



INDEPENDENT LIQUOR AND GAMING AUTHORITY OF NSW

**INDEPENDENT REVIEW OF THE STAR PTY LTD BY ADAM BELL SC
UNDER THE CASINO CONTROL ACT 1992**

**PUBLIC HEARING
SYDNEY**

**WEDNESDAY, 1 JUNE 2022
AT 10:00 AM**

DAY 38

**MS N. SHARP SC appears with MR C. CONDE, MS P. ABDIEL
and MR N. CONDYLLIS as counsel assisting the Review
MS K. RICHARDSON SC appears as counsel for The Star Pty Ltd**

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

<THE HEARING RESUMED AT 10:03 AM

MS SHARP SC: Mr Bell, I was taking you yesterday afternoon to some provisions in the Casino Control Act. I needed to correct one aspect of what I said yesterday, which was the time at which section 75(5A) was introduced into the Act. In fact, it was on 5 June 1996 that that provision was introduced, and that was an amendment effected by the Casino Control Amendment (Cheques) Act of 1996. So just to recap the relevant dates of change in the provisions of section 74 and 75, there is firstly that point. So that was a change from 1996.

Secondly, on 21 December 2018, section 74(1)(c) was amended to reduce the scope of the prohibition, and it had the effect that a casino operator or its agent could provide money or chips to a premium player or a junket via a debit card. And then the third relevant change was one which occurred on 1 July 2020 where section 74(5) was amended, replacing the concept of the restricted gaming licensee with the concept - a broader one - of casino operator. And that meant that from that time, The Star could extend credit to junkets and premium players. So that's the relevant chronology of the legislative amendments.

With those remarks on section 74 and section 75 completed, I will now turn to topic 8, Mr Bell, which is to address you on the use of China UnionPay cards at The Star. Now, the evidence established, Mr Bell, that the China UnionPay card is a credit and debit card scheme which is operated by UnionPay International and which is banked by the Chinese Government. It functions - a CUP card can function much in the same way as a Visa card or a Mastercard. In this case, the evidence is that The Star only permitted debit cards to be used, and there's no issue - we don't take any issue with that proposition, that only debit cards were used.

We wish to take you to exhibit B310. If I can have the operator bring this up, please. In fact, that is the - I might just give you the document ID. That's the wrong exhibit number. It's STA.3401.0006.2956. That's exhibit 3100. Now, this is a letter that Mr David Aloï sent on behalf of The Star to the authority dated 10 September 2021 in relation to its queries about the China UnionPay card.

And could I ask the operator to go to pinpoint 2961, please. And if I could draw your attention, Mr Bell, to item 7 in the top. There, The Star advised that 1307 guests utilised the service resulting in 8912 transactions. So that was in the period from 2013 to March 2020. If I could ask the operator now to go back to pinpoint 2960. If, Mr Bell, you have regard to the very bottom of that page, The Star identified the cumulative total of transactions on CUP cards as \$908 million.

Mr Bell, there is in evidence an email from Andrew Haberley at NAB to David Aloï, dated 19 March 2013, which is exhibit B332 - I won't go there yet - which confirms that, by that date, The Star was in possession of a copy of the UnionPay operating regulations. They were annexed to that email. I understand there is now an issue regarding whether the UnionPay regulations prohibited the purchase of gaming chips on CUP cards, so I will address you now on that matter.

MR BELL SC: Can I just confirm, Ms Richardson, is that correct?

5 **MS RICHARDSON SC:** I am still taking instructions about our final approach to this, Mr Bell.

MR BELL SC: All right.

10 **MS RICHARDSON SC:** My learned friend put a slightly different proposition there, which was a prohibition on gambling chips, as opposed to a prohibition on the actual terms of the arrangements that were in operation at The Star. I'm taking --

15 **MR BELL SC:** Well, is it in issue that the UnionPay rules prohibited the cards being used to obtain funds for gambling?

MS RICHARDSON SC: I'm taking instructions on all these matters, Mr Bell, and if I could have time to consider those matters.

20 **MR BELL SC:** Yes. Well, Ms Sharp, you had better proceed on the assumption that it is in issue.

25 **MS SHARP SC:** Thank you, Mr Bell. I will. Can I start by noting this, though, Mr Bell. In the report to the board prepared by Mr Seyfort from HWL Ebsworth in September 2021, he advised that the CUP transactions were prohibited by the UnionPay rules. But be that as it may, can I take you through the operating regulations that are in evidence. If I could call up - and it's actually in two exhibits. Firstly, it's exhibit B332, but it's also exhibit B2931. So if the operator could please call up exhibit B2931. And you'll see, Mr Bell, that that front page is the
30 email from Mr Haberley I just referred to.

So what I will now take you to are the Operating Regulations, Volume II Business Rules dated October 2012, and I will call those the UnionPay regulations. Could I just start by noting the way these regulations are structured, and to do that could I
35 take you, please, to pinpoint 2474. You will see, Mr Bell, that chapter 1 is entitled the Issuing Rules. And then if I take you to the next page, chapter 2 are the Acquiring Rules. Chapter 3 is Merchant Management. So if you just bear in mind that's the way these are organised. Could I then take you to pinpoint 2479. And you'll see under the heading Purpose, it states:

40 "The Volume II Business Rules is one of seven volumes comprising the operating regulations."

A little further along:

45 "Issuers and acquirers participating in UnionPay network must comply with the rules and the requirements in this volume."

5 So that's a statement of the general purpose. The audience is specified as being UnionPay card issuers and acquirers. There's a definition section I will take you to, but for present purposes the issuers are the banks that issue the UnionPay cards that serve the banks in China and the acquirers are banks or financial institutions that provide the merchant terminals and, in this case, include NAB. Then could I take you to pinpoint 2481. You will see at chapter - this is chapter 1, and clause 1.1 says:

10 "This chapter applies to all UnionPay Member participating in issuing UnionPay Card and specifies general rules for issuing."

15 So this is the chapter to applies to issuers, which in shorthand we may describe as the Chinese banks. More important for present purposes is chapter 2, which I will take you to, pinpoint 2492. And you will see the heading Acquiring Rules. And at clause 2.3 and under that 2.2.1, Terminal Requirements, it states:

"Acquirers must ensure that ATMs, POS terminals and other terminals accepting UnionPay meet the following requirements."

20 And the second dot point, which we rely upon, states:

"Acquirers outside Mainland China shall comply with the UnionPay regulations."

25 I think the operator has highlighted the wrong dot point. But in any event, it's the one underneath. So this is what imposes the obligation on NAB to comply with these operating regulations. Then if I could take you, please, to clause 2.4, which is on pinpoint 2493. You will see there's a heading Merchant - at 2.4, it says Merchant Requirements and:

30 "For detailed information, please refer to chapter 3 of this volume."

35 And I will take you to chapter 3 now. If we go to pinpoint 2501. This is what was just picked up by clause 2.4, and it is headed Chapter 3 Merchant Management. And you will see under the heading 3.1, Introduction, it provides at the third paragraph:

"This chapter applies to UnionPay participants and UnionPay."

40 And at 3.2, General Requirements, it says:

"An Acquirer is responsible for merchant management."

45 So that is NAB is responsible for merchant management. And I should say in this case, the merchant is The Star because it operates the terminal. If you have regard to the very bottom of that page, you will see a heading 3.3.2, Restrictions on Merchants. And if you go over to the page, that clause provides:

"An Acquirer must not contract with a Merchant that is prohibited by local laws and regulations or relative rules of the UnionPay regulations."

5 So we say this is a key provision. Again, it imposes an obligation on NAB to act consistently with the UnionPay regulations when contracting with a merchant. Now, clause 3.3.3 on that page - we can take that highlight down, thank you, operator - you will see it says Merchant Qualifications and it stipulates that:

10 "Prior to entering into a Merchant Agreement, an Acquirer must ensure that the Merchant will meet the following requirements."

And the third dot point:

15 "Will comply with requirements for Merchants in UnionPay Regulations."

And 3.3.4 is important. Operator, if we can take that bubble down. That's entitled Merchant Agreement and provides:

20 "An Acquirer must sign a Merchant Agreement with the Merchant before it commences the service of accepting UnionPay Card. The following information or requirements must be included in the Merchant Agreement."

25 And I'll take you to the NAB merchant agreement momentarily, Mr Bell, but just to note that these are obligations that UnionPay imposes on NAB with the expectation that NAB will impose obligations on its merchants. So at the bottom of this page, there's a heading 3.3.5, Merchant ID. And it starts off by setting out some general requirements, and I'll take you over to pinpoint 2503 to show you what those are. And you'll see under the heading 3.3.5.2, Format of Merchant ID, that the first - underneath that first dot point, there's a heading:

30 "For directly-connected Merchants outside Mainland China."

Which Star is obviously one of those. There's an italicised set of words right above the next bolded heading which says:

35 "Specification on Merchant Category Code for UnionPay Merchant (March 2009), which shall be consistent with the principal business of the Merchant."

40 Pardon me, Mr Bell. Then if I can take you to pinpoint 2583. This is appendix C to the agreement - and, sorry, that's on pinpoint 2583. And this is an appendix which sets out all the merchant category codes. And can I take you in particular to pinpoint 2593. And if you have regard to the left-hand side, towards the bottom you will see an entry for the number 7011. And that says:

45 "Lodging: hotels, motels and resorts."

And the evidence shows that this was the merchant category code given to the terminals operated by Star at the hotel in Sydney. So NAB had contracted with

UnionPay to ensure that the principal business of the merchant - in this case, Star - operating the terminal was - with that particular terminal was lodging, hotels, motels and resorts. And then if I can take you a little further in this schedule to pinpoint 2598. Third from the top, you will see there's a merchant category code 7995:

"Betting, including lottery tickets, casino gaming chips, off-track betting, and wagers at the racetracks."

10 So that's a prohibited merchant category code. And, Mr Bell, you'll see there's a column entitled Fully Prohibited. And in respect of 7995, that is ticked. And we say that's what indicates that the UnionPay regulations stipulate that the merchant terminals cannot be used by a merchant with a principal purpose of purchasing gaming chips. And that is reiterated, if I can take you, Mr Bell, to pinpoint 2560. I
15 beg your pardon. I've taken you to the wrong number. It's 2600. And you'll see there are two notes at the bottom of the page, Mr Bell. The second note is:

"(2) A merchant with a prohibited merchant category code should not be recruited by an Acquirer for acceptance of UnionPay cards."

20 And just while we're here, at pinpoint 2601, you'll see there's an appendix D which sets out the definition of some terms. And the first term is "acquirer". And that's defined as:

25 "A bank or other institution which engages in the business of acquiring UnionPay Card."

Now, you will have seen that the regulations impose obligations on NAB to impose obligations on its merchant, and that happens through the merchant terms.
30 So I will take you to the merchant terms that are in evidence now, Mr Bell. If I could call up exhibit B2925. And I'll just work through this document in order. You might recall I examined certain of the witnesses, including Mr White, about the terms of this document. Mr White provided certain advice to Star in relation to this document. If we could start, please, operator, at pinpoint 6931. You will see
35 that this is a clause 1.1 definition section. Could I direct your attention, please, to "card schemes" which is defined to mean China UnionPay. So that's a card scheme. And then "card scheme rules" is defined to mean:

"The rules and regulations which regulate participants in the card scheme."

40 So that picks up, we say, the UnionPay International operating regulations that I just took you to. Then could we go to pinpoint 6935. And there's a heading at the top there, Relevant Law. And we rely in particular on limb (c) which says:

45 "Any card scheme rules applicable to the confidential information, the provision of the merchant services and any other obligations to be performed under this agreement."

So on the basis of that, we submit that the UnionPay International operating regulations are "relevant law". And if you go a little further down, you'll see - probably about two-thirds of the way down the page - "you" and "your" are defined. And they mean:

5

"The person or persons named in the addressee in the letter of offer."

The letter of offer is in evidence and includes Star, Mr Bell. Then if we go to pinpoint 6936. There is a topic heading 3, which is Your Obligations. So that is the obligations of The Star. And could I take you to pinpoint 6938. At clause 3.5, which is headed UnionPay Card Terms, at limb (b) it says:

10

"A UnionPay card can only be processed on a UnionPay terminal by swiping the card through that terminal in the presence of the UnionPay cardholder."

15

I draw that to your attention because Mr Phillip Dong Fang Lee's evidence was that that condition was not satisfied in relation to certain transactions with him. His evidence was that he sat at the gaming table and Star staff members took the card away from him and performed the swipe elsewhere. And if I can take you to pinpoint 6950. You'll see there's a heading Processing Transactions, clause 7, and then could I take you over the page to pinpoint 6951. And right at the top of that page, there's clause 7.3, which are warranties that The Star provides to NAB. And it says:

20

"In giving us information on a transaction or otherwise for the purposes of this agreement, you -"

25

That is The Star:

"Warrants that (a) all the particulars are true; (b) the transaction is valid and acceptable; and (c) the cardholder is not disputing the transaction."

30

Now, just to pause on subparagraph (b) for a minute, this is the warranty given by The Star that the transaction is valid or acceptable. We say that within this is the warranty that this is a permissible transaction under the UnionPay operating regulations. That is the only sensible way of construing these documents together, and this is how NAB gives effect to its contractual obligations under the UnionPay International operating regulations. Could I then take you to pinpoint 6956, just to note that clause 13, midway down this page, operates as a clawback provision. And in particular, if you have regard to clause 13.2:

35

40

"You authorise us to withdraw the following amounts from the accounts you have with us."

And then if I can take you over the page, Mr Bell, to subparagraph (h). It provides:

45

"All fines, penalties or similar costs imposed on us under card scheme rules because of your conduct in relation to the merchant services including where your conduct results in an unacceptable rate of chargebacks -"

5 And so on. So that's a clawback provision. And then at clause 17, which is on pinpoint 6963 - if we can go there now. At clause 17 - it's entitled Indemnity and Set-Off. And here, Star gives an indemnity to NAB, in clause 17.1(a) if it breaches the obligations under the agreement, and in (e) for:

10 "Any wilful default, negligence, fraud or omission by you or your agents under the agreement."

And lastly, can I go to pinpoint 6966. And you will see there's a heading, clause 21, Representations and Warranties. If I could have that section blown up, please,
15 operator. Clause 21.1 provides:

"You represent and warrant to us -"

20 That is, a representation of Star and a warranty of Star:

"(a) in having received and receiving the merchant services, you have not been and will not be in breach of any relevant law or any obligations."

25 Now, "relevant law", you will recall, was defined to include the UnionPay operating regulations. So --

MR BELL SC: Is there evidence that the acquiring bank allocates a merchant category code based upon information provided by the merchant to it?

30 **MS SHARP SC:** Can I - I don't want to answer that incorrectly. I'd like to just go back through the provisions of the UnionPay regulations, so can I come back to you on that, Mr Bell. Just pardon me for one moment, Mr Bell. In general terms, we submit that the assumption that seemed to operate at The Star that the
35 UnionPay regulations did not apply to it was wrong because the merchant terms indicate that the regulations, as relevant law, was picked up and applied in various ways in the merchant agreement. So that's our principal submission.

40 I indicated that there was a letter of offer that stood behind the merchant agreement, and if I could just give you the exhibit number without going there. There's a letter of offer dated 31 July 2012, which is exhibit B3058, and there is also an NAB transactional banking and facilities and fees letter dated 30 June 2011, which is exhibit B3059.

45 **MR BELL SC:** Can I just see the rest of clause 21.1, just to identify more of the relevant warranties?

MS SHARP SC: Yes.

MR BELL SC: Yes. Thank you.

MS SHARP SC: The evidence establishes that the terminals supplied by NAB were located in the VIP arrival lounge, which was in the Astral Hotel, which was, I think, later called The Star Grand Hotel. Could I now take you to exhibit F13. This is a request from Mr Stevens for a copy of the merchant agreement. So that's simply to indicate to you that various officers of The Star were aware of that merchant agreement by that time. This is an email chain which starts - if I could go to pinpoint 2166. You will see there's an email from Brett Houldin, who was the general manager of group finance, dated 8 February 2013. And this seems to be the origins of the idea of using the CUP process at Star in Sydney. You will see the second paragraph of Mr Houldin's letter says:

"This was discussed again today with John to explore the option but through the hotel channel."

So from the earliest times, the idea was to use the terminal in the hotel. That seems to be so at this time, that is, February 2013, to avoid the prohibition in section 74(1)(c) that I took you to yesterday, Mr Bell. You'll see that at this time, the recipients of the email are Andrew Power, Graeme Stevens and David Aloï. Mr Aloï said in his evidence that the hotel channel was proposed because the Casino Control Act did not debit cards to be utilised in connection with gaming. And he gave that evidence at day 8 at page 805 to 806. He also accepted, at page 806, that this was a way of stepping around regulatory restrictions.

Could I take you to exhibit B23. This is an email from Mr - yes, sorry, this is the same email. If I direct your attention to the bottom of that page, Mr Bell. He refers to the China UnionPay card, and that it is the card that allows money to be moved from China. Now, if I can go back to the first page of the email chain, you will see halfway down there's an email from Graeme Stevens to Andrew Power dated 20 February 2014. And Mr Stevens raises the concern:

"This concept may be in breach of the Casino Control Act section 74."

So Mr Power and Mr Stevens are alive to that fact, and Mr Stevens there highlights section 74(1)(c), which I just referred to. And I'll come back to that point because advice was sought from King & Wood Mallesons.

Before I go there, though, can I bring up exhibit B2966. Now, this is the money laundering/counter-terrorism financing risk assessment. This is the only document that we can find in evidence where an AML risk assessment was conducted in relation to what I will call the CUP payment channel. If I could take you, please, to pinpoint - over the page to pinpoint 1050. You will see that this risk assessment was initiated by David Aloï on 25 February 2013, and you'll see the fourth row - it says:

"Debit card charged at hotel reception and then internally transferred to front money account of patron for the international rebate activity."

So from the earliest time, the hotel payment channel was proposed. Could we go over the page, please, operator. Now, it's a little difficult to read this. I'll have the bottom half of this page highlighted so we can look at the handwriting. In the left-hand column, it says:

"Has Echo risk management reviewed the money laundering risk assessment?"

10 It says:

"Yes. China is not a prescribed country."

And a little bit further down, it states:

15

"SOPs -"

That's standard operating procedures:

20

"Have been designed to track movements of fund into hotel accommodation. Cleared funds moved into front money account in same name as room and card. Front money account is subject to existing know your customer procedures. No credit function, drawdown on cleared funds only."

25

And then could we go to the next page, please, operator. And then that is signed by the managing director of The Star Sydney property. So that's the only money laundering risk assessment we've been able to find. We submit that it is very scant analysis and was not adequate in terms of identifying the risks, particularly those associated with source of funds. I should say that that document also had an entry from Mr Aloï that says:

30

"Low risk as funds must be from cardholders and standard AML/CTF reporting applies."

35

Of course, the evidence establishes that no IFTIs were lodged in relation to this payment channel. And because it wasn't cash, no threshold transaction reports were lodged either.

