



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 5 AUGUST 2020
AT 11.36 AM**

Continued from 4.8.20

DAY 11

Any person who publishes any part of this transcript in any way and to any person contrary to an Inquiry direction against publication commits an offence against section 143B of the *Casino Control Act 1992 (NSW)*

MR S. ASPINALL appears as counsel assisting the Inquiry
MS R. ORR QC appears with MS C. HAMILTON-JEWELL for Crown
Resorts Limited & Crown Sydney Gaming Proprietary Limited
MS Z. HILLMAN appears for Melco Resorts & Entertainment Limited
5 **MR A. D'ARVILLE appears for CPH Crown Holdings Pty Ltd**

COMMISSIONER: Yes, Mr Aspinall.

10 MR ASPINALL: Thank you, Commissioner. I understand Ms Orr needs to re-
announce the appearance of her junior.

COMMISSIONER: Yes. Thank you. Yes, Ms Orr.

15 MS ORR: Commissioner, today I appear and tomorrow I will appear with Ms
Hamilton-Jewell.

COMMISSIONER: Yes. Thank you, Ms Orr, for that announcement. Yes, Mr
Aspinall.

20

MR ASPINALL: Commissioner, the next witness is Mr Peter Cohen.

COMMISSIONER: Thank you. Mr Cohen, thank you for making yourself
available. I understand that there are burdens on you that have been caused by the
25 technology or the lack thereof. Thank you so much for your assistance in making
yourself available in Melbourne in these very troubling times.

MR COHEN: You're welcome.

30 COMMISSIONER: Can you hear me?

MR COHEN: I can hear you fine. Thank you.

COMMISSIONER: Do you wish to take an oath or make an affirmation in respect
35 of the evidence that you're about to give?

MR COHEN: I will take an affirmation. I don't think we have a Bible here
anywhere.

40 COMMISSIONER: All right then.

<PETER BERNARD COHEN, AFFIRMED

[11.37 am]

<EXAMINATION BY MR ASPINALL

COMMISSIONER: Yes. Thank you, Mr Cohen. Yes, Mr Aspinall.

5

MR ASPINALL: Thank you, Commissioner.

Mr Cohen, would you tell us your full name, please?

10 MR COHEN: Peter Bernard Cohen.

MR ASPINALL: And your address is known to those assisting this Inquiry, isn't it?

MR COHEN: It is indeed.

15

MR ASPINALL: Mr Cohen, could you tell us firstly, have you provided a CV to this Inquiry?

MR COHEN: I believe I have some time ago.

20

MR ASPINALL: Could that be brought up on the screen. It's exhibit K, tab 13 and its number is INQ.500.001.3933. Do you see that on the screen, Mr Cohen?

MR COHEN: Not yet. Still not. Now it's present. Yes. Yes. It's there now.

25

MR ASPINALL: I will just take you through that CV, if you don't mind. You are currently the director of regulatory affairs for The Agenda Group?

MR COHEN: Correct.

30

MR ASPINALL: And you've been in that position since February 2011?

MR COHEN: Yes.

35 MR ASPINALL: What is the business of the Agenda Group more generally?

MR COHEN: It's generally a consulting practice that advises clients that could be government or non-government on various matters to do with community engagement, government relations and other matters. I'm the only person here that works in the gambling area full-time. Some of the others do some occasional work for companies that might be associated with gambling, but they're not gambling people. That's more government relations work.

40

MR ASPINALL: Thank you. And since you've been in that role since February 45 2011, can you give us a flavour of the type of work that you have done?

MR COHEN: Generally, I advise governments, industries and regulators, meaning gaming regulators, on matters associated with their own business and how they deal with each other. So it would be things like modernisation of regulatory regimes, assisting industry clients who might wish to be licensed in new jurisdictions,
5 assisting jurisdictions that are contemplating whether to allow new gambling opportunities, such as casinos and integrated resorts.

MR ASPINALL: Thank you. Now, in the respect of the second paragraph of your CV there, it says that you are the former executive commissioner and chief executive officer of the Victorian Commission for Gaming Regulation. Now, I know that that organisation has over time had various iterations in terms of names and responsibilities and in fact you've had various roles of and within those authorities over a long period of time, and I just wanted to take you through in a step-wise fashion your work experience, which ultimately led up to, I think, you becoming the
15 executive commissioner and chief executive officer. In terms of, firstly, your academic qualifications, could you tell us what those are?

MR COHEN: I've got a master's in science, majoring in biochemistry, and an MBA.
20

MR ASPINALL: And could you take me through, if you wouldn't mind, your work history? I understand that you started in the public service.

MR COHEN: I joined the Victorian public service as a graduate recruit in January 25 1984. I spent six years in what was then the Department of Sport and Recreation. For a while, it was the Department of Youth, Sport and Recreation. Then some time in the Victorian Tourism Commission, the Ministry of Consumer Affairs and then the Cabinet Office. All that was between 1984 and 1996 and then in, I think it was, April 1996, I joined the gaming regulator, which I think then was called the
30 Victorian Casino and Gaming Authority as a – probably called senior policy officer. Might have been senior adviser. I can't remember the title. And then within the regulator at the end of 1996, I became the assistant director of Licensing and Compliance. Then in 2000, the assistant director of Gambling Operations and Audit and - - -

MR ASPINALL: Can I just stop you there.
35

MR COHEN: Yes.

MR ASPINALL: We are talking now about 1996 and I think casinos had been first established in Victoria in around the early 1990s, perhaps '91 or '92; is that correct?
40

MR COHEN: The legislation was '91. The casino opened in temporary premises in 1993.
45

MR ASPINALL: And so by 1996, we're dealing with a very early iteration of the regulatory structure of casinos in Victoria?

MR COHEN: That's correct.

MR ASPINALL: And what was the structure at that time? You mentioned the Victoria Casino and Gaming Authority.

5

MR COHEN: You mean the structure of the regulator?

MR ASPINALL: Yes.

10 MR COHEN: So in 1996 when I joined, it was an entity called the Victorian Casino and Gaming Authority which had a number of authority members, probably about 10, and it had a supporting staff made up of various teams headed by a chief executive, who also had the title – the statutory position of Director of Gaming and Betting. There was also separately a statutory position of director of casino
15 surveillance, but that person was not in charge of the organisation. It just had separate statutory powers. It's a complicated story because the casino regulation and non-casino regulation were separate up until about 1995 when they were consolidated.

20 MR ASPINALL: Did you say 1995, they were consolidated?

MR COHEN: I can't remember but I think it was about 1995. This was certainly before I joined in April 1996.

25 MR ASPINALL: I see. Now, in terms of the structure at the time you first went to work there, did the Victoria casino and gaming authority at that time employ its own staff or did the staff come from elsewhere?

MR COHEN: The staff were the staff of – at that time of the Department of
30 Treasury and Finance but had independent management. It was a complicated structure. So the short answer to your question is the authority members did not control the staff. The Director of Gaming and Betting controlled the staff but he was accountable to the Secretary of the Department of Treasury and Finance.

35 MR ASPINALL: I see. Now, the Director was a statutory office, was it?

MR COHEN: That's correct.

MR ASPINALL: And what did you understand to be the duties of the Director at
40 that time?

MR COHEN: The duties were described in what was then the Gaming and Betting Act 1994, and those duties were generally matters such as issuing licences for employees and approving various things. I can't remember now the breakdown
45 between what matters went to the Victorian Casino and Gaming Authority to approve and what matters were left with the Director of Gaming and Betting to approve, but, generally speaking, the more significant matters went to the Victorian

Casino and Gaming Authority. A significant matter would be a new gaming venue, meaning a new poker machine venue, or any form of disciplinary action against anybody that was licensed. They all went to the Victorian Casino and Gaming Authority, but the director of gaming and betting had statutory powers for other things including taking of prosecutorial actions through the courts for breaches of gaming laws.

MR ASPINALL: You also mentioned the director of casino surveillance; is that correct?

MR COHEN: Yes. Correct.

MR ASPINALL: And they were two separate officers?

MR COHEN: When I joined in 1996 not only were they two separate statutory offices but they were held by two different people. By 1998, I think it was, it was held by one person.

MR ASPINALL: And I think – just to jump ahead, you eventually became that one person.

MR COHEN: In 2002, yes. Yes. But technically in – in an acting capacity, technically.

MR ASPINALL: Yes. Just going back to the director of casino supervision, was the casino – was that director also answering or in a line of report to the head of the department?

MR COHEN: Just a minor correction; it was director of casino surveillance, not casino supervision. He was accountable to the director of gaming and betting, not to the – so theoretically to the secretary of the department but his direct report was the director of gaming and betting.

MR ASPINALL: I see. So there was a dual structure – is this right: the director – the directors were answerable to a departmental officer?

MR COHEN: Only answerable in the sense of administrative matters, not in the sense of decisions made under gaming legislation whether to approve things, take disciplinary action or so on. That was separated away and was – it never involved anybody from the Department of Treasury and Finance. So if you like, it was a bread and rations responsibility, not a regulatory responsibility for the secretary of the treasury.

COMMISSIONER: It was a what sort of responsibility?

MR COHEN: I said bread and rations.

COMMISSIONER: I thought you did. Could you tell me what that might mean?

MR COHEN: Responsible for making sure we had a budget, that we had the money we needed, that we had an office to work within, those sorts of administrative
5 matters. But the secretary of the department had no responsibilities for any regulatory decision under any of the eight gambling Acts that were in place at the time.

COMMISSIONER: And was that a legislative structure or just an administrative
10 arrangement between the relevant parties?

MR COHEN: I think it was a machinery of government decision. There was no role in any gaming legislation for a secretary of a department. There wasn't – subsequently there was, but there wasn't at that time any role for a secretary of the
15 department, so all the regulatory activities were for the director – were either the Victorian Casino and Gaming Authority or the director of gaming and betting or the director of casino surveillance, but never the secretary of the department. And some of it was responsibility of the Minister for Gaming as well. Some responsibilities.

COMMISSIONER: These are very important matters and I understand that you
20 have lived and breathed this, but I would be most grateful if you could just slow down just a little bit.

MR COHEN: I apologise. I will go as slowly as you require.

COMMISSIONER: Thank you very much. Yes, Mr Aspinall.

MR ASPINALL: Thank you, Commissioner.

Now, Mr Cohen, you mentioned earlier, jumping ahead, that by 2002 your position
30 had changed.

MR COHEN: Yes, so 2002, I – the director of gaming and betting had moved on and they asked me to act in that job while they thought about restructuring the
35 organisation. So from September 2002 – sorry, in September 2002 I was appointed as acting director of gaming and betting and acting director of casino surveillance, so both statutory responsibilities, and with that came the responsibility to be the CEO of the office which was probably by then called the Office of Gambling Regulation which supported the Victorian Casino and Gaming Authority. It's a very messy
40 structure.

MR ASPINALL: Yes. And do I infer that the Office of Gambling Regulation was a part of the department?

MR COHEN: That is correct. Part of the Department of Treasury and Finance in
45 2002, yes.

MR ASPINALL: And as director of that office at that time what was the relationship with the staff who “worked” for the authority?

5 MR COHEN: I had responsibility to advise them or to instruct them on what they had to do but I had no responsibility for their employment contracts or the ability to hire – sorry, to fire anyone. I did have the responsibility to hire, but not the responsibility to fire.

10 MR ASPINALL: Now, in terms of the distribution of staff, were there staff that were – were all staff ultimately answerable to you as the director of that office or were some staff answerable to the authority directly or was there some other arrangement?

15 MR COHEN: By 2002 all the staff were responsible to me. There was – the authority had no staff of its own. All the work done for the authority was done by me and my staff as one of our responsibilities was to support the office – support the authority.

20 MR ASPINALL: And you were, I suppose, formally a departmental officer albeit a statutory officer as well. Were you obliged to follow the directions given to you by the authority with regard to what the staff did?

25 MR COHEN: I was obliged to consider what the authority asked me to do, but they could not instruct me to do – technically they could not instruct me to do anything. They did – the staff – no, the short answer is the authority could ask me to do things, but they couldn’t instruct me or the staff to do anything. That’s not to say I wouldn’t do what they asked me to do, but in a technical sense they couldn’t instruct the staff to do anything or instruct me to do anything.

30 MR ASPINALL: And in terms of your position, was there anyone who could instruct you to do things?

35 MR COHEN: I was – in effect, I was accountable to three different individuals. There was the secretary of the Department of Treasury and Finance, there was the Minister for Gaming and there was the chair of the Victorian Casino and Gaming Authority. Each of them thought that I was – they were the most important person for me to report to, but in fact each of them equally had important roles. To be fair, the secretary of the Department of Treasury and Finance was quite happy to leave me alone, if you like, as long as the authority was happy. So each of them – I had an
40 accountability to each of those three for different things.

45 MR ASPINALL: All right. Well, that’s – all of that history was working up to this proposition for you. The Inquiry has received evidence from two experts – one being Professor Rose and one being Professor Cabot – of a regulatory structure where you have two parts to the regulator, if I might describe it in that way. Professor Rose described it in a paper which I will give the reference to just for the purpose of the

transcript is INQ.130.003.0034, which is exhibit A33 at .0035. You don't need to look at it, Mr Cohen, but Professor Rose said:

5 *I am in favour not only of strict regulation but of dual regulation, so you have two competing regulators, but nobody agrees with me because it's too expensive.*

And then in terms of Professor Cabot, Professor Cabot in his evidence at INQ.009.003.0100 at .0146 gave evidence noting that:

10 *The Nevada Gaming Control Board had an investigations division and an enforcement division.*

Now, the evidence that you've just given seems to have the flavour of two parts to the regulator at this time. Would that be an accurate interpretation of what was actually happening or not?

MR COHEN: At that time, yes, it would be accurate.

20 MR ASPINALL: And given that you're probably the only person that will give evidence to this Inquiry having had actual experience of the way in which that operated, can you give the Inquiry your views as to the pros and cons of that structure?

25 MR COHEN: What we know as gambling regulators is that there's no perfect model because if there was we'd all be doing it, and that's why regulators have different models everywhere. For Victoria at that time, it was a very messy arrangement but that was partly because of personal relationships between members of the authority and my predecessor as the director of gaming and betting which
30 made it difficult for that to work. I came to the conclusion that it was an unnecessarily complicated structure because it was – there were unclear lines of responsibility and accountability. The authority thought that they were responsible for certain things when it was quite clear the power was with the director of gaming and betting and I mean in the technical sense.

35 So it was a messy structure and that's the best way to describe it which led to a lot of tension, but also led to difficulties for the industry because they weren't sure who they were dealing with. As an example the office of gambling regulation, that's the bit that the director of gaming betting and the staff to satisfy them - - -

40 MR ASPINALL: I'm sorry, Mr Cohen, we just lost your feed for a moment.

COMMISSIONER: Just after the word "for example".

45 MR COHEN: That's always good timing.

COMMISSIONER: Yes, if you just slow down a little bit.

MR COHEN: I certainly will.

COMMISSIONER: an example was.

5 MR COHEN: The example – the example, without talking about anything that I
can't talk about, was that an operator or an industry member might wish to get a new
product approved and would negotiate that product and the rules and the integrity
systems and everything else about it with the office of gaming – gambling regulation
as we then were, and we could say it – we were happy with it, but they could not
10 meet with the casino and gaming authority so they were never sure whether their
product was going to be approved or not and it was just a very difficult time because
they couldn't deal with a single organisation to give them a single unified response.
It was just complicated and unnecessarily so. It doesn't need to be complicated like
that.

15 MR ASPINALL: Well, that was a con of that system. Were there any beneficial
aspects to that arrangement that you saw?

MR COHEN: No.
20

MR ASPINALL: Thank you. Now, in terms of the possible models, you have, I
suppose, over the years thought about the possible models and one – and the model
where you have separated investigation divisions and enforcement divisions?

25 MR COHEN: Yes. There are various models. They don't – investigations and
enforcement are usually together and I know they're not always. Often the licensing
side is separate - - -

MR ASPINALL: Just before you go further, I was just wanting to ask you did you
30 see the model that was in position at 2002 as being an attempt to do that separation of
investigation and enforcement functions or was it something else?

MR COHEN: No, that model was not a separation of enforcement and – sorry, what
did you say, enforcement and compliance, was it?
35

MR ASPINALL: Enforcement and investigation.

MR COHEN: Enforcement and investigations, no, because the investigations were
done by the same people – sorry, the director of gaming and betting had enforcement
40 powers and he managed the investigations.

MR ASPINALL: All right. So as at 2002 what did you understand to be the
rationale for this dual arrangement where the casino – the director of casino
surveillance and director of gaming and betting was separated to an extent from the
45 authority itself?

MR COHEN: I think it was an adoption of a New Jersey model for the sake of adopting a New Jersey model of regulation.

5 MR ASPINALL: But the New Jersey model, as I understood it, does separate investigations and enforcement; is that correct?

MR COHEN: Yes, it would have. The New Jersey Division Of Gaming Enforcement was where – it was like the equivalent of the Office of Gaming and Regulation, and the New Jersey Casino Control Commission took the enforcement
10 action. That is – that is correct. But our model was not quite the same as New Jersey, but it was based upon the New Jersey model.

MR ASPINALL: All right. And just to paraphrase the answer that you gave – and I think I cut you off in trying to give it – you saw it as problematic as at 2002 because
15 of the division of your responsibilities across various people and the capacity for that to give rise to personal interrelational problems; is that right?

MR COHEN: It was a significant problem at the time for us in 2002.

20 MR ASPINALL: Your view looking back on it now, would there have been a way of resolving that tension which could have resolved the problems with that model, or do you think it was irretrievably bad?

MR COHEN: It's difficult to know whether we could have continued with that
25 model with different people in charge. But even if we had continued with that model, I still don't think it's the ideal structural model anyway. What we moved to, which I'm sure we will get to in 2004, I think, was a much better arrangement and proved to work.

30 MR ASPINALL: Right. Now, in terms of the responsibilities that you had as director of casino surveillance at this time, did that include supervising the casino inspectors?

