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

TUESDAY, 14 JUNE 2022
AT 10:00 AM

DAY 41

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

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<THE HEARING RESUMED AT 10:08 AM

MR BELL SC: Yes, Ms Sharp.

MS SHARP SC: Good morning, Mr Bell. The matter is listed today for closing submissions on behalf of Star Entertainment Group and Star. However, could I raise a matter regarding documentation before that takes place? Over yesterday and today, those assisting this review have received - I believe it's three separate requests for new summonses to be issued for documents which The Star and Star Entertainment would like to be placed into evidence. Obviously, the summons haven't gone yet. I haven't had the opportunity to review them.

Additionally, we have been provided with an index, which is styled as Draft Exhibit Q, which contains 53 documents, and a request has been made that those documents be tendered. Now, in relation to those documents, I understand that the vast majority of them have been previously produced to this review but have not, to date, been included in the exhibits. One of them, which is STA.3422.0133.0195, which is number 1 in that index, has not been produced to this review to date and is the subject of one of the new summons requests.

And there were two documents - and I'll read the numbers out - STA.3411.0077.6680 and STA.3403.0002.1988, which are documents that were produced to those assisting the review last night for the first time, and it was said that these documents were responsive to summons 4 but had not been produced at the time. This creates some difficulties, Mr Bell. Obviously, the counsel assisting team have closed - have given you our closing submissions. Witnesses have not been asked about any of these documents. I haven't, in fact, had the opportunity to look at any of the documents in exhibit Q.

You will be familiar, of course, Mr Bell with the procedural guidelines, and under paragraph 34 it's for counsel assisting to determine what documents are to be tendered. So I would request the time to review those documents in draft exhibit Q, as well as any other documents that may be produced under summons at the request of Star and Star Entertainment.

MR BELL SC: Yes. Ms Richardson, is there anything you would like to say at this stage about these communications last night and this morning concerning further documents?

MS RICHARDSON SC: Could we defer that to the morning tea break where I can confer with my learned junior and perhaps liaise with my learned friend about those tenders?

MR BELL SC: Yes. Certainly. Yes, Ms Richardson.

<CLOSING SUBMISSIONS BY MS RICHARDSON SC

MS RICHARDSON SC: The review is considering the suitability of The Star Pty Ltd, which I will call The Star, to be concerned in, or associated with, the management and operation of Star Casino. The review is also considering three corporate close associates of The Star, being firstly The Star Entertainment Group, which I will call TSEG; secondly, The Star Entertainment Sydney Holdings Limited, which I will call The Star Holdings; and EEI Services (Hong Kong) Limited, which I will call EEIS.

Firstly, in relation to The Star. The Star accepts that the evidence before the review permits findings of significant deficiencies and failings due to behaviour not in adherence to the company's code of conduct and related risk and compliance policies approved by the board. The Star accepts that evidence means it is open for the review to conclude that as at the commencement of the review, The Star was not a suitable person to hold a casino licence. The Star respectfully submits that the review should conclude that it is presently suitable to hold the casino licence.

Next, in relation to TSEG. At an operational level, TSEG and The Star had a number of common employees and, from time to time, TSEG executives and employees performed functions for The Star and as part of their duties. Relevantly, a number of the individuals who were responsible for, or failed to stop, the conduct addressed by this review held executive roles at TSEG. These individuals have all since resigned. Similarly, each of the directors of The Star Pty Ltd previously held executive roles with TSEG, being Mr Bekier and Mr Theodore. They have also since resigned. In the circumstances, TSEG accepts that it is open for this review to conclude that it was not suitable to be a close associate of the casino licence holder as at the commencement of this review.

Next, in relation to The Star Holdings. Star Holdings accepts that it is open for this review to conclude that it was not suitable to be a close associate of the casino licence holder as at the commencement of this review on the basis that it is a subsidiary of TSEG.

Next, in relation to EEIS. Steps have been taken to wind up EEIS. Its bank accounts have been closed, and lawyers have been instructed to liquidate the company. Thus, it is submitted that a finding need not be made about the suitability of EEIS and whether it can be a close associate. But if such a finding is necessary, it is submitted that to the extent TSEG is found to be unsuitable at a particular point in time, then the same conclusion would follow for EEIS as it is a wholly owned subsidiary of TSEG and was a close associate of The Star.

The Star accepts that its past conduct is relevant to the question of present suitability. And in these submissions, I will address key areas in which the evidence before this review supports findings of significant failings. However, The Star respectfully submits that the review should conclude that it is presently suitable to hold the casino licence. On the same basis, it is respectfully submitted

that the review should conclude that TSEG and Star Holdings are also presently suitable to be a close associate of the licence holder. And this is for a number of reasons which I will address, in most likelihood, on the third day of this oral closing, but I summarise them now.

Firstly, TSEG and The Star have demonstrated an understanding of, and insight, concerning the seriousness of the inappropriate conduct that has been identified in the course of this review. By these submissions, TSEG and The Star will make a large number of concessions in relation to the evidence of inappropriate conduct that the review has identified. Further, each member of the board has given evidence before the review, and by that evidence they showed a thorough understanding and acceptance of the serious deficiencies that have been evidenced in this review.

Secondly, no finding is sought by counsel assisting that any of the directors of TSEG are not suitable to be close associates. The character and integrity of a corporate entity, namely, its suitability, will be informed by the character and integrity of those who control its affairs. In this respect, Commissioner Bergin recognised that a company's suitability may ebb and flow with changes to the composition of the company's board, management and others who influence its affairs over time.

In this respect - and this is thirdly - in relation to the fact that suitability of a corporate entity may ebb and flow with changes to those who influence its affairs, TSEG accepts that the evidence would support findings that the behaviour and culture within the ranks of senior management, until very recently, fell well short of what is to be expected. Importantly, though, the non-executive directors of TSEG were unaware of the shortcomings that have been identified. The particular appreciation of the behaviour and culture within the ranks of management has been revealed in this review.

The board has responded to the disclosure of these issues, it is submitted, entirely appropriately. And this is more than just a matter of words. The board took prompt action to ensure that those involved in the conduct are no longer involved in the business. The key persons who were the locus of, or failed to stop, the misconduct are no longer with TSEG. In particular, each of Mr Theodore, Mr Hawkins, Ms Martin, Mr Power, Mr Whytcross, Mr White, Mr Stevens, Mr Brodie, Ms Arnott, Mr Aloi, Mr Houlihan and Mr Bekier has either resigned or is no longer with TSEG. As a consequence of these departures, TSEG and The Star are now, or shortly will be, under substantially new executive management.

However, it bears emphasis that the parting of ways with senior management has significance well beyond merely addressing the immediate problem. It also demonstrates TSEG's commitment to ensuring a proper culture at all levels of the business and taking real action to ensure the risk of repetition is minimised. It sends a powerful message to all employees at the company as to what the board

will, and will not, countenance. The departures set the standard of behaviour expected of all The Star's people, even, and in particular, its most senior people.

Fourthly, the failures identified by the review no longer pose a risk of non-compliance. In particular, The Star has ceased the use of China UnionPay cards for gaming purposes in March of 2020. The last loan made by EEIS was in March 2020, and no deposits into an EEIS account were made after April 2020. The Star ceased dealing with junkets, including Suncity, in September 2020, and it has identified patrons of - sorry, it has excluded the patrons of interest identified by the review.

It is accepted that past conduct is relevant to present suitability, even if that past conduct is not currently ongoing. However, the weight to be given to past conduct, it is submitted, should vary according to the circumstances of the matter and the nature of the conduct in question. That is, past conduct cannot be assessed in isolation, particularly where, as here, the past conduct is being analysed in terms of seeking to predict the future. The persons who engaged in the misconduct are no longer with the business. Thus, while it is accepted that parting ways with senior management is not enough, the fact that those members of management are no longer with the business is highly relevant to putting that past misconduct in context.

Fifth, insofar as there are outstanding matters to be investigated and resolved, TSEG has taken steps to ensure any shortcomings do not persist while those investigations occur. In particular, TSEG accepts that an audit should take place to determine if there has been any shortfall in any duty payable and has engaged KPMG to conduct that audit. In the interim, all rebate play has been suspended.

Sixth, as far as AML/CTF compliance is concerned, TSEG's AML/CTF program has been independently reviewed on several occasions. In particular, it has implemented KPMG's recommendations since mid-2018, and its AML/CTF program has also been the subject of a number of independent reviews and found to be effective. And I refer in particular to the December 2020 review by BDO engaged to conduct an independent review of the part A program and found, in May 2021, that the AML/CTF program was effective; that the program complied with the AML/CTF Rules; and that TSEG had complied with that program.

More recently, McGrathNichol's reports to this review have also confirmed that TSEG has taken active steps not only to comply with and implement KPMG's recommendations, but that in some circumstances it has taken action beyond the relevant recommendations. Counsel assisting in this review has accepted that it cannot be doubted that TSEG took many steps to improve its AML/CTF program and, ultimately, did significantly improve its program and compliance framework. As such, there is already a strong foundation for a proper and sound approach to risk compliance - sorry, risk and compliance in relation to AML/CTF in the organisation.

Seventh, it is true that there has been a dramatic change in the board's understanding of the extent of the issues since the review commenced. However, the matters that have been revealed during the course of the review were learned in a context where the board was already proactively setting about improving its processes. As such, it's submitted that it's not the case that the board has only just begun on its journey of reflecting what went wrong and making changes.

Last year, the board embarked on a program of regulatory and cultural reform in order to ensure that a suitable operating environment is maintained. TSEG has consolidated a number of existing and new initiatives into a comprehensive renewal program, which is overseen by the board, and a newly formed - there is a newly formed renewal steering committee, which is chaired by the chairman of TSEG, Mr Ben Heap.

The steps taken, and to be taken, in TSEG's process of reflection and improvement will be outlined in some detail at the end of these oral submissions, but they include, firstly, taking steps to understand the key failings found in respect of Crown in the Bergin report and the Finkelstein Royal Commission. And in particular, through Project Zurich, which commenced in April 2021, TSEG has considered matters raised in the Bergin Inquiry to assess whether there are issues relevant to The Star's operations.

Secondly, it has commissioned a risk and compliance culture review by PwC in August of 2021, which consisted of a review to assess director and employee perceptions, attitudes and beliefs towards risk and compliance management and to identify risk and compliance culture strengths and areas of opportunity. The final report from PwC was provided on 27 January 2022, and the response by The Star to this report forms part of the renewal program.

Next, a program was commenced in November of last year, now referred to as the renewal program, which consolidated and expanded existing programs that sought to understand the risk and culture of the company and the level of maturity in the risk and compliance functions, and implemented new programs that improve operations and put in place robust mechanisms to maintain or uplift key elements in the operating environment. This renewal program includes 11 discrete initial projects, each with specific deliverables and milestone dates, with several additional projects identified in the second tranche of work.

Next, a transformation office has been formed to oversee the renewal program. And as set out in submissions that were provided to the review on 24 March of this year, further measures have been implemented to address problem gambling. Next, independent third-party experts have been engaged to assist in the recruitment of new board members and senior management to seek to ensure that appropriate independent scrutiny is applied to ensure that persons with the right skills are appointed to senior roles.

Next, there has been a splitting of the probity and risk functions from the chief legal and risk officer role and to appoint a separate chief risk officer. Next, there has been a review, or it is being reviewed, of the whistleblower program to encourage employees to report matters of concern to the board's attention. And, next, there has been an expanding of the terms of reference in December of last year of TSEG's risk, compliance and regulatory performance committee.

Finally, no submission has been made by counsel assisting that TSEG or The Star are incapable of reform or that the prospect of reforms is insufficiently certain. The review should proceed on the basis that the prospect that those reforms will, in fact, be implemented is sufficiently certain. The board has committed to a process of board renewal to demonstrate accountability; the evidence of the non-executive directors acknowledge the importance of transparency with regulators; and the review should be satisfied that the board will take steps to ensure that occurs going forward, including engaging directly with regulators with respect to assurance in relation to the reform program that is underway.

The Star accepts a necessary step to determine suitability is the TSEG's board ability to accept existence of failures; secondly, to analyse the reasons for such failures; thirdly, to remove the cause of the failures; and fourthly, to commit to a reformation that will remove the likelihood of a repetition of such failures. The Star respectfully submits that this is the case for the board. And for these reasons that I will outlay in the next few days, and noting the ongoing commitment to reform, The Star respectfully submits that it and TSEG are presently suitable.

In terms of the approach I propose to take to closing submissions, while initially my clients have been allocated four days, I had indicated we would endeavour to try and finish within three to make the final timetable more manageable for other parties. I will endeavour to do that, but it will be a solid three days, I anticipate.

The order of topics that I propose to address are the statutory framework on suitability - there will be written submissions about this topic, but as there is very little dispute with the submissions made by counsel assisting in relation to the statutory framework and the correct approach, I don't propose to deal with those orally. We will seek to give assistance to the review in writing about the relevant principles, but I don't apprehend there to be really anything by way of dispute in terms of the appropriate approach.

Next, I will deal with the issue of Suncity; then China UnionPay; then KPMG; claims of legal professional privilege; ASX announcements and investor briefings; rebates; overseas payment channels; then I will deal with the AML/CTF uplift regulatory program; and then, finally, the regulatory reform program that I have just alluded to.

In terms of persons of interest identified in media allegations, our current intention is to deal with that in writing, which is the way that it was dealt with by counsel assisting, because of the length that that would take. So that is our current approach. There will also be a number of matters within the topics I have outlined where there are key, slightly more dense legal matters that need to be addressed that I don't propose to deal with orally because of the time it will take and, it will in all likelihood, blow out the time estimate. So there are matters where, at the relevant point, I will indicate that we propose to deal with that issue in writing.

And in terms of developing the approach of which matters will be dealt with in oral submissions as opposed to writing, I am mindful of the fact that there are a number of separately represented parties in the review. So the priority I will give to oral submissions is matters where it is of direct relevance to those other employees, in the sense - or former employees, in the sense that - for example, where The Star is accepting that a criticism made by counsel assisting of a particular person is open to be found and so on, so that they're on notice of the position my client is taking in that respect. So I will endeavour to do that.

So I don't propose to deal with the suitability legislative framework, Mr Bell, unless you would be assisted by hearing from me on that. I do propose to deal with that in writing, given I don't apprehend it's contentious.

MR BELL SC: There is an issue that counsel assisting raised that I would be interested to hear from you about. Counsel assisting pointed out that the terms of reference for this review asked me to make a finding about suitability, but they don't go on to ask me to address issues which were raised in Commissioner Bergin's terms of reference or in the Victorian or Western Australian Royal Commissions, which were on the assumption that if I were to find unsuitability, what steps might be taken to reform.

Now, I appreciate your position is that The Star and Star Entertainment are presently suitable, and that may be the finding I make. But if I were to make a finding of unsuitability, what do you say about counsel assisting's submissions about where I should go from there?

MS RICHARDSON SC: We agree with that submission, that that is not part of the terms of reference. And as my learned friend put it, the consequences of any unsuitability are reserved for the consideration of the authority.

MR BELL SC: Yes. Thank you.

MS RICHARDSON SC: So I propose now, unless there's any other questions about the framework, to move to the question of Suncity.

In the interests of time, Mr Bell, I'm not proposing to ask for many documents to be put on the screen because a number of documents are well known to the review.

I will refer to them by exhibit number so that hopefully the transcript is navigable, but I'm not proposing to go to the documents in detail because of the time constraints I'm under in terms of getting through the material. But of course, if at any point you would like a document brought up, I can certainly do that.

So this Suncity section addresses the matters raised by my learned friend in topics 13, 14, 15 and 16 of her submissions, namely, the operations of the Suncity junket in Salons 95 and 82; Mr Buchanan's due diligence briefing of the board in July and August 2019; and representations made to ILGA. The Star ceased doing business with junkets, including Suncity, in about September 2020. This subject is relevant to the review insofar as it casts light on The Star's current and future processes, people and organisational culture.

I want to set out - because this will be quite a long topic. It might take a few hours, I'm afraid. I want to set out in summary the key matters that we will be submitting. In summary, The Star accepts that the evidence before the review supports a number of findings, which I will list. Firstly, that its dealings with Suncity involved significant errors of judgment on the part of a number of its employees and involved significant cultural issues and in an important segment of the organisation. Secondly, that it's open to find that, until recently, executives of The Star did not direct themselves to the good repute test when deciding whether to maintain a business association with junket operators and funders.

Thirdly, it's open to find that Mr Stevens' submission to Liquor and Gaming New South Wales for approval of renovations to install a service desk in Salon 95 failed to identify that it was contemplated that the desk would be used by Suncity for the purpose of buy-in transactions. Mr Stevens gave evidence that the submission was knowingly misleading and, as such, that conduct was grossly inappropriate and unethical.

Fourthly, that Mr Brodie allowed the service desk to commence operations before a risk assessment had been approved by the chief risk officer and before controls had been finalised. Fifthly, that Mr Bekier's reporting to the board in relation - sorry, in May of 2018 was inadequate in circumstances where he had received Mr Andrew Power's “unacceptable level of risk” email of 15 May 2018.

Sixthly, that while The Star took a series of prompt steps in May and June 2018 to ensure that Suncity staff complied with controls and communicated them to Suncity, that after a further instance of non-compliance occurred on 29 May in 2018, a business decision needed to be made about whether, and if so how, to continue the business relationship with Suncity in circumstances where that business decision was affected by significant risk.

In sending a second warning letter, rather than carrying through on the ultimatum that had been made in the first warning letter, Mr Hawkins made that decision without giving sufficient weight to that risk and without referring the matter to the

board for decision. If it had been referred to the board for decision and the board had been briefed with an appropriate and dispassionate assessment of the risk, the board would have terminated the business relationship then. That the board would have acted in this way can be inferred from the evidence of the directors given to this review and in relation to their approach to AML issues and risk generally.

Next, that the reporting to the board that ultimately occurred in July and August 2018 was cursory and inadequate. Next, that while The Star made appropriate reports to New South Wales Police and to AUSTRAC in relation to cash transactions observed in Salon 95, Mr Stevens ought also to have brought the non-compliance with controls in Salon 95 to the authority's attention. His failure to do so represented a significant failure to be transparent with the regulator.

Next, that the compliance audit conducted by Mr Stevens in May 2019 was immediately rendered unreliable by Mr McGregor's investigations in June/July 2019. Mr Stevens should have formally withdrawn his report or corrected it so that it could not be relied on in future. Next, Mr McGregor's reports of 3 and 5 June 2019 sent to Ms Martin, Mr Power and Mr Houlihan suggested that wilful non-compliance and deceit upon the part of Suncity staff, and there is no evidence that Ms Martin, Mr Power, or Mr Houlihan appropriately escalated and disseminated that information.

Next, that in the eight-week period between June to late July 2019, Ms Martin and Mr Hawkins and others were informed of a series of events, all of which adversely reflected on Suncity's activities at The Star and indicated that there were very serious risks associated with continuing the business relationship with Suncity. Firstly, on 12 June 2019, Ms Martin, Mr Houlihan and Mr White came into possession of the Hong Kong Jockey Club report.

Secondly, on 15 July 2019, the - I'm just determining whether this is a matter I can say publicly. I may not say that publicly. I think I can say it without naming them. On 15 July 2019, the Commissioner of Police excluded six individuals associated with Suncity, which fact was known by Greg Hawkins and Kevin Houlihan. Thirdly, the Crown Unmasked reports in the media in late July 2019 contained serious allegations in relation to Suncity and Alvin Chau, including by reference to the Hong Kong Jockey Club report.

The combined effect of these events was that The Star's ongoing association with Suncity and Alvin Chau ought to have been the subject of a detailed report to the board, containing a full and dispassionate account of the risks, including in relation to the contents of the Hong Kong Jockey Club report and the incidents that had occurred in Salon 95 to date, and a recommendation that the business relationship with Suncity and Alvin Chau be suspended or terminated.

The next matter that it is open to the review to find, in our submission, is that Mr Hawkins and Ms Martin's 15 August 2019 report to the board following the Crown

Unmasked media allegations was inadequate and distinctly misleading. It was liable to, and did, give the board unjustified reassurance that the problems reported were isolated to Crown.

Next, it is open to find that if the course had been set out that I have foreshadowed, that after the series of events in July 2019 came to be known and the board had been properly briefed, the board would not have allowed Suncity to continue to operate in another private room, Salon 82, or at The Star at all after the cessation of the fixed room agreement in Salon 95.

Next, it's open to find that Mr Power's letter of 9 September 2019 to the authority relied on a narrow and technical reading of the questions asked that suggest that the staff responsible for that letter were minded only to disclose problematic information to the regulator when it was unavoidable to do so.

Next, it's open to find that while each of Mr Houlihan, Mr Power and Mr Buchanan denied that any pressure was applied to Mr Buchanan to water down his draft reports about Suncity, it is open to the review to conclude that, at the very least, Mr Buchanan read the room and was influenced to tailor his report to suit the perceived desires of others in a manner which compromised the independence of his due diligence. It is also open to the review to conclude that the conduct of Mr Houlihan and Mr Power in their interactions with Mr Buchanan in relation to his reports was influenced by a desire to suit the perceived desires of others in the business.

