
**INDEPENDENT LIQUOR AND GAMING AUTHORITY OF NSW**

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

**PUBLIC HEARING**
**SYDNEY**

**WEDNESDAY, 15 JUNE 2022**
**AT 10:00 AM**

**DAY 42**

**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 with MR D. WONG as counsel for The Star Pty Ltd**

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**<THE HEARING RESUMED AT 10:02 AM**

**MR BELL SC:** Ms Richardson, there's just a couple of matters that I wanted to raise. There's still unresolved questions about summonses which I've been requested to issue over the last 24 hours. Can we deal with those matters in a private directions hearing at 2 pm, please? I'm sorry, I can't hear you.

**MS RICHARDSON SC:** Yes, we can.

**MR BELL SC:** Yes.

**MS RICHARDSON SC:** And in advance of that, a letter - a detailed letter will go from KWM to Maddocks that hopefully will shorten matters that you would have before then.

**MR BELL SC:** Yes. Thank you. The second thing is this. You submitted yesterday that the cage operated by Suncity and Salon 95 was not a breach of the Casino Control Act. Could I invite you to provide more detailed submissions in due course, either orally or in writing, which address two matters: whether it involved a breach of section 4 of the Casino Control Act having regard to the definition in section 3 of the Act, whereby gaming equipment includes chips; and secondly, whether the cage involved multiple breaches of the cage operations internal control manual in force at the time and, consequently, multiple breaches of section 124 of the Act.

**MS RICHARDSON SC:** We will address that in writing, if we may.

**MR BELL SC:** Yes. Thank you. Yes, Ms Richardson.

**MS RICHARDSON SC:** This morning I propose to commence with - sorry, can you still see me on the screen?

**MR BELL SC:** Yes.

**MS RICHARDSON SC:** Thank you. I propose to commence with the topic of KPMG reports.

**MR BELL SC:** Yes.

**MS RICHARDSON SC:** So this section addresses matters raised in topics 10 and 12 of counsel assisting's submissions. It addresses the circumstances of obtaining the KPMG reports, and their presentation to senior management and TSEG's audit committee; initial reactions to the reports by some members of senior management; the actions taken in response to KPMG's recommendations; and the privilege claims made in respect of those reports. The separate question of whether there was a broader culture of claiming legal professional privilege over

documents, which is topic 11, I will deal with separately but immediately after this topic.

At the outset, it is accepted that the assertion of privilege by a member of senior management, Ms Martin, over the KPMG reports was inappropriate and unacceptable. AUSTRAC should have been provided with the KPMG reports immediately. While there does not appear to have been any positive obligation to disclose the KPMG reports to ILGA, and there was no specific request from ILGA for those reports, it is accepted that in the interests of transparency, it was appropriate to have provided them to ILGA.

So the first subtopic I'll deal with is recommendations made by KPMG and steps taken in response. The final versions of the KPMG reports were provided to members of senior management on or shortly before a meeting of the audit committee on 23 May 2018. As the Review knows, KPMG was engaged to conduct an independent review of TSEG's anti-money laundering and counter-terrorism financing program, and it provided two reports covering a period December 2016 to November 2017. And I won't go over the detailed structure of those reports because they're well known to the Review, but in writing we will set those key aspects of the reports out.

KPMG identified a number of deficiencies with, and made a series of recommendations concerning, the AML/CTF program. The Review has heard evidence that TSEG takes independent reports like KPMG's reports seriously and took extensive steps as a matter of priority to implement KPMG's recommendations from mid-2018, and our written submissions will set out the evidence in support of that proposition.

KPMG's recommendations were the subject of a detailed and tracked action plan, containing 36 agreed actions in relation to the following broad main areas: firstly, the AML/CTF program and risk assessment methodology; secondly, standard operating procedures; thirdly, training; and fourth, transaction monitoring. Each of the recommendations made in the KPMG reports was adopted and implemented. In this respect, counsel assisting accepted - and this was at T4047.41 - that it cannot be doubted that TSEG did take many steps to improve its AML/CTF program and that ultimately TSEG did take steps to improve, and significantly improve, its AML/CTF program and compliance framework.

A comprehensive review, which will be described in some detail in the written submissions, summarised by me today, was conducted by mid-2019, and Ms Martin gives evidence that - to that at paragraph 70 of her witness statement, and TSEG has implemented ongoing continuous improvement programs in that area. To facilitate the process of implementation, TSEG's internal audit function tracked each action taken, validated management's response and provided updates to the board on the status of management's response. Mr Power gives evidence to that effect in his written statement at paragraph 52. And resources were dedicated to

addressing changes required to The Star's AML/CTF program, including retaining secondees from KPMG to assist.

The steps taken in detail to implement KPMG recommendations are set out in the witness statements of Mr O'Neill, Mr Bekier, Ms Martin and Mr Power. In summary, they involve the undertaking of a program of work to enhance TSEG's AML/CTF compliance program, which comprised a full review of that program and documentation, including the core program document and the know your customer standard, the enhanced customer due diligence standard and the transaction monitoring and AUSTRAC reporting standards. And this is set out in some detail in Mr O'Neill's witness statement at paragraph 28, including by reference to a table that tracks each action and how it was implemented.

As a result of the review, TSEG updated its AML/CTF program, the key aspects of which included, firstly, working with operational teams to develop updated processes, particularly in the area of know your customer updates and source of wealth inquiries; secondly, working with leadership teams to develop and document updated standard operating procedures; thirdly, conducting a comprehensive training program to make staff aware of the updated program and provide relevant role-specific information to all staff members; and using the CEO's monthly leadership meetings as a forum to identify new initiatives and to help identify and mitigate any new or emerging AML/CTF risks arising from changes in product design or marketing activities.

So there are a series of other matters that were implemented, which we will detail at some length in writing, but they include, at a high level, a significant increase in resources to the AML/CTF area, including the recruitment of Howard Steiner, a leading international AML/CTF compliance operations and systems expert, to direct the development and implementation of a new AML information system called TrackVia. TrackVia has been operational since April 2021, and it's a central repository of risk information to assist risk-based management decision-making.

The organisational structure of the AML/CTF team has been revised, and the number of persons in the team have been increased by having 20 people in AML/CTF specific roles, working within the financial crime and investigations team. And 10 members of the AML/CTF team undertook training with the Association of Certified Anti-Money Laundering Specialists, and role-specific AML/CTF training was developed.

Next, there was the implementation of automatic transaction monitoring using TrackVia. The initial phase of that project cost approximately two and a half million dollars, and the next phase has received approval to proceed. TSEG also procured further independent reviews of its program, which I will detail, which verified the implementation of that program, as I referred to yesterday.

We submit that the importance placed on the KPMG reports and the recommendations contained in those reports is demonstrated by the fact that the board oversaw the program of work to enhance the AML/CTF compliance framework. And in writing, we will detail the extensive role of the board in overseeing that program of work.

In Mr O'Neill's table - Mr O'Neill's witness statement, there was a table there listed that I referred to which lists each of the actions taken by the board. It's Mr O'Neill's witness statement at paragraph 24 and the table that follows. And it lists each of the meetings at a board level, or a board committee level, and what those meetings undertook in terms of addressing specific actions recommended by KPMG and the implementation of the program of work. And that table, which we will replicate in our written submissions, shows the very comprehensive program of work that was undertaken and intensely supervised by the board and its relevant committees.

That evidence of Mr O'Neill as to the extent of board work that was undertaken and to implement the KPMG report was essentially unchallenged by counsel assisting, that that work had taken place, and that the recommendations had been implemented. And so we submit it ought be accepted by the review.

The next subtopic is the obtaining of the KPMG reports, the 23 May 2018 audit committee meeting and initial reactions to that meeting. KPMG was engaged pursuant to a letter of engagement dated 27 November 2017 that was sent to Ms Tarnya O'Neil of The Star. That's at exhibit B0488. The terms of engagement were accepted by Paul McWilliams, the then chief risk officer of TSEG. There was no suggestion that other members of management were aware of the engagement at the time.

Between December 2017 and April 2018, KPMG conducted its review and, on 24 April 2018, provided drafts to Ms O'Neil. The final version of the KPMG reports were provided to Ms O'Neil on 16 May 2018, and we see that at exhibit B0800. However, as I will set out, Mr Bekier and others did not receive the reports on 16 May 2018. And I recollect a submission of counsel assisting to the contrary, suggesting that Mr Bekier and others had received them as early as the 16th. We submit that is not correct. That submission was made at T4042.

The executive summaries of the KPMG reports were tabled and discussed at the 23 May 2018 meeting of TSEG's audit committee. The Review has heard evidence from Mr McWilliams, Ms O'Neil, Mr Bekier, Ms Martin and a number of other attendees of that meeting, and there was evidence in relation to the conduct of Mr Bekier at that meeting. TSEG acknowledges that - the evidence before the Review that there was some tension at the meeting and that there is evidence of a negative initial reaction to the KPMG reports by Mr Bekier. While TSEG does not seek to excuse the conduct of Mr Bekier at the meeting, it is submitted that there is context that ought to be considered.

Firstly, it is tolerably clear that the KPMG reports were included in the papers for the 23 May 2018 audit committee meeting at short notice, and were only provided to Mr Bekier and Ms Martin on or shortly before 23 May 2018. The evidence in respect of that proposition is as follows. While Mr Bekier couldn't recall precisely how long before the meeting he was provided with a copy of the part A report - and that's at T3006.15 - Mr Bekier emailed Mr McWilliams on 22 May 2018, the day before, indicating that he had not seen the KPMG report and asking Mr McWilliams to talk him through the key points, and that's at exhibit B0808.

Mr Bekier gave evidence that he considered Mr McWilliams' provision of the KPMG reports involved a departure from normal practice because the audit committee was only provided with the executive summaries, and that's at T3010.05. Mr Bekier considered that there were further departures from normal practice because the internal audit team had received a draft of the report in late April but had not taken that report to management to allow management to prepare and present a response to the findings of the auditor when the paper was presented to the board, and that's Mr Bekier at 3010.18. In other words, as Mr Bekier said, the KPMG report:

> "Was not syndicated by our own team as it should have been."

And that's also at 3010. This is consistent with Mr Bradley's evidence - a director - that:

> "Management usually, in the process of a report, prepares responses or plans to respond to recommendations, which is usually part of the process that comes to the audit committee."

And that's at T3527.45. Mr O'Neill first became aware of the KPMG reports when he received committee papers in the lead-up to the audit committee meeting - and that's at T3808.42 - and he recalled that the KPMG reports had been provided late in the piece, and members of the audit committee and management had had insufficient time to absorb the findings, and that's at T3810.36. Mr Bekier's view was that as a result of the departures from usual practice:

> "Senior management hadn't really had time to provide the board a perspective on what we were going to do about it."

And that's at T3010.25. Having regard to the above, although regrettable, it is submitted it is not surprising that Mr Bekier could have reacted intensely at the audit committee meeting.

**MR BELL SC:** That being said, does The Star accept that the initial reaction to the KPMG report is indicative of a cultural issue in the sense that the board, in

general, and the managing director in particular, were sending a powerful message that bad news wasn't welcomed?

**MS RICHARDSON SC:** Well, certainly not from the perspective of the board, because the board at that point had only received the executive summaries of the report, and they went about - and they had not received management's response to the recommendations, which would be the ordinary process. So that first meeting was, as evidence has received, not in the ordinary process where there's a full report that is presented with management's response. So the board didn't receive the full report.

And so, in our submission, there could be no inference found in that respect from its reaction at that first meeting and, rather, the inference that should be drawn is that the board set about, after it had received management's response to the report, which is the ordinary process, setting - implementing every single one of the recommendations that had been made. So we don't certainly accept an inference could be drawn in relation to the board.

The second point of context, we would submit, is that the views expressed in the KPMG report were very different from prior positive reports that had been provided by independent parties to TSEG in respect of its AML/CTF program. So from that perspective, The Star had received comfort in relation to its AML/CTF program prior to the KPMG report. And it's submitted that that's an additional element of context to explain the surprise - initial surprise - that some witnesses expressed in relation to the contents of that report.

In particular, an independent review of TSEG's part A program that had been conducted in mid-2015 by Mr William C. Brown, had set out broad, very positive conclusions about the effectiveness of the AML/CTF program; its compliance with the rules; the fact that it had been effectively implemented; and also that casinos within TSEG complied with the program. And Mr Brown, in that report, cited a series of actions taken by casinos within the TSEG group as evidence that the part A program was effective, and he referred to a number of concrete matters in support of that.

While the existence of prior positive reports does not excuse Mr Bekier's conduct at the 23 May 2018 audit committee meeting, it does explain the initial shock and immediate desire to understand why KPMG had reached such a different set of conclusions and recommendations. And this is consistent with the evidence of Mr O'Neill, who recalled being surprised by the contents of the KPMG reports, and that he and others expressed surprise at the meeting. But his reaction was not just surprise; it was alarm at the contents of the report, and that's at T3809 and T3813.

Ms Martin also gave evidence that upon receiving the KPMG reports, her first reaction was surprise and concern as the content of the findings of the reports, in some respects, differed significantly from earlier AML/CTF program independent

review reports, including those obtained from AUSTRAC. And Mr Sheppard gave evidence to similar effect. This was also the board's understanding of what management thought of the program. Ms Pitkin explained:

> "I think management got a bit surprised when these reports came in because I think there was a view that the AML/CTF program was pretty good and that management had received good reports previously."

And she gave that evidence at T3607.18. Having regard to those matters, it is submitted that it is understandable that it took a short period of time for certain members of management to fully embrace the issues with its AML/CTF program that had been identified by KPMG. And - however, the Review ought not find that this period of time is indicative of a poor culture.

Thirdly, as I have adverted to, the recommendations in the reports have been comprehensively implemented by The Star, and this has been independently verified.

Fourth, it is submitted there is insufficient evidence to conclude that there was no discussion as to whether legal professional privilege subsisted in the KPMG reports at the audit committee meeting. The highest this was put by counsel assisting was that there was a real question about whether there was any such discussion, and that's at T4042.19. And it is submitted that the Review could not, without more, make a finding, particularly a finding with such serious consequences.

The next subtopic is meetings with KPMG after the 23 2018 audit committee meeting. In the months that followed the 23 May 2018 audit committee meeting, various members of the management team attended meetings with Mr Jeff O'Sullivan and Mr Alexander Graham of KPMG to discuss and understand the recommendations made in the KPMG reports. And Ms Martin gives evidence to that effect in her statement at 109. Mr Bekier gave evidence that his conduct was not intended to, and he did not seek to, persuade KPMG that there were errors in their reports. That evidence is at T3012.37. In this respect, counsel assisting has submitted to the Review that Mr Bekier should generally be accepted as a frank and candid witness, and that submission was made at T3986.32.

The Review has heard evidence from, among others, Mr McWilliams, the then chief risk officer; Mr O'Sullivan and Mr Graham of KPMG concerning these meetings and, in particular, the conduct displayed by Mr Bekier at the meeting on 12 July 2018. TSEG acknowledges the evidence of Mr Graham of KPMG in particular, who said that Mr Bekier's conduct was hostile, aggressive and rude. That evidence is referred to by counsel assisting at 4043.24. TSEG regrets any offence that may have been caused to Mr O'Sullivan and Mr Graham as a result of that conduct by Mr Bekier.

Insofar as any findings could be made of Mr Bekier's conduct at the meetings with the KPMG partners, it is submitted those findings would be limited to Mr Bekier, who has since resigned from TSEG. There is no suggestion in the evidence that Ms Martin or any other person from TSEG who attended the meetings was anything but courteous and respectful in the meetings. In any case, by 25 July 2018, Mr Graham of KPMG had written to his team, saying:

> "We had several positive meetings with the CEO and the chair of the audit committee. They've now accepted that it's time to look forward and focus on fixing this up."

And that's email from Mr Graham, which is at exhibit B1008. Mr Graham accepted in cross-examination that the email he wrote was accurate when he wrote it, and that's at T4010.19. He accepted that KPMG had had several positive meetings with the CEO and the chair of the audit committee - that's at T410.41 - and he accepted that he understood, from a meeting that Mr O'Sullivan, his partner, had attended, that TSEG had, by 25 July 2018, agreed that it was time to move forward and fix things up, and that's at T411.31. And as I've outlined, that is what happened.

The next subtopic is the claim for privilege over the report. TSEG accepts that the claim for privilege was an error and that it ought not to have been made. The background to the claim for privilege over the reports is known to the Review, and it will be set out in some detail in the written submissions in terms of the correspondence with AUSTRAC. But I won't go through it here, unless you would be assisted by that, Mr Bell. But we will set it out in detail in our written submissions.

**MR BELL SC:** The claim for privilege had the effect that Star Entertainment set out to rectify the problems which KPMG had identified privately without appropriate scrutiny from the regulators; do you agree?

**MS RICHARDSON SC:** Well, no, because The Star had - or TSEG had provided the recommendations by - that had been made by KPMG to AUSTRAC from a very early stage so that AUSTRAC was well aware of the existence of the report and the recommendations for improvement that it said should be made. So, no, we would not accept that submission.

So as I have indicated, TSEG accepts that the claim for privilege ought not to have been made. And it's submitted, however, that there are a few matters of context that are relevant - the context in which that claim was made, without cutting across the acceptance that it should never have been made. First, it was Ms Martin who provided advice to The Star in 2018 that a claim for legal professional privilege should be made in relation to the KPMG reports, and that's in her witness statement at 123.

The evidence shows that the board, including Mr O'Neill and Mr Bekier, were unaware that the reports in their entirety had been - other than the recommendations - sorry, I will start again. They were unaware that the reports had been withheld from AUSTRAC on the basis of a privilege claim at the time the claims were initially made by Ms Martin. In particular, Mr O'Neill and Mr Bekier played no role in the privilege claim being asserted, and the support for that is, in respect of Mr O'Neill, his written statement at 31, and Mr Bekier, his statement at 19.

Mr Sheppard was not aware - a director - that the KPMG reports had not been provided to AUSTRAC in 2018 - he gave that evidence at T3264.35 - and he indicated that he was surprised that TSEG initially refused to provide the KPMG reports to AUSTRAC, at T3761. He considered that there should have been total transparency with the regulators and that they - AUSTRAC - should have got that report immediately. That's at T3762. Mr Heap accepted that the reports should have been provided to AUSTRAC regardless of privilege, and that's at T3442. Mr O'Neill accepted that the assertion of privilege was inappropriate and unacceptable - that's at T3824.13 - and he said that the evidence was - sorry, that the board was unaware of all of this, at T3824.23.

Upon becoming aware that AUSTRAC was insisting on being provided with a full copy of the KPMG reports, Mr Bekier had a discussion with Ms Martin regarding AUSTRAC's position, and he supported the view that the KPMG reports should be provided to AUSTRAC in full. That's in his witness statement at 20.