MR COHEN: Yes, it did, but just to clarify, by 2002 we didn't have a separate
35 group of casino inspectors. We had all-out gaming inspectors, which means for poker machine venues and charitable gaming, bingo centres and casino were all one group and they rotated through the various different responsibilities. So the answer is yes, but qualified, yes.

40 MR ASPINALL: Had that been the case since you had arrived on the scene in 1986 or did it change?

MR COHEN: It changed while I was there. In 1986, the casino inspectorate was a
45 separate unit and it changed – I think it was about 1998 to the consolidation of the casino inspectors with the rest of the inspectorate for what were good reasons.

MR ASPINALL: I think we will come back to that a bit later, but by what I've understood you to say, that meant that one inspector would not be at the casino all the time but would divide their time between the different duties; is that right?

5 MR COHEN: Yes. They had a rotating roster, so they would spend something like nine weeks at the casino, then nine weeks doing gaming in venues, then maybe nine weeks doing charitable gaming and so on. It's a little bit more complicated like that because for a roster system for a 24/7 casino, it means you need more people at the casino than you might otherwise have appreciated that you need, but the short answer
10 is yes, they would rotate through the various roles.

MR ASPINALL: But that didn't mean there wasn't a presence of inspectors at the casino 24/7, though? It was just that they also did other things.

15 MR COHEN: That's correct.

MR ASPINALL: Whilst we've been working through your work history, I think we had come up to 2002 and we – I would like to finish off that work history before we move on to other matters, but we might come back to your role as director of casino
20 surveillance a bit later on. But can you finish the story for us in terms of your work experience from 2002 onwards, please?

MR COHEN: I acted in the roles of director of gaming and betting and director of casino surveillance while the government decided what to do with the structure of the
25 regulator, which they decided to turn into the Victorian Commission for Gaming Regulation, which took effect on 1 July 2004, and I was appointed as the inaugural executive commissioner and CEO of the commission to take effect on that date, so that was where we blended or merged the old authority and the old staff into one
30 organisation.

MR ASPINALL: All right. That's called the VCGR now.

MR COHEN: It was then. It's not anymore because it's now had liquor added to it as well.
35

MR ASPINALL: Yes, I meant by – at this time.

MR COHEN: At that time, yes.

40 MR ASPINALL: And you said you merged the functions of those two organisations. Do you mean by that the office of gambling regulation and the – what had been the authority?

MR COHEN: Yes, I did. That's what I meant.
45

MR ASPINALL: And in terms of the employment of the staff from this point on, what happened with that?

MR COHEN: The staff were still the employees of the department, though at this stage, it was now Department of Justice. There had been a transfer machinery government change from treasury to justice probably early 2003, I think. So the staff were still the employees of the Department of Justice and the Secretary of the
5 Department of Justice was responsible for them. So I had a group of senior executives in what was called the senior executive service of the Victorian public service, who had contracts with the Secretary of the Department of Justice, not with me, and the Secretary of the Department of Justice decided how much they got paid and what bonuses they got, not me. Yes, that was frustrating, but nevertheless it was
10 not significantly changed from the previous model, that is, the staff were still the employees of a department but that was only for administrative purposes. All their responsibilities in terms of their day-to-day activities and any of the regulatory powers that they had come from me as the executive commissioner.

15 MR ASPINALL: And they were subject to your direction as to how they carry out - - - what work they perform and how they carry it out?

MR COHEN: That's correct.

20 MR ASPINALL: But in terms of if you were unhappy with the work that had been done, you had no capacity to terminate their employment; is that right?

MR COHEN: That is correct.

25 MR ASPINALL: Was that a problem?

MR COHEN: Yes, it is a problem. I had some difficulties with some staff and the Department of Justice assisted me when the time came where we needed to move them on, but it makes it more difficult in the process because you just don't have the
30 power yourself to take the action that is necessary as quickly as required.

MR ASPINALL: And in terms of the selection of who worked for you, was that also outside your power to select?

35 MR COHEN: Technically, it was, but the Secretary of the Department always let me have the senior executives that I wanted but it wasn't my technical decision. It was my – I could only make a recommendation, but my recommendations were accepted in terms of their employment of who I chose to be the senior executives that worked for me. For the non-executive staff, they were – we had the power – we had
40 been authorised to engage them so we could engage whoever we wanted for the non-executive staff.

MR ASPINALL: I see. Now, in terms of the control diagram or structure, as it were, the earlier structure, I think you told me, was that you or the director of gaming and betting directed the staff. Under the new situation, were you as CEO subject to
45 the directions of the commission as to what to direct the staff to do? In other words, had ultimate power now moved to the commission?

MR COHEN: No, the power was still with me as executive commissioner but because I was now a member of the commission, it was a more collaborative arrangement. So I could discuss it with my co-commissioners. Now, there were only three of us. It was a three-person commission with some sessional

5 commissioners to help with hearings and inquiries. The sessional commissioners weren't involved in any of the administrative responsibilities, so we can ignore them for the purpose of this discussion. So my chairman, deputy chair and myself worked collaboratively when it came to staffing matters, but the individual decisions about staffing matters were mine.

10

MR ASPINALL: And in terms of the – you mentioned the difficulties that you perceived with the earlier structure. What were the pros and cons, as you saw it, of this new structure?

15 MR COHEN: The con was the – that the staff were still members of the Department of Justice rather than belonging to the authority – the commission, rather. It would have been better if they were the commission's own staff. The pro was that there was only a single organisation, so you had a single view about any matter, whether it was administrative, policy or anything else, and I use the word policy carefully there.

20 It's a matter we should come back to. It was a much more streamlined organisation. The industry certainly found it much easier to deal with because they knew who they were dealing with, but it was as much about me having been given by my minister two very good co-commissioners, very good chair and deputy chair, so between us we could make it work and it's a really important point that personnel is just as

25 important as structure. I just wanted to touch on that policy issue to make clear that sometime in about 2000, 2001, the government of the day decided that gaming policy which had before that time been with the Victorian Casino and Gaming Authority should not be with the regulator, it should be with the government department. So when I talk about policy, I'm talking about regulatory policy, not government policy.

30

MR ASPINALL: I've just noticed, Mr Cohen, that when you see me on the screen, I appear to be looking down, not at you. I'm in fact looking at you on a screen that's in my line of vision here, so I don't mean any disrespect by that and I am listening to what you say.

35

MR COHEN: No problem at all.

MR ASPINALL: In terms of the cons of that structure, did you see any?

40 MR COHEN: Apart from the senior executives and the staff being Department of Justice employees rather than the regulator's - - -

MR ASPINALL: Well, just stopping there, that's an independence issue, isn't it?

45 MR COHEN: Yes, it's more a perception of independence because it does threaten the power of the executive commissioner, but it was never used against me in any way so there is always that possibility when things aren't working that it could be an

independence issue. But I stress that at no stage ever was I or any – or were any of our – any of the staff of the commission ever pushed to make a particular decision by the Secretary of the Department or by the minister or any of the minister’s staff at any time. So we were always independent in our decision-making but there is
5 always the potential threat, which is why I think the staff should be the staff of the commission. They should be an independent agency completely separated from the administrative arm of government.

MR ASPINALL: I’m sorry I side-tracked you there, but I was asking you, other
10 than the – that independence or employment issue, was there any other drawback to this structure that you observed?

MR COHEN: I can’t think of anything. It all seemed – it all seemed to work, or we made it work so, no, I don’t think there was another problem that I could see with
15 that model. It was useful also only having a small number of commissioners, otherwise it just becomes unwieldy, and we made it work.

MR ASPINALL: Now, in terms of the work of that commission, it has the name Victoria Commission for Gambling Regulation. Did gambling include more than the
20 casinos by this point?

MR COHEN: Yes. It was all forms of gambling – by 2004, it was all forms of gambling except rails bookmakers. They were separately – bookmakers at the racetrack. Okay. All other forms of gambling were regulated by the VCGR and
25 bookmakers became part of the VCGRs remit probably in about 2008 or something like that as well. So there was no gambling regulation of any description that wasn’t done by the VCGR.

MR ASPINALL: All right. So, for example, that would include the lotteries, lotto,
30 keno, poker machines, that sort of thing?

MR COHEN: Yes, charitable gaming. The one – well, I was going to say the one that wasn’t done is interactive gambling. Technically, yes, the VCGR had
35 responsibility for interactive gambling but there’s a Federal Act that overrides it, so we didn’t actually do any work in the space. But, yes, it would include that if the Federal Act hadn’t been in place.

MR ASPINALL: And since you joined what had then been the authority back in 1996, there had been that mixture of the casino with other forms of gambling; is that
40 correct?

MR COHEN: From when I joined in – yes, yes. From when I joined in 1996, yes. If we go back in history, the – there was a Casino Control Authority, separate from whatever the Victorian Gaming Commission might have been called back. They
45 started separately both in the early nineties, but they were – they merged before I joined, I think, in about 1995.

MR ASPINALL: I, again, side-tracked you but I think we were at 2004 and you had become the CEO of the VCGR.

MR COHEN: Yes.

5

MR ASPINALL: What happened next in your work history?

MR COHEN: I did that job from 1 July 2004 until I retired from the public service at the end of 2010 with no change to the title or responsibilities. No change? Yes,
10 no change at all. That's when I left. I left at the end of 2010 and I became a consultant with The Agenda Group at the beginning of 2011.

MR ASPINALL: I see. Now, in terms of – just before we leave the VCGR when you left, in terms of the way in which it was funded to perform its functions, how did
15 that occur?

MR COHEN: There were two different models, I think. I'm just making sure there wasn't a third one. The first model from when I joined was – can't remember what it was called, but it was a special fund and that's not the title of it. I can't think of the
20 exact name of it – where Treasury would provide a cash funding for an accrual-based process, which meant we made a loss every year because we never had enough money to cover the things like long service leave – setting aside for long service leave. So from a political perspective it looked like we couldn't manage a budget but in fact we could but it just looked bad because people don't understand budgets. So
25 that was changed and I'm sorry – special appropriation, that's what it was called. It was a special appropriation, and that was changed some time in the mid-2000s to output-based funding coming from the Department of Justice so that we became a budget line for the Department of Justice to and we got funded on the basis of those outputs.

30

MR ASPINALL: I'm sorry, I haven't heard that expression before. Output-based funding, did you say?

MR COHEN: Yes. Probably an inhouse term. So it was – it was funding like any
35 other government agency within the Department of Justice. So we had to – I was going to say fight for our funds, but that's probably not the right term, but we had to stand in line with everybody else in the Department of Justice which, of course, includes emergency services and corrections and police and everybody else to get our funding. But it's calculated on the basis of the number of outputs that we
40 produce. An output might be – outputs are things like numbers of licences issued, numbers of prosecutions undertaken, number of products approved. They all add up and come to a number and you get your funding based on the number of outputs you intend to deliver.

MR ASPINALL: Is that problematic? It sounds like you're incentivised to
45 prosecute. Is that - - -

MR COHEN: You're not incentivised to prosecute because it's such a small number anyway in the overall scheme of things. The model is flawed because one output equals another output, so one gaming employee's licence which costs about \$100 to produce is equal to one lottery licence which costs about a million dollars to produce which is a silly model if you think about it. But it's also a model that allows some form of quantitative assessment to be undertaken. It's more quantitative than qualitative which is unfortunate. I could talk about this for hours, by the way, because you can have – there are all sorts of problems associated with every model that you introduce, whether you have inputs, outputs or outcomes, so outputs actually makes sense; it's just not necessarily done the best way.

MR ASPINALL: Right. And just before we leave the VCGR, how many staff at that time that you were there did it have – I mean technical staff of the department, but how many staff worked - - -

MR COHEN: The numbers varied depending on the responsibilities that we had, but it would vary between about 160 to about 190, maybe 200 at any one time. The numbers changed depending on special activities that we might have had like major licence reviews or the addition of responsibilities and so on, but generally somewhere between 160 to 190, I would have thought, at any one time.

MR ASPINALL: And to your observation was that an adequate number? Did you get the resourcing that you needed?

MR COHEN: We were satisfactorily resourced. So yes, we had the – I believe we had the numbers that we needed, and I think we had the budget that we required for the time I was there, yes.

MR ASPINALL: We have come to 2010 when you left VCGR, but I was wondering if you could give – fill us in on the structural changes, if any, that have happened in the Victorian regulator since that time.

MR COHEN: Certainly. There have been two significant changes. The first one is that the gambling regulator was consolidated with the liquor regulator. Now, in Victoria, before that happened liquor didn't really have a regulator. There was a director of liquor licensing, a statutory position with no staff, or at least I don't think the position had any staff, and I think most of liquor regulation was undertaken by Victoria Police. Government determined to consolidate liquor and gaming into a single regulator and that became the Victorian Commission for Gambling and Liquor Regulation. And the second change is that the structure of the commission was changed again and the CEO of the VCGLR is not a commissioner.

Now, I don't know why that happened and it's not one I would have supported, but in return – or at the same time, rather, the chairman of this – the VCGLR has become a full-time position whereas in the time I was there at the VCGR the chairman was a part-time position. I think also, and I may be – I may not be correct on this, but I

think the chairman now has responsibility for staff employment, but I – that may not be correct. That’s something that someone else might need to investigate.

5 MR ASPINALL: Do you happen to know how many staff they have now?

MR COHEN: No, I don’t. It will be more, though, because liquor is a big – it’s the biggest part of their responsibility.

10 MR ASPINALL: Yes, I was going to ask you about that, and obviously you haven’t been a member of that organisation, but do you consider, as an expert in this field, that the addition of liquor – the responsibilities of liquor to an organisation such as VCGR had been may mean that it becomes so big that it loses its specialist focus on gambling? In a detrimental way, I mean.

15 MR COHEN: The logic for joining liquor and gaming regulators was flawed. The reason it was – they were joined was because people thought that they did the same thing because all most people think about is poker machine venues have both a liquor licence and a gaming licence. In Victoria there are 500 venues that have both poker machines and a liquor licence. There are another probably 500 hotels that have a
20 liquor licence without gambling, and then there are thousands of other liquor licences that have got nothing to do with gambling. And conversely, there’s hundreds, perhaps even thousands of other gambling activities such as – the big ones are wagering and lotteries, that don’t have any liquor responsibility.

25 The overlap – what I’m saying is the overlap between liquor and gaming is actually very, very small, however, some of the activities that are undertaken such as licensing and compliance are not that dissimilar. So it is not necessarily illogical to put them together, but the reason for doing so was actually not based on the right understanding of what the two organisations – the two former organisations actually
30 do. So there’s not a lot of value to be created by putting liquor and gaming together. And my conversations with regulators in other states of Australia that have liquor and gaming say that liquor takes up about 80 per cent of their time which means gaming obviously the other 20 per cent, and perhaps there is a loss of focus on the gaming activity because of that.

35 MR ASPINALL: And to your observation, is the idea that there is a cost saving to government by combining those functions into one authority because they are, in a way, similar? Is that your understanding of why it was done?

40 MR COHEN: That’s not why it was done. It might have been argued why it was done. It was done for purely political reasons.

MR ASPINALL: I see. What would be the – I could see how it might be argued there are synergies, but you have pointed to the fact that that might not be so, but
45 what would be the other advantage of combining them?

MR COHEN: The only advantage – sorry, I shouldn't say the only – the primary advantage that I can think of is that you can have one set of inspectors go to those 500 gaming venues and check them for both gaming and liquor. But the – it doesn't help you with the other thousands of licensed activities, venues, people or anything else because they're either gambling or they're liquor; they're not both. So it doesn't help you significantly, but that's the one – that is one advantage is that one set of inspectors can do both things at those 500 venues. Some of the skills might possibly be useful such as the investigation skills or the licensing processing skills but having not been responsible for liquor I'm not absolutely certain what's necessary to allow – to – what's required to license the – or regulate the liquor side.

MR ASPINALL: Now, just to round off that question, I think that I might have inferred from what you said that you regard the better model as being to separate gambling from liquor. Is that right?

MR COHEN: I think that having – keep in mind that I've not regulated liquor previously, so I'm doing it, if you like, from an uninformed position but I think it's – I would prefer the focus of the regulator for gaming to be on gaming matters.

MR ASPINALL: And in terms of whether or not the casino regulation should be separated from the rest of gaming, you haven't actually experienced that in your time with the regulator, but in terms of your expertise in the field, do you have a view on whether it's better to separate casino into specialty regulator or you regard it as acceptable to have it mixed with the rest of gambling?

MR COHEN: Acceptable is not the right word. I think it's essential to have them consolidated. There are – one of the biggest risks for a regulator that does the casino only, particularly in a jurisdiction with one casino operator, is regulatory capture. And that is one of the reasons we had to consolidate the casino regulation with the non-casino regulation back in 19 – whatever it was, 1995 or whenever it was. Actually, I'm mistaken. The two organisations were put together in 1995 but the casino division still ran itself separately within the organisation. In 1998 that's when we separate – or consolidated the inspectors from the casino with the inspectors from elsewhere, and the reason we had to do that – one of the reasons we had to do that was because of regulatory capture. A number of our inspectors had got far too close to the casino and the casino staff and it put at risk the regulation of the casino.

MR ASPINALL: Just pausing there, at that time there was only one casino in Victoria?

MR COHEN: That's correct.

MR ASPINALL: And is the risk of regulatory capture particular to a situation where you've only got one regulator and one regulated party?

MR COHEN: I think it's always possible if – even with multiple operators, but I think the risk is greater with a single operator because your casino inspectors are

only dealing with one casino operator, and you can't move them to a different casino to break up that relationship.

5 MR ASPINALL: And does it follow from that that the more casinos you regulate the lower the risk of regulatory capture becomes because, effectively, your relationship with one of those casinos is one of many?

10 MR COHEN: I think that's – think that's correct. I would agree with that. I can't point to evidence to show that, but the logic stands up, in my mind.

MR ASPINALL: In terms of international examples, have you looked at larger jurisdictions like, for example, Nevada where there are many, many casinos?

15 MR COHEN: For what point? For which point? The regulatory capture or the structure?

MR ASPINALL: Yes, from a regulatory capture point of view.

