate use of the funds so as to support a finding that the funds were an instrument of crime. Absent this evidence the element of the offences under
5 division 400 of the Criminal Code would not be made out even to the lesser civil standard but, as I said at the start, we recognise that to get bogged down in that question is to miss the fundamental point and we accept - - -

10 COMMISSIONER: It's in the Terms of Reference, Mr Craig.

MR CRAIG: I accept that, Commissioner, but - - -

COMMISSIONER: The Terms of Reference require me to look at the allegation that money laundering took place. Now, the press articles – and Mr Young has referred to the media allegations – but the press said, on the 6th of August, that the
15 accounts had been used for money laundering. It arises from the 6th of August article, and in looking at the veracity of that, was it justified that the press said this? Was it something that Crown should have followed up? All of the things that go with it. So the allegation of money laundering has been made, and I have to then
20 answer that in the light of that allegation whether your client is suitable. That's how the Terms of Reference, paragraphs 15 and 16 require me to conduct the Inquiry.

MR CRAIG: I accept that, Commissioner. We say two things. We say, as I've said, there isn't an evidentiary basis for that conclusion, but, secondly, that we
25 recognise that in the assessment of suitability, and in the ongoing mitigation and elimination of these risks. We need to address and be proactive in addressing the potential for significant cash transactions in the casino. And that's the fundamental proposition as to suitability moving forward, in our respectful submission. Can I
30 deal then with the submission that what occurred in the Suncity Room demonstrated a lack of will and conviction to enforce controls and react to the breach of those controls.

COMMISSIONER: Yes.

35 MR CRAIG: In our submission, Crown did have in place processes for monitoring what was occurring in the Suncity Room and for responding to and addressing the money laundering risks that were presented by the Suncity Room. In early 2017, AUSTRAC commenced a compliance assessment. During the compliance
40 assessment, and in May 2017, AUSTRAC requested an onsite assessment of Crown Melbourne. During that assessment, AUSTRAC toured Crown's junket facilities, including the Suncity Room, and observed how the Suncity Room operated. AUSTRAC was also provided with an overview of the operations and procedures in the Suncity Room.

45 On 22 June 2017, Mr Preston and a representative from AUSTRAC met to discuss Mr Chau. And during that course of that discussion the occurrence of the cash being provided over the cash desk was discussed with AUSTRAC. And following the

meeting with AUSTRAC, AUSTRAC continued to engage with Crown regarding arrangements concerning cash in the Suncity Room. And there were no further questions sent through by AUSTRAC regarding Mr Chau personally.

- 5 On the 29 June 2017, AUSTRAC emailed Mr Preston in relation to the cash that was being provided over the desk within the Suncity Room. And AUSTRAC sought confirmation from Crown in relation to the monitoring and oversight that Crown had in place in relation to those transactions.
- 10 On 26 September 2017, following correspondence from AUSTRAC of that day, Mr Preston had discussions internally with relevant senior management and reiterated the requirement to file suspicious matter reports when observing suspicious matters, which were expressly noted as including persons dealing in large sums of cash, and in particular asked that the teams ensure activity in the Suncity Room was captured.
- 15 Crown acknowledged in its response to AUSTRAC in October 2017 that it had been reiterated to staff in the room and surveillance staff that the observation of unusually large cash transactions should result in the suspicious matter report.

20 In those circumstances, the inference that the Suncity Room operated as an island of immunity ought to be rejected. To the extent that there is an assertion that Crown turned a blind eye to money laundering in the Suncity Room, that submission ought to be rejected. Crown did not turn a blind eye in relation to the cash transactions in the Suncity Room. It reminded staff to be vigilant in relation to those transactions and escalated matters in 2018. In March 2018, the AML team received a report from

25 the business regarding large amounts of cash being stored in the room. And, in response to those concerns, Crown resolved to implement additional controls in relation to the Suncity Room and inform Suncity that they would come into effect from 20 April 2018.

- 30 By 17 April 2018, Crown had placed additional controls on the Suncity Room, which included the following: all customer deposits were to take place at the mahogany cage and cash of up to \$100,000 could be held in the Suncity Room for petty cash purposes and not for the purposes of gambling. Having told Suncity about the new cash limit controls 17 April 2018, and you will know that from the evidence at
- 35 BJ160, CRL.609.007.8703, Suncity were told that the controls would take effect from 20 April 2018.

40 On that day, Crown Melbourne conducted an audit of the Suncity desk following the implementation of the additional controls. And in the course of that audit, Crown was advised of the significant \$5.3 million held at the Suncity desk. Crown staff, including the cage, surveillance and security staff then counted the money and inspected the various drawers and cupboards in the room. And the note-counting machine was removed at that time. A further audit was commenced and conducted on 5 May 2018. Again, exhibit BJ160 sets out that chronology. And no additional

45 cash was located.

Six days later, on 11 May 2018, Crown Melbourne had implemented an additional control in relation to the Suncity Room, which required any Suncity patron deposit of the amount of above \$300,000 to be approved by a senior VIP business executive. Further enhanced controls were created by relocating to pit 38, removing the ability for a private entrance. And identification was required for every person entering the room.

On 18 May 2018, as you know, Commissioner, Mr Preston met with AUSTRAC, during which time the 5.6 million located in the Suncity Room was discussed, together with the additional controls that had been implemented in that room. On 21 May – and this in part addresses a question you asked of my learned friend Mr Herzfeld, an email exchange occurred between Mr Preston and Mr Alexander. And I take you to that. That’s CRL.501.039.5141.

COMMISSIONER: Thank you. I will just have it brought up. Yes. Thank you, Mr Craig. I have it now.

MR CRAIG: You will see this is 21 May 2018, Commissioner. And it’s a few days before the board is told that the AUSTRAC investigation had closed out. And if you turn – go to page 2 of this document under heading 3 - - -

COMMISSIONER: Yes.

MR CRAIG: - - - you will see a report from Mr Preston to Mr Alexander on Suncity.

COMMISSIONER: That shouldn’t have a redaction, I don’t think. Does your copy have a redaction, Mr Craig?

MR CRAIG: It does, Commissioner, so I actually don’t know what it says, I regret to say.

COMMISSIONER: We will have Minters send across an unredacted version. It’s probably here - - -

MR CRAIG: Yes, thank you, Commissioner.

COMMISSIONER: - - - but it shouldn’t be redacted. Yes.

MR CRAIG: In partial answer to the question you asked of Mr Herzfeld yesterday, you will see there Mr Preston - - -

COMMISSIONER: Preston.

MR CRAIG: - - - updating, it would appear, because there’s a – you will see the opening words - - -

COMMISSIONER: Mr Alexander.

MR CRAIG: Yes.

5 COMMISSIONER: Yes.

MR CRAIG: Now, just to close the factual loop on that, Commissioner, the CEO report for the board meeting on 20 June notes that there have been discussions with AUSTRAC around a range of issues and a review of Suncity activities. That's
10 exhibit AK3. And I will give you the pinpoint, should it be of assistance, CPH.001.658.3597. And the pinpoint is .3621.

COMMISSIONER: Thank you.

15 MR CRAIG: And, as I said, at the board meeting on 20 June 2018, the board was told that the AUSTRAC investigation had been closed out. That's CRL.506.006.5485. Commissioner, can I - - -

COMMISSIONER: Who fixed the - I suppose you won't know this, Mr Craig, but
20 \$100,000 in petty cash is something that was fixed by Crown, I suppose, in consultation with Suncity.

MR CRAIG: Yes.

25 COMMISSIONER: Did that remain; was that the petty cash limit the whole time, \$100,000?

MR CRAIG: I will need to check the evidence, Commissioner.

30 COMMISSIONER: In any event, I don't know whether that was checked by Crown, but it looks as though then there was a limit of 300,000 cash for gambling but 100,000 for petty cash.

MR CRAIG: Well, if you go to exhibit BJ160, Commissioner - - -
35

COMMISSIONER: You will have to give me the pin number.

MR CRAIG: Yes, excuse me, I will find that. CRL.609.007.8703.

40 COMMISSIONER: What were the last four?

MR CRAIG: 8703.

COMMISSIONER: Yes, have I that now.
45

MR CRAIG: Yes. You will see a file note of communication between - - -

COMMISSIONER: This is an email.

MR CRAIG: Yes, sorry, I'm colloquially calling it a file note because you will see
5 in the second half of the document it's recording a conversation or a meeting with
representatives of Suncity on 17 April.

COMMISSIONER: Yes.

MR CRAIG: Halfway down, yes. And you will see there what's recorded as having
10 been communicated on the 17th of April.

COMMISSIONER: Yes. So \$100,000 cash was able to be kept as petty cash at the
desk.

15 MR CRAIG: Yes, that appears to be the case.

COMMISSIONER: Yes. And it's not clear who set that figure.

MR CRAIG: No.
20

COMMISSIONER: Yes, I see. Thank you.

MR CRAIG: Can I then turn to Southbank and Riverbank.

25 COMMISSIONER: Yes.

MR CRAIG: In substance, I've made the submission that I seek to today, that is, as
a product of the look-back review and the engagement of the external experts to
review the bank account transactions, Crown has assessed and recognises that there
30 is evidence which would allow an inference to be drawn that at some point in time
deposits were made which were more probably than not part of cuckoo smurfing.
Can I deal only with one additional matter beyond those I've already made
submissions on in relation to Southbank and Riverbank, and that's to deal with Mr
Birch, and the email exchange with Mr Barton at ANZ.334.002.0036.

35
Commissioner, you have received Mr Barton's candid acknowledgment of the
matters raised in that email and the importance that they ought to have carried. We
have provided an aide-mémoire to those assisting you which identifies how, really by
way of stress testing Crown's response to those matters in recent years has evolved.
40 The part of the policy - - -

COMMISSIONER: I'm not sure what you're talking about, Mr Craig. I do
apologise.

45 MR CRAIG: My apologies.

COMMISSIONER: Could you just tell me what the reality is?

MR CRAIG: Yes. So as you will recall, in the email exchange with Mr Birch at ANZ.334.002.0036, a number of matters were raised by Mr Birch.

5 COMMISSIONER: Yes. Whether they were serious issues or failures by Crown and Mr Barton said he didn't accept that they were and then in his fifth statement he said that he accepted that they were.