The second matter of context is that Ms Martin now accepts that the claim that the KPMG reports were the subject of legal professional privilege was erroneous, and that's in her witness statement at 116. And she also gave oral evidence to that effect at 2078.20 and at 2097.38. There is no suggestion that Ms Martin did not believe that the KPMG reports were privileged at the time she provided the advice, and Ms Martin gave evidence to the contrary at 2102.16, 2131.15. She also gave evidence to that effect in her witness statement at 120.

The third matter of context, however, is it is accepted that The Star showed intransigence in relation to the privilege claim in the face of repeated correspondence from AUSTRAC seeking the full KPMG reports and failed to revisit and assess the correctness of that privilege claim over some 15 months. A proper approach would have resulted in the correctness of those privilege claims being revisited, and it is submitted that Ms Martin ought to have obtained independent legal advice as to the correctness of the assertion of that privilege claim.

The conduct was principally attributable to Ms Martin, who has since resigned. Given the state of her evidence, it is not easy to draw confident conclusions as to the reasons for her conduct in this respect. It is submitted there is no reason to reject her evidence that she believed the claim for privilege was sustainable at the

time. Erroneous claims for privilege are, sadly, not uncommon. But as I have said, she should have at least obtained independent legal advice as to whether the claim was correct.

As the evidence of TSEG's directors makes clear, the mere fact of a claim for privilege was not an answer to the question of whether the reports should be disclosed to AUSTRAC, and evidence to that effect was given by Mr Heap at 3442 and by Mr Sheppard at 3762. They recognised that the standards required of all The Star called for a transparent relationship with its regulators. And Ms Martin has since resigned from TSEG.

The next subtopic is disclosure to ILGA. The KPMG reports were not disclosed to ILGA outside the process of this Review. The reason management took this view was explained by Mr Power in his witness statement at paragraph 70, namely, that the reports were concerned with Star's compliance with Anti-Money Laundering and Counter-Terrorism Financing Act obligations, and Mr Power assumed this was within the remit of AUSTRAC rather than ILGA.

The question of disclosing the KPMG reports to ILGA does not appear to have been raised with Ms Martin, and Ms Martin was not aware of any request made by ILGA for a copy of any independent review of The Star's AML/CTF program obligations, and she gave that evidence in her statement at 128.

While there does not appear to have been any positive obligation to disclose the KPMG reports to ILGA, and ILGA didn't make a specific request in that respect, it is accepted that in the interests of transparency, those reports should have been provided to ILGA. And counsel assisting made a submission to that effect at T4044.24.

So in terms of conclusions in relation to the KPMG reports issue, TSEG accepts that KPMG identified a number of deficiencies with its AML/CTF program and that the initial response of Mr Bekier to the KPMG reports was unfortunate, and it accepts that Ms Martin made an error of judgment in claiming legal professional privilege over those reports. These errors of judgment and unfortunate conduct were limited to a small number of senior management, who are no longer with TSEG.

The evidence, including that of KPMG partners who came before the Review to give evidence, demonstrates that TSEG accepted that it was time to move forward and fix things up by July 2018, and that TSEG has implemented KPMG's recommendations from mid-2018. This program has also been the subject of a number of independent reviews and found to be effective. In this respect, McGrathNichol found that:

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

And that's in the McKern report at page 15. And as I've said, counsel assisting has accepted that it cannot be doubted that TSEG took steps to significantly improve its AML/CTF program and compliance framework, at T4048.1. As Ms Pitkin explained in her evidence:

"So this report gave the company a wonderful opportunity to have a much better AML/CTF program. And it was because of these - this report, and the findings and recommendations, that the company really, then, moved along in terms of automation, more transaction monitoring and other things."

I will have to find the T reference for that quote, which will come in the written submissions. So those are the submissions I would make about the KPMG reports.

The next topic I propose to deal with is the question of privilege generally. Just one moment. Sorry. The transcript reference for the quote from Ms Pitkin I just mentioned is T3607.23. So I now address the broader submission in relation to the allegation of inappropriate claims of legal professional privilege, which is topic 11 of counsel assisting's closing. This was a submission made by counsel assisting in closing as to whether TSEG had a practice of cloaking documents in legal professional privilege to resist the production of documents containing adverse information. That was made at T4045.10.

At the outset, TSEG accepts that there is evidence before the Review that some members of TSEG's and The Star's legal team had a practice of marking communications with third parties as privileged without necessarily first considering whether there was a basis to claim privilege. Evidence to that effect was given by Mr Power at T1841.44 and Mr White at T1746.30. It is open to the Review to find that a number of the documents to which counsel assisting referred in closing address do not, on their face, disclose any basis for the privilege marking that they bear. Examples of these include certain emails and memoranda authored by Mr Angus Buchanan, which I will discuss.

For this reason, it is open to the Review to find that there was a - there may have been a misunderstanding by certain staff members of TSEG or The Star as to when a communication could be privileged. Mr Power accepted that there could be a risk of persons who were responding to a regulator concluding that a document marked as privileged was, in fact, privileged and refraining from producing that document in response to a request from a regulator, and he gave that evidence at T1857.01 and following.

It is open for the Review to find that the misunderstanding by certain staff members of TSEG or The Star as to when a communication could be privileged

created a risk that a person reviewing a document marked as privileged might assume it is privileged and refrain from producing that document in response to a request from a regulator, although there were no such examples of such an instance before the Review. The Star accepts that it would be desirable for it to have a policy and training on when a communication should be marked as privileged, and for the legal team's email signature to contain words to the effect that a communication may be privileged.

It is submitted, however, that the Review should decline to find that there was a practice of cloaking documents in legal professional privilege to resist production of documents containing adverse information to regulators. That submission was put at 4045.14. It is submitted that such a finding would go beyond what is justified by the evidence, also as such a finding carries potentially serious consequences in light of the professional obligations held by legal practitioners at TSEG at The Star.

The other question - this is relevant to procedural fairness, in particular in relation to legal practitioners for whom the consequences are potentially very serious. Counsel assisting did not put the documents that were referred in closing address to witnesses and did not challenge the author of the document as to why he or she had marked the document as privileged. This is in no sense a criticism of counsel assisting, but it does mean that there is an insufficient basis, it is submitted, for the Review to make findings as to the propriety of, or reason for, marking the documents she nominated as privileged. And as I've said, it creates a procedural fairness issue so far as the authors and The Star are concerned.

**MR BELL SC:** What do you say about the attempts to attract legal professional privilege in relation to the current part A report from BDO?

**MS RICHARDSON SC:** I will address that. I will address it in a few moments, if I may.

**MR BELL SC:** Yes.

**MS RICHARDSON SC:** I will address that specifically.

**MR BELL SC:** Yes. Thank you.

**MS RICHARDSON SC:** There are a few considerations that I would seek to draw out as pertinent in relation to this issue. Firstly, there is an important distinction between marking a document as privileged and making a claim that a document is privileged. The fact that a document or communication is labelled as privileged is not, and cannot be, equivalent to making a claim for privilege.

The claim of privilege is made by the positive act of resisting production on the basis of that privilege. It is not, as counsel assisting seems to have invited the

Review to find, the mere labelling of a document as privileged, which, on any view, would be insufficient. And we will refer to case law for that proposition. Even a sworn assertion of privilege in an affidavit is insufficient, and we will cite authority for that proposition.

The second aspect I would seek to draw out is that both Mr Power and Mr White explained why they marked certain documents as - not certain documents, how they marked documents privileged in a general sense. Mr Power explained that it was used as a mark to note the sensitivity and flag the potential for the fact that it may contain advice, and that is at T1841.32 and 1854.39. He also gave evidence at 1856.16 that:

> "It was a notation only that it would need to be looked at carefully and considered at that time. I don't think it was done for any other reason than to flag. And I think you could say that is a practice that we had to try and at least flag to potentially people that aren't myself and others that may be reviewing these documents down the track to at least turn their minds to the question of whether it was, in fact, privileged."

Mr Power described this as:

> "Critically important because anyone looking at this document down the track needs to be alerted to the fact it may actually disclose the content of legal advice."

And that was at T1859.33. It is submitted that Mr Power's evidence concisely demonstrates the error in conflating the marking on the one hand as opposed to the claiming of privilege on the other. Mr Power marked documents as privileged to ensure someone would turn their mind to whether the document was, in fact, privileged in the event a claim was later considered. Put another way, Mr Power expected that someone independently would make a determination as to whether privilege could, and would, be claimed. In a similar vein, Mr White said that he was:

> "Not certain as to whether it's unethical to put 'privileged' on it if you might wish to sort of consider it later whether it's privileged or not."

And that was at T1747.01. We say it's tolerably clear from that evidence that the premise was - that Mr White's premise was that someone would consider at a later point whether the document was privileged or not.

It ought not to escape the Review's attention that the practice of putting on emails in particular, including in signature blocks, that a communication is privileged is consistent with many corporations and law firms. And while the precise wording that legal practitioners and others use may vary and change over time, the fact is it remains commonplace to see such a notation that a communication either is or

may be privileged. And we will give a reference - I will give this reference, CORRO.001.001.0684 at 0686, which was an email - it's exhibit H0605 - where a law firm has included, in the email footer, that:

"The information in this electronic mail is privileged and confidential."

Not Mallesons; a different law firm has included that. So it is something, we say, that is commonly seen in practice.

The risk identified by counsel assisting, at transcript 2076.21, that a person collecting documents to respond to a regulator will not provide them because they assume they are privileged, we say, asks the Review to take an unduly pessimistic view of persons, including legal practitioners with their own ethical obligations who assist a company in responding to regulators. That view ought not to be adopted, in our submission, and certainly should not be used as a basis to find there was a practice of cloaking documents in privilege to resist production, as has been contended for.

However, we accept, as I accepted at the outset, that the practice of nominating certain documents as privileged created a risk that a person responding to a regulator who sees a document marked as privileged might make an assumption that that's privileged, although it's a risk which we say does take a pessimistic view of legal practitioners' who have their own ethical obligations in that respect.

**MR BELL SC:** But it's certainly - a reviewer would be entitled to take the view, would they not, that the author of the document had formed the view that the document was privileged, it being labelled in that manner?

**MS RICHARDSON SC:** In my submission, no. Any reviewer has to look at the contents of the document and form a view about whether it's privileged. And --

**MR BELL SC:** I thought that's what Mr Power had himself accepted was a problem with his procedure.

**MS RICHARDSON SC:** Well, he accepted there was a risk. But a legal practitioner who is responding to a regulator is required to look at the document, notwithstanding a marking of privilege, and form an independent view about whether it is, in fact, privileged.

**MR BELL SC:** So you don't accept that is a risk?

**MS RICHARDSON SC:** I accept it's a risk that they could form that view. I don't think an inference could arise that they will, in fact, proceed on the basis that the author has, in fact, formed that view. We accept that Mr Power has given evidence that it creates a risk, and we have accepted that there should be training around the marking of documents to address that risk. Mr Power also gave evidence that

when the person who is doing a review of a document that is compelled for production will make inquiries and that there would not be an assumption that the marking of privilege represents some type of conclusive review.

The third matter of context we would refer to is that Mr Power, at T1842.07 and 1855.08, and Mr White, at T1630.09 and following to the next page, both denied marking documents as privileged to shield communications from regulators and denied being told by anyone to engage in those practices or telling others to engage in those practices. The only instance before the review of TSEG resisting the production of a document to a regulator is that of the KPMG reports.

I have addressed that elsewhere. But, in short, the assertion of privilege in respect of KPMG reports was inappropriate. But it was one that was limited to Ms Martin, who is no longer with TSEG. And we have also accepted in that respect that the approach of Ms Martin and those involved in the communications with AUSTRAC were unduly intransigent in failing to revisit the correctness of the privilege claim, particularly in the face of repeated correspondence from AUSTRAC seeking full reports, and that the correctness of that privilege claim ought to have been revisited.

In my submission, the comments I have made are sufficient to address the submission of counsel assisting about the use of privilege to cloak document, but I would still seek to go through each of the documents that my learned friend has referred to in closing address.

**MR BELL SC:** I assume you will do that in written submissions, will you?

**MS RICHARDSON SC:** I can, if that would be preferable.

**MR BELL SC:** Well, I would like to hear what you say about the BDO report. But perhaps for other specific instances, it might be more efficient to put in writing.

**MS RICHARDSON SC:** I accept that. I can do that. So in relation to the BDO report and the 28 July 2021 minutes, these were referred to by my learned friend at T4046.42. And the BDO report is at STA.3402.0008.4551, and the minutes are at STA.3402.0008.2411. And their respective exhibits number are B3370 and A1366. The BDO report includes the following note:

> "Privileged -"

There's a spelling error, but it's clearly meant to say:

> "Privileged and confidential. Prepared by BDO at the request of HWL Ebsworth Lawyers for the purpose of providing legal advice."

The BDO report is not a document created by The Star, and there's no evidence before the review as to the origin of those words on BDO's reports. The 28 July 2021 minutes record that:

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

Mr Seyfort did not give evidence, nor did the authors of the BDO report. Ms Martin denied, in her evidence, that The Star retained HWL Ebsworth to commission the BDO report to cloak the Review in legal professional privilege, and that's at T2126.43 over to the next page. In those circumstances, it's submitted the Review should not make an adverse finding. Just one moment. And in this review, when that document was produced, no claim for privilege was made in respect of that report.

**MR BELL SC:** So in light of the fact that you have submitted that there's no evidence that the claim for privilege was made by Star Entertainment, I take it that Star Entertainment accepts that the part A report is not privileged?

**MS RICHARDSON SC:** That is correct. Well, it's certainly the position that The Star has taken. Certainly, in this Review, there was never a claim for privilege asserted over that document. So whether it may have been originally been privileged and it's been waived, that that claim has not been asserted by The Star.

**MR BELL SC:** Yes. Thank you.

**MS RICHARDSON SC:** In writing, we will go through each of the documents that my learned friend adverted to. I think just because other witnesses might be affected on Friday, there are a few submissions that I think I should just flag because other separately represented people might be assisted by them.

**MR BELL SC:** Yes, of course.

**MS RICHARDSON SC:** And I might do it quickly, which won't be rhetorically assisting to you, Mr Bell, but might assist other people understand what we say about those documents. So I will just refer to documents where I think it will be of relevance to persons who are separately represented to understand the position that we take on them.

Exhibit B2209. This document was not put to Mr White in his evidence, and so we say the propriety about this document should not be the basis for an adverse finding in the absence of hearing from him.

The next document is B0787, which is a file note by Mr Power. Again, Mr Power was not challenged as to why he marked this document as privileged, and we say

that you ought not make findings about the propriety of that marking in the absence of hearing from him about that.

Exhibit C0048. The words "privileged and confidential" appear to have been included by Mr Power and Ms Judd. That document was not put to Mr Power in terms of why the privilege marking was put, and Ms Judd was not called to give evidence. So we make the same submission, that no adverse finding should be made.

Exhibit B0805. That's an information note prepared by Mr McGregor. Mr McGregor wasn't called to give evidence and so I make the same procedural fairness point in relation to him.

Exhibit B0709. That document doesn't contain the word "privilege", so it's just not relevant at all, in our submission.

B0890. It appears the words "privileged and confidential" were included in that email chain by Mr Power. It should be noted that those words are also qualified by the words "may also be the subject of legal professional privilege" added into the footer of that email. But in any event, the document wasn't put to Mr Power.

Exhibit B1185. That document does not contain the word "privilege", so it's not relevant, in our submission.

B1492 is a letter from Mr Stevens addressed to Mr Power. Mr Stevens wasn't challenged as to why he marked the document as privileged, and this document was not put to Mr Power in this respect. So I make the same submission about procedural fairness in that respect.

Exhibit G0688. That is an email. Our reading of that document is the only time the words "legal professional privilege" appear in the email are in Mr Houlihan's signature block, which reads:

> "It may also be the subject of legal professional privilege and/or copyright."

Also, the document wasn't put to Mr Houlihan. And it also wasn't put to Ms Martin on this topic.

Exhibit B2704. It appears from the context that the words "privileged and confidential" appear to have been added by Mr Buchanan. But it's also noted that those words are qualified by the words in the footer of the email, saying that they "may also be the subject of legal professional privilege". Mr Buchanan wasn't challenged as to why he marked the document as privileged, and the document wasn't put to Mr Power in this respect. So the same procedural fairness submission is made in respect of both of those persons.

Exhibit B2705. That document does not contain the word "privilege", so we say it's not relevant.

Exhibit B2706. This is the attachment to exhibit B2704. That document wasn't put to any witness, so we submit the Review couldn't make findings of propriety or otherwise for the reasons I've given.

Exhibit B2707. That document wasn't put to any witness, and so I make the same submission about the inability to make findings about it.

Exhibit B2708. That document does not contain the word "privilege", so it's not relevant.

Exhibit B2778. It appears that the words "privileged and confidential" in that email chain were added by Mr Buchanan. But those words are qualified by the footer of the email, saying "may also be the subject of legal professional privilege". The document wasn't put to any witness. So in our submission, no propriety findings could be made about it.

Exhibit B2560. It appears the words "privileged and confidential" in the chain must have been added by Mr White, but this document wasn't put to him or any other witness. So I make the same submission about procedural fairness.

C0257. That was a document attached to a memorandum from Mr Buchanan. Mr Houlihan was the only witness to whom the document was taken, but he wasn't asked about his views about privilege in that respect, and Mr Buchanan wasn't taken to the document. So in our submission, the same contention arises in terms of the inability to make propriety findings about that.

In terms of the submission I made at the outset that there are a few emails and memoranda that, on their face, don't appear to disclose a basis for a privilege claim and might be support for a finding that there was a misunderstanding by certain persons, I should just indicate which ones I'm talking about. They are Mr Buchanan's documents. They are exhibit B2704, B2778 and C0257. So those are the submissions I make about the topic of privilege, unless I can be of further assistance on that topic, Mr Bell.

The next topic is ASX announcements and investor briefings. This section addresses counsel assisting's submissions concerning whether the KPMG reports warranted disclosure to the ASX in May 2018 in accordance with TSEG's continuous disclosure obligations; next, TSEG's announcements to the ASX on 11 and 12 October; and the investor briefings by Mr O'Neill on 13 October 2021. And I'll come in turn to the exhibit references for various documents. Just one moment. At the outset - sorry. At the outset, TSEG submits that the Review ought not make any findings concerning continuous disclosure obligations or whether ASX releases contravened the Corporations Act.

**MR BELL SC:** Well, as I indicated to counsel assisting, I don't see how I've got the evidentiary basis to make findings about those matters.

**MS RICHARDSON SC:** We respectfully adopt that approach. So can I take it that I don't need to address the Review on those topics on that basis?

**MR BELL SC:** Correct.

**MS RICHARDSON SC:** Thank you. Can I ask whether the same position applies in relation to investor briefings by Mr O'Neill?

**MR BELL SC:** No. And I should make it clear that I'm referring to whether there has been a breach of the Corporations Act. That specific issue is not something that I can determine. I imagine the submissions you would wish to make about the ASX announcements of 11 and 12 October 2021 go beyond that precise issue.

