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

FRIDAY, 17 JUNE 2022
AT 10:00 AM

DAY 44

MS N. SHARP SC appears with MR C. CONDE, MS P. ABDIEL and MR N. CONDYLIS as counsel assisting the Review
MR. P. BRAHAM SC appears with MS A. OSBORN BRODIE as counsel for Ms Sarah Scopel
MS A. HORVATH SC appears as counsel for Mr Oliver White
MR J. McLEOD appears as counsel for Mr Andrew Power
MR P. WOOD appears as counsel for Ms Paula Martin
MS K. RICHARDSON SC appears as counsel for The Star Pty Ltd

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<THE HEARING RESUMED AT 10:02 AM

MR BELL SC: Yes, Mr Braham.

MR BRAHAM SC: Thank you, Mr Bell. I appear with Ms Osborn Brodie for Ms Scopel. And should I just proceed to make – commence submissions on Ms Scopel’s behalf?

MR BELL SC: Yes, please.

MR BRAHAM SC: Thank you. I want to address some aspects of the conduct of Ms Scopel which is relevant to the matters being considered by the inquiry and, in particular, of course, I’m referring to the various emails and other communications in relation to the CUP in the second half and particularly towards the end of 2019, and that’s going to be a focus of these submissions.

The subm’ssions I make, of course, are in the context of counsel assisting’s submissions. And on my reading and listening to those submissions, I don’t think you are being asked to make any findings in the context of this inquiry adverse – expressly adverse to Ms Scopel in terms. It has not been suggested you would find her an unsatisfactory witness, and no submission has been put to you directly that you would find her conduct to be – in the context of these transactions, to be warranting some negative comment or disparaging (indistinct) misleading or dishonest. And I want to make submissions that would assist you to reach a proper characterisation of Ms Scopel’s conduct.

MR BELL SC: Well, whether or not that has been expressly put by counsel assisting, it would be appropriate for you to address those matters.

MR BRAHAM SC: Yes. So the first matter I want to address is a proper understanding of Ms Scopel’s role and the treasury role, because it’s a matter of important context. And for that purpose, could I ask the operator, please, to bring up transcript page 91, which is a passage in Ms Dudek’s evidence concerning the role of treasury. And from about – yes. Thank you. So from about line 15, you will see that I asked Ms Dudek some questions about the treasury function at line 22, putting that it was a liaison, and she agreed to that. And the function is at line 35:

> “Taking the query from the NAB and passing it to relevant people, passing the answer back to the NAB.”

And then at line 40 – and then at line 45, Ms Dudek says:

> “We didn’t have any visibility of the operations.”

And Ms Scopel, when she was asked by counsel assisting, gave similar evidence at transcript 115. If the operator could bring that up, please. And at about line 6, you can see Ms Scopel saying:

5 > "Treasury doesn't have the information required to respond to details of specific transactions."

And, indeed, that's how Ms Arthur understood it. If the operator could move now to page 232 on the transcript. And at line 20, you will see I put to Ms Arthur that
10 she understood:

> "That insofar as Ms Scopel was conveying to you information about operational matters, she was doing that as a conduit of information provided by others at The Star?"

15

And Ms Arthur agreed to that. And there really can be no doubt that both from the perspective of Ms Scopel and indeed Ms Dudek and Ms Arthur, Ms Scopel's and Ms Dudek's role was as a conduit of information, not as the author of it. That was the perception. And, of course, you know from other evidence that it was also the
20 reality, that the emails that went between Ms Scopel and the bank were emails dictated, created and settled by Mr White and Mr Theodore, both of whom were people to whom Ms Scopel reported. And there's ample evidence in the email chains themselves of that being the fact. I will go to that shortly.

25 And, indeed, it was Ms Scopel's evidence, and as counsel assisting fairly acknowledged in her submissions, Ms Scopel gave evidence that she didn't feel she was in a position to challenge Mr Theodore or Mr White about the substance of those responses, even when she had concerns about them, their fullness and frankness. And Ms Scopel gave evidence that she expressed discomfort to Mr
30 Theodore about the responses but that she didn't feel she could do anything else to challenge that without endangering her employment.

That evidence stands unchallenged before you and really makes sense and should be accepted – intuitively makes sense. Mr Theodore was a very senior person in
35 the organisation and, of course, Mr White was the company's lawyer. And to the extent that someone might have a concern about the legality of what was occurring, having a legal sign-off is an appropriate vehicle for gaining comfort on that topic. So that's what I want to say about Ms Scopel's position and role in the context in which these things happened.

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Now, I would like to move to taking you to the documents now, and I would like to start with the email which really starts this chain of communications, which is in exhibit B1430. It's an email – this is an email dated 19 June from Ms Dudek to the NAB, and it has the three points on it that we see repeated throughout these
45 emails. A description of the operation of The Star:

"The merchant operates integrated resorts consisting of hotels, restaurants and other entertainment facilities."

And then underneath that, you can see points 2 and 3, attaching invoices. That's in
5 response to the question from the NAB, which we see a bit down the page of the email, with a 2.39 time stamp from Mr Ventura, but copying an email from Mr Joe Avenell, asking those three questions, which again are repeated. If the operator could scroll down, please. At least on the version on my screen, it's not there. Yes. So those are the three questions there. Now –
10

MS RICHARDSON SC: Sorry to interrupt. We can't see any document – is there a document on the screen?

MR BRAHAM SC: Yes, there's a document on my screen.
15

MR BELL SC: And on mine.

MS RICHARDSON SC: Could I perhaps have the exhibit –

20 **MR BRAHAM SC:** Exhibit B1430.

MS RICHARDSON SC: Thank you.

MR BRAHAM SC: Now, that answer is –
25

MR BELL SC: Sorry. Ms Richardson, do you want us to adjourn until you've got it on your screen, or are you content just to have references to the exhibit number?

MS RICHARDSON SC: Hopefully it can be fixed. I will just look at the exhibit
30 numbers in the interim.

MR BELL SC: Yes. All right. Please let me know if that becomes a problem. Yes, Mr Braham.

35 **MR BRAHAM SC:** Thank you. That response is lifted straight from an email from Mr White. If there's any question about this, the exhibit is exhibit B1413. The identifier – if I reference documents just by exhibits, that's adequate for the purposes for both the operator and you, Mr Bell?

40 **MR BELL SC:** Yes.

MR BRAHAM SC: Yes. So this exhibit – if the operator could go down to the last email at the foot of that page, please:

45 "Hi Juanita."

The foot of the first page. Yes. Thank you. And you see there:

> "Paulinka, in relation to the other questions, my suggested response is as follows."

5

I've gone this far back because it sets a pattern that's followed throughout. But you can see immediately that from the beginning, the responses given to the NAB by treasury – Ms Dudek and Ms Scopel, drafted by – in this case, drafted by – and, in a later case, dictated by Mr White here and maybe also Mr Theodore – and
10 passed on by Paulinka, as was entirely appropriate on behalf of the treasury department, which itself had no way of knowing what the true purpose of any particular transactions were. We know, of course, that both of them came to understand that the funds were used for gambling purposes and, in Ms Scopel's case, expressed a concern about that. But here we have the formation of the
15 response being done in an entirely conventional way with treasury operating as a conduit. And then you see that invoices are attached.

I don't want to spend any more time on the June transactions. But could I ask the operator – we're going to move over now to August – ask the operator to bring up
20 exhibit B1594, please. And this is an email dated 28 August 2019, responding to an email from Mr Meldrum, which we can see there on the screen of 27 August 2019, again asking, in relation to specified transactions, the three questions. Now, you can't see the three questions on the part of the screen, at least that I can see. But if the operator were to scroll down to the bottom of the page there, we would
25 see the three questions again. Keep going. Yes, there they are. The business scope of the relevant merchants; what type of goods or services the cardholder purchased; and supporting documents. And at the top of the page, the answer is given in the same way as had been drafted by Mr White on an earlier occasion. And the answer to number 1 refers to entertainment facilities, and the second
30 answer refers to hotel accommodation services. And then there's said to be attached invoices.

Now, it's put on behalf of counsel assisting that this and other emails were misleading because they don't refer to the fact that the funds are being used for
35 gambling, and clearly they don't refer to the fact that the funds are being used for gambling. And it's clear that the original author of the emails knew that some, if not all, or most of the funds were used for gambling. The question, then, is what finding should be made about this email and subsequent ones. Is it appropriate to make a finding it was misleading, in fact? And I want to say a number of things
40 about that, how this is to be properly characterised, because it's relevant to Ms Scopel and also, as it happens, to Ms Dudek.

The first thing I want to say is that "entertainment facilities" in the answer to the first question was understood by everyone, including Ms Arthur, to be a reference
45 to the gambling activities of The Star. Although to the perhaps disinterested observer, "entertainment facilities" is ambiguous, there was no doubt in the minds

of the NAB, or the principal relevant person of the people at the NAB, that "entertainment facilities" was the phrase used by The Star to refer to all of its activities, including gambling, and I'll take you shortly to the transcript.

5 Answer number 2 refers to "hotel accommodation services". Now, that, as a description of the purpose of the funds, is, on an objective reading of it, not accurate because we know that the funds were not just used for hotel accommodation, in the sense of providing room and board, but also for gambling. But in fact, when we look at the evidence, we will see that the National Australia
10 Bank was not misled by that. Within the National Australia Bank, it was understood that "hotel accommodation services" might be used by The Star to refer to gambling chips and credits and that that answer did not address one way or the other whether the funds were used for gambling.

15 The question about whether conduct is misleading or dishonest has to ultimately focus on whether the recipient of the communication is likely to be, or is, in fact, misled. And I don't quibble for a minute with the idea that these emails were - deliberately used weasel words, if you like, to avoid answering the question that had been directly asked about gambling. But nothing in it was treated by the
20 National Australia Bank as a statement that none of the funds were used for gambling. And, again, I'm going to come to the evidence about that. And if no one is misled, then the conduct cannot be characterised as misleading.

MR BELL SC: Well, there are a number of problems with that submission, I
25 think. The first is that everybody knew that these communications were being conveyed ultimately to UnionPay International and, in relation to later communications in November, directly to the People's Bank of China. And secondly, whether or not recipients were, in fact, misled doesn't in any way resolve the issue of whether these communications were dishonest, misleading, inaccurate,
30 deceptive. The issue is not ultimately what was the subjective impact on the recipient, whoever that may have been, but what the communication conveys. The issue, surely, is whether these communications should ever have been sent in the first place.

35 **MR BRAHAM SC:** There may well be an issue about that. I'm now addressing how one characterises these communications. And as to the - two of the points, Mr Bell, you've just raised with me, I raised - when Ms Arthur came in to give evidence, I raised the point that we had not been provided with, and the inquiry did not have, the communications between the NAB and China UnionPay to
40 demonstrate whether or not what was being given to China UnionPay was, in fact, the communications that were provided by email by Ms Scopel and Ms Dudek to the NAB or some other information from within the NAB.

And I identified at the opening of my cross-examination of Ms Arthur that that
45 seemed to be a critical element to any finding that could be made in relation to these emails, including against Ms Scopel. And with great respect, what you've

raised with me demonstrates that that is the case. It isn't obvious and there isn't evidence, in my submission, at least that I'm aware of, that these emails were going directly to the Bank of China. And what we do have in exhibit B2232 - if the operator could please bring that up. Exhibit B2232. We have the letter dated 28
5 February 2020 from UnionPay to Mr Avenell. And it says at the top:

"Referring to your response dated January 7, 2020 -"

Now, unless that response has been obtained by the inquiry since Ms Arthur gave
10 evidence, the inquiry doesn't, as far as I know, have that response. But we do know that it contained - in the second paragraph there of this letter, the transactions were, the author says, for "accommodation services". Well, we can guess where that comes from. And:

15 "Do not include any component for the purpose of gambling."

No email authored by Ms Scopel or provided, as far as I'm aware, by The Star included those words "do not include any component for the purpose of gambling". That's the critical thing that China UnionPay wanted to know. By this
20 letter of 28 February - this letter of 28 February suggests that UnionPay was told by the NAB on 7 January 2020, in terms, using the words, that "the transactions do not include any component for the purpose of gambling".

Now, where did that come from? It doesn't come from any email provided by
25 Ms Scopel. It doesn't come from any email that the inquiry has been able to produce from The Star. But the words come from somewhere, and they were provided not by The Star but by the NAB. And I want to present a theory as to the origin of those words. They are the only false - that is a false statement. Anyone who said that the funds did not include any component for the purpose of
30 gambling made a false statement. And that's something I want to address. So that goes to this idea that these emails ultimately were misleading because they were provided to China UnionPay.

The other question you raised as to whether the emails are misleading in and of
35 themselves irrespective of the subjective way they were understood, can I respond to that in two ways. Firstly, these emails were sent in the context of a longstanding and ongoing relationship between people who knew each other and their businesses very well. And the context in which they are sent is that context. It is a dangerous thing, in my respectful submission, for the inquiry to look at the email
40 in isolation and say, "That email is not comprehensive. It's misleading on its face," if that's all you look at, "and it never have been sent."

The emails are sent in a context where both - the evidence before the inquiry demonstrates, both people at the NAB and people at The Star were aware, going
45 back to 2013, that these cards were being used under a particular arrangement within The Star in order to facilitate the financing of gambling, and that there was

a problem with that because of the prohibition by the CUP on the use of the cards in that way.

And can I make this general point because it's relevant to Ms Scopel? I am not here to defend the conduct of using the cards for an improper purpose. Ms Scopel had nothing to do with that. This is just about the communications upon inquiry by the CUP, the communications between The Star and the National Australia Bank. You may well make a finding, although it's for other people to address, that the misuse of the cards was poor conduct relevant to the question of whether The Star should have a licence.

But the communications in a period of a few months at the end of 2019 between The Star and the NAB about the use of those cards, that brings up - if that is to be criticised, if it's to be suggested that they were misleading communications vis-a-vis the NAB, it has to be demonstrated that people at the NAB were actually misled, in my respectful submission. The idea that in the context of this very multi-layered and longstanding arrangement between the NAB and The Star are half truths - and these were half truths - would be seen as being misleading of the NAB, well, one would have to know a lot about the context and the relationship between the people.

MR BELL SC: Well, most pernicious lies contain an element of the truth, don't they?

MR BRAHAM SC: In my respectful submission, a lie has to be a falsehood. Being asked, "Is there a gambling component to this?" and answering in terms that don't address that question - explicitly just don't address it, it's avoiding answering a question, which is what happened. It's not a lie. It's a very marked half truth avoiding the point of the question.

And can I make that good by reference to this email of 28 August. You can see that the reference is to entertainment facilities; the purchases of hotel accommodation services, which, of course, is - one might think is a problematic expression because it would seem, on its face, to exclude gambling; and the third is that the invoices for the relevant transactions are provided, and we know that what was provided were not invoices, but they're described as being invoices. They are, in fact, statements showing the transfer of money between accounts. And anyone who looked at them with any degree of care would see immediately that they don't, and they don't purport to, describe the goods and services provided by the funds. I mean, they're just not invoices and no one could ever think that they were invoices.

So as to "entertainment facilities", can I ask the operator to bring up Ms Arthur's evidence at transcript 233. And at the bottom of page 233 - and there's a passage of cross-examination that precedes it. But at the bottom of 233, at line 41, I put to Ms Arthur:

"You were under no doubt when you received this email -"

And that's the August email:

5

"That the answer to that first question, which refers to hotels, restaurants and other entertainment facilities, was a reference to, amongst things, gaming."

And Ms Arthur reads out the answer. And:

10

"So as a description of the merchant being Star, then your answer is yes."

And read in the context of the earlier questions - well, I should go back to make it clear. Transcript 231 - if the operator could go back to 231, please. And at the top,
15 from line 7, I put to Ms Arthur:

"You became aware that the tendency of The Star was to use euphemisms for gaming and gambling, such as describing it as entertainment."

20 And she said:

"The business is described in that matter. Entertainment, as I understood it, included all sorts of different things, in addition to gaming."

25 "And you became familiar, didn't you, in that lexicon of The Star, describing itself as an entertainment venue encompassed all of those activities you've just mentioned."

Answer:

30

"Yes."

So when the email is sent in August describing the business of The Star as an entertainment facility and not mentioning expressly a casino, it's doing it using a
35 lexicon with which the recipient of the email was familiar. They knew it was - "entertainment facility" was a way of referring to all of those activities of The Star, including gambling.

The next point is that the emails attached what were called invoices, and I raised
40 this also with Ms Arthur. Could the operator please bring up page 235? And at line 21, I asked whether Ms Arthur had looked at the invoices. She said she had, going down to line 27, at about the time she received the email. And I then took her through the invoices attached - or the so-called invoices attached to this document to make the point that in relation to a person we ended up calling customer number
45 37, upwards of a million dollars had been put into this customer account and was referred to in the invoices over the period of a few days.

So without going through all of that examination, could the operator bring up page 240, please. And at line - transcript 240, line 25, I put to Ms Arthur:

> "There were three documents all in relation to the same customer, all in relation to the same two days and a total, if we add them up, just from those entries, of a million dollars put into a patron account."
>
> "Yes."
>
> "And you didn't for a minute think that was the price of accommodation or related services for two nights, did you?"

At line 39, she said:

> "Well, I didn't look at these invoices in a lot of detail. I looked at them very briefly. I didn't realise it was the same patron."

We then went through some more of the invoices. And if the operator could please turn up page 243. At line 10, I put to her:

> "When you say accommodation services were described to you as involving more than just paying for hotel accommodation; is that right?"
>
> "That's my understanding, yes."
>
> "Is that your recollection?"
>
> "Yes."
>
> "When you got the email - when you got this email, had you looked at it carefully, you accept, don't you, it would have been apparent to you, just from looking at the email and the attachments, that the charges to the China UnionPay cards covered more than just accommodation services at the hotel; do you agree?"
>
> "Yes."

Now, when it's put that the email is misleading because it says "the cardholder purchased hotel accommodation services with the transaction in question", it has to be taken into account that Ms Arthur accepted that if she had read the material carefully, which she didn't do, it would have been apparent to her that the charges covered more than just accommodation services at the hotel. And she agreed to that. Line 27:

"It would have been apparent to you that they were charges being levied on a high roller from China who had come to The Star principally for the purpose of gambling, as you understood it; is that right?"

5 "Yes."

So the inquiry should find that the reasonable interpretation of the email, when read together with the invoices, is that the bank was being told that some customers, including customer 37 who put about two and a half million dollars
10 into his patron account in three days in July - two and a half million dollars - that's what was disclosed to the NAB - that a proper construction of the email and the attachments was that it covered more than just accommodation services, notwithstanding the answer to point 2, and that it was being levied on a high roller from China who had come to The Star principally for the purpose of gambling.
15

MR BELL SC: Did you ask her the next question, which was whether she understood that it was, in fact, being levied for gambling?

MR BRAHAM SC: No, because Ms Arthur says she didn't look at them
20 carefully. Ms Arthur's out here was she herself had not read the email carefully. So there was no point asking her what she understood. I was putting to her that she would have understood, if she had it read carefully, those matters and the conclusion you might draw from that. But there's more - there's more to this, because we then have to look at how the email was used within the bank. And for
25 that purpose, could I ask the transcript operator to bring up exhibit B1670.

Because, in fact, what happens, of course, is that the email from The Star is forwarded from Ms Arthur within the bank to the people dealing with the China UnionPay. So we have this document, exhibit B1670, and could I ask the operator,
30 please, to go to page - or the second page of the document, which has the last three digits 695 in its document identifier. There's an email about three-quarters of the way down the page from Mr Meldrum to others within the bank. Just further down, please. I'm sorry. A little bit up. Yes. I apologise to the operator. So there is 28 February, 4.23, Martin Meldrum to various people, copied to Ms Arthur:
35

"Please see attached the response from The Star. Hope this will suffice."

And then if we roll up the page:

40 "Hello -"

Marty is - Sudono Salim is responding to Mr Meldrum:

"Hi Marty, thanks for the quick turnaround, but we require the actual tax
45 invoices for these transactions."

Now, point number 1, no one in the bank was deceived into thinking that invoices had been provided or that there had been an explanation of what the money had been provided for. Mr Salim says:

5 "What were the payments for? We need to be sure that these were not for gambling purposes. The supporting documents provided all just state 'transfer to customers's account'. This sounds like a deposit, which UPI/CUP is suspecting about."

10 But can I just pause there? The criticism directed at the treasury department is the sending of emails. It's very important to observe here that within the NAB, that email was not read as answering the question, "Were the funds being used for gambling purposes?" It didn't mislead anyone. And then if we go up the page, Mr Meldrum says:

15

"We have received the attached response from The Star. They are saying what provided earlier are the actual tax invoices. Can you please advise next steps."

20 We're now in September. And over the page - or up to the page before, there's an email from Joe Avenell dated 3 September:

"Hi Martin, Paulinka is correct in that the only invoices supplied by The Star are similar to the ones provided. However, previously The Star has been more
25 forthcoming with their confirmation on whether or not there's any gambling component in the transactions."

Just pausing there, I don't have any submission to make about this previously being more forthcoming. As I understand it, whatever happened previously has
30 nothing to do with Ms Scopel; it refers to some prior occasion. But here is Mr Avenell observing that The Star has not been forthcoming about whether or not there's a gambling component. If we move up the page to the email from Tanya Arthur to Joe Avenell on 4 September. This is critical. It says:

35 "Hello everyone -"

Or:

"Hi everyone, I've spoken to Paulinka and she has followed up with the
40 appropriate internal department again for clarification. She confirms the transactions were used for hotel accommodation services only."

