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

THURSDAY, 16 JUNE 2022
AT 10:00 AM

DAY 43

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 P. HOLMES as counsel for The Star Pty Ltd

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<THE HEARING RESUMED AT 10:01 AM

MR BELL SC: Yes, Ms Richardson.

MS RICHARDSON SC: Thank you, Mr Bell. As I foreshadowed yesterday, the next subtopic this morning is drawing together some threads in relation to the Kuan Koi arrangement. Just one moment, sorry. So as a signpost, this is within the broader subtopic I started yesterday, which is AML/CTF issues in relation to the overseas payment channels. So this is a subtopic within that, which is the Kuan Koi arrangement. So yesterday I set out at some length the chronology in respect of overseas payment channels generally and now, as I foreshadowed, I'm seeking to deal with things more thematically but drawing together matters that I referred to yesterday.

So as I submitted yesterday, the Kuan Koi arrangement was intended to be an interim arrangement to facilitate payments from overseas patrons until the EEIS arrangements were put in place. The Star accepts that the transactions that took place through the Kuan Koi arrangement lacked transparency because, as Ms Arnott accepted - and this was at T1507 through to the next page - because from the perspective of the banks involved in the transactions and from the perspective of law enforcement authorities, it would appear as though money being transferred to The Star came from Kuan Koi rather than from the patron whose money he was, in effect, remitting. The Star acknowledges that it is open to the review to conclude that the arrangement was unsatisfactory from the perspective of managing AML/CTF risks.

The Star also accepts, as was submitted by counsel assisting at live transcript 4099.16, that when the Kuan Koi arrangement expanded from covering only CCF payments to covering pre-payments of front money as well, it changed the risk calculus. Because when there was a CCF in place, The Star had undertaken due diligence on the relevant patron, but that was not always the case with patrons depositing front money before play. However, The Star submits that reasonable and genuine efforts were made to control that risk to the extent that The Star collected international depositor identification forms in relation to patrons through the Kuan Koi arrangement, as I will come to describe in a moment, and thereby obtained source of funds information from those patrons.

Mr Bell, as you correctly, with respect, observed at live transcript 4102.45 and following, in an email of 17 January 2018, Mr Oliver White emphasised that it was important that the Kuan Koi arrangement only be used for the repayment of outstanding CCF amounts and not for transfers of money prior to play. It may be inferred, however, that this was because, at the time, the client management agreement only covered the former and not the latter.

The Star accepts, as was accepted by Ms Arnott in evidence at transcript 1493, and it was also put by counsel assisting at live transcript 4103.25 - so it accepts that

under the Kuan Koi arrangement, Mr Koi was, in effect, acting as a remitter, even though he was not a licensed remitter. It also accepts that the more prudent course would have been not to pursue the Kuan Koi arrangement at all. However, it submits that efforts were made to address the AML/CTF risks associated with his fulfilling a quasi-remittance function (indistinct) I will shortly seek to set out.

A number of other matters - given those matters I've just addressed, I just seek to put together another few aspects of context in relation to the Kuan Koi arrangement. First, the arrangement was the subject of both legal advice and a risk assessment before being put into effect. As I referred to yesterday, Mr Seyfort of HWL Ebsworths advised on legal and regulatory implications of the proposed arrangement, particularly with respect to AML/CTF law of Australia. And he generally endorsed the model proposed, subject to various comments, and later provided comments on a draft of the client management agreement. And we see that at exhibit G329.

Mr Seyfort's advice included 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, ie, Kuan Koi's, as well as transaction monitoring. And that's at exhibit G70.

As I have referred to, a risk assessment was provided by Ms Arnott, the results of which were later embodied in a report produced in early February 2018. And that is in exhibit B96, and that's also referred to in Ms Arnott's witness statement at paragraph 90. Ms McKern made no criticism in her report of Ms Arnott's risk assessment. She noted that - or she observed that the risk assessment:

> "Appropriately outlined the ML -"

Money laundering:

> "Typologies and risks associated with the KK arrangement, with reference to FATF reports and after identifying risk mitigation measures to be taken into consideration concluded that the risk associated with the interim arrangement was low."

That's in her first report at 8.4.4 and 8.4.5. Ms Arnott accepted in oral evidence that, in retrospect, she was incorrect to assess the risk posed by the Kuan Koi arrangement as low, although that did reflect her genuine belief at the time, and that evidence is at T1504.25 and following.

The second matter of context is that the risk mitigation measures contemplated in the risk assessment that was done were put in place. These - I will describe these more fully, but the risk mitigation measures implemented include, firstly, requiring the completion by international staff of an international depositor

identity form, identifying the depositor, beneficial owner and other third parties involved in the transaction; and secondly, reporting the transactions and all relevant know your customer information to AUSTRAC as an international funds transfer instruction or IFTI.

Ms Arnott's statement explains that a staff member was present when transactions under the Kuan Koi arrangement took place, and that's in her statement at 77. Her evidence was that she was involved in the process of creating an international depositor identity form for the collection of identity information for customers using the Kuan Koi arrangement. And on 1 February 2018, she emailed Gabriela Soares, who was then TSEG's assistant VP of VIP credit and collections in Macau, and she emailed Adrian Hornsby with information about how to correctly complete the required paperwork and that she assisted in putting in place a process to manage the reporting of IFTIs to AUSTRAC in relation to that process. That's in her witness statement at paragraph 78.

She gave oral evidence that until about March 2018, she received international depositor identity forms completed by staff members for all Kuan Koi transactions, which she would then forward to the AML/CTF administrator for the purpose of creating IFTI reports to AUSTRAC. That's in her evidence at T1494.12. She said that she stopped receiving the forms after the AML/CTF administrator told her that he was receiving the transaction details in another way and so that she no longer needed to forward the forms to him, and that evidence is at T1494.40 and again at 1496.07.

It was suggested by counsel assisting that this indicated that the international depositor identification forms were not, in fact, collected by the staff for very long during Kuan Koi's arrangement operation - that submission was made at live transcript 4100.17 - and it was submitted that there's no evidence to suggest that this control was being complied with for the duration of the arrangement. That submission was made at live transcript 4104.23. On the contrary, however, there is evidence. There are 46 completed international depositor identification forms in the hearing bundle, including forms dating from 2018, and well after they stopped being sent to Ms Arnott. And in the written submissions, we will give references to each of those forms in the bundle.

Relatedly, counsel assisting submitted that it does not appear from evidence - from the evidence that staff members were routinely with Mr Koi when he collected the cash and then, on some occasions, he collected the cash from cages in Macau casinos. And that submission was put at live transcript 4101.31. Counsel assisting did not identify, and The Star is not aware of, the evidence that supports that contention. And we submit it's inconsistent with the evidence that was given by Ms Arnott that I've just referred to. As such, we submit that contention should not be accepted.

Ms Arnott further explained that in most cases, there was no need to obtain a copy of a patron's passport because the identification details of casino members were already on the casino management system, and that's at T1496.07. In that connection, counsel assisting asked whether it would surprise Ms Arnott to learn that "members of The Star staff in Macau said they did not perform any know your customer identification checks", to which Ms Arnott responded that she would be surprised. And that was at T1497.04.

The basis for that submission by counsel assisting appears to have been an email of Ms Gabriela Soares. But for reasons that we will set out in writing, that email related to a different topic and did not - Ms Soares was not describing activities in relation to the Kuan Koi arrangement. And in our written submissions, we have sought to set out each aspect of the email and also McGrathNichol comments in respect of that email where reliance is put on that by McGrathNichol and setting out The Star's submission in each respect. Although the McKern report - I call that interchangeably with the McGrathNichol report and the supplementary report - comment on the lack of IFTI reports in relation to other payment mechanisms. They do not suggest that there was any failure to lodge IFTI reports in respect of the Kuan Koi arrangement.

The third matter of context is that the McKern report calls into question whether risk mitigation measures were, in fact, maintained in relation to the Kuan Koi arrangement, but it is submitted that those doubts are unfounded. In Ms McKern's report at paragraph 8.5.6, there is a table 23 where Ms McKern comments on various documents that purportedly cast doubt on whether risk implementation measures were appropriately implemented. We will address the significance of those documents in writing where we, in effect, take each document that Ms McKern has relied on and seek to make submissions about that.

The fourth matter of context is that counsel assisting submitted that the controls that were imposed in relation to the Kuan Koi arrangement were quite inadequate in circumstances where Kuan Koi was not a reporting entity for the purposes of the AML/CTF framework, either in Macau and in Australia, and was under no obligation to conduct know your customer or source of funds checks or the like. And that submission is put at live transcript 4102.13. The Star submits, in light of the matters I have adverted to, that the controls that were in place were not demonstrably inadequate; in particular, the requirement on staff of The Star to collect international depositor identification forms recognised that Kuan Koi had no obligation to conduct know your customer or source of funds checks and put in place a system so that The Star conducted those checks itself.

The next subtopic is modified or morphed Kuan Koi service and also, together with that, CCF repayments through the EEIS NAB account. As I submitted yesterday, the evidence indicates that the modified Kuan Koi service operated from May 2018 through to March 2020, that it was not the subject of a legal and risk assessment. It was not formally approved; rather, it was initiated and

maintained by the VIP credit and collections team managed by Adrian Hornsby. Further, that it was not disclosed to the board before or while it was operating. The Star acknowledges that accepting deposits through third-party remitters increases the money laundering risk associated with such transactions, and that was a submission put by my learned friend at live transcript 4106.27.

The modified Kuan Koi service involved accepting deposits into the EEIS NAB account via third-party remitters in repayment of patron CCF debts. Accordingly, there was a greater risk that those transactions could be associated with money laundering than if the deposits had been made directly by patrons. That is because, in the case of money received through third-party remitters, The Star could not check and verify for itself the source of funds of the patron on whose behalf the money was remitted. Instead, it was reliant on the remitter to conduct source of funds checks.

The substance of these propositions I have just submitted about were accepted by the following witnesses when it was put to them by counsel assisting: Mr Whytcross, Ms Arnott, Ms Martin, Mr Brodie and Mr Bekier. And I'll give the transcript references for each of those witnesses in writing.

However, at the time that Ms Arnott became aware of the modified Kuan Koi service, she believed that the fact that the remitters involved in the arrangement were licensed in Hong Kong mitigated that risk to an acceptable level because such remitters are required to comply with the money ordinance, which is a reference to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance of Hong Kong. She understood this to require remitters to conduct know your customer checks on customers and to monitor transactions, and she gave that evidence at transcript 1524.14 and 1537.31 and over to the next page.

In short, she considered that the existence of legal obligations on licensed remitters to conduct know your customer checks and monitor transactions brought the money laundering risks associated with the remitter transactions within the bounds of tolerance. It is accepted that those views involved an error of judgment. The Star's AML responsibilities go beyond merely satisfying the minimum necessary to avoid breach of the law. AML/CTF regulation proceeds on the basis of risk management. In that context, a reasonable expectation of conduct by others may be relevant, but The Star may not outsource its responsibilities.

The Star acknowledges that the fact that licensed remitters might have legal obligations of their own to conduct know your customer, including source of funds checks, does not of itself completely mitigate the AML/CTF risks of accepting funds through such money remitters. Further, and in any event, The Star accepts, as did each TSEG director who was asked about it by counsel assisting - and this question was put to Mr Bradley, Ms Pitkin and Ms Lahey - it accepts that the modified Kuan Koi service should not have proceeded without a proper risk assessment and legal due diligence, including as to AML/CTF compliance and

compliance with casino control legislation, and that the board should have been fully informed about the proposed service.

The Star accepts, as was submitted by counsel assisting at live transcript 1406.16, that it is of considerable concern that the modified Kuan Koi service was offered without those things occurring. They amount to significant failures on the parts of the managers who were responsible. Allowing that to occur, as submitted by counsel assisting, was unacceptable. And that reference is at live transcript 4106.37. Furthermore, The Star accepts that the repayment of patron CCFs through EEIS bank accounts was not a service explicitly contemplated by the EEIS AML/CTF program, although it did contemplate the movement of patrons' funds by EEIS to the casinos more generally.

Counsel assisting submitted that, to the extent EEIS was accepting such payments from third-party remitters, EEIS was itself acting as a remitter or proxy remitter. That submission was put at live transcript 4116.18 and also at 4118.26. If either of those characterisations was intended as a legal categorisation of EEIS's conduct, The Star submits that is not supported.

Relatedly, counsel assisting adopted a proposition that had been suggested by Mr Bell that, to the extent EEIS was itself conducting remittance services by accepting CCF repayments that were not made through third-party remitters and was not providing loans, this would have been a designated service provided by EEIS, and that's at live transcript 4116.29. The Star submits that that is not correct and that it's inconsistent with legal advice given to TSEG by Mr Seyfort of HWL Ebsworth in relation to transactions of that kind, which I referred to yesterday, and that advice is exhibit B1712.

In any event, The Star accepts that there was a material risk that such activities were not sufficiently addressed by its AML/CTF program. As TSEG's directors who were asked about it by counsel assisting readily conceded, this was something that warranted urgent inquiry. Not only should that matter have been brought to the board's attention, but the board should have been comprehensively briefed on these activities of EEIS. But neither of those things occurred. And the evidence of non-executive directors in that respect is Mr Heap at live transcript 3437 and 3439; Mr Bradley at 3495; and Ms Pitkin at live transcript 3633 and 3635.

Those who might be regarded as being responsible in relation to the matters I have just described, having regard to their involvement in instigating or maintaining or as to their knowledge of the modified Kuan Koi service and deposits into EEIS accounts, are - I'll just identify who those persons are in my submission. They are Mr Hornsby, who the evidence supports was the person who initially implemented the practice, and as it was adopted by his team, which is the VIP credit and collections team, that aspects of it were disclosed to Micheil Brodie, who was then general manager of compliance and responsible gambling, and Skye Arnott on 31 May 2018, 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 of 2019. And that is in the memorandum from Oliver White dated 26 August 2019, which is exhibit B1579. And the reference in relation to the knowledge of Micheil Brodie and Skye Arnott is exhibit A60.

MR BELL SC: You've mentioned members of management as having responsibility for these events, but surely all of these events occurred under the board's watch. The board is also responsible, is it not?

MS RICHARDSON SC: Well, the first issue there is that the board - well, the board wasn't briefed at all about the modified Kuan Koi arrangement. And in relation to the other aspects of overseas payment channels, as I've sought to set out yesterday, these matters were described - to the extent the board was briefed, they were described in a matter by reference to legal compliance advice being obtained externally and risk assessments being done and with a focus on compliance and so on. So we say that the way in which the board was briefed on those matters didn't give it reason to think that what was contemplated in response to the risks posed an unmanageable legal or AML/CTF risk.

Before implementing the modified Kuan Koi service, Mr Hornsby, it is submitted, should have sought formal approval for it through his superiors who could then, and should then, have ensured that a legal and risk assessment was obtained and reported in relation to the proposed service to the board. Moreover, upon becoming aware of the modified Kuan Koi services and any other payments through third-party remitters, it is submitted that Micheil Brodie, Oliver White, Greg Hawkins and, if contrary to his denials he was aware of these matters, Mr Whytcross, each of them should have reported the matter to their superiors, through whom the board could then have been informed and payments of that kind be suspended, pending proper legal and risk assessments.

As for board members, those who were asked about it were not aware, at the times that the EEIS NAB operated, that it had been established and was accepting large amounts of payments into it. And Mr Bradley gave evidence to that effect at live transcript 3498.17, and Ms Lahey gave evidence at live transcript 3702.33. That the board was unaware of these matters is unsurprising in light of the matters of context that I have referred to in terms of the absence of any briefing on this topic. It can be expected that had they been informed of the practice as they should have been, they would have put a stop to the practice.

It is submitted that the matters I have outlined in relation to the attitude of the board to these matters, coupled with the considerable advances that The Star has made in its culture and practices relating to AML/CTF monitoring and compliance, would give the review comfort that the unsatisfactory circumstances of the modified Kuan Koi service would not be repeated.