MR CRAIG: Yes, and - - -

10 COMMISSIONER: So what's the aide-mémoire about?

MR CRAIG: The aide-mémoire identifies, having regard to the current program and policies, just really by way of an assistance or stress test for you, Commissioner, how each of those matters raised by Mr Birch - - -

15 COMMISSIONER: Mr Craig, I do not need my stress to be tested. I really do not. Now, let's just go back to reality. The position with Mr Birch I understand. I don't understand what you're speaking of when you speak of an aide-mémoire provided to the Inquiry. We don't have it, I don't believe, so I'm just trying to sort out what the reality is. Is there a document somewhere?

MR CRAIG: Yes. There's a document that should have been provided to you, Commissioner, and perhaps over the luncheon adjournment I will make inquiries about that and address - - -

25 COMMISSIONER: Yes.

MR CRAIG: - - - you about that. All I was seeking to identify is that as an aid to you – and we don't overstate how it might operate as an aid; I recognise that. What we have done is we have broken down each of the matters identified by Mr Birch and located where in the policies and programs you might now find a response to that, and I will - - -

35 COMMISSIONER: I see.

MR CRAIG: - - - make inquiries - - -

COMMISSIONER: So this is a totally separate exercise to that which Mr Barton - - -

40 MR CRAIG: Yes.

COMMISSIONER: - - - conceded he should have set in the first place.

45 MR CRAIG: Yes.

COMMISSIONER: This is a separate exercise altogether.

MR CRAIG: Yes.

COMMISSIONER: I see.

5 MR CRAIG: This is an exercise that does no more than seek to identify where in Crown's current policies and programs the matters raised by Mr Birch are dealt with.

COMMISSIONER: Well, thank you, Mr Craig. Yes. You see, let's go back to the article that was written about Riverbank and Southbank. Mr Barton was named in
10 that article and it, in effect, said that he and Mr Alexander and Mr Felstead were the directors of Riverbank and Southbank. The journalist was very careful to say it wasn't suggested that Mr Barton or Mr Felstead or Mr Alexander knew about criminals depositing moneys in the accounts, but the real problem on the 6th of August for Crown was that it would appear that somebody had some information
15 about its accounts and the operation of its accounts over the years which suggested that there were serious, deep problems with the operation of the accounts.

Now, once that happened on the 6th of August, there was a need to do the things that were notified last evening of looking into the accounts. What I don't understand is
20 the decision that was made that's identified in paragraph 9, subparagraph (g)(ii), if we just go to that, of Mr Barton. Just pardon me. I will turn it up.

MR CRAIG: Yes.

25 COMMISSIONER: Which says that a view was formed that Ms Lane's suggestion to have a comprehensive review should not be adopted, effectively, on the basis that a preliminary assessment of the accounts had not – for the period in the media allegations, that's – the period in the media allegations ranged from 2013 to August 2019, and then it says:

30 *...had not identified anything that could be specifically identified as matching the allegations and, importantly, that our transaction monitoring program was responding to them in any event and, accordingly, relevant information was being provided to the appropriate authorities.*

35 Now, as hard as I've tried since we got this statement, I don't understand what that means.

40 MR CRAIG: Yes, can I – in fairness to Mr Barton, identify firstly – this is something he's directly said he had no knowledge of at the time, so it's not - - -

COMMISSIONER: I got that point the first time you raised it. Now, what I want to understand is what this paragraph means.

45 MR CRAIG: Yes. And I've indicated I will respond to that. At the moment, what you do know, by reference to the affidavit material, is it's a view formed by Mr Preston, and you know that from the second sentence of paragraph 9.

COMMISSIONER: Just pardon me. Well, I don't know that that's right if you look at it again. If you look at the second sentence of paragraph 9 and you look at the subparagraph 9(g)(ii), I don't know whose view that is.

5 MR CRAIG: I'm perhaps – and this is what I will clarify – I'm importing to the word “having” at the start of paragraph 9(g) that Mr Preston is the subject of that view expressed in 9(g)(ii) but I will confirm that, Commissioner.

10 COMMISSIONER: Yes. And so you're going to confirm with me what on earth this paragraph means?

MR CRAIG: I'm going to confirm with you the person that held the view in paragraph 9(g)(ii) and any other matters that you seek assistance on.

15 COMMISSIONER: The assistance I seek is what does it mean. Does it mean that they decided that there was no – there was nothing in the account that showed any concern that they should address having regard to the content of the newspaper article which I think was the very thing that Ms Lane was addressing. Now, Ms
20 Ms Lane is addressing an allegation made on the 5th of August. I think the one that I'm referring to is the 6th of August which was in The Age, but I think there may have been an equivalent in the Sydney Morning Herald, I'm not sure. And the specific allegations was in relation to a large cash transfer, etcetera, and the Southbank CBA statements, etcetera.

25 Now, what Mr Barton says, that Ms Lane did not uncover any issues with Crown's transaction monitoring program in respect of its application to the Southbank/Riverbank and, indeed, advised that the transaction monitoring program did respond to Southbank and Riverbank. Now, I'm not quite sure what that means. Does that mean that the program itself was a sensible program but unfortunately
30 these things weren't picked up? I'm not quite sure. And then advising that:

If we wanted to carry out an historical review of all the Southbank accounts –

35 that's in the newspaper article –

...she recommended engaging an external consultant to review the data for all the transactions across, and then before you progress it, any potential external consultant we should seek the advice of the lawyers.

40 Now, what I'm concerned about is the conclusion that was apparently reached in (ii) of subparagraph (g) of paragraph 9 and what it actually means that it says that “nothing could be identified as matching the allegations” after Ms Lane had reported. So I presume there must be some records within Crown that detail all of this that were not produced to the Inquiry and were found in recent times because Ms Manos
45 apparently spoke to Mr Barton on the 10th of November.

MR CRAIG: Commissioner, I don't understand there to be a record of what's contained in paragraph 9(g) insofar as Mr Preston's recollection is concerned, but I will confirm that. Can I say this: we will obtain - - -

5 COMMISSIONER: When you say that, has any search been made?

MR CRAIG: I will confirm instructions on that, Commissioner.

10 COMMISSIONER: You see, if an organisation has had an allegation of money laundering of the kind that was made on the 9th of August or the 6th of August last year and its group general manager, or the category that Ms Lane was in, seriously promotes what she seriously promoted, I – perhaps I wouldn't be surprised, but I would be surprised, I think on this occasion, if there weren't records relating to that process and I think a very urgent search needs to be made and produced if possible
15 during the luncheon adjournment, and I will adjourn now, Mr Craig.

MR CRAIG: Thank you, Commissioner.

20 **ADJOURNED** [12.54 pm]

RESUMED [1.59 pm]

25 COMMISSIONER: Yes, Mr Craig.

MR CRAIG: Commissioner, it's Mr Young.

30 COMMISSIONER: Mr Young.

MR YOUNG: Commissioner.

35 COMMISSIONER: Yes, Mr Young.

MR YOUNG: Can I have your leave to intervene. I wanted to directly answer the question you posed before the adjournment.

40 COMMISSIONER: Which one?

MR YOUNG: Well, all of them, I hope.

COMMISSIONER: Yes. All right.

45 MR YOUNG: But please tell me if I miss any. I want to firstly give you a direct answer to your question about paragraph 9(g) of the sixth Barton affidavit or statement.

COMMISSIONER: Yes. Yes. Please.

MR YOUNG: Yes. It's regrettable, and we apologise that the paragraph is unclear. It is expressed in the passive voice to some extent and awkwardly. Paragraph 9(g) is referring to steps that Mr Preston took and views he formed and a decision he made.

COMMISSIONER: So it's Mr Preston that is referred to as forming the view. Thank you.

MR YOUNG: Yes. The phraseology is, as I said, unclear. And we apologise. Reading the end of the chapeau, he recalls (g) having sought and obtained, that is, to express it in the active voice, he recalls that he sought and obtained. And in (ii) he formed the view that it was not necessary for those stipulated reasons. And when it says, "It was decided not to proceed", expressed actively, he decided not to proceed.

COMMISSIONER: So, Mr Young, part of my concern, as sad as it may be, is, because Mr Preston was in the witness box for many days and each of your Crown representatives and witnesses has been asked about whether a review of these accounts was done and what was done in respect of any review of them. And this evidence now is throwing a most different light, to use a neutral expression, on all that has gone before in respect of why Crown didn't look at these accounts. You will recall that even the directors were asked and Ms Manos was asked, "Didn't you bother to look at the accounts?"

MR YOUNG: Yes.

COMMISSIONER: And now we know that your general manager of AML did look at the accounts and wanted them to be properly reviewed and was prevented from doing so by these decisions. So it is very worrying, Mr Young.

MR YOUNG: Yes. Commissioner, I understand all - - -

COMMISSIONER: I'm not quite sure – I'm sorry. Please proceed.

MR YOUNG: I'm sorry. I didn't mean to cut you off, Commissioner.

COMMISSIONER: Not at all. I'm just not sure what to make of it as yet, because it's so brand new and we haven't had the opportunity to look at it with those assisting me. But prima facie it's of deep concern because of the way in which the Inquiry proceeded to make assumptions, wrongly it turns out, when Crown had this evidence.

MR YOUNG: Yes. Well, these were the facts. Crown had the evidence. That doesn't reflect the understanding or position of the directors who gave evidence, nor of the understanding of any of Crown's representatives at the time the evidence was given, Commissioner.

COMMISSIONER: Well, Mr Alexander as the CEO was asked about whether there was a review. I do not know the extent of the formulation of the decision that was made in subparagraph (ii) of 9(g) - - -

5 MR YOUNG: Yes.

COMMISSIONER: - - - and that needs some exploration. And that's the problem. And so - - -

10 MR YOUNG: Yes.

COMMISSIONER: - - - I won't tarry at the moment, Mr Young, but it is of deep concern.

15 MR YOUNG: Yes. As I said, we understand that, Commissioner.

COMMISSIONER: Yes. Thank you.

20 MR YOUNG: May I say this. We will, if it assists the Commissioner, provide a clarifying statement in relation to paragraph 9(g) to try and clarify the obscurity about the way in which it's expressed.

25 COMMISSIONER: I'm not sure that it will help at the moment until we have – until you and the Inquiry has the facts of what it was that was suggested by Minters. I mean, I know that Mr Barton says that because Minters gave advice that Mr Preston thought that, because there was a risk that the engagement of external consultants to conduct the review would not be covered by legal privilege. I mean, to be fair to
30 Minters, we need to understand what the actual advice was, because if it was advice in the face of an inquiry that it was simply the fact, that's one thing. But if it's advice that you don't do it because it might be exposed, that's another thing. And that in itself has a number of features to it. So I think it may be best to reflect on the documents before any next step is taken, Mr Young, but I appreciate the offer.