Now, just reading that email, as a record of a conversation that happened between Ms Arthur and Ms Dudek on 4 September, we would conclude, some years after
45 the event, that there was a conversation between Ms Dudek and Ms Arthur in which Ms Dudek confirmed that the transactions were for hotel accommodation

services only. And she probably used those words. In other words, she put back to Ms Arthur the same words that are in the email that she authored the week before, which also uses the phrase hotel "accommodation services".

5 **MR BELL SC:** Was the word "only" something that was added by this communication beyond what the emails had conveyed?

MR BRAHAM SC: Yes, possibly. With respect, that's a very fair comment. And I can't really explain that, but there's more to this story. Because if we then go up
10 to the next email, which is 4 September at 3.48 pm, this is Mr Avenell:

> "I understand the casino chips or gambling credits could fall under the definition of 'hotel accommodation services'. Appreciate confirmation there's no gambling component to the 'hotel accommodation services'."

15

Just pausing there, Mr Avenell is not deceived. And, really, Mr Bell, of course he's not. It's perfectly obvious to any reasonable reader of these communications that The Star is just refusing to answer the question, "Was there a gambling component?" And Mr Avenell is not having it. He is saying, "I want confirmation
20 there's no gambling component." What he wants is an answer that uses the word "gambling". "There is no gambling component." And he knows - and he's the person dealing with the CUP, by the way. He knows that at this point, that confirmation has not been given. Because all of these weasel words about hotel accommodation services doesn't answer the question. And that's on 4 September at
25 3.48. He looks for confirmation there's no gambling component from Ms Arthur. Ms Arthur doesn't reply immediately.

So what we have is a conversation between Ms Arthur and Ms Dudek on 4 September, some time just before 3.44 - maybe at 3.30, say - within a very short
30 space of time - four minutes after Ms Arthur sends her reporting email to everybody who is interested, she gets an answer straight back from Mr Avenell, "You haven't answered the question. What about gambling?" And there's no response. At a point in time at which this communication - her discussion with Ms Dudek was fresh in her mind, Ms Arthur doesn't reply to Mr Avenell to say,
35 "No, no, no. Ms Dudek did say definitely no gambling." There's silence from Ms Arthur. And then six days later, Mr Avenell follows up again. And we can see - if the operator would go up to the email above, please, of 10 September:

> "Hi Tanya, is there any response from Paulinka? UnionPay is pressing for a
40 reply."

And then if we go to the top email on the page, which is sent six minutes after Mr Avenell's follow-up:

45 > "Hi Joel, she said there was no gambling component, so I take this includes chips and credits."

Now, pausing there, there are those words, "no gambling component", which appear in inverted commas in UnionPay's letter of 28 February. What we know is that the NAB at some point told China UnionPay that these payments contained no gambling component. This is the only place in the written record where that phrase appears, and it's in an email from Ms Arthur to Mr Avenell and not in an email from The Star to the NAB.

MR BELL SC: Are you suggesting Ms Arthur made it up --

MR BRAHAM SC: Yes. Yes.

MR BELL SC: -- or should I conclude where she says "she said", she's referring to Ms Dudek?

MR BRAHAM SC: She is referring to Ms Dudek, but she's making that up.

MR BELL SC: Why would I find that?

MR BRAHAM SC: I'm going to tell you why you should find that. Thank you for the question. There are a number of reasons. The first is that - the first point I want to make by the way, before I get there, is that whether or not Ms Arthur is making that up - there's two possibilities here. The first is that Ms Arthur was telling the truth in that email to her peers within the bank and that Ms Dudek had said to her, "There's no gambling component." The second is that Ms Arthur was not telling the truth to her peers within the bank and Ms Dudek had not made that statement.

MR BELL SC: There is a third possibility, which is perhaps a subtle alternative, which is that there was a subsequent communication between Dudek and Arthur between 4 and 10 September in which Ms Dudek was asked the specific question which Mr Avenell had raised.

MR BRAHAM SC: Yes. And Ms Arthur said that didn't happen. I asked her that. And Ms Arthur was quite clear there was no subsequent communication with Ms Dudek.

MR BELL SC: I see.

MR BRAHAM SC: I'm going to take you to the transcript, Mr Bell, but Ms Arthur's evidence was this was a reference back to the same conversation that happened on the 4th which she had - she said inaccurately recorded to others within the NAB on the 4th and only accurately recorded on the 10th.

So let me - what I want to say is there are two possibilities: this is a true statement or it's a false statement. Either way, it wasn't the emails that gave rise to that statement; it was a conversation with Ms Dudek. And Ms Scopel is not implicated

in that at all. Ms Scopel and the others within The Star who authored emails are not responsible for this communication between Ms Arthur and Mr Avenell which gets passed on to the CUP. It is either Ms Dudek on a frolic of her own - I want to say something about the probability of that being true - or it's Ms Arthur covering for the fact she hadn't, earlier in the week or the week before, addressed the matter she was required to address.

Just looking at the broad picture here, just consider - first of all, this was put to Ms Dudek. This was put to Ms Dudek by counsel assisting as a possibility and quite - if I may say so, with respect, quite properly put, anticipating that this would come along when Ms Dudek gave evidence. Counsel assisting - could the operator please bring up transcript 61. And at line 19 on 61, Ms Sharp said:

> "What do you say to the suggestion that in late August or early September, Ms Arthur expressly asked you whether the words 'hotel accommodation services' included a gambling component and you said they did not?"

And Ms Dudek said:

> "I don't believe that could have occurred because I wouldn't have felt comfortable discussing the matter with Ms Arthur over the phone. If there was a question that was posed to me from Ms Arthur, I would have followed up with Mr White to confirm an appropriate response back. But I wouldn't have been in a position to feel comfortable responding to Ms Arthur on that direct request over the phone."

Now, of course - of course - that is the truth. At every stage, these emails have been coming in from the NAB and Ms Dudek has been diligently sending them off to the in-house legal counsel to carefully prepare a response, which she knew, and she said in her evidence, was incomplete and she was concerned about.

MR BELL SC: Didn't the email of 4 September that you took me to a moment ago refer to Ms Dudek having referred the matter to the appropriate internal department?

MR BRAHAM SC: Yes. That's right. She referred it to the appropriate internal department for clarification. She confirmed the transactions were used for hotel accommodation services only. So the email of 4 September, we can accept, might actually refer to something that occurred. Ms Arthur calls up Ms Dudek. Ms Dudek says, "I will follow up with the appropriate internal department for clarification", and comes back with a form of words that we know Mr White would have approved because they're his words. But now what's being suggested by Ms Arthur, in the email that she only sends a week after the event, is that Ms Dudek came up with words that expressly excluded a gambling component.

MR BELL SC: I'm just not sure how much I can take from the transcript you have taken me to at page 61, lines 19 to 28, in circumstances where the previous question and answer was that Ms Dudek said she didn't recall having any conversations with Ms Arthur --

MR BRAHAM SC: No.

MR BELL SC: -- regarding CUP, apart from one call with Ms Scopel closer to December.

MR BRAHAM SC: Yes. So this is not purporting to be a recollection by Ms Dudek. And she doesn't say it's a recollection. She says, "I don't believe that could have occurred. I wouldn't have felt comfortable. I would have followed up. I wouldn't have been in a position." She's not purporting to record anything, but she's making a statement that, in my submission, you would absolutely easily accept from a witness who otherwise is said by counsel assisting to be a witness of truth and who was plainly telling the truth and who says very persuasively and believably, "I wouldn't have given that confirmation over the phone. I wouldn't have felt comfortable doing that."

And compare that to the compromised position Ms Arthur finds herself in, even on the documentary record, where she is - well, I will take you to the transcript rather than talking in generalities. Ms Arthur's evidence on this topic - okay. If the operator could please turn up transcript page 247 . And at line 6, I raise this conversation. And at line 16:

> "It's a conversation that must have happened at about 3.44 pm on 4 September; do you agree?"
>
> "That's correct."

So that's when the conversation happened:

> "What you got from Ms Dudek was a confirmation of the transactions were used for hotel accommodation services only; is that right?"

Ms Arthur:

> "That's what's written in the email."

Now, just pausing here, Ms Arthur has read the email and is plainly aware of the problem:

> "Well, what does that mean? Is it right or wrong?"

"It's correct as described in that email, but the conversation confirmed there was no gambling component as per the emails after then."

MR BELL SC: Yes.

5

MR BRAHAM SC: And then I ask her another question:

"As per the email."

10 She says. I put to her at line 46:

"The phrase 'hotel accommodation services' was exactly the same phrase that had been put in the email, wasn't it? The original email said 'hotel accommodation services'; correct?"

15

Answer:

"Yes."

20 "So you were relying to other people in the bank no more information than had been contained on this topic in the email of 28 August, were you?"

"It was confirmed."

25 I asked her again, and she confirmed that the transactions were used for hotel accommodation services only:

"You asked her to confirm what was in the email of 28 August, and she confirmed that what was in the email was right."

30

"She confirmed what was in the email; that's right, isn't it?"

"At that point in time, that is what I conveyed internally, yes."

35 And I have put to her:

"That's all that had happened."

And she said:

40

"When I was asked internally to confirm that hotel accommodation services did not include a gambling component, that's when I clarified."

And I then took her on about that. Mr Loxley, who appeared for Ms Arthur,
45 objected. And just pausing there, Mr Loxley appeared for Ms Arthur personally. Neither Mr Loxley nor anyone from the NAB put to Ms Dudek this version of

events that comes out of Ms Arthur now, that there was one conversation and that it was Ms Dudek who told Ms Arthur that the money hadn't been used for gambling purposes. The very key fact came from Ms Dudek in a conversation with Ms Arthur on 4 September. Never put to Ms Dudek by representatives of the bank.

Then we go over to page 249. And, in fact, page 249, we see at line 5 Ms Sharp also had an objection - or made a submission in support of Mr Loxley's objection, referring to the top of the emails where, of course, the critical things comes to an end. At line 30, I say:

> "What I think I was putting to you, Ms Arthur, is that in the email of 4 September, what you told them about that conversation was that Ms Dudek had confirmed the accuracy of the content of the email; that's right, isn't it?"
>
> "Yes."
>
> "And that's because that was an accurate and comprehensive description of the content of your conversation; that's right, isn't it?"
>
> "Yes."
>
> "You don't actually recall now, sitting here in the witness box, you don't remember that conversation that happened two and a half years ago, do you?"
>
> "It's two and a half years ago. I'm referring to the email correspondence."
>
> "You don't remember the conversation."

Over the top of 250. Answer:

> "Yes."

So what's the state of the evidence? Ms Arthur just has the emails. She has no independent recollection of this conversation, neither does Ms Dudek. Ms Dudek says, "I wouldn't have said it." And, of course, that has, in my submission, the ring of truth. She wasn't in the business of providing answers; she was in the business of relaying them, and we know the answers have been carefully worded not to refer to gambling.

Ms Arthur, on the other hand, has the problem that she purports to be relaying the content of a conversation, for the second time in the email of 10 September, in terms that are materially different from the way she relayed the same conversation within minutes of it actually having occurred six days earlier. And there are additional matters you could take into account. We know that there's another contest in the evidence about a conversation on 7 November between Ms Scopel

and Mr Theodore on the phone with Ms Arthur, in which Ms Scopel remembers
Mr Theodore and Ms Scopel saying to Tanya Arthur:

5 "You know we can't provide you with confirmation that the funds weren't used for gambling. We're not going to be able to provide you with that confirmation."

And Ms Arthur says:

10 "Yes, I know."

Ms Arthur denies that conversation occurred. Ms Scopel remembers it happening. Mr Theodore corroborates Ms Scopel. Counsel assisting says:

15 "You would believe Ms Arthur that it didn't occur."

Well, it serves to emphasise the extent to which Ms Arthur's credit on this question depends entirely on her being believed over Ms Scopel, Mr Theodore and Ms Dudek as to these very important conversations. And I accept that counsel
20 assisting has multiple complaints about the credit of Mr Theodore, and I don't want to get into the credit of Mr Theodore. I'm not in a position to do that, and there's presumably somebody else who is going to do that on his behalf. But counsel assisting doesn't otherwise suggest Ms Scopel's evidence was anything other than truthful to you. And counsel assisting doesn't suggest that Ms Dudek's
25 evidence was anything other than truthful to you.

And Ms Dudek, on this occasion, has the support of the contemporaneous email that is sent on 4 September. And in relation to the 7 November conversation, the email correspondence, again, in my respectful submission, supports Ms Scopel
30 and not Ms Arthur. So can I move to that email. There's very little in the documentary record in November. But the email that was sent - if the operator could please bring up exhibit B1828. This is the email of 7 November. And without going through it in detail, because I know it's been traversed in detail, it doesn't contain a confirmation that none of the funds were used for gambling.
35

MR BELL SC: That's the clear inference that any fair reader would obtain from it, though. Do you accept that?

MR BRAHAM SC: "Any fair reader" is a very loaded term. This wasn't being
40 sent to any fair reader; it was being sent to the people of the NAB with whom all the previous communications had occurred. It was clearly another email, carefully worded not to answer the question that had been asked. Not to say anything false, but not to provide an answer to the very clear question that had been asked. And it was being sent to the bank. So what we get - if the operator could go to the second
45 page of that, please. We get an email from Tanya Arthur dated 6 November at 7.27

pm. And she says - if we look at the last sentence of that first paragraph, although it's the last two lines:

> "They believe includes gambling and we are struggling to see how this level of expenditure could be made on non-gambling entertainment."

And then she says:

> "Could you please provide additional information as suggested below."

And there are three points. And the third point is:

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

It's a very clear question, "Tell us in writing - tell us in writing that there is no gambling component." And we can go through the email that comes in response, but the one thing that is perfectly clear is that it does not have written confirmation that none of it is a gambling component. And if the operator could then bring up, please, exhibit B1873. Here's Ms Arthur's response in the middle of the page:

> "Hi Sarah, just wanted to let you know we've received an update from UnionPay who seem satisfied with the response received so far and are awaiting a response from the People's Bank of China."

So what is going on with Ms Arthur here? She has asked for written confirmation, she gets an answer that doesn't include written confirmation that there's no gambling component and she makes no complaint about that. In fact, the email that comes later is, "We seem to be all good."

MR BELL SC: In that response, which we have all read many times as you say, there's a reference towards the bottom of the page to the fact that the terminals are outside the casino and there's no - that's coming pretty close to a confirmation, is it not? It's certainly the intention.

MR BRAHAM SC: Yes, I accept - this is an email that has been settled within an inch of its life by lawyers and senior people of The Star to say a whole range of things that are factually true and don't answer the question that has been asked, and tend to convey an impression that the cards are not being used for gambling without saying so. I mean, it is a true statement that the terminal is located outside the gaming related areas. It is just not relevant, really, because the transactions can happen electronically from one place to another. It's a true statement that the gaming transactions are not conducted at the hotel.

This letter wasn't being published in a broadcast newspaper for the general public; it was being sent to the bankers who knew in detail that this was a very large

casino that attracted high rollers from China. Ms Arthur knew that. She agreed in her evidence she knew that. They were provided with documents that told them that some of these high rollers were spending two and a half million dollars through these cards in three days, people who had come from China for the principal purpose of gambling. There is a little bit of a game of hide and seek going on here, and this letter is being sent to the bank - to Ms Arthur.

MR BELL SC: But it's also being conveyed, as everybody understood, not just to UnionPay but also to the People's Bank of China.

MR BRAHAM SC: Yes. I mean, I understand that. What we don't have are the terms of that conveyance. Because when these statements are made along the lines - as we saw from the - I'm sorry. I will start again. As we saw from the email I showed you back in September, The Star sending to the bank and the bank relaying to the Chinese bank that these transactions were being used for hotel accommodation services, it didn't fool anyone. I mean, even if we just look at this email of 6 November:

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

Well, with great respect to the People's Bank of China, yes, no kidding. I mean, it was obvious. And then what the National Australia Bank asks of The Star is for written confirmation that no transactions include a gambling component. And they get a letter back that doesn't have written confirmation, and they don't complain about it. Now, Ms Scopel says, "I spoke with Mr Theodore, to Ms Arthur, before we sent the response, and I said we're not going to be able to give you the confirmation you need" - I'm sorry, Mr Theodore said to her, "You know we're not going to be able to give you the confirmation you need." And she said, "Yes, I know." Ms Arthur says, "I don't remember the conversation." Mr Theodore and Ms Scopel say they do and it happened.

It's consistent with the email traffic. Ms Arthur has asked for written confirmation. She hasn't received it. She doesn't complain. And if - by the way, going back to September, if Ms Arthur is telling the truth about her conversation with Ms Dudek, if she has already received confirmation from The Star orally that there's no gambling component, why would she accept an email communication two months later that didn't repeat that confirmation?

MR BELL SC: Well, let me ask you a rhetorical question in response.

MR BRAHAM SC: Yes.

MR BELL SC: Ms Arthur told me that she understood that there would be very serious consequences for the bank, her employer, if it was found to have permitted the cards to be used for gambling. So why would she lie to her superiors about that?

5

MR BRAHAM SC: Well, with great respect, that is an excellent question. I'm not necessarily able to answer - what the material available to Ms Scopel is her own recollection and the documents produced by the inquiry. We are faced with this situation: is Ms Dudek lying? We could equally ask: why would Ms Dudek lie?
10 Why would Ms Dudek tell Ms Arthur that there was no gambling component? That was an extraordinary thing for her to do. But you asked me why would Ms Arthur lie, and I accept that that's a good question and I don't know what her motives are. One possibility that I put to her in my cross-examination was that she was acting in concert with what she understood The Star was doing to provide
15 answers that would satisfy China UnionPay, maintaining for the bank and, in particular, her client within the bank, a very large and profitable business from which The Star was making a lot of money and from which the NAB was making a lot of money.

20 But I have no basis other than supposition for suggesting that as a motive. What I have, in my respectful submission, is clear evidence on a balance of probabilities basis that some of Ms Arthur's answers are false. Some of her recollections are wrong. And, of course, they are self-serving. You asked me why would she do it. This happened a long time ago. I don't necessarily know. But having done it, it's
25 quite clear why she would seek to attribute responsibility to Ms Dudek rather than take it herself. What we see from the November email trail is Ms Arthur accepting an answer that didn't contain the written confirmation she had sought and, on her version of events, the confirmation that she had already received orally.

30 And if you were in Ms Arthur's position, and you understood that The Star had already said to you in terms, "There's no gambling component", why wouldn't you say, "I just need that in writing. You said it to me on the phone. Put it in writing", or send Sarah Scopel an email saying, "I just want to confirm that I've been told by Paulinka that there's no gambling component. Can you put that in an email,
35 please?" But there's nothing, there's no - in the many email communications between Ms Arthur and The Star, beside having had this confirmation about gambling, never appears. It only appears internally in an email between Ms Arthur and her colleagues at the bank who are hassling her for a response. I really can't provide an adequate motive; I can only provide supposition. But in my respectful
40 submission, the evidentiary trail is clear.

But can I just repeat a point I made earlier. It really doesn't matter to Ms Scopel - I appear for Ms Scopel. It really doesn't matter to Ms Scopel whether you believe Ms Arthur or you believe Ms Dudek because, on any of the version of events, the
45 critical confirmation, which is apparently sent on to China UnionPay, didn't originate in an email from Ms Scopel. Even on Ms Arthur's version, it originated

from Ms Dudek. Poor old Ms Dudek, the most junior person in the whole list, the least likely person to make anything up of just about anyone. She is the one Ms Arthur blames for coming up with the all-important confirmation that the China UnionPay and the NAB have been seeking for months and which The Star has repeatedly and doggedly refused to provide in a whole range of emails that tell half truths and so forth. It's Ms Dudek who provides it. And in my submission, that's an unattractive conclusion.

But even if it's arrived at, it does not permit, in my respectful submission, a conclusion that either the National Australia Bank or China UnionPay were misled by any email sent by Ms Scopel. Just to be clear, Ms Arthur's evidence was that she never discussed this matter with Ms Scopel. The transcript reference, if the operator could bring it up, please, is transcript 221. And there, at the top of the page, is Ms Arthur's evidence that she didn't discuss whether the CUP cards had been used to fund gambling with Ms Scopel. Didn't ask for it outright.

Now, we're going to supplement the submissions I've - I'm sorry. There's one other thing I wanted to take you to, Mr Bell, on this topic. At transcript 254, I put to Ms Arthur that her evidence wasn't to be accepted. Ms Arthur - I apologise to the operator. Could I ask the operator to go back to 251, please. At line 35, I asked her for an explanation as to why the gambling confirmation wasn't in her first response to Mr Avenell, and she says at line 43:

> "I can't answer that question. I could have been doing a number of things on the day. I can't answer why I didn't reply straightaway. I could have gone into a meeting. I could have taken another call. I don't know."

And I put to her some things at the top of 252, which she didn't accept. And then over at page 253, I put to her that when she got the further request from Mr Avenell about confirming things with The Star, she says at line 9:

> "I didn't confirm with the client again because she had already said to me it didn't including a gambling component."
>
> "You already had that confirmation?"
>
> "That's right, yes."

And that, Mr Bell, is the answer to the question. There's no suggestion of a second phone call.

MR BELL SC: Yes, I see that.

MR BRAHAM SC: Yes. So over at 254, I put to her at line 16:

"Isn't the truth of the matter that you were the source, and the only source, of the confirmation to Mr Avenell there was no gambling component?"

"In this exchange, yes."

5

"You've sought to attribute that to Ms Dudek, but in fact it wasn't Ms Dudek at all."

"I don't agree."

10

"All she said was the transactions were used for hotel accommodation."

"I don't agree."

15 And then at line 39:

"From your perspective, the critical confirmation on the critical question of whether the CUP cards were used for gambling purposes - the critical confirmation that they weren't came from a conversation between you and
20 Ms Dudek on 4 September; is that right?"