The next subtopic is just at a higher level, but IFTIs in relation to payments through the EEIS NAB account. The Star's position is that it was not required to lodge IFTI reports to AUSTRAC in relation to any EEIS transactions, but it is submitted that that is a complex legal question which is within the remit of AUSTRAC and that the review does not, and ought not, make findings on that question, particularly noting that the consequences of breach of such an obligation attract civil penalties under section 45 of the AML/CTF Act. The Star respectfully embraces your observation, Mr Bell, that in relation to transactions occurring through the modified Kuan Koi service - but we say this applies to IFTI obligations involving The Star more broadly - that:

> "I don't see how I'm in a position to determine whether IFTIs should or should not have been lodged."

And that was at live transcript 4108.13. That observation was accepted by counsel assisting at live transcript 4108.16. The Star, accordingly, proceeds on the basis that the review does not intend to make findings as to whether The Star failed to lodge an IFTI in respect of any of the three relevant circumstances relevant to EEIS, that is, firstly, to redeem a CCF; secondly, for the purpose of front money before play; or thirdly, in respect of EEIS loan drawdowns or repayments.

But for the purposes of the review in relation to suitability, it is submitted that the relevant question is not whether or not there was a legal obligation, but whether the position that The Star took on the question is reasonable and how that question reflected on the risk function. And in view of the legal advice supporting The Star's position that was received from Mr Seyfort of HWL Ebsworth, it's submitted that that answer should be answered favourably to The Star. And we will set out in writing all of the exhibits where that advice was received in relation to IFTI obligations and EEIS.

The next subtopic is other remittance services; in broad terms, other payments into The Star's NAB account. As I set out in the chronology yesterday, the evidence indicates that from about 5 February 2018 until 22 April 2020, The Star accepted payments via licensed third-party remitters into its NAB account. These do not appear to have been accepted pursuant to the modified Kuan Koi service. By contrast, the evidence in relation to third-party remitters into the EEIS NAB account suggests that it was in relation to the modified Kuan Koi service.

The Star reiterates the acknowledgement it has already made about the increased money laundering risks in relation to transactions conducted through third-party remitters. The Star acknowledges, as I've acknowledged yesterday, that for patrons based in Macau who could only pay The Star with cash, it would sometimes refer them to the licensed remitter, Regal Crown, and that's in exhibit B1579. That's the memorandum from Mr White dated 26 August 2019 describing various matters. However, as I have already noted, Ms McKern's analysis indicates that, in fact, no remittances were made to The Star or to EEIS through Regal Crown, and that was

in her supplementary report at paragraph 4.3.1, table 6, and in appendix C. She also accepted that in her oral evidence.

Nonetheless, The Star accepts that it should not have engaged in referring customers to Regal Crown, which the evidence suggests was done by VIP credit and collections staff. And that's in that same memorandum from Oliver White, which is exhibit B1579. It should not have done that without first undertaking a legal and risk assessment of the practice, which it did not do, and support for that proposition is again in that memorandum, exhibit B1579. A memorandum - or that same memorandum from Mr White suggests staff did not actively recommend Regal Crown but would:

> "Only inform patrons that we are aware that other patrons have used Regal Crown in similar circumstances."

And that's in the same memorandum. TSEG directors have given evidence before the review that the risks associated with accepting money through remitters are not alleviated by a passive approach to referrals and that The Star should be assured of obtaining proper source of funds information about the patron using the remitter. Mr Bradley gave evidence to that effect at live transcript 3491.13, and Ms Lahey gave evidence to that effect at live transcript 3699.45 and over to the next page.

The Star acknowledges that it was an error of judgment for its AML/CTF function to proceed on the basis that the fact that licensed remitters might have legal obligations of their own to conduct know your customer, including source of funds, was sufficient to mitigate the AML/CTF risks.

Ms Lahey gave evidence that in view of the elevated AML/CTF risks associated with accepting money through third-party remitters, even if they are licensed, arrangements with Regal Crown should not have been contemplated. She gave that evidence at T3686.38.

Mr Bradley gave evidence that before The Star referred customers to Regal Crown, it should have been the subject of careful due diligence; AML/CTF risks should have been addressed; and the board should have been informed of any arrangement with that company. And that evidence is at transcript 3490.17.

Dr Pitkin gave evidence to similar effect at transcript 3625, 3626, over to 3627. Her evidence was that there should have been an agreement in place between The Star and any remitter, such as Regal Crown, contractually binding it to conduct appropriate beneficial owner and know your customer checks before accepting money transferred by it, and that evidence is at transcript 3624.1. The Star accepts that it was a significant error of judgment to have accepted such payments from third-party remitters without those things having occurred.

The next subtopic is in relation to EEIS loans. The Star accepts, as I have already alluded to, that the connection between The Star and the EEIS was not transparent. While it submits there was no conscious intention to disguise that connection from authorities in China or Macau, that it is open to the review to find that that lack of transparency was unsatisfactory from a general regulatory perspective.

From a strict AML perspective, TSEG's directors, to whom it was put, accepted that the interposition of an intermediary, such as EEIS, between the casino licence holder and a patron or junket borrower, raises a complication. And that evidence is Mr Heap at live transcript 3436.26; Mr Bradley at transcript 3485.04; Ms Pitkin at transcript 3620.19; and Ms Lahey at transcript 3682.18. To the extent that such a complication arises by - The Star sought to address it by having an AML/CTF program for EEIS that was separate from TSEG's AML/CTF program and compliant with both Hong Kong and Australian AML/CTF requirements, as I have sought to establish yesterday.

Could I just have one moment, please, Mr Bell? Sorry, Mr Bell. I next want to make some submissions about EEIS bank accounts and transaction monitoring. Counsel assisting made submissions specifically about the alleged absence of transaction monitoring of EEIS bank accounts until late 2019. Around December 2021, in connection with the preparation of responses to notices issues by AUSTRAC, The Star identified that a number of deposits had been made into EEIS's Bank of China accounts in Hong Kong while EEIS was dormant: eight in 2015; one in 2016; and 10 in 2017. And that's set out in a memorandum from Mr White in exhibit B3419.

As I referred to yesterday, EEIS was dormant at that time. This - that is consistent with a lack of careful monitoring of EEIS's bank accounts in that period. If so, that was presumably because there was no expectation by those who would otherwise monitor the accounts that the accounts were being used in that dormancy period. Counsel assisting submitted more generally that there was no transaction monitoring occurring on EEIS's domestic or overseas bank accounts until late 2019, and that submission was put at live transcript 4112.12.

For reasons that we will deal with in detail in writing, The Star submits that that submission is not correct and the evidence doesn't support it. Rather, what emerges from the evidence is that throughout the relevant period, there was manual transaction monitoring of EEIS accounts conducted by the cage in accordance with its usual practices, and that the practice of the cage was to report suspicious transactions to the AML team, although the AML team did not obtain direct access to the EEIS accounts until September 2019. Making good that submission --

MR BELL SC: Does The Star submit that that was a satisfactory and appropriate method of transaction monitoring, for it to be left to the cage staff?

MS RICHARDSON SC: The submission in that respect - we will set out all the evidence because it requires piecing together the evidence of various witnesses. The ultimate submission will be that although The Star admits that there was monitoring of EEIS bank accounts in the relevant period, it is likely that the monitoring had deficiencies.

MR BELL SC: Yes. Thank you.

MS RICHARDSON SC: In the period 2018 to September 2019 - and this is the gist of the submission. In that period, The Star relied on the cage team to report to it any suspicious transactions. However, the cage team does not appear to have been aware of TSEG's intended prohibition on accepting front money payments into the EEIS accounts and was not instructed to monitor for front money payments until September 2019. Ms Arnott also gave evidence that there were shortcomings in the EEIS transaction monitoring as at October 2019, and her evidence was:

> "We weren't looking at the bank accounts in enough detail, and there may not have been as much monitoring of repayments of loans as there should have been."

And she gave that evidence at T1527.16. The next subtopic is - just one moment. The next topic I propose to deal with is false documents provided to the Bank of China Macau. This was topic 20, as designated by my learned friend.

MR BELL SC: Are you going to at least briefly tell me why The Star says that in making its loans, EEIS was not an agent of The Star?

MS RICHARDSON SC: Yes, that will happen.

MR BELL SC: Thank you.

MS RICHARDSON SC: That's another topic. I will certainly be dealing with that. So in relation to topic 20, this involves the provision of the false source of funds letter to Bank of China Macau. That was in connection with patron deposits into The Star's Bank of China Macau accounts before they were closed on 31 December 2017, which was a matter I referred to yesterday. The issue raises AML/CTF concerns, but, more fundamentally, serious probity questions concerning the conduct of credit and collections staff in Macau.

The Star accepts that the evidence before the review allows the following findings to be made, as were submitted by counsel assisting: firstly, in the period 2013 to the end of 2017, The Star's Bank of China accounts in Macau were heavily utilised for deposits by patrons in Macau, both for the deposit of front money and the redemption of cheque cashing facilities; and secondly, that the Bank of China

would accept large cash deposits in Hong Kong dollars. And those submissions were put by my learned friend at live transcript 4085.

Counsel assisting submitted - and this is at live transcript 4088 through to 4090 - a series of matters: firstly, that during the period of 2013 to the end of 2017, staff of TSEG based in Macau adopted a process whereby they would accompany patrons, or people making deposits on behalf of those patrons, where large cash amounts are being deposited to the bank and provide documentation in the form of letters to the bank to provide an explanation of the source of funds, and I will refer to that as SOF letters; secondly, it was submitted that the process was a longstanding one, having apparently begun before Ms Gabriela Soares commenced employment within TSEG in June 2015, and it was submitted that all of the credit and collections team staff in Macau were involved in the process; and the third broad submission put was that the SOF letters provided as part of that process were misleading and knowingly so, and that's at live transcript 4085.47.

The Star makes the following broad submissions in relation to those matters. Firstly, The Star accepts that at some point within the period 2013 to 2017, staff of TSEG based in Macau engaged in a process of accompanying patrons to Bank of China Macau and providing SOF letters to the bank. Secondly, The Star accepts that some number of SOF letters provided to Bank of China Macau as part of the process I've described falsely described the source of funds to be deposit - sorry, falsely described the source of funds to be deposited as funds of The Star, and I'll refer to them as false SOF letters.

Thirdly, The Star accepts that those letters were misleading and were misleading to the knowledge of those involved in providing the false SOF letters with the possible exception of Ms Soares, which I will discuss. Fourthly, The Star accepts, as accepted by Mr Whytcross in evidence, that the provision of false SOF letters to Bank of China Macau by TSEG through staff were involved in the - sorry, by staff, involved the making of serious and deliberate representations to the Bank of China Macau. Mr Whytcross gave that evidence at T1088.16.

Fifthly, as for Ms Soares, The Star submits that it cannot be concluded that she knowingly provided false information to Bank of China Macau in connection with the false SOF letters. Rather, the evidence supports the conclusion, as expressed in a file note by Mr White of 29 November of last year, that she was:

> "A junior employee principally engaged in execution of processes without necessarily having a deeper understanding of the purpose of certain steps."

And that file note is at exhibit B3402. Sixthly, for reasons I will develop, it is submitted that the review could not safely make findings about how many times and how frequently or over what period of time staff in Macau engaged in the practice providing false SOF letters.

MR BELL SC: Once would have been far too much, would it not?

MS RICHARDSON SC: That's accepted. That's accepted. The extent of that practice is under investigation. Seventhly - and this is related to the question you just asked me, Mr Bell - The Star acknowledges that whatever the extent of the practice of providing false SOF letters to the Bank of China in Macau, the fact that such documents were provided was completely unacceptable and should never have occurred.

The Star also accepts that where staff representing The Star provided false SOF letters to the Bank of China in Macau, this was indicative, it is open to the review to find, of the following - and these were contentions made by Ms McKern and also referred to counsel assisting in her submissions at live transcript 4093, and this is Ms McKern's analysis at 8.6.5. Firstly, it's open to find that it indicated a preparedness by the individuals involved to do whatever is necessary to meet the needs of the patron, to the extent of fabricating documents, to create the illusion that a transaction is something other than what it is.

Secondly, it's open to find a lack of understanding of, and total disregard towards, AML/CTF obligations and the purpose of AML/CTF controls by the senior casino employees involved, being apparently Mr Jacker Chou and Mr Adrian Hornsby. Thirdly, it's open to find that there was inadequate control and supervision of activities of these offshore employees. And fourthly, it's open to find inadequate training of less senior staff, such that they did not recognise or were unwilling or unable to raise concerns in relation to these transactions.

To elaborate on the money laundering implications of the relevant conduct, The Star accepts, as Mr Whytcross did in evidence, that to the extent that TSEG provided false SOF letters to the Bank of China Macau, the false source of funds information would result in a high risk of money laundering. Mr Whytcross gave that evidence at T1093.21, and that was referred to by counsel assisting at live transcript 4090.21.

To similar effect, The Star accepts that the evidence given by Ms Arnott that the effect of the false SOF letters would be to obscure or, more accurately, falsely characterise the true source of the funds being deposited with the Bank of China Macau and that this is a cause for very significant concern in relation to money laundering. That evidence was given by Ms Arnott at T1565 and referred to by counsel assisting in closing at live transcript 4090.25. Ms Arnott's evidence was that this may facilitate the placement of funds by money launderers, and that evidence was given at T1565.33.

The Star accepts that upon discovery by members of senior management of TSEG in late 2021 of this issue, that the question of false SOF letters should have immediately been notified to non-executive directors of the board, but was not. That submission was put by counsel assisting at live transcript 4093 and over to

the next page. Mr Bekier gave evidence that he became aware of the issue in October 2021 in connection with preparing the 8 November 2021 response. He gave that evidence at T3139.40 and following. This suggests that he became aware of it relatively promptly after it was discovered, initially by Mr Whytcross on 5 October 2021, as I will shortly come to describe.

In the written submissions, we will give detailed analysis of the various template letters and our submissions in relation to them. I don't propose to go through that now, unless that would be of assistance, but we have analysed each one of them and made submissions about each one of them.

The next subtopic in relation to Bank of China Macau is investigation of the conduct. The investigation of the circumstances and extent of the issuing of false SOF letters to the Bank of China Macau became the subject of an investigation. Counsel assisting has submitted that that investigation has not been conducted in an expeditious and timely way and that it indicates a reluctance to reveal to you, Mr Bell, a full account of what has occurred with respect to the situation, which, on any view of the matter, is extremely concerning having regard to the potential money laundering implications. That was at live transcript 4091.27.

The Star acknowledges that the investigation has taken a considerable amount of time and that it remains incomplete. It regrets that has taken so long. The Star submits, however, that there are a series of matters that demonstrate that the time taken to conduct the investigation is the product of circumstances that have made it difficult to obtain relevant and reliable evidence more quickly and does not reflect a reluctance to reveal to the review a full account of what has occurred.

The key aspects - I might deal with this in writing. We set out at some length the chronology of when the matter was first discovered, what actions were taken, who was interviewed and contacted. But you will be aware, Mr Bell, that the gist of that evidence that was given by various witnesses, which we will set out in detail, is that there were difficulties in obtaining accurate evidence from key participants, including Ms Soares and Mr Chou, who are based overseas.

There are also issues of people with English as a second language in terms of investigating - communicating with investigators where English is not their first language; difficulties in obtaining primary evidence of what occurred, given that the originals of the templates - the false letters were not retained; and difficulties because of the recent resignation of several of the key people who were involved in that investigation. None of the staff based in Macau at the relevant times, including Ms Soares or Mr Chou, remain with TSEG.

As I have already acknowledged, there are difficulties on the evidence in making findings about the extent of conduct in the sense of how prevalent it was. We have already accepted that whatever the extent of the practice, the fact that any such documents were provided was completely unacceptable. In writing, we will set out

at some length the various evidence before the review in terms of what various witnesses have said about the prevalence of the conduct or not. We will deal with that in writing.

The next subtopic in relation to these letters is informing the review about the issue. Counsel assisting submitted that the 8 November response given by The Star referred to the issue of false SOF letters provided to Bank of China Macau only at a very high level and that it was not a candid outline of all that was known about that issue at the time of the response. That submission was made at live transcript 4089.31. The Star accepts that the description of the false SOF letter issue in the 8 November response was at a high level but, for the following reasons, submits that the review should not accept the characterisation that it was not a candid outline of all that was known about the issue at the time.