40

Can I now move to address you on initial dealings with NAB. And Mr David Aloï gave evidence that in 2013 he had discussions with Andrew Haberley from NAB, and Mr Haberley then came back to him with more information about the China UnionPay card. And he said that at day 8 at page 803. Mr Aloï said that in his phone call - and, again, this is at page 803 - that he gave Mr Haberley:

45

"Some scenarios about what our intentions were, and the intention was to transact at the hotel and then move the money across to the front money account - the playing accounts of the guest."

Then could I go to exhibit B332.

MR BELL SC: Is there any document that records that communication?

5 **MS SHARP SC:** Well, not in terms, no. But this is the only document we have which records the terms of the communications. So if I can take you to the email at the bottom of the front page. That is from Andrew Haberley dated 9 March 2013. And it might be useful to start at the back of the email chain. So if I could take your attention to pinpoint 4217. Mr Aloï says:

10

"The purchase would be the hotel package, ie, room cost 1K and they swipe 50K. We then transfer 49K to their account. That would be the scenario. Could that be done, do you think?"

15 And Mr Haberley's email is responsive to this question. If I could now take you to the first page. You will see Mr Haberley says:

"There is no transaction limit."

20 And that:

"In regards to your request below around withdrawing the funds from the customers' cards as they transact at the hotel, UnionPay advised me this is fine as long as the merchant category code is not restricted or subject to transaction limits which in this case it should not be based on the below document."

25

Now, that "below document" is a reference to the UnionPay operating regulations that I just took you to, and I'll need to go back there in a minute. There's a reference to page 114. We say it's actually page 115, but I'll take you there. So that is some support for what Mr Aloï says. So there's no basis to find that his evidence about what he discussed with Mr Haberley was not correct. You can see that expressly Mr Haberley says:

30

"You can disperse them accordingly to the casino's operating/playing accounts."

35

MR BELL SC: Once the funds hit the account after 24 hours.

40 **MS SHARP SC:** Yes. Yes. But Mr Haberley, you would find, knew that the intention was to move them to the casino's operating accounts. That, I should say at this point, does not indicate that, many years later, other officers of NAB had that knowledge. This only establishes that in 2013, Mr Haberley had that knowledge. Now, if I can return you to the operating regulations. You'll see there is the reference to page 114. I will take to you page 115. Operator, could we call up exhibit B2931. And page 115 is at pinpoint 2593. And this is the page I took you to a little earlier, Mr Bell. This is the one with the merchant category code 7011:

45

"Lodging: hotels, motels and resorts."

5 So while the evidence would suggest that Mr Haberley did know of the intention
to transfer money swiped at the hotel terminal to an account in the casino, there is
no other evidence to support that this knowledge was, in some way, transmitted to
other representatives of NAB, including Ms Arthur and Mr Bowen, several years
later. And, in fact, their evidence to you is quite the contrary. They said that they
10 did not know. And we submit it was a very unsafe assumption for The Star to
make, that because one officer of NAB knew about the matter in 2013, it might be
assumed that very different staff members had that same knowledge in 2016 all
the way through to 2019. And there are emails that I examined the lawyers about
during evidence before you that showed that they did have concerns that personnel
15 had changed and that the knowledge within NAB may have changed at the same
time.

I indicated to you earlier that Mr Stevens raised a concern with Mr Power that the
CUP arrangement may be contrary to section 74(1)(c). Advice was sought from
KWM about this matter, and an advice was provided on 30 April 2013. Could I
20 take you to exhibit B at 2928. And you will see on this first page that the advice is
transmitted from Mr White to Ms Martin. This is simply to make the point that Ms
Martin, Mr White and Mr Power all knew about the CUP proposals at that time.
At the bottom of that page, you'll see an email from Patrick Gunning at King &
Wood Mallesons. Then could I take you over the page, please. That forwards
25 another email from Mr Gunning to various representatives of The Star, including
Mr Stevens, and it says:

30 "Here is our advice on the section 75 issue arising from the China UnionPay
proposal. It has been written in a format that should be capable of being
disclosed to the authority if you choose to waive privilege in it. For that
reason, this memo does not touch on whether or not NAB will be entitled to
transfer the funds under the UnionPay rules. Obviously the last thing you
would want is to proceed with the proposal and obtain the authority's
approval to amend the internal control manual, only to discover that when the
35 transfers start to go through, UnionPay reverses them because they are all for
gambling. We understand you are progressing this issue with NAB."

40 This is a concerning email, Mr Bell. It suggests that people at The Star were well
aware of the difficulty with the transactions being inconsistent with the UnionPay
rules. It also suggests that it was not intended to disclose that fact to the authority.
It also suggests that the lawyers - the external lawyers were aware of that fact, Mr
Bell. Now, if I can take you to the advice from King & Wood Mallesons. This is at
exhibit B at tab 24.

45 **MR BELL SC:** So should I conclude that the advice deliberately failed to refer to
the UnionPay scheme rules?

MS SHARP SC: Yes.

MR BELL SC: Yes.

5 **MS SHARP SC:** And that's what Mr Gunning said in the email: it was written in such a way that it could be disclosed to the authority. And this is the advice dated 30 April 2013. And I need to take you through the terms of this advice, if I can, Mr Bell. You'll see the instructions to see whether section 75 can be relied upon to pursue the CUP transactions. And there's a summary of the opinion at 1.2. If I could have that highlighted, please. And it's stated:

10 "Our opinion is that it may be possible for the casino to accept deposits of money into a section 75 deposit account by way of electronic funds therefore through a transaction involving a UnionPay card, similar to the way that the casino currently accepts cleared funds into section 75 deposit accounts
15 through Hexagon, telegraphic transfer and direct deposits in accordance with internal control manual number 15."

And it continues:

20 "However, in order for this proposal to be implemented, the casino would need to amend internal control number 15 to specifically refer to 'electronic funds transfers'."

25 Now, this advice was said to overcome that prohibition in section 74(1)(c) of the Act. And as I'll take you through the terms of this advice, that was because reliance was placed on section 74(5) of the Act. However, before I take you through the body of the advice, can I set out what was stated as being the instructions. If we can go to the bottom of the first page, Proposal to Use UnionPay Cards. And if I can have that highlighted. You will see that the
30 instructions were noted as being that the procedure would work in the following way, that:

35 "Patrons with UnionPay cards will stay at one of the casino's hotels and the amount will be transferred into a section 75 deposit account and will be agreed with the patron and added to the patron's room charges."

So the hotel payment channel was well and truly known by this time.

40 **MR BELL SC:** Just pausing there, the premise is that there would be legitimate room charges to which some other amount would be added, and that's more or less what Mr Alois posed as a scenario to the NAB, that there would be legitimate room charges and some additional amount would be transferred to a front money account, rather than simply being a transaction purely for the purpose of providing
45 money for gambling.

MS SHARP SC: That is so. Although as the evidence discloses, by 2016, Mr White, Mr Power and Ms Martin were all aware that there were what were described in the documents as "dummy rooms" and that was where the patron was

not staying at the hotel, and the hotel staff, when swiping the transaction, would use a dummy room and attribute the transaction to that dummy room. Now, if I can take you to the next page, pinpoint 0079. There's a heading Analysis.

5 **MR BELL SC:** I just also noted that the instructions are also that the UnionPay cards weren't linked to savings accounts in the manner that debit cards are linked to savings accounts in Australia, but it was simply a matter of the UnionPay customers paying amounts on to their card. So it was, in a sense, different from what might commonly occur with an Australian Visa or Mastercard in that it
10 wasn't linked to a savings account at all, according to these instructions.

MS SHARP SC: Well, that is so, Mr Bell. Yes. Now, if I can go to the analysis on pinpoint 0079. Can I direct your attention, please, to the - if I can just have that highlighted, please, operator, the paragraph, "Assuming for present purposes."
15 And this goes to the point you were just making, Mr Bell:

"Assuming for the present purpose that China UnionPay is the debit card for the purpose of section 74(1)(c), prima facie, that section appears to prohibit the UnionPay transaction."

20

So this is what Mr Stevens was concerned about. But Mallesons say:

"However, section 74 is unambiguously qualified by section 74(4) which states, 'This section does not limit the operation of section 75'."

25

Now, that's all that the Mallesons advice said about the operation of section 74(4), and we submit that's really a matter that ought to have been further considered but was not, whether it is the case that section 75 does operate as a true exception to the prohibition in section 74(1)(c). That was the assumption that was made in this
30 advice.

MR BELL SC: It's interesting because section 74(4) doesn't say that the section is subject to section 75; it just says it doesn't limit the operation of section 75.

35 **MS SHARP SC:** Precisely. I adopt that point. And this - but that was not a matter that was further considered in this advice. And we submit that had the legislature intended section 75 to confer an exception, it would clearly have said that. It used different terminology. That said, this is the advice that the external law firm did provide to The Star, and we submit that Star was entitled to rely on that advice.
40 But --

MR BELL SC: Was this advice from Mallesons provided to the regulator?

45 **MS SHARP SC:** The evidence does not indicate that the advice was provided to the regulator.

MR BELL SC: Yes.

MS SHARP SC: Now, what the advice did concern itself with was how section 75 was to be construed. If I can then take your attention further down that page where it says:

5 "Section 75 (2) and (3) state."

And here, it says, at section 75(2):

10 "A casino operator may establish for a person a deposit account which is to be credited the amount of any deposit to the account comprising (a) money."

So the question that was put into issue here is whether a deposit of money included a swipe of the CUP debit card. And that's put into issue - if I can take you, please, to pinpoint 0080. And you'll see the second paragraph says:

15 "The relevant question, therefore, becomes whether a transfer of an amount by way of electronic funds transfer through the transaction involving a UnionPay card is a deposit of 'money' for the purpose of section 75(2)(a)."

20 Now, we submit that's a question of statutory construction. However, what appears to be relied upon in this advice is an administrative practice and the approval of an internal control manual by the authority. If you have regard to the heading 3.2, Advice, it states:

25 "It is not clear on the face of section 75(2)(a) whether the term 'money' should be interpreted broadly to refer to cash as well as money received by the casino by way of electronic funds transfer, or whether 'money' should be interpreted narrowly to simply refer to cash."

30 Now, we say that's a question of statutory construction, but that question of statutory construction was not addressed in this advice. Instead, what the advice looked to was what had been permitted by way of an administrative practice under the internal control manual. And the internal control manuals are things that must be approved by the authority under section 124 of the Act. And you will see that
35 the advice refers to internal control number 15, which provided, at clause 15:

"The Star must confirm the clearance of funds via Hexagon or telegraphic transfer or direct deposit to The Star account."

40 Now, the solution that Mallesons proposed is that set out towards the bottom of the page where it says:

"Accordingly, it is our opinion (b) -"

45 And if I can have the operator scroll down there:

"In order for this proposal to be implemented, the casino would need to amend internal control number 15, which refers to 'funds received via Hexagon' to specifically refer to 'electronic funds transfer'."

5 And that is the permission that The Star ended up seeking from ILGA. In any
event, to be clear, our submission is that this advice is not a sound advice, for two
reasons: first of all, the scope of section 74(5) was not considered, whereas that
ought to have been front and centre of the advice; and secondly, instead of
10 addressing the question of what "money" means as a matter of statutory
construction, it was instead - I withdraw that - instead consideration was given to
an administrative practice and changing that administrative practice. So it didn't
really answer the question. That said, Mr Bell, this was an advice that was
obtained from an external law firm, and we submit that The Star was entitled to
rely on that advice, although we do call its accuracy into question.

15 **MR BELL SC:** When you said that the scope of section 74, subsection (5) wasn't
considered, were you, in fact, referring to subsection (4)?

MS SHARP SC: I think I was. Just pardon me for one moment. Yes. Yes, I was.
20 It was section 74(4). Now, that advice was - if I can call up - well, I won't call up. I
will just give you the document reference. By 2 May 2013, Mr Power had been
provided with this advice, and that's apparent from exhibit B at tab 26. And he
sought instructions to make a submission to the authority to amend internal control
manual 15. And Mr Alois then set about preparing the documentation for Mr
25 Stevens to make that submission. And we see that in exhibit - I don't have the
exhibit number. I will give you the document ID, STA.3401.0007.0424. Now I
will take you to the submission that Mr Stevens provided to the regulator. This is
exhibit C1. This is an email from Mr Stevens dated 6 May 2013 to representatives
of the authority, attaching a submission. And if I could take you to the next --

30 **MR BELL SC:** Describing it as "a fairly straightforward ICM update".

MS SHARP SC: Yes. Yes, that's right. Now, I'm hoping that this has the
attachment on the next page. Operator, if we could go - pardon me for one
35 moment while I try to locate that. Can I call up exhibit B2944. No, I don't think
that's it. Can you just pardon me one moment.

MR BELL SC: I think it was up on the screen a moment ago. I think it's
40 STA.3027.0001.0003.

MS SHARP SC: Yes. Thank you. We've got that now. This is the submission
made. And as you've noted already, what Mr Stevens said about the purpose.
You'll see that in this document itself, there's no reference to CUP and it is
described simply as an amendment of clause 15 of ICM15 to include the words
45 "electronic funds transfer".

MR BELL SC: And I also note that Mr Stevens says:

"The Star has received advice."

But he doesn't append that advice.

5 **MS SHARP SC:** Yes. And at one point, he gave evidence that he disclosed to ILGA an advice prepared by Mr Walker of senior counsel, and that advice was produced. That advice was not relevant, as it turned out, and he later conceded in oral evidence that that advice was not the one that was produced to ILGA.

10 **MR BELL SC:** It only refers to electronic funds transfers; it doesn't refer specifically to debit cards, still less to UnionPay or the proposal that the funds be provided - that swipes be used to provide funds for gambling.

15 **MS SHARP SC:** Yes. And it doesn't refer to a UnionPay card being swiped at the hotel, and it doesn't refer to knowledge that UnionPay regulations prohibited CUP cards being used to purchase gaming chips.

20 Now, the advice - I beg your pardon. The evidence that Mr Stevens gave about the Walker advice can be found at day 6 at pages 634 to 635. Now, the evidence - there's a live issue here about what the regulator was told in 2013 about the CUP card, and we have this documentation that I've just taken you to, and we have evidence of Mr Aloï and Mr Stevens. And they were the two Star representatives who attended the relevant meeting at ILGA.

25 And I've already been through what Mr Stevens said, which, as it turned out, was not correct. Mr Aloï said - and this was at day 8 at page 826 - that he recalled attending a meeting with the authority in May 2013 with Mr Stevens, but he did not recall whether the authority was informed that the CUP card would be swiped at the hotel. So that's the first point. He didn't remember. And, secondly, he agreed
30 it was most likely that he did not tell the authority that the UnionPay regulations prohibited the CUP card being used to purchase gaming chips. And he said that at page 826.

35 Now, the evidence is that on 5 June 2013, the authority approved the amendment of the internal control manual, and you will find that evidence at exhibit B29. I don't need to go there. We submit that based on the oral evidence of Mr Stevens and Mr Aloï, as well as the documentary trail, you should find that The Star did not disclose to ILGA, that is, the authority, that the CUP card would be swiped at the hotel or that the UnionPay regulations prohibited the use of the cards to
40 purchase gaming chips.

45 **MR BELL SC:** For a licensee to be behaving transparently, any communication about this proposal should have been in writing so there's a clear record of it, rather than trying to find out what might have been said verbally in a meeting eight years ago.

MS SHARP SC: That's right, Mr Bell. And the reason why I've spent time on this point is because of what The Star submitted to the authority about this matter in

2021 where it asserted that it had disclosed to the regulator these matters, and I'll address you on that in more detail later in these submissions.

5 There is some question about when the CUP process first started operating at The Star. There is some suggestion, in an email from Mr Alooi to Mr Hawkins dated 27 September 2021, that it commenced in December of 2013, and that's at exhibit G860. However, there is other data about CUP usage in that email which indicates that it had been in use from June of 2013.

10 Now, could I take you to some correspondence from King & Wood Mallesons on behalf of The Star and Star Entertainment to this review dated 8 November 2021. This is exhibit B at 3331. And I'll just give the document - here it is. This is a letter that was sent in response to a request for certain information in the course of preparing for the public hearings in this review. If I can take you to pinpoint 0316,
15 please. This is part of the response relating to CUP. And could I ask you to have regard to the information - first of all, it says:

"Approval of CUP process."

20 So it's there suggested that in May, the authority had advised the authority of the proposed use of the CUP debit cards. This is the representation made to you, Mr Bell. And the evidence is not consistent with, and does not support, that representation. And we submit that this shows a continuing lack of transparency in dealings with the regulator, you being an emanation of the regulator. What I also
25 wish to draw to your attention is how the process was described under the heading Arrangements for Transfer in the VIP Arrival Lounge. So it's stated here - and this is described as the CUP process, so I will use that terminology as well:

30 "The CUP process transactions occurred at point of sale terminal in the VIP arrival lounge. The process involved (1) the fund from swiping the CUP cards were transferred by NAB, within 24 hours of the swipe, into the hotel revenue at The Star's hotel revenue account; (2) the patron draws down an equivalent amount of funds to their front money account via a cheque cashing facility; and (3) -"

35 If I can take this over the page:

40 "(3) when funds arrived as cleared funds in The Star's hotel revenue account, the CCF is redeemed, suspended or the limit zeroed."

Now, that's a reference to what is described in the documents as the temporary cheque cashing facility, and I'll come to address you on that momentarily. This process is what a number of witnesses described in evidence to you as the two-stage process. So to take Ms Martin as an example, at day 19 at page 2150,
45 she said that:

"(1) the swipe would occur from the customer using their card; and then (2) the funds would be made available for their use in connection with the front money account."

5 And Mr White also referred to a two-stage process. He did so at day 16 at page 1712. Mr Power also referred to a two-stage process, being day 18 at page 1996. What happened once the card was swiped is that The Star would issue an information-only hotel invoice which contained the patron's name and also a room number. And you can find evidence in support of that at exhibit B117.

10 The bank account into which the CUP funds was transferred was The Star's corporate cheque account, and that had a stated purpose of hotel when we look at exhibit D40 in evidence. That exhibit is a copy of a letter advising what The Star's bank accounts were.

15 By ledger entry, the patron's front money accounts would then be credited with the funds. We submit that from the beginning, this involved a process which was a sham and involved sham documentation. And that was to the knowledge of all of those involved, including the three lawyers, that is, Ms Martin, Mr Power and
20 Mr White.

Could I address you on what a "sham" means, Mr Bell. The principal authority for defining a "sham" is Equuscorp Pty Ltd v Glengallan Investments, which is (2004) 218 CLR 471. And I've had this put into Law in Order so I can call it up on the
25 screen. If I could ask the operator to call up INQ.028.001.3301. And could I ask the operator to go to pinpoint 3316 and highlight paragraph 46. And midway through that paragraph, you'll see the court says:

30 "Sham' is an expression which has a well-understood legal meaning. It refers to steps which take the form of a legally effective transaction but which the parties intend should not have the apparent, or any, legal consequences."