"Yes."

"And it was that confirmation that caused you to give Mr Avenell the
25 confirmation you gave him on 10 September?"

"Yes."

"It was not the email of 28 August."

30

Now, Ms Arthur, I don't think understood my question and there's a bit of confusion, but ultimately at line 26:

"That was the first time you had given him that confirmation?"

35

"Yes."

"You understood, didn't you, that up till that point, nothing he had seen had comforted him that the CUP charges did not have a gambling component; do
40 you agree?"

"Yes."

"The email of 28 August was ambiguous on the question; do you agree?"

45

There's a bit of confusion about which email she's talking about. But ultimately at 256, she understood and she agreed that by 10 September, she understood that the email was ambiguous to answering the question. She said:

5 "Yes."

In other words, it wasn't the email; it was Ms Dudek's conversation.

There's one other matter I want to address. Counsel assisting, at transcript 4036,
10 referred to an inquiry that was made of Ms Scopel by UnionPay International on 4 November 2019. It's at line 33:

"A representative from CUP directly contacted The Star. Ms Scopel effectively fobbed him off."

15

By this stage, Ms Sharp had been making submissions for a very long time, and I don't mean to make a point about the use of a phrase. But if that's intended to be a criticism, it would be a very unfair one. UnionPay International wasn't a client of The Star. Ms Scopel worked in treasury at The Star. And it was a fundamental - as
20 she explained in her evidence, it was a fundamental feature of basic security protocols and privacy considerations that she not provide any information at all to an unsolicited email inquiry from someone she couldn't identify.

And that was just - that's just, I think, probably pretty basic financial security. She
25 would require - The Star could answer questions from the National Australia Bank. But in respect of what someone said on their email footer or what they might say on the phone, a person in Ms Scopel's position must not share financial details following an unsolicited inquiry from someone in China or, in fact, anywhere. And you don't do it just because they have a convincing looking email
30 footer. And so what Ms Scopel did, as she explained, is she referred them to their client, the National Australia Bank, and expected an inquiry from the National Australia Bank. And, again, I don't want to make a mountain out of a molehill, but to the extent "fobbing off" is a criticism, it would be an unfair one.

35 In conclusion, can I say, Mr Bell, on one hand, you could write a report into The Star's suitability for a licence without mentioning my client's name. On one view of it, it's really just - she is no longer an employee and hasn't been for some time. Can I just say this: Ms Scopel's appearance before the Review was attended by widespread publicity, all of which reported to allegations made during
40 cross-examination by counsel assisting, and the reporting is also reported the subsequent and consequential loss of employment of a similar role at Woolworths and of her career.

And it is appropriate in those circumstances, in my respectful submission, that if
45 the inquiry forms the view that - as I suggest it would, that nothing Ms Scopel did had the effect of misleading the bank, then it would be appropriate in all of the

circumstances to say so in your report. Unless I can assist by answering questions, that's all I wish to say.

MR BELL SC: Yes. Thank you, Mr Braham. In view of the time, I will now take the morning adjournment and I will resume in 15 minutes.

<THE HEARING ADJOURNED AT 11:20 AM

<THE HEARING RESUMED AT 11:38 AM

MR BELL SC: Yes, Ms Horvath.

MS HORVATH SC: Thank you, Mr Bell. As you're aware, Mr White, for whom I appear, was employed by The Star Entertainment Group from September 2011. He took planned long service leave from December 2021 and, whilst on leave, resigned in January this year. He had not been asked to provide a witness statement and had already resigned when he received his summons. For the 10 years that Mr White worked at The Star, he remained in the same position of general counsel corporate, reporting to the group general counsel, who was initially Michael Anderson and Paula Martin and finally Andrew Power. He worked in a team of about 14 lawyers.

Over the past three days, The Star has made submissions to this Review, which could be summarised as a submission that, unfortunately, The Star has had a few bad apples who have now left. This characterisation, insofar as it relates to Mr White, is unfair and inappropriate and ignores the powerful impact that The Star's corporate culture has had on Mr White. Mr White respectfully adopts the submissions by counsel assisting in relation to corporate culture and agrees that corporate culture is not defined by individual lapses but is rather better identified in the manner set out by the former ASIC Commissioner, John Price, in terms of it's the evidence of the way we do things around here.

The Star may not have realised the insidious effect that its delinquent culture has had on employees like Mr White. And if I can briefly take you, Mr Bell through a longitudinal assessment which will make that clear. On 23 June 2013, Mr White first became involved with CUP and the proposal for a cheque cashing facility. He sent an email, which - I wasn't going to ask you, Mr Bell, to look at these documents because you've seen them, and I'm going to provide you with references, and they're referred to in detail in our written submissions. But he emailed Graeme Stevens, then the regulatory affairs manager, asking whether it was necessary or desirable or advisable to liaise with the regulator about the proposal. That's B2946. It seems there was no substantive response, and The Star has conceded in its submissions that no approval was sought despite Mr White's request of the regulatory affairs manager.

Then, on 3 July 2013, Mr White sent a follow-up email - this is B0032 - to Adrian Hornsby and David Aloi, copied to eight other Star employees, stressing that someone in the business needed to take ownership of the CUP in order that legal and the regulatory departments could properly consider it. His email says:

> "Someone in the business (not sure whether this is IRB, domestic VIP or cage), needs to take ownership of this project to ensure that all relevant areas are involved and seek relevant internal approvals (which given the potential scale, may need to be taken as high as the board for final sign-off)."

The chief financial officer, Brett Houldin, responded the next day, somewhat curtly, to the effect that he would take charge of ensuring that The Star achieved the outcome intended; he would obtain any necessary sign-offs, although he thought it was unlikely that they would be required; and, essentially, that Mr White's correspondence was unnecessary. That's B35.

The same day, Mr White responded inter alios to Mr Houldin, stating that whilst it may not be strictly necessary to clear the CUP proposal with regulators, it would be advisable, and that he accepted that consideration of that question would need to form part of any internal sign off-process. That is, on three occasions within one month, Mr White raised with at least nine other Star employees, including the CFO and regulatory affairs manager, the need to consider liaising with the regulator. At best, he was simply ignored. The business instead chose to court that risk. Those emails clearly demonstrated to both Mr White and all other recipients that the business's approach to these issues was, at a minimum, cavalier. It was quite clear, in our submission, that Mr White was being told, "This is the way we do things around here."

On 3 February, Mr White sent a detailed memorandum - and this is B47 and F54 - to the then CEO John Redmond, the CFO Matt Bekier, Adrian Hornsby and Ms Martin in relation to advice sought by Mr Hornsby about a cheque cashing facility for patrons who have swiped their CUP cards and were waiting for funds to clear. I'm aware, Mr Bell, that you've seen this document several times. In the advice, however, Mr White twice warned the senior executives that whilst it was legally open to The Star to use a cheque cashing facility, it was an approach that may not find favour with ILGA, and ILGA essentially may see it as a contravention of the Act.

Each of Mr Bekier and Mr Redmond instructed Mr White that the proposal should proceed. The Star has submitted that this demonstrates that Mr Bekier and the in-house lawyers, which presumably means Mr White, showed a willingness to court risk and a failure to be forthcoming with the Authority. This submission, insofar as it concerns Mr White, is inappropriate. Mr White did advise of the risks. He was not the decision-maker, and it wasn't his job to liaise with the regulator. There was a team of people whose job it was to liaise with the regulator. Again, he was essentially ignored. The business - not Mr White - chose to court that risk, and

Mr White and the other employees on that email were again shown that courting risk is the way we do things around here.

On 16 January 2017 - and this is B167 - Mr White sent an email to senior management, and I won't read them all out, but it includes the chief risk officer, Chad Barton, the CFO, Mr Theodore, Mr Hornsby and many others. And in this email, Mr White drew their attention to media articles about the use of the CUP cards in casinos and raised whether there should be further monitoring of CUP exposures or proposals around use. Consistently with the cavalier culture at The Star, there's no evidence that anybody ever responded to Mr White.

On 7 February 2017, Mr White alerted Matt Bekier CEO, Chad Barton CFO and Mr Hornsby about a potential patron who proposed to use their CUP card who was under investigation by the AFP for money laundering. Mr White expressly warned these senior officers about the risks and, again, Mr White was instructed that it wasn't worth knocking back the patron.

On 3 May 2017, Mr White learned that the hotel team were entering the CUP swipes against a dummy account. He immediately reported it to Mr Power, and that's B327. It's apparent as well from the evidence before this Review that as long ago as 20 April 2016, Mr Power had also instructed The Star not to create false hotel records using a dummy account. Notwithstanding the repeated advice, The Star apparently continued this practice, which, consistently with submissions, I believe The Star has conceded was in breach of the SOP which required that customers had to have a hotel room booking at the hotel in order to use the CUP cards. And that's exhibit A1289. Again, legal advice, which was repeated to The Star, was simply ignored.

On 17 January 2018, Mr White provided advice about the implementation of a client management agreement with Kuan Koi - and that's B531 - and the risk that this might be outsourcing AML responsibilities. As noted by counsel assisting at transcript 4099 and following, yet again, The Star elected not to follow Mr White's advice and, significantly, increased its risk profile associated with dealing with third-party remitter services.

On 13 March 2018, Mr White gave clear written advice to The Star, David Aloi and Wallace Liu that there could not be any cash transactions taking place at the service desk within Salon 95 because Suncity did not have authority to operate a cage. That's exhibit B705. Although The Star now accepts that this is appropriate and prudent legal advice - that's transcript 4193 - only two weeks later, Mr White was pressed by the business to change his advice. It is apparent from the evidence in this Review that, thereafter, The Star conducted a risk assessment and, instead of following Mr White's initial advice, set up a system for cash transactions to occur at the service desk under particular controls.

Suncity failed to act in accordance with those controls, and Greg Hawkins, the CEO of The Star Sydney, twice instructed Mr White to issue warning letters to Suncity. Mr White's evidence, at transcript 1751 to 55, is that he told his boss, Ms Martin, and Mr Power, that he thought that the second warning letter was a weak response. The Star submits, at transcript 4193, that this was a failure of the legal, risk and compliance personnel because they acceded to Mr Hawkins' decision to issue a second warning letter rather than carrying through with the ultimatum contained in the first letter, and The Star submits that behaviour of this kind was enabling or advocating for the business.

This fails to acknowledge that it was Mr Hawkins' decision, not Mr White's, and that Mr Hawkins was a member of the executive committee, not Mr White. And it's inappropriate in the context of a suitability review for The Star to criticise individuals such as Mr White, who were given no direct line of report to the board, for failing to somehow go around their boss and report these matters to the board.

Finally, on 25 June 2020, Mr White wrote to Ms Martin, Mr Houlihan and Mr Power - at that point, Mr Power was the group general counsel - describing a patron's potential transaction and highlighting that there were two red flags for potential money laundering. Mr White was again directed that the transaction was to be pursued, notwithstanding the risks. That's at B2468. Again, further evidence of The Star's corporate culture which simply courted risk.

This is, of course, a suitability review for The Star, not Mr White, so this is only a very small subset of what I am instructed are the very many occasions over the 10 years that Mr White worked at The Star where he endeavoured to act as an independent brake or a check on the business. He was repeatedly rebuffed, ignored and asked to reconsider his advice and impliedly told through that conduct that that's not how we do things here.

When Mr White gave evidence, he was, as counsel assisting submitted, a very emotional witness and, to use counsel assisting's words, somewhat broken. It ought be understood, of course, that what the review saw was the end of Mr White working for 10 years in that terribly difficult environment where risk was courted and the warnings given by him and others were largely ignored. It is through that lens that the following submissions are advanced. First, in relation to credit, counsel assisting made submissions at transcript 3979 in relation to Mr White's credit to the effect that one might doubt whether he was doing his best to give a frank account.

In our submission, the Review ought not make any adverse findings concerning Mr White's credit for the following reasons. First, counsel assisting did not refer to any particular circumstance where Mr White gave evidence where one might doubt whether he was doing his best, or any circumstance where he would not make concessions which were fairly due. Indeed, it would be noted that Mr White made numerous concessions in his evidence, and I'll come to them shortly.

Second, there is no question that Mr White found it very difficult to give evidence. He was emotional, and he was often confused by the questions. Examples of those are in our written submissions. Whilst that did have the consequence that his evidence, from time to time, may have been unclear, and that questions needed to be repeated, it does not lead to the conclusion that the Review ought consider he wasn't doing his best to give a frank account.

Consistently with Mr White doing his best, when giving evidence, he made very significant concessions. For example, it is notable that in relation to the advice that he had given to The Star about the cheque cashing facility and whether it complied with the Cheques Act, and his advice to The Star that The Star was not obliged to - that The Star wasn't bound by the CUP rules, Mr White was clear that when he gave that advice, he genuinely believed that his legal advice was correct.

It was put to Mr White in evidence that the construction of those instruments was incorrect and that his advice was wrong because he had misconstrued the legislation. Mr White made extensive concessions that his legal advice must have been incorrect, both in relation to the Cheques Act and also in relation to the CUP rules. The Star, of course, has advanced lengthy submissions to the effect that Mr White's interpretation and his legal advice was correct on both of those matters. The fact that Mr White made those concessions is, of course, consistent with a person doing their best to assist the Review and tells against any credit finding.

Can I turn now to the CUP and the correspondence with the NAB? In his oral evidence, Mr White made a number of concessions about the pieces of correspondence from The Star to the NAB in the period October to December 2019, which were put to him. His concessions about that correspondence in which he was involved are clear and unambiguous. He does not withdraw them. He does not seek to resile from them. Mr White accepts that it would be open to the Review to conclude that his conduct in this regard was not conduct which is consistent with an organisation or a person that is suitable to hold a casino licence, that is, his conduct in this regard was not consistent with suitability.

However, each of counsel assisting and counsel for The Star go further in their submissions. It is submitted that it is both unnecessary and inappropriate for this Review to make the adverse and pejorative findings sought in relation to Mr White. It pays insufficient regard to the clear impact on Mr White of working in the negative and delinquent working environment, and the impact it has had on Mr White. Moreover, it is respectfully submitted that this is not the appropriate forum for findings to be made concerning Mr White's professional conduct.

Moreover, having regard to some of the submissions made and evidence advanced, it is important to note, first, that the emails of 22 October 2015 and 9 November 2015, which are at B93, which are emails from Mr White to Ms Martin

and Mr Power, and another email from Mr White to Ms Waterson, were not put to Mr White. Counsel assisting submitted that they support an inference that Mr White was aware, in 2015, that the NAB did not know that money withdrawn using CUP cards would, once cleared, be transferred to a patron's Star account.

In circumstances where these emails were not put to Mr White during his three days of evidence, and he wasn't asked about what he was told following the discussions referred to in the 9 November email between Damon Colbert and the NAB, in those circumstances, in our submission, it would not be appropriate to make any finding concerning Mr White's knowledge when he was wasn't given the opportunity to give evidence on that matter.

Secondly, it was not put to Mr White in cross-examination by either counsel assisting or The Star that he was the drafter of the 7 November email, 2019, sent by Ms Scopel to the NAB, and that's A1443. Whilst Ms Scopel gives evidence to that effect - and that is at transcript 125 to 128 - and her counsel repeated submissions to that effect this morning, that has never been put to Mr White, and he's never had an opportunity to deal with it.

Equally, it was not put to Mr White that he instructed or directed Ms Dudek, who reported to Ms Scopel, not Mr White, to provide the identified responses to the NAB. And nor is it consistent with the documents that were, in fact, put to Mr White. Firstly, B1435 at 50 is the first of the documents put to Mr White where, in his email to Ms Dudek, he says:

> "My suggested response is as follows."

And then sets it out. In our submission, that's not consistent with an instruction or direction to Ms Dudek. The second email put to Mr White, B1785, is an email where Ms Dudek asks Mr White to prepare a suggested response, which he provides, but he then asks her to run it past Harry Theodore, the then CFO, and, as I understand, someone to whom Ms Dudek's boss reported, to make sure that Mr Theodore is comfortable. In our submission, the Review would not conclude, in those circumstances, that Mr White instructed or directed Ms Dudek in any particular fashion.

MR BELL SC: But a suggestion from a senior lawyer to a junior treasury employee would carry a great deal of weight, would it not?

MS HORVATH SC: I have no doubt that it carried weight, Mr Bell. But equally importantly is the fact that Mr White asked Ms Dudek to run it past the person who is in her direct line of report. So Ms Dudek reported to Ms Scopel, who reported to Mr Theodore. That's her line of report. And he asked her to make sure that her boss's boss was happy with it. I'm not suggesting that Mr White's suggested response is something that Ms Dudek would ignore, but equally it's not a direction or an instruction by Mr White, is my submission.

Next, still in the CUP, counsel assisting has advanced a submission that from the beginning of the implementation of CUP, it constituted a sham, involving sham documentation to the knowledge of, amongst others, Mr White. That's at transcript 4007 to 4014. Mr White adopts The Star's submissions which would tell against that conclusion. However, in addition, Mr White's clear evidence is that it was his belief, whilst working at Star, that whilst the CUP rules forbade the use of CUP cards to purchase gambling chips, he did not believe that the CUP rules bound The Star because The Star did not have a direct relationship with CUP. He believed that The Star's relationship was with NAB and provided advice to the business on that basis.

However, by May 2017, he was concerned that the CUP may form a different view and that it may consider that there was too close a link with gambling. And as the CUP was, as Mr White said, the judge of their own rules, he sought advice from Mallesons about whether settled transactions could be unwound. Whilst Mr White accepted in evidence that, in retrospect, his advice may have been incorrect, that does not alter the fact that in good faith he gave that advice, and that was his legal opinion at the time.

Next, counsel assisting has submitted at 4008 to 9 that the evidence discloses that, by 2016, Mr White, Mr Power and Ms Martin were aware of the practice of dummy rooms where patrons not staying at the hotel would have swipes done on CUP cards against a dummy room. It is submitted on behalf of Mr White that the Review would not make such a finding. First, that contention was never put to Mr White in terms; and second, the evidence, which I've already taken you to, Mr Bell, is that Mr White first learned about this practice in May 2017. He immediately made Mr Power aware of his concerns - and that's B327 - and his evidence, which was not challenged, was he understood it had been communicated to Mr Barton, the CFO, and his direct reports, that customers had to be staying at the hotel to use the CUP facilities. That tends against any suggestion that Mr White was aware of the practice of use of the dummy rooms prior to that time or that he condoned it.

In relation to the submissions made by counsel assisting about client legal privilege - and this is at transcript 4045 to 46 - counsel assisting has submitted that there was a practice at The Star of cloaking documents in privilege, with the only rational explanation being to resist production containing adverse information. And it was also submitted that the lawyers had a practice of marking things as privileged without firstly considering whether there was, in fact, privilege. Mr White submits that the Review ought not make any finding of that nature insofar as it concerns him.

First, Mr White expressly denied that he had a practice of marking documents as privileged without considering whether the communications were privileged, and he denied that he ever encouraged anybody else to do the same - that's at transcript

1630 - and he was not challenged on that denial. Second, Mr White in his evidence was taken to four documents and asked to identify the basis for the privilege claim. I'll deal with each of them in detail in the written submissions.

5 But as to the four documents, one of them Mr White could not remember the basis of the privilege claim. But as for the other three, he explained why they were privileged. He explained that he was being asked to provide legal advice on matters set out in the emails, and his evidence in this regard was entirely unremarkable. And in my submission, there is no cause for the Review to make 10 any finding, as pressed by counsel assisting, in relation to the documents that were put to Mr White.

Can I turn to the Hong Kong Jockey Club report? At C78 is an email from Mr Buchanan to Mr White, Ms Martin and Mr Houlihan of 12 June 2019, providing 15 that report and stating that:

> "Given the confidentiality of the report, it would be appreciated if the document is not distributed beyond the group."

20 Mr White's evidence, which was lengthy on this question, was that he could not recall when he read the report. He was asked several times and pressed on the question by counsel assisting, and ultimately he explained that he took extended leave in July 2019 and his best recollection is that he read it after the media allegations came out in the end of July. He understood that each of Mr Power and 25 Ms Martin were taking steps - extensive steps - in relation to the report. And the evidence before this Review is that Ms Martin, who, of course, did report to the board, has given extensive evidence about the actions she took in response to the report.

30 Mr White's involvement appears essentially to have been, at the request of Mr Power, to assist with the preparing of a chronology. In the circumstances, the submissions by The Star at transcript 4172 that, amongst others, there's no evidence that Mr White acted on this information appropriately, that submission ought not be accepted. It seems to assume that what Mr White should have done, 35 upon receipt of this report, is ignore the work that his boss was doing and go around his boss to report directly to the board in circumstances where there was no particular path or way for him to do that.

Equally, the submission by counsel assisting at 4061 to the effect that it beggars 40 belief that, amongst others, Mr White could have entertained any thought at all that it was appropriate to continue dealing with Alvin Chau and Suncity in light of the report, that submission ought not be accepted. It was never put to Mr White. The factual foundation for that submission simply hasn't been established.

In our written submissions, we propose to deal with a couple of other individual matters that weren't put to Mr White, and we also anticipate responding to some of the submissions made this morning by counsel for Ms Scopel.

5 **MR BELL SC:** Yes.

MS HORVATH SC: Other than that, those are our submissions.

MR BELL SC: Yes. Thank you, Ms Horvath. I will now adjourn for five minutes
10 so that the next party can proceed with their submissions.

<THE HEARING ADJOURNED AT 12:07 PM

<THE HEARING RESUMED AT 12:14 PM

15

MR BELL SC: Yes, Mr McLeod.