The first matter of context in that respect is that the false SOF letters information in the 8 November response was information provided as part of a response to one numbered information request, being question 9, among 19 numbered information requests in the same notice, several of which had multiple subparts. Having regard to the breadth of the notice and the time in which the response had to be produced, the time was relatively compressed. Producing the response required obtaining information instructions from multiple parts of The Star's business and, as it was, the response was 131 pages long.

In those circumstances, it is submitted that a reasonable expectation of The Star was that only the material facts relating to the false SOF issue needed to be included in the response and that it was not expected to contain all possible detail about the issue, particularly so given that The Star expected the issue, once raised in the response, to be the subject of detailed evidence in the public hearings.

Secondly, the 8 November response described the false SOF letters at pages 32 to 33. It stated the material facts that were known to it about the issue at the time, according to the evidence; in particular, it candidly stated that The Star had identified that patron deposits may have been facilitated by documentation provided by its credit and collections team in Macau that falsely represented that the source of funds of cash deposits was The Star's cage in Macau and that The Star had never operated a cage in Macau. It stated that this issue had only recently been identified and that it was under investigation. It also stated that there was no suggestion at this stage that anyone outside the credit and collections team or the Macau office staff were involved in it or aware implicitly at the time it was occurring at the practice, and that was all true.

So we submit that the material facts that conveyed the gravity of this conduct, that there were these letters that were falsely representing sources of funds, had been provided to the Bank of China in Macau. In those circumstances, it is submitted that there's no basis to conclude that the 8 November response lacked candour in respect of the false SOF letters issue.

Mr Bell, yesterday you raised a number of questions with me about remittance aspects. We propose to deal with that in writing because it will require us to draw on a number of the aspects of the chronology that I laid out yesterday. And what we will do in writing is specifically refer to the transcript where you asked me a particular question and set out our express response in that respect.

The next issue is that my learned friend has alleged that there was a contravention of section 74 of the Casino Control Act by reason - the allegation is that the EEIS was an agent of The Star. The broad - or the submission we make is that EEIS was not The Star's agent in issuing those loans and there was no breach. My learned junior Mr Holmes will deal with this issue and, as part of that, there will be an acceptance that a more prudent approach would have been to obtain specific legal advice on risks in relation to agency. But it's submitted that there was, in fact, no agency relationship. And I'll just hand over to Mr Holmes.

MR HOLMES: If I might just re-traverse some points that senior counsel just made in outline about the submissions put against us in relation to agency. I just want to make it clear how we understand those submissions to be put. The - counsel assisting submitted in relation to this issue that:

> "The facts establish that EEIS was an agent of the casino operator."

And that submission was made at transcript 4120.45. Counsel assisting also submitted that - and this was at transcript 4121, that:

> "The concern here is that it does not appear that any consideration was given to the question of whether this arrangement could breach the prohibition in section 74(1) and that there is no evidence before you to suggest that, in 2018 and 2019, evidence was taken about whether EEIS might be regarded as the agent of the casino operator for the purpose of the prohibition in section 74, subsection (1)."

And counsel assisting continued:

> "We submit that, once again, shows a courting of the risk of regulatory contravention."

So the way that we have interpreted those submissions is that it's put against The Star that it contravened section 74(1) of the Casino Control Act by the acts of EEIS issuing loans to individuals for the purpose of gambling at The Star. Now, I should say, we understand that it's put against us that EEIS contravened section 74(1), and the reason I say that is that section 74, subsection (1) provides that:

> "A casino operator must not, and an agent of the operator or a casino employee must not, lend money or extend credit."

Relevantly. Now, the imperative in that subsection is directed at an entity that provides the loans or the credit. So in other words, if it was EEIS providing the credit as agent, then it would be EEIS, in my submission, that contravenes that section of the Act.

MR BELL SC: Well, that may be somewhat circular because it may be that if the casino operator's agent is in breach, that that breach should be attributed to the principal as well.

MR HOLMES: That potentially follows, although I would say this in response: section 74, subsection (2) specifically addresses the issue of The Star in connection with any conduct by its agent, and that subsection prohibits The Star from permitting, etcetera, an agent to breach subsection (1).

MR BELL SC: I see.

MR HOLMES: And so - but it hasn't been put against us that there was any contravention of section 74, subsection (2). And so I don't seek to address that subsection further.

MR BELL SC: Well, I think you should address that as well because it would certainly be something that I would be taking into account. If it's established that there's a breach of section 74(1), I would be concerned to understand whether a breach of section 74(2) followed from that.

MR HOLMES: If I may, I will address that aspect in writing. Because as I've just indicated, it wasn't apprehended that that subsection was something that was - arose out of counsel assisting's submissions.

MR BELL SC: Yes. Okay.

MR HOLMES: If I can - so I've just outlined the relevant subsection of the Act. And I'll just remind you, Mr Bell - I think counsel assisting drew this to your attention - that since 1 July 2020, there has been an exception to the general prohibition in section 74(1) that permits - that does now permit The Star to extend a form of direct credit to people not ordinarily resident in Australia who are participating in a premium player arrangement or a junket approved by the authority. But that exception only came into effect, we accept, after the last EEIS loan was issued. And so it doesn't have a bearing on the analysis here. Just for your reference, the evidence suggests that the last EEIS loan was issued on 7 March 2020, and that's identified in Ms McKern's supplementary report at paragraph 6.2.2.

Now, the - so I would seek to first address you on the question of whether there was, in fact, a contravention of section 74 or primarily - the anterior question of

whether EEIS acted, relevantly, as The Star's agent in issuing the loans. And I will secondly address the submission that regardless of whether it did, in fact, breach the section, that The Star courted the risk of that occurring, and that will draw on advice by Mr Walker which was referred to yesterday, and I'll take you to that.

And I should say that in relation to the question of a contravention of section 74, it is primarily a legal analysis which we had anticipated providing primarily in writing. So I will just try and do it in a summary way here and not give you all the references that I rely on, unless it seems like it might be a contentious or particularly significant authority, and, of course, unless you ask otherwise.

But just in the interests of time, I will just say broadly that it's The Star's submission that the primary characteristics of agency as - well, I'm sorry, I will take an anterior - make an anterior point. It would be well known to you, Mr Bell, that the word "agency" itself is one that has a variety of meanings in common parlance. But we submit that what the Act is concerned with is the legal concept of agency, and there's authority to suggest - that states that against a common law background, it's hard to avoid the conclusion that the legislature intended that the common law meaning would apply when the word "agency" is used. That's in a decision of Justice Edelman in Perpetual Trustee, neutral citation [2012] WASC 383. And it's further been said that:

> "It always requires the strong compulsion of other words in an Act to induce the court to alter the ordinary meaning of a well-known legal term."

And I'll provide those references in writing. But we say that there's no compulsion that exists in these circumstances to interpret "agent" in section 74(1) as anything other than "agent" in its legal conception. And on the contrary, in circumstances where the Act imposes criminal liability in certain circumstances with respect to the conduct of an agent of the casino operator - and an example is section 85, subsection (7) - that the legislature cannot have meant to impose liability of that kind on an uncertain class of people who might meet the description of "agent" in a non-legal sense.

So all that is to say that in our submission, what we are dealing with is the concept of agency in its legal meaning. And counsel assisting appeared to proceed on that assumption as well by, among other things, submitting that the question of agency is one of substance and not form. She made that submission at T4106.12 to 14. And I will address that point of the question of substance as well, incidentally.

So the - I will need to outline some of the applicable principles of what constitutes agency, and I will try and do it in an abbreviated way, which, as I say, will be dealt with in detail in the written submissions. But the cases commonly identify two essential elements of an agency relationship, and that is: consent, or assent, of both the principal and the agent; and the conferral of authority on the agent to act on a principal's behalf. And so as a legal concept, agency is:

"A consensual arrangement, a relationship, whereby A -"

Agent:

"Is to be taken as being, or as representing, P."

Principal. And that was stated in the decision of New South Wales Court of Appeal in Tonto. I'm giving you the citation because we do refer to it quite extensively, Tonto Home Loans v Tavares [2011] NSWCA 389. That was a decision of President Allsop, with whom Chief Justice Bathurst and Justice Campbell agreed, and that covers the principles of agency in some detail. But it was said in that decision that while there's no uniformly agreed definition of "agency", there are two definitions that are extensively quoted as being authoritative: one is in the Restatement of Agency and, therefore, a US authority; and another is in Bowstead v Reynolds. And we will set out those definitions in the written submissions, but what those definitions draw out is that - and this was said by the Court of Appeal:

"Central to agency is the conception of identity or representation of the principal."

And that was said at paragraph 177 in Tonto. The court said:

"That the essential characteristic is that one party acts on another's behalf, and that this will generally be in circumstances of a requirement or duty not to act otherwise than in the interests of the principal in the performance of the consensual arrangement."

And the court identified that those central conceptions of agency, that is, authority and consent:

"Reveal the closeness of identity that is required for the relationship to exist."

And that was at paragraph 177. So central to - and, again, this is - the Court of Appeal said this:

"The core conception of agency is one that connotes an authority or capacity of one person to create legal relations between a person occupying the position of principal and third parties."

And having said that, the court does identify, in effect, an extended sense in which agency could be considered to exist, and that's the situation where an agent may have some fiduciary relationship with a principal, and acts on behalf of the principal, but has no authority and hence no power to affect the principal's

relations with third parties. And the court said that in that sort of agency, the agent:

> "Makes no contracts and disposes of no property, but is simply hired, whether as an employee or an independent contractor, to introduce parties desirous of contracting and leaves them to contract between themselves."

And the reason I raise that extended form of the concept of agency, which the court described as being at the fringes of the common law principles, is that it doesn't apply here. Because this was not a situation where the putative agent was introducing parties to the purported principal, and leaving it to the principal and that party to form a contract. As the evidence shows, all of these loans issued by EEIS were on EEIS letterhead. They didn't purport to be loans issued by The Star at all. So they were, if anything, loans issued by the agent, which, of course, we say it wasn't an agent.

Now, in any case, to establish agency, it's insufficient to show that the alleged principal and agent had a common interest in particular transactions being implemented and that each had some general understanding of the nature of participation by others, and that's a principle stated in Gunns Finance [2016] NSWSC 1543 at paragraph 119. It's also been said that:

> "It is insufficient to show that one person did work at the request of another person for the latter's benefit."

That's a point made by Dal Pont on agency and referring to various authorities which we will set out in writing. And - but that rather, it's necessary to establish that one party was given authority to act on behalf of the other in some relevant way.

And the reason I'm making - I will perhaps flag this. The reason I'm making these points is that it will be our submission that counsel assisting in her submissions, which I will get to, in support of the proposition that EEIS was an agent for The Star, addressed certain subsidiary - what we would say are subsidiary aspects of an agency relationship, but not the core elements of an agency relationship that must be established, that is, authority and consent. Rather, she referred to matters such as control, which I will come to, and acting for the benefit of another rather than in one's own benefit. So as I've just mentioned, it's insufficient to establish that benefit - acting for the benefit of another, but - even though it is one of the - could be considered one of the factors to weigh into account.

Mr Bell, I see the time. I will need to develop this further. Is that a convenient time?

MR BELL SC: Yes. It is. I should say this, Mr Holmes. This is an important issue, but it is one that you can probably develop in writing. And I would be

content, bearing in mind that The Star really only has the rest of today to complete its oral submissions, for you to give me a summary of what The Star says on this issue, orally.

MR HOLMES: Yes. Thank you. I will do that, and perhaps I'll just make some high level propositions at the end - after the adjournment.

MR BELL SC: Yes. All right. I will now adjourn for 15 minutes.

<THE HEARING ADJOURNED AT 11:30 AM

<THE HEARING RESUMED AT 11:46 AM

MR BELL SC: Yes, Mr Holmes.

MR HOLMES: Thank you, Mr Bell. In an effort to make this more concise, I'll just put some - the propositions on faith that we'll make them good by reference to authority in our written submissions. In effect, our submission will be that there's no evidence of any authority conferred on EEIS to act on behalf of The Star in issuing loans, let alone that EEIS, in issuing loans, affected The Star's legal relations. In that regard, there's no agency agreement or any other agreement between EEIS and The Star in evidence.

The evidence is rather that the facility application and facility offer forms issued in connection with EEIS loans were on EEIS letterhead and that they contained no suggestion that any EEIS loan facility was being offered by or on behalf of The Star or affected The Star's legal rights. There's also no evidence to support the kind of agency which I described as being on the fringe of the common law principles, and I think I mentioned earlier that that's because the contracts were between EEIS itself. It wasn't a situation where it was introducing a party to its purported principal and letting the principal contract.

Next, there's no evidence of consent on the part of The Star to appoint EEIS as its agent or by EEIS to act as The Star's agent. So that is, there's no manifestation of any intention by The Star that EEIS would act for it or of any intention by EEIS so to act. And indeed, on the contrary, EEIS's application in 2014 to become a close associate of The Star manifested an intention that EEIS would not be such an agent. Now, granted that was several years earlier than the loans were actually issued, but I'll mention in a moment why we say that there was no material change that would cause one to doubt the continued application of that denial of agency, as it were.

Now, it's true that some four years - the statement that EEIS would not be an agent that was made to the regulator was made some four years before EEIS actually began issuing loans and that, in certain ways, as counsel assisting submitted, arrangements had changed in the ensuing period. I think that was the words used.

But The Star was at all times - well, I'll make this point. There had been no relevant changes to the Casino Control Act, section 74(1), in the ensuing period. And, indeed, what was contemplated in that early period - and I'll come to this when I refer to Mr Walker's advice - there had been no change in the substance of what had been contemplated, in the sense of EEIS providing indirect credit as part of the Star group to patrons of The Star itself.

And so in those circumstances, there's no reason to think that by 2018/2019, The Star or EEIS intended or consented to the creation of an agency relationship. And - in fact, far from it, that agency - such a relationship would have made, of course, the loans unlawful and would have defeated the purpose of the loans being issued by EEIS rather than The Star. So that, in itself, we say, tells against finding of such an intention.

And - now, counsel assisting did make a submission about the memorandum of services agreement, and the substance of the submission made about that was there's no - there was a statement in that agreement to the effect that there was no agency relationship, but the - there was - and counsel assisting correctly indicated that denying agency per se does not deny the legal fact of agency, although it is regarded as something that ought to be given proper weight in the absence of a sham. But the real point about that agreement is that that was an agreement that, relevantly, was between The Star Entertainment Group Limited and EEIS, and doesn't say anything about any agency relationship between EEIS and The Star Pty Ltd, which is (indistinct).

MR BELL SC: It only dealt with ancillary matters, did it not?

MR HOLMES: It did. We accept that. And - but that, in a sense, reinforces that - the absence of any evidence of an indication of an intention to create an agency relationship between The Star and EEIS. And I'll just mention, in that regard - we'll make this point in more detail in writing, but it's a significant point that there's a considerable reluctance by courts - and this has been expressly acknowledged in authorities - to find an agency relationship between corporate entities within a corporate group, and that is because to find that would easily trespass on the notion of the separate personality principle of companies, and it would almost be akin to - if you accepted that the fact of control, if indeed such control exists, were enough to establish an agency relationship, then just about all subsidiaries would be the agent of their principal.

There's even more reluctance to find that - it's often alleged that there's an agency relationship between a principal and a holding company, but the courts are even more reluctant to find such a relationship between sister companies, which is what the situation is here, that is, companies that are both the subsidiaries of a common parent.

And one of the points that's made in the authorities is that it militates strongly against any finding of agency where there is a good commercial purpose in having a member of the corporate group perform particular functions for the group, from a group perspective. And there are a number of authorities that make that point. And, indeed, there are some that we will cite that - or the more prominent ones that deal with this point considered situations in which, in fact, a funding company for - one company within the group provided finance for customers of, in effect, the group. So that has parallels to what we're talking about here.

In any case - so the ultimate point that we would make about the specific evidence that counsel assisting put to you about the agency relationship was that they all related, in effect, to the question of control and benefit. And in substance, we say the only evidence of control was that there was a common directorship between The Star and EEIS. Now, we would say that's not sufficient to establish control, and there's authorities to that effect. But even if it were, control is very much a subsidiary consideration in the question of whether an agency relationship has been formed, and there's a string of authorities to the effect that it is - control is insufficient to establish agency.