And that's exactly what was happening in this case, Mr Bell, insofar as these information-only invoices were being issued after the CUP cards were swiped at
35 the terminals. Just to indicate that this definition of "sham" has recently been cited with approval in the High Court in Boensch, B-o-e-n-s-c-s, v Pascoe, which is (2019) 268 CLR 593 at paragraph 103, and in the New South Wales Court of Appeal in Lewis - that's L-e-w-i-s - v Condon (2013) 85 NSWLR 99 at paragraph 58. In relation to the concept of a sham document, could I refer you to the
40 authority of WT Ramsay v Inland Revenue Commissioner, which is [1982] AC 300 at page 323. This was cited with approval in Lewis v Condon at paragraph 59, and I'll quote:

45 "To say that a document or transaction is a 'sham' means that while professing to be one thing it is in fact something different."

And that is exactly the case with these for-information hotel invoices. They profess to be invoices that the hotel had issued for what might generically be

described as accommodation. They had a room number on them, the date that the patron stayed and so on. But the substance of the transaction was that these were deposits into a front money account for the purpose of purchasing chips. Just while I'm on the question of sham, in terms of sham transaction, in Lewis v Condon it was stated that:

"A sham transaction is one which takes a legally effective form but which is intended by the parties to bear a different character."

10 And that's exactly what we say was here and happening here. And I will also give you a reference, Mr Bell, to Gregg v The Queen, which is [2020] NSWCCA 245 at paragraph 461.

15 Now, it was put to a number of the witnesses that this process was, from the start, a sham or a sham transaction or involved an artifice insofar as these for-information hotel invoices were involved. At day 26, page 2992, Mr Bekier said that the CUP process was sharp practice and that it was always very clear to everybody that the money would be used for gaming. At day 8 at page 810, Mr Aloï accepted that the CUP process was an artifice. He said it concerned him, and he raised it with Mr Houldin. And Mr Houldin said, "Get it done."

20 Mr Power said at day 18, page 2008 that the documentation issued showing a room number had been assigned to a patron was fake. And Mr Theodore agreed that the documentation was adopted to obscure the nature of the transaction. He said that at day 25 at page 2849. Interestingly, Ms Martin said that she considered that this two-stage process was a permissible one because the CUP cards were not being used directly to purchase the gaming chips. Ms Martin said that at day 19 at page 2152. And then at page 2153, she did not accept that the process is a sham. We submit that that answer reflects poorly on her judgment and that you should find that, from its inception, the CUP process involved a sham.

Would that be a convenient time to have the mid-morning adjournment?

35 **MR BELL SC:** Yes. I will now adjourn for 15 minutes.

<THE HEARING ADJOURNED AT 11:29 AM

<THE HEARING RESUMED AT 11:46 AM

40 **MR BELL SC:** Yes, Ms Sharp.

MS SHARP SC: I'm just concerned that the counsel for Star and Star Entertainment doesn't appear to be on the line.

45 **MR BELL SC:** Yes, there seems to be someone there now.

MS SHARP SC: Now, could I call up exhibit B at 3095, please. Now, I'm showing you an email chain - if you can look about a third of the way down, this is

an email from a lawyer at KWM to Mr White dated 4 May 2017. Can I start at the back of the email chain, please. If the operator can go to pinpoint 6255. There, Mr Bell, can you see there's an email from Oliver White dated 3 May 2017 to solicitors at KWM. And Mr White there attaches The Star's merchant agreement and also the UnionPay rules. And then Mr White says:

5
10 "The most material question on which we need advice here is whether the transactions which have previously been settled could be unwound in some way by UnionPay, were it to find out that a merchant facility was operated in breach of its rules. I know The Star has agreed to indemnify NAB in relation to claims against NAB for breaches of scheme rules, but could this be used as a mechanism to unwind transactions."

15 Now, this was a very serious risk that Mr White identified at this time. And certainly from the terms in which it is written, it appears that Mr White considered that the merchant terminal was being used in breach of the UnionPay International rules. Can I take you over the page to the response, please. And this is styled as "preliminary thoughts", you will see. So it's not an advice; it's just preliminary thoughts. There's no evidence before you that there was any further advice after
20 this. But you will see point number 2:

25 "Based on the information you have provided to us it may be arguable that The Star has not breached the terms of the merchant agreement by processing hotel package transactions with UnionPay cards."

Now, it's of considerable concern that this risk has not been discounted and yet it would appear that The Star continued to court the risk for many years afterwards, Mr Bell. Can I also draw your attention here to point 3:

30 "We note there may also be an argument."

So it's not expressed in the most confident terms:

35 "There may also be an argument that the hotel package transactions where parts of the proceeds transferred into Star accounts are also not prohibited under the UnionPay scheme rules as it may not be characterised as a 'fully prohibited' transaction."

40 Now, that, of course, is on the assumption that some part of that swipe was, in fact, being used to pay for the hotel, that is, accommodation services. Can I also, while we're here, draw your attention to what is stated at point 4:

45 "It is not clear based solely on the documents you have provided that us that NAB understood that it may have endorsed or permitted behaviour by The Star that could potentially breach the scheme rules."

So the external law firm is clearly calling out the fact that there's a risk that NAB does not know the true purpose of the transactions. Just while I'm on this point,

you asked a question before the adjournment - and I think the question was, "Is the evidence that the acquiring bank allocates a merchant category code based upon information provided by the merchant to it?" Let me take you to what the evidence said. There was evidence at page 821 at lines 7 to 14 that the merchant category code for the terminal was set at an earlier time.

And then if I could call up exhibit F31, please. This is an email from Ms Fiona Walmsley on 17 June 2013 to Graeme Stevens, David Aloï and Andrew Power. You'll see there's a reference there to an Excel spreadsheet that lists the merchant category codes for The Star terminals, and what it appears is that - and can I - just before I go - what appears is that Star was hunting around for a terminal it had that had what I will describe as a permissible merchant category code. But you will see that Ms Walmsley says here that:

"For our terminals contains reference to MCC 7995 terminal (which from my understanding of the UnionPay rules is a prohibited use of UnionPay)."

So this is what the lawyers are thinking at this point in time. Andrew Power is on that email, you would note. And then if I could take you, please, Mr Bell, to 1677. And you will see, midway down, Mr Haberley says:

"Merchant category code can be allocated at an EB level."

We're not sure what "EB" stands for, Mr Bell. It might be that The Star can assist on that question, but that's where the evidence stands. So in answer to your question, it's not so much that the NAB assigned, in 2013, the merchant category code; it's that The Star hunted around for a terminal it already had that had a merchant category code that was not prohibited under the scheme rules.

We submit that numerous witnesses gave evidence to you accepting that the UnionPay - the CUP card was used in a way that was prohibited by the UnionPay regulations, and I refer to the evidence of Mr Stevens at day 6 at page 656 and at day 7 at page 771. I refer to the evidence of Mr Aloï at day 8, page 814; Mr Power at day 18, page 1997; Mr Bekier at day 27, page 3058; Mr Hawkins at day 23 at page 2646; and Mr White at day 15 at page 1656, although he placed some weight on the so-called two-stage process. And Mr Theodore said that The Star had taken a pretty aggressive interpretation of the scheme rules, and he said that at day 25 at page 2905.

The next matter in relation to UnionPay that we wish to address you on is the search for workarounds because of a concern about the fact that, for a particular period of time, the funds that were swiped on the CUP card had not cleared in The Star's account, and the concern that that might mean that The Star was providing credit to a patron in contravention of section 94 of the Casino Control Act. The evidence suggests that there was a delay in the funds clearing of about 24 to 48 hours, and I refer there to exhibit B32. I don't need to take you to that. Can I take you to - in fact, I do need to go there. If I can call up exhibit B at 32. And if I can

take you, please, to pinpoint 0028. And the concern that Mr Stevens expressed is recorded at the bottom of this page in a 19 June 2013 email. He said:

5 "If we release funds before they can be seen in our account, ILGA regard this as the provision of credit."

10 So this was the concern, and the evidence shows that certain - well, two workarounds were contemplated. The first workaround that was contemplated was that The Star would rely on the printout of the merchant terminal receipts to establish that there were funds, even though they had not cleared. And that was described by Mr Stevens at day 6 at page 657. Could I call up exhibit C7 because The Star wrote to ILGA about this. What I'm showing you is a letter of 22 November 2013 from ILGA to - I beg your pardon, from The Star to ILGA. And what is sought is a further amendment to the cheque cashing and deposit facility internal control. And it says:

"This change relates to the use of debit cards at the casino."

20 So there's no reference to CUP here. But it says:

"Currently the internal controls require that all electronic funds transfers must be registered in The Star's bank accounts before the funds can be released."

25 Then there's a reference to the Casino Control Act. Then it says:

30 "Despite the transaction being processed and approved, some financial institutions may not actually be deposited into The Star's account for up to 48 hours. The Star contends that this receipt is sufficient proof for the funds to be released to the patron and that in doing so it is not providing credit."

35 So that was the contention, and then an amendment was sought to the internal control. But Mr Stevens gave evidence that the authority did not accept this, and he gave that evidence at day 6 at page 659. Mr Micheil Brodie, who worked at the authority at that time, gave the same evidence, and that's at day 21 at page 2379. So The Star was aware that the first workaround was not accepted. And this is when the second workaround was developed, and this is the temporary cheque cashing facility. And this workaround was set out in a memorandum from Oliver White dated 3 February 2014, and I'll call that up now.

40 In fact, what I'll call up first is a file note that Mr White prepared later in October 2014. If I could call up exhibit B47, please. Now, Mr White was examined about this file note dated 15 October 2014. He's there recording his recollection of the advice he provided back in February of 2014, and he says in this file note he prepared a briefing note for Matt Bekier and John Redmond, and he provided that 45 to them in hard copy and in person. And he says that:

"On the basis of the briefing note, Adrian Hornsby and I approached Matt Bekier, who gave his approval to us, but referred us also to John Redmond to

consider the matter and confirm whether he approved. We had a brief meeting in person with John Redmond where we ran through the memo content and answered questions."

5 Now, this, we submit, establishes precisely what happened with this memo at the time, and there's no reason not to accept this as an accurate account of what took place. Let me now take you, Mr Bell, to that memorandum, which is exhibit F at tab 54. And you'll see that this memorandum, in terms, is addressed to
10 Mr Redmond, who was the CEO and managing director at the time, and Mr Bekier, who was the CFO, and also copied to Ms Martin. And Mr White, in his executive summary, says that:

15 "The best potential solution is to temporarily establish a CCF for this player, although there is a risk that ILGA would still form the view that this process is provision of credit."

This is a very good example, Mr Bell, of where The Star realises a risk but chooses to court that risk. And we submit this was not a matter that was disclosed to ILGA at the time, so no permission was sought to do this. If we can - if I can
20 take you to the background section, Mr White says:

25 "Currently, it is ILGA's view that a patron using CUP can only access the funds for which they have transacted once those funds have cleared in The Star's bank account."

Now, we submit this cannot be read as confirmation that ILGA knew that a patron was using CUP. This could well be shorthand for Mr White referring simply to what Mr Stevens referred to, which was a debit card being used and the problem of the cleared funds. Now, Mr White goes on at the bottom of that first page under
30 the heading Operating a CCF to say that:

35 "The standard practice across Echo's properties is for a house marker to be signed on buy-in. If the patron does not have an Australian bank account, the house marker is supported by a signed, but otherwise blank cheque from the patron's relevant overseas bank account."

Now, "house marker" or "marker" is another word for "counter cheque", and usually The Star describes this as a counter cheque. And Mr White goes on that:

40 "The house marker is the 'cheque' for the purposes of the cheque cashing facility."

And then he says:

45 "The requirements for a cheque are."

And can I ask the operator to go over the page, please, to 0592. And you'll see at the top, Mr Bell, that he - Mr White set out four dot points. Now, those are dot

points taken from section 10 of the Cheque Act which go to the definition of what a cheque is. May I remind you at this stage, Mr Bell, that section 75 of the Casino Control Act said that:

5 "In this section, 'cheque' has the same meaning as the Cheques and Payment Orders Act of 1986."

10 So, in fact, that was changed to be - the name of that Commonwealth legislation changed to the Cheque Act but remained in the same terms. But in section 10 of the Cheque Act, there is a definition set out of "cheque". And the first of those points is:

"An unconditional order to pay."

15 Now, one of our submissions, Mr Bell, is that the process for the temporary CCF never involved an unconditional order to pay, but I'll come back to develop that in more detail in a minute. Mr White then indicated some risks under the heading - well, I will take a step back. What Mr White advises, as to what we say is the workaround, is:

20 "Accordingly, provided we have bank details of the relevant overseas bank and put this on the house marker and that is signed by the patron or their authorised signatory, we will have a valid cheque and can provide chips against the cheque under the CCF provisions in section 75."

25 Now, we submit that is a very brave call. No external advice was sought that we have been able to find in the evidence. We submit that there are two problems with it: the first problem is creating a house marker or a counter cheque in circumstances where the patron has not handed over a valid cheque that can be
30 drawn on an Australian financial institution means that a counter cheque is not a cheque within the meaning of section 10 because it is not an unconditional order to pay; secondly, we submit that this is, in effect, a recommendation to create sham documentation, and I will develop that submission in a moment. But let me take you through the balance of Mr White's advice. He says, under the heading
35 Interaction With Prohibition on Credit:

"The complication of operating a CCF for patrons with overseas bank accounts arises from the prohibition on the provision of credit in section 74(1) and -"

40 This:

"House markers are generally only recognised and banked by Australian banks."

45 And this is the problem. The counter cheque that's created in conjunction with the so-called temporary CCF is one that is addressed to a foreign bank which has no idea that the patron is authorising any money to be drawn from the account and is

under no unconditional order to pay that amount. And if I can take you to an example. We could call up the documentation for Phillip Dong Fang Lee, which is exhibit B73. This is - you will recall evidence that there were two occasions in April 2015 where Mr Phillip Dong Fang Lee swiped \$11 million and then, a few days later, swiped a further \$11 million. This is the second swipe.

And if I could take you to the second page here, Mr Bell. What I'm showing you now is the counter cheque that Star generated as the so-called temporary CCF. This, we submit, is not a cheque within the meaning of the Cheque Act and is a sham - sham document. Mr Dong Fang Lee gave evidence that he did not know that a temporary cheque cashing facility was being created for him, and our submission is that Star never had the intention that it would bank this cheque if the transaction failed to clear for some reason. And that's what makes this a sham document.

You'll see that this counter cheque is, as Mr Dong Fang Lee confirmed, drawn on the bank - or purported to be drawn on the bank account that issued the CUP card that Mr Dong Fang Lee swiped. So it has got a BSB number, an account number and it's in the name of China Construction Bank. Mr Dong Fang Lee gave evidence that he did not have a chequing facility with China Construction Bank. And as various standard operating procedures of The Star indicate - and I'll give you a reference but not take you there at this stage, exhibit D3 at pinpoint 0059 - Star was aware that it could not bank - that overseas banks would not recognise counter cheques that it issued.

Now can I return to Mr Oliver White's memorandum of February 2014. So this is exhibit F54. And over to pinpoint 0592. Now, under the heading Current Situation with CUP, Mr White said:

"As highlighted above, however, ILGA have stated that in their view the funds the subject of a CUP transaction may only be recognised when they clear in The Star's bank account. To date, The Star has not sought to challenge this position. In certain very limited circumstances, ILGA has permitted The Star to recognise funds before they have cleared, but this is strictly case by case depending on the facts."

And then there's a heading Proposed Work Around, and that's where Mr White suggested the temporary cheque cashing facility. But he says:

"The issues to be considered in relation to this solution -"

Dot point:

"ILGA's stated view on the position of CUP transactions to date, which might suggest that they would form the view that the use of CCF in this circumstance is a prohibited provision of credit."

So that risk is squarely identified here. And then the second risk, dot point:

"The risk that CUP will not make payment on a transaction which has been approved on a card terminal (I am not in a position to quantify this risk)."

5 And then if I can go over the page again, please, operator. There - at the second dot point there, Mr White says:

"Whilst it is unlikely that ILGA will investigate this matter unless it ends up in a position of default, it is possible -"

10

Sorry:

"(I.e. the CUP approved transaction is not honoured by payment and accordingly the house marker is banked and dishonoured), it is possible that this will be flagged as an issue during a routine audit of house markers/cheques held by cage, which will happen annually."

15

20 So the risks have been squarely identified to the then CEO, Mr Redmond, and the CFO, Mr Bekier, and they have decided to court the risk, Mr Bell. We say that this temporary CCF is a sham transaction because there was no intention on the part of The Star to bank these counter cheques. The very point of the cheque cashing facility that is permitted under section 75 is that the casino has collateral if it all goes wrong, and the casino has to bank the cheque within a certain amount of time if the cheque cashing facility is not paid off. But Star well knew that it could not bank the counter cheques that it issued in respect of the CUP transactions because it well knew that these overseas banks would not honour the counter cheques that Star had raised.

25

30 And that is indicated in the various versions of the standard operating procedure on cheque cashing facilities. And I'll take you to one of them now, Mr Bell. If I could call up exhibit D at 3. And I'm showing you a copy of the cheque cashing and deposit facility standard operating procedure of 26 August 2016. Could I go, please, operator, to pinpoint 0059. And you'll see there's a heading at the top, Task 10, Acceptance of Cheques for CCF Draw Downs. And about a little bit over halfway down the page, it says:

35

"Note: patrons with a CCF drawn on an overseas bank account must provide a signed personal cheque prior to any draw down. Overseas banks do not honour The Star generated counter cheques."

40

MR BELL SC: Sorry, where does it say that?

45 **MS SHARP SC:** A little bit over halfway down the page, after the entry at point 3. If I could have that highlighted, please, operator. Now, what that means is that for a real cheque cashing facility, the essence of that transaction is that the patron hands over a cheque that can be banked. That's the collateral. And Star well knew this, and it was on the basis - and Mr Aloï gave this evidence - that what would ordinarily happen is that a patron would hand over the cheque drawn on a bank

with a cheque cashing account. And in return for receiving that cheque, The Star would issue the counter cheque, and that Australian banks would recognise the counter cheque and would bank the counter cheque. But overseas banks do not recognise the counter cheques, and Star knew it could not bank the counter cheque
5 like the one that I just showed you in the case of Mr Phillip Dong Fang Lee.

So we submit this is the vice of this so-called temporary CCF because it was a sham process. It documented a procedure which The Star did not intend that it would use. It did not ever intend that it would bank these counter cheques because
10 it knew it could not bank the counter cheques. So that's one problem with the process. The second problem with the process, we submit, is that the counter cheque does not satisfy the section 10 Cheque Act definition of "cheque" because it is not an unconditional order on a bank to pay. It cannot be an unconditional order if the overseas bank is not required to honour that direction and not required
15 to bank it.