20 MR COHEN: It's difficult to know from a distance for any other regulator, whether there's been regulatory capture or not. No-one is ever going to admit that they were captured. I think it's likely to have occurred in different places, but I can't point to examples. What I can say is that very, very few regulators are left in the world that are casino regulators only. It used to be common. It used to be in New Zealand, in New South Wales, Jamaica, Singapore, they all had single stand-alone casino
25 regulators. I think Jamaica is the only one that still does. Singapore changed maybe in the last couple of years. New Zealand changed probably three or four years ago. So it's very rare now.

30 In fact, I don't even know if Jamaica still is but it's the only one I can think of that might still be a stand-alone casino regulator where everybody else has consolidated regulators elsewhere. Probably Macau is a stand-alone casino regulator because I don't think there's any other gambling in Macau.

35 MR ASPINALL: All right. Well, in terms of your work history I was going to move on now and take you now back, as I foreshadowed, to your time as the director of casino surveillance in 2002. Now, at that point what was the VCGA did approve junkets; is that correct?

40 MR COHEN: To the – yes – I think it was the director – it was the director of casino surveillance who had the responsibility to prove junket operators, not the authority.

MR ASPINALL: I see. Well, it was your responsibility - - -

45 MR COHEN: As the director of casino surveillance, correct.

MR ASPINALL: And when did that end?

MR COHEN: It ended when the law changed to no longer require the director of casino surveillance to approve junket operators, which would have been – I think the law changed in 2004. I think.

5 MR ASPINALL: Again, Mr Cohen, I anticipate that you may be the only person to give evidence to this Inquiry who has actually been in the position of a regulator who has actually approved junkets, and I wanted to get your views on the pros and cons of that process from the point of view of a regulator.

10 MR COHEN: There are no pros. There are only cons. The regulator is put in an impossible position because the information provided about whether to approve a junket operator is insufficient. If I'm approving – I will give you the alternative. If I'm approving an associate of the casino licensee, so an associate is a senior person such as the CEO or a director of the company that holds the licence, I can get
15 information from the applicant him or herself, plus the police, whether it's Victoria Police, the Federal Police or police anywhere else in Australia, and I can get information from gaming regulators all around the world as necessary – not all around the world, but from regulators I trust and who trust me to tell me whether that person is suitable or not. I can get none of that information for a junket promoter.
20 All I will get at best is a letter from a police inspector in some remote town in a country like Indonesia that tells me that a bloke called Rooney is okay to be approved and I've got no way of verifying any of that information, which means that I either approve someone based on insufficient information or I don't approve them.

25 Now, if the model requires – if the policy position of the government is to allow international business and junkets, the regulator has to find a way to make that happen and you can't make it happen properly if you're relying on that sort of information, and you can't get that information verified anywhere because most of the junket operators work in jurisdictions where there is no information sharing that
30 is reliable. And I think you had a witness, Mr Bromberg, some time ago, and I know Paul very well, who said, I think, that junket operators have opaque structures and he's right. They do. So you are being asked to approve people with insufficient information. That's a dangerous position for the regulator to be in. Worse than dangerous. It's a horrible position.

35 MR ASPINALL: I wanted to ask you about that because it seems to be that the problem you've identified is an information access problem.

MR COHEN: Yes, and reliability of that information, yes.

40 MR ASPINALL: Now, I wanted to put to you a proposition that Prof Rose raised in a speech he gave in Japan earlier this year. The document reference is INQ.130.003.0034 at 0036, and that, Commissioner, is exhibit A10.

45 COMMISSIONER: Thank you.

MR ASPINALL: You don't need to look at the document. I will just read it – the relevant part to you, which is Prof Rose's view is that the regulator, whoever it may be, has to have the same police power as your top police officials. Otherwise, they cannot get confidential information from police forces around the world. Now, I
5 appreciate the difficulty that you experienced when you were the director of casino surveillance, but if it were possible to have given the regulator the equivalent powers of, say, the AFP or AUSTRAC or police, would that have put you in a position where that problem, that information gap, was removed, meaning that you were then in a position to properly fulfil what you saw as your duty to properly assess junkets?
10

MR COHEN: I doubt it because even if I had had the police powers, I'm not sure I could rely on the police that I would need to talk to in the places where the junket promoters come from. It's difficult for me to know that because I've never had police powers, I've never had to use them. There's a separate question there whether
15 about that's a hammer to break a walnut anyway.

MR ASPINALL: Sorry?

MR COHEN: What I'm saying – I – there's a bigger picture about whether you
20 want a gaming regulator to have police powers anyway because that could be abused.

COMMISSIONER: I think the expression was using a hammer to crack a walnut.

MR COHEN: It was indeed.
25

COMMISSIONER: Yes.

MR COHEN: Thank you. I would be a bit worried about giving police powers to a gaming regulator because they could be abused in other ways. That would worry me
30 for what it brings to the commission rather – inadvertently.

MR ASPINALL: Well, in terms of the police powers, if what Prof Rose was interpreted to be saying was with the power to access information - - -

MR COHEN: Can I ask you to stop? You've been breaking up. I can't hear this question. Could we start again?
35

COMMISSIONER: All right. Yes.

MR ASPINALL: Yes, of course. Assuming that what Prof Rose was meaning when he said the powers of a top police official related only to the sharing or the ability to access information, would that assuage your concern about the abuse of the power?
40

MR COHEN: It would, but it doesn't necessarily mean I would be happy that I would still get the information that I needed.
45

MR ASPINALL: Now, in terms of the problem of being unable to access information which you considered was sufficient to enable you to make an informed decision as to whether to approve or not approve a junket, to skip forward in the Casino Modernisation Review, you noted that the changes had been made which
5 meant that that responsibility was devolved or moved on to the casino operator. Remember that?

MR COHEN: Yes.

10 MR ASPINALL: And you in the Casino Modernisation Review made the comment that that was where it belonged. Do you remember that?

MR COHEN: I don't specifically remember the words, but I'm sure I probably did say something like that, yes.
15

MR ASPINALL: I was wondering how moving the responsibility from the regulator to the regulated party augments the ability to assess whether or not a junket operator should be approved, because the casino themselves don't have access to any – they wouldn't have access to any better information as to whether a certificate from
20 a police officer in Indonesia was reliable or not, would they?

MR COHEN: You're correct in that but they do have the ability to engage the people to do due diligence investigations that the regulator doesn't do. The regulator could do, but the regulator doesn't do because it doesn't have the budget or the – if
25 you like, the interest in doing so. The casino operator did do more - - -

MR ASPINALL: Can I just stop you there. Stopping there. Sorry. When you say they don't have the budget to do that, wouldn't it be possible to charge a fee for the approval of the junket such that they did have the budget to do that?
30

MR COHEN: It's always possible to charge a fee if the legislation allows you to do so. It just depends on the model that you have in place. Yes, you could charge a fee that's full cost recovery for junket investigations. I mean there's a higher order - - -

35 MR ASPINALL: Would you consider that - - -

MR COHEN: Sorry. Go on.

MR ASPINALL: You go ahead, Mr Cohen.
40

MR COHEN: I was just going to say there are other issues about whether or not it needs to be done at all, but I'm sure we will get to that.

MR ASPINALL: Yes. I was just wondering in terms – the advantage that you said
45 that the casino might have is the ability to access these databases; is that right?

MR COHEN: Yes. So there are databases, such as World-Check from – used to be Thomson Reuters, I don't know if they still operate it, which is a list of every individual and their publicly known criminal and – semi-criminal, if that's the right word, activity, so that you can check every person against that and all casino operators that I know have used that for a variety of different reasons, including employment of their own staff. They've already got access to some of this information that the regulator just doesn't do.

MR ASPINALL: And in terms of the ability to access that, other than to charge the applicant a fee to allow the authority to access that World-Check or whatever database it would like to do, wouldn't an alternative be to charge the casino with providing those searches to the authority as part of a dossier on this person so that then the regulator could make the decision whether or not to approve them? Would that improve the system, do you think?

MR COHEN: My recollection is that they probably did that back in the days when we used to approve junket operators back in 2002. Let me rephrase that. I would imagine that the casino operator probably did that check and probably advised us that they had done that check, but we may not have actually been given the documentation that proved that they had done that check. In other words, we didn't get a printed report. To be honest, it's a long time ago. I can't remember what information they provided, but I suspect they provided us with a World-Check summary even if we didn't actually see the World-Check information. So they were already doing it, I think, back in the day of – let's say 2002, prior to director of casino surveillance no longer having to approve junket operators.

MR ASPINALL: And so – I mean what actually happened is not so much – is not so important as the theoretical issue that I was wanting to talk to you about, as to whether or not the regulator could be put in the position in one way or another, such that it was provided with the same information that the casino could glean, but then the regulator rather than the casino itself make the decision.

MR COHEN: Yes, that's possible. Yes. That is absolutely - - -

MR ASPINALL: If that – such a structure were able to be formulated, would that solve the problem, do you think, that you encountered when you were concerned about the approval of junkets?

MR COHEN: The only bit in the – that puzzle that would be missing, I think, is a regulator talking to another gaming regulator. That wasn't common when it came to junket approvals anyway, but it could be done. So if, for example, a junket operator had been approved in one state in Australia, let's say in New South Wales, the Victorian regulator could check with the New South Wales regulator whether there had been any issues of concern with that junket promoter. That's a step that the regulator could do separately from anything that the casino operator might provide. The casino operator might know that that junket operator is approved but they

wouldn't know what the regulator in that other jurisdiction is aware of about that junket operator.

5 MR ASPINALL: When you were at VCGR or the VCGA, did you have good cooperation and sharing with other regulators in matters like that?

10 MR COHEN: I don't recall it ever being used for junkets, but we certainly shared information with other gaming regulators that we trusted on other matters to do with approvals of individuals.

15 MR ASPINALL: Now, in terms of the mechanics of approving a junket, you said that often times you were presented with information which you thought was perhaps unreliable as a – or incomplete. When you were making a decision as to the approval of a junket or otherwise, what standard of proof or satisfaction were you inclined to employ as to whether or not to reject or accept an application?

MR COHEN: I can't remember specifically now on what basis someone was approved or not approved. I didn't do it for long.

20 MR ASPINALL: Perhaps I could make the question a little better by saying, for example, in respect of someone who had adverse media comment unverified, just a story in a newspaper, would you have accepted that as being sufficient to disqualify them from approval or was it more nuanced than that?

25 MR COHEN: It's always more nuanced than that. Doesn't mean – I mean, if there had been a negative story in a newspaper, it would be something that we would have investigated to look at whether or not there was substance behind it. So what's in a newspaper is not always 100 per cent accurate, of course, but it would always trigger my inspectors doing some form of further investigation to see if there's something
30 that we needed to know about it, but I can't recall any specific instances of that occurring with any of the junket operators that I was asked to approve. I was asked to approve – I can't tell you that. Sorry. No, I was going to tell you something that I've just realised I can't talk about. It was a good story too.

35 MR ASPINALL: Thank you. Whetting our appetite. But in terms of the issue in that regard to the standard of proof or to the strength of the case or otherwise against or for the approval of the applicant, I'm interested in your views on this issue: doesn't moving it to a casino then put the casino in a position where it has a conflict of interest, particularly in respect of what might be a lucrative junket operator, that it
40 then has to make a decision as to what standard of proof or otherwise it will allow versus the attraction of the money that they might make from accepting this person as a junket operator?

45 MR COHEN: I think that conflict exists if the casino operator doesn't manage its own compliance properly. It has to make decisions like this on all sorts of matters, not just on junket operators. It's the same with people who provide goods and services to the company. So there are provisions in the Casino Control Acts of both

New South Wales and Victoria called controlled contracts. Whether you choose to use a particular contractor or not is a responsibility of the casino operator and the same principles apply. What the regulator does is ensure that there's a proper compliance program that's followed at the casino operator so those conflicts should not be problematic. In other words, they should be managed in a way that the casino operator, to use very loose language, does the right thing, and – but these are decisions that casinos have to make every day. It's not just about junket operators.

You're right that there is – there are – there can be conflicting views and what it means is the compliance arm of the organisation has to be strong enough to tell the international marketing people when they can or can't use a particular person, just like they have to tell their marketing people for other activities that "You can't do that because you're going to break the law". So it all gets back to a strong compliance culture within the casino operator and that gets back to the regulator making sure that there is a strong compliance culture with an independent compliance committee at the casino. So it's a manageable conflict.

MR ASPINALL: Yes, but it is there. To the extent that you have an independent person within the organisation who is overseeing this process, perhaps, or a member of a committee or the final decision-maker in terms of whether or not to say yes or no on the basis of certain information, isn't that problem avoided completely by just putting it back to where it was with the regulator?

MR COHEN: I don't think it – it might avoid that problem, but you're still going to have to have a compliance committee. You still have to – your compliance committee is still going to have to check that junket operator before you even send it on to the regulator anyway, so I don't think it changes the role of compliance, therefore I don't think it's necessary for it to come to the regulator. Compliance – the role of the compliance arm of a casino is far more important than perhaps people realise, and they take on these responsibilities all the time. I don't see that it necessitates an extra layer of responsibility with the regulator, remembering that junkets being licensed is only one part of the regulation of junkets. There are other parts of the regulation of junkets as well. Licensing is just one bit of it, the bit that I don't think is necessary.

MR ASPINALL: Thank you. I might just take you to one final comment that – one final piece of evidence that Professor Rose gave in regard to the licensing of junkets and get your views on it, if you wouldn't mind. I can bring it up on the screen because it's a bit of a lengthy quote. It's from the transcript at INQ.009.003.0100 at .0183. Do you see at the top of the page at line 4 – actually line 3 towards the end, there's a quote that starts:

I absolutely think they should be licensed.

MR COHEN: Yes, I can see that.

MR ASPINALL: Can you just read from there to the end of the page? I'm sorry, not the end of the page, just the end of the paragraph.

MR COHEN: Right. Okay. Do you want me to lead it out loud?

5

MR ASPINALL: No, no, if you can just read it to yourself. I was just interested on your views on that issue.

MR COHEN: The most important point to make is that junket operators in Macau operate on a different model to the junket operators in Australia. So we're talking about two completely different schemes. So when Professor Rose talks about that he was talking about Macau with the junket operators who are much more like casino – mini casino operators themselves in the way they operate their business which is very different to what we have here. And yes, there have been accusations in Macau of casinos colluding with junket operators, but there is a Macau pre-2004, post-2004 and a lot of what he might be talking about, I suspect, is historical, back in the days when it was a much more unregulated marketplace.

MR ASPINALL: Yes. Well, I assume that from what we've just been discussing that you accept that there is a tension when you place the regulation – the responsibility for approving junkets or licensing them to the casino operator, correct; that does create a tension?

MR COHEN: Sorry, is that a question? I - - -

MR ASPINALL: You accepted, I think, that when you moved the responsibility for whether or not to allow a junket promoter to operate in your casino that does create a tension for the casino?

MR COHEN: If you're allowing – if you're adopting the Macau model where the junket operator is virtually a de facto casino operator, it's a very different proposition.

MR ASPINALL: But in your view, and where you depart from Professor Rose, is that you think that the casino does have the capacity and the desire to regulate them in the way a government would.

MR COHEN: I think they do in Australia. That's what we're talking about. Yes, in Australia I think they do.

40

MR ASPINALL: And that is based upon an assumption that the casino will have a strong compliance culture?

MR COHEN: Along with the fact that they have valuable licences and reputations to protect, so it's not in their interests to break the law or to do anything that puts that licence at risk or puts their reputation at risk. And the reputation being at risk is an important point because it leads to all sorts of other opportunities for them if their

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reputation is solid. If their reputation is poor, they're not going to be able to open new casinos, they're not going to be able to get the finance they require, they're not going to get licences they have extended, so reputation is important. It's not just because they don't want bad news in the newspaper; it's actually because from a
5 business point of view they need to have a strong, positive reputation and they need to have those licences in good standing. So it's in their interest to, if you like, behave.

10 MR ASPINALL: Right. We might come back to that issue a bit later in respect of the modernisation review.

MR COHEN: Yes.

15 MR ASPINALL: But just before we leave this sentence, I understand your position to be that the casino does have the capacity to assess and regulate junkets effectively; is that right?

20 MR COHEN: I'm talking about – well, I'm saying the Victorian casino does and I would say the New South Wales casinos also do. Those – casinos of that type or style do, yes.

25 MR ASPINALL: And beyond the mention you made of the databases they have access to, is there any other reason that you think they have a better capacity than the regulator to make those sort of judgments?

30 MR COHEN: Well, they also generally have people on the ground in the jurisdictions where those junket operators are from, whether that's – you know, most junkets now these days – well, not the last six months, but these days come from China, but in the past there's been other parts of Asia as well, and the casino operators usually have somebody close by on the ground who they – who also has access to local information that the casino regulator does not have access to.

35 MR ASPINALL: Yes, but is there not a potential issue that the person on the ground in China, for example, is in all likelihood going to be one of the persons who is charged with finding and marketing to gamblers?

MR COHEN: Sorry, you have frozen.

40 MR ASPINALL: I'm sorry.

MR COHEN: Can you go back to “the person on the ground is charged with” and then you disappeared for a while.

45 MR ASPINALL: I hope I've thawed now. My question was – you spoke about the people on the ground; correct?

MR COHEN: Yes.

MR ASPINALL: Being a valuable source of information.

MR COHEN: Yes.

5 MR ASPINALL: I was suggesting to you isn't it likely that the people on the ground are the very people who are trying to procure gamblers rather than talk the casino out of accepting them?

10 MR COHEN: That's a reasonable point and that's something that the casino operator needs to manage. They need to make sure that they've got the right people with the right controls over those people, but yes, you're right. There is a risk for the casino operator that the person on the ground might have incentives to have junket operators approved and perhaps don't have as independent an eye as they should have.

15 MR ASPINALL: Thank you, Mr Cohen.

20 COMMISSIONER: It's not so much, is it, the right person; it's the fact that any employee who is charged with trying to assist the company to make profits will obviously want to do whatever he or she can to snare or have a junket that's going to give a great deal of money to the casino employed with the casino. You would agree with that?

25 MR COHEN: I would agree that that's one of their responsibilities, but they should also be – understand the responsibility they have to the company.

COMMISSIONER: Wait for the next question, Mr Cohen.