**MS RICHARDSON SC:** Well, the submission - well, I'll deal with that in turn. In my submission, it's not a matter about which I would make submissions, for this reason: given that it's - the position appears to be accepted that whether there is a breach of the Corporations Act or continuous disclosure obligations is outside the scope of the Review, that the various obligations turn on different criteria, but it turns on, in effect, for example, questions about whether things were misleading, which has, as an analogue, whether things were accurate, inaccurate and so on. And so addressing that topic inevitably involves traversing effectively the same topic. And --

**MR BELL SC:** Well, I think I should be more precise in indicating what I don't need to hear from you on. I don't need to hear from you about whether particular information was price sensitive, to use that expression loosely. The expression is defined more precisely in the Corporations Act. The submission that counsel assisting has made, particularly in relation to 11 and 12 October, goes beyond whether material was price sensitive but addressed the wider question of whether it was misleading. And I do think you do need to address that submission by counsel assisting. So I hope that clarifies my position.

**MS RICHARDSON SC:** Well, the difficulty for my client is understanding what is the submission that is put against us in such a serious matter. So, for example, the submission put by counsel assisting at T4143.29 is that the question of continuous disclosure is a question you will note. And so we say the status and purpose of such a notation is unclear and unsafe, particularly in the context of a civil penalty regime, and I refer to the analysis of Commissioner Bergin in her report that I referred to yesterday at exhibit B2791 about --

**MR BELL SC:** I think - to avoid any misunderstanding between us, notwithstanding what I've tried to express clearly, I think you should make

whatever submissions you intended to make about these matters so that there's no question of misunderstanding between us.

**MS RICHARDSON SC:** Thank you. I might come back to this topic after the morning tea break. The primary submission that we would seek to make in relation to it is that given questions of obligations around continuous disclosure, even if it's not framed in the strict legal terms of is it a breach of a particular obligation, even if it's framed as a freestanding idea about whether something was accurate or inaccurate or misleading, inevitably dovetails into a civil penalty regime in relation to continuous disclosure.

Those types of obligations are notoriously complex. There's a recent Full Court Federal Court decision about the complexity of those matters in Crowley, C-r-o-w-l-e-y, v Worley, W-o-r-l-e-y, Limited, neutral citation [2022] FCAFC 33. And they require detailed analysis of all the evidence and surrounding circumstances, and that in order to understand whether something is consistent with continuous disclosure obligations - or even to put it in a non-juridical term, is it misleading or accurate or inaccurate - requires the totality of the evidence, including evidence from the board and all members of the board and so on, about a topic.

So our general submission is that it would be both unsafe and prejudicial for the Review to make any findings concerning those matters. And insofar as they are to be ventilated, it should be done in a proper forum with the attendant protections of procedure, the presentation of evidence in an admissible form and the ability of those potentially the subject of sanction to present and test the totality of the evidence. And so we would call in aid there Commissioner Bergin's analysis there in the context of why matters of contractual law ought to be avoided, which we say apply with greater force to matters that may attract regulatory sanctions and civil claims.

So I think that's what I will say about those matters at this point, if I may, and I would extend those comments to all of the ASX matters raised by my learned friend and the investor briefing by Mr O'Neill. I'll move - I note the time, but I'm happy to move to the next topic of rebates, unless the Review would prefer to take the morning tea break now?

**MR BELL SC:** No, let's press on.

**MS RICHARDSON SC:** Thank you. The next topic of rebates - this is the issue of rebates, which addresses topic 24 of counsel assisting's closing, in relation to media allegations, that TSEG underpaid duty by shifting local patrons to international rebate programs. It addresses the sources of TSEG's obligation to pay duties; the previous and current process by which patrons are classified as a rebate or non-rebate player; the audit conducted by ILGA; and the media allegations that I have referred to.

In the written submissions, we will set out at some length the legal obligation in both statute and agreements with the treasurer to pay duty, and we will set all of those matters out in full. But I won't go through them today. At the outset, it is accepted that, in some cases, complete documentation for some patrons could not be found and that The Star had not followed its own processes for some of the patrons. It is further accepted that there may have been a few instances of the international rebate and interstate teams poaching local players.

As I will seek to develop, however, such conduct was not a practice. It was, the evidence has established, limited to a couple of instances. It was not condoned by TSEG, and it has been stopped. And counsel assisting accepted in her closing that there is not clear evidence for the Review to support the Sydney Morning Herald allegation in this respect, and that is at - I just have a live transcript number there - 4137.29 and 4154.10.

Further, TSEG accepts that any mistakes in the classification of players should be remedied and any shortfall in duty paid. It also accepts that an audit should take place, a complete audit. To that end, TSEG has engaged KPMG to determine whether there has been any shortfall in duty payable, and in the interim all rebate play has been suspended.

So the first subtopic is the obligation to pay duty, which I will deal with in short terms, but we will deal with extensively in writing. So the obligation is on The Star to pay the duty, and section 120 of the Casino Control Act provides that the casino operator is liable to pay, relevantly, any duty in respect of its licence, and it's a condition of the licence that the operator must pay. And the amount of duty is, relevantly, as agreed from time to time by the treasurer and the casino operator concerned, and we see that at exhibit B2432.

So the relevant agreement from 1 July 2020 is the duty and responsible gaming levy agreement entered into by the treasurer and The Star on 29 May 2020, and that's at exhibit B2432. And under that, The Star is obliged, relevantly, to pay what is described as non-rebate gaming revenue and rebate gaming revenue. And the rate of duty to be paid on non-rebate gaming revenue is higher, at 17.91 per cent, than on gaming revenue, which is at 10 per cent. And we will give all of the references to the agreement establishing those matters.

The critical definition for these purposes is that of a rebate player, which is defined in the agreement. That's at exhibit B2432 at pinpoint 0010. That's a definition of "rebate player", which means a person not normally resident in New South Wales. And then the definition goes on, but the relevant chapeau in the definition for our purposes is "a person who is not normally resident in New South Wales". And separately, a non-rebate player is a person defined in the alternative, effectively, a person who participants in gaming at the casino and who is not a rebate player, and we see that at pinpoint 0010.

So the issue before the Review concerns whether certain players were misclassified as rebate players because they do not meet the description of a person normally resident in New South Wales. As counsel assisting noted, there is no guidance in the rebate agreements about how one calculates who is local, who is domestic and who is international, and that was at live transcript reference 4138.21. TSEG accepts that it would be preferable - and this submission was made by counsel assisting - for there to be clear provision in the 2020 Casino Duty Agreement between The Star and the Treasurer as to how one classifies a resident as local, domestic or international. And that submission was made by my learned friend at live transcript 4143.22.

The next subtopic is the process by which a patron is classified as a rebate or non-rebate player. The Star has internal control manuals and standard operating procedures which address rebate play. And I won't quote it now, but I just note that The Star's ICM Manual 8, Rebate Play, describes rebate play in exhibit A0437 at pinpoint 0238. That rebate ICM lists - includes a list of material significant risks, which include, for example. And we see that in the rate ICM, which is exhibit A437 at pin cite 0237.

Those risks are addressed by a series of internal controls that are detailed in the rebate ICM, which relevantly include - and these are in exhibit A437 starting at pinpoint 0239. And I won't read them out, but there's a significant list of internal controls directed to determining eligibility and - sorry, relevantly, eligibility in relation to rebate play. The most recent version - I will just draw out one of those, which is at exhibit A0437, pin site 0239. It's the first control in the rebate ICM which provides:

> "A residency assessment will be undertaken in accordance with SOPs to determine the suitability of all participants prior to their participation in rebate play."

Which is referred to as control of risks (a) and (b).

**MR BELL SC:** What clause is that? What paragraph is that?

**MS RICHARDSON SC:** It's numbered 1.

**MR BELL SC:** Yes.

**MS RICHARDSON SC:** It is exhibit A0437, and these controls start at pinpoint 0239.

**MR BELL SC:** I wonder if the operator could call it up on the screen so I can follow the submissions more precisely. Perhaps I will take the morning

adjournment now for 15 minutes. But when we resume, operator, you could perhaps bring that document up so you could take me to it.

**MS RICHARDSON SC:** Certainly. It is a confidential document, so I'm happy for it to go on the screen. But I will just refer to it obliquely.

**MR BELL SC:** Yes. Is this the document that was in force at the time of Mr Hawkins' calculations?

**MS RICHARDSON SC:** I'll just check which one we're referring to. The most recent version is version 7, which came into effect on 2 November last year.

**MR BELL SC:** It's really the earlier version, I think, that I need to look at. Version 6, probably.

**MS RICHARDSON SC:** It is. And that's what I proposed - so the later version, version 7, is at exhibit A4334. The earlier version, which I agree we need to go through, is version 6, which was in effect between 8 September 2020 and 1 November 2021.

**MR BELL SC:** Yes.

**MS RICHARDSON SC:** And that - sorry. That's the SOPs at exhibit A5111. Previously, I was referring to the rebate ICM.

**MR BELL SC:** Yes. Yes. Well, perhaps we can look at that after the morning adjournment.

**MS RICHARDSON SC:** Thank you.

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

**<THE HEARING ADJOURNED AT 11:31 AM**

**<THE HEARING RESUMED AT 11:48 AM**

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

**MS RICHARDSON SC:** Thank you. Perhaps - I see that version 7 of the rebate SOP is on the screen. Perhaps we should have version 6, which is exhibit A1511.

**MR BELL SC:** Yes. You were referring before the adjournment to the internal control manual 8. Are you going to take me to that document?

**MS RICHARDSON SC:** I'm happy to.

**MR BELL SC:** Thank you.

**MS RICHARDSON SC:** I don't think it's necessary, but - we will set it out in detail in writing, but would you be assisted by going to it now?

**MR BELL SC:** I think so, just to understand in broad terms what it says.

**MS RICHARDSON SC:** Certainly. So that ICM is at exhibit A0437. And if we could go to pin site 0239. I won't read it out loud because it's confidential. I will just point to salient parts. So you see on the left-hand screen, it says Internal Controls.

**MR BELL SC:** Yes.

**MS RICHARDSON SC:** And under that, it contemplates the establishment of standard operating procedures to implement these matters, and you see there --

**MR BELL SC:** Is this document confidential because it remains in force now?

**MS RICHARDSON SC:** It's not in force, but it's so similar to version 7 that to release this one would, in effect, release the contents of the other.

**MR BELL SC:** I see. Yes, I have noted paragraph 1 which you referred to earlier.

**MS RICHARDSON SC:** I'm sorry. I misspoke. I'm sorry. This is an ICM, so this is still in force. I apologise.

**MR BELL SC:** Yes. Thank you.

**MS RICHARDSON SC:** So you can see there, under the heading Eligibility and Suitability, the matter expressed in paragraph 1.

**MR BELL SC:** Yes.

**MS RICHARDSON SC:** And I should have - perhaps if we go to the previous page, it sets out a series of risks which are identified by alphabetical letters. And we have the risk, which I've already read out, which I think I can say in open session. It's a risk if proper procedures aren't followed, that:

> "Ineligible persons participate in rebate programs."

And then there's the risk in B. And then there's the risk in C, which I can say openly is that:

> "Duty for rebate play is not calculated accurately."

**MR BELL SC:** Yes.

**MS RICHARDSON SC:** So when we go to the next page, which identifies various controls, you will see they're nominated by reference to risks with alphabetical letters, which must be a reference to the risks that have been identified on the previous page. So under the heading Eligibility and Suitability, you see (1), which is addressed to the control of risks A and B. Really, risk A dovetails into risk C. And you see in (3), minimum requirements there set out. And then if we go over the page to paragraph 8, there is a series of persons there listed who will be prevented from rebate play, and I draw attention to the matter at 8(d).

**MR BELL SC:** Yes.

**MS RICHARDSON SC:** And just incidentally, I draw attention to the matter at (f). And then if we could go to the next page, please. Sorry, it's the following page. Thank you. I draw attention to paragraph 23, which contemplates rebate program requirements being specified in SOPs, including - and you there see that that's specifically directed to control of risk C. And the three aspects of that information - implementation are set out there. And then 24. I just draw attention to that matter which is directed to control of risks C and F.

**MR BELL SC:** So in general terms and without breaching the confidentiality, the internal control manual approved by the regulator directs you back to the standard operating procedure in force at the relevant time to determine residency?

**MS RICHARDSON SC:** That's correct.

**MR BELL SC:** Yes.

**MS RICHARDSON SC:** And I'll just note the risk of control - the risk in (f) - I think I can read that out because it's not describing how that risk is controlled for. Risk F is:

> "Errors, irregularities, incidents are not detected or corrected and not reported when detected."

So paragraph 24 is directed to controlling risk C and risk F that we agree that the mechanics in the ICM directs you to the SOP that is then currently in force.

So as I adverted to earlier, the most recent version of the rebate SOP, version 7, came into effect on 2 November last year. That's exhibit A0434. That replaced version 6 that had been in force up to that time from 8 September 2020, and that's exhibit A1511. So perhaps if the version 6 SOP could be brought up. So - this is also confidential, so I'll be oblique. If we could go to task 5, please, which is on pin cite 0633. Sorry, could that just be blown up a bit just so I can read that.

So task - just one moment. So I'm instructed I can read out the tasks, just not the material underneath. So task 5 is the residency checklist for international rebate players. And I note separately task 17 is for - the residency checklist for domestic rebate players. So it's the checklist for each of the two different type of rebate players. So those tasks are intended to ensure that only non-Australian residents, i.e., international rebate players and non-New South Wales residents, i.e., domestic rebate players, are able to participate in rebate play.

**MR BELL SC:** Operator, can I see task 5, which I think must be on the previous page.

**MS RICHARDSON SC:** Task 5 actually starts on pinpoint 629. So it's task 5, which has a number of numbered tasks within it, starting at task 1 - subtask 1, if you like. And task 17, which I referred to, which is the checklist for domestic rebate player, in substance mirrors task 5.

**MR BELL SC:** Yes. Thank you.

**MS RICHARDSON SC:** Obviously there are differences, in the sense you don't have a visa if you a local person. So there are differences in terms of the fact that you're dealing with Australian residents, and there's interstate issues as opposed to international issues. But in substance, a lot of it is very similar. So if I address the standards applied to task 5. So if we go - I think we're on page - pinpoint 0269. See on the right-hand side, the way it's structured is there's steps in the left-hand and standards in the right-hand column. So the standards applied to task 5 - just one moment.

**MR BELL SC:** I think when Mr Hawkins was examined about this - I think you accepted that what's underlined under Standards was not, in fact, confidential.

**MS RICHARDSON SC:** That's my recollection. I'm just taking instructions about what I'm allowed to read out. I think that is correct. Just one moment. Thank you. We will proceed on that basis. So you see there the underlined portion:

> "For a patron to be considered as a non-resident of Australia, they generally must be in Australia for less than 183 days out of a rolling 12-month period (set by the ATO)."

The steps involved in verifying this standard or rule of thumb include completing the Residency Status Checklist - International, and we see that - so that covers pin cite 0629 all the way through to 0637. So the checklist starts at pin site 0635. Perhaps if that could be brought up. And so I won't read that out, but you see that it's structured as part A and part B. And we've got the first row in part A - I have some recollection that Mr Hawkins may have been taken to this in open session. I might deal with it confidentially now.

**MR BELL SC:** My recollection was that I think you accepted that because this SOP was no longer in force, that it wasn't confidential. But I'm happy for you to deal with it as a confidential document in order to instruct me about it.

**MS RICHARDSON SC:** I might do that just for the time being and then we will clarify the position at lunch so that there's no question over what you can put in the report and so on.

**MR BELL SC:** Yes. Thank you.

**MS RICHARDSON SC:** So you see, under part A, the first row of a yes/no about a particular piece of information. And then - sorry. Under part B, you see there the first line entry:

> "Has the person -"

Well, I can say that because it reflects what I've already said in open session, which is:

> "Has the person spent more than 183 days in Australia in the last 12 months?"

Do you see that in the first row under part B?

**MR BELL SC:** Yes. So should I understand the way this works, that for a non-Australian passport holder, unless they have a visa of the kind described in the third box in part A, you then have to answer the first question in part B, and if the answer to that is "no", then they're not entitled to be treated as an international resident under this SOP? I'm happy for you to take that on notice, if you like.

**MS RICHARDSON SC:** I might take it on notice. The double negatives and yes and nos and --

**MR BELL SC:** It's very hard to deal with this confidentially. Perhaps you could identify whether this is, in fact, confidential and come back to it, because it will be much easier for us to discuss it if I can refer to it more directly.

**MS RICHARDSON SC:** I agree. Given that we need to go to the details of things, it would be clearer to come back to it. So would it be - just one moment. I'm just seeing if I can get those instructions now. I have instructions that the cross-examination of Mr Hawkins about this was done in open session, and this is a superseded SOP, so that we can proceed in open session more openly, if that's convenient.

**MR BELL SC:** Yes.

**MS RICHARDSON SC:** So - but I still might take on notice the question that you put to me, Mr Bell, as to how the matrix works. I might consider that over lunch, if I may.

**MR BELL SC:** Yes.

**MS RICHARDSON SC:** So the checklist, relevantly under part A, directs inquiry as to the nationality of the issuing country of the passport. And then we see, under part B, a question as to whether a person spent more than 183 days in Australia in the past 12 months. And then we've got other references there to Australian Medicare cards, and I won't read them out, but other aspects that might connect a person to Australia and so on. And then if we could go to pinpoint 0636, please. You see, at about point 4 of the page, there's a requirement for a declaration as to overseas residential status where the person is required to declare:

> "I declare my normal place of residence is outside of Australia and is as follows."

Then you will see there at point 5 of the page, the patron is required to indicate their length of stay in New South Wales and where they will reside.

**MR BELL SC:** Yes.

**MS RICHARDSON SC:** And then on the same page, the staff member completing the checklist is required to sign, that they:

> "Can reasonably confirm that the person is an overseas resident, based on the information provided to me by the person and on the checks I have been able to conduct."

And I won't go through it, but a similar standards and processes occur in relation to task 17, which is domestic rebate players.

**MR BELL SC:** Could we just go back to the previous page, please, part A and part B. So under part A, Ms Richardson, underneath the three boxes, it says:

> "If the answer to the above is 'yes', the remainder of the checklist is not required to be completed."

The only way I can sensibly understand that is if it's referring to the third box, "the answer to the above" being what's in the third box only.

**MS RICHARDSON SC:** We agree with that. That's correct.

**MR BELL SC:** Yes. Thank you.

**MS RICHARDSON SC:** So as I have indicated, on 2 November last year, version 7 of this SOP came into effect. And that update was, at least in part, in response to potential weaknesses that had been identified in version 6 of the rebate SOP. The residency checks for international rebate players and domestic rebate players in version 7 are task 4 and task 5 of that rebate play SOP, which I won't read out because that is confidential. That's at exhibit A0434. But I can indicate, because this has already happened in open session, that one of the key changes is the deletion of the proposition that a person generally must be in Australia for less than 183 days out of a rolling 12-month period in order to be a non-resident. So that rule of thumb is deleted from the later version, and there are other --

**MR BELL SC:** That was the principle which are operated in relation to the task which Mr Hawkins was undertaking and which he was examined about, and it's emphasised by the first question in part B:

> "Has the person spent more than 183 days in Australia in the past 12 months? If the answer to the above is 'yes', the participant is not eligible."