Next, it's open to find that while Project Congo represented an attempt to address questions of AML/CTF risk assessment separately from questions of suitability, the process adopted was not well designed; the information presented in respect of Suncity was inadequate; and the recommendations and decisions revealed a significant lack of judgment and perspective on those involved.

And, next, it is open to find that senior employees in legal, risk and compliance roles allowed the perceived financial interests of the business to compromise their judgment in relation to Suncity. As a result, it is open to find that they failed to ensure that matters of significant tension between risks for the business on one hand, and customer convenience and turnover on the other, were elevated to the board or disclosed to the authority.

So that is a summary of the findings that we say it is open on the evidence before the review to make. In the written submissions, there will be an overview of the regulatory framework in relation to junkets and ICMs that were in force and so on, which I won't go through here because it's not contentious.

Firstly, the topic I will address is the issue of considering the good repute test. It's open to find that The Star's assessment process for junket operators and funders did not appropriately consider whether those persons were not of good repute.

Instead, in the case of Suncity, the evidence supports a finding that The Star directed itself to a different and wrong question of whether it had been clearly proven that Mr Chau and Mr Iek were of bad character. And it's open to find that had The Star directed itself to the correct question, the appropriate answer during the relevant period would have been to cease to deal with Suncity.

And it's submitted that it's open to the review to find that the failure to properly address the question of good repute explains a significant number of the failings made in relation to Suncity. And in the written submissions, we will set out the evidence of a number of the non-executive directors in respect of this topic, recognising those matters.

The next broad topic I address is the initial submission that was made to Liquor and Gaming concerning Salon 95, which Mr Stevens gave evidence was misleading. Mr Stevens conceded that he knowingly misled Liquor and Gaming New South Wales by his email and submission of 12 October 2017, in that he knew that it was proposed that the service desk would operate as a buy-in desk and knew that that information had been omitted from the submission.

As such, that constituted grossly inappropriate and unethical conduct on the part of Mr Stevens. And it was all the worse because of the role of Mr Stevens that he occupied, as New South Wales regulatory affairs manager, which he had held for over a decade by 2017 and which he acted as the primary point of liaison between The Star and the authority. And I will set out in written submissions the evidence of a number of non-executive directors about how unacceptable that behaviour was.

The gravity of the misconduct is compounded when Mr Stevens became aware, in May 2018, of the concerns about cash transactions occurring at the service desk. At that point, it ought to have been obvious to Mr Stevens that the regulator had been misled in a serious way and that the information he had provided in 2017 needed to be immediately corrected. Mr Stevens ultimately accepted that the proper thing to do would have been to inform the regulator and that it was extremely regrettable that that did not occur. Mr Stevens is no longer employed by TSEG.

The next broad topic I address is the fact that the service desk should not have commenced operation prior to the risk assessment and associated controls being finalised and approved by the chief risk officer, Mr McWilliams. Suncity commenced operating in Salon 95 from early 2018. It did not, however, commence operating the service desk until mid-April 2018. That ought not to have occurred in circumstances where the risk assessment of the service desk had yet to be finalised.

And in the written submissions, we will give a detailed chronology of the various steps showing the lead-up to the commencement of the service desk and the risk

assessment. But the key point for present purposes is the risk assessment signed by the chief risk officer, Mr McWilliams, on 27 April 2018, which is exhibit B3362, was only signed after the service desk had commenced operating in mid-April and after a number of transactions of concern had already occurred.

Mr Brodie was examined about the conduct of the risk assessment by counsel assisting and gave evidence at T2386 about the fact that there was an email from Mr Lim saying:

> "The risk assessment does not need to slow down the implementation of the arrangement."

And - that was to Mr Lim. And my learned friend asked:

> "Was there some haste at this time in getting the risk assessment done?"

And the evidence Mr Brodie gave, in short, at T2386 was:

> "I wouldn't have allowed the conduct of the risk assessment to be done anything other than at the pace it needed to be completed at."

Now, Mr Brodie was not challenged in relation to that answer. But that said, it's open to the review to find that the conduct of the risk assessment was at least expedited in light of pressure from Mr Lim to have the service desk operational as soon as possible. Further, it's open to find that given the risk assessment ultimately needed Mr Williams' approval as chief risk officer, it was inappropriate that Suncity was allowed to operate the service desk prior to that approval being obtained.

Notwithstanding the communication controls to Suncity in mid-April of 2018 which were contained in the risk assessment, by early May 2018 a number of cash transactions of interest had been observed. And on 3 May 2018, Mr Brodie forwarded an email from Ms Arnott to Mr McWilliams, referring to two deposits in the Suncity room that were of concern, and that is at exhibit A532. I won't go through that, but that raised concerning matters in relation to cash transactions at Suncity.

On 7 May 2018, Mr Willett provided Mr Brodie and Ms Arnott with information about another transaction of note, and that's exhibit A16. At least initially, staff of The Star apprehended that the non-compliance observed in Salon 95 may be the product of inadequate communication of the controls by The Star and inadequate understanding of the controls by Suncity, and this led to staff of The Star reminding Suncity staff of the controls on both 8 and 9 May 2018, and we see that at exhibit A530. This was followed, on 14 May 2018, by the delivery of the first warning letter, signed by Mr Greg Hawkins, emphasising that:

> "Compliance with the points above is extremely important, and non-compliance will result in The Star Sydney terminating your use of the service desk."

That's at exhibit B776. Mr Whytcross, Mr Mugnaini, Mr Brodie, Ms Arnott, Ms Martin, Mr McWilliams - just one moment. Sorry, I will say that again. Mr Whytcross, Mr Mugnaini, Mr Brodie, Ms Arnott, Mr McWilliams and Ms Martin were all provided with a draft of that letter before it was sent. And it was Mr Brodie that recommended it be signed by Mr Hawkins, and we see that exhibit A22. Mr Mugnaini delivered this first warning letter on 4 May 2018, and we see that exhibit A25.

The next relevant juncture is Mr McGregor, an investigator, in his email of 14 May 2018. It's open to the review to find that counsel assisting rightly placed considerable emphasis on Mr McGregor's email - and that's at C49 - of 14 May that was sent to Mr Power, Mr Houlihan and Ms Judd, which contained material which I won't read out for time, but it is setting out concerning information about Suncity, including that:

> "We have an entity within our four walls which is totally non-compliant to reasonable requests for basic information."

And so on. Mr McGregor's email raised the prospect that Suncity was providing lines of credit or operating an informal money remitter or hawala, and that email was obviously very concerning. Given the emphasis placed in submissions on Mr McGregor's statement that Suncity was totally non-compliant to reasonable requests for basic information, the following context should be noted. There was an email at 3.55 from Mr McGregor where he replied to his own email saying that Suncity had sought a meeting to explain the transaction in question that had triggered his email where they were seeking to explain it.

Then on the following day, on 15 May, Mr McGregor sent a further email to Mr Power, Mr Houlihan and Ms Judd - and we see that at exhibit C50 - recounting his meeting the previous evening with Suncity representatives and that they had provided some, although not fulsome, details about the transaction and acknowledged that they perceived a problem with this transaction in accordance with the agreement.

In her closing submissions, counsel assisting quoted this passage from Mr McGregor's email and submitted that this risk had been expressly drawn to the attention of both Mr Power and Mr Houlihan, and it was submitted that no effective controls were put in place at this time. We submit that this somewhat understates the actions of Mr Power at that time, which I will set out below, which included that there be an immediate suspension of all cash transactions at the service desk. That's not to submit that the steps that were taken were sufficient, especially after the contravention that occurred on 29 May 2018.

The next step is - sorry. The next subject is Mr Power's "unacceptable level of risk" email of 15 May 2018. On that day, Mr Power sent an email to Greg Hawkins referring to an earlier discussion and stating that:

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

Mr Power's email that:

> "Cash transactions -"

Sorry. He indicated that:

> "Cash transactions at the service desk must cease until such time as we have prepared a clear list of permitted activities and prohibited acts."

On 16 May, Mr Hawkins forwarded Mr Power's email to Mr Bekier and referred to a discussion they had. Mr Power also forwarded his email to Ms Martin and Mr White and copied Mr Houlihan, and we see that at exhibit C53. Each of Mr Bekier, Mr Hawkins and Ms Martin reported directly to the board. In the written submissions, I will refer to the evidence of non-executive directors about the fact that those persons were aware of the "unacceptable level of risk" email and did not report it to the board.

The next subtopic is the cessation of cash transactions at the service desk and the development of written procedures by Mr Brodie. Mr Hawkins acted on Mr Power's advice and instructed Mr Mugnaini to communicate that all cash transactions from the service desk be suspended pending preparation of a more formal procedures document. Then, on 21 May 2018, Mr Brodie sent an email to Mr Hawkins and Mr McWilliams with the subject line SOP - meaning standard operating procedures - for Salon 95, which sought their endorsement of the procedures document that had been developed.

The next subtopic is the second warning letter that was sent by Mr Hawkins. On 29 May 2018, Mr Willett informed Mr Brodie and Ms Arnott of another transaction of concern. Mr Brodie forwarded the email to Mr Power, stating:

> "FYI. Some follow up to do, but this seems very concerning."

Then, on 5 June 2018, Mr White provided a draft of a second warning letter to Mr Hawkins in an email which indicated that the letter has had input from those copied on this email and follows a group call yesterday afternoon. Copied to that email were Mr Whytcross, Mr Mugnaini, Mr Power, Mr Brodie, Mr McWilliams, Ms Martin and Mr Houlihan. On 7 June, Mr Brodie sent an email to Mr

McWilliams, copied to Mr Power and Mr Hawkins, which I won't read out now, but it said - the gist of it was:

> "I'm concerned that a number of the large cash transactions originating from people associated with the Suncity junkets might have increased our risks in respect of layering-type activity."

And so on. And he recommended that:

> "We start by conducting an enhanced due diligence process on the principals involved in concerning transactions in the salon."

Mr McWilliams responded by saying:

> "Thanks, Michael. As discussed, I agreed."

And we will refer to that email in our written submission. On 8 June, the second warning letter was delivered to Suncity, although it's dated on the 5th. The second warning letter response was inadequate and inappropriate. The Star accepts counsel assisting's submission made at T4056 that the delivery of the second warning letter was not commensurate with the risk that was being presented at the time.

By that time, repeated warnings had been given to Suncity. The evidence supports a finding that Mr Hawkins and others ought to have entertained real doubt that Suncity could or would ensure that its staff complied with The Star's requirements. Mr White gave evidence that at that stage, there couldn't really be any excuse for not understanding.

Further, Mr McGregor's investigation should have given rise to a real apprehension as to how Suncity was permitting the service desk to be used. While Mr Houlihan was evidently consulted in relation to the sending of the second warning letter, it is not at all clear that he had appropriately communicated Mr McGregor's concerns to others, including Mr Brodie and Mr McWilliams. Further, the issue of the second warning letter involved Mr Hawkins resiling from the unambiguous ultimatum he had delivered in his first warning letter, that:

> "Non-compliance will result in The Star Sydney terminating your use of the service desk."

Mr White gave evidence that everyone in legal, risk and compliance thought the issue of the second warning letter was not the appropriate response but that they acceded to the instructions from Mr Hawkins that a second warning letter should be issued, and we see that at T1803.

The basis for Mr White's assertion isn't clear, but assuming it's correct, it's not clear that Mr Hawkins was aware of it. But what is important for present purposes is that the ongoing concerns were significant enough that it is open for the review to find that they should have been promptly raised with the board. Mr Hawkins was primarily responsible for that occurring. The inference is - that's open to the review - is that he prioritised perceived business needs over compliance and risk concerns, which was a serious error of judgment.

Both Mr Power and Mr Brodie had warned Mr Hawkins in writing as to the serious risks associated with non-compliance by Suncity. If Mr Hawkins proposed that the fixed room arrangement with Suncity nevertheless continue, the appropriate course was for the matter to be referred to the board and for the board to be given a comprehensive and dispassionate assessment of what had occurred, the risks involved and the decision to be made.

If the decision had been referred, the board would have terminated the business relationship with Suncity at that point. That the board would have acted in this way can be inferred from the evidence of the directors to this review and inferred from their approach to AML issues and risk generally. And in the written submissions, I will refer to the evidence of the non-executive directors in this respect.

The next subtopic is interactions with New South Wales Police and the sharing of information by the investigations team. The investigations - I will deal with this primarily in writing, but it's to note that a number of the transactions of concern that were identified in Suncity were reported to New South Wales Police. And while - we say that that cooperation with law enforcement is important, but we accept that while it's important for The Star to cooperate with law enforcement, which it did, that does not explain or excuse the failure to close Salon 95 or, the review would find, to bring an end to its business association with Suncity.

The next subtopic is the reporting to the board in 2018 was inadequate. On 26 July 2018, Mr Bekier spoke to the managing director and CEO report he had prepared for May 2018, which is at exhibit A538. And that passage in that report is well known to the review, but it - we will make submissions about the unsatisfactory nature of the description of concerns that had emerged in Salon 95. The other report to the board around this time was a compliance assurance process paper prepared by the chief risk officer, Mr McWilliams, to the board audit committee on 16 August 2018, which contained an entry reading:

> "Third-party agreement relating to Salon 95 creating some compliance risk increases."

In a row that was labelled General Counsel, and that's at exhibit A1128. It's submitted that the review would find it open to conclude that these two reports were unsatisfactory in a number of respects: they were written in brief, anodyne

and vague terms; they failed to identify Suncity as the junket operator; they failed to identify the nature of the concerns that had emerged or the activities which had given rise to them.

Mr McWilliams' report omitted references to the warning letters that had been issued and the advice that had been given by Mr Power and the concerns that had been raised by Mr McGregor and the concerns that had been raised by Mr Brodie about layering activity; the investigation that had been commenced by the police; or the fact that repeated instances of non-compliance had been observed notwithstanding repeated warnings to Suncity.

And in the written submissions, we will set out the evidence of the non-executive directors about their frustration and disappointment in relation to this board reporting, that this issue should have been brought to the board with bells and whistles and front and centre, and the board should not have had to dig for that information.

It's submitted that given the way in which the board reports were drafted, this is not an instance where it could fairly be said that there was a failure to bring a questioning mindset on the part of directors. The content contained in Mr Bekier's managing director's report was such that it was highly unlikely to prompt inquiry from the board. Had the true picture been revealed to the board, the board would have insisted that Salon 95 be shut down and the relationship with Suncity be suspended and/or the matter be brought to the authority's attention.

Each of Mr Bekier, Mr Hawkins, Ms Martin and Mr McWilliams reported directly to the board at the time and knew the true nature of the concerns that had emerged about the operation of the service desk. It is open to the review to find that the failure of each of them to ensure that the matter was reported to the board accurately and with due prominence and detail represented a significant breach of trust reposed in them by the board. None of those persons involved in this reporting to the board is still employed by TSEG.

The next subtopic is Mr Stevens' compliance review ought to have been withdrawn or corrected once it was rendered unreliable. Mr Stevens' compliance assurance report in relation to Salon 95 was not completed until 23 May 2019. He produced a report that indicated that cash transactions were occurring at The Star cage rather than at the service desk which provided a higher level of control and oversight and was a more effective control than that contained in the SOP. He concluded that there was no evidence of the practices that raised a concern around the operation of the room in 2018 continuing, and The Star now has an effective level of control and oversight over the (indistinct).

However, the conclusions of Mr Stevens' review were almost immediately cast into serious doubt by Mr McGregor's investigations. In light of Mr McGregor's reports, which I will shortly discuss, Mr Stevens' report ought to have been

withdrawn or corrected so as to avoid the possibility, which ultimately transpired, that any reliance would subsequently be placed on it.

The next subtopic is the events of June and July 2019. In the two months of June and July 2019, Ms Martin and Mr Hawkins and others were informed of a series of matters, all of which adversely reflected on Suncity's activities at The Star and indicated that there were very serious risks associated with continuing the business relationship with Suncity.

On 3 June 2019, Mr McGregor produced an information note which indicated that since 20 May 2019, there had been six transactions of concern relating to cash buy-ins at the Rivers cage in favour of the Iek junket and that, on five occasions, cash appeared to have come out of the closet room behind the Suncity service desk, and we see that at exhibit G671.

The note indicated that Mr McGregor had spoken with a Suncity supervisor, TK, who said he was embarrassed and pissed off by/at his staff for dealing in cash despite earlier agreements not to do so. On 5 June 2019, Mr McGregor sent an updated note to Mr Houlihan and Mr Power and was copied to Ms Martin - and that's exhibit G672 - saying, among other statements:

> "It appears that as newer people have moved into roles within Suncity Sydney, that behaviours discouraged during last year's review period are returning."

There is no evidence to suggest that the recipients of that email - Mr Houlihan, Mr Power or Ms Martin - appropriately escalated or acted upon Mr McGregor's reports.

On 12 June 2019, Mr Buchanan emailed a copy of the Hong Kong Jockey Club report to Ms Martin, Mr White and Mr Houlihan, and we see that at exhibit C78. As counsel assisting submitted, the report raised extremely serious concerns about the probity of Mr Chau and Suncity - and that's at T4060 - and it's suggested, in that report, ongoing connections with triads and the facilitation of organised crime by Suncity.

There is no indication that Ms Martin, Mr White or Mr Houlihan acted upon this information appropriately. It's open to the review to conclude that a failure in this regard is reflective of The Star's broader failure to have regard to the true significance of the good repute test in section 12, subsection (2)(g) of the Casino Control Act.

The report was also provided to Ms Arnott in hard copy at some later point. She, at least, gave evidence of having analysed the report and interrogated its sourcing, which she found wanting in some respects, and that's at T1469. However, it is

submitted that that evidence was itself reflective of a mistaken approach in seeking clear evidence of bad repute.

On 15 July 2019, the Commissioner of Police issued exclusion orders in respect of a number of individuals, including six persons associated with Suncity. That's at exhibit C84. Mr Brodie forwarded that information to Ms Martin on the same day. Mr Hawkins was aware of the exclusions of the Suncity personnel by about 17 July 2019. In late July 2019, Fairfax and Channel Nine published their Crown Unmasked media reports.

On 30 July, Ms Arnott sent an email to Ms Martin about the JRAM held the previous day, recommending that consideration be given to conducting a risk assessment of the Suncity arrangements and to asking Suncity to participate in the due diligence process. Ms Martin was not able to give an explanation as to why that did not occur as a matter of urgency.

The combined effect of these events is that The Star's ongoing association with the city and Alvin Chau ought to have been the subject of a detailed report to the board, containing a full and dispassionate account of the risks, including in relation to the contents of the Hong Kong Jockey Club report and the incidents that had occurred in Salon 95 to date, and a recommendation that the business relationship with Suncity and Alvin Chau be suspended or terminated. Ms Martin, who was aware of each of the matters I've described above, was not able to give an adequate explanation as to why that did not occur.

The next subtopic is the August 2019 board report. On 15 August 2019, at the board's request, Mr Hawkins and Ms Martin circulated a board report about allegations made in the Crown Unmasked media reports, and that's at A1131. It's open to the review to find that it must have been obvious to Mr Hawkins and Ms Martin, given the context in which the board request was made, that the board wished to know whether The Star was involved in, and exposed to, the sort of misconduct that had been reported about Crown and that, in that context, the report they presented was distinctly misleading.

The board paper did not describe, firstly, the issue of the warning letters to Suncity; secondly, the nature of the service desk within Salon 95; thirdly, the various transactions of concern that had been identified since April 2018; fourthly, the substance of Mr McGregor's investigations; fifthly, the fact of police exclusion; sixthly, the fact Ms Martin was in possession herself of a copy of the Hong Kong Jockey Club report; next - or the substance of that Hong Kong Jockey Club report.

Each of those matters was within Ms Martin's knowledge and obvious and direct relevance to the matters in relation to which the board had requested a briefing. Counsel assisting made the submission at T4063 that 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 to 2019, and that submission may be accepted.

Similarly, the submission that it is a matter of very concern - sorry, this is a submission by counsel assisting at T4061, that it is a matter of very serious concern that not one of the people who was in the possession of the Hong Kong Jockey Club report by this time made knowledge of that fact known to the board, when the board was requesting a briefing - the board was requesting a briefing, that is also a submission that may be accepted.

And in the written submissions, we will set out the evidence of non-executive directors in this respect, including that Ms Pitkin gave evidence that she had a very clear recollection of the board hearing from Mr Hawkins in relation to allegations about the fixed room and Suncity at Crown, and that Mr Hawkins assured the board of a number of things, and they took - and she placed reliance on that. Assuming that recollection of Ms Pitkin to be accurate, it reflects most poorly on Mr Hawkins; however, noting, of course, that Ms Pitkin's recollection was not put to Mr Hawkins because she gave evidence after him.