30 MR COHEN: Okay.

35 COMMISSIONER: You will have an opportunity to deal with it; I just wanted your assistance on this. Where there is a desire to make profits which, thankfully, in this country we endorse and approve, where there's a strong desire to make profits and you charge an employee with assisting you to try and make those profits, that employee is burdened, isn't that employee, if they also have to decide whether to say no to a junket and to try and balance that up when their real responsibility is sales and marketing. Isn't it right that you have to just get rid of the role of sales and marketing from that person's position so that they can act independently and advise the casino of the true position?

40 MR COHEN: That is correct. The marketing people in any gambling company are the ones that put that company's licences most at risk. That's my experience as a regulator. That's where the – most of the problems come from in any gambling company is their marketing people put the company's reputation most at risk.
45 They're the people that cause the breaches. It doesn't matter which sort of gambling we're talking about, and that's because the marketing people are engaged to be cutting edge and to put their company at the forefront. What the company needs to

do is keep reminding their marketing people that they've got to put the reputation of the company first and the profits of the company second - - -

COMMISSIONER: Yes - - -

5

MR COHEN: - - - and if they don't do that, that's a problem.

COMMISSIONER: Yes, I'm sorry to interrupt you. There was expert evidence in February – I'm aware that you've been looking at some of it – which indicated that this is a problem on an international scale so that casinos in America and various other places have exactly the same problem, and the education of the marketing group would probably convert the marketers into incompetence. You see, what they've got to do is sell, and to try and shackle them with behaving like an ethics lecturer is not going to work, so isn't it the case that you have to have a structure where the marketing people do the marketing but there is, in fact, a temperate person in place to check what's happening before the casino goes into business with a triad-connected junket.

MR COHEN: You're 100 per cent correct, and that's why every casino operator needs to have a compliance manager who has responsibilities that oversee all those types of activities. In other words, that no casino operator should engage a junket operator without the compliance manager having first signed off on it, but that compliance manager is a loose title. I mean a whole compliance team should be responsible for any marketing activity. Every marketing activity needs to go through compliance and that includes engagement of junkets. Sorry.

COMMISSIONER: That's all right. I've heard evidence where compliance officers have many roles and so many hats that they're unrecognisable on which particular day which particular hat is being worn. This is also an international problem, so it's – I'm not really suggesting that it's anything other than making a decision to fund a compliance AML program properly is probably the outcome, but you would agree, wouldn't you, that it's inappropriate for people who are advising a board of a public company in relation to anti-money laundering that they should have another five roles looking at the sales team, the marketing team, whether the junkets come in or out. That would be unacceptable, wouldn't it?

MR COHEN: I would say the number 1 issue for the casino operator is to make sure the structure is correct, and that the compliance team has all the budget and powers that it requires to oversee all of those activities. Yes, it costs a lot, but casinos can make a lot of money too, and they should use that money wisely because if they want to keep money – keep making money and be a sustainable business then they have to be a compliant organisation. I've got no sympathy for a casino operator who says, "We're not going to do compliance because it costs too much".

COMMISSIONER: No, but if you just come back to the question I posed, specifically, it is not acceptable, is it, to burden a person who has money laundering advisory obligations to a board with a whole lot of other obligations to oversee

marketing and sales and various other aspects of the company's business; do you agree with that or not?

5 MR COHEN: I don't expect it to be one person, but I expect the whole team to take that responsibility at a casino. I don't think it's unreasonable at all that they have a team of people who are responsible for all matters associated with compliance.

10 COMMISSIONER: I think perhaps I haven't made myself clear. Do you agree with the proposition that it's inappropriate to burden a compliance team or officer, who is charged with the responsibility to advise the board about anti-money laundering within the organisation, to have that team or officer also responsible for supervising the sales, marketing, obtaining of junket approvals at the same time?

15 MR COHEN: I don't have a problem with that. I think – I think – sorry, I will rephrase that because that's a bit ambiguous the way I answered that.

COMMISSIONER:

20 MR COHEN: Sorry, I could have been misunderstood. What I'm trying to say is that I think it's perfectly appropriate for one person or one team to have all those responsibilities, so centralise the compliance.

25 COMMISSIONER: Don't worry about the tag or the label. What I have heard from the experts – international experts apart from yourself, of course, is that to burden one of – a compliance officer with obligations to drive profit at the same time as regulating anti-money laundering within the company is not appropriate. You disagree with that proposition?

30 MR COHEN: I don't even understand what the concern is. I mean, compliance is compliance.

COMMISSIONER: Just pause. You disagree with the proposition?

35 MR COHEN: I disagree with it because – maybe I'm misunderstanding what they're saying.

40 COMMISSIONER: So what they're saying is that once you have a person who has an obligation to drive the profit of the company at the same time as advising the board that they shouldn't be engaging with X because he's connected to a triad gang, albeit that he would bring millions in turnover, that person is conflicted. That's what the proposition is. Have you not heard that before?

45 MR COHEN: Unfortunately, I didn't hear you that time because you broke up, but it seems to me - - -

COMMISSIONER: Wait, wait, wait, Mr Cohen, please. If you didn't hear me, I don't want you to answer something that hasn't been put to you. What I think I will

do is I will take the luncheon adjournment. I know we started late but we need to have a break for various purposes, and so I'm conscious of the time that you're giving us and what I will do is adjourn until 2 pm.

5 MR COHEN: Okay.

COMMISSIONER: Thank you, Mr Cohen.

10 **ADJOURNED** [1.05 pm]

RESUMED [2.02 pm]

15

COMMISSIONER: Yes, thank you. Yes, Mr Aspinall.

MR ASPINALL: Thank you, Commissioner.

20 Mr Cohen, before we move on to the next set of topics, I want to just confirm with you on the transcript that you were in receipt of two certificates which had been issued pursuant to section 17, subsection (2) of the Gaming and Liquor Administration Act 2007?

25 MR COHEN: That is correct.

MR ASPINALL: Thank you, Mr – and you are in possession of those certificates?

30 MR COHEN: In possession, they're in a file somewhere but I don't have them with me.

MR ASPINALL: Thank you very much, Mr Cohen. You may recall that in 2015 there was a program shown on Four Corners on the ABC called High Rollers – High Risk?

35

MR COHEN: Right. Yes, okay. The Four Corners one, the Linton Besser one. Okay.

MR ASPINALL: And do you recall - - -

40

COMMISSIONER: Just pause. Don't talk over. Sorry, Mr Cohen. I missed what you said there.

45 MR COHEN: That's the one with Linton Besser as the reporter? I'm just trying to get in my mind which program we're talking about.

COMMISSIONER: That's the one.

MR COHEN: Yes. Okay.

MR ASPINALL: And you recall that arising out of that, you were asked by ILGA at the time to do a review of junket – well, a review of the available material about approaches to junkets, the oversight of them in Australian casinos?

MR COHEN: Yes.

MR ASPINALL: And you provided that report in 2015?

MR COHEN: Yes.

MR ASPINALL: I would just like to show you an excerpt from that program, if I may, which is INQ.800.001.0001, and if that could be shown on the live stream, please.

COMMISSIONER: Yes. Thank you. Yes, please, Operator.

MR ASPINALL: That, Commissioner, is exhibit A144.

COMMISSIONER: Thank you for that.

VIDEO SHOWN

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MR ASPINALL: Thank you. If you could pause it there. That can be taken off.

COMMISSIONER: Yes.

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MR ASPINALL: Mr Cohen, do you recall seeing that at the time?

MR COHEN: I may not have seen it live, but I saw it around that time, yes.

MR ASPINALL: Exactly, yes. And you understood that in response to the allegations that had been made in that program, ILGA had asked you to review the available material about the existing approaches to arrangements for the oversight of junket operations in Australian casinos?

MR COHEN: Yes, they did.

MR ASPINALL: And to conduct a review of ILGA's approach to the oversight of junkets at the Star?

MR COHEN: That's correct.

MR ASPINALL: Now, if I could take you to your review that is found at exhibit F41, which is INQ.080.050.0447, can you see that Mr – can that be shown, please? Do you recognise that, Mr Cohen?

5 MR COHEN: Yes.

MR ASPINALL: That's your report.

MR COHEN: It is.

10

MR ASPINALL: And if I could ask you, operator, to move to page 0450 and zoom in on the introduction. Do you see, Mr Cohen, that those are the items that I just referred you to in respect of what ILGA was looking for.

15 MR COHEN: Yes. Yes.

MR ASPINALL: Now, if you could zoom out of that page again, please. And if I could take you to the second last paragraph on that page which starts "A story".

20 MR COHEN: Yes.

MR ASPINALL: Can you read that to yourself, please?

MR COHEN: Yes.

25

MR ASPINALL: You concluded in the report that the differences between junket activities in Macau and other jurisdictions made the findings in that program irrelevant.

30 MR COHEN: Irrelevant to the New South Wales situation, yes.

MR ASPINALL: Yes. And if I could now show you the next page, 0451, at the bottom of the page, the last two paragraphs. Can you see that?

35 MR COHEN: Yes.

MR ASPINALL: Can you read those to yourself?

COMMISSIONER: There's one going over the next?

40

MR ASPINALL: Yes, the bottom paragraph proceeds on to the next page, but when you've finished let me know and I will move to that.

MR COHEN: Okay. Okay. I'm ready for the next page.

45

MR ASPINALL: Thank you, Mr Cohen. Could you blow up the top?

MR COHEN: Okay. Do I need to read the last two paragraphs of that section?

MR ASPINALL: No.

5 MR COHEN: Okay.

MR ASPINALL: Thank you. I would now just like to show you the final paragraph on that page if you don't mind.

10 MR COHEN: Okay.

MR ASPINALL: Now, Mr Cohen, in the excerpts that we've looked at, particularly the paragraph on the bottom of page 0451, you said:

15 *Upon closer examinations, in jurisdictions which offer a traditional junket business, that is essentially every jurisdiction which has junkets other than Macau, the concerns about gaming integrity do not stack up.*

Now, can I ask you, in that context what did you mean by the traditional junket?

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MR COHEN: I'm sorry, did you – you froze for a while. I didn't know if you had finished your sentence.

COMMISSIONER: Ask the question again, please.

25

MR COHEN: Sorry, that's why you haven't heard from me. I thought you were frozen.

30 MR ASPINALL: I'm sorry, Mr Cohen. I wanted to ask you in respect of the last paragraph on the page that is on the screen you speak about:

In jurisdictions which offer a traditional junket business.

MR COHEN: Right.

35

MR ASPINALL: You see?

MR COHEN: Yes.

40 MR ASPINALL: Can you tell me what you mean by a traditional junket business?

MR COHEN: That's probably poor terminology. What I meant was a junket business that is operated – that has been operating as it has in Australia since casinos started here – or at least casinos with junket programs started here in the nineties.

45 That – I was considering that to be the traditional junket business so I can imagine people in Macau would say theirs is the traditional junket business. Traditional is probably the sorry did you say something else?

MR ASPINALL: You cut out at “traditional is probably”; can you just repeat the
- - -

5 MR COHEN: I think traditional is – I think traditional is the wrong word to have
used. I probably should have said in jurisdictions which offer a junket business of
the type that’s offered in Australia in casinos such as Crown and the Star. That is
what I meant, which is the way junket business is run, as far as I understand it, in
every other jurisdiction other than Macau.

10 MR ASPINALL: Yes. Now, in respect of that terminology of traditional junket,
that – can I just show you a reference to the Casino Control Act of 1992 which is at –
I will just bring it up for you. It’s at INQ.070.001.1061. And that’s at pinpoint
.1101. And is it possible to bring up two pages because the – thank you. You see
there the word “junket” is defined.

15 MR COHEN: It’s very small. I’m trying to look for it. Yes, down there – I can see
it. It took me a while to find it:

20 *In this Act junket means –*
that’s what we’re talking about.

MR ASPINALL: Yes. Do you see junket has two meanings?

25 MR COHEN: Yes.

MR ASPINALL: And I can tell you – you can take it from me that the definition
which had traditionally, perhaps until 2010, been the definition of junket was (b).

30 MR COHEN: Right.

MR ASPINALL: And that’s what - - -

35 MR COHEN: Okay.

MR ASPINALL: That’s what some persons giving evidence to the Inquiry have
called a traditional junket.

40 MR COHEN: Okay.

MR ASPINALL: Is that your understanding of what a traditional junket is?

MR COHEN: Both parts to me mean a traditional junket, both parts (a) and (b).

45 MR ASPINALL: Well, the thing is, in respect of the allegations that were being
made in the High Roller – High Risk clip that we looked at, the allegation was,
firstly, that the junket operator provided credit to the players.

MR COHEN: Yes.

MR ASPINALL: Correct?

5 MR COHEN: Yes.

MR ASPINALL: And enforced upon the debts; correct?

10 MR COHEN: I think arguably, but yes. I mean, I'm saying it may have, yes.

MR ASPINALL: This is the allegation.

MR COHEN: Yes.

15 MR ASPINALL: And effectively operated the VIP rooms of their own volition or in an unsupervised fashion; is that right?

MR COHEN: Yes, though we should point out that the dealers in those rooms would have been licensed to the casino operator of that casino, but otherwise yes.

20

MR ASPINALL: And so in terms of what a traditional junket was in – at least in Sydney, that wasn't a traditional junket, was it, because junket operators didn't do those things.

25 MR COHEN: So just to be clear, what was recorded in that Four Corners program is a traditional junket for Macau, but not for Sydney or for any other casino in Australia.

30 MR ASPINALL: Yes. And so when we go back to your report at 0451 – are we able to bring that back; it was INQ.080.050.0447.

COMMISSIONER: Yes.

35 MR ASPINALL: At 0451 at the bottom of the page, and going on to the next page, please.

COMMISSIONER: Yes.

40 MR ASPINALL: You see – do you see that, Mr Cohen?

MR COHEN: Yes.

45 MR ASPINALL: And so the allegations in the program were not in respect of traditional junkets, were they? They were talking about a different form of junket, the Macau junket.

MR COHEN: They were. They were absolutely talking about the Macau junket and not – I know I used the word “traditional”. I probably shouldn’t have. Not the Australian junket model.

5 MR ASPINALL: And so wasn’t what ILGA was asking you to do was consider the implications of what non-traditional junkets meant to the approach which Australian casinos were taking to these junkets, these Macau-style junkets, I might call them?

10 MR COHEN: Yes, that’s correct. That’s correct, and also whether they were operating what they were doing efficiently anyway as well – or as well.

MR ASPINALL: When we go back to 0450 - - -

15 COMMISSIONER: 0450.

MR ASPINALL: - - - you see the second last paragraph - - -

COMMISSIONER: On the left-hand page.

20 MR ASPINALL: On the left-hand page.

MR COHEN: Right. Yes.

25 MR ASPINALL: You’ve said that the differences meant that the findings in the program were irrelevant, didn’t you?

MR COHEN: Yes, irrelevant to New South Wales, yes.

30 MR ASPINALL: But at that time, New South Wales had a provision within its Act which allowed non-traditional junkets as well as traditional junkets, didn’t it?

35 MR COHEN: Whether they had it in the provision in their Act or not, the significant difference is that the Macau model allows the junket operator to run the room. So in the room within the casinos in Macau, there are rooms set aside for specific junket operators and they run the room, which means, most importantly, they manage the cage within the room which is where the accounting is recorded for the purpose of turnover or expenditure of the players, the conversion of money to chips or whatever model they’re using, and that is allowed in Macau. It’s not allowed in Australian casinos. It’s a significance difference.

40 MR ASPINALL: Now, in terms of your conclusion that the findings in the program were irrelevant, did you do any investigation as to the types of junkets that were operating in Australia at that time?

45 MR COHEN: Yes, that was the purpose of the review.

MR ASPINALL: Did you go to the casinos – sorry. Did you go to various casinos and observe the type of action or play that was taking place in junket play?

5 MR COHEN: I've been to so many casinos so many times, I can't recall if I went during that particular review, but I certainly met with the regulator at the casino at Star to talk to them about the methodology used for enforcement of the junket regime in New South Wales. I cannot recall at that time whether I visited junket rooms or whether that was a different time, but I've certainly been in junket rooms in the Star and looked at them, but I can't recall if I did it for that – at that particular time for
10 that project.

MR ASPINALL: What about Crown in Melbourne?

15 MR COHEN: I don't believe – I visited their rooms many times when I was the regulator. I don't think I have done so since. I don't think I've had cause to visit their junket rooms since. That's not true. I do recall I have been, but not for this – not for the purpose of this review. I have been to their rooms since, now that I can recall, but not for this purpose.

20 MR ASPINALL: I see. Now, in terms of that answer, do I understand that in terms of what you did, that you spoke to the regulator and that you may have visited a junket room at the Star? Is that correct?

25 MR COHEN: That's correct.

MR ASPINALL: Now, in terms of your comment, if we could go to 0452, you see you say at the top of the page – if you might blow that up – the integrity issues, if they ever existed at all, are external to the operations of casinos. Were you referring there to the allegations which had been made in the Four Corners program that the
30 junket operators were providing credit and enforcing debts perhaps illegally?

MR COHEN: I think so. Without reading the whole report, I imagine that's what I was talking about. I think I talked about three different issues that were raised in that Four Corners program, all of which were specific to Macau and not occurring outside
35 Macau.

MR ASPINALL: And if we look at the final paragraph of that page again, you see the final two sentences:

40 *in addition to this role, junket promoters can provide credit to players they recruit. How that credit is offered and collected is external to the operations of the casino.*

45 MR COHEN: Yes.

MR ASPINALL: Correct?

MR COHEN: Yes.

MR ASPINALL: Do I take that to mean that from your perspective, those things were, therefore, beyond the concern of the regulator?

5

MR COHEN: I – yes, that is my – that is my view. It – they don't impact on the integrity of gaming.

MR ASPINALL: Can you explain to me how you come to that conclusion?