35 MR YOUNG: Yes. Commissioner, if it will assist if I make a few further short submissions.

COMMISSIONER: Yes.

40 MR YOUNG: The first is you asked Mr Craig about the existence of documents relating to any of the matters in paragraph 9(g).

COMMISSIONER: Yes.

45 MR YOUNG: Our instructions are that searches have been carried out and that no documents have been identified relating to any of the matters in paragraph 9(g), that is to say, the steps taken by Mr Preston to seek and obtain advice to form those views and to make the decision recorded in paragraph 9(g).

COMMISSIONER: There must be some record of it somewhere. It would probably be Minters that will provide it.

5 MR YOUNG: We will carry out a renewed search with the greatest care, Commissioner. But I did want to - - -

COMMISSIONER: Thank you, Mr Young.

10 MR YOUNG: - - - make that statement, that the search has been done and it has not identified anything. Had we identified anything, it would have been provided to the Commission.

15 COMMISSIONER: I see. Well, a summons has gone across, I understand, to assist so that the protections of the Act are there, Mr Young. And - - -

MR YOUNG: Yes.

20 COMMISSIONER: - - - that's the Royal Commissions Act. And I think, having regard to what you've just said, it may be necessary, unfortunately, to give a summons to your solicitors.

MR YOUNG: Yes. I understand that, Commissioner.

25 COMMISSIONER: Thank you, Mr Young.

30 MR YOUNG: The other thing – may I say this now. Crown unreservedly accepts that Ms Lane's recommendation should have been accepted to conduct a full review of the accounts. And it should have been acted upon as a matter of urgency when she made that recommendation in - - -

COMMISSIONER: August, I think.

35 MR YOUNG: - - - August of 2019. We accept that unreservedly. And her recommendation was for the appointment of Grant Thornton.

COMMISSIONER: Yes.

40 MR YOUNG: We also accept that, had that been done, the report that you've now been provided with would have been provided long ago.

COMMISSIONER: And we wouldn't have had to have all of the days of – well, it looks like, from what I've seen of the Grant Thornton report and Initialism, that we could have saved taxpayers huge amounts of money, I think.

45 MR YOUNG: Yes, Commissioner. Now, can I say this, that we brought forward this material. And the lateness is unsatisfactory - - -

COMMISSIONER: Yes.

MR YOUNG: - - - but we've brought this forward because Crown made the
5 decision that it was the right and proper thing to do to bring these matters to the
attention of the Inquiry.

COMMISSIONER: How did it come - - -

MR YOUNG: Notwithstanding the lateness – I beg your pardon?
10

COMMISSIONER: How did it come about? How did it come about? Did Grant
Thornton or Initialism uncover it?

MR YOUNG: Beyond what's said in the affidavit, that Ms Manos caused a search
15 of the email records of the departed employee Ms Lane, I can't answer your question
at the moment. I've - - -

COMMISSIONER: These things probable – I mean, I can see that it's – it looks
20 probable, Mr Young – I may be quite wrong. But once Grant Thornton and Mr Jeans
started looking to assist Crown, it may well have been that they were uncovered at
that time.

MR YOUNG: I'm afraid I can't answer it, Commissioner, because - - -

25 COMMISSIONER: That's all right.

MR YOUNG: I won't explain my personal position.

COMMISSIONER: Yes.
30

MR YOUNG: The other thing I wanted to say is, as I said, not only did we take the
view it was the right and proper thing to bring this forward even though it is as late
and that lateness is unsatisfactory, but the company is committed to doing the right
35 thing and to implementing the best possible AML practices, precautions and
proactive approaches.

COMMISSIONER: Yes.

MR YOUNG: And we wanted to ensure as well that the Inquiry had complete and
40 up-to-date information. Now, the lateness arises in those circumstances, Madam
Commissioner.

COMMISSIONER: Well, you see, on the 10th of November it was known that there
45 was something going on and I do understand your client's statement that it wants to
do the right thing. Please don't think that I don't understand that it has that aim. But
in the circumstances of what I've seen overnight and this morning, the impediments
in its way are what is stopping it, and I don't understand how it could be that as at the

10th of November, and we're now the 18th, that this wasn't appreciated by Mr Barton or – I'm not quite sure – and we don't get it until almost midnight last night.

5 So the problems that have been exposed, as you've said, are – a lot of them are in the past. This is a present problem and it is one that, as I say, has ramifications of the most serious kind and we will just have to take it step by step, I think, Mr Young.

MR YOUNG: Yes. Yes, I understand, Commissioner.

10 COMMISSIONER: Thank you.

MR YOUNG: Commissioner, we did commission the two reports - - -

COMMISSIONER: Yes.

15

MR YOUNG: - - - Grant Thornton and Initialism.

COMMISSIONER: Yes.

20 MR YOUNG: We had indicated to the Commission that that was going to be done - - -

COMMISSIONER: Yes.

25 MR YOUNG: Mr Barton's fourth statement said that, and likewise his third statement.

COMMISSIONER: Yes.

30 MR YOUNG: And so we understood – we had always indicated that we would carry out these reports and get them done as quickly as possible and provide the results to the Inquiry - - -

COMMISSIONER: Yes, I understand.

35

MR YOUNG: - - - as soon as we could, and that – quite frankly, that's only just concluded, and one of the reports is still in not a totally finalised state.

COMMISSIONER: Yes.

40

MR YOUNG: So we have done our best to get this done as quickly as possible, Madam Commissioner.

COMMISSIONER: Yes, I understand. I understand, Mr Young.

45

MR YOUNG: Yes. Well, thank you for allowing me to address those matters directly.

COMMISSIONER: Yes. No, I'm grateful, Mr Young. I'm grateful. Thank you.

MR YOUNG: I will step back.

5 COMMISSIONER: Yes, all right. I will return to Mr Craig. Thank you, Mr Young.

MR YOUNG: Thank you.

10 COMMISSIONER: Yes, Mr Craig.

MR CRAIG: Thank you, Commissioner.

COMMISSIONER: Yes.

15

MR CRAIG: Commissioner, can I start by addressing a number of the questions you asked me before lunch.

COMMISSIONER: Yes.

20

MR CRAIG: On the 2nd of November the Crown board approved the part A of the program.

COMMISSIONER: Thank you.

25

MR CRAIG: Which is the AML policies which form part of that program.

COMMISSIONER: And that's exhibit - - -

30 MR CRAIG: So the AML program is exhibit AO79.

COMMISSIONER: Yes.

MR CRAIG: And – that's part A, and then the AML policies are exhibit 81.

35

COMMISSIONER: 81.

MR CRAIG: Yes. AO81.

40 COMMISSIONER: Yes, thank you.

MR CRAIG: The following is not recorded in the evidence, but we will be able to produce a minute of the meeting on the 2nd of November. It's yet to be finalised.

45 COMMISSIONER: Yes.

MR CRAIG: The part B of the joint program was also presented to the board.

COMMISSIONER: Thank you.

5 MR CRAIG: But because a part B of a joint program does not need to be approved by the governing body, the formal endorsement or approval did not need to occur at that board meeting.

COMMISSIONER: Thank you.

10 MR CRAIG: The third party transfer money remitter policy and critical risk customer policy do not form part of the part A program for the purposes of the Act and do not require board approval under the Act, so Mr Stokes in the exercise of his role as AML/CTF officer has issued and authorised those documents.

15 COMMISSIONER: And the board hasn't seen them?

MR CRAIG: Not at this stage, as I understand it.

COMMISSIONER: I see.

20 MR CRAIG: Similarly, Mr Stokes is authorised under rule 6.2.3 of the AML policies to authorise the bank statement rules and, again, I confirm that the board has not yet seen that policy, but there is no positive obligation for it to be approved by the board.

25 COMMISSIONER: Yes. Thank you.

MR CRAIG: You asked me some questions before the luncheon adjournment in relation to Sentinel.

30 COMMISSIONER: Yes.

MR CRAIG: Can I assist you in relation to Sentinel by reference to the fourth Barton statement. Could I ask you to take that up?

35 COMMISSIONER: Yes.

MR CRAIG: At paragraph 65 of the fourth Barton statement – sorry, I mean the third Barton statement, Commissioner.

40 COMMISSIONER: Yes.

MR CRAIG: Paragraph 65, you will see that Mr Barton notes that it is being developed and implemented and that the transition period will continue over the next two to three months.

45 COMMISSIONER: Yes.

MR CRAIG: And so we are at the tail end of that transition period, this statement having been provided on the 16th of September. At paragraph 67 - - -

5 COMMISSIONER: Just before you leave that.

MR CRAIG: Sorry.

10 COMMISSIONER: When you say the tail end, I just want to get a feel for what's actually happening with the Sentinel program.

MR CRAIG: Yes.

15 COMMISSIONER: I know what Mr Barton told me on the 16th of September or thereabouts, but I was talking to you in terms of the capacity for a casino to mine the data, which is of some interest, obviously. Sentinel is a conversion from its manual regime to automated regime, and is it possible to know the date upon which the automation will in fact be concluded, and that's a question that I know you can't answer right now. That's something of importance, I think, Mr Craig.

20 MR CRAIG: Thank you, Commissioner, and we will answer that question.

COMMISSIONER: Yes. Thank you.

25 MR CRAIG: Can I then turn to your question about the source of funds declaration.

COMMISSIONER: Yes, please.

MR CRAIG: And that is dealt with in the AML policies, so again exhibit AO81.

30 COMMISSIONER: Yes.

MR CRAIG: And that's CRL.728.001.0054.

35 COMMISSIONER: Yes.

MR CRAIG: And the pinpoint reference is 8.1.2 – clause 8.1.2.

COMMISSIONER: The pinpoint reference is what?

40 MR CRAIG: 8.1.2.

COMMISSIONER: Yes.

45 MR CRAIG: And subparagraph - - -

COMMISSIONER: Yes.

MR CRAIG: And it identifies that one of the things that the Crown entities will undertake at subparagraph (f)(iii) is inquiries from the customer or through relevant business units or staff members or from third party sources to clarify or update a customer's KYC information and beneficial owner information.

5

COMMISSIONER: Yes. Is that it?

MR CRAIG: That is.

10 COMMISSIONER: See, what I was speaking about the other day was the declaration of source of funds. In British Colombia they have introduced that - - -

MR CRAIG: Yes.