And as to the question of benefit, the benefit - certainly there was - it's undeniable that EEIS was, in one sense, acting for the benefit of The Star. It was also acting directly for the benefit of its holding company. And - but as I outlined earlier before the adjournment, it's again insufficient to establish that one company acts for the benefit of another in order to establish agency. Now - so I think - I've galloped through those in a way, but we will make those points in more detail in writing.

What I did want to address you on was the second aspect of counsel assisting's submission, which was the question of whether we courted the risk of a contravention. The substance of that submission - or the substantive response to that submission rests, in part, on the advice given by Mr Walker SC and Mr Free of counsel in 2012. And that advice is in - or that opinion is in exhibit F1. It might be worth just briefly showing - I think you wanted to be taken to that, and I can just - if we could bring it up, I will take you to the salient parts of it.

The first point to make about this opinion - and if you want me to pause to allow you to read it more fully, please say so. But the first point to make about it is that in paragraph 2, you will see that the premise of the advice is that:

> "The Echo Group -"

Which was obviously The Star group's name at the time:

> "Is considering options for promoting VIP businesses at The Star Casino."

And it expressly states:

"One option includes facilitating loans by a company in the Echo Group (not being The Star) to patrons of The Star Casino and/or promoters of junkets at The Star. Such loans would be provided on the condition that the funds be used to gamble at The Star Casino."

So the point about that is that's precisely the scenario in which - that subsequently ensued, albeit some years later, namely, that an entity within The Star Entertainment Group provided loans for the purpose of gambling at The Star Casino. And the advice given in relation to that - there was detailed analysis, but if we could go to the last --

MR BELL SC: Just pausing, though, to the questions that counsel was asked to consider. They were asked to consider some large questions. There was no specific advice sought in relation to the question of agency. Do you agree?

MR HOLMES: There wasn't - no, that's correct. There wasn't advice specifically sought in relation to agency. But in my submission, that - the breadth of the questions asked supports the reasonableness of the response, and I'll develop that. But the question asked - the first question asked was that they:

"Advise generally on the enforceability of agreements relating to gambling."

And secondly:

"Answer the following specific questions: is it lawful under the Casino Control Act for a member of the Echo Group to advance credit?"

So that's a broad question about legality of the arrangements that had been specifically contemplated and set out in paragraph 2. And then the second subsidiary question was:

"Would a loan contract be enforceable?"

Now, if one looks, then, at the ultimate advice, which is on the last page - if we can bring that up, operator - you will see in paragraph 16 that counsel says:

"In light of the analysis set out above, the answers to the specific questions may be shortly stated."

And then it says - and this is the - well, I can read those out, but I will just try and summarise:

"Section 74 precludes The Star, its agents and employees from extending credit. The Casino Act does not prohibit the provision of credit by other persons in connection with gaming in the casino. It follows that it would not

be contrary to the Casino Control Act for a member of the Echo Group (other than The Star or any entity which would be construed as an agent or employee of The Star) to advance credit to patrons."

Etcetera. Now, in my submission, that is an unequivocal statement about the legality, subject to one - to a parenthetical qualification about agents, admittedly, and employees. But the parenthetical qualification is about the very things that are expressly stated in the - section 74(1) of the Act. And so in my submission, the reasonable reader of this advice, having - knowing that counsel had been briefed to advise on - broadly on the legality of the contemplated arrangement, the arrangement that had been expressly set out in the advice, that if counsel considered there was any material risk that an entity within the group would be considered an agent, that they would specifically address that question in the advice and elaborate on it. But that was not done. And so the inference that the reader would draw from this is that that's not something that they need to be concerned about. It's really an aside reflecting the wording of the legislation.

MR BELL SC: Counsel weren't asked to address the specific question of when and how an agency might arise, and it's in that context that they simply draw the broad conclusion that as long as there is no agency, it would be permissible. But you're not suggesting that this broad statement in 2012 was a sufficient basis for The Star to proceed on the terms in which it did specifically in 2018, are you?

MR HOLMES: I wouldn't put it that highly. I would say that the advice given appeared - would have given the reader reasonable comfort at the time that there was no risk that - particular risk that any company in the group would be construed as an agent in circumstances where it was clear that what they were trying to seek to ensure through this advice was that the contemplated arrangements would be legal.

Now, it's true that - and so we do concede that it would have been more prudent to seek further advice about this closer to the time, you know, in relation to the agency question, that they were issuing loans. But that was - that's perhaps the counsel of perfection in hindsight, in my submission, when you see the fairly categorical advice given at this time in circumstances where the legislation had not changed in the interim and the material facts as well or the scenario contemplated had not changed.

Excuse me for a moment. And so we say that that advice conveys the - the import of that advice is that the mere fact of being a company within the group would not cause - would not establish agency or cause it to be an agent. And that, of course, is reflected in the authorities and the ways in which they approach the questions of agency within corporate - between companies and particularly in corporate groups. So that's my submission about that.

I should mention as well, of course, that these contemplated arrangements, as senior counsel mentioned this morning, were disclosed not only at around - well, they were first disclosed to ILGA in - around 2012, and this specific advice was put before ILGA - provided to it. And I'll just need to turn up the reference to the evidence of that. But it was also - the structure - the proposed structure - the money lending structure was then disclosed to ILGA in March of 2018, and reference has already been made to that. But it's exhibit J30 and J31. But as to the 2012 disclosure, if I can just give you a reference to that, it made that presentation in exhibit M23 and M24. And in that, there's a reference to Mr Walker and Mr Free's advice on that topic.

That's all I wished to outline at this stage on the agency questions, unless there are further questions about it. I did want to make some - just two very short clarifications about something said yesterday in relation to EEIS while I'm on my feet, if I may. One is that at live transcript reference 4302.10, senior counsel mentioned that she was instructed that, on at least one occasion, a loan - an EEIS loan was made for a period of longer than 30 days. That hasn't been able to be verified overnight. And so we'll need to address that question in writing, about whether that's, in fact, correct.

MR BELL SC: Yes.

MR HOLMES: The other point is live transcript 4322. There was a bit of a discussion between you and Ms Richardson about the predominant reason for EEIS loans, and you asked the question - Ms Richardson said, "By early 2018, the predominant reason for EEIS loans was not the provision of credit," or words to that effect. And that prompted you to ask, "Well, what was the other purpose of the EEIS loans?" What we wish to clarify about that is that the reference that Ms Richardson made to EEIS loans was - she misspoke. It should have been a reference to the EEIS project.

MR BELL SC: Yes.

MR HOLMES: So you will recall that at that time, the EEIS project contemplated, in part, that EEIS itself would be a remitter.

MR BELL SC: Yes. Yes. Thank you for that clarification.

MS RICHARDSON SC: Sorry for that delay, Mr Bell. The next topic I propose to do, which is out of order but was foreshadowed a day or two ago, is the question about temporary CCFs and whether they constitute a breach of the Cheques Act - sorry, the Casino Control Act.

MR BELL SC: Yes.

MS RICHARDSON SC: I think a communication was made to solicitors assisting that I might be referring to parts of the Cheques Act and the Casino Control Act so that they could be brought up on the screen, if that's of assistance. And I'm proposing to go through this, even though it's slightly dense legal analysis, because, Mr Bell, you indicated that would be of assistance. But we will be --

MR BELL SC: At least in terms of a broad overview, yes.

MS RICHARDSON SC: Certainly. So I won't go through specifics about case law and references to texts and so on, but that will all be provided in the written material that we provide. It's really just an overview, conceptually, about what the concept of a cheque is as used in the Casino Control Act. So I don't know whether this is possible. But if it's possible, we could have one screen with section 10 of the Cheques Act and, on the right-hand side, exhibit B73, which was a cheque signed by Mr Phillip Dong Fang Lee, only because it gives a concrete - no, it's the next page. Sorry, on the right-hand side. Not that page; the next page. Yes. Thank you. And if we could have section 10 on the left-hand page, that would be great. Thank you.

MR BELL SC: Operator, can we go to section 10 itself, please? Thank you.

MS RICHARDSON SC: Thank you. If we could possibly blow up section 10. Thank you. So section 10, you see in the heading, is Cheque Defined. And I'll come back to the terms of section 75 of the Casino Control Act, but you will recall that section 75(1) says that:

> "'Cheque' has the same meaning as in the Cheque and Payment Orders Act."

Which is the same Act as the Cheques Act 1986, and that's common ground between my learned friend and I. So that is why we are then directed to the Cheques Act. But it's plain in the Casino Control Act - sorry. It's plain in section 75 of the Casino Control Act that each time there's a reference to "cheque", it's to be understood as a cheque as defined - or it has the same meaning as in the Cheques Act.

So taking each element of this - the cheque on the right-hand side is just an example of a cheque that has been referred to in evidence. But that is a cheque within the meaning of the Cheques Act and, therefore, within the meaning of section 75 of the Casino Control Act. So taking each element - element in the chapeau of subsection (1), it's an unconditional order in writing. So we see on the left-hand side of the cheque, about five lines down:

> "Pay to the order of The Star Pty Ltd."

So that is an unconditional order in writing. In terms of the requirement in section 10(1)(a), it's addressed by a person, which is Mr Phillip Dong Fang Lee, to another person, being a financial institution, and the other person/financial institution is the China Construction Bank. The requirement in section 10(1)(b), it's signed by the person giving the unconditional order, that is, it's signed by Mr Phillip Dong Fang Lee, and we see his signature in the bottom right-hand corner of the cheque, and he gave evidence at transcript 585.11 that that is his signature.

And then the third requirement in section 10 is the order - unconditional order requires the financial institution to pay on demand a sum certain in money. So we have a sum certain in money, which is the figure in Chinese Yuan of 53,698,000, and I'll take you in broad terms to authorities that establish that a cheque in that form meets that requirement in 10(1)(c), that it's an unconditional order requiring the financial institution to pay. And --

MR BELL SC: I think the relevant issue, though, is whether this document required the China Construction Bank to do anything.

MS RICHARDSON SC: I'll come to what that means. I accept that that is an issue that has been raised, and I'll seek to do that. So the relevant seminal text in this area is by Professor Tyree, T-y-r-e-e. It's Tyree Australian Law of Cheques and Payment Orders (1988), which we will refer to extensively in our written submissions, and, in particular, at 7.9 and following. And he notes that there are various matters that prove this proposition, namely, that section 10(1)(c), where it says "requires the financial institution to pay", does not import a requirement that the financial institution - here, China Construction Bank - be actually obliged to obey the order, that is, to honour the cheque.

And secondly - sorry, I will come back to the second point. So that concept of "requires" in section (1)(c) does not import that obligation, and that is axiomatic from the structure of the Cheques Act and authorities supporting that proposition. I will just seek to deal with them at a high level. So Professor Tyree observes that, for example, a person may draw a valid cheque on a financial institution with which they hold no account. So that the fact that a person doesn't hold a chequing account does not mean that a document that meets the requirements of section 10 does not constitute a cheque. The drawing of such a cheque would be treated as an implied request for credit.

Similarly, he observes that if a person with a chequing account draws a cheque on that account and there are insufficient funds to meet the order in that cheque that they be paid, that it is still a cheque even though the financial institution is not ultimately obliged to honour it because there are insufficient funds. It's still a cheque. And that would also be met as an implied request for credit.

So in those circumstances, the drawee financial institution, which here is China Construction Bank - in the scenario they're a chequing account and there were

insufficient funds to meet the order in the cheque at the time it was presented, they would be highly unlikely to honour such an order. But that does not mean that the instrument itself does not meet the description of a cheque.

Another matter in relation to the law of cheques is that in - Professor Tyree acknowledges that in Anglo-Australian banking law as between a bank and customer, that is, the drawee - here, relevantly, Mr Philip Lee - and the - sorry, the drawee - here, China Construction Bank - and the drawer, Mr Philip Lee, relevantly, here, there is generally no requirement that the customer have a cheque book or a dedicated checking facility or even an account in order to draw what would be recognised as a cheque that the bank will be obliged to pay.

So even if a person without a chequing account were to draw up an instrument meeting the criteria in section 10 and were to present that - sorry, to give it - the example I'm giving you is in relation to, for example, if a person had a term deposit at a bank and that there's no chequing facility, but there are funds - sorry, not a term deposit because a term deposit has contractual requirements about when you can access the funds and so on. But if there were a savings account or an account otherwise with credit, if an instrument was prepared meeting the criteria in section 10, even where the person doesn't have a chequing account, the bank would generally be obliged to pay that cheque if it's in relation to an account which has sufficient cleared funds to meet it. And that's --

MR BELL SC: But the basis upon which I will be proceeding will be consistent with the instructions that were given to Mallesons, which were reflected in its advice of 30 April 2013, which was that these Chinese patrons using China UnionPay had no account with their bank other than a China UnionPay card.

MS RICHARDSON SC: But even so, that doesn't affect the analysis under the Cheques Act. So in relation to the point I was making about where a person doesn't have a chequing account and if there were sufficient funds in an account and the person prepared an instrument that meet the criteria in section 10, the bank would be generally obliged to pay because that is just an incident of the debtor and creditor relationship between the bank and the customer, which is that the customer has funds at the bank, that the bank, in effect, owes it.

So the broad proposition is in order for an instrument to be a valid cheque under section 10, there's no requirement that the bank be obliged to honour the cheque. That is a matter as between the drawer of the cheque - here, Philip Lee - and the drawee - here, China Construction Bank - but that does not affect the validity as to whether it is a cheque in the hands of the holder - and "holder" is defined in section 3 of the Cheques Act - and, relevantly, here, The Star - in limb (a) of the definition of "holder" in relation to a cheque payable to order, The Star is the payee who is in possession of the cheque as payee. So it is also the holder of the cheque.

So it's plain on the analysis in Professor Tyree's text and in case law, we submit, that in order for an instrument to meet the description of "cheque" under the Cheques Act, section 10 does not import a requirement that the drawee institution be under any obligation to honour or pay out the cheque at the time that it's drawn or that it actually be honoured. An example of that is even a person who has a chequing account, if they write a cheque at the time, and at the time they write it there are insufficient funds in their account to pay it out, that does not mean the instrument itself is not a cheque.

Similarly, if the person writes a cheque and there are sufficient funds at the time they write it, but at the time of presentment there are insufficient funds, it's still a cheque. And the Cheques Act has detailed mechanisms for dealing with presentment and honour and dishonour of cheques as between financial institutions. And that is a separate regime as to when an instrument that meets the description of a cheque is presented as to what the obligations of various financial institutions are. And for example, there is an express statutory regime about obligations in relation to a cheque that is presented and when, for example, it may be dishonoured.

That doesn't mean the underlying instrument loses its character as a cheque; it's just conferring rights about when cheques must be honoured and so. And we will refer in detail in writing to a - there are actually a series of cases involving counter cheques and casinos where these types of counter cheques - and it's apparent from the recitation of facts in those cases, in relevantly similar terms to this example - counter cheque - are valid cheques. So --

MR BELL SC: Were any of those cases cases in which the customer had no account with the bank at all?

MS RICHARDSON SC: Not to my knowledge, but - here, in our submission, you couldn't draw an inference that Mr Lee did not have an account with the China Construction Bank. Plainly, he did, because he had a China UnionPay card.

MR BELL SC: Well, he told me he didn't. He told me he didn't have an account, and the Mallesons' advice refers to the instructions from Star that the only banking relationship between these patrons and the banks in China was the China UnionPay card.

MS RICHARDSON SC: But the China UnionPay card is an account itself. So we might address the details of that in writing, but the --

MR BELL SC: Yes. Thank you.

MS RICHARDSON SC: In terms of the cases we will refer to that - where counter cheques, in the context of casinos, have been expressly considered, a relatively recent case is Star Pty Ltd v Wong, neutral citation [2018] NSWSC 151.

In that case, there were two cheques. One was a counter cheque - there were two cheques in that case. One was a cheque written on a chequing account, and one was a counter cheque that had been created by the casino but was a cheque in the sense of section 10, in the sense that it had been signed by a person and was expressed to be paid to the order of The Star and so on.

And in that case, the person was from overseas and it was a foreign bank. This is the drawee financial institution. In that case, both the, if you like, chequing account cheque and the counter cheque were just described cumulatively as two cheques. And there's express analysis of Justice Schmidt, I think, that they were both - both met the definition of section 10 as being cheques and were expressly enforceable, and both were drawn in relation to a foreign bank. And that's at paragraphs 4 to 7 and 11 of that judgment.