Do you accept those matters?

**MS RICHARDSON SC:** Well, I certainly accept that he was cross-examined by that. I wouldn't put it as highly as a principle, in the sense that the principle in the SOP itself is described as "generally". So it's not a hard and fast rule. And I might come back to the way that checklist is phrased, in the sense of it seems to be phrased in a higher language than, in fact, the SOP requires for, because the SOP didn't create it as a hard principle. It was, in effect, a rule of thumb or general threshold guideline. I won't go through them now, because version 7 is confidential, but in writing we will point out other changes in version 6 which are clarifications and improvements on version 6.

**MR BELL SC:** But you do accept that version 6 is the document which governed Mr Hawkins' task?

**MS RICHARDSON SC:** That's correct. Since August of 2020, Mr Walker, who gave evidence before the review - his team, which is premium services operations, has been responsible for undertaking the residency checklists, and that evidence was given by Mr Walker in his witness statement at paragraph 8, and it was also given orally at T2432.35. Prior to that time, what was described as the international team, headed by Saro Mugnaini, was responsible for conducting the residency checks, and Mr Walker gave that evidence at T2433.24 and following.

So the next subtopic is Liquor and Gaming New South Wales' audit. On 17 January last year, Liquor and Gaming New South Wales notified The Star that it would be conducting an audit on elements of its rebate play operations, and that's - sorry, not last year, 17 January 2020. And that was by letter from ILGA at exhibit H0283. Liquor and Gaming indicated that the audit would include an

examination into The Star's compliance with regulatory requirements, including internal controls and relevant standard operating procedures.

Throughout 2020, Liquor and Gaming New South Wales requested, and The Star provided, information and documents, including residence and identification assessments undertaken for various individuals. On 12 August 2020, Mr Power emailed Mr Hawkins seeking assistance in relation to 14 specific individuals of interest to Liquor and Gaming as part of the rebate audit, and we see that at exhibit B3275. Mr Hawkins and Mr Power accepted that, in some cases, his team could not find complete residency checklists for some of those 14 patrons. That evidence was given by Mr Hawkins at 2559.27 and Mr Power at 2037.07.

Mr Hawkins also accepted that The Star had not followed its own processes for some of the patrons, and he gave that evidence at T2582.26. On September 2020, after the review of the 14 specific individuals, Mr Power requested Mr Hawkins to conduct a review of patrons playing on the rebate program in July 2020. Just excuse me one moment. Sorry, I've lost my train of thought. He - Mr Power requested Mr Hawkins to conduct review of patrons playing on rebate programs in July 2020, including their residency status, and we see that at exhibit A0622.

That request was accompanied by legal advice concerning how residency status was to be determined for the purposes of the 2020 casino duty agreement. Mr Hawkins gave evidence that he read Mr Power's advice at the time that he conducted his review. That's at transcript 2562.08. Just one moment. So I'll just refer to the salient parts of that advice. This is the advice from Mr Power at exhibit A0622. Perhaps if that could be brought up. So we see there, in paragraph 1, Mr Power writes under the heading What Needs to Be Done:

> "Before submitting the duty calculation to the New South Wales regulator for July, there is a need to do an urgent stocktake of who has been playing on rebate programs during the month of July and work out whether we have substantiation of the fact that they are not normally resident of New South Wales, including collating any information that the IRB team may hold about these individuals that would assist to classify that a particular person is not normally resident of New South Wales."

The relevant context here is that, of course, by July 2020, the pandemic had been ongoing for a number of months, where the casino had been closed and under public health orders. There was no rebate play because of the pandemic. And we will refer to this in writing, but the short point is that from 1 July 2020, rebate play was reactivated after public health orders in connection with the pandemic had been lifted.

So that explains the context around why things were being revisited, because the situation was unusual, in the sense that you had people - well, firstly, there had been no play and there were people in Australia that might otherwise might not

have been in Australia because the borders were shut. And an evidence reference for that proposition is Mr Hawkins' statement at 22.

So Mr Power - that's just the relevant factual context of why the focus on July 2020 in terms of the reactivation of rebate play. Paragraph 2, Mr Power writes:

> "Given serious consequences arise if a person is mischaracterised for the purposes of rebate duty calculation, care should be taken in undertaking this assessment."

And then the matter in paragraph 3 that I won't read out.

**MR BELL SC:** I have a recollection that this was also clarified as no longer being confidential in light of the fact that that rebate SOP is no longer in force, and I have also a recollection that Mr Hawkins was examined about the last sentence of paragraph 3. You might want to check that.

**MS RICHARDSON SC:** That does ring a bell, I'm just trying to get specific instructions about that.

**MR BELL SC:** All right.

**MS RICHARDSON SC:** I think that's correct, but I will just proceed prudently in the next few minutes.

**MR BELL SC:** Yes.

**MS RICHARDSON SC:** I'll just obtain instructions about that. But in the meantime, if you wouldn't mind reading paragraph 3. But I can read out openly the last sentence:

> "The SOP does not provide for disregarding the period that the casino was closed."

And:

> "Moving forward, we may look to update the SOP in this regard."

**MR BELL SC:** Yes.

**MS RICHARDSON SC:** I would also draw attention to paragraph 6 of Mr Power's advice, which says:

> "Care needs to be taken in substantiating the residency status of these individuals and our records/correspondence in this regard. There is a requirement to notify the casino regulator in circumstances where it is known

that duty has been underpaid. Accordingly, if there is any doubt, the safer approach would be to move players that we do not presently have substantiation into the non-rebate revenue/duty calculation."

And then paragraph 7, Opportunities for Improvement:

"Moving forward, it is recommended that enhanced due diligence is undertaken in order to obtain sufficient justification/substantiation before a player commences on a rebate program and, after a period of three months, is then assessed on a routine basis (monthly). To support this approach, The Star's recordkeeping, controls and general discipline in this area will need to be improved. We will prepare some documentation to assist the team with this process shortly."

That's, in effect, describing what happens in SOP 7. So that was, plainly enough, very prudent advice given by Mr Power. If we could go to the next page, please. So you see there, starting at about point 5 of the page at pin site 1376, Mr Power has included in the memorandum he has provided to Mr Hawkins his more detailed reasoning supporting the more conclusory directives or advice he has given in the main body of the memorandum, which we say adds to the prudence of the advice he gave. So if I could draw your attention to paragraph 4 where he says:

"'Not normally a resident of New South Wales' is not defined in the 2020 casino duty agreement."

And as such:

"The natural and ordinary meaning of those words will be applied."

And then paragraph 5 says:

"The fact that the individual has been in New South Wales for six months or more is not determinative, especially given travel restrictions imposed by various governments to mitigate the risks in relation to COVID-19."

Then paragraph 6 - and I won't read it out, but Mr Power refers to that as we would say are correct, that the natural and ordinary meaning of the word "resident" in case law invites close analysis of a range of factors. Perhaps if we could straddle both pages, because Mr Power sets them out.

**MR BELL SC:** Is this a summary of external advice?

**MS RICHARDSON SC:** I think it is a summary of external advice that had been given by Mallesons on this topic.

**MR BELL SC:** Yes. And, therefore, it's addressing changes moving forward, rather than the approach which Mr Hawkins is required to take in light of SOP version 6, is it not?

**MS RICHARDSON SC:** Well, the advice was given on 4 September 2020, which is the point at which he was doing his - Mr Hawkins was doing his review.

**MR BELL SC:** Yes. I think you agreed earlier that Mr Hawkins' review was governed by version 6 of the SOP, and really what I'm trying to establish is whether what Mr Power is doing here is summarising external advice about how it might be improved going forward.

**MS RICHARDSON SC:** I think what Mr Power is doing is he is referring to the analysis in version 6 of the SOP, which is that the 183-day period is a general matter. It's not a hard and fast rule. And he's pointing out that the concept of residency is not defined, so it takes on its natural and ordinary meaning. And that the question of residency invites an analysis of various other factual matters relevant to the person, including assets, employment, family ties and so on.

**MR BELL SC:** I have a recollection there was an advice from Mallesons that was explaining this more fully and that this summary seems to be a summary of that advice. But that's – that's right.

**MS RICHARDSON SC:** That is correct. And the advice - so we accept that Mr Power's advice, as extracted here to Mr Hawkins, was based on the advice that he had obtained from external law firm Mallesons, and that external advice is at exhibit B3270.

**MR BELL SC:** Thank you.

**MS RICHARDSON SC:** So that advice from Mallesons, which is reflected in Mr Power's recitation of it in this memorandum - the advice from Mallesons included statements that - and this is at exhibit B3270:

> "There is no bright line test of when a foreign individual will be taken to be 'not normally resident in New South Wales '. The fact that the individual has been in New South Wales for six months or more is not determinative, especially given travel restrictions imposed by various governments to mitigate the risk of the transmission of COVID-19. In order to assess the residency of a foreign individual who has been physically present in Australia for more than a set period of time (say three months) The Star will need more information from a patron than is currently collected under its rebate play SOP."

And then it goes on:

"Accordingly, even if an individual has been in New South Wales for six months or more, it does not necessarily follow that the individual has become someone who is normally resident in New South Wales."

So it's just reiterating the fact that it's not a bright line, binary test and that what is required is a more nuanced analysis. But - and I will come back to this in turn. The ultimate test, of course, as to whether duty is payable rests on the terms of the agreement between The Star and the treasurer that imposes the obligation to pay duty, which is framed in terms of a rebate player means a person not normally resident in New South Wales. So it doesn't depend on the terms of the SOP. Now, plainly enough, the terms of the SOP are designed to give effect to the obligation but, ultimately, as to whether or not duty is payable under that agreement turns on the phrase in the agreement itself:

"Is a person not normally resident of New South Wales."

**MR BELL SC:** But there is another dimension that you have pointed out to me this morning, which is that in addition to the agreement between the State and The Star, there's an internal control manual approved by the authority which requires The Star to act in accordance with its SOPs to determine residency.

**MS RICHARDSON SC:** It does. But in our submission, that doesn't cut across the obligation in the agreement with the treasurer, which is an obligation to pay a certain level of tax in respect of any person who meets the description of "not normally resident of New South Wales".

I'll come to this in due course, but we have averted to the fact that KPMG has, relatively recently, been engaged to do an audit of this entire subject matter because of the complexity involved, as both Mallesons and Mr Power averted to. The question of where someone is resident is surprisingly quite a complex issue and will depend on a detailed factual analysis of the different aspects of that person's life in terms of social, employment, business connections to different places and so on. And so it's not a matter that can readily be, in terms of my analysis today, identified whether a person is or isn't. But KPMG has been engaged to do a full factual analysis of that matter, which I'll come back to.

And I'll come back to this, but I note that counsel assisting accepted in her closing - this is at live transcript 4140.06 - that we are not in a position to know, in effect, whether the players have been misclassified or not until the detailed audit is done.

**MR BELL SC:** But counsel assisting also made a precise submission that there had been an underpayment of duty of the order of $2.5 million based upon the misapplication by Mr Hawkins of SOP 6 in relation to the patrons in question.

**MS RICHARDSON SC:** Yes, that submission was made. So I'll come to that. But the short answer, we say, to that is there was evidence that Mr Hawkins did not apply the SOP properly in respect of at least one individual. But we say that that does not - a breach of the SOP does not necessarily mean there has been an underpayment of duty. It certainly raises a live issue as to whether there has been. But, in fact - so it would be open to the review to make a finding, that in respect of that individual, that Mr Hawkins did not follow the SOP properly in that respect. But it would not be open to make a finding that there had, in fact, been an underpayment of duty. Rather, the KPMG audit that is taking place will be looking at those matters in detail.

**MR BELL SC:** Well, that's really the issue that I've been raising with you, because it seems to me that there's an agreement between the State and The Star which talks about "ordinarily resident" without providing any guidance as to how that's to be determined. There's then an internal control manual, which is approved by the authority, which requires The Star to follow its SOPs. And in terms of what Mr Hawkins' task was, he was therefore required to follow SOP 6 in relation to the 14 residents in question.

**MS RICHARDSON SC:** We accept those integers of the analysis, but we say that you could not make a finding as to whether had been an underpayment of duty, because that turns not on whether a SOP had been breached, but it turns on the requirement under the contract. We accept it raises a real issue in relation to that person, given the shortcomings in Mr Hawkins' review of that person, but that that issue will be conclusively resolved by the audit that KPMG is doing, among other persons.

**MR BELL SC:** I think counsel assisting was referring to an audit which was managed and controlled by the authority rather than a private audit prepared by The Star itself, but I take the point that you're making.

**MS RICHARDSON SC:** I hadn't understood that, but I will just foreshadow that one of the documents that we will - that is not before the review yet but that I will address you on in the directions hearing at 2, is the engagement scope of works of KPMG showing the breadth of the audit that they have been engaged to undertake.

**MR BELL SC:** Yes. Thank you.

**MS RICHARDSON SC:** So I was just referring to Mr Power's advice and the fact that it was clearly based on the advice that he had obtained externally. The next relevant point is that after receiving that request from Mr Power that there was a need to do an urgent stocktake about rebate play, the evidence is that Mr Hawkins asked Mr Whytcross to assist with the requested review - that's Mr Hawkins' witness statement at 20 - and Mr Hawkins and Mr Whytcross explained the steps to conduct that review, which commenced in about September of 2020, and we see that from exhibit A0623.

So the first step is that at Mr Hawkins' request, Mr Whytcross, assisted by others in his team - and this is Mr Whytcross' evidence at T1102 - compiled a list of players who had had any rebate activity from 1 July, being the date that rebate play was reactivated after public health orders had been lifted, and that's Mr Hawkins' statement at 22. And that process identified 25 players who had participated in rebate play from 1 July 2020 until the date of Mr Hawkins' review, and Mr Hawkins sets that out in his statement at 23.

Then Mr Whytcross and his team identified, from among those 25, 12 patrons out of the 25 who had rated play after they passed their 183-day mark in Australia. And you will recall that those 12 patrons were marked and shaded in red in the spreadsheet that Mr Whytcross prepared. So as you will recall, the rebate play SOP that was applicable at the time, version 6, provided that, as a general rule, the patron had to be in Australia for less than 183 days out of a rolling 12-month period to be considered non-resident.

And as a consequence, Mr Whytcross provided Mr Hawkins with copies of residency information for each of the 12 patrons identified. That's Mr Hawkins' statement at 25 and 26, and Mr Whytcross' evidence at 113.30. Mr Whytcross and his team also compiled a spreadsheet summarising various details about these 12 patrons, including their patron ID, date of entry into Australia, date on which they had reached 183 days in their last play date. That's at exhibit A0624.

The next step is that Mr Hawkins reviewed the player information and formed a view that, based on that information and COVID-related circumstances impacting Star and international borders, that the 12 patrons identified were non-New South Wales residents and that each of them had been appropriately permitted to play on the rebate program, and that's in Mr Hawkins' statement at 28 and his oral evidence at 2595.12.

Notwithstanding his conclusion that they had been appropriately permitted to play, his evidence was that he did reclassify those patrons in light of the concerns in Mr Power's email, and that evidence is in his witness statement at 29. Mr Hawkins was extensively cross-examined by counsel assisting in relation to his review and, in particular, in relation to compliance with what my learned friend termed the 183-day rule. And two of the 12 patrons identified out of the 12 patrons in Mr Hawkins' review, being the first two in that list of 12, [Redacted] --

**MR BELL SC:** I don't think you should --

**MS RICHARDSON SC:** Sorry.

**MR BELL SC:** Operator, can we delete the name of that person from the live record, please.

**MS RICHARDSON SC:** I apologise.

**MR BELL SC:** That's okay.

**MS RICHARDSON SC:** I apologise.

**MR BELL SC:** That's okay. So it was the first two of the 12?

**MS RICHARDSON SC:** Yes. Thank you. So the cross-examination was in relation to the first two people in that list of 12, which is at exhibit A0624. So we make a number of submissions about that. First, as I've already averted to, we say the focus on that 183-day so-called test - we wouldn't call it a test, we would call it a rule of thumb or benchmark - distracts from the real issue. That is because there is no bright line rule or, as counsel assisting accepted, any guidance in the 2020 casino duty agreement. That's at live transcript 4138. There is no guidance delineating individuals who are in New South Wales for more than 183 days from those who are not.

While it may be accepted that earlier versions of the SOP, including the one applicable at 4 September 2021, indicated that a person "generally" must be in Australia for less than 183 days to be a non-resident of Australia, it is not the case that a person who is in Australia for more than 183 days is necessarily an Australian resident. As both King & Wood Mallesons and Mr Power advised, the question turns on more and, as we have discussed, involves an analysis of the behaviour of the individual while they're in New South Wales, the purpose of their presence in New South Wales, together with the period that the person is in New South Wales. And as counsel assisting submitted, at live transcript 4138.40, a more nuanced approach is necessary to this question.

We submit that Mr Hawkins took these matters and - understood these matters and took them into account when forming his views, and there's evidence to that effect at T2572.10 from him. And it's also to be inferred from the fact that he was sent the memorandum from Mr Power expressly advising him in that respect. Mr Hawkins repeated evidence under cross-examination that he generally used 183 days as a guide to assess the status of the 12 persons and took into account what he called mitigating circumstances, and that evidence was given at T2593.39, 2599.07 and 2600.07. I think the inference about mitigating circumstances is COVID and the fact that the borders were closed.

We submit that that approach accords with commonsense, that a person who is, per force of border closures, unable to return to their ordinary place of residence, due to either the Australian Government preventing them from leaving or their home government preventing them from entering, that such a person would not ordinarily be resident in Australia.

**MR BELL SC:** But Mr Power had expressly told Mr Hawkins not to take that into account, had he not?

**MS RICHARDSON SC:** No. He, my understanding is, expressly directed him not to take into account the number of days that the casino was closed.

**MR BELL SC:** I see. Yes. Thank you.

**MS RICHARDSON SC:** Put another way, previous versions of the rebate SOPs may have used 183 days as a proxy to determine eligibility, but it would be unsafe for the review to conclude that a person who had been in New South Wales for more than 183 days was necessarily ineligible for rebate play and, therefore, that there had been an underpayment of duty.

And as I've alluded to, even though it would be open for the review to find that Mr Hawkins did not comply with the SOP in relation to two of the patrons - two of the patrons that he was cross-examined about, non-compliance with an SOP doesn't equate to underpayment of duty under the agreement, although we accept it raises a real issue about that question that has to be resolved.