MR McLEOD: Yes, Mr Bell. Thank you for the opportunity to make submissions on behalf of Mr Power today. I can confirm that Mr Power is here with me today,
20 sitting near me. I'm also instructed by Mr Harris, and he is here. Mr Power's wife, Kate Power, is also here in support of him.

I will start with an introduction, Mr Bell, and then tell you where I'm going with it as part of that introduction. I've got an estimate of an hour and a half today and, in
25 that time, I hope to give you an introduction and otherwise do five things. In effect, there are five parts to my presentation after the introduction.

In part 1, I will make some submissions about why, in my respectful submission, there is no need for you to descend into the task of making specific findings in
30 respect of Mr Power.

Secondly, in part 2, I will make some remarks in relation to a proper and reasonable context for the consideration of the work of Mr Power that has been scrutinised in this inquiry and, indeed, the context in which closing submissions of
35 counsel assisting should be considered and assessed, and also some of the submissions of Ms Richardson.

Thirdly, in part 3, I will provide you with some submissions about some concessions that, on reflection, Mr Power wants to make in respect of some of the
40 areas of focus of this inquiry that relate to him. They speak to a reasonable, responsible and ethical person and lawyer with insight, Mr Bell.

Fourthly, in part 4, I will provide our specific responses to adverse submissions made by counsel assisting and, at times, counsel for The Star and The Star
45 Entertainment Group Limited in relation to Mr Power. During this part, I will identify what I submit are some errors of characterisation of evidence which are

made in respect of submissions of counsel assisting, in particular, and also, in a limited extent, counsel for The Star and The Star Entertainment Group, in respect of Mr Power.

5 Now, whilst this part 4 is possibly the most critical part of my presentation, Mr Bell, I need to lay the platform by going through the other parts so that you can understand the context in which I put the direct responses to the adverse submissions made in relation to Mr Power. And lastly, in part 5, I will pull things together and make some final remarks.

10

So the goal of these submissions, if I can now continue my introduction, Mr Bell, is really, as a matter of substance, put on the record and for you certain matters we wish to advance in respect of Mr Power - or I wish to advance. I can say at the outset that the level of adverse scrutiny of counsel assisting on Mr Power in
15 closing submissions has, in my respectful submission, been undue and, at times, overstated. And I will make that submission good through the course of my address.

That scrutiny or focus has led to several public submissions being made which call
20 into question whether he is an honest lawyer and an ethical lawyer. Can I say at the outset that there is no evidence which could be relied on to establish the proposition that anything he has done in his time at The Star or The Star Entertainment Group has been dishonest, nor, properly analysed, that establishes conduct that is unethical or constitutes misconduct. Those words are serious to
25 anyone with professional pride in their work as a lawyer, and it was clear from Mr Power's evidence that he does have such pride.

Those words ought not be used lightly, nor findings made in relation to them, unless there is sufficient evidence to establish them, in this case in respect of
30 Mr Power, which, in my submission, there is not. In contrast, Mr Power is honest; he is ethical; and his a body of work in his legal career, including, importantly, at The Star and The Star Entertainment Group to which I will come, speaks to that.

When alleged against a lawyer with a longstanding professional career and no
35 adverse findings professionally or as to character, submissions to the effect that someone is dishonest or unethical need to be assessed with rigour and fairly scrutinised with reference to the principles in the High Court decision in *Briginshaw v Briginshaw & Anor* (1938) 60 CLR 336. Those are principles we have not heard mention of at all to this point in closing addresses that I've heard,
40 Mr Bell, but they're squarely relevant to assessing serious allegations, some involving dishonesty or unethical behaviour against a legal practitioner. In this case, I'm dealing specifically with Mr Power.

And it's the only case I will go to today, Mr Bell. I know it is known very well, but
45 the reality is that Briginshaw has stood the test of time and has direct applicability to your task of assessing the mass of evidence you have heard or been referred to

over more than 40 days of public hearings. And I just wish at the outset to remind you of this well-known passage from Chief [*sic*] Justice Dixon at 362 of Briginshaw, which is short, and he said this:

5 > "But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description or the gravity of the consequences flowing from a particular finding are considerations which 10 must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters, reasonable satisfaction should not be produced by inexact proofs, indefinite testimony or indirect inferences."

15 That passage is relevant to assessing many of the adverse things that have been submitted in relation to Mr Power. And as part of this introduction, I remind you that he gave considered and frank evidence to you over nearly two days on 8 and 11 April this year, and that evidence speaks to his honesty, diligence as a lawyer and candour. When you cast your mind back to his evidence, it was frank. It 20 disclosed an intelligent, honest and ethical legal practitioner endeavouring to answer the many questions he was asked over nearly two days and making appropriate concessions.

Adverse submissions made in this forum about Mr Power, either of a generalised 25 nature, of which there have been some, or in respect of specific aspects of his work at The Star or The Star Entertainment Group, may be, and have at times, been publicly reported on and have significant reputational and personal consequences. And I take my role seriously today in providing context and carefully considered responses to several of the matters that have been put about 30 or against Mr Power.

Before finishing my introduction, Mr Bell, and moving to what I call part 1 of this oral submission, there are four practical matters I want to point out as a guide to where I'm going. Firstly, although I have tried in the time that I have had to 35 endeavour to identify document IDs and transcript references, where I don't do that today, I will endeavour to do that in written submissions. Secondly, I don't intend to take you specifically to documents on the screen. But I may, from time to time, take you to the text of important documents where they're relevant to context and my submissions in respect of Mr Power.

40

Next, I will refer to the casino operator as The Star. I will refer to the close associate, The Star Entertainment Group Limited, as The Star Entertainment Group or TSEG. I will refer to the Casino Control Act as the Act. I will refer to the entity known as ILGA as the Authority, and Liquor and Gaming New South Wales 45 simply as that.

Lastly, and to conclude this introduction, I just want to make clear that I won't be dealing in oral submissions with every matter that has been raised in respect of Mr Power. There's not the available time to do so. I will focus on his position in respect of matters of substance that relate to him - or several of them - indeed,
5 several of them, but I won't deal exhaustively with every contention that has been raised expressly or implicitly.

The first part following my introduction I wish to move to, Mr Bell, is the topic of - which is short, which is simply to just make some brief remarks on why there
10 is no need to make specific findings in respect of Mr Power, that is, there is no need for you to do so. And, Mr Bell, of course, ultimately, it is a matter for you as to the extent to which you decide, in preparing your report, to make findings about individuals at, or formerly at, The Star or TSEG, and nothing that I say detracts from that proposition. And I'm not suggesting otherwise.
15
And I also wish to make clear that nothing what I'm about to say contradicts or cuts across my position that adverse findings should not be made about Mr Power on a careful consideration of the evidence if you come to assessing it in respect of him with reference to specific submissions. And as I say, I will address you on key
20 matters put against him in part 4 of my presentation.

The first point I want to raise in relation to why it's not necessary to make specific findings in respect of Mr Power is that it's not necessary in the context of conducting a suitability review under section 31 of the Act into The Star's
25 suitability as a casino operator. Secondly, it's not necessary in the context of the terms of reference for your review, which, by paragraph 1, make plain that the Review is into the suitability of The Star as casino operator and each of its close associates as nominated by the Authority from time to time. And specifically as to that, in respect of Mr Power, it is not necessary because he is not, and was not, a
30 close associate of The Star as nominated by the Authority.

Thirdly, it's not necessary for you to descend into that task because, on 13 May 2022, Mr Power resigned from The Star and - he resigned from The Star and/or, to be more precise, The Star Entertainment Group, and I will expand on the reasons
35 for that later. But the short point it is that he has no intention to work in the casino industry moving forward.

Now, fourthly, on this topic, Mr Bell, while I concede the conduct of senior managers and lawyers at The Star or TSEG is relevant to culture, which is relevant
40 to suitability of The Star and TSEG, that doesn't require specific findings about discrete aspects of Mr Power's conduct to be made. In short, it doesn't require you to resolve or determine specific adverse submissions Ms Sharp or Ms Richardson has made about discrete aspects of Mr Power's conduct or work.

45 One other point on this topic or part 1 of my presentation is that I do endorse what Ms Richardson said on Tuesday at transcript 4209.16 to 19, to the effect that

adverse findings of credit, which is the character of some of the findings sought against Mr Power, including by counsel assisting, should only be made if they are necessary. And I add to that submissions these two points: that they should only be made if there was a proper basis with reference to the evidence for a contention
5 adverse to credit; and secondly, where a proposition going to credit has been squarely put to a witness, and that has not always been the case.

I now move to part 2 of my presentation, which is to give you some context to assessing Mr Power, including aspects of his work which have been the focus of
10 the inquiry. I advance these points for the reason that they set the platform for the more specific submissions that I make in the third and fourth parts of this presentation. The first matter is Mr Power's legal background and body of work. Mr Bell, in my submission, in an inquiry of this nature, a witness subject to examination is inevitably left to deal with many discrete questions about specific
15 conduct viewed under a microscope, sometimes many months or years from when the relevant occasion had originally occurred.

And in that context, in respect of Mr Power, there are probably around five or six areas of his work scrutinised heavily in this Review, and perhaps two that remain
20 under most close focus, which I will come to, and that's in the case of a body of work at The Star and later TSEG where, from 4 November 2019, he was appointed group general counsel, reporting to Ms Martin. But the reality that that is what happens in an inquiry of this kind is indeed the reality.

25 But my submission is that that reality should not obscure the fact that with Mr Power, we are dealing with a senior lawyer who did considerable work over around 14 years at The Star. The reality is that we have only been given, through this inquiry, a narrow window into some of his work, and so I ask you to remember that when assessing him and the issues to which he was taken. And
30 that's relevant, including in the light of adverse credit submissions in respect of him.

Just briefly, he has been a lawyer since 2003. He was a Sydney Uni law graduate with first class honours in 2003. He was at Mallesons after he graduated until
35 about 2007, and then he has been at The Star from 2007 until his resignation this year. At all times when at The Star, he held a special employee licence issued by or on behalf of the Authority, which is subject to probity checks in order for it to be issued. And in addition to those matters, it's also important, when assessing the matters put against him, to be clear on the timeframes of his several roles at The
40 Star and later TSEG. Dates in terms of his career are critical to remember for context and when assessing his work and his seniority at the relevant times.

So he was at The Star as a senior lawyer from 2007 to 2010. He was then the general counsel of The Star from 2010 to 2019. At that point, he was reporting to
45 Paula Martin, who was to become the chief risk officer and chief legal officer. He was group general counsel of TSEG from around about 4 November 2019. It was

only from that point that Mr White reported to him and that he had group-wide legal responsibilities, as distinct from responsibilities as a lawyer solely for the casino operator. At that point, when he became group general counsel, he continued to report to Ms Martin. He was the AML/CTF compliance officer from around - for the short period from around - that is, for TSEG, from around May 2020, when Ms Skye Arnott went on maternity leave, to around December 2021 only and, in that period, shared the rule with Mr Houlihan.

The next matter of context I want to go to, Mr Bell, is something that for which there has been no, to my understanding, direct analysis or submissions to this inquiry to this point of which I'm aware, and that's the issue of the role of an in-house counsel as a legal practitioner, either generally or in the casino industry, as distinct from someone in a position to ultimately, within an organisation like The Star or TSEG, make the key decisions that affect the business.

And in the present case, those people in that position to make the key decisions to affect the business include Mr Bekier, the CEO and the managing director of TSEG - or the former one, I say - and, of course, who was a member of the board of TSEG, and Mr Hawkins, who was the chief casino officer of TSEG, and, of course, the board. And in respect of the relative boards of the casino operator, Mr Hawkins and Mr Theodore were directors of TSEG. You're familiar with the directors there. And as I mentioned, Mr Bekier was the managing director of TSEG, relevantly.

On this point, my main submission to you on this, and limiting my analysis to Mr Power, is as follows. And it's consistent with some of what I heard Ms Horvath talking about. And that is when discharging functions in his capacity as an in-house lawyer within the business, his role was primarily to advise the business and make recommendations, including in calling out and highlighting risks, but it typically wasn't a role as a decision-maker on the areas on which he was advising. And it certainly wasn't as a decision-maker in areas in respect of CUP or decisions in respect of the characterisation of rebate patrons for the purpose of payment of duty or in respect of Salon 95. To take one example, it was not his decision to make to decide to close Salon 95. He had advised in the clearest terms about Salon 95, and the risks there, as early as 15 May 2018. And I'll come to that shortly.

Mr Bell, a temptation may be for on outsider looking at a business like The Star or TSEG to look for some function within the business that could have righted the ship through choppy waters in relation to matters like CUP and Salon 95. But while Mr Power in his capacity as an in-house lawyer was required to provide the advice which would help the decision-makers to be informed of the risks of piloting the business through the waters it was navigating, it was not his decision as to how to navigate those waters. That is a matter of context which I think ought not be lost on the Review.

And it may go without saying, but I will say it; it is probably a reality that for an in-house lawyer, there would scarcely be a more challenging in-house role than to take up the role of a senior in-house lawyer at a casino, in the highly regulated casino industry, being an industry which carries the inherent risks that it does of exposure to criminal elements and activity, and where senior management - and I would suggest typically so, too, the board - inherently is striving for avenues for profit-making within that environment.

The next matter of context - and I'll take some time on this, and, again, it has some parallel to some of the submissions - or at least one or more of the submissions Ms Horvath made - is to provide you with examples that show Mr Power was one to give clear advice on risks within the business, including in respect of high-risk areas or projects within the business that have been the focus of this inquiry.

I make the submission that in areas of The Star's business up to around about 4 November 2019 - or The Star Entertainment Group's business from 4 November 2019 until his resignation on 13 May 2022, in areas of The Star's business on which he advised, the evidence discloses that, overwhelmingly, Mr Power did identify and call out legal and other risks to the business, consistently and clearly, and this is to his credit. He was not silent or complicit in courting risk. And I want to make the submission clear - and I'll make it again later - that there is no evidence that can be sensibly relied on adverse to him that he somehow preferred commercial interests or the profit motive of the business to the role that he fulfilled as a lawyer. And that was not squarely put to him by anyone either, Mr Bell.

I make the submission that out of any of the lawyers or senior employees who gave evidence, Mr Power was the one within the business who the evidence discloses most consistently called things out to the business. Indeed, notwithstanding her criticism of him in certain respects in closing submissions to which I will come, during the course of the Review, counsel assisting did, a number of times, take other witnesses to documents prepared by Mr Power, more so than any other former employee on my reckoning, as being exemplars of issues being called out to the business and putting it on notice of areas of risk or concern. It was Mr Power's work that was most commonly used in this Review to evidence the fact that risks had been brought to the attention of the business, including elevated to senior decision-makers within the business.

While I may provide more examples of this in the written submissions that I will provide next Tuesday, to make good the point that I'm making in this respect, in respect of context, and in doing so along the way also dealing with some matters that have been raised against Mr Power, for now I wish to simply remind you of seven examples of Mr Power calling out and identifying risk clearly, including in areas of high risk which have been under focus in this Review.

Firstly, re Salon 95, Mr Bell. The 15 May so-called unacceptable level of risk email, which has been referred to many times, including in closing, was one prepared and sent by Mr Power. A copy of it is contained in STA.3411.0010.3560. And this is a document - that particular document is where Mr Hawkins, on 16 May - and I make the point that Mr Hawkins got the email and, on 16 May, forwarded to it to Mr Bekier, the CEO and managing director of The Star Entertainment Group Limited and, of course, a member of the board. Mr Hawkins forwarded what Mr Power had sent on 15 May 2018, with the words:

> "FYI as discussed."

And then underneath was the unacceptable level of risk or unacceptable risk email - I'll call it the unacceptable level of risk email - from Mr Power to Mr Hawkins dated 15 May 2019 - 2018. 15 May 2018. I want to make that clear because it was very early in the piece in the issues with Salon 95, on 15 May 2018, not long after the early May 2018 concerns in relation to Salon 95 had arisen. And the email included the following words:

> "As discussed, I have now been briefed on conduct occurring in Pit 95 (the salon the subject of an exclusivity arrangement with the Iek junket group) and reviewed available footage and reports received from gaming staff. The focal point of concern relates to cash transactions occurring in those areas."

Then, Mr Bell, next to a very clear heading in bold and underline, he headed Legal and Regulatory Risks. Mr Power said:

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

And while that was the headline, in effect, matter in the email, Mr Bell, it did more than that. And I know you are familiar with that document. But it's important at this very early juncture to note that at this very early juncture, in a direct email to the chief casino officer, Mr Hawkins, which was soon after forwarded on to Mr Bekier, Mr Power went on to document the following. And the following matters were both detailed and accurate. He raised these matters in terms of concern:

> "Cash for chip (and vice versa) transaction taking place at the service desk; withdrawal of cash (terms unknown) by non-junket participants at the service desk and other locations (including retail)."

He said:

> "Equally, concerns are also held around reporting requirements arising from the services offered and compliance with AML reporting requirements; source of funds and presentation of large quantities of cash into Salon 95;

> retention of documents relating to transactions; reports by other junket groups that large quantities of cash had been sourced from the Suncity Group (presumed to be the Iek junket). Finally, there are also a suggestion that one of the junket staff was an excluded patron who was recent in the Salon 95 (a blue line area)."

And he had a heading Next Steps:

> "Oliver will discuss with Saro and Michael W who will convey to the junket group that cash transaction at the service desk must cease."

And it went on. And he said at the end of the email, Mr Bell:

> "Should you require any further information or advice, please let me know."

So, Mr Bell, this, at a very early point in time in the concerns of Salon 95, was an example of Mr Power as a lawyer calling things out accurately, comprehensively and clearly on, arguably, the issue that has had the most focus in this Review, Salon 95; and in addition, of giving the advice and/or information that he gave, some of which I've taken you to, to an appropriate senior person who could action it. In short, Mr Power nailed it in that email.

By 16 May 2018, Mr Hawkins and Mr Bekier, two of the most senior executives within TSEG and one the managing director of TSEG, had clear and independent advice about Salon 95. Right from that moment, Mr Bell, the business had the information and advice it needed into concerns with Salon 95. Quite frankly, there would have been no need to put together any special board paper to brief the board. Such was its clarity, the email could simply have been shown to the board in the form that Mr Power drafted it.

The content and preparation of that email is not the action of a lawyer courting risk, nor influenced by the profit motive, Mr Bell. And as a general submission, I contend Mr Power should not be found to have either been a lawyer who courted risk or who was influenced in his legal function by profit considerations or imperatives of some others or generally of the business that it may have had, or profit considerations or imperatives generally, Mr Bell. But this was not an isolated example, and is not an isolated example, of clear independent risk advice and other advice of Mr Power on issues of concern to this inquiry.

Next, I want to go to some correspondences in relation to CUP. And this was the subject of submissions from Ms Richardson towards the end of Tuesday of this week from T4231.9. And as Ms Richardson put it - and I endorse this - at T4231, Mr Power authored a number of documents which highlighted the risks associated with CUP. And, Mr Bell, I note he did so when he was not group general counsel of TSEG and he was not the lawyer primarily responsible for CUP and its intricacies at The Star. Properly considered, these correspondences speak to him

being someone who would call out risk, including in high-risk areas of the business.

Paragraph 93 of his witness statement refers to a memo given to Matt Bekier and Paula Martin - a specific memo - and that he discussed, his evidence discloses at paragraph 93 of his first witness statement, I say, with Mr Bekier and Ms Martin. The doc ID is A1290. And I'll come to the memo, but in paragraph 93 of his first witness statement, in relation to the memo and a meeting with Mr Bekier and Ms Martin, two senior people within the business with a direct avenue to the board, Mr Bell, Mr Power says of the meeting:

> "I recall there was some detailed discussion about the CUP arrangement and the risks associated with it, including potential financial exposure to NAB and CUP."

Now, the document itself, when you go to it, which is A1290, is headed Memo of Legal Advice Re Key Risks. It deals with a number of risks, but item 1 of that memo was China UnionPay. And in that memo, Mr Power identified risks, some of which my recollection is Ms Richardson went to earlier in the week, including:

> "Whether CUP transfers for gambling purposes are permitted; whether CUP policy supporting practice of converting CUP credit through the SR lounge by swiping CUP card on NAB EFTPOS (and attributing an amount to a hotel room and creating a temporary CCF for gambling) is permitted or known."

Mr Power also identified a risk as to:

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

So he called out the NAB knowledge issue, too, at a very early point, Mr Bell. And in the last column of the memo, in relation to the CUP issue, he also called out the dummy room issue, doing so in the following terms:

> "DQ to advise VIP staff to discontinue creating hotel room numbers on receipts (done)."

He also, in that very early email - or relatively early email about CUP, disclosed and flagged the issue of Philip's Lee use of the facility as an issue. It's a very clear, succinct and comprehensive advice, Mr Bell. He really nailed the issues and concerns that were live. He called them out to Mr Bekier and Ms Martin. He was not general counsel of the group at the time, and it was not his place to do any more at that point. He was not the channel to communicate those risks to the board, and he spoke to two people who directly were, or could be, about it. Ms Richardson said on Tuesday at T4232.1 to 5 that:

"So we say it's open to the review to find that the risks associated with CUP were known to staff at The Star and that they were obviously significant, that the individuals aware of the risks included a number of people who reported directly to the board, including -"

5

And she named some people, including Mr Bekier. Mr Power's actions in giving the advice he did about CUP show he was one who was not concerned about imperilling the major payment channel that was CUP, and that was consistent with his independent approach to work - to his work.