Separately, there's a full - there is a judgment of the Court of Appeal of the Northern Territory - well, it was the Full Court. Justices Angel and Priestley were in the majority. And that was a case over the validity of a counter cheque issued in the context of a casino. It's Newham, N-e-w-h-a-m, v Diamond Leisure Pty Ltd (No 2).

MR BELL SC: Yes, I read that case when you referred me to it at an earlier point in time. And that was a case where the customer, in fact, held a chequing account with the Commonwealth Bank. So it is somewhat different as a matter of fact.

MS RICHARDSON SC: The facts are different in that respect but not positively so, in my submission. The relevant point is that if we compare the cheque written by Mr Lee here, which says "pay to the order of The Star", which reflects the language in section 10 of the Cheques Act that it's an unconditional order, and the Full Court in Newham talked about the syntax of "pay to", as in the imperative sense, if it's an order, "pay". And the particular terms of the counter cheque in Newham said "payable to". And it was in the non-imperative, general tense "payable to", and the analysis was, is using slightly different language "payable to" - is that still within section 10, and the two judges in the majority held it was. The point of referring to that is that there was no doubt in that case that the counter cheque issued in the context of a casino, and signed by the patron, was a cheque. The only issue was whether the particular tweak in the language took it outside that framework.

In respect of the evidence about whether Mr Lee had a bank account with China Construction Bank, he gave evidence that he did have a bank account. So you put the question to him at T585.23:

> "You've told me that you had a bank account in China with the China Construction Bank, which had a China UnionPay card attached to it; is that correct?"

And he gave the evidence:

> "Correct."

So in our submission, the evidence is he did have a bank account.

In the written submissions, we will refer to a series of other cases involving counter cheques created in the context of casinos where their validity and the fact that patrons are drawing cheques on paperwork prepared by casinos is not novel or unusual and the enforceability of those instruments is recognised.

So the other point we would make about the Cheques Act is that it has a conflict of laws question provision in 117, which makes clear that:

> "The question as to whether an instrument constitutes a cheque shall be determined in accordance with the law of the place of issue."

And "issue" is defined in section 3. And relevantly, here, it's Australia. Because it's - in relation to a cheque, it's the first delivery of the cheque to the person who takes the cheque as holder. So here, the first delivery of the cheque from Mr Lee was to The Star in Australia. So The Star is the holder of the cheque, and it has been issued in Australia. So the conflict of laws provision provides that it's the Cheques Act that will determine the validity of that cheque.

So we submit that the example I've given there in relation to Dong Fang Lee but generally the way in which temporary - or cheques that were created as part of the temporary CCF meet the description of the relevant description in section 75(2)(b), that is, it's a cheque payable to the operator. So in that respect, in 75(2)(b), it's a cheque, for the reasons I have said, and it's payable to the operator, which is The Star Pty Ltd. And in our submission, because it is a valid cheque under the Cheques Act, which is the relevant requirement under section 75(1), those cheques were not shams. To the contrary, they were cheques expressly within the contemplation of a cheque in section 75, and they're cheques that have been recognised by multiple cases.

MR BELL SC: But the question of sham raises much broader considerations, doesn't it? Firstly, for example, the context is that section 75(6) and 75(6A) of the Casino Control Act require the licensee to:

> "Bank a cheque accepted by the operator under this section."

Whereas the casino's own standard operating procedures made it very clear that these cheques were never to be presented or banked. Doesn't that bear on the question of whether the casino and the patron intended it to operate as a cheque?

MS RICHARDSON SC: Firstly, I'll have to check the SOP, but my recollection is that it does not provide that they must not be banked. And Mr Oliver White in his memorandum, which I will come to - his February 2014 memorandum - expressly contemplated that these cheques might be banked. He also contemplated the risk that they might be dishonoured upon banking. But, in fact, the evidence that exists before the review is that they would be banked in accordance with the timeframe in 75, subsection (6). And I will just seek to develop that. So --

MR BELL SC: You will need to take me to the SOP because my recollection of it is that it says that foreign banks do not recognise counter cheques, and that made it clear that there would be no issue of presentation occurring in relation to these temporary CCF cheques. But I may be wrong about that. But I would be grateful if you could take me to it.

MS RICHARDSON SC: I will have to have that turned up. So in terms of the requirement in section 75(6), that is that the casino operator must bank a cheque. So I just seek to address what it means to bank a cheque. So the definition of the verb "to bank a cheque" is not defined in the Casino Control Act. It's also not defined in the Cheques Act. But we say that as a matter of ordinary usage, what that means is it's intended to mean lodgement by the holder of the cheque with a financial institution for collection on behalf of the holder.

So for example, if The Star's - one of its banks was the NAB. It would not be banking the cheque with China Construction Bank. It banks the cheque, for example, with the NAB. And it must bank it within the period of time set out in subsection (6). So you, in effect - if you are the holder of a cheque - and this applies to ordinary people as well. If you have a cheque, you bank it with your financial institution. And then there are a series of mechanisms in the Cheques Act which provide for what happens when a person banks a cheque as to how the financial institution who receives the cheque then interacts with the drawee institution.

So for example, if we could bring up section 66 of the Cheques Act. So if we look at section 66(1), it's talking about deposit institutions. So here, in my example, NAB is the deposit institution. It's the institution where The Star has chosen to bank the cheque. And I'll just interpolate my example here:

> "Where the holder of a cheque -"

Which is here The Star:

> "Lodges the cheque with a financial institution -"

Defined as the deposit institution; in my example, the NAB:

"For collection for the holder."

So The Star would bank a cheque for collection by the deposit institution for the holder, which is The Star:

"The deposit institution -"

Here, the NAB:

"Shall duly present the cheque for payment."

And so it's - here, in this example, it's the NAB that presents the cheque for payment to the drawee institution, which, relevantly here, is China Construction Bank. And then we see - if we could go to 66 subsection (2), for example. It says:

"Where the drawee institution -"

Here China Construction Bank:

"Makes a request."

And then there's mechanics about whether it will be taken to have been duly presented. So the Cheques Act creates a framework whereby financial institutions, where one is the deposit institution - here, the NAB - and the other is the drawee, their rights as between each other in terms of the presentment of cheques that have been drawn.

MR BELL SC: I'm not sure exactly where you're going with this because I would have understood, as I think you're putting, that section 75(6) and (6A) are referring to an obligation on the licensee to bank the cheque with its own bank. The question is really - and using the example of the --

MS RICHARDSON SC: Just to be clear, I am saying that.

MR BELL SC: Yes. And the real question, it seems to me, is whether - taking the example of the Phillip Dong Fang Lee cheque that you referred to, whether Mr Lee intended to make an unconditional order in writing on the China Construction Bank by that document, and whether The Star ever intended to bank it. Because if they didn't have that intention, then it seems to me it would fall clearly within the accepted definition of "sham" provided by the High Court in Equuscorp at 46, namely, it refers to:

"Steps which take the form of a legally effective transaction but which the parties intend should not have the apparent, or any, legal consequences."

That's really the issue here, I think.

MS RICHARDSON SC: I'll address that. So in my submission, that - given the terms of the cheque that Mr Dong Fang Lee signed, for example - but he's only one example, of course. One can't draw an inference from one person as to what every other person who drew a cheque. Just taking him as an example, we have a document in formal terms where he has signed the document, with express language of paying to the order of The Star an amount of money, and it's in formal terms. And as I've submitted, it meets the definition of a cheque under the Act. So in my submission, given that he has given evidence that he had an account with the China Construction Bank, one could not draw the inference about his intentions.

In any event, we submit that under the Cheques Act, the subjective intention of the person who draws the cheque is not relevant. Section 10, to be a valid cheque, the subjective intentions of the drawee - sorry, the drawer are irrelevant, and the examples I have given, for example, is - even to take a more straightforward example, if a person drew a cheque on their cheque book and their subjective intention was that this cheque would never be honoured because there was no money in their chequing account at the time they wrote it or that there was money in their chequing account at the time they wrote it but they knew it would be depleted by the time it would be presented or any other matter affecting relevant subjective intention of that drawer, none of that affects at all whether the instrument they have created meets the description of a cheque. That just feeds into the --

MR BELL SC: I don't think there's any doubt the question of whether it's a sham isn't determined by whether it's effective as a cheque under section 10, because the question of sham assumes that the document takes the form of a legally effective transaction. So for the purposes of this analysis, the starting point was that it does take the form of a legally effective transaction under section 10. The question then becomes what are the real intentions of the parties in relation to that document.

MS RICHARDSON SC: So if I could take you to the relevant standard operating procedure --

MR BELL SC: Yes.

MS RICHARDSON SC: -- it actually expressly contemplates the banking of cheques. So the cheque cashing/deposits facility SOP - I don't have the exhibit number, but the STA number is 3463.0004.4208 at - I will just give you the pin cite which requires banking within the required timeframe.

MR BELL SC: Yes. And you should show me that. And is that specifically dealing with these temporary CCF procedures? Because I recall it had a separate standard operating procedure.

MS RICHARDSON SC: So that SOP does deal with China UnionPay cards, but the section I'm referring to is a general obligation to bank counter cheques. And I will just give the reference to that. It's at pin cite 4225, and it's task 8.3. And it makes clear that this requirement to bank within the required timeframe applies to foreign cheques. Also, task 9 describes expressly the timeframes in which cheques must be banked.

The other matter I wish to take you to is Mr Oliver's memorandum - sorry, Mr White's memorandum - it's exhibit 3409 - where - so in that memorandum, we say Mr White expressly contemplates that the counter cheque that would be issued as part of the temporary CCF process would be banked in the event that the CUP transaction didn't clear. So he - perhaps if we could have page 2 and 3 - lose page 1 and have pages 2 and 3. So Mr White refers, down the bottom of that page - the bullet point:

> "The risk that CUP will not make payment on a transaction that has been approved."

He identified that as a risk and said he's not in a position to quantify this risk. And, in effect, it would be the event that CUP didn't make payment on the transaction, that then the funds wouldn't clear. And then the counter cheque, in effect - the issue would arise. And he says on the last page there, in the second bullet point - he talks about:

> "It is unlikely ILGA will investigate the matter unless it ends up in a position of default."

And he expressly identifies the position of default will be:

> "The CUP approved transaction is not honoured by payment."

And:

> "Accordingly, the house marker -"

Which is interchangeably, here, the counter cheque:

> "Is banked and dishonoured."

So we say the contemplation was that the cheque would have to be banked because that is what section 75, subsection (6) required in terms of the timeframes. And so we say that the evidence supports the view that the cheque would be banked. And the fact that it might ultimately be dishonoured does not mean that the instrument that was created is not a cheque.

And, of course, the same is true for any cheque that is written, even on a chequing account, for example, that a person might write a cheque - and section 75 wouldn't prevent this. They give a cheque payable to the operator, where the person may have a subjective intention that, although they have given that cheque payable to the operator, which is the thing that has allowed them to have money credited to their deposit account under section 75(2) - even if they have the subjective intention that that would never be honoured because either that chequing account isn't valid, there's no funds in it, there's funds now but there won't be funds later or any of those other permutations, none of those matters mean the cheque is not an instrument that meets the description of a cheque payable to the operator.

So we submit that the legal position in relation to the counter cheques referred to as temporary CCFs in relation to China UnionPay - the position that Mr White advised on in his - the memorandum of February 2014 was correct, as a matter of law. However, I have already accepted that - as counsel assisting was correct to submit, that reliance upon merely internal legal advice to this effect was a very brave call in circumstances where no external advice had been sought to confirm it, and that submission was made at T4020 point 26.

And we accept that - and I've already accepted this, that it's open to the review to find that in circumstances where the author and the recipients of this memorandum, being Mr Redmond, Mr Bekier and Ms Martin and Mr White, must have understood that the authority might take a different view in this respect; that the appropriate course was to clearly lay out a temporary CCF proposal to the authority and to explain its reasoning as to why it was said to be consistent with the Casino Control Act; and that it was - it is also open to the review to find that the failure of The Star to clearly lay out this proposal to the authority reflects a failure on its part to be frank and transparent with the regulator.

And I've also accepted that the fact that the issue was not raised squarely with the authority and no external legal advice was obtained on the subject means it is open for the review to find that the relevant persons, which included Mr Redmond, Mr Bekier and Ms Martin, relevantly, were prepared to court legal risk where it suited the perceived financial interests of the business.

MR BELL SC: Ms Richardson, could you take me to the SOP that you were referring to earlier which indicates that The Star did intend to bank the counter cheques?

MS RICHARDSON SC: I will take you to it. It's a general section in relation to all cheques, including - it would include counter cheques and include cheques in relation to foreign institutions. It's not specifically in relation to cheques linked to China UnionPay.

MR BELL SC: Is it exhibit D3?

MS RICHARDSON SC: Just one moment.

MR BELL SC: Yes. Operator, could we go to page - pinpoint point 0059 in that SOP. Just scroll down that page. See, the way I read that, Ms Richardson - I'm looking at the note under paragraph 3 on the left-hand side. It says:

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

That seems to indicate that The Star recognised that it would require a signed personal cheque in respect of overseas patrons. Perhaps I'm reading that incorrectly.

MS RICHARDSON SC: Well, that is a general task in relation to CCFs generally. Of course, in relation to CUPs - sorry, the CUP transactions, there wasn't a need for a signed personal cheque because they were a debit card where there were funds in the account which were - would be transferred. And so it was in a different position.

MR BELL SC: Well, that was, of course, the hope. But, of course, there could be any number of reasons why a credit card transaction was declined or there was a charge-back or some other reason why the funds didn't ultimately arrive in The Star's bank account, in which case it was left only with this counter cheque, was it not?

MS RICHARDSON SC: In that scenario, it would have been left with a counter cheque. But using the Philip Lee cheque as an example, the intention revealed by Mr White in his memorandum is that the cheque would be banked and then it would be a question of whether it was honoured. And for example, in relation to the China Construction Bank, Mr Lee gave evidence that he had an account with that bank. And I referred, as part of the interchange we had in relation to this topic, that China Construction Bank did have a local branch in Australia.

So while there may be a risk that it is dishonoured, one cannot assume it would be dishonoured. But there's no doubt that Mr White contemplated a risk it would be dishonoured. But that there was no - it's clear that the intention was that this would be treated as a cheque, because Mr White's analysis was exactly to the effect that this was a cheque and it met the requirements of section 10, and that it would be banked.

MR BELL SC: Would I not deduce The Star's corporate intention from its standard operating procedures, rather than from a memorandum from Mr White?

MS RICHARDSON SC: I just need to go to a different part of this SOP.

MR BELL SC: Yes.

MS RICHARDSON SC: I note the time. Is this something that I could digest these SOPs after lunch so I could do it in a more efficient way?

MR BELL SC: Yes. I'm also conscious that I'm taking up a lot of your allocated time. I'm happy for you to deal with it at a broad-brush level and then move on to the other important issues that I know you need to address.

MS RICHARDSON SC: Is this convenient: we accept that this is an issue that you wish to be assisted with and we will do that, but we will track through the relevant parts of the SOPs and make submissions directed to the questions that you've raised with me, if that's convenient.

MR BELL SC: It probably is more convenient for you to take that course, rather than for me to be taking up your time that's remaining in oral submissions.

MS RICHARDSON SC: The other thing is that I don't know whether they relevantly changed over time, but they changed over time and so we would need to track through for you whether they were relevantly the same or relevantly different, and I think that might be more efficiently done in writing.

MR BELL SC: Yes. No, I accept that. Okay. Well, I will now adjourn until 2 pm.

<THE HEARING ADJOURNED AT 12:59 PM

<THE HEARING RESUMED AT 2:01 PM

MR BELL SC: Yes, Ms Richardson.

MS RICHARDSON SC: Thank you, Mr Bell. I wanted to raise an issue in relation to the ASX announcements that arose yesterday. Sorry, just one moment. Counsel assisting in relation to the ASX releases of 11 and 12 October - she submitted at T4044.12 and following that she would submit that those releases were wrong in serious respects. It was not articulated how they were wrong in serious respects. And yesterday, Mr Bell, you said to me at live transcript 4258.08 and following that you didn't need to hear from me about price sensitivity and so on, and said that the submissions that counsel assisting has made, particularly in relation to the 11 and 12 October releases, go beyond whether material was price sensitive, and you said that it addressed the wider question of whether it was misleading and said that I do need to address that submission.