Thus, we say that the review ought not, without more, accept counsel assisting's submission that there has, in fact, been an underpayment of duty in respect of the person whose name I won't read out, but he's the second person in the list of 12 at exhibit A0624, and that submission made by my learned friend is at live transcript 4142.19. We would also emphasise in this respect that the operative versions of the SOP at the time did not prescribe 183 days as a bright line rule but used the language "generally" and so on.

The next point we would make relates to whether it was appropriate to disregard the period during which the casino was closed during the pandemic, and Mr Hawkins gave evidence about this at T2572.32. He did give evidence that he thought that the period of casino closure could be excluded in determining eligibility - and that evidence is at T2573.41 - and that approach was consistent with the approach that the regulator in Queensland had adopted, and we see that in the letter from the Queensland regulator at exhibit G0782.

In any event, it doesn't arise because Mr Hawkins said - or he gave evidence that he did not, in fact, exclude casino closure days in his assessment - and that evidence was given at T2574.13 - despite the fact that Mr Whytcross had modelled that scenario in the spreadsheet, and that's the spreadsheet at exhibit A0624. And Mr Hawkins confirmed that he did not take that into account in his evidence at T2586.46. Sorry, I should have said that Mr Whytcross modelled the casino closure days in exhibit A0623, not 624.

Thus, we submit that the review should not accept counsel assisting's submission that TSEG excluded the days when the casino was shut as part of this review, and

that submission was made by counsel assisting at live transcript 4138.27. And obviously, in the final written submissions, we will be giving final transcript references to all of these matters. So as I have discussed, Mr Hawkins and his team reviewed the eligibility of any person who had rebate activity after 1 July 2020 after passing the 183-day proxy benchmark and reviewed their eligibility for play, and the days the casino was closed didn't play any part in the identification of those players.

The next submission we make is in relation to counsel assisting's cross-examination of the person who is the second person listed in the list of 12 players of exhibit A624.

**MR BELL SC:** That's counsel assisting's examination. It's not cross-examination, of course.

**MS RICHARDSON SC:** I'm sorry. I apologise. In relation to that person, being the second person in the list of 12 --

**MR BELL SC:** Yes.

**MS RICHARDSON SC:** -- Mr Hawkins accepted that he had made a mistake as to assessing the sufficiency of the residency documentation in that he had not cited, in relation to the travel documentation, both an entry and exit ticket for that person. He accepted that at T2607.48 and over to the next page. Mr Hawkins' assessment of that patron's eligibility was based on circumstances in addition to the 183-day threshold, although it's clear that Mr Hawkins also took the period that person was in Australia into account when considering his eligibility, and that's apparent from the evidence at T2603.13 over to the next page.

We submit that insofar as Mr Hawkins was mistaken or made an incorrect assessment, there should be a finding that it was inadvertent. And we say the same analysis applies to counsel assisting's examination of the other patron she examined about, which is the first patron listed in the list of 12 at exhibit 0624. So in accepting the same analysis, that involves an acceptance that Mr Hawkins accepted that he made a mistake as to assessing the sufficiency of the residency documentation in respect of that second person, and that in respect of both of them, that he did not, in fact, follow the SOP.

The next submission we make is that the review should not extrapolate findings in respect of those two patrons on whom counsel assisting - in relation to whom counsel assisting examined. An extrapolation could not be made from those two to the remainder of the patrons that were the subject of Mr Hawkins' review. While he accepted there was room for improvement in the process of his review - and that's at T2625 - he was not asked any questions about the other persons. And so we submit that the review would not make a finding about whether he had made

errors in respect of other patrons. In this respect, we would call in aid Mr Hawkins' evidence at T2623.04 and following where he said:

> "I felt at the time I initiated a thorough assessment of the players, and with the records that were presented to me I felt there was relevant information there to form that view. I accept that some of the specific details there may have been inaccurate, notwithstanding the efforts that were made."

And then, Mr Bell, you put to him:

> "But do you accept now, based on what counsel assisting has shown you today, looking at it today, some of those patrons had, in fact, been treated incorrectly as international patrons?"

And as part of his answer to that, he accepted that:

> "Some of the information we've just reviewed indicates that some of that information wasn't completely accurate. I accept that."

And then the question was put by my learned friend:

> "In conducting your review, you did not follow the procedures that were stated in the SOP, at least in respect of the 183-day requirement?"

And he responded:

> "Yes. As I said, there's an earlier reference to 'generally 183 days'."

So we submit it's clear that he was correct to not follow a bright line rule of 183 days.

The next subtopic in relation to rebates is media allegations that employees falsely encouraged local patrons to claim that they live outside New South Wales. As has been referred to, there were media allegations that employees of TSEG had encouraged local patrons to falsely claim they lived outside New South Wales as part of a scheme to minimise the amount of duty payable by The Star. The evidence before the review, it is submitted, does not support the media allegations. Counsel assisting said in closing:

> "There is not clear evidence to support the Sydney Morning Herald allegation."

And that was made at - that acceptance by counsel assisting is at live transcript 4137.29. Further, we submit the review should not accept the submission that there was likely a practice of the interstate and international sales teams of

poaching players and poaching local residents and converting them to rebate players. That was a submission made at live transcript 4137.34.

Mr Walker gave evidence that there were instances of the international rebate and interstate teams poaching local players - that was given at T440 - but he gave evidence that such conduct was limited to a couple of instances, and that was at T2440.39. That conduct was the result of competing sales teams and was motivated by individual staff members improperly seeking to obtain a larger bonus by obtaining larger sales for their division. Mr Walker gave evidence to that effect at 2440.40 and over the page. The evidence is that that conduct was limited and it was stopped quickly.

Mr Walker understood that protocols were put in place so that this shouldn't happen going forward, and that's at T2448.37. And Mr Hawkins gave evidence that his firm view at the time was that such conduct was entirely inappropriate and should not have occurred, and that's at T2638 over to the next page. Mr Walker gave evidence that such conduct was certainly not something that was approved by higher-ups, and that's at T2441.23.

Mr Walker gave evidence that he did not ever observe local players being designated as international or interstate rebate players when he held concerns that they should not have been, and he was not aware of anyone at The Star encouraging others to treat patrons as international or international rebate players when they should have been treated as local patrons. And that's T2441.39 over to the next page.

The other submission we make in that respect is that there was also no commercial incentive to classify an individual as a rebate player, as Mr Hawkins explained, based on the analysis conducted by Pedro Palomares in exhibit I0393. Any reduction in the amount of duty payable by TSEG was more than offset by the margins in the sense of the amount of rebate paid to local players. Mr Hawkins gave that evidence at 2633 over the page to 2634 and also 2640.

**MR BELL SC:** I think he also accepted that that was based on an assumption that the amount of play would not increase as a rebate player.

**MS RICHARDSON SC:** I think that is correct. So I note the time, but I just - I have about three minutes left on rebates. Would you prefer me to stop now or --

**MR BELL SC:** No, I think it would be good if you concluded that now.

**MS RICHARDSON SC:** Thank you. In conclusion, in relation to rebates, The Star acknowledges that there have been shortcomings in the method by which it previously determined the residency of a patron. However, there are a number of matters we say are relevant to the context of that acceptance.

Firstly, there's no clear evidence before the review that there has, in fact, been an underpayment. But in any event, an independent third party has been engaged to audit that matter. So we submit there should not be findings as to actual underpayment of duty in the absence of clear evidence to that effect. Secondly, we submit that any underpayment of tax was not a deliberate or systemic attempt attributable to The Star; rather, that The Star had systems and controls aimed at checking and verifying patrons' residency status in order to determine their eligibility for rebate play.

In respect of the media allegations that there had been a practice of encouraging patrons to falsely make claims about residency, Gadens has been engaged to investigate that matter. But I note in that respect, counsel assisting has accepted there's not clear evidence to support that media allegation. But nonetheless, it's being investigated by Gadens.

**MR BELL SC:** Has Gadens formed any views about that?

**MS RICHARDSON SC:** That process is still ongoing, is my understanding. It's submitted that The Star takes its responsibility to pay the correct amount of duty seriously. The evidence shows that once Liquor and Gaming identified its concerns, Mr Hawkins, together with his team, on the advice of Mr Power, conducted a review of patrons' residency status. The conservatism and caution taken by - is reflected in Mr Power's advice, where he reiterated that care needed to be undertaken in making the assessment. He reiterated that proposition multiple times and, finally, reiterated that:

> "If there is any doubt, the safer approach would be to move any players that we do not presently have substantiation for to a non-rebate category."

We do accept, in this respect, however, that it's regrettable, as submitted by counsel assisting at live transcript 4143, that Mr Hawkins did not proceed to liaise with the finance team at The Star, because after - he reclassified individuals who had previously been eligible to non-rebate players, and the question was put to him by my learned friend as to why he did not follow up with the finance team about that. And we accept that it's regrettable that he did not do that and that that was an error of judgment on his part.

But in relation to that error, Mr Hawkins accepted that consideration needed to be given as to whether there should be some adjustment to the duty paid. He accepted that at transcript 2626 to 2627. In this respect, two board members who were asked about this, being Mr Heap and Mr Bradley, agreed that the failure to follow up the finance team was unsatisfactory. That was Mr Heap at 3433.24 and Mr Bradley at 3469.20. And I note that Mr Hawkins is no longer with TSEG.

In relation to the importance that The Star places on the obligation to pay casino duty, and the seriousness with which the board takes the allegations of

underpayment of duty, it's demonstrated by a number of matters. Firstly, all rebate play has been suspended while this issue is finally determined and --

**MR BELL SC:** Although the board members all told me that that decision was unrelated to this issue of underpayment of duty and was based on broader considerations.

**MS RICHARDSON SC:** I certainly agree it was based on broader considerations as well. But the effect of rebate play is that this issue is paused, if you like, while the audit happens.

**MR BELL SC:** Yes.

**MS RICHARDSON SC:** Each board member accepted that The Star, of course, should be paying any duty it owes and that, if and when rebate play is resumed, the question of any outstanding duty has to be confirmed that it has been resolved. And that evidence was given by Ms Lahey at 3677, 3678 and 3680; Ms Pitkin at live transcript 3613, 3615, over to 3616; Mr Bradley at live transcript 3475 over to the following page and also at 3481; and Mr Heap at live transcript 3430 over to the next page and then also at 3433 and also to the next page. And as I have already adverted to, Gadens is investigating the media allegations and KPMG is conducting the audit about the ultimate amount of duty and if there is any shortfall.

Mr Bell, in relation to the submission of my learned friend about the need for an audit, that was at live transcript 4140.06. And my note of that submission was that the audit should be a full audit so that it can be understood one way or the other whether the international rebate players had been appropriately categorised as such for the purpose of paying duty to New South Wales Government. And this afternoon, I will seek to address you on the terms of the engagement of KPMG to seek to make good that that's an audit that meets that description.

**MR BELL SC:** Yes. Although as I indicated, I had understood the submission to involve the proposition that the audit would involve - be bilateral, involving the regulator as well. But that's certainly the way I had understood the recommendation to be put.

**MS RICHARDSON SC:** I will have the transcript checked. It's not how I had understood it, but I will check the transcript.

**MR BELL SC:** Well, whether or not that was the submission, that's certainly something that I would be interested in you responding to. Whether the audit - in view of the fact that this is a serious matter, that any audit would need to involve the regulator in the process. That's certainly a matter that I would like to hear from you about.

**MS RICHARDSON SC:** I'll take some instructions about that. Other than that point, those are my submissions about the rebates.

**MR BELL SC:** Yes. Thank you. In view of the time, I will now adjourn until 10 past 2, at which time we will commence in private mode.

**<THE HEARING IN PUBLIC SESSION ADJOURNED AT 1:09 PM**

**<THE HEARING IN PRIVATE SESSION RESUMED AT 2:14 PM**

**<THE HEARING IN PRIVATE SESSION ADJOURNED AT 2:44 PM**

**<THE HEARING IN PUBLIC SESSION RESUMED AT 2:44 PM**

**MR BELL SC:** Mr Bell, just before Ms Richardson continues, could I tender some documents, please?

**MR BELL SC:** Yes.

**MS SHARP SC:** Now, you should have a list in front of you, which has - is marked Part Q. There are 40 - well, there are documents numbered 1 to 53 on that list. However, I only tender documents 2 through to 42. If they could be marked as exhibit Q.

**MR BELL SC:** Just before I do that, according to my record, we're only up to exhibit M. I have not got an exhibit N, O or P. Am I missing something?

**MS SHARP SC:** Yes. I apologise. I had understood that exhibit O had been tendered. Could I withdraw that tender just until the mid-afternoon adjournment and I will just check what is happening there?

**MR BELL SC:** Yes. Thank you very much. Yes, Ms Richardson.

**MS RICHARDSON SC:** Thank you, Mr Bell. So the next topic that I will deal with is overseas payment channels. And I should indicate that this is a lengthy topic, so what I am hoping to do is to do it in a more abbreviated fashion at the oral hearing but to give an assurance that the written submissions will be very detailed in terms of seeking to assist the review, of a chronology from start to finish as to all of the key decisions and aspects of the chronology, and that that will come in writing, that we hope will be of assistance to the review. But I won't do it in that detail on my feet. But if there's a factual matter about which you would seek assistance today, please raise it with me because I'm sure, inevitably, it will be in the written submissions in any event.

So this section of the submissions addresses issues raised in the review about a collection of matters that my learned friend dealt with variously in topics 17, 18,

19 and 21, and I will just summarise them. The closure of The Star's bank accounts at the Bank of China Macau, which I will call BOC Macau, which took effect by 31 December 2017.

And could I indicate, Mr Bell, if this is convenient, because this topic, I apprehend, is less likely to be of interest to other separately represented parties. But if there's an area that involves a particular person or a matter that might be adverse, I will indicate the exhibit. But to try and go quicker, I won't give all of the exhibit numbers. But in the written document, there will be very a detailed citation as to where everything is in the review tender bundle. Is that of assistance? It may be that my learned friend will be assisted by exhibit numbers today so that she has got more forewarning than the written submissions coming next Tuesday. It's a matter for my learned friend and you, Mr Bell.

**MR BELL SC:** Well, I think you should just proceed as you plan, and I will let you know if I see a problem with it.

**MS RICHARDSON SC:** Thank you. The first topic is the closure of The Star's bank accounts at BOC Macau by 31 December 2017 and then various channels and facilities that were developed and made available at different times after that closure in relation to overseas-based patrons of The Star. And we've collectively called those payment channels, as I think my learned friend has, overseas payment channels.

So as part of that, we will deal with payments made on behalf of patrons into patrons ' front money accounts at The Star through Mr Kuan Koi, as part of arrangements with him. Next, payments made into the bank accounts of The Star or its related company EEI Services (Hong Kong) Limited, which I will call EEIS, by third parties, including third-party remitters, either to repay a cheque cashing facility or to provide front money for gambling at The Star, some of which payments were made pursuant to the arrangement that evolved from the relationship with Kuan Koi, which I will come to, which we will refer to as the modified Kuan Koi arrangement.

Next topic will be loans provided by patrons to EEIS and their repayment through EEIS bank accounts.

**MR BELL SC:** You mean loans by EEIS?

**MS RICHARDSON SC:** Yes.

**MR BELL SC:** Yes.

**MS RICHARDSON SC:** So because this is a particularly long topic, I just wish to make some summary submissions as to the general position of The Star at the outset. So, firstly, I'll identify the key submission made by counsel assisting and

then our high-level response to it. Firstly, counsel assisting made a submission that the fact that the Bank of China Macau accounts were being closed presented challenges for the business in terms of keeping the flow of funds coming through the casino and that the board was briefed about the reasons for those challenges and the new payment channels that were being explored to replace those accounts. That submission was put at live transcript 4094, 4095.

We, firstly, accept that the board was briefed in relation to those matters, as a general matter. We submit that the way in which the board was briefed on those matters did not - or it gave a level of comfort to the board that what was contemplated in response to those matters did not pose unmanageable legal AML/CTF risks. And, next, the high-level submission is that certain personnel at The Star permitted some overseas payment channels to develop in ways that were not contemplated or identified in materials that were disclosed to the board while (indistinct).

The next key submission that my learned friend made was that the overseas payment channels that were developed were very risky from an anti-money laundering perspective and ought not to have been pursued by a casino operator because of the money laundering and counter-terrorism financing risks involved, and that was at live transcript 4092.48. And what we say in response to that at a high level is that the evidence before the review would allow a finding that overseas payment channels were a high risk from an AML/CTF perspective, and that the review has identified several shortcomings and matters of concern relating to TSEG's conduct in relation to AML/CTF risks associated with some of those channels, which I will elaborate on.

The next key submission put by my learned friend was that a board that was less passive would have engaged in more active stewardship and taken further steps to understand the risks associated with these payment channels. That submission was made at live transcript 4095.4. And the submission we make about that is that - and I will develop this - that the Review, it is submitted, should not make findings that the board acted with passivity or a lack of active stewardship with respect to the risks associated with the overseas payment channels. And I will develop that the way the broad was briefed about the development of these channels gave the board reason to take comfort that they were being developed with the assistance of specialist legal and AML/CTF advice and were being appropriately managed for legal and compliance risks.

Further, with one exception - and that's Mr O'Neill - it wasn't put to any members of the board, including Mr Bekier, by counsel assisting that the board was passive or lacking in active stewardship with respect to understanding the risks in relation to the overseas payment channels, nor was it put to them that there were specific steps that members of the board failed to take in order to fulfil their responsibilities in that regard. So for those reasons, including detailed reasons I

will give to develop that submission, we say that the review should not make that finding that is sought.

The next key submission put by counsel assisting was that a principal objective of the overseas payment channels was to obscure the nature of those transactions and their connection with a casino, because of the overseas patrons' reluctance to reveal the connection - that connection in their bank accounts, and the board was, at relevant times, aware of this objective. And that submission was put at live transcript 4096.26, put again at 4015 and at 4215. They're live transcript references. The broad submission we make in that respect is that the weight of the evidence is such that the review would not conclude that the board or management were motivated by a desire to disguise or obscure or to assist customers disguise or obscure, the ultimate purpose of the payments occurring through them or their connection with a casino.

The next key submission of my learned friend, which is related to the previous submission, is that there was no genuine commercial purpose to the EEIS loans, and that submission was put at live transcript 4125.24. And what we say in broad terms in that respect is that there was a genuine commercial purpose for the EEIS loans, which included providing more flexible credit terms than were available under the CCF.

And the next key submission put by counsel assisting was that when EEIS provided loans, that it was acting as an agent of The Star and, therefore, that The Star or EEIS contravened, or courted the risk of contravening, the prohibition in section 74 of the Casino Control Act on a casino operator or its agent providing credit. And that submission was put at live transcript 4127.33 and following. And we make the broad submission in that respect that EEIS did not act as The Star's agent in issuing loans. There was no breach of section 74 in respect of those loans.

And in terms of the prudence of The Star's approach, we will refer to the advice that was sought from Bret Walker, which is expressly on the topic of whether a company in the group could provide loans in a way that would not breach section 74, and we will place some emphasis on that. However, it is accepted that additional - that it may have been prudent to take an additional step, which was to take additional advice on the question of agency in the sense of addressing that specifically. But we will make detailed submissions about the proposition that there was no such agency that arose.