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MR COHEN: The objectives of the Casino Control Act are about – essentially about operations of the casino and the people who operate the casino, not the things that occur outside the casino. Now, I will be a bit more clear on this. In that language, casino – in the Casino Control Act, “casino” means the gaming floor. It doesn't mean the whole complex, but I would nevertheless accept that anything that happens in the casino complex can be the responsibility of the regulator. But for this purpose, when it comes to gaming in the casino, I think the regulator's interest is what happens inside the casino, not what happens outside, what happens externally. It's beyond the remit of the regulator to be able to do it. It's not empowered in many cases anyway to be able to search for documents and things outside the casino. It is if it's the casino operator's own staff, but not if it's not the casino operator's.

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MR ASPINALL: But if the casino operator was in business or had a business association with persons who were effectively of bad repute or dishonest or unsatisfactory, wouldn't that be an important issue?

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MR COHEN: Yes, and that is relevant.

MR ASPINALL: Whether or not they did those things externally or internally to the casino?

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MR COHEN: That's correct. I agree with that. That is why the casino operator is required to do due diligence on junket promoters, one of the reasons.

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MR ASPINALL: That would be – sorry. That would be a reason why the fact that those things were happening was not irrelevant, wouldn't it, as you concluded?

MR COHEN: What I'm trying to say is that the – if the junket operator is participating in illegal activities outside the casino, that makes them an unsuitable person or, in the language of the legislation, it would be an unsuitable business association for the casino operator to deal with them, but it's not the regulator's job to find out whether those activities are legal or illegal. That's another law enforcement agency. The regulator can act on those findings. So if the junket operator is found by another court to be – to have broken laws that are of concern to the regulator, then the regulator would say that's not a junket operator the casino operator should be dealing with. Doesn't have to be junket operators, any business associate they're doing business with, but it's not the gaming regulator's

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45

responsibility to be doing the investigations to determine whether the junket operator has broken a law that's not within the remit of the Casino Control Act.

5 MR ASPINALL: But doesn't that overlook the fact that one of the functions of the authority under the Act is to ensure that the conduct of gaming remains free of criminal influence or exploitation?

10 MR COHEN: I'm not sure that the link is there. The conduct of gaming is what occurs on the gaming floor and the criminal exploitation refers to the activities inside the casino. So I'm not sure where that – where your – where that link is that says what happens external to the casino is relevant to that objective of the Act.

15 COMMISSIONER: But if you have a criminal gang – the head of a criminal gang who frequently operates the junket operation within the casino but does not misbehave in the casino, the fact that he is a relevantly well connected triad member is of some relevance, is it not?

MR COHEN: Yes, it is, but - - -

20 COMMISSIONER: So – just wait. So if the object of the Act, as Mr Aspinall described it, is to ensure that the casino is free from the influence of exploitation of criminals, isn't the fact that this particular triad member who is bringing in cash to assist the junket to operate, such cash being the proceeds of crime, would that not be also a relevant matter?

25 MR COHEN: It's – it's relevant for AUSTRAC to worry about the proceeds of crime part. That's the Know Your Customer obligations.

30 COMMISSIONER: Don't worry about – Mr Cohen, I'm asking you about whether it's relevant in the light of what Mr Aspinall is asking you. He is focusing on what you've said in this report about the irrelevancy of all of the things that we saw in that little clip. So is it not relevant that the triad head, or the head of the group, is bringing the large amounts of cash in and obtaining chips for his junket players? Now, isn't that a relevant matter for consideration at least by the casino operator and possibly the regulator?

35 MR COHEN: The reason why I say that it's irrelevant is because the junket operator is not conducting the gaming in the casino. The junket operator, in the Australian context we're talking about, is delivering the player to the casino and may be providing credit to that player. The player is the one that, therefore, has the cash and it's the player's cash that the regulator, and that means the gaming regulator and the financial transactions regulator need to worry about, and that's why I'm saying the junket operator in this instance is irrelevant. The junket operator could easily be providing that money to the player in a neutral jurisdiction that's got nowhere near the Sydney casino and that player brings the money with them to the casino. So if you say that the junket operator is – needs to be checked because they're bringing the money to the casino with that player, they will just do it off-site. So you haven't

solved anything by saying it's either relevant or irrelevant to the exercise. Crime will always find a way around the regulatory scheme.

5 COMMISSIONER: That's why, isn't it, that the matters that were identified in the program have some relevance?

10 MR COHEN: No, the reason why I said the matters aren't relevant is because the claims made in the program were of activities that only occur in Macau, because of the style of junket operation that they allow in Macau.

15 COMMISSIONER: I understand your point that the junket operator who is the criminal and connected to the triads may give the money to the junket player in Pitt Street and therefore it's not on the casino premises, but the fact that his 2.5 million or 5 million or whatever it might be is handed over as the proceeds of crime to the player who then goes down to the casino, is not that fact that the casino operator – I withdraw that. Is not that fact that the junket operator is of that ilk of some relevance to the casino operator and the regulator?

20 MR COHEN: Yes, that is relevant and that – I know I'm sounding like I'm a bit jumping around, but I'm thinking of it from a different perspective. It is relevant because we recognise that regulatory controls over junkets are worthwhile, and that's one of the reasons why they're worthwhile. But the comment about irrelevancy that I put into that report related to the claims made in the Four Corners program specifically.

25 COMMISSIONER: Mr Aspinall.

30 MR ASPINALL: Could we have a look at a new video now, please, operator. That is at INQ.800.001.0010 which is exhibit F93, Commissioner.

COMMISSIONER: Thank you.

MR ASPINALL: And that can be shared with the live stream.

35 **VIDEO SHOWN**

40 MR ASPINALL: Mr Cohen, can you hear me?

MR COHEN: I can hear you, yes.

MR ASPINALL: Can you see the video?

45 MR COHEN: Yes, it's frozen at the moment, but yes.

MR ASPINALL: I want you to assume for the purposes of viewing this video that this is showing footage in the Suncity Room in Crown Casino.

MR COHEN: Okay.

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MR ASPINALL: And that the persons behind the desk that we see in the video are employees or representative of Suncity - - -

MR COHEN: Right.

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MR ASPINALL: - - - not of Crown Casino. Can we resume the video now, please.

VIDEO SHOWN

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MR ASPINALL: Just pausing the video there, please, and you can take it down, can you agree with me, Mr Cohen, that what we saw was not the operation of a traditional junket in the Australian sense?

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MR COHEN: No, I can't tell from that. All I'm seeing is somebody on one side handing a lot of money to someone on other side who looks like they're changing it for plaques, but that's all I can tell. I don't know what happens after that. So no, I can't say whether it's traditional or not traditional. I don't know - I don't know what's going on at all. In fact, I can't even see - I'm assuming it's green-coloured money but I don't even know what that is given - given what it - I will assume for the sake of this that they're \$100 Australian notes but they may be foreign currency too because Crown does accept foreign currency.

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MR ASPINALL: Well, using the assumptions that I asked you to make before we viewed the video, what you saw there was a person presenting to a desk within the Suncity Room, which I asked you to assume was operated by Suncity representatives, large bundles of cash in exchange for what are called plaques, isn't it?

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MR COHEN: Yes. That's what it looks like, yes.

MR ASPINALL: And that's not the operation of a traditional junket, is it?

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MR COHEN: Well, if I have to assume that they are Crown's plaques then that's not what I would anticipate to be a traditional junket, but I don't know that that's - that they are Crown's plaques. If you're telling me that they are then that is not what I would have expected.

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MR ASPINALL: Yes, and you can make that assumption, Mr Cohen.

MR COHEN: Okay.

MR ASPINALL: And in making that assumption, what we are effectively seeing there is Suncity operating a cage within the Suncity Room, aren't we?

MR COHEN: One of the functions, but yes.

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MR ASPINALL: And that is consistent with what we might call the Macau style of junket, isn't it?

MR COHEN: It's consistent with some of the activities of the Macau style junket, I agree.

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MR ASPINALL: And having regard to the fact that your concern was limited to the four walls – what we might call what happens within the four walls of the casino, that would be of grave concern to you as a regulator, wouldn't it?

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MR COHEN: I don't know what compensating controls are in place so at the time that I was regulator this activity would not have been occurring, but in the 10 years since I've left – and I don't know what era – what year this was filmed so you may well embarrass me shortly and say it happened under my watch, but I don't believe it would have. The – I don't know what the compensating controls are. I mean, the first thing to note of course is somebody has filmed this, so the camera is watching, which is pleasing to see. What they did with it, I don't know, but there are – there may well be other compensating controls that I'm not familiar with, for example, the junket, whilst handing over those plaques, may contemporaneously be advising Crown that they've done that or the Victorian regulator they've done that. I don't know because I don't know what the controls are that are in place or were in place when the Suncity Room was established at Crown.

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MR ASPINALL: Well, assume that what is taking place there is that a junket representative is exchanging large quantities of cash from a cooler bag for Crown plaques and assume that whatever control is in place has not prevented that occurring. Can you make those assumptions?

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MR COHEN: All right. I will make those assumptions, yes.

35

MR ASPINALL: Having seen those – having made those assumptions, what are the risks you see associated with the video behaviour that we see in that video?

MR COHEN: There is the potential for the person handing over the cash to be laundering that money. There is a responsibility on Crown to report that transaction to AUSTRAC and for AUSTRAC to investigate that. There's a responsibility for Crown to know who the customer is that is spending that amount of money. It may be that it's – and I don't know who the player was. It may be a well-respected international player who has – that transacts in cash a lot. I don't know. There's a lot more that I don't know than I do know, which makes it difficult to explain what might have happened in this set of circumstances.

40

45

MR ASPINALL: And would it be concerning to you as a former regulator if, in fact, the casino didn't have an obligation to report that to AUSTRAC?

5 MR COHEN: I would be surprised. When I was a regulator, the relationship between the gaming regulators around Australia and AUSTRAC was almost non-existent because of legal restrictions. I don't know what the situation is today. So I would have been surprised if that was not being reported to AUSTRAC, but I would not have known if it had been reported to AUSTRAC because I was not allowed to be told under the federal law in place at the time.

10 MR ASPINALL: And would you also be surprised if you were told that the camera which recorded that footage did not record and store that footage; it only showed it live to a screen?

15 MR COHEN: I'm just thinking about what the obligations are. I would expect anything that's game play related to be stored for seven days. I'm not sure what the obligations would be on this sort of transaction as – but I would be – I would have been surprised – or I am surprised if you're telling me that it was not recorded.

20 MR ASPINALL: Yes. And that would be exacerbated if there were not casino inspectors manning the cameras at all times, wouldn't it, because it would mean that transactions like that may be lost forever?

25 MR COHEN: I agree with that but that's not a reason to have inspectors looking at cameras 24/7. There's very little to see for most of the 24/7. It's not a good use of inspector's time. It's much better to record it and come back later.

30 MR ASPINALL: But if you don't have each camera in an important location, like that camera obviously is, recording at all times such that the footage can be recovered, then you would have to have casino inspectors watching it all the time, wouldn't you, or you would potentially miss things?

35 MR COHEN: Oh, yes, you will potentially miss things, but that's always going to happen. Even if you record it, you're going to potentially miss things. You can't – there are thousands – millions of transactions every day in a casino. You're not going to be able to see them all. It doesn't matter how many inspectors you have and doesn't matter how good their – how good they are and how good the cameras are. There's all sorts of problems that will never be seen using a camera or a catwalk or anything else. There are people who cheat with sleight of hand that can't be seen by
40 the normal person – by a person, just like magicians do tricks and you can't see how they do it. It's the same with people who cheat so you're never going to see everything.

45 MR ASPINALL: But we're not talking about millions of transactions in – of hundreds of thousands of dollars in cooler bags a day, are we? This is a particular risk we're looking at.

MR COHEN: No, but we don't know when this one is going to occur, so you have to watch every camera all the time to know when there's going to be one of these. You don't get advance notice that there's going to be a million dollars transacted at 3 am on the 17th of August. You just don't know when these are going to occur, so
5 it's not a good use of time, which is why you have a casino that has internal controls and procedures, the regulators have audit programs. You do it in another way. You can't do it by live visual inspection. You just won't be able to do it. It's just not the way to do it.

10 MR ASPINALL: Thank you, Mr Cohen. If we might return to your junket review, which is INQ.080.050.0447. Could we go to 0450. And could you zoom in on the second paragraph under the executive summary, please. Can you read that, Mr Cohen?

15 MR COHEN: Yes.

MR ASPINALL: You said there in the context of regulation of junkets that a major area of risk to the regulator is unnecessary involvement, which might not only impact on the act of the regulated entities to pursue their business but also put the regulator
20 at risk of being unnecessarily blamed for a lack of commercial success by the licensed operator.

MR COHEN: Yes.

25 MR ASPINALL: But isn't that the whole purpose of having a regulator, to take that risk?

MR COHEN: I'm happy for regulators to take the risks which are relevant to the regulator to take, but the regulator shouldn't be taking the risks that are the industry's
30 risks.

MR ASPINALL: And isn't the situation where the regulator becomes concerned about being blamed for a lack of commercial success by an operator savouring of regulatory capture?
35

MR COHEN: I'm sorry. Could you say that again?

MR ASPINALL: In the circumstance where the regulator becomes concerned about a risk of being blamed for a lack of commercial success by an operator, isn't that
40 indicative of the regulator becoming captured by the regulated party?

MR COHEN: Yes, it – I think that's true. It could be considered to have been captured by the industry if it's not doing its – if it's getting in the way of doing business. I think that's a fair assumption, but that's not the reason for – that's not
45 what I was trying to say. What I was trying to say is that the regulator shouldn't unnecessarily get in the way.

MR ASPINALL: Well - - -

MR COHEN: The shorthand version of that is red tape – you know, getting rid of unnecessary red tape, but the regulator takes risks all the time. It doesn't need to
5 take the risks that it doesn't – that aren't – it shouldn't be responsible for.

MR ASPINALL: Well, if we could turn to 0453, please, and look at the paragraphs under Unnecessary Interference in a Casino Operator's Business. You talk there in the first paragraph about removing unnecessary red tape.
10

MR COHEN: Yes. Yes.

MR ASPINALL: And then that making the business less competitive.

15 MR COHEN: Yes.

MR ASPINALL: And then you talk about that being a significant risk for junkets because they're highly mobile and can choose from a number of locations.

20 MR COHEN: Yes.

MR ASPINALL: Then you say:

25 *A further risk to the regulator is if its regulatory activities become part of the operations of the business.*

See that?

MR COHEN: Right. Yes.
30

MR ASPINALL: As much as possible, you say:

35 *...the casino operator should make its own decisions in a way that meets regulatory rather than operating in a way mandated by the regulator.*

See that?

MR COHEN: Yes.

40 MR ASPINALL: And you say in the final sentence:

45 *As an example, the casino operator should develop its own system of internal controls for approval by the regulator rather than being told by the regulator how to implement particular aspects of its business.*

MR COHEN: Yes.

MR ASPINALL: You see that?

MR COHEN: Yes.

5 MR ASPINALL: But if making the assumptions that I asked you to make, what we saw in that video occurred in Crown Melbourne; isn't that an example of the regulations being ineffective?

10 MR COHEN: Once again I have to say I don't know because I don't know what other compensating controls were in place. I've seen 30 seconds or a minute of something and I don't know what else was in place so I can't tell you whether they were effective or ineffective.

15 MR ASPINALL: But can you see any circumstance in which the transaction we saw in that footage could be allowed under any reasonable sort of internal control or regulation?

20 MR COHEN: Yes, I can. If the – if there are proper – if there are other controls in place, yes, I absolutely can. It's – that's not to say that the – I'm not saying that the transaction was with legal process. I don't know that they were, but there are measures in place to review that process to see whether they are or not, but you don't do it in advance of that transaction taking place. I don't know what happens after the transaction takes place. It's out of context so, you know, that's a snippet out of context. Now, if there was nothing done and it wasn't reported to AUSTRAC, those
25 plaques were given to the player, the player played with them and nothing was – nothing was looked at, then yes there are issues of concern, but I don't know that none of those things occurred. It's quite possible that other measures occurred that I am not aware of.

30 COMMISSIONER: Well, you're just being asked to assume none of the things that you've just said, but rather looking at that transaction with that rather huge amount of money coming across a desk that's not operated by Crown, but rather a junket operator; do you not see that as of some concern?

35 MR COHEN: I'm used to casinos having large amounts of money being transacted
- - -

COMMISSIONER: I think we all are. I think we all are, Mr Cohen.

40 MR COHEN: So perhaps – perhaps that's – the amount of money doesn't necessarily concern me from the point of view of being shocked by its size. I expect that that transaction would have been reported to AUSTRAC. I expect AUSTRAC would have investigated that to see the source of the money and to see whether Crown was aware of the customer. They're the steps that I would have expected to
45 have occurred. As I said previously, I'm surprised, based on what I've been told, that they appear to be Crown's own plaques being passed across because that's not something that would have happened when I was there, but as I said, there may well

be controls in place that the Victorian regulator is aware of and comfortable with. I don't know.

5 They may have had an inspector in the room. I don't know. Without knowing the full story – as I've learned as a gaming regulator you need to know the full story – it's difficult to know whether or not I should be concerned or not be concerned.

10 COMMISSIONER: Well, the only issue identified in that answer was the fact that they were Crown plaques and not a Crown-controlled room, I suppose. And I see that you have all the expectations that everything that's in place is working appropriately. But if you have a room in a casino that is not operated by the casino operator but by the junket operator where the large amount of cash is brought in in the blue bag like that, just on those matters alone, would that not give you some concern?

15 MR COHEN: I would rather it actually happened at the casino than elsewhere where there are cameras around to see what's going on so - - -

20 COMMISSIONER: I'm not suggesting it's going to be anywhere else than in the casino. If you can just focus with me because I do appreciate your very experienced observations on this. At the moment we have at least a proposition given to you by Mr Aspinall which you've been asked to assume - - -

25 MR COHEN: I'm sorry could I interrupt you for a moment. I apologise, but I've not been able to hear you for the last 30 or 40 seconds or so.

30 COMMISSIONER: At the moment – I'm not suggesting anything other than the proposition that Mr Aspinall has put to you, that you assume the things that you have been asked to assume, that is, that it's a Suncity Room, that is a junket room, and that it is not operated – that it is not operated by Crown staff, but by the Suncity staff. The Suncity staff received the cash. It looks large, but may not be seen to be. And then the Crown plaques are provided to the player or the person – it may not be a player – and that is something that is of concern if it's not a Crown employee. I'm just asking you for that response.