15 COMMISSIONER: - - - over the last little while and it requires - - -

MR CRAIG: Yes, so - - -

20 COMMISSIONER: It requires the patron, the customer, to make a declaration about the source of funds so that the onus is on the declarant, the patron, as opposed to the business unit trying to search it out. So they have an upfront declaration and if that's false then there are things that follow. It may not be good for business because it probably drives people away who are thinking about doing the wrong thing, but is there anything in any of the documents that is equivalent to a declaration of source of
25 funds from the patron?

MR CRAIG: Yes. It's the sub clause immediately above the one I took you to.

30 COMMISSIONER: (E), is it?

MR CRAIG: (f) sub (ii). 8.1.2(f)(ii).

35 COMMISSIONER: So in cases where there is due diligence which is elevated or escalated, a Crown entity will undertake, etcetera. Just pardon me for a minute. Yes, so it's not a - it's not mandatory - - -

MR CRAIG: No. It is - - -

40 COMMISSIONER: - - - at this stage.

MR CRAIG: No, but it's conditioned by reference to the level of risk and the ECDD trigger. So - - -

45 COMMISSIONER: Yes.

MR CRAIG: Yes.

COMMISSIONER: Yes. So it's not mandatory and it's only alternative. And it's only in circumstances where ECDD is in place.

5 MR CRAIG: Yes, although ECDD does have to happen, of course. It's just - - -

COMMISSIONER: I'm interested to know if Mr Stokes is thinking about – the company, really, is thinking about this as a step, because it is pretty effective from the sounds of things.

10 MR CRAIG: Thank you, Commissioner. and - - -

COMMISSIONER: Yes.

15 MR CRAIG: - - - if you would be assisted by that, we will procure the answer to that question.

COMMISSIONER: Thank you.

20 MR CRAIG: Can I then deal with your question about Louise Lane and – or someone like her escalating an issue.

COMMISSIONER: Yes.

25 MR CRAIG: If you take up the joint program part A, that's exhibit AO 79.

COMMISSIONER: The number again?

MR CRAIG: Yes. CRL.728.001.0001.

30 COMMISSIONER: Yes.

MR CRAIG: And if you go to clause 7.1 sub (c)(ii).

35 COMMISSIONER: 7.1?

MR CRAIG: Yes, subparagraph (c), sub (ii).

COMMISSIONER: Yes. Thank you.

40 MR CRAIG: You will see there that the AML/CTF compliance officer is required to provide relevant updates on new and emerging money laundering risks.

COMMISSIONER: Yes. Thank you.

45 MR CRAIG: And then clause – yes.

COMMISSIONER: Details of – yes, I see. And that’s the – just pardon me. Is there a timeframe on that? Is that in the monthly report, Mr Craig? Subparagraph (b)? Or is that something separate? That looks to be something separate, I think.

5 MR CRAIG: Yes, although it may condition the content of the reporting in (a) and (b), Commissioner.

COMMISSIONER: Yes, I see.

10 MR CRAIG: It would be necessary but not necessary – but not necessarily sufficient to meet the subparagraph (a) and (b) obligation.

COMMISSIONER:

15 MR CRAIG: It’s required content, if I can put it that way.

COMMISSIONER: Thank you. Yes. Thank you.

MR CRAIG: So, Commissioner, I think having dealt with your questions might I
20 turn to what we say the position is now - - -

COMMISSIONER: Yes.

MR CRAIG: - - - and why it is that the licensee and Crown Resorts are suitable for
25 the purposes of the analysis you are conducting.

COMMISSIONER: Yes.

MR CRAIG: Since 2017, Crown has made significant advancements in relation to
30 its AML control and processes. Further significant steps, as I’ve outlined today, have been undertaken since issues have been identified in the course of this Inquiry. Crown submits that, having regard to those steps which have been put in place to enhance Crown’s AML framework, the Inquiry should conclude that the licensee is suitable to hold the restricted gaming licence and nor should it conclude that Crown
35 Resorts is unsuitable to be a close associate.

It has been accepted that Crown historically had a predominant focus on compliance with the obligations imposed under the legislation and a lesser focus on risk-based mechanisms to proactively prevent money laundering. Mr Barton’s evidence to the
40 Inquiry has set out a number of steps Crown has taken since the commencement of the Inquiry to promote a strong AML culture within Crown and to reduce the risk of money laundering occurring in connection with its operations. In that regard, the most recent statement of Mr Stokes amplifies the position.

45 The steps taken include the separation of the AML function from compliance and other functions within the business, that decision being taken on 10 September 2020

and endorsed by the board. A new AML team is being created. And you have the AML organisation chart at CRL.728.001.0197.

5 In furtherance of the desire to focus more broadly than pure AML compliance and reporting, Mr Barton has previously explained the function of this team will be to focus not just on AML and not just on compliance, but more broadly in thinking about financial crimes and about how Crown proactively looks to address criminal risks in the financial transactions it is involved in.

10 The person that is leading – to lead that exercise will be the head of financial crimes, reporting directly to the board. Mr Barton’s sixth statement, the inquiry confirms that the proposed appointee has been issued with a contract of employment. That’s paragraph 33. In addition to the separation of the AML function from business units and the recruitment of a head of financial crime, Crown has also resolved to
15 strengthen the resources within its AML team. To date that process has resulted in the recruitment of Nick Stokes into the position of group manager AML.

Mr Stokes, as you know, Commissioner, has significant experience in AML/CTF roles and has qualifications in AML. Mr Stokes has also, with effect from 22
20 November 2020, been appointed as the AML/CTF compliance officer for each of Crown Melbourne, Crown Perth and the licensee. And through the course of this morning I’ve documented some of the significant work product that he has supervised in that position.

25 There has been an expansion of the number of members of the AML team. There are currently 15 approved positions, seven of which are actively filled, three additional team members are due to start during December, and another team member has been selected for one of the vacant roles. Of the three individuals that will be starting during December, two are dedicated Sydney AML resources. And that’s dealt with
30 in Mr Stokes’ statement at paragraph 13 and the organisation chart to which I referred.

Having regard to the matters I’ve outlined, including the new roles, the qualifications and skills Mr Stokes has brought to the role and the dedicated resources of the
35 Sydney AML team, in our submission, the Inquiry and the authority can be confident that Crown will have strong AML resources with direct reporting lines to the board of Crown Resorts. The head of financial crimes reports directly to the board. And clause 7 of the part A program to which I’ve taken you today sets out the detail of the governance and oversight that is in place. I should pause there to confirm that the
40 draft watermark on that document is in error and that is the approved form.

COMMISSIONER: Thank you.

45 MR CRAIG: In our submission, the improvements that have been made will address any issues which have arisen in the past as a consequence of either the AML/CTF compliance officer wearing too many hats or as a result of lack of resourcing. The head of financial crimes with a direct reporting line to the board and

an obligation as to the content of that mandatory reporting will ensure that AML matters are given a prominent voice in the future governance of Crown. Since 2017 Crown has been developing, as you know, with external parties an automated transaction monitoring system to enhance the ability to detect and monitor
5 transactions from an AML compliance perspective.

As I've already submitted to you, the new data analytics tool, Sentinel, will automatically monitor and report in relation to transactions and we will update you as to the status of its implementation above and beyond what's contained in Mr
10 Barton's statement of the 16th of September. Management will have access to Sentinel and the dashboard on Sentinel to provide greater oversight and review of AML monitoring and reporting. That's referred to in paragraph 67 of Mr Barton's third statement. Criticism has been levelled at Sentinel in closing submissions on the basis that it relies on inputs from a transaction monitoring system.

15 That criticism seems to proceed on the assumption that only SYCO provides the inputs for Sentinel. That's not correct. As set out in Mr Barton's evidence and Mr Stokes' statement, Sentinel ingests a variety of data including data from Crown's bank accounts and until the automated rules for Sentinel have been tested, the
20 manual bank reviews, as I've described, are being undertaken on a weekly basis. The Sentinel rules that are being tested are set out as a confidential annexure to Mr Stokes' affidavit.

25 COMMISSIONER: Is someone going to assess the effectiveness of Sentinel before it's commissioned across the three properties?

MR CRAIG: Yes. Can I say this, because it's understood it not only has to be designed, it has to be tested and implemented. That's the state of the evidence is that there in a sense has to be a commissioning process - - -

30 COMMISSIONER: Yes.

MR CRAIG: - - - to determine that it works properly and does the job.

35 COMMISSIONER: Yes, but once it's operative – I mean, it's obvious that these things, depending upon technology, will always have glitches, but so far as the effectiveness of it to meet the desire of the part A, part B systems that are in place, from the point of view of – because Sentinel will do a lot of other things other than
40 just focus on anti-money laundering, presumably, so from the point of view of the anti-money laundering perspective, is it anticipated that there will be, as I used that term earlier, certification that it is in fact doing what it is anticipated it would do?

MR CRAIG: I will obtain direct instructions on that, but it would, in my submission, be implicit in ensuring that the part A program remained adequate.

45 COMMISSIONER: Yes, all right.

MR CRAIG: As you know, Commissioner, transaction monitoring is addressed in both the joint program part A and the Crown AML policies. The transaction monitoring program is dealt with in clause 12 of the joint program, and section 6.1.5 of the AML policies sets out the automated transaction monitoring system and its
5 role in detecting various transaction scenarios of interest. Can I turn to some specific areas of concern. The opportunity to obscure the purpose of a deposit is a risk. We accept that. Crown accepts that operating a deposit account into which patrons could deposit funds or direct the transfer of funds from their gaming activities creates an opportunity for the purpose or source of the funds to be obscured.

10 This risk has been addressed in the following ways. The Southbank and Riverbank accounts are no longer operative. Crown is deregistering Southbank and Riverbank and the only patron account - - -

15 COMMISSIONER: What's the status of that process?

MR CRAIG: I understand – my current understanding is it's ongoing, but we will provide an update in our closing submissions. I don't think I can say to you today it's completed.

20 COMMISSIONER: All right then.

MR CRAIG: The only patron accounts for Sydney will be onshore bank accounts in the name of Crown Sydney Gaming. That's dealt with in Mr Barton's third affidavit and at transcript 2766.