So the first subtopic I will seek to deal with is what I've described as the bona fides or transparency of, and the board's role in relation to, the overseas payment channels. And that does require some recitation of the history in order to make good the proposition as to the circumstances in which these overseas channels came about. And I will just flag that as I go along, I will be making a number of submissions where it is open, on the evidence before the review, to accept that there were certain AML/CTF risks associated with certain aspects of these

arrangements, and I will set each of those out. But rather than summarise them up the front because of timing issues, I will seek to indicate those as I go.

So the first matter of historical context is just to note that until 1 July 2020, The Star's ability to provide credit for gambling to overseas patrons, as well as local patrons, was highly constrained, and we will set out in writing the history of those relevant constraints. But the result of those constraints was that throughout the relevant period, that The Star offered gambling credit to certain patrons in exchange for personal cheques through a facility known as a cheque cashing facility or a CCF. Thus, until 1 July of 2020, the only form of credit that The Star could offer any patron was through a CCF, and the maximum term of any credit so provided was 30 days. By contrast, a loan through EEIS could potentially allow for longer credit terms.

**MR BELL SC:** I thought I had seen - I thought counsel assisting had taken me to a standard operating procedure or some document of that nature, which, in fact, said that the EEIS loans were limited to 30 days, notwithstanding the evidence that had been given by various individuals about more flexible credit terms.

**MS RICHARDSON SC:** We accept that was the default position, but the difference was that there could be an extension. Whereas, under the Casino Control Act, there cannot be an extension because it's a statutory prohibition by reference to time. I'm instructed that at least one of the loans that was made was for a period longer than 30 days, and I'll make reference to that as part of my address.

As I adverted to earlier, The Star obtained a joint legal opinion from Bret Walker SC and Stephen Free of counsel which unequivocally stated section 74 of the Casino Control Act did not prohibit the provision by persons other than the casino operator.

**MR BELL SC:** My recollection was that that was a very concise opinion which made some reference to the fact it would be necessary to ensure that the third party was not an agent without exploring the circumstances in which such agency might arise.

**MS RICHARDSON SC:** I'll have to refer to that advice. My recollection is it didn't contain words saying "necessary to ensure", but it just noted the terms of section 74, which is that there is a carve-out for the fact that an agent of the casino operator cannot provide credit. So that was just a recitation of the statute without any analysis about what agency would or wouldn't entail.

**MR BELL SC:** Yes.

**MS RICHARDSON SC:** But the relevant matter for present purposes is that what the advice makes clear is that it's expressly contemplated and advised on, is that a

company within the same group of TSEG - that was the premise of the advice. It's not some unrelated person, evidently enough. The reason why the advice was sought was to determine whether a company within the TSEG group could provide loans in connection with gaming that would not breach section 74.

**MR BELL SC:** My other recollection was that the opinion was dated 2012, so it was many years before the relevant events and didn't contemplate the specific events which, in fact, occurred.

**MS RICHARDSON SC:** I accept it was in 2012, which is well before the relevant circumstances. But in my submission, what we take from it is that The Star had advice from an eminent Senior Counsel that a company that was part of the TSEG group, if you like, could provide loans in connection with gambling which would not be a breach of section 74.

**MR BELL SC:** It might be helpful at some point to take me to the opinion because I remember being struck at the time that it didn't provide a great deal of comfort. But that may be an inaccurate recollection.

**MS RICHARDSON SC:** Well, it's at exhibit F1, and the other - I might come back to it after the afternoon tea break. But what we would say is that Mr Walker and Mr Free were advising on section 74 which was in terms that were not relevantly amended after that, so that the pertinence and correctness of that advice, in our submission, was maintained.

**MR BELL SC:** Yes.

**MS RICHARDSON SC:** I accept the advice did not traverse what it means to be an agent and those types of things, but it's still relevant, in the sense of it was express advice about a company within The Star group giving loans for the purpose of gambling that would not be a breach of section 74.

So in terms of the establishment of EEIS, around November 2013, EEIS was established as a Hong Kong company within The Star Entertainment Group that was then known as Echo Entertainment Group - and that's exhibit B540 - to facilitate settlement activities and provide credit to junkets and premium players. That's also exhibit B540. And EEI Services stands for Echo Entertainment International Services, and evidence to that effect was given by Mr O'Neill at live transcript 3835, Mr Whytcross at T1058 and Mr Bekier at T3150.

In May 2014, EEIS was approved by ILGA as a close associate of The Star. That's exhibit B540 at pin site 1555. However, after EEIS was established, it was not activated in the sense that its planned settlement and credit activities were not pursued at that time. Then jumping on forward in time, in September 2017, by that time, certain members of management had again begun contemplating the

activation of EEIS and other initiatives in response to issues emerging from China and the region that were affecting TSEG's international business.

And IRB strategy update document dated 26 September 2017 was prepared by Mr Bekier, who was then CEO, and Mr John Chong, who was president of international marketing, and that is exhibit B0435. And that was presented to a board meeting on that date. And that paper introduced to the board the concept of the EEIS/MMS project. And MMS was an acronym for Macau Marketing Subsidiary. And I won't go through that document in detail, but the document observed various matters, including matters my learned friend has placed emphasis on, for example, that:

> "Chinese Government focus on cracking down on gaming appears to be moderating in respect to Macau casinos, but not foreign operators. Global focus on AML continues to intensify, with direct and indirect implications (indirect including banks tightening their internal controls and customer risk assessments)."

And then there was a specific update about issues in China under a heading China Update, including a reference to Operation Chain Break, which was described as:

> "A campaign to stop the flow of money and connection between high-stake gamblers on the mainland and casinos (including Macau) that had been launched in 2015."

So in describing the implications of those issues for The Star, the September 2017 IRB on board paper identified the need to:

> "Continue to deliver compliant business operations in all markets."

And that's exhibit B0435, pinpoint 1504. So to the - sorry. That board paper also identified four operational risks that were facing the IRB business. That's at pinpoint 1512. Firstly, that The Star was unable to market to Chinese customers directly, either in mainland China or Macau; secondly, it was unable to secure working visas for relevant sales team members; thirdly, there was a risk that bank accounts in Macau which were used to remit funds to The Star might be closed; and fourthly, that some international staff were predominantly domiciled in different locations of their work or for where they held a visa.

To address those concerns, the authors of the September 2017 board paper contemplated activating EEIS, as well as establishing a Macau marketing subsidiary, which was referred to as an MMS - that would be a subsidiary of TSEG - and also considering acquiring a Macau travel agency. We see that exhibit B0435 at pinpoint 1512. And the September IRB board paper explained the rationale for this at pinpoint 1513. But in short, it was:

> "Establishing an MMS and activating an EEIS will enable those entities to enter program agreements directly with junkets in Macau. It's a commonly adopted structure that is expected to assist in obtaining working visas and operating local bank accounts."

And it was also referred that:

> "This new structure would provide a lower risk structure (for Australian casinos licence holders) but would increase reporting and compliance obligations in Hong Kong."

So the first of those matters indicates that the earlier stated risk in relation to Macau bank accounts being closed would be alleviated by having a business presence in Macau, and that is consistent with the unchallenged evidence of Mr Theodore on this topic, which was that the subsequent closure of The Star's bank accounts at BOC Macau was as a result of a policy directive not to maintain transactional accounts unless you had a licensed or operating business in Macau. In the same board paper, Mr Bekier and Mr Chong elaborated on the proposed structure of EEIS and MMS, which we will detail in writing. And the paper also observed, at pinpoint 1514, that:

> "IRB management has begun a high level due diligence process (with Macau based lawyers MdME advising and Manuel Leong acting as broker)."

We make a number of submissions about what the review would draw from the above about the knowledge and intentions of TSEG's members of management and board as at September 2017. Mr Bekier and Mr Chong, who were the authors of the paper, and the board were aware that the Chinese Government had, since 2015, been taking steps of some kind, collectively described as Operation Chain Break, to stem the flow of money from mainland China and casinos outside mainland China, including Macau.

Secondly, that Mr Bekier and Mr Chong understood those measures to centre on preventing and punishing activities within mainland China involving the marketing of foreign casinos and organising Chinese tourists to visit foreign casinos. And that the board was separately, through that paper, aware that, as a separate matter, there was an increasingly global focus on AML, the implications of which included banks tightening internal controls and customer risk assessments.

It may further be understood that a risk about - they identified that there was a risk that the Bank of China Macau accounts might be closed. That the authors of that report, Mr Bekier and Mr Chong - it could be inferred they understood that this was potentially connected with the Chinese Government's efforts to stem the flow of capital from China, but that they viewed the establishment of a business presence in Macau through the MMS and EEIS as a potential way of complying

with that requirement and, therefore, addressing that risk. And so it was envisaged that EEIS would hold a bank account in Hong Kong and that MMS would also hold a bank account, presumably in Macau.

Mr Bekier and Mr Chong contemplated that the MMS would enter into agreements with junkets as an agent for EEIS and that the EEIS would in turn operate as The Star's capital junket and credit provider in Hong Kong. And it was envisaged that this set of arrangements would, in some respects, simplify compliance with gaming regulation in Australia but increase compliance obligations in Hong Kong. This aspect never proceeded, of course, in terms of acting as a junket.

So in those circumstances, it's submitted that any payment channels contemplated through EEIS were not motivated on the part of management or the board by any imperative to disguise a connection between the transactions through that channel and the casino, but rather by the need to have a licensed or active business operation in Macau in order to operate bank accounts there.

In December of 2017, in a board meeting on 6 December, Chad Barton and Saro Mugnaini presented a board paper titled Cheque Cashing Facility Process - that's exhibit B0497 - which set out, at pinpoint 0081, that:

> "Unlike most foreign jurisdictions, casino regulations in New South Wales do not permit The Star to issue credit to players."

And then it went on to say:

> "Relative to direct credit, the CCF is administratively more cumbersome and has real drawbacks from a customer point of view as Star is forced by regulation to bank cheques within the relevant period after presentation. The CCF also tends to inflate receivables relative to a direct credit model as all cheques held at the end of play are immediately classified as receivables."

And we submit that this is another indication that a business case remained for indirect credit to be provided to Star's patrons through a separate entity, such as EEIS, in circumstances where the only direct credit that The Star could offer was through a CCF.

On 7 December 2017, it was recorded in an email from John Chong on that day that he had met with others with Kuan Koi, who was described as a long-term client of The Star, and that is at exhibit 0506 at pinpoint 7718. And he had been identified as someone who might be able to provide assistance with settlement of patron CCF debts in the face of the imminent closure of the Bank of China Macau accounts, and that's in the same exhibit at pinpoint 7717 and 7718. On 31 December 2017, The Star's bank accounts with Bank of China Macau, which had

previously accepted deposits by patrons, were closed. And that - evidence for that is in exhibit B0539 and also B0540 at pin cite 5514.

On about 19 January 2018, The Star Entertainment International Pty Ltd entered into a client management agreement, negotiated by management with Kuan Koi, under which he would facilitate the payments by international patrons to The Star to repay patron CCF debts. And that client management agreement is exhibit B0523. That arrangement, including as it expanded to incorporate front money payments is - I will refer to that as the Kuan Koi arrangement.

So the Kuan Koi arrangement was intended to service an interim arrangement under which Mr Koi would act as a service provider until the EEIS/MMS initiative was approved and becomes operational, and we see that at exhibit B0539 and exhibit B0540 at pin site 5517. It was described that this was so that in the interim period, before EEIS and MMS became operational, that:

> "IRB premium and junket patrons would be able to repay outstanding CCF balances from Macau (mainly in cash)."

And the same references are for that. That's exhibit 539 and 540. So in summary, the arrangement under the client management agreement with Kuan Koi involved him accepting cash from the patron in Macau and transferring his own money - his own funds from his front money account that had been paid in from his bank account to the patron's account at The Star in settlement of the patron's debt. And that process is described in a memorandum from Mr White to Greg Hawkins dated 26 August 2019, which is exhibit B1579.

**MR BELL SC:** Is there any evidence about how Mr Koi transferred the value that he had received in cash in Macau to his front money account in Sydney?

**MS RICHARDSON SC:** I don't know whether there is, but could I take that question on notice? I will seek to address it after afternoon tea.

**MR BELL SC:** Yes.

**MS RICHARDSON SC:** For simplicity, the Kuan Koi arrangement that I've sought to summarise is depicted in the McKern report at paragraph 8.4.3, and the citation for that is - sorry, I've given you the citation. It's 8.4.3 of that report.

So at this stage, the arrangement only related to CCF payments. Mr Whytcross was part of a working group that established the Kuan Koi arrangement. That's at T989. And before the client management agreement was entered into with Oliver White - sorry, was entered into, Oliver White obtained legal advice from Anthony Seyfort of Ebsworths on the legal and regulatory implications of the proposed arrangement, in particular in relation to Australian AML/CTF law. Mr Seyfort generally endorsed the model that was proposed and later provided comments on a

draft of the client management agreement, and we see that at exhibit G0070 and G0329.

Mr Seyfort advised, among other things, that the proposed arrangement should undergo a thorough risk assessment and that the AML/CTF program needed to manage and mitigate AML/CTF risks through the design of procedures, including the matching of players' funds through the junket operators, i.e., Kuan Koi, and players' own accounts, as well as transaction monitoring. And that's exhibit G0070. And I will come in turn to the risk assessment that was done in relation to the Kuan Koi arrangement.

Before the client management agreement was entered into with Kuan Koi, Skye Arnott separately conducted a risk assessment of the proposed arrangement under the agreement, the results of which were later embodied in a report produced in February 2018. Ms Arnott gives evidence about that at witness statement 90, and the risk assessment is at B0626. And I'll come to later, but that risk assessment was then updated when a supplementary agreement was entered into with Kuan Koi.

So it's accepted that the Kuan Koi arrangement was an expedient intended to overcome the fact that The Star no longer had a bank account in Macau that could accept payments from foreign patrons. And as I've indicated, at the time, it was expected eventually to be resolved, in the relatively short term, by the opening of bank accounts in the name of EEIS or MMS.

There was then a - starting from about January of 2018, an EEIS project team and an EEIS steering committee who were working on the development of these activities. Mr Bekier confirmed in evidence that he was on the EEIS steering committee. That was at T3150.26. Mr Whytcross was the project sponsor and co-project lead with Oliver White, and that's in Mr Whytcross's evidence at T1052.23. Mr Whytcross gave evidence that the EEIS working group included himself, Mr Aloi, Mr Hornsby, Mr White, Mr Procter and Joanne Moore. And that's at T1049.

Ms Arnott also gave evidence that she was in the EEIS working group - that's at T1551 - and Mr Theodore gave evidence that he was on it too, as well as on the EEIS steering committee - and that's at T2960 - suggesting there was some overlap in the membership of those bodies. Ms Arnott gave evidence that it was the EEIS steering committee that set the parameters, approved things and was generally kept abreast of the activities of the working group and the progress, and that the working group comprised more junior-level staff who were working through the issues at the time, and that's at T1511.25.

By about mid-January 2018, it was contemplated that the EEIS AML/CTF program would comply with the AML/CTF laws of Hong Kong, Macau and Australia, even if, as a Hong Kong incorporated entity, it was not strictly required

to comply with Australian law, and that's in exhibits B0539 and B0540 and also at C0029. At that point, TSEG was in the process of obtaining advice from external law firms in Australia, Macau and Hong Kong concerning the AML/CTF aspects of the proposed EEIS/MMS arrangements. And, again, we see that in exhibit B0539, 540 and C0029. We submit this indicated a genuine concern to comply with the laws of all jurisdictions in which those arrangements might operate.

I note the time. I'm about to go on to a different timeframe. Is that convenient, or shall I keep going?

**MR BELL SC:** No, that's convenient. I will now adjourn for 15 minutes.

**<THE HEARING ADJOURNED AT 3:30 PM**

**<THE HEARING RESUMED AT 3:47 PM**

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

**MS RICHARDSON SC:** Thank you, Mr Bell. Sorry for the delay. So in relation to February 2018, from about 5 February '18 - this is according to the supplementary McKern report - The Star began to accept patron payments via licensed remittance service providers into its bank account held at the NAB in Australia, which I will refer to as The Star NAB account. That's in the McKern's supplementary report at appendix C2. Payments of that kind into The Star NAB accounts ceased on 22 April 2020, and that's also in McKern's supplementary report at appendix C2.

On about February 2018, The Star Entertainment International Pty Ltd and Kuan Koi entered into a client management supplementary agreement which expanded the earlier arrangement. Under the expanded arrangement, Kuan Koi would facilitate not only CCF repayments but also payments to be made available for international patrons' front money accounts for gambling. And that supplementary agreement, I think - I don't have an exhibit - I think that's one of the documents that will be in exhibit Q. It's STA.3008.0006.4464.

Before entering into the supplementary agreement, Mr White had sought legal advice from Mr Seyfort of HWL Ebsworth - that's referred to in exhibit F0076 - who had advised on the legality and implications under AML/CTF law of Australia of the expanded arrangement and had provided a draft agreement that was consistent with his advice, and we see that at exhibit F0076 and F0077. So that supplementary client management agreement will be part of exhibit Q.

Around the time that the supplementary agreement was entered into, Ms Arnott also amended her risk assessment to address the expansion of the Kuan Koi arrangement under the agreement, and her assessment remained that the AML/CTF risk associated with the expanded Kuan Koi arrangement was low. And

that's exhibit B0626 at pinpoint 6741. In this respect - and I will come to this in turn - Ms Arnott accepted in oral evidence that, in retrospect, this assessment was not correct, although it did reflect her belief at the time. And where she gave that evidence is at T1504.25.

On 7 February 2018, the board received a board paper concerning the Kuan Koi arrangement without referring to him by name. And that paper is - a version of that is at exhibit - I will have to get the correct exhibit number - 0672. We will just work out that what correct exhibit number is. In that board paper, the Kuan Koi arrangement was described, and the board paper observed that the chief risk officer, Mr McWilliams, had conducted an AML/CTF risk assessment of the arrangement and concluded, after taking legal advice, that it did not require additional approvals from AUSTRAC and that the risk related to the interim arrangement is:

> "Low after the recommended amendments to the AML/CTF program are applied."

And I will just have to get the exhibit reference. That's at exhibit M0014. It also noted that a detailed risk assessment was being conducted in relation to the longer term EEIS/MMS proposal, and noted that legal advice had been obtained in relation to the interim arrangement, including on both Australian and Macanese AML/CTF requirements. And it summarised amendments that were required to be made to TSEG's AML/CTF program and sought the board's approval of those amendments. And the details of those amendments were marked up in a copy of the program that were appended to the board paper. That's exhibit M0014 at pin cite 7308 to 7309.