10

The next document I'll remind you of - and I'll go through the rest of the examples more quickly, Mr Bell, I know you are likely to be familiar with them - is an email of 28 July 2017 from Mr Power to Ms Martin, which is exhibit A0970. And this was sent as part of a senior management - or Snr Management Compliance

15 Assurance, and it's an email referred to in this inquiry often where Mr Power wrote:

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

20

In the email, he also noted the dummy rooms issue. He referred to an instruction in relation to dummy rooms, which he wrote had been corrected, and he identified that:

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

The next correspondence in relation to CUP that I'll refer to was that he had

30 earlier, on 20 April 2016, at an early point in relation to identifying the dummy rooms issue, sent an email to Damian Quayle, who was the chief operating officer of The Star Pty Ltd at the time, which email was copied to Mr Hawkins, the chief casino operator. And that's exhibit A1289. And that email, at numbered point 3, includes the following text:

35

"CUP: As previously discussed with you, I have undertaken a review of the CUP process and believe that the legal risk is low to moderate, but from a PR perspective I recommended that we make two changes to our process. Cease creating dummy rooms for customers -"

40

This was (a):

"Who are not staying in the hotel."

45 And it goes on, (b):

"Have documented guidelines which are used for the purpose of you making a decision as to whether to permit our biggest CUP user (PL) to draw down funds from his CUP account. It would be prudent to run the guidelines past Paul McWilliams from a risk point of view and then keep a record of each time you receive a request to utilise this service and your determination in accordance with the guidelines."

This is another example of clearly calling out CUP risks, including re dummy rooms. On 13 November 2017, which is - this is a document A1292, Mr Power wrote to Paula Martin and Oliver White, again being another occasion where he raised a red flag re the dummy rooms issue and, indeed, he included a screenshot of the concerning information. He wrote in part in that email:

"In summary, CUP was offered to someone who was not checked into the hotel overnight. VIP staff even noted 'dummy room' on the booking. This appears to be a breach of our CUP procedure, which I understand occurred at the direction of the VIP team."

Lastly, as to CUP, in terms of the examples I'm now providing, was that on 12 April 2018, or at least at some point in 2018, he caused to be included in the risk register for The Star a reference to CUP, which indicated in the risk rating matrix or rating system that CUP was an extreme priority rating to - extreme priority rating. Now, when I say he caused that to occur, it happened after a discussion he had with a risk manager, Ms Lawler. So I'm not suggesting he inputted the information himself, but he caused it to be inputted through the discussion and issue - or issues that he had raised in relation to CUP. And the reference to that register is STA.3412.0023.5474.

MR BELL SC: It's still not entirely clear to me what the practice was in relation to the dissemination of that register and who was likely to have seen it. I'm not sure if you can help me with that,

MR McLEOD: Mr Bell, my understanding was, at this time, the risk team was small. It may have comprised Mr McWilliams and two risk managers. The risk register was an Excel spreadsheet, which was the central repository of risk information at the time. The system has been since improved. But my understanding was that this was, if I can put it this way, a closely held document that wasn't widely disseminated and not widely available to staff.

MR BELL SC: Thank you.

MR McLEOD: So pausing on CUP and finishing on the CUP correspondences I've taken you to for context, this has been an issue given a lot of attention in evidence. And in my submission, no one called out the risks as consistently, clearly or accurately in relation to it as Mr Power.

The final example I'll give for context of Mr Power's clear work in advising the business, including, importantly, on several risks that the business faced in high-risk areas, was in relation to the issue of rebates and the applicable payment of duty to the New South Wales Government in respect of the classification of gamblers into various categories. And there was a detailed advice email that he sent to Mr Hawkins, the chief casino officer and one of two directors of The Star Pty Ltd, which is STA.3412.0067.1375. And it may also be, I think, Mr Bell, exhibit A0622. And this document is, again, the work of someone who clearly identified risk, made appropriate recommendations, went into detail about it, took the business through the step or steps that he said needed doing, which was wise and sensible, and brought it to the attention of a senior decision-maker within the business.

That document is contrary to somehow being influenced - squarely contrary to somehow Mr Power being squarely influenced by, or beholden to, a profit motive or profit considerations. And you'll recall that to my best recollection, he even suggested that, where there was doubt, certain players be moved into category - to a category which attracted a higher rate of tax. I believe Mr Hawkins' response to that is STA.360 1.0021.1506. And later on, on that day, on 4/9/2020, Mr Power also emailed Paula Martin and Harry Theodore, providing a copy of what he had sent to Greg Hawkins that day, and I believe that's STA.3412.0118.9397.

So, Mr Bell, these seven examples are not indicative of someone courting or being dismissive to risk. They're, in fact, indicative and exemplars of one calling and - identifying a risk or risks and calling them out - calling them out and, not only that, bringing them to the attention of decision-makers who could stop certain projects or operations from continuing, and who could directly convey the relevant information to the board, or, in Mr Bekier's case, who was on the board of TSEG. And those examples relate to three risky areas of business the focus of this inquiry: Salon 95, CUP and rebate play.

Mr Bell, I have got - part 3 is a short topic which I can deal with now in probably five to seven minutes or so, if you want me to do it before lunch. And then it will probably be appropriate to deal with my specific responses to adverse submissions after lunch, if you want me to continue with part 3?

MR BELL SC: Yes. Yes, by all means.

MR McLEOD: Part 3 is in relation to some concessions that Mr Power wants to make to the Review, including in the light of reflection since giving evidence. It is apparent, Mr Bell, that this inquiry process is searching and causes deep reflection, and some of the witnesses were given a clear avenue in evidence to provide some reflections, and I'm thinking, for example, of Mr O'Neill and Ms Pitkin.

I want to preface the concessions that follow with the submission that they speak to Mr Power's insight, intelligence and the responsible and cooperative approach

he is taking to this inquiry. They also speak to the reality that he is indeed an honest and ethical lawyer. I'm going to say more in response to criticisms levelled at him in part 4 of my presentation, as I've foreshadowed. But for now, up front and unequivocally, Mr Bell, I offer the following concessions on behalf of
5 Mr Power.

On privilege, Mr Power accepts, which he accepted in his evidence, that he did, from time to time, mark documents privileged and confidential without specifically turning his mind on every occasion to whether a communication was,
10 in fact, the subject of a sound privilege claim. Mr Power accepts that it would have been preferable in those scenarios if he had used the language "may be privileged" or "may be subject to legal professional privilege". Mr Power has already commenced that practice since giving evidence on 8 and 11 April this year.

15 In relation to the privilege issue, Mr Power accepts that if he had marked documents "may be privileged", as distinct from "privileged" in respect of the general practice that from time to time he adopted, that would have dealt with any perception or the risk that any person, including a more junior lawyer, would withhold from production a document that he had labelled "privileged and
20 confidential" in response to a compulsory notice or other request from a regulator.

In respect of Mr Power's involvement or association with what has been referred to as the Buchanan report or reports, which culminated in a final draft of Mr Buchanan in relation to Alvin Chau and Suncity of around about 7 January 2021,
25 Mr Power wishes to offer the following concessions and make the following concessions. On reflection, he accepts that he should not have provided either handwritten edits or electronic mark-ups in respect of the Buchanan report, and that his feedback should have been confined to suggestions or points raised for Mr Buchanan's consideration, as then it would remove doubt about whether the
30 recommendations of Mr Buchanan were, in fact, his own.

Mr Power accepts he should have requested Mr Buchanan to include those comments of his that were adverse to The Star in respect of historical matters, including in relation to the adequacy of The Star's AML program in a separate
35 report. Mr Power accepts that while The Star retained the benefit of the chronology through various employees and so that knowledge was not lost when it came – that the chronology no longer was an attachment to the report, Mr Power accepts that retaining it as an attachment to the Buchanan report may have been preferable, and leaving it in would have made the report more fulsome and, in that
40 sense, may have assisted any future readers of that report.

In respect of the 10 September 2019 correspondence of The Star sent to Natasha Mann at Liquor and Gaming New South Wales, which document is B1669, Mr Power wishes to indicate the following. With the benefit of hindsight and
45 given where we are now, and the opportunity since giving evidence to reflect on this correspondence in respect of the issue of the broader engagement of The Star

with the regulator in respect of junkets, Mr Power accepts that it would have assisted the regulator to add to the answer to question 2, that is, the answer to the second bullet point of Ms Mann's 8 August 2019 letter, so as to provide information in relation to how The Star mitigates or manages risks related to Alvin Chau as a junket funder and Suncity. He accepts, on reflection, that had he done so, he could have avoided criticism of not responding fully to that question.

Further, in relation to that correspondence, Mr Bell, on reflection and since giving his evidence, Mr Power concedes now that when viewed in a way which gives more weight to paragraph 4 of the body of the letter to which the 10 September 2019 correspondence responded, it would have been preferable and of more assistance to the regulator, and more fulsome, to provide more information in respect of steps The Star had taken, or would take, in relation to risks associated with Alvin Chau and, by extension, Suncity.

Mr Bell, the last issue, which is not purely a concession but offered by way of explanation - and it's short, before I finish part 3 - is as to Mr Power's future direction and why he resigned on 13 May 2022. He resigned from his role at TSEG on that date. He has decided, for two main reasons, he will not be working in the casino industry going forward. The first is that he believes that he wants to take a career break and pivot from working in a senior role in the casino industry. The second, in reality, is that the experience that he has had dealing with this inquiry has taken its toll, and it has amounted to the most challenging professional experience in his professional life.

When I provide this information about Mr Power's future direction as a lawyer or in respect of his career, I want to make it clear that Mr Power doesn't accept that he was not someone who engaged appropriately with the regulator and make clear that he worked and acted competently and did a good job over the course of his 14 to 15 years - around 14 to 15 years - about 14 years - working at The Star and TSEG, including a history of dealing with the regulator, Mr Bell.

Now, Mr Bell, that does bring me to what will be probably about a 40-minute topic in respect of my responses to specific adverse submissions. So if you're minded to take the luncheon adjournment now, that would be convenient.

MR BELL SC: Yes. I will now adjourn for one hour.

<THE HEARING ADJOURNED AT 1:04 PM

<THE HEARING RESUMED AT 2:01 PM

MR BELL SC: Yes, Mr McLeod.

MR McLEOD: Mr Bell, timing-wise, I think I'm about a half or perhaps a little over a half way through, so I should be finished hopefully within 45 minutes. The

next topic that I wish to go to is responding - part 4 of my presentation or next part, which is responding to matters - specific matters of adverse submissions put in relation to Mr Power, either by counsel assisting or counsel on behalf of The Star and TSEG. The first of those topics I want to deal with is Mr Power's general credit as a witness, Mr Bell, and the first point that I want to deal with is the submission at T3979.26 by counsel assisting that:

> "Mr Power's oral evidence about the Hong Kong Jockey Club report was unsatisfactory. We submit it is why you would be careful of relying on Mr Power's evidence where it is not corroborated by other documents."

Mr Bell, there is a clear error of characterisation of evidence in relation to counsel assisting's assertion in closing to that effect, which is an example of what I submit is undue adverse focus on Mr Power by counsel assisting. I'm not suggesting it was other than inadvertent, but it was a wrong submission to make that his evidence was unsatisfactory and reliance on the proposition that it was somehow unsatisfactory about the Hong Kong Jockey Club report. And specifically, it was wrong that he had accepted, that is, Mr Power had accepted, that he potentially had received the Hong Kong Jockey Club report by 7 November 2020, when he never did. And this was an error that was corrected by Ms Richardson earlier in the week, for which I'm grateful.

The problem - or one of the problems with the error was that it led to the wrong characterisation by counsel assisting of Mr Power's evidence on this topic as a moveable feast, when, in actual fact, Mr Power's evidence was consistent and clear that he never received a copy of the Hong Kong Jockey Club report. The error was unfortunate, including because it was the only matter counsel assisting relied on to advance the wrong proposition, in my submission, to the effect that when not corroborated by documents, you would hesitate to accept the evidence of Mr Power.

Three times in closing, Mr Bell, counsel assisting asserted the proposition that Mr Power's evidence that he had potentially received or actually received the Hong Kong Jockey Club report. The first time that error was made was at T3979 on 31 May, the first day of her closing submissions. The second time was on day 3 of those closing submissions on 2 June, at T4075, where she referred to his evidence:

> "That he was not provided with a copy of the Hong Kong Jockey Club report."

Again, as a "moveable feast" and said:

> "So I think he ended up conceding that he probably did see a copy of the Hong Kong Jockey Club at some point in late 2019."

She was then asked by you shortly after at T4075:

> "Could you give me a transcript reference to where you say that concession was made by Mr Power?"

5

And some time later in response, there was no reference provided evidencing a concession of that kind in relation to the receipt of the report. But rather, it was asserted at T4083 the wrong position on the issue for a third time. As to that, after providing a reference to Mr Power's evidence at T1968, which, in fact, Mr Bell,
10 related to the topic of his becoming aware of the report not receiving it, counsel assisting then submitted:

> "And we submit that his evidence moved in relation to whether he was ever provided with a copy of that report. He eventually made that concession."

15

Well, the fact is he didn't, Mr Bell. There was another element of either error or, in this case, overreach, as well as, in my submission, what was a wrong submission, at T4075, to the effect that counsel assisting said:

20
> "The obvious reason why we say Mr Power sought to distance himself from that document was because of the letters he prepared to the Authority in late 2019."

No, he didn't seek to distance himself from the report. He gave his recollection of
25 the position with respect to it, never having been received by him, and the reason advanced by counsel assisting for an allegation of seeking to distance himself from the report was an impermissible leap.

The error of counsel assisting in attributing potential receipt or actual receipt of
30 the Hong Kong Jockey Club report to him, that is, to Mr Power, in respect of this issue is problematic in two specific ways. Firstly, the erroneous proposition to that effect and that his evidence was a moveable feast on the topic of the Hong Kong Jockey Club report was the only matter she put forward in support of the submission early on in making submissions about Mr Power in closing, to the
35 effect that unless corroborated by documents, his oral evidence should be received with caution. No other specific matter was put as supporting that submission, and it being a submission of a serious kind which calls into question Mr Power's credit which was unjustified. It can no longer stand.

40 Now, it gave an example of an undue focus, in my submission, on submissions directed to asserting adverse credit of Mr Power, when not properly - when, on the evidence, my submission is that that those contentions to that effect should be rejected. I also want to put forward clearly for the record that Mr Power rejects the submission made in closing by counsel assisting that his evidence that he never
45 got the Hong Kong Jockey Club report should either be disbelieved or rejected, and that submission was made at transcript T4075.26 to 27.

Just because he dealt with others who had it doesn't mean he got it. Why would he not be frank about that? He was an honest witness. And I also endorse what Ms Richardson said about this submission by counsel assisting, that it's a very serious submission to make, or a contention to make, against a practising lawyer, or a lawyer, and it should not be accepted in the circumstances, in my submission. In short, there is simply no evidence that, in fact, Mr Power ever received that report.

The second issue of credit that I want to go to, Mr Bell, is a submission that was put by counsel assisting in closing where she identified and made a submission to the effect that Mr Power was someone who had engaged in deliberate obfuscation in relation to the way his witness statement was put together, and that submission was at transcript 3979.23. And the position seemed to be being advanced, in relation to the way he had dealt with the Buchanan reports and otherwise - the reports or documents and otherwise, that he had appended document after document but did very little to assist this Review in understanding what the correct position was; on the contrary, left the Review to try to discern the position for itself - T3979. And as I mentioned, one of the matters relied upon in respect of deliberate obfuscation seems to be in relation to his dealing with the Buchanan reports, being the drafts of them.

The short point, Mr Bell, in the circumstances, is on a proper and fair reading of Mr Power's statement, there is no witness statement - I'm talking about his first one, the lengthier one. There is no sufficient basis for any suggestion that he sought to deliberately mislead or obfuscate from the regulator with reference to his witness statement, or obfuscate with the regulator. No sound inference to that effect is available from a close reading of his witness statement and, frankly, you have heard from Mr Power and got a sense of him. Really, why would he do that? The submission does not withstand scrutiny and was one which was publicly reported on in the mainstream media, which was unfortunate. You have also seen his written work.

In relation to this submission of alleged deliberate obfuscation, which we reject, first, there was nothing involving obfuscation in relation to his answering of question 1 put to him in his witness statement - in relation to his witness statement:

> "Please explain why Angus Buchanan prepared each of the Buchanan documents."

Either actually or that you would infer on a fair reading of the response. Secondly, the general criticism that I have mentioned involving the appending of document after document is not fairly sustainable on a fair reading of the statement. It does much more than that and, when taken in context and on a fair complete reading, responds to the questions that he was asked.

Thirdly, the submissions at transcript 3980.11 - or the submission - seems to suggest that part of the alleged deliberate obfuscation relates to not disclosing - Mr Power not disclosing in his witness statement the marked-up version of the Buchanan report draft that Mr Buchanan refers to in his witness statement and which Mr Buchanan annexes to his witness statement. Now, Ms Richardson dealt with this issue on Tuesday, and I endorse what she had to say about that and adopt it. Mr Power should not be unfairly - I withdraw that.

Mr Power should not be criticised in relation to that in the circumstances Ms Richardson alluded to, including with reference to paragraph 35 of his witness statement, which was to the effect that he did engage - he did provide some handwritten mark-ups and made them available to Mr Buchanan, but either misremembered or mis-recalled that, in fact, there were electronic mark-ups. He didn't shy away or seek to not mention the reality of there being a marking-up process in respect of the Buchanan report.

Ms Sharp also submitted that the witness statement - the first witness statement of Mr Power, in all these submissions about alleged deliberate obfuscation, relate to his first witness statement and respond to what was said about it. She also submitted that it was a labyrinth-like statement at T3916, and that's not the case on a fair reading, Mr Bell.

So in response to this submission - a very serious submission to make, one that should be viewed with reference to Briginshaw - of alleged deliberate obfuscation in putting together a witness statement by a lawyer, it is contended that those submissions were wrong; alternately, misconceived on a proper and fair consideration of the witness statement; that the submission that there had been deliberate obfuscation in respect of how it was put together has no proper basis.

As to that, it's not a logical inference to be drawn from a fair reading of the statement. It's a serious allegation and a serious submission to make, but, significantly, not one which was put to him in examination. And, thirdly, it constituted an impermissible leap to, from his witness statement, draw any negative inference at all about whether he had tried to obfuscate the work of the inquiry. And, fourthly, Mr Bell, the submission pays insufficient heed to the reality of how witness statements are typically put together.

There was also a criticism in respect of not mentioning in his witness statement - criticism by counsel assisting that there had been a link, in effect, of the Buchanan report to Project Congo in the 17 August 2021 JRAM meeting. Ms Richardson dealt with that, and I endorse her submissions in respect of that. And it's not a criticism that should be sustained when one looks at the question that Mr Power was asked in respect of the Buchanan documents, which were defined as four particular documents.

Going into detail about Project Congo, whilst perhaps on one view it could have been a very broad extension to - or a broad extension to go down that road in a response, those matters in respect of Project Congo were not specifically responsive to the question asked. So as I say, I endorse Ms Richardson's submission in respect of no adverse inference or criticism of Mr Power's witness statement being sustained in respect of it not dealing with Project Congo.

The third topic, Mr Bell, I want to go to is what has been said about Mr Power in respect of the correspondence that was sent by Ms Scopel that you are well familiar with on around 7 November 2019 to the NAB. And in closing address, counsel assisting made the submission that Mr Power, along with Mr White and Ms Martin, had been party to the misleading of the NAB in respect of the true purpose of the CUP card facility by the sending of the 7 November 2019 correspondence by Ms Scopel to Ms Arthur, and the relevant document is at A1443. Ms Sharp's specific submission at T4037 was this:

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

Now, Mr Bell, Mr Power - there is no evidence that he had a positive role or a direct role in the drafting or any settling or particular positive review of that email before it was sent. He was taken to a draft of the document in examination, that is, a draft of the email that was ultimately sent, - and that's at transcript 2026 - and that was an email that he received from Oliver White, which was sent to both he and Paula Martin at 10.46am on 7 November 2019, which was the day that the relevant response which was ultimately sent was due to be sent to the National Australia Bank by 12 noon. And in the email, Mr White said to Ms Martin and Mr Power:

> "FYI see below."

And indicated that he had been liaising with Sarah and Harry on the proposed response, which will be made prior to the 12 pm deadline, and forwarded the email draft from Ms Scopel to Harry Theodore and Oliver White, which included a draft response to Ms Arthur at the NAB. Now, Mr Bell, there is no evidence that Mr Power responded to that email. The reality is, Mr Bell, that you may well recall there was no evidence from Mr Power, as distinct from the position with Mr White and Ms Martin, as I understand it - I withdraw that. I withdraw that last part. I withdraw "as distinct from the position with Mr White and Ms Martin". I leave the topic to them to deal with.

The reality is, Mr Bell, that you may well recall there was no evidence from Mr Power that he positively recalled ever reviewing a draft of the email that was sent that had been worked on or approved by others. Mr Power had been forwarded a draft by Mr White around an hour and a quarter before the email was due to be sent to the NAB. And Mr Power's evidence, after searching examination on this issue, at transcript 2027 to 2028, was that he didn't recall reading the draft that was sent to him, that he:

> "Certainly wasn't involved in it."

And he was being asked in that regard about unethical conduct. He said he:

> "Certainly wasn't involved in it or assisting with the response to the bank. I can say that with certainty."

And he also gave evidence that he did not believe he knew The Star was providing misleading responses to the NAB in relation to the use to which CUP cards were being put. And there is no evidence that he either approved, or was involved in, the drafting of the relevant email that was proposed to be sent to the NAB. Further, Mr Bell, on this topic, it was never put squarely to Mr Power that he had been party to, or involved in, the misleading of the NAB in respect of that email.