Ms Martin, who was the chief legal officer and chief risk officer, had she done her job properly, was bound to ensure that the board was properly briefed with the material of which she was aware. If Mr Hawkins and Ms Martin had provided a proper briefing to the board, it's inevitable that the board would not have allowed Suncity to move its operations to Salon 82 or to continue to operate at The Star at all.

The next subtopic is communications with the authority in relation to Suncity. On 8 August 2019, Liquor and Gaming New South Wales sent a letter to Mr Power, asking various questions about The Star's relationship with junkets in light of the Crown Unmasked media story. In particular, the letter asked about what, if any, steps had been taken to mitigate the ongoing risk relating to individuals or entities listed in annexure 1 that are authorised junket operators or junket representatives including Mr Chau and Suncity.

Mr Power's response to that question on 10 September 2019, it is open to the review to conclude, was narrow, technical and inappropriate. The response relied upon the fact that Mr Chau and Suncity had not themselves been authorised as junket operators or junket representatives and, on that basis, provided no information about the series of steps that had, in fact, been taken to mitigate risks which had emerged and materialised in Salon 95 since April 2018. Those are matters which ought to have been brought to the authority's attention as they occurred, especially in light of the submission that had been made by Mr Stevens in 2018. They certainly ought to have been brought to the authority's attention in response to its letter of 8 August 2019, as should The Star's possession of the Hong Kong Jockey Club report.

In closing submissions, counsel assisting made the submission at T4066 that the response to the authority was deliberately misleading. That proposition was squarely put by counsel assisting to Mr Power in his evidence, who denied both that the response was misleading or that it was deliberately misleading, and we see that at T1932. However, it is submitted it is open to the review to find that Mr Power failed to respond appropriately to Liquor and Gaming New South Wales and that the failure is suggestive of insufficient priority being given to transparency with the regulator, as opposed to the perceived short-term financial interests of the business.

I'm about to move to a different topic, which is the Buchanan documents, which is quite a lengthy - I'm happy to start now, or is it convenient to take the morning tea adjournment now?

MR BELL SC: Yes. I will adjourn now for 15 minutes. Thank you.

<THE HEARING ADJOURNED AT 11:25 AM

<THE HEARING RESUMED AT 11:42 AM

MR BELL SC: Yes, Ms Richardson.

MS RICHARDSON SC: The next subtopic is the Buchanan documents.

MR BELL SC: Just before you go to that, Ms Richardson, you were going to deal with the issue of documents that counsel assisting raised. Would you like more time to consider that?

MS RICHARDSON SC: I would like the opportunity to talk to my learned friend over lunch, if that's convenient. It might shorten things.

MR BELL SC: Yes, that is convenient. Thank you.

MS RICHARDSON SC: In relation to the Buchanan documents, we submit as follows. Each of Mr Buchanan, Mr Power and Mr Houlihan denied, in unequivocal terms, that Mr Buchanan was ever directed to water down the draft reports he prepared about Alvin Chau and Suncity, and Mr Buchanan gave evidence on that topic at T550. However, it is open to the review to conclude that it is inherently likely, from the progress of those drafts, that Mr Buchanan read the room and tailored his reports to suit the perceived desires of others in the business, even if he was never given an express direction to that effect. And it's open to conclude that this fact - the fact this occurred reflects poorly on The Star's broader culture.

The way counsel assisting put it at T3960 was that Mr Buchanan came to The Star with good intentions and with a wealth of experience, and he did the right thing in

making known to his colleagues the existence of the Hong Kong Jockey Club report and following, but that the evolution of those drafts, it would be open to you to find, show that he tailored his reports to suit the perceived needs of the business. I won't go through the various changes in those reports that occurred over time because we will deal with that in writing, but I will just call out a couple of them. A telling change in Mr Buchanan's draft was the deletion of the sentences:

> "Accordingly, Suncity staff were conversant with The Star's expectations as to how the service desk should operate."

And:

> "When confronted by the investigations team, Suncity staff were unhelpful and evasive."

in the 25 November 2020 draft. And we see that by comparison between exhibit A1221 with exhibit A1017. The 25 November 2020 draft also inserted the following justification that the business could use if it chose to continue the relationship with Suncity:

> "It could reasonably be argued that the instances of non-compliance which occurred at Salon 95 during 2018 and 2019 were the result of Suncity's poor internal management systems as opposed to criminal intent."

Mr Buchanan himself described that he was playing devil's advocate in putting forward the second option of continuing the relationship with Suncity, and this evidence starts at T549. So he effectively accepted that he was playing devil's advocate by putting forward material that he didn't believe in. Whatever occurred as between Mr Buchanan, Mr Power and Mr Houlihan in the drafting of Mr Buchanan's reports, it is open to the review to find that it compromised the integrity and independence of the due diligence conducted by Mr Buchanan; that it was wrong that Mr Buchanan should be suggesting in a due diligence report that The Star could rely upon arguments that he did not, in fact, believe to be true; that Mr Buchanan's role was not to provide justifications he did not believe or decisions he did not think should be taken; and that the fact that he came to believe this was part of his role suggests a perversion of that due diligence process.

Similarly, Mr Power's extensive editing of substantive matters in the Buchanan memorandum, which was a memorandum, in fact, addressed to him, was inappropriate and should not have occurred. The edits suggested by Mr Power in his marked-up draft are primarily directed to removing criticism of Star's past actions, and we see that at exhibit A99. Those were important matters to have recorded, disseminated and acted upon.

Mr Power also suggested that Mr Buchanan's chronology not be attached to the memorandum as Mr Buchanan had originally proposed, and we see that at exhibit A99. That suggestion was unjustifiable. The deletion of the detailed chronology made the “devil's advocate” option of continuing to do business with Suncity appear to be more palatable and justifiable. It's open to the review to find that the independence of the legal, regulatory and compliance functions was compromised in this instance and that this was reflective of the prioritisation of those persons of short-term profit above legal and regulatory compliance.

The next subtopic is Project Congo. Project Congo represented a belated realisation, the review could find, that the question of good repute under the Casino Control Act had to be considered separately and in addition to considerations of risk under The Star's AML program. The process adopted, however, was not well designed. The process involved two steps: step 1 involved consideration of The Star's AML program, whereas step 2 involved consideration as to whether a person - sorry, whether a given person was a business associate and, if so, whether they were of good repute. The two-step process is described in a Project Congo presentation dated August 2021, which is at exhibit G843. So step 1 was described to be:

> "Is the customer suitable to continue to deal with under The Star's AML program? Yes or no."

And step 2 is:

> "Is the customer a business associate? Yes or no. If yes, The Star needs to (a) undertake inquiries and identify material relevant to the person's reputation; and (b) decide, on the basis of inquiries made and material identified in light of the business association, whether there are reasonable grounds to conclude the person is of good repute."

It would have been preferable for those steps to be undertaken in the reverse order. Whether or not a business associate is of good repute is a binary threshold question, albeit a difficult one. There are no controls that can weigh against a lack of good repute. By contrast, the assessment for the purposes of the AML/CTF program involves the assessments of risks and the efficacy of controls.

On 16 August 2021, Mr Buchanan provided a memorandum to Andrew Power and Kevin Houlihan, and we see that at exhibit C256. Recommendations were made in relation to various patrons, including Mr Chau, and we see that at exhibit C256 at pinpoint 1403. As part of the recommendations in relation to Mr Chau, Mr Buchanan put forward two options: the first option was to cease the relationship, and various matters were put forward in support of that option; the second option was that The Star continues to engage with the patron, being Mr Chau, and various matters were put forward in support of that option. The two options and the matters that were put forward in relation to each option via Mr Buchanan mirrored

the material that Mr Buchanan had set out in his memorandum of 7 January 2021. After setting forward the two options, Mr Buchanan made the following recommendation in relation to Mr Chau:

> "Taking cognizance of both options, it is recommended that given the robust nature of The Star's revised AML/CTF program, coupled with the new structure of the AML work area, if patron specific risk mitigation processes are put in place, the business could safely continue to engage in a business relationship with this patron."

And we see that at exhibit C2546 at pinpoint 1404. The recommendation by Mr Buchanan that The Star could continue to deal with Mr Chau and Mr Iek in accordance and compliance with The Star's AML program showed serious errors of judgment. The more detailed table that Mr Buchanan attached to the 16 August 2021 memorandum in support of the recommendation that the business relationship could be continued was incomplete and misleading, and that more detailed table is at exhibit C257 at pinpoint 1418 and following. It was incomplete and misleading, including the continued reference to Mr Stevens' outdated 2019 compliance review. In that respect, Mr Buchanan included the following text - this is at pinpoint 1420:

> "The group compliance officer's audit report completed in May 2019 found that Suncity were adhering to the mandatory Salon 95 service desk processes. The report provides some comfort that Suncity are capable of operating compliant junket programs."

Mr Buchanan's attached table made mention of Channel 9's reports about a confidential Hong Kong Jockey Club document - and we see that at pinpoint 1418 - but made no mention of the fact that a number of senior Star employees, including himself, had that document in their possession.

Mr Buchanan also repeated his “devil's advocate” suggestion that The Star could reasonably argue that the non-compliance in Salon 95 could be attributed to poor internal management rather than criminal intent, and we see that at pinpoint 1421. In this context, no mention was made of Mr McGregor's conclusions as to the wilful non-compliance and deceit upon the part of Suncity staff directed from offshore. Indeed, the section on Mr Iek put the matter the other way around, stating:

> "Following the internal investigation, it was clear the patrons management of Salon 95 was weak and somewhat ineffective. This may have been partially due to the fact he relied on his Sydney-based junket representatives to oversee proceedings whilst he was in Macau."

Mr Buchanan's commentary concerning Mr Chau was unduly focused on perceptions of The Star, rather than the money laundering risk posed by Mr Chau.

He referred at pinpoint 1418 that the rationale pertains to the adverse media coverage; there is some concern that regulatory and public perception may be; it may pose something of a reputational risk; it provides an impression; and so on.

The attached table was more concerned with whether The Star would be perceived as being comfortable to engage with a company, such as Suncity, rather than whether The Star should, in fact, be dealing with that company. It is open to the review to conclude that Mr Buchanan's recommendation that The Star could continue to deal with Mr Chau and Mr Iek, even if only considering the issue from the perspective of an AML program, was a serious error of judgment on his part and ought never been made.

The JRAM meeting which occurred on 17 August 2021 - and we see that at STA.5002.0007.1447 - only led to decisions concerning step 1 of the process, being suitability under the AML program, and that was made clear by a September 2021 board report which described the JRAM meeting in that respect. When asked by Mr Bell SC:

> "Was any decision made by Star Entertainment at that JRAM meeting?"

Counsel assisting referred to the minutes of the JRAM meeting. However, item 6 of those minutes, which are at STA.3412.0042.5891, stated:

> "AML compliance officers (AP and KH) -"

Which must be Andrew Power and Kevin Houlihan:

> "Will revert to this forum with recommendations on how to deal with the non-excluded POIs."

Thus, there was no decision recorded to maintain or re-establish a business relationship with Mr Chau or Suncity at that meeting. However, the following day, on 18 August 2021, a form of decision was made about Mr Chau, although that decision was not in absolute terms. The background to that decision is as follows.

On about 18 August 2021, Mr Buchanan provided an update in relation to the out-of-cycle JRAM meeting that had taken place on 17 August, and that was an entry that he included in an AML DD review report, which is at exhibit G932. That update included the fact that following the meeting, the CLRO, being the chief legal risk officer, which was Paula Martin at the time, and the CGC, being Mr Power, agreed with the six strategies that had been recommended in relation to managing AML/CTF risk in relation to Alvin Chau, and we see that at exhibit G932 at pinpoint 0058. Mr Buchanan then set out additional matters in relation to Mr Chau and concluded with the following statements:

"A fuller synopsis of the patron and a recommendation as to whether we should consider to continue to do business with this patron will, of course, be referenced in the Project Congo report. I recommend that should comprehensive and patron specific risk mitigation measures be put in place, The Star could, moving forward, safely maintain a relationship with this patron."

That's at exhibit G932 at pinpoint 0058. Within that same document, being the AML DD review report, on 18 August 2021, Mr Houlihan, after reviewing the update and recommendation made by Mr Buchanan which I've just referred to, inserted the text against the heading Final Decision. The text was:

"Maintain customer relationship."

And that's at exhibit G932 at point 0058. The commentary from Mr Houlihan accompanying that entry was as follows:

"Good morning Angus -"

Mr Buchanan:

"Thank you for the above information. I note your comments and agree with your recommendations. However, I would request a comprehensive ECDD if we wish to re-establish a business relationship. I understand we are reviewing a recommendation to the business for an enhanced risk mitigation process for specific individuals, where this patron falls within this category and will be subject to undertake a further risk mitigation process before engaging in any casino-related business relationship or CCF approvals. Could you please identify a way to record this recommendation against the patron's account. In light of the above, I am satisfied to maintain an active account for this patron at this time. Thanks, Kevin."

This indicates that as at 18 August 2021, Mr Houlihan was prepared to maintain an active account for Mr Chau predicated on further risk mitigation process being undertaken before any casino-related business relationship or CCF approvals were made, and we see that at exhibit G932 at pinpoint 0059. Mr Buchanan's entry of 3 December 2021 in the same document contained text which is inconsistent with any broad-based decision to maintain a relationship with Mr Chau in all respects having been made. He wrote - this is STA.3023.0003.0050 at pinpoint 0065:

"As you are aware, the patron was recently discussed at an out-of-session JRAM meeting following the completion of Project Congo. Suggested risk mitigation measures, which would potentially allow the business relationship were formulated and are awaiting approval/comment from senior management."

Mr Houlihan's entry in the same document of 6 December 2021 also bears the text:

"Maintain customer relationship."

However, the commentary makes clear in that document that at the time, Mr Houlihan had taken steps to have Mr Chau's front money account and CCF closed, and we see that at pinpoint 0065. On 14 December 2021, a group-wide withdrawal of licence was recommended and approved in relation to Mr Chau, and a final decision of "cease customer relationship" was recorded.

In conclusion, it is open to the review to find that the recommendation by Mr Buchanan and the conclusion by Mr Houlihan that The Star could continue to deal with Mr Chau and Mr Iek in accordance with the - in accordance and in compliance with The Star's AML program, firstly, showed serious errors of judgment; secondly, that the information presented by Mr Buchanan in support of that recommendation was incomplete and misleading; thirdly, that Mr Buchanan's recommendation that The Star could continue to deal with Mr Chau and Mr Iek, even if only considering the issue from the perspective of the AML program, ought never have to be made; fourthly, that it ought to have been obvious to those involved in Project Congo, including Mr Houlihan, Mr Power and Ms Martin, that it was impossible for The Star to do business with Mr Chau in the future.

The next subtopic is a submission made by counsel assisting that The Star breached the Casino Control Act in relation to activities in Salon 95. On the final day of closing submissions, counsel assisting made the following submission, at T4152, that there were further breaches in relation to Suncity and Salon 95 because there was a cage operating in Suncity that was a casino within a casino. Counsel assisting did not specify which provisions of the Casino Control Act are alleged to have been breached or by whom. The grant of a casino licence renders gaming in a licensed casino lawful when conducted by or on behalf of the casino operator. That's section 4. There is no suggestion that Suncity staff were involved in the conduct of gaming in Salon 95.

Further, as to the involvement of employees of The Star, there's no suggestion that they were involved in, or acquiesced in, any of the inappropriate activities that took place in Salon 95. Rather, it's apparent from the contemporaneous documents that it was The Star's gaming managers present in Salon 95 who observed and then escalated the cash for chips transactions in early May 2018. They had been specifically instructed about the importance of immediately reporting such matters, and it is submitted that they behaved accordingly. And we submit that there was a positive compliance culture at that level of the organisation.

As a general matter, individuals working in a casino in relation to the exchange of money or chips to patrons, or the counting of money or chips, fall within the definition of "special employee" in section 44, subsection (1) and that, therefore, required by section 34, subsections (1) and (2) to be licensed and to hold

certificates of competency. However, at all relevant times, rule 6 of the Casino Control Regulation 2009 and 2019 exempted junket promoters or their representatives from the definition of "special employee".

So it is not apparent why the exchange of cash for chips by junket representatives would constitute a breach of the Casino Control Act. Even if there had been a breach of the Casino Control Act on the part of junket representatives, that would not of itself constitute a breach of the Act on the part of The Star. In those circumstances, it is submitted that the evidence of the review - before the review does not permit a conclusion that The Star breached the Casino Control Act.

It is, however, accepted that the exchange of cash for chips by junket representatives in Salon 95 was a breach of the controls that The Star had communicated to Suncity that had been specifically referred to in the two warning letters, and that they were controls designed to minimise AML/CTF risks. And in that respect, I would refer to the risk assessment that was originally done in relation to the service desk, which appears at B3362, which set out the key controls that were to operate in relation to that room, and one of those was that customers will not be able to provide cash and receive chips in the same transaction.

And that was reiterated a number of points in the controls that were set out in that risk assessment. And the specialised standard operating procedures that were implemented after the first concerning transactions were identified also outlined those risk assessment controls in greater detail, which included that at no time will chips be given to junket participants at the Salon 95 service desk. And only - there was only to provide chips received from the casino cage to junket participants and so on.

The next subtopic is submissions made by counsel assisting as to the candour of The Star and its witnesses. Counsel assisting made submissions critical of the failure of both The Star and of several witnesses to disclose matters concerning Suncity to this review. Each of these is dealt with now in turn.

The first subtopic is information provided by The Star. Counsel assisting referred to Maddocks' letter of 1 October 2021 which requested that The Star state all facts, matters or circumstances which The Star considers may affect suitability of The Star or any close associate in the period of November 2016 to date which have not previously been disclosed in writing to the authority. The Star did not address its dealings with Suncity in its response of 8 November 2021. It's submitted that its failure to address these dealings in its response of 8 November should be viewed against the fact that the terms of reference of this review at paragraph 5 specifically required that:

> "The investigation will have regard to the evidence given by The Star on 4 August 2020 before the Bergin Inquiry which stated that The Star was

continuing to operate junket programs, noting that The Star's dealings with Suncity and other junket operators in the circumstances identified above raise concerns for the authority as to The Star's ongoing willingness and capability to comply with its obligations under the Act."

The Star understood Maddocks' letter as requesting the disclosure of matters which were not already going to be the subject of the review's investigation, noting paragraph 5 of the terms of reference. The Star's response of 8 November 2021 did identify a number of such matters. While it is accepted, on reflection, that The Star's dealings with Suncity should also have been addressed in that response, it is submitted that the failure to do so is not reflective of any lack of candour with the review on the part of The Star.

MR BELL SC: Well, let's just pause there for a minute, because it seems to me that there's two issues which you need to address. The first is that, in 2020, Mr Hawkins gave sworn evidence to Commissioner Bergin which, to put it neutrally, was incorrect concerning the activities which had occurred in relation to Suncity and Salon 95. And whilst (indistinct) a personal dimension for Mr Hawkins, it's also the case that no steps were taken by The Star to correct that evidence to Commissioner Bergin at any time up until the delivery of her report in 2021.

And secondly, when I asked the question on 1 October whether there were any matters affecting suitability in the relevant period which had not been previously disclosed in writing, there was not a word - not a word - provided in response concerning the extraordinary activities in Salon 95, and it was up to - it was left to this review to uncover this wrongdoing, despite that non-disclosure by The Star in November 2021. Now, what do those two matters say about the current suitability of The Star?

MS RICHARDSON SC: Could I take that question on notice, Mr Bell? It is a matter I will address.

MR BELL SC: Yes.

MS RICHARDSON SC: None of the witness statements produced to the review in early February 2022 made mention of the Hong Kong Jockey Club report. A number of witnesses were asked questions critical of their, or The Star's, failure to disclose its possession of the Hong Kong Jockey Club report to this review, and I now deal with those matters. The Star first produced a copy of the Hong Kong Jockey Club report to the review on 21 January 2022 in answer to summons 3. Mr Buchanan's email of 12 June 2019, distributing the Hong Kong Jockey Club report to Mr Houlihan, Ms Martin and Mr White, was produced to the review on 3 March 2022 in answer to summons 4.

In relation to - I will turn, in respect of each witness, to the adverse findings that are sought in respect of specific witnesses on this topic, but I just seek to make

some general observations first. First, it is submitted that adverse credit findings ought not be made unless the review is satisfied that it is both appropriate and necessary to make such findings. And in the written submissions, we put forward case law to the effect that that is the prudent course adopted by courts and decision-makers. This is especially the case in circumstances where findings have been sought that witnesses engaged in deliberately misleading or evasive conduct.

Secondly, paragraphs 24 and 25 of the procedural guidelines published by the review require that if a decision is to be made - sorry, if a submission is to be made that a witness should be disbelieved or that they have given deliberately false evidence, the grounds of that contention must have been put to that witness. Thirdly, when preparing their witness statements, witnesses were directed not to confer with one another, and the review heard evidence from a number of witnesses to that effect.