MR BELL SC: So let me make sure I understand your submissions. You firstly say the cheques issued under the temporary CCF were not, in fact, cheques because they were - the definition of a "cheque" under the Cheques Act requires
20 there to be an unconditional order on a financial institution to pay. And it didn't, in fact, operate in that way. Is that the first submission you make?

MS SHARP SC: Yes.

MR BELL SC: And then is the reason why it doesn't operate in that way because the evidence is that the only relationship between the overseas bank and the customer is the CUP card? And do you rely upon the instructions that Mallesons recorded, that there were no savings account or other accounts attached to the CUP; it was simply a matter of customers paying moneys on to that card?
25

MS SHARP SC: Yes, Mr Bell. I also rely on the evidence of Mr Phillip Dong Fang Lee that there was no - in respect of the counter cheques issued to him, that he had no chequing account with those banks. And, in fact, he gave no cheque drawn on those accounts. He couldn't. But he gave no cheque drawn on those
30 accounts to Star in return for Star issuing the counter cheque. So that's the first point. It wasn't a cheque. But in any event, even if it was, it is a sham transaction because The Star never intended to bank these counter cheques and knew that an overseas bank would not honour the counter cheques, as is indicated in the standard operating procedure before you.
35

MR BELL SC: So the submission of counter cheques in relation to the temporary CCF where a sham is put further or alternatively, is it, to the proposition that it doesn't meet the definition in section 10?
40

MS SHARP SC: That is so.
45

MR BELL SC: And do you say that's because the document, although it purports to be a cheque - firstly, there was no intention of The Star to present the cheque for payment?

5 **MS SHARP SC:** That is the first point. And the second point is that there was no intention on the part of the patron to create a temporary cheque cashing facility. And we use Mr Phillip Dong Fang Lee as the example, who gave evidence that he didn't even know one had been created.

10 **MR BELL SC:** So - and to be more precise, so far as the customer is concerned, do you submit that the customer did not intend to - by this document to, in fact, order the foreign bank to do anything?

15 **MS SHARP SC:** That is precisely the point we make. And not only did not intend to, but could not order the bank to pay because the patron did not have a cheque account with the overseas bank. Now, it might be said that one example does not make the rule, but it needs to be remembered that the evidence establishes that Phillip Dong Fang Lee was the largest user of the CUP process at The Star. And the evidence is that he swiped - I believe it was about \$40 million on the CUP
20 during that - sorry, about \$100 million on the CUP out of the \$900 million of swipes. So this is an example that makes the rule, we say.

MR BELL SC: So if the temporary CCF cheques were shams, do you say that there was no real transaction at all, or do you say that there was some other real
25 transaction which this was disguising?

MS SHARP SC: Well, we say that the disguise was to seek to overcome the prohibition on providing credit and that it did not work to achieve that aim. And that meant that every time that a CUP card was swiped and chips or chip purchase
30 vouchers were provided to a patron prior to the funds clearing, there was a breach of section 74 of the Act.

And returning specifically to the question you just asked me about whether - what the true substance of the transaction was as compared to the purported substance,
35 the purported substance, of course, was that it was a cheque cashing facility. But the true substance was simply that there was a debit and there was a period of time where the funds hadn't cleared and that, in substance, for that reason, there was the provision of credit to the patron because The Star could not be sure, until the funds cleared, that the transaction would be honoured by the issuing party of the CUP
40 card.

MR BELL SC: So to be precise, do you submit that there was either no true transaction or, alternatively, if there was a true transaction, it was merely operating as an IOU by the customer --
45

MS SHARP SC: Yes.

MR BELL SC: -- to The Star and did not, in fact, involve any order on the foreign bank at all?

MS SHARP SC: That is so. And I adopt your characterisation of that.

5

MR BELL SC: Yes. Thank you.

MS SHARP SC: And this temporary CCF is a very good example of The Star courting the risk of a breach of the Act which squarely conditions its obligations as a casino operator.

10

MR BELL SC: Yes. Commissioner Finkelstein, in relation to Crown, referred to it as a risk-based approach to legal and moral norms where the question is not, "Is this illegal?" or, "Is this immoral?" The question is, "What is the risk of us getting away with it or not?"

15

MS SHARP SC: And that is precisely what Mr White said in his memorandum: it's unlikely that ILGA would detect this; it might detect it in a routine audit. And this, in and of itself, casts very serious doubt on the suitability of The Star as a casino operator. We submit that the temporary cheque cashing facility was not something in respect of which The Star sought permission of the authority. There is some evidence to show that in versions - certain versions of the standard operating procedure, the temporary cheque cashing facility was set out. But I think the evidence established that it wasn't until December 2015 that the authority was provided with a copy of the relevant standard operating procedure and --

20

25

MR BELL SC: What was the date?

MS SHARP SC: I believe it was 20 December 2015. I'll have one of my juniors pull up the date and obtain the exhibit. But it certainly wasn't a matter that was squarely drawn to the authority's attention, nor in respect of which the authority's approval was sought. And, of course, this was in February 2014, that approval was given to do this, and that document that I'm referring to dates from December 2015.

30

35

I've made some mention of Mr Phillip Dong Fang Lee because the evidence establishes that he is the - was the single largest user of the CUP facility and because the media allegations made specific reference to his usage. He gave evidence to you through an interpreter, Mr Qin. We submit you would find that the interpreter was highly qualified to interpret on behalf of Mr Lee and was very experienced.

40

The evidence was that Mr Lee had been an Australian citizen for 20 years. He had gambled at The Star for about 20 years, and he held the highest membership at The Star, which was the diamond membership. Interestingly - well, not interestingly. Notably, he was a local player and, as at the time that he swiped the card in 2015, he was not eligible even under Star's rules for using that facility because he wasn't an international rebate player.

45

Mr Lee gave evidence that the use of the card was suggested to him by Chen Rong, an employee of The Star who managed the relationship with Mr Lee. He gave evidence of how he used the card at day 6 at page 578 to 579. And as I've
5 already mentioned, on some occasions, he stayed at the gaming table while his card was taken from him and processed elsewhere. He gave evidence that he did not stay at the hotel, and he did not have a room at the hotel. And that evidence was given at day 6 at page 580. The evidence that he never held a cheque account with China Construction Bank was given at page 585.

10 Mr Lee also confirmed in evidence that there were times when he would be issued with winnings cheques after he had gambled. He gave that evidence at page 591. He gave evidence that sometimes he purchased more chips than he gambled, and if he decided not to use his chips, he could take the chips away from the casino or he
15 could exchange those for a cheque from the casino. And he gave that evidence at page 591. He also gave evidence that he sometimes gave the chips to other people, which he said at page 592.

The evidence shows that various employees of The Star were concerned about Mr
20 Phillip Dong Fang Lee's usage of the China UnionPay card and, in particular, that his level of CUP swipes was not commensurate with his level of play. And I'll refer you, without taking you, to the exhibit, which is exhibit B54, which is an email dated 4 January 2015. In relation to the query at that time, Mr Adrian Hornsby, who was in charge of credit and collections, said in an email dated 4
25 January 2015, which is also exhibit B54, that:

"CUP is not to be used as Mr Lee's personal money changer."

30 So there was an awareness of that risk from that early point in time. As I've already mentioned, Mr Bell, there is evidence that in - over a three-day period in April of 2015, Mr Lee swiped a value of \$22 million on his CUP card, so \$11 million one day and then another \$11 million the following day. That first \$11 million swipe, which was a series of swipes of \$999,000 each, was, in fact, approved by Mr Bekier. And you will see that approval at the document I just took
35 you to - I'm sorry. I've forgotten the exhibit number of it. But you will have seen Mr - no. Sorry. I withdraw that. That was the second one. Mr Bekier did agree that he had approved that, though, on day 27 at page 3066.

40 Can I show you the email correspondence which followed that first approval. If I could call up exhibit B at 67. And the approval of Mr Bekier is indicated at exhibit B66, I should indicate. Now, after that first approval, there's an email - and you'll see in the large red that it says:

"Mr Lee is now requesting to do CUPs worth 11 million. Please advise?"

45 And then could I take you to the top of that document, please. Sorry, if I can take you to the bottom of that first page. And you'll see that staff members are expressing concern over his level of play.

5 If I then take you to exhibit B73. This is the second approval for the so-called
temporary cheque cashing facility dated 6 April 2015. You will see the signature
of Ms Martin appears, and next to that is the signature of Mr Bekier. So both of
them approved this transaction. Mr Bekier gave evidence to you, at day 27, 3066,
that he approved the swipe because there was no credit risk. He accepted that it
was an extraordinary amount of money to withdraw on a debit card, but his
position was as long as the money was used for gaming, it did not break any laws
and he left it to others to check the money laundering issues associated with the
10 transaction.

Ms Martin said, at day 19 at page 2157, that she did not understand who the patron
was when she approved this transaction, which is highly concerning. She says that
she would have had to review some underlying materials, but she could not recall
15 what those materials were at the time. She also agreed that she did not regularly
give approvals for somebody to swipe \$11 million in one go. We submit that Mr
Hawkins would also have been aware of these transactions because his evidence
was that he monitored the high-value patrons.

20 Mr Bell, can I call up exhibit B at 74. You will see this is an email chain
relating - it's a little bit later in April 2015. At the bottom of that first page, there's
an email to Mr Aloï that says:

25 "Just want to bring to your attention a few things about Lee. In my mind he
appears to be taking advantage of the winning cheque system."

So he's raising an issue that swipes are not commensurate with play and that
winning cheques are being provided. If we can go - he says here:

30 "See below. He's taken 5.1 worth of winnings cheques over the last week,
after originally buying in on the 3rd. In the same period, ratings show he's
only winning 3.4."

35 So he's taking more money out of the casino by way of winning cheques than he is
playing through the casino. And this is why we make the submission that, in
effect, Mr Dong Fang Lee was using the CUP process as - at the Crown in the
same way that one would use an ATM machine, so to move money - sorry, I said
Crown, I meant The Star - to move money out of the casino.

40 Mr Aloï, at day 8 at page 780, said that Mr Lee's use of the CUP card was in
breach of The Star's processes because the process was supposed to ensure that
winnings cheques issued by the casino actually reflected winnings from gambling
at the casino. He also gave evidence, at page 871, that he believed he raised his
concerns with the money laundering team, but he had no particular recollection of
45 having done so.

In later April 2015, The Star gave Mr Lee a two-week ban on the use of the debit
facility via CUP, and we submit that that was a completely inadequate control in

the circumstances of the case. There are a number of emails in the latter part of 2015 where officers, including Mr Alois and Mr Hornsby, continued to express concern that his level of swipes are not commensurate with his level of play at the casino.

5

There are also documents to which Mr Hawkins was a party, and they are emails in the period 2016 to 2017, where concerns were drawn to his attention in relation to Mr Lee's usage of the CUP cards. And one document that I'll take you to in particular is exhibit B117. And you can see here, Mr Bell, there's an email from Andrew Power to Mr Quayle, copied to Mr Hawkins, dated 20 April 2016. And this follows from an RAR - I think the evidence was that this was some sort of risk assessment review. And at number - if I can have number 3 highlighted for you, please. Mr Power refers to the CUP process here. This is recognition, in (a), that there was a practice of creating dummy rooms for customers who were not staying at the hotel. And Mr Power said:

15

"Staff should be advised to stop doing this."

Although the evidence indicates that many staff members, including Mr Power, were aware that this continued to happen. And then (b), Mr Power recommends that there be:

20

"Documented guidelines which are used for the purposes of making a decision as to whether to permit our biggest CUP user (PL) draw down further funds."

25

And that's clearly a reference to Phillip Dong Fang Lee, which was accepted by both Mr Hawkins and Mr Power in the evidence.

Can I then take you to an email of 11 May 2016. If I could call up exhibit B124. That's exhibit B124. The document is STA.3009.0009.0058. This is a document that was prepared by Mr Power entitled Memo of Legal Advice Re Key Risks. He says that he gave this memo to Ms Martin and Mr Bekier, and we submit you should accept that both of those people received and viewed this document. Mr Power clearly calls out a number of serious risks in relation to China UnionPay in that first row. If I could have that enlarged for you. If the operator could enlarge that. So Mr Power says:

30

35

"Whether CUP transfers for gambling purposes are permitted -"

40

So that risk is known:

"And the potential for the service to be used as a means of circumventing restrictions imposed by the Chinese Government on nationals withdrawing funds from China."

45

So that risk is known:

"More specifically, (a) whether CUP policy supporting practice of converting CUP credit through the -"

I don't know what "SR" stands for:

5

"Lounge by swiping a CUP card on the NAB EFTPOS (and attributing an amount to a hotel room and creating a temporary CCF for gambling) is permitted or known."

10 So that's a third risk - third serious risk that's called out:

"(b) issue is whether The Star is circumventing China laws and creating a reputational risk and taking active steps to conceal this practice (noting NAB email)."

15

And then (c):

"Use by prominent customer -"

20 That's a reference to Mr Lee:

"Under certain self-imposed operational restrictions that are not defined and documented."

25 It is simply extraordinary, Mr Bell, that all of these risks are known by two senior lawyers in the organisation and made aware to Mr Bekier and that an immediate stop was not put to this process. This was in 2016. The evidence shows that this practice continued until March 2020.

30 I will also refer you, but not take you, to exhibit B183, which is a spreadsheet of Mr Lee's gaming transactions which were sent to Mr Hawkins on 26 January 2017. And, of course, Mr Lee continued using the CUP card all the way up until the time it was stopped. Mr Lee was only excluded from the casino by having a withdrawal of licence issued on 19 July 2021 when it was reported in the newspaper that the
35 ATO had issued a garnishee order against him.

We submit that you should find that The Star permitted, knowingly, Mr Lee to use the CUP process as though it was an ATM machine and that it knowingly
40 permitted him to continue removing chips and plaques from the casino and, on occasions, to swap them with his friends. He was permitted to use the facility in the early years, notwithstanding that he was not entitled to do so under The Star's own procedures, because he was not an international rebate patron.

45 There is no evidence before you that indicates that anybody engaged in any source of funds checks for Mr Lee in relation to these swipes. I do note, however, Mr Bell, that Ms McKern, the forensic accountant, accepted in her evidence at page 3185 at day 28, that funds obtained via CUP processes carried a lower risk of money laundering because the funds had cleared the bank account.

MR BELL SC: What do you say about the evidence from Mr Lee that he never stayed at the hotel?

5 **MS SHARP SC:** Well, this underscores the point that there was sham
documentation from the beginning. This was an artifice from the beginning, Mr
Bell. It seems that originally it was intended to apply to patrons who did stay at the
hotel, although as the experience with Mr Lee indicates, and as the experience
10 with other patrons where dummy invoices was issued indicates, even the
pre-qualification of patrons staying at the hotel was done away with by The Star.

Can I, just in the few minutes remaining before lunch, indicate to you that there's
evidence to suggest that the lawyers were aware, from an early time, of the
potential that the CUP process would breach the merchant agreement with NAB.
15 Can I call up exhibit B77. And you'll see here there is an email from Mr White to
Mr Power which attaches the merchant agreement and other contractual
documentation with NAB. It's dated 24 April 2015, and it forwards an email that
Oliver White had sent on 11 April 2014. If I could take the - ask the operator to go
over the page, please.

20 And here, Mr White sets out his views about whether there was a breach of the
merchant agreement. And one thing - and I examined Mr White about this. One
thing that Mr White overlooked - and he agreed with this at day 15, page 1664 - is
the fact that "relevant law" was defined in the merchant agreement as referring to
25 the UnionPay scheme rules. We submit that was a mistake, but it was one - a
mistake which informed this advice. So Mr White makes reference - at the top of
the page, you will see Merchant Terms, and further down the page says:

30 "Please note there are no other express restrictions on the use of CUP or
specific reference to UnionPay's terms."

So that's where we submit he made a mistake because he didn't realise that
"relevant law" included the UnionPay terms. And then if I could take you over the
page, please, Mr Bell. Mr White concludes:

35 "On the basis of the above and my understanding of current processes for
CUP, I do not believe there is a breach of the NAB merchant terms."

40 But the point is this: a senior lawyer - well, two senior lawyers at the organisation
were well aware that there was a risk of the merchant terms. And when they
finally sought advice from King & Wood Mallesons in 2017, there was no
confidently expressed advice that the process was not a breach of the merchant
terms. So, again, this is an example of Star personnel appreciating that there was a
serious risk and courting that risk.

45 **MR BELL SC:** Ms Sharp, I'm conscious that this may not be the only forum in
which the question of whether The Star breached its merchant agreement with

NAB might be ventilated. It's not necessary for me to make a finding as to whether there was a breach of the merchant agreement, is there?

5 **MS SHARP SC:** Indeed. We submit it is not necessary for you to make that finding. We submit that you could comfortably make the finding that Star personnel were aware of the risk of breach and courted that risk. That's as high as we put it.

10 **MR BELL SC:** Yes.

15 **MS SHARP SC:** I'm about to move on to a slightly different topic now - I see there are 10 minutes left. I will move on to it now. Could I take you, Mr Bell, please, to a slightly different point in this story of CUP, and this - the point I'm now going to address you on is an awareness that personnel at NAB might not have known the true purpose of the transactions. And this risk was known from - I've taken you to the Andrew Haberley correspondence back in 2013. But we submit that by 2015, the lawyers, that is, Ms Martin, Mr White and Mr Power, were aware of a risk that NAB did not know. And first of all, can I take you to exhibit B93, please. Now, if I can start at the beginning of this email chain.
20 Mr White emails Ms Martin and Mr Power on 22 October 2015 and says:

"NAB's approach appears to be changing with a change in personnel (it was NAB who recommended the charge code that is used at The Star)."

25 So there's a square acknowledgement of that risk I've just mentioned, Mr Bell. And then if I take you to the email that Mr White responded to at the bottom of the page. That's an email from Ms Martin dated 22 October 2015. And that, in turn, forwards an email from Ms Waterson dated 22 October that was originally sent to Mr Power and Ms Martin. And could I highlight the second paragraph of that
30 email beginning, "I received a phone call." And Ms Waterson advises Mr Power that she had received a phone call from Neil Williams at NAB about the volume and value of the CUP transactions. And she states:

35 "Neil was enquiring about the volume and expected value figures, he asked if we were aware that China UnionPay transactions were not to be utilised for gaming purposes and then advised that as part of the merchant approval assessment, questions had been raised in regard to the proposed coding of these transactions (hotels, motels and resorts) and the dollar value of the transactions. His exact comment was, 'That makes for a very expensive hotel
40 room'."

45 So we submit that by this time, the three lawyers could not have had any confidence at all that NAB understood the true purpose of these transactions. And the evidence is that none of these lawyers contacted NAB or caused to be contacted - caused NAB to be contacted to confirm that - their understanding of the purpose of the transactions. This is another good example of a risk being known - a serious risk being known and the decision made to court the risk.

We submit that by October 2015, there's evidence that Mr White was searching for documentation that would show whether or not NAB was - or did have knowledge of the risks. And I refer there to exhibit B96. And then another email dated exhibit - I beg your pardon, which is exhibit B100. And in evidence, when

5 Mr Power was taken to that document, he accepted at day 18, page 2005, that he was aware of the risk by that time and that NAB was concerned that the service was being used for gambling. And it's in that context that Mr Power's advice of 11 May 2016 should be understood, where he referred to the possibility of concealing and NAB.