So the first thing we say is that we respectfully submit that that was not put by counsel assisting. There was just a general submission that those releases were wrong in serious respects. Even if, in fact, a submission is, in fact, being put that they were misleading, which we did not understand to have been put, we submit as

follows. Firstly, that the review, it is submitted, should not make findings about whether an ASX release is misleading, because that is in the remit of ASIC, which carries serious consequences for a company, for example, under sections 1041E and H, and for directors under section 180.

And in that respect, we would again call in aid the reasoning of Commissioner Bergin in the Bergin Inquiry. Again, that was in the context of determining contractual rights that we say apply a fortiori in relation to questions of regulatory breach and civil penalties, that those matters ought be determined in a curial environment controlled by the third arm of government, being the judiciary, as opposed to an inquisitorial environment where the parties are exposed to the intrusive use of Royal Commission style powers, and also, in that context, that in a curial environment, the parties have the benefit of pleadings identifying the basis for claims and so on.

And in the curial context, rules of evidence apply, which are within the confines of a pleaded case, and people are acquainted with the issues before they give evidence and so on. So we submit that it would give rise to real unfairness in this case, particularly where there is an overlap between the concept of misleading and penalty provisions in the Corporations Act, to seek to make a finding on that topic without those curial protections that I have just submitted in relation to.

So we submit that, similarly, the review would decline to make findings about whether an ASX release was misleading, even in an adjectival sense, untethered to the Corporations Act, because that would also inevitably involve findings of considering whether releases were intentionally or recklessly misleading, and all of those matters would fall afoul of the analysis I have just set out that we call in aid from Commissioner Bergin. They are matters within the remit of the ASIC, and they potentially carry serious consequences. So we submit those matters should only be addressed in a proper forum with the attendant protections of procedure and the presentation of evidence an admissible form and the ability for those who are potentially the subject of findings to present and test the totality of evidence where they're on notice of what the issue is that's being put against them.

And so we say that the review should not make findings in those terms and that it would be unfair to do so. If the review were, in the alternative, to consider making findings about whether the ASX releases were, for example, unintentionally misleading, akin to an innocent misrepresentation, we would say that could have no bearing as to suitability because it would not reflect on poor culture and so on. But inevitably, if the review were to embark on a pathway of analysing states of mind as to intention, recklessness, innocent conduct and so on, that it would inevitably trample on the territory that Commissioner Bergin, by analogy, would submit that that the inferences that that would not be fair to be done in an inquisitorial environment without curial protections. So they're the submissions we make about the ASIC announcements and also the investor briefings.

The next topic I propose to do is what I foreshadowed on the first day, which is improvements to the AML program, which I've already alluded to in broad terms. At the outset, I should note one matter, Mr Bell. You raised an issue with me in the context of privilege as to whether a claim for privilege had, in fact, been invoked in relation to BDO, and I indicated that there was no such claim that had been made, certainly in this review. I also wanted to indicate that the part A BDO report was provided to AUSTRAC on 20 October last year. And the part B part of that report was only issued in February of this year, and it was given to AUSTRAC on 13 May of this year.

So in relation to this topic I'm now dealing with, which is improvements to the AML program, this corresponds to topic 12 of counsel assisting's submissions. As I have already adverted to, TSEG implemented KPMG's recommendations on and from mid-2018. And since then, its AML/CTF program has been independently reviewed on several occasions. And on each occasion, as set out below, the review found that TSEG had responded to the deficiencies in the KPMG program and that it had implemented and complies with an effective AML/CTF program, and that that program complies with the relevant rules. And as I've adverted to, counsel assisting has accepted that it cannot be doubted that TSEG took many steps to improve its AML program and, ultimately, took steps to significantly improve its AML/CTF program and its compliance framework. And that was at T4048.1.

In terms of the details as to the independent review of TSEG's AML/CTF program, I firstly refer - this is the first subtopic - to the BDO review in 2020 and 2021. So in December of 2020, BDO was engaged to conduct an independent review of the part A program, and that's at exhibit B2841. BDO prepared an interim report in May 2021 - that's exhibit 2841 - and its final phase 2 reporting relating to transaction monitoring in August and September of 2021 - that's exhibit H464 - was produced to the review.

BDO's review was based on the AML/CTF program approved by the board on 1 June 2020. That's exhibit 2841 at pin cite 1254. And BDO's review found that the AML program was effective, having regard to the money laundering and counter-terrorism financing risk that TSEG may reasonably face; that the program complied with the AML/CTF Rules; had been effectively implemented; and that TSEG had complied with that AML/CTF program. And we see those conclusions at exhibit B2841 at pin cite 1254.

Importantly, we submit BDO found that the AML/CTF procedures were effective; that senior management were also very forthcoming with information and showed a great understanding of money laundering/terrorism financing issues impacting the business; and that there are a number of areas of good practice which further demonstrates TSEG's dedication to cultivating a strong AML/CTF framework. And that conclusion is exhibit 0284 at pin cite 1255. Just one moment.

The BDO review followed - covered the following areas. And I'll just list these, but they are set out in exhibit B2841 at pin cite 1256. And I'll list them, but each of them were found to be compliant. And there was also a finding that insofar as enhancement opportunities were identified, they were all in "minor areas that could be undertaken to add simplicity and clarity to the existing program", and that conclusion about enhancement is at pin cite 1255.

So the areas that the review covered which were found to be compliant were, firstly, the AML/CTF program policy; secondly, money laundering and terrorism financing risk assessment; thirdly, money laundering and terrorism finance risk awareness training program; fourthly, employee due diligence program; fifthly, oversight by boards and senior management; sixthly, as to the AML/CTF compliance officer; next, independent review; next, AUSTRAC feedback; next, ongoing customer due diligence, enhanced customer due diligence and further know your customer; and finally, recordkeeping.

The reporting obligation/transaction monitoring areas was the subject of the BDO phase 2 report, and that's at exhibit H464. A draft of that report dated August/September 2021 records that, firstly, BDO's review of parameters and alerts for all TrackVia rules to date found them to be fit for purpose, and that's exhibit H464 at pin cite 0405. Secondly, it was found - overall, BDO found that:

> "The current implementation of the live/active rules is effective and risk-based."

That's exhibit H464 at page 0405. And that they target known behaviours related to AML entities and is more effective than previous systems. And that's at pin cite 0417. BDO found that:

> "TrackVia includes appropriate systems and controls to facilitate the identification of suspicious matters."

And that's at pin cite 0405. And BDO found that:

> "The monitoring rules reviewed seek to identify complex, unusually large transactions and patterns of transactions that have no apparent economic or visible lawful purpose."

And that's at pin cite 0405. BDO also recognised that there had been substantial changes since the review conducted by KPMG to the part A program and to what is called the program machinery, as well as standards and the design and partial implementation of TrackVia. That's exhibit B2841 at pin cite 1253.

It is submitted that BDO's conclusions are significant for the review because they were conducted on a more recent iteration of TSEG's AML/CTF program, namely, the iteration as at June 2020. And those conclusions demonstrate, firstly, TSEG

has taken significant steps to implement the recommendations of KPMG in order to address the shortcomings identified in the KPMG reports; and, secondly, it is significant for the review, in our submission, because it shows that a review was conducted by an independent expert, and it found that TSEG has implemented and complies with an effective AML/CTF program, and that that program complies with the AML/CTF Rules.

The authors of the BDO report have not been called to give evidence at the review, and counsel assisting has not sought to challenge the conclusions reached by BDO. So it is submitted that the review should comfortably accept BDO's findings.

The next subtopic I would refer to is the McGrathNicol review of 2022. Part of McGrathNicol's review - and we will set out the background to that in detail in writing - involved a review of TSEG's responses to the KPMG reports and the adequacy of transaction monitoring and TrackVia. McGrathNicol's reports confirm that TSEG has taken active steps, not only to comply with and implement KPMG's recommendations, but that in some circumstances TSEG has taken action beyond the relevant recommendation. This is so for a number of reasons, as set out in the reports of McGrathNicol. Firstly - and I'll give the references to the McGrathNicol report as I go. The first proposition from the McGrathNicol report is that:

> "TSEG's program of improvement in respect of AML/CTF underway since 2018 has been appropriately directed towards identified deficiencies, including those identified by KPMG, and to enhance overall effectiveness of the AML/CTF function."

And that conclusion by Ms McKern is in her first report at exhibit C330 at pin cite 0015. She identified that the key elements of the program of improvement included - and this is at the same page, 0015 - firstly, increased resources and restructuring functions and reporting lines; renewal of the AML/CTF program in 2019 to include a documented money laundering/terrorism financing risk assessment methodology and assessment and the development of AML standards.

Thirdly, she identified revisions and updates of standard operating procedures to support the implementation of the renewed AML/CTF program and standards. Fourthly, she identified AML/CTF training of relevant employees supported by programs aimed at bolstering a desired culture where employees do the right thing. And fifthly, she identified the design and implementation of TrackVia, which was described as a sophisticated tool used to facilitate effective transaction monitoring across more datasets and the collation of know your customer and enhanced customer due diligence and intelligence and patron history at The Star to enable consideration of patron activity and behaviour on a holistic basis.

The second key matter that Ms McKern gave evidence about - and this is at exhibit C330, again at pinpoint 0015. She identified that, in her view, the design and implementation of TrackVia was "a substantial leap forward towards industry best practice in AML/CTF systems". She described the system as "impressive in its breadth and functionality" and she observed that when fully implemented:

> "It can be expected to be an invaluable tool to support transaction monitoring investigations, customer risk assessments, proactive management of customer risk, and compliant and effective regulatory reporting."

And that's at exhibit C330 at pinpoint 0025. TSEG acknowledges that McGrathNicol has identified risks to the ultimate effectiveness of TrackVia, including that the risks that the system becomes an end in itself rather than being a tool used to make timely and appropriate operational and strategic decisions, and the risk that data input is incomplete or lacks integrity, and the risk that inadequately appropriately skilled resources are deployed to maintain timely and prioritised review of alerts. And that's the same exhibit at pin cite 0025 to 0026.

We say, however, that the existence of risks is not a failing. Every system has risks. And TSEG's awareness of these risks, coupled with the extensive resources that it has dedicated to its AML/CTF program, including training programs and further developing TrackVia, demonstrates its commitment to ensuring the AML/CTF program is effective and remains fit for purpose.

The issues that counsel assisting has raised in relation to TrackVia in the context of, for example, Suncity, we will deal with in the context of our Suncity submissions.

Further, as Ms McKern, as the author of the McGrathNicol report, acknowledged, the risk of TrackVia becoming an end in itself is mitigated by the operation of the role of the person running the AML program and the role of the person monitoring TrackVia, which, relevantly, is Howard Steiner. And she gave that evidence at T3183.27.

Similarly, the risk of data input being incomplete or lacking in integrity is something that would be monitored by the second line of defence, and she gave that evidence at T3183.38. And the AML/CTF team has been empowered to implement a more mature second line of defence at The Star. And I refer in that respect to the McKern report at paragraph 2.8.12. While Ms Arnott is no longer with The Star, it is submitted the review should proceed on the basis that the person responsible for the AML program will take steps to ensure that a more mature second line of defence is implemented.

Thirdly, McGrathNicol found that each of the deficiencies identified by KPMG were either addressed or that significant steps were being taken to address those matters. I won't go through these at the oral hearing, but in the written submissions

we will set out each of the matters where KPMG identified a deficiency and where Ms McKern has identified that that matter has been either addressed or that significant steps have been taken in that regard.

Importantly, McGrathNicol found that its review supports the proposition that The Star acted upon KPMG's findings and has subsequently gone further to improve its capability and approach to AML/CTF obligations, as indicated by the table where Ms McKern had set out a table with her underlying reasoning supporting that view. She also expressed the view:

> "In our assessment, much has been done to improve the quality of the AML/CTF program through the relevant period."

And she expressed that view at exhibit C330 at pin cite 0025. She also expressed the view that:

> "Substantial progress has been made to address the findings of the KPMG report."

And that's in her first report at paragraph 4.2.8, pin cite 0045. These views she expressed in writing were further explained and accepted by Ms McKern, the author of the report, in her oral evidence. She accepted a number of matters. Firstly, she observed herself that The Star had responded to the deficiencies identified in the KPMG report. That evidence as T381.01. Secondly, she accepted that significant further resources had been added to address the AML/CTF uplift and that that uplift had been ongoing since late 2018. That's at exhibit 3181.14.

Thirdly, she accepted that as part of her review, she did not become aware of any deficiency that had been identified by KPMG that had not been addressed by The Star. That evidence is at T3181.17. Fourthly, she accepted that she had not identified any issues in the materials that McGrathNicol reviewed, or the conversations that she and her team had had, that contradicted the conclusions in the BDO reports. That's at T3181.24.

Next, she accepted that the changes to The Star's AML/CTF program were extensive. That's at T3181.37. Next, she accepted that TrackVia is an endeavour to get to what she described as nirvana in the casino world, which is being "able to look at all the information about a patron and about their behaviours and about transactions flowing through the casino in one place". And that's at T3182.31. And, next, she also accepted that it was a positive and necessary step that TrackVia is being independently reviewed for its efficacy. And that is at T3183.01.

Separately, McGrathNicol, in the report, also agreed that the current part A program, which is a newer version of the program reviewed by BDO is - it was

described as well documented, that it addresses the matters required of it under the AML/CTF Act and Rules, and is risk-based. And:

> "Has been implemented as evidenced by the issue of documentation, the training program surrounding it and the existence of documentation that is required under the program."

And that evidence is in her first report at 4.2.11, exhibit C330 at pin cite 0045. Thus, it is submitted that TSEG has learned from the shortcomings identified by KPMG, taken those recommendations seriously and implemented a comprehensive program, which has been independently reviewed, in order to uplift its AML/CTF program. And as I've referred to, counsel assisting, in effect, says it cannot be doubted that this has taken place. So those are the broad submissions we make about uplift with the AML program.

The next topic is regulatory uplift, which I foreshadowed on the first day as being the final topic that I propose to address during the oral hearing. As I've indicated, in relation to the persons of interest submissions that we received in writing because counsel assisting were doing that in writing, given the length of those and the level of detail, we also propose to deal with them in writing in order to meet the timeframes I had foreshadowed at the oral hearing.

So in relation to regulatory uplift, some of these matters I adverted to at the beginning of my opening by way of summary, and I now wish to deal with them in some more detail. The Star recognises that a period of deep reflection on the failings exposed by the review is necessary. And while that process is not complete, the board has embarked on a process of reflection, starting in 2021, in respect of the conduct in relation to Crown in the Bergin report, and it has also embarked last year on this reflective process via an independent review into its culture, which I will come to. And in the written version of these submissions, Mr Bell, there will be exhibit references for each of these propositions.

The process is ongoing, but substantive and meaningful steps have already been taken to address and identify - or identify and address specific failings identified by the review. And while the steps to date are an indication, we say, of present suitability, TSEG accepts that further steps are important to effect the necessary cultural change. In this regard, The Star has consolidated a number of existing and new initiatives into a comprehensive program of regulatory reform, which I will shortly outline. That program is overseen by the board and a newly formed steering committee which is chaired by the chairman of the board.

In this section, I propose to set out the steps that TSEG and The Star have taken to identify and address the failings exposed by the review. And I will refer to The Star and TSEG together as The Star, unless it's necessary to identify them separately.

The Star acknowledges that suitability ought to be evaluated including by reference to the extent to which The Star has, firstly, accepted the existence of failures; (2) analyse the reasons for such failures; (3) removed the causes for the failures; and (4) committed to a reformation that will remove the likelihood of repetition of such failures. And that language comes from the Bergin report at page 342, which, from recollection, was adopted by my learned friend in her closing as appropriate analysis to be followed.

The Star agrees that the board and senior management must demonstrate the types of conduct, attitudes and values that align with maintaining a state of suitability going forward. To that end, the non-executive directors have accepted the existence of failures in their evidence, and we submit that they, in their evidence, analysed the reasons they saw for those failures. We also say that the non-executive directors have taken prompt action to address misconduct as it has become clear to them.