Approximately half an hour after receiving the board paper that I've just referred to, the board received an email attaching a substantially identical board paper except that the cover email observed that the paper was updated to include additional information under “Background” and, as part of that, Kuan Koi was specifically named. Also, it referred to the fact that a credit risk assessment had been done on Mr Koi and that various matters supported the risk management of using him as an intermediary. And that's M0015 and M0016.

The information about the Kuan Koi arrangement provided by the two versions of the board paper that I've just described, including the references to Macanese and Australian legal advice obtained, the chief risk officer's risk assessment concluding that the arrangement involved low risk and the updating of the AML/CTF program and the interim arrangement scheduled cessation by July 2018, served to provide comfort to the board about the appropriateness of the interim arrangement.

On 8 February 2018, the board resolved, by circular resolution, to adopt a new version of TSEG's AML/CTF program that had been recommended in the paper of

the previous day. Then in March of 2018, there was a second board meeting at which the proposed IRB restructure was discussed. And that's at exhibit C0037. And by then, the legal and operational structure of the IRB business contemplated by the EEIS/MMS project had evolved. There was a board paper presented by Mr Chong at that meeting - that's exhibit C0037 - which provided a status report on the project. And that's - a board paper by Mr Chong is exhibit B0699, which said:

> "The recommended legal structure has been amended to include two companies in Hong Kong to ensure compliance, one to provide funding to junkets and another to market and enter into rebate agreements with customers as well as being sole junket operator engaging with each casino licence holder."

That March 2018 IRB board paper by Mr Chong now contemplated that the company funding junkets would be EEIS, which was described there in as the EEIS money lender, and that the sole junket engaging through program agreements with casino licence holders would be a new entity, called EEIS Services (Hong Kong) Holdings Limited, which I will refer to as EEIS junket for short, and that's at exhibit B0699.

That board paper noted that the EEIS/MMS project was intended to address the key issues of the potential closure of Macau bank accounts and the difficulty of securing working visas for Chinese sales team members in Hong Kong and Macau. The paper observed that the closure of the Macau bank accounts would have an negative impact on EBITDA unless rectified. And the board paper observed - this is exhibit B0699 at pin cite 0674 - that:

> "The new structure will respond to these issues by -"

Bullet point 1:

> "Establishing a new Macau registered entity, the MMS, to market Macau licensed junkets and to collect debts on behalf of the Hong Kong junket company. The MMS will then have full legitimacy to operate in Macau, including holding bank accounts and employing both local staff and staff working with visas."

And then the second bullet point was:

> "Establishing EEIS Services as a licensed money lender and licensed remittance agent thus changing the nature of the payments from customers to being repayment of loans in Hong Kong from repayment of gambling debts in Australia."

So consistently with that, the board paper added - and this is at pin cite 0770 - that:

"The EEIS/MMS framework amends the existing legal and operating structure of TSEG's international business and although it continues to evolve, it has been developed to ensure risk is mitigated while also achieving the objective to have a business presence in Macau (which management expect will allow banking facilities to be established)."

So we submit that the observations I've just drawn attention to are consistent with the evidence I've already sought to lay out, that the individuals involved in developing the EEIS project understood the risk of closure and the subsequent closure of the Bank of China Macau accounts to be related to The Star not having a licensed or operating business presence in Macau. It's also consistent with the evidence I've discussed that those individuals believed that establishing such a presence in Macau through the contemplated EEIS/MMS arrangements would, therefore, allow the opening of bank accounts there.

**MR BELL SC:** So the interim arrangement with Kuan Koi was principally designed to allow patrons in Macau to make cash - at least initially, to make cash repayments to Kuan Koi, and that was an interim arrangement designed to be superseded by what you've described as the EEIS/MMS arrangement. But it was MMS --

**MS RICHARDSON SC:** That's correct.

**MR BELL SC:** But it was MMS specifically that was designed to take over the role which Kuan Koi had had, in the sense that it was designed to be the debt collector in Macau; is that correct?

**MS RICHARDSON SC:** I don't think that the latter part is correct.

**MR BELL SC:** You told me that this paper - and I'm sure we have looked at it before, but the paper proposed that EEIS would be the money lender. But you said that one of the roles of MMS would be to collect the debts. So I'm just trying to clarify whether --

**MS RICHARDSON SC:** Sorry. Sorry. It did say that MMS - establishing a new Macau registered company, the MMS, to market Macau licensed junkets and to collect debts on behalf of the Hong Kong junket company, yes.

**MR BELL SC:** So it was the MMS entity which was designed to take over the debt collection role which Kuan Koi had, on an interim basis at least, as it was told to the board at this time?

**MS RICHARDSON SC:** Could I take that on notice? I don't know whether that's exactly correct, but I will seek to address that, if I may.

**MR BELL SC:** Yes. Thank you. I want to understand what the board came to understand the role of EEIS was, once it was no longer proposed that the MMS subsidiary would operate.

**MS RICHARDSON SC:** I will address that specifically.

**MR BELL SC:** Thank you.

**MS RICHARDSON SC:** March 2018 IRB board paper informed the board that the proposed EEIS structure would be compliant in Australia, Hong Kong and Macau, and that TSEG had prepared presentations to the New South Wales and Queensland regulators outlining the new structure and highlighting areas requiring specific approval or evaluation, including, in New South Wales, close associate status and potential changes to ICMs, and that's exhibit 0699 at pin cite 0779.

**MR BELL SC:** Is there any evidence that the company - that Star had any dialogue with the New South Wales regulator in 2018 about EEIS, or did it rely on the approval in 2014?

**MS RICHARDSON SC:** There is evidence, and I'll come to it. There was a specific presentation made to ILGA. I'll come to that in a moment. In relation to the second bullet point in the board paper that my learned friend has placed some emphasis, that:

> "Establishing EEIS Services as a licensed money lender and licence remittance agent thus changing the nature of the payments from customers to being repayment of loans in Hong Kong from repayment of gambling debts in Australia."

I just seek to address that because a number of submissions have been made about it.

**MR BELL SC:** Yes.

**MS RICHARDSON SC:** We say - counsel assisting submitted that it should be assumed that members of the board were astute readers and that the astute reader of that passage would detect that there was an objective of obscuring the nature of the transactions, and that's exactly what was stated there. That's at live transcript 4096.26. It's submitted that those contentions would not be accepted.

Firstly, the passage expressly states that the nature of certain transactions would be changed, which, of course, was correct, and that conveys that the transactions would take on a different substantive or legal character. It did not convey that the character would remain the same but be obscured. Secondly, we say the passage conveys that the purpose that the effecting of that substantive or legal change had

to do with the nature of the new business that would be established in Macau through EEIS and MMS, and that this would be done lawfully.

Counsel assisting also later submitted at live transcript 4215.33 that this board paper stated:

> "This will change the appearance of the transactions."

We submit that, plainly, the paper did not say that. Similarly, counsel assisting submitted at live transcript 4127.9 that the board was told either, in the March 2018 IRB board paper or someone else - it wasn't clear on the basis of the submission:

> "We have a problem here in moving money because the Bank of China Macau accounts have shut, and we have another problem because our patrons are reluctant to have it appear on their bank account statements that they are moving money to a casino."

We submit that there's nothing in the March 2018 IRB board paper or any other communication to the board at this time that conveyed that information.

In terms of interactions with the regulation that you raised with me a moment ago, on 27 March 2018, The Star gave a presentation to ILGA about the proposed restructure of its international business, including the EEIS money lender and EEIS junket aspects, which explained the relevant features of the proposed restructure. And that's exhibit M0019.

**MR BELL SC:** I would be grateful if you would take me to that document.

**MS RICHARDSON SC:** Certainly. So just for the record, the email that shows that this was presented to ILGA is at M0017, which - it attaches - and other exhibits showing that the presentation was made to ILGA are at J0030 and J0031. All of this will be set out in detail in our written submissions.

**MR BELL SC:** Sorry. I don't recall being shown this document before. Can I just have a moment to read it, please. This doesn't indicate that the document on the right-hand side of the page was provided to ILGA, does it?

**MS RICHARDSON SC:** That's proven by J0030 and J0031.

**MR BELL SC:** Could I see those, please? Yes. Thank you. Could you take me through the presentation?

**MS RICHARDSON SC:** So we see there the executive summary.

**MR BELL SC:** Sorry. I just would like to read the executive summary, if I can.

**MS RICHARDSON SC:** Certainly.

**MR BELL SC:** Yes. Thank you.

**MS RICHARDSON SC:** So you see there on that page, Mr Bell, that the third paragraph starts:

> "The project is required in order to respond to -"

Firstly:

> "Regulatory changes in offshore jurisdictions where Star VIP customers reside requiring SEG to evolve their offshore structure; closing Macau bank accounts by Bank of China; changes relating primarily to anti-money laundering/CTF requirements."

And so on. So we submit it's foreshadowing the matters that were in the board paper that these are set out to the regulator. And then if we could go over to page 5 of the presentation. And we see there in terms of - the first bullet point describes:

> "Achieving an objective of having a business presence in Macau (which management will expect allow a banking facility to establish)."

And the key components are EEIS money lender, EEIS Services (Hong Kong) Limited, providing loans to players with personal cheques, and that they:

> "Will hold a master CCF with each casino operator from which customers will draw down their own front money account."

Which, of course, matched what, in fact, happened with EEIS as a lender. And the next two structures were EEIS junket and, separately, MMS, which were structures that were not ultimately adopted.

**MR BELL SC:** Is there anything else in that presentation that you want to draw my attention to?

**MS RICHARDSON SC:** Just over the page, on page 6. It has got, in effect, an organisational chart where you see, in terms of the second layer, there's, on the far left, Star Pty Ltd, being the New South Wales licence holder; secondly, EEIS money lender, which ended up being the EEIS entity. So - and then you see in the first bullet point on the left:

> "EEIS money lender is a licensed money lender in Hong Kong (which is also seeking a licence to act as a remitter) and will operate a cheque cashing

facility with both casino operators. This entity has been approved as a close associate of The Star Pty Ltd."

So there was a clear disclosure to the regulator that there was a proposal that a company within the TSEG group would be providing credit for the purposes of gambling in this way. Those are the main points we would wish to draw attention in relation to that presentation made to ILGA.

So as I indicated, the executive summary of that document disclosed that the purpose of the restructuring project included responding to regulatory changes offshore - in offshore jurisdictions where Star VIP customers reside and the closing of Macau bank accounts held by the Bank of China. So there was no obscuring of that fact. It was also noted in that - as part of that document that the changes proposed by the restructure related primarily to AML/CTF requirements, as well as ensuring TSEG continues to comply with all local regulations in Macau and Hong Kong.

On 31 March 2018, Adrian Hornsby, who was then the general manager of VIP credit and collections, informed various members of the EEIS project team and Mr Hawkins by email that Kuan Koi had advised that the Bank of China Macau had blocked all his wire transfers, issuances of cashier orders and personal cheques from his Macau accounts, and that he could no longer continue his contractual relationships with The Star. And that's exhibit --

**MR BELL SC:** What was that date?

**MS RICHARDSON SC:** 31 March 2018.

**MR BELL SC:** Thank you.

**MS RICHARDSON SC:** And the exhibit reference is B0707. There's no evidence that this was reported to the board. So this is the point at which, if you like, the formerly contemplated Kuan Koi arrangement ended because of the closure of those accounts, and it then morphed into a different arrangement, which I'll come to. Perhaps that document could be taken down because I've moved on from that.

In April of 2018, EEIS opened an account with NAB in Australia. That's in Ms Martin's statement at 110. It's also in exhibit B3421. That account was opened with the aim that it be used in connection with EEIS's proposed loans and remittance services businesses, and it's the same citation for that. In May of 2018, EEIS's AML/CTF program was finalised --

**MR BELL SC:** Sorry. Just pausing there, the documents that you've referred to, or taken me to, show that the board and the regulator were informed about the proposed money lending role. Is there any evidence that the board or the regulator were informed at this time about a proposed role as a remittance agent?

**MS RICHARDSON SC:** Could I take - just because it is quite technical, take that on notice so that I'm sure I'm giving an accurate answer to that?

**MR BELL SC:** Yes.

**MS RICHARDSON SC:** So from early May 2018, CCF payments were also permitted through the EEIS NAB account. But other payments, such as deposits of funds for gambling before play, were not permitted. Ms Martin sets that out in her statement at 180, and it's also in a memorandum by Oliver White at exhibit B3421.

**MR BELL SC:** So because of the close conjunction in time, should I conclude that the opening of the EEIS NAB account was related to the closure of Mr Kuan Koi's accounts in Macau?

**MS RICHARDSON SC:** There's no evidence that would support an inference either way in that respect --

**MR BELL SC:** Yes. Thank you.

**MS RICHARDSON SC:** -- in my submission. I mean, the EEIS project was already in contemplation and the Kuan Koi arrangement was only ever interim, so I think the natural inference is it's a coincidence.

**MR BELL SC:** Although you said it was set up to act as remitter. When you introduced the opening of the account, you said the evidence was to permit it to act as a money lender and a remitter; is that right?

**MS RICHARDSON SC:** The EEIS NAB account, there is evidence to support, and that's in Ms Martin's statement at 180 and Mr White's memorandum at exhibit B3421.

**MR BELL SC:** Thank you.

**MS RICHARDSON SC:** That NAB account was opened with the aim that it be used in connection with EEIS's proposed loans and remittance service business. Then during May 2018, the operation of the Kuan Koi arrangement morphed, such that third-party remitters began depositing funds into EEIS bank accounts on behalf of Kuan Koi, and I refer to that as the modified Kuan Koi service. And evidence to that effect was given by Ms Arnott at T1504, 1505 and also at 1533.

There's also - the modified Kuan Koi service was not expressly reflected in the client management agreement with Kuan Koi or the client management supplementary agreement and does not appear to have been formally approved. And we will give references to transcript given in private session to that effect by

Ms Arnott and Mr White. In respect of the modified Kuan Koi arrangement, The Star had not undertaken a legal and risk assessment before offering it.

**MR BELL SC:** So was this new role for EEIS as a remitter, which seems to have emerged in April 2018 and is referred to by Ms Martin - was that in consequence of the closure of the Kuan Koi bank accounts, or is there any evidence to assist in relation to that matter?

**MS RICHARDSON SC:** I'll have to take on notice whether there's any evidence that suggests that's connected or not. I can't answer that at the moment.

**MR BELL SC:** Yes. Thank you.

**MS RICHARDSON SC:** The evidence supporting the proposition that The Star did not undertake a legal and risk assessment of the modified Kuan Koi arrangement before offering it is in a memorandum from Mr White dated 26 August 2019, which is exhibit B1579, and Ms Arnott also gives that evidence at T1505.20.

The evidence supports a finding that the modified Kuan Koi service was a practice implemented initially by Adrian Hornsby - Ms Arnott gave that evidence in private session at T16 - and that it was an adopted by the VIP credit and collections team that was managed by Mr Hornsby, and we see that in an email dated 31 May from Micheil Brodie to Skye Arnott, which is exhibit A0106. Just one moment. That's exhibit B1579.

I apologise, the better reference is at A0060. That it was disclosed to Micheil Brodie and Skye Arnott on 31 May 2018, and that's in an email dated 31 May 2018 from Micheil Brodie to Skye Arnott, which is exhibit A0060, and that the substance of the arrangement was disclosed to Oliver White and, through him, to Greg Hawkins, Paula Martin and possibly Michael Whytcross in late August 2019. And we see that from the memorandum that Oliver White wrote on 26 August 2019 to those persons, which is exhibit B1579.

**MR BELL SC:** You have taken me to quite a number of board papers where the board was informed about the proposal and the early stages and up to the end of March 2018. Is there any evidence that the board was kept informed of what was, in fact, occurring after that time?

**MS RICHARDSON SC:** There is evidence in relation to other matters. But in relation to the modified Kuan Koi arrangement, that was not disclosed to the board. And the evidence suggests that it was not formally approved; it was, rather, something undertaken by Mr Hornsby and the VIP credit collections team. So just to confirm, there's no evidence that the board was informed of the practices involved in the modified Kuan Koi service at any time. And my learned friend asked various TSEG directors about it, and they all confirmed that they were not

informed. And we will give, in footnotes, T references to where each of them confirmed that fact.

**MR BELL SC:** It seems to have been from about this time of what you've described as the morphing of the relationship that both the board and many members of senior management just lost oversight of what was actually occurring.

**MS RICHARDSON SC:** Well, in respect of the modified Kuan Koi service, we say that is a finding that would be open to the review in respect of this particular channel. But in terms of losing oversight, the board actually weren't told that it was happening. And I'll come at a later point to make a series of submissions about shortcomings, that it would be open to the review to find, in relation to the modified Kuan Koi arrangement in particular.

On 24 May 2018, a board meeting was held, at which a further report on the EEIS/MMS project was presented. I will refer to that as the May 2018 IRB board paper. Exhibit B0821. And the board paper summarised the history and purpose of the EEIS/MMS project as follows. It was described as:

> "A strategic initiative to establish a Macau marketing subsidiary via EEIS Services Hong Kong, referred to as EEIS money lender. It was raised by IRB management at the September 2017 and March '18 board meetings. Developing and implementing the structure was intended (1) to address the closure of the Macau bank accounts which were historically used to accept payments (including cash); (2) to enable the provision of loans (or credit) on The Star's terms; and (3) to provide a level of control and risk mitigation around repayment and collections."

So the second point there, which was to enable provision of loans or credit on Star's terms, supports the submission I made earlier that providing direct credit on Star's terms remained one of the purposes of developing this initiative. In that regard, Mr Theodore gave evidence that a key driver of EEIS was to be able to offer credit terms that were different, particularly in terms of how long the player had to repay, that were different to the existing CCF terms, and he gave that evidence at T2970.39 and at 2970.33. And we say this aspect of the May 2018 board paper corroborates his understanding.

Ms Arnott gave evidence to similar effect about the ability to have loans that weren't constrained by timeframes of CCF. She gave that evidence at T1563.2. While we say this was not the only or, by early 2018, the predominant reason for EEIS loans, the May board paper corroborates Mr Theodore's and Ms Arnott's understanding that it was still a purpose of the EEIS loans to offer these flexible repayment terms. Mr Bekier also gave evidence about a purpose being to provide credit on flexible terms, and he gave that evidence at 3153.5.

So in light of that board paper and other matters I've referred you to, it's submitted that witnesses' evidence to the effect that providing flexible credit terms to customers remained a purpose of the EEIS project in 2018, and that should be accepted.

**MR BELL SC:** And what do you say the other purposes of the EEIS loans were?

**MS RICHARDSON SC:** Of the EEIS project or the EEIS loans?

**MR BELL SC:** The EEIS loans. I thought you said that that was only one of the purposes of the loans, to provide more flexible or longer credit terms.

**MS RICHARDSON SC:** To replace the payment channel in the Bank of China Macau account that had been closed.

**MR BELL SC:** So that was more the remittance role, was it?

**MS RICHARDSON SC:** Could I take that - that's a related question on the remittance aspect of the project. If I could take on notice, if I may?