10

Mr Bell, is it convenient at this stage if we take the luncheon adjournment?

MR BELL SC: Yes. I will now adjourn for one hour and resume at five to 2.

15

<THE HEARING ADJOURNED AT 12:57 PM

<THE HEARING RESUMED AT 1:57 PM

20

MR BELL SC: Yes, Ms Sharp.

MS SHARP SC: There's one document that I neglected to take you to earlier which I'll need to call up, which is exhibit F45, please. This - if I can have that over to the last page, please, operator. And - I beg your pardon, it's the previous page. If I can have that page scrolled up from the bottom of the page. There's an

25 email from Graeme Stevens dated 21 February 2014 to Mr Aloï that says:

25

"The SOP should not specify China UnionPay. Why is this not done in the buy-in room or at the cage? The SOP should simply be labelled Debit Card Fund Transfer."

30

So there's this intention to obfuscate the nature of the transaction. If I could scroll up that a little bit, please, operator. And then Mr Aloï explains why:

35

"The reason it's at Astral VIP lounge is because it can't be directly linked to the casino's account as it's against CUP policy. So we went with the arrival lounge where it's linked to the hotel and they assign the room."

40

This was a sham from the beginning, Mr Bell. Can I move forward in time to an email from Mr White, one of the lawyers, dated 28 November 2019. I won't bring it up. I'll give you the exhibit number, which is exhibit B147. At this point in time, Mr White is recommending that the wording issued on the for-information invoices be changed. And he says:

45

"As you may be aware, VIP use of China UnionPay credit cards is a sensitive area and we need to ensure that relevant documentation is drafted to minimise potential risk to the business. I would like to amend the standard wording produced for these transactions to say 'transfer to customer's The Star account'."

Again, there's a knowing involvement by one of the lawyers to obfuscate the true purpose of the transaction. We submit that this was dishonest and this was unethical.

5

In 16 January 2017, Mr White emailed many members of senior management. I do need to bring up this email. It is exhibit B167. If I could go to that. And once it's called up, you will note that it's sent to Chad Barton, Harry Theodore and Ms Martin, all very senior within the organisation. Again, operator, that's exhibit 10 B167. And Mr White attaches some articles in the press at the time. And he says:

15 "If the general gist of these stories is correct and Beijing is looking to limit the use of CUP for capital outflows, then we should be aware of this and considering our potential exposure should CUP shut down as a payment method for The Star Entertainment Group or CUP is both shut down as a payment method and CUP refuses to clear one or more of the approved transactions."

20 So the risks are squarely drawn to the attention of many of these senior members. I've already taken you, Mr Bell, to Mr White's consultation emails with KWM on 3 May 2017. I won't go there again. It's exhibit B3095. Now could I take you to a document, which I will need the operator to bring up, which is exhibit B397. This is an email, again, from one lawyer to another, Mr Power to Ms Martin, dated 28 25 July 2017. Number 2, you will see, is China UnionPay, where Mr Power says:

"The risks associated with CUP are well known and a risk assessment and legal advice has been given in this regard."

And then he says at the bottom of that paragraph:

30

"It highlights a risk that the use of CUP for international guests may well have exceeded the intended scope of this service, which may call into question the arrangement we have in place with Star's bank."

35 Of course, Mr Bell, this continued all the way until March 2020. Mr Power gave evidence that, by this time, he knew that fake documents were being created as part of the scheme and that there was a real question about whether NAB knew the true purpose of the transaction. That's at day 18 at page 2021. However, he would not accept that the only reasonable and ethical advice to be given by the lawyers at 40 that time was to cease using the CUP process, and that was at day 18, page 2021. That very much calls into question his judgment, including his professional judgment as a lawyer.

45 Can I move now to make some submissions on The Star's dealings with NAB from 2016 onwards. There is a contest in the evidence in relation to dealings between Mr Theodore and Andrew Bowen from NAB. There was evidence of their dealings in relation to CUP from 2016. I do need to call up Mr Theodore's statement - his first statement to you, which is exhibit A1339, and go to pinpoint

0164. And if we could go to pinpoint 0164. Mr Bell, at paragraph 89(b), Mr Theodore sets out his account of discussions with Mr Andrew Bowen in September of 2016. And he says:

5 "In particular, I recall that Mr Bowen outlined his understanding of how the terminals would be used. He said words to the effect that he understood the terminals were for VIP customers based on the level of gaming spend, that the transactions would take place as 'hotel transactions', and once cleared, the funds would primarily be used by patrons for gaming."

10

We submit that is knowingly false evidence that was provided to you, Mr Bell. Mr Bowen gave a statement and also was examined by me and he denied that and gave evidence that he never understood that the CUP swipes were used for the purpose of patrons purchasing chips. It is important, Mr Bell, that while every opportunity was extended, nobody cross-examined Mr Bowen. So his evidence remains unchallenged. It should be accepted in preference to Mr Theodore's.

15

Mr Theodore's account of catching up for a coffee with Andrew Bowen on 22 March 2017 and discussing how the CUP cards were used should also be rejected. We submit, again, it is contrary to Mr Bowen's evidence, in his statement and orally, and he was not challenged on that evidence. It is also, that is, Mr Theodore's evidence, quite contradictory to the contemporaneous documents. And in that regard, we refer to an email that Mr Bowen sent to Mr Theodore on 30 March 2017, which is exhibit B253. And there's no need for me to take you to that document. But there, Mr Bowen states:

20

25

"NAB would like to ensure that all transactions through Star merchant facilities restrict gambling. Gambling applies a separate merchant category code to what is currently applied in Star Group's Astral VIP merchant terminal."

30

It is simply unbelievable that Mr Bowen would write an email in those terms had he truly been aware that the CUP card was being used to purchase gaming chips, and it's further evidence that Mr Theodore's account to you was untrue, Mr Bell. Mr Theodore gave evidence in his statement that he understood that CUP was aware of the process because of conversations he had had with Oliver White and Chad Barton, and because NAB had demonstrated knowledge of it in an email. He agreed in evidence he had never seen the email, and he also said he could not recount the terms of the conversations with either Mr White or Mr Barton. Mr Theodore also said that he believed that NAB knew because no NAB representative could reasonably believe the funds were deposited simply for hotel accommodation services. He said that at paragraph 87(a)(v) of his statement.

35

40

Of course, the evidence of Ms Arthur from NAB and Mr Bowen, both of whom had that proposition put to them, was that, indeed, they did reasonably believe that the funds were used for what I might say are accommodation and ancillary services, which, in the case of Ms Arthur, is hardly surprising given there were a number of emails where The Star went to great length to append documents

45

suggesting that these high-value transactions were indeed for the purchase of luxury goods, including the jet that Ms Paula Martin referred to when she settled the 7 November transaction. Even if it was the case that early on Mr Theodore believed that NAB knew, he could not have any confidence that they did know after he received that email from Mr Bowen on 30 March 2017. He did accept that in his oral evidence, at page 2916 in day 26.

Can I take you, please, to exhibit B1806. This was sent by Mr Theodore to very senior members of management - Mr Bekier, Mr Hawkins and Ms Martin - on 5 November 2019 when there were another round of inquiries from NAB on behalf of CUP. This is indicative of what Mr Theodore's attitude is, we submit. He says this:

"We have had this in the past. We gave high level answers and it blew over. The requests we are getting now however are seeking more detail."

Clearly, from this point, Mr Theodore could not have had a reasonable basis to say that NAB knew what the true purpose of the transactions were. We submit that you would find that Mr Theodore did not give a truthful account to you. You would also find that Mr Bowen and Ms Arthur did give a truthful account to you.

There were a number of what we submit are misleading and indeed deceptive emails that members of The Star sent to NAB in 2019. Can I start with one that Ms Dudek sent, which was at exhibit B1430. And if we can look at the top of the email, it's copied to Ms Scopel, it's dated 19 June 2019 and it's sent to NAB, together with what are described as hotel receipts. These are the for-information invoices.

The answer that Ms Dudek gives is one that she agreed in evidence was utterly misleading. And I won't read it out to you; you will be familiar with this. The evidence shows that this email was suggested by Mr White, the lawyer. Again, highly dishonest and highly unethical. The invoices that were attached I won't take you to, but they're exhibit B1431, exhibit 1432, suggest - or gave every appearance of transaction records for purchasing hotel accommodation.

MR BELL SC: Do you submit that The Star was obtaining a financial advantage as a result of these communications?

MS SHARP SC: Yes. And that is a matter that I put to Mr Theodore. The financial advantage that was obtained was an increase in turnover. And from that increase in turnover, there is invariably an increase in revenue because of the concept of theoretical win and the house advantage. So here we have obtaining a financial advantage. We also have deception. There is a very real question about whether there was a breach of section 192A of the Crimes Act - sorry, 192E of the Crimes Act in New South Wales, Mr Bell.

Now, I've just taken you to one example of a misleading - or we say deceptive response, and we say deceptive because it was knowingly misleading. It wasn't

accidentally misleading. The very purpose was to suggest that the transaction was different in substance than was the reality. Ms Dudek said that she knew the response was misleading at the time, but she had deferred to Mr White as he was the lawyer. She said that at page 54 in day 1.

5

There were similar responses to the 19 June email that's before you now, given by Ms Dudek to NAB and copied to Ms Scopel on 27 August 2019. I won't take you to that, Mr Bell, but it is exhibit B1594. Ms Scopel accepted that by the time of August, she had grown increasingly aware that UnionPay were making queries and NAB was passing on information to UnionPay. Mr White, during this period, continued to settle the responses that were being provided. Meanwhile, Ms Scopel was consulting with Mr Theodore about them, and Mr White also said that he consulted with Mr Theodore about these responses, as did Ms Dudek.

10

15

Now, a new round of misleading - or we say misleading emails were sent, commencing from 4 November 2019. If I could take you to an email from Ms Dudek to NAB of that date. It is exhibit B1802. And I should indicate that both Ms Dudek and Ms Scopel indicated that this response was completely misleading. Ms Dudek said that at page 65, while Ms Scopel said that at page 120. If I have the top part of that email enlarged for you, Mr Bell. The email from Ms Dudek says:

20

"Certain very high end premium guests at Star Entertainment's integrated resorts incur expenses."

25

Again, the attempt here is to imply that what the patron is purchasing are hotel accommodation services and ancillaries. There's no disclosure here that, in fact, they're purchasing chips. It was knowingly misleading. Mr White also accepted in evidence that this email should not have been sent. That was at day 16 at page 1720. And Mr Theodore, in a more troubling answer, said that he wasn't clear as to whether this response was appropriate to send or not. And he said that at day 26 at page 2912 through to 2913. We submit that his evidence was not candid on that count.

30

It was on 4 November 2019 that a representative from CUP directly contacted The Star and sought some information about the transactions, and Ms Scopel effectively fobbed him off on the basis of privacy and security reasons. There, the relevant exhibit is exhibit B1813.

35

40

On 5 November 2019, Mr Theodore emailed Mr Bekier, and he copied Greg Hawkins and Paula Martin, and informed them that The Star was receiving more requests from UnionPay about these transactions. That is at exhibit B1806. So that is to say all of these senior members of The Star were aware of this problem at the time.

45

On 6 November 2019, Ms Arthur sent a further request for transaction details, this time directly to Ms Scopel - that is exhibit B1834 - and foreshadowed at that time that UnionPay were considering directing NAB to cease providing the terminal facility to The Star. She also said that she wanted:

"Written confirmations that no transactions via the merchant facility includes a gambling component."

5 We submit the request could not have been clearer, that NAB wanted confirmation in writing that there was no gambling component. There were some telephone calls between Ms Scopel, Ms Arthur and Mr Theodore at that time. We submit you should prefer the evidence of Ms Arthur where it contradicts Ms Scopel and Mr Theodore.

10 There was - Ms Scopel then prepared a draft email in response, and Mr White reviewed that draft, and so did Ms Martin and Mr Power - all of the lawyers - and we submit they were all acting unethically and dishonestly. If I could bring up exhibit B1834. This shows you that all three of the lawyers were involved at that point, Mr Bell, and not one of them stopped the proposed response going through to Ms Arthur.

15 And that final response, in 7 November 2019 email, can be found at exhibit B1828. It was, we submit, a completely misleading response, and that much was admitted by Ms Scopel at day 2 at page 126. If I could just bring that response up for you, Mr Bell. It's exhibit B1828. And you will see that attachments to this response are Star Entertainment Luxury Overview, External Customer Expense Examples. If you note the second-last paragraph, it states:

25 "We confirm the terminal is located at The Star Grand Hotel, outside of gaming related areas and that gaming transactions are not conducted at the hotel."

30 You would comfortably find that this is a misleading response, we say. Mr Theodore accepted in evidence, at page 2925, that he authorised the sending of this response to NAB. He also said that he hadn't appreciated at this time that the response would also apparently be sent to the People's Bank of China. He said that at page 2928 to 2930. He would not accept in evidence that this response was misleading, Mr Bell, and we refer you to page 2915 to 2916 of the transcript. This shows the continuing poor judgment of Mr Theodore, who, at least at the time that he gave this evidence to you, was the CFO of this publicly listed company.

40 Yet more misleading responses were sent. I won't take you to it, but there's a 9 December 2019 response authored by Ms Dudek, into which Ms Scopel was copied, at exhibit B2059. The evidence shows that Mr White was aware of this document. You'll see there's an email from Mr White to Ms Scopel that has just come up. The final response was on 16 December 2019 by Ms Dudek to Ms Arthur, and it is exhibit B2069. And it largely replicated the 7 November response.

45 So what this email shows is that this was not a one-off event of sending one misleading email to NAB; this was a pattern that extended over a significant period of time, to the knowledge of many senior members of staff, including Ms

Martin and Mr White, that shows that NAB - or the documents sought to mislead NAB, and that was so knowing that NAB was going to pass on its answers to CUP.

5 Things became increasingly difficult in early 2020 when Ms Arthur from NAB sent an email dated 3 March 2020 - this is at exhibit B2240 - advising that UnionPay were querying more transactions and which attached a warning letter. And this warning letter clearly indicated, we submit, that UnionPay had been misled about the purpose of the transactions. Could you just pardon me for a moment, Mr Bell.

10 We submit that Ms Arthur's evidence that she did not know the true purpose of these transactions should be accepted by you. She was subjected to a very searching examination, but she held fast in her evidence and her evidence is consistent with the documents. There was nothing in this document - in the documents to indicate that she was informed of the true purpose of these transactions.

15 That evidence is consistent with the fact that on 23 December last year, she sent a letter to The Star which queried what these transactions had been used for, and she sought a full account. And by the time she gave her evidence to you, there had not been a substantive response to that letter. And indeed, by the time Mr Theodore gave his evidence to you, there had not been a substantive response to that letter.

20 There's one particular phone call I need to deal with, Mr Bell, and this is a phone call relating to November 2019. On 6 November 2019, Ms Scopel sent Mr Theodore an email where she said:

25 "Tarnya -"
30 That's Ms Arthur:

"Said the suggestion should go a long way, and I will liaise with the merchant team to get a guide on how to beat communications."

35 Now, that suggestion, we submit, was the suggestion of reducing the transaction limit to \$50,000 per swipe. We say there's nothing in that email which would confirm that Ms Arthur was told that the true purpose of these transactions was to purchase gaming chips. Now, Ms Arthur frankly said that she had no recollection of the conversation - and she said that at page 211 to 212 on day 2 - but she did accept there had been a telephone call. But we submit this document falls a long way short of showing that Ms Arthur was advised of the true purpose of the transactions.

40
45 There's another telephone call that I need to refer to, which is the 7 November telephone call. And Ms Scopel said in evidence that - and this was at day 2 at 129, that there was a telephone call between Ms Arthur, Ms Scopel and Mr Theodore where Mr Theodore said words to the effect that, "Star could not provide specific

confirmation that the transactions were non-gaming related," and Ms Arthur said, "Yes, yes, I know." Now, we submit that Ms Arthur's evidence is to be preferred on this point, and she maintained that she did not know what the true purpose was, that knowledge being, as it was, she could not have said, "Yes, yes, I know," to Mr Theodore.

She, that is Ms Arthur, did say she could not recall one way or the other whether there was a telephone call on 7 November, and she said that at day 2 at page 212. Notwithstanding that absence of recollection, she was certain that it was never conveyed to her by Ms Scopel or Mr Theodore that the cards were used to fund gambling, and that is also evidence she gave at page 212. And we submit that where there is contest, you would prefer Ms Arthur's account.

Now, once the warning letter was passed on by NAB to The Star, consultations occurred within senior management at The Star and a decision was taken to cease using the service. Even then, there was not a frank acknowledgement within The Star as to the reason why the CUP process was being terminated. In fact, Ms Scopel sent a draft email to Mr Theodore and Mr White that was approved and then sent to staffers a final email. And it said:

"Due to increased administration associated with the use of CUP card transactions for the purposes of contributing to hotel account balances, The Star has made an operational decision to discontinue this transaction type across all properties."

So the charade was being perpetuated even at this stage, Mr Bell.

There is evidence of a significant telephone call taking place on 7 October 2021, which is an email from Tom Mazzaferro at NAB Bank. This is exhibit B3149. Could I bring that up, please, because this is another document which suggests that the account Mr Theodore gave is not a correct one. This is a contemporaneous email. As you will see, Mr Mazzaferro says:

"I just received a call from Harry Theodore at The Star. Harry wanted to let me know that The Star had been notified that the media were intending to run a story."

And it was only at this time, we submit, that Mr Theodore came clean to NAB on the true purpose of the CUP transactions.

Now, there were a litany of problems associated with CUP, Mr Bell, and this litany of problems continued all the way from 2013 through to March 2020. And in and of itself, this litany of failings, which include sham documentation, misleading of banks, misleading of regulators, probable breach of section 94 of the Casino Control Act, would firmly lead you to conclude that The Star was not suitable to hold the casino licence. This highlights deeply ingrained cultural problems shared across a large number of members of the senior executive and that three of the lawyers were prepared to be dishonest and unethical, that the CFO

and the group treasurer were prepared to mislead a bank and that the regulatory affairs manager was prepared to mislead ILGA.

5 **MR BELL SC:** Just for the record, when you said section 94 of the Casino Control Act, you meant section 74?

10 **MS SHARP SC:** Yes, I did, Mr Bell. It's the case - I should say, just to wrap up the submissions on CUP, the directors gave evidence to the effect that while they had some understanding that the CUP card was in use, that they had no other understanding about what had happened with the CUP cards. And it was not until they received a paper in September 2021 that they had an understanding of the problems associated with the CUP card. That, of course, was the paper of Mr Seyfort.