So I will now seek to address the steps that The Star has taken, and is in the process of taking, to address the causes of failings and the steps that it's committed to in order to address the risks that they might ever have again. We say that the actions that have been taken to date by The Star, and the forward plan for renewal and change, demonstrate the necessary commitment to the characteristics of suitability.

To date, The Star have taken the following steps to address the failings identified by the review. As I referred to at the beginning on Tuesday, the misconduct identified by the review no longer poses a risk to the business. In particular, firstly, CUP cards ceased for gaming purposes in March 2020. Secondly, The Star ceased dealing with Suncity and other junkets in September 2020. And in this respect, TSEG has no intention to deal with junkets in the future.

Thirdly, it has suspended all rebate play from 9 May 2020. Fourthly, it ceased the use of overseas payment channels, including the closure of the EEIS accounts held with the Bank of China in Macau on 25 January 2018. It ceased the use of EEIS loans. And it excluded the patrons of interest identified by the review and intends to upgrade its systems to ensure that all persons who have been issued with an exclusion, other than a self-exclusion, in one state are excluded persons across all properties.

The key persons who were responsible for, or failed to stop, misconduct are no longer with The Star. In particular, each of Mr Bekier, Mr Theodore, Mr Hawkins, Ms Martin, Mr Power, Mr Whytcross, Mr White, Mr Stevens, Mr Brodie, Ms Arnott, Mr Aloi and Mr Houlihan have resigned their employment. Secondly, The Star has taken substantive steps to fix the shortcomings identified by independent experts, and I've already detailed at some length the comprehensive implementation of KPMG's recommendations and the independent review of those matters.

Thirdly, TSEG commissioned a risk and compliance culture review by PricewaterhouseCoopers in August of last year, and that is at exhibit B3451. This consisted of performing a risk and compliance culture review to assess director and employees' perceptions, attitudes and beliefs towards risk and compliance management, and identify risk and compliance culture strengths and areas of opportunity. The final report of PwC was provided on 27 January this year, and the response to the PwC report forms part of the renewal program that I will be describing.

Fourth, in November of last year, TSEG commenced a program which consolidated and expanded existing programs that sought to understand the risk culture of the company, and the level of maturity in the risk and compliance functions; and implemented new programs that improve operations; and put in place mechanisms to maintain or uplift key elements of the operating environment. And this is what I'm referring to together as the renewal program, which I will describe in some detail.

Fifthly, insofar as there are any outstanding matters to be investigated and resolved, TSEG has taken steps to ensure that misconduct or shortcomings cannot continue while those investigations occur. Firstly, it suspended all rebate play, and Gadens has been engaged to investigate the media allegations in relation to encouraging local patrons to falsely claim they live outside New South Wales. I have received an update in relation to that, Mr Bell. Apparently Gadens provided their report today. I have not seen that, but we will be able to produce that if a summons were issued. We're not saying that that course need be taken, but we just bring that to the inquiry's attention.

TSEG has also engaged KPMG to determine whether there has been a shortfall in the duty paid, and that engagement letter is one I referred to yesterday in the private hearing in relation to additional tenders. The STA number is STA.5002.0018.0448 - sorry, I read that wrongly - 5002.0010.0448. That is among the documents that I think a summons will be issued for. It doesn't have an exhibit number, to my knowledge. But when that is ultimately tendered, it's a letter from KPMG dated 2 June 2020 - sorry, 2022.

The reason for this is that the scope of Gadens' engagement was to assess the media allegations, which were specific allegations, in effect, as to whether employees were encouraging patrons to falsely make claims about residency. And so that was their focus, and their focus was not the broader question of auditing the issue generally, which The Star has determined that a broader audit must be done in order to accurately identify whether there has been any underpayment of duty. And I can indicate that in that KPMG letter where they set out the terms of their engagement, the name of the project has been - it's called Ravenscourt Project, I think. The scope of the review - I will just read out the scope of the review they

are undertaking. Under the heading 1, Scope - this is at pinpoint 0048 - it's described as:

> "The scope of the engagement is to conduct a forensic review of The Star records in relation to those patrons who changed their residential status from 'ordinarily resident in New South Wales' to 'ordinarily resident interstate or overseas' in the period 20 November 2016 to 31 May 2022."

And my understanding is the basis of that scope of time, which is some five-and-a-half years, is it's effectively tracking an RFI that was issued by the review in terms of that timeframe. The other aspect of the scope that KPMG has identified is their obligation under the scope of works is:

> "If the forensic review identifies patrons where The Star has recorded a change in residency status with insufficient supporting documentation, then the scope of works includes a quantification of any potential shortfall in duty payable to the New South Wales Government."

So we say that is a very broad and practical scope of works, which is not just - involves a two elements: firstly, a qualitative assessment as to whether there is sufficient supporting documentation in relation to residency and if it's insufficient to make that qualitative assessment; and, secondly, where documentation is insufficient, it includes the quantification of any shortfall in duty payable. And I think I was asked yesterday by you, Mr Bell, whether - the extent to which The Star would be happy for the regulator to be involved in that audit process, and I can indicate that The Star is willing to involve the regulator by sharing any audit findings made by KPMG with the regulator, and also to invite ILGA to meet directly with KPMG as the independent service provider.

And the rationale for that approach is that it's obviously a significant job for KPMG to go through all the records and identify whether there is insufficiency in documentation and, if so, quantify the amount. And giving ILGA the opportunity to meet directly with KPMG would give them the opportunity to, presumably, discuss findings and see records and test methodology and so on. It would give them that direct ability to engage with KPMG, which is a level of transparency that the regulator can have the benefit of the work being done by KPMG as an independent service provider, but also has the ability to have visibility over the nature of that work.

Next, in terms of outstanding matters to be investigated, the cessation of the use of overseas payment channels, as I've described in the overseas payment channel section, all of the overseas patron bank accounts are now closed, the operations of EEIS were suspended in early 2020 and TSEG has closed its overseas offices, means that there is no risk of any such channels being misused. Upon discovering various matters concerning the use of overseas payment channels, The Star

promptly commenced investigations through HWL Ebsworth into any use of these payment channels that was outside intended purposes or done in an - sorry.

MR BELL SC: Is The Star now making loans directly to persons not ordinarily resident in Australia under section 74, subsection (5), in view of the amendment to that section in July 2020?

MS RICHARDSON SC: I would have to take instructions about that.

MR BELL SC: Yes. Thank you.

MS RICHARDSON SC: Is that something that we could deal with in writing? I just don't know the answer to that.

MR BELL SC: Of course, yes.

MS RICHARDSON SC: With the exception of the investigation into misrepresentations made to the Bank of China Macau through the provision of false SOF documents - and the finalisation of that is subject to documentation being provided by Bank of China Macau - those investigations have all been finalised.

Sixth, the next point we point to is that The Star has taken steps to understand the key failings found and in respect of Crown in the Bergin report and in the Finkelstein Royal Commission. In particular, The Star has considered matters that were raised in the Bergin Inquiry to assess whether there were issues that were relevant to its operations. This was entitled Project Zurich and commenced in April of last year. We see that at exhibit B2837.

As part of this, HWL Ebsworth provided three review papers concerning, firstly, governance arrangements, that's exhibit B3376; secondly, the second review paper was Group Bank Account Arrangements, and that is exhibit B2982; and thirdly, a review paper in relation to CUP, and that's at exhibit A967. Those papers addressed whether there could be lessons learned from, respectively, the Bergin report's criticism of the Crown's shareholding structure and corporate governance arrangements; the Bergin report's criticisms of the Crown's unusual and opaque bank account arrangements for the receipt of funds from patrons; and the Finkelstein Royal Commission's highlighting of the use of CUP cards at the Crown for inbound remittances of offshore gambling.

Seventh, The Star has significant measures in place, and are developing and implementing further measures, to address problem gambling. These were set out in The Star's submissions provided to the review on 24 March 2022, and they include the following broad matters. I won't read those out, but, Mr Bell, we have addressed you extensively on those in writing on 24 March of the extensive

measures that have been implemented to enhance measures in relation to problem gaming.

The eighth point is that TSEG accepts the need to change the leadership of TSEG, and with the exception of Mr Heap and Mr O'Neill, who has - the latter who has already resigned, each of the non-executive directors has indicated they will retire from the board shortly after this review completes or after The Star's or TSEG's next annual general meeting in November of this year.

MR BELL SC: Does Mr Heap propose to remain as a director indefinitely?

MS RICHARDSON SC: I couldn't say indefinitely. I don't know that position. But he was unlike the other non-executive directors in that he did not indicate an intention to retire.

MR BELL SC: He was the only director of whom I did not ask the question directly, which is why I'm asking you. Perhaps you could take some instructions on that.

MS RICHARDSON SC: I will. But he's also stepped up to be chairman, and he's also head of the steering committee. And in my submission, you heard his evidence about his active involvement in the steering committee in terms of regulatory uplift program.

MR BELL SC: I recall the evidence well, but the reason I ask is because other directors, such as Ms Lahey, had told me that all of the directors intended to resign in a relatively short time. And I didn't specifically ask Mr Heap the question, and that's why I'm asking. If you can take instructions about it.

MS RICHARDSON SC: I will do that, but I apprehend that that does not apply to him. But I will take express instructions about that.

MR BELL SC: Thank you.

MS RICHARDSON SC: The Star accepts that the board and senior management must demonstrate the types of conduct, attitudes and values that align with maintaining a suitable state going forward. TSEG recognises that the culture of an organisation must be set by the board. And in writing, we will give references to where all of the directors accepted that proposition.

For this reason, it is intended that culture will be a key consideration in future recruitment for executive roles, and it's a standalone project within the renewal program. There has also been the engagement of an independent third-party expert. The independent third-party expert I'm referring to is Spencer Stuart have been engaged to ensure that appropriate replacements are found and to ensure there is an appropriateness of skills for the board as a whole.

The process - the board renewal has commenced, with the appointment of Michael Issenberg as a non-executive director, subject to casino regulatory approvals being obtained, and an ASX announcement was made about that on 13 May 2022. There's no exhibit number for that, but that is a publicly available ASX announcement in relation to Mr Issenberg.

Ninth, TSEG has also engaged independent experts to assist it in the hiring of new senior management. Egon Zehnder, Z-e-h-n-d-e-r, was retained on 10 May to assist in the search for a new chief risk officer and retained on 15 May to assist in the search for a chief legal officer. Again, by the engagement of independent third-party experts, TSEG seeks to ensure that appropriate independent scrutiny is applied to ensure that persons with the appropriate skills are appointed to senior roles. And the other point I would make in this respect is that it can be inferred that the board - and the board has revealed its attitude towards compliance and what conduct is and is not acceptable. The board will be involved in making sure that persons with appropriate skills and culture are appointed to these senior roles.

Tenth, the board has resolved to separate the probity and risk functions from the chief legal and risk officer role. And it has resolved to appoint a separate chief risk officer on the one hand as opposed to chief legal officer on the other. And in respect of each of these things, Mr Bell, in writing there will be footnoted to - minutes of the board where each of these actions has been decided. I'm not going through it now, but they're documents that were in the bundle that was the subject of the directions hearing yesterday in relation to regulatory uplift. So there will be footnotes setting out minutes of meetings where each of these decisions has been resolved. The board is also in the process of reviewing the whistleblower program to encourage employees to report matters of concern to the board's attention.

Eleventh, the board has formed a transformation office - that was commenced in October of last year - to monitor and supports its renewal program. It is also considering organisational changes to enhance the effectiveness of its governance arrangements, including the establishment of an office of the board, and that office of the board would support the board and the licensee boards in New South Wales and Queensland, and it would have an assurance function in relation to The Star's integrity uplift and its internal audit function, together with The Star's regulatory relationships, and be responsible for assurance functions and regulatory engagement to ensure that the board has direct access to, and oversight of, those activities.

So those matters are an overview of the steps that The Star has taken to address the failings identified by the review. The next topic I wish to - or subtopic I wish to deal with is the renewal program which I have referred to. The renewal program seeks to improve operations and put in place robust mechanisms to maintain a suitable operating environment, and one of the documents that's in the bundle that

was referred to yesterday is the terms of reference to the renewal steering committee, which was put before the board paper - it was attached to a board paper in May of this year. But in December of last year, the board approved the updated terms of reference for its risk, compliance and regulatory performance committee, which was formerly known as the risk and compliance committee.

So that committee now has - and this is set out in the 1 December board paper that's in the bundle we referred to yesterday. It's STA.0028.0001.0901 at pin cite 0914 and following. So that committee now has additional responsibility for various matters, including, listed as (e), monitoring risk and regulatory compliance culture and behavioural risk, including adherence to relevant systems, processes and controls, and cooperation with the remuneration, people and social responsibility committee.

Term of reference (u) is providing strategic direction on the company's regulatory performance program, including its scope, objectives, milestones and resourcing; (v) reviewing and overseeing that regulatory performance program and reporting to the board on the progress of that program; (w) reviewing reports from external consultants and advisors supporting the program; (x) overseeing the company's engagement strategy with relevant external stakeholders, such a regulators and government bodies, in relation to the progress of the program, and referring any other matters to other committees or the board as relevant.

Also, in early this year, the regulatory performance program was extended to include a broader set of renewal projects and was renamed The Renewal Program, which is overseen by the renewal steering committee, and that steering committee reports to the risk, compliance and regulatory performance committee and to the board. And this was the renewal steering committee that Mr Heap gave extensive evidence about. The importance placed by The Star - or by TSEG on the renewal program is demonstrated by the fact that Mr Heap, the chairman of the board, is chairing the renewal steering committee, which oversees implementation, the dedication of internal resources to the renewal program and the retention of external expert consultants.

The other members of the renewal steering committee are Mr Ben Heap; Ms Kim Lee, who is the chief transformation officer; Mr Geoff Hogg, who is the acting CEO; Mr James Gough, who is general manager, internal audit and assurance; and another person, who I won't name because there's regulatory approvals, but in an acting chief legal officer role; Ms Paula Hammond, who is a people and performances officer; Christina Katsibouba, K-a-t-s-i-b-o-u-b-a, who is acting CFO; Mr Mark Wilson, who is general manager, business development and strategy and investor relations; Mr Peter Jenkins, who is external affairs; Mrs Nicola Burke, who is general manager of transformation at the transformation office; and Ms Samantha Torres, who is an external consultant from Spedding Torres & Associates.

The purpose of the renewal steering committee is recorded in its terms of reference, and this is in the documents that were referred to in the bundle yesterday, but it's STA.5002.0011.0164 at pin cite 0167. So the purpose of that committee is:

> "To ensure the company is an organisation which not only complies with all rules and controls required by regulatory agencies, but acts consistently with the intent of all relevant laws and regulations with its own ethical and cultural aspirations while providing experiences attractive to customers and satisfying to employees, and producing a financial return valued by investors."

To that end, the renewal program will deliver a set of initiatives which will effect the necessary changes to ensure The Star remains suitable to hold a casino licence, it is submitted. The reform steering committee is required to provide updates on the status of the renewal program to The Star executive committee and the board. That's set out in the terms of reference. The renewal program includes eight discrete projects, each with specific deliverables and milestone dates, with separate additional projects identified as a second tranche of work. And the renewal program is designed to be responsive to ongoing reflection and analysis.

So I won't go into detail about those eight discrete projects now, but there will be detail about them in the written submissions by reference to the bundle of documents that was referred to yesterday, which are the regulatory uplift documents. So I just indicate what those eight discrete projects are with milestones and so on. The first is strength and corporate governance and culture. The second is regulatory compliance redesign. That, in effect, involves undertaking an assessment, including by the external expert, Ms Torres from Spedding Torres & Associates; assessing the existing regulatory compliance function; and operating a model to inform recommendations on functional and organisational changes. That is a significant tranche of work.

The third discrete project is regulatory compliance investigations and integrity skills and capability uplift. That is a project to deliver a framework for decision-making with respect to business associates and patrons of The Star, and it will also deliver a redesign of The Star's training programs relating to financial crime investigations functions. The fourth project is harm minimisation, which is in relation to continuing to improve the responsible gambling program.