25 COMMISSIONER: Yes.

MR CRAIG: We accept that permitting patrons to deposit funds in bank accounts
30 creates a risk of money laundering. Steps have been taken to reduce the prevalence of cash deposits into Crown's accounts and Crown has actively engaged with the ANZ in relation to this process. The steps that have been taken are summarised in counsel assisting's submissions at paragraph 316. Additional issues in relation to those deposit accounts are also identified in Mr Barton's sixth statement at
35 paragraphs 23 to 26 and through the Sentinel alert rules and the manual TMS reports and bank statement monitoring rule on which I've already addressed you today.

The effect, in our submission, of the new Crown AML policies, read together with the transaction monitoring bank rules, is that there is now an express obligation
40 under the AML framework to monitor transactions on the bank accounts and for the AML team to review those bank accounts on a weekly basis. Crown has also written to patrons who deposited cash within the last 18 months to notify them that cash deposits will not be accepted into its bank accounts, and paragraph 26 of Mr Barton's sixth statement deals with that matter.

45 COMMISSIONER: I notice that Mr Barton said that he was having trouble with trying to manage this with the ANZ because the ANZ can't stop cash deposits, so I

presume that the process is to tell the patrons that they're not permitted to do it and that's how he's got around that, I think. Is that right?

MR CRAIG: Yes. That's right.

5

COMMISSIONER: Yes, I see.

MR CRAIG: That's right. So that's paragraphs 23 to 26 of his latest statement.

10 COMMISSIONER: Yes. Yes, I read that.

MR CRAIG: Turning to transfers to third parties, again Crown accepts that third party transfers, both into its accounts and directed by patrons present an increased risk in relation to money laundering.

15

COMMISSIONER: Yes.

MR CRAIG: Crown has implemented the following controls to address those risks. The third-party transfer direction. From 8 April this year Crown Resorts determined that it would no longer make or receive payments from third parties without prior notice and written approval from the chief operating officer and the group general manager of AML, and as I took you to this morning, Crown has decided not to accept deposits from a money remitter except with the relevant approvals. The third-party transfers and money remitters policy provide clarity which sets out that Crown will not accept or make payments to or from third parties without prior notice and written approval from the chief operating officer and the group general manager.

20

25

As I took you to this morning, before that can occur the AML team need to expressly recommend it. If they don't recommend it, it won't occur. Addressed in this way, Crown's - - -

30

COMMISSIONER: In the operation of Barangaroo facility there is – if there are no junkets, these, for instance, deposits will be unnecessary, as I understand it. Because the main reason for the deposit account was the upfront money, on one view of it, and I presume for the gaming – in the gaming areas that have been described, for the membership of Barangaroo is it necessary for the patrons to have upfront money deposited?

35

MR CRAIG: Can I confirm that, Commissioner?

40

COMMISSIONER: Yes, of course. Yes, all right.

MR CRAIG: Can I turn to training. Questions have been raised in this Inquiry in relation to the adequacy of Crown's AML training.

45

COMMISSIONER: Yes.

MR CRAIG: And Crown accepts that additional training ought to have been carried out in the past. In advance of the board meeting of 2 November 2020, Mr Stokes and Mr Walsh, the chief operating officer, provided a memorandum regarding the implementation of the joint program. That's exhibit AO 83, CRL.728.001.0193. In
5 that memorandum, they identified that revised induction training has been introduced at both Crown Perth and Crown Sydney. Revised AML/CTF awareness training has been made available online. And employees at all three Crown properties have commenced undertaking the training.

10 As at 28 October 2020, 95 per cent of the Crown staff had completed the training. It is intended that business unit specific training in the joint program comprising face-to-face sessions will be completed by November 2020. The training slides for particular business units which have a heavier focus on AML issues are more detailed than the general training which is provided to the board and senior
15 management. The training for cage, surveillance and table games contain greater detail on AML typologies relevant to their roles.

At paragraph 319 of their submissions, counsel assisting posed questions as to whether the culture within Crown had undergone the necessary shift from reporting
20 to proactively and addressing money laundering. In our submission, that shift has occurred. And it was asserted by counsel assisting that the following factors were of critical importance: the extent to which customers with two or more SMRs have been reviewed and the customer relationship discontinued; whether a process had been implemented for a regular review of SMRs by the AML/CTF committee or the
25 risk management committee to implement improvements to the compliance program; and whether mandatory training and external accreditation had been implemented to create AML training that provides role-specific and enhanced training for senior management and the board, as well as traditional AML roles.

30 Now, stepping back, these three issues in isolation are not necessarily of particular or specific importance in assessing the suitability of the licensee. Holistically, it is necessary to assess whether the appropriate aspect of AML compliance has occurred in a way that bears upon suitability. And they are by reference to the stated objects of the AML/CTF Act, that is, deterring, detecting and disrupting money laundering.
35 Those are the clear objects of the revised framework that has been implemented by Crown.

But in response to the particular concerns of counsel assisting, Crown does have a revised and explicit policy for exiting critical risk customers. And the role of AML
40 is central to assessing the ongoing relationship with any customer in respect of which an SMR has been lodged. The increased escalation and the critical role of AML demonstrates Crown's new culture of prioritising those considerations.

45 Having regard to the constraints of section 123 of the Act, there is no mechanism nor a lawful ability to put before the AML/CTF committee or the risk management committee the suspicious matter reports. However, the joint program part A

expressly contemplates the sharing of information in a way that will be utile. And I draw your attention to clause 6.2 in exhibit AO 79.

5 COMMISSIONER: But they're able to share it within their organisation. I mean, if somebody on level two sees something that's suspicious, they can go downstairs or upstairs to the committee and say, "I've got this problem."

MR CRAIG: Yes.

10 COMMISSIONER: So when you say that section 123 doesn't let them share it with the committee, is that really a problem, Mr Craig?

MR CRAIG: Not in substance having regard to the way the policy works, Commissioner, no.

15 COMMISSIONER: But even the statute. I mean, it can't be that the statute would prevent an organisation from informing itself about what's going on within its organisation.

20 MR CRAIG: I accept that. And that is implicit in the way in which - - -

COMMISSIONER: All right.

25 MR CRAIG: Yes. And without being overt about it, when I took you through the various gradings of customers - - -

COMMISSIONER: Yes.

30 MR CRAIG: - - - and how that might be determined, that's implicit, if not explicit, in the policies.

COMMISSIONER: All right. Yes. I understand.

35 MR CRAIG: Mandatory training has been carried out and, as we've outlined, is continuing to be carried out. And in those ways and for the reasons I've submitted to you today, we submit that the AML concerns that have been actuating the Inquiry are now addressed through the range of measures and remediations that have been implemented.

40 COMMISSIONER: Yes. All right. Thank you, Mr Craig. The other matters that Mr Young dealt with they will just have to develop as they develop and I will have to deal with them in due course. But they're your submissions on those topics, are they?

45 MR CRAIG: They are. And the matters that I've identified remaining requiring an answer will be addressed in our written submissions, Commissioner.

COMMISSIONER: Yes. Thank you, Mr Craig. Yes, Mr Young.

MR YOUNG: Madam Commissioner.

5 COMMISSIONER: Yes, Mr Young. Thank you.

MR YOUNG: In the next part of our submissions I'm going to draw some threads together from the sections that have already been addressed.

10 COMMISSIONER: Thank you.

MR YOUNG: And I will assume that as a base, more or less, for the submissions I'm going to make, which will be directed towards the assessment of current suitability.

15 COMMISSIONER: Yes. Thank you.

MR YOUNG: In broad overview, Commissioner, what I'm going to do is this. First, I'm going to address some submissions to the use made of the advertisement by counsel assisting as one of the foundation stones for their submissions about lack of suitability. I'm not going to go back into the detail of particular matters you've heard about particular aspects, but I'm going to deal with it at a more overall basis, that is, the advertisement.

25 COMMISSIONER: Yes.

MR YOUNG: Secondly, I'm going to bring out some aspects of the way in which the board of Crown Resorts has addressed problems and implemented improvements in each of the areas that have been canvassed. Again, I'm going to do that somewhat more generally than has been done in the specific submissions that you have heard category by category.

COMMISSIONER: Thank you.

35 MR YOUNG: But I think the overall threads need to be pulled together about the progressive improvements that have been implemented in those areas. I'm then going to move to the matters that we say are most relevant to an assessment of current suitability. That will lead to some references to the way in which suitability has been approached in other jurisdictions. And then I will deal with your request that we consider and put some submissions about what further steps might be taken which would weigh upon the assessment of current suitability by you, Madam Commissioner. So in broad outline that's the approach I propose to take.

45 COMMISSIONER: Yes. Thank you. Thank you, Mr Young.

MR YOUNG: Now, dealing with the advertisement, it is our submission that looking at all of the evidence, the way in which counsel assisting have used and

sought to rely upon the board's decision to publish the advertisement as an indicator of unsuitability is an approach which can be seen to be unbalanced. It can also be seen to be artificial and strained. Ultimately, it's our submission that the decision to publish the advertisement should not be weighed in any way as a factor supporting a
5 conclusion of unsuitability. On the contrary, the decision to publish the advertisement was reasonable and understandable in the circumstances confronting the directors and having regard to the need to protect the interests of the company and its shareholders from egregiously false allegations.

10 Now, can I first refer to the evidence given by the directors very briefly as to the situation that confronted them in the face of the 60 Minutes program and the media allegations. The directors considered that the media articles and the program made allegations of the most serious kind that Crown had knowingly broken the law and that it had complicitly assisted others, junkets, to engage in criminal activities. And
15 further, it had turned a blind eye to money laundering, it had knowingly breached the law, the criminal law of China, and it had acted corruptly in trying to circumvent the visa process.

The directors view those allegations as sensationalist and lacking fairness. Some
20 directors said that the company was under attack. Another saw it as a crisis for the business. Those are references respectively to Ms Coonan in her second statement at paragraph 18, Mr Poynton on the same point at transcript 3418, and Ms Korsanos in paragraph 11 of her statement. Several of the directors held concerns about the impact the reporting would have on Crown's employees, shareholders and other
25 stakeholders, and that, with great respect, was a very legitimate and justified concern. Now, all of those opinions and concerns were genuinely held.

No director was challenged about their reaction to the reporting and it was not
30 disputed when they gave evidence that they genuinely held the views that they expressed. The second thing about the approach of directors to note is this, Madam Commissioner. The directors recognised the importance of having the allegations investigated. They were provided with a detailed internal report on Monday, 30 July 2019. The reference will be given in our written submissions.