15 We submit that that in itself is a fairly sanitised description of what, in fact, had happened. But it did - even though it was sanitised, it did highlight some very serious problems, including the probability that members of Star had misled the bank, and yet nothing was done by the executive at this point in time other than to seek a response of management. In particular, we submit that the failure of any
20 members of the executive at that time to say, "We want to look at these communications with NAB and understand what's happened," is a good indication of the passive approach that the directors took in their administration of the executive.

25 Can I move now to a different topic, which is topic 10, the KPMG reports. And I'll try to move through this fairly quickly, Mr Bell. The evidence shows that by 16 May 2018, KPMG had prepared two reports for The Star, one of them being the report which was the review of part A of the AML/CTF program at Star Entertainment. Those reports had already been - the evidence establishes that those
30 reports had already been through a detailed fact-checking exercise, and there had been a large number of meetings with staff within Star on the part of KPMG to understand what The Star's position was.

35 It is notable that those reports, dated 16 May 2018, did not bear the word "draft" on the front of them. The evidence is that the draft versions had been provided to Mr McWilliams on 3 May 2018, as well as to Mr Brodie and Ms Arnott, for the purpose of them checking the factual accuracy. And that was noted in footnote 2 of KPMG's letter dated 6 August 2018, which is exhibit B1027. The reason for that letter at that time was to confirm the findings that KPMG had expressed in its
40 reports of 16 May. I won't take you to that document, but we rely on its contents because it shows you how many meetings occurred after the executive summaries of the KPMG reports were provided to the audit committee on 23 May 2018.

45 KPMG made a number of findings in its part A report that showed that there were serious deficiencies in The Star's AML/CTF program, and I do need to take you to its findings. If we could go to exhibit B795. I'm sorry. I've taken you to the wrong document. Could we go to exhibit B794. Just to note again, I'm showing you the part A report. There's nothing on the face of this front page that says it is a draft

report; in fact, you will see at pinpoint 2751 that it is signed by Alexander Graham, the director.

5 If I could take you to pinpoint 2756. You'll see in the right-hand column that there's a ranking system of the findings, which is colour coded. Then if I take you to pinpoint 2757. You will note that item 2, the money laundering/terrorism financing risk assessment, is coded as "high" in red. And we submit that the problems - or the findings outlined here were ones that highlighted very serious inadequacies in the program at that time; for example, that Star Entertainment
10 does not have an adequately documented money laundering and terrorism financing risk assessment methodology, that it applied a default customer risk rating of "low", that even - that:

15 "We note a customer who brings a significant amount of money into the casino will not automatically be assessed as being higher than "low" risk."

That:

20 "The risk assessment does not consider terrorism financing."

And so on. And then if I can take you, Mr Bell, to pinpoint 2759. At items 10 and 11, problems are identified with transaction monitoring and enhanced customer due diligence. And then if I take you to pinpoint 2765. You'll note at 3.2, for the money laundering terrorism financing risk assessment, again it's rated as "high".
25 So a serious problem there. The same with pinpoint 2766. And at pinpoint 2768 - if I could take you there and highlight this, midway down the page, Mr Bell, it says:

30 "Risk."

And it says:

35 "Star Entertainment may not be adequately identifying its money laundering/terrorism financing risks and therefore its program may not be adequate to address the actual money laundering/terrorism financing risk."

This is a very serious finding in the context of a casino, Mr Bell.

40 Now, you heard evidence from a number of witnesses about reactions to the executive summary of this report that were presented to the audit committee meeting on 23 May 2018. Those were, firstly, a concern that management had only just received the report and hadn't had time to review it; and the second reaction was a reaction of hostility and challenging these conclusions, rather than accepting them and trying to remedy, at that point in time, the deficiencies. Can I
45 go to the minutes of the meeting, Mr Bell, which are - pardon me one moment - exhibit B0811. And the reference to this starts at the bottom of that first page. You see it says:

"Internal audit status."

And, Mr Bell, would you note that the minutes say:

5 "Subject to legal professional privilege."

Now, certainly Mr McWilliams and Ms O'Neil gave evidence that they didn't recollect any discussion taking place about legal professional privilege at that meeting. If I can go to the second page of those minutes - well, first of all, what
10 you'll note at that first page of these minutes - and Ms Martin confirmed that she prepared these minutes in evidence. The minutes state:

15 "The committee chair noted that the first part of the internal audit status update was being discussed in a limited forum in light of the legal professional privilege protocols."

It was accepted by Ms Martin in her written statement that legal professional privilege was wrongly asserted in relation to this document, although she cavilled with that to some degree in her oral evidence to you. But in any event, we submit
20 that there's a real question here about whether there was any discussion at all of legal professional privilege in these minutes, which is a concern because the minutes should be an accurate record of what was discussed at the meeting.

It is difficult to understand how privilege could ever have been asserted, given that
25 this was an independent review that was required by statute under the AML/CTF Rules. In view of the fact it was a statutory requirement, one cannot understand how it could be asserted that the dominant purpose of the creation of this document was for the provision of legal advice. In any event, if I can take you, Mr Bell, to pinpoint 0819. The minutes record at dot point 3:

30 "KPMG were engaged to conduct the independent review reported in the paper to bring financial services/banking sector expertise to the review and prepare a report for the purposes of legal advice being provided."

35 Now, nobody could give evidence about who sought that legal advice when they were asked, Mr Bell. A little further down, the minutes record:

40 "It was noted that the detailed reports had only just been received by management."

Well, that's, with respect, not correct, Mr Bell. Those detailed reports were provided on 16 May. This meeting is occurring on 23 May:

45 "There are aspects of the content and bases for some opinions that may be contested by management."

So this shows some degree of hostility, Mr Bell. The minutes record that:

"Ms Martin noted that the next steps are for management to complete its review of the report."

And then a little bit further:

5

"And finalise legal advice."

Again, it's completely unclear what legal advice was being provided in relation to these reports. And a number of - so these minutes very much convey that the report had not been finalised at this time and indeed record, a little bit further down the page - if I can have the operator go there - that - you'll see, Mr Bell, it says:

10

"Following discussion, the committee noted the extracts presented and noted that management is however continuing to work with KPMG and will revert to the committee further."

15

Now, a number of witnesses gave evidence that they considered that the reports were final by the time of the 16 May documents provided to Mr McWilliams and Ms O'Neil. Two officers of KPMG gave evidence to you - Mr Sullivan and Mr Graham - and they both gave evidence that they were invited to present at this meeting, but ultimately sat outside the meeting and were not called upon.

20

What happened after that time, Mr Bell, is that Mr Bekier and Ms Martin attended a meeting with KPMG representatives, together with Mr McWilliams. And Mr McWilliams gave evidence, consistently with Mr Alexander - Mr Graham Alexander and Mr Sullivan, that Mr Bekier was hostile at the meeting, sat through the meeting and flicked through the - well, what Mr Graham said was that Mr Bekier was hostile - he said that at day 4 at page 400 - and he wouldn't make eye contact with the KPMG representatives. And Mr Graham said, at page 400, that Mr Bekier turned through the pages and said, "This is wrong," turned through more, said, "This is wrong," and so on.

25

30

The evidence is that an apology was, in fact, provided to KPMG, although not specifically in relation to Mr Bekier's conduct, but an apology was ultimately provided to KPMG by Mr Todorcevski in relation to this meeting. The evidence is that The Star raised 22 specific concerns with KPMG about its report and that there were meetings - a large number of meetings between 16 May 2018 and 8 August 2018. These meetings are all recorded in exhibit B1027, which is the KPMG letter dated 6 August 2018, where KPMG, after all of those meetings, confirmed the views it had expressed in its 16 May report.

35

40

We submit that this evidence of how the KPMG report was handed reflects poorly on Star Entertainment's culture and processes, because it took so long for management to reach the point of acceptance that there were problems with its AML/CTF program. It is worth noting at this very same time the problems that were occurring in Salon 95 and the behaviour of Suncity. And there, may I remind you, Mr Bell, that it was on 14 May 2018 that Andrew McGregor wrote to

45

Mr Power, Mr Houlihan and Ms Judd that he wanted to "call it out early" that Suncity was:

"Operating a business model under our noses which is problematic."

5

And that is exhibit C49. And the KPMG report came one day after Mr Power had emailed Mr Hawkins on 15 May 2018, expressing his concern that Suncity's conduct gave rise to unacceptable risks, and Mr Hawkins forwarded that email to Mr Bekier the very day that the KPMG reports were sent. And there, I refer to exhibit B790.

10

Now, there were a few other problems associated with the KPMG reports that I need to take you to, Mr Bell. The first point is that these reports were not disclosed to the market. Now, that's a matter I examined Mr O'Neill about, and there's a question about whether that was a breach of continuous disclosure obligations. You may contrast that failure to say anything to the market with what The Star did do on 11 and 12 October 2021 where it released two separate ASX releases about that KPMG report, and we will submitting in due course that those releases were wrong in serious respects. Could you just pardon me for one moment?

15

20

I said there were a few problems. The next problem was this report was not provided to the authority at the time, notwithstanding that it highlighted significant problems with the AML/CTF program. There is no evidence that the authority specifically requested this document at the time, but we submit that the appropriate conduct of a regulated entity - a casino operator licensee would be to provide this document to the regulator. As it turns out, it was not provided to ILGA until late last year.

25

Most concerningly, The Star persistently pressed the claim that this document was subject to legal professional privilege when AUSTRAC sought the production of this letter. And that gave rise to a battle that lasted for around 16 months and which necessitated AUSTRAC writing to The Star on four separate occasions to press for production. And I won't take you to the documents, but I'll give you the exhibit numbers. Pardon me for one moment. So, firstly, it was on 14 September 2018 that AUSTRAC first wrote, requiring production of the KPMG part A report. And that's in exhibit B1087. On 5 October 2018, The Star refused to provide the document, asserting privilege. And that's at exhibit B1102.

30

35

Then on 12 September 2019, AUSTRAC issued a formal statutory notice for the production of that document. And that is in exhibit 1674. However, on 9 October 2018, The Star wrote to AUSTRAC, refusing to provide that document and asserting legal professional privilege. Exhibit B1736. On 5 December 2019, AUSTRAC wrote again, requesting the report and disputing the claim for legal professional privilege. So it was squarely drawn to The Star's attention that the claim was disputed, and there ought to have been very serious reflection at that point. That's exhibit B2013. And yet, on 12 December 2019, The Star once again responded, claiming privilege. And that is at exhibit B2049.

40

45

AUSTRAC had to write yet again on 9 January 2020, seeking the report, and squarely disputed that privilege attached. And that was at exhibit B2095. And the evidence then discloses that there were some telephone calls involving Ms Martin and AUSTRAC representatives, and it was only on 20 January 2020 that The Star
5 did finally provide the document. However, it asserted privilege and claimed that it did not intend to waive that privilege, but nevertheless provided it. And that's at exhibit B3204. So the upshot of all of this, Mr Bell, is that for 16 months, AUSTRAC had pursued the request for production of that document, and we submit that The Star made an entirely baseless claim for legal professional
10 privilege in resisting production.

At this point, I do need to say some things about legal professional privilege, the reason being, Mr Bell, is that we submit that the evidence establishes that there was a practice at Star Entertainment of cloaking documents in legal professional
15 privilege. And we submit the only rational explanation for that practice was so as to resist the production of documents containing adverse information to the regulators. And we say this is quite inconsistent with the expectation that a casino licensee will be clear and transparent with its regulators. Just pardon me for a moment, Mr Bell.

20 We submit that a good overview in a recent case of principles relating to legal professional privilege can be found in Justice Moshinsky's judgment in Commissioner of Taxation v PricewaterhouseCoopers, which is [2022] FCA 278. That refers to the test for legal professional privilege at common law and the
25 advice limb of the privilege. We refer you to paragraphs 135 to 151 of that decision. A few matters may be noted. First of all, the communication needs to be a confidential one, but, secondly, the advice needs to be for the dominant purpose of providing legal advice.

30 And if - pardon me, Mr Bell. What must be recognised with the situation of in-house counsel is that not everything that in-house counsel does is the provision of legal advice. In-house counsel can be involved in providing purely commercial advice. So it is incumbent, we submit, upon an in-house lawyer to consider in each
35 case whether advice they are providing is for the dominant purpose of providing legal advice.

There is a case I do wish to take you to, which I understand is - I can bring up on the screen. If I can ask the operator to bring up, please, INQ.028.001.0537. This is a case of Martin v Norton Rose Fulbright Australia (No 2) [2019] FCA 96. Could I
40 take you, Mr Bell, to paragraph 187. I'm sorry. I don't have a pinpoint number for it. And here, Justice Charlesworth refers to the High Court's decision in Waterford, which looked at the situation for government lawyers and made the point that sometimes they provide policy advice and sometimes they provide legal advice. But what Justice Charlesworth said is:

45 "The capacity in which the adviser is acting necessarily informs the dominant purpose of the communication in which privilege is claimed. As has been said, that is an objective factual inquiry."

But in this case, it rather appears that Mr Power, Mr White and Ms Martin had a practice of marking things as privileged without considering, firstly, whether there was any question for legal advice at all, but in what capacity they were acting and whether they were, in fact, providing legal advice.

The other point we'd make relates to the question of copy documents, and that's a matter that has been dealt with by the High Court in Commissioner of Australian Federal Police v Propend Finance, which is (1997) 188 CLR 501. And this stands for the proposition that where a document is provided to a lawyer for the purpose of obtaining legal advice, the copy of the document provided is privileged, but the original document isn't privileged, Mr Bell.

And that means, if we reflect on the KPMG reports, even if it was the case that a copy of the KPMG reports had been provided to one of the in-house lawyers for the purpose of providing legal advice - and there's no evidence that there was. But even if that is so, it does not immunise other copies of the KPMG report held by the business from production on the ground of legal professional privilege. Now, I made the submission that there is evidence of a practice of claiming privilege when there was not a proper basis for doing so. We submit that that is quite unethical.

Ms Martin squarely denied in evidence that she had a practice of marking documents and communications as privileged without satisfying herself that she had a proper basis to claim the privilege. And she said that at day 18 at page 2073. However, the dealings with the KPMG report stand to the contrary of that denial and, in fact, show that, in practice, she was willing to assert legal professional privilege in a situation where there was no proper basis to do so.

Mr White denied that there was any kind of practice of claiming privilege. However, he did agree, at day 16 at page 1746, that, as a matter of course, he marked communications with third parties as being privileged. And Mr Power gave evidence, at page 1841 to 1842 at day 17, that he did have a practice of marking documents as privileged without his having turned his mind to whether there was a proper basis for doing so. But he also gave evidence that he didn't consider that to be unethical, at day 17 at page 1842. It's also worth noting that Mr Power said he didn't have the word "privileged" as part of his automatic email signature. He said that at page 1841. That, of course, means that every time "privilege" appeared on one of his emails, he gave thought to whether or not to write that there.

We say that some other examples of where privilege was claimed where there did not appear to be a proper basis for it was in relation to the report of BDO. This was the independent review of the money laundering program subsequent to KPMG's independent review. And if I could take you to the board minutes of the 28 July 2021 meeting. They're at exhibit B3006. If I could have that up please, operator. Mr Bell, these are the minutes of the board of directors of July 2021.

Could I take you, please, to pinpoint 2449. And do you see there's an entry at the top which says:

"Ebsworth Lawyers and BDO."

5

And it there records that:

"Mr Seyfort noted that both phases of the review are being conducted subject to legal professional privilege."

10

Again, one may wonder why that was stated in view of the fact that there is a statutory obligation on Star Entertainment to obtain an independent review of the AML program. In view of that statutory obligation, it is very hard to see how it can properly be said that the dominant purpose for obtaining the report is to provide legal advice.

15

Now, some directors were asked about these minutes. I think that Ms Pitkin was asked about it in particular and could not say why it was that legal advice was being sought. The same may be said for Mr Sheppard and Mr O'Neill. Ms Martin was also asked about why privilege was claimed here, and she said that she did not realise that privilege had been claimed in July of 2021, and she said that she did not turn her mind to it. And that was at day 19 at page 2126. This, of course, is after The Star had finally produced the document - the KPMG report to AUSTRAC after lengthy disagreement, over 16 months, about whether that document was privileged.

20

25

Another example of a dubious privilege claim, we say, is in relation to the PwC culture report of 2022. On the first page of that report, it says that it's privileged and confidential, prepared for the purposes of legal advice. That is at exhibit B3451. Ms Pitkin, as a director, was asked in the context of this report being tabled at the directors' meeting whether she had understood that the PwC report was requested for the purpose of providing legal advice, and she said it wasn't. And that evidence is at day 32 at page 3555.

30

35

I will also take you to some documents in the context of submissions about Salon 95 and Suncity which show that, as a matter of course, information notes and investigation notes in relation to events in Salon 95 were marked as being privileged. Again, one may ask the question of whether the privilege was appropriately claimed in those circumstances.

40

Mr Bell, in relation to the KPMG reports, it cannot be doubted that after this initial, say, three-month period after the reports were provided to the audit committee, The Star and Star Entertainment did take many steps to improve their AML/CTF program. And those steps are set out in detail in Mr John O'Neill's written statement to you, and also in Ms Martin's statement. The current version of the AML/CTF program is set out in a statement provided by Mr Howard Steiner, who has long experience in working to improve money laundering frameworks of casinos and worked for many years - I think it was at Las Vegas Sands casino.

45

So ultimately, Star Entertainment did take steps to improve, and significantly improve, its AML/CTF program and compliance framework. And Ms McKern makes this point in her report to you, which is exhibit C330. I won't take you to that now. However, while the documentation has been significantly improved and, for example, there are new processes on enhanced consumer due diligence, transaction monitoring and the like, and also a substantial increase in AML/CTF resources and personnel - so that has all happened. But what must come with that, we submit, is a culture of compliance with the norms and values in that framework.

And we submit that that culture of compliance has been sadly lacking in two significant respects, and they are with respect to - well, really, in three significant respects: in relation to dealings in the Suncity room, which is Salon 95; in relation to dealings with certain junkets; and in relation to the patron bank accounts and, in particular, the arrangements that were negotiated with Mr Koi, the junket operator, and in relation to EEI Services and, in particular, the EEIS loans. And Ms McKern details at some length in her report various problems with the patron bank accounts, and I will come to those observations in due course.

MR BELL SC: Just a little earlier you said that there was a question about whether Star Entertainment had complied with its continuous disclosure obligations in relation to the KPMG report. Are you submitting that that is a question for me?

MS SHARP SC: I'm not sure that it's something that you can resolve, Mr Bell. Can I reflect upon that over the mid-afternoon adjournment and provide you with a response?

MR BELL SC: Yes. Well, let me just offer you this observation: that there was no admission by or on behalf of Star Entertainment that it was information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Star Entertainment securities. And in the absence of such an admission, in the ordinary course, there would be expert evidence on that issue, and there's a dearth of that evidence. So I would need to be persuaded that I have a basis to determine that issue.