35 MR COHEN: I can't tell you whether I'm satisfied or not satisfied because I don't – I don't know enough about what other compensating controls are in place and without that it's impossible to know.

40 COMMISSIONER: All right.

MR COHEN: Because things don't happen in isolation.

45 COMMISSIONER: Isn't one of the indicia that you've spoken about is that the junket process in Australia is one in which the casino operator has the control of the provision of chips and plaques to the junket player?

MR COHEN: That has been my view, yes, and I understand what you're saying.
Yes.

5 COMMISSIONER: No, no, just let me say it. It might be something else. And if,
in fact – if in fact, in this instance it's not the casino operator that provides the chips
and plaques, that's outside your assumptions, isn't it?

MR COHEN: That's correct.

10 COMMISSIONER: And so it's not the usual situation about which you've spoken,
is it?

MR COHEN: That is also correct.

15 COMMISSIONER: And so at the very least, it's unusual.

MR COHEN: It's unusual to me. Whether it's unusual to the modern day of casino
operations at Crown I'm not so sure, but it's unusual for me.

20 COMMISSIONER: Yes, Mr Aspinall.

MR ASPINALL: We might move on now, Mr Cohen, to the Casino Modernisation
Review. Do you remember that?

25 MR COHEN: I do.

MR ASPINALL: Operator, could you bring up that, which is INQ.080.050.32.99
and that is exhibit A74, Commissioner.

30 COMMISSIONER: Can I just ask you in fairness, Mr Aspinall, are you going to
ask Mr Cohen about the travel agent point that Ms Sharp has been referring to
previous?

MR ASPINALL: I certainly can.

35

COMMISSIONER: I think you should in the circumstances.

MR ASPINALL: Mr Cohen, do you recall that one of the quotes that I took you to
in your junket review was a reference by you, which is at the bottom of .0452, please
40 operator.

COMMISSIONER: Thank you, operator.

MR ASPINALL: I'm sorry. Can you zoom in on the bottom paragraph, please.
45 You see there that you concluded that in the Australian environment and in any other
jurisdiction other than Macau junket promoters are essentially glorified travel
agents?

MR COHEN: Yes.

MR ASPINALL: Having seen the footage and made the assumptions that I asked you to, that's clearly not true, is it?

5

MR COHEN: It - - -

COMMISSIONER: Well, not accurate.

10 MR ASPINALL: Not accurate.

MR COHEN: I believed it to be accurate when I wrote it because I was not aware of this other activity going on as I've been shown today.

15 MR ASPINALL: But even leaving aside the video, if the junket promoter is providing credit to the players, that takes their role beyond that of a travel agent, doesn't it?

MR COHEN: Not necessarily. I mean, I think it's quite possible travel agents provide credit to people who travel. I don't know if they do or they don't, but I – but it's - - -

20

COMMISSIONER: It'd be nice to have a list of those, Mr Aspinall.

25 MR COHEN: It's – it's an – it is an activity that is different to what most type of travel agents do. When I'm talking about glorified travel agents, I'm thinking of the type of travel agent that will take you on a tour of, you know, the cathedrals of France or something. They arrange the travel, they arrange the accommodation, they arrange the meals and they take you to all the cathedrals. This is one that takes you –
30 does all those things but takes you to a casino instead of cathedrals. That was my analogy.

30

MR ASPINALL: But if the travel agent is providing you money to gamble at a casino in Italy and collecting upon those gambling debts that would be beyond the activities of what almost anyone would describe as a travel agent, isn't it?

35

MR COHEN: No, I think – look, I think that is a fair difference between what junkets do and what the traditional travel organiser – probably travel agent – I probably should have said travel organiser rather than travel agent, but either way that probably is a little bit different. But the essential point that I was trying to make is that they deliver the players to the casino and, importantly from a gaming regulatory point of view, what occurs in the casino is undertaken by the casino operator and not the junket operator and that's how it's essentially different from Macau's model. That's the point I've been trying to make. It's not so much about
40 who lends the money and who doesn't; it's who runs the gambling in the casino.
45

MR ASPINALL: Could we now move on to the Casino Modernisation Review, please, operator which is INQ.080.050.3299, and that is exhibit A74, Commissioner.

COMMISSIONER: Thank you.

5

MR ASPINALL: Do you have that, Mr Cohen?

MR COHEN: I do.

10 MR ASPINALL: Do you recall this review?

MR COHEN: I do.

15 MR ASPINALL: Can you tell us how you came to be asked to do this, and what your instructions were.

MR COHEN: I was initially approached by Paul Newson, whose title I can't remember but think of him as the deputy secretary with the responsibility for the gaming regulator, who initially asked me whether it was something I could do. He was then seconded to run something else, I think Greyhound Racing New South Wales and Sam Torres became the person I reported to, and she asked me to do this review. Now, I know it arose because part of the agreement between Crown Resorts Group – Crown Resorts Limited and the New South Wales Government as part of their unsolicited proposal for the Crown Sydney casino, part of the agreement was that the New South Wales Government would undertake a review of their casino regulatory regime.

20
25
30
35
But I met with Sam Torres about this. She engaged me – actually, I'm not sure if it was Paul or her that engaged me at the time, but she was in charge when I got the final instructions and I was asked to modernise the regulatory regime. I asked whether I was to take them up to current practice or take them beyond current practice and she said take us beyond, and I did so accordingly. But in addition to modernisation I was also asked to look at competitive neutrality issues when two casinos operated and also to look at liquor-related issues as well.

40
MR ASPINALL: You mentioned that you were asked to – you asked whether they wanted to take you – whether they wanted you to take them beyond current practice. With respect to the jurisdictions that they were thinking about, did they give you any indication of the sort of model that they were looking at?

45
MR COHEN: I don't know if it was discussed, but it was clearly implied in the process that the New South Wales regulatory scheme had fallen behind the Victorian scheme in terms of modernity and that it was the Victorian model that New South Wales was interested in exploring.

MR ASPINALL: And was there any discussion of which aspects of the Victorian model they wanted - - -

MR COHEN: I don't recall any specific matters though I was asked to look at the – I think it was called the Restated Framework Agreement between the New South Wales Government and Crown as a guide to some of the things that had been considered between the New South Wales Government and Crown, but I can't recall
5 any specific instructions of particular areas where I was asked to look other than to be thorough and look at everything.

MR ASPINALL: And in terms of the outcomes – might take you to the next page, 3303. Do you see there's a paragraph there which we might have blown up; it starts:
10

The government's optimal outcomes of this review include –

and there's various points there.

15 MR COHEN: Yes.

MR ASPINALL: And it says there:

Implementation of the agreed outcomes from the unsolicited proposals process.
20

MR COHEN: Yes.

MR ASPINALL: Can you tell me what you understood that to mean?

25 MR COHEN: I understood that to mean the written agreement which I think is called the amended and restated framework agreement from – I may not quite have the wording correct, but that agreement had a number of measures proposed by Crown that they would like to see in the regulatory regime for when they opened Crown Sydney – what was to become Crown Sydney.

30 MR ASPINALL: And so did you understand it to be your role to implement those agreed outcomes in this report?

35 MR COHEN: Not to implement them. It was my role to review them and see whether they – whether to recommend that they should be implemented. The implementation is up to government. Some things would need Parliamentary approval because it would need legislative change. Some would need the regulator to agree, and some would need the operators to change their practices and internal controls. All those – the report refers to all the things that need to change before any
40 of these measures can take place, but it wasn't for me to implement any of them, only to make recommendations for others to implement.

MR ASPINALL: So in other words you were asked to consider the changes that Crown had asked be reviewed?

45 MR COHEN: That's correct.

MR ASPINALL: And then that went to government to see whether or not those recommendations would be implemented.

5 MR COHEN: There were other steps before that. I also had to consult with the Star
and a number of other groups including the Salvation Army, New South Wales
Council of Social Services, Clubs New South Wales, the Australian Hotels
Association – I can't remember who else. It's all listed in the review but there was
some consultation before that and – but eventually there would be a review to go to
10 government for the government to decide which of the recommendations they wished
to proceed with.

MR ASPINALL: Thank you. Now, could we go to pinpoint 3311, please. Could we zoom in on the pyramid there. See that, Mr Cohen?

15 MR COHEN: Yes, I can.

MR ASPINALL: And that's described as Braithwaite's pyramid.

20 MR COHEN: Yes.

MR ASPINALL: And it's a theory in relation to what constitutes the most cost-effective method of regulating, perhaps businesses or other enterprises.

25 MR COHEN: Not just cost effective, but effective generally, but not just about cost, but yes.

30 MR ASPINALL: And it is an idea that primarily one aims to have the enterprise or business regulate itself unless there's a reason why you would move to a higher level; is that right?

MR COHEN: Okay. Yes. Yes, I'm glad you added those extra words, but yes.

35 MR ASPINALL: And in terms of your understanding of this pyramid, the way in which things should work is that you assume, unless proven otherwise, that a business or enterprise is capable and wants to self-regulate; is that right?

40 MR COHEN: I think that's reasonable. I think every business would rather self-regulate than be told – actually, no, that's not necessarily true, but most businesses would. Casinos are one that might actually like the idea of regulation because it's a barrier to entry for competitors. If you've already got a regulatory scheme in place and you're complying with it, you've done all your internal controls, you've got your standard operating procedures and everything else, it's a lot easier for you to operate in a regulated space than allow your competitors in to self-regulate. So self-regulation intuitively sounds like everybody wants it. It's not necessarily whatever
45 industry would want if they're already experienced in regulation. The barrier to entry is such that they may actually prefer regulation.

MR ASPINALL: But in terms of what you understood to be the position that Crown had suggested, you understood that self-regulation was the approach which was preferred?

5 MR COHEN: No, I don't think I – don't think Crown has ever said they wanted self-regulation. I'm not aware of that. Well, not to me. I'm not aware of that. They wanted modernisation of regulation, but that's not the same thing as self-regulation.

COMMISSIONER: What did they want?

10

MR COHEN: They wanted a more modern form of regulation. So to put it in other language, they wanted to move away from a prescriptive model of regulation where possible to a risk-based model of regulation where possible. They're fully aware that not everything can be changed from a prescriptive module. Some measures have to
15 retain but there are other things where prescriptive regulation is unnecessary. And that report addresses many of those matters where there were still prescriptive regulation occurring in New South Wales, possibly still are. I don't know which recommendations have been implemented. They wanted some of those reduced to be more consistent with a modern style of casino regulation, but that's not about self-
20 regulation.

COMMISSIONER: So they didn't want self-regulation.

MR COHEN: Well, if they did, they didn't express it to me or it wasn't expressed
25 to me by anybody else that they wanted self-regulation.

COMMISSIONER: So is that a combination of the second top tier and the third top tier in Professor Braithwaite's pyramid?

30 MR COHEN: I would think most casinos in what I will call properly regulated jurisdictions should operate somewhere between the second and the third level depending on other factors which I go into in the review about the capability of the operator, the value to them of their licences and so on. Self-regulated casinos do exist, but not in Australia, and not in any proper – properly regulated jurisdiction.

35

MR ASPINALL: Thank you, Mr Cohen. Could we now turn to the next page, please. And if we can blow up the paragraph, the heading and the – the two paragraphs underneath the heading Are the Expected Operators Capable and Willing to Comply with the Regulatory Scheme? Do you see that paragraph, Mr Cohen?

40

MR COHEN: I do.

MR ASPINALL: And you conclude in respect of where big gambling companies fall within that scheme that big gambling companies are generally voluntary in – in
45 the voluntary space for reasons which will be expanded upon below.

MR COHEN: Yes.

MR ASPINALL: Correct? And then if we go to the next page, which is 3313, if we could enlarge the paragraph – the first paragraph under the heading on the screen, I think the paragraph refers to some research which you did which is noted in the footnote.

5

MR COHEN: Yes.

MR ASPINALL: And that was a poll, was it?

10 MR COHEN: Yes, a poll of regulators – of members of the International Association of Gaming Regulators.

MR ASPINALL: And you concluded, based upon that poll, that casinos said that they complied because they had a corporate reputation and, secondly, because of the value of their gaming – gambling licence, sorry.

15

MR COHEN: They were the most common reasons put for why

COMMISSIONER: I think if you could just repeat that for me, please, Mr Cohen, I would be grateful.

20

MR COHEN: I was saying they're not the only reasons they comply, but they were the reasons that the regulators most commonly said were the reasons why casino operators comply.

25

COMMISSIONER: Thank you.

MR ASPINALL: And if we turn to the next page which is 3314, and do you see, if we blow up the last two paragraphs on that page.

30

MR COHEN: Yes.

MR ASPINALL: You conclude that:

35 *They generally sit in the V category and therefore not a lot of regulatory effort is needed to ensure compliance.*

MR COHEN: Yes.

40 MR ASPINALL: And that:

The modern regime required the cooperation of the regulated parties who were provided with greater freedom to run their businesses in return for them taking on higher levels of risk.

45

MR COHEN: That's right.

MR ASPINALL: But that as a consequence:

...there is a higher level of risk that disciplinary action may be taken by the regulator.

5

MR COHEN: Yes.

MR ASPINALL: And then you say:

10 *For this model to work, the operators need to appreciate that the light hand of regulation perhaps counterintuitively –*

and then if we go to the next page, please, operator and just the first two lines enlarged, please –

15

...lead to higher penalties should the operators not place enough value on the benefits they are being given.

MR COHEN: Yes.

20

MR ASPINALL: Do you see that?

MR COHEN: Yes.

25 MR ASPINALL: Now, I would like to discuss those conclusions with you. Could we look at INQ.009.003.0100, and then at 0175. Do you see at line 20 and following Professor Rose is giving evidence there on his views of the utility of Braithwaite's pyramid in the regulation of casinos?

30 MR COHEN: Right. Yes.

MR ASPINALL: And he says that a tea house in Japan could be self-regulating, but he doesn't think that it works for what he would called "a morally suspect industry", and from what he had seen through all his studies is self-regulation does not work for the casino industry. There's too much cash and there's too much opportunity for things to go wrong.

35

MR COHEN: Yes, I see that.

40 MR ASPINALL: Can you tell me what you say to that?

MR COHEN: I agree with him. The only bit that I'm – the wording I don't like is calling a casino a morally suspect industry. I don't know what he means by morally suspect industry, but ignoring that sort of pejorative term I agree that self-regulation is not appropriate for casinos.

45

MR ASPINALL: Right. And why do you say that?

MR COHEN: For the reasons he says: there's too much cash and too much opportunity for things to go wrong if they were to self-regulate. I think the community's interest – the role of the regulator is to protect the community's interest to ensure that the gambling is operated fairly, responsibly, in a way that's safe, that's
5 auditable and so on. To allow a casino to self-regulate is putting too much risk to the community that it might not occur the way we want it to occur.

MR ASPINALL: But isn't that, in effect, what you mean when you say light touch
10 regulation.

MR COHEN: No, light touch regulation is not self-regulation. Not in my language.

MR ASPINALL: Can you tell me what the difference is to you?

MR COHEN: Light touch regulation to me is to move away from a prescriptive form of regulation – so the model that we've had in Australia from the early nineties when we established the casinos in Sydney and Melbourne, and probably it was in Tasmania when they started the casinos in the seventies, right from then was a New Jersey style of regulation which is a term that's used within the industry to mean a
20 highly prescriptive model of regulation which effectively means a lot of upfront approvals, whether it's people, products or places. And you move towards, in a more modern style, to a risk-based model which transfer a lot of that to – regulatory effort to monitoring and compliance, or auditing, if you like. So it prevents casinos having to do things that are unnecessarily – unnecessary red tape, and I can give you
25 examples if you wish.

MR ASPINALL: Well, I just wanted to understand what you mean – I was trying to understand what you mean by light touch regulation, but from the answer that you gave, what you mean is to eliminate red tape; is that right?
30

MR COHEN: Eliminate unnecessary red tape.

MR ASPINALL: Right. But that still means that they would need to be highly regulated, doesn't it?
35

MR COHEN: I don't know what "highly" means, but they need – there certainly needs to be a consistent level of regulation of casino operations. I'm not saying that they don't need to be regulated or they can be relied upon to self-regulate. I'm not saying that at all, and I never have.
40

MR ASPINALL: I see. Can I take you to the report of Sir Laurence Street, which is at INQ.080.050.1698. That is exhibit A44, Commissioner.

COMMISSIONER: Thank you.
45

MR ASPINALL: Can we move now to page 1802. Do you see at paragraph 6.1.2 Sir Laurence Street was addressing the adequacy of what became the Casino Control Act?

5 MR COHEN: Right.

MR ASPINALL: And do you see in the third line at paragraph 6.1.2, Sir Laurence said:

10 *A comprehensive and meticulously enforced regulatory system might be*
thought to be unduly exacting from the operator's point of view. Such a
perception would be erroneous. The immunity from the operator from criminal
15 *pressures flows directly from the total absence of any room for the operator to*
bend or twist the system in response to such pressures and from the certainty of
the prospect that any attempts in this direction would be promptly detected and
frustrated by the regulators.

Do you see?

20 MR COHEN: Yes.

MR ASPINALL: And then if we go to 1804, you see – Operator, 1804 – you see paragraph 6.15. If you could enlarge that, please. Sir Laurence, in the fifth line and following, says:

25 *I am entirely satisfied the principles of this Bill, the provisions contained in it,*
and the mechanisms control that can be implemented under it, combined to
create a fabric in which casinos can be protected from criminal influence or
exploitation, kept free from money laundering and maintained as places for
30 *honest gaming.*

See that?

35 MR COHEN: Yes.

MR ASPINALL: Now, do you agree with that proposition, that the regulation of casinos in a very firm and meticulous way is not done merely to make their lives difficult, but in a realisation that what one creates when one creates a casino is something which is by its very nature a target for criminal influence?

40 MR COHEN: Yes, I understand that.

MR ASPINALL: And that far from being an attempt to make the casino's life difficult, what those firm regulations and oversight do is protect it from criminal
45 infiltration?