In those circumstances, it is submitted a witness ought not be criticised for having failed to disclose something in their witness statement unless it's shown that both the matter was known to that witness and the matter ought to have been disclosed in light of the questions that that witness was asked and, where necessary, that the requirements of procedural fairness have been met in respect of that witness.

So with those general submissions made, I now deal with individual witnesses. Firstly, Mr Buchanan. Counsel assisting submitted that Mr Buchanan lacked candour and transparency - and this is at T3961 - in that his witness statement failed to disclose the existence of the Hong Kong Jockey Club report and his role in it, and also existence of the further due diligence process that led to the 17 August 2021 JRAM. Mr Buchanan was asked to answer the question in his witness statement:

> "What investigative steps did you take and which people did you consult with for the purpose of preparing the Buchanan documents?"

And you will recall that the Buchanan documents were defined by reference to specific documents. While the existence of the Hong Kong Jockey Club report was not directly responsive to the questions Mr Buchanan was asked, it is open to the review to conclude that a complete and transparent response should have disclosed that Mr Buchanan had previously overseen a substantially similar investigation while employed by the Hong Kong Jockey Club and that he was, in at least some respects, replicating investigative steps that he had previously taken or overseen while at the Hong Kong Jockey Club. Counsel assisting made the following submission in relation to Mr Buchanan's statement at T3965:

> "Mr Buchanan's statement is interesting because he was not constrained by the questions he was asked. In fact, he provided quite a bit of information that he was not asked to provide."

And then she goes on to say:

> "Under that background -"

He referred to The Star Entertainment Group's ECDD:

> "Now, he wasn't asked to provide any of that information, but he did so anyway. So we submit what follows from that was he did not feel constrained by the particular questions."

And that's at T3965. It's submitted that matter should not be given significant weight in assessing Mr Buchanan's evidence when his statement is read as a whole. It's submitted that the additional background information is principally provided by way of background to question 1 as to why Mr Buchanan prepared the 8 May 2020 draft due diligence review. And the background information describes the review that Mr Buchanan conducted of The Star's existing due diligence methodology when he joined The Star in 2019 and the revised methodology he recommended.

Mr Buchanan was also criticised by counsel assisting as having been misleading - and this is at T3967 - for failing to disclose Project Congo and the 17 August 2021 JRAM in answer to question 4 of his witness statement, which asked whether a decision has been made - or had been made in relation to the two options he had set out in his 7 January 2021 memorandum. I'm going to list a number of matters which lead to the submission we make that it's open to the review to find that Mr Buchanan ought to have disclosed Project Congo and the 17 August 2021 JRAM in answer to question 4.

The first matter - and I have already alluded to these matters in the chronology, but I'll summarise them. Mr Buchanan's memorandum of 16 August 2019 that went to the JRAM meeting set out the two options, being the two options that he had set out in his memorandum at paragraphs 48 to 52, that being the 7 January 2021 memorandum. He also, in that 16 August memorandum, made a recommendation that I read out before, starting:

> "Taking cognizance of -"

Effectively the two options:

> "If patron specific risk mitigation processes are put in place, the business could safely continue to engage in a business relationship with Mr Chau."

That's at exhibit C256 at pinpoint 1404. The next point is that Mr Buchanan's memorandum of 16 August 2021, which set those two options out, was presented to the 17 August 2021 JRAM meeting. The next point in the chronology that's relevant is that after considering Mr Buchanan's memorandum of 16 August 2021

and attending the 17 August 2021 JRAM meeting, Mr Houlihan made a decision on 18 August 2021 to maintain an active account for Mr Chau. The next relevant point is that Mr Buchanan was aware of Mr Houlihan's decision on about 18 August 2021 that an active account could be maintained for Mr Chau, and we see that in the evidence given by Mr Buchanan at T560 to 561.

Given those matters, it is open to the review to find that Mr Buchanan ought to have disclosed Project Congo and the 17 August 2021 JRAM in answer to question 4. However, the proposition that it was misleading for Mr Buchanan not to have done so was not put to him during his examination. In the circumstances, it is submitted the review will have to consider whether it is appropriate to make a finding to that effect and, with respect, it's submitted that Mr Buchanan was candid in disclosing the existence of the August 2021 Project Congo discussion during his evidence on 23 March 2022, and that disclosure he made was in answer to open questions in circumstances where it appears counsel assisting was not aware of the JRAM at that time that Mr Buchanan disclosed those matters, and we see that at T560 to 561.

The next witness is Mr Stevens. Counsel assisting criticised Mr Stevens' failure to mention a 24 June 2019 email alerting him to transactions of concern to do with Suncity following the completion of his compliance report. It is accepted that it's open to the review to find that that is a matter that should have been disclosed in Mr Stevens' statement in light of the questions he was asked. Counsel assisting made the following submission in relation to Mr Stevens' evidence at T3970:

> "And in his oral evidence, he agreed that he did have concerns after that audit report, and they were material, but he did not include them in his statement. He says that was because he forgot about the Tomkins email. Now, that evidence was given at day 7, page 368. So we submit that there is a lack of candour in that regard unless, Mr Bell, you consider his evidence to be plausible that he forgot about Mr Tomkins' email. And, with respect, it's difficult to see how a regulatory affairs manager could forget being notified of seven separate instances of concern."

The proposition that Mr Stevens was giving a false explanation was squarely put to Mr Stevens by counsel assisting during his examination, and that's at T769.2. The assessment of Mr Stevens' evidence is ultimately a matter for the review, but it is submitted that as a general matter he was willing to make appropriate concessions.

The next witness is Mr Houlihan. Counsel assisting's submissions concerning Mr Houlihan's involvement with Suncity go less to his candour than to his judgment and insight, and I've dealt with those matters in relation to his judgment in my submissions to date. Counsel assisting suggested that Mr Houlihan himself gave misleading evidence when he refused to accept that a passage of Mr Buchanan's 16 August 2021 memorandum was misleading, and that's at T3974.43. Given that

it was not Mr Houlihan's document, his own evidence was not misleading as such. But it's open to the review to find that his evidence reflected an unwillingness, on Mr Houlihan's part in that respect, to make appropriate concessions.

The next witness is Ms Arnott. Counsel assisting submitted:

> "That Ms Arnott was an evasive witness at times and that often she gave answers which were not clear. She sometimes did not make concessions when they were fairly due."

And that's at T3978.24. Counsel assisting did not give any examples in support of that conclusion, and it's submitted that a general finding to that effect should not be made. Counsel assisting was critical of Ms Arnott's email to Ms Arthur dated 31 October 2019, which included the statement that:

> "The Star has withdrawn exclusive access to one of its VIP rooms previously provided to a junket operator associated with the Suncity Group. The withdrawal of exclusive access to the VIP room was a commercial decision driven by slower demand."

That submission was made at T4115. The documents produced to this review establish that it was Mr White who provided the impugned text to Ms Arnott on 29 October 2019, describing it as:

> "A proposed response to NAB below with input from Graeme and Andrew P."

And that's STA.3427.0038.4950. Ms Arnott gave unchallenged evidence that she was not involved in the termination of the fixed room arrangement, and that's in her witness statement at paragraph 44. In those circumstances, it is submitted that it was reasonable for Ms Arnott to rely upon and relay the response that had been proposed by Mr White, Mr Stevens and Mr Power. Next, in the request for witness statements, Ms Arnott was asked the following question:

> "Were you made aware of money laundering concerns in Salon 95 which resulted in warning letters to Mr Iek in May and June 2018 noted in the Buchanan document of 7 January 2021? If so, please outline your involvement in detail and provide relevant supporting documentation."

In this context, counsel assisting also criticised Ms Arnott's failure to mention that she received a copy of the Hong Kong Jockey Club report in her witness statement, and that is at T4071.25. Ms Arnott recalled being handed a physical copy of the Hong Kong Jockey Club report but was unsure as to when that occurred. Ms Arnott said she did not believe that she had a copy of the report at the time of the media reports about Crown in July and August of 2019, and that

evidence is at T1570. That said, she accepted it was possible that she received the report in about July 2019. She said:

> "It is possible. But as I said, I genuinely don't recall when I was given the report."

That's at T1573.7. Ms Arnott gave evidence that it was likely she had received the report prior to requesting that Mr Buchanan conduct ECDD in relation to the Suncity junket, and that's at T1570.38, also at 1572.45. She made that request in March of 2020, and we see that at exhibit A98. So that leaves an inference that it was likely that she had received the report at the time she made that request in March 2020.

On 22 April 2020, Mr Buchanan sent Ms Arnott an email about Mr Chau's PEP, P-E-P, status, which made reference to the fact that he had previously spent some time looking at Suncity entities. That's Ms Arnott's evidence at T1574.42. Ms Arnott was asked by counsel assisting why she did not disclose her possession of the Hong Kong Jockey Club report in answer to the question above, and she gave the following answer at T1574.24:

> "Well, as I think we've established, in my memory, there is no link between these transactions in this review and that Hong Kong Jockey Club report and receiving it. You may be right that the timing is around that June time, but I have no recollection of that. Yes, it may be likely. But I just don't remember. So in my memory, it was not linked to this particular stream of transaction and topics. And so, I'm sorry, I didn't recall to put it in. It was not an attempt to disclose - not disclose information to the inquiry."

Ms Arnott denied that her failure to mention the report reflected an attempt to be evasive or an attempt to be deceitful, and she said that she had genuinely attempted to answer the questions that she had been asked, and that's in her evidence at T1464 and at 1547. While it is submitted it is open to the review to accept that evidence, given the context of the questions she was asked, it is accepted it's open to conclude that a more transparent approach would have been for Ms Arnott to disclose to the review that she had been given a copy of the Hong Kong Jockey Club report, even if it was not directly responsive to any of those questions.

Ms Arnott was also criticised for having minimised the degree of concern that she had in relation to Salon 95. In this regard, counsel assisting criticised paragraph 41 of Ms Arnott's statement, which referred to Mr Stevens' compliance review. It's submitted that that paragraph needs to be read alongside paragraphs 38, 39, 40 and 42 of Ms Arnott's statement, as well as her supplementary statement of 24 March 2022. In light of those matters, it is submitted that counsel assisting's submission that Ms Arnott sought to minimise her degree of concern should not be accepted.

The next witness is Mr Power. Counsel assisting made the following submission about Mr Power and the Hong Kong Jockey Club report at T3979.26:

> "Mr Power's oral evidence about the Hong Kong Jockey Club report was unsatisfactory. We submit it shows why you would be careful of relying on Mr Power's evidence where it is not corroborated by the documents. For example, at day 18, page 1968, he said that potentially he had the Hong Kong Jockey Club report by 7 November 2020, but at other times in his evidence he denied being in receipt of the Hong Kong Jockey Club report."

It's submitted that that is not a correct characterisation of Mr Power's evidence. The passage referred to by counsel assisting was to the following effect - and this is at Mr Power's evidence T1968.29 - question from Ms Sharp:

> "If you were so concerned that nothing had been overlooked in Star's possession relevant to Alvin Chau, surely you were made aware of the existence of the fact that The Star held the Hong Kong Jockey Club report by this time?""

Answer, Mr Power:

> "Potentially by this time."

I just interpose there, the question is put as to whether he is aware of the existence of it as opposed to whether he has read it. Answer, Mr Power:

> "Potentially by this time. I don't recall, but I believe that that was incorporated into Mr Buchanan's report. Even if I'm not provided with a copy of it, it's incorporated. It wasn't missed. But it's a report that related to the Hong Kong Jockey Club. I was wanting to make sure that The Star's reports regarding Mr Chau hadn't been overlooked."

So while Mr Power accepted that he may have been aware that others held the Hong Kong Jockey Club report, at all times he denied that he had been given a copy of the report, and that denial is at T1877.11. In closing submissions, counsel assisting suggested that Mr Power's evidence to that effect should be disbelieved, stating:

> "What you would infer from this account is that Mr Power dealt in detail with Oliver White, Angus Buchanan and Mr Houlihan over various months in relation to Mr Buchanan preparing the chronology and then the Buchanan reports. We submit in those circumstances, it is completely implausible that Mr Power would not have been made aware of the Hong Kong Jockey Club report when Mr Buchanan was involved in its preparation - and, in fact, the evidence suggests he was the author - and when that document was provided to his supervisor, Ms Martin, and with Mr Power - to Mr Power and Mr

> Houlihan. We submit that you would reject his evidence given to you that he was not provided with a copy of the Hong Kong Jockey Club report."

And that submission is made at T4075.16. It is submitted that that is a very serious submission to make, including against a practising lawyer, and it should not be accepted in the circumstances. In particular, there is no evidence of Mr Power ever having been provided with the Hong Kong Jockey Club report. Ms Arnott gave evidence that either Mr Power or Mr Houlihan provided her with a physical copy of the report but that she could not remember who or in what context, and that's at T1569 and T1570.

Given that Mr Houlihan had been emailed a copy of the report, it is inherently more likely that he, rather than Mr Power, provided it to Ms Arnott. Further, counsel assisting's reference to inherent probabilities, it is submitted, is of little weight in circumstances where Mr Buchanan had said in his 12/9/2019 email:

> "Given the confidentiality of the report, would appreciate if the document is not distributed beyond this group."

And that's at STA.3427.0037.3869. Counsel assisting also made the following submission about Mr Power's witness statement concerning the preparation of the Buchanan documents, and this is at T3980.11:

> "And one document that Mr Power does not disclose in this account is the document where he handed over to Mr Buchanan a heavily marked-up version of a draft of Mr Buchanan's report at a meeting he had with Mr Buchanan in December of 2020. So no reference is made to - or that document is not reproduced, and that document was not provided by him but instead was obtained from Mr Buchanan in the course of examination."

It's submitted that that submission made by counsel assisting ought to be considered in light of paragraph 35 of Mr Power's witness statement, which is in the following terms:

> "I recall that at one point I printed a copy of one of Mr Buchanan's drafts. I cannot recall which version of his report this was but believe it would have been one of the versions from November 2020. I recall making comments on the hard copy report by hand. I do not recall exactly when this occurred. I do not recall providing my written comments to Mr Buchanan directly, but I do have a recollection of providing the annotated document to Mr Houlihan, who told me he would provide them to Mr Buchanan. I cannot recall exactly when I provided the comments to Mr Houlihan, but I believe it may have been on 9 December 2020 as I was leaving Queensland to return to Sydney. To the best of my recollection, my comments were directed to the sequencing of the report so that it more clearly set out the facts known, an assessment of

those facts by Mr Buchanan and then a clear assessment of the recommendation from Mr Buchanan."

And so on. So as can be seen, Mr Power did disclose that he had provided a marked-up copy of the report to Mr Buchanan, in effect through Mr Houlihan, although he did misremember - sorry, he did misremember the manner in which it occurred. It wasn't a handwritten mark-up; it was electronic. But he clearly revealed to the review that he had marked up the report, and he had indicated the nature of the amendments. Mr Buchanan - it was Mr Buchanan who annexed a copy of the marked-up document to his statement.

In that respect, my learned friend made a submission at one point that the marked-up document was discovered when a call for it was made. In my submission, that's not correct. It was proffered by Mr Buchanan and attached to his witness statement from the outset. It's submitted it was reasonable for Mr Power to not seek out the marked-up document that had ultimately been provided to Mr Buchanan in circumstances where they were both preparing witness statements canvassing the same topics, but he did the right thing in indicating that such a mark-up had occurred.

Mr Power was also criticised for his failure to disclose Project Congo and the 17 August 2021 JRAM in his witness statement. The questions Mr Power was asked concerning Suncity were asked under the heading Buchanan Documents, which were defined to be four specific documents dated between 13 February 2020 and 7 January 2021. While it would have been preferable for the Project Congo process to be addressed in Mr Power's witness statement, it is submitted the review would not find it open that there is a deliberate lack of candour in this regard.

Finally, Mr Power's credit was attacked in light of the response that was provided to the authority on 10 September 2019. I have dealt with this previously this morning. While it is submitted that Mr Power's evidence that he did not deliberately seek to mislead the regulator should be accepted, it's open to the review to find that his unwillingness under examination to concede that the response lacked transparency and was inappropriate reflected poorly on his levels of judgment and insight, and the evidence of Mr Power to that effect is at T1931.27 through to page 1932.

The next witness is Mr Hawkins. Counsel assisting submitted that Mr Hawkins did not have a good explanation for his evidence before Commissioner Bergin's inquiry and that this reflects poorly on his general credibility. While it is open for the review to accept that submission, in circumstances where Mr Hawkins has resigned and is not a close associate, it is submitted it is not necessary, nor should, the review determine whether Mr Hawkins deliberately gave false evidence to an inquiry, given the gravity and implications of such a finding.

Counsel assisting also criticised Mr Hawkins' witness statement as burying relevant information relating to the conduct of Salon 95. Mr Hawkins' statement addressed 44 questions over 36 pages. The description of compliance issues in Salon 95 that he identified at paragraph 109 to 118 outlined the major events to which Mr Hawkins was a party in May 2018 concerning Salon 95.

At paragraph 113, he identified Mr Power's "unacceptable level of risk" email of 15 May 2018, and he exhibited the copy forwarded to Mr Bekier, albeit that he did not describe it in detail. In those circumstances, it is submitted the review would not conclude that that email, as referred to by counsel assisting, had been buried by Mr Hawkins.

Counsel assisting was also critical of Mr Hawkins for failing to disclose the compliance issues in Salon 95 in May and June 2019. The submission was made at T4072:

> "This leaves the reader with a thoroughly misleading impression as to what happened with respect to Suncity in the period May until July 2019, matters of which the evidence established that Mr Hawkins was well aware."

Counsel assisting didn't identify what evidence the above submission referred to, but it's noted that aside from awareness of police exclusions, Mr Hawkins denied he was aware of the issues that emerged from May 2019, and that's at T2751.41.

The next witness is Ms Martin. In relation to Suncity, Ms Martin was criticised for the failure of her witness statement to disclose her possession of the Hong Kong Jockey Club report and the existence of Project Congo. In the request for witness statements, Ms Martin was asked to identify any shortcomings during the relevant period in relation to junkets; to explain why Mr Buchanan prepared the Buchanan documents; and to state her knowledge as to the dissemination of the Buchanan documents. As such, the review might readily conclude that a complete and transparent response to that question would have disclosed that Mr Buchanan had provided her with a copy of the Hong Kong Jockey Club report in June of 2019.

So I just want to make some submissions about general matters in relation to Suncity that the review might find it open to conclude the evidence supports a finding. The first is that the evidence before this review means it's open to the review to conclude that key legal, risk and compliance executives failed in their task in relation to Suncity; to find that they acceded to decisions of the business that they didn't agree with; that they allowed the perceived commercial interests of the business to compromise their independence and judgment in relation to Suncity; and that they conveyed information to the board and ILGA in a way that, in some instances, was misleading and, in other instances, lacked transparency; and that it's open to find, in summary, that the legal, risk and compliance executives, in relation to Suncity, acted as enablers or advocates for the business, rather than as an independent brake or check upon the business.

The origin of the service desk in Salon 95 provides an instructive example. Mr Stevens conceded that he deliberately misled ILGA by omitting to mention the principal intended use of the service desk. That was evidence of grossly inappropriate conduct on the part of the principal liaison person with the regulator. In March of 2018, Mr White gave appropriate and prudent advice that no cash transactions be allowed at the service desk, but the legal and risk function ultimately resiled from that position after Suncity asked to be allowed to operate as in Crown.

There is evidence that would support a finding that The Star was acutely concerned about winning Chinese gaming revenue away from the Crown, especially faced with the spectre of Crown Casino opening at Barangaroo. Further, the risk assessment of the service desk was conducted by Mr Brodie and Ms Arnott in April 2018 but was expedited after Mr Lim repeatedly emphasised Suncity's commercial importance to the business.

Next, it would be open to the review to find that when transactions of concern occurred or emerged in late April and early May of 2018, again, the legal and risk functions initially gave appropriate advice leading to the issue of the first warning letter and the suspension of cash transactions in Salon 95 and the institution of a formal procedures document and compliance training and monitoring. However, further transactions of concern occurred and the evidence supports a finding that the legal, risk and compliance personnel acceded to Mr Hawkins' decision to issue a second warning letter and to fail to carry through on the ultimatum that was contained in the first warning letter.

It is also open to find that people in legal, risk and compliance considered this to be an inappropriate and deficient response, but they failed to cause the matter to be escalated to the board. It's also open to find that the reporting to the board that occurred was in such anodyne terms as to be suggestive of an attempt to not provoke inquiry. Ms Martin had received Mr Power's “unacceptable level of risk” email and, as group general counsel, it was a legal risk that she ought to have reported to the board.

It is submitted that it would be open to the review to find that the failings of Ms Martin in June and August of 2019 are of a more serious and revealing character. It supports findings that in little more than eight weeks, she became aware of, firstly, Mr McGregor's report suggesting the reoccurrence of inappropriate cash transactions and deceit on the part of Suncity representatives; secondly, she became aware of the Hong Kong Jockey Club report; thirdly, she became aware of police exclusions of Suncity personnel.