35 COMMISSIONER: Yes, thank you.

MR YOUNG: But you are very familiar with it, Madam Commissioner. That report was an extensive report. It was prepared by management as the basis upon which the board might determine what action to take in response to the advertisement. The
40 directors read that report and they relied upon the information in it. It was specifically considered at a board meeting convened for 1 pm on Tuesday, 30 July whose sole purpose was to discuss the media allegations to consider that internal report and to determine what Crown should do in response. That appears in the second Alexander statement at paragraph 24. And there was an understandable
45 urgency about the need to consider those serious allegations of criminality and how to respond to them.

The directors are not to be criticised for acting with appropriate urgency to consider the matter. Indeed, the value of anything that the company might be able to do would be diminished the longer the time period that elapsed before there was a response to allegations of that particular kind alleging criminality. The key
5 conclusions that the directors drew from the internal report was that Crown was in bed with, complicit with and engaged in criminal activities with underworld figures or otherwise turned a blind eye to criminal activity. That appears in many sources throughout the statements of the directors. Yes, they were the allegations. I'm not sure if I made that clear. They understood they to be the allegations rather than the
10 fact.

COMMISSIONER: Yes, of course.

MR YOUNG: Secondly, the directors understood that Crown had ceased dealing
15 with a number of the individuals and junkets referred to in the 60 Minutes program many years ago. Now, the board resolved that management should prepare an advertisement for publication within 48 hours to respond by way of highlighting the factual inaccuracies in the central allegations. They received that draft advertisement the next day, the 31st of July. The email providing the draft noted that it was going to
20 be subject to a verification process. The Crown directors noted the importance of verification and they relied upon verification being undertaken by management, and there was a verification process. Ms Halton, you may recall in particular, is noted in the minutes as insisting that these matters be the subject of verification.

25 COMMISSIONER: Yes.

MR YOUNG: Now, that was a proper, conscientious and careful step to take, but of course the board had to rely upon management's investigations, management's
30 internal report and management's double-checking of the information by way of this verification process. As a result of the verification, some changes were made to the draft advertisement. Now, aside from the mistaken description of Suncity in one of the early paragraphs of the advertisement, the factual statements made in the advertisement were accurate.

35 None of them has been impugned, and I say that appreciating that there's a complaint about the adjectival usages of "robust" in the heading under Junkets, and I will deal with that. Mr Herzfeld dealt with it, but I won't ignore it. As to the mistake about Suncity, it is something that was corrected in a second version of the advertisement. Further, the error is a slip and, in a sense, an understandable slip because whilst
40 Alvin Chau was the junket operator, within the organisation it was regarded as the Suncity junket because Mr Chau was a major shareholder and the chief executive of Suncity.

45 Now, some further changes were made to the advertisement in the course of the afternoon of the 31st of July and then it was lodged with the ASX at about 6 pm that day. Now, it's said, I think, at points by counsel assisting that the process was unduly hasty. That was a product of the circumstances in which the directors found

5 themselves and it was necessitated by the extreme allegations of criminality that called for a swift response. Commissioner, as I said, in our submission, the decision to publish the advertisement does not, in our respectful submission, weigh in any assessment of Crown's current suitability for these reasons, if I may summarise them.

10 First, in addition to all of the circumstances I've just been through, directors confronted by allegations of criminality need to decide how to respond to allegations that if not responded to will cause serious reputational damage to the company and damage to the interests of shareholders and stakeholders. So they had a business judgment to exercise about how quickly they responded and how they responded, and part of that decision was to focus on the central allegations of criminality. That was a reasonable business judgment that they made. And that remains a reasonable business judgment even if there is some room for debate, particularly in hindsight, 15 about the choice of words or the tone.

The board's decision should be assessed at the time it was made on the information on which it was made and having regard to the circumstances in which it was made, and I have emphasised features of those circumstances. The fact that Crown did not 20 respond to every allegation in the advertisement is no criticism of the directors' actions. They had no obligation to respond to every statement made in the media. They were fully entitled to identify the central allegations of criminality and to respond to those matters, and they did so in a way that they believed was entirely factual. They pointed out the facts. So the response also needs to be evaluated in the 25 light of the extreme language used in the media allegations. Examples are:

Crown knowingly dealt with junket operators backed by organised crime syndicates –

30 not that have been reported to have links with organised crime syndicates, but actually backed by organised crime syndicates, and:

Crown did not care that their junket operators were known organised crime figures.

35 Likewise, the allegation of:

Knowingly assisting or turning a blind eye to money laundering –

40 and so on. Now, the second point is the approach of counsel assisting to the decision to publish the advertisement is not a balanced one, and I say that for a whole series of reasons, but it includes the following. In their assessment, they pay no attention to the false allegations. Some are not acknowledged to be false, but the evidence is that they clearly were false. Some others are recognised to be false such as the allegation 45 about circumventing proper visa controls, but that recognition of falsity then is simply removed from their analysis. It drops off the edge of the table.

There are other allegations that they – false allegations that they don't bring to account. For example, the allegation that Crown helped bring criminals through Australia's borders in ways that raise serious national security concerns. The allegation about the Chinese President's cousin being brought to Australia on a Crown private jet to Coolangatta, the allegation that Crown Resorts had dealings with Simon Pan as a junket operator, and I could go on and on. There are innumerable false allegations through the media coverage. Now, the fact that this was the environment in which Crown board was making a decision needs to be brought to account. It simply can't be excluded from the analysis of what the decision says about the suitability or the judgment of the Crown board.

Now, I appreciate, Madam Commissioner, from observations you made yesterday about the falsity of the visa allegations that that is not your approach. The range of false allegations, and that they were part of the matters in which Crown is to be assessed needs to be brought to account. My point is the lesser one, that counsel assisting, in what they advance, do not in any way undertake that balanced assessment. Now, can I then deal with a couple of more precise aspects, and I'm only doing this to the extent I think it helps to pull together themes. Mr Herzfeld has covered the junket allegations in detail and I'm not going to rehearse that. He's also covered the allegation that Crown Resorts partnered with junket operators.

Now, that figures in the Terms of Reference, the allegation that Crown partnered with junket operators. But we would ask you to note, Commissioner, in this assessment that the word "partnered" is not used by Crown in the advertisement. All Crown does under the heading Junkets is to point out accurately the facts. Secondly, whilst the amended Terms of Reference refer to the allegation as partnering with junkets, that does not reflect the great bulk of the allegations in the media. They go way beyond the use of the word "partner". Crown was in bed with junkets backed by criminals – the range of allegations about the junkets is a set of allegations directly alleging and at the very least imputing or insinuating that Crown was acting in concert with junkets in engaging in criminal activities or carrying out a joint enterprise directed to the conduct of criminal activities.

Further, what the media allegations would convey to an ordinary reader or viewer of the allegations was that Crown was knowingly involved in criminal activities. Likewise, references in the 60 Minutes program to Crown having a partnership with junkets would convey to the ordinary reader or viewer that Crown was in a joint enterprise with them sharing assets and liabilities and directed towards the achievement of a common criminal objective. Now, that is what was conveyed, and it's not addressed, not answered, in fact it's side-stepped by pointing to internal Crown documents that in marketing jargon refer to partnering in the sense of any mutually beneficial business contract. It's not really open to contend, as counsel assisting did, that the media allegations used the accusations they did to allege no more than a business relationship directed towards mutual benefit, like any other business contract. That's not a proper characterisation of what was conveyed by the advertisements.

COMMISSIONER: I don't think it's fair. I think I must intervene. I don't think it's fair to say that that was what was being attempted to be done. What was being addressed, as I apprehend those submissions, was the term of reference that you've pointed out that it was – that I must investigate, the allegation that was crafted in the terms of reference that Crown had partnered. And there's no doubt, Mr Young, I accept what you say, that the allegations were more broadly based and had other things to them. But so far as the terms of reference are concerned, it was in response to those allegations, that is, I must, in response to the allegation that Crown partnered, etcetera, work out whether there's suitability. So I don't see it as any problematic side-stepping, as you put it. I think it was addressing the focus on that aspect of it without wishing to unbalance the process.

MR YOUNG: Commissioner, may I say two things in response.

COMMISSIONER: Yes. Of course.

MR YOUNG: First, I, of course, accept that that is the way the terms of reference are framed, and that is your task, to investigate that matter. And I don't criticise counsel assisting for considering that aspect of the matter. They're bound to, because that's the amended term of reference that's relevant.

COMMISSIONER: Yes.

MR YOUNG: But that takes me back to a point I made at the outset, that is, that the framing of the term of reference in that way should not be allowed thereafter to disorient or tilt off its axis, as I said, the proper assessment of suitability.

COMMISSIONER: I understand.

MR YOUNG: That's a separate thing. And what I'm directing my criticism to is the second aspect. Counsel assisting have allowed that inquiry to unbalance – the inquiry demanded by the terms of reference to then unbalance the way in which they assess current suitability.

COMMISSIONER: I see what you're saying.

MR YOUNG: Which is quite independent of that matter in the framing of that term of reference. So in those circumstances it was both understandable and reasonable for Crown to wish to set out in the advertisement under the heading Junket Operators the actual facts as to the nature of the relationship with partnerships:

The junkets are not Crown's. They are independent operators who arrange for their customers to visit many casinos globally. Crown deals with junkets and their customers in, essentially, the same way as other international casinos.

And I think it goes on to refer to a business contract with them. They were purely factual statements. Now, let me move to the choice of the adjective about the vetting

process. You heard Ms Coonan say it could have said “extensive”. In hindsight, she thought that would have been a better choice of words than “robust”. But they are both evaluative adjectives relating to what the directors were told was an extensive set of checks by way of vetting. And, moreover, Crown relied upon the obtaining of a visa.

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COMMISSIONER: I don’t have any doubt that Ms Coonan accepted that things were not as robust as she thought they were when she received the report from management.

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MR YOUNG: Yes.

COMMISSIONER: By the time she gave her evidence I have no doubt Ms Coonan understood there was a different aspect to what existed to that which she was told about in July 2019.

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MR YOUNG: Yes. But I’m directing myself to the decision to publish, which is what is said to be the - - -

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COMMISSIONER: Yes. I understand.

MR YOUNG: - - - proxy for an assessment of suitability.

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COMMISSIONER: Yes.

MR YOUNG: And ex post debates about the choice of the adjectives can’t be used as a mechanism to impugn the suitability of Crown and the directors in the circumstances I’ve explained.

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COMMISSIONER: Unless, of course, Ms Coonan said, “That’s rubbish. Of course they’re robust.” That would then have some impact, Mr Young, so I suppose it’s not exclusive.