MR COHEN: That is true, but there are also many measures that are put in place that do nothing to keep – or are unnecessary and don't do anything to keep out criminal exploitation or, conversely, are irrelevant to whether there's going to be any criminal exploitation or not, they just interfere with business practice.

5

MR ASPINALL: Correct, but are we not talking in a different level here in terms of Braithwaite's pyramid and the Vade system which you relied upon?

MR COHEN: In what way? I don't understand why you're saying – I'm not sure where you're coming from.

10

MR ASPINALL: As I understand it, you and I think any reasonable person would accept that a casino should not be bound in unnecessary red tape.

MR COHEN: Yes.

15

MR ASPINALL: But that that is a different thing from allowing a casino to essentially take responsibility for its own regulation.

MR COHEN: Yes, but casinos – just to qualify, casinos are responsible for ensuring that they comply with all regulation and - - -

20

MR ASPINALL: And that's – and that is - - -

MR COHEN: And - - -

25

MR ASPINALL: Sorry, you go on.

MR COHEN: And I was just going to say, and that's beyond gaming law as well. They've got to comply with all forms of regulation, whether it's gaming or workplace laws or health and safety or environmental laws. It's not just about gaming. They've got to understand their responsibility to comply with all forms of regulation.

30

MR ASPINALL: But what Sir Laurence Street is saying is that light touch regulation is dangerous because it renders a casino liable to be infiltrated by criminals and by money launderers, doesn't it?

35

MR COHEN: No, I don't agree with that – sorry, I agree that that's what he said but I don't agree with him is what I'm saying. The view that he had in 1991 was a consistent view that people had, that they thought that they needed to have a model like New Jersey to keep crime out. Ironically, New Jersey was never able to keep crime out.

40

COMMISSIONER: Even with regulation.

45

MR COHEN: Even with regulation.

COMMISSIONER:

MR COHEN: So the tightest form of regulation is also - - -

5 COMMISSIONER: What does that tell you when you've got regulation like you have in New Jersey and you can't even keep it out then? What for the future? And it's obvious that it's not being kept out with a different form so I'm not quite sure what we can suggest, but it does need adjustment, I would think, from what I've seen and what you've seen. You would agree with that, wouldn't you?

10

MR COHEN: I agree that you have to be – a regulator has to be consistently reviewing its practices because the other side, meaning the criminal side – I don't mean the casino side – the criminal side is always reviewing theirs and so you have to always find the best methodology to keep criminal activity out.

15

COMMISSIONER: Yes, Mr Aspinall. Thank you, Mr Cohen.

MR ASPINALL: And, Mr Cohen, you spoke in the section we just reviewed about the corporate reputation of the casino operator.

20

MR COHEN: Yes.

MR ASPINALL: And the fact that they have valuable licences.

25

MR COHEN: Yes.

MR ASPINALL: And I take it from what you said that the perceived risk to the casino operator is that if they misbehave or – that they will lose that valuable licence; correct?

30

MR COHEN: They could lose their licence or they could have a damaged reputation, which makes it hard to acquire new licences in other jurisdictions, and other matters like that.

35

MR ASPINALL: Can we look at exhibit A43, which is INQ.140.010.0909.

COMMISSIONER: This is 1983, is it?

MR ASPINALL: Yes.

40

COMMISSIONER: Yes, thank you.

MR ASPINALL: This is a report by Xavier Connor. Do you see, Mr Cohen?

45

MR COHEN: Yes.

MR ASPINALL: Have you seen this before?

MR COHEN: Oh, a long time ago. This is his second report.

MR ASPINALL: Correct. And if I take you to pinpoint 1027 – I don't know if I told you, Commissioner, but this is exhibit A43.

5

COMMISSIONER: Thank you.

MR ASPINALL: Thank you. Are you able to read that, Mr Cohen?

10 MR COHEN: Yes, I can.

MR ASPINALL: Could you read that and let me know when you're finished?

MR COHEN: The whole page?

15

MR ASPINALL: Yes, please.

MR COHEN: Okay, yes.

20 MR ASPINALL: If you could go to the next page, the top paragraph.

MR COHEN: Can I ask them to lower it a bit? It's hidden, the last – the first two lines are hidden.

25 MR ASPINALL:

MR COHEN: Thank you. Okay. Yes.

MR ASPINALL: Do you agree with what Mr Connor is saying there?

30

MR COHEN: Yes, I do.

MR ASPINALL: And that is, in effect, that although there might theoretically be a power to cancel a licence, a casino quickly learns that it is highly unlikely that that power will ever be exercised?

35

MR COHEN: I think that's fair. It – I can't think of casinos that have lost their licences very often, if at all. Mind you, that's because many of them are compliant. Sorry.

40

MR ASPINALL: Because the consequences of doing so would be so monumental both to the loss of jobs and the loss of income to the government or the state, the disorganisation of the site and so forth that, effectively, casinos come to learn that no matter how bad their behaviour, the prospect of them losing their licence is remote, don't they?

45

MR COHEN: Can I give you a "yes but" answer?

MR ASPINALL: Of course.

MR COHEN: Yes - - -

5 COMMISSIONER: That's not surprising.

MR COHEN: - - - but – but the regulator can ensure that the people that are in the company that owns that licence are no longer able to stay with the company. We've seen that happen with Wynn, for example, where Steve Wynn was forced to leave.
10 In effect, he left of his own volition, but he knew he had no choice. You can skin the cat a different way. You can still have a casino licence but it's a different operator by changing the people involved and changing the company involved through that process and that has happened.

15 COMMISSIONER: Yes, that happened earlier this – last year, didn't it?

MR COHEN: Well, it happened with –

COMMISSIONER:
20

MR COHEN: It happened with Wynn, but it's not the only company that it's happened with where people have been inappropriate as associates, the term we use to mean people involved in casinos, who have been required to leave that role that they had that made them an associate. It won't – he wasn't the first and he won't be
25 the last.

COMMISSIONER: So that was in May '19, I think, wasn't it?

MR COHEN: I can't recall the date, but it would have been something like that.
30

COMMISSIONER: And prior to that, so far as you're aware, there haven't been any cancellations of licences?

MR COHEN: I can't think of any in – none comes to mind in premium
35 jurisdictions. So I think I'm reading one, might be happening right now in the American jurisdiction, of the Northern Mariana Islands. I think they might be about to have their licensed cancelled but it's - - -

COMMISSIONER:
40

MR COHEN: I was reading something about that today, but I can't recall any that have had their licences cancelled. Of course, keep in mind that's because most of them are behaving. They don't need to have – they're not putting the licences at risk for the very reasons I say they don't want to put their licence at risk.
45

COMMISSIONER: Yes. Yes, Mr Aspinall.

MR ASPINALL: What I wanted to suggest to you, Mr Cohen, is that if Mr Connor is correct in his hypothesis and a casino over time learns that no matter how bad their behaviour, it's highly unlikely that they would lose their licence, wouldn't it then be a very dangerous proposition to impose light touch regulation upon them?

5

MR COHEN: No, because, as I said, the people who are involved with the casino operator could be forced to leave the company. So the casino licence might continue, but it might be, in effect, a different operator that's running that casino. So the impact is still the same on those people. They could still lose their – their – I was going to call it licence, but licence with a small L, their ability to be associated with the casino. So if you look at a company that runs the casino – let's just use Crown purely as an example. Crown is a company made up of shareholders, directors and key employees. Any shareholder over 10 per cent needs to get approval from the regulator, all the directors need to be approved and all the approved. The regulator could require any of those to disassociate themselves from the casino operator, any or all of them, not just Crown, any of the licensees in Australia. So, in effect, the casino – that company can lose its licence by being forced to become a different owned and operated company.

10

15

20

MR ASPINALL: Now, Mr Cohen, I wanted to talk to you briefly about what the risk-based approach means to you.

MR COHEN: Right.

25

MR ASPINALL: I think we've already – I think you've already explained that to you a risk-based approach does not mean any particular form of level of regulation; is that right?

MR COHEN: That's correct, yes.

30

MR ASPINALL: So a prescriptive top of the pyramid regulation is one of the options within the risk-based approach; correct?

MR COHEN: It is. I agree.

35

MR ASPINALL: And what is – what the risk-based approach effectively means is attempting to identify what the biggest or most dangerous risks are and to focus one's regulatory attention upon those risks; correct?

40

MR COHEN: I agree.

MR ASPINALL: And to focus relatively less regulatory firepower on things that are a lower risk.

45

MR COHEN: I agree. With risk made up of two components: one is the likelihood of it happening, and the second is the consequences of something should it happen.

And you can map that and work out where your higher risks are and where your lower risks are.

5 MR ASPINALL: Now, I want to just take that a little bit further with you. If you adopt a light touch regulation where you effectively say to a casino, “I am taking off the training wheels and you are now responsible for making sure that you comply with the regulatory norms and I will not interfere unless I hear something to the contrary, and if I do hear something to the contrary you can expect to be severely punished for that”.

10 MR COHEN: That’s correct. When you say “hear something”, sometimes it’s something that the regulator finds out for themselves. They’re not waiting to be told something necessarily, but yes, that’s what I would expect to happen.

15 MR ASPINALL: Well, I’m interested in how that would actually work in practice because in those circumstances a regulator is waiting for a problem to explode and then dealing with that problem in a post facto fashion, isn’t it?

20 MR COHEN: That’s correct.

MR ASPINALL: And so isn’t it almost inevitable in those circumstances that over time one of those things will emerge, because the regulator is not being proactive in preventing the risk happening.

25 MR COHEN: That’s not – the risk-based model doesn’t say you don’t approve some things upfront, okay.

30 MR ASPINALL: As I understood you to explain the risk-based approach, the risk-based approach is about, as a regulator, identifying where the major problems are and focusing your firepower on those.

MR COHEN: That’s correct.

35 MR ASPINALL: And unless you’re in there looking at the casino all the time, you can’t know where the major risks are, can you?

40 MR COHEN: I think you need to step back a moment and think about what the regulatory role – what regulation does. It’s not just about what happens on the gaming floor. So the role of the regulator is to do five things, okay? The role of the gaming regulator internationally – the amount you do on each of these things varies but you have to look at the suitability of the people involved in the casino. You’ve got to look at the integrity of the games. You’ve got to ensure that the gambling is delivered responsibly. You’ve got to verify that the proceeds of gambling are going to the right place, so the players get their share, the government gets its share as tax, the operator gets its share. In some jurisdictions charities get their share. And then

45 you’ve got this commercial obligation to ensure that the casino is delivering what it’s

promised to the jurisdiction, a world class facility or three hotels or whatever it promised to deliver.

5 A number of those measures are implemented through pre-approval processes and
some are done through monitoring and compliance. It's not that you're waiting for
something to happen. The integrity of gaming is done by approving product before it
goes on to the floor. You approve the rules of the game, you approve the technology
of the game, you have the game tested by an independent accredited test lab and then
10 if you're satisfied with it you approve it. You don't expect after that that there's
going to be a problem with a poker machine because it's been pre-approved, but you
continue to monitor it just to ensure that there isn't a problem with it. So it's a
mixture of pre-approvals and monitoring and compliance. It's not all left to wait for
something to go wrong.

15 MR ASPINALL: Well, what I'm interested in is how a regulator can accurately
gauge and assess risks if the regulator is not intimately involved in overseeing the
operations of the casino.

MR COHEN: What do you mean by intimately involved in the operation –
20 overseeing the operations?

MR ASPINALL: Well, unless it's down in the casino every day watching
developments and seeing what's actually happening on the ground in the casino.

25 MR COHEN: Experience shows that the regulators will very rarely see anything
happening in the casino. They're more likely to have – to exercise their control
through supervision and approval of internal controls and procedures, approving
rules and processes like that. It's almost impossible to observe what happens on the
floor on a livestream basis. That's just not going to happen.

30 MR ASPINALL: And what I'm suggesting to you is unless you are there
monitoring intimately what is happening in the casino and its business, that what will
inevitably happen is that you miss the major risks. What will happen then over time
is that that risk will fester and eventually blow up into something like a newspaper
35 report or something like that, whereas if you had actually been involved in reviewing
and overseeing the casino closely, that risk could have been nipped in the bud before
it became a major problem. What do you say to that?

MR COHEN: The risk is nipped in the bud by having an appropriate system of
40 controls in place before anything happens, before you start. So you have all your
procedures in place, you have – so the casino has – if you think about the gaming
floor, the product needs to be approved, but they also need to have standard – sorry,
they need to have internal controls approved by the regulator and standard operating
procedures in place and then they are required to follow those internal controls and
45 standard operating procedures. It's in the casino's interest to do so and they
inevitably do but there is sometimes human error; I understand that. And where

breaches of those controls and procedures are identified or a breach of the rules are identified, disciplinary action could be taken by the regulator.

5 But the regulator is not going to be able to monitor ever transaction that takes place on the casino floor. That's just an impossibility. So you're better to have procedures and rules in place that have to be followed and then audit the activities of the casino operator to ensure that they complied with that. You're not going to see – you're just not going to find every individual breach.

10 MR ASPINALL: But isn't what you're saying there effectively that we shouldn't – the regulator shouldn't bother looking at anything that happens at the casino because it won't be able to see anything – everything, sorry. In other words, unless we can see every single thing that's happening it's not even worth us looking.

15 MR COHEN: No, I'm not saying that. That's why you do random audits. You keep your activities a mix of random and programmed audits, if you like to mix it up, but so the casino operator is also aware that you're doing both and so the casino staff are aware that you're doing both. It's a complicated world, gaming regulation. It's not a one size fits all and it's not one model that you do. The best operators would
20 even – the best regulators would even have teams of inspectors that the casino operators doesn't even know exists so that you've got – I can't think of the word we would use, but we used to have inspectors that were unknown to the industry so they didn't even know they were being observed. You have a mixture of all those things to ensure that you're giving the best approach possible. But it's always going to be a
25 mix of pre-approvals and monitoring and auditing of compliance.

MR ASPINALL: Could I suggest this to you, that in some ways it might be viewed as unfair for a regulator to know that a casino is inherently vulnerable to infiltration by criminal elements and to say, "I will step back from monitoring you closely, adopt
30 a light touch form of regulation, but then if I ever find out that something major has gone wrong or that criminals have influenced your organisation or infiltrated it, then I will be very harsh with you." Do you see any unfairness in that system of governance?

35 MR COHEN: Unfair to the operator you mean?

MR ASPINALL: Yes.

40 MR COHEN: No, I don't – I don't see why that's unfair. I mean what you're doing by saying, "We will be more harsh on you with disciplinary action" is saying "We're giving you more freedom to run this casino without interference, without unnecessary interference" but it comes with the responsibility to run it properly, to run it fairly.

45 MR ASPINALL: But on your view isn't the regulator saying, "I am going to step back from closely monitoring you because that represents a risk to me, the regulator."

MR COHEN: No, I'm not saying that. I do say - - -

MR ASPINALL:

5 MR COHEN: I do say in some places that risks should be transferred to the operator
when the risks are properly theirs. They're the ones that are the beneficiary of the
activity and they should be taking the risk and if they get it wrong disciplinary action
should be taken against them. I don't see why the government through its regulator
10 needs to take risks that the licensed operator who is making the money out of the
business shouldn't be taking. That's bad English, but what I'm trying to say is that
the operator should be taking more risk than the regulator should. It's not the
government's responsibility to be the one that's taking the risk for the casino.

15 MR ASPINALL: If we could move on now to the issue of casino inspectors and
police presence at the casino.

MR COHEN: Yes.

20 MR ASPINALL: One of the recommendations that you made in the Casino
Modernisation Review related to casino inspectors and them being on site 24/7; is
that right?

MR COHEN: Yes. Well, not being on site 24/7, I think.

25 MR ASPINALL: Yes.

MR COHEN: But yes.

30 MR ASPINALL: Correct. Sorry. And can you explain to us what your rationale
for that recommendation was.

35 MR COHEN: The reason I recommended – there's actually two reasons I
recommended it. The first one is I don't think it's necessary, subject to some other
changes being made to current practice which I will get to, I just don't think it's
necessary. There's nothing that a regulator can do at the casino that needs the
regulator to be there at all times. They can always attend when necessary.

40 MR ASPINALL: Just stopping there; if, for example, a casino inspector had been
on the site at the time that that footage was taken at the Suncity Room, wouldn't that
have enabled the casino inspector to walk down, show him or herself and stop
potentially that transaction from happening?

45 MR COHEN: It's possible. It's also possible that the inspector may not have been
aware of what was going on. I'm – it's difficult to know on that particular set of
circumstances, but yes that's a possibility. Like it's a possibility that the inspector
might see that the wrong number of cards have been played in a game of Pontoon

and stops the game from being played, or that there's a card stuck in the shuffle machine.

5 MR ASPINALL: Wouldn't that be at least one reason why having casino inspectors on site at all times would be beneficial?

MR COHEN: It is a reason why but there are more reasons why not which is why I say not to.

10 MR ASPINALL: Well, in your line of thinking you advocate having 24/7 casino inspectors but off-site; is that correct?

15 MR COHEN: I actually can't remember whether I said 24/7. I certainly said off-site. I can't remember whether I said 24/7. If I did, fine; I can't remember what I actually said.

MR ASPINALL: Leave that to the side. What is your view as you sit there now?

20 MR COHEN: My view is that I think 24/7 off-site is fine subject to the off-site inspectors having the same camera access or the same access to cameras that they have onsite. The physical location of the inspectors doesn't really matter. They need to have the eye in the sky still giving them the vision that they would get inside the casino, subject to some changes to some of the processes and procedures that are in place at the moment which can be done.

25

MR ASPINALL: And in terms of whether or not it's preferable to have specialised casino inspectors or generalists, what is your view on that?

30 MR COHEN: I'm strongly in favour of not having specialist casino inspectors. We used to have them and it was hugely problematic; they became captured by the casino. They became too friendly with the casino's own staff and that diminished the value to the regulator of having those people involved. They became much better inspectors for us if they were – diversified their skills across the board in gaming. So I strongly recommend not having dedicated casino inspectors – dedicated is probably
35 the wrong word; inspectors that are exclusive to the casino.