But when the board called for a report in light of the 60 Minutes/Fairfax reports, she did not give a full report to the board about those matters. It's open to the review to find that she failed to do so because she and Mr Hawkins appreciated

that the board would terminate the association with Suncity if properly briefed, and it's open to find that this behaviour reflects a failure to act independently of the business and to ensure that the board was properly briefed.

Similarly, it's open to the review to conclude that Mr Power's letter to ILGA of 10 September 2019 was narrow and technical, and that it represented a serious failure to be transparent with the regulator and to disclose obviously relevant information. Again, the review, it is submitted, is open to find that the behaviour of that kind, in the legal and risk function, involved acting them as an enabler or advocate of the business.

Next, counsel assisting described Mr Buchanan as an interesting case study, and we accept that is correct. He came into the business with obviously good intentions and motives, but his interactions with Mr Power and Mr Houlihan appear to have caused the independence of his due diligence to be compromised, to the point that he came to recommend a devil's advocate option of continuing to do business with Alvin Chau, being an option that he himself did not believe in. The fact that Mr Power, Mr Houlihan and Mr Buchanan were even contemplating that The Star could continue to do business with Alvin Chau as late as August 2021, it is submitted the review could find, reveals a total loss of perspective and lack of judgment on their part.

Those are the submissions we wish to make about Suncity. I note it's five minutes before lunchtime. Is the review minded to take an early lunch break as I will be commencing on China UnionPay after lunch?

MR BELL SC: Yes. I will adjourn now until five to 2.

<THE HEARING ADJOURNED AT 12:56 PM

<THE HEARING RESUMED AT 1:59 PM

MR BELL SC: Yes, Ms Richardson.

MS RICHARDSON SC: Thank you, Mr Bell. The next topic I seek to address on is China UnionPay. This section of the submissions addresses the matters raised in topic 9 identified by counsel assisting, namely, the use of China UnionPay cards at The Star from 5 June 2013 to 5 March 2020 to fund gaming and the propriety of The Star's communications with the authority and the NAB about that matter.

I'll set out at the beginning an overview of the matters that we accept the evidence before this review would support findings in relation to. Firstly, that the process whereby CUP cards were swiped at terminals at the hotel but then used to fund gaming obscured the true nature of the transactions and masked the fact that funds were used for the purpose of gaming from UnionPay and Chinese financial institutions.

Secondly, that Star personnel understood from the beginning, at least, that UnionPay intended or wished to deny access to its card services for the purposes of gambling and that, in that context, the employment of a device that meant it was not apparent to China UnionPay that its services were being used for those purposes was at least sharp practice, even if it was not an infringement of any contract or law, and that this kind of sharp practice is unacceptable on the part of a casino licensee.

Thirdly, the evidence supports a finding that The Star's communications with the authority concerning CUP were inadequate and inappropriate, and that The Star ought to have disclosed its understanding at the time that CUP scheme rules prohibited CUP cards from being used for gaming, and they ought to have disclosed that allowing CUP cards to be swiped at the hotel would mask the purpose of the transactions from UnionPay.

Fourthly, that The Star's communications with the NAB in relation to the use of CUP cards were obfuscatory, misleading and unethical; that they involved the creation of misleading documents and the deployment of documents in a misleading way. That NAB's awareness of the true purpose of the CUP transactions is of limited relevance to the question whether The Star's communications with NAB were inappropriate. Mr Heap observed in evidence it makes not an iota of difference whether the NAB knew that CUP cards were being used for gaming purposes.

It's open to find that The Star should have been giving complete, accurate and responsive answers to inquiries made by NAB, regardless of the NAB's state of knowledge. And based on the evidence, it's open to the review to find that multiple employees at The Star, including Mr Theodore, Ms Martin and Mr White, were on notice for a number of years that NAB may not understand the true nature of the CUP transactions, and they did not take appropriate steps to ensure that NAB and UnionPay were not misled. Rather, they caused or allowed The Star to respond to inquiries from NAB in a way that was liable to mislead both NAB and UnionPay.

Next, that The Star did not, at any time before the CUP facility was provided at The Star, obtain external or internal legal advice on whether The Star was required to report CUP transactions as IFTIs, and that its failure to obtain legal advice and to conduct a risk assessment on the basis of IFTI reporting of CUP transactions was a failure of its AML/CTF and risk functions.

Next, that The Star appreciated the risk that the temporary CCF process may involve a prohibited provision of credit, albeit that an in-house lawyer, Mr White, had advised that it did not. But it failed to take appropriate steps to, firstly, seek external legal advice to confirm Mr White's advice; and secondly, to bring the matter squarely to the authority's attention.

Next, it's open to find that while the use of CUP and the temporary CCF arrangement at The Star did not, in fact, contravene the CUP scheme rules or the NAB merchant terms or Casino Control Act, that the conduct of Mr Bekier and of in-house lawyers and others in relation to these matters showed a willingness to court risk and the failure to be forthcoming and transparent with the authority.

That at all times senior legal and risk officers were aware of the risks entailed in the CUP process but failed to cause them to be properly assessed or escalated to the board for decision, a failure which suggests a compromised approach to risk and a desire to satisfy the perceived commercial needs of the business.

Next, that in-house lawyers were the principal authors of misleading communications to NAB, which reveals a significant loss of judgment, independence and integrity on their part, as they were no longer acting as a check upon poor impulses of the business but were enabling them by engaging in misleading and unethical conduct.

And, next, that the reporting that was made to the board was inadequate about CUP since Ms Martin and Mr Bekier were on notice for years of the significant legal risks involved with CUP, but neither raised those matters to the board. And that when the board finally insisted upon a response from management to the report of HWL Ebsworth in September of 2021, that the response that was given entirely omitted one of the most important matters, being the misleading correspondence that had been sent to the NAB and so formed part of a broader pattern of communications lacking candour with the board.

So the structure in which I will address the submissions in relation to CUP is broadly, firstly, I will outline in broad terms the circumstances in which CUP cards came to be used at The Star; secondly, I will address The Star's communications with the authority about the use of CUP cards and related matters; thirdly, I will address The Star's communications with the NAB about the use of CUP cards; next, I'll address The Star's approach to risk in relation to the issue of whether UnionPay rules were breached, merchant terms of the NAB were breached or the Casino Control Act was breached; and finally, I will address the AML/CTF issues raised by the use of CUP cards at The Star.

So going to the first topic, which is the introduction of CUP cards at The Star. The Star accepts counsel assisting's submission that the review can consider circumstances in which CUP cards came to be used at The Star, notwithstanding that some of those events pre-date the relevant period, and that - I don't have the reference for where that submission was made, but it was made by counsel assisting and we accept that.

One submission that was made by counsel assisting in relation to the events that pre-date the relevant period was that The Star was hunting around for a terminal it had with a permissible merchant category code or MCC - and that submission was

made at T4017 - with the implication being that the NAB was not involved in the MCC code that was to be used for the purpose of CUP swipes at the Astral Hotel that would then, in the second stage, be used for gaming purposes.

It is submitted that that is not the case, which the following history supports. On 20 February 2013, Mr Aloi of The Star sent an email to Mr Andrew Haberley of the NAB with the subject China UnionPay - and this is a document that was produced a few days ago - which asked:

> "Can you forward me any info on this -"

Which would be a reference to China UnionPay:

> "As we would like to implement this debit card to The Star at the hotel to purchase services, then transfer funds across to their casino deposit account."

And the next --

MR BELL SC: When you say this was produced a few days ago, do you mean it was produced a few days ago but should have been produced much earlier?

MS RICHARDSON SC: I'll just determine what category that document falls into. My instructions at this stage are that it's not responsive to a summons to date, but it is a matter that we are seeking a summons so that we can produce it.

MR BELL SC: Well, in relation to that, there are a number of issues. I'd need to understand why it's only been produced now and not earlier, even if it wasn't responsive to a summons. I'd need to understand from counsel assisting what disruption it would cause to the review at this stage to issue further summonses for documents at this point and whether it was material which should have been put to witnesses. So they're all matters that I will need to take into account before deciding whether you can rely on that material.

MS RICHARDSON SC: I hear what you say, Mr Bell. In that respect, I note that I will be referring to a number of matters of context around the same time, which are in evidence, which refer, in effect, to the same point, which is that Mr Haberley of the NAB was aware that the process would be that funds would be transferred to the casino account. So it may be that it's not necessary to rely on that email because there are other emails that establish the same point.

The next relevant contextual matter is the email dated 13 March 2013 from Mr Haberley of the NAB to Mr Aloi, referring to a phone conversation between the two of them, and that's exhibit B332. And in that email, Mr Haberley indicated that:

"CUP and the issuers only go by the merchant category code. And in this case, if the MCC is 'membership account' or something similar, it would be approved if all the other checks pass. Once in the internal Star account, how this is used can't be controlled by UnionPay or the issuers."

And that's at exhibit B332 at pinpoint 4218. Mr Haberley --

MR BELL SC: I'm not sure how I'm in a position to determine what Mr Haberley knew or didn't know. I can certainly make inferences from documents. But as you point out, what the NAB knew is of little relevance. Mr Bowen and Ms Arthur's evidence, in terms of their personal knowledge, is a little different because there are allegations made about conversations with each of them. But I don't see that I am in a position to, or should, make any finding about what the NAB knew as a corporation over the whole of the period from 2013 to 2020.

MS RICHARDSON SC: I'm certainly not suggesting that you could make that type of rolled-up finding. I'm certainly not suggesting that. I'm just seeking to respond to a submission made by counsel assisting that The Star was hunting around for an MCC that was permissible with, in my submission, the implication that the NAB was not involved or didn't know that the MCC code - which MCC code would be applied or that Mr Haberley of the NAB, who was assisting, set the matter up. It's apparent from the emails that by reason of what he wrote and what was told to him, that the proposition was that the funds would be transferred to the casino account.

So it's really only put tangentially in the sense you've already heard the submission that we accept whether the NAB knew or not doesn't make an iota of difference to the conduct that occurred later in relation to the communications that were sent to the NAB. It's only relevant to the early history and the "hunting around" submission that was made, which we submit is not consistent with the evidence. So I'll just deal with it shortly. It's only put in that narrow way.

And it's also put for the other broader point, while not excusing the later conduct, which is that there was some understanding within The Star that the NAB knew initially as to how these cards would be used. So Mr Haberley's email of 13 March, which is exhibit B332, Mr Haberley then said:

"David -"

David Aloi:

"Can you advise the process in which The Star is going to follow? I note you mentioned that they will make a purchase at the hotel, but what purchase?"

And then Mr Aloi replies on 13 March 2013, which has been referred to a number of times in the review. It's STA.3401.0001.4216. His answer is:

"The purchase would be the hotel package. Room costs $1000 and they swipe $50,000 and then we transfer $49,000 to their account. That would be the scenario. Could that be done, do you think?"

And then Mr Haberley of the NAB replied on 19 March 2013, and this is part of the same email chain:

"There is no transaction limit assigned by UnionPay, but NAB have a terminal limit of $999,999.99. In regards to your request below around withdrawing the funds from the customer's cards as they transact at the hotel, UnionPay advise me this is fine as long as the MCC (merchant category code) is not restricted or subject to transaction limits which in this case it should not be based on the below document. You will need to keep in mind that the transaction will not be completed and posted for 24 hours. Once the funds hit the account after 24 hours, you can disperse them accordingly to the casino's operating/playing accounts."

And that email attached a copy of the CUP business rules. Then, on 18 April 2013 - this is exhibit F31 - Mr Ko, K-o, of The Star sent an email to Mr Haberley of the NAB, in which he stated:

"Can you confirm the merchant categories for our terminals. I assume they will be different depending on the location of the terminal. However, we should be either hotels, accommodation or F&B -"

Which I assume is food and beverage:

"Do you have the category classification/number?"

And that's exhibit F31. And then on 23 April 2013, Mr Haberley of the NAB replied, in which he stated:

"See attached. The merchant category code can be allocated at an EB level."

That's exhibit F31 at pin site 1677. And attached to that email, which we see at exhibit F30, was an Excel spreadsheet entitled Echo's Merchant List-240113 Amex Diners EB Name - and that's exhibit F30 - which set out, among other things, MCC codes for various terminals at various Echo properties, including The Star. So the Excel spreadsheet that was attached to Mr Haberley's email set out - and you will see this in the Excel spreadsheet at line 255 - Astral VIP 7011, which is the code that was used in relation to the CUP swipes at the hotel.

MR BELL SC: Was there any evidence about what "EB" means?

MS RICHARDSON SC: Yes. Mr Aloi gave evidence at T822.23 that "EB level" means the location of the terminal. It follows, we submit, that there was at least some understanding within the NAB, at least initially, about the transactions that The Star proposed to undertake using CUP cards on a NAB-supplied EFTPOS terminal and an appreciation that the funds would ultimately be used for the purposes of gaming. However, Mr Haberley at the NAB was not a senior person, and his email - well, it can be inferred he was not senior. His email signature includes - sorry, his email signature indicates that he was an assistant account manager, New South Wales/ACT, and that's at STA.3401.0001.4216 at pinpoint 4217.

External legal advice was obtained from Mallesons about the proposed use of CUP and its intersection with The Star's obligations under the Casino Control Act on 30 April 2013. Counsel assisting has raised issues as to the soundness of that advice but submitted that The Star was entitled to rely on that advice, at T4009, and we submit that submission that The Star was entitled to rely on that advice is correct and should be accepted.

The next key matter was that on 6 May 2013, Mr Stevens wrote to ILGA to request approval to amend the cheque cashing and deposit facility ICM - internal control manual - to include reference to deposit of funds by way of electronic funds transfer, but his request did not specifically refer to CUP. That's at STA.3027.0001.0003.

MR BELL SC: It didn't even refer to the use of debit or credit cards, did it? It just referred to electronic funds transfers.

MS RICHARDSON SC: I think that's correct, but I will just have that checked, if I may.

MR BELL SC: Yes. Thank you.

MS RICHARDSON SC: On 5 June 2013, the change to the cheque cashing and deposit facility ICM was approved. That's at STA.3008.0004.0869. In this respect, I apologise for giving STA numbers rather than exhibit numbers. The final written version of our submissions will have all of that corrected. On 7 June 2013, Mr Aloi asked Mr Haberley of the NAB to confirm proposed answers to Star questions about the use of CUP, one of which was:

> "If the patron wins, will we credit back his front money to his card or can he take cash."

That's exhibit F28. Mr Aloi also requested that someone from NAB have a quick session with marketing/VIP team as to how the CUP transactions would be processed. On 4 September 2013, Mr Stevens provided a marked-up version of the

cage operations SOPs to the authority. The mark-up included a change at paragraph 3.6, in tracking mode, which was to insert the words so that it read:

> "The casino operator is to accept the hexagon transfer -"

And these are the words that are inserted:

> "Or electronic funds transfer (EFT) associated with China UnionPay debit cards to enable the following --"

MR BELL SC: Ms Richardson, was there any evidence concerning what a hexagon transfer is?

MS RICHARDSON SC: I don't think there was, but my understanding is it's an electronic bank transfer connected to HSBC. That's my understanding, but I don't - I can have it checked. I don't know whether there is any evidence to that effect.

MR BELL SC: Yes. Thank you.

MS RICHARDSON SC: At that time, the cage operations SOPs did not make reference to the prospect that CUP cards be swiped at the hotel lobby. And I'll come, in due course, to the submission we make in relation to disclosures by Mr Stevens to the authority, that it would be open to find that in circumstances where his understanding was that UnionPay scheme rules prohibited the direct use of CUP cards for gaming, it was a matter he ought to have brought to the authority's attention.

MR BELL SC: And what is The Star's submission as to whether the UnionPay rules did prohibit the use of the cards for gaming?

MS RICHARDSON SC: The submission is that they - I'd like to come to that in turn, if I may, but the submission is that we submit that The Star did not breach the China Pay scheme rules. They were not a counterparty to those scheme rules. But it's actually a more complex submission which I'd like to come to in turn, because the CUP scheme rules have a set of rules in relation to merchants inside mainland China and outside mainland China. And so it depends on a construction of the scheme rules.

But what we do accept was that there is evidence that it does not matter in terms of the suitability review that you are undertaking as to whether it was not an infringement of that contract or not. What matters from the perspective of suitability is that there were a number of persons within The Star who were operating on the understanding that the CUP scheme rules prohibited the purchase of gaming chips, and that The Star - sorry. The review would be open to find that personnel at The Star understood from the beginning that UnionPay intended or

wished to deny access to its card services for the purposes of gaming and such that the employment of a device meant it were not apparent to them that that was happening was sharp practice. So we say that (indistinct)--

MR BELL SC: What do you mean by "sharp practice" exactly? Because it's perhaps somewhat ambiguous. Do you mean unethical? Illegal?

MS RICHARDSON SC: Unethical.

MR BELL SC: Yes. Thank you.

MS RICHARDSON SC: The next key matter is that from December 2013, CUP cards were being accepted at the VIP arrival check-in lounge at The Star via an EFTPOS terminal that had been provided by the NAB. Owing to the delay which was experienced in funds clearing into The Star's bank accounts once a CUP transaction occurred at the EFTPOS terminal, and the associated inability of the casino to provide credit to patrons under the Casino Control Act other than in prescribed terms, it was determined in or around February 2014 to use what was described as a workaround, involving a temporary cheque cashing facility.

And the document where we see that concept introduced by Mr White is at exhibit F54, which I will come back to in some detail. The evidence of Mr White at T1681 to 1682 was that this was approved by Mr Bekier and Mr John Redmond, the then chief executive officer of what is now TSEG, on about 3 February 2014. On 27 February 2014, Mr Stevens sent an email to the authority with the subject UnionPay - Section 75 Advice, which contained a summary of the legal advice. It was described as containing:

> "A summary of the legal advice we sought around the use of debit cards in association with a front money account."

And that is at STA.3418.0103.8683. And on 29 April 2014, Mr Stevens sent a further email to the authority with the subject Debit Cards and Front Money Accounts, which contained a statement that:

> "The interpretation of the meaning of a 'deposit comprising money' for the purposes of section 75(2)(a) must include funds deposited by way of a China UnionPay debit card."

And that's at STA.3418.0103.8512. Just one moment. On 12 June 2014, there was an executive operations meeting between Mr Brodie and Mr Brearley of the authority and Mr Power and Mr Houldin of The Star, and that's at STA.3412.0158.1831. And this and the next document I'll refer to have been produced to the review but do not currently have an exhibit number.

MR BELL SC: When were these documents produced?

MS RICHARDSON SC: In relation to the first one I referred to, which is the executive operations meeting, the text that is within that which lists the minutes has been produced in earlier documents to the review - is known to the review. But the form in which it's in that I'm referring was produced very recently on 9 June. But it's material that I understand is referenced in other documents that are before the review.

Then on - the next issue is on 4 September 2014, Ms Mawer, M-a-w-e-r, sent an email to the authority with the subject Updated Cage Operations SOP. The body of the email read:

> "Please find attached a copy of the cage operations SOP loaded onto our intranet this morning. The only change is the insertion of the section Acceptance of China UnionPay Debit Card on page 20."

And the SOP included a series of steps in relation to the swiping of the CUP card, which included a reference to the establishment of a temporary CCF. And it also referred to the fact that the debit card would be swiped at the VIP hotel arrival lounge. Now, this is not in the hearing bundle, and I accept it's only been recently produced. The only relevance of it is we have previously submitted that the first point at which the temporary CCF and the swiping of the cards at the hotel were brought to the authority's attention expressly was in December 2014. It looks like it was three months earlier, in September. But where the temporary CCF and the swiping at the hotel were revealed, that does not --

MR BELL SC: But no approval was sought; is that correct? You say it was revealed in an SOP, but no approval was sought in relation to that; is that correct?

MS RICHARDSON SC: Correct.

MR BELL SC: Yes.

MS RICHARDSON SC: And we've also made - I've made summary submissions at the outset, that in this respect, it would be open to the review to find that The Star apprehended a risk that that temporary CCF process may - or the authority may form the view that it involved the prohibited provision of credit, but it failed to raise this matter squarely with the authority.

On 19 December 2014, Ms Mawer sent an email to the authority attaching an updated version of the cheque cashing and deposit facilities SOP, which is a different SOP. The covering email mentioned that the SOP had been updated but didn't identify the nature of the amendments, and that's at STA.3463.0004.4207. That SOP contained a new item 4, which is Acceptance of China UnionPay Debit Card, which was in similar form to the task to be inserted into the cage operations SOP but provided further detail about the cheque cashing facility.

So the next broad topic I would like to refer to is, as foreshadowed, The Star's communications with the authority about CUP cards, some of which I have adverted to. Just in response to your question before, Mr Bell, about whether the 6 May 2013 ICM amendments submission - what it referred to, it did not make a reference to debit cards.