35
MR YOUNG: Yes, but from the outset, Commissioner, we – Crown has accepted, and we accept, that there were shortcomings in the process throughout. As to AML, the media allegations conveyed that Crown was knowingly assisting or turning a blind eye to money laundering. In fact, as per the terms of reference, it says, and we say rightly, that the allegations were that Crown was actually engaging in money laundering and thereby committing criminal offences. And there was no substance to the allegation that it was committing criminal offences, because that requires
40 knowledge or a belief that you are dealing in the proceeds of crime.

Now, some criticisms were made of the tone of the advertisement. And that can only really be fairly directed to the opening section, because thereafter the position stated
45 is a factual one. Now, in our respectful submission, the tone was a response to the tone of the allegations they were confronting. As Ms Coonan said, it was proportional. And it doesn’t matter in terms of assessing current suitability that some

might think that a different tone might have been adopted. That may well be so. In hindsight, that may be an appreciation that the same points could have been made without the strength of the opening section, but that is not a criticism that goes in any way – Commissioner, I don't - - -

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COMMISSIONER: I'm sorry, Mr Young - - -

MR YOUNG: We lost - - -

10 COMMISSIONER: Yes. It was – you were just addressing me on the tone.

MR YOUNG: Yes. We lost vision for a moment. I'm not quite sure where I was up to.

15 COMMISSIONER: Yes. You were up to telling me the tone of the advertisement - - -

MR YOUNG: Yes. I was about to say that that aspect, that discussion, in our respectful submission, does not bear upon questions of current suitability and nor does it impugn the judgment made by the directors in the circumstances in which they were operating, having regard to the nature of the allegations they were responding to.

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Next, Commissioner, there was a criticism advanced by counsel assisting to the effect that the people investigating the allegations and providing the information in the internal report were primarily Mr Felstead and Mr Preston, assisted by outside lawyers. Now, the board, of course, has to rely upon management. Mr Felstead and Mr Preston were the two members of senior management best placed to provide information. They provided the information and the directors relied upon them. Therefore, in those circumstances, not a sound basis, in our submission, to attack the directors' decision and the company's actions by saying the two members of management that prepared the investigative report could have been better chosen. There were no better people in the organisation with more knowledge to provide that information. In any event, there has been an organisational restructure within Crown, there has been the creation of a new compliance and financial crimes department, and you've seen that the appointment of such a head is imminent in a recent updating affidavit.

40
So again, in our respectful submission, this criticism doesn't go to any matter affecting suitability. I will pass now, Commissioner, to the broader question of the approach to the assessment of current suitability.

COMMISSIONER: Yes, thank you.

45
MR YOUNG: Now, as I said, I'm going to try and draw the threads together from the separate sections that have already been addressed without unnecessarily repeating things.

COMMISSIONER: Thank you.

MR YOUNG: But I will make a few brief submissions about each of those areas as a foundation for what I will go on and submit. First, you have heard my submissions
5 about the China arrests. The mistakes that were made in China, as I submitted, were honest mistakes and they do not reflect on the character, honesty or integrity of Crown. The contention advanced in the media that Crown knowingly flouted the law in China has found not to be supportable by counsel assisting. I would make these other points concerning the Chinese operations. First, the unique circumstances
10 attending Crown's operations in China which created the issues that were the subject of examination are issues that are not representative of Crown's business operations generally.

There were particular difficulties, as I have earlier submitted, in doing any business
15 in China, including business in an area as sensitive as activities connected with gambling. Next, the immediate cessation of all operations in China by early 2017 and the changes and substantial improvements that Crown has implemented in its risk management systems and other systems since the China arrests indicate that that matter has no connection with the current assessment of suitability. There have been
20 organisational changes at the highest level of the company since then and, as I earlier submitted, immediately after the Chinese arrests both the CEO and the then chairman departed.

Ms Siegers was engaged in the middle of 2017 to remake the risk management
25 processes and specifically to address the embedding of a culture whereby all significant events and risks are brought to the attention of the relevant risk management committees, and new processes were implemented relating to junket relationships. So in the wake of China, it's not as if the board sat on its hands; it took conscientious steps to improve its systems and processes. Can I then move to a
30 few brief submissions concerning junkets, again, in the same fashion to provide a foundation for what I will later submit.

As you now know, Commissioner, on the 11th of November the board of Crown
35 Resorts passed a resolution to permanently cease dealing with all junkets and only recommence dealing with a junket operator if that operator is licensed or otherwise approved or sanctioned by the gaming regulator in the state in which it's operating.

COMMISSIONER: I think that was the 17th. I withdraw that.

40 MR YOUNG: I'm sorry, you're right.

COMMISSIONER: It was just yesterday.

MR YOUNG: Yes, it's my fault.

45 COMMISSIONER: That's all right.

MR YOUNG: Yes. The – now, that’s been announced to the ASX, as you know, Madam Commissioner.

COMMISSIONER: Yes.

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MR YOUNG: That step followed some consultations with regulators but it was essentially the outcome of the review process that the Crown had been undertaking for some time, and that particular outcome, as you noted, was – foreshadowed is perhaps too strong a word – identified as one of the real options by Ms Coonan in her evidence.

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COMMISSIONER: Yes. Yes, it was.

MR YOUNG: And that review was against the backdrop of an earlier suspension of all junket relationships in August 2020. That decision was deprecated by counsel assisting. That failed to pay attention to the fact that it was a suspension that would endure until 30 June 2021 if necessary, and it may have endured, depending on the course of discussions with regulators, for a longer period of time. It was a real step to permit a review in circumstances where all options were open, including complete cessation. Of course, no-one was visiting the casinos in Crown Melbourne and Crown Perth because of restrictions on international travel so junkets weren’t operating, but they may well have renewed operations before June of 2021.

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But in any event, it was a bona fide decision that the directors took, not by way of some kind of facade, but conscientiously and genuinely on the basis that this was the sensible way to proceed. Now, can I mention one aspect of the decision taken by the board on the 17th. That decision has financial ramifications in light of the evidence that the Inquiry has heard. Junkets have been a declining source of both turnover and revenue since 2017 throughout Australia, but they were nonetheless a significant source of turnover and, more relevantly, the bottom line EBITDA contribution. You have the figures, Commissioner, and I won’t go back and dig them out, but that’s the picture.

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A decision to cease dealing with junket operators and only recommence in the circumstances specified in the resolution is a decision which has significant financial ramifications for Crown. This shows a genuine commitment to address all risks associated with junkets at significant expense to the bottom line. That is a real commitment by the board and by Crown to doing the right thing in relation to its future operations, including in particular its operation of the Sydney casino consistently with the objects in section 4A of the Casino Control Act. Therefore, that decision is very relevant, not just because of what it immediately does by way of curtailing the junket risk area, but because of what it says about the commitment of Crown and its board to doing the right thing and ensuring that its operations comply with all of the objectives and requirements of the Casino Control Act in New South Wales.

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And you might recall, Madam Commissioner, that at some point I think Ms Sharp suggested to Crown directors that Crown directors should be leading the field. Well, undoubtedly, this decision is one of leadership. It's not only financially adverse, but it puts Crown at a competitive disadvantage vis-à-vis the other casino in New South
5 Wales, assuming that other casino continues as it currently does to deal extensively with the same junkets that Crown was criticised for dealing with, including Suncity. There couldn't be a more eloquent statement of a real commitment by Crown to doing the right thing than that decision. Now, I should say something about the parallel stream of work that the board commissioned and has been undertaking. I
10 refer there - - -

COMMISSIONER: Before you move off those matters, have you said what you wanted to say to me about the suitability analysis?

15 MR YOUNG: No, I will come back to that.

COMMISSIONER: Or are you coming to that?

MR YOUNG: Yes, I'm coming to that.
20

COMMISSIONER: That's all right. That's all right.

MR YOUNG: What I was going to do is address specific matters in the substratum of China junkets and AML.
25

COMMISSIONER: Yes, all right.

MR YOUNG: Very briefly about our AML and then go to the next tier of the argument, as it were, which is the process and the factors that are most relevant to
30 assessing current suitability.

COMMISSIONER: Yes, thank you, Mr Young.

MR YOUNG: Yes. I was going to refer, Madam Commissioner, to the parallel
35 stream of work which was directed along the lines recommended by Deloitte to improving a junket due diligence review and management process. The point I wanted to make is that work is continuing and it's not work whose practical value is entirely wasted.

40 COMMISSIONER: No, I see that.

MR YOUNG: That is because down the track there may be some system of licensing approval or other mechanisms to permit a select number of junkets to operate with Crown, and perhaps the same junkets only to operate with the Star, in
45 which event this work will be, we submit, valuable work that can be shared with the regulators in relation to that process.

COMMISSIONER: But I thought from the point of view of not wasted work it probably enabled Crown, although I don't know this, but it seems more probably that it enabled Crown to reach the decision that it did on the 17th.

5 MR YOUNG: Yes. Can I put it this way, Commissioner, Deloitte's recommendations included many improvements: briefly, due diligence on a wider group of affiliates of the principal operator.

COMMISSIONER: Yes.

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MR YOUNG: Due diligence by way of recognising patterns and association and drawing the threads together so as to permit a reassessment or review of a relationship, greater involvement of compliance and AML teams, and proactive engagement with law enforcement. But Deloitte's recommendations, I think, also
15 make it clear that a casino can never be confident that it has addressed all of the risks.

COMMISSIONER: Yes.

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MR YOUNG: And so we might have the best set of recommendations for improvements for the most refined due diligence system, but there's an area of risk that it's difficult for a casino operator to address but easier for governmental agencies to address. I would simply, by way of responding to you, Madam Commissioner, make that point.

25

COMMISSIONER: Thank you.

MR YOUNG: And going forward, Commissioner, the new division, if I can call it that, the head of compliance and financial crimes, is a way of managing risks of
30 criminal influence affecting casino operations that can be deployed not just with respect to junket relationships but more broadly, and that's an improvement of lasting relevance. That person, of course, as I think you were the first to observe, Madam Commissioner, would be empowered by having a direct reporting line to the board. Even before the recent junket decision of 17 November, in our submission,
35 Crown had conscientiously taken a lot of improvement steps and it was unfair to dismiss them as largely tokenistic.