So the submission that was ultimately made, in effect, by counsel assisting, grouping Mr Power with other lawyers and implicating him in misleading conduct in respect of the NAB, is not sustainable, and there is no sufficient evidentiary basis to support it. And it cannot stand, in my submission. And I note that no specific submission was made by - specific or other submission was made by Ms Richardson that Mr Power was involved or complicit in any obfuscatory, misleading or unethical conduct in respect of communications with the NAB regarding CUP.

Now, the next topic I want to go to, Mr Bell, is the topic of privilege claims. And there has been adverse things said about Mr Power in respect of privilege and the practice that I referred to earlier that, from time to time, he had. In general, can I say at the outset that I endorse Ms Richardson's submissions on this topic and submit that they are a fair and balanced characterisation of this issue. In effect, the submission put against Mr Power in respect of this is that he was engaged in a practice of marking documents "privileged and confidential" so as to cloak documents in privilege to prevent production of adverse information to regulators, and the submission there was put at 4045.12 by counsel assisting.

Mr Bell, the substantive response to this submission is that Mr Power did not intentionally cloak documents in privilege so that they would not be produced to one or more regulators and that there is no sound evidentiary basis to support a finding to that effect. It would not be a finding that you would make in the circumstances. And can I just give you these references, Mr Bell. Mr Power

directly rejected in evidence marking documents as privileged to prevent, cloak or shield documents from production to a regulator or regulators. Transcript 1842.07, 1842.21 and 1855.08.

5 In respect of the practice that he took from time to time that he's made a concession about today through me, his evidence was he clearly utilised his practice to flag documents that may be privileged - see transcript 1855 - which is not a dishonest or unethical approach. As Ms Richardson referred to on Wednesday, Mr Power explained his practice was to mark or flag a document for
10 sensitivity and flag that it may contain advice. Transcript 1841.26 and following and 1854 in answer to a question from you, particularly. And also there is evidence that it was - that he utilised the practice that he, from time to time, had as a notation - see T1856.16 - that it was:

15 "It was a notation only. It would need to be looked and carefully considered. I don't think it was done for any other reason than to flag."

And I've truncated that passage. And I also refer you to transcript 1859.27. So when he did utilise the practice that he accepted from time to time was used, he
20 did so on the basis that if there was a claim for production of a document or documents, the document he had marked with "privilege" would be subject to further assessment and the making of a call at a later point in time. He did candidly accept the risk of a person reviewing a document perhaps thinking it was privileged and refraining from producing it to a regulator, and I've dealt with and
25 addressed - I've made a specific concession in relation to that issue today as well on behalf of Mr Power.

So, Mr Bell, none of that evidence of Mr Power in relation to privilege speaks to dishonesty or any intention to cloak or prevent production to a regulator. Again,
30 with reference to Briginshaw, there is no basis for a finding against him that that is what he did. I adopt the reasons provided by Ms Richardson in answer to counsel assisting's cloaking the documents in privilege submissions, including that it's a serious matter to suggest against a practising lawyer and, where it has been suggested, you would want to see the specific documents put to the lawyer and an
35 opportunity to respond. And Mr Power himself denied, when a specific document was put to him, in relation to whether there had been cloaking of a document in privilege.

When B2747 was put to him, which was an email he sent to Mr Buchanan of
40 December 2019, Mr Power denied that he had cloaked it in privilege or marked it in a way to do so. That evidence should be accepted. There is no reason to doubt it. And it's a serious matter to allege the cloaking - it has potentially serious consequence if established, and the type of matter where - it is the type of matter where a Briginshaw analysis is required. Here, my primary position, as I say, you
45 should in short flat out accept Mr Power's explanation and position on it, that he

wasn't doing that, consistent with my submission that he is an honest practitioner and person.

I also agree and adopt the important distinction Ms Richardson highlighted on
5 Wednesday between marking a document as privileged and, in fact, making a claim for privilege. And that's relevant to Mr Power's some time practice that I've referred to. A marking would later be reviewed in the context of a request from a regulator, for example. He expected someone would independently make a determination of whether privilege could or would be claimed.

10

And another relevant matter, which I won't go to in detail, but you recall Ms Richardson went through a list of documents, some of them involving Mr Power, and put the submission that there should be no finding of impropriety in relation to markings of "privilege" on documents unless the particular
15 documents that had been referred to or relied on had been put to witnesses. And a number of the documents she listed related to or had some degree - or were documents associated with Mr Power. So I agree with the submission. If there's going to be any impropriety found in respect of any particular claim of privilege, it should have been put to the relevant witness and them given an opportunity to
20 respond.

I also note that in written submissions, we may say more about this issue. But you've heard the substance of my position on it, and I rely on that. And I endorse the proposition put by Ms Richardson on Wednesday that the identification by
25 lawyers to the effect that a document is or may be privileged is not uncommon practice, and she referred to an example of that.

Mr Bell, there is also - there was a point, obviously, which has been made about the KPMG report and a claim related to that. But to my knowledge, there is no
30 other specific document or documents that - of which it is suggested were wrongly withheld from production on the basis of a privilege claim.

Now, those are my submissions on the privilege point, and I strongly submit that it would be an impermissible finding on the evidence that I've referred you to, and
35 on the submissions I've referred you to, to find that Mr Power was engaged in any form of dishonesty or unethical practice in relation to the privilege topic.

The next topic I want to deal with in terms of specific adverse submissions is the Buchanan report or reports. And by that, I mean the drafts that were put together
40 between October 2020 to January 2021 by Mr Buchanan. And it's a topic Mr Power was questioned at length about, and there has been closing submissions adverse to him about that and his association with that topic.

Mr Bell, I want to suggest that the Buchanan report needs to be at all times viewed
45 in the context of two particular things, that is, the report and its evolution. Firstly, its specific purpose, as far as Mr Power was concerned, and clearly explained was,

in his mind, as a due diligence report in respect of Mr Chau which Mr Buchanan was asked to put together for the purpose of The Star assessing whether it should deal with Mr Chau under the AML program.

5 As Mr Power indicated, that was the first of a two-stage process. The second would be - the second stage would be a decision as to whether Mr Chau was suitable for The Star to continue to deal with, with reference to section 12 of the Act. And, secondly, it was an internal document for The Star and, to the extent that content came out of it, it was not knowledge that was lost to The Star. It came
10 out as a result of the evolution of the document in the context of the purpose of the document that I have mentioned.

Now, there are essentially two branches of criticism in respect of Mr Power about the Buchanan reports, culminating in the 7 December 2021 one, and I can deal
15 more swiftly with the first than the second. The first was, in effect, that Mr Power, including Mr Power and/or Mr Houlihan, but I'm dealing with Mr Power, had put pressure on Mr Buchanan to change his report. The evidence is that Mr Power - and I reject that proposition, and there's no evidence of that. And, indeed, to the contrary, the evidence is that Mr Power met with Mr Buchanan
20 about his report, clearly that there were two meetings in around about November 2020 and around 7 December 2020.

There is no evidence that application of pressure on Mr Buchanan is what happened. Indeed, Mr Buchanan expressly denied having had pressure put on him
25 by Mr Power or Mr Houlihan to change his report. Mr Buchanan gave evidence that he was happy to work into the report the feedback that he was given at the first meeting in relation to it involving Mr Power, and he gave evidence that he was content to make the changes suggested in the version marked up by Mr Power provided to him on 7 December, or thereabouts, 2020.

30

And in saying these matters for context, Mr Bell, I've already acknowledged the aspects of Mr Power's connection to that report, which he has reflected on and is prepared to concede as a matter of reflection, as to what might have been a preferable course and a preferable final product in respect of the document. Now,
35 in respect of a related matter to whether there was any - so I say that there's no finding open that Mr Buchanan was pressurised to change his report by Mr Power in any way.

MR BELL SC: I think the submissions, as they evolved from counsel assisting
40 and also counsel from The Star, was that it was somewhat more nuanced and subtle than that. It was more a matter of Mr Buchanan reading the room and coming to understand, in a subtle way, what was required of him.

MR McLEOD: Mr Bell, I accept that that's the way it was put by counsel for The
45 Star and Star Entertainment Group. There was that more nuanced version, and I

was just coming to that. The submission was put - and I've got the reference at transcript 4164.16 to 24. Ms Richardson said:

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

Now, there's two submissions adverse to Mr Power there, and I will deal with the "read the room" one second. The first one is that the suggestion that Mr Power was influenced by a desire to suit the perceived desires of others in the business, and there's just no evidence of that. You wouldn't find that. That would be a serious finding that calls into question his independence and his character, frankly. And the evidence is all to the contrary in terms of Mr Power calling out risks in areas that were potential revenue streams for the business and/or risky, not that he somehow was influenced to make decisions in favour of that. It was also an imprecise submission, the first part of that, because the so-called others he alleged - he was alleged to be compromising his actions for were not identified by Ms Richardson.

Secondly, the allegations that the conduct of his interactions with Mr Buchanan in relation to the reports was influenced by a desire to suit the perceived desires of others in the business was never put to Mr Power. And, thirdly, as I've said, it's a serious allegation to suggest that Mr Power's interactions with Mr Buchanan were influenced by a desire to suit the perceived desires of others in the business.

It's a slight on his integrity, frankly, and independence, and no finding should be made about that in the circumstances, including in the circumstances where Mr Power's conduct on the evidence to which I've taken you to is that he was not one to pander to the business, including in relation to the profit motive, and where it is clear from his evidence that he was trying to get a due diligence report directed to whether the business should continue to deal with Mr Chau and/or Suncity under the AML program. Now, that's my response to the first part of Ms Richardson's submission at T4164 adverse to Mr Power. The second aspect is the more subtle one, which is the suggestion:

> "At the very least, Mr Buchanan read the room and was influenced to tailor his report to suit the perceived desires of others in a manner which compromised the independence of his due diligence."

Well, that's not the position of Mr Buchanan, firstly. I will say that. The allegation of tailoring against him is a serious allegation, and he's not here at the moment, or someone on his behalf, that that ought not likely be made. But dealing with the implication of that submission as it relates to Mr Power, it's not clear to me what "read the room" is alleging, if anything, in respect of Mr Power, and nothing was put to him about any so-called undue influence that may have caused Mr Buchanan to have read the room in a certain way.

So if that submission is alleging anything negative about Mr Power's interactions, it should have been put to him. But Mr Power's clear position was that he was not telling Mr Buchanan what to do and that it remained Mr Buchanan's report. And there is, frankly, no evidence of any undue influence by Mr Power towards Mr Buchanan in respect of the content of Mr Buchanan's report. So that's my submission. But the bottom line on it is that nothing should be attributed adversely to Mr Power in respect of the so-called "reading the room" submission in those circumstances.

Now, the next aspect of the Buchanan report that I want to deal with is squarely and head-on, Mr Bell, deal with this notion of Mr Power marking up the document. And he's made a concession in relation to that, and I think that does speak to his insight and credits him significantly. And I want to say the following propositions in relation to the marking up and Mr Power's involvement in that respect and, to an extent - or to an actual reality, more broadly, that - firstly, that there was no so-called watering down of the report, properly considered, with reference to the purpose of the report that Mr Power was seeking or wanting from Mr Buchanan.

And the problem with watering down, Mr Bell, is that it comes with a pejorative or negative connotation, which we don't accept, in the sense of some degree of impropriety in respect of interactions in relation to the report. Mr Power was very clear on what he was trying to do in terms of providing feedback, getting the report shorter, having it to be a specific due diligence report in relation to Mr Chau, not having speculative content, not have content reviewing historical matters about AML program. And those matters, when one steps back from it, outside the poignant glare and scrutiny that can get applied in an inquiry such as this, that those matters make complete logical sense, that that's where he was coming from and that was the way his involvement or association with the report should be considered.

Now - so what was his evidence on this aspect of the evolution of the report, including this aspect of marking up? He wanted to make it fit for purpose - I withdraw that. He wanted to assist in the product that was being produced being fit for purpose as a due diligence report into Mr Chau, that it was the first of a two-stage process. And these matters are largely for context, as well as substantive submissions, Mr Bell. But I want to point out that content adverse did stay in the

report - content adverse to The Star. I know there was some changes. I know that there was some content that was adverse that came out.

But the reality is that some content adverse came out and, for example, in the 7 January 2021 draft, the final draft, paragraph 45, regarding activity in Salon 95, stayed in. The final draft is STA.3412.0054.309. And the analogue to it so you can compare that it did stay in after Mr Power's mark-ups is paragraph 55 of what I will call the marked-up version, and that document is STA.3009.0003.0482.

The other thing is, Mr Bell, when you take the time, as I suspect you either have or will, and if you have, you may do again, content positive to The Star did come out as well. And paragraph 59 and 60 of the marked-up document was struck through by Mr Power and came out. And those paragraphs read:

> "The joint -"

Not 59:

> "The joint AML/CTF program, which was introduced in November 2019, has significantly strengthened The Star's ability to identify, disrupt and prevent potential money laundering and terrorism financing act. The recently revised ECDD process is demonstrably more fit for purpose which allows the AML/CTF area to conduct more comprehensive, in-depth screening with respect to junket related entities and international premium mass players."

And then paragraph 60 talked about the improvement that would come with the transition to TrackVia. So that's - you know, there is an important element of balance and context that needs to be brought to bear to what was, in fact, an internal report. Knowledge wasn't lost to The Star with the changes. Mr Power has given his concessions about the report and the process of putting it together - process of Mr Buchanan putting it together. It remained Mr Buchanan's report, and that is consistent with his evidence. Can I remind you, Mr Bell, that Mr Buchanan was a longstanding policing and intelligence person, with a policing background, who was experienced, and not someone who would put his name to something that he did not genuinely believe in.

Now, or - I'll qualify that in one respect, because there is one - I withdraw that submission and say not someone who would put his name to a report that he didn't want to put his name to. And the reason I qualify it is there was one discrete aspect of evidence of Mr Buchanan to the effect that there was one point he made, ultimately, in support of retaining a connection with Mr Chau that he said he didn't believe in, and that was what he described as a devil's advocate point, in effect, or a devil's advocate argument that he put forward.

And that was one matter - he accepted that he didn't genuinely believe when he included in it, but he included the point as a matter that could be advanced in

support of dealing with Mr Chau and continuing to deal with Mr Chau. But the bottom line, he was not a person you would find that would have not put his name to something that he didn't - a report he didn't endorse. And he was an experienced campaigner, and he was someone that had a long history in intelligence and in policing.

And just in relation to this question about Mr Buchanan - and I'm not here for him, Mr Bell, but I just want to make this point, because it does have some sort of spin-off effect to my client. When Mr Buchanan ultimately came up with his two options, either continue to deal with Chau or cease to deal, and ultimately identified that, with certain things in place and control or controls, The Star could continue to deal with Mr Chau, that option itself - this, in substance, option of continuing to deal - was not a devil's advocate option. His concession about devil's advocate was more limited, and it was to one point that he advanced in the report in favour of continuing to deal..

So it remained ultimately that he put forward options that he said, you know, this is where things stand, and he ultimately thought and formed a view and expressed the view that The Star could continue to deal with Chau in respect of the AML program in connection with what happened through Project Congo. But - and no criticism intended of Ms Richardson, but it's too broad to say that he put forward a devil's advocate option of continuing to deal. That wasn't his position. It was a devil's advocate point in support of the option to continue to deal.

Now, those are the points that I want to make about the Buchanan report and the way it should be considered, and ultimately there is nothing on the evidence to support any notion of impropriety or unethical or dishonest conduct on the part of Mr Power in respect of it. The next point I want to deal with, Mr Bell, is - and I'm coming to the end of my points. I think I will be about five or six minutes, if that's convenient.

MR BELL SC: Yes.

MR McLEOD: Perhaps 10 - perhaps 10 - because this topic will take a little while, is the New South Wales Liquor and Gaming correspondence dated 10 September 2019.

MR BELL SC: Perhaps could I preface that topic by asking you this question, which is whether Mr Power accepts that that communication was one of the occasions on which there ought to have been a full, frank and transparent disclosure to the regulator of the misconduct which had occurred in Salon 95 and the history of those events.

MR McLEOD: Can I answer it this way, and I'll explain why in my submission as I develop it. He accepts it could have been more fulsome, and he accepts more information in answer to question 2 could have been provided in respect of

Suncity or Mr Chau and that would have assisted the regulator. And that's a part of the concession that he made - or that's part of the concession he made. But it's important, Mr Bell - and it's a bit like the Buchanan documents issue. There has been a lot of scrutiny on this correspondence. There's a couple of things important for context.

It was a correspondence that formed part of a dialogue between New South Wales Liquor and Gaming - Liquor and Gaming New South Wales and The Star that was ongoing in relation to junkets and provision of information in relation to junkets, and the extension of the potential to continue the dialogue about that topic as between Ms Mann and Mr Power, and it was a conversation that was evolving and continuing collaboratively over a period of time between The Star through, among others - I withdraw that - through at least Mr Power and Liquor and Gaming New South Wales.

Secondly, Mr Bell, it was a correspondence where, ultimately, it's The Star's position reflected. Sure, Mr Power's name is on the letter. But as I will take you, there was significant input sought and provided by others within the business, including sign-off to that letter or approval of it by Mr Bekier.

MR BELL SC: Yes. I'm aware that Mr Power was not the only person involved in that communication, and my question to you was really directed to whether this was an occasion when there should have been full and frank disclosure by The Star as a corporation.

MR McLEOD: Well, let me put it this way. It would have assisted the regulator, and it can be said now, when one scrutinises that correspondence in the prism that we're now viewing it, would have been preferable if more fulsome information was provided at the time. But that does not speak to the intention of Mr Power at the time, which was to be responsive to specific questions that were asked, after getting input from individuals within the business, and after engaging and continuing to engage with Ms Mann in the context of provision of information in respect of junkets. And no impropriety should be attributed specifically to Mr Power for the role that he played in helping to assemble the letter and ultimately send it in that context.

And can I put it this way, Mr Bell - and I don't say this lightly - the response provided was not brilliant, was not great, but was not as bad in context, which I'll go into more detail, to what has been made out in the context that in answer to question 1, it was clearly disclosed - and by question 1, I mean the first bullet point of Ms Mann's August letter that was responded to - in the context of Ms Mann's first bullet point about certain junket operators and promoters, for example, or representatives, it being disclosed by The Star, through Mr Power, that there was connection with the Suncity junket, Mr Chau was the funder of the junket and that there was the promoter as the Iek junket.

That was what was provided, that information, albeit if one was to take a – a even – well withdraw that. If one was to take a - well, a particularly narrow view, that wasn't directly responsive to go into the connection with Mr Chau. But it was completely appropriate, and it was provided at that time in respect of question 1. In respect of question 2, the criticism is, well, you didn't go into Suncity and Mr Chau; in effect, you didn't provide information about Suncity and Mr Chau. Now, okay, it wasn't directly responsive on a strict reading of that question to deal with that issue. Would it have been more fulsome? Yes, that's accepted. Would it have assisted the regulator at the time? Yes, that is accepted.

But in the context of question 1 being answered, the disclosure about Chau and Suncity, it would have been open to the regulator to continue in its dialogue with Mr Power and/or The Star to say, "Righto. You flagged Alvin Chau and Suncity in answer to question 1. We didn't hear anything about it in answer to question 2. Tell us more information about Suncity and Mr Chau. That's who the Crown allegations have focused on a lot, and we now want some more information about that." So it's not as clear cut, and it's not clear cut, to condemn that letter, in isolation, without regard to two things, its context in the course of discourse between The Star and Liquor and Gaming New South Wales; the fact it was - three things - the fact that it was The Star's response; and the fact that it was a response that was put together after input from several people within the business.

Now, was it a gold-standard response to putting forward, you know, as fulsome information as you could in the context? No. But it is a leap and a, in my submission, it would be an unfair leap, including with reference to what I've told you about Mr Power and the role that he fulfilled there. And when you go back and read the letter in the context of the history of the correspondence, to which I'll shortly come, to condemn that as being in some way completely inadequate or completely inappropriate or inappropriate or inadequate at the time. Could it be viewed now as inadequate in the prism we're now viewing it? Okay, that might be said. But in the context of the time and what the discourse was and what was being disclosed, those labels or those words do not most accurately characterise the correspondence, in my view, Mr Bell. And I've summarised --

MR BELL SC: My concern is that this was part of a pattern of concealment of the wrongdoing in Salon 95, which has continued right up until this Review, and non-responsive answers in relation to questions that I've asked.

MR McLEOD: Well, I'm not dealing with the questions you might have asked in the context of this inquiry, and I'm not familiar with the specifics of them or through those lawyers assisting you. But it's not, as it relates to my client, a letter that speaks to concealment or hiding, in a pejorative way, of information. It speaks to an assembled letter with input from others within the business that was directly responsive to specific questions, rather than in its fulsome as it could have been.

And in that respect, yes, it would have been preferable if more information had been provided and more fulsome if more information had been provided.

But that proposition should not be sheeted home as making Mr Power, whose name was on the letter, in the capacity of a lawyer at The Star, when the response was The Star's response. Now, what you make of that letter in the context of other correspondence is a matter for you, Mr Bell. But I'm here to give you the responses to this criticism about Mr Power's role in it, and it has been very direct, and there has been a lot of focus on it, and he's been somehow held out to be someone that was engaging in conduct that was improper or inappropriate in respect of this when those findings, in my submission, in proper context, should not be found and attributed to him personally.

Now, the context that I want to direct you to in respect of this correspondence - and I'm fairly confident that you haven't been taken to all of these documents, Mr Bell - is that before Mr Power sent The Star's response on 10 September, Ms Mann checked in to see how the response was going. This is at STA.3427.0038.1948. And that was quite a short response - a short letter, just checking in on when the written response of The Star was coming.