So, firstly, in terms of The Star's communications with the authority about CUP cards, we submit it's open to the review to find that The Star's communications with the authority about the proposed use of CUP cards omitted relevant information and lacked transparency, and it's open to find that this was reflective of a broader reluctance to communicate relevant information to the authority where it might compromise The Star's perceived financial interests. In this respect, counsel assisting made the following submission at T4012:

> "We submit that based on the oral evidence of Mr Stevens and Mr Aloi, 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 cards to purchase gaming chips."

So the first subtopic I will deal with in that respect is understanding as to whether there was inconsistency with CUP scheme rules. Mr Stevens gave evidence that in his - that in June 2013, his evidence - sorry, his understanding was that UnionPay scheme rules prohibited the use of CUP cards to purchase gaming chips, and that's at T656.19. Mr Stevens' understanding that the scheme rules did, or may, prohibit the use of CUP cards to purchase gaming chips was a matter he ought to have brought to the authority's attention. Mr Stevens accepted that the open and honest approach would have been to communicate his understanding to the authority and that it was a grave error for him not to have done so, and that's at 646.35 over to T647.

A number of other witnesses shared Mr Stevens' understanding that CUP cards could not be used to effect direct purchases of gaming chips, and that included Mr Aloi at T814; Mr Power at T1997; Mr White at T1656; Mr Theodore at T2845; and Mr Bekier at 3058. And as I've already submitted, it's open to the review to find that relevant Star personnel understood from the beginning that UnionPay intended or wished to deny access to its card services for the purpose of gambling. That was their understanding.

The next subtopic is swiping of CUP cards at the hotel. Mr Stevens' email of 5 June 2013 stated that - I'll just get the exhibit reference to that, I apologise. It stated:

> "In the discussions with ILGA that David Procter -"

I query whether that should be David Aloi, but it said that:

> "David Procter and I had regarding this change, we clearly called out the use of CUP and so they are aware of these transactions and how they will work."

That's at exhibit G30. It's unclear from that email and other contemporaneous documents whether the fact that CUP cards would be swiped at the hotel was discussed with the authority in May 2013. And in evidence before this review, both Mr Stevens and Mr Aloi had scanty recollections of what was discussed with the authority.

On 4 September 2014, Ms Mawer notified the authority of the amendments to the cage operations SOP and specifically identified the insertion of the section Acceptance of China UnionPay Debit Card. While the SOP clearly indicated that CUP cards would be swiped at the VIP arrival lounge, The Star did not disclose that doing so would obscure the nature of the transactions from UnionPay and Chinese financial institutions. It is open to the review to find that in circumstances where Mr Stevens understood - or his understanding was that UnionPay scheme rules prohibited the direct use of CUP cards for gaming, this was a matter that he ought to have brought to the authority's attention.

The next subissue in this respect is Mallesons' advice of 30 April 2013 in relation to CUP cards. Counsel assisting invited a finding that Mallesons' advice of 30 April 2013 was - that it deliberately failed to refer to the UnionPay scheme rules. That submission was made at T4007.45. It's submitted that in circumstances where the instructions provided to Mallesons are not in evidence, save to the extent that they're recited in the advice themselves, the authors were not called as witnesses, and given the terms of reference of this review, that that finding should not be made.

Counsel assisting accepted that The Star was entitled to rely upon Mallesons' advice, and Mr Stevens' emails of 27 February and 29 April 2014 notified the authority of The Star's understanding that it was permissible for debit cards to be used to deposit funds into deposit accounts under section 75(2) of the Casino Control Act. And there's no evidence that the authority expressed a contrary view.

The next subtopic is the adoption of temporary CCFs. The documents before the review support a conclusion that The Star first notified the authority of the use of temporary CCFs in conjunction with CUP cards in September 2014 when an updated cage operations SOP was provided.

On 3 February 2014, Mr White had prepared a memorandum. This is exhibit B3409. It was a memorandum addressed to Mr Redmond, Mr Bekier and Mr Hornsby, copied to Ms Martin, on the subject of China UnionPay and cheque cashing facilities, CCF. Mr White expressed a view that under the Casino Control Act, a counter cheque or a house marker could be accepted from the patron so as

to allow chips to be provided to the patron prior to funds from the CUP transaction clearing.

Mr White noted that house markers are generally only recognised and banked by Australian banks, and implied that Echo generally did not accept cheques unless it knows that it has an instrument which is capable of being banked and honoured in accordance with the requirements of section 75 of the Casino Control Act.
Mr White noted the potential risk that the authority:

> "Would form the view that the use of CCF in this circumstance is a prohibited provision of credit. Echo/The Star would argue that their view is not correct, but this has not been raised/challenged to date."

Mr White also observed in the memorandum:

> "Whilst it is unlikely that ILGA will investigate this matter unless it ends up in a position of default (ie, 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 the cage, which happen annually."

And that's also part of exhibit B3409. It is open to the review to conclude that Mr Redmond, Mr Bekier, Mr Hornsby and Ms Martin, and Mr White, understood that there was a risk that the regulator would view the temporary CCF process as not compliant with the Casino Control Act and were willing to accept that risk even though no external advice had been sought to confirm the correctness of Mr White's advice.

It is also open to the review to find that in circumstances where Mr Redmond, Mr Bekier, Mr White and Ms Martin understood that the authority may have different views as to the operation of the Casino Control Act, that the appropriate and transparent course was to lay out the temporary CCF proposal to the authority prior to its implementation and explain why The Star considered the process to be compliant with the Casino Control Act, and open to find that the failure of The Star to do so reflected a failure on its part to be frank and transparent with its regulator and was inconsistent with doing the right thing in relation to its regulatory obligations, notwithstanding the fact that the "doing the right thing" principle was only added to The Star's code of conduct in June 2021.

I propose to deal in writing with the submission that Mr White's ultimate conclusion that the use of a temporary CCF in this circumstance was permitted under section 75 of the Casino Control Act and that his advice was correct.

MR BELL SC: I would be grateful if you can give me an outline of the reasons why you say that's so.

MS RICHARDSON SC: I might have to do that tomorrow, if I can. I had planned to deal with it in writing, if I may. It's a detailed argument. It's - we say it relies upon an incorrect reading of the Cheques Act, and we say that the temporary CCF cheque that was used by The Star meets the description of a cheque payable to the operator under section 75.

That said, we accept that it's open to find, even though we say there was compliance with the Act in that respect for the reasons I've set out, that there are a number of failings that it would be open to the review to find in relation to this process in relation to the awareness that the authority might have a different view as - and the failure to bring that to the authority's attention and to lay out clearly what the arrangement was and The Star's position that it was compliant.

The failure to squarely call out, other than in terms of inserting into SOPs which were not, in fact, required to be authorised - they were, in effect, sent as an FYI to the authority - that that was an inadequate bringing of the matter to the authority's attention. And also in terms of an approach to risk, the failure to obtain external legal advice to confirm Mr White's internal legal advice to that effect.

MR BELL SC: I think it would be helpful at some stage over your oral address to at least give me a broad outline of why you say these temporary CCFs did not breach section 75. I think it would be helpful to have a dialogue about that at some point.

MS RICHARDSON SC: I can do that. The next subtopic is The Star's communications in 2021. Counsel assisting submitted that The Star's letter of 10 September 2021 to Liquor and Gaming was misleading, and that was at 104077 - sorry, that's at T40877.28. In answer to a question:

> "Was the regulator informed about the CUP process? If not, why not?"

The Star provided the following answer:

> "Yes, the casino operator -"

Sorry:

> "The casino regulator was informed about The Star's intended use of the CUP process as part of a request to update relevant internal controls. ILGA was advised in May 2013 about the proposed introduction of the CUP process and how it would work in a meeting with Graeme Stevens and David Aloi."

And then it refers to:

> "Approval to change the cheque cashing facility ICM to facilitate the use of the CUP process was given by ILGA on 5 June 2013."

And it goes on. And that letter was signed by Mr Aloi as the then regulatory manager of New South Wales. Counsel assisting was similarly critical of The Star's answer to this review in - of 8 November 2021, and this is at - and that response that The Star gave on 8 November last year is at CORRO.001.001.0190, which stated:

> "In May 2013, prior to the introduction of the CUP process, The Star advised the authority of the proposed use of CUP debit cards as part of The Star's application to vary the internal control manual 3, cheque cashing/deposit facilities during executive operations meetings and with the authority's on-site employees."

Those statements are broadly consistent with Mr Stevens' contemporaneous email of 5 June 2013, which had stated that the authority was aware of the proposed CUP transactions and how they will work. That said, it is unclear on that email just how much detail was discussed with the authority at that time, and it's accepted that both Mr Aloi and Mr Stevens had only scanty recollections of the detail of the discussions that took place in May 2013. In those circumstances, The Star accepts that the 10 September 2021 and 8 November 2021 letters ought to have been written in far more qualified terms.

In particular, both letters failed to mention that The Star had failed to communicate to the authority understanding of key personnel that the UnionPay scheme rules prohibited the purchase of gaming chips and the fact that the purpose of locating - sorry, the fact that the hotel - sorry, the fact that the CUP terminal was in the hotel lobby allowed the avoidance of disclosing to the CUP that the transactions were for gaming, and these were matters that ought to have been disclosed.

The next issue is The Star's communications with the NAB about CUP cards. At the outset, it is open to the review to find that The Star's communications with the NAB as to the use of CUP cards were misleading, unethical and wholly inappropriate, and that they reflect very poorly upon the judgment - and in some cases, the integrity - of Mr Theodore, Mr White, Ms Martin and, to a lesser extent, Ms Scopel and Ms Dudek. So the first topic in this respect is the relevance or otherwise of - sorry. I will start again.

The first subtopic is an awareness of a risk of NAB's ignorance on this topic. It is accepted that the NAB's level of knowledge as to the true purpose of the CUP transactions is only of limited relevance in assessing the impropriety of The Star's conduct. It's open to find that regardless of the extent of the NAB's knowledge, it could not excuse the misleading communications to the NAB, especially in circumstances where employees of The Star knew, or should have inferred, that NAB was likely to convey those communications in some form to a third party, namely, UnionPay International. Mr Heap observed in evidence it makes not an

iota of difference whether NAB knew that CUP cards were being used for gaming purposes.

In addition, it is open to the review to find that several employees, including Mr Theodore, Ms Martin and Mr White, were on notice for a number of years that while some employees of the NAB had a degree of understanding in 2013 that funds from CUP transactions would be used for gaming, from 2015 that NAB may not have understood the true nature of the CUP transactions and that they did not take appropriate steps to ensure that NAB and UnionPay were not misled. But instead, it's open to find that they caused or allowed The Star to respond to inquiries in a way which was liable to mislead both the NAB and UnionPay.

Insofar as the NAB's knowledge is a relevant matter, The Star accepts that it is open to the review on the evidence before it to prefer the evidence of Ms Arthur and Mr Bowen over the contradictory evidence of other witnesses, including Mr Theodore and Ms Scopel. In circumstances where Mr Bowen was not cross-examined, his evidence may be accepted by the review. But this does not require a finding that any other witness gave knowingly false evidence, nor should such a finding be made, in our submission. And we will refer in writing to case law to the effect that adverse credit findings should only be made if they're necessary, which we submit in this instance they're not.

MR BELL SC: Well, there's an additional problem because Mr Bowen gave evidence after Mr Theodore and, indeed, only consequent upon an invitation to Mr Bowen to do so. So Mr Bowen's evidence wasn't put to Mr Theodore. That would be an additional reason why I wouldn't make a finding against Mr Theodore's credit in relation to that issue.

MS RICHARDSON SC: We, respectfully, accept that analysis. Counsel assisting referred to the email of Ms Waterson of 22 October 2015, in which Mr Williams of the NAB had:

> "Asked if we were aware that China UnionPay transactions were not to be utilised for gaming purposes."

And that's at exhibit A992. Mr White's email to Ms Martin and Mr Power concerning this email from Ms Waterson contemplated that this may reflect a change in position or understanding on the part of the NAB. And that email from Mr White said:

> "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)."

Mr White's email of 28 October 2015 to Mr Power, copied to Ms Martin, forwarded one of the initial emails from Mr Haberley of the NAB from 2013 but noted:

"I see that the person we are dealing with in this chain is not particularly senior and we will check the position of the person raising questions in Queensland. We can then assess whether this will be a problem or not."

And the citation for that is STA.3412.0151.0084. On the same day, Mr Power sent an email to Mr White, which is exhibit A1296, which stated:

"Options are: (1) drop proposal for CUP in Queensland; (2) pursue Queensland CUP (at the risk of arrangements in New South Wales). If we pursue (2), my recommendation would be to try and get New South Wales NAB representatives to talk to the person who has asked Deb Waterson the questions."

Mr Power exhibited this email to his witness statement, although he was not cross-examined about it. Mr Power also exhibited an email of 9 November 2015 from Mr White to Ms Waterson, which indicated that Damon Colbert of The Star was going to discuss directly with the NAB when in Melbourne on Thursday, and that's STA.3412.0151.0091. There is no evidence before the review as to the contents of any discussions between Mr Colbert and NAB in 2015, although Mr Theodore gave evidence that he had discussions with Mr Colbert concerning NAB's awareness of the purpose of the CUP transactions, and that's at T2844.23, T2845.1 and T2875.36.

It is open to the review to find that by the time of Mr Bowen's email of 13 March 2017, Mr Theodore ought to have apprehended the real likelihood that key persons at the NAB were not aware of the use of CUP cards to fund gaming, and that email was in the following terms. This is the 30 March 2017 email. I will just find the exhibit reference for that:

"Further to discussions we had last year re merchant acquiring for China UnionPay cardholders, I have been asked to forward the following to remind The Star Entertainment Group of China UnionPay's terms and conditions."

And then it set out:

"As Star Entertainment -"

This is in italics:

"As Star Entertainment Group's acquiring bank, NAB are committed to protecting our customers' reputation. NAB would like to ensure that all transactions through Star Entertainment Group merchant facilities restrict gambling. Gambling applies a separate merchant category code to what is currently applied to the Star Entertainment Group's Astral VIP merchant

terminal, thereby we must ensure that no proceeds or deposits for gambling are placed through this terminal."

This is exhibit A1377:

"Please ensure strict controls are in place to avoid any gambling credits being placed through the terminals."

As counsel assisting submitted, at T4007.9, it was a very unsafe assumption for The Star to make, that because one officer of the NAB knew about a matter in 2013, it might be assumed that very different staff members had that same knowledge all the way through to 2019.

MR BELL SC: But not only unsafe, you would also submit irrelevant? Irrelevant to make any assumption about what the NAB may or may not have known in terms of the right thing to do.

MS RICHARDSON SC: It's certainly not relevant to assessing the conduct that The Star then involved in, in terms of the communications it sent.

MR BELL SC: Yes.

MS RICHARDSON SC: The next subtopic - I mean, it gives context, but it's not exculpatory. The next subtopic is the creation of false hotel records. The first - the issue of documents containing dummy room numbers is addressed. On 20 April 2016, Mr Power sent an email to Mr Quayle and copied Mr Hawkins, and that email is exhibit A1289. And that email from Mr Power included the following:

"CUP - as previously discussed with you, I have undertaken a review of the CUP process and believe that the legal risk is low to moderate, but from a PR perspective I recommended that we make two changes to our process - (a) cease creating 'dummy' rooms for customers who are not staying in the hotel. For the purposes of creating a receipt in the VIP check-in area, if the customer is not staying in the hotel, we should simply N/A or four zeroes if the number must be included. If it hasn't already happened, staff should be advised to stop doing this."

Mr Power's email supports a conclusion that documents with false room numbers had been created by hotel staff prior to that time. Further, this was a breach of SOPs which required that customers must have a room booking at the hotel in order to use their CUP cards as part of the CUP process. While there is no evidence as to how widespread this practice was, on 13 November 2017 Ms Martin directed that the practice cease immediately when a further instance of it was brought to her attention, saying:

"This has to stop now. I would like to understand who was involved and also what disciplinary action is proposed."

And she gave evidence to that effect at paragraph 48 of her witness statement, and that email is at B460. The second issue raised by counsel assisting is the issue of what were described as for-information hotel documents. An example of such a document referred to by my learned friend in closing is exhibit B1431. The document is on treasury and casino and a hotel letterhead, with the marking:

"Information copy only."

It is not described as an invoice. It records a series of debit and credit transactions on 1 June 2019, each bearing the description:

"Transfer to customer's account."

While the document does not by itself purport to record a payment for hotel accommodation services, it does bear a room number and describe arrival and departure dates. Counsel assisting described these documents as "sham documents", stating that:

"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 and the date that the person stayed and so on, but the substance of the transaction was that these were deposits into a front money account for the purchase of gaming chips."

Without in any way seeking to defend or excuse the conduct, that submission is only partially correct. The for-information documents do not themselves purport to record charges or payments for accommodation. They're not labelled as an invoice. And aside from identifying sums that had been transferred to and from unidentified accounts, the documents did not purport to identify the nature or purpose of the underlying transaction. The covering emails and how those documents were deployed are another matter, which I will address shortly.

MR BELL SC: You would accept, would you, that what you have described as the dummy invoices or dummy hotel records were shams?

MS RICHARDSON SC: Well, we accept that - we don't have an example of them, but Mr Power's email of 2018 supports a conclusion that that phenomena had occurred and that documents with false numbers must have been created by Star prior to that time. I just don't - there is some ambiguity about the meaning of "sham". My learned friend in closing submissions gave three different definitions from different cases as to what a sham is. And in some instances, the meaning of the sham is that a document is created which - and I'm quoting here from Snook v

London West End Riding Investments where Lord Diplock considered what, if any, legal concept is involved in the use of this "popular and pejorative word 'sham'". And he said that:

> "I apprehend if it has any meaning in law, it means acts done or documents executed by the parties to the sham which are intended by them to give third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations, if any, which the parties intend to create."

So it actually has quite a specific meaning as an inter partes transaction. So that explains the resistance to the word "sham" because it's actually not - it's not fixed as to what it means, and my learned friend in closing referred to, I think, three or so different definitions which differ as to what it might mean.

In relation to that the second category of documents, the information-only hotel documents, they do not purport to create legal rights. And so, if it matters, we say it's not correct to describe them as a sham in the sense of Lord Diplock described it. That said, we accept it's open to the review to find that the documents were drafted in a way to not reveal the true nature of the underlying transactions that were taking place. And I will also make submissions momentarily about the way those documents were deployed.

MR BELL SC: You say there weren't any examples of the dummy invoices, but isn't that what we saw in relation to Mr Phillip Dong Fang Lee and the hotel invoice documents in relation to him?

MS RICHARDSON SC: Could I take that on notice? It may be that's an example, and we will have that reviewed.

MR BELL SC: Yes, of course.

MS RICHARDSON SC: The obscurity of the description in the for-information documents, which included the narration "transfer to customer's account", ultimately prompted UnionPay International's query in October 2019 - and this is an email query at STA.3002.0010.0444 - where they wrote - and this is unusual syntax because it's a person with English as a second language, I apprehend:

> "We wonder what does it mean regarding 'transfer to customer's account' in description column. It is not clear what were the transactions purchased, what kind of specific service, etcetera. Meanwhile, one amount of debit and one amount of credit and the balance due is zero AUD. We also have a query in part."

So that query was sent in October of 2019.

So the next subtopic is the communications with the NAB. From June 2019 onwards, The Star responded to a series of questions from UnionPay conveyed by the NAB in the following terms, three questions:

> "(1) explain the business scope of the relevant merchants; (2) explain what type of goods or services did the cardholder purchase; (3) provide the supporting documents for the attached transactions (including but not limited to contract, agreement, invoice, etcetera)."

Mr White drafted the proposed responses, which were ultimately sent to the NAB by Ms Dudek, which included the following text:

> "(1) the merchant operates integrated resorts in Australia, consisting of hotels, restaurants and other entertainment facilities; (2) the cardholder purchased accommodation services with the transactions in question; and (3) invoices for the relevant transactions are attached."

So an example of that is at exhibit B1430. And so an example of the types of documents that were attached, which were described in the covering email as "invoices for the relevant transactions are attached", are the documents which I have just been describing, the for-information documents. So they were described in the covering email as an invoice for the relevant transaction, which was described as the purchase of accommodation services.

Those answers that were drafted by Mr White and sent by Ms Dudek are indefensible, and it is open to the review to find that The Star's communications with the NAB in relation to the use of CUP cards were obfuscatory, misleading and unethical; that they involved the creation of misleading documents and deployment of documents in a misleading way; that multiple employees at The Star, including Mr Theodore, Ms Martin and Mr White, were on notice for a number of years that NAB may not understand the true nature of the CUP transactions and did not take appropriate steps to ensure that NAB and UnionPay were not misled.

Rather, it's open to find that they caused or allowed The Star to respond to inquiries from NAB in a way that was liable to mislead both the NAB and UnionPay. Mr White agreed, albeit with hindsight, that the response he drafted was highly unethical, and that was at T1726.26. Mr Bradley, a non-executive director, said that clearly the response was totally misleading and inappropriate, and other directors made comments to the same effect.