The fifth project is to significantly reduce exposure to risks arising from international VIP patrons. Decisions have been made in this respect already in relation to the suspension of rebate play until such a time as The Star has worked with ILGA to develop a comprehensive suite of new ICMs and procedures designed to mitigate risks in this domain. And there is a specific board paper in this respect, which is in the bundle I referred to yesterday, but it's STA.5002.0010.0565. And another part of that is the KPMG audit, in the sense of

the issue of payment of duty, the board has indicated must be determined conclusively.

The sixth project is IT systems uplift. So this is complementary in the sense of its project to deliver any technology requirements identified by the other projects within the renewal program. And the seventh discrete project is a risk management uplift. That project will determine which areas of the risk management function and operating model should be changed to enable the company to perform its risk management activities at a higher quality level, and that would be in line with a board-approved risk management framework and risk appetite. The scope of this project is in development following the board's recent consideration of the Pricewaterhouse risk and compliance maturity assessment that commenced last year. And the eighth project is part of a project to deliver timely and targeted communications with respect to progress in the renewal program to key stakeholders.

The next topic is proposals for additional board and independent oversight. Now, it's common ground that it's not part of the terms of reference for you, Mr Bell, to make recommendations about specific matters that might augment suitability, for example, but I just have some short submissions to make.

MR BELL SC: I wouldn't put it that way. I think what both you and counsel assisting have agreed is that if, hypothetically, I were to find unsuitability, I haven't been tasked by the terms of reference to address how part of the suitability might emerge. Those were matters that were specifically parts of the terms of reference of the Bergin Inquiry and also the Royal Commissions in Victoria and in Western Australia, but are not part of my terms of reference.

MS RICHARDSON SC: Yes. So I just wish to make submissions about a series of matters that the board has under consideration, to the extent it might be of interest to you, Mr Bell, because a number of them were matters that you tested or raised with various non-executive directors, and we say the fact that the board is considering, and is open to, these various structures is relevant to insight and suitability in terms of appropriate change and as part of the process of reflection that they're currently undertaking.

So these are not - these are a series of matters that are under consideration. It's not suggesting that they would all be implemented because they're all, in effect, different ways of achieving similar outcomes. But I wish to put forward matters that the board is considering. So as part of its commitment to the renewal program, TSEG is considering further measures to mitigate the risks revealed by the review, and it's in particular developing and taking steps to reduce the risk of management misleading or withholding information from the board and to ensure that there is appropriate information flow to the board and to ILGA, including information about risk - well, in particular.

So the proposals that are under consideration are one or more of the following. Firstly, as I have mentioned, an office of the board, which would be within TSEG's internal organisational structure, which would support the TSEG board and the licensee boards in New South Wales and Queensland, and would be responsible for assurance functions and regulatory engagement so as to ensure the board has direct access to, and oversight of, those activities. And it's intended, if such an office were to be created, that the head of the office would be externally recruited to add to independence.

The second proposal under consideration is a monitor arrangement. The board is willing to, and is currently investigating, the appointment of a suitably qualified, independent advisory firm, that I will call in shorthand a monitor, with expertise in private sector businesses operating in highly regulated industries to provide advice and independent assurances with respect to The Star's renewal program, in addressing identified failures and to minimise the risk of a repeat of the conduct that led to those failures. The TSEG board further proposes that the monitor would report regularly to both the board and to ILGA in relation to the progress of the renewal program.

The third measure under consideration is in relation to subsidiary board oversight. The board is considering appointing one or more of its non-executive directors as directors of the licensee to provide a more direct governance link between TSEG and the licensee.

The fourth measure under consideration is a compliance committee, a compliance committee with functions similar to that of a compliance committee for managing investment schemes, with a series of functions that I will just summarise. Firstly, monitoring the extent to which The Star complies with the Casino Control Act; the conditions of its licence; its internal controls; and contractual obligations under section 142 agreements. And, importantly, to report on its findings to the board.

Secondly, to report to The Star any breach of the Casino Control Act, any breach of the conditions of licence of which the committee becomes aware or suspects. Thirdly, to report to ILGA if the committee is of the view that The Star has not taken, or doesn't propose to take, appropriate action to deal with a matter reported by the committee.

Fourthly, to assess at regular intervals whether the internal controls and other elements of the risk management framework are adequate, to report on the assessment and to make recommendations about any changes that it considers should be made to the controls or risk framework. And fifthly, where necessary, to commission independent legal accounting or other professional advice or assistance at the reasonable expense of The Star.

The fifth measure under consideration is an integrity auditor. That is the appointment of an independent and appropriately qualified integrity auditor,

approved by ILGA, to report annually to TSEG on compliance with obligations under all regulatory statutes, including the Casino Control Act, the Casino Control Regulation and the terms of The Star licence.

MR BELL SC: That proposal, to some extent, links with Commissioner Bergin's recommendation that the Casino Control Act be amended to make provision for the appointment of compliance auditors, which, as I understand it, is a matter under consideration.

MS RICHARDSON SC: That is correct. I think it was recommendation 6 in the Bergin report. Next - sorry. As part of the integrity auditor consideration, Star considers that it would be appropriate for the auditor to have an obligation to report any breach or suspected breach of The Star's statutory obligations to ILGA, akin to the manner in which obligations are imposed on statutory auditors under section 311 of the Corporations Act.

This would likely take the form of the following, which tracks the recommendations made in the Bergin Inquiry. If the integrity auditor, in the course of the performance of the auditor's duties, forms the belief that (1) activity within the casino operations may put the achievement of any of the objects of the casino control at risk or (2) a contravention of the Casino Control Act or the regulations or of any other Commonwealth or New South Wales Act regulating the casino operations has occurred or may occur, then the integrity auditor must immediately provide written notice of that belief concurrently to the casino operator and to ILGA. The cost of any such integrity auditor would be borne by TSEG, and the auditor would have the power to inspect the operations of TSEG throughout the year for the purpose of reaching relevant satisfaction of compliance.

The next measure under consideration is reporting by the AML compliance officer to the board, having regard to the significant AML/CTF risks faced by all casinos, including The Star, ensuring that the AML/CTF compliance officer has a direct reporting line to the board and, separately, that the board has live access to the risk register, at both the licensee and group level, to ensure that the board does not have to wait for board papers to be informed of a risk, and also to reduce the possibility of management thinking that it's not possible to bring certain risks to the board's attention.

The seventh measure under consideration is accountability obligations for certain employees. This - under consideration is accountability obligations in the employment contracts of persons who have significant influence over the conduct and behaviour of The Star, likely to mostly comprise senior management. This would be similar to the banking executive accountability regime, also referred to as the BEAR regime introduced in May 2017 in the federal budget, to increase transparency and accountability of senior management. So it's, in effect, a financial requirement or incentive to do the right thing.

As part of this, The Star anticipates the obligations imposed in employment contracts of such employees would require them to conduct their business with honesty and integrity and with due skill, care and diligence; to deal with ILGA and all regulators in an open, constructive and cooperative way; and prevent matters from arising that would adversely affect The Star's status as an operator of good repute. The Star considers that an appropriate method of enforcing these obligations is to link the portion of the persons with these obligations to remuneration, to compliance with and adherence to their obligations. So put another way, it's a very real financial incentive to do the right thing.

So in conclusion, it is submitted that the combination of the reflections of the current directors, the prompt action taken by them to address misconduct, the strong commitment of a well resourced renewal program to remove the cause of the failures, and The Star's willingness to reflect and engage in future reform in order to minimise the risk of repeat of conduct demonstrates, it is submitted, that the review should conclude that The Star is presently suitable to hold a casino licence and that the review would make similar findings in relation to its corporate close associates.

Mr Bell, in relation to a number of questions I've taken on notice, each of those has been noted. And in the relevant part of the submission, we will deal with each of them, including citing in the transcript where you put that question to me or to my learned junior, and then we will address it in the relevant order within that subject matter submission that we will file by next Tuesday.

MR BELL SC: Yes. Ms Richardson, it seems to me that a key question is whether the regulator, and ultimately the State of New South Wales, can trust The Star and Star Entertainment. As we all know, trust takes time to build up and, in this context, relevantly, requires a history of a casino operator acting honestly and transparently and with integrity. Mr Finkelstein noted that a factor indicating unsuitability is misleading a regulator, which is why I asked you a question on Tuesday, which you haven't yet answered, and I would be grateful if you could indicate what The Star's position is on this. I will just repeat the question. It was at transcript 4183:

> "In 2020, Mr Hawkins gave sworn evidence to Commissioner Bergin which, to put it neutrally, was incorrect, concerning the activities which occurred in relation to Suncity and Salon 95. And whilst that has a personal dimension for Mr Hawkins, it's also the case that no steps were taken by The Star to correct that evidence to Commissioner Bergin at any time up until the delivery of her report in 2021."

And:

> "Secondly, when I asked the question -"

More accurately, when those assisting me asked the question:

> "On 1 October 2021 whether there were any matters affecting suitability in the relevant period which had been not previously disclosed in writing, there was no a word provided in response concerning the extraordinary activities in Salon 95. And it was left to this review to uncover this wrongdoing, despite that non-disclosure by The Star in 2021."

And the question I asked was:

> "What do those two matters say about the current suitability of The Star?"

What exactly does The Star say about those matters?

MS RICHARDSON SC: I'll seek to address those now. If I deal with the second issue first, which is the response that was given to the question asked on 1 October of last year. It is accepted that the dealings with Suncity, and the full extent of the dealings with Suncity, should have been addressed in that response. Mr Heap, Ms Pitkin and Ms Lahey were each examined about aspects - they were examined about aspects of that response that were unrelated to Salon 95. That was at T3681 in relation to Ms Lahey; 3616 in relation to Dr Pitkin; and 3427 in relation to Mr Heap. Both Mr Heap and Ms Lahey gave evidence which indicated they were unaware of matters stated in the response until they were either shown them by counsel assisting, or other evidence given by directors was that they had discovered matters during their preparation for the hearing.

So - there was otherwise no evidence or examination of witnesses as to the preparation of the November 2021 response, but it is accepted that it should have addressed the dealings with Suncity in an open and transparent way. And we say it's open to the review to infer that the response that was sent in November of last year was sent on the instructions of the then management of Star. It's also clear from the evidence of the then management of The Star that a number of those members were aware of the incidents that had taken place in Salon 95. And so we say it is open to you to make a finding that the failure in the November 2021 response to mention the dealings with Suncity reflect upon the management that was in place at the time, although we say it is difficult to make a more specific finding than that, given witnesses were not examined about the response. But we accept that you could make the finding in those general terms.

MR BELL SC: Well, this is a question that I didn't ask of a particular witness. This is a question which I asked the corporation. The corporation must bear responsibility for this concealment, must it not?

MS RICHARDSON SC: Well, we say to the effect that the inference you would draw is that the terms of that response were - must have been prepared on the instructions of then management, which is the only inference that could arise,

particularly given the evidence of the non-executive directors that they were unaware of these matters until such time as, or the extent of these matters, that they were preparing for this review. So the evidence that you have heard is that key pieces of information, which we accept should have been included in the November 2021 response, were also withheld by management from the TSEG board, and aspects of them were also withheld from the authority.

So we accept that there is a finding open to the review that the failure to disclose them to this review is an incident reflective of the submission that The Star has already made, that is, that it's open to the review to find that the legal and compliance functions engaged in a pattern of behaviour in which information that might adversely affect the perceived commercial interests of the business was not disclosed to regulators unless unavoidable to do so, and so that that - the inference would arise that that general approach was adopted in relation to the November response as well.

MR BELL SC: Why shouldn't I conclude that the concealment of this important matter from me was a continuation of a deliberate pattern of concealment of the events in Salon 95 from the regulator that commenced with the failure of the organisation to report it to the regulator at the time it occurred, continued with the inappropriate and inadequate response by Mr Power to the regulator on these questions in August 2019, continued further with the misleading of Commissioner Bergin in 2020 in the evidence that Mr Hawkins gave and which was not corrected, and then continued right up until the time of this review in November last year?

MS RICHARDSON SC: Well, we accept, as I have said in terms, that there is a finding open to the review that the failure to disclose this in detail and transparently to the review is a - it's open to you to find that that's reflective of the submission we've made in other respects, that it's a pattern of behaviour, and we would accept that it was part of that pattern. But it was a pattern engaged in by management who are no longer employed by TSEG. And TSEG, through its board, has made very clear, through its actions, that that conduct will not be countenanced by the board. And in terms - that conduct happened in - or absence of conduct happened in November of last year.

And in terms of present suitability, we would point to the fact that no finding is sought by counsel assisting that any of the directors of TSEG are not suitable, and that there has been no adverse submission made in relation to the judgment and decision-making of the directors. And we point to the analysis of Commissioner Bergin that I referred to on Tuesday, that a company's suitability may ebb and flow with changes to the composition of the company's board, management and others who influence its affairs.

So those persons who influenced its affairs, including in November of last year when that response was given to the review, and also when no correction was

made before Commissioner Bergin in relation to Mr Hawkins' evidence, are all persons who no longer have any influence over the affairs of the company, and they're all in a category where the board has sent a powerful message that it will not accept any of that conduct. So we say that conduct could not be attributed to the board, and it's apparent from their evidence that they were unaware of that conduct and, had they known of it, it would not have been tolerated.

MR BELL SC: It seems to me that the mind of a corporation - there's much wisdom that has been provided by the Western Australian and Victorian Royal Commissions which has moved beyond the traditional analysis of assessing the mind of a corporation by reference to the individuals who lead it, and they have both pointed out the importance of assessing the mind of a corporation through the systems, policies and patterns of behaviour which it has employed. Do you accept that, in assessing suitability, I need to look further than just at the individuals who were involved in the corporation from time to time?

MS RICHARDSON SC: We accept the considerations are broader, and there are other aspects we would point to in that respect. So in addition to what I've referred to, that there's no challenge to the behaviour or judgment-making of the board who are now exerting very clear control over this company in relation to the renewal program and those who are able to influence affairs, the evidence before the review is of an appropriate compliance culture at the coalface. And so - there is extensive evidence that the compliance issues were not at the coalface, that the problems addressed by the evidence related to more senior managers.

So we accept it's a broader review, but we say that the executive - the evidence of the executive directors was very firm and insightful before this review as to the culture and as to the agenda that they are setting for this company, and they have already sent very powerful messages as to what that will involve. And we say that the board is ultimately responsible for that culture, and they have made plain what is required of The Star in terms of approach to risk and regulatory compliance.

MR BELL SC: And the board must accept responsibility, must it not, for the failure to disclose this important matter to me?

MS RICHARDSON SC: Well, the board - someone will be giving submissions on behalf of them on Tuesday, but in circumstances where - it's clear from their evidence that they were unaware of that matter at the time that response was being formulated. And in my submission, the clear tenor of their evidence is that they would not have countenanced a response in their terms had though known of the underlying material and the response that was being prepared. So in that respect, counsel assisting has made a submission that each of the non-executive directors in their evidence were seeking to assist the review.

MR BELL SC: That doesn't really answer my question, though. My question is whether The Star accepts that the board must accept responsibility for this deliberate concealment from me of the matters relating to Suncity.

MS RICHARDSON SC: Well, it's not something I can deal with on the run this afternoon, and I know that submissions are being made on behalf of the non-executive directors on Tuesday. I have made the submissions - the reason why I referred to the submission of counsel assisting about the fact that non-executive directors were seeking to assist the review is just to say that that allows an inference to be drawn, is that if they had known of the underlying material and that the form of - the proposed language that was being sent to the review, that they would not have allowed that to happen.

And so while it is very regrettable that that has happened, in my submission, in terms of present suitability, in terms of the board and the approach of the board to regulatory compliance, that an inference would be drawn that it would not have occurred had the board been aware.

MR BELL SC: Yes. Thank you.

MS RICHARDSON SC: Just on one separate matter you asked me, Mr Bell, I can confirm the instructions of Mr Heap is that he does not have any present intentions to resign, given his role in the work of the steering committee and his role as chairman. But that's subject to your views in the review.

MR BELL SC: Yes. Thank you. Yes. Thank you for those submissions, Ms Richardson. Is there anything else you wanted to say at the moment or --

MS RICHARDSON SC: No. Thank you.

MR BELL SC: All right. In those circumstances, I will now adjourn until 10 am tomorrow to hear oral submissions from other parties with leave to appear. I will now adjourn.

<THE HEARING ADJOURNED AT 3:40 PM