Mr Power's responded to that in an email that requests updating where the written response of The Star was. He responded to Ms Mann on 6 September 2019, in which he volunteered a meeting with Liquor and Gaming New South Wales so that Liquor and Gaming New South Wales could meet people with The Star dealing with junkets. He specifically offered that. And that would be a logical forum in which to tell, frankly and in a personal environment, more about the situation at The Star with respect to junkets, including provide additional information. Now, that offer is in STA.3412.0068.9030. And in that email, Mr Power foreshadowed:

> "Providing the written response -"

This 10 September correspondence:

> "Early next week."

And said:

> "It may be useful to meet and discuss the issue of junkets more generally and address any questions you have about our response with those people who are primarily responsible for those areas. Please let me know if you think this would be of assistance."

So it was directly offering to meet and discuss, with Liquor and Gaming New South Wales, junkets, and for Liquor and Gaming New South Wales to direct

questions with the actual specific people within The Star's business primarily responsible for dealing with junkets. And he said:

> "Please let me know if you think this would be of assistance."

5

On 6 September, Ms Mann responded back, thanking him for the email and agreeing with the offer for that meeting and its usefulness, saying:

> "Yes, a meeting would be useful. Thanks."

10

And that's STA.3412.0138.2696. This goes to the ongoing dialogue point that was going on. Mr Power had a good relationship with dealing with people like Ms Mann and Ms Wright at Liquor and Gaming New South Wales. It ought not be found that he had a somehow problematic or unworkable relationship with
15 individuals such as that. There's no evidence of that. Now - then Mr Power sends, on behalf of The Star, the response that has been focused on in this inquiry, the 10 September response, and Ms Mann actually writes back to Mr Power on 14 November and says to him on 14 November - and this is document STA.3008.0006.4084:

20

> "I refer to your letter of 10 September 2019 and supporting material in response to my specific questions to The Star on 8 August 2019. I note the additional material provided in response. Liquor and Gaming New South Wales has reviewed the material which has been useful in informing our
25 understanding of risks associated with junket operations at The Star. I appreciate The Star's earlier offer to discuss ongoing customer due diligence."

It goes on:

30
> "Liquor and Gaming New South Wales' engagement framework with The Star provides opportunities to discuss these matters on an ongoing basis. This includes the quarterly executive intelligence meeting, providing an opportunity to openly discuss matters with New South Wales Police and AUSTRAC."

35

That was a reality, Mr Bell, that there was this particular forum where - called an executive intelligence meeting, where the New South Wales Police and AUSTRAC and Liquor and Gaming New South Wales would periodically come together to talk about issues of common concern, including risks to a casino
40 environment.

So I'm not saying that the fact that Ms Mann thanked Mr Power and said the response was useful, that it was the gold-star response. But she did thank him. She did convey it was useful. She didn't say, "By the way, that seems totally
45 non-responsive. You know, what are you driving at there?" And also, it would have been open to her, after, in answer to question 1, it was flagged that there was

this connection with Suncity, Chau and Iek, for more specific information to have been sought. So that is ongoing dialogue between The Star, in this case through Mr Power, and Ms Mann at Liquor and Gaming New South Wales.

5 So, Mr Bell, that's how this issue should be viewed, and it would be - and I ask you to consider the material to which I've gone. And it would be unfair, in my respectful submission, to criticise directly Mr Power about any impropriety, dishonesty or unethical conduct in respect of the 10 September 2019 correspondence. It's not the reality, and that was one correspondence over a body 10 of work over a long time. And, yes, it's been given a lot of focus, but it ought be assessed with reference to the matters to which I've had regard.

And lastly on this point, that there were several other employees, I just note, that I've already mentioned, including Ms Arnott, who was the AML compliance 15 officer at the time; Micheil Brodie, the GM of compliance, who had input into the letter; and the reality was it was approved by Mr Bekier, the CEO. And the relevant correspondence in respect of his approval of it is STA.3412.0138.2716, and Ms Martin, STA.3412.0138.7346. And the input of the chief casino officer was also sought, that being Mr Hawkins.
20
So that's the context in which it should be viewed. And the correspondence ultimately found its way onto the board portal as well, Mr Bell, and that's relevant to be aware of because it was a correspondence that there was visibility of the board in relation to. And ultimately Mr Bekier said to Mr Power in respect of his 25 approval of the letter that went:

> "Thank you. This is fine with me. It reads well. Paula, we should put this correspondence in the appropriate section of the board portal and provide a verbal update at the board."

30
And that document is STA.3412.0138.2716. So that's what I say about that letter. I don't take away at all from the concession that Mr Power has made in relation to it that I've expressed today, but that's the appropriate context in which it ought be considered.
35
A couple of - one other point. If there was a criticism in closing - and I think there was, from Ms Sharp - that Mr Power didn't reveal, in answer to question 1 of the letter, a commercial relationship between a Tom Zhou and the Chinatown junket, the evidence is that there is no positive evidence that Mr Power knew of that 40 connection at the time the letter was sent. And, indeed, Mr Power gave evidence to that effect at transcript 1929.16. Now, it wasn't a deliberately misleading response to the regulator. Mr Power rejected both that it was misleading or that it was deliberately misleading when it was sent under his name. And I've said matters that are important for you to consider in relation to that letter.
45

Now, Mr Bell, I have gone a little over. I know you've got somewhat more time. If you can indulge me for about 10 minutes, I will wrap it up. And when I say "some more time", I'm proceeding on the basis that hopefully you can sit beyond 4 o'clock. But if I could have 10 minutes, I would be obliged.

5

MR BELL SC: Yes, no, that's fine. You continue.

MR McLEOD: That's what I was looking for, Mr Bell, the submissions that it somehow amounted to dishonest or unethical conduct on the part of Mr Power, or

10 the submission at transcript 3979.5, should be rejected in those circumstances, and - including on a careful - and on a careful analysis, including with reference to the Briginshaw standard, and so, too, should the submission that it was deliberately misleading, and Mr Power rejected it as misleading and deliberately misleading at transcript 1932.

15

Now, I'll deal shortly with the balance of matters, and if there's anything I need to say further or otherwise, if I want to reiterate them, I'll do it in writing. I just direct your attention to the - there was a written submission document of the team of barristers, or at least some of them, dated 6 June 2022 that dealt with some

20 individuals of interest to the commission that was put in writing. That was a part of the closing submissions that the counsel assisting team did in writing.

I just want to note that there was a criticism of Mr Power, at least implicitly, because it related to a correspondence that had his name on it. But perhaps more

25 than implicitly and directly, in relation to - which was made at paragraph 147 of that written submission to which I've referred, and my response is simply that there was nothing misleading in respect of what - what was said about Mr Pan in response to the relevant question that the paragraph 147 related to. The response that came from The Star pointed out police interest in Mr Pan, and information

30 about him was provided which was accurate. So criticism in respect of the response provided should be rejected.

Also, in paragraph 149 of that written submission of the counsel assisting team, or some of them, there was a criticism of a response that came with Mr Power's name

35 on it about a response to the regulator, which is a letter at B2757. And it related to a question - I withdraw that. The criticism was that there hadn't been a sufficient or good enough response to a so-called question that was raised in a correspondence from Liquor and Gaming New South Wales about the exclusion of Mr Pan from the casino or the withdrawal of his licence.

40

The response that was criticised is B2851 and, in my submission, the response was appropriate. It was not lacking transparency. What happened in the response is that it was dealing with a particular issue that had been flagged in the correspondence at B2757 to which it responded, the response being B2851, in which The Star

45 accepted a recommendation that Liquor and Gaming New South Wales had made in respect of an audit of ICM 8 and, in accepting that recommendation, dealt with

some - provided some content in response to Liquor and Gaming New South Wales's letter.

And two points. New South Wales Liquor and Gaming did not, in fact, ask a specific question about why there was some degree of problem or delay in the exclusion or withdrawal of the licence of Mr Pan. Rather, there was an observation in the correspondence of New South Wales - Liquor and Gaming New South Wales in relation to it. And, yes, while the response from The Star was a general one in relation to that issue, it wasn't asked to specifically deal with a particular question, and it wasn't a misleading or inappropriate response taken in context. But I will refer to the specific references to that correspondence in writing, Mr Bell.

Also, in that same submission, there was - in paragraph 158, the written submission of 6 June, it reads as a criticism of Mr Power in failing in evidence to mention that a Tom Zhou was the junket funder of the Chinatown junket at The Star. And to make clear, Mr Bell, Mr Power's evidence at T1923 was he did not believe that he knew that Mr Tom Zhou, as he knew of the Tom Zhou, was the funder of the Chinatown junket at The Star. And in actual fact, as distinct from what might be the position in respect of a Tom Zhou funding the Chinatown junket when it was connected with the Crown, I understand the position that a Mr Tom Zhou was not the funder of the Chinatown junket when it had its association with The Star and operated at The Star. So no criticism, in my submission, is available of Mr Power in respect of that issue.

So lastly, Mr Bell, I just want to respond to some matters that were put by Ms Richardson, and I'll do so briefly. One, there was the word used of - the word "misconduct" was used by Ms Richardson in the context of some senior people that have no longer been at The Star either engaging in or failing to stop misconduct. That should not be found in relation to Mr Power, for the reasons that I've put. He didn't fail to stop any; he didn't engage in any.

And I also note there was no specific submission of Ms Richardson about Mr Power as to misconduct, and there was no specific allegation put to him by her at any point of misconduct in any respect. So it should not be found against him and is not available. It's one of those words that, when one or more employees are grouped without specificity, it's problematic and it's difficult to deal with. And in many respects, it's preferable if that sort of submission is not made unless it's attached to something specific and something specific that was actually put to a witness, and that's not the case in respect of Mr Power.

There's no open finding, in my submission and in response to something Ms Richardson said, that the legal - that Mr Power, as a legal person, acted as an enabler or advocate for the business, rather than an independent check – a brake or check upon the business, and that's for the reasons I've already put. And that wasn't put to him either.

There is no evidentiary basis to support the proposition in relation to Mr Power that he acceded to the second warning letter in relation to Salon 95 being sent in circumstances where he somehow deferred to Mr Hawkins, and Mr Hawkins being the person ultimately who owned that particular issue. Mr Power's evidence was not that he deferred to Mr Hawkins or otherwise acceded to him, and a submission to that effect, if pressed against Mr Power, should not be made.

And just so that I'm clear, the particular submissions about misconduct that are problematic and I reject entirely on behalf of Mr Power is a generalised submission that was put, I think on day 1 of the closing submissions of Ms Richardson, to the effect that "persons engaged in misconduct have left the business" or words to that effect. And I don't want there to be any doubt that that's rejected entirely insofar - if it's attributed in any way, that submission, to Mr Power. And I think yesterday was where there was a proposition put that persons who had engaged - or one or more persons in misconduct - who had either engaged or failed to stop misconduct had left the business or moved on. And, similarly, I reject that as having no evidentiary basis and being unable to be found or sustained on the evidence in respect to Mr Power.

So, Mr Bell, that's my presentation. Thank you for the opportunity today to provide oral submissions on behalf of Mr Power in this public inquiry setting. I will just check if there's anything else. And we will put in a written submission by the relevant time next Tuesday, and they will probably follow a similar structure to my oral submissions but perhaps add some other detail and references. So thank you for your time today.

MR BELL SC: Yes. Thank you, Mr McLeod. In view of the time, I will now take the afternoon adjournment. But to ensure that we finish by 5 pm, I will just adjourn for 10 minutes. Thank you.

<THE HEARING ADJOURNED AT 3:14 PM

<THE HEARING RESUMED AT 3:25 PM

MR BELL SC: Yes, Mr Wood. Yes, Mr Wood.

MR WOOD: I appear with my learned friend, Mr Hancock, for Ms Martin.

MR BELL SC: Yes. Please proceed, Mr Wood.

MR WOOD: In our written submissions, we will deal with the many substantive issues and credit issues put against Ms Martin in detail. You will appreciate, Mr Bell, that it is impractical in an oral address with the confines of time that we can address all those issues in the depth that they deserve and in the confines of the time limits that, understandably, are put on oral submissions. What I propose to do in relation to the oral submissions initially is that I shall address the parameters of,

and the principles informing and controlling, the approach to factual findings and conclusions that should be adopted in this Review. There are 10 relevant governing propositions and, upon occasions, I will provide examples of them. Many of those propositions are axiomatic and well accepted; others are bespoke.

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The key purposes I seek to serve in doing that is to collect together in one place adjectival propositions, some of which have been mentioned already by others, that will come into play on multiple occasions in relation to findings either as to credit or matters of substance. The second purpose is something that may come slightly unexpected, and that is to raise with you a fundamental question about the way in which the Review should proceed. The identification of the 10 propositions provides a good platform for the introduction of that question to which I will come last, if I may. It won't take me very long to identify the propositions; it may take me slightly longer to illustrate them insofar as I just want to give examples of them.

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The first proposition - and it doesn't appear to be contentious in any way because it was recognised by counsel assisting at transcript 3941.42 to 45 - that following the resignations of the individual members of management, there is no necessity to make findings about the suitability of the individuals who were formerly close associates and no longer are. Now, that should operate as a significant confine to the facts that you are obliged to find. But more importantly - and this is an issue I will come back to eventually - this confine of close associates has a consequence, together with other intersecting factors, in the way in which you way consider the Review should proceed henceforth.

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The second is almost banal, and that is that matters that weren't put to Ms Martin, or indeed to any other witness in examinations, should not be the subject of any adverse findings against her or against any such other witness. Now, you helpfully - or someone has helpfully put *Browne v Dunn* into two paragraphs, in the procedural guidelines, and they are paragraphs 24 and 25, and that not only reflects the necessities of procedural fairness, but it also seeks to guarantee the integrity of fact-finding.

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Related to that issue is the third proposition - and, again, I don't think this is particularly controversial - is that there should be no findings made adverse to Ms Martin in respect of matters that were not the subject of specific submissions made by counsel assisting. That, again, is a requisite of procedural fairness in an inquiry of the present kind in the exercise of the power conferred by section 143 of the Casino Act. I won't take you to it, but I will give you a reference to an analogous case dealing with a coronial inquiry in the High Court. The case is *Annetts v McCann* (1990) 170 CLR 596 at 599 and 601. Again, I don't perceive that proposition to be particularly contentious.

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The next proposition that also I don't think, which is proposition number 4, is particularly contentious, although its application I can readily perceive could be

the subject of some debate, doubt and difficulty - the proposition is that findings of, or concerning, breaches of provisions of legislation which may give rise to civil penalty consequences or criminal consequences should be avoided. You have received quite detailed submissions from Ms Richardson on this point, and you've been referred to *Parker v Miller* in the Court of Appeal in Western Australia and also to Commissioner Bergin's chapter 4.7 dealing with this.

The way, on the evidence and the arguments that have been presented so far, this may play out - and I know you have expressed positions in relation to some of this - some of these aspects. Section 192E of the Crimes Act issue seems so bedevilled by problems at the legal and factual level that, with respect, your position not wishing to go anywhere near there is correct, generally speaking, and also as a function of this proposition.

Secondly - and Mr McLeod has referred to it just recently - the operation of part 5 of the Gaming and Liquor Administration Act dealing with - or concerning dealings with the Authority, and the parallel provision - or the cognate provision in part 12 - or provisions in part 12 of the Anti-Money Laundering and Counter-Terrorism Financing Act. Then there are various provisions that have been referred to by Ms Richardson in the Corporations Act.

Now, they can have potential play in various ways based upon submissions that have been made against various people, which you would be very well advised to stay away from, just as you had observed it would be very wise to stay away from section 674 of the Corporations Act dealing with continuous disclosure. There are enough other matters to be decided in this Review without venturing into territory that's best left to other regulators, other tribunals or other forums.

MR BELL SC: I take it, Mr Wood, that in making that submission, you don't include addressing the alleged breaches of the Casino Control Act by The Star.

MR WOOD: Yes, I wasn't - I think that's so sufficiently in the heartland, at least of term 1 of the reference, that it's almost unavoidable, just as dealing with the provision of credit and the application of 75 and 76, for example, go to critical aspects, so it would seem, of suitabilities, and there doesn't seem an avenue by which one could readily side-step that, whether as a consequence of applying this adjectival approach or otherwise. So I accept what you say.

The next matter - and this is something reflected in the submissions of Mr McLeod, but they apply a fortiori to Ms Martin, and that is one must retain in close perspective, when one comes to assess Ms Martin's conduct and Ms Martin's evidence, a number of critical contextual matters. You may recall that in her first witness statement, which was a comprehensive one, in paragraphs 7 through to 28 she provided great detail of the organisational structure and the reporting lines going back many years and ending recently.

Could I have brought up by way of illustration the organisational structure that's referred to in paragraph 18 of her statement, which is the structure in place from August 2019, which is STA.3009.0005.0526. You will see there that the reporting lines directly to Ms Martin, who is the chief legal and risk officer, spread over nine different direct reports. And if you read across - and that includes the secretarial function, which is the immediate box to the right, below her position. If you read across the boxes under it, the eight boxes, they're the direct reports.

And you will see immediately that there is quite a wide spectrum of responsibilities feeding through those channels, in addition to the strictly legal ones that an in-house counsel would typically have responsibility for. And you will not only notice that they are many, but they are varied.

If we could go down one page to the next one, which should be 0527, you will see that's a breakdown of the first reporting line, being the group general counsel - that's the group general counsel who reported to Ms Martin - and you will see there it's quite a complex structure of reporting, in the sense that there are a lot of professionals and others in that tree. You will remember that a number of directors, including Mr O'Neill, gave evidence that, in retrospect or in their view, it was probably an unwise decision to burden the one person with responsibilities that pertained to a chief legal officer and a chief risk officer. That will come as no surprise, I don't think, when one looks at these charts and one looks at the breadth of responsibilities, that is a lot on the plate of any one person.

The consequences of that, in part, are these. You could not have an expectation in reviewing or evaluating the conduct of Ms Martin or the evidence of Ms Martin that she would have a detailed coalface knowledge of the minutiae, or even higher than that, of issues that come across her plate. Secondly, you've had the benefit of days of examination of two of the senior lawyers, Mr White and Mr Power, who sit very high up - in fact, in one case, right at the top of the tree we're looking at at the moment, and the other immediately below them as general counsel.

They are not only very experienced lawyers, but they they're experienced lawyers in the field of the business conducted by The Star. If those gentlemen, for example, were in private practice, we would have no hesitation in saying their experience levels are equivalent to those of a relatively experienced partner. What that means as a matter of perspective is that you could readily accept the idea that Ms Martin could responsibly delegate total task performing to those gentlemen without any supervision on particular matters.

Equally, you've seen the evidence concerning Mr Brodie. If we could go back to the previous page, please, and expand that. He was the general manager, responsibility and sustainability - and I just use this as an illustration - and based upon his experience and expertise, you could well understand that Mr Brodie could be delegated, within his field of duty, responsibilities to perform functions without supervision from the chief legal and risk officer.

Those contextual ideas coalesce in the way that's been articulated by Mr McLeod and I will not repeat, that the distortion that can occur in fact-finding based upon the benefit of hindsight, and based upon a microscopic or a confined spotlight on conduct, shouldn't distort an expectation in the real world that someone is going to remember events or conversations of years ago, or someone is going to necessarily have read attachments to emails or consumed in detail presentations that were given that may have happened years ago and also may have not been at the front of one's mind where one has delegates quite able to perform the substantive tasks at hand.

The sixth proposition - and this has been mentioned by others, and it will bedevil, I suspect, a lot of the process of fact-finding - is that you must resist making any adverse credit findings unless it is necessary to do so in order to respond to the terms of reference. That sort of proposition is an accepted and non-contentious proposition in judicial proceedings, and The Star has indicated that it will identify in its written submissions the orthodox, which I expect to be the - and no doubt will be, the orthodox authorities on that point. Equally, in the exercise of a power under section 143, whether in combination with 30 and 141 or otherwise, it does, in our submission, seem like a prudent approach. I'll come back to the significance of that when we get to the end, if I may.

The seventh proposition - and this one is slightly idiosyncratic to the present review - is that in respect of submissions that have been made that a witness has displayed a lack of candour or a lack of transparency by reason of alleged omissions in a witness statement when that witness statement is responding to questions that have been posed by or on behalf of the Review, there must be a rigorous assessment of the sufficiency of the connection between the alleged omitted matter and the question, and that is on any fair reading of the question. Now, this issues first arose - and if I could have called up, please, the transcript at 3961. It first arose in relation to Mr Buchanan's evidence. And if you could focus - I'm not sure that's the right page.

MR BELL SC: Operator, I think you've got the wrong page.

MR WOOD: T3961. That's the page number. I'm sorry. That may have been my error, Mr Bell. You will see there at line 31 going through to 44 the way the issue arose, and you made the observation of the necessity of a sufficient connection between the omitted matter and the question that was posed. And that, with respect, is a good point and, one may say, an obvious point if one is alleging a lack of transparency and candour.

The overreach in relation to that particular matter was continued - or repeated in respect of Ms Martin and the Buchanan documents. Can we go, please, to transcript 4073. And if you would be good enough to cast your eye at line 2 and then over the next - and that page has finished, over to the next page at line 28.

You will see the suggestion put there that there was a non-disclosure of the Hong Kong Jockey Club report, and the JRAM August 2021 meeting. That was said to be compelled by questions 4 and 5.

5 And we will come to it in more detail in the written submissions as to how responsive or non-responsive they - those alleged omissions were to the questions. We say, of course, they were not compelled by those questions on any fair reading of them. But - or perhaps I can just demonstrate that. If I could pull up the relevant questions that Ms Martin was asked. We haven't been able to find that document
10 entered into the system, but we can readily find them in Ms Martin's witness statement. Can we have pulled up - sorry. Have you finished - may I ask, Mr Bell, have you finished reading those parts of the transcript?