MS SHARP SC: Yes. I'll address you on that after the mid-afternoon adjournment, if that's convenient. In fact, it may be convenient to have that adjournment now, Mr Bell. I've dealt - just to go back to where I am in terms of the list of topics I provided to you, I've addressed you on topic 10, which is the KPMG reports; I've address you on topic 11, what we say is an abuse of legal professional privilege; I've addressed you on topic 12, which is the further development of the AML/CTF program in light of the KPMG report; and the next topic I was going to move to is Suncity and Salon 95. I wonder if I could do that after the mid-afternoon adjournment?

MR BELL SC: Very well. I will adjourn now for 15 minutes.

<THE HEARING ADJOURNED AT 3:21 PM

<THE HEARING RESUMED AT 3:38 PM

5

MR BELL SC: Yes, Ms Sharp.

10 MS SHARP SC: I just wanted to give you a few more references before I move
on to my next topic. In relation to my submission about what Ms McKern had said
about the recent uplift in the AML/CTF program, could I take you, Mr Bell, to her
first report, which is exhibit C330. And that's a 12 March report. Operator, could
you go to page 15 of that report. I'm sorry. I think the pinpoint reference will be
0015. So here, we have a summary of some of Ms McKern's conclusions. And can
15 I just draw to your attention, please, Mr Bell, that at the top of the page, Ms
McKern says:

20 "The Star's multi-streamed program of AML/CTF improvement underway
since late 2018 was necessary and has been appropriately directed towards
the identified deficiencies and to enhance overall effectiveness of The Star's
AML/CTF function."

25 And in the right-hand column, Ms McKern provides further details in support of
her conclusion; for example, the increase in resources and renewal of the program
in 2019. Then could I direct your attention to the second row there, Mr Bell, which
says that:

30 "In the relevant period, The Star lacked a function within the second line of
defence to provide assurance as to the effectiveness of its AML/CTF
controls."

And then she notes, that is, Ms McKern notes, that:

"The AML/CTF uplift program has been extensive and is ongoing."

35 In the right-hand column. And that, in the next dot point:

"The BDO phase 1 report assessed the revised program as compliant."

40 And as well as there were several enhancement opportunities. And then in the last
row on that first page, Mr Bell, Ms McKern says:

"The Star's design and implementation of the TrackVia system is a substantial
leap forward towards industry best practice in AML/CTF systems."

45 And:

"It is at an early stage of implementation and there are risks to its ultimate
effectiveness which will require management."

And we wanted to draw your attention to what Ms McKern perceived to be the key risks to TrackVia, in the right-hand column, and that second entry there:

5 "The risk that data input to TrackVia is incomplete or lacks integrity."

And we submit that is a risk that has been realised in practice, at least so far as Suncity and Salon 95 are concerned, and I addressed you on that matter yesterday, Mr Bell, in looking at what became of the Angus Buchanan due diligence reports, his recommendations in August 2021 and what was ultimately recorded in TrackVia.

Mr Bell, also before the break, I made submissions to you on what we say is the abuse of legal professional privilege. I won't take you to these documents, but can I give you some further references to documents where we submit there does not appear to be evidence of a proper basis for the claims made. They are exhibit B2209; exhibit B787; exhibit C48; exhibit B805; exhibit B709; exhibit B890; exhibit B1185; exhibit B1492; exhibit G688; exhibit B2704; exhibit B2705; exhibit B2706; exhibit B2707; and exhibit B2708; exhibit B2778; exhibit B6256; and exhibit C257. Operator, you can take that document down, please.

I will now move to what I've identified as topic 13, which is Suncity and Salon 95. This shows that The Star took on an unacceptable level of risk, and even when clear money laundering risks were drawn to the attention of the lawyers and senior management, the choice was made to put profit over the need to effectively manage money laundering risks.

The beginning of this story comes with the 2017 rebate agreement between The Star and Mr Iek, who was the junket operator for the main Suncity junket, and this is exhibit B383. I won't go to that document now, but clause 6 of the agreement conferred exclusive access upon the Suncity junket to Salon 95 and referred to the operation of the cage. There, it was stated in clause 6 that:

35 "The promoter acknowledges and agrees that The Star retains sole operational and management control of the exclusive VIP salon (including the operating hours, who may access the exclusive VIP salon, the conduct of gaming, the operation of the cage).

40 However, in a series of email communications which followed later in 2017 and into early 2018, it seems to have been contemplated that Suncity would operate the cage in Salon 95. In particular, we emphasise the documents that Mr Whytcross was taken to in his oral evidence.

45 Just to explain a bit of background here, the - Salon 95 was in the Rivers - what was called the Rivers area. It was in part of the hotel, rather than in the main casino, and it was a VIP gaming room. There were some other gaming salons next door to it, and there was what is described as a satellite cage for the Rivers area. But it's our submission that in addition to that satellite cage, transactions were

occurring when Suncity operated the room at the so-called service desk which were tantamount to cage operations. So when cash was exchanged for chips, for example. And there's evidence, including CCTV footage, before you that shows that the exchange for cash and chips happened at that service desk.

5

We submit that there's evidence from about the middle of August 2017 between various Star representatives and Suncity representatives about installing a "cage" in Salon 95, and in that regard we rely on exhibit B412. And, for example, one of the emails in the chain of emails collected there is from a Suncity representative, which says:

10

"Please kindly continue progressing to set up a cage with two windows and a service counter with two seaters."

So a distinction is made between the service counter and the cage. And, Mr Bell, you might recall the physical layout of the room. There was indeed an enclosed office and then next to it, in the open plan, a desk. We say that was the service desk, in the open plan, and in the enclosed area was what people were referring to in these late 2017 emails as the cage.

20

Now, Mr Stevens made a submission to the regulatory - I beg your pardon, a submission to the authority. I've made submissions to you about that yesterday. That submission of Mr Stevens was misleading, and we submit that Mr Stevens accepted that in evidence, that he misled ILGA about why the renovations were being sought, which had the effect of creating the closed-off office in Salon 95.

25

The evidence establishes that Suncity commenced operating Salon 95 as its exclusive VIP room some time in early 2018. There was exclusive Suncity branding in that room and a number of Suncity representatives who all wore a uniform. There was various bits of equipment within the room that were branded with Suncity. So in a sense, this was a casino operating within a casino, Mr Bell.

30

I'd like to take you to some of the key documents and also what various witnesses said about these documents. It was early on that significant problems emerged with Salon 95. If I can take you to - and I'm - if I can go firstly to - and, I'm sorry, I don't have the exhibit number for this. It's STA.3412.0019.5757. This is exhibit B705. Now, if I could start at the end of this document, Mr Bell, at pinpoint 5760. So Mr Saro Mugnaini, who was involved in VIP operations, emails Mr Aloj and refers to Suncity using the Suncity cage without any AML requirement. And Mr Saro says on behalf of Suncity:

35

40

"Junket doesn't want to cause any AML issue, however this is a very important part of their business."

MR BELL SC: This email seems to be from someone called Wallace, to which Mr Mugnaini is copied.

45

MS SHARP SC: Yes. Mr Wallace is a representative of the Suncity junket. If you look on to the next page, which is pinpoint 5759, you will see that the email comes from Wallace Liu, L-i-u, on 12 March 2018. And then Mr Aloï forwards it to Mr White and says to him:

5

"I would assume Suncity would have an AML program in place prior to setting up a cash desk in the Rivers salon."

10 And at that time, Mr Aloï is the cash services manager at The Star. Now, Mr White sends an email - and I will take you to pinpoint 5758. He replies to - and, sorry, this does disclose Wallace Liu is a member of The Star. You can see the email is sent to him as well, Mr Bell. You will see that Mr White has marked this as "privileged and confidential", and then he says in the paragraph above Next Steps:

15

"If you become aware that Suncity are handling cash transactions, please let me, Saro Mugnaini and Micheil Brodie know as soon as possible. Please send an email to me including 'privileged and confidential' in the title and seek my advice on incidents."

20

And we submit this is evidence of the practice of cloaking documents which contain adverse information in the legal professional privilege banner. Over the page, Mr White says:

25

"If any team member becomes aware of cash transactions at the service desk, they should inform Oliver White by email using 'privileged and confidential' in the title, seeking my advice."

30 So this is encouraging team members to confect a process of seeking legal advice. In any event, Mr White - if I can go back to pinpoint 5758 - says in the second paragraph:

35 "I should point out that Suncity have a service desk in Salon 95. They do not operate a cage and have no authority to operate a cage. A cage may only be operated by the casino operator."

40 That's clearly correct, Mr Bell. You need a licence in New South Wales to operate a casino, and that's the point in the Casino Control Act. But the problem here was identified from very early on in the piece. A risk assessment was conducted. The evidence is that Ms Arnott prepared this risk assessment, in consultation with Mr McWilliams, who was then the chief risk officer. And I'll bring up this document. It's STA.3415.0007.1411. This is dated 24 April 2018. It's exhibit B3362. Can I draw your attention to the paragraph above the heading Proposal. It says:

45 "Allowing the Suncity service desk to operate without controlling for the above risks could result in serious legal non-compliances and is outside the risk tolerance of The Star."

Indeed, it could result in serious non-compliances because you need a licence to operate a cage, that being the core of a casino. However, instead of recommending that Suncity not conduct any cash transactions in that room, proposals were set up for cash transactions to occur at the service desk but with particular controls. And
5 can I take you over to the second page, which is - I beg your pardon. Sorry. On that first page, it says - if I can go back to the first page, please. Under the heading Proposal, the second paragraph, it says:

10 "As a condition of operation, the Suncity service desk will not be able to exchange cash for chips."

However, Mr Bell, you've seen CCTV footage where precisely that occurred. But at the fourth paragraph down, it states:

15 "There are a number of activities that mirror the activities of current junkets that will be permitted at the service desk."

And one of those is the last dot point there:

20 "Accept cash (or other payment) from customers."

And over the page:

25 "The service desk may disperse funds back to the customers."

And then it states:

30 "Suncity will not be able to use funds they have received at the service desk to pay players at settlement."

But, of course, that did occur, despite these controls. And the controls are there set out. I won't go through those now. Incidents of concern continued to be observed, and the evidence shows that eventually Suncity was provided with a standard operating protocol to constrain the cash transactions which could occur at the
35 service desk. But Suncity repeatedly breached those protocols. This gave rise to what has been described in the evidence as the first warning letter from Mr Hawkins, and that is a 10 May 2018 letter and exhibit B773, where - I won't take you to it, but Mr Hawkins said:

40 "I am writing to reiterate that the restrictions notified to you in April 2018 regarding the operation of the service desk in Salon 95."

And he states that:

45 "The service desk must not operate a cash float."

And then points out that:

"The following transactions must not take place at the service desk, including the exchange of cash for chips."

And that:

5

"The service desk is for the exclusive use of Suncity customers."

And that people who are not customers should not use the service desk. Then there is the document - and, again, I won't take you to it, but I will just read out part of it, STA.3427.0018.3096. And this is where the senior investigator, Andrew
10 McGregor, emailed Mr Power and Mr Houlihan on 14 May 2018 and said:

"Today's activities with Suncity have been very strange, we have an entity
15 within our four walls which is totally non-compliant to reasonable requests for basic information. I'm going to call it out early, Suncity is operating a business model under our noses which is problematic for Star Entertainment with regards to AML/CTF laws."

So this risk is expressly drawn to the attention of both Mr Power and Mr Houlihan,
20 but no effective controls are put into place at this time. So this, again, discloses the preparedness of senior Star officials to court the risk, notwithstanding very serious money laundering risks and the fact that Suncity were being uncooperative when inquiries were made to them by the investigative team.

Matters seem to have come to a head later in May of 2018, and there can I bring
25 up exhibit B787, which is an email that Mr Power sent to himself that functions as a file note, really, Mr Bell. And you'll see this is dated 15 May 2018. It refers to a conversation with Greg Hawkins, Paul McWilliams and Micheil Brodie from 11 May. This is after Mr Hawkins has sent the first warning letter, Mr Bell. And if
30 you have a look at the - if you have regard to the bottom of the page, it says:

"KH -"

That's Kevin Houlihan:

35

"Called it to get everyone in a room to understand who controlled what part of it."

And Mr Power records - and there's no reason to think this is not correct:

40

"Skye -"

That is, Skye Arnott:

"Believed Suncity is in breach of the agreement and we were interested in
45 one patron and the source of funds ."

And there's a reference to footage. There's a reference on the next page, which is pinpoint 6633, where Mr Power records towards the bottom of that page:

5 "So, I went up and spoke to gaming managers in Sovereign. Asked if he had concerns. GM -"

That's general manager:

10 "Said they are running a cage back there and 'it's out of control'."

And:

"I told Kev -"

15 I think that's - we submit that's Kevin Houlihan:

"I think we've got a problem here."

20 So it would appear that a number of senior members of staff at The Star in Sydney were aware that there were significant risks at this point in time. And that, in fact, is expressly advised to Mr Hawkins by Mr Power on 15 May 2018, which is exhibit B790, if I can bring that up, Mr Bell. I should indicate that the witnesses - a number of witnesses were examined extensively about these documents. You will see, Mr Bell, that Mr Power says to Mr Hawkins:

25 "In my opinion, the junket group's conduct has exposed The Star to an unacceptable level of risk and constitutes a breach of the agreement, of applicable laws or otherwise amounts to casino operations."

30 Really, once that view had been expressed, the only appropriate step was to shut this room down and terminate the agreement with Suncity, we submit. Mr Hawkins forwarded this email to Mr Bekier, which you will see, on 16 May 2018. A working group was then convened. You will see - I won't take you to it, but that's at exhibit B803. And then by - I do need to go to this document.

35 By - well, two days later, a number of very serious concerns about cash transactions were notified to Mr Power, Ms Martin and Mr White. If I could take you, please, to exhibit B804. And this is an email from Andrew McGregor, 17 May 2018. Could I take you now to the attachment, which is exhibit B805. Just while we're here, you will note that Mr McGregor has marked this as "privileged and confidential", and it's called Operation Money Bags Legal Summary. And it states in the summary:

45 "The purpose of this report is to brief The Star's legal team to assist them in the preparation of legal advice for the business."

However, there was no evidence about who had requested legal advice here and whether there were any anticipated legal proceedings. We submit this is a good

example of cloaking adverse information in documentary form in purporting to have the document subject to legal professional privilege. A large number of incidents are referred to in this document relating to cash transactions of concern. There's reference to cash being delivered in an esky, cash being delivered in a red coloured suitcase, cash being exchanged for chips at the service desk, cash being stored in suitcases and backpacks in the verandah of Salon 95. Again, once this information has been made known to these members of staff, the only appropriate response was to shut this room down, we say, Mr Bell.

10 **MR BELL SC:** I suppose if the authority had been notified, as it ought to have been, that consequence would have also followed.

15 **MS SHARP SC:** Yes. Yes. And in that regard, we also wish to emphasise that Andrew Power was a party to many of these emails in May and June 2018 about the cash transactions of concern. And that will become relevant when I come to address you on the submission he made to the regulator in August and September 2019 in answer to its queries. And, indeed, one such email exchange is that at exhibit B890, which refers to a number of incidents of concern and where, at pinpoint 3773, Mr McGregor states:

20 "Concerning for me is that Suncity staff are still making serious efforts to avoid suspicion and detection as they are outside our reach pursuant to the misconduct and discipline policy."

25 Mr Power is kept further briefed in a further information note, 19 June 2018, which is exhibit C57. I won't go to that now.

30 A second warning letter was sent by Mr Hawkins to Suncity in June of 2018. We submit that that was not commensurate with the level of risk that was being presented at that time, and Mr Hawkins at that time ought to have taken steps to have arrangements with Suncity terminated. In - and I'll come to address you a little later on what the board was told at this point. The short point is very little.

35 Can I take you now to exhibit B1492. You will see that this is addressed to Mr Power. This was an audit that was conducted by Mr Stevens, bearing the date 23 May 2019. There is an email of 6 August 2019 which shows that this document was sent to Mr Power on 23 May 2019. That's exhibit B1491. I won't take you to that now. The short point is that Mr Stevens concluded at this point in time that:

40 "The international VIP business unit and Suncity service desk team responded positively to the review conducted by regulatory affairs. There was no evidence of the practices that raised a concern around the operation of the room in 2018 continuing and Star now has an effective level of oversight."

45 Now, after that audit report - very soon after that audit report, a number of further transactions of concern emerged and were made known to various senior members of staff, including Mr Stevens, who agreed in evidence that he ought to have undertaken a further audit or risk assessment but did not.

Can I take you to a sample - and this is just a sample. It's by no means all of the evidence of what happened in 2019. But one of the documents is STA.3428.0034.3612, which is an email of 3 June 2019 from Kevin Houlihan to Ms Martin. Do you see this is marked "private and confidential", Mr Bell? This is exhibit G670, and it attaches what's described as a draft information report, which I'll take you to, pinpoint 3626. Again, it's marked "private and confidential". And this refers to operation - if we can go over to - I might take you to a different - sorry, could I just - yes, there, we've got the right email now.

Now, I can't read out some of the information here - it's in blue shade, as you'll see, Mr Bell - but you will note that information. And then can I take you - and I might just contrast this. I will come to it later. But on 21 May 2019, Ms Martin submits a compliance paper to the board risk and compliance committee which said there are no issues in Salon 95. So this information is coming to her, really, a week and a half later after that submission is made.

Could I take you to STA.3009.0012.0111. And at this time, we have events being reported to Skye Arnott about further transactions of concern. This is exhibit B1396. This relates to the Iek junket, which, of course, is the Suncity junket. If I can take you over the page. You'll see the image there, Mr Bell.

A further information report is provided to Mr Houlihan and Ms Martin by Mr McGregor on 5 June 2019, as well as to Mr Power. Again, that's relevant in view of the responses that Mr Power sent to ILGA later in 2019. That information note is at exhibit G675 and refers to a number of concerning transactions. If I can take you to pinpoint 3540. There's a heading Postscript, and it states:

"It appears that Suncity associates bring cash into Salon 95 concealing it in a few ways and that this concealment has thwarted casino surveillance's efforts to track its source and/or arrival time."

It's clear from this, Mr Bell, that the senior investigator has absolutely no confidence in Suncity by this point in time. If I could --

MR BELL SC: What should I conclude about the last sentence of the postscript where:

"The most senior Suncity employee in Sydney describes himself as a lame duck with no real ability to direct/supervise other people as those directions come from outside Sydney."

What conclusion should I draw about that?

MS SHARP SC: Well, one conclusion that you would draw, Mr Bell, is that if even Suncity staff can't control what's going on in that room, The Star can't, and it's been notified of that. But you may also conclude that more senior people in that junket are directing the operation - the cash transactions of concern. Can I just

take your attention back to pinpoint 3538, the very last paragraph there. And you can see that it states:

5 "The key reasons for my response to this so far is to mitigate the reputational harm to The Star, which is likely, if external stakeholders investigate these suspicious transactions. It is clear that Suncity is not currently complying with the agreed key processes."

10 Now, none of this is notified to the board, and certainly none of this is notified by Mr Power to ILGA when ILGA expressly consulted with The Star later in 2019. Can I draw your attention, please, to the part in blue shade, which would also indicate the knowledge that these people were aware of at this time.