We, again, would say that to dismiss those matters in that fashion and not bring them to bear in the assessment of current suitability is a marker of an approach which is
40 not properly balanced. So all in all, Commissioner, we submit that the evidence about the past concerning junkets that I won't go back to and all of the conscientious steps that Crown has responsibly taken right up to the present time, show that Crown has the right commitment and nothing in the evidence about past shortcomings reflects any dishonesty or lack of integrity on the part of Crown.

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Now, in relation to anti-money laundering, I refer to, without repeating what I said immediately after the adjournment this afternoon about Crown's commitment,

Madam Commissioner. We do wish to stress that that is something that the Crown board is absolutely committed to. There have been mistakes. There have been things that should have been done that ought to have been done with urgency, as I accepted. But even so, Crown has been striving to introduce significant
5 enhancements in relation to its AML controls and processes progressively since 2017. Those steps – they haven't been perfect, we accept that, but there have been responsible steps that have been taken.

10 Just to list a few – I'm not going to go into detail – the AML function was separated from other functions within the business, and that is going to be entrenched in the new financial crimes and compliance department. The recruitment of Mr Nick Stokes, who on any view of things is very able and experienced, into the position of group manager AML and a significant increase in resources is a clear, responsible step forward. So too is the comprehensive review of the AML program and the
15 policies and procedures that have been adopted in that regard.

I think Mr Craig may have said this, but the part A program, the joint program, was approved by the board of each of the licensee companies on 2 November. Another commitment is automation. And that's progressing. Additional controls are being
20 introduced, as you saw from Mr Barton's update this morning, in relation to cash transactions, additional precautions at the cage, trying to agree arrangements with the ANZ Bank. There has been a change in approach to third party transfers. And there has been the processes for identifying patrons that should be severed, effectively, because of the risks associated with them.

25 Now, all of that has a financial aspect, too. Very substantial resources are being devoted to this area. That has the imprimatur of the board. It, again, bespeaks the commitment of prioritising these important matters. Having heard the directors, Madam Commissioner, we submit you should be satisfied that they are committed to
30 doing the right thing in all areas of the company's operations, but including this area of AML. And they recognise the past failings in every area where they have occurred. And they have been doing their best to address them. Now, can I then turn to the assessment of current suitability.

35 COMMISSIONER: Yes, please.

MR YOUNG: An important ingredient in the assessment of current suitability involves not just a review of past failings, but a balancing of them against the
40 measures that have been taken and are being taken to remedy and the commitments that have been demonstrated by the company, its board and its CEO. I want to deal specifically with the contentions advanced by counsel assisting. In terms of suitability, these points were advanced:

45 *Crown has demonstrated an arrogant indifference to regulatory and compliance risk.*

Secondly, that:

Crown has in the past exhibited a culture of denial and unwillingness to examine and address past failings.

And, thirdly:

5

There has been a culture which prioritised the pursuit of profits above all else.

That last statement comes from paragraph 5 of counsel assisting's closing remarks. In fact, I think all three of them do. Now, none of those contentions are supported by a fair examination of all of the evidence. Indeed they are contradicted by a fair examination of all of the evidence. First, there is no evidence that currently there is a prioritisation of the pursuit of profit above all else. That may be a reference to the evidence concerning VIP operations in China. That may be the source of it. It may be accepted that prior to the China arrests the international VIP team had and ran according to aggressive sales targets. You might recall there was an email from Mr O'Connor doubting that they were achievable at one point. Now, that was so.

That reflected, I think, the circumstances that it was seen that there was an opportunity to attract greater VIP business out of China in the wake of a corruption crackdown that affected Macau casinos, in particular, in relation to the Chinese VIP market at that particular time.

Now, those matters are historical for many reasons. The recent actions of Crown and the steps it's gone to to try and address the junket risk and to improve AML demonstrate that it is not prioritising profit; it's prioritising its obligations under its licence to ensure that its operations meet every standard and requirements of the various acts and the various states in which it operates. And, moreover, that suggestion of pursuing profit above all else was peculiarly localised in terms of the VIP operations in relation to China. That was no fair assessment of Crown's overall approach to its conduct of its business. That hasn't even been addressed or considered. But there are many other responsibilities which are taken seriously which cost a lot of money and which Crown conscientiously complies with. That's apparent, for instance, from the VCGLR reviews, the sixth review in particular.

The allegation of arrogant indifference to regulatory and compliance risk is not a contention that is supportable at any time. Crown has, starting with the board, adopted the approach that it should fully comply with regulatory requirements and that compliance issues should be properly addressed. That is demonstrated by very many decisions taken by the board, some of which I rehearsed a little while ago in relation to all of the progressive improvements and changes that have been made.

Now, they might be criticised as not being enough at different points of time, but that does not bespeak arrogant indifference to regulatory or compliance risk. The board has acted responsibly, introducing what it thought were the necessary, relevant, appropriate and best remedies at each step along the way. And, as for a culture of denial and unwillingness to examine and address past failings, well, it has been addressing past failings progressively and consistently. And the matters I addressed

you on immediately after lunch were exactly that. It was a willingness to address those past failings to bring forward the information because it was the right thing to do. So, in our respectful submission, those contentions should not be accepted.

5 Crown accepts that there have been cultural failings in the past. There has been a failure to bring matters to the attention of the risk management committees. And that can be characterised as a cultural failing within the organisation. Executives did not properly appreciate that their responsibility was to take those steps whatever their personal judgment, but that has been addressed through training, through the
10 engagement of Ann Siegers, and by the kind of measures that she described having put in place.

Efforts were made to progressively address it, such as the panel of three reviewing all junkets. That was an attempt to take the assessment of junket relationships into the
15 hands of a panel of three who would make an appropriate assessment. Now, that was made in good faith. It may not have been perfect, but this was a good faith attempt to tighten the processes. Now, as to improvements in risk management, can I list these factors that come out of Mr Barton's presentations to the board on 10 August and 10 September. I won't go back to the actual documents, Commissioner.

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COMMISSIONER: That's all right.

MR YOUNG: The improvements include the following. First, implementing an organisational structure through the new Compliance and Financial Crimes
25 Department, which is independent of Crown business units. It also involved reorganising the business. Can I just draw one attention to the structure that was reorganised. There was previously a role of head of Crown Resorts Australia.

COMMISSIONER: Yes.

30

MR YOUNG: Which meant Mr Felstead in that position had oversight of two different licensed jurisdictions. And now, of course, there are going to be three, but that has been altered by Mr Barton's recommendation so that you're going to have, effectively, a head responsible for the operations of each licensee. And the reporting
35 lines have been improved and clarified.

Secondly, there's been a review of Crown's subsidiary board structures and subsidiary board committees and the composition of the relevant boards. That is appropriate. It's a commitment to ensure that there is proper oversight of the affairs
40 of each licensee company in the relevant jurisdiction. Again, a conscientious attempt to improve the way in which Crown operates, and its ability to ensure compliance with regulatory requirements and objectives.

Ms Coonan has explained how she is committed to embarking on a board renewal and succession process. And that too is a commitment for an improved situation.
45 There has been a decision to appoint – or to undertake a review of Crown's organisational culture and to monitor and measure that matter. There has been a

revision of Crown's remuneration structures in relation to short-term incentives to ensure that they operate to prioritise the appropriate matters.

5 There has been an enhancing of risk reporting to Crown's executive management and Crown Resorts' board. And that has various aspects, including executive risk and compliance committee meetings. Now, those recent initiatives build on past attempts by Crown to improve its processes. Now, Crown hasn't been acting alone in making progressive improvements. For instance the VCGLRs sixth review indicated matters that could sensibly be addressed. There was a PwC report associated with the sixth
10 VCGLR review that identified areas of enhancement, possible to ensure Crown Resorts met best practice, which Crown has been addressing. There is an updated risk management strategy approved by the Crown Resorts board on 12 June 2019. And I won't go into the details.

15 Now, those matters, in our respectful submission, need to be brought to account in assessing current suitability, both for what they are, that is, they are improvements in structures and processes, but also because of the commitment they bespeak by Crown itself. Commissioner, I will – I was going to give some examples drawn from the overseas material, but, if I may, I will leave that until tomorrow morning.

20 COMMISSIONER: Yes, of course. Are you going to – if I could ask you – I know that you've addressed the fact there's going to be board renewal. Obviously, there will be a need to review the evidence of the directors, they being the guiding mind of the corporation that is the subject of the suitability review. Since we first discussed it
25 – and I think you appear for Mr Mitchell. I think that's right, isn't it?

MR YOUNG: Well, I appeared when Mr Mitchell gave evidence. Dr Collins appeared for Mr Mitchell - - -

30 COMMISSIONER: That's quite right, yes.

MR YOUNG: - - - individually, yes.

35 COMMISSIONER: Yes. That's quite right. I thank you for that reminder. I just wondered, since then, there has been a finding in the Federal Court with which I have been made aware – of which I've been made aware in respect of Mr Mitchell. And that may need some form of submission to me, I think. There's a finding of – there's a declaration of breach and a fine.

40 MR YOUNG: Yes. No. No. I follow that, Commissioner. I think it will be necessary to inform Dr Collins and his instructors.

COMMISSIONER: Yes.

45 MR YOUNG: And I think it's best probably, if that's to be addressed, that Dr Collins address the matter and if there's anything else we need to say, we would be present and can make submissions.

COMMISSIONER: All I need is a submission in respect of what I make of it in the process of assessing suitability of the corporation

5 MR YOUNG: Yes. Thank you. I don't have - - -

COMMISSIONER: What I make of it, if anything.

10 MR YOUNG: Yes. Well, thank you for raising that, Commissioner. We will take it on notice. If there's anything I can assist you with tomorrow morning on that point, I will.

COMMISSIONER: Thank you. Thank you.

15 MR YOUNG: Yes.

COMMISSIONER: Yes. All right then. Thank you, Mr Young, for those submissions. Yes.

20 MR YOUNG: Yes. I was about to move to a convenient topic, so, if it's convenient, Commissioner, could we adjourn now?

COMMISSIONER: Yes, of course. Yes, of course.

25 MR YOUNG: Thank you.

COMMISSIONER: And I will resume at 10 o'clock in the morning. Thank you.

30 MR YOUNG: Thank you.

**MATTER ADJOURNED at 3.57 pm UNTIL
THURSDAY, 19 NOVEMBER 2020**

Index of Witness Events

Index of Exhibits and MFIs

MFI #C STATEMENT OF KENNETH BARTON P-5589

MFI #D STATEMENT OF NICHOLAS STOKES P-5589