MR BELL SC: Yes. Thank you.

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MR WOOD: Can we have brought up, please, operator, STA.3021.0001.0238. Yes. And that's Ms Martin's statement. We will find question 4 at pinpoint 0253. Yes. I think we have, operator, to move to 0253 of the same document.

20 **MR BELL SC:** I have it on hard copy, in any event.

MR WOOD: You will see questions 4 and 5 in the way they're formulated, and you can see quite readily that the Hong Kong Jockey Club report and the JRAM meeting in August of 2021 are not candidates to naturally fall within, or be
25 responsive to, those questions. Now, I raise this because, demonstrably, there's no sufficient connection between those. But this issue took a bizarre, or somewhat bizarre, detour thereafter.

If we could go back to the transcript, and this time it is at 4192. And these are in
30 the submissions of Star. And if you would be good enough to look at lines 22 to 30. You will see it's submitted there on behalf of Star that the Hong Kong Jockey Club report and Project Congo ought to have been disclosed not in response to questions 4 and 5, but this time in response to questions 2 and 3 - sorry, 2 and 5. Again, we say it's demonstrably insufficient as a matter of connection on the
35 proper reading of the questions.

Question 2, if you have the hard copy there, you will see doesn't demand, on any fair reading of it, the revelation or disclosure of the Hong Kong Jockey Club report or Project Congo. This is entirely incidental to the fact that this alleged
40 non-disclosure giving rise to lack of candour, in the submissions both of Star and of counsel assisting, were not put to Ms Martin, but we can leave that to one side for the moment. But the different approaches as to where one looks or shops around the questions to see how tenuously or otherwise one can try and fit in an argument, that then supposedly builds into a criticism of a witness for lack of
45 candour or transparency, is something that must be treated with the utmost caution.

The next proposition, which is number 8, is this: in respect of specific submissions that have been made relating to the credit of Ms Martin - and the proposition applies more generally, I must say - should it be necessary to make findings, then any findings cannot be soundly based upon conclusory or broad assertions - and I'm talking about findings that are adverse, of course, to Ms Martin - and this is applicable to any other witness, for that matter - can be based upon conclusory or broad assertions untethered to a detailed reference to, and support in, the evidence as fairly evaluated.

May I provide two examples, and these go to very important matters on more levels than one. As part of what was described as introductory submissions to be supplemented in various ways on particular topics of concern - this is counsel assisting at transcript 3956, lines 1 to 4 - it was submitted - and this is at transcript 3979.1 to 7. Perhaps we could bring that page up, operator, please. It's T3979. You will see at lines 1 to 7 it was submitted that at times the three lawyers' conduct was unethical and at times dishonest. And the sole reference there given is to Mr Power and his dealings with the regulator in August and September 2019, about which you've just heard submissions from Mr McLeod.

Now, it's hard to imagine more serious allegations made against professionals, and particularly professional lawyers, than unethical and dishonest conduct. But here, that allegation is made and it's not tied, in relation to Ms Martin, to any particularisation or any proof. Now, we've struggled to find in the transcript other examples, or any examples, pertaining to Ms Martin of submissions of dishonesty and unethical conduct, but we will continue that combing through. But unless and until one discovers and discloses with specificity, particularisation and the tethering of those allegations to substantive evidence, then you should not countenance any adverse credit or other finding against a professional in those circumstances.

Secondly - and this also is important at many levels - could we go, please, to transcript 3980. You will see at line 34 - and this continues over to line 11 on page 3981. There are 23 lines of recorded submissions there. This is the place where the submission was made against Ms Martin that her oral evidence was extremely pedantic, you will see, technical, evasive and non-responsive. One example only is given of that, with which we will deal in detail in our written submissions. But it may be a curiosity to you, Mr Bell, to find that the epithets or adjectives "pedantic" and "technical" fit within the rubric as well, and customarily understood, of counting against somebody's credit. But we can leave that to one side.

You will see the next submission that's made, that almost entirely she failed to make appropriate concessions or take responsibility. Now, one example was given of that, which, again, will be dealt with thoroughly and refuted in writing. It must, in fairness, be acknowledged that counsel assisting said - and you will see it

reported there - that further submissions would be made about Ms Martin in the context of CUP, Salon 95 and patron accounts.

Where we can find in those submissions, that is, those submissions dealing with CUP, Salon 95 and patron accounts, submissions going to the credit, whether through evasive or non-responsive answers or whether through failure to make appropriate concessions or whether through failure to take personal responsibility, we will address them. But they are something of a mystery to us. And if they are a mystery to us, then it's not going to be an allegation of sufficient specificity, given the seriousness of it, that it should be encountered or accepted by you without the greatest scrutiny.

MR BELL SC: One matter that I should raise with you - and it's raised by counsel assisting at transcript 3981, lines 4 to 11 - is Ms Martin's role in the 7 November 2019 email to National Australia Bank --

MR WOOD: Yes.

MR BELL SC: -- where she said that she was rushed and busy and didn't have time to properly consider it. That was the subject of some specific criticism there.

MR WOOD: Yes, true.

MR BELL SC: I should say to you that having observed Ms Martin give evidence over a number of days, it did seem to me that she presented as a very careful and considered person. She usually contemplated her answers carefully before giving them. She rarely, if ever, answered a question without imposing some qualification on the question, even if it was a fairly minute one. And I draw that to your attention only because I'm finding it hard to reconcile my impression of Ms Martin with the submission - or with the evidence that she gave there that she acted carelessly.

MR WOOD: That's why we want to deal, with precision and in detail and in depth, with issues like that because they deserve - and they're important, as you have recognised - close treatment. And I don't think it's had the treatment quite from the point of view of Ms Martin at the moment. But what our submissions will do in writing in addressing that in part - and it will be more comprehensive than this - is have the close scrutiny of the exchange of emails that occurred and the three drafts that were in play, and the time sequence in relation to each of those drafts and their interaction, or non-interaction in the case of two drafts, with Ms Martin, and the time that was available when she first saw the only draft that she saw until the 12 o'clock deadline.

But it's the minutiae of that analysis that has caused us, in part, apart from recognising the realities and the practicalities of not delving into, in a partial way, any serious questions. But we will focus upon that and address that. And you do

recall, no doubt, that her evidence on that topic was that she had a brief conversation with Mr Theodore, but she was in a meeting at the time. But I think you would benefit from the content and nature of what she said in her email and the surrounding documents that were - to which that was responsive, and the amendments that went on thereafter, in respect of which she doesn't seem to have been in the loop. But thank you for the forewarning.

May I move to the ninth proposition, and this is one that Mr McLeod has submitted on and done so more than once, that any serious adverse findings, particularly those with potential to have consequences professionally for a witness - and we're dealing here with lawyers, so those consequences are well known to you - should only be made in accordance with the principles of Briginshaw. He has given you the reference to that, and no doubt you've read it hundreds of times, or perhaps you only need to read it once and, unlike me, not have to read it 100 times.

Briginshaw, of course, has been considered to be a decision about a rule of evidence. And you know that you are free from such rules under section 143(3) of the Casino Control Act. However, the Court of Appeal in New South Wales - and I won't take you to this, but I'll give you the precise reference - in *Bronze Wing International v Safe Work NSW* - and the medium neutral citation is [2017] NSWCA 44 - sorry, 41, 4-1, at paragraph 127.

The Court of Appeal there - and this was in the judgment of Justice Leeming, with whom Justice Gleeson agreed, applied Briginshaw by analogy to NCAT in circumstances where NCAT expressly, under its governing legislation, was not bound by the rules of evidence. Notwithstanding that, in the exercise of the powers that NCAT had, the Court of Appeal considered that it should follow the principles of Briginshaw by analogy. Now, when one looks at section 143, in addition to, if necessary, 141 or section 30, we say the analogy is here applicable as well.

I don't need to or want to say anything further on that proposition. The final proposition is one that is truly bespoke here, and that is this: you should treat with extreme caution admissions made by Star, or submissions made by Star, as a foundation for fact-finding against members of senior management. That point, we say, is made good by the following. Could we have pulled up and the following five of six subintegers. Could we have pulled up, please, operator, transcript 4160.

The admissions - and I'll call them that, and I'll come back to that characterisation of "admissions" later, but allow me, please, to use that short-form expression for the moment - and submissions by Star conform to a deliberate strategy, forensic or otherwise. And you will see that strategy recorded at line 19 through to line 20, namely, this is the mea culpa idea that, "We have been bad in the past, but we're not bad now, and to demonstrate we're not bad now, we have to go through this four-step process." And you will remember these four steps were identified by Commissioner Bergin in the Crown Inquiry. So there is a compulsion, if one wants

to fit within that framework, upon Star to make admissions and to make submissions based upon contraventions that they recognise - sorry, contraventions - failings that they recognise to fit into that category.

5 Now, let me try and make that good by the second integer. Star has promoted a finding against Ms Martin and Mr Hawkins. And this is at, if we could bring it up, T4193 at line 33 to line 46, where you will see there's attributed there a motivation to Ms Martin and the allegation or submission that she failed to act independently of the business, in circumstances where neither of those matters was put by
10 anybody to Ms Martin in her evidence and in circumstances where Star, in another part of its or their submissions, warns against this very thing, "Do not make serious allegations against somebody if they have not been apprised of them and had an opportunity pursuant to the procedural guidelines in 24 and 25 or otherwise to answer them." Now, one explanation for why Star did that is that it might want
15 to fit into the category 1 requirement of recognising its own failings.

Further - and this is the third integer - it would be more than passing strange to you to have noticed that having occupied 26 days of transcript cross-examining Ms Arthur - 26 pages of transcript cross-examining Ms Arthur as to her and
20 NAB's knowledge and use of the CUP cards, including the contested conversations with Ms Scopel about which you heard much from Mr Braham this morning - and that cross-examination is recorded, and I won't take you to it, at pages 268 to 294 - Star then turns around in final submissions, at transcript 4209, lines 10 to 14, and says it's open to the Review to prefer the evidence of Ms Arthur and Mr
25 Bowen over the contradictory evidence of other witnesses, including Mr Theodore and Ms Scopel, we say, all to conform to the strategy. Otherwise, you would have to implicitly accept that the cross-examination was not only futile but counterproductive.

30 **MR BELL SC:** I suppose, in fairness, counsel could have reflected upon the evidence, having conducted that examination.

MR WOOD: I was just about to come to that very point. Of course, that would be a very proper thing to do. But it is pretty hard to rationalise that with the
35 convincing submissions that Mr Braham put this morning about the circumstances of the conversations, the inherent likelihoods of who should be believed or not believed. It's not one of those categories where you think this is a dead duck that does not need flogging any longer. If anything, it's the reverse. And I would fully accept, if I had only one point that was the hinge to this conclusion, I wouldn't be
40 getting very far. But if I have many, then it's going to sow a doubt in your mind as to the - not a doubt in your mind, but it's going to provoke caution with dealing as against the individuals based upon submissions or admissions by Star.

The next integer concerns the CUP contract and its unwinding, as it were, through
45 the long analysis that Ms Richardson took you to in terms of the applicability or otherwise of the CUP rules. Now, that could have played out in many ways,

theoretically, having unstitched those rules in terms of the applicability, but Star didn't do that. And it may be for very legitimate and good reasons that it didn't pursue all the consequences of their analysis but, rather, turned back to the underlying conduct and said, "It doesn't really matter what's going on at the
5 contractual level. Let's look at this through the narrower prism of conduct that goes to unsuitability." That, of course, also conforms, we say, with the strategy.

The next one is something that I mentioned before back up in relation to proposition 7, and that is that Star has propounded in the final submissions a
10 finding of lack of complete and transparent response in Ms Martin's witness statement when she was asked by the review, and I won't take you back to it. And that sort of approach, we say, again conforms to the strategy, albeit it's entirely unsoundly based. But it's hard to see why, given counsel assisting had trodden in that area in a slightly different way, The Star would propound that finding out of a
15 witness statement of Ms Martin said to contain a non-responsive material omission.

The next way of illustrating it - and this is the final integer - is that at transcript 4238 - could we have that bought up - probably not necessary - at lines 4 to 6. It
20 was submitted on behalf of Star that the assertion of privilege over the KPMG report was inappropriate and unacceptable. We, of course, admit and accept that the claim to privilege was wrongly made. But no - as was reflected in Ms Martin's oral evidence and reflected in her witness statement, but no attempt was made by Star to analyse closely the full circumstances, which, in our written submissions,
25 we will go to in detail, that show the claim for that privilege bears a far more anodyne characterisation. And the easy way out, conforming to the strategy from Star's point of view, is simply to say this claim for privilege was inappropriate and unacceptable. Inappropriate one can understand; unacceptable is rather loaded on it.
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Now, they are the 10 propositions controlling, we say, the way in which fact-finding conclusion reaching should - to which you should adhere and in respect of which you will, in any orthodox approach, bump into on many different occasions. The idea that I wish to raise for your consideration arises, in part, about
35 the application of those propositions and the complexities that will be involved in applying them and, in part or principally, from the position taken by Star at the beginning of their submissions and throughout their submissions in reply - sorry, in concluding.

40 Could we go to transcript 4156. And you will remember this well, but it's the opening part of Ms Richardson's submissions. And you will remember at line 10 to 32, there are a number of submissions that it's open for you to conclude that Star and its corporate associates at the commencement of the Review was not suitable. That is about as close as one can come to an admission of unsuitability prior to the
45 commencement of the Review, other than couched slightly differently. But that's the substance and effect of it.

Now, there are summary areas of deficiencies or failings that are then given - and I won't take you to them because you will remember them - at transcript 4157 through to 4160. And also, at the very end of her submissions yesterday, there were summarised areas of failings and the responses thereto, and there are 11 such topics. And I won't take you to these either. They're at T4359 and T4367. So we have a circumstance where we have an effective admission of unsuitability, and we have a circumstance where there are summary areas of deficiencies or failings that give rise to, or underwrite, that effective admission of unsuitability.

In addition to that, what you have over three days of submissions, is quite a detailed analysis of where the failings have occurred and invitations either to - that it's open to find that some failing or deficiencies occurred, or that such a finding may be made, or, in some circumstances, such a finding should be made. So you could have confidence from Ms Richardson's submissions that, one, the effective concession or admission that Star and its corporate close associates at the commencement of the Review was not suitable is well made and made after considerable consideration and made with a proper basis.

That leaves you, Mr Bell, in a very curious position in some ways, and I don't mean that in any pejorative sense. But if we have a look at the dominating term of reference, which is clearly the suitability of Star in paragraph 1 - and I will park, if I may, the ongoing directors - or it may only be one director who qualifies as a close associate. If I can park that in a box for the moment. We have an effective admission of unsuitability up until the time of the commencement of the Review in relation to the three Star corporate bodies.

The terms of reference from 2 through to 8 are, in many ways, subsumed by or consumed within term 1. I'm not saying that is correct dogmatically and exclusively. But the way the Review has unfolded, it's difficult to see that there's going to be much in the way of matters to address if there's an orthodox inquiry process and report through items - or paragraphs 2 to 8. So you are left with a position where the individuals are no longer close associates and their suitability does not have to be assessed. You are left with an effective admission that prior to the commencement of the Review, Star and its corporate close associates were unsuitable.

What then occurred was Ms Richardson said, "We are going to demonstrate that we're suitable now, and one way we will do that is by recognising the failings in the past." And she goes through all those and seeks to demonstrate and convince you that they're suitable now. What wasn't suggested by Ms Richardson, and what hasn't been suggested thus far - and it's a matter in respect of which obviously counsel assisting has not had an opportunity to make submissions about, and I note that, understandably, you didn't interject at the time of the effective admission by and on behalf of The Star about unsuitability at the earlier point of time and saying, "Well, that relieves me of an enormous burden. Thank you very much. I

can rely on those submissions without having to dig much deeper if I am comfortable those submissions have been properly made."

And I don't say that by way of criticism because, no doubt, you were interested in knowing the foundation for that conclusory effective concession. But now we know that because we've had three days' worth of submissions about it. We are in this position: there can be no doubt that if the individuals that are represented today before you, or will be represented by way of written submissions by Tuesday, were not here, you would be fully justified in reaching conclusions about the prior suitability - and by "prior" I mean prior to the commencement of the Review - based upon the admissions and concessions in detail made by Star.

What difference does it make that we are here? And what has not been explored is what the utility is in you delving into, for example, the minutiae and detail of a conversation between a bank officer and a Star officer and making conclusions about that. And as Mr Braham said, he would not come as any particular surprise if you wrote a report that didn't include any reference to her at all. Because who wins that contest and who loses it can't have any rational bearing upon the way in which you should answer the terms of reference. And we can say the same. We could multiply those examples many times over.

I'm not suggesting this approach for consideration because it is a shortcut. It's certainly, we would submit, something that should be taken under close advisement, as the Americans would say. And it would go a long way towards avoiding having to pour through each of my 10 points every time I complain in writing about a proposed finding. I'm not saying 10 would apply to every one of them, but it's very likely any adverse serious finding is going to attract one or more of those points. Then you multiply my complaints or submissions by those of an indeterminate number of other individuals, and we've heard many occasions already in which you have been urged not to make findings going to - with great consequences or not to make findings on credit or not to make findings that would expose anybody to civil penalties or criminal proceedings.

And it is hard to put one's finger on the utility of you engaging in debates - sorry, engaging in the resolution of debates that are propounded by individuals where those individuals are no longer close associates and their suitability has got nothing to do with your terms of reference, in truth, hereafter. And the resolution of those debates, it is simply not easy to see, has any utility, ultimately.

MR BELL SC: It's a nice point you make, but wouldn't the logical consequence of that be that if I was limited to the period up to the commencement of the Review, I would need to express an opinion about the suitability of the close associates at that time?

MR WOOD: Not necessarily - not if what you must focus upon according to the terms of reference is something that is current. Now, I understand that the - one, as

a matter of orthodox thinking, would say is, well, we should look at what has happened in the past and see whether the future is different than the past for whatever reason.

5 In relation to close associates, you couldn't have had a very good point, with respect, other than the fact that all the individual close associates, and putting to one side in their box the independent directors, have all gone. So whatever disadvantageous aspects are said to be attached to their conduct, or their failure to conduct themselves in a particular way, is not, as a matter of logic, of any
10 relevance to the current suitability of Star.

And this is a point, for different reasons, Ms Richardson made when she was going through the various ways in which she alleges they have remedied the deficiencies and failings that existed in the past, and she lines up 12 people in
15 senior management and says, "These either committed the conduct that we say was a failing or they permitted it to occur, and they have all gone." So everybody that's an individual close associate at the time prior to the commencement of the Review, we would submit, is no longer a person of relevance, either strictly or more generally, in you responding to paragraph 1 or, indeed, otherwise to the
20 terms of reference.

We know that this suggestion - this idea should be thought through quite closely. And I don't imagine any other party has had much of an opportunity, or maybe they have thought about this in various ways, as to whether this is an appropriate
25 way to go. And obviously counsel assisting haven't had any opportunity, and obviously you haven't because you haven't heard about this idea until now. But we were trying to work out where does it really go for you to have to deal with hundreds of allegations, spreading over many individuals, concerning detailed conduct and detailed submissions that are just not going to lead anywhere, that we
30 can see at least, as relevant to your ultimate conclusion and reasoning process.

That's why I was tedious with going through the 10 propositions, because they did provide a good platform to test life in two different modes: one is the orthodox inquiry mode with the orthodox, if there is such a thing, report; the other is to look
35 at whether we are really wasting a lot of time here in many ways in delving in a process that doesn't seem to be any longer, per force of the effective admissions, of any utility or consequence. I'm not sure I can take that any further. And it doesn't detract from, in any way, the fact that we are going to, and have been continuing to, prepare and will serve detailed written submissions in the orthodox way.
40

But we may preface that by - those submissions by recording that is without prejudice to our suggestion that it is a good idea to eliminate a lot of the now functionally irrelevant material from your consideration in terms of fact-finding, and conclusions for that matter. Yes. Sorry. It may have been implicit, and I
45 should make it explicit, that the approach would carry with it two implications: (1) your reliance - sorry, theoretically, if you were to rely on the admissions of Star,

they would give rise to findings as against Star and its corporate close associates, but they would not give rise to findings against any of the individuals.

Now, that would go a long way to protecting any individual who thought their
5 reputation was slighted or was concerned about not having their day in the Review, and it may be it goes as far as one could ever be expected to go. But it certainly doesn't cavil with the implied admission by any individual that they would be bound by, or consumed in, findings based upon admissions by Star.

10 **MR BELL SC:** Yes.

MR WOOD: It may be that one has to reflect upon that a bit further, but we think it is an idea worth (1) discussing and (2), we say, ultimately embracing.

15 The final thing I want to say - and I know I'm probably over time as well - we will endeavour to respond in our written submissions to anything my learned friend, Mr Henry, has to say on behalf of the non-executive directors if they raise new submissions, allegations or suggested findings against Ms Martin, because we haven't had any opportunity to even consider - obviously because they haven't
20 been made, we don't know what's going to be said. But if we don't have time to respond to Mr Henry within the deadline of the next day, I foreshadow we may ask for a day's extension, just confined to that topic. But I don't know whether it's going to occur. But I thought it best to flag it now so it doesn't come as a bolt of lightning out of the clear blue sky if that were to happen. Those are the
25 submissions I wish to make orally.

MR BELL SC: Yes. Thank you, Mr Wood. I will now adjourn until 10 am on Monday morning.

30 **<THE HEARING ADJOURNED AT 4:29 PM UNTIL MONDAY, 20 JUNE 2022 AT 10 AM**