40 MR ASPINALL: In terms of the casino modernisation and New South Wales, before you made that recommendation had you investigated or looked in any way as to whether or not there had been any regulatory capture of casino inspectors in New South Wales?

45 MR COHEN: I knew that there had been from conversations with my peer at the old New South Wales Casino and Gaming and Liquor Authority, Brian Farrell. We used to talk regularly because we're both doing the same job. He was doing it in New South Wales and I was doing it in Victoria, and we would talk quite regularly and that was one of his problems, was the ability to protect his inspectors from being captured.

MR ASPINALL: Did you happen to hear the evidence which Mr Sidoti gave yesterday?

MR COHEN: No, I haven't heard it.

5

MR ASPINALL: Would it surprise you that Mr Sidoti indicated to the Inquiry that during his tenure as the chair of what was latterly known as ILGA he never observed any regulatory capture or heard any complaint from any person which would indicate that there had been regulatory capture?

10

MR COHEN: No, I'm not surprised that Chris would have said that.

MR ASPINALL: But wouldn't that indicate that the risk of regulatory capture was more theoretical than real in New South Wales?

15

MR COHEN: No. Just because Chris said it didn't happen doesn't mean it didn't happen. I said in my modernisation review that the casino authority – sorry, that ILGA thought it was a modern risk-based regulator, when the evidence from others would suggest that it's not a modern regulator in the form that I considered to be modern. In other words, they were probably had modernised themselves compared with where they were a few years previously, but they weren't a modern regulator compared with other regulators around the world. So Chris' view is tempered by the fact – not tempered – is informed by what he saw, but it's not necessarily the view that I would see.

20

Now, having said that, Brian Farrell was having that conversation with me many years ago and things might be different today, but the risk is certainly still there that when you have inspectors that are exclusively to the casino that they have the potential to be captured.

25

MR ASPINALL: But when you were writing the Casino Modernisation Review you were contemplating specifically that there were going to be two – I might call them gambling casino-like facilities in Sydney.

30

MR COHEN: Yes.

MR ASPINALL: Wouldn't having two casinos half the risk of regulatory capture because you could move them around between the two of them?

35

MR COHEN: Or double the risk. I think that's true. I think that if you had – if you had that you could move them around. And if I was the regulator and I only had casino inspectors and they weren't able to do anything else I would definitely make sure that they did both casinos for that very reason. There is another reason I should add why casino inspectors are better if they do other gaming regulatory work as well. It makes them better inspectors. They learn more, they become more skilled in what they do. So you actually end up with a better workforce if you give them a more – a broader education in gambling regulatory activity.

40

45

MR ASPINALL: But if they're not devoting all their time – and again this was a point that Mr Sidoti opined upon yesterday, if they're not permitted to devote all their time to the specific inspection of casinos, don't they miss out on the expertise that was otherwise gained in what is a very highly complicated gambling environment?

MR COHEN: They shouldn't because if the regulator is training their staff properly, they should be trained well enough to be able to do that responsibility, at least that's what we found. If you train them properly. We had some resistance from a number of inspectors when we changed the model. Most of them in the end decided that they preferred not being dedicated casino inspectors because they preferred the diversity in the work so they became less bored and they didn't lose any skills. They enhanced their skills by doing other gaming regulatory activity.

MR ASPINALL: Can I read to you another quote from Professor I. Nelson Rose which is taken from a speech he gave in Japan which is at INQ.130.003.0034 at .0035. You don't need to read it, I'll just put it on to the transcript. But Professor Rose there said:

All regulation starts with regulators being very strict and tough and then weakens over time. Regulators almost never speak directly with patrons or even workers and so they become what is known as captive regulators.

Do you agree with that?

MR COHEN: Partially. I don't think they become captive regulators – or they don't necessarily become captive regulators. I think they do start strictly when they start but I think they lessen the shackles when they discover that they can afford to do so, not because they're captured by the casino – well, sometimes they – perhaps they are. I think he's right, though, that regulators probably don't talk to patrons or the workers enough to get their view on matters. I think that's a good suggestion. But I – but his premise, I think, is that they – I think he's arguing, from that – from what you said, that regulation – regulators become captured and loosen regulation and I don't think that's true. I think they loosen regulation when they see that they can safely do so. Not because they're captured.

MR ASPINALL: But isn't the light touch approach which you advocate an example of that occurring in this state?

MR COHEN: An example of what occurring, regulatory capture?

MR ASPINALL: The constant wearing down of the regulator from a very strict and tough position to a weakened position over time.

MR COHEN: Not – no, because it's not a weakened position.

MR ASPINALL: Can I take you finally to another quote from Mr Connor which is at INQ.140.010.0909. We will find the exhibit number for you, Commissioner.

COMMISSIONER: Thank you very much.

5

MR ASPINALL: Could you bring up .0972. Do you see at .4.32 Mr Connor says:

10 *I cannot stress too strongly that the introduction of a casino industry into a jurisdiction is accompanied by a most powerful lobby and pressure group. As Mr Al Merck said in New Jersey, "One of the things we notice with casinos is that they will accept any conditions to get in and they will testify in front of everyone that that is what satisfies them and go along with your rules. As soon as they get in, they will seek every advantage."*

15 Mr Connor says:

There is a constant wearing down process like water pressing against a dyke ready to flood through any opening that occurs.

20 MR COHEN: Yes.

MR ASPINALL: You see that?

MR COHEN: Yes.

25

MR ASPINALL: Do you agree with that, having regard to your long experience in the casino industry?

30 MR COHEN: I agree they will do anything they can to get a licence, but that's – I shouldn't say that; I'm not saying they will act illegally to get a licence. What I'm saying is they will promise to deliver anything and do anything that they're asked to do to get a licence and they will then try and water down the process. So yes, that part I agree with.

35 MR ASPINALL: But isn't the move to a light touch regulatory system where casinos are essentially monitoring themselves and so much responsibility is placed upon a compliance culture and compliance officers within the casino rather than an external regulator indicative of that sort of wearing down of the regulatory structure?

40 MR COHEN: Light touch regulation doesn't mean the casino is self-regulating though which is what you just implied in that sentence. The light touch regulation does not mean the regulator is not continually regulating the casino. It is doing it in a different way. It's not doing it in a heavy-handed approach, if I can use another poor cliché. It's – so it's not the same thing. What Justice Connor was talking about – I
45 think what he was probably leading to, was a concern that the regulator would weaken under that pressure, and I'm not saying that the regulator is being – is

weakening; it's just changing the regulatory model. It's not a weaker model, it's a different model. It's a more effective model.

5 COMMISSIONER: Well, you have that particular view about it. Those witnesses that seem to suggest otherwise have different experiences and different views. May I ask you about your experience with the Massachusetts regulator? Do you have any?

10 MR COHEN: A little. I appeared once before them and I know one of the commissioners reasonably well. I'm not sure if she's still a commissioner; that's Gayle Cameron. I used to know her quite well. I don't know if she's still there.

COMMISSIONER: I'm only speaking about the structure.

15 MR COHEN: Okay.

COMMISSIONER: That is a separate, independent is it is not?

20 MR COHEN: There's the Massachusetts Gaming Commission and then they have a separate enforcement agency that does the investigations and provides report to them, as I understand it.

COMMISSIONER: And it relates to gaming, does it not?

25 MR COHEN: As far as I know to three casinos. I don't know if it regulates anything else.

COMMISSIONER: So it's just the gaming in casinos.

30 MR COHEN: I think it's just the casinos. I don't – I'm not aware that it does any other thing. I don't think it does betting or lotteries or anything like that.

COMMISSIONER: And have you studied it at all for the purposes of indicating whether you regard that as an impressive model or not?

35 MR COHEN: I've not looked at them in detail to see whether it's an impressive model but what I have observed from them is that they are a highly prescriptive organisation that have been provided advice from consultants that have a very prescriptive approach to regulation, and I know from talking to one of the operators in Massachusetts that they've found it very difficult to sometimes understand what's
40 required of them because of that, because of the strict approach that's been taken.

COMMISSIONER: I see. But otherwise you haven't looked at it in any detail.

45 MR COHEN: No, I haven't looked at it in detail.

COMMISSIONER: Thank you. I won't burden you with it. Sorry, Mr Aspinall.

MR ASPINALL: That's all right. No problem.

Mr Cohen, in the course of preparing the Casino Modernisation Review you received submissions from various parties?

5

MR COHEN: Yes, I did.

MR ASPINALL: Including from Crown Resorts?

10 MR COHEN: Yes.

MR ASPINALL: And was one of the submissions that Crown made that contemporary gaming regulation is moving away from prescriptive regulation to a broad risk-based model?

15

MR COHEN: Yes, it was.

MR ASPINALL: And did Crown submit that a risk-based model centred on a set of internal control statements that establish broad minimum standards and controls required to ensure integrity reflects current best practice in gaming regulation?

20

MR COHEN: They did say that.

MR ASPINALL: And that Crown saw no regulatory need for more prescriptive operating procedures or controls and that the day-to-day operation of the restricted gaming facility should be a commercial matter for the operator within a risk control framework?

25

MR COHEN: Yes, they said that.

30

MR ASPINALL: And that the operator is best placed to determine the most effective and efficient methods of meeting minimum standards of control and integrity contained in the internal control statements?

35 MR COHEN: Yes, they did.

MR ASPINALL: And that where regulators become unnecessarily involved in the day-to-day operation of casinos this can lead to regulators assuming a level of liability in operational matters.

40

MR COHEN: I recall them saying that, yes.

MR ASPINALL: And that modern regulation should concentrate on risks to government and the community, leaving each operator to manage its own commercial risks.

45

MR COHEN: Yes.

MR ASPINALL: Isn't that consistent with the type of submission which Mr Connor was speaking about?

5 MR COHEN: You mean that they were asking to water down the regulatory approach, the drip, drip, drip?

MR ASPINALL: Yes. Yes.

10 MR COHEN: Yes, I agree that that's what Justice Connor was referring – well, the type of thing that he might have been referring to.

MR ASPINALL: But didn't you effectively adopt each of those submissions?

15 MR COHEN: I don't think I adopted all of them. Towards the end there, there are a couple about the Crown doing its own regulation. I don't think I adopted everything that they suggested. They might have asked for that, but - - -

MR ASPINALL: I see.

20 MR COHEN: My experience as a regulator is that Crown would ask for a lot and it didn't always get what it asked for. The public thinks they did. The public thinks they always got what they asked for, but they didn't always get what they asked for.

25 MR ASPINALL: I'm not being critical of you, Mr Cohen, but stepping back now and looking at it, don't you see that as consistent with Professor Rose's statement that over time the regulation gets weaker?

30 MR COHEN: It could. What I'm saying is the regulation hasn't – the casino modernisation process didn't weaken regulation; it changed the regulatory model, but it doesn't weaken it. It improves it, makes it more efficient, but it doesn't weaken it. I think there might be a misunderstanding from some that because you change from prescriptive to risk based you've somehow weakened regulation, and that's just not the case. It could be, but it's not in this instance of the ones that I recommended. It was enhancing regulation by concentrating effort where regulatory
35 effort was going to provide the most reward.

40 COMMISSIONER: The Star Casino has operated for over – about 30 years now in this state alone, and will soon, as I apprehend it, have the Crown Barangaroo Casino operating in that restricted gaming facility. You understand that, Mr Cohen.

MR COHEN: I do.

45 COMMISSIONER: And so far as the Star is concerned, I'm not sure that you observed any of its chief casino officer, Mr Hawkins, give any evidence. Did you see that at all?

MR COHEN: I only saw a small part of it yesterday, but I didn't have time to watch it all.

5 COMMISSIONER: Understood. Mr Hawkins, who as you know, has been in the industry for over 20 years and now in charge down there at the Star has put forward a suggestion that there be more regulation by the authority. Did you see that part of his evidence?

10 MR COHEN: I don't recall seeing that, no.

COMMISSIONER: And I presume, notwithstanding your detailed analysis in your report, you would have some reason to respect Mr Hawkins' observations as to the necessity for greater regulation of his own casino, I suppose.

15 MR COHEN: It's not inconsistent with what I said earlier. I was asked whether the casinos would prefer to self-regulate and I said not necessarily because regulation is a barrier to entry to others and they may actually like some regulation. So no, I'm not surprised.

20 COMMISSIONER: So do I glean from that that there should be some cynicism applied to Mr Hawkins' motivation to tell me that?

MR COHEN: No, that's not necessarily what I was trying to say because I don't know the circumstances of what he was referring to.

25 COMMISSIONER: What are you trying to tell me?

MR COHEN: Well, I don't - - -

30 COMMISSIONER: Mr Hawkins has the experience to either tell me that the modernised approach to regulation is working very well; alternatively, to indicate areas where it may be that some regulation could be increased. One of the things he said which you may disagree with was that there should be – or in his experience, the presence of a dedicated group of officers goes some way to managing risk across the
35 business. Now, I don't think you disagree with that.

MR COHEN: Sorry, dedicated group of – are we talking about casino inspectors when you say officers?

40 COMMISSIONER: Either police or inspectors.

MR COHEN: Okay.

45 COMMISSIONER: He was commenting on police at that stage, but let's assume a dedicated group of external regulatory people such as police or law enforcement or regulatory. So if he, with the experience he has, and head of the Star, indicates that,

notwithstanding what you have put forward, would it not be a good idea to seriously consider such a proposition?

5 MR COHEN: This is going to sound cynical. Is it possible that he likes the idea of dedicated casino inspectors because they're easier for him to deal with and to – for the Star to train to their way of thinking, which is my concern about having a dedicated group of casino inspectors from a regulator's perspective.

10 COMMISSIONER: I don't think there's any avenue that you haven't been down in this particular aspect of regulation, but if Mr Hawkins, unchallenged by my counsel assisting, at least on this aspect of his evidence, suggested to the Inquiry that the continued and regular presence of such a unit goes some way to managing risk in the business, would that not be a serious matter that should be considered for the future of regulation in this state?

15 MR COHEN: I agree it should be considered, but it's not the outcome that I would favour at the end.

20 COMMISSIONER: You would favour the outcome that's contained in your report.

MR COHEN: Yes, I would.

COMMISSIONER: Yes.

25 MR COHEN: And that's based on practical experience, not just regulatory theory.

30 COMMISSIONER: I don't know that Mr Hawkins was promoting it on the basis of regulatory theory. He's a man that's been all over the world in casinos for 20-odd years, actually operating them as opposed to regulating them, so I don't think he's – he can be criticised for regulatory theory. The proposition that you propound in the Braithwaite pyramid is, in fact, regulatory theory, is it not?

MR COHEN: Yes, it is.

35 COMMISSIONER: So let's be clear. Mr Hawkins' experience as a casino operator and now the head of the Star that's operated here successfully for 30 years is an opinion that I would presumably take heed of, and no doubt you say I should reject it, but why should I reject it?

40 MR COHEN: I think because what I'm saying is that my experience as a regulator has shown me that inspectors that are at the casino only are more likely to be captured by the casino operator than inspectors that rotate through various other activities which means that the casino is dealing with different inspectors all the time.

45 COMMISSIONER: But doesn't that mean you just have to have the regulator ensure that it has an integrity when it puts its group of casino inspectors together?

That is, let's look at the Massachusetts group. If they have the reputation of being a group of officers who have the integrity and respect of a casino – that's what you're trying to achieve, isn't it?

5 MR COHEN: Yes, you are.

COMMISSIONER: And so chumminess is one thing - - -

10 MR COHEN: I'm sorry, what was that word? I didn't hear it.

COMMISSIONER: Chumminess. Being chummy. That's where you get the regulatory capture.

15 MR COHEN: Yes.

COMMISSIONER: Chumminess is one thing, but in terms of what has to be looked into for the future of regulation in this state where there's complex transactions occurring, you would need to educate people as to how cryptocurrency transactions occur, would you agree with that?

20 MR COHEN: Yes.

25 COMMISSIONER: And you need to have capacity to identify sophisticated transactions in the money laundering jurisdiction, you would agree with that?

30 MR COHEN: Actually thought of, remembering money laundering, AML responsibility is not the responsibility of the gaming regulator. If they identify it, they should – they should be aware of what might be a problem and bring it to the attention of AUSTRAC, but it's AUSTRAC that would do that investigation. But in short, yes, to what you say, but keeping in mind that it's not the regulator's core responsibility. They just need to be aware enough to bring it to the attention of the right people.

35 COMMISSIONER: And to be in a position to converse about it with some knowledge of what they're talking about. You would agree with that?

MR COHEN: Yes, I agree with that. Of course.

40 COMMISSIONER: And so modernity – I understand the modernisation of the casino regulation is the title or close to the title of your report, but it is also necessary to have regard to what experienced casino operators over many years put forward at least to suggest that there may be a change in structure. You would agree with that.

45 MR COHEN: Yes, I do.

COMMISSIONER: Mr Aspinall.

MR ASPINALL: If it please, Commissioner, I have no further questions.

COMMISSIONER: Yes. I will just see, Mr Cohen, if there are any questions from any of the interested parties who have been granted leave to appear. Yes. Now, let
5 me see who is available. Mr d'Arville, any questions?

MR D'ARVILLE: No, Commissioner. Thank you.

COMMISSIONER: Thank you. Ms Hamilton-Jewell, any questions?
10

MS HAMILTON-JEWELL: No, Commissioner. Thank you.

COMMISSIONER: And Ms Hillman, any questions?

15 MS HILLMAN: No, thank you, Commissioner.

COMMISSIONER: That was a no, I think.

MS HILLMAN: No, thank you.
20

COMMISSIONER: Mr Cohen, may I thank you very much for the efforts that you've made to assist this Inquiry. Are you still there, Mr Cohen?

MR COHEN: I'm still here, yes.
25

COMMISSIONER: Not only today, but the assistance that you've provided prior to today, and also the extra efforts to which you had to go to appear today via the video linkage from Melbourne. Thank you very much, Mr Cohen. I will now adjourn.

30 MR COHEN: You're welcome.

COMMISSIONER: Thank you.

35 <THE WITNESS WITHDREW [4.15 pm]

MATTER ADJOURNED at 4.15 pm UNTIL THURSDAY, 6 AUGUST 2020

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