The next subtopic is the involvement of Ms Martin and Mr Theodore. As I have referred to, in October 2019, UnionPay International requested clarification as to what transfer - sorry, as to what "transfer to customer's account" meant and asked what kind of specific service, etcetera, had been purchased. On 4 November 2019, Ms Dudek responded to that inquiry in the following terms - that's exhibit

B1802 - and I won't read it out, but she gave an answer describing certain high-end premium guests at the hotel incurring expenses at the hotel and so on. That response had been drafted by Mr White on 30 October 2019, who then described it to Ms Dudek in the following terms, and this is at exhibit A253:

> "Please run this by Harry and make sure he is comfortable with this wording. We discussed the proposed response briefly, and I think this should be consistent with what we discussed whilst I believe being accurate. My only concern with the wording above is whether it may cause UPI to flag that these transactions are not being properly coded if not directly linked to accommodation. I am hopeful that the above retains the link to hotel accommodation whilst noting other expenses, eg, dining, transfers, are also potentially within this."

On 31 October 2019, Ms Dudek sent an email to Mr Theodore, copied to Ms Scopel, asking if he was comfortable with the wording that had been proposed by Mr White. It's exhibit B1787. Ms Dudek's email of 5 November 2019 indicates that Mr Theodore confirmed that he was comfortable with Mr White's proposed response, subject to one minor change, and that email from Ms Dudek is exhibit B1808. The response that was provided on 4 November 2019 to the NAB was obfuscatory, misleading and highly inappropriate. Mr White's description of the response as being accurate is only true if the answer is read as non-responsive to the question that had been asked. On 4 November 2019, Mr Craig of UnionPay International - and this is at exhibit A262 - contacted The Star directly and asked:

> "As discussed, would you mind providing us with some further detail on the transactions that have been placed through the terminal below. We would really appreciate if you could provide as much detail as possible. Is it used to top up a club card of some sort? Please let me know if I can assist at all. It would be great if you could send me any information you have by Wednesday COB."

On 6 November 2019 - and this is exhibit B1818 - Ms Arthur of the NAB sent an email to Ms Scopel. And I won't read this out because it's an email that's well known to the review, but the gist of this email is where Ms Arthur says to Ms Scopel:

> "As discussed, UnionPay have provided us notice indicating they are considering issuing NAB a directive to cease provision of UnionPay card acceptance to The Star."

And so on. Set out that:

> "From our conversation with local UnionPay representatives, they're not satisfied with UnionPay's explanations received from The Star (via NAB) for previous irregular transaction requests. The People's Bank of China has

observed individual cardholders spending more than $20 million at The Star which they believe includes gambling and are struggling to see how this level of expenditure could be made on non-gambling entertainment."

And so on. And so then she sets out that:

"UnionPay has requested The Star provide by noon tomorrow -"

Which would be the 7th:

"Documentation that individuals are spending the above amount at their venue on entertainment and accommodation expenses."

And then she listed a series of bullet points as the additional information that could be suggested might be provided. It was plain from the NAB's email of 6 November 2019 that CUP and the People's Bank of China were concerned that CUP transactions conducted by The Star may include a gambling component and were seeking written confirmation that this was not the case.

On 7 November 2019, The Star provided a response which - and this is at A1443, which elaborated on the types of non-gaming services which were provided to VIP customers, and it attached invoices. And I won't go through the text of that email. This is well known to the review. At best, the text in the 7 November email to the NAB consists of weasel words, words giving the impression of a direct answer while actually stating something non-responsive, unclear and quite different. Ms Pitkin, non-executive director, said of the first sentence in that email that had been sent to the NAB:

"I think the sentence is factually correct, but it's very misleading to put that sentence in. It's drawing the reader to conclude that, therefore, the card was not being used for gambling transactions, which is not the case."

And as I have indicated generally, The Star's communications with the NAB, including this one, it would be open to the review to find, was misleading and unethical. That The Star would engage in such correspondence with anybody, let alone a bank, reflects very poorly upon all those involved. The fact that Mr White drafted this response, and that Mr Theodore and Ms Martin approved of it, each of them trained lawyers, adds to the seriousness of the conduct. Counsel assisting submitted, at T4037, 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."

In light of the evidence outlined above, that submission can be accepted.

The next subtopic is in relation to the position of Ms Dudek and Ms Scopel. Both Ms Dudek and Ms Scopel were evidently, and rightly, uncomfortable with the responses to NAB that they were instructed to provide but did not feel able to challenge senior lawyers and management involved in drafting responses to NAB, and that evidence was given by Ms Dudek at T59, T64 and T77, and was given by Ms Scopel at T128.03 and 128.37.

It is open to the review to find that the fact they felt this way indicated a weakness in the whistleblower program, and two non-executive directors gave evidence to that effect, Mr Heap at T4309 and Mr Bradley at 3483. It's also open to the review to find that the fact they felt this way, as counsel assisting submitted, pointed to a problematic culture that existed within that part of the organisation, and that submission was made at 3957.29. When asked about that evidence, Ms Pitkin, director, said:

> "That is terrible. All employees should feel that they can come forward with any concerns without there being any fear that their jobs may be impacted."

And that was at T3560. And Mr O'Neill gave evidence to similar effect at T3888.17.

The next subtopic is UnionPay's warning letter and the failure to inform the board. On 28 February 2020, UnionPay International sent a letter to NAB with the subject line Warning Letter to National Australia Bank. The letter recited responses that NAB had apparently given to UnionPay International:

> "That transactions were for accommodation services and do not include any component for the purposes of gambling."

On 3 March 2020, that warning letter was provided by the NAB to Mr Theodore and Mr White, and Mr Theodore forwarded the letter to Ms Martin later that day. And on 5 March 2020, Mr Theodore forwarded that letter to Mr Bekier. We see that at exhibit A1475. It is open to the review to find that that letter - warning letter ought to have been brought to the attention of the board. It clearly suggested that UnionPay and the NAB may have been misled, and no explanation - no adequate explanation was given as to why this matter was not brought to the prompt attention of the full board in circumstances where the chief executive officer, the chief financial officer, the chief legal and risk officer all knew of it.

The next subtopic is the paper by Mr Seyfort of HWL Ebsworth submitted to the board. I note the time. Might I address that after the afternoon tea break?

MR BELL SC: Yes, of course. I will now adjourn for 15 minutes.

<THE HEARING ADJOURNED AT 3:29 PM

<THE HEARING RESUMED AT 3:43 PM

MR BELL SC: Yes, Ms Richardson.

MS RICHARDSON SC: Thank you, Mr Bell. The next subtopic is the Seyfort paper that was submitted to the board in September of last year in relation to CUP. Prior to a meeting on 22 September 2021, the board was briefed with a paper prepared by Anthony Seyfort of HWL Ebsworth lawyers entitled Project Zurich Review Paper 3, China UnionPay, and that's at exhibit B3103, and Mr O'Neill described that briefing paper in his written statement at paragraph 51. Counsel assisting made the following submission about that paper. This is at T4135:

> "And while we submit this was a slightly sanitised version of what, in fact, did happen at The Star, alarm bells should well and truly have been ringing once the board read this report in September of 2021. In particular, it was suggested that a bank may have been misled by conduct of officers at The Star and that the practices of Star Entertainment were not in accordance with the current expectations of how staff members should conduct itself."

And the report included text under a heading Relationship with the Card-Acquiring Bank and CUP, and it referred to the fact that:

> "From, at the latest, late 2016 NAB had made inquiries with The Star about the size of transactions, upon prompting by UPI."

And that.

> "The responses to NAB did not reveal the use of funds from the card transactions in gambling activity."

And it went on to say:

> "Ultimately, the use of CUP cards for gambling was discontinued in March 2020, not long before the COVID-19 shutdowns. We understand that such decision was motivated by concern about financial risk exposure to NAB and to avoid ultimate disclosure of details of transactions of which UPI had been inquiring about through NAB."

While the report indicated that the use of funds in gambling activity had not been disclosed in responses to NAB, the report did not detail the various communications to NAB which clearly implied that funds had been used for non-gambling purposes. Similarly, no mention was made of the CUP warning letter dated 28 February 2020 which precipitated the termination of the CUP process.

The report went on to state the following under the heading Who Was Misled - and I won't read that out because it's well known to the review, but it included saying that:

> "UPI and NAB might have been misled, but whether they were depends on what each actually knew or perceived about the use of CUP cards at The Star."

And there was a footnote 5, which included the disclaimer:

> "We have not investigated what UPI and NAB knew or perceived."

While that footnote perhaps ought to have prompted further questions, it is submitted that in light of the manner in which the Project Zurich paper was drafted, including the fact that it did not disclose positive representations had been made to NAB about the nature of expenses, it's submitted the board cannot be fairly criticised for failing to bring an inquiring mind or to the issue of adopting an unduly passive approach. The minutes of the board meeting of 22 September 2021 record that Mr Bekier:

> "Acknowledged that management did not advise the board of the decision to cease use of the CUP service at the time of that decision, and that should have been done."

The minutes also record that the board requested that management revert to the board with priority to provide a formal response plan to the review findings, and that is at exhibit A1179. The board met the following week for what was described as the primary purpose of considering management's response to the Seyfort paper, and that's at exhibit J76. And management's response did not address the question of whether the NAB had been misled.

A number of directors were asked about, in their evidence before this review, why they had not instigated further investigations as to whether NAB had been misled or why they hadn't taken action in respect of the executives involved. Mr Sheppard gave evidence that he concluded from Mr Seyfort's paper that NAB had likely been misled and explained that he didn't take further steps after management's response on 1 October because it was anticipated that these emails would surface in the requests for information from the inquiry and that information would come to light before much time had passed. And that evidence is at T3297.5. Mr Sheppard accepted that action could have been taken more quickly but noted that:

> "We felt, because of the public inquiry, that the executives concerned should be given the opportunity to provide evidence."

And that:

> "In order to fully cooperate with the inquiry, we should allow all of the executives to provide evidence."

And he gave that evidence at T3296.44 and 3297.26. Mr O'Neill accepted that, with the benefit of hindsight, an investigation as to whether NAB was misled may have been a task that should have been actioned. But he said he noted that the board knew that this review would be taking evidence and that the evidence would determine what was truthful, and he gave that evidence at T3389.22.

Mr O'Neill said that he was not happy - sorry, he gave evidence that the board was not happy with management's explanation of 1 October 2021, but had:

> "Agreed that there would be consequences that would be addressed once the Bell Review was complete, and we could then take decisions around consequences. And indeed, a lot of the departures from the company, in my view, fall under the heading of consequences."

And that's at T3389.44. Ms Pitkin gave evidence that she reacted with extreme concern to Mr Seyfort's paper and disagreed with Mr Seyfort's conclusion that no harm had been caused, including, as she described it, because senior people in the NAB would not have condoned this practice for a moment, and that evidence is at T3594.21.

The next subtopic in relation to these communications is, in closing submissions, counsel assisting suggested that there is a very real question about whether there was a breach of section 192E of the Crimes Act, and that submission was made at 4035.43 and 4152.40. It's submitted that the review should not make any type of finding or notation as to whether there has been the commission of an offence, nor, we note, was any such finding expressly sought by counsel assisting.

MR BELL SC: You can be assured, Ms Richardson, that I won't be making a finding of criminality. The question really, I think, is section 12A of the Royal Commissions Act. You might want to consider that in due course.

MS RICHARDSON SC: I will do that. In light of that, I might come back to that topic, but in - just one moment. We would say that nor should there be any type of finding or view expressed as to whether there is even a very real question as to whether there has been a breach of section 192E, and nor would it, in our submission, advance the inquiry that's required by the terms of reference.

And in that respect, we would refer to the decision of Parker v Miller, neutral citation [1998] WASCA 124, per Chief Justice Malcolm, which is - just one moment. That is a case, which has been referred to in other cases, where Chief Justice Malcolm referred, in the context of a Royal Commission, that:

"It is not a court of criminal justice charged with the determination of guilt or innocence."

And so on:

"It has got no power to affect the legal rights of individuals."

But his Honour also went on to express caution about expressing any type of view that could be seen as an expression of a view about whether there was a prima facie case or that might prejudice any future matter. And in that respect, we would also refer to the analysis of Commissioner Bergin - and I will come back to this analysis and refer to it for different purposes - where Commissioner Bergin, in that context - in her inquiry, she was talking in that context with the determination of contractual rights in a review context, and that inquiry, of course, was an unusual context where one of the terms of reference actually directed her to a particular contract, which was an unusual scenario.

But she set out, in chapter 4.7 of her report, the general principles that require - that ought to govern when in an inquisitorial environment as opposed to a curial environment as to whether or not certain questions of law should be dealt with. And she was dealing with contractual issues, but we would say it's a fortiori in relation to civil penalty issues, which I will come to in another context, and a fortiori again in relation to a criminal context.

And Commissioner Bergin referred to the fact that the reason why, in the inquisitorial environment, these types of questions ought not be embarked upon is that, in the inquisitorial environment, parties are exposed to the intrusive use of Royal Commission powers and so on, and in a curial or judicial setting, there are prepared statements of evidence that comply with the rules of evidence, evidence remains within the confines of pleaded cases and protections of privilege and rules of evidence and so on. So she gives extended analysis about the contrast in an inquisitorial environment. And we would say if those principles apply to not deciding contractual matters, it's a fortiori in relation to matters with regulatory civil penalty and criminal potential consequences.

The next topic is The Star's approach to risks in relation to CUP cards. As counsel assisting accepted, it is not necessary for the review to determine whether The Star breached its merchant terms agreement with the NAB, and that submission is made at 4031.4. And here, I again call in aid the analysis of Commissioner Bergin, but particularly in chapter 4 at paragraphs 574 and 575, where --

MR BELL SC: You can take it, Ms Richardson, that for the reasons that I expressed to counsel assisting, I won't be determining whether The Star or Star Entertainment was in breach of its contract with the NAB. The question, which at some point I would like to explore, is the separate issue of whether the Union International scheme rules prohibited gambling.

MS RICHARDSON SC: I'm very happy to go through that. But in my submission, if the approach of the review is that it would not determine whether there was a contractual breach of the merchant terms with NAB, it's a fortiori that it would not determine whether there was a breach of China Pay scheme rules in circumstances where The Star was not a counterparty to those rules, and they are referred to and picked up in certain ways in the merchant terms, but that you could only make a decision about China UnionPay rules through the prism of the merchant terms, which you have indicated you will not be determining. But I'm happy to go through the terms of the CUP scheme to make good the approach that we have taken.

MR BELL SC: Yes. I'm not suggesting I would decide whether The Star breached the scheme rules because, as you say, that intersects with the question of breach of contract. But it's really the more - the broader question of whether - which seems to have been understood by all or most of the senior executives at The Star, that was that the scheme rules did not prohibit the cards to be used - did not permit, I should say, the cards to be used for gambling because of the relevant MCC codes and the prohibition on the MCC code that dealt with gambling. I'm not sure whether you want to address me on that or not. But it's really a broader question, I think, than the question of breach.

MS RICHARDSON SC: I accept that. The - we accept - just one moment. I'll just find the relevant paragraph where I've dealt with this.

MR BELL SC: You don't have to deal with it now if I've interrupted you.

MS RICHARDSON SC: No, I'm happy to deal with it now. As I've already submitted but I'll just reiterate, we accept that quite apart from whether there was, in fact, a contractual breach or not, that the evidence before the review of a number of witnesses, and pertinent witnesses, was that their understanding was that CUP cards could not be used to effect direct purchases of gambling chips. And I've given the T references to that, but I'll repeat them. It's Mr Aloi at 814; Mr Power at 1997; Mr White at 1656; Mr Theodore at 2845; and Mr Bekier at 3058.

So we accept that that is the import of the evidence before the review, that that was the understanding. And we accept that that is relevant, in terms of the suitability review, to your analysis of the approach that The Star took nonetheless, in terms of we have accepted that, given that knowledge, it would be open to the review to find that the process that The Star implemented where the card was swiped at the hotel but then used to fund gaming obscured the true nature of the transaction and masked that fact - or the fact that funds were being used for gaming from UnionPay.

And I accept that it's open to the review to find that regardless of whether it's, in fact, a breach of the scheme rules, that Star personnel did understand from the beginning that at least UnionPay intended or wished to deny access to its card services for the purposes of gambling. And that in that context, in terms of a suitability review, that you would take into account, given that they had that understanding, the fact that a device was deployed, in the sense of the two-step transaction, that meant it was not apparent to UnionPay that its services were being used for those purposes, was sharp practice.

So we have accepted the integers of people's understanding are matters that you would take into account adversely in terms of suitability at that time. But I'm happy to go through the aspects of the scheme rules now to show why the rules, as a contractual matter, were not breached.

MR BELL SC: Yes. I don't need you to address me about the contract. What I'm really asking you, though, is whether The Star accepts that that subjective understanding that most or all of its staff had was objectively correct.

MS RICHARDSON SC: No. And the reason is - which would require me to take you to the rules, is that the way the CUP rules are drafted is that - and I would have to take you to this. The way they are drafted is that where the merchant is in mainland China, there is a contractual requirement imposed - I think I will have to do this by reference to the terms, if I may.

MR BELL SC: Well, I do think I need to understand whether The Star, to this day, does not accept that those witnesses' subjective understanding was correct or not.

MS RICHARDSON SC: Could I take you to the terms to show the basis of my --

MR BELL SC: Yes. That would help.

MS RICHARDSON SC: Thank you. So the CUP rules are at exhibit B2931. So the submissions I'm making are directed only to the legal contractual position and not to the question, as I've already submitted, as to whether The Star's conduct in relation to CUP cards was such as to bear on its suitability. It's really - this is a pure contractual question (indistinct).

MR BELL SC: I hope we're not at cross-purposes because I'm not going to make a finding about whether The Star was in breach of its contract with the NAB. I really want to just want to understand whether The Star says that the subjective understanding of its staff was correct or incorrect.

MS RICHARDSON SC: And I will address that, if I could just take you to the terms.

MR BELL SC: Yes.

MS RICHARDSON SC: So at first, it's necessary to consider how the merchant category codes listed in appendix C to the scheme rules, each an MCC, interact with the operative provisions of the CUP rules. And so you will be aware that appendix C lists a series of MCCs in relation to those rules. Then, if we could go to pinpoint 2502, we see down the bottom Merchant ID, 3.3.5, and it provides:

> "An acquirer is responsible for assigning a merchant ID to each merchant."

So, here, the acquirer is the NAB. So the NAB is responsible for assigning a merchant ID to each merchant. And then, separately, the merchant ID is required to be recorded in certain documents relating to CUP transactions. And we see, for example, point of sale transaction receipts where the merchant ID must be listed in rule 2.6.2, 3.3.4 and various other provisions. And then if we go over the page to clause 3.3.5.2 on page 2503, it says:

> "A merchant ID is of 15 characters and has the following format."

And then it says:

> "For merchants inside mainland China, institution code (3 characters) plus country/region code (4 characters) plus MCC (4 digits) plus sequence number (4 characters)."

So the question of whether the four-digit MCC is to form part of the merchant ID for a particular merchant depends on that rule, 3.3.5.2. So where the merchant is in mainland China, which is not our case, the following contractual rule provides, that's 3.3.5.2:

> "The merchant ID is to include an MCC."

And it further provides that:

> "The MCC in merchant ID for merchants inside mainland China is based on Specification on Merchant Category Codes (March 2019)."

And that's at pin site 3503 in the middle of the page. That's the final bullet point before clause 3.3.5.3. So that provides that the - it further provides:

> "The MCC in the merchant ID for merchants inside mainland China is based on Specification on Merchant Category Codes (March 2019) which shall be consistent with the principal business of the merchant."

So that is a contractual rule that applies to merchants inside mainland China. So what that means is where the merchant is inside mainland China, the acquirer,

being the NAB here, is to allocate a merchant ID to the merchant that includes an MCC from the list in appendix C which is consistent with the principal business of that merchant. And the other parts of the merchant ID from a merchant in mainland China are the institution code, the region or country code and the four-digit sequence number. By contrast, where the merchant is not in mainland China - and we see this - you see the chapeau, it says:

"For directly-connected merchants outside mainland China."

And we interpolate this reads back to the beginning of the clause, which is this is what the merchant ID is to consist of. So for directly-connected merchants outside mainland China, it consists of an eight-character sequence number, but there's no reference to the MCC.

MR BELL SC: What does "directly connected" mean?

MS RICHARDSON SC: I don't know at this point. I will take that on notice. I don't know what that means. So we say the effect of rule 3.3.5.2 is that NAB was obliged to allocate a merchant ID to all merchants. The merchant ID for merchants in mainland China is to include an MCC, consistent with the merchant's principal business. But for merchants outside mainland China, such as The Star, they are not to be allocated an MCC as part of their merchant ID. And that is consistent with CUP rule 7.3.1.6, which is on page 2567, and rule 7.3.1.2, which provide for interchange service fees in relation to purchase transactions payable between issuers of CUP and acquirers. So that where the point of sale is within mainland China, fees are referable to the category of MCC that's applicable to the relevant merchant.