**MR BELL SC:** Yes, of course.

**MS RICHARDSON SC:** The May board paper that I've taken you to also referred to The Star's presentation that it had made to gaming regulators earlier in March of 2018. That was the presentation to the regulator I took you to. Also, at the May board meeting that considered that paper, the board resolved to approve the establishment of an internal CCF for EEIS with a limit of $400 million to facilitate the provision of loans to IRB customers and to include EEIS in the Star designated business group that was registered with AUSTRAC for the purposes of Australian AML/CTF law. That's exhibit A1064. There's no evidence that at that board meeting anything was communicated to the board in connection with the Kuan Koi arrangement or the modified Kuan Koi arrangement.

By August of 2018, various payment pathways were being considered by members of the EEIS project team, and Mr Whytcross gave evidence about that at T1039. Then the next key matter is, in September of 2018, there was an IRB strategy update paper. That's exhibit B1093. Mr Bekier, Mr Hawkins, Mr Whytcross and Mr Lim spoke about the paper and the issues identified in it, and the minutes of that meeting reveal that. That's exhibit D0021. I think, given the time, we'll make detailed submissions about that board paper in writing. I'm just concerned about the time.

By November 2018, EEIS was operational and could offer loans to existing (indistinct) and that's in exhibit B1159 - is a steering committee paper making clear that EEIS was operational and could offer loans at that point. The EEIS steering committee considered this as a pathway to start offering direct credit

to a limited and controlled number of customers as a way to build up a full credit offering. And that's in that same document at pinpoint 3809.

EEIS had received a money service operators, or MSO, licence in Hong Kong which allowed it to remit funds via EEIS bank accounts in Australia and Hong Kong to The Star, but the SOP and framework to allow the processing of such remittances was still being finalised. And that's in the same document at pinpoint 3807. In the event, EEIS never acted as a remitter itself. Mr Theodore gave that evidence at T2985.27. It's also set out in a memorandum from Oliver White dated 26 August 2019, which is exhibit B1579. And EEIS issued only about five or six loans, and that evidence was given by Mr Theodore at T2985.21 and it's also set out in the McKern supplementary report at 6.2.2.

As at 26 August 2019, Mr White had identified that where a patron based in Macau could only pay The Star with cash, The Star would provide an introduction to the modified Kuan Koi service or to remittance services offered by Regal Crown Trading, who was a licensed money services operator or remitter in Hong Kong, and that's set out in the same memorandum from Oliver White, which is exhibit B1579 at paragraphs (c)(i) and (ii).

**MR BELL SC:** I think Mr White gave evidence that he was just doing his best to try and piece it all together in terms of what had happened in the memorandum. And I think he also said that at a later point in time, he was even less sure about what was going on than he had been when he wrote that memorandum.

**MS RICHARDSON SC:** Well, I accept that, by that memorandum, he was doing his best to recount his understanding at the time as what had happened. The Star had not undertaken a legal and risk assessment of the Regal Crown referral process or, as I've already indicated, the modified Kuan Koi service, and that's revealed by Mr White in that memorandum at exhibit B1579 under the heading Associated Risks.

However, Ms McKern's analysis indicates that no remittances were, in fact, made to The Star or EEIS through Regal Crown, and that was revealed through her analysis in her supplementary report at 4.3.1 and in appendix C, and she also gave that evidence orally at T3918.2. Accordingly, we submit that an observation that my learned friend made at live transcript 4109.27 that should not be - or is not supported by the evidence in relation to Regal Crown. That submission was:

> "What appears to have happened instead is that other money service businesses/remitters, being Silver Express and Regal Crown, started depositing money into the NAB account."

So there's no evidence to support the fact that's true in respect of Regal Crown, but it is correct in respect of Silver Express. This practice of informal referrals to Regal Crown was not disclosed to the board. In early September 2019, TSEG

identified instances of deposits having been made to the EEIS NAB account by overseas patrons for the purpose of gambling at The Star, that is, deposits for front money before play. And that's in Ms Martin's statement at 181 and 182, and it's also in the memorandum by Oliver White, which is exhibit B3421 at pin cite 3461.

That was contrary to the intended uses of the account, which, except to the extent that EEIS began operating as a licensed remitter, were to accept deposits for EEIS loan repayments and CCF payments only. The NAB initially flagged those transactions at a meeting with TSEG representatives on 2 and 4 September and sent an email to TSEG's treasury team requesting further information about those transactions in an attached NAB EEIS account bank statement. And that's referred to in Ms Martin's statement at paragraph 182. The email is at exhibit B1651, and the attachment is at B1652.

Upon becoming aware of the front money transactions and the EEIS NAB account, Ms Arnott asked Mr Hornsby to put a stop to front money transactions. And on 4 September 2019, Mr Hornsby directed the credit and collections team not to allow further transactions of that kind. Ms Arnott gave evidence to that effect in her witness statement at 66, and the email from Adrian Hornsby to the collections team with that direction is at exhibit B1688. In that same month, the credit and collections team conducted a review of customer transactions on the EEIS NAB account and provided an analysis of each transaction recorded in a spreadsheet. And Ms Martin gave evidence in her statement at 183. That's also referred to in B1688.

On about 13 September, about a week or so later, 2019, Ms Arnott met with Sabrina Yi and asked her to submit four IFTI reports to AUSTRAC in relation to identified transactions in the EEIS NAB account that she believed at the time of the submission to be IFTIs. She gave evidence about that in her statement at 68. After that, she and Oliver White sought legal advice from Anthony Seyfort of HWL Ebsworth on whether, in relation to EEIS transactions, a designated service had been provided in Australia or whether there were IFTI reporting obligations. She sets it out in her statement at 69, and the email to Mr Seyfort is exhibit B1712.

The request to Mr Seyfort was based on detailed individual descriptions of the transactions as being from individual patrons or authorised representatives of individual patrons, and Mr Seyfort advised that the transactions did not constitute a designated service by EEIS or give rise to any IFTI reporting obligations, and that advice is at exhibit B1712 at pin cite 0067.

In early 2020, the operations of EEIS were suspended, and that matter is set out in a board paper by Mr Seyfort as part of - that was Project Zurich, Review Paper 2, dealing with group bank account payments, which is exhibit B3377 at pin cite 7300. On 11 November, Harry Theodore, as the group's CFO, decided to close the EEIS bank account at NAB in Australia and its bank account with the Bank of

China in Hong Kong. He gives that evidence in his witness statement at 56(f). As he explained:

> "Those accounts are no longer required because, from 1 July 2020, The Star has been permitted to provide direct credit to patrons, such that there is no need to provide credit indirectly through EEIS."

And he gave that evidence in his statement at 56(e). And we say this further supports a conclusion that a purpose of the EEIS project throughout was to provide credit on more flexible terms than it was possible for The Star to provide it itself. That's evidenced by the fact that once that credit imperative was removed, there was no need commercially for the accounts.

Then on about 8 November last year, Oliver White requested that the credit and collections team provide a breakdown of relevant transactions in the EEIS NAB accounts from inception to that date and then, on 16 November, sent emails to HWL Ebsworth attaching spreadsheets prepared by the credit and collections team analysing the use of EEIS NAB account. Ms Martin gave evidence about that in her statement at 184, and the exhibit references are A1037 and attachments at A1308.

The spreadsheets identified in green shading approximately 15 transactions that were not CCF redemptions or EEIS loan payments which occurred in financial years '19 and '20. Ms Martin sets that out in her statement at 185. And that is consistent, we say, with Ms McKern's evidence, which I will discuss in a moment, that the vast majority of deposits into the EEIS NAB account appeared to be for the purpose of clearing CCF debts. And she set that out in her first report at 8.8.5 and repeated it in evidence at T3193.31.

On 30 November 2021, the EEIS NAB account was closed by TSEG. Ms Martin gives evidence of that in her witness statement at 106. In relation to third-party transactions throughout the relevant period, in that period until 5 November of last year, there was no prohibition in The Star's cage SOP on third-party deposits into patrons' front money accounts, that is, deposits by a person other than the holder of the account. Ms McKern sets that out in her first report at 2.4.5 and in her supplementary report at 3.4.2.

On 5 November last year, version 25 of the cage SOP took effect, and that's at exhibit D0029. And Ms McKern discusses that in her main report at 2.4.5 and her supplementary report at 3.4.2. So among other things, version 25 introduced a prohibition on such third-party deposits in the absence of authorisation from the beneficiary of the front money account and introduced procedures to monitor and ensure this did not happen. Ms McKern makes that statement in the same paragraph numbers I just referred to. Ms McKern, in her supplementary report, analysed the extent of such third-party deposits into bank accounts held by The

Star, The Star Queensland or EEIS, as well as deposits by third-party remitters, and I'll discuss that in greater detail in a specific section.

So I just make the following general submissions in relation to the overseas payment channels, the bona fides of them and the transparency and role of the board. It's submitted that the matters that I have - the chronology that I have set out at some length demonstrate a number of matters.

Firstly, that the form and payment structures employed in the overseas management channels after the closure of the Bank of China Macau accounts were developed in response to an understanding that a tightening of AML practices of banks in Macau, particularly the Bank of China, had made it increasingly difficult for foreign businesses, not just foreign casinos, to hold bank accounts in Macau unless they had an active or licensed business operation in Macau. And that's reinforced by a number of matters which we will detail in writing, but they're matters I have already referred to.

Secondly, that there is evidence before the review that would support a conclusion that members of the EEIS project team and the board likely knew that the difficulty of maintaining a bank account in Macau was influenced by mainland China's increasingly strict capital outflow restrictions. However, there's no material that would support a finding that those persons were of the understanding that the outflow restrictions operated to prohibit foreign casinos, or businesses connected with them, from having bank accounts in Macau or accepting payments from customers located in Macau, provided they had a legitimate business presence in Macau.

On the contrary, the evidence supports the view that the EEIS project team and the board were intent on developing a restructured international business in Macau and Hong Kong that was compliant with laws in those jurisdictions, as well as Australia. That's demonstrated by the legal advice sought in all of those jurisdictions and also with the direct engagement with the Australian regulators about their plans for EEIS. The other inference we say arises is that to the extent there was awareness in the EEIS project team or the board, the capital outflow restrictions imposed by China had a political rather than a legal effect in Macau and did not bind companies in The Star Entertainment Group operating in Macau or Hong Kong.

The third broad point, which I've made a few times, is that the permission of direct credit to patrons on flexible terms remained a parallel, although subsidiary, aim of the EEIS project.

The fourth proposition based on the matters I have addressed on, we say there's no basis in the evidence to conclude that anyone within the EEIS project team or the board was motivated by a desire to obscure or disguise, or to assist customers to

do that - sorry, to disguise or obscure the ultimate purpose of the payments occurring through them or in conjunction with the casino.

**MR BELL SC:** There was, I think, evidence from a number of individuals that they - in terms of how the arrangement morphed and EEIS became a proxy repayment channel for Star, that no one was able to offer any explanation for that, other than that it made it easier for patrons in Macau to obscure the fact that they were making repayments to a casino. Is that not correct?

**MS RICHARDSON SC:** We wouldn't accept that assessment of the evidence. The material I've sought to go through at length seeks to set out the basis of the EEIS project and the way it was structured. And the way it was - advice was taken on it and that the regulators were communicated as to why that was the case. So we would not accept that characterisation of the evidence.

**MR BELL SC:** We may be at cross-purposes. I'm not talking about how it was set up or what was communicated in the period up to April/May 2018. But how it, in fact, operated, which seems to have come as a surprise to Mr White and Ms Arnott and others after NAB made inquiries, was that the NAB EEIS account in Australia was used, essentially, to make payments - repayments or whatever - to The Star. It was a proxy payment channel to The Star. And my recollection was that no one was able to suggest that there was any reason for that morphing of the arrangement, except to permit patrons in Macau to obscure from the Chinese authorities that they were making payments to a casino.

**MS RICHARDSON SC:** I would have to review the evidence before I could accede or resist that proposition, Mr Bell.

**MR BELL SC:** Yes, of course. You are welcome to take it on notice.

**MS RICHARDSON SC:** Notwithstanding the matters I've submitted, it's not - we do not suggest that the board was properly apprised of all of the material facts relating to the development of the overseas payment pathways. It was not kept properly informed of a number of matters, which I will seek to elucidate. And we submit that given the way the board was informed of such matters, with references to legal advice and compliance and assurances that were given and so on, that The Star - sorry, that the review would not make findings that the board acted with passivity or a lack of active stewardship, given the way that they had been briefed in relation to those matters.

The Star accepts that in relation - as a general matter, other than direct deposits by patrons into The Star's bank accounts, that it was not readily apparent, at least to a casual observer, that the transactions were ultimately for the purpose of gambling or that they were connected with a casino. And in that respect, it would be open for the review to find that the way in which the overseas payment channels operated was unsatisfactory from the perspective of transparency towards law

enforcement agencies, not regulators in the sense of - certainly not ILGA, because they were expressly told about the structure.

**MR BELL SC:** Well, they were told about a role as a money lender, but they weren't told - and it seems no one, in fact, knew the extent to which it was - it had a far more extensive role than that in simply being a proxy payment channel.

**MS RICHARDSON SC:** We accept that the only evidence we have of what the regulator was told is in that presentation that I took you to.

So the next broad topic I will address after that long chronology, if you like, is AML/CTF issues relating to the overseas payment channels.

**MR BELL SC:** I just wanted to say, I did find it very helpful to go through those matters with you. So thank you for that.

**MS RICHARDSON SC:** So I'm hoping now to deal with things thematically that will draw upon the chronology that I have set out, but things will become more thematic from now on. I note the time, but I think I can use the next three minutes, if I may, because I am loving overseas payment channels.

**MR BELL SC:** Fire away.

**MS RICHARDSON SC:** So the first subtopic in relation to AML/CTF issues is third-party deposits generally. As I adverted to, since 5 November of last year, The Star's cage SOP version 25 has expressly prohibited third-party deposits into a patron's front money account without the patron's authorisation. Before then, the SOP did not prohibit third-party deposits without authorisation.

Ms McKern's principal criticism of third-party deposits generally is that transfers made by third parties enhance AML/CTF risk by bringing another party to the transaction chain who is neither the source nor the beneficiary of the funds, which can aid obfuscation of the original source of those funds. And she set that out in her supplementary report at 3.1.1. And she also referred to this evidence, that in casinos, know your customer procedures are conducted upon the patrons who hold the recipient front money account, and that when money is transferred by third parties, know your customer may not have been conducted on the actual source of the funds. And that's in her supplementary report at 3.1.2 and 3.1.3.

According to the analysis in Ms McKern's supplementary report in section 3, in the period of 4 December 2017 to 10 October 2021 - this was before version 25 of the cage SOP came into effect - there were some 500 third-party deposits made for the benefit of patrons' front money accounts into bank accounts held by The Star, The Star Queensland or EEIS, totalling approximately $70 million. This is in her supplementary report at 3.3.1, 3.3.3 and appendix B.

Most of the $70 million in the third-party deposits identified in Ms McKern's supplementary report were made into The Star NAB account or the EEIS NAB account, and that's in her supplementary report at 3.3.4. Deposits into the EEIS NAB accounted for approximately half the value of those third-party deposits. That's in her supplementary report at 3.3.4. The analysis in her report doesn't distinguish between deposits into EEIS NAB account for the purposes of clearing CCF debts as opposed to deposits for gambling before play.

But Ms McKern did state in her report, and acknowledged in oral evidence, that the vast majority of the deposits into the EEIS NAB account appeared to be for the purposes of clearing CCF debts. That evidence is in her first report at 8.8.5 and in her oral evidence at 3193.31. Allowing for the possibility of some errors or omissions, The Star does not dispute the substance of the McGrathNichol analysis of third-party deposits that I've just referred to.

Putting those things together, there is evidence before the Review that would allow the Review to accept that, on its face, the acceptance of third-party deposits over nearly four years indicates a risk that adequate know your customer checks were not conducted on the source of the funds for those deposits and that this increased the AML/CTF risks of those transactions. It also - The Star also accepts that the previous version of its cage SOP was deficient in not prohibiting third-party deposits without authorisation. It's noted that that deficiency has been remedied by version of 25 of the SOP with effect from 5 November last year.

And McGrathNichol's analysis indicates that there had been no further third-party deposits into any Star group bank accounts since that date, being 5 November 2021. And the support for Ms McKern's analysis to that effect is in her supplementary report at 3.3.1, 3.3.3 and appendix B.

I note the time. My next topic tomorrow morning will be drawing together submissions we make about the Kuan Koi arrangement.

**MR BELL SC:** Yes. Yes. Thank you, Ms Richardson. I will now adjourn until --

**MS SHARP SC:** Mr Bell, just before you do, could I just tender some evidence, please?

**MR BELL SC:** Yes.

**MS SHARP SC:** I'll tender three things. First of all, there should be a list in front of you marked exhibit O, which contains eight documents. I tender that.

**MR BELL SC:** Yes. I don't have an exhibit N marked in my list.

**MS SHARP SC:** I'm told that exhibit N was tendered on day 40 at transcript page 4153.

**MR BELL SC:** I see. How many exhibits were in that exhibit N?

**MS SHARP SC:** If you could give me one moment, I will be able to bring up that detail for you. Two documents were in there.

**MR BELL SC:** Yes, I remember - yes. Sorry. I do have that record. So exhibit O is exhibit O1 to O8. That will be an exhibit.

**MS SHARP SC:** Yes.

**MR BELL SC:** Yes.

**MS SHARP SC:** And then there's what will become exhibit P, which contains three documents.

**MR BELL SC:** That will be exhibit P1 to P3.

**MS SHARP SC:** And then there is what will become exhibit 43, which I - sorry, exhibit Q, which I previously foreshadowed. I don't tender document number 1; I do tender documents 2 to 42.

**MR BELL SC:** That will be exhibit Q2 to Q42.

**MS SHARP SC:** Could I also raise the time for the reply submissions, Mr Bell?

**MR BELL SC:** Yes.

**MS SHARP SC:** At the moment, I understand that you have that scheduled for 24 June. However, bearing in mind the submissions made by my learned friend Ms Richardson and the submissions that have been foreshadowed will be made in writing, you have directed that those written submissions be put on 21 June. In order to enable the counsel assisting team an adequate time to prepare, I would seek that the date of the oral reply submissions be moved to 27 June.

**MR BELL SC:** Yes. Ms Richardson, is there anything you wanted to say about that?

**MS RICHARDSON SC:** I'm available, and I don't resist that.

**MR BELL SC:** All right. Well --

**MS RICHARDSON SC:** I had hoped that this would come to an end slightly earlier, but I don't resist that timeframe. I was thinking myself that a few days to respond to everyone was too short.

**MR BELL SC:** Well, we all shared that hope. But, yes, in the circumstances, I will amend the date for the reply submissions to Monday, 27 June.

**MS SHARP SC:** Thank you, Mr Bell. And I can indicate no one had that hope more than me.

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

**<THE HEARING ADJOURNED AT 5:06 PM**