15 Can I take you to exhibit G680. I'm taking you to this email - this is one from Skye Arnott to Kevin Houlihan dated 14 June 2019 - because, by this time, it's clear that two separate business units within Star, if I can describe them that way, are coming together about problems in Salon 95. And they're Ms Arnott from the compliance money laundering perspective and Mr Houlihan from the investigations perspective. It is simply not plausible that they would not have
20 shared with one another what they knew at this time. You will see at this time that Ms Arnott asks:

"If it would be possible to get Angus -"

25 That is, Angus Buchanan:

"To assist us with reviewing the month of Suncity footage that has been held out. I just spoke to Graeme and I am not sure that Ian has been looking for the things that we would necessarily find interesting."
30

If you will note this date, Mr Bell, 14 June, this is two days after Mr Buchanan emailed the Hong Kong Jockey Club report to Mr Houlihan and Mr White and Ms Martin. You will see - if I can take you, please, to STA.3418.0035.8175, and that's exhibit B1408 - that a meeting is organised - and there's no reason to think that this
35 did not take place - on 19 June of 2019 between Ms Arnott, Mr Houlihan, Mr Stevens, Mr Tomkins and Mr Brodie to - it says here:

"To gain an understanding of what came out of the Suncity footage and discuss next steps."
40

Of course, by this time, some people were in possession of the Hong Kong Jockey Club report. Ms Arnott agrees that she was provided with the Hong Kong Jockey Club report, although she cannot put a particular date on it.

45 Can I then draw your attention, please, to exhibit B1406. And if we go to this. This is an email from Wayne Willett, who you will see is the AML/CTF administrator, dated 14 June 2019. Of note, it's sent to Ms Martin. It's also sent to Ms Arnott and Mr Houlihan. By this time, we know that at least Ms Martin and Mr Houlihan

have that Hong Kong Jockey Club report. It is referring to further concerning transactions. And then can I take you, Mr Bell, to exhibit B1437. And - sorry, exhibit B1437.

5 **MR BELL SC:** Just before - if we just go back to that exhibit B1436 again - 1406. It says - this is 14 June:

"All dealings with Suncity are through Simon Kim, international marketing manager, Star Entertainment."

10

When did the allegations against Mr Kim surface?

MS SHARP SC: They were later in time. If you just pardon me for a moment, I'll see if I've got a note that can answer that now.

15

MR BELL SC: You can take it on notice, if you like.

MS SHARP SC: Thank you for that. I think it was in - yes, I will take that on notice. Thank you, Mr Bell.

20

Now, can we return to exhibit B1437? This is an email from Ian Tomkins to Ms Arnott and Mr Stevens dated 24 June 2019. It's of note that it's sent to Mr Stevens because he did not update that audit report but gave things the "all clear" the previous month. This email, we submit, demonstrates that there were seven separate transactions of concern which had been captured in CCTV footage in Salon 95 after Mr Stevens's "all clear" audit.

25

We submit it is clear from the documents, when they're all put together, that Skye Arnott's team was talking with Graeme Stevens, with Mr Houlihan and with the three lawyers, as well as with Mr Hawkins, and that all of these people were monitoring developments in Salon 95 closely at this time. And I should say so was Mr Power. If I can take you - Ms Martin denied this, we should say, in the evidence. But can I take you to exhibit C83. You will see - and there's some blue shade on here. But at this time, Mr White is reporting to Ms Martin on 11 July 2019, providing more information about Mr Chau.

35

And then can I take you to exhibit G84. I might call that up by its document number and check the exhibit number. STA.3427.0037.3741. And that's exhibit C84. And you will see that, by this time, Mr Brodie is communicating to Mr Hawkins and Ms Martin about exclusions that the New South Wales Police Commissioner has issued to six people who are associated with Suncity. That's on 22 July 2019.

40

Now, in answer to your question, Mr Bell, about Simon Kim, the termination letter to Mr Kim was dated 13 June 2020. By that time, he had gone missing.

45

Now, this is - the document before you, Mr Bell, you will note the date is 22 July 2019. The media allegations about Crown and its dealings with junkets commence

on 27 July 2019, that is, five days later. One of those articles is found in exhibit B1467. I don't need to go to that.

5 I will take you, Mr Bell, to the transcript of the 60 Minutes program that was aired on 28 July 2019. The broadcast was called Crown Unmasked. That is B1475. And could I take you to pinpoint - I hope I'm getting the right pinpoint here - 0590. Or it could be pinpoint 1074. And if it assists the operator, the number that will appear in the left column is 185. And at 185, it was reported by 60 Minutes:

10 "In a secret report obtained by us, one of the world's largest bookmakers, the Hong Kong Jockey Club, reveals its own deep mistrust of Suncity which has always denied any wrongdoing."

And then at 187, it's reported:

15 "The Hong Kong Jockey Club has black banned Suncity."

And so on. By this time, Mr Houlihan has a copy of that report, Ms Martin does and so does Mr White. So --

20 **MR BELL SC:** The serious problems with the Salon 95 had been front of mind with the legal, AML and investigations teams for the previous two months leading up to this moment.

25 **MS SHARP SC:** Yes, indeed. And that's what I endeavoured to show you with those documents. And each of the relevant parties to that documentation were examined extensively about these documents. But the concerns were front and centre. And that is no doubt why Mr Buchanan sent the Hong Kong Jockey Club report to Mr Houlihan, Ms Martin and Mr White. And I'll address you on that
30 report momentarily, but it raised extremely serious concerns about the probity of Mr Chau and Suncity. And certainly Mr Bekier was prepared to accept that it raised serious probity concerns, as were the other directors who were asked about it.

35 Sorry, Mr Bell. I'm just seeing how I can speed things up a little bit here. Can I go now to the Hong Kong Jockey Club report, Mr Bell. The email by which it was transmitted - if I can call that up. It's exhibit C78. And that's STA.3427.0037.3869. And Mr Buchanan states in his cover email:

40 "Please find attached a copy of the 2018 Suncity report my intelligence team compiled."

45 While Mr Buchanan was not particularly forthcoming in terms of what his role was in relation to this report, other witnesses said that they understood that he had authored the report. At this time, he says of the report:

"It is a comprehensive report and was prepared due to potential threat Suncity posed/poses to the integrity of racing in Hong Kong."

And you will note the information in blue shade, Mr Bell. Can I then take you to exhibit C79. This is part of the documentation attached to that email. And there, you'll see the author is Martin Purbrick, who is identified as the director of security and integrity, that is, at the Hong Kong Jockey Club, and Mr Purbrick says:

"The attached report from Angus Buchanan's team -"

10 That's about the Hong Kong Jockey Club report. And then he says:

"We have considered Suncity Group a threat to the club since -"

15 And elaborates. You will notice what is said in the blue shading there. In the second-last paragraph, it states:

"Suncity clearly involves a number of criminal enterprises, although the business lines are so diverse that these are well hidden in more obscure legitimate businesses."

20 Mr Bell, it beggars belief that Ms Martin, Mr White and Mr Houlihan - and indeed Mr Buchanan - could have entertained any thought at all that it was appropriate to continue dealing with Alvin Chau and Suncity in light of this report. In every sense, this is a third-party due diligence report. It is authored by the due diligence officer at Star Entertainment, who was, no doubt, employed by Star Entertainment on the basis of his experience. There is evidence that Mr Houlihan and Mr Buchanan travelled to Hong Kong in July 2019 to speak with members of the Hong Kong Jockey Club about this report.

30 If I can - I know, Mr Bell, you are very familiar with this document because so many witnesses have been examined about it, so I won't take you to the conclusions in this report. Suffice to say that it is credible evidence and it was not evidence to be readily discounted and it clearly indicated, without doubt at all, that Mr Cheng's business partner was a triad - that was Mr Kong - and was involved in numerous illegal activities, and that evidence indicated that Mr Chau and Suncity were linked to organised crime, and that - and I will quote from paragraph 57, that:

"The Suncity Group is of interest to Australian law enforcement."

40 Now, at this point in time, can I remind you, Mr Bell, that Mr Houlihan had indicated that he was told that Suncity was not of interest to law enforcement, and that is incorrect. His evidence in that regard is incorrect when regard is had to contemporaneous file notes prepared by Mr Buchanan.

45 It is a matter of very serious concern that not one of the people who was in possession of the Hong Kong Jockey Club report by this time made knowledge of that fact known to the board when the board requested a briefing note about the

allegations levelled against Crown and the junkets it dealt with in July and August of 2019.

And if I could now move to some of those documents about the board briefing.

5 The evidence will show that numerous members of the senior executive were involved in compiling a briefing note for the board. One of these documents is dated 29 July 2019. And I won't take you to it. It's exhibit B1476. It's an email from Ms Arnott to Ms Martin, copied to Mr Brodie and Mr Houlihan, which starts compiling information.

10

None of these officers made the board aware of any of the transactions of concern in Salon 95, despite the fact that all of them were aware of the transactions by that point in time. The evidence is that Ms Martin prepared the draft of the report with input of various officers. In that regard, I refer to exhibit B1514, which is an email that Ms Martin circulates to Mr Power, Mr Houlihan and Mr White. And she states:

15

"I am doing substantial edits on the paper so probably best to discuss with me before you do any substantive edits."

20

That follows an email from Mr Brodie that shares a draft of the report with her. There is - just pardon me for one moment. If I could take you, Mr Bell, to the final version of that report that was provided to the board. This is a paper and then an attached memorandum, which is exhibit B1538. If I could bring that up. You'll see this is dated 15 August 2019, and it's from Mr Hawkins and Ms Martin. It refers to the media allegations. And at pinpoint 2242, you'll see at the second paragraph it states:

25

"Management has also formed a focus group comprised of senior leaders from operational areas, finance, compliance, legal and regulatory (including AML/CTF team) to monitor media."

30

And so on:

35

"This group is reporting to the authors of this report."

Not one member of that group appears to have suggested to Mr Hawkins and Ms Martin that they include any of the information about events in Salon 95. If you look a little further down, Contact from Regulators, it's stated that:

40

"Liquor and Gaming New South Wales has written to The Star seeking further information."

45

And the letters are, in fact, appended to this report. And at pinpoint 2244, there's a reference to Key Junkets Adversely Named. And it is noted that some of the junkets have current associations with The Star, and they are Suncity and Simon Pan. It's also reported that:

"The Chinatown group was historically associated with The Star, however the arrangement ceased on 2 December 2016 following the exclusion of Zhou (Tom) Juiming."

5 Now, here, in this report, there's a clear link given between Chinatown junket and Tom Zhou, and the suggestion that because of action taken to exclude Tom Zhou, arrangements ceased with the Chinatown junket. However, no witness who I examined accepted that they understood that Mr Zhou was the financial backer of the Chinatown junket. But clearly there is a link between him and this junket
10 identified in this paper.

If I could then take you, Mr Bell, to pinpoint 2245. This is attachment 1 to that paper, which sets out what the allegation was in the media and then contrasts that with what is said to be the position at The Star. Of course, by this time, allegations
15 have been made in the media about Suncity and Alvin Chau.

And in that regard, could I take you to pinpoint 2246. There's an express reference, you will see, to the Hong Kong Jockey Club report at the top of the page. Nothing in the third column to indicate that, in fact, staff members at The Star held a copy
20 of that report and could verify its contents.

And then there's a specific allegation to Mr Chau being involved in a money laundering issue, but nothing in the right-hand column about all of the transactions of concern that had occurred in Salon 95, either in 2018 or more recently in May, June and July of 2019.
25

And just while I'm in this document, at pinpoint 2248, there's again a reference to Tom Zhou, and he's linked here to the Chinatown junket. So obviously members of staff know that there is a link between Tom Zhou and Chinatown, and that
30 arrangements with that junket came to an end when he was excluded. But no witness accepted that they knew that he was the financial backer of the Chinatown junket.

It's our submission that senior management misled the board in relation to the media allegations and in relation to events in Salon 95 and relating to Alvin Chau. And the only appropriate course for the senior members of staff to take, when the board specifically requested a briefing, was to disclose to the board what had occurred in Salon 95 in the course of 2018 and 2019.
35

I'm conscious of the fact that I've only got about 12 minutes left, but can I move to address you on what was said to ILGA and New South Wales Liquor and Gaming in August and September of 2019 when it came asking - or they came asking The Star about the veracity of the media allegations. And these letters of inquiry were appended to that 15 August 2019 board briefing paper.
40

45 So the first inquiry was from Liquor and Gaming New South Wales, and you will find that, Mr Bell, in this document at pinpoint 2250. And this is an email that was sent to Mr Quayle, but found its way to Mr Power, from New South Wales Liquor

and Gaming dated 29 July 2019. So this is two days after the media allegations had commenced. You'll see in the first page - I beg your pardon. In the first paragraph, there's reference made to the media allegations and connections between Crown Resorts and criminal figures, and allegations about suspicious junket arrangements. And then the letter continues:

"As you are aware, there are materially significant risks associated with junket operations."

10 And then a few paragraphs down:

"I am writing to request that The Star undertakes a risk assessment of its practices and procedures which mitigate against the types of issues."

15 An then further down:

"I also request that The Star reviews any current associations or arrangements with junket operators or related individuals to ensure the suitability of any existing relationships."

20

It couldn't have been clearer that the regulator was concerned that The Star ensured it only had dealings with suitable people. The test of suitability was expressly stated here. And the letter continued:

25 "I note that a more specific discussion around the individuals and organisations identified in the reports is to take place between Liquor and Gaming New South Wales and Mr Stevens."

30 It could not have been clearer that the regulator was interested in whether Star had assured itself that junket operators it dealt with were suitable.

35 Then could I take you to a further letter dated 8 August 2019. This is at pinpoint 2251. By this time, New South Wales Liquor and Gaming are writing directly to Mr Power. Reference is made to the letter I've just taken you to dated 29 July 2019. So it's clear that the letters had to be read together. That's the only fair and reasonable approach to take. And in the fourth paragraph, you will see that the letter states that:

40 "Liquor and Gaming New South Wales seeks to understand what, if any, ongoing association The Star has with those named individuals or entities, and what, if any, ongoing risks may arise as a result of ongoing associations."

45 Again, it could not have been clearer what New South Wales Liquor and Gaming concerns are. One would reasonably expect that at this point, The Star would have disclosed that there were numerous transactions of concern occurring in the exclusive VIP gaming room in Salon 95 and that it was in possession of a report which cast serious doubts over the integrity of Alvin Chau and Suncity. But that did not occur. Instead, a technical and sharp approach was taken because in the

specific questions that were asked in the back end of this letter, New South Wales Liquor and Gaming did not ask a specifically targeted question which would have specifically elicited that information. And what you will see at paragraph 5 is the statement:

5

"We have reviewed the recent media reports."

And then a little further down:

10

"To further assist our understanding of the issues, I now request more specific information relating to the entities and individuals named in the media reports."

15

And then there's a reference to a list of names in annexure A. And you will note, Mr Bell, the second-last dot point there for advice being sought:

20

"Of what, if any, steps have been taken to mitigate ongoing risk to individuals listed at annexure 1 who have attended The Star as a participant of a junket arrangement."

25

So not exactly the right question is asked here because Liquor and Gaming here have asked about the participant of a junket, rather than asking a specific question about the financial backer of the junket, who is Mr Chau. But on any reasonable approach of a regulated entity, it would have been clearly understood the substance of what Liquor and Gaming New South Wales was after. Could I take you now to pinpoint 2253, which is annexure 1? And you will see that Suncity is identified, Alvin Chau is identified, as are Roy Moo, Simon Pan and Tom Zhou.

30

Now, can I take you to exhibit B1672. And you'll see that's an email from Mr Power to Liquor and Gaming New South Wales dated 10 September 2019. It is, relevantly, copied to Ms Martin and Mr Stevens, both of whom were perfectly well aware of all the problems that had occurred in Salon 95. And, of course, Ms Martin had been provided with the Hong Kong Jockey Club report by this point in time. That is responding to the 9 August 2019 letter from ILGA - sorry, New South Wales Liquor and Gaming that I have just taken you to. Can I take you to this email a little further along in this email chain. If we go to pinpoint 0668. Mr Power had sent an earlier email to Ms Mann at Liquor and Gaming New South Wales of 31 July 2019 and says in the third paragraph:

40

"As for allegations relating that Crown was wilfully blind to the criminal activity of key business partners, we remain comfortable that The Star's processes are robust and that the findings of the review conducted by Dr Horton QC hold true today."

45

It is simply not tenable that Mr Power could have believed at this point in time that there was a robust procedure in place for managing Suncity in Salon 95 in view of the very large number of transactions of concern that were reported in 2018 and again in 2019. Mr Power requested the opportunity to meet with the regulator to

discuss the allegations, but the regulator rejected that offer and said, "No, we want a reply in writing." And if I can finish off this afternoon by taking you to that reply in writing, Mr Bell. If we go to exhibit B1669. If I could bring that up, please. And this is a letter dated 10 September 2019, signed off by Mr Power. And if I take you
5 to pinpoint 0300, Mr Power commences by stating:

"The Star Entertainment Group is a top 100 ASX listed company with a strong culture of compliance, a record of self-reporting -"

10 It couldn't be further from the truth. This is disgraceful, Mr Bell:

"A record of self-reporting and a proactive strategy for engagement with regulatory authorities and law enforcement agencies."

15 Nothing could be further from the truth insofar as the dealings with the New South Wales casino regulator were concerned. If I could take you, please, to pinpoint 0302. The first question - specific question to which Mr Power responds is:

20 "Whether any of the entities or individuals listed at annexure 1 -"

Which I just took you to, Mr Bell:

25 "Are or have been authorised at junket operators, promoters or representatives."

And you will see there's a reference to Suncity at point 1 and Mr Chau at point 2. It is stated that:

30 "Mr Chau holds a cheque cashing facility at The Star Sydney, which is used to fund junket groups organised by Mr Iek. It is The Star's understanding that Mr Chau is the CEO of the Suncity Group."

By this time, of course, The Star is well aware that Mr Chau is the financial backer of the Suncity Group. There's a reference, you will note, further down the page to
35 Mr Tom Zhou. It's indicated that he was excluded from The Star in Sydney. You will note that there is nothing here drawing any link at all with the Chinatown junket, Mr Bell, notwithstanding that the briefing paper of 15 August does link Mr Zhou with the Chinatown junket. Over at pinpoint 0304, the next question is:

40 "What, if any, steps have been taken to mitigate ongoing risk relating to individuals or entities listed that are authorised as junket operators or junket representatives."

45 Regretfully, the question didn't ask about junket financiers. And this is where the sharp and technical approach is taken, because there is no response in relation to Suncity or Mr Chau. Clearly one was called for, having fair regard to context, Mr Bell, and this is why we submit that this was a deliberately misleading response to

the regulator and the antithesis of a transparent approach. I may end there for the day, Mr Bell.

MR BELL SC: Yes. I will adjourn now until 10 am tomorrow.

5

<THE HEARING ADJOURNED AT 5:01 PM