MR BELL SC: I wonder if the operator could –

MS RICHARDSON SC: However –

MR BELL SC: blow that page up a little bit. Thank you.

MS RICHARDSON SC: So, sorry, where the point of sale is within mainland China, fees are referable to the category of MCC applicable to the relevant merchant. However, where the point of sale is outside mainland China, the fees are determined without reference to the MCC, which we would say is because merchants outside mainland China are not to be allocated MCCs by acquirers as part of their merchant ID under rule 3.3.5.2.

Thus, on the proper construction of these rules, the - if we could go to the prohibition - or the reference in appendix - note 2 in appendix C, which is at pin site 2600. That note 2 at the bottom of the page only applies to a merchant with a prohibited category code. And a merchant outside mainland China, such as The Star, is not to be allocated, as a contractual matter, a merchant category code and,

therefore, is not a merchant with a prohibited category code to which that note could apply. So --

MR BELL SC: (Indistinct) And do you say, do you, that for merchants using UnionPay - or merchants with UnionPay facilities outside China MCC is irrelevant?

MS RICHARDSON SC: It certainly seems to be relevant from an operational matter, in the sense of how the parties conducted themselves. But as a contractual matter, as to the prohibition fixing on an MCC, the terms of the scheme rules only provide that that is a prohibition in relation to merchants within mainland China. And I'll keep going with this analysis.

But we accept that notwithstanding that that is the contractual effect of the rules, that is, that the MCC doesn't create a prohibition outside mainland China, including for gaming chips as a contractual matter, that Star personnel understood - or they had an understanding that UnionPay intended or wished to deny access to their card services for the purposes of gambling. So that there was an understanding as to what UnionPay intended or wished to deny, presumably by reason to the rules, but that when one looks at the rules, they, in fact, only imposed that prohibition as a contractual matter for merchants inside mainland China. So -

MR BELL SC: So note 2 that's highlighted on the screen at the moment should be read - where it says:

> "A merchant."

It should be read as:

> "A merchant operating inside China."

MS RICHARDSON SC: No. It is not necessary to interpolate those words --

MR BELL SC: Right –

MS RICHARDSON SC: Because it already says:

> "A merchant with a prohibited MCC."

And that directs you back to the front of the contract to work out what is a prohibited MCC, and MCCs are only applied as a contractual matter to merchants within China. So that it's not necessary to read in words.

MR BELL SC: I see.

MS RICHARDSON SC: The construction is consistent with rule 3.3.2, which is at page 2501. And that is down the bottom, 3.3.2, Restrictions on Merchants, which says:

"An acquirer -"

Here, the NAB:

"Must not contract with a merchant that is prohibited by local laws and regulations or relative rules of UnionPay regulations."

And we say the effect of that is that an acquirer, being the NAB, may not contract with a merchant if, firstly, where the merchant is in mainland China and their principal business is within a prohibited MCC, in which case to recruit that merchant would be prohibited by the CUP rules by reason of the operation of note 2 in appendix C and CUP rule 3.3.2. But - and separately the NAB - or the acquirer, whether the merchant is inside or outside mainland China, they must not contract with them if that would be prohibited by local laws. And regulation, for example, if that – the business of the merchant is locally proscribed and so on.

So in other words, we say that the CUP rules specify categories of merchants within mainland China with whom acquirers must not contract, and the question of whether an acquirer - here, the NAB - is permitted to contract with merchants otherwise is determined by the law of the relevant jurisdiction. And rule 2.2.1, which was relied on by counsel assisting at T3999 - and that's at pin site 2492 - we say that does not support the construction she contends for. That provides that:

"Acquirers outside mainland China shall comply with UnionPay regulations."

And goes no further than making clear that the CUP rules apply to acquirers, such as NAB, who are outside mainland China. But that does not --

MR BELL SC: Are the UnionPay regulations in evidence?

MS RICHARDSON SC: I don't think they are.

MR BELL SC: So you would say - do you say that objectively, as a matter of law, UnionPay were misguided in seeking clarification from The Star, via the NAB, as to whether the cards were being used for gambling or not because they had no right to prevent the cards being used for gambling outside of China?

MS RICHARDSON SC: Well, it's not for me to say whether UnionPay were misguided. But we accept that by their communications, they had expressed an intention, which The Star understood, that they wished to deny access to its cards for the purpose of gambling. And on a proper review of its contract, in fact, in relation to merchants outside China, the contract did not provide for that.

But the reality is it was their card. And if they were working on the understanding that they did not wish their cards to be accessed for that purpose, well then, operationally, they could have sought the termination of those cards. And so when they were writing seeking clarification as to whether the cards were being used for gambling, they were obviously entitled to do so, to make that inquiry. It's just purely a matter of contract law as to what this contract provided for.

But in relation to rule 2.2.1, that does not require or cut across the fact that nowhere in the CUP rules is there a requirement that merchants outside mainland China be allocated an MCC. And the other matter is it doesn't impose obligations of merchants - on merchants at all. The - and it doesn't contractually prohibit acquirers outside mainland China from contracting with merchants whose principal business is within a particular MCC. So --

MR BELL SC: And so does it also follow from your submission that Mr Aloi and others at Star who, in 2013, were seeking some guidance from NAB about merchant category codes were also misguided because the issue simply didn't arise at all?

MS RICHARDSON SC: Well, I'm not saying they're misguided because there clearly seems to be a level of understanding that people were operating on, which was that UnionPay did not want its cards used for the purpose of gambling. And so that was the basis of the communications that were happening, and people were not turning their minds to the exact terms of the contract. But they understood that that was CUP's position, and that's why we say that is relevant to suitability because they had that understanding and they took the risk nonetheless.

So that is the basis of our submission in relation to the scheme rules, which is why I make the submission as to the fact that the understanding that we accept personnel had that China UnionPay cards could not be used to purchase gaming chips - while they had that understanding, it wasn't actually correct as a matter of construction of the Act. But we say that that does not detract from the suitability review that you would be undertaking in terms of the fact that this matter was not - the understanding that it was contrary - sorry, that scheme rules would not allow use for gambling chips wasn't disclosed to the authority, it doesn't excuse the communications that were had with NAB and so on. So it's really just a question of contract, which does not excuse the conduct that took place.

The other matter I would just raise briefly, noting that you have indicated you're not intending to make the finding about NAB - breaches of NAB terms and so on, is that a submission has been put a number of times by my learned friend that the NAB merchant terms pick up the CUP rules and that the breach is committed in that way. We just say, in broad terms, in relation that, when one reviews the CUP rules, it's clear - and this is made clear on page 2479 at the beginning of the rules - that merchants - well, the merchants - they're not party - they're not a

counterparty to the scheme rules. They're also not part of the audience, which is described on page 1, as:

> "The audience of the rules -"

This is at about point 3 of the page:

> "Are the staff from China UnionPay, UnionPay card issuers and acquirers."

Which is, relevantly here, the NAB. So the CUP rules themselves do not purport to impose any obligations on merchants, and merchants are not capable of breaching any obligation created by them. Rather, the prohibitions in the rules in terms of recruiting certain merchants or contracting with certain categories of merchants, they're imposed on acquirers rather than The Star. So I won't go any further into that, given that you're not proposing to make a finding about (indistinct) observe that the CUP rules don't impose obligations on merchants.

So just going back to the question of breach of the merchant terms and scheme rules, I've already put some of the ways we say that even though you wouldn't make a finding to that effect, it's nonetheless relevant to suitability. On 11 April 2014, Mr White gave advice that:

> "I do not believe there is a breach of NAB's merchant terms."

Exhibit B77. However, Mallesons' email of 4 May 2015, providing preliminary thoughts, cast at least some doubt on that advice by using the qualified phrase:

> "It may be arguable that The Star has not breached the terms of the merchant agreement before asking for further information about hotel package transactions."

And that's at exhibit B335. In that circumstance, where the issue of whether there was a breach had been raised, the prudent course would have been to provide external lawyers with instructions about the nature of the transactions and seek formal advice. As counsel assisting submitted, the fact that this was not done was indicative of a willingness to court, and to not properly assess, legal risk, which reflects poorly on the judgment of the executives who were responsible. And for the same reasons, we say the fact that there was an understanding - or there was a query or understanding that there might be a risk of the China UnionPay rules, and that this risk was courted without being properly assessed, and that they were willing to court this risk reflects poorly upon the judgment of the executives who were responsible.

Further, it is open to the review to find that Star personnel understood, as I have said, from the beginning, at least, that UnionPay intended or wished to deny access to its card services for the purposes of gambling. And, of course, that is the

relevant point for suitability. Regardless of whether there was a breach of contract, there was that understanding that that is what UnionPay intended or wished. It did not wish its cards to be used for gambling. And in that context, the employment of a device, meaning the two-step transaction that meant it was not apparent to UnionPay that its services were being used for those purposes, was at least sharp practice, even if it was not an infringement of the contract. And we accept that that type of sharp practice is unacceptable on the part of a casino licensee.

The next issue is - the next subtopic is the question of a breach of section 74 of the Casino Control Act. As I have referred to, external legal advice was obtained from Mallesons about the proposed use of CUP and its intersection with The Star's obligations under the Casino Control Act on 30 April 2013, which is at exhibit A1008. While counsel assisting raised issues as to the soundness of that advice, she accepted that The Star was entitled to rely on that advice, and that's at T4009.38. Accordingly, we submit that whether that advice was correct or not is not a matter that would reflect on The Star's suitability because it did take that advice, and counsel assisting has accepted it was entitled to be relied on.

So we also - so we say it's neither necessary nor appropriate for the review to express a view about the correctness of that advice. We also say that the correctness of that advice doesn't arise. It concerned, in effect, what constitutes a deposit of money under section 75(2)(a) of the Casino Control Act. However, under the temporary CCF process that was instituted, section 75(2)(b) of the Casino Control Act is the relevant section, that is, whether there was a cheque payable to the operator.

And the question that arises is whether section 74(1)(c) prevents the CUP card from being used to redeem a counter cheque signed by the CUP cardholder. So we say the relevant issue, which we accept arises and has been squarely put by counsel assisting, is whether or not the temporary CCF process was compliant with the Casino Control Act, and that was put at T4152.17. And we submit that that process was not a breach of the Casino Control Act. But I will address you on that at a later point, if I may.

MR BELL SC: Yes.

MS RICHARDSON SC: So, again, we say, as a question of what the law required, that there was no breach by reason of the temporary CCF process. However, we accept a number of matters in relation to the adoption of the temporary CCF process, which we accept are relevant to issues of suitability.

As I've already noted, Mr White identified a risk in his memorandum of February 2014, a risk that ILGA would view the use of the temporary CCF to allow chips to be used prior to funds from the CUP transaction clearing, a risk that they would see it as a breach of the prohibition on credit in the Casino Control Act. And so while it's submitted that Mr White's advice was ultimately correct on that topic, as

counsel assisting submitted, relying on that internal advice was a very brave call, and that submission was made at T4020.26.

The prudent course would have been to raise the issue squarely with the authority, to lay out the temporary CCF process and to explain the reasons to the authority as to why The Star saw it as compliant; and secondly, the prudent course was to seek external advice on the subject, neither of which happened. The fact that neither of those courses was taken is suggestive of a willingness on the part of Mr Redmond and Mr Bekier to court legal risk where it suited the perceived financial interests of the business.

Further, as I have already submitted, it's open to the review to find that in circumstances where Mr Redmond, Mr Bekier, Ms Martin and Mr White understood that the authority may have different views as to the operation of the Casino Control Act, the appropriate course was to clearly lay out the temporary CCF proposal to the authority and explain why The Star considered it to be consistent with the Act, and that the failure of The Star to do so reflected a failure on its part to be frank and transparent with its regulator.

The next subtopic is Mr Power's documents concerning the risks of CUP. Mr Power authored a number of documents which highlighted the risks associated with CUP. He created a memorandum dated 11 May 2016, which he gave to Mr Bekier and Ms Martin, which identified a risk as to whether "CUP transfers for gambling purposes are permitted" and whether the "supporting practice" involving a CCF is "permitted or known", and that's at exhibit A1290. Mr Power also identified a risk as to:

> "Whether The Star is circumventing China laws and creating a reputational risk in taking active steps to conceal this practice."

On 28 July 2017, Mr Power sent Ms Martin a further email - and that's at exhibit A970 - as part of a compliance assurance process, which stated:

> "The risks associated with CUP are well known."

And then referred to the practice of using dummy rooms and noted 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 The Star's bank, NAB."

On 12 April 2018, Mr Power was sent the draft updated risk register for New South Wales, which records him as having reviewed the entry for China UnionPay on that day, and the risk rating matrix used gave an extreme priority rating to the risks associated with China UnionPay. And in the column marked Controls, the first entry read:

"Risk has been accepted by the business."

MR BELL SC: Was there any evidence about the extent to which that risk register was disseminated?

MS RICHARDSON SC: I don't think - I'm not aware of any evidence about the extent. Well, the evidence is - I was just about to refer to - that the chief risk officer at the time, Mr McWilliams, received a copy of that risk register by at least 2 July 2018 and that he provided a copy of that to Mr O'Sullivan at KPMG, and the exhibit references for that are B918 and B919.

So we say it's open to the review to find that the risks associated with CUP were known to staff at The Star, and that they were obviously significant; that the individuals aware of the risks included a number of people who reported directly to the board, including Mr Bekier, Mr McWilliams, Ms Martin and Mr Theodore; and that the fact that those risks were not elevated to the board or raised with the inquiry - sorry, with the authority, it's open to find, may be indicative of a broader issue where significant legal risks were accepted and both the board and regulators were not informed, where to do so may have imperilled a major payment channel.

In this regard, it's relevant to note that Ms Arnott expressed some reservations about the use of CUP cards in 2019. Mr Hornsby said words to her to the effect of, "It's really big. You would be responsible for closing down." And in her witness statement, she didn't recall the specific dollar amount. But the import was that Ms Arnott had expressed reservations about the use of CUP and Mr Hornsby had said, in effect, "You're making a big business call to shut that down." And that was in Ms Arnott's witness statement at paragraph 98.

To similar effect, Mr Power's memorandum of 11 May 2016 made reference to the fact that the restrictions imposed on Mr Phillip Dong Fang Lee were "able to be influenced by commercial objectives". While it may have been rare for a sentiment to have been voiced expressly, it's open to the review to conclude that a like sentiment influenced the decision-making of Mr Bekier, Ms Martin and others when choosing to accept the risks associated with the use of CUP and in failing to adequately communicate those risks to the board.

The next key topic in relation to CUP is CUP and AML. Firstly, it's submitted that the use of CUP did not present a significantly elevated risk from an AML perspective. Ms Arnott's evidence, on which she was not challenged, was that CUP did not raise significant AML risks as the arrangement involved the transfer of cleared funds from known customers with bank accounts in their name in China, ie, the source of funds was known. The AML/CTF program's requirements relating to source of wealth were followed for such customers. Once the funds were made available through a front money account, they were subject to The

Star's usual transaction monitoring program. And she gave that evidence in her first witness statement at paragraph 95.

Ms Arnott did acknowledge, in her - that there was - sorry. She acknowledged CUP use did give rise to a potential layering risk, in that it made the flow of funds less direct. But she noted that each of the monitoring that was imposed across the customers and their play, the controls placed on the accounts, the cessation of the use of the account if it was not used for game play and the fact that each front money account was in the same customer's name were matters which assisted in managing that risk. And that - she gave that evidence at paragraph 96 of her witness statement.

Ms Arnott's evidence is also consistent with that of Ms McKern, who gave a report to this review. Ms McKern's evidence was, relevantly, that because a CUP card was presented by a person and was in their name, then the source of funds was known; that this means it is a lower money laundering risk transaction than some other kinds of transactions, such as cash or remittance transactions. And she gave that evidence at T3185.15 to 3184.45, and she gave it again at 3186.05. She also accepted that CUP transactions effectively presented the same level of risk as a transfer of funds by a patron directly into one of their Star bank accounts, and that evidence was given at 3185.32 to 3186.15, and again at 3187.35 to 3188.15.

It's also to be noted that Mr Seyfort's report to The Star in respect of CUP ultimately noted that the use of CUP was not adverse to The Star's compliance with its AML/CTF obligations, and that's at exhibit A555 at pinpoint 197 to 1918. As such, it is submitted the review ought not find that the use of CUP at The Star involved a disregard of money laundering risks, as counsel assisting has suggested at T3312. There, it is submitted that there was no evidence from Ms McKern or any other witness before the review that makes good the proposition that The Star did not adhere to its AML program in respect of CUP transactions, and the identities of cardholders were confirmed in accordance with the SOP that governed cage operations, which noted standard KYC identification processes applied in relation to CUP. And that's at exhibit C21 at pinpoint 7494.

The next subissue in relation to CUP and AML is IFTI reporting of CUP transactions. An issue that has arisen is whether The Star was required to report IFTIs to AUSTRAC relating to CUP transactions. While The Star's position is that it was not required to lodge IFTI reports to AUSTRAC relating to CUP transactions, it agrees with counsel assisting's submission that the review is not in a position to determine whether IFTIs should or should not have been lodged. That submission was made at T4103.26.

The review does not need to, and it is submitted ought not to, form a view on whether The Star was required to lodge IFTI reports with AUSTRAC relating to CUP transactions, particularly when a breach of such an obligation under the AML/CTF Act to report an IFTI attracts civil penalties. And I reiterate the analysis

of Commissioner Bergin in respect of contractual issues in an inquisitorial environment, which we say applies a fortiori to civil penalty issues. That said, in terms of relevance to suitability, The Star accepts that it ought to have obtained external legal advice about whether such IFTIs were required to be lodged before commencing the CUP process, which it did not do.

Now, The Star has received legal advice from Mr Seyfort last year that there was no requirement to lodge IFTIs, but we say that does not cut across the relevance for suitability that external advice should have been sought to confirm the position at the outset, which did not happen. So for those reasons, we submit that any issue about whether The Star was, in fact, obliged to lodge IFTIs ought to be left to AUSTRAC. But it is open to the review to take into account the position that The Star took in assessing its legal and regulatory risk in relation to this obligation was not prudent.

The next and final issue in relation to CUP is Mr Phillip Dong Fang Lee. Mr Power's memorandum of 11 May 2016, which is exhibit A1210, identified one of the issues relating to CUP to be as follows: use by prominent customer, which must, in the context, be Phillip Lee; use by prominent customer under certain self-imposed operational restrictions that are not defined or documented and able to be influenced by commercial objectives.

Counsel assisting's submissions concerning Mr Lee included, in summary, that, firstly, Mr Lee was the largest user of the CUP facility at The Star - and all these submissions are made at a range of pages starting at T4025 through to 4027. So, firstly, that he was - I am going to list a series of things that counsel assisting has submitted that we accept it's open to the review to make findings in accordance with those submissions.

So the first is that it's open to find Mr Lee was the largest user of CUP facility at The Star; secondly, that Mr Lee was allowed to use his CUP card in 2015 despite being a domestic player, which was inconsistent with The Star's written procedure at the time; thirdly, Mr Lee's use of his CUP card was not commensurate with his level of play and that he sometimes purchased more chips than he gambled and took chips away from the casino or exchanged chips for cheques, and in that sense he was permitted to use the CUP process as though it were an ATM; fourthly, that various employees at The Star expressed concern that Mr Lee's use of his CUP card was not commensurate with his level of play and that he was taking advantage of winnings cheques; fifthly, that while Star imposed some restrictions on Mr Lee's use of his CUP card, those restrictions were inadequate; and finally, that there is no evidence before the review that anybody engaged in source of funds checks for Mr Lee.

We accept that each of those matters would be open to the review to find in accordance with those submissions. In his evidence, Mr Aloi said that it seemed that The Star prioritised the making of money from Mr Lee over compliance with

its own rules and over very serious compliance and regulatory concerns, and he gave that evidence at T885.20. Again, The Star accepts that such a finding is open to be made by the review. Those are my submissions in relation to CUP.

MR BELL SC: Just before you leave that. What do you say about Mr Lee's evidence that when he was using the CUP card, he didn't even leave the gaming table but simply gave his card to a customer service representative who went away and swiped it for him?

MS RICHARDSON SC: Could I take that question on notice? But I do accept that if that happened, I think there's a reference in the NAB merchant terms that that was something that would not be permitted.

MR BELL SC: Yes.

MS RICHARDSON SC: If I could take that question on notice.

MR BELL SC: Of course.

MS RICHARDSON SC: The next topic I'm proposing to start is KPMG. I'm happy to start it now or to start tomorrow. It's a matter for the review.

MR BELL SC: Well, I think it's - I'm happy to proceed. It's really whether you feel you're on schedule from a time point of view.

MS RICHARDSON SC: I am on schedule at the moment.

MR BELL SC: All right. In that case, I will adjourn now until 10 am tomorrow.

<THE HEARING ADJOURNED AT 